

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

INDEX

BACKGROUND

ARTICLE I

DEFINITIONS

- Section 1 Defined Terms
- Section 1.2 Interpretation

ARTICLE II

CONVEYANCE OF THE PROPERTY

- Section 2.1 Covenant of Sale
- Section 2.2 Condition of Property to be Conveyed
- Section 2.3 Title and Instruments of Conveyance
- Section 2.4 Purchase Price
- Section 2.5 Time of Sale and Conveyance
- Section 2.6 Real Estate Conveyance Tax and other Closing Costs
- Section 2.7 Real Property Tax Adjustments
- Section 2.8 Allowable Activity Prior to Closing

ARTICLE III

RESTRICTIONS AND CONTROLS UPON DEVELOPMENT

- Section 3.1 General
- Section 3.2 Covenants
- Section 3.3 Covenants; Binding Upon Successors in Interest
- Section 3.4 Construction Work
- Section 3.5 Time for Commencement and Completion of Construction

- Section 3.6 Remediation
- Section 3.7 Prompt Payment of Obligations
- Section 3.8 Access to the Property by City Personnel
- Section 3.9 Certificate of Completion

#### ARTICLE IV

#### TRANSFER AND MORTGAGE OF INTEREST IN PROPERTY

- Section 4.1 Transfer by the Developer
- Section 4.2 Mortgage of Property by the Developer
- Section 4.3 Rights and Duties of the Mortgagees Upon Acquisition Prior to Completion
- Section 4.4 Rights and Duties of Mortgagee Upon Acquisition after Completion

#### ARTICLE V

#### OPERATION, MAINTENANCE, ENFORCING COMPLIANCE AND DEVELOPER'S OBLIGATIONS

- Section 5.1 Operation and Maintenance of the Property
- Section 5.2 Reimbursement of the City

#### ARTICLE VI

#### INDEMNIFICATION

- Section 6.1 Indemnification
- Section 6.2 Survival

#### ARTICLE VII

#### DEFAULT

- Section 7.1 Failure by the Developer to Purchase the Property
- Section 7.2 Failure by the City to Transfer the Property

- Section 7.3 Default Subsequent to Purchase of the Property
- Section 7.4 Notice of Default to Mortgagees
- Section 7.5 Mortgagee May Cure Default by the Developer
- Section 7.6 Rights of Developer and Mortgagee in the Event of Revesting of Title  
in City
- Section 7.7 Remedies
- Section 7.8 Consequential Damages

## ARTICLE VIII

### MISCELLANEOUS PROVISIONS

- Section 8.1 Obligations and Rights and Remedies Cumulative
- Section 8.2 Finality of Approvals
- Section 8.3 Covenants to be Enforceable by the City
- Section 8.4 Members and Officers Barred From Interest
- Section 8.5 Agreement Binding on Successors and Assigns
- Section 8.6 Severability
- Section 8.7 Waivers
- Section 8.8 Amendments
- Section 8.9 Approvals and Notices
- Section 8.10 Matters to be Disregarded
- Section 8.11 Obligations to Continue
- Section 8.12 No Personal Liability
- Section 8.13 Number and Gender
- Section 8.14 City Regulatory Authority

**THIS LAND DISPOSITION AGREEMENT** (this "Agreement") is entered into this day of \_\_\_\_\_, 2007, by 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 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.

## **BACKGROUND**

In accordance with the terms and conditions set forth in that certain Development Agreement (the "Development Agreement") dated \_\_\_\_\_ between the City and the Developer it is agreed between the City and the Developer that all conditions precedent (if any) to the conveyance of the "Property" (as therein defined) have been satisfied and accordingly, the City, at the request of the Developer has agreed to convey the Property to the Developer subject to the terms and conditions set forth in this Agreement.

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

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

### **Section 1     Defined Terms**

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

- (A) "City" shall mean the City of New Haven, Connecticut, 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, and shall include any of its boards or commissions, and any successor in interest whether by operation of

law, or otherwise. The Economic Development Administrator of the City is authorized to act on behalf of the City to implement the provisions of this Agreement.

- (B) "Closing" shall have the meaning ascribed in Section 2.5 of this Agreement.
- (C) "Construction Work" shall have the meaning assigned to it in Article III, Section 3.4(A).
- (D) "Deed" shall have the meaning ascribed in Section 2.3 of this Agreement.
- (E) "Developer" shall mean 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, and its successors and permitted assigns, whether by operation of law or otherwise, but shall not mean mortgagees, unless and until such mortgagee shall succeed to Developer's interest in the Property by foreclosure or deed in lieu of foreclosure.
- (F) "Development Agreement" shall have the meaning ascribed in the Background section of this Agreement.
- (G) "Environmental Condition" shall mean any conditions which, under applicable Environmental Laws, require testing, remediation or monitoring.
- (H) "ELUR," an acronym, shall stand for Environmental Land Use Restriction and shall mean those use restrictions as described in Connecticut General Statutes Sections 22a-133n to 22a-133r, inclusive, as amended from time to time.
- (I) "Environmental Laws" shall mean any and all laws, statutes, ordinances, rules, regulations or orders of any Governmental Authority pertaining to the environment, including the federal Clean Water Act, the federal Clean Air Act, the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, the federal Water Pollution Control Amendments, the federal Resource Conservation and Recovery Act of 1976, the federal Hazardous Materials Transportation Act of

1975, the federal Safe Drinking Water Act, the federal Toxic Substances Control Act, and any comparable or similar environmental laws of the State, including Title 22a of the General Statutes.

(J) "Existing Environmental Conditions" shall mean any Environmental Condition at the Property existing on the date hereof.

(K) "Force Majeure" shall have the meaning ascribed in Section 1.1 of the Development Agreement.

(L) "Governmental Authority" shall mean any federal, state, local, or other governmental, regulatory or administrative agency, governmental commission, department, board, subdivision, court or tribunal.

(M) "Hazardous Substance" shall mean (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.

(N) "LEP," an acronym, shall stand for Licensed Environmental Professional and shall mean that individual licensed by the Connecticut State Board of Examiners of Environmental Professionals as set forth in Connecticut General Statutes Section 22a-133v and the implementing regulations thereto.

- (O) "Project" shall have the meaning ascribed in the Development Agreement and as further described in Exhibit B ("Description of Project") attached thereto.
- (P) "Project Schedule" shall mean the preliminary construction schedule set forth in Exhibit D of the Development Agreement and incorporated herein by reference.
- (Q) "Property" shall have the meaning ascribed in the Background section of the Development Agreement.
- (R) "Purchase Price" shall have the meaning ascribed in Section 2.4 of this Agreement.
- (S) "Release" shall mean any discharge, spillage, uncontrolled loss, seepage, filtration, emission, migration, leaking, pumping, injection, deposit, disposal or discharge of any Hazardous Substance into the environment to the extent prohibited under Environmental Laws.
- (T) "Remediation" shall mean any of the following activities to the extent that they relate to or arise from the presence of Environmental Conditions in the soil or groundwater or both at the Property for which remediation is required under Environmental Laws: (i) monitoring, investigation, cleanup, containment, remediation, removal, mitigation, or establishment of an ELUR at the Property required or permitted by the Connecticut Transfer Act should the Developer elect to use an ELUR; (ii) obtaining any permits, consents, approvals or authorizations from any Governmental Authority necessary to conduct such Remediation; and (iii) preparing and implementing any plans or studies for such Remediation.
- (U) "Remediation Standard Regulations" or "RSRs" shall mean Sections 22a-133k-1 to 22a-133k-3 of the Regulations of Connecticut State Agencies.
- (V) "Site Plan" shall mean the plan for the Project site, as submitted by Developer, and as approved by the City Plan Commission through said commission's site plan

review process, including approved modifications thereof.

- (W) “Union-Backed Pension Fund” shall have the meaning ascribed in the Development Agreement.

## **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.

## **ARTICLE II**

### **CONVEYANCE OF THE PROPERTY**

#### **Section 2.1 Covenant of Sale**

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

#### **Section 2.2 Condition of Property to be Conveyed**

(A) The Developer acknowledges, represents and warrants that any information in any manner pertaining to the Property, or any part thereof, supplied or made available by the City, is furnished to the Developer solely as a courtesy. THE INFORMATION IS PROVIDED, AND THE PROPERTY IS TO BE TRANSFERRED ON AN AS-IS-WHERE-IS BASIS AND THE CITY MAKES NO REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF CONDITIONS, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR

PURPOSE AS TO THE INFORMATION OR THE PROPERTY, and no representations, whether written or oral, have been made by the City, or its agents or employees, regarding the Property, except as expressly set forth in this Agreement or in the Development Agreement.

(B) The Developer acknowledges, represents and warrants that the Developer has made a complete inspection of the Property and is familiar with the Property, including any Environmental Conditions thereon, and has made such independent investigations as the Developer deems necessary or appropriate concerning the Property. The City makes no representations or warranties and specifically disclaims any representation, warranty, or guaranty, oral or written, past, present or future with respect to the physical conditions or any other aspect of the Property including the compliance of the Property with any applicable laws, including Environmental Laws, the financial earning capacity of the operation of the Property, the nature and extent of any right-of-way, lien, encumbrance, license, reservation, condition, or otherwise, the existence of soil instability, past soil repairs, soil additions or conditions of soil fill, susceptibility to landslides, sufficiency of undershoring, sufficiency of drainage, whether the Property is located wholly or partially in a flood plain or a flood hazard boundary or similar area, the existence or non-existence of Hazardous Substances, or other toxic materials of any kind (including, without limitation, asbestos or petroleum products) or any other matter affecting the stability or integrity of the Property.

(C) As part of the Developer's agreement to acquire the Property AS-IS-WHERE-IS, and not as a limitation on such agreement, THE DEVELOPER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES AND RELEASES THE CITY FROM ANY AND ALL ACTUAL OR POTENTIAL RIGHTS THE DEVELOPER MIGHT HAVE REGARDING ANY FORM OF WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND OR TYPE, RELATING TO THE PROPERTY AND THE INFORMATION, INCLUDING ANY CLAIMS ARISING FROM NEGLIGENCE OR STRICT LIABILITY. SUCH WAIVER AND RELEASE

IS ABSOLUTE, UNCONDITIONAL, IRREVOCABLE, COMPLETE, AND NOT LIMITED IN ANY WAY. SUCH WAIVER AND RELEASE INCLUDES, BUT IS NOT LIMITED TO, A WAIVER AND RELEASE OF EXPRESS WARRANTIES, IMPLIED WARRANTIES, WARRANTIES OF FITNESS FOR A PARTICULAR USE, WARRANTIES OF MERCHANTABILITY, WARRANTIES OF HABITABILITY, STRICT LIABILITY RIGHTS AND CLAIMS OF EVERY KIND AND TYPE, INCLUDING, BUT NOT LIMITED TO, CLAIMS REGARDING DEFECTS, WHETHER OR NOT DISCOVERABLE, PRODUCT LIABILITY CLAIMS, PRODUCT LIABILITY TYPE CLAIMS, ENVIRONMENTAL CLAIMS AND ALL OTHER EXTANT OR LATER CREATED OR CONCEIVED CLAIMS AND RIGHTS.

**Section 2.3 Title and Instruments of Conveyance**

The sale and conveyance of the Property shall be of fee simple title to the Property and shall be by quit claim deed substantially in the form attached hereto as Exhibit A (the "Deed"), granting marketable title to the Property to the Developer. The Deed shall be made expressly subject to the terms and provisions of this Agreement, which shall survive delivery of the Deed. The Deed shall be delivered to the Developer at the Closing upon the Developer's payment of the Purchase Price to the City.

**Section 2.4 Purchase Price**

The purchase price for the Property shall be One Dollar and Zero Cents (\$1.00) (the "Purchase Price"). The Purchase Price shall be paid to the City upon the City's delivery of the Deed to the Developer.

**Section 2.5 Time of Sale and Conveyance**

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.

**Section 2.6 Real Estate Conveyance Tax and other Closing Costs**

The Developer shall pay the cost of obtaining any title search and policy of title insurance, the cost, if any, of any real estate conveyance tax, and all other costs related to the Closing, including the cost of recording this Agreement and the Deed. Each party shall be responsible for payment of the legal fees of its own counsel in the negotiation and execution of this Agreement and the transfer of the Property.

**Section 2.7 Real Property Tax Adjustments**

(A) With respect to any tax period during which the City on the one hand, and the Developer on the other hand, both had title to the Property, real estate taxes allocable to the Property for such period shall be prorated between the City on the one hand, and the Developer on the other hand, in proportion to the respective periods of ownership of title by (i) the City and their predecessors in title on the one hand, and (ii) the Developer or any permitted assignee on the other hand, in accordance with the custom in the County of New Haven, Connecticut.

(B) In the event the Property is fully exempt from taxation on the assessment date next preceding the date on which the Deed is recorded in the Land Records of the City of New Haven by virtue of title being vested in the City or other tax-exempt entity, the Developer or any successor or permitted assignee shall be liable for taxes pursuant to Section 12-81a of the General Statutes of the State of Connecticut, and shall make payment of such taxes in accordance therewith (or if such section shall be held invalid, unenforceable or unconstitutional by a court of competent jurisdiction, the Developer or any permitted assignee shall make a payment in lieu of taxes, to the City, based upon the assessed value of the Property or portion thereof, at the tax rate then prevailing in the City, for that portion of the tax year during which the Developer or such assignee had title). The City and the Developer agree that it is their intention that,

commencing upon Closing, the Property shall be, and shall remain, subject to real estate tax and in no event shall the Developer or any successor or assignee seek exemption from such taxes. This Section 2.7(B) shall survive the expiration or any termination of this Agreement for a period of forty (40) years from the recording of the Certificate of Completion. Notwithstanding the foregoing, it is expressly agreed, stipulated and understood that nothing contained in this Section 2.7(B) shall be construed as limiting the Developer's ability to take advantage of the Citywide Rehabilitation Area Agreement Deferral Program for tax assessment phase-in, pursuant to the provisions of Section 12-65c ct. seq. of the Connecticut General Statutes (and City of New Haven ordinance made thereunder) to the extent that the Developer is so entitled and any other such as of right tax abatement deferral program existing at the date hereof.

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

**Section 2.8 Allowable Activity Prior to Closing**

(A) Prior to the Closing, the City shall grant the Developer and its designees, agents, employees, contractors and consultants an exclusive license to reasonably access the Property to perform such inspections and testing as deemed reasonably necessary by the Developer, and to conduct such demolition or construction work in accordance with all the activities allowed to maintain the Project Schedule. Prior to Closing, the City may not sell, lease, file liens or any kind upon, or borrow against, the Property, unless title has reverted in the City pursuant to the default provisions of this Agreement.

(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 2.8, 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.

### **ARTICLE III**

#### **RESTRICTIONS AND CONTROLS UPON DEVELOPMENT**

##### **Section 3.1 General**

The general composition and design of the Project has been determined taking into account the visual impact that the Project will have on the surrounding neighborhood, market conditions and economic viability, pedestrian enhancements and the reasonable needs and concerns of the community, the Developer and the City.

##### **Section 3.2 Covenants**

(A) The Developer covenants that it shall construct the Project on the Property in accordance with all zoning and other regulations and the terms, conditions and restrictions set forth in this Agreement and the Development Agreement (the "Permitted Use"). Without limiting the foregoing, the Developer covenants and agrees that it will not use or occupy, nor permit the Property to be used or occupied,

for any purpose which

- (i) violates any zoning, land use, or building restriction then in force;
- (ii) breaches any existing private covenant, restriction, license, condition, easement or agreement covering or affecting the use of the Property; or
- (iii) constitutes a violation of applicable law.

(B) The Developer covenants on behalf of itself and its successors and assigns, that any development of this Property, including that permitted pursuant to this Article III, is and remains subject to all applicable City approval processes.

(C) Without prejudice to the generality of any provisions of this Article III, Section 1(a), the Developer covenants on behalf of itself and its successors and assigns that the Developer and its successors and assigns shall:

- (i) devote the Property to (and operate in accordance with) the Permitted Use, in accordance with all zoning and other regulations and the terms, conditions and restrictions set forth in this Agreement;
- (ii) not discriminate upon the basis of race, color, religion, gender, sexual orientation, national origin, marital status or physical disability in the sale, lease, or rental or in the use and occupancy of the Property or any improvements erected or to be erected thereon, or any part thereof;
- (iii) comply with all federal, state and local laws in effect from time to time, prohibiting discrimination or segregation by reason of race, religion, color, gender, sexual orientation, national origin, marital status or physical disability in the sale, lease, or rental or in the use and occupancy of the Property or any improvements erected thereon or to be erected thereon, or any part thereof;
- (iv) not cause or permit obnoxious odors to emanate, or be dispelled, from the

Property;

(D) Without prejudice to the generality of Section 3.2(A) above, it is hereby agreed and understood that the provisions of Section 6.4 and 6.5 of the Development Agreement are incorporated herein in their entirety as if set out in full.

**Section 3.3 Covenants; Binding Upon Successors in Interest**

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

(B) in amplification of, and not in restriction of, the provisions of this Article III it is intended and agreed that the City and its successors and assigns shall be deemed beneficiaries of the agreements and covenants provided in this Article III both for and in their own right and also for the purposes of protecting the interest of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided. Such agreements and covenants shall (and the Deed shall so state) run in favor of the City for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether the City has at any time been, remains, or is an owner of any land or interest therein to or in favor of which such agreements and covenants relate. The City shall

have the right, in the event of any breach of any such agreements or covenants, to exercise all of the rights and remedies available to it, and to maintain any actions or suits at law or in equity or other proper proceedings designed to enforce the curing of any such breach, to which it or any other beneficiaries of said agreements or covenants may be entitled.

### **Section 3.4 Construction Work**

- (A) The Developer shall improve the Property by constructing on it the Project in accordance with all of the obligations set forth in the Development Agreement (the “Construction Work”). All plans, specifications, work and improvements for the Construction Work shall conform to applicable state and local laws, regulations and ordinances. The Developer has submitted (or will shortly submit) to the City Plan Commission site plan applications for the Construction Work, which Construction Work cannot be commenced until the same have been approved by the City Plan Commission and building permits issued therefor.
- (B) During the Construction Work, no materials, objects or other things shall be stored or kept on any portion of the Property unless such materials, objects or other things are enclosed in a building or are screened from view by an architectural screen of not less than eight (8) feet in height, around the boundary of the Property.
- (C) No portion of the Construction Work shall be carried out unless such work materially conforms with the Site Plan, except and only to the extent that material modifications to the Site Plan have been requested by the Developer in writing and have been approved in writing by the Executive Director of the City Plan Department after having obtained the written opinion of the City Plan Commission. In the event that the Developer shall fail to comply with the foregoing requirements, the City may within a reasonable time after discovery thereof by the City direct in writing that the Developer so modify or reconstruct such portion or portions of the Construction Work as are not in material conformance with the Site Plan so as to bring it into conformance therewith. The Developer shall promptly comply with any such

directive, and shall not proceed further with the Construction Work until any such directive is complied with. In the event the Developer, within thirty (30) days (or such additional time as may be necessitated by Force Majeure), fails to comply with such a directive, the City upon notice to Developer may cause to be performed such modification or reconstruction and charge all costs therefor to the Developer, provided, however, that the City shall have no right to proceed in the event the Developer has commenced to comply with the directive and continues to diligently pursue its completion. In the event the City undertakes to perform the modification or reconstruction as herein set forth, the Developer agrees to pay all such costs without objection, provided that the City shall cause such modification or reconstruction to be performed only after the Developer has been notified in writing of the City's intention to cause such work to be performed and has failed for thirty (30) days (or such additional time as may be necessitated by Force Majeure) after the receipt of such notice to comply with the City's prior directive to modify or reconstruct. In the alternative, the City may (in the sole and absolute discretion of the City) apply to a court of competent jurisdiction for an order of specific performance compelling the Developer to comply with such prior directive.

- (D) In the event the City directs that the Construction Work be modified or reconstructed due to the Developer's failure to materially conform to the Site Plan, Developer shall have such period of time to complete such work as is reasonable under the circumstances (taking into account Force Majeure, if applicable), provided Developer promptly commences such work and diligently performs it.

### **Section 3.5 Time for Commencement and Completion of Construction**

- (A) Subject to delays caused by Force Majeure, the Developer shall perform the Construction Work in accordance with the Site Plan and substantially in accordance with the Project Schedule.
- (B) Following the commencement of the Construction Work and until such time as the Construction Work has been completed, the Developer shall deliver a written report

to the City's Economic Development Administrator, in such detail as may reasonably be required, every three (3) months as to the actual progress of the Developer with respect to the Construction Work.

(C) The time for the commencing or completing of the Construction Work shall be extended for any period equal to the period of any delay (plus any necessary start-up time should the delay require such) resulting from Force Majeure or from any delay in the delivery of the Deed and/or delivery of possession of the Property to the Developer pursuant to this Agreement. In the event of the occurrence of any of the foregoing, the time for the performance of the Developer's obligations to commence and complete the Construction Work shall be extended, in writing, for such period as the City's Economic Development Administrator shall reasonably find in writing to be the period of the enforced delay, provided the Developer shall promptly after the Developer becomes aware of any of the aforementioned reasons for delay, notify the City's Economic Development Administrator in writing of any such reasons. In calculating the length of the delay, the City shall consider not only the actual work stoppages but also the consequential delays resulting from such stoppages.

(D) The Developer's development obligations with respect to the Project shall incontestably be deemed completed (and the City's right of reentry shall be terminated except with respect to an unauthorized transfer of the Property as set forth in Article IV, Section 1) upon recording of a Certificate of Completion in accordance with Section 3.9 of this Article III.

### **Section 3.6 Remediation**

(A) The Developer shall be solely responsible for the Remediation at the Property, if any, required by Environmental Laws. If applicable, the Developer shall comply with the requirements of the Connecticut Transfer Act and perform such Remediation in accordance with the RSRs and any other applicable Environmental Laws.

(B) The Developer shall be solely responsible for all costs of Remediation, if any, of the

Property, including, without limitation, the payment of any LEP hired by the Developer and all filing fees associate with any ELUR on the Property, should the Developer elect or be legally required to use an ELUR.

**Section 3.7 Prompt Payment of Obligations**

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

**Section 3.8 Access to the Property by City Personnel**

Upon prior notice by the City to the Developer, the Developer shall provide representatives of the City reasonable access to the Property during and after the carrying out of the Construction Work, for the purpose of inspecting the same and ascertaining whether the Property is being used and maintained in accordance with the Permitted Use, provided such access does not unreasonably interfere with the Developer's business operations.

**Section 3.9 Certificate of Completion**

(A) Within twenty (20) days after completion of the Construction Work (as evidenced by the issuance of final Certificates of Occupancy for each component of the Project), the City's Economic Development Administrator will deliver to the Developer a certificate of completion so certifying (the "Certificate of Completion"). Final Certificates of Occupancy will not be unreasonably withheld, delayed, or conditioned. Such Certificate of Completion shall be a conclusive determination of full satisfaction and termination of the agreements and covenants in the Agreement and the Deed with respect to the obligations of the Developer and its successors and assigns to construct the Project. The Certificate shall specify such other obligations of the Developer in this Agreement that survive its issuance. The Certificate of Completion shall be in a form proper for recording on the Land Records of the City of New Haven and the

Developer shall be permitted to record the Certificate of Completion.

(B) If the City Economic Development Administrator refuses to provide a Certificate of Completion in accordance with this Section 3.9, following the Developer's request therefore, the Economic Development Administrator shall, within said twenty (20) day period, provide the Developer with a written statement indicating in reasonable detail in what respects the Developer has failed to complete the improvements in accordance with the provisions of this Agreement, or is otherwise in default, and specifying the measures or acts necessary for the Developer to take or perform in order to obtain the same. Upon Developer's completion of such measures or acts, to the reasonable satisfaction of the City's Economic Development Administrator then the City shall deliver the Certificate of Completion to Developer within fifteen (15) days of such completion.

#### **ARTICLE IV**

#### **TRANSFER AND MORTGAGE OF INTEREST IN PROPERTY**

##### **Section 4.1 Transfer by the Developer**

- (A) The Developer represents and agrees that it is purchasing the Property for the purposes herein described, and not for speculation in land holding. The Developer further recognizes that, in view of:
- (i) the importance of the rehabilitation of the Property to the general welfare of the community; and
  - (ii) the substantial financing and other public aid that has been made available by the federal and local government for the purpose of the Project; and
  - (iii) the fact that any change in the identity of the Developer or the interest held in the Property by the Developer, or any other act or transaction involving or resulting in a significant change in the ownership of the Property or control thereof is for

practical purposes a transfer or disposition of an interest in the Property,

the qualifications and identity of the Developer are of particular concern to the community and to the City. The Developer further recognizes that it is because of the Developer's qualifications and identity that the City is entering into this Agreement and, in so doing, is relying upon the Developer for the faithful performance of all of the undertakings and covenants set forth in the Development Agreement and this Agreement. Accordingly, the Developer shall not transfer any interest in the Property until the Certificate of Completion has been issued. For purposes hereof a "transfer" shall include a transfer of a controlling interest in the Developer. However, a "transfer" shall not include (and there shall be no restriction upon) a transfer or sale of the Property to (a) another legal entity that is either owned or controlled by the Developer (controlled meaning that the Developer maintains at least fifty-one percent (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 the development of the Project. In addition, a "transfer" shall not include (and there shall be no restriction upon) (a) the granting of easements or licenses in connection with the construction, development or operation of the Project, and (b) any change in the beneficiaries or participating pension plans or other investors in the provider of the Union Backed Financing.

(B) Any assignment of any interest in this Agreement which is in contravention of the provisions of Article IV, Section 1 above, shall be an event of default entitling the City to exercise any and all of the various rights and remedies available to it, whether set forth herein or existing at law or in equity.

(C) For a period of forty (40) years after the recording of the Certificate of Completion, there shall be no transfer of any interest in the Property or in the owner thereof that might cause the Property to be exempt from real property taxation, unless the transferee agrees to make payments in lieu of taxes in an amount equal to the amount of real property taxes that would otherwise be due on the Property if it were

not tax-exempt and in a manner acceptable to the City in its reasonable discretion. Furthermore, the Property shall remain subject to the limitation on use to the Permitted Use, as provided in Article III, Section 1(a) for the life cycle of the Project, but in no event shall terminate prior to the fortieth (40<sup>th</sup>) anniversary of the recording of the Certificate of Completion.

- (D) Any deed of conveyance by the Developer shall contain the surviving agreements and covenants set forth in Article III, Section 1(c)(ii) and (iii) above and in Article IV, Section 1(c) above, and the Deed and the reversion rights set forth in this Agreement and the Deed.

#### **Section 4.2 Mortgage of Property by the Developer**

Notwithstanding any other provisions of this Agreement, the Developer shall at all times have the right to encumber, pledge, or convey its right, title and interest in and to the Property, or any portion or portions thereof, by way of a bona fide mortgage to secure the payment of any loan or loans obtained by the Developer to finance the Project provided that any mortgagee taking title to the Property or part thereof (whether by foreclosure or deed in lieu of foreclosure or otherwise) shall be subject to the provisions of this Agreement and that the Developer shall give prior written notice to the City of the existence of any such mortgage, the amount thereof and the name and address of the mortgagee.

#### **Section 4.3 Rights and Duties of the Mortgagees Upon Acquisition Prior to Completion**

- (A) If a mortgagee acquires fee simple title to the Property or, forecloses its mortgage by judicial sale or exercises any power of sale in conjunction with its mortgage prior to issuance of a Certificate of Completion for that Property, such mortgagee shall, at its option:

- (i) Complete construction of such improvements 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 (including, but not limited to, at a foreclosure by sale or pursuant to any power of sale in connection with the mortgage) 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), fee simple title to the Property to a purchaser, assignee or transferee who shall expressly assume all of the covenants, agreements and obligations of the Developer under this Agreement in respect to the Property (and shall be deemed a "Developer" under the terms of this Agreement), by written instrument reasonably satisfactory to the City filed forthwith and recorded in the Land Records of the City of New Haven,

(iii) Reconvey to the City fee simple title to the Property subject to the provisions of Article VII, Section 7.5 of this Agreement, in which event said provisions of that section relative to resale shall apply.

(B) Notwithstanding any other provision of this Agreement, including but not limited to those that are or are intended to be covenants running with the land, any mortgagee (including one who obtains title to the Property as a result of foreclosure proceedings or action in lieu thereof) shall not be obligated to construct or complete the Project or to guarantee such construction or completion, nor shall any covenant or any other provision in the Deed or certificate of foreclosure be construed to so obligate such mortgagee, provided that nothing in this section or in this Agreement shall be deemed or construed to permit or authorize any such mortgagee to devote the Property to any uses or to construct any improvements thereon, other than those uses or improvements permitted in this Agreement.

#### **Section 4.4 Rights and Duties of Mortgagee Upon Acquisition after Completion**

If a mortgagee acquires fee simple title to the Property after issuance of a Certificate of

Completion, the mortgagee shall comply with the applicable provisions of this Agreement, provided the mortgagee shall have the right to sell, assign or transfer the fee simple title to the Property on the same basis as set forth in Section 4.1(c) of this Article IV.

**ARTICLE V**  
**OPERATION, MAINTENANCE, ENFORCING COMPLIANCE AND**  
**DEVELOPER'S OBLIGATIONS**

**Section 5.1 Operation and Maintenance of the Property**

The Developer and each permitted successor shall keep the Property and all improvements thereat, now or hereafter existing, in good and safe condition and repair, and shall comply with all applicable laws, ordinances, codes and regulations (federal, state or municipal).

**Section 5.2 Reimbursement of the City**

The Developer shall pay all reasonable costs and expenses, judgments and decrees which may be incurred by the City in proceedings brought to enforce compliance with the provisions of this Agreement, including, without limitation, the obligations set forth in this Article V, except any obligations which arise before the date the Developer takes title to the Property and which are caused or contributed to by the City or its agents, contractors or employees.

**ARTICLE VI**  
**INDEMNIFICATION**

**Section 6.1 Indemnification**

(A) The Developer shall indemnify, 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 (i) any default in the observation or performance of any covenant, condition or agreement, or the material untruth or inaccuracy of any representation or warranty of the Developer on the part of the Developer to be fulfilled, kept, observed and performed under the terms of this Agreement; (ii) any damage or injury to property or persons, including, without limitation, death resulting at any time therefrom, occasioned by the Developer's use and occupancy of the Property or which the Developer may otherwise permit or suffer to be man of the Property, or otherwise occurring in the Property, and (iii) any Environmental Conditions on the Property, including Existing Environmental Conditions, and the Remediation thereof. Nothing in this Agreement shall be deemed to waive or release the City from 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 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.

(B). 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.

## **Section 6.2 Survival**

This indemnification shall survive the termination or expiration of this Agreement, provided the City is not then in default hereunder.

## **ARTICLE VII** **DEFAULT**

**Section 7.1 Failure by the Developer to Purchase the Property**

In the event that the Developer shall fail to complete the purchase of the Property, the City may, upon such failure, and in its sole discretion, terminate all of its obligations to the Developer hereunder. The City shall, in the alternative, be entitled to the remedy of specific performance. These shall be the sole and exclusive remedies available to the City for this default.

**Section 7.2 Failure by the City to Transfer the Property**

In the event that the City shall fail to deliver title to and possession of a Property as required hereby then, and in any such event, the Developer shall be entitled to the remedy of specific performance. This shall be the sole and exclusive remedy available to the Developer for this default.

**Section 7.3 Default Subsequent to Purchase of the Property**

(A) In the event the Developer shall fail due to reasons other than Force Majeure to perform its obligations under this Agreement with respect to commencement and completion of the Construction Work and the City has acted promptly and in good faith with respect to the granting of approvals, consents, and reviews necessary for or related to the Permitted Use, the City shall notify the Developer of such default, in writing. After the Developer's receipt of any such notice, the Developer shall, subject to Force Majeure extensions, have ninety (90) days within which to cure a failure to commence construction and one hundred eighty (180) days within which to cure a failure to complete Construction Work. If the Developer fails to cure any such default under this Article VII, Section 7.3(A) within the period specified (or such longer period as may be required to complete the Construction Work as long as the Developer is diligently pursuing its completion), then, the City may, in its discretion deliver written notice to the Developer that all estate and title conveyed pursuant to this Agreement and the Deed has automatically reverted to and become fully and

completely revested in the City (subject to the rights of the mortgagees), so that the City (or its successors or assigns) shall be entitled to and may of right enter upon and take possession of the Property, provided that any such revesting of title in the City shall always be subject to and shall not defeat or render invalid the lien of any existing mortgages with respect to the Property permitted by this Agreement or the rights of mortgagees herein set forth. Such automatic reversion and revesting in the City shall be evidenced by the filing of any such notice on the Land Records of the City of New Haven. Notwithstanding the foregoing, the Developer shall not be liable for any delay or default in performing its obligations with respect to construction of the Project if such delay or default is caused by conditions beyond its reasonable control as set forth in Section 3.5(C) of Article III above. The Developer shall execute such documentation as the City may reasonably consider necessary or desirable in order most effectively to record such reversion of title, but failure to do so shall not affect the City's rights hereunder. Said rights of the City shall be in addition to, and not in lieu of, any and all other rights of the City arising out of such default. The reversionary right under this Article VII, Section 7.3 (A) shall terminate upon recording of the Certificate of Completion.

(B) In the event of a violation of Article IV, Section 4.1(C) of this Agreement, then, the City shall provide written notice to the Developer. The Developer shall have thirty (30) days within which to provide to the City a commitment by the transferee for the payment of payments in lieu of taxes pursuant thereto. If the Developer fails to provide such commitment, the City may, in its discretion, deliver written notice to the Developer that all estate and title conveyed pursuant to this Agreement and the Deed has automatically reverted to and become fully and completely revested in the City (subject to the rights of the mortgagees), so that the City (or its successors or assigns) shall be entitled to and may of right enter upon and take possession of the Property, provided that any such revesting of title in the City shall always be subject to and shall not defeat or render invalid the lien of any mortgagees with respect to the Property permitted by this Agreement or the rights of s as herein set forth. Such automatic reversion and revesting in the City shall be by the filing of any such notice on the Land Records of the City of New Haven. The Developer shall such

documentation as the City may reasonably consider necessary or desirable in effectively to record such reversion of title, but failure to do so shall not affect the City's rights hereunder. Said rights of the City shall be in addition to, of, any and all other rights of the City arising out of such default. The reversionary right under this subsection extends through the natural life cycle of the Project, but in no event shall terminate prior to the fortieth (40<sup>th</sup>) anniversary of the recording of the Certificate of Completion.

(C) In the event of any other default by the Developer under this Agreement, the City shall deliver written notice thereof, and the Developer shall have a period of ninety (90) days to cure such default, or if such default is not susceptible of cure within such period, then such longer period as may be reasonably required provided that the Developer shall commence the cure within such ninety (90) day period and thereafter diligently complete the same. However, it is understood that nothing herein shall be deemed to limit any other remedy the City may have for any such default (if applicable) pursuant to the terms and conditions of the Development Agreement.

#### **Section 7.4 Notice of Default to Mortgagees**

In the event the City gives notice to the Developer of any default under this Agreement, the City shall furnish a copy of such notice to any mortgagees of which the City has notice (including record notice by virtue of any mortgagee notice addresses appearing in the public records).

#### **Section 7.5 Mortgagee May Cure Default by the Developer**

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

**Section 7.6 Rights of Developer and Mortgagee in the Event of Revesting of Title in City**

(A) In the event that title to the Property shall revest in the City in accordance with the provisions of this Article VII, the City shall use commercially reasonable and continuous efforts to market and resell the Property in an all cash sale at full market value, subject to all mortgages, as soon as reasonably possible and consistent with the objectives of applicable law, to a qualified and responsible party or parties, as reasonably determined by the City, which will assume the obligation of making or completing the improvements specified under this Agreement and under the Mortgages and documents recorded in conjunction therewith, and in accordance with the Permitted Uses.

(B) Upon resale of such Property the proceeds thereof shall be applied first to reimburse the City, for all costs and expenses incurred by it including, but not limited to:

- (i) all taxes, assessments, and water and sewer charges;
- (ii) any payments made or necessary to be made to discharge any encumbrances or liens existing on the Property at the time of revesting of title thereto in the City or to discharge or prevent from attaching or being made any subsequent encumbrance or liens due to obligations, defaults, or acts of the Developer or of its successors or assigns, to the extent any of said liens or encumbrances have priority over the mortgages;
- (iii) expenditures made or obligations incurred with respect to the making or completion of the improvements or any part thereof on the Property; and
- (iv) any amounts otherwise owing the City by the Developer and/or its successors and assigns.

(C) The balance of such proceeds, if any, shall be allocated and paid () first, to the mortgagees in order of priority to pay down the outstanding mortgage indebtedness, provided, however, for the purposes of this Section 7.6(C), if the Property being sold was conveyed to the City by any mortgagee such mortgagee shall be treated as holding a mortgage with the same priority as existed prior to such mortgagee acquiring title to the Property and such mortgage shall be treated as securing a mortgage indebtedness in an amount equal to the mortgage debt which existed immediately prior to such mortgagee acquiring such fee title, plus any expenditures made or obligations incurred by such mortgagee in improving or protecting the Property, less any income received by such mortgagee from the operation thereof, and, (ii) second, the balance to the Developer or its successors or assigns up to an amount equal to the sum of the purchase price paid by it for the Property and the cash actually paid or liabilities actually incurred by Developer or its successors or assigns in connection with the acquisition, design, development, financing, construction, marketing, operation, ownership and leasing of the Project, less the cash amounts of any net gains or net income withdrawn or made by the Developer from this conveyance or from the Property.

(D) The balance (if any) remaining after such reimbursements shall be retained by the City. To the extent that the total outstanding indebtedness secured by a mortgage is not paid in full, the Property shall remain encumbered by such mortgage.

### **Section 7.7 Remedies**

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

### **Section 7.8 Consequential Damages**

Without prejudice to the City's reversionary interest under Section 7.3 or other remedies available to the City under this Article VII, neither the City nor the Developer shall be entitled to indirect, special, or consequential damages for any event of default under this Agreement or under the Development Agreement.

**ARTICLE VIII**  
**MISCELLANEOUS PROVISIONS**

**Section 8.1 Obligations and Rights and Remedies Cumulative**

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

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

**Section 8.2 Finality of Approvals**

Where, pursuant to this Agreement, any document of or proposed action by the Developer is submitted by it to the City, and the Developer has been notified in writing by the City that the same is approved or is satisfactory, the Developer may proceed in reliance that such determination shall be a final determination by the City with respect to such particular document or proposed action for which such approval or notice of satisfaction was given.

**Section 8.3 Covenants to be Enforceable by the City**

The covenants of the Developer contained in this Agreement and/or the Deed shall constitute covenants running with the Property, but shall nonetheless be enforceable by the City whether or not the City retains title to, an interest in or possession of any land to which such covenant runs in favor or relates.

**Section 8.4 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 or any successor or assign thereof, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interests of any corporation, partnership, or association in which he or she is, directly or indirectly interested. No member, official or employee of the City shall be personally liable to the Developer or any successor in interest in the event of any default by the City or for any amount which may become due to the Developer or to its successor or with respect to any other obligations arising under the terms and conditions of this Agreement.

**Section 8.5 Agreement Binding on Successors and Assigns**

This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the respective parties to this Agreement. Notwithstanding the preceding sentence, and except as provided in the next sentence, the Developer shall not be authorized or permitted to assign all or any portion of this Agreement to any other party without the prior consent of the City, which consent may be granted or withheld in the City's sole discretion. Notwithstanding anything to the contrary in this Agreement, the Developer is expressly authorized to assign this Agreement (a) another legal entity that is either owned or controlled by the Developer (controlled meaning that the Developer maintains at least fifty-one percent (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 the development of the Project.

**Section 8.6 Severability**

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

**Section 8.7 Waivers**

- (A) Any right or remedy which the City or the Developer may have under this Agreement, may be waived in writing by the City or by the Developer (as the case may be) without execution of a new or supplementary agreement, but any such waiver shall not affect any other rights not specifically waived, or be deemed a waiver of such right in the future, unless the writing shall expressly so state.
- (B) 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.
- (C) 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 8.8 Amendments**

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

**Section 8.9 Approvals and 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,
- (ii) three (3) business days after deposit in the United States mail, registered or certified mail, postage prepaid, return receipt requested, or
- (iii) one (1) business day after deposit with Federal Express or similar overnight courier, or
- (iv) 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, President

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.

**Section 8.10 Matters to be Disregarded**

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

**Section 8.11 Obligations to Continue**

Except as to obligations expressly to be performed at or prior to delivery of the Deed, the provisions of this Agreement shall survive delivery of the Deed. Upon recording of the Certificate of Completion in the Land Records of the City of New Haven, the Developer shall be deemed to have satisfied its obligations under this Agreement and the Deed with respect to the performance of the Construction Work, but all other covenants and obligations shall survive delivery of the Certificate of Completion. All such covenants shall run with the land for the natural life cycle of the Project, but in no event shall the covenants terminate prior to the fortieth (40<sup>th</sup>) anniversary of the date of the recording of the Certificate of Completion.

**Section 8.12 No Personal Liability**

(A) No member, officer, employee, or agent of Developer shall be personally liable to the City in the event of any default by the Developer or for any amount which may become due to the City with respect to any obligations arising under terms and conditions of this Agreement.

(B) No official (elected or appointed), employee or other agent of the City shall be personally liable to the Developer in the event of any default by the City or for any amount which may become due to the developer with respect to any obligations arising under the terms and conditions of this Agreement

**Section 8.13 Number and Gender**

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

**Section 8.14 City Regulatory Authority**

Nothing in this Agreement shall affect the City's powers and duties in its regulatory and governmental capacities.



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

Signed, Sealed and Delivered  
in the presence of:

CITY OF NEW HAVEN

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

John DeStefano Jr.  
Mayor

\_\_\_\_\_

Approved as to Form:

Seal Impressed and Attested:

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

John R. Ward  
Deputy Corporation Counsel

City/Town Clerk

Witness  
ASSOCIATES, LLC.

BECKER DEVELOPMENT

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

Bruce Becker, Managing Member

\_\_\_\_\_

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

, 2007

