

CITY OF THE PRESIDENTS

QUINCY
Massachusetts

Master Tax Increment Financing (TIF)
FOR
Downtown Quincy Center
April 4, 2005



PCD



INTRODUCED BY

MAYOR'S
SOLICITORS
AUDITORS
ASSESSORS

PLANNING

CITY OF QUINCY
IN COUNCIL

ORDER NO. 2005-130
ORDERED:

June 6, 2005

MASTER TAX INCREMENT FINANCING AGREEMENT (TIF)
(QUINCY CENTER DIF DISTRICT)

Be it ordained that the City Council of the City of Quincy hereby approves the Master Tax Increment Financing Agreement (the "TIF") between the City and owners of real estate located within the Quincy Center District Improvement Financing (DIF) District that are subsequently approved by the City Council, pursuant to G.L. s 40 & 59, said TIF shall be substantially in the form as presented to the Council, and designates the Quincy Center DIF District as a Tax Increment Financing Zone and an Economic Opportunity Area to be known as the Quincy Center DIF Economic Opportunity Area.

PASSED TO BE ORDAINED JUNE 6, 2005

ATTEST: *Maurice J. Halber*
CLERK OF COUNCIL



YEAS Coughlin, Davis, Finn, Gardner, Gutro, Keenan, Kelly, McCauley, Raymondi (6)

NAYS Coughlin, Davis, Finn, Gardner, Gutro, Keenan, Kelly, McCauley, Raymondi

**TAX INCREMENT FINANCING AGREEMENT
BY AND BETWEEN
THE CITY OF QUINCY,
AND**

This AGREEMENT is made this day of , 200 by and between the CITY OF QUINCY, a municipal corporation duly organized under the laws of the Commonwealth of Massachusetts, having a principal place of business at City Hall, 1305 Hancock Street, Quincy, Massachusetts 02169 (hereinafter referred to as the "CITY"), and , a organized under the laws of the , having a usual place of business at (hereinafter referred to as the "DEVELOPER").

WITNESSETH

WHEREAS, the CITY, has been designated as an Economic Target Area ("ETA") by the Massachusetts Economic Assistance Coordinating Council (the "EACC");

WHEREAS, the DEVELOPER is the owner of the s/f building (the "EXISTING BUILDING") and the land more particularly described in Exhibit A; and, the DEVELOPER or his tenants [will be making improvements to the EXISTING BUILDING] [the DEVELOPER will be constructing a commercial building to be leased or sold for commercial purposes (the NEW BUILDING)] which together the land and improvements thereon, shall be referred hereafter as the "FACILITY"; and the users or tenants of the FACILITY shall be hereafter referred to as the "USERS";

WHEREAS, the FACILITY is located within the City Center District Economic Opportunity Area as, or to be designated by the EACC (the "EOA") as shown on the plan in Exhibit B;

WHEREAS, the DEVELOPER is committed to completing various common area improvements (the "INITIAL CERTIFIED PROJECT") and to leasing, constructing or selling portions or all of the FACILITY; and each of the USERS may seek to certify its improvements as a certified project (the "FUTURE CERTIFIED PROJECTS");

WHEREAS, the INITIAL CERTIFIED PROJECT, when fully operational, will create at least () permanent, full time jobs in connection with the operation of the FACILITY and will result in new common area improvements of at least \$;

WHEREAS, the DEVELOPER and any USERS will likely invest approximately \$ in the new common area improvements and the development and construction of the FUTURE CERTIFIED PROJECTS;

WHEREAS, the DEVELOPER is seeking a Tax Increment Financing Exemption from the CITY (the "EXEMPTION") in order to benefit the USERS that will execute a participating user joinder agreement (the "PARTICIPATING USER JOINDER AGREEMENT") in the form attached hereto as Exhibit C and approved by the Mayor (the "PARTICIPATING USERS"), for any FUTURE CERTIFIED PROJECTS located at the FACILITY, in accordance with the

Massachusetts Economic Development Incentive Program and Chapter 23A of the Massachusetts General Laws;

WHEREAS, the CITY strongly supports increased economic development to provide additional jobs for residents of the CITY, to expand retail and commercial activity within the CITY and to develop a healthy economy and stronger tax base;

WHEREAS, the EXEMPTION will be used by the DEVELOPER to attract USERS to the FACILITY, thereby increasing the tax base of the CITY and enhancing commercial activity and employment opportunities for its residents;

WHEREAS, the INITIAL and FUTURE CERTIFIED PROJECTS will further the economic development goals and the criteria established for the ETA and the EOA;

NOW, THEREFORE, in consideration of the mutual promises of the parties contained herein and other good and valuable consideration each to the other paid, receipt of which is hereby acknowledged, the parties hereby agree as follows:

A. TAX INCREMENT FINANCING EXEMPTION

1. The CITY, as authorized by vote of its City Council adopted on _____, 2005, hereby enters into this Tax Increment Financing Agreement (the "AGREEMENT") with the DEVELOPER for the INITIAL CERTIFIED PROJECT and any FUTURE CERTIFIED PROJECTS that are the subject of an approved PARTICIPATING USER JOINDER AGREEMENT.
2. The EXEMPTION is hereby granted by the CITY to the DEVELOPER in accordance with Chapter 23A, Section 3E; Chapter 40, Section 59; and Chapter 59, Section 5 of the Massachusetts General Laws. The EXEMPTION shall be for a period of twenty (20) years (the "EXEMPTION PERIOD"), commencing for the INITIAL CERTIFIED PROJECT with fiscal year 2006 (which begins July 1, 2005) and ending with fiscal year 2025 (which ends June 30, 2025) and for each FUTURE CERTIFIED PROJECT with the Fiscal Year in which such FUTURE CERTIFIED PROJECT receives its occupancy permit, and ending with fiscal year 2025 (which ends June 30, 2025) and shall provide a percentage EXEMPTION from taxation, as described in the table below, on the increased value of the FACILITY resulting from the INITIAL CERTIFIED PROJECT as to which the PARTICIPATING USER is either the owner-user or the tenant responsible for paying the taxes at the FACILITY. The EXEMPTION shall be calculated and remain unchallenged for each fiscal year as follows:

3.

YEAR	TAX EXEMPTION
1	5% of the increase in valuation
2	5% of the increase in valuation
3	5% of the increase in valuation
4	5% of the increase in valuation
5	5% of the increase in valuation
6	2% of the increase in valuation
7	2% of the increase in valuation

8	2% of the increase in valuation
9	2% of the increase in valuation
10	2% of the increase in valuation
11	2% of the increase in valuation
12	2% of the increase in valuation
13	2% of the increase in valuation
14	2% of the increase in valuation
15	2% of the increase in valuation
16	2% of the increase in valuation
17	2% of the increase in valuation
18	2% of the increase in valuation
19	2% of the increase in valuation
20	2% of the increase in valuation

- The EXEMPTION formula for the INITIAL CERTIFIED PROJECT and each FUTURE CERTIFIED PROJECT will be calculated as prescribed by the Massachusetts General Laws Chapter 40, Section 59 and in 760 CMR 22.00. The EXEMPTION formula shall apply to the incremental difference in the assessed valuation of the FACILITY benefited by the EXEMPTION between the base valuation in the base year and the increase in assessed valuation of the FACILITY for the remaining years of the EXEMPTION.
- The base valuation is the aggregate assessed value of the FACILITY in the fiscal year immediately prior to the fiscal year in which the property becomes eligible for the EXEMPTION.
- The DEVELOPER hereby agrees to reduce the PARTICIPATING USERS' real estate taxes on a pro rata basis allocated on the square footage of the FACILITY occupied by each of the PARTICIPATING USERS and as indicated in each PARTICIPATING USER JOINDER AGREEMENT according to Paragraph A, Section 3 above and subject to adjustment pursuant to Paragraph B (9) hereinafter described.

B. CONDITIONS

The EXEMPTION granted to the DEVELOPER by the CITY hereby is in consideration of the DEVELOPER'S and the PARTICIPATING USERS' commitments stated as follows:

- The DEVELOPER shall create at least () new, permanent, full-time jobs as outlined in the CERTIFIED PROJECT APPLICATION submitted to the CITY by the DEVELOPER in connection with the DEVELOPER'S request for the EXEMPTION, and to hire residents of Quincy and the ETA as outlined in the WORK FORCE ANALYSIS AND JOB CREATION PLANS section of the CERTIFIED PROJECT APPLICATION and the PARTICIPATING USERS shall create additional employment as described in each PARTICIPATING USER JOINDER AGREEMENT;
- The DEVELOPER intends to invest approximately \$ in common area improvements at the FACILITY as described in the CERTIFIED PROJECT APPLICATION or FUTURE CERTIFIED PROJECT APPLICATION and, it is likely that the DEVELOPER and the USERS, will invest an additional \$ if the

FACILITY is fully developed; and all said improvements shall be placed in use no later than two (2) years after the INITIAL CERTIFIED PROJECT or FUTURE CERTIFIED PROJECT becomes eligible for the EXEMPTION;

3. The DEVELOPER and each PARTICIPATING USER with respect to its employee hiring shall cooperate with the South Coastal Area Workforce Investment Board, the local Office of the Massachusetts Department of Employment and Training and other agencies, as appropriate, in seeking to fill job vacancies with the DEVELOPER and the PARTICIPATING USERS as they develop, and operate a job outreach program whereby Quincy and ETA residents are made aware of job opportunities with the DEVELOPER and each PARTICIPATING USER, including advertising in the local newspapers encouraging such residents to apply for employment with the DEVELOPER and each PARTICIPATING USER anytime advertisements are otherwise placed by the DEVELOPER and each PARTICIPATING USER for employment at the FACILITY and hire properly qualified Quincy and ETA residents on a priority basis consistent with any applicable laws or regulations;
4. The DEVELOPER and each PARTICIPATING USER shall use their best efforts to afford priority to local contractors, vendors and suppliers, in connection with the construction and repair of the INITIAL CERTIFIED PROJECT and each FUTURE CERTIFIED PROJECT, subject to any applicable laws or regulations, and assuming equal qualification;
5. Each PARTICIPATING USER shall have all its vehicles, owned and used in connection with the FACILITY, garaged so that any local motor vehicle excise tax owed with respect to such vehicles will be paid to the CITY;
6. The DEVELOPER and each PARTICIPATING USER shall submit annual reports with the Commonwealth, the CITY and the Quincy Area ETA on job creation, job retention and new investments at the FACILITY to the CITY by September 30th of each year during the EXEMPTION PERIOD. The annual report shall include the number of permanent (regular), full and part-time jobs created and the number of people hired from within Quincy and the ETA annually and on a cumulative basis, the value of capital investments made with respect to the FACILITY annually and on a cumulative basis, the amount of property and automobile excise taxes paid to the CITY and the utilization of local contractors, vendors and suppliers annually and on a cumulative basis; and the Mayor or his or her designee may verify the employment and advertising records of the DEVELOPER and of each PARTICIPATING USER
7. The DEVELOPER and each PARTICIPATING USER shall pay all taxes and all other payments owed by each to the CITY or its representatives relating to the FACILITY or this AGREEMENT in a timely fashion;
8. The DEVELOPER and each PARTICIPATING USER shall pay any reasonable legal or consulting fees or out of pocket expenses incurred by, or behalf of the CITY that are directly associated with this AGREEMENT, or the monitoring or enforcement of the AGREEMENT while it remains in force or in connection with the CERTIFIED PROJECT APPLICATION or FUTURE CERTIFIED PROJECT APPLICATION, Economic Opportunity Area Application, TIF Zone Plan, supporting documentation

submitted to the Commonwealth and any PARTICIPATING USER JOINDER AGREEMENT;

9. The DEVELOPER and each PARTICIPATING USER hereby permits the CITY, through its Mayor, to manage, administer, monitor and enforce this AGREEMENT and any PARTICIPATING USER JOINDER AGREEMENT; and
10. Each PARTICIPATING USER hereby waives the statutory right to the exemption granted from personal property taxes (with respect to the FACILITY and the personal property used in the FACILITY) due to the fact that a business is located in an Economic Opportunity Area, and shall pay such taxes for the duration of the AGREEMENT. In the event that this waiver is deemed invalid by the Massachusetts Department of Revenue, the PARTICIPATING USER hereby commits to reimbursing the CITY annually for the loss of revenue created by such statutory exemption from personal property taxes related to the personal property used at the FACILITY.

C. ADDITIONAL PROVISIONS

1. The DEVELOPER and each PARTICIPATING USER agree that the CITY has the right to petition to the EACC to decertify the INITIAL CERTIFIED PROJECT or any FUTURE CERTIFIED PROJECT and revoke this AGREEMENT if the CITY, acting through its Mayor, determines that the DEVELOPER or any PARTICIPATING USER has failed in any material way to meet any of its obligations as set forth in this AGREEMENT. Any decertification of a PARTICIPATING USER shall not constitute a default hereunder of the entire AGREEMENT nor shall the same result in the decertification of any other PARTICIPATING USER or the DEVELOPER that are in compliance with the terms of this AGREEMENT. Upon decertification by the EACC, the CITY shall discontinue the EXEMPTION benefits described above, commencing with the fiscal year immediately following the year for which the breaching party so failed to meet its obligations. Prior to filing any such petition for decertification, however, the CITY shall give the breaching PARTICIPATING USER or the breaching DEVELOPER, if that be the case, written notice of the alleged defaults and an opportunity to be heard at a public hearing on the matter. If the CITY is satisfied that the breaching party has made a good faith effort to meet its obligations under this AGREEMENT, the parties will attempt to negotiate a mutually acceptable and reasonable resolution, which may result in amendments to the terms of this AGREEMENT, prior to the CITY filing a decertification petition.
2. If the DEVELOPER decides to transfer any portion of the FACILITY or any PARTICIPATING USER shall discontinue operations at the FACILITY, it shall give the CITY thirty (30) days written notice prior to any proposed change in the use of, or proposed disposition of the FACILITY. In addition, in the event of a transfer of any portion of the FACILITY to an entity controlling, controlled by or under common control with the DEVELOPER or PARTICIPATING USER, or to a successor by merger, consolidation or sale, written notice of such transaction shall be given to the CITY within thirty (30) days after such transaction. This provision shall not be applicable to the granting of mortgages or the exercise of the rights of a mortgagee of the FACILITY.

Said notice shall be given to the Mayor, City Hall, 1305 Hancock Street, Quincy, MA 02169. The CITY shall not, except as required by law, disclose any information provided by the DEVELOPER or the PARTICIPATING USER regarding the proposed change in the use of, or proposed disposition of, the FACILITY.

3. Pursuant to 760 CMR 22.05 (8) (d), this AGREEMENT shall be binding upon all parties to it, and be binding upon the DEVELOPER and any PARTICIPATING USER and their successors and assigns and shall inure to the benefit of affiliates of the DEVELOPER and any PARTICIPATING USER so long as the INITIAL CERTIFIED PROJECT or any FUTURE CERTIFIED PROJECT has not been decertified by the EACC.
4. The INITIAL CERTIFIED PROJECT becomes eligible for the EXEMPTION on the July 1st following the date on which the EACC approves the TIF Plan pursuant to which this AGREEMENT is executed, as provided in 760 CMR 22.05 (4)(d) and each FUTURE CERTIFIED PROJECT shall become eligible for the EXEMPTION on the July 1st following the date on which the EACC approves each FUTURE CERTIFIED PROJECT.
5. If any provision of this AGREEMENT shall be found invalid for any reason, such invalidity shall be construed as narrowly as possible and the balance of this AGREEMENT shall be deemed to be amended to the minimum extent necessary to provide to the CITY, the DEVELOPER and each PARTICIPATING USER substantially the benefits set forth in this AGREEMENT.
6. All notices permitted or required under the provisions of this AGREEMENT shall be in writing, and shall be sent by registered or certified mail, postage prepaid, or shall be delivered by private express carrier to the addresses listed above or at such other address as may be specified by a party in writing and served upon the other in accordance with this section.
7. If and to the extent that either party is prevented from performing its obligations hereunder by an event of force majeure, such party shall be excused from performing hereunder and shall not be liable in damages or otherwise, and the parties instead shall negotiate in good faith with respect to appropriate modifications to the terms hereof. For purposes of this AGREEMENT, the term force majeure shall mean any supervening cause beyond the reasonable control of the affected party, including without limitation requirement of statute or regulation; action of any court, regulatory authority, or public authority having jurisdiction; acts of God, fire, earthquake, floods, explosion, actions of the elements, war, terrorism, riots, mob violence, inability to procure or a general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, actions of labor unions, condemnation, laws or orders of governmental or military authorities, denial of, refusal to grant or appeals of any permit, approval or action of any public or quasi public authority, official, agency or subdivision and any litigation relating thereto, or any other cause similar to the foregoing, not within the control of such party obligated to perform such obligation.
8. Failure by the DEVELOPER or a PARTICIPATING USER to perform any term or provision of this AGREEMENT shall not constitute a default under this AGREEMENT unless the DEVELOPER or the PARTICIPATING USER fails to commence to cure, correct or remedy such failure within thirty (30) days of the receipt of written notice of

such failure from the CITY to the DEVELOPER or a PARTICIPATING USER and thereafter fails to complete such cure, correction or remedy within ninety (90) days of the receipt of such written notice, or, with respect to defaults which cannot be remedied within such ninety (90) day period, within such additional period of time as is required to reasonably remedy such default, provided the DEVELOPER or a PARTICIPATING USER exercises due diligence in the remedying of such default. Notwithstanding the foregoing, any late payments of property taxes due under this AGREEMENT shall be subject to the same interest and penalty charges that would otherwise be levied in case of a failure to timely pay property taxes.

9. After receiving written notice from any person, firm or other entity, that such party holds a mortgage which includes as part or all of the mortgaged premises, any part of the FACILITY, the CITY shall, so long as such mortgage is outstanding, be required to give to such holder the same notice as is required to be given to the DEVELOPER or a PARTICIPATING USER under the terms of this AGREEMENT, but such notice may be given by the CITY to the DEVELOPER or a PARTICIPATING USER and such holder concurrently. It is further agreed that such holder shall have the same opportunity to cure any default as is available to the DEVELOPER or a PARTICIPATING USER and that such holder shall have forty-five (45) days more to cure any such default than would be available to the DEVELOPER or a PARTICIPATING USER under the provisions of this AGREEMENT. In addition, so long as any such holder, within seventy-five (75) days of receiving any such notice from the CITY, shall commence proceedings for foreclosure of any such mortgage and shall, in the meantime, keep and perform or cause to be kept and performed all the obligations of the DEVELOPER or a PARTICIPATING USER, or shall undertake to cure any default under or failure of the DEVELOPER or a PARTICIPATING USER to satisfy any condition of this AGREEMENT, to the extent that any such actions can be performed or undertaken by a party proceeding under foreclosure under applicable law, no default or failure of any condition shall exist under this AGREEMENT. Notwithstanding the foregoing, any late payments of property taxes due under this AGREEMENT shall be subject to the same interest and penalty charges that would otherwise be levied in case of a failure to timely pay property taxes.

WITNESSETH the execution and delivery of this AGREEMENT by the CITY OF QUINCY, and _____, as an instrument under seal as of the date first above written.

Attachments:

Exhibit A: Property Description of FACILITY

Exhibit B: Plan of EOA

Exhibit C: Form of Participating User Joinder Agreement

CITY OF QUINCY

By it's Mayor:

The undersigned hereby covenants and agrees to be bound by all terms of the TIF Agreement applicable to Participating Users.

Executed this ___ day of _____, ____.

[NAME OF APPLICANT]

Name and Title:
Hereunto Duly Authorized

APPROVED AS A PARTICIPATING
USER UNDER THE TIF AGREEMENT:
CITY OF QUINCY

Mayor