

EXHIBIT A TO ORDER

EASEMENT AGREEMENT A-21

THIS EASEMENT AGREEMENT (this “Agreement”) is made this ____ day of _____, 2021 effective as of _____ (the “Effective Date”) by 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, CT 06510 (the “Grantor”) in favor of **44 OLIVE STREET GROUND OWNER LLC**, a Delaware limited liability company with an address of 1114 Avenue of the Americas, 39th Floor, New York, NY.10036 (the “Grantee”).

RECITALS:

WHEREAS, Grantee is the owner of a certain piece or parcel of land known as 44 Olive Street, New Haven, CT (“Grantee’s Premises”), being more particularly described in **Schedule 1** attached hereto and made a part hereof and shown on a map entitled “Easement Agreement” attached hereto as **Exhibit A** and made a part hereof; and

WHEREAS, Grantee is in the process of redeveloping the Grantee’s Premises into a mixed-use development to be known as Olive & Wooster and has hired a general contractor to construct the improvements thereon (the “Improvements”); and

WHEREAS, Grantor is the owner of a certain parcel of land located between the western border of Grantee’s Premises and the public right-of-way known as Union Street, which parcel of land is more particularly described in **Schedule 2** attached hereto and made a part hereof and depicted as the “Easement Area” on **Exhibit A**; and

WHEREAS, Site Plan Approval was granted by the City of New Haven City Plan Commission to develop Grantee’s Premises into a mixed-use development, which approval, as amended, requires Grantee to construct certain landscaping, lighting, benches, and decorative concrete improvements in the Easement Area as shown on **Exhibit A** and to maintain the landscaping, benches and decorative concrete improvements; and

WHEREAS, Grantor desires to grant Grantee and its successors and assigns a nonexclusive easement to enter the Easement Area for the purpose of constructing the landscaping, lighting, benches, and decorative concrete improvements in the Easement Area and for maintaining the landscaping, benches and decorative concrete improvements.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, Grantor as the owner of the Easement Area

does hereby grant, declare and establish an easement in favor of Grantee and its successors and assigns as follows:

1. Grantor hereby grants to Grantee and its successors and assigns in perpetuity a nonexclusive easement to enter the Easement Area for the purpose of constructing, erecting and/or installing thereon lighting fixtures, as approved by the City of New Haven City Plan Department in New Haven City Plan Commission Administrative Site Plan Review 1502—03A1 dated August 15, 2018 and for the purpose of constructing, erecting and/or installing thereon benches, decorative concrete and landscaping as approved in the City of New Haven City Plan Commission Report 1502-03 dated February 18, 2015.
2. Grantor further grants to Grantee and its successors and assigns in perpetuity a nonexclusive easement to enter the Easement Area for the purpose of maintaining, repairing, reconstructing, and replacing the approved benches, decorative concrete and landscaping and for the purpose of removing snow and ice from the Easement Area, which Grantee shall be responsible for properly doing at its own expense. Grantee agrees to maintain the approved benches, decorative concrete and landscaping in accordance with the provisions of New Haven City Plan Commission Site Plan Review Report 1502-03 recorded in Volume 9255 at Page 273 of the New Haven Land Records as modified by New Haven City Plan Commission Administrative Site Plan Review 1502-03A1 recorded in Volume 9760 at Page 292 of the New Haven Land Records.
3. Grantor, at its own expense, shall be responsible for properly maintaining, repairing, reconstructing, and repairing the light fixtures installed in the Easement Area and for otherwise maintaining the Easement Area as an area open for public use consistent with that of a public sidewalk.
4. The easements created herein shall be permanent and shall run with, be appurtenant to and bind the Grantor's Premises and shall be binding upon and inure to the benefit of and be enforceable by Grantee and its successors and assigns and by Grantor and its successors and assigns.
5. Grantee hereby agrees to defend, indemnify, and hold harmless Grantor and Grantor's officers, agents, servants, and employees, from and against any and all actions, lawsuits, claims, damages, losses, judgments, liens, costs, expenses, and reasonable counsel and consultant fees sustained by any person or entity ("Claims"), to the extent such Claims are caused by the negligent acts, errors, or omissions or the intentional misconduct of Grantee, their respective employees, agents, or subcontractors, directly arising out of, or in any way in connection with, Grantee's activities in the Easement Area pursuant to this Agreement, but Grantee shall have no responsibility for any pre-existing environmental conditions on the Easement Area except that no indemnification shall apply to the extent that any such claims arise out of Grantor's or its agents', officers' contractors', subcontractors', or employees' own negligence or intentional misconduct

6. Grantor hereby agrees to defend, indemnify, and hold harmless Grantee and Grantee's officers, agents, servants, and employees, from and against any and all actions, lawsuits, claims, damages, losses, judgments, liens, costs, expenses, and reasonable counsel and consultant fees sustained by any person or entity ("Claims"), to the extent such Claims are caused by the negligent acts, errors, or omissions or the intentional misconduct of Grantor their respective employees, agents, or subcontractors, directly arising out of, or in any way in connection with, Grantor's activities in the Easement Area pursuant to this Agreement, but Grantor shall have no responsibility for any pre-existing environmental conditions on the Easement Area except that no indemnification shall apply to the extent that any such Claims arise out of Grantee's or its agents' officers' contractors', subcontractors', or employees' own negligence or intentional misconduct..
7. Grantee shall purchase from and maintain, with a company or companies with an A- or greater A.M. Best & Co. rating acceptable to Licensor and lawfully ~~authorized~~ permitted to do business in Connecticut, such insurance as will protect Grantor and Grantee from claims which may arise out of or result from use of the Easement Area by Grantee and/or all those who may use or enter upon the Easement Area under this Agreement for which Grantee may be legally liable, whether such use be by Grantee, subcontractor, or a sub-tier contractor, or by anyone directly employed by either of them, or by the invitees or permittees or any such entity but not by the general public or Grantee's tenants and their respective invitees or permittees.
8. Grantee and Grantor shall not act nor permit any actions by their respective employees, agents or contractors on or at the Easement Area which are or may be contrary to law or which will invalidate or be in conflict with any policy of insurance at any time carried by or for the benefit of Grantee with respect to the Easement Area; the Grantee and Grantor cognizing that the Easement Area shall be open to the public.
9. Without prejudice to the generality of Section 8 above, Grantee shall obtain and maintain Commercial General Liability coverage including:
 - a. a combined Bodily Injury and Property Damage Limit of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the General Aggregate.
 - b. Fire Damage Legal Liability Limit of no less than ~~One Hundred~~ Fifty Thousand Dollars (\$40050,000).
 - c. Medical Payments Liability Limit of not less than Ten Thousand Dollars (\$10,000).

This limit of liability can be provided by a combination of an Umbrella and/or Excess Liability policy(ies).

Coverage must include the following endorsements:

- (i) Blanket Contractual Liability for liability assumed under this Agreement;
- (ii) Severability of Interests; and
- (iii) that the insurance provided is to be primary for Grantor, and all other indemnities named under Section 5 of this Agreement.

10. Grantee and Grantor or their respective general contractors must carry Workers' Compensation insurance as follows:

- (i) Coverage A – Statutory Benefits Liability imposed by the Workers' Compensation and/or Occupational disease statute of the State of Connecticut and any other governmental authority having jurisdiction.
- (ii) Coverage B – Employer's Liability – Limits of not less than One Hundred Thousand Dollars (\$100,000) per accident; One Hundred Thousand Dollars (\$100,000) bodily injury per disease/employee; Five Hundred Thousand Dollars (\$500,000) policy by disease.
- (iii) Thirty (30) day written notice of non-renewal.

11. The insurance required pursuant to these Sections 7-10 shall be written for not less than the limits of liability specified herein or as required by law, whichever coverage is greater. Insurance coverage written on an occurrence basis shall be maintained without interruption throughout from the Effective Date.

12. For all policies required hereunder, Grantee hereby waives (or shall cause to be waived) subrogation against Grantor and all other indemnitees pursuant to Section 5 of this Agreement, and shall name Grantor as Certificate Holder and, except for Worker's Compensation, an additional insured. Further, each such policy shall provide that the insurance company will endeavor to give a minimum of thirty (30) days' written notice to Grantor prior to any modification or cancellation (except for reason of non-payment of premium which shall be ten (10) days' notice) of any such insurance coverage and such notice shall be directed to Grantor in accordance with the notice provisions of the Agreement. Grantee shall furnish Licensors with the insurance policy(ies) and corresponding Certificate(s) of Insurance evidencing that it has complied with the obligations of Sections 7-12 of this Agreement on an arrival basis, including, but not limited to, requirements for (1) waiver of subrogation, (2) additional insured (with the exception of Worker's Compensation coverage), (3) notice of cancellation, and (4) Certificate Holder information. Certificates of Insurance acceptable to Grantor shall be filed with Grantor prior

to the Effective Date and thereafter upon renewal or replacement of each required policy of insurance.

13. Grantee shall notify Grantor whenever fifty percent (50%) of the aggregate limits required hereunder are eroded during the required coverage period. If the aggregate limit is eroded for the full limit, Grantee agrees to reinstate or purchase additional limits to meet the minimum limit requirements stated herein. Any premium for such shall be paid by Grantee.
14. Unless requested otherwise by Grantor, Grantee and Grantee's insurer shall waive governmental immunity as defense and shall not use the defense of governmental immunity in the adjustment of claims or in the defense of any suit brought against Licensor.
15. Any deductible or self-insured retention must be declared to and approved by Grantor. All deductibles or self-insured retentions are the sole responsibility of Grantee to pay and/or to indemnify Grantor.
16. The failure of Grantor or Grantee to enforce or insist upon the performance of any of the covenants and conditions contained in this Agreement shall not be construed as a waiver of any other covenant or condition, or as a waiver of any future right to enforce or insist upon the performance of the covenant or condition in question.
17. Any notices required to be given hereunder shall be deemed duly given if mailed in any post office by first class mail or email addressed to the persons listed below at the following addresses, or such other address as the parties may by written notice provide:

If to Grantor:

City of New Haven
Office of the Economic Development Administrator
165 Church Street
New Haven, CT 06510
Attn: Michael Piscitelli, Economic Development Administrator
MPiscite@newhavenct.gov

If to Grantee:

44 Olive Street Ground Owner LLC
1114 Avenue of the Americas, 39th Floor
New York, NY 10036
Attn: Omri Sachs
omri@adamamericare.com

Each party shall have the right to change the place or person or persons to which notices, requests, demands, and communications hereunder shall be sent or delivered

by delivering a notice to the other parties in the manner required above. Notice shall be deemed to have been given or made upon (i) the next business day after delivery to a regularly scheduled overnight delivery carrier with delivery fees prepaid, if notice is sent by overnight carrier; (ii) receipt if notice is sent by first class mail or email; or (iii) when agreed to by the parties in writing.

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

19. 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.

20. Grantor and Grantee agree that the provisions of this Agreement may be modified or amended, in whole or in part, only by written document executed by Grantor and Grantee.

21. 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.

22. The parties agree, 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.

IN WITNESS WHEREOF, the parties have executed two (2) counterparts of this Agreement as of the day and year first above written.

WITNESS:

CITY OF NEW HAVEN

BY: _____
Justin Elicker
Its Mayor

Approved as to Form and Correctness:

John R. Ward
Special Counsel to Economic Development

WITNESS:

44 OLIVE STREET GROUND
OWNER LLC

BY: _____
Authorized Signatory

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

On this _____ day of _____, 20__, 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)
)
COUNTY OF) ss:

On this _____ day of _____, 20__, before me, the undersigned officer, personally appeared _____, who acknowledged himself/herself to be the _____ and that as such being authorized so to do, executed the foregoing instrument for the purposes contained therein, by signing on behalf of 44 OLIVE STREET GROUND LESSOR LLC, as his/her free act and deed.

Notary Public
Commission expires:

SCHEDULE 1

LANGAN

Technical Excellence
Practical Experience
Client Responsiveness

2 October 2020
140107701

**WRITTEN DESCRIPTION
44 OLIVE STREET
NEW HAVEN, CONNECTICUT**

Beginning at a point in the westerly side of Olive Street, said point being the southeast corner of land now or formerly of Spinnaker Residential LLC and the northeast corner of herein described parcel;

Thence S 07° 52' 48" W along the westerly side of Olive Street a distance of 200.22' to a point;

Thence N 86° 30' 35" W in part bounded southerly by land now or formerly of Fair Properties, LLC and in part along the northerly side of Fair Street a distance of 387.72' to a point;

Thence N 86° 30' 15" W along the northerly side of Fair Street a distance of 18.20' to a point;

Thence N 85° 41' 02" W along the northerly side of Fair Street a distance of 57.80' to a point,

Thence N 22° 50' 42" E bounded westerly by land now or formerly of the City of New Haven a distance of 344.91' to a point;

Thence S 67° 21' 53" E bounded northerly by land now or formerly of Spinnaker Residential LLC a distance of 386.10' to the point of beginning.

Containing approximately 113,046 square feet (2.59518 acres).

SCHEDULE 2



Technical Excellence
Practical Experience
Client Responsiveness

October 1, 2020
140107701

**WRITTEN DESCRIPTION
44 OLIVE STREET – EASEMENT AREA
NEW HAVEN, CONNECTICUT**

Beginning at a point on the southerly line of land now or formerly of Spinnaker Residential LLC, said point being the northwest corner of land now or formerly of 44 Olive Street Ground Owner LLC, also being the northeast corner of herein described easement;

Thence S 22° 50' 42" W bounded easterly by land now or formerly of 44 Olive Street Ground Owner LLC a distance of 344.91' to a point on the northerly right of way line of Fair Street

Thence S 86° 14' 02" E along the northerly right of way line of Fair Street a distance of 173.15' to a point;

Thence S 03° 38' 42" W through the right of way of Fair Street a distance of 4.28' to a point;

Thence N 86° 24' 13" W through the right of way of Fair Street a distance of 200.22' to a point of curvature;

Thence along a curve through the right of way of Fair Street and Union Street curving to the right, with an arc length of 62.45', a radius of 29.40', an included angle of 121° 41' 48" and a chord length of 51.35', bearing N 25° 45' 02" W to a point;

Thence N 35° 05' 51" E through the right of way of Union Street a distance of 6.23' to a point of curvature;

Thence along a curve through the right of way of Union Street curving to the right, with an arc length of 1.88', a radius of 2.40', an included angle of 45° 00' 00" and a chord length of 1.84', bearing N 57° 35' 51" E to a point;

Thence N 80° 05' 51" E through the right of way of Union Street a distance of 8.83' to a point of curvature;

Thence along a curve through the right of way of Union Street curving to the left, with an arc length of 2.83', a radius of 3.60', an included angle of 45° 00' 00" and a chord length of 2.76', bearing N 57° 35' 51" E to a point;

Thence N 34° 36' 33" E through the right of way of Union Street a distance of 60.45' to a point;

Thence N 34° 05' 49" E through the right of way of Union Street a distance of 51.28' to a point;

Thence N 33° 12' 10" E through the right of way of Union Street a distance of 26.89' to a point;

SCHEDULE 2 (CONTINUED)

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Thence N 30° 05' 22" E through the right of way of Union Street a distance of 27.28' to a point;

Thence N 26° 20' 20" E through the right of way of Union Street a distance of 27.42' to a point;

Thence N 22° 42' 57" E through the right of way of Union Street a distance of 26.38' to a point of curvature;

Thence along a curve through the right of way of Union Street curving to the left, with an arc length of 2.83', a radius of 3.60', an included angle of 45° 00' 00" and a chord length of 2.76', bearing N 01° 55' 48" W to a point;

Thence N 24° 25' 48" W through the right of way of Union Street a distance of 8.83' to a point of curvature;

Thence along a curve through the right of way of Union Street curving to the right, with an arc length of 1.88', a radius of 2.40', an included angle of 45° 00' 00" and a chord length of 1.84', bearing N 01° 55' 48" W to a point;

Thence N 20° 34' 12" E through the right of way of Union Street a distance of 12.74' to a point of curvature;

Thence along a curve through the right of way of Union Street curving to the right, with an arc length of 1.85', a radius of 2.40', an included angle of 44° 05' 04" and a chord length of 1.80', bearing N 42° 36' 44" E to a point;

Thence N 64° 39' 16" E through the right of way of Union Street a distance of 8.26' to a point of curvature;

Thence along a curve through the right of way of Union Street curving to the left, with an arc length of 2.80', a radius of 3.60', an included angle of 44° 32' 42" and a chord length of 2.73', bearing N 42° 22' 55" E to a point;

Thence N 20° 02' 47" E through the right of way of Union Street a distance of 59.67' to a point;

Thence S 67° 26' 53" E through the right of way of Union Street and along the northerly line of land now or formerly of the City of New Haven a distance of 23.72' to a point of beginning;

Containing approximately 12,425 square feet (0.285 acres).

LANGAN

EXHIBIT A

