

**Contract between the City of Quincy and
_____ Inc.
Pursuant to Section 6A of Chapter 121A of the
Massachusetts General Laws**

This Agreement ("Agreement") made this ___ day of _____, 20___, under Sections 6A, 10, 15 and 18C of Chapter 121A of the General Laws of the Commonwealth of Massachusetts and Chapter ___ of the Acts of _____ [Add Special Legislation citation] (collectively, "Chapter 121A") is by and between _____ Inc., a _____ (hereinafter referred to as the "Developer") and the City of Quincy, a municipal corporation of the Commonwealth of Massachusetts (hereinafter referred to as the "City").

WITNESSETH THAT:

WHEREAS, the Developer [is party to/is an affiliate of _____ the "Redeveloper" under] that certain Land Disposition Agreement with the City of Quincy dated _____, _____ (the "LDA") which Land Disposition Agreement has been approved by the City and by the Commonwealth of Massachusetts, Department of Housing and Community Development (the "Department").

WHEREAS, the Redeveloper has filed with the City of Quincy the Financial Submission in connection with Step # __, as defined in and required by the LDA, which pertains, inter alia, to the construction of the improvements described below (the "Project") in that certain section of downtown Quincy (the "New Quincy Center Area") that is subject to the Quincy Center District Urban Revitalization and Development Plan dated May 7, 2007 (including all amendments thereto, the "URDP") and commonly known as [street address], Quincy, Massachusetts (the "Project Site"). [Assumes that there will be multiple Projects/Projects Sites due to subdivision of the city parcels and other land that is subject to the LDA – including vertical subdivisions.]

WHEREAS, as more particularly described in the LDA, the Project consists of the acquisition of the fee interest in the Project Site by the Developer, the construction on the Project Site of [describe improvements] containing approximately _____ square feet of gross leasable area (the "Building"), the certification of the Developer as a 121A entity with authorization to undertake and carry out the Project, and the ground lease of the Project Site by the Developer to _____.

WHEREAS, the Mayor of the City has approved the Financial Submission in accordance with the LDA.

WHEREAS, pursuant to the requirements of Chapter 121A, the Developer has executed a Regulatory Agreement of even date with the City (the "Regulatory Agreement").

WHEREAS, pursuant to the provisions of Chapter 121A, the City and the Developer have determined to enter into this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Agreement to Undertake 121A Project. The Developer hereby agrees with the City that all activities of the Developer will be undertaken in accordance with the provisions of Chapter 121A as now in effect, the LDA and the Regulatory Agreement. Such activities of the Developer include, without limitation, acquiring fee simple title in the Project Site, or such other interests as are sufficient, in the Developer's determination, to undertake and complete the Project, ground leasing the Project Site to _____, and causing the Project to be constructed, maintained and operated in accordance with the LDA.

2. Contract Payments. The Developer hereby agrees to make the following annual payments (the "121A Payments") to the City in lieu of ad valorem real estate taxes that would otherwise be assessed on the Project Site and acknowledges that the 121A Payments are likely to exceed the amount of ad valorem real property taxes that would otherwise be assessed on the Project Site:
 - A. For a period of the sooner of (i) thirty-six (36) calendar months, commencing on the Effective Date of this Agreement; or (ii) substantial completion of the Project, as evidenced by the issuance by the City of a temporary certificate of occupancy for the Building, the Developer shall pay \$ _____ per annum. [Amount to be completed from data in Financial Submission demonstrating compliance with Section 4.03(b) of the LDA]

 - B. Thereafter, for the balance of the term of this Agreement, the Developer shall pay the following amounts: [Amounts to be completed from data in Financial Submission demonstrating compliance with Section 4.03(d) of the LDA - amount escalates every 5 years]
 - i. Commencing on _____ until _____ \$ _____ per annum
 - ii. Commencing on _____ until _____ \$ _____ per annum
 - iii. Commencing on _____ until _____ \$ _____ per annum
 - iv. Commencing on _____ until _____ \$ _____ per annum
 - v. Commencing on _____ until _____ \$ _____ per annum
 - vi. Commencing on _____ until _____ \$ _____ per annum

 - C. DIF Maintenance Fund Payments. In addition to the 121A Payments, the Developer agrees to pay the following amounts to be used by the City in accordance with Section 4.03(e) of the LDA: [Amounts to be completed from data in Financial Submission demonstrating compliance with Section 4.03(e) of the LDA - amount escalates every 5 years]

- vii. Commencing on _____ until _____ \$_____ per annum
- viii. Commencing on _____ until _____ \$_____ per annum
- ix. Commencing on _____ until _____ \$_____ per annum
- x. Commencing on _____ until _____ \$_____ per annum
- xi. Commencing on _____ until _____ \$_____ per annum
- xii. Commencing on _____ until _____ \$_____ per annum

3. Timing of Payments.

- A. All payments due hereunder shall be paid in quarterly installments on or before April 1, July 1, October 1 and January 1 of each year. Late payments will bear interest at the rate equal to the rate charged for delinquent real estate accounts by the City Assessor pursuant to M.G.L. c. 60. The City shall have all rights and remedies available to it under law for the collection of payments due hereunder in the event the Developer breaches its duty to pay.
- B. Payment of amounts due hereunder shall be equitably pro rated for any partial year during the periods set forth in this Section.

4. 121A Payments Parity. The City recognizes that the 121A Payments due hereunder, in substantial measure, are intended to underwrite the City’s cost in funding the Implementing Public Improvements, as defined in the LDA, 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 in the New Quincy Center Area such as the Project. The City would, however, have the authority under Chapter 121A, if the applicable statutory and regulatory requirements were satisfied and, if City so elected, in its sole discretion, 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 by the Developer hereunder, could undermine the financial stability of the Redevelopment Properties (as defined in the LDA) and conflict with the purposes of the URDP. Therefore, the City has agreed that the tax payments under 121A Agreements or Development Covenants (as provided for in the URDP) entered into by the City with other owners of properties in the New Quincy Center Area put to the same use as the Project (other than with the Excluded Owners as defined in Exhibit A to the LDA, which may be at such rates as the City in its sole discretion shall determine) shall be no less than those in this Agreement or another Agreement entered into, or to be entered into, by the Developer for the same use for a period of eleven (11) years commencing on _____ (the “Parity Period”). [Date will be the date of the issuance of the Certificate of Consistency for Step 1 of the Redevelopment Properties (as defined in the LDA).] In the event that the City breaches this section of this Agreement, the City shall have a thirty (30) day period to cure such breach, commencing on the date of notice from the Developer. 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(s) of property put to the same use in the New Quincy Center Area, but in no event less than the Existing Real Estate Tax Payment, as defined in Section 4.03(d) of the LDA.

The Developer acknowledges that the City cannot require a third party to form a 121A corporation. Rather, if a third party, as part of its approval process under the URDP, desires to use any of the Public Parking Improvements purchased by the City under the LDA, the City may, alternatively, require such third party to execute a Development Covenant but which would be subject to the foregoing parity provisions.

5. City Election to Change Tax Assessment. The City, annually until exercised, shall have the election following the fifteenth (15th) anniversary of the date of this Agreement, on no less than one hundred eighty (180) days' notice to the Developer, (a) to convert the 121A Payments due hereunder for the balance of the term of this Agreement to ad valorem real estate taxes, or (b) to terminate this Agreement as to the New Growth Tax Payment Component and the Special Assessment Payment Component under the LDA, but not as to the DIF Maintenance Fund Payment, and to revert to such ad valorem real estate taxes. Such decision shall be made by the City Council upon recommendation from the Mayor. Upon the termination of this Agreement as to the Project, the Developer shall pay or cause to be paid a pro-forma tax to cover the time period between such termination of this Agreement and the period under which the Project becomes taxable pursuant to Chapter 59 of the General Laws, which pro-forma tax shall be equal to the 121A Payments for such period if the Project or portion thereof had remained subject to this Agreement. Such amount for the balance of the calendar year during which this Agreement terminates shall be payable within six (6) months following the month in which this Agreement expires or terminates. Neither the Project nor the Developer shall thereafter be subject to the obligations of Chapter 121A; enjoy the rights and privileges thereunder, or be subject to the terms, conditions, and obligations of this Agreement.
6. Amendments to Chapter 121A. The Developer and the City further agree that, without mutual consent, any amendment subsequent to the delivery of this Agreement of any of the provisions of Chapter 121A of the General Laws or of Chapter ___ of the Acts of _____ [Special Legislation] now applicable to the Project shall not affect this Agreement.
7. Notices: All notices required pursuant to this Agreement shall be in writing and delivered by hand or mailed postage prepaid, by registered or certified mail, addressed as follows:

If to the City:

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 Developer: 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 a copy to:

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

Each party may designate a different address provided that notice of said change is first given to the other party. Any such notice shall be deemed given when so delivered by hand or, if so mailed, two (2) days after such notice is deposited with the U.S. Postal Service.

8. Binding Effect. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns. In the case of the Developer, no successor shall benefit from the provisions of this Agreement unless it has been approved by the City, and as a condition of any such approval, the City shall cause such successor to enter into a new 121A Agreement, on substantially the same terms as this Agreement.
9. Limited Recourse. The liability of Developer hereunder shall be limited solely to its interest in the Project Site, and no partner, venturer, trustee, beneficiary, shareholder, officer, director, employee, agent, or the like of the Developer or

their respective successors or assigns (including, without limitation, mortgagees), or any person or entity directly or indirectly holding any interests in any of the foregoing from time to time, shall have or be subject to any personal liability hereunder or under any agreement or undertaking related hereto or required hereby. After the expiration of the term of this Agreement, or if sooner, its permitted termination, or authorized transfer of the Project to another party, the Developer shall no longer be subject to the future obligations hereunder (but shall remain liable for any outstanding and unpaid 121A Payments) and shall have no further liability hereunder with respect to the Project, the City agreeing to look solely to such transferee for satisfaction of such future obligations.

10. Effective Date. The “Effective Date” of this Agreement shall be the date on which the Developer acquires fee simple title to undertake and to complete the Project, in all of the land comprising the Project Site, which shall be the same date as a Step Closing under the LDA.
11. Term of Agreement. The Term of this Agreement shall be thirty (30) years, commencing on the date hereof, unless sooner terminated by the City in accordance with the terms hereof.
12. Intent of Parties; Enforceability. This Agreement has knowingly been entered into by the Developer at rates higher than current ad valorem real estate taxes, with full advice of counsel, and with the full understanding and agreement by the Developer that the obligation to pay such higher payments is a binding, enforceable obligation of each 121A corporation and its successors and assigns, non-dischargeable in bankruptcy and terminable only by the City as provided in Section 4.03(f) of the LDA. All amounts payable under this Agreement shall be secured by a lien of the property to which this Agreement is applicable with the priority of the lien established under M.G.L. c. 60, and such lien shall continue in effect for three (3) years after the last payment is due thereunder and shall be collected against the corporation and its property in accordance with Chapters 59 and 60. The secure and timely receipt by the City of such payments at rates higher than current ad valorem real estate taxes is a material, essential term of the LDA required for the financing of the City Bonds and the purchase model redevelopment plan embodied therein. Without such assured cash flow, the City would not have (a) executed the LDA, (b) agreed to sell the City Parcels to the Developer, or (c) agreed to issue bonds to pay for the Public Improvements under the LDA.
13. Invalidity. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons and circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
14. Lender Subordination. This Agreement shall be superior in chain of title to any mortgage now or hereafter encumbering the Project Site. Any holder of any such

mortgage agrees, for itself, successor and assigns, to be bound by the terms of this Agreement.

15. Municipal Lien Certificate. The City agrees that it shall, upon request, provide the Developer with a municipal lien certificate or its equivalent, in recordable form, reflecting payments made pursuant to this Agreement.

[NOTE – CROSS CHECK REFERENCES WITH LDA PRIOR TO EXECUTION]

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

Approved as to form:

By: _____
Corporation Counsel

CITY OF QUINCY

By: _____
Mayor

By: _____
Commissioner of Assessing

DEVELOPER

By: _____
Name:
Title:
Hereunto duly authorized

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