

ARTICLE III

RESTRICTIONS AND CONTROLS UPON REDEVELOPMENT

Section 301: Restrictions on Use

a. The Redeveloper agrees for itself, and its successors and assigns, and every successor in interest to the Property, or any part thereof, and the Deed shall contain covenants on the part of the Redeveloper for itself, and its successors and assigns, that the Redeveloper, its successors and assigns shall, subject to Section 301(c) below:

1. Devote the Property only to, and in accordance with, the uses specified in the Plan as in effect on the date hereof or as amended in accordance with the terms hereof; and

2. Give preference in the selection of tenants for dwelling units built on the Property, first, to families displaced from the Property because of clearance and redevelopment activity, and second, to other families displaced from the Plan Area by clearance and redevelopment activity or by other governmental activities, who desire to occupy such dwelling units and will be able to pay rents or prices equal to rents or prices charged other families for similar or comparable units built as part of the Improvements.

3. Not discriminate upon the basis of race, color, sex, religion or national origin in the sale, lease or rental or in the use or occupancy of the Property or any Improvements erected or to be erected thereon, or any part thereof.

b. The Redeveloper agrees to comply with all applicable rules and orders issued by the Department of Housing and Urban Development which prohibit the use of lead-based paint in residential structures undergoing Federally-assisted construction or rehabilitation and requiring the elimination of lead-based paint hazards.

c. It is intended and agreed, and the Deed shall so expressly provide, that the covenants provided in Subsection (a) of this Section 301 shall be covenants running with the land binding to the fullest extent permitted by law and equity for the benefit and in favor of, and enforceable by, the Authority, its successors and assigns, the City of Boston, and in the case of the covenant provided in subparagraph (3) of Subsection (a), the United States, both for and in its or their own right and also to protect the interest of the community and other parties, public and private, in whose favor or for whose benefit the covenants have been provided, against the Redeveloper, its successors and assigns, and every successor in interest to the Property or any part thereof or any interest therein, and any party in possession or occupancy of the Property or any part thereof. It is further intended and agreed that the covenants provided in subparagraphs (1) and (2) of Subsection (a) shall remain in effect for the Plan Term. The covenant provided in subparagraph (3) of Subsection (a) shall remain in effect without limitation as to time. The terms "uses specified in the Plan" and "land use" referring to provisions of the Plan, or similar language, in this Agreement shall include the land and all buildings, housing, and other requirements or restrictions of the Plan pertaining to such land.

d. In order to effectuate the provisions of subparagraphs (2) and (3) of Subsection (a) of this Section 301, the Redeveloper agrees to submit to the Authority all materials regarding its

rental program, including but not limited to, advertising matter, brochures, leases, proposals for establishment of rental offices, for review of all aspects of said program which relate to or have an effect upon the selection of tenants. The Redeveloper further agrees to inform the Authority by ten (10) days prior written notice thereof of its intention to permit initial occupancy of the Improvements built on the Property. The Redeveloper shall not proceed with any aspect of its rental program to which the Authority objects, and agrees to follow all reasonable suggestions of the Authority with respect thereto, provided, however, that the Authority shall not require the Redeveloper to take any action inconsistent with or which impose more burdensome requirements than the terms of any agreement between HUD and the Redeveloper, copies of which shall have been deposited with the Authority.

e. Upon the request of the Authority, the Redeveloper agrees to submit to the Authority all promotional materials regarding any residential rental program for a Parcel, if applicable, including but not limited to advertising matter and brochures, for review of all aspects of said program which relate to or have an effect upon the selection of tenants.

f. The Redeveloper agrees for itself, its successors and assigns, that during construction and thereafter, the Redeveloper, and its successors and assigns, shall develop and carry out a reasonable program of advertising for the sale and/or rental of any residential development on a Parcel or the Property and shall include in all such advertising (including signs), the legend "An

Open Occupancy Building", in type or lettering of easily legible size and design. The word "Project" or "Development" may be substituted for the word "Building" where circumstances require such substitution.

g. The Redeveloper agrees for itself, its successors and assigns, that during construction and thereafter, the Redeveloper, and its successors and assigns, shall include in all such advertising for the sale or rental of residential development on the Property, a statement to the effect: (a) that the Property is open to all persons without discrimination on the basis of race, color, sex, religion or national origin; and (b) that there shall be no discrimination in public access and use of the Property to the extent that it is open to the public.

Section 302: Improvements

a. As more particularly set forth in the Development Programs for each Parcel contained in Exhibit B attached hereto and made a part hereof, the Property shall be used for commercial, institutional, research, office, hotel, conference center, residential, parking and marina uses, together with accessory uses, including retail uses, to be built in accordance with the terms hereof and applicable standards and controls of the Plan and the Boston Zoning Code. The Authority shall conduct design review of the Development Programs under and pursuant to Article 31 of the Boston Zoning Code.

b. The Redeveloper shall construct the Improvements to be erected on the Property in accordance with the Working Drawings

and Specifications approved by the Authority as provided below in this Section 302.

It is agreed that any and all Material Exterior Changes (as defined in Section 101(70)) issued and implemented subsequent to approval by the Authority of Working Drawings and Specifications constitute a deviation from said approved Working Drawings and Specifications. The Redeveloper agrees that no such Material Exterior Change will be issued or implemented unless such Material Exterior Change shall have been submitted to and approved in writing by the Authority prior to its issuance or implementation. In approving or disapproving Material Exterior Changes, the Authority shall be subject to the limitations on the Authority's review of Working Drawings and Specifications as set forth below in this Subsection 302(b), except that if the Authority shall neither approve or disapprove in writing within fourteen (14) days of receipt of such Material Exterior Change approval request then such Material Exterior Change shall be treated as having been approved.

In the event the Redeveloper shall fail to comply with the foregoing requirements, the Authority may, within a reasonable time after discovery thereof by the Authority, direct in writing that the Redeveloper so modify or reconstruct such portion or portions of the Improvements erected or being erected on the Property as are not in conformance with the applicable approved Working Drawings and Specifications or any approved modifications thereof, or Material Exterior Changes therefor as to bring them

into conformance therewith. The Redeveloper shall promptly comply with such a directive. In addition to any other remedies available under this Agreement, the Authority may enforce the provisions of this Subsection 302(b) by an action in a court of appropriate jurisdiction to compel specific performance.

c. No sign shall be erected or placed on the exterior of any building on the Property, nor on any portion of the Property which is not enclosed within a building, unless the character, location, design, size, shape, form and lighting of such sign shall have been approved by the Authority in writing, which approval shall not be unreasonably withheld and which shall be deemed given if the Authority does not approve or disapprove such sign within a 21-day period of such request therefor. Without limiting in any way the scope of the Authority's review, no sign shall be approved which does not meet the following standards. Signs may only be erected or placed upon the ground floor street facade of each store, if any, or other individual use. Flashing, illuminated signs, exposed neon signs or signs other than those relating to businesses on the site, if any, shall not be permitted.

d. The Authority shall review and approve or disapprove the Working Drawings and Specifications as follows:

- (1) In its review of all sketches, plans, drawings and specifications (referred to hereafter in this Subsection 302(d) prior to final approval by the Authority as "Plans") submitted, the Authority shall use best efforts to achieve all of the Development Programs in a sound economic and commercially reasonable manner. In furtherance of

the foregoing, in the event of a dispute of any matter subject to this Subsection 302(d), preference shall be given to the reasonable desires of the Redeveloper, provided that the work or materials proposed by the Redeveloper are reasonably equivalent to the work or materials proposed by the Authority. The Authority agrees to cooperate with the Redeveloper in the planning and design of Improvements to be constructed as contemplated by the Development Programs and recognizes that the Redeveloper may submit Plans on a preliminary basis prior to submitting proposed final Working Drawings and Specifications. Review by the Authority of all Plans submitted shall be limited to the exterior of the shell and base building and shall not include interiors, except lobby areas and areas which are visible from the outside. Without limiting the foregoing, Plans which are submitted as proposed final Working Drawings and Specifications and which are substantially in accordance with Plans previously submitted and approved or deemed approved shall be approved by the Authority. Plans which are submitted as proposed final Working Drawings and Specifications and which are consistent with the submissions approved or deemed approved under Article 31 of the Boston Zoning Code shall be approved by the Authority.

- (2) If the Authority does not approve or disapprove any Plans submitted within twenty-one (21) days of such submission, the Plans so submitted shall be deemed approved.

Section 303: Time for Commencement and Completion of Construction

a. The Redeveloper shall commence construction of any Improvement for which the Redeveloper has received a full Building Permit from the City of Boston Building Department within twelve (12) months of the later of the date of issuance of such Building Permit or the date of approval by the Authority of Working Drawings and Specifications under Section 302, and the Redeveloper shall substantially complete such Improvements within a reasonable time thereafter, subject in such event to extension for Force

Majeure Events; provided, however, that the 12-month period for commencement shall be suspended if the Redeveloper allows the Building Permit to lapse or cancels said Building Permit, and upon issuance of a new Building Permit for the Improvement in question the Redeveloper shall have twelve (12) months to commence construction and shall complete construction as aforesaid. It is understood and agreed that the date upon which a Building Permit is obtained for any Improvement shall be in the discretion of the Redeveloper; provided, however, that construction of Improvements on the Property shall be commenced in any event within fourteen (14) years of the date hereof and upon commencement shall thereafter be substantially completed before the later to occur of fourteen (14) years of the date hereof or thirty-six (36) months from the date such construction commenced, subject to extension for Force Majeure Events. Commencement of construction shall be defined as in Section 101(49).

b. The Redeveloper shall upon the request of the Authority inform the Authority of the Redeveloper's construction schedule and substantial changes thereto. After the sale and conveyance and delivery of possession of the Property to the Redeveloper and during the term of this Agreement, such work of the Redeveloper shall be subject to reasonable inspection by representatives of the Authority, of the City, and the United States of America.

c. Prior to the sale and conveyance and delivery of possession of the Property, the Authority shall permit the Redeveloper access thereto, whenever and to the extent necessary

to carry out the purposes of this Agreement, including without limitation performance of tests or borings to determine soil characteristics or the presence of any Hazardous Substances, surveying and other development preparation activities.

d. It is intended and agreed that the agreements and covenants contained in this Section 303 with respect to the beginning and completion of the Improvements on the Property shall be covenants running with the land.

Section 304: When Improvements Completed

After substantial completion of the shell of a building on any Parcel or portion thereof, exclusive of interior finish work, and within thirty (30) days of request by the Redeveloper, the Authority shall issue a Certification of Completion for said building, and if the Authority fails to issue a Certificate of Completion within such 30-day period despite the fact that the shell of the building is substantially complete, such Certificate of Completion shall be deemed issued as of the date which is thirty (30) days after the date of such written request therefor.

The building of Improvements on the Property or a Parcel shall be deemed completed for the purposes of this Agreement as of the date of the Certificate of Completion for such Improvements required of the Redeveloper by the provisions of this Agreement. As of the date of such Certificate of Completion, and it shall be so provided in the Deed, it shall be conclusively determined with respect to the area for which the Certificate has been issued that the Redeveloper has achieved satisfaction and termination of the

agreements and covenants in this Agreement and in the Deed, with respect to the obligations of the Redeveloper and its successors and assigns to construct the Improvements, provided that such certification and such determination shall not constitute evidence of compliance with or satisfaction of any obligation of the Redeveloper to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance the Improvements, or any part thereof or the purchase of the Property.

Upon such issuance applicable to a Parcel, the following shall apply (and the Deed shall so state) subject to the provisions of Section 502 hereof: (1) any party purchasing, leasing, or otherwise acquiring such Parcel or an interest therein shall not (because of such purchase, lease, or acquisition) incur any obligation with respect to the construction of the Improvements relating to such Parcel or to any other Parcel of the Property; (2) neither the Authority nor any other party shall thereafter have or be entitled to exercise with respect to any such Parcel (or any interest therein) any rights or remedies or controls that it may otherwise have or be entitled to exercise with respect to the Parcel as a result of a default in or breach of any provisions of this Agreement or the Deed by the Redeveloper or any successor in interest or assign, unless (i) such default or breach be by the purchaser, acquirer, or lessee, or any successor in interest or assign of or to such Parcel with respect to the covenants and obligations required to be assumed pursuant to Section 401 of this Agreement, and (ii) the right, remedy, or

control relates to such default or breach; and (3) the Authority shall execute in a form suitable for recording any certificates required by the Redeveloper or a lender to confirm such completion and performance by the Redeveloper hereunder. If the Authority shall refuse or fail to provide any certification in accordance with the provisions of this Section 304, the Authority shall, within five (5) days after receipt by the Authority of a written request by the Redeveloper, provide the Redeveloper with a written statement, indicating in adequate detail in what respects the Redeveloper has failed to complete the Improvements in accordance with the provisions of this Agreement or is otherwise in default and what measures or acts it will be necessary, in the opinion of the Authority, for the Redeveloper to take or perform in order to obtain such certification.

The Redeveloper agrees that the Authority shall be under no obligation to issue a Certificate of Completion until such time as the Authority has had a reasonable opportunity to inspect the Improvements constructed pursuant to the provisions of this Agreement, the approved Working Drawings and Specifications, and any approved modifications thereof, provided however, that the Authority shall not be required to make an inspection hereunder unless the Redeveloper has requested in writing that the Authority issue a Certificate of Completion, but upon such request the inspection shall be made if at all within the 30-day period following such request.

Section 305: Prompt Payment of Obligations

The Redeveloper shall make, or cause to be made, prompt payment of all monies due and legally owing to all persons, firms and corporations doing any work, furnishing any materials or supplies or renting any equipment to the Redeveloper or any of its contractors or subcontractors in connection with the development, construction, furnishing, repair or reconstruction of any of the Improvements required by this Agreement to be constructed upon the Property.

Section 306: Non-Discrimination in Employment

The Redeveloper, for itself, its successors and assigns, agrees that in the construction of the Improvements in accordance with the provisions of this Agreement:

- a. The Redeveloper will not discriminate against any employee or applicant for employment because of race, color, sex, religion or national origin. The Redeveloper will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Redeveloper agrees to post in conspicuous places, available to employees and applicants for employment, notices to be

provided by the Authority setting forth the provisions of this non-discrimination clause.

b. The Redeveloper will, in all solicitations or advertisements for employees placed by or on behalf of the Redeveloper, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

c. The Redeveloper will send to each labor union or representative of workers with which the Redeveloper has a collective bargaining agreement or other contract of understanding, a notice, to be provided advising the said labor union or worker's representative of the Redeveloper's commitments under Section 202 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The Redeveloper will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and of the rules, regulations and relevant orders of the Secretary of Labor.

e. The Redeveloper will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor, or the Secretary of HUD pursuant thereto,

and will permit access to the portion of Redeveloper's records, which pertain to compliance with this Section 306, by the Authority, the Secretary of HUD, and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

f. In the event of the Redeveloper's noncompliance with the non-discrimination clauses of this Section 306 or with any of the said rules, regulations, or orders, unless the provisions of Section 806 apply, then after notice to the Redeveloper and a reasonable period of time to cure or commence a cure, the Redeveloper may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965 as amended by Executive Order 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, or by rules, regulations, or orders of the Secretary of Labor, and the Authority shall have the right to seek appropriate relief and damages but shall not be entitled to cancel, terminate or suspend this Agreement with respect to any Parcel or to seek or obtain reconveyance of title to any Parcel conveyed hereunder.

g. In every employment contract, whether union or nonunion, and in every general construction contract the Redeveloper will require the other party to agree to the

requirements of Subsections 306(a) through (f) hereof, and will require the inclusion of the same requirements in every subcontract entered into by any of his contractors, unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, so that such provisions will be binding upon each such contractor, subcontractor, or vendor as the case may be. The Redeveloper will take such action with respect to any construction contract or subcontract as the Authority or the Department of Housing and Urban Development may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event the Redeveloper becomes involved in or is threatened with litigation with a contractor, subcontractor or vendor as a result of such direction by the Authority or the Department of Housing and Urban Development, the Redeveloper may request the United States to enter into such litigation to protect the interest of the United States.

For the purpose of including such requirements in any construction contract or subcontract, as required hereby, the first three lines of this Section 306 shall be read as: "During the performance of this Contract, the Contractor/Subcontractor/Vendor agrees as follows:" and the term "Redeveloper" as it

appears throughout this Section 306 shall be read as "Contractor", "Subcontractor", or "Vendor", as the case may be.

Section 306A: Additional Obligations of Contractors

The Redeveloper shall use reasonable efforts to cause contractors undertaking work on the Improvements to carry out the requirements of (i) the Authority's "Equal Opportunity Compliance Policy", dated June 12, 1975, (ii) the "Commonwealth of Massachusetts Supplemental Equal Employment Opportunity Anti-Discrimination and Affirmative Action Program", dated December 2, 1975, and (iii) the City of Boston's "Contract Compliance Manual", copies of which have been furnished by the Authority and are attached hereto as Exhibit F, G, and H respectively and made a part hereof.

Section 307: Access to the Property by Authority and City Personnel

The Redeveloper, its successors and assigns, shall from time to time until the expiration of the Term of this Agreement, at all reasonable hours, give to the duly authorized representatives of the Authority, the City, and the United States of America, free and unobstructed access for reasonable inspection purposes to any and all of the Improvements constructed on the Property by the Redeveloper, its successors and assigns, and to all open areas surrounding the same.

ARTICLE IV

TRANSFER AND MORTGAGE OF REDEVELOPER'S INTEREST

Section 401: General Terms Relating to Transfer of Interest in Property by Redeveloper

a. Prior to the completion of the construction of the Improvements on a Parcel in accordance with Section 304 of this Agreement, no interest or portion thereof of the Redeveloper shall be transferred, or caused or suffered to be transferred, without the written consent of the Authority to the proposed transferee (which consent shall be subject to Subsection 401(c)(3)), except that no consent is required and a transfer may occur (i) in the event of involuntary transfer caused by the death or incapacity of any such party; (ii) if such transfer is to a Permitted Assignee; or (iii) as provided in Section 402 hereof; nor without such written approval (which shall be subject to Subsection 401(c)(3)), shall there be any other transfer in the ownership of such partnership or stockholder interests or in the relative distribution thereof or change in identity of the parties in control, or in the degree of control of the Redeveloper, by any other methods or means unless the transfer, distribution or change meets one of the requirements of clauses (i), (ii) or (iii) immediately above in this sentence or is a change in or distribution of any partnership interest, shares or other evidence of ownership among the existing holders of such interests, shares or other evidence of ownership and there is no change in the identity of the person or entity responsible for management of the

Redeveloper (in which event, no approval of such transfer, distribution or change shall be required). (If there is such a change in identity, such change shall be subject to Authority approval, such approval to be subject to Subsection 401(c)(3).) The Redeveloper shall advise the Authority of any and all such proposed changes in ownership for which Authority consent is required and at the request of the Authority shall furnish the Authority with an up-to-date list of all present and proposed new owners thereof, setting forth the amounts of such interest owned or to be owned by each owner, and with any other information relating to such proposed change which the Authority shall reasonably require.

b. Rights hereunder with respect to any Parcel may be separately assigned or transferred on a Parcel-by-Parcel basis subject to requirements of this Section 401, and upon request of the Redeveloper the Authority shall enter into a separate agreement with respect to any such separate Parcel to facilitate such transfer or a mortgage of such Parcel, and such separate agreement shall be on the same terms and conditions of this Agreement, as applicable to the separate Parcel. Notwithstanding the requirements of this Section 401, leases of individual rental units or space within buildings may be entered into without the written consent or approval of the Authority, provided that rental payments commence only upon completion and certification pursuant to Section 304 of the unit or space leased.

c. The following shall apply to any proposed assignment or transfer of rights hereunder with respect to any Parcel prior to the date of the Certificate of Completion for such Parcel:

1. Unless the transfer is permitted under Subsection 401(a), the transferee or transferees shall have been approved as such in writing by the Authority, which approval shall be subject to Subsection 401(c)(3).

2. The transferee or transferees, by valid instrument in writing, satisfactory to the Authority, shall have expressly assumed for themselves and their successors and assigns, and directly to and for the benefit of the Authority, all obligations of any person or persons, including the Redeveloper, to begin, complete, and or maintain and operate, as applicable, the Improvements and all obligations of the Redeveloper provided for in this Agreement, including the obligations of performance in accordance with the Plan; and upon such assumption by a transferee, the transferor shall no longer be obligated to perform any such obligations, conditions or restrictions so assumed by the transferee. In the event any such transfer would be made without such assumption of obligations, the Redeveloper shall pay to the Authority the expenses and costs incurred by the Authority in any actions or proceedings instituted to enforce all such obligations, conditions, and restrictions, and all of the Authority's said rights, remedies, and controls as against such transferee.

3. Whenever the consent or approval of the Authority to any transfer is required hereunder, in no event shall any such consent or approval of the Authority to a transferee be unreasonably withheld or delayed or conditioned upon the modification of any term of this Agreement not reasonably and directly related to the identity of the proposed transferee, and in no event shall any such assignment or transfer be conditioned upon any change in any Purchase Price, economic terms, Development Program or matter bearing upon the ability of the Redeveloper to achieve construction and the full use and enjoyment of the entire Development Programs, it being the intention of the parties hereto that the right of the Authority to approve or consent shall be limited to the Authority reasonably assuring itself that the transferee is reasonably capable of performing its obligations hereunder.

d. After completion of the Improvements with respect to a Parcel, as evidenced by the Certificate of Completion, the Redeveloper may assign or otherwise transfer any portion of or interest in such Parcel or any interest in the Redeveloper with respect to such Parcel, in each case without the consent of the Authority.

e. Nothing herein shall give the Authority any right or power to control the transfer of any stock, shares or other interests in any corporation, the stock of which is traded on a public stock exchange, or in any mutual insurance company or other entity, the ownership interests of which are or may be generally transferable.

Section 402: Mortgage of Property by the Redeveloper

Notwithstanding any other provisions of this Agreement, the Redeveloper shall at all times have the right to encumber, pledge, or convey its rights, title and interest in and to a Parcel or the Property, or any portion or portions thereof, and partners of the Redeveloper, if any, shall have at all times the right to encumber their individual partnership interest, by way of a bona fide mortgage or pledge to secure the payment of any loan or loans obtained by the Redeveloper or said partners thereof to finance the development, construction, repair or reconstruction of any of the Improvements to be constructed by the Redeveloper on any of the Property including without limitation land acquisition costs, site preparation and construction costs and all hard and soft costs associated therewith, or any obligations of the Redeveloper

or any affiliate thereof who would qualify as a Permitted Assignee hereunder, or under the Plan and this Agreement, or to refinance any outstanding loan or loans therefor obtained by the Redeveloper or such affiliate thereof for any such purpose; provided, however, that the Redeveloper and its individual partners, as the case may be, shall give prior written notice to the Authority of its or their intent to exercise such rights hereunder, including in such notice the name(s) and address(es) of such mortgagee(s) and any other information regarding the mortgagee(s) and mortgage documents which the Authority may require.

The holder of any such mortgage (including a holder who obtains title to the Property or any portion thereof by foreclosure or action in lieu thereof, but not including a party who obtains title through such holder or any purchaser at a foreclosure sale other than the holder) shall not be obligated by this Agreement to construct or complete the improvements or to guarantee such construction or completion, but shall have the options described in Section 403.

Section 403: Rights and Duties of Mortgagee Upon Acquisition

a. If a mortgagee, through the operation of its contract to finance the Improvements required by this Agreement to be constructed by the Redeveloper on a Parcel or the Property, or by foreclosure, acquires fee simple title to a Parcel or the Property or any part thereof prior to the completion of such Improvements, the mortgagee shall, for the period during which said mortgagee

holds such title, comply with applicable provisions of this Agreement and shall in addition have the following options:

1. complete construction of such Improvements in accordance with the Plan and this Agreement and in all respects comply with the provisions of this Agreement;
2. sell, assign, or transfer, with the prior written consent of the Authority, fee simple title to such Parcel or the Property or any part thereof to a purchaser, assignee or transferee subject to the provisions of Section 401; or
3. reconvey fee simple title to the Parcel or Property or part thereof to the Authority, in which event the provisions of Section 802 relative to resale shall apply.

b. In the event that a mortgagee elects to complete construction pursuant to (a)(1) above, or sells, assigns or transfer pursuant to (a)(2) above, the Authority shall extend the time limits set forth in Section 303 herein as shall be reasonably necessary to complete construction of the Improvements, and upon such completion, the mortgagee or purchaser, as the case may be, shall be entitled to the Certificate(s) of Completion described in Section 304.

Section 404: Intentionally omitted.

Section 405: Other Encumbrances by Redeveloper

The Redeveloper shall have the right to grant easements, licenses or rights to use or otherwise encumber a Parcel or the Property or any portion thereof as may be necessary or convenient in the Redeveloper's sole discretion.

ARTICLE V**PROVISIONS RELATING TO OPERATION AND MAINTENANCE****Section 501: Maintenance and Operation of Improvements**

The Redeveloper shall, at all times until June 7, 2005, keep the Improvements constructed on the Property in good and safe condition and repair unless such Improvements shall have become uninsurable, and in the occupancy, maintenance and operation of such Improvements, the Property shall comply with the terms and conditions of the Plan and all laws, ordinances, codes and regulation applicable thereto.

Section 502: Additions or Subtractions to Completed Improvements

After the Improvements have been completed, the Redeveloper shall not, until after June 7, 2005, reconstruct, demolish, subtract therefrom, make any additions thereto or extensions thereof, or change the materials, design, dimensions or color thereof, if such reconstruction, demolition, subtraction, addition, extensions or change will affect in any way the external appearance of public lobbies, arcades, open spaces or landscaping, or the external appearance of any building (including roof and penthouse) without the prior written approval of the Authority, provided, however, that such approval shall be deemed given upon compliance by the Redeveloper with all provisions of the Boston Zoning Code applicable to such reconstruction, demolition, subtraction, addition, extension or change and any other applicable federal, state and local laws. Any such reconstruction, demolition, subtraction, addition, extension, or

change undertaken pursuant to such approval of the Authority shall in all respects be in accordance with and conform to the provisions of the Plan. The controls imposed by this Section 502 shall expire on June 7, 2005.

ARTICLE VI

INDEMNIFICATION

Section 601: Reimbursement of Authority in Respect of Certain Litigation

The Redeveloper shall pay all reasonable costs and expenses, and the amounts of all judgments and decree which may be incurred by the Authority in any proceedings brought by the Authority to enforce the obligations of the Redeveloper set forth in the provisions of this Agreement, provided that the Authority prevails in such proceedings. It is expressly understood, however, that a mortgagee under any mortgage permitted hereunder shall not be liable to the Authority for any costs, expenses, judgments, decrees or damages which shall have accrued against the Redeveloper except that a mortgagee who becomes a mortgagee after, and who acquires title after the Redeveloper has become liable for any costs, expenses, judgments, decrees or damages, shall be liable for such liabilities.

Section 602: Reimbursement of Redeveloper in Respect of Certain Litigation

The Authority shall pay all reasonable costs and expenses, and the amounts of all judgments and decree which may be incurred by the Redeveloper in any proceedings brought by the Redeveloper to enforce the obligations of the Authority set forth in the

provisions of this Agreement, provided that the Redeveloper prevails in such proceedings.

ARTICLE VII

INSURANCE

Section 701: Insurance Coverage

a. From and after the acquisition of a Parcel and until June 7, 2005, the Redeveloper shall keep all of the insurable property and equipment in respect of the Property insured by fire and extended insurance and additional risk insurance to the same extent and amount which is normally required by institutional mortgagees in the use of similar property and equipment in the City. Such insurance shall be in an amount sufficient to comply with the co-insurance clause applicable to the location and character of the property or equipment, and, in any event, in amounts not less than eighty per cent of the current cash value of such insurable property or equipment. All such insurance shall be standard policies, obtained from financially sound and responsible insurance companies authorized to do business in Massachusetts, and shall have attached thereto a clause making the loss payable to the Redeveloper and the mortgagee as their respective interests may appear.

b. Each insurance policy shall be written to become effective at the time the Redeveloper becomes subject to the risk or hazard covered thereby, and shall be continued in full force for such period as the Redeveloper is subject to such risk or hazard.

c. Certificates of such policies and renewals shall be filed with the Authority upon request.

Section 702: Non-Cancellation Clause

All insurance policies shall provide that any cancellation, change or termination thereof shall not be effective with respect to the Authority until after at least ten (10) days prior notice has been given to the Authority to the effect that such insurance policies are to be cancelled, changed, or terminated at a particular time.

Section 703: Authority May Procure Insurance if Redeveloper Fails to Do So

If the Redeveloper at any time refuses, neglects or fails to secure and maintain in full force and effect any or all of the insurance required pursuant to this Agreement, the Authority at its option, may procure or renew such insurance, and all amount of money paid therefor by the Authority shall be payable by the Redeveloper to the Authority; with interest thereon, calculated at the rate of the City Borrowing Rate (as defined in Subsection 203(c)(4)), from the date the same were paid by the Authority to the date of payment thereof by the Redeveloper. The Authority shall notify the Redeveloper in writing of the date, purposes, and amounts of any such payments made by it.

Section 704: Redeveloper's Obligations with Respect to Restoration and Reconstruction

a. Whenever any Improvements, or any part thereof, constructed on the Property shall have been damaged or destroyed prior to the expiration of the term of the Plan, the Redeveloper

shall proceed promptly to establish and collect all valid claims which may have arisen against insurers or others based upon any such damage or destruction. All proceeds of any such claim and any other monies provided for the reconstruction, restoration or repair of any such improvement, shall be deposited in full in a separate account of the Redeveloper or of any mortgagee.

b. The insurance money and any other proceeds so collected shall be used and expended for the purpose of fully repairing or reconstructing the Improvements which have been destroyed or damaged to a condition at least comparable to that existing at the time of such damage or destruction to the extent that such insurance money and other proceeds may permit. Any excess proceeds after such repair or reconstruction has been fully completed shall be retained by the Redeveloper, subject to the rights of any mortgagee of record permitted hereunder and the rights of the Authority.

c. The Redeveloper, with the written approval of the Authority (which approval shall not be unreasonably withheld or delayed), and any mortgagee of record permitted hereunder, may determine that all or any part of any such damage to or destruction of such Improvements shall not be reconstructed, restored, or repaired, and in such event, the proceeds of any claims against insurers or others arising out of such damage or destruction, to the extent not used for such reconstruction, restoration, or repairs shall be retained by the Redeveloper,

subject to the rights of such mortgagee and the rights of the Authority.

d. Any reconstruction or repair undertaken pursuant to the provisions of this Section 704 shall in all respects be in accordance with and conform to the provisions of the Plan, the Working Drawings and Specifications, and the provisions of this Agreement.

Section 705: Commencement and Completion of Reconstruction

The Redeveloper shall commence to reconstruct or repair any Improvements and equipment on the Property, or any portion thereof, which have been destroyed or damaged prior to the expiration of the term of the Plan, within a period not to exceed eighteen (18) months (subject to extension for Force Majeure Events) after the insurance or other proceeds with respect to such destroyed or damaged property have been received by the Redeveloper or any mortgagee (or, if the conditions then prevailing require a longer period, such longer period as the Authority may agree to in writing, such agreement not to be unreasonably withheld or delayed), and shall well and diligently and with dispatch prosecute such reconstruction or repair to completion, such reconstruction or repair in any event to be completed within a reasonable time thereafter, subject to Force Majeure Events.

Section 706: Amendment of Article VII

The Authority agrees to execute any documentation required to effect any amendment of this Article VII, and to waive any of the

provisions of this Article VII, if and to the extent that any lender of the Redeveloper requires such amendment, or waiver. In all events, the provisions of this Article VII shall not apply after June 7, 2005.

ARTICLE VIII

RIGHTS, REMEDIES AND PROCEDURES IN THE EVENT OF A BREACH BY REDEVELOPER

Section 801: Failure or Refusal by Redeveloper to Purchase and Accept Possession

If the Redeveloper shall fail to pay any payment on account of the Purchase Price or accept possession of any Parcel as required hereunder, the Authority shall notify the Redeveloper in writing of such failure. The Redeveloper shall thereupon have ninety (90) days from the receipt of such written notice to cure such failure. If the Redeveloper does not cure such failure within the 90-day period (or within such extended period of time as may be established by the Authority acting in its discretion) and if the holders of record of any building loan agreements and/or mortgages in replacement thereof do not exercise their rights to cure such failure (as provided in Section 804 hereof), then the Authority shall retain such Parcel to which such failure relates, and the provisions of Subsections 802(c) and (d) shall apply. In the event that the Authority retains any Parcel pursuant to this Section 801, then with respect to that Parcel, but not to any other Parcel or portion of the Property, all obligations of the

parties hereunder shall terminate, subject to the provisions of Subsections 802(c) and (d).

Section 802: Consequence of Breach by Redeveloper With Respect To Completion of Construction

a. If with respect to a Parcel or a portion thereof, (i) the Redeveloper shall fail to perform its obligation to commence construction as provided in Section 303; or (ii) the Redeveloper shall fail to achieve completion of construction of the Improvements to be built on a Parcel within the time periods set forth in Section 303, such completion being determined as of the date of a Certificate of Completion for such Parcel, then the Authority shall notify the Redeveloper in writing of such failure or violation. The Redeveloper shall thereupon have ninety (90) days from the receipt of such written notice to cure such failure or violation.

b. If the Redeveloper does not cure a failure or violation referred to in Subsection 802(a) above within the 90-day period (or within such extended period of time as may be established by the Authority acting solely in its discretion), if the holders of record of any building loan agreements and/or mortgages in replacement thereof do not exercise their rights to cure such failure (as provided in Section 804 hereof), and if the Redeveloper has title to such Parcel for which the Redeveloper failed to complete pursuant to Subsection 802(a), then the Redeveloper shall promptly transfer possession of, and reconvey, such Parcel (together with any Improvements thereon) to the

Authority by Massachusetts quitclaim deed, provided that such reconveyance (1) shall be subject to any existing building loan agreements and mortgages thereon permitted under this Agreement, and (2) shall not include any Parcel with respect to which a Certificate of Completion has been issued as described in Section 304 or any Parcel other than the Parcel to which such failure to complete directly relates.

c. If the Redeveloper or a mortgagee reconveys to the City or if title reverts in the City pursuant to this Section 802, the Authority on behalf of the City shall, subject to Redeveloper's Rights of First Offer described in Subsection 802(d) hereof, undertake with due diligence and in a commercially reasonable manner to resell the Parcel so reconveyed hereunder, or so much thereof as has been so reconveyed or which it has so re-entered, and all Improvements thereon. In preparation for resale, the Authority shall consult with, and consider suggestions of, the Redeveloper and any mortgagee as to methods and strategies of maximizing the net proceeds from the resale of, or so much thereof of, the Property or the Parcel. The Authority may attempt to resell the Property or the Parcel, or so much thereof, in an "as is" condition, and shall have no obligation to spend any funds in order to prepare the Property or the Parcel, or so much thereof, for resale. The resale shall be for cash only, unless the first mortgagee of record otherwise directs or disapproves. The proceeds of such resale, together with the net income, if any, derived by the Authority from its operation and management of the

Parcel or portion thereof, subsequent to such reconveyance to the City shall be used:

- (1) First, to pay all taxes, payments in lieu of taxes, public charges and other sums owing to the City, except for development impact project contributions and grants with respect to the Property or the Parcel and the Improvements thereon up to the time of such reconveyance (or in the event the Property or the Parcel is, and the Improvements thereon are exempt from taxation during the period of ownership thereof by the City, an amount equal to such taxes as would have been payable if the same were not so exempt);
- (2) Second, in their respective order of priority to pay any and all mortgage indebtedness permitted or authorized by this Agreement and encumbering the Property or Parcel (including, but not limited to, accrued and unpaid interest and other amounts payable thereunder);
- (3) Third, to pay any development impact project contributions and grants (the payments required under Articles 26A and 26B of the Code) owing to the City with respect to the Improvements on the Property or Parcel up to the time of such reconveyance;
- (4) Fourth, in their respective order of priority, to make all and whatever payments may be necessary to discharge any other encumbrances or liens existing or threatened on the Property or Parcel or the Improvements thereon, in favor of mechanics, materialmen or subcontractors;
- (5) Fifth, to pay or reimburse the Authority for any amounts otherwise owing to the Authority from Redeveloper with respect to such resold Parcel;
- (6) Sixth, in their respective order of priority, to pay any and all amounts to be paid to entities other than Redeveloper (but including equity contributions from partners or affiliates of partners within Redeveloper), representing equity contributions utilized in the development and construction of the Property or Parcel (including, but not limited to, accrued and unpaid interest and other amounts payable thereunder);
- (7) Seventh, to reimburse the Redeveloper for 100% of the "Total Development Cost" allocable to the Parcel or the Parcel and the Improvements thereon plus an amount calculated at the compounded annual rate of 12.75% on 100% of the Total Development Cost allocable to the

Property or Parcel and Improvements thereon from the times incurred through the time said cost is reimbursed under this clause (6) of this Section. "Total Development Cost" means the amount expended by the Redeveloper in (x) the purchase of the Parcel and (y) the development and construction of the Improvements and (z) any operating deficits incurred (including interest expense incurred) prior to the month in which the gross income derived from the Parcel equals or exceeds all of the expenses for the Parcel (including interest expense incurred) (the "Breakeven Date") less any profit theretofore realized by the Redeveloper from the disposition of any interest therein or in any part or parcel thereof, and less any net income in excess of net losses realized by the Redeveloper after the Breakeven Date from its use of the Parcel;

(8) Eighth, any balance remaining shall remain the property of the Authority.

d. The Redeveloper shall have the following rights of first offer prior to any resale or other disposition by the Authority of a Parcel or any portion thereof and Improvements thereon to a third party under this Article VIII. Prior to offering to enter into any transaction with a third party for resale or other disposition of all or any portion of a Parcel under this Article VIII on terms relating to the required development thereof which differ in any material respect from the requirements imposed on Redeveloper with respect thereto hereunder (the "Revised Development Conditions"), the Authority shall first offer (by delivery of written notice hereunder) such Parcel and Improvements thereon to the Redeveloper, such offer on the Revised Development Conditions to remain open for at least forty-five (45) days. If Redeveloper accepts such offer within such 45-day period, the Parcel and Improvements thereon shall be reconveyed by the Authority to the Redeveloper or a Permitted Nominee subject to the

Revised Development Conditions, which shall be substituted for the corresponding terms of this Agreement. If Redeveloper does not exercise its rights ("Rights of First Offer") within such 45-day period, the Authority shall be free to resell or dispose of the Parcel, free of Redeveloper's Rights of First Offer hereunder, at any time within two years after the date of the offer to Redeveloper on terms which are not materially more favorable to the buyer than the Revised Development Conditions offered to Redeveloper hereunder. If the Authority does not so resell, the Redeveloper's Rights of First Offer shall apply prior to any subsequent resales or dispositions based on Revised Development Conditions. The Authority's determination, in the exercise of its reasonable judgment, as to whether Revised Development Conditions exist or as to whether the Authority's resale or disposition is on terms which are not materially more favorable to the buyer than the Revised Development Conditions offered to Redeveloper hereunder may be relied upon by any third-party buyer if such determination is made in good faith. If the Authority does not so resell the Parcel within two years of the offer to the Redeveloper, the Redeveloper's Rights of First Offer shall apply prior to any subsequent resales or dispositions based on Revised Development Conditions.

Section 802A: Other Defaults by Redeveloper

If after acquisition of a Parcel the Redeveloper shall fail to pay any real estate taxes or assessments on a Parcel, or any part thereof when due, then the Authority shall notify the

Redeveloper of such failure. The Redeveloper shall thereupon have ninety (90) days from the receipt by it of such written notice to cure such failure. If the Redeveloper does not cure such failure within the 90-day period (or within such extended period of time as may be established by the Authority acting solely in its discretion) and if the holders of record of building loan agreements and/or mortgages in replacement thereof do not exercise their rights to cure such failure (as provided in Section 804 hereof), the Authority shall have the right to seek monetary damages limited to such real estate taxes and assessments.

Section 803: Notices of Breaches to Mortgagees

If the Authority gives written notice to the Redeveloper of a default under this Agreement, the Authority shall forthwith furnish a copy of the notice to each of the mortgagees of record of the Property permitted under this Agreement. To facilitate the operation of this Section, the Redeveloper shall at all times keep the Authority provided with an up-to-date list of names and addresses of mortgagees and holders of building loan agreements from whom the Redeveloper has obtained loans as permitted under this Agreement. Any such mortgagee or holder may notify the Authority of its address and request that the provisions of Section 907 as they relate to notices apply to it. The Authority agrees to comply with any such request.

Section 804: Mortgagee May Cure Breach of Redeveloper

If the Redeveloper has received notice from the Authority of a default under this Agreement and such breach is not cured by the

Redeveloper before the expiration of the period provided therefor, the holders of record of building loan agreements or mortgages on the Property as permitted under this Agreement may cure any such breach upon giving written notice of their intention to do so to the Authority within ninety (90) days after such holder receives such notice of breach, and shall thereupon proceed with due diligence to cure such breach.

Section 805: Remedies for Other Breaches

It is understood by the parties hereto that in the event any party shall fail to comply with or violate any of the provisions of this Agreement, then subject to the provisions for specific remedies in Sections 306, 401, 801, 802, 802A and 806 hereof, the other party hereto may institute such actions and proceedings as may be appropriate, including actions and proceeds to compel specific performance and payment of all damages, expenses, and costs; provided, however, that if such failure to comply pertains only to a Parcel or to certain Parcels, then any remedy shall in all events be limited to such Parcel or certain Parcels to which such failure to comply pertains. Neither these remedies nor that class of remedies more particularly described in this Agreement shall be exclusive unless specifically so described, provided, however, that the remedies prescribed in Sections 306, 401, 801, 802, 802A and 806 for the defaults therein described shall be exclusive.

Section 806: Equal Opportunity Compliance Policy and Breach Thereof

If with respect to a Parcel, at any time prior to the issuance of the Certificate of Completion for such Parcel as described in Section 304 hereof, the Director shall find that the Redeveloper and/or its General Contractor have failed with respect to such Parcel to comply with the requirements of the Authority's "Equal Opportunity Compliance Policy", the Director shall issue notice of such finding, setting forth the reasons therefor. Such notice shall be sent registered mail, return receipt requested, to the Redeveloper and its General Contractor.

The Redeveloper and/or its General Contractor shall have the right to appeal such finding to the Boston Redevelopment Authority within sixty (60) days of receipt of the notice thereof. Within sixty (60) days after receipt by the Authority of written notice of the Redeveloper's and/or its General Contractor's intention to appeal said finding, or at the next regular meeting of the Authority, whichever is later, the Authority shall hear such appeal at a public meeting.

Upon the failure of the Redeveloper and/or its General Contractor to appeal the finding of the Director within such 60-day period or upon receipt by the Redeveloper of a determination by the Authority subsequent to any appeal that the Redeveloper and/or its General Contractor have failed to comply with the requirements of the Authority's "Equal Opportunity Compliance Policy", the Redeveloper shall thereupon have ninety

(90) days to cure such failure, and if the Redeveloper shall fail to cure within such 90-day period and if the holders of record of any building loan agreements and/or mortgages do not exercise their rights to cure such failure (as provided in Section 804 hereof), then the Authority shall have the right to seek appropriate relief and damages but shall not be entitled pursuant to Section 806 to cancel, terminate or suspend this Agreement with respect to any Parcel or to seek reconveyance of title to any Parcel conveyed hereunder. Nothing herein shall limit the remedies which may be available to private persons affected by such defaults of the Redeveloper.

Upon the failure of the Redeveloper and/or its General Contractor to cure within the time period provided for above in this Section 806, the Director shall send a notice of his finding and any Authority action related thereto to the following:

- a. Secretary, Department of Housing and Urban Development
- b. Regional Administrator, Department of Housing and Urban Development
- c. Commissioner, Federal Housing Administration
- d. Director, Boston Office, Federal Housing Administration
- e. Massachusetts Committee Against Discrimination in Housing
- f. Association of General Contractors
- g. The Building Trades Council
- h. Mayor, City of Boston

- i. Mortgagee, and
- j. Such other interested parties as the Director may deem appropriate.

ARTICLE IX

MISCELLANEOUS PROVISIONS

Section 901: Obligations and Rights and Remedies Cumulative and Separable

Except as otherwise provided herein, the respective rights and remedies of the Authority, the City of Boston, and the Redeveloper, whether provided by this Agreement, or by law, shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude the exercise, at the same or different times of any other such rights or remedies.

Section 902: Finality of Approvals

Where, pursuant to this Agreement, any document or proposed action by the Redeveloper is submitted by it to the Authority, and the Redeveloper has been notified in writing by the Authority that the same is approved or is satisfactory, such determination shall be conclusively deemed to be a final determination by the Authority with respect to such particular document or proposed action for which such approval or notice of satisfaction was given.

In addition to the limitations set forth in Section 401(c)(3), it is agreed that where the consent or approval of the Authority is required hereunder, such consent or approval shall not be conditioned upon modification of any term hereof not reasonably and directly related to the subject matter of such

consent or approval and shall not be unreasonably withheld or delayed.

Section 903: How Agreements Affected by Provisions Being Held Invalid

If any provisions of this Agreement are held invalid, the remainder of this Agreement shall not be affected thereby, if such remainder would then continue to conform to the requirements of applicable laws, including Chapter 121A and all agreements entered into pursuant thereto, and the Plan.

Section 904: Covenants to be Enforceable by Authority and United States

The covenants herein contained, which are expressed to be covenants running with the land, shall be stated or incorporated by reference in any instrument of conveyance or lease relating to the Property or any portion thereof or any interest therein and shall in any event and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by, the Authority (and the United States in the case of the covenants provided in Section 301(a)(3) hereof) against the Redeveloper (including its successors and assigns to or of the Property or any part thereof or any interest therein and any party in possession or occupancy of the Property or any part thereof). In amplification, and not in restriction of the provisions hereof, it is intended and agreed that the Authority shall be deemed a beneficiary of the covenant provided in

Section 301(a)(3) hereof, both for and in its own right and also for the purpose of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such covenants have been provided, and such covenants shall be in force and effect, without regard to whether the Authority or the United States has at any time been, remains or is an owner or in possession of any land to, or in favor of, which the covenants relate.

It is the intention of the Authority that the benefit of the covenants running with the land which are contained in any instrument of conveyance relating to a Parcel or the Property shall be enforceable only by the Authority (and the United States in the case of the covenant provided in Section 301(a)(3) hereof) and those holding title to an interest in a Parcel or the Property and that such covenants shall not be enforceable by transferees of other land owned by the Authority in the area covered by the Plan.

Section 905: Parties Barred From Interest in Project

No member of the Congress of the United States of America shall be admitted to any share or part hereof, or to any benefit to arise therefrom.

Section 906: Authority's Members and Officers Barred From Interest

a. No member, official or employee of the Authority shall have any personal interest, direct or indirect, in this Agreement or the Redeveloper, nor shall any such member, official or employee participate in any decision relating to this Agreement

which affects his personal interest or the interests of any corporation, partnership, or association in which he is directly or indirectly interested. No member, official or employee of the Authority shall be personally liable to the Redeveloper or any amount which may become due to the Redeveloper or to its successors or on any obligations under the terms of this Agreement.

b. After the date hereof, the Redeveloper shall not, without a prior finding by the Authority that such action is consistent with the public interest, offer employment in connection with its obligations under this Agreement, to any person who has participated in the planning or execution of the Plan or related Project and who is named on any list which may be furnished by the Authority to the Redeveloper as having so participated, or permit any such person to directly or indirectly acquire an interest (except an interest based upon the ownership of its capital stock if such stock is publicly held or offered) in the Redeveloper or in the Property prior to the completion of the Improvements thereon in accordance with this Agreement and the Plan.

c. The Redeveloper covenants that it has not employed or retained any company or person (other than a full-time bona-fide employee working for the Redeveloper) to solicit or secure this Agreement, and that he has not paid or agreed to pay any company

or person any percentage, or brokerage fee, contingent upon or resulting from the execution of this Agreement.

Section 907: Approvals and Notices

Except as otherwise specifically provided in this Agreement, whenever under this Agreement notices, approvals, authorizations, determinations, satisfactions, or waivers are required or permitted, such notices, approvals, authorizations, determinations, satisfactions or waivers shall be effective and valid only when given in writing and signed by a duly authorized officer of the Authority or Redeveloper, and shall be deemed given when delivered by hand, deposited in the United States mail and sent registered or certified, postage prepaid, to the principal office of the party to whom it is directed which is as follows:

Redeveloper: Immobiliare New England, a Limited Partnership
c/o Charlestown Holdings, Inc.
Flagship Wharf
197 Eighth Street, Suite 227
Charlestown, MA 02129
Attn: David L. Francis, President

With a copy to:

Hale and Dorr
60 State Street
Boston, MA 02109
Attn: John D. Hamilton, Jr., P.C.

Authority: Boston Redevelopment Authority
City Hall
Boston, Massachusetts 02201
Attn: Director

With a copy to:

Boston Redevelopment Authority
City Hall
Boston, Massachusetts 02201
Attn: Chief General Counsel

In the manner set forth for delivery of notice, the parties shall promptly notify each other of any change of their respective addresses as set forth above.

Any request for approvals made by Developer to the Authority where such approvals shall be deemed granted after a period of non-reply by the Authority shall, as a condition to the effectiveness thereof, be prefaced with the following language printed in capital letters in bold face type:

"NOTICE

THIS REQUEST FOR APPROVAL REQUIRES IMMEDIATE REPLY

FAILURE TO RESPOND WITHIN _____ DAYS

SHALL RESULT IN AUTOMATIC APPROVAL"

Notice and other communications to mortgagees and holders of construction loan agreements shall be deemed given when deposited in the United States mail and sent registered or certified, postage prepaid, to the last known address of the party concerned.

Section 908: Matters to be Disregarded

The titles of the several articles and sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

Section 909: Obligations to Continue

Except as to obligations to be performed at or prior to the time of closing of the sale and conveyance of fee simple title and delivery of possession of the Property or a Parcel, the provisions of this Agreement shall survive the time of closing and the sale and conveyance of fee simple title to and the delivery of possession of the Property to the Redeveloper, but shall not survive issuance of the Certificate of Completion by the Authority except to the extent stated herein or in the Deed.

Section 910: Excusable Delays

For the purposes of any of the provisions of this Agreement, neither the Authority nor the Redeveloper, as the case may be, shall be considered in breach of or default in its obligations with respect to the preparation of the Property for redevelopment, or the beginning and completion of construction of the Improvements, or progress in respect thereto, in the event of unavoidable delay in the performance of such obligations due to causes beyond its control and without its fault or negligence, including, but not restricted to, acts of God, or of the public enemy, acts of the federal or state government, acts of the other party, fires, floods, or other casualties, epidemics, quarantine restrictions, labor disputes, litigation commenced against the party who is obligated to perform, freight embargoes, and unusually severe weather or delays of contractors and subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such

enforced delay, the time or times for performance of the obligations of the Authority with respect to the preparation of any Parcel or the Property for redevelopment or of the Redeveloper with respect to construction of the Improvements and other obligations hereunder, as the case may be, shall be extended for the period of the enforced delay. In calculating the length of the delay, the Authority and the Redeveloper shall consider not only actual work stoppages but also any consequential delays resulting from such stoppages as well. In no event shall any financing difficulty or inability to secure a building permit (unless caused by the City, the Authority or matters beyond the Redeveloper's reasonable control) be a cause for an extension hereunder.

Section 911: Advertising

The Redeveloper agrees for itself, its successors, and assigns, that during construction and thereafter the Redeveloper, and its successors and assigns, shall include in all advertising for the sale or rental of the Property a statement to the effect (a) that the Property is open to all persons without discrimination on the basis of race, religion, sex, color or national origin and (b) that there shall be no discrimination in public access and use of the Property to the extent that it is open to the public. Without limiting the foregoing, the Redeveloper shall include in all advertising (including signs) for sale and rental of the whole or any part of the Property the

legend "An Open Occupancy Building" in type or lettering of easily legible size and design.

Section 912: Agreement Binding on Successors and Assigns

The respective provisions of this Agreement, in accordance with their terms, shall be binding upon, and shall inure to the benefit of the successors and assigns of the Redeveloper and the public body or bodies succeeding to the interests of the Authority, and to any subsequent grantees of the Property.

Neither the Redeveloper nor any successor in title to the Property shall be liable for any breach hereof except for a breach occurring during the period when it was owner of the Property or Parcel to which such breach directly relates. No holder of any mortgage on the Property shall be deemed to be the owner thereof until it shall have foreclosed the mortgage thereon or shall have acquired title by deed in lieu of foreclosure.

In the event of any breach by the Redeveloper of its obligations hereunder with respect to a Parcel or under any instrument delivered pursuant hereto, the Authority agrees to look only to the interest of the Redeveloper in such Parcel and not to any other asset of the Redeveloper or to the assets of any general or limited partner, venturer, trustee, beneficiary, shareholder, officer, director, or the like, of the Redeveloper, it being understood that in no event shall the assets of any general or limited partner, venturer, trustee, beneficiary, shareholder, officer, director, or the like, of the Redeveloper, other than their interest in the Property, be subject to liability for any

such breach. Nothing stated herein shall enlarge the remedies of the City or the Authority against the Redeveloper for any default beyond those set forth in Article VIII hereof.

Section 913: Amendment of Plan

No modification or amendment to any provisions of the Plan shall be effective with respect to a Parcel or the Property, unless prior to becoming effective with respect to the Redeveloper, such modification or amendment of the Plan has been consented to by the Redeveloper and everyone entitled to be given notice under Section 803.

Section 914: Waivers

Any right or remedy which the Authority or the Redeveloper may have under this Agreement, or any of its provisions, may be waived in writing by the Authority or the Redeveloper, as the case may be, without execution of a new or supplementary Agreement, but any such waiver shall not affect any other rights not specifically waived, and no waiver by the Redeveloper of a right under Article VIII shall be effective unless approved in writing by everyone then entitled to be given notice under Section 803.

Section 915: Construction of Exhibits

In case of any conflict between any provisions of body of this Agreement and anything contained in an exhibit hereto, the provisions of the body of this Agreement shall govern, unless expressly provided otherwise in an exhibit.

Section 916: Sole Obligation of the Authority

The sole obligation of the Authority hereunder shall be to perform timely its duties set forth hereunder with respect to (i) approvals required of it, (ii) the performance of the covenants and obligations required of it and conditions to be met by it, and (iii) conveyance of the Property.

Section 917: References and Defined Terms

Terms defined in this Agreement shall refer to either the singular or plural form of such term as context requires. The words "herein", "hereof", "hereunder", and words of similar import shall refer to this Agreement as a whole and not to any Article, Section, Subsection or other subdivision of this Agreement.

Section 918: Governing Law

This Agreement is to be construed as a Massachusetts contract.

Section 919: Entire Agreement

This Agreement is the final expression of, and contains the entire agreement among, the parties with respect to the subject matter hereof and supersedes all prior negotiations, understandings and agreements with respect thereto.

Without limiting the foregoing, it is the intent of the parties that, upon the execution and delivery of this Agreement and except as otherwise provided herein, the Existing Agreement shall be superseded and merged into this Agreement insofar as the Existing Agreement relates to that portion of the land subject to the Existing Agreement which is referred to herein as Parcels A,

B, C, D, and E, and otherwise the Existing Agreement shall remain in full force and effect with respect to all other land subject to the Existing Agreement.

This Agreement shall not be amended except by a writing duly authorized and signed by the parties hereto. Any duly authorized and executed amendment hereto may apply with respect to any Parcel or the Property as the case may be.

Section 920: Status Reports

The Authority shall, within ten (10) days after written request therefor by the Redeveloper or any mortgagee, provide a certificate in writing, as requested or applicable, that the Agreement or any particular section hereof or exhibit attached hereto specified by the requesting party is in full force and effect and unmodified, or in what respects the Agreement is no longer in force or effect or has been modified, or that the Redeveloper is in compliance with this Agreement or any particular section hereof or exhibit attached hereto specified by the requesting party, or, in the case of any non-compliance, in what respects there is not compliance; or as to any other matter reasonably related to the Property which the requesting party may reasonably request of the Authority. The Authority hereby authorizes the Director of the Authority to execute and deliver any such certificate on behalf of the Authority.

Section 921: Further Assurances

To the extent it shall appear after the date hereof that additional acts, authorizations, approvals, certifications,

findings or appropriations of funds shall be necessary or appropriate to clear title to a Parcel, or otherwise to carry out the purpose and agreements stated or contained in this Agreement, the Authority hereby covenants and agrees to perform, to grant or to use its best efforts to obtain all such acts, authorizations, approvals, certifications, findings, or appropriations of funds or otherwise to take any action as is necessary or appropriate to carry out the purposes and agreements stated or contained in this Agreement.

IN WITNESS WHEREOF, as of the twenty-eighth day of September, 1990, at Boston, Massachusetts, the parties hereto have caused this Agreement in five counterparts to be signed, sealed and delivered by their duly authorized officers or representatives, respectively.

Signed, sealed and delivered in the presence of:

Paul J. [Signature]

BOSTON REDEVELOPMENT AUTHORITY
(Corporate Seal)

By: *[Signature]*
Stephen Coyle, Director

IMMOBILIARE NEW ENGLAND, A
LIMITED PARTNERSHIP

By: Charlestown Holdings,
Inc., Its General Partner

[Signature]

By: *[Signature]*
Its