OFFICE OF THE CITY CLERK

Rosaria Salerno
City Clerk

Room 601, Boston City Hall, Boston, Massachusetts 02201, 617-635-4600, Fax: 617-635-4658

September 21, 2010

To the City Council

Dear Councilors:

In compliance with the order passed by your Honorable Body December 6, 1976, this is to inform you that the following was filed by the Boston Redevelopment Authority with the City Clerk on September 13, 2010.

"Agreement between the City and Trinity Washington Beech Phase Two-B Limited Partnership pursuant to Chapter 121A, Section 6A of the M.G.L."

Respectfully,

Alex Geourntas
Asst. City Clerk

RS/pt

Printed on recycled paper

Phase 2B

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

WASHINGTON BEECH CHAPTER 121A PROJECT - PHASE 2B

This **AGREEMENT** (the "Agreement") is made as of this 13 day of September 2010, by and between **TRINITY WASHINGTON BEECH FOUR 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 February 10, 2010 (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 and revitalization of a phase of the low income housing project known as Washington Beech, in cooperation with the Boston Housing Authority ("BHA"), located in the Roslindale District of the City of Boston, Suffolk County, Massachusetts, through the demolition of existing structures and development of mixed-income housing, including replacement public housing units, on the site of the former development as well as the redevelopment and revitalization of certain adjacent areas; and

WHEREAS, the Washington Beech project will be implemented in phases as described in the Application; and

WHEREAS, Phase 2B of the Washington Beech project which is the subject of this Agreement (for the purpose of this Agreement, the "Project") is the subject of a ground lease dated on or about the date hereof, executed by Washington Beech Revitalization Corporation, as landlord, and the Partnership, as tenant (the "Ground Lease"); and

WHEREAS, the Authority approved the Application by a vote on April 13, 2010, adopting a Report and Decision (the "Report and Decision"); and

WHEREAS, the Mayor of the City (the "Mayor") approved the above votes of the Authority on April 15, 2010; 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 April 20, 2010 (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 Ground Lease and the 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. The Partnership shall notify the Authority and the Commissioner of Assessing of the City (the "Commissioner of Assessing") of said recording date, accompanied by a copy of the recorded document.

3. **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").

4. **6A Contract Payments.**

a. *Amount*: For Calendar Year 2010 the Partnership shall pay to the City Two Thousand ($2,000.00) Dollars. For Calendar Year 2011, the Partnership shall pay to the City the greater of Three Thousand ($3,000.00) Dollars or 10% of the aggregate rental income received by the Partnership from tenants of the Project, exclusive of the amounts described in clause (i) and clause (ii) in the next sentence hereof. Beginning with Calendar Year 2012 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 10% of the aggregate rental income received by the Partnership from tenants of the Project less amounts actually paid under section 10 of chapter 121A to DOR; provided, however, that "the aggregate rental income received by the Partnership from tenants of the Project" shall exclude (i) any operating subsidies payable by the BHA to the Partnership pursuant to that certain Regulatory and Operating Agreement between the Partnership and the BHA ("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"), and (ii) any Section 8 rental subsidies provided by the BHA to the tenants of the Project. 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 the Partnership acknowledges that any change in use which would involve any uses other than the foregoing would require approval by the Authority.

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 pro rated 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 allowed for in G.L. c. 60, as amended from time to time.

The City acknowledges that, notwithstanding the fact that the Partnership does not hold a fee simple interest in the land comprising the Project Area, the Partnership's ground lease interest coupled with its fee simple ownership of the improvements thereon represents the full real estate value of the 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").

5. **Gap Payments.** Upon the termination of this Phase 2B 6A Contract 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 Phase 2B 6A Contract. The gap payment shall be paid within six (6) months following the month in which the Phase 2B 6A Contract 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 Phase 2B 6A Contract; 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.

6. **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.

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

a. The Partnership 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 the Project during the preceding calendar year, or portion thereof, a (b) a Declaration of Liability Return Valuation, a form made available by the Assessing Department.

b. The Partnership 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 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 2012 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.

8. **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.

9. **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.

10. **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.

11. **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 follow:

Partnership:	Trinity Washington Beech Four Phase Two Limited Partnership 40 Court Street, Suite 800 Boston, MA 02108 Attn: Mr. James G. Keefe
With a copy to:	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.

12. **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.

13. **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.

14. **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.

15. **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.

[End of text on page]

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

TRINITY WASHINGTON BEECH FOUR PHASE TWO LIMITED PARTNERSHIP

By: Trinity Washington Beech Four Phase Two, Inc., Its General Partner

By: _____
James G. Keefe, President

CITY OF BOSTON

By: _____
Thomas M. Menino, Mayor

By: _____
Ronald W. Rakow,
Commissioner of Assessing

APPROVED AS TO FORM
LAW DEPARTMENT

_____
WILLIAM F. SINNOTT
CORPORATION COUNSEL

GMC

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