

DEVELOPMENT AGREEMENT  
BETWEEN  
THE CITY OF NEW HAVEN  
AND  
BECKER DEVELOPMENT ASSOCIATES, LLC  
A07-0249

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**THIS DEVELOPMENT AGREEMENT** is entered into and effective as of this      day of  
, 2007, 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 at 165 Church Street,  
New Haven, Connecticut 06510 (the “City”) and **BECKER DEVELOPMENT ASSOCIATES,  
LLC**, a limited liability company organized and existing under the laws of the State of  
Connecticut, with a mailing address at 95 Reef Road, Fairfield, Connecticut 06824 (the  
“Developer”).

## **BACKGROUND**

The City is the fee simple owner of a certain parcel of land located in New Haven, Connecticut known as 745 Chapel Street, which parcel is more particularly described in Exhibit A to the Land Disposition Agreement (a copy of which is attached hereto as Exhibit A and made part hereof) and which the City considers to be an underused parcel (the “Property”). The City also owns the nearby Pitkin Plaza and the Pitkin Tunnel. The City issued a Request for Proposals for the development and future use of the Property. The Developer proposed a mixed use facility for the Property, which proposal was subsequently selected by the City. A description of such proposal, following modification thereof, is more particularly set forth in Exhibit B attached hereto (the “Project”). The City and the Developer previously entered into a Memorandum of Understanding, dated April 12, 2007, outlining the basic elements to be included in the Project and certain other basic terms and conditions. Based upon the framework set forth in said Memorandum of Understanding, the City and the Developer have negotiated and agreed all of the terms and conditions pursuant to which the City shall facilitate and the Developer shall carry out the Project, as hereinafter set forth.

**NOW THEREFORE**, the City and the Developer agree as follows:

## **ARTICLE I** **DEFINITIONS**

### **Section 1.1    Definitions**

For the purposes of this Agreement:

- (i) “Agreement” means the four corners of this instrument, and includes any appendices, exhibits or schedules incorporated by reference, as well as any amendments, modifications, or supplements which may be executed by the City and the Developer subsequent to the effective date of this instrument, but does not include any agreement, understanding or other arrangement between the City and the Developer, including (without limitation) the Memorandum of Understanding which is hereby superseded in its entirety.
- (ii) “Chase Agreement” means a separate agreement entered into between the City of New Haven and Connecticut Financial Center Associates Limited Partnership, and recorded at Volume 5462, Page 115 of the New Haven Land Records.
- (iii) “City” has the meaning ascribed in the first sentence of this Agreement.
- (iv) “Developer” has the meaning ascribed in the first sentence of this Agreement and shall include any permitted successor or assign of Developer.
- (v) “Environmental Conditions” means any conditions which, under applicable Environmental Laws, require testing, remediation or monitoring.
- (vi) “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 Title 22a of the General Statutes.
- (vii) “Event of Bankruptcy” means any of the following: (a) if a receiver or custodian is appointed for all or a substantial portion of the Developer’s property or assets, which appointment is not dismissed within one hundred eighty (180) days; (b) if the Developer files a voluntary petition under the United States Bankruptcy Code or any other bankruptcy or insolvency laws; (c) if there is an involuntary petition filed

- against the Developer as the subject debtor under the United States Bankruptcy Code or any other bankruptcy or insolvency laws, which is not dismissed within one hundred eighty (180) days of filing, or which results in the issuance of an order for relief against the debtor; or (d) if the Developer makes or consents to an assignment of its assets, in whole or in part, for the benefit of creditors, or a common law composition of creditors.
- (viii) “Existing Environmental Conditions” means any Environmental Conditions at the Property existing on the date of this Agreement.
  - (ix) “Force Majeure” means any event, act or failure to act directly caused by: riots, civil disturbances, insurrection or acts of public enemy; war; court or administrative or other governmental order directing that the construction of the Project be stopped; strikes or labor disputes where the primary dispute is not related to the Developer and also affects construction projects other than this Project; acts of terrorism; casualty at the job site or proximately causing direct physical damage to the Project 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; an act or omission of the City in violation of the terms of this Agreement or the Land Disposition Agreement; or any other event or circumstance which is outside the Developer’s immediate reasonable control.
  - (x) “General Statutes” means the General Statutes of the State of Connecticut, 1958 Revision, as amended.
  - (xi) “Governmental Authorities” means all federal, state or local governmental bodies, instrumentalities or agencies (including municipalities, taxing, fire and water districts and other governmental units).
  - (xii) “Grocery Store” shall have the meaning ascribed under Section 6.4(B).
  - (xiii) “HANH” shall have the meaning ascribed under Section 7.3(D).
  - (xiv) “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.
- (xv) “Land Disposition Agreement” has the meaning ascribed under “Background”.
- (xvi) “LEED Green Building Rating System” means the Leadership in Energy and Environmental Design green building rating system developed by the United States Green Building Council as of the date the execution of this Agreement.
- (xvii) “Opening Date” has the meaning ascribed under Section 6.4(B) of this Agreement.
- (xviii) “Parking Authority” means the New Haven Parking Authority.
- (xix) “Pitkin Plaza” means that certain parcel of land owned by the City of New Haven, which faces Orange Street and is more particularly described in Exhibit C.
- (xx) “Pitkin Tunnel” means that tunnel, being a public right of way, linking State Street and Elm Street, a portion of which is adjacent to the Shartenberg Site and above which portion exists the air rights which are part of the Property, and which is subject to an agreement dated 2006, between the City and the United States of America.
- (xxi) “Property” has the meaning as ascribed under “Background”.
- (xxii) “Project” has the meaning as ascribed under “Background”.
- (xxiii) “Project Schedule” means the projected schedule for the development of the Project, a copy of which is attached hereto as Exhibit D.
- (xxiv) “Urban Act Funding” has the meaning ascribed under Section 7.3(A).
- (xxv) “Work With” or any similar phrase means diligently and continuously pursue, cooperate with, assist and facilitate the desired result or objective, including, as necessary or appropriate under the circumstances, execution and delivery of documents; scheduling, attending and participating in conferences or meetings; contacting and requesting action from other governmental personnel or agencies;

responding promptly to all reasonable requests for documents or information; and make introductions to persons, entities or agencies. Work With shall not require the expenditure of funds by the City unless these funds are prepaid by the Developer.

**Section 1.2 Interpretation**

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

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

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

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

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

provided herein. Wherever under this Agreement “reasonableness” is the standard for the granting or denial of any approval, consent, waiver, acceptance, concurrence or permission of any party hereto, the City shall be entitled to consider governmental considerations, as well as business and economic considerations.

(F) 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 either the City or the Developer may be considered the drafter of this Agreement or any particular part hereof.

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

## **ARTICLE II**

### **REPRESENTATIONS AND WARRANTIES**

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

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

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

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

**ARTICLE III**  
**PROPERTY**

**Section 3.1 Property Transfer**

Concurrently herewith or upon the satisfaction of all conditions precedent contained herein (whichever is the earlier) the City shall quit claim the Property to the Developer, subject to any and all encumbrances existing as of the date of the Agreement (including without limitation, the Chase Agreement) and subject to the Land Disposition Agreement, which shall be recorded in the New Haven Land Records immediately prior to the Quit Claim Deed. As a condition precedent to the quit claim of the Property to Developer, the City shall cause the Property, the Pitkin Tunnel, and the Pitkin Plaza to be surveyed. Title to the Pitkin Tunnel and the Pitkin Plaza shall remain with the City. Subject to the preceding sentence, the Developer hereby acknowledges and agrees that it has made its own investigation as to title and is satisfied that the same is good and marketable. The delivery of the Deed shall take place at a closing to be held at such place and time as the parties hereto shall agree (the "Closing"). It is acknowledged and agreed that the City must have not less than sixty (60) days notice of the date of the Closing in order to obtain vacant possession of the Property. The foregoing provision notwithstanding, the Developer, at any time after the signing of this Agreement, may request that the City set a date for the Closing, after receipt of which request the City must respond within fifteen (15) days to Developer with a reasonable offer for a date for the Closing. At such time as all conditions precedent to the conveyance of the Property have been met by the City, the City may so notify the Developer and such notification shall include a proposed date of Closing. In the event that the Developer shall dispute the fulfillment of all conditions precedent, then the Developer shall

notify the City within seven (7) days of receipt of the City's notice, whereupon the City and the Developer shall meet to agree upon the completion of outstanding conditions precedent (if any) and of the date of Closing. The Developer acknowledges that the Developer may not unreasonably delay the Closing. Notwithstanding the foregoing provisions, before the date of closing, if requested by Developer, the City may in its discretion lease the Property to the Developer. If such a lease is negotiated with the City: (a) the Developer shall have an exclusive right to purchase the Property pursuant to the terms of this Agreement; (b) the Deed to the Property shall held in escrow until the date of closing; and (c) the Developer shall tender to the City payments in lieu of taxes in an amount equivalent to real estate property taxes which would be assessed on the Property if the Property were owned by a private entity which was not exempt from real property taxation.

### **Section 3.2 Purchase Price**

As set forth in the Land Disposition Agreement, the Property shall be conveyed to the Developer by quit claim deed (the "Quit Claim Deed") in consideration of the sum of One Dollar and Zero Cents (\$1.00) and the mutual covenants and conditions contained herein and in the Land Disposition Agreement.

### **Section 3.3 Easements and Licenses**

It is acknowledged that the construction and operation of the Project will require the City's granting of various easements or licenses to Developer with respect to City owned rights of way or City owned property surrounding, or otherwise adjacent to, the Property, including (without limitation): (a) an easement benefiting the Property over, under and across the streets and sidewalks surrounding the Property, including an easement benefiting the Property to place geothermal wells under such sidewalks; (b) a construction easement benefiting the Property and covering the Pitkin Tunnel; (c) a permanent easement allowing the connection of the Property to the Pitkin Tunnel for pedestrian and vehicular ingress, egress, and other uses to be determined; and (d) an easement benefiting the Property over Pitkin Plaza for the purpose of access, subject to the conditions which the City may impose in such easement. A substantially completed draft

of the Quit Claim Deed containing these four specified easements, to be completed and signed by the parties to this Agreement within a reasonable period after executing this agreement, is hereby attached as Schedule G. The City hereby approves the grant of any other easements and licenses which may reasonably be needed to construct, complete and operate the Project, provided that the Developer shall provide the City with detailed plans of those improvements that will be the subject of the easements or license in question for final approval by the City's Economic Development Administrator (which approval will not be unreasonably withheld, conditioned or delayed) and provided further that with respect to any such easement or license granted by the City, the Developer shall comply with customary City requirements with respect to insurance. The City will Work With the Developer to secure any approvals needed for such easements or licenses from the United States of America or any other governmental agencies.

#### **Section 3.4 Chase Agreement**

The obligations contained in the Chase Agreement are hereby expressly acknowledged by the Developer and the Developer hereby covenants that upon the execution and delivery of the Land Disposition Agreement and execution and delivery of the Quit Claim Deed contemplated under Section 3.1 hereof, the Developer shall be solely responsible for compliance with those obligations under the Chase Agreement arising from and after the date that Developer takes title to the Property, both during and after construction of the Project, which compliance may require (to the extent possible) the renegotiation of portions of the Chase Agreement with the licensee thereunder. In particular (but without limitation) the Developer acknowledges that the Chase Agreement currently provides for temporary displacement of persons entitled to parking under the Chase Agreement at the time of the execution of this Agreement. As requested by the Developer, the City shall Work With the Developer to assist with the Developer's negotiations with the licensee of the Chase Agreement and the Parking Authority under the Chase Agreement for the purpose of arranging a temporary relocation of these parkers during the construction period of the Project. The Developer hereby agrees to indemnify and hold harmless the City against and from any liability, costs or expenses of any nature whatsoever under the Chase Agreement, arising (whether directly or indirectly) out of the Developer's ownership, use or occupation of the Property.

**ARTICLE IV**  
**ENVIRONMENTAL**

**Section 4.1 Environmental Survey**

The City has carried out a Phase II environmental survey with respect to the Property (the “Environmental Survey”) a copy of which is attached hereto as Exhibit E and made a part hereof. The Developer hereby expressly acknowledges and agrees that it has read and understood the Environmental Survey, and by execution and delivery of this Agreement, will accept the Property in its existing condition including (without limitation) subject to any and all Existing Environmental Conditions, whether or not expressly referred to in the Environmental Survey.

**Section 4.2 Indemnification**

The Developer shall indemnify, defend and hold harmless City and its officials, employees and agents from and against any and all liability, fines, suits, claims, demands, judgments, actions, or losses, penalties, damages, costs and expenses of any kind or nature, including, without limitation, reasonable attorneys’ fees made or asserted by anyone whomsoever, due to or arising out of any Environmental Conditions on the Property, including Existing Environmental Conditions, but excluding any Environmental Conditions first arising after the date the Developer takes title to the Property which are caused or contributed to by the City or its agents, contractors or employees. If the Developer is required to defend any such action or proceeding to which action or proceeding and the City desires to be 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 any such action does not limit or make void any liability of any insurer hereunder with respect to the claim or matter in question. This indemnification shall survive the termination or expiration of this Agreement, provided the City is not then in default hereunder.

**ARTICLE V**  
**PROJECT FINANCING**

**Section 5.1 General**

The Project will be financed through a combination of private and public funding sources, as more particularly described in this Agreement.

**Section 5.2 Overall Responsibility**

It shall be the sole responsibility of the Developer to ensure that the financing described herein is sufficient to complete the Project or, if insufficient, to obtain additional financing from such source or sources as may be available to the Developer, provided that such additional financing shall not contravene the provisions of Section 6.3 below, without obtaining the prior written consent of the City Economic Development Administrator or Mayor, which consent may be granted or withheld in the sole and absolute discretion of such parties.

**ARTICLE VI**  
**OBLIGATIONS OF THE DEVELOPER**

**Section 6.1 Development**

Upon execution and delivery of the Land Disposition Agreement and the conveyance of the Property to the Developer, the Developer shall commence and thereafter complete the Project in accordance with this Agreement, including the Project Schedule.

**Section 6.2 Project Schedule**

The Developer shall complete the Project in accordance with the Project Schedule. The Developer acknowledges that the Project Schedule contains a number of progress deadlines

which the Developer is obliged to meet, as outlined in Exhibit D (a “Progress Deadline”). In the event that the Developer shall fail to meet a Progress Deadline, and such failure shall not arise as a result of Force Majeure or any action or omission of the City, then the Developer shall in each instance, as liquidated damages and as the sole consequence thereof, pay a penalty to the City in the amount of Twenty Thousand Dollars and Zero Cents (\$20,000.00) to be used to support other economic development projects in the City, at the discretion of the City Economic Development Administrator. Notwithstanding the foregoing, the City Economic Development Administrator shall have the discretion, which shall be exercised only under reasonable circumstances, to waive any penalty which would otherwise be payable hereunder, provided that such discretion may be used not more than twice.

### **Section 6.3 Private Financing**

The Developer has secured and delivered to the City a written term sheet for an investment in the minimum amount of One Hundred Million Dollars and Zero Cents (\$100,000,000.00) from a union pension investment fund, a copy of which is attached hereto on Exhibit F (the “Union Backed Financing”). The Developer acknowledges that the source of funding was an important factor in the City’s selection of the Developer and that in no event shall the Union Backed Financing represent less than fifty percent (50%) of the total capital investment in the carrying out of the Project. Once the Certificate of Completion has been secured for the Project, this Union-Backed Financing requirement shall be no further in force or effect.

### **Section 6.4 Basic Project Requirements**

(A) Without prejudice to the more specific provisions concerning design review set forth in Section 6.3 (C) below and/or the descriptions set forth in Exhibit B, it is agreed and understood that unless expressly agreed otherwise in writing by the City and the Developer:

- (i) The Project shall not, without the express written approval of the City, contain less than Four Hundred Thousand (400,000) square feet of useable space;

(ii) The minimum base height of that portion of the Project which is not part of the proposed tower, shall be forty-five (45) feet;

(iii) The Developer guarantees that not less than fifty (50) of the housing units contained within the Project are affordable; the Developer guarantees that not more than fifty percent (50%) of the housing units on any one floor of the Project shall be affordable; and the Developer shall ensure that it complies with the terms and conditions with any subsidies received for the purpose of affordable housing for the applicable duration of such terms and conditions;

(iv) The Developer shall design and build the Project to meet, at a minimum, certification under the LEED Green Building Rating System as to at least the residential portion of the Project and shall use commercially reasonable efforts to obtain the “Silver Standard.” The Developer acknowledges that failure to achieve the basic LEED Green Building Rating System certification for the residential portion of the Project shall obligate Developer (as the sole consequence thereof) to pay the City a penalty of Two Hundred and Fifty Thousand Dollars and Zero Cents (\$250,000.00), provided that the Developer shall first be accorded a reasonable amount of time to remedy any such default;

(v) The Developer shall exert commercially reasonable efforts to ensure that the Project contains a childhood education center, subject to the Developer receiving sufficient financing;

(vi) In no event during the term of this Agreement shall any portion of the Project be used as a discount department store, “dollar store”, charity thrift shop, “five and dime” store, or other such retailer of comparable quality or as a liquor store, or as any commercial establishment of any nature whatsoever related to “adult” use/entertainment or related to the sale or use of firearms or other weaponry.

(B) Within thirty-six (36) months from the issuance of the first temporary Certificate of Occupancy for any portion of the Project, The Developer shall secure as a tenant in the

Project (in the form of an executed lease or commitment to lease) a full service urban grocery store, located in the first floor of the Project (the “Grocery Store”). The Grocery Store shall be of the quality and reputation of Whole Foods, Trader Joe’s, Gristede’s, Fairway Market, Wild Oats, Limon Gourmet or Stew Leonard’s Grocery or other grocery of similar quality and reputation. The Grocery Store shall be an element of the Project for a period of not less than five (5) years from the date upon which the Grocery Store opened for business (the “Opening Date”). In the event that the Developer fails to secure such a Grocery Store as a tenant within the thirty-six (36) month period, or such grocery store shall cease operations within one (1) year of the Opening Date and is not replaced by a comparable tenant within six (6) months following the Grocery Store’s vacation of its premises, the Developer shall, as liquidated damages and as the sole consequence thereof, pay the City a one time penalty of Two Hundred Fifty Thousand Dollars and Zero Cents (\$250,000.00) provided that said penalty shall automatically be reduced by Fifty Thousand Dollars and Zero Cents (\$50,000.00) on each anniversary of the issuance of the first temporary Certificate of Occupancy, so that the same shall expire and become null and void and of no further effect on the fifth anniversary of the Opening Date. This penalty provision shall be the sole remedy for the City in the event the Developer fails to secure such grocery store of the quality and reputation described, except that after the penalty is paid, the Developer shall consult with the City regarding a preferred replacement retailer and shall keep the City apprised of its efforts until the fifth anniversary of the Opening Date or until eight (8) years after the issuance of the first temporary Certificate of Occupancy, whichever comes first. In no event shall the Developer seek to replace the Grocery Store with any type of establishment specifically excluded pursuant to the provisions at Section 6.4 (A)(vi) above.

(C) The City, acting through the City Economic Development Administrator and the Executive Director of the City Plan Department or their respective designees, shall have the opportunity to participate in the design process of the Project as follows:

(i) The Developer shall deliver to the City schematic design drawings of the Project reasonably consistent with the obligations of the Developer set forth in this Agreement,

and the City shall have fifteen (15) days after receipt thereof to provide written comments on the schematic design specifying recommended alterations;

(ii) Upon submission of revised schematic design drawings, the City and the Developer design team shall meet within ten (10) days to endeavor to resolve any differences.

The City shall be reasonable in its proposals with consideration given to the visual impact the design would have on the surrounding neighborhood, market conditions, and economic viability of the Project, pedestrian enhancements, the cost of design, and the reasonable needs and concerns of the community and the Developer. It is hereby agreed, stipulated and understood that this review process shall be in addition to and not in lieu of Site Plan Review by the City Plan Commission, and the Developer hereby acknowledges that nothing herein shall be deemed to waive or modify any and all planning, zoning and such municipal requirements and regulations applicable to the Project and/or the Developer to which the Project shall be and remain subject.

#### **Section 6.5 Workforce and Utilization Requirements**

In carrying out the provisions of this Agreement, the Developer shall comply with, or require that its general contractor for the Project comply with, all applicable City workforce requirements and small contractor utilization requirements now and hereafter existing, including, without limitation, all Equal Employment Opportunity requirements and Small Business Construction Initiative requirements and in particular, during the carrying out of the Project, the Developer agrees to, or require its general contractor:

(A) to comply with all provisions of Executive Order 11246 and Executive Order 11375, Connecticut Fair Employment Practices Act and Chapter 12 1/2, the contract compliance ordinance of the City of New Haven, including all standards and regulations which are promulgated by the government authorities who established such acts and requirements, and all standards and regulations are incorporated herein by reference, including 24 CFR Part 135, Davis Bacon Act & Related Acts (40 USC §276a; 29 CFR 1, 3, 5, 6 and 7), Copeland

Act (18 USC §874 and 40 USC §276c; 29 CFR 3), 40 U.S.C. Section 327 et seq 29 CFR5, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act, and the Equal Pay Act. Under Title VII (N-915.040), Immigration and Reform and Control Act of 1986 (IRCA) (8 USC 1101 as amended) Immigration and Nationality Act, Section 274A, FLSA's recordkeeping Regulations, 29 CFR Part 516. State of Conn. General Statutes Section 31-53, State of Conn. P.A.97-263, Sec. 31-51d-5. Standards of apprenticeship;

- (B) not to discriminate against any employee or applicant for employment because of race, color, religion, age, sex, physical disability or national origin, the Developer shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to race, color, religion, age, sex, physical disability or national origin, and such action shall include, but not limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of any or other forms of compensation, and selection for training, including apprenticeship;
- (C) to post, in conspicuous places available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause;
- (D) to state, in all solicitations or advertisements for employees placed by or on behalf of the Developer, that all qualified applicants will receive consideration for employment without regard to race, color, religion, age, sex, physical disability or national origin; to utilize the only City-sponsored workforce program (Construction Workforce Initiative 2) as a source of recruitment; and to notify the City of New Haven Commission on Equal Opportunities of all job vacancies;
- (E) to send to each labor union or representative of workers with whom the Developer has a collective bargaining agreement, or other contract or understanding, a notice advising the labor union or worker's representative of the Developer's commitments under the equal opportunity clause of the City of New Haven, and to post copies of the notice in conspicuous

places available to employees and applicants for employment, and the Developer shall register all workers in the skilled trades, who are below the journeyman level, with the Apprenticeship Training Division of the Connecticut State Labor Department;

(F) to comply with the provisions of City of New Haven Ordinance 12 1/4-9, which requires that all construction contractors aggressively make every effort to obtain 25% overall Minority Business Enterprise (“MBE”) utilization goals for subcontracting. The Developer acknowledges that for the purposes of this Agreement and the goals of the City of New Haven the definition of MBE is persons having origins in Black African and Hispanic racial groups as defined by Ordinance 12 1/4 -3 (g)(3); that failure to achieve the 25% MBE goal will require documentation of good faith efforts to achieve the utilization goals; and that the good faith efforts will be evaluated, verified and recognized by the Small Business Initiative office if a contractor has accomplished at least four (4) of the following: (1) placing advertisements in at least two local newspapers, (2) placing advertisement in one minority publication, (3) mailing notices to development agencies, (4) placing notice with the Small Business Initiative and the New Haven Contractors' Alliance, (5) showing proof of outreach to and collaboration with the New Haven Contractors' Alliance, (6) showing proof of quotes received from subcontractors, and (7) undertaking other efforts undertaken to encourage MBE participation as determined in advance by the Small Business Initiative;

(G) to ensure equal opportunities for construction and construction related small and minority contractors by instructing the Developer’s general contractor to notify the Small Business Initiative of all contracting opportunities; by allowing such information to be distributed to contractors via fax and email; and by holding a workshop detailing the Project and the contracting opportunities with the New Haven Contractors' Alliance, if such alliance Works With the general contractor to hold such workshop;

(H) to comply with the Developer's obligation for increasing the utilization of minority contractors, by working in conjunction with the Small Business Initiative to implement mentoring partnerships providing management, technical, and developmental training skills through sub-contracting opportunities;

- (I) to furnish all information and reports required by the City Contract Compliance Director pursuant to section 12-1/2-19 through section 12-1/2-32 of the City's Code of General Ordinances and to permit access to the Developer's books, records and accounts by the contracting agency, the City Contract Compliance Director, and the City Secretary of Labor for purposes of investigations to ascertain compliance with the program;
- (J) to file, along with its construction subcontractors, if any, compliance reports with the City in the form and to the extent prescribed in this Agreement by the City Contract Compliance Director and to file compliance reports at such times as directed which shall contain information as to the employment practices, policies, programs and statistics of the Developer and its subcontractors, if any;
- (K) to comply, as a United States employer, with the Immigration and Naturalization Service (INS)'s I-9 verification process, which requires employers to confirm the employment eligibility of workers. The Developer acknowledges that an employer can be fined or otherwise sanctioned for knowingly hiring an undocumented worker; that the I-9 forms also provide employers with a "good faith" defense if they hire someone who later turns out to be working illegally in the United States; and that the City Commission on Equal Opportunities will monitor and report of any alleged violations of the I-9 verification process to the proper authorities;
- (L) to acknowledge that a finding, as hereinafter provided, of a refusal by the Developer, or subcontractor, to comply with any portion of this program as herein stated and described, may subject the offending party to any or all of the following penalties:
- (i) refusal of all future bids for any public contract with the City of New Haven, or any of its departments or divisions, until such time as the Developer, or subcontractor, is in compliance with the provisions of this Agreement;
  - (ii) cancellation of this Agreement;
  - (iii) recovery of specified monetary penalties;

(M) to comply with the Developer's obligation that Section 3 of the HUD Act of 1968 applies to contracts in excess of \$200,000 or where contracts to contractors are in excess of \$100,000 in which any HUD funds are utilized for construction, renovation and rehabilitation activities, including lead paint, regardless of ownership. Such HUD-assisted contracts must contain Section 3 provisions with respect to employment and other economic opportunities, withholding funds from sub-recipients to ensure compliance with Section, and termination of contract of debarment for failure to adhere to the requirement provision. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low and very low-income persons, particularly persons who are recipients of HUD assistance for housing;

(N) to comply with the Developer's obligation that each contractor and construction subcontractor hire the following groups, in correspondence to the following percentages of total hours completed on the Project: twenty-five percent (25%) worked by minorities; six and nine-tenths percent (6.9%) worked by females; thirty percent (30%) completed in compliance with Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3), twenty-five percent (25%) residents of the City of New Haven, and fifteen percent (15%) worked by apprentices provided that fifty percent (50%) of apprentice hours must be worked by first-year apprentices.

(O) to include the provisions of sub-paragraphs (A) through (P) of this Section 6.5 in every subcontract or purchase order so that said provisions will be binding upon each such subcontractor or vendor;

(P) to take such action, with respect to any subcontractor, as the City may direct as a means of enforcing the provisions of sub-paragraphs (A) through (P) herein, 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 Small Business Initiative, 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.

**ARTICLE VII**  
**OBLIGATIONS OF THE CITY**

**Section 7.1**      **Building Permits and Fees**

(A) For the purposes of this Section, Completion Date shall mean the date on which the Developer receives the final Certificate of Completion.

(B) The City agrees that the: (i) Developer shall not have to pay any building permit fees due and owing to the City until the first calendar day of the twelfth (12th) year after the Completion Date ("Building Fee Due Date"); (ii) Developer shall thereafter pay One Hundred Thousand Dollars (\$100,000) on the first calendar day of each of the five (5) calendar years immediately following such Building Fee Due Date; (iii) Developer shall thereafter pay Two Hundred Thousand Dollars (\$200,000) on the first calendar day of each of the calendar years immediately following until Developer's total obligation to pay the building permit fee is extinguished; (iv) Interest shall not be chargeable by the City on such building permit fees; and (v) Such agreement shall be legally binding, now and in the future, on the City, and shall benefit the Developer and any successor or assignee of Developer. A memorandum of this agreement set forth in Section 7.1(B) shall be prepared and executed in recordable form and recorded in the Land Records of the City of New Haven.

(C) The City shall diligently pursue and Work With the Developer and all relevant Governmental Authorities and entities to help obtain for Developer the maximum tax credit available for the Project under the State of Connecticut Urban and Industrial Sites Reinvestment Tax Credit Program, created under Public Act 00-170 and as amended from time to time,

including any successor of that tax credit, if and to the fullest extent applicable to the Project. If as a result of City's efforts, Developer is awarded such tax credit before the Building Fee Due Date, then, as, when and to the extent necessary to pay building permit fee installments as such installments become due under Section 7.1 (B) above, Developer shall pay the City an amount equal to fifty percent (50%) of the net cash benefit, if any, received by Developer from such tax credit (net of all expenses and fees incurred in connection therewith). Any and all payments by Developer to the City under this Section 7.1(C) shall be applied and credited by the City exclusively and entirely toward the installments of the building permit fee payable by Developer as described in Section 7.1(B) above. It is agreed and understood that nothing in this Section 7.1 (C) shall affect the Developer's obligations set forth in Section 7.1 (B) above, except insofar as the additional payments to the City shall reduce the principal balance owed to the City, thus reducing the total period of payments.

(D) It is agreed and understood that the Developer shall be responsible for the payment in full of all Certificate of Occupancy fees.

(E) For the purposes of this Section, the Building Permit Fee rate for this project shall be the current rate of twenty-five dollars and sixteen cents (\$25.16). In the event that any new type of fees for construction activities are adopted by the City of New Haven following the execution and delivery of the Land Disposition Agreement, then the Project shall be exempt from such new fees. However, it is agreed and understood that this exemption does not apply to any fees that are legally charged by independent agencies which are not controlled by the City and which have the authority to impose the same.

## **Section 7.2      Access to the Property**

(A) Prior to the execution and delivery of the Land Disposition Agreement, the City shall grant the Developer and its designees, agents, employees and consultants reasonable access to the Property to perform such inspections and testing as deemed reasonably necessary by the Developer.

(B) It is agreed and understood that the Developer shall provide its employees, designees, agents, consultants and contractors with appropriate safety equipment when accessing the Property, and that the Developer shall be responsible for causing the Developer's contractors to observe all applicable workplace safety rules and regulations. By agreeing to this Section 7.2(B), the Developer does not forgo any available legal protection from liability that may arise out of the torts or other misconduct of Developer's employees, designees, agents, consultants and contractors.

(C) The Developer itself shall obtain and shall cause its general contractor to obtain general liability insurance in the amount of Five Million Dollars (\$5,000,000.00) and shall name the City as an additional insured on all such insurance policies. In addition, the Developer shall cause all construction subcontractors to obtain general liability insurance in the amount of Two Million Dollars (\$2,000,000.00) and shall name the City as an additional insured on all such insurance policies.

### **Section 7.3 Public Financing**

(A) If the State of Connecticut has deposited the Urban Act Funding for the Project into the bank account which the City has dedicated to the purpose of receiving the Urban Act Funding, within sixty (60) days of said deposit, the City shall contribute the cash sum of Nine Million Nine Hundred and Two Thousand Three Hundred and Seventy-One Dollars and Zero Cents (\$9,902,371.00) in Urban Act grant funds to the Project (the "Urban Act Funding"). The Developer shall execute and deliver such documentation as may be required by the State of Connecticut with respect to the Urban Act Funding and shall use such Urban Act Funding strictly in accordance with the terms and conditions set forth in such documentation. To the extent that the City shall be subject to any obligations to the State of Connecticut in connection therewith, the Developer hereby agrees to indemnify and hold harmless the City against and from any liability of any nature with respect thereto.

(B) The City shall carry out and pay for certain sidewalk and streetscape/landscape improvements, to be used solely with respect to the sidewalks and streetscape/landscape

surrounding the Property at a cost to the City of between Four Hundred and Fifty Thousand Dollars and Zero Cents (\$450,000.00) and Five Hundred Thousand Dollars and Zero Cents (\$500,000.00), such improvements to be of a general standard and quality comparable to the streetscape/landscape improvements located in the “Ninth Square” section of the City’s downtown. Such sidewalk and streetscape/landscape improvements shall include on-street parking on Chapel, Orange, and State Streets, if such parking is recommended by the City Department of Parking and Traffic. The City shall begin carrying out such improvements, which carrying out shall include at a minimum the commencement of the bidding process, within thirty (30) days after request by Developer, and shall complete such improvements within a reasonable time.

(C) Provided that the City shall receive sufficient funding therefor, the City will contribute cash in the amount of up to One Million Dollars and Zero Cents (\$1,000,000.00) in 2008-2009 HOME funds for the provision of eight (8) affordable housing units within the Project. If the Developer has already commenced construction on the Project when these funds are received, the funds will be contributed to the Developer within sixty (60) days of the City’s receipt of these funds. If the Developer has not yet commenced construction when these funds are received by the City, the funds will be contributed to the Developer within sixty (60) days of Developer commencing construction on the Project. These eight (8) units will be allocated for households earning eighty percent (80%) or less of Area Median Income, corresponding with the HOME Program requirements. The Developer agrees that the Developer shall be responsible for compliance with all rules and regulations with respect to the use of any such HOME funds and agrees to indemnify and hold harmless the City against and from any liability of any nature arising out of the Developer’s use or misuse of any such funding.

(D) The City shall Work With the Developer in obtaining from the Housing Authority of New Haven (“HANH”) a grant in the sum of approximately Three Million One Hundred Thousand Dollars (\$3,100,000.00), which shall be used to pay for development costs, as well as certificates for project based Section 8 funding for the provision of twenty (20) affordable housing units within the Project. These twenty (20) units will be allocated for households

earning fifty percent (50%) or less of Area Median Income and the affordability of these twenty (20) units will be maintained for not less than seventeen (17) years, subject to the availability of project-based Section 8 certificates. The rental subsidies associated with these twenty (20) units will be between one hundred and ten percent (110%) and one hundred and twenty percent (120%) of fair market rents. In the event that such funding is secured, the Developer agrees that it shall comply with any and all applicable rules and regulations with respect thereto, whether from the United States Department of Housing and Urban Development (“HUD”) or from HANH, and that the Developer shall be required to execute and deliver a separate agreement with HANH regarding such funding. The use of this funding is subject to environmental clearance and approval from the United States Department of Housing and Urban Development. It is agreed and understood that the funding described in this Section 7.3(D) is dependent upon the execution and delivery of an agreement or a set of agreements between the City, HANH, and the Developer in a form expressly approved in writing by HUD, and that in the absence of same, no such funding shall be available. The City shall Work With the Developer in pursuing this approval and execution of such agreement.

(E) The City shall Work With the Developer in securing additional public financing to be used to provide affordable housing within the Project, including (without limitation) funding from the Connecticut Affordable Housing Trust Fund and the Federal Home Loan Bank.

#### **Section 7.4 Applications to Governmental Authorities**

The City Economic Development Administrator shall Work With the Developer to support applications for funding or other approvals made by the Developer to any Governmental Authority, including without limitation any applications made to the City Redevelopment Authority, the New Haven Board of Alderman, the State Traffic Commission, and the City Board of Zoning Appeals. The City Economic Development Administrator shall Work With the Developer to procure the existing, city-wide five (5)-year Assessment Deferral Program benefits, tax credits under the State of Connecticut Urban and Industrial Sites Reinvestment Tax Credit Program, and empowerment zone benefits.

**Section 7.5 Records and Access to Records**

The City shall promptly make available to the Developer for inspection and copying all documents, information and public records in the possession or control of the City, which relate to the Property or the Project.

**ARTICLE VIII**  
**TRAFFIC AND PARKING**

**Section 8.1 Parking Facilities**

- (A) As an element of the Project, the Developer shall obtain all necessary approvals and construct a parking facility (the “Parking Facility”) comprising not less than five hundred (500) parking spaces;
- (B) The Parking Facility shall be constructed below grade or to the extent that the Project shall contain any above-grade parking, the structure must be “wrapped” by active commercial uses on the street frontage first floor and by an appropriate “skin”, reasonably acceptable to the City, blending into the remainder of the Project, on each other floor containing any parking facilities;
- (C) Upon completion of the Parking Facility, and the issuance of a Certificate of Occupancy the Developer may, at its discretion, provide for the management of the Parking Facility, or the Developer may elect to negotiate a master-lease for the Parking Facility with the Parking Authority, with the conditions as described in Section 8.1(D) of this Agreement.
- (D) In the event the Developer elects to negotiate a master-lease for the Parking Facility with the Parking Authority the following conditions shall apply:

- (i) The Developer agrees that the master-lease shall provide for a monthly per space cost equal to the debt service per space, it being understood that debt service shall include third-party debt as well as equity provided by Union Backed Financing;
- (ii) The Developer agrees to guarantee a minimum of three hundred thirty five (335) monthly parkers for the Parking Facility, for use by tenants at a rate to be determined, and currently estimated at One Hundred Fifty Dollars and Zero Cents (\$150.00) per space provided that security, utilities, and maintenance are considered building costs and therefore excluded;
- (iii) It is understood that any master-lease negotiated between the Developer and the Parking Authority would be subject to the approval of the Board of the Parking Authority Board and the Board of Aldermen of the City.

**Section 8.2      Traffic Improvements**

- (A) The Developer is in the process of completing a traffic study, at the Developer's sole expense, with respect to the projected effects of the Project and finalizing a traffic plan with respect thereto (the "Traffic Plan") and obtaining State Traffic Commission approval thereof, to the extent necessary.
- (B) To the extent that the Traffic Plan requires a break in the median on State Street to create an entry to the Pitkin Tunnel from the left lane (northbound) of State Street (the "State Street Entry") the City shall, subject to obtaining all necessary permits and approvals, and at the City's sole cost and expense, provide a break in, or relocation of, the median, including design and engineering costs, to create a State Street Entry.
- (C) The Developer acknowledges that subject to the provisions of Section 8.2(b) above, the Developer shall be responsible, at the Developer's sole cost and expense, for implementation of the Traffic Plan. The City Traffic and Parking Department shall impose only those obligations on the Developer which are reasonably necessary to mitigate the impact of the

Project, as further described in the Traffic Plan or as reasonably determined by the City Traffic and Parking Department and/or as determined by the State Traffic Commission.

**ARTICLE IX**  
**DEFAULT**

**Section 9.1 Events of Default**

(A) The following shall constitute an Event of Default by the Developer:

- (i) an Event of Bankruptcy
- (ii) a failure to perform any monetary covenant or agreement on the part of the Developer to be performed, and to cure such failure within five (5) business days of notice thereof from the City; and
- (iii) a failure to perform any other covenant or agreement of this Agreement on the part of the Developer, and to cure such failure within thirty (30) days of notice thereof from the City or such longer time as may be required to cure such failure provided the Developer has commenced and is diligently pursuing such cure.

(B) A failure to perform any covenant or agreement of this Agreement on the part of the City, where such failure is not cured by the City within thirty (30) days of notice thereof from the Developer (or such longer time as may be required to cure such failure provided the City has commenced and is diligently pursuing such cure) shall constitute an Event of Default by the City.

**Section 9.2 Remedies**

Subject to the provisions of Section 9.3, both the City and the Developer shall have all rights and remedies available at law and in equity upon an Event of Default by the other party.

### **Section 9.3 Dispute Resolution Procedure**

- (A) The City and the Developer agree that they shall endeavor to resolve any dispute that may arise under this Agreement through good faith negotiations, prior to submitting to binding arbitration pursuant to clauses (B) through (E) of this Section 9.3. Either party may initiate negotiations by providing written notice (“Notice of Dispute”) in letter form 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 Dispute, the receiving party shall respond in writing with a statement of its position. At the request of either party, representatives of each party with full settlement authority shall meet at a mutually acceptable time and place in the City of New Haven within ten (10) days of the Notice of Dispute in order to attempt to negotiate in good faith a resolution to the dispute.
- (B) If the dispute is not resolved by the parties in accordance with the provisions of this Section 9.3, then within thirty (30) days of delivery of the Notice of Dispute or such other time as may be agreed to in writing by both parties, either party may commence binding arbitration, with the American Arbitration Association hereby agreed as the designated arbitrating body hereunder. The party filing the demand for arbitration shall name one arbitrator at the time it files a demand for arbitration, and the other party shall name a second arbitrator within ten (10) days of the date the demand is received by the American Arbitration Association. The two arbitrators so selected shall appoint a third arbitrator from a list provided by the American Arbitration Association, within five (5) days’ of receipt of said list. If either party fails to name an arbitrator within the time prescribed in this Section or if the arbitrators appointed by the parties do not appoint a third arbitrator within the time prescribed in this Section 9.3, the designated arbitration firm shall make the appointment. Such arbitration hearing shall take place within the City of New Haven and shall commence within sixty (60) days of the appointment of the third arbitrator or such later time as the parties shall agree to in writing.
- (C) Upon the request of either party, the arbitrators will determine what pre-hearing discovery is necessary or desirable for a full airing of the facts to render a fair and equitable judgment and

set a schedule for such discovery. The arbitrators shall issue a written reasoned opinion within thirty (30) days of the arbitration hearing. The decision of the arbitrators shall be binding upon the parties.

(D) Any arbitral award may be confirmed and enforced, and judgment entered thereon, in the state or federal courts of Connecticut.

(E) The prevailing party shall be entitled to reimbursement of all costs and expenses incurred in connection with any such arbitration and any judicial review thereof, including, but not limited to attorney's fees.

#### **Section 9.4 Indirect, Special or Consequential Damages**

Neither the City nor the Developer shall be entitled to indirect, special or consequential damages for an Event of Default.

### **ARTICLE X**

#### **GENERAL PROVISIONS**

#### **Section 10.1 Notices**

(A) 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 considered to have been given upon the earlier of (i) receipt thereof, (ii) three (3) business days after deposit in the United States mail, registered or certified mail, postage prepaid, return receipt requested, or (iii) day of delivery by hand, and addressed as set forth below

If to the Developer:

Becker Development Associates, LLC

95 Reef Road

Fairfield, Connecticut, 06824

Attention: Bruce Becker, Managing Member

With copies to:

Kennedy Associates Real Estate Counsel, LP

7315 Wisconsin Avenue, Ste 350 West

Bethesda, MD 20814

Attention: David Antonelli

Vice President of Acquisitions

And to:

McNaul Ebel Nawrot & Helgren PLLC

600 University Street, Suite 2700

Seattle, WA 98101

Attention: Marc O. Winters

If to the City:

Economic Development Administrator

City of New Haven

165 Church Street

New Haven, CT 06510

Attention: Kelly Murphy

With copies to:

City of New Haven

165 Church Street

New Haven, CT 06510

Attention: John R. Ward

Deputy Corporation Counsel

(B) 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.

**Section 10.2 No Waiver**

No failure on the part of the City or the Developer to enforce any covenant or provision herein contained, nor any waiver of any right hereunder by the other, 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 either party unless such waiver is in writing and designated as such and signed by such party, and such waiver shall not be a continuing waiver but shall apply only to the instance of default for which it is granted.

**Section 10.3 Rights Cumulative**

The rights and remedies conferred upon either party hereby are in addition to any rights or remedies to which either party may be entitled at law or in equity.

**Section 10.4 Successors**

This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the respective parties to this Agreement. The Developer is expressly authorized to assign this Agreement (a) to another legal entity that is either owned or controlled by the

Developer (controlled meaning that the Developer maintains at least 51% equity interest) and which retains Developer as the developer principally in charge of the development of the Project, or (b) to another legal entity which is owned or controlled by the provider of the Union Backed Financing and which retains Developer as the developer principally in charge of development of the Project. Except in the circumstance described in the preceding sentence, the Developer shall not be authorized or permitted to assign this Agreement to any other party without the prior consent of the City Economic Development Administrator or Mayor, which may be withheld in such parties' sole discretion.

**Section 10.5      Severability**

If any term, provision or condition contained in this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term, provision or condition to persons or circumstances (other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each term, provision and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law provided each party shall have substantially received the benefit of the Agreement accruing to it.

**Section 10.6      Governing Law**

This Agreement 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.

**Section 10.7      Waiver of Jury Trial**

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

**Section 10.8      No Partnership, Joint Venture or Agency**

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

**Section 10.9     Consents**

Where the consent or approval of the City is required to any action (or inaction) pursuant to the provisions of this Agreement, such consent or approval shall be granted (or denied) by the Economic Development Administrator.

**Section 10.10    Amendments**

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

**Section 10.11    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 10.12    Term**

This Agreement shall expire on the earlier to occur of (a) full performance and satisfaction of all covenants, agreements and obligations of the City and Developer hereunder, or (b) forty (40) years from the date hereof.

**IN WITNESS WHEREOF**, the City and the Developer have executed this Agreement as of the date set forth above.

**THE CITY OF NEW HAVEN**

By: \_\_\_\_\_

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

Date: \_\_\_\_\_

Approved as to form and correctness:

\_\_\_\_\_  
John R. Ward  
Deputy Corporation Counsel

Date: \_\_\_\_\_

**BECKER DEVELOPMENT ASSOCIATES, LLC**

By: \_\_\_\_\_

Bruce Becker  
Its Managing Member  
Duly Authorized to act herein

Date: \_\_\_\_\_

**EXHIBIT A**  
**Land Disposition Agreement**

**EXHIBIT B**  
**Description of Project**

This Description of Project has been drafted to describe the nature of the project which forms the basis of the development agreement (“Development Agreement”) signed between the CITY OF NEW HAVEN, a municipal corporation organized and existing under the laws of the State of Connecticut, with a mailing address at 165 Church Street, New Haven, Connecticut 06510 (the “City”) and BECKER DEVELOPMENT ASSOCIATES, LLC, a limited liability company organized and existing under the laws of the State of Connecticut, with a mailing address at 95 Reef Road, Fairfield, Connecticut 06824 (the “Developer”). Any capitalized terms used in this Description of Project shall be assigned the meaning they are given in the Development Agreement.

The former Shartenberg Department Store site, in vibrant downtown New Haven, represents one of the most exciting and significant development opportunities in the region. Developer’s proposal for a mixed-use, transit-oriented and green development will embrace and expand upon New Haven’s renaissance. Developer intends to build an iconic structure of exceptional design, to include housing, retail, parking and community facilities. When completed, the Project will be a visual gateway to New Haven, support a growing downtown population and workforce, and further the revitalization already underway.

**I. Site**

The site comprises just over one acre and fronts Chapel Street between State and Orange Streets in downtown New Haven. It currently functions as a surface parking lot and is owned by the City of New Haven. The site is known as the “Shartenberg site” because the Shartenberg Department Store was once located there. There are currently no buildings on the site, but an existing service tunnel borders the northern boundary. The site’s neighbors include retail shops, a quaint public plaza, and the State Street Train Station with service to New York City via Metro North. The site is also a short walk to Ninth Square shops and restaurants, bus service and Union Street Station, the New Haven Green, Yale University, the Yale-New Haven Hospital and downtown office buildings.

Through an RFP process, the City of New Haven selected Developer as the preferred developer. A memorandum of understanding between the City and Developer was executed in April 2007.

**II. Development Program**

Developer plans to include in the development at least 400,000 square feet in at least one multi-story tower, with a base for the tower or towers of not taller than 45 feet. The primary use of this Project will be residential, with approximately 425 market rate units and at least 50 affordable units. Developer also plans to include retail uses, a specialty grocery store, an early childhood education center, and parking structure containing at least 500 parking spaces.

The proposed building is less than the maximum FAR allowable under the site's current zoning, and as a result an exemption to exceed FAR is not required for this Project.

### **III. Design**

The design intent of this proposal is to create an iconic building that uses the land intensely while complementing the urban context and greening the City. The tower or towers will be defined by large windows and a slender footprint.

This development will be a model for sustainable design and will be LEED registered, and Developer will, at a minimum, meet the LEED standard for the residential portion of new construction. Through the incorporation of a variety of energy-efficient measures, such as water heat recovery units and insulated windows, our proposal will consume far less energy than comparable new buildings. A green roof will help reduce the "heat island" effect common to urban buildings. In addition, the roof of the taller residential tower will be large enough to accommodate a 50kw photovoltaic system. The visibility of this solar panel canopy throughout the region will raise environmental awareness and help promote New Haven's image as a center of progressive thought and innovation.

### **IV. Meeting community needs & city development goals**

The City's development goals have been carefully considered while formulating this proposal. Developer has gained input from citizens of New Haven from a variety of sources, including a recent and well-attended community design workshop.

With this Project, Developer aims to continue the growth of the downtown as a residential and commercial neighborhood. The primary uses in the proposed development are retail and residential. The new apartments created by this development will support and enhance commercial uses throughout downtown New Haven, while the convenience-oriented retail will promote downtown living. This Project will reinforce the idea of New Haven as a regional destination for visitors and businesses.

Developer also aims to have a significant positive impact on street-level activity and nearby neighboring communities. The inclusion of high traffic retailers on the first floor will generate street-level activity in and around the building and provide a vital retail connection from the downtown train station to the New Haven Green and beyond. Pedestrians can easily travel from the Shartenberg Site to the Ninth Square and Wooster Square, two of New Haven's most vibrant neighborhoods.

Finally, this development will be a major boost to the local economy. Developer estimates that this Project will generate hundreds of new construction and permanent jobs, as well as retain existing jobs.

**EXHIBIT C**  
**Property Description**

**EXHIBIT D**  
**Project Schedule**

This Project Schedule has been drafted to describe in detail certain Progress Deadlines, as referred to in the development agreement (“Development Agreement”). The Project Schedule begins as of the date of execution of the Land Disposition Agreement. Any capitalized terms used in this Project Schedule shall be assigned the meaning they are given in the Development Agreement.

The Developer shall complete meet the following Progress Deadlines, subject to the terms and penalties described in the Development Agreement:

**(1) Progress Deadline One: Design Development Drawings**

- (a) Twelve (12) months after the date of the execution of the Land Disposition Agreement, the Developer shall deliver to the City Economic Development Administrator a set of design development drawings.
- (b) Such set shall be in a state of substantial completion and shall include drawings which visually describe, in standard architectural terms, the following: a site plan, a typical floor plan for each proposed structure, sections for any buildings and underground structures, elevations as available, a plan for the retail and commercial space, a plan for any outdoor spaces, and as much structural detail as possible.
- (c) The Developer shall execute or cause execution of such design development drawings in a manner which reflect the standards, degree of skill, and care which is common to the architectural profession.

**(2) Progress Deadline Two: Construction Drawings**

- (a) Eighteen (18) months after the date of the execution of the Land Disposition Agreement, the Developer shall deliver to the City Economic Development Administrator a set of completed construction drawings.
- (b) Such set shall include drawings which visually describe, in standard architectural terms, the manner in which the Developer and its employees, designees, agents,

consultants and contractors, plan to execute the construction of the Project described in the Development Agreement.

- (c) The Developer shall execute or cause execution of such construction drawings in a manner which reflect the standards, degree of skill, and care which is common to the architectural profession.

**(3) Progress Deadline Three: Building Permits**

- (a) Twenty-four (24) months after the date of the execution of the Land Disposition Agreement, the Developer shall obtain from the City of New Haven all building permits necessary to the commence construction of the Project described in the Development Agreement.

**(4) Progress Deadline Four: Construction Completion**

- (a) Fifty-four (54) months after the date of the execution of the Land Disposition Agreement, the Developer shall substantially complete construction of the Project described in the Development Agreement.
- (b) The Project shall be substantially completed for the purposes of satisfying Progress Deadline Four if it has reached stage of progress at which the Project may be occupied or utilized for its intended use.

**(5) Progress Deadline Five: First Temporary Certificate of Occupancy**

- (a) Fifty-five (55) months after the date of the execution of the Development Agreement, the Developer shall obtain the first temporary certificate of occupancy from the relevant governmental authority.
- (b) Such governmental authority shall not unreasonably withhold, delay, or condition such certificate.

**EXHIBIT E**  
**Environmental Report**

**EXHIBIT F**  
**Union-Backed Financing**

**EXHIBIT G**  
**Quit Claim Deed**  
FORM OF  
**QUITCLAIM DEED**

KNOW ALL PEOPLE BY THESE PRESENTS, THAT:

**THE CITY OF NEW HAVEN**, a Connecticut municipality (the “Grantor”) for One Dollar (\$1.00) and other valuable consideration received to its full satisfaction of Becker Development Associates, LLC, a Connecticut limited liability company having a place of business c/o Becker and Becker Associates, 95 Reef Road, Fairfield, CT 06824 (the “Grantee”) does hereby remise, release and forever QUIT CLAIM unto the said Grantee and unto its successors and assigns forever, all of its right, title, interest, claim and demand whatsoever as the Grantor has or ought to have in and to all that certain piece or parcel of land, together with all improvements thereon, situated in the City of New Haven, County of New Haven and State of Connecticut and known as **745 Chapel Street**, being more particularly bounded and described on **Schedule A** attached hereto and made a part hereof (the “Premises”):

TOGETHER WITH the following rights, privileges and authorities appurtenant to said Premises:

1. **Easement for Wells**. A permanent, nonexclusive easement over, under and upon the sidewalks and/or streets adjacent to the Premises for the purpose of constructing, installing and maintaining permanent geothermal wells at locations shown on a certain survey recorded or to be recorded on the Land Records of the City of New Haven, **[identify survey]** (the “Map”).
2. **Utility Easements**. A permanent, nonexclusive easement over, under and upon the sidewalks and/or streets adjacent to the Premises including the Pitkin Plaza and Pitkin Tunnel (being the “Public Right of Way”) as shown on the map, for the purpose of locating, installing and maintaining utilities to provide service to the Premises.
3. **Construction Easements**. Such nonexclusive temporary construction easements over, under and upon the Public Right of Way as may be reasonably required to complete construction of the project (the “Project”) contemplated by a certain Land Disposition Agreement between Grantor and Grantee (the “LDA”) recorded together herewith on the Land Records of the City of New Haven, including, without limitation, the right to close certain lanes on adjacent streets, in such locations and for such periods as shall be approved by the Director of Traffic and Parking, the Director of City Plan Commission, the Director of Public Works, the Building Inspector and the Fire Marshal, as applicable. Upon the filing of a final Certificate of Completion, pursuant to the terms of the LDA, the temporary easement created hereby shall terminate and come to an end.
4. **Building, Foundation and Footing Easements**. Such other nonexclusive permanent easements over, under or upon the Public Right of Way as may be reasonably necessary to permit or facilitate the construction and completion of the Project, including, without limitation, easements for buildings, vaults, foundations, footings, support, signage and other similar purposes, **[as are shown on the Map]**. Specifically, Grantee shall have the absolute right to install footings in the Public Right of Way and to construct those portions of the Project lying within the area directly over the Pitkin Tunnel, as shown on the Map, provided that such construction shall not permanently destruct the use of the Pitkin Tunnel as a public right of way, and shall have a

permanent easement allowing the connection of the Project to the Pitkin Tunnel for pedestrian and vehicular ingress and egress.

5. Pitkin Plaza. A nonexclusive permanent easement over Pitkin Plaza for purposes of pedestrian access to and egress from the structures on the Premises.

The Grantee, by its acceptance of this Deed, agrees, for itself and its successors and assigns, that in the event any activity in the easement areas undertaken by or on behalf of Grantee significantly disturbs the surface of any portion of the easement area **[shown on the Map]**, such disturbed surface area shall be restored by such Grantee to its former condition to the extent reasonably practicable. The covenants, agreements and grants herein contained shall be binding on and shall inure to the benefit of the respective parties hereto and their successors and assigns and shall be deemed covenants running with the land and rights appurtenant to the dominant tenement. All such licenses, rights, and obligations shall continue to exist appurtenant to the Premises in perpetuity unless specifically temporary in nature or specifically terminated by agreement in writing by the owner of the Premises.

The Grantee, by its acceptance of this Deed, agrees, for itself and its successors, and assigns that it and they shall indemnify and hold harmless the Grantor and the Grantor's successors and assigns, against and from any liability of any nature, direct or indirect, arising out of the use by Grantee (or by any agent, contractor, licensee, or other permittee of Grantee) of any of the easements granted herein, including (without limitation) any and all legal costs incurred by Grantor in connection therewith. Further, in addition to the responsibilities of the Grantee to provide insurance under the LDA, the Grantee shall, during any period of construction, construction maintenance, or other work involving any of the easement areas, obtain and shall cause its general contractors during the carrying out of such work to obtain general liability insurance in an amount that is reasonably commensurate with the scope and impact of such work, with the Grantor named as an additional insured on such insurance policies. It is agreed and understood that during construction of any portion of the Project involving the air rights over the Pitkin Tunnel, such reasonably commensurate insurance shall be in an amount of not less than Ten Million Dollars (\$10,000,000.00).

SUBJECT TO the terms and conditions of the LDA. Without limiting the foregoing, the agreements and covenants contained in **[specify sections of LDA]** shall be covenants running with the premises enforceable by Grantor against Grantee and any successor in interest to the Premises. Such agreements and covenants run in favor of Grantor for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether Grantor has at any time been, remains, or is an owner of any land or interest therein to or in favor of which such agreements and covenants relate.

TO HAVE AND TO HOLD the above remised, released and QUIT CLAIMED Premises with the appurtenances thereof, unto the said Grantee, and Grantee's successors and assigns forever, to it and their proper use and behoof, so that neither the Grantor nor Grantor's successors or assigns, nor any other person claiming in its or their name or behalf, shall hereafter have any claim, right or title in or to the Premises or any part thereof, but therefrom the Grantor and they are by these presents forever barred and excluded.

IN WITNESS WHEREOF, the Grantor, on \_\_\_\_\_ day of \_\_\_\_\_, 2007, has caused this Deed to be executed and delivered by John DeStefano, Jr., its Mayor, who is duly authorized and empowered, and its corporate seal to be hereto affixed in its behalf by its City Clerk who is duly authorized to impress and attest said corporate seal of the City of New Haven has hereunto set its hand and seal this

