

Contract Between the City of Boston and
Mission Main Phase One Limited Partnership
Pursuant to Section 6A of Chapter 121A of the
Massachusetts General Laws

Phase One Mission Main Revitalization Project

This Contract made this 28th day of October, 1998, under Sections 6A, 10, 15 and 18C of Chapter 121A of the General Laws of the Commonwealth of Massachusetts, is by and between Mission Main Phase One Limited Partnership, a Massachusetts limited partnership (hereinafter called the "Partnership"), and the City of Boston, a municipal corporation of the Commonwealth of Massachusetts (hereinafter called the "City").

WITNESSETH THAT:

WHEREAS, the Mission Main Revitalization Corporation (the "Original Applicant") caused to be filed with the Boston Redevelopment Authority (the "BRA") an application dated October 11, 1996 (the "Master Application"), under the provisions of said Chapter 121A of the General Laws and Chapter 652 of the Acts of 1960, both as amended (collectively, "Chapter 121A"), for approval of a project (the "Project"), more particularly described in the Master Application including, but not limited to, acquisition of the Project Area (as defined in the Master Application), demolition of existing structures in the Project Area and the construction of a new residential neighborhood; and

WHEREAS, the BRA approved the undertaking of the Project by the Original Applicant by vote on November 14, 1996, adopting the "Boston Redevelopment Authority Report and Decision on the Mission Main Revitalization Project Under Chapter 121A of the General Laws and Acts of 1960, Chapter 652, Both as Amended" ("Report and Decision"); and

WHEREAS, the Mayor of the City of Boston (the "Mayor") approved the BRA's approval on November 26, 1996; and

WHEREAS, the vote of the BRA and the approval of the Mayor of the City were filed with the Clerk of the City of Boston (the "City Clerk") on November 26, 1996, and such approval has become final and binding pursuant to the provisions of Chapter 121A; and

WHEREAS, the Original Applicant and the Mission Main Developer Limited Partnership (the "Developer" and, together with the Original Applicant, the "Applicant") caused to be filed with the BRA two (2) applications to amend the Report and Decision of the BRA on the Project, both dated October 11, 1996 (respectively the "Phase 1A Transfer Application" and the "Phase 1B Transfer Application") under the provisions of Chapter 121A in order to describe Phases 1A and 1B of the Project, to transfer Chapter 121A approval as to such phases, and to obtain zoning deviations for such phases; and

WHEREAS, the Phase 1A and Phase 1B Transfer Applications were approved by the BRA by votes on November 14, 1996 adopting respectively the "Boston Redevelopment Authority First Amendment to the Report and Decision on the Mission Main Chapter 121A Project" (the "First Amendment") and the "Boston Redevelopment Authority Second Amendment to the Report and Decision on the Mission Main Chapter 121A Project" (the "Second Amendment"); and

WHEREAS, the Mayor approved the BRA's approvals on November 26, 1996; and

WHEREAS, the votes of the BRA and the approvals of the Mayor of the City were filed with the City Clerk on November 26, 1996 and such approvals have become final and binding pursuant to the provisions of Chapter 121A; and

WHEREAS, the Applicant caused to be filed with the BRA an "Application for Approval to Amend the First Amendment to the Report and Decision on Phase 1A of the Mission Main Chapter 121A Project" dated September 30, 1997 (the "Application to Amend the Phase 1A Transfer Application") under the provisions of Chapter 121A in order to revise the description of Phase 1A of the Project, to transfer Chapter 121A Approval as to such phase, and to obtain zoning deviations for such phase; and

WHEREAS, the Application to Amend the Phase 1A Transfer Application was approved by the BRA by vote on October 1, 1997 adopting the "Third Amendment to the Report and Decision on the Mission Main Revitalization Chapter 121A Project" (the "Third Amendment"); and

WHEREAS, the Mayor approved the BRA's approval on October 9, 1997; and

WHEREAS, the vote of the BRA and approval of the Mayor of the City were filed with the City Clerk on October 14, 1997, and such approval has become final and binding pursuant to the provisions of Chapter 121A; and

WHEREAS, the Applicant caused to be filed with the BRA an "Application for Approval to Further Amend the First and Second Amendments to the Report and Decision on Phase 1 of the Mission Main Chapter 121A Project" dated July 17, 1998 (the "Application to Further Amend the First and Second Amendments" and, together with the Phase 1A Transfer Application, the Phase 1B Transfer Application and the Application to Amend the Phase 1A Transfer Application, the "Transfer Applications") under the provisions of Chapter 121A in order to make certain changes in the design, schedule, phasing, proposed uses, construction and permanent financing, and other minor aspects of Phase One of the Project as described in the Application to Further Amend the First and Second Amendments, to transfer Chapter 121A approval as to Phase One, and to obtain zoning deviations for such phase; and

WHEREAS, the undertaking of Phase One of the Project was approved by the BRA by vote on July 23, 1998 adopting the "Boston Redevelopment Authority Force Amendment to the

Report and Decision on the Mission Main Revitalization Chapter 121A Project" (the "Fourth Amendment") and approving the Application to Further Amend the First and Second Amendments; and

WHEREAS, the Mayor approved the BRA's approval on August 14, 1998; and

WHEREAS, the vote of the BRA and the approval of the Mayor of the City were filed the City Clerk on August 17, 1998 and such approval has become final and binding pursuant to the provisions of Chapter 121A; and

WHEREAS, pursuant to the provisions of Chapter 121A, the City and the Partnership have determined to enter into this Contract.

NOW, THEREFORE:

1. All capitalized terms used and not specifically defined herein shall have the meanings set forth in the Report and Decision (which, as amended by the First Amendment, Second Amendment, Third Amendment and Fourth Amendment, shall hereinafter be referred to as the "Report and Decision").

2. The Partnership hereby agrees with the City that, subject to Section 9 hereof, upon the Effective Date defined below, all activities of the Partnership will be undertaken in accordance with the Applications, the provisions of Chapter 121A as now in effect and the Minimum Standards for the Financing, Construction, Maintenance and Management of the Project set forth in the Report and Decision, which are incorporated herein by reference. Such activities of the Partnership will include acquisition by ground lease of the portion of the Project Area comprising Phase One (the "Phase One Ground Lease") and causing Phase One to be constructed, maintained and managed. The "Phase One Effective Date" shall mean the date when the Phase One Ground Lease has been fully executed by all necessary parties and delivered, and is effective according to its terms.

3. Subject to the provisions and limitations of this Contract, the Partnership will pay to the Commonwealth of Massachusetts Department of Revenue or any successor department or agency ("DOR"), for each calendar year during which the Partnership is subject to Chapter 121A and has the benefit of the tax exemption provided thereunder, the urban redevelopment excise required under Section 10 of Chapter 121A (the "Excise Tax").

4. Subject to the provisions and limitations of this Contract, the Partnership will pay to the City with respect to each calendar year during which the Partnership is subject to Chapter 121A and has the benefit of the tax exemption provided thereunder, the amount (the "Differential Amount"), if any, by which the following amount (the "Contract Amount") exceeds the Excise Tax for such calendar year:

Commencing on the Phase One Effective Date and ending on the date on which the Project is no longer subject to Chapter 121A, an annual amount which shall be equal to ten

percent (10%) of the amount of rent actually received from tenants (exclusive of any operating subsidies for those units occupied by public housing eligible households under any Annual Contributions Contracts, or like contracts, entered into between the Boston Housing Authority ("BHA") and the United States Department of Housing Urban Development, or any successor department or agency ("HUD")) occupying units in Phase One of the Project.

To the extent that the Excise Tax exceeds the Contract Amount in any calendar year, the Partnership shall receive a credit against the Contract Amount payable in a subsequent calendar year or years.

Payment of amounts due hereunder shall be equitably pro rated for any partial year during the periods set forth in this Section 4. Payment to the City of any Differential Amount shall be made by no later than April 1 of each calendar year in which such a payment is due.

5. The Partnership shall file: (a) with the Commissioner of Assessing of the City (the "Commissioner of Assessing") and the BRA by February 10 following the end of each calendar year during which this Contract is in effect the following: (i) a computation for such calendar year under the applicable formula set forth in Section 4 above; (ii) a statement of income and expenses of the Partnership from Phase One of the Project; and (iii) a Declaration of Liability Return, a form made available by the Assessing Department of the City (the "Assessing Department"); and (b) with the Commissioner of Assessing, the Collector-Treasurer of the City (the "Collector-Treasurer") and the BRA by April 1 following the end of each calendar year during which this Contract is in effect the following: (i) a Declaration of Liability Form, a form made available by the Collector-Treasurer; (ii) an audited report, prepared by a Certified Public Accountant, consisting of a statement of all rental and other income, operating costs, a statement of profit and loss, a balance sheet, and a statement of disposition of funds for the preceding year; and (iii) a certified copy of the Partnership's urban redevelopment excise tax return as filed with the DOR.

6. The Partnership will submit to the Commissioner of Assessing, or to a representative of the Commissioner designated in writing, written authorization to examine all urban redevelopment excise tax returns and attachments thereto filed by the Partnership with the DOR.

7. Any Overpayment (as defined below) by the Partnership with respect to any calendar year shall be refunded by the City to the Partnership as soon as is practicable after the sending of notice to the City by the Partnership of the discovery of such overpayment. In the event that the amount of any Overpayment is not refunded prior to the date on which the next payment by the Partnership becomes due under this Contract, the Partnership shall, notwithstanding anything else herein to the contrary, be entitled to offset the amount of such Overpayment against such next payment. For purposes of this Contract, an Overpayment by the Partnership with respect to any calendar year shall include (A) amounts paid by the Partnership to the Commonwealth of Massachusetts with respect to the Project pursuant to Sections 10, 15 and 18C of Chapter 121A which exceed for such calendar year the Contract Amount, (B) any amounts paid by the Partnership to the City of Boston pursuant to Massachusetts General Laws,

Chapter 59, as amended ("Chapter 59") with respect to Phase One of the Project for any period during which this Contract is in effect, whether assessed to the Partnership, to the ground lessor of Phase One, or to any predecessor in title of either of them; or (C) amounts paid as a different or additional tax resulting from the replacement of the current method of assessment of real estate taxes, in whole or in part, by a different method or type of tax or the imposition of an additional type of tax to supplement the current method of assessing real estate taxes, in either case upon the Partnership, the tenant(s), subtenant(s) and/or subsubtenants of the Partnership or the Project (such different or additional tax, for example, would include a general or a specific assessment, user fee, tax on real estate rental receipts or any other tax imposed on or required to be collected and paid over by the Partnership or the tenant(s), subtenant(s) and/or subsubtenants of the Partnership for the privilege of doing business in Boston, for the employ of employees in Boston or levied against real estate or upon the owners or users of real estate as such rather than persons generally for any period during which this Contract is in effect).

8. The Assessing Department hereby determines, in accordance with the seventh paragraph of Section 10 of Chapter 121A, that the fair cash value of the real and personal property constituting Phase One of the Project, as of January 1, 1998, and for each succeeding January 1 up to and including the year next following the year in which the Partnership's property tax exemption under Chapter 121A shall terminate, shall be an amount which, when used in the computation of the Excise Tax for the previous calendar year, would not result in an Excise Tax greater than the Contract Amount due for such prior calendar year.

Except for the period prior to completion of Phase One of the Project, in the event the Partnership does not file with the Commissioner of Assessing the information required by the first sentence of Section 5 of this Contract, the Assessing Department, at the option of the Commissioner of Assessing, may determine the fair cash value in its sole discretion, without regard to the limitation set forth in the preceding paragraph of this Section 8. Upon the request of the Partnership, and based on reasonable cause, the Commissioner of Assessing may extend the time period for the filing of the required information.

The Assessing Department agrees to certify as to each of the foregoing fair cash value amounts to DOR and the Partnership on or before March 1 of each year during such periods, pursuant to the second paragraph of Section 10 of Chapter 121A. The Assessing Department acknowledges that the Partnership's interest as ground lessee of the land and fee owner of the improvements comprising Phase One of the Project constitutes all the real and personal property of Phase One of the Project for which it is required to establish a fair cash value under the provisions of Section 10 of Chapter 121A, and the City Assessing Department hereby covenants not to separately assess or to seek the payment of any tax on real or personal property under Chapter 59 or otherwise on the ground lessor's estate in Phase One of the Project, which is exempt from taxation under Chapter 121A of the General Laws.

9. The obligations of the Partnership under this Contract and the Applications are conditioned in all respects upon (i) the acquisition by ground lease of Phase One of the Project Area by the Partnership; (ii) the issuance of all permissions, variances, permits and licenses which may be required with respect to the construction, maintenance and management of Phase

One of the Project, whether or not the same were specified in the Applications; (iii) the Project being exempt from taxation under Section 10 of Chapter 121A, and (iv) upon the gross income of the Partnership for purposes of Section 10 of Chapter 121A being limited to the rental income actually received by the Partnership, excluding subsidy payments and any utility or other pass-through payments, from Phase One of the Project as described in the Applications. The Partnership shall not be held in any way liable for delays which may occur in the construction, repair and maintenance of Phase One of the Project, or otherwise, by reason of scarcity of materials or labor, labor difficulties, damage by fire or other casualty or any other cause beyond the Partnership's reasonable control. The Partnership agrees to use reasonable efforts to cause all such permissions, variances, permits and licenses to be secured and all such delays to be overcome.

10. This Contract shall continue for a term commencing on the Effective Date and terminating on the date on which the property tax exemption provided to the Partnership under Chapter 121A terminates. Notwithstanding the foregoing, upon the termination of this Contract as to Phase One of the Project, the Partnership shall pay or cause to be paid a pro-forma tax to cover the time period between such termination of this Contract and the period for which Phase One of the Project becomes taxable pursuant to Chapter 59, which pro-forma tax shall be equal to the Contract Amount for such period as if Phase One of the Project had remained subject to this Contract. Such amount for the balance of the calendar year during which this Contract terminates shall be payable on or before March 15 of the year following the year in which this Contract terminates. Such amount for the first six months of the year following the year in which this Contract terminates shall be payable on or before June 30 of the year following the year in which this Contract terminates. Neither the Project nor the Partnership shall thereafter be subject to the obligations of Chapter 121A, enjoy the rights and privileges thereunder, or be subject to the terms, conditions, and obligations of this Contract as provided in Chapter 121A provided, however,, the deviations and permissions granted by the BRA pursuant to the Report and Decision shall survive and remain in effect.

11. The Partnership and the City agree that, without mutual consent, any amendment subsequent to the delivery of this Contract of any of the provisions of Chapter 121A of the General Laws or of Chapter 652 of the Acts of the 1960 or of the Rules, Regulations and Standards now applicable to the Project shall not affect this Contract.

12. All notices required pursuant to this Contract shall be in writing and delivered by hand or mailed postage prepaid, by registered or certified mail, addressed in the case of the City to One City Hall Plaza, Boston, Massachusetts, and in the case of the Partnership, to Edward A. Fish Associates, 159 Burgin Parkway, Quincy, Massachusetts 02169, Attention: Edward J. Lubitz, and to Winn Development Company, Six Faneuil Hall Marketplace, Boston, Massachusetts 02109, Attention: Roger M. Cassin, with a separate copy to Peabody & Brown, 101 Federal Street, Boston, Massachusetts 02110, Attention: Paul E. Bouton, and to Goulston & Storrs, 400 Atlantic Avenue, Boston, Massachusetts 02110, Attention: Matthew J. Kiefer, and in the case of either party to such other address as shall be designated by written notice given to the other party. Any such notice shall be deemed given when so delivered by hand or, if so mailed, two (2) days after such notice is deposited with the U.S. Postal Service.

13. The provisions of this Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Each and every obligation and condition contained in this Contract, in the Report and Decision or in any agreement or undertaking relating to the Report and Decision is and shall be construed only to apply to Phase One of the Project and a default by the owner of any other portion or phase or subphase of the Project, under the Approval or under any such agreement or undertaking, shall not constitute a default by the owner of another portion or phase or by the Partnership. The liability of the undersigned shall be limited solely to its interest in Phase One of the Project, and no partner, venturer, trustee, beneficiary, shareholder, officer, director or the like of the Partnership or its successors or assigns (including, without limitation, mortgagees), or any person or entity directly or indirectly holding any interests in any of the foregoing from time to time, shall have or be subject to any personal liability hereunder. After any termination under Chapter 121A as to the Project, or transfer of Phase One of the Project to another party, or termination or transfer of any portion thereof, each in accordance with the Approval by the BRA or as otherwise approved by the BRA, the Partnership shall no longer be subject to the obligations hereof and shall have no further liability hereunder with respect to the Project or such portion of the Project, as the case may be, the City agreeing to look solely to such transferee.

14. The term of this Contract shall be forty (40) years commencing on the Effective Date, subject to any rights of the Partnership to terminate the status of Phase One of the Project as a 121A project under the Applications or Report and Decision, hereunder or at law. The Partnership may elect, as of the end of any fiscal tax year in the City of Boston ending after the fifteenth (15th) year following the Approval Date (as defined in Section 4 above), to terminate the status of Phase One of the Project as a 121A Project and shorten the period of extension of tax exemption provided under Chapter 121A and this Contract upon written notice provided to the Clerk of the City of Boston and to the BRA not less than thirty (30) days prior to the date upon which the assessment of property is set during such fiscal tax year, provided that the BRA certifies that the public amenities (as set forth in the Applications and the Report and Decision) have been reasonably provided or are otherwise reasonably assured of being provided.

15. If any provision of this Contract or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Contract and the application of such provisions to other persons and circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

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15. If any provision of this Contract or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Contract and the application of such provisions to other persons and circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

EXECUTED as a sealed instrument the day and year first above written.

Approved as to Form:

By: *Mark Sweeney*
for Merita A. Hopkins
Corporation Counsel
City of Boston

CITY OF BOSTON

By: *Thomas M. Menino*
Mayor

By: *[Signature]*
Commissioner of Assessing

MISSION MAIN PHASE ONE LIMITED
PARTNERSHIP

By: Mission Main Developer Limited Partnership,
Its General Partner

By: Mission with Vision Limited Partnership,
Its General Partner

By: Vision Housing 2000 Corp.,
Its General Partner

By: *[Signature]*
Edward A. Fish, President

By: Winn-Mission Main Limited Partnership
Its General Partner

By: Winn-Mission Main Corporation,
Its General Partner

By: *William W. Wollinger*
William W. Wollinger, President

By: Mission Main Housing Corporation, a General Partner

By: Yolanda Ador Alina Stallings
Name: Yolanda Ador Alina Stallings
Title: Treasurer President