

C. PROJECT COMPLETION

1. Development Period.

The Applicant anticipates commencing construction of the full Project in the second quarter of 2008, with substantial completion of the Project by approximately third quarter of 2011.

2. Abandonment of Project.

If, in the future, the Applicant shall decide not to proceed with the whole or any portion of the Project or any portion thereof, then in such case and after substantiation by the Applicant deemed reasonably adequate by the Authority of the Applicant's reasons for not proceeding with the Project or any portion thereof, the Authority shall cooperate with the Applicant to modify, alter, or amend its previous approvals of the Project or any portion thereof and this Agreement in order to allow the Applicant the opportunity to reasonably develop the Project Site.

3. Authority Cooperation.

The Authority will informally advise the Applicant concerning, and will actively cooperate with and publicly support, at no cost to the Authority, the Applicant's efforts to obtain from the appropriate municipal, state and federal bodies and agencies, all such permits, licenses and approvals and exceptions and variances from the applicable zoning and building codes and other ordinances and statutes which may be necessary in order to carry out the development of the Project or any portion thereof in accordance with the Adequacy Determination and to fulfill the Applicant's obligations hereunder in the most expeditious and reasonable manner. The Authority shall cooperate with, at no cost to the Authority, the Applicant to obtain approvals for any reconfiguration of the Project or any portion thereof, if any, required by other permit-granting agencies and authorities.

4. Maintenance and Operation of Improvements.

The Applicant shall, at all times, keep the improvements constructed on the Project Site in good and safe condition and repair; and the occupancy, maintenance and operation of such improvements shall at all times comply with all laws, ordinances, codes and regulations applicable thereto.

5. Project Completion.

The Project or any portion thereof shall be deemed completed when the Applicant has substantially completed construction of the Project or any portion thereof in accordance with the Contract Documents approved by the Authority in accordance with the Development Review Guidelines, except for (i) items of work and adjustment of equipment and fixtures which can be completed after occupancy has occurred, e.g., so-called punch list items, and (ii) landscaping and other similar work which cannot then be completed because of climatic conditions or other reasons beyond the reasonable control of the Applicant. Upon substantial completion of the Project or any portion thereof as aforesaid, the Authority will issue to the Applicant a Project Certificate of Completion, which shall be in recordable form and shall be conclusive evidence that the construction of the Project or any portion thereof has been completed in compliance with the Adequacy Determination, Amended IMP, DPIR and this Cooperation Agreement and that all obligations to the Authority as to the construction of the Project or any portion thereof under the Adequacy Determination and this Cooperation Agreement have been fulfilled (except any obligation hereunder which by its terms survives the completion of construction of the Project, which obligation when cited in the Project Certificate of Completion shall survive the issuance of the Project Certificate of Completion).

Within forty (40) days after the Applicant's request, the Authority shall issue either (i) a Project Certificate of Completion to the Applicant for the Project or any component thereof and to any mortgagee of the Project or portion thereof, or (ii) a written statement ("Non-Compliance Statement"), indicating with specificity in what respect the Applicant has failed to complete the construction of the Project or any portion thereof in compliance with the Adequacy Determination, this Agreement or is otherwise in default of its obligations to the Authority and what measures or actions will be necessary, in the reasonable opinion of the Authority, for the Applicant to take or perform in order to obtain such Project Certificate of Completion. Upon compliance by the Applicant with the requirements of any Non-Compliance Statement for the Project, the Authority shall issue a Project Certificate of Completion for the Project. Such Project Certificate of Completion shall be in suitable form for recording in the Registry of Deeds for Suffolk County, Commonwealth of Massachusetts ("Deeds"). If the Authority shall refuse or fail to provide either a Project Certificate of Completion or a Non-Compliance Statement to the Applicant or any such mortgagee within forty (40) days of a request for a Project Certificate of Completion, then the Project Certificate of Completion requested shall be deemed to have been issued; provided, however, that any transmittal of any request for the issuance of a Project Certificate of Completion shall recite that approval by the Authority is due within forty (40) days of receipt, or said Project Certificate of Completion shall be deemed to have been issued. The Applicant and any such mortgagee may record an affidavit with said Deeds, which affidavit shall attest to the adequacy of notice to the Authority, the lapse of forty (40) days without response, and the completion of the Project in compliance with the provisions of the Adequacy Determination and this Agreement. Such affidavit shall be conclusive

evidence as to the facts stated therein and as to the substantial completion of the Project in compliance with the provisions of the Adequacy Determination and this Agreement.

In the event that the construction of the Project shall have been substantially completed so as to warrant the issuance of a Project Certificate of Completion in accordance with this Section except for items listed in clauses (i) - (ii) in the first grammatical paragraph of this Section C.4. or other items for reasons beyond the reasonable control of the Applicant as may reasonably be determined by the Authority, then at the option of the Applicant, upon forty (40) days' written notice to the Authority, either (i) an escrow shall be established pursuant to the provisions of this Section or (ii) the Applicant shall obtain for the Authority at the Applicant's sole cost and expense a surety or performance bond or completion guarantee in a form satisfactory to the Authority (in an amount which, in the reasonable opinion of the Authority, would be sufficient to cover the cost of completion) guaranteeing the completion of such aspects of the work and the Authority shall forthwith issue a Project Certificate of Completion for the Project.

If an escrow is established for the completion of any incomplete work which, in the reasonable opinion of the Authority, should be completed prior to the issuance of a Project Certificate of Completion (a "BRA Completion Escrow") and the Authority issues a Project Certificate of Completion prior to completion of the entire Project, then the Applicant shall deposit with the Authority, or, if required by any mortgagee, with the holder of the first mortgage on the Project Site pursuant to an escrow or holdback agreement approved by the Authority in its reasonable discretion, as security for the completion of said items, an amount which, in the reasonable opinion of the Authority, would cover the cost of such completion. Said deposit, if deposited with the Authority, shall be in the form of a certified or bank check, treasury bills or by other security reasonably satisfactory to the Authority and shall be deposited in an interest-bearing account simultaneously with the issuance of the Project Certificate of Completion. Upon the completion of any items of work for which the BRA Completion Escrow was established, the portion of the escrow fund designated for such item of work shall be paid over to the Applicant forthwith, with accumulated interest, or if such work is not so completed to the reasonable satisfaction of the Authority, within a reasonable time after the issuance of such Project Certificate of Completion, and in any event within one (1) year of such issuance, then after having give written notice to the Applicant of such failure to complete the work the Authority may apply such deposit to completion of said work. Notwithstanding the provisions of this Agreement, the Authority shall have no obligation to issue a Project Certificate of Completion if there is any outstanding default under this Cooperation Agreement.

D. GENERAL PROVISIONS

1. Enforceability

This Agreement sets forth the entire agreement between the Parties hereto and shall be governed by the laws of the Commonwealth of Massachusetts. This Agreement is binding upon and enforceable against, and shall inure to the benefit of, the Parties and their successors, assigns and legal representatives (including, without limitation, any successor owner or owners of the improvements and/or the Project Site, but excluding mortgagees of the Project or those claiming through mortgagees of the Project, unless said mortgagee obtains title to the Project Site and proceeds with development of the Project). This Agreement is intended to be only for the benefit of the Parties hereto and no other person or entity may seek enforcement of the terms hereof, regardless of whether such person or entity would enjoy a financial or other benefit from such enforcement.

The liability of the Applicant or its successors or assigns (including without limitations, mortgagees) arising under this agreement shall be limited solely to the interests of the Applicant in the Project and the Project Site. Notwithstanding any other provision of this Agreement, no holder of a mortgage, deed of trust or other similar instrument on the Project, the Project Site, or any portion thereof shall be liable to perform, or liable in damages for any failure to perform, any of the obligations of the Applicant unless such holder shall have acquired title to the Project and/or the Project Site, as the case may be, by foreclosure or deed or assignment in lieu of foreclosure and proceeds with the development of the Project, and, in any event, the liability of such holder shall be limited to the amount of its interest in and to the Project and the Project Site.

Neither the Applicant nor any successor or assign of the Applicant, nor any trustee, beneficiary, general or limited partner, member, stockholder, manager, officer, director, member of board of overseers or other board, consultant, owner's representative, agent or employee of the Applicant or any such successor or assign (including, without limitation, mortgagees) shall be personally or individually liable under this Agreement, nor shall it or they be answerable or liable in any equitable proceeding or order beyond the extent of its or their interest in the Project.

2. Notices

Any notice and other communications required and permitted under this Agreement shall be in writing, signed by a duly authorized officer or representative of the Authority or the Applicant, as the case may be, and shall be delivered by hand or by

recognized overnight delivery service, or mailed postage prepaid by certified or registered mail, return receipt requested, to the Parties at the following addresses (or such other address as a party hereto may have specified to the other by written notice as herein provided):

Authority: Boston Redevelopment Authority
Attn: Director's Office
One City Hall Square
Boston, MA 02201-1007

with a copy to: Boston Redevelopment Authority
Attn: General Counsel
One City Hall Square
Boston, MA 02201-1007

Applicant: Harvard University Allston Development Group
Holyoke Center, Suite 901
1350 Massachusetts Avenue
Cambridge, Massachusetts 02138
Attention: Christopher Gordon

with a copy to: Harvard University Office of the General Counsel
Holyoke Center, Suite 980
1350 Massachusetts Avenue
Cambridge, Massachusetts 02138
Attention: Daniel Rabinovitz, Esq.

with a copy to: Goulston & Storrs, PC
400 Atlantic Avenue
Boston, MA 02110
Attention: Matthew J. Kiefer, Esq.

A notice shall be deemed to have been given on the earlier of (a) the date received, or (b) the date of delivery, refusal or non-delivery indicated on the return receipt.

3. Authority Approval

Whenever the consent or approval of the Authority is required under this Agreement or any other project documentation, the Development Review Procedures, or otherwise in connection with the development of the Project on the Project Site, such

consent or approval shall not be unreasonably withheld, conditioned or delayed, nor shall it be made contingent upon or made in any way to require, directly or indirectly, the payment of any fee or charge by the Applicant or any other interested party, and wherever there is a requirement that any thing, act or circumstance shall be satisfactory to the Authority or shall be done and performed to the Authority's satisfaction or any other requirement of similar import, the Authority shall be subject to the standards of reasonableness and customary practice in determining the adequacy and sufficiency of the Applicant's performance.

Any request for approval made to the Authority by the Applicant where such approval will be deemed to have been granted if the Authority fails to respond within a specified period of time shall, as a condition to the effectiveness thereof, be prefaced with the following language printed in capital letters in boldface type:

"NOTICE:

THIS REQUEST FOR APPROVAL REQUIRES A PROMPT RESPONSE FROM THE BOSTON REDEVELOPMENT AUTHORITY. THE FAILURE OF THE BOSTON REDEVELOPMENT AUTHORITY TO RESPOND WITHIN () [BUSINESS] DAYS SHALL RESULT IN AN AUTOMATIC APPROVAL."

4. Severability

The terms and provisions set forth herein shall be construed as separate and independent obligations. If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be determined to be invalid and unenforceable, the remainder of this Agreement, and the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

5. Term; Amendments

Unless earlier terminated pursuant to any provisions hereof, this Agreement shall expire ten (10) years from the date hereof, and the provisions contained herein shall be null and void as of such date of expiration, subject to specific time periods set forth herein with regard to specific provisions; provided, however, that specific provisions of this Agreement that by their terms explicitly create obligations lasting beyond the ten (10) year term stated above shall survive until they are completed.

This Agreement may, by an instrument executed by the Parties hereto, be amended in whole or in part.

6. Limited Commitment

Nothing in this Agreement shall be construed as a commitment by the Applicant to construct or complete the Project. If and to the extent that the Project is undertaken by Applicant, the sole obligation of the Applicant hereunder is to adhere to and to fulfill obligations set forth in this Agreement.

7. Sale or Assignment

The Applicant shall have the right to sell or assign its rights and interests in all or a portion of the Project and under this Agreement, provided that: (a) the Applicant shall not be in material default (beyond applicable notice and cure periods) of the terms and conditions of this Agreement imposed as of such date; (b) the successor or assignee shall expressly assume and agree to perform and comply with all the covenants and provisions of this Agreement on the part of the Applicant then applicable to the Project (unless notwithstanding a transfer or assignment of Applicant's rights and interest in a portion of the Project, such covenants and agreements are to remain those of Applicant); (c) there shall be promptly delivered to the Authority the original or a duplicate original of the instrument or instruments containing such assignment to and assumption by the successor or assignee; and (d) if said sale or assignment is occurring prior to the issuance of a Project Certificate of Compliance, then the Applicant shall notify the Authority of said sale or assignment and obtain the Authority's written approval prior to the sale or assignment. Such approval shall not be unreasonably withheld, conditioned, or delayed by the Authority. Notwithstanding, this section shall not apply to any financing or refinancing of the Project, or transfers to affiliates of the Applicant.

8. Estoppel Certificates

The Authority shall, within fifteen (15) business days after written request therefore by the Applicant or any mortgagee of the Project or any portion thereof, provide a certificate in writing, as requested or applicable, that the Applicant is in compliance with this Agreement or any particular paragraph thereof specified by the requesting party, or in what respects there is noncompliance, or as to any other matter reasonably related to the Project which the requesting party may reasonably request of the Authority.

9. Counterparts

This Agreement may be executed in counterparts, and all such counterparts shall be deemed to be originals and together shall constitute but one and the same instrument.

10. Authorization of the Authority

The Authority has authorized the Director of the Authority to take any action hereunder on behalf of the Authority (including, but not limited to the granting of consents or approvals and the execution and delivery of agreements and certificates, except for any certificates of completion), and any action so taken shall be binding on the Authority.

11. Governing Law

This Agreement shall be governed and construed by the laws of the Commonwealth of Massachusetts, without regard to conflict of law principles.

12. Business Days

As used herein, the term "business day" shall mean any day other than a Saturday, Sunday, or legal holiday in Suffolk County, Commonwealth of Massachusetts.

13. Default Rate.

Interest shall accrue on (i) any sum due hereunder that is not paid to the Authority on the date due, and (ii) any sums expended by the Authority in exercising its remedies hereunder to cure any breach of the Applicant, at the rate of ten percent (10%) per annum from the date due or the date incurred, as applicable.

14. Waiver of Jury Trial; Venue.

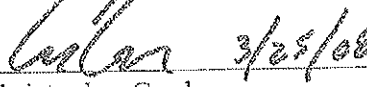
Each of the parties hereto hereby waives any right it may have to a jury trial on any claim or action arising out of this Agreement. Any action arising hereunder shall be heard in any State court of the Commonwealth of Massachusetts or in the Federal District Court for the Commonwealth of Massachusetts.

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed as an instrument under seal by their respective officers thereunto duly authorized as of the day and year first above set forth.


BOSTON REDEVELOPMENT AUTHORITY

By: 
John F. Palmieri, Director

PRESIDENT AND FELLOWS OF HARVARD COLLEGE, acting by and through the Allston Development Group, & Central Administration
Department of Harvard University

By:  3/25/08
Christopher Gordon
Title: COO - 406
Duly Authorized

Approved as to Form:

By: 
Kevin Morrison, General Counsel *sc*
Boston Redevelopment Authority