

AGREEMENT BETWEEN THE CITY OF BOSTON
AND ORCHARD PARK OFF-SITE PHASE 1 LIMITED PARTNERSHIP
GENERAL LAWS CHAPTER 121A, SECTIONS 6A AND 10

OFF-SITE PHASE 1a PROJECT
ORCHARD PARK REVITALIZATION CHAPTER 121A PROJECT

This **AGREEMENT** (the "Agreement") is made as of this 28th day of December, 1998, by and between **ORCHARD PARK OFF-SITE PHASE 1 LIMITED PARTNERSHIP** ("OPOS 1"), 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, 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, by Report and Decision dated November 14, 1996 (the "Original Report and Decision") the Boston Redevelopment Authority (the "Authority") approved the Orchard Park Revitalization Project (the "Original Project") as a phased 121A project and approved Orchard Park Revitalization Corporation ("OPRC") as the Chapter 121A entity to own, operate and manage all of the phases of the Original Project; and

WHEREAS, by vote adopting Second Amendment to the Original Report and Decision dated April 9, 1998, the Authority approved a modification to the Project boundaries to include within the Project an additional parcel of land (the "OIC" parcel at 210 Dudley Street) and by vote adopting Third Amendment to the Original Report and Decision also dated April 9, 1998, the Authority approved OPOS 1 as a Chapter 121A entity and approved the transfer of a portion of the Original Project designated Off-Site Phase 1a, including the OIC Parcel (the "Off-Site Phase 1a Project"), to OPOS 1, all as more fully set forth in Application by OPRC dated March 7, 1998 to Amend Application and Original Report and Decision and Application by OPRC and OPOS 1, also dated March 7, 1998 for Approval to Transfer a Project, to Acquire a Project and to Form an Urban Redevelopment Corporation to Take Title Thereto; and

WHEREAS, the above votes of the Authority with respect to the Second Amendment and the Third Amendment were approved by the Mayor of the City (the "Mayor") on April 24, 1998; and

WHEREAS, the votes of the Authority and the approvals of the Mayor with respect to the Second Amendment and the Third Amendment were filed with the City Clerk of the City of Boston (the "City Clerk") on May 1, 1998 (the "Approval Date"), and such votes have become final and binding pursuant to the provisions of Chapters 121A and 652; and

WHEREAS, by vote adopting Fourth Amendment to the Original Report and Decision dated September 29, 1998, the Authority approved a modification to the Project boundaries to include within the Project an additional parcel of land (the "Benn Parcel" at 263-265,273 and 275-275A Dudley Street) and by vote adopting Fifth Amendment to the Original Report and Decision also dated

September 29, 1998, the Authority approved the transfer of two portions of the Benn Parcel as well as a parcel at 157-159 Eustis Street which was part of the original project area to OPOS 1, such transferred parcels to be part of the Off-Site Phase 1a Project, all as more fully set forth in Application by OPRC dated September 23, 1998 to Amend Application and Original Report and Decision and Application by OPRC and OPOS 1, also dated September 23, 1998 for Approval to Transfer an Additional Portion of a Project and for Additional Zoning Deviations; and

WHEREAS, the above votes of the Authority with respect to the Forth Amendment and the Fifth Amendment were approved by the Mayor on October 12, 1998; and

WHEREAS, the votes of the Authority and the approvals of the Mayor with respect to the Forth Amendment and the Fifth Amendment were filed with the City Clerk on October 14, 1998 and such votes have become final and binding pursuant to the provisions of Chapters 121A and 652; and

WHEREAS, in accordance with the Third Amendment and the Fifth Amendment, OPOS 1 has entered into a Regulatory Agreement with the Authority, of even date, with respect to development of the Off-Site Phases 1a Project (the "Regulatory Agreement"); and

WHEREAS, OPOS 1 and the City desire to enter into this Agreement pursuant to Sections 6A and 10 of Chapters 121A for payments in-lieu-of taxes with respect to the Off-Site Phases 1a Project.;

NOW, THEREFORE, the Parties hereto agree as follows:

1. OPOS1 shall carry out the Off-Site Phases 1a Project in accordance with, and subject to, the provisions of Chapters 121A and 652, the provisions of the Original Report and Decision, as amended by the Second Amendment, the Third Amendment, the Fourth Amendment and the Fifth Amendment and the provisions of the Regulatory Agreement with the Authority, as the same may be amended.

2. From and after the Approval Date, OPOS 1 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 or as may be amended in the future (the "Excise Tax").

3. OPOS 1 shall pay to the City with regard to the Off-Site Phase 1a Project with respect to each calendar year or any portion thereof that this Agreement is in effect, commencing with calendar year 1998 or a portion thereof and for each calendar year, or portion thereof, thereafter, an amount equal to ten percent (10%) of the aggregate rental income received by OPOS 1 from tenants of the Off-Site Phase 1a Project, exclusive of any operating subsidies payable by the BHA to OPOS 1 pursuant to that certain Regulatory and Operating Agreement among the BHA, OPOS 1 and OPRC (the "BHA Regulatory Agreement") for those units occupied by public housing eligible households, the source of which operating subsidies is payments received by the BHA under any Annual Contributions Contracts, or like contracts, entered into between the BHA and the United States Department of Housing and Urban Development, or any successor department or agency ("HUD"), to the extent such amount exceeds the Excise Tax (the "Contract Amount"). The above formula for determining the Contract Amount is expressly contingent on the Off-Site Phase 1a Project being used exclusively for

multifamily residential rental housing and associated common areas and amenities, and OPOS 1 acknowledges that any change in use which would involve any uses other than multifamily rental residential housing and associated common areas and amenities would require approval by the Authority.

The City acknowledges that, notwithstanding the fact that OPOS 1 does not hold a fee simple interest in the land comprising the Off-Site Phase 1a Project, OPOS 1's ground lease interest coupled with its fee simple ownership of the improvements thereon represents the full real estate value of the Off-Site Phase 1a Project and, accordingly, the land is not to be taxed separately from the improvements and ground lease interest under General Laws Chapter 59 ("Chapter 59").

4. 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 Off-Site Phase 1a Project shall be subject to this Agreement, any Overpayment by OPOS 1 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 OPOS 1 to the City as real estate taxes pursuant to Chapter 59; (ii) any amounts paid by OPOS 1 under Chapter 121A, Section 15; and (iii) any amounts paid by OPOS 1 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 Off-Site Phase 1a Project, not including the excise prescribed by Chapter 121A, Section 10.

5. OPOS 1 shall file with the Commissioner of Assessing and the Authority by February 10 following the end of each calendar year during which this Agreement is in effect: 9a) a statement of income and expenses for the Off-Site Phase 1a Project during the preceding calendar year, or portion thereof; and (b) a Declaration of Liability Return, a form made available by the Assessing Department.

6. OPOS 1 shall file with the Commissioner of Assessing, the Collector-Treasurer of the City ("Collector-Treasurer") and the Authority 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, a form made available by 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 OPOS 1's Excise Tax Return as submitted to DOR.

7. The maximum "fair cash value" for the Off-Site Phase 1a 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 1998 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 ten percent (10%) of the aggregate rental payments made by the tenants of the Off-Site Phase 1a Project, exclusive of any operating subsidies payable by the BHA to OPOS 1 pursuant to the BHA Regulatory Agreement, as set forth in Section 3 of this Agreement.

Except for the period prior to the Completion of Development, in the event OPOS 1 does not file with the Commissioner of Assessing the information set forth in Section 5 of this Agreement, the

Assessing Department, at the option of its Commissioner of Assessing, may determine the "fair cash value" in its sole discretion without regard to the limitation set forth in this Section 6. Upon the request of OPOS 1, and based on reasonable cause, the Commissioner of Assessing may extend the time period for filing the information required by Section 5.

8. The obligations of OPOS 1 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 Off-Site Phase 1a Project, whether or not the same were specified in the Application.

9. OPOS 1 and the City agree that any amendment, of Chapter 121A, except for Section 10, or of Chapter 652 and the rules, regulations and standards prescribed by the Authority, subsequent to the execution of this Agreement, which otherwise might be applicable to the Off-Site Phase 1a Project, shall not affect the same.

10. Upon the expiration or earlier termination of the term of the Off-Site Phase 1a Project's designation under Chapters 121A and 652 pursuant to the Report and Decision as amended, OPOS 1 shall pay or cause to be paid a pro-forma tax to cover the time period between such expiration or termination and the date under which the Off-Site Phase 1a Project becomes taxable pursuant to Chapter 59, which pro-forma tax shall be equal to the Contract Amount, as set forth in Section 3 of this Agreement, for such period as if the Off-Site Phase 1a Project had remained subject to such designation. Such amount shall be payable on or before April 1 of the year following the end of the calendar year in which such designation expires or terminates, notwithstanding the Original Report and Decision, Section N(12) to the contrary.

11. All notices or other communications given under this Agreement shall be in writing, signed on behalf of respectively OPOS 1 and the City, and shall be deemed delivered if mailed postage prepaid, or by hand delivery to the principal office of the party to which it is directed, which unless otherwise designated by written notice, shall be:

if to OPOS1: Orchard Park Off-Site Phase 1 Limited Partnership
c/o Cruz Development Corporation
One John Eliot Square
Boston, MA 02119
Attn: John B. Cruz, III President

with copies to: Robinson & Cole LLP
One Boston Place
Boston, MA 02108-4404
Attn: Dennis R. Tourse, Esquire

if to the City: Commissioner of Assessing
Assessing Department
City of Boston
One City Hall Square
Boston, MA 02201

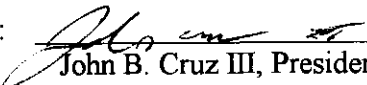
12. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

13. This Agreement shall commence on the Effective Date, as defined in Section 2 of the Agreement, and shall remain in effect for a period of forty (40) years after the Effective Date, unless sooner terminated.

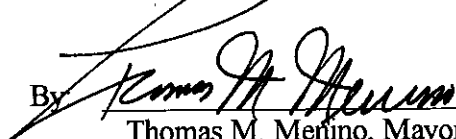
Executed as a sealed instrument as of the day and year first above written.


ORCHARD PARK OFF-SITE PHASE 1 LIMITED PARTNERSHIP

BY: Orchard Park Corporation
Its General Partner

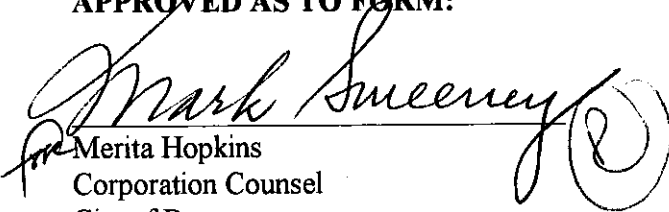
By: 
John B. Cruz III, President

CITY OF BOSTON

By: 
Thomas M. Menino, Mayor

By: 
Ronald W. Rakow
Commissioner of Assessing

APPROVED AS TO FORM:


Merita Hopkins
Corporation Counsel
City of Boston