

AGREEMENT BETWEEN THE CITY OF BOSTON
AND TRINITY NORTHAMPTON PHASE TWO LIMITED PARTNERSHIP
PURSUANT TO CHAPTER 121A, SECTION 6A OF
THE MASSACHUSETTS GENERAL LAWS

NORTHAMPTON SQUARE CHAPTER 121A PROJECT - PHASE TWO

This **AGREEMENT** (the "Agreement") is made as of this ___ day of _____, 2014, by and between **TRINITY NORTHAMPTON PHASE TWO LIMITED PARTNERSHIP**, a Massachusetts limited partnership organized under General Laws Chapter 109 and subject to General Laws Chapter 121A ("Chapter 121A") and the Acts of 1960, Chapter 652 ("Chapter 652"), both as amended to date (the "Partnership"), and the **CITY OF BOSTON**, a municipal corporation of the Commonwealth of Massachusetts (the "City") acting pursuant to General Laws Chapter 121A, Sections 6A and 10 and every other power and authority.

WITNESSETH THAT:

WHEREAS, an application dated November 21, 2013 (the "Application") was filed by the Partnership with the Boston Redevelopment Authority (the "Authority") under the provisions of Chapter 121A and Chapter 652 for approval of a project for the acquisition of a leasehold interest in Unit 3 of the Northampton Square Condominium, a commercial condominium created pursuant to a Master Deed recorded in the Suffolk County Registry of Deeds in Book 52176, Page 232, as amended by a First Amendment to Master Deed recorded with said Deeds in Book ___, Page ___, which is comprised of part of floor 1 and all of floors 3 through 12 of the building located at 860 Harrison Avenue, including space for a property management office and office space on the first floor of the Building (the "Premises"), which Building is one of the residential components of the former Boston City Hospital School of Nursing Campus (the "Campus") located in the South End/Lower Roxbury District of the City of Boston, Suffolk County, Massachusetts, and the revitalization of such Premises in cooperation with the Boston Public Health Commission ("PHC"), through the renovation of the condominium unit as well as the redevelopment and revitalization of certain adjacent areas of the Building; and

WHEREAS, the Premises which is the subject of this Agreement (for the purpose of this Agreement, the "Project") is subject to a 98 year lease recorded with the Suffolk County Registry of Deeds, at Book 53911, Page 281 on December 31, 2014, from BPHC Northampton Development Corp., Inc., an affiliate of the PHC, as Landlord, and the Partnership, as Tenant (the "Lease"); and

WHEREAS, the Authority approved the Application by vote on April 17, 2014, adopting a Report and Decision (the "Report and Decision"); and

WHEREAS, the Mayor of the City (the "Mayor") approved the initial vote of the Authority on April 18, 2014; and

WHEREAS, the vote of the Authority and the approval of the Mayor with respect to the Report and Decision were filed with the City Clerk of the City of Boston (the "City Clerk") for the vote on April 23, 2014 (the "Approval Date"), and such approval became final and binding pursuant to the provisions of Chapters 121A and 652; and

WHEREAS, in accordance with the Report and Decision, the Partnership has entered into a Regulatory Agreement with the Authority, of even date, with respect to the development of the Project (the "Regulatory Agreement"); and

WHEREAS, the Partnership and the City desire to enter into this Agreement pursuant to Sections 6A and 10 of Chapter 121A for payments in-lieu-of taxes with respect to the Project.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Operation of the Project.** The Partnership shall carry out the Project in accordance with, and subject to, the provisions of Chapters 121A and 652, the provisions of the Report and Decision, and the provisions of the Regulatory Agreement with the Authority, as it may be amended from time to time.

2. **Term.** Notwithstanding the Approval Date, this Agreement shall not become effective until the date of execution of the Lease and recording of a Notice thereof with the Suffolk County Registry of Deeds (the "Effective Date") and shall remain in effect for a period of forty (40) years after the Effective Date, unless sooner terminated.

3. **Notice of Lease.** As soon as the ground lease is executed by the Partnership and BPHC Northampton Development Corp., the Partnership shall record a Notice of Lease at the Suffolk Registry of Deeds. The Partnership shall provide a copy of said recorded Notice of Lease to the Authority and the Commissioner of Assessing for the City of Boston within ten (10) days of its recording. If the ground lease is not executed and the Notice of Lease is not recorded by ____, 201__, then the terms of this 6 A contract shall be null and void and a new 6A contract will have to be negotiated with the Commissioner of Assessing for the City of Boston.

4. **Excise Tax Payments.** The Partnership shall pay to the Commonwealth of Massachusetts, its Department of Revenue or any successor department or agency ("DOR"), with respect to each calendar year, or any portion thereof, that this Agreement is in effect and applicable, the Urban Redevelopment Excise Tax required under Chapter 121A, Section 10, as amended from time to time (the "Excise Tax").

5. **6A Contract Payments.**

- a. *Amount:* For Calendar Year 2014 the Partnership shall pay to the City Five Thousand Dollars (\$5,000). In Calendar Year 2015, the Partnership shall pay to the City the greater of Fifteen Thousand Dollars (\$15,000.00) or the sum of (i) 10% of the Project's Gross Residential Income and (ii) 20% of the Project's Gross Commercial Income. In Calendar Year 2016, the Partnership shall pay to the City the greater of Thirty Thousand Dollars (\$30,000.00) or the sum of (i)

10% of the Project's Gross Residential Income, and (ii) 20% of the Project's Gross Commercial Income. Beginning with Calendar Year 2017 or a portion thereof, and for each calendar year, or portion thereof, thereafter, the Partnership shall pay to the City an amount ("the Contract Amount") equal to the sum of (i) 10% of the Project's Gross Residential Income and (ii) 20% of the Project's Gross Commercial Income, less amounts actually paid under section 10 of chapter 121A to DOR. The Partnership shall not deduct interest, penalties or charges assessed to it by DOR due to the Partnership making late payments or having delinquent payments.

Gross Residential Income shall mean the gross rental revenue received by the Partnership from whatever source derived, including but not limited to, the residential tenants or other occupants of the Project, the operation of a laundry room, payments received by the Partnership in connection with the Project pursuant to a Housing Assistance Payments Contract with the U.S. Department of Housing and Urban Development pursuant to Section 8 of the Housing Act of 1937, as amended, or any similar successor subsidy program (herein called subsidy amounts). *Gross Commercial Income* shall mean the gross rental revenue received by the Partnership from commercial tenants at the Project.

- b. *Due Date:* The Partnership shall pay to the City the 6A contract payment on or before April 1 following the end of each calendar year for which such payment is due.
- c. *Partial Payments:* 6A contract payments shall be equitably prorated for any partial year during the term set forth in Section 2.
- d. *Late Payments:* Late 6A contract payments and gap payments, or any portion thereof, shall bear interest at the rate charged for delinquent real estate tax accounts by the City's Collector-Treasurer pursuant to General Laws, Chapter 60, as amended from time to time. The City shall have all of the same remedies available to it for the collection of delinquent real estate taxes for the collection of any payments due under this Agreement in the event the Partnership breaches its duty to pay.

The City acknowledges that, notwithstanding the fact that the Partnership does not own a fee simple interest in the Project, the Partnership's leasehold interest represents the full real estate value of the Project, and accordingly, the land is not to be taxed separately from the improvements and leasehold interest under General Laws Chapter 59 ("Chapter 59").

6. **Gap Payments.** Upon the termination of this Agreement the Partnership shall pay or cause to be paid a gap payment to cover the time period between the termination date and the date the Project becomes taxable pursuant to General Laws, Chapter 59. The gap payment shall be equal to the 6A contract payment that would have been made for such period if the Project had remained subject to this Agreement. The gap payment shall be paid within six (6) months

following the month in which the Agreement terminates. The Project thereafter shall not 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 Agreement; provided, however, the deviations and permissions granted by the Authority pursuant to the Original Report and Decision shall survive such termination and shall remain in effect.

7. **Overpayments.** Any Overpayment (as defined below) applicable to a calendar year, or portion thereof, shall at the election of the City, be either refunded or applied to reduce the payments due in succeeding calendar years, except with respect to the last calendar year, or portion thereof, in which the Project shall be subject to this Agreement, any Overpayment by the Partnership shall be refunded by the City. For purposes of this Agreement, an "Overpayment" shall include the following, to the extent that they exceed collectively the Contract Amount: (i) any amounts paid by the Partnership to the City as real estate taxes pursuant to Chapter 59; (ii) any amounts paid by the Partnership under Chapter 121A, Section 15; and (iii) any amounts paid by the Partnership to the Commonwealth of Massachusetts, or any political subdivisions thereof, under any general or special law, as an excise or tax measured by its income from or investment in the Project, not including the excise prescribed by Chapter 121A, Section 10. If the Overpayment is due to the Partnership's failure to provide the financial information required by this contract or to the Partnership's intentional provision of misleading financial information then no refund will be issued and the Overpayment will not be applied to reduce payments due in succeeding calendar years.

8. **Delivery and Examination of Financial Statements.**

- a. The Partnership shall file with the Commissioner of Assessing by February 10 following the end of each calendar year during which this Agreement is in effect: (a) a statement of income and expenses for the Project during the preceding calendar year, or portion thereof, and (b) a Declaration of Liability Return, available from the Assessing Department.
- b. The Partnership shall file with the Commissioner of Assessing and the Collector-Treasurer of the City ("Collector-Treasurer") by April 1 following the end of each calendar year during which this Agreement is in effect the following: (a) a Declaration of Liability Form, available from the Collector-Treasurer; (b) 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 (c) a certified copy of the Partnership's Excise Tax Return as submitted to DOR.
- c. The maximum "fair cash value" for the Project to be determined annually by the Assessing Department and certified to DOR under Chapter 121A, Section 10, the second and seventh paragraphs thereof, commencing in calendar year 2014 or portion thereof and succeeding calendar years, or portions thereof, thereafter shall be the amount which when used in calculating the Excise Tax under the applicable statutory formula produces an Excise Tax equal to or less than the Contract Amount defined in Section 4 above.

- d. The Partnership hereby authorizes the Commissioner of Assessing, or a representative of the Commissioner designated in writing, to examine from time to time all urban redevelopment excise tax returns and attachments thereto filed by the Partnership with the DOR. No further evidence of this authorization shall be required. In addition, the Partnership shall provide to the City a copy of any filing made to the DOR within 30 days of such filing. For all payments made to the DOR, the Partnership will provide a detailed breakdown indicating what portions of the payment, if any, were for penalties or interest, including the ward and parcel number to which those payments were applied.

9. **Determination of Fair Cash Value.** During the term specified in Section 2, the City of Boston Assessing Department shall determine the fair cash value of the Project in accordance with Section 10 of Chapter 121A; provided, however, that if the Partnership does not file with the Commissioner of Assessing the financial information set forth in Section 7 of this Agreement, the Assessing Department, at the option of the Commissioner of Assessing, may determine the "fair cash value" without regard to the limitations set forth in Section 9 of Chapter 121A. Upon the request of the Partnership, and based on reasonable cause, the Commissioner of Assessing may extend the time period for filing the information required by Section 7.

10. **Conditions.** The obligations of the Partnership under this Agreement are conditional in all respects upon the issuance to it of all permissions, approvals, favorable reviews, permits and licenses which may be required by City, State, Federal or other authorities with respect to the construction of the Project, whether or not the same were specified in the Application.

11. **Amendments to Chapter 121A or Rules and Regulations** The Partnership and the City agree that any amendment, subsequent to the execution of this Agreement, of Chapter 121A, except for Section 10, and Chapter 652 and the rules, regulations and standards prescribed by the Authority, which otherwise might be applicable to the Project, shall not affect the same.

12. **Notices.** All notices required pursuant to this Agreement shall be in writing and delivered by hand delivery or mailed postage prepaid, by registered or certified mail, addressed as follows:

Partnership: Trinity Northampton Phase Two Limited Partnership
75 Federal Street, Suite 400
Boston, MA 02110
Attn: Patrick A.T. Lee

With a copy to: Trinity Northampton Phase Two Limited Partnership
75 Federal Street, Suite 400
Boston, MA 02110
Attn: General Counsel

And

Katharine E. Bachman, Esquire

Wilmer Cutler Pickering Hale and Dorr LLP
60 State Street
Boston, MA 02109

City: City of Boston Assessing Department
One City Hall Square, Room 301
Boston, MA 02201
Attn: Commissioner of Assessing

A different address may be designated by each party by giving written notice 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. **Counterparts.** This Agreement may be executed in counterparts, each of which when so executed and delivered shall be deemed an original, but such counterparts shall together constitute but one and the same instrument.

14. **Successors and Assigns.** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

Successors/Assigns.

- a. This Agreement may be assigned or transferred during the Term specified in Section 2. However, if there is a "Sale/Transfer" of the Project for a use that is not consistent with section 42 of the IRS Code, i.e. the low income housing tax credit program, the City reserves the right to change the financial terms of this Agreement if, in the determination of the Commissioner of Assessing, the tax benefits afforded the Partnership can be modified without putting the Project at risk. The Commissioner of Assessing shall have the right to request financial information, including but not limited to, Operating Pro-Forma projections for the Property, Feasibility Studies, Hold/Sell analysis conducted by either buyer or seller, and any appraisals conducted by either the buyer or seller.
- b. If after due consideration of the information provided pursuant to section 7 the City determines that the viability of the Project is still dependent on maintaining the same percentage used for calculating the Contract Amount, the Partnership's successor or assign shall be entitled to the same terms and conditions of this Agreement. The successor or assign shall derive the benefits only for the time remaining in the Agreement.
- c. If on the other hand, the City determines that the viability of the Project is not as dependent on the benefits afforded by this Agreement, the Partnership's successor or assign shall be required to enter into good faith negotiations to determine the new percentage to be applied for calculating the 6A Contract Payment. The Partnership's failure to enter into good faith negotiations shall give the Commissioner of Assessing the right to unilaterally determine the new percentage to be used.

- d. The Partnership shall have the burden of notifying the City of the intended Sale/Transfer for a use that is not consistent with section 42 of the IRS Code, i.e. the low-income housing tax credit program. The City shall have 30 business days within which to respond, provided the Partnership shall have supplied pertinent Sale/Transfer information with its notice. If the City must request additional Sale/Transfer information, the 30 days shall commence upon the City receiving all pertinent Sale/Transfer information.

15. **Governing Law.** Notwithstanding anything to the contrary, this Agreement shall be governed by the laws of the Commonwealth of Massachusetts and any suit, claim or action shall be brought in Suffolk County.

16. **Invalidity.** If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement 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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Executed as a sealed instrument as of the day and year first above written.

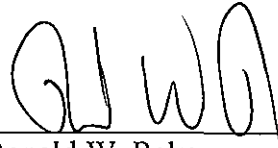
**TRINITY NORTHAMPTON PHASE TWO
LIMITED PARTNERSHIP**

By: Trinity Northampton Phase Two, Inc., Its
General Partner

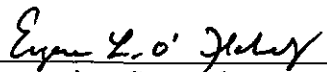
By: 
Patrick A.T. Lee, President

CITY OF BOSTON

By: 
Martin J. Walsh, Mayor

By: 
Ronald W. Rakow,
Commissioner of Assessing

Approved as to form by:


Corporation Counsel CNC

EUGENE L. O'FLAHERTY