DISTRICT/New Haven joint revision 11/15/23

A16-0400

DEVELOPMENT AND LAND DISPOSITION AGREEMENT

This Development and Land Disposition Agreement (this "Agreement") is entered into as of the ____ day of _____, 2016 (the "Effective Date"), by and between the City of New Haven, a municipal corporation organized and existing under the laws of the State of Connecticut, with a mailing address of 165 Church Street, New Haven, Connecticut 06510 (the "City") and District NHV LLC, a limited liability company organized and existing under the laws of the State of Connecticut, with a mailing address at 470 James Street New Haven, Connecticut 06513.

(the "Developer").

BACKGROUND

The City is the owner of that certain parcel of land located in the Fair Haven neighborhood and lying within the Mill River District consisting of approximately 6.95 acres located at 470 James Street, New Haven, Connecticut, as more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Property").

The Property was owned by the State of Connecticut and used as a garage for the State of Connecticut Department of Transportation. The State of Connecticut has agreed to convey the Property to the City for the purpose of redevelopment as more particularly described herein. It is a goal of the City to advance a comprehensive revitalization strategy for the Property. Pursuant to a Request for Proposal process by the City, a project was selected and Developer was subsequently formed as a single purpose entity to acquire and develop the Property in accordance therewith.

The Developer's plan for the redevelopment of the Property includes a plan to create an environment that would create jobs for residents, bring in new taxes for the City and State and re-invigorate the Fair Haven neighborhood, in accordance with the Mill River Planning Study previously approved by the City's Board of Alders, by redeveloping the property into a forward thinking campus that fosters and supports creation, collaboration and prosperity in the industries

of tomorrow. The Developer plans to transform the Property into a place where innovators will be inspired, new industries will be built, and future makers will create.

A portion of the building will act as a unique incubation space for tomorrow's entrepreneurs to thrive. Public access to the Mill River will be enhanced by a river walk garden and, to the extent permitted by the state, a kayak launch, both of which the City and the Developer intend to complement the aesthetics of the area. The possible future addition of an amphitheater will allow for educational, inspirational, and entertaining events for local community and visitors alike.

The long-time vacant Property served as a bus garage for the State of Connecticut Department of Transportation for a number of years, and is recognized as environmentally impacted, which has increased development costs and significantly slowed the redevelopment opportunities for the Property.

The Property requires extensive environmental remediation and the Developer has agreed to carry out the same in accordance with a Remedial Action Plan to be prepared by the Developer, such remediation and the financing thereof (including the securing of any funding from the State of Connecticut) to be the sole responsibility of the Developer.

The Developer has received a grant from the State of Connecticut Department of Economic and Community Development under the State of Connecticut Brownfields Program to assess and characterize the extent of the Environmental Conditions (as such term is defined in Section 1.2 hereinbelow) present on the Property, to develop a Remedial Action Plan to address some or all of the Environmental Conditions, and determine the cost of implementing the same. The Developer and the State have executed a proposal pursuant to which the State has agreed to provide funding in an amount sufficient to complete the Environmental Remediation Work pursuant to the Remedial Action Plan (such funds being hereinafter referred to as the "DECD Brownfields Grant")

The City and the Developer are entering into this Agreement to set forth the basic elements to be included in the Project, and the City’s and the Developer’s general vision and goals for the redevelopment of the Property. In particular, the parties anticipate that the project will consist of reducing the size of the building from approximately 195,000 square feet to approximately

100,000 square feet, of which a minimum of 5,000 square feet shall be incubator space, a bistro-style restaurant, 240 parking spaces, and, to the extent permitted by the state, a kayak launch.

The Developer is a single-purpose entity formed to undertake the development of the Property. Recognizing the interplay of real estate and financial market conditions with the composition of land uses in the Project, the City and the Developer have agreed to the following terms and conditions pursuant to which the City and the Developer shall collaborate in their efforts to develop the Project, as hereinafter set forth.

ARTICLE I

INTERPRETATION AND DEFINITIONS

Section 1.1 Interpretation

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

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

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

(D) Any reference to any statute, law or regulation includes all statutes, laws or regulations amending, consolidating or replacing the same from time to time, and a reference to a law or statute includes all regulations, codes or other rules issued or otherwise applicable under such law or statute unless otherwise expressly provided in such law or statute or in this Agreement. This rule of

interpretation shall be applicable in all cases notwithstanding that in some cases specific references in this Agreement render the application of this rule unnecessary.

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

(F) Each party agrees to work diligently and in good faith to provide any and all approvals, consents, waivers, acceptances, concurrences and permissions required to be given or made by any party hereunder, which approval, consent, waiver, acceptance, concurrence or permission 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 in this Agreement 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 Developer, and the City 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, be subject to adjustment for Excusable Delays.

(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 no survivability of obligations of another section.

Section 1.2 Definitions

For the purposes of this Agreement:

(A) "Affiliate" means any entity which is fifty percent (50%) or more owned directly or indirectly by the Developer, or over which the Developer has managerial control, and/or by any equity investor providing a majority of the equity financing for the Project.

(B) "Agreement" means the four corners of this instrument, and includes any appendices, exhibits or schedules incorporated by reference, as well as any amendments, modifications, or supplements which may be executed by the City and the Developer subsequent to the effective date of this instrument, but does not include any agreement, understanding or other arrangement between the City and the Developer.

(C) "Assistance Agreement" shall mean that certain Assistance Agreement with respect to the DECD Brownfields Grant by and between the Developer and the State of Connecticut Department of Economic and Community Development for funding under the State of Connecticut Brownfields Remediation Program to pay all or a portion of the cost of performing the Environmental Remediation Work.

(D) "Billboard" means a two-sided "Bulletin" or "Spectacular" sign, on the Property reasonably acceptable to the City which sign shall be visible from Interstate 91 both north bound and south bound, subject to the rules and regulations set forth in the City of New Haven Zoning Code, Section 44.1.

(E) "Brownfield Remediation and Revitalization Program" or "BRRP" shall mean the liability relief and remediation program set forth in Connecticut General Statutes Section 32-769 as amended.

(F) "BRRP Completion Date" means the earlier to occur of either (i) the receipt by the Developer of a no audit letter issued by DEEP pursuant to the BRRP; (ii) the expiration of the applicable statutory audit notification timeframe (currently sixty (60) days after submittal of remedial action report and Verification) without DEEP issuing a notice of audit; (iii) the receipt by Developer of an audit closure letter or its equivalent under the BRRP in the event DEEP issued a notice of audit within the applicable statutory timeframe; or (iii) the expiration of the applicable statutory timeframe for the issuance of an audit decision (currently one hundred eighty (180) days after the submittal of remedial action report and Verification) after receiving an audit notification without DEEP issuing an audit decision.

(G) "Building" means the building currently situated on the Property.

(H) "CDOT" means the Connecticut Department of Transportation.

(I) Certificate of Completion" means a certificate issued in accordance with Section 8.2 of this Agreement.

(J) "City" has the meaning ascribed to it in the preamble of this Agreement.

(K) "City Default" means an event of default by the City as more particularly set forth in Section 9.2 of this Agreement.

(L) "City Design Reviewers" means the City's Economic Development Administrator and City Plan Director, or, in the event either or both of such

positions are vacant, such appropriate parties as have been designated by the Mayor.

(M) "Compulsory Taxable PILOT Period" means the period commencing on the Effective Date and ending on the date that is 30 years from the Effective Date.

(N) Conditions Precedent" shall have the meaning set forth in Section 3.3 of this Agreement.

(O) "Connecticut Transfer Act" or "CTA" means Connecticut General Statutes Sections 22a-134 et seq. as amended from time to time.

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

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

(R) "Default Notice" means any notice of eligible event of default delivered by either the City or the Developer under provisions of Article IX of this Agreement

(S) "Developer" has the meaning ascribed to is in the preamble of this Agreement and shall include any permitted successor or assign of the Developer.

(T) "Developer Improvements" means the Improvements to be rehabilitated and or constructed on the Property, as set forth in Exhibit B of this Agreement, but does not include the Environmental Remediation Work.

(U) "Developer Improvements" shall have the meaning set forth in Section 4.4(A) of this Agreement.

(V) "Dispute Resolution Procedure" means the procedure for resolving disputes as set forth in Section 9.4 of this Agreement.

(W) "Environmental Conditions" means any conditions which, under applicable Environmental Laws, require testing, remediation or monitoring for a property with the uses contemplated by this Agreement.

(X) "Environmental Conditions Precedent" means those conditions precedent described in Section 3.3(d) below which constitute a discrete portion of the Conditions Precedent.

(Y) "Environmental Laws" means any and all laws, statutes, ordinances, rules, regulations, and orders of any Governmental Authority pertaining to the environment, including the federal Clean Water Act, the federal Clean Air Act, the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, the federal Water Pollution Control Amendments, the federal Resource Conservation and Recovery Act of 1976, the federal Hazardous Materials Transportation Act of 1975, the Federal Safe Drinking Water Act, the federal Toxic Substances Control Act, and any comparable or similar environmental laws of the State of Connecticut, including without limitation Title 22a of the General Statutes; the Remediation Standard Regulations RCSA Section 22a-133k 1through 3 inclusive (as amended from time to time) (RSRs); and the BRRP.

(Z) "Environmental Remediation Work" means the work to be performed by the Developer pursuant to the RAP.

(AA) "Event of Bankruptcy" means any of the following: (a) if 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) if the Developer files a voluntary petition under the United States Bankruptcy Code or any other bankruptcy or insolvency laws; (c) if 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) if 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.

(BB) "Event of Default" means default by the City or the Developer as more particularly described in Article IX.

(CC) "Existing Environmental Conditions" means any Environmental Conditions at the Property existing on the date of this Agreement.

(DD) "Excusable Delay" means any delay in any party's performance under this Agreement caused by any "Force Majeure" event.

(EE) "Force Majeure" means any event, act or failure to act caused by: strikes, lockouts, or other labor or industrial disturbance; war; court or administrative or other governmental order directing that the construction of the Project be stopped; acts of terrorism; insurrection, civil disturbance, act of the public enemy, war, riot, sabotage, blockade, embargo; lightning, earthquake, fire, casualty, storm, hurricane, tornado, flood, washout, explosion; casualty at the job site or proximately causing physical damage to the Project or proximately causing a disruption or delay in the supply chain of labor or materials to the Project; government shut down; an act or omission of the City in violation of the terms of this Agreement; any other event or circumstance which is outside the Developer's immediate reasonable control; or any other cause whatsoever beyond the reasonable control of the party responsible for performance.

(FF) "General Statutes" means the General Statutes of the State of Connecticut, 1958 Revision, as amended.

(GG) "Governmental Authorities" means all federal, state or local governmental bodies, instrumentalities or agencies (including municipalities, taxing, fire and water districts and other governmental units).

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

(II) "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 include Environmental Laws.

(JJ) "Licensed Environmental Professional" or "LEP" means an environmental professional licensed in Connecticut pursuant to Conn. Gen. Stat. Section 22a-133v.

(KK) "Memorandum of Understanding" means that Memorandum of Understanding between the City and the State entered into as of even date herewith concerning the conveyance of the Property a copy of which is attached hereto as Exhibit C and made a part hereof.

(LL) "Mill River MDP" or "MDP" means that Municipal Development Project Plan that the City adopted in October 1987 pursuant to Chapter 132 of the Connecticut General Statutes.

(MM) "Mill River Special Services District" or "Mill River SSD" means a special services district that the City may establish, in accordance with Section 7-339m of the Connecticut General Statutes, to enhance the breadth and quality of public services within a demarcated area surrounding parts of the Mill River.

(NN) "New Environmental Conditions" means any Environmental Conditions at the Property that first arise after the date of Closing.

(OO) "Permitted Encumbrances" means only those encumbrances and restrictions affecting the Property which the Developer has approved.

(PP) "Plans" means, with respect to the Developer Improvements, the final plans, specifications, construction drawings and construction phasing plans for the Developer Improvements, as the same may be amended from time to time.

(QQ) "Project" means the entire development at the Property contemplated by this Agreement, consisting of the Developer Improvements set forth herein.

(RR) "Project Plan" means the Developer Improvements.

(SS) "Project Completion Date" shall mean the later to occur of the scheduled date for completion of the Project in accordance with the Project Schedule, or the date which is eighteen (18) months from the date of execution of this Agreement.

(TT) "Project Schedule" shall mean the schedule for construction and completion of the Project as set forth on Exhibit D attached hereto.

(UU) "Property" shall have the meaning ascribed to it in the Recitals of this Agreement, and as depicted in Exhibit A.

(VV) "Punch List Items" shall mean those items of construction, decoration, landscaping and mechanical adjustment relating to any of the Developer Improvements which, individually or in the aggregate, are minor in character and do not materially interfere with the full use, enjoyment and occupancy of the applicable improvements or any material amenity constituting a part of such the Developer Improvements, and the appurtenances thereto, and for which it may be reasonably anticipated that the completion shall occur within one hundred eighty (180) days after Substantial Completion, subject to extension for Excusable Delay.

(WW) "RAP" means a Remedial Action Plan to be prepared by the Developer's LEP required to comply with applicable Environmental Laws.

(XX) "Right of Reversion" shall mean the City's right to obtain title to the Property in the event that the Developer shall fail to meet its obligations hereunder, as more particularly described in Section 3.6 of this Agreement.

(YY) The "State" means the State of Connecticut.

(ZZ) "Substantial Completion", "Substantially Completed" and similar terms shall mean, with respect to the Developer Improvements, the completion of the construction of the Developer Improvements in substantial accordance with the Plans therefor, all applicable Legal Requirements and this Agreement, in a good and workmanlike manner, and in accordance with good construction and engineering practices, free from known defects (structural, mechanical, or otherwise) in design, workmanship, and materials, with only Punch List Items to be completed, which Punch List Items shall be completed within one hundred eighty (180) days of the date of Substantial Completion. Substantial Completion shall include the construction, installation, completion, and (if appropriate) operation in their intended fashion in accordance with the Plans therefor.

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

(BBB) "Verification" has the same meaning as provided in the CTA.

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; (b) the Developer has the legal authority to enter into and carry out the transactions to which it is proposed to be a party; (c) the execution and delivery of this Agreement by the Developer has been duly and validly authorized by all necessary action; and (d) this Agreement is a legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms.

Section 2.2 Representations and Warranties of the City

The City represents and warrants that (a) it is a municipal corporation validly existing under the laws of the State of Connecticut; (b) it has the legal power and authority to execute and deliver this Agreement and to carry out its terms and provisions, (c) the execution and delivery of this Agreement have been duly and validly authorized by all necessary action, and (d) this Agreement constitutes the legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms.

ARTICLE III

PROPERTY

Section 3.1 Conveyance of Property

(A) At such time as the Conditions Precedent have been satisfied (and not less than thirty (30) days thereafter, subject to force majeure and/or title issues to be addressed in accordance with Section 3.8 below) the City shall convey the Property to the Developer by Quit Claim deed in a form reasonable satisfactory

to Developer and City (the "Quit Claim Deed"), subject only to the Permitted Encumbrances and to the terms and conditions of this Agreement which shall be recorded on the Land Records of the City of New Haven immediately prior to the recording of the Quit Claim Deed.

(B) The delivery of the Quit Claim Deed shall take place at a closing to be held within thirty (30) days of satisfaction of the Conditions Precedent at such place and time as the parties hereto shall agree (the "Closing").

Section 3.2 Purchase Price

(A) The purchase price to be paid by the Developer to City for the Property shall be the sum of One and No/100 Dollars ($1.00).

Section 3.3 Conditions Precedent

(A) Prior to conveyance of the Property the following Conditions Precedent must be satisfied (unless, any one or more of said Conditions Precedent shall, in the sole and absolute discretion of the City, be waived by the City in writing through the sole discretion of the Economic Development Administrator):

a. The Developer shall have obtained all necessary regulatory permits and approvals required for the operations of the Project, including without limitation from the Board of Alders (including, without limitation, all necessary amendments to the IL zone required for the Project as shall be determined by the City in its sole discretion) CDOT, OSTA, DECD, DEEP, Board of Zoning Appeals and the City Plan Commission with all related regulatory and statutory appeal periods having lapsed, with no appeals, claims or other challenges having been asserted but excluding site plan

approval(s), and building permits which may be obtained subsequent to conveyance.

b. The City shall have received from the Developer documentation, in such form and detail as shall be reasonably satisfactory to the City demonstrating the Developer's funding sufficient for the Developer Improvements and sufficient funding to carry out the Environmental Remediation Work which shall include an executed proposal from DECD to provide the DECD Brownfields Grant by way of the Assistance Agreement and commitments from such other sources as may be available to the Developer in amounts which together are at least equal to the estimated cost of the Environmental Remediation Work.

c. The Developer, at its sole cost and expense, shall have prepared the RAP together with a detailed cost estimate (including commercially reasonable contingencies) and a proposed schedule for implementing and completing the Environmental Remediation Work under the applicable state regulatory clean-up program (which is anticipated to be the BRRP), which cost estimate shall be provided to the City by the Developer's LEP and shall have obtained (i) approval of the RAP by DEEP to the extent that such approval is necessary to support a Covenant Not to Sue between DEEP and the City in accordance with CGS Section 22a-133aa (the "Covenant Not to Sue"); (ii) any relevant approvals from

DEEP to implement the RAP; (iii) the Covenant Not to Sue, duly executed by DEEP and to be effective upon transfer of title to the Property by the State to the City; (iv) an approval from DECD for the City and the Developer and the Property to be eligible under the BRRP; and (v) an acceptable Form Reliance Letter from the Developer' LEP to the City with respect to all environmental investigation and Environmental Remediation Work to be conducted at the Property. The Conditions Precedent set forth in this Section 3.3(d) constitute the Environmental Conditions Precedent.

(B) The Developer shall have a period of twelve (12) months from the Effective Date to satisfy the Conditions Precedent (the "Conditions Precedent Satisfaction Period"). In the event that the Developer shall be unsuccessful in satisfying the Conditions Precedent within the Conditions Precedent Satisfaction Period and the City is unwilling to waive any unsatisfied Conditions Precedent, but progress has been made and there is reason to anticipate satisfaction of the same at a later date, then the Developer and the City may mutually agree upon an extension of the Conditions Precedent Satisfaction Period for such additional period as may be reasonably required therefor, which extension shall be in writing and executed by both the City and the Developer (an "Extension Period"). In no event shall the Extension Period (or any aggregate thereof be in excess of one (1) year.

Section 3.4 <u>Environmental</u>:

(A) Prior to conveyance of the Property, the Developer shall be responsible for the satisfaction of Environmental Conditions Precedent.

(B) Following conveyance of the Property, the Developer, at the Developer's sole cost and expense, shall carry out the Environmental Remediation Work in accordance with the RAP through Verification and any audit thereof, including the timely payment of any fees and filing of any reports required thereunder.

(C) The Developer shall be responsible for compliance with any and all requirements related to the use of the DECD Brownfields Grant and/or any other funding obtained from the State including (without limitation) obtaining any flood management certifications and/or exemptions.

(D) The Developer shall be responsible, at its sole cost and expense, for any and all requirements related to compliance with the requirements of the BRRP through the BRRP Completion Date in the event DECD issues a BRRP approval for the Property and, if not and Developer proceeds to Closing, then compliance with any and all requirements the Developer has in its capacity as "Certifying Party" for any form filing submitted at Closing under the CTA.

(E) The Developer shall be responsible, at its sole cost and expense, to timely provide the City with copies of any and all reports, filings, forms and documentation prepared by Developer's LEP FOR SUBMISSION TO and/or received from DEEP or DECD related to the Environmental Remediation Work and applicable Environmental Laws.

Section 3.5 Indemnification

Upon conveyance of the Property to the Developer, the Developer shall indemnify, release, defend and hold harmless City and its officials, employees and agents 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 Property, including Existing Environmental Conditions, New Environmental Conditions

and the Environmental Remediation Work. For purposes of this section 3.5, "New Environmental Conditions shall not include Environmental Conditions created or exacerbated by the City. In connection with this Section 3.5, 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 question. This indemnification shall survive the termination or expiration of this Agreement but shall terminate as to Existing Environmental Conditions in the event that the City shall exercise the City's Right of Reversion set forth in Section 3.6 herein below.

Section 3.6 Right of Reversion

(A) Without prejudice to any other rights or remedies of the City hereunder, it is agreed and understood that if, after conveyance of the Property to the Developer, the Developer shall fail to carry out the Developer Improvements in accordance with the Project Schedule on or prior to the Projects Completion Date (as the same may be extended from time to time pursuant to this Agreement) then the City may, in the exercise of the City's sole and absolute discretion, exercise its Right of Reversion, in which event the Developer shall (if so demanded by the City) execute such deeds or other documentation as may reasonably be required to effect such Right of Reversion provided that such Right of Reversion shall be subject to the rights of any Mortgagee described in Section 3.15 below, and provided further that if the City exercises its Right of Reversion prior to the Developer's completion of the Environmental Remediation Work, the City shall complete the Environmental Remediation Work in accordance with the RAP, at the City's sole cost and expense, subject to Developer assigning all of its rights, title and interests to the City under the Developer's DECD Brownfields Grant Agreement and/or any other agreement Developer has entered for funding obtained from the State, as well as any and all permits, approvals or other related documentation or agreements necessary for the City to complete the Environmental

Remediation Work . In addition, if the City's exercise of its Right of Reversion triggers the CT Transfer Act (CGS 22a-134, et seq.), the City shall file a Form III as the "certifying party" and shall be responsible for all filings, fees and costs of investigation and remediation at its sole cost and expense.

(B) In the event that the City shall exercise its Right of Reversion, then, to the extent required, the Developer shall cooperate with the City in the City's exercise of its rights under the Assistance Agreement (as described in the Memorandum of Understanding) to obtain the remaining funds thereunder in order to complete the Environmental Remediation Work which shall include the execution and delivery of such documentation as may be reasonably deemed necessary or desirable and the preparation and delivery of appropriate project records.

(C) The Right of Reversion shall terminate upon the issuance of the Certificate of Completion with respect the Developer Improvements, and thereafter, the City shall have no Right of Reversion with respect thereto. Notwithstanding anything to the contrary set forth herein, the City shall not have the right to exercise the Right of Reversion if the exercise of same Right arises from an unanticipated Environmental Condition and/or New Environmental Condition with respect to the Property which is not accounted for in the RAP, the estimated cost of remediation of which exceeds fifteen (15%) percent of the original estimated cost of the Environmental Remediation Work contemplated by the RAP. In any such instance the City and the Developer shall enter into good faith negotiations as regards an extension of the Project Schedule for completion of the Developer Improvements to take account of the unanticipated Environmental Condition and/or New Environmental Condition as regards the additional time required both to remedy the unanticipated Environmental Conditions and/or New Environmental Conditions and obtain the additional funds required therefor. Notwithstanding any of the foregoing, in the event that the Developer Improvements have not been completed within seven (7) years of the Effective Date as a result of such Environmental

Condition and/or New Environmental Condition, the City's Right of Reversion shall be reactivated.

Section 3.7 Easements and Licenses

(A) It is acknowledged that the construction and operation of the Project may require the City's granting to the Developer, and/or acceptance from the Developer, of various easements or licenses with respect to City owned rights of way or City owned property surrounding, or otherwise adjacent to, the Property, and/or with respect to the Property.

(B) The City hereby approves and authorizes the grant and the acceptance of any easements and licenses which may reasonably be needed to construct, complete and operate the Project, *provided that* the Developer shall provide the City with detailed plans of those improvements that will be the subject of the such easements or licenses for final approval by the City's Economic Development Administrator (which approval shall not be unreasonably withheld, conditioned or delayed) and further provided that with respect to any such easements or licenses granted by the City, the Developer shall comply with customary City requirements with respect to insurance. The City will work with the Developer to secure any approvals needed for such easements or licenses from any and all Governmental Authorities.

Section 3.8 Title

Notwithstanding any other provisions of this Agreement, it is agreed and understood that the Developer shall not be required to accept the Quit Claim Deed unless it shall be able to obtain Title Insurance, insuring a good and marketable fee simple title. If the City shall be unable to convey such title then 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 a timeframe agreed upon between the City and the Developer) to provide such title, or terminate this Agreement. Marketability of title shall be determined in accordance with the Standards of Title of the Connecticut Bar Association.

Section 3.9 Real Estate Conveyance Tax and other Closing Costs

The Developer shall pay the cost of obtaining any policy of title insurance, and all other closing costs, including the cost of recording, if any, of this Agreement, the Quit Claim Deed and all other licenses, agreements and easements granted to the Property. The City shall pay the cost, if any, of the real estate conveyance tax for the conveyance of the Property. Each party shall be responsible for payment of the legal fees of its own counsel in the negotiation, execution and delivery of this Agreement.

Section 3.10 Assignment and Mortgage by the Developer

(A) It is hereby agreed and stipulated that prior to the issuance of the Certificate of Completion, the Developer shall not, without the City's written permission, transfer or assign any of its rights and/or obligations under this Agreement or in the Property other than to an Affiliate, which Affiliate shall agree in writing to assume all of the obligations of the Developer under this Agreement. For purposes hereof, a "transfer" shall include a transfer of more than fifty (50%) percent of the ownership interests in the Developer other than to an Affiliate. The Developer shall provide the City with prior written notice of its intent to make an assignment to an Affiliate and the name and address of such Affiliate, and upon such assignment, the written agreement of the Affiliate to assume all of the obligations of this Agreement associated with the rights so assigned.

(B) Any assignment of any interest in this Agreement or in the Property which is in contravention of the provisions of this Section 3.10 shall be a Developer Default.

(C) It is further agreed by the parties that following the issuance of the Certificate of Completion, the Developer may sell, assign or transfer any or all of its interest in this Agreement or in the Property to any purchaser, assignee or transferee free and clear of the requirements of Section 3.10(A) without restriction as to the consideration to be received and without the City's consent, provided that if such sale, assignment or transfer is made during the Term, the Developer shall require that the purchaser, assignee or transferee expressly assume all of the covenants, agreements, and obligations under this Agreement (including specifically, but without limitation, the obligation to pay taxes) which have not yet been performed and which expressly survive the issuance of the Certificate of Completion, by written instrument, reasonably satisfactory to the City filed and recorded in the New Haven Land Records.

Section 3.11 Mortgage of the Property; Rights of a Mortgagee

(A) Notwithstanding any other provisions of this Agreement, the Developer shall at all times have the right to encumber, pledge, or convey its right, title and interest in and to the Property by way of a Mortgage or Mortgages (a "Mortgage"), *provided that* any mortgagee (a "Mortgagee") taking title to the Property or any part thereof (whether by foreclosure or deed in lieu of foreclosure or otherwise) shall be subject to the provisions of this Agreement, and that the Developer shall give written notice to the City of the proposed grant of any such Mortgage, the amount thereof and the name and address of such Mortgagee. This Agreement shall be superior and senior to any lien placed upon the Property after the date of the recording of this Agreement, including the lien of any Mortgage, subject to any such liens taking priority at law.

(B) The City agrees at any time and from time to time, upon not less than thirty (30) days prior written notice, to execute, acknowledge and deliver without charge to a Mortgagee, or to any prospective Mortgagee designated by either the Developer or any Mortgagee, or to any prospective purchaser of the Developer's interest in the Property designated by the Developer a written statement that 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), that no notice of default or notice of termination of this Agreement has been served on the Developer (or if the City had 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), that to the City's knowledge no default exists under this Agreement including no 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 the amounts due under this Agreement and any other information as may be reasonably requested. In the event that the City shall fail to provide such written statement as requested by the Developer, then City's failure to so respond shall be deemed to be a confirmation of the statements set forth hereinabove.

(C) In the event that during the Term, a Mortgagee shall succeed to the interests of the Developer hereunder or with respect to all or any portion of the Property, or both, the

time permitted for a Mortgagee to complete construction of any portion of the Developer Improvements shall be extended as long as the Mortgagee is diligently and continuously working towards completion of the construction and shall include any time necessary for the Mortgagee to exercise its rights under the Mortgage and to obtain possession of that portion of the Property which is encumbered by Mortgagee's mortgage(s).

(D) If a Mortgagee (or its designee as may have acquired the Developer's estate through foreclosure) acquires the Developer's estate in the Property or forecloses its Mortgage prior to issuance of a Certificate of Completion, such Mortgagee shall, at its option:

i. Complete construction of the Developer Improvements required in accordance with this Agreement and in all respects (other than time limitations) comply with the provisions of this Agreement; or

ii. Sell, assign or transfer with the prior written consent of the City, which consent shall not unreasonably be withheld, conditioned or delayed (but without restriction as to the consideration received), the Developer's estate in the portion of the Property covered by the Mortgage to a purchaser, assignee or transferee who shall expressly assume all of the covenants, agreements and obligations of the Developer under this Agreement to be performed and observed on the Developer's part thereafter arising in respect to the Project (and shall be deemed a "Developer" under the terms of this Agreement), by written and recordable instrument reasonably satisfactory to the City filed in the New Haven Land Records.

(E) In the event a Mortgagee completes the construction of the Project in accordance with this Agreement (other than time limitations), the Mortgagee may sell, assign or transfer fee simple title to the Project 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 shall expressly assume all of the covenants, agreements, and obligations under this Agreement applicable to the 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.

(F) If a Mortgagee acquires the Developer's estate in any portion of the Property after issuance of a Certificate of Completion but during the Term, the Mortgagee shall comply with the applicable provisions of this Agreement which have not yet been performed and which survive the issuance of such Certificate of Completion.

(G) In the event a Mortgagee acquires the Developer's estate in any portion of the Property, the City agrees (if so requested) to enter into a new Agreement ("New Agreement") with such Mortgagee or its designee, effective as of the date of termination and for the remainder of the Term, upon the terms, covenants and conditions (but excluding requirements which are not applicable or which have already been fulfilled) of this Agreement.

Section 3.12 Notice of Default to Mortgagee

(A) The City shall simultaneously deliver any Default Notice to the Mortgagee at the address theretofore designated by the Mortgagee at the same time as it delivers a Default Notice to the Developer. Any such Default Notice shall be delivered in accordance with the notice provisions of this Agreement.

(B) A Mortgagee shall have the right, but not the obligation, to perform any term, covenant, or condition and to remedy any default by the Developer under this Agreement within the applicable time period afforded the Developer, plus an additional period of sixty (60) days, which period shall be reasonably extended if the default is not in the payment of money and a Mortgagee commences to remedy the default within such period and thereafter diligently prosecutes such remedy to completion.

(C) In the event that a Mortgagee elects to cure a default occasioned by the failure of the Developer to commence or complete the construction work in accordance with this Agreement, then, upon completion of such construction work, such curing Mortgagee or its permitted assignee shall be entitled to a Certificate of Completion in accordance with the provisions of Article 8 of this Agreement. Upon issuance of such Certificate of Completion, all rights of the City arising as a result of a Developer Default shall terminate.

ARTICLE IV

THE DEVELOPER IMPROVEMENTS

Section 4.1 General

The Developer agrees, after the Conveyance of the Property to the Developer, and at its sole cost and expense, to design and construct the Developer Improvements. The Developer shall renovate approximately 100,000 square feet of the existing space within the Building, adhering to high-quality construction and design standards. In particular, it is agreed that the Developer will landscape the Property consistent with high quality and design standards so as to create a "campus-like" feel for the Project. It is also agreed that there shall be approximately 5,000 square feet of new construction on the Property meeting similar construction and design standards, and that the Developer, in order to direct attention to the activity on the Property, will erect and maintain the Billboard during the carrying out of the Developer's Improvements or thereafter. The Project further contemplates public access to the Mill River by way of the construction, to the extent permitted by the state, of a kayak launch for public use.

Section 4.2 Developer Improvements Plan and Design

(A) Recognizing the importance of the Developer Improvements to the Project, the City and the Developer agree to work collaboratively in the design of the Developer Improvements, meaning that the City Design Reviewers, shall, at no material cost to the Developer and at no material delay to the Project Schedule,

have the opportunity to provide input in the design of the Developer Improvements as follows:

i. Design Process

a. Prior to seeking site plan approval for both the Developer Improvements and with sufficient time to allow for the herein described Design Process, the Developer shall deliver to the City Design Reviewers schematic design drawings reasonably consistent with the obligations of the Developer set forth in this Agreement (the "Schematics"). The City Design Reviewers shall have the opportunity to provide written comments on the Schematics that specify recommended alterations (the "City Comments"), provided that such City Comments must be limited to design considerations that do not cause any material change to the cost structure or viability of the Developer Improvements.

b. It is agreed and understood that the City Design Reviewers may consult with an independent third-party architect (the "City Architect") and the Developer shall attend such meetings with the City Architect and/or the City Design Reviewers as may be reasonably necessary to effectuate the Project and intentions of this Section 4.2.

c. If the City Design Reviewers do not provide the City Comments within forty-eight (48) hours after receipt of the Schematics by the City, the City Design Reviewers shall be deemed to have no City Comments.

d. The Developer shall respond to the City Comments, and, at the option of the Developer, it may respond to any or all City Comments by submitting revised Schematics (the "Response"), in which event the City Design Reviewers and the Developer shall meet forty-eight (48) hours after the date on which the Response is delivered to the City Design Reviewers to discuss the City Comments and the Response. The Developer agrees to use

reasonable efforts to respond to the City Comments within the bounds of financial feasibility.

e. Throughout the Design Process, the Developer agrees to work with the City Design Reviewers to incorporate the City comments that are compatible with the design of the Developer Improvements as determined by the Developer in its sole, but reasonable, discretion.

f. Notwithstanding the foregoing, nothing herein contained in this Section 4.2(A) shall empower the City with the authority to deny, approve, or otherwise condition the design of the Developer Improvements as part of the Design Process. The parties agree that the Developer has the ultimate authority to decide the final design of all the Developer Improvements to be submitted to the City Plan Commission for site plan approval and that the City Plan Commission retains ultimate authority to decide any or all applications submitted to it for site plan or other regulatory approval as required by applicable Legal Requirements for the Developer Improvements in accordance with all Legal Requirements.

Section 4.3 Cooperation and Coordination Between the Developer and the City

The City shall fully and expeditiously assist the Developer in obtaining all approvals and permits required for the Developer Improvements. The City agrees to cooperate with the Developer and support in good faith all approvals required in connection with the Developer Improvements. The City shall work cooperatively with the Developer in seeking all necessary approvals from CDOT, OSTA and DEEP.

Section 4.4 Minimum Project Requirements

(a) The City and the Developer recognize that the Project may be subject to circumstances that are currently unanticipated and may require altering the Project details while preserving the shared vision of the City and the Developer. Accordingly, the City and the Developer have agreed to certain minimum requirements for the Project that aim to

provide long term flexibility while preserving the overall Project vision, as set forth in Section 4.4(b) below:

(b) At a minimum the Project shall consist of the adaptive reuse of not less than 100,000 square feet of space of the existing structure and new construction of 5,000 square feet, which adaptive reuse shall include (without limitations):

(i)renovation of the exterior Building systems (roof, facade and accessibility) and interior Building systems (HVAC, electrical/power, plumbing, water and sewer, fire suppression and alarm system, common areas, exit lighting and security);

(ii) division of the Building into sub-tenant spaces, suitable for occupancy pursuant to any and all relevant portions of the Building Code;

(iii)

(iv) development of approximately 5,000 square feet of fully fitted out co-working / incubator space;

(v) those improvements to the Property including stormwater management, resurfacing of the parking area to accommodate 240 parking spaces;

(vi) coastal area management improvements to include, to the extent permitted by the state, a kayak launch;

(vii) construction of an amphitheater of a size appropriate to the Property and reasonably acceptable to the City; and

(viii) appropriate plantings, landscaping and pathways all in a manner consistent with an approved coastal area and site plan.

Section 4.5 Project Schedule

Following conveyance of the Property to the Developer, the Developer will 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 account of unforeseen conditions and delays (including, without limitation, delays in the issuance of permits and approvals, or conditions both physical and economic, whether or not constituting Force Majeure for the purpose of this Agreement), and to the extent that the Developer provides the City with reasonable evidence of the need for such modifications, then the City and the Developer shall amend the Project Schedule in such manner as 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.

Section 4.6 Permits and Approvals

Following conveyance of the Property to the Developer, the Developer agrees that it shall apply expeditiously, and no later than the times set forth on the Project Schedule, for all permits and approvals required for the construction and operation of the Developer Improvements which were not Conditions Precedent (or which were waived Conditions Precedent) including (without limitation) permits from CDOT, the Office of State Traffic Administration (OSTA), DEEP, DECD, the City Plan Commission and any permits required under the National Environmental Protection Act (collectively, "Permits and Approvals"). The Developer covenants to comply with all conditions and terms of the Permits and Approvals.

Section 4.7 Casualty

In the event of any damage or destruction to any of the Developer Improvements during the Term, then, subject to the rights of any Mortgagees and subject to any agreement to the contrary with the City, the Developer agrees, to the extent feasible, 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 4.8 Prohibited Uses

The Developer hereby agrees that after conveyance of the Property to the Developer, no portion of the 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, or 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 pint.

ARTICLE V

COMMUNITY BENEFITS

Section 5.1 Permanent Jobs

The City and the Developer recognize the importance of creating economic opportunities for New Haven residents and agree to work collaboratively and an ongoing basis to connect New Haven residents to jobs resulting from the Project, both during construction and permanent jobs. Therefore, after conveyance of the Property to the Developer, the Developer shall:

(A) Use best good faith efforts to partner with New Haven Works concerning employment opportunities with the Developer directly associated with the Project.

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

(C) Actively participate in an Information Technologies skills training ladder in cooperation with the City's Economic Development Administration, Board of Education, Gateway Community College and New Haven Promise.

Section 5.2 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 (and shall require its general contractor to):

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 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. Not discriminate 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 utilize the City-sponsored workforce program (Construction Workforce Initiative 2) as a source of recruitment, and to notify the City of New Haven Commission on Equal Opportunities of all job vacancies;

v. send to each labor union or representative of workers with whom the Developer has a collective bargaining agreement, or other contract or understanding, a notice advising the labor union or worker's representative of the Developer's commitments under the equal opportunity clause of the City of New Haven, and to post copies of the notice in conspicuous places available to employees and applicants for employment, and the Developer shall register all workers in the skilled trades, who are below the journeyman level, with the Apprentice Training Division of the Connecticut State Labor Department;

(B) work with the City's Commission on Equal Opportunities (the "Commission") in complying with the Section 12 ½ of the City of New Haven's Code of Ordinances and in particular (without limitations):

i. the Developer acknowledges that under Section 12 ½-26 all prime contractors, subcontractors and tiers must attend a pre-award conference scheduled 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

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

(C) furnish all information and reports required by the City Contract Compliance Director 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 Contract Compliance Director, and the City Secretary of Labor 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 Contract Compliance Director 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;

(D) 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 City Commission on Equal Opportunities will monitor and report of any alleged violations of the I-9 verification process to the proper authorities;

(E) acknowledge that a finding, as hereinafter provided, of a refusal by the Developer, or subcontractor, to comply with any portion of this program as herein stated and described, may subject the offending party to any or all of the following penalties (subject to the provisions of Article V, Section 5.1):

i. 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, is in compliance with the provisions of this Agreement;

ii. cancellation of this Agreement;

iii. recovery of specified monetary penalties;

(F) include the provisions of sub-paragraphs (A) through (E) in every subcontract or purchase order so that said provisions will be binding upon each such subcontractor or vendor;

(G) take such action, with respect to any subcontractor, as the City may direct as a means of enforcing the provisions of this Section 7.2, 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.

Section 5.3 <u>Small Contractor Utilization Requirements During Construction</u>

(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 Business Construction

Initiative requirements and in particular, during the construction of the Project, the Developer agrees that it shall (and shall require its general contractor to):

i. comply with all applicable City small contractor utilization requirements now and hereafter existing, 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 MBE 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 all of the construction subcontracts is awarded to MBEs; in order to achieve MBE Utilization Goals, contracts may be awarded to MBE subcontractors and/or a contractor may enter into a joint venture or other commercially reasonable relationship that is satisfactory to the City with one or more MBEs for the purpose of performing construction work on the Development. In the event that the Developer is unable to meet the MBE Utilization Goals, then the Developer shall document in an affidavit its good faith efforts to achieve the MBE Utilization Goals, which efforts will be evaluated, verified and recognized by the City if the Developer or its general contractors, construction manager has accomplished at least four (4) of the following: (A)The submittal of scope specific subcontracting opportunities with the SCD office for distribution; (B) Demonstrate to the SCD office 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; (C) Verification of quotes received from subcontractors that were denied because of cost, quality, availability, etc.; (D) Verification of outreach and collaboration with the New Haven Regional Contractors Alliance; (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; (F) Conducting a networking event with owner, construction manager, and prime contractors; (G) Holding individual trade meetings with construction manager, prime contractors and sub-contractors; (H) Other efforts as determined in advance by the Contractor Development Office; (I) The contractor followed-up initial solicitations by contacting the enterprises to determine whether the enterprises were interested in such contracting or subcontracting opportunity; (J) 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.

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

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

iv. to furnish all information and reports required by the City's Small Business Development Program 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 City's Small Business Development Program with the opportunity to review proposed contracts prior to the award of the same and to provide such Program with notice of all prebid conferences and the opportunity to attend such conferences;

v. to take all reasonable corrective actions requested by the City to comply and to effectuate compliance with the requirements of this Section 7.3;

(B) acknowledge that a finding, as hereinafter provided, of a refusal by the Developer, or subcontractor, to comply with any portion of this program as herein stated and described, may subject the offending party to any or all of the following penalties (subject to the provisions of Article V, Section 5.1):

i. 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, is in compliance with the provisions of this Agreement;

ii. cancellation of this Agreement;

iii. recovery of specified monetary penalties;

(C) include the provisions of sub-paragraphs (A) through (B) in every subcontract or purchase order so that said provisions will be binding upon each such subcontractor or vendor;

(D) take such action, with respect to any subcontractor, as the City may direct as a means of enforcing the provisions of this Section 7.3, including penalties and sanctions for noncompliance and fines and penalties related to the rules of practice enforced by the SBC office *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.

Section 5.4 Commitment to Sustainability

The City and the Developer agree that promoting environmental sustainability and alternative modes of transportation are critical to the success of the Project as well as the future success of New Haven as a whole. Therefore, the Developer shall use its best efforts, subject to cost considerations in the Developer's commercially reasonable discretion to construct the buildings

in accordance with the Leadership in Energy and Environmental Design ("LEED") Green Building Rating System, Silver Standard, developed by the United States Green Business Council (as the same may be defined as of the Effective Date or at the time of construction.

Section 5.5 Amphitheater

If the Developer chooses to develop an Amphitheater as a component of the Project, said Amphitheater must comprise a facility suitable for outdoor events.

Section 5.6 Billboard

(A) It is agreed and understood that the Developer may elect to erect a Billboard on the Property, subject to the Developer's compliance with the rules and regulations set forth in Section 44.1 of the Zoning Ordinance of the City of New Haven, and that the Developer may seek to rent the same as an off-premises sign.

(B) In the event that the Developer erects a Billboard, the Developer hereby agrees that during each year of the term the City shall be entitled to a share of the proceeds from any such Billboard (the "City Billboard Share"), commencing on the January 1 of the calendar year immediately following the year in which the Billboard is erected, calculated as follows:

i. Thirty (30%) percent of the gross income to the Developer from renting the Billboard up to a gross income of $84,000.00; and

ii. Twenty (20%) percent of the gross income in excess of $84,000.00.

(C) Within sixty (60) days of the expiration of each year during the Term, the Developer shall deliver to the City an accounting, in such form and detail as shall

be reasonably acceptable to the City, detailing the revenues received and the calculation of the City Billboard Share, together with a check in the appropriate amount. In the event that the City or the Developer shall dispute any portion of the calculation of the City's Billboard Share, the parties shall resolve such dispute in accordance with the provisions of Section 9.4 of this Agreement.

(D) Notwithstanding any disagreement between the parties as described in paragraph (C) above, within ninety (90) days of the expiration of each year during the Term, the Developer shall deliver the City Billboard Share to the City by check pursuant to paragraph (C) above. The Developer may not withhold the City Billboard Share because of any dissatisfaction or disagreement that it may have regarding the City's performance of any of its responsibilities under this Agreement. The Developer shall raise any such dissatisfaction or disagreement that it may have with the City in accordance with the provisions of Section 9.4 of this Agreement.

(E) The City shall deposit the City Billboard Share into an escrow account that it shall establish and maintain (the "Mill River Special Funds Account").

(F) The City shall disburse funds from the Mill River Special Funds Account at the direction of the Mill River Special Services District, solely for the purposes of paying for:

i. A streetscape project at the corner of State and James Streets (the "Streetscape Project"); or

ii. General maintenance and streetscape cleaning in the Mill River Special Services District; or

iii. Cultural equity education, events, and other programming in the Mill River Special Services District.

(G) If the City, through its Board of Alders, does not approve and authorize the creation of the Mill River Special Services District by December 31, 2024, the City shall establish a Mill River Improvements Committee.

a. The Mill River Improvements Committee shall consist of the following members:

i. The Developer;

ii. A member of the community appointed by the Developer;

iii. The City's Economic Development Administrator;

iv. The City's Director of the Department of Cultural Affairs; and

v. The City's Alders from Ward 8, Ward 9,and Ward 10.

b. The Mill River Improvements Committee, established pursuant to subparagraph (a) above, shall meet at least annually to review and approve a plan which may include:

i. Maintenance and streetscape cleaning functions in the Mill River Special Services District; or

ii. Cultural equity education, events, and other programming in the Mill River Special Services District.

(H) Notwithstanding the foregoing, the City and the Developer have agreed to fund, and expedite the creation of, the Streetscape Project described in Subsection (F)(i) above. As part of this project, the City agrees that the Developer may retain $150,000 of those funds that it owes the City pursuant to Subsection (B) above to fund creation of the Streetscape Project. If the Developer does not expend at least a majority of those funds by December 31, 2025 to perform the Streetscape Project, the Developer shall remit all remaining funds to the City within thirty (30) days for deposit into its Mill River Special Funds Account.

Section 5.7 Mill River Trail Easement

The City and the Developer hereby acknowledge and agree that the Quit Claim Deed shall reserve a public access easement over that portion of the Property identified on the map attached to Exhibit E as Attachment 1, it being further agreed and understood that the grant of the Mill River Trail Easement in a form consistent with Exhibit E shall be a condition of coastal site plan approval in accordance with the requirements of Section 22a-9d through Section 22a-112 of the Connecticut General Statutes. To the extent not covered by the provisions of Section 52-557g of the Connecticut General Statutes, the City shall indemnify and hold the Developer harmless from any and all liability, including reasonable attorneys' fees in defense of the same, in connection with public use of the Mill River Trail Easement. The Developer shall make good-faith efforts annually to ensure that the public has access to the Mill River for recreational purposes from its property and across the Mill River Trail Easement, and shall provide the City with documentation describing such efforts within sixty (60) days of the expiration of each year during the Term.

Section 5.8 Payment of Taxes

(A) It is agreed and understood that during the Compulsory Taxable PILOT Period, 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 or appeal, or make application for and receive such real property tax

abatements or exemptions to which the Developer, 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, 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 agreed and understood during the Compulsory Taxable PILOT Period, 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 Compulsory Taxable PILOT Period with respect to such potion of the Property, or obtains the prior written consent of the Economic Development Administrator (which consent shall not to be unreasonably withheld) and 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 Compulsory Taxable PILOT Period, 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 5.6(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 agreed, stipulated and understood that all or any portion of the Project may qualify for a tax deferment program (state of 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.

ARTICLE VI

DEVELOPER IMPROVEMENTS FINANCING

Section 6.1 Minimum Equity Contribution

The Developer and its associates and affiliates agree to secure the necessary equity required to finance the Project's pre-development costs, and the equity required to finance and launch the

Project, all in keeping with good underwriting standards currently in use in comparable markets for comparable developments, and subject to the commercial feasibility of the Project.

Section 6.2 City Support for Developer Improvements Financing

The City shall work with the Developer in locating and obtaining state and federal public financing in order to fill any funding gaps which would otherwise limit the Developer's ability to develop the Developer Improvements, including (without limitation): US EPA and Brownfield Funding. It is further anticipated that any future tenants of the Project may make application and qualify for future façade grants and funding with the City, any such desire for funding by any tenant of the Project shall seek approval by adhering to the process as established by the City for such funding and no representation is being made herein of the promise for said funding.

ARTICLE VII

PERMITS AND APPROVALS

Section 7.1 Land Use

(A) **Zoning**

As of the Effective Date, the Developer acknowledges that the Property is currently zoned Industrial Light (IL).

(B) **Site Plan Review**

The Developer shall file for Site Plan Review for those aspects of the Developers Improvements which require Site Plan Review with the City Plan Commission pursuant to Section 64 of the Zoning Ordinance. To the extent required (and to the extent that the same has not been achieved as a Condition Precedent) the Developer shall file for a special permit for parking. The Developer shall not be required to appeal a denial of any of these applications. Any changes to any matters contemplated by this Agreement approved by the City Plan Commission as part of its Site Plan Review or special permit application review, shall, when agreed to in writing by the Developer, be

deemed to modify the matters contemplated by this Agreement without any need for any modification or amendment to this Agreement.

Section 7.2 The City shall, in good faith, support the Developer its associates and affiliates, in its efforts to obtain any special permits as may be required to address and meet the parking needs, requirements and/or commitments provided that it is hereby agreed and understood that the City has no authority over any federal or state agency nor any authority to direct local boards or commissions including (without limitation) the Board of Alders, the City Plan Commission and/or the Board of Zoning Appeals.

Other

(A) **Municipal Permits**

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

(B) **Greater New Haven Water Pollution Control Authority**

i. 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.

ii. 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.

Section 7.3 Traffic Study

To the extent that the Proposed Project shall include any traffic or roadway design improvements, the Potential Developers understand that the planning, design and construction of future roadway infrastructure must comply with the City's Complete Streets Design Manual. In

addition, the Potential Developers shall be responsible for carrying out a traffic study to determine the projected effect of the Proposed Project on traffic flow around the Property and preparing a suitable plan to manage the same (the "Draft Traffic Plan") for the City's review. The Draft Traffic Plan shall include such road and signaling improvements and modifications as may be reasonably necessary in order to mitigate the impact of the additional traffic resulting from the completion of the Proposed Project, including TDM strategies. The City and the Potential Developers shall review the Draft Traffic Plan and seek to agree upon the same and to allocate responsibility for implementing the provisions of the Draft Traffic Plan and the costs associated therewith. To the extent that the input and/or approval of the Office of the State Traffic Administration to the Draft Traffic Plan is required, the Potential Developers shall be responsible for obtaining all such approvals and for liaising with the State Traffic Commission.

Section 7.4 District-Wide Cooperation and Integration

It is expected that the success of the Project will stimulate additional growth within the area surrounding the Project. As such, parking may become constrained in the surrounding area. Therefore, the Developer, for a period of 15 years, shall, at the City's request, enter into discussions concerning general parking availability and possible solutions to parking constraints that may arise as a result of future growth, provided that it is understood by the City and the Developer, that the Developer shall not be obligated to provide parking for abutting properties or other neighbors, or anyone other than as required by applicable law with respect to the Developer's use of the Property. At the end of such discussions, the Developer shall deliver to the City a memorandum with respect to the results of such deliberations within thirty (30) days of the conclusion of the same.

Section 7.5 Coastal Area Management

The Property is situated within the City's Coastal Management District. The Potential Developers shall be responsible for compliance with any and all obligations with respect to Coastal Area Management set forth in Section 55 of the New Haven Zoning Ordinance.

ARTICLE VIII

CONSTRUCTION OF THE DEVELOPER IMPROVEMENTS

Section 8.1 Construction Progress Reports

The Developer shall provide the City with construction progress reports every thirty (30) days after its construction work 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 which are claimed to result in Excusable Delays.

Section 8.2 Certificate of Completion

(A) After Substantial Completion, the Developer shall give notice via recognized overnight courier against a signed receipt, or certified mail return receipt requested to the Economic Development Administrator, with a copy to their counsel, of the same, requesting a Certificate of Completion with respect to the Project. Notwithstanding any other provision of this Agreement, the Economic Development Administrator shall inspect or shall cause the Developer Improvements to be inspected within thirty (30) days of a request for a Certificate of Completion and shall furnish such Certificate of Completion within forty-five (45) days of the Developer's request therefor. A Certificate of Completion shall be in such form as will enable it to be recorded on the New Haven Land Records.

(B) A Certificate of Completion shall be a conclusive determination of the satisfaction of the Developer's obligation to construct the Developers Improvements and shall state that the Developer's obligations to construct the Developers Improvements have been Substantially Completed, the effect of the issuance of such Certificate of Completion shall mean all rights of the City with respect to the Property as set forth in this Agreement shall terminate.

(C) Notwithstanding any other provision of this Agreement, if the Economic Development Administrator shall refuse or fail to provide a Certificate of Completion in accordance with the provisions of this Section, the Economic Development Administrator 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 complete the Project, and what measures or acts will be in necessary for the Developer to take or perform in order to obtain a Certificate of Completion the Project. Following receipt of such written statement, the Developer shall promptly carry out the corrective measures or acts described in the written statement, and a Certificate of Completion will be delivered to the Developer within fifteen (15) days of the completion by the Developer of the items set forth 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 set forth herein.

(D) Notwithstanding any other provision of this Agreement, if the Economic Development Administrator shall fail to provide the Developer with a Certificate of Completion or with a written statement within such forty-five (45) day period of a request for a Certificate of Completion, such failure shall be deemed to constitute certification that the Project has been completed. In such case, the Developer shall, in its sole discretion, record a Certificate of Completion on the New Haven Land Records, setting forth the failure of the City to issue a Certificate of Completion within the time required for issuing same. The Developer's Certificate of Completion shall have the same force and effect as a Certificate of Completion issued by the Economic Development Administrator.

ARTICLE IX

DEFAULT AND REMEDIES

Section 9.1 Default by the Developer

(A) The occurrence of (i) an Event of Bankruptcy or (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 the City's written notice (the "Default Notice") of such event or failure is received by the Developer and the Developer shall fail 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 shall be an Event of Default by the Developer ("Developer Default") *provided, however, that* the Developer shall not be in default with respect to any matter referred to in a Default Notice which is susceptible of cure but cannot be reasonably cured within said thirty (30)-day period, so long as the Developer responds to the Default Notice and sets out a reasonable plan and schedule to effect a cure and thereafter makes reasonable efforts to complete the same in accordance with such schedule.

(B) Except as otherwise provided in this Agreement if a Developer Default occurs, the City shall be entitled to pursue its rights and remedies pursuant to this Agreement or as may otherwise be available at law or in equity.

(C) It is agreed and understood that in the event a Developer Default occurs, the Developer agrees, upon City's prior written request, to execute such assignments or other documentation as may be reasonably required to effect an assignment to the City of Developer's DECD Brownfields Grant Assistance Agreement and/or any other agreement Developer has for funding obtained from the State, as well as any and all permits, approvals or other related documentation or agreements necessary for the City to complete the Environmental Remediation Work.

(D) It is agreed and understood that the provisions of this Section 9.1 shall not affect the Right of Reversion set forth on Section 3.6 above, and that the City may, in the City's sole discretion, elect to pursue such remedy as it may deem necessary or desirable from time to time.

Section 9.2 Default by the City

(A) The occurrence of any failure by the City to perform any obligation under this Agreement where such event or failure shall continue for more than thirty (30) days after City's receipt of a Default Notice is received by the City, and the City shall fail 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 shall be an Event of Default by the City ("City Default") *provided, however, that* the City shall not be in default with respect to any matter referred to in a Default Notice which is susceptible of cure but cannot be reasonably cured within said thirty (30)-day period, so long as the City responds to the Default Notice and sets out a reasonable plan and schedule to effect a cure and thereafter makes reasonable efforts to complete the same in accordance with such schedule.

(B) Except as otherwise provided in this Agreement, if a City Default occurs, the Developer shall be entitled to pursue its rights and remedies pursuant to this Agreement or as may otherwise be available at law or in equity.

Section 9.3 Excusable Delay

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

Section 9.4 Dispute Resolution Procedure

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

(a) At the request of any party, representatives of each party with full settlement authority shall meet at a mutually acceptable time and place in the City within ten (10) days of the Notice of Conflict (the "Dispute Meeting") in order to attempt to negotiate in good faith a resolution to the dispute.

(b) If the dispute is not resolved by the parties by way of the Dispute Meeting, 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 (the "Mediation") Mediation shall be with the AAA, or, if agreed upon, through use of a private mediator chosen by the parties. The 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. Agreements reached in the Mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. If the parties agree to the Mediation (and subject to Section 9.4(d) below) the conclusion of the Mediation shall be a condition precedent to litigation. The parties shall conclude the Mediation within (60) days after the designation of the mediator.

(c) If the dispute is not resolved by way of the Dispute Meeting or the Mediation, the dispute(s) 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 parties to the dispute. Third parties relevant to the adjudication of the dispute may be added to the advisory opinion proceedings if agreed to by the parties. 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, except as provided in Section 9.4(d) below.

(d) *Provided that* the party seeking use of the Dispute Resolution Procedure has complied with the requirements for giving the "Notice of Conflict," no passage of time or delay caused by pursuit of Dispute Resolution Procedure, mediation or seeking an advisory opinion will prejudice the rights of any party. At the request of any party, the parties shall enter into an agreement to 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 any party 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.

(A) In the event that the Dispute Resolution Procedure is unsuccessful in solving any dispute, then the provisions of Section 9.1 and Section 9.2 of this Agreement shall apply, without further reference to the Dispute Resolution Procedure.

ARTICLE X

GENERAL PROVISIONS

Section 10.1 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:

District NHV, LLC
25 Randy Road
Milford, Connecticut 06461
Attn: David Salinas
Eric O'Brien

with copies to:

Berchem, Moses & Devlin, P.C.
75 Broad Street
Milford, Connecticut 06460
Attn: Rolan Joni Young Smith, Esq.

IF TO THE CITY:

City of New Haven
165 Church Street
New Haven, CT 06510
Attention: Economic Development Administrator

with copies to:

City of New Haven
165 Church Street
New Haven, CT 06510
Attention: Special Counsel for Economic Development

Office of the Corporation Counsel
City of New Haven
165 Church Street
New Haven, CT 06510

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

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 10.2 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 by any other party, shall discharge or invalidate such covenant or provision or affect the right to enforce the same in the future. No default shall be deemed waived by any party unless such waiver is in writing and designated as such and signed by such party, and such waiver shall not be a continuing waiver but shall apply only to the instance of default for which it is granted.

Section 10.3 Rights Cumulative

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

Section 10.4 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 shall not authorize any assignment not permitted by this Agreement under Article III.

Section 10.5 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 10.6 Governing Law and Jurisdiction

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

Section 10.7 No Partnership, Joint Venture or Agency

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

Section 10.8 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 10.9 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 10.10 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 10.11 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 10.12 Estoppel Certificate

The parties agree that during the Term of this Agreement, upon the request of any party, the receiving party shall within fourteen (14) days of receipt deliver to the requesting party a recital of factual matters as requested including without limitation indicating that the requesting party is in compliance with all covenants and agreements binding upon the requesting party under this Agreement to the best knowledge of the receiving party, provided such is the case.

Section 10.13 No Third-Party Beneficiaries

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

Section 10.14 Survival

All provisions and conditions of this Agreement which by their terms are to be performed or satisfied prior to the transfer of the Property shall be deemed to be satisfied upon such transfer and shall not survive the transfer, unless the parties have waived or extended the time for performance by a written instrument as provided elsewhere in this Agreement or unless such provisions expressly provide for their survival after the transfer of the Property. All other provisions shall survive the transfer of the Property and shall expire upon the expiration of this Agreement or, if earlier, in accordance with the express provisions of this Agreement, including (without prejudice to the generality of the foregoing), the satisfaction of the construction obligations of the Developer hereunder, as evidenced by the issuance of a Certificate of Completion.

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

In the presence of:

CITY OF NEW HAVEN

_____

By_____
Toni Harp
Its Mayor
Duly Authorized to act herein

_____

Approved as to form and correctness:

_____
John R. Ward
Special Counsel to Economic Development

DISTRICT NHV, LLC

_____

By:_____
David Salinas
Its
Duly Authorized to act herein

_____

_____ By:_____
Eric O'Brien
Its
Duly Authorized to act herein

_____

STATE OF CONNECTICUT)

COUNTY OF NEW HAVEN)

On this _____ day of _____, 2016, before me, the undersigned officer, personally appeared TONI HARP., who acknowledged herself to be the Mayor of the City of New Haven, and that as such Mayor, being authorized so to do by the Board of Aldermen, executed the foregoing instrument for the purposes contained therein, by signing on behalf of the City of New Haven, said act being the free act and deed of the City of New Haven and her free act and deed as such Mayor.

_____
Notary Public
Commission expires:
Commissioner of the Superior Court

STATE OF CONNECTICUT)
) ss. _____
COUNTY OF NEW HAVEN)

On this the ___ day of _____, 2016, before me, the undersigned officer, personally appeared David Salinas, who acknowledged himself to be the _____ of District NHV LLC, a limited liability company, and he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained as his 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 himself as such officer.

In witness whereof I hereunto set my hand.

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

STATE OF CONNECTICUT)
) ss. _____
COUNTY OF NEW HAVEN)

On this the ___ day of _____, 2016, before me, the undersigned officer, personally appeared Eric O'Brien, who acknowledged himself to be the _____ of District NHV LLC, a limited liability company, and he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained as his 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 himself as such officer.

In witness whereof I hereunto set my hand.

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

EXHIBIT A

Property Description

EXHIBIT B

Those improvements described in Article IV of this Agreement

EXHIBIT D

Project Schedule

EXHIBIT E

Easement Area