CHECK LIST FOR ALDERMANIC SUBMISSIONS

X	Cover Letter
X	Resolutions/ Orders/ Ordinances
X	Prior Notification Form
X	Fiscal Impact Statement - Should include comprehensive budget
X	Supporting Documentation
	Disk or E-mailed Cover letter & Order

IN ADDITION IF A GRANT:

	Notice of Intent
	Grant Summary
	Executive Summary (not longer than 5 pages without an explanation)

Date Submitted: November 3, 2020

Meeting Submitted For: November 5, 2020

Regular or Suspension Agenda: Suspension

Submitted By: Arlevia Samuel

Title of Legislation:

AMENDED AND RESTATED DEVELOPMENT AGREEMENT AND LAND DISPOSITION AGREEMENT BY AND AMONG THE CITY OF NEW HAVEN AND BEULAH LAND DEVELOPMENT CORPORATION, INC.FOR THE DEVELOPMENT OF 316 DIXWELL AVENUE AND 340 DIXWELL AVENUE AND 783 ORCHARD STREET

Comments:

Coordinator's Signature: MPL

Controller's Signature (if grant):

Mayor's Office Signature:

Call 946-7670 with any questions.

CITY OF NEW HAVEN

Justin Elicker, Mayor

LIVABLE CITY INITIATIVE
165 Church Street, 3rd Floor
New Haven, CT 06510
Phone: (203) 946-7090 Fax: (203) 946-4899

LIVABLE CITY INITIATIVE · CITY OF NEW HAVEN
CITY OF NEIGHBORHOODS

Arlevia T. Samuel
Acting Executive Director

CITY OF NEW HAVEN
AN ECONOMIC DEVELOPMENT DEPT.

Michael Piscitelli
Economic Development Administrator

November 2, 2020

The Honorable Alder Tyisha Walker-Myers
President, Board of Alders
City of New Haven
165 Church Street
New Haven, CT 06510

RE: DEVELOPMENT AND LAND DISPOSITION AGREEMENT BETWEEN THE CITY OF NEW HAVEN AND BEULAH LAND DEVELOPMENT CORPORATION, INC. FOR THE CONVEYANCE OF REAL PROPERTY KNOWN AS PORTIONS OF 316 DIXWELL AVENUE, 340 DIXWELL AVENUE AND 783 ORCHARD STREET, NEW HAVEN, CONNECTICUT

- Suspension Agenda Requested

Dear Honorable President Walker-Myers:

I am pleased to submit for the Board's consideration this Development and Land Disposition Agreement (DLDA) with BEULAH LAND DEVELOPMENT CORPORATION, INC. ("the Developer") concerning the City of New Haven's interests at 316 Dixwell Avenue and 340 Dixwell Avenue.

As you know, 340 Dixwell has been an undeveloped lot for many years creating blight at a major corridor in the heart of the Dixwell neighborhood. The Developer has assembled a partnership with H.E.L.P. Development USA and Spiritos Properties to transform this site into a beautiful eco-friendly, energy efficient residential campus. The Developer proposes to fully redevelop the three (3) sites into one parcel consisting of two buildings and off-street parking in a manner consistent with the attached concept site plans and marketing materials.

The DLDA sets forth the terms and conditions for the sale of the City's interests. Notable provisions include:

- The Developer shall build a sixty-nine (69) residential units and 2,500 sf of commercial space within five (5) years.

- A minimum of 80% of the housing units shall be affordable at 25%, 50% and 60% Area Median Income (AMI) together with a corresponding tax abatement and payment in lieu of taxes.

- The purchase price shall be $280,000 the appraised value. (2/3 to be deposited into the Community Development Repayment (LCI) and 1/3 into the City's General Fund.

- Construction and Small Contractor opportunities shall be made available consistent with City Ordinances 12½ and 12¼ as well as a resident construction workforce goal of 25%.

- The development will be constructed utilizing mass timber, passive house and solar panels for higher quality, energy efficient and natural housing.

As a more general point, Beulah Land Development Corporation, Inc. consists of leaders in our community with a demonstrated commitment to affordable housing development. The vision for the redevelopment of 316 Dixwell Avenue, 340 Dixwell Avenue, and 783 Orchard Street is in keeping with our overall efforts to revitalize the Dixwell Avenue neighborhood in a manner that builds a stronger, more vibrant community and I look forward to sharing this proposal in more detail at the committee hearing.

Thank you for your time and attention to this matter. If you have any questions, please do not hesitate to call.

Very truly yours,

Arlevia T. Samuel, M.S. CPM®
Acting Executive Director

enclosures
cc: Taijah Anderson, Office of the Mayor
Michael Piscitelli, EDA
file

FISCAL IMPACT STATEMENT

DATE: October 29, 2020
FROM (Dept.): LCI
CONTACT: Arlevia Samuel **PHONE** 946-8436

SUBMISSION ITEM (Title of Legislation):

AMENDED AND RESTATED DEVELOPMENT AGREEMENT AND LAND DISPOSITION AGREEMENT BY AND AMONG THE CITY OF NEW HAVEN AND BEULAH LAND DEVELOPMENT CORPORATION, INC.FOR THE DEVELOPMENT OF 316 DIXWELL AVENUE AND 340 DIXWELL AVENUE AND 783 ORCHARD STREET

List Cost:

	GENERAL	SPECIAL	BOND	CAPITAL/LINE ITEM/DEPT/ACT/OBJ CODE
A. Personnel				
1. Initial start up	**0**			
2. One-time	**0**			
3. Annual	**0**			
B. Non-personnel				
1. Initial start up	**0**			
2. One-time	**0**			
3. Annual	**0**			

List Revenues: **Will this item result in any revenues for the City? If Yes, please list amount and type.**

NO	
YES	**X**

1. One-time **See Below**

2. Annual

Other Comments

Sale price for $280,000 at closing for 316 Dixwell Avenue, assigned 2/3 to LCI Community Development Repayment Fund and 1/3 to City of New Haven General Fund.

Annual revenue as per agreement – see Section 7 for tax provisions related to entire project with $400/unit PILOT for affordable units.

PRIOR NOTIFICATION FORM

NOTICE OF MATTER TO BE SUBMITTED TO THE BOARD OF ALDERMEN

TO (list applicable aldermen/women): **Full Board of Alders**

DATE: **October 29, 2020**

FROM: Department **LCI**

Person **Arlevia Samuel** Telephone **946-8436**

This is to inform you that the following matter affecting your ward(s) will be submitted to the Board of Aldermen.

AMENDED AND RESTATED DEVELOPMENT AGREEMENT AND LAND DISPOSITION AGREEMENT BY AND AMONG THE CITY OF NEW HAVEN AND BEULAH LAND DEVELOPMENT CORPORATION, INC.FOR THE DEVELOPMENT OF 316 DIXWELL AVENUE AND 340 DIXWELL AVENUE AND 783 ORCHARD STREET

Check one if this an appointment to a commission

☐ Democrat

☐ Republican

☐ Unaffiliated/Independent/Other _____

INSTRUCTIONS TO DEPARTMENTS

1. Departments are responsible for sending this form to the alderperson(s) affected by the item.
2. This form must be sent (or delivered) directly to the alderperson(s) **before** it is submitted to the Legislative Services Office for the Board of Aldermen agenda.
3. The date entry must be completed with the date this form was sent the alderperson(s).
4. Copies to: alderperson(s); sponsoring department; attached to submission to Board of Aldermen.

340+ DIXWELL AVENUE – NEW HAVEN, CT

Parcels:
316 Dixwell Avenue to be conveyed for $280,000 the appraised value.
(2/3 to be deposited into Community Development Repayment (LCI) and 1/3 to the City's General Fund.
340 Dixwell Avenue previously conveyed in 2007.
783 Orchard Street acquired privately by the developer.

Development Terms:
69 residential units total in (2) two (4) four story buildings.
55 affordable units and 14 market rate, non-restricted units.
2,500 square feet of commercial space.

No less than 80% of units to remain affordable with a maximum rent of the lesser of the FMR for comparable housing in New Haven; or the High HOME Rent which is rent that doesn't exceed 30% of adjusted income of a family whose income equals 65% of the AMI as determined by HUD with adjustments for number of bedrooms in the unit, less monthly allowance for utilities paid by the tenant.

If unable to secure affordable housing subsidies by the affordable housing subsidies deadline, a written request may be presented for an extension of up to 12 months for any milestone within the project timeline. Said request must be received by the city prior to the expiration date of the deadline and if approved the developer must pay the city a non-refundable extension payment of $5,000 per month.

Project timeline:

CHFA Application Submission for 9% LIHTC	November 12, 2020
100% Construction Drawings:	August 1, 2021
Financing Closing and 316 Dixwell Acquisition	September 1, 2021
Construction Commencement	September 15, 2021
Construction Completion	December 31, 2022
100% Lease up	June 30, 2023

Support:
PILOT of $400 per unit will go into effect upon Certificate of Completion and escalate at 3% annually for 15 years. In the event of a future sale, the PILOT is not transferable without prior approval from the BOA/Tax abatement committee

Reversion:
Failure to complete the development project according to the agreed upon timeline and any extensions which may occur, will cause the City to invoke it's right of reversion for 316 Dixwell Avenue and 340 Dixwell Avenue as well as the ability to purchase the parcel 783 Orchard Street for the price the developer paid for it.

ORDER OF THE BOARD OF ALDERS OF THE CITY OF NEW HAVEN APPROVING AN AMENDED AND RESTATED DEVELOPMENT AGREEMENT AND LAND DISPOSITION AGREEMENT BY AND BETWEEN THE CITY OF NEW HAVEN AND BEULAH LAND DEVELOPMENT CORPORATION, INC. FOR THE DEVELOPMENT OF 316 DIXWELL AVENUE AND 340 DIXWELL AVENUE AND 783 ORCHARD STREET

WHEREAS, Beulah Land Development Corporation, Inc. (the "Developer") previously executed and delivered to the City of New Haven (the "City") a Land Disposition Agreement dated January 12, 2007 (the "LDA") for the development of parcels of land designated as 340 Dixwell Avenue aka 328-350 Dixwell Avenue and 304 Munson Street aka 330-340 Dixwell Avenue, New Haven, which LDA is recorded in Volume 7847 at Page 169 of the New Haven Land Records; and

WHEREAS, pursuant to the LDA, the Developer was to rehabilitate said parcels of land which were to be used and maintained for commercial purposes, specifically as a pharmacy, but such developments have not taken place and said parcels of land have remained undeveloped; and

WHEREAS, the City and the Developer wish to enter into an Amended and Restated Development Agreement and Land Disposition Agreement in substantially the form attached hereto (the "Agreement") providing for a reimagined redevelopment project involving a mix of market rate housing and affordable housing, as described in the Agreement (the "Project") and including two additional parcels of land known as 316 Dixwell Avenue and 783 Orchard Street in order to increase the density of the Project; and

WHEREAS, the City is the current owner of 316 Dixwell Avenue (the "City Parcel") which City Parcel shall be conveyed to the Developer pursuant to the terms and conditions of the Agreement; and

WHEREAS, in view of the provision of affordable housing, and pursuant to the Order of the Board of Alders concerning the Project dated [ ] the Agreement provides for the abatement of certain real estate taxes as well as a payment in lieu of taxes (PILOT), consistent with the terms and conditions of said Order.

NOW, THEREFORE, BE IT ORDERED that the Mayor of the City be and hereby is authorized to execute and deliver on behalf of the City the Agreement substantially in the form attached hereto (meaning that no "substantive amendments" may be made to the same without further approval by the Board of Alders, "substantive amendments" being as defined by the Board of Aldermen by resolution adopted April 30, 2002), and to execute and deliver a quit claim deed conveying the City Parcel to the Developer in consideration of the sum of $280,000.00 as set forth in the Agreement and to execute and deliver such other instruments and agreements as may be described in the Agreement or otherwise necessary or appropriate, from time to time, in order to implement and effect the intent and purposes of the Agreement and this Order (the "Ancillary Documents") and that the City-Town Clerk of the City be and hereby is authorized to impress and attest the official seal of the City upon the Agreement, the Ancillary Documents (to the extent necessary) and this Order.

AMENDED AND RESTATED
DEVELOPMENT AGREEMENT

AND LAND DISPOSITION AGREEMENT BY AND AMONG

THE CITY OF NEW HAVEN AND

BEULAH LAND DEVELOPMENT CORPORATION, INC.
FOR THE DEVELOPMENT OF
316 DIXWELL AVENUE AND 340 DIXWELL AVENUE and 783 ORCHARD STREET

DATED AS OF _____, 2020

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EXHIBITS

Exhibit A1 to A3	Legal Descriptions for Project Parcels
Exhibit B	Project Schedule and Milestones
Exhibit C	Order of the Board of Alders

THIS AMENDED AND RESTATED DEVELOPMENT AND LAND DISPOSITION AGREEMENT (this "Agreement") dated as of this ____ day of _____, 2020 (the "Effective Date") is by and among the **CITY OF NEW HAVEN**, a municipal corporation organized and existing under the laws of the State of Connecticut, with a mailing address of 165 Church Street, New Haven, Connecticut 06510 (the "City"), and **BEULAH LAND DEVELOPMENT CORPORATION, INC,,** a non-profit corporation organized under the laws of the State of Connecticut with a mailing address of 774 Orchard Street, New Haven, CT 06511 (the "Developer").

WITNESSETH

WHEREAS, the Developer executed and delivered to the City a Land Disposition Agreement dated January 12, 2007 (the "LDA") for the development of parcels of land designated as 340 Dixwell Avenue aka 328-350 Dixwell Avenue and 304 Munson Street aka 330-340 Dixwell Avenue, New Haven (collectively the "Project Parcels"), which LDA is recorded in Volume 7847 at Page 169 of the New Haven Land Records; and

WHEREAS, pursuant to the LDA, the Developer was to rehabilitate the Project Parcels which were to be used and maintained for commercial purposes, specifically as a pharmacy; and

WHEREAS, to date, the Project Parcels remain undeveloped; and

WHEREAS, the parties wish to amend the LDA and enter into this Agreement, to provide that the Project Parcels will be developed for uses that promote affordable

housing, urban design and in all other respects contribute to the overall revitalization of the Dixwell Avenue corridor, as set forth herein; and to add two additional parcels known as 316 Dixwell Avenue and 783 Orchard Street (the "Additional Parcels") to the Project in order to increase the density of the Development; and

WHEREAS, the City and the Developer wish to enter into this Agreement for the development of the Project Parcels together with the Additional Parcels (collectively the New Project Parcels and each the "New Project Parcel"); upon the terms set forth herein.

Article I

INTERPRETATION AND DEFINITIONS

Section 1.1 **Interpretation**

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

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

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

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

(E) Capitalized terms used herein shall have the meanings set forth in Section 1.2 and hereinafter.

(F) All approvals, consents, waivers, acceptances, concurrences and permissions required to be given or made by any party hereunder shall not be unreasonably withheld, delayed or conditioned by the party whose approval, consent, waiver, acceptance, concurrence or permission is required, whether or not expressly so stated, unless otherwise expressly provided herein.

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

(H) With regard to interpretation of individual words in this Agreement, the singular version shall be construed to include the plural version, and vice

versa, except where the context or a reasonable reading of a word could only mean either a singular or plural version of such word.

(I) With respect to any exhibit made part of this Agreement, the Developer and the City, may amend, alter or change such exhibit in a writing signed by the Developer, and the Executive Director of the Livable City Initiative. 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 in another section.

Section 1.2 Definitions

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

(1) "AAA" means the American Arbitration Association.

(2) "Acceptable Encumbrances" means encumbrances and restrictions on a New Project Parcel which the Developer agrees may continue to encumber the New

Project Parcel at the time that the New Project Parcel is conveyed by the City to the Developer.

(3) “Active Marketing” means the marketing of the availability of the New Project Parcels for lease or purchase subsequent to the completion of the development of such parcels as required under this Agreement, and may include retaining a licensed commercial real estate broker to market such parcels, which broker may include an Affiliate of Developer, listing the availability of such parcels for lease or purchase in the appropriate commercial journals, posting signs on such parcels as to their availability for rent or purchase, and taking other appropriate steps to find tenants or purchasers of such parcels.

(4) “Affiliate” means any entity that is fifty (50%) percent owned directly or indirectly by Beulah Land Development Corp. Inc. and/or by any equity investor providing a majority of the equity financing for the Development.

(5) "Affordable Housing Units" shall mean no fewer than fifty-five (55) units of the Project that are restricted to low income and very low-income households as those terms are defined by HUD and amended from time to time, for the duration of the Affordability Period .

(6) “Affordable Housing Subsidies” means subsidies provided from a Funding Source(s) for the operation and/or construction costs of the Affordable Housing Units to be constructed in the Project, as set forth more particularly herein.

(7) “Affordable Housing Subsidy Deadline” means the deadline by which commitments for the Affordable Housing Subsidies must be received by the Developer in order for the Developer to construct the Affordable Units, which deadline shall be

eighteen (18) months subsequent to the Effective Date, unless extended by the City pursuant to Section 5.2 herein.

(8) The term "Affordability Period" shall mean Twenty (20) years commencing from the Project Completion Date..

(9) “Agreement” means this Development and Land Disposition Agreement and includes any appendices, exhibits or schedules incorporated by reference as well as any amendments, modifications or supplements which may be executed by the City and the Developer subsequent to the Effective Date of this instrument, but does not include any other agreement, understanding or other arrangement, oral or written, among the City and/or the Developer.

(10) “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.

(11) “Approved Plans” means the plans for the development approved by the City Plan Commission in connection with the Site Plan Reviews of the development of the applicable New Project Parcel(s).

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

(13) “BA” means the General Business Zoning District established under the New Haven Zoning Ordinance.

(14) “Certificate of Completion” means each certificate issued in accordance with Section 8.1 of this Agreement.

(15) “City” shall have the meaning ascribed to it in the preamble and shall include its boards, agencies, commissions and its public officials and employees who are

authorized to act on its behalf and any successors in interest to such persons or entities, whether by operation of law, or otherwise.

(16) "City Architect" shall have the meaning ascribed to it in Section 3.2(A)(1) of this Agreement.

(17) "City Comments" has the meaning ascribed to it in Section 3.2(A)(1) below of this Agreement.

(18) "City Default" means an event of default by the City as more particularly set forth in Section 10.1(B) below of this Agreement.

(19) "City Design Reviewers" mean the City's Executive Director for the Livable City Initiative and the Executive Director of the City Plan Department of the City of New Haven or, in the event that either or both positions are vacant, then such appropriate official(s) as the Mayor of the City shall designate.

(20) "City Plan Commission" means the New Haven Plan Commission established in May 1913 by Special Act No. 243 of the Connecticut Legislature.

(21) "Citywide Assessment Deferral Program" shall have the meaning ascribed to it in Section 7.1(C) of this Agreement.

(22) "Closing" means the conveyance of the New Project Parcel, 316 Dixwell Avenue, to the Developer.

(23) "Closing Date" means the date on which the New Project Parcel, 316 Dixwell Avenue, is to be conveyed by the City to the Developer as set forth in this Agreement.

(24) "Commercial Space" shall mean the approximately 2,500 square feet of space as depicted on the Approved Plans, designated as commercial space.

(25) “Community Plan” shall have the same meaning ascribed to it in the preamble.

(26) Intentionally Omitted.

(27) “Construction Drawings” means drawings which visually describe in standard architectural terms the manner in which the Developer plans to execute the construction of the Project.

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

(29) “Default Notice” means a notice of an eligible event of default given by one party to this Agreement by another party to this Agreement under the provisions of Article X of this Agreement.

(30) “Design Development Drawings” means drawings which visually describe in standard architectural terms a site plan, a typical floor plan for a proposed structure, sections for a building and for any underground structures, elevations, a plan for any retail or commercial space, a plan for any outdoor space, and structural details for a Phase of the Project.

(31) “Design Guidelines” shall mean the Design Guidelines required by the City, as such Guidelines may be amended from time to time

(32) “Designee” shall have the meaning ascribed to it in Section 9.2(A).

(33) “Developer” has the meaning ascribed to it in the preamble and shall include any permitted successor or assign of Developer.

(34) “Development” or “Project” 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 as hereinafter defined.

(35) "Developer Improvements" means any of or collectively all of the improvements to be constructed, as part of the Development.

(36) "Dispute Resolution Procedure" means the procedure for resolving a dispute among or between the parties as set forth in this Agreement.

(37) Intentionally Omitted.

(38) "Environmental Conditions" means the environmental conditions on each of the New Project Parcels which under applicable Environmental Laws require testing, remediation or monitoring for the uses on such New Project Parcel contemplated by this Agreement.

(39) "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.

(40) "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.

(41) "ESA" means the Phase I Environmental Site Assessment Report dated September 30, 2020, prepared by Payne Environmental LLC.

(42) "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 or stayed 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 or stayed 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.

(43) "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 article of this Agreement.

(44) "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.

(45) "Exempt Entity" means an entity to which the Developer transfers any interest in any New Project Parcel and/or the improvements thereon and whose use

of the property is wholly or partially exempt from real property taxation under Connecticut law.

(46) “Existing Environmental Conditions” means Environmental Conditions on a New Project Parcel existing on the date of the any Phase I or Phase II ESA through the Closing Date for such New Project Parcel.

(47) “Expiration of the Zoning Appeal Process” means the time for appealing a zoning map, a zoning text amendment or a land use approval has expired and no appeals of such amendments or approvals have been filed, or if any such appeal has been filed, a final judgment has entered dismissing the appeal.

(48) “Extension Payment” shall have the meaning ascribed to this term in Section 3.1 below.

(49) Intentionally Omitted.

(50) “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, pandemics; (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 a New Project Parcel to vacate a New Project Parcel, 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.

(51) "Funding Source" means a Governmental Authority which provides funding for the Project, including but not limited to a Governmental Authority that provides some or a portion of the Affordable Housing Subsidies.

(52) "General Statutes" means the General Statutes of the state of Connecticut, 1958 Revision, as amended.

(53) "GNHWPCA" means the Greater New Haven Water Pollution Control Authority.

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

(55) "Hazardous Materials" means (i) any chemical compound, material, mixture or substance that is now or hereafter defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous waste", "restricted hazardous waste" or "toxic substances" or terms of similar import under any applicable federal, state or local law, or under the regulations adopted or promulgated pursuant thereto, including Environmental Laws; (ii) any oil, petroleum or

petroleum derived substance, any flammable substances or explosives, any radioactive materials, any hazardous wastes or substances, any toxic wastes or substances, or any other materials or pollutants which cause any part of any facility, structure or improvement to be in violation of any Environmental Laws; and (iii) asbestos in any form, urea formaldehyde foam insulation, and electrical equipment which contains any oil or dielectric fluid containing levels of polychlorinated biphenyls in excess of applicable legal or regulatory limits.

(56) "HANH" shall mean the Housing Authority of the City of New Haven.

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

(58) "Income-Eligible Tenants" shall mean those tenants having an income limit as the set forth in the HUD Income Limits Documentation System for the New Haven-Meriden CT HUD Metro FMR Area.

(59) "Land Disposition Agreement" shall have the meaning ascribed to it in the preamble.

(60) Intentionally Omitted.

(61) "Leasehold Parcels" shall have the same meaning ascribed to them in Section 4.3 below.

(62) "Legal Requirements" means any and all judicial decisions, orders, injunctions, writs, and any and all statutes, laws, rulings, rules, regulations, permits, certificates, or ordinances of any Governmental Authority in any way applicable to the Project including, but not limited to, any of the aforesaid dealing with the zoning, design, construction, ownership, use, leasing, handicapped accessibility, maintenance, service,

operation, sale, exchange, or condition of any New Project Parcel. “Legal Requirements” shall not include Environmental Laws.

(63) “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.

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

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

(66) “Milestone Dates” mean those dates on the Project Schedule which are indicated as “Milestone Dates” and on which certain items for the Project are to be completed to the degree of completion indicated on the Project Schedule.

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

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

(69) “New Project Parcels” or “New Project Parcel” shall have the meanings ascribed to these terms in the preamble.

(70) “Non-Curable Default” means an Event of Default under this Agreement which is a default which cannot be cured by the Mortgagee as described more fully in Section 9.3 below of this Agreement.

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

(72) “Ordinance” means an ordinance codified in the City’s Code of General Ordinances.

(73) “Permitted Encumbrances” means only those encumbrances and restrictions affecting each of the New Project Parcels which the Developer has approved.

(74) “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

(75) Intentionally Omitted.

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

(77) “Project Completion Date” shall be the scheduled date for completion in accordance with the Project Schedule and shall include occupancy.

(78) “Project Parcel” or “Project Parcels” shall have the same meanings ascribed to these terms in the preamble.

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

(80) “Property” shall mean that property located in the City of New Haven and State of Connecticut designated as 340 Dixwell Avenue, aka 328-350 Dixwell Avenue; 330-340 Dixwell Avenue; 304 Munson Street; 316 Dixwell Avenue and 783

Orchard Street, all as more particularly described on Exhibit A attached hereto and made a part of hereof.

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

(82) "Qualified Transferee" has the same meaning ascribed to this term in Section 8.2 below.

(83) "Quit Claim Deed" means the deed by which the New Project Parcel, 316 Dixwell Avenue, to be conveyed hereunder to the Developer.

(84) "Response" shall have the meaning ascribed to it in Section 3.2(A)(3) below.

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

(86) "RSRs" means Remediation Standards Regulations of Connecticut State Agencies §§ 22a-133-k 1 through 3 inclusive (as amended).

(87) "SBEs" means Small Business Enterprises as defined in Ordinance Section 12¼-3 (n).

(88) “Schematics” has the meaning ascribed to it in Section 3.2(A)(1).

(89) “Site Plan Review” means a review by the City Plan Commission of the site plan applications to be filed by the Developer for the Project pursuant to Section 64 of the Zoning Ordinance and Conn. Gen. Stat. § 8-2.

(90) “Streetscape Improvements” means sidewalks, curbs, landscaping, and lighting to be constructed by the Developer in the areas which abut and bound a New Project Parcel, in accordance with all City standards and as approved by the City Plan Commission as part of the Site Plan Review.

(91) “Substantial Completion” means 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”).

(92) “Survey” means a survey of each of the New Project Parcels being conveyed hereunder as prepared by JPGA dated July 13, 2020.

(93) “Tenant Improvements” means those improvements to be completed by or for a commercial tenant of the Developer subject to the specific requirements of the tenant, including without limitation, the interior design, layout, lighting, partitioning, doorways, painting, and components of the heating, ventilation, air conditioning, electrical and plumbing systems serving the Commercial Space only to be leased on the Premises.

(94) “Term” means the period commencing on the Effective Date and ending on the date that is twenty (20) years after the Project Completion Date.

(95) “Transfer” with respect to the transfer of Developer’s rights and obligations under this Agreement includes a transfer of more than fifty (50%) percent of the ownership interests in the Developer and/or Development other than to an Affiliate.

(96) "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

(97) “Zoning Appeal Process” shall mean the process by which a zoning map or text amendment or land use approval is appealed

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

(99) "Zoning Permit" shall means the zoning variance from the City of New Haven dated May 15, 2020 which the Developer will need to renew prior to Closing.

Article II
REPRESENTATIONS AND WARRANTIES

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

The Developer represents, warrants and covenants that (a) the Developer is a non-profit corporation, duly organized and existing under the laws of the State of Connecticut, (b) the Developer has the legal authority to enter into and carry out the transactions to which it is proposed to be a party, (c) the execution and delivery of this Agreement by the Developer has been duly and validly authorized by all necessary action, (d) this Agreement is a legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms, and (e) except as expressly set forth elsewhere herein, there are no agreements or contracts to which the Developer is a party

which would in any manner impede or prevent the Developer from performing its obligation under this Agreement and/or which would impair any of the rights of the City under this Agreement.

Section 2.2 Representations and Warranties of the City

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

Article III
THE DEVELOPER'S IMPROVEMENTS

Section 3.1 Developer Improvements

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

(A) Description of the Improvements

(1) Provided that the Developer acquires the New Project Parcel, 316 Dixwell Avenue, from the City in accordance with the provisions of Article IV below, Developer agrees to consolidate the New Project Parcels (into either one or two separate

zoning parcels) and to file on the Land Records of the Town of New Haven a survey depicting the New Project Parcels.

(2) The Developer shall at its own cost and expense, design and construct a mixed use building on the New Project Parcels consisting of a minimum of 69 residential units to be comprised of no fewer than 55 Affordable Units and 14 market rate, non-income restricted units and approximately 2,500 square feet of commercial space (the "Project Building") which may be developed for any permitted use in the BA District but shall not be used, leased, sold or occupied by a discount store, a "dollar store", a firearms and/or ammunition store, a thrift shop, an adult bookstore/adult entertainment venue, a tattoo parlor, a massage parlor or a liquor store (although a wine shop shall be permitted). The Project Building shall be at least four stories high but shall not exceed 5 stories in height unless expressly approved by the City, through the Executive Director for the Livable City Initiative, taking into consideration the best interests of the City and the surrounding neighborhood and shall provide adequate parking 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 .

(3) The work to be performed by the Developer, at its sole cost and expense, to prepare the New Project Parcels for construction of the Project Building shall include without limitation, the demolition of any existing structures on the New Project Parcels the performance of any Environmental Work as may be required in accordance with all Legal Requirements.

(4) The Developer shall design and construct, at its own cost and expense, the Streetscape Improvements adjacent to and abutting the New Project Parcels subject to Site Plan Review for the New Project Parcels .

(B) Project Schedule

(1) 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 Excusable 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.

The Developer further agrees that it shall use its best efforts to secure Affordable Housing Subsidies by the Affordable Housing Subsidy Deadline. Notwithstanding the preceding paragraph immediately above, in the event the Developer is unable to receive the required Affordable Housing Subsidies by the Affordable Housing Subsidy Deadline, upon written request of the Developer, the City may, in is sole and absolute discretion, consent to an extension of the Affordable Housing Subsidy Deadline.

(2) With respect to any time limit or Milestone Date set forth in the Project Schedule other than in an instance of Excusable Delay, or in the event that commitments for the Affordable Housing Subsidies are not received and the City consents to an extension of the Affordable Housing Subsidy Deadline, , the Parties, recognizing that the

Project that is to be constructed may be subject to circumstances that are currently unanticipated, agree that the Developer shall have the option to extend any deadline set forth in the Project Schedule for a period of up to one (1) additional year by (i) providing written notice to the City of the extension period being claimed prior to the expiration of the deadline being extended and the reasons that such extension is required and (ii) paying to the City the sum of Five Thousand Dollars ($5,000) for each month included in the extension period (the "Extension Payment"), which Extension Payment shall be nonrefundable. In the event that a Milestone Date on the Project Schedule (Exhibit B) is extended under this subsection or subsection 4.2 or due to an instance of Excusable Delay, then all subsequent Milestone Dates on the Project Schedule will be extended for the same period of time as the Milestone Date that is extended under this subsection or that is extended due to an instance of Excusable Delay or under section 4.2.

(3) Active marketing of the New Project Parcels and the improvements that are to be constructed thereon under this Agreement shall commence in accordance with the Project Schedule.

Section 3.2 Provisions Applicable to the Developer's Improvements

(A) Design Guidelines and Design Review

(1) The Developer shall design the Development in accordance with the Design Guidelines. Prior to seeking Site Plan Review the Developer shall deliver to the City Design Reviewers schematic design drawings (the "Schematics") for the Development. The City may provide written comments about the Schematics (the "City Comments") to the Developer provided that such City Comments must be limited to

design considerations that do not cause any material change to the cost structure or viability of the Development.

(2) The Developer and its architect and/or engineer shall attend meetings concerning the Schematics with the City Design Reviewers as may be reasonably requested by the City. In the event that the City Design Reviewers consult with an independent third party architect (the "City Architect") about the Schematics, the Developer, and, at the Developer's option, its architect and/or engineer, shall, if requested by the City, attend meetings with the City Architect.

(3) The Developer shall respond to the City Comments, which response may include the submission of revised schematic drawings (the "Response"), in which case, the City Design Reviewers and the Developer shall meet within ten (10) days after the date on which the Response is delivered to the City Design Reviewers to discuss the City Comments and the Response.

(4) Notwithstanding the foregoing, the parties agree that the Developer has the ultimate authority to decide the final design of its improvements provided that such improvements are in accordance with all Legal Requirements.

(5) If the City Design Reviewers do not provide the City Comments within twenty-one (21) days after receipt of the Schematics by the City, the City Design Reviewers shall be deemed to have no City Comments.

(B) 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 316 Dixwell Avenue, first occurring after the Closing and while the Developer owns 316 Dixwell Avenue, but excluding (i) any environmental conditions existing on 316 Dixwell Avenue as of the date that the Developer takes title to 316 Dixwell Avenue (whether first discovered after the Developer takes title to 316 Dixwell Avenue or not); and (ii) any environmental conditions first arising after the date the Developer takes title to 316 Dixwell Avenue which are caused or contributed to by the City or its agents, contractors or employees. In connection with this Section, 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 of Developer hereunder with respect to the claim or matter in questions.

To the extent the issuer of an environmental insurance policy under which the Developer is insured confirms that the following will not result in a loss of coverage to the Developer, the Developer agrees to waive and release the City and its officials, employees, agents and successors and assigns from and against any and all liability, fines, suits, claims, demands, judgments, actions, or losses, penalties, damages, costs and expenses of any kind or nature, including, without limitation, reasonable attorney's fees, made or asserted by anyone whomsoever, due to or arising out of any Environmental Conditions or Hazardous Materials on, at or emanating from 316 Dixwell

Avenue existing as of the date that the Developer takes title to 316 Dixwell Avenue (whether first discovered after the Developer takes title to 316 Dixwell Avenue or not) other than Environmental Conditions which are caused or contributed to by the City or its agents, contractors or employees.

Once 316 Dixwell Avenue is merged into the Property being developed by the Developer so that 316 Dixwell Avenue no longer exists as one separate parcel, then the indemnification by the Developer provided under this Section 3.2 shall apply only to that portion of the Property which formerly constituted 316 Dixwell Avenue and the Developer shall have no indemnification obligations hereunder with respect to any other portion of the Property.

This indemnification shall survive the termination or expiration of this Agreement.

(C) Access and Inspections

(1) The City shall provide Developer and its designees and consultants with reasonable access to the New Project Parcel, 316 Dixwell Avenue, to perform such inspections and testing (including environmental surveys, soil testing and borings), boundary surveys and physical inspections, as are deemed reasonably necessary by the Developer. It is agreed and understood that the Developer's employees, consultants, contractors, and subcontractors performing such inspections and testing shall use safety equipment appropriate for inspecting the New Project Parcels and shall observe all applicable workplace safety rules and regulations. The Developer shall, itself, carry and shall cause its consultants and contractors to carry appropriate insurance for their anticipated inspection and testing activities on the New Project Parcels with limits

reasonably acceptable to the City naming the City an additional insured on such insurance policies.

(2) The City shall turn over and deliver to the Developer copies of all reports, studies, environmental assessments, surveys, plans, maps and other documents in their possession and/or control relating to the New Project Parcel, 316 Dixwell Avenue, subject to the proviso, however, that no representation or warranty is being made by the City as to the accuracy or completeness of any information contained in any such documentation or the information contained therein.

(3) At the Developer's request, the Developer shall be permitted to perform, at its own cost and expense, the Environmental Work required to prepare New Project Parcel, 316 Dixwell Avenue, for development prior to the Closing Date for such New Project Parcel. In such instance, the Developer shall require that its employees, consultants, contractors, and subcontractors performing such Environmental Work use safety equipment appropriate for performing such Environmental Work and observe all applicable workplace safety rules and regulations. In addition, the Developer shall itself, carry and shall cause its consultants, contractors and subcontractors to carry appropriate insurance for the Environmental Work with limits reasonably acceptable to the City naming the City as an additional insured on such insurance policies.

(D) Permits and Approvals

(1) The Developer agrees to apply for all permits and approvals required for the construction and operation of the Development. The Developer shall not be required to appeal a denial of any of these applications. The City shall fully and expeditiously assist the Developer in obtaining such permits and approvals, including any

approvals required from the City of New Haven Board of Zoning Appeals, the City of New Haven City Plan Commission and any other municipal, state, and other governmental boards and commissions.

(2) 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.

(3) To the extent required by Section 4 of the Greater New Haven Water Pollution Authority's ("GNHWPCA") Sewer Ordinance, as amended, the BOA consents and approves any extension of the GNHWPCA's collection system to all of the New Project Parcels.

(E) Land Use Plans

(1) The City agrees not to adopt any land use or development plan that includes any portion of a New Project Parcel, which would hinder or impede or in any manner adversely affect, including but not limited to deterring financing of or tenant interest in the Development before a Certificate of Completion is issued for the Development, unless the period for developing such New Project Parcels has expired.

(F) Project Schedule

(1) It is agreed and understood that in addition to the modifications of the Project Schedule (Exhibit B) provided for under Sections 3.1, 3.2 and 4.2 and due to incidents of Excusable Delay, the Project Schedule (Exhibit B) may require periodic modifications to take account of unforeseen conditions (both physical and economic, whether or not constituting Excusable Delay for the purpose of this Agreement), and to

the extent that the Developer provides the City with reasonable evidence of the need for such modifications, then the City and the Developer shall amend the Project Schedule in such manner as may be 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.

(2) The parties agree that Substantial Construction of the Project shall be completed no later than December 31, 2025 unless otherwise provided for in this Agreement or unless extended by the City and the Developer in writing.

(G) Assistance With Financing

(1) In addition to providing assistance to secure Affordable Housing Subsidies as set forth in Section 5.2 below, 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 real estate tax exemptions or abatements and 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.

Article IV

ACQUISITION OF THE NEW PROJECT PARCEL, 316 DIXWELL AVENUE

Section 4.1 Purchase Price for 316 Dixwell

(A) The purchase price for New Project Parcel, 316 Dixwell Avenue, shall be Two Hundred Eighty Thousand Dollars and Zero Cents ($280,000.00).

(B) The purchase price for the New Project Parcel, 316 Dixwell Avenue shall be paid to the City at the Closing for such New Project Parcel. The payment shall be made by a check drawn to the order of "Treasurer, City of New Haven".

(C) The purchase price for the New Project Parcel, 316 Dixwell Avenue shall be used as follows:

(1) Two thirds (2/3) of the purchase price shall be deposited into the Community Development Repayment, to be administered by the Livable City Initiative

(2) One third (1/3) of the purchase price shall be deposited in the City's General Fund.

Section 4.2 **Preconditions to Developer's Obligation to Acquire the New Project Parcel, 316 Dixwell Avenue**

(A) The obligations of the Developer to acquire the New Project Parcel, 316 Dixwell Avenue ("316 Dixwell"), from the City is subject to the satisfaction of each of the following preconditions, unless waived by mutual agreement of the City and the Developer in writing. The City and the Developer agree to use reasonable best efforts to cause the matters within their respective control to occur before the Closing Date for the New Project Parcel. The City agrees not to permit encumbrances, liens and easements to encumber the New Project Parcel, 316 Dixwell Avenue, after the Effective Date and before the Closing Date without the express consent of the Developer. The preconditions to Closing are as follows:

(1) 316 Dixwell is located within the BA District and the Expiration of the Zoning Appeal Process shall have occurred.

(2) , the BOA has approved the conveyance of 316 Dixwell to the Developer without any conditions that are objectionable to the Developer in its sole and reasonable discretion.

(3) The Developer shall have secured all permits, land use and other approvals and/or renewals of approvals as required to construct and operate the Developer's Improvements to be constructed on the New Project Parcels, which approvals shall not be subject to any conditions that are objectionable to the Developer in its sole but reasonable discretion and further provided that the Expiration of the Zoning Appeal Process shall have occurred.

(4) The Developer shall have secured all licenses and easements required to construct and operate the Developer's Improvements to be constructed on the New Project Parcels.

(5) The Developer shall have acquired the Project Parcels and New Project Parcel, 783 Orchard Street.

(6) The Developer shall have secured all financing commitments, including subsidy commitments for operations and funding for the construction of the Project and the Developer is prepared to close on such financing.

(7) Only the Acceptable Encumbrances shall continue to encumber 316 Dixwell, the City agreeing that the Developer shall not be required to accept the Quit Claim Deed for 316 Dixwell unless the City is able to convey good and marketable fee simple title to 316 Dixwell, and the Developer is able to obtain title insurance insuring a good and marketable fee simple title from a title insurance company reasonably

acceptable to the Developer. Marketability of title shall be determined in accordance with the Standards of Title of the Connecticut Bar Association.

(8) In the event that any of the preconditions to Closing are not satisfied by the Closing Date for the 316 Dixwell, as set forth in the Project Schedule and are not waived by the City and Developer, then, at the election of the Developer, the parties shall agree in writing to extend the Closing Date for such conveyance for a period not to exceed six (6) months, while each party continues to use reasonable best efforts to cause the matters within its respective control to occur. If the Closing Date is so extended, then all subsequent Milestone Dates and the date for Substantial Completion on the Project Schedule shall be correspondingly extended, subject to the terms and conditions of this Agreement including without limitation the Extension Payments.. Additionally, if the City is unable to convey good and marketable title to 316 Dixwell , then during the period that the Closing Date is so extended, the City will use all reasonable efforts (within a timeframe agreed upon among the City and the Developer) to provide such title. Such reasonable efforts shall include, but not be limited to taking all necessary steps to (i) defend against any claim of adverse possession of 316 Dixwell and (ii) obtain possession of 316 Dixwell, from any persons or entities occupying the same, provided, however, that the it is agreed among the parties, that the City shall have no obligation to terminate any leases, subleases, licenses and/or rights to possession to 316 Dixwell, which have been granted to any third party by the Developer.

Section 4.3 **<u>The Closing</u>**

(A) The Closing for 316 Dixwell 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 in Sections 3.1(C), 4.2 or 5.1 or in a writing signed by the parties.

(B) The conveyance of the New Project Parcel, 316 Dixwell Avenue, shall be by means of a Quit Claim Deed in such form as will be insured by a title insurance company qualified to do business in the State of Connecticut.

(C) This Agreement shall be recorded in the New Haven Land Records prior to the recording of the Quit Claim Deed for the New Project Parcel, 316 Dixwell Avenue, to be developed.

(D) The Developer acknowledges that the City will convey the New Project Parcel, 316 Dixwell Avenue, in an "as is" condition and that the City has not made any representations or warranties to the Developer regarding the condition of the New Project Parcel, 316 Dixwell Avenue, on which Developer will rely. The Developer further acknowledges and agrees that it is relying solely upon its inspection of the New Project Parcel, 316 Dixwell Avenue, for all purposes, including without limitation, their 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 New Project Parcel, 316 Dixwell Avenue.

(E) Based upon the ESA, The City and the Developer believe that as of the Effective Date of the Agreement, the New Project Parcel, 316 Dixwell Avenue, does not meet the definition of an "establishment" as such term is defined under the Connecticut Transfer Act, Conn. Gen. Stat. § 22a-134 et seq. (as amended)

(the “Transfer Act”) and as such, the parties do not anticipate a filing will be required to be made at the Closing under the Transfer Act. With respect to the New Project Parcel, 316 Dixwell Avenue, which is not a Leasehold Parcel (the “Non-Leased Parcel”), in the event that the Developer, its contractors, subcontractors and/or agents shall cause any such Non-Leased Parcel to become an “establishment” prior to the Closing Date for 316 Dixwell l, then the Developer shall comply with the Transfer Act at its sole cost and expense as the “Certifying Party” as such term is defined under the Transfer Act with respect to 316 Dixwell and shall prepare and execute the relevant form together with all supporting documentation and fees, required for a filing to be made, all at the sole cost of the Developer. In the event that the City or any of its contractors, subcontractors and/or agents shall cause any such Non-Leased Parcel to become an “establishment” prior to the Closing Date for such Non-Leased Parcel, then the City shall comply with the Transfer Act at its sole cost and expense, as the “Certifying Party” as such term is defined under the Transfer Act and shall prepare and execute the relevant form together with all supporting documentation and fees, required for a filing to be made, all at the sole cost of the City. In the event that neither the City nor the Developer causes a Non-Leased Parcel, which is not an “establishment” as of the date of the ESA to become an “establishment”, prior to the Closing Date for s316 Dixwell but such Non-Leased Project Parcel otherwise becomes an “establishment” prior to the Closing Date for 316 Dixwell, then the Developer shall have the option of (i) complying with the Transfer Act as the Certifying Party and shall prepare and execute the relevant form together with

all supporting documentation and fees, required for a filing to be made, all at the sole cost of the Developer.

(F) Prior to the Closing Date for the New Project Parcel, 316 Dixwell Avenue, the Developer shall cause a licensed environmental professional ("LEP") to update the Phase I ESA, which update shall be addressed both to the Developer and the City and shall state whether the real property on such New Project Parcel since the date of the Phase I ESA appears to have become an "establishment", and, if so, to state which activities in subsections (A) through (E) of the Transfer Act appear to have occurred on the New Project Parcel, 316 Dixwell Avenue, since the date of the Phase I ESA.

(G) The Developer shall pay the cost of obtaining any policy of title insurance and all other customary closing costs, including the cost of recording this Agreement and the Quit Claim Deed for the New Project Parcel, 316 Dixwell Avenue. 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 New Project Parcel, 316 Dixwell Avenue.

(H) 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 New Project Parcel, 316 Dixwell Avenue, 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. If Section 12-81a

is held invalid, unenforceable or unconstitutional by a court of competent jurisdiction, the Developer shall make a payment in lieu of taxes for the New Project Parcel, 316 Dixwell Avenue. Such payment in lieu of taxes shall be based upon the assessed value of such New Project Parcel, 316 Dixwell Avenue, at the mill rate then prevailing in the City, for that portion of the tax year during which the Developer holds title and possession and for which taxes have not been paid. Notwithstanding the foregoing, no provision of this Agreement shall be construed as a waiver by the Developer or its tenants of any of their rights to challenge or appeal any assessment of the New Project Parcel, 316 Dixwell Avenue, to which title has been conveyed to the Developer or to apply for and receive any tax abatement or assessment deferral for which it or its tenants may be eligible, as set forth in Section 7.1 below. Any amounts owed by the Developer under this Section 4.3(I) shall be due and payable in the manner and at the time set forth in Conn. Gen. Stat. § 12-81a. Nothing herein shall prevent the Developer from seeking any available real estate tax abatement, exemption or PILOT for any of the Property and the Project.

Article V
COMMUNITY BENEFITS

Section 5.1 **Affordable Housing Units**

(A) Developer agrees that during the Affordability Period, or if a longer period is required by a Funding Source, no less than 80% of the total residential rental units developed shall be Affordable Housing Units (the “Affordable Units”).

(B) Developer agrees that the Affordable Units shall be comprised of one, two and three bedroom units and will bear a maximum rent that is (i) the lesser of (a) the fair market rent for existing housing for comparable units in the City of New Haven, Connecticut area as established by HUD under 24 CFR, Part 888.111 or (b) the High HOME Rent which is defined as a rent that does not exceed thirty percent (30%) of adjusted income of a family whose annual income equals Sixty Five Percent (65%) of the area median income, as determined by HUD, with adjustments for number of bedrooms in the unit, less the monthly allowance for the utilities and services (excluding telephone) to be paid by the tenant

(C) Developer agrees that the Affordable Units shall be occupied by Income-Eligible Tenants, at all times during the Affordability Period.

Section 5.2 Affordable Housing Units

The Developer agrees to comply with each and every requirement of a Funding Source relating to the Project or any portion thereof, including but not limited to the submission of all information, documents and reports required by a Funding Source for the Project in a timely manner. The Developer further agrees to indemnify, defend and hold harmless the City and its officials, employees, agents, successors and assigns from and against any liability, claims, actions, demands, losses or penalties, costs and expense of any kind due to or arising out of any failure of the Developer to comply with a requirement of a Funding Source relating to the Project or any portion thereof.

Section 5.3 **Construction Jobs and Small and Minority Business Opportunities**

(A) Workforce Utilization Requirements

(1) The parties acknowledge that construction jobs will be created as a result of the Development, and in order to increase construction employment opportunities for City residents, women and minorities to participate in the construction of the Development, the Developer shall comply with, or require that its general contractors, construction manager and all construction subcontractors for each Phase of the Development comply with all applicable City workforce requirements now and hereafter existing, including, without limitation, all equal employment opportunity requirements and in particular, during the carrying out of the Development, the Developer agrees to require its general contractors, construction manager and its construction subcontractors:

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

(b) Not to 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 be limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of any or other forms of compensation, and selection for training, including apprenticeship;

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

(d) To state, in all solicitations or advertisements for employees placed by or on behalf of the Developer, that all qualified applicants will receive consideration for employment without regard to race, color, religion, age, sex, physical disability or national origin; to utilize the City sponsored workforce programs as a source of recruitment and to notify the City of New Haven Commission on Equal Opportunities of all job vacancies;

(e) To send to each labor union or representative of workers with whom the Developer has a collective bargaining agreement, or other contract or understanding, a notice advising the labor union or worker's representative of the Developer’s commitments under the 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 to require its general contractor and all construction subcontractors on its portion of the Project to register all workers in the skilled trades who

are below the journeyman level with the Apprentice Training Division of the Connecticut State Labor Department;

(f) To furnish all information and reports required by the New Haven Commission on Equal Opportunities Contract Compliance Director, as defined in Ordinance Section 12-1/2-20(b), pursuant to Ordinance Sections 12-1/2-9 through 12-1/2-32 and to permit access to the Developer's books, records and accounts by the City, the City Contract Compliance Director and the United States Secretary of Labor for purposes of investigations to ascertain compliance with the requirements of this Section 5.3;

(g) To file, along with its general contractors, construction manager and construction subcontractors, compliance reports with the City in the form and to the extent prescribed by the City Contract Compliance Director at such times as directed by the Contract Compliance Director, which compliance reports shall contain information as to the employment practices, policies, programs and statistics of the Developer, its general contractors, construction manager and the construction subcontractors relative to the Developer's obligations under this Section 5.3;

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

(i) To acknowledge that a finding, as hereinafter provided, of a refusal by the Developer, its general contractors, construction manager or the construction subcontractors on the Development, to comply with any portion of this Section 5.3 as herein stated and described, may subject the offending party to any or all of the following penalties: refusal of all future bids for any public contracts with the City of New Haven, or any of its departments or divisions, until such time as the Developer, its general contractors, construction manager or its construction subcontractors, as the case may be, are in compliance with the provisions of this Agreement; and recovery of specified monetary penalties;

(j) To make best efforts to have its general contractors, construction manager and all subcontractors for the Project hire the following groups, in correspondence to the following percentages of total hours completed on the Development: twenty-five percent (25%) of hours to be worked by minorities as defined in Ordinance Section 12-1/2-19(n); six and nine-tenths percent (6.9%) of hours to be worked by females; twenty-five percent (25%) of hours to be worked by residents of the City; and fifteen percent (15%) of hours to be worked by apprentices, provided that fifty percent (50%) of apprentice hours must be worked by first-year apprentices;

(k) To include the provisions of subparagraphs (a) through (j) of this Section 5.3(A) in every contract, subcontract or purchase order with respect to the construction of the Project so that said provisions will be binding upon each such contractor, subcontractor or vendor; and

(l) To take such action, with respect to any general contractors, construction manager or subcontractor, as the City may direct as a means of enforcing

the provisions of subparagraphs (a) through (k) herein, including penalties, fines and sanctions for noncompliance, provided, however, that in the event the Developer becomes involved in or is threatened with litigation as a result of such direction by the City, the City will intervene in such litigation to the extent necessary to protect the interest of the City and to effectuate the City's Equal Employment Opportunity program.

(m) Notwithstanding the foregoing, in the event that any portion of the funding for the Project, including without limitation the Affordable Housing Subsidies, is received from a third party Funding Source, and there is a conflict between any requirements set forth in this subsection 5.4(A) with the requirements of the third party Funding Source, then the requirements of such third party Funding Source shall govern the matters set forth above with respect to the Developer’s work funded by such third party Funding Source.

(B) Small and Minority Business Utilization

(1) In order to best provide opportunities for City-based, minority and small businesses to participate fully in the construction of the Project, the Developer shall comply with, or require that its construction manager, general contractors and all construction subcontractors for the Project comply with all applicable City small contractor utilization requirements now and hereafter existing, including, without limitation, all small business construction initiative requirements and in particular, during the carrying out of the Project, the Developer agrees to require its construction manager, general contractors and its construction subcontractors to comply with the provisions of Ordinance Section 12 1/4-9, which require that every effort be aggressively made to meet the MBE Utilization Goals. Pursuant to Ordinance Sections 12 1/4-9(d) and (f), the Developer and its

contractors shall be considered to have achieved compliance with the MBE Utilization Goals if work totaling the value of twenty-five (25%) percent of all of the construction subcontracts is awarded to MBEs. In order to achieve MBE Utilization Goals, contracts may be awarded to MBE subcontractors and/or a contractor may enter into a joint venture or other commercially reasonable relationship that is satisfactory to the City with one or more MBEs for the purpose of performing construction work on the Development. In the event that the Developer is unable to meet the MBE Utilization Goals, then the Developer shall document in an affidavit its good faith efforts to achieve the MBE Utilization Goals, which efforts will be evaluated, verified and recognized by the City if the Developer or its general contractors, and/or construction manager have accomplished at least four (4) of the following: (1) placing a notice of the subcontracting opportunity on an approved City construction opportunity website at least ten (10) days in advance of selection of the subcontractor(s); (2) mailing notices (certified mail, return receipt requested) to at least four (4) business associations and/or development agencies which disseminate bid and other construction-related information to businesses within the Greater New Haven area not less than two (2) weeks prior to Developer's requests for bids or proposals, which notice shall describe the type of work being solicited, set forth the name, address and telephone number of a contact person from Developer's general contractors or construction manager with knowledge of the Development and state where appropriate plans and specifications can be obtained; (3) showing proof of quotes received from subcontractors whose bids or proposals were denied because of cost, quality, availability, and similar reasons; (4) showing proof of outreach to and collaboration with the New Haven Contractors' Alliance and the City's Small Business Development Program;

(5) describing in detail any attempts to enter into joint ventures or other arrangements with MBEs and/or assistance provided to MBEs relating to (a) the review of plans and specifications or other documents issued by the Developer or its general contractors or construction manager, (b) the review of work to be performed by MBEs, (c) encouragement of other subcontractors to utilize MBEs, (d) encouragement of participation of MBEs, and (e) all actions taken by Developer and its general contractors or construction manager with respect to proposals received from MBEs, including where appropriate, the reasons for the rejection of such proposals; (6) conducting a networking event with Developer's construction manager (if any) and general contractors; (7) holding individual trade meetings with Developer's construction manager or its general contractors; and (8) 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.

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

(3) 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.

(4) To furnish all information and reports required by the City's Small Business Development Program and to permit access to Developer's records and to require that its construction manager, general contractors and subcontractors provide access to their records in order to verify compliance with the requirements of this 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.

(5) To take all reasonable corrective actions requested by the City to comply and to effectuate compliance with the requirements of this Section 5.3(B).

(6) Notwithstanding the foregoing, in accordance with Code of General Ordinance Section 121/4-11, in the event that any portion of the funding for the Project, including without limitation the Affordable Housing Subsidies, is received from a third party Funding Source, and there is a conflict between any requirements set forth in this subsection 5.4(B) with the requirements of the third party Funding Source, then the requirements of such third party Funding Source shall govern the matters set forth above with respect to the Developer's work funded by such third party Funding Source.

Section 5.4 **Commitment to Sustainability**

(A) The Developer agrees that it will use reasonable commercial efforts to design and build the Developer's Improvements using sustainable materials and building practices to the extent economically and commercially reasonable.

(B) The Developer agrees to participate in a bike share program, if such program is developed by the City, Yale University or Yale New Haven Hospital, at the request of such sponsor, including locating at least one (1) bike sharing facility on one of the New Project Parcels after such New Project Parcel is conveyed to the Developer.

(C) The Developer agrees to incorporate bike storage facilities into the Developer Improvements and to incorporate changing/shower facilities into any office space constructed as part of the Developer Improvements.

Section 5.5 **Non Discrimination in Sales and Rentals**

(A) The Developer covenants on behalf of itself and its successors and assigns that the Developer and its successors and assigns shall not discriminate upon the basis of race, color, religion, gender, sexual orientation, national origin, marital status or physical disability in the sale, lease or rental or in the use and occupancy of any of the New Project Parcels or any improvements erected or to be erected thereon, or any part thereof; and shall comply with all federal, state and local laws in effect from time to time, prohibiting discrimination or segregation by reason of race, religion, color, gender, sexual orientation, national origin, marital status or physical disability in the sale, lease, or rental or in the use and

occupancy of any New Project Parcel or any improvements erected thereon or to be erected thereon, or any part thereof.

Article VI

CONSTRUCTION OF THE PROJECT

Section 6.1 Easements and Licenses

(A) The City hereby approves and authorizes the granting of any easements and licenses which may reasonably be needed to construct, complete and operate the Project, provided that the Developer shall provide the City with detailed plans of those improvements that will be the subject of such easements or licenses for final approval by the Executive Director for the Livable City Initiative, if applicable (which approval shall not be unreasonably withheld, conditioned or delayed) and further provided that with respect to any such easements or licenses granted by the City the Developer shall comply with customary City requirements with respect to insurance.

Section 6.2 Insurance

Subsequent to the Closing for the New Project Parcel, 316 Dixwell Avenue, and until a Certificate of Completion is issued for the Project, the Developer shall obtain and shall cause its general contractor to obtain general liability insurance in an amount not less than 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 for its operations with respect to the Project. The Parties agree that the Developer's insurance coverage obligations under this Section 6.3

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 not less than 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 to name the City as an additional insured on all such insurance policies when they are performing work on the New Project Parcels. Notwithstanding any provision of this Section 6.3, the Developer shall at all applicable times comply with the insurance coverage provisions of Subsections 3.3(B)(1) and (3).

Article VII

OPERATION OF THE PROJECT

Section 7.1 **Taxes**

(A) The Developer agrees for itself and its successors and assigns that the Developer and its successor or assigns will pay all real property taxes lawfully assessed against the New Project Parcels and the improvements thereon for which the Developer or its successors or assigns hold legal title for the periods during which the Developer or its successor or assigns hold such legal title, as applicable.

(B) Notwithstanding the foregoing, the parties agree that no provision of this Agreement shall be construed as waving any right the Developer or its tenants or its successors or assigns may have to contest or appeal, in the manner provided by law, any assessment made by the City with respect to any New Project Parcel and the improvements thereon.

(C) Further, notwithstanding the provisions of Section 7.1(A), no provision of this Agreement shall be construed as limiting in any manner, Developer or its tenants' rights to apply for and be qualified for any municipal or state tax exemption or tax assessment deferral program, including but not limited to the City Wide Assessment Deferral Program, the City Enterprise Zone Assessment Deferral Program established under Conn. Gen. Stat. § 28-9, the State Distressed Municipalities/Enterprise Zone Program authorized by Conn. Gen. Stat. § 32-9 et seq., and the Biotechnology/Enterprise Zone Program established under Conn. Gen. Stat. § 32-41s. Notwithstanding the foregoing, the City and Developer agree and acknowledge that in view of the provisions of Section 7.1(D) below and the Order of the Board of Alders therein referred to, any such application under any Tax Assessment Deferral Program would not apply to the Affordable Units, so that the Project would require appropriate apportionment.

(D) Further, notwithstanding the provisions of Section 7.1(A), 7.1(B) and 7.1(C), the City and Developer acknowledge that following the issuance of a final Certificate of Occupancy for the Project, in accordance with the Order of the Board of Alders dated xx a copy of which Order is attached hereto as Exhibit C, real estate taxes with respect to the Affordable Units shall be abated for a period of fifteen (15) years and the Developer or any successor to the Developer shall make payments in lieu of real estate taxes (the "Affordable PILOT") in an initial amount for the Grand List Year that the final Certificate of Occupancy is issued equal to four hundred dollars ($400.00) per Affordable Unit, and which Affordable PILOT payment shall increase at the rate of 3% per annum and in all other respects in

compliance with said Order. Notwithstanding the generality of the foregoing, it is hereby agreed, stipulated and understood that in the event of any conveyance or other transfer of any interest in the Project or any portion thereof, whether prior to or following the issuance of a Certificate of Completion, the Affordable PILOT payment provided for in this Section 7.1(D) shall automatically become null and void and of no further effect without the prior approval of the Board of Alders, acting by and through its Tax Abatement Committee, so that in the absence of such approval, real estate taxes with respect to the entire Project shall be due and payable in accordance with Section 7.1(A).

(E) In the event that the Developer or its successor and assigns transfers title to any New Project Parcel or any portion thereof or any improvements thereon to an Exempt Entity, the Developer or its successors or assigns, as the case may be, shall require prior to such transfer that the Exempt Entity enter into a Payment in Lieu of Taxes ("PILOT") Agreement with the City for a term of not less than the balance of the Affordability Period, which agreement shall incorporate both the obligations contained in the Affordability PILOT, if then in existence, and shall otherwise be reasonably acceptable to the City and shall be subject to approval by the BOA. The provisions of this Section 7.1(E) shall expressly survive the Closing and be binding upon the Developer's successors or assigns with respect to a New Project Parcel and/or any portion thereof or any improvements thereon conveyed.

(F) In the event that any conveyance of title to any portion of a New Project Parcel or any improvements thereon to an Exempt Entity is made in

contravention of the provisions of Section 7.1(E) above, then the Developer if the Developer has made the conveyance of title, (or a subsequent holder of title, if the subsequent holder of title has made the conveyance of title) shall be responsible for the payment of all sums that would have been due under a PILOT Agreement with the Exempt Entity and for any other damages that the City may suffer as a result of the breach of the obligations set forth in this Section 7.1.

Section 7.2 Casualty

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

Section 7.3 Environmental Indemnification

(A) The Developer shall indemnify, defend and hold harmless the City and its officials, employees, agents and successors and assigns from and against any and all liability, fines, suits, claims, demands, judgments, actions, or losses, penalties, damages, costs and expenses of any kind or nature, including, without limitation, reasonable attorneys' fees made or asserted by anyone whomsoever, due to or arising out of, any failure of the Developer to perform the Environmental Work as required by this Agreement or Environmental Conditions or Hazardous Materials on, at or emanating from any New Project Parcel, which indemnification shall be limited as to the New Project Parcel, 316 Dixwell Avenue, to arise only

after the Developer has taken title to said New Project Parcel, 316 Dixwell Avenue.

(B) The Developer shall further indemnify, defend and hold harmless the City and its officials, employees, agents and successors and assigns from and against any and all liability, fines, suits, claims, demands, judgments, actions, or losses, penalties, damages, costs and expenses of any kind or nature, including, without limitation, reasonable attorneys' fees made or asserted by anyone whomsoever, due to or arising out of, any failure of the Developer to perform the Environmental Work as required by this Agreement or Environmental Conditions or Hazardous Materials on, at or emanating from any New Project Parcel, which indemnification shall be limited as to the New Project Parcel, 340 Dixwell Avenue.

Section 7.4 **Maintenance of Streetscape Improvements**

(A) In accordance with its standard obligations, the City agrees to maintain, repair and replace the Streetscape Improvements constructed by the Developer in accordance with all current and future City standards, including but not limited to City standards concerning the selection of light fixtures and which are approved by the City Plan Commission as part of the Site Plan Reviews for the New Project Parcels and to pay all utility usage bills for any lighting so installed by the Developer.

Article VIII

CERTIFICATES OF COMPLETION AND ASSIGNMENT

Section 8.1 Certificates of Completion

(A) After completion of the Developer's Improvements required to be constructed under this Agreement, the Developer shall give notice to the Executive Director of the Livable City Initiative of such completion and request a Certificate of Completion from the City with respect to the Project. The Executive Director of the Livable City Initiative on behalf of the City shall inspect or shall cause such Developer Improvements on such New Project Parcels (this should be 316 Dixwell and 340 Dixwell only) to be inspected within thirty (30) days of a request for a Certificate of Completion and the Executive Director of the Livable City Initiative shall furnish such Certificate of Completion within thirty (30) days of the Developer's request for the Certificate, subject to Section 8.1(C) below. The Certificate of Completion shall be in such form as will enable it to be recorded on the New Haven Land Records and shall be issued by the City.

(B) The Certificate of Completion shall be a conclusive determination of the satisfaction of the Developer's obligation to construct the Developer's Improvements for which it is issued. The parties agree that the Certificate of Completion shall not represent a determination that the Developer has satisfied any other of its other obligations under this Agreement other than its obligations to construct the Developer Improvements for which it is issued in accordance with the Approved Plans. The parties agree that this Agreement does not obligate the Developer with respect to construction and completion of any Tenant

Improvements, and a Certificate of Completion for the Developer Improvements may not be denied or withheld because Tenant Improvements have not been constructed or completed.

(C) Notwithstanding any other provision of this Agreement, if the Executive Director of the Livable City Initiative shall refuse or fail to provide certification in accordance with the provisions of this Article VIII, the Executive Director of the Livable City Initiative shall, within such thirty (30) day period, provide the Developer with a written statement setting forth in adequate detail in what respects the Developer has failed to complete the Developer Improvements in accordance with the Approved Plans therefor, 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(s), 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 a Certificate of Completion, the parties shall participate in the Dispute Resolution Procedure.

(D) Notwithstanding any other provision of this Agreement, if the Executive Director of the Livable City Initiative shall fail to provide the Developer with a Certificate of Completion or with a written statement within such thirty (30) day period of a request for such Certificate of Completion, such failure shall be deemed to constitute certification that the Developer Improvements have been

completed in accordance with the Approved Plans. In such case, the Developer shall, in its sole discretion, record a Certificate of Completion on the New Haven Land Records, setting forth the failure of the City to issue a Certificate of Completion within the time required for issuing such certificate for which the Certificate of Completion was requested. The Developer's Certificate of Completion shall have the same force and effect as a Certificate of Completion issued by the Economic Development Administrator.

Section 8.2 Assignment

(A) It is hereby agreed and stipulated that prior to the expiration of this Agreement, the Developer shall not, without the City's written permission or except as provided in Section 9.1 transfer or assign any of its rights and/or obligations under this Agreement with respect to the New Project Parcel(s) that are 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 agrees that in the event that the Developer wishes to make an assignment permitted under Section 8.2(A), it will deliver to the Developer and its Affiliate, as the case may be, within fourteen (14) days of the making of such a request, a recital that the Developer is in compliance with all of the covenants and

agreements binding upon it under this Agreement to the best of the knowledge of the City and that such assignment complies with the terms of this Agreement and will not constitute an Event of Default under this Agreement.

(C) Any assignment of any interest in this Agreement or in any New Project Parcel which is made in contravention of the provisions of Section 8.2(A) shall be an Event of Default entitling the City to exercise any and all of the various rights and remedies available to them, 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, the Developer may sell, assign or transfer any or all of its interest in the New Project Parcels to any purchaser, assignee or transferee free and clear of the requirements of this Agreement with respect to such New Project Parcels (other than the nondiscrimination requirements in Section 5.5) without restriction as to the consideration to be received and without the City's consent, provided that if such sale, assignment or transfer is made during the Term, the Developer shall require that the purchaser, assignee or transferee expressly assume those covenants, agreements, and obligations under this Agreement (including specifically, but without limitation, the tenant affordability restrictions and obligation to pay taxes), with respect to such New Project Parcels 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 recorded in the New Haven Land Records.

Article IX

MORTGAGE OF THE NEW PROJECT PARCELS

Section 9.1 **Mortgage of the New Project Parcels**

(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 New Project Parcels, by way of a Mortgage, provided that (i) any encumbrance, pledge, conveyance of right, title and interest shall be as to the New Project Parcels collectively and in their entirety and not separately or exclusively; and (ii) the Mortgagee taking title to the New Project Parcels or any part thereof (whether by foreclosure or deed in lieu of foreclosure or otherwise) shall be subject to the provisions of this Agreement, except as hereinafter provided and that the Developer shall give written notice to the City of the proposed grant of any such Mortgage, the amount thereof and the name and address of the Mortgagee. This Agreement shall be superior and senior to any lien placed upon a New Project Parcel after the date of the recording of this Agreement, including the lien of any Mortgage, except for those liens that by law have superiority over this Agreement.

(B) The City agrees at any time and from time to time, upon not less than fourteen (14) days prior written notice, to execute, acknowledge and deliver without charge to any Mortgagee, or to any prospective Mortgagee designated by either Developer or any Mortgagee, or to any prospective purchaser of Developer's interest in the New Project Parcels designated by Developer 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, the City desires to enter into any of the aforementioned agreements, it shall be the responsibility of Developer to obtain the consent of the Mortgagee.

(E) Notwithstanding any other provision of this Agreement, including but not limited to Section 7.3 and any other indemnification obligation of Developer set forth in this Agreement, no Mortgagee (or its Designee as may have acquired Developer's estate through foreclosure) shall become personally liable under this Agreement 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 9.2 **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 New Project Parcels 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 New Project Parcels or forecloses its Mortgage prior to issuance of a Certificate of Completion for the New Project Parcels, such Mortgagee shall, at its option: (i) complete construction of such improvements on such New Project Parcels in accordance with this Agreement and in all respects (other than time limitations) comply with the provisions of this Agreement with respect to such New Project Parcels; or (ii) sell, assign or transfer the Developer's estate in the New Project Parcels to a purchaser, assignee or transferee who shall expressly assume all of the

covenants, agreements and obligations of the Developer under this Agreement to be performed and observed on the Developer's part thereafter with respect to the New Project Parcels that were the subject of the Mortgage (and shall be deemed a "Developer" under the terms of this Agreement with respect to such New Project Parcels), 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 a New Project Parcels 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 such New Project Parcel 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 a New Project Parcels 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 New

Project Parcels or in accordance with this Agreement (other than time limitations), the Mortgagee may sell, assign or transfer fee simple title to the New Project Parcels 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 pay taxes) 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 New Project Parcels after issuance of a Certificate of Completion and 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 such New Project Parcels, provided the Mortgagee shall have the right to sell, assign or transfer the fee

simple title to the New Project Parcels on the same bases as set forth in Section 8.1 and Section 9.2(C) of this Agreement.

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

(F) In the event a Mortgagee acquires the Developer's estate in the New Project Parcels, the City agrees (if so requested) to enter into a new agreement with such Mortgagee or its designee, effective as of the date of termination of this Agreement with respect to such New Project Parcels and for the remainder of the Term, upon the terms, covenants and conditions (but excluding requirements which are not applicable or which have already been fulfilled) of this Agreement with respect to such New Project Parcels and, to the extent possible, with the same priority as this Agreement, provided that it is specifically acknowledged and agreed that all covenants, duties and obligations of the Developer hereunder shall survive the execution of any new agreement among the City 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.

(G) 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 9.3 Notice of Default to Mortgagee

(A) If the City shall give a Default Notice to Developer with respect to the New Project Parcels 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 New Project Parcels 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 New Project Parcels 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 New Project Parcels subject to its Mortgage. Provided, further, that if the default is of a nature that possession of the New Project Parcels 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 of the New Project Parcels, 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 the New Project Parcels 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 complete the construction work in accordance with this Agreement, then, upon completion of such construction work, such curing Mortgagee shall be entitled to a Certificate of Completion in accordance with the provisions of Section 8.1 of this Agreement.

Upon issuance of such Certificate of Completion, 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 New Project Parcels.

(E) Upon foreclosure or other acquisition of the Developer's interest in this Agreement by the Mortgagee or its Designee, all such defaults described in the foregoing paragraph shall be deemed to have been fully cured as to the Mortgagee, its Designee and their respective successors and assigns, but the foregoing shall not constitute a waiver by the City of such default with respect to the Developer or a release of the Developer with respect to any such default.

Section 9.4 <u>New Development Agreement</u>

(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 New Project Parcels 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) Provided that if the City and the Mortgagee enter into a new agreement, the City shall be under no obligation to remove from any New Project Parcel the Developer or anyone holding by, through or under the Developer, and the Mortgagee shall take the New Project Parcels 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 such New Project Parcel, 316 Dixwell Avenue, to the Developer; (iii) any easement, right of way or other agreement not constituting a lien which the City shall have approved and entered into during the Term of and in accordance with the terms of this Agreement; (iv) any other encumbrances which the City shall have entered into or approved under and in accordance with the terms of this Agreement; (v) the lien of taxes on the New Project Parcels which are not yet due and payable; and (vi) 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 New Project Parcels shall survive the execution of any new agreement among the

City 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 same New Project Parcels, 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 X

DEFAULT AND REMEDIES

Section 10.1 **Events of Default**

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

(1) an Event of Bankruptcy;

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

(3) a failure of the Developer to accept the conveyance of the New Project Parcel, 316 Dixwell Avenue, if and when required to do so under this Agreement excluding any period of Excusable Delay;

(4) a failure to meet any Milestone Date when required to do so under this Agreement (other than the Closing Date Milestone Date), excluding any period of

Excusable Delay, and a failure to cure such failure within thirty (30) days of receipt of a Default Notice from the City;

(5) a failure to substantially complete construction of any portion of the Development when required to do so under this Agreement, 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 failure within ninety days (90) of receipt of a Default Notice from the City;

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

(7) an assignment in violation of Section 8.2; or

(8) a transfer of Developer's title to any New Project Parcel or any of the improvements thereon in violation of the terms of Section 7.1.

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

(1) a failure by the City, to deliver the deed to any of the New Project Parcel, 316 Dixwell Avenue, to the Developer when required to do so under this Agreement; or

(2) a failure to perform any other covenant or agreement required to be performed by the City under this Agreement, where such failure is not cured by the City within 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 and/or the Redevelopment Agency has commenced and is diligently pursuing such cure.

(C) No Default by Any Party

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 10.2 Remedies

(A) Right of Reversion

(1) Without prejudice to any other rights or remedies of the City hereunder, it is agreed and understood that if, after the conveyance of the New Project Parcel, 316 Dixwell Avenue to the Developer, the Developer shall fail to carry out the Developer Improvements in accordance with the Project Schedule on or prior to the Project Completion Date then the City may, in the exercise of the City's sole and absolute discretion, exercise its Right of Reversion, in which event the Developer shall (if so demanded by the City) execute such deeds or other documentation as may be reasonably required to effect such Right of Reversion provided that such Right of Reversion shall be subject to the rights of any Mortgagee described herein, and provided further that if the City exercises its Right of Reversion prior to the Developer's completion of the Environmental Work as required under this Agreement, the City may complete the Environmental Work in accordance with the provisions hereunder, at the City's sole cost and expense subject to the Developer assigning all of its rights, title and interests to the City under any agreement Developer has entered into for funding obtained from the State,

as well as any permits, approvals or other related documentation or agreements necessary for the City to complete the Environmental Work. In addition, if the City's exercise of its Right of Reversion triggers the CT Transfer Act (CGS 22a-134, et seq.), the City shall file a Form III as the "certifying party" and shall be responsible for all filings, fees and costs of investigation and remediation at its sole cost and expense.

(2) Should the City, in its sole and absolute discretion, elect to pursue the Right of Reversion as provided for in this Section 10.2, the City shall, upon the Developer's execution of such deeds or other documentation as may be reasonably required to effect such Right of Reversion, pay to Developer a sum equal to the amount paid by Developer upon its acquisition of New Project Parcel 783 Orchard Street.

(3) The Right of Reversion shall terminate upon the issuance of the Certificate of Completion with respect to the Developer Improvements, and thereafter, the City shall have the no Right of Reversion with respect thereto.

(B) Notwithstanding the foregoing, the City may, in the City's sole discretion, elect to purse any other remedies available at law and in equity upon an Event of Default by Developer. The provisions of this Section 10.2(B) shall not affect nor supersede the Right of Reversion as set forth in Section 10.2(A) above.

Article XI

GENERAL PROVISIONS

Section 11.1 **Notices**

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

shall be given by certified mail return receipt requested or by overnight delivery courier or such other means as may be agreed to by the parties in writing with a copy addressed to the party for whom it is intended as follows:

IF TO THE DEVELOPER:	Beulah Land Development Corporation, Inc. 772 Orchard Street New Haven, CT 06511 Attn: Darrell Brooks, COO
with a copy to:	Dixwell Housing Associates LLC c/o H.E.L.P. Development Corp. 115 East 13th Street New York, NY 10003
IF TO THE CITY:	City of New Haven Livable City Initiative 165 Church Street, 3rd Floor New Haven, CT 06510 Attention: Executive Director
with a copy to:	City of New Haven Corporation Counsel 165 Church Street, 4th Floor New Haven, CT 06510

Each party shall have the right to change the place or person or persons to whom 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 by certified mail, if notice is sent by certified mail; or (iii) when agreed to by the parties in writing.

Section 11.2 Superseded Agreements

The parties agree that this Agreement shall supersede the LDA with respect to all rights and obligations of the City and the Developer concerning the New Project Parcels.

Section 11.3 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 11.4 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 11.5 Successors

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

Section 11.6 Severability

If any term, provision or condition contained in this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such

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

Section 11.7 Governing Law and Jurisdiction

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

Section 11.8 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 11.9 Consents

Where consents, approval, waiver or acceptance of work by the City are 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 Executive Director of the Livable City Initiative on behalf of the City and shall be granted (or denied) within the Review Period, unless otherwise specified in this Agreement.

Section 11.10 Amendments

The City and the Developer agree that the provisions of this Agreement may be modified or amended, in whole or in part, only by written document executed by the City and the Developer.

Section 11.11 Counterparts

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

Section 11.12 Term

The term of this Agreement for all provisions of this Agreement shall be twenty (20) years from the Project Completion Date.

Section 11.13 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, limited liability company, 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 successors or assigns with respect to any other obligations arising under the terms and conditions of this Agreement.

Section 11.14 Gender

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

Section 11.15 Estoppel Certificate

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

Section 11.16 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 11.17 Survival

All provisions and conditions of this Agreement which by their terms are to be performed or satisfied prior to the transfer of the New Project Parcel, 316 Dixwell Avenue to the Developer shall be deemed to be satisfied upon the transfer of the New Project Parcel, 316 Dixwell Avenue to the Developer and shall not survive the transfer, unless the parties have in writing, waived or extended the performance or satisfaction of the

provisions or conditions until after the transfer of the New Project Parcel, 316 Dixwell Avenue or unless such provisions expressly provide for their survival after the transfer. All other provisions shall survive the transfer of 316 Dixwell 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 with respect to the New Project Parcels, as evidenced by the issuance of a Certificate of Completions for such New Project Parcels.

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

In the presence of:

CITY OF NEW HAVEN

_____

By_____
Justin Elicker
Its Mayor
Duly Authorized to act herein

_____

Approved as to form and correctness:

_____

In the presence of:

BEULAH LAND DEVELOPMENT CORPORATION, INC.

_____

By_____
Darrell Brooks
Its Chief Operating Officer
Duly Authorized to act herein

_____

STATE OF CONNECTICUT)
ss: New Haven
COUNTY OF NEW HAVEN)

On this _____ day of _____, 2020, before me, the undersigned officer, personally appeared Justin Elicker, who acknowledged himself to be the Mayor of the CITY OF NEW HAVEN, and that as such Mayor, being authorized so to do by the Board of Alders, executed the foregoing instrument for the purposes contained therein, by signing on behalf of the CITY OF NEW HAVEN, said act being the free act and deed of the CITY OF NEW HAVEN and his free act and deed as such Mayor.

_____

Notary Public
Commission expires:
Commissioner of the Superior Court

STATE OF CONNECTICUT)
ss: New Haven
COUNTY OF NEW HAVEN)

On this _____ day of _____, 2020, before me, the undersigned officer, personally appeared, who acknowledged him/herself to be the _____ of BEULAH LAND DEVELOPMENT CORPORATION, INC., a non-profit corporation, and that as such _____, being authorized so to do, executed the foregoing instrument for the purposes contained therein, by signing on behalf of BEULAH LAND DEVELOPMENT CORPORATION, INC., said act being the free act and deed of said corporation and his/her free act and deed as such _____.

_____

Notary Public
Commission expires:
Commissioner of the Superior Court

Exhibit A-1

316 Dixwell Avenue

Real property in the City of New Haven, County of New Haven, State of Connecticut, described as follows:

All that certain piece or parcel of land known as 316 Dixwell Avenue, situated in the Town of New Haven, County of New Haven, and State of Connecticut, in the Dixwell Redevelopment and Renewal Area, containing 9,845 square feet, more or less, and bounded and described as follows:

Commencing at a point in the Westerly street line of Dixwell Avenue, said point being South 11 degrees, 15 minutes 43 seconds East 272.47 feet from the interaction of the Southerly street line of Munson Street and the westerly street line of Dixwell Avenue when Measured along said Westerly street line of Dixwell Avenue, said point further having coordinates North 178,062.37 and East 549,109.14 on the Connecticut Coordinate System;

Thence running South 11 degrees 15 minutes 43 seconds East 72.00 feet along the Westerly street line of Dixwell Avenue;

Thence running South 75 degrees 02 minutes 00 seconds West 133.27 feet along land now or formerly of Henry and Minnie Moore;

Thence running North 4 degrees 30 minutes 35 seconds West 69.36 feet along land now or formerly of Anna Monterosso;

Thence running South 8 degrees 40 minutes 06 seconds East 6.00 feet along land now or formerly of Letha Allen;

Thence running North 0 degrees 55 minutes 46 seconds East 15.21 feet along land now or formerly of Letha Allen;

Thence running North 83 degrees 51 minutes 35 seconds East 116.72 feet along land now or formerly of Paul and Lucille Worthy at a point place of commencement.

Exhibit A-2

340 Dixwell Avenue

Real property in the City of New Haven, County of New Haven, State of Connecticut, described as follows:

ALL THAT CERTAIN PIECE OR PARCEL OF LAND, WITH THE BUILDINGS AND ALL OTHER IMPROVEMENTS THEREON KNOWN AS 340 DIXWELL AVENUE, AKA 328-350 DIXWELL AVENUE AND 304 MUNSON AND AKA 330-340 DIXWELL AVENUE, SITUATED IN THE TOWN OF NEW HAVEN, COUNTY OF NEW HAVEN AND STATE OF CONNECTICUT, BOUNDED AND DESCRIBED AS FOLLOWS:
BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHERLY LINE OF MUNSON STREET AND THE WESTERLY LINE OF DIXWELL AVENUE; THENCE RUNNING SOUTH 19 DEGREES, 05 MINUTES, 10 SECONDS EAST ALONG THE WESTERLY LINE OF DIXWELL AVENUE, 236.42 FEET TO THE NORTHERLY LINE OF LAND FORMERLY OF CHARLES T. WARNER, MORE LATELY SUPPOSED TO BELONG TO PETER YOUNG; THENCE TURNING AN INTERIOR ANGLE OF 85 DEGREES, 24 MINUTES, 21 SECONDS AND RUNNING SOUTH 75 DEGREES, 30 MINUTES, 29 SECONDS WEST IN PART ALONG THE NORTHERLY LINE OF THE LAND SUPPOSED TO BELONG TO PETER YOUNG, AND IN PART ALONG THE NORTHERLY LINE OF LAND FORMERLY OF MICHAEL HAGGERTY, MORE LATELY OF LETHA ALLEN, IN ALL, 178.80 FEET TO THE EASTERLY LINE OF ORCHARD STREET; THENCE TURNING AN INTERIOR ANGLE OF 65 DEGREES, 29 MINUTES, 06 SECONDS AND RUNNING NORTH 10 DEGREES, 01 MINUTES, 23 SECONDS EAST ALONG THE EASTERLY LINE OF ORCHARD STREET, 282.40 FEET TO THE SOUTHERLY LINE OF MUNSON STREET; THENCE TURNING AN INTERIOR ANGLE OF 88 DEGREES, 00 MINUTES, 44 SECONDS AND RUNNING SOUTH 77 DEGREES, 59 MINUTES, 21 SECONDS EAST 47.70 FEET ALONG THE SOUTHERLY LINE OF MUNSON STREET TO THE WESTERLY LINE OF DIXWELL AVENUE AND THE POINT AND PLACE OF BEGINNING BY A LINE WHICH FORMS AN INTERIOR ANGLE OF 120 DEGREES, 05 MINUTES, 49 SECONDS WITH HE FIRST COURSE HEREIN DESCRIBED.

REFERENCE IS HEREIN MADE TO MAP ENTITLED "PLAN OF LAND IN NEW HAVEN, CONN.;

SURVEYED FOR MOBIL OIL CORP., SCALE 1" = 20' DATE JULY 20, 1968 SURVEYED BY KRATZERT & JONES."

Exhibit "A-3"

783 Orchard Avenue

Real property in the City of New Haven, County of New Haven, State of Connecticut, described as follows:

All that certain piece or parcel of land, with all the improvements thereon situated in the Town of New Haven, in the County of New Haven and State of Connecticut, known as 783 Orchard Street, and bounded and described as follows:

WESTERLY: by Orchard Street 32 1/2 feet, more or less;

NORTHERLY: by land now or formerly of Henry F. English and Benjamin R. English, 69 feet, more or less;

EASTERLY: in part by land now or in part by land now or formerly of Christian Kramer, and in part by land now or formerly of Mary A. Grogan, in all, 50 feet, more or less by a straight line;

SOUTHERLY: in part by land now or t, in part by land now or formerly of Mary A. Grogan and in part by land now or formerly of Anna Monterosso, in all, 77 feet, more or less by a straight line.

Exhibit "B"

Project Schedule/Milestones

CHFA Application Submission	11/12/2020
100% Construction Drawings	8/1/2021
Financing Closing and 316 Acquisition	9/1/2021
Construction Commencement	9/15/2021
Construction Completion	12/31/2022
100% Lease-up	6/30/2023

EXHIBIT C

ORDER OF THE BOARD OF ALDERS

LAND DISPOSITION AGREEMENT

BETWEEN

THE CITY OF NEW HAVEN

AND

BEULAH LAND DEVELOPMENT CORP.

FOR

THE CONVEYANCE OF REAL PROPERTY

KNOWN AS 340 DIXWELL AVENUE AKA 328-350 DIXWELL AVENUE AND 304 MUNSON STREET AND 330-340 DIXWELL AVENUE, NEW HAVEN, CONNECTICUT

A05-0563

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THIS AGREEMENT, made and entered into as of the 12th day of January, 2007, by and between the **CITY OF NEW HAVEN,** a municipal corporation existing under the laws of the State of Connecticut (the "City") and **BEULAH LAND DEVELOPMENT CORP.**, 774 Orchard Street, New Haven, Connecticut 06511 (the "Developer") witnesseth as follows:

ARTICLE I

DEFINITIONS

Section 1: Defined Terms

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

(a) "City" shall mean the City of New Haven, Connecticut, organized and existing by virtue of an act of the General Assembly of the State of Connecticut and shall include any successor in interest whether by operation of law, or otherwise.

(b) "Developer" shall mean Beulah Land Development Corp. and shall include any successors or permitted assigns whether by operation of law or otherwise, but shall not mean mortgagees.

(c) "Property" shall mean that property located at 340 Dixwell Avenue aka 328-350 Dixwell Avenue and 304 Munson Street and 330-340 Dixwell Avenue, New Haven, Connecticut, 06511 more particularly described on Exhibit A attached hereto and made a part of hereof.

(d) "Development" or "Rehabilitation" shall mean the work, repair, renovation, remodeling, construction, and /or reconstruction necessary or desirable to bring the Property into conformance with this Agreement, more particularly described in the Specifications and Floor Plans as hereinafter defined, said work to be performed on the Property by the Developer.

(e) "Specifications" shall mean a description of the improvements to be performed on the Property by the Developer.

(f) "Floor Plans" shall mean drawings and outlines indicating the general plan of the development or rehabilitation to be performed on the Property by the Developer.

ARTICLE II

CONVEYANCE OF THE PROPERTY

Section 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 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 further acknowledges that the City has requested Developer to inspect fully the Property and investigate all matters relevant thereto, including without limitation, environmental matters and to rely solely upon the results of Developer's own inspections or other information obtained or otherwise available to the Developer, rather than any information that may have been provided by the City to the Developer. Except as set forth in this Agreement, the Developer has not relied upon any statement or representation made by the City regarding the environmental condition of the Property. The City has made available to Developer information and reports relating to the environmental condition of the Property in order to facilitate the transfer of the Property. The City has relied on such information and reports for its own use but makes no representations or warranties with respect to the accuracy or completeness, methodology of preparation or otherwise concerning the contents of such reports. The City makes no representations or warranties as to whether the Property contains, without limitation, asbestos, or harmful or toxic substances, or hazardous wastes or oil or petroleum as defined in C.G.S. §22a-448, or pertaining to the extent, location or nature of same. Further, to the extent that the City has provided to the Developer information from any inspections, engineering or environmental reports concerning asbestos or harmful or toxic substances, the City makes no representations or warranties with respect to the accuracy or completeness, methodology of preparation or otherwise concerning the contents of such reports. Except to the extent expressly set forth herein to the contrary, the Developer agrees to accept the Property in its "AS IS" and "WITH ALL FAULTS" condition existing at the time of the execution of this Agreement.

Section 3: Title and Instrument of Conveyance

The sale and conveyance shall be of fee simple title to the Property and shall be by quit claim deed (the "Deed") containing no restrictions other than those contained in applicable codes, ordinances and regulations and the applicable restrictions of this Agreement. The Deed

shall be made expressly subject to the terms and provisions of this Agreement, which shall survive delivery of the Deed.

Section 4: Purchase Price

(a) The Purchase Price for the Property shall be One Hundred Thousand Dollars and Zero Cents ($100,000.00). The City hereby acknowledges receipt of a deposit of Ten Thousand Dollars and Zero Cents ($10,000.00) and the balance of Ninety Thousand Dollars and Zero Cents ($90,000.00) shall be paid to the City, upon its delivery of the Deed to the Developer.

(b) The payment shall be in certified check drawn to the order of the "Treasurer, City of New Haven."

Section 5: Time of Sale and Conveyance

The delivery of the Deed shall take place concurrently herewith, at a closing to be held at the offices of the Livable City Initiative Bureau of the City or at such other place as the City may designate.

Section 6: Real Estate Conveyance Tax and other Closing Costs

The Developer shall pay the cost of obtaining any policy of title insurance, the cost, if any, of the real estate conveyance tax, and all other closing costs including the cost of recording this Agreement.

Section 7: Real Property Tax Adjustments

(a) With respect to any tax period during which the City, on the one hand, and the Developer on the other hand, both had title to and possession of the Property or any portion thereof, real estate taxes allocable to the Property or such portion thereof, as the case may be, for such period shall be prorated between the City on the one hand, and the Developer on the other hand, in proportion to the respective periods of ownership of title and possession by (i) the City and their predecessors in title on the one hand, and (ii) the Developer on the other hand, provided in no event shall the Developer be liable for any real estate taxes levied on the Property prior to the assessment date immediately preceding the date on which the Deed is recorded in the Land Records of the City.

(b) In the event the Property or any portion thereof is exempt from taxation on the assessment date next preceding the date on which the Deed is recorded in the Land Records of the City by virtue of title being vested in the City or other tax exempt entity, the Developer shall be liable for taxes pursuant to Section 12-81a of the General Statutes of the State of Connecticut, and shall make payment of such taxes in accordance therewith (or, if such section shall be held invalid, unenforceable or unconstitutional by a court of competent jurisdiction, the Developer shall make a payment in lieu of taxes, to the City, based upon the assessed value of the

Property or portion thereof, at the tax rate then prevailing in the City, for that portion of the tax year during which the Developer had title and possession).

(c) Any amounts owed by the Developer under this Article shall be due and payable in the manner and at the time set forth in Section 12-81a of the General Statutes of the State of Connecticut.

ARTICLE III

RESTRICTIONS AND CONTROLS UPON DEVELOPMENT

Section 1: Use

(a) The Developer covenants on behalf of itself and its successors and assigns, that the building to be rehabilitated/constructed pursuant to the Construction Work (as defined in Article III, Section 3(b)) shall be used and maintained for commercial purposes, more specifically as a pharmacy in accordance with all zoning and other regulations.

(b) Without prejudice to the provisions of Article III, Section 1(a), Developer covenants on behalf of itself and its successors and assigns, and every successor in interest to the Property, or any part thereof, that the Developer and such successors and assigns shall:

(i) not discriminate upon the basis of race, color, religion, gender, sexual orientation, national origin, marital status or physical disability in the sale, lease, or rental or in the use and occupancy of the Property or any improvements erected or to be erected thereon, or any part thereof;

(ii) comply with all federal, state and local laws in effect from time to time, prohibiting discrimination or segregation by reason of race, religion, color, gender, sexual orientation, national origin, marital status or physical disability in the sale, lease, or rental or in the use and occupancy of the Property or any improvements erected thereon or to be erected thereon, or any part thereof; and,

(iii) include in all advertising (including signs) for the sale or rental of the Property:

a) the legend "An Open Occupancy Building" in type or lettering of easily legible size and design; and

b) a statement to the effect (i) that the Property is open to all persons without discrimination on the basis of race, religion, color, gender, sexual orientation, national origin, marital status or physical disability and (ii) that there shall be no

discrimination in public access and use of the Property to the extent that it is open to the public.

(iv) comply with all requirements set forth in Article III, Section 8 below at Developer's sole cost and expense, including without limitation assuming all responsibilities, costs, expenses and liabilities for compliance with requirements of the Connecticut Transfer Act, C.G.S. Section 22a-134 *et seq.* (as amended), and any other federal, state or local environmental law; release the City from any and all claims Developer may have now or in the future arising out of the environmental condition of the Property or related to the Developer's use of, or any negligence, omission or act whatsoever by Payne Environmental or any other Licensed Environmental Professional or Consultant, to complete its obligations under Article III, Section 8 below; and, to indemnify, defend and hold the City harmless from any and all claims, damages, losses, liabilities and expenses (including without limitation reasonable attorney's fees) including any third party claims and any claims related to Developer's use of, or any negligence, omission or act whatsoever by, Payne Environmental or any other Licensed Environmental Professional or Consultant, to complete its obligations under Article III, Section 8, incurred at anytime in connection with or arising out of the environmental condition of the Property.

Section 2: **Covenants; Binding Upon Successors in Interest**

(a) It is intended and agreed (and the Deed shall expressly so provide) that the agreements and covenants contained in Article III, Section 1 shall be covenants running with the Property, and that unless otherwise specifically provided for in this Agreement, they shall, in any event, and without regard to technical classification or designation, legal or otherwise, be binding to the fullest extent permitted by law and equity for the benefit of the City, and shall be enforceable by the City against the Developer and every successor in interest to the Property, or any part thereof, or any interest therein, and any party in possession or occupancy of the Property or any part thereof. It is further intended and agreed that the agreements and covenants provided in Article III, Section 1 shall remain in effect without limitation as to time, and that such agreements and covenants shall be binding on the Developer itself, each successor in interest to the Property, and every part thereof, and each party in possession or occupancy, respectively, for such period as such successor or party shall have title to, or an interest in, or possession or occupancy of, the Property or any part thereof.

(b) In amplification of, and not in restriction of, the provisions of Article III, Section 2(a), it is intended and agreed that the City and its successors and assigns shall be deemed beneficiaries of the agreements and covenants provided in Article III, Section 1, both for

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

Section 3: **Construction Work**

(a) Prior to the commencement of construction and prior to applying for a Building Permit, the Developer shall submit the following:

(i) An application for Site Plan approval to City Plan Department illustrating the provision of site layout, parking, landscaping, lighting, signage, floor plans and elevations depicting exterior materials.

(ii) Floor Plans and Specifications of proposed rehabilitation work to the City Plan Department for its approval and review, with a copy to the Office of the Corporation Counsel.

(b) The Developer shall carry out that construction work at the Property (the Construction Work") as shown in the Floor Plans and Specifications.

(c) No sign shall be erected or placed upon the exterior of any building on the Property nor on any portion of the Property which is not enclosed within a building unless the character, design, size, shape, form and lighting of such sign shall have been approved by the City in writing. Notwithstanding, the Redeveloper shall be permitted to post a sign in accordance with the requirements of C.G.S. Section 22a-134 or other applicable law, by providing prior notice to the City of said sign.

(d) No materials, objects or other things shall be stored or kept on any portion of the Property unless such materials, objects or other things are:

(i) enclosed in a building or screened from view by an architectural screen of not less than eight (8) feet in height around the boundary of the Property; and

(ii) unless the plan for and design of such screening shall have been approved by the City in writing.

(e) The Developer shall not apply for a Building Permit or Certificate of Occupancy for the Construction Work (nor shall a Building Permit or Certificate of Occupancy be issued by the Building Inspector of the City of New Haven with respect to the Construction Work) without the prior certification of the City that the work to be done (in the case of a Building Permit) or allegedly completed (in the case of a Certificate of Occupancy) is in accordance with the Floor Plans and Specifications, and otherwise in accordance with the provisions of this Agreement. Any Building Permit or Certificate of Occupancy issued without such prior certifications shall be void and of no effect for the purposes of this Agreement.

(f) No portion of the Construction Work shall be carried out unless such work conforms in every material respect with the Floor Plans and Specifications, except and only to the extent that material modifications to the Floor Plans and Specifications have been requested by the Developer in writing and have been approved in writing by the City after having obtained the written opinion of the City Plan Commission. In the event that the Developer shall fail to comply with the foregoing requirements, the City may within a reasonable time after discovery thereof by the City direct in writing that the Developer so modify or reconstruct such portion or portions of the Construction Work as is not in conformance with the Floor Plans and Specifications (or any approved modifications thereof) so as to bring it into conformance therewith. The Developer shall promptly comply with any such directive, and shall not proceed further with the Construction Work until any such directive is complied with. In the event the Developer, within a reasonable time, fails to comply with such a directive, the City may cause to be performed such modification or reconstruction and charge all costs therefor to the Developer. The Developer agrees to pay all such costs without objection, provided that the City shall cause such modification or reconstruction to be performed only after the Developer has been notified in writing of the City's intention to cause such work to be performed and has failed for thirty (30) days after the receipt of such notice to comply with the City's prior directive to modify or reconstruct. In the alternative, the City may (in the sole and absolute discretion of the City) apply to a court of competent jurisdiction for an order of specific performance compelling the Developer to comply with such prior directive and the Developer agrees not to contest such an application.

Section 4: **Time for Commencement and Completion of Construction**

(a) The Developer shall promptly commence the environmental testing and cleanup and then the construction of the Improvements and shall prosecute diligently the completion of said construction, provided that in any event construction shall commence within one hundred eighty (180) days from the date of the Deed and shall be completed not later than twelve (12) months from the commencement of the Construction Work or eighteen (18) months from delivery of the Deed, whichever occurs first.

(b) Upon written request by the City (not more often then every three (3) months the Developer shall report to the City, in writing and in such detail as may reasonably be required by the City, as to the actual progress of the Developer with respect to the Construction Work.

(c) The time for the commencing or completing of the Construction Work shall be extended for any period equal to the period of any delay resulting from causes not due to the fault or neglect of the Developer, including (but not limited to) the following: any delay in the delivery of the Deed and/or delivery of possession of the Property to the Developer pursuant to this Agreement; strikes or other labor disputes; shortages of materials not within the reasonable control of the Developer; acts of God or of the public enemy; fires; floods; epidemics; quarantine restrictions; freight embargoes; and weather conditions of unusual severity such as hurricanes, tornadoes, cyclones and other extreme conditions. In the event of the occurrence of any of the foregoing, the time for the performance of the Developer's obligations to commence and complete the Construction Work shall be extended for such period as the City shall reasonably find to be the period of the enforced delay, provided that the Developer shall, within ten (10) days after the beginning of any such enforced delay, notify the City in writing of the same. In calculating the length of the delay, the City shall consider not only the actual work stoppages but also the consequential delays resulting from such stoppages.

Section 5: Equal Employment Opportunity and Affirmative Action

The Developer, on behalf of himself/herself/itself and his/her/its successors and assigns, agrees that during the carrying out of the Construction Work:

(a) the Developer will comply, and will require his/her/its contractors and subcontractors to comply, with the provisions of Executive Order 11246, as amended, and the regulations issued thereunder, 41 C.F.R. 60-4, and Attachments A, B, and C thereto, all of which are incorporated herein by reference and made a part hereof as though fully set forth herein.

(b) the Developer will comply, and will require his/her/its contractors and subcontractors to comply, with the provisions of Article II of Chapter 12½ of the Code of Ordinances of the City of New Haven entitled "Hiring Practices in the Construction Trades", including, without limitation, the pre-award conference, which Article is incorporated herein by reference and is on file as a public Ordinance in the office of the Clerk of the City, and with the minority and female utilization goals issued by the City's Commission on Equal Opportunities pursuant to the Ordinance, which goals are incorporated herein by reference and made a part hereof as though set out in full.

Section 6: Prompt Payment of Obligations

The Developer shall pay, or cause to be paid, promptly all money due and legally owing to all persons doing any work or furnishing any materials or supplies to the Developer or any of its contractors or subcontractors in connection with the carrying out of the Construction Work.

Section 7: Access to the Property by City Personnel

During the carrying out of the Construction Work, the Developer shall provide free and unobstructed access to the Property to any authorized representative of the City for the purpose of inspecting the same.

Section 8: Environmental Work

(a) The Developer acknowledges that the City retained Advanced Environmental Interface, Inc.("AEI") to document and oversee the closure and removal of four out-of-service/orphan underground storage tanks ("USTs") in December 2005 at the Property. The City retained Earth Technologies, LLC to perform the tank and associated removal activities. Three gasoline USTs, one waste oil UST and an additional heating oil UST (discovered) were removed from the Property. AEI conducted post removal soil sampling, prepared and submitted a Spill Report to DEP OCSRD, prepared and had the City submit a Revised UST Notification Form EPHM-6 as required by state and federal law, and prepared an Underground Storage Tank Closure Report dated February 2006 (the "Closure Report"), which Closure Report contains the required closure documentation as required by state and federal law and identified hereunder. AEI submitted to the City, a Proposed Workscope for Subsurface Investigation to Assess Soil and Potential Ground Water Impacts from the UST removal, dated March 2, 2006 (the "Workscope"), a copy of which has been provided to the Developer for informational purposes only. The Developer acknowledges that the City has provided it with a copy of the Closure Report and Workscope and that it has reviewed the Closure Report and the Workscope and accepts the Property in its "As Is" condition, without any representation or warranty by the City. The Developer agrees to maintain a copy of the Closure Report at the Property at all times as required by state and federal law.

(b) The Developer acknowledges that the City has provided the Developer with copies of a Supplemental Phase II Environmental Site Assessment on the Property dated August 2006, conducted for the City by Payne Environmental and a Remedial Estimate on the Property, prepared for the City by Payne Environmental, dated September 7, 2006, for informational purposes only. The Developer acknowledges that it has reviewed the Supplemental Phase II and Remedial Estimate Letter and accepts the Property in its "As Is" condition, without any representation or warranty by the City.

(c) The parties acknowledge that the Property may be an "establishment" as such term is defined under the Connecticut Transfer Act, C.G.S. Section 22a-134 *et seq.*, (as amended) (the "Act") and the Developer, at its sole cost and expense, agrees to be the Certifying Party, as such term is defined in the Act, and be responsible for compliance with any and all aspects and requirements of the Act now or in the future, including without limitation the preparation and filing of all documents and forms required by the Act upon closing, payment of all filing fees, conducting any and all investigations, remediation, and post-remediation monitoring as may be required for either the Department of Environmental Protection to review and approve, or a Licensed Environmental Professional to verify that the remediation has been conducted in accordance with the Connecticut Remediation Standard Regulations, RCSA Sections 22a-133k-1 through 22a-133k-3 (including any applicable draft revisions thereto) (RSRs), in compliance with the Act including any additional activities required as part of an audit hereof; (2) the City shall sign any forms required under the Act solely in its capacity as Transferor of the Property; and, (3) the Developer agrees to defend and hold the City harmless from any and all claims, damages, losses, liabilities and expenses incurred in connection with any of Developer's obligations hereunder. The Developer agrees to provide the City with copies of

the Transfer Act Form, Environmental Condition Assessment Form and any other submittals, prior to execution of this LDA for the City's review. The terms and provisions of this paragraph shall survive Closing hereunder.

(d) Upon execution of this LDA, the Developer shall provide the City with evidence that it has retained an LEP for the tasks identified hereunder and further provide the City with a reliance letter from the Developer's LEP to the City for all of the work contemplated under this Section 8. Notwithstanding anything to the contrary, in the event that the Developer shall retain Payne Environmental as its LEP hereunder to conduct its Environmental Work contemplated hereunder, the City agrees that the Developer can obtain a reliance letter between Payne Environmental and the Developer to be able to rely only on the data generated as part of the Supplemental Phase II for the sole purpose of completing the Developer's Environmental Work as such term is defined hereunder, but all other opinions, conclusions, estimates or other work product conducted by Payne Environmental for the Developer shall be separate and independent from any such opinions, conclusions, estimates or other work product conducted by Payne on behalf of the City prior to execution of the LDA, which opinions, conclusions, estimates or other work product shall remain subject to all of the conditions and restrictions contained in Article II Section 2, hereinabove, and nothing contained herein shall in any way or manner alter, change or modify the Developer's agreement hereunder to accept the Property in its "AS IS" and "WITH ALL FAULTS" condition existing at the time of the execution of this Agreement . The Developer agrees to conduct its investigation and remediation contemplated hereunder (the "Environmental Work") by no later than eighteen (18) months from delivery of the Deed, except for compliance, post-remediation, or natural attenuation groundwater monitoring which the Developer's LEP and/or DEP has determined requires greater than eighteen (18) months to complete , and to promptly provide the City, as said documents are completed, with copies of any proposed site investigation workscopes, site investigation reports, and a final remedial action report and/or LEP Verifications and/or DEP approvals indicating completion of the investigation and remediation contemplated hereunder in compliance with the RSRs, RCSA Section 22a-449(d)-106 of the Underground Storage Tank Regulations, and the Act prepared by the Developer's LEP. The Developer hereby waives and releases the City from any present or future claims, including without limitation any third party claims, arising from or relating to the presence or alleged presence of, without limitation, asbestos, or harmful or toxic substances, or hazardous substances or hazardous wastes or oil or petroleum as defined under federal or state law, in, on, under or emanating from or about the Property including, without limitation, any claims under or on account of (i) any negligence, omission or any other act conducted by Payne Environmental at the Property prior to or after execution of the LDA, either on behalf of the City or the Developer; (ii) the Environmental Work including without limitation the removal of certain Underground Storage Tanks and associated structures and any associated remediation or contamination resulting there from as provided hereunder and in compliance with the Act (iii) any federal, state or local law, ordinance, rule or regulation, now or hereafter in effect, that deals with or otherwise in any manner relates to, environmental matters of any kind including without limitation the Act and the Underground Storage Tank Regulations, or (iv) this Agreement or the common law. The terms and provisions of this Section 8 shall survive the issuance of a Certificate of Completion pursuant to Section 9 below.

(e) The Developer shall indemnify, defend and hold harmless the City, its agents, servants and employees from and against all claims, damages, losses and expenses including, but not limited to, reasonable attorney's fees arising out of, or resulting directly or indirectly from the performance of any obligations or failure to perform any obligations of the Developer and/or, its representatives or their agents or employees, and/or Payne Environmental set forth under this Agreement, including in particular (but without limitation) with respect to the Developer's obligation to carry out the Environmental Work pursuant to this Section 8.

Section 9: Certificate of Completion

Promptly after completion of the Construction Work (as evidenced by the issuance of a Certificate of Occupancy in conformance with the provisions of Article III, Section 3(e) above) and the Environmental Work, the City will furnish the Developer with a certificate of completion so certifying (the "Certificate of Completion"). Such Certificate of Completion issued by the City shall be a conclusive determination of the satisfaction by the Developer of its obligations with respect to the carrying out of the Construction Work, and shall be in such form as will enable it to be recorded in the Land Records of the City.

ARTICLE IV

TRANSFER AND MORTGAGE OF INTEREST IN PROPERTY

Section 1: Transfer of Interest in Property by the Developer

(a) The Developer represents and agrees that it is purchasing the Property for the purposes herein described, and not for speculation in land holding. The Developer further recognizes that, in view of:

(i) the importance of the rehabilitation of the Property to the general welfare of the community;

(ii) the substantial financing and other public aid that has been made available by the federal and local governments for the purpose of making such rehabilitation possible; and

(iii) the fact that any change in the identity of the Developer or the interest held in the Property by the Developer, or any other act or transaction involving or resulting in a significant change in the ownership of the Property or control thereof is for practical purposes a transfer or disposition of an interest in the Property,

the qualifications and identity of the Developer are of particular concern to the community and to the City. The Developer further recognizes that it is because of the Developer's qualifications and identity that the City is entering into this Agreement and, in so doing, is relying upon the

Developer for the faithful performance of all of the undertakings and covenants set forth in this Agreement.

(b) The Developer agrees that, prior to the completion of the Construction Work, it will not assign or otherwise transfer its interest in the Property or in this Agreement, unless:

(i) the transferee or transferees shall have been approved as such, in writing, by the City in the exercise of the City's sole and absolute discretion; and

(ii) the transferee or transferees, by valid instrument in writing, addressed to the City, shall have expressly assumed, for themselves and their successors and assigns, all obligations of the Developer under this Agreement, including (without limitation) the obligation to commence and complete the Construction Work, provided that it is hereby expressly agreed, stipulated and understood that any transfer made without such provisions shall in no event be deemed to relieve the transferee or transferees from compliance with all of the obligations set forth in this Agreement and that in no event shall any transfer be deemed to relieve the Developer of its obligations hereunder unless expressly consented to in writing by the City.

(c) Any assignment of any interest in the Property and/or in this Agreement contrary to the provisions of this Article IV shall be an event of default entitling the City to exercise any and all of the various rights and remedies available to it, whether set forth herein or existing at law or in equity.

(d) After the completion of the Construction Work, the Developer may assign or otherwise transfer any portion of the Property or any portion of the Developer's interest therein.

Section 2: Mortgage of Property by the Developer

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 that the Developer shall give prior written notice to the City of the existence of any such mortgage, the amount thereof and the name and address of the mortgagee. The Developer reserves the right to record an Environmental Land Use Restriction and seek subordination agreements relative thereto, with regards to the Property subject to the provisions of this Agreement and the Developer shall provide prior written notice to the City of the existence of any such restriction including all relevant documentation.

ARTICLE V

OPERATION, MAINTENANCE AND ENFORCING COMPLIANCE

Section 1: Operation and Maintenance of the Property

During the period the Developer holds title to the Property, it shall keep the Property and all improvements thereat, 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 2: Reimbursement of the City

The Developer shall pay all costs and expenses, 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. 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 VI

INSURANCE

Section 1: Insurance Coverage

(a) Until completion of the Construction Work, the Developer shall keep all improvements at the Property (including, without limitation, the Construction Work) and all insurable personal property at the Property (together the "Insurable Property") insured against fire and against such additional risks with respect to which insurance is commonly carried on similar property (real and personal) in the City. Such insurance shall be in amounts sufficient to comply with the co-insurance clause applicable to the location and character of the Insurable Property and, in any event, shall be in amounts not less than eighty percent (80%) of the current replacement value of the same. All such insurance shall be by standard policies, obtained from financially sound and responsible insurance companies authorized to do business in the state of Connecticut and shall have attached thereto a clause making the loss payable to the Developer, the mortgagee, and (subject to the rights of the mortgagee) the City, as their respective interests may appear.

(b) Each insurance policy shall be written to become effective at the time the Developer becomes subject to the risk or hazard covered thereby, and shall be continued in full force and effect for such a period as the Developer is subject to such risk or hazard.

(c) All such insurance policies and renewals thereof or certificates of such policies and renewals shall be filed with the City.

Section 2: Non-Cancellation Clause

Prior to the completion of the Construction Work, all insurance policies shall provide that they cannot be canceled or terminated unless and until at least thirty (30) days prior written notice of such imminent cancellation or termination has been delivered to the City.

Section 3: The City May Procure Insurance

In the event that, at any time prior to the completion of the Construction Work, the Developer refuses, neglects or fails to secure and maintain in full force and effect any or all of the insurance required pursuant to this Agreement, the City, at its option, may procure or renew such insurance. All amounts of money paid therefor by the City shall be reimbursed by the Developer to the City with interest thereon at the rate of ten percent (10%) per annum from the date of payment by the City to the date of reimbursement by the Developer. The City shall notify the Developer in writing of the date, purposes, and amounts of any such payments made by it.

Section 4: Repair and Reconstruction

(a) At any time prior to the completion of the Construction Work, whenever any improvement, or any part thereof, constructed on the Property shall have been damaged or destroyed, the Developer shall proceed promptly to establish and collect all valid claims which may have arisen against any insurer based upon any such damage or destruction. All proceeds of any such claims and any other monies provided for the reconstruction, restoration or repair of such improvement, shall be deposited in a separate account. Such insurance money so collected shall be used and expended for the purpose of fully repairing or reconstructing the improvement or improvements which have been destroyed or damaged to a condition at least comparable to that existing at the time of such damage or destruction to the extent that the insurance money may permit. If there is any excess of insurance proceeds after such repair or reconstruction has been fully completed, the Developer shall retain such excess.

(b) The Developer shall commence any repair or reconstruction pursuant to this Article VI, Section 4 within six (6) months of receiving the insurance proceeds with respect thereto (or, if the conditions then prevailing require a longer period, such longer period as the City shall specify in writing), and shall well and diligently and with prompt dispatch prosecute the same, so as to fully complete such reconstruction or repair within twelve (12) months from the commencement thereof.

(c) In the event that the Developer and the City determine and agree with, where required, the approval of any mortgages that any improvement, or any part thereof, constructed on the Property shall have been damaged or destroyed to the extent that it is not feasible to repair, reconstruct or restore the improvement in whole or in part, then the proceeds of any claim against insurers or others arising out of such damage or destruction, to the extent not used for such repair, reconstruction, or restoration, shall be used to satisfy any outstanding claims

against the Property, as the Developer may have incurred, and the Developer shall retain any surplus of such proceeds.

ARTICLE VII
DEFAULT

Section 1: Failure by the Developer to Purchase the Property

In the event that the Developer shall fail to complete the purchase of the Property, the City may, upon such failure and in its sole discretion, terminate all of its obligations to the Developer hereunder by written notice to the Developer, but without prejudice to any rights or remedies available to the City arising from such default.

Section 2: Default Subsequent to Purchase of the Property

(a) In the event the Developer shall fail to perform its obligations under this Agreement with respect to commencement and completion of the Construction Work or with respect to the transfer or encumbrance of the Developer's interest in the Property, the City shall notify the Developer of such default, in writing. Such writing may be recorded in the Land Records of the City. After the Developer's receipt of any such notice, the Developer shall thereupon have sixty (60) days within which to cure a transfer or encumbrance of the Developer's interest in the Property or to cure a default with respect to the failure to comply with the occupancy requirement, ninety (90) days within which to cure a failure to commence the Construction Work and one hundred eighty (180) days within which to cure a failure to complete the Construction Work. If the Developer does not cure any such default within the period specified (or such longer period as may be agreed in writing between the City and the Developer), and upon failure of any mortgagee to exercise its right to cure as provided in Section 4 of this Article, then, the City may, in its sole and absolute discretion, deliver written notice to the Developer that all estate and title conveyed pursuant to this Agreement and the Deed has automatically reverted to and become fully and completely revested in the City, so that the City (or its successors or assigns) shall be entitled to and may of right enter upon and take possession of the Property, provided that any such revesting of title in the City shall always be subject to and shall not defeat or render invalid the lien of any existing mortgages with respect to the Property (or any part thereof) permitted by this Agreement. The Developer shall execute such documentation as the City may reasonably consider necessary or desirable in order to most effectively record such reverter, but failure to do so shall not affect the City's rights hereunder. Said rights of the City shall be in addition to, and not in lieu of, any and all other rights of the City arising out of such default, as described in Article VII, Section 5.

(b) In the event of any other default by the Developer, the City shall deliver written notice thereof to the Developer, and the Developer shall have a period of thirty (30) days from the date of such notice to cure such default or, if such default is not susceptible of cure within such period, then such longer period as may be reasonably required and consented to by the City, which consent shall not unreasonably be withheld, provided that the Developer shall

commence the cure within such thirty (30) day period and thereafter diligently complete the same.

(c) In the event that title to the Property shall revert to the City in accordance with the provisions of this Agreement, such title shall be subject to such liens and security interests permitted by this Agreement or arising by operation of law and, upon revesting of title in the City, the City shall make reasonable efforts to resell the Property to a party or parties qualified and willing to assume the obligations of rehabilitation, or to another qualified buyer, consistent with the objectives underlying this Agreement. The City shall apply the proceeds of such resale, if any, first to taxes and other liens or charges afforded priority by statute, as such shall have attached prior to such resale, and then toward satisfaction of security interests permitted by this Agreement or which arise by operation of law. Any such liens or permitted security interests not satisfied from the proceeds of a resale of the Property, as aforesaid, shall remain as encumbrances on the Property.

Section 3: Notice of Default to Mortgagees

In the event the City gives notice to the Developer of any default under this Agreement, the City shall furnish a copy of such notice to any mortgagees of which the City has notice.

Section 4: Mortgagee May Cure Default by the Developer

(a) In the event that the Developer fails to cure any default of which notice is duly delivered, then any mortgagee of the Property (or part thereof) may cure any such failure upon giving written notice of an intention to do so to the City within fifteen (15) days after the expiration of the applicable cure period, and may add the cost thereof to the amount then secured by the mortgagee and the City shall accept such cure as if it were carried out by the Developer.

(b) In the event that a mortgagee elects to cure a default occasioned by the failure of the Developer to commence or complete the Construction Work in accordance with this Agreement, then, upon completion of such Construction Work, such curing mortgagee shall be entitled to a Certificate of Completion in accordance with the provisions of Article III, Section 8 of this Agreement. Upon issuance of such Certificate of Completion, all rights of the City arising as a result of such default by the Developer shall terminate.

Section 5: Remedies

It is understood by the parties hereto that notwithstanding the specific rights and remedies set forth in Article VII, Section 2(a) above (and without prejudice thereto) in the event of any uncured default by the Developer hereunder, the City may institute such actions and proceedings, (including proceedings to compel specific performance and payment of damages, expenses and costs) as the City may consider appropriate, whether such right or remedy is expressly set forth herein or exists at law or in equity.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

Section 1: Obligations and Rights and Remedies Cumulative

(a) The respective obligations of the City and the Developer pursuant to this Agreement shall be cumulative and the reference to any one obligation shall not be construed as a limitation with respect to any other obligation.

(b) The respective rights and remedies of the City and the Developer, whether provided by this Agreement or by law, shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude the exercise, at the same or at different times, of any other rights or remedies.

Section 2: Finality of Approvals

Where, pursuant to this Agreement, the Developer submits any Floor Plans or other documents to the City, and the City approves, the same, such determination shall be conclusively deemed to be a final determination by the City unless expressly stated otherwise.

Section 3: Invalidity

If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the requirements of applicable laws.

Section 4: Covenants to be Enforceable by the City

Any covenant contained in this Agreement and/or the Deed which is expressed to be a covenant running with the Property shall be enforceable by the City whether or not the City retains title to an interest in or possession of any land to which such covenant relates. The provisions of this Article VIII, Section 4 shall apply to this entire Agreement and, with respect to Article III, Section 2 above, is intended to augment (and not restrict) the provisions therein contained.

Section 5: 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 or for any

amount which may become due to the Developer or to its successor or with respect to any other obligations arising under the terms and conditions of this Agreement.

Section 6: Agreement Binding on Successors and Assigns

The provisions of this Agreement shall be binding upon, and shall inure to the benefit of, the respective successors and assigns of the City and the Developer.

Section 7: Waivers

Any right or remedy which the City or the Developer may have under this Agreement may be waived in writing by the City or by the Developer (as the case may be) without execution of a new or supplementary agreement, but any such waiver shall not affect any other rights not specifically waived, or be deemed a waiver of such right in the future, unless the writing shall expressly so state.

Section 8: Amendments

This Agreement may be amended only by written document, duly executed by both the City and the Developer.

Section 9: Approvals and Notices

(c) Except as otherwise specifically provided in this Agreement, whenever under this Agreement approvals, authorizations, determinations, satisfactions, or waivers are required or permitted, such approvals, authorizations, determinations, satisfactions or waivers shall be effective and valid only when given in writing signed by a duly authorized officer of the City or the Developer, and sent by registered or certified mail, return receipt requested, postage prepaid to the principal address of the party to whom it is directed, which are as follows:

Developer: Beulah Land Development Corp.
774 Orchard Street
New Haven, Connecticut 06511

City: Livable City Initiative Bureau
City Of New Haven
165 Church Street
New Haven, Connecticut 06510
Deputy Director, Property Services Division

(d) The parties shall promptly notify each other of any change in their respective addresses from those set forth above.

Section 10: Matters to be Disregarded

The titles of the several Articles and Sections of this Agreement are inserted for convenience only and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

Section 11: Entire Agreement Contained in this Instrument

The terms and conditions of this Agreement, including the Schedules hereto, shall constitute all of the terms and conditions that shall be required by the parties of one another without reference to any other instrument.

Section 12: Obligations to Continue

Except as to obligations to be performed at or prior to delivery of the Deed, the provisions of this Agreement shall survive delivery of the Deed.

Section 13: Gender

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

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

Signed, sealed and delivered
in the presence of:

Patricia A Lawlor

Approved as to form
and correctness:

John R. Ward
Deputy Corporation Counsel

CITY OF NEW HAVEN

By: _____
John DeStefano, Jr.
Its Mayor
Duly Authorized to act herein

Signed, sealed and delivered
in the presence of:

Scott A. Hunter

Michael J. Pinto

BEULAH LAND DEVELOPMENT CORPORATION

BY: _____
Theodore L. Brooks
Its President /CEO
Duly Authorized to act herein

STATE OF CONNECTICUT)
) ss.: New Haven 1/11, 2007
COUNTY OF NEW HAVEN)

Personally appeared, John DeStefano, Jr., 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.

Patricia A. Lawlor
~~Commissioner of the Superior Court~~/
Notary Public
My Commission Expires: 12/31/05

PATRICIA A. LAWLOR
NOTARY PUBLIC
MY COMMISSION EXPIRES DEC 31 2010

STATE OF CONNECTICUT)
) ss.: New Haven , 2007
COUNTY OF NEW HAVEN)

Personally appeared, Theodore L. Brooks, President/CEO of the Beulah Land Development Corp., one of the signers and sealers of the foregoing instrument, and acknowledged the same to be the free act and deed of the Beulah Land Development Corp., and of himself as President and CEO thereof, before me.

_____
Commissioner of the Superior Court/
~~Notary Public~~ Scott A. Hunter
~~My Commission Expires:~~

Revised 11/16/01

Schedule "A"

All that certain piece or parcel of land, with the buildings and all other improvements thereon known as 340 Dixwell Avenue, aka 328-350 Dixwell Avenue and 304 Munson and aka 330-340 Dixwell Avenue, situated in the Town of New Haven, County of New Haven and State of Connecticut, bounded and described as follows:

Beginning at the point of intersection of the southerly line of Munson Street and the Westerly line of Dixwell Avenue; thence running South 19 degrees, 05 minutes, 10 seconds East along the westerly line of Dixwell Avenue, 236.42 feet to the northerly line of land formerly of Charles T. Warner, more lately supposed to belong to Peter Young; thence turning an interior angle of 85 degrees, 24 minutes, 21 seconds and running South 75 degrees, 30 minutes, 29 seconds West in part along the northerly line of land supposed to belong to Peter Young, and in part along the northerly line of land formerly of Michael Haggerty, more lately of Letha Allen, in all, 178.80 feet to the easterly line of Orchard Street; thence turning an interior angle of 65 degrees, 29 minutes, 06 seconds and running North 10 degrees, 01 minutes, 23 seconds East along the easterly line of Orchard Street, 282.40 feet to the southerly line of Munson Street; thence turning an interior angle of 88 degrees, 00 minutes, 44 seconds and running South 77 degrees, 59 minutes, 21 seconds East 47.70 feet along the southerly line of Munson Street to the westerly line of Dixwell Avenue and the point and place of beginning by a line which forms an interior angle of 120 degrees, 05 minutes, 49 seconds with the first course herein described.

Reference is herein made to map entitled "Plan of land in New Haven, Conn.; surveyed for Mobil Oil Corp., scale 1" = 20' date July 20, 1968 surveyed by Kratzert & Jones."

Together with all the right, title and interest, if any, in and all land lying in all streets and highways abutting on or appurtenant to said premises.

Subject to all covenants, conditions, restrictions, easements, provisions, exceptions, and reservations, if any, contained in former instruments of records.

CITY CLERK

07 JAN 17 AM 9:13

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