DEVELOPMENT AND LAND DISPOSITION AGREEMENT

AMONG

THE CITY OF NEW HAVEN, THE NEW HAVEN PARKING AUTHORITY AND

WE ROUTE 34, LLC

DATED AS OF_____, 2012

FOR THE DEVELOPMENT AND DISPOSITION

OF 100 COLLEGE STREET

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THIS DEVELOPMENT AGREEMENT dated as of this ____ day of _____ 2012 (the "Effective Date"), by and between the **CITY OF NEW HAVEN**, a municipal corporation organized and existing under the laws of the State of Connecticut, with a mailing address of 165 Church Street, New Haven, Connecticut 06510 (the "City"), the **NEW HAVEN PARKING AUTHORITY**, a special purpose municipal authority created by Special Act 51-473 of the General Assembly of the State of Connecticut, as amended with a mailing address of 50 Union Avenue, Union Station, New Haven, Connecticut 06519 (the "Parking Authority") and **WE ROUTE 34, LLC,** a limited liability company organized and existing under the laws of the State of Delaware and qualified to do business in the State of Connecticut, with a mailing address of 150 Baker Avenue Extension, Suite 303, Concord, Massachusetts 01742 (the "Developer").

WITNESSETH:

WHEREAS, the City has embarked on a project known as Downtown Crossing which will transform the State Route 34 Connector in the City between Union Avenue and the existing Exit 3 of Route 34 from a limited access highway into urban boulevards and which will reconfigure local streets that intersect with existing Route 34 to create approximately ten (10) new acres of developable land in a livable, walkable transit oriented neighborhood, connect the City's Medical District and the Hill neighborhood with the City's central business district and grow jobs and the City's tax basis; and

WHEREAS, during Phase I of Downtown Crossing, the first development parcel consisting of approximately 2.4 acres will be created, which parcel will be bounded on the north by Martin Luther King (MLK) Boulevard, on the east by College Street, on the south by South Frontage Road, and on the west by a parking structure owned by the City and operated by the

Parking Authority known as the "Air Rights Garage." The Development Parcel is more particularly described on Exhibits A and B; and

WHEREAS, in order to create the Development Parcel, a number of traffic and infrastructure improvements are required; and

WHEREAS, on August 21, 2010, the City applied to the United States Department of Transportation for a grant under the provisions of the Transportation Housing and Urban Development, and Related Agencies Appropriations Act for 2010 (Div. A of the Consolidated Appropriations Act, 2010 (Pub. L. 111-117, Dec. 16, 2009)) for the National Infrastructure Investment Discretionary Grant Program (TIGER II) to fund a portion of the design, engineering and construction costs of certain of the Public Improvements; and

WHEREAS, in October 2010, the City was awarded a grant of $16 million in TIGER II funds, and on December 6, 2010, the City's Board of Aldermen approved the acceptance of the TIGER II Grant; and

WHEREAS, the State of Connecticut has agreed to provide $10,350,000 in funding for the Public Improvements; and

WHEREAS, the Board of Aldermen has approved a bonding request in the amount of $7 million, which may fund a portion of the Public Improvements; and

WHEREAS, the Developer has agreed to provide $500,000 in funding for the Public Improvements; and

WHEREAS, certain Public Improvements for the Project will require alterations to the Air Rights Garage and easements with respect to the Air Rights Garage in favor of the Development Parcel; and

WHEREAS, the State of Connecticut is the owner of the Development Parcel; and

WHEREAS, pursuant to Public Act No. 09-4, enacted during the September 2009 Special Session of the Connecticut General Assembly, the Connecticut Department of Transportation was directed to convey the Development Parcel to the City for economic development purposes; and

WHEREAS, Public Act No. 09-4 authorized the City to convey the Development Parcel for economic development purposes to a third party and further provided that the Connecticut State Traffic Commission and the Connecticut Department of Transportation approve changes to Route 34 and other traffic improvements required by the elimination of the Development Parcel from Route 34; and

WHEREAS, it is anticipated that because of the proximity of the Development Parcel to Yale-New Haven Hospital (including the new Smilow Cancer Hospital and the 55 Park Street laboratory building), Yale University School of Medicine, the Connecticut Mental Health Center, Pfizer Pharmaceutical Company's research facility, and the 300 George Street building (which houses biotechnology laboratories), biomedical research companies as well as laboratories, life sciences, research and development, and/or medical offices will locate to the Development Parcel; and

WHEREAS, it is anticipated that the development of the Development Parcel and the Public Improvements (collectively, the "Project") will create approximately 2,000 construction jobs, up to $184 million in direct and indirect spending during construction, approximately 600-960 permanent jobs at all skill levels, up to $114 million in direct and indirect spending over the next three years, and significant tax revenues for the City; and

WHEREAS, the Developer is a subsidiary of Winstanley Enterprises, LLC, a limited liability company organized and existing under the laws of the Commonwealth of Massachusetts ("Winstanley Enterprises"); and

WHEREAS, Winstanley Enterprises and its affiliates are among New England's leading developers of biotechnology laboratories and offices and have developed or are in the process of developing over one million (1,000,000) square feet of laboratory and office space in the City, including space at 300 George Street, 25 Science Park, 275 Winchester Avenue, and 344 Winchester Avenue; and

WHEREAS, to date, the Developer has expended substantial sums with respect to the Project, including expenditures for designing the Public Improvements; and

WHEREAS, the City and the Developer entered into a Memorandum of Understanding effective January 1, 2012 designating the Developer as the preferred developer for the Development Parcel; and

WHEREAS, pursuant to the Memorandum of Understanding, the City, the Developer and the Parking Authority have negotiated the terms and conditions for the Project as set forth below; and

WHEREAS, it is the intention of the parties that the construction of the Project will result in minimal disruption to the operation of neighboring institutions and property owners; and

WHEREAS, as set forth herein, the Development Parcel shall be conveyed to the Developer subject to the terms of this Agreement as hereinafter set forth.

NOW THEREFORE, for good and valuable consideration, the receipt of which is acknowledged, the City, and the Developer and the Parking Authority (with respect to certain provisions) agree as follows:

ARTICLE I
INTERPRETATION AND DEFINITIONS

Section 1.1 Interpretation

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

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

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

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

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

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

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

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

(I) With respect to any exhibit made part of this Agreement, the Developer, the City and the Parking Authority (in the case of an exhibit pertaining to the Parking Authority or the Air Rights Garage) may amend, alter or change such exhibit in a writing signed by the Developer and the Economic Administrator of the City (and the Executive Director of the Parking Authority in the case of an exhibit pertaining to the Parking Authority or the Air Rights Garage). In the event that there is a conflict between an exhibit to this Agreement and the text of this Agreement,

the text of this Agreement shall control, unless otherwise provided for in the text of this Agreement.

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

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

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

Section 1.2 Definitions

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

(1) "300 George Street Property" means the land and the improvements thereon known as 300 George Street, New Haven, Connecticut.

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

(3) "Acceptable Encumbrances" means encumbrances and restrictions on the Development Parcel which the Developer agrees may continue to encumber the Development Parcel at the time that the Development Parcel is conveyed by the City to the Developer and includes (i) a temporary easement for the current location of the Drainage Pipe (which will terminate when the pipe is relocated) and a perpetual easement for the portion of the Development Parcel to which the

Drainage Pipe will be relocated and a nonexclusive easement for access to and the maintenance, repair and replacement of the Drainage Pipe in favor of CDOT or the State or the City, if the City becomes the owner of the Drainage Pipe; (ii) nonexclusive easements over reasonably agreed upon portions of the Development Parcel for the purpose of maintenance, repair and replacement of the Air Rights Garage; (iii) a perpetual easement for the operation, maintenance, repair and replacement of the Tunnels and Driveways in favor of the City; (iv) a perpetual easement for the maintenance, repair and replacement of the Streetscape Improvements in favor of the City; (v) a temporary construction easement for the construction of the westerly side of the College Street fill structure in favor of the City and/or the State or CDOT; (vi) a temporary slope easement on the southerly slope of that portion of the Development Parcel which borders MLK Boulevard and a temporary slope easement on the northerly slope of that portion of the Development Parcel that borders South Frontage Road in favor of the City and/or the State or CDOT for the purpose of supporting the embankments bordering such roadways; and (vii) temporary construction easements in favor of the City and/or the State or CDOT along certain portions of the Development Parcel which border MLK

Boulevard and South Frontage Road for the purpose of widening each of these roadways.

(4) "Activated Uses" means uses on the ground floor of the Building which when viewed from the exterior of the Building can be seen in whole or in part and which are described in greater detail in Exhibit P to this Agreement.

(5) "Additional Public Financing" means financing that is required to pay for the costs of the Developer's Site and Traffic Improvements in addition to Public Financing as more particularly described in Section 4.1.

(6) "Agency" means any Third Party Funding Agency or any Regulatory Agency.

(7) "Agreement" means this Development and Land Disposition Agreement and includes any appendices, exhibits or schedules incorporated by reference as well as any amendments, modifications or supplements which may be executed by the City, the Parking Authority and the Developer subsequent to the Effective Date of this instrument, but does not include any other agreement, understanding or other arrangement, oral or written, between the City, the Parking Authority and the Developer, including any confidentiality agreement executed or to be executed between any or all of the

parties and the Memorandum of Understanding, the latter of which is hereby superseded in its entirety.

(8) "Air Rights Garage" means the parking structure and the land thereunder owned by the City of New Haven and operated by the New Haven Parking Authority with an address of 60 York Street, New Haven, Connecticut.

(9) "Air Rights Garage Improvement Drawings" means the design plans, drawings and specifications for the ARG Improvements.

(10) "Application" means the City of New Haven TIGER II Grant Application dated August 21, 2010.

(11) "Approved Plans" means the plans for the Developer's Private Improvements, or a portion thereof, and the plans for the On-Site Improvements and the Streetscape Improvements approved by the City Plan Commission in connection with its Site Plan Review process and by the Development Commission.

(12) "ARG Contractors" means the construction managers and/or general contractors, trade contractors and subcontractors responsible for the construction of the ARG Improvements.

(13) "ARG Contracts" are all of the construction contracts for the ARG Improvements.

(14) "ARG Improvements" means the proposed new Air Rights Garage Ramp and other improvements to the parking, traffic circulation and security gates in the lower level of the Air Rights Garage to be made by the City and the Parking Authority under this Agreement and described more fully in Exhibit I of this Agreement and any other improvements to the Air Rights Garage required by the STC.

(15) "ARG Improvements Final Completion Date" means the date set forth in the Project Schedule for the completion of the ARG Improvements as the same may be extended because of Excusable Delay.

(16) "ARG Ramp" means the ramp to be constructed at the northeast corner of the Air Rights Garage as more particularly described in Exhibit I of this Agreement.

(17) "Building" is the Building to be built by the Developer on the Development Parcel as more particularly described in Article V.

(18) "BOA" means the City of New Haven Board of Aldermen.

(19) "Bond Repayment Period" means the period of time commencing on the date of Closing and continuing to the earlier of: (i) 29 years and 364 days or (ii) the original period of time provided to the City for the repayment of

the Bonds, notwithstanding any subsequent amendment, modification, refinancing, reissue or other change extending the period for repayment of any principal of the Bonds.

(20) "Bond Repayment Sum" means a sum of money calculated as follows: First, the amount shall be calculated that would be required to repay the outstanding principal amount of the Bonds in full (after deducting any sinking funds or other reserves then existing for repaying the principal of the Bonds) as of the date of any transfer of title to any portion of the Development Parcel and/or any improvements thereon to an Exempt Entity. Such total prepayment amount shall be calculated based on the terms of the original Bonds, including the scheduled times and amounts for repaying the principal of such Bonds notwithstanding any subsequent amendment, modification, refinancing, reissue, default, forbearance or other change extending the period for repayment of such principal, and shall not take into account any prepayment, make-whole or other penalty or similar terms (even if prepayment is not permitted under the Bonds). Such total prepayment amount shall then be multiplied by a fraction, the numerator of which is the total gross square footage of all buildings and parking structures located on the Development Parcel which are being conveyed to the Exempt Entity and the denominator of which is the total of the gross

square footage of all buildings and parking structures (including those on the Development Parcel) located or under construction or for which a building permit has been issued in the Downtown Crossing Area; the product thus obtained shall be the Bond Repayment Sum.

(21) "Bonds" mean the original general obligation bonds that the Developer and the City anticipate will be issued by the City to pay for a portion of the Public Improvements, up to a principal amount of $7 million.

(22) "CDOT" means the State of Connecticut Department of Transportation.

(23) "Certificate of Completion" means the certificate issued by the Economic Development Administrator of the City certifying that all of the Developer's obligations relating to the construction of the Developer's Private Improvements, the On-Site Improvements and the Streetscape Improvements have been satisfied.

(24) "City" means the City of New Haven, Connecticut, a municipal corporation organized and existing by virtue of an act of the General Assembly of the State of Connecticut and shall include its boards, agencies, commissions and its public officials and employees who are authorized to act

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

(25) "City Acquisition Date" means the date upon which the City acquires the Development Parcel from the State.

(26) "City Engineer" means the City Engineer employed by the City of New Haven, Connecticut.

(27) "City Environmental Condition" means an Environmental Condition at or emanating from the Development Parcel which did not exist or was not known as of the Effective Date of the Agreement and arose or is discovered after the City Acquisition Date.

(28) "City Plan Commission" is New Haven's City Plan Commission established in May 1913 by Special Act No. 243 of the Connecticut Legislature.

(29) "City's Minimum Traffic Improvements Date" means the date on which the City's Traffic Improvements have been completed to the minimum extent required by CDOT and/or STC in order to convey the Development Parcel from the State to the City as set forth on the Project Schedule (Exhibit G) and the City's Traffic Improvements Schedule (Exhibit H).

(30) "City's Public Improvements" mean collectively the City's Traffic Improvements and the Air Rights

Garage Improvements, which are depicted in Exhibits D-1 to D-5, F, as modified by Exhibit F-1 (provided that the changes described in Exhibit F-1 are approved by CDOT), and Exhibit I.

(31) "City Public Improvements Financing" means the financing described in Exhibit S necessary to design, engineer and construct the City's Public Improvements.

(32) "City's Traffic Improvements" mean (i) the conversion of MLK Boulevard and South Frontage Road into urban boulevards; (ii) the closing of the westbound off-ramps at Exits 2 and 3 and the modification and relocation of Exits 1 and 2 from Route 34; (iii) the removal of the College Street bridge, the reconstruction of College Street at grade and the creation of two culverts; (iv) the removal of the roundabout currently located to the east of the Air Rights Garage; (v) the reconstruction of College Street at grade (already included in (iii) above); and (vi) the removal of the pavement for the Exit 3 off ramp, all as depicted more particularly in Exhibits D-1 and F, as modified by Exhibit F-1 (provided that the changes described in Exhibit F-1 are approved by CDOT).

(33) "City's Traffic Improvements Contractors" mean the construction managers and/or general contractors, trade contractors and subcontractors who will be

responsible for the construction of the City's Traffic Improvements.

(34) "City's Traffic Improvements Drawings" mean the design plans, drawings and specifications of the City's Traffic Improvements at a minimum 30% completion (with the exception of the ARG Improvements) which drawings are set forth in Exhibit F, as modified by Exhibit F-1 (provided that the changes described in Exhibit F-1 are approved by CDOT), to this Agreement and are incorporated by reference herein.

(35) "City's Traffic Improvements Schedule" is a portion of the Project Schedule which sets forth the schedule for the construction of the City's Traffic Improvements as set forth in Exhibit H of this Agreement.

(36) "Closing" means the conveyance of the Development Parcel to the Developer.

(37) "Closing Date" means the date on which the Development Parcel is to be conveyed by the City to the Developer as set forth on the Project Schedule (Exhibit G).

(38) "Construction Logistics Plan" means a plan agreed to by the Developer, the City and the Parking Authority which outlines the steps that each will take to mitigate noise, dust and traffic disruption during the construction of the Project.

(39) "Critical Items Schedule Dates" means collectively the Milestone, the City's Minimum Traffic Improvements Date and the Final Completion Date for the construction of the City's Traffic Improvements as set forth on the City's Traffic Improvements Schedule attached as Exhibit H to this Agreement.

(40) "DECD" means State of Connecticut Department of Economic and Community Development and its successors.

(41) "Default Notice" means a notice of default or of a condition which could lead to default given by one party to this Agreement by another party to this Agreement.

(42) "DEEP" means the Connecticut Department of Energy and Environmental Protection and its successors.

(43) "Developer" means WE Route 34, LLC, a limited liability company organized and existing under the laws of the State of Delaware and qualified to do business in the State of Connecticut.

(44) "Developer's Expenditures" means the funds expended by the Developer as of the Effective Date of this Agreement with respect to the Project, including funds expended for the design of the Public Improvements.

(45) “Developer’s Private Improvements” means the improvements described in Article V of this Agreement, including the Building and the Parking Garage.

(46) “Developer’s Site and Traffic Improvements” means the Public Improvements that the Developer is required to construct under this Agreement after acquiring the Development Parcel as set forth in Article IV and Exhibits D, E, J, and K to this Agreement.

(47) “Development” means collectively the Developer’s Site and Traffic Improvements and the Developer’s Private Improvements.

(48) “Development Parcel” means real property in the City of New Haven within the boundaries on the north by MLK Boulevard, on the east by College Street, on the south by South Frontage Road, and on the west by the Air Rights Garage, as more particularly described in Exhibits A and B to this Agreement upon which the Development is to occur.

(49) “Dispute Resolution Procedure” means the procedure for resolving a dispute among the parties prior to the City, the Parking Authority and/or the Developer prior to any of the parties filing suit in court or terminating the Agreement on account of an Event of Default as described in Section 12.2(A) of this Agreement.

(50) “DMP” means a parking Demand Management Plan to be developed by the Developer to encourage occupants of the Building to use forms of transportation other than single occupancy vehicles.

(51) “Downtown Crossing” means a project that will convert the State Route 34 Connector in the City between Union Avenue and the existing Exit 3 of Route 34 into development parcels.

(52) “Downtown Crossing Area” means the area depicted in and described in Exhibits X-1 and X-2.

(53) “Drainage Pipe” means the 48” drainage pipe on the Development Parcel to be relocated to a location in the Tunnels and Driveways as set forth on Exhibit K of this Agreement.

(54) “Effective Date” is the first day of the month following the date on which the approval of this Agreement by the Board of Aldermen becomes effective.

(55) “Encroachment Agreement” means Encroachment Agreement No. 4.30-02(08) dated August 6, 2008 recorded in Volume 8267 at Page 89 between the City and CDOT regarding Encroachment Permit No. 3008210.

(56) “Environmental Conditions” mean the environmental conditions on the Development Parcel which

under applicable Environmental Laws require testing, remediation or monitoring and/or are otherwise in excess of the relevant criteria set forth in the RSRs assuming, as applicable, commercial/industrial use and GB groundwater quality, and that are not or are not rendered inaccessible or environmentally isolated consistent with the RSRs.

(57) "Environmental Insurance" means that insurance to be acquired by the City as more particularly described in Section 7.4(E) below with limits of not less than $5,000,000 per occurrence, a term of not less than 18 months or 2 years, as determined by the Developer, and a deductible of not more than $50,000 per occurrence naming the City as a named insured, which Environmental Insurance may include, at the City's option, an extended reporting period of 3 years (a "Tail") and upon such other terms and conditions as the Developer may reasonably approve, which Environmental Insurance shall be underwritten by such insurer as reasonably approved by the Developer or such other environmental insurance to be acquired by the City as the City and the Developer shall agree to in writing.

(58) "Environmental Laws" 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 the comparable or similar environmental laws of the State, including Title 22a of the General Statutes and the RSRs.

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

(60) "Event of Default" means a default by any of the parties of its obligations or covenants hereunder after notice, if required under this Agreement, as described in Article XII of this Agreement or in any other article of this Agreement.

(61) "Excusable Delays" are delays or failures of any of the parties with respect to any time limits which are imposed upon the performance of the parties hereto by the terms of this Agreement, which delays are caused by a Force Majeure Event, but only to the extent that such delays adversely affect the party's ability, using reasonable efforts, to comply with such time limits, and which delays or failures will not be counted in determining any time for performance under this Agreement but rather will extend the time for performance by a party.

(62) "Exempt Entity" means an entity to which the Developer transfers any interest in the Development Parcel and/or the improvements thereon whose use of the property is wholly or partially exempt from real property taxation under Connecticut law.

(63) "Fair Market Value" means the fair market value of the Development Parcel on the Termination Effective Date as determined under the procedures set forth in Section 13.2 of this Agreement.

(64) "FHWA" means United States of America Department of Transportation Federal Highway Administration.

(65) "Final Completion Date" means the date for the completion of the construction of the City's Traffic Improvements as set forth on the City's Traffic Improvements Schedule, Exhibit H.

(66) "Force Majeure Event" means, with respect to delays in performance by the City, the Parking Authority and Developer, any of the following events or circumstances but only (i) if and to the extent such event or circumstance is beyond the reasonable control of the party asserting an Excusable Delay; (ii) if and to the extent the party asserting an Excusable Delay shall have taken all reasonable precautions to prevent and minimize the effect of such delays by reason of such event or circumstance if such event or circumstance was actually known or should have reasonably been known in advance by the party asserting an Excusable Delay; and (iii) if and to the extent such event or circumstance is not caused by the fault or negligence of the party asserting an Excusable Delay or any of its employees, contractors or agents: (a) acts of God, including without limitation, floods, hurricanes, tornadoes and landslides; (b) fires or other casualties; (c) governmental moratorium other than a governmental

moratorium imposed by the City or the Parking Authority with respect to an Excusable Delay asserted by the City or the Parking Authority; (d) acts of a public enemy, civil commotions, riots, insurrections, acts of war, blockades, terrorism, effects of nuclear radiation, or national or international calamities; (e) sabotage; (f) condemnation or other exercise of the power of eminent domain other than the exercise of the power of eminent domain by the City or the Parking Authority with respect to an Excusable Delay asserted by the City or the Parking Authority; (g) the passage or enactment of, or the new interpretation or application of statutory or regulatory requirements other than the passage or enactment of a new regulatory requirement by the City or the Parking Authority with respect to an Excusable Delay asserted by the City or the Parking Authority; (h) with respect to the Developer's assertion of Excusable Delay, delays, acts, neglects or faults on the part of the City or the Parking Authority or their employees or agents or contractors; (i) with respect to the City's or the Parking Authority's assertion of Excusable Delay, delays, acts, neglects or faults on the part of the Developer or its employees, agents or contractors; (j) restraint, delay or any similar act by any utility company and any Governmental Authority (including any reviews and approvals required from an Agency), other than the City and the Parking Authority with

respect to an Excusable Delay asserted by the City or the Parking Authority; (k) the act, failure to act, omission or neglect of third parties over whom the party asserting the Excusable Delay has no control; (l) strikes, work stoppages or lockouts; (m) unusual adverse weather conditions; (n) freight embargoes; (o) unusual and unanticipated delay in transportation; (p) unavailability of, or unusual delay in the delivery of, fuel, power, supplies, equipment, or materials; (q) discovery of previously unknown Hazardous Materials which materially affect the ability of the party asserting the Excusable Delay to carry out the required work in accordance with the Project Schedule; and (r) any other cause beyond the reasonable control of the party asserting an Excusable Delay.

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

(68) "Governmental Authorities" mean all federal, state or local governmental bodies, instrumentalities or agencies (including municipalities, taxing, fire and water districts and other governmental units).

(69) "Hazard Notice" means the written notice provided by the Developer to the City after construction of the Tunnels and Driveways that the Tunnels and/or Driveways are posing a hazard or risk to the safety of and/or welfare of the

public, the Building, the Parking Garage, the Development Parcel, the Development, the Developer, its tenants, or others, or the written notice provided by the City and/or the Parking Authority to the Developer that the Developer's operations are posing a hazard or risk to the safety and/or welfare of the public or to any of the rights-of-way or easements granted to the City.

(70) "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.

(71) "Hospital" means Yale-New Haven Hospital, Inc., a corporation organized and existing under the laws of the State of Connecticut.

(72) "Hospital Walkway" means the existing pedestrian walkway inside the Air Rights Garage, which connects to a pedestrian bridge across South Frontage Road proximate to York Street and which leads to the Hospital.

(73) "Independent Architect" means the architect or architectural firm selected by the Developer from a list of at least six architects provided by the City's Economic Development Administrator, all of whom must be licensed by the State of Connecticut to perform architectural services.

(74) "LEED" means the Leadership in Energy and Environmental Design Green Building Rating System developed by the United States Green Building Council.

(75) "License Agreement" means that license agreement between the Parking Authority and the Connecticut Mental Health Center for the license to the Connecticut Mental Health Center of 202 parking spaces in the lower portion of the Air Rights Garage.

(76) "Liquidated Damages" means contractually specified sums of money to be recovered from the City's Traffic Improvements Contractors or ARG Contractors, as the case may be, for work not completed by the dates for completion of work by such contractors as described more fully in Sections 3.1(B) and 3.2(A) below.

(77) "Loading Dock License" means a license agreement dated December 31, 2007 by and among the City, the Parking Authority and the Hospital recorded in Volume 8154 at Page 258 of the New Haven Land Records granting to the Hospital certain licenses in the lower portion of the Air Rights Garage to construct, use, maintain and repair the Hospital's loading dock which Loading Dock License was partially assigned to Fusco Park Street LLC by means of a Partial Assignment and Assumption Agreement dated May 23, 2008 recorded in Volume 8212 at Page 327 of the New Haven Land Records.

(78) "MBE" means a minority owned business as defined in Ordinance Section 12 ¼-3 (i).

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

(80) "Milestone Dates" means those dates on the City's Traffic Improvements Schedule, Exhibit H, which are indicated as "Milestone Dates" and on which certain items of the City's Traffic Improvements are to be completed to the degree of completion indicated on the Schedule, including but not limited to the City's Minimum Traffic Improvements Date.

(81) "Mortgage" means the voluntary encumbrance(s), pledge(s), or conveyance(s) of the Developer's right, title and interest in and to the Development Parcel or any portion or portions thereof to secure payment of any loan or loans obtained by the Developer to finance the Development.

(82) "Mortgagee" means the holder of the Mortgage.

(83) "MOU" means a Memorandum of Understanding effective January 1, 2012 between the City and the Developer under which the City designated the Developer as the preferred developer for the Development Parcel and the City and the Developer agreed to negotiate the terms and conditions of this Agreement.

(84) "Non-Curable Default" means an Event of Default under this Agreement which is a default which cannot be cured by the Mortgagee as described more fully in Section 12.1(F)(3) of this Agreement.

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

(86) "Notice of Dispute" means a written notice from the City to the Developer that the City disputes that a hazard or risk exists in the Tunnels/Driveways and/or financial responsibility therefor or from the Developer to the City that the Developer disputes that a hazard or risk exists in the Tunnels/Driveways and/or financial responsibility therefor.

(87) "Notice to Proceed" means the CDOT notice to the City authorizing the City to commence construction of the City's Traffic Improvements.

(88) "On-Site Public Improvements" means the improvements on the Development Parcel to be constructed by the Developer which are not in the public right-of-way, such as pavers, lighting, landscape plantings, benches, and stairs and ramps, as generally depicted in Exhibit E to this Agreement.

(89) "Ordinance" means an ordinance in the City's Code of General Ordinances.

(90) "Parking Agreement" means an agreement dated as of October 1, 1980 by and among the City, the Parking

Authority, the Hospital, the University and Yale-New Haven Medical Center, Inc.

(91) "Parking Authority" means the New Haven Parking Authority, a special purpose municipal authority created by Special Act 51-473 of the General Assembly of the State of Connecticut, as amended, and any of its boards, officials and employees who are authorized to act on its behalf.

(92) "Parking Consultant" shall have the meaning as stated in the Parking Agreement.

(93) "Parking Garage" means the Parking Garage to be designed and constructed on the Development Parcel by the Developer, as more particularly described in Section 5.3.

(94) "Pedestrian Connection" means a pedestrian connection which may be constructed by the Developer, which will connect the Building and/or the Parking Garage to the Air Rights Garage in order to provide a pedestrian walkway from the Building/the Parking Garage to the Hospital Walkway as shown on Exhibit N of this Agreement.

(95) "Phase I/II Report" means the report of the Phase I/II environmental site assessment of the Development Parcel conducted by Fuss & O'Neill dated March 2010.

(96) "Project" means the development of the Development Parcel and the Public Improvements, both as more particularly described and set forth in this Agreement.

(97) "Project Manager" is a person whom the City shall designate to assist the City and the Parking Authority in carrying out their obligations under this Agreement.

(98) "Project Schedule" means the schedule attached hereto as Exhibit G, as amended from time to time to take into account periods of Excusable Delay or as otherwise amended from time to time by the Developer, the City and the Parking Authority (if appropriate).

(99) "Public Financing" means financing from public sources as outlined in Exhibit S which will pay for the Developer's Site and Traffic Improvements and does not include the TIGER II Grant financing.

(100) "Public Improvements" means the traffic, infrastructure and Streetscape Improvements described in Articles III and IV and Exhibits D-1 to D-5, E, F, as modified by F-1 (to the extent that such modifications are approved by CDOT), I, J, and K of this Agreement.

(101) "Public Parking Period" means the five year period commencing on the date that the Parking Garage opens during which the Parking Garage shall be open in the

weekday evenings to the public for parking, as described more fully in Section 6.4(B).

(102) "Quit Claim Deed" means the deed by which the Development Parcel will be conveyed to the Developer in the form attached as Exhibit Q to this Agreement or one substantially similar thereto.

(103) "Regulatory Agency" means any Governmental Authority other than the City or the Parking Authority that has the authority to review and approve any portion of the Public Improvements to be constructed under this Agreement.

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

(105) "Route 34" means the State of Connecticut Route 34 Connector located in the City.

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

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

(108) "Side Maintenance Agreement" means the agreement between the City and the Hospital dated July 29, 2008 regarding the maintenance of property on Route 34 to the east of the Air Rights Garage on which a roundabout is located.

(109) "Site Plan Review" means a review by the City Plan Commission of the site plan application to be filed by the Developer for the Development Parcel pursuant to Section 64 of the Zoning Ordinance and Conn. Gen. Stat. § 8-2.

(110) "State" shall mean the State of Connecticut.

(111) "State Environmental Condition" means an Environmental Condition at or emanating from the Development Parcel which did not exist as of the Effective Date of the Agreement and arose or is discovered prior to the City Acquisition Date.

(112) "STC" means the State of Connecticut Traffic Commission.

(113) "Streetscape Improvements" means streetscape improvements in the public right-of-way adjacent to the On-Site Public Improvements, including sidewalks, curbs, landscaping, and lighting as shown in Exhibit E, as approved by the City Plan Commission.

(114) "Survey" means a survey map of the Development Parcel prepared by Fuss & O'Neill dated May 1, 2009, set forth in Exhibit B, as updated through the date of Closing.

(115) "Tenant Improvements" means those improvements to be completed by or for a tenant of the Developer subject to the specific requirements of the tenant, including without limitation, the interior design, layout, lighting, partitioning, doorways, painting, and components of the heating, ventilation, air conditioning, electrical and plumbing systems serving the premises to be leased and those portions of the common areas which may be included in or otherwise serve such premises.

(116) The "Term" shall mean the term of this Agreement as set forth in Section 14.11.

(117) "Term Sheet" means the Conditional and Preliminary Term Sheet dated December 10, 2010 submitted by the City to the FHWA for the TIGER II Grant.

(118) "Termination Effective Date" means the date on which the termination of this Agreement under Article XIII is effective.

(119) "Terms of Disbursements of Public Financing" means the terms under which Public Financing shall

be disbursed to the Developer as set forth in Exhibit L of this Agreement.

(120) "Third Party Funding Agency" means any Governmental Authority other than the City or the Parking Authority which provides funding for the Public Improvements under this Agreement and which has a right of review or approval of such portion of the Public Improvements for which it is providing funds.

(121) "TIGER II Grant" has the same meaning as set forth in the whereas clauses to this Agreement.

(122) "TIGER II Grant Agreement" means the agreement executed by the City and FHWA, which sets forth the terms and conditions under which FHWA will provide and the City will accept the TIGER II Grant.

(123) "Tunnels and Driveways" means the tunnels and driveways eastbound and westbound from the Air Rights Garage which will run under the Development Parcel to and from Route 34 providing public access to the Air Rights Garage and 55 Park Street, together with all pavement and necessary systems and equipment for fire protection, drainage associated with the tunnels and driveways, traffic control systems, signage, lighting, security (including monitoring and control devices), emergency egress, ventilation, structural

supports, conduits, wiring, power (regular and emergency), mechanical rooms, fuel storage, and generators as well as certain walls to retain the ramps under the Development Parcel as more particularly described on Exhibit J of this Agreement.

(124) "Tunnels and Driveways Design Criteria" mean standards for the design, construction and inspection of the Tunnels and Driveways set forth in a document entitled "Route 34 Downtown Crossing Project Air Rights Implementation Guidelines dated September 26, 2011" prepared by the City and attached as Exhibit V-1, as modified by Modifications and Waivers of the Route 34 Downtown Crossing Project Air Rights Implementation Guidelines for the Project, attached as Exhibit V-2.

(125) "Tunnels and Driveways Drawings" means the conceptual design, schematic design, design development, final design, contract documents, specifications, and shop drawings of the Tunnels and Driveways to be designed in accordance with all applicable codes, laws, regulations and requirements and in accordance with Exhibit J and the standards set forth in Exhibit V-1 as modified by Exhibit V-2 or such other criteria as the Developer and the City shall agree to in writing.

(126) "University" means Yale University, a corporation organized and existing by virtue of a charter granted

by the General Assembly of the Colony and State of Connecticut and located in the City.

(127) "Winstanley Enterprises" means Winstanley Enterprises, LLC, a limited liability company existing under the laws of the Commonwealth of Massachusetts.

(128) "Working Group" means a group consisting of the Project Manager, the City's Engineering consultant for the City's Traffic Improvements, a representative of the Developer, the Developer's engineer, a representative from the Parking Authority, the City's construction manager/general contractor, and the Developer's construction manager/general contractor which shall meet to coordinate the work of the City, the Parking Authority and the Developer.

(129) "Zoning Ordinance" means the City of New Haven Zoning Ordinance.

ARTICLE II
REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations and Warranties of the Developer

(A) 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 Delaware and qualified to do business in the State of Connecticut; (b) the Developer has the legal authority to enter into and carry out the transactions to which it is proposed to be a party; (c) the execution and delivery of this Agreement by the Developer has been duly and validly authorized by all necessary action; (d) this Agreement is a legal, valid and binding obligation of the Developer,

enforceable against the Developer in accordance with its terms; and (e) there are no agreements or contracts to which the Developer is a party which would in any manner impede or prevent the Developer from performing its obligations under this Agreement and/or which would impair the rights of the City or the Parking Authority under this Agreement.

Section 2.2 Representations and Warranties of the City

(A) 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, (d) this Agreement is a legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms; and (e) except as expressly set forth elsewhere herein, there are no agreements or contracts to which the City is a party which would in any manner impede or prevent the City from performing its obligations under this Agreement and/or which would impair any of the rights of the Developer under this Agreement.

Section 2.3 Representations and Warranties of the Parking Authority

(A) The Parking Authority represents and warrants that (a) the Parking Authority is a special purpose municipal authority created by Special Act 51-473 of the General Assembly of the State of Connecticut (as amended) validly existing under the laws of the State of Connecticut; (b) the Parking Authority has the legal power and authority to execute and deliver this Agreement with respect to those terms and provisions that pertain to it and to carry out such terms and provisions; (c) said execution and delivery have been duly and validly authorized by all necessary action; (d) the terms and provisions of this Agreement with respect to which the Parking Authority has executed this Agreement are legal, valid and binding obligations of the

Parking Authority, enforceable against the Parking Authority in accordance with their terms; and (e) except as expressly set forth elsewhere herein, there are no agreements or contracts to which the Parking Authority is a party which would in any manner impede or prevent the Parking Authority from performing its obligations under this Agreement and/or which would impair any of the rights of the Developer under this Agreement.

ARTICLE III
THE CITY'S PUBLIC IMPROVEMENTS

Section 3.1 <u>The City's Traffic Improvements</u>

(A) The City shall cause to be designed and constructed at its cost and expense the City's Traffic Improvements in order to prepare the Development Parcel for development by the Developer in accordance with the provisions below:

(1) The City shall consult with the Developer in the design of the City's Traffic Improvements and shall seek to incorporate the Developer's comments and suggestions in such design, provided that such comments do not cause an overall material increase in the cost of the City's Traffic Improvements. Notwithstanding the foregoing, the City shall not design the City's Traffic Improvements in any manner that the Developer reasonably believes would negatively impact the Development Parcel, the Development or the STC application for a major traffic generator certificate for the Development. The parties agree that the preliminary design concepts for the City's Traffic Improvements shall be those set forth in the drawings

listed in Exhibit F as modified by Exhibit F-1 (provided that CDOT approves the changes described in Exhibit F-1).

(2) The City and the Developer acknowledge that each fully embraces enhanced bike/pedestrian improvements in a manner consistent with the City's Complete Streets Design Manual. The City and the Developer agree that the design concepts set forth in the Preliminary City's Traffic Improvements Drawings (30%) as of July 2011 (Exhibit F as modified by Exhibit F-1 (provided that CDOT approves the changes described in Exhibit F-1)) are preliminary and may be altered in order to further enhance pedestrian and bicycle transportation if agreed to by the Developer and the City in writing. Additionally, the City may alter the drawings if (i) a change to Exhibit F as modified by Exhibit F-1 (provided CDOT approves the changes described in Exhibit F-1) is required so that the City's Traffic Improvements will comply with the requirements of applicable zoning regulations, building codes, and applicable ordinances, including but not limited to applicable fire, plumbing and electrical codes or (ii) a material change to Exhibit F as modified by Exhibit F-1 (if CDOT approves the changes described in Exhibit F-1) is required by an Agency. In the event that a change is made to Exhibit F as modified by Exhibit F-1 (if CDOT approves the changes described in Exhibit

F-1), the City agrees that such change shall, to the greatest extent possible, not negatively impact the design or any other aspect of the Development Parcel or the Development. The City shall provide advance written notice to the Developer of any change to the City's Traffic Improvements Drawings. In the event that a dispute arises regarding whether a change to the City's Traffic Improvements Drawings is permissible under this Agreement, the Developer shall have the right in its sole and absolute discretion to terminate this Agreement provided that the Development Parcel has not been conveyed to the Developer, and upon such termination by the Developer, the parties shall be fully released from and have no further obligations hereunder to each other, subject to Section 13.3. If such dispute arises and the Developer elects not to terminate this Agreement or if the Development Parcel has been conveyed to the Developer, the parties shall engage in the Dispute Resolution Procedure before pursuing any other remedies available under this Agreement or under law or equity.

(B) Schedule for Construction of the City's Traffic Improvements

(1) The City shall cause to be designed and constructed the City's Traffic Improvements substantially in accordance with the City's Traffic Improvements Schedule set forth in Exhibit H. The City will commence construction of the

City's Traffic Improvements in accordance with the City's Traffic Improvements Schedule and will complete construction in accordance with the Critical Items Schedule Dates. In the event that the Notice to Proceed is issued on a date later than that set forth on the Project Schedule, then the City and the Developer shall amend the Project Schedule to provide additional time for the City to commence construction of the City Traffic Improvements commensurate with the delay in the issuance of the Notice to Proceed.

(2) The parties acknowledge that in the course of negotiating leases with prospective tenants for the Building, the Developer has provided and will continue to provide such prospective tenants with projected dates and commitments for the commencement of occupancy of their space to be leased, which commitments are necessary for the success of the Development. The parties further acknowledge that the Developer cannot commence construction of the improvements described in Articles IV and V herein until the City's Traffic Improvements have been completed to the degree of completion set forth in Exhibit R and that the Building and the Parking Garage cannot be occupied before the City's Traffic Improvements have been completed.

(3) In view of the foregoing, the City agrees to encourage timely performance by the City's Traffic Improvements contractors by including various provisions in its contracts with the City's Traffic Improvements Contractors which are intended to track performance, create incentives for timely performance, encourage out-of-court settlements and interim dispute resolutions, and/or penalize delayed performance monetarily. Such provisions shall include (i) required adherence to the City's Traffic Improvements Schedule and completion by the Critical Items Schedule Dates; (ii) performance bonds in the amount of the contract sum; (iii) Liquidated Damages, as more particularly described in subsection (B)(4) below; (iv) acceleration or contract schedule makeup and updating in accordance with applicable regulations; and (v) dispute resolution procedures, such as a negotiated settlement procedure, mediation and/or an advisory or binding opinion from a standing neutral, and, if possible, authorizing the Developer to participate in dispute resolution procedures where failures to meet the Critical Items Schedule Dates or to adhere to the City's Traffic Improvements Schedule are alleged. It is agreed and understood that the contracts with the City's Traffic Improvements Contractors may need to be approved by an Agency or Agencies. The City shall permit the Developer to review and comment on

its draft contracts with the City Traffic Improvements Contractors and to the extent permitted by any applicable Agency, the City agrees to make reasonable efforts to incorporate the Developer's comments into its contracts with the City Traffic Improvements Contractors.

(4) For the purposes of Section (B)(3) above, each such contract shall provide for Liquidated Damages in the following amounts to the extent that the work contemplated by such contract is not completed on or before the contractual completion date:

Days Late	Liquidated Damages
0-14	Grace Period (no damages)
15-30	$500 per day
31-45	$750 per day
46-60	$1,000 per day
in excess of 61	$2,000 per day

Notwithstanding the foregoing, the Developer and the City agree that the amount of the Liquidated Damages and/or the dates on which the same become applicable may be modified by written agreement between the Developer and the City (to be executed for the City by the Economic Development Administrator) based upon the specific circumstances of a particular contract with a Traffic Improvements Contractor. The City agrees to take all reasonable steps to collect such Liquidated Damages, including bringing a court action to collect such Liquidated Damages provided that the Developer agrees to pay all costs of such action, including reasonable attorneys' fees (hereinafter "Developer's Litigation Costs"). In the event that the City brings a lawsuit to collect Liquidated Damages from a Traffic Improvements Contractor, the Developer and the City shall jointly select the counsel to represent the City in such action, and the

Developer shall be reimbursed on a priority basis for Developer's Litigation Costs from any recovery or settlement, to the extent of such recovery or settlement, before any distribution is made to the City, it being agreed and understood that the Developer is only entitled to reimbursement of its costs from such recovery or settlement received by the City and that the City shall have no other obligation to reimburse the Developer, except as expressly stated herein. The obligations contained herein shall not apply to the extent that any Agency shall disapprove the same, and the City shall provide the Developer with notice of such disapproval. Thereafter, the Working Group shall consider other options available to the City and the Developer with respect to enforcing the Project Schedule. The City shall monitor the work of the City's Traffic Improvements Contractors to encourage timely performance by such contractors. The City shall provide the Developer with written notice of any requests by any of the City's Traffic Improvements Contractors for an Excusable Delay and/or an extension of time to perform its work and shall provide the Developer with the opportunity to comment on such request. If either the City or the Developer believes that a City's Traffic Improvements Contractor is not meeting or will not meet any of the Critical Items Schedule Dates, the Developer or the City, as the case may be, will provide written notice to the other party and the Working Group of such delay or anticipated delay, and the Working Group will meet to try to resolve the delay and/or, if applicable, the City and the Developer will meet with any standing neutral appointed pursuant to the City and the City's Traffic Improvements Contractors' contracts to try to resolve the delay. The failure of the Developer to provide the aforesaid notice, however, will not prevent or in any way preclude the Developer from seeking any remedies it may be entitled to under this Agreement or under law for an Event of Default due to such delay or anticipated delay.

A. The City and the Developer may mutually agree to alter the City's obligations set forth above in subsection (C)(3) and (4) with respect to a Critical Items Schedule Date for a particular City's Traffic Improvements Contractor in a writing signed by the City's Economic Development Administrator and the Developer.

Section 3.2 Air Rights Garage Improvements

(A) The Parking Authority shall cause to be designed and constructed at its cost and expense the ARG Improvements as described more particularly in Exhibit I and in accordance with the provisions below:

(1) The Parking Authority shall provide all notices and obtain all consents, approvals and amendments to agreements required for the construction, operation and maintenance of the ARG Improvements, including but not limited to all notices, consents and amendments required under the Parking Agreement, the Loading Dock License, the License Agreement, and the bonds issued in connection with the Air Rights Garage.

(2) The Parking Authority shall consult with the Developer in the design of the ARG Improvements and shall seek to incorporate the Developer's comments and suggestions in such design, provided that such comments do not cause an overall material increase in the cost of the ARG Improvements. Notwithstanding the foregoing, the Parking Authority shall not design the ARG Improvements in any manner which the

Developer reasonably believes would negatively impact the Development Parcel, the Development or the STC application for a major traffic generator certificate for the Development. The parties agree that the design concepts for the ARG Improvements shall be those set forth in the Air Rights Garage Improvement Drawings set forth in Exhibit I. The parties further agree that the design concepts set forth in the Air Rights Garage Improvement Drawings shall not be altered in any material respect unless (i) both parties agree in writing to a change to the Air Rights Garage Improvement Drawings; (ii) a change to the Air Rights Garage Improvement Drawings is required so that the ARG Improvements will comply with the requirements of applicable zoning regulations, building codes, and applicable ordinances, including, but not limited to, applicable fire, plumbing and electrical codes; or (iii) a material change to the Air Rights Garage Improvement Drawings is required by an Agency. In the event that a change is made to the Air Rights Garage Improvement Drawings, the Parking Authority agrees that such change shall, to the greatest extent possible, not negatively impact the design or any other aspect of the Development Parcel or the Development. The Parking Authority shall provide advance written notice to the Developer of any change to the Air Rights Garage Improvements Drawings. In the event that a

dispute arises regarding whether a change to the Air Rights Garage Improvements Drawings is permissible under this Agreement, the Developer shall have the right in its sole and absolute discretion to terminate this Agreement provided that the Development Parcel has not been conveyed to the Developer, and upon such termination by the Developer, the parties shall be fully released from and have no further obligations hereunder to each other, subject to Section 13.3. If such dispute arises and the Developer elects not to terminate this Agreement or if the Development Parcel has been conveyed to the Developer, the parties shall engage in the Dispute Resolution Procedure before pursuing any other remedies available under this Agreement or under law or equity. The City shall participate in such Dispute Resolution Procedure at the request of the Developer.

(3) Schedule for Construction of the Air Rights Garage Improvements

A. The Parking Authority shall cause to be designed and constructed the ARG Improvements substantially in accordance with the Project Schedule set forth in Exhibit G. The City shall be a party to all contracts of the Parking Authority with the ARG Contractors and designers of the ARG Improvements.

B. The City and the Parking Authority agree to encourage timely performance by the ARG Contractors by including various provisions in their contracts with the ARG Contractors which are intended to track performance, create incentives for timely performance, encourage out-of-court settlements and interim dispute resolutions, and/or penalize

delayed performance monetarily. Such provisions shall include (i) required adherence to the Project Schedule and the date for the completion of the ARG Improvements; (ii) performance bonds in the amount of the contract sum; (iii) Liquidated Damages as more particularly described in Section C below; (iv) acceleration or contract schedule makeup and updating in accordance with applicable regulations; and (v) dispute resolution procedures, such as a negotiated settlement procedure, mediation and/or an advisory or binding opinion from a standing neutral, and if possible, authorizing the Developer to participate in dispute resolution procedures where failures to meet the date for the completion of the ARG Improvements or to adhere to the Project Schedule are alleged. It is agreed and understood that the contracts with the ARG Contractors may need to be approved by an Agency or Agencies. The City and the Parking Authority shall permit the Developer to review and comment on draft contracts with the ARG Contractors, and to the extent permitted by any applicable Agency, the City and the Parking Authority agree to make reasonable efforts to incorporate the Developer's comments into their contracts with ARG Contractors.

C. For the purposes of Section (B)(3) above, each such contract shall provide for Liquidated Damages in the following amounts to the extent that the work contemplated by such contract is not completed on or before the contractual completion date:

Days Late	Liquidated Damages
0-14	Grace Period (no damages)
15-30	$500 per day
31-45	$750 per day
46-60	$1,000 per day
in excess of 61	$2,000 per day

Notwithstanding the foregoing, the Developer, the Parking Authority and the City agree that the amount of the Liquidated Damages and/or the dates on which the same become applicable may be modified by written agreement between the Developer, the Parking Authority (to be executed

for the Parking Authority by its Executive Director) and the City (to be executed by the City by the Economic Development Administrator) based upon the specific circumstances of a particular contract with an ARG Contractor. The City and/or the Parking Authority agree to take all reasonable steps to collect such Liquidated Damages, including bringing a court action to collect such Liquidated Damages provided that the Developer agrees to pay all costs of such action, including reasonable attorney's fees ("Developer's Litigation Costs"). In the event that the City and/or the Parking Authority bring a lawsuit to collect Liquidated Damages from an ARG Contractor, the Developer, the City and the Parking Authority shall jointly select the counsel to represent the City and/or the Parking Authority in such action, and the Developer shall be reimbursed on a priority basis for Developer's Litigation Costs from any recovery or settlement to the extent of such recovery or settlement, before any distribution is made to either the Parking Authority or the City or both, it being agreed and understood that the Developer is only entitled to reimbursement of Developer's Litigation Costs from such recovery or settlement received by the City and/or the Parking Authority and that the City and the Parking Authority shall have no other obligation to reimburse the Developer, except as expressly stated herein. The obligations contained herein shall not apply to the extent that any Agency shall disapprove the same, and the City and the Parking Authority shall provide the Developer with notice of such disapproval. Thereafter, the Working Group shall consider other options available to the City, the Parking Authority and the Developer with respective to enforcing the Project Schedule.

D. The Parking Authority shall monitor the work of the ARG Contractors to encourage timely performance by such contractors. The Parking Authority shall provide the Developer with written notice of any requests by any of the ARG Contractors for an Excusable Delay and/or an extension of time to perform its work and shall provide the Developer

with the opportunity to comment on such request. If the City, the Parking Authority or the Developer believes that an ARG Contractor is not meeting or will not meet any of the Critical Items Schedule Dates, the Developer, the City or the Parking Authority, as the case may be, will provide written notice to the other parties and the Working Group of such delay or anticipated delay, and the Working Group will meet to try to resolve the delay, and, if applicable, the City, the Parking Authority and the Developer will meet with any standing neutral appointed pursuant to the City and the Parking Authority's contracts with the ARG Contractors' to try to resolve the delay. The failure of the Developer to provide the aforesaid notice, however, will not prevent or in any way preclude the Developer from seeking any remedies it may be entitled to under this Agreement or under law for an Event of Default due to such delay or anticipated delay.

E. The City, the Parking Authority and the Developer may agree to alter the City's and the Parking Authority's obligations set forth above in subsections (A)(3), B and C with respect to a particular ARG Contractor in a writing signed by the City's Economic Development Administrator, the Executive Director of the Parking Authority and the Developer.

F. In the event that the Developer in its sole reasonable discretion determines that the Parking Authority is not meeting any of its obligations under this Section 3.2, then the Developer shall give notice of such determination to the Parking Authority and the City and request that the City assume the obligations of the Parking Authority under this Section 3.2. Upon receipt of such notice, the City will immediately assume the Parking Authority's obligations with respect to the design and construction of the ARG Improvements, including without limitation, the Parking Authority's obligations with respect to insurance coverage under Article X of this Agreement and take all actions necessary to ensure the timely completion of the ARG Improvements as set forth in the Project Schedule. The Parking Authority agrees to fully

cooperate with the City and the Developer in such endeavor and to make such payments to ARG Contractors or designers of the ARG Improvements as directed by the City or to transfer funds to the City for the same, to provide all surveys, drawings, plans and specifications, estimates, contracts and subcontracts to the City and to execute any and all documents requested by the City or required in connection with the City's assumption of the Parking Authority's obligations under Section 3.2. The assumption by the City of the Parking Authority's obligations under Section 3.2 shall not in any way preclude the Developer from seeking any other remedies it may be entitled to under this Agreement or under law for an Event of Default.

Section 3.3 Funding for the City's Public Improvements

(A) The estimate of the cost of the City's Public Improvements as set forth in Exhibit S is based on an estimate developed by the Developer and reviewed and verified by the City's independent engineer. Exhibit S is a table of sources and uses of funding for the City's Public Improvements. The City shall provide the Developer with copies of the estimates, plans and specifications that it periodically submits to CDOT for the City's Traffic Improvements within a reasonable period of time after such submission. The City shall also provide the Developer with copies of the estimates, plans and specifications for the ARG Improvements that the designer of the ARG Improvements periodically submits to the City and the Parking Authority within a reasonable period of time after such submission.

(B) The City agrees to abide by and comply with all terms and conditions of any agreements under which the City's Public Improvements Financing is provided to the City, including without limitation the TIGER II Grant, representations made by the City in the Application, the TIGER II Grant Agreement and all agreements executed or to be executed with the State under which funding will be provided to the City for the City's Public Improvements.

The City's failure to comply with any or all the requirements, conditions, covenants or obligations set forth in such agreements or the City's failure to contribute all or a portion of the City funds required to be contributed under such agreements shall be considered Events of Default under this Agreement.

(C) If (i) the City does not receive the amounts set forth in Exhibit S for the City's Traffic Improvements, and if the City and the Parking Authority do not receive the amounts set forth in Exhibit S for the Air Rights Garage Improvements or a commitment from a Third Party Funding Agency to provide the same reasonably satisfactory to the Developer within 36 months after the Effective Date; or (ii) the Developer reasonably determines that the costs of any of the City's Public Improvements exceed the amount set forth in Exhibit S for the City's Public Improvements and provides the City with a certified cost estimate of such additional costs and the City does not dispute such cost estimate but despite using all reasonable efforts to obtain funding for such additional costs from sources other than from the City or the Parking Authority, the City is unable to obtain the same, then the Developer shall have the right in its sole and absolute discretion to terminate this Agreement at any time after such 36 month period, provided that the Development Parcel has not been conveyed to the Developer, upon thirty (30) days written notice, and upon such termination by the Developer, the parties shall be fully released from and have no further obligations hereunder to each other, subject to the provisions of Section 13.3. If a dispute arises between the City and the Developer concerning whether such additional costs are required or the amount of the same, such dispute shall be submitted to the Dispute Resolution Procedure, provided, however that such submission shall not affect the rights and remedies of the City, the Parking Authority and the Developer under this Agreement.

Section 3.4 Acceptance of Streets

The City shall also seek to have conveyed to it from CDOT all property required for the construction of the City's Public Improvements, and no further BOA approval shall be required for the acceptance of such property. To the extent that the streets shown on Plans 1-8 of Exhibit F (whether existing or to be modified or constructed) are currently located on land owned by the State and in the event that the State conveys such land to the City, then the City hereby accepts the same as public rights-of-way. No subsequent action by the BOA shall be required for the dedication and acceptance of such land as public rights-of way.

Section 3.5 Overlap of Work

In the event that the City determines that due to the sequencing, schedule and proximity of the Developer's construction of the Development in relation to the construction of the City's Traffic Improvements, certain City Traffic Improvements are more efficiently and/or appropriately constructed by the Developer, then, the Developer and the City shall seek to reach an agreement under which the Developer will undertake the construction of such improvements at no material increase in cost to the City. Such agreement, if reached, shall be memorialized in writing. The City agrees to grant to the Developer any easements, licenses and permits and to assist the Developer in obtaining any encroachment permits, agreements, licenses and/or easements from the State/DOT or any other third party, which are reasonably necessary for this work.

Section 3.6 Permits

The City and the Parking Authority, where applicable, agree to apply expeditiously and no later than the times set forth on the Project Schedule, for all permits and approvals required for the construction and operation of the City's Public Improvements, including without

limitation permits from CDOT, the STC, DEEP, the City Plan Commission and any permits required under the National Environmental Protection Act, at the times set forth in the Project Schedule. The City and the Parking Authority agree to comply with all conditions and terms of such permits.

ARTICLE IV
THE DEVELOPER'S PUBLIC IMPROVEMENTS

Section 4.1 Description of the Improvements

Provided that the Developer acquires the Development Parcel in accordance with Article VI below, Developer agrees to construct the Developer's Site and Traffic Improvements, as set forth below.

(A) Tunnels and Driveways

(1) The Developer shall cause the Tunnels and Driveways to be constructed as more particularly detailed in and in accordance with Exhibit J and the standards of Exhibit V-1 prepared by the City as modified by Exhibit V-2 or such other criteria as the Developer and the City shall agree to in writing. The Developer agrees to provide to the City, and other funding agencies, if required, for their review and approvals the Tunnels and Driveways Drawings. The City shall review and approve the Tunnels and Driveways Drawings in accordance with the procedures set forth in Article VIII of this Agreement. All contracts for the design and construction of the Tunnels and Driveways shall provide that the City shall be the third party beneficiary of the contractors' obligations to the Developer under

such contracts, including without limitation all guarantees and warranties. Any review or approval of the Tunnels and Driveways Drawings shall not relieve the Developer from its obligations to construct the Tunnels and Driveways in a good and workmanlike manner in accordance with the Tunnels and Driveways Drawings. It is understood and agreed that review of the Tunnels and Driveways Drawings by an Agency or Agencies may be required, that the City cannot control the timing or content of such review, and that an Agency's review may override or render void the City's review and approvals of such drawings. Nonetheless, the City will perform its review and encourage the timely review by any reviewing Agency. Such Tunnels and Driveways shall be constructed substantially in accordance with the Project Schedule. The City will periodically monitor construction of the Tunnels and Driveways and after provision by the Commissioning Agent (as defined in Exhibit V-1) with a statement of acceptable performance to the Commissioning Authority (as defined in Exhibit V-1) as provided for in Section 11.3.4 of Exhibit V-1, the City's Engineer will issue a written acceptance on behalf of the City of the Tunnels and Driveways. Notwithstanding the foregoing, it is also understood and agreed that an Agency or Agencies may also reserve the right to inspect and approve the Tunnels and

Driveways and that in such event, the City Engineer will not issue a written acceptance until such time as such Agency or Agencies has either inspected and approved the same or waived the right to do so.

(2) Notwithstanding any other provision of this Agreement, the Developer and the City agree that they may amend this Agreement in order to reallocate between them the responsibilities for the design and construction of the Tunnels and Driveways or in any manner that the City and the Developer deem desirable for the Project, which amendment shall be in writing signed by the Developer and the Economic Development Administrator of the City on behalf of the City.

(3) The Developer hereby dedicates and the City hereby accepts the Tunnels and Driveways as public rights-of-way in the City. No subsequent action by the BOA shall be required for the dedication and acceptance of the Driveways and Tunnels as public rights-of-way. Upon acceptance of the Tunnels and Driveways by the City Engineer, as described above, except as set forth herein, City shall assume full responsibility for the maintenance and repair of the Tunnels and Driveways, including without limitation, the pavement, the pavement markings, the systems and equipment associated with the Tunnels and Driveways, including fire protection, ventilation, lighting,

security (including monitoring and control devices), emergency egress, signage, drainage for the Tunnels and Driveways, and associated structural supports (except as hereinafter stated), conduits, wiring, power (regular and emergency), mechanical rooms, fuel storage, and generators installed in connection with the Tunnels and Driveways, and the Developer shall have no liability for the maintenance and repair of the same. Notwithstanding the foregoing, the Developer will be responsible for maintaining the structural integrity of the walls of the Tunnels and Driveways and those portions of its improvements, including the footings of the Building and the Garage, which impact the Tunnels and Driveways, except in the event that structural damage to such walls, footings or other improvements is caused by the City, the Parking Authority and/or members of the public, in which case, the City shall be responsible for making all required repairs. The Developer's obligation to maintain the structural integrity of the walls of the Driveways and Tunnels shall not include an obligation to maintain any surface coverings or lighting fixtures installed on such walls.

(4) At the time that the Tunnels and Driveways are accepted by the City Engineer, the Developer shall supply the City with "as built" plans of the Tunnels and Driveways (both in hard copy and electronically) and shall turn

over and assign to the City all contractor warranties and guarantees for work performed on and materials supplied for the Tunnels and Driveways (with the exception of the construction of the walls), and the City shall accept such assignment and assume the responsibilities for maintenance and repair set forth above in subparagraph (3). If any contractor or supplier shall refuse to recognize the assignment or otherwise refuse to honor its guarantee or warranty, the Developer agrees to assist the City in administering and enforcing such warranties and guarantees at the request of the City and at no cost to the Developer, provided that any time expended by employees of Developer and its affiliates who were involved in the construction of the Tunnels and Driveways shall be at no cost to the City. In the event that after acceptance by the City Engineer of the Tunnels and Driveways, the City determines that work performed on the Tunnels and Driveways is defective, the City shall not seek any remedies against the Developer for such defective work, but rather agrees to seek its remedies against the contractors involved. The foregoing shall not be considered a release by the City against the Developer but rather is a covenant not to sue the Developer for such defective work or materials. The Developer agrees to fully cooperate with the City in any claims that the City may bring against the Developer's construction manager, general

contractor or its subcontractors or suppliers on account of such defective work at no cost to the Developer, and any time expended by employees of Developer and its affiliates who were involved in the construction of the Tunnels and Driveways shall be at no cost to the City.

(5) The Developer shall grant to the City or the City shall reserve for itself permanent easements through and over the Tunnels and Driveways for public vehicular passage and to repair, maintain and replace the Tunnels and Driveways as necessary and such easements over, under and across the Development Parcel, Building and the Parking Garage as are necessary to repair, maintain and replace the Tunnels and Driveways as necessary, and the Developer shall retain or shall be granted, as the case may be, such permanent rights and easements over, under and through the Tunnels and Driveways as are necessary for the construction, maintenance, repair, and replacement of the Developer's Private Improvements as set forth in Exhibits T and U.

(B) Streetscape Improvements

(1) The Developer shall design and construct the Streetscape Improvements as described more particularly on Exhibit E or similar improvements, all such improvements to be

approved by the City Plan Commission in connection with the Site Plan Review of the Development Parcel.

(2) In accordance with its standard obligations, the City agrees to maintain, repair and replace the Streetscape Improvements as approved by the City Plan Commission as part of the Site Plan Review. The Developer will grant the City such access to the Development Parcel as may be reasonably required to maintain, repair and replace such Streetscape Improvements.

(C) On-Site Public Improvements

(1) The Developer will design and construct the On-Site Public Improvements all as set forth in the attached Exhibit E or similar improvements, all such improvements to be approved by the City Plan Commission in connection with the Site Plan Review of the Development Parcel. The Developer shall thereafter be responsible for maintenance, repair and replacement of said On-Site Improvements.

(D) Drainage Pipe

(1) The Developer will relocate the Drainage Pipe on the Development Parcel in accordance with Exhibit K. The Developer will obtain any encroachment permit required from CDOT to relocate the Drainage Pipe. T. The parties shall use best efforts to urge the State to continue to own, maintain,

repair and replace the Drainage Pipe following relocation of the same.

(E) Payment for the Developer's Site and Traffic Improvements.

(1) The City and the Developer acknowledge that Public Improvements are needed on and under the Development Parcel because it currently is a portion of a state highway and the Development is not viable without financing from public sources to pay in full for all costs of public access through the Tunnels and Driveways, the relocation of the Drainage Pipe and the Streetscape Improvements and to pay for one-half of the costs of the On-Site Public Improvements.

(2) The City and the Developer estimate that the full costs of designing, engineering and constructing the Tunnels and Driveways, the relocation of the Drainage Pipe and the Streetscape Improvements and one-half of the costs of designing, engineering and constructing the On-Site Improvements shall be as set forth in Exhibit S and agree that such costs shall be paid for by Public Financing. This estimate was developed by the Developer and reviewed and verified by the City's independent engineers. The attached Exhibit S includes a description of the sources and uses of the Public Financing.

(3) Since a portion of the Public Financing will be received by the City from a Third Party Funding Agency by way of reimbursement of funds advanced by the City to pay the Developer's expenses in carrying out the Developer's Site and Traffic Improvements, at the Closing and as a condition thereof, the City shall identify Public Financing of not less than $1,350,000 to create a fund for initial advances by the City pending reimbursement, in order to allow for the Developer to proceed with the construction of the Developer's Site and Traffic Improvements in accordance with the Project Schedule. Upon reasonable request by the Developer, the City shall identify the sources and further amounts of the Public Financing required hereunder and the anticipated date of receipt. The City shall not use the funds identified in this paragraph for any purpose other than to reimburse the Developer for the costs of the Developer's Site and Traffic Improvements until the Development is completed, unless the City and the Developer execute a writing allowing the use of such funds for another purpose.

(4) As a condition of Developer' first disbursement of the Public Financing in accordance with Exhibit L, the Developer shall provide the City with reasonable assurances that it intends to commence construction of the Building and/or the Parking Garage within four (4) months

thereafter. Such reasonable assurances may include demonstration reasonably satisfactory to the City that the Developer has obtained construction financing for the Building and/or the Parking Garage or that the Developer has executed a construction contract with a construction manager/general contractor to construct any of the foregoing improvements.

(5) If any of the amounts set forth in Exhibit S for Public Financing are not received by the City or a commitment to provide such funds satisfactory to the Developer in its sole discretion, has not been received by the City on or before 36 months after the Effective Date, provided that the Development Parcel has not been conveyed to the Developer, the Developer shall have the right in its sole and absolute discretion to terminate this Agreement upon thirty (30) days written notice, and upon such termination by the Developer, the parties shall be fully released from and have no further obligations hereunder to each other, subject to Section 13.3.

(6) The parties agree that they have undertaken a diligent review of the costs of the Developer's Site and Traffic Improvements and the expected sources of funds thereof and believe that Exhibit S accurately represents the costs and sources of funding for the Developer's Site and Traffic Improvements. However, if prior to the date of the Closing the

Developer provides the City with a certified cost estimate demonstrating that either (i) the CDOT and/or FHWA have required improvements in addition to the Developer's Site and Traffic Improvements which materially increase the cost of the Developer's Site and Traffic Improvements or (ii) due to circumstances beyond the Developer's control, the actual costs of the Developer's Site and Traffic Improvements exceed the amount of the Public Financing set forth in Exhibit S, subject to the right of the City to dispute the same, then the City and the Developer shall meet to determine if the costs of such improvements can be reduced and/or if certain of such improvements can be delayed until the Additional Public Financing is secured the City agrees to use its best efforts prior to Closing to obtain the Additional Public Financing or commitments for the same. The City will seek such Additional Public Financing first from sources other than the City. For example, the City may seek to use any allocation received through the New Market Tax Credits Program. However, in the event that the City is unable to secure the Additional Public Financing from outside sources, then the City shall obtain the same from City funds. Notwithstanding the foregoing, it is agreed and understood that in no event shall the City be required to make efforts to secure or pay Additional Public Financing in

excess of $3 million. In the event that Additional Public Financing is needed and the parties are not sure of the source or timing of receipt of the Additional Public Financing, then, at the Developer's option, the Project Schedule shall be amended to account for anticipated delays to the work caused by delays in obtaining Additional Public Financing. If a dispute arises between the City and the Developer concerning whether Additional Public Financing is required to pay for the costs of the Developer's Site and Traffic Improvements or as to the amount of such Additional Public Financing, such dispute shall be submitted to the Dispute Resolution Procedure. If the City and the Developer have been unable to reach an agreement to resolve the dispute so submitted to the Dispute Resolution Procedure, then in order to expedite the resolution of the dispute, the parties agree to submit the same to a construction cost consultant or a construction accountant as appropriate to the dispute to be selected promptly by the mutual agreement of the City and the Developer, whose decision with respect to the dispute submitted shall be binding on the parties, the parties to equally share in the costs of such procedure.

(7) In the event that Additional Public Financing is required in accordance with subparagraph (6) above and the City has been unable to secure commitments for the

Additional Public Financing within 12 months of the Developer delivering the certified cost estimate for the Additional Financing to the City, then the Developer shall have the right to terminate this Agreement upon thirty (30) days written notice, and upon such termination by the Developer, the parties shall be fully released from and have no further obligations hereunder to each other, subject to Section 13.3.

(8) Cooperation in Applications for Public Financing

A. The City and the Developer agree to cooperate in determining sources of Public Financing as may now or hereafter be available. Each party agrees to make application in a timely manner and pursue sources of Public Financing for which such party is the appropriate applicant, to cooperate with each other in making such applications and to use all reasonable efforts and to take all necessary steps to obtain such funding. The City and the Developer each agree to support applications made by the other party for Public Financing.

B. Each party agrees to abide by and to fully comply with all material terms and conditions of any agreements under which Public Financing is provided to the City or the Developer, including without limitation, all terms and conditions of any agreement for any grant or loan from any Third Party Funding Agency or relating to the issuance of bonds by the City, the proceeds of which will be used in part or in full to fund the Developer's Site and Traffic Improvements. The failure by any party to materially comply with any or all the requirements, conditions, covenants or obligations set forth in such agreements shall be considered Events of Default under this Agreement.

(9) Bidding and Contracting Procedure for Public Financing

With respect to the use of any Public Financing provided directly from City funds for the construction of any portion of the Developer's Site and Traffic Improvements, the Developer agrees to follow a bidding and contracting procedure to be developed by the Developer and approved by the City.

(F) Schedule for Construction of Developer's Site and Traffic Improvements

The Developer shall cause the construction of the Developer's Site and Traffic Improvements to be commenced substantially on the dates set forth in the Project Schedule, provided that the Closing has occurred and will complete construction of such improvements as set forth in the Project Schedule, provided that the Closing occurs on or before the Closing Date. In the event that the Closing occurs after the Closing Date, the parties shall amend the Project Schedule to provide new dates for the commencement and completion of the Developer's Site and Traffic Improvements, which new dates shall reflect the difference in time between the Closing Date and the actual date of the Closing. In the event that the Project Schedule shall be amended in accordance with the provisions of Section 5.4 below, then the Project Schedule for the Developer's Site and Traffic Improvements shall, at the option of the Developer, be amended in a similar manner.

ARTICLE V
THE DEVELOPER'S OTHER OBLIGATIONS

Section 5.1 Summary of Developer's Obligations/Plans

(A) Provided that the Developer acquires the Development Parcel in accordance with Article VII below, in addition to the Developer causing the Developer's Site and Traffic Improvements to be constructed, the Developer agrees, at its own cost, to design and construct the required Developer's Private Improvements and may design and construct the optional

Developer's Private Improvements as set forth more particularly in this Article V. The required work to be performed by the Developer includes (i) performing certain work to prepare the Development Parcel for construction as set forth in Article V; (ii) designing and constructing the Building on the Development Parcel which will be not less than 225,000 gross square feet as more particularly described in Section 5.2; and (iii) designing and constructing the Parking Garage on the Development Parcel, as more particularly described in Section 5.3. The Developer agrees to make these improvements, notwithstanding any increases in the costs of such improvements after the Effective Date of this Agreement.

(B) 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 Building and Parking Garage.

(C) In addition, the Developer, at its own cost and expense, shall conduct an architectural review by the Independent Architect of the Building, the Parking Garage and the Pedestrian Connection (if it is to be constructed when the Building and the Parking Garage are constructed), which review shall include consideration of the context in which the Building and the Parking Garage are to be located, taking into account the existing built environment, the articulation, orientation and fenestration of the Building and the Parking Garage, the provision and location of space for Activated Uses, the building materials to be used for the Building and the Parking Garage, and the massing of the Building and the Parking Garage.

(D) In addition, the Developer may cause to be constructed at Developer's option and sole cost and expense the Pedestrian Connection as depicted in Exhibit N.

(E) The Developer will perform other site preparation work in addition to the City's and the Developer's work described above to prepare the Development Parcel for construction,

which work will include: (i) the removal or relocation of utilities; (ii) the installation of a sewer connection and utilities, all as set forth in a plan by Fuss & O'Neill dated 9/29/11 and entitled "Sewer and Utilities Plan" attached hereto as Exhibit O or one substantially similar thereto approved by the City Plan Commission as part of its Site Plan Review; and (iii) the performance of any environmental work required to test, remediate or monitor any Environmental Condition existing on the Development Parcel on the date of Closing which is required to be performed pursuant to any applicable Environmental Law including remediating any Environmental Condition in excess of the commercial/industrial and GB criteria in the RSRs which cannot otherwise be remediated by rendering the soil inaccessible or environmentally isolated consistent with the RSRs, if required by any applicable Environmental Law, unless the City is required to perform such environmental work pursuant to this Agreement and the Developer does not undertake to perform such work pursuant to Section 7.4(E)(2). The items of work described in subsections (i) and (ii) shall be performed in accordance with the Project Schedule. The Project Schedule will be amended at Closing to set forth the time for the Developer to commence and complete such environmental remediation.

Section 5.2 <u>The Building and Appurtenances</u>

(A) During the Term of this Agreement, the Building will be used primarily for offices, research, development and/or testing laboratories, medical or health care offices, health care clinics, associated medical uses, retail, commercial and/or other uses as are allowed by the zoning described in Article VIII of this Agreement, but not for any uses expressly prohibited by this Agreement.

(B) During the Term of this Agreement, certain portions of the ground floor of the Building will be devoted to Activated Uses as more particularly shown on Exhibit P. In addition

to the main entrance to the Building, there will be, at minimum, two doorways to the Building on any of the sides of the Building which face College Street, MLK Boulevard or South Frontage Road, which doorways will lead to Activated Uses on the ground floor of the Building, such as those described in Paragraph 1 of Exhibit P.

(C) During the Term of this Agreement, neither the Building nor any other portion of the Development Parcel shall be used for a discount department store, a "dollar store", a charity thrift shop, a "five and dime" store or other such retailer that regularly markets all or most of its merchandise for sale as discounted merchandise, a commercial establishment of any nature related to "adult" use/entertainment, an establishment related to the sale or use of firearms or weaponry, a dance/music hall (but a dance studio or a dancing school is a permitted use), a tattoo parlor, an automotive repair or sales establishment, a package store, or a research laboratory that is dedicated to the study of highly infectious diseases and regulated as a Biosafety Level 4 laboratory by the United States Department of Health and Human Services Centers for Disease Control and Prevention and the National Institute of Health. Notwithstanding the foregoing, a wine shop may be located in the Building.

(D) At the Developer's option and at its sole cost and expense, the Developer may design and construct a Pedestrian Connection across South Frontage Road, substantially in accordance with and at the locations indicated on a drawing entitled "Pedestrian Connection Plan" prepared by Fuss & O'Neill dated 9/29/11 attached hereto as Exhibit N. If the Developer notifies the City that it intends to construct the Pedestrian Connection at the time that it will be constructing the Building and the Parking Garage, then as preconditions to the Developer's obligation to acquire the Development Parcel (i) the City and the Parking Authority shall grant to the Developer permanent air rights, if required, and temporary and permanent easements to

construct, reconstruct, operate, own, use, maintain, and repair the Pedestrian Connection and to connect the Pedestrian Connection to the Air Rights Garage as described in Exhibit T; (ii) the City and the Parking Authority shall grant to the Developer an easement for the passage of occupants, tenants and visitors of and to the Building through the Air Rights Garage to and from the Hospital and to install signage in the Air Rights Garage at such locations reasonably approved by the Parking Authority directing pedestrians to the Parking Garage and the Building as described in Exhibit T and Article IX herein; (iii) if City and/or the Parking Authority is the owner of the Hospital Walkway, the City and/or the Parking Authority, as the case may be, shall grant to the Developer a permanent easement for pedestrian passage on and over the Hospital Walkway; and (iv) the City shall grant to the Developer temporary and permanent easements to construct, operate, own, use, maintain, and repair such Pedestrian Connection over South Frontage Road as described in to Exhibit T and Article IX herein. If the Developer does not notify the City that it intends to construct the Pedestrian Connection at the time that it will be constructing the Building and the Parking Garage, the granting of such easements shall not be preconditions to Closing. In the event that the Developer thereafter elects to construct the Pedestrian Connection, the Developer shall provide the City and the Parking Authority with notice of such intention and the date upon which it intends to commence such construction and provided that such construction shall take place no more than ten (10) years after the date of Closing, the City and the Parking Authority shall grant the foregoing easements to the Developer sufficiently in advance of such date.

(E) Provided that the construction of the Pedestrian Connection takes place no more than ten (10) years after the date of Closing, the City and the Parking Authority shall provide all notices and will make reasonable efforts to secure all consents to the construction and

maintenance of the Pedestrian Connection required under the Parking Agreement, under the bonds issued for the Air Rights Garage, and under any other agreement to which the City and the Parking Authority is a party. The Developer with the assistance of the City and the Parking Authority shall obtain all other licenses, permits and/or easements required from the Hospital for the passage of occupants, tenants and visitors of the Building on or over the Hospital Walkway. The Developer shall own, maintain and repair the Pedestrian Connection. Notwithstanding any provision of this Agreement to the contrary, nothing contained herein nor any exercise of the foregoing rights will be deemed to be a gift or dedication of the Pedestrian Connection to the general public, the Parking Authority, the City or any other person, and the Developer reserves the right to discontinue and/or remove the Pedestrian Connection at any time.

Section 5.3 <u>The Parking Garage</u>

(A) The Developer shall design and construct the Parking Garage. The Parking Garage shall contain no more than 3.25 parking spaces for each 1,000 square feet of gross area of the Building up to a maximum of eight hundred and fifty (850) parking spaces. Notwithstanding the foregoing, if the gross square footage of the Building is greater than 400,000 square feet, then the Developer shall be permitted to add one parking space for each additional 475 gross square feet of Building area in excess of 400,000 square feet, provided that in no event shall the Parking Garage contain more than 1000 parking spaces. In determining the maximum number of spaces allowed under this Section 5.3, "zip", or other rental cars, the parking of shuttle buses, commuter vans, bicycles and the like shall not be considered. At Developer's election, the Parking Garage will provide parking both for the tenants of and visitors to the Building as well as for tenants of and visitors to 300 George Street.

(1) The Developer may stack cars in the Parking Garage as long as it provides valet service or an attendant to move cars in accordance with customary parking practices.

(2) As a precondition to the Developer's obligation to acquire the Development Parcel, the City and the Parking Authority will grant to the Developer permanent easements over and under the Air Rights Garage parcel and MLK Boulevard and South Frontage Road as are required for the footings of the Parking Garage as more particularly described in Article IX and Exhibit T. Additionally, the Parking Authority agrees to grant to the Developer an easement to remove certain buttresses of the Air Rights Garage as depicted on Exhibit Y and described in Exhibit T as such design is reasonably approved by the Parking Authority. The Review Period for the Parking Authority to approve the design for the removal of the buttresses shall be forty-five (45) days. The Developer agrees that upon removal of the buttresses, it shall install suitable attenuators in front of the columns from which the buttresses were removed as reasonably approved by the Parking Authority. The Developer further agrees that it shall promptly repair any damage that it causes to the Air Rights Garage in the course of its removal of the buttresses, including repairing and/or replacing, if necessary,

any of the ARG Improvements damaged by the Developer, at its own cost. The Parking Authority and the City agree to provide all notices and seek to obtain all consents and approvals required under the Parking Agreement and under the bonds issued for the Air Rights Garage for such easements.

Section 5.4 Developer's Schedule

(A) The Developer will commence construction of the Developer's Private Improvements substantially in accordance with the Project Schedule. The Developer will complete construction of the foregoing remaining elements on the dates set forth in the Project Schedule. The Developer will commence and complete all other activities by the times set forth on the Project Schedule provided that the Closing occurs on or before the Closing Date. In the event that the Closing occurs after the Closing Date, the Developer and the City shall amend the Project Schedule to provide new dates for the commencement and completion of the Developer's Private Improvements, which new dates shall reflect the difference in time between the Closing Date and the actual date of the Closing. Provided further, in the event that the Closing has occurred and changes to the design and/or purposes of the Building are required in order to meet the needs of potential occupants, whose commitment to occupying the Building is evidenced in a writing (a copy of which shall be provided to the City), and provided that the Developer provides the City with reasonable evidence of the need for such changes, then the City and the Developer shall amend the Project Schedule in a manner that reasonably reflects the additional time required to accommodate such changes. If the City and the Developer cannot agree upon such Project Schedule amendments, then such dispute shall be submitted to the Dispute Resolution Procedure.

Section 5.5 Coordination and Cooperation Among the City, the Parking Authority and the Developer

(A) The Working Group

In order to coordinate the work of the City, the Parking Authority and the Developer during the construction of the Project, the Working Group will be established on the Effective Date. The Economic Development Administrator or her or his designee shall chair the Working Group. A representative from the Hospital shall be invited to join meetings of the Working Group as determined by its chair. The Working Group shall meet twice a month to coordinate the work of the City, the Parking Authority and the Developer and shall endeavor to resolve issues regarding the coordination of the construction of the Project among the parties.

(B) Construction Logistics Plan

The Developer, the City and the Parking Authority agree that prior to commencement of construction of the Project, they shall jointly prepare and agree to the Construction Logistics Plan. The Construction Logistics Plan will include a plan for the routes that trucks will take during construction of the Project. The Construction Logistics Plan shall guide the work of the Working Group.

(C) Acknowledgement of Unforeseen Events and Duty to Cooperate

The City, Developer and Parking Authority acknowledge that all events and conditions impacting the Project cannot be foreseen at this time. As such, they agree to cooperate in the attempted resolution of problems and unforeseen events that may arise through use of the Working Group meetings, and, if necessary, the Dispute Resolution Procedure.

ARTICLE VI
COMMUNITY BENEFITS

Section 6.1 Permanent Jobs

(A) Workforce Training in the Medical Office/Research and Life Sciences Industry

The parties acknowledge that creating new permanent jobs is a driving force behind the 100 College Street Project. The parties further acknowledge that the Project reflects the continued growth of the Medical Office/Research and Life Sciences Industry. The City will in conjunction with the New Haven Board of Education, the Workforce Alliance, Gateway Community College, and the Economic Development Corporation of New Haven, work to develop a curriculum and training program for City residents to foster the skills necessary to secure positions in such industry. Provided that the Closing occurs, the Developer agrees to make at Closing a contribution of $150,000 to such program established by the City and the New Haven Board of Education.

(B) Participate in the Board of Education ACE Mentoring Program

In order to foster New Haven students' interest in the fields of architecture, construction and engineering, the Board of Education participates in the national ACE program that provides mentoring opportunities to students with professionals in these fields. As part of the 100 College Street Project, the Developer will actively participate in this program.

(C) Business Fair

In order to provide meaningful opportunities for City-based businesses to participate in the Project, the Developer's primary architects and engineers and its construction manager/general contractor will attend a business fair to be organized by the City, which business fair will feature suppliers of goods and services located in the Greater New Haven area with particular emphasis on City-based businesses. The parties further agree to consider the purchase of those goods and services from such firms for the Project.

Section 6.2 <u>Construction Jobs and Small and Minority Business Opportunities</u>

(A) Workforce Utilization Requirements

The parties acknowledge that many construction jobs will be created as a result of the Development, and in order to increase construction employment opportunities for City residents, women and minorities to participate in the construction of the Development, the Developer shall comply with, or require that its general contractors, construction manager and all construction subcontractors for the Development comply with (subject to the provisions of Section 6.2(A)(13) below) all applicable City workforce requirements now and hereafter existing, including, without limitation, all equal employment opportunity requirements and in particular, during the carrying out of the Development, the Developer agrees to require its general contractors, construction manager and its construction subcontractors:

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

respect to those portions of the Development which are funded by Public Financing from the State, other than sales and use tax relief, the Developer agrees to comply with the requirements of Conn. Gen. Stats. § 31-54. With respect to those portions of the Project which are funded by public financing from the federal government, if any, the Developer agrees to comply with the requirements of the Davis Bacon Act & Related Acts, (40 U.S.C. Sec. 3141; 29 CFR Parts 1, 3, 5, 6, and 7); the Coperland Act (18 U.S.C. § 874 and 40 U.S.C. Sec. 3145; 29 CFR Part 3); 29 CFR Part 5.

(2) Not to discriminate against any employee or applicant for employment because of race, color, religion, age, sex, physical disability or national origin. The Developer shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to race, color, religion, age, sex, physical disability, or national origin, and such action shall include, but not be limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of any or other forms of compensation, and selection for training, including apprenticeship.

(3) To post, in conspicuous places available to employees and applicants for employment, notices to be

provided by the Contract Compliance Officer as defined by Ordinance Section 12 ½ setting forth the provisions of this nondiscrimination clause.

(4) To state, in all solicitations or advertisements for employees placed by or on behalf of the Developer, that all qualified applicants will receive consideration for employment without regard to race, color, religion, age, sex, physical disability or national origin; to utilize the City sponsored workforce 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.

(5) To send to each labor union or representative of workers with whom the Developer has a collective bargaining agreement, or other contract or understanding, a notice advising the labor union or worker's representative of the Developer's commitments under the equal opportunity clause of the City of New Haven, and to post copies of the notice in conspicuous places available to employees and applicants for employment, and to require its general contractor and all construction subcontractors on its portion of the Project to register all workers in the skilled trades, who are below the journeyman level, with the Apprentice Training Division of the Connecticut State Labor Department.

(6) To furnish all information and reports required by the New Haven Commission on Equal Opportunities Contract Compliance Director, as defined in Ordinance Section 12-1/2-20(b), pursuant to Ordinance Sections 12-1/2-9 through 12-1/2-32 and to permit access to the Developer's books, records and accounts by the City, the City Contract Compliance Director and the United States Secretary of Labor for purposes of investigations to ascertain compliance with the requirements of this Section 6.2(A).

(7) To file, along with its general contractors, construction manager and construction subcontractors, compliance reports with the City in the form and to the extent prescribed by the City Contract Compliance Director at such times as directed by the Contract Compliance Director, which compliance reports shall contain information as to the employment practices, policies, programs and statistics of the Developer, its general contractors, construction manager and the construction subcontractors relative to the Developer's obligations under this Section 6.2(A).

(8) To comply, as a United States employer, with the Immigration and Naturalization Service (INS)'s I-9 verification process, which requires employers to confirm the employment eligibility of workers. The Developer acknowledges

that an employer can be fined or otherwise sanctioned for knowingly hiring an undocumented worker; and that the I-9 forms also provide employers with a "good faith" defense if they hire someone who later turns out to be working illegally in the United States.

(9) To acknowledge that a finding, as hereinafter provided, of a refusal by the Developer, its general contractors, construction manager or the construction subcontractors on the Development, to comply with any portion of this Section 6.2(A) as herein stated and described, may subject the offending party to any or all of the following penalties:

a. refusal of all future bids for any public contracts with the City of New Haven, or any of its departments or divisions, until such time as the Developer, its general contractors, construction manager or its construction subcontractors, as the case may be, are in compliance with the provisions of this Agreement; and

b. recovery of specified monetary penalties

(10) To make best efforts to have its general contractors, construction manager and all subcontractors for the Project hire the following groups, in correspondence to the following percentages of total hours completed on the Development: twenty-five percent (25%) of hours to be worked by minorities as defined in Ordinance Section 12-1/2-19(n); six and nine-tenths percent (6.9%) of hours to be worked by females;

twenty-five percent (25%) of hours to be worked by residents of the City, and fifteen percent (15%) of hours to be worked by apprentices, provided that fifty percent (50%) of apprentice hours must be worked by first-year apprentices.

(11) To include the provisions of subparagraphs (1) through (10) of this Section 6.2(A) in every contract, subcontract or purchase order with respect to the construction of the Project so that said provisions will be binding upon each such contractor, subcontractor or vendor.

(12) To take such action, with respect to any general contractors, construction manager or subcontractor, as the City may direct as a means of enforcing the provisions of subparagraphs (1) through (11) herein, including penalties, fines and sanctions for noncompliance, provided, however, that in the event the Developer becomes involved in or is threatened with litigation as a result of such direction by the City, the City will intervene in such litigation to the extent necessary to protect the interest of the City and to effectuate the City's Equal Employment Opportunity program.

(13) Notwithstanding the foregoing provisions of this Section 6.2(A), in the event that any portion of the funding for the Developer’s work is received from any Third Party Funding Agency and there is a conflict between any

requirements set forth in this Section 6.2(A) and the requirements of such Third Party Funding Agency, then the requirements of such Third Party Funding Agency shall govern the matters set forth above with respect to the Developer's work funded by such Third Party Funding Agency.

(B) Small and Minority Business Utilization

In order to best provide opportunities for City based, minority and small businesses to participate fully in the construction of the Project, the Developer shall comply with, or require that its construction manager, general contractors and all construction subcontractors for the Project (subject to the provisions of Section 6.2(B)(6) below) comply with all applicable City small contractor utilization requirements now and hereafter existing, including, without limitation, all small business construction initiative requirements and in particular, during the carrying out of the Project, the Developer agrees to require its construction manager, general contractors and its construction subcontractors.

(1) To comply with the provisions of Ordinance Section 12 1/4-9, which require that every effort be aggressively made to meet the MBE Utilization Goals. Pursuant to Ordinance Sections 12 1/4-9(d) and (f), the Developer and its contractors shall be considered to have achieved compliance with the MBE Utilization Goals if work totaling the value of twenty-five (25%) percent of all of the construction subcontracts is awarded to MBEs. In order to achieve MBE Utilization Goals, contracts may be awarded to MBE subcontractors and/or a

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

received from subcontractors whose bids or proposals were denied because of cost, quality, availability, and similar reasons; (4) showing proof of outreach to and collaboration with the New Haven Contractors' Alliance and the City's Small Business Development Program; (5) describing in detail any attempts to enter into joint ventures or other arrangements with MBEs and/or assistance provided to MBEs relating to (a) the review of plans and specifications or other documents issued by the Developer or its general contractors or construction manager (b) the review of work to be performed by MBEs on its portion of the Project with a MBE, (c) encouragement of other subcontractors to utilize MBEs, (d) encouragement of participation of MBEs, and (e) all actions taken by Developer and its general contractors, construction manager with respect to proposals received from MBEs, including where appropriate, the reasons for the rejection of such proposals; (6) conducting a networking event with Developer's construction manager (if any) and general contractors; (7) holding individual trade meetings with Developer's construction manager (if any) or its general contractors; and (8) undertaking other efforts to encourage MBE participation in the Project as determined in advance by the City, such as making reasonable efforts to bid out work in packages of a suitable size for small contractors.

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

(3) To cooperate with the City's Small Business Development Program in its efforts to encourage mentoring programs and management, technical, and developmental training skills through sub-contracting opportunities.

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

the requirements of this subsection, to provide the City's Small Business Development Program with the opportunity to review proposed contracts prior to the award of the same and to provide such Program with notice of all prebid conferences and the opportunity to attend such conferences.

(5) To take all reasonable corrective actions requested by the City to comply and to effectuate compliance with the requirements of this subsection 6.2(B).

(6) Notwithstanding the foregoing provisions of this Section 6.2(B), in accordance with Ordinance Section 12 ¼-11, in the event that any portion of the funding is received from any Third Party Funding Agency for the Developer's work, and there is a conflict between any requirements set forth in this Section 6.2(B) and the requirements of such Third Party Funding Agency, the requirements of such Third Party Funding Agency shall govern the matters set forth above with respect to the Developer's work funded by such Third Party Funding Agency.

(7) In addition, the Developer shall, working with the City's Small Business Development Program and the New Haven Contractors' Alliance, undertake a mentoring program for the MBE and SBE contractors who have been certified by the City's Small Business Development Program and are working on the Developer's portion of the Project. Such

mentoring program shall include backstopping by the Developer of insurance requirements, payrolls and/or credit related issues as may be needed by such contractors from time to time for work done on the Developer's portion of the Project.

Section 6.3 Commitment to Sustainability

(A) LEED Rating System

The Developer agrees that it will design and build the shell and core of the Building to meet certification under the Leadership in Energy and Environmental Design ("LEED") Green Building Rating System developed by the United States Green Building Council at the Silver Standard level, based upon the criteria existing as of the Effective Date, provided, however, that the City agrees that no provision of this Agreement shall require the Developer to actually apply for and/or be granted such certification.

(B) Green Transportation

(1) In order to encourage tenants of the Building to use mass transit or other alternative means of transportation, the Developer agrees to develop a DMP setting forth a goal to encourage, at minimum, twenty percent (20%) of the occupants of the Building to not park in the Parking Garage and to encourage use of public transportation, University shuttle buses, bicycling, car pooling, and any other means designed to reduce the number of occupants of the Building parking in the Parking Garage. Provided that the University is willing to provide shuttle bus service to the Building, the Developer will

provide a shuttle bus stop and a bus shelter for the benefit of persons using bus services (private or public) serving the Development Parcel at a suitable location reasonably satisfactory to the City.

(2) In furtherance of the DMP, the Parking Garage will contain bicycle racks, which will be available to the public when the Parking Garage is open. Showers will be provided for cyclists who work in the Building, and the Parking Garage will provide planned spaces for electric charging of electrically powered vehicles as reasonably allocated by the Developer.

(3) In accordance with the goals of the DMP, subsequent to the expiration of the Public Parking Period and continuing for the balance of the Term of this Agreement, the Developer shall continue to: (i) make bicycle racks in the Parking Garage available to the general public when the Parking Garage is open; (ii) make available bus stops for University shuttle bus stops and for public buses on the Development Parcel as long as such bus services continue service to the Building; (iii) continue to implement the DMP; and (iv) provide information about ride sharing to occupants of the Building.

Section 6.4 Public Space

(A) To further integrate the Development into the Medical District/Downtown/Hill neighborhoods and the future full build-out of the Downtown Crossing Project, the areas on which the On-Site Public Improvements of the Development are to be located shall be open to the public, except in case of emergency or when closure is required for maintenance and repair of such areas, subject to the reasonable rules and regulations of the Developer. Notwithstanding any provision of this Agreement to the contrary, nothing contained herein nor any exercise of the foregoing rights will be deemed to be a gift or dedication to the general public or the City of the area on which the On-Site Public Improvements are to be located. The Developer will install and maintain "Artistic Objects" on the Development Parcel. "Artistic Objects" under this subparagraph may include posters, banners, graphic art, mixed media, decorative screening projections on the side of the Parking Garage, photographs, statues, sculptures, and/or a water element, all as chosen by the Developer and as may be replaced from time to time by the Developer.

(B) To accommodate the current need for additional parking during non-business hours in the vicinity of the Development, the Developer shall, during the Public Parking Period make empty spaces in the Parking Garage available for general public use on weekday evenings commencing at 6:00 p.m. at rates from time to time established by the Developer and ending when the Parking Garage closes, as such closing time may be determined by the Developer in its sole discretion. At the expiration of the Public Parking Period, the Developer will evaluate whether such need continues to exist and will, in its sole and absolute discretion, determine whether or not to continue to make empty spaces in the Parking Garage available for general public use during weekday evenings, it being understood that no provision of this Agreement

shall obligate the Developer to make such spaces available to the general public during weekday evenings after the expiration of the Public Parking Period.

ARTICLE VII
ACQUISITION OF THE DEVELOPMENT PARCEL BY THE DEVELOPER

Section 7.1 Acquisition of the Development Parcel by the City

(A) Date for Acquisition of Development Parcel

The City agrees promptly after the approval by the STC of the application for a major traffic generator certificate for the Development to submit the Survey to CDOT and to use all reasonable efforts to acquire the Development Parcel on or prior to the Closing Date from the State. In the event that the City does not acquire the Development Parcel from the State by the Closing Date due to no fault of its own, such failure shall be considered an Excusable Delay, but the Developer shall have the right in its sole and absolute discretion to terminate this Agreement upon thirty (30) days prior written notice to the City, and upon such termination by the Developer, the parties shall be fully released from and not have any further obligations hereunder to each other, subject to Section 13.3.

Section 7.2 Access to the Development Parcel and Other Parcels

(A) Access to the Development Parcel

At the request of the Developer, the City shall join in any request by the Developer to the State to provide the Developer and its agents and contractors with access to the Development Parcel subject to the Developer's (or its agents' or contractors') execution of the City's or the State's, as the case may be, standard form of access agreement, for the purpose of performing an environmental site assessment, making a boundary survey, soil tests and borings, and physical inspection of the Development Parcel, which access agreement shall include, without limitation, the requirement for the Developer to promptly provide the City with copies of any reports, data,

or other documentation from such assessments, tests, borings, surveys and physical inspection, and to comply with all Environmental Laws. Upon the City's acquisition of the Development Parcel, the City shall provide similar access to the Development Parcel.

(B) Access to Other Parcels

The City, and in the case of access to the Air Rights Garage, the Parking Authority, shall provide similar access, or shall join in any request by the Developer to the State for the State to provide similar access, to those areas where the Pedestrian Connection and the footings of the Parking Garage are to be constructed.

Section 7.3 Preconditions to Developer's Obligation to Acquire the Development Parcel

(A) The obligation of the Developer to acquire the Development Parcel from the City is subject to the satisfaction of each of the following preconditions. As hereinafter set forth, some preconditions are waivable by the Developer, some preconditions are waivable by the Developer if agreed to by the City's Economic Development Administrator, and, if appropriate, the Parking Authority, and shall herein be described as "Conditionally Waivable" and some preconditions are not waivable and must be completed before the Development Parcel may be acquired. All waivers and conditional waivers shall be memorialized in writing. The City, the Parking Authority and the Developer agree to use their reasonable best efforts to cause the matters within their respective control to occur by the Closing Date. The preconditions to Closing are described below:

(1) The City shall have acquired title to the Development Parcel from the State. This precondition is not waivable.

(2) The City shall have substantially completed the construction of those items on the City Traffic Improvements Schedule which must be constructed before the Closing Date and the City and the Parking Authority shall have substantially completed the ARG Improvements before the Closing Date. This precondition is waivable, provided that if the parties cannot agree as to the nature or extent of the outstanding work required for completion of the City Traffic Improvements and/or the ARG Improvements and/or the schedule for completion of the same, then such dispute shall be immediately submitted to the Dispute Resolution Procedure.

(3) Public Financing and/or Additional Public Financing (if required) has been obtained or commitments for such financing reasonably satisfactory to the Developer have been made to the City to provide such financing. This precondition is waivable by the Developer, provided that it is agreed, stipulated and understood that in the event that any Additional Public Financing is required in excess of $3 million, then the Developer shall be solely responsible for paying for the amount of such excess, so that the City shall have no responsibility whatsoever to pay for any portion of such excess or to seek to locate funding for the same.

(4) The City and the Parking Authority, with respect to the ARG Improvements, shall have received the City Public Improvements Financing and any additional financing required for the City's Public Improvements, and/or adequate commitments satisfactory to the Developer in its reasonable discretion shall have been made to the City and the Parking Authority, as applicable, to fund the City's Public Improvements. This precondition is Conditionally Waivable.

(5) Only the Acceptable Encumbrances shall continue to encumber the Development Parcel. This precondition is waivable. If waived, then in accordance with provisions of Section 7.4(B) below, any encumbrances remaining on the property will be acceptable to Developer and the Developer shall accept the Development Parcel subject to such encumbrances.

(6) The City and CDOT or the Commissioner of CDOT shall have executed a termination agreement terminating the Encroachment Agreement in recordable form, and the City and CDOT shall have executed a release of any and all rights that either might have in the Encroachment Agreement and Encroachment Permit No. 3008210, which termination agreement and release shall be held by the City in escrow and delivered to the Developer at the Closing. In the event that the Closing does not occur, the parties agree that the City may

destroy such termination agreement and that in such case, the termination agreement and release shall be null and void and of no further effect. This precondition is not waivable.

(7) The City and the Hospital shall have executed a termination agreement terminating the Side Maintenance Agreement and the Hospital shall have executed a release of any and all rights that it may have under the Side Maintenance Agreement and in New Haven City Plan Commission Site Plan Review and Planned Development Action, Report #1407-10 recorded in Volume 8075 at Page 131 of the New Haven Land Records, required by Section 9.3(B)(3), which termination agreement and release shall be held by the City in escrow and delivered to the Developer at the Closing. In the event that the Closing does not occur, the parties agree that the City may destroy such termination agreement and release and in such case, such termination and release shall be null and void and of no further effect. This precondition is waivable.

(8) The Developer shall have secured all permits and land use and other approvals as set forth in Article VIII below or as otherwise contemplated or provided elsewhere in this Agreement required to construct and operate the Development, including, but not limited to, an amendment to the Parking Authority's major traffic generator certificate from

the STC to permit the Development, all permits required by DEEP, encroachment permits from CDOT to permit the Developer to relocate the Drainage Pipe and for any other purposes required for the Development, storm water runoff and sewer connection permits, building permits for the Building, the Parking Garage, the Tunnels and Driveways, the Pedestrian Connection (if the Developer elects to construct the Pedestrian Connection), the Streetscape Improvements, the On-Site Improvements and the relocation of the Drainage Pipe, and the periods for appealing such permits and approvals shall have expired without appeal (or such appeals shall have been finally adjudicated as being without merit and the permit or approval upheld). This provision is waivable with respect to any of the permits required, with the proviso that if waived, the City will not be responsible for the Developer's failure to obtain such permits.

(9) All licenses, easements and agreements required for the Developer's construction, maintenance and operation of the Development as described in Articles IV, V and IX and Exhibit T herein shall have been executed by all parties to such instruments and delivered to the Developer. This precondition is waivable.

(10) All other licenses, easements, agreements, and amendments or modifications to agreements, including without limitation the License Agreement and the Loading Dock License, required for the construction, maintenance and operation of the Development including those described in Article IX shall have been executed by all parties to such instruments and delivered to the party in whose favor such instrument runs. This precondition is Conditionally Waivable.

(11) The Development Parcel shall be in the physical condition described in Exhibit R. This precondition is waivable, provided that if the Developer waives such precondition (i) the Developer shall provide the City with all temporary construction easements, licenses or agreements that it and the City's Traffic Improvement Contractors may reasonably require in order to complete the work required to make the Development Parcel in the physical condition described in Exhibit R and (ii) all work required to meet this precondition shall be completed within 30 days of Closing. If the parties cannot agree as to the further work that needs to be done in order to meet this precondition and/or the schedule for performing such work, then such dispute(s) shall be immediately submitted to the Dispute Resolution Procedure.

(12) If the Developer elects to construct the Pedestrian Connection at the time that it will be constructing the Building and the Parking Garage, the City, the Parking Authority and the Hospital shall have entered into such agreements as may be necessary setting forth their respective rights and obligations regarding ownership, operation, repair, maintenance and replacement of the Hospital Walkway, and such agreement(s) shall have been recorded on the New Haven Land Records. This precondition is Conditionally Waivable. If the Developer elects to construct the Pedestrian Connection at a later time but within ten (10) years of the date of the Closing, then the City and the Parking Authority shall use reasonable efforts to assist the Developer in obtaining the foregoing agreements as set forth in Section 5.2(D).

(13) The City and the Parking Authority shall have provided all notices and obtained all consents and amendments to agreements and instruments, including easements and consents necessary for the construction and maintenance of the ARG Improvements, the Pedestrian Connection (if Developer elects to construct the Pedestrian Connection at the time that it constructs the Building and the Parking Garage) and the Development, including but not limited to the removal of the buttresses from the Air Rights Garage and the location of certain

footings of the Parking Garage on the Air Rights Garage Property, as set forth in Section 5.3(A)(2) herein. This precondition is waivable. If the Developer elects to waive this precondition to Closing, the City and the Parking Authority shall provide all such notices and make reasonable best efforts to obtain such amendments to agreements and instruments and consents described in this Section 7.3(A)(13) if requested to do so by the Developer sufficiently in advance of the times set forth in the Project Schedule for the construction of such improvements. The City shall not be required to provide notices, obtain consents and enter into agreements required in connection with the construction, repair, maintenance, and operation of the Pedestrian Connection if the Pedestrian Connection is not constructed within ten (10) years after Closing.

(14) The City and the Parking Authority shall have obtained all permits required for the construction of the City's Public Improvements. This precondition is Conditionally Waivable.

(15) The Developer shall have obtained all amendments and modifications to existing STC certificates as set forth in Section 8.1(E) which would otherwise preclude or adversely impact development on the Development Parcel or title to the Development Parcel and shall have obtained the consent of

the Hospital to such amendments and modifications, if required. This precondition is Conditionally Waivable.

(16) There are no Environmental Conditions or Hazardous Materials at, on or emanating from the Development Parcel, which did not exist as of the Effective Date of the Agreement that require testing, remediation or monitoring under Environmental Laws (other than those created by the Developer) except to the extent that the same have been or are being remediated by the City or the Parking Authority in accordance with the provisions of this Agreement below. The condition is waivable, and the Developer may accept the Environmental Conditions or Hazardous Materials in their "as is" "where as" condition subject to the City's obligations to remediate the same pursuant to Section 7.4 of this Agreement provided that the Developer shall give the City access to the Development Parcel to perform such testing and remediation as it reasonably deems necessary and appropriate to perform its obligations under Sections 7.4(E)(1), subject to the execution of an access agreement containing customary provisions with respect to such access, if the Developer does not elect to perform such work under Section 7.4(E)(2).

(B) The Closing Date will be as set forth in Exhibit G. If the foregoing conditions have not been satisfied or waived in writing by the Developer and, where appropriate, the City

and/or the Parking Authority by the Closing Date, the Developer may, in its sole discretion, elect to extend such Closing Date (subject to the City's right to terminate in Section 13.1 below), or to terminate this Agreement upon thirty (30) days prior written notice to the City (delivered at any time following the Closing Date) and upon such termination by the Developer, the parties shall be fully released from and have no further obligations hereunder to each other, subject to Section 13.3.

Section 7.4 Transfer of the Development Parcel to the Developer

(A) Scheduling the Closing

(1) The Closing shall take place on the Closing Date, unless such Closing Date has been extended due to Excusable Delay or in writing by the Developer, or by written agreement of the Developer and the City. If either the Developer or the City disputes that the conditions precedent to Closing have been satisfied or waived, or if the parties cannot agree to the terms and conditions of any waiver, the parties shall participate in the Dispute Resolution Procedure.

(2) The failure of the Developer to accept the conveyance of the Development Parcel on the Closing Date, as the same may have been extended because of Excusable Delay, or by the Developer or by agreement of the City and the Developer if all of the conditions precedent to the Closing have been satisfied or waived, if such failure is not cured within thirty (30) days following notice thereof from the City to Developer,

shall be considered an Event of Default under the Agreement and shall entitle the City to terminate the Agreement or to seek specific performance of the Agreement. The City shall not be entitled to any other remedies for such Event of Default except that the City shall be entitled to all remedies available under Section 12.2(E)(1) if such Event of Default is caused by the bad faith of the Developer.

(3) The failure of the City to convey the Development Parcel to the Developer on the Closing Date, as the same may have been extended because of Excusable Delay, or by the Developer or by agreement of the City and the Developer, which, if not cured within thirty (30) days following notice thereof from the Developer to the City, shall be considered an Event of Default under this Agreement, which shall entitle the Developer to terminate this Agreement or to seek specific performance of the Agreement. The Developer shall not be entitled to any other remedy for such Event of Default except that the Developer shall be entitled to all remedies available under Section 12.2(E)(1) if such Event of Default is caused by the bad faith of the City.

(B) Form and Content of the Deed

(1) The conveyance of the Development Parcel shall be by means of the Quit Claim Deed in the form attached hereto as Exhibit Q or by means of a Quit Claim Deed substantially similar thereto.

A. The Quit Claim Deed shall convey the City's entire interest and title to the Development Parcel, it being the City's intention to release any easement from the State to the City including, but not limited to, the City's rights of ingress over the present South Frontage Road entrance for access to the lower level of the Air Rights Garage and the right of egress over the present exit access to Route 34 from an underground parking lot conveyed to the City in a deed from DECD dated October 21, 2003 and recorded February 23, 2004 in Volume 6706 at Page 141 of the New Haven Land Records.

B. Developer shall be entitled to the conveyance of a good and marketable fee simple title to the Development Parcel subject only to the Acceptable Encumbrances and this Agreement and accordingly cannot be required to accept the Development Parcel, unless such good and marketable title can be delivered by the City. Notwithstanding, the foregoing, the Developer may, in its sole discretion, accept such title as the City is able to convey, in which event, it is agreed and understood that since the conveyance shall be by way of Quit Claim Deed (meaning that the City will make no representations and warranties as to the status and quality of the title) that by accepting the Quit Claim Deed from the City, the Developer will be accepting the quality of title conveyed by the Quit Claim Deed.

C. This Agreement shall be recorded in the New Haven Land Records immediately prior to the recording of the Quit Claim Deed. The legal description of the Development Parcel to be conveyed to the Developer shall be as set forth in Exhibit A and the

Survey, (which Survey shall disclose no encroachments, easements and other matters affecting the title other than the Acceptable Encumbrances or such matters and encumbrances affecting the title as may be agreed to by Developer or which are to be released at the Closing).

(1) The Quit Claim Deed shall reserve unto or another instrument shall grant to the City a permanent easement over that portion of the Development Parcel situated below grade under the Development Parcel upon which the Driveways and Tunnels will be constructed and located, all as described in Exhibit U over, under and across the Development Parcel, Building and the Parking Garage as are necessary to repair, maintain and replace the Tunnels and Driveways, subject to such rights in the Developer over, under, with and through the Tunnels and Driveways as shall be required for the construction, repair, maintenance, reconstruction, and use of the Development including but not limited to, the Building, the Parking Garage, the Development Parcel, the On-Site Improvements and all utilities serving the improvements on the Development Parcel and for the repair to and maintenance of the Driveways and Tunnels by the Developer under Sections 4.1(A)(3) and 11.2(A) of this Agreement.

(2) The Quit Claim Deed shall further reserve unto the City or another instrument shall grant to the City and/or the State (i) a temporary construction easement on the easterly

portion of the Development Parcel as shown on Exhibit R to such an extent as is reasonably necessary for the City to construct the westerly side of the College Street fill structure, which construction shall be completed in accordance with the Project Schedule; ((ii) a temporary slope easement on the southerly slope of that portion of the Development Parcel which borders MLK Boulevard and a temporary slope easement on the northerly slope of that portion of the Development Parcel that borders South Frontage Road in favor of the City and/or the State for the purpose of supporting the embankments bordering such roadways; and (iii) temporary construction easements in favor of the City and/or the State along certain portions of the Development Parcel which border MLK Boulevard and South Frontage Road in favor of the City and/or the State for the purpose of widening each of these roadways.

(C) Purchase Price

The Development Parcel shall be conveyed to the Developer in consideration of all of the Developer's financial and other obligations hereunder and the mutual covenants and conditions herein.

(D) Condition of Development Parcel and Environmental Matters

(1) The condition of the Development Parcel at Closing shall be that described in Exhibit R, except if such condition is waived by the Developer pursuant to

Section 7.3(A)(11). Neither the City nor the Parking Authority has made any representations or warranties to the Developer regarding the condition of the Development Parcel on which Developer will rely, and the Developer acknowledges and agrees that it is relying solely upon its inspection of the Development Parcel for all purposes, including without limitation, its conditions and suitability. The Developer acknowledges that the City does not make, has not made and specifically disclaims any representations or warranty, express or implied, regarding the Environmental Conditions of the Development Parcel at Closing.

(E) Environmental Matters Including Environmental Insurance

The parties acknowledge that the Developer has performed the Phase I/Phase II environmental investigation of the Development Parcel and that the results of such investigation are set forth in the Phase I/Phase II Report, a copy of which has been provided by the Developer to the City. The Developer acknowledges that the City does not make, has not made and specifically disclaims any representations or warranty, express or implied regarding the Environmental Conditions of the Development Parcel as of the Effective Date of this Agreement and/or as of the City Acquisition Date, and under this Agreement, the Developer has an unfettered right and access to conduct any environmental site assessment of the Development Parcel it so chooses, and the Developer alone has determined the extent of any such site assessments, and accepts the Development Parcel in its "as is" "where is" condition as it concerns environmental matters, subject to any Environmental Conditions otherwise required to be remediated pursuant to the provisions of this Agreement.

The City has obtained the Environmental Insurance or concurrently herewith shall obtain Environmental Insurance that covers claims made for unknown existing Environmental Conditions at the Development Parcel as of the Effective Date and Environmental Conditions that arise at the Development Parcel following the Effective Date (a certificate of insurance which evidences such coverage is attached hereto as Exhibit W). In every instance where a claim can be made or is made under the Environmental Insurance, the City agrees to take all reasonable efforts to pursue such claim and the City and the Developer each agree to cooperate with each other in pursuing such claim. The Developer shall pay the portion of the cost of the premium for the Environmental Insurance which exceeds $30,000.

(1) In the event of the occurrence or discovery of a State Environmental Condition and/or a City Environmental Condition prior to the Closing, the City will promptly and diligently investigate, remediate and monitor the State Environmental Condition and/or the City Environmental Condition as reasonably determined by the City's and the Developer's respective licensed environmental professionals. In the event of a dispute between the City's and the Developer's environmental professionals with respect to the work required to investigate, remediate and monitor the State Environmental Condition and/or the City Environmental Condition or the cost of such work, the parties shall submit such dispute to the Dispute Resolution Procedure. Notwithstanding the foregoing, in the event that all or any portion of the claim for costs to investigate,

remediate and monitor the State Environmental Condition and/or the City Environmental Condition are not covered by Environmental Insurance, not including any deductible, then the Developer shall have the option to (i) require the City to promptly and diligently investigate, remediate and monitor the State Environmental Condition and/or the City Environmental Condition, to the extent possible using the insurance proceeds received (if any), and accept at Closing conveyance of the Development Parcel "as is" subject to the State Environmental Condition and/or the City Environmental Condition as it then exists, or (ii) terminate this Agreement by notice given within thirty (30) days of the determination that there will be inadequate insurance proceeds, in which case, the parties shall have no further obligations to each other except as provided in Section 13.3.

(2) In the event that the City has not commenced or completed performing the work necessary to investigate, remediate and monitor the State Environmental Condition and/or City Environmental Condition pursuant to Section 7.4(E)(1) above, then the Developer shall have the right to perform the work itself, provided that at Closing, the City shall pay to Developer any insurance proceeds received by the City in excess of the costs incurred by the City in performing such work,

and assign to the Developer all of its rights in and to any insurance proceeds remaining to be payable under the claim. If the Developer does not exercise its right to perform the work, then the Developer shall provide the City and its agents and contractors with access to the Development Parcel subject to the execution of an access agreement containing customary provisions with respect to such access, for the purpose of performing the work.

(3) In the event the State Environmental Condition and/or the City Environmental Condition was caused by the Developer, its contractors, subcontractors and/or agents, then notwithstanding the provisions of Section 7.4(E)(1) above, the City shall have no obligation to perform any work to address such condition, and the Developer shall accept at Closing conveyance of the Development Parcel "as is" subject to the State Environmental Condition and/or the City Environmental Condition, provided that at Closing, the City shall assign to the Developer all of its rights in and to any insurance proceeds payable under the Environmental Insurance.

(4) In the event the State Environmental Condition and/or the City Environmental Condition was caused by the City and/or the Parking Authority or any of their contractors, subcontractors and/or agents and the Developer does

not terminate this Agreement pursuant to Section 7.4(E)(1) above, then notwithstanding the provisions of Section 7.4(E)(1), the City and/or the Parking Authority shall perform the work necessary to investigate, remediate and monitor the State Environmental Condition and/or City Environmental Condition, as reasonably determined by the City's and the Developer's respective licensed environmental professionals, regardless of whether any or adequate insurance proceeds are available (provided that the City may use any available insurance proceeds to perform such work). In the event of a dispute between the City's and the Developer's environmental professionals with respect to the scope and/or the cost of the work, the parties shall submit such dispute to the Dispute Resolution Procedure. If following the Closing, the Developer exercises its right to perform the work pursuant to Section 7.4(E)(2) above, the City shall pay to the Developer any amounts expended by the Developer from time to time to perform such work until complete.

(F) The Developer shall be afforded access to the Development Parcel to perform additional environmental site assessments should it wish to do so subject to it or its contractor's execution of the City's standard access agreement, which access agreement shall include, without limitation, the requirement to provide the City prior to Closing with copies of all reports, data or other documentation related to the additional environmental site assessment work

contemplated hereunder. The Developer shall be afforded sufficient time and access to conduct any and all environmental site assessments of the Development Parcel necessary for the Developer to identify prior to Closing the presence on the Development Parcel of any Environmental Conditions or Hazardous Materials on, at or emanating from the Development Parcel, that require testing, remediation or monitoring under Environmental Laws, so as to be fully satisfied with the Environmental Conditions at Closing.

(G) The parties further agree that as of the Effective Date of the Agreement, the Development Parcel does not meet the definition of an "establishment" as such term is defined under the Connecticut Transfer Act, CGS Section 22a-134 *et seq.* (as amended) (the "Transfer Act") and as such, the parties do not anticipate a filing will be required to be made at Closing under the Transfer Act so long as no "establishment" activities are conducted after the Effective Date and prior to Closing. In the event that the Developer, its contractors, subcontractors and/or agents shall cause the Development Parcel to become an "establishment" prior to Closing, then the Developer shall comply with the Transfer Act at its sole cost and expense, as the "Certifying Party" as such term is defined under the Transfer Act and shall prepare and execute the relevant form together with all supporting documentation and fees, required for a filing to be made, all at the sole cost of the Developer. In the event that the City, its contractors, subcontractors and/or agents shall cause the Development Parcel to become an "establishment" following the City Acquisition Date but prior to Closing, then the City shall comply with the Transfer Act at its sole cost and expense, as the "Certifying Party" as such term is defined under the Transfer Act and shall prepare and execute the relevant form together with all supporting documentation and fees, required for a filing to be made, all at the sole cost of the City. In the event neither the City nor the Developer causes the Development Parcel to become an Establishment, but the Development

Parcel otherwise becomes an Establishment prior to Closing, then the Developer shall have the option of (i) complying with the Transfer Act as the Certifying Party and shall prepare and execute the relevant form together with all supporting documentation and fees, required for a filing to be made, all at the sole cost of the Developer, or (ii) terminating this Agreement by giving notice before the Closing, in which case, the parties shall have no further obligations to each other except as provided in Section 13.3.

(H) The parties further agree, that the Developer shall be entitled to (but shall not be required to) apply for eligibility for the Developer and the Development Parcel in the Brownfield Remediation and Revitalization Program established in Section 17 of Public Act 11-141 "An Act Concerning Brownfield Remediation and Development as an Economic Driver," (the "Section 17 Program") prior to the conveyance of the Development Parcel, and to avail itself of all of the benefits established under such legislation and if determined to be eligible, then the Developer shall benefit from an exemption to the Transfer Act filing, but shall be responsible at its sole cost and expense to comply with all of the requirements of the Section 17 Program. If the Developer decides to submit an application to the Section 17 Program, the City shall, as necessary, join in such application at no cost to the City.

(I) The Developer shall indemnify, defend and hold harmless the City and its officials, employees, agents and successors and assigns from and against any and all liability, fines, suits, claims, demands, judgments, actions, or losses, penalties, damages, costs and expenses of any kind or nature, including, without limitation, reasonable attorneys' fees made or asserted by anyone whomsoever, due to or arising out of, any Environmental Conditions or Hazardous Materials on, at or emanating from the Development Parcel first occurring after the date that the Developer takes title to the Development Parcel and while the Developer owns the

Development Parcel, but excluding any Environmental Conditions existing as of the date that the Developer takes title to the Development Parcel (whether first discovered after the Developer takes title to the Development Parcel or not) and any Environmental Conditions first occurring after the date the Developer takes title to the Development Parcel 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 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 of the Developer with respect to the claim or matter in question. The Developer and the City acknowledge that the Developer shall have no liability for any Environmental Conditions that exist or may arise at any time on any portion of the Project which is not located on the Development Parcel, so long as the Developer did not cause or contribute to said Environmental Conditions. To the extent the issuer of the Environmental Insurance policy confirms that the following will not result in a loss of coverage to the Developer, the Developer agrees to waive and release the City and its officials, employees, agents and successors and assigns from and against any and all liability, fines, suits, claims, demands, judgments, actions, or losses, penalties, damages, costs and expenses of any kind or nature, including, without limitation, reasonable attorneys' fees, made or asserted by anyone whomsoever, due to or arising out of any Environmental Conditions or Hazardous Materials on, at or emanating from the Development Parcel existing as of the date that the Developer takes title to the Development Parcel (whether first discovered after the Developer takes title to the Development Parcel or not) other than Environmental Conditions which are caused or contributed to by the City or its agents, contractors or employees. Notwithstanding the

foregoing, the City and the Developer agree that this release shall not release the City from its obligations to obtain Environmental Insurance and/or remediate Environmental Conditions on the Development Parcel as set forth above in this Article VII.

(J) Real Estate Conveyance Tax and other Closing Costs

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

(K) Real Property Tax Adjustments

(1) Real estate taxes will be adjusted as of the date of Closing in accordance with the custom in the County of New Haven, State of Connecticut. In the event that the Development Parcel is exempt from taxation on the assessment date immediately preceding the date on which the Quit Claim Deed is recorded in the New Haven Land Records by virtue of title being vested in the City or other Exempt Entity, the Developer shall be liable for taxes from the date of Closing pursuant to Conn. Gen. Stat. § 12-81a and shall make payment of such taxes in accordance therewith. If such section shall be held invalid, unenforceable or unconstitutional by a court of competent jurisdiction, the Developer shall make a payment in

lieu of taxes, based upon the assessed value of the Development Parcel or portion thereof, at the tax rate then prevailing in the City, for that portion of the tax year during which the Developer had title and possession. Notwithstanding the foregoing, no provision of this Agreement shall be construed as a waiver by the Developer or its successors or assigns of its right to challenge or appeal any assessment of the Development Parcel, the Building and/or the Parking Garage or any other element of the Development. Any amounts owed by the Developer under Section 7.4(K) shall be due and payable in the manner and at the time set forth in Conn. Gen. Stat. § 12-81a.

ARTICLE VIII
PERMITS AND APPROVALS

Section 8.1 **Zoning and Land Use Approvals**

(A) The Developer shall apply for and obtain all zoning and land use approvals which are required for the development.

(B) Zoning Permits

The Developer shall file for Site Plan Review for those aspects of the Development which require Site Plan Review with the City Plan Commission pursuant to Section 64 of the Zoning Ordinance. The Developer shall also file for a special permit for the Parking Garage with the City Plan Commission pursuant to Sections 45 and 64 of the Zoning Ordinance. The Developer shall not be required to appeal a denial of any of these applications. Any changes to any matters contemplated by this Agreement approved by the City Plan Commission as part of its Site Plan Review or special permit application review, shall, when agreed to in writing by the

Developer, be deemed to modify the matters contemplated by this Agreement without any need for any modification or amendment to this Agreement.

(C) Municipal Permits

(1) The Developer shall apply to the New Haven Development Commission for review of the consistency of the improvements on the Development Parcel with the objectives of the Development Plan, Downtown Municipal Development Program adopted May 1996 as amended through February 2005.

(2) The Developer shall apply for all required building permits, certificates of occupancy, street openings and other permits required for the construction and operation of the Development.

(D) Greater New Haven Water Pollution Control Authority

(1) To the extent required by Section 4 of the GNHWPCA Sewer Ordinance, as amended, the City's BOA consents and approves any extension of the GNHWPCA collection system or the capacity of the GNHWPCA system required for the Project.

(2) The Developer shall apply for and obtain such permits and approvals as may be necessary for an extension of the collection system and the lawful discharge of surface waters from the Development Parcel.

(E) State of Connecticut Permits

(1) The Developer has applied to the STC for an amendment to the Parking Authority's major traffic generator certificate for the Development. The City and the Parking Authority shall support such application and shall request that the conditions of approval of such amendment by the STC include only those traffic improvements that are proposed to be constructed by the City, the Parking Authority, and the Developer pursuant to this Agreement (including Exhibits D-1 to D-5, F, as modified Exhibit F-1 (to the extent approved by CDOT), I, and J). The Parking Authority shall sign any amendments or modifications to the application for the amendment to the Parking Authority's major traffic generator certificate for the Development, provided that such amendments and modifications meet with its reasonable approval. The Developer will also apply to the DEEP for all permits necessary for the improvements that the Developer constructs under this Agreement. Additionally, the Developer shall apply to CDOT for encroachment permits necessary to construct the Developer's Site and Traffic Improvements and any other aspect of the Developer's portion of the Project for which an encroachment permit is required. The Developer also shall obtain such permits

as may be required for the lawful discharge of surface waters from the Development Parcel.

Section 8.2 Cooperation by the City, the Parking Authority and the Developer

(A) The City and the Parking Authority shall fully and expeditiously assist the Developer in obtaining all approvals and permits required for the Development. The City and the Parking Authority agree to cooperate with the Developer and support in good faith all approvals required in connection with the Development. The City and the Parking Authority shall work cooperatively with the Developer in seeking all necessary approvals from CDOT, STC and DEEP. The City and the Developer agree to cooperate with each other to obtain all approvals required from CDOT, STC and any other relevant City/State agency to close the westbound off ramp at Exit 3 of Route 34 on or prior to the City's Minimum Traffic Improvements Date in order to facilitate the transfer of the Development Parcel to the Developer on or before the Closing Date, provided, however, that the foregoing agreement shall not be construed to require the Developer to conduct any additional traffic studies or modeling.

(B) The City shall designate the Project Manager to assist the City in carrying out its obligations and the obligations of the Parking Authority under this Agreement.

(C) Review of requests for consents and approvals. Unless otherwise specifically provided for elsewhere in this Agreement, the City and the Parking Authority (if applicable) shall review all of Developer's requests for consents, approvals of submissions (other than applications for zoning and land use approvals) and waivers, and shall conduct all inspections required under this Agreement (other than inspections which are part of the Commissioning process under Exhibit V-1) within the Review Period. The City and the Parking Authority (if applicable) shall notify the Developer in writing within the Review Period whether the City or

the Parking Authority, as applicable, consents to or denies approval of the request or submission or approves and/or accepts the work inspected. Where consent, approval or acceptance of work by the City or the Parking Authority is required, such consent or approval shall not be unreasonably withheld, conditioned or delayed. Where consent, approval or acceptance is also required by an Agency or Agencies, the City and the Parking Authority, if applicable, shall not be responsible for the timeliness of the Agency or Agencies' reviews, and delays in such reviews may constitute Excusable Delays. Where the City or the Parking Authority consents to or approves a request of the Developer under this Agreement or accepts work performed by the Developer under this Agreement, such consent, approval or acceptance shall be conclusively deemed a final consent, approval or acceptance by the City or the Parking Authority, as the case may be, subject to the consent, approval or acceptance of an Agency or Agencies, if required. The City or the Parking Authority agrees to give notice to the Developer when an Agency or Agencies' review, consent or approval is needed for a particular item or event. The City will encourage prompt review by an Agency or Agencies of any consent, approval or acceptance required. In the event that the City or the Parking Authority does not grant or deny approval of the Developer's request or submission or accept or reject the Developer's work within twenty-three (23) days of the Developer's request or submission, then the Developer shall give written notice to the City's Economic Development Administrator and the Project Manager of the impending expiration of the Review Period, and if the request has been made to the Parking Authority, such notice shall be given to the Executive Director of the Parking Authority. In the event that the City or the Parking Authority, as the case may be, does not grant or deny approval or accept or reject the Developer's work, or notify the Developer that consent, review or approval by an Agency is required before the expiration of the Review Period of the Developer's

request or submission and the Developer has provided the City's Economic Development Administrator, the Project Manager and the Executive Director of the Parking Authority, as the case may be, with written notice of the impending expiration of the Review Period, then such request or submission of work shall be deemed approved or accepted by the City or the Parking Authority as of the end of the Review Period but shall remain subject to further Agency comment and approval. Notwithstanding the foregoing, the provisions of this Section 8.2(C) shall not apply to the Commissioning inspections and the acceptance of the Tunnels and Driveways, which Commissioning inspections and acceptance shall be governed by Exhibit V-1 and Article IV of this Agreement. In the event that the City or the Parking Authority denies the Developer's request for approval or disapproves the Developer's submission or is not reasonably satisfied with its inspection of the Developer's work, the City or the Parking Authority, as the case may be, shall promptly provide notice to the Developer of such disapproval or denial, which notice shall be accompanied by written comments to the Developer of the reasons for its denial or disapproval and shall meet with the Developer to attempt to resolve the basis for such denial or disapproval. In the event that there is a conflict between this section and provisions of Exhibit L with respect to consents, acceptances, inspections and approvals required for the disbursements of Public Financing, the provisions of Exhibits L shall govern.

(D) In addition to the meetings of the Working Group set forth in Section 5.5(A), the City and the Developer shall meet at regularly scheduled meetings to review the progress of the Project.

(E) The City acknowledges that the Developer has submitted a traffic study for the Development to the City, and the Developer agrees to submit such study to the BOA as required by Section 2 ½ -25 of the Ordinances.

ARTICLE IX
EASEMENTS, LICENSES AND AGREEMENTS

Section 9.1 Easements, Licenses and Agreements from the City and the Parking Authority

(A) The City and the Parking Authority acknowledge that the Developer requires certain easements, licenses and/or agreements from the City with respect to City maintained rights-of-way, City owned property, and from the City and the Parking Authority with respect to the Air Rights Garage including the Hospital Walkway (if owned by the City or the Parking Authority) in order to construct, reconstruct, operate, use, repair, and/or maintain the Development Parcel, the Development and the Developer's Site and Traffic Improvements. The City and the Parking Authority agree to grant the licenses and easements to the Developer for the Project described in Exhibit T, as applicable.

(B) The City and the Parking Authority agree to grant such additional licenses, easements or agreements as may be required to construct, complete and operate the Development. The City and the Parking Authority are each hereby authorized to execute such additional licenses, easements or agreements, as may be required, provided that the City and/or the Parking Authority, as the case may be, shall be supplied with the reasons for such licenses, easements or agreements and the detailed plans of those improvements that will be the subject of the easements and licenses in question for final approval by the City, acting through its Economic Development Administrator, and/or the Executive Director of the Parking Authority, if applicable, which approval will not be unreasonably withheld, conditioned or delayed; and provided further that with respect to any such license, easement or other agreement granted by the City or the Parking Authority, the Developer will comply with the requirements for indemnification and insurance set forth in Exhibit T.

(C) The City shall grant the Parking Authority such easements licenses and shall enter into such agreements as may be required for the Parking Authority to construct, operate, maintain, and replace the ARG Improvements.

Section 9.2 Licenses, Easements and Agreements from Third Parties to the Developer

(A) The City and the Parking Authority acknowledge that the Developer requires or may require certain licenses, easements and agreements from third parties, including (i) the Hospital, the University, the Parking Consultant and the trustee of the bonds and/or the bondholders of the bonds issued in connection with the Air Rights Garage with the respect to construction of the Pedestrian Connection, the use of the Hospital Walkway (if the Pedestrian Connection is constructed), the location of the footings of the Parking Garage, and the removal of certain buttresses of the Air Rights Garage; (ii) CDOT with respect to the location of the footings of the Parking Garage, the City's Traffic Improvements if undertaken by the Developer under Section 3.5 of this Agreement, the installation, relocation, maintenance, operation, repair, and replacement of utilities, air rights required for the Parking Garage, and the construction maintenance, operation, repair, and replacement of the improvements shown on Exhibit Y; (iii) the STC with respect to modifications to certain certificates previously issued to the Hospital and the Parking Authority. The City and the Parking Authority agree, at the Developer's request, to assist the Developer in obtaining licenses, agreements, encroachment permits, and easements from the foregoing parties which are required for the construction, operation and completion of the Project. The City also agrees to assist the Developer with respect to agreements with utility providers which are required for the provision of utility services for the Development and for the relocation of utilities. The Developer agrees to pay for all costs of bringing utilities to the Development Parcel.

Section 9.3 **City and the Parking Authority Agreements with Third Parties**

(A) Agreements with CDOT

(1) The City agrees to enter into an appropriate maintenance agreement required by CDOT for the maintenance of the new landscaping and ornamental lighting which may be installed as part of the City's Traffic Improvements in the public rights-of-way owned by CDOT and the State. The City further agrees to take all necessary steps required by CDOT with respect to the conveyance of property required from CDOT to the City for the construction of the City's Public Improvements.

(2) The City shall enter into a termination agreement with CDOT or the Commissioner of CDOT in recordable form to terminate the Encroachment Agreement and to release and obtain from CDOT a release of any and all rights that either might have in the Encroachment Agreement and Encroachment Permit No. 3008210.

(B) The City shall enter into a termination agreement with the Hospital terminating the Side Maintenance Agreement and shall obtain from the Hospital a release of any and all rights that it may have under the Side Maintenance Agreement and in New Haven City Plan Commission Site Plan Review and Planned Development Action, Report #1407-10 recorded in Volume 8075 at Page 131 of the New Haven Land Records, all in a recordable form.

(C) It is agreed that it is the responsibility of the City and the Parking Authority to provide all notices and to obtain all licenses, easements, consents, and agreements from third

parties which are required for the construction, operation and completion of the City's Public Improvements, the Pedestrian Connection (if constructed) and the Development, including licenses, easements, agreements, amendments, or modifications to and consents required by the Loading Dock License, the License, the Parking Agreement, and the bonds issued for the Air Rights Garage for the Pedestrian Connection (if constructed), the Air Rights Garage Improvements, the location of certain footings of the Parking Garage, and the removal of certain buttresses of the Air Rights Garage and including agreements for the funding of the City's Public Improvements and the Developer's Site and Traffic Improvements from Third Party Funding Agencies as set forth in Articles III and IV.

(D) It is agreed that it shall be the responsibility of the City and the Parking Authority to enter into an agreement and/or easement with the Hospital to clarify their respective rights and obligations with respect to the ownership, maintenance, repair, operation and replacement of the Hospital Walkway, if the Pedestrian Connection is constructed.

Section 9.4 Easements, Licenses and Agreements from the Developer to the City, the Parking Authority and the State

(A) The Developer agrees to grant to the City, the State (including CDOT) and the Parking Authority such licenses, easements or agreements as the City, the State and/or the Parking Authority may require for the City to (i) construct, operate, maintain, repair, and reconstruct public rights-of-way on and adjacent to the Development Parcel, including without limitation a temporary construction easement on, over and under the Development Parcel as is necessary to construct the westerly side of the College Street fill structure, if necessary, a slope easement to maintain the embankments on MLK Boulevard and South Frontage Road and a construction easement to widen MLK Boulevard and South Frontage and (ii) operate, maintain, repair and reconstruct the Tunnels and Driveways, including easements for the maintenance and

repair of the walls, pavements, pavement markings, fire protection equipment, ventilation equipment, drainage associated with the Tunnels and Driveways, lighting, signage, security (including monitoring and control devices), emergency egress, structural supports, conduits, wiring, power (regular and emergency), mechanical rooms, fuel storage and generators, all as more particularly described in Exhibit V-1, as modified by Exhibit V-2. The City and the Parking Authority agree to enter into an agreement subordinating any of the foregoing licenses, easements or other agreements to any environmental land use restriction or similar restriction required by DEEP.

(B) The Developer further agrees to grant to the City and the Parking Authority such licenses, easements or agreements as the City and the Parking Authority may require for the City and the Parking Authority to operate, maintain, repair, and reconstruct the Air Rights Garage. The City and the Parking Authority agree to enter into an agreement subordinating any of the foregoing licenses, easements or other agreements to any environmental land use restriction or similar restriction required by DEEP.

(C) The aforesaid easements granted by the Developer to the City shall provide that neither the City nor the Parking Authority shall unreasonably interfere with any of the Developer's operations on the Development Parcel when exercising their rights under such licenses, easements and agreements. The City and the Parking Authority further agree that with respect to any such license or easement granted by the Developer to the City or reserved by the City or enjoyed by the City over, under and through the Development Parcel, the City and/or the Parking Authority, as the case may be, will indemnify the Developer for any third party claims brought against Developer arising out of the City's and/or the Parking Authority's exercise of their rights under such easements, licenses or agreements, inclusive of reasonable attorneys' fees

and costs, except to the extent that any such claims arise out of the Developer's own negligence, and the Parking Authority shall maintain general liability insurance with at least $5,000,000 limits in coverage for risks associated with its exercise of its right under the licenses, easement or agreements described in this section subject to reasonable deductibles as set forth in Exhibit U, the parties acknowledging that the City is self-insured for such risks. The Developer agrees with respect to any such license, easement or agreement granted by the City or the Parking Authority or reserved by the Developer or enjoyed by the Developer over, under and through the City's or the Parking Authority's property or public rights-of-way, the Developer will indemnify the City and the Parking Authority for any third party claims brought against the City or the Parking Authority arising out of the Developer's exercise of its rights under such easements, licenses or agreements, inclusive of reasonable attorney's fees and costs, except to the extent that any such claims arise out of the City's and/or the Parking Authority's own negligence, and the Developer shall maintain general liability insurance with at least $5,000,000 limits in coverage for risks associated with its exercise of its rights under the licenses, easements or agreements described in this section, subject to reasonable deductibles as set forth in Exhibit T.

(D) In the event that the conveyance in the Quit Claim Deed is not subject to a temporary easement in favor of the State or CDOT for the temporary location of the Drainage Pipe in its current location and a permanent nonexclusive easement for the location, maintenance, repair and replacement of the Drainage Pipe in its relocated location, the Developer will grant the foregoing easements to the State or CDOT for such purposes.

ARTICLE X
CONSTRUCTION OF THE PROJECT

Section 10.1 Construction Progress Reports

(A) The Developer shall provide the City and (to the extent applicable) the Parking Authority, and the Working Group with construction progress reports every thirty (30) days after its construction work commences until the Development and its portion of the Project are completed. Such reports, which shall be made publicly available, shall state whether any dates on the Project Schedule have been met and any anticipated difficulties in meeting such dates and shall include a list of any and all Force Majeure Events which are claimed to result in Excusable Delays.

(B) The City and (to the extent applicable) the Parking Authority, shall provide the Developer and the Working Group with construction progress reports every thirty (30) days after their construction work commences until the City's Public Improvements are completed. The City and the Parking Authority shall state whether the Critical Items Dates have been met and any anticipated difficulties in meeting such dates and the Final Completion Date and shall include a list of any and all Force Majeure Events which are claimed to result in Excusable Delays.

Section 10.2 Compliance with Applicable Laws

The design and construction of the Project shall be in compliance with all applicable City, State and federal laws and regulations, permits and approvals.

Section 10.3 Storage of Soil Removed from Development Parcel.

In the event that the Developer wishes to transport and store soil removed from the Development Parcel in connection with the construction of the Development in the areas in

which the City's Traffic Improvements are to be constructed as set forth on Exhibits D-1 to D-5, the parties shall make good faith efforts to reach an agreement regarding the transportation and disposal of such soils from the Development Parcel to such sites, which agreement, if made, shall be memorialized in a writing signed by the Developer and the Economic Development Administrator, on behalf of the City.

Section 10.4 Construction Details

(A) Construction Fencing and Publicity.

The Developer agrees that during the construction of the improvements on the Development Parcel, the construction fencing for the Development Parcel shall be of a high quality and with appropriate material, height, materials, and content, such as images of New Haven selected by the Developer, which shall be reviewed by the City. Additionally, during such construction period, a sign will be erected on the Development Parcel which will provide the names of all of the entities that have provided public funding for the Project, which sign shall comply with the requirements of the City and Third Party Agencies. The Developer agrees to cooperate with City and Third Party Agencies regarding publicity for the Project.

(B) Construction Planning, Staging, Coordination and Communications

Developer agrees to early and meaningful communications with City staff, including periodic meetings as necessary, to ensure the timely Site Plan Review of the Development Parcel by the City Plan Commission. The Developer and the City acknowledge that during construction, it is important that proper access be maintained to the Air Rights Garage and the Hospital's loading docks located at 55 Park Street. Before and during construction, the Developer agrees to work with the Hospital, the City and the Parking Authority in establishing appropriate agreements with regard to coordination of its construction activities, including but not limited to,

coordination of truck/dock access, work zone safety, communications, traffic interruption, hours of construction, staging areas, and storage of materials.

Section 10.5 Insurance

(A) Developer's Insurance Obligations

(1) The Developer shall cause its construction manager/general contractor for the construction of the Developer's Site and Traffic Improvements to post performance and payment bonds which name the Developer and the Developer's construction financing lenders (if permitted by the surety) and the City as obligees and beneficiaries of such performance and payment bonds.

(2) The Developer shall post a performance bond or security with the City, including being covered under a dual obligee rider to the bond required under subsection 10.5(A)(1) above in such amount as may be required by the City Plan Commission in connection with the Site Plan Review.

(3) In connection with the design and construction of the Developer's Site and Traffic Improvements and the Developer's Private Improvements, the Developer shall obtain, or cause to be maintained by its construction manager/general contractor, the following insurance: (a) workers' compensation insurance with respect to all operations performed in accordance with the requirements of the

laws of the State of Connecticut (Statutory), and employer's liability insurance with limits of $100,000 each accident, $100,000 coverage for each employee for disease, and $500,000 policy limit for disease; (b) commercial general liability insurance with respect to all operations the construction manager/general contractor performs providing a total limit of $1,000,000 per occurrence per location for all damages arising out of bodily injury, personal injury, property damage, contractual liability, and product completed operations liability coverage for the indemnification obligations arising under this Agreement. Each annual aggregate shall be $2,000,000. The products completed operations coverage shall have a separate aggregate limit of not less than $2,000,000 aggregate; (c) with respect to claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any vehicle, the Developer shall arrange for its construction manager/general contractor to carry for each owned, non-owned, hired, borrowed or leased vehicle, automobile liability insurance providing $1,000,000 combined single limit coverage per accident for bodily injury and property damage; (d) umbrella or excess liability insurance with a minimum limit of $10,000,000 per occurrence/general aggregate excess of all liability insurance described within this contract,

other than workers' compensation (commercial general liability, automotive liability and employer's liability); (e) with the exception of workers' compensation, the City, the Parking Authority and the trustee of the bonds or the bondholders of bonds issued in connection with the Air Rights Garage (if required) shall be named as an additional insured as well as any Agency that is required to be named as an additional insured or other party that the City, Parking Authority (if applicable) and Developer agree should be named as an additional insured on all such policies by endorsement with respect to the construction activities to be performed under this Agreement. Coverage shall be primary and non-contributory with any other insurance and self-insurance. In addition, the Developer shall cause all subcontractors/trade contractors to obtain and show evidence of insurance coverage. The construction manager/general contractor shall be named as the certificate holder on a valid certificate of insurance for all insurance coverage required. All subcontractors/trade contractors shall be required to maintain the same minimum scope and limits of insurance as required herein, with the exception of umbrella/excess liability which will not be required. These policies (except for workers' compensation) shall name the City, the Parking Authority and the trustee of the bonds or the bondholders of the bonds issued in connection with

the Air Rights Garage as well as any Agency that requests to be named as an additional insured or other party that the City, Parking Authority (if applicable) and Developer agree should be named as an additional insured on all such insurance policies by endorsement. In addition, should the insurance requirements of an Agency or Agencies require additional or different types of insurance, the requirements of such Agency or Agencies shall be complied with in addition to these requirements. It is agreed and understood among the City and the Developer (and the Parking Authority to the extent applicable) that the limits of liability insurance in this subsection (A)(3) are appropriate, as of the Effective Date, for projects of a similar size and nature. However, it is also recognized by the parties that the Developer may not be required to obtain or cause to be obtained such insurance immediately after the Effective Date because there may be a lapse in time between the Effective Date and the date that the Developer commences construction of the Development. Accordingly, in the event that the liability insurance required hereunder is being obtained on a date which is more than three years subsequent to the Effective Date, then if there has been a substantial change in insurance industry standards with respect to the commercially reasonable liability insurance limits for projects similar to the Development, the parties shall, by written

agreement, alter the liability limits set forth in this Agreement to take into account such changes, provided, however that in no event shall the limits of liability insurance be less than those set forth in this subsection. In the event of a dispute as to what the appropriate limits of liability insurance should be under such circumstances, then the parties shall submit such dispute to the Dispute Resolution Procedure.

(4) At all times during the design and construction of the Developer's Site and Traffic Improvements and the Developer's Private Improvements, the Developer shall maintain, or cause its outside primary architects and engineers with whom it contracts to perform the design work and the construction administration work (primary architects and engineers, and site, civil, environmental, traffic, and structural engineers) to maintain architect's and engineer's professional liability errors and omissions insurance with a minimum of $5,000,000 per claim and in the aggregate for damage caused by an error, omission or any negligent or wrongful act, subject to adjustment if agreed to by the City and the Developer. At all times during the design and construction of such work, the Developer shall maintain or cause any other subconsultant architects, engineers, consultants, and designers (such as mechanical, electrical, plumbing, landscaping, sustainability

consultant, wind/airflow designer, parking flow designer (security, valet, etc.)) performing the design and construction administration work to maintain architect's errors and omissions or other professional liability insurance errors and omission insurance with a minimum of $1,000,000 per claim and in the aggregate, for damage caused by an error, omission or any negligent or wrongful act, subject to adjustment if agreed to by the City and the Developer. If the policy is written on a "claims-made" basis, then an extended reporting period "tail" or continuous claims-made liability will be required at the completion of the Developer's Site and Traffic Improvements for a duration of three years after such completion and at the completion of the Developer's Private Improvements for a duration of three years after the issuance of the Certificate of Completion, or the maximum time period reasonably available in the marketplace. Continuous "claims-made" coverage will be acceptable in lieu of "tail" coverage provided its retroactive date is on or before the Effective Date of this Agreement.

(5) Property Insurance. With respect to the Developer's Private Improvements and the Streetscape and On-Site Improvements, until a Certificate of Completion is issued for the same, and with respect to the Developer's Site and Traffic Improvements, until the Tunnels and Driveways are accepted by

the City Engineer, the Developer shall keep such improvements and all related insurable personal property insured against all risks of direct physical loss or damage and against such additional risks with respect to which insurance is commonly carried on similar property (real and personal) in the City. Such insurance shall be in amounts comprising the total value of the Developer's Site and Traffic Improvements (with respect to insurance for such improvements), the Developer's Private Improvements (with respect to insurance for such improvements) on a full replacement cost basis. Property insurance shall be written on a Builder's "All-Risk" policy form that shall include insurance for physical loss or damage to the work, temporary buildings, falsework, materials and equipment in transit, including in the Tunnels and Driveways underlying the Building and Parking Garage, and shall insure against at least the following perils or causes of loss: fire, lightening, extended coverage, theft, vandalism and malicious mischief, earthquake, flood, collapse, removal of debris, testing and startup, temporary buildings and removal of debris, demolition occasioned by enforcement of laws and regulations, water damage, and such other perils or causes of loss as may be required by the contract documents.

(6) All such insurance required to be obtained by the Developer under this Agreement shall be by standard policies, obtained from financially sound and responsible insurance companies authorized to do business in the State of Connecticut with an AM Best rating of A- or better and with respect to casualty insurance shall have attached thereto a clause making the loss payable to the Developer, the Mortgagee, and subject to the rights of the Mortgagee and the City, as their respective interests may appear. Each insurance policy shall be written to become effective at the time the Developer becomes subject to the risk or hazard covered thereby and shall be continued in full force (i) with respect to the Developer's Private Improvements, the Streetscape Improvements and the On-Site Improvements, until issuance of the Certificate of Completion, (ii) with respect to the Tunnels and Driveways until the acceptance by the City Engineer of the same, or such other dates as the City and Developer and its Mortgagee may agree are appropriate. All such insurance policies and renewals thereof or certificates of such policies and renewals shall be filed with the City's Corporation Counsel's Office in accordance with Section 14.1. The certificates shall specify all parties who are additional insureds.

(7) Deductibles and Self-Insured Retentions must be declared to and approved by the City's Corporation Counsel's Office as commercially reasonable.

(8) Prior to the date on which a particular improvement is required to be insured as set forth in paragraph 6 above, all required insurance policies shall provide that they cannot be canceled or terminated unless and until at least ten (10) days prior written notice of such imminent cancellation or termination has been delivered to the City for a cancellation due to nonpayment of premiums and until at least thirty (30) days prior written notice of such imminent cancellation or termination has been delivered to the City for any other reason.

(9) In the event that, at any time prior to the date on which a particular improvement is required to be insured as set forth in subsection 6, if the Developer or its construction manager/contractors or subcontractors or their construction managers/contractors, subcontractors, architects, engineers, or subconsultants refuse, neglect or fail to secure and maintain in full force and effect any or all of the insurance required pursuant to this Agreement, the City, at its option, may procure or renew such insurance. All amounts of money paid therefor by the City shall be reimbursed by the Developer to the City with interest thereon at the rate of ten percent (10%) per annum from the date

of payment by the City to the date of reimbursement by the Developer. Before procuring or renewing any such insurance, the City shall provide the Developer and any Mortgagee with ten (10) days prior notice of the expected dates, purposes, and amounts of any such payments to be made by it, during which period the Developer and any Mortgagee shall have the opportunity to cure any such deficiency in insurance coverage.

(10) At any time prior to the date on which a particular improvement is required to be insured as set forth in subsection 6 above, whenever any such improvement, or any significant part thereof, constructed as part of the Development shall have been damaged or destroyed, the same shall be considered a Force Majeure Event for purposes of reconstruction and scheduling. To the extent possible, the Developer will proceed with construction on those portions of its obligations that are not delayed by the destruction and/or damage. In addition, the Developer shall proceed promptly to establish and collect all valid claims which may have arisen against any insurer based upon any such damage or destruction. All proceeds of any such claims and any other monies provided for the reconstruction, restoration or repair of such improvement, shall be deposited in a separate account which may be under the control of the Mortgagee. Subject to the rights of any Mortgagee, such

insurance money so collected shall be used and expended for the purpose of fully repairing or reconstructing the improvement or improvements which have been destroyed or damaged to a condition at least comparable to that existing at the time of such damage or destruction to the extent that the insurance money may permit, and if there is any excess of insurance proceeds after such repair or reconstruction has been fully completed, the Developer shall retain such excess. Notwithstanding the foregoing, should the City's property or the Tunnels and Driveways be damaged or destroyed during the same event, the City shall have the right to make a claim against any parties or on all applicable insurance policies for damages to its own property interests. The Developer shall commence any repair or reconstruction of those portions of the improvement which could not be proceeded with due to lack of insurance money pursuant to this Section 10.5(A)(10) within six (6) months of receiving the insurance proceeds with respect thereto, subject to Excusable Delays (or such longer period as mutually and reasonably agreed upon by the Developer and the City), and shall diligently and with prompt dispatch prosecute the same, so as to fully complete such reconstruction or repair within eighteen (18) months from the commencement thereof subject to Excusable Delays, or such longer period as mutually and reasonably agreed upon by the

Developer and the City. In the event that the Developer and the City determine and agree (with, where required, the approval of any Mortgagee) that any improvement, or any part thereof, constructed as part of the Development shall have been damaged or destroyed to the extent that the Developer and the City (with, where required, the approval of any Mortgagee) agree that the improvement should not be repaired, reconstructed or restored in whole or in part, then the Developer and the City with the approval of the Mortgagee, if required, shall enter an agreement which covers the distribution of the proceeds of any claim against insurers or others arising out of such damage or destruction, including the extent to which the proceeds shall be used for (i) such repair, reconstruction, or restoration; (ii) the restoration of the site and; (iii) subject to the rights of any Mortgagee, to satisfy any outstanding claims or expenses as the Developer may have incurred with respect to the Project and which agreement shall provide for the distribution to Developer of any surplus of such proceeds.

(11) Certificate of Insurance. As evidence of the insurance coverage required under this Agreement, the Developer shall cause to have furnished to the City Corporation Counsel's Office all applicable certificates of insurance signed by a person authorized by the insurer to bind coverage on its

behalf, and all renewals of expiring certificates shall be filed thirty (30) days prior to expiration.

(12) Waiver of Governmental Immunity. Unless requested otherwise by the City, all entities providing insurance shall waive governmental immunity as a defense and shall not use the defense of governmental immunity in the adjustment of claims or in the defense of any suit brought against the City.

(B) Insurance Requirements for City's Traffic Improvements

(1) In connection with the design and construction of the City's Traffic Improvements, the City shall cause to be maintained by its construction manager/general contractor, the following insurance: (a) workers' compensation insurance with respect to all operations performed in accordance with the requirements of the laws of the State of Connecticut (Statutory), and employer's liability insurance with limits of $100,000 each accident, $100,000 coverage for each employee for disease, and $500,000 policy limit for disease; (b) commercial general liability insurance with respect to all operations the construction manager/general contractor performs providing a total limit of $1,000,000 per occurrence per location for all damages arising out of bodily injury, personal injury, property damage, contractual liability and product completed

operations liability coverage for the indemnification obligations arising under this contract. Each annual aggregate shall be $2,000,000. The products completed operations coverage shall have a separate aggregate limit of not less than $2,000,000 aggregate; (c) with respect to claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any vehicle, the City shall arrange for its construction manager/general contractor to carry for each owned, non-owned, hired, borrowed or leased vehicle, automobile liability insurance providing $1,000,000 combined single limit coverage per accident for bodily injury and property damage; (d) umbrella or excess liability insurance with a minimum limit of $10,000,000 per occurrence/general aggregate excess of all liability insurance described in this Agreement, other than workers' compensation (commercial liability, general liability, automotive liability and employer's liability); (e) with the exception of workers' compensation, the Developer, the City, any Agency that is required to be named as an additional insured or other party that the City and the Developer agree should be named as an additional insured shall be named as an additional insured on all such policies with respect to the City's Traffic Improvements by endorsement. Coverage shall be primary and non-contributory with any other

insurance and self-insurance. In addition, the City shall cause all subcontractors/trade contractors to obtain and show evidence of insurance coverage in the amounts required herein. The construction manager/general contractor shall be named as the certificate holder on a valid certificate of insurance for all insurance coverage required. All subcontractors/trade contractors shall be required to maintain the same minimum scope and limits of insurance as required herein, with the exception of umbrella/excess liability which will not be required. These policies (except for workers' compensation) shall name the Developer, the City, any Agency that is required to be named as an additional insured or other party that the City and the Developer agree should be named as an additional insured shall be named as an additional insured on all such insurance policies by endorsement. In addition, should the insurance requirements of an Agency or Agencies require additional or different types of insurance, the requirements of the Agency or Agencies shall be complied with in addition to these requirements. It is agreed and understood between the City and the Developer that the limits of liability insurance in this subsection (B)(1) are appropriate as of the Effective Date for projects of a similar size and nature. However, it is also recognized by the parties that the City's construction manager/general contractor may not be required to

obtain or cause to be obtained such insurance immediately after the Effective Date, because there may be a lapse in time between the Effective Date and the date that the City commences construction of the City's Traffic Improvements. Accordingly, in the event that the liability insurance required hereunder is being obtained on a date which is more than three years subsequent to the Effective Date, then, if there has been a substantial change in insurance industry standards with respect to the commercially reasonable liability insurance limits for projects similar to the City's Traffic Improvements, the parties shall, by written agreement, alter the liability limits set forth in this Agreement to take into account such changes, provided, however that in no event shall the limits of liability insurance be less than those set forth in this subsection. In the event of a dispute as to what the appropriate limits of liability insurance should be under such circumstances, then the parties shall submit such dispute to the Dispute Resolution Procedure.

(2) At all times during the design and construction of the City's Traffic Improvements, the City shall maintain or cause its outside primary architects and engineers with whom it contracts to perform the design work and the construction administration work (primary architects and engineers, and site, civil, environmental traffic and structural

engineers) for the City's Traffic Improvements, to maintain architect's and engineer's professional liability insurance with a minimum of $5,000,000 per claim and in the aggregate for damage caused by an error, omission or any negligent or wrongful act, subject to adjustment if agreed to by City and the Developer. At all times during the design and construction of the City's Traffic Improvements, the City shall maintain or cause its other subconsultant architects, engineers, consultants, and designers (such as mechanical, electrical, landscaping, sustainability consultant, wind/airflow designer, parking flow designer (security valet, etc.)) performing the design and construction administration work for the City's Traffic Improvements to maintain architect's errors and omissions or professional liability insurance with a minimum of $1,000,000 per claim and in the aggregate, for damage caused by an error, omission or any negligent or wrongful act, subject to adjustment if agreed to by the City and the Developer. If the policy is written on a "claims-made" basis, then an extended reporting period "tail" or continuous claims-made liability will be required at the completion of the City's Traffic Improvements for a duration of three years after such completion, or the maximum time period reasonably available in the marketplace. Continuous "claims-made" coverage will be acceptable in lieu of "tail" coverage

provided its retroactive date is on or before the Effective Date of this Agreement.

(C) Requirements for Insurance for the ARG Improvements

(1) In connection with the design and construction of the ARG Improvements, the City and the Parking Authority shall maintain or cause to be maintained by their construction manager/general contractor, the following insurance: (a) workers' compensation insurance with respect to all operations performed in accordance with the requirements of the laws of the State of Connecticut (Statutory), and employer's liability insurance with limits of $100,000 each accident, $100,000 coverage for each employee for disease, and $500,000 policy limit for disease; (b) commercial general liability insurance with respect to all operations the contractor performs providing a total limit of $1,000,000 per occurrence per location for all damages arising out of bodily injury, personal injury, property damage, contractual liability and product completed operations liability coverage for the indemnification obligations arising under this contract. Each annual aggregate shall be $2,000,000. The products completed operations coverage shall have a separate aggregate limit of not less than $2,000,000 aggregate; (c) with respect to claims for damages because of bodily injury or death of any person or property damage arising

out of the ownership, maintenance or use of any vehicle, the City and the Parking Authority shall arrange for their construction manager/general contractor to carry for each owned, non-owned, hired, borrowed or leased vehicle, automobile liability insurance providing $1,000,000 combined single limit coverage per accident for bodily injury and property damage; (d) umbrella or excess liability insurance with a minimum limit of $10,000,000 per occurrence/general aggregate excess of all liability insurance described in this Agreement, other than workers' compensation (commercial general liability, automotive liability and employer's liability); (e) with the exception of workers' compensation, the Developer, the City, the Parking Authority, any Agency that is required to be named as an additional insured or other party that the City, the Parking Authority and the Developer agree should be named as an additional insured shall be named as an additional insured, on all such policies with respect to the ARG Improvements by endorsement. Coverage shall be primary and non-contributory with any other insurance and self-insurance. In addition, the City and the Parking Authority shall cause all subcontractors/trade contractors to obtain and show evidence of insurance coverage in the amounts required herein. The construction manager/general contractor shall be named as the certificate holder on a valid certificate of

insurance for all insurance coverage required. All subcontractors/trade contractors shall be required to maintain the same minimum scope and limits of insurance as required herein, with the exception of umbrella/excess liability which will not be required. These policies (except for workers' compensation) shall name the Developer, the City, the Parking Authority, an Agency required to be named as an additional insured or other party that the City, the Parking Authority and Developer agree should be named as an additional insured as an additional insured on all such insurance policies by endorsement. In addition, should the insurance requirements of an Agency or Agencies require additional or different types of insurance, the requirements of the Agency or Agencies shall be complied with in addition to these requirements. It is agreed and understood between the City, the Parking Authority and the Developer that the limits of liability insurance in this subsection are appropriate as of the Effective Date for projects of a similar size and nature. However, it is also recognized that the ARG Contractors may not be required to obtain or cause to be obtained such insurance immediately after the Effective Date, because there may be a lapse in time between the Effective Date and the date that the Parking Authority commences construction of the ARG Improvements. Accordingly, in the event that the liability

insurance required hereunder is being obtained on a date which is more than three years subsequent to the Effective Date, then if there has been a substantial change in insurance industry standards with respect to the commercially reasonable liability insurance limits for projects similar to the ARG Improvements, the parties shall, by written agreement, alter the liability limits set forth in this Agreement to take into account such changes, provided, however, that in no event shall the limits of liability insurance be less than those set forth in this subsection. In the event of a dispute as to what the appropriate limits of liability insurance should be under such circumstances, then the parties shall submit such dispute to the Dispute Resolution Procedure.

(2) At all times during the design and construction of the ARG Improvements, the Parking Authority shall maintain, or cause its primary outside architects and engineers with whom it directly contracts to perform the design work and the construction administration work for the ARG Improvements (primary architects and engineers and site, civil, environmental, traffic and structural engineers) to maintain architect's and engineer's professional liability insurance with a minimum of $5,000,000 per claim and in the aggregate for damage caused by an error, omission or any negligent or wrongful act, subject to adjustment if agreed to by the parties. At

all times during the design and construction of the ARG's Traffic Improvements, the Parking Authority shall maintain or cause its other subconsultant architects, consultants, engineers, and designers (such as mechanical, electrical, plumbing, landscaping, sustainability consultant, wind/airflow designer, parking flow designer (security, valet, etc.)) performing the design and construction administration work for the ARG Improvements to maintain architect's and engineer's errors and omissions professional liability insurance with a minimum of $1,000,000 per claim and in the aggregate, and shall cause the structural engineering consultant to maintain engineer's professional liability insurance errors and omission insurance with a minimum of $2,000,000 per claim and in the aggregate for damage caused by an error, omission or any negligent or wrongful act, subject to adjustment if agreed to by the parties. If the policy is written on a "claims-made" basis, then an extended reporting period "tail" or continuous claims-made liability will be required at the completion of the ARG Improvements for a duration of three years after the completion of the ARG Improvements, or the maximum time period reasonably available in the marketplace. Continuous "claims-made" coverage will be acceptable in lieu of "tail" coverage provided its retroactive date is on or before the Effective Date of this Agreement.

(3) Property Insurance. With respect to the ARG Improvements, the Parking Authority shall keep such improvements and all related insurable personal property insured against all risks of direct physical loss or damage and against such additional risks with respect to which insurance is commonly carried on similar property (real and personal) in the City. Such insurance shall be in amounts comprising the total value of the ARG Improvements (with respect to insurance for such improvements) on a full replacement cost basis. Property insurance shall be written on a Builder's "All-Risk" policy form that shall include insurance for physical loss or damage to the work, temporary buildings, falsework, materials and equipment in transit and shall insure against at least the following perils or causes of loss: fire, lightening, extended coverage, theft, vandalism and malicious mischief, earthquake, flood, collapse, removal of debris, testing and startup, temporary buildings and removal of debris, demolition occasioned by enforcement of laws and regulations, water damage, and such other perils or causes of loss as may be required by the contract documents.

(D) General Requirements for City's and Parking Authority's Insurance

(1) All such insurance required to be obtained by the City's and the Parking Authority's contractors, subcontractors, design professionals and consultants and by the

Parking Authority under this Agreement shall be by standard policies, obtained from financially sound and responsible insurance companies authorized to do business in the State of Connecticut with an AM Best rating of A- or better and with respect to casualty insurance shall have attached thereto a clause making the loss payable to the City, the Parking Authority (if applicable), the Mortgagee, and subject to the rights of the Mortgagee, and the Developer, as their respective interests may appear. Each insurance policy shall be written to become effective at the time the City and the Parking Authority, if applicable, become subject to the risk or hazard covered thereby and shall be continued in full force and effect until the City's Traffic Improvements are completed and with respect to the Parking Authority, until a certificate of occupancy is issued for the ARG Improvements or if no certificate of occupancy is to be issued for the ARG Improvements until the ARG Improvements are completed All such insurance policies and renewals thereof or certificates of such policies and renewals shall be sent to the Developer at the address specified in Section 14.1. The certificates shall specify all parties who are additional insureds. Deductibles and self-insured retentions must be declared to and approved by the Developer as commercially reasonable.

(2) Prior to the completion of the City's Traffic Improvements and prior to the completion of the ARG Improvements, all insurance policies applicable to each of these portions of the City's Public Improvements shall provide that they cannot be canceled or terminated unless and until ten (10) days prior written notice of such imminent cancellation or termination has been delivered to the Developer for a cancellation due to nonpayment of premiums and until at least thirty (30) days prior written notice of such imminent cancellation or termination has been delivered to the Developer for any other reason.

In the event that at any time prior to the completion of the City's Traffic Improvements or prior to the completion of the ARG Improvements, the City's and the Parking Authority's construction managers/contractors, subcontractors, architects, engineers, or subconsultants refuse, or the Parking Authority neglect or fail to secure and maintain in full force and effect any or all of the insurance required pursuant to this Agreement for the applicable improvement, the Developer, at its option, may procure or renew such insurance. All amounts of money paid therefor by the Developer shall be reimbursed by the City and the Parking Authority, if applicable, to the Developer with interest thereon at the rate of ten percent (10%) per annum from the date of payment by the Developer to the date of reimbursement by the City and/or the Parking Authority, if applicable.

Before procuring or renewing any such insurance, the Developer shall provide the City and the Parking Authority, if applicable, with ten (10) days prior notice of the expected dates, purposes, and amounts of any such payments to be made by it, during which period the City and the Parking Authority, if applicable, shall have the opportunity to cure any such deficiency in insurance coverage.

(3) At any time prior to the completion of the City's Traffic Improvements or prior to the completion of the ARG Improvements, whenever any such improvement, or any significant part thereof, constructed as part of the Project shall have been damaged or destroyed, the same shall be considered a Force Majeure Event for purposes of reconstruction and scheduling. To the extent possible, the City and/or the Parking Authority, as the case may be, will proceed with construction on those portions of its obligations that are not delayed by the destruction and/or damage. In addition, the City and/or the Parking Authority, if applicable, shall proceed promptly to establish and collect all valid claims which may have arisen against any insurer based upon any such damage or destruction. All proceeds of any such claims and any other monies provided for the reconstruction, restoration or repair of such improvement, shall be deposited in a separate account and such insurance money so collected shall be used and expended for the purpose

of fully repairing or reconstructing the improvement or improvements which have been destroyed or damaged to a condition at least comparable to that existing at the time of such damage or destruction to the extent that the insurance money may permit, and if there is any excess of insurance proceeds after such repair or reconstruction has been fully completed, the City and/or the Parking Authority, shall retain such excess. Notwithstanding the foregoing, should the Developer's Private Improvements and/or the Developer's Site and Traffic Improvements be damaged or destroyed during the same event, the Developer shall have the right to make a claim against any parties or on all applicable insurance policies for such improvements. The City and the Parking Authority, if applicable, shall commence any repair or reconstruction of those portions of the improvement which could not be proceeded with due to lack of insurance money pursuant to Section 10.5(D)(3) within six (6) months of receiving the insurance proceeds with respect thereto, subject to Excusable Delays (or such longer period as mutually and reasonably agreed upon by the Developer), the City and the Parking Authority, if applicable, and shall diligently and with prompt dispatch prosecute the same, so as to fully complete such reconstruction or repair within eighteen (18) months from the commencement thereof subject to Excusable Delays, or such

longer period as mutually and reasonably agreed upon by the Developer, the City and the Parking Authority. In the event that the Developer, the City and the Parking Authority, determine and agree that any improvement, or any part thereof, constructed as part of the Project shall have been damaged or destroyed to the extent that the Developer, the City and the Parking Authority, agree that the improvement should not be repaired, reconstructed or restored in whole or in part, then the Parking Authority, the City and the Developer shall enter an agreement which covers the distribution of the proceeds of any claim against insurers or others arising out of such damage or destruction, including the extent to which the proceeds shall be used for (i) such repair, reconstruction, or restoration (ii) the restoration of the site and (iii) to satisfy any outstanding claims or expenses as the City and/or the Parking Authority may have incurred with respect to the Project and which agreement shall provide for distribution to the Parking Authority and/or the City of any surplus of such proceeds.

(4) Certificate of Insurance. As evidence of the insurance coverage required under this Agreement, the City and the Parking Authority, if applicable, shall cause to have furnished to the Developer all applicable certificates of insurance signed by a person authorized by the insurer to bind coverage on its behalf, and all renewals of expiring certificates shall be filed thirty (30) days prior to expiration.

Section 10.6 Certificate of Completion

(A) After completion of the Developer's Private Improvements (but not including the Tenant Improvements), the Streetscape Improvements and the On-Site Improvements in accordance with the Approved Plans for such improvements, the Developer shall give notice via certified mail return receipt requested to the Economic Development Administrator of such completion and request a Certificate of Completion for the Developer's Private Improvements, the Streetscape Improvements and the On-Site Improvements. Notwithstanding any other provision of this Agreement, the Economic Development Administrator, shall inspect or shall cause the Developer's Private Improvements, the Streetscape Improvements and the On-Site Improvements to be inspected within thirty (30) days of a request for a Certificate of Completion and shall furnish such Certificate of Completion within forty-five (45) days of the Developer's request for the Certificate, subject to Section 10.6(C) below. The Certificate of Completion shall be in such form as will enable it to be recorded on the New Haven Land Records.

(B) The Certificate of Completion shall be a conclusive determination of the satisfaction of the Developer's obligation to construct the Developer's Private Improvements, the Streetscape Improvements and the On-Site Improvements and shall state that the Developer's obligations to construct the Developer's Private Improvements, the Streetscape Improvements and the On-Site Improvements have been fully satisfied. The parties agree that the Certificate of Completion shall not represent a determination that the Developer has satisfied any other of its other obligations under this Agreement other than its obligations to construct the Developer's Private Improvements, the Streetscape Improvements and/or the On-Site Improvements in accordance with the Approved Plans. The parties agree that this Agreement does not obligate the Developer with respect to construction and completion of any Tenant Improvements to the Building, and a Certificate of Completion for the Developer's Private Improvements, the

Streetscape Improvements and the On-Site Improvements may not be denied or withheld because Tenant Improvements have not been constructed or completed.

(C) Notwithstanding any other provision of this Agreement, if the Economic Development Administrator shall refuse or fail to provide certification in accordance with the provisions of this Section, the Economic Development Administrator shall, within such forty-five (45) day period, provide the Developer with a written statement setting forth in adequate detail in what respects the Developer has failed to complete the Developer's Private Improvements and/or the Streetscape Improvements and/or the On-Site Improvements in accordance with the Approved Plans, and what measures or acts will be in necessary for the Developer to take or perform in order to obtain such certification. Following receipt of such written statement, the Developer shall promptly carry out the corrective measures or acts described in the written statement, and a Certificate of Completion will be delivered to the Developer within fifteen (15) days of the completion of the items by the Developer described in the written statement. In the event of any dispute between the City and the Developer with respect to the issuance of the Certificate of Completion, the parties shall participate in the Dispute Resolution Procedure.

(D) Notwithstanding any other provision of this Agreement, if the Economic Development Administrator shall fail to provide the Developer with a Certificate of Completion or with a written statement within such forty-five (45) day period of a request for a Certificate of Completion, such failure shall be deemed to constitute certification that the Developer's Private Improvements, the Streetscape Improvements and the On-Site Improvements have been completed in accordance with the Approved Plans. In such case, the Developer shall, in its sole discretion, record a Certificate of Completion on the New Haven Land Records, setting forth the

failure of the City to issue a Certificate of Completion within the time required for issuing such certificate. The Developer's Certificate of Completion shall have the same force and effect as a Certificate of Completion issued by the Economic Development Administrator.

Section 10.7 Sales and Use Tax Relief

The sales and use tax relief program established under Conn. Gen. Stat. § 32-23h provides for sales and use tax relief on the purchase of tangible personal property and services for qualifying economic development projects. The City and the Developer acknowledge that the Developer intends to apply to the Connecticut Development Authority for sales and use tax relief under Conn. Gen. Stat. § 32-23h for purchases of taxable tangible personal property that will be made for the Development which are eligible for tax relief. The Developer will take all reasonable actions to pursue such tax relief, provided that the terms of such tax relief are acceptable to the Developer. The City agrees to provide support and assistance to the Developer with respect to such application, and for a period of two years following the date of the Closing, if there are then other applications for such Sales and Use Tax Relief for projects in the City, then the City shall advise the Connecticut Development Authority that the Developer's application is the City's first priority in this respect.

ARTICLE XI
OPERATION OF THE PROJECT

Section 11.1 Payment of Taxes

(A) During the period of time that the Developer holds title to the Development Parcel, the Developer agrees to pay all taxes and assessments lawfully assessed against the Development Parcel and the improvements thereon. Nothing herein shall be construed as waiving any right the Developer, or its successors in title or its tenants may have to contest or appeal, in the manner provided by law, any assessment made by the City with respect to all or

any portion of the Development, including the Development Parcel and the improvements thereon.

(B) In the event that during the Bond Repayment Period, the Developer transfers title to any portion of the Development Parcel and/or the improvements thereon to an Exempt Entity, then the Developer shall require the Exempt Entity to pay to the City on the date that title is transferred to the Exempt Entity the Bond Repayment Sum.

(C) The provisions of this Section 11.1 shall expressly survive the Closing, and shall be binding upon all of the Developer's successors or assigns with respect to the Development Parcel or any portion thereof or any improvements thereon.

(D) Developer covenants and agrees for itself and on behalf of its successors and assigns that in the event of any assignment of any interest in the Development Parcel to an Exempt Entity in contravention of the provisions of this Section 11.1, then the Developer (or a subsequent assignor) shall be responsible for payment of the Bond Repayment Sum which would have been payable under this Section 11.1 to the extent that the City is unable to obtain the same (or any portion thereof) by way of subsequent agreement with the Exempt Entity.

Section 11.2 Repair of Tunnels and Driveways

(A) Notwithstanding any other provision of this Agreement, during the Term of this Agreement, in the event that the Developer reasonably determines that any portion of the Tunnels and/or Driveways, including but not limited to any system relating to the operation of the Tunnels and Driveways, such as the pavement (including markings), walls (except as to structural repairs that the Developer has agreed to perform under this Agreement), signage, lighting, ventilation, drainage, security (including monitoring and control devices), emergency access, fire protection equipment, structural supports for the foregoing equipment and systems,

conduits, wiring, power (regular and emergency), mechanical rooms, fuel storage, and generators pose a hazard or risk to the safety and/or welfare of the public, the Building, the Parking Garage, the Development Parcel, any other portion of the Development, the Developer, its tenants or others, the Developer shall provide the City with a Notice of Hazard and provide the City with a sixty (60) day opportunity to cure the hazard or risk. In the event that the City disputes that a hazard or risk exists, the City shall provide the Developer with a Notice of Dispute within fourteen (14) days of receipt of the Notice of Hazard. The parties shall attempt to resolve the issue promptly. Within seven (7) days of the date of the Notice of Dispute, each party shall select a licensed Connecticut professional engineer with the applicable technical expertise and employed by an engineering firm that employs at minimum ten (10) licensed Connecticut professional civil engineers, which firm has not provided services to the party selecting the engineer employed by such firm within two (2) years of his or her selection. Within five (5) days of such selection, the engineers selected by each party shall confer and attempt to resolve the dispute. If the engineers cannot provide a solution acceptable to the parties, the engineers shall select a third licensed Connecticut professional engineer with expertise in the area in dispute who is employed by a firm that employs at minimum ten (10) licensed Connecticut professional engineers and which has not done work within two (2) years of the third engineer's selection for either the City or the Developer. Such third engineer shall, after meeting with each parties' engineers and the parties' representatives, make a written determination regarding whether a hazard or risk concerning the Tunnels and/or the Driveways exists, and/or the work required to cure such hazard or risk within twenty-one (21) days of his or her selection. Such determination shall be conclusively binding on the parties. Each party shall pay the fees of the engineer whom such party has selected, and the parties shall share equally in the costs of the third engineer for

the services performed under this subparagraph. If either (i) the third engineer determines that a hazard or risk exists with respect to the Tunnels and/or Driveways and makes a recommendation regarding the work required to cure such hazard or risk and the City does not cure such hazard or risk within sixty (60) days of the third engineer's determination or (ii) if the City has not provided a Notice of Dispute within the timeframe set forth in this subparagraph and the City has not cured such hazard or risk within sixty (60) days of the Hazard Notice, such failure to cure shall be considered an Event of Default by the City, and the Developer shall have the right to enter into the Tunnels and Driveways and may undertake to make the required repairs, maintenance and/or replacements to the Tunnels and/or Driveways, and the City shall reimburse the Developer for its reasonable costs in performing the foregoing work. If the Developer undertakes to perform the work described in this subparagraph, the Developer shall also be entitled to all other remedies for an Event of Default applicable to this Event of Default under Article XII. Notwithstanding the foregoing, in the event of an immediate risk to life or property, if the City does not commence curing such emergency within a reasonable time considering the circumstances, the Developer may undertake to cure the emergency, and the City shall reimburse the Developer for its reasonable costs of curing the emergency. Temporary flooding of the Tunnels and Driveways shall not constitute a hazard or risk pursuant to the terms of this section. Notwithstanding the foregoing, the City shall have the right to dispute the existence of the hazard, the emergency nature of the hazard and the reasonableness and appropriateness of any costs for which the Developer seeks reimbursement of from the City.

In the event the City does not dispute that a hazard exists or the action to be taken to cure such hazard, but disputes the responsibility for payment for correction of the hazard, the City shall respond to the Developer in writing within seven (7) days of receipt of the Notice of

Hazard. The City shall undertake the work to correct the hazard, and if it fails to do so with sixty (60) days of the Hazard Notice, the provisions and the procedure set forth above for correction of the hazard by the Developer shall apply, and the parties shall thereafter submit the dispute to the Dispute Resolution Procedure with respect to liability for payment of the work.

(B) In the event the City and/or the Parking Authority reasonably determine that the Developer's operations in any portion of the Tunnels and Driveways, Building, Parking Garage or any other part of the Development are posing a risk to the safety or welfare of the public, the City or the Parking Authority, as the case may be, shall deliver a Notice of Hazard to the Developer and thereafter the determination of whether a hazard exists, the corrective work required for any hazard which is found to exist and the determination of financial responsibility for correction of the same shall be determined in accordance with the procedures set forth in Section 11.2(A).

Section 11.3 Assignment and Mortgage by the Developer

(A) It is hereby agreed and stipulated that prior to the issuance of any of the Certificate of Completion required for the Development, the Developer shall not, without the City's written permission or except as provided in Section 11.4, transfer or assign any of its rights and/or obligations under this Agreement or in the Development Parcel other than to an Affiliate, which Affiliate agrees in writing with the City to assume all of the obligations of the Developer under this Agreement. An Affiliate is defined under this Agreement as any entity which is fifty (50%) percent or more owned directly or indirectly by Winstanley Enterprises, LLC and/or by any equity investor providing a majority of the equity financing for the Development. For purposes hereof, a "transfer" shall include a transfer of more than fifty (50%) percent of the ownership interests in the Developer other than to an Affiliate. The Developer

shall provide the City with prior written notice of its intent to make an assignment to an Affiliate and the name and address of such Affiliate, and upon such assignment, the written agreement of the Affiliate to assume all of the obligations of this Agreement associated with the rights assigned.

(B) Any assignment of any interest in this Agreement or in the Development Parcel which is in contravention of the provisions of Section 11.3(A) 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) It is further agreed by the parties that following the issuance of the Certificate of Completion required for the Development, the Developer may sell, assign or transfer any or all of its interest in this Agreement or in the Development Parcel to any purchaser, assignee or transferee free and clear of the requirements of Section 11.3(A) and Section 11.3(B) without restriction as to the consideration to be received and without the City's consent, provided that if such sale, assignment or transfer is made during the Term of this Agreement, the Developer shall require that the purchaser, assignee or transferee expressly assume all of the covenants, agreements, and obligations under this Agreement (including specifically, but without limitation, the obligation to pay taxes, or, if applicable, per Section 11.1, the Bond Repayment Sum) which have not yet been performed and which expressly survive the issuance of the Certificate of Completion by written instrument, reasonably satisfactory to the City filed and recorded in the New Haven Land Records.

(D) The Developer covenants on behalf of itself and its successors and assigns that the Developer and its successors and assigns shall:

(1) 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 Development Parcel or any improvements erected or to be erected thereon, or any part thereof;

(2) 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 Development Parcel or any improvements erected thereon or to be erected thereon, or any part thereof.

Section 11.4 Mortgage of the Development Parcel

(A) Notwithstanding any other provisions of this Agreement, the Developer shall at all times have the right to encumber, pledge, or convey its right, title and interest in and to the Development Parcel, or any portion or portions thereof, by way of a Mortgage, provided that the Mortgagee taking title to the Development Parcel or any part thereof (whether by foreclosure or deed in lieu of foreclosure or otherwise) shall be subject to the provisions of this Agreement, except as hereinafter provided and that the Developer shall give written notice to the City of the proposed grant of any such Mortgage, the amount thereof and the name and address of the Mortgagee. This Agreement shall be superior and senior to any lien placed upon the

Development Parcel after the date of the recording of this Agreement, including the lien of any Mortgage, except for those liens that by law have superiority over this Agreement.

(B) The City agrees at any time and from time to time, upon not less than fourteen (14) days prior written notice, to execute, acknowledge and deliver without charge to any Mortgagee, or to any prospective Mortgagee designated by either Developer or any Mortgagee, or to any prospective purchaser of Developer's interest in the Development Parcel designated by Developer (1) a statement in writing stating that this Agreement is in full force and effect and unmodified (or if there have been any modifications, identifying the same by the date thereof and including a copy thereof), that no notice of default or notice of termination of this Agreement has been served on Developer (or if the City had served such notice, the City shall provide a copy of such notice or state that the same has been revoked, if such be the case), that to the City's knowledge no default exists under this Agreement or state or condition that, with the giving of notice, the passage of time, or both, would become a default (or if any such default does exist, specifying the same), and the amounts due under this Agreement and any other information as may be reasonably requested, and (2) reasonable modifications to this Agreement which do not alter the basic economic terms hereof, do not increase the City's and/or the Parking Authority's respective monetary obligations and/or do not adversely affect or diminish the rights, and/or increase the other obligations of the City and the Parking Authority hereunder, as may be requested from time to time by any such Mortgagee, prospective Mortgagee or prospective purchaser.

(C) No voluntary action by Developer to cancel, surrender, terminate or modify this Agreement shall be binding upon the Mortgagee without its prior written consent, and the City shall not enter into an agreement with Developer to amend, modify, terminate or cancel this

Agreement and shall not permit or accept a surrender of this Agreement prior to the end of the Term without, in each case, the prior written consent of the Mortgagee. In the event Developer and the City desire to enter into any of the aforementioned agreements, it shall be the responsibility of Developer to obtain the consent of the Mortgagee.

(D) No Mortgagee (or its designee as may have acquired Developer's estate through foreclosure) shall become personally liable under this Agreement unless and until it becomes the holder of Developer's estate and then only as provided herein.

(E) The time permitted for a Mortgagee to complete construction of any portion of the Development shall be extended as long as the Mortgagee is diligently and continuously working towards completion of the construction and shall include any time necessary for the Mortgagee to exercise its rights under the Mortgage and to obtain possession of the mortgaged premises.

(F) Foreclosure of Mortgage/Acquisition of Developer's Estate by Mortgagee

(1) Notwithstanding anything to the contrary in this Agreement, any Mortgagee (or any entity that, directly or indirectly, is owned and controlled by such Mortgagee) may acquire title to the Development Parcel by foreclosure or a transfer in lieu of foreclosure without any consent or approval by the City.

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

A. 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

B. Sell, assign or transfer with the prior written consent of the City, which consent shall not unreasonably be withheld, conditioned or delayed (but without restriction as to the consideration received), the Developer's estate in the Development Parcel to a purchaser, assignee or transferee who shall expressly assume all of the covenants, agreements and obligations of the Developer under this Agreement to be performed and observed on the Developer's part thereafter arising in respect to the Development (and shall be deemed a "Developer" under the terms of this Agreement), by written and recordable instrument reasonably satisfactory to the City filed in the New Haven Land Records, it being the intention of the parties that upon the assignment of this Agreement by a Mortgagee or its designee, the assignor (but not the assignee or any subsequent assignor, purchaser or transferee) shall be relieved of any further liability which may accrue under this Agreement from and after (but not before) the date of such assignment and that such assignment shall effect a release of the Mortgagee's liability hereunder, except for liability which accrued prior to such assignment;

C. Notwithstanding any other provision of this Agreement, any Mortgagee (including one who obtains title to the Development Parcel as a result of foreclosure proceedings or action in lieu thereof) shall not be obligated to construct or complete the Development or to guarantee such construction or completion; provided that nothing in this section or in this Agreement shall be deemed or construed to permit or authorize any such Mortgagee to devote the Development Parcel to any uses or to construct any improvements

thereon, other than those uses or improvements permitted in this Agreement or otherwise specifically approved by the City;

D. In the event a Mortgagee completes the construction of the Development in accordance with this Agreement (other than time limitations), the Mortgagee may sell, assign or transfer fee simple title to the Development Parcel to any purchaser, assignee or transferee, without restriction as to the consideration to be received and without the City's consent, provided that if such sale, assignment or transfer is during the Term of this Agreement, the purchaser, assignee or transferee expressly assume all of the covenants, agreements, and obligations under this Agreement (including specifically, but without limitation, the obligation to pay taxes or the Bond Repayment Sum) which have not yet been performed and which survive the issuance of the Certificate of Completion by written instrument, reasonably satisfactory to the City and recorded in the New Haven Land Records and provided further that it being the intention of the parties that upon the assignment of this Agreement by a Mortgagee or its designee in accordance with the terms of this paragraph, the assignor (but not the assignee or any subsequent assignor, purchaser or transferee) shall be relieved of any further liability which may accrue under this Agreement from and after (but not before) the date of such assignment and that such assignment shall effect a release of the Mortgagee's liability hereunder, except for liability which accrued prior to such assignment;

E. If a Mortgagee acquires the Developer's estate in the Development Parcel after issuance of a Certificate of Completion and during the Term of this Agreement, the Mortgagee shall comply with the applicable provisions of this Agreement which have not yet been performed and which survive the issuance of the Certificate of Completion, 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 11.4(F)(2)D of this Article XI.

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

ARTICLE XII
DEFAULT AND REMEDIES

Section 12.1 **Event of Default**

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

(1) an Event of Bankruptcy;

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

(3) a failure of the Developer to accept the conveyance of the Development Parcel, if required to do so under Section 7.4(A)(2) of this Agreement;

(4) a failure to commence construction of any portion of the Development when required to do so under this Agreement, excluding any period of Excusable Delay, and a failure to cure such failure within thirty (30) days of notice thereof from the City;

(5) a failure to complete construction of any portion of the Development when required to do so under this Agreement, excluding any period of Excusable Delay and for any Mortgagee, any period when the Mortgagee is diligently and continuously working towards completion of the construction, and the failure to cure such failure within ninety days (90) of notice thereof from the City;

(6) any other Event of Default by the Developer specified in another article of this Agreement;

(7) a failure to perform any other covenant or agreement of this Agreement required to be performed by the Developer, and the failure to cure such failure within thirty (30) days of 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;

(8) an assignment in violation of Sections 11.3; or

(9) a transfer during the Bond Repayment Period of Developer's title to any portion of the Development Parcel or any of the improvements thereon in violation of the terms of Section 11.1. as set forth in Section 11.1.

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

(1) a failure to commence construction of any portion of the City's Public Improvements when required to do so under this Agreement, excluding any period of Excusable Delay;

(2) a failure to complete construction of the City's Traffic Improvements or any portion of the City's Traffic Improvements when required to do so under this Agreement, including the failure to construct the City's Traffic Improvements to the extent required under this Agreement by the Closing Date excluding any period of Excusable Delay and the failure to cure the same within forty-five days (45) of notice thereof from the Developer;

(3) a failure to complete construction of any other item of the City's Public Improvements when required to do so under this Agreement, excluding any period of Excusable Delay, and the failure to cure the same within ninety days (90) notice thereof from the Developer;

(4) a failure by the City to deliver the deed to the Development Parcel to the Developer in accordance with Section 7.4 (A)(3) of this Agreement;

(5) a failure to perform any monetary covenant or agreement required to be performed by the City and

the failure to cure such failure within thirty (30) days notice thereof from the Developer;

(6) any other Event of Default by the City described in another article of this Agreement; or

(7) a failure to perform any other covenant or agreement required to be performed by the City under this Agreement, where such failure is not cured by the City within forty-five (45) days of notice thereof from the Developer, or unless specifically provided otherwise in this Agreement, within such longer time as may be required to cure such failure, provided the City has commenced and is diligently pursuing such cure.

(C) The following are Events of Default by the Parking Authority:

(1) a failure to commence construction of any portion of the ARG Improvements when required to do so under this Agreement, excluding any period of Excusable Delay;

(2) a failure to complete construction of the ARG Improvements when required to do so under this Agreement, excluding any period of Excusable Delay and the failure to cure the same within ninety days (90) of notice thereof from the Developer;

(3) a failure to perform any monetary covenant or agreement required to be performed by the Parking

Authority and the failure to cure such failure within thirty (30) days notice thereof from the Developer;

(4) any other Event of Default by the Parking Authority described in another article of this Agreement; or

(5) a failure to perform any other covenant or agreement required to be performed by the Parking Authority under this Agreement, where such failure is not cured by the Parking Authority, as applicable, within forty-five (45) days of notice thereof from the Developer, or unless specifically provided otherwise in this Agreement, within such longer time as may be required to cure such failure, provided the Parking Authority has commenced and is diligently pursuing such cure;

(D) In the event that there is a conflict between any of Sections 12.1(A), (B) and (C) and the provisions of any other article of this Agreement, the provisions of such other article shall govern.

(E) No Default by Any Party

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

(F) Notice of Default to Mortgagee

(1) If the City or the Parking Authority shall give a Default Notice to Developer, such party shall

simultaneously give a copy of such Default Notice to the Mortgagee at the address theretofore designated by the Mortgagee. Any such copy of a Default Notice shall be given in the same manner provided in the Agreement for giving notices between the City and Developer. No Default Notice given by the City or the Parking Authority to Developer shall be binding upon or affect the Mortgagee unless a copy of such Default Notice shall be given to it as so provided. In the case of an assignment of a Mortgage or change in address of the Mortgagee, the assignee or Mortgagee, by written notice to the City and the Parking Authority, may change the address to which copies of Default Notices are to be sent. The City and the Parking Authority shall not be bound to recognize any assignment of a Mortgage unless and until the City shall have been given written notice thereof together with a copy of the executed assignment and the name and address of the assignee. Thereafter, such assignee shall be deemed to be a Mortgagee hereunder. The City and the Parking Authority shall not exercise any right, power or remedy with respect to any default of Developer under this Agreement unless the City or the Parking Authority, as the case may be, shall have given to the Mortgagee a copy of the Default Notice as provided herein and such default shall not have been cured within the applicable grace period set forth in this

Agreement, plus the additional periods set forth in this Article XII below.

(2) The Mortgagee shall have the right to perform any term, covenant, or condition and to remedy any default by the Developer under this Agreement within the applicable time period afforded the Developer, plus an additional period of thirty (30) days, which period shall be reasonably extended if the default is not in the payment of money and the Mortgagee commences to remedy the default within such period and thereafter diligently prosecutes such remedy to completion. The City and the Parking Authority shall accept such performance with the same force and effect as if furnished by the Developer; provided, however, that if the default is not a default in the payment of money and is of a nature that possession of the Development Parcel by the Mortgagee is reasonably necessary for the Mortgagee to remedy the default, the Mortgagee shall be granted an additional period of time within which to obtain possession of the Development Parcel provided that the Mortgagee shall have commenced foreclosure or other appropriate proceedings in the nature thereof within a reasonable period of time (including any time necessary to obtain relief from any bankruptcy stay) and shall thereafter diligently prosecute any such proceedings to completion.

(3) Notwithstanding anything contained in this Agreement to the contrary, a Mortgagee shall in no event be required to cure or remedy a Non-Curable Default, which is a default which cannot be cured by the Mortgagee, such as but not limited to an Event of Bankruptcy by the Developer, a wrongful assignment of this Agreement by the Developer or a misrepresentation by the Developer, and upon foreclosure or other acquisition of the Developer's interest in this Agreement by the Mortgagee or its designee, all Non-Curable Defaults shall be deemed to have been fully cured as to the Mortgagee, its designee and their respective successors and assigns, but the foregoing shall not constitute a waiver by the City of such default with respect to the Developer or a release of the Developer with respect to any such default.

(4) In the event of the termination of this Agreement prior to its stated expiration date by reason of rejection of this Agreement by the Developer in a bankruptcy or a similar proceeding, notice thereof shall be given by the City to the Mortgagee, together with a statement of all amounts then due to the City from the Developer under this Agreement, and the City and the Parking Authority shall enter into a new agreement with respect to the Development Parcel with the Mortgagee or, at the request of such Mortgagee, with a corporation or other entity

formed by or on behalf of such Mortgagee (which corporation or other entity shall, when identified to the City and the Parking Authority by Mortgagee be included within the meaning of "Mortgagee" as used in this Agreement), for the remainder of the Term, effective as of the date of such termination, upon all of the terms and conditions herein contained and, to the extent possible, with the same priority as this Agreement, provided such Mortgagee makes written request to the City and/or the Parking Authority for such new agreement within sixty (60) days from the date it received notice of such termination. The City shall be under no obligation to remove from the Development Parcel the Developer or anyone holding by, through or under the Developer, and the Mortgagee shall take subject to the possessory rights, if any, of the Developer and such occupants and (i) any and all liens and encumbrances upon the conveyance of the Development Parcel to the Developer; (ii) any easement, right of way or other agreement not constituting a lien which the City shall have approved and entered into during the Term of and in accordance with the terms of this Agreement; (iii) any other encumbrances which the City shall have entered into or approved under and in accordance with the terms of this Agreement; (iv) the lien of taxes on the Development Parcel which are not yet due and payable; and (v) any other lien or encumbrance

created or caused by the Developer. It is specifically acknowledged and agreed that all covenants, duties and obligations of the Developer hereunder shall survive the execution of any new agreement between the City and/or the Parking Authority and the Mortgagee (or its designee) between the City and the Mortgagee (or its designee) pursuant to this subparagraph and that such execution shall not release or be deemed to release the Developer from any liability for failure to perform any such covenant, duty or obligation. In the event that more than a single Mortgagee shall make a request for a new agreement hereunder, the Mortgagee senior in lien priority shall have the prior right to a new agreement and the certification of such priority from a title company duly licensed to do business in Connecticut shall be conclusively binding on all parties concerned.

(5) In the event that a Mortgagee elects to cure a default occasioned by the failure of the Developer to commence or complete the construction work in accordance with this Agreement, then, upon completion of such construction work, such curing Mortgagee shall be entitled to a Certificate of Completion in accordance with the provisions of Article X of this Agreement. Upon issuance of such Certificate of

Completion, all rights of the City arising as a result of such default by the Developer shall terminate.

Section 12.2 Remedies

(A) Dispute Resolution Procedure

Except as otherwise provided in this Agreement, the City, the Developer and the Parking Authority shall have all rights and remedies available at law and in equity upon an Event of Default by another party.

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

(2) Dispute Resolution - At the request of any party, representatives of each party with full settlement authority shall meet at a mutually acceptable time and place in the City within ten (10) days of the Notice of Conflict in order to attempt to negotiate in good faith a resolution to the dispute. This

subparagraph shall not apply to a dispute regarding whether there exists a hazard or risk to safety and/or welfare with respect to the Tunnel and the Driveways, which dispute shall be governed by the procedure set forth in Section 11.2 above.

(B) Mediation

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

(C) Advisory Opinion

If the dispute is not resolved under subsection (A) above, by agreement of the parties, the dispute(s) may be referred for an advisory opinion to a neutral party who shall be retained by the parties, and such neutral shall establish such procedures as will allow him or her to promptly consider the dispute and issue a written advisory opinion with regard to the issues in dispute. Costs and fees for the neutral shall be equally shared by the parties to the dispute. Third parties

relevant to the adjudication of the dispute may be added to the advisory opinion proceedings if agreed to by the parties. The parties agree that the neutral's advisory opinion shall not be admissible in subsequent litigation. If an advisory opinion is agreed upon as a procedure, it shall be a condition precedent to litigation, except as provided in subsection (D) below.

(D) No Prejudice

Provided the party seeking use of the Dispute Resolution Procedure has complied with the requirements for giving the "Notice of Conflict," no passage of time or delay caused by pursuit of Dispute Resolution Procedure, mediation or seeking an advisory opinion will prejudice the rights of any party. At the request of any party, the parties shall enter into an agreement to toll the statute of limitations with respect to the subject matter of the dispute for the period of time in which the procedures described above are being utilized. Although any party may commence litigation while the Dispute Resolution Procedure, mediation or an advisory opinion procedure is being pursued for tolling purposes only, such party must request that the Court stay the case until such time as completion of such Dispute Resolution Procedure, mediation or advisory opinion procedure, as the case may be.

(E) Remedies Subsequent to Dispute Resolution Procedure

(1) If the dispute is not resolved by the parties in accordance with the provisions of Section 12.2(A)(1) and a mediation or advisory opinion procedure is not pending, then, except as otherwise provided in this Agreement, with respect to any other Events of Default concerning any other matter, the parties shall be entitled to seek all administrative and judicial remedies available at law and in equity, including, but not

limited to, injunctive relief, damages, specific performance, attorneys fees if provided by statute, expenses and/or costs and any other rights or remedies whether such rights or remedies are specifically set forth herein or exist at law or in equity, except that neither the City, the Parking Authority nor the Developer shall have the right to terminate this Agreement after the Development Parcel is conveyed to the Developer. The parties further agree that in any court proceeding, the City, the Parking Authority and the Developer shall not be entitled to recover indirect, special or consequential damages for an Event of Default, except that the Developer shall be entitled to recover for lost profits arising under any lease entered into by the Developer provided that (i) such lease covers not less than sixty (60) percent of the Building's gross square footage and (ii) the Building to be constructed contains not less than 400,000 gross square feet, where any such loss is established to have been caused by an Event of Default described in Subsection (3) below, Subsection (4) below (as to the failure of the City's Traffic Improvements to be completed by the Final Completion date in circumstances only whereby such noncompletion results in the failure of the Developer to obtain a certificate of occupancy) or Subsection (5) below, and the City shall be entitled to recover for lost tax

revenue where any such loss is established to have been caused by an Event of Default described in Subsection (2) below.

(2) Notwithstanding any other provision of this Agreement, if there is an Event of Default arising out of the Developer's failure to accept the conveyance of the Development Parcel when required to do so under this Agreement, the City shall be entitled to terminate this Agreement or to seek specific performance of the Agreement in court. The City shall not be entitled to any other remedies for such claimed Event of Default except if such Event of Default is caused by the Developer's bad faith, in which case, the City shall be entitled to all remedies available under Section 12.2(E)(1).

(3) Notwithstanding any other provision of this Agreement, if there is an Event of Default arising out of the City's failure to convey the Development Parcel to the Developer when required to do so under this Agreement, the Developer shall be entitled to terminate this Agreement or to seek specific performance of the Agreement in court. The Developer shall not be entitled to any other remedies for such claimed Event of Default, except if such Event of Default is caused by the Developer's bad faith, in which case, the City shall be entitled to all remedies available under Section 12.2(E)(1).

(4) Notwithstanding any other provision of this Agreement, it is agreed and understood if there is an Event of Default arising out of the City's failure to meet any of the Milestone Dates (but not the Final Completion Date) on the Project Schedule (Exhibit G) and Exhibit H, then the Developer shall not be entitled to any damages based solely upon such failure, provided that nothing herein shall be deemed to prevent the Developer from obtaining any remedy available to the Developer hereunder in the event that such failure or failures shall cumulatively result in the failure of the City's Traffic Improvements to be completed by the Final Completion Date or to preclude the Developer from pursuing the Dispute Resolution, Mediation and/or Advisory Opinion procedures described above with respect to such Event of Default.

(5) Notwithstanding the foregoing, if there is an Event of Default arising out of the City's failure to meet (i) the City's Minimum Traffic Improvements Date Milestone as set forth on Exhibits G and H or (ii) the date for the completion of the City's Traffic Improvements depicted on Exhibit R as set forth on Exhibits G and H and failure to cure the same by October 1, 2013, then, the Developer shall be entitled to seek all remedies available under Section 12.2(E)(1).

(6) Notwithstanding any other provision of this Agreement but subject to all rights of Mortgagees, in the event that an Event of Default occurs because the Developer does not commence or complete construction of any portion of the Development when required to do so under this Agreement, in addition to any other remedy the City shall have under this Agreement or under law or equity, the Developer shall be obligated to deliver to the City the transfer of ownership and/or a license to utilize all design documents, plans and specifications and bid documents for the Development, and the City may commence and/or complete construction. The Developer shall be obligated to reimburse the City for all of its reasonable costs of performing such construction work.

(7) If an Event of Default occurs because the Developer designs/constructs any portion of the Development in a manner which does not conform in all material respects with the Site Plan Review approval granted for such portion of the Development, or in the case of an improvement for which there is no Site Plan Review approval, because the Developer designs/constructs the improvement in a manner which does not conform in all material respects to the applicable exhibits to this Agreement for such portion of the Development or the Project, the City shall be entitled, after thirty (30) days written notice,

subject to all rights of Mortgagees, to the Developer given within ninety (90) days following completion of the Development or portion thereof or portion of the Project in question, to take corrective action to cause to be performed all modifications or reconstruction required for the Development to conform to the Site Plan Review approval or exhibits to this Agreement, as applicable, and may charge the Developer with all reasonable costs therefore, or seek any other remedy at law or equity in order to effect such changes or to recover the reasonable costs of same. However, to the extent that the Developer submits construction plans for any portion of the Development or the Project to the City requesting that it approve such plans as being in conformance with the Site Plan Review approval or the applicable exhibits to this Agreement if there is no Site Plan Review approval for the portion of the Development or the Project and the City so approves such plans (or is deemed so to have approved such plans under this Agreement), or the City refers such plans for approval to the proper reviewing authority and such plans are approved, then the City may not thereafter claim that the Development, if built substantially in accordance with such approved plans, is not in conformance with the Site Plan Review approval or the exhibits to this Agreement, as the case may be.

(8) WAIVER OF JURY TRIAL.

THE PARKING AUTHORITY, THE CITY AND THE DEVELOPER HEREBY IRREVOCABLY WAIVE, AS AGAINST THE OTHERS, 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.

ARTICLE XIII
TERMINATION OF THE AGREEMENT

Section 13.1 Right to Terminate Agreement

(A) In the event that the Development Parcel has not been conveyed to the Developer within five (5) years of the Effective Date, and the City is not in default of its obligations under this Agreement at that time, then the City, in addition to any other right of the City to terminate this Agreement, shall have the right to terminate this Agreement upon thirty (30) days written notice to the Developer of such termination and upon such termination by the City, the parties shall be fully released from and have no further obligations hereunder to each other, except as set forth in Sections 13.2 and 13.3.

(B) In the event that the Development Parcel has not been conveyed to the Developer within seven (7) years of the Effective Date and the Developer is not in default of its obligations under this Agreement at that time, then the Developer shall have the right to terminate this Agreement upon thirty (30) days written notice to the City of such termination and upon such termination by the Developer, the parties shall be fully released from and have no further obligations hereunder to each other except as set forth in Sections 13.2 and 13.3.

Section 13.2 Conveyance of Development Parcel Upon Termination of Agreement

(A) Upon a termination of this Agreement by the City or the Developer under Section 13.1, the City shall, within thirty (30) days, quit claim its interest in the Development

Parcel to the Developer, provided that the City has obtained title to the Development Parcel. Such conveyance may be made subject to any Acceptable Encumbrances which have then been recorded on the land records of the City of New Haven (to the extent that it proves not possible to terminate the same in accordance with the provisions of Section 13.3 below or if the Developer requests that no effort be made to effect such termination) but otherwise free and clear of any encumbrances not existing as of the Effective Date, and subject to the following use and other restrictions in the quit claim deed: (i) the Development Parcel shall not be used for a prison or correctional facility; (ii) during the Bond Repayment Period, the Development Parcel shall not be transferred to an Exempt Entity, unless such Exempt Entity agrees to pay the Bond Repayment Sum; (iii) the Development Parcel shall not be used for any purposes prohibited under Section 5.2 of this Agreement; and (iv) a building containing a minimum of 100,000 square feet of gross floor area shall be constructed on the Development Parcel provided that the Developer or its successors and assigns is able to secure the release of any and all encumbrances and easements that encumber the Development Parcel and the termination of any and all agreements, permits and approvals with respect to the Development Parcel which would reasonably prohibit or preclude the construction of such building.

(B) The Developer shall pay to the City as the purchase price for the conveyance of the Development Parcel under this section the Fair Market Value of the Development Parcel on the Termination Effective Date minus the Developer's Expenditures. The Fair Market Value shall be determined by an appraiser mutually agreed to by the Developer and the City and paid for by the party terminating the Agreement. If the Developer and the City are unable to agree upon the selection of an appraiser within thirty (30) days of the Termination Effective Date, then each party shall select a MAI certified appraiser having at least ten (10) years of commercial real

estate appraisal experience in New Haven, Connecticut. Such selection shall be made within forty-five (45) days of the Termination Effective Date, and each party shall bear the costs of the appraiser whom it has selected. The two appraisers shall, in turn, select a third MAI certified appraiser who has at least ten (10) years of commercial real estate appraisal experience in New Haven, Connecticut to determine the Fair Market Value of the Property. The determination of the Fair Market Value of the Development Parcel by the third appraiser shall be the final Fair Market Value determination. The City and the Developer shall share the costs of the third appraiser equally. The provisions of Sections 7.4 (J) and (K) shall apply to the transfer of title of the Development Parcel to the Developer under this Section 13.2.

Section 13.3 Obligations Upon Termination

(A) In the event this Agreement shall terminate for any reason whatsoever, including (without limitation) a termination by the Developer in accordance with the provisions of this Agreement, then the parties shall cooperate in taking all reasonable actions necessary with respect to terminating agreements previously entered into and cancelling actions previously taken in furtherance of the Project, including without limitation the execution of any necessary documentation to effectuate such terminations and cancellations. In the event of any dispute with respect to the obligations of any of the parties under this paragraph, the parties shall participate in the Dispute Resolution Procedure.

ARTICLE XIV
GENERAL PROVISIONS

Section 14.1 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 given by certified mail return receipt requested or by overnight delivery courier or such other means as may be

agreed to by the parties in writing with a copy addressed to the party for whom it is intended as follows:

IF TO THE DEVELOPER:	WE ROUTE 34, LLC 150 Baker Avenue Extension Suite 303 Concord, Massachusetts 01742 Attn: Carter J. Winstanley
with copies to:	Carolyn W. Kone Brenner, Saltzman & Wallman LLP 271 Whitney Avenue New Haven, CT 06511
and to:	Daniel A. Taylor DLA Piper LLP (US) Arch Street Boston, MA 02110
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 Special Counsel for Economic Development Robert Brooks, P.E. Parsons Brinckerhoff, Inc. 75 Arlington Street Boston, MA 02116
IF TO THE PARKING AUTHORITY:	New Haven Parking Authority 50 Union Avenue, 2nd Floor New Haven, CT 06519 Attn: Executive Director
with a copy to:	Joseph L. Rini, Esq. 51 Elm Street, Suite 420 New Haven, CT 06510

For Section 11.2 Notice add:

City of New Haven
Attention, Richard H. Miller, P.E., L.S.
City Engineer
200 Orange Street
New Haven, CT 06510

(B) Insurance Notices

IF TO THE DEVELOPER:

WE ROUTE 34, LLC
150 Baker Avenue Extension
Suite 303
Concord, Massachusetts 01742
Attn: Carter J. Winstanley

IF TO THE CITY:

Corporation Counsel
City of New Haven
165 Church Street
New Haven, CT 06510
Attention: Victor A. Bolden

with copies to:

Finance Director
City of New Haven
165 Church Street
New Haven, CT 06510
Attention:

Public Works Director
City of New Haven
165 Church Street
New Haven, CT 06510
Attention:

IF TO THE PARKING AUTHORITY:

New Haven Parking Authority
50 Union Avenue, 2nd Floor
New Haven, CT 06519
Attn: Executive Director

(1) 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.

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

Section 14.2 No Waiver

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

Section 14.3 Rights Cumulative

The rights and remedies conferred upon any party hereby are in addition to any rights or remedies to which any party may be entitled to at law or in equity, except as otherwise provided in this Agreement.

Section 14.4 Successors

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

Section 14.5 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.

Section 14.6 Governing Law and Jurisdiction

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

Section 14.7 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 14.8 Consents

Where consents, approval, waiver or acceptance of work by the City is required to any action (or inaction) pursuant to the provisions of this Agreement, other than zoning and land use approvals, building permits and certificates of occupancy, unless otherwise provided by this Agreement, such consent, approval, waiver or acceptance of work may be granted (or denied) by the Economic Development Administrator. Where consents, approval, waiver, or acceptance of work by the Parking Authority is required to any action (or inaction) pursuant to the provisions of this Agreement, other such consent, approval, waiver or acceptance of work may be granted (or denied) by the Executive Director of the Parking Authority.

Section 14.9 Amendments

The City, the Parking Authority and the Developer agree that the provisions of this Agreement which do not concern the rights and/or obligations of the Parking Authority may be modified or amended, in whole or in part, only by written document executed by the City and the Developer. No modification or amendment with respect to the rights and/or obligations of the Parking Authority shall be binding upon the Parking Authority unless it joins in such modification or amendment.

Section 14.10 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 14.11 Term

The term of this Agreement for all provisions of this Agreement with the exception of Section 11.1 and the provisions of Section 12.1(A)(9) and Section 12.2 as they relate to a default

by the Developer of its obligations under Section 11.1 shall be thirty (30) years from the Effective Date. The term of Developer's obligations under Section 11.1 and the provisions of Section 12.1(A)(9) and Section 12.2 as they relate to a default by the Developer of its obligations under Section 11.1 shall be for the Bond Repayment Period.

Section 14.12 Members and Officers Barred From Interest

No member, official or employee of the City or the Parking Authority shall have any personal interest, direct or indirect, in this Agreement or the Developer, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interests of any corporation, partnership, or association in which he or she is directly or indirectly interested. No member, official or employee of the City, or the Parking Authority shall be personally liable to the Developer or any successor in interest in the event of any default by the City or the Parking Authority 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 14.13 Gender

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

Section 14.14 Estoppel Certificate

The parties agree that during the Term of this Agreement, upon the request of any party, the receiving party shall within fourteen (14) days of receipt deliver to the requesting party a recital of factual matters as requested including without limitation indicating that the requesting

party is in compliance with all covenants and agreements binding upon the requesting party under this Agreement to the best knowledge of the receiving party, provided such is the case.

Section 14.15 No Third-Party Beneficiaries

This Agreement is made solely and specifically among and for the benefit of the parties hereto and their successors and assigns, where permitted, and no other person is to have any rights, interests or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise.

Section 14.16 Survival

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

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

In the presence of:

CITY OF NEW HAVEN

_____

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

_____

Approved as to form and correctness:

_____
John R. Ward
Special Counsel to Economic Development

WE ROUTE 34, LLC
By Winstanley Enterprises, LLC

_____

By_____
Carter J. Winstanley
Its Manager
Duly Authorized to act herein

In the presence of:

_____

_____

NEW HAVEN PARKING AUTHORITY
(as to Article I, Article II, Article III, Sections 3.2, 3.3 to 3.6 only, Article V, Sections 5.2 (D), 5.2(E), 5.3(A)(2), 5.5, Article VII, Sections 7.2, 7.3, 7.4 (D), (E), and (G) only, Article VIII, Sections 8.1(E) and 8.2 only, Article IX, Sections 9.1, 9.3, 9.4, Article X, Sections 10.1, 10.2, 10.4(B), 10.5(C) and (D) only, Article XI, Section 11.2, Article XII, Article XIII, Section 13.3 only, Article XIV, Exhibits D, G, I, N, R, S, T, U and Y

By_____
Name:
Its:
Duly Authorized to act herein

STATE OF CONNECTICUT)

COUNTY OF NEW HAVEN)

On this _____ day of _____, 2012, before me, the undersigned officer, personally appeared JOHN DESTEFANO, JR., who acknowledged himself to be the Mayor of the City of New Haven, and that as such Mayor, being authorized so to do by the Board of Aldermen, executed the foregoing instrument for the purposes contained therein, by signing on behalf of the City of New Haven, said act being the free act and deed of the City of New Haven and his free act and deed as such Mayor.

_____

Notary Public
Commission expires:
Commissioner of the Superior Court

STATE OF)

COUNTY OF)

On this _____ day of _____, 2012, before me, the undersigned officer, personally appeared CARTER J. WINSTANLEY, who acknowledged himself to be the Manager of Winstanley Enterprises, LLC the member/manager of WE ROUTE 34, LLC, a Delaware limited liability company, and that as such Manager, being authorized so to do, executed the foregoing instrument for the purposes contained therein, by signing on behalf of WE ROUTE 34, LLC, as his free act and deed as such Manager.

_____

Notary Public
Commission expires:
Commissioner of the Superior Court

STATE OF CONNECTICUT)

COUNTY OF NEW HAVEN)

On this _____ day of _____, 2012, before me, the undersigned officer, personally appeared _____, who acknowledged her/himself to be the _____ of the New Haven Parking Authority, and that as such _____, being authorized so to do, executed the foregoing instrument for the purposes contained therein, by signing on behalf of the New Haven Parking Authority, said act being the free act and deed of the New Haven Parking Authority and her/his free act and deed as such _____.

_____

Notary Public
Commission expires:
Commissioner of the Superior Court