

DEVELOPMENT AND LAND DISPOSITION AGREEMENT  
BETWEEN  
THE CITY OF NEW HAVEN  
AND  
RJDA ASHMUN STREET LLC  
FOR  
THE CONVEYANCE OF REAL PROPERTY  
KNOWN AS ASHMUN STREET, NEW HAVEN, CONNECTICUT  
A20-0230

**[TO BE UPDATED]**

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## LAND DISPOSITION AGREEMENT

This DEVELOPMENT AND LAND DISPOSITION AGREEMENT (this “Agreement”) is entered into as of \_\_\_\_\_, 2020 (the “Effective Date”) by and between **THE CITY OF NEW HAVEN**, a municipality organized and existing under the laws of the State of Connecticut, with a mailing address at 165 Church Street, New Haven, Connecticut 06510 (hereinafter referred to as the “City”), and **RJDA ASHMUN STREET LLC** (the “Developer”), a limited liability company, organized and existing under the laws of the State of Connecticut with an office located at 555 Long Wharf Drive, 11<sup>th</sup> Floor, New Haven, Connecticut 06511, Connecticut 06510, (the City and the Developer collectively referred to as the Parties”).

### BACKGROUND

The City is the owner of those certain parcels of land located in the Newhallville neighborhood consisting of approximately 1.783 acres (77,634 square feet) located at 291 Ashmun Street, 309 Ashmun Street, and 178-186 Canal Street as more particularly described in Schedule A attached hereto and incorporated herein (the “Property”). The Property is located on the northern end of one city block in the southeastern section of the Newhallville neighborhood and is located adjacent to Science Park at Yale, a business park development of approximately 80 acres.

The Developer is a single purpose limited liability company formed by RJ Development & Advisors LLC (“RJ Development”) for the purpose of owning, developing and operating the Property. RJ Development, a Connecticut limited liability company, is a full-service commercial real estate development company that delivers services in real estate development, acquisition, and asset repositioning for commercial and multi-family residential properties throughout greater New England. RJ Development's principals have over 25 years of combined experience in commercial real estate, development, finance, and law, including deal origination, planning and execution. RJ Development’s active and recently completed development projects include: The Residences at Fort Trumbull in New London, CT, College & Crown in New Haven CT and Route 34 West Master-Plan of Development in New Haven CT.

RJ Development’s Principals have delivered real estate development projects across a variety of project types and including: multi-family residential, for-sale residential, Class-A office, medical office, industrial, retail, parking, and mixed-use developments.

RJ Development responded to a Request for Proposals issued by the City seeking qualified developers for the proposed redevelopment of the Property. RJ Development was selected by the City to develop the Property, and RJ Development formed Developer as the single purpose entity to acquire, develop and operate the Project.

Using the Request for Proposals as the framework for the negotiations between the City and the Developer for the development of the Project, as hereinafter defined, the City and Developer are entering into this Agreement to set forth the basic elements to be included in the Project and the City and Developer’s

general vision and goals for the redevelopment of the Property. In particular, the Parties anticipate a mixed-use project that will promote affordable housing and consist of no greater than a five story, 150 unit apartment building of which no fewer than 50 units shall be restricted and provided at various levels of affordability, below prevailing market rate with ground level parking (the “Project”). Recognizing the interplay of real estate and financial market conditions with the composition of land uses in the Project, the City and 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, code 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 this Article 1, Section 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, 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 herein shall not be construed against the City or the Developer solely by virtue of

the fact that the City or the Developer may be considered the drafter of this Agreement or any particular part hereof.

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

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

(j) Any time limits which are imposed upon the performance of the parties hereto by the terms of this Agreement shall, if applicable, 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 non-survivability of obligations of another section.

## **Section 1.2 Defined Terms**

In this Agreement, the following terms shall mean:

(a) "Affiliate" shall mean any entity that is at least fifty (50%) percent owned directly or indirectly by Developer and/or RJ Development.

(b) "Agreement" shall mean the four corners of this instrument, and includes any appendices, exhibits or schedules incorporated by reference, as well as any amendment, modifications or supplements which may be executed by the City and the Developer subsequent to the effective date of this instrument.

(c) "Affordable Housing Units" shall mean those units of the Project that are restricted to low income and very low-income households as follows, for the duration of the Affordability Period:

(i) no fewer than 25 units shall be restricted to families and persons whose income do not exceed Eighty Percent (80%) of the AMI for the New Haven County, Connecticut area, with adjustments for the number of bedrooms in the unit;

(ii) no fewer than 15 units shall be restricted to families and persons whose income do not exceed Sixty Percent (60%) of the AMI for the New Haven County, Connecticut, with adjustments for the number of bedrooms in the unit; and

(iii) no fewer than 10 units shall be restricted to families and persons with Section 8 Housing Choice Vouchers (HCV).

(d) “Affordability Period” shall mean twenty (20) years commencing from the Project Completion Date.

(e) “AMI” means the area median income for households of various sizes in the New Haven/Meriden area as determined by HUD for the year during which such households will occupy an Affordable Housing Unit.

(f) “Certificate of Completion” shall mean a certificate issued in accordance with Section 8.3 of this Agreement.

(g) “City” means the City of New Haven, organized and existing by virtue of an act of the General Assembly of the state of Connecticut and shall include any successor and/or assigns in interest whether by operation of law, or otherwise.

(h) “City Default” means an event of default by the City as more particularly set forth in Section 10.2 of this Agreement.

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

(j) “Developer” shall have the meaning ascribed to it in the preamble of this Agreement.

(k) “Developer Improvements” shall mean the construction of a five (5) story maximum, mixed-use development consisting of at least one hundred and fifty (150) studio, one and two bedroom units, one third, but no less than fifty (50) of which, shall be Affordable Housing Units, as herein defined, offered at below market rates, for the duration of the Affordability Period.

(l) “Development” or “Rehabilitation” means the work, repair, renovation, remodeling, construction, and/or reconstruction that the Developer is to perform to bring the Property into conformance with this Agreement, more particularly described in the Plans and Specifications and Floor Plans as hereinafter defined.

(m) “Dispute Resolution Procedure” means the procedure for resolving a dispute among or between the parties as set forth in Section 10.3 of this Agreement.

(n) [INTENTIONALLY OMITTED]

(o) [INTENTIONALLY OMITTED]

(p) “Environmental Conditions” shall mean the environmental conditions on the Property which under applicable Environmental Laws require testing, remediation or monitoring for the uses on such Property as contemplated by this Agreement.

(q) “Environmental Laws” means any and all laws, statutes, ordinances, rules, regulations or orders of any Governmental Authority pertaining to the environment, including the federal Clean Water Act, the federal Clean Air Act, the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, the federal Water Pollution Control Amendments, the Federal Resource Conservation and Recovery Act of 1976, the federal Hazardous Materials Transportation Act of 1975, the federal Safe Drinking Water Act, the federal Toxic Substances Control Act, and any comparable or similar environmental laws of the State, including Title 22a of the General Statutes and the RSRs.

(r) “Environmental Work” means environmental work required to test, remediate or monitor any Existing Environmental Condition which is required to be performed pursuant to any applicable Environmental Law, including remediating any Environmental Condition in excess of the criteria in the RSRs which cannot otherwise be remediated by rendering the soil inaccessible or environmentally isolated consistent with the RSRs.

(s) “Event of Bankruptcy” means any of the following: (a) a receiver or custodian is appointed for all or a substantial portion of the Developer’s property or assets, which appointment is not dismissed within one hundred eighty (180) days; (b) the Developer files a voluntary petition under the United States Bankruptcy Code or any other bankruptcy or insolvency laws; (c) there is an involuntary petition filed against the Developer as the subject debtor under the United States Bankruptcy Code or any other bankruptcy or insolvency laws, which is not dismissed within one hundred eighty (180) days of filing, or which results in the issuance of an order for relief against the debtor; or (d) the Developer makes or consents to an assignment of its assets, in whole or in part, for the benefit of creditors or a common law composition of creditors

(t) “Event of Default” means a default by any of the parties of its obligations or covenants hereunder after notice, if required under this Agreement, as described in Article X of this Agreement or in any other section of this Agreement.

(u) “Excusable Delays” are delays or failures of any of the parties with respect to any time limits which are imposed upon the performance of the parties hereto by the terms of this Agreement, which delays are caused by a Force Majeure Event.

(v) “Floor Plans” shall mean drawings and outlines indicating the general plan of the development to be performed on the Property by the Developer.

(w) “Force Majeure Event” means any event, act, failure to act or circumstances caused by: (a) acts of God, including without limitation, floods, hurricanes, storms, tornadoes, lightning, earthquakes, washouts, and landslides; (b) fires, explosions or other casualties; (c) governmental moratorium; (d) acts of a public enemy, civil commotions or disturbances, riots, insurrections, acts of war, blockades, embargos, terrorism, effects of nuclear radiation, government shutdowns, or national or international calamities; (e) sabotage; (f) condemnation or other exercise of the power of eminent domain other than the exercise of the power of eminent domain by the City or the Redevelopment Agency with respect to an Excusable Delay asserted by the City or the Redevelopment Agency; (g) the passage or enactment of, or the new interpretation or application of statutory or regulatory requirements or the adoption of any land use plan that adversely impacts on the conveyance or development of any of the New Project Parcels other than the passage or enactment of a new regulatory requirement by the City or the Redevelopment Agency with respect to an Excusable Delay asserted by the City or the Redevelopment



Agency; (h) with respect to the Developer's assertion of Excusable Delay, delays, acts, neglects or faults or violations of the terms of this Agreement on the part of the City or the Redevelopment Agency or their board members, public officials, employees or agents or contractors; (i) with respect to the City's or the Redevelopment Agency's assertion of Excusable Delay, delays, acts, neglects or faults on the part of the Developer or its employees, agents or contractors; (j) restraint, delay or any similar act by any utility company and any Governmental Authority (including any reviews and approvals required from a Governmental Authority), other than the City and the Redevelopment Agency with respect to an Excusable Delay asserted by the City, or the Redevelopment Agency; (k) the act, failure to act, omission or neglect of third parties over whom the party asserting the Excusable Delay has no control; (l) strikes, work stoppages, lockouts, or other industrial disturbance; (m) unusual adverse weather conditions; (n) freight embargoes; (o) unusual and unanticipated delays in transportation; (p) unavailability of, or unusual delay in the delivery of, fuel, power, supplies, equipment, materials or labor; (q) discovery of an Environmental Condition, including but not limited to Hazardous Materials, the nature or quantity of which materially affects the ability of the Developer to carry out the required work; (r) appeals of any zoning amendments, approvals or permits required for the Development or any court or administrative or governmental order directing that the construction of any portion of the Project be stopped; (s) any other cause beyond the reasonable control of the party asserting an Excusable Delay, (t) the failure of any occupant of the Property to vacate the Property, other than the Developer with respect to an Excusable Delay asserted by the Developer and other than the City or the Redevelopment Agency with respect to an Excusable Delay asserted by the City or the Redevelopment Agency, and (u) the failure of a third party to take any action or obtain any approval and/or consent from a Governmental Authority which is required by a Legal Requirement in order for the Developer to obtain any zoning or other governmental permit, approval and/or relief.

(x) "HUD" shall mean the United States Department of Housing and Urban Development.

(y) "Legal Requirements" shall mean any and all judicial decisions, orders, injunctions, writs and any and all statutes, laws, rulings, rules, regulations, permits, certificates, or ordinances of any Governmental Authority in any way applicable to the Project including but not limited to any of the aforesaid dealing with the zoning, subdivision, design, construction, ownership, use, leasing, handicapped accessibility, maintenance, service, operation, sale, exchange or condition of the Project. "Legal Requirements" shall not mean Environmental Laws.

(z) "Low-Income Family" shall mean a family whose annual income does not exceed eighty percent (80%) of the median income for the New Haven, Connecticut area as determined by HUD.

(aa) "Plans and Specifications" shall mean the plans and specifications for the Project prepared by the Developer, as such plans and specifications may be modified from time to time in accordance with Section 4.2 below. For the purposes hereof, Plans and Specifications shall not mean or include construction documents.

(bb) "Permitted Encumbrances" shall mean only those encumbrances and restrictions affecting the Property which City has approved.

(cc) "Property" means that property designated as Assessor's MBP 257/0351/00101 Ashmun Street, New Haven, Connecticut, as more particularly described on Exhibit A attached hereto and made a part of hereof.

(dd) "Project" shall mean the entire development at the Property contemplated by this Agreement, consisting of the improvements set forth herein.

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

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

(gg) "Substantial Completion" shall mean that the Developer Improvements to be constructed either (i) are completed to the extent that the buildings or structures to be erected or renovated thereon may be occupied or utilized for their intended purposes notwithstanding any Punch List items (the issuance of a certificate of occupancy, a temporary certificate of occupancy or a Certificate of Completion shall be presumptive evidence of "Substantial Completion").

(hh) "Term" shall mean the period commencing on the Effective Date and ending on the date that is Twenty (20) years after the Project Completion Date.

(ii) "Very-Low-Income Family" shall mean a family whose annual income does not exceed sixty percent (60%) of the median income for the New Haven, Connecticut area as determined by HUD.

## **ARTICLE II**

### **REPRESENTATIONS AND WARRANTIES**

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

The Developer represents, warrants and covenants that (a) RJDA Ashmun Street, LLC is a limited liability company, duly organized and existing under the laws of the State of Connecticut and qualified to do business in the State of Connecticut; (b) RJDA Ashmun Street, LLC 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 RJDA Ashmun Street, LLC has been duly and validly authorized by all necessary action; (d) this Agreement is a legal, valid and binding obligation of RJDA Ashmun Street, LLC, enforceable against RJDA Ashmun Street, LLC in accordance with its terms; and (e) there are no agreements or contracts to which RJ Development is a party which would in any manner impede or prevent RJDA Ashmun Street, LLC from performing its obligations under this Agreement and/or which would impair the rights of the City under this Agreement.

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

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

**ARTICLE III**

**CONVEYANCE OF THE PROPERTY**

**Section 3.1     Covenant of Sale**

Subject to all of the terms, covenants and conditions of this Agreement, the City covenants and agrees to sell and convey, and the Developer covenants and agrees to purchase, the Property.

**Section 3.2     Condition of Land to be Conveyed**

The Developer acknowledges that a complete inspection of the Property has been made immediately prior to conveyance. The Developer agrees to accept, without qualification, the Property in the condition existing at the time of the execution of this Agreement.

**Section 3.3     Title and Instrument of Conveyance**

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

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

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

(d) The legal description of the Property to be conveyed to the Developer shall be as set forth in Exhibit A.

**Section 3.4 Purchase Price**

The purchase price for the Property (the "Purchase Price") shall be Five Hundred Thousand Dollars and Zero Cents (\$500,000.00) which shall be paid to the City, upon its delivery of the Deed to Developer. The payment shall be made by a check drawn to the order of "Treasurer, City of New Haven."

**Section 3.5 Time of Sale and Conveyance**

The Closing shall take place on the Closing Date as set forth in the Project Schedule (Exhibit B) at a time and place to be mutually agreed upon by the City and the Developer, unless such date has been extended due to Excusable Delay or as set forth herein or in a writing signed by the parties.

**Section 3.6 Real Estate Conveyance Tax and other Closing Costs**

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

**Section 3.7 Adjustments**

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

**Section 3.8 Access and Inspections**

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

(b) The City shall provide the Developer and its designees and consultants with reasonable access to the Property to perform such inspections and testing (including environmental surveys) as deemed reasonably necessary by the Developer. It is agreed and understood that the Developer shall

provide its employees, designees and consultants with appropriate safety equipment for accessing the Property, and that the Developer shall be responsible for causing the Developer's contractor to observe all applicable workplace safety rules and regulations. The Developer shall itself carry and shall cause its designees and consultants to carry appropriate insurance for their anticipated activities on the Property with limits reasonably acceptable to the City, naming the City as an additional insured on such insurance policies.

**Section 3.9     Environmental**

The Developer shall indemnify, defend and hold harmless the City and their officials, employees, agents and successors and assigns from and against any and all liability, fines, suits, claims, demands, judgments, actions, or losses, penalties, damages, costs and expenses of any kind or nature, including, without limitation, reasonable attorneys' fees made or asserted by anyone whomsoever, due to or arising out of, any environmental conditions on the Property, including any existing environmental conditions, but excluding any environmental conditions (a) first arising before the date the Developer takes title to the Property, or (b) which are caused or contributed to by the City or its agents, contractors or employees. In connection with this Section 3.9, if the Developer is required to defend any such action or proceeding to which action or proceeding the City is made a party, the City shall be entitled to appear, defend, or otherwise take part in the matter involved, at the City's election (and sole cost and expense), by counsel of its own choosing, provided that any such action does not limit or make void any liability of any insurer hereunder with respect to the claim or matter in questions. This indemnification shall survive the termination or expiration of this Agreement.

**ARTICLE IV**

**RESTRICTIONS AND CONTROLS UPON DEVELOPMENT**

**Section 4.1     General**

The Developer agrees, at its own cost and expense, to design and construct the Developer Improvements in accordance with this Agreement.

**Section 4.2     Developer Improvements Plan and Design**

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. The City shall have the opportunity to provide input to Developer on the Developer Improvements, provided that such input shall (1) be limited to design considerations that do not cause any material change to the cost structure or viability of the Project and (2) not include any denials, approvals or other conditions except as may otherwise be required. The parties agree that the Developer has the ultimate authority to decide the final design of all Developer Improvements to be submitted for any and all City approvals as may be required in accordance with all Legal Requirements, including but not limited to the City of New Haven Board of Zoning Appeals and the City of New Haven City Plan Commission.

**Section 4.3      Cooperation and Coordination Between the Developer and the City**

(a) The Developer agrees to apply for all permits and approvals required of the construction and operation of the Development. The City shall fully and expeditiously assist the Developer in obtaining all approvals and permits required for the Developer Improvements, including any approvals required from the City of New Haven Board of Zoning Appeals, the City of New Haven City Plan Commission, the City of New Haven Traffic Authority, the DEEP and any other municipal, state, and other governmental boards and commissions.

(b) The City agrees to provide support and assistance to the Developer for any applications that the Developer may make for additional applicable local, state and federal funding to be used to finance any funding gaps in the Project, including but not limited to the Sales and Use Tax Relief program established under Conn. Gen. Stat. § 32-23h, New Market Tax Credits and EB-5 funding to support retail and entrepreneurship efforts.

**Section 4.4      Project Schedule**

(a) The Developer shall commence construction of the Project substantially in accordance with the Project Schedule, it being agreed and understood that the Project Schedule may require periodic modification to take account of unforeseen conditions and delays, 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 is mutually acceptable. If the City and the Developer cannot agree upon such Project Schedule amendments, then such dispute shall be submitted to the Dispute Resolution Procedure.

(b) The Parties agree that Substantial Completion of the Project shall be no later than the date set forth in the Project Schedule unless otherwise provided for in this Agreement or unless extended by the City and Developer in writing.

**Section 4.5      Permits and Approvals**

(a) The Developer agrees to 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, including but not limited to the City Plan Commission, at the times set forth in the Project Schedule. The Developer agrees to comply with all conditions and terms of such permits.

(b) The parties agree that any changes to any matters contemplated by this Agreement approved by the City Plan Commission as part of its Site Plan Review shall be deemed to modify the matters contemplated by this Agreement without any need for any modification or amendment to this Agreement

**Section 4.6      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 mortgage 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 4.7     Prohibited Uses**

The Developer hereby agrees that no portion of the Property shall be sold, leased, used or occupied by a discount department store, “dollar” store, firearms and/or ammunition store, charity thrift shop or the like, adult bookstore/adult entertainment establishment, tattoo parlor or massage parlor of any kind, or liquor store.

**ARTICLE V  
MORTGAGE OF INTEREST IN PROPERTY**

**Section 5.1     Mortgage of Property by the Developer**

(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, or any portion or portions thereof, by way of a bona fide mortgage to secure the payment of any loan or loans obtained by the Developer to finance the acquisition of the Property and/or the Construction Work, provided that any mortgagee taking title to the Property or part thereof (whether by foreclosure or deed in lieu of foreclosure or otherwise) shall be subject to the provisions of this Agreement and Developer shall give written notice to the City of the proposed grant of any such Mortgage, the amount thereof and the name and address of the Mortgagee. This Agreement shall be superior and senior to any lien placed upon the Property after the date of the recording of this Agreement, including any lien of Mortgage, except for the liens that by law have superiority over this Agreement.

(b)     The City shall from time to time, upon not less than fourteen (14) days prior written notice, execute acknowledge and deliver without charge to any Mortgagee, or to any prospective Mortgagee designated by either Developer or any Mortgagee, or to any prospective purchaser of Developer’s interest in the Property as provided for herein, a statement in writing stating that (i) this Agreement is in full force and effect and unmodified (or if there have been any modifications, identifying the same by the date thereof and including a copy thereof), (ii) no notice of default has been served on Developer (or if the City has served such notice, the City shall provide a copy of such notice or state that the same has been revoked, if such be the case), (iii) to the City’s knowledge no default exists under this Agreement or state or condition that, with the giving of notice, the passage of time, or both, would become a default (or if any such default does exist, specifying the same), and (iv) the amounts due under this Agreement and any other information as may be reasonably requested.

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

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

(e) Notwithstanding any other provision of this Agreement, no Mortgagee (or its Designee as may have acquired Developer's estate through foreclosure) shall become personally liable under this Agreement unless and until it becomes the holder of Developer's estate for any claims, suits, actions or inactions arising out of events occurring prior to the date that it becomes the holder of the Developer's estate and then only upon the terms and conditions as set forth in this Agreement concerning a foreclosing Mortgagee.

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

(a) Notwithstanding anything to the contrary in this Agreement, any Mortgagee or any entity, that, directly or indirectly, is owned and controlled by such Mortgagee (a "Designee") may acquire title to the Property by foreclosure or a transfer in lieu of foreclosure without any consent or approval by the City. If a Mortgagee (or its Designee as may have acquired 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 for the Property, such Mortgagee shall, at its option: (i) complete construction of such improvements on the Property in accordance with this Agreement and in all respects (other than time limitations) comply with the provisions of this Agreement with respect to the Property; or (ii) sell, assign or transfer the Developer's estate in the Property to a purchaser, assignee or transferee who shall expressly assume all of the covenants, agreements and obligations of the Developer under this Agreement (other than time limitations, which time limitations shall be reasonably extended by City) to be performed and observed on the Developer's part thereafter with respect to the Property that were the subject of the Mortgage (and shall be deemed a "Developer" under the terms of this Agreement with respect to the Property), by written and recordable instrument reasonably satisfactory to the City filed in the New Haven Land Records. It is the intention of the parties that upon the assignment of this Agreement by a Mortgagee or its Designee, the assignor (but not the assignee or any subsequent assignor, purchaser or transferee) shall be relieved of any further liability which may accrue under this Agreement from and after (but not before) the date of such assignment and that such assignment shall effect a release of the Mortgagee's liability hereunder, except for liability which accrued prior to such assignment.

(b) Notwithstanding any other provision of this Agreement, any Mortgagee (including one who obtains title to the Property as a result of foreclosure proceedings or a deed in lieu thereof) shall not be obligated to construct or complete the Developer's Improvements on the Property or to guarantee such construction or completion; provided that nothing in this section or in this Agreement shall be deemed or construed to permit or authorize any such Mortgagee to devote the Property to any uses or to construct any improvements thereon, other than those uses or improvements permitted in this Agreement or otherwise specifically approved by the City.



(c) In the event a Mortgagee completes the construction of the Developer Improvements to be constructed under this Agreement on the Property or in accordance with this Agreement (other than time limitations), the Mortgagee may sell, assign or transfer fee simple title to the Property to any purchaser, assignee or transferee, without restriction as to the consideration to be received and without the City's consent, provided that if such sale, assignment or transfer is during the Term of this Agreement, the purchaser, assignee or transferee expressly assumes all of the covenants, agreements, and obligations under this Agreement (including specifically, but without limitation, the obligation to maintain the Affordable Housing Units and pay taxes) with respect 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. Provided, further, it is the intention of the parties that upon a sale, assignment or transfer by a Mortgagee or its designee in accordance with the terms of this paragraph, the assignor (but not the assignee or any subsequent assignor, purchaser or transferee) shall be relieved of any further liability which may accrue under this Agreement from and after (but not before ) the date of such assignment and that such assignment shall effect a release of the Mortgagee's liability hereunder, except for liability which accrued prior to such assignment.

(d) If a Mortgagee acquires the Developer's estate in the Property after issuance of a Certificate of Completion but during the Term of this Agreement, the Mortgagee shall comply with the applicable provisions of this Agreement which have not yet been performed and which survive the issuance of the Certificate(s) of Completion with respect to the Property, provided the Mortgagee shall have the right to sell, assign or transfer the fee simple title to the Property on the same basis as set forth in this Agreement.

(e) If a Mortgagee becomes the holder of Developer's estate in the Property the City acknowledges that any claims or lawsuits or judgments obtained by the City against the Mortgagee and arising under this Agreement shall be satisfied solely out of the Mortgagee's interest in the Property.

(f) The rights of the Mortgagee under this Agreement shall extend to any Designee of the Mortgagee or any assignee or transferee of the Mortgage, provided that the City shall not be bound to recognize any assignment of a Mortgage unless and until the City shall have been given written notice thereof together with a copy of the executed assignment and the name and address of the assignee. Thereafter, such assignee shall be deemed to be a Mortgagee hereunder.

### **Section 5.3     Notice of Default to Mortgagee**

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

(b) The Mortgagee shall have the right to perform any term, covenant, or condition and to remedy any default by the Developer under this Agreement with respect to the Property subject to

its Mortgage within the applicable time period to cure a default afforded the Developer, plus an additional period of thirty (30) days, which period shall be reasonably extended if the default is not in the payment of money and the Mortgagee commences to remedy the default within such period and thereafter diligently prosecutes such remedy to completion with respect to the Property subject to its Mortgage. Provided, further, that if the default is of a nature that possession of the Property by the Mortgagee is reasonably necessary for the Mortgagee to remedy the default, the Mortgagee shall be granted an additional period of time within which to obtain possession, provided that the Mortgagee shall have commenced foreclosure or other appropriate proceedings in the nature thereof within a reasonable period of time (including any time necessary to obtain relief from any bankruptcy stay) and shall thereafter diligently prosecute any such proceedings to completion. Additionally, the period for a Mortgagee to cure a default in the failure to substantially complete construction of any portion of the Property on which it holds a Mortgage when required to do so under this Agreement shall be extended for the period during which the Mortgagee is diligently and continuously working towards completion of the construction.

(c) The City shall accept performance by the Mortgagee of the Developer's obligations under this Agreement with the same force and effect as if furnished by the Developer. In the event that a Mortgagee elects to cure a default occasioned by the failure of the Developer to (1) complete the construction work and/or (2) maintain the Affordable Housing Units in accordance with this Agreement, then, upon completion of such construction work and/or compliance with the requirements to maintain Affordable Housing Units, such curing Mortgagee shall be entitled to a Certificate of Completion with regard to the completion of the construction work in accordance with the provisions of Section 8.3 of this Agreement and/or confirmation of compliance with regard to the leasing of the Affordable Housing Units in accordance with the provisions of Section 9.2, upon which all rights of the City arising as a result of such default by the Developer shall terminate.

(d) Notwithstanding anything contained in this Agreement to the contrary, a Mortgagee shall in no event be required to cure or remedy a Non-Curable Default, which is a default which cannot be cured by the Mortgagee, such as but not limited to an Event of Bankruptcy by the Developer, a wrongful assignment of this Agreement by the Developer or a misrepresentation by the Developer. The Mortgagee shall also not be required to cure or remedy an Event of Default in an indemnification obligation of the Developer which arises out of events occurring before the Mortgagee's acquisition of the Developer's estate in the Property.

#### **Section 5.4     New Development Agreement**

(a) In the event of the termination of this Agreement prior to its stated expiration date by reason of rejection of this Agreement by the Developer in a bankruptcy or a similar proceeding, notice thereof shall be given by the City to the Mortgagee, together with a statement of all amounts then due to the City from the Developer under this Agreement, and the City shall enter into a new agreement with the Mortgagee or its Designee, at the request of the Mortgagee or its Designee, with respect to the Property on which the Mortgagee holds a Mortgage(s) for the remainder of the Term, effective as of the date of such termination, upon all of the terms and conditions herein contained and, to the extent possible, with the same priority as this Agreement, provided such Mortgagee makes written request to the City for such new agreement within sixty (60) days from the date it receives notice of such termination.

(b) In the event that the City and the Mortgagee enter into a new agreement, the City shall be under no obligation to remove from the Property the Developer or anyone holding by, through or

under the Developer, and the Mortgagee shall take the Property which was the subject of the Mortgagee subject to (i) the possessory rights, if any, of the Developer and such occupants, (ii) any and all liens and encumbrances that existed at the time of the conveyance of the Property to the Developer; (iii) any other encumbrances which the City shall have entered into or approved under and in accordance with the terms of this Agreement; (iv) the lien of taxes on the Property which are not yet due and payable; and (v) any other lien or encumbrance created or caused by the Developer. It is specifically acknowledged and agreed that all covenants, duties and obligations of the Developer hereunder with respect to the Property shall survive the execution of any new agreement among the City, if applicable, and the Mortgagee (or its Designee) pursuant to this paragraph and that such execution shall not release or be deemed to release the Developer from any liability for failure to perform any such covenant, duty or obligation. In the event that more than a single Mortgagee shall make a request for a new agreement hereunder with respect to the Property, the Mortgagee senior in lien priority shall have the prior right to a new agreement and the certification of such priority from a title company duly licensed to do business in Connecticut shall be conclusively binding on all parties concerned.

## **ARTICLE VI**

### **OPERATION, MAINTENANCE AND ENFORCING COMPLIANCE**

#### **Section 6.1     Operation and Maintenance of the Property**

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

#### **Section 6.2     Reimbursement of the City**

The Developer shall pay all costs and expenses, including a reasonable attorney's fee, as well as any judgments and decrees which may be incurred by the City in proceedings brought to enforce compliance with the provisions of this Agreement, including, without limitation, the obligations set forth in Article V, Section 1, to the extent that the City prevails in any such action. It is expressly understood, however, that any mortgagee of all or any portion of the Property shall not be liable to the City for any costs, expenses, judgments and decrees which shall have accrued against the Developer, whether or not such mortgagee shall subsequently acquire title to the Property.

## **ARTICLE VII**

### **COMMUNITY BENEFITS**

#### **Section 7.1     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 and small contractor utilization requirements now and hereafter existing, including, without limitation, all Equal Employment Opportunity requirements and 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 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 Statutes 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, age, sex, 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, age, sex, 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, age, sex, 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;
- vi. 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:
- vii. 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) placing a notice of the subcontracting opportunity on an approved City construction opportunity website at least ten (10) days in advance of selection of the subcontractor(s); (B) mailing notices (certified mail, return receipt requested) to at least four (4) business associations and/or development agencies which disseminate bid and other construction-related information to businesses within the Greater New Haven area not less than two (2) weeks prior to the Developer's requests for bids or proposals, which notice shall describe the type of work being solicited, set forth the name, address and telephone number of a contact person from the Developer's general contractors, construction manager with knowledge of the Development and state where appropriate plans and specifications can be obtained; (C) showing proof of quotes received from subcontractors whose bids or proposals were denied because of cost, quality, availability, and similar reasons; (D) showing proof of outreach to and collaboration with the New Haven Contractors' Alliance and the City's Small Business Development Program; (E) describing in detail any attempts to enter into joint ventures or other arrangements with MBEs and/or assistance provided to MBEs relating to (i) the review of plans and specifications or other documents issued by the Developer or its general contractors or construction manager (ii) the review of work to be performed by MBEs on its portion of the Project with a MBE, (iii) encouragement of other subcontractors to utilize MBEs, (iv) encouragement of participation of MBEs, and (v) all actions taken by the Developer and its general contractors, construction manager with respect to proposals received from MBEs, including where appropriate, the reasons for the rejection of such proposals; (F) conducting a networking event with the Developer's construction manager (if any) and general contractors; (G) holding

individual trade meetings with the Developer's construction manager (if any) or its general contractors; and (H) undertaking other efforts to encourage MBE participation in the Project as determined in advance by the City, such as making reasonable efforts to bid out work in packages of a suitable size for small contractors.

- viii. to ensure equal opportunities for participation by MBEs and SBEs in the Project, the Developer agrees that it or its general contractors, 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;
- ix. 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,
- x. 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;
- xi. to take all reasonable corrective actions requested by the City to comply and to effectuate compliance with the requirements of this Section 5;

- (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:
  - 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 (m) 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 5, 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 7.2     Commitment to Sustainability**

The Developer agrees that it shall use its best efforts, subject to cost considerations of Developer in Developer's commercially reasonable discretion, to achieve sustainability standards for the Developer's Improvements, measured against the Silver Standard level set forth in the Leadership in Energy and Environmental Design ("LEED") Green Building Rating System developed by the United States Green Building Council in effect as of the Effective Date, and which sustainability standards shall be determined in light of feasibility and prevailing real estate and financial market conditions for similar construction.

## ARTICLE VIII

### PERMITS AND APPROVALS

#### Section 8.1 Zoning Approvals

##### (A) Zoning

As of the Effective Date, the Developer acknowledges that the Property is **currently zoned** \_\_\_\_\_ and that such zoning is satisfactory for the completion of the Project.

##### (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 the applicable sections of the Zoning Ordinance. The Developer shall also file for a special permit for parking associated with the Developer Improvements with the City Plan Commission pursuant to the applicable section(s) of the Zoning Ordinance. 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.

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.

##### (C) Permits

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

##### (D) Greater New Haven Water Pollution Control Authority

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.

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.

## ARTICLE IX

### DEVELOPER IMPROVEMENTS, CERTIFICATE OF COMPLETION AND ASSIGNMENT

#### **Section 9.1     Construction Progress Reports**

The Developer shall provide the City with construction progress reports every thirty (30) days after 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 claims to result in Excusable Delays.

#### **Section 9.2     Insurance**

The Developer shall obtain and shall cause its general contractor to obtain general liability insurance in the amount of Five Million and No/100 Dollars (\$5,000,000.00) per occurrence and Five Million and No/100 Dollars (\$5,000,000.00) aggregate and shall name the City as an additional insured on all such insurance policies. The parties agree that the Developer's insurance coverage obligations under this Section 9.2 may be satisfied (in whole or in part) by an insurance policy providing umbrella coverage. In addition, the Developer shall cause all construction subcontractors to obtain general liability insurance in the amount of One Million and No/100 Dollars (\$1,000,000.00) per occurrence and Two Million and No/100 Dollars (\$2,000,000.00) aggregate and shall name the City as an additional insured on all such insurance policies.

#### **Section 9.3     Certificate of Completion**

(a) After Substantial Completion of the Developer Improvements, the Developer shall give notice via certified mail return receipt requested to the Deputy Director of the Livable City Initiative, with a copy to the office of Corporation Counsel, of the same. Notwithstanding any other provision of this Agreement, the Deputy Director of the Livable City Initiative 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 for the Certificate. The Certificate of Completion shall be in such form as will enable it to be recorded on the New Haven Land Records

(b) The 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.

(c) Notwithstanding any other provision of this Agreement, if the Deputy Director of the Livable City Initiative shall refuse or fail to provide certification in accordance with the provisions of this Section, the Deputy Director of the Livable City Initiative 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 Developer Improvements, and what measures or acts will be in necessary for the Developer to take or perform in order to obtain such certification. Following receipt of such written statement, the Developer shall promptly carry out the corrective measures or acts described in

the written statement, and a Certificate of Completion will be delivered to the Developer within fifteen (15) days of the completion of the items by the Developer described in the written statement. In the event of any dispute between the City and the Developer with respect to the issuance of the Certificate of Completion, the parties shall participate in the Dispute Resolution Procedure.

#### **Section 9.4     Assignment**

(a)     It is hereby agreed and stipulated that prior to the issuance of a Certificate of Completion for the Development, the Developer shall not, without the City's written permission or except as provided herein transfer or assign any of its rights and/or obligations under this Agreement with respect to the Property that is to be developed other than to an Affiliate, which Affiliate agrees in writing to the City to assume all of the obligations of the Developer under this Agreement. The Developer shall provide the City with prior written notice of its intent to make an assignment to an Affiliate and the name and address of such Affiliate, and upon such assignment, the Developer shall provide the other parties the written agreement of the Affiliate to assume all of the obligations of this Agreement associated with the rights assigned.

(b)     The City hereby agrees that in the event the Developer wishes to make an assignment permitted under Section 9.4, at the request of the Developer, it shall deliver to the Developer and its Affiliate or an otherwise qualified transferee within fourteen (14) days of the making of such request, a recital that the Developer is in compliance with all the covenants and agreements binding upon it under this Agreement to the best knowledge of the City and that such assignment complies with the terms and conditions of this Agreement and shall not constitute a default hereunder.

(c)     Any assignment of any interest in this Agreement which is made in contravention of the provisions herein shall be considered an Event of Default entitling the City exercise any and all of the rights and remedies available to it, whether set forth herein or existing at law or in equity.

(d)     It is further agreed by the Parties that following the issuance of the Certificate of Completion for the Project, the Developer may sell, assign or transfer any or all of its interest to any purchaser, assignee or transferee free and clear of the requirements of this Agreement with respect to the Property (other than the nondiscrimination requirements in Section 7.1) 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 to expressly assume those limited covenants, agreements, and obligations under this Agreement (including specifically, but without limitation, the obligation to maintain the Affordable Housing Units), which have not yet been performed with respect to the Property and which expressly survive the issuance of the Certificate of Completion by written instrument which sets forth the specific provisions of this Agreement which survive and which are being assumed, in form reasonably satisfactory to the City and filed and recorded in the New Haven Land Records.

## **ARTICLE X AFFORDABLE HOUSING**

#### **Section 10.1     Affordable Housing Requirements**

(a) The Developer covenants and agrees that it shall maintain the Affordable Housing Units in accordance with Section 2(b) of this Agreement for the entire Affordability Period. Notwithstanding anything herein to the contrary, the Developer acknowledges that damages are not an adequate remedy at law for the any breach of this covenant therefore should the Developer, its successors or assigns, fail to comply with the requirements to provide the Affordable Housing Units for the duration of the Affordability Period, the City shall be entitled to enjoin the Developer, its successors or assigns, from leasing or conducting any activity or practice contrary to the terms and conditions of this Agreement. In the event that Developer fails to maintain all or any portion of the Affordable Housing Units during the Affordability Period, Developer shall have thirty (30) days from the date of receipt of notice of the same from the City to cure such failure. Notwithstanding the foregoing, if the nature of the Default is such that more than thirty (30) days are reasonably required for its cure, then the Developer will not be in default if the Developer commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

(b) The Developer shall lease the Affordable Housing Units as they become available for occupancy in accordance with the terms and conditions of this Agreement and in a manner to satisfy the Affordable Housing Unit requirements as set forth in Section 2(b) of this Agreement.

(c) Developer shall permit, during normal business hours and upon reasonable notice, any duly authorized representative of the City, to inspect any books and records with respect to the incomes of tenants of the Affordable Housing Units which pertain to compliance with the restrictions specified in this Agreement.

(d) The Developer shall submit, any information, documents, or certifications requested by the City which the City shall deem reasonably necessary to substantiate the Developer's continuing compliance with the provisions of the restrictions specified in this Agreement.

(e) The Developer further agrees to submit annual certifications and reports to the City confirming that the Development is in compliance with the Affordable Housing Unit restrictions specified in this Agreement.

## **Section 10.2    Real Property Taxes**

(a) It is agreed and understood that during the Affordability Period, the 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 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) Notwithstanding the foregoing, it is agreed and understood the City and Developer, pursuant to the Connecticut City and Town Development Act, C.G.S. Section 7-480, et seq, shall enter into a tax agreement (the "Tax Agreement") in form and substance substantially similar to the form attached

hereto as Exhibit C, pursuant to which (i) the City shall abate the real property taxes for the Affordable Housing Units during the Affordability Period, **commencing on \_\_\_\_\_ (the "Tax Abatement Period")** and (ii) the Developer shall agree to make payments in lieu of taxes (the "PILOT") with respect to the Affordable Housing Units in an amount equal to Four Hundred Dollars and Zero Cents (\$400.00) per Affordable Housing Unit, subject to the five (5) year escalation contained therein. The PILOT shall be paid in two (2) equal installments each year on July 31 and January 31, **commencing on July 31/January 31, 20\_\_\_\_**, pursuant to the terms of the PILOT Agreement.

## **ARTICLE XI DEFAULT AND REMEDIES**

### **Section 11.1    Default by the Developer**

The occurrence of (i) an Event of Bankruptcy; (ii) any failure by the Developer to perform any obligation (including but not limited to providing Affordable Housing Units for the duration of the Affordability Period) under this Agreement where such event or failure shall continue for more than thirty (30) days after receipt of a Default Notice and the Developer fails to provide a response to the Default Notice specifying the actions undertaken or to be undertaken to effect a cure within thirty (30) days after receipt of the Default Notice; or shall respond to the Default Notice but shall fail to effect the cure specified in such response; (iii) a failure to substantially complete the construction of any portion of the Project in accordance with the Project Schedule, excluding any period of Excusable Delay (and for any Mortgagee, any period when the Mortgagee is diligently and continuously working towards completion of the construction), and the failure to cure such default within ninety (90) days of receipt of a Default Notice; or (iv) an assignment or transfer of the Property in violation of Section 8.4, shall be an Event of Default by the Developer ("Developer Default").

### **Section 11.2    Default by the City**

(a) The occurrence of (i) a failure by the City to deliver the deed to the Property to the Developer when required to do so under the terms and conditions of this Agreement; or (ii) a failure of the City to perform any other covenant under the terms and conditions of this Agreement where such failure is not cured by the City within thirty (30) days of notice thereof from the Developer, or unless specifically provided otherwise in this Agreement, within such longer time as may be required to cure such failure, provided the City has commenced and is diligently pursuing such cure, shall be an Event of Default by the City ("City Default").

(b) 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 11.3    Remedies**

Except as otherwise provided in this Agreement, the City and the Developer shall have all rights and remedies available at law and in equity upon an Event of Default by the other.

#### **(a) 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 any court of competent jurisdiction. 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.

At the request of either the City or the Developer, the Parties, or their duly authorized representatives having full settlement authority (which authority of the City may be conditioned on the final approval by a separate committee charged with such authority) shall meet at a mutually acceptable time and place in the City within ten (10) days of the Notice of Conflict in order to attempt to negotiate in good faith a resolution to the dispute.

(b) Mediation

If the dispute is not resolved by the Parties through the Dispute Resolution Procedure, then if agreed upon by the Parties, the dispute may be submitted to mediation under the Commercial or Construction Mediation Procedures of the AAA, whichever procedure is appropriate to the dispute among the Parties, in effect on the Effective Date of the Agreement, or under such other rules as the Parties may agree upon. Mediation shall be with the AAA, or, if agreed upon, through use of a private mediator chosen by the parties to the mediation. The parties to the mediation shall determine if they will be submitting the dispute to mediation within sixty (60) days following the conclusion of the Dispute Resolution Procedure and shall designate the mediator within this time period. Mediation shall occur in New Haven, Connecticut or as otherwise agreed upon. The mediator's fees and the filing fees, if any, shall be shared equally between the Developer and the City. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. Subject to the provisions of subsection (D), if the parties agree to mediation, the conclusion of mediation proceedings shall be a condition precedent to litigation among the parties to the mediation. The Parties shall conclude mediation proceedings within (60) days after the designation of the mediator.

(c) Advisory Opinion

If the dispute is not resolved under Subsection (a) or (b) above, within sixty (60) days after the conclusion of either the Dispute Resolution Procedure and/or mediation, and by agreement of the Parties, the dispute may be referred for an advisory opinion to a neutral party who shall be retained by the Parties, and such neutral party shall establish such procedures as will allow him or her to promptly consider the dispute and issue a written advisory opinion with regard to the issues in dispute. Costs and fees for the neutral party shall be equally shared by the 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 subsection (d) below.

(d) No Prejudice

Provided the party seeking use of the Dispute Resolution Procedure has complied

with the requirements for giving the “Notice of Conflict”, no passage of time or delay caused by pursuit of the 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.

(e) Remedies Subsequent to Dispute Resolution

If the dispute is not resolved by the Parties in accordance with the provisions of this Section 11, the Parties shall be entitled to seek all administrative and judicial remedies available at law and in equity, including but not limited to, injunctive relief, damages, specific performance, attorney’s fees if provided by statute, expenses and/or costs and any other rights or remedies whether such rights or remedies are specifically set forth herein or exist at law or in equity.

(f) WAIVER OF JURY TRIAL

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

## ARTICLE XII

### GENERAL PROVISIONS

#### **Section 12.1    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 DEVELOPER:

RJDA Ashmun Street LLC  
555 Long Wharf Drive  
11<sup>th</sup> Floor  
New Haven, Connecticut 06511  
Attn: Yves-Georges A. Joseph II

With a copy to:



McCarter & English LLP  
CityPlace I  
185 Asylum Street  
Hartford, Connecticut 06103  
Attn: Rolan Joni Young, Esq.

IF TO THE CITY:

Livable City Initiative  
City of New Haven  
165 Church Street  
New Haven, Connecticut, 06511  
Attn: Executive Director

With a copy to:

Office of the Corporation Counsel  
City of New Haven  
165 Church Street  
New Haven, Connecticut, 06511  
Attn: Corporation Counsel

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 12.2    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 12.3    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 12.4    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.

**Section 12.5    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 12.6    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 12.7    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 12.8    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 Deputy Director of the Livable City Initiative.

**Section 12.9    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 12.10    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 12.11 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 12.12 Estoppel Certificate**

The Parties agree that during the Term of this Agreement, upon the request of any party, the receiving party shall within thirty (30) 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 12.13 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 12.14 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

[SIGNATURE PAGES FOLLOW]

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

Signed, sealed and delivered  
in the presence of:

**CITY OF NEW HAVEN**

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

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

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

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

Signed, sealed and delivered  
in the presence of:

**RJDA ASHMUN STREET LLC**

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

By: \_\_\_\_\_  
  
Its \_\_\_\_; Duly Authorized

**STATE OF CONNECTICUT )**  
**)**  
**COUNTY OF NEW HAVEN )**

ss.: New Haven

, 2020

On this the \_\_\_\_ day of \_\_\_\_\_, 2020, before me, the undersigned personally appeared, Justin Elicker, Mayor of the City of New Haven, one of the signers and sealers of the foregoing instrument, and acknowledged the same to be the free act and deed of the City of New Haven, and of himself as Mayor thereof, before me.

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

STATE OF CONNECTICUT)

)

ss. \_\_\_\_\_

COUNTY OF NEW HAVEN)

On this the \_\_\_\_ day of \_\_\_\_\_, 2020, before me, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged him/herself to be the \_\_\_\_\_ of RJDA Ashmun Street LLC, a limited liability company, and h/she, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained as his/her free act and deed and the free act and deed of the limited liability company, by signing the name of the limited liability company by him/herself as such officer.

In witness whereof I hereunto set my hand.

\_\_\_\_\_  
Printed Name:

Notary Public/ My Commission Expires:

Commissioner of Superior Court

EXHIBIT A  
LEGAL DESCRIPTION

EXHIBIT B  
PROJECT SCHEDULE

EXHIBIT C  
TAX AGREEMENT