DEVELOPMENT AND LAND DISPOSITION AGREEMENT

BETWEEN

THE CITY OF NEW HAVEN

AND

BIGELOW SQUARE, LLC

FOR

THE CONVEYANCE OF REAL PROPERTY

KNOWN AS 198 RIVER STREET, PARCEL C
NEW HAVEN, CONNECTICUT

2023-CON- [ ]

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DEVELOPMENT AND LAND DISPOSITION AGREEMENT

THIS DEVELOPMENT AND LAND DISPOSITION AGREEMENT (this "Agreement") is entered into as of ____ day of _____, 2023 (the "Effective Date") by and between **THE CITY OF NEW HAVEN,** a municipality organized and existing under the laws of the State of Connecticut, with a mailing address of 165 Church Street, New Haven, Connecticut 06510 (the "City"), and **BIGELOW SQUARE, LLC**, a limited liability company, organized and existing under the laws of the State of Connecticut, with a mailing address of 34 Lloyd Street, New Haven, Connecticut 06513 ("the Developer"). The City and the Developer are hereinafter sometimes together referred to as the "Parties", or each individually as a "Party".

BACKGROUND

On January 7, 2002, the New Haven Board of Aldermen, acting pursuant to the provisions of Chapter 132 of the Connecticut General Statutes, as amended, adopted the River Street Municipal Development Project Plan (the "Plan"), a development plan covering the approximately fifty-three (53) acre area located in the Fair Haven neighborhood that encompasses 198 River Street. The City established the Plan to promote responsible economic development within the Plan boundaries, and to create quality jobs and significant waterfront investment and revitalization.

On or about January 9, 2017, as a part of the City's pursuance of the goals set forth in the Plan, the City and the Developer entered into a lease agreement (the "Lease") with respect to that certain parcel of land owned by the City and known as 198 River Street, New Haven, Connecticut 06513, as therein more particularly described (the "Original Property). The aim of the Lease was to preserve certain historic buildings situated upon the Original Property, by way of a mechanism whereby the Developer would seek to shore up and renovate said historic buildings (which historic buildings were in a dilapidated state) and the City would seek to obtain funding to carry out environmental remediation of portions of the Original Property adjacent to such historic buildings, with a view to the Developer purchasing any such renovated historic building and adjacent remediated portions of the Original Property upon the completion of any such renovation and associated remediation.

On May 25, 2022, in accordance with the Lease, the City conveyed a portion of the Original Property (duly renovated and remediated) to the Developer, which portion of the Original Property is now known as 190 River Street (the "Renovated and Remediated Premises"). The advanced dilapidation of the

remaining historic buildings on the Original Property caused in part by recent storms, however, created a significant health and safety issue. The City's duly authorized Building Official (acting in accordance with the Building Official's responsibilities under State Statute) addressed this health and safety issue by way of demolition of these historic buildings, except for that building known as Building Two. Unfortunately, due to its own advancing deterioration, Building Two has now also been demolished at the direction of the City's Building Official, thus paving the way for a broader range of redevelopment options of the entire Original Property.

Since the intent of the City and the Developer in entering into the Lease was frustrated with respect to the preservation of those other historic buildings situated upon the Original Property (other than the Renovated and Remediated Premises), the City and the Developer have agreed to terminate the Lease and establish a new pathway towards a redevelopment and future use of the Original Property (the "New Project"), by way of (inter alia) (i) the demolition of Building Two, and (ii) the conveyance by the City of a portion of the Original Property to Bigelow (the "Development Property"), which Development Property is more particularly described in Exhibit A attached hereto and made a part hereof. The City will make such conveyance subject to this mutually agreed Development and Land Disposition Agreement (the "DLDA"), pursuant to which the Developer will improve the Development Property with an industrial/commercial building of ten thousand (10,000) square feet and accompanying parking and loading facilities for lease for uses in accordance with the Plan (the "Project").

This Development and Land Disposition Agreement was approved by the Board of Alders, by Order dated [ ].

ARTICLE I

INTERPRETATION AND DEFINITIONS

Section 1.1 Interpretation

(a) Words such as "hereunder", "hereto", "hereof", "herein", and other words of similar import shall refer, unless the context requires otherwise, 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 will render the application of this rule unnecessary.

(e) Capitalized terms used in this Agreement shall have the meanings set forth in this Section 1.2 below, or as may be otherwise defined within the body of this Agreement.

(f) The City and the Developer agree to work diligently and in good faith to provide any and all approvals, consents, waivers, acceptances, concurrences, or permissions 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.

(g) The City and the Developer have participated in the drafting of this Agreement and any ambiguity contained herein shall not be construed against the City or the Developer solely by virtue of the fact that the City or the Developer may be considered the drafter of this Agreement or any particular part hereof.

(h) With respect 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 City and the Developer may amend, alter, or change such exhibit in a writing signed by the Developer and the Economic Development Administrator of the City. 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, by subject to adjustment for Excusable Delay.

(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 non-survivability of obligations of another section.

Section 1.2 <u>Defined Terms</u>

In this Agreement, the following terms shall mean:

(a) "Affiliate" means any entity that is at least fifty-one percent (51%) owned directly or indirectly by the Developer or an entity that has admitted a ninety-nine and 99/100 percent (99.99%) tax credit investor member, so long as Developer directly or indirectly controls the managing member of such entity.

(b) "Agreement" means the four (4) corners of this instrument, and includes any appendices, exhibits, or schedules incorporated by reference, as well as any amendments, modifications, or supplements which the City and the Developer may execute subsequent to the effective date of this instrument.

(c) "Certificate of Completion" means a certificate issued in accordance with Section 9.3 of this Agreement.

(d) "Conditions Precedent" means those conditions which must be satisfied or waived by the Developer prior to conveyance of the Development Property as more particularly described in Section 3.5(b) below.

(e) "CNS" means a Covenant Not to Sue under C.G.S. Section 22a-133aa.

(f) "DEEP" means the Connecticut Department of Energy and Environmental Protection.

(g) "DECD" means the Connecticut Department of Economic and Community Development.

(h) "Default Notice" means any notice of an event of default delivered by either the City or the Developer under the provisions of Article X of this Agreement.

(i) "Developer Improvements" means those improvements to be designed and constructed by the Developer at the Property in furtherance of the completion of the Project, and more particularly described in Section 4.1 below.

(j) "Development Property" means that property to be redeveloped and more particularly defined under "Background".

(k) "Dispute Resolution Procedure" means the procedure for resolving a dispute among or between the Parties as set forth in Section 10.3 of this Agreement.

(l) "Environmental Laws" means any and all federal, state, and local laws, statutes, ordinances, rules, regulations, or orders of any Governmental Authority enacted for the protection of human health, welfare, and/or the environment, including the federal Clean Water Act, the federal Clean Air Act, the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, the federal Water Pollution Control Amendments, the Federal Resource Conservation and Recovery Act of 1976, the federal Hazardous Materials Transportation Act of 1975, the federal Safe Drinking Water Act, the federal Toxic Substances Control Act, and any comparable or similar environmental laws of the State, including Title 22a of Connecticut General Statutes including without limitation the Property Transfer Act C.G.S. Section 22a-134 et seq. (the "Transfer Act"); the Voluntary Remediation Program under C.G.S. Section 22a-133x (the "VRP"); the Release Based Program, C.G.S. Section 22a-134tt (the "RBP") and the State of Connecticut Remediation Standard Regulations, R.C.S.A. Section 22a-133k-1 through k-3 inclusive ("RSRs") (all as may be amended from time to time).

(m) "Environmental Work" means environmental work required to test, remediate, abate, or monitor any Existing Environmental Condition which is required to be performed pursuant to any applicable Environmental Law, including without limitation, remediating any Existing Environmental Condition in accordance with the RSRs including without limitation by rendering the soil inaccessible or environmentally isolated and restricting the Development Property to commercial/industrial use, all as more fully set forth in the RSRs.

(n) "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 of creditors

(o) "Event of Default" means a default by either of the Parties of its obligations or covenants hereunder after notice, if required under this Agreement, as described in Article X of this Agreement.

(p) "Excusable Delay" means any delay which is caused by a Force Majeure Event.

(q) "Existing Environmental Conditions" means the environmental conditions on the Development Property existing on or before the Closing Date, which under applicable Environmental Laws require testing, remediation, abatement, or monitoring for the uses on such Development Property as contemplated by this Agreement.

(r) "Force Majeure Event" means any event, act, failure to act, or circumstances caused by: (i) acts of God, including without limitation, floods, hurricanes, storms, tornadoes, lightning, earthquakes, washouts, and landslides; (ii) fires, explosions, or other casualties; (iii) governmental moratorium; (iv) acts of a public enemy, civil commotions or disturbances, riots, insurrections, acts of war, blockades, embargos, terrorism, effects of nuclear radiation, government shutdowns, or national or international calamities; (v) sabotage; (vi) condemnation or other exercise of the power of eminent domain other than the exercise of the power of eminent domain by the City with respect to an Excusable Delay asserted by the City; (vii) the passage or enactment of, or the new interpretation or application of statutory or regulatory requirements or the adoption of, any land use plan that adversely impacts on the conveyance or development of the Property; (viii) with respect to the Developer's assertion of Excusable Delay, delays, acts, neglects, or faults or violations of the terms of this Agreement on the part of the City or public officials, employees, or agents or contractors; (ix) with respect to the City's assertion of Excusable Delay, delays, acts, neglects, or faults on the part of the Developer or its employees, agents, or contractors; (x) restraint, delay, or any similar act by any utility company and any governmental authority (including any reviews and approvals required from a governmental authority), other than the City with respect to an Excusable Delay asserted by the City; (xi) 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, lockouts, or other industrial disturbance; (xii) unusual adverse weather conditions; (xiii) freight embargoes; (xiv) unusual and unanticipated delays in transportation; (xv) unavailability of, or unusual delay in the delivery of, fuel, power, supplies, equipment, materials, or labor; (xvi) discovery of an Environmental Condition, including but not limited to hazardous materials, the nature or quantity of which materially affects the ability of the Developer to carry out the required work; (xvii) appeals of any zoning amendments, approvals, or permits required for the Development or any court or administrative or governmental order directing that the construction of any portion of the Project be stopped; (xix) any other cause beyond the reasonable control of the Party asserting an Excusable Delay; (xx) the failure of any occupant of the Property to vacate the Property, other than the Developer with respect to an Excusable Delay asserted by the Developer and other than the City with respect to an Excusable Delay asserted by the City; and (xxi) the failure of a third party to take any action or obtain any approval and/or consent from a governmental authority which is required by a legal requirement in order for the Developer to obtain any zoning or other governmental permit, approval, and/or relief.

(s) "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 any way applicable to the Project including but not limited to any of the aforesaid dealing with the zoning, subdivision, design, construction, ownership, use, leasing, handicapped accessibility, maintenance, service, operation, sale, exchange, or condition of the Project. "Legal Requirements" shall not mean Environmental Laws.

(t) "LEP" means a Licensed Environmental Professional.

(u) "Mortgagee" means third party providing financing for the Project and holding a mortgage to secure the Developer's obligations, as more particularly described in Section 4.9 of this Agreement.

(v) "Project" means the entire development at the Development Property contemplated by this Agreement, consisting of the improvements set forth herein.

(w) "Project Completion Date" shall be the scheduled date for completion in accordance with the Project Schedule.

(x) "Project Schedule" means the schedule for construction and completion of the Project as set forth on Exhibit B attached hereto.

(y) "RAP" means the Remedial Action Plan prepared by the City's LEP to address the remediation of the Existing Environmental Conditions on the Development Property necessary to comply with the requirements of the VRP in accordance with the RSRs.

(z) "Substantial Completion" means that the Developer Improvements to be constructed are completed, to the extent that the buildings or structures to be erected or renovated thereon may be occupied or utilized for their intended purposes notwithstanding any punch list items as may be evidenced by an interim Certificate of Occupancy.

(aa) "Term" means the period commencing on the Effective Date and ending on the date that is thirty (30) years after the Project Completion Date.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations and Warranties of the Developer

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 Connecticut, and qualified to do business in the State of Connecticut; (b) the Developer has the legal authority to enter into and carry out the transactions set forth in this Agreement; (c) the execution and delivery of this Agreement by the Developer has been duly and validly authorized by all necessary corporate action; (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

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 action; (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.

ARTICLE III

CONVEYANCE OF THE DEVELOPMENT PROPERTY

Section 3.1 Covenant of Sale

Subject to all of the terms, covenants, and conditions of this Agreement (including in particular, but without limitation, the provisions of Section 3.5(b) below), the City covenants and agrees to sell and convey, and the Developer covenants and agrees to purchase, the Development Property.

Section 3.2 Condition of Property to be Conveyed

The Developer acknowledges that a complete inspection of the Development Property has been made immediately prior to conveyance. The Developer further acknowledges that the City has requested the Developer to inspect fully the Development Property and investigate all matters relevant thereto, including without limitation, all Existing Environmental Conditions, and to rely solely upon the results of Developer's own inspections or other information obtained or otherwise available to the Developer rather than any information that may have been provided by the City to the Developer. Except as set forth in this Agreement, the Developer has not relied upon any statement or representation made by the City regarding the Existing Environmental Conditions of the Development Property. The City has made available to the Developer information and reports relating to the Existing Environmental Conditions of the Development Property in order to facilitate the transfer of the Development Property. The City has relied on such information and reports for its own use but makes no representations or warranties with respect to the accuracy or completeness, methodology of preparation, or otherwise concerning the contents of such reports. The City makes no representations or warranties as to whether the Development Property contains, without limitation, asbestos, harmful or toxic substances, hazardous wastes, or oil or petroleum as defined in C.G.S. §22a-448, or to the extent, location, or nature of same. Further, to the extent that the City has provided to the Developer information from any inspections, engineering, or environmental reports concerning asbestos or harmful or toxic substances, the City makes no representations or warranties with respect to the accuracy or completeness, methodology of preparation, or otherwise concerning the contents of such reports. The Developer acknowledges that the Development Property may now or in the future be encumbered by an Environmental Use Restriction (the "EUR"), which will be either an Environmental Land Use Restriction ("ELUR") or a Notice of Activity and Use Limitation ("NAUL"), which ELUR or NAUL will be recorded by the Developer on the Land Records of the City of New Haven after Closing and will run with the land, as well as any other Existing Environmental Conditions or restrictions, all as more fully set forth in Section 3.9 of this Agreement below. The Developer agrees to accept, without qualification, the Development Property in its "AS IS" and "WITH ALL FAULTS" condition existing at the time of the execution of this Agreement.

Section 3.3 Title and Instrument of Conveyance

(a) The sale and conveyance shall be of fee simple title to the Development Property, and shall be by quit claim deed (the "Deed") in form reasonably satisfactory to the Developer and the City, containing no restrictions other than those contained in applicable codes, ordinances, and regulations and the applicable restrictions of the Deed and this Agreement. The Deed shall be made expressly subject to the terms and provisions of this Agreement, which shall survive delivery of the Deed.

(b) Notwithstanding any other provision of this Agreement, it is agreed and understood that the Developer shall not be required to accept the Deed unless it shall be able to obtain Title Insurance, insuring good and marketable fee simple title. If the City shall be unable to convey such title, the Developer shall have the right to accept such title as the City can convey or require the City to use its reasonable best efforts, within an agreed upon timeframe, to provide such title, failing which Developer may terminate this Agreement. Marketability of title shall be determined in accordance with the Standards of Title of the Connecticut Bar Association.

(c) This Agreement shall be recorded in the New Haven Land Records prior to the recording of the Deed.

Section 3.4 Purchase Price

The purchase price for the Property (the "Purchase Price") shall be One Dollar and Zero Cents ($1.00), which shall be paid to the City upon its delivery of the Deed to the Developer.

Section 3.5 Time of Sale and Conveyance

(a) The closing shall take place at a time and place to be mutually agreed upon by the City and the Developer, following the satisfaction of all of the Conditions Precedent (the "Closing Date"), provided that the Closing Date shall take place (subject to Excusable Delay) within ninety (90) days of such satisfaction or waiver.

(b) The obligation of the Developer to purchase the Development Property and carry out the Project in accordance with the terms and conditions of this Agreement shall be subject to the satisfaction of the Conditions Precedent, namely:

(i) the securing by the Developer of all final, unappealable permits and land use and other approvals required to construct and operate the Project (including without limitation as described in Section 7.2 of this Agreement below), which approvals shall not be subject to any conditions which (in the reasonable opinion of the Developer) would prevent such operation; and

(ii) the securing by the Developer of unconditional commitments for all funding required to construct the Developer Improvements, or conditional commitments for such funding where it is in the power of the Developer to meet such conditions.

(iii) the demolition of the Remaining Building by the City, at the City's sole cost and expense, but subject to a contribution by the Developer of Thirty Thousand Dollars and No Cents ($30,000.00) to Dixwell Avenue Congregational Church, located at 217 Dixwell Avenue, New Haven, CT 06511, regarding measures to be taken with respect to demolition mitigation (the "Mitigation Payment"), in accordance with the

requirements set forth in the letter from the CT State Historic Preservation Office to the City dated February 3, 2022.

(iv) the submission by the City of the RAP to DEEP for approval and the receipt by the City of a CNS for the Development Property from DEEP, a copy of which CNS Approval shall be recorded on the land records prior to Closing.

(v) the completion of active soil remediation of the Development Property by the City, following the Developer's compliance with the provisions of Section 9.2 of this Agreement below, as set forth in the RAP, except for any final capping required to render soil inaccessible or environmentally isolated as defined in the RSRs, which final capping will be done post-Closing as part of the Project; and the preparation, submission and recording of an EUR, if and as required.

(vi) the drafting of a mutually-acceptable site plan (and such ancillary documentation as may be required) for site plan review (the "Site Plan Review Documents"), which Site Plan Review Documents shall be prepared by an engineer to be selected by the City in the exercise of the City's sole but reasonable discretion (the "Engineer") at the City's sole cost and expense, provided that it is agreed and understood that the Developer pursuant to such Site Plan Review Documents, ownership of which the City shall transfer to the Developer by way of an instrument in form acceptable to the City, shall hold harmless and indemnify the City from and against any and all errors and omissions.

(vii) the termination of the Lease effective upon the execution and delivery of this Agreement, by way of written agreement between the parties and recording in the New Haven Land Records.

(c) In the event that all of the Conditions Precedent are not satisfied within [ ](the "Precondition Period"), and the City and the Developer do not agree to extend the Precondition Period, the City shall not convey the Development Property to the Developer and this Agreement may be terminated by the City or the Developer by written notice, whereupon this Agreement shall be null and void and of no further effect. In the event that this Agreement shall have been recorded on the New Haven Land Records, the City and the Developer shall jointly execute a "Notice of Termination" in recordable form, which Notice of Termination shall be recorded in the New Haven Land Records.

Section 3.6 Real Estate Conveyance Tax and other Closing Costs

The Developer shall pay the cost of obtaining any policy of title insurance and all other customary closing costs, except for the cost of recording this Agreement and the Deed for the Property. The City will make reasonable efforts to record this Agreement and the Deed at no cost to the City, if so permitted, unless not so permitted, in which case the Developer agrees to pay the costs of recording this Agreement and the Deed. Each Party shall be responsible for payment of the legal fees of its own counsel in the negotiation and execution of this Agreement, the Deed, and the transfer of the Property.

Section 3.7 Adjustments

The City shall adjust real estate taxes as of the Closing Date in accordance with the custom in the City of New Haven, State of Connecticut. In the event that the Property is exempt from taxation on the assessment date immediately preceding the date on which the Deed is recorded in the New Haven Land Records, the Developer shall be liable for taxes from the Closing Date pursuant to Conn. Gen. Stat. § 12-81a and shall make payment of such taxes in accordance therewith. Any amounts owed by the Developer under this Section 3.7 shall be due and payable in the manner and at the time set forth in Conn. Gen. Stat. § 12-81a.

Section 3.8 Access and Inspections

(a) The Developer acknowledges that the City will convey the Development Property in an "as is" and "whereas" condition, and that the City has not made any representations or warranties to the Developer regarding the condition of any portion of the Development Property, including any Existing Environmental Conditions, upon which the Developer has relied. The Developer further acknowledges and agrees that it is relying solely upon its own inspection of the Development Property for all purposes, including without limitation, its conditions and suitability. The Developer acknowledges that the City does not make, has not made, and specifically disclaims any representations or warranty, express or implied, regarding the Existing Environmental Conditions of any portion of the Development Property.

(b) Subject to the Developer obtaining and maintaining the insurance hereinafter described, the City shall provide the Developer and its designees and consultants with reasonable access to the Development Property to perform such inspections and testing (including environmental surveys) as deemed reasonably necessary by the Developer. It is agreed and understood that the Developer shall provide its employees, designees, and consultants with appropriate safety equipment for accessing the Development Property, and that the Developer shall be responsible for causing the Developer's contractor to observe all applicable workplace safety rules and regulations. The Developer shall itself carry and shall cause its designees and consultants to carry appropriate insurance for their anticipated activities at the Property, with limits reasonably acceptable to the City, naming the City as an additional insured on such insurance policies.

Section 3.9 Environmental

(a) The Developer acknowledges that the City's LEP has completed Phase I, Phase II, and Phase III environmental site assessments of the Development Property ("ESAs") in accordance with applicable requirements, which ESAs have identified Existing Environmental Conditions on the Development Property that may require remediation under applicable law. The City's LEP has also prepared a RAP to address the Existing Environmental Conditions on the Development Property, in accordance with the VRP, which RAP has been approved by the City's LEP and by DEEP prior to Closing. Developer acknowledges that it has reviewed the ESAs, the RAP, and the Development Property, and approves and accepts the Existing Environmental Conditions. Prior to Closing, the City will have its LEP submit the RAP to the DEEP to enter the Development Property in the VRP. The City agrees to conduct and complete the remediation activities outlined in the Development Property RAP at its sole cost and expense ("City's Remediation Obligations").

(b) The City and the Developer agree that the City will conduct the City's Remediation Obligations outlined in the RAP, and the Developer will perform its obligations identified below to address the Existing Environmental Conditions. Specifically, prior to Closing, the City will have completed active soil remediation on the Development Property, as set forth in the RAP, except for: (i) any final capping required to render soil inaccessible or environmentally isolated as defined in the RSRs, which final capping will be done by the Developer post-Closing as part of the Project; (ii) the preparation, submission, and recording of an EUR; (iii) groundwater monitoring; and (iv) the submission of the Final Verification Report required under the VRP, in accordance with the applicable RSRs and as outlined in the RAP and/or approved by DEEP. Any other remediation activities required as part of the RAP shall be conducted by the City at its sole cost and expense after the Closing and Delivery of Deed.

(c) The Developer agrees that any soil excavation required to be conducted as part of additional Developer Improvements, if any, to the Development Property after Closing and Delivery of Deed, including any trenches, pits, or other installations, both as part of the slab installation, landscaping, utility installation, grading or other site requirements, shall be conducted by the Developer at its sole cost and

expense. Any underground utilities installed on behalf of the Developer shall be placed within a clean corridor, subject to prior approval of same by City's LEP, if required. All soils excavated shall first be properly characterized by the Developer and managed in accordance with a soil management plan developed by the Developer and submitted to the City for approval, in accordance with applicable RSRs and any other local, state, or federal law, at the sole cost and expense of the Developer. Any soils which cannot be reused on the Development Property in accordance with the provisions of the RAP and the RSRs, or as approved by DEEP, shall be properly disposed of off-site by the Developer in accordance with all applicable laws at the sole cost and expense of the Developer. The Developer shall promptly provide the City with all documentation regarding the soil re-use and/or off-site disposal, including any information necessary for the City to complete the requirements of its RAP and/or EUR for the Development Property. Further, the Developer agrees to be solely responsible for all costs and expenses of remediating any new environmental conditions to the extent that they first arise out of or relate to circumstances or conditions first occurring after the Closing Date and delivery of Deed, with respect to or in any way related to the Development Property, both on the Development Property and off the Development Property, that may require remediation or that may result in claims or demands by or liabilities to third parties, including governmental authorities, resulting from the Developer's operations on the Development Property, unless said condition existed or was related to the Existing Environmental Conditions addressed and identified prior to Closing and Delivery of Deed as defined hereinabove (the "New Environmental Conditions"), except that the Developer shall be solely responsible as provided hereunder for any exacerbation of the Existing Environmental Conditions resulting from the Developer's Operations on the Development Property or the Premises during the Term of the Lease Agreement or after the Closing Date and delivery of Deed.

(d) Following the Closing and Delivery of Deed, the Developer covenants and agrees on behalf of itself and its heirs, successors, and assigns to cooperate fully with the City with regard to the City's performance of the City's Remediation Obligations, subject to the terms and provisions of the Post Closing Access Easement, Release and Restrictions Agreement attached hereto as Exhibit D and made a part hereof, which Agreement the Developer and the City agree to execute at Closing and record on the Land Records together with Deed. Such cooperation includes without limitation: (i) signing as the grantor an EUR form required under RCSA Section 22a-133q as required to meet the City's Remediation Obligations in accordance with C.G.S. Section 22a-133x and the RAP, providing any and all agreements to subordinate and subordination agreements required as part of the EUR, recording the EUR on the New Haven Land Records and providing proof of recording to the City, paying the fee for the EUR, complying with all requirements of the EUR as Development Property owner after the filing of the EUR on the New Haven Land Records, and complying as owner of the Development Property with all other requirements under C.G.S. Section 22a-133x; (ii) not objecting to the use of any protective barriers, engineered controls, geotechnical fabric markers, alternative compliance criteria, or any other mechanisms allowed under the RSRs as part of the City's Remediation Obligations; (iii) providing the City and/or its agents, consultants, LEP, contractors, or subcontractors access to the Development Property upon reasonable notice and at reasonable times to allow implementation of the City's Remediation Obligations and to perform such groundwater sampling, soil remediation, soil removal, post-remedial or natural attenuation monitoring, or other activities required to comply with the City's Remediation Obligations including any requirements to satisfy the EUR; (iv) being solely responsible for all liabilities, costs, and expenses relating to any New Environmental Condition; (v) providing assurances at Closing that the Developer has obtained agreements to subordinate Development Property interests to any EUR with all parties with an interest in the Development Property, or expected to have an interest in the Development Property after Closing, until such time as the EUR is approved and ready to be filed on the New Haven Land Records, which agreements shall provide for a re-execution at the time of recording the EUR on the New Haven Land Records in accordance with the requirements of C.G.S. Section 22a-133o, as amended and RCSA Section 22a-133q-1; and (vi) provide the City an as-built A-2 Survey of the Development Property, which A-2 survey the

City shall be allowed to utilize as a base A-2 survey to meet the requirements under RCSA Section 22a-133q-4 for an A-2 Survey in preparation of the EUR as provided for in subsection (h) herein below. This covenant shall survive the Closing and Delivery of Deed contemplated hereby.

(e) The Developer agrees that the City will have completed the City's Remediation Obligations hereunder upon the issuance of a Final Verification Report by its LEP that the Development Property is in compliance with the RSRs as required under the VRP and, absent an audit by DEEP of the Verification, the City shall have no further obligations to the Developer on the City's Remediation Obligations including without limitation any obligations of the EUR. The Developer agrees to release any and all claims it may have against the City for any New Environmental Conditions or Existing Environmental Conditions covered by the City's Remediation Obligations including, without limitation, the EUR, upon delivery of the Final Verification Report (Developer's Release). Nothing contained in this Agreement shall be considered a representation or warranty by the City to the Developer regarding the Existing Environmental Conditions of the Development Property at any time including upon completion of the City's Remediation Obligations hereunder. The release contained herein shall survive the Closing and Delivery of Deed contemplated hereby.

(f) The Developer agrees to indemnify, defend, and hold the City harmless from any and all claims, damages, losses, liabilities, and expenses (including without limitation reasonable attorney's fees) incurred in connection with any negligence of the Developer or any of its employees, agents, guests, vendors, assignees, tenants, or contractors first occurring after the Closing Date, until such time as the City has completed the City's Remediation Obligations hereunder upon the issuance of a Final Verification Report by its LEP that the Development Property is in compliance with the RSRs as required under the VRP, absent an audit by DEEP of the Verification which negligence results in any damage, claim, or injury in connection with City's Remediation Obligations conducted pursuant to the terms of this Agreement. The indemnification contained herein shall survive the Closing contemplated hereby and shall terminate and be of no further force and effect on the date which is the earlier of either: 1) the issuance by DEEP of a No Audit or No Further Audit Letter or equivalent, 2) the successful completion of any activities necessary to respond to an audit by DEEP of the Verification (or equivalent) in the event DEEP issues a Notice of Audit, or 3) one (1) year after the submission of the Verification, provided DEEP has not commenced an audit during such timeframe.

(g) The Developer agrees to indemnify, defend, and hold the City harmless from any and all claims, damages, losses, liabilities, and expenses (including without limitation reasonable attorney's fees) incurred in connection with any negligence or other act or omission of the Developer or any of its employees, agents, guests, vendors, assignees, tenants, or contractors which violate any of the provisions of the EUR. Such indemnification shall run with the land and apply to any future owner, heir, successor, or assign of the Developer. The indemnification contained herein shall survive the Closing and Delivery of Deed contemplated hereby.

(h) The Developer agrees and acknowledges that the City has agreed to prepare an EUR for the Development Property, together with all of the required documents, in compliance with the requirements of CGS Section 22a-133o and RCSA Section 22a-133q. Prior to submitting the proposed EUR to DEEP for approval, the Developer will provide the City with the fee for submitting the EUR, together with all of the agreements to subordinate and subordination agreements for any and all parties with an interest in the Development Property as provided in Section 3.9(d) of this Agreement hereinabove, any additional executed subordination agreements from any newly discovered parties with an interest in the Development Property, and any other EUR documents required of the Developer as the owner of the Development Property, all for submission with the proposed EUR to DEEP for its review and approval and as required under RCSA Section 22a-133q. Upon approval of the EUR by DEEP, the City will provide all

of the requisite documents to the Developer and the Developer shall sign and record the EUR and any other required documents, in that order, on the New Haven Land Records and provide to the City proof of recording the EUR and required documents. Upon the filing of the EUR on the New Haven Land Records, the City will have no further obligations to the Developer relating to the EUR as more fully provided hereinabove.

(i) The City agrees to indemnify, defend, and hold the Developer harmless from any and all claims, damages, losses, liabilities, and expenses (including without limitation reasonable attorney's fees) incurred solely in connection with the City's performance of the City's Remediation Obligations, and shall survive the Closing contemplated hereby and shall terminate and be of no further effect upon the City's completion of the City's Remediation Obligations hereunder upon the issuance of the Final Verification Report by its LEP to DEEP that the Development Property is in compliance with the RSRs as required under the VRP. **This indemnity shall not apply to any excavation, handling or disposal of soil, New Environmental Conditions, or other activities for which Developer is responsible under Sections 3.9(b) and 3.9(c) of this Agreement.**

(j) On and after the date of the delivery of the Deed, the Developer shall indemnify, defend, and hold harmless the City and the City's 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 attorneys' fees made or asserted by anyone whomsoever, due to or arising out of, any environmental conditions on the Development Property, including any existing environmental conditions, but excluding any environmental conditions (a) first arising or existing before the Closing Date, or (b) which are caused or contributed to by the City or its agents, contractors, or employees. In connection with this Section 3.9, if the Developer is required to defend any such action or proceeding to which action or proceeding the City is made a Party, 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 that any such action does not limit or make void any liability of any insurer hereunder with respect to the claim or matter in questions. This indemnification shall survive the termination or expiration of this Agreement.

(k) It is intended and agreed that the agreements and covenants contained in this Section 3.9 shall be subject to Section 11.4 of this Agreement herein below and shall survive the Closing and Delivery of the Deed.

ARTICLE IV

THE DEVELOPER IMPROVEMENTS

Section 4.1 General

The Developer agrees, at the Developer's sole cost and expense, to design and thereafter construct the Developer Improvements so as to complete the Project in accordance with all of the terms and conditions of this Agreement, which Developer Improvements shall consist of the construction of a new building of ten thousand (10,000) square feet in size, together with the appropriate parking and loading areas in accordance with the Plan and the Site Plan Review Documents.

Section 4.2 Plan and Design

The Developer agrees to deliver copies of the Developer's preliminary design plans and drawings for the Project (the "Design Documents") prior to commencement of the Project and, provided there shall be no significant increase in cost, material adverse construction, or operational impacts, to make reasonable efforts to incorporate the City's suggestions in the final Design Documents, particularly those suggestions concerning the design goals of the Plan as related to the former Bigelow National Register Historic District and the goals for advancing sustainability and energy efficiency, provided further that the City delivers such suggestions within thirty (30) days following delivery of the Design Documents to the City. It is agreed and understood that the Developer shall be the ultimate decisionmaker in connection with any and all design considerations, provided that all such decisions made by the Developer concerning the design of the Developer Improvements shall result in the Project being constructed and completed in accordance with all of the requirements set forth in this Agreement.

Section 4.3 Cooperation

The Developer agrees to apply for all permits and approvals required for the construction and operation of the Developer Improvements, including (without limitation) an application for site plan review ("Site Plan Review"). To the extent reasonably possible, the City shall assist the Developer in making applications for all approvals and permits required for the Developer Improvements, including any approvals required from the City of New Haven Board of Zoning Appeals (the "BZA"), the CPC, the City of New Haven Traffic Authority (the "NHTA"), DEEP, or any other municipal, state, or federal governmental agency, board, or commission. Notwithstanding the foregoing, the Developer hereby acknowledges and understands that the CPC, the BZA, and the NHTA are independent municipal decision-making bodies, and that the City does not have any authority to modify, overturn, or otherwise alter any decision made by any such independent municipal body, and further that the City has no authority whatsoever over any state or federal agency, board, or commission.

Section 4.4 Project Schedule

(a) The Developer shall commence construction of the Project substantially in accordance with the Project Schedule, it being agreed and understood that the Project Schedule may require periodic modification to take into account unforeseen conditions and delays, and to the extent that the Developer provides the City with reasonable evidence of the need for such modifications, the City, acting through the City's Economic Development Administrator, and the Developer shall amend the Project Schedule in such manner as is mutually acceptable. If the City and the Developer cannot agree upon such Project Schedule amendments, then such dispute shall be submitted to the Dispute Resolution Procedure pursuant to and as contained in Section 10.3 of this Agreement.

(b) Subject to Excusable Delay, the Parties agree that Substantial Completion of the Project shall occur no later than the date set forth in the Project Schedule unless by mutual agreement between the City and the Developer in writing.

Section 4.5 Commitment to Sustainability

(a) Consistent with the Board of Alders' Resolution Endorsing the Declaration of a Climate Emergency to Restore a Safe Climate, adopted on September 3, 2019, the Developer will take a climate awareness approach to the rehabilitation and construction of the Project Building, with a view to long-term responsiveness to climate change. In particular (but without limitation) the Developer shall undertake

such carbon reduction measures as may be feasible including, (without limitation) as more specifically provided below:

a. Upon delivery of the Developer's preliminary design plans and drawings for the Project, the Developer shall provide a narrative describing how the Developer plans to select products and materials in order to reduce the Project's embodied carbon footprint.
b. The Developer agrees to contact the Energize CT's New Construction Energy Efficiency program to learn about technical assistance and incentives options.

(b) The Developer shall use glazing treatments (including but not limited to etched glass or frosted glass), visual markers (including but not limited to fritted glass, line markers, or dot markers), or ultraviolet-reflective markers to deter bird collisions with the windows of the Project Building. Glazing or marking treatments (such as dot markers or line markers) must be no more than 2 inches apart horizontally or 4 inches apart vertically.

(c) All uses shall be located a minimum of two feet above the base flood elevation.

(d) In order to promote bicycling and bicycle transportation within the City, the Developer will provide an enclosed and secure bicycle storage facility within the Project with the capacity of not less than ten (10) bicycles.

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Section 4.6 Casualty

In the event of any damage or destruction to any of the Developer Improvements during the Term, and subject to the rights of any mortgagee and subject to any agreement to the contrary with the City, the Developer agrees, to the extent feasible and commercially practicable, to use all insurance proceeds obtained as a result of such damage or destruction to restore the portion of the Developer Improvements so damaged or destroyed to the condition existing prior thereto.

Section 4.7 Prohibited Uses

The Developer hereby agrees that, after conveyance of the Development Property to the Developer, no portion of the Development Property shall be sold, leased, used, or occupied by a discount department store, "dollar" store, firearms and/or ammunition store establishment, charity thrift shop or the like, adult book store or adult entertainment establishment, massage parlor (provided that therapeutic massage establishments shall be permitted), or any liquor store which sells single beers or hard liquor in containers holding less than one (1) pint.

Section 4.8 Operation and Maintenance of the Development Property

The Developer shall, during the period it holds title to the Development Property, keep the Development Property and all improvements thereon, now or hereafter existing, in good and safe condition and repair, and shall comply with all applicable laws, ordinances, codes, and regulations (federal, state, or municipal) with respect to the occupancy, operation, and maintenance of the same.

Section 4.9 Reimbursement of the City

The Developer shall pay all costs and expenses, including a reasonable attorney's fee, as well as any judgments and decrees which may be incurred by the City in proceedings brought to enforce compliance with the provisions of this Agreement, including, without limitation, the obligations set forth in Article IV and Article VI of this Agreement, provided that in any such case the City prevails in such enforcement actions. It is expressly understood, however, that any Mortgagee of all or any portion of the Development Property shall not be liable to the City for any costs, expenses, judgments, or decrees which shall have accrued against the Developer, whether or not such Mortgagee shall subsequently acquire title to the Development Property.

ARTICLE V
MORTGAGES OF INTEREST IN PROPERTY

Section 5.1 Mortgage of Property by the Developer

(a) Notwithstanding any other provisions of this Agreement, the Developer at all times shall have the right to encumber, pledge, or convey its right, title, and interest in and to the Development Property, or any portion or portions thereof, by way of a bona fide mortgage to secure the payment of any loan or loans obtained by the Developer to finance the acquisition of the Development Property and/or the Construction Work (a "Mortgage"), provided that any Mortgagee taking title to the Development Property or part thereof (whether by foreclosure or deed in lieu of foreclosure or otherwise) shall be subject to the provisions of this Agreement, and 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 Development Property after the date of the recording of this Agreement, including the lien of any Mortgage, except for the liens that by law have superiority over this Agreement.

(b) From time to time, and upon not less than fourteen (14) days prior written notice, the City shall execute, acknowledge, and deliver, without charge to any Mortgagee, any prospective Mortgagee designated by either the Developer or any Mortgagee, or any prospective purchaser of the Developer's interest in the Development Property as provided for herein, a statement in writing stating that (i) this Agreement is 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), (ii) no notice of default has been served on the Developer (or if the City has served such notice, the City shall provide a copy of such notice or state that the same has been revoked, if such be the case), (iii) to the City'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 (iv) the amounts due under this Agreement and any other information as may be reasonably requested.

(c) No voluntary action by the Developer to cancel, surrender, terminate, or modify this Agreement shall be binding upon any Mortgagee without its prior written consent, and the City shall not enter into an agreement with the 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 any Mortgagee. In the event that the Developer and the City shall desire to enter into any such agreement, it shall be the responsibility of the Developer to obtain the consent of each Mortgagee.

(d) Notwithstanding any other provision of this Agreement, no Mortgagee shall become personally liable under this Agreement unless and until it becomes the holder of the Developer's estate 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.

Section 5.2 Foreclosure of Mortgage/Acquisition of the Developer's Estate by Mortgagee

(a) Notwithstanding anything to the contrary in this Agreement, any Mortgagee or any entity, that, directly or indirectly, is owned and controlled by such Mortgagee (a "Designee") may acquire title to the Development Property by foreclosure or a transfer in lieu of foreclosure without any consent or approval by the City. If a Mortgagee or Designee acquires the Developer's estate in the Development Property or forecloses its Mortgage prior to issuance of a Certificate of Completion for the Project, such Mortgagee shall, at its option: (i) complete construction of the Developer Improvements in accordance with this Agreement and in all respects (other than time limitations) comply with the provisions of this Agreement with respect to the Property; or (ii) sell, assign, or transfer the Developer's estate in the Development Property to a purchaser, assignee, or transferee who shall expressly assume all of the covenants, agreements, and obligations of the Developer under this Agreement, other than time limitations, which time limitations shall be reasonably extended by the City. Thereafter, such purchaser, assignee, or transferee shall be deemed the "Developer" under the terms of this Agreement with respect to the Project, by written and recordable instrument reasonably satisfactory to the City and filed in the New Haven Land Records. It is 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.

(b) In the event a Mortgagee completes the construction of the Developer Improvements to be constructed under this Agreement on the Development Property or in accordance with this Agreement (other than time limitations), the Mortgagee may sell, assign, or transfer fee simple title to the Property to any purchaser, assignee, or transferee, without restriction as to the consideration to be received and without the City's consent, provided that if such sale, assignment, or transfer is during the Term of this Agreement, the purchaser, assignee, or transferee expressly assumes all of the covenants, agreements, and obligations under this Agreement with respect to the Development Property 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. Provided, further, it is the intention of the Parties that upon a sale, assignment, or transfer by a Mortgagee or its designee in accordance with the terms of this Section 5.2(b), 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.

(c) If any Mortgagee acquires the Developer's estate in the Development Property after issuance of a Certificate of Completion but during the Term, such 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 with respect to the Project, provided any Mortgagee shall have the right to sell, assign, or transfer the fee simple title to the Development Property on the same basis as set forth in this Agreement.

(d) If any Mortgagee becomes the holder of the Developer's estate in the Development Property, the City acknowledges that any claims or lawsuits or judgments obtained by the City against such Mortgagee

and arising under this Agreement shall be satisfied solely out of the Mortgagee's interest in the Development Property.

(e) The rights of any Mortgagee under this Agreement shall extend to any Designee of the Mortgagee or any assignee or transferee of a Mortgage, provided that 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.

Section 5.3 Notice of Default to Mortgagee

(a) If the City shall deliver a Default Notice to the Developer, the City shall simultaneously give a copy of such Default Notice to each Mortgagee at the address theretofore designated by the 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 Mortgagee, unless the City shall have delivered to such Mortgagee a copy of the Default Notice. In the case of an assignment of a Mortgage or change in address of the Mortgagee, the assignee or Mortgagee, by written notice to the City, may change the address to which copies of Default Notices are to be sent.

(b) A Mortgagee shall have the right to perform any term, covenant, or condition and to remedy any default by the Developer under this Agreement with respect to the Development Property subject to its Mortgage within the applicable time period to cure a default 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 the Mortgagee commences to remedy the default within such period and thereafter diligently prosecutes such remedy to completion with respect to the Development Property subject to its Mortgage. Further, if the default is of a nature that possession of the Development Property by the Mortgagee is reasonably necessary for the Mortgagee to remedy the default, a Mortgagee shall be granted an additional period of time within which to obtain possession, provided that a 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. Additionally, the period for a Mortgagee to cure a default in the failure to substantially complete construction of any portion of the Development Property on which it holds a Mortgage when required to do so under this Agreement shall be extended for the period during which a Mortgagee is diligently and continuously working towards completion of the construction.

(c) The City shall accept performance by a Mortgagee of the Developer's obligations under this Agreement with the same force and effect as if furnished by the Developer. In the event that a Mortgagee elects to cure a default occasioned by the failure of the Developer to complete the Developer Improvements in accordance with this Agreement, then, upon completion of such construction work, such curing Mortgagee shall be entitled to a Certificate of Completion with regard to the completion of the construction work in accordance with the provisions of Section 8.3 of this Agreement upon which all rights of the City arising as a result of such default by the Developer shall terminate.

Section 5.5 New Development Agreement

(a) 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, the City shall provide notice thereof 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 the Mortgagee or its Designee, at the request of the Mortgagee or its Designee, with respect to the Development Property on which the Mortgagee holds a Mortgage(s) 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 that such Mortgagee shall make written request to the City for such new agreement within sixty (60) days from the date it receives notice of such termination.

(b) In the event that the City and the Mortgagee enter into a new agreement, the City shall be under no obligation to remove from the Development Property the Developer or anyone holding by, through, or under the Developer, and the Mortgagee shall take the Development Property which was the subject of the Mortgagee, subject to: (i) the possessory rights, if any, of the Developer and such occupants; (ii) any and all liens and encumbrances that existed at the time of the conveyance of the Development Property to the Developer; (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 lien of taxes on the Development Property 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 with respect to the Development Property shall survive the execution of any new agreement among the City, if applicable, and the Mortgagee (or its Designee) pursuant to this Section 5.4 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. In the event that more than a single Mortgagee shall make a request for a new agreement hereunder with respect to the Development Property, 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.

ARTICLE VI

TOGETHER WE GROW

Section 6.1 <u>Permanent Jobs</u>

The City and the Developer recognize the importance of creating economic opportunities for New Haven residents and agree to work collaboratively and on an ongoing basis to connect New Haven residents to jobs resulting from the Project during construction and thereafter, only to the extent to which the Developer has discretion with respect to employment opportunities. Therefore, the Developer shall:

(a) Use best, good-faith efforts to collaborate with New Haven Works and the region's workforce board (the "Workforce Alliance") concerning employment opportunities directly associated with the Project, only to the extent to which the Developer has complete discretion with respect to employment opportunities.

(b) Advocate on behalf of New Haven Works and the Workforce Alliance with the Developer's commercial and retail tenants with respect to entry into partner agreements with New Haven Works and the Workforce Alliance in order to maximize opportunities for New Haven residents to obtain permanent jobs created as a result of the Project.

(c) Sponsor at least one (1) job fair prior to the commencement of the Developer Improvements aimed at informing small businesses of the Project and striving to provide construction and/or ancillary opportunities for small businesses during the carrying out of the Developer Improvements.

Section 6.2 **Workforce Requirements During Construction**

(a) In carrying out the construction of the Project, the Developer shall comply with, or require that its general contractor for the Project comply with, all applicable City workforce requirements now and hereafter existing, including, without limitation, all Equal Employment Opportunity requirements and, in particular, during the construction of the Project, the Developer agrees that it shall:

(i) Comply with all provisions of Executive Order 11246 and Executive Order 11375, Connecticut Fair Employment Practices Act and Chapter 12 1/2, the contract compliance ordinance of the City of New Haven, including all standards and regulations which are promulgated by the government authorities who established such acts and requirements, and all such applicable standards and regulations are incorporated herein by reference, including 24 CFR Part 135, Davis Bacon Act & Related Acts (40 USC §276a; 29 CFR 1, 3, 5, 6 and 7), Copeland Act (18 USC §874 and 40 USC §276c; 29 CFR 3), 40 U.S.C. Section 327 et seq 29 CFR5, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act, and the Equal Pay Act. Under Title VII (N-915.040), Immigration and Reform and Control Act of 1986 (IRCA) (8 USC 1101 as amended) Immigration and Nationality Act, Section 274A, FLSA's recordkeeping Regulations, 29 CFR Part 516. State of Conn. General Statues Section 31-53, State of Conn. P.A.97-263, Sec. 31-51d-5. Standards of apprenticeship.

(ii) Comply with applicable law that prohibits discrimination against any employee or applicant for employment because of race, color, religion, gender, age, sexual orientation, gender identity or expression, marital status, physical disability or national origin. 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, gender, age, sexual orientation, gender identity or expression, marital status, physical disability or national origin, and such action shall include, but not limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of any or other forms of compensation, and selection for training, including apprenticeship.

(iii) Post, in conspicuous places available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(iv) State, in all solicitations or advertisements for employees placed by or on behalf of the Developer, that all qualified applicants will receive consideration for employment without regard to race, color, religion, gender, age, sexual orientation, gender identity or expression, marital status, physical disability or national origin, and notify the City of New Haven Commission on Equal Opportunities (the "Commission") of all job vacancies.

(v) Work with the Commission in complying with Section 12 ½ of the City of New Haven's Code of Ordinances and in particular (without limitation):

A. the Developer acknowledges that under Section 12 ½-26 all prime contractors, subcontractors and tiers must attend a pre-award conference scheduled by the Developer and conducted by the Commission; and that during each such pre-award conference, meeting minutes are kept to be signed by each such party; and

B. the Developer shall deliver to the Commission notice of all contracts to be bid, together with the opportunity to review the same and opportunity to attend all pre-bid conferences or other such meetings concerning the same as may take place;

C. the Developer shall furnish all information and reports required by the City pursuant to Section 12-1/2-19 through section 12-1/2-32 of the City's Code of General Ordinances and to permit access to the Developer's books, records and accounts by the contracting agency, the City, and the Commissioner of Labor of the State of Connecticut for purposes of investigations to ascertain compliance with the program and file, along with its construction subcontractors, if any, compliance reports with the City in the form and to the extent prescribed in this Agreement by the City and to file compliance reports at such times as directed which shall contain information as to the employment practices, policies, programs and statistics of the Developer and its subcontractors, if any; and

D. the Developer shall comply, as a United States employer, with the Immigration and Naturalization Service (INS)'s I-9 verification process, which requires employers to confirm the employment eligibility of workers. The Developer acknowledges that an employer can be fined or otherwise sanctioned for knowingly hiring an undocumented worker; that the I-9 forms also provide employers with a "good faith" defense if they hire someone who later turns out to be working illegally in the United States; and that the Commission will monitor and report of any alleged violations of the I-9 verification process to the proper authorities.

(vi) Utilize to the most reasonable extent (and without prejudice to the specific requirements of Section 6.1 above) manpower programs sponsored or supported by the City or by the Department of Labor of the State of Connecticut (the "DoL") and notify such programs of all job vacancies arising as a result of the Project, together with the Commission's contract compliance unit, and recruitment and training programs sponsored by the City in order to ensure the hiring of qualified minority, women and physically disabled employees, trainees and apprentices, it being hereby agreed and acknowledged by the Developer that if the Developer fails to meet compliance requirements and is unable to furnish reasonable evidence of such utilization, then the Developer shall automatically be deemed non-compliant with the Developer's obligations under this Section 6.2.

(vii) Include the provisions of Section 6.2(a)(i) and Section 6.2(b)(ii) in every subcontract or purchase order so that said provisions will be binding upon each such subcontractor or vendor.

(viii) Take such action, with respect to any subcontractor, as the City may direct as a means of enforcing the provisions of this Section 6.2, including penalties and sanctions for noncompliance and fines and penalties related to the rules of practice enforced by the City Commission on Equal Opportunities or the SBC office, whichever is applicable, provided however that, in the event 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.

(ix) Make best efforts to have the Developer's general contractors, construction manager and all subcontractors for the Project hire the following groups, in correspondence to the following percentages of total hours completed on the Project: twenty-five percent (25%) of hours to be worked by minorities as defined in Ordinance Section 12-1/2-19(n); six and nine-tenths percent (6.9%) of hours to be worked by females; twenty-five percent (25%) of hours to be worked by residents of the City.

(a) The Developer hereby acknowledges that a finding of a refusal by the Developer, or subcontractor, to comply with any portion of the requirements set forth in this Section 6.2 may result in the refusal of all future bids for any public contract with the City of New Haven, or any of its departments or divisions, until such time as the Developer, or subcontractor (as appropriate) shall bring itself into compliance with the requirements of this Section 6.2.

(b) Without prejudice to the various other penalties and sanctions available to the Commission as a result of the Developer's failure to comply with the requirements of this Section 6.2, the Developer hereby acknowledges the table of financial penalties imposable by the Commission and approved by the City's Board of Alders.

(c) The Developer shall consult with the DOL to determine the wage rate(s) appropriate for the Project, based on the wage levels required pursuant to the various governmental funding sources.

Section 6.3 **Small Contractor Utilization Requirements During Construction**

(a) In carrying out the construction of the Project, the Developer shall comply with, or require that its general contractor for the Project comply with, all applicable City small contractor utilization requirements now and hereafter existing, including, without limitation, the Small Contractor Development Program ("SCDP") requirements as set forth in Section 12 ¼ of the City's Code of General Ordinances (the "Program") and in particular, during the construction of the Project, it is acknowledged and agreed that:

(i) the Developer shall comply with all applicable SCDP requirements, including, without limitation, all small business construction initiative requirements and in particular, during the carrying out of the Project, the Developer agrees to require its construction manager, general contractors and its construction subcontractors to comply with the provisions of Ordinance Section 12 1/4-9, which require that every effort be aggressively made to meet the Utilization Goals for Minority Owned Business Enterprises ("MBE") and Women Owned Business Enterprises ("WBE") which are herein collectively referred to as the "MBE/WBE Utilization Goals". Pursuant to Ordinance Sections 12 1/4-9(d) and (f), 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 the total construction cost is awarded to MBEs/WBEs; in order to achieve MBE/WBE Utilization Goals, contracts may be awarded to MBE/WBE subcontractors and/or a contractor may enter into a joint venture or other commercially reasonable relationship that is satisfactory to the City with one or more MBEs/WBEs for the purpose of performing construction work on the Development. In the event that the Developer is

unable to meet the MBE/WBE Utilization Goals, then the Developer shall document in an affidavit its good faith effort to achieve the MBE/WBE Utilization Goals, which efforts will be evaluated, verified and recognized by the City. The good faith efforts shall be determined using the following factors:

A. the contractor negotiated in good faith with certified minority- and women-owned business enterprises submitting bids, proposals, or quotations and did not, without justifiable reason, reject as unsatisfactory any bids, proposals or quotations prepared by any certified minority- or women-owned business enterprise. "good faith" negotiating means engaging in good faith discussions with certified minority- or women-owned business enterprises about the nature of the work, scheduling, requirements for special equipment, opportunities for dividing of work among the bidders, proposers, and various subcontractors and the bids of the minority or women businesses, including sharing with them any cost estimates from the request for proposal or invitation to bid documents, if available; and

B. the submittal of scope specific subcontracting opportunities with the SCDP for distribution; and

C. demonstration to the SCDP whether the contractor provided relevant plans, specifications or terms and conditions to certified minority- and women-owned business enterprises sufficiently in advance to enable them to prepare an informed response to a contractor request for participation as a subcontractor; and

D. verification of quotes received from subcontractors that were denied because of cost, quality, availability, etc.; and

E. the contractor identified economically feasible units of the Project that could be contracted or subcontracted to certified minority- and women-owned business enterprises in order to increase the likelihood of participation by such enterprises on the contract; and

F. conducting a networking event with owner, construction manager, and prime contractors; and

G. holding individual trade meetings with construction manager, prime contractors and sub-contractors; and

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

(ii) To ensure equal opportunities for participation by MBEs and SBEs in the Project, the Developer or its general contractors or construction manager shall notify the SCDP of all construction contracting opportunities for all phases of the Project carried out by the Developer.

(iii) The Developer shall include the provisions of Section 6.3(a) and Section 6.3(b) in every subcontract or purchase order so that said provisions will be binding upon each such subcontractor or vendor.

(iv) The Developer and/or its general contractors or construction manager shall permit information about construction opportunities to be distributed to potential subcontractors via facsimile and email.

(v) The Developer together with the SCDP shall hold a workshop detailing the Project and the contracting opportunities therefor.

(vi) The Developer shall cooperate with the SCDP in its efforts to encourage mentoring programs and management, technical, and developmental training skills through sub-contracting opportunities.

(b) The Developer shall furnish all information and reports required by the SCDP and to permit access to the Developer's records of and to require that its construction manager, general contractors and subcontractors provide access to their records in order verify compliance with the requirements of this subsection, to provide the SCDP with the opportunity to review proposed contracts prior to the award of the same and to provide such Program with notice of all pre-bid conferences and the opportunity to attend such conferences.

(c) The Developer shall take all reasonable corrective actions requested by the City to comply and to effectuate compliance with the requirements of this Section 6.3.

(d) A finding of a refusal by the Developer, or subcontractor, to comply with any portion of the Program may subject the offending party to any of the sanctions herein or therein provided for, which may include the refusal of all future bids for any public contract with the City, or any of its departments or divisions, until such time as the Developer, or subcontractor (as appropriate) shall bring itself into compliance with the requirements of this Section 6.3.

(e) The Developer shall take such action, with respect to any subcontractor, as the City may direct as a means of enforcing the provisions of this Section 6.3, including such penalties and sanctions for noncompliance as set forth in this Section 6.3 as related to the rules of practice enforced by the SCDP 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 provided further that any such action required to be taken by the Developer shall be at no cost to the Developer. During the pendency of any legal proceedings the Developer shall continue to move forward on the Project and shall not be the guarantor of any outcomes of such litigation.

(f) The Developer acknowledges that the penalties for non-compliance with the provisions of this Section 6.3 include the following penalties, which the Developer shall bring to the attention of all contractors and subcontractors carrying out any portion of the Project:

(i) declaring the Developer or contractor to be nonresponsive and ineligible to receive the award of a contract;

(ii) declaring the Developer or contractor to be an irresponsible bidder and disqualified from eligibility for providing goods or services to the City for a period of up to twelve (12) months;

(iii) the removal of an offending contractor from the City's list of registered SBEs or MBEs; and

(iv) the imposition of a civil penalty on the Developer and/or any offending contractor of up to ten thousand dollars ($10,000.00) in any instance in which the noncompliance is determined to be willful or persistent or with blatant disregard for the provisions of this Section 6.3.

Section 6.4 Payment of Taxes

(a) It is agreed and understood that, during the Term, the entire project shall remain taxable in accordance with the customary assessment practices applied to all real property within the City, and that the Developer agrees to pay all taxes and assessments lawfully assessed against the Property and the improvements thereon, provided however that nothing herein shall be construed as waiving any right the Developer, or its successors in title or its tenants may have, to contest, appeal, or make application for and receive such real property tax abatements, deferrals, or exemptions to which the Developer, or any of its tenants or successors in interest to all or any portion of the Property, may be entitled, in the manner provided by law, or any assessment made by the City with respect to all or any portion of the Development, including the Property and the improvements thereon.

(b) It is further agreed and understood that, during the Term, no portion of the Property may be conveyed to a tax-exempt entity unless such tax-exempt entity executes and delivers to the City an agreement waiving its right to apply for and receive any exemption from the payment of real property taxes during the remainder of the Term with respect to such portion of the Property, or with the prior written consent of the Economic Development Administrator, which consent shall not be unreasonably withheld, enters into a Payment in Lieu of Taxes ("PILOT") Agreement with the City for a term of years not less than the then-balance of the Term, pursuant to which such entity agrees to pay a PILOT in the amount of the taxes which otherwise would be payable. It is hereby agreed, stipulated, and understood that any conveyance, assignment, or other transfer made to any tax-exempt entity in breach of the provisions of this Section 6.4(b) shall be null and void and of no effect and shall result in an automatic reversion of the portion of the Property in question to the City.

(c) It is hereby stipulated and understood that all or any portion of the Project may qualify for a tax deferment program (state or municipal), in which event, the Developer shall be entitled to make application for, and enter into an agreement with respect to, the same if qualified.

(d) The provisions of this Section 6.4 shall survive issuance of a Certificate of Completion and shall be binding upon the Developer, and the Developer's successors and assigns, until the expiration of the Term.

ARTICLE VII

PERMITS AND APPROVALS

Section 7.1 Zoning

(a) It is hereby agreed and acknowledged between the Developer and the City that the Property is now situated entirely within an IL Zone, as defined in the City's Zoning Ordinance, following a Zoning Map Modification dated September 3, 2002 (the "Required Project Zoning"). .

Section 7.2 Site Plan Review

The Developer shall file for Site Plan Review (and, if applicable, Coastal Site Plan Review and/or special permits) for approval of the Developer Improvements with the City Plan Commission pursuant to the applicable sections of the Zoning Ordinance. The Developer shall be required to appeal a denial of any of these applications, and to exhaust all administrative appeals, but shall not be obligated to appeal the same to the Connecticut Superior Court. Any changes to any matters contemplated by this Agreement approved by the City Plan Commission as part of its Site Plan Review or Coastal Site Plan Review shall be deemed to modify the matters contemplated by this Agreement when agreed to in writing by the Developer, without any need for any modification or amendment to this Agreement.

Section 7.3 Permits

The Developer shall apply for all required building permits, certificates of occupancy, street openings, and other permits as may be required for the construction of the Developer Improvements or the operation of the Project.

Section 7.4 Greater New Haven Water Pollution Control Authority

The Developer shall apply for and obtain such permits and approvals as may be necessary for an extension of the collection system and the lawful discharge of surface waters from the Property. To the extent required by Section 4 of the GNHWPCA Sewer Ordinance, as amended, the City's BOA consents and approves any extension of the GNHWPCA collection system.

ARTICLE VIII

THE DEVELOPER IMPROVEMENTS, CERTIFICATE OF COMPLETION AND ASSIGNMENT

Section 8.1 Construction Progress Reports

The Developer shall provide the City with construction progress reports every ninety (90) days after construction of the Developer Improvements commences. Such reports, which shall be made publicly available, shall state whether any dates on the Project Schedule have been met and any anticipated difficulties in meeting such dates and shall include a list of any and all Force Majeure Events claims to result in Excusable Delays.

Section 8.2 Insurance

The Developer shall obtain and shall cause its general contractor to obtain general liability insurance in the amount of Three Million and No/100 Dollars ($3,000,000) per occurrence and Three Million and No/100 Dollars (3,000,000) aggregate (or Three Million and No/100 Dollars ($3,000,000) combined single limit) and shall name the City as an additional insured on all such insurance policies. The Parties agree that the Developer's insurance coverage obligations under this Section 8.2 may be satisfied (in whole or in part) by an insurance policy providing umbrella coverage. In addition, the Developer shall cause all construction subcontractors to obtain general liability insurance in the amount of One Million and No/100 Dollars ($1,000,000) per occurrence and Two Million and No/100 Dollars ($2,000,000) aggregate and shall name the City as an additional insured on all such insurance policies.

Section 8.3 Certificate of Completion

(a) After Substantial Completion of the Developer Improvements, the Developer shall give notice via certified mail return receipt requested to the Economic Development Administrator of the City, with a copy to the Economic Development Administrator, of the same. Notwithstanding any other provision of this Agreement, the Economic Development Administrator shall cause the Developer Improvements and the Developer's construction records concerning workforce and subcontracting to be inspected within thirty (30) days of a request for a Certificate of Completion and shall furnish such Certificate of Completion, if appropriate, within forty-five (45) days of the Developer's request for the Certificate. The Certificate of Completion shall be in such form as will enable it to be recorded on the New Haven Land Records. For the avoidance of confusion, the legal right to occupy the Project is governed exclusively by the issuance of a Certificate of Occupancy by the City under applicable laws and the Certificate of Completion referenced in this Section addresses only the Developer's satisfaction of its obligations under this Agreement.

(b) The Certificate of Completion shall be a conclusive determination that the Developer has (i) Substantially Completed the construction of the Developer Improvements and (ii) complied with all other obligations under this Agreement concerning the development of the Project (including, without limitation, the obligations set forth under Article IV and Article VI of this Agreement). Upon the issuance of the Certificate of Completion, the Developer shall have no further obligations under the terms of this Agreement except the Developer's obligations under Section 4.7 (Prohibited Uses), Section 4.8 (Operating and Maintenance of the Property), Section 4.9 (Reimbursement of the City), and Article IX (Developer Obligations) of this Agreement, which shall continue for the duration of the Term, and except those provisions of this agreement that expressly survive termination or expiration of 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 8.3, the Economic Development Administration shall, within such forty-five (45) day period, provide the Developer with a written statement setting forth in adequate detail in what respects the Developer has failed to meet the requirements of Section 8.3(b) above, 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 thirty (30) 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.

Section 8.4 Assignment

It is hereby agreed and stipulated that, prior to the issuance of a Certificate of Completion, the Developer shall not transfer or assign any of its rights or obligations under this Agreement, without the City's written permission, with respect to the Development Property or the Project other than to an Affiliate, which Affiliate agrees in writing to the City to assume all of the obligations of the Developer under this Agreement. 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 Developer shall provide the City with the written agreement of the Affiliate to assume all of the obligations of this Agreement in such form as shall be reasonably acceptable to the City. Any assignment of any interest in this Agreement which is made in contravention of the provisions herein shall be considered an Event of Default entitling the City to exercise any and all of the rights and remedies available to it, whether set forth herein or existing at law or in equity.

ARTICLE IX
DEVELOPER OBLIGATIONS

Section 9.1 Minimum Equity Contribution

A mutually acceptable minimum equity contribution will be made by the Developer of not less than Two Million Dollars and No Cents ($2,000,000.00).

Section 9.2 Project Completion Obligation Bond

The Developer acknowledges the collateral provisions (the "Collateral Provisions") contained in the Proposal from DECD dated July 21, 2023 as regards the provision of a Municipal Brownfield Cleanup Grant to defray the costs of remediation at the Development Property, which Collateral Provisions are attached hereto as Exhibit E and made a part hereof. As such, a Performance bond, in terms reasonably acceptable to the City shall be delivered to the City, prior to the City commencing any environmental remediation work at the Development Property (as described in Section 3.5 (b) (iv) above) pursuant to which the Developer's obligations to carry out and complete the Project following completion of the City's environmental remediation work shall be guaranteed by a financial institution reasonably acceptable to the City (and/or, to the extent applicable, DECD), upon terms and conditions reasonably acceptable to the City guaranteeing the Developer's obligations concerning completion of the Project.

ARTICLE X
DEFAULT AND REMEDIES

Section 10.1 Default by the Developer

The occurrence of: (i) an Event of Bankruptcy; (ii) any failure by the Developer to perform any obligation under this Agreement where such event or failure shall continue for more than thirty (30) days after receipt of a Default Notice and the Developer fails to provide a response to the Default Notice specifying the actions undertaken or to be undertaken to effect a cure within thirty (30) days after receipt of the Default Notice, or shall respond to the Default Notice but shall fail to effect the cure specified in such response; (iii) a failure substantially to complete the construction of any portion of the Project in accordance with the Project Schedule, excluding any period of Excusable Delay (and for any Mortgagee, any period when the Mortgagee is diligently and continuously working towards completion of the construction), and the failure to cure such default within ninety (90) days of receipt of a Default Notice; or (iv) an assignment or transfer of the Development Property in violation of Section 8.4 of this Agreement shall be an Event of Default by the Developer.

Section 10.2 Default by the City

The occurrence of: (i) a failure by the City to deliver the Deed to the Developer when required to do so under the terms and conditions of this Agreement; or (ii) a failure of the City to perform any other covenant under the terms and conditions of this Agreement where such failure is not cured by the City within thirty (30) days of 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 shall be an Event of Default by the City.

Section 10.3 Remedies

(a) Except as otherwise provided by way of the Dispute Resolution Procedure described in this Section 10.3, the City and the Developer shall have all rights and remedies available at law and in equity following the occurrence of an Event of Default.

(b) Notwithstanding the provisions of Section 10.3(a) above, it is agreed and understood that the City and the Developer agree that they shall endeavor to resolve any dispute that may arise under this Agreement through the Dispute Resolution Procedure prior to filing suit in any court of competent jurisdiction. Either Party may initiate the Dispute Resolution Procedure by providing a notice of conflict to the other Party (a "Notice of Conflict") 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. At the request of either the City or the Developer, the Parties, or their duly authorized representatives having full settlement authority (which authority of the City may be conditioned on the final approval by a separate committee charged with such 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.

(c) 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 on the Effective Date of the Agreement, 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 to the mediation. The Parties to the mediation shall determine if they will be submitting the dispute to mediation within sixty (60) days following the conclusion of the Dispute Resolution Procedure and shall designate the mediator within this time period. 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 between the Developer and the City. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. 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 (60) days after the designation of the mediator.

(d) If the dispute is not resolved under Subsection (b) or (c) above, within sixty (60) days after the conclusion of either the Dispute Resolution Procedure and/or mediation, and by agreement of the Parties, the dispute may be referred for an advisory opinion to a neutral party who shall be retained by the Parties, 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. Costs and fees for the neutral party shall be equally shared by the City and the Developer. Third parties relevant to the adjudication of the dispute may be added to the advisory opinion proceedings if agreed to by the City and the Developer. 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.

(e) 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 the Dispute Resolution Procedure, mediation, or seeking of an advisory opinion will prejudice the rights of any Party. At the request of either the City or the Developer, the Parties shall enter into an agreement to extend 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 either the City or the Developer may commence litigation 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) has been completed.

(f) If the dispute is not resolved in accordance with the provisions of this Section 10.3, then subject to the provisions of Section 11.14 of this Agreement below, both the City and the Developer shall be entitled to seek all administrative and judicial remedies available, whether at law or in equity, including (without limitation) 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.

ARTICLE XI

GENERAL PROVISIONS

Section 11.1 Notices

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, or by overnight delivery courier 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:

Bigelow Square, LLC
34 Lloyd Street
New Haven, CT 06510
Attn: Carmine Capasso

With a copy to:

Ippolito & Fasano
488 Orange Street
New Haven, CT 06511
Attn: Al Ippolito, Legal Counsel

IF TO THE CITY:

Economic Development Administration
City of New Haven
165 Church Street, 4R
New Haven, Connecticut, 06510
Attn: Economic Development Administrator

With a copy to:

Economic Development Administration
City of New Haven

165 Church Street, 4R
New Haven, Connecticut, 06510
Attn: Special Counsel to Economic Development

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 Party in the manner required above. 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 notice is sent by certified mail; or (iii) when agreed to by the Parties in writing.

Section 11.2 No Waiver

No failure on the part of the City or the Developer to enforce any covenant or provision herein contained, nor any waiver of any right hereunder, 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 either 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 11.3 Rights Cumulative

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

Section 11.4 Successors

This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the City and the Developer, provided that this Section 11.4 shall not authorize any assignment not permitted by this Agreement.

(a) It is intended and agreed (and the Deed shall expressly so provide) that the agreements and covenants contained in Sections 3.9 and 4.7 above shall be covenants running with the Development Property and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, be binding, to the fullest extent permitted by law and equity, for the benefit of the City, and shall be enforceable by the City against the Developer and every successor in interest to the Development Property, or any part thereof. It is further intended and agreed that the agreements and covenants provided in Sections 3.9 and 4.7 above shall remain in effect without limitation as to time and that such agreements and covenants shall be binding on the Developer itself and each successor in interest to the Development Property, and every part thereof, and each part in possession or occupancy, respectively, for such period as such successor or party shall have title to, or an interest in, or possession or occupancy of, the Development Property or any part thereof.

(b) In amplification of, and not in restriction of, the provisions of Section11.4 (a) above, it is intended and agreed that the City and its successors and assigns shall be deemed beneficiaries of the agreements and covenants provided in Sections 3.9 and 4.7 above, both for and in their own right and also for the purposes of protecting the interest of the community and other parties, public or private,

in whose favor or for whose benefit such agreements and covenants have been provided. Such agreements and covenants shall (and the Deed shall so state) run in favor of the City for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether the City has at any time been, remains, or is an owner of any land or interest therein to or in favor of which such agreements and covenants relate. The City shall have the right, in the event of any breach of any such agreements or covenants, to exercise all of the rights and remedies available to it, and to maintain any actions or suits at law or in equity or other proper proceedings designed to enforce the curing of any such breach, to which it or any other beneficiaries of said agreements or covenants may be entitled.

Section 11.5 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 11.6 Governing Law and Jurisdiction

This Agreement is made in the State of Connecticut and shall be governed by and construed in accordance with the laws of the State of Connecticut, without regard to its conflicts of law principles. Subject to adherence to the Dispute Resolution Procedure, the Parties agree that the state courts of Connecticut and, to the extent appropriate, the federal courts sitting in Connecticut shall have jurisdiction over any dispute arising under this Agreement.

Section 11.7 No Partnership, Joint Venture, or Agency

Nothing contained herein or done pursuant hereto shall be deemed to create, between the Parties, any partnership, joint venture, or agency relationship.

Section 11.8 Consents

Where consents, approval, waiver 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, 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 11.9 Counterparts

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.

Section 11.10 Members and Officers Barred From Interest

No member, official, or employee of the City 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 shall be personally liable to the Developer or any successor in interest in the event of any default by the City 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.

Section 11.11 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 constructed to include both and the feminine gender.

Section 11.12 No Third-Party Beneficiaries

This Agreement is made solely and specifically for the benefit of the Parties and their respective 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 11.13 Survival

All provisions and conditions of this Agreement which by their terms are to be performed or satisfied prior to the conveyance of the Development Property shall be deemed to be satisfied upon such transfer and shall not survive the conveyance, 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 conveyance of the Development Property. All other provisions shall survive the conveyance of the Property and shall expire upon the expiration of this Agreement or, if earlier, in accordance with the express provisions of this Agreement.

Section 11.14 WAIVER OF JURY TRIAL

THE CITY AND THE DEVELOPER HEREBY IRREVOCABLY WAIVE, AS AGAINST THE 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.

Section 11.15 Subordination

The Developer acknowledges and agrees that any interests created in this DLDA that the Developer may hold in the Development Property or the Premises shall be automatically and irrevocably subordinate to any Environmental Use Restriction (EUR) under C.G.S. Sections 22a-133n to 22a-133s, inclusive, approved by the Commissioner of DEEP or an LEP in accordance with the requirements of C.G.S. Sections 22a-133n to 22a-133s, R.C.S.A Sections 22a-133k-1 through 3 inclusive, R.C.S.A Section 22a-133q (all as may be amended from time to time) required to comply with the VRP or any other DEEP Remediation Program or applicable Environmental Law when such EUR is executed and recorded on the New Haven Land Records. The Developer shall cooperate and consent to and execute all necessary documents and instruments as required in connection with this subordination, as required.

Signature Pages Follow
[Remainder of This Page Intentionally Left Blank]

IN WITNESS WHEREOF, the City and the Developer have caused this Agreement to be signed, sealed and delivered by their duly authorized officers, if applicable, as of the day and year first above written.

Signed, sealed and delivered
in the presence of:

CITY OF NEW HAVEN

_____

By: _____
Justin Elicker
Its Mayor
Duly Authorized

_____

Approved as to form and correctness
for the City of New Haven:

_____
John Ward Special Counsel to Economic Development

STATE OF CONNECTICUT)
) ss.: New Haven _____, 20[ ]
COUNTY OF NEW HAVEN)

On this the ____ day of _____, 20[ ], before me, the undersigned personally appeared, [ ], Mayor of the City of New Haven, one of the signers and sealers of the foregoing instrument, and acknowledged the same to be the free act and deed of the City of New Haven, and of himself as Mayor thereof, before me.

_____
Commissioner of the Superior Court/
Notary Public
My Commission Expires: _____

[Signatures continue on following page]

Signed, sealed and delivered
in the presence of:

BIGELOW SQUARE, LLC]

_____ By: _____
Carmine Capasso
Its Principal

[ ])
) ss. _____
COUNTY OF _____)

On this the ___ day of _____, 20[ ], before me, the undersigned officer, personally appeared [ ] who acknowledged him/herself to be the [ ] of [ ], a limited liability company, and h/she, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained as his/her free act and deed and the free act and deed of the limited liability company, by signing the name of the limited liability company by him/herself as such officer.

In witness whereof I hereunto set my hand.

_____
Printed Name:
Notary Public/ My Commission Expires:
Commissioner of Superior Court

EXHIBIT A
LEGAL DESCRIPTION

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

Thence N84°07’50”E, along the southerly streetline of River Street, a distance of 194.20’ to a point;

Thence S5°52’10”E, along 198 River Street Parcel 198RS-B, a distance of 175.00’ to a point;

Thence S84°07’50”W, along 34 Lloyd Street and 198 River Street Parcel 198RS-E, in part by each, a distance of 194.23’ to a point;

Thence N5°51’40”W, along 5 and 17 James Street, a distance of 175.00’ to the Place and Point of Beginning.

Said Parcel contains 0.78 acres, more or less.

EXHIBIT B

PROJECT SCHEDULE

- Submit resolutions to NHDC for 9/13/23 meeting 9/1/23
    - Lease termination
    - DLDA – 200 River
    - Long Term Lease – 194 River
    - Long Term Lease – Parcel E

- Submit resolution and orders to BOA for 9/18/23 meeting 9/4/23
    - Same as above
    - $400,000 City Grant for fill material
    - DECD cleanup grant funds
- Site Plan submission to City Plan SPR Committee 9/20/23

- Building Demolition 8/29/23
- Mitigation payment to Dixwell church 8/29/23
- Site Plan to City Plan Commission 10/18/23
- Items approved by BOA 11/20/23
- DLDA executed 11/27/23
- Assistance Agreement for DECD funds executed 12/11/23
- Grant Agreement executed 12/29/23
- Bid package prepared/bids requested 1/9/24
- Bids received 2/6/24
- Cleanup initiated 3/11/24
- Soil cleanup completed 7/10/24
- Lease terminated 7/14/24
- Closing on 198 River Street 7/14/24
- Leases on 194 River Street and 200 River Street executed 7/14/24
- Construction initiated 7/17/24
- Construction completed 8/31/25

EXHIBIT C
ORDER OF THE BOARD OF ALDERS

EXHIBIT D

POST CLOSING ACCESS EASEMENT, RELEASE
AND RESTRICTIONS AGREEMENT

THIS POST CLOSING ACCESS EASEMENT, RELEASE, AND RESTRICTIONS AGREEMENT (this "Easement and Agreement") is made as of the ___ day of _____, 2023 by and among the CITY OF NEW HAVEN, Connecticut, a municipality, organized and existing by virtue of an act of the General Assembly of the State of Connecticut, herein sometimes referred to as the "City", that is the former owner of 198 River Street, Parcel C in New Haven, Connecticut ("Grantee"), and BIGELOW SQUARE, LLC, a Connecticut Limited Liability Company with a mailing address of 34 Lloyd Street, New Haven, Connecticut, herein sometimes referred to as "Bigelow" ("Grantor").

RECITALS**:**

Grantee is the former owner and operator of that certain real property commonly known as 198 River Street, Parcel C, New Haven, Connecticut, and described more fully in the legal description attached hereto and made a part hereof as Attachment 1 (the "Development Property"). Pursuant to a certain Development and Land Disposition Agreement dated _____ , 2023 (the "DLDA"), Grantee agreed to sell and Grantor agreed to purchase the Development Property for redevelopment as part of the City of New Haven's River Street Municipal Development Plan, and Grantor is now the record owner of the Development Property.

Prior to the transfer of the Development Property from City to Bigelow, the investigation and remediation of the Development Property was being conducted under Connecticut Department of Energy and Environmental Protection ("DEEP") Voluntary Remediation Program in accordance with Connecticut General Statutes § 22a-133x ("VRP"). In accordance with Sections 3.9 of the DLDA, the City agreed to conduct and complete City's Remediation Obligations on the Development Property (hereinafter collectively referred to as the "City's Remediation Obligations") in accordance with the Remediation Standard Regulations, R.C.S.A. § 22a-133k-1 et seq. (as amended) (the "RSRs") as provided under the VRP.

In order to Remediate the Development Property as required by the DLDA, it is necessary for Grantee to have access to the Development Property to conduct and complete the City's Remediation Obligations contemplated by the DLDA, including the placement of an Environmental Use Restriction ("EUR") on the Development Property, as authorized by Connecticut General Statutes §22a-133o and R.C.S.A. § 22a-133q. The restrictions imposed by any such EUR may include not using the Development Property for residential purposes or as a source of drinking water, and/or not disturbing Polluted Soil and Polluted Fill in areas covered by structures, pavement or clean fill, provided that no such EURs unreasonably interfere with use of the Development Property for industrial or commercial purposes. As a result, this Easement and Agreement allows, subject to the terms hereof, Grantee to conduct such Remediation at the Development Property as may be contemplated by the DLDA.

GRANT:

NOW, THEREFORE, in consideration of the covenants set forth herein and in the DLDA between the Grantor and Grantee, and subject to the terms and covenants set forth herein, the Parties hereto agree as follows:

Definitions.

As used in this Easement and Agreement, the following terms shall have the following meanings:

Unless otherwise specifically provided herein, all terms shall have the meaning ascribed to them in CGS §§ 22a-133n, 22a-133x and 22a-134, and in the Regulations of Connecticut State Agencies (R.C.S.A.) § 22a-133k-1 through 3 inclusive and § 22a-133q (all as amended from time to time) (the "RSRs").

"Final Approved RAP" means collectively the Development Property RAP as defined in Section 3.9 of the DLDA, prepared and approved by the City's LEP, including all Remediation Alternatives (as hereinafter defined).

"Release" means (i) any spill, discharge, leak, emission, escape, injection, dumping, or other release or threatened release of any Hazardous Substances or Hazardous Waste into the soil, surface waters, ground waters, sediments, air, and similar environmental media, including any Release which is subject to CERCLA, or (ii) a "spill" as defined in § 22a-452c of the Connecticut General Statutes. In the event of any conflict in meanings "Release" shall be given its broadest meaning.

"Remediation" or "Remediate" means, to the extent necessary to comply with the VRP, the RSRs, or any other applicable regulations then in effect, all actions taken to investigate, evaluate, and/or "remediate" (as such term is defined in Conn. Gen. Stat. § 22a-134(15)) pollution caused by the presence of or any release of hazardous waste or hazardous substances occurring on or emanating from the Development Property, including pre-remedial studies and investigations, implementation of Remediation Alternatives (as hereinafter defined), groundwater monitoring, monitored natural attenuation, post-remediation monitoring, and all public notice requirements necessary to complete the remediation required by the DLDA.

"Remediation Alternatives" means certifications, requests, applications to change water quality classifications, EURs, and other documents or approvals required to obtain a variance from Remediation requirements or secure approval for the use of Engineered Controls or alternative criteria for soil, sediments, surface water or groundwater located in, on, under or around the Development Property under applicable environmental law, as part of the Final Approved RAP, including the RSRs, the VRP or any other applicable regulations then in effect to complete the remediation required by the DLDA, as the same may be modified from time to time.

Access Easement.

Subject to the terms and covenants set forth herein, Grantor, for itself and its successors and assigns, hereby grants and conveys unto Grantee and its successors and assigns, and for the benefit of its employees, agents, and consultants (including without limitation the LEP, contractors and subcontractors) (collectively, the "Benefited Parties"), as an easement appurtenant to the Development Property, a non-exclusive easement (the "Access Easement") for access over, under, upon and across the Development Property, to perform the City's Remediation Obligations as required by the DLDA, including, without limitation, performance of groundwater or soil sampling, soil remediation, soil removal, filling and grading, groundwater monitoring, or natural attenuation monitoring.

This grant of access shall terminate upon completion of the City's Remediation Obligations under the DLDA. When entering the Development Property pursuant to this Access Easement, Grantee shall conform to all applicable laws. Grantee shall work cooperatively with Grantor to minimize any disruption to the Development Property. Grantee shall provide at least two (2) business days' notice to Grantor prior to entering the Development Property**,** unless emergency or similar circumstances do not allow such notice, in which case Grantee will provide Grantor with notice immediately after it learns that access will be required**.**

Grantor shall provide such cooperation as necessary for Grantee to perform the City's Remediation Obligations, including making all commercially reasonable efforts to cause any occupants of the Development Property to fully cooperate with Grantee's performance of the Remediation Obligations, all as more fully described in the DLDA.

Remediation Alternatives, including Environmental Use Restrictions.

Grantor hereby grants Grantee the right to record and use EURs, and other Remediation Alternatives authorized under applicable environmental law, including the RSRs and VRP, as long as such Remediation Alternatives do not unreasonably interfere with the industrial and/or commercial use of the Development Property, as contemplated by the Final Approved RAP. Such Remediation Alternatives may include, without limitation, a prohibition on residential uses; limits on the use of groundwater; EURs to render soil inaccessible or environmentally isolated, other environmental land notices and institutional controls, requests for RSR exceptions or variances, including a widespread polluted fill variance, engineered controls, and natural attenuation monitoring. Upon request by Grantee, Grantor agrees to execute in recordable form any and all EURs which are consistent with this Section and as set forth in the DLDA.

Any and all liens, mortgages, easements, licenses, leases, notice of lease, and any other encumbrance placed on the Development Property after the recording of this Easement and Agreement shall be automatically subordinate to any EUR(s) or other measures (e.g., variances or engineered controls) created or imposed by Grantee regardless of the date on which any such EUR or notice of such measure is recorded on the land records.

Grantor covenants and agrees that any lien, mortgage or other title encumbrance on the Development Property, or any portion thereof, granted by Grantor after the date hereof shall contain a provision which (i) subordinates such lien or other encumbrance to any EUR(s) regardless of the date on which any such EUR is recorded on the land records and (ii) requires that the holder of such lien, mortgage or other title encumbrance execute any confirmation or other document reasonably required by Grantee to confirm such subordination; provided, however, failure by Grantee to request any such confirmation and/or failure by any such holder of a lien, mortgage or other title encumbrance to execute and deliver any such confirmation shall not affect the automatic subordination of such lien, mortgage or other title encumbrance provided above.

Grantor covenants and agrees, at Grantor's sole cost and expense, to pay the EUR fees and if required, to obtain and maintain the financial assurance required as part of Grantee's Engineered Control Variance, as set forth in the final Approved RAP.

Insurance.

Prior to the first entry by Grantee, Grantee will provide Grantor with a certificate of commercial general liability insurance, in the minimum amount of $1,000,000 per occurrence ($2,000,000 combined occurrences), evidencing the insurance maintained by Grantee or the party entering the Development Property, naming Grantor as an additional insured. All such policies shall be issued by companies authorized to issue such policies in the State of Connecticut. Such insurance shall be in place during such time as Grantee, its agents, contractors, or consultants are present on the Development Property.

Release.

Except with respect to Grantee's obligations under the DLDA and this Easement and Agreement, Grantor, for itself and its successors and assigns does hereby fully and forever release acquit, waive, and discharge Grantee, its affiliates, predecessors, successors, assigns, insurers, guarantors, shareholders, directors, officers, agents, and attorneys from any and all actions, causes of action, claims, and demands of any kind or nature whatsoever, including those claims made (or which could have been made) in connection with the Development Property, and any injuries, losses, or damages for which Grantee may be liable with respect to the Development Property, whether known or unknown it may have against Grantee including for any (i) New Environmental Condition (as such capitalized terms are defined in the DLDA); and (ii) Existing Environmental Conditions covered by City's Remediation Obligations (as such capitalized terms are defined in the DLDA) including without limitation the EUR, upon delivery of the Verification, subject to DEEP audit. This Release shall continue in perpetuity, notwithstanding the Termination of the other provisions of the Easement and Agreement and DLDA.

Binding Effect.

Subject to the terms contained herein, Grantor and Grantee agree that all provisions of this Easement and Agreement including the respective benefits, burdens and obligations set forth herein, touch and concern, and shall run with, the land which constitutes the Development Property, and are binding upon, and shall inure to the benefit of, the Parties and the successors and assigns of the parties hereto. The Easement and Agreement contained herein constitute a covenant running with the land, which shall remain in full force and effect, and at all times, except to the extent terminated as provided herein, shall inure to the benefit of the Benefited Parties. The Easement and Agreement shall be binding upon any owner, purchaser, mortgagee or any person having an interest in the Development Property or any part or portion thereof.

Notices.

All notices, approvals, consents, request and/or demands to or: upon the Parties hereto shall be in writing and shall be deemed to have been given or made (i) upon receipt if personally delivered or sent by electronic mail, (ii) on the next business day if sent by nationally recognized overnight courier, or (iii) on the third business day if sent by registered or certified mail return receipt requested, if addressed as follows:

To Grantee:	Office of Economic Development Administrator City of New Haven Department of Economic Administration 165 Church Street, 4R New Haven, CT 06510 Attn: John Ward, Special Counsel to Economic Development Attn: Helen Rosenberg, Economic Development Officer
And copies to:	Nancy K. Mendel, Esq. Winnick Ruben Hoffnung Peabody & Mendel, LLC

110 Whitney Avenue
New Haven, CT 06510
Nancy.mendel@winnicklaw.com

To Grantor: Bigelow Square, LLC
34 Lloyd Street
New Haven, Connecticut 06513
Attn: Carmine Capasso

And a copy to: Ippolito & Fasano
488 Orange Street
New Haven, CT 06511
Attn: Al Ippolito, Esq.

or to such other address as may be furnished in writing for such purposes as the Party whose address is being changed shall specify in writing.

Transfer of Ownership.
If Grantor shall sell, assign, transfer, convey, or otherwise dispose of the Development Property, or any portion thereof (other than as security for a loan to Grantor), then the party who succeeds to Grantor's interest in such portion of the Development Property shall be deemed to have assumed any and all of the covenants and obligations of Grantor arising under this Easement and Agreement of Grantor with respect to the Development Property or such portion of the Development Property accruing or which accrue under this Easement and Agreement from and after the date Grantor shall so sell, assign, transfer, convey, or otherwise dispose of its interest in such portion of the Development Property.

Termination.
This Easement and Agreement, except for the Release, shall automatically terminate, without any further action of either party upon the date (the "Expiration") which is the date Grantee completes the City's Remediation Obligations under the DLDA. As of the Expiration, the parties hereto shall have no further obligation to each other under the terms of this Easement and Agreement.

Applicable Law.
This Easement and Agreement shall be construed and enforced in accordance with the laws of the State of Connecticut without regard to its conflict of laws provisions, and applicable federal law.

Miscellaneous.
This Easement and Agreement may be amended or modified only by a written instrument duly executed and acknowledged by the parties hereto. No amendment shall be effective until duly recorded in the official records of the City of New Haven, Connecticut.

The Section captions are for the convenience of the parties hereto and are not intended to, and do not, limit or restrict or affect the substantive provisions hereof.

In the event that any provisions hereof shall be deemed to be invalid or unenforceable in any context, such invalidity or unenforceability shall affect only the particular provision in the particular context and shall not have any effect upon the remaining provisions hereof or the application of the challenged provision in any other context.

This Easement and Agreement may be prepared and executed in several counterparts, each of which shall be deemed to be an original, but all of which together shall be deemed one and the same instrument.

All Exhibits attached hereto are intended to be, and hereby are, specifically made a part of the Easement and Agreement.

In the event any conflict or inconsistency between this Easement and Agreement and the DLDA, the DLDA shall govern and control, anything contained herein to the contrary notwithstanding.

Subordination.

Grantor acknowledges and agrees that any interests created in this Easement and Agreement that Grantor may hold in the Development Property or the Premises, shall be automatically and irrevocably subordinate to any Environmental Use Restriction (EUR) under C.G.S. Sections 22a-133n to 22a-133s, inclusive, approved by the Commissioner of CTDEEP or a Licensed Environmental Professional in accordance with the requirements of C.G.S. Sections 22a-133n to 22a-133s, R.C.S.A Sections 22a-133k-1 through 3 inclusive, R.C.S.A Section 22a-133q required to comply with the VRP or any other DEEP Remediation Program or applicable law when such EUR is executed and recorded on the New Haven Land Records. Grantor shall cooperate and consent to and execute all necessary documents and instruments as required in connection with this subordination, as required.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, Grantor and Grantee have caused this Agreement, in four (4) counterparts, to be signed, sealed, and delivered by their duly authorized officers, as of the day and year first above written.

GRANTEE:

WITNESS:

CITY OF NEW HAVEN,

_____

BY:_____
Justin Elicker
Mayor

_____

Approved as to Form and Correctness

_____
John R. Ward
Special Counsel to Economic Development

STATE OF CONNECTICUT)
) ss.: New Haven, , 202_
COUNTY OF NEW HAVEN)

Personally appeared Justin Elicker, Mayor of the City of New Haven, one of the signers and sealers of the foregoing instrument and acknowledged the same to be the free act and deed of the City of New Haven, and of himself as Mayor thereof, before me.

_____
Commissioner of the Superior Court/
Notary Public
My Commission Expires: _____

GRANTOR:

Signed, sealed and delivered in the presence of:

BIGELOW SQUARE, LLC

_____

By: _____
Name: Carmine Capasso
Title: Principal
Duly Authorized

_____

STATE OF CONNECTICUT)
) ss.: New Haven, , 202_
COUNTY OF NEW HAVEN)

Personally appeared _____, _____ of Bigelow Square, LLC, one of the signers and sealers of the foregoing instrument and acknowledged the same to be the free act and deed of Bigelow Square, LLC, and of himself as _____ thereof, before me.

_____
Commissioner of the Superior Court/
Notary Public
My Commission Expires: _____

[Signature Page for Access Easement and Restrictions Agreement]