

DEVELOPMENT AND LAND DISPOSITION AGREEMENT

BETWEEN

THE CITY OF NEW HAVEN

AND

ALPHA ACQUISITIONS LLC

(793 STATE STREET)

THIS DEVELOPMENT AND LAND DISPOSITION AGREEMENT (this “Agreement”) is entered into as of the ____ day of _____, 2021 (the “Effective Date”), by and between the **CITY OF NEW HAVEN**, a municipal corporation organized and existing under the laws of the State of Connecticut, with a mailing address of 165 Church Street, New Haven, Connecticut 06510 (the “City”), and **ALPHA ACQUISITIONS LLC** a limited liability company organized and existing under the laws of the State of Connecticut, with a mailing address of 185 Bartlett Drive Madison, CT 06443 (the “Developer”).

BACKGROUND

(i) In 1961 and 1962 the majority of Pulaski Street and the property surrounding it were acquired by the State of Connecticut (the “State”) for the purpose of construction of Interstate 91. A small portion of Pulaski Street was not taken by the State, nor was it ever formally discontinued at that time. However pursuant to an Order of the Board of Alders dated _____ (the “Order”) the remaining portion of Pulaski Street has been discontinued with the result that the portion of the former Pulaski Street adjacent to the New Haven Parking Authority Lot # ____ (as shown on Exhibit A) is owned by the City (the “City Property”) and that portion of the former Pulaski Street adjacent to 793 State Street is owned by the Developer, as the owner of 793 State Street (the “Developer Property”).

(ii) The City and the Developer have agreed to enter into this Agreement pursuant to which the City will convey the City Property to the Developer, so that the Developer may develop 793 State Street, the Developer Property and the City Property (together, the “Property”) as one project in accordance with the terms and conditions set forth in this Agreement.

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 a limitation of the generality of any description preceding such term, and for the 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 below, or as otherwise defined in this Agreement.

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

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

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

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

(J) Any time limits which are imposed upon the performance of the parties hereto by the terms of this Agreement shall, if applicable, be subject to adjustment for Excusable Delays.

(K) Whenever this Agreement requires that a party make a payment to another party or to a third party, such payment shall be made in a timely manner and on a prompt basis.

(L) Reference to obligations surviving in any section of this Agreement does not imply either survivability or nonsurvivability of obligations of another section.

Section 1.2 Definitions

For the purposes of this Agreement:

(A) “Affiliate” means any entity which is fifty-one (51%) percent or more owned or controlled by the Developer, or an entity under which the Developer and such entity are under common ownership or control.

(B) “Agreement” means the four corners of this instrument, and includes any Exhibits or other appendices or schedules incorporated by reference, as well as any amendments, modifications, or supplements which may be executed by the City and the

Developer subsequent to the effective date of this instrument, but does not include any agreement, understanding or other arrangement between the City and the Developer.

(C) “Certificate of Completion” means a certificate issued in accordance with Section 7.2 of this Agreement.

(D) “City Default” means an event of default by the City as more particularly set forth in Section 8.2 of this Agreement.

(E) “City Design Reviewers” means the City’s Economic Development Administrator and City Plan Director, or, in the event either or both of such positions are vacant, such appropriate parties as have been designated by the Mayor of the City.

(F) “Compulsory Taxable PILOT Period” means the period commencing on the Effective Date and ending on the date that is thirty (30) years from the Effective Date.

(G) “Conditions Precedent” shall have the meaning set forth in Section 2.2 of this Agreement.

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

(I) “Developer” has the meaning ascribed to in the preamble of this Agreement and shall include any permitted successor or assignee of the Developer.

(J) “Developer Improvements” means the improvements to be carried out by the Developer on the Property, as set forth in **Exhibit C** of this Agreement, but does not include site preparation.

(K) “Dispute Resolution Procedure” means the procedure for resolving disputes as set forth in Section 8.4 of this Agreement.

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

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

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

(O) “Event of Default” means default by the City or the Developer as more particularly described in Article VIII of this Agreement.

(P) “Existing Environmental Conditions” means any Environmental Conditions at the City Property existing on the date of this Agreement.

(Q) “Excusable Delay” means any delay in any party’s performance under this Agreement caused by any “Force Majeure” event.

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

(S) “General Statutes” means the General Statutes of the State of Connecticut.

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

(U) “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.

(V) “Legal Requirements” means any and all judicial decisions, orders, injunctions, writs, and any and all statutes, laws, rulings, rules, regulations, permits,

certificates, or ordinances of any Governmental Authority in any way applicable to the Project including, but not limited to, any of the aforesaid dealing with the zoning, subdivision, design, construction, ownership, use, leasing, handicapped accessibility, maintenance, service, operation, sale, exchange, or condition of the Project.

(W) “Permitted Encumbrances” means those utility easements shown on the map entitled: _____ and shown on Exhibit F attached hereto and made a part hereof.

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

(Y) “Project” means the entire development at or of the Property contemplated by this Agreement, meaning the carrying out and completion of the Developer Improvements in accordance with all of the terms and conditions of this Agreement.

(Z) “Project Completion Date” shall mean the scheduled date for completion of the Project in accordance with the Project Schedule.

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

(BB) “Property” shall have the meaning ascribed in the Recitals of this Agreement.

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

(DD) “State” means the State of Connecticut.

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

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

ARTICLE II

CITY PROPERTY

Section 2.1 **Conveyance of City Property**

(A) At such time as the Conditions Precedent have been satisfied (and not less than thirty (30) days thereafter, subject to Force Majeure and/or title issues to be addressed in accordance with Section 2.5 below), the City shall convey the City Property to the Developer by quit claim deed (the “City Property Quit Claim Deed”). This Agreement shall be recorded on the Land Records of the City of New Haven immediately prior to the recording of the City Property Quit Claim Deed.

(B) The purchase price to be paid by the Developer to the City in return for the City Property Quit Claim Deed shall be the sum of **ELEVEN THOUSAND AND FOUR HUNDRED DOLLARS** (the “City Property Purchase Price”).

(C) The delivery of the City Property Quit Claim Deed shall take place at a closing to be held within thirty (30) days of satisfaction of the Conditions Precedent at such place and time as the City and the Developer shall agree (the “Closing”) or by such other methods as the parties may agree.

Section 2.2 Conditions Precedent

- (A) The conveyance of the City Property Quit Claim Deed shall be subject to the Developer having secured all land use approvals required in order to complete the Project with any applicable regulatory or statutory appeal periods having expired with no appeals, claims, or other such challenges having been asserted.

- (B) Notwithstanding the provisions of Section 2.2 (A) above, the City, acting through the City's Economic Development Administrator, may, in its sole and absolute discretion, waive some or all or any part of the Conditions Precedent.

- (C) In the event that the Conditions Precedent have not been satisfied or waived (as appropriate) within one (1) year of the Effective Date, then this Agreement shall be null and void and of no further effect, so that neither the City nor the Developer shall have any further rights, duties, or responsibilities hereunder.

Section 2.3 Indemnification

Upon conveyance of the City Property to the Developer, the Developer shall indemnify, release, defend, and hold harmless the City and its officials, employees, and agents from and against any and all liability, fines, suits, claims, demands, judgments, actions, or losses, penalties, damages, costs, and expenses of any kind or nature, including, without limitation, reasonable attorneys' fees made or asserted by anyone whomsoever, due to or arising out of any Environmental Conditions on the Property, unless the same shall arise out of the willfulness or gross negligence of the City and/or the City's employees or agents. In connection with this Section 2.3, if the Developer is required to defend any such action or proceeding to which action or proceeding the City is made a party, the City shall be entitled to appear, defend, or otherwise take part in the matter involved, at the City's election (and sole cost and expense), by counsel of its own choosing, provided that any such action does not limit or make void any liability of any insurer hereunder with respect to the claim or matter in question. This indemnification shall survive the expiration of the Term or any earlier termination of this Agreement.

Section 2.4 Easements and Licenses

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

B. The City hereby approves and authorizes the grant and the acceptance of any easements and licenses which may reasonably be needed by the Developer 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 City's Economic Development Administrator (which approval shall not be unreasonably withheld, conditioned or delayed), and further provided that with respect to any such easements or licenses granted by the City, the Developer shall comply with customary City requirements with respect to insurance.

C. In furtherance of Section 2.4(B) above, the City shall cooperate with the Developer in seeking to release the Permitted Encumbrances by way of a relocation of existing utilities (to the extent required).

Section 2.5 Title

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

Section 2.6 Real Estate Conveyance Tax and other Closing Costs

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

Section 2.7 **Assignment**

(A) Subject to the provisions of Section 2.8 below, it is hereby agreed and stipulated that prior to the issuance of the Certificate of Completion, the Developer shall not, without the City's written permission, transfer or assign any of its rights and/or obligations under this Agreement or in the Property other than to an Affiliate, which Affiliate shall agree in writing to assume all of the obligations of the Developer under this Agreement. For purposes hereof, a "transfer" shall include a transfer of more than fifty-one (51%) percent of the ownership interests in the Developer other than to an Affiliate. The Developer shall provide the City with five (5) days' prior written notice of its intent to make an assignment to an Affiliate and the name and address of such Affiliate, and upon such assignment, the written agreement of the Affiliate to assume all of the rights and obligations of the Developer under this Agreement associated with the rights so assigned.

(B) Any assignment of any interest in this Agreement or in the Property which is in contravention of the provisions of this Section 2.7 shall be a Developer Default.

(C) It is further agreed by the parties that following the issuance of the Certificate of Completion, the Developer may sell, assign or transfer any or all of its interest in this Agreement or in the Property to any purchaser, assignee or transferee free and clear of the requirements of Section 2.7(A) without restriction as to the consideration to be received and without the City's consent, provided that if such sale, assignment or transfer is made during the Compulsory Taxable PILOT Period, then the provisions of Section 4.4 of this Agreement shall apply, which provisions shall survive the issuance of a Certificate of Completion until the expiration of the Compulsory Taxable PILOT Period.

Section 2.8 Mortgage of the Property; Rights of a Mortgagee

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

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

respond shall be deemed to be a confirmation of the statements set forth hereinabove.

(C) In the event that, prior to the issuance of the Certificate of Completion, a Mortgagee shall succeed to the interests of the Developer hereunder or with respect to all or any portion of the Property, or both, the time permitted for a Mortgagee to complete construction of any portion of the Developer Improvements shall be extended as long as the Mortgagee is diligently and continuously working towards the completion of the construction, and shall include any time necessary for the Mortgagee to exercise its rights under the Mortgage and to obtain possession of that portion of the Property which is encumbered by Mortgagee's mortgage(s).

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

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

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

(E) In the event a Mortgagee completes the construction of the Project in accordance with this Agreement (other than time limitations), the Mortgagee may sell, assign, or transfer fee simple title to the Project to any purchaser, assignee, or transferee, without restriction as to the consideration to be received and without the City's consent, provided that if such sale, assignment, or transfer is prior to the issuance of a Certificate of Completion, the purchaser, assignee, or transferee shall expressly assume all of the covenants, agreements, and obligations under this Agreement applicable to the Property which have not yet been performed and which survive the issuance of the Certificate of Completion by written instrument reasonably satisfactory to the City and recorded in the New Haven Land Records.

(F) If a Mortgagee acquires the Developer's estate in any portion of the Property after issuance of a Certificate of Completion but during the Term, the Mortgagee, and any party acquiring title under the Mortgagee, shall be subject to the Compulsory Taxable PILOT Period and the use requirements with respect to the Property set forth in Section 3.1 below.

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

Section 2.9 Notice of Default to Mortgagee

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

(B) A Mortgagee shall have the right, but not the obligation, to perform any term, covenant, or condition and to remedy any default by the Developer under this Agreement within the applicable time period afforded the Developer, plus an additional

period of sixty (60) days, which period shall be reasonably extended if the default is not in the payment of money and a Mortgagee commences to remedy the default within such period and thereafter diligently prosecutes such remedy to completion.

(C) In the event that a Mortgagee elects to cure a default occasioned by the failure of the Developer to commence or complete the Developer Improvements in accordance with this Agreement, then, upon completion of the Developer Improvements, such curing Mortgagee or its permitted assignee shall be entitled to a Certificate of Completion in accordance with the provisions of Article 6 of this Agreement. Upon issuance of a Certificate of Completion, all rights of the City arising as a result of a Developer Default shall terminate.

ARTICLE III **THE DEVELOPER IMPROVEMENTS**

Section 3.1 **General**

Following the Closing, the Developer shall carry out the Developer Improvements in accordance with the Project Schedule, involving the construction of a new building, containing not more than sixteen (16) residential units and not more than 2,000 square feet of commercial/retail space on the first floor. The Developer shall, and does hereby, restrict TWO (2) residential units as affordable units to occupancy by tenants earning at or below 60 percent of Area Median Income as determined by the United States Department of Housing and Urban Development (as adjusted annually) for the New Haven-Meriden Metropolitan Statistical Area for a period of TEN (10) years from the date of first occupancy by an Income compliant tenant. Such affordable units shall be as follows: one (1) studio apartment located on the garden level and be not less than 452 square feet gross; one (1) single bedroom unit located on the garden level to be not less than 600 square feet gross and shall be accessible to persons with disabilities. The forgoing terms as more fully detailed below and herein shall be referred to as the “Affordable Units”. The designated commercial/retail space shall remain solely for occupancy by commercial/retail establishments during the Term, unless the City’s Economic Development Administrator shall, following application by the Developer, agree to waive said requirement, which waiver shall not be unreasonably withheld, in

the context of then prevailing commercial realities. The provisions of this Section 3.1 shall survive the issuance of a Certificate of Completion and shall continue until the expiration of the Term.

Section 3.2 **Project Schedule**

Following the Closing, the Developer will commence construction of the Project substantially in accordance with the Project Schedule, it being agreed and understood that the Project Schedule may require periodic modification to take account of unforeseen conditions and delays (including, without limitation, delays in the issuance of permits and approvals, or conditions both physical and economic, whether or not constituting Force Majeure for the purpose of this Agreement), and to the extent that the Developer provides the City with reasonable evidence of the need for such modifications, then the City and the Developer shall amend the Project Schedule in such manner as mutually acceptable. If the City and the Developer cannot agree upon such Project Schedule amendments, then such dispute shall be submitted to the Dispute Resolution Procedure.

Section 3.3 **Permits and Approvals**

Following the Closing, the Developer agrees that it shall apply expeditiously, and no later than the times set forth on the Project Schedule, for all permits and approvals required for the construction of the Developer Improvements and operation of the Project, which applications (including, without limitation, all applications with respect to zoning issues concerning the Project) shall be supported by the City to the extent legally permissible and reasonable. The Developer covenants to comply with all conditions and terms of all such permits and approvals.

Section 3.4 **Casualty**

In the event of any damage or destruction to any of the Developer Improvements prior to the issuance of a Certificate of Completion, 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 3.5 Prohibited Uses

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

Section 3.7 Screening

Until such time as the Project is completed, the Developer shall provide attractive fencing and wrapping around the Project, such fencing and wrapping to be subject to the reasonable approval of the City.

Section 3.8 Work Zone and Staging

Concurrent with the submission of its application for a building permit with respect to the Developer Improvements, the Developer shall submit to the City Plan Commission a work zone and staging plan (the “Work Zone and Staging Plan”) prepared and shaped by a licensed engineer for the Project consistent with conditions of approval of the City Plan Commission, which approval shall not be unreasonably withheld.

Section 3.9 Noise

The Developer shall be responsible for carrying out the Project in accordance with any and all applicable rules or regulations (federal, state or municipal) now or hereafter existing concerning maximum decibels permissible and/or hours of operation.

ARTICLE IV
COMMUNITY BENEFITS

Section 4.1 **Permanent Jobs**

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

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

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

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

(D) Sponsor at least one (1) job fair prior to the completion of the Developer Improvements connecting the Developer’s commercial or retail tenants with New Haven residents seeking jobs created as a result of the Project.

Section 4.2 **Workforce Requirements During Construction**

In carrying out the construction of the Project, the Developer shall comply with, or require that its general contractor for the Project comply with, all applicable City workforce

requirements now and hereafter existing, including, without limitation, all Equal Employment Opportunity requirements and in particular, during the construction of the Project, the Developer agrees that it shall:

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

(B) Comply with applicable law that prohibits discrimination against any employee or applicant for employment because of race, color, religion, gender, age, sexual orientation, gender identity or expression, marital status, physical disability or national origin. The Developer shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to race, color, religion, gender, age, sexual orientation, gender identity or expression, marital status, physical disability or national origin, and such action shall include, but not limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of any or other forms of compensation, and selection for training, including apprenticeship.

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

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

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

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

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

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

(iv) the Developer shall comply, as a United States employer, with the Immigration and Naturalization Service (INS)’s I-9 verification process, which

requires employers to confirm the employment eligibility of workers. The Developer acknowledges that an employer can be fined or otherwise sanctioned for knowingly hiring an undocumented worker; that the I-9 forms also provide employers with a “good faith” defense if they hire someone who later turns out to be working illegally in the United States; and that the Commission will monitor and report of any alleged violations of the I-9 verification process to the proper authorities.

(F) Acknowledge that a finding, as hereinafter provided, of a refusal by the Developer, or subcontractor, to comply with any portion of this program as herein stated and described may result in the refusal of all future bids for any public contract with the City of New Haven, or any of its departments or divisions, until such time as the Developer, or subcontractor, is in compliance with the provisions of this Agreement.

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

(H) Take such action, with respect to any subcontractor, as the City may direct as a means of enforcing the provisions of this Section 4.2, including penalties and sanctions for noncompliance and fines and penalties related to the rules of practice enforced by the City Commission on Equal Opportunities or the SBC office, whichever is applicable, provided however that, in the event the Developer becomes involved in or is threatened with litigation as a result of such direction by the City, the City will intervene in such litigation to the extent necessary to protect the interest of the City and to effectuate the City’s Equal Employment Opportunity program.

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

six and nine-tenths percent (6.9%) of hours to be worked by females; twenty-five percent (25%) of hours to be worked by residents of the City.

Section 4.3 Small Contractor Utilization Requirements During Construction

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

(A) Comply with all applicable SCDP requirements, including, without limitation, all small business construction initiative requirements and in particular, during the carrying out of the Project, the Developer agrees to require its construction manager, general contractors and its construction subcontractors to comply with the provisions of Ordinance Section 12 1/4-9, which require that every effort be aggressively made to meet the Utilization Goals for Minority Owned Business Enterprises (“MBE”) and Women Owned Business Enterprises (“WBE”) which are herein collectively referred to as the “MBE/WBE Utilization Goals”. Pursuant to Ordinance Sections 12 1/4-9(d) and (f), the Developer and its contractors shall be considered to have achieved compliance with the MBE Utilization Goals if work totaling the value of twenty-five (25%) percent of the total construction cost is awarded to MBEs/WBEs; in order to achieve MBE/WBE Utilization Goals, contracts may be awarded to MBE/WBE subcontractors and/or a contractor may enter into a joint venture or other commercially reasonable relationship that is satisfactory to the City with one or more MBEs/WBEs for the purpose of performing construction work on the Development. In the event that the Developer is unable to meet the MBE/WBE Utilization Goals, then the Developer shall document in an affidavit its good faith effort to achieve the MBE/WBE Utilization Goals, which efforts will be evaluated, verified and recognized by the City. The good faith efforts shall be determined using the following factors:

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

(ii) The submittal of scope specific subcontracting opportunities with SCDP for distribution; and

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

(iv) Verification of quotes received from subcontractors that were denied because of cost, quality, availability, etc.; and

(v) The Contractor identified economically feasible units of the project that could be contracted or subcontracted to certified minority- and women-owned business enterprises in order to increase the likelihood of participation by such enterprises on the contract; and

(vi) Conducting a networking event with owner, construction manager, and prime contractors; and

(vii) Holding individual trade meetings with construction manager, prime contractors and sub-contractors; and

(viii) The Contractor followed-up initial solicitations by contacting the enterprises to determine whether the enterprises were interested in such contracting or subcontracting opportunity; and

(B) 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 SCDP of all construction contracting opportunities for all Phases of the Project carried out by the Developer.

(C) 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.

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

(E) To cooperate with SCDP in its efforts to encourage mentoring programs and management, technical, and developmental training skills through sub-contracting opportunities.

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

(G) To take all reasonable corrective actions requested by the City to comply and to effectuate compliance with the requirements of this Section 4.3.

(H) Acknowledge that a finding, as hereinafter provided, of a refusal by the Developer, or subcontractor, to comply with any portion of this program as herein stated and described, may subject the offending party to any or all of the following penalty: the refusal of all future bids for any public contract with the City of New Haven, or any of its departments or divisions, until such time as the Developer, or subcontractor, is in compliance with the provisions of this Agreement.

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

(J) Take such action, with respect to any subcontractor, as the City may direct as a means of enforcing the provisions of this Section 4.3, including such penalties and sanctions for noncompliance as set forth in this Section 4.3 as related to the rules of practice enforced by SCDP provided however that, in the event the Developer becomes involved in or is threatened with litigation as a result of such direction by the City, the City will intervene in such litigation to the extent necessary to protect the interest of the City, and provided further that any such action required to be taken by the Developer shall be at no cost to the Developer. During the pendency of any legal proceedings the Developer shall continue to move forward on the Project and shall not be the guarantor of any outcomes of such litigation.

Section 4.4 Payment of Taxes

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

(B) It is agreed and understood during the Compulsory Taxable PILOT Period, no portion of the Property may be conveyed to a tax-exempt entity unless such tax-exempt

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

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

(D) The provisions of this Section 4.4 shall survive issuance of a Certificate of Completion and shall be binding upon the Developer, and the Developer's successors and assigns, until the expiration of the Compulsory Taxable PILOT Period.

ARTICLE V

INTENTIONALLY OMITTED

ARTICLE VI

CONSTRUCTION OF THE DEVELOPER IMPROVEMENTS

Section 6.1 Construction Progress Reports

The Developer shall provide the City with construction progress reports every thirty (30) days after commencement of the Developer Improvements. Said construction progress reports

shall indicate whether the pace of construction of the Developer Improvements is in conformity with the Project Schedule, shall detail any anticipated difficulties in meeting the Project Schedule, and shall include a list of any and all Force Majeure Events which are claimed to result in Excusable Delays. Further, said construction progress reports, which shall be made publicly available, shall provide timely updates as to anticipated future impacts arising out of the continued development of the Project. The progress reports contemplated herein shall be made through electronic mail to the Development Administrator or his/her designee.

Section 6.2 Certificate of Completion

(A) After Substantial Completion, the Developer shall give notice via recognized overnight courier against a signed receipt, or certified mail return receipt requested to the Economic Development Administrator, with a copy to their counsel, of the same, requesting a Certificate of Completion with respect to the Project. Notwithstanding any other provision of this Agreement, the Economic Development Administrator shall inspect or shall cause the Developer Improvements to be inspected within thirty (30) days of a request for a Certificate of Completion and shall furnish such Certificate of Completion within sixty (60) days of the Developer's request therefor. A Certificate of Completion shall be in such form as will enable it to be recorded on the New Haven Land Records; or, in the alternative, the Developer files an affidavit of facts relating to title or interest in real estate as permitted by Section 7.2(D) of this Agreement, below.

(B) A Certificate of Completion shall be a conclusive determination of the satisfaction of the Developer's obligation to construct the Project in accordance with the terms and conditions of this Agreement. The effect of the issuance of a Certificate of Completion shall mean (i) except for ongoing obligations with respect to the operation of the Property, as set forth in Section 3.1 (affordable units)Section 4.1 (Permanent Jobs) and Section 4.4 (PILOT)of this Agreement, all rights of the City with respect to the Property as set forth in this Agreement shall terminate; and, (ii) any Right of Reversion set forth in this Agreement is extinguished.

(C) Notwithstanding any other provision of this Agreement, if the Economic Development Administrator shall refuse or fail to provide a Certificate of Completion in accordance with the provisions of this Section, the Economic Development Administrator shall, within such sixty (60) day period, provide the Developer with a written statement setting forth in adequate detail in what respects the Developer has failed to complete the Project, and what measures or acts will be necessary for the Developer to take or perform in order to obtain a Certificate of Completion the Project. Following receipt of such written statement, the Developer shall promptly carry out the corrective measures or acts described in the written statement, and a Certificate of Completion will be delivered to the Developer within fifteen (15) days of the completion by the Developer of the items set forth in the written statement. In the event of any dispute between the City and the Developer with respect to the issuance of the Certificate of Completion, the parties shall participate in the Dispute Resolution Procedure set forth herein.

(D) Notwithstanding any other provision of this Agreement, if the Economic Development Administrator shall fail to provide the Developer with a Certificate of Completion or with a written statement within such sixty (60) day period of a request for a Certificate of Completion, such failure shall be deemed to constitute certification that the Project has been completed. In such case, the Developer shall, in its sole discretion, record, in lieu of the Certificate of Completion, an Affidavit of Facts relating to title or interest in real estate, as permitted by C.G.S. 47-12a (“Developer’s Affidavit”), on the New Haven Land Records, setting forth the failure of the City to issue a Certificate of Completion within the time required for issuing same. The Developer’s Affidavit shall have the same force and effect as a Certificate of Completion issued by the Economic Development Administrator.

ARTICLE VII

DEFAULT AND REMEDIES

Section 7.1 Default by the Developer

(A) An event of Default by the Developer (a “Developer Default”) shall occur upon (i) an Event of Bankruptcy (provided that such an Event of Bankruptcy shall not be a Developer Default if the same is dismissed within ninety (90) days), or (ii) any failure by the Developer to perform any obligation under this Agreement in which such event or failure shall continue for more than thirty (30) days after the City’s written notice (the “Default Notice”) of such event or failure is received by the Developer, and the Developer (A) shall fail to provide a response to the Default Notice specifying the actions undertaken or to be undertaken to effect a cure within thirty (30) days after receipt of the Default Notice, or (B) shall respond to the Default Notice but shall fail to effect the cure specified in such response, provided, however, that the Developer shall not be in default with respect to any matter referred to in a Default Notice which is susceptible of cure but cannot be reasonably cured within said thirty (30) day period, so long as the Developer responds to the Default Notice and sets out a reasonable plan and schedule to effect a cure and thereafter makes reasonable efforts to complete the same in accordance with such schedule.

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

(C) It is agreed and understood that the provisions of this Section 7.1 shall not affect any right or remedy pursuant to this Agreement, and that the City may, in the City’s sole discretion, elect to pursue such right or remedy as it may deem necessary or desirable from time to time.

Section 7.2 **Default by the City**

(A) An Event of Default by the City (“City Default”) shall occur upon any failure by the City to perform any obligation under this Agreement in which such event or failure shall continue for more than thirty (30) days after the City’s receipt of a Default Notice is received by the City, and the City (A) shall fail to provide a response to the

Default Notice specifying the actions undertaken or to be undertaken to effect a cure within thirty (30) days after receipt of the Default Notice, or (B) shall respond to the Default Notice but shall fail to effect the cure specified in such response, however, that the City shall not be in default with respect to any matter referred to in a Default Notice which is susceptible of cure but cannot be reasonably cured within said thirty (30) day period, so long as the City responds to the Default Notice and sets out a reasonable plan and schedule to effect a cure and thereafter makes reasonable efforts to complete the same in accordance with such schedule.

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

Section 7.3 **Excusable Delay**

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

Section 7.4 **Dispute Resolution Procedure**

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

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

(B) If the dispute is not resolved by the parties by way of the Dispute Meeting, then if agreed upon by the parties, the dispute may be submitted to mediation under the Commercial or Construction Mediation Procedures of the AAA, whichever procedure is appropriate to the dispute among the parties, in effect on the Effective Date of the Agreement, or under such other rules as the parties may agree upon (the “Mediation”) Mediation shall be with the AAA, or, if agreed upon, through use of a private mediator chosen by the parties. The Mediation shall occur in New Haven, Connecticut or as otherwise agreed upon. The mediator’s fees and the filing fees, if any, shall be shared equally. Agreements reached in the Mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. If the parties agree to the Mediation (and subject to Section 8.4(D) below) the conclusion of the Mediation shall be a conditions precedent to litigation. The parties shall conclude the Mediation within sixty (60) days after the designation of the mediator.

(C) If the dispute is not resolved by way of the Dispute Meeting or the Mediation, the dispute(s) may be referred for an advisory opinion to a neutral party who shall be retained by the parties, and such neutral party shall establish such procedures as will allow him or her to promptly consider the dispute and issue a written advisory opinion with regard to the issues in dispute. Costs and fees for the neutral party shall be equally shared by the parties to the dispute. Third parties relevant to the adjudication of the dispute may be added to the advisory opinion proceedings if agreed to by the parties. The parties agree that the neutral party’s advisory opinion shall not be admissible in subsequent litigation. If an advisory opinion is agreed upon as a procedure, it shall be a conditions precedent to litigation, except as provided in Section 8.4(D) below.

(D) Provided that the party seeking use of the Dispute Resolution Procedure has complied with the requirements for giving the “Notice of Conflict,” no passage of time or delay caused by pursuit of Dispute Resolution Procedure, mediation or seeking an advisory opinion will prejudice the rights of any party. At the request of any party, the parties shall enter into an agreement to extend the statute of limitations with respect to the subject matter of the dispute for the period of time in which the procedures described above are being utilized. Although any party may commence litigation while the Dispute Resolution

Procedure, mediation or an advisory opinion procedure is being pursued for tolling purposes only, such party must request that the Court stay the case until such time as completion of such Dispute Resolution Procedure, mediation or advisory opinion procedure, as the case may be.

In the event that the Dispute Resolution Procedure is unsuccessful in solving any dispute, then the provisions of Section 8.1 and Section 8.2 of this Agreement shall apply, without further reference to the Dispute Resolution Procedure.

ARTICLE VIII

GENERAL PROVISIONS

Section 8.1 Representations and Warranties of the Developer

The Developer represents, warrants and covenants that (A) the Developer is a limited liability company, duly organized and existing under the laws of the State of Connecticut; (B) the Developer has the legal authority to enter into and carry out the transactions to which it is proposed to be a party; (C) the execution and delivery of this Agreement by the Developer has been duly and validly authorized by all necessary action; and (D) this Agreement is a legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms.

Section 8.2 Representations and Warranties of the City

The City represents and warrants that (A) it is a municipal corporation validly existing under the laws of the State of Connecticut, (B) it has the legal power and authority to execute and deliver this Agreement and to carry out its terms and provisions, (C) the execution and delivery of this Agreement have been duly and validly authorized by all necessary action, and (D) this Agreement constitutes the legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms. The City further represents that it has undertaken and completed the discontinuance of Pulaski Street pursuant to State Law and municipal ordinance and that, as of the date of execution of this Agreement, it has the power and authority to convey the City Property to the Developer upon the terms and conditions contained in this Agreement. In addition, the City

and the Developer agree to cooperation on the relocation of utility easements and extinguishment of existing utility easements encumbering the City Property, it being understood by the City and Developer that new utility easements will be required for the proper construction of the project contemplated in the Agreement.

Section 8.3 Notices

Except as otherwise provided in this Agreement, any notice or approval required or permitted to be given under this Agreement shall be in writing and shall be given by certified mail return receipt requested or by overnight delivery courier or such other means as may be agreed to by the parties in writing with a copy addressed to the party for whom it is intended as follows:

IF TO THE DEVELOPER:

Alpha Acquisitions LLC
185 Bartlett Road
Madison, CT 06443

with copies to:

Trachten Law Firm LC
c/o Atty Ben Trachten
679 State Street
New Haven CT 06511
ben@trachtenlaw.com

]

IF TO THE CITY:

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

with copies to:

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

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

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

Notice shall be deemed to have been given or made upon (A) the next business day after delivery to a regularly scheduled overnight delivery carrier with delivery fees prepaid, if notice is sent by overnight carrier, (B) receipt if notice is sent by certified mail, or (C) when agreed to by the parties in writing.

Section 8.4 **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 8.5 **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 8.6 **Successors**

This Agreement shall be binding upon and inure to the benefit of the respective successors and assignees of the City and the Developer, provided that this section shall not authorize any assignment not permitted by this Agreement under Section 2.8 of this Agreement.

Section 8.7 **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 8.8 **Governing Law and Jurisdiction**

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

Section 8.9 **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 8.10 **Consents**

Where consents, approval, waiver or acceptance of work by the City is required to any action (or inaction) pursuant to the provisions of this Agreement, other than zoning and land use approvals, building permits and certificates of occupancy, unless otherwise provided by this Agreement, such consent, approval, waiver or acceptance of work may be granted (or denied) by the Economic Development Administrator or if there is no longer an Economic Development Administrator then such other appropriate office holder as may be appointed by the Mayor of the City of New Haven.

Section 8.11 **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 8.12 **Members and Officers Barred From Interest**

No member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement or the Developer, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interests of any corporation, partnership, or association in which he or she is directly or indirectly interested. No member, official or employee of the City shall be personally liable to the Developer or any successor in interest in the event of any default by the City for any amount which may become due to the Developer or to its successor or with respect to any other obligations arising under the terms and conditions of this Agreement.

Section 8.13 **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 constructed to include both and the feminine gender.

Section 8.14 **Estoppel Certificate**

The parties agree that prior to the issuance of a Certificate of Completion, 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 8.15 **No Third-Party Beneficiaries**

This Agreement is made solely and specifically among and for the benefit of the parties hereto and their successors and assignees, 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 8.16 **Survival**

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

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

In the presence of:

CITY OF NEW HAVEN

By _____
Justin Elicker
Its Mayor
duly authorized to act herein

Approved as to form and correctness:

John R. Ward
Special Counsel to Economic Development

ALPHA ACQUISITIONS LLC

By: _____
Alex Opuszynski
Its Member
duly authorized to act herein

STATE OF CONNECTICUT)

COUNTY OF NEW HAVEN)

On this _____ day of _____, 2021, 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 Aldermen, executed the foregoing instrument for the purposes contained therein, by signing on behalf of the City of New Haven, said act being the free act and deed of the City of New Haven and her free act and deed as such Mayor.

Notary Public

Commission expires:

Commissioner of the Superior Court

STATE OF CONNECTICUT)

)

ss. _____

COUNTY OF NEW HAVEN)

On this the ____ day of _____, 2021, before me, the undersigned officer, personally appeared Alex Opuszynski who acknowledged himself to be the Member of Alpha Acquisitions, LLC, a Connecticut limited liability company, and he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained as his free act and deed and the free act and deed of the limited liability company, by signing the name of the limited liability company by himself as such officer.

In witness whereof I hereunto set my hand.

Printed Name:

Notary Public/ My Commission Expires:

Commissioner of Superior Court

EXHIBIT A

City Property Description

EXHIBIT B

Developer Property Description

EXHIBIT C

Developer Improvements

- Development of no more than sixteen (16) residential units in total.
- Demolition of existing blighted and unsafe structure located at 793 State Street.
- Construction of new structure containing sixteen (16) residential units and not more than 2000 square feet or retail/commercial space on the first floor of the property
- All building area to be code compliant
- One (1) ADA-compliant income-restricted one (1) bedroom apartment to be occupied by tenants earning at or below 60 percent of Area Median Income as determined by the United States Department of Housing and Urban Development (as adjusted annually) for the New Haven-Meriden Metropolitan Statistical Area for a period of TEN (10) years from the date of first occupancy by an income-compliant tenant
- One (1) income-restricted studio apartment on the lower/garden level to be occupied by tenants earning at or below 60 percent of Area Median Income as determined by the United States Department of Housing and Urban Development (as adjusted annually) for the New Haven-Meriden Metropolitan Statistical Area for a period of TEN (10) years from the date of first occupancy by an income-compliant tenant
- Zero (0) parking spaces and no loading space
- Bicycle parking with half to be covered

EXHIBIT D

Project Schedule

Commencing from date of recording of this DLDA:

- 1) Submission of zoning application 60 days approximately
- 2) Submission of site plan approval 60 days thereafter approximately
- 3) Upon Site plan approval, submission of building permit applications 120 days approximately
- 4) Upon issuance of building permits, commencement of construction 120 days approximately
- 5) Construction is anticipated to require no less than 12 months nor more than 20 months