

**SUMMARY OF THE PROPOSED DEVELOPMENT AND LAND DISPOSITION AGREEMENT  
BY AND AMONG THE CITY OF NEW HAVEN, WE 2 CHURCH STREET LLC AND THE NEW  
HAVEN PARKING AUTHORITY**

May 28, 2026



This document provides an overview of the proposed Development and Land Disposition Agreement (the "Development Agreement") between the City of New Haven (the "City"), WE 2 Church Street LLC (the "Developer") and the New Haven Parking Authority (the "Parking Authority").

A Development and Land Disposition Agreement is the City's standard practice for the disposition of real property involving large and/or complex community and economic development projects. This Development Agreement establishes the rights, duties and obligations of the parties concerning the construction and operation of a new building to be known as 2 Church Street (the "Building"). The Development Agreement also sets forth coordination activities with Downtown Crossing, the City's ongoing transition of the Route 34 right-of-way from state-owned highway land to new city blocks connected to local streets and facilitates a new Innovation Cluster initiative being made possible through competitive grants awarded by the Connecticut Department of Economic and Community Development ("DECD").

The Development Agreement will allow the Developer to construct the Building at 2 Church Street, a parcel of land that is bounded by MLK Boulevard to the north, 101 College Street to the west, South Frontage Road to the south and Church Street to the east (the “Site”).

The Development Agreement and related instruments are also designed to facilitate construction of the Building and certain public infrastructure investments such as the Church Street Promenade and “Arc Bridge” and the tunnels and drives which connect Interstates 91 and 95 with the Air Rights Garage (the “Project”).

The estimated private investment by either the Developer or tenants is in excess of \$200 million. Although not delineated as part of the Development Agreement as a deal point, the Developer is advancing potential tenancy with private commercial tenants and QuantumCT. On May 28, 2029, Unilever announced its intention to be the primary tenant and establish a global research center at 2 Church Street.



Once complete, the Project will represent a vital connecting part of the Innovation Cluster, which represents a unique opportunity to leverage the removal of Route 34 and convert much of the right of way into an economic engine designed to generate future growth, increase New Haven’s tax base and create hundreds of new jobs, both during construction and permanently thereafter.

## **1. Innovation Cluster Initiative**

Following a competitive solicitation, DECD awarded \$50.5M in various grants supporting the New Haven Quantum and Life Science Innovation Cluster.<sup>1</sup> These grants are made available on a dollar for dollar basis to invest in necessary public infrastructure and those public facilities in downtown New Haven which propel growth in the life sciences industry and the emerging sector of quantum technologies, setting the stage for a new generation of cutting-edge research, innovation, and business and job growth in these sectors.

DECD funding will enable the creation of a 4,500 s.f. New Haven Innovation Center at 101 College Street; provide critical financial support for QuantumCT and BioCT; extend the Church Street Promenade with a new Arc Bridge; and support the development of 2 Church Street with particular emphasis on the public infrastructure on- and off- the new development site.

The Innovation Cluster grant application and initiative were presented to the Board of Alders and adopted on April 7, 2025. The application was formally presented to DECD on June 10, 2025 and the awards listed above were announced on September 26, 2025. Since then, the project partners (the primary recipients of DECD funding) have worked to implement key initiatives. The City will continue to work closely with all partners to ensure access to jobs and opportunities arising out of the various initiatives.

Of note, the City is one of the matching fund partners for the New Haven Innovation Center, which will be the first home of QuantumCT. QuantumCT is a new organization which is bringing together the state's research power, industry expertise and workforce development partners to best position Connecticut's economy for future growth.

Researchers and start-ups in Connecticut are some of the world's leading experts in the quantum science. The establishment of QuantumCT solidifies New Haven's standing against intense competition from industry and academic centers across the country.

The fiscal impact statement includes the sources and uses for the new grants and the dollar for dollar matching requirements. There has been extensive cooperation with DECD and the Connecticut Department of Transportation ("CT DOT") as the City gained approval(s) to redesignate federal and state funding sources in order to deliver on the mission of the Innovation Cluster in a timely fashion.

## **2. Downtown Crossing & Tear Down of the Route 34 Expressway**

The Route 34 right-of-way was established through acquisition of property by the State of Connecticut, as part of the Oak Street urban renewal project which involved the relocation of more than 900 households and 250 businesses. While the social and economic fabric can never be recovered, Downtown Crossing, Hill to Downtown and Union Square all strive to restore the community in ways that lift our residents and city as a whole. In this spirit, tearing out the Route 34 expressway has opened up new land for infill development and improved connections around the medical district and Hill neighborhood with the City's central business district. In turn, the Downtown Crossing project has created new jobs by building on the economic strengths of the City.

In Phase 1 of the Downtown Crossing project, the City obtained a landmark \$16 million TIGER 2 grant from the United States Department of Transportation and, together with state and local bonds, used the grant to permanently close Route 34 westbound Exits 2 and 3 as well as eastbound Exit 3. Along with work on local streets and the construction of the tunnels and service areas under 100 College Street, Phase 1 enabled construction of a 495,000 s.f. medical/lab office building at 100 College Street. Alexion Pharmaceuticals, the Wu Tsai and the Yale School of Medicine are among the most notable tenants.

In Phases 2 and 3 of Downtown Crossing, the City constructed new intersections at South Orange Street and MLK Boulevard, South Orange Street and South Frontage Road and Congress Avenue at South Frontage Road. Also, South Frontage Road was lifted to provide an at-grade pedestrian walk to a new plaza at 101 College Street.

Phases 2 and 3 of the Downtown Crossing project, were made possible by a \$21.5M grant from the Connecticut Department of Economic and Community Development (DECD), a \$20.0M USDOT TIGER 8 grant and approximately \$12M in local capital bonds. Due to rising costs arising out of the COVID-19 pandemic and the sheer complexity of utility coordination, the City did not move forward with efforts to raise the grade of MLK Boulevard and extend Temple Street to South Frontage Road.

Moving forward, the City will enter into a Maintenance Agreement with CT DOT concerning final close out of the Downtown Crossing memorializing (inter alia) that maintenance, ownership and stewardship responsibilities have been resolved, with CT DOT's responsibilities commencing generally to the east of Orange Street. In turn, the City will take possession of the Church Street Bridge and look to replace or renovate

the bridge as part of the new Church Street Promenade and Arc Bridge, a signature element of the Innovation Cluster.

### **3. Structure of the Development Agreement**

The Development Agreement describes the Project and sets forth the scope of work, the responsibilities of the parties, the conveyance process including easements, licenses and other encumbrances, the various required permitting processes, community benefits, construction and operation of both the private and public improvements, the sources and uses of funding as well as the default provisions, penalties and remedies. To enhance coordination, a working group will be established among the parties.

### **4. WE 2 Church Street LLC and the 2 Church Street Development**

The Developer is a wholly owned subsidiary of Winstanley Enterprises, LLC. Winstanley Enterprises, LLC is led by Carter Winstanley, who has served as the principal in the development of over 1.5 million square feet of laboratory and office space in New Haven, including 100 College Street, 101 College Street, 300 George Street, 25 Science Park, 275 Winchester Avenue and 344 Winchester Avenue.

Section 5.1(A) of the Development Agreement requires the construction of the Building, which shall be no less than 200,000 square feet and be designed to accommodate quantum information and technologies as well as a parking structure of approximately no more than 100 spaces (the “Parking Structure”).

Consistent with prior agreements related to the Downtown Crossing project, the Development Agreement includes provisions for shared parking with New Haven Parking Authority and for a pedestrian connection. In this instance, the pedestrian connection would be across South Frontage Road, connecting 2 Church Street and 2 Church Street South.

The Developer will also be responsible for carrying out certain streetscape improvements, and certain landscaping, lighting and similar public improvements.

The Building must be designed and built to meet the Silver Standard level under Leadership In Energy and Environmental Design (LEED) as detailed in Section 7.5 (A).

In 2025, the Connecticut Department of Energy and Environmental Protection (CT DEEP) promulgated new regulations concerning brownfield redevelopment known as the release-based standard. The City and Developer each have retained environmental counsel to assist in the negotiation of the environmental provisions in Section 9.2 of the Development Agreement. The City will purchase environmental insurance to cover any unforeseen costs or required clean up for which is or becomes the responsibility of the City as current owner.

The Developer will carry out aspects of public infrastructure which are located on-site and integrated with the private development, collectively known as the Developer's Site and Traffic Improvements and which include the above-mentioned plaza, the tunnels and drives and the streetscape.

With respect to the design of the Building, the Site and Traffic Improvements and the Public Plaza, there has been coordination with City staff in the form of design reviews at the 10% and 30% level. See pages 11 and 12 of this document for excerpts of the draft plan set. In addition, the Developer and the City engaged Jacobs Engineering to carry out a full update of the Air Rights Design Guidelines ("ARIG") for the tunnels and drives. They are specifically designed to ensure that the Tunnels and Driveways are constructed properly, in accordance with all specifications and safety regulations and successful completion of all of the tests prior to acceptance of the Tunnels and Driveways by the City. The ARIG has been reviewed by the City's public safety departments and will be made part of the Development Agreement as Exhibit M.

The Developer's response to comments is expected in mid-July, 2026 consistent with the Project Schedule (Exhibit D).

## **5. Enabling Project**

The Project Schedule strives to meet the goals of the prospective tenants. As the quantum sciences advance to commercial application and as tenants seek to establish new locations in the innovation cluster, the City and the Developer recognize the need for an early start to the construction activity and, as an added benefit to the City, potentially recognize Building Permit revenue in Fiscal Year 2027.

With that in mind, the Development Agreement includes provisions for the Developer to carry out certain readiness tasks at the Site, such as the removal of approximately 10,000 cubic yards of soil to make the Site ready for the Building. This work is called Enabling

Work and may be carried out prior to the Closing under an Access Agreement. The Project Schedule accounts for the Enabling Work starting as early as the fourth quarter of 2027.

## **6. The City's Public Improvements**

The City is responsible for the design and construction of the City's Public Improvements, otherwise known as the off-site scope of work and which entails construction of the Church Street Promenade and Arc Bridge. The Church Street Promenade supports both the Union Square/Glendower redevelopment of Union Square as well as 2 Church Street by creating a new bike/ped accessible corridor from Union Avenue to South Frontage Road. With support from the Innovation Cluster program, an additional \$4.2M will extend the promenade concept and introduce the Arc Bridge from South Frontage Road across Church Street to MLK Boulevard and generally along the west side of MLK Boulevard to Orange Street. The Development Agreement provides for certain liquidated damages and will need to carry out such work in a timely fashion.

## **7. Construction Logistics and Coordination**

The City, the Developer and the Parking Authority are required to develop a working group which will be responsible for the coordination of construction activities, the development of a construction logistics plan (which will include plans with respect to traffic flow and access to the Site and to the construction areas and the resolution of other problems during construction as they may arise.

Maintaining access to 100 College Street, 101 College Street, the Air Rights Garage, the loading docks for Yale-New Haven Hospital and 55 Park Street during construction is extremely important. Likewise, the City must pay particular attention to the safe flow of traffic including pedestrians and cyclists at the high-volume intersections of Church Street and MLK Boulevard and Church Street and South Frontage Road. A maintenance and protection of traffic ("MPT") approach during construction will be developed via the Working Group and is subject to approval by the City's Traffic Engineer among others.

## **8. Together, We Grow**

It is anticipated that the Project will create substantial construction jobs and permanent jobs in basic economic sectors with a significant economic multiplier. As

an indicator of the indirect economic activity happening in the City, projects such as the 200 College Street mixed-use building, the Blake Hotel, the various residential projects in the Congress/Lafayette Street areas can be attributed to prior projects. Looking ahead, the additional spending power will support new commercial uses in the Hill, at Union Square (the Glendower-led redevelopment of Church Street South) as well as new developments in the State Street and Downtown areas.

With 2 Church Street, Carter Winstanley and City staff are focusing efforts on the ladder of job opportunities associated with a now-maturing innovation district. Employment opportunities range from construction to maintenance to culinary and various support services. New Haven Works will provide best-in-class resources to support the initiative and a new Local Employment Team will be established to drive connections, accessibility and readiness.

Workforce and small contractor participation goals are incorporated into the DLDA. Although the proposed building is not as large as 101 College Street, we can use prior performance as a benchmark. With 101 College, approximately \$171M in construction contract value was awarded to minority and/or women-owned construction firms. To further elevate performance with this project, the Developer has committed to launching two (2) pre-apprentice construction readiness programs with the first commencing no later than one month after the closing. The more aggressive schedule will align with the forecast construction schedule.

The Developer will also contribute an additional \$200,000 toward the highly-successful BioCity program. A program of the New Haven Public Schools Career Pathways Initiative, BioCity students have an average GPA of 4.09 and have accumulated 400 college credits to date. Moreover, students at BioCity have real-world experience at BioLabs, a world-class biotech incubator with funding support from various sources including the Developer, the City and federal government.

Recognizing the need to do more in support of small business and connections on a business to business level, the DLDA creates a structure whereby the plaza and indoor spaces will be programmed with business fairs. Coupled with regular engagement by our Small Business Resource Center and Buy New Haven outreach, the small business fairs will ensure a lasting impact and point of sale connections to tenants within 2 Church Street and across the innovation cluster.

The Development Agreement also requires the Developer to maintain a sustainable transportation program focused on the promotion of bicycling to the Site with showers, private changing areas and a bike storage station.

By limiting the amount of on-site parking, the Building will become part of the Downtown community, using shared parking assets at the Temple Street and Temple Medical facilities.

## **9. Sources and Uses of Public Funding**

Consistent with prior projects along the Route 34 corridor, the Developer's "on-site" Enabling Work and Site and Traffic Improvements are paid for with public financing and carried out by the Developer. The scope of work includes the removal of soil, the adjustment of steel sheeting, the extension of the service tunnels, the construction of the privately-owned and maintained public plazas and the completion of the public streetscape improvements. All of this work will be designed by the Developer, approved by the City and then constructed by the Developer using public funds. The City has studied the Developer's preliminary design, which is now at the Preliminary Design (30%) level of detail.

To date, DECD, CT DOT and the City have collaborated to assemble \$34.7M in public financing for these improvements. This is the sum of the Innovation Cluster grant (\$17.5M) and a re-allocation of the Innovation Cluster grant for the Arc Bridge (\$4.2M) as well as \$13M in State funding made possible via CT DOT's Local Transportation Capital Improvement Program ("LOTICIP"). Since DECD is the primary public funding partner for the Project, DECD is taking a lead role by entering into an interagency agreement with CT DOT for the LOTICIP funding and then entering into an agreement with the Developer to finance the public improvements with all-State funds. The City's oversight and commissioning responsibilities will remain in place. However, a significant administrative effort will now be the responsibility of DECD.

The City, DECD, CT DOT and DECD have all participated in the planning work and understand that additional funding may be needed to complete the scope of work. Per the Development Agreement, the City and Developer have agreed to a process to assess the estimated cost based on current pricing and, in turn, seek any additional funding first through value engineering, scope and plan review, followed by additional applications to Innovation Cluster program as well as other federal and state funding. If these routes are not successful in bringing the budget into balance, the City will commit the next \$600,000 in additional funding and then the Developer will commit the following \$600,000 in additional funding. Any remaining gaps following the Developer's contribution, including any change orders, which are not covered by the State or other grants, are the responsibility of the City.

The City is responsible for the design and construction of the City's Public Improvements, otherwise known as the off-site scope of work and which entails construction of the Church Street Promenade and Arc Bridge. In the Development Agreement, this component part of the Project is described in Article III, the City's Public Improvements, and will be funded primarily out of federal funding and cost approximately \$8.45M.

With support from all partners, the financing approach simplifies the administration of all the Projects with the "on-site" portion using primarily State of Connecticut funding and the "off-site" portion using primarily federal funds.

### **10. Other Notable Provisions**

Article XIII sets forth the operational aspects of the Project, notably that the Developer and the City have agreed to a Minimum Compulsory Tax Period, even if the Building is sold to a nonprofit entity.

The tunnels and driveways are not taxable as they are part of the public right-of-way to be managed and operated by the City through the Department of Public Works and Transportation, Traffic and Parking. The City will be required to repair and maintain the tunnels and driveways as well as cover 50% of the cost to replace any Structural Element in the tunnels and driveways. Recognizing that there will be more traffic and general use of the tunnels and driveways, the ARIG includes a coordination working group consisting of the New Haven Parking Authority, the Developer and the City (represented through various departments). On a daily basis, the City's Department of Public Works and Engineering Department will have the primary responsibilities for tunnel maintenance. The Developer is responsible for the maintenance of the streetscape and the plaza.

Article XIV of the Agreement provides that prior to any party commencing litigation with respect to any alleged default, the parties must submit the dispute to a dispute resolution procedure. Article 14.2(A) also provides for alternative dispute resolution procedures such as mediation and the obtaining of an advisory opinion.





May 29, 2026

DEVELOPMENT AND LAND DISPOSITION AGREEMENT  
AMONG  
THE CITY OF NEW HAVEN, THE NEW HAVEN PARKING AUTHORITY AND  
WE 2 CHURCH STREET LLC  
DATED AS OF \_\_\_\_\_ 2026  
FOR THE DEVELOPMENT AND DISPOSITION  
OF 2 CHURCH STREET

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## EXHIBITS

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Exhibit B	Survey of the 2 Church Street Parcel
Exhibit C	Streetscape Improvements (landscaping, lighting, sidewalks, wayfinding signage, on-street parking on the west side of the Church Street Bridge), the 2 Church Street Plaza and the Hardscape (Schematic Design as of _____)
Exhibit D	Project Schedule
Exhibit E	2 Church Tunnels and Driveways Drawings (30% Design Development), Drainage Pipe, Steel Sheeting and the Duct Bank Located on the 2 Church Street Parcel
Exhibit F	Budget for Developer's Site and Traffic Improvements
Exhibit G	Letter from the Department of Economic and Community Development Regarding the DECD Financing
Exhibit H	Construction Logistics Plan
Exhibit I	Pedestrian Connection
Exhibit J	Quit Claim Deed for the 2 Church Street Parcel
Exhibit K	Easements, Licenses and Agreements from the City to the Developer and to the Owner of 2 Church Street South
Exhibit L	Easements, Licenses and Agreements from the Developer to the City
Exhibit M	The Air Rights Implementation Guidelines dated _____
Exhibit N	Form of Parking Agreement Among the Developer, the Parking Authority and the City for the Use of Spaces in the Temple Street Garage and the Temple Medical Garage
Exhibit O	Form of Future Memorandum of Understanding Between the Developer and the City
Exhibit P	City's Public Improvements
Exhibit Q	Standard Form of Access Agreement

Exhibit R	Form of Memorandum of Understanding between the Developer and 101 College Street, LLC Regarding the 2 Church Street Plaza and the 101 College Street Plaza
Exhibit S	Letter from QuantumCT, Inc. Regarding Providing Education and Workforce Development in the Field of Quantum Physics
Exhibit T	Acknowledgement of New Haven Works, Inc.
Exhibit U	Certificate of Insurance

**THIS DEVELOPMENT AND LAND DISPOSITION AGREEMENT** dated as of this \_\_\_\_\_ day of \_\_\_\_\_, 2026 (the “Effective Date”) by and among 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”), the **NEW HAVEN PARKING AUTHORITY**, a special purpose municipal authority created by Special Act 51-473 of the General Assembly of the State of Connecticut, as amended with a mailing address of 232 George Street, New Haven, Connecticut 06510 (the “Parking Authority”) and **WE 2 CHURCH STREET LLC** a limited liability company organized and existing under the laws of the State of Delaware and qualified to do business in the State of Connecticut, with a mailing address of 150 Baker Avenue Extension, Suite 303, Concord, Massachusetts 01742 (the “Developer”) (the City, the Parking Authority and the Developer may be collectively referred to as the “Parties”); and

**WITNESSETH:**

**WHEREAS**, the City has embarked on a project known as Downtown Crossing (“Downtown Crossing”) to transform the State Route 34 Connector located in the City (“Route 34”) between Union Avenue and the former Exit 3 of Route 34 from a limited access highway into an urban street grid with development parcels; and

**WHEREAS**, during Phase 1 of Downtown Crossing (“Downtown Crossing, Phase 1”) which was completed in 2016, the City converted portions of the Route 34 Land (as hereinafter defined) from an expressway into an urban boulevard system comprised of two one-way roadways, Rev. Dr. Martin Luther King, Jr. Boulevard (“MLK Blvd”) heading west and South Frontage Road heading east; and

**WHEREAS**, also during Downtown Crossing, Phase 1, the College Street bridge was reconstructed and extensive pedestrian and bicycle friendly improvements were constructed; and

**WHEREAS**, pursuant to Special Act No. 15-1, enacted during the June 2015 Special Session of the Connecticut General Assembly, the Commissioner of the Connecticut Department of Transportation (the “DOT”) was directed to convey 4.5 acres of land owned by the State of Connecticut (the “State”) and bounded by College Street on the west, MLK Blvd on the north, Church Street on the east and South Frontage Road on the south (the “Route 34 Land”) to the City for economic development purposes; and

**WHEREAS**, during Downtown Crossing, Phase 1, the State conveyed a portion of the Route 34 Land to the City, and the City created the first development parcel in Downtown Crossing, consisting of approximately 2.4 acres, which parcel is bounded on the north by MLK Blvd, on the east by College Street, on the south by South Frontage Road, and on the west by a parking structure owned by the City and operated by the Parking Authority, known as the “Air Rights Garage” (the “100 College Street Property”), and

**WHEREAS**, also during Downtown Crossing, Phase 1, the City constructed below-grade roads (the “Original Service Drives”) which provided access and egress to and from Route 34 to the 100 College Street Property over the 101 College Street Parcel (as hereinafter defined) and over the 2 Church Street Parcel (as hereinafter defined); and

**WHEREAS**, in Downtown Crossing, Phase 1, the City conveyed the 100 College Street Property to WE 100 College Street LLC, an affiliate of the Developer, which constructed a 14-story, 513,000 square foot laboratory, research and office building along with an 850 space parking structure on the 100 College Street Property as well as tunnels and driveways connecting the

Original Service Drives to the parking structure on the 100 College Street Property and thereafter to the Air Rights Garage; and

**WHEREAS**, during Phase 2 of Downtown Crossing (“Downtown Crossing, Phase 2”), in 2021, the City reconnected Orange Street and South Orange Street over Route 34 with an at-grade intersection and constructed pedestrian and bicycle infrastructure improvements, including a protected bicycle intersection, and streetscape and landscape improvements to improve access to Union Station from the Downtown Neighborhood (as hereafter defined) and to create a new gateway to the Hill Neighborhood (as hereafter defined); and

**WHEREAS**, on September 8, 2020, the State conveyed the remaining portion of the Route 34 Land to the City, and during Downtown Crossing, Phase 3, the City created two development parcels from the land, which are (i) the “101 College Street Parcel”, which is approximately 1.75 acres and is bounded by College Street on the west, MLK Blvd on the north, the 2 Church Street Parcel on the east (formerly known as Parcel B), and South Frontage Road on the south, and (ii) the “2 Church Street Parcel”, which is approximately 1.795 acres and is bounded on the west by the 101 College Street Parcel, on the north by MLK Blvd, on the east by Church Street, and on the south by South Frontage Road; and is depicted on **Exhibit B**; and

**WHEREAS**, in Downtown Crossing, Phase 3, the City conveyed the 101 College Street Parcel to an affiliate of the Developer, which developed the 101 College Street Parcel into a 497,762 square foot laboratory and office building with a parking facility (the “101 College Building”) and constructed tunnels and driveways under the 101 College Street Parcel which connected to Route 34 over a portion of the Original Service Drives located on the 2 Church Street Parcel and to the tunnels and driveways under the 100 College Street Property in accordance with

the terms of a Development and Land Disposition Agreement among the Parties dated as of August 1, 2020 and thereafter amended; and

**WHEREAS**, during Phase 3 of Downtown Crossing (“Downtown Crossing, Phase 3”), South Frontage Road was raised; and although it was originally intended that during Downtown Crossing, Phase 3, Temple Street would be raised to create a vehicular connection between MLK Blvd and Congress Avenue, the City decided not to pursue that plan but rather to explore the development of a potential pedestrian crossing from MLK Blvd to Congress Avenue across the 2 Church Street Parcel at the western border of the 2 Church Street Parcel; and

**WHEREAS**, the City has recently adopted a Comprehensive Plan of Conservation and Development entitled “Vision 2034”, which states that the City should support the growth of an innovation cluster for quantum technologies and life sciences in proximity to Downtown; and

**WHEREAS**, Vision 2034 notes that the Downtown Crossing area now provides “a true connection between the Hill neighborhood, the Medical District, Union Station, and Downtown, as well as unlocking new sites for development;” and writes, “[t]hese areas should be targeted for the development of new innovation districts and complexes for industries such as quantum computing and life sciences”; and

**WHEREAS**, the City and the Developer have agreed to work together to support the physical and programmatic development of New Haven’s innovation, quantum and life sciences ecosystem and next-generation technologies (the “Innovation Cluster”), the purpose of which is to promote research and development and entrepreneurship in the areas of life sciences and medical technology, quantum information science and technology, artificial intelligence and machine learning, and clean technology; and

**WHEREAS**, it is anticipated that the Innovation Cluster will launch new start-ups, create jobs in the life sciences, quantum computing and clean technology and train workers in these areas; and

**WHEREAS** a new building is required to accommodate these new and emerging technologies and uses, to provide laboratory space, quantum systems testing and fabrication areas, and expansion spaces for technology and research firms; and

**WHEREAS**, the City wishes to convey the 2 Church Street Parcel to the Developer so that the Developer can construct a building on the 2 Church Street Parcel which will house certain activities of the Innovation Cluster, and the Developer wishes to undertake such a development (the “2 Church Street Building”); and

**WHEREAS**, the Connecticut Department of Economic and Community Development (“DECD”) has awarded the Developer an infrastructure grant for the 2 Church Street Building in the amount of \$17.5 million (the “DECD Public Infrastructure Grant”) as set forth in Exhibit G; and

**WHEREAS**, DECD has agreed to enter into an interagency agreement with DOT to make available an additional \$13 million (the “DOT Allocation”), as described in Exhibit G, which DOT Allocation together with the DECD Public Infrastructure Grant will fund the design and construction of the Developer’s Site and Traffic Improvements (as hereinafter defined); and

**WHEREAS**, DECD has awarded the City an infrastructure grant for the Arc Pedestrian Bridge (as hereinafter defined) in the amount of \$4.2 million, and the City and DECD have agreed to reallocate such grant funds to fund the Developer’s Site and Traffic Improvements, as described in Exhibit G (the “DECD Innovation Cluster Arc Bridge Grant”); and

**WHEREAS**, the Developer and DECD intend to enter into an agreement (the “DECD Agreement”) with respect to the disbursement of the DECD Public Infrastructure Grant, the DOT Allocation and the DECD Innovation Cluster Arc Bridge Grant which grants total \$34.7 million (collectively the “DECD Financing”), as set forth in Exhibit G; and

**WHEREAS**, the City and Winstanley Enterprises, LLC, entered into a Memorandum of Understanding (the “Memorandum of Understanding”) dated October 25, 2025 designating Winstanley Enterprises LLC or its affiliate as the preferred developer for Parcel B (now known as the 2 Church Street Parcel), which Memorandum of Understanding provided that Winstanley or its affiliate and the City would negotiate the terms under which the 2 Church Street Parcel would be acquired; and

**WHEREAS**, the City and the Developer have negotiated the terms and conditions for the acquisition of the 2 Church Street Parcel by the Developer, and the Parking Authority has participated in such negotiations for the purpose of minimizing the need for new parking facilities in connection with the development of the 2 Church Street Parcel by using existing parking accommodations where feasible; and

**WHEREAS**, as set forth herein, the 2 Church Street Parcel shall be conveyed to the Developer subject to the terms of this Agreement.

**NOW THEREFORE**, for good and valuable consideration, the receipt of which is acknowledged, the City, the Developer and the Parking Authority (with respect to certain provisions respecting the Parking Authority) agree as follows:

**ARTICLE I  
INTERPRETATION AND DEFINITIONS**

**Section 1.1 Interpretation**

(A) Words such as “hereunder,” “hereto,” “hereof” and “herein” and other words of similar import shall, unless the context requires otherwise, refer to the whole of this Agreement and not to any particular article, section, subsection, paragraph or clause hereof.

(B) A reference to “including” means including without limiting the generality of any description preceding such term and for purposes of this Agreement the rule of ejusdem generis shall not be applicable to limit or restrict a general statement, followed by or referable to an enumeration of specific matters, to matters similar to, or of the same type, class or category as, those specifically mentioned.

(C) Any reference to “days” shall mean calendar days unless otherwise expressly specified.

(D) Any reference to any statute, law or regulation includes all statutes, laws or regulations amending, consolidating or replacing the same from time to time, and a reference to a law or statute includes all regulations, codes or other rules issued or otherwise applicable under such law or statute unless otherwise expressly provided in such law or statute or in this Agreement. This rule of interpretation shall be applicable in all cases notwithstanding that in some cases specific references in this Agreement render the application of this rule unnecessary.

(E) Capitalized terms used herein shall have the meanings set forth in Section 1.2 or as subsequently defined in this Agreement.

(F) All approvals, consents, waivers, acceptances, concurrences and permissions required to be given or made by any party hereunder shall not be unreasonably withheld, delayed or conditioned by the party whose approval, consent, waiver, acceptance, concurrence or

permission is required, whether or not expressly so stated, unless otherwise expressly provided herein. Wherever under this Agreement “reasonableness” is the standard for the granting or denial of any approval, consent, waiver, acceptance, concurrence or permission of any party hereto, the City and the Parking Authority shall be entitled to consider governmental considerations, as well as business and economic considerations.

(G) The City, the Developer and the Parking Authority (as to the sections involving the Parking Authority) have participated in the drafting of this Agreement and any ambiguity contained in this Agreement shall not be construed against the City, the Developer or the Parking Authority solely by virtue of the fact that the City, the Developer or the Parking Authority may be considered the drafter of this Agreement or any particular part hereof.

(H) With regard to interpretation of individual words in this Agreement, the singular version shall be construed to include the plural version, and vice versa, except where the context or a reasonable reading of a word could only mean either a singular or plural version of such word.

(I) With respect to any exhibit made part of this Agreement, the Developer, and the City may amend, alter or change such exhibit in a writing signed by the Developer and the Economic Development Administrator and with respect to an exhibit concerning the Parking Authority, the Developer and the Parking Authority may amend, alter or change such exhibit in a writing signed by the Developer and the Parking Authority. In the event that there is a conflict between an exhibit to this Agreement and the text of this Agreement, the text of this Agreement shall control, unless otherwise provided for in the text of this Agreement.

(J) Any time limits which are imposed upon the performance of the parties hereto by the terms of this Agreement shall, if applicable, be subject to adjustment for Excusable Delays, unless otherwise provided in this Agreement.

(K) Whenever this Agreement requires that a party make a payment to another party or to a third party, such payment shall be made in a timely manner and on a prompt basis.

(L) Reference to obligations surviving in any section of this Agreement does not imply either survivability or nonsurvivability of obligations of another section.

## **Section 1.2 Definitions**

For the purposes of this Agreement, the following terms shall mean:

(1) “100 College Street Property” shall have the same meaning ascribed to this term in the preamble.

(2) “101 College Building” shall have same meaning ascribed to this term in the preamble.

(3) “101 College Street Parcel” shall have the same meaning ascribed to this term in the preamble.

(4) “2 Church Street Parcel” shall have the meaning ascribed to this term in the preamble.

(5) “2 Church Street Parcel Survey” means a boundary survey map of the 2 Church Street Parcel prepared by Fuss & O’Neill, Inc. dated \_\_\_\_\_ set forth in Exhibit B, as updated through the date of the Closing.

(6) “2 Church Street Plaza” means the plaza to be constructed on the western portion of the 2 Church Street Parcel and includes but is not limited to concrete walls and surfaces, pavers, decking and support, soil, large trees, waterproofing, lighting, landscape materials, planters, tables, benches, and ramps and stairs connecting to MLK Blvd, as generally depicted on Exhibit C, which 2 Church Street Plaza will be designed, maintained and operated in accordance with Exhibit R and Section 5.1(D).

(7) “2 Church Tunnels and Driveways” means the tunnels and driveways which will connect on the east to the Remaining Service Drives beginning at the eastern face of the Church Street Bridge and which will then run under the 2 Church Street Parcel to the west and thereafter connect to the tunnels and driveways that run under the 101 College Street Parcel, together with all pavement (including markings) and necessary systems and equipment for fire protection and heat detection, drainage for the 2 Church Tunnels and Driveways, the Deluge Discharge System including a force main connection to the GNHWPCA sanitary pipe (if determined to be necessary during the design process), traffic control and safety systems, signage, lighting, security (including monitoring and control devices), emergency ingress and egress, ventilation, Structural Elements, conduits, wiring, power (regular and emergency), mechanical rooms, fuel storage, wayfinding signs, and generators, with all power connections, as well as the foundations (with ground improvements), walls and ceiling of the tunnels and driveways, as more particularly depicted on Exhibit E to this Agreement.

(8) “2 Church Tunnels and Driveways Drawings” mean the design development, final design construction documents, specifications, and shop drawings for the 2 Church Tunnels and Driveways, to be made in accordance with the standards set forth in the Air Rights Implementation Guidelines (Exhibit M) or such other criteria as the Developer and the City shall agree to in writing. The 2 Church Tunnels and Driveways Drawings (30% Design Development ) are set forth in Exhibit E.

(9) “2 Church Street South Property” means the land and the improvements thereon known as 2 Church Street South, New Haven, Connecticut.

(10) “AAA” means the American Arbitration Association.

(11) “Acceptable Encumbrances” means encumbrances and restrictions on the 2 Church Street Parcel which the Developer agrees may continue to encumber the 2 Church Street Parcel at the time that the 2 Church Street Parcel is conveyed by the City to the Developer.

(12) “Affiliate” means any entity that is fifty-one (51%) percent or more owned directly or indirectly by Winstanley Enterprises or by an entity owned or controlled by an equity investor providing a majority of the financing or capital for the Development.

(13) “Agency” means any governmental funding agency, other than the City, or any Regulatory Agency.

(14) “Agreement” means this Development and Land Disposition Agreement and includes any appendices, exhibits or schedules incorporated by reference as well as any amendments, modifications or supplements which may be executed by the City, the Parking Authority (if applicable) and the Developer subsequent to the Effective Date of this Agreement, but does not include the Memorandum of Understanding, the latter of which is hereby superseded in its entirety.

(15) “Air Rights Garage” shall have the same meaning ascribed to this term in the preamble.

(16) “Air Rights Implementation Guidelines” shall mean the guidelines adopted by the City dated \_\_\_\_\_ for the construction of the 2 Church Tunnels and Driveways.

(17) “Approved Plans” means collectively the plans for the Developer’s Private Improvements (or any portion thereof), the plans for the Streetscape Improvements and the plans for the Developer’s On-Site Public Improvements approved by the City Plan Commission in connection with its Site Plan Review(s).

(18) “Arc Bridge” means a bicycle and pedestrian path over the Remaining Service Drives to be constructed by the City which connects MLK Blvd and South Frontage Road.

(19) “BD-3” means the Central Business/Mixed Use Zoning District established under the New Haven Zoning Ordinance.

(20) “BOA” means the City of New Haven Board of Alders.

(21) “BRRP” shall have the meaning ascribed to such term in Section 9.2(B).

(22) “Certificate of Completion” means the certificate to be issued by the Economic Development Administrator certifying that all of the Developer’s obligations relating to the construction of the Developer’s Private Improvements, the Developer’s On-Site Public Improvements and the Streetscape Improvements have been satisfied. The construction of the Pedestrian Connection and the Tenant Improvements shall not be required in order for the Developer to be entitled to a Certificate of Completion.

(23) “Church Street Bridge” means the bridge that crosses over the Remaining Service Drives on the eastern side of the 2 Church Street Parcel between MLK Blvd and South Frontage Road, known as Bridge No. \_\_\_\_\_.

(24) “Church Street Promenade” means is a planned walkway along Church Street South, Union Avenue and South Orange Road which connects Union Station to Downtown.

(25) “City” shall have the same meaning ascribed to this term in the preamble and shall include its boards, agencies, commissions and its public officials and employees who are authorized to act on its behalf and any successors in interest to such persons or entities, whether by operation of law, or otherwise.

(26) “City Architect” shall have the same meaning ascribed to this term in Section 5.1(B)(3).

(27) “City Comments” shall have the same meaning ascribed to this term in Section 5.1(B)(5).

(28) “City Default” means an event of default by the City as more particularly set forth in Section 14.1(B).

(29) “City Design Review” means the design review process more particularly described in Section 5.1(B).

(30) “City Design Reviewer” means the Executive Director of the City Plan Department of the City, or in the event that such position is vacant, then the Economic Development Administrator or in the event that such position is vacant, then such appropriate official(s) or employees as the Mayor of the City shall designate.

(31) “City Engineer” means the City Engineer employed by the City.

(32) “City Plan Commission” is New Haven’s City Plan Commission established in January 1926 by Special Act No. 490 of the Connecticut Legislature.

(33) “City’s Environmental Conditions” means Environmental Conditions (i) existing on the 2 Church Street Parcel on the Closing Date or (ii) first occurring after the Closing Date which are caused or contributed to by the City or its agents, contractors or employees.

(34) “City’s Public Improvements” means the Arc Pedestrian Bridge, the Realignment Work and the replacement of the Church Street Bridge if the City decides to replace the Church Street Bridge prior to the issuance of the Certificate of Completion.

(35) “City’s Public Improvements Contractors” shall mean the contractor or contractors and their subcontractors which will be responsible for the City’s Public Improvements.

(36) “City’s Public Improvements Critical Completion Dates” means the dates on Exhibit D by which the City must complete the City’s Public Improvements.

(37) “City’s Public Improvements Schedule” means a portion of the Project Schedule, Exhibit D, which sets forth the schedule for the construction of the City’s Public Improvements.

(38) “Closing” means the conveyance of the 2 Church Street Parcel by the City to the Developer.

(39) “Closing Date” means the date on which the 2 Church Street Parcel is to be conveyed by the City to the Developer as set forth on the Project Schedule, attached as Exhibit D to this Agreement.

(40) “Commissioning Agent” means the independent person or entity hired by the City to certify to the City that the 2 Church Tunnels and Driveways have been constructed and can be operated in accordance with the Air Rights Implementation Guidelines (Exhibit M).

(41) “Commissioning Authority” shall have the same meaning ascribed to this term in the Air Rights Implementation Guidelines.

(42) “Compulsory Taxation PILOT Period” means the period of time beginning on the Effective Date and ending 30 years after the Effective Date.

(43) “Construction Logistics Plan” means a plan agreed to by the Developer and the City which outlines the steps that each will take to mitigate traffic disruption during the construction of the Project.as set forth on Exhibit H.

(44) “DECD” shall have the same meaning ascribed to this term in the preamble.

(45) “DECD Agreement” shall have the same meaning ascribed to this term in the preamble.

(46) “DECD Financing” shall have the same meaning ascribed to this term in the preamble.

(47) “DECD Innovation Cluster Arc Bridge Grant” shall have the same meaning ascribed to this term in the preamble.

(48) “DECD Public Infrastructure Grant” shall have the same meaning ascribed to this term in the preamble.

(49) “DEEP” means the State of Connecticut Department of Energy and Environmental Protection and its successors.

(50) “Default Notice” means a written notice of default or of a condition which could lead to default given by one party to this Agreement by another party to this Agreement.

(51) “Deluge Discharge System” means a lift pump, grit chamber controls and a force main sewer connection for the discharge of water to the GNHWPCA sewer.

(52) “Designee” means an entity or person that directly, or indirectly, is owned and controlled by a Mortgagee and when identified to the City by the Mortgagee, a Designee shall be included within the meaning of Mortgagee under this Agreement.

(53) “Developer” shall have the same meaning ascribed to this term in the preamble.

(54) “Developer’s On-Site Public Improvements” means the improvements on the 2 Church Street Parcel to be constructed by the Developer which are not in the public right-of-way and are not the Developer’s Private Improvements and consist of (i) the 2 Church Street Plaza and (ii) the Hardscape, all as shown on Exhibit C to this Agreement.

(55) “Developer’s Private Improvements” means the improvements described in Article V of this Agreement, including the 2 Church Street Building and the Parking Structure but do not include the Pedestrian Connection depicted on Exhibit I.

(56) “Developer’s Site and Traffic Improvements” means collectively the (i) 2 Church Tunnels and Driveways; (ii) the Developer’s On-Site Public Improvements; (iii) the Streetscape Improvements as set forth in Article IV and Exhibit C; (iv) the maintenance and protection of traffic improvements to be undertaken by the Developer as set forth in Exhibit H; (v) the preparation of the 2 Church Street Parcel for construction including (a) the removal of the approximately 10,000 cubic yards of soil on the 2 Church Street Parcel, (b) if agreed to by the City, modification to the steel sheeting as discussed by the Working Group, and/or the relocation of the Drainage Pipe as shown on Exhibit E; and (vi) the design and installation of a stormwater retention system to be constructed on the 2 Church Street Parcel.

(57) “Development” means collectively the Developer’s Site and Traffic Improvements, the Developer’s Private Improvements and the Pedestrian Connection, if it is constructed.

(58) “Dispute Resolution Procedure” means the procedure for resolving a dispute among any of the Parties prior to the City, the Parking Authority or the Developer filing suit in court or terminating the Agreement on account of an Event of Default as described in Section 14.2(A) of this Agreement.

(59) “Downtown Crossing” shall have the same meaning ascribed to this term in the preamble.

(60) “Downtown Crossing Phase 1” shall have the same meaning ascribed to this term in the preamble.

(61) “Downtown Crossing, Phase 2” shall have the same meaning ascribed to this term in the preamble.

(62) “Downtown Crossing, Phase 3” shall have the same meaning ascribed to this term in the preamble.

(63) “Downtown Neighborhood” means that section of the City of New Haven, which is included in Census Tracts, New Haven 1401 and 3614.01.

(64) “DOT” shall have the same meaning ascribed to this term in the preamble.

(65) “DOT Allocation” shall have same meaning ascribed to this term in the preamble.

(66) “Drainage Pipe” means the City drainage pipe located on the 2 Church Street Parcel, depicted on Exhibit E, which is owned by the City and will continue to be owned by the City after the 2 Church Street Parcel is conveyed to the Developer and which may need to be relocated on the 2 Church Street Parcel.

(67) “Duct Bank” means the duct bank owned by Frontier Communications which is located on the 2 Church Street Parcel and shown on Exhibit E.

(68) “Dwight Neighborhood” means that section of the City which is included in Census Tracts, New Haven 1401 and 1411.

(69) “Economic Development Administrator” means the Economic Development Administrator of the City or any person temporarily acting in this capacity.

(70) “Effective Date” is the date on which the approval of this Agreement by the Board of Alders becomes effective.

(71) “Enabling Work” means the work that may, at the Developer’s option, be undertaken on the 2 Church Street Parcel after the Effective Date and before the Closing, and subject to the Access Agreement set forth in Exhibit Q, which work consists of the removal of

approximately 10,000 cubic yards of soil from the 2 Church Street Parcel, and certain maintenance and protection of traffic improvements as set forth on Exhibit H.

(72) “Environmental Conditions” mean the environmental conditions on the 2 Church Street Parcel, which require testing, remediation, monitoring or disclosure under the Release Based Cleanup Program.

(73) “Environmental Laws” mean any and all laws, statutes, ordinances, rules, regulations or orders of any governmental authority pertaining to 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 the comparable or similar environmental laws of the State, including Title 22a of the General Statutes, including without limitation, the Release Based Cleanup Program.

(74) “Environmental Phase I/II Report” means the report of the Phase I or Phase I/II environmental site assessment of the 2 Church Street Parcel to be conducted by the Developer’s environmental engineer, Fuss & O’Neill Inc., prior to the Closing Date.

(75) “Event of Bankruptcy” means any of the following: (a) a receiver or custodian is appointed for all or a substantial portion of the Developer’s property or assets, which appointment is not dismissed within one hundred eighty (180) days; (b) the Developer files a voluntary petition under the United States Bankruptcy Code or any other bankruptcy or insolvency laws; (c) there is an involuntary petition filed against the Developer as the subject debtor under the United States Bankruptcy Code or any other bankruptcy or insolvency laws, which is not dismissed

within one hundred eighty (180) days of filing, or which results in the issuance of an order for relief against the debtor; or (d) the Developer makes or consents to an assignment of its assets, in whole or in part, for the benefit of creditors or a common law composition with creditors.

(76) “Event of Default” means a default by any of the Parties of its obligations or covenants hereunder after notice, if required under this Agreement and any applicable cure period, as described in Article XIV of this Agreement or in any other article of this Agreement.

(77) “Excusable Delays” are delays or failures of any of the Parties with respect to any time limits that are imposed upon the performance of the Parties hereto by the terms of this Agreement, which delays are caused by a Force Majeure Event, but only to the extent that such delays adversely affect the party’s ability, using reasonable efforts, to comply with such time limits, and which delays or failures will not be counted in determining any time for performance under this Agreement but rather will extend the time for performance by a party.

(78) “Exempt Entity” means an entity to which the Developer transfers title to any portion of the 2 Church Street Parcel and/or any improvements thereon and whose use of the 2 Church Street Parcel is wholly or partially exempt from real property taxation under Connecticut law.

(79) “Force Majeure Event” means, with respect to delays in performance by the City, the Developer or the Parking Authority, any of the following events or circumstances but only (i) if and to the extent, such event or circumstance is beyond the reasonable control of the party asserting an Excusable Delay; (ii) if and to the extent, the party asserting an Excusable Delay shall have taken all reasonable precautions to prevent and minimize the effect of such delays by reason of such event or circumstance if such event or circumstance was actually known or should have reasonably been known in advance by the party asserting an Excusable Delay; and (iii) if and

to the extent such event or circumstance is not caused by the intentional act or omission or negligence of the party asserting an Excusable Delay or any of its employees, contractors or agents, and (iv) the party asserting an Excusable Delay has provided written notice to the other parties that the party is asserting an Excusable Delay, which notice will include a description of the Force Majeure Event that is causing the Excusable Delay, the manner in which the Force Majeure Event has caused or will cause the Excusable Delay, the steps taken by the party asserting the Excusable Delay to prevent and minimize the effect of the Excusable Delay, if applicable, and the period of the Excusable Delay being asserted: (a) acts of God, including without limitation, floods, hurricanes, tornadoes, landslides; (b) fires or other casualties; (c) governmental moratorium other than a governmental moratorium imposed by the City or the Parking Authority with respect to an Excusable Delay asserted by the City or the Parking Authority, as the case may be; (d) acts of a public enemy, civil commotions, riots, insurrections, acts of war, blockades, terrorism, effects of nuclear radiation, or national or international calamities; (e) sabotage; (f) condemnation or other exercise of the power of eminent domain but specifically excluding the exercise of the power of eminent domain by the City with respect to an Excusable Delay asserted by the City or by the Parking Authority with respect to an Excusable Delay asserted by the Parking Authority; (g) the passage or enactment of, or the new interpretation or application of statutory or regulatory requirements other than the passage or enactment of a new regulatory requirement by the City with respect to an Excusable Delay asserted by the City or a new regulatory requirement by the Parking Authority with respect to an Excusable Delay asserted by the Parking Authority; (h) with respect to the Developer's assertion of Excusable Delay, delays, acts, neglects or faults on the part of the City or the Parking Authority or their respective employees or agents or contractors; (i) with respect to the City's or the Parking Authority's assertion of Excusable Delay, delays, acts, neglects

or faults on the part of the Developer or its employees, agents or contractors; (j) restraint, delay or any similar act by any utility company and any Governmental Authority (including any reviews and approvals required from an Agency), other than the City with respect to an Excusable Delay asserted by the City and other than the Parking Authority with respect to an Excusable Delay asserted by the Parking Authority; (k) the act, failure to act, omission or neglect of third parties over whom the party asserting the Excusable Delay has no control; (l) strikes, work stoppages or lockouts; (m) unusual adverse weather conditions; (n) freight embargoes; (o) unusual and unanticipated delays in transportation; (p) unavailability of, or unusual delay in the delivery of, fuel, power, supplies, equipment, or materials; (q) a Release or the discovery of previously unknown Hazardous Materials which materially affect the ability of the party asserting the Excusable Delay to carry out the required work in accordance with the Project Schedule set forth in Exhibit D; (r) public health emergencies (including but not limited to pandemics, epidemics, disease outbreaks, government mandated quarantines and shutdowns); and (s) any other similar or dissimilar cause beyond the reasonable control of the party asserting an Excusable Delay.

(80) “General Statutes” means the General Statutes of the State of Connecticut, 1958 Revision, as amended.

(81) “GNHWPCA” means the Greater New Haven Water Pollution Control Authority.

(82) “Governmental Authorities” mean all federal, state or local governmental bodies, instrumentalities or agencies (including the City, the GNHWPCA, the South Central Connecticut Regional Water Authority and other governmental units).

(83) “Hardscape” means the areas between the 2 Church Street Building and the public right-of-way, including the pavers, site walls, railings, stairs, ramps, benches, lighting, trees, and landscaping.

(84) “Hazard Notice” means (i) the written notice provided by the Developer to the City after acceptance by the City of the 2 Church Tunnels and Driveways that the 2 Church Tunnels and Driveways are posing a hazard or risk to the safety of and/or welfare of the public, the 2 Church Building, the Parking Structure, the 2 Church Street Parcel, the 2 Church Street Plaza, the 101 College Street Parcel, the 101 College Street Building, the Developer, its tenants or others, or (ii) the written notice provided by the City to the Developer after acceptance of the 2 Church Tunnels and Driveways that the Developer’s operations in the 2 Church Tunnels and Driveways, are posing a hazard or risk to the safety and/or welfare of the public, the City or to any rights-of-way or to any easements or licenses to be granted to the City under this Agreement.

(85) “Hazardous Materials” means (i) any chemical compound, material, mixture or substance that is now or hereafter defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous waste”, “restricted hazardous waste” or “toxic substances” or terms of similar import under any applicable federal, state or local law, or under the regulations adopted or promulgated pursuant thereto, including Environmental Laws; (ii) any oil, petroleum or petroleum derived substance, any flammable substances or explosives, any radioactive materials, any hazardous wastes or substances, any toxic wastes or substances, or any other materials or pollutants which cause any part of any facility, structure or improvement to be in violation of any Environmental Laws; and (iii) asbestos in any form, urea formaldehyde foam insulation, and electrical equipment which contains any oil or

dielectric fluid containing levels of polychlorinated biphenyls in excess of applicable legal or regulatory limits.

(86) “Hill Neighborhood” means that section of the City of New Haven, which is included in Census Tracts, New Haven 1402, 1403, 1404, 1405, and 1406.

(87) “Innovation Cluster” shall have the meaning ascribed to this term in the preamble.

(88) “LEED” means the series of Leadership in Energy and Environmental Design (LEED) rating systems developed by the Green Building Council as of the Effective Date.

(89) “Legal Requirements” means any and all judicial decisions, orders, injunctions, writs and any and all statutes, laws, rulings, rules, regulations, permits, certificates or ordinances of any Governmental Authority in each case to the extent that such has the force of law, but does not include Environmental Laws.

(90) “Liquidated Damages” means specified sums of money to be recovered from the City by the Developer if the City does not meet any of the City’s Public Improvements Critical Completion Date with respect to the replacement of the Church Street Bridge, as set forth in Exhibit D.

(91) “MBE” means a minority owned business as defined in Ordinances, Section 12 ¼-3 (i).

(92) “MBE Utilization Goals” means the minority owned business utilization goals set forth in Ordinances, Section 12 ¼-9 (p).

(93) “Memorandum of Understanding” shall have the same meaning ascribed to this term in the preamble.

(94) “MLK Blvd” shall have the meaning ascribed to this term in the preamble.

(95) “Mortgage” means the voluntary encumbrance(s), pledge(s), or conveyance(s) of the Developer’s right, title and interest in and to the 2 Church Street Parcel or any portion or portions thereof, to secure payment of any loan or loans obtained by the Developer to finance any portion of the Development.

(96) “Mortgagee” means the holder of the Mortgage.

(97) “Non-Curable Default” means an Event of Default under this Agreement which is a default which cannot be cured by the applicable Mortgagee as described more fully in Section 14.1(F)(3) of this Agreement.

(98) “Notice of Conflict” means the written notice, which may be in a letter or electronic mail form, provided by one party to another party notifying the receiving party that the sending party is initiating the Dispute Resolution Procedure.

(99) “Notice of Dispute” means a written notice from the City to the Developer that the City disputes that a hazard or risk exists in the 2 Church Tunnels and Driveway and/or responsibility for the cure thereof and/or the reasonableness of the extent and/or the cost of the work undertaken by the Developer to cure such hazard or risk or a written notice from the Developer to the City that the Developer disputes that a hazard or risk exists in the 2 Church Tunnels and Driveways, and/or the financial responsibility therefor.

(100) “Ordinances” mean the City’s Code of General Ordinances.

(101) “Original Service Drives” shall have the meaning ascribed to this term in the preamble.

(102) “OSTA” means the State of Connecticut Office of State Traffic Administration.

(103) “OSTA Determination” means an administrative determination by OSTA whether a Major Traffic Generator Certificate will be required for the Development and/or the Project.

(104) “Parking Agreement” means the parking agreement to be entered into among the Developer, the Parking Authority and the City under which the Parking Authority will make monthly parking permits available to the Developer which will permit the Developer, its employees, its tenants and their employees and their respective visitors to park in the Temple Street Garage and the Temple Medical Garage in the form attached hereto as Exhibit N.

(105) “Parking Authority” shall have the meaning ascribed to this term in the preamble.

(106) “Parking Authority Default” means an event of default by the Parking Authority as more particularly set forth in Section 14.1(C).

(107) “Parking Structure” means the Parking Structure to be designed and constructed on the 2 Church Street Parcel by the Developer, as more particularly described in Section 5.2(D).

(108) “Pedestrian Connection” means an above-ground pedestrian bridge and walkway connecting the 2 Church Street Property to the 2 Church Street South Property over South Frontage Road together with all necessary piers, footings, foundations and/or supports, (as depicted generally on Exhibit I) which Pedestrian Connection is intended to increase connectivity and parking options.

(109) “PILOT Agreement” shall have the meaning ascribed to this term in Section 13.1(C).

(110) “Project” shall mean collectively the Development and the City’s Public Improvements.

(111) “Project Manager” is a person whom the City shall designate to assist the City in carrying out its obligations under this Agreement.

(112) “Punch List Items” means those items of construction, decoration, landscaping and mechanical adjustment relating to the Developer’s Private Improvements, the Streetscape Improvements and the Developer’s On-Site Public Improvements, which individually, or in the aggregate are minor in character and do not materially interfere with the full use, enjoyment and occupancy of the Developer’s Private Improvements, the Streetscape Improvements and/or the Developer’s On-Site Public Improvements, and for which it may be reasonably anticipated that the completion shall occur within one hundred eighty (180) days after Substantial Completion, subject to extension for Excusable Delay.

(113) “Qualified Transferee” shall have the same meaning ascribed to this term in Section 13.3(B).

(114) “QuantumCT, Inc.” means the nonprofit statewide organization that coordinates quantum computing infrastructure, research and commercialization and involves industry, academia and startups.

(115) “Quit Claim Deed” means the deed by which the 2 Church Street Parcel will be conveyed to the Developer in the form attached as Exhibit J to this Agreement or one substantially similar thereto.

(116) “Realignment Work” means the work to move a portion of the southerly Remaining Service Drive, which is proximate to the Church Street Bridge, closer to South Frontage Road as shown on Exhibit P.

(117) “Regulatory Agency” means any Governmental Authority other than the City that has the authority to review and approve any portion of the Project.

(118) “Release” means a release as defined in the Release Based Cleanup Program.

(119) “Release Based Cleanup Program” means the provisions set forth at Chapter 445b of the General Statutes and Regs. Conn. State Agencies §§ 22a-234tt-1 et seq. and 221-133q-1 et seq.

(120) “Remaining Service Drives” shall have the meaning ascribed to this term in the preamble.

(121) “Remediation Work” shall have the meaning as ascribed to this term in Section 9.2.

(122) “Response” shall have the same meaning as ascribed to this term in Section 5.1(B)(6).

(123) “Review Period” means a 30-day period, except as otherwise expressly provided for in this Agreement, for the City to review and approve all requests for consents, approvals of submissions, or waivers, or to accept or reject the Developer’s work.

(124) “Route 34” shall have the same meaning ascribed to this term in the preamble.

(125) “SBEs” means Small Business Enterprises as defined in Ordinance Section 12¼-3 (n).

(126) “Schematic Design” shall have the same meaning as ascribed to this term in Section 5.1(B)(1).

(127) “Site Plan Review” means a review by the City Plan Commission of the site plan application to be filed by the Developer for development of the 2 Church Street Parcel pursuant to Section 64 of the Zoning Ordinance and General Statutes § 8-3(g), and, if not included in such application, a review of the site plan application for the Pedestrian Connection.

(128) “State” shall have the same meaning ascribed to this term in the preamble.

(129) “Steel Sheeting” shall mean the steel sheeting located on the 2 Church Street Parcel as shown on Exhibit E.

(130) “Streetscape Improvements” means the streetscape improvements in the public right-of-way adjacent to the 2 Church Street Parcel and include (i) public sidewalks; (ii) landscaping; (iii) lighting; (iv) the portion of the site driveway from the 2 Church Street Parcel to MLK Blvd and the apron in the public right-of-way; (v) bioswale stormwater treatment areas (bioswales); (vi) certain wayfinding signs, and (vii) the installation of on-street parking spaces on the westside of the Church Street Bridge, including all appropriate signage, meters and/or pavement kiosks, all as shown on Exhibit C and as approved by the City Plan Commission as part of its Site Plan Review.

(131) “Structural Elements” means the load-bearing ceilings, footings, foundations (with ground improvements) and walls of the 2 Church Tunnels and Driveways.

(132) “Substantial Completion” means that the Developer’s Private Improvements, the Streetscape Improvements and the Developer’s On-Site Public Improvements to be constructed are completed to the extent that the Developer’s architect has issued a certificate of substantial completion certifying that the foregoing, have been substantially completed and identifying any Punch List Items that have not been completed.

(133) “Temple Medical Garage” means the second, third, fourth, and fifth floors of a parking garage located at 230 George Street, New Haven, Connecticut, which floors are owned by the City and operated by the Parking Authority and which parking garage is also known as the Temple George Garage.

(134) “Temple Street Garage” means the parking garage owned by the City and operated by the Parking Authority and located at 21 Temple Street, New Haven, Connecticut, Assessor’s Map 241, Block 205, Lot 100.

(135) “Tenant Improvements” means those improvements to be completed by or for a tenant of the Developer subject to the specific requirements of the tenant, including, without limitation, the interior design, layout, lighting, partitioning, doorways, painting, and components of the heating, ventilation, air conditioning, electrical and plumbing systems serving the premises to be leased and those portions of the common areas which may be included in or otherwise serve such premises.

(136) “Term” shall mean the term of this Agreement as set forth in Section 16.11.

(137) “Termination Effective Date” means the date on which the termination of this Agreement is effective.

(138) “Transfer” shall have the same meaning ascribed to this term in Section 13.3(A).

(139) “Tunnels and Driveways Design Criteria” mean standards for the design, construction and inspection of the 2 Church Tunnels and Driveways set forth in the Air Rights Implementation Guidelines \_\_\_\_\_ (Exhibit M)

(140) “TTP” means the City’s Department of Transportation, Traffic and Parking.

(141) “Winstanley Enterprises” shall have the same meaning as ascribed to this term in the preamble.

(142) “Working Group” means a group consisting of the Economic Development Administrator or his or her representative, the Project Manager, representatives of the City’s Public Improvements Contractors, the City Engineer or his or her representative, a representative of the Parking Authority, a representative of DECD, a representative of the Developer, and the Developer’s construction manager/general contractor, which shall meet to coordinate the work of the City and the Developer.

(143) “Zoning Ordinance” means the City of New Haven Zoning Ordinance.

**ARTICLE II  
REPRESENTATIONS AND WARRANTIES; PRINCIPLES OF  
CONSTRUCTION**

**Section 2.1 Representations and Warranties of the Developer**

(A) The Developer represents, warrants and covenants that: (a) the Developer is a limited liability company, duly organized and existing under the laws of the State of Delaware and qualified to do business in the State, (b) the Developer has the legal authority to enter into and carry out the transactions to which it is proposed to be a party; (c) the execution and delivery of this Agreement by the Developer has been duly and validly authorized by all necessary actions; (d) this Agreement is a legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms; and (e) there are no agreements or contracts to which the Developer is a party which would in any manner impede or prevent the Developer from performing its obligations under this Agreement and/or which would impair the rights of the City under this Agreement.

**Section 2.2 Representations and Warranties of the City**

(A) The City represents and warrants that (a) the City is a municipal corporation validly existing under the laws of the State of Connecticut; (b) the City has the legal power and authority to execute and deliver this Agreement and to carry out its terms and provisions; (c) said execution and delivery have been duly and validly authorized by all necessary actions; (d) this Agreement is a legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms; and (e) except as expressly set forth elsewhere herein, there are no agreements or contracts to which the City is a party which would in any manner impede or prevent the City from performing its obligations under this Agreement and/or which would impair any of the rights of the Developer under this Agreement.

**Section 2.3 Representations and Warranties of the Parking Authority**

(A) The Parking Authority represents and warrants that (a) the Parking Authority is a special purpose municipal authority created by Special Act 51-473 of the General Assembly of the State (as amended) validly existing under the laws of the State; (b) the Parking Authority has the legal power and authority to execute and deliver this Agreement with respect to those terms and provisions that pertain to it and to carry out such terms and provisions; (c) said execution and delivery have been duly and validly authorized by all necessary actions; (d) the terms and provisions of this Agreement with respect to which the Parking Authority has executed this Agreement are legal, valid and binding obligations of the Parking Authority, enforceable against the Parking Authority in accordance with their terms; and (e) except as expressly set forth elsewhere herein, there are no agreements or contracts to which the Parking Authority is a party which would in any manner impede or prevent the Parking Authority from performing its

obligations under this Agreement and/or which would impair any of the rights of the Developer under this Agreement.

### **ARTICLE III THE CITY'S PUBLIC IMPROVEMENTS**

#### **Section 3.1 The City's Public Improvements**

(A) The City shall at its own cost and expense design and construct the Public Improvements in accordance with the Project Schedule, Exhibit D.

(1) The City acknowledges that in the course of negotiating leases with prospective tenants for the 2 Church Street Building, the Developer has provided and will continue to provide prospective tenants with projected dates and commitments for the commencement of occupancy of their leased spaces, which commitments are necessary for the success of the Development. In view of the foregoing, the City agrees to encourage timely performance by the City's Public Improvements Contractors by including various provisions in its contracts with the City's Public Improvements Contractors which are intended to track performance, create incentives for timely performance, encourage out-of-court settlements and interim dispute resolutions, and/or penalize delayed performance monetarily. Such provisions shall include (i) required adherence to Exhibit D and completion by the City's Public Improvement Critical Completions Dates therein; (ii) performance bonds in the amount of the contract sum; (iii) liquidated damages for items for failure to comply with the City's Public Improvements Critical Completion Dates listed on Exhibit D with respect to the replacement of the Church Street Bridge; (iv) acceleration or contract schedule makeup and updating in accordance with applicable regulations; (v) dispute resolution procedures, such as a negotiated settlement procedure, mediation and/or an advisory or binding opinion from a standing neutral; and/or (vi) deletion of

work from the contract. Recognizing the significance of the City's Public Improvements Critical Completion Dates, the City shall work to ensure performance and completion of the same by the City's Public Improvements Critical Completion Dates, as set forth in Exhibit D.

(2) It is agreed and understood that the contracts with the City's Public Improvements Contractors may require approval by an Agency or Agencies. The City shall permit the Developer to review the draft contract with the City's Public Improvements Contractors to the extent permitted by any applicable Agency. The Developer shall have no less than ten (10) days to comment on the draft contract, and the City agrees to take the Developer's comments into consideration and make reasonable efforts to incorporate the Developer's comments into its contracts with the City's Public Improvements Contractors as may be appropriate to facilitate coordination of work to the extent permitted by any applicable Agency and to the extent that such comments do not affect the City's cost, schedule and scope of work.

(3) The City shall monitor the work of the City's Public Improvements Contractors to encourage timely performance by such contractors. The City shall provide the Developer with written notice of any requests by any of the City's Public Improvements Contractors for an Excusable Delay and/or an extension of time to perform its work and shall provide the Developer with the opportunity to review and comment on such request as part of the Working Group process. If either the City or the Developer believes that a City's Public Improvements Contractor is not meeting or will not meet the City's Public Improvements Critical Completion Dates, the Developer or the City, as the case may be, will provide written notice to the other party and the Working Group of such delay or anticipated delay, and the Working Group will meet to try to resolve the delay, and/or, if applicable, the City and the Developer will meet with any Standing Neutral appointed pursuant to the contract between the City and the City's

Public Improvements Contractors to try to resolve the delay. The failure of the Developer to provide the aforesaid notice, however, will not prevent or in any way preclude the Developer from seeking any remedies it may be entitled to under this Agreement or under law for an Event of Default due to such delay or anticipated delay.

(B) The City agrees that if the Developer reasonably anticipates that a City's Public Improvements Critical Completions Date in Exhibit D will not be met, the Developer may perform such work so that the City's Public Improvements Critical Completion Dates are met. Additionally with respect to the Realignment Work, at the City's request, the Developer will undertake the Realignment Work. In both instances, the City shall promptly reimburse the Developer for the costs of the same upon receipt of an invoice from the Developer for such work. If the Developer undertakes the City's Public Improvements because it has reasonably concluded that the City's Public Improvements Critical Completion Dates will not be met with respect to the replacement of the Church Street Bridge, it shall also be entitled to Liquidated Damages, as set forth below, as well as any additional remedies that it may be entitled to on account of an Event of Default. Provided, however that the Developer shall not be required to submit the anticipated failure or the failure of the City to timely complete the City's Public Improvements Critical Completion Dates to the Dispute Resolution Procedure in Article XIV prior to undertaking the work.

(C) Liquidated Damages

(1) Subject to the provisions of Section 3.1(C)(2) below, the City and the Developer agree that partial Liquidated Damages in the following amounts is a fair and reasonable amount to be paid by the City if the City's Public Improvements Critical Completion Dates set forth in Exhibit D with respect to the replacement of the Church Street Bridge are not met because

damages that would result from such failure to complete work by the City's Public Improvements Critical Completion Dates would be uncertain in amount or difficult to prove:

Days Late	Liquidated Damages
0-14	Grace Period (no damages)
15-30	\$500 per day
31-45	\$750 per day
46-60	\$1,000 per day
in excess of 61	\$2,000 per day
in excess of 120	\$500,000 (maximum aggregate amount)

(2) Notwithstanding the provision of Section 3.1(C)(1) above, it is agreed and understood that the City shall be afforded not less than 270 days to commence and complete the replacement of the Church Street Bridge and that such work cannot commence until the Developer shall have delivered written notice to the City as to when it is possible for the City to commence such work without unduly interfering with the Developer's Site and Traffic Improvements and/or the Developer's Private Improvements. Upon delivery of such notice by the Developer, in the event that there shall then be less than 270 days until the date shown in Exhibit D as the Critical Completion Date for completion of the Church Street Bridge, then said Critical Completion Date shall be automatically extended so as to provide for the full 270 days.

(3) The City and the Developer stipulate that in no event will the Developer's damages be less than the foregoing sums if the City fails to meet the City's Public Improvements Critical Completion Dates set forth in Exhibit D with respect to the replacement of the Church Street Bridge. The City and the Developer further agree that the foregoing partial Liquidated Damages do not constitute a penalty or a forfeiture and that the payment of such Liquidated Damages shall not limit the Developer's rights and remedies at law or in equity and under this Agreement arising from additional damages incurred by the Developer on account of an Event of

Default due to the City's failure to meet the City's Public Improvements Completion Critical Dates set forth in Exhibit D.

**Section 3.2 Funding for the City's Public Improvements**

(A) The City agrees to abide by and comply with all terms and conditions of any agreement under which funding for the City's Public Improvements is provided to the City. The City's failure to comply with any or all of the requirements, conditions, covenants or obligations set forth in such agreements or the City's failure to contribute all of any portion of the City funds required to be contributed under such agreements shall be considered Events of Default under this Agreement.

**ARTICLE IV  
THE DEVELOPER'S SITE AND TRAFFIC IMPROVEMENTS OBLIGATIONS**

**Section 4.1 Description of the Improvements**

(A) 2 Church Tunnels and Driveways

(1) Provided that the Developer acquires the 2 Church College Street Parcel in accordance with Article VIII below, the Developer agrees to design and construct the Developer's Site and Traffic Improvements as set forth below. The Developer shall cause the 2 Church Tunnels and Driveways to be constructed as more particularly detailed in and in accordance with Exhibit E and the standards set forth in the Air Rights Implementation Guidelines (Exhibit M) or such other criteria as the Developer and the City shall agree to in writing.

(2) The Developer agrees to provide to the City and, if required by DECD, for their review and approval, the 2 Church Tunnels and Driveways Drawings. The City shall review and approve the 2 Church Tunnels and Driveways Drawings in accordance with the procedures set forth in Section 10.2(C) of this Agreement. No review or approval of the 2 Church Tunnels and

Driveways Drawings shall relieve the Developer from its obligations to construct the 2 Church Tunnels and Driveways in a good and workmanlike manner in accordance with the 2 Church Tunnels and Driveways Drawings and all applicable Federal, State, or local codes, standards, requirements and permits. It is understood and agreed that an Agency or Agencies may require review of the 2 Church Tunnels and Driveways Drawings and that the City cannot control the timing or content of such review and that an Agency's review may override, or render void the City's review and approvals of such drawings. Nonetheless, the City will timely perform its review and encourage the timely review by any reviewing Agency.

(3) All contracts for the design and construction of the 2 Church Tunnels and Driveways shall provide that the City shall be the third party beneficiary of the designers', engineers' and all other contractors' obligations to the Developer under such contracts, including without limitation all guarantees and warranties and professional liability.

(4) The 2 Church Tunnels and Driveways shall be constructed in accordance with the Project Schedule set forth in Exhibit D.

(5) The Commissioning Agent and the City will periodically monitor construction of the 2 Church Tunnels and Driveways to confirm that the construction of the 2 Church Tunnels and Driveways is being conducted in compliance with all applicable codes, standards, requirements, including the Air Rights Implementation Guidelines (Exhibit M), and permits. The Developer acknowledges that the City and Agencies have the right to inspect the construction of the 2 Church Tunnels and Driveways at any time, and the City agrees that when feasible, it shall provide advance notice to the Developer of such inspections. Such inspections may include but are not limited to inspections of the Structural Elements, the structural connections, such as the closure walls (the walls connecting the 2 Church Tunnels and Driveways

to the Church Street Bridge), and the expansion joints between the Developer's Private Improvements and the 2 Church Tunnels and Driveways together with material certifications, submittals, inspection reports and other such customary documentation. Such inspections may take place at the 2 Church Street Parcel or at any other location where work for the 2 Church Tunnels and Driveways is being performed.

(6) In addition, the Developer shall permit the City Engineer (or his or her representative) to review test reports, daily reports, cost estimates, change orders, inspection reports and any similar documents relating to the construction of the 2 Church Tunnels and Driveways. The City agrees to provide advance notice of such review and that in making his or her inspections, the City Engineer shall not disrupt, interfere or delay the Developer's construction activities with respect to the Development. In the event that the City Engineer determines that any construction work on the 2 Church Tunnels and Driveways has not been done in compliance with all applicable codes, standards, requirements, and permits, the City shall provide written notice of its disapproval of the work and the reasons therefor, and the disapproval, if disputed by the Developer, shall be submitted to the Dispute Resolution Procedure. If the Developer does not dispute the disapproval, the Developer will undertake all corrective work required, and the Project Schedule (Exhibit D) shall be adjusted to provide the Developer with the additional time that it requires to undertake the corrective work and to provide for all other necessary similar extensions for its other items of work.

(7) Upon substantial completion of the construction of the 2 Church Tunnels and Driveways, as certified by the Developer's engineer, and the completion of all inspections that the City Engineer and any Agency or Agencies deem necessary and after provision by the Commissioning Agent of a statement of acceptable performance for the 2 Church Tunnels and

Driveways to the Commissioning Authority (as defined in the Air Rights Implementation Guidelines ), the City Engineer will issue a written acceptance on behalf of the City of the 2 Church Tunnels and Driveways. Notwithstanding the foregoing, it is also understood and agreed that an Agency or Agencies may also reserve the right to inspect and approve the 2 Church Tunnels and Driveways, and in such event, the City Engineer will not issue a written acceptance of the 2 Church Tunnels and Driveways, until such Agency or Agencies have either inspected and approved the same or waived the right to do so.

(8) Notwithstanding any other provision of this Agreement, the Developer and the City agree that they may amend this Agreement in order to reallocate their respective responsibilities for the design and construction of the 2 Church Tunnels and Driveways or in any manner that the City and the Developer deem desirable, which amendment shall be in writing and signed by the Developer and the Economic Development Administrator on behalf of the City.

(9) Prior to the acceptance of the 2 Church Tunnels and Driveways by the City Engineer, the Developer shall supply the City with “as built” plans of the 2 Church Tunnels and Driveways (both in hard copy and electronically) and upon acceptance of the 2 Church Tunnels and Driveways by the City Engineer, the City shall become the owner of all equipment and systems associated therewith, and the Developer shall relinquish and assign to the City all contractor warranties and guarantees for work performed on and materials supplied for the 2 Church Tunnels and Driveways (with the exception of warranties and guarantees for the construction of the Structural Elements and for the waterproofing of and prevention of water, be it stormwater, sanitary, fire suppression or other infiltration from the 2 Church Street Building, the Parking Structure and the 2 Church Street Plaza into the 2 Church Tunnels and Driveways). The City shall accept such assignment and assume the responsibilities for maintenance, repair and replacement

of the 2 Church Tunnels and Driveways as set forth in Section 6.1(B). If any contractor or supplier refuses to recognize the assignment or otherwise refuses to honor its guarantee or warranty, the Developer agrees to assist the City in administering and enforcing such warranties and guarantees at the request of the City and at no cost to the Developer, provided that any time expended by employees of the Developer and its affiliates who were involved in the construction of the 2 Church Tunnels and Driveways shall be at no cost to the City. In the event that after acceptance by the City Engineer of the 2 Church Tunnels and Driveways, the City determines that work performed on the 2 Church Tunnels and Driveways is defective, the City shall not seek any remedies against the Developer for such defective work or materials, but rather agrees to pursue remedies against the contractors responsible for such work or materials. The foregoing shall not be considered a release by the City against the Developer but rather is a covenant not to sue the Developer for such defective work or materials. The Developer agrees to fully cooperate with the City in any claims the City may bring against the Developer's construction manager, general contractor or its subcontractors or suppliers on account of such defective work at no cost to the Developer, and any time expended by employees of Developer and its affiliates who were involved in the construction of the 2 Church Tunnels and Driveways shall be at no cost to the City.

(B) Streetscape Improvements

(1) The Developer shall design and construct the Streetscape Improvements as described more particularly on Exhibit C, or similar improvements. The Streetscape Improvements shall be subject to approval by the City Plan Commission in connection with the Site Plan Review of the 2 Church Street Parcel.

(2) In accordance with its standard obligations, the City agrees to maintain, repair and replace the Streetscape Improvements as approved by the City Plan Commission as part

of its Site Plan Review. The Developer will grant the City such access to the 2 Church Street Parcel as may be reasonably required to maintain, repair and replace the Streetscape Improvements.

(C) Maintenance and Protection of Traffic Construction Logistics Plan

(1) The Developer and the City have prepared a Construction Logistics Plan, which is set forth in Exhibit H. The Construction Logistics Plan includes a plan for the routes that trucks will take during construction of the Development and will specify phasing, sequencing, schedule, and specific work zones and traffic corridors that must be maintained. A portion of the Construction Logistics Plan will set forth the construction logistics for the Enabling Work. The Construction Logistics Plan shall guide the work of the Working Group. The Developer, the City and the Parking Authority agree to work together to implement the Construction Logistics Plan and enforce the same, to the extent required through their respective contractors. The Parking Authority and the City agree, as appropriate, to provide the Developer with all required licenses and easements to conduct such work as set forth on Exhibit K.

(D) Developer's On-Site Public Improvements

(1) The Developer will design and construct the 2 Church Street Plaza, the Hardscape and way finding signs (as set forth in Exhibit C) and the stormwater management system and will conduct the soil removal that is part of the Enabling Work, or similar improvements, all such improvements (except for the wayfinding signs) to be approved by the City Plan Commission in connection with the Site Plan Review of the 2 Church Street Parcel as being in accordance with the Zoning Ordinance as provided in Section 10.1 below. The Developer and, 101 College Street, LLC, the owner of the 101 College Street Parcel, will enter into a memorandum of understanding with respect to coordinating the design, maintenance and operation of the 2

Church Street Plaza and the 101 College Street Plaza, which memorandum of understanding shall be substantially in the form of Exhibit R. The Developer shall thereafter be responsible for the maintenance, repair and replacement of the Developer's On-Site Public Improvements.

(E) Developer's Other Site and Traffic Improvements

(1) The Developer will prepare the 2 Church Street Parcel for construction, including removal of approximately 10,000 cubic yards of soil from the 2 Church Street Parcel and/or make any agreed modifications to the Steel Sheeting, as shown on Exhibit E.

(2) The Developer will design and construct a stormwater retention system for the 2 Church Street Parcel as approved by the City Plan Commission as part of the Site Plan Review Process.

(F) Payment for the Developer's Site and Traffic Improvements.

(1) The City and the Developer acknowledge that improvements are needed on and under the 2 Church Street Parcel in part because of the need to maintain public travel under the 2 Church Street Parcel and in part in order to provide accessible outdoor space to the public that is integrated with the 2 Church Street Building and the 101 College Street Plaza.

(2) The budget for the Developer's Site and Traffic Improvements is set forth on the basis of the cost estimate at the preliminary design stage as provided by the Developer to the City and DECD and as summarized in Exhibit F. The City and the Developer agree that Exhibit F may be amended from time to time in accordance with the terms of the DECD Agreement.

(3) The City and the Developer acknowledge that DECD has agreed to provide the DECD Financing to the Developer for the design and construction of the Developer's Site and Traffic Improvements in the amounts listed in Exhibit F and that DECD, the Developer and the City, if required by DECD, will be entering (or have entered) into the DECD Agreement that will

set forth the terms under which DECD will be providing the DECD Financing to the Developer for the Developer's Site and Traffic Improvements. The City and the Developer anticipate that pursuant to the DECD Agreement, the Developer, as certified by the Developer's engineer, will submit requisitions for payment of costs relating to the Developer's Site and Traffic Improvements to the City for its review and inspection, and if approved, the City will forward such requisitions to DECD for payment to the Developer.

(4) The City agrees that in the event of (i) requests by the City for changes to the Developer's Site and Traffic Improvements from those depicted in Exhibits C and E, or (ii) requests for changes to the Construction Logistics Plan shown on Exhibit H, which materially increase the costs for such improvements or plans as set forth in Exhibit G or result in material delays of the dates set forth in the Project Schedule, Exhibit D, which delays result in or are anticipated to result in additional costs to the Developer, then the City will reimburse the Developer for such additional costs promptly upon Developer providing an invoice to the City for such costs. In the event of any such requests by the City if the Developer anticipates material increases in cost or material delays, the Developer shall notify the City before commencing the same so that the City may amend or withdraw the request. If the City amends or withdraws the request, it shall do so in writing within five (5) working days of such notice by the Developer of the anticipated increase in costs and/or material delays. TIME IS OF THE ESSENCE WITH RESPECT TO THE TIMEFRAME SET FORTH IN THIS SECTION SUBJECT TO EXCUSABLE DELAY.

(5) The City and the Developer each agree to abide by and to fully comply with all material terms and conditions of any agreements under which the DECD Financing is provided to the City or the Developer. The failure by the Developer or the City to materially comply with any or all the requirements, conditions, covenants or obligations set forth in the DECD Agreement

and the failure to cure such failure within the time provided for cure in the DECD Agreement shall be considered an Event of Default under this Agreement.

(6) The City and the Developer agree that the final drawings of the Developer's Site and Traffic Improvements and the bidding based upon such final drawings for such improvements may disclose a shortfall in funding for the Developer's Site and Traffic Improvement from that the funding provided by DECD under the DECD Agreement (the "Funding Gap"). In the event such Funding Gap exists, the City and the Developer in consultation with DECD agree as follows:

(a) The City and the Developer will review the costs of the Developer's Site and Traffic Improvements to determine if the costs of the Developer's Site and Traffic Improvements can be reduced by undertaking, among other measures, the reduction in the scope of the Developer's Site and Traffic Improvements as mutually agreed to, the value engineering of the Developer's Site and Traffic Improvements, the elimination of redundancies, and/or the competitive bidding and pricing of work and materials required to construct the Developer's Site and Traffic Improvements.

(b) The City and the Developer will cooperate in determining sources of funding from DECD or such other third parties with each party agreeing to make applications in a timely manner and to pursue sources of funding from DECD or such other third parties for which the Developer and/or the City is the appropriate applicant, each party agreeing to cooperate with the other party in making such applications and to use reasonable best efforts and take all necessary steps to obtain such funding. The City and the Developer each agree to support all applications made by the other party for such third party financing.

(c) If, notwithstanding the foregoing efforts by the Developer and the City, at Closing, some or all of the Funding Gap exists, (i) the City agrees to provide the first \$600,000 as a supplement to the DECD Financing, (ii) the Developer agrees to provide the next \$600,000, and (iii) any remaining Funding Gap shall be the responsibility of DECD and the City.

(G) Schedule for Construction of Developer's Site and Traffic Improvements.

(1) The Developer shall cause the construction of the Developer's Site and Traffic Improvements to be commenced substantially on the dates set forth in the Project Schedule set forth in Exhibit D, provided that the Closing has occurred, and will complete construction of such improvements as set forth in the Project Schedule set forth in Exhibit D, provided that the Closing occurs on or before the Closing Date. In the event that the Closing occurs after the Closing Date, the Developer and the City shall amend the Project Schedule set forth in Exhibit D to provide new dates for the commencement and completion of the Developer's Site and Traffic Improvements, which new dates shall reflect the difference in time between the Closing Date and the actual date of the Closing. In the event that the Project Schedule set forth in Exhibit D shall be amended in accordance with the provisions of Section 5.3(A) below, then the Project Schedule set forth in Exhibit D for the Developer's Site and Traffic Improvements shall, at the option of the Developer, be amended in a similar manner.

## ARTICLE V THE DEVELOPER'S OTHER OBLIGATIONS

### **Section 5.1 Summary of Developer's Obligations**

(A) Provided that the Developer acquires the 2 Church Street Parcel in accordance with Article VIII below, in addition to the Developer causing the Developer's Site and Traffic

Improvements to be constructed, the Developer agrees, at its own cost, to design and construct the required Developer's Private Improvements as set forth more particularly in this Article V. The required work to be performed by the Developer includes: (i) designing and constructing the 2 Church Street Building on the 2 Church Street Parcel which will be not less than 200,000 gross square feet and shall be designed to accommodate the infrastructure required for quantum information sciences and technologies in the 2 Church Street Building; and to accommodate occupancy by Quantum CT, Inc. or another quantum sciences entity (ii) designing and constructing the Parking Structure on the 2 Church Street Parcel, as more particularly described in Section 5.2(D). The Developer agrees to make these improvements, notwithstanding any increases in the costs of such improvements after the Effective Date of this Agreement. In addition, at the Developer's option, the Developer will design and construct the Pedestrian Connection.

(B) Design Review

(1) The Parties acknowledge that the City Design Reviewer is in the process of reviewing the designs for the Developer's Private Improvements, the Developer's On-Site Public Improvements and the Streetscape Improvements, and the City and the Developer agree to make best efforts to complete the City Design Review process prior to the Developer applying for Site Plan Review for such improvements.

(2) In connection with the City Design Review process, the City acknowledges that the Developer has delivered to the City Design Reviewer schematic design drawings (the "Schematic Design") for the 2 Church Street Building, the Parking Structure, the On-Site Public Improvements, and the Streetscape Improvements. and the Pedestrian Connection if the Developer intends to construct the Pedestrian Connection at the time that it constructs the 2 Church Street Building. The Developer will separately submit the Schematic Design for the Pedestrian

Connection for design review pursuant to this Section 5.1(B)(1) if the Pedestrian Connection is to be constructed separately from the construction of the other Developer's Private Improvements prior to applying for Site Plan Review of the Pedestrian Connection, which shall be required.

(3) In reviewing the Schematic Design, the City may consult with an independent third party architect (the "City's Architect") and with respect to the 2 Church Street Plaza, with an artist.

(4) The Developer and its architect and/or engineer has and shall continue to attend meetings concerning the Schematic Design with the City Design Reviewer as may be reasonably requested by the City. In the event that the City Design Reviewer consults with the City Architect about the Schematic Design and/or an artist with respect to the design of the 2 Church Street Plaza, the Developer, and, at the Developer's option, its architect and or engineer, shall, if requested by the City, attend meetings with the City Architect and/or the artist, as applicable, about the Schematic Design.

(5) The City has and shall continue to provide written comments about the Schematic Design (the "City Comments") to the Developer in a timely manner, which comments may be provided after meeting with the Developer (at the option of the City), provided that such City Comments shall be limited to aesthetic considerations and compliance of the Schematic Design with the Zoning Ordinance and any other relevant Legal Requirements. Except with respect to considerations of compliance with the Zoning Ordinance or other relevant Legal Requirements, the City shall refrain from making City Comments that would result in a material change to the cost, structure or viability of the Developer's Private Improvements, the Streetscape Improvements, the Developer's On-Site Public Improvements. or the Pedestrian Connection.

(6) The Developer, and, at the Developer's option, its architect shall respond in writing to the City Comments in a thorough and considered manner, which response may include the submission of revised schematic design drawings (the "Response"). The City Design Reviewer and the Developer shall meet, at the City's option, within ten (10) days, excluding weekend days and City holidays, after the date on which the Response is delivered to the City Design Reviewer to discuss the City Comments and the Response.

(7) The Developer shall take into consideration the City Comments, including those on the last design submission to the City, when finalizing its design, however, notwithstanding the foregoing, the City and the Developer agree that the Developer has the ultimate authority to decide the final design of its improvements provided that such improvements are in accordance with all Legal Requirements.

(8) Notwithstanding any other provision of this Agreement, if the City Design Reviewer does not provide the City Comments within twenty-one (21) days, excluding weekend days and City holidays, after receipt of the Schematic Design by the City, the City Design Reviewer shall be deemed to have no City Comments. TIME IS OF THE ESSENCE WITH RESPECT TO THE TIME PERIOD SET FORTH IN THIS SECTION SUBJECT TO EXCUSABLE DELAY.

**Section 5.2 The Building, and Appurtenances**

(A) During the Term of this Agreement, the Building will be used for uses that are permitted in the BD-3 District as of the Effective Date, as well as for any additional uses which may be included in the BD-3 District after the Effective Date and are not otherwise prohibited by this Agreement.

(B) During the Term of this Agreement, the Building, the Parking Structure or any other portion of the 2 Church Parcel, shall not be used for a commercial establishment of any nature

related to “adult” use/entertainment, an establishment related to the sale or use of firearms or weaponry, a dance/music hall (but a dance studio or a dancing school is a permitted use), a tattoo parlor, a Smoke Shop, a Self-Storage facility, an automotive repair, or an automotive sales establishment or a research laboratory that is dedicated to the study of highly infectious diseases and regulated as a Biosafety Level 4 laboratory by the United States Department of Health and Human Services Centers for Disease Control and Prevention and the National Institute of Health.

(C) The Pedestrian Connection

(1) The City and the Developer acknowledge that the Pedestrian Connection provided for under this Agreement will facilitate movement between buildings in the Downtown Crossing area, the Medical District, and the Hill Neighborhood, reduce the need for on-site parking on the 2 Church Street Parcel, and increase accessibility between the 2 Church Street Parcel and 2 Church Street South, thereby contributing to the creation of a life sciences campus in the Downtown Crossing area and the Hill Neighborhood.

(2) The Pedestrian Connection shall be designed so as to enhance the sense of place in the Downtown Crossing Area, the Medical District and the Hill Neighborhood and shall be consistent with the design of these districts. In particular, the Pedestrian Connection shall be transparent and shall contain no exterior signage.

(3) When the Developer notifies the City that it intends to construct the Pedestrian Connection, the City shall promptly grant to the Developer all necessary temporary and permanent air rights, easements and licenses required for such construction, including without limitation, the right to construct any piers, footings, foundations and/or supports required for the Pedestrian Connection. The granting of the easements shall be subject to standard insurance requirements and indemnification obligations as set forth on Exhibit K. The City further agrees to

enter into all agreements with the Developer and any third parties, including without limitation the owner of 2 Church Street South which may be required to construct, reconstruct, operate, own, use, maintain, repair, and replace the Pedestrian Connection.

(4) The City shall support all efforts of the Developer to obtain any zoning relief, modifications, approvals (including but not limited to Site Plan Review) and/or permits required for the Pedestrian Connection; the Developer acknowledging that the New Haven Board of Zoning Appeals and the New Haven City Plan Commission have independent legal authority and decision-making responsibilities with respect to applications for approvals for the Pedestrian Connection.

(5) The Developer shall own, maintain and repair the Pedestrian Connection; provided, however, that notwithstanding the provisions of Section 13.3, the Developer shall have the right to assign all of its rights and obligations with respect to the Pedestrian Connection to the owner of the 2 Church Street South. Additionally, notwithstanding any provision of this Agreement to the contrary, nothing contained herein, nor any exercise of the foregoing rights will be deemed to be a gift or dedication of the Pedestrian Connection to the general public, the City or any other person, and the City acknowledges that the owner of the Pedestrian Connection shall reserve the right to discontinue and/or remove the Pedestrian Connection that such owner owns at any time.

(D) The Developer shall design and construct the Parking Structure as part of the Development. The Parking Structure shall contain no more than 100 parking spaces plus loading spaces. The Developer may stack cars in the Parking Structure as long as it provides valet service or an attendant to move cars in accordance with customary parking practices.

**Section 5.3 Developer’s Schedule**

(A) The Developer will commence construction of the Developer’s Private Improvements substantially in accordance with the Project Schedule set forth in Exhibit D. The Developer will make efforts to complete construction of the foregoing remaining elements on the dates set forth in the Project Schedule set forth in Exhibit D. The Developer will commence and complete all other activities by the times set forth on the Project Schedule set forth in Exhibit D, provided that the Closing occurs on or before the Closing Date. In the event that the Closing occurs after the Closing Date, the Developer and the City shall amend the Project Schedule set forth in Exhibit D to provide new dates for the commencement and completion of the Developer’s Private Improvements, which new dates shall reflect the difference in time between the Closing Date and the actual date of the Closing.

(B) Provided further, in the event that the Closing has occurred and changes to the design and/or purposes of the 2 Church Street Building are required, which changes are necessary in order to meet the needs of potential occupants, and provided that the Developer provides the City with reasonable evidence of the need for such changes, then the City and the Developer shall amend the Project Schedule set forth in Exhibit D in a manner that reasonably reflects the additional time required to accommodate such changes.. If the City and the Developer cannot agree upon such amendments to the Project Schedule set forth in Exhibit D, then such dispute shall be submitted to the Dispute Resolution Procedure.

**Section 5.4 Coordination and Cooperation Between the City and the Developer**

(A) The Working Group

(1) In order to coordinate the work of the City and the Developer during the construction of the Project, the Working Group will be established on the Effective Date. The

Economic Development Administrator or her or his designee shall chair the Working Group. The Working Group shall meet twice each month to coordinate the work of the City and the Developer and shall endeavor to resolve issues regarding the coordination of the design and construction of the Project.

(2) The Developer shall provide the Working Group with oral and written construction reports which shall report whether any dates on the Project Schedule set forth in Exhibit D have been met and any anticipated difficulties in meeting such dates and which shall list any Force Majeure Events which are claimed to result in Excusable Delays. The City shall also provide the Working Group with oral or written construction progress reports and shall state whether there are any anticipated difficulties in meeting the City's Public Improvements Critical Completion Dates and when such dates are met and shall report on any Force Majeure Events which are claimed to result in Excusable Delays.

(3) As part of the Working Group activities, the City and the Developer will work together to ensure the City Plan Commission can undertake a timely Site Plan Review of the Developer's applications for the development of the 2 Church Street Parcel. and the Pedestrian Connection.

(4) The Chair of the Working Group shall draft and distribute to the members of the Working Group minutes of each meeting, which shall document discussions, agreements, resolutions, and action items.

(B) Acknowledgement of Unforeseen Events and Duty to Cooperate

The City, the Parking Authority and the Developer acknowledge that all events and conditions impacting the Project cannot be foreseen at this time. As such, they agree to cooperate

in the attempted resolution of problems and unforeseen events that may arise through use of the Working Group meetings, and, if necessary, the Dispute Resolution Procedure.

(C) The City and the Developer agree that following the construction of the Developer's On-Site Public Improvements and the Streetscape Improvements, they will work together to prevent damage to such improvements.

(D) The City, as part of its ongoing design work, agrees to consult with the Developer regarding conceptual plans and enhancements to that portion of Temple Street located between MLK Blvd and Chapel Street. Specifically, the City and the Developer agree to collaborate on the planning of a possible future bike and pedestrian overpass from the 2 Church Street Plaza over MLK Blvd, to connect to Temple Street; which is at a lower grade; the City and the Developer agreeing that the goal of such overpass is to create a strong bicycle and pedestrian connection from the 101 College Street Building and the 2 Church Street Building, which are Innovation Cluster properties, to the New Haven Green.

**ARTICLE VI  
ACCEPTANCE OF THE 2 CHURCH TUNNELS AND DRIVEWAYS**

**Section 6.1 Dedication and Acceptance of the 2 Church Tunnels and Driveways**

(A) The Developer hereby dedicates and the City hereby accepts, subject to written acceptance thereof by the City Engineer, as hereinabove described in Section 4.1(A)(7) above, the 2 Church Tunnels and Driveways as public rights-of-way in the City. No subsequent action by the BOA shall be required for the dedication and acceptance of the 2 Church Tunnels and Driveways as public rights-of-way.

(B) Upon acceptance of the 2 Church Tunnels and Driveways by the City Engineer, as described in Section 4.1(A)(7), the City shall be responsible for the maintenance, repairs, and

replacement of the 2 Church Tunnels and Driveways except to the extent set forth below. The City's obligation to maintain, repair and replace the 2 Church Tunnels and Driveways shall include, but not be limited to the ceiling, walls, Structural Elements, the pavement (including markings), floors, fire protection equipment, heat detection, fans and ventilation, drainage (associated with the 2 Church Tunnels and Driveways), a pump station with controls and alarms and a force main connection to the GNHWPCA, a sanitary pipe (as determined to be necessary during the design process), traffic control and safety systems, public signage, lighting, security (including monitoring and control devices), emergency ingress and egress, ventilation, conduits, wiring, power (regular and emergency), mechanical rooms, fuel storage, public wayfinding signs (excluding private signs related to the 2 Church Building, the Parking Structure and the 2 Church Street Plaza), and generators with all power connections to the 2 Church Tunnels and Driveways.

(C) The Developer and the City shall be equally responsible for the costs of the replacement of the Structural Elements of the 2 Church Tunnels and Driveways which also provide structural support to the 2 Church Street Building, the Parking Structure and the 2 Church Street Plaza,. The City shall not be responsible for the costs of the replacement of any ceilings, footings, foundations and walls of the 2 Church Street Building, the Parking Structure and/or the 2 Church Street Plaza which provide support for the 2 Church Street Building, the Parking Structure and/or the 2 Church Street Plaza and do not provide support for the 2 Church Tunnels and Driveways. The Developer shall perform all work required to replace the Structural Elements of the 2 Church Tunnels and Driveways, if required, and the City shall reimburse the Developer for 50% of the Developer's documented costs for such work within 90 days of receipt of an invoice from the Developer for such work. In the event that replacement of a Structural Element is required because

of an action by a member of the public, the City will pay the full costs of replacement of the Structural Element, which work the Developer will perform.

(D) The Developer will also be responsible for repairing any damage to the 2 Church Tunnels and Driveways caused by water infiltration from water, stormwater, fire suppression, sanitary and/or other water source originating within the 2 Church Street Building, the Parking Structure and/or 2 Church Street Plaza that penetrates into the 2 Church Tunnels and Driveways. The City shall pay for the costs of repair by the Developer for any damage to the 2 Church Tunnels and Driveways resulting from water infiltration from any other source, which payment by the City will be made within 90 days of receipt of an invoice from the Developer documenting its costs.

(E) Notwithstanding the foregoing, in no event shall either the Developer or the City be responsible for the costs of replacement of any of the Structural Elements of the 2 Church Tunnels and Driveways to the extent that the need for such replacement is caused by the negligence or willful misconduct of the other party, its agents or contractors.

## **ARTICLE VII TOGETHER, WE GROW INITIATIVE**

### **Section 7.1 Preamble**

(A) The City and the Developer acknowledge that the Development will further solidify the competitive position of New Haven in the life sciences and quantum technology sectors as well as grow the broader innovation sectors, contributing to the development of a vibrant technology driven ecosystem that bridges research, industry, entrepreneurship, and workforce development. The Together, We Grow Initiatives are intended to connect New Haven residents to opportunity and to build a stronger, holistic community through inclusive growth. The benefits described herein are therefore intended to support a wide range of goals including sustainability,

design excellence and inclusive growth for all New Haven residents with the shared vision that the opportunities of the emerging life science and quantum economy be accessible to all.

Section 7.2 **Permanent Jobs Pipeline**

(A) Support Services Pipeline.

(1) The City and the Developer acknowledge that opportunities exist to connect New Haven residents to work for businesses that provide support services associated with the operation and management of the 2 Church Street Building, the Parking Structure and Developer's On-Site Public Improvements. For a period of five (5) years commencing on the Closing Date, the Developer shall develop skill profiles for support services jobs and together with New Haven Works, Inc. ("New Haven Works") establish a protocol for job postings and candidate referrals by New Haven Works in connection with the Developer's hiring of support services positions.

(2) In accordance with its acknowledgement set forth in Exhibit T (the "Acknowledgement"), New Haven Works has agreed to work with the Developer to establish a protocol for job postings and candidate referrals and to designate a case manager who shall serve as a point of contact, to receive job postings, manage candidate referrals and maintain regular and ongoing communication with the Developer in connection with support services hiring pursuant to Section 7.2(A)(1). Such point of contact is listed in the Acknowledgement. As further stated in the Acknowledgement, New Haven Works shall maintain records of referrals to the Developer and placements for support services positions in connection with the Development, and, during the period set forth in Section 7.2(A)(1), report annually to the City on referrals of candidates for support positions to the Developer and placements by the Developer of referred candidates, which reports shall be simultaneously sent to the Developer.

(B) Board of Education Architecture Construction Engineering (ACE) Mentoring Program. In order to foster New Haven students' interest in the fields of architecture, construction and engineering, the Developer shall conduct a one-hour class at Hillhouse High School and a two-hour field trip to the 2 Church Street Parcel during construction for students who are interested in these fields. In addition, the Developer will provide mentoring for a New Haven Public School ACE Team. Additionally, the City will enter into an agreement with the New Haven Board of Education which agreement provides that (i) every student from the Hill Neighborhood, the Downtown Neighborhood and the Dwight Neighborhood who applies for admission to the ACE Mentoring Program and who meets the minimum qualifications for admission to the ACE Mentoring Program will be admitted to the Program and (ii) the New Haven Board of Education will provide information about the ACE Mentoring Program, including the application process, at community forums identified by the Alders from Wards 2, 3, 4, 5, 6, and 7.

(C) Quantum Technologies.

(1) The City and Developer shall work with QuantumCT, Inc. to ensure training, education and workforce development for quantum related jobs will be made available to New Haven residents as set forth in Exhibit S.

(2) The City shall work with CT State Colleges and Universities (Southern Connecticut State University and Connecticut State Community College - Gateway Campus), Albertus Magnus College and other local colleges and universities to provide outreach on Quantum-related training opportunities as made available by National Science Foundation funding and other sources including but not limited to QuantumUp and QuantumPath.

(3) For a period of five years commencing on the Effective Date, the Developer shall notify New Haven Works of quantum-related training and employment opportunities at the

2 Church Street Building, which notice shall be provided to the individual listed in the Acknowledgment as the person to whom notices from the Developer should be sent (the “Notified Person”).

(D) Life Sciences

(1) The City and the Developer wish to provide continued support for BioCity, a biotech career training program for New Haven high school students located in the Biolabs New Haven, LLC space in the 101 College Building. BioCity is a partnership between Biolabs New Haven, LLC and the New Haven Board of Education.

(2) To continue support for BioCity, the City and the Developer agree as follows:

(a) The City acknowledges that in connection with the development of the 101 College Building, the developer of the 101 College Building, an affiliate of the Developer, provided \$500,000 to a Community Fund for scholarships and other initiatives described in Article VII of the Development and Land Disposition Agreement for the 101 College Street Parcel dated as of August 1, 2020, as amended. The City agrees that it will take all necessary actions to reallocate funds not otherwise reserved for scholarships in the Community Fund on the Effective Date to support BioCity, quantum-related initiatives and permanent jobs in the Innovation Cluster; and

(b) The Developer agrees at Closing, it shall contribute \$200,000 to the New Haven Board of Education for ongoing support of the BioCity program.

(3) For a period of five (5) years commencing on the Closing Date to further support opportunities for internships, the Developer shall reasonably cooperate with the Greater New Haven Chamber of Commerce and the New Haven Board of Education to assist students

enrolled in the BioCity program in preparing applications and interviewing for internships made possible through the Governor's Workforce Council Bioscience Partnership.

(4) For a period of five (5) years commencing on the Closing Date, the Developer shall notify New Haven Works of life sciences-related training and employment opportunities at the 2 Church Street Building.

(E) Innovation Cluster Local Employment Team. (the "Team") Commencing at the Effective Date, the City shall establish an Innovation Cluster Local Employment Team, the purpose of which is to coordinate resident access to permanent employment opportunities in the Innovation Cluster. The Team shall include representatives from New Haven Works, the Developer, major tenants as they execute leases, and such innovation sector intermediaries, academic institutions, workforce organizations, and community partners as the City and Developer shall determine. The Team shall convene no less than quarterly and shall be responsible for: (i) convening, with the support of the Developer, no less than one (1) employer orientation workshop following the Closing at which tenants and Innovation Cluster employers present anticipated job types and hiring timelines to workforce training partners, to be repeated as additional tenants execute leases; and after such workshop (ii) advising New Haven Works case managers about current hiring needs of Innovation Cluster employers consistent with Sections 7.2(C)(3) and 7.2(D)(4); (iii) maintaining records of New Haven resident placements and referrals, which shall be reported annually to the City; and (iv) ensuring that residents in the New Haven community are made aware of training and employment opportunities for construction work for a period of five (5) years from the date of Closing.

Section 7.3 **Small Business Opportunities**

(A) Business Fair. In order to provide meaningful opportunities for City-based businesses to participate in the Development, the Developer's primary architects, engineers and construction manager/general contractor will attend one business fair to be organized by the City, which will feature suppliers of goods and services located in the Greater New Haven area with particular emphasis on City-based businesses. The business fair will be held in the Hill Neighborhood. The Developer will also encourage its tenants to attend the business fair. The Developer further agrees to consider the purchase of goods and services from suppliers located in the Greater New Haven area in general and in the City, in particular, and the Developer also agrees that it will encourage its tenants to consider such purchases.

(B) Buy New Haven. The Developer shall make available copies either in hard copy or digital copy to its Construction Manager or General Contractor and its subcontractors Buy New Haven guides as prepared by the Center for Inclusive Growth for so long as such guide is published and regularly updated but not for more than five (5) years after the Closing Date.

(C) Buy New Haven Shop Local Events. For a period of five (5) years from the date of the issuance of the Certificate of Completion, the City through its Small Business Resource Center or other partner as may be determined by the City shall host two (2) small business fairs ("Shop Local Fairs") annually as follows:

(1) The Developer's obligations with respect to the Shop Local Fairs shall be limited to: (a) making available and subject to reasonable scheduling availability, applicable building rules (including insurance requirements and indemnification obligations) and the rights of tenants and occupants, a mutually agreed upon location (to the extent the same is within the Developer's control) at the 101 College Street plaza, the 101 College Street Building, the 2 Church

Street Building, the 2 Church Street Plaza, or the 100 College Street Property, (b) advertising each Shop Local Fair to all tenants of the foregoing buildings and properties through customary tenant communication channels; and (c) furnishing a standard form of agreement for use of the space at no charge to the City or its designated operator of the Shop Local Fairs.

(2) The City, at its sole cost, shall be solely responsible for the planning and operation of the Shop Local Fairs. The City may include the City's Small Business Resource Center, the Director of Arts, Culture and Tourism, the Center for Inclusive Growth and other such other organizations that the City selects in its planning efforts to ensure that a blended mix of local goods, food, arts, and other products is made available at each Shop Local Fair. The City shall be solely responsible for all vendor outreach and engagement, event programming, advertising and promotion to the public, event staffing and coordination, permits, security, insurance, weather contingency planning for outdoor locations, and compliance with applicable laws.

(3) In the event that a Shop Local Fair is canceled or postponed due to minimal participation, weather, or other circumstance beyond the reasonable control of the City or the Developer, such cancellation shall not be deemed an Event of Default under this Agreement, and the City and the Developer shall use reasonable efforts to reschedule the Shop Local Fair.

**Section 7.4 Construction Jobs and Small and Minority Business Opportunities**

(A) Workforce Utilization Requirements. The City and the Developer acknowledge that many construction jobs will be created as a result of the Development, and in order to increase construction employment opportunities for City residents, women and minorities to participate in the construction of the Development, the Developer shall comply with, or require that its general contractors, construction manager and its construction subcontractors for the Development, comply with all applicable City workforce requirements, including, without limitation, all equal

employment opportunity requirements and in particular, during the Development, the Developer agrees to require its general contractors, construction manager and its construction subcontractors:

(1) To comply with all provisions of Executive Order 11246 and Executive Order 11375, Connecticut Fair Employment Practices Act and Chapter 12 ½ of the Ordinance, including all standards and regulations which are promulgated by the government authorities who established such acts and requirements, and all standards and regulations are incorporated herein by reference, 29 U.S.C. Section 6511 et seq. Title VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act; the Americans with Disabilities Act; the Equal Pay Act; the Immigration and Nationality Act Section 274A; FLSA's recordkeeping Regulations, 29 CFR Part 516; General Statutes § 31-22p (standards of apprenticeship); and any other applicable federal, state and/or municipal law relating to employment. With respect to those portions of the Development which are funded by DECD Financing, the Developer agrees to comply with General Statutes § 31-54.

(2) Not to discriminate against any employee or applicant for employment because of race, color, religion, creed, gender, age, sexual orientation, gender identity or expression, pregnancy, marital status, mental/physical/intellectual/learning disability, national origin, status as a victim of domestic abuse, genetic information, veteran status, prior criminal record, if prohibited under Connecticut law, or national origin. The Developer shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to race, color, religion, creed, gender, age, sexual orientation, gender identity or expression, pregnancy, marital status, mental/physical/intellectual/learning disability, national origin, status as a victim of domestic abuse, genetic information, veteran status, prior criminal record and/or such action shall include, but not be 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.

(3) To post, in conspicuous places available to employees and applicants for employment, notices to be provided by the Contract Compliance Officer as defined by Ordinance § 12 ½ setting forth the provisions of this nondiscrimination clause.

(4) To state, in all solicitations or advertisements for employees placed by or on behalf of the Developer, that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, gender, age, sexual orientation, gender identity or expression, pregnancy, marital status, mental/physical/intellectual/learning disability, national origin; status as a victim of domestic violence, genetic information, veteran status, or prior criminal record to utilize the City sponsored workforce programs (as a source of recruitment); and to notify the City's Commission on Equal Opportunities of all job vacancies.

(5) To send to each labor union or representative of workers with whom the Developer has a collective bargaining agreement, or other contract or understanding, a notice advising the labor union or worker's representative of the Developer's commitments under the City's equal opportunity clause, and to post copies of the notice in conspicuous places available to employees and applicants for employment, and to require its general contractor and all construction subcontractors on the Development to register all workers in the skilled trades, who are below the journeyman level, with the Apprentice Training Division of the Connecticut State Labor Department.

(6) To furnish all information and reports required by the New Haven Commission on Equal Opportunities Contract Compliance Director, as defined in Ordinance § 12 ½-20(b), pursuant to Ordinance §§ 12 ½-9 through 12 ½-32 and to permit access to the Developer's

books, records and accounts by the City, the City Contract Compliance Director and the United States Secretary of Labor for purposes of investigations to ascertain compliance with the requirements of this Section 7.4(A). The Developer shall provide copies of all reports required under this section to the Economic Development Administrator.

(7) To file, along with its general contractors, construction manager and construction subcontractors, compliance reports with the City in the form and to the extent prescribed by the City Contract Compliance Director at such times as directed by the Contract Compliance Director, which compliance reports shall contain information as to the employment practices, policies, programs and statistics of the Developer, its general contractors, construction manager and the construction subcontractors relative to the Developer's obligations under this Section and to provide copies of such compliance reports to the Economic Development Administrator of the City..

(8) To 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. The Developer acknowledges that an employer can be fined or otherwise sanctioned for knowingly hiring an undocumented worker and 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.

(9) To acknowledge that a finding, as hereinafter provided, of a refusal by the Developer, its general contractors, construction manager or the construction subcontractors on the Development, to comply with any portion of this Section as herein stated and described, may subject the offending party to any or all of the following penalties:

(a) refusal of all future bids for any public contracts with the City, or any of its departments or divisions, until such time as the Developer, its general contractors, construction manager or its construction subcontractors, as the case may be, are in compliance with the provisions of this Agreement; and

(b) recovery of specified monetary penalties.

(10) To make best efforts to have its general contractor, or construction manager and all subcontractors for the Development hire the following groups, in correspondence to the following percentages of total hours completed on the Development: twenty-five percent (25%) of hours to be worked by minorities as defined in Ordinance § 12 ½-19(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; and fifteen percent (15%) of hours to be worked by apprentices provided that fifty percent (50%) of apprentice hours must be worked by first-year apprentices.

(11) To include the provisions of subparagraphs (1) through (10) of this Section 7.4(A) in every contract, subcontract or purchase order with respect to the construction of the Development so that said provisions will be binding upon each such contractor, subcontractor or vendor.

(12) To take such action, with respect to any general contractors, construction manager or subcontractor, as the City may direct as a means of enforcing the provisions of subparagraphs (1) through (11) herein, including penalties, fines and sanctions for noncompliance, provided, however, that in the event the Developer 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.

(13) Pre-Construction Workforce Engagement. Approximately two (2) months prior to execution of the construction management contract or the general construction contract by the Developer, the City shall convene an introductory meeting among New Haven Works, the Developer, and the Developer's prospective general contractor or construction manager, to discuss workforce referral protocols, job posting procedures, and a shared calendar of outreach and job fair events prior to the commencement of construction.

(14) In furtherance of achieving workforce participation goals, specifically as pertaining to New Haven residents, the Developer shall enter into an agreement with a qualified vendor of the Developer or the Developer's Construction Manager or General Contractor to provide two (2) pre-apprentice style readiness training sessions with the first session to be held no later than one (1) month following the Closing. The Developer's obligations with respect to the apprentice readiness training sessions shall be limited to engaging the trainers for the sessions and providing suitable understanding of the construction aspects of the Development to enhance the quality and effectiveness of the training program. The City shall be solely responsible for outreach, advertising, recruitment, promotion, and participant engagement for such training sessions and may engage New Haven Works to assist it in these efforts. Although it is the goal of the Developer and the City to include at least ten (10) participants in each training session, the City and the Developer acknowledge that the participation in each session may be fewer than ten (10) participants based on participant interest and other factors outside of the reasonable control of the Developer and the City.

(B) Notwithstanding the foregoing provisions of Section 7.4, in the event that there is a conflict between any requirements set forth in Section 7.4 and the requirements of the DECD

Financing or any Agency, then the Developer and the City shall cooperate to achieve the goals herein described.

(C) Small and Minority Business Utilization. In order to best provide opportunities for City-based, minority and small businesses to participate fully in the construction of the Development, the Developer shall comply with, or require that its construction manager, general contractors and all construction subcontractors for the Development, comply with all applicable City small contractor utilization requirements, including, without limitation, all small business construction initiative requirements and in particular, during the carrying out of the Development, the Developer agrees to require its construction manager, general contractors and its construction subcontractors:

(1) To comply with the provisions of Ordinance § 12 ¼ -9, which require that every effort be aggressively made to meet the MBE Utilization Goals. Pursuant to Ordinance §§ 12 ¼-9(d) and (f), the Developer 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 all of the construction subcontracts is awarded to MBEs. In order to achieve MBE Utilization Goals, contracts may be awarded to MBE 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 for the purpose of performing construction work on the Development. In the event that the Developer is unable to meet the MBE Utilization Goals, then the Developer shall document in an affidavit its good faith efforts to achieve the MBE Utilization Goals, which efforts will be evaluated, verified and recognized by the City if the Developer or its general contractors, construction manager has accomplished at least four (4) of the following (1) placing a notice of the subcontracting opportunity on an approved City construction opportunity website at least ten

(10) days in advance of selection of the subcontractor(s); (2) mailing notices (certified mail, return receipt requested) to at least four (4) business associations and/or development agencies which disseminate bids and other construction-related information to businesses within the Greater New Haven area not less than two (2) weeks prior to Developer's requests for bids or proposals, which notice shall describe the type of work being solicited, set forth the name, address and telephone number of a contact person from Developer's general contractor or construction manager with knowledge of the Development and state, when appropriate, where plans and specifications can be obtained; (3) showing proof of quotes received from subcontractors whose bids or proposals were denied because of cost, quality, availability, and similar reasons; (4) showing proof of outreach to and collaboration with the New Haven Contractors' Alliance and the City's Small Contractor Development Program; (5) describing in detail any attempts to enter into joint ventures or other arrangements with MBEs and/or assistance provided to MBEs relating to (a) the review of plans and specifications or other documents issued by the Developer or its general contractors or construction manager, (b) the review of work to be performed by MBEs on their portion of the Development, (c) encouragement of other subcontractors to utilize MBEs (d) encouragement of participation of MBEs and (e) all actions taken by Developer and its general contractors and/or, construction manager with respect to proposals received from MBEs for the Development including where appropriate, the reasons for the rejection of such proposals; (6) conducting a networking event with Developer's construction manager (if any) and general contractors; (7) holding individual trade meetings with Developer's construction manager (if any) or its general contractors; and (8) undertaking other efforts to encourage MBE participation in the Development, as determined in advance by the City, such as making reasonable efforts to bid out work in packages of a suitable size for small contractors.

(2) To ensure equal opportunities for participation by MBEs and SBEs in the Development, the Developer agrees that it or its general contractors and/or construction manager shall notify the City's Small Contractor Development Program of all construction contracting opportunities for all portions of the Project carried out by the Developer. The Developer and/or its general contractors/construction manager shall permit information about construction opportunities to be distributed to potential subcontractors via facsimile and email. The Developer together with the New Haven Contractor's Alliance and the City's Small Contract Development Program shall hold a workshop detailing such portions of the Development and the contracting opportunities therefor.

(3) To cooperate with the City's Small Contractor Development Program in its efforts to encourage mentoring programs and management, technical, and developmental training skills through sub-contracting opportunities.

(4) To furnish all information and reports required by the City's Small Contractor Development Program and to permit access to Developer's records and to require that its construction manager, general contractors and subcontractors provide access to their records in order to verify compliance with the requirements of this Section, to provide the City's Small Contractor Development Program with the opportunity to review proposed contracts prior to the award of the same and to provide such program with notice of all prebid conferences and the opportunity to attend such conferences. The Developer shall provide copies of all reports required by the City's Small Contractor Development Program to the Economic Development Administrator of the City.

(5) To take all reasonable corrective actions requested by the City to comply and to effectuate compliance with the requirements of this Section 7.4(C).

(6) Notwithstanding the foregoing provisions of this Section, in accordance with Ordinance § 12 ¼-11, in the event that there is a conflict between any requirements set forth in this Section 7.4(C) and the requirements of the DECD Financing or other Agency, then the Developer and the City shall cooperate to achieve the goals herein described.

(7) In addition, the Developer shall, working with the City's Small Contractor Development Program and the New Haven Contractors' Alliance, undertake a mentoring program for the MBE and SBE contractors who have been certified by the City's Small Contractor Development Program and are working on the Development. Such mentoring program shall include backstopping by the Developer of insurance requirements, payrolls and/or credit related issues as may be needed by such contractors from time to time for work done on the Development.

Section 7.5 **Commitment to Sustainability**

(A) LEED Rating System. The Developer agrees that it will design and build the core and shell of the 2 Church Street Building to meet the checklist criteria and certification under the Leadership in Energy and Environmental Design ("LEED") Green Building Rating System developed by the United States Green Building Council at the Silver Standard level, based upon the criteria existing as of the Effective Date or meet an equivalent rating system, provided, however, that the City agrees that no provision of this Agreement shall require the Developer to actually apply for and/or be granted LEED or any other certification.

(B) Sustainable Transportation Program. In order to promote bicycling to the 2 Church Street Parcel, the Developer will provide showers and a private changing area for cyclists who work in the 2 Church Street Building. The Developer shall take a shared parking approach to the Development by limiting on-site parking to less than 100 spaces and by entering into an agreement

with the Parking Authority for the use of parking spaces in the Temple Street Garage and the Temple Medical Garage as set forth in Section 11.2 below and Exhibit N to this Agreement.

(C) The Developer will take a climate awareness approach to construction of the 2 Church Street Building, the Parking Structure and the 2 Church Street Plaza and encourage its initial tenants who have signed leases prior to issuance of a certificate of occupancy to design fit-out space with a view to long-term responsiveness to climate change. The Developer shall prepare and provide to the City a LEED checklist which checklist shall address LEED relevant sustainability criteria applicable to both the core and shell of the 2 Church Street Building and the Developer's On-Site Public Improvements

(D) Electric Vehicle Charging Stations. The Parking Structure shall provide two (2) electric vehicle charging stations. Additionally, the Parking Structure will be equipped with the capacity to support additional electric charging stations, including sufficient electric capacity, appropriate wiring and conduit pathways.

#### **Section 7.6 Artistic Objects**

(A) The Developer will make efforts to include artistic programming on the 2 Church Street Parcel, including providing visual arts in and around the exterior of the 2 Church Street Building, in the 2 Church Street Plaza and in temporary displays in the lobby of the 2 Church Street Building. In creating such arts programming, the Developer will consult with local artists and the local arts community. Additionally, the City may include an artist in its design review of the Schematic Design for the 2 Church Street Plaza, as set forth in Section 5.1(B) above.

**ARTICLE VIII**  
**ACQUISITION OF THE 2 CHURCH STREET PARCEL BY THE DEVELOPER**

**Section 8.1    Access to the 2 Church Street Parcel**

(A)    Access to the 2 Church Street Parcel Prior to Closing, the City shall provide the Developer and its agents and contractors with access to the 2 Church Street Parcel subject to the Developer’s (or its agents’ or contractors’) execution of the City’s standard form of access agreement. attached hereto as Exhibit Q, for the purpose of performing the Enabling Work, performing an environmental site assessment, making a boundary survey, performing soil tests and borings, and physical inspection of the 2 Church Street Parcel, which access agreement shall include, without limitation, the requirement for the Developer to promptly provide the City with copies of any reports, data, or other documentation from such assessments, tests, borings, surveys and physical inspection(collectively referred to as the “Enabling Work Information”), upon a request by the City in accordance with the terms of Exhibit Q, unless the Enabling Work Information is necessary to address a “Significant Existing Release” under the Release Based Cleanup Program for which environmental insurance coverage may be available.

(B)    The City shall turn over and deliver to the Developer copies of all reports, studies, environmental assessments, surveys, plans, maps and other documents in its possession and/or control relating to the 2 Church Street Parcel, subject to the proviso, however, that no representation or warranty is being made by the City as to the accuracy or completeness of any information contained in any such documentation.

**Section 8.2    Preconditions to Developer’s Obligation to Acquire the 2 Church Street Parcel**

(A)    The acquisition of the 2 Church Street Parcel by the Developer from the City is subject to the satisfaction of each of the following preconditions, which are waivable by the

Developer. All waivers shall be memorialized in writing. The City and the Developer agree to use their reasonable best efforts to cause the matters within their respective control to occur by the Closing Date. The preconditions to the Closing are described below.

(1) The DECD Financing has been obtained or commitments for such financing reasonably satisfactory to the Developer have been made to the Developer to provide such financing. This precondition is waivable by the Developer.

(2) The Funding Gap has been eliminated or the City has paid funds to the Developer to eliminate the Funding Gap or a commitment to provide such payment reasonably satisfactory to the Developer has been made to the Developer by the City. This precondition is waivable by the Developer.

(3) Only the Acceptable Encumbrances shall continue to encumber the 2 Church Street Parcel. This precondition is waivable by the Developer. If waived, then in accordance with provisions of Section 8.3(B) below, the Developer shall accept the 2 Church Street Parcel subject to such encumbrances.

(4) The Developer shall have secured all permits and land use and other approvals as set forth in Article X below or as otherwise contemplated or provided elsewhere in this Agreement required by the Developer in its sole discretion to construct and operate the Development, which approvals are not subject to any conditions that are objectionable to the Developer in its sole discretion, including, but not limited to the following permits: (a) a determination by OSTA whether a Major Traffic Generator Certificate is required, and if required, the issuance of such Certificate or an amendment to an existing Certificate, (b) all permits required by DEEP, (c) all encroachment permits and other permits from DOT, if required, (d) storm water runoff, power, water and sewer connection permits, (e) street opening permits, (f) building

permits, (g) demolition permits, (h) Site Plan Review approvals, (i) soil and sedimentation approvals, (j) any Environmental Conditions have been remediated or otherwise resolved to the Developer's satisfaction and the periods for appealing such permits and approvals shall have expired without appeal (or such appeals shall have been finally adjudicated as being without merit and the permit or approval upheld). This provision is waivable by the Developer with respect to any of the permits and approvals required, with the provision that if waived, the City will not be responsible for the Developer's failure to obtain such permits and approvals.

(5) All licenses, easements and agreements required for the construction, maintenance and operation of the Development as described in Article IV, Article V, Article XI, and Exhibit K herein shall have been executed by all parties to such instruments and delivered to the Developer. This precondition is waivable by the Developer.

(6) There are no Environmental Conditions or Hazardous Materials or Releases that are unacceptable to the Developer, in its sole discretion at, on or emanating from the 2 Church Street Parcel, which require testing, remediation, monitoring or disclosure under Environmental Laws (other than those created by the Developer). The condition is waivable by the Developer, and the Developer may accept the 2 Church Parcel in its "as is" "where is" condition subject to the City's obligation to work with the Developer to obtain funds to pay for any Remediation Work that needs to be done as set forth in Section 9.1 and subject to the City's obligation to indemnify the Developer for the costs of any Remediation Work required for such Environmental Conditions, Hazardous Materials and/or Releases as set forth in Article IX.

(7) The 2 Church Street Parcel remains (i) located within the BD-3 District and in the Downtown for All Overlay District Inner Core under the Zoning Ordinance and (ii) there have been no amendments to the text or the map of the BD-3 District and the Downtown for All

Overlay District since the Effective Date, which the Developer, in its sole discretion, determines would materially and adversely affect the Development as described in this Agreement and as depicted in the Schematic Design. This condition is waivable by the Developer.

(B) The Closing Date will be as set forth in Exhibit D. If the foregoing conditions have not been satisfied or waived in writing by the Closing Date by the Developer, the Developer may elect to terminate this Agreement upon at least thirty (30) days' prior written notice to the City (delivered at any time following the Closing Date) and upon such termination by the Developer, the parties shall be fully released from and have no further obligations hereunder to each other, subject to Section 15.3 below.

(C) If the foregoing conditions have not been satisfied or waived in writing by the Developer by the Closing Date, the Developer may, in its sole discretion, elect to extend such Closing Date (subject to the City's right to terminate in Section 15.1 below) and the dates for the Developer's construction of the Development shall be correspondingly extended on the Project Schedule.

**Section 8.3 Transfer of the 2 Church Street Parcel to the Developer**

(A) Scheduling the Closing

The Closing shall take place on the Closing Date set forth in the Project Schedule on Exhibit D, unless either such Closing Date has been extended due to Excusable Delay (but not longer than six (6) months) or in writing by the Developer, or by written agreement of the Developer and the City, or in accordance with the terms of this Agreement. If either the Developer or the City disputes that the conditions precedent to the Closing have been satisfied or waived, or if the parties cannot agree to the terms and conditions of any waiver, the parties shall participate in the Dispute Resolution Procedure.

(B) Form and Content of the Quit Claim Deed

(1) The conveyance of the 2 Church Street Parcel shall be by means of a Quit Claim Deed in the form attached hereto as Exhibit J or by means of a Quit Claim Deed substantially similar thereto.

(2) The Quit Claim Deed shall convey the City's entire interest and title to the 2 Church Street Parcel, except for its interest in the Drainage Pipe which the City shall retain title to.

(3) The Developer shall be entitled to the conveyance of a good and marketable fee simple title to the 2 Church Street Parcel subject only to the Acceptable Encumbrances and this Agreement and accordingly cannot be required to accept the 2 Church Street Parcel, unless such good and marketable title to the parcel can be delivered by the City, and the Developer is able to obtain title insurance for such parcel insuring a good and marketable fee simple title from a title insurance company reasonably acceptable to the Developer. Marketability of title shall be determined in accordance with the Standards of Title of the Connecticut Bar Association. Notwithstanding the foregoing, the Developer may, in its sole discretion, accept such title to the 2 Church Street Parcel as the City is able to convey, in which event, it is agreed and understood that since the conveyance shall be by way of a Quit Claim Deed (meaning that the City will make no representations and warranties as to the status and quality of the title) by accepting the Quit Claim Deed from the City, the Developer will be accepting the quality of title conveyed by such Quit Claim Deed.

(4) This Agreement shall be recorded in the New Haven Land Records prior to the recording of the Quit Claim Deed. The legal description of the 2 Church Street Parcel to be conveyed to the Developer shall be as set forth in Exhibit A and the Survey (Exhibit B) (which

survey shall be updated and shall disclose no encroachments, easements and other matters affecting the title other than the Acceptable Encumbrances or such matters and encumbrances affecting the title as may be agreed to by Developer or which are to be released at the Closing).

(5) The Quit Claim Deed shall reserve unto or another instrument shall grant to the City on terms mutually agreed to by the City and the Developer and as generally described in Exhibit L: (i) a permanent easement over that portion of the 2 Church Street Parcel situated below grade upon which the 2 Church Driveways and Tunnels will be constructed and located, all as described in Exhibit E and over, under and across the 2 Church Street Parcel, the 2 Church Street Building, the 2 Church Street Plaza, and the Parking Structure as is necessary for the City to repair, maintain and replace the 2 Church Tunnels and Driveways; and (ii) permanent easements for the maintenance, repair and replacement of the Streetscape Improvements (if required) and the Drainage Pipe.

(6) If the City and the Developer are unable to agree to the terms of such reservation and/or easements, such dispute(s) shall be submitted to the Dispute Resolution Procedure.

(C) Purchase Price

(1) The 2 Church Street Parcel shall be conveyed to the Developer in consideration of all of the Developer's financial and other obligations hereunder and the mutual covenants and conditions herein.

(D) Real Estate Conveyance Tax and other Closing Costs

(1) The Developer shall pay the cost of obtaining any policies of title insurance for the 2 Church Street Parcel. The Parties acknowledge that under the General Statutes, § 12-498, there will be no real estate conveyance taxes required to be paid in connection with the conveyance

of the 2 Church Street Parcel. The City will cause this Agreement, the Quit Claim Deed, the Parking Agreement and all other licenses, agreements, easements and permits or approvals granted in favor of the 2 Church Street Parcel, the Developer, the Parking Authority or the City, in connection with this Agreement to be recorded, so that there will be no costs of recording of these instruments and approvals. Each party shall be responsible for payment of the legal fees of its own counsel in the negotiation and execution of this Agreement, the Quit Claim Deed, the transfer of the 2 Church Street Parcel, the Parking Agreement, and all instruments contemplated by this Agreement.

(E) Real Property Tax Adjustments

(1) The Parties acknowledge that the 2 Church Street Parcel will have been exempt from taxation on the assessment date immediately preceding the date on which the Quit Claim Deed will be recorded in the New Haven Land Records by virtue of title to the land that comprises such parcel having been vested in the City. Accordingly, the Developer acknowledges that it shall be liable for real property taxes from the date of the Closing pursuant to General Statutes § 12-81a and shall make payment of such taxes in accordance therewith.

(F) Other Documents to Be Delivered at the Closing

(1) At the Closing, the Developer shall provide the City with evidence of financial ability to construct the Development in accordance with the Project Schedule set forth in Exhibit D. Such evidence may be in the form of the first page and the signatory pages of the contract between the Developer and its construction manager or general contractor for the Development.

**ARTICLE IX**  
**CONDITION OF THE 2 CHURCH STREET PARCEL**  
**AND ENVIRONMENTAL MATTERS**

**Section 9.1**    **Condition of the 2 Church Street Parcel**

(A)            The Developer acknowledges and agrees that the City has not made any representations or warranties to the Developer regarding the condition of the 2 Church Street Parcel upon which the Developer is relying and for all purposes with respect to the suitability and conditions of such parcel, the Developer is relying solely upon its inspection of the 2 Church Street Parcel.

(B)            The Developer acknowledges that the City does not make, has not made and specifically disclaims any representations or warranty, express or implied, regarding what the Environmental Conditions of the 2 Church Street Parcel will be at the Closing; however, this acknowledgment shall not be construed to excuse the City from its obligations under Section 9.2 below.

**Section 9.2**    **Environmental Matters**

(A)            Prior to the Closing Date on the Project Schedule set forth in Exhibit D, if the Environmental Phase I/Phase II or Phase III Report discloses a City Environmental Condition, the Developer may terminate this Agreement.

(B)            Alternatively, the Developer may develop a plan for investigating, remediating and closure and/or monitoring such Environmental Conditions and/or removing such Hazardous Materials and/or complying with the Release Based Cleanup Program. The Developer shall estimate the costs of the remediation work required under the Release Based Cleanup Program for the 2 Church Street Parcel (the “Remediation Work”). The City and the Developer will then work cooperatively to identify and secure funding on mutually acceptable terms to pay for Remediation

Work, TIME BEING OF THE ESSENCE in securing such funding. The Developer may elect to apply for eligibility for the 2 Church Street Parcel to participate in the Brownfield Remediation and Revitalization Program established in General Statutes § 32-769 (the “BRRP Program”). or other brownfields and/or liability protection program. The City and the Developer shall adjust any dates on the Project Schedule set forth in Exhibit D, including the Closing Date, which need to be extended due to the need to secure funding for the Remediation Work and the time required to perform the environmental remediation.

(C) If by, twelve (12) months after the Effective Date and prior to the adjusted Closing Date, the Developer determines in its sole and absolute discretion that funding for the Remediation Work for the City’s Environmental Condition is not likely to be secured within a reasonable period of time, provided that the 2 Church Street Parcel has not been conveyed to the Developer, the Developer may terminate this Agreement and upon such termination, the parties shall be fully released from and have no further obligations hereunder except as provided in Section 15.3 below.

(D) If the 2 Church Street Parcel has been conveyed to the Developer, the City shall indemnify, defend and hold harmless the Developer and its members, officers, employees, agents and successors and assigns from and against any and all liability, fines, suits, claims, demands, judgments, actions, or losses, penalties, damages, costs and expenses of any kind or nature, including, without limitation, reasonable attorney’s fees made or asserted by anyone whomsoever, due to a City’s Environmental Condition (whether first discovered after the Developer takes title to the 2 Church Street Parcel or not) excluding any Environmental Conditions which are caused or contributed to (but only to the extent of such contribution) by the Developer, its agents, contractors or employees.

(E) The Developer shall indemnify, defend and hold harmless the City and its officials, employees, agents and successors and assigns from and against any and all liability, fines, suits, claims, demands, judgments, actions, or losses, penalties, damages, costs and expenses of any kind or nature, including, without limitation, reasonable attorney's fees made or asserted by anyone whomsoever, due to or arising out of, any Environmental Conditions or Hazardous Materials on, at or emanating from the 2 Church Street Parcel first occurring on a date after the Closing and while the Developer owns the 2 Church Street Parcel, but excluding any City's Environmental Condition.

(F) If the Developer is required to defend any such action or proceeding, the City shall be entitled to appear, defend, or otherwise take part in the matter involved at the City's election (and sole cost and expense) by counsel of its own choosing, provided any such action does not limit or make void any liability of any insurer of the Developer with respect to the claim or matter in question. The Developer and the City acknowledge that the Developer shall have no liability for any Environmental Conditions that exist or may arise at any time which are not located on the 2 Church Street Parcel, so long as the Developer did not cause or contribute to said Environmental Conditions.

(G) The City agrees that it shall obtain environmental insurance that covers claims made for unknown existing Environmental Conditions at the 2 Church Street Parcel as of the Effective Date and Environmental Conditions that arise at the 2 Church Street Parcel following the Effective Date (a certificate of insurance which evidences such coverage is attached hereto as Exhibit U). In every instance where a claim can be made or is made under the Environmental Insurance, the City agrees to take all reasonable efforts to pursue such claim, and the City and the Developer each agree to cooperate with each other in pursuing such claim.

**ARTICLE X  
PERMITS AND APPROVALS**

**Section 10.1 Permits**

(A) Zoning and Land Use Approvals

(1) The Developer shall apply for and obtain all zoning and land use approvals which are required for the Development. The Developer shall file for Site Plan Review for those aspects of the Development which require Site Plan Review with the City Plan Commission pursuant to Section 64 of the Zoning Ordinance. The Developer shall not be required to appeal a denial of any of these applications or any conditions placed on approvals to such applications which are not acceptable to the Developer in its sole discretion. Any changes to any matters contemplated by this Agreement approved by the City Plan Commission as part of its Site Plan Review, when agreed to in writing by the Developer, be deemed to modify the matters contemplated by this Agreement without any need for any modification or amendment to this Agreement.

(B) Other Municipal Permits

(1) The Developer shall apply for all required building permits, certificates of occupancy, street openings and other permits required for the construction and operation of the Development.

(C) Greater New Haven Water Pollution Control Authority

(1) To the extent required by Section 4 of the GNHWPCA Sewer Ordinance, as amended, the City's BOA consents to and approves any extension of the GNHWPCA collection system or the capacity of the GNHWPCA system required for the Development.

(D) State of Connecticut Permits

(1) The Developer will apply to OSTA for a determination whether a Major Traffic Generator Certificate is required for the Development. The City and the Parking Authority shall support such application and shall request that any conditions of approval of such determination by OSTA include with respect to the Development only those traffic improvements that are proposed to be constructed by the City and the Developer pursuant to this Agreement (including Exhibits E and P). The City and the Parking Authority, as appropriate, shall sign any applications to OSTA for which their signatures are required.

(2) The Developer will also apply to the DEEP for all permits necessary for the improvements that the Developer constructs under this Agreement and any amendments thereto, including permits required for the lawful discharge of surface waters from the 2 Church Street Parcel.

(3) Additionally, the Developer shall apply to DOT for all permits necessary to construct the Development, including all required encroachment permits.

**Section 10.2 Assistance by the City**

(A) The City shall fully and expeditiously assist the Developer in obtaining all approvals and permits required for the Development and shall support in good faith all applications required for such approvals, including without limitation any zoning relief, modifications and permits required for the Pedestrian Connection. The City shall work cooperatively with the Developer in seeking all necessary approvals from, DOT, OSTA and DEEP, in order to facilitate the transfer of the 2 Church Street Parcel to the Developer on or before the Closing Date.

(B) The City has determined that the Development is as-of-right under the Zoning Ordinance and further agrees not to amend the Zoning Ordinance (including its map and text) or

to adopt a land use plan which would not permit the Development contemplated by this Agreement as of right (i.e., without the need for any variances, special exceptions and/or special permits) or to make any changes to the BD-3 District and the Downtown for all Overlay District which would have an adverse impact on the 2 Church Street Parcel during the Term.

(C) Review of Requests for Consents and Approvals

(1) Unless otherwise specifically provided for elsewhere in this Agreement, the City shall review all of Developer's requests for consents, approvals of submissions (other than applications for zoning and land use approvals), material certifications, product submittals, shop drawings, field changes, construction coordination sketches and waivers, and shall conduct all inspections required under this Agreement within the Review Period. The City shall notify the Developer in writing within the Review Period whether the City consents to or denies approval of the request or submission or approves and/or accepts the work inspected. Where consent, approval or acceptance of work by the City is required, such consent or approval shall not be unreasonably withheld, conditioned or delayed. Where consent, approval or acceptance is also required by an Agency or Agencies, the City shall not be responsible for the timeliness of the Agency or Agencies' reviews, and delays in such reviews may constitute Excusable Delays. Where the City consents to or approves a request of the Developer under this Agreement or accepts work performed by the Developer under this Agreement, such consent, approval or acceptance shall be conclusively deemed a final consent, approval or acceptance by the City, subject to the consent, approval or acceptance of an Agency or Agencies, if required. The City agrees to give notice to the Developer when an Agency or Agencies' review, consent or approval is needed for a particular item or event. The City will encourage prompt review by an Agency or Agencies of any consent, approval or acceptance required.

(2) In the event that the City does not grant or deny approval of the Developer's request or submission or accept or reject the Developer's work within twenty-three (23) calendar days of the Developer's request or submission, then the Developer shall give written notice to the Economic Development Administrator and the Project Manager of the impending expiration of the Review Period. In the event that the City does not grant or deny approval or accept or reject the Developer's work or notify the Developer that consent, review or approval by an Agency is required before the expiration of the Review Period of the Developer's request or submission, and the Developer has provided the Economic Development Administrator and the Project Manager with written notice of the impending expiration of the Review Period, then such request or submission of work shall be deemed approved or accepted by the City as of the end of the Review Period but shall remain subject to further Agency comment and approval. Notwithstanding the foregoing, the provisions of this Section 10.2(C)(2) shall not apply to (i) the inspections by the Commissioning Agent and the Commissioning Authority under the Air Rights Implementation Guidelines (Exhibit M) and the acceptance of the 2 Church Tunnels and Driveways by the City Engineer, the time for which review shall be governed by the Air Rights Implementation Guidelines (Exhibit M) and (ii) the City's review of the Developer's requests for payment from the DECD Financing, which review period shall be governed by the provisions of Exhibit G.

(3) In the event that the City denies the Developer's request for approval or disapproves the Developer's submission or is not reasonably satisfied with its inspection of the Developer's work, the City shall promptly provide notice to the Developer of such disapproval or denial, which notice shall be accompanied by written comments to the Developer of the reasons for its denial or disapproval. In such case, the denial or disapproval shall be submitted to the Dispute Resolution Procedure. In the event that there is a conflict between this section and

provisions of Exhibit G with respect to consents, acceptances, inspections and approvals required for the disbursements of the DECD Financing, the provisions of Exhibit G shall govern.

(D) The Parties acknowledge that in connection with the submission of this Agreement to the BOA, the Developer will be submitting a traffic study to the BOA as required by Section 2 ½ -25 of the Ordinances.

## **ARTICLE XI EASEMENTS, LICENSES AND AGREEMENTS**

### **Section 11.1 Easements, Licenses and Agreements from the City and Consents by the Parking Authority**

(A) The City acknowledges that the Developer requires certain easements, licenses and/or agreements from the City with respect to City maintained rights-of-way and City owned property, in order to construct, reconstruct, operate, use, repair, and/or maintain the Development, including without limitation (i) the right to enter the 2 Church Street Parcel for the purpose of performing the Enabling Work prior to the Closing and (ii) easements to perform work on the Church Street Bridge and the Remaining Service Drives required for the construction of the 2 Church Tunnels and Drives. The City agrees to grant the licenses and easements to the Developer described in Exhibit K, including without limitation all licenses, easements and agreements required for the Pedestrian Connection. The City further agrees to grant and the Parking Authority agrees to consent to grant construction easements over, under and across the Air Rights Garage to limit traffic on the lower level to one lane during construction, to temporarily relocate certain curbs and to post way-finding signs.

(B) The City agrees to grant any additional licenses, easements or agreements as may be required to construct, complete and operate the Development and the 2 Church Street Parcel, and the Parking Authority agrees to consent to such agreements, easements and licenses granted

by the City that concern properties on which the Parking Authority operates parking facilities The City and the Parking Authority are each hereby authorized to execute such additional licenses, easements or agreements, as may be required, provided that the City and/or the Parking Authority, as applicable, shall be supplied with the reasons for such licenses, easements or agreements and the detailed plans of those improvements that will be the subject of the easements, agreements and licenses in question for final approval by the City, acting through its Economic Development Administrator and, if applicable, for final approval by the Parking Authority acting through its Chairman and its Board of Commissioners, which approval will not be unreasonably withheld, conditioned or delayed; and provided further that with respect to any such license, easement or other agreement granted by the City and, if applicable, consented to by the Parking Authority, the Developer will comply with the requirements for indemnification and insurance set forth in Exhibit K.

(C) The Developer agrees with respect to any such license, easement or agreement granted by the City, and, if applicable, consented to by the Parking Authority or reserved by the City or enjoyed by the Developer over, under and through the City's property or public rights-of-way, the Developer will indemnify the City or the Parking Authority (with respect to an easement or license concerning the Air Rights Garage) for any third party claims brought against the City and/or the Parking Authority with respect to the Air Rights Garage arising out of the Developer's exercise of its rights under such easements, licenses or agreements, inclusive of reasonable attorney's fees and costs, except to the extent that any such claims arise out of the City's or the Parking Authority's, if applicable, or their respective contractors', employees', or officials' or agents' intentional acts or omissions or negligence, and the Developer shall maintain general liability insurance with at least \$5,000,000.00 limits in coverage for risks associated with its

exercise of its rights under the licenses, easements or agreements described in this section, subject to reasonable deductibles as set forth in Exhibit K.

**Section 11.2 Parking Agreement among the Parking Authority, the Developer and the City**

(A) The Parties acknowledge that simultaneously with the execution of this Agreement, they are entering into the Parking Agreement substantially in the form attached hereto as Exhibit N for the Parking Authority to make available to the Developer a minimum of two hundred and eighty-five (285) parking permits with a maximum of four hundred (400) parking permits for parking Developer's tenants and their employees and visitors in the Temple Street Garage and the Temple Medical Garage. The City agrees that as the owner of the Temple Street Garage and the Temple Medical Garage, it will be a signatory to the Parking Agreement.

(B) In the event that there is a conflict between the Parking Agreement and this Agreement, the terms of the Parking Agreement shall control.

**Section 11.3 Licenses, Easements and Agreements from Third Parties to the Developer**

(A) The City agrees, at the Developer's request, to assist the Developer in obtaining licenses, agreements, easements, and releases from any third parties which are required for the construction, operation and completion of the Development. The City also agrees to assist the Developer with respect to agreements with utility providers which are required for the provision of utility services for the 2 Church Street Parcel.

**Section 11.4 City Agreements with Third Parties**

(A) The City agrees to enter into all licenses, agreements and easements required for the construction, ownership, maintenance, repair, and replacement of the Pedestrian Connection with the owner of the 2 Church Street South Property.

**Section 11.5 Easements, Licenses and Agreements from the Developer to the City**

(A) The Developer agrees to grant to the City such licenses, easements or agreements as the City may require and as are described in Exhibit L. The City agrees to enter into an agreement subordinating any of the foregoing licenses, easements or other agreements to any environmental land use restriction or similar restriction if prudent.

(B) The aforesaid easements, licenses and agreements granted by the Developer to the City shall provide that the City shall not unreasonably interfere with any of the Developer's operations on the 2 Church Street Parcel when exercising its rights under such licenses, easements and agreements. The City further agrees that with respect to any such license, easement or agreement granted by the Developer to the City or reserved by the City or enjoyed by the City over, under and through the 2 Church Street Parcel, the 2 Church Street Building, the 2 Church Street Plaza, and/or the Parking Structure, the City will indemnify the Developer for any third party claims brought against the Developer arising out of the City's exercise of its rights under such easements, licenses or agreements, inclusive of reasonable attorney's fees and costs, except to the extent that any such claims arise out of the Developer's or its contractors' or its employees' or officials' or agents' intentional acts or omissions or its own negligence, the Developer acknowledging that the City is self-insured for such risks.

**ARTICLE XII  
CONSTRUCTION OF THE PROJECT**

**Section 12.1 Compliance with Applicable Laws**

(A) The design and construction of the Project shall be in compliance with all applicable City, State and federal laws and regulations, permits and approvals and Legal Requirements.

**Section 12.2 Soil Removed from the 2 Church Street Parcel**

(A) The City hereby grants permission to the Developer, subject to approval by the City Plan Commission of a Soil and Sedimentation Control Plan under Section 58 of the Zoning Ordinance to remove prior to the Closing approximately 10,000 cubic yards of soil from the 2 Church Street Parcel, which permission is subject to the execution by the Developer of Exhibit Q.

**Section 12.3 Construction Details**

(A) Construction Fencing and Publicity

(1) The Developer agrees that during the construction of the improvements on the 2 Church Street Parcel, the construction fencing for the 2 Church Street Parcel shall be of a high quality and with appropriate material, height, and content, such as images of New Haven selected by the Developer, which shall be reviewed by the City's Development Administrator. Additionally, during such construction period, a sign will be erected on the 2 Church Street Parcel which will provide the names of all of the public entities that have provided funding for the Development and which sign shall comply with the requirements of the City, DECD and any Agencies providing funding. The Developer agrees to cooperate with the City, DECD, and any Agencies providing funding regarding publicity for the Project.

**Section 12.4 Insurance**

(A) Developer's Insurance Obligations

(1) The Developer shall cause its construction manager/general contractors for the construction of the Developer's Site and Traffic Improvements to post performance and payment bonds which name the Developer, the Developer's construction financing lenders (if permitted by the surety) and the City as obligees and beneficiaries of such performance and payment bonds.

(2) The Developer shall post a bond in such amounts as may be required by the City Plan Commission in connection with its Site Plan Review in accordance with the requirements of General Statutes, § 8-3(g).

(3) In connection with the design and construction of the Development, the Developer shall obtain, or cause to be maintained by its construction managers/general contractors, the following insurance: (a) workers' compensation insurance with respect to all operations performed in accordance with the requirements of the laws of the State of Connecticut (Statutory), and employer's liability insurance with limits of \$100,000 each accident, \$100,000 coverage for each employee for disease, and \$500,000 policy limit for disease; (b) commercial general liability insurance with respect to all operations the construction manager/general contractor performs providing a total limit of \$1,000,000 per occurrence per location for all damages arising out of bodily injury, personal injury, property damage, contractual liability, and products completed operations liability coverage for the indemnification obligations arising under this Agreement (each annual aggregate shall be \$2,000,000, and the products completed operations coverage shall have a separate aggregate limit of not less than \$2,000,000 aggregate); (c) with respect to claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any vehicle, the Developer shall arrange for its construction managers/general contractors to carry for each owned, non-owned, hired, borrowed or leased vehicle, automobile liability insurance providing \$1,000,000 combined single limit coverage per accident for bodily injury and property damage; (d) umbrella or excess liability insurance with a minimum limit of \$5,000,000 per occurrence/general aggregate excess of all liability insurance described within the Agreement, other than workers' compensation (commercial general liability, automotive liability and employer's liability); (e) with the exception of workers' compensation,

all persons whom the Developer is required to indemnify under this Agreement, and any other party whom the Developer and City shall agree to shall be named as an additional insureds on all such policies by endorsement with respect to the construction activities to be performed under this Agreement by the Developer. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

(4) The Developer's construction manager/general contractor shall be named as the certificate holder on a valid certificate of insurance for all insurance coverage required herein to be maintained by the Developer's subcontractors/trade contractors. In addition, the Developer shall cause all subcontractors/trade contractors to obtain, maintain and show evidence of insurance coverage in the same minimum scope and limits of insurance as required herein for the Developer's construction manager/general contractor, with the exception of umbrella/excess liability which will not be required. These policies issued to the Developer's subcontractors (except for workers' compensation) shall name the City and all persons whom the Developer is required to indemnify as additional insureds. Should the insurance requirements of an Agency or Agencies require additional or different types of insurance, the requirements of such Agency or Agencies shall be complied with by the Developer in addition to these requirements.

(5) At all times during the design and construction of the Development, the Developer shall, maintain, or cause its outside primary architects and engineers with whom it contracts to perform the design work and the construction administration work (primary architects and engineers, and site, civil, environmental, traffic, and structural engineers) to maintain architect's and engineer's professional liability errors and omissions insurance with a minimum of \$5,000,000.00 per claim and in the aggregate for damage caused by an error, omission or any negligent or wrongful act, subject to adjustment if agreed to by the City and the Developer.

(6) At all times during the design and construction of the Development, the Developer shall maintain or cause any other subconsultant architects, engineers, consultants, and designers (such as mechanical, electrical, plumbing, landscaping, sustainability consultant, wind/airflow designer, parking flow designer, security, valet, etc.) performing the design and construction administration work to maintain architect's errors and omissions or other professional liability errors and omission insurance with a minimum of \$1,000,000 per claim and in the aggregate, for damage caused by an error, omission or any negligent or wrongful act, subject to adjustment if agreed to by the City and the Developer.

(7) If the policy is written on a "claims-made" basis, then an extended reporting period "tail" or continuous claims-made liability will be required at the completion of the Development after the issuance of the Certificate of Completion, for a duration of the shorter of three (3) years after such completion or for the maximum time period reasonably available in the marketplace. Continuous "claims-made" coverage will be acceptable in lieu of "tail" coverage provided its retroactive date is on or before the Effective Date.

(8) Property Insurance. With respect to (i) the Developer's Private Improvements, the Developer's On-Site Public Improvements and the Streetscape Improvements until a Certificate of Completion is issued for the same, and (ii) the 2 Church Tunnels and Driveways until the same are accepted by the City Engineer, the Developer shall keep such improvements and all related insurable personal property insured against all risks of direct physical loss or damage and against such additional risks with respect to which insurance is commonly carried on similar property (real and personal) in the City. Such insurance shall be in amounts comprising the total value of the 2 Church Tunnels and Driveways (with respect to insurance for such improvements), and the Developer's Private Improvements, the Developer's On-Site Public

Improvements and the Streetscape Improvements (with respect to insurance for such improvements), on a full replacement cost basis. Property insurance shall be written on a Builder's "All-Risk" policy form that shall include insurance for physical loss or damage to the work, temporary buildings, falsework, materials and equipment in transit, including in the 2 Church Tunnels and Driveways underlying the 2 Church Street Building, the 2 Church Street Plaza and the Parking Structure and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, flood, and tornadoes, collapse, removal of debris, testing and startup, temporary buildings and removal of debris, demolition occasioned by enforcement of laws and regulations, and water damage.

(9) All such insurance required to be obtained by the Developer under this Agreement shall be by standard policies, obtained from financially sound and responsible insurance companies authorized to do business in the State with an AM Best rating of A- or better and with respect to casualty insurance shall have attached thereto a clause making the loss payable to the Developer, and/or any Mortgagee, and subject to the rights of any Mortgagee. Each insurance policy shall be written to become effective at the time the Developer becomes subject to the risk or hazard covered thereby and shall be continued in full force with respect to: (i) the Developer's Private Improvements, the Developer's On-Site Public Improvements and the Streetscape Improvements until issuance of the Certificate of Completion for the same, and (ii) the 2 Church Tunnels and Driveways until the acceptance by the City Engineer of the same, or such other dates as the City and Developer and any Mortgagee may agree are appropriate.

(10) Deductibles and Self-Insured Retentions must be declared to and approved by the City's Corporation Counsel's Office as commercially reasonable.

(11) Prior to the date on which a particular improvement is no longer required to be insured as set forth in subparagraphs (8) and (9) above, all required insurance policies shall provide that they cannot be canceled or terminated unless and until at least ten (10) days' prior written notice of such imminent cancellation or termination has been delivered to the City for a cancellation due to nonpayment of premiums and until at least thirty (30) days' prior written notice of such imminent cancellation or termination has been delivered to the City for any other reason.

(12) In the event that, at any time prior to the date on which insurance is no longer required to be carried under this Section 12.4(A), if the Developer or its construction managers/general contractors or subcontractors or their construction managers/contractors, subcontractors, architects, engineers, designers, or subconsultants refuse, neglect or fail to secure and maintain in full force and effect any or all of the insurance required pursuant to this Agreement, the City, at its option, may procure or renew such insurance. All amounts of money paid therefor by the City shall be reimbursed by the Developer to the City with interest thereon at the rate of ten percent (10%) per annum from the date of payment by the City to the date of reimbursement by the Developer. Before procuring or renewing any such insurance, the City shall provide the Developer and any Mortgagee with ten (10) days' prior notice of the expected dates, purposes, and amounts of any such payments to be made by it, during which period the Developer and any Mortgagee shall have the opportunity to cure any such deficiency in insurance coverage. If the Developer or the Mortgagee cures any such deficiency in insurance coverage as provided for above, such deficiency shall not be considered an Event of Default under Section 14.1(A) below.

(13) At any time prior to the date on which a particular improvement is no longer required to be insured as set forth above, whenever any such improvement, or any significant part thereof, constructed as part of the Development, shall have been damaged or destroyed, the same

shall be considered a Force Majeure Event for purposes of reconstruction and scheduling. To the extent possible, the Developer will proceed with construction on those portions of its obligations that are not delayed by the destruction and/or damage. In addition, the Developer shall proceed promptly to establish and collect all valid claims which may have arisen against any insurer based upon any such damage or destruction. All proceeds of any such claims and any other monies provided for the reconstruction, restoration or repair of such improvement, shall be deposited in a separate account which may be under the control of any Mortgagee. Subject to the rights of any Mortgagee, such insurance money so collected shall be used and expended for the purpose of fully repairing or reconstructing the improvement or improvements which have been destroyed or damaged to a condition at least comparable to that existing at the time of such damage or destruction to the extent that the insurance money may permit, and if there is any excess of insurance proceeds after such repair or reconstruction has been fully completed, the Developer shall retain such excess.

(14) Notwithstanding the foregoing, should the City's property or the tunnels and driveways under the 100 College Street Property and/or under the 101 College Street Property be damaged or destroyed during the same event, the City shall have the right to make a claim against any parties or on all applicable insurance policies for damages to its own property interests.

(15) The Developer shall commence any repair or reconstruction of those portions of the improvement which could not be proceeded with due to lack of insurance money within six (6) months of receiving the insurance proceeds with respect thereto, subject to Excusable Delays (or such longer period as mutually and reasonably agreed upon by the Developer and the City), and shall diligently and with prompt dispatch prosecute the same, so as to fully complete such reconstruction or repair within eighteen (18) months from the commencement

thereof subject to Excusable Delays, such longer period as mutually and reasonably agreed upon by the Developer and the City or as is otherwise set forth in Project Schedule set forth in Exhibit D. Moreover, notwithstanding any provision of this Agreement, the Developer shall only have the obligation to undertake reconstruction or restoration of any improvements to the 2 Church Street Parcel to the extent that the Developer has received adequate insurance proceeds to pay for such reconstruction or restoration.

(16) In the event that there are inadequate insurance proceeds to fully complete reconstruction or repair or the Developer and the City determine and agree (with, where required, the approval of any Mortgagee) that any improvement, or any part thereof, constructed as part of the Development shall have been damaged or destroyed to the extent that the Developer and the City (with, where required, the approval of any Mortgagee) agree that the improvement should not be repaired, reconstructed or restored in whole or in part, then the Developer and the City with the approval of any Mortgagee, if required, shall enter an agreement which covers, subject to the rights of the Mortgagee, the distribution of the proceeds of any claim against insurers or others arising out of such damage or destruction, including the extent to which the proceeds shall be used (i) for the restoration of 2 Church Street Parcel and (ii) to satisfy any outstanding claims or expenses as the Developer may have incurred with respect to the Development, and which agreement shall provide for the distribution to Developer of any surplus of such proceeds. Under such circumstances, the Developer may terminate this Agreement upon 30 days' notice, and the parties shall have no rights or obligations with respect to this Agreement other than as stated in Article XV.

(17) Certificate of Insurance. As evidence of the insurance coverage required under this Agreement, the Developer shall cause to have furnished to the City's Corporation

Counsel's Office all applicable certificates of insurance signed by a person authorized by the insurer to bind coverage on its behalf, and all renewals of expiring certificates shall be filed within thirty (30) days' prior to expiration at the addresses specified in Section 16.1(B) below. The certificates shall specify all parties who are additional insureds.

(18) Waiver of Governmental Immunity. Unless requested otherwise by the City, all entities providing insurance shall waive subrogation and shall waive governmental immunity as a 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.

(B) Insurance Requirements for the City's Public Improvements

(1) In connection with the design and construction of the City's Public Improvements, the City shall cause to be maintained by the City's Public Improvements Contractors the following insurance: (a) workers' compensation insurance with respect to all operations performed in accordance with the requirements of the laws of the State of Connecticut (Statutory), and employer's liability insurance with limits of \$100,000 each accident, \$100,000 coverage for each employee for disease, and \$500,000 policy limit for disease; (b) commercial general liability insurance with respect to all operations such contractors perform providing a total limit of \$1,000,000 per occurrence per location for all damages arising out of bodily injury, personal injury, property damage, contractual liability and products completed operations liability coverage for the indemnification obligations arising under this Agreement (each annual aggregate shall be \$2,000,000 and the products completed operations coverage shall have a separate aggregate limit of not less than \$2,000,000 aggregate); (c) automobile liability insurance providing \$1,000,000 combined single limit coverage per accident for bodily injury and property damage; (d) umbrella or excess liability insurance with a minimum limit of \$5,000,000 per

occurrence/general aggregate excess of all liability insurance described in this Agreement, other than workers' compensation (commercial liability, general liability, automotive liability and employer's liability); (e) with the exception of workers' compensation, the Developer, the City, any Agency that is required to be named as an additional insured, all persons and entities entitled to indemnification under this Agreement, or other party that the City and the Developer agree should be named as an additional insured shall be named as an additional insured on all such policies with respect to the City's Public Improvements by endorsement. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The City represents that the foregoing insurance requirements have been or shall be contained in the City's bid documents for the City's Public Improvements.

(2) In addition, the City shall cause all subcontractors/trade contractors working on the City's Public Improvements to obtain and show evidence of insurance coverage in the amounts required herein. The City's Public Improvements Contractors shall be named as the certificate holder on a valid certificate of insurance for all insurance coverage required to be obtained by the City's subcontractors/trade contractors. All subcontractors/trade contractors shall be required to maintain the same minimum scope and limits of insurance as required herein, with the exception of umbrella/excess liability which will not be required. These policies (except for workers' compensation) shall name the Developer, the City, any Agency that is required to be named as an additional insured, all persons entitled to indemnification and any other party that the City and the Developer agree should be named as an additional insured as additional insureds on all such insurance policies by endorsement. In addition, should the insurance requirements of an Agency or Agencies require additional or different types of insurance, the requirements of the Agency or Agencies shall be complied with in addition to these requirements. The City represents

that the foregoing insurance requirements were or shall be included in the City's bid documents for the City's Public Improvements.

(3) At all times during the design and construction of the City's Public Improvements, the City shall cause the City's outside primary architects and engineers with whom it contracts to perform the design work and the construction administration work (primary architects and engineers, and site, civil, environmental traffic and structural engineers), if any, for the City's Public Improvements to maintain architect's and engineer's professional liability insurance with a minimum of \$5,000,000 per claim and in the aggregate for damage caused by an error, omission or any negligent or wrongful act, subject to adjustment if agreed to by City and the Developer.

(4) At all times during the design and construction of the City's Public Improvements, the City shall cause its other subconsultant architects, engineers, consultants, and designers (such as mechanical, electrical, landscaping, sustainability consultant, wind/airflow designer, parking flow designer, security valet, etc.) performing the design and construction administration work for the City's Public Improvements to maintain architect's errors and omissions or professional liability insurance with a minimum of \$1,000,000 per claim and in the aggregate, for damage caused by an error, omission or any negligent or wrongful act, subject to adjustment if agreed to by the City and the Developer.

(5) If the policy is written on a "claims-made" basis, then an extended reporting period "tail" or continuous claims-made liability will be required at the completion of the City's Public Improvements for a duration of the shorter of three (3) years after such completion or the maximum time period reasonably available in the marketplace. Continuous "claims-made" coverage will be acceptable in lieu of "tail" coverage provided its retroactive date is on or before

the Effective Date of this Agreement. The City represents that these requirements were or shall be included in the City's bid documents for the City's Public Improvements.

(C) General Requirements for the City's Insurance

(1) All such insurance required to be obtained by the City's Public Improvements Contractors and the City's design professionals and consultants under this Agreement shall be by standard policies, obtained from financially sound and responsible insurance companies authorized to do business in the State of Connecticut with an AM Best rating of A- or better. Each insurance policy shall be written to become effective at the time that the City or its contractors or design professionals become subject to the risk or hazard covered thereby and shall be continued in full force and effect until the City's Public Improvements are completed. All such insurance policies and renewals thereof or certificates of such policies and renewals shall be sent to the Developer at the address specified in Section 16.1(A) below. The certificates shall specify all parties who are additional insureds. Deductibles and self-insured retentions must be declared to and approved by the Developer as commercially reasonable.

(2) Prior to the completion of the City's Public Improvements, all insurance policies applicable to such Public Improvements shall provide that they cannot be canceled or terminated unless and until ten (10) days' prior written notice of such imminent cancellation or termination has been delivered to the Developer for a cancellation due to nonpayment of premiums and until at least thirty (30) days' prior written notice of such imminent cancellation or termination has been delivered to the Developer for any other reason.

(3) In the event that at any time prior to the completion of the City's Public Improvements, any of the City's Public Improvements Contractors, architects, engineers, designers, or subconsultants refuse, neglect or fail to secure and maintain in full force and effect

any or all of the insurance required pursuant to this Agreement for the applicable improvement, the Developer, at its option, may procure or renew such insurance. All amounts of money paid therefor by the Developer shall be reimbursed by the City to the Developer with interest thereon at the rate of ten percent (10%) per annum from the date of payment by the Developer to the date of reimbursement by the City. Before procuring or renewing any such insurance, the Developer shall provide the City with ten (10) days' prior notice of the expected dates, purposes, and amounts of any such payments to be made by it, during which period the City shall have the opportunity to cure any such deficiency in insurance coverage. If the City cures any such deficiency in insurance coverage as provided for above, such deficiency shall not be considered an Event of Default under Section 14.1(B) below.

(4) At any time prior to the completion of the City's Public Improvements, whenever any such improvement, or any significant part thereof, constructed as part of the City's Public Improvements shall have been damaged or destroyed, the same shall be considered a Force Majeure Event for purposes of reconstruction and scheduling. The City will proceed with reconstruction of the improvements so damaged or destroyed and on those portions of its improvements which were not damaged or destroyed which are not delayed by the destruction and/or damage within six (6) months of the damage or destruction and shall diligently and with prompt dispatch prosecute the same, so as to fully complete such reconstruction or repair within twelve (12) months from the commencement thereof subject to Excusable Delays, or such longer period as mutually and reasonably agreed upon by the Developer and the City.

(5) In addition, the City shall proceed promptly to establish and collect all valid claims which may have arisen against any insurer based upon any such damage or destruction. All proceeds of any such claims and any other monies provided for the reconstruction, restoration or

repair of such improvement shall be deposited in a separate account and such insurance money so collected shall be used and expended for the purpose of fully repairing or reconstructing the improvement or improvements which have been destroyed or damaged to a condition at least comparable to that existing at the time of such damage or destruction, and, if there is any excess of insurance proceeds after such repair or reconstruction has been fully completed, the City shall retain such excess. Notwithstanding the foregoing, should the Developer's Private Improvements and/or the Developer's Site and Traffic Improvements be damaged or destroyed during the same event as caused destruction to the City's Public Improvements, the Developer shall have the right to make a claim against any of the Parties or on all applicable insurance policies for the loss or damage to its improvements, notwithstanding the damage or destruction to the City's Public Improvements.

(6) Certificate of Insurance. As evidence of the insurance coverage required under this Agreement to be carried by the City's Public Improvements Contractors and the City's architects, engineers designers, and subconsultants, the City, shall cause to have furnished to the Developer all applicable certificates of insurance signed by a person authorized by the insurer to bind coverage on its behalf, and all renewals of expiring certificates shall be sent to the Developer thirty (30) days' prior to expiration of the expiring certificates in accordance with Section 16.1(B) below. The certificates shall specify all parties who are additional insureds.

(7) All parties providing insurance under this Section 12.4(B) shall waive subrogation.

### **Section 12.5 Certificate of Completion**

(A) After Substantial Completion of the Developer's Private Improvements (but not including the Tenant Improvements and the Pedestrian Connection), the Developer's On-Site

Public Improvements and the Streetscape Improvements, each in accordance with the Approved Plans for such improvements, the Developer shall give notice to the Economic Development Administrator of such completion, which notice shall include a certificate of substantial completion executed by the Developer's architect, and request a Certificate of Completion for such improvements. Notwithstanding any other provision of this Agreement, the Economic Development Administrator shall inspect or shall cause such improvements to be inspected within fifteen (15) days of the request for a Certificate of Completion and provided that the Developer has furnished the Economic Development Administrator with copies of compliance reports as required in Sections 7.4(A)(6) and (7) and with copies of the reports required by the City's Small Contractor Development Program, as required by Section 7.4(C)(4), the Economic Development Administrator shall furnish such Certificate of Completion within thirty (30) days of the Developer's request for the Certificate of Completion, subject to Section 12.5(C) below. The Certificate of Completion shall be in such form as will enable it to be recorded on the New Haven Land Records. TIME IS OF THE ESSENCE WITH RESPECT TO THE TIME PERIODS SET FORTH IN THIS PARAGRAPH subject to Section 12.5(C) below and Excusable Delay..

(B) The Certificate of Completion shall be a conclusive determination of the satisfaction of the Developer's obligation to construct the Developer's Private Improvements, the Developer's On-Site Public Improvements and the Streetscape Improvements in accordance with the Approved Plans and shall state that the Developer's obligations to construct such improvements have been fully satisfied. The parties agree that the Certificate of Completion shall not represent a determination that the Developer has satisfied any other of its other obligations under this Agreement other than its obligations to construct the Developer's Private Improvements, the Developer's On-Site Public Improvements and the Streetscape Improvements, in accordance

with the Approved Plans. The parties agree that this Agreement does not obligate the Developer with respect to construction and completion of any Tenant Improvements to the 2 Church Street Building or the Pedestrian Connection, and a Certificate of Completion, may not be denied, conditioned or withheld because Tenant Improvements or the Pedestrian Connection has not been constructed or completed or because there is any other Event of Default by the Developer under this Agreement.

(C) Notwithstanding any other provision of this Agreement, if the Economic Development Administrator shall refuse or fail to provide certification in accordance with the provisions of this Section 12.5 above, the Economic Development Administrator shall, within such thirty (30) day period, provide the Developer with a written statement setting forth in adequate detail in what respects the Developer has failed to complete the Developer's Private Improvements, the Developer's On-Site Public Improvements and/or the Streetscape Improvements, in accordance with the Approved Plans, and what measures or acts will be necessary for the Developer to take or perform in order to obtain such certification. Following receipt of such written statement, the Developer shall promptly carry out the corrective measures or acts described in the written statement, and a Certificate of Completion will be delivered to the Developer within fifteen (15) days of the completion of the items by the Developer described in the written statement. In the event of any dispute between the City and the Developer with respect to the issuance of the Certificate of Completion, the Parties shall participate in the Dispute Resolution Procedure. TIME IS OF THE ESSENCE WITH RESPECT TO THE TIME PERIODS SET FORTH IN THIS PARAGRAPH.

(D) Notwithstanding any other provision of this Agreement, if the Economic Development Administrator shall fail to provide the Developer with a Certificate of Completion

or with a written statement of the items that the Developer has failed to complete within such thirty (30) day period of a request for a Certificate of Completion, such failure shall be deemed to constitute certification that the Developer's Private Improvements, Developer's On-Site Public Improvements and the Streetscape Improvements have been completed in accordance with the Approved Plans. In such case, the Developer shall, in its sole discretion, record a Certificate of Completion on the New Haven Land Records, setting forth the failure of the City to issue a Certificate of Completion within the time required for issuing such certificate. The Developer's Certificate of Completion shall have the same force and effect as a Certificate of Completion issued by the Economic Development Administrator. TIME IS OF THE ESSENCE WITH RESPECT TO THE TIME PERIODS SET FORTH IN THIS PARAGRAPH SUBJECT TO EXCUSABLE DELAY.

**Section 12.6 Sales and Use Tax Relief**

(A) The sales and use tax relief program established under General Statutes § 32-23h provides for sales and use tax relief on the purchase of tangible personal property and services for qualifying economic development projects. The City and the Developer acknowledge that the Developer intends to apply to Connecticut Innovations, Incorporated for sales and use tax relief under General Statutes § 32-23h for purchases of taxable tangible personal property that will be made for the Development and which are eligible for tax relief. The Developer will take all reasonable actions to pursue such tax relief, provided that the terms of such tax relief are acceptable to the Developer. The City agrees to provide support and assistance to the Developer with respect to such applications, and if there are then other applications for such Sales and Use Tax Relief for projects in the City when the Developer submits its application for Sales and Use Tax Relief, then

the City shall advise Connecticut Innovations, Incorporated that the Developer's application is the City's first priority for the award of Sales and Use Tax Relief.

## **ARTICLE XIII OPERATION OF THE PROJECT**

### **Section 13.1 Payment of Taxes**

(A) The Developer agrees for itself and its successors and assigns that subsequent to the Closing and during the Compulsory Taxation PILOT period, the Developer and its successors and assigns will pay all taxes and assessments lawfully assessed against the 2 Church Street Parcel and the improvements thereon, except as hereinafter stated in Section 13.1(C) below.

(B) Notwithstanding the foregoing, the Developer and the City agree that no provision of this Agreement shall be construed as waiving any right the Developer or its successors or assigns or its tenants may have to contest or appeal, in the manner provided by law, any assessment made by the City with respect to all or any portion of the 2 Church Street Parcel and the improvements thereon or to apply for any assessment or tax deferral or abatement program for which it may be eligible.

(C) In the event that if during the Compulsory Taxation PILOT Period, the Developer or its successor and assigns transfers title to the 2 Church Street Parcel or any portion thereof or any improvements thereon to an Exempt Entity, the Developer or its successors or assigns, as the case may be, shall require prior to such transfer that the Exempt Entity enter into a Payment in Lieu of Taxes Agreement (the "PILOT Agreement") with the City for a term of not less than the balance of the Compulsory Taxation PILOT Period, which agreement shall be reasonably acceptable to the City. The provisions of this Section 13.1(C) shall expressly survive the Closing and be binding upon the Developer's successors or assigns.

(D) In the event that any conveyance of title to any portion of the 2 Church Street Parcel or any improvements thereon to an Exempt Entity is made in contravention of the provisions of Section 13.1(C) above, then the Developer, if the Developer has made the conveyance of title, or a subsequent holder of title, if the subsequent holder of title has made the conveyance of title shall be responsible for the payment of all sums that would have been due under a PILOT Agreement between the Exempt Entity and the City to the extent that the City is unable to obtain the same or any portion thereof by way of subsequent agreement with the Exempt Entity.

**Section 13.2 Repair of Tunnels and Driveways**

(A) Notwithstanding any other provision of this Agreement, once the 2 Church Tunnels and Driveways are accepted by the City Engineer pursuant to Section 6.1 above, during the Term, in the event that the Developer reasonably determines that any portion of the 2 Church Tunnels and Driveways, including, but not limited to any system relating to the operation of the 2 Church Tunnels and Driveways, such as the pavement (including markings) and necessary systems and equipment for fire protection and heat detection, drainage associated with the 2 Church Tunnels and Driveways, a pump station with controls and alarms and a force main connection to the GNHWPCA sanitary pipe (as determined to be necessary during the design process), traffic control and safety systems, signage, lighting, security (including monitoring and control devices), emergency ingress and egress, ventilation, the Structural Elements, conduits, wiring, power (regular and emergency), mechanical rooms, fuel storage, wayfinding signs, and generators with all power connections as well as the ceiling, floor and the walls of the 2 Church Tunnels and Driveways pose a hazard or risk to the safety and/or welfare of the public, the 2 Church Street Building, the Parking Structure, the 2 Church Street Parcel, 2 Church Street Plaza, the Pedestrian Connection, any other portion of the Development, the Project, and/or the 101 College Street

Property, the Developer, its tenants or others, the Developer may provide the City with a Hazard Notice and provide the City with a sixty (60) day opportunity to cure the hazard or risk. Notwithstanding the foregoing, if the hazard or risk requires the replacement of a Structural Element or water infiltration into the 2 Church Tunnels and Driveways, then the Developer shall still provide the City with a Hazard Notice and the procedures set forth below with respect to contesting a Hazard Notice shall still apply, but the work undertaken to eliminate the hazard or risk shall be performed by the Developer with the financial responsibility for such remedial action to be allocated between the Developer and the City as set forth in Section 6.1(B), Section 6.1(C), Section 6.1(D), and Section 6.1(E) above.

(B) The City shall have the right to dispute the existence of the hazard or risk, the costs of eliminating the hazard or risk and the responsibility for paying for such cure. In the event that the City disputes that a hazard or risk exists and/or the appropriate response to the hazard and/or the reasonable cost for such cure and/or the responsibility for paying for the cure, the City shall provide the Developer with a Notice of Dispute within fourteen (14) days of receipt of the Hazard Notice. The parties shall attempt to resolve the issue promptly.

(C) Within seven (7) days of the date of the Notice of Dispute, the Developer and the City shall each select a licensed Connecticut professional engineer with the applicable technical expertise and employed by an engineering firm that employs at minimum ten (10) licensed Connecticut professional civil engineers, which firm has not provided services to the party selecting the engineer employed by such firm within two (2) years of his or her selection. Within five (5) days of such selection, the engineers selected by each party shall confer and attempt to resolve whether the hazard or risk exists, the appropriate response to the hazard, and the reasonable cost for such cure. If the engineers cannot provide a solution acceptable to the City and the

Developer, the engineers shall select a third licensed Connecticut professional engineer with expertise in the area in dispute who is employed by a firm that employs at minimum ten (10) licensed Connecticut professional engineers and which has not done work within two (2) years of the third engineer's selection for either the City or the Developer. Such third engineer shall, after meeting with each of the City's and the Developer's engineers and their representatives, make a written determination regarding whether a hazard or risk concerning the 2 Church Tunnels and Driveways exists, the work required to cure such hazard or risk and the reasonable cost of such work within twenty-one (21) days of his or her selection, and with respect to water leakage into the 2 Church Tunnels and Driveways, the cause of such leak. Such determination shall be conclusively binding on the parties. The Developer and the City shall each pay the fees of the engineer whom such party has selected and shall share equally in the costs of the third engineer for the services performed under this subparagraph. TIME IS OF THE ESSENCE WITH RESPECT TO THE TIME PERIODS SET FORTH IN THIS SECTION.

(D) Notwithstanding any other provision of this Agreement, the City shall cure a hazard or risk other than a hazard or risk requiring the replacement of a Structural Element or the remedying of water infiltration into the 2 Church Tunnels and Driveways even if the City disputes responsibility for such hazard or risk. Except with respect to the replacement of a Structural Element and eliminating water leakage into the 2 Church Tunnels and Driveways if either (i) the third engineer determines that a hazard or risk exists with respect to the 2 Church Tunnels and/or Driveways and makes a recommendation regarding the work required to cure such hazard or risk and the City does not cure such hazard or risk within sixty (60) days of the third engineer's determination or (ii) if the City has not provided a Notice of Dispute within the timeframe set forth in this subparagraph and the City has not cured such hazard or risk within sixty (60) days of the

Hazard Notice or (iii) if the City has provided a Notice of Dispute which disputes responsibility for the cure of the hazard or risk but does not dispute whether a hazard or risk exists or the work required to cure the hazard or risk or the reasonable costs of such cure and the City has not cured such hazard or risk within sixty (60) days of the Hazard Notice, such failure to cure shall be considered an Event of Default by the City, and the Developer shall have the right to enter into the 2 Church Tunnels and Driveways, and make the required repairs, maintenance and/or replacements to the 2 Church Tunnels and Driveways, and the City shall reimburse the Developer for its reasonable costs in performing the foregoing work upon demand. TIME IS OF THE ESSENCE WITH RESPECT TO THE TIME PERIODS SET FORTH IN THIS SECTION SUBJECT TO EXCUSABLE DELAY.

(E) Notwithstanding the foregoing, in the event of an immediate risk to life or property, if the City does not commence curing such emergency within a reasonable time based upon the circumstances, the Developer may undertake to cure the emergency, and the City shall reimburse the Developer for its reasonable costs of curing the emergency upon demand, provided that the City is responsible under Section 6.1(B) above, Section 6.1(C) above, Section 6.1(D) above, or Section 6.1(E) above for such costs. Notwithstanding the foregoing, the City shall have the right to dispute the existence of the hazard, the emergency nature of the hazard, the reasonableness and appropriateness of any costs for which the Developer seeks reimbursement of from the City, and the City's responsibility to cure the emergency through the Dispute Resolution Procedure. If the City does not reimburse the Developer for the reasonable costs of curing the emergency and it was required to do so under this Agreement, such failure shall be considered an Event of Default under Article XIV.

(F) In the event that the City or the Developer disputes the responsibility for payment for correction of the hazard, the City and the Developer shall submit the dispute to the Dispute Resolution Procedure and shall have all of the remedies for an Event of Default set forth in Article XIV. In the event the City reasonably determine that the Developer's operations in any portion of the 2 Church Tunnels and Driveways are posing a risk to the safety or welfare of the public or the City or the rights-of-way or easements granted to the City, the City shall deliver a Hazard Notice to the Developer and thereafter the determination of whether a hazard exists, and the corrective work required for any hazard which is found to exist and the responsibility for the payment thereof shall be determined in accordance with the procedures set forth in this Section provided, however, that the City shall not undertake any work to correct the hazard, and all required corrective action shall be undertaken by the Developer with the Developer and the City submitting the issues of the financial responsibility for the corrective action to the Dispute Resolution Procedure. The failure of the Developer to undertake any required corrective action shall be considered an Event of Default by the Developer under Article XIV.

(G) In accordance with Exhibit M, in order to provide long term management of the 2 Church Tunnels and Driveways, the Developer will participate in the group established under Exhibit M for the purpose of meeting regularly to discuss the ongoing maintenance of the Downtown Crossing tunnel system.

### **Section 13.3 Assignment**

(A) It is hereby agreed and stipulated that prior to the issuance of the Certificate of Completion and the acceptance by the City Engineer of the 2 Church Tunnels and Driveways, the Developer shall not, without the City's written permission or except as provided for below transfer or assign any of its rights and/or obligations under this Agreement or in the 2 Church Street Parcel

(except as otherwise provided for in this Agreement) other than to an Affiliate, which Affiliate agrees in writing with the City to assume all of the obligations of the Developer under this Agreement. For purposes hereof, a “transfer” shall include a transfer of more than fifty (50%) percent of the ownership interests in the Developer other than to an Affiliate. The Developer shall provide the City with prior written notice of its intent to make an assignment to an Affiliate and the name and address of such Affiliate, and upon such assignment, the written agreement of the Affiliate to assume all of the obligations of this Agreement associated with the rights assigned.

(B) The City shall not unreasonably withhold its consent to the Developer’s transfer or assignment of any of its rights and/or obligations under this Agreement to an entity that is not an Affiliate and which establishes to the reasonable satisfaction of the City that (i) it has a net worth of at least Ten Million and 00/100 Dollars (\$10,000,000) and (ii) it or its principal owners or a parent or its development manager has at least ten (10) years of development experience (a “Qualified Transferee”). The Developer shall provide the City with prior written notice of its intent to make an assignment to a Qualified Transferee, the name and address of the Qualified Transferee, documentation that establishes that the transferee is a Qualified Transferee, and a description of the rights assigned, and upon such assignment, the written agreement of the Qualified Transferee to assume all of the obligations of this Agreement associated with the rights assigned.

(C) The City agrees that in the event that the Developer wishes to make an assignment permitted under Section 13.3(A) above or Section 13.3(B) above, at the request of the Developer, it will deliver to the Developer and its Affiliate or a Qualified Transferee, as the case may be (if the transfer to the Qualified Transferee has been approved by the City through its Economic Development Administrator for transfers under Section 13.3(B) above), within seven (7) days of the making of such a request, a recital that the Developer is in compliance with all of the applicable

covenants and agreements binding upon it under this Agreement to the best of the knowledge of the City and that such assignment complies with the terms of this Agreement and will not constitute an Event of Default under this Agreement. TIME IS OF THE ESSENCE WITH RESPECT TO THE TIME PERIOD SET FORTH IN THIS SECTION.

(D) Any assignment of any interest in this Agreement or in the 2 Church Street Parcel which is in contravention of the provisions of this Section 13.3 shall be an Event of Default entitling the City to exercise any and all of the various rights and remedies available to it, whether set forth herein or existing at law or in equity.

(E) It is further agreed by the City and the Developer that following the issuance of the Certificate of Completion for the improvements on the 2 Church Street Parcel and the acceptance by the City Engineer of the 2 Church Tunnels and Driveways, the Developer may sell, assign or transfer any or all of its interest in the 2 Church Street Parcel to any purchaser, assignee or transferee free and clear of the requirements of Section 13.3(A) above without restriction as to the consideration to be received and without any requirement that the City consent to such transfer, provided that if such sale, assignment or transfer is made during the Term of this Agreement, the Developer shall require that the purchaser, assignee or transferee expressly assume all of the covenants, agreements, and obligations under this Agreement relating to the 2 Church Street Parcel (including specifically, but without limitation, the obligation to pay taxes, or, if applicable, per Section 13.1(C) above, the PILOT payments), which have not yet been performed and which expressly survive the issuance of the Certificate of Completion by written instrument, reasonably satisfactory to the City filed and recorded in the New Haven Land Records.

**Section 13.4 Nondiscrimination Covenants**

(A) The Developer covenants on behalf of itself and its successors and assigns that the Developer and its successors and assigns shall:

(1) Not discriminate upon the basis of race, color, religion, creed, gender, age, sexual orientation, gender identity or expression, pregnancy, marital status, mental/physical/intellectual/ learning disability, status as a victim of domestic abuse, genetic information, veteran status, prior criminal record, or national origin in the sale, lease or rental or in the use and occupancy of the 2 Church Street Parcel or any improvements erected or to be erected thereon, or any part thereof; and

(2) Comply with all federal, state and local laws in effect from time to time, prohibiting discrimination or segregation by reason of race, color, religion, creed, gender, age, sexual orientation, gender identity or expression, pregnancy, marital status, mental physical/intellectual/ learning disability, status as a victim of domestic violence, genetic information, veteran status, prior criminal record or national origin in the sale, lease, or rental or in the use and occupancy of the 2 Church Street Parcel or any improvements erected thereon or to be erected thereon, or any part thereof.

**Section 13.5 Mortgage of the 2 Church Street Parcel**

(A) Notwithstanding any other provisions of this Agreement, the Developer shall at all times have the right to encumber, pledge, or convey its right, title and interest in and to the 2 Church Street Parcel and the improvements thereon, or any portion or portions thereof, by way of one or more Mortgages, provided that the Mortgagee taking title to the 2 Church Street Parcel and the improvements thereon or any part thereof (whether by foreclosure or deed in lieu of foreclosure or otherwise) shall be subject to the provisions of this Agreement, except as hereinafter provided

and that the Developer shall give written notice to the City of the proposed grant of any such Mortgage, the amount thereof and the name and address of the Mortgagee. This Agreement shall be superior and senior to any lien placed upon the 2 Church Street Parcel after the date of the recording of this Agreement, including the lien of any Mortgage, except for those liens that by law have superiority over this Agreement.

(B) The City and the Parking Authority, agree at any time and from time to time, upon not less than ten (10) business days' prior written notice, to execute, acknowledge and deliver without charge to any Mortgagee, or to any prospective Mortgagee designated by either Developer or any Mortgagee or to any prospective purchaser of Developer's interest in the 2 Church Street Parcel designated by Developer: a statement in writing stating: (1) that this Agreement (and the Parking Agreement, if requested) are in full force and effect and unmodified (or if there have been any modifications, identifying the same by the date thereof and including a copy thereof); (2) that no notice of default or notice of termination of this Agreement, or the Parking Agreement has been served on Developer (or if the City, or the Parking Authority, has served such notice(s), the City or the Parking Authority shall provide a copy of such notice or state that the same has been revoked, if such be the case); (3) that to the City's and the Parking Authority's knowledge, no default exists under this Agreement or state or condition that, with the giving of notice, the passage of time, or both, would become a default (or if any such default does exist, specifying the same), and that no default exists under the Parking Agreement or state or condition that with the giving of notice, the passage of time or both, would become a default (or if any such default does exist, specifying the same); (4) the amounts due under this Agreement and the Parking Agreement; and (5) any other information as may be reasonably requested. TIME IS OF THE ESSENCE WITH

RESPECT TO THE TIME PERIOD SET FORTH IN THIS SECTION SUBJECT TO EXCUSABLE DELAY.

(C) The City agrees that reasonable modifications to this Agreement which do not alter the basic economic terms hereof, do not increase the City's monetary obligations and/or do not adversely affect or diminish the rights, and/or increase the other obligations of the City, as may be requested from time to time by any such Mortgagee, prospective Mortgagee, prospective purchaser or Qualified Transferee shall be made.

(D) No voluntary action by Developer to cancel, surrender, terminate or modify this Agreement shall be binding upon the Mortgagee without its prior written consent, and the City shall not enter into an agreement with Developer to amend, modify, terminate or cancel this Agreement and shall not permit or accept a surrender of this Agreement prior to the end of the Term without, in each case, the prior written consent of the Mortgagee. In the event Developer and the City desire to enter into any of the aforementioned agreements, it shall be the responsibility of Developer to obtain the consent of the Mortgagee.

(E) Notwithstanding any other provision of this Agreement, including, but not limited to Section 9.2(E) above, Section 11.1(B) above, Section 11.1(C) above, Exhibit K, and any other indemnification obligation of Developer set forth in this Agreement, no Mortgagee (or its Designee as may have acquired Developer's estate through foreclosure) shall become personally liable under this Agreement for any claims, suits, actions or inactions arising out of events occurring prior to the date that it becomes the holder of the Developer's estate and then only upon the terms and conditions as set forth in this Agreement concerning a foreclosing Mortgagee.

(F) The time permitted for a Mortgagee to complete construction of any portion of the Development shall be extended as provided in Section 14.1(F)(2) below.

**Section 13.6 Foreclosure of Mortgage/Acquisition of Developer's Estate by Mortgagee**

(A) Notwithstanding anything to the contrary in this Agreement, any Mortgagee or its Designee may acquire title to the 2 Church Street Parcel by foreclosure or a transfer in lieu of foreclosure without any consent or approval by the City.

(B) If a Mortgagee (or its Designee as may have acquired the Developer's estate through foreclosure) acquires the Developer's estate in the 2 Church Street Parcel, or forecloses its Mortgage prior to issuance of a Certificate of Completion or the acceptance of the 2 Church Tunnels and Driveways, as applicable, such Mortgagee shall, at its option:

(1) Complete construction of the Development, in accordance with this Agreement and in all respects (other than time limitations) comply with the provisions of this Agreement; or

(2) Sell, assign or transfer with the prior written consent of the City, which consent shall not unreasonably be withheld, conditioned or delayed (but without restriction as to the consideration received), the Developer's estate in the 2 Church Street Parcel to a purchaser, assignee or transferee who shall expressly assume all of the covenants, agreements and obligations of the Developer under this Agreement to be performed and observed on the Developer's part thereafter arising in respect to the Development and shall be deemed a "Developer" under the terms of this Agreement), by written and recordable instrument reasonably satisfactory to the City filed in the New Haven Land Records, it being the intention of the Parties that upon the assignment of this Agreement by a Mortgagee or its Designee, the assignor (but not the assignee or any subsequent assignor, purchaser or transferee) shall be relieved of any further liability which may accrue under this Agreement from and after (but not before) the date of such assignment and that such assignment shall effect a release of the Mortgagee's liability hereunder, except for liability

which accrued prior to such assignment. Notwithstanding the foregoing, in the event of a sale, assignment or transfer by the Mortgagee under this subsection to a Qualified Transferee, the City's consent to such sale, assignment or transfer shall not be required.

(C) Notwithstanding any other provision of this Agreement, any Mortgagee (including one who obtains title to the 2 Church Street Parcel as a result of foreclosure proceedings or action in lieu thereof) shall not be obligated to construct or complete the Development or to guarantee such construction or completion; provided that nothing in this section or in this Agreement shall be deemed or construed to permit or authorize any such Mortgagee to devote the 2 Church Street Parcel to any uses or to construct any improvements thereon, other than those uses or improvements permitted in this Agreement or as otherwise specifically approved by the City.

(D) In the event a Mortgagee completes the construction of the Development in accordance with this Agreement (other than time limitations), the Mortgagee shall be entitled to a Certificate of Completion and acceptance by the City Engineer of the 2 Church Tunnels and Driveways and may sell, assign or transfer fee simple title to the 2 Church Street Parcel and the improvements thereon to any purchaser, assignee or transferee, without restriction as to the consideration to be received and without the City's consent. If such sale, assignment or transfer is during the Term of this Agreement, the purchaser, assignee or transferee shall be required to expressly assume all of the covenants, agreements, and obligations under this Agreement (including specifically, but without limitation, the obligation to pay taxes or if the purchaser, assignee or transferee is an Exempt Entity the obligation to make payments due under the PILOT Agreement), which have not yet been performed and which survive the issuance of the Certificate of Completion by written instrument, reasonably satisfactory to the City and recorded in the New Haven Land Records. It is provided further that it is the intention of the City and the Developer

that upon the assignment of this Agreement by a Mortgagee or its Designee in accordance with the terms of this paragraph, the assignor (but not the assignee or any subsequent assignor, purchaser or transferee) shall be relieved of any further liability which may accrue under this Agreement from and after (but not before) the date of such assignment and that such assignment shall effect a release of the Mortgagee's liability hereunder, except for liability which accrued prior to such assignment.

(E) If a Mortgagee acquires the Developer's estate in the 2 Church Street Parcel after issuance of a Certificate of Completion and after acceptance by the City Engineer of the 2 Church Tunnels and Driveways during the Term of this Agreement, the Mortgagee shall comply with the applicable provisions of this Agreement which have not yet been performed and which survive the issuance of the Certificate of Completion, provided the Mortgagee shall have the right to sell, assign or transfer the fee simple title to the 2 Church Street Parcel on the same basis as set forth in Section 13.6(D) above of this Agreement.

(F) If a Mortgagee becomes the holder of Developer's estate in the 2 Church Street Parcel, the City agrees that any claims or lawsuits by the City or judgments obtained by the City against the Mortgagee and arising under this Agreement with respect to the parcel acquired shall be satisfied solely out of the Mortgagee's interest in the parcel acquired.

(G) The City shall not be bound to recognize any assignment of a Mortgage unless and until the City shall have been given written notice thereof together with a copy of the executed assignment and the name and address of the assignee. Thereafter, such assignee shall be deemed to be a Mortgagee hereunder.

**ARTICLE XIV  
DEFAULT AND REMEDIES**

**Section 14.1 Event of Default**

(A) The following are Events of Default by the Developer:

(1) an Event of Bankruptcy;

(2) a failure to perform any monetary covenant or agreement required to be performed by the Developer and the failure to cure the same within thirty (30) days' of written notice thereof from the City;

(3) a failure of the Developer to accept the conveyance of the 2 Church Street Parcel on the Closing Date, as the same may have been extended as permitted by the Developer under this Agreement or by agreement of the City and the Developer, if all of the conditions precedent to the Closing have been satisfied or waived and if such failure is not cured within thirty (30) days following notice thereof from the City to the Developer, provided, however that if the Developer terminates this Agreement as permitted by this Agreement, the Developer's failure to accept the conveyance of the 2 Church Street Parcel on the Closing Date as described above shall not be considered an Event of Default; TIME IS OF THE ESSENCE WITH RESPECT TO THE TIME FOR THE ACCEPTANCE BY THE DEVELOPER OF THE CONVEYANCE OF THE 2 CHURCH STREET PARCEL.

(4) a failure to commence construction of any portion of the Development, when required to do so under this Agreement, excluding any period of Excusable Delay, and a failure to cure such failure within thirty (30) days of written notice thereof from the City;

(5) a failure to complete construction of any portion of the Development, when required to do so under this Agreement, excluding any period of Excusable Delay, and the failure to cure such failure within ninety (90) days of written notice thereof from the City;

(6) any other Event of Default by the Developer specified in another article of this Agreement;

(7) a failure to perform any other covenant or agreement of this Agreement required to be performed by the Developer, and the failure to cure such failure within thirty (30) days of written notice thereof from the City or such longer time as may be required to cure such failure, provided the Developer has commenced and is diligently pursuing such cure;

(8) an assignment in violation of Section 13.3 above; or

(9) a transfer of Developer's title to any portion of the 2 Church Street Parcel or any of the improvements thereon during the Compulsory Taxation PILOT Period in violation of the terms of Section 13.1(C) above.

(B) The following are Events of Default by the City:

(1) a failure to complete construction of the Church Street Bridge City's Public Improvements by the City's Public Improvements Critical Completion Dates set forth in the Project Schedule, Exhibit D, excluding any period of Excusable Delay and the failure to cure the same within thirty (30) days of written notice thereof from the Developer; TIME IS OF THE ESSENCE. WITH RESPECT TO THE TIME FOR COMPLETION OF THE CONSTRUCTION OF THE CHURCH STREET BRIDGE SUBJECT TO EXCUSABLE DELAY.

(2) a failure by the City to deliver the Quit Claim deed to the 2 Church Street Parcel to the Developer on the Closing Date, as the Closing Date may have been extended because of Excusable Delay (which period or periods of Excusable Delay may not exceed six (6) months) or which may have been extended by the Developer or as permitted by this Agreement or by agreement of the City and the Developer, if not cured within thirty (30) days following notice thereof from the Developer to the City; TIME IS OF THE ESSENCE WITH RESPECT TO THE

TIME FOR THE DELIVERY OF THE QUIT CLAIM DEED TO THE 2 CHURCH STREET PARCEL SUBJECT TO EXCUSABLE DELAY.

(3) a failure to perform any monetary covenant or agreement required to be performed by the City and the failure to cure such failure within thirty (30) days' of written notice thereof from the Developer, including but not limited to the failure to reimburse the Developer for its costs of eliminating a hazard to the 2 Church Tunnels and Driveways and the failure to pay Liquidated Damages

(4) any other Event of Default by the City described in another article of this Agreement; or

(5) a failure to perform any other covenant or agreement required to be performed by the City under this Agreement, where such failure is not cured by the City within forty-five (45) days' of written notice thereof from the Developer, or unless specifically provided otherwise in this Agreement, within such longer time as may be required to cure such failure, provided the City has commenced and is diligently pursuing such cure.

(C) The following is an Event of Default by the Parking Authority:

(1) a failure to perform any covenant or agreement required to be performed by the Parking Authority under this Agreement, where such failure is not cured by the Parking Authority within forty-five (45) days' of written notice thereof from the Developer, or unless specifically provided otherwise in this Agreement, within such longer time as may be required to cure such failure, provided the Parking Authority has commenced and is diligently pursuing such cure.

(D) In the event that there is a conflict between any of Section 14.1(A) above, Section 14.1(B) above, and Section 14.1(C) above and the provisions of any other article of this Agreement, the provisions of such other article shall govern.

(E) No Default by Any Party

(1) A delay or failure by the Developer, the City or the Parking Authority to comply with any time limits which are imposed upon the performance of the parties hereto by the terms of this Agreement due to an Excusable Delay shall not constitute an Event of Default under this Agreement.

(2) A default under the Parking Agreement by the Developer, the Parking Authority or the City shall not be considered an Event of Default under this Agreement.

(3) A default under any easement, license or other agreement to be given or made in accordance with this Agreement shall not be considered a default under this Agreement.

(F) Notice of Default to Mortgagee.

(1) If the City shall give a Default Notice to the Developer, the City shall simultaneously give a copy of such Default Notice to the Mortgagee at the address theretofore designated by such Mortgagee. Any such copy of a Default Notice shall be given in the same manner provided in the Agreement for giving notices between the City and the Developer. No Default Notice given by the City to the Developer shall be binding upon or affect the applicable Mortgagee unless a copy of such Default Notice shall be given to said Mortgagee, as so provided. In the case of an assignment of a Mortgage or change in address of the Mortgagee, the assignee or applicable Mortgagee, by written notice to the City, may change the address to which copies of Default Notices are to be sent. The City shall not exercise any right, power or remedy with respect to any default of the Developer under this Agreement, unless the City, shall have given to the

Mortgagee a copy of the Default Notice as provided herein and such default shall not have been cured within the applicable grace period set forth in this Agreement plus the additional periods set forth in this Article XIV for Mortgagees.

(2) The Mortgagee shall have the right to perform any term, covenant, or condition and to remedy any default by the Developer under this Agreement within the applicable time period afforded the Developer, plus an additional period of thirty (30) days, which period shall be reasonably extended if the default is not in the payment of money and such Mortgagee commences to remedy the default within such period and thereafter diligently prosecutes such remedy to completion. The City shall accept such performance with the same force and effect as if furnished by the Developer, provided, however, that if the default is not a default in the payment of money and is of a nature that possession of the 2 Church Street Parcel by the Mortgagee is reasonably necessary for such Mortgagee to remedy the default, such Mortgagee shall be granted an additional period of time within which to obtain possession of the 2 Church Street Parcel, provided that the Mortgagee shall have commenced foreclosure or other appropriate proceedings in the nature thereof within a reasonable period of time (including any time necessary to obtain relief from any bankruptcy stay) and shall thereafter diligently prosecute any such proceedings to completion.

(3) Notwithstanding anything contained in this Agreement to the contrary, a Mortgagee shall in no event be required to cure or remedy a “Non-Curable Default,” which is a default which cannot be cured by the Mortgagee, such as, but not limited, to an Event of Bankruptcy by the Developer, a wrongful assignment of this Agreement by the Developer or a misrepresentation by the Developer, and upon foreclosure or other acquisition of the Developer’s interest in the 2 Church Street Parcel by the Mortgagee or a Designee, all Non-Curable Defaults

shall be deemed to have been fully cured as to the applicable Mortgagee, the Designee and their respective successors and assigns, but the foregoing shall not constitute a waiver by the City of such default with respect to the Developer or a release of the Developer with respect to any such default.

(4) In the event of the termination of this Agreement prior to its stated expiration date by reason of rejection of this Agreement by the Developer in a bankruptcy or a similar proceeding, notice thereof shall be given by the City to the Mortgagee, together with a statement of all amounts then due to the City from the Developer under this Agreement, and the City shall enter into a new agreement with respect to the 2 Church Street Parcel with the Mortgagee or, at the request of such Mortgagee, with a Designee for the remainder of the Term, effective as of the date of such termination, upon all of the terms and conditions herein contained and, to the extent possible, with the same priority as this Agreement, provided such Mortgagee or Designee makes written request to the City for such new agreement within sixty (60) days from the date it receives notice of such termination. The City shall be under no obligation to remove the Developer or anyone holding by, through or under the Developer from the 2 Church Street Parcel, and the Mortgagee or Designee shall take subject to the possessory rights, if any, of the Developer and such occupants. The Mortgagee shall also take subject to (i) any and all liens and encumbrances upon the conveyance of the 2 Church Street Parcel to the Developer, (ii) any easement, right of way or other agreement not constituting a lien which the City shall have approved and entered into during the Term of and in accordance with the terms of this Agreement; (iii) any other encumbrances which the City shall have entered into or approved under and in accordance with the terms of this Agreement; (iv) the liens of taxes on the 2 Church Street Parcel, which are not yet due and payable; and (v) any other lien or encumbrance created or caused by the Developer. It

is specifically acknowledged and agreed that all covenants, duties and obligations of the Developer hereunder shall survive the execution of any new agreement between the City and the Mortgagee (or the Designee) pursuant to this section and that such execution shall not release or be deemed to release the Developer from any liability for failure to perform any such covenant, duty or obligation under this Agreement. In the event that more than a single Mortgagee shall make a request for a new agreement hereunder, the Mortgagee senior in lien priority shall have the prior right to a new agreement and the certification of such priority from a title company duly licensed to do business in Connecticut shall be conclusively binding on all parties concerned.

(5) In the event that a Mortgagee elects to cure a default occasioned by the failure of the Developer to commence or complete construction of the Developer's Private Improvements, the Developer's On-Site Public Improvements and/or the Streetscape Improvements and/or the 2 Church Tunnels and Driveways in accordance with this Agreement, then, upon completion of such construction work in accordance with the Approved Plans and the acceptance of the 2 Church Tunnels and Driveways by the City Engineer, such curing Mortgagee shall be entitled to a Certificate of Completion in accordance with the provisions of Section 12.5 above. Upon issuance of such Certificate of Completion, all rights of the City arising as a result of such default by the Developer shall terminate.

## **Section 14.2 Remedies**

### **(A) Dispute Resolution Procedure**

(1) Except as otherwise provided in this Agreement, the City, the Developer and the Parking Authority shall have all rights and remedies available at law and in equity upon an Event of Default by another party. The City, the Developer and the Parking Authority agree that they shall endeavor to resolve any dispute that may arise under this Agreement, except as

otherwise provided for in this Agreement through the Dispute Resolution Procedure prior to filing suit in court and prior to terminating this Agreement on account of an Event of Default. Any party may initiate the Dispute Resolution Procedure by providing a Notice of Conflict to the other party setting forth: (i) the subject of the dispute; (ii) the party's position; and (iii) the relief requested. Within five (5) business days of delivery of the Notice of Conflict, the receiving party shall respond in writing with a statement of its position.

(2) Dispute Resolution Procedure. At the request of any party, representatives of each party with full settlement authority shall meet at a mutually acceptable time and place in the City within ten (10) days of the Notice of Conflict in order to attempt to negotiate in good faith a resolution to the dispute. In the event that there is a dispute regarding whether there exists a hazard or risk to safety and/or welfare with respect to the 2 Church Tunnels and Driveways, the procedure set forth in Section 13.2(A) above shall be followed, if applicable, before the Dispute Resolution Procedure is initiated. In the event that there is a dispute regarding the lack of completion of the City's Public Improvements by the City's Public Improvements Critical Completion Dates under Exhibit D, the procedure set forth in Article III may, at the option of the Developer, be followed before the Dispute Resolution Procedure is initiated.

(B) Mediation

If the dispute is not resolved by the parties through the Dispute Resolution Procedure, then if agreed upon by the Parties, the dispute may be submitted to mediation under the Commercial or Construction Mediation Procedures of the AAA, whichever procedure is appropriate to the dispute among the Parties, in effect upon the date that the dispute is submitted to mediation, or under such other rules as the Parties may agree upon. Mediation shall be with the AAA, or, if agreed upon, through use of a private mediator chosen by the parties. Mediation shall occur in New Haven,

Connecticut or as otherwise agreed upon. The mediator's fees and the filing fees, if any, shall be shared equally among the Parties participating in the mediation. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. Subject to the provisions of Section 14.2(D) below, if the Parties agree to mediation, the conclusion of mediation proceedings shall be a condition precedent to litigation. The Parties shall conclude mediation proceedings within sixty (60) days after the designation of the mediator.

(C) Advisory Opinion

If the dispute is not resolved under Section 14.2(A) above, by agreement of the Parties, the dispute(s) may be referred for an advisory opinion to a neutral party who shall be retained by the Parties seeking the advisory opinion, and such neutral party shall establish such procedures as will allow him or her to promptly consider the dispute and issue a written advisory opinion with regard to the issues in dispute. The Parties may seek an advisory opinion in addition to or in lieu of Mediation. Costs, and fees for the neutral party shall be equally shared by the Parties seeking the advisory opinion. Third parties relevant to the adjudication of the dispute may be added to the advisory opinion proceedings if agreed to by the Parties to the dispute. The Parties agree that the neutral party's advisory opinion shall not be admissible in subsequent litigation. If an advisory opinion is agreed upon as a procedure, it shall be a condition precedent to litigation among the Parties to the dispute, except as provided in Section 14.2(D) below.

(D) No Prejudice

Provided the party seeking use of the Dispute Resolution Procedure has complied with the requirements for giving the Notice of Conflict, no passage of time or delay caused by pursuit of Dispute Resolution Procedure, Mediation or seeking an advisory opinion will prejudice the rights of any party. At the request of any party, the Parties shall enter into an agreement to toll the statute

of limitations with respect to the subject matter of the dispute for the period of time in which the procedures described above are being utilized. Although any party to the dispute may commence litigation with respect to the dispute while the Dispute Resolution Procedure, Mediation or an advisory opinion procedure is being pursued for tolling purposes only, such party must request that the Court stay the case until such time as completion of such Dispute Resolution Procedure, Mediation or advisory opinion procedure, as the case may be, occurs.

(E) Remedies Subsequent to the Dispute Resolution Procedure

(1) If the dispute is not resolved by the Parties in accordance with the provisions of Section 14.2(A)(1) above and a mediation or advisory opinion procedure is not pending with respect to the dispute, then, except as otherwise provided in this Agreement, the Parties shall be entitled to seek all administrative and judicial remedies available at law and in equity, including, but not limited to, injunctive relief, damages, specific performance, attorney's fees if provided by statute, expenses and/or costs and any other rights or remedies whether such rights or remedies are specifically set forth herein or exist at law or in equity, except that neither the City nor the Developer shall have the right to terminate this Agreement after the 2 Church Street Parcel has been conveyed to the Developer.

(2) The Parties further agree that in any court proceeding, the City, the Parking Authority and the Developer shall not be entitled to recover indirect, special or consequential damages for an Event of Default, except that the Developer shall be entitled to recover from the City or the Parking Authority lost profits arising under leases entered into by the Developer provided that: (i) such lease covers not less than ten (10%) percent of the 2 Church Street Building's rentable square footage and (ii) the 2 Church Street Building constructed or to be constructed contains not less than 200,000 gross square feet where such loss is established to have

been caused by an Event of Default described in Subsections (4) or, (5) below, as set forth in said subsections.

(3) Notwithstanding any other provision of this Agreement, if there is an Event of Default arising out of the Developer's failure to accept the conveyance of the 2 Church Street Parcel when required to do so under this Agreement, as the same may be, extended by Excusable Delay, the City shall be entitled to terminate this Agreement or to seek specific performance of the Agreement. The City shall not be entitled to any other remedies for such claimed Event of Default.

(4) Notwithstanding any other provision of this Agreement, if there is an Event of Default arising out of the City's failure to convey the 2 Church Street Parcel to the Developer when required to do so under this Agreement, the Developer shall be entitled to terminate this Agreement, or to seek specific performance of this Agreement and/or damages, including but not limited to lost profits arising under a lease, as described in Section 14.2(E)(2) above.

(5) Notwithstanding any other provision of this Agreement, if there is an Event of Default by the City arising out of the City's failure to meet the City's Public Improvements Critical Completion Dates set forth in Exhibit D, as such dates may be extended by an Excusable Delay caused by a Force Majeure Event then the Developer shall be entitled to seek all remedies available under Section 14.1(E)(1) and Section 14.1(E)(2) above.

(6) Notwithstanding any other provision of this Agreement but subject to all rights of Mortgagees, in the event that an Event of Default occurs because the Developer does not commence or complete construction of any portion of the Development when required to do so under this Agreement, in addition to any other remedy the City shall have under this Agreement or under law or equity, the Developer (but not any Mortgagee) shall be obligated to deliver to the City the transfer of ownership and/or a license to utilize all design documents, plans and

specifications and bid documents for the Development, and the City may commence and/or complete construction of the Development following the giving of 30 days' prior written notice to the Mortgagee, if any, the Parties agreeing that the Developer does not make any warranties or representations regarding the accuracy or the completeness of such documents, plans, and specifications.

(7) If an Event of Default occurs because the Developer designs/constructs any portion of the Developer's Private Improvements, Developer's On-Site Improvements and/or the Streetscape Improvements, in a manner which does not conform in all material respects with the Approved Plans, or in the case of the 2 Church Tunnels and Driveways, in a manner which does not conform in all material respects with the Air Rights Implementation Guidelines (Exhibit M) in addition to any other remedy provided in this Section 14.2(E)(1) above, the City shall be entitled, subject to all rights of Mortgagees, after thirty (30) days' written notice to the Developer given within ninety (90) days following completion of the Development or the portion thereof in question, to take corrective action to cause to be performed all modifications or reconstruction required for the portions of the Development in question to conform to the Approved Plans or Exhibit M, to this Agreement, as applicable, and may charge the Developer with all reasonable costs therefor, or seek any other remedy at law or equity in order to effect such changes or to recover the reasonable costs of same. However, to the extent that the Developer submits plans for any portion of the Development to the City requesting that it approve such plans as being in conformance with the Approved Plans or Exhibit M with respect to the 2 Church Tunnels and Driveways, and the City so approved such plans (or is deemed so to have approved such plans under this Agreement) including but not limited to approvals by the City of plans submitted by the Developer in connection with its applications for building permits, sidewalk or street opening

permits or other permits or if the City refers such plans for approval to an Agency and such plans are approved, then the City may not thereafter claim that the Development or any portion thereof, as the case may be, if built substantially in accordance with the Approved Plans or other plans approved by the City or an Agency is not in conformance with the Approved Plans or the Air Rights Implementation Guidelines (Exhibit M) or other City permits. Additionally, the foregoing remedies provided under this Section 14.2(E)(7) shall not be available to the City for any claimed defective work or defective material with respect to the construction of the 2 Church Tunnels and Driveways; the sole remedies for any such claimed defective work or defective material being those set forth in Section 4.1(A)(9) above of this Agreement.

(8) If an Event of Default occurs because the Parking Authority has failed to comply with its obligations under this Agreement after notice and an opportunity to cure as set forth above, the Developer shall be entitled to all remedies against the Parking Authority set forth in Section 14.2(E)(1) above, as limited by Section 14.2(E)(2) above.

(9) Notwithstanding any other provision of this Agreement, if an Event of Default occurs because the Developer has not complied with its obligations under Section 13.1(C) above with respect to conveying title to the 2 Church Street Parcel or any portion thereof to an Exempt Entity during the Compulsory Taxation PILOT Period, the City shall be limited to the remedies set forth in Section 13.1(D) above.

**Section 14.3 WAIVER OF JURY TRIAL**

(A) THE CITY, THE DEVELOPER AND THE PARKING AUTHORITY HEREBY IRREVOCABLY WAIVE, AS AGAINST EACH OTHER, ANY RIGHTS SUCH PARTY MAY HAVE TO A JURY TRIAL IN RESPECT TO ANY CIVIL ACTION ARISING UNDER THIS AGREEMENT TO THE EXTENT PERMITTED BY LAW.

**ARTICLE XV  
TERMINATION OF THE AGREEMENT**

**Section 15.1 Right to Terminate Agreement**

(A) In addition to any other right to terminate this Agreement that the Developer has under this Agreement, the Developer may terminate this Agreement upon 30 days' notice to be effective on a Termination Effective Date which shall be no later than twelve (12) months after the Effective Date if the Developer determines in its sole and absolute discretion that the Development is not economically viable. Upon such termination, the parties shall be fully released from and have no further obligations hereunder to each other except as set forth in Section 15.3 below.

(B) In addition to any other right to terminate this Agreement that the City has under this Agreement, in the event that the 2 Church Street Parcel has not been conveyed to the Developer within five (5) years of the Effective Date and the City is not in default of its obligations under this Agreement at that time, then the City, shall have the right to terminate this Agreement upon thirty (30) days' written notice to the Developer of such termination and upon such termination by the City, the Parties shall be fully released from and have no further obligations hereunder to each other, except as set forth in Section 15.2 and ..

(C) In addition to any other right to terminate this Agreement that the Developer has under this Agreement, in the event that the 2 Church Street Parcel has not been conveyed to the Developer within five (5) years of the Effective Date, and the Developer is not in default of its obligations under this Agreement at that time, then the Developer shall have the right to terminate this Agreement upon thirty (30) days' written notice to the City of such termination and upon such termination by the Developer, the Parties shall be fully released from and have no further obligations hereunder to each other, except as set forth in Section 15.2 and Section 15.3 below.

**Section 15.2 Memorandum of Understanding Regarding Future Development of the 2 Church Street Parcel Upon Termination of the Agreement**

(A) Upon a termination of this Agreement by the City under Section 15.1(B) above or by the Developer under Section 15.1(C) above, if the City is the holder of title to the 2 Church Street Parcel, then the City and the Developer shall enter into a memorandum of understanding in substantially the form attached hereto as Exhibit O designating the Developer as the preferred developer for the development of the 2 Church Street Parcel for a term of twenty-four (24) months.

**Section 15.3 Obligations Upon Termination**

(A) In the event this Agreement shall terminate for any reason whatsoever, including (without limitation) a termination by the Developer in accordance with the provisions of this Agreement, then the Parties shall cooperate in taking all reasonable actions necessary with respect to terminating and/or amending agreements previously entered into and cancelling and/or amending actions previously taken in furtherance of the Project as applicable, except as set forth herein above and below, including without limitation the execution of any necessary documentation to effectuate such terminations and cancellations. In the event of any dispute with respect to the rights and obligations of the Developer or the City under this Section 15.3, the City and the Developer shall participate in the Dispute Resolution Procedure, and the provisions relating to the Dispute Resolution Procedure and the remedies for an Event of Default shall survive the termination of this Agreement.

**ARTICLE XVI  
GENERAL PROVISIONS**

**Section 16.1 Notices**

(A) Except as otherwise provided in this Agreement, any notice or approval required or permitted to be given under this Agreement shall be in writing and shall be given by certified mail

return receipt requested, overnight delivery courier, electronic mail, hand-delivery , or such other means as may be agreed to by the Parties in writing with a copy addressed to the party for whom it is intended as follows:

IF TO THE DEVELOPER: WE 2 Church Street LLC  
c/o Winstanley Enterprises LLC  
150 Baker Avenue Extension  
Suite 303  
Concord, Massachusetts 01742  
Attention: Carter Winstanley  
Email: cw@winent.com  
Attention: Demian Gage  
Email: dgage@winent.com

with copies to: Carolyn W. Kone  
Brenner, Saltzman & Wallman LLP  
271 Whitney Avenue  
New Haven, CT 06511  
Email: ckone@bswlaw.com

and to: Geoffrey Howell  
DLA Piper LLP (US)  
33 Arch Street  
Boston, MA 02110  
Email: geoff.howell@usdlapiper.com

IF TO THE CITY: Economic Development Administrator  
City of New Haven  
165 Church Street  
New Haven, CT 06510  
Attention: Michael Piscitelli,  
Economic Development Administrator  
Email: [mpiscite@newhavenct.gov](mailto:mpiscite@newhavenct.gov)

with copies to: City of New Haven  
165 Church Street  
New Haven, CT 06510  
Special Counsel for Economic Development  
Attention: John R. Ward  
Email: Jward@newhavenct.gov

For Section 13.2 Notice  
add:

City of New Haven  
200 Orange Street  
New Haven, CT 06510  
Attention: Giovanni Zinn, City Engineer  
Email: gzinn@newhavenct.gov

(B) Insurance Notices

IF TO THE DEVELOPER:

WE 2 Church Street LLC  
c/o Winstanley Enterprises LLC  
150 Baker Avenue Extension  
Suite 303  
Concord, Massachusetts 01742  
Attention: Carter J. Winstanley  
Email: cw@winent.com  
Attention: Demian Gage  
Email: dgage@winent.com

IF TO THE CITY:

Corporation Counsel  
City of New Haven  
165 Church Street  
New Haven, CT 06510  
Attention: Alison Jacobs  
Email: ajacobs@newhavenct.gov

with copies to:

Controller  
City of New Haven  
165 Church Street  
New Haven, CT 06510  
Attention: Michael Gormany  
Email: mgormany@newhavenct.gov

Public Works Director  
City of New Haven  
165 Church Street  
New Haven, CT 06510  
Attention: Michael Siciliano  
Email: msiciliano@newhavenct.gov

IF TO THE PARKING  
AUTHORITY

New Haven Parking Authority  
232 George Street  
New Haven, CT 06510  
Attention: Douglas Hausladen  
Executive Director  
Email: [dhausladen@nhparking.com](mailto:dhausladen@nhparking.com)

with copies to:

Rini & Associates  
51 Elm Street Suite 420  
New Haven, CT 06510  
Attention: Joseph L. Rini  
Email: [josephirinilaw@sbcglobal.com](mailto:josephirinilaw@sbcglobal.com)

Merin Law LLC  
51 Elm Street Suite 409  
New Haven, CT 06510  
Attention: Clifford Merin  
Email: [clifford@merinlaw.com](mailto:clifford@merinlaw.com)

(1) Each party shall have the right to change the place or person or persons to which notices, requests, demands, and communications hereunder shall be sent or delivered by delivering a notice to the other parties in the manner required above.

(2) Notice shall be deemed to have been given or made upon (i) the next business day after delivery to a regularly scheduled overnight delivery carrier with delivery fees prepaid, if notice is sent by overnight carrier; (ii) receipt if by certified mail; if notice is sent by certified mail; (iii) receipt if notice is hand-delivered; (iv) when sent if sent by electronic mail, or (v) when agreed to by the parties in writing.

**Section 16.2 No Waiver**

No failure on the part of the City, the Developer or the Parking Authority to enforce any covenant or provision herein contained, shall discharge or invalidate such covenant or provision or affect the right to enforce the same in the future. No default shall be deemed waived by any

party unless such waiver is in writing and designated as such and signed by such party, and such waiver shall not be a continuing waiver but shall apply only to the instance of default for which it is granted.

### **Section 16.3 Rights Cumulative**

The rights and remedies conferred upon any party hereby are in addition to any rights or remedies to which any party may be entitled to at law or in equity, except as otherwise provided in this Agreement.

### **Section 16.4 Successors**

This Agreement shall be binding upon and inure to the benefit of the respective successors and approved assigns of the City, the Parking Authority and the Developer, provided that this section shall not authorize any assignment not permitted by this Agreement under Article XIII.

### **Section 16.5 Severability**

If any term, provision or condition contained in this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term, provision or condition to persons or circumstances (other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each term, provision and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

### **Section 16.6 Governing Law and Jurisdiction**

This Agreement is made in the State of Connecticut and shall be governed by and construed in accordance with the internal laws of the State of Connecticut, without regard to its conflicts of law principles. The Parties consent and agree that the state and federal courts of Connecticut shall have jurisdiction over any dispute arising under this Agreement.

**Section 16.7 No Partnership, Joint Venture or Agency**

Nothing contained herein or done pursuant hereto shall be deemed to create, as among the parties to this Agreement, any partnership, joint venture or agency relationship.

**Section 16.8 Consents**

Where consents, approvals, waivers, or acceptance of work by the City is required to any action (or inaction) pursuant to the provisions of this Agreement, other than zoning and land use approvals, building permits and certificates of occupancy, or unless otherwise provided by this Agreement, such consent, approval, waiver or acceptance of work may be granted (or denied) by the Economic Development Administrator.

**Section 16.9 Amendments**

The City and the Developer agree that the provisions of this Agreement, other than those that concern the Parking Authority, may be modified or amended, in whole or in part, only by a written document executed by the City and the Developer. The Developer, the City and the Parking Authority agree that the provisions of this Agreement that concern the Parking Authority may be modified or amended, in whole or in part, only by a written document approved by the Chairman and the Board of Commissioners of the Parking Authority and the Developer, and the City, acting through its Economic Development Administrator, when applicable.

**Section 16.10 Counterparts**

(A) This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. An electronic, facsimile or photocopy of this Agreement or any signature hereon shall be deemed an original and may be filed or received in evidence in any matter and for any purpose.

**Section 16.11 Term**

The term of this Agreement shall be thirty (30) years from the Effective Date.

**Section 16.12 Members and Officers Barred From Interest**

No member, official or employee of the City or the Parking Authority shall have any personal interest, direct or indirect, in this Agreement or the Developer, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interests of any corporation, partnership, or association in which he or she is directly or indirectly interested. No member, official or employee of the City or the Parking Authority shall be personally liable to the Developer or any successor in interest in the event of any default by the City or for any amount which may become due to the Developer or to its successor or with respect to any other obligations arising under the terms and conditions of this Agreement. No member, manager, officer or employee of the Developer shall be personally liable to the City or the Parking Authority or any of its successors in interest in the event of any default by the Developer for any amount which may become due to the City and/or the Parking Authority or to its successors or with respect to any other obligations arising under the terms and conditions of this Agreement.

**Section 16.13 Gender**

Whenever herein used and the context so permits, the singular shall be construed to include the plural and the masculine or neuter shall be construed to include both and the feminine gender.

**Section 16.14 Estoppel Certificate**

The Parties agree that during the Term of this Agreement, in addition to the provisions in Section 13.3(C) above and Section 13.4 above, upon the request of any party, the receiving party

shall within seven (7) days of receipt deliver to the requesting party a recital of factual matters as requested including without limitation indicating that the requesting party is in compliance with all covenants and agreements binding upon the requesting party under this Agreement to the best knowledge of the receiving party, provided such is the case. TIME IS OF THE ESSENCE WITH RESPECT TO THE TIME PERIODS SET FORTH IN THIS SECTION.

**Section 16.15 Third-Party Beneficiaries**

This Agreement is made solely and specifically among and for the benefit of the Parties hereto and their successors and assigns, where permitted, and no other person is to have any rights, interests or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise.

**Section 16.16 Survival**

All provisions and conditions of this Agreement which by their terms are to be performed or satisfied prior to the transfer of the 2 Church Street Parcel, shall be deemed to be satisfied upon such transfer and shall not survive the transfer, unless the Parties have waived or extended the time for performance by a written instrument as provided elsewhere in this Agreement or unless such provisions expressly provide for their survival after the transfer of the 2 Church Street Parcel. All other provisions shall survive the transfer of the 2 Church Street Parcel and shall expire upon the expiration or termination of this Agreement or, if earlier, in accordance with the express provisions of this Agreement, including (without prejudice to the generality of the foregoing), the satisfaction of the construction obligations of the Developer hereunder with respect to the Development, as evidenced by the issuance of a Certificate of Completion for the Developer's Private Improvements, the Developer's On-Site Public Improvements and the Streetscape Improvements and the acceptance by the City Engineer of the 2 Church Tunnels and Driveways.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the date set forth above.

In the presence of:

**CITY OF NEW HAVEN**

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

By

\_\_\_\_\_  
Justin Elicker  
Its Mayor  
Duly Authorized to act herein

Approved as to form and correctness:

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

**WE 2 CHURCH STREET LLC**

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

By

\_\_\_\_\_  
Carter J. Winstanley  
Duly Authorized to act herein

In the presence of:

\_\_\_\_\_

\_\_\_\_\_

**NEW HAVEN PARKING AUTHORITY**

(as to \_\_\_\_\_)

By: \_\_\_\_\_

Its: Chairman  
Duly Authorized to act herein



