

## TABLE OF CONTENTS

	<u>Page</u>
<b>ARTICLE I PURCHASE PRICE .....</b>	<b>7</b>
Section 1.01. Purchase Price.....	7
Section 1.02. Partial Purchase of City Parcels.....	7
Section 1.03. Redeveloper’s Additional Payment .....	7
Section 1.04. Deposit .....	8
Section 1.05. Bond Authorization.....	8
<b>ARTICLE II DEVELOPMENT PLAN.....</b>	<b>8</b>
Section 2.01. Development Plan; Purpose.....	8
Section 2.02. Modifications to Development Plan .....	8
Section 2.03. Definition of Steps; Scope and Timing.....	10
Section 2.04. Additional Development Opportunity .....	11
Section 2.05. Description of Public Improvements .....	11
<b>ARTICLE III REDEVELOPER’S DESIGN AND PERMITTING BENCHMARKS .....</b>	<b>12</b>
Section 3.01. The Redeveloper’s Design and Permitting Benchmarks .....	12
Section 3.02. Performance; Extension .....	12
Section 3.03. Coordination of Plans for Private Development and Public Improvements..	12
Section 3.04. Cooperation; Construction Coordination; Future Easements and Declarations .....	12
Section 3.05. The Redeveloper’s Default In Respect of Benchmark Schedule.....	13
<b>ARTICLE IV PUBLIC IMPROVEMENTS .....</b>	<b>13</b>
Section 4.01. Design, Permitting, Construction and Funding of Public Improvements.....	13
Section 4.02. Characterization of Public Improvements; Stages of Public Improvements .	13
Section 4.03. The Financial Standards-General.....	15
Section 4.04. Funding for the Town Brook Culvert Restoration; Construction of the Cliveden Bridge Extension and Hancock Common .....	19
Section 4.05. Construction of Implementing Public Improvements.....	21
Section 4.06. The Construction Standard; Determination of Reimbursement Budget; Timing of Reimbursement .....	23
<b>ARTICLE V CLOSING.....</b>	<b>32</b>
Section 5.01. Conveyance of Title; Closing .....	32
Section 5.02. Condition of City Parcels.....	32
Section 5.03. Extension to Perfect Title or Make City Parcels Conform .....	33
Section 5.04. Redeveloper’s Election to Accept Title .....	33
<b>ARTICLE VI CONDITIONS TO CLOSING.....</b>	<b>34</b>
Section 6.01. Conditions to Closing 1 .....	34
Section 6.02. Conditions to Closing on the Redeveloper’s Subsequent Purchase of City Parcels .....	37
<b>ARTICLE VII REPRESENTATIONS AND WARRANTIES.....</b>	<b>38</b>
Section 7.01. Representations and Warranties of Redeveloper .....	38
Section 7.02. Representations and Warranties of the City.....	39
<b>ARTICLE VIII RIGHT TO ACCESS.....</b>	<b>40</b>
Section 8.01. City’s Right of Entry.....	40
Section 8.02. Redeveloper’s Access Prior to Conveyance .....	40

<b>ARTICLE IX ASSIGNMENT AND TRANSFER.....</b>	<b>40</b>
Section 9.01. Representations as to Redevelopment .....	40
Section 9.02. Assignment and Transferability .....	41
Section 9.03. Agreement to be Bound by Chapter 121A Agreements .....	42
Section 9.04. Granting of Mortgage .....	42
Section 9.05. Estoppel Certificates .....	43
Section 9.06. Information as to Holders of Ownership Interests.....	43
Section 9.07. Survival.....	43
<b>ARTICLE X USE RESTRICTIONS .....</b>	<b>43</b>
Section 10.01. Restrictions on Use .....	43
Section 10.02. Period of Duration of Covenants on Use and Non-Discrimination .....	43
Section 10.03. Additions or Subtractions to Completed Improvements.....	44
Section 10.04. Covenants; Binding Upon Successors in Interest; Period of Duration .....	44
<b>ARTICLE XI CERTIFICATE OF COMPLETION.....</b>	<b>44</b>
Section 11.01. Completion of Project.....	44
Section 11.02. Certificate of Completion.....	45
<b>ARTICLE XII INSURANCE AND INDEMNITY .....</b>	<b>45</b>
Section 12.01. Required Insurance .....	45
Section 12.02. Policies Non-Cancelable.....	47
Section 12.03. Waiver of Subrogation.....	47
Section 12.04. Indemnity Provision.....	47
<b>ARTICLE XIII RIGHTS OF MORTGAGEES.....</b>	<b>48</b>
Section 13.01. Limitation upon Encumbrance of Property.....	48
Section 13.02. Mortgagee not Obligated to Construct; Recognition of Mortgagees.....	48
Section 13.03. Copy of Notice of Default to Mortgagee .....	49
Section 13.04. Mortgagee's Option to Cure Defaults.....	49
Section 13.05. City's Option to Pay Mortgage Debt or Purchase Property.....	49
Section 13.06. Estoppels.....	50
Section 13.07. Mortgagees' Obligations Regarding Chapter 121A Agreements .....	50
<b>ARTICLE XIV REMEDIES.....</b>	<b>50</b>
Section 14.01. In General; Opportunity to Cure.....	50
Section 14.02. Termination by City Prior to Closing .....	51
Section 14.03. Remedies of City Upon Happening of Event Subsequent to a Closing.....	52
Section 14.04. Resale of Reacquired Property; Disposition of Proceeds .....	54
Section 14.05. Other Rights and Remedies of City; No Waiver by Delay.....	55
Section 14.06. Remedies of Redeveloper .....	55
Section 14.07. Excusable Delay in Performance for Causes Beyond Control of Party.....	56
Section 14.08. Recourse to Interest of Redeveloper .....	56
Section 14.09. Right of City to Redevelopment Materials .....	57
Section 14.10. Rights and Remedies Cumulative .....	57
<b>ARTICLE XV MISCELLANEOUS .....</b>	<b>57</b>
Section 15.01. Notices .....	57
Section 15.02. Conflict of Interests; City Representatives and Agents not Individually Liable .....	58
Section 15.03. Equal Employment Opportunity.....	59
Section 15.04. Disclosure and Revenue Enforcement Statements .....	59

Section 15.05. Actions by the Parties; Good Faith Cooperation; Deemed Approvals .....	59
Section 15.06. Intentionally Deleted.....	60
Section 15.07. Brokerage Warranty .....	60
Section 15.08. No Partnership .....	60
Section 15.09. Provisions Not Merged With Deed.....	60
Section 15.10. Applicable Law .....	60
Section 15.11. Jurisdiction; Venue. ....	60
Section 15.12. Amendment.....	61
Section 15.13. Severability .....	61
Section 15.14. Entire Agreement .....	61
Section 15.15. Exhibits; Counting of Days.....	61
Section 15.16. Counterparts .....	61
Section 15.17. Successors and Assigns.....	61
Section 15.18. Community Benefits. ....	62
Section 15.19. Development Team.....	65
Section 15.20. Cooperation; Appeals.....	65
Section 15.21. Outdoor Dining .....	65
Section 15.22. Valet Parking .....	65
Section 15.23. Parking Management Plan .....	65

**LIST OF EXHIBITS**

Exhibit A– Definitions

Exhibit B – Development Plan

Exhibit C – Development Design Standards

Exhibit D – List of Key Dates

Exhibit E – Allocable Land Cost

Exhibit F – Occupancy Levels

Exhibit G – Pre-Acquisition Benchmark Schedule

Exhibit H – Plan of Ross Garage Parcel and Hancock Parking Lot Parcel

Exhibit I – Form of Chapter 121A Agreement

Exhibit J – Special Legislation

Exhibit K – Disclosure Statement of Beneficial Interest

Exhibit L – Revenue Enforcement Certification

Exhibit M – List of Redeveloper’s Professionals

Exhibit N – Labor Standards

## LAND DISPOSITION AGREEMENT

This Land Disposition Agreement (the “Agreement”) is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between the City of Quincy, a municipal corporation organized under the laws of the Commonwealth of Massachusetts, with an address of 1305 Hancock Street, Quincy, MA 02169 (the “City”), and Hancock Adams Associates, LLC, a New York limited liability company, with a principal place of business at c/o Street-Works Development LLC, 30 Glenn Street, Fourth Floor, White Plains, NY 10603 (the “Redeveloper”).

### RECITALS

**A.** The Redeveloper is the designated developer under the City’s Urban Renewal Development Plan, as amended (“URDP,” as more specifically defined herein) to redevelop two (2) parcels of real estate in the City of Quincy known, respectively, as the Ross Garage and the Hancock Parking Lot (the “City Parcels”), together with other land in the “New Quincy Center Area,” as shown on Sheet 10.1 of Exhibit B hereto, to be acquired privately by the Redeveloper, in accordance with the URDP and the applicable requirements of the City’s Zoning Ordinance. The URDP proposes a conceptual redevelopment program incorporating the City Parcels and substantial portions of the New Quincy Center Area. This Agreement affects only the Redeveloper’s activities in the New Quincy Center Area. Those portions of the New Quincy Center Area in which the Redevelopment Project (as defined below) will occur are referred to in this Agreement as the “Redevelopment Area.” The New Quincy Center Area and the Redevelopment Area are located within the “Project Area” identified in the URDP and are shown on Sheet 10.1 of Exhibit B.

**B.** Subsequent to its designation as developer, the Redeveloper has prepared a comprehensive redevelopment plan for substantial portions of the Redevelopment Area consistent with the URDP as shown on the plans entitled: “The Development Plan,” dated October 4, 2010 by Street-Works Development LLC, attached hereto as Exhibit B (the “Development Plan”). The redevelopment project as set forth in the Development Plan and to be undertaken by the Redeveloper is referred to herein as the “Redevelopment Project;”

**C.** The URDP and the Development Plan recognize that significant public infrastructure improvements, typical to a major urban renewal project, in the nature of the replacement and upgrading of existing municipal utilities, the modification of and additions to roadways and other traffic infrastructure, the Town Brook Culvert Restoration, the construction of new public parking facilities as well as other improvements (collectively, the “Public Improvements”) are critical to the success of the Redevelopment Project. The scope and magnitude of the Public Improvements are identified in the Development Plan. It is anticipated that the cost of the Public Improvements, including those in the Additional Development Opportunity, and other Redevelopment Project-related expenses will be in the range of Two Hundred Sixty Nine Million Dollars (\$269,000,000), plus approximately Fifty Million Dollars (\$50,000,000) in Federal and State funds. The City has determined that a contractual arrangement in which the Redeveloper initially assumes the construction risk for certain of the Public Improvements and the occupancy risk for the private components of the Redevelopment Project before the City purchases the completed Public Improvements from the Redeveloper

represents the best opportunity to achieve a comprehensive redevelopment of the Redevelopment Area;

**D.** The contemplated acquisition funding of the Public Improvements will come from a combination of (i) available state and federal funding, (ii) the proceeds from the sale of the City Parcels, (iii) the proceeds of municipal bonds to be underwritten with the increased revenues from the Redevelopment Project (through payments under Chapter 121A Agreements and the net revenue from the new public parking garages in the Redevelopment Project) (the “City Bonds”), and (iv) possible private equity and/or debt if such other sources are insufficient. The City and the Redeveloper intend to establish a process to demonstrate, prior to the conveyance of the City Parcels and the City being obligated to provide funding in respect of the Public Improvements, that these sums will be available and sufficient to fund the City’s purchase of the Public Improvements. The City and the Redeveloper recognize that the securing of approximately Fifty Million Dollars (\$50,000,000) of State and Federal funding will be critical to the commencement of the Redevelopment Project (that level of funding shall be referred to herein as the “Commencement Amount,” and any such State or Federal funding in excess of the Commencement Amount shall be referred to herein as the “Additional Grant Funds”). In order for the redevelopment process to be successful, the URDP recognizes that the City must be willing to devote a significant portion of the anticipated increase in tax revenues from the Redevelopment Project to underwrite the debt service on the City Bonds to be issued to fund these costs and that, assuming the conditions set forth in this Agreement are satisfied, the City will issue the City Bonds for these purposes;

**E.** In the process of the finalization of Development Plan, the Redeveloper and the City agreed on a number of matters relating to the scope and timing of the individual Steps (as hereinafter defined) in the Development Plan, the uses of the buildings within the individual Steps, and the procedures to be followed to assure the timely completion and funding of the Public Improvements;

**F.** The purpose of this Land Disposition Agreement (this “Agreement”), among other things, is to set forth the terms and conditions upon which the purchase of the City Parcels is to occur, and the development of the Redevelopment Project as a whole and the various rights and obligations of the Redeveloper and the City, respectively, in respect of the design, construction and funding of the costs of the Public Improvements; and

**G.** Terms used in the Agreement are defined, as applicable, either in the text of the Agreement itself or in Exhibit A attached hereto. Where a definition is set forth in the text, Exhibit A identifies the provision of the Agreement in which the definition is set forth.

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Redeveloper hereby agree as follows:

## ARTICLE I PURCHASE PRICE

**Section 1.01. Purchase Price.** The Redeveloper will pay to the City the sum of Four Million Eight Hundred Thousand Dollars (\$4,800,000) for the City Parcels, which are more fully described in Exhibit H attached hereto. The purchase price shall be increased on an annual basis equal to increases in CPI for each year since June 30, 2009, when the parties executed the Designated Developer's Purchase Offer.

**Section 1.02. Partial Purchase of City Parcels.** To accommodate the phasing anticipated under the Development Plan (defined herein as the "Steps"), the purchase may be consummated in more than a single closing, in which event, the purchase price to be paid at the first closing for the Ross Garage, which must be purchased first and in its entirety, ("Closing 1") shall be allocated according to the square foot area of the City Parcel(s) being purchased as compared to the total square foot area of the City Parcels to be purchased in the later Steps; provided, however, that (a) the balance of the purchase price shall be due and payable in full at such time as any portion of the Hancock Parking Lot is purchased, and (b) the Hancock Parking Lot shall not be subject to more than two (2) closings. If either or both of the City Parcels are required to be subdivided in order to make a conveyance of a portion of them, the Redeveloper will be responsible for the reasonable cost of the preparation of the applicable subdivision plan and preparation of the appropriate deeds. The amount of the purchase price remaining after Closing 1 is called the "Purchase Price Balance." The Purchase Price Balance will be increased by CPI for every year after Closing 1. The deposit paid at the time of the execution and delivery of this Agreement as provided in Section [1.04] hereof, as well as other deposits paid hereunder, shall be deducted from the portions of the purchase price first becoming due and payable. Where this Agreement makes reference to the conveyance of a portion of a City Parcel, such conveyance shall relate only to the conveyance of the applicable portion of the City Parcel as the context admits.

**Section 1.03. Redeveloper's Additional Payment.** The City previously has issued debt in the amount of approximately Thirty Million Dollars (\$30,000,000) which has been used, in part, to fund the construction of the so-called "Concourse" in the New Quincy Center Area and other related improvements, as well as other costs and expenses associated with the planning and redevelopment of the New Quincy Center Area. As additional consideration for this Agreement, including its rights hereunder to purchase the City Parcels and to proceed with the Additional Development Opportunity (as defined in Section [2.04] below), the Redeveloper has agreed to make an additional payment to the City at the time of Closing 1 in the amount of Thirty Million Dollars (\$30,000,000) (the "Additional Payment") to be applied to the repayment of a like amount of outstanding bond anticipation notes issued by the City to finance the development of the Concourse. In recognition of the financial commitment of the Redeveloper to make the Additional Payment, the City has agreed, as set forth in Section [2.04] below, that to the extent the payments under the Chapter 121A Agreements made on account of buildings constituting Additional Development Opportunity are sufficient to support the reimbursement of some or all of the Additional Payment, the Reimbursement Amount (as defined in Section 4.06(c) below) for the Step(s) in which the Additional Development Opportunity occurs can include such reimbursement of the Redeveloper for the Additional Payment.

**Section 1.04. Deposit.** The Redeveloper shall pay to the City the following non-refundable deposits on account of the purchase price:

(a) the Redeveloper shall pay to the City the sum of One Hundred Thousand Dollars (\$100,000) concurrently with the execution hereof;

(b) the Redeveloper shall pay to the City the sum of Five Hundred Thousand Dollars (\$500,000) concurrently with the Redeveloper's filing of an application for a COC for Step 1; and

(c) the Redeveloper shall pay to the City an additional sum of Five Hundred Thousand Dollars (\$500,000) at the time of the Financial Submission for Step 1.

**Section 1.05. Bond Authorization.** Concurrently with the execution and delivery of this Agreement, it is anticipated that the City will also authorize (a) bonds in the amount of Two Hundred Forty-Four Million Two Hundred Thousand Dollars (\$244,200,000) to be utilized to fund Two Hundred Twenty-Three Million Eight Hundred Thousand Dollars (\$223,800,000) of Public Improvements once the Public Improvements are completed and certain other requirements are met, (b) a further authorization that will provide for an additional bond amount up to Forty-Five Million One Hundred Fifty Thousand Dollars (\$45,150,000) to fund Forty-One Million Three Hundred Fifty Thousand Dollars (\$41,350,000) for the reimbursement set forth in Section 1.03 and for Public Improvements associated with the Additional Development Opportunity, if the additional payments under the 121A Agreements for the buildings constituting the Additional Development Opportunity alone support such bonds and satisfy the 4:1 ratio requirement described in Section [4.06(a)(iii)(3)] herein. The total bond authorization, therefore, shall be Two Hundred Eighty-Nine Million Three Hundred Fifty Thousand Dollars (\$289,350,000).

## **ARTICLE II DEVELOPMENT PLAN**

**Section 2.01. Development Plan; Purpose.** The Development Plan, *inter alia*, describes the public and private improvements intended to be incorporated in the Redevelopment Project, their anticipated sequencing, the anticipated use of the improvements, and an estimate of the costs associated with construction of those portions of the improvements which are to be considered as Public Improvements. A copy of the Development Plan is also on file in the Quincy Planning Office and the Quincy City Clerk's Office.

**Section 2.02. Modifications to Development Plan.** The City recognizes that as the Redeveloper and the City proceed through the permitting process for the Development Plan, changes may be required in portions of the Development Plan, depending upon such factors as permit requirements, construction and financing considerations and market demand for the buildings proposed to be constructed in the Redevelopment Area and that modifications may be required to accommodate the Additional Development Opportunity. In recognition of this need for changes, the City agrees that (1) changes of a minor nature may be made in the Development Plan with the approval of both the Mayor and the Director of Urban Redevelopment, and (2) changes which are of a major nature will require the approval of both the Mayor and the City Council.

With respect to major changes, the City agrees to use diligent efforts to process the Redeveloper's request for approval of such modifications within one hundred twenty (120) days (plus such additional time as is required to obtain DHCD approval of the same) following the City's receipt of the request and complete plans and other descriptive materials adequately describing the nature of the proposed change; provided, however, that the City's failure to act within such time period shall not result in a deemed approval and the decision whether to grant such approval shall be at the City's sole discretion.

With respect to minor changes, the City agrees to use diligent efforts to process the Redeveloper's request for approval of such modifications within forty-five (45) days following the City's receipt of the request and complete plans and other descriptive materials adequately describing the nature of the proposed change. If the City has not responded within said forty-five (45) day period, the Redeveloper shall send the Mayor and the Director of Urban Redevelopment a notice by certified mail, return receipt requested, stating in bold, capital letters that failure of the City to respond within an additional thirty (30) days from the date of said notice will result in a deemed approval of such request for a minor change. The Mayor shall respond with an approval or disapproval within said time period. If the Mayor fails so to respond, the City shall be deemed to have approved such minor change in the Development Plan. The City agrees that a reasonableness standard shall apply to its review of requested minor changes to the Development Plan.

Changes will be considered to be minor if they fall within any of the following criteria:

(a) A reduction in the square foot area of a Step (exclusive of parking structures) of less than fifteen percent (15%);

(b) A reduction in an anticipated use in a Step of less than fifty percent (50%) (measured by square foot area except for hotel use (to be measured in rooms)) and housing (to be measured in dwelling units). For purposes of this determination, there shall be three use groups: (1) office, hotel, education and medical; (2) residential; and (3) retail, including restaurant and entertainment;

(c) An increase of less than five percent (5%) in the cost of the City's share of the Implementing Public Improvements for a Step, provided that (i) such requested minor change must be made following issuance of the Certificate of Consistency for such Step and prior to the Financial Submission for such Step, and (ii) such minor change shall not increase the City's overall bond cap for the Redevelopment Project, as set forth in Section 1.05 above;

(d) A second Big Box Use in the Redevelopment Project (including the Additional Development Opportunity), provided the design of the building is consistent with the requirements of the Design Standards for urban form;

(e) Less than one hundred twenty (120) units of Assisted Living Use in the Redevelopment Project, provided that there shall be no Assisted Living Use in Step 1;

(f) A change in the configuration of internal lot lines of a City Parcel;

(g) A drive-through window for a permitted use, provided the design of the building is consistent with the requirements of the Design Standards for urban form and not a suburban-type pad site; and

(h) Any other changes which both the Mayor and the Director of Urban Redevelopment determine are not materially inconsistent with the intent and purpose of both the URDP and the Development Plan.

The Redeveloper may increase the square footage of the Redevelopment Project (exclusive of the Additional Development Opportunity) by up to five percent (5%) upon notice to the Mayor and the Director of Urban Redevelopment, but such change shall not be deemed a minor or major change requiring approval hereunder; provided, however, that such additional development must be included in the COC approval, the MEPA approval, and all other approvals for the Redevelopment Project.

Modifications to the Development Plan required by reason of development associated with the Additional Development Opportunity shall be governed by Section **[2.04]** below.

All other modifications to the Development Plan shall be considered major changes requiring the approval of both the Mayor and the City Council including, without limitation, any Nursing Home Use.

**Section 2.03. Definition of Steps; Scope and Timing.** The Development Plan envisions the Redevelopment Project to be executed in three basic steps, identified as Step 1, Step 2 and Step 3 (individually, a “Step” and collectively, “Steps”) in the Development Plan with those Steps to be undertaken in a chronological sequence. In addition, the Development Plan identifies Step 4, referred to herein as the “Independent Step,” which could occur, depending on market absorption and other related factors, during the development of either Step 2 or Step 3 or as a separate Step following the substantial completion of Step 2 or Step 3; provided, however, that if the Independent Step is to be constructed as part of Step 2, Step 1 must be fully completed before the construction of the Independent Step can occur. The Independent Step cannot be part of Step 1.

The required dates for the commencement and completion of the individual Steps (including the Independent Step) are set forth on Exhibit D hereto. Such dates are subject to extension only (a) for a Force Majeure Event as defined in Section **[14.07]**, or (b) if the Redeveloper elects to extend the date of Closing 1 as permitted in Section **[5.01]** hereof; provided, however, that in no event may the commencement of construction of Step 1 occur later than January 1, 2015 and, in respect of the later Steps (including the Independent Step), in no event may construction commence later than two (2) years after the occurrence of substantial completion of the prior Step nor shall completion occur later than four (4) years from such commencement. If the Independent Step is constructed after Step 3, then the Independent Step shall commence within two (2) years after the completion of Step 3 and shall be completed within three (3) years of such commencement. The Outside Step Completion Date, regardless of the occurrence of a Force Majeure Event, by which the Steps each must be commenced and be completed are identified on Exhibit D hereto. Other key dates under this Agreement also are set forth on said Exhibit D.

**Section 2.04. Additional Development Opportunity.** The City recognizes that in exchange for the Redeveloper's agreement to make the Additional Payment as described in Section [1.03] above, the Redeveloper needs the opportunity to expand the development program anticipated under the Development Plan, whether by acquiring other land that is within the New Quincy Center Area but not identified for the redevelopment in the Development Plan or expanding the development on land currently anticipated for development in the Development Plan ("Additional Development Opportunity"). A development within the Additional Development Opportunity will be subject to all of the provisions of this Agreement and the URDP and the requirement of the issuance of a COC thereunder and all other permit requirements for the Redevelopment Plan and will be developed in whole or in part at the same time as either Step 1 or Step 2. The Additional Development Opportunity shall not require additional infrastructure capacity in the nature of more or wider streets or the capacity of utilities; however, additional public parking may be required for such Additional Development Opportunity (beyond that required for the Step under the Development Plan). In such event, the construction of such additional public parking shall either be funded separately by the Redeveloper or by an increase in the applicable Reimbursement Amount (but not by more than Eleven Million Three Hundred Fifty Thousand Dollars (\$11,350,000) plus issuance costs so that such amount is net proceeds in the aggregate for all such additional public parking whether in Step 1 or Step 2) for the Step in question; provided, further, however, that only payments under the Chapter 121A Agreements for the buildings included in the Additional Development Opportunity shall be utilized in the determination of the underwriting of the Reimbursement Amount under Section [4.06] of this Agreement. The parking revenues from such additional public parking shall belong to the City and without any obligation to its application to support City Bonds.

Upon the filing of the application for the COC for a Step in which buildings comprising the Additional Development Opportunity are to be included (and the Additional Development Opportunity must be included in either Step 1 and/or Step 2) and notice thereof to the Mayor, the Director of Urban Redevelopment and the City Clerk, the Development Plan shall be treated as amended to reflect such additional buildings without the need of any approvals from the Mayor, the Director of Urban Redevelopment or the City Council; provided, however, that the aggregate floor area of such buildings (together with any such floor area likewise included in any prior Step) (but exclusive of parking structures) cannot exceed seven hundred fifty thousand (750,000) square feet of gross floor area. Upon the inclusion of the Additional Development Opportunity in the Development Plan, development of the Additional Development Opportunity will be subject to the same requirements of Section [2.02] for approval of a modification to the Development Plan as either a minor change or a major change, with the exception that a reduction in the size of the Additional Development Opportunity shall not require any approval from the City.

**Section 2.05. Description of Public Improvements.** The Development Plan also describes the various Public Improvements to be constructed in connection with each Step. The design of those Public Improvements, the allocation of their cost and the manner in which they are to be funded, is set forth in more detail in Article IV below.

## **ARTICLE III REDEVELOPER'S DESIGN AND PERMITTING BENCHMARKS**

**Section 3.01.** The Redeveloper's Design and Permitting Benchmarks. Attached to this Agreement as Exhibit G is a schedule entitled "Pre-Acquisition Benchmark Schedule" in which certain events that constitute design commencement or completion dates and permitting dates for the Redeveloper to accomplish are set forth, as well as the timing for performance of those efforts and the manner in which the Redeveloper is obligated to demonstrate fulfillment of those obligations (the "Benchmark Schedule").

**Section 3.02.** Performance; Extension. The City and the Redeveloper recognize that in order for the Redeveloper to proceed from certain events to later events on the Benchmark Schedule, the Redeveloper will require the cooperation of the City and, in some cases, of other governmental agencies not within the control of the City. The City has agreed that, in respect of its review and approval of the submittals identified on the Benchmark Schedule, the City will respond once the submission is complete within thirty (30) days and that failure to do so will be treated as the City's "deemed approval" solely for purposes of the Redeveloper's timely compliance with the Benchmark Schedule; provided, however, that (a) the submittal shall state in bold, capital letters that failure to respond within such thirty (30) days shall be deemed an approval, and (b) such limitation shall not apply to the time within which the Planning Board has to act in the COC process. In respect of its review of the submissions under the Massachusetts Environmental Policy Act, the City shall have a period of sixty (60) days to conduct its review. As to the failure of state and federal agencies to respond, the Redeveloper will be excused from the performance of later events at the time set forth in the Benchmark Schedule to the extent that the delay in agency action restricts the Redeveloper's completion of the event on which such agency action is dependent, subject to the time limitations set forth in Section [2.03] and on Exhibit D of this Agreement. The Redeveloper will have the right, as reflected in the Benchmark Schedule, to extend the applicable date for completion of a task or fulfillment of an event for sixty (60) days upon payment of a Twenty-Five Thousand Dollar (\$25,000) non-refundable additional deposit. Additional sixty (60) day periods of extension will only be available upon payment of an additional Twenty-Five Thousand Dollar (\$25,000) non-refundable additional deposit per extension period and only with the consent of the Mayor and the Director of Urban Redevelopment in their sole discretion. Such extensions shall not extend the time for Closing 1 under Section [5.01].

**Section 3.03.** Coordination of Plans for Private Development and Public Improvements. The Redeveloper acknowledges that the private improvements which the Public Improvements are being constructed to serve must be designed as well in accordance with the schedule applicable to the design of the Public Improvements but only to the extent necessary, in the case of buildings or structures, to clearly delineate the interrelationship between the Public Improvements and the private improvements.

**Section 3.04.** Cooperation; Construction Coordination; Future Easements and Declarations. The City and the Redeveloper acknowledge that the Redevelopment Project includes the interrelationship of various parcels of real property included within the Redevelopment Area and that the construction, development, operation and maintenance of such real property, including the improvements to be located thereon, will require cooperation between the parties in a number of areas which may not be apparent until final design or

completion of construction of the Public Improvements and Private Improvements including, without limitation, the coordination of systems and permits for storm water discharge, sanitary sewer discharge, and stationary source emissions and the construction, development and operation of utility facilities. The parties agree to cooperate with one another in good faith and in a timely manner with respect to such matters. The parties shall endeavor to promote harmony and cooperation among all trades, employees, and vendors engaged in any work on the Public Improvements and the Private Improvements. The parties shall repair, maintain and operate their respective property and the improvements thereon.

At least ninety (90) days prior to the closing for any Step, the City, acting through its Mayor, and the Redeveloper shall negotiate and enter into such easement, maintenance and/or license agreements for construction, drainage, utilities, vaults, footings, subterranean garage connections (which may be beneath the surface of public streets), ongoing repair and maintenance, construction signage, and other similar purposes, as may be reasonably necessary to permit or to facilitate the performance of the parties' rights and obligations with respect to the Redevelopment Project (including, without limitation, such easements, rights or way or other agreements with utility providers). Likewise, at least ninety (90) days prior to Closing 1, the Redeveloper and the City shall negotiate arrangements for the use of the surface parking area that is being constructed on an interim basis during Step 1, as shown on Sheet 5.1 of the Development Plan, and which will be reconveyed to the City if Step 2 does not occur hereunder, other than by reason of the City's default.

The Mayor shall be authorized to execute such documentation, including the granting of easements affecting City property, upon such terms and conditions as he deems in the City's best interests.

**Section 3.05.** The Redeveloper's Default In Respect of Benchmark Schedule. In the event the Redeveloper fails to cure any default in its obligations to conclude an event in accordance with the Benchmark Schedule (as extended as permitted herein) within thirty (30) days after written notice from the City to the Redeveloper, then the City's sole remedy on account thereof shall be (i) to terminate this Agreement, (ii) to retain all deposits, and (iii) contemporaneously therewith, be assigned the rights to use, and to receive complete copies of, the Plans and Specifications for the Public Improvements as previously authorized under the consents of the architect or engineer who prepared the same and which shall be required to be delivered to the City as each such contract is executed between the Redeveloper and such architect, engineer or other professional.

## **ARTICLE IV PUBLIC IMPROVEMENTS**

**Section 4.01.** Design, Permitting, Construction and Funding of Public Improvements. The manner in which the Public Improvements for each Step are to be designed, permitted, constructed and acquired, and the costs of the design and construction thereof are to be paid, are described in this Article IV. The details of the design and permitting process are set forth in Section [4.02] and the criteria for selection of the contractors to construct the Public Improvements are set forth in detail in Sections [4.06(c), 15.18(a), and 15.19].

**Section 4.02.** Characterization of Public Improvements; Stages of Public Improvements. The City and the Redeveloper recognize and agree that the Public Improvements may be divided

into two categories: (1) the Public Improvements that are a prerequisite to any redevelopment of a substantial portion of the New Quincy Center Area as a whole (the “Core Public Improvements” as defined in Section [4.04]), and (2) the Public Improvements that are required specifically to serve the Redevelopment Project (the “Implementing Public Improvements”). The manner in which the Public Improvements are designed and permitted is set forth in Section [4.05] below. The design, permitting, construction, funding, and acquisition of the Public Improvements within these two categories shall be undertaken in six (6) sequential stages identified as follows:

Stage One: Subject to the review process of the City set forth in this Agreement or otherwise required by law, the Public Improvements will be designed in sufficient detail to enable applications for applicable discretionary permits to be prepared and filed. The construction drawings required for the construction of parking structures will occur following the completion of Stage Four. The Redeveloper will be responsible for the design of (a) all of the Implementing Public Improvements, and (b) the Core Public Improvements, except to the extent provided in Section [4.04] below;

Stage Two: The applications for the necessary discretionary permits will be prepared by the Redeveloper for the Implementing Public Improvements and for the Core Public Improvements to the extent provided in Section [4.04] below and filed and prosecuted with the governmental agencies with jurisdiction to review and, as applicable, to approve such applications;

Stage Three: The funding process for the Public Improvements shall be finally determined. For the Core Public Improvements, the process is set forth in Section [4.04] below. For the Implementing Public Improvements, the process is set forth in Section [4.06(a)] below and includes a submission and review process with the City. At the conclusion of such City process, a Final Reimbursement Budget (as referred to in Section [4.06(a)] below) will be established;

Stage Four: The Redeveloper will complete the construction drawings for all of the Public Improvements for all of the Steps in the manner and to the extent provided in the Benchmark Schedule. Thereafter, the Redeveloper will close the purchase of the City Parcel required for Step 1, but only after fulfilling the requirements for the completion of such construction drawings for the Public Improvements in all of the Steps and demonstrating compliance with the standards set forth in Section [4.06] below;

Stage Five: The Redeveloper, at the Redeveloper’s cost and expense, will cause the Implementing Public Improvements to be constructed for the related Step;

Stage Six: Upon completion of the Implementing Public Improvements in the manner identified in Section [4.06] below and satisfaction of the other matters that are pre-conditions thereto (as set forth in Section [4.06(a)] below), the City will acquire the same and will reimburse the Redeveloper in accordance with, and

subject to the limitations set forth in, Section [4.06(a)(iii)] below. The City recognizes that the acquisition and reimbursement for the Public Improvements will initially be made, if requested by the Redeveloper, in respect of the Non-Parking Public Improvements (as defined in Exhibit A) when the requirements of Section [4.06(d)] below are satisfied and, as to the Parking Public Improvements (as defined in Exhibit A) at such later date as the requirements of Section [4.06(e)] below are satisfied.

**Section 4.03. The Financial Standards-General.** In addition to the proceeds from the sale of the City Parcels, the funding of the Public Improvements is to be made from the following sources: (1) Federal and State grants (“Federal and State Funding”), (2)(a) the net revenue from the Parking Public Improvements for the Step, and (2)(b) a portion of the 121A Payments from the redeveloped properties in the Redevelopment Project which are parties to 121A Agreements as contemplated under this Agreement (the “Redevelopment Properties”) or, if the 121A Agreements have been terminated by the City, from ad valorem real estate taxes. Increased real estate taxes from the properties in the DIF District that are not part of the Redevelopment Properties shall not be utilized to fund the City’s purchase of the Public Improvements and shall be utilized by the City to improve the balance of the DIF District and generally to maintain the DIF District. In addition, the Redevelopment Properties shall fund a DIF Maintenance Fund as described in Section [4.03(e)] herein.

(a) Timing of the Determination of Funding Sources. As provided in Section [4.04], the City has begun the process of securing the Federal and State Funding with the assistance of the Redeveloper. The City and the Redeveloper also have agreed in Section [4.04] on the dates by which the Federal and State Funding must be in place or either party may terminate this Agreement. In respect of each of the Steps, revenues under items (2)(a) and (2)(b) above will be determined prior to the time of the purchase of the applicable portion of the City Parcels for the Step in question in the manner determined under Section [4.06] below.

(b) Payments under 121A Agreements; Timing of Payments. The amounts to be paid under clause (2)(b) of this Section [4.03] will be paid under one or more agreements substantially in the form of the Chapter 121A Agreement attached hereto as Exhibit I (the “121A Agreements”) that will provide the City with a revenue stream from the Redevelopment Properties in the Step and will include the components described in Section [4.03(d)] of this Agreement. Payments under the 121A Agreements as set forth in the Final Reimbursement Budget shall be made to the City on a quarterly basis, with the first installment on a building-by-building basis due and payable on the first to occur of (i) the substantial completion of each building within the applicable Step, or (ii) the end of the 36<sup>th</sup> month following the land closing for such Step.

Between a land closing and the commencement of 121A Payments as described above, the Redeveloper shall make payments to the City on a quarterly basis, and in a manner to avoid any gaps in or cessation of the City’s normal receipt of the following (and which shall be the sum of): (a) real estate taxes that would otherwise have been due and payable on the Redevelopment Properties that are being redeveloped as part of the Step in question had they not been redeveloped; (b) the net revenues that the City would have realized for such period had the public parking facilities on the City Parcel included in the Step in question remained in

operation, and (c) the personal property taxes that would otherwise have been due and payable in respect of the occupants of the Redevelopment Properties that are being developed as part of the Step in question. For purposes of determining such amount, the amounts so assessed (or in the case of the public parking facilities, the net amount collected) for the fiscal year most recently ended shall be utilized and shall be confirmed in writing at each closing.

(c) Financial Components of the 121A Agreements. The 121A Agreements shall contain provisions for both 121A Payments and DIF Maintenance Fund Payments.

(d) Components of the 121A Payments. There are two components of the 121A Payment: (i) the New Growth Tax Component, and (ii) the Special Assessment Component. Each of the “New Growth Tax Component” and the “Special Assessment Component” are described in Section 12 of the Development Plan. The rates for 121A Payments within each Step shall be uniform for each land use within each Step. For any proposed land use in a Step, the sum of the New Growth Tax Payment and Special Assessment Payment shall equal not less than seventy-five percent (75%) of the amount the proposed use would pay to the City in ad valorem real estate taxes in a year of its operation (the “Projected Real Estate Tax Payment”). The City, acting through the Mayor, shall provide the Projected Real Estate Tax Payment per square foot by land use, which will be determined at the time of the Financial Submission and fixed at that amount for the term of the 121A Agreements for that Step.

(i) The minimum charge per square foot of the New Growth Tax Payment Component is presented in Section 12 of the Development Plan by land use.

1. The New Growth Tax Payment shall be established in the Financial Submission for the Step and escalated at twelve and one-half percent (12.5%) every five years from the date of the Step’s Closing.

2. The first dollars of the New Growth Tax Payment shall be used to compensate the City for property tax revenues it currently receives on the Redevelopment Properties included in the Step (the “Existing Real Estate Tax Payment”) (as escalated under clause (i)(1) above). The Existing Real Estate Tax Payment will be determined at the time of the Financial Submission. The City, acting through the Mayor, will, upon the Redeveloper’s request, provide the Redeveloper with its reasonable estimate of the Existing Real Estate Tax Payment as well as its reasonable estimate of the amounts payable under the second paragraph of Section **[4.03(b) and 4.03(d)]** of this Agreement.

3. After deduction of the Existing Real Estate Tax Payment, thirty-five percent (35%) of the residual New Growth Tax Payments (as escalated under clause (i)(1) above) shall be allocated to the City for the City’s general fund and general municipal purposes. From the Redevelopment Properties in the Step, in the aggregate, a minimum of Five Hundred Thousand Dollars (\$500,000) will be provided to the City from the thirty-five percent (35%) portion of the residual New Growth Tax Payments.

4. After deduction of the Existing Real Estate Tax Payment and payment of thirty-five percent (35%) of the residual New Growth Tax Payment, sixty-five percent (65%) of the residual New Growth Tax Payments (as escalated under clause (i)(1) above) shall be allocated to fund the purchase of the Public Improvements for the Step.

(ii) The anticipated charge per square foot of the Special Assessment Payment Component is presented in Section 12 of the Development Plan by land use.

1. The Special Assessment Payment shall be established in the Financial Submission for the Step and will be fixed – it will not escalate over time.

2. The Special Assessment Payment (along with the portion of the New Growth Tax Payment referred to in clause (i)(4) above) shall be allocated to fund the purchase of the Public Improvements for the Step.

(iii) If applicable, and in the event the buildings included in the Step are part of the Additional Development Opportunity, the sixty-five percent (65%) of the residual New Growth Tax Payment and the Special Assessment Payment shall be used by the City to fund (1) the Additional Payment, and (2) subject to the limitation of Section **[2.04]** above, the cost of the Public Parking Improvements required to service the buildings in the Additional Development Opportunity.

(e) The DIF Maintenance Fund Payment. The DIF Maintenance Fund Payment is in addition to the 121A Payments and shall be used by the City to pay for any increases in municipal services, repairs or maintenance of public infrastructure or amenities within the DIF District. The base payment for each Step and Additional Development Opportunity shall be Fifty Cents (\$0.50) per gross square foot of building area, increased by CPI from the date of this Agreement. The DIF Maintenance Fund Payment will commence on the Redevelopment Properties when the City pays the initial Reimbursement Amount for the Step. The DIF Maintenance Fund Payment, once it has become due and payable, will escalate at twelve and one-half percent (12.5%) every five (5) years for that Step. Such payment shall be made on a quarterly basis in conjunction with the 121A Payments for the term of the 121A Agreements. Section 12 of the Development Plan attached illustrates how these revenues are calculated.

(f) City Election to Change Tax Assessment. Under the terms of each of the 121A Agreements, the City, annually until exercised, shall have the election following the fifteenth (15<sup>th</sup>) anniversary of the date of each 121A Agreement, on no less than one hundred eighty (180) days' notice to the Redeveloper, (a) to convert the 121A Payments due thereunder for the balance of the term of the 121A Agreement to ad valorem real estate taxes on the property in question, or (b) to terminate the 121A Agreement and to revert to such ad valorem real estate taxes.

(g) Shortfalls and Surpluses in Reimbursement Amount. The City recognizes that each Step will bear the appropriate cost of completing the Implementing Public Improvements for that Step, and that the revenue from that Step may not be sufficient to support

the City Bonds for the Implementing Public Improvements for that Step, and that the Redeveloper is obligated to fund that shortfall (the “Shortfall”). In the event that the revenue from a Step is more than sufficient to support the City Bonds for the Implementing Public Improvements for that Step, there will be a surplus of 121A revenue (the “Surplus”). In such event, the Surplus can be used to support bonds to reimburse the Redeveloper for some or all of the Shortfall from an earlier Step, with such reimbursement amount included in the Final Reimbursement Budget for the applicable later Step, or the Surplus can be used to fund a Shortfall in a subsequent Step with such application included in the Final Reimbursement Budget for that Step.

Surplus 121A revenue derived from the City obtaining Additional Grant Funds will not be available to fund Shortfalls in prior or subsequent Steps.

The Additional Development Opportunity shall be accounted for separately, but the same principles relating to Shortfalls and Surpluses and their application shall apply. In the event that the revenue from Step 1 of the Additional Development Opportunity is insufficient to support the City Bonds to reimburse the Additional Payment and support public parking required for the Additional Development Opportunity, this shall be a Shortfall. Only Surplus revenues derived from the Additional Development Opportunity can be applied to an Additional Development Opportunity Shortfall.

(h) Parity of 121A Payments. The City recognizes that the 121A Payments, in substantial measure, are intended to underwrite the City’s cost in funding the Implementing Public Improvements and that the 121A Payments, for a number of years, are anticipated substantially to exceed the ad valorem real estate taxes that the City could levy on new development such as the Redevelopment Project. The City would, however, have the authority under Chapter 121A, if the applicable statutory and regulatory requirements were satisfied and, if the City so elected, to grant favorable tax treatment to other owners in the New Quincy Center Area which, if at a rate more favorable than the 121A Payments paid or, based upon the Financial Submission, to be paid by the Redeveloper, could undermine the financial stability of the Redevelopment Properties and conflict with the purposes of the URDP. Therefore the City has agreed that the tax payments under the 121A Agreements or Development Covenants entered into by the City with other owners of properties in the New Quincy Center Area put to the same use as the applicable use within the Redevelopment Project (other than with the Excluded Owners as defined in Exhibit A, which may be at such rates as the City in its sole discretion shall determine) shall be no less than those in the 121A Agreements entered into, or to be entered into, with the Redeveloper for the same use for a period of eleven (11) years commencing on the date of issuance of the COC for Step 1 of the Redevelopment Properties (the “Parity Period”).

In the event that the City breaches this Section of the Agreement, the City shall have a thirty (30) day period to cure such breach, commencing on the date of notice from the Redeveloper. In the event that the City fails to cure such breach within the cure period, then, for (a) the remainder of the Parity Period, or (b) as long as such breach continues, whichever is shorter, the 121A Payments due hereunder shall be recalculated to make them consistent with the agreement(s) entered into by the City with the other owner of property put to the same use in the New Quincy Center Area.

The Redeveloper acknowledges that (1) the City cannot require a third party to form a 121A corporation. Rather, if a third party desires to use any of the Public Parking Improvements under the URDP and purchased by the City hereunder, the City may, alternatively, require such third party to execute a Development Covenant but which would be subject to foregoing parity provisions; and (2) the 121A Agreements executed by the Redeveloper or its affiliate have knowingly been entered into at rates higher than current ad valorem real estate taxes, with full advice of counsel, and with the full expectation and agreement that the obligation to pay such higher payments are binding and enforceable contractual obligations of the 121A corporation and its successors and assigns.

(i) Other 121A Matters. A 121A corporation must own the fee interest in the Redevelopment Property (both the City Parcels and all privately-acquired property) until the termination of the 121A Agreements for each Step. All users within the Redevelopment Project, regardless of their tax status for payment of ad valorem real estate taxes under applicable law, shall be obligated to make 121A Payments under any ground lease or sub-ground lease.

**Section 4.04. Funding for the Town Brook Culvert Restoration; Construction of the Cliveden Bridge Extension and Hancock Common.** The Redeveloper and the City have identified, as part of the Public Improvements, three (3) separate improvements that will benefit the New Quincy Center Area generally, and for which the City will seek Federal and State Funding. These components, as identified in the Development Plan, consist of (a) the reculverting of Town Brook to the south side of the Concourse (the “Town Brook Culvert Restoration”), (b) the reconstruction of Hancock Common, and (c) the construction of a bridge above the MBTA rail line connecting Burgin Parkway and Cliveden Street (the “Cliveden Bridge Extension”) (collectively, the “Core Public Improvements”), each as identified in the Development Plan. The aggregate cost of the Core Public Improvements presently is estimated to be Fifty Million Dollars (\$50,000,000). The remaining Public Improvements (i.e., the “Implementing Public Improvements”) are intended to be funded through the issuance of City Bonds, the debt service on which will be paid by the revenues identified in items [(2)(a)] and [(2)(b)] in the first paragraph of Section [4.03].

The City has agreed diligently to pursue Federal and State Funding for the Core Public Improvements. The City expressly will not be obligated to utilize any City funds for the design, permitting or construction of the Core Public Improvements unless it elects to do so in its sole discretion. Further, the City may determine, in its sole discretion, the manner of allocating the Federal and State Funding as among the Core Public Improvements. Notwithstanding the Redeveloper’s obligations hereunder, the City has received a grant and is utilizing the same to fund a portion of the design costs of the Hancock Common improvements. In consultation and coordination with the City’s own efforts, the Redeveloper shall retain qualified professionals (Akerman, Senterfitt & Eidson, P.A. hereby being deemed qualified) to design and to prepare the applications and supporting documents necessary to design and to permit: (1) the Town Brook Culvert Restoration, (2) the Cliveden Bridge Extension, and (3) to the extent not included in the grant, Hancock Common; however, because of the public bidding requirements for the selection of the consultants to prepare the construction plans and specifications, the City acknowledges that the Redeveloper’s design efforts will be directed to the preparation of the supporting documentation necessary to make application for Federal and State Funding and the permits therefore.

In respect of the costs of the Redeveloper for the design and permitting of the Town Brook Culvert Restoration, to the extent the Redeveloper can be reimbursed for such costs from the Federal and State Funding, the City will cooperate with the Redeveloper in securing that reimbursement as long as such reimbursement does not diminish the funds that would otherwise be available for the construction of the Town Brook Culvert Restoration. Insofar as the design and permitting of the Cliveden Bridge Extension and Hancock Common is concerned, if the Federal and State Funding permits reimbursement to the Redeveloper for such costs, the City (acting through the Mayor and the Director of Urban Redevelopment) will have the sole discretion whether to utilize the Federal and State Funding for those purposes if they also may be applied for other public purposes. The Redeveloper's costs for the Core Public Improvements shall not be eligible for inclusion in any Reimbursement Budget.

The City and the Redeveloper have agreed that the funding commitment of Federal and State Funding for the Town Brook Culvert Restoration must be in place prior to January 1, 2012 and its construction commenced by September 1, 2012 (with substantial completion scheduled to occur prior to Closing 1). The Redeveloper has retained, at the Redeveloper's cost and expense, consultants with expertise in securing Federal and State Funding and shall, under the supervision of the Redeveloper, make such consultants available to the City to assist the City in pursuing the Federal and State Funding. The Redeveloper timely shall provide the City with title to the portion of the intended layout of the Town Brook Culvert Restoration not now in public ownership prior to the time at which the City commences the installation of the Town Brook Culvert Restoration and sufficiently in advance to allow the City to complete such work prior to Closing 1.

The funding commitment for both Hancock Common and the Cliveden Bridge Extension must be in place prior to June 30, 2012. If either or both of these funding commitments are not in place by said date, the Redeveloper will have the right to extend Closing 1 on notice to the City and without the need to make any additional deposit. The exercise of such extension right shall not modify the right of extension of the Redeveloper set forth in Section **[5.01]**, but in no event shall commencement of construction of Step 1 occur later than January 1, 2015.

The City, upon sixty (60) days notice, may terminate this Agreement if the funding commitment for any of the Town Brook Culvert Restoration, the Hancock Common improvements or the Cliveden Bridge Extension is not in place prior to January 1, 2014, unless the Redeveloper during such sixty (60) days waives any pre-closing requirement with respect to such matters. In the event of such termination, neither party shall have any rights against the other party under this Agreement, except as provided pursuant to the provisions hereof which expressly survive termination. Once the funding commitment for Hancock Common and for the Cliveden Bridge Extension is in place, the City and the Redeveloper shall use their efforts to cause such improvements to be constructed as expeditiously as possible using such funds and with a goal, but not a closing requirement or pre-condition, of completion prior to the completion of construction of Step 1 by the Redeveloper. No extension hereunder shall change the outside date for the Redeveloper to commence Step 1 by no later than January 1, 2015.

In the event the City obtains sufficient Federal and State Funding for the Town Brook Culvert Restoration by January 1, 2012, but fails to commence construction thereof by September 1, 2012, with substantial completion scheduled to occur prior to Closing 1, then,

unless such delays have been caused by a Force Majeure Event, the Redeveloper shall have the rights set forth in this paragraph. Such rights shall become operative, however, only if the following conditions previously have been met by the Redeveloper: (1) the Redeveloper has completed the overall design of the Town Brook Culvert Restoration in sufficient detail for all required permit applications by February 1, 2011; (2) the Redeveloper has provided the City with evidence of the Redeveloper's land control for all of the non-City land necessary for such work as aforesaid by June 1, 2011, and has delivered title to such land to the City by June 1, 2012; (3) the Redeveloper has applied for all required permits for such work by June 15, 2011, and has secured such permits by June 1, 2012; and (4) the City has approved the Redeveloper's Financial Submission. If the foregoing conditions have been met, but the City still has failed to commence construction by September 1, 2012 (other than for a Force Majeure Event), then the Redeveloper, by notice to the City given no later than October 1, 2012, may elect either to (a) terminate this Agreement and to receive a refund of its deposit, or (b) take over such work and to complete the same, in which event the City will cooperate in facilitating the Redeveloper being able to use the Federal and State Funding to complete such work. In addition, the time for Closing 1 shall be extended for such reasonable time as is required for the Redeveloper to take over and to complete such work, not to exceed twelve (12) months. If the City timely commences the Town Brook Culvert Restoration Work hereunder but, for reasons other than a Force Majeure Event, suspends the same for more than sixty (60) consecutive days, the Redeveloper may also take over such work as described in (b) above upon thirty (30) days notice to the City.

If Federal and State Funding is insufficient to pay all of the cost of the Core Public Improvements, the City and the Redeveloper agree that if there is off-setting non-City public funding available to pay for part of the cost of the Implementing Public Improvements, then, upon reasonable terms to be determined by the Mayor and the Director of Urban Redevelopment, a portion of the City Bonds contemplated by Section [1.05] to purchase the Implementing Public Improvements also could be used by the City to reimburse the Redeveloper for funds expended by the Redeveloper, at its election, for the Core Public Improvements. Such terms shall include, without limitation, that (a) the Redeveloper has first expended its own funds to construct the Core Public Improvements, (b) the 121A Payments from Step 1 will pay the debt service on all City Bonds issued for both the Core Public Improvements and the Implementing Public Improvements, (c) the amount of City Bonds which can be used for such purposes shall not (i) exceed Fifty Million Dollars (\$50,000,000), or (ii) increase the Reimbursement Amount for Step 1, and (d) such determination shall be made at the Financial Submission stage for Step 1. In implementing these arrangements, for purposes of reallocating the proceeds of City Bonds to pay for Core Public Improvements, the Mayor shall establish such further criteria as, in his reasonable judgment, are appropriate to insure that such reallocation shall have no greater impact on the finances of the City than those otherwise anticipated under the terms of this Agreement, and the parties shall execute such mutually-agreeable amendments to this Agreement as may be appropriate to conform the use of the terms Core Public Improvements and Implementing Public Improvements to such Mayoral approval under this paragraph.

**Section 4.05. Construction of Implementing Public Improvements.** The City and the Redeveloper acknowledge that the public parking garages to be included in the Public Improvements of the Redevelopment Project (and essential to the development and occupancy of the Redevelopment Project), in all instances, will be integrated in buildings and structures that will also be devoted to private use; likewise, the utilities serving these public/private buildings

and structures cannot be separately constructed. The relocation and creation of new roadways will involve both public land and private land of the Redeveloper and it is impractical to divide the construction of these integrated components. Accordingly, the City recognizes that the design, permitting and construction of the “Implementing Public Improvements” cannot be undertaken separately from the private improvements that will be simultaneously constructed with them and, for that reason, the Redeveloper is the appropriate party to undertake the design, permitting and construction of the Implementing Public Improvements at the same time it designs, permits and constructs the components of the Development Plan that are to be privately used (the “Private Improvements”).

(a) Design Standards for Implementing Public Improvements. Attached to this Agreement as Exhibit C are criteria which are to serve as the design standards for the public parking garages and public open space for the Implementing Public Improvements (the “Design Standards”). The Design Standards are intended to assure both the City and the Redeveloper that the quality, appearance and functionality of the Implementing Public Improvements and the components of the Development Plan that are to be privately used both are consistent with those found in the projects and specifications referred to in the Design Standards.

(b) City Consultants. Since the City will be purchasing the Public Improvements, the Redeveloper recognizes and the City acknowledges that the City will require competent consultants with various expertise inter alia (i) to participate in the Redeveloper’s design, pre-construction and construction activities for the Public Improvements, (ii) to review the Financial Submission as defined in Section [4.06(b)], (iii) to assist with various permit reviews and applications for both Public Improvements and Private Improvements, (iv) to review, inspect, sign-off and advise the City during construction of both Public Improvements and Private Improvements, and (v) generally to assist the City with its performance hereunder (the “City Consultants”). The Redeveloper will fund an account with the City (the “Consultant Escrow Account”), the funds in which shall be utilized by the City to retain the City Consultants. The City will retain the City Consultants, provided that the Redeveloper will have the right to object to (but not to disapprove unless the Redeveloper is in litigation with the proposed City Consultant) the City’s proposed selection if the Redeveloper has good faith concerns about the capacity or the competence of one or more of the proposed City Consultants. Counsel for the City shall not be deemed a City Consultant. The Redeveloper hereby approves Faithful & Gould, VHB, Inc., W-ZHA, LLC, Walker Parking Consultants, and Halverson Design Group as qualified City Consultants. The City will keep the Redeveloper generally informed of the City’s plans for staffing in order to review the Redevelopment Project and the City’s strategy for implementing reviews, inspections, sign-offs and the like during construction, and to interface with the City Consultants. The City will provide the Redeveloper with an estimated budget for the City Consultants’ activities for the Redeveloper’s review and input (but not approval) and the Redeveloper will provide the funding in accordance with the estimated budget. Within ten (10) business days following the Mayor’s execution of this Agreement, the Redeveloper shall fund Two Hundred Fifty Thousand Dollars (\$250,000) into the Consultant Escrow Account. Such amount shall be replenished within thirty (30) days of a request from the City (or sooner, if necessary for the City to retain a particular consultant) whenever the balance in the Consultant Escrow Account falls below Fifty Thousand Dollars (\$50,000). At the time the Redeveloper makes application for the building permits for the Implementing Public Improvements, the Redeveloper shall receive a credit against the Private Improvement application fees otherwise

payable for the amounts paid into the Consultant Escrow Account. If any funds remain in the Consultant Escrow Account after the completion of all of the Steps and after the completion of and final payment for the City Consultants' services, then any such funds for which the Redeveloper has not yet received such a credit shall promptly be repaid to the Redeveloper. If the Redeveloper defaults hereunder and this Agreement is terminated, any funds remaining in the Consultant Escrow Account shall be retained by the City as an additional deposit hereunder.

(c) Activities of the City Consultants. The City Consultants shall meet regularly with the Redeveloper, its representatives, professionals and consultants (and in the case of determining the probable cost of construction, its construction personnel) to review the plans and specifications for the Public Improvements as they proceed through the schematic, design and construction phases for the purpose of assuring the City that they are consistent with the Design Standards, and are designed with due considerations of impacts associated with repair and maintenance, security (as applicable) and operational factors and durability of materials (collectively, the "Design Operational Standards"). The City Consultants responsible for monitoring consistency with the Design Standards and the Design Operational Standards shall provide a written assessment of the consistency of such materials with the Design Standards and the Operational Design Standards (the "Design Assessment"): (i) at the time the Financial Submission is made under Section [4.06(b)], (ii) at the time the construction drawings for the public parking garages, the underground utilities and the public spaces are seventy-five percent (75%) completed, and (iii) when construction drawings are ready to be distributed for bid solicitation. In terms of the pricing of construction of the Implementing Public Improvements and the competitive process used to secure them, the City Consultants with expertise in evaluating construction costs shall evaluate the bids received and the manner in which they are solicited by the Redeveloper to assure that commercially reasonable standards are being observed by the Redeveloper in soliciting bids for construction. The City Consultants will likewise provide a written assessment at the time the applicable Financial Submission is made and at the applicable Closing for the purpose of assuring the City that such commercially reasonable standards have been observed by the Redeveloper (the "Construction Bidding Assessment"). At least one hundred eighty (180) days prior to the Closing for Step 1 (and, as applicable, prior to the Closing for subsequent Steps), the Redeveloper and the City, acting through the Mayor and the Director of Urban Redevelopment, shall establish standards for change orders to the Plans and Specifications for the Implementing Public Improvements, requisition procedures and other provisions necessary for construction administration and tender of delivery of the Implementing Public Improvements for acquisition by the City. Such matters shall be addressed in accordance with the provisions of Section [3.04] of this Agreement. The City Consultants shall also confirm that all demolition, geotechnical, environmental and other like costs shall be allocated between the City and the Redeveloper, as has been agreed to between the parties, as follows: (i) if such costs are with respect to a building that includes both Public Improvements and Private Improvements, the costs shall be allocated based on the pro rata square footage of the Public Improvements and Private Improvements, respectively; and (ii) if the costs are with respect to only Public Improvements or only Private Improvements, the costs shall be allocated, in full, to the applicable party.

**Section 4.06. The Construction Standard; Determination of Reimbursement Budget; Timing of Reimbursement.** Except in respect of the Core Public Improvements (for which provision is made in Section [4.04]), the Redeveloper shall be obligated to undertake the design,

permitting and the construction of the Public Improvements at an agreed upon “not to exceed” price initially established at Financial Submission and updated at the time of Closing 1 pursuant to Section 6.01(a)(24) (or if less, the actual cost). The Redeveloper will be responsible for all “cost overruns” of the Final Reimbursement Budget, as so updated.

(a) Submission of Reimbursement Budget. Prior to the conveyance of any portion of either of the City Parcels for the Step in question and as part of Stage 3 described in Section [4.02], the Redeveloper and the City shall undertake the following process in order to establish, to the City’s reasonable satisfaction (acting through the Mayor and the Director of Urban Redevelopment), that public finance arrangements necessary to fund the applicable Public Improvements are attainable (the “Final Reimbursement Budget”).

(i) Pre-requisites to the Making of a Financial Submission. As a pre-requisite to the commencement of this process (the “Pre-Requisites”), the following shall be completed (and where a Pre-Requisite requires action by a City Consultant or city advisor, the Mayor will, when requested by the Redeveloper, cause such City Consultants or advisors to undertake the applicable study, assessment or investigation and promptly provide the study, assessment or investigation in order to enable the Redeveloper to have the benefit of the information required to fulfill such Pre-Requisite):

1. All discretionary permits for the Step in question shall have been issued. The discretionary permits for the Redevelopment Project shall be identified by the Redeveloper and confirmed by the Director of Urban Redevelopment prior to the filing of the Environmental Notification Form for the Redevelopment Project with MEPA (with appropriate modifications as the Redeveloper and the Director of Urban Redevelopment shall jointly determine);
2. The MEPA Process shall have been completed in respect of the Step in question;
3. The Planning Board shall have issued a COC for the Step in accordance with the requirements of the URDP, including without limitation, a Construction Management Plan, an Interim Parking Management Plan, and a Parking Management Plan (as defined in Section 15.23 below) for the future public garages, and, for Step 1, the Redeveloper shall have paid to the City an additional deposit in the amount of Five Hundred Thousand Dollars (\$500,000) as required pursuant to Section [1.04(b)] above;
4. The Design Development Documents for the Public Improvements (as referred to in Exhibit G) shall have been determined by the City’s Consultants to be consistent with the Design Standards and the Operational Design Standards as described in Section [4.05(c)] and the City’s Consultants shall have delivered to the City a Construction Bidding Assessment;

5. The Mayor and the Director of Urban Redevelopment shall have approved the Interim Parking Management Plan, the Parking Management Plan, and the Construction Management Plan, including the re-routing of traffic and the payment arrangements for foregone public parking revenues as referenced in Section 4.03(b);

6. The City shall have received an updated schedule of projected net revenues from the public parking garages to be included in the Step as part of the Public Improvements (the “Projected Net Parking Revenues”) prepared by a recognized national parking consultant which shall be either Desman Parking Consultants (“Desman”) or another firm with equivalent experience and qualifications reasonably acceptable to the Mayor and the Director of Urban Redevelopment and consistent with the conservative annual parking revenue projections and methodology contained in the parking study entitled “Final Report, Quincy Center Redevelopment Parking Demand Study, Quincy, MA” dated June 2, 2009 by Desman (the “Desman Study”), with such material to take into account any then existing current operating data for Parking Public Improvements constructed for a prior Step. Such updated schedule must also be reviewed and approved by the City’s independent parking consultant, which shall be either Walker Parking Consultants or another firm with equivalent experience and qualifications; and

7. The City’s bond advisors shall have confirmed in writing to the Mayor that the Redeveloper’s projection of bond interest rates and underwriting costs are consistent with commercially reasonable anticipated market conditions for general obligation bonds of the City and calculated using the methodology illustrated in Section 12 of the Development Plan. If requested by the Redeveloper, the Mayor shall request the City’s bond advisors to review the Redeveloper’s projections prior to the Redeveloper making its Financial Submission, to determine whether such projections are so consistent and, if the City’s bond advisors, in their professional judgment, conclude otherwise, in communicating such conclusion to the Mayor and the Redeveloper, the City’s bond advisors shall provide advice of their assessment of the anticipated market conditions for such bonds in respect of projected interest rates and underwriting costs.

The City’s bond advisors shall make reasonable efforts to provide such information to the City and the Redeveloper within thirty (30) days of such request. If the City’s bond advisors deem the Redeveloper’s projections not to be commercially reasonable, they shall notify the City and the Redeveloper of the projections which they determine are reasonable. Thereafter, the Redeveloper shall have a period of thirty (30) days in which to notify the City whether the Redeveloper elects (a) to accept such determination and to adjust the requested bond amount, or (b) to withdraw any then pending request. The parties contemplate and agree

that the Redeveloper and the City's bond advisors shall continue to consult with each other until either (a) or (b) occur.

With respect to all future Steps after Step 1, said determination of the City's bond advisors shall also be informed by, and shall take into account, how the assumptions and projections which were used in a prior Step actually performed.

The Redeveloper may not make a formal Financial Submission hereunder unless the Mayor has received a positive consistency determination from the City's bond advisors as aforesaid.

(ii) Submission of Proposed Reimbursement Budget and Supporting Documentation. Following satisfaction of the Prerequisites, the Redeveloper shall submit to the Mayor and the Director of Urban Redevelopment for their review and approval as set forth in this Section [4.06(a)] a proposed Reimbursement Budget for the Implementing Public Improvements in the Step for which the Redeveloper is seeking reimbursement under this Agreement (the "Proposed Reimbursement Budget"). (As noted in Section 4.03(g) above, addressing Shortfalls and Surplus, a Final Reimbursement Budget for Step 1 or Step 2 may reflect one or more notes indicating the Redeveloper's plans to address any Shortfall or Surplus).

In addition, the Proposed Reimbursement Budget shall include the materials and information listed in Section 11 of the Development Plan entitled: "Exhibits Required for Financial Submission," plus such other exhibits the Mayor and the Director of Urban Redevelopment deem reasonably necessary.

(iii) Limitations. The items within the Proposed Reimbursement Budget shall be limited to the costs associated with the Implementing Public Improvements and shall meet the following additional standards:

1. Redeveloper Equity. The Redeveloper shall demonstrate that, at the time of the Closing for the particular Step, the Redeveloper will have invested (or shall be committed to invest) as equity at least twenty percent (20%) of the total cost of the Redevelopment Project;

2. Construction Cost Limitations. The schedule of hard and soft costs shall meet the following standards:

(a) Fees and Interest. (i) The development fee reflected therein shall not exceed three percent (3%) of hard costs, and (ii) the soft costs (including such development fee) shall not exceed twenty-two percent (22%) of hard costs excluding solely (x) costs for appeals, (y) consultant fees in securing Federal and State Funding, and (z) financing commitment fees and interest payments. The Proposed Reimbursement Budget shall not include (i) interest or returns paid on equity, (ii) interest on loans from related parties or investors in the Redeveloper entity or its affiliates

to the extent they are made as equity members and not separately as a secured, first mortgage lender to the Redevelopment Project, (iii) interest paid on mezzanine debt representing more than twenty percent (20%) of the total costs of the Implementing Public Improvements, or (iv) any interest paid or owed on private debt which financed the Implementing Public Improvements first accruing after the substantial completion of such Implementing Public Improvements.

(b) Contingencies. There will be no contingency for LEED requirements or so-called deal contingency. Each of the hard cost contingency and the soft cost contingency shall not exceed ten percent (10%).

(c) Construction Management Fee. The construction management fee shall be consistent with commercially reasonable fees charged for similar large-scale public projects in the Greater Boston area at or about the time of the Financial Submission;

3. Ratio of Costs of Private Improvements to Implementing Public Improvements. There shall be reflected in the Proposed Reimbursement Budget an estimate of the costs of the design and construction of the Private Improvements in the Step, including all soft costs and land costs associated therewith. The ratio of said costs of the Private Improvements to the comparable costs of the Public Improvements in the Step being paid for by the City, including, for purposes of this calculation, the Additional Grant Funds, shall not be less than 4 to 1. Payment by the City for the Public Improvements shall, in no event, be more than the amount set forth in the Final Reimbursement Budget for that Step [ADD EXAMPLE PRE-EXECUTION].

4. Allocable Land Cost. Private land costs eligible for public sector reimbursement (the “Allocable Land Cost”) shall be fixed for each Step as set forth on Exhibit E. Further, the Allocable Land Cost for the entire Redevelopment Project shall not exceed Thirteen Million Eight Hundred Thousand Dollars (\$13,800,000).

(iv) Additional Submissions. In addition to the Proposed Reimbursement Budget, the following items also shall be submitted (the “Additional Submissions”):

1. For Step 1, the identification of sources of Federal and State Funding available to be applied to the costs of the construction of the Core Public Improvements, including an update on the status of such funding if not yet finally secured;

2. A schedule of the payments to be made under the 121A Agreements for the Redevelopment Properties proposed to be redeveloped as part of the Step (which shall be calculated on a thirty (30) year amortization schedule for the City Bonds, regardless of which payment schedule the City may ultimately select for the City Bonds) and drafts of the proposed 121A Agreements substantially consistent with the form of those Agreements attached hereto as Exhibit I;

3. Evidence that the Redeveloper owns or controls all of the real estate (other than the City Parcels) required for the Step for which the Redeveloper is making such submission;

4. The Redeveloper's proposed computation of the sufficiency of the revenue stream of 121A Payments, and the Projected Net Parking Revenues (collectively, the "Anticipated Revenue Stream") to cover the debt service on the projected City Bonds under clause (iv) (2) above (the "Calculated Debt Service") and the other sums referred to in Section **[4.03(d)]** of this Agreement which are to be funded from the Anticipated Revenue Stream;

5. The Redeveloper's proposed reconciliation of the cost of the Public Improvements for the Step in question with the Federal and State Funding and the anticipated amounts of the City Bonds (as computed by the methodology in Section 12 of the Development Plan) and any other sources of funding available for these purposes; and

6. If the Step includes Additional Development Opportunity, the projected 121A Payments attributable to the Additional Development Opportunity and corresponding Reimbursement Amount to be supported thereby and whether the Reimbursement Amount relates, in whole or in part, to (i) additional public parking, or (ii) reimbursement to the Redeveloper on account of the Redeveloper's Additional Payment under Section **[1.03]**. The standards set forth in Section **[4.03(d)(iii)]** shall be applicable to the Reimbursement Amount requested for the Additional Development Opportunity included in the Step if additional parking is to be constructed in connection with the buildings included in the Additional Development Opportunity.

7. For Step 1, the Redeveloper shall have paid to the City an additional deposit in the amount of Five Hundred Thousand Dollars (\$500,000) as required pursuant to Section **[1.04(c)]** above

(b) Review of Submissions. Following the City's receipt of the Proposed Reimbursement Budget, the Additional Submissions, a Design Assessment and a Construction Bidding Assessment (the "Financial Submission"), the City, acting through the Mayor and the Director of Urban Redevelopment, and with the advice of City's Bond Counsel and bond advisors (acting pursuant to Section **[4.06(a)(i)(7)]**), will, in good faith, review the same for a

period of sixty (60) days, during which time the City and the Redeveloper and their representatives will consult. If the City, acting through the Mayor, finds that: (i) the Proposed Reimbursement Budget and supporting documentation complies with the requirements set forth in Section **[4.06(a)(i)]** above, (ii) the Design Assessment and the Construction Bidding Assessment issued by the City Consultants under Section **[4.05(c)]** respectively make the consistency determination contemplated under Section **[4.05(c)]**; and (iii) with respect to any Step after Step 1, no default has occurred and is continuing under any 121A Agreement and all 121A Agreements required for a Step are still in effect (a “121A Default”), then the Proposed Reimbursement Budget shall become the Final Reimbursement Budget. If the City, acting through the Mayor, objects to the Financial Submission, then, within sixty (60) days of its receipt of the Financial Submission, the City, acting through the Mayor, shall notify the Redeveloper of any objections the City may have to the Proposed Reimbursement Budget or any other aspect of the Financial Submission, including the reasons therefor in sufficient detail for the Redeveloper to address.

The City’s objections shall be based on one or more of the following factors: (i) the Proposed Reimbursement Budget and supporting documentation fail to comply fully with the requirements set forth in Section **[4.06(a)]** above, including any incomplete or inaccurate materials; (ii) adverse findings in either the Design Assessment or the Construction Bidding Assessment issued by the City Consultants under Section **[4.05(c)]** above; and (iii) there is a 121A Default. In addition to the foregoing, it shall be a pre-condition to the City’s approval of the Financial Submission for any Step that the Redeveloper is in compliance with all of its other obligations under this Agreement and that no default has occurred and is continuing.

The Redeveloper shall have a period of sixty (60) days following the Redeveloper’s receipt of the City’s objections to respond and to submit additional information either in support, clarification or modification of the Proposed Reimbursement Budget. If the Redeveloper submits such a response and the City fails to accept such submission as a satisfactory response to the City’s objections, the City shall notify the Redeveloper of such determination and the basis for its continuing objection no later than thirty (30) days after the Redeveloper submits its response.

Thereafter, if the parties cannot reach agreement as aforesaid, the parties agree that any litigation to resolve such disagreement shall be brought solely in the Business Law Section of the Suffolk Superior Court and that each party submits to the jurisdiction of said Court. The prevailing party shall be awarded its counsel fees incurred in such litigation. The decision of said Court shall be binding upon both parties without further right of appeal by either party. If the Redeveloper prevails in any action claiming that, with respect to its disapproval of the Financial Submission, the City wrongfully withheld its approval, the Redeveloper’s sole remedy will be to elect one of the following remedies by notice to the City given within thirty (30) days of the entry of the Court’s decision: (1) to continue to proceed with the Step in question pursuant to the Court’s decision, the parties agreeing that, for purposes of this Section **[4.03(b)]**, a decision by said Court in favor of the Redeveloper shall be treated as an approval of the Financial Submission, including any modifications which the Court might find appropriate in its decision, or (2) to receive from the City the Redeveloper’s actual costs related to the Redevelopment Project first incurred after June 30, 2009, but not to exceed the sum of Seven Million Five Hundred Thousand Dollars (\$7,500,000). Upon the Redeveloper’s election of such

damages and the City's payment thereof, the Redeveloper simultaneously shall deliver to the City the materials described in Section [14.09] hereof and this Agreement thereupon shall be terminated for all purposes without further right or recourse by either party, except for the indemnification provisions of Section [12.04] hereof. The City and the Redeveloper also agree that all dates for the performance of the obligations of either party hereunder shall be extended during the pendency of any such judicial proceedings.

(c) Construction of and Reimbursement for Implementing Public Improvements. Following the approval of the Final Reimbursement Budget, the Redeveloper, in accordance with the requirements of Section [4.02], shall complete plans and specifications for the Public Improvements for all Steps consistent with the Design Development Documents (the "Plans and Specifications"). The Plans and Specifications shall require the City's receipt of a favorable Design Assessment as a condition to Closing 1, as further set forth in Section [6.01(a)].

As a condition to Closing 1, and as part of the COC process, the City (acting through the Mayor and the Director of Urban Redevelopment) and the Redeveloper shall establish and implement mutually satisfactory arrangements for performance bonds or other security acceptable to the City to assure that the Public Improvements, once commenced, are completed or, at the City's election (acting through the Mayor and the Director of Urban Redevelopment), that all disturbed areas are restored to their prior condition.

Following the conveyance of the applicable portion of the City Parcels for the Step in question, the Redeveloper will commence the construction of the applicable Public Improvements within one hundred fifty (150) days of such conveyance and, subject to Force Majeure Events, shall substantially complete construction of the applicable Step within (a) four (4) years of the commencement of construction of such Step, and (b) in all events, regardless of a Force Majeure Event, by the Outside Step Completion Date set forth on Exhibit G. For purposes hereof, construction will be treated as commenced if either building demolition activity has commenced or where significant environmental remediation is required, such activities have begun or substantial earth work activities have commenced, or if utility work is commenced earlier, then such date ("Commencement of Construction").

Reimbursement for the Implementing Public Improvements, which shall be limited to the lesser of: (a) the amounts set forth in the Final Reimbursement Budget as updated pursuant to Section [6.01(a)(24)] below, or, (b) the actual costs thereof, shall be made as provided in Sections [4.06(d)] and [4.06(e)] below and payments to the Redeveloper shall be made in accordance with the Final Reimbursement Budget or with such lesser actual costs (a "Reimbursement Amount").

At least ninety (90) days prior to the Closing for any Step, the City, acting through the Mayor, and the Redeveloper shall establish (a) more detailed procedures for the Redeveloper to submit to the City evidence of its costs for the Implementing Public Improvements, including paid invoices and other supporting documentation and affidavits, and (b) procedures and forms for any requisitions of payment by the City for the Implementing Public Improvements in the manner contemplated under Section [4.05(c)].

At least ninety (90) days prior to the Closing for any Step, the Redeveloper also shall submit to the City (a) the names of all proposed design professionals and contractors who the Redeveloper proposes to retain in connection with the design and construction of the Public Improvements (both the Core Public Improvements and the Implementing Public Improvements); and (b) evidence of the bonding capacity of, and the bonds secured by, any contractor for any of the Public Improvements. The City, acting through the Mayor and the Director of Urban Redevelopment, may comment upon the qualifications of each such firm, but may not disapprove the same unless such firm (i) has defaulted on other projects in the City, or (ii) is, or has been, in a dispute (i.e., in litigation or other formal proceedings in which either party seeks damages or other relief) with the City.

(d) Timing of Reimbursement for Non-Parking Public Improvements and Tender for Public Acceptance. The City shall be obligated to reimburse the Redeveloper for the costs of the design, permitting and construction of the Non-Parking Public Improvements upon their one hundred percent (100%) completion (other than for punch list items) substantially in accordance with the Plans and Specifications but only at such time as: (1) the Redeveloper has achieved substantial completion of the core and shell of all of the buildings in the Step in connection with which they are constructed as evidenced by issuance of temporary certificates of occupancy, and (2) all payments under the applicable Chapter 121A Agreements in effect for the Step in question have been made for no less than two quarters and the Redeveloper has offered such Non-Parking Public Improvements to the City for acceptance and tendered title thereto to the City. It shall be at the election of the Redeveloper whether the Non-Parking Public Improvements are separately tendered for payment from the Parking Public Improvements.

The Redeveloper shall keep the City regularly informed of the construction status of the Non-Parking Public Improvements and shall provide the City with at least six (6) months' notice of the anticipated completion date, with monthly updates thereafter. Following the Redeveloper's notice to the City that the Redeveloper has determined that the Non-Parking Public Improvements have been substantially completed, accompanied by customary certificates and other evidence of completion from the Redeveloper's design professionals, including approvals from the City Inspectional Services Department and an updated Design Assessment from the City's Consultants, the City promptly shall inspect the same, identify with the Redeveloper's engineer a list of punch list items and, upon (a) the completion of such punch list items, or (b) at the City's election (acting through the Mayor and the Director of Urban Redevelopment), made within fifteen (15) days of the City's inspection and development of a punch list, either (i) the Redeveloper's posting of a bond or (ii) the establishment of an escrow account funded from a holdback from the Reimbursement Amount sufficient in amount to assure the proper completion of such items, make payment of the Reimbursement Amount to the Redeveloper and acquire the Non-Parking Improvements within sixty (60) days of the earlier to occur of (i) the completion of such punch list, or (ii) the posting of such bond or the establishment of such escrow account.

For purposes of this Agreement, notwithstanding the posting of a bond or establishment of an escrow account, any item which is incomplete or improperly installed and which would materially affect the operation of the Public Improvements shall not be considered a punch list item and must be completed or corrected before reimbursement may be made. The City and the

Redeveloper further agree that the amount of any bond or punch list escrow account shall equal one hundred fifty percent (150%) of the estimated cost to complete each punch list item.

(e) Timing of Reimbursement for Parking Public Improvements. Incident to the Redeveloper's tender of title to the City of the applicable Implementing Public Improvements, the City shall be obligated to acquire such Implementing Public Improvements and reimburse the Redeveloper for the costs of the design, permitting and construction of the Parking Public Improvements as individual Steps are completed, but only at such time as: (1) the Public Improvements for a specific Step are substantially completed in accordance with the Plans and Specifications; (2) the established occupancy levels for that Step are met as listed in Exhibit F; and (3) payments under the applicable Chapter 121A Agreements in effect in respect of that Step have been made for no less than two quarters. At such time, the Redeveloper shall offer the Parking Public Improvements for acceptance and tender title thereto to the City. The Parking Public Improvements shall be broom clean and fully operational. The provisions of the second paragraph of sub-section (d) above, including all notice and time periods, shall be equally applicable to reimbursement by the City for the Public Parking Improvements.

## ARTICLE V CLOSING

**Section 5.01. Conveyance of Title; Closing.** A good and sufficient quitclaim deed conveying the portion of the City Parcels required for Closing 1 in the same state as the title as of the date hereof (which the Redeveloper hereby approves) shall be delivered on the closing date to be established by the Redeveloper by notice given to the City no later than September 15, 2013, subject to extension in the event of the occurrence of a Force Majeure Event. Closing 1 shall take place at a date and time to be mutually agreed with the City, which shall be no less than thirty (30) days and no more than sixty (60) days from such notice. If the parties cannot reach agreement on a specific closing date, the closing shall occur on the first business day following the sixtieth (60<sup>th</sup>) day after the Redeveloper's notice. Closing 1 (and all subsequent Closings) shall occur in the Boston metropolitan area at the office of the Redeveloper's counsel or the Redeveloper's lender's counsel or, if no such place is designated, at the Norfolk County Registry of Deeds. The closing of the portions of the City Parcels required for Step 2, Step 3, or the Independent Step if not part of Step 2 or Step 3, shall occur prior to the commencement of construction of those Steps on no less than ninety (90) days' notice from the Redeveloper to the City at the time and date set forth in such notice and at the same places as described above. Each closing shall be conditioned on the Redeveloper's performance of its obligations set forth in Article III and Article IV and the conditions to closing set forth in Article VI hereof. Time shall be of the essence. In addition, upon payment of an additional non-refundable deposit of Two Hundred Fifty Thousand Dollars (\$250,000) prior to September 15, 2013, the Redeveloper may extend Closing 1 for up to twelve (12) months, but such extension shall not extend or otherwise modify the Redeveloper's obligation to commence construction of Step 1 by January 1, 2015, as provided in Section [2.03] above.

**Section 5.02. Condition of City Parcels.** The Redeveloper and the City agree that the Redeveloper is acquiring the City Parcels in their "AS-IS" condition, with all faults, if any, and without any warranty, express or implied, except as set forth in this Agreement (but without modification of the conditions of Sections 6.01(b)(4), (5) and (6)). By accepting the deeds and paying the purchase price, the Redeveloper acknowledges that it is familiar with the City Parcels

and has had full opportunity, to the extent it desired to do so, to fully inspect and review (i) the environmental condition of the City Parcels, (ii) the title to the City Parcels, (iii) the compliance of the City Parcels with applicable laws, and (iv) such other engineering and other matters related to the City Parcels as the Redeveloper has found appropriate and the Redeveloper hereby acknowledges that the Redeveloper is satisfied with each of the foregoing matters. The Redeveloper hereby confirms that neither the City nor the City's Authorized Representatives, nor any other person purporting to act on behalf of the City, has made any representation upon which the Redeveloper is relying with respect to the City Parcels. The Redeveloper hereby releases the City and its Authorized Representatives from and against any and all claims, demands and causes of action or any claim for adjustments to the purchase price that the Redeveloper may have or assert relating to (a) the condition of the City Parcels, including, without limitation, the environmental condition, or (b) any other matter pertaining to the condition of the City Parcels, as of each of the closings. Such release shall survive the closings or the earlier termination of this Agreement.

In addition to accepting the environmental condition of the City Parcels as of the date hereof, the Redeveloper further accepts the risk of any change in such condition between the date hereof and a closing on a City Parcel caused by the acts or omissions of a third party; provided, however, that the City shall be responsible for remediating any new release of hazardous materials on a City Parcel caused by the City's own actions first occurring after the date hereof, up to a maximum expenditure of Two Hundred Fifty Thousand Dollars (\$250,000).

The Redeveloper hereby agrees that any loss, damage or deterioration in respect of the buildings or other improvements on the City Parcels (including damage by casualty) which may occur between the date of this Agreement and all applicable closings shall not give rise to any adjustment of the purchase price, any change in the rights and obligations of the parties, or the Redeveloper's obligation to purchase the City Parcels assuming all other pre-conditions to closing under Article VI hereof have been satisfied.

**Section 5.03. Extension to Perfect Title or Make City Parcels Conform.** If the City shall be unable to give title, or to make conveyance, or to deliver possession of the City Parcels, all as herein stipulated, or if at the time of the delivery of the applicable deed the City Parcels do not conform with the provisions hereof, the City, in its sole election, may use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the City Parcels conform to the provisions hereof, as the case may be. In such event, the City may, if the City (acting through the Mayor) elects, extend the time for performance for a period not to exceed ninety (90) days, by giving written notice thereof to the Redeveloper at or before the original time for performance. "Reasonable efforts," as used in this Section [5.03], shall not require the expenditure by the City of more than Fifty Thousand Dollars (\$50,000); provided, however, that such Fifty Thousand Dollar (\$50,000) limitation shall not apply to monetary encumbrances voluntarily incurred by the City on the City Parcels.

**Section 5.04. Redeveloper's Election to Accept Title.** The Redeveloper shall have the election, at either the original or any extended time for performance, to accept such title as the City can deliver to the City Parcels in their then condition and to pay therefor the full allocated purchase price without reduction. In the event of such conveyance, if the City Parcels shall have been damaged by fire or casualty insured against and have not been fully restored, the City shall

pay over or assign to the Redeveloper, on delivery of the deed, all amounts recovered or recoverable on account of such insurance, less any amounts reasonably expended for any partial restoration.

## ARTICLE VI CONDITIONS TO CLOSING

**Section 6.01.** Conditions to Closing 1. The respective conditions to the City's and the Redeveloper's obligation to close Closing 1 shall be as follows:

(a) City Conditions. The following conditions shall be required to be satisfied (unless the City, acting through the Mayor and the Director of Urban Redevelopment, elects to waive them) as a pre-condition to the City's obligation to convey title to a City Parcel (or a portion thereof) requested to be conveyed by the Redeveloper:

1. The Redeveloper has timely conveyed to the City all non-public property required for the City to undertake and to complete the Town Brook Culvert Restoration;
2. All special legislation required for the Redevelopment Project, including the legislation (as the same may be modified by the General Court in a manner satisfactory to the City and the Redeveloper) attached as Exhibit J hereto, shall have been adopted;
3. DHCD shall have issued all necessary approvals under applicable law;
4. Bond Counsel shall have provided any approvals, if necessary, as a matter of law or customary underwriting practice, for such sale;
5. The issuance of a COC by the Planning Board for the City Parcel and all other land required for Step 1, and, for Step 1, the Redeveloper shall have paid to the City an additional deposit in the amount of Five Hundred Thousand Dollars (\$500,000) as required pursuant to Section **[1.04(b)]** above;
6. The City's receipt of a favorable Design Assessment in respect of the Plans and Specifications;
7. The City's receipt of a favorable Construction Bidding Assessment in respect of the construction contracts executed by the Redeveloper for the Public Improvements to be constructed by the Redeveloper, together with the City's receipt of Construction Drawings for all Public Improvements for all Steps (except the garages) and complete Construction Drawings for the garages for the applicable Step;
8. Completion of all items on the Redeveloper's Benchmark Schedule relative to the respective Step, together with copies of all permits and approvals;

9. Evidence of the Redeveloper's concurrent acquisition of title to all private land required for the applicable Step;

10. Evidence of the availability of Federal and State Funding for completion of the Core Public Improvements (to the extent not then completed);

11. Evidence of the concurrent closing of the Redeveloper's construction financing for the Step (with the Redeveloper to provide for purpose of review by the City's counsel at the offices of the Redeveloper's Boston counsel, as part of such evidence, copies of the Redeveloper's financing documents, including, without limitation, all completion guarantees and bonds);

12. Evidence that the Redeveloper has equity invested (or is committed to invest equity) in the Step of no less than twenty percent (20%) of the cost of the Implementing Public Improvements and no less than twenty percent (20%) of the cost of the Private Improvements;

13. Confirmation that lease or occupancy arrangements are in effect for at least sixty-five percent (65%) of the rentable floor space in the buildings included in the applicable Step;

14. Copies of the construction contracts for all of the Public Improvements (including garages) in the Step consistent with the Final Reimbursement Budget and with duly qualified contractors who meet the criteria set forth in Sections **[4.06(c), 15.18(a), and 15.19]**;

15. (a) Delivery to the City Law Department of portions of the construction contracts for verification and by means of certification by the chief financial officer (or equivalent) of the Redeveloper, as to the final budget of the soft costs and land costs for the private development in the Step to confirm that the 4:1 ratio set forth in Section **[4.06(a)(iii)(3)]** has been met and, (b) receipt by the City from one of the City Consultants of a written confirmation that, based upon its review of the figures used by the Redeveloper in its construction loan budget and in any other financial submissions to the construction lender (and accepting those figures as being true and accurate solely for the purposes of this number 15), that said 4:1 ratio is still being met;

16. Delivery of executed 121A Agreements consistent with the standards set forth in Section **[4.03]**, which Agreements shall have a term of thirty (30) years;

17. The absence of any uncured defaults on the part of the Redeveloper hereunder;

18. The delivery of the deed and appropriate cross-easement agreements, the terms of which shall be agreed to by the City (acting through the Mayor and the Director of Urban Redevelopment) and the Redeveloper prior to the Closing as contemplated by Section **[3.04]** hereof;

19. The delivery by the Redeveloper of such other customary documents and evidence of authority as shall be required by the title insurance company or the City's counsel;
20. All of the Redeveloper's representations and warranties set forth in Section **[7.01]** shall be true and correct as of Closing 1;
21. Delivery of the performance bonds or other security required by Section **[4.06(c)]**;
22. Consents from the Redeveloper's architects, engineers and other design professionals that, in the event of default by the Redeveloper, the City may use the plans and specifications without cost to the City;
23. Approval by the City, acting through the Mayor and Director of Urban Redevelopment, of an updated Interim Parking Management Plan, the Parking Management Agreement, and the Construction Management Plan;
24. An updated Final Reimbursement Budget reflecting updated pricing based upon complete construction drawings, executed construction contract(s) for that Step, and, consistent with the Limitations in Section 4.06(a)(iii), updated eligible soft costs, which budget shall thereafter become the basis for the Reimbursement Amount pursuant to Section 4.06(c);
25. Agreement on the more detailed requisition procedures and change order procedures contemplated by Section **[4.06(c)]**;
26. Satisfactory arrangements for the Redeveloper to pay the City for lost net parking revenues resulting from the elimination of existing public parking as part of construction of that Step or described in Section **[4.03(b)]**;
27. Satisfactory payment and other arrangements regarding temporary and permanent parking on Parcel 9B as shown on Sheet 5.1 of the Development Plan have been made per Section **[3.03]** hereof;
28. Submission of all evidence of insurance required by Section **[12.01]**;
29. Receipt of a favorable Design Assessment from the City Consultants;
30. The Redeveloper fully shall fund the Community Benefits Account described in Section **[15.18(c)]** as part of Closing 1 for the Ross Garage Parcel;
31. The Redeveloper shall have made the Additional Payment described in Section **[1.03]**; and

32. The satisfactory performance by the Redeveloper of all other obligations on its part to be performed hereunder prior to Closing 1;

(b) The Redeveloper Conditions. The following conditions shall be required to be satisfied (unless the Redeveloper elects to waive them) as a pre-condition to the Redeveloper's obligation to pay the Purchase Price for the Redevelopment Parcel (or a portion thereof) requested to be conveyed by the Redeveloper:

1. The Town Brook Culvert Restoration shall be substantially complete, assuming the Redeveloper has timely complied with its obligations under Section [6.01(a)(i)] above;

2. The Concourse shall have been substantially completed;

3. Subject to the last paragraph of Section [4.04], the City shall have received the Federal and State Funding commitment for each of the Hancock Common improvements and the Cliveden Bridge Extension;

4. Subject to Section [5.02], there has been no change in title from the City's title as of the date hereof, which the Redeveloper hereby accepts;

5. Subject to Section [5.02], there has been no change in the environmental condition of the City Parcels from the condition as of the date hereof, which the Redeveloper hereby accepts;

6. Possession of the City Parcel is delivered free and clear of tenants and occupants and any claimed rights of third parties not of record as of the date of this Agreement, but without warranty or representation by the City in respect of its physical condition other than as required in a standard title insurance certificate;

7. All discretionary permits identified pursuant to Section [4.02] shall have been issued;

8. The delivery of the other closing documents as are identified in Section [6.01(a)(18)] hereof, and such other customary and reasonable documents as shall be required by the title insurance company or the Redeveloper's lender's counsel, all of which the Mayor shall be authorized to execute; and

9. The City's representations and warranties are still true and correct.

**Section 6.02.** Conditions to Closing on the Redeveloper's Subsequent Purchase of City Parcels. The following conditions shall be required to be satisfied as a pre-condition to the City's obligation to consummate closings of a City Parcel after Closing 1 and the Redeveloper's obligation to pay the Purchase Price Balance:

(a) The conditions under Sections [6.01(a)] and [6.01(b)] to the extent applicable are satisfied;

(b) The prior Step shall have achieved Substantial Completion;

(c) Notwithstanding the foregoing, the Redeveloper may purchase all of the Hancock Parking Lot in order to commence Step 2 prior to the substantial completion of Step 1 provided that: (a) all of the Non-Parking Public Improvements for Step 1 shall have been fully completed, (b) all of the Step 1 Public Parking Improvements shall have been completed as evidenced by issuance of temporary certificates of occupancy, (c) one hundred percent (100%) of the core and shell of the Private Improvements within Step 1 shall have been completed as also evidenced by issuance of temporary certificates of occupancy, (d) at least two quarterly payments of the aggregate 121A Payments for Step 1 shall have been made, and (e) no default under this Agreement shall have occurred and be continuing.

No portion of the Hancock Parking Lot shall be sold for the Independent Step unless: (a) the Independent Step is part of either Step 2 or Step 3 or thereafter, and (b) all pre-conditions for the sale of Step 2 shall have been satisfied.

(d) The closings for the subsequent Steps shall occur on the dates set forth on Exhibit D;

(e) The closing of the sale for the City Parcel for Step 2 and Step 3, respectively, may not occur unless, in respect of Step 1 (in connection with the transfer of the City Parcel for Step 2) and Step 2 (in the case of the transfer of the City Parcel for Step 3), the prior Step shall have attained Substantial Completion; and

(f) The City shall not be obligated to sell, and the Redeveloper shall have no right to buy, a City Parcel for a future Step if there is a default by the Redeveloper under any prior Step.

## **ARTICLE VII REPRESENTATIONS AND WARRANTIES**

**Section 7.01. Representations and Warranties of Redeveloper.** The Redeveloper represents and warrants that:

(a) The Redeveloper is a duly formed limited liability company organized under the laws of the State of New York and is in good standing and qualified to do business under the laws of the Commonwealth of Massachusetts;

(b) The Redeveloper has taken all actions required by law to approve the execution of this Agreement;

(c) The Redeveloper's entry into this Agreement and/or the performance of the Redeveloper's obligations under this Agreement do not violate any contract, agreement or other legal obligation of the Redeveloper;

(d) The Redeveloper's entry into this Agreement and/or the performance of the Redeveloper's obligations under this Agreement do not constitute a violation of any state or federal statute or judicial decision to which the Redeveloper is subject;

(e) There are no pending lawsuits or other actions or proceedings which would prevent or impair the timely performance of the Redeveloper's obligations under this Agreement;

(f) The Redeveloper has the legal right, power, and authority to enter into this Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Agreement have been duly authorized and no other action by the Redeveloper is requisite to the valid and binding execution, delivery, and performance of this Agreement, except as otherwise expressly set forth herein; and

(g) The individual executing this Agreement is authorized to execute this Agreement on behalf of the Redeveloper.

The representations and warranties set forth above are material considerations to the City, and the Redeveloper acknowledges that the City is relying upon the representations set forth above in undertaking the City's obligations set forth in this Agreement. The Redeveloper's representations and warranties shall survive the final closing contemplated by this Agreement for a period of one (1) year and shall not be deemed merged with any deed.

**Section 7.02. Representations and Warranties of the City.** The City represents and warrants that:

(a) The City is a municipal corporation organized under the laws of the Commonwealth of Massachusetts;

(b) The City has taken all actions required by law to approve the execution of this Agreement;

(c) The City's entry into this Agreement and/or the performance of the City's obligations under this Agreement do not violate any contract, agreement or other legal obligation of the City;

(d) The City's entry into this Agreement and/or the performance of the City's obligations under this Agreement do not constitute a violation of any state or federal statute or judicial decision to which the City is subject;

(e) There are no pending lawsuits or other actions or proceedings which would prevent or impair the timely performance of the City's obligations under this Agreement;

(f) The City has the legal right, power, and authority to enter into this Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Agreement have been duly authorized and no other action by the City is requisite to the valid and binding execution, delivery, and performance of this Agreement, except as otherwise expressly set forth herein; and

(g) The individual(s) executing this Agreement is/are authorized to execute this Agreement on behalf of the City.

The representations and warranties set forth above are material considerations to the Redeveloper, and the City acknowledges that the Redeveloper is relying upon the representations set forth above in undertaking the Redeveloper's obligations set forth in this Agreement. The City's representations and warranties shall survive the final closing contemplated by this Agreement for a period of one (1) year and shall not be deemed merged with any deed.

## **ARTICLE VIII RIGHT TO ACCESS**

**Section 8.01. City's Right of Entry.** The City reserves, for itself and for its employees, agents, consultants, contractors and representatives (collectively, its "Authorized Representatives"), as may be appropriate, the right to enter upon any of the Redevelopment Properties at all reasonable times for the purpose of enforcing the provisions of this Agreement prior to the issuance of the Certificate of Completion (as defined below) for that portion of the Redevelopment Area, for inspecting the Redevelopment Project, and for reconstructing, maintaining, repairing, or servicing any facility or element located within the Redevelopment Area which may be owned by the City or its Authorized Representatives, provided that in each instance of entry the City shall give the Redeveloper reasonable prior notice of the City's intended entry upon any of the Redevelopment Properties; and further provided that the City will use diligent efforts to minimize the disruption to the Redeveloper's operations.

**Section 8.02. Redeveloper's Access Prior to Conveyance.** Prior to the Redeveloper's making entry thereon, the City, acting through the Mayor, and the Redeveloper shall enter into an "Access Agreement," in a form and on terms mutually satisfactory to the City and the Redeveloper, pursuant to which the Redeveloper and its Authorized Representatives will be allowed to access the City Parcels, at reasonable times and upon reasonable notice, for the purpose of conducting Redevelopment Project-related activities.

## **ARTICLE IX ASSIGNMENT AND TRANSFER**

**Section 9.01. Representations as to Redevelopment.** The Redeveloper represents and agrees that its purchase of the City Parcels, and its other undertakings pursuant to this Agreement, are, and will be used, solely for the purpose of redevelopment of the Redevelopment Area in the manner provided for in this Agreement and not for speculation in land holding. The Redeveloper further recognizes that, in view of:

- (a) The importance of the Redevelopment Project to the general welfare of the City;
- (b) The substantial financing and other public aid that has been and will be made available by law and by the state and local governments for the purpose of making the Redevelopment Project possible; and
- (c) The fact that a change with respect to the identity of the parties in control of the Redeveloper is for practical purposes a transfer or disposition of the City Parcels then owned by the Redeveloper,

the qualifications and identity of the Redeveloper and those who manage are of particular concern to the community and to the City. The Redeveloper further recognizes that it is because

of such qualifications and identity that the City is entering into this Agreement with the Redeveloper, and, in so doing, is further willing to accept and to rely on the obligations of the Redeveloper for the faithful performance of all of its undertakings and covenants to be performed without requiring in addition a surety bond or similar undertaking for such performance, except as otherwise provided in this Agreement.

**Section 9.02. Assignment and Transferability.** The Redeveloper may not assign its rights under this Agreement without compliance with the following conditions:

(a) Assignment to Affiliates. The Redeveloper will have the right, upon thirty (30) days advance notice to the Mayor, but without the consent of the Mayor or the City, to assign its rights under this Agreement to an entity with which it is affiliated. An “affiliate” must be an entity whose manager member, general partner entity, or, if a business corporation, is majority owned by the same principals who are in control of the Redeveloper as listed in Exhibit K (an “Affiliate”). The foregoing restriction shall not be evaded by a sale of stock in the Redeveloper or an Affiliate to unrelated third parties. The Affiliate or the Redeveloper must always control the day-to-day management and decision-making of the Redeveloper entity hereunder (or its successor in interest) as manager of a limited liability company or as managing general partner of a partnership and shall be responsible for effectuating the completion of the Public Improvements hereunder (except following an assignment permitted under Section **[9.02(b)]**).

In addition to the foregoing, (a) the originally named Redeveloper (i.e., Hancock Adams Associates LLC) must be a member or limited partner of any Redeveloper assignee or transferee, (b) the originally named Redeveloper must own at least five percent (5%) of any Redeveloper assignee or transferee, and (c) if the assignment or transfer involves more than a fifty percent (50%) ownership interest in the Redevelopment Project, neither the proposed assignee nor any of its principals shall be a party to any litigation pending with or against the City nor have any claim for damages pending with or against the City. The Redeveloper will give notice of such a proposed assignment and the identity of the proposed assignee to the Mayor no later than thirty (30) days prior to making such assignment, provided that, unless the City has an objection based upon the foregoing litigation or claims grounds, neither the consent of the City nor the Mayor will be required for such assignment to be effective.

(b) Assignment to Non-Affiliates. Until such time as Step 1 is completed and the City has purchased the Public Improvements for Step 1, the Redeveloper may not assign its rights under this Agreement to an entity which is not an Affiliate of the Redeveloper. Thereafter, such an assignment may be made only with the prior approval of the Mayor and the Director of Urban Redevelopment, which approval may be withheld in their sole discretion.

(c) Assignment of Rights to Construct Individual Buildings Within a Step. The City recognizes the fact that, within each Step, there are multiple buildings with multiple uses intended to be constructed and that the Redeveloper may desire to assign its rights to develop a single building or group of buildings or a portion of a building to an entity more suited to develop a particular use or to transfer title thereto an entity affiliated with the Redeveloper which is a qualified corporation or limited partnership under Chapter 121A. For purposes of making such assignment, the Redeveloper may grant such assignee a leasehold interest in a portion of the

Redevelopment Property but subject always to the obligations of the 121A Agreement applicable to such portion of the Redevelopment Property. Any transfer of the fee interest to such a qualified corporation or limited partnership shall be expressly subject to compliance with the provisions of Section [9.03]. Accordingly, prior to or after the commencement of the construction of any individual building within a Step, the Redeveloper may assign its rights to construct such building or portion thereof (or the parcel on which it is to be constructed) under the Development Plan, provided that, in all cases, neither the proposed assignee nor any of its principals shall be a party to any litigation pending with or against the City nor have any claim for damages pending with or against the City. The Redeveloper will give notice of the proposed assignment and the identity of the proposed assignee to the Mayor no later than thirty (30) days prior to making such assignment, provided that, unless the City has an objection based upon the foregoing grounds, the consent of the City will not be required for such assignment to be effective. No such assignment shall relieve the Redeveloper from its obligation to construct the Public Improvements that are part of the Step of which such building is a part. In addition, such assignees shall be bound by all the provisions of this Agreement applicable to the Private Improvements on its property, including, without limitation, the provisions of Article XIV hereof.

(d) Transfer Following Completion of a Building. Following (i) the completion of any building or group of buildings in a Step (to the extent of the core and shell thereof), (ii) the issuance by the City of a Certificate of Completion pursuant to Section [11.02] hereof, (iii) the completion of the Implementing Public Improvements for such Step, and (iv) the tender of title for the purchase thereof by the City in accordance with Section [4.06(e)] and, if applicable, Section [4.06(d)], the Redeveloper, thereafter, may transfer fee title or, if applicable, its ground lessee's interest therein, on notice to the Mayor and the Director of Urban Redevelopment but without the need of consent from the City to any such transfer.

**Section 9.03. Agreement to be Bound by Chapter 121A Agreements.** No transfer of the fee interest of a Redevelopment Property (other than in connection with a foreclosure of the mortgage or delivery of a deed in lieu of foreclosure under Section [9.04]) shall be made under any of Sections [9.02(a)] through [9.02(d)] unless the transferee expressly enters into an agreement to be bound by the applicable Chapter 121A Agreements executed pursuant to this Agreement governing the control of the applicable 121A corporation and the sale or encumbrance of its property.

**Section 9.04. Granting of Mortgage.** As further provided in Section [9.02] hereof, the Redeveloper shall have the right, once it acquires title to a City Parcel, to grant a mortgage of the fee interest thereto to any lender providing construction or permanent financing; provided such lender agrees, in the event of foreclosure or deed in lieu of foreclosure, for itself and any successor purchasers at foreclosure, to be bound by the Redeveloper's obligations under any 121A Agreement applicable to the building or parcel in question. In no event, however, shall any mortgagee be obligated to complete construction of any Public Improvement, but the absence of such obligation shall not affect the City's rights to insist on completion of the Public Improvements for the Step in question as a condition precedent to the City's reimbursement under Sections [4.06(d) and 4.06(e)].

**Section 9.05. Estoppel Certificates.** In connection with any financing, assignment or transfer permitted under this Article IX, if requested by the Redeveloper or any transferee otherwise permitted hereunder, upon thirty (30) days notice from the Redeveloper, the City will execute an estoppel certificate reporting on the status of compliance of the Redeveloper's obligations under this Agreement in respect of the building or group of buildings in question.

**Section 9.06. Information as to Holders of Ownership Interests.** Prior to any assignment or transfer pursuant to Section [9.02] above, the Redeveloper shall provide to the City the following materials for any such assignee: (i) the names and addresses of all managers and members, in the case of a limited liability company, or general and limited partners, in the case of a partnership, (ii) copies of their respective organizational documents, (iii) information, documentation and disclosures regarding the identity, history, and financial status of the entity, and (iv) such other information and documentation as the Mayor may reasonably request from time to time. All information provided to the City shall be certified by the Redeveloper to the City as being true, accurate and complete in all material respects.

**Section 9.07. Survival.** The provisions of this Article shall survive the Closings.

## **ARTICLE X USE RESTRICTIONS**

**Section 10.01. Restrictions on Use.** The Redeveloper agrees for itself, its successors and assigns, and every successor in interest to the Redevelopment Properties, or any part thereof, and all applicable deeds shall contain covenants on the part of the Redeveloper for itself, and its successors and assigns, as follows:

(a) Subject to the express limitations set forth in Article II above and in the URDP and the Quincy Zoning Ordinance, the Redeveloper, and its successors and assigns, shall use the Redevelopment Properties only for the uses specified in the Development Plan.

(b) The Redeveloper, and its successors and assigns, shall not discriminate upon the basis of race, color, religion, creed, sex, age, veterans or marital status, ancestry, or national origin in the sale, lease, or rental or in the use or occupancy of the Redevelopment Properties or in the design or construction of any project erected or to be erected thereon, or any part thereof and, in that regard, shall in any event comply with the provisions of M.G.L. c. 151B, as amended, and all other applicable federal, state and local laws, ordinances and regulations guaranteeing civil rights, providing for equal opportunities and prohibiting discrimination on the basis of race, color, religion, creed, sex, age, veterans or marital status, ancestry, or national origin.

**Section 10.02. Period of Duration of Covenants on Use and Non-Discrimination.** The use covenants set forth in Section [10.01(a)] shall remain in effect until the expiration of thirty (30) years after the issuance of the applicable Certificate of Completion. The non-discrimination covenants set forth in Section [10.01(b)] shall remain in effect for a period of one hundred (100) years from the date of issuance of the applicable Certificate of Completion until such dates thereafter to which it may be extended, on which dates, as the case may be, such covenants shall terminate.

**Section 10.03. Additions or Subtractions to Completed Improvements.** After the Private Improvements required by this Agreement to be constructed by the Redeveloper have been completed, the Redeveloper shall not, until the expiration of the applicable 121A Agreement, without the prior written approval of the City, reconstruct, demolish, or subtract therefrom or make any additions thereto or extensions thereof which would not be in accordance with this Agreement and the Development Plan or which would result in substantial deviations in the external appearance of the Private Improvements or the Redevelopment Properties; provided, however, that the foregoing shall not be construed as limiting any activities following any casualty or any improvements or modifications approved under a COC (or any amendment thereof) for the Redevelopment Property in question or any remodeling for which COC approval is not required. In the event that the Redeveloper shall fail to comply with the foregoing requirement, the City may, within a reasonable time after its discovery thereof, direct in writing that the Redeveloper so modify, reconstruct, or remove such portion or portions of the Private Improvements as were reconstructed, demolished, subtracted from, added to, extended, or otherwise changed without the prior written approval of the City. The Redeveloper shall promptly comply with any such directive and shall not proceed further with such reconstruction, demolition, subtraction, addition, extension or change.

**Section 10.04. Covenants; Binding Upon Successors in Interest; Period of Duration.** It is intended and agreed, and the deeds for the Redevelopment Properties shall so expressly provide, that the covenants provided in Sections [10.01 and 10.03] above shall be covenants running with the land and that they shall, without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the City, its successors and assigns, the City and any successor in interest to the Redevelopment Properties, or any part thereof, against the Redeveloper, its successors and assigns and every successor in interest to the Redevelopment Properties, or any part thereof or any interest therein, and any party in possession or occupancy of the Redevelopment Properties or any part thereof. It is further intended and agreed that this Agreement and the covenants provided in Section [10.01] hereof shall remain in effect for the period of time, or until the date specified or referred to in Section [10.02] of this Agreement (at which time such covenants shall terminate); provided, however, that the covenants in Section [10.01] shall be binding on the Redeveloper itself, each successor in interest to the Redevelopment Properties, and every part thereof, and each party in possession or occupant, respectively, only for such period as such successor or party shall have title to, or an interest in, or possession or occupancy of, the Redevelopment Properties or part thereof.

## ARTICLE XI CERTIFICATE OF COMPLETION

**Section 11.01. Completion of Project.** The Redeveloper shall complete the construction of each Step of the Redevelopment Project not later than the dates set forth in Exhibit D hereto (each completion date, the “Target Step Completion Date”), which construction shall be consistent with this Agreement in all respects; provided, however, that each Target Step Completion Date may be extended by the Redeveloper as set forth in Section [14.07] if a Force Majeure Event has occurred, but subject always to the Outside Step Completion Date (i.e., regardless of a Force Majeure Event) for each Step as set forth on Exhibit D.

### **Section 11.02. Certificate of Completion.**

(a) Within thirty (30) days after the Redeveloper has notified the City that the construction of each Step is complete or individual buildings within a Step, but only if the Redeveloper has satisfied the requirements of this Agreement for tender of title thereto for purchase by the City, the City promptly shall inspect that portion of the Redevelopment Project constructed in that Step, and, if it finds that the construction of the Redevelopment Property in question has been completed in accordance with this Agreement, promptly shall furnish the Redeveloper with an appropriate instrument so certifying (the “Certificate of Completion”). Such Certificate of Completion by the City shall be (and it shall be so provided in any applicable deed and in the Certificate of Completion itself) a conclusive determination of satisfaction and termination of this Agreement and covenants in this Agreement with respect to the obligations of the Redeveloper related to construction of the applicable Step or of the Redevelopment Property in question. Any such Certificate of Completion shall mean and provide that any remedies or rights with respect to recapture of or reversion or reversioning of title to that portion of the Redevelopment Properties included in the Step that the City shall have or be entitled to under Article XIV because of failure of the Redeveloper or any successor in interest to that portion of the Redevelopment Properties to cure or remedy any default with respect to the construction of the Step, or because of any other default in or breach of this Agreement by the Redeveloper or such successor, shall have been released and no longer apply to the completed portion of the Redevelopment Properties included in the Step and for which such a Certificate of Completion is issued.

(b) Each Certificate of Completion provided for in this Section [11.02] shall be in such form as will enable it to be recorded in the Norfolk County Registry of Deeds. If the City shall refuse or fail to provide any Certificate of Completion in accordance with the provisions of this Section, the City or a representative of the City shall, within such thirty (30) day period, provide the Redeveloper with a written statement, indicating in adequate detail in what respects the Redeveloper has failed to complete the applicable Step of the Redevelopment Project in accordance with the provisions of this Agreement and the Development Plan, or is otherwise in default, and what measures or acts it will be necessary, in the reasonable opinion of the City, for the Redeveloper to take or to perform in order to obtain such Certificate of Completion.

(c) Within thirty (30) days after the Redeveloper has notified the City, and the City is reasonably satisfied, that the Redeveloper has adequately completed the measures or acts described in the written statement described in Section [11.02(b)] above, the City will furnish the Redeveloper with a Certificate of Completion.

## **ARTICLE XII INSURANCE AND INDEMNITY**

**Section 12.01. Required Insurance.** With respect to activities on the Redevelopment Properties and other activities related to the Redevelopment Project, the Redeveloper shall (or shall cause others to) purchase and maintain throughout the term of this Agreement adequate insurance coverage to include, but not be limited to, the following: (i) worker’s compensation insurance coverage in accordance with M.G.L. c. 152; (ii) employer’s liability insurance; (iii) commercial general public liability insurance, including blanket contractual liability coverage sufficient to cover the Redeveloper’s indemnity obligations hereunder, products and completed

operations coverage, and owner's and contractor's protective liability coverage (if the Redeveloper undertakes any construction activity during the term hereof); (iv) commercial automobile insurance providing liability coverage for all owned, leased, hired or rented, and non-owned vehicles of the Redeveloper; and (v) umbrella liability insurance (an excess liability policy is not acceptable). The combination of the underlying liability policies listed in items (ii) to (iv) and the umbrella liability policy shall provide overall insurance limits of not less than an amount to be reasonably established by the City acting through the Mayor, prior to the Financial Submission for any Step and such limits shall apply on a "per project" basis and shall be customary and reasonable for similar projects. Notwithstanding the foregoing, prior to entering upon any City Parcel to perform any Redevelopment-related activities pursuant to Section **[8.02(b)]**, the Redeveloper shall provide the City with a certificate of commercial general liability insurance in the minimum amount of Ten Million Dollars (\$10,000,000) per occurrence. The insurance policies specified in items (iii) to (v) above shall be written using an occurrence form, and shall be endorsed to name the City and the City's Authorized Representatives as additional insureds and to state that the insurance provided thereunder shall be primary and that any insurance maintained by the City and the City's Authorized Representatives shall be non-contributory. All insurance policies listed in items (i) to (v) above shall be endorsed to waive the insurer's rights of subrogation against the City and the City's Authorized Representatives.

The Redeveloper shall cause its architect(s), engineer(s) and other professional consultants, but not its counsel, listed on Exhibit M attached hereto to each carry professional liability insurance coverage for errors, omissions and negligent acts in an amount of not less than Two Million Dollars (\$2,000,000) available solely for the Redevelopment Project.

Prior to the construction of the Redevelopment Project and at all other times that the Public Improvements are undergoing construction, the Redeveloper shall maintain and keep at all times in force (or cause to be provided, maintained and kept at all times in force) builder's risk completed value non-reporting form (replacement cost) (including, without limitation, fire, earthquake in such amounts as the City, acting through the Mayor, shall establish prior to the Financial Submission for any Step and as shall be customary and reasonable for similar projects. If such policies are written using a claims-made form, the policies shall contain an extended reporting endorsement that provides coverage for at least three (3) years following the completion of work. In addition, prior to Closing 1, the Redeveloper shall place and provide evidence to the City of any pollution legal liability policy required by its lender, naming the City as an additional insured and insuring against the discovery of pre-existing conditions which might require remediation.

The Redeveloper shall be responsible for all deductibles. In addition, the City may require commercially reasonable increases in all insurance coverage amounts from time to time as may be appropriate for projects of similar size and complexity.

Prior to undertaking any activities on the City Parcels, the Redeveloper and any of its Authorized Representatives shall first provide to the City certificates of insurance evidencing all insurance policies that the Redeveloper and its Authorized Representatives (including, without limitation, any architects, engineers, general contractors, subcontractors, and consultants) are required to carry hereunder. All such certificates of insurance shall confirm the specific coverage requirements stated above and shall unequivocally state that should any of the above-

described policies lapse, be materially changed, or be cancelled before the expiration date thereof, the issuing insurer shall provide thirty (30) days written notice to the City.

All policies of insurance referred to herein shall be written in a form that is reasonably acceptable to the City and by companies that are authorized to do business in the Commonwealth and have a Best's rating of not less than A-/IX. All policies of insurance shall provide that any act or negligence of the Redeveloper shall not prejudice the rights of the City as a party insured under said policies. If requested by the City in writing, the Redeveloper shall furnish the City with certified copies of the insurance policies required hereunder.

**Section 12.02. Policies Non-Cancelable.** The Redeveloper agrees that all policies of insurance referred to herein shall not be canceled or allowed to lapse nor shall any material changes be made in any such policy which changes, restricts or reduces the insurance provided, nor shall there be a change in the name of the insured, without first giving thirty (30) days notice in writing to the City in accordance with Section [15.01].

**Section 12.03. Waiver of Subrogation.** The Redeveloper hereby waives all rights of recovery against the City and its Authorized Representatives on account of loss or damage to the Redeveloper's property, and to the extent that the Redeveloper obtains an insurance policy for such loss or damage, the Redeveloper shall cause such policy to be endorsed to waive the insurer's rights of subrogation against the City and its Authorized Representatives.

**Section 12.04. Indemnity Provision.** The Redeveloper, at its sole cost and expense, shall defend and shall indemnify and hold harmless the City and its Authorized Representatives from and against all loss, cost, damage, and expense, including claims for bodily injury and property damage, which are incurred or suffered by any one or more of them (a) based upon or arising out of the acts or negligence of the Redeveloper, or any of the Redeveloper's employees, agents, contractors, or subcontractors in the performance of any activity, undertaking or obligation arising out of this Agreement, or (b) based upon or arising out of any breach of or default under this Agreement by the Redeveloper, or (c) based upon or arising out of any interference of the design of the Redevelopment Project or any component thereof with, or any adverse effect of the design of the Redevelopment Project or any component thereof on, the operation, maintenance and use of City or third party property (including utility companies) in and around the Redevelopment Area; provided, however, that the Redeveloper shall not be liable for any losses to the extent caused by the gross negligence or willful misconduct of any one or more of the City or its representatives, or its agents or contractors. The foregoing express obligation of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to the City which would exist at common law or under other provisions of this Agreement, and the extent of the obligation of indemnification shall not be limited by any provision of insurance undertaken in accordance with this Agreement. This indemnification shall survive any Closing hereunder or the termination of this Agreement.

## **ARTICLE XIII RIGHTS OF MORTGAGEES**

### **Section 13.01. Limitation upon Encumbrance of Property.**

(a) Prior to the issuance of a Certificate of Completion by the City for the Step in which a portion of the Redevelopment Properties is located, neither the Redeveloper nor any successor in interest to the Redevelopment Properties, or any part thereof, shall engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon the City Parcels, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attach to any part of the City Parcels, except for purposes of obtaining funds only to the extent necessary for acquiring, planning, designing, and constructing the Redevelopment Project (inclusive of the Public Improvements) (including soft costs and any other costs typically funded by construction lenders).

(b) The Redeveloper shall notify the City in advance of any financing secured by a mortgage or other similar lien instrument, or so-called mezzanine debt secured by a pledge of ownership interests in the Redeveloper, that it proposes to enter into with respect to any portion of the City Parcels, and in any event it shall promptly notify the City of any encumbrance or lien that has been created on or attached to the City Parcels, whether by voluntary act of the Redeveloper or otherwise.

(c) For the purposes of such mortgage financing as may be made pursuant to this Agreement, the City Parcels may, at the option of the Redeveloper, be divided into several parts or parcels, provided that such subdivision is not inconsistent with this Agreement or the Development Plan.

(d) Notwithstanding any contrary provision of this Agreement, all privately-owned land within the Redevelopment Area acquired by the Redeveloper in connection with the Redevelopment Project shall be subject to all of the terms and conditions of this Agreement, excepting only the right of reverter described herein, which shall apply only to the City Parcels.

### **Section 13.02. Mortgagee not Obligated to Construct; Recognition of Mortgagees.**

Notwithstanding any of the provisions of this Agreement, including but not limited to those which are or are intended to be covenants running with the City Parcels, the holder of any mortgage authorized by this Agreement (including any such holder which obtains title to all or a portion of the City Parcels as a result of foreclosure proceedings, or action in lieu thereof, but not including: (a) any other party who thereafter obtains title to any portion of the City Parcels from or through such holder; or (b) any other purchaser at foreclosure sale other than the holder of the mortgage itself) shall not be obligated by the provisions of this Agreement to construct or to complete the Redevelopment Project or to guarantee such construction or completion; nor shall any covenant or any other provision in the deed(s) be construed to so obligate such holder; provided, however, that nothing in this Agreement shall be deemed or construed to permit or authorize any such holder to devote all or any portion of the City Parcels to any uses, or to construct any improvements thereon, other than those uses or improvements provided or permitted in the Development Plan and this Agreement.

**Section 13.03. Copy of Notice of Default to Mortgagee.** Whenever the City shall deliver any notice or demand to the Redeveloper with respect to any breach or default by the Redeveloper in its obligations or covenants under this Agreement, the City shall at the same time forward a copy of such notice or demand to each holder of any mortgage authorized by this Agreement at the last address of such holder shown in the records of the City. To facilitate the operation of this Section [13.03], the Redeveloper shall at all times keep the City provided with a current list of names and addresses of each holder of a mortgage or mezzanine debt from whom the Redeveloper has obtained financing as permitted under this Agreement. Any holder of a mortgage or other lender authorized by this Agreement may notify the City of its address and request that the provisions of this Section as they relate to notices apply to it. The City agrees to comply with any such request.

**Section 13.04. Mortgagee's Option to Cure Defaults.** If the Redeveloper has received notice from the City of a breach or default by the Redeveloper in its obligations or covenants under this Agreement and such breach or default is not cured by the Redeveloper before the expiration of the period provided therefore, each holder of any mortgage permitted by this Agreement shall (insofar as the rights of the City are concerned) have the right, at its option, to cure or remedy such breach or default (or such breach or default to the extent that it relates to the portion of the City Parcels covered by its mortgage) upon giving written notice of its intention to do so to the City within twenty (20) days after such holder receives notice from the City that the Redeveloper has so failed to cure such breach or default and to add the cost thereof to the mortgage debt and the lien of its mortgage; provided, however, that if the breach or default is with respect to construction of the Redevelopment Project, nothing contained in this Agreement shall be deemed to permit or authorize such holder, either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or completion of the Redevelopment Project (beyond the extent necessary to conserve or protect the Redevelopment Project or construction already made) without first having expressly assumed the obligation to the City, by written agreement satisfactory to the City and any other party having a right to enforce this Agreement in the event of default, to complete improvements intended to be constructed on the applicable City Parcels in accordance with the COC and the other permits therefore, or the part thereof to which the lien or title of such holder relates. In the event that such holder elects to undertake or continue the construction or completion as above provided on the City Parcels, the rights and remedies set forth in Section [13.05] shall not be exercisable until such holder is afforded a reasonable period of time in which to complete such construction.

**Section 13.05. City's Option to Pay Mortgage Debt or Purchase Property.** In any case where, subsequent to a breach or default by the Redeveloper with respect to the construction of the Redevelopment Project on a City Parcel, the holder of any mortgage authorized by this Agreement has the right under Section [13.04] to cure such breach or default by undertaking or continuing the construction or completion of the Redevelopment Project and either: (a) elects not to undertake construction or completion of such Redevelopment Project by failing to give written notice to the City within twenty (20) days after the holder has been notified or informed of the default or breach as required by Section [13.04]; or (b) subject to the foreclosure of its mortgage, elects to undertake construction or completion of such Redevelopment Project but does not complete such construction prior to the applicable Target Step Completion Date, as may be extended pursuant to Section [14.07] (including a reasonable time to enable the mortgagee to foreclose its mortgage), and such default shall not have been cured within sixty (60) days after

written demand to such holder by the City so to do, then the City shall (and every mortgage instrument made prior to completion of the Redevelopment Project with respect to the Redevelopment Properties by the Redeveloper or successor in interest shall so provide or acknowledge) have the option of:

(x) paying to the holder the amount of the outstanding mortgage debt secured by any mortgage authorized by this Agreement and securing an assignment of the mortgage and the debt secured thereby, or

(y) in the event ownership of the City Parcels (or part thereof) has vested in such holder by way of foreclosure or action in lieu thereof, obtaining a conveyance to the City of the City Parcel or part thereof (as the case may be) upon payment to such holder of an amount equal to the sum of:

(i) the outstanding mortgage debt at the time of foreclosure or action in lieu thereof (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings);

(ii) all expenses with respect to the foreclosure; and

(iii) the net expense, if any (exclusive of general overhead), incurred by such holder in and as a direct result of the subsequent management of the Redevelopment Properties.

**Section 13.06. Estoppels.** The City shall, with reasonable promptness, but in no event less than thirty (30) days after receipt of a written request therefor by the Redeveloper, any mortgagee, lessee or purchaser of the Redevelopment Project or all or a portion of the City Parcels, which request has been made in connection with the closing, sale, lease or financing of the Redevelopment Project or all or a portion of the City Parcels or any portion thereof, provide a certificate in writing stating that, to the City's actual knowledge, this Agreement is in full force and effect and unmodified, or stating in what respects the Agreement is no longer in force and effect or has been modified, and whether or not the City has actual knowledge of any default of the Redeveloper in this Agreement and, if so, in what respects.

**Section 13.07. Mortgagees' Obligations Regarding Chapter 121A Agreements.** The Redeveloper shall require that the holder of any mortgage on all or a portion of the Redevelopment Properties (including the City Parcels) which is subject to a Chapter 121A Agreement expressly enter an agreement to be bound, and to bind its successors and assigns, by the applicable Chapter 121A Agreements described in this Agreement, but such agreement shall not be binding on such holder (or its successors) as to obligations thereunder that first arise after such holder (or any such successor) transfers its interest in such Redevelopment Properties.

## ARTICLE XIV REMEDIES

### **Section 14.01. In General; Opportunity to Cure.**

(a) Except as otherwise provided in this Agreement, in the event of any failure to make payment under the terms of this Agreement (a "Monetary Default") or failure fully and

timely to perform any other acts required of the parties under this Agreement, or any of its terms or conditions, by either party, or any successor to such party (a “Non-Monetary Default”), such party (or successor) shall, upon written notice from the other (a “Default Notice”), proceed immediately to commence to cure or to remedy such default or breach, and, in the case of a Monetary Default, shall complete such cure within ten (10) days after receipt of the Default Notice, or, in the case of a Non-Monetary Default, complete such cure within a thirty (30) day period or, if the Non-Monetary Default is not capable of being cured within such thirty (30) day period, shall commence to cure the same within such thirty (30) day period and diligently prosecute the same to completion, but in no event beyond an additional ninety (90) days without the express written consent of the non-defaulting party, which consent if required by the City may be granted by the Mayor. Where the term “Default” is used herein, it shall refer to a Monetary Default or a Non-Monetary Default as the context admits. Where such cure is timely made, the party whose Default is covered shall no longer be treated as in default or breach of this Agreement. In case such action is not taken or not diligently pursued as provided herein, or the Default or breach shall not be cured or remedied within the prescribed period of time, as applicable, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and to remedy such Default or breach.

(b) Except as specifically provided in this Agreement, the parties stipulate that any liquidated damages to be paid in accordance with this Agreement represent a reasonable estimate of the actual damages to be suffered by the non-breaching party, and payment of such damages represents the sole remedy at law or in equity available to such non-breaching party in the event of such failure on the part of the other party.

**Section 14.02. Termination by City Prior to Closing.** In the event that prior to Closing 1 or any subsequent closing:

- (a) the Redeveloper assigns or attempts to assign this Agreement or any rights therein in violation of Section [9.02] of this Agreement; or (ii) there is a change in the management and control of the Redeveloper which would not be treated as an assignment to its affiliate as permitted under Section [9.02] of this Agreement; or
- (b) the Redeveloper does not pay the Purchase Price and take title to the applicable City Parcels upon tender of conveyance by the City pursuant to this Agreement, with all preconditions to Closing 1 or any future Step closing, as applicable, set forth in this Agreement having been satisfied; or
- (c) subject to the notice and cure provisions in Section [14.01(a)] above, the Redeveloper otherwise Defaults (including, without limitation, with respect to Closing 1, failure to satisfy its obligations under the Benchmark Schedule as more specifically addressed in Section [5.04], or failure to meet the key dates set forth on Exhibit D hereto);

then any rights of the Redeveloper, or any assignee or transferee, set forth in this Agreement or arising thereunder with respect to the City or the City Parcels, shall, at the option of the City, be terminated by the City without further recourse by either party. The City shall retain all deposits hereunder, the plans and other materials required to be delivered to the City under Section

[14.09] hereof, and, in the case of any Step after Closing 1, the Additional Payment. The foregoing shall be the City's sole and exclusive remedy for the Redeveloper's default or breach of this Agreement for such events, but shall not release the Redeveloper's indemnification obligations under Section [12.04] hereof.

**Section 14.03. Remedies of City Upon Happening of Event Subsequent to a Closing.**

(a) In the event that, subsequent to the closing for a Step but prior to the issuance of a Certificate of Completion for that Step by the City, the Redeveloper shall Default under this Agreement (other than those Defaults set forth in sub-section (b) below), then the City shall have the following rights and remedies for the events described in sub-sections (i) – (iii) below:

(i) Cessation of Construction of Non-Parking Public Improvements.

If, except for a Force Majeure Event, the Redeveloper (x) fails to commence construction of the Non-Parking Public Improvements within one hundred fifty (150) days of closing for Closing 1 or any subsequent Step, or (y) commences but thereafter stops construction for more than thirty (30) consecutive days, the City shall give notice to the Redeveloper to recommence such work and the Redeveloper shall pay the City a penalty, payable monthly in arrears on the first day of the next succeeding month, beginning with the month commencing on the 31<sup>st</sup> day. Such penalty shall be One Hundred Thousand Dollars (\$100,000) per month for the first thirty (30) days and Two Hundred Thousand Dollars (\$200,000) per month thereafter until the Redeveloper recommences such work. Such penalty shall be paid in cash rather than as a later credit against the Reimbursement Amount. If the Redeveloper fails to recommence the work within such thirty (30) days, the City, upon ten (10) days notice to the Redeveloper given at any time until work recommences, may undertake such work itself and deduct the cost of the same from the Reimbursement Amount. If the Redeveloper still has not recommenced the work for another thirty (30) days (i.e., for ninety (90) consecutive days altogether) or has not timely paid such penalty, then such events shall constitute a Default hereunder and the City may terminate this Agreement for all purposes. During any cessation of work as aforesaid, the Redeveloper, at its sole expense, shall take all prudent measures to assure the safety of the work site and to minimize public inconvenience.

(ii) Cessation of Construction of Private Improvements.

If, except for a Force Majeure Event, the Redeveloper stops work on any Private Improvement (including, for this purpose, any Parking Public Improvement which is part of a Private Improvement) for more than ninety (90) consecutive days, (a) the City may give notice to the Redeveloper to recommence such work within the next sixty (60) days, and (b) starting with the ninety-first (91<sup>st</sup>) day, the Redeveloper shall pay the City a penalty in the same manner as aforesaid in the amount of One Hundred Thousand Dollars (\$100,000) per month for the first three (3) months and Two Hundred Thousand Dollars (\$200,000) per month thereafter until such work is recommenced. Any penalty amounts unpaid by the Redeveloper shall be deducted from the Reimbursement Amount for the Parking Public Improvements and such non-payment on a monthly basis shall not be a Default hereunder. If the Redeveloper fails to recommence construction within such sixty (60) days, the City shall give a second ten (10) day notice to the Redeveloper to recommence the work. If the Redeveloper fails to recommence the work by the end of such second sixty (60) day period, such event shall constitute a Default hereunder and (x) the City may terminate this Agreement as to all future Steps, and (y) the monthly penalty shall

continue until construction recommences. This provision shall also apply to the cessation of construction by any permitted assignee hereunder including, without limitation, under Section [9.03(c)] hereof.

(iii) Failure to Meet Dates for Completion of Steps. If, absent a Force Majeure Event, the Redeveloper does not complete a Step by the Target Step Completion Date set forth on Exhibit D hereto, such event shall constitute a Default hereunder and the City may terminate this Agreement as to all future Steps. If the Redeveloper fails to meet an Outside Step Completion Date, such event shall constitute a Default hereunder and the City also may terminate this Agreement as to all future Steps. With respect to the Implementing Public Improvements for the Step in question, if, with the sole exception of such late completion, the Redeveloper meets all other conditions for the City to purchase said Implementing Public Improvements (a) within an additional three (3) years in the case of a Target Step Completion Date, or (b) within an additional one (1) year in the case of an Outside Step Completion Date, the City still shall purchase such Implementing Public Improvements, but only after first deducting from the Reimbursement Amount otherwise due the sum of Two Million Dollars (\$2,000,000) per annum, pro-rated on a monthly basis for the period of time between the missed Target Step Completion Date or Outside Step Completion Date, as applicable, and the date that the City pays the Reimbursement Amount.

(iv) Reversion of Title. Notwithstanding the foregoing sub-sections (i) – (iii) and in addition to the remedies set forth herein, if a Default by the Redeveloper occurs hereunder which is not cured within the applicable cure period, and if foundations have not yet been installed on a City Parcel, then the City, at its option, (a) may declare a termination in favor of the City of the title, and of all the rights and interest in and to the City Parcels, in which case all such title and all rights and interests of the Redeveloper, and any successors or assigns in interest to and in the City Parcels, shall revert to the City, and/or (b) may declare a termination of this Agreement, including all future rights of the Redeveloper to acquire additional City Parcels or to be the designated developer under the URDP. Such condition subsequent and any reversion of title as a result thereof in the City shall always be subject to and limited by, and shall not defeat, render invalid, or limit in any way: (x) the lien of any mortgage authorized by this Agreement; or (y) any rights or interests provided in this Agreement for the protection of the holders of such mortgages.

(b) In the event that, subsequent to the closing for a Step but prior to the issuance of a Certificate of Completion for that Step by the City,

(i) the Redeveloper (or its successors in interest) shall fail to pay the payments due under the Chapter 121A Agreements or, if the City has terminated such Chapter 121A Agreements, the real estate taxes or assessments on the Redevelopment Properties or any part thereof when due, or shall place thereon any encumbrance or lien unauthorized by this Agreement, or shall suffer any levy or attachment to be made, or any materialmen's or mechanics' lien (which may be bonded), or any other unauthorized encumbrance or lien to attach, and such 121A Payments, taxes or assessments shall not have been paid, or the encumbrance or lien removed or discharged or provision satisfactory to the City made for such payment, removal, or discharge, or the Redeveloper (or any successor in interest) transfers the Redevelopment Properties or any part thereof in violation of Section [9.02] of this Agreement; or

(ii) there is a change in the control of the Redeveloper in violation of Section [9.02] of this Agreement, and such violations shall not be cured within thirty (30) days after written demand by the City to the Redeveloper,

then any such event shall constitute a Default hereunder and the City shall have the right to pursue any remedies available at law or in equity, including the termination of this Agreement.

(c) Anything contained in this Agreement to the contrary notwithstanding, the City shall have no right to terminate this Agreement and receive a reversion of title to the City Parcels unless, following the expiration of the period of time given pursuant to this Section [14.01(a)] for the Redeveloper to cure the Default, the City shall notify every mortgagee of the City Parcels of the City's intent as provided in Section [13.03] above. In no event shall any reversion of title to the City Parcels be effective so long as cure rights are available to a mortgagee pursuant to Section [13.04] above. As provided in Section [13.03] hereof, the City shall be obligated to give such notice only to those mortgagees for whom either the Redeveloper, or the mortgagee itself, has given notice to the City of the exact name, mailing address, and contact information in the manner set forth in Section [15.01] hereof.

(d) Subject to the preceding paragraph, in the event that the City shall, at any time prior to the completion of the Redevelopment Project as aforesaid, have the right to declare a termination in favor of the City of the title of the Redeveloper in and to the City Parcels, the Redeveloper shall promptly, upon written demand by the City, transfer possession of, and reconvey by quitclaim deed, such City Parcels or parts thereof, together with all improvements thereon, to the City, without cost to the City, subject to any easements reserved or created by the City and subject to the provisions of this Section [14.03].

**Section 14.04. Resale of Reacquired Property; Disposition of Proceeds.** Upon the revesting in the City of title to the City Parcels or any part thereof as provided in Section [14.03], the City shall, pursuant to its responsibilities under state and local law, use best efforts to resell the City Parcels or parts thereof. Upon such resale of the City Parcels, the proceeds thereof shall be applied:

(a) first, to reimburse the City, on its own behalf or on behalf of the entities incurring such costs, for all costs and expenses reasonably and proximately incurred by the City, including but not limited to salaries of personnel, in connection with the recapture, management, and resale of the City Parcels or part thereof (but less any income derived by the City from the City Parcels or part thereof in connection with such management);

(b) second, to pay all 121A Payments, taxes, assessments, and water and sewer charges with respect to the City Parcels or part thereof (or, in the event the City Parcels are exempt from taxation or assessment or such charges during the period of ownership thereof by the City, an amount, if paid, equal to such taxes, assessments, or charges (as determined by the City assessing official) as would have been payable if the City Parcels were not so exempt);

(c) third, to pay any and all outstanding mortgage indebtedness authorized by this Agreement and to make all payments necessary to discharge any encumbrances or liens existing on the City Parcels or part thereof at the time of revesting of title thereto in the City or to

discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of the Redeveloper, its successors or transferees;

(d) fourth, to reimburse the City for any expenditures made or obligations incurred with respect to the making or completion of the Redevelopment Project or any part thereof on the City Parcels or part thereof;

(e) fifth, to reimburse the City for any amounts otherwise owing the City by the Redeveloper and its successor or transferee; and

(f) sixth, to reimburse the Redeveloper, its successor or transferee, up to the amount equal to the purchase price paid by it for the City Parcels (or allocable to the part thereof), but excluding the Additional Payment, plus the Redeveloper's carrying costs and the cash actually invested by it in the construction of the Redevelopment Project (including development and soft costs).

Any balance remaining after such reimbursements shall be retained by the City as its property.

**Section 14.05. Other Rights and Remedies of City; No Waiver by Delay.** The City shall have the right to institute such actions or proceedings as it may deem desirable for effectuating the purposes of this Article [XIV], including, with respect to the City's rights of reversion as set forth in Section [14.03], the right to execute and record in the Norfolk County Registry of Deeds a written declaration of the termination of all the right, title and interest of the Redeveloper, and its successors in interest and assigns, in the City Parcels, and the reversioning of title thereto in the City; provided, however, that any delay by the City in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Article [XIV] shall not operate as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that the City should not be constrained (so as to avoid the risk of being deprived of or limited in the exercise of the remedy provided in this Section because of concepts of waiver, laches or otherwise) to exercise such remedy at a time when it may still hope otherwise to resolve the problems created by the Default involved).

**Section 14.06. Remedies of Redeveloper.** In the event of a Default by the City under this Agreement involving failure to convey a City Parcel, which Default has not been cured pursuant to Section [14.01(a)] above, the Redeveloper's sole and exclusive remedy shall be either, at the Redeveloper's election, (i) to receive an immediate return of its deposits as liquidated damages in full settlement of any and all claims arising under or in any way related to this Agreement, or (ii) to bring an action to compel specific performance for conveyance of that portion of the City Parcels included in the Step for which said Default occurs on the terms set forth in this Agreement. In all events, the Redeveloper hereby waives any other recourse or right to damages of any kind or nature (including, without limitation, actual, indirect, incidental, special, consequential or punitive) and any right to any other form of injunctive relief on account of any Default by the City under this Agreement for failure to convey the City Parcels.

If the Redeveloper completes the Implementing Public Improvements as required by this Agreement and otherwise satisfies all of the pre-conditions to the City's obligation to purchase

the Implementing Public Improvements hereunder including, without limitation, Sections 4.06(d) and (e) hereof, and the City wrongfully fails to purchase the same, the Redeveloper shall have the remedies set forth herein for the City's Default. If the Redeveloper prevails in such an action, the Redeveloper shall be entitled to: (1) its actual damages caused by such breach, which sum shall include the Reimbursement Amount; and (2) its reasonable attorney's fees. Simultaneously with the City's payment of such amounts, the Redeveloper shall transfer title to the Implementing Public Improvements to the City. The Redeveloper hereby waives any other recourse or right to damages of any kind or nature (including, without limitation, indirect, incidental, special, consequential or punitive) and any right to any other form of injunctive relief on account of such Default by the City. If the City prevails in such an action, the City shall be entitled to its reasonable attorney's fees.

**Section 14.07. Excusable Delay in Performance for Causes Beyond Control of Party.**

(a) For the purposes of any of the provisions of this Agreement, except as otherwise expressly provided in this Agreement to the contrary, neither the City nor the Redeveloper, as the case may be, nor any successor in interest, shall be considered in breach of, or Default in, its obligations with respect to the preparation of the Redevelopment Properties for redevelopment, or the beginning and completion of construction of the Redevelopment Project, or progress in respect thereto, in the event of enforced delay in the performance of such obligations due to unforeseeable causes beyond its reasonable control and without its fault or negligence, including, but not restricted to, acts of God, acts of terrorism directly affecting the Boston Metropolitan area, war, fires, floods, earthquakes, epidemics, labor disputes, strikes, and unusual and severe weather conditions (each such instance, a "Force Majeure Event"), but Force Majeure Events shall expressly exclude lack of credit, funds, or financing, or change in market conditions; it being the purpose and intent of this provision that, in the event of the occurrence of any such Force Majeure Event, the time or times for performance of the obligations of the parties shall be extended only for the period of the Force Majeure Event. Provided, however, that the party seeking the benefit of the provisions of this Section [14.07] shall, within ten (10) days after the beginning of such Force Majeure Event, have first notified the other party thereof in writing, and of the cause or causes thereof, and requested an extension for the period of the enforced delay.

(b) Regardless of any Force Majeure Event, the Redeveloper shall be in Default upon its failure to meet the Outside Step Completion Dates set forth on Exhibit G hereto.

**Section 14.08. Recourse to Interest of Redeveloper.** No owner of all or a portion of any Redevelopment Property shall be liable under this Agreement except for breaches of Redeveloper's obligations occurring while an owner of all or a portion of any Redevelopment Property. No individual partner, trustee, manager, member, stockholder, officer, director, employee or beneficiary of the Redeveloper or successor or assign of the Redeveloper shall be personally liable under this Agreement, and the assets of its partners, trustees, managers, members, stockholders, officers, employees or beneficiaries of the Redeveloper and its successors and assigns shall not be subject to levy, execution or other enforcement procedure for the satisfaction of the remedies of the City.

**Section 14.09. Right of City to Redevelopment Materials.** Upon any Default or breach of this Agreement by the Redeveloper and the City's subsequent termination of this Agreement pursuant to Section [14.02] or Section [14.03] above, or if this Agreement is terminated for any reason other than a Default by the City, the Redeveloper shall provide to the City, no later than thirty (30) days following such termination, any and all plans, materials, and other work products developed by the Redeveloper, its Authorized Representatives, and any architects, engineers, and other professional consultants related to the Redevelopment Project.

**Section 14.10. Rights and Remedies Cumulative.** The rights and remedies of the parties whether provided by law or by this Agreement shall be cumulative, and, except as may be specifically provided for by liquidated damages, the exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same Default or breach or of any of its remedies for any other Default or breach by the other party. No waiver made by either such party with respect to the performance, or manner or time thereof, or any obligation of the other party or any condition to its own obligation under this Agreement shall be considered a waiver of any rights of the party making the waiver with respect to the particular obligation of the other party or condition to its own obligation beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect in regard to any other rights of the party making the waiver or any other obligations of the other party.

## ARTICLE XV MISCELLANEOUS

**Section 15.01. Notices.** Any notice hereunder shall be in writing and shall be deemed duly given if mailed by certified or registered mail, postage and registration charges prepaid, by overnight delivery service with receipt, or by hand delivery to the parties at the addresses set forth below (or such other address as a party may hereafter designate for itself by notice to the other party as required hereby):

If to the City:

Office of the Mayor  
City of Quincy  
City Hall  
1305 Hancock Street  
Quincy, Massachusetts 02169

and

Office of Solicitor  
City of Quincy  
City Hall  
1305 Hancock Street  
Quincy, Massachusetts 02169

with copies to:

Thomas R. Kiley, Esq.  
Cosgrove, Eisenberg & Kiley, P.C.  
One International Place  
Boston, Massachusetts 02110

and

Robert A. Fishman, Esq.  
Nutter, McClennen & Fish, LLP  
Seaport West  
155 Seaport Boulevard  
Boston, Massachusetts 02210

If to the Redeveloper:

Street-Works Development LLC  
30 Glenn Street, Fourth Floor  
White Plains, New York 10603  
Attention: Mr. Kenneth Narva

and

Mr. Jeffrey Levien  
(each by separate transmittal)

with copies to:

Robert C. Davis, Esq.  
Goulston & Storrs, P.C.  
400 Atlantic Avenue  
Boston, Massachusetts 02110

Dan Fass, Esquire  
Klapper & Fass, Attorneys at Law  
170 Hamilton Avenue, Suite 318  
White Plains, New York 10601

Any such notice shall be effective upon delivery or attempted delivery during regular business hours.

**Section 15.02. Conflict of Interests; City Representatives and Agents not Individually Liable.** No member, official, employee, agent, or other authorized representative of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, employee, agent, or representative participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested. No member, official, employee, agent, or other authorized representative of the City shall be personally liable to the Redeveloper, or any successor in interest, in the event of any Default or breach by the City or for any amount which may become due to the Redeveloper or its successor or on any obligations under the terms of this Agreement. No stockholder, member, director, manager, official, employee, agent, or other authorized representative of the Redeveloper shall be personally liable to the City, or any successor in interest, in the event of any Default or breach by the Redeveloper or for any amount which may become due to the City or successor or on any obligations under the terms of this Agreement.

**Section 15.03. Equal Employment Opportunity.** The Redeveloper, for itself and its successors and assigns, agrees that during the construction of the Redevelopment Project:

(a) The Redeveloper shall not discriminate against any employee or applicant for employment because of race, color, religion, creed, sex, age, veterans or marital status, ancestry, or national origin. The Redeveloper will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, national origin or veterans or marital status. 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 City setting forth the provisions of this non-discrimination clause.

(b) The Redeveloper shall, 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, creed, sex, age, veterans or marital status, ancestry, or national original.

(c) In the event of the Redeveloper's noncompliance with the non-discrimination clauses of this Section, this Agreement may be canceled, terminated, or suspended in whole or in part.

**Section 15.04. Disclosure and Revenue Enforcement Statements.** In compliance with the provisions of M.G.L. c. 7, § 40J relative to the filing of disclosure statements, signed under the penalties of perjury, of persons who have or will have a direct or beneficial interest in the Redevelopment Properties, the Redeveloper shall furnish to the City, simultaneously with the execution and delivery of this Agreement, evidence of the filing of a signed statement in the form attached hereto as Exhibit K with the Commissioner of the Commonwealth of Massachusetts Division of Capital Asset Management. Pursuant to M.G.L. c. 62C, § 49A, the Redeveloper shall furnish to the City, simultaneously with the execution and delivery of this Agreement, a signed statement in the form attached hereto as Exhibit L as required by applicable law and shall update the same promptly following any transfers or changes in the Redeveloper as provided in Section [9.02(a)] hereof.

**Section 15.05. Actions by the Parties; Good Faith Cooperation; Deemed Approvals.** Except as specifically provided otherwise in this Agreement, when the approval of either party is required to be obtained pursuant to this Agreement, such party shall be obligated to act reasonably, and any such approval may not be unreasonably withheld or delayed. Where any provision herein provides for a deemed approval of an action or a submission by the Redeveloper as the result of a lack of response from the City, no such deemed approval shall be granted unless the Redeveloper first provides a second notice to the City and an additional thirty (30) days to respond as provided in Section [15.01] above. In this Agreement, when City review and/or approval is required, it will be deemed to mean the applicable City department or City Consultant as directed by the Mayor and the Director of Urban Redevelopment, unless otherwise specifically set forth herein.

**Section 15.06. Intentionally Deleted.**

**Section 15.07. Brokerage Warranty.** Each party represents to the other that there has been no broker or finder engaged on such party's behalf in connection with the transactions contemplated by this Agreement. Each party agrees that should any claim be made for brokerage commissions or finder's fees by any broker or finder by, through or on account of any acts of said party or its representatives, said party will indemnify and hold the other party free and harmless from and against any and all loss, liability, cost, damage and expense in connection therewith. The provisions of this Section shall survive the closings contemplated herein and/or the termination of this Agreement.

**Section 15.08. No Partnership.** No relationship between the City and the Redeveloper of partnership or joint venture is intended to be created hereby, and any such relationship is hereby expressly disclaimed.

**Section 15.09. Provisions Not Merged With Deed.** None of the provisions of this Agreement are intended to or shall be merged by reason of any instrument transferring or subleasing title to the City Parcels from the City to the Redeveloper or any successor in interest, and any such instrument shall not be deemed to affect or impair the covenants of this Agreement.

**Section 15.10. Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

**Section 15.11. Jurisdiction; Venue.**

(a) For the purposes of any suit, action or proceeding involving this Agreement, the parties hereby expressly submit to the jurisdiction of all Federal and State courts sitting in the Commonwealth of Massachusetts and consent that any order, process, notice of motion or other application to or by any such court or a judge thereof may be served within or without such court's jurisdiction by registered mail or by personal service, provided that a reasonable time for appearance is allowed, and the parties agree that such courts shall have exclusive jurisdiction over any such suit, action or proceeding commenced by either or both of said parties. In furtherance of such agreement, the parties agree upon the request of the other to discontinue (or agree to the discontinuance of) any such suit, action or proceeding pending in any other jurisdiction.

(b) Each party hereby irrevocably waives any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement brought in any federal or state court sitting in the Commonwealth of Massachusetts and hereby further irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

(c) In recognition of the benefits of having any disputes with respect to this Agreement resolved by an experienced and expert person, the City and the Redeveloper hereby agree that any suit, action or proceeding, whether claim or counterclaim, brought or instituted by any party in connection with this Agreement or any event, transaction or occurrence arising out of or in any way connected with this Agreement or the Redevelopment Properties, or the dealings of the parties with respect thereto, shall be tried only by a court and not by a jury.

EACH PARTY HEREBY EXPRESSLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION OR PROCEEDING.

**Section 15.12. Amendment.** This Agreement may be amended or modified only by a writing signed by the City and the Redeveloper.

**Section 15.13. Severability.** If any term or provision of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be invalid, inoperative or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid, inoperative or unenforceable, shall not be affected thereby; it shall not be deemed that any such invalid, inoperative or unenforceable provision affects the consideration for this Agreement; and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**Section 15.14. Entire Agreement.** This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof, including, without limitation, the Designated Developer's Purchase Offer dated June 30, 2009. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate representatives of the City and the Redeveloper.

This Agreement is subject to the approval of the DHCD and performance of certain of its provisions shall be enforceable only after that certain legislation proposed in the form of Exhibit J shall take effect.

**Section 15.15. Exhibits; Counting of Days.** The obligations of the parties as set forth in this Agreement are subject to compliance with the terms and conditions of the Exhibits attached hereto which are incorporated herein and shall be considered to be a part of this Agreement. Capitalized terms used in the main body of this Agreement and not otherwise defined shall have the meaning ascribed to them in any Exhibit hereto and incorporated herein. Unless specifically noted to the contrary, the term "day" as used in this Agreement shall mean calendar day.

**Section 15.16. Counterparts.** This Agreement may be executed in multiple counterpart originals, each of which shall constitute one and the same instrument.

**Section 15.17. Successors and Assigns.** The provisions of this Agreement 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 interest of the City, and to any subsequent grantees of any portion of the Redevelopment Properties. Notwithstanding the terms of the preceding sentence, the Redeveloper, and its successors and assigns, shall, with respect to any breaches under the deeds and under this Agreement occurring after the issuance of the Certificate of Completion in accordance with this Agreement, be liable, and any permitted mortgagee shall in any event be liable (subject to the provisions of Section [9.04] hereof), only for breaches occurring during its or their respective ownership of an interest in the Redevelopment Properties and only with respect to, and only for breaches occurring in respect of, that portion of the Redevelopment Properties as to which the Redeveloper, its successors and assigns, or mortgagee,

as the case may be, at the time of the breach, holds an interest in such portion of the Redevelopment Properties. The City reserves the right, at its sole option, to record this Agreement or a notice hereof with the Norfolk County Registry of Deeds.

**Section 15.18. Community Benefits.**

(a) Construction and Employment Matters. Any Public Improvements undertaken by the Redeveloper, the City or the Commonwealth shall be subject to the General Laws governing the award of public design and construction contracts. In its planning, design and construction of the Public Improvements, the Redeveloper shall make good faith efforts to give hiring preference to firms or employees based, in order of preference, in the City of Quincy, the South Shore area, and the Commonwealth of Massachusetts, respectively. In constructing any of the Public Improvements contemplated by this Agreement, the Redeveloper and any contractors and subcontractors performing the work shall comply with (a) sections 26 to 27F, inclusive, of Chapter 149 of the General Laws, the so-called "prevailing wage law"; (b) section 29 of said Chapter 149 relative to obtaining security by bond for payment of labor and materials; and (c) those standards and practices set forth on Exhibit N hereto.

The parties acknowledge that (1) compliance with applicable state laws will result in bids and quotes being submitted by contractors and subcontractors which are not signatories to union agreements; (2) the Redeveloper contemplates utilizing a construction manager in connection with its obligations to construct both the Public Improvements and the Private Improvements described in the Development Plan and in the Additional Development Opportunity; and (3) the utilization of a construction manager on both the public and private elements of the Redevelopment Project will result in economies of scale, reduce costs and promote the public interest; provided that sufficient labor harmony exists to preserve the construction schedule essential to the Redevelopment Project. Therefore, the Redeveloper shall only engage a construction manager willing to execute a memorandum of understanding with construction trade unions that fulfills the minimum requirements set forth in this Section. At a minimum, the Redeveloper and/or its construction manager shall offer the construction trade unions a memorandum of understanding pursuant to which the Redeveloper agrees (a) to utilize signatory subcontractors on eighty percent (80%) of the scope of work on the Redevelopment Project that is either the subject of the Redeveloper's contractual agreement with its construction manager or involves the Public Improvements, and (b) to encourage the same eighty percent (80%) union participation by subsequent developers, owners and tenants within the Redevelopment Project. The Redeveloper's offer shall be conditioned, however, on the agreement of the applicable trade union to seek in good faith to meet community and minority workforce goals including, but not limited to, a goal of twenty-five percent (25%) for Quincy residents qualified to perform such work. The workforce goals set forth in such memorandum of understanding shall be measured in man hours in order to achieve the purposes of this Section.

In addition to the employment goals for the construction trades, the Redeveloper agrees to seek in good faith to meet the goal that qualified Quincy businesses will provide twenty-five percent (25%) of the supplies, services and materials to be used or required in the construction of the Redevelopment Project, measured in terms of the value of the contract.

(b) Other Employment Opportunities for Quincy Residents. The Redeveloper and the City shall work cooperatively to promote permanent job creation for Quincy residents within the Redevelopment Project. In this connection, the Redeveloper agrees to use reasonable efforts to foster the creation of jobs for Quincy residents including, without limitation, by hosting job fairs at regular intervals (at a minimum of one every three (3) months), for a period of seven (7) years from the commencement of each Step, to provide opportunities for such Quincy residents to meet with representatives of the businesses that will ultimately be operating within the applicable Step of the Redevelopment Project. This same undertaking shall be included in all ground leases, sub-ground leases and space leases with businesses within the Redevelopment Project for tenants in excess of fifteen thousand (15,000) square feet. The Redeveloper agrees to coordinate the timing and location of such job fairs with the Mayor and his or her staff.

(c) Affordable Housing. Pursuant to Chapter 392 of the Acts of 2004, the City of Quincy has enacted Council Order 2004-052B establishing Quincy Municipal Code Title 17, Chapter 17, Section 17.04.235 et seq.

Title 17, Section 17.04.235, as amended, constitutes the City of Quincy Affordable Housing Ordinance (the "Ordinance"). By subpart A, the Ordinance establishes that the Ordinance shall apply to all projects where a special permit and/or variance is sought from any City of Quincy board or body to construct a residential building project of ten (10) units or more. For the purposes of the Ordinance, such projects are referred to as "Inclusionary Projects." By sub-part B, the Ordinance applies to all Inclusionary Projects in all zoning districts of the City of Quincy.

The Ordinance sets forth an administrative framework for submission of Inclusionary Projects to the Department of Inspectional Services and the Affordable Housing Trust Fund. The Affordable Housing Trust Fund and the Affordable Housing Trust Fund Committee are established by the Ordinance for the administration and implementation of the Ordinance.

As part of the Redevelopment Project, the Redeveloper has proposed to construct substantially in excess of ten (10) residential units within the New Quincy Center Area. The dwelling units to be constructed are both "For Sale" or ownership units and rental units.

Within Quincy Center Zoning District 10 and Quincy Center Zoning District 15 of the Quincy Zoning Ordinance, urban renewal projects are allowed as of right upon the issuance by the Planning Board of the City of Quincy of a Certificate of Consistency. In Quincy Center Zoning District 15, upon the issuance of a special permit by the Planning Board, a building could be constructed with as many as twenty stories.

The Redeveloper proposes to construct at least one residential building in a Quincy Center Zoning District 15 of twenty stories in height. The issuance of this special permit would cause the Redevelopment Project to be an Inclusionary Project. The parties hereby agree that the residential component of the Redevelopment Project shall be an Inclusionary Project for all purposes of the Ordinance.

The parties have agreed that it is in the best interest of the City, the Affordable Housing Trust Fund and the Redeveloper that the Redeveloper pay to the Affordable Housing Trust Fund

a sum of money in lieu of the construction of affordable housing units, as provided for in the Ordinance, as an alternative to constructing affordable housing units within the Redevelopment Project. The Redeveloper hereby agrees to make such payments. The making of such payments is hereby deemed to be compliance with the Ordinance.

The parties understand and acknowledge there to be a great variance in the cost to construct the several types of residential units proposed in the Redevelopment Project. To aide in the administration of the Ordinance with regard to the residential portion of the Redevelopment Project and to provide a sum certain of such payment for planning purposes both on the part of the Redeveloper, the Affordable Housing Trust Fund, and the City, the parties hereby agree that the Redeveloper shall pay Ten Thousand Dollars (\$10,000.00) for each residential unit within the Redevelopment Project (including the Additional Development Opportunity) in lieu of the construction of affordable units within the Redevelopment Project. Such payment shall be made on a per-building basis at the time of the issuance of a building permit for such building.

(d) Community Benefits Account. The City and the Redeveloper recognize and agree that the Redevelopment Project will focus substantial time, money and resources within the Redevelopment Area, and will result in development impacts typically associated with a construction project of this magnitude and nature. In recognition of the foregoing, the City and the Redeveloper agree that it is necessary and appropriate to establish a fund intended to provide for certain community benefits not restricted to the Redevelopment Project or the Redevelopment Area in order to insure that the City's substantial investment of time, money and resources to the Redevelopment Project does not result in a diminution in the municipal services provided by the City to other neighborhoods across the City relative to their continued maintenance, enhancement and/or development.

Therefore, the City and the Redeveloper agree that the Redeveloper shall establish and fund a Community Benefits Account in the amount of Ten Million Dollars (\$10,000,000) for the purposes described herein. The establishment and funding of the Community Benefits Account shall be a material pre-condition to the City's obligation to convey title to any City Parcel to the Redeveloper.

The City and the Redeveloper hereby agree that the Community Benefits Account is intended to fund certain public infrastructure projects outside of the Redevelopment Area, which projects will serve to preserve, maintain, enhance and/or develop areas of the City such as the North/South/West gateways, certain public parks and/or recreational areas, and other public areas located outside the Redevelopment Area which are, or may be, in the exclusive judgment/discretion of the Mayor, in need of infrastructure investment. All expenditures from the Community Benefits Account shall be solely at the direction of the City, acting by and through the Mayor, subject, however, to the appropriation process set forth in M.G.L. c. 40.

The City shall report annually to the Redeveloper on all expenditures made from the Community Benefits Account. Such report shall be made on or before November 1<sup>st</sup> of each year, until the Community Benefits Account is exhausted. Such report shall encompass the prior municipal fiscal year's expenditures.

**Section 15.19. Development Team.** The Redeveloper's consultants are set forth on Exhibit M attached hereto. Counsel shall not be considered a consultant. The Redeveloper retains the right, in its sole discretion, to dismiss any of such consultants, replace them and add additional consultants. In each case, the Redeveloper shall notify the Mayor and the Director of Urban Redevelopment of such removal or appointment and, in the case of an appointment, the Redeveloper shall make no public announcement of such appointment until at least ten (10) days after giving such notice.

The Redeveloper shall retain contractors and construction managers as the Redeveloper, in its sole discretion, may determine, but each of whom must have the experience required under Section [4.06(c)] hereof. Neither any consultant nor any construction manager or contractor who the Redeveloper desires to retain shall be a party to a legal proceeding with the City nor be a party against whom the City has a claim pending for breach of contract.

**Section 15.20. Cooperation; Appeals.** To the extent required by law, the City shall join as co-applicant with respect to applications for governmental approvals and permits and, at the Redeveloper's request, cooperate in the Redeveloper's prosecution and/or defense of any appeals with respect thereto; provided, however, that the Redeveloper shall indemnify and hold the City harmless from (a) any liability arising from joining the Redeveloper as a co-applicant in any such application, and (b) from the City's litigation expenses.

**Section 15.21. Outdoor Dining.** The parties agree that in order to maximize the pedestrian-friendly nature of the Redevelopment Project, the best location for restaurant outdoor dining within the Redevelopment Project may be at curbside instead of in areas adjacent to any building. The parties agree to cooperate with one another in good faith in achieving the goal of locating restaurant outdoor dining areas at curbside at no fee to the operator thereof other than the normal fees charged pursuant to the provisions of the City of Quincy Municipal Code applicable to outside dining throughout Quincy.

**Section 15.22. Valet Parking.** The City shall cooperate with the Redeveloper in connection with the location of valet parking stands and the establishment of limited on-street pick-up and drop-off zones solely for restaurant and medical uses, with such areas to be operated and maintained by the Redeveloper at its sole cost and expense. There shall be no designated or reserved on-street valet parking.

**Section 15.23. Parking Management Plan.** The City (through the Mayor and the Director of Urban Redevelopment) and the Redeveloper shall negotiate and execute and deliver, at least ninety (90) days prior to Closing 1, a parking management agreement (the "Parking Management Plan") that shall establish operating standards and parking rate standards, in order to cause the Parking Improvements to be maintained and operated in a manner so as facilitate the use and occupancy of the Redevelopment Project as intended under the URDP. Such agreement shall be effected in the manner provided in Section [3.03].

*[Signatures Appear on the Next Page]*

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

APPROVED AS TO FORM:

CITY OF QUINCY

\_\_\_\_\_  
Corporation Counsel

By: \_\_\_\_\_  
Mayor  
Hereunto duly authorized

REDEVELOPER

HANCOCK ADAMS ASSOCIATES, LLC

By: \_\_\_\_\_  
Name:  
Title:  
Hereunto duly authorized