

## **GROUND LEASE**

**THIS GROUND LEASE** (this “Lease”) is entered into the \_\_\_\_\_ day of \_\_\_\_\_, 2023 (the “Effective Date”), by and between **THE CITY OF NEW HAVEN**, a municipal corporation organized and existing under the laws of the State of Connecticut, with a mailing address of 165 Church Street, New Haven, Connecticut 06510 (the “City”), and **BIGELOW SQUARE, LLC**, a limited liability company organized and existing under the laws of the State of Connecticut, with a mailing address of 34 Lloyd Street, New Haven, Connecticut 06510 (“Bigelow”).

## **BACKGROUND**

On January 7, 2002, the New Haven Board of Aldermen, acting pursuant to the provisions of Chapter 132 of the Connecticut General Statutes, as amended, adopted the River Street Municipal Development Project Plan (the “Plan”), a development plan covering an approximately fifty-three (53) acre area located at and along the southern end of New Haven’s Fair Haven neighborhood. The City established the Plan to promote responsible economic development, quality job growth, and significant waterfront investment and revitalization within the Plan’s boundaries. The Plan included a property on River Street identified as Parcel I.

On or about January 9, 2017, as part of the City’s pursuit of the goals set forth in the Plan, the City and Bigelow entered into a lease agreement (the “Original Lease”) with respect to a portion of Parcel I owned by the City and known at that time as 198 River Street, New Haven, Connecticut 06513, as therein more particularly described (the “Original Property”). The aim of the Lease was to preserve certain historic buildings situated upon the Original Property, by way of a mechanism whereby the City would seek to obtain funding to carry out environmental remediation of portions of the Original Property underneath and surrounding each such historic building and Bigelow would shore up and renovate said historic buildings (which historic buildings were in a dilapidated state), with a view to Bigelow then purchasing from the City each remediated portion of the Original Property and attendant renovated historic building upon the completion of the remediation and renovation of each such portion and building.

While the City, in accordance with the Original Lease, ultimately succeeded in completing remediation and conveyance of a portion of the Original Property to Bigelow, which portion of the Original Property is now known as 190 River Street and identified by the City’s Assessor’s Office as MBLU 175 0608 00201 (the “Renovated and Remediated Premises”), the City could not accomplish remediation and conveyance of other portions of the Original Property before the continuing deterioration of the remaining historic buildings on the Original Property created an exigent health and safety issue.

The City's duly-authorized Building Official (acting in accordance with said Building Official's responsibilities under State Statute) in 2021 addressed this exigent health and safety issue with regard to most of the then-remaining historic buildings by ordering their demolition except for that building known as Building Two, which is located on that portion of the Original Property formerly known as "Parcel C", now known as 198 River Street, and identified by the City's Assessor's Office as MBLU 175 0608 00202 (the "Development Property"), and more particularly described in Exhibit A attached hereto and made a part hereof. Unfortunately, due to its own advancing deterioration, Building Two has now also been demolished at the direction of the City's Building Official, thus requiring a new development plan including new construction for the area.

Since the intent of the City and Bigelow in entering into the Original Lease has been frustrated with respect to the preservation of most of the formerly-extant historic buildings situated upon the Original Property, other than the Renovated and Remediated Premises, the City and Bigelow have terminated the Original Lease and established a new pathway to the Original Property's redevelopment, by way of (inter alia) (i) the conveyance by the City to Bigelow of the Development Property, which conveyance will be made subject to a mutually-agreed Development and Land Disposition Agreement (the "DLDA") that will require Bigelow to improve the Development Property with an industrial/commercial building of ten thousand (10,000) square feet and accompanying parking and loading facilities for uses that accord with the Plan, (ii) a long-term lease by the City to Bigelow of that portion of the Original Property formerly known as "Parcel E", now known as 200 River Street, and identified by the City's Assessor's Office as MBLU 175 0608 00203, and (iii) a long-term lease by the City to Bigelow of that portion of the Original Property, formerly known as "Parcel B", now known as 194 River Street, and identified by the City's Assessor's Office as MBLU 175 0608 00200 (the "Premises"), which Premises are more particularly described in Section 1 below.

**NOW THEREFORE**, the City, for and in consideration of the mutual covenants hereinafter described, hereby leases to Bigelow, and Bigelow hereby leases from the City, all of the City's right, title, and interest in and to the Premises upon the following terms and conditions:

Section 1:        Premises

The Premises consist of approximately eighteen thousand seven hundred thirty-four (18,734) square feet and is more particularly described in Exhibit A attached hereto and made a part hereof.

Section 2:        Term

Subject to the provisions of Section 3 below, the term of this Lease Agreement (the “Term”) shall commence on the Effective Date and shall expire on the last day of the month which comprises the ninety-eighth (98<sup>th</sup>) full calendar year following the Effective Date, without any right to further extend the term of this Lease (the “Expiration Date”).

Section 3: Termination

If not sooner terminated, in accordance with the provisions herein contained, this Lease shall terminate on the Expiration Date without the necessity of notice from either the City or Bigelow, and Bigelow hereby waives notice to vacate or quit the Premises and agrees that the City shall be entitled to the benefit of all provisions of law respecting the summary recovery of possession of the Premises to the same extent as if statutory notice had been given.

Section 4: Permitted Uses

- (a) Subject to the provisions of Section 4(b) below, Bigelow shall use the Premises throughout the Term as a parking lot in conjunction with the use of the Development Property.
- (b) Notwithstanding the provisions of Section 4(a) above, in the event that Bigelow redevelops the Premises for a purpose other than a parking lot, then, to the extent that this Lease shall remain in place, Bigelow shall be permitted to sublease the Premises (in whole or in part) for any legal purpose except that Bigelow shall not permit the Premises to be used as a discount department store, “dollar” store, firearms and/or ammunition store establishment, charity thrift shop or the like, adult book store or adult entertainment establishment, massage parlor (provided that therapeutic massage establishments shall be permitted), or any liquor store which sells liquor in containers holding less than one (1)

pint.

Section 5: Rent

- (a) Subject to the provisions of Section 5(b) below, Bigelow agrees to pay to the City an annual basic rent of One Dollar and No Cents (\$1.00) per year, payable on the first business day of each calendar year of the Term (the “Basic Rent”).
- (b) In the event that Bigelow redevelops the Premises for a use other than as a parking facility ancillary to the Development Property and/or the Renovated and Remediated

Premises, then for so long as this Lease shall remain in place, the City and Bigelow shall negotiate and agree upon a fair market rent for the Premises and, in default of agreement, a panel of licensed real estate appraisers with existing business within New Haven County shall determine such fair market rent (the "Fair Market Rent"), as follows: An appraiser appointed by the City and an appraiser appointed by Bigelow (the "Primary Appraisers") shall seek to agree upon the Fair Market Rent. If the Primary Appraisers are unable to agree upon the Fair Market Rent, then they shall jointly appoint a third appraiser similarly qualified ( the "Third Appraiser"), and the Third Appraiser shall examine data prepared by the Primary Appraisers and shall make a judgment as to the Fair Market Rent (which shall be not less than the smaller value, and not more than the greater value, submitted by the Primary Appraisers), which shall be final and binding.

- (c) Bigelow agrees that, during the Term, the Premises shall be fully taxable, and Bigelow shall pay the same as additional rent ("Additional Rent") hereunder. Bigelow acknowledges and agrees that, to the extent that, at any time during the Term, the Premises is ruled to be tax-exempt for any reason, including (without limitation) because of the City's ownership of the fee simple title, Bigelow shall pay such Additional Rent as a Payment in Lieu of Taxes, in the amount that would otherwise be payable as taxes if the Premises were not ruled to be tax-exempt.
- (d) The Basic Rent and the Additional Rent are herein together referred to as the "Rent."

#### Section 6: Alienation

Bigelow may not assign its interest under this Lease, in whole or in part, or enter into any sublease of all or any portion of the Premises, without the prior written consent of the City, acting in its sole and absolute discretion, provided, however, that such consent to an assignment of the whole of Bigelow's interest hereunder, or a sublease of the entire Premises where such assignment or sublease is ancillary to a permitted disposition (if required under the DLDA) of the Development Property, shall not be unreasonably withheld.

#### Section 7: Improvements

- (a) The Premises shall be delivered in "as is" condition, including without limitation the environmental conditions existing at the time of the execution of this Lease. Bigelow will construct the improvements described in Exhibit B attached hereto and made a part hereof

(the “Improvements”). The construction of any Improvements shall comply with all applicable codes, regulations, and ordinances, including planning and zoning requirements, environmental laws, and the payment to the City of any and all applicable Building Permit fees.

- (b) Construction of the Improvements shall be initiated within twelve (12) months and completed within twenty-four (24) months of the Effective Date. An extension of the timeframes for initiation or completion of the Improvements shall require the written approval of the City.
- (c) To the extent required, Bigelow shall arrange for the provision of water, sewer, electrical service, telephone, natural gas, and HVAC service to the Improvements that Bigelow requires. Such services, equipment, and appurtenances relating thereto shall comply with all appropriate state and municipal statutes, ordinances, codes, rules, and regulations. Bigelow shall pay, or cause its sublessees to pay, for the use of said services.
- (d) To the extent required, as part of its construction of the Improvements, Bigelow shall comply with all requirements set forth in Section 14 below, including engaging a Licensed Environmental Professional (“LEP”) of its choosing to oversee the environmental requirements of the construction and management of the Improvements.

Section 8:        Workforce Requirements During Construction

- (a) In carrying out any Improvements at the Premises, Bigelow shall comply with, or require that its general contractor for the Improvements comply with, all applicable City workforce requirements now and hereafter existing, including, without limitation, all Equal Employment Opportunity requirements. In particular, Bigelow agrees that it shall:
  - (i) Comply with all provisions of Executive Order 11246 and Executive Order 11375, Connecticut Fair Employment Practices Act and Chapter 12 1/2, the contract compliance ordinance of the City of New Haven, including all standards and regulations which are promulgated by the government authorities who established such acts and requirements, and all such applicable standards and regulations are incorporated herein by reference, including 24 CFR Part 135, Davis Bacon Act & Related Acts (40 USC §276a; 29 CFR 1, 3, 5, 6 and 7), Copeland Act (18 USC §874 and 40 USC §276c; 29 CFR 3), 40 U.S.C. Section 327 et seq 29 CFR5, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans

with Disabilities Act, and the Equal Pay Act. Under Title VII (N-915.040), Immigration and Reform and Control Act of 1986 (IRCA) (8 USC 1101 as amended) Immigration and Nationality Act, Section 274A, FLSA's recordkeeping Regulations, 29 CFR Part 516. State of Conn. General Statutes Section 31-53, State of Conn. P.A.97-263, Sec. 31-51d-5. Standards of apprenticeship.

- (ii) Comply with applicable law that prohibits discrimination against any employee or applicant for employment because of race, color, religion, gender, age, sexual orientation, gender identity or expression, marital status, physical disability or national origin. Bigelow shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to race, color, religion, gender, age, sexual orientation, gender identity or expression, marital status, physical disability or national origin, and such action shall include, but not limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of any or other forms of compensation, and selection for training, including apprenticeship.
- (iii) Post, in conspicuous places available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- (iv) State, in all solicitations or advertisements for employees placed by or on behalf of Bigelow, that all qualified applicants will receive consideration for employment without regard to race, color, religion, gender, age, sexual orientation, gender identity or expression, marital status, physical disability or national origin, and notify the City of New Haven Commission on Equal Opportunities (the "Commission") of all job vacancies.
- (v) Work with the Commission in complying with Section 12 ½ of the City of New Haven's Code of Ordinances and in particular (without limitation):
  - A. Bigelow acknowledges that under Section 12 ½-26 all prime contractors, subcontractors and tiers must attend a pre-award conference scheduled by Bigelow and conducted by the Commission; and that during each such pre-award conference, meeting minutes are kept to be signed by each such party; and

- B. Bigelow shall deliver to the Commission notice of all contracts to be bid, together with the opportunity to review the same and opportunity to attend all pre-bid conferences or other such meetings concerning the same as may take place; and
  - C. Bigelow shall furnish all information and reports required by the City pursuant to Section 12-1/2-19 through section 12-1/2-32 of the City's Code of General Ordinances and to permit access to Bigelow's books, records and accounts by the contracting agency, the City, and the Commissioner of Labor of the State of Connecticut for purposes of investigations to ascertain compliance with the program and file, along with its construction subcontractors, if any, compliance reports with the City in the form and to the extent prescribed in this Lease by the City and to file compliance reports at such times as directed which shall contain information as to the employment practices, policies, programs and statistics of Bigelow and its subcontractors, if any; and
  - D. Bigelow shall comply, as a United States employer, with the Immigration and Naturalization Service (INS)'s I-9 verification process, which requires employers to confirm the employment eligibility of workers. Bigelow acknowledges that an employer can be fined or otherwise sanctioned for knowingly hiring an undocumented worker; that the I-9 forms also provide employers with a "good faith" defense if they hire someone who later turns out to be working illegally in the United States; and that the Commission will monitor and report of any alleged violations of the I-9 verification process to the proper authorities.
- (vi) Utilize to the most reasonable extent (and without prejudice to the specific requirements of this Section 8) manpower programs sponsored or supported by the City or by the Department of Labor of the State of Connecticut (the "DOL") and notify such programs of all job vacancies arising as a result of the Improvements, together with the Commission's contract compliance unit, and recruitment and training programs sponsored by the City in order to ensure the hiring of qualified minority,

women and physically disabled employees, trainees and apprentices, it being hereby agreed and acknowledged by Bigelow that if the Bigelow fails to meet compliance requirements and is unable to furnish reasonable evidence of such utilization, then Bigelow shall automatically be deemed non-compliant with the Bigelow's obligations under this Section 8.

- (vii) Include the provisions of Section 8(a)(i) through Section 8(a)(v) in every subcontract or purchase order so that said provisions will be binding upon each such subcontractor or vendor.
  - (viii) Take such action, with respect to any subcontractor, as the City may direct as a means of enforcing the provisions of this Section 8, including penalties and sanctions for noncompliance and fines and penalties related to the rules of practice enforced by the City Commission on Equal Opportunities or the SBC office, whichever is applicable, provided however that, in the event Bigelow becomes involved in or is threatened with litigation as a result of such direction by the City, the City will intervene in such litigation to the extent necessary to protect the interest of the City and to effectuate the City's Equal Employment Opportunity program.
  - (ix) Make best efforts to have Bigelow's general contractors, construction manager, and all subcontractors performing the Improvements hire the following groups, in correspondence to the following percentages of total hours completed to perform the Improvements: twenty-five percent (25%) of hours to be worked by minorities as defined in Ordinance Section 12-1/2-19(n); six and nine-tenths percent (6.9%) of hours to be worked by females; twenty-five percent (25%) of hours to be worked by residents of the City.
- (b) Bigelow hereby acknowledges that a finding of a refusal by Bigelow or subcontractor, to comply with any portion of the requirements set forth in this Section 8 may result in the refusal of all future bids for any public contract with the City or any of its departments or divisions, until such time as Bigelow, or subcontractor (as appropriate) shall bring itself into compliance with the requirements of this Section 8.
- (c) Without prejudice to the various other penalties and sanctions available to the Commission as a result of Bigelow's failure to comply with the requirements of this



Section 8, Bigelow hereby acknowledges the table of financial penalties imposable by the Commission and approved by the City's Board of Alders.

- (d) Bigelow shall consult with the DOL to determine the wage rate(s) appropriate for performing the Improvements, based on the wage levels required pursuant to the various governmental funding sources.

Section 9: Small Contractor Utilization Requirements During Construction

- (a) In carrying out the construction of the Improvements, Bigelow shall comply with, or require that its general contractor for performing the Improvements comply with, all applicable City small contractor utilization requirements now and hereafter existing, including, without limitation, the Small Contractor Development Program ("SCDP") requirements as set forth in Section 12 ¼ of the City's Code of General Ordinances (the "Program"), and in particular, during the construction of the Improvements, it is acknowledged and agreed that:
  - (i) Bigelow shall comply with all applicable SCDP requirements, including, without limitation, all small business construction initiative requirements and in particular, during the carrying out of the Improvements, Bigelow agrees to require its construction manager, general contractors and its construction subcontractors to comply with the provisions of Ordinance Section 12 1/4-9, which require that every effort be aggressively made to meet the Utilization Goals for Minority Owned Business Enterprises ("MBE") and Women Owned Business Enterprises ("WBE") which are herein collectively referred to as the "MBE/WBE Utilization Goals". Pursuant to Ordinance Sections 12 1/4-9(d) and (f), Bigelow and its contractors shall be considered to have achieved compliance with the MBE Utilization Goals if work totaling the value of twenty-five (25%) percent of the total construction cost is awarded to MBEs/WBEs; in order to achieve MBE/WBE Utilization Goals, contracts may be awarded to MBE/WBE subcontractors and/or a contractor may enter into a joint venture or other commercially reasonable relationship that is satisfactory to the City with one or more MBEs/WBEs for the purpose of constructing the Improvements. In the event that Bigelow is unable to meet the MBE/WBE Utilization Goals, then Bigelow shall document in an affidavit its good faith effort to achieve the MBE/WBE Utilization Goals, which efforts will be evaluated, verified and recognized by the City. The good faith efforts shall be determined using the following factors:

- A. the contractor negotiated in good faith with certified minority- and women-owned business enterprises submitting bids, proposals, or quotations and did not, without justifiable reason, reject as unsatisfactory any bids, proposals or quotations prepared by any certified minority- or women-owned business enterprise. "Good faith" negotiating means engaging in good faith discussions with certified minority- or women-owned business enterprises about the nature of the work, scheduling, requirements for special equipment, opportunities for dividing of work among the bidders, proposers, and various subcontractors and the bids of the minority or women businesses, including sharing with them any cost estimates from the request for proposal or invitation to bid documents, if available; and
- B. the submittal of scope specific subcontracting opportunities with the SCDP for distribution; and
- C. demonstration to the SCDP whether the contractor provided relevant plans, specifications or terms and conditions to certified minority- and women-owned business enterprises sufficiently in advance to enable them to prepare an informed response to a contractor request for participation as a subcontractor; and
- D. verification of quotes received from subcontractors that were denied because of cost, quality, availability, etc.; and
- E. the contractor identified economically-feasible units of the Improvements that could be contracted or subcontracted to certified minority- and women-owned business enterprises in order to increase the likelihood of participation by such enterprises on the contract; and
- F. conducting a networking event with owner, construction manager, and prime contractors; and
- G. holding individual trade meetings with construction manager, prime contractors and sub-contractors; and

H. the contractor followed-up initial solicitations by contacting the enterprises to determine whether the enterprises were interested in such contracting or subcontracting opportunity.

- (ii) To ensure equal opportunities for participation by MBEs and SBEs in performing the Improvements, Bigelow or its general contractors or construction manager shall notify the SCDP of all construction contracting opportunities for all phases of the Improvements carried out by Bigelow.
  - (iii) Bigelow shall include the provisions of Section 9(i) through Section 9(vi) in every subcontract or purchase order so that said provisions will be binding upon each such subcontractor or vendor.
  - (iv) Bigelow and/or its general contractors or construction manager shall permit information about construction opportunities to be distributed to potential subcontractors via facsimile and email.
  - (v) Bigelow together with the SCDP shall hold a workshop detailing the Improvements to be performed and the contracting opportunities therefor.
  - (vi) Bigelow shall cooperate with the SCDP in its efforts to encourage mentoring programs and management, technical, and developmental training skills through sub-contracting opportunities.
- (b) Bigelow shall furnish all information and reports required by the SCDP and to permit access to Bigelow's records of and to require that its construction manager, general contractors and subcontractors provide access to their records in order verify compliance with the requirements of this subsection, to provide the SCDP with the opportunity to review proposed contracts prior to the award of the same and to provide such Program with notice of all pre-bid conferences and the opportunity to attend such conferences.
- (c) Bigelow shall take all reasonable corrective actions requested by the City to comply and to effectuate compliance with the requirements of this Section 9.

- (d) A finding of a refusal by Bigelow, or subcontractor, to comply with any portion of the Program may subject the offending party to any of the sanctions herein or therein provided for, which may include the refusal of all future bids for any public contract with the City, or any of its departments or divisions, until such time as Bigelow, or subcontractor (as appropriate) shall bring itself into compliance with the requirements of this Section 9.
- (e) Bigelow shall take such action, with respect to any subcontractor, as the City may direct as a means of enforcing the provisions of this Section 9, including such penalties and sanctions for noncompliance as set forth in this Section 9 as related to the rules of practice enforced by the SCDP provided however that, in the event Bigelow becomes involved in or is threatened with litigation as a result of such direction by the City, the City will intervene in such litigation to the extent necessary to protect the interest of the City, and provided further that any such action required to be taken by Bigelow shall be at no cost to Bigelow. During the pendency of any legal proceedings Bigelow shall continue to move forward on the Improvements and shall not be the guarantor of any outcomes of such litigation.
- (f) Bigelow acknowledges that the penalties for non-compliance with the provisions of this Section 9 include the following penalties, which Bigelow shall bring to the attention of all contractors and subcontractors carrying out any portion of the Improvements:
  - (i) declaring Bigelow or contractor to be nonresponsive and ineligible to receive the award of a contract;
  - (ii) declaring Bigelow or contractor to be an irresponsible bidder and disqualified from eligibility for providing goods or services to the City for a period of up to twelve (12) months;
  - (iii) the removal of an offending contractor from the City's list of registered SBEs or MBEs; and
  - (iv) the imposition of a civil penalty on Bigelow and/or any offending contractor of up to Ten Thousand Dollars and No Cents (\$10,000.00) in any instance in which the

noncompliance is determined to be willful or persistent or with blatant disregard for the provisions of this Section 9.

Section 10: Ownership of Improvements

During the Term of this Lease, the Improvements shall be and remain the property of Bigelow, and Bigelow shall be responsible for maintenance of the Improvements, except as otherwise provided in this Lease. Unless the parties hereafter mutually agree in writing to the contrary, title to the Improvements in "as is" condition shall pass to the City on the Expiration Date or upon earlier termination of this Lease. Bigelow agrees to execute any documents required to effectuate such transfer of title.

Section 11: Mechanic's Liens

No work performed by Bigelow pursuant to this Lease shall be deemed to be for the immediate use and benefit of the City, so that no mechanic's or other lien shall be allowed against the City by reason of consent given to Bigelow to improve the Premises. Bigelow shall promptly pay all persons furnishing labor or materials with respect to any work performed by Bigelow's agents or contractors on or about the Premises. In the event that any mechanic's or other lien shall at any time be filed against the Premises by reason of work, labor, services, or materials performed or furnished, or alleged to have been performed or furnished, to Bigelow or its Sublessees, Bigelow shall diligently cause the same to be discharged or bonded to the satisfaction of the City after receiving written notice of such lien. If Bigelow shall fail to diligently cause such lien to be discharged or bonded after being notified of the filing thereof, then, in addition to any other right or remedy, the City may bond or discharge the same by paying the amount claimed to be due, and the amount so paid by the City, including reasonable attorneys' fees incurred by the City either in defending against such lien or upon invoice therefor, shall be reimbursed by Bigelow as Additional Rent.

Section 12: Indemnification

Bigelow hereby agrees to defend, indemnify, and hold harmless the City, and the City's officers, agents, and employees, from and against any and all actions, lawsuits, claims, damages, losses, judgments, liens, costs, expenses, and reasonable counsel and consultant fees sustained by any person or entity ("Claims"), to the extent such Claims are caused by the acts, errors, or omissions of Bigelow or its respective employees, agents, or subcontractors, directly or indirectly arising out of, or in any way in connection with, any use of the Premises pursuant to this Lease.

Section 12: Insurance

- (a) Bigelow shall purchase from and maintain, with a company or companies with an A- or greater A.M. Best & Co. rating acceptable to the City and lawfully authorized to do business in Connecticut, such insurance as will protect the City and Bigelow from claims which may arise out of or result from use of the Premises by Bigelow and/or by the invitees or permittees or others who may use or enter upon the Premises under this Lease for which Bigelow is or may be legally liable.
- (b) Bigelow shall not act nor permit any actions on or at the Premises which are or may be contrary to law or which will invalidate or be in conflict with any policy of insurance at any time carried by or for the benefit of Bigelow with respect to the Premises.
- (c) Without prejudice to the generality of Section 13(a) above, Bigelow shall obtain and maintain Commercial General Liability coverage including:
  - (i) a combined Bodily Injury and Property Damage Limit of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the General Aggregate.
  - (ii) Fire Damage Legal Liability Limit of no less than One Hundred Thousand Dollars (\$100,000).
  - (iii) Medical Payments Liability Limit of not less than Ten Thousand Dollars (\$10,000).
- (d) This limit of liability can be provided by a combination of an Umbrella and/or Excess Liability policy(ies).
- (e) Coverage must include the following endorsements:
  - (i) Blanket Contractual Liability for liability assumed under this Lease;
  - (ii) Severability of Interests; and
  - (iii) (iii) that the insurance provided is to be primary the City, and all other indemnitees named in this Lease.

- (f) Bigelow must carry Workers' Compensation insurance as follows:
- (i) Coverage A – Statutory Benefits Liability imposed by the Workers' Compensation and/or Occupational disease statute of the State of Connecticut and any other governmental authority having jurisdiction.
  - (ii) Coverage B – Employer's Liability – Limits of not less than One Hundred Thousand Dollars (\$100,000) per accident; One Hundred Thousand Dollars (\$100,000) bodily injury per disease/employee; Five Hundred Thousand Dollars (\$500,000) policy by disease.
  - (iii) Extensions of Coverage
    - Other States Endorsement
    - Amendment of the Notice of Occurrence
    - Thirty (30) days' written notice of cancellation, non-renewal.
- (g) The insurance required pursuant to this Section 13 shall be written for not less than the limits of liability specified herein or as required by law, whichever coverage is greater. Insurance coverage written on an occurrence basis shall be maintained without interruption throughout the Term from the Effective Date. If liability coverage is written on a claims-made basis, "tail" or "extended reporting period" coverage will be required at the expiration of the Term for a duration of twenty-four (24) months, or the maximum time period reasonably available in the marketplace. Bigelow shall furnish certification of "tail" coverage as described or continuous "claims-made" liability coverage for twenty-four (24) months following the expiration of the Term. Continuous claims-made coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the Effective Date. If continuous claims-made coverage is used, Bigelow shall be required to keep the coverage in effect for the duration of not less than twenty-four (24) months from the date of expiration of the Term or, if appropriate, from earlier termination of this Lease.
- (h) For all policies required hereunder Bigelow hereby waives (or shall cause to be waived) subrogation against the City and any and all other indemnitees pursuant to Section 12 above, and shall name the City as Certificate Holder and, except for Worker's Compensation, an additional insured. Further, each such policy shall provide that the insurance company will endeavor to give a minimum of thirty (30) days' written notice to

the City prior to any modification or cancellation (except for reason of non-payment of premium which shall be ten (10) days' notice) of any such insurance coverage and such notice shall be directed to the City in accordance with the notice provisions of the Lease. Bigelow shall furnish the City with the insurance policy(ies) and corresponding Certificate(s) of Insurance evidencing that it has complied with the obligations of this Section 13 on an arrival basis, including, but not limited to, requirements for (1) waiver of subrogation, (2) additional insured (with the exception of Worker's Compensation coverage), (3) notice of cancellation, and (4) Certificate Holder information. Certificates of Insurance acceptable to the City shall be filed with the City prior to the Effective Date and thereafter upon renewal or replacement of each required policy of insurance. If any of the insurance coverage required herein is to remain in force after the expiration of the Term, an additional Certificate of Insurance evidencing continuation of such coverage shall be delivered to the City.

- (i) Bigelow shall notify the City whenever fifty percent (50%) of the aggregate limits required hereunder are eroded during the required coverage period. If the aggregate limit is eroded for the full limit, Bigelow agrees to reinstate or purchase additional limits to meet the minimum limit requirements stated herein. Any premium for such shall be paid by Bigelow.
- (j) Unless requested otherwise by the City, Bigelow and Bigelow's insurer shall waive governmental immunity as defense and shall not use the defense of governmental immunity in the adjustment of claims or in the defense of any suit brought against the City.
- (k) Any deductible or self-insured retention must be declared to, and approved by, the City. All deductibles or self-insured retentions are the sole responsibility of Bigelow to pay and/or to indemnify the City.

Section 14: Environmental

- (a) Bigelow acknowledges that, prior to the Effective Date of the Lease, the City requested that Bigelow inspect fully the Premises and investigate all matters relevant thereto, including, without limitation, all environmental matters, and to rely solely upon the



results of Bigelow's own inspections or other information obtained or otherwise available to Bigelow rather than any information that may have been provided by the City to Bigelow. Bigelow acknowledges that it has made a complete inspection of the Premises prior to the Effective Date of this Lease, including all environmental matters. Except as set forth in this lease, Bigelow has not relied upon any statement or representation made by the City regarding the environmental condition of the Premises. Bigelow acknowledges that the City's Licensed Environmental Professional (LEP) has completed certain limited environmental site assessments of the Premises as set forth on Exhibit C (the "City's ESAs"), which City's ESAs have been provided to Bigelow and have identified certain environmental conditions on the Premises existing on or before the Effective Date of this Lease (the "Existing Environmental Conditions"). The City has relied on such information and reports for its own use but makes no representations or warranties with respect to: (i) the accuracy, methodology of preparation, or otherwise concerning the contents of such City's ESAs, or (ii) whether the Premises contains, without limitation, asbestos, or harmful or toxic substances, or hazardous wastes or oil or petroleum as defined in C.G.S. §22a-448, or pertaining to the extent, location or nature of same. Except to the extent expressly set forth herein to the contrary, Bigelow acknowledges and agrees to accept the Premises in its "AS IS" and "WITH ALL FAULTS" condition existing at the time of Closing, including all Existing Environmental Conditions.

- (b) Bigelow agrees that any soil excavation required to be conducted as part of Bigelow's **Improvements**, if any, at the Premises after the Effective Date of the Lease, including any trenches, pits, or other installations both as part of the slab installation, landscaping, utility installation, grading, or other site requirements, shall be conducted by Bigelow at its sole cost and expense. Any soils excavated shall first be properly characterized by Bigelow and managed in accordance with a Materials and Soil Management plan developed by Bigelow's LEP and submitted to the City prior to construction, for the City's and City's LEP's review and approval, in accordance with applicable Remediation Standard Regulations (the "RSRs") and any other local, state, or federal law, at the sole cost and expense of Bigelow. Any soils which cannot be reused on the Premises in accordance with the RSRs or as approved by the City's LEP, shall be properly disposed of off-site by Bigelow in accordance with all applicable laws at the sole cost and expense of Bigelow. Bigelow shall promptly provide the City with all documentation regarding

the soil re-use and/or off-site disposal, including any information requested by the City's LEP. Bigelow agrees to have its LEP oversee Bigelow's construction of the Improvements and, upon completion of the Improvements, Bigelow shall provide the City with a final closure report prepared by its LEP including the final as-built details of the completed Improvements for the City and City's LEP prior review and approval.

- (c) Notwithstanding the above, as part of the Improvements as set forth on Exhibit B , the City's LEP and remediation contractor shall be responsible for the installation of: (i) storm drainage including trench excavation, liner placement, pipe/structure installation and backfill; (ii) fence posthole excavation (fence to be installed buy Bigelow); and (iii) light pole base excavation and installation as part of the Improvements (collectively the "City's Remediation Work"). Bigelow agrees to fully cooperate with the City in the City's conduct of the City's Remediation Work including, without limitation, providing access to the Property as set forth below.
- (d) In addition, upon completion of the Improvements, Bigelow shall provide the City and the City's LEP with a Maintenance and Inspection Plan of the Improvements prepared by Bigelow's LEP, for the City's and the City's LEP's review and approval, which shall include annual inspections to be conducted by Bigelow, to identify any degradation of the Improvements and measures taken by Bigelow, at its sole cost and expense, necessary to restore the Improvements to ensure their integrity, with a comprehensive inspection of the Improvements to be conducted every five (5) years by Bigelow's LEP for the duration of the Lease term. Bigelow shall timely submit to the City, reports documenting its annual inspections and its five-year (5-year) comprehensive inspections, which five-year (5-year) report shall be certified to the City by Bigelow's LEP.
- (e) Bigelow shall be solely responsible for any hazardous wastes generated during construction of the Improvements or resulting from its activities or those of any Sublessees during the Term of the Lease as generator of that waste, and shall promptly provide the City with copies of all manifests or bills of lading.
- (f) Bigelow agrees to be solely responsible for all costs, liabilities, and expenses arising from, relating to, or otherwise associated with any new environmental conditions to the extent that they first arise out of, or relate to circumstances, or conditions first occurring after the beginning of the Term of the Lease, with respect to or in any way related to the

Premises, both on the Premises and off the Premises, that may require investigation, abatement, reporting, and/or remediation, or that may result in claims or demands by or liabilities to third parties including governmental authorities, resulting from any action or inaction of Bigelow, its agents, contractors, or Sublessees during the Term of the Lease, unless said condition existed or was related to the Existing Environmental Conditions identified in City's ESAs (the "New Environmental Conditions"). Bigelow agrees to indemnify, defend, and hold harmless City, City officials, employees, agents, and successors and assigns from and against any and all liability fines, suits, claims, demands, judgments, actions, penalties, orders, damages, losses, liabilities, costs, and expenses (including without limitation reasonable attorneys' fees) made or asserted by anyone whatsoever, due or arising out of any connection with any New Environmental Conditions, any exacerbation by Bigelow, its agents, contractors, or Sublessees of any Existing Environmental Condition, any negligence or other act or omission of Bigelow or any of its employees, agents, guests, vendors, assignees, sublessees, or contractors and any violation of Environmental Laws which indemnification shall survive the Termination of the Lease. "Environmental Laws" means any and all federal, state, and local laws, statutes, ordinances, rules, regulations, or orders of any Governmental Authority enacted for the protection of human health, welfare, and/or the environment, including the federal Clean Water Act, the federal Clean Air Act, the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, the federal Water Pollution Control Amendments, the Federal Resource Conservation and Recovery Act of 1976, the federal Hazardous Materials Transportation Act of 1975, the federal Safe Drinking Water Act, the federal Toxic Substances Control Act, and any comparable or similar environmental laws of the State, including Title 22a of Connecticut General Statutes including without limitation the Property Transfer Act C.G.S. Section 22a-134 et seq. (the "Transfer Act"); the Voluntary Remediation Program under C.G.S. Section 22a-133x (the "VRP"); the Release Based Program, C.G.S. Section 22a-134tt (the "RBP") and the State of Connecticut Remediation Standard Regulations, R.C.S.A. Section 22a-133k-1 through k-3 inclusive ("RSRs") (all as may be amended from time to time).

- (g) During the Term of the Lease, Bigelow covenants and agrees to permit the City and/or its agents, consultants, LEP, contractors, or subcontractors to access the Property upon reasonable notice and at reasonable times to inspect Bigelow's construction of the

Improvements, conduct City's Remediation Work, and conduct any other inspections, assessments, remediation, repairs or other work on the Property that Bigelow may have failed to commence in accordance with the terms of this Lease and/or required by law.

Section 15: Damage and Destruction

If the Improvements are substantially damaged by fire, the elements, accident or other casualty, Bigelow shall, at its option, promptly cause such damage to be repaired at no cost to the City. The City shall not be liable for costs of interruption to Bigelow's business or for damage to, or replacement or repair of, personal property or Improvements, all of which damage, replacement or repair shall be undertaken and completed by Bigelow under the above.

Section 16: Covenant of Quiet Enjoyment

The City warrants that it and no other person or corporation has the right to lease the Premises, and that Bigelow shall have peaceful and quiet use and possession of the Premises without hindrance for the Term.

Section 17: Permitted Mortgages

- (a) Bigelow, from time to time during the Term, may make one or more mortgages ("Permitted Mortgages"), provided that: (i) such Permitted Mortgage shall be subject and subordinate to the rights of the City under this Lease and shall not create any lien on the City's fee interest in the Premises; and (ii) Bigelow or the Permitted Mortgagee shall promptly deliver to the City in the manner herein provided for the giving of notice to the City, a true copy of such Permitted Mortgage and of any subsequent modification or assignment thereof and shall notify the City of the address of the Permitted Mortgagee to which notices may be sent.
- (b) With respect to any Permitted Mortgage made in accordance with the provisions of Section 17(a) above, the following shall apply:
  - (i) when giving notice to Bigelow with respect to any default, the City shall also serve a copy of such notice upon each Permitted Mortgagee at the last address given by such Permitted Mortgagee by written notice to the City, and no such notice to Bigelow shall be effective unless a copy of such notice is so served upon the Permitted Mortgagee at such last known address;

- (ii) each Permitted Mortgagee shall have ninety (90) days after the giving of the notice aforesaid to it for remedying any default or causing the same to be remedied;
- (iii) this Lease shall not be modified, amended, altered, or cancelled, nor shall a surrender of the Premises or a waiver of the rights of Bigelow be accepted by the City, without the prior written consent of any Permitted Mortgagee which has given notice to the City under Section 17(a)(ii) above, and any such action taken without such Permitted Mortgagee's consent shall not be binding on Bigelow or the Permitted Mortgagee; and
- (iv) the Permitted Mortgagee shall have the right to exercise all rights of Bigelow under this Lease.

Section 18: Miscellaneous

(a) Estoppel Certificate

At any time and from time to time, within thirty (30) days after Bigelow shall request the same, the City will execute, acknowledge, and deliver to Bigelow and to such Permitted Mortgagee or other party as may be designated by Bigelow, a certificate in acceptable form with respect to the matters required by such party and such other matters relating to this Lease or the status of performance of obligations of the parties hereunder as may be reasonably requested. In the event that the City fails to provide such certificate within thirty (30) days after the request therefore, the City shall be deemed to have approved the contents of any such certificate submitted in writing to the City by Bigelow, and Bigelow is hereby authorized to so certify.

(b) Notice of Lease

The parties hereby agree that, upon the request of either party, each will execute, acknowledge, and deliver a statutory Notice of Lease in recordable form. Recording and filing charges and stamp, transfer or other tax shall be paid by Bigelow.

(c) Cumulative Remedies

Except as hereinafter specified, no reference to any specific right or remedy shall preclude a party from exercising any other right or from having any other remedy or from maintaining any action to which it may otherwise be entitled at law or in equity.

(d) Successors and Assigns

This Lease and the covenant and conditions contained herein shall inure to the benefit of and be binding upon the City, its successors and assigns, and shall inure to the benefit of and be binding upon Bigelow, its successors, and assigns.

(e) Captions and Headings

The Article and Section captions and headings are for convenience of reference only and in no way shall be used to construe or modify the provisions set forth in this Lease

(f) Broker's Commission

Each of the parties represents and warrants that there are no claims for brokerage commissions or finder's fees in connection with the execution of this Lease, and each agrees to indemnify the other against, and hold it harmless from, all liability arising from any such claim including, without limitation, the cost of attorney's fees in connection therewith.

(g) No Discrimination

Bigelow shall not discriminate upon the basis of race, color, religion, gender, sexual orientation, national origin, marital status or physical disability in the sale, lease, or rental or in the use and occupancy of the Premises or any improvements erected or to be erected thereon, or any part thereof. Bigelow shall comply with all federal, state and local laws in effect from time to time, prohibiting discrimination or segregation by reason of race, religion, color, gender, sexual orientation, national origin, marital status or physical disability in the sale, lease, or rental or in the use and occupancy of the Premises or any improvement erected thereon or to be erected thereon, or any part thereof.

(h) No Modification by Prior Dealings

This writing is intended by the parties as a final expression of their agreement and as a complete and exclusive statement of the terms hereof, all negotiations, considerations, and representations between the parties having been incorporated herein. No course of prior dealings between the parties or their officers, employees, agents, or affiliates shall be relevant or admissible to supplement, explain or vary any of the terms of this Lease Agreement. Acceptance of, or acquiescence in, a course of performance rendered under this or any prior agreement between the parties or their affiliates shall not be relevant or admissible to determine the meaning of any of

the terms of this Lease. No representations, understandings, or agreements have been made or relied upon in the making of this Lease other than those specifically set forth herein. This Lease can be modified only by a writing signed by the party against whom the modification is enforceable.

(i) Severability

If any term or provisions, or any portion thereof, of this Lease, or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

(j) Third-Party Beneficiary

Nothing contained in this Lease shall be construed so as to confer upon any other party the rights of a third-party beneficiary, except rights set forth herein for the benefit of a Permitted Mortgagee.

(k) Applicable Law

This Lease and the rights and obligations of the parties hereunder shall be construed in accordance with the laws of the State of Connecticut.

(l) Notices

Any notice, request, demand, approval, or consent given or required to be given under this Lease shall be in writing and shall be deemed to have been given as follows:

If intended for the City, on the third day following the day on which the same shall have been mailed by United States registered or certified mail, return receipt requested, with all postage charges prepaid, addressed to the City at the address contained herein.

If intended for Bigelow, on the third day following the day on which same shall have been mailed registered or certified mail, return receipt requested, with all postage charges prepaid, addressed to Bigelow at the addresses contained herein with a copy of same to Attorney Al Ippolito at the address set forth therein.

Either party may, at any time, change its address by sending a notice as provided herein to the other party stating the change and setting forth the new address. The City may be required to give notice to a Permitted Mortgagee, simultaneously with notice to Bigelow pursuant to this Section 18(l) herein:

For the City:

Office of the Special Counsel to Economic Development  
City Hall  
165 Church Street  
New Haven, CT 06510

For Bigelow Square:

Carmine Capasso  
Capasso Restoration, Inc.  
34 Lloyd Street  
New Haven, CT 06513

(m) Waiver of Jury Trial

The City and Bigelow hereby mutually waive any and all rights which either may have to request a jury trial in any proceeding at law or in equity in any court of competent jurisdiction.

(n) Approvals

Whenever in this Lease a party's approval or consent shall be required, same shall not be unreasonably withheld, conditioned or delayed. If given, such approval or consent shall be given in writing in the manner required for notices under this Section. Except as otherwise specified herein, whenever a party's approval or consent shall be requested under this Lease, such approval or consent shall be deemed given if the party shall fail to respond within thirty (30) days after receipt of all relevant documentation. Any denial of consent or approval shall give specific reasons therefor.

(o) Additional Documents and Feasible Rights

The City and Bigelow shall execute and deliver such additional documents or instruments as may be reasonably necessary to effectuate the intent and purposes hereof.



(p) Cancellation

Bigelow shall have the right, at any time during the term of this Lease upon one hundred eighty (180) days' notice to the City, to cancel this Lease as of a specified date.

(q) Unavoidable Delays

If any work or act required to be performed by a party under this Lease shall be delayed by reason of Unavoidable Delays, the time within which a party shall perform such work or act shall be extended for the period of time as such party shall have been so delayed. The term "Unavoidable Delays" shall mean delays beyond the control of a party, including without limitation delays due to strikes, lock-outs, acts of God, Inability to obtain labor or materials, government restrictions, enemy action, civil commotion, fire or other casualty; provided, however, that lack or unavailability of funds shall not be deemed a cause beyond the control of a party.

(r) Legal and Equitable Remedies

Neither party shall have the right to terminate this Lease based on an alleged default by the other. Each party shall, however, have all other legal and equitable remedies for any alleged breach by the other, including without limitation suits at law for damages and the right to seek injunctive relief.

(s) Counterparts

This Lease may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and same instrument.

**IN WITNESS WHEREOF**, the City and Bigelow have executed this Lease as of the date first above written.

WITNESS:

CITY OF NEW HAVEN

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Justin Elicker  
Mayor

Approved as to Form and Correctness

\_\_\_\_\_  
John R. Ward, Special Counsel to  
Economic Development

WITNESS:

BIGELOW SQUARE, LLC

\_\_\_\_\_

By: \_\_\_\_\_  
Carmine Capasso  
Principal

STATE OF CONNECTICUT            )  
   )  
   )        ss:             \_\_\_\_\_, 2023  
 COUNTY OF NEW HAVEN            )

Personally appeared Justin Elicker, known to me to be the Mayor of the City of New Haven, Connecticut, who executed the foregoing instrument on behalf of said City and acknowledged the same to be his free act and deed as Mayor and the free act and deed of the City of New Haven.

\_\_\_\_\_  
 Commissioner of the Superior Court

STATE OF CONNECTICUT            )  
   )  
   )        ss:             \_\_\_\_\_, 2023  
 COUNTY OF NEW HAVEN            )

Personally appeared [                 ], known to me to be the [                 ] of the [                 ], who executed the foregoing instrument on behalf of said [                 ] and acknowledged the same to be his/her free act and deed as [                 ] and the free act and deed of the [                 ].

\_\_\_\_\_  
 Commissioner of the Superior Court

EXHIBIT A  
Description of the Premises

Beginning at a point in the southerly streetline of River Street, said point being the northeasterly corner of the parcel herein described;

Thence S5°52'10"E, along 198 River Street Parcel 198RS-A, a distance of 175.00' to a point;

Thence S84°07'50"W, along 34 Lloyd Street, a distance of 107.05' to a point;

Thence N5°52'10"W, along 198 River Street Parcel 198RS-C, a distance of 175.00' to a point in the southerly streetline of River Street;

Thence N84°07'50"E, along the southerly streetline of River Street, a distance of 107.05' to the Place and Point of Beginning.

Said Parcel contains 0.43 acres, more or less.

EXHIBIT B

Improvements

<b>Item No.</b>	<b>Item Name</b>	<b>Unit</b>	<b>Quantity</b>
1	Remove Existing Curb	LF	72
2	Remove Existing Sidewalk	SY	39
3	Concrete Curb	LF	10
4	Concrete Sidewalk	SF	360
5	Bituminous Curb	LF	543
6	Formation of Subgrade	SY	880
7	Material for Tack Coat	GAL	312
8	HMA S1 (2")	TON	240
9	HMA S0.375 (2")	TON	240
10	Processed Aggregate Base (6")	CY	350
11	Crushed Gravel Subbase (6")	CY	520
12	Mirafi 140NL/0 Delineation Geotextile Fabric (Roll)	EA	4
13	Handicap Sign	EA	2
14	4" White Pavement Markings	LF	428
15	Pavement Marking Symbols	SF	191
16	Site Lighting Fixtures	EA	4
17	Earth Excavation	CY	64
18	15" HDPE Pipe	LF	110
19	Hydrodynamic Separator	EA	1
20	Catch Basin	EA	1
21	6" Perforated PVC Pipe	LF	380
22	6" Solid PVC Pipe	LF	95
23	3/4" Crushed Stone	CY	70
24	Trench Drains	LF	48
25	Silt Fence	LF	540
26	Construction Entrance	SY	100
27	24' Cantilever Sliding Gate	EA	1
28	Remove and Reset Chain Link Fence	LF	117

## EXHIBIT C

### City ESAs

- Phase I Environmental Site Assessment Update, 198 River Street, prepared for the City of New Haven Office of Economic Development by DTC, May 6, 2016
- Phase III Environmental Site Assessment, 198 River Street, prepared for the City of New Haven Office of Economic Development by DTC, October 24, 2016

EXHIBIT D

Site Plans