

DUDLEY NEIGHBORS, INCORPORATED

Contract Required by Section 6A  
of Chapter 121A of the General Laws

AGREEMENT made this 30<sup>th</sup> day of April, 1990, by and between DUDLEY NEIGHBORS, INCORPORATED, a Massachusetts charitable corporation organized pursuant to Massachusetts General Laws, Chapter 180 and authorized to act as an Urban Redevelopment Corporation under Massachusetts General Laws, Chapter 121A, as amended, and Chapter 652 of the Acts of 1960 (the "Owner" or the "Corporation"), and the CITY OF BOSTON, a municipal corporation of the Commonwealth of Massachusetts (the "City"), acting under Massachusetts General Laws, Chapter 121A, Section 6A and every other power and authority hereto enabling.

WHEREAS, there has been filed on behalf of the Owner with the Boston Redevelopment Authority (the "Authority") an Application dated August 19, 1988 (the "Application") under the provisions of Massachusetts General Laws, Chapter 121A, as amended, and an Addendum to the Application (the "Addendum"), for approval of a project situated in the City of Boston to undertake and carry out the acquisition and leasing of up to approximately thirty (30) acres of vacant land in the area described in Appendix A hereto for the construction of housing for low and moderate income persons and families and related uses

(the "Project"), which Project was approved by vote of the Authority on November 10, 1988; and

WHEREAS, the Mayor of the City approved the aforesaid mentioned vote of the Authority on November 10, 1988; and

WHEREAS, the Certificate of Vote of the Authority and the approval of the Mayor of the City of Boston were filed with the office of the City Clerk on March 20, 1989.

NOW, THEREFORE,

1. The Owner hereby agrees with the City as follows:

(a) To carry out the Project in accordance with the Application, the Addendum, the provisions of Massachusetts General Laws, Chapter 121A, as now in effect, Chapter 652 of the Acts of 1960, the Rules and Regulations of the Authority, as now in effect, and the Minimum Standards for Financing, Construction, Maintenance and Management of the Project, all as set forth in the Report and Decision of the Authority approving the Project, the Report and Decision of the Authority approving the Project as it may be amended (the "Report and Decision"), the Regulatory Agreement by and between the Authority and the Owner dated October 10, 1989, and any other agreement with the City and Authority, or either, relating to the Project, all of which are incorporated herein by reference.

(b) To perform all of the obligations as Owner under the Regulatory Agreement between the Owner and the Authority.

(c) To pay to the Commonwealth of Massachusetts, with respect to each year that this contract is in full force and effect, the urban redevelopment excise tax required under Section 10 of Massachusetts General Laws, Chapter 121A.

(d) Subject to the provisions and limitation of this Agreement, to pay to the City with respect to each of the calendar years during which the Project is subject to Chapter 121A, at any time within the preceding calendar year, the amount, if any, by which the tax that would be assessed on the Project for land and improvements thereon, whether or not leased to another entity, pursuant to Chapter 59 of Massachusetts General Laws if the Project were not exempt as provided by Chapter 121A of Massachusetts General Laws exceeds the excise prescribed by Massachusetts General Laws Chapter 121A, Section 10. Under the excise formula in Section 10, the term "gross income" shall include all receipts attributable to the land or the improvements thereon, whether or not leased to another entity.

(e) To file with the City's Commissioner of Assessing, the City's Collector-Treasurer's Office and the Authority within fifteen (15) days of the end of each calendar year during which the Agreement is in effect a statement of the detailed income and expenses of each property in the Project, including improvements thereon, the amounts invested in the Project, and a complete list of properties acquired during the calendar year. The corporation shall allow the Assessing Department access to these properties by no later than January 15th of each year.

(f) To file with the Authority, the Collector-Treasurer's Office and the Assessing Department within ninety (90) days of the end of each calendar year during which this agreement is in effect an audited report with respect to the Corporation, prepared by a Certified Public Accountant, consisting of a statement of all rental and other income, operating cost, construction and replacement cost, a statement of profit and loss for the 121A corporation, a balance sheet, and a statement of disposition of funds for the preceding calendar year, and a certified copy of the Owner's urban redevelopment excise

tax return as submitted to the Department of Revenue and a certified copy of all financial statements filed with any state or federal agency. At the request of the City's Assessors, the Corporation shall deliver to the Assessors such additional information concerning the operation of the Project and the finances of the Corporation as the Assessors may from time to time require.

(g) To submit to the Commissioner of Assessing and the Collector-Treasurer for the City of Boston or their designated representatives written authorization to examine all urban redevelopment excise tax returns and attachments thereto filed by the Corporation with the Department of Revenue. To submit to the Commissioner of Assessing or a designated representative written authorization to examine all documents and attachments thereto filed by or on behalf of the Corporation with any governmental entity.

(h) In addition to any other requirements, the Owner agrees that any lease executed with respect to the project premises or any portion thereof shall contain clauses, in the form approved by the Assessing Department before the execution of such lease, obligating the lessee 1) to pay, on a proportional basis, as additional rent an amount equal to the amounts the owner has agreed to pay herein and 2) to provide to the Assessors such information as the Assessors may require from time to time.

2. Furthermore, the City may make an annual audit of all financial records pertaining to the operations of the Project under its 121A status and may engage the services of a private accounting firm to undertake such an audit at the reasonable expenses of the Owner.

If the Owner is found to have deliberately withheld information on or misrepresented collection for the Project relative to its payments in-lieu-of taxes, the Owner will be required to pay all arrearages plus interest on that amount owed the City (with interest rate equal to the rate charged in

delinquent property tax accounts by the Collector-Treasurer for the City of Boston) and in addition will be required to pay and/or reimburse the City for all expenses incurred as a result of such deliberate withholding or misrepresentation.

3. Except in the instance of a condominium development, which development shall be subject to Section 18D of Chapter 121A, the City and Owner agree that payments made under this contract shall be calculated in the same manner as if the Corporation owned any and all improvements now or hereafter erected pursuant to the Project, and further, that such payments shall be in lieu of, and not in addition to, any tax payments which otherwise would be due under Chapter 59 of the Massachusetts General Laws from the owner(s) of any improvements existing now or hereafter upon the real property owned by the Corporation.

4. The Assessors agree at all times to cause information required to be submitted to the Department of Revenue under said Chapter 121A to conform to the provisions of this Agreement. In connection therewith, the Assessors hereby determine, for the purposes of Section 10 of Chapter 121A, and shall certify to the Department of Revenue and to the Owner pursuant to the second paragraph of Section 10 of Chapter 121A, a fair cash value of the Project which shall not exceed the amount which would result in a annual excise tax payable under Section 10 of Chapter 121A equal to the amount that would be payable if the property were taxed pursuant to Chapter 59 of the Massachusetts General Laws.

5. Any payments which may become due to the City on account of the provisions of paragraph 1(d) shall be paid to the City on or before the first day of April of the year next following the year with respect to which such

payment is made. Any overpayment applicable to one calendar year shall, at the election of the City, be either refunded or applied to reduce the payments due in the succeeding calendar years, except that with respect to the last calendar year in which the Project shall be subject to the provisions of Chapter 121A of the General Laws, any overpayment by the owner shall be refunded by the City.

6. The obligations of the Owner under this Agreement are conditioned in all respects upon the issuance to them of all permissions, including without limiting the generality of the foregoing, all variances, permits and licenses which may be required with respect to the construction, maintenance and management of the Project, as specified in the Application or addendum or reserved therein, the closing of the mortgage loan for the Project and the closing of mortgage loans for those portions of the project to be constructed by lessees of the owner. The Owner shall not be held in any way liable for delays which may occur in the construction, repairs, maintenance or management of the Project, or otherwise, by reason of scarcity of materials or labor difficulties, damage by fire or other casualty or any other cause beyond the Owner's reasonable control.

7. The Owner and the City further agree that without written approval of both parties any amendment, subsequent to the execution of this contract, of the provisions of the Massachusetts General Laws, Chapter 121A, as now amended, or the rules and regulations and standards prescribed by the Authority now applicable to the Project shall not affect the Project.

8. If the Owner or any mortgagee of the Project proposes acting under either the provisions of the last paragraph of Section 11 or under Section 16A of said Chapter 121A, to transfer the Project to a different entity,

Sections 1(a) through 1(c) inclusive and Sections 3 through 8 inclusive of the Agreement shall, upon the transfer, be assignable to any transferee or, at the option of the Owner of mortgagee as appropriate, terminable by giving written notice to the City provided, however, that in the event of such assignment the assignee shall agree to such modifications in Section 1(c) hereof as may be required by the City. In the event of such termination the Owner shall be released from all obligations under this contract and at the time shall be divested of all powers, rights and privileges conferred by this contract.

9. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, executors, administrators, successors in office or interest, and assigns, except that nothing herein contained shall apply in the event a successor in interest elects under option 3 under the provisions of Section 16A of said Chapter 121A as now in effect and that in case of a transfer or termination as contemplated by Section 8 of this contract, the Owner shall thereupon cease to be liable hereunder.

10. The invalidity or unenforceability of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof and shall not affect the validity of such clause, part or provision in circumstances other than those to which it is invalid or unenforceable.

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

DUDLEY NEIGHBORS, INCORPORATED

By: \_\_\_\_\_

Paul Yelder, Treasurer

APPROVED:

CITY OF BOSTON

By: \_\_\_\_\_

Commissioner of Assessing

By: \_\_\_\_\_

Raymond L. Flynn, Mayor

APPROVED AS TO FORM:

By: \_\_\_\_\_

Corporation Counsel