

Termination  
Date + Parcels  
P. 13

BRA plan  
in C-town  
P. 16

Hazardous  
waste  
deposition  
P. 17

AMENDED AND RESTATED  
LAND DISPOSITION AGREEMENT

THIS AMENDED AND RESTATED LAND DISPOSITION AGREEMENT is made and entered into as of this 28th day of September, 1990, by and between the Boston Redevelopment Authority and Immobiliare New England, a Limited Partnership.

WHEREAS, the Agreement dated December 17, 1978, by and between the Boston Redevelopment Authority and Immobiliare New England, a Limited Partnership, as amended by a First Amendment to Agreement, dated July 12, 1984 and a Second Amendment to Agreement dated June 25, 1987 (the "Existing Agreement"), pertains to several parcels of land, including the parcel on which the New England Aquarium wishes to construct its new Aquarium (as hereinafter defined);

WHEREAS, the Existing Agreement provides for the disposition and redevelopment of all the parcels which are the subject of this Amended and Restated Land Disposition Agreement, except for the parcel referred to therein as Parcel 7; *Excluded*

WHEREAS, with respect to said Parcel 7 the Boston Redevelopment Authority declared the parcel available for disposition, determined the value based on appraisals, advertised to invite the submission of proposals, opened proposals publicly and published the name of the party selected in the Central Register;

A = 6, 7  
B = 4

see P. 47  
on MHP

P. 49  
affordable  
housing release

P. 81 Broude  
by developer  
P. 99 No change to  
plan.

WHEREAS, the Boston Redevelopment Authority has otherwise complied with all statutory and regulatory requirements in effect at all relevant times for such disposition and redevelopment of the parcels;

WHEREAS, Immobiliare New England has expressed a willingness to facilitate development of the proposed new Aquarium by NEAQ (as hereinafter defined) subject to the terms and conditions hereof;

WHEREAS, the parties hereto recognize that to facilitate such a project by the New England Aquarium, the Existing Agreement would require further amendments; and

WHEREAS, accordingly, the parties hereto have undertaken to make such amendments and extensions as are directly related to the willingness of Immobiliare New England to accommodate the Boston Redevelopment Authority and NEAQ;

#### NOW THEREFORE

For consideration paid as more particularly described below, the receipt and sufficiency of which consideration is hereby acknowledged, the parties hereto do hereby amend and restate said Existing Agreement with respect to Parcels A, B, C, D and E (as defined herein) as follows:

#### ARTICLE I

#### DEFINITIONS

##### Section 101: Defined Terms

For the purpose of this Agreement, the following terms shall have the meanings, respectively, ascribed to them below:

1. "Agreement" shall mean this Amended and Restated Land Disposition Agreement.

2. "Amendment to Design Guidelines" shall be as set forth in Subsection 208A(f).

3. "Aquarium" shall mean the new aquarium facility proposed by NEAq to be built on Parcel E by NEAq.

4. "Aquarium Development Condition" shall mean that the following three conditions shall be and remain satisfied at all times:

(a) NEAq shall have achieved each of the Aquarium Development Milestones described in Exhibit J hereof, provided that if any Aquarium Development Milestone ("ADM") is not achieved by the applicable date described in Exhibit J, the Authority shall diligently investigate the reasons therefor, and may extend by up to six (6) months any particular milestone date upon a good faith determination by the Authority that NEAq has used best efforts to achieve the applicable Aquarium Development Milestone, provided, however, that (i) the extension of the date by which any one ADM may be achieved shall not extend the date by which any other ADM must be achieved; and (ii) in no event shall the condition in this clause (a) be deemed to be unsatisfied unless and until the Authority has made a formal determination, after granting to NEAq notice and an opportunity to be heard, that NEAq has failed to achieve an ADM by the date described in Exhibit J, as the same may be extended as herein provided;

(b) NEAq shall remain publicly committed to construction of the Aquarium on Parcel E, and no announcement of abandonment or suspension of efforts to construct the Aquarium on Parcel E shall have been made; and

(c) in all events without regard to Force Majeure Events, NEAq shall have commenced substantial above-ground construction of the Aquarium on or before June 1, 1996 (the "Outside Aquarium Start Date"), and shall thereafter have diligently pursued construction thereof to completion, provided, however, that the Outside Aquarium Start Date may be extended beyond June 1, 1996,

but in no event later than June 1, 1999, by one or more notices given to Redeveloper by the Authority prior to the then applicable Outside Aquarium Start Date, provided that any such notice shall not be effective unless accompanied by a payment to Redeveloper equal to \$50,000 for each calendar month or partial calendar month by which the Outside Aquarium Start Date is being extended.

If any of the aforesaid three conditions are at any time not satisfied, the Aquarium Development Condition shall not be satisfied for the purposes of this Agreement. In addition, the Aquarium Development Condition shall not be satisfied at any time after construction commences on Parcel E if it is thereafter abandoned, and the Authority de-designates NEAq as redeveloper of Parcel E or determines that Parcel E shall not be redeveloped by NEAq. Time is of the essence with respect to the Aquarium Development Condition. The Authority shall be obligated to inform the Redeveloper promptly at any time it has knowledge that the Aquarium Development Condition is not satisfied.

5. "Authority" shall mean the Boston Redevelopment Authority, a public body, politic and corporate, organized and existing pursuant to Chapter 121B of the Massachusetts General Laws (Ter. Ed.), as amended, and shall include any successor in interest, whether by act of a party to this Agreement or by operation of law or otherwise.

6. "Authority Mortgage" shall mean the mortgage of the Property executed and delivered by the Authority to the Redeveloper and recorded in the Suffolk County Registry of Deeds

simultaneously with the execution hereof, which mortgage shall be in the form of Exhibit C attached hereto.

7. "Boston Zoning Code" shall mean the Zoning Regulation of the City of Boston as in effect from time to time.

8. "Bricklayers" shall mean the Bricklayers and Laborers Non-Profit Housing Corporation or the Bricklayers and Laborers Non-Profit Housing Company, Inc.

9. "Building 1" shall mean the first principal building to be constructed by Redeveloper on Parcel A.

10. "Building 2" shall mean the second principal building to be constructed by Redeveloper on Parcel A.

11. "Building 3" shall mean the third principal building to be constructed by Redeveloper on Parcel A. Section 203 also provides for the possibility that more than three principal buildings will be constructed by Redeveloper on Parcel A.

12. "Building 1 Payment Component" shall mean that portion of any annual payment for Parcel A equal to the product of \$1,588,000 multiplied by a fraction, the numerator of which shall be the Gross Floor Area then estimated by Redeveloper to be included in Building 1, and the denominator of which shall be 1,100,000.

13. "Building 2 Payment Component" shall mean that portion of any annual payment equal to the product of \$1,588,000 multiplied by a fraction, the numerator of which shall be the Gross Floor Area then estimated by Redeveloper to be included in Building 2 and the denominator of which shall be 1,100,000.

*Parcel B  
6+7*

14. "Building 3 Payment Component" shall mean that portion of any annual payment equal to the product of \$1,588,000 multiplied by a fraction, the numerator of which shall be the Gross Floor Area then estimated by Redeveloper to be included in Building 3 and the denominator of which shall be 1,100,000

15. "Building 104 Release" shall mean the release of the rights of the Redeveloper in the land defined as Parcel 3I under the Existing Agreement, which release the Redeveloper made in exchange for a credit granted by the Authority to the Redeveloper toward any obligation of the Redeveloper to construct up to forty-eight (48) affordable housing units (i.e. the number of units of housing the Redeveloper was entitled to develop on said Parcel 3I under the Existing Agreement) and for the release of the Redeveloper from the obligation to construct affordable or elderly housing as described below under Subsection 208B(a).

16. "Business Days" shall mean Monday through Friday but excluding any legal holiday on which the Suffolk County Registry of Deeds is closed.

17. "Certificate of Completion" shall mean, with respect to any of the Improvements, a Certificate of Completion issued or deemed issued by the Authority in accordance with Section 304 hereof.

18. "Chapter 21E" shall mean Chapter 21E of the General Laws of the Commonwealth of Massachusetts, as in effect from time to time.

19. "Chapter 91" shall mean Chapter 91 of the General Laws of the Commonwealth of Massachusetts, as in effect from time to time.

20. "Chapter 91 Application" shall mean the application for a license under Chapter 91 submitted on October 3, 1990 to DEP by the Redeveloper with the consent of the Authority.

21. "New Chapter 91 Regulations" shall mean the regulations promulgated by the DEP at 310 CMR 9.00 et seq., as in effect as of October 4, 1990.

22. "Chapter 121A" shall mean Chapter 121A of the General Laws of the Commonwealth of Massachusetts, as in effect from time to time.

23. "Charlestown Navy Yard" shall mean the land and water shown on the plan entitled "Boston Redevelopment Authority, City of Boston - Suffolk County - Massachusetts, Boston Naval Shipyard - Charlestown, Land Parcel Plan, Alternate 1, Revised", dated May 31, 1978, by Parsons, Brinckerhoff, Quade & Douglas, Inc.

24. "Charlestown Navy Yard Master Plan" shall mean the document entitled "Master Plan for the Yard's End, Charlestown", issued by the City of Boston, Raymond L. Flynn, Mayor, and the Boston Redevelopment Authority, Stephen Coyle, Director, dated October 1990.

25. "City" shall mean the City of Boston, Massachusetts.

26. "Closing Date" shall mean, with respect to each Parcel, the date referred to in Section 204 of this Agreement.

27. "Contribution to Bricklayers" shall mean the contribution of money and development rights which the Redeveloper made in exchange for credits granted by the Authority to the Redeveloper toward any obligation of the Redeveloper to construct elderly or affordable housing on Parcel C and in Building 197, as more particularly described in Subsection 208B(b) hereof, which contribution was made in order to allow the Bricklayers to develop affordable housing on a portion of Parcel 4 (as defined in the Existing Agreement), such contribution having been in the form of voluntary payment of \$897,548 and a voluntary transfer to the Bricklayers of the development rights in portions of said Parcel 4, which development rights the parties agree had at the time of such contribution a value of not less than \$1,000,000.

28. "Deed" shall mean the instrument or instruments, to be recorded in the Suffolk County Registry of Deeds in Boston, Massachusetts, whereby a Parcel of the Property is conveyed to the Redeveloper.

29. "DEP" shall mean the Massachusetts Department of Environmental Protection.

30. "Design Guidelines" shall mean the document entitled "Design Guidelines: New Development Area, Boston Naval Shipyard at "Charlestown", dated June, 1978 (Superseding the March 20, 1978 Design Guidelines).

31. "Development Programs" shall mean the plans for redevelopment by the Redeveloper as described in Exhibit B

attached hereto and made a part hereof, which Development Programs have been approved by the Authority.

32. "Director" shall mean the Director of the Boston Redevelopment Authority, or any person designated by him to act in his behalf.

33. "EOEA" shall mean the Massachusetts Executive Office of Environmental Affairs or the Secretary of Environmental Affairs.

34. "Existing Agreement" shall mean as defined in the first "WHEREAS" clause on page 1 of this Agreement.

35. "First Milestone" shall mean that all of the following conditions have been satisfied and shall continue to remain satisfied:

1. The Waiver Condition (as hereinafter defined) shall have been satisfied;
2. The Notice of Project Change shall have been filed as required in Subsection 208A(b) hereof and, with respect to Building 1 on Parcel A and with respect to Parcels B, C, and D, EOEA shall have determined that the change does not significantly increase the environmental consequences or warrant resubmission of an ENF, rescoping, supplementary documentation or a further EIR, and that no further review is required under MEPA; all applicable appeal periods with respect to such determination by EOEA shall have expired without the filing of an appeal or notice of intent to appeal or in the event an appeal is filed, the outcome of such appeal has been finally and favorably determined; no other notice of project change shall be pending or have been made; and such determination shall not have lapsed or been revoked or modified.
3. The Amendment to Design Guidelines as defined in Subsection 208A(f) hereof shall have been executed by the Authority and the Massachusetts Historical Commission and shall have been approved (or, to the satisfaction of the Redeveloper's counsel, been deemed approved) by the Advisory Council on

Historic Preservation, no change to the Amendment to Design Guidelines which is not permitted under Subsection 208A(f) hereof shall be pending or have been made, and the Amendment to Design Guidelines shall not have been revoked and shall be in full force and effect;

4. The Plan shall have been amended to the extent determined necessary by the Redeveloper's counsel to allow all of the Development Programs to be constructed on an as-of-right basis, all applicable appeal periods with respect to such amendment shall have expired without the filing or threat of an appeal and no further change, modification or amendment shall be made which affects the Property without prior written consent of the Redeveloper; and
5. The amendment to the Boston Zoning Code described in Section 208A pertaining to the Boston Zoning Code shall have been adopted by the Boston Zoning Commission, all applicable appeal periods with respect to such amendment shall have expired without the filing or threat of an appeal and no further change, modification or amendment to the Boston Zoning Code shall be pending or have been made, except as permitted by Subsection 208A(j) hereof.

References to appeal periods in this Subsection 101(35), shall be to the shorter of (i) one hundred twenty (120) days from the date of the action subject to appeal, (ii) any other period specifically provided by applicable statute, regulation or ordinance, during which an appeal may be made, or if no appeal period is so specifically provided, sixty (60) days from the date of the action subject to appeal.

36. "Force Majeure Event" shall mean as described in Section 910 hereof.

37. "Gross Floor Area" shall mean the sum of areas of the several floors of the structure, as measured by the

exterior faces of the walls, including fully enclosed porches and the like as measured by the exterior limits thereof, but excluding (a) garage and parking space, wherever located; (b) basement and cellar areas devoted exclusively to accessory uses; and (c) areas elsewhere in the structure devoted to mechanical equipment and operation.

38. "Gross Sales Price" shall mean the purchase price paid by the buyer of a condominium unit without deduction therefrom or adjustment thereto for taxes, municipal betterment assessments, deed stamps, recording charges, or any similar real estate closing related costs.

39. "Hazardous Substances" shall mean "hazardous substances" as defined in the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. § 9601 et seq., and any regulations thereunder, "hazardous material" and "oil" as such terms are defined in Chapter 21E and any regulations thereunder, and shall include without limitation asbestos, urea formaldehyde foam insulation and radon.

40. "Historic Monument Area" shall mean the land described in the Deed, dated July 7, 1978, from the United States of America, acting by and through the Administrator of General Services, to the Boston Redevelopment Authority, recorded with the Suffolk County Registry of Deeds in Book 9182, Page 149.

41. "HUD" shall mean the United States Department of Housing and Urban Development or any duly authorized representative thereof.

42. "Improvements" shall mean the buildings to be constructed by the Redeveloper on the Property.

43. "MEPA" shall mean the Massachusetts Environmental Policy Act, codified at Chapter 30, Sections 61-62H, of the General Laws, as amended.

44. "MHC" shall mean the Massachusetts Historic Commission.

45. "MHFA" shall mean the Massachusetts Housing Finance Agency or any duly authorized representative thereof.

46. "Municipal Harbor Plan" shall mean a Municipal Harbor Plan, as defined at 310 CMR § 9.02, as approved for the Property.

47. "NEAq" shall mean New England Aquarium, Inc.

48. "Notice of Project Change" shall mean the notice required by 301 C.M.R. § 11.17(1) filed by the Authority pursuant to Subsection 208A(b) hereof and as more particularly described in said Subsection 208A(b).

49. "Outside Completion Date" shall mean September 28, 2004; provided, however, that the Outside Completion Date shall in no event be earlier than thirty-six (36) months (subject to extension for Force Majeure Events) after commencement of construction on any Parcel, so long as such construction has commenced by September 28, 2004, and

provided further, that with respect to Parcel B, the aforesaid references to September 28, 2004 shall be extended on a day for day basis for each day occurring between September 28, 1992 and the date which is the later to occur of (x) the day NEAq commences substantial above-ground construction of the Aquarium or (y) the date on which the Authority acknowledges in writing that the Aquarium Development Condition has not been satisfied, and provided further, that with respect to Parcel E, the aforesaid references to September 28, 2004 shall be extended on a day for day basis for each day occurring between June 28, 1992 and that date on which the Authority acknowledges in writing that the Aquarium Development Condition has not been satisfied. For purposes hereof, commencement of construction on any Parcel by INE shall mean the commencement of substantial site preparation work.

50. "Parcel" shall mean any of the areas of land designated as Parcel A (*i.e.*, Parcels 6 and 7 as defined in the Existing Agreement), Parcel B (*i.e.*, Parcels 4A, 4C, 4D and 4E under the Existing Agreement), Parcel C (*i.e.*, Parcels 1B and 1C under the Existing Agreement), and Parcel D (*i.e.*, Pier 9 and a portion of Parcel 4B under the Existing Agreement) on the Parcelization Plan, or any portion of such area. In addition, "Parcel" shall include the area of land designated as Parcel E (*i.e.*, Parcel 5 and a portion of Parcel 4B under the Existing Agreement, sometimes referred to

as the Aquarium Parcel) on the Parcelization Plan, or any portion of such area, if and to the extent Redeveloper acquires rights in Parcel E as provided in this Agreement. Parcel A and any other Parcel may be subdivided further or the lot lines of Parcels may be changed by the Redeveloper as long as the Property subject to this Agreement is not increased or decreased. In the event any Parcel is resubdivided or lot lines changed, the Authority will cooperate with Redeveloper to cause a revised Parcelization Plan to be prepared and to be acknowledged by the parties hereto as the Parcelization Plan for the purposes of this Agreement.

51. "Parcel E Waiver Condition" shall mean that if the Redeveloper submits a waiver application under the Massachusetts Contingency Plan (310 C.M.R. §§ 40.00 et seq.) with respect to Parcel E, DEP shall have approved such waiver application so that Hazardous Substances on Parcel E may be remediated by the Redeveloper as provided in such waiver application without any requirement for further study, treatment, testing, removal or remediation with respect to any Hazardous Substances; that such approval is given by DEP without any conditions other than those standard conditions listed at 310 CMR §40.537; and that approval of said waiver application with respect to Parcel E shall be in full force and effect and shall not have lapsed or been appealed or revoked.

52. "Parcelization Plan" shall mean the plans entitled:

(i) "Yard's End, Subdivision Plan of Land in Boston, Massachusetts, Suffolk County, Charlestown District, Charlestown Navy Yard", Scale 1:960, dated December 5, 1990, by Survey Engineers of Boston, (which plan shows Parcels A, B, D and E); (ii) "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; (iii) "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 (which plans referenced as (ii) and (iii) show Parcel C as Parcels 1B and 1C thereon), copies of all of which plans are attached hereto as Exhibit A and made a part hereof.

53. "Permitted Assignee" shall mean any entity affiliated with, controlled by, controlling or under common control with the Redeveloper or any partner of the Redeveloper. For purposes of this definition, "control" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and the policies of an entity, whether through the ownership of voting securities or partnership interests, by contract, or

otherwise, and "affiliated with" shall include but not be limited to an entity such as a joint venture, corporation or limited partnership in which Redeveloper or any other Permitted Assignee has a material interest.

54. "Permitted Nominee" shall mean any entity or trust nominated by the Redeveloper to take title to the Property to be conveyed, provided such entity or trust, (or the beneficiary of such trust) would also qualify as a Permitted Assignee.

55. "Plan" shall mean the Charlestown Urban Renewal Plan, adopted by the Authority on March 25, 1965 and approved by the City Council of the City of Boston on June 7, 1965, as amended to include the Boston Naval Shipyard by the Authority on July 19, 1976 and by the City Council on August 2, 1976, and as it is amended in accordance with the provisions therein contained through amendment dated November 30, 1988, a copy of which Plan has been delivered to the Redeveloper.

56. "Plan Area" shall mean the area in the City of Boston to which the said Plan pertains, as indicated by the boundary descriptions and maps therein.

57. "Plan Term" shall mean a period of forty years from and after June 7, 1965.

58. "Premium Costs" shall mean, with respect to Parcels A and B in the aggregate, the incremental amount by which (i) the costs incurred, or reasonably estimated by the Redeveloper to be incurred in the twenty-four (24) months

after the date of payment from which a deduction is taken as provided in Sections 203(a) and (b), respectively, and subject to the waiver of the 24-month limitation set forth in Subsection 203(a), for all remediation of the presence of any Hazardous Substance on the Property (including but not limited to the costs of borings, lab fees, site studies and reports, removal, disposal, capping and treatment, any amounts in the nature of oversight costs, taxes or fines assessed or charged by any federal, state or local government body or officer in connection with such remediation work, any premium construction and demolition costs attributable to the presence of any Hazardous Substance, asbestos removal, and consultants' and attorneys' fees) exceed (ii) the costs of excavation, demolition and construction which the Redeveloper reasonably estimates would have been incurred at a comparable non-contaminated site; provided that any estimate under this Subsection must be reasonably documented by an invoice, estimate or price quote from a third party.

59. "Property" shall mean all of the Parcels, which are part of the Charlestown Urban Renewal Project Area and are shown on the Parcelization Plan attached hereto as Exhibit A.

60. "Purchase Price" shall mean as provided in Section 203 hereof, subject to further adjustment as provided in Sections 206 and 207, as applicable.

61. "Redeveloper" shall mean Immobiliare New England, a Limited Partnership, a Massachusetts limited partnership

having a place of business in the City of Boston, Commonwealth of Massachusetts, and shall include any successor in interest or assign, whether by act of a party to this Agreement or by operation of law or otherwise, but shall not mean the holders of any mortgage granted by the Redeveloper or the holders of any pledge of an interest in Redeveloper or any of the partners of Redeveloper unless and until any such party succeeds to the interest of the Redeveloper hereunder.

62. "Second Milestone" shall mean with respect to Parcels A, B, C, and D, that a Certificate has been issued by the Secretary of the EOEА, which Certificate approves a Final Environmental Impact Report for (all portions) of the Development Programs without requiring further notice or study under MEPA (such certificate to be issued upon the determination of EOEА that no further notice or study is required, or if further action is required by EOEА in response to the Notice of Project Change, upon the completion of such action as required by EOEА), and that (1) all applicable appeal periods with respect to such Certificate have expired without the filing of any appeal; (2) in the event an appeal is filed, the outcome of such appeal has been finally and favorably determined; and (3) the Certificate issued by the Secretary of the EOEА shall not have lapsed or have been revoked or modified.

Parcel  
5

63. "Second Milestone Applicable to Parcel E" shall mean with respect to Parcel E that a Certificate has been issued by the Secretary of the EOEA, which Certificate approves a Final Environmental Impact Report for all portions of the applicable Development Program without requiring further notice or study under MEPA (such certificate to be issued upon the determination of EOEA that no further notice or study is required, or if further action is required by EOEA in response to the Notice of Project Change, upon the completion of such action as required by EOEA), and that (1) all applicable appeal periods with respect to such Certificate have expired without the filing of any appeal; (2) in the event an appeal is filed, the outcome of such appeal has been finally and favorably determined; and (3) the Certificate issued by the Secretary of the EOEA shall not have lapsed or have been revoked or modified, and further that if the Design Restrictions described in Section 208A(f) have not previously been modified to in order to permit Redeveloper's Development Program on Parcel E to be constructed on an as-of-right basis, such Design Restriction shall have been modified in accordance with and subject to the provisions of Section 208A(f).

64. "Term" shall mean the period of time from the date hereof until September 28, 2004; provided, however, that in the case of any Parcel which has an Outside Completion Date

later than September 28, 2004, the Term shall be until such Outside Completion Date with respect to any such Parcel.

65. "Third Milestone" shall mean construction of a roadway providing for vehicular access and egress to the Property at the current location of a portion of Building 114 through a new Gate 6 and the opening of the same to public use, which construction and opening the Authority shall cause to occur; provided, however, that nothing contained herein shall be, or is intended to be, an inducement to the Authority to fail to perform or breach any obligation or covenant of the Authority to any other person or entity with respect to Building 114:

66. "Two-Year Termination Right" shall mean that right of the Redeveloper to terminate this Agreement, or its rights with respect to positions of the Property, pursuant to Section 203A hereof.

67. "Waiver Application" shall mean that application, filed with the DEP by the Authority under cover of a letter dated August 22, 1990, for a waiver under the Massachusetts Contingency Plan (310 C.M.R. §§40.00 et seq.).

68. "Waiver Condition" shall mean that DEP shall have approved the Waiver Application so that Hazardous Substances on Parcel A may be remediated by the Redeveloper by capping as described in Section III of the Waiver Application without any requirement for further study, treatment, testing, removal or remediation with respect to any Hazardous

Substances; provided, however, that such approval is given by DEP without any conditions other than those standard conditions listed at 310 CMR §40.537; and provided further that approval of said Waiver Application shall be in full force and effect and shall not have lapsed or been appealed, subject to a threat of an appeal, or revoked.

69. "Waiver Termination Right" shall mean the rights of the Redeveloper to terminate this Agreement pursuant to Section 203A hereof.

70. "Working Drawings and Specifications" shall mean those plans, drawings and specifications approved by the Authority in accordance with Section 302(d) for construction of the Improvements on a Parcel. "Material Exterior Change" shall mean any substantial change, modification or amendment to the exterior of an Improvement as described in the Working Drawings and Specifications as approved by the Authority which would materially and adversely affect the aesthetic impact of the exterior of such Improvement.

## ARTICLE II

### TRANSFER OF THE PROPERTY AND PAYMENT THEREFOR

#### Section 201: Covenant of Sale

Subject to all of the terms, covenants and conditions of this Agreement, the Authority agrees to sell and convey, and the Redeveloper covenants and agrees to purchase, the Property. As

set forth in Section 203, the Redeveloper may acquire separate Parcels of the Property at separate times.

Section 202: Condition of Land to be Conveyed

The Authority and the Redeveloper covenant and agree that, subject to the Redeveloper's rights to undertake remediation pertaining to Hazardous Substances in connection with the Waiver Condition and to adjust payment of the Purchase Price with respect to a Parcel in connection therewith, the Property and any Parcel shall be conveyed in "as is" condition, be free and clear of all tenants and occupants, and otherwise be in the same condition as it is as of the date hereof, reasonable wear and tear excepted.

Section 203: Purchase Price and Payment Therefor

The Purchase Price for the Property shall be payable as follows:

a. Payments totalling \$9,840,000 for Parcel A shall be paid as follows:

1. The Redeveloper has made an initial deposit of \$300,000, the receipt of which the Authority acknowledges;
2. The Redeveloper shall pay \$500,000 on or before November 16, 1990;
3. The Redeveloper shall pay \$700,000 on or before December 21, 1990;
4. The Redeveloper shall pay \$400,000 upon achievement of the First Milestone;
5. The Redeveloper shall pay \$1,588,000 on or before September 28, 1991, and again on or before September 28 of each of the four consecutive years thereafter with the final payment to be paid on or before September 28, 1995;

Provided, however, that such payments for Parcel A are subject to the following conditions, the effects of which may be cumulative:

- (i) If the First Milestone has not been achieved prior to September 28, 1991, then the Building 1 Payment Component of the payment due on September 28, 1991 and the Building 1 Payment Component of any payment coming due thereafter with respect to Parcel A shall be deferred and be due and payable on the date which is sixty (60) days after the date the First Milestone has been achieved; and if at any time after the First Milestone has been achieved, if any condition comprising the First Milestone ceases to remain satisfied, then any payment coming due thereafter with respect to Parcel A shall be deferred and shall not become due until sixty (60) days after all conditions comprising the First Milestone have been satisfied and remain so satisfied;
- (ii) If the First Milestone and the Second Milestone have not been achieved prior to September 28, 1991, then the Building 2 Payment Component and the Building 3 Payment Component of the payment due on September 28, 1991 and the Building 2 Payment Component and the Building 3 Payment Component of any payment coming due thereafter with respect to Parcel A shall be deferred and be due and payable on the date which is sixty (60) days after the date the Second Milestone has been achieved; and if at any time after the First Milestone and the Second Milestone have been achieved, if any condition comprising the First Milestone or the Second Milestone ceases to remain satisfied, then the Building 2 Payment Component and the Building 3 Payment Component of any payment coming due thereafter with respect to Parcel A shall be deferred and shall not become due until sixty (60) days after all conditions comprising the First Milestone and the Second Milestone have been satisfied and remain so satisfied;
- (iii) If the Authority has not achieved the Third Milestone prior to the date construction commences on Building 2, the Building 2 Payment Component and the Building 3 Payment Component in respect of the payment next due for Parcel A shall be reduced by \$500,000, and the Redeveloper shall have the right but not the obligation to use its own funds to achieve the Third Milestone, as more particularly

described in Section 208A(g). If Redeveloper exercises its right under said Section 208A(g), the amount so deducted from the Building 2 Payment Component and the Building 3 Payment Component less verifiable costs incurred by the Redeveloper in achieving the Third Milestone, including but not limited to planning, permitting, construction costs, legal fees and expenses, and other hard and soft costs, shall be payable to the Authority sixty (60) days after the Third Milestone has been achieved;

- (iv) To the extent that any conditions or requirements of any permit-granting or other governmental authority, or any conditions contained in, or requirements of, any permit, license, approval, or certification required for Parcel A reduce the density of Parcel A from that which is set forth in the applicable Development Program, or the Redeveloper agrees to any reduction in the density of any Development Program in order to obtain a permit, license, approval, or certification and the Redeveloper gives the Authority notice fifteen (15) days prior to agreeing to such reduction in density and thereafter reasonably considers any objection raised by the Authority within such 15-day period to any such agreement, payments shall be reduced on the basis of \$10.00 per square foot of any reduction in the Gross Floor Area so set forth in the Development Program for Parcel A, and if density is reduced after the Redeveloper has acquired the Parcel, the Authority shall pay the Redeveloper \$10.00 per square foot of any such reduction. Without limiting the foregoing, a reduction in density shall be deemed to occur if the number of parking spaces permitted to be constructed in accordance with the Development Program is reduced because of any condition, agreement or requirement as aforesaid and as a result the density of the Development Program is reduced by Developer because of financing, leasing or marketing requirements resulting from the reduction in parking spaces or because of the need to restore additional parking spaces in later phases. For illustration purposes, an example of the calculation is as follows: if a building is to contain a certain number of Gross Square Feet and that number is reduced by 5,000 square feet in order to obtain a required permit (and this reduction is agreed to before September 28, 1991 and no other reductions are made for any part of

the Parcel A Development Program), then the total of the five remaining payments due thereafter shall be reduced in equal amounts of \$10,000 each, for a total reduction of \$50,000 (which equals \$10.00 x 5,000);

- (v) To the extent that Premium Costs exceed \$1,600,000, fifty percent (50%) of the next \$2,600,000 of Premium Costs shall be deducted from the next payments due for Parcel A (and for Parcel B as set forth below); provided, however, that (a) no deduction from the payments due with respect to Parcel A shall be made until the payments due on September 28, 1992; and (b) the deduction from the payment due on September 28, 1992 and any payments due thereafter shall not exceed \$794,000 (with the balance of such deduction remaining available in a given year applied to the next subsequent year's payment); provided, however, that notwithstanding the foregoing, any annual payment may be reduced by more than \$794,000 if and to the extent necessary to make the full deduction for Premium Costs available to the Redeveloper, and if Premium Costs exceed the amount of all payments remaining due with respect to Parcel A and B so that the full deduction for Premium Costs would not be available to the Redeveloper, the Authority shall reimburse the Redeveloper for any such excess, subject to the cap set forth above, within forty-five (45) days of demand therefor; and, provided further that the 24-month limitation on estimated costs set forth in Subsection 101(58) shall be waived and the Redeveloper may estimate costs for a period of more than 24 months if and to the extent necessary to ensure that the full deduction for Premium Costs actually incurred or estimated to be incurred will be available to the Redeveloper. The provisions of this subparagraph shall survive delivery of the deed of any portion of Parcel A, so that Redeveloper shall be entitled to credits and reimbursements with respect to costs incurred after such delivery;
- (vi) Payments shall be reduced further pursuant to Section 203A pertaining to the Two-Year Termination Right and the Waiver Termination Right, as applicable; and
- (vii) Notwithstanding any provision of this Subsection 203(a) to the contrary, if the full Purchase Price for Parcel A has not been paid and

the Redeveloper acquires title to a portion of Parcel A, the Purchase Price for said portion of Parcel A shall be equal to the sum of (a) the product of \$9,840,000 multiplied by a fraction, the numerator of which shall be the total Gross Floor Area of the portion of the Parcel A Development Program to be constructed on said portion of Parcel A and the denominator of which shall be 1,100,000, less (b) all deductions otherwise permitted hereunder; and such sum, less all amounts previously paid hereunder allocable to the Parcel to be acquired on a pro rata basis, shall be payable simultaneously with execution and delivery of the Deed on the Closing Date for said portion of Parcel A.

- (viii) If Redeveloper elects to construct more or fewer than three principal buildings on Parcel A and gives written notice of that election to the Authority, all of the provisions of this Section 203 shall be deemed to be modified to reflect the actual number of buildings constructed or to be constructed as set forth in such notice, with payment on account thereof to be made on a pro rata basis, based upon the ratio of the number of Gross Floor Area to be included in each building to 1,100,000.
- (ix) For each calendar month after June 1, 1993 that (a) the Aquarium Development Condition remains satisfied and (b) substantial above-ground construction of the Aquarium has not commenced, the purchase price for Parcel A shall be reduced by \$12,500 per month for the first eighteen (18) months, and \$25,000 for the next eighteen (18) months thereafter, (all such payments to be prorated in the case of partial months), any such reduction to be reflected in the next payments due hereunder.

b. The Authority acknowledges payment in full by the Redeveloper of all payments previously due from the Redeveloper of the Purchase Price for Parcel B under the Existing Agreement. In addition to such prior payments, a payment of \$400,000 for Parcel B shall be payable simultaneously with the delivery of the

Deed on the Closing Date for Parcel B; provided, however, that such payment for Parcel B is subject to the following condition:

- (i) To the extent that Premium Costs exceed \$1,600,000, up to \$200,000 shall be deducted from the payment due for Parcel B.

c. Payments for Parcel C shall be paid as follows:

1. The Redeveloper shall pay the Authority \$1,000 on the Closing Date for Parcel C.
2. The Redeveloper shall pay the Authority an amount equal to \$1,500 per unit of residential development as set forth in the Development Program for Parcel C, and such payment shall be made at the time a building permit is issued with respect to such unit.
3. The Redeveloper shall pay the Authority an amount equal to four percent (4%) of the Gross Sales Price of each unit at the time such unit is conveyed to a third party.
4. For each additional condominium unit constructed above 66, Redeveloper shall pay the Authority an amount equal to \$15,000 per unit, such amount to be due and payable upon issuance of a building permit for such additional unit; provided, however, that at the election of the Redeveloper, payment of such amounts may be deferred until the conveyance of the unit to a third party, and if deferred, such payment shall be paid together with interest accrued thereon from the date of the issuance of the applicable building permit until conveyance of the unit to a third party, such interest to be calculated monthly at the rate of interest payable by the City of Boston on general obligation bonds issued by the City (the "City Borrowing Rate"). The Redeveloper shall include in any deed to a third party of a condominium unit on Parcel C the requirements that (i) in the event of any subsequent resale by such third party of such unit within six months of the third party's initial purchase, the third-party shall pay to the Authority an amount equal to four percent (4%) of the amount by which the Gross Sales Price paid by such third-party is less than the resale price; and (ii) in the event of any subsequent resale by such third party of such unit after six months of the

Bids  
1970

third party's initial purchase, the third party shall pay to the Authority an amount equal to two percent (2%) of the Gross Sales Price of said unit.

d. The Authority acknowledges prior payment by the Redeveloper in full of the total Purchase Price for Parcel D pursuant to the Existing Agreement.

✓  
12  
19

e. The Redeveloper shall pay a total of \$4,000,000 for Parcel E on the terms set forth below, provided, however, that payments for Parcel E are subject to the following conditions, the effects of which may be cumulative:

- (i) The obligation to make payments with respect to Parcel E shall be deferred if, and as long as, the Aquarium Development Condition is satisfied. Accordingly, the Redeveloper hereby releases its rights to develop Parcel E until such time as the Aquarium Development Condition, as hereinabove defined, is not satisfied or does not remain satisfied; provided, however, that without limiting the foregoing this release of rights to develop Parcel E is made by the Redeveloper subject to the re-vesting of such rights in the Redeveloper in the event that the Aquarium Development Condition shall not be satisfied or remain satisfied, and in such event, upon the request of the Redeveloper, the Authority and the Redeveloper shall execute an agreement confirming the re-vesting of such rights to develop Parcel E. As set forth above in this subsection, as long as the Aquarium Development Condition remains satisfied, the Redeveloper shall make available to NEAq the Redeveloper's contribution of the value in Parcel E for purposes of facilitating planning and construction of the Aquarium by NEAq, but nothing contained in this Agreement shall prejudice the rights of the Authority to establish any re-use price it determines with NEAq to relate to NEAq's proposed development of Parcel E. If the Aquarium Development Condition is not satisfied and the rights released pursuant to this Subsection 203(e)(i) re-vest in the Redeveloper, the Redeveloper shall pay \$300,000 with respect to Parcel E within sixty (60) days after the later of the date of such re-vesting or the date the

if no [unclear] →

Authority confirms in writing such re-vesting, (the "Initial Parcel E Payment") and shall pay the balance due with respect to Parcel E in four (4) equal annual installments beginning one year after the Initial Parcel E Payment is due (the "Parcel E Annual Payment").

- (ii) If the Second Milestone Applicable to Parcel E has not been achieved prior to the time that any Parcel E Annual Payment is due, any such Parcel E Annual Payment shall be deferred and be due and payable on the date which is sixty (60) days after the date the Second Milestone Applicable to Parcel E has been achieved; and if at any time after the Second Milestone Applicable to Parcel E has been achieved, if any condition comprising the Second Milestone Applicable to Parcel E ceases to remain satisfied, then any payment coming due thereafter with respect to Parcel E shall be deferred and shall not become due until sixty (60) days after all conditions comprising the Second Milestone Applicable to Parcel E have been satisfied and remain so satisfied and any amounts previously advanced shall upon demand by the Redeveloper be repaid to the Redeveloper;
- (iii) To the extent that any conditions or requirements of any permit-granting or other governmental authority, or any conditions contained in, or requirements of, any permit, license, approval, or certification required for Parcel E reduce the density of Parcel E from that which is set forth in the applicable Development Program, or the Redeveloper agrees to any reduction in the density of any Development Program in order to obtain a permit, license, approval, or certification and the Redeveloper gives the Authority notice fifteen (15) days prior to agreeing to such reduction in density and thereafter reasonably considers any objection raised by the Authority within such 15-day period to any such agreement, payments shall be reduced (and to the extent that the Redeveloper is permitted to and does build more than the amount of gross square feet of area provided for in the Development Program, the Purchase Price shall be increased) on the basis of \$14.55 per square foot of any change in the Gross Floor Area so set forth in the Development Program for Parcel E, and if density is reduced after the Redeveloper has acquired the Parcel, the Authority shall pay the Redeveloper \$14.55 per square foot of any such

reduction. Without limiting the foregoing, a reduction in density shall be deemed to occur if the number of parking spaces permitted to be constructed in accordance with the Development Program is reduced because of any condition, agreement or requirement as aforesaid and as a result the density of the Development Program is reduced by Developer because of financing, leasing or marketing requirements resulting from the reduction in parking spaces or because of the need to restore additional parking spaces in later phases. For illustration purposes, an example of the calculation is as follows: if a building on Parcel E is to contain 275,000 Gross Square Feet and that number is reduced by 5,000 Gross Square Feet in order to obtain a required permit (and this reduction is agreed to before September 28, 1993 and no other reductions are made), then the total of the three remaining payments due thereafter shall be reduced in equal amounts of \$24,250 each, for a total reduction of \$72,750 (which equals  $\$14.55 \times 5,000$ );

- (iv) Payments shall be reduced further pursuant to Section 203A pertaining to the Two-Year Termination Right and the Waiver Termination Right; and
- (v) Notwithstanding any provision of this Subsection 203(e) to the contrary, if not sooner paid, any remaining payments due with respect to Parcel E on the Closing Date shall be payable simultaneously with the execution and delivery of the Deed on the Closing Date for Parcel E.
- (vi) For each calendar month after June 1, 1993 that the Aquarium Development Condition remains satisfied, the purchase price for Parcel E shall be reduced by \$12,500 per month for the first eighteen (18) months, and \$25,000 for the next eighteen (18) months thereafter, (all such payments to be prorated in the case of partial months).

#### Section 203A: Further Environmental Conditions

##### a. Waiver Termination Rights with Respect to all Parcels.

The Redeveloper may elect to terminate this Agreement with respect to any Parcel or portion of the Property at any time until the Waiver Condition is satisfied or at any time if the Waiver

Condition ceases to be satisfied, and in the event the Redeveloper does so elect, Subsection 203A(c) hereof shall apply.

b. Two-Year Termination Rights With Respect to All Parcels.

The Redeveloper may elect to terminate this Agreement with respect to any Parcel or portion of the Property at any time within two (2) years of November 30, 1990 if the Redeveloper is not satisfied in any respect, in its sole discretion, with the presence of any Hazardous Substance located on or any environmental risk pertaining to a Parcel or the Property, and in the event the Redeveloper does so elect, Subsection 203A(c) shall apply.

c. Exercise of Rights. In the event that the Redeveloper exercises its Waiver Termination Right or Two-Year Termination Right with respect to any Parcel or portion of the Property (upon such exercise such Parcel or portion thereof referred to as a "Termination Parcel"), any and all payments previously made with respect to any Termination Parcel shall be subject to credit or reimbursement (as provided below in this Subsection) and no further payments shall be made hereunder with respect to the Parcel or portion of the Property subject to cancellation. For purposes of the immediately preceding sentence, in the case of a termination with respect to a portion of the Property, payment which would have been made on account thereof shall be calculated on a pro rata basis, based on Gross Floor Area. In addition, the subsequent right of first offer (as provided in the last sentence of this subsection) shall be deemed to have been granted to Redeveloper; provided, however, that if such termination was

pursuant to the Two-Year Termination Right and not the Waiver Termination Right as such rights apply to Parcel A, the payments totalling \$1,500,000 which were required to be paid on or before December 21, 1990 with respect to Parcel A shall not be subject to such credit or reimbursement. The amount of any payment subject to a credit or reimbursement pursuant to the preceding sentence shall be applied as a credit against any future payment due under this Agreement or otherwise due under any other agreement or obligation arising between the Redeveloper (or any affiliate of Redeveloper which would qualify as a Permitted Assignee) and the Authority; except that to the extent that such credit is not so applied within thirty-six (36) months of the date hereof, the Authority shall promptly reimburse the Redeveloper (without any deduction or set-off) for the amount of any credit not so applied. In addition to the application of any credit as set forth in the preceding sentence, upon any termination under this Section 203A, the Redeveloper shall have the right of first offer prior to any resale or other disposition by the Authority of the applicable Parcel, such right to be exercised as follows:

- (i) Prior to offering to enter into any transaction with a third party for resale or other disposition of all or any portion of the Parcel 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 "Different Development Conditions"), the Authority shall first offer to convey (by delivery of written notice hereunder) such Parcel and any Improvements thereon to the Redeveloper, such offer on the Different Development Conditions to remain open for at least forty-five (45) days;

- (ii) If Redeveloper accepts such offer within such 45-day period, the Parcel and any Improvements thereon shall be conveyed by the Authority to the Redeveloper or a Permitted Nominee subject to the Different Development Conditions, which shall be substituted for the corresponding terms of this Agreement;
- (iii) If Redeveloper does not exercise its rights ("Section 203A Rights of First Offer") within such 45-day period, the Authority shall be free to resell or redispense of the Parcel, free of Redeveloper's Section 203A 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 Different Development Conditions offered to Redeveloper hereunder;
- (iv) If the Authority does not so resell, the Redeveloper's Section 203A Rights of First Offer shall apply prior to any subsequent resales or redispersions based on Different Development Conditions. The Authority's determination, in the exercise of its reasonable judgment, as to whether Different Development Conditions exist or as to whether the Authority's resale or redispersion is on terms which are not materially more favorable to the buyer than the Different Development Conditions offered to Redeveloper hereunder may be relied upon by any third-party buyer if such determination is made in good faith.
- (v) If the Authority does not so resell the Parcel within two years of the offer to the Redeveloper, the Redeveloper's Section 203A Rights of First Offer shall apply prior to any subsequent resales or redispersions based on Different Development Conditions.

d. Additional Waiver Termination Rights and Other Rights with Respect to Parcel E. If after the Aquarium Development Condition has not been met (or after the Authority and the Redeveloper have executed an agreement acknowledging the vesting of rights to develop Parcel E in the Redeveloper if Redeveloper

has so elected), the Redeveloper shall have the right (but not the obligation) to file a new application for a waiver under the Massachusetts Contingency Plan (310 C.M.R. §§ 40.00 et seq.), and shall have the right to defer any payment coming due thereafter with respect to Parcel E as provided in Section 203(e) until sixty (60) days after the Parcel E Waiver Condition is satisfied. If the Redeveloper elects to file such new application for a waiver, the Redeveloper shall have the further right to elect to terminate this Agreement with respect to Parcel E at any time until all the requirements of the Parcel E Waiver Condition described in Subsection 101(51) have been satisfied; and whenever the Redeveloper does so elect to terminate (whether or not a new application is filed) the Redeveloper shall have the rights of first offer as set forth in Subsection 203A(c), and if the Redeveloper has made any payment with respect to Parcel E as provided in Section 203(e), any and all payments previously made with respect to Parcel E shall promptly upon demand by the Redeveloper be paid to the Redeveloper without any reduction or set-off.

e. Additional Two-Year Termination Rights with Respect to Parcel E. In addition to any other termination rights, at any time within two (2) years of the date which is the later of the date on which the Aquarium Development Condition is not satisfied or the date the Authority and the Redeveloper execute an agreement acknowledging the vesting of rights to develop Parcel E in the Redeveloper, if the Redeveloper elected to execute such agreement,

if the Redeveloper is not satisfied in any respect, in its sole discretion, with the presence of any Hazardous Substance or any environmental risk pertaining to Parcel E, the Redeveloper may elect to terminate this Agreement with respect to Parcel E, and in the event the Redeveloper does so elect to terminate, the Redeveloper shall have the rights of first offer as set forth in Subsection 203A(c), and if the Redeveloper has made any payment with respect to Parcel E as provided in Section 203(e), any and all payments previously made with respect to Parcel E shall promptly upon demand by the Redeveloper be paid to the Redeveloper without any reduction or set-off.

Section 204: Time of Sale and Conveyance

The sale and conveyance and delivery of possession of the Property or a Parcel and the purchase of the same by the Redeveloper or a Permitted Nominee, shall take place at the office of the Authority at City Hall, Boston, Massachusetts, on the date specified by the Redeveloper in notice to the Authority, which notice shall be given at least ten (10) Business Days before the date set forth therein for the sale and conveyance and delivery of possession. The Redeveloper shall have the right to call for the sale of conveyance and delivery of possession of separate Parcels at various times and shall have the right from time to time to adjourn the time for such sale and conveyance and delivery of possession to any Business Day during the Term hereof.

Section 205: Title and Instrument of Conveyance

a. The sale and conveyance of any Parcel or portion of the Property shall be by Massachusetts quitclaim deed of good, clear record and marketable fee simple title, free and clear of all liens and encumbrances (except those encumbrances listed in Exhibit D), but subject to and with the benefit of all conditions, covenants, easements, and restrictions set forth or referred to in this Agreement and the Plan or in either thereof. In connection with such sale and conveyance and at any time thereafter during the Term of this Agreement, the Authority shall grant to the Redeveloper such good, clear record and marketable easements as shall be reasonably necessary to provide access, and the provision of utilities, other services, and amenities, to any Parcel or portion of the Property. Without limiting the foregoing, the Authority shall provide the "Access" described in the Existing Agreement, and shall use reasonable efforts to provide a non-exclusive access easement over the parcel of land upon which Building 114 is located, in the location shown as "Proposed Access Easement #1" on the Parcelization Plan, for vehicular and pedestrian access, in common with others entitled to thereto, for the benefit of Parcel A. Without limiting the foregoing, the Deed conveying Parcel E to any party other than the Redeveloper or a Permitted Nominee shall state that such conveyance is made subject to the provisions of Exhibit E hereto, which provisions Redeveloper and the Authority agree to comply with and be bound by.

use of  
parcel  
E - Ag

b. If requested by the Redeveloper, the Authority shall make a valid and effective confirmatory taking of the Property, prior to the Closing Date.

c. From and after September 28, 1990, the Authority covenants not to place any encumbrances nor allow any encumbrances to be placed on the Property.

d. On or before March 1, 1991, the Redeveloper shall deliver to the Authority notice of any encumbrance on, or defect in, title to the Property existing as a matter of record at the Suffolk County Registry of Deeds as of September 28, 1990, and if any such encumbrance or defect existing as a matter of record at said Registry as of September 28, 1990 is not set forth in such notice, such encumbrance or defect shall automatically be deemed to be added to the list in Exhibit D. Subject to the provisions of Section 209, before the Closing Date for a Parcel the Authority shall remove any encumbrances and defects in title to the Property except for such liens, encumbrances and defects which are listed in Exhibit D as of the date hereof or by operation of the preceding sentence.

Section 205A: Ground Lease Option

Notwithstanding the provision of Section 205 requiring conveyance of fee simple title, at the election of the Redeveloper, conveyance of any Parcel may be made in the form of the execution and delivery of a customary and commercially reasonable ground lease providing for prepaid ground rent (at the rate and on terms that are identical to the applicable purchase

price if fee simple title were acquired) and including an option for nominal consideration to purchase the applicable Parcel during the term of the ground lease.

Section 206: Federal Tax Stamps and Other Closing Costs

The Redeveloper shall pay the costs of any Federal or State documentary tax stamps which shall be required, and the Redeveloper shall pay the cost of recording the Deed and all other instruments and plans to be recorded together with the Deed.

Section 207: Adjustments

The Authority shall pay all taxes, sewer and water charges and other assessments or charges allocable with respect to any period before delivery and conveyance to the Redeveloper of the Deed hereunder. Taxes, charges or assessments allocable with respect to any period after delivery to the Redeveloper of a Deed hereunder shall be paid by the Redeveloper. In the event any Parcel is exempt from taxation on the assessment date next preceding the conveyance hereunder by virtue of title being vested in the Authority or other tax exempt entity, the Redeveloper shall pay the Authority, in lieu of a tax adjustment, a pro rata amount of the taxes which could have been payable to the City of Boston if such Parcel had not then been exempt from taxation, for that portion of the tax year during which the Redeveloper has title and possession. This payment in lieu of taxes shall be computed using the Purchase Price for the Parcel conveyed as the assumed assessment on such Parcel and using the tax rate for the current tax year if it is known, and if it is not known, the estimated tax

rate established by the City Assessor. All customary costs and adjustments for the Parcel conveyed, if any, shall be prorated and paid to the Authority upon delivery of the Deed to the Parcel. The provisions of this Section shall survive delivery of the Deed.

Section 208: Conditions Precedent to Conveyance and to Commencement of Construction

a. The Authority shall not be obligated to make conveyance of a Parcel unless and until the Redeveloper has (1) paid the applicable Purchase Price for the Parcel, which Purchase Price is payable pursuant to the schedule set forth in Section 203 and may be paid prior to any date listed in said schedule; and (2) sent notice of the date of the Closing Date for the Parcel as provided in Section 204.

b. The Redeveloper shall not commence construction on a Parcel unless and until the following events have all occurred with respect to the Improvements to be constructed thereon:

- (1) Working Drawings and Specifications for the Improvements to be constructed on such Parcel have been submitted by the Redeveloper and approved by the Authority as provided in Section 302 hereof; provided, however; that the Redeveloper shall have the ability to seek approval of Working Drawings and Specifications for the foundation or any other discrete component of the work and commence construction of the foundation or such component upon such approval and prior to approval of the Working Drawings and Specifications for the entire Improvement.
- (2) The Redeveloper has submitted a letter of intent executed by its construction contractor, substantially in the form attached hereto as Exhibit I and made a part hereof, in which letter of intent the Contractor undertakes to carry out all of the provisions of this Agreement in the Section entitled "Nondiscrimination in Employment"

and the requirements of the policies and programs contained in the documents attached hereto as Exhibits F, G and H.

- (3) The Redeveloper has obtained a Building Permit from the City of Boston Building Department and has paid all application fees in connection therewith, and the Improvements described in the Building Permit are in accordance with the Working Drawings and Specifications approved by the Authority pursuant to Section 302 hereof.

Section 208A: Covenants by the Authority

a. The Authority shall take the following actions at its Board meeting on October 11, 1990, and if the Authority fails to do so, the Authority shall be obligated to do so at the next Board meeting, but in all events the actions listed herein must be taken by the Authority no later than November 16, 1990, or by such other time as the Redeveloper and the Authority mutually agree:

- (i) Recommend the adoption of the amendments to the Boston Zoning Code described in Subsection 208A(j) hereof;
- (ii) Authorize the execution and delivery of this Agreement, if not done so prior to execution hereof;
- (iii) Approve the Charlestown Navy Yard Master Plan;
- (iv) Authorize the submission of a Municipal Harbor Plan which permits the Development Program to ECEA for approval;
- (v) Take all required action to amend the Plan as necessary to permit the Development Programs within the Plan Area; and
- (vi) Authorize the execution of the Amendment to Design Guidelines described under Subsection 208A(f) below.

b. The Authority shall cause to be filed, as soon as is reasonably possible, a Notice of Project Change describing the

Development Programs for Parcels A, B, C, D and the Aquarium proposed by the NEAq on Parcel E, and such Notice of Project Change shall seek a determination from EOEa (MEPA Unit) that the change does not significantly increase the environmental consequences or warrant resubmission of an ENF, rescoping, supplementary documentation or study or a further EIR and that no further review of Building 1 and the Development Programs described in said Notice of Project Change on Parcels B, C and D is required under MEPA;

c. The Authority shall cooperate with the Redeveloper to cause any MEPA study of traffic, historic, waterways, infrastructure and other master planning issues with respect to all Development Programs to be accomplished jointly and in cooperation with NEAq, and the Authority shall cooperate with the Redeveloper as requested in connection with any other MEPA matters in connection with any Development Program. The Authority shall cause NEAq to cooperate with Redeveloper in accomplishing future MEPA study as aforesaid.

d. The Authority will actively support the Chapter 91 Application filed by Redeveloper with respect to its entire Development Programs on Parcels A, B, C and D, in order to permit those areas to be processed under Chapter 91 procedures in effect prior to the New Chapter 91 Regulations, and will actively support any other applications under Chapter 91 hereafter filed describing any project consistent with the Development Programs.

e. The Authority shall use best efforts to cause EOEА to approve adoption of the Municipal Harbor Plan as submitted to EOEА for the City in October, 1990 and after approval of said Municipal Harbor Plan shall use best efforts to cause EOEА to renew said Municipal Harbor Plan without any changes made thereto without the consent of the Redeveloper and, if said Municipal Harbor Plan is revoked, to obtain EOEА approval of the Municipal Harbor Plan in the same form as that Municipal Harbor Plan submitted to EOEА in October, 1990 as affected by any subsequent change thereto approved by the Redeveloper.

f. The parties acknowledge that the Development Programs, or portions thereof, will require amendment to the Design Guidelines, such amendment to be effected in accordance with requirements of the "Memorandum of Agreement", dated June, 1978 among the Advisory Council on Historic Preservation, the General Services Administration, the Massachusetts State Historic Preservation Officer, and the Authority (the "Memorandum of Agreement"). To the satisfaction of the Redeveloper, the Authority shall amend the Design Guidelines, and in conjunction with such amendment the Authority shall obtain any other approvals or releases of restrictions required from the Advisory Council on Historic Preservation, the Secretary of the U.S. Department of the Interior, the Massachusetts State Historic Preservation Officer, the General Services Administration, and the MHC, so that the Design Guidelines, as amended, will permit the Development Programs to be completed on an as-of-right basis, it being agreed

that the use, height and other dimensional restrictions set forth in the Design Guidelines, as amended, shall be no more restrictive than the use, height and other dimensional restrictions set forth in the Approved Zoning Amendment (as defined in Subsection 208A(j) below) (the amendment to the Design Guidelines and all approvals or releases required in connection therewith shall be referred to collectively as the "Amendment to Design Guidelines").

Thereafter, the Authority will not agree to any change in the Amendment to Design Guidelines which affects a Parcel or the Property without the written consent of the Redeveloper. Further, and in connection therewith, the MHC shall acknowledge that the Development Programs are approved under M.G.L. c. 9, § 27C, subject only to design review which will not reduce density or height approved in or permitted by the Amendment to Design Guidelines.

g. The Authority shall cause to be taken all necessary steps (including, without limitation, consent of the MHC, and the U.S. Department of Interior, modifications to the Design Guidelines or further modification of the Amendment to Design Guidelines and amendment of the Plan, subject to the consent of the Redeveloper as provided herein) to enable it to construct a roadway providing for vehicular access and egress to the Charlestown Navy Yard through a new Gate 6, to be constructed in the current location of a portion of Building 114. At no expense to Redeveloper, the Authority shall cause such roadway and gate to be constructed and open for public use so that the Authority will

achieve the Third Milestone before the date that the shell of Building 1 is completed. In all events, the Authority shall cause the Third Milestone to be achieved no later than the date Redeveloper commences construction of Building 2.

In the event that the Authority fails to achieve the Third Milestone before the date on which the Redeveloper commences construction of Building 2, the Redeveloper may exercise self-help rights to achieve the Third Milestone as follows: the Redeveloper may submit plans for the new Gate 6, which plans shall show a scope of work comparable to Gate 5 as existing on the date hereof, to the Authority for approval by the Authority, which approval shall not be unreasonably delayed, withheld or conditioned upon any action by the Redeveloper other than with respect to reasonable changes to said plans. The Authority shall use best efforts to cause any federal, state or local permits or approvals to be obtained, shall use best efforts to cause any actions required of any federal, state or local government authority or officer to be taken with respect to the new Gate 6, and shall cooperate with any efforts of the Redeveloper to obtain such actions of any federal, state or local government authority or officer. If the Redeveloper elects to construct the new Gate 6, the Authority shall fully cooperate and take any action required of it to allow Redeveloper to accomplish such construction and opening of the New Gate 6 to public use, including, without limitation, providing access to all areas necessary to complete such construction.

h. Before and after the conveyance of any Parcel to Redeveloper, Redeveloper shall have the right but not the obligation to undertake remediation of any Hazardous Substances located on any Parcel, and in connection therewith to do all things reasonably necessary or convenient to effectuate such remediation. The Authority shall cooperate with Redeveloper and shall execute all applications, documents and certificates as shall be reasonably requested by Redeveloper.

Neither party waives any rights it may have at law or in equity with respect to any loss, cost or damage arising out of the presence of Hazardous Substances on any of the Parcels and asserted by or which it may assert against any party other than the Authority, the Redeveloper or their affiliates.

i. In addition to the specific obligations of the Authority set forth elsewhere in this Agreement with respect to particular permits and approvals, the Authority agrees to cooperate with Redeveloper in order to cause applicable permits and approvals to be issued in order to permit the Development Programs to be completed. This provision shall survive delivery of any and all Deeds and payment of the Purchase Price.

j. The Authority shall include in its final draft of the text amendment to the Boston Zoning Code entitled "Article 42F Harborpark District Charlestown Navy Yard" (the "Approved Zoning Amendment") all such provisions which shall be reasonably necessary to allow Redeveloper to construct the Development Programs described herein on an as-of-right basis. Upon adoption

of the Approved Zoning Amendment by the Zoning Commission of the City, the Authority shall thereafter oppose any text or map amendment to the Boston Zoning Code which would materially affect a Parcel or the Property, unless the Redeveloper gives its written consent to the Authority to support such amendment. Redeveloper hereby requests that such Approved Zoning Amendment be adopted. The parties agree that buildings on Parcel A shall be analyzed together for determining compliance with Articles 26 and 26B of the Boston Zoning Code but that all other Parcels shall be analyzed separately for such compliance. The parties agree that the Authority shall target a substantial portion of all housing and jobs payments required pursuant to Articles 26 and 26B of the Boston Zoning Code to the Charlestown neighborhood, subject, however, to concurrence, if required, of the Neighborhood Housing Trust and the Neighborhood Jobs Trust. All construction shall be subject to design review by the Authority under Article 31 of the Boston Zoning Code. There shall be no dimensional restriction on the Parcels except as set forth in the Approved Zoning Amendment, which shall be no more restrictive than the following Maximum

Allowed Building Heights:

Bricklayers Row  
Parcel 4  
NEA  
Parcel 6/7  
197 (Pier 5) marina

<u>Parcel</u>	<u>Maximum Allowed Building Height</u>
B (area defined in Boston Zoning Code as Parcel 4)	90'
B (area defined in Boston Zoning Code as Parcel 4A)	135'
E	110'
A	140' (average on a per building basis) and 155' (maximum)
C	55/75'
D	35'

Except that (1) for the portion of Pier 5 on Parcel C within 150' of the end of Pier 5, the Maximum Permitted Building Height (as defined in the Approved Zoning Amendment) is fifty-five (55) feet. Elsewhere on Pier 5 or landward of the High Tide Line (as defined in the Approved Zoning Amendment) the Maximum Permitted Building Height is seventy-five (75) feet; and (2) mechanical roof structures shall be excluded from height calculations. The Waterfront Yard Area (as defined in the Approved Zoning Amendment) for Parcel A shall be no greater than twenty (20) feet, for Parcel B shall be no greater than thirty-five (35) feet, for sides of any piers shall be no greater than twelve (12) feet and for ends of piers shall be no greater than thirty-five (35) feet.

In addition, the Approved Zoning Amendment shall provide that the parking requirements for the Parcels shall not exceed the parking requirements set forth in the description of the Development Programs set forth in Exhibit B hereof.

It is anticipated that the Approved Zoning Amendment shall require 50% open space in the Charlestown Navy Yard, excluding the Historic Monument Area. The Authority shall not allow the issuance of any building permit for any building in the Charlestown Navy Yard (excluding the Historic Monument Area) which, by virtue of the open space existing with respect thereto, would prohibit the Development Programs described herein, as the same may be modified as contemplated herein or by agreement of the Redeveloper and the Authority.

In addition, it is anticipated that the Approved Zoning Amendment will require that transportation access measures, such as the possible expansion of Gate 5 or the construction of a new Gate 6, be undertaken in connection with development in the Charlestown Navy Yard. The Authority covenants and agrees that it will cause any expansion of Gate 5 or construction of a new Gate 6 or other transportation access measures required by the Approved Zoning Amendment to be completed prior to the time that NEAQ commences construction of the Aquarium.

k. Simultaneously with the execution hereof, the Authority shall execute and deliver the Authority Mortgage to the Redeveloper.

l. The Authority shall construct and maintain, at its sole expense, the "Public Improvements", as defined in and in accordance with the provisions of the Existing Agreement.

m. The Authority shall perform all other covenants,

agreements, and obligations contained herein, whether or not listed in this Section 208A.

Section 208B: Affordable/Elderly Housing Credits

a. The Authority and the Redeveloper acknowledge the Building 104 Release. The credit granted by the Authority to the Redeveloper under the Building 104 Release may be applied by the Redeveloper, in the Redeveloper's sole discretion, to any Development Program of the Redeveloper described herein, and application of such credit shall fully satisfy any affordable or elderly housing requirement applicable to any residential development on Parcels B and E (if any residential development shall be constructed thereon) whether such requirement would be to construct such housing on or off-site or to make any monetary or other contribution with respect to elderly or affordable housing.

b. The Authority and the Redeveloper acknowledge the Contribution to Bricklayers, which shall constitute full satisfaction of any requirement that any portion of the residential units on Parcel C or in the existing Building 197 shall be made available for purchase by low or moderate income or elderly persons; that the Redeveloper make any off-site residential units available for purchase by low or moderate income or elderly persons, and that the Redeveloper make any monetary or other contribution with respect to elderly or affordable housing.

Section 209: Default by Authority

a. In the event that the Authority shall be unable to give title or to make conveyance or to deliver possession of the

Property or any Parcel as provided for herein, the time for performance hereunder may be adjourned from time to time for such period of time as the Redeveloper may specify, but such adjournment shall not, in the aggregate, extend the time for performance beyond three hundred sixty-five (365) days after the original time for performance established under Section 204 hereunder or beyond September 28, 2004, whichever is later (the "Outside Date for Performance"). During any period of extension, the Authority shall use best efforts to remove any defect in title or to deliver possession as provided herein, as the case may be. In any event, the Redeveloper may at any time elect to accept such title or possession as the Authority can deliver to the Property or a Parcel and to pay the Purchase Price therefor subject to deduction for all costs to the Redeveloper to remove any encumbrances, clear title, and cause the condition of the Property or Parcel to conform with the requirements hereof, in which case the Authority shall convey such title to the Redeveloper. In the event that on the Outside Date for Performance the Authority shall be unable to give title or to make conveyance or to deliver possession as herein provided, and the Redeveloper has not made an election pursuant to the preceding sentence, then (1) all payments made by the Redeveloper with respect to any Parcel for which the Authority is unable to give title or make conveyance or deliver possession, if any, together with interest earned thereon from the dates of such payments at the City Borrowing Rate (as defined in Subsection 203(c)(4)), shall be refunded; (2) all obligations of

the parties hereto with respect to the Parcel for which the Authority was unable to perform shall cease; and (3) this Agreement shall be void and without recourse to the parties hereto with respect to the Parcel for which the Authority was unable to perform. The acceptance of a Deed by the Redeveloper shall be deemed a full performance and discharge of every agreement and obligation herein contained with respect to the Property conveyed by said Deed, except such as are to be performed after the delivery of the Deed.

b. In the event that the Authority shall default in the performance of any other covenant, obligation or condition hereof, the Redeveloper may, after notice to the Authority of such default and the expiration of thirty (30) days for the Authority to cure such default, or within a lesser but reasonable period in case of emergencies, the Redeveloper may cure such default for the account of the Authority and deduct the reasonable cost of such cure from any amounts then due or to become due from the Redeveloper to the Authority (provided that the amount the Redeveloper deducts under this Subsection shall not exceed \$250,000 per Parcel), and the Redeveloper may seek and enforce all remedies at law or in equity, including but not limited to specific performance, other injunctive relief and money damages.

c. Nothing herein shall prejudice any rights of the Redeveloper under the Authority Mortgage.

Section 210: Intentionally omitted.