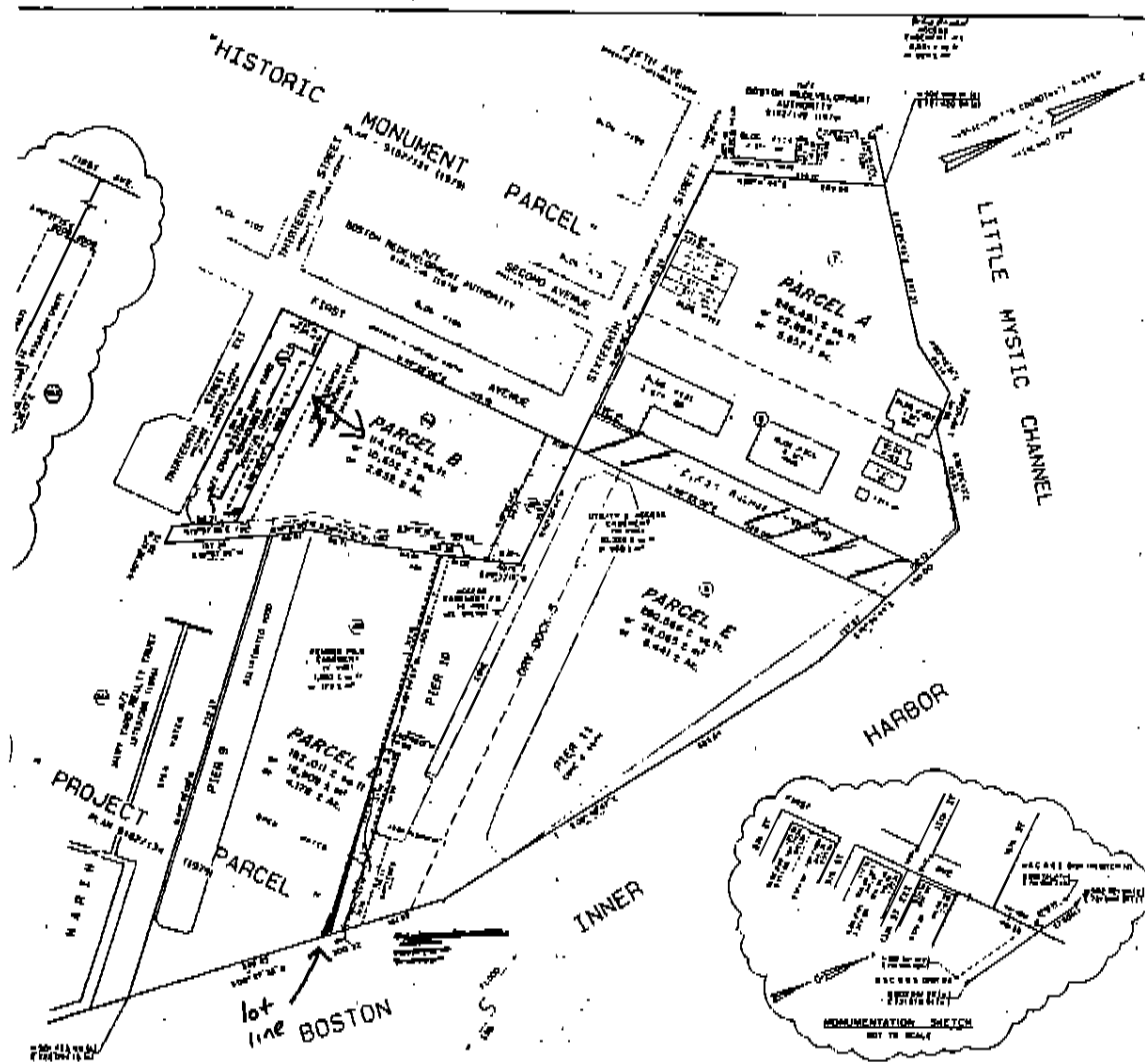


LIST OF EXHIBITS

- EXHIBIT A Parcelization Plan
- EXHIBIT B Development Programs
- EXHIBIT C Form of Authority Mortgage
- EXHIBIT D Permitted Encumbrances
- EXHIBIT E Use Principals Regarding Parcel A, D and E
- EXHIBIT F "Boston Redevelopment Authority Equal Opportunity Compliance Policy", dated June 12, 1975
- EXHIBIT G "Commonwealth of Massachusetts Supplemental Equal Employment Opportunity Anti-Discrimination and Affirmative Action Program", dated December 2, 1975
- EXHIBIT H City of Boston "Contract Compliance Manual"
- EXHIBIT I Form of Letter of Intent with Contractor

Exhibit J

NEAg Milestones

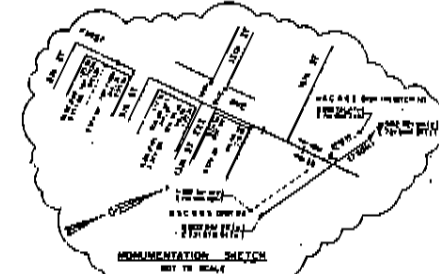


MOL. C. 91 (PROJECT) SUBDIVISION CHART	
PARCEL	1961 OR 1961 C BY PROJECT B DISPOSITION
OTHER PLAN	TRA 2.5 B ONE OR TWO
B	PARCEL 4A AREA
A	PARCELS 5 & 7 AREA
D	PARCEL 4B AREA
C	MEDFORD & E. AVENUE

REVISIONS
 SUFFOLK COUNTY REGISTER OF DEEDS
 DEED NO 9187 PG 105 (1979)
 LAND PARCEL PLAN ALTERNATE 1 REVISED
 DEED NO 9187 PG 134 (1979)
 SURVEY CONTINUED BY BOSTON
 100 200 250 10/1/1990
 100 200 250 8/11/1991
 100 200 250 7/26/1997
 100 200 250 8/13/1991

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- NOTES**
- 1 CHANNEL LINES ARE NOT SHOWN
 - 2 PARCEL 4A AS SHOWN REPRESENTS THE BALANCE OF PARCEL 4A AS REFERRED TO IN PROJECT B AND THE REMAINDER OF PARCEL 4A IN 14250/277
 - 3 SUB-PARCELS 4A, 4B, 4C, 4D, 4E, 4F, 4G AND 4H SHOWN IN VARIOUS PARCEL DISPOSITION AGREEMENTS, BUT HAVE NEVER BEEN SUBDIVIDED OR CONVEYED AS SUCH
 - 4 SUB-PARCEL 4C HAS BEEN SUBDIVIDED BY PLAN 11574/6 (1984) BUT HAS NEVER BEEN CONVEYED AS SUCH
 - 5 THIS PLAN IS A SUBDIVISION OF THE REMAINDER OF PARCEL 4D, 2 AS SHOWN ON LAND PARCEL PLAN ALTERNATE 1 REVISED, 8/11/1991, FILED NO 11747/6 (1991)
 - 6 SURVEY BY 26199 (11) AND TOTAL STATION
 - 7 PARCEL C (PIER 11) IS NOT SHOWN



THIS PLAN HAS BEEN PREPARED IN CONFORMITY WITH THE RULES AND REGULATIONS OF THE REGISTER OF DEEDS OF THE COMMONWEALTH OF MASSACHUSETTS

YARD'S END

SUBDIVISION PLAN OF LAND

BOSTON, MASSACHUSETTS

SUFFOLK COUNTY CHARLESTOWN DISTRICT
 CHARLESTOWN NAVY YARD

SCALE 1/8" = 1'-0" DEC. 1990

BY: [Signature]

THE RAYMOND CRUISE ENGINEERING AND ARCHITECTURE FIRM

FLAGSHIP WHARF REALTY TRUST

BRA PUBLIC PARK PARCEL 3
2189' x 124' (1981)

LOT "Y"
182 M²

LOT "K"

BUILDING #107
PARCEL 1A1
6,372 ± m²
or
75,042 ± sq. ft.
or
1.723 ± AC.

EIGHTH STREET (PAVING VARIABLE WIDTH)
11/11/1993



AREA TABULATION

REMAINS OF 1A	63,394	=	14.11
LOT "Y"	1,352	=	.31
LOT "K"	18	=	.00
PART OF 1C	2,876	=	.66
PARCEL 1A1	75,042	=	17.11

NOTES

LOT "Y" TO BE COMBINED WITH FORMER PARCEL 1A. PARCEL 1A1 COMPRISES REMAINS OF PARCEL 1A PLUS LOTS "K" & "Y" PLUS PART OF PARCEL 1C AS RECORDED ON PLAN 9226/330 (1982).

REFERENCES

- SURVEY RECORDS OF BOSTON
- DWG NO 1960L (1987)
- DWG NO 1201M (1941)
- DWG NO 173 02M (1961)

WHERE CERTIFY THAT

I, THE SURVEYOR, HAVE BEEN DULY SWORN AND HAVE RECORDED THIS PLAN AND REGULATIONS OF THE REGISTERED OFFICE OF THE COMMONWEALTH OF MASSACHUSETTS.

DATE: 28 July 1987
SURVEYOR: P. BRODE

RECEIVED
FEB 88

PARCELS 1A1, X, Y, & BRA 3 & 1C
SUBDIVISION PLAN OF LAND
IN
CHARLESTOWN, MA
SUFFOLK COUNTY
SCALE 1"=240'
28 JULY 1987
SURVEY ENGINEERS OF BOSTON
333 SUMMIT STREET, BOSTON, MA

MADE BY THE RAYMOND GROUP
14172/125

Exhibit B
to Amended and Restated Land Disposition Agreement

Development Programs

The Redeveloper shall have the exclusive right to develop the Parcels subject to this Agreement in accordance with the Development Programs described below:

Parcel A: 1,100,000 square feet of space, together with the right to construct up to 1200 structured parking spaces and the obligation to construct structured parking spaces equal to .9 per 1,000 square feet of development. Of the 1,100,000 square feet of space, at least 600,000 square feet of space (the "Research Component") shall be designed and constructed for research center (with accessory office) use ("Research Use"), and 500,000 square feet of space (the "Office/Research Component") shall, at Redeveloper's option, be designed and constructed either for primary office use or for Research Use, or for any combination of the two. Both Components may be used for Research Use; the Office/Research Component may be used for office use, and the Research Component may be used for office use (provided that it has been designed for Research Use, as set forth above), if and to the extent that, in the Redeveloper's judgment, there is no readily available leasing market for Research Use. The Components, or portions thereof, may be brought on line in such sequence as Redeveloper determines.

Parcel B: A 400 room hotel/conference center together with the right to construct up to 300 structured parking spaces and the obligation to construct at least 175 structured parking spaces. The hotel/conference center may be constructed in phases; the first phase shall consist of 300 rooms, the conference center and associated parking; the second phase shall consist of an additional 100 rooms and associated parking.

If the Aquarium Development Condition is not met, the Redeveloper may, at its option, either (i) develop Parcel B as described in the immediately preceding paragraph, or (ii) develop Parcel B with

at least 180, and no more than 334 market rate residential condominium/apartment units, located within one or more structures containing up to 500,000 square feet of Gross Floor Area, together with the right and obligation to construct structured parking spaces per unit required to satisfy market demands, (such residential condominium to be constructed in phases). The foregoing will not prejudice the right of Redeveloper to petition the Authority to agree to a modified Development Plan for Parcel B which reflects the then-prevailing market conditions, community input and planning goals. If housing is developed on Parcel B, a 10% affordability requirement shall apply thereto, which requirement has been fully satisfied by the Building 104 Release, and there shall be no further requirement to construct affordable or elderly housing on or off-site or to make any monetary or other contribution with respect to affordable or elderly housing in connection with the Development Program for Parcel B.

Parcel C: Notwithstanding any provision of the Existing Agreement to the contrary, 110 Market rate residential condominium/apartment units, located within one or more structures containing no fewer than 170,000 gross square feet of area, together with the right and obligation to develop structured parking spaces per unit required to satisfy market demands, (such residential condominium to be constructed in phases). With respect to the housing to be developed on Parcel C, any requirement to construct affordable or elderly housing on or off-site or to make any monetary or other contribution in connection with affordable or elderly housing has been fully satisfied by the Redeveloper.

Parcel D: Notwithstanding any provision of the Existing Agreement to the contrary, a private marina containing, at Redeveloper's option, up to 150 marina slips, together with accessory marina uses which may be constructed on the remaining portion of Pier 9. It is understood that Developer shall have the right to demolish and remove a large portion of Pier 9.

Parcel E: If the Aquarium Development Condition is not satisfied, the Redeveloper shall have the exclusive right to develop on Parcel E 275,000 gross square feet of area for commercial use, together with such additional square footage as may be devoted to facilities of public accommodation, and together with the right and obligation, to develop accessory structured parking spaces at a rate of .9 spaces per 1,000 square feet of development. The foregoing will not prejudice the right of Redeveloper to petition the Authority to agree to a modified Development Plan for Parcel E which reflects the then-prevailing market conditions, community input and planning goals. If housing is developed on Parcel E, any requirement to construct affordable or elderly housing on or off-site or to make any monetary or other contribution with respect to affordable or elderly housing in connection with the Development Program for Parcel E has been fully satisfied.

Exhibit C
to Amended and Restated Land Disposition Agreement

MORTGAGE

BOSTON REDEVELOPMENT AUTHORITY, a body politic and corporate having its principal offices at City Hall, Boston, Massachusetts 02201 ("Mortgagor"), FOR CONSIDERATION PAID, HEREBY GRANTS to IMMOBILIARE NEW ENGLAND, A LIMITED PARTNERSHIP, a Massachusetts limited partnership with a place of business at Flagship Wharf, 197 Eighth Street, Suite 227, Charlestown, Massachusetts 02129 ("Mortgagee"), with MORTGAGE COVENANTS, to secure the performance and payment by Mortgagor of certain covenants, obligations, agreements and debts hereinafter referred to, the land in Boston (Charlestown), Massachusetts, as described in Exhibit "A" annexed hereto, which is incorporated herein by this reference, together with the easements and restrictions described in said Exhibit "A", and together with any and all improvements now or hereafter situated thereon, and all equipment (as defined in the Uniform Commercial Code), appliances, furnishings and fixtures (to the extent not part of the real estate) now or hereafter placed on the above-described premises, or used in connection therewith, and now owned or hereafter acquired by the Mortgagor.

The Mortgagor hereby grants to the Mortgagee, as secured party, a first priority security interest in the above-described equipment, appliances, furnishings and fixtures and agrees to execute on demand of the Mortgagee all instruments necessary to perfect or continue such security interest, and in the event of default hereunder the Mortgagor hereby grants the Mortgagee full power and authority as attorney irrevocable of the Mortgagor to execute, deliver and record and file such instruments. This instrument is intended to be effective as a fixture filing under the Uniform Commercial Code. Certain of the goods described herein are or are to become fixtures related to the real property described herein. The record owner of the land described herein is the Mortgagor.

Said land, improvements, equipment, appliances, furnishings and fixtures are hereinafter referred to as the "Premises."

This Mortgage is given to secure the performance by Mortgagor of all its covenants, obligations and agreements arising under or pursuant to that certain agreement entitled "Amended and Restated Land Disposition Agreement", dated as of September 28, 1990, by and between Mortgagor and Mortgagee (the "Amended Agreement"), including without implied limitation of the generality of the foregoing, the obligation of the Mortgagor to grant and convey to Mortgagor title to the Premises at the prices and on the terms set

forth in the Amended Agreement, and to secure the performance of all covenants and agreements contained herein and the payment or performance of all other debts, covenants and agreements of or by the Mortgagor to or for the benefit of the Mortgagee now existing or hereafter accruing while this mortgage is still undischarged of record.

The Mortgagor covenants and agrees with the Mortgagee:

(1) to perform all of the covenants and agreements contained in the Amended Agreement and herein;

(2) to pay when due all taxes, charges for water, sewer and other municipal services, and assessments, whether or not assessed against the Mortgagor, if applicable or related in any way to the Premises, or any interest in the Premises of the Mortgagor, the Mortgagee, or any other person or organization, or the debt, obligations or performance secured hereby, or the disbursement or application of the proceeds therefrom, excluding, however, any income or corporation excise tax of the Mortgagee; the Mortgagor grants the Mortgagee in the event of a default hereunder full power and authority as attorney irrevocable of the Mortgagor to apply for and prosecute claims for the abatement of real estate taxes and to collect and endorse any checks issued on account of the Mortgagor in connection with such claims and to retain and apply the same to the debt secured hereby;

(3) to keep the Premises insured against fire, vandalism, malicious mischief and such other casualties and contingencies as presently insured; to deposit all insurance policies or memoranda thereof with the Mortgagee forthwith after the binding of such insurance, and to deliver to the Mortgagee new policies or memoranda thereof for any insurance about to expire at least thirty (30) days before such expiration, all such insurance policies shall be first payable in case of loss to the Mortgagee and shall be written by such companies, on such terms, in such form and for such periods and amounts as the Mortgagee from time to time reasonably shall designate or approve, and the Mortgagor hereby grants the Mortgagee in the event of a default hereunder full power and authority as attorney irrevocable of the Mortgagor to cancel or transfer such insurance, to collect and endorse checks issued in the name of the Mortgagor under such policies and to retain any premium or proceeds and to apply the same to the debt secured hereby;

(4) to put, maintain and keep the Premises at all times in as good repair and condition as the same now are or hereafter may be put, damage from casualty excepted, permitting and suffering no waste or strip of the Premises to occur, nor any violation of any law, by-law, ordinance, restriction,

regulation, order, or code affecting the Premises or the use thereof; and not to remove or alter any of the improvements, equipment, appliances, furnishings and fixtures constituting part of the Premises without the prior written consent of the Mortgagee;

(5) to observe and perform all the obligations imposed upon the Mortgagor under any leases of the Premises, nor to execute without Mortgagee's permission any leases on the Premises;

(6) that if the Premises or any part thereof shall be damaged or destroyed by fire or other hazard insured against or if the Premises or any portion thereof shall be taken by eminent domain, no settlement on account of any loss or damage shall be made without the consent of the Mortgagee, or, in the event of a default hereunder, the Mortgagee may, at its option settle any claims with the insurers or taking authority, and any proceeds from insurance or damages for such taking, as the case may be, shall be paid to the Mortgagee if there exists a default hereunder, and the Mortgagor hereby irrevocably assigns the same to the Mortgagee and the Mortgagor hereby grants to the Mortgagee full power and authority as attorney irrevocable of the Mortgagor to settle such claims and to collect and endorse any checks issued in the name of the Mortgagor. The Mortgagee at its discretion may either apply such proceeds in satisfaction of any debt or other obligation of the Mortgagor to the Mortgagee secured hereby (in which case Mortgagor's obligations hereunder to restore such damage to the Premises as may have been caused by such fire, other hazard or taking, shall terminate), or release such portion of the proceeds to the Mortgagor as is necessary to restore the Premises to their prior condition insofar as is practicable upon such terms and conditions as the Mortgagee deems appropriate, and apply the balance thereof, if any, in satisfaction of any debt or other obligation of the Mortgagor to the Mortgagee secured hereby;

(7) if the Mortgagor shall default in the performance or observance of any covenant or agreement herein or in the Amended Agreement contained, the Mortgagee may apply toward satisfaction of any debt or other obligation of the Mortgagor to the Mortgagee secured hereby any deposit, payment or any sum due from the Mortgagee to the Mortgagor without first enforcing any other rights of the Mortgagee against the Mortgagor, or against any endorser or guarantor of the Note or against the Premises;

(8) if Mortgagee shall become involved in any action or course of conduct with respect to the Amended Agreement, this Mortgage, the Premises, or other security for the obligations secured hereby, in order to protect its interest therein,

including without limitation: the Mortgagee's commencement and prosecution of foreclosure proceedings, involvement in bankruptcy proceedings concerning the Mortgagor, entering the Premises, care and management thereof or defending or participating as a party in any action at law or in equity brought by the Mortgagor or any other person or organization with respect to the Premises (or other security for the obligations secured hereby), the Mortgagor shall reimburse the Mortgagee for all charges, costs and expenses incurred by the Mortgagee in connection therewith, including without limitation attorneys' fees and an additional reasonable fee to compensate the Mortgagee for overhead and personnel salaries and wages attributable to undertaking such actions or conduct;

(9) that at any foreclosure sale of the Premises, the Premises and any combination or all of the other security for the obligations secured hereby may be offered for sale for one total price, and the proceeds of such sale may be accounted for in one account without distinction between the items of security or without assigning to them any proportion of such proceeds, the Mortgagor hereby waiving the application of any doctrine of marshalling. The Mortgagee may, in the exercise of the power of sale herein given, sell the Premises and said other security in parts or parcels, said sales may be held from time to time, and the power shall not be fully executed until all of the Premises and said other security not previously sold shall have been sold; if surplus proceeds are realized from a foreclosure sale, the Mortgagee shall not be liable for any interest thereon pending distribution of such proceeds by the Mortgagee;

(10) to notify the Mortgagee promptly of the existence of and the exact details of any other security interest in the Premises, now existing or hereafter arising, to make all payments that become due to any secured party having such security interests, and at the request of the Mortgagee to discharge immediately any such security interest or to assign to the Mortgagee all of its right, title and interest in and to any and all agreements evidencing such security interest, and the Mortgagor hereby grants the Mortgagee full power and authority as attorney irrevocable of the Mortgagor to make, execute, acknowledge and deliver such assignments. The Mortgagor warrants and represents that no security interest presently exists in any of said security except as is disclosed herein;

(11) that the Mortgagee shall be entitled, but not obligated, to cure any default of the Mortgagor hereunder, and shall be reimbursed by the Mortgagor for all costs, charges and expenses including without limitation attorneys' fees, incurred in connection therewith, and that all sums for

which the Mortgagee may be entitled to reimbursement shall also be secured hereby and shall earn interest to be calculated monthly at the rate of interest payable by the City of Boston on general obligation bonds issued by the City of Boston, and shall be payable on demand of the Mortgagee, whether or not the remaining principal balance of any obligations has been declared due and payable;

(12) in the event the legal or beneficial ownership of the Premises, or any portion thereof or interest therein, becomes vested in anyone other than the Mortgagor, other than a successor public agency, authority or department by operation of law, the Mortgagee shall have the STATUTORY POWER OF SALE, provided, however, that the Mortgagee may, without notice to the Mortgagor, deal with the Mortgagor's successor or successors in interest with reference to the Mortgage and any obligation secured hereby in the same manner as with the Mortgagor without in any way vitiating or discharging the Mortgagor's liability or obligations with respect to this Mortgage or the obligations secured hereby. No sale of the Premises hereby mortgaged and no forbearance on the part of the Mortgagee or extension of the time for the payment of the debt secured hereby or any other indulgence given by the Mortgagee shall operate to release, discharge, modify, change or affect the original liability of the Mortgagor, nor the priority of this Mortgage either in whole or in part, notice of such forbearance, extension or other indulgence being hereby expressly waived;

(13) that Mortgagor shall not:

(a) create, permit to be created any encumbrance on the Premises (except for the payment of real estate taxes and betterment assessments prior to the commencement of interest and penalties thereon);

(b) liquidate or dissolve or permit its liquidation or dissolution;

(c) file a petition under any chapter of the Federal Bankruptcy Act or institute any other proceeding under any law relating to bankruptcy, bankruptcy reorganization, insolvency or relief of debtors, or consent to an assignment, composition or similar arrangement for the benefit of Mortgagor's creditors, or consent to appointment of a receiver for any of Mortgagor's property.

(14) any notice, demand or other communication required or permitted hereunder shall be deemed satisfactorily given upon depositing the same in writing in the United States mail

by postage prepaid, registered or certified mail, addressed to the party to which it is directed at the address set forth herein.

(15) Section 401(b) of the Amended Agreement provides that upon request of Mortgagee, Mortgagor and Mortgagee shall enter into separate agreements with respect to portions of the Premises, on the same terms and conditions as the Amended Agreement as applicable to such portion. In such event, upon request of Mortgagee, Mortgagor shall grant a separate mortgage with respect to such portion of the Premises, on the same terms and conditions as this Mortgage.

In the event of any breach of any covenant, condition or agreement contained herein or of any default hereunder or under the Amended Agreement, if such breach or default remains uncured beyond the expiration of applicable notice and grace periods, or if any involuntary proceedings shall be commenced against Mortgagor under any chapter of the Federal Bankruptcy Act or other law relating to bankruptcy, bankruptcy reorganization, insolvency or relief of debtors, and such petition or proceeding is not dismissed with sixty (60) days from the date on which it is filed or instituted, the Mortgagee shall have the STATUTORY POWER OF SALE.

In case any provision of the Amended Agreement, this Mortgage, or any instrument executed by any person or organization in connection therewith shall be found unenforceable or invalid for any reason, the enforcement of any other provision shall be deemed modified to the extent necessary to be enforceable or if such modification is not practicable, shall be deleted from this Mortgage.

This Mortgage is upon the STATUTORY CONDITION and upon the further condition that all covenants and agreements of the Mortgagor in the Amended Agreement, this Mortgage, all other instruments executed in connection therewith and in all other mortgages, debts and obligations of or from the Mortgagor to the Mortgagee shall be kept and fully performed, and upon any breach of the same Mortgagee shall have the STATUTORY POWER OF SALE and any other powers given by statute.

The word "Mortgagor" as used herein means Mortgagor named herein, whether one or several, and also means any subsequent owner or owners of the equity of redemption of the Premises, shall be binding upon Mortgagor, its heirs, executors, administrators, successors and assigns and shall be joint and several if more than one person constitute Mortgagor. The word "Mortgagee" as used herein means Mortgagee named herein and any subsequent holder or holders of this Mortgage.

This Mortgage is executed under seal this 28th day of September, 1990.

BOSTON REDEVELOPMENT AUTHORITY

By: _____
its
hereto duly authorized

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

, 1990

Then personally appeared the above-named _____
and acknowledged the foregoing instrument to be the free act and
deed of said Boston Redevelopment Authority.

Before me,

Notary Public

My commission expires: _____

EXHIBIT "A" TO MORTGAGE

Description of Premises

The land and improvements thereon shown as Parcels A, B and D on the plan entitled "Yard's End, Subdivision Plan of Land in Boston, Massachusetts, Suffolk County, Charlestown District, Charlestown Navy Yard", Scale 1:960, dated December , 1990, by Survey Engineers of Boston, and recorded herewith (the "November 1990 Plan"), and the land shown as Parcels 1C and 1B, respectively, on the plan entitled "Parcels 1A1, X, Y & BRA3 & 1C, Subdivision Plan of Land in Charlestown, MA, Suffolk County, Charlestown Navy Yard" Scale 1:240, dated July 28, 1987, as revised September 30, 1987, by Survey Engineers of Boston, which plan is recorded at the Suffolk County Registry of Deeds in Book 14192, Page 200, and the plan entitled "Parcel 1B, 1B1, 2B & 2B1, Subdivision Plan of Land in Charlestown, Mass. (former Boston Naval Shipyard-Charlestown)" Scale: 1" = 40', dated June 6, 1979, as revised August 31, 1981, by Boston Survey Consultants, which plan is recorded at said Registry in Book 9928, Page 551.

Exhibit D
to Amended and Restated Land Disposition Agreement

PERMITTED ENCUMBRANCES

1. That certain Temporary Parking Easement on Parcel B shown on the Parcelization Plan.
2. That certain Mortgage from the Boston Redevelopment Authority to Immobiliare New England dated September 28, 1990.
3. Those easements created pursuant to Exhibit E hereof.

EXHIBIT E
to Amended and Restated Land Disposition Agreement

Use Principals Regarding Parcels A, D and E

The Authority and Redeveloper acknowledge and agree that the use and operation of certain portions of Parcels A, D and E will affect the Redeveloper's Development Program and NEAq's operation of an Aquarium. Therefore, the Authority and the Redeveloper agree that the portions of Parcels A, D and E described below shall be subject to the following and the Authority shall cause NEAq to agree with and comply with the following (the "Use Principals"):

1. NEAq shall have a right of vehicle and pedestrian access to Parcel E over that portion of Parcel A shown as "First Avenue Extended" on the Parcelization Plan, provided that the use of such area by NEAq shall have no adverse impact on Redeveloper's right to achieve its Development Program on Parcel A or the cost to achieve the Development Program.

2. Redeveloper shall have a right of access over that portion of Parcel E adjacent to First Avenue Extended which is improved and used for vehicular and pedestrian access, provided that the use of such area by Redeveloper shall have no adverse impact on NEAq's ability to construct and operate the Aquarium.

3. NEAq shall have a right of vehicular and pedestrian access, and a right to install and use sub-surface utilities, in the portion of Parcel B shown as "Utility and Access Easement" on the Parcelization Plan, provided that such use shall have no adverse impact on Redeveloper's operation of facilities on Parcel B.

4. NEAq shall restrict any service uses on Pier 10 and in the yard areas facing Parcels A, B and D, such as maintenance, loading, waste and trash disposal (which shall in all events be appropriately refrigerated so that there are no odors) and storage, to enclosed structures, provided that areas in which live marine mammals are temporarily housed may be screened or covered in a way which accommodates the need for light and air. NEAq's operation of delivery, loading and service facilities shall respect the nature and legitimate marketability needs of the hotel, marina and other uses adjacent thereto. The exterior design of all interior service areas shall be compatible with the design of the remainder of the Aquarium and adjacent structures.

5. The portion of Pier 10 adjacent to the water, and the portion of the water in Parcel D and E adjacent to Pier 10, shall be accessible to Redeveloper for purposes consistent with its Development Program. The same areas shall be accessible to NEAq for purposes consistent with the operation of the Aquarium. NEAq shall not operate its program in a fashion which has a detrimental effect on Redeveloper's ability to economically achieve and rationally operate its program, nor shall Redeveloper or NEAq charge any rent or other fee to the other insofar as either party makes any portion of Parcel D or Parcel E (including, without limitation, Pier 11) available to the other to achieve and operate its program.

6. The Authority and NEAq shall seek and diligently pursue City, State and Federal funding for demolition, removal, stabilization and reconstruction of piers and bulkheads adjacent to and a part of Parcels A, B, D and E.

7. Operational matters and questions of interpretation with respect to all matters arising under this Exhibit E shall initially be decided by an Operations Board comprised of one representative from each of the Authority, Redeveloper and NEAq. The decisions of the Operation Board must be consistent with the Use Principals, and the goals and objectives of the Navy Yard Master Plan, and the siting of the NEAq Facility and the Redeveloper's Development Program.

8. In consideration of the provisions of this Exhibit E, NEAq shall approve of the Redeveloper's Development Program, and Redeveloper shall approve of the Aquarium, and neither shall take any action inconsistent with such approval and Redeveloper, NEAq and the Authority shall reasonably cooperate with each other with respect to permitting and other matters jointly affecting Redeveloper and NEAq. In furtherance of the foregoing, the Authority and NEAq shall acknowledge that Redeveloper's release of rights in Parcel E provides essential economic support to the construction of the Aquarium.

9. The parties shall enter into such agreements, including, without limitation, recordable easement documents insofar as rights of access are created, as may be reasonably required to effectuate the provisions of this Exhibit E.

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Exhibit F to Amended and Restated
Land Disposition AgreementBOSTON REDEVELOPMENT AUTHORITY
EQUAL OPPORTUNITY COMPLIANCE POLICY

June 12, 1975

To assure execution of Affirmative Action to provide equal employment opportunity and prevent discrimination regardless of race, sex, religion, color or national origin, in accordance with Executive Order of the President No. 11246, as amended by 11375, the Boston Redevelopment Authority establishes the following policies, practices and procedures for the selection of contractors and subcontractors, site preparation, demolition, rehabilitation construction, service contracts and redevelopment programs under the Authority's jurisdiction and control:

1. Every proposed contract to which the Authority is a party for professional or technical services, including those for planning, design, engineering and appraisal work shall be submitted to the Contract Compliance Officer for Equal Opportunity, hereinafter referred to as "Compliance Officer." The Authority whenever possible will solicit minority contractors to submit bids and proposals for any of the above-mentioned contracts. The Authority will propose coventuring and joint venturing with minority contractors whenever possible. If the proposed firm has dealt previously with the Authority the Compliance Officer will review the record of its affirmative action programs for the employment of minorities. No contract shall be submitted for the Authority's approval until a written evaluation of these employment practices has been prepared by the Compliance Officer. The Contract Compliance Officer may recommend to the Director of the Authority that any proposed contractor with the Authority comply with such of the following requirements of this Equal Opportunity Compliance Policy, as the Director of the Authority may deem appropriate.

11. Prior to the conveyance of any real property, there must be submitted, together with the developer's form of construction contract, before the said contract is executed, a "Plan of Affirmative Action for Equal Opportunity" prepared by the proposed contractor containing the following information:

1. A statement of contractor's current policy with respect to equal opportunity; a description of how this policy is implemented and the extent of the contractor's achievement in the employment of minorities.
2. A statement of the contractor's goal to utilize an adequate representation of minority subcontractors on this project.
3. Identification of the goals which the contractor has established for the employment of minority groups on the project, and of the affirmative action which he will take to insure or facilitate their employment, including:

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- a. Professional, technical and clerical personnel;
 - b. Field and/or construction personnel;
 - c. Employees of subcontractors;
 - d. Employees of suppliers; and
 - e. Apprenticeship and upgrading.
4. An estimate of the anticipated total minority employment by category and trade.
 5. One copy of each pertinent Union Collective Bargaining Agreement.
 6. A statement of the contractor's anticipated plan for affirmative action for equal opportunity in connection with any contemplated co-venture or joint venture.
 7. A letter of intent between the developer and the contractor, in form acceptable to the Authority, requiring the contractor to perform in accordance with this Equal Opportunity Compliance Policy and under the Land Disposition Agreement between the Authority and the developer, and further requiring the contractor to insert a complete text of the non-discrimination clause of Section 202, 1 through 7 of the President's Executive Order No. 11246 in every contract, subcontract and purchase order, and an executed copy of the Bid Conditions Certificates. Said section 202 is hereby incorporated and made a part of this Equal Opportunity Compliance Policy by reference.
 8. Evidence that the contractor will require the submission of such a Plan for Affirmative Action by proposed subcontractors and will await review of each such plan by the Compliance Officer prior to the execution of the subcontract.

After the contractor has submitted its Plan for Affirmative Action, and prior to execution of the construction contract and subcontracts:

1. The developer and his proposed prime contractor and subcontractor will request the Compliance Officer to hold a pre-award conference. No work shall be performed nor contracts executed with the prime or the subcontractors until the developer or the contractor has been notified in writing of the Contract Compliance Officers approval. At the pre-award conference(s) the contractors will be examined to determine their compliance posture and guided in such revisions and improvements in its Plan for Affirmative Action and equal opportunities as the Contract Compliance Officer may deem appropriate. At all pre-award meetings the Compliance Officer will urge utilization of minority subcontractors. The developer shall be recommended to the Authority as being in breach of the Land Disposition Agreement for failure by any of the parties to comply with above revisions.

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2. The Contract Compliance Officer shall investigate the proposed contractor's prior records in Affirmative Action for Equal Opportunity and submit findings in writing to the Director of the Authority, together with a written evaluation of the proposed prime contractor's Plan for Affirmative Action.
3. No approval will be given by the Director with respect to a proposed construction contractor or subcontractor until the written recommendations of the Contract Compliance Officer have been considered.

III. The Authority's closing attorney at the request of the Contract Compliance Officer will arrange a pre-closing conference with the developer and the approved contractor and approved sub-contractors. The conference will be attended by the closing attorney and the Contract Compliance Officer, with representation from the HUD regional office where required. The following matters will be discussed at the conference:

1. The prime contractor's responsibility for following up on affirmative action by subcontractors.
2. Instructions to the contractor for maintenance on the site of a daily report on employment showing total number and non-whites employed by trade, and for the submission of bi-monthly labor reports to the Contract Compliance Officer.
3. Instructions to the contractors for providing each of his subcontractors with the required forms for public posting.
4. Instructions to the contractor for notifying all unions of equal opportunity requirements of his contract.
5. Contractor's responsibility for recruitment efforts in the utilization of minority group subcontractors.
6. Other aspects of affirmative action including apprentice and other training programs.
7. BRA procedure for insuring and facilitating affirmative action.
8. Urge representation use of minority subcontractors.
9. Advise the contractor to appoint a responsible officer of his organization as Equal Opportunity Officer for this project.

Any contractor who is a participant, in or is a member of an organization or association which participates in, an area-wide equal employment opportunity program (Boston Plan) which is approved by the Department of Housing and Urban Development and the Office of Federal Contract Compliance for the purpose of effectuating the goals of Executive Order 11246, shall be exempt from the requirement of developing and maintaining a written affirmative action program.

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IV. A. The Contract Compliance Officer will furnish the Director with bi-monthly reports on the progress of the equal opportunity program development. Where indicated the Contract Compliance Officer will:

1. Discuss failures to comply with the developer and the contractor.
2. Undertake on-site review of employment.
3. Recommend appropriate action to insure compliance with these policies and procedures.

B. In any case in which a contractor or subcontractor fails to adhere to the provisions of this Equal Opportunity Compliance Policy or its Plan for Affirmative Action, or fails to make every positive and acceptable effort to do so, the developer shall be recommended to the Authority as being in breach of the Land Disposition Agreement. The Director will notify any such developer and will exercise whatever sanctions necessary to effect compliance. The contractor and/or subcontractor may be declared ineligible by the Authority for further approval for work on Government contracts, Urban Renewal Parcels and Federally-Assisted construction contracts.

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Exhibit G to Amended and Restated
Land Disposition Agreement

December 2, 1975

THE COMMONWEALTH OF MASSACHUSETTS

SUPPLEMENTAL EQUAL EMPLOYMENT OPPORTUNITY
ANTI-DISCRIMINATION AND AFFIRMATIVE ACTION PROGRAM

- I. For purposes of this contract, "minority" refers to Asian-Americans, Blacks, Spanish Surnamed Americans, North American Indians, and Cape Verdeans. "Commission" refers to the Massachusetts Commission Against Discrimination.
- II. During the performance of this contract, the Contractor and all of (his/her) Subcontractors (hereinafter collectively referred to as the Contractor), for himself/herself, his/her assignees, and successors in interest, agree as follows:
 1. In connection with the performance of work under this contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religious creed, national origin, age or sex. The aforesaid provision shall include, but not be limited to, the following: employment upgrading, demotion, or transfer; recruitment advertising; recruitment layoff; termination; rates of pay or other forms of compensation; conditions or privileges of employment; and selection for apprenticeship. The Contractor shall post hereafter in conspicuous places, available for employees and applicants for employment; notices to be provided by Commission setting forth the provisions of the Fair Employment Practices Law of the Commonwealth (M.G.L. Chapter 151B).
 2. In connection with the performance of work under this contract, the Contractor, shall undertake in good faith affirmative action measures designed to eliminate any discriminatory barriers in the terms and conditions of employment on the grounds of race, color, religious creed, national origin, age or sex, and to eliminate and remedy any effects of such discrimination in the past. Such affirmative action shall entail positive and aggressive measures to ensure equal opportunity in the areas of hiring, upgrading, demotion or transfer, recruitment, layoff or termination, rate or compensation, and in-service or apprenticeship training programs. This affirmative action shall include all action required to guarantee equal employment opportunity for all persons, regardless of race, color, religious creed, national origin, age, or sex. A purpose of the provision is to ensure to the fullest extent possible an adequate supply of skilled tradesmen for this and future Commonwealth public construction projects.
- III. 1. As part of his/her obligation of remedial action under the foregoing section, the Contractor shall maintain on this project a not less than _____ percent ratio of minority

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- employee man hours to total man hours in each job category including but not limited to bricklayers, carpenters, cement masons, electricians, ironworkers, operation engineers, and those "classes of work" enumerated in Section 44C of Chapter 149 of the Massachusetts General Laws.
2. In the hiring of minority journeymen, apprentices, trainees, and advanced trainees, the Contractor shall rely on referrals from a multi-employer affirmative action program approved by the Commission, traditional referral methods utilized by the construction industry, and referrals from agencies, not more than three in number at any one time, designated by the Liaison Committee or the Commission.
- IV.
1. At the discretion of the Commission there may be established for the life of this contract a body to be known as the Liaison Committee. The Liaison Committee shall be composed of one representative each from the agency or agencies administering this project, hereinafter called the administering agency, the Commission and such other representatives as may be designated by the Commission in conjunction with the administering agency.
 2. The Contractor (or his agent, if any, designated by him as the on-site equal employment opportunity officer) shall recognize the Liaison Committee as an affirmative action body, and shall establish a continuing working relationship with the Liaison Committee, consulting with the Liaison Committee on all matters related to minority recruitment, referral, employment and training.
 3. The Contractor shall prepare projected manning tables on a quarterly basis. These shall be broken down into projections, by week, or workers required in each trade. Copies shall be furnished one week in advance of the commencement of the period covered, and also when updated, to the Commission and Liaison Committee.
 4. Records of employment referral orders, prepared by the Contractor, shall be made available to the Commission and to the Liaison Committee on request.
 5. The Contractor shall prepare weekly reports in a form approved by the Commission of hours worked in each trade by each employee, identified as minority or non-minority. Copies of these shall be provided at the end of each such week to the Commission and to the Liaison Committee.
- V.
1. If the Contractor shall use any subcontractor on any work performed under this contract, he shall take affirmative action to negotiate with qualified minority subcontractors. This affirmative action shall cover both pre-bid and post-bid periods. It shall include notification to the Office of Minority Business Assistance (within

the Executive Office of Communities and Development) or its designee, while bids are in preparation, of all products, work or services for which the Contractor intends to negotiate bids.

- VI. In the employment of journeymen, apprentices, trainees and advanced trainees, the Contractor shall give preference, first, to citizens of the Commonwealth who have served in the armed forces of the United States in time of war and have been honorably discharged therefrom or released from active duty therein, and who are qualified to perform the work to which the employment relates, and, secondly, to citizens of the Commonwealth generally, and, if such cannot be obtained in sufficient numbers, then to citizens of the United States.
- VII. A designee of the Commission and a designee of the Liaison Committee shall each have right of access to the construction site.

VIII. Compliance with Requirements

The Contractor shall comply with the provisions of Executive Order No. 74, as amended by Executive Order No. 116 dated May 1, 1975, and the Chapter 151B as amended, of the Massachusetts General Laws, both of which are herein incorporated by reference and made a part of this contract.

IX. Non-Discrimination

The Contractor, in the performance of all work after award, and prior to completion of the contract work, will not discriminate on grounds of race, color, religious creed, national origin, age or sex in employment practices, in the selection or retention of subcontractors, or in the procurement of materials and rentals of equipment.

X. Solicitations for Sub-Contracts, and for the Procurement of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by the Contractor either for work to be performed under a subcontract or for the procurement of materials or equipment, each potential subcontractor or supplier shall be notified in writing by the Contractor of the Contractor's obligations under this contract relative to non-discrimination and affirmative action.

XI. Bidders Certification Requirement

1. The bidders certification form currently in use will be deleted from all future bid documents.
2. The following certification statement will be inserted in the bid document just above the bidder's signature, as a substitute for the present bidder certification form:

"The bidder hereby certifies he shall comply with the minority manpower ratio and specific action steps contained in

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the appendix EEO attached hereto, including compliance with the minority contractor compliance specified in Section V of said appendix. The contractor receiving the award of the contract shall be required to obtain from each of its sub-contractors and submit to the contracting or administering agency prior to the performance of any work under said contract a certification by said subcontractor, regardless of tier, that it will comply with the minority manpower ratio and specific affirmative action steps contained in the appendix EEO."

XII. Contractor's Certification

The contractor's certification form must be signed by all successful low bidder(s) prior to award by the contracting agency (see attachment).

XIII. Compliance-Information, Reports and Sanctions

1. The Contractor will provide all information and reports required by the administering agency or the Commission on instructions issued by either of them and will permit access to its facilities and any books, records, accounts and other sources of information which may be determined by the Commission to affect the employment personnel. This provision shall apply only to information pertinent to the Commonwealth supplementary affirmative action contract requirements. Where information required is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the administering agency or the Commission as appropriate and shall set forth what efforts he has made to obtain the information.
2. Whenever the administering agency, the Commission, or the Liaison Committee believes the General Contractor or any Subcontractor may not be operating in compliance with the terms of this Section, the Commission directly, or through its designated agent, shall conduct an appropriate investigation, and may confer with the parties, to determine if such Contractor is operating in compliance with the terms of this Section. If the Commission or its agent finds the General Contractor or any sub-contractor not in compliance, it shall make a preliminary report on non-compliance, and notify such Contractor in writing of such steps as will in the judgement of the Commission or its agent bring such Contractor into compliance. In the event that such Contractor fails or refuses to fully perform such steps, the Commission shall make a final report of non-compliance, and recommend to the administering agency the imposition of one or more of the sanctions listed below. If, however, the Commission believes the General Contractor or any Subcontractor has taken or is taking every possible measure to achieve compliance, it shall not make a final report of non-compliance. Within fourteen days of the receipt of the recommendations of the Commission, the administering agency shall move to impose one or more of the following sanctions, as it may deem appropriate to attain full and effective enforcement:

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- a. The recovery by the administering agency from the General Contractor of 1/100 of 1% of the contract award price or \$1,000 whichever sum is greater, in the nature of liquidated damages or, if a Subcontractor is in non-compliance, the recovery by the administering agency from the General Contractor, to be assessed by the General Contractor as a back charge against the Subcontractor, or 1/10 of 1% of the subcontract price, or \$400 whichever sum is greater, in the nature of liquidated damages, for each week that such party fails or refuses to comply;
 - b. The suspension of any payment or part thereof due under the contract until such time as the General Contractor or any Subcontractor is able to demonstrate his compliance with the terms of the contract;
 - c. The termination, or cancellation, of the contract, in whole or in part, unless the General Contractor or any Subcontractor is able to demonstrate with a specified time his/her compliance with the terms of the contract;
 - d. The denial to the General Contractor or any Subcontractor of the right to participate in any future contracts awarded by the administering agency for a period of up to three years.
3. If at any time after the imposition of one or more of the above sanctions a Contractor is able to demonstrate that he is in compliance with this Section, he may request the administering agency, in consultation with the Commission, to suspend the sanctions conditionally, pending a final determination by the Commission as to whether the Contractor is in compliance. Upon final determination of the Commission, the administering agency, based on the recommendation of the Commission, shall either lift the sanctions or reimpose them.
4. Sanctions enumerated under Section XI shall not be imposed by the administering agency except after an adjudicatory proceeding, as that term is used M.G.L. c. 30A, has been conducted. No investigation by the Commission or its agent shall be initiated without prior notice to the Contractor.

XIV. Severability

The provisions of this section are severable, and if any of these provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

A contractor will be eligible for award of ²⁸⁸ unless such contractor has submitted the following certification, which is deemed a part of the resulting contract:

CONTRACTOR'S CERTIFICATION

Contractor certifies that:
1. it intends to use the following listed construction trades in the work under the contract:

- 2. will comply with the minority manpower ratio and specific affirmative action steps contained herein; and
- 3. will obtain from each of its subcontractors and submit to the contracting or administrative agency prior to the award of any subcontract under this contract the subcontractor certification required by these bid conditions.

(Signature of authorized representative of contractor)

B. Subcontractors' Certification

Prior to the award of any subcontract, regardless of tier, the prospective subcontractor must execute and submit to the Prime Contractor the following certification, which will be deemed a part of the resulting subcontract:

SUBCONTRACTORS' CERTIFICATION

Subcontractor certifies that:
1. it intends to use the following listed construction trades in the work under the subcontract:

- 2. will comply with the minority manpower ratio and specific affirmative action steps contained herein; and
- 3. will obtain from each of the subcontractors prior to the award of any subcontract under this subcontract the subcontractor certification required by these bid conditions.

(Signature of authorized representative of subcontractor)

In order to ensure that the said subcontractors' certification becomes a part of all subcontracts under the prime contract, no subcontract shall be executed until an authorized representative of the state agency (or agencies) administering this project has determined, in writing, that the said certification has been incorporated in such subcontract, regardless of tier. Any subcontract executed without such written approval shall be void.

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MINIMUM MINORITY PERCENTAGES TO BE APPLIED TO
STATE AND STATE ASSISTED CONTRACTS
WITHIN THE COMMONWEALTH OF MASSACHUSETTS

The following percentages shall apply:

	<u>No Less Than</u>
Boston:	
Impact Area (Jamaica Plain (part), Mattapan, South Cove, Chinatown, Bay Village, Roxbury, Dorchester, South End)	30%
Others	10%
Cambridge	12%
New Bedford	18%
Springfield	10%
All other cities and towns	5%
12-2-75	

Exhibit H to Amended and Restated
Land Disposition Agreement

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COMPLIANCE & ENFORCEMENT MANUAL



CITY OF BOSTON
Kevin H. White, Mayor

EXHIBIT J

MEMORANDUM

TO: All Department and Agency Heads

Room 9.3
 100 State St.
 Boston, Massachusetts 02201
 Tel: 617-725-4014

FROM: Joseph I. Mulligan
Corporation Counsel *JM*

DATE: September 23, 1988

RE: CHANGE TO CONTRACT MANUAL: PROMOTING
MINORITY AND WOMEN OWNED BUSINESS ENTERPRISESJoseph I. Mulligan, Jr.
Corporation Counsel

Pursuant to the Mayor's Executive Order and the Ordinance pertaining to minority and women business enterprise development, effective immediately all contracts for the procurement of goods and/or services entered into by any department, agency, board or commission of the City of Boston or Suffolk County where the obligations are to be paid for from the treasury of the City shall include the attached addendum to the City's Standard Contract General Conditions. This requirement applies whether or not the contract is advertised. The language contained in the addendum shall also be inserted in or attached to any agreement in which the City's Standard Contract General Conditions are not used (for example, negotiated lease/purchase agreements). Where appropriate, it also should be inserted in invitations/requests for proposals.

Any contract for the purchase of goods and/or services received for approval by the Law Department on or after October 15, 1988 which does not contain the attached addendum (or which does not contain the language set forth in the attached addendum) shall be

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returned to the originating department without approval, except that contracts awarded or entered into prior to receipt of this memorandum and in the process of approval shall not be subject to the requirements set forth in the addendum.

The caption of the attached addendum may be modified only if necessary to properly identify the specific contract to which it applies if the City's Standard Contract General Conditions are inapplicable to a particular contract, so long as the addendum otherwise clearly retains its identity as a distinct and prominent modification of existing contractual provisions.

The addendum may be published by each department or agency in quantities sufficient to meet anticipated needs.

This memorandum constitutes a change to the City of Boston Contract Manual. It is effective upon receipt, and all officials responsible for the initiation and preparation of contracts shall strictly comply with its provisions.

Please contact the Office of Minority/Women Business Enterprise or the Law Department if there are any questions regarding this requirement.

ATTACHMENT: (1)

cc: All Assistant Corporation Counsel and Special Assistant Corporation Counsel

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ADDENDUMCITY OF BOSTON/COUNTY OF SUFFOLK
STANDARD CONTRACT GENERAL CONDITIONS

AND

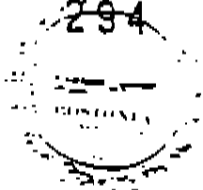
CITY OF BOSTON PURCHASING DIVISION
PURCHASING PROPOSAL AND CONTRACT
GENERAL CONDITIONS**PROMOTING SUBCONTRACTING WITH MINORITY
AND WOMEN OWNED BUSINESS ENTERPRISES**

In furtherance of Mayor Raymond L. Flynn's Executive Order "Minority and Women Business Enterprise Development" dated December 31, 1987 and the Ordinance entitled "Promoting Minority and Women Owned Business Enterprises in the City of Boston" (Ordinances of 1987, Chapter 14), it is understood and agreed by the Contractor, and the Contractor by the execution of this contract so certifies, as follows:

- (1) That the contractor shall actively solicit bids for the subcontracting of goods and services from certified minority and women businesses.
- (2) That in reviewing substantially equal proposals the contractor shall give additional consideration to the award of subcontracts to certified minority and women bidders.

APPROVED AS TO FORM BY CORPORATION COUNSEL SEPTEMBER, 1988

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CITY OF BOSTON - MASSACHUSETTS

OFFICE OF THE MAYOR
RAYMOND L. FLYNN

EXECUTIVE ORDER

OF

MAYOR RAYMOND L. FLYNN

ON

MINORITY AND WOMEN BUSINESS ENTERPRISE DEVELOPMENT

WHEREAS, it has consistently been the policy of this Administration to promote equality of opportunity in the economic life of the City, and

WHEREAS, the amount of revenue generated by City contracts greatly impacts the local economy and business development of the City, and

WHEREAS, women and minority businesses have not been able to participate in an equitable manner in the receipt of City contracts due to the continuing effects of past discrimination within the City of Boston, and

WHEREAS, these past practices have resulted in the underrepresentation and underutilization of minority and women businesses in the receipt of City contracts, and

WHEREAS, non-discrimination alone in the awarding of City contracts is not sufficient to remedy the continuing effects of these past practices, the need exists for affirmative steps to be taken to ensure that minority and women businesses are utilized to the fullest extent possible, and

WHEREAS, there is an existing pool of capable and qualified minority and women business enterprises, ready and willing to do business with the City, this resource must be used so that the City's contractors will reflect the diversity of Boston's population,

NOW, THEREFORE, I hereby issue this order to all City departments and personnel, to ensure the equitable participation of minority and women businesses in the City's contracting arena.

Article I: POLICY

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It is the policy of the City of Boston to encourage, assist and provide the maximum opportunity for minority and women owned businesses to participate in the city's contracting arena. To this end, the City will increase both the number of Minority and Women Business Enterprises that receive City contracts and the amount of contractual dollars awarded to Minority and Women Business Enterprises. The goals of the Minority and Women Business Enterprise Development Program are consistent with this Administration's philosophy of inclusion for all of Boston's residents in the prosperity of the City. Thus, the City shall promote and affirmatively market contract opportunities for minority and women owned businesses by establishing participation requirements consistent with this Order.

Article II: STANDARDS**A. GOODS AND SERVICES**

The City shall require that a minimum of fifteen percent (15%) in the procurement of all goods and services including professional and consulting services be supplied by certified Minority Business Enterprises (MBEs), and a minimum of five percent (5%) in the procurement of all goods and services including professional and consulting services be supplied by certified Women Business Enterprises (WBEs), out of the eligible contract dollars awarded by the City and its departments during each Fiscal Year. This requirement shall include all legally enforceable agreements, including service and purchase orders, without regard to specific awarding or advertising processes for the provision of supplies, labor, materials, and services, including professional and consulting services, franchises, concessions, and leases.

B. CONSTRUCTION

A minimum of fifteen percent (15%) of the eligible contract dollars of each construction related contract awarded during each fiscal year shall be awarded to certified MBEs. The fifteen percent minimum shall be increased to thirty percent (30%) of the eligible contract dollars of each construction related contract let within an impacted area.

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A minimum of five percent (5%) of the eligible contract dollars of each construction related contract awarded during each fiscal year shall be awarded to certified WBEs.

Article III: IMPLEMENTATION

A. OPERATIONAL RESPONSIBILITIES

1. The Director of Administrative Services

The Director of Administrative Services will be responsible for the development, coordination, and implementation of the Order by City departments and the initiation of corrective action, where necessary. The Director of Administrative Services will work closely with the Mayor's Senior Advisor on Equal Rights and the Mayor's Policy Director on issues relating to the Order.

2. The M/WBE Coordinator

The M/WBE Coordinator will assist the Director of Administrative Services in the development and coordination of this Order and will assume primary responsibility for monitoring departmental compliance with the Order. The Coordinator will report to the Director of Administrative Services and will work in conjunction with the Purchasing Agent and the Director of the Office of Contract Management to implement this policy. The Coordinator will work closely with the Mayor's Senior Advisor on Equal Rights, the Mayor's Policy Director and the Deputy Director of the Office of Jobs and Community Services (hereinafter the Deputy Director for Compliance and Enforcement). Among the responsibilities of the Coordinator will be to:

- a. Assist the Director of Administrative Services in the preparation, dissemination, implementation, revision, and monitoring of the City of Boston's Implementation Plan for contracting with M/WBEs.
- b. Work with department heads, managers, supervisory personnel, and appointing authorities to develop departmental implementation plans.
- c. Staff and assist the efforts of the Minority and Women Business Advisory Council.
- d. Develop and implement an effective outreach program for M/WBEs to encourage their maximum participation in the City's contracting process.

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- e. Provide assistance to departments in the identification of minority and women vendors.
- f. Assess individual department's compliance with their implementation plan and, where necessary, recommend corrective action to the department head and the Director of Administrative Services.
- g. Coordinate regular training programs for City personnel.
- h. Prepare quarterly and annual reports for the Mayor on the performance of all City departments.
- i. Develop effective communication with and serve as the City's liaison to, federal and state agencies, and local business associations and professional organizations.

3. The Mayor's Policy Director

The Mayor's Policy Director will work with the Mayor's Senior Advisor on Equal Rights and the Director of Administrative Services on policy direction and on the review of program implementation and compliance.

4. The Mayor's Senior Advisor on Equal Rights

The Mayor's Senior Advisor on Equal Rights, reporting to the Mayor, will oversee the Policy direction of the Order by the City. In addition, the Senior Advisor will serve on the Minority and Women Business Advisory Council.

5. The Purchasing Agent and the Director of the Office of Contract Management

The Purchasing Agent and the Director of the Office of Contract Management will play an essential role in the implementation of this Order. Among their responsibilities will be to:

- a. Maintain a list of goods and services used by the City and inform minority and women vendors of potential contract opportunities.
- b. Identify contract opportunities in which the City has traditionally underutilized minority and women business participation.
- c. Take affirmative action to develop and encourage minority and women business participation.

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d. Disseminate the "City Record" to minority and women business enterprise vendors.

6. The Deputy Director for Compliance and Enforcement

The Deputy Director for Compliance and Enforcement will monitor, implement, and enforce the M/WBE plan for construction related contracts and comply with the provisions of the Ordinance creating the Boston Employment Commission. The Deputy Director will work with the State Office of Minority Business Assistance in certifying M/WBEs. The Deputy Director shall forward copies of all compliance and enforcement reports to the Director of Administrative Services, the M/WBE Coordinator and the Boston Employment Commission.

B. OPERATIONAL PLAN

1. The City will publish every two years, or more often as necessary, a City M/WBE Implementation Plan. The components of the City's Plan shall include, but not be limited to: (1) departmental requirements for submitting Implementation Plans and inclusion of these plans in the department's annual budget submission, (2) procedures to address grievances, (3) review of the vendor payment process, (4) procedures by which City departments and contractors document their good faith efforts to comply with this Order, (5) quarterly and annual reports, (6) outreach efforts to minority and women vendors, (7) training for appropriate City personnel, (8) guidelines for the uniform compilation and reporting of statistical M/WBE data, (9) development of appropriate contract language for implementing this policy, (10) enforcement procedures, and (11) maintenance of a list of eligible M/WBEs, a reference library of all sources to be used to locate M/WBEs, and the dissemination of such information to City departments.
2. The following factors are necessary requirements for departmental compliance with this Order:
 - a. Preparation of an annual departmental implementation plan, to be submitted with the budget, which includes, but is not limited to, goals, objectives, performance criteria and tasks for complying with the M/WBE program.
 - b. Effective coordination of departmental efforts with the M/WBE Coordinator in order to fully comply with this Order.

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- c. Maintenance of a reference list of M/WBEs for departmental contracts.
 - d. Documentation of good faith efforts to contact M/WBEs for bids.
 - e. Maintenance of records denoting M/WBEs contacted, the method by which they were contacted, and their responses.
 - f. Targeting of advertisements in areas likely to attract M/WBEs and the release of those advertisements in a timely manner.
 - g. Maintenance of copies of Invitations to Bid and Requests for Proposals.
 - h. Designation of the senior administration and finance staff person for each department, or the equivalent senior staff person in departments without administration and finance staff, to coordinate the development and implementation of the M/WBE program.
 - i. Submission of quarterly and annual reports, on a timely basis, to include the total number and dollar value of contracts awarded and expensed to M/WBEs and documentation of the methods used to ensure the full participation of M/WBEs. These methods may include promoting joint ventures, subcontracting, dividing large contracts into smaller units, establishing sheltered market programs, and the conducting of departmental training sessions.
 - j. Attainment of the required percentage of utilization of M/WBEs.
3. If a department is determined to be in noncompliance with this Order, the Minority and Women Business Advisory Council will be notified and progressive enforcement will be achieved by the following steps:

STEP 1

Departments shall submit Requests for Proposals and Requests for Bids, along with a list of vendors to be contacted to the Director of Administrative Services and to the M/WBE Coordinator five (5) days prior to distribution and/or advertisement.

STEP 2

Prior to the department's awarding of a contract, the

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Contract must carry the signature of the M/WBE Coordinator in addition to those required by State law, City Ordinance, or administrative regulations.

STEP 3

Prior to the awarding of a contract, the department will submit an analysis of the bid process to include the names of businesses contacted, name of business selected, and other information required by the M/WBE Coordinator. The analysis must be filed with the Director of Administrative Services and the M/WBE Coordinator to ensure that eligible M/WBE vendors had been contacted. If the M/WBE Coordinator determines that eligible M/WBE vendors were not contacted, the department may be required by the Director of Administrative Services to solicit new bids.

STEP 4.

At the direction of the Mayor, the contract award process will be handled by an internal awarding committee.

STEP 5

Any other action deemed appropriate which may include the Director of Administrative Services authorizing the City Auditor to encumber up to fifteen (15%) of that portion of a department's budget earmarked for contractual services.

C. MINORITY AND WOMEN BUSINESS ADVISORY COUNCIL

The Mayor shall establish a Minority and Women Business Advisory Council. The members, not to exceed eleven (11), will be appointed by the Mayor and will be composed of City officials and persons outside of the Administration. The City officials shall not exceed three (3) persons and shall consist of the Mayor's Senior Advisor on Equal Rights, the Mayor's Advisor on Women's Issues or a representative of the City's Women's Commission and the Mayor's Policy Director. The Council shall be chaired by a representative of the M/WBE community and shall be staffed by the M/WBE Coordinator.

The Mayor shall recommend to the City Council that Council Members shall be made Special Municipal Employees for the purposes of Massachusetts General Law chapter 268A.

Members shall be appointed or reappointed for three (3) year terms except that the initial members of the Council shall be appointed on a staggered basis with one-third of the Council's term expiring after three (3) years, one-third after two (2), and one-third after one (1) year.

The Council shall meet not less than monthly. 16512 301.

ARTICLE IV: DEFINITIONS

For the purposes of this Executive Order, the following definitions shall apply:

"CERTIFICATION", means the process by which a business enterprise meets the standards promulgated by the Compliance and Enforcement Division of the Mayor's Office of Jobs and Community Services and the State Office of Minority Business Assistance.

"CITY", means the City of Boston.

"CITY DEPARTMENT", means those departments under the supervision of the Mayor or persons appointed by him, to include the Boston Public Library and the Department of Health and Hospitals.

"CONTRACT", means a legally enforceable agreement for the provision of supplies, labor, materials, services, construction, franchises, concessions, or leases granted by or on behalf of the City.

"CONTROLLED", means a business whose management policies and daily business operations are dominantly controlled by one or more Minority Persons or Women. Control shall include, but not be limited to, dominant control over:

1. the purchase of goods, equipment, business inventory, and services,
2. the hiring and firing of employees,
3. the corporate accounts and other financial affairs, and
4. solicitation and negotiation of contracts and the offering and acceptance or rejection of bids.

"ELIGIBLE CONTRACT DOLLARS", shall refer to the total dollar amount of contracts awarded or expensed as set forth under the provisions of this Executive Order and guidelines and procedures issued pursuant thereto.

"FISCAL YEAR", means the period from July 1 through June 30.

"IMPACTED AREA", means an area of the City where the proportion of minority residents is greater than the proportion of minority residents in the City as a whole, as determined by OJCS through the use of census data.

"MINORITY PERSON", means a citizen or legal resident alien of the United States who is Black, Hispanic, Native American, Asian or Cape Verdean, as defined by the Massachusetts State Office of Minority Business Assistance (SOMBA).

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"MINORITY/WOMEN BUSINESS ENTERPRISE (M/WBE)", means a business which is owned, controlled, and managed by one or more Minority Persons or Women.

"OWNED", means a business which is at least fifty-one percent (51%) owned by one or more Minority Persons or Women.

1. In the case of a corporation, at least fifty-one percent (51%) of all classes of voting stock and/or interests of such corporation must be owned by one or more Minority Persons or Women.
2. In the case of a partnership, at least fifty-one percent (51%) of such partnership interest must be owned by one or more Minority Persons or Women.
3. In the case of a limited partnership, the Minority Persons or Women must act as general partners and own at least fifty-one (51%) of the general partnership interest of such limited partnership.
4. In the case of a joint venture, at least fifty-one percent (51%) of the controlling interest of such joint venture must be owned by one or more Minority Persons or Women.
5. In the case of a sole proprietorship, the Minority Person or Woman must own and control the business.
6. In any other form of business organization, one or more Minority Persons or Women must own at least fifty-one percent (51%) of the business.
7. An ownership interest held by one or more Minority Persons or Women shall not qualify as being an interest held by said Person(s) if an agreement, option, scheme, security interest, or document would, if exercised, result in less than fifty-one percent (51%) ownership of the business and/or dominant control of the business by one or more Minority Persons or Women.

ARTICLE V: GENERAL IMPLEMENTATION POLICY

- A. This Executive Order applies to all City and County agencies. With respect to statutorily independent agencies, every effort will be made to secure adoption and compliance with this Executive Order.
- B. In order to assure total compliance with this Order, all department heads, managers, supervisory personnel, and appointing authorities are to cooperate to the fullest in carrying out the systems and procedures for proper implementation, reporting and enforcement of this policy.

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- C. Promulgated in conjunction with this Executive Order is an Implementation Plan which shall take effect immediately.
- D. This Executive Order is subject to review by the Mayor on an annual basis to reassess the continuing desirability and viability of the program.

This policy is effective immediately, and is intended to supersede the Executive Order of July 1, 1978 relating to Minority Business for the City of Boston. It shall remain in effect until its objectives are met.

Raymond L. Flynn

 Raymond L. Flynn, Mayor
 8/17/87

 Date

EXHIBIT I

LETTER OF INTENT

(To be executed by the prime contractor for each urban renewal redevelopment parcel and deliver to the developer. A signed copy should be submitted by the developer to the BRA, as a condition precedent to conveyance.)

Revised April 8, 1975

(LETTERHEAD OF GENERAL CONTRACTOR)

To Contract Compliance Officer

(Date)

Dear Mr. :

This letter is being delivered to you, in consideration of being awarded a contract for the construction of _____ on Re-Use Parcel _____ in the _____ Urban Renewal Project in the City of Boston, Massachusetts, as evidence of our undertakings in connection with equal employment opportunity.

We understand that opportunities for minority groups to obtain adequate employment have been severely limited; that it is the policy of the Federal government and the City of Boston to ensure the fullest possible employment opportunities in every construction job involving, directly or indirectly, public assistance; and that we are obligated to the Boston Redevelopment Authority to take certain steps to help ensure the creation of such opportunities. We further understand that under the provision of the Land Disposition Agreement pursuant to which we will be permitted to purchase urban renewal land, you must submit to the Authority, prior to conveyance, assurance that your contractor will assist you in meeting these obligations. Finally, we understand that if in the course of construction there is a failure to comply with governmental policies or BRA's compliance policy pertaining to equal employment opportunities, we will be in default under said Disposition Agreement and likely to incur serious penalties.

Accordingly, we hereby agree, as part of the inducement to you for consideration of said construction contract, to do the following things:

- (1) We shall assist you in every way in carrying out the requirements of the section of said Land Disposition Agreement which is entitled "Non-Discrimination in Employment", a copy of which is attached hereto, and the President's Executive Orders to which said section refers and with which we have familiarized ourselves.

- (2) We shall observe all of the practices and procedures set forth in the "Equal Opportunity Compliance Policy" of the Boston Redevelopment Authority, with the provisions of which we also have become familiar, including the requirements to submit to the Authority an acceptable "Plan of Affirmative Action for Equal Employment Opportunity", and the requirement that prior to the execution of any sub-contracts we shall schedule with the Authority's Contract Compliance Officer a pre-award conference in order to assure compliance with said policy and to further the goals thereof. We shall also observe all of the practices and procedures set forth in the "Supplemental Equal Employment Opportunity Anti-Discrimination and Affirmative Action Program" and the City of Boston's "Contract Compliance Program".
- (3) We shall assist in every way to ensure that you do not fall into default under the provisions of said Disposition Agreement, and will assist you and the Boston Redevelopment Authority in every reasonable way to help to provide greater employment opportunities for members of minority groups.

(NAME OF COMPANY)

By (Signature of Officer)
(Title)

(NAME OF DEVELOPER)

By (Signature of Officer)
(Title)

Exhibit J
to Amended and Restated Land Disposition Agreement

AQUARIUM DEVELOPMENT MILESTONES

- Milestones: NEAq shall achieve the following Milestones and accomplish and fulfill the elements thereof by the dates specified, to wit:
- (1) Execution of a Term Sheet by December 20, 1990.
 - (2) Fulfillment by March 1, 1991 of items listed below under Governmental Actions as numbers (1), (2), (3), (4) (except as to approval of SFEIR for Parcel 5), (5) and (6).
 - (3) BRA tentative designation of a redeveloper of Central Wharf and Parcel A3N, by May 30, 1991, following a procedure which includes: (a) joint issuance of RFP, including a preliminary RFQ, by BRA and NEAq; (c) amount and terms of payment of consideration to NEAq, and contractual commitment thereof to NEAq, subject to approval of NEAq in all respects in its own judgment.
 - (4) Submission by NEAq of schematic drawings and PIR/SFEIR by February 28, 1992, and approval by BRA of schematics within 60 days thereafter.
 - (5) Submission of design development plans by NEAq by January 31, 1993, and approval of BRA thereof within 30 days thereafter.
 - (6) Submission of working drawings by NEAq by February 28, 1994, and approval by BRA thereof, and of the City of Boston Inspectional Services Department within 60 days thereafter.

- (7) Final Designation, conveyance of title (which shall not occur until a full building permit has been issued) and issuance of building permit to NEAq by June 31, 1994, and entry into a construction contract and commencement of construction by NEAq by October 31, 1994.

**Governmental
Actions:**

The governmental actions herein specified shall be proposed, recommended and diligently sought to be effected, by BRA and NEAq:

- (1) BRA shall recommend for adoption, and the Boston Zoning Commission shall adopt Article 42F Harborpark District-Charlestown Navy Yard as part of the Boston Zoning Code, substantially in the form identified as TA53/02.RPT111990/1, submitted by the BRA to the Zoning Commission on November ____, 1990.
- (2) BRA shall recommend for approval, and the Executive Office of Environmental Affairs (EOEA) shall approve, a Boston Municipal Harbor Plan, substantially in the form submitted by the BRA for approval in October 1990.
- (3) BRA shall adopt amendments to the Charlestown Urban Renewal Plan.
- (4) BRA shall request of EOEA, and EOEA shall grant, the determinations specified in BRA's letter of October 31, 1990 to EOEA setting forth a notice of project change under MEPA; and EOEA shall approve an SFEIR with respect to the NEAq development proposed for Parcel 5.
- (5) BRA shall enter into a Memorandum of Agreement with the GSA, Massachusetts Historic Commission and Advisory Council on Historic Preservation setting forth Design Guidelines affecting Parcel 5. Further, and in connection therewith, MHC shall, as a condition of NEAq's obligations hereunder, acknowledge that NEAq's development project for Parcel 5 is approved under M.G.L. c. 9, §27C, subject only to design review which will not reduce density or height approved in said Memorandum of Agreement and in said Article 42F.