

**NOTE TO LHAS CHOOSING NOT TO USE THIS FORM AGREEMENT:
PARAGRAPHS IN BOLD TYPE DENOTE SUBSTANTIVE LANGUAGE THAT MUST
BE INCLUDED IN ANY ALTERNATIVE VERSION OF THIS AGREEMENT.**

LAND DISPOSITION/DEVELOPMENT AGREEMENT

This Land Disposition/Development Agreement (this “Agreement”) is made as of this ____ day of _____, 2016, by and between XYZ, a Massachusetts [corporation][limited partnership][limited liability company], having a place of business at 123 Main Street, Anywhere MA 02601 (“Developer”) and the _____ Housing Authority, a public body corporate and politic organized under the laws of the Commonwealth of Massachusetts, having a place of business at _____ (address) (“HA”).

Recitals

A. HA is the owner in fee simple of certain property known as _____ located at _____ (address) _____ MA (“Existing Property”) containing ____ units of state-aided public housing currently operated by HA. HA wishes to redevelop all or a portion of the Existing Property (the designated redevelopment area being referred to herein as the “Project Site”) as a mixed-income rental housing development, including the same number of state-aided public housing units as are currently located at the Property.

B. On or about, _____ HA issued a request for proposals (the “RFP”) in connection with the contemplated development, rehabilitation, construction and operation of mixed income rental housing, including at least _____ units of state-aided public housing on the Project Site. The RFP contemplated that the successful proposer would apply, as a co-applicant with the HA, to the Massachusetts Department of Housing and Community Development (“DHCD”) for grant funding under DHCD’s State-Aided Public Housing Mixed Income Demonstration program (the “Demonstration Program”) notice of funding availability issued in November, 2015 (the “NOFA”). The RFP also constituted the HA’s notice that the Project Site was available for disposition, and indicated that the HA would select the successful proposer to acquire an interest in the Project Site.

C. On or about _____, Developer submitted a proposal, a copy of which is attached as Exhibit A and incorporated herein by reference, (the “Proposal”) to develop, rehabilitate, construct and operate residential units and associated site improvements on the Project Site (the proposed redevelopment project, including the unit mix, income mix and other details described in the Proposal, being referred to herein as the “Project”). On or about _____, HA designated Developer as the developer for the Project and as the party to whom HA would dispose of an interest in the Project Site in accordance with the RFP.

D. HA and Developer desire to enter into an agreement pursuant to which the HA will dispose of an interest in the Project Site to Developer and Developer will develop, construct and operate the Project on the Project Site in accordance with this Agreement as set forth below.

Agreement

**NOTE TO LHAS CHOOSING NOT TO USE THIS FORM AGREEMENT:
PARAGRAPHS IN BOLD TYPE DENOTE SUBSTANTIVE LANGUAGE THAT MUST
BE INCLUDED IN ANY ALTERNATIVE VERSION OF THIS AGREEMENT.**

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

Article 1. Disposition of Project Site; Developer Right of Entry; Long-Term Use Restriction.

1.1 Determination of Project Site Boundaries. The parties agree that the exact boundaries of the Project Site shall be as delineated in the site plan or survey attached as Exhibit ___, subject to minor adjustments based on an updated survey to be obtained prior to closing.

1.2 Disposition of Project Site. At such time as Developer is ready to close on its construction financing for development of the Project, HA and Developer shall enter into such agreements as may be required to convey a long-term leasehold interest in the Project Site to Developer on terms consistent with this Agreement and approved by the Department of Housing Community Development (DHCD). *[Suggested description of basic terms:]* The Ground Lease shall be for a term of ninety-nine (99) years and shall be on a “triple net” basis, with all costs and expenses, including taxes and insurance, paid by tenant. Rent under the Ground Lease shall consist of an initial payment of \$ _____, an additional payment of \$ _____ upon the permanent loan closing, and annual payments based on a percentage of cash flow. *[Note to housing authorities: A ground lease must be used with respect to the disposition of any portion of the project for multi-family rental housing. If the project is expected to include homeownership units, language will be needed describing the conveyance of a fee simple interest in that portion of the Project Site, and describing the sale price.]*

1.3 Developer Right of Entry Prior to Disposition. HA grants to Developer, its agents, employees, subcontractors, and their agents and employees, a license to enter onto the Project Site for the purpose of investigating site conditions including, without limitation, surveying, conducting soil tests or borings, and conducting other investigations or engineering tests. Any such entry shall be done at Developer’s sole cost and expense, and at Developer’s sole risk. Developer agrees to indemnify, defend, and hold harmless HA and its employees and agents, from and against any cost, expense, claim or liability arising from any such entry onto the Project Site by Developer, its agents, employees or subcontractors. Developer agrees that it shall conduct all such tests and investigations in a manner which will cause as little damage as possible to the Project Site, and in the event of any such damage, shall promptly repair and restore the same at its sole cost and expense. Developer agrees further that all such tests and investigations will be conducted in compliance with all applicable laws and regulations, with due respect for the privacy and safety of residents of the Project Site, and consistent with any applicable notice provisions of HA’s leases with residents of the Project Site.

1.4 Long Term Use Restriction. At the time of disposition of the Project Site, Developer shall execute and deliver to HA a recordable land use restriction agreement (the “LURA”), consistent with the requirements of the NOFA and the RFP, enforceable as a perpetual restriction encumbering the Project Site under G.L. c. 184 Sections 31-33, pursuant to which Developer shall agree to use the Project Site solely for multifamily residential housing, including state-aided public housing as required by this Agreement.

**NOTE TO LHAS CHOOSING NOT TO USE THIS FORM AGREEMENT:
PARAGRAPHS IN BOLD TYPE DENOTE SUBSTANTIVE LANGUAGE THAT MUST
BE INCLUDED IN ANY ALTERNATIVE VERSION OF THIS AGREEMENT.**

1.5 Additional Sites. Nothing in this Agreement shall preclude Developer from incorporating into the Project, with the prior written consent of HA and DHCD, one or more adjacent parcels of land; provided that any LURA entered into pursuant to Section 1.4 of this Agreement shall encumber such additional land as well as the Project Site.

Article 2. Development of Project; Public Housing; Term of Agreement.

2.1 The Project. Subject to the Requirements (defined in Section 4.1 below), and further subject to *[describe any special HA rights]*, Developer shall have responsibility for all aspects of the design, development, construction and operation of the Project.

2.2 State-Aided Public Housing. _____ of the dwelling units at the Project shall be state-aided public housing units, operated in accordance with G.L. c. 121B and any applicable regulations and/or administrative guidance issued by DHCD.

2.3 Development Costs. **It is understood and agreed that Developer shall receive the Project Site in an “as is” condition and shall bear all costs associated with the Project as contemplated hereunder. Developer is solely responsible for obtaining all financing for the development of the Project.** This sole responsibility shall in no way preclude Developer from applying with HA for and receiving funds from DHCD under the Demonstration Program, or from applying for and receiving locally available financial assistance for affordable housing initiatives within *[City/Town]*, such as Community Preservation Act funds. HA will pay its own legal fees in connection with preparation and negotiation of this Agreement and any closing documents.

2.4 Term of Agreement. This Agreement shall become effective on the date approved in writing by DHCD, and if not sooner terminated pursuant to Section 3.4 shall have a term of three (3) years; provided, that all provisions of this Agreement governing the use restrictions applicable to the Project and Developer’s indemnity obligations under Section 3.2 shall survive the termination of this Agreement and shall be enforceable in perpetuity or for the longest period permitted by law, which in any event shall be for at least ninety-nine (99) years.

Article 3. Respective Responsibilities of Parties.

3.1 Responsibilities of Developer. All aspects of the development of the Project as a financially feasible project shall be the responsibility of Developer, it being understood that Developer shall only be responsible for the construction and operation of the Project to the extent Developer timely receives all funding, permits and approvals contemplated in the Proposal or this Agreement or otherwise necessary for the Project. Items 3.1(a), (b) and (c) are required for documentation that the Developer is diligently pursuing his obligations to the HA as further detailed in Article 5.1.1. Specific Developer responsibilities include, without limitation, the following:

(a) Developer shall provide HA on a timely basis with all information with regard to Developer’s activities which HA reasonably requests, and shall submit to HA for its prior approval all significant Project contracts, materials, plans and documents.

**NOTE TO LHAS CHOOSING NOT TO USE THIS FORM AGREEMENT:
PARAGRAPHS IN BOLD TYPE DENOTE SUBSTANTIVE LANGUAGE THAT MUST
BE INCLUDED IN ANY ALTERNATIVE VERSION OF THIS AGREEMENT.**

(b) Developer shall coordinate, direct and manage the Project development and construction teams identified in the Proposal and any other team members subsequently selected by Developer (which shall be subject to HA's approval). Developer shall provide HA with contact information for all team members. *Note to Housing authorities: LHAs should negotiate with their developer partners the scope of LHA approval rights, and should seek legal advice as to the potential impact of MGL c. 7C and MGL c. 149.*

(c) Developer shall apply for, secure, and enter into all necessary Project financing and subsidy arrangements. Developer shall keep HA fully informed of all applications for government assistance and public or private financing with respect to the Project and upon request shall provide HA with copies of formal submissions in addition to the drafts submitted for prior HA approval.

(d) Developer shall obtain hazard and liability insurance reasonably satisfactory to HA, DHCD and all funding sources.

(e) Developer shall use diligent efforts to adhere to the Project Development Schedule attached as Exhibit B.

(f) Developer shall comply with all the Requirements (defined below), and shall obtain all necessary governmental consents and approvals, including, if required, a comprehensive permit pursuant to M.G.L. Ch. 40B or any other zoning permits, a building permit and other municipal, state or federal permits, prior to undertaking any work on the Project.

(g) Developer shall manage and supervise the construction of the Project in a good and first-class workmanlike manner and employing new materials of good quality and in accordance with the terms of the Ground Lease and the LURA and all Requirements.

(h) Developer shall not permit any mechanics' liens or similar liens to remain upon the Project Site for labor and materials furnished to the Project in connection with work of any character performed at the direction of Developer and shall cause any such lien to be released of record without cost to HA pursuant to the terms of this Agreement, by satisfaction and discharge of such lien or release of such lien by bond.

(i) Developer shall provide reasonable access, at reasonable times and from time to time, to HA to inspect Developer's books and records, the Project Site, and the Project, and to assure compliance with the provisions of this Agreement, provided that the HA provides Developer at least twenty-four hours' prior notice thereof except in case of emergency.

3.2 Developer Indemnification. Developer agrees to defend, indemnify and hold HA harmless from and against any and all liabilities, losses, costs, expenses (including attorneys' fees), causes of action, suits, claims, damages, demands, judgments or expenses from any and all claims, actions, or suits of any nature whatsoever that may be imposed upon, incurred by, or asserted against HA by reason of this Agreement, This indemnity and hold harmless agreement shall include indemnity against all costs, expenses and liabilities incurred in or in connection with any such claim or proceeding brought thereon, and the defense thereof.

3.3 Responsibilities of HA. The following matters shall be the primary responsibility of HA:

**NOTE TO LHAS CHOOSING NOT TO USE THIS FORM AGREEMENT:
PARAGRAPHS IN BOLD TYPE DENOTE SUBSTANTIVE LANGUAGE THAT MUST
BE INCLUDED IN ANY ALTERNATIVE VERSION OF THIS AGREEMENT.**

(a) HA shall review on an expeditious basis any matter submitted to it for review or approval and advise Developer of approval or denial, and (if relevant) of its reasons for denial.

(b) HA shall cooperate with Developer in providing information within HA's possession and in joining Developer as a co-applicant as reasonably necessary to obtain licenses, approvals, clearances, comprehensive permit and other permits, or other cooperation from local, state, and Federal agencies and officials and from local governing bodies, including with respect to the approval of the Project by DHCD pursuant to 760 CMR 4.12-4.16, et. seq.; provided, that in no event will HA be responsible for the cost of preparing any such applications. HA will also cooperate with Developer in pursuing any real estate tax exemptions and abatements that may be available for the Project.

(c) In no event shall HA assume any responsibility as a borrower, guarantor or endorser of any debt relating to the Project Site or the Property.

(d) Notwithstanding the provisions of Subsection (b) above, the HA shall not be required to join in or become a party, nominal or otherwise, to any proceeding in which it will oppose the [City][Town] of _____ or the Commonwealth of Massachusetts or any agency, authority, branch, housing authority, division, office or subdivision of or for the [City][Town] of _____ or the Commonwealth of Massachusetts, nor shall the HA be required in connection with any such proceeding or otherwise to oppose in any way any policy previously established by the HA nor to take any position inconsistent with a position previously taken and made public by the HA.

3.4 Responsibilities of Both Parties. If resources anticipated by the parties for the Project become unavailable, or for any reason the Project ceases to be feasible, including, without limitation, due to engineering constraints of the Property, HA will work with Developer, both in good faith, to develop changes or alternate plans which accomplish the original goals set forth in this Agreement to the maximum extent possible given available resources, which changes may include a change in the number of the units in the Project but shall not include a reduction in the number or size of state-aided public housing units or a change in the eligibility criteria for such units. In the event that the parties, using good faith, are either unable to identify feasible changes or alternate plans or to agree upon proposed changes or alternate plans within six (6) months after the need for changes or alternate plans has been identified, either party may terminate this Agreement upon thirty (30) days' written notice to the other party, in which event Developer shall be entitled to termination expenses to the extent authorized under Section 5.5 below.

Article 4. Plans; Project Development Schedule

4.1 Plans. The development and construction of the Project shall be in substantial compliance with the RFP and such site plans, concept plans, plans and specifications and the like, approved pursuant to this Agreement by the parties ("Plans"), unless changes are agreed upon in writing by the parties. In addition, Plans shall comply with all applicable Town of _____ ordinances, regulations and processes (as the same may be affected by any variances, permits or approvals, "Local Ordinances") and with the terms and conditions of any variances, permits and approvals obtained for the Project (the Approved Plans and Local Ordinances), together with any other applicable federal or state laws, regulations, notices, rulings or administrative guidance, collectively, the "Requirements").

**NOTE TO LHAS CHOOSING NOT TO USE THIS FORM AGREEMENT:
PARAGRAPHS IN BOLD TYPE DENOTE SUBSTANTIVE LANGUAGE THAT MUST
BE INCLUDED IN ANY ALTERNATIVE VERSION OF THIS AGREEMENT.**

4.2 Project Development Schedule. Attached hereto as Exhibit B is the Project Development Schedule, including proposed dates for performance of certain milestones.

Article 5. Default; Remedies.

5.1 Default by Developer. The occurrence of any of the following events shall constitute an event of default (“Event of Default”) under this Agreement by Developer:

5.1.1 If Developer fails to diligently prosecute the development and construction of the Project in accordance with the Requirements, the LURA and all other applicable requirements of this Agreement or to observe or perform in any material respect any covenant, condition, agreement or obligation hereunder and shall fail to cure, correct or remedy such failure within thirty (30) days after the receipt of a written notice thereof, unless such failure cannot be cured by the payment of money available to the Project and cannot with due diligence be cured within a period of thirty (30) days, in which case such failure shall not be deemed to continue if Developer proceeds promptly and with due diligence to cure the failure and diligently completes the curing thereof, but in no event shall such extended cure period extend beyond ninety (90) days;

5.1.2 If Developer shall be adjudicated bankrupt or be declared insolvent under the federal bankruptcy code or any other federal or state law (as now or hereafter in effect) relating to bankruptcy, insolvency, reorganization, winding up or adjustment of debts (hereinafter collectively “Bankruptcy Laws”) or if Developer shall (a) apply for or consent to the appointment of, or the taking of possession by, any receiver, custodian, trustee, United States Trustee, or liquidator (or other similar official) of Developer or of any substantial portion of Developer’s property, or (b) generally not pay its debts as they become due, admit in writing its inability to pay its debts generally as they become due, or (c) make a general assignment for the benefit of its creditors, or (d) file a petition commencing a voluntary case or seeking to take advantage of any Bankruptcy Law; or

5.1.3 If an order for relief against Developer shall be entered in any involuntary case under any Bankruptcy Law, or if the petition commencing an involuntary case against Developer or proposing reorganization of Developer under any Bankruptcy Law shall be filed in and approved by any court of competent jurisdiction and not be discharged or denied within sixty (60) days after filing, or if a proceeding or case shall commence in any court of competent jurisdiction seeking aid or liquidation, the organization, dissolution, winding up or adjustment of debts of Developer, or the appointment of a receiver, custodian, trustee, United States Trustee, or liquidator or (other similar official) of Developer or of any substantial portion of Developer’s property, or any similar relief as to Developer pursuant to any Bankruptcy Law, and any such proceeding or case shall continue undismissed, or an order, judgment or decree approving any or ordering any of the foregoing shall be entered and continued unstayed and in effect for thirty (30) days.

5.2 Remedies for HA. If there is an Event of Default by Developer, in addition to any and all other remedies available to it at law or in equity, HA may (a) terminate this Agreement upon written notice to Developer, (b) seek specific performance of Developer’s obligations hereunder, and/or (c) seek monetary damages. In the event that HA initiates enforcement or other legal proceedings to enforce this Agreement or to otherwise redress a breach of this

**NOTE TO LHAS CHOOSING NOT TO USE THIS FORM AGREEMENT:
PARAGRAPHS IN BOLD TYPE DENOTE SUBSTANTIVE LANGUAGE THAT MUST
BE INCLUDED IN ANY ALTERNATIVE VERSION OF THIS AGREEMENT.**

Agreement by Developer, in addition to any other remedies to which HA may be entitled, Developer shall pay to HA forthwith any and all costs and expenses, including attorneys' fees, that are incurred in enforcing this Agreement or prosecuting any such proceedings.

5.3 Default by HA. The occurrence of any of the following events shall constitute an Event of Default by HA hereunder:

5.3.1 If HA fails in any material respect to observe or perform any covenant, condition, agreement or obligation hereunder, and shall fail to cure, correct or remedy such material default within thirty (30) days after the receipt of written notice thereof, unless such failure cannot be cured by the payment of money and cannot with due diligence be cured within a period of thirty (30) days, in which case such failure shall not be deemed to continue if the HA proceeds promptly and with due diligence to cure the failure and diligently completes the curing thereof, but in no event shall such extended cure period extend beyond ninety (90) days;

5.3.2 If HA shall be adjudicated bankrupt or be declared insolvent under any Bankruptcy Laws or if HA shall (a) apply for or consent to the appointment of, or the taking of possession by, any receiver, custodian, trustee, United States Trustee, or liquidator (or other similar official) of HA or of any substantial portion of HA's property, or (b) generally not pay its debts as they become due, admit in writing its inability to pay its debts generally as they become due, or (c) make a general assignment for the benefit of its creditors, or (d) file a petition commencing a voluntary case or seeking to take advantage of any Bankruptcy Law; or

5.3.3 If an order for relief against HA shall be entered in any involuntary case under any Bankruptcy Law, or if the petition commencing an involuntary case against HA or proposing reorganization of HA under any Bankruptcy Law shall be filed in and approved by any court of competent jurisdiction and not be discharged or denied within sixty (60) days after filing, or if a proceeding or case shall commence in any court of competent jurisdiction seeking aid or liquidation, the organization, dissolution, winding up or adjustment of debts of HA, or the appointment of a receiver, custodian, trustee, United States Trustee, or liquidator or (other similar official) of HA or of any substantial portion of HA's property, or any similar relief as to HA pursuant to any Bankruptcy Law, and any such proceeding or case shall continue undismissed, or an order, judgment or decree approving any or ordering any of the foregoing shall be entered and continued unstayed and in effect for thirty (30) days.

5.4 Remedies for Developer. If there is an Event of Default by HA, Developer's sole remedy shall be to terminate this Agreement upon written notice to HA and to receive termination expenses to the extent authorized under Section 5.5 below.

5.5 Termination Expenses. If this Agreement is terminated for any reason other than a default by Developer continuing beyond applicable notice and grace periods, then Developer shall be entitled to receive payment for its third-party costs and expenses incurred in good faith prior to the effective date of termination, only upon the following conditions:

5.5.1 Such costs and expenses shall be consistent with a pre-development budget approved by HA in its sole discretion;

5.5.2 HA shall have agreed in writing to fund the pre-development costs set forth in such budget out of the a grant under the Demonstration Program or another

**NOTE TO LHAS CHOOSING NOT TO USE THIS FORM AGREEMENT:
PARAGRAPHS IN BOLD TYPE DENOTE SUBSTANTIVE LANGUAGE THAT MUST
BE INCLUDED IN ANY ALTERNATIVE VERSION OF THIS AGREEMENT.**

source of pre-development funding (provided, that HA shall not pay any pre-development costs out of state-aided public housing operating subsidy, tenant-paid rents, or capital funds without prior written approval by DHCD);

5.5.3 Developer shall have submitted to HA invoices and other back-up documentation reasonably required by HA to evidence that such costs were actually incurred and reasonable given the progress of the applicable third-party work;

5.5.4 If so requested by HA, Developer shall have provided prompt notice to the applicable third-party contractor to cease work under its contract, to limit the amount of costs incurred prior to the effective date of termination of this Agreement; and

5.5.5 If so requested by HA, Developer shall have executed such assignments and approvals as may be necessary to transfer any such third-party contracts and the ownership of any work product produced thereunder to HA.

In no event shall HA be responsible for the payment of Developer’s staff costs, overhead, or any other costs or expenses associated with the Project other than the third-party costs and expenses described above.

Article 6. Miscellaneous.

6.1 Integration. This Agreement expresses the entire agreement of the parties, and supersedes and replaces any prior agreements of the parties, written or oral.

6.2 Applicable Law. This Agreement shall be construed under the laws of the Commonwealth of Massachusetts.

6.3 Amendment. This Agreement may be amended only by a written instrument, executed by both parties.

6.4 Notices. Whenever, by the terms of this Agreement, notice or any other communication shall or may be given, such notice or communication shall be in writing and shall be deemed given upon the earlier of (i) actual receipt by the party to whom addressed or by such party’s agent or employee, (ii) two business days after being deposited in the U.S. mail, registered or certified mail, postage prepaid, or (iii) one business day after being delivered to a so-called “overnight” mail service with 1-day service, in any event addressed as follows:

If to HA, to:

Housing Authority,
Anywhere, MA 01111
Attn: _____, Executive Director

**NOTE TO LHAS CHOOSING NOT TO USE THIS FORM AGREEMENT:
PARAGRAPHS IN BOLD TYPE DENOTE SUBSTANTIVE LANGUAGE THAT MUST
BE INCLUDED IN ANY ALTERNATIVE VERSION OF THIS AGREEMENT.**

and a copy to:

Chief Counsel
Department of Housing and
Community Development
100 Cambridge St,
Suite 300
Boston, MA 02114

If to Developer, to:

XYZ corporation,
460 Main Street
Anywhere, MA 02222
Attn: _____, Project Manager

and a copy to:

Attorney
ABC LLP
123 Main Street
Boston, MA 02122

6.5 Approvals and Consents. Where the approval or consent of either party is required, such approval or consent shall not be unreasonably withheld, conditioned or delayed. All approvals and consents shall be requested and provided in writing. Any denial of an approval or consent shall be in writing and shall contain a clear and full statement of the reasons for the denial. Unless otherwise specifically provided in this Agreement, if approval or consent is requested pursuant to the notice procedures set forth in this Agreement and if no response is received within thirty (30) days of the notice, the approval or consent shall be conclusively deemed granted. Any such approvals or consents to be deemed granted after a period of non-reply 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 IMMEDIATE REPLY.
FAILURE TO RESPOND WITHIN ___ DAYS SHALL RESULT IN AUTOMATIC
APPROVAL.”**

6.6 Prohibition on Assignment. **This Agreement may not be assigned or transferred by Developer without the written consent of HA and DHCD. Notwithstanding the foregoing, for the purposes of this Agreement, “Developer” shall refer variously to XYZ corporation and, as the context dictates, any entity which either directly or indirectly controls, is controlled by or is under common control with XYZ corporation, which XYZ corporation may organize to accomplish its obligations hereunder.**

6.7 DHCD Approval. **This Agreement shall not take effect until it has been approved in writing by DHCD.**

6.8 Governing Law; Severability. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts. Any amendments to this Agreement must be in writing and

**NOTE TO LHAS CHOOSING NOT TO USE THIS FORM AGREEMENT:
PARAGRAPHS IN BOLD TYPE DENOTE SUBSTANTIVE LANGUAGE THAT MUST
BE INCLUDED IN ANY ALTERNATIVE VERSION OF THIS AGREEMENT.**

executed by all of the parties hereto. The invalidity of any clause, or portion of any provision of this Agreement shall not affect the validity of the remaining portions hereof.

6.9 Waiver. The failure on the part of Developer or HA, as the case may be, to complain in any one or more cases of any action or inaction on the part of the other party, or to insist in any one or more cases upon the performance of any of the provisions, covenants, agreements or conditions of this Agreement or to exercise any option contained herewith, no matter how long the same may continue, shall never be deemed or construed to be a waiver by such party of any of its rights hereunder, or a relinquishment for the future of any such provision, covenant, agreement, condition or option. Further, it is covenanted and agreed that no waiver at any time of any of the provisions hereof by Developer or HA shall be construed as a waiver of any of the other provisions hereof, and that a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions.

6.10 Binding; Successors. The terms of this Agreement shall be binding on the parties and their respective successors, heirs and assigns. All references in this Agreement to the Developer shall be deemed to apply to the Developer and any entity or entities established by the Developer to carry out the Project. All covenants, agreements, terms and conditions of this Agreement shall be construed as covenants running with the land, and this Agreement may be recorded by either party; provided, that by mutual agreement of the parties, this Agreement may be superseded in whole or in part by the Ground Lease and the LURA.

6.11 Headings and Captions for Convenience Only. The captions and headings throughout this Agreement are for convenience of reference only and the words contained therein shall in no way be held or deemed to define, limit, explain, modify, amplify or add to the interpretation, construction or meaning of any provisions of, or the scope or intent of this Agreement, nor in any way affect this Agreement, and shall have no legal effect.

[signature page follows]

**NOTE TO LHAS CHOOSING NOT TO USE THIS FORM AGREEMENT:
PARAGRAPHS IN BOLD TYPE DENOTE SUBSTANTIVE LANGUAGE THAT MUST
BE INCLUDED IN ANY ALTERNATIVE VERSION OF THIS AGREEMENT.**

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement under seal as of the date and year first written above.

XYZ corporation

By: _____

Chief Executive Officer

_____ Housing Authority

By: _____

Executive Director

List of Exhibits:

Exhibit A	Proposal
Exhibit B	Draft Project Development Schedule
Exhibit C	Form of Ground Lease