

AGREEMENT BETWEEN THE CITY OF BOSTON  
AND MADISON TRINITY LIMITED PARTNERSHIP  
GENERAL LAWS CHAPTER 121A, SECTIONS 6A AND 10

PHASES 1 AND 2 OF INITIAL PROJECT  
ORCHARD PARK REVITALIZATION CHAPTER 121A PROJECT

This **AGREEMENT** (the "Agreement") is made as of this ~~15~~<sup>15</sup> day of August, 1997, by and between **MADISON TRINITY 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 "Initial Developer" and "MTLP"), 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 October 11, 1996 (the "Application") was filed by OPRC with the Boston Redevelopment Authority (the "Authority") under the provisions of Chapter 121A and Chapter 652, for approval of a project (the "Project") for the redevelopment of those certain parcels of land with the buildings and improvements thereon located in the Roxbury District of the City of Boston, Suffolk County, Massachusetts, commonly known as the Orchard Park public housing project, and certain additional parcels of land, as more particularly described in the Application (the "Project Area"), for residential uses; and

**WHEREAS**, pursuant to an application, dated October 10, 1996 (the "Phases I and 2 Transfer Application"), OPRC and the Initial Developer sought approval of the Authority for the proposed transfer by OPRC to the Initial Developer of: (1) control of a portion of the Project Area, specifically Phases 1 and 2 of the Initial Project Area, pursuant to a ground lease, together with fee simple title to certain existing buildings located within Phases 1 and 2 of the Initial Project Area; and (2) responsibility for development of the portion of the Project to be located therein; and

**WHEREAS**, the Authority approved the Application by a vote on November 14, 1996, adopting a Report and Decision (the "Report and Decision"); and

**WHEREAS**, the Authority approved the Phases 1 and 2 Transfer Application by a vote on November 14, 1996, adopting a First Report and Decision Amendment (the "First Amendment"); and

**WHEREAS**, the Mayor of the City (the "Mayor") approved the above votes of the Authority on November 26, 1996; 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") on November 26, 1996 (the "Approval Date"), and such vote has become final and binding pursuant to the provisions of Chapters 121A and 652; and

**WHEREAS**, the vote of the Authority and the approval of the Mayor with respect to the First Amendment were filed with the City Clerk on November 26, 1996 (also, the "Approval Date") and such vote has become final and binding pursuant to the provisions of Chapters 121A and 652; and

**WHEREAS**, in accordance with the First Amendment, the Initial Developer has entered into a Regulatory Agreement with the Authority, of even date, with respect to development of Phases 1 and 2 of the Project within the Initial Project Area (the "Regulatory Agreement"); and

**WHEREAS**, the Initial Developer 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 Phases 1 and 2 of the Project within the Initial Project Area.

**NOW, THEREFORE**, the Parties hereto agree as follows:

1. MTLP 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, as amended by the First Amendment, and the provisions of the Regulatory Agreement with the Authority, as may be amended.

2. Notwithstanding the Approval Date, with respect to the Initial Project Area (as defined in the Application, Sections 2(a) and 3, and the Report and Decision, Section D), this Agreement shall not become effective until the date OPRC first acquires Phases 1 and 2 of the Initial Project Area from the Boston Housing Authority ("BHA")(the "Effective Date"). Provided, that a conveyance by the BHA to OPRC which is immediately followed by a conveyance back to the BHA in order to enable the BHA to

submit a petition to the Land Court with respect to the land which is the subject of such conveyance, shall not be deemed to be the date that OPRC "first acquires" any portion of the Initial Project Area for purposes of establishing the Effective Date hereunder. MTLP shall notify the Authority and the Commissioner of Assessing of the City (the "Commissioner of Assessing") of the recording date of the deed from the BHA to OPRC with respect to Phases 1 and 2 of the Initial Project Area, accompanied by copies of the deed(s) thereof.

3. MTLP 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").

4. MTLP shall pay to the City with regard to Phases 1 and 2 of the Project within the Initial Project Area, with respect to each calendar year or any portion thereof, that this Agreement is in effect, commencing with calendar year 1997 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 MTLP from tenants of the Project, exclusive of any operating subsidies payable by the BHA to MTLP pursuant to that certain Regulatory and Operating Agreement among the BHA, MTLP 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 Project being used exclusively for multifamily residential rental housing and associated common areas and amenities, and MTLP acknowledges that any change in use which would involve any uses other than multifamily residential housing and associated common areas and amenities would require approval by the Authority.

The City acknowledges that, notwithstanding the fact that MTLP does not hold a fee simple interest in the land comprising Phases 1 and 2 of the Project within the Initial Project Area, MTLP's ground lease interest coupled with its fee simple ownership of the improvements thereon

represents the full real estate value of Phases 1 and 2 of the Project within the Initial Project Area and, accordingly, the land is not to be taxed separately from the improvements and ground lease interest under General Laws Chapter 59 ("Chapter 59").

5. 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 Phases 1 and 2 of the Project within the Initial Project Area shall be subject to this Agreement, any Overpayment by MTLP 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 MTLP to the City as real estate taxes pursuant to Chapter 59; (ii) any amounts paid by MTLP under Chapter 121A, Section 15; and (iii) any amounts paid by MTLP 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.

6. MTLP 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: (a) a statement of income and expenses for Phases 1 and 2 of the Project within the Initial Project Area during the preceding calendar year, or portion thereof; and (b) a Declaration of Liability Return, a form made available by the Assessing Department.

7. OPRC 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 OPRC's Excise Tax Return as submitted to DOR.

8. The maximum "fair cash value" for Phases 1 and 2 of the Project within the Initial Project Area 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

1997 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 Phases 1 and 2 of the Project within the Initial Project Area exclusive of any operating subsidies payable by the BHA to MTLP pursuant to the BHA Regulatory Agreement, as set forth in Section 4 of this Agreement.

Except for the period prior to the Completion of Development, in the event MTLP does not file with the Commissioner of Assessing the information set forth in Section 6 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 (B) of this Section 8. Upon the request of MTLP, and based on reasonable cause, the Commissioner of Assessing may extend the time period for filing the information required by Section 6.

9. The obligations of MTLP 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.

10. MTLP 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.

11. Upon the expiration or earlier termination of the term of the Project's designation under Chapters 121A and 652 pursuant to the Report and Decision as amended, MTLP 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 Project becomes taxable pursuant to Chapter 59, which pro-forma tax shall be equal to the Contract Amount, as set forth in Section 4 of this Agreement, for such period as if the 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 Report and Decision, Section N(12) to the contrary.

12. All notices or other communications given under this Agreement shall be in writing, signed on behalf of respectively MTLP 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:

MTLP: Madison Trinity Limited Partnership  
122 DeWitt Drive  
Roxbury, MA 02120  
ATTN: President, MTV, Inc.

With a copy to :

Katharine Bachman, Esquire  
Hale & Dorr  
60 State Street  
Boston, MA 02109

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

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

14. 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.

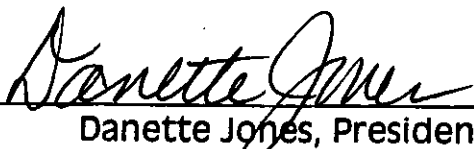
[SIGNATURES CONTINUED ON NEXT PAGE]

[SIGNATURE PAGE TO 6A CONTRACT - MTLPI]

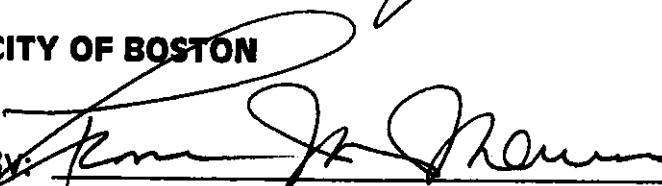
Executed as a sealed instrument as of the day and year first above written.

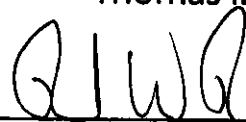
**MADISON TRINITY LIMITED PARTNERSHIP**

By: MTV, Inc., Its General Partner

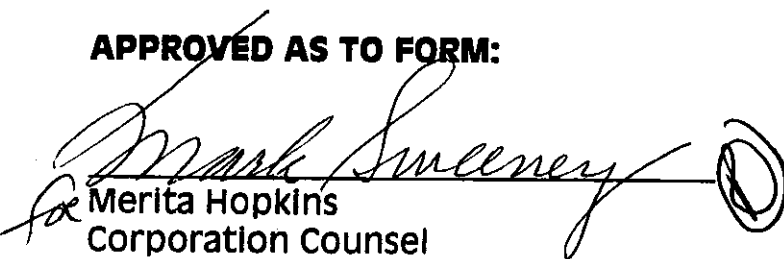
By:   
Danette Jones, President

**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