

DEVELOPMENT AND LAND DISPOSITION AGREEMENT  
AMONG  
THE CITY OF NEW HAVEN, THE NEW HAVEN PARKING AUTHORITY AND  
WE 101 COLLEGE STREET LLC  
DATED AS OF \_\_\_\_\_, 2020  
FOR THE DEVELOPMENT AND DISPOSITION  
OF 101 COLLEGE STREET

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## EXHIBITS

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| Exhibit A | Legal Description of the 101 College Street Parcel   |
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| Exhibit C | Modifications to the College Street Bridge by the Developer  |
| Exhibit D | Developer's Site and Traffic Improvements (except Streetscape Improvements and Developer's On-Site Public Improvements)(Schematic Design) as of 12/6/19_____ |
| Exhibit E | Streetscape Improvements and Developer's On-Site Public Improvements   |
| Exhibit F | City of New Haven Base Technical Concept for Downtown Crossing – Phase 3 Temple Street dated August 2019 and Addenda prepared by HNTB Corp                   |
| Exhibit G | Project Schedule   |
| Exhibit H | Critical Dates Schedule  |
| Exhibit I | Email from the South Central Regional Water Authority Releasing its Interests in the Water Main with Map   |
| Exhibit J | 101 Tunnels and Driveways Drawings (60% Design Development) and Drainage Pipe Located on the 101 College Street Parcel                                       |
| Exhibit K | Budget for Developer's Site and Traffic Improvements dated 1/10/20   |
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| Exhibit M | Drawing of Improvements to the Air Rights Garage Property  |
| Exhibit N | Pedestrian Connections   |
| Exhibit O | Sewer and Utilities Plan   |
| Exhibit P | Intentionally Omitted  |
| Exhibit Q | Quit Claim Deed for the 101 College Street Parcel  |
| Exhibit R | Condition of the 101 College Street Parcel at Closing  |
| Exhibit S | Intentionally Omitted  |

|             |  |
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| Exhibit T   | Easements, Licenses and Agreements from the City to the Developer and to the Owner of the 100 College Street Property and to the Owner of the 300 George Street Property |
| Exhibit U   | Easements, Licenses and Agreements from the Developer to the City  |
| Exhibit V   | Route 34 Downtown Crossing Project Air Rights Implementation Guidelines dated September 26, 2011, revised March 12, 2020 (Draft)   |
| Exhibit V-1 | Reconciliation of Air Rights Implementation Guidelines (to be added)   |
| Exhibit W   | Intentionally Omitted  |
| Exhibit X-1 | Drawing of Downtown Crossing Area  |
| Exhibit X-2 | Legal Description of Downtown Crossing Area  |
| Exhibit Y   | Survey of the State Land   |
| Exhibit Z   | Form of Parking Agreement Among the Developer the Parking Authority and the City for the Use of Spaces in the Temple Street Garage and the Temple Medical Garage         |
| Exhibit AA  | Form of Memorandum of Understanding  |

**THIS DEVELOPMENT AND LAND DISPOSITION AGREEMENT** dated as of this \_\_\_\_ day of \_\_\_\_\_ 2020 (the “Effective Date”) by and among 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 232 George Street, New Haven, Connecticut 06510 (the “Parking Authority”) and **WE 101 COLLEGE STREET 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 (“Downtown Crossing”) which is intended to transform the State Route 34 Connector located in the City (“Route 34”) between Union Avenue and the former Exit 3 of Route 34 from a limited access highway into an urban street grid which, in turn, will create a livable, walkable transit oriented neighborhood that supports economic development, grows jobs and the City’s tax base, relieve congestion, improve safe multi-modal travel through complete streets for motorists, pedestrians and cyclists, and addresses local flooding through resiliency and green infrastructure; and

**WHEREAS**, during Phase 1 of Downtown Crossing, which was completed in 2016, the City converted portions of Route 34 from an expressway into an urban boulevard system

comprised of two one-way roadways, Rev. Dr. Martin Luther King, Jr. Boulevard (“MLK Blvd”) heading west and South Frontage Road heading east; and

**WHEREAS**, also during Phase 1 of Downtown Crossing, the bridge over College Street was reconstructed (the “College Street Bridge Structure”), extensive pedestrian and bicycle friendly improvements were constructed, and the first development parcel in Downtown Crossing, consisting of approximately 2.4 acres was created, which parcel is bounded on the north by MLK Blvd, 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 “100 College Street Parcel”);and

**WHEREAS**, also during Phase 1 of Downtown Crossing, the City constructed below-grade roads (the “Service Drives”) which provided access and egress to and from Route 34 to the 100 College Street Property; and

**WHEREAS**, during Phase 1 of Downtown Crossing, WE 100 College Street, LLC constructed a 14-story, 513,000 square foot laboratory, research and office building along with an 850-space parking structure on the 100 College Street Property as well as tunnels and driveways connecting the Service Drives to the parking structure on the 100 College Street Property and thereafter to the Air Rights Garage; and

**WHEREAS**, funding for a portion of the design, engineering and construction costs of certain of the public improvements made during Phase 1 of Downtown Crossing was provided in part by a \$16 million grant from the United States Department of Transportation to the City 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”) together with state, local and private funding; and

**WHEREAS**, during Phase 2 of Downtown Crossing (“Downtown Crossing, Phase 2”) which is currently under construction and is expected to be completed in 2021, the City will reconnect Orange Street and South Orange Street over Route 34 with an at-grade intersection, pedestrian and bicycle infrastructure improvements, including a protected bicycle intersection, and streetscape and landscape improvements, and which will improve access to Union Station from downtown and create a new gateway to the City; and

**WHEREAS**, during Downtown Crossing, Phase 2, the City will undertake certain City Traffic Improvements, as described below, which are required for the Project described in this Agreement; and

**WHEREAS**, during Phase 3 of Downtown Crossing (“Downtown Crossing, Phase 3”), MLK Blvd and South Frontage Road will be raised and Temple Street may be extended by means of a bridge over Route 34 to South Frontage Road and Congress Avenue; and

**WHEREAS**, funding for a portion of the design, engineering and construction cost of certain of the improvements to be made during Downtown Crossing, Phase 2 and Downtown Crossing, Phase 3 will be, in part, provided by a Twenty (\$20,000,000.00) million dollar grant dated January 11, 2019 from the United States Department of Transportation to the City 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 8”) and a \$21.5 million grant dated September 8, 2015 as amended, from the State of Connecticut; and

**WHEREAS**, pursuant to Special Act No.15-1, enacted during the June 2015 Special Session of the Connecticut General Assembly, the Commissioner of the Connecticut Department of Transportation (the “CDOT”) was directed to convey 4.5 acres of land owned by the State and bounded by College Street on the west, MLK Blvd on the north, Church Street on the east and South Frontage Road on the South as shown on Exhibit Y (the “State Land”); to the City for economic development purposes; and

**WHEREAS**, Special Act No. 15-1 authorizes the City to sell the State Land for economic development purposes to a third party; and

**WHEREAS**, Downtown Crossing, Phase 3 will create two development parcels, which are the 101 College Street Parcel, which will be located on the westerly portion of the State Land, and Parcel B, which will be located on the easterly portion of the State Land; and

**WHEREAS**, the 101 College Street Parcel will consist of approximately 75,000 square feet or 1.75 acres to be created from (i) the most westerly portion of the State Land together with (ii) a sliver of land owned by the City which is located to the south and west of the State Land (the “City Sliver”), which new development parcel will be bounded by College Street on the west, MLK Blvd on the north, Parcel B on the east, and South Frontage Road on the south and will be known as the “101 College Street Parcel”; and

**WHEREAS**, it is anticipated that because of the proximity of the 101 College Street Parcel to the 100 College Street Property, Yale-New Haven Health (including the Smilow Cancer Hospital and 55 Park Street), Yale University School of Medicine, the Connecticut Mental Health Center and the 300 George Street Property (which houses biotechnology laboratories, biomedical research companies and laboratories), life sciences, research and development, and/or medical offices are likely to locate to the 101 College Street Parcel; and

**WHEREAS**, recent economic assessments focus on innovation as an emerging area of growth for the City, including the bioscience, quantum, medical/tech and food service sectors; and

**WHEREAS**, various economic development organizations including BioCT, the Economic Development Corporation of New Haven and the Elm City Innovation Collaborative have called for the creation of laboratory incubator space and flex space, particularly in the life sciences in order to grow these sectors of the City's economy; and

**WHEREAS**, the Developer plans to make efforts to develop space for an incubator in the Building to be constructed on the 101 College Street Parcel; and

**WHEREAS**, it is anticipated that the development of the 101 College Street Parcel together with the City's Traffic Improvements (as hereinafter defined) will create between 700 - 1,000 permanent jobs at all skill levels, support over 3,000 jobs in the regional economy and generate over \$250 million in wages, support business acceleration in an incubator setting and generate significant tax revenues and permit fees for the City; and

**WHEREAS**, Winstanley Enterprises LLC is a limited liability company organized and existing under the laws of the State of Delaware ("Winstanley Enterprises"); and

**WHEREAS**, Winstanley Enterprises and its affiliates are among New England's leading developers of biotechnology laboratories and offices and have developed over approximately one million and five hundred thousand (1,500,000) square feet of laboratory and office space in the City, including space at the 300 George Street Property, 25 Science Park, 115 Munson Street, 344 Winchester Avenue, and the 100 College Street Property; and

**WHEREAS**, Winstanley Enterprises is a member of the Developer; and

**WHEREAS**, the City and the Developer entered into a Memorandum of Understanding, (the “Memorandum of Understanding”) designating the Developer as the preferred developer for the 101 College Street Parcel and providing that the Developer and the City would negotiate the terms under which the Developer could acquire the 101 College Street Parcel; and

**WHEREAS**, pursuant to the Memorandum of Understanding, the City and the Developer as well as the Parking Authority, as applicable, have negotiated the terms and conditions for the acquisition of the 101 College Street Parcel by the Developer upon the terms and conditions, as set forth herein; and

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

**WHEREAS**, it is the further intention of the parties to minimize the need for new parking facilities in connection with the development of the 101 College Street Parcel and to use existing parking accommodations where feasible; and

**WHEREAS**, as set forth herein, the 101 College Street Parcel shall be conveyed to the Developer subject to the terms of this Agreement.

**NOW THEREFORE**, for good and valuable consideration, the receipt of which is acknowledged, the City, the Developer and the Parking Authority (with respect to certain provisions respecting the Parking Authority) 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 or as subsequently defined in this Agreement.

(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 the Parking Authority) have participated in the drafting of this Agreement and any ambiguity contained in this Agreement shall not be construed against the City, the Developer or the Parking Authority solely by virtue of the fact that the City, the Developer or the Parking Authority 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, and the City may amend, alter or change such exhibit in a writing signed by the Developer and the Economic Development Administrator and with respect to an exhibit concerning the Parking Authority, the Developer and the Parking Authority may amend, alter or change such exhibit in a writing signed by the Developer and the Parking Authority. 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, unless otherwise provided in this Agreement.

(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) “100 College Street Pedestrian Connections” shall mean collectively the Pedestrian Connection from the 100 College Street Property to the 300 George Street Property and the Pedestrian Connection from the 100 College Street Property to 333 Cedar Street.

(2) “100 College Street Property” shall have the same meaning ascribed to this term in the preamble.

(3) “101 College Street Parcel” shall have the same meaning ascribed to this term in the preamble.

(4) “101 College Street Plaza” means the plaza to be constructed on the eastern portion of the 101 College Street Parcel as generally depicted on Exhibit E.

(5) “101 College Street Parcel Survey” means a boundary survey map of the 101 College Street Parcel prepared by Fuss & O’Neill, Inc. dated January 6, 2020 set forth in Exhibit B, as updated through the date of the Closing.

(6) “101 Tunnels and Driveways” means the tunnels and driveways eastbound and westbound which will run under the 101 College Street Parcel to and from Route 34 and

which will connect to the tunnels and driveways that run under the 100 College Street Property together with all pavement (including markings) and necessary systems and equipment for fire protection and heat detection, drainage associated with the 101 Tunnels and Driveways, a pump station with controls and alarms and a force main connection to the GNHWPCA sanitary pipe (as determined to be necessary during the design process), traffic control and safety systems, signage, lighting, security (including monitoring and control devices), emergency ingress and egress, ventilation, Structural Elements, conduits, wiring, power (regular and emergency), mechanical rooms, fuel storage, wayfinding signs (not including private garage signage), and generators with all power connections as well as the ceiling and the walls of the tunnels and driveways, , as more particularly depicted on Exhibit J of this Agreement.

(7) “101 Tunnels and Driveways Drawings” mean the design development , final design construction documents, specifications, and shop drawings for the 101 Tunnels and Driveways to be designed in accordance with the standards set forth in Exhibit V and as the same may be modified by Exhibit V-1 or such other criteria as the Developer and the City shall agree to in writing. The 101 Tunnels and Driveways Drawings (60% Design Development ) are set forth in Exhibit J.

(8) “300 George Street Property” means the land and the improvements thereon known as 300 George Street, New Haven, Connecticut.

(9) “333 Cedar Street” means the land and the B Wing Building located at the southwest corner of College Street and South Frontage Road.

(10) “AAA” means the American Arbitration Association.

(11) “Acceptable Encumbrances” means encumbrances and restrictions on the 101 College Street Parcel which the Developer agrees may continue to encumber the 101



College Street Parcel at the time that the 101 College Street Parcel is conveyed by the City to the Developer.

(12) “Affiliate” means any entity that is fifty-one (51%) percent owned directly or indirectly by Winstanley Enterprises and/or by an entity owned or controlled by an equity investor providing a majority of the financing or capital for the Development.

(13) “Agency” means any Third Party Funding Agency or any Regulatory Agency.

(14) “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 (if applicable) and the Developer subsequent to the Effective Date of this Agreement, but does not include the Memorandum of Understanding, the latter of which is hereby superseded in its entirety.

(15) “Air Rights Garage” shall have the same meaning ascribed to this term in the preamble.

(16) “Application” means the City of New Haven TIGER 8 Grant Application dated \_\_\_\_\_.

(17) “Approved Plans” means collectively the plans for the Developer’s Private Improvements (or any portion thereof), the plans for the Streetscape Improvements and the plans for the Developer’s On-Site Public Improvements approved by the City Plan Commission in connection with its Site Plan Review.

(18) “Base Technical Concept” shall mean the City of New Haven Base Technical Concept for Downtown Crossing-Phase 3 - Temple Street dated August 2019 and Addenda through No. 13 prepared by HNTB Corp. set forth in Exhibit F.

(19) “BD-3” means the Central Business/Mixed Use Zoning District established under the New Haven Zoning Ordinance.

(20) “BOA” means the City of New Haven Board of Alders.

(21) “Building” means the building to be constructed by the Developer on the 101 College Street Parcel, as described in Article V.

(22) “Bypass” has the meaning ascribed to this term in Section 1.2(37)(vi).

(23) “CDOT” has the meaning ascribed to this term in the preamble.

(24) “Certificate of Completion” means the certificate to be issued by the Economic Development Administrator certifying that all of the Developer’s obligations relating to the construction of the Developer’s Private Improvements, the Developer’s On-Site Public Improvements and the Streetscape Improvements have been satisfied. The construction of any of the Pedestrian Connections or Tenant Improvements shall not be required in order for the Developer to be entitled to a Certificate of Completion.

(25) “City” shall have the same meaning ascribed to this term in the preamble 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.

(26) “City Acquisition Date” means the date upon which the City acquires the State Land.

(27) “City Architect” shall have the same meaning ascribed to this term in Section 5.1(B)(2).

(28) “City Comments” shall have the same meaning ascribed to this term in Section 5.1(B)(4).

(29) “City Default” means an event of default by the City as more particularly set forth in Section 14.1(B).

(30) “City Design Reviewer” means the Executive Director of the City Plan Department of the City, or in the event that such position is vacant, then the Economic Development Administrator or in the event that such position is vacant, then such appropriate official(s) or employees as the Mayor of the City shall designate.

(31) “City Engineer” means the City Engineer employed by the City.

(32) “City Plan Commission” is New Haven’s City Plan Commission established in January 1926 by Special Act No. 490 of the Connecticut Legislature.

(33) “City’s Critical Traffic Improvements” means the minimum City’s Traffic Improvements which are required in order for the Developer to obtain a certificate of occupancy for the Building and the Parking Structure and consist of (i) the construction of the Service Drives as shown on Exhibit F, (ii) the improvements to the intersection of MLK Blvd and Temple Street, including the raising of MLK Blvd in order for the driveway on the 101 College Street Parcel to be able to connect to MLK Blvd, as shown on Exhibit F and (iii) the improvements to the intersection of MLK Blvd and Temple Street required for pedestrian passage to and from the Temple Street Garage crossing MLK Blvd to the sidewalk on the south side of the intersection, including pedestrian signals approved by TTP.

(34) “City’s Design-Build Contractor” means the City’s contractor which will be responsible for both the design, as designer of record, and construction of the City’s Traffic Improvements set forth in the Base Technical Concept.

(35) “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 this Agreement for conveyance of the 101 College Street Parcel from the City to the Developer in the physical condition as shown on Exhibit R and as set forth on the Project Schedule (Exhibit G).

(36) “City Sliver” shall have the meaning ascribed to this term in the preamble.

(37) “City’s Traffic Improvements” mean: those improvements described on page 1 of Exhibit F, items #s 1, 2, and 5, as well as the improvements described on page 2 of Exhibit F under the heading “Base Bid”, items #s 1, 2 and 3, and the preparation of the 101 College Street Parcel in a manner consistent with Exhibit R.

(38) “City’s Traffic Improvements Contractor – Downtown Crossing- Phase 2” means the contractor the City has entered into a contract with to construct the City’s Traffic Improvements – Downtown Crossing- Phase 2.

(39) “City’s Traffic Improvements Contractors- Downtown Crossing- Phase 3” means the City’s Design-Build Contractor and the City’s general contractor and/or construction manager which will undertake the work required for the 101 College Street Parcel to be in the condition shown on Exhibit R as well as their respective trade contractors and subcontractors who will be responsible for the construction of the City’s Traffic Improvements.

(40) “City’s Traffic Improvements – Downtown Crossing – Phase 2” means the items of work set forth in Exhibit G under the heading “Route 34 DTX Phase 2 (DB) Milestone/Target Dates.”

(41) “City’s Traffic Improvements Schedule” means a portion of the Project Schedule, Exhibit G, which sets forth the schedule for the construction of the City’s Traffic Improvements.

(42) “Closing” means the conveyance of the 101 College Street Parcel by the City to the Developer.

(43) “Closing Date” means the date on which the 101 College Street Parcel is to be conveyed by the City to the Developer as set forth on the Project Schedule, attached as Exhibit G to this Agreement.

(44) “College Street Bridge Structure” shall have the meaning ascribed to this term in the preamble.

(45) “Commissioning Agent” means the independent person or entity hired by the City to certify to the City that the 101 Tunnels and Driveways have been constructed and can be operated in accordance with Exhibit V.

(46) “Commissioning Authority” shall have the same meaning ascribed to this term in Exhibit V.

(47) “Community Fund” shall have the meaning ascribed to this term in Section 7.1(B).

(48) “Compulsory Taxation PILOT Period” means the period of time beginning on the Effective Date and ending 30 years after the Effective Date.

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

(50) “Contingency” shall have the meaning ascribed to this term in Section 4.1(E)(2).

(51) “Critical Dates” shall mean those dates set forth on Exhibits G and H by which the City’s Critical Traffic Improvements are to be completed.

(52) “DECD” means the State of Connecticut Department of Economic and Community Development and its successors.

(53) “Default Notice” means a written 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.

(54) “DEEP” means the State of Connecticut Department of Energy and Environmental Protection and its successors.

(55) “Designee” means an entity or person that directly, or indirectly, is owned and controlled by a Mortgagee and when identified to the City by the Mortgagee, a Designee shall be included within the meaning of Mortgagee under this Agreement.

(56) “Developer” shall have has the same meaning ascribed to this term in the preamble.

(57) “Developer’s On-Site Public Improvements” means the improvements on the 101 College Street Parcel to be constructed by the Developer which are not in the public right-of-way and are not the Developer’s Private Improvements and consist of (i) the 101 College Street Plaza, including the pavers, waterproofing, lighting, landscape materials, planters, and benches thereon, (ii) the site walls, railings, stairs, ramps, and green walls along the periphery of the Building and (iii) wayfinding signs, all as shown on Exhibit E to this Agreement.

(58) “Developer’s Private Improvements” means the improvements described in Article V of this Agreement, including the Building and the Parking Structure but do not include any Pedestrian Connections as depicted on Exhibit N.

(59) “Developer’s Share” shall have the meaning ascribed to this term in Section 4.1(E)(2).

(60) “Developer’s Site and Traffic Improvements” means collectively the (i) 101 Tunnels and Driveways, (ii) the Developer’s On-Site Public Improvements; (iii) the Streetscape Improvements as set forth in Article IV and Exhibits E and J to this Agreement, (iv) the relocation of the 60” Drainage Pipe, if required, and (v) the traffic maintenance and protection improvements to be undertaken by the Developer described in Section 5.4(B) below.

(61) “Development” means collectively the Developer’s Site and Traffic Improvements, the Developer’s Private Improvements, and any of the Pedestrian Connections, if they are constructed.

(62) “Development Commission” means the commission created under Section 21-14(b) of the Ordinances to administer municipal development plans adopted by the City.

(63) “Dispute Resolution Procedure” means the procedure for resolving a dispute between any of the parties prior to the City, the Parking Authority or the Developer filing suit in court or terminating the Agreement on account of an Event of Default as described in Section 14.2(A) of this Agreement.

(64) “Downtown Crossing” shall have the same meaning ascribed to this term in the preamble.

(65) “Downtown Crossing Area” means the area depicted on Exhibit X-1 and described in Exhibit X-2.

(66) “Downtown Crossing, Phase 2” shall have the meaning ascribed to this term in the preamble.

(67) “Downtown Crossing, Phase 3” shall have the meaning ascribed to this term in the preamble.

(68) “Drainage Pipe means the 60” drainage pipe located on the 101 College Street Parcel, depicted on Exhibit J, currently owned by the State, which will be owned by the City when the State Land is conveyed to the City and which will continue to be owned by the City after the 101 College Street Parcel is conveyed to the Developer and which may need to be relocated on the 101 College Street Parcel.

(69) “Ductbank” means the ductbank owned by The United Illuminating Company located under MLK Blvd and the grassed slope area adjacent to the southeast corner of College Street and MLK Blvd.

(70) “Economic Development Administrator” means the Economic Development Administrator of the City or any person temporarily acting in this capacity.

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

(72) “Environmental Conditions” mean the environmental conditions on the 101 College Street 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 uses of the 101 College Street Parcel and



GB groundwater quality, and that are not or are not rendered inaccessible or environmentally isolated consistent with the RSRs.

(73) “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.

(74) “Environmental Phase I/II Report” means the report of the Phase I or Phase I/II environmental site assessment of the 101 College Street Parcel to be conducted by the Developer’s environmental engineer, Fuss & O’Neill Inc. prior to the Closing Date.

(75) “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 with creditors.

(76) “Event of Default” means a default by any of the parties of its obligations or covenants hereunder after notice, if required under this Agreement and any applicable cure period, as described in Article XIV of this Agreement or in any other article of this Agreement.

(77) “Excusable Delays” are delays or failures of any of the parties with respect to any time limits that 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.

(78) “Exempt Entity” means an entity to which the Developer transfers title to any portion of the 101 College Street Parcel and/or any improvements thereon and whose use of the 101 College Street Parcel is wholly or partially exempt from real property taxation under Connecticut law.

(79) “FHWA” means the United States Department of Transportation Federal Highway Administration.

(80) “FHWA TIGER 8 Agreement” means the agreement between the City and the United States Department of Transportation for the TIGER 8 funding.

(81) “Final Completion Date” means the date for the completion of the construction of the City’s Traffic Improvements as set forth on Exhibit G.

(82) “Final Design Drawings” means the final design drawings for the City’s Traffic Improvements.

(83) “Force Majeure Event” means, with respect to delays in performance by the City, the Developer or the Parking Authority, 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 intentional act or omission 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, 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, as the case may be; (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 but specifically excluding the exercise of the power of eminent domain by the City with respect to an Excusable Delay asserted by the City or by the Parking Authority with respect to an Excusable Delay asserted by 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 with respect to an Excusable Delay asserted by the City or a new regulatory requirement by the Parking Authority with respect to an Excusable Delay asserted by 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 respective 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 with respect to an Excusable Delay asserted by the City and other than the Parking Authority with respect to an Excusable Delay asserted by 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 delays 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 set forth in Exhibit G; (r) public health emergencies (including but not limited to pandemics, epidemics, disease outbreaks, government mandated quarantines and shutdowns) and (s) any other similar or dissimilar cause beyond the reasonable control of the party asserting an Excusable Delay.

(84) “General Statutes” means the General Statutes of the State of Connecticut, 1958 Revision, as amended.

(85) “GNHWPCA” means the Greater New Haven Water Pollution Control Authority.

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

(87) “Hazard Notice” means (i) the written notice provided by the Developer to the City after acceptance by the City of the 101 Tunnels and Driveways that the 101 Tunnels and Driveways are posing a hazard or risk to the safety of and/or welfare of the public, the Building, the Parking Structure, the 101 College Street Parcel, the 101 College Street Plaza, the Developer, its tenants or others, or (ii) the written notice provided by the City to the Developer after acceptance of the 101 Tunnels and Driveways that the Developer’s operations in the 101 Tunnels and Driveways, are posing a hazard or risk to the safety and/or welfare of the public, the City to any right-of-ways or to any easements or licenses to be granted to the City under this Agreement.

(88) “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.

(89) “LEED” means the series of Leadership in Energy and Environmental Design (LEED) rating systems developed by the Green Building Council.

(90) “Legal Requirements” means any and all judicial decisions, orders, injunctions, writs and any and all statutes, laws, rulings, rules, regulations, permits, certificates or ordinances of any Governmental Authority in each case to the extent that such has the force of law, but does not include Environmental Laws.

(91) “Liquidated Damages” means specified sums of money to be recovered from the City by the Developer for Critical City Traffic Improvements that are not completed by the Critical Dates, as set forth in Exhibits G and H.

(92) “MBE” means a minority owned business as defined in Ordinances, Section 12 ¼-3 (i).

(93) “MBE Utilization Goals” means the minority owned business utilization goals set forth in Ordinances, Section 12 ¼-9 (p).

(94) “Medical District” means the area in the Hill section of New Haven comprised of facilities owned/operated by Yale-New Haven Hospital, the Yale School of Medicine, the State of Connecticut Community Mental Health Center, and Pfizer Pharmaceutical’s research facility.

(95) “Memorandum of Understanding” shall have the same meaning ascribed to this term in the preamble.

(96) “Milestone Dates” means those dates on Exhibit G which are indicated as “Milestone Dates” on which certain items of the City’s Traffic Improvements are to be completed to the degree of completion indicated on Exhibit G.

(97) “MLK Blvd” shall have the same meaning ascribed to this term in the preamble.

(98) “Mortgage” means the voluntary encumbrance(s), pledge(s), or conveyance(s) of the Developer’s right, title and interest in and to the 101 College Street Parcel or any portion or portions thereof, to secure payment of any loan or loans obtained by the Developer to finance any portion of the Development.

(99) “Mortgagee” means the holder of the Mortgage.

(100) “Non-Curable Default” means an Event of Default under this Agreement which is a default which cannot be cured by the applicable Mortgagee as described more fully in Section 14.1(F)(3) of this Agreement.

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

(102) “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 101 Tunnels and Driveway and/or responsibility for the cure thereof and/or the reasonableness of the extent and/or the cost of the work undertaken by the Developer to cure such hazard or risk or a written notice from the Developer to the City that the Developer disputes that a hazard or risk exists in the 101 Tunnels and Driveways, and/or the financial responsibility therefor.

(103) “Notice to Proceed” means the notice form FHWA to the City authorizing the City to proceed with construction of the City’s Traffic Improvements.

(104) “Ordinances” mean the City’s Code of General Ordinances.

(105) “OSTA” means the State of Connecticut Office of State Traffic Administration.

(106) “OSTA Determination” means an administrative determination by OSTA whether a Major Traffic Generator Certificate will be required for the Development and/or the Project.

(107) “Parcel B” has the meaning ascribed to this term in the preamble.

(108) “Parking Agreement” means the parking agreement to be entered into among the Developer, the Parking Authority and the City under which the Parking Authority will make monthly parking permits available to the Developer which will permit the Developer, its employees and tenants (other than Yale University) and their respective visitors to park in the Temple Street Garage and the Temple Medical Garage in the form attached hereto as Exhibit Z.

(109) “Parking Authority” shall have the meaning ascribed to this term in the preamble.

(110) “Parking Authority Default” means an event of default by the Parking Authority as more particularly set forth in Section 13.1(C).

(111) “Parking Structure” means the Parking Structure to be designed and constructed on the 101 College Street Parcel by the Developer, as more particularly described in Section 5.2(G) below.

(112) “Pedestrian Connection” means any of the following: (a) an above-ground pedestrian bridge and walkway connecting the 100 College Street Property to the 300 George Street Property over MLK Blvd together with all necessary piers, footings, foundations and/or supports, (b) an above-ground pedestrian bridge and walkway connecting the 100 College Street Property to 333 Cedar Street over South Frontage Road together with all necessary piers, footings, foundations and/or supports, (c) a below ground pedestrian walkway under South Frontage Road connecting the 101 College Street Parcel to property located on the south side of



South Frontage Road between Congress Avenue and Church Street South, and (d) an above-ground pedestrian bridge and walkway over MLK Blvd connecting the 101 College Street Parcel to the Temple Medical Garage , all as depicted generally on Exhibit N, which Pedestrian Connections are intended to increase connectivity and parking options within the Downtown Crossing Area.

(113) “PILOT Agreement” shall have the meaning ascribed to this term in Section 13.1(C).

(114) “Project” shall mean collectively the Development and the City’s Traffic Improvements.

(115) “Public Financing” means financing which will pay for a portion of the Developer’s Site and Traffic Improvements and which does not include the TIGER 8 Grant financing.

(116) “Project Manager” is a person whom the City shall designate to assist the City in carrying out its obligations under this Agreement.

(117) “Punch List Items” means those items of construction, decoration, landscaping and mechanical adjustment relating to the Developer’s Private Improvements, the Streetscape Improvements and the Developer’s On-Site Public Improvements, which individually, or in the aggregate are minor in character and do not materially interfere with the full use, enjoyment and occupancy of the Developer’s Private Improvements, the Streetscape Improvements and/or the Developer’s On-Site Public Improvements, and for which it may be reasonably anticipated that the completion shall occur within one hundred eighty (180) days after Substantial Completion, subject to extension for Excusable Delay.

(118) “Qualified Transferee” shall have the same meaning ascribed to this term in Section 13.3(B).

(119) “Quit Claim Deed” means the deed by which the 101 College Street Parcel will be conveyed to the Developer in the form attached as Exhibit Q to this Agreement or one substantially similar thereto.

(120) “Regulatory Agency” means any Governmental Authority other than the City that has the authority to review and approve any portion of the Project.

(121) “Remediation Work” shall have the meaning as ascribed to this term in Section 9.2(A).

(122) “Response” shall have the same meaning as ascribed to this term in Section 5.1(B)(5).

(123) “Review Period” means a 30-day period, except as otherwise expressly provided for in this Agreement, for the City to review and approve all requests for consents, approvals of submissions, or waivers, or to accept or reject the Developer’s work.

(124) “Route 34” shall have the same meaning ascribed to this term in the preamble.

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

(126) “SBEs” means Small Business Enterprises as defined in Ordinance Section 12<sup>1</sup>/<sub>4</sub>-3 (n).

(127) “Schematic Design” shall have the same meaning as ascribed to this term in Section 5.1(B)(1).

(128) “Section 17 Program” shall have the same meaning as ascribed this term in Section 9.2(C).

(129) “Selected Design Concept” shall have the same meaning as ascribed to this term in Section 3.2(A).

(130) “Service Drives” shall have the same meaning as ascribed to this term in the preamble.

(131) “Site Plan Review” means a review by the City Plan Commission of the site plan application to be filed by the Developer for development of the 101 College Street Parcel pursuant to Section 64 of the Zoning Ordinance and Connecticut General Statutes § 8-2, and, if not included in such application, a review of the site plan application(s) for each of the Pedestrian Connections.

(132) “State” shall have the same meaning ascribed to this term in the preamble.

(133) “State Land” shall have the same meaning ascribed to this term in the recitals.

(134) “Streetscape Improvements” means the streetscape improvements in the public right-of-way adjacent to the 101 College Street Parcel and the bridge over Temple Street, if built and include (i) public sidewalks, (ii) backfill to be installed under the public sidewalks, (iii) a structure that will connect the site walls to the bridge over Temple Street, if built (along with an expansion joint), (iv) landscaping, (v) lighting, (vi) the portion of the site driveway from the 101 College Street Parcel to MLK Boulevard and the apron in the public right-of-way, and (vii) certain wayfinding signs, all as shown on Exhibit E and as approved by the City Plan Commission as part of its Site Plan Review.

(135) “Substantial Completion” means that the Developer’s Private Improvements, the Streetscape Improvements and/or the Developer’s On-Site Public Improvements to be constructed are completed to the extent that the Developer’s architect has issued a certificate of substantial completion certifying that the foregoing, have been substantially completed and identifying any Punch List Items that have not been completed.

(136) “Temple Medical Garage” means the second, third, fourth, and fifth floors of a parking garage located at 230 George Street, New Haven, Connecticut, which floors are owned by the City and operated by the Parking Authority and which parking garage is also known as the Temple George Garage.

(137) “Temple Medical Pedestrian Connection”) means an above-ground pedestrian bridge and walkway over MLK Blvd connecting the 101 College Street Parcel to the Temple Medical Garage

(138) “Temple Street Garage” means the parking garage owned by the City and operated by the Parking Authority and located at 21 Temple Street, New Haven, Connecticut, Assessor’s Map 241, Block 205, Lot 100.

(139) “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.

(140) “Term” shall mean the term of this Agreement as set forth in Section 16.11

(141) “Termination Effective Date” means the date on which the termination of this Agreement is effective.

(142) “Terms of Disbursements of Public Financing” means the terms under which the Public Financing shall be disbursed to the Developer as set forth in Exhibit L of this Agreement.

(143) “Third Party Funding Agency” means any Governmental Authority, other than the City, which provides funding for the City’s Traffic Improvements or any portion of the Developer’s Site and Traffic Improvements.

(144) “TIGER 8 Grant” shall have the same meaning ascribed to this term in the preamble.

(145) “Transfer” shall have the same meaning ascribed to this term in Section 13.3(A).

(146) “Transfer Act” shall have the same meaning ascribed to this term in Section 9.2(A).

(147) “Tunnels and Driveways Design Criteria” mean standards for the design, construction and inspection of the 101 Tunnels and Driveways set forth in a document entitled “Route 34 Downtown Crossing Project Air Rights Implementation Guidelines dated September 26, 2011, revised to March 12, 2020” as prepared by the City and attached as Exhibit V as the same may be modified by Exhibit V-1.

(148) “TTP” means the City’s Transportation, Traffic and Parking Department.

(149) “US DOT” means the United States Department of Transportation.

(150) “Water Main” means the water main currently on the 101 College Street Parcel which will be removed by the Developer as part of its Private Improvements and as shown on Exhibit I

(151) “Winstanley Enterprises” shall have the same meaning as ascribed to this term in the preamble.

(152) “Work Zone #1” shall have the meaning ascribed to this term in Section 5.3(C).

(153) “Work Zone #2” shall have the meaning ascribed to this term in Section 5.3(E).

(154) “Working Group” means a group consisting of the Economic Development Administrator or his or her representative, the Project Manager, a representative of the City’s Design-Build Contractor, the City Engineer or his or her representative, a representative of the Parking Authority, a representative the Developer, the Developer’s engineer, and the Developer’s construction manager/general contractor, which shall meet to coordinate the work of the City and the Developer.

(155) “Zoning Ordinance” means the City of New Haven Zoning Ordinance.

**ARTICLE II  
REPRESENTATIONS AND WARRANTIES; PRINCIPLES OF  
CONSTRUCTION**

**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, (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 actions; (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 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 actions, (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 (as amended) validly existing under the laws of the State; (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 actions; (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 INFRASTRUCTURE OBLIGATIONS**

**Section 3.1   The City's Traffic Improvements –Downtown Crossing Phase 2**

(A)   The City shall cause to be designed and constructed, at its cost and expense, the City's Traffic Improvements – Downtown Crossing – Phase 2. The City shall enforce all time requirements in its contract with the City's Traffic Improvements Contractor – Downtown Crossing Phase 2, so that the City's Traffic Improvements- Downtown Crossing Phase 2 are completed by the dates for completion of such work set forth in Exhibit G. In the event that the City's Traffic Improvements – Downtown Crossing Phase 2 are not completed on such dates, the Developer may request in writing that the City perform such work.

**Section 3.2   The City's Traffic Improvements**

(A)   The City shall cause to be designed and constructed, at its cost and expense, the City's Traffic Improvements. The parties acknowledge that the City has developed the design-build procurement documents with the consideration of the comments of the Developer on the Base Technical Concept, which Base Technical Concept includes maintenance and protection for traffic during construction as set forth in Exhibit F. The Developer acknowledges that it has had



an opportunity to review, comment and is currently working with the Base Technical Concept. The Developer further acknowledges that the Base Technical Concept (Exhibit F) includes items of work in the Base Bid (as defined in Exhibit F), which are not included in the City's Traffic Improvements and are therefore not required to be undertaken by the City under this Agreement. The Developer also acknowledges that the Base Technical Concept contains three Bid Alternates, which the City may, at its option, award any or all of such Bid Alternates but the City shall not be required to award any of such Bid Alternates or perform any of the work described in the Bid Alternates under this Agreement.

(B) The City agrees to provide the Developer with the opportunity for meaningful comment during the design development process for the City's Traffic Improvements. If following the conclusion of the design development process, the Developer determines that any aspect of the City's Traffic Improvements will have a material adverse impact to the design and/or construction of any aspect of the Development, then the City shall either (i) compensate the Developer for the costs of mitigating such adverse impact, including but not limited to any costs of redesign of the Development or (ii) revise the Selected Design Concept ("Selected Design Concept") for the City's Traffic Improvements in such a manner so that it does not have a material adverse impact on any aspect of the Development.

(C) If changes are required by an Agency, the City and the Developer will endeavor to minimize any negative impact of such changes on the other party's improvements or the application by the Developer for the OSTA Determination.

(D) The City and the Developer agree that ongoing coordination is required during the design development process in order to ensure that the City's Traffic Improvements are consistent with the design concepts set forth in the Base Technical Concept. If the Developer

determines that the design City's Traffic Improvements materially adversely impact the design and/or construction of any aspect of the Development, then the City shall either (i) compensate the Developer for the costs of mitigating such adverse impact, including but not limited to any costs of redesign of the Development and any additional construction costs due to such adverse impact or (ii) revise the City's Traffic Improvements so that they do not have a material adverse impact on any aspect of the Development. If the Developer determines that the City's Traffic Improvements materially adversely impact the Developer's application because of changes made to the City's Traffic Improvements during the Design Development Process for the OSTA Determination and/or the permits or approvals for the Development, then the City shall revise the design of the City's Traffic Improvements so that they do not have material adverse impact on such determination, permits or approvals.

(E) Schedule for Construction of the City's Traffic Improvements – Downtown Crossing – Phase 2 and City's Traffic Improvements.

(1) The City shall cause to be designed and constructed the City's Traffic Improvements – Downtown Crossing- Phase 2 and the City's Traffic Improvements substantially in accordance with Exhibit G. The City will construct the City's Traffic Improvements – Downtown Crossing - Phase 2 in accordance with the Milestone Dates in Exhibit G, including but not limited to the dates for completion of construction.

(2) The City will commence final design and construction of the City's Traffic Improvements in accordance with the Milestone Dates set forth in Exhibit G and will complete construction in accordance with the Milestone and Critical Dates set forth in Exhibit H. In the event that the Notice to Proceed is issued on a date later than that set forth on the Project Schedule (Exhibit G), the City and the Developer shall amend the Project Schedule set forth in

Exhibit G, to provide additional time for the City to commence construction of the City's Traffic Improvements commensurate with the delay in the issuance of the Notice to Proceed.

(3) The Developer acknowledges that one of the City's Traffic Improvements Contractors -- Downtown Crossing – Phase 3, the City's Design-Build Contractor, will be under contract with the City for design/build services, while another of the City's Traffic Improvements Contractors -- Downtown Crossing – Phase 3, which will undertake the improvements on the 101 College Street Parcel so that such parcel of land is in the condition set forth in Exhibit R will be under contract for construction services, and that the City's Traffic Improvements Contractors - Downtown Crossing – Phase 2 is under contract for construction services.

(4) The City acknowledges that in the course of negotiating leases with prospective tenants for the Building, the Developer has reviewed the City's current plans for the City's Traffic Improvements and provided and will continue to provide such prospective tenants with projected dates and commitments for the commencement of occupancy of their leased spaces, which commitments are necessary for the success of the Development. The City and the Developer further acknowledge that the Developer cannot commence construction of the improvements described in Article V herein until certain of the City's Traffic Improvements have been completed to the degree of completion set forth in Exhibit R and that the Building cannot be occupied by tenants until certain of the City's Critical Traffic Improvements have been completed on the Critical Dates set forth on Exhibit H.

(5) In view of the foregoing, the City agrees to encourage timely performance by the City's Traffic Improvements Contractors – Downtown Crossing - Phase 3 by including various provisions in its contracts with the City's Traffic Improvements Contractors – Downtown Crossing - Phase 3 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 Exhibits G and H and completion by the Milestone Dates and Critical Dates therein; (ii) performance bonds in the amount of the contract sum; (iii) liquidated damages for items listed on Exhibit H, (iv) acceleration or contract schedule makeup and updating in accordance with applicable regulations; (v) dispute resolution procedures, such as a negotiated settlement procedure, mediation and/or an advisory or binding opinion from a standing neutral and/or (vi) deletion of work from the contract. Recognizing the significance of the Milestone Dates and the Critical Dates, the City shall work to ensure performance and completion of the same when work has not been completed by the Milestone Dates and the Critical Dates, as set forth in Exhibits G and H. It is agreed and understood that the contracts with the City's Traffic Improvements Contractors – Downtown Crossing - Phase 3 may require approval by an Agency or Agencies. The City shall permit the Developer to review the draft contract with the City's Traffic Improvements Contractors – Downtown Crossing - Phase 3 to the extent permitted by any applicable Agency. The Developer shall have no less than ten (10) days to comment on the draft contract, and the City agrees to take the Developer's comments into consideration and make reasonable efforts to incorporate the Developer's comments into its contracts with the City's Traffic Improvements Contractors – Downtown Crossing - Phase 3 as may be appropriate to facilitate coordination of work to the extent permitted by any applicable Agency and to the extent that such comments do not affect the City's cost, schedule and scope of work.

(6) The City shall monitor the work of the City's Traffic Improvements Contractors - Downtown Crossing - Phase 3 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 - Downtown Crossing - Phase 3 for an Excusable Delay and/or an extension of time to perform its work and shall provide the Developer with the opportunity to review and comment on such request as part of the Working Group process. If either the City or the Developer believes that a City's Traffic Improvements Contractor - Downtown Crossing - Phase 3 is not meeting or will not meet any of the Milestone 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 contract between the City and the City's Traffic Improvements Contractor - Downtown Crossing - Phase 3 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.

(F) The City agrees that if a Milestone Date or a Critical Date in Exhibit G or Exhibit H is not met, the Developer may request in writing that the City perform such work. If the City agrees to perform such work, the City shall so notify the Developer of its intention to perform the work within 30 days of the date of the Developer's request to perform the work, and the City shall have 60 days from the date of the Developer's request to complete the work or to make arrangements reasonably satisfactory to the Developer to complete such work. If the City does not indicate that it is intending to complete the work within 30 days of the Developer's request to undertake the work or represents that it will undertake the work and does not complete the work or make reasonably satisfactory arrangements to complete such work within 60 days of the date of the Developer's request, the Developer may undertake the work necessary to complete such

work and the City shall promptly reimburse the Developer for the costs of the same upon receipt of an invoice from the Developer for such work. If the Developer undertakes the work, it shall also be entitled to Liquidated Damages, as set forth below if the work that has not been completed is a City Critical Traffic Improvement and the work has not been completed by a Critical Date, as well as any additional remedies that it may be entitled to on account of an Event of Default. Provided, however that the Developer shall not be required to submit the failure of the City to timely complete the City’s Traffic Improvements by a Milestone Date or a Critical Date to the Dispute Resolution Procedure in Article XIV prior to making the request to the City to undertake the work or prior to undertaking the work.

**Section 3.3 Liquidated Damages**

(A) The City and the Developer agree that partial Liquidated Damages in the following amounts is a fair and reasonable amount to be paid by the City if it does not complete an item of the City’s Critical Traffic Improvements by a Critical Date set forth in Exhibits H, because damages that would result from such failure to complete work by a Critical Date would be uncertain in amount or difficult to prove:

| 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              |
| in excess of 120 | \$500,000 (maximum aggregate |

amount)

(B) The City and the Developer stipulate that in no event will the Developer’s damages be less than the foregoing sums if the City fails to complete construction of an item of the City’s Critical Traffic Improvements on the Critical Dates set forth in Exhibits G and H. The

City and the Developer further agree that the foregoing partial Liquidated Damages do not constitute a penalty or a forfeiture and that the payment of such Liquidated Damages shall not limit the Developer's rights and remedies at law or in equity and under this Agreement arising from additional damages incurred by the Developer on account of an Event of Default due to the City's failure to complete construction of an item of the City's Critical Traffic Improvements on the Critical Dates set forth in Exhibits G and H.

**Section 3.4 Funding for the City's Traffic Improvements**

(A) The City agrees to abide by and comply with all terms and conditions of any agreements under which funding for the City's Traffic Improvements is provided to the City, including without limitation the TIGER 8 Agreement and all other agreements executed or to be executed with the State under which funding will be provided to the City for the City's Traffic Improvements. The City's failure to comply with any or all of the requirements, conditions, covenants or obligations set forth in such agreements or the City's failure to contribute all of any portion of the City funds required to be contributed under such agreements shall be considered Events of Default under this Agreement.

(B) If the City does not receive the amounts it reasonably determines are required to pay for all of the City's Traffic Improvements or a commitment from a Third Party Funding Agency to provide the same within twelve (12) months of the Effective Date, the City shall at its sole cost and expense construct the City's Critical Traffic Improvements no later than the Critical Dates set forth in Exhibits G and H.

**ARTICLE IV  
THE DEVELOPER'S INFRASTRUCTURE AND PUBLIC ACCESS AREA  
OBLIGATIONS**

**Section 4.1 Description of the Improvements**

(A) 101 Tunnels and Driveways

(1) Provided that the Developer acquires the 101 College Street Parcel in accordance with Article VIII below, the Developer agrees to design and construct the Developer's Site and Traffic Improvements as set forth below. The Developer shall cause the 101 Tunnels and Driveways to be constructed as more particularly detailed in and in accordance with Exhibit J and the standards set forth in Exhibit V, as the same may be modified by Exhibit V-1 or such other criteria as the Developer and the City shall agree to in writing.

(2) The Developer agrees to provide to the City and Third Party Funding Agencies, if required, for their review and approval, the 101 Tunnels and Driveways Drawings. The City shall review and approve the 101 Tunnels and Driveways Drawings in accordance with the procedures set forth in Section 10.2(C) of this Agreement. No review or approval of the 101 Tunnels and Driveways Drawings shall relieve the Developer from its obligations to construct the 101 Tunnels and Driveways in a good and workmanlike manner in accordance with the 101 Tunnels and Driveways Drawings and all applicable Federal, State, or Local codes, standards, requirements and permits. It is understood and agreed that an Agency or Agencies may require review of the 101 Tunnels and Driveways Drawings and 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 timely perform its review and encourage the timely review by any reviewing Agency.

(3) All contracts for the design and construction of the 101 Tunnels and Driveways shall provide that the City shall be the third party beneficiary of the designers',



engineers' and all other contractors' obligations to the Developer under such contracts, including without limitation all guarantees and warranties and professional liability.

(4) The 101 Tunnels and Driveways shall be constructed in accordance with the Project Schedule set forth in Exhibit G.

(5) The Commissioning Agent and the City will periodically monitor construction of the 101 Tunnels and Driveways to confirm that the construction of the 101 Tunnels and Driveways is being conducted in compliance with all applicable codes, standards, requirements, including Exhibit V, as the same may be modified by Exhibit V-1, and permits. The Developer acknowledges that the City and Third Party Funding Agencies have the right to inspect the construction of the 101 Tunnels and Driveways at any time, and the City agrees that when feasible, it shall provide advance notice to the Developer of such inspections. Such inspections may include but are not limited to inspections of the Structural Elements, the structural connections, such as the closure walls (the walls connecting the 101 Tunnels and Driveways to the bridge over Temple Street, if built), and the expansion joints between the Developer's Private Improvements and the 101 Tunnels and Driveways together with material certifications, submittals, inspection reports and other such customary documentation. Such inspections may take place at the 101 College Street Parcel or at any other location where work for the 101 Tunnels and Driveways is being performed.

(6) In addition, the Developer shall permit the City Engineer (or his or her representative), to review test reports, daily reports, cost estimates, change orders, inspection reports and any similar documents relating to the construction of the 101 Tunnels and Driveways. The City agrees that when feasible to provide advance notice of such review and that in making his or her inspections, the City Engineer shall not disrupt, interfere or delay the

Developer's construction activities with respect to the Development. In the event that the City Engineer determines that any construction work on the 101 College Tunnels and Driveways has not been done in compliance with all applicable codes, standards, requirements and permits, the City shall provide written notice of its disapproval of the work and the reasons therefor, and the disapproval, if disputed by the Developer, shall be submitted to the Dispute Resolution Procedure. If the Developer does not dispute the disapproval, the Developer will undertake all corrective work required, and the Project Schedule shall be adjusted to provide the Developer with the additional time that it requires to undertake the corrective work and to provide for all other necessary similar extensions for its other items of work.

(7) Upon Substantial Completion of the construction of the 101 Tunnels and Driveways and the completion of all inspections that the City Engineer and any Agency or Agencies deem necessary and after provision by the Commissioning Agent of a statement of acceptable performance for the 101 Tunnels and Driveways to the Commissioning Authority (as defined in Exhibit V), the City Engineer will issue written acceptances on behalf of the City of the 101 College Street 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 101 Tunnels and Driveways, and in such event, the City Engineer will not issue a written acceptance of the 101 Tunnels and Driveways, until such Agency or Agencies have either inspected and approved the same or waived the right to do so.

(8) Notwithstanding any other provision of this Agreement, the Developer and the City agree that they may amend this Agreement in order to reallocate their respective responsibilities for the design and construction of the 101 Tunnels and Driveways or in any manner that the City and the Developer deem desirable, which amendment shall be in writing

and signed by the Developer and the Economic Development Administrator on behalf of the City.

(9) Prior to the acceptance of the 101 Tunnels and Driveways by the City Engineer, the Developer shall supply the City with “as built” plans of the 101 Tunnels and Driveways (both in hard copy and electronically) and upon acceptance of the 101 Tunnels and Driveways by the City Engineer, the City shall become the owner of all equipment and systems associated therewith, and the Developer shall relinquish and assign to the City all contractor warranties and guarantees for work performed on and materials supplied for the 101 Tunnels and Driveways (with the exception of warranties and guarantees for the construction of the Structural Elements (as hereinafter defined) and for the waterproofing of and prevention of water, be it stormwater, sanitary, fire suppression or other infiltration from the Building, the Parking Structure and the 101 College Street Plaza into the 101 Tunnels and Driveways). The City shall accept such assignment and assume the responsibilities for maintenance, repair and replacement of the 101 Tunnels and Driveways as set forth in Section 6.3(A). If any contractor or supplier refuses to recognize the assignment or otherwise refuses 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 the Developer and its affiliates who were involved in the construction of the 101 Tunnels and Driveways shall be at no cost to the City. In the event that after acceptance by the City Engineer of the 101 Tunnels and Driveways, the City determines that work performed on the 101 Tunnels and Driveways is defective, the City shall not seek any remedies against the Developer for such defective work or materials, but rather agrees to pursue remedies against the contractors responsible for such work or material. 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 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 101 Tunnels and Driveways shall be at no cost to the City.

(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 101 College Street 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 its Site Plan Review. The Developer will grant the City such access to the 101 College Street Parcel as may be reasonably required to maintain, repair and replace such Streetscape Improvements.

(C) Developer's On-Site Public Improvements

(1) The Developer will design and construct the Developer's 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 101 College Street Parcel as being in accordance with the Zoning Ordinance as provided in Section 10.1 below. The Developer shall thereafter be responsible for the maintenance, repair and replacement of the Developer's On-Site Public Improvements.

(D) Drainage Pipe

(1) If necessary, the Developer will relocate the 60” Drainage Pipe as shown on Exhibit J on the 101 College Street Parcel.

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

(1) The City and the Developer acknowledge that improvements are needed on and under the 101 College Street Parcel in part because of the need to maintain public travel under the 101 College Street Parcel and in part in order to provide accessible outdoor space to the public that is integrated with the Building.

(2) Based upon schematic design drawings dated December 6, 2019 (Exhibit K) and a budget prepared by the Developer on January 10, 2020 (Exhibit K), the City and the Developer have estimated that the full costs of designing, engineering and constructing the Developer’s Site and Traffic Improvements to be \$16.5 million Extensive coordination has occurred following the schematic design drawings dated December 6, 2019 (Exhibit D) and the budget dated January 10, 2020 (Exhibit K). The Developer has continued to advance the design, and has made subsequent submissions of the 10%/30%, and 60% plan sets to the City (the 60% plan set is behind Exhibit J). The City has reviewed and responded with comments to the 10%/30% plan set submission. The Working Group has met bi-weekly during this period and has addressed many issues of coordination on the Developer’s design, as well as the City’s procurement documents for the solicitation of the City’s Design-Build Contractor. The City has worked with the City’s Program Manager for Downtown Crossing, HNTB, to produce a draft update to the Air Rights Improvements Guidelines (Exhibit V). The Developer has since submitted a 60% plan set to the City (Exhibit J). The 60% plan set is currently under review by the City and its Program Manager, and the January 10, 2020 budget has not been revised at this

time. The Working Group has begun discussing the design implications in view of Exhibit V, and the Developer continues to review the budget (Exhibit K) relative to the 60% plan set (Exhibit J). All of these updates and interactions have been completed in the spirit of collaboration to advance the mutually shared objective of completing the Development, and the City's Traffic Improvements to enable the Project in a coordinated fashion.

(3) The City and the Developer agree that the Developer's Site and Traffic Improvements shall be paid for by a \$10 million contribution of Public Financing to be paid to the Developer and that the balance of such costs (\$6.5 million) shall be paid for by the Developer (the "Developer's Share"). The City agrees that in the event of unanticipated conditions, including costs overruns, unforeseen field conditions, requests by the City for changes to the Developer's Site and Traffic Improvements from those depicted in the Schematic Design (Exhibit D), and/or for any other reason that increases the costs of the Developer's Site and Traffic Improvements above \$16.5 million, which reasons are beyond the Developer's control and/or not the fault of the Developer, an additional sum of up to \$2 million in Public Financing shall be provided by the City to the Developer to pay for the Developer's Site and Traffic Improvements (the "Contingency"). The City agrees that if modifications to the 101 Tunnels and Driveways as depicted in Exhibit J are required in order for the 101 Tunnels and Driveways to comply with the requirements of Exhibit V, as the same may be modified by Exhibit V-1, and there are additional costs associated with such modifications, then the Developer shall be reimbursed for such additional costs from the Contingency. In the event that the City requests or requires changes to the Developer's Site and Traffic Improvements which cause the cost of such improvements to exceed the \$10 million in Public Financing allocated to the Developer for such purposes, the Contingency and the Developer's Share (i.e. which exceed \$18.5 million), then the

City shall either (i) provide additional funds to the Developer to pay for the costs of the changes in excess of \$18.5 million or (ii) withdraw its request for such changes.

(4) The City and the Developer agree that they have undertaken a review of the costs of the Developer's Site and Traffic Improvements and the expected sources of funds thereof. The City and the Developer agree to work together to try to reduce the costs of the Developer's Site and Traffic Improvements by undertaking among other measures the elimination of redundancies, the reduction of costs and the competitive bidding and pricing of work and materials required to construct the Developer's Site and Traffic Improvements. If as a result of such efforts, the costs of the Developer's Site and Traffic Improvements are reduced below \$16.5 million, then, first, the Developer's Share shall be reduced by such savings up to a maximum amount of \$6.5 million, and, then, any reduction in the costs of the Developer's Site and Traffic Improvements in excess of \$6.5 million shall reduce the amount of Public Financing required for such improvements.

(5) The Parties 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 applications 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 the 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, including all bidding requirements. The failure by any party to materially comply with any or all the requirements, conditions, covenants or obligations set forth in such agreements and the failure to cure such failure within the time provided for cure in the agreements with Third Party Funding Agencies shall be considered an Event of Default under this Agreement.

(F) Bidding and Contracting Procedure for City Financing.

(1) With respect to the use of any of the 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 together with any requirements of Third Party Funding Agency

(G) Restrictions on Reimbursement

(1) The Developer and the City agree that, in addition to any restrictions on reimbursement imposed by Third Party Funding Agencies, the Developer shall not be entitled to reimbursement from Public Financing provided directly from City Funds for work required to correct the Developer's design and construction errors and omissions.

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

(1) 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 set forth in Exhibit G, provided that the Closing has occurred, and will complete construction of such improvements as set forth in the Project Schedule set forth in Exhibit G, 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 set forth in Exhibit G



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 set forth in Exhibit G shall be amended in accordance with the provisions of Section 5.3(A) below and Section 5.3(B) below, then the Project Schedule set forth in Exhibit G 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**

(A) Provided that the Developer acquires the 101 College Street Parcel in accordance with Article VIII 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 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 101 College Street Parcel for construction as set forth in this Article V; (ii) designing and constructing the Building on the 101 College Street Parcel which will be not less than 350,000 gross square feet and not more than 550,000 gross square feet; and (iii) designing and constructing the Parking Structure on the 101 College Street Parcel, as more particularly described in Section 5.3 below. The Developer agrees to make these improvements, notwithstanding any increases in the costs of such improvements after the Effective Date of this Agreement. In addition, at the Developer's option, the Developer will design and construct any or all of the Pedestrian Connections.

(B) Design Review

(1) Prior to seeking Site Plan Review for the Developer's Private Improvements, the Developer's On-Site Public Improvements and the Streetscape Improvements, the Developer shall deliver to the City Design Reviewer schematic design drawings (the "Schematic Design") for the Building, the Parking Structure, the On-Site Public Improvements, the Streetscape Improvements and any Pedestrian Connection(s) that the Developer intends to construct at the time that it constructs the Building. The Developer will submit the Schematic Design for the Pedestrian Connection(s) which are to be constructed separately from the construction of the Developer's Private Improvements (which Schematic Design for each Pedestrian Connection may be submitted separately) and which have not otherwise been reviewed in connection with the Developer's Private Improvements for design review pursuant to this Section 5.1(B)(1) prior to applying for Site Plan Review of each of such Pedestrian Connections, which shall be required.

(2) In reviewing the Schematic Design, the City may consult with an independent third party architect (the City's Architect") and with respect to the 101 College Street Plaza, with an artist.

(3) The Developer and its architect and/or engineer shall attend meetings concerning the Schematic Design with the City Design Reviewer as may be reasonably requested by the City. In the event that the City Design Reviewer consults with the City Architect about the Schematic Design and/or an artist with respect to the design of the 101 College Street Plaza, the Developer, and, at the Developer's option, its architect and or engineer, shall, if requested by the City, attend meetings with the City Architect and/or the artist, as applicable, about the Schematic Design.

(4) The City shall provide written comments about the Schematic Design (the “City Comments”) to the Developer in a timely manner, which comments may be provided after meeting with the Developer (at the option of the City), provided that such City Comments shall be limited to aesthetic considerations and compliance of the Schematic Design with the Zoning Ordinance and any other relevant Legal Requirements. The City Comments shall not cause any material change to the cost, structure or viability of the Developer’s Private Improvements, the Streetscape Improvements, the Developer’s On-Site Public Improvements, or the Pedestrian Connections, and the City’s Comments shall take into consideration the tight constraints of the 101 College Street Parcel.

(5) The Developer, and, at the Developer’s option, its architect shall respond in writing to the City Comments in a thorough and considered manner, which response may include the submission of revised schematic design drawings (the “Response”), The City Design Reviewer and the Developer shall meet, at the City’s option, within ten (10) days, excluding weekend days and City holidays, after the date on which the Response is delivered to the City Design Reviewer to discuss the City Comments and the Response.

(6) Notwithstanding the foregoing, the parties agree that the Developer has the ultimate authority to decide the final design of its improvements provided that such improvements are in accordance with all Legal Requirements.

(7) Notwithstanding any other provision of this Agreement, if the City Design Reviewer does not provide the City Comments within twenty-one (21) days, excluding weekend days and City holidays, after receipt of the Schematic Design by the City, the City Design Reviewers shall be deemed to have no City Comments.

(C) The Developer will perform site preparation work in addition to the City's Traffic Improvements and the Developer's Site and Traffic Improvements to prepare the 101 College Street Parcel for construction. This work shall include the removal of the Water Main which the City has represented has been abandoned by all parties who have an interest in the Water Main. In addition, the Developer shall modify the north and south abutment walls of the College Street Bridge Structure as shown on Exhibit C. Except as herein expressly specified to the contrary, the Developer shall be responsible for all other site preparation responsibilities including the removal of known existing utility infrastructure (drainage, lighting, conduits, manholes and catch basins) which the City represents have been abandoned prior to conveyance of the 101 College Street Parcel to the Developer. Such site preparation work may also include: the installation of a sewer connection and utilities for the 101 College Street Parcel, as set forth in Exhibit O or as set forth on a drawing substantially similar thereto approved by the City Plan Commission as part of its Site Plan Review and the performance of any environmental work required to test, remediate or monitor any Environmental Condition existing on the 101 College Street Parcel on the Closing Date, which are required to be performed pursuant to any applicable Environmental Law, provided that remediation shall not be required for any Environmental Condition that is less than or equal to the commercial/industrial and GB criteria in the RSRs or which may otherwise be remediated by rendering the soil inaccessible or environmentally isolated consistent with the RSRs. The Developer shall also remove all guide rails and bollards. The Developer's work described above shall be performed on the 101 College Street Parcel in accordance with the Project Schedule set forth in Exhibit G. The Project Schedule set forth in Exhibit G may be amended at the Closing to set forth the times for the Developer to commence and complete any required environmental remediation.

**Section 5.2 The Building, and Appurtenances**

(A) During the Term of this Agreement, the Building will be used for office, laboratory, medical, retail, restaurant and other commercial and nonresidential uses as are permitted in the BD-3 District as of the Effective Date, as well as for any additional nonresidential uses which may be included in the BD-3 District after the Effective Date and are not otherwise prohibited by this Agreement.

(B) During the Term of this Agreement, the Building, the Parking Structure or any other portion of the 101 College Street Parcel, shall be not used for 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, 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.

(C) In order to minimize the need to construct new parking facilities and in an effort to manage the changes in grade proximate to the 101 College Street Parcel, at the Developer’s option and at its sole cost and expense, the Developer may design and construct any or all of the Pedestrian Connections at any time during the Term, subject to Design Review, Site Plan Review, Detailed Plans Review pursuant to Section 65 of the Zoning Ordinance with respect to the Pedestrian Connection between the 100 College Street Property and 333 Cedar Street, and the provisions of this Agreement. The City and the Developer acknowledge that the Development and Land Disposition Agreement among the City, the Parking Authority and WE 100 College Street LLC for the development and disposition of the 100 College Street Property dated as of September 1, 2012, authorized the developer of that project to construct a pedestrian

connection connecting the 100 College Street Property to property located on the south side of South Frontage Road, but that such pedestrian connection was never built. The City and the Developer further acknowledge that Pedestrian Connections provided for under this Agreement will facilitate movement between buildings in the Downtown Crossing Area and the Medical District, support the viability of the retail space on the 100 College Street Property, reduce the need for on-site parking on the 101 College Street Parcel, and increase accessibility among the 100 College Street Property, the 300 George Street Property 333 Cedar Street, and the 101 College Street Parcel, thereby contributing to the creation of a life sciences campus in the Downtown Crossing Area.

(D) The Pedestrian Connections shall be designed so as to enhance the sense of place in the Downtown Crossing Area and the Medical District and shall be consistent with the design of these districts. In particular, the Pedestrian Connections shall be transparent and shall contain no exterior signage.

(E) When the Developer notifies the City that it intends to construct any of the Pedestrian Connections, the City shall promptly grant to the Developer all necessary temporary and permanent air rights, easements and licenses required for such construction, including without limitation, the right to construct any piers, footings, foundations and/or supports required for the Pedestrian Connection between the 100 College Street Property and 333 Cedar Street on the sidewalk adjacent to and north of 333 Cedar Street and the right to construct any piers, footings, foundations and/or supports for the Pedestrian Connection between the 100 College Street Property and the 300 George Street Property on the sidewalk adjacent to and on the north side of the 100 College Street Property, and the right to connect the Temple Medical Pedestrian Bridge to the Temple Medical Garage, the later of which the Parking Authority shall consent to.

The granting of the easements shall be subject to standard insurance requirements and indemnification obligations as set forth on Exhibit T. In addition, with respect to the Temple Medical Pedestrian Bridge, the Developer shall give the Parking Authority the right to review and approve the structural design of such Pedestrian Bridge, the Parking Authority recognizing that such Pedestrian Bridge will also be subject to Design Review and Site Plan Review and shall name the City and the Parking Authority as obligees on its performance bonds for such work. The City further agrees to enter into all agreements with the Developer and any third parties, including without limitation the owners of the 100 College Street Property and the 300 George Street Property, which may be required to construct, reconstruct, operate, own, use, maintain, repair, and replace the Pedestrian Connections, and the City and the Parking Authority agree to take all necessary actions to obtain any approvals and consents required for the Temple Medical Pedestrian Bridge, including all approvals required from the Common Elements Management Committee established under a certain Garage Purchase and Operating Agreement By and Between the City of New Haven Acting by and Through The New Haven Parking Authority and Temple Street Associates executed on November 4, 1977 and shall make best efforts to obtain all consents required from the owners of properties known as 40 Temple Street and 60 Temple Street, New Haven, CT. The City shall support all efforts of the Developer to obtain any zoning relief, modifications, approvals (including but not limited to Site Plan Review and Detailed Plans Review) and/or permits required for the Pedestrian Connections; the Developer acknowledging that the New Haven Board of Zoning Appeals and the New Haven City Plan Commission have independent legal authority and decision-making responsibilities with respect to applications for approvals for the Pedestrian Connections.

(F) The Developer shall own, maintain and repair the Pedestrian Connections; provided, however, that notwithstanding the provisions of Section 13.3, the Developer shall have the right to assign all of its rights and obligations with respect to the Pedestrian Connection from the 100 College Street Property to 333 Cedar Street to the owner of the 100 College Street Property and shall have the right to assign all of its rights and obligations with respect to the Pedestrian Connection from the 100 College Street Property to the 300 George Street Property to the owner of either the 100 College Street Property or the owner of the 300 George Street Property. Additionally, 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 any of the Pedestrian Connections to the general public, the City or any other person, and the City acknowledges that the owners of each of the Pedestrian Connections shall reserve the right to discontinue and/or remove the Pedestrian Connections that such owner owns at any time.

(G) The Developer shall design and construct the Parking Structure as part of the Development. The Parking Structure shall contain no more than 175 parking spaces plus loading spaces. The Developer may stack cars in the Parking Structure as long as it provides valet service or an attendant to move cars in accordance with customary parking practices.

(H) The Developer shall endeavor to create an incubator space in the Building of not less than 50,000 square feet, including an interior conference space proximate to the 101 College Street Plaza., and to the extent available, space will also be made available at discounted rates to tenants qualifying through the small business programs operated by the Elm City Innovation Collaborative, New Haven Small Business Academy, iHaven, Gateway Community College and/or other qualified programs. The Developer will strive to create opportunities for mentoring,



technical assistance and programming for entrepreneurial and community related events in the incubator. A classroom space for use by the New Haven Public Schools for STEM academic programs will be made available in the incubator space or if the incubator space is not created or is no longer present in the Building in another location in the Building, such as the conference space, at no charge for a minimum of 10 years from the date that a certificate of occupancy is issued for the Building.

**Section 5.3**    **Developer’s Schedule**

(A)    The Developer will commence construction of the Developer’s Private Improvements substantially in accordance with the Project Schedule set forth in Exhibit G. The Developer will make efforts to complete construction of the foregoing remaining elements on the dates set forth in the Project Schedule set forth in Exhibit G. The Developer will commence and complete all other activities by the times set forth on the Project Schedule set forth in Exhibit G, 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 set forth in Exhibit G to provide new dates for the commencement and completion of the Developer’s Private Improvements and the City’s Traffic Improvements, which new dates shall reflect the difference in time between the Closing Date and the actual date of the Closing.

(B)    Provided further, in the event that the Closing has occurred and changes to the design and/or purposes of the Building are required, which changes are necessary 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 set forth in Exhibit G in a manner that

reasonably reflects the additional time required to accommodate such changes. If the City and the Developer cannot agree upon such amendments to the Project Schedule set forth in Exhibit G, then such dispute shall be submitted to the Dispute Resolution Procedure.

(C) Provided further, in the event that the Developer has completed construction of the sheeting for the southern walls of the Building and the Parking Structure but has not completed construction of the southern walls of the Building and/or the Parking Structure on the date set forth on Exhibit G for the completion of such work, then upon 30 days' notice, if the construction of such walls has still not been completed by the end of the notice period, the Developer agrees to vacate and remain absent from the area between the back of sidewalk and South Frontage Road ("Work Zone #1") until the date passes for the City's completion of its work in Work Zone #1, as set forth on Exhibit G. When vacating Work Zone #1, the Developer agrees to cut off the sheeting and backfill the area in which the sheeting is located in order to facilitate the City's work in Work Zone #1. The failure by the Developer to complete construction of the southern walls on the date specified in Exhibit G for the completion of such work shall not be considered an Event of Default under this Agreement.

(D) In the event that the Developer has not commenced construction of the sheeting for the southern walls of the Building and/or the Parking Structure or has not completed construction of such sheeting on the date for the completion of the construction of the southern walls of the Building and the Parking Structure set forth on Exhibit G, then upon 30 days' notice if the construction of the sheeting has not been completed by the end of the notice period, the City may construct or complete construction of the sheeting in locations to be approved by the Developer and may enter the 101 College Street Parcel in order to perform such work. If the southern walls are not completed by the end of the notice period, whether or not the Developer

has completed the sheeting by the end of such notice period, the City may also avail itself of the remedies set forth in Section 5.3(C) above without additional notice to the Developer but shall vacate Work Zone #1 at the time set forth in Exhibit G for the completion of the City's work in Work Zone #1. The Developer agrees to provide the City with all necessary licenses, easements and agreements required for the City to perform the construction of the sheeting, subject to customary indemnification and insurance provisions as set forth in Exhibit U and to provide the City with any drawings and permits required for the installation of the sheeting which the Developer has in its possession. The Developer agrees to reimburse the City on a per unit price basis for the City's cost of the sheeting that the City installs under this subparagraph.

(E) In the event that the Developer has completed construction of the sheeting for the northern walls of the Building and the Parking Structure but has not completed construction of the northern walls of the Building and/or the Parking Structure on the date set forth on Exhibit G for the completion of such work, then upon 30 days' notice if the construction of such walls has still not been completed by the end of the notice period, the Developer agrees to vacate and remain absent from the area between the back of sidewalk and MLK Blvd ("Work Zone #2") until the date passes for the City's completion of its work in Work Zone #2, as set forth on Exhibit G. When vacating Work Zone #2, the Developer agrees to cut off the sheeting and backfill the area in which the sheeting is located in order to facilitate the City's work in Work Zone #2. The failure by the Developer to complete construction of the northern walls on the date specified in Exhibit G for the completion of such work shall not be considered an Event of Default under this Agreement.

(F) In the event that the Developer has not commenced construction of the sheeting for the northern walls of the Building and/or the Parking Structure or has not completed

construction of such sheeting on the date for the completion of the construction of the northern walls of the Building and the Parking Structure set forth on Exhibit G, then upon 30 days' notice if the construction of the sheeting has not been completed by the end of the notice period, the City may construct or complete construction of the sheeting in locations to be approved by the Developer and may enter the 101 College Street Parcel in order to perform such work. . If the northern walls are not completed by the end of the notice period, whether or not the Developer has completed the sheeting by the end of the notice period, the City may also avail itself of the remedies set forth in Section 5.3(E) above without additional notice to the Developer but shall vacate Work Zone #2 at the time set forth in Exhibit G for the completion of the City's work in Work Zone #2. The Developer agrees to provide the City with all necessary licenses, easements and agreements required for the City to perform the construction of the sheeting, subject to customary indemnification and insurance provisions as set forth in Exhibit U and to provide the City with any drawings and permits required for the installation of the sheeting which the Developer has in its possession. The Developer agrees to reimburse the City on a per unit price basis for the City's cost of the sheeting that the City installs under this subparagraph.

**Section 5.4 Coordination and Cooperation Between the City and the Developer**

(A) The Working Group

(1) In order to coordinate the work of the City 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. The Working Group shall meet twice each month to coordinate the work of the City and the Developer and shall endeavor to resolve issues regarding the coordination of the design and construction of the Project.

(2) The Developer shall provide the Working Group with oral and written construction reports which shall report whether any dates on the Project Schedule set forth in Exhibit G have been met and any anticipated difficulties in meeting such dates and which shall list any Force Majeure Events which are claimed to result in Excusable Delays. The City shall also provide the Working Group with oral or written construction progress reports and shall state whether the Milestone Dates and Critical Dates on the Project Schedule have been met and any anticipated difficulties in meeting such dates and the Final Completion Date and shall report on any Force Majeure Events which are claimed to result in Excusable Delays.

(3) As part of the Working Group activities, the City and the Developer will work together to ensure the City Plan Commission can undertake a timely Site Plan Review of the Developer's application for the development of the 101 College Street Parcel and the Pedestrian Connections.

(4) The Chair of the Working Group shall draft and distribute to the members of the Working Group minutes of each meeting, which shall document discussions, agreements, resolutions, and action items.

(B) Construction Logistics Plan

The Developer and the City agree to a Construction Logistics Plan, which will take into account the Downtown Crossing, Phase 2 and Downtown Crossing, Phase 3 as well as the construction activities associated with the Project. The Construction Logistics Plan will include a plan for the routes that trucks will take during construction of the Project and will specify phasing, sequencing, schedule, and specific work zones and traffic corridors that must be maintained. The Construction Logistics Plan shall guide the work of the Working Group. The Developer, the City and the Parking Authority agree to work together to implement the

Construction Logistics Plan and shall consult with Yale-New Haven Hospital regarding the Construction Logistics Plan, when necessary. The Parties acknowledge that during construction, it is imperative that proper access and egress be maintained to (i) Yale-New Haven Hospital's loading docks located at 55 Park Street at all times, (ii) parking under the Air Rights Garage at all times and (iii) parking in the Air Rights Garage at all times during peak hours, which the Parties agree are 7:00-9:00 a.m. and 4:00-6:00 p.m. The Developer and the City further agree that during construction of the Project, proper access shall be maintained at all times to the 100 College Street Property but acknowledge that the Service Drives from Route 34 to the 100 College Street Property may need to be closed on an intermittent basis during the construction of the Project and that such closure will be included in the Construction Logistics Plan. As part of the Developer's Site and Traffic Improvements, the Developer agrees to construct a paved temporary driveway (including removing curbs, excavating soil and installing signs), as shown on Exhibit M, on the land on which the Air Rights Garage is located (60 York Street) in order to permit trucks exiting the Yale-New Haven Hospital loading docks to access the east bound lane in the north tunnel and driveway under the 100 College Street Property and thereafter the 101 College Street Parcel, and the Parking Authority agrees to provide the Developer with all required licenses and easements to conduct such work as set forth on Exhibit T. Also, as part of the Developer's Site and Traffic Improvements, the Developer will construct temporary Service Drives across Parcel B to the 101 College Street Parcel, and the City will provide the Developer with all required licenses and easements to conduct such work as set forth on Exhibit T. Additionally, as part of the Construction Logistics Plan, the Developer agrees to provide the City with temporary easements for the public to travel across and through the 101 College Street Parcel, as described in Exhibit U

and as will be described in more particularity in an easement agreement between the Developer and the City.

(C) Acknowledgement of Unforeseen Events and Duty to Cooperate

The City, the Parking Authority and the Developer 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  
ACCEPTANCE OF THE STATE LAND, STREETS AND 101 TUNNELS AND  
DRIVEWAYS**

**Section 6.1 State Land**

(A) The BOA hereby accepts the State Land, and no further approval shall be required for the acceptance of the State Land.

**Section 6.2 Dedication and Acceptance of City Streets**

(A) The City hereby dedicates and accepts the following as public rights-of-way once constructed: (i) the bridge over Temple Street if built, (ii) the Service Drives over Parcel B, (iii) the widened MLK Blvd and (iv) the widened South Frontage Road. No subsequent action by the BOA shall be required for the dedication and acceptance of such streets and the bridge over Temple Street, if built as public rights-of way. Such streets shall be named by the BOA.

**Section 6.3 Tunnels and Driveways**

(A) The Developer hereby dedicates and the City hereby accepts, subject to written acceptance thereof by the City Engineer, as hereinabove described in Section 4.1(A)(7) above, the 101 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 101 Tunnels and Driveways as public right-of-ways.

(B) Upon Section 4.1(A)(6) above acceptance of the 101 Tunnels and Driveways by the City Engineer, as described in Section 4.1(A)(6) above, the City shall be responsible for the maintenance, repairs, and replacement of the 101 Tunnels and Driveways except to the extent set forth below. The City's obligation to maintain, repair and replace the 101 Tunnels and Driveways shall include, but not be limited to the ceiling, walls, Structural Elements, as hereinafter defined, the pavement (including markings), floors, fire protection equipment, heat detection, fans and ventilation, drainage (associated with the 101 Tunnels and Driveways), a pump station with controls and alarms and a force main connection to the GNHWPCA, sanitary pipe (as determined to be necessary during the design process), traffic control and safety systems, public signage, lighting, security (including monitoring and control devices), emergency ingress and egress, ventilation, conduits, wiring, power (regular and emergency), mechanical rooms, fuel storage, public wayfinding signs (excluding private signs related to the Building, the Parking Structure and the 101 College Street Plaza), and generators with all power connections to the 101 Tunnels and Driveways.

(C) The Developer and the City shall be jointly responsible for the costs of the replacement of the Structural Elements of the 101 Tunnels and Driveways that also provide structural support to the Building, the Parking Structure and the 101 College Street Plaza, which Structural Elements are the load-bearing ceilings, footings, foundations and walls of the 101 Tunnels and Driveways. The City shall not be responsible for the costs of the replacement of any ceilings, footings, foundations and walls of the Building, the Parking Structure and/or the 101 College Street Plaza which provide support for the Building, the Parking Structure and/or the



101 College Street Plaza and do not provide support for the 101 Tunnels and Driveways. The Developer shall perform all work required to replace the Structural Elements of the 101 Tunnels and Driveways, if required, and the City shall reimburse the Developer for 50% of the Developer's documented costs for such work within 90 days of receipt of an invoice from the Developer for such work. In the event that replacement of a Structural Element is required because of an action by a member of the public, the City will pay the full costs of replacement of the Structural Element, which work the Developer will perform.

(D) The Developer will also be responsible for repairing any damage to the 101 Tunnels and Driveways caused by water infiltration from water, stormwater, fire suppression, sanitary and/or other water source originating within the Building, the Parking Structure and/or 101 College Street Plaza that penetrates into the 101 Tunnels and Driveways. The City shall pay for the costs of repair by the Developer for any damage to the 101 Tunnels and Driveways resulting from water infiltration from any other source, which payment by the City will be made within 90 days of receipt of an invoice from the Developer documenting its costs.

(E) Notwithstanding the foregoing, in no event shall either the Developer or the City be responsible for the costs of replacement of any of the Structural Elements of the 101 Tunnels and Driveways to the extent that the need for such replacement is caused by the negligence or willful misconduct of the other party, its agents, or contractors.

**Section 6.4 City's Critical Traffic Improvements Public Rights-of-Way**

(A) In the event that the City only constructs the City's Critical Traffic Improvements pursuant to Section 3.4(B) above, the City hereby dedicates and accepts the Service Drives so constructed and any alterations to MLK Blvd as public rights-of-way, and no subsequent action

by the BOA shall be required for the dedication and acceptance of such streets and sidewalks as public rights-of-way.

**ARTICLE VII  
TOGETHER, WE GROW INITIATIVE**

**Section 7.1   Benefits to the Community**

(A) The parties acknowledge that the Project will further solidify the competitive position of New Haven in the life sciences and technology innovation sectors. Benefits described herein are intended to support a wide range of goals including sustainability, design excellence and inclusive growth for all New Haven residents.

(B) In addition to regulatory, performance and other requirements herein, a 101 College Street Community Benefits Fund (the “Community Fund”) shall be established in support of these efforts. At the Closing, the Developer shall contribute a minimum of four hundred thousand dollars (\$400,000) to the Community Fund. In the event that the Developer plans to construct a Building in excess of 500,000 useable square feet, the Developer will make an additional contribution to the Community Fund at Closing in the amount of one dollar for each useable square foot of the Building in excess of 400,000 gross square feet.

**Section 7.2   Permanent Jobs**

(A) Board of Education Architecture Construction Engineering (ACE) Mentoring Program. In order to foster New Haven students’ interest in the fields of architecture, construction and engineering, the Developer shall conduct a one-day class at Hillhouse High School and a field trip to the 101 College Street Parcel for students who are interested in these fields. In addition, the Developer will provide mentoring for a New Haven public school ACE Team.

(B) Business Fair. In order to provide meaningful opportunities for City-based businesses to participate in the Development, the Developer's primary architects and engineers and its construction manager/general contractor will attend two (2) business fairs to be organized by the City, which business fairs will feature suppliers of goods and services located in the Greater New Haven area with particular emphasis on City-based businesses. The Developer will also encourage its tenants to attend such business fairs. The City and the Developer further agree to consider the purchase of those goods and services from such firms for the Project, and the Developer also agrees that it will encourage its tenants to consider such purchases.

(C) Innovation Workforce Pipeline. In order to foster career pathways in the life sciences and technology for New Haven public school students, the City will work with Career High School and Gateway Community College to prepare students to study biosciences at the college level and will contribute funds from the Community Fund for this purpose. Additionally, to the extent that incubator space is located in the Building, to assist in these efforts, the Developer will work to make incubator space available to the community and will set aside space in the Building for a classroom for New Haven public school students, as stated in Section 5.2(H) above.

(D) Support Services Pipeline. The City and the Developer acknowledge that opportunities exist to connect New Haven residents to work in support services associated with the operation and management of the Building, the Parking Structure and the On-Site Public Improvements. The Developer shall partner with New Haven Works to develop skill profiles, host three (3) career open house events and establish a protocol for job postings and candidate referrals in connection with the Developer's initial procurement of vendors.

**Section 7.3 Construction Jobs and Small and Minority Business Opportunities**

(A) Workforce Utilization Requirements. The City and the Developer 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 its construction subcontractors for the Development, comply with all applicable City workforce requirements, including, without limitation, all equal employment opportunity requirements and in particular, during 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 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 Connecticut General Statutes § 31-54. With respect to those portions of the Development 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. §. 3141; 29 CFR Parts 1, 3, 5, 6, and 7); the Coperland Act (18 U.S.C. § 874 and 40 U.S.C. §. 3145; 29 CFR Part 3); and 29 CFR Part 5.

(2) Not to discriminate against any employee or applicant for employment because of race, color, religion, gender, age, sexual orientation, gender identity or expression, marital status, physical disability or national origin. The Developer shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to race, color, religion, gender, age, sexual orientation, gender identity or expression, marital status, physical disability or national origin, and such action shall include, but not 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 § 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, gender, age, sexual orientation, gender identity or expression, marital status, physical disability or national origin; to utilize the City sponsored workforce programs (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 the Development 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 § 12-1/2-20(b), pursuant to Ordinance §§ 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 7.3(A) above.

(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 7.3(A) above.

(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 7.3(A) above 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, 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 Development 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 § 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 7.3(A) above in every contract, subcontract or purchase order with respect to the construction of the Development 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.

(B) Notwithstanding the foregoing provisions of Section 7.3(A) above, 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 Section 73(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.

(C) 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 Development, the Developer shall comply with, or require that its construction manager, general contractors and all construction subcontractors for the Development, comply with all applicable City small contractor utilization requirements, including, without limitation, all small business construction initiative requirements and in particular, during the carrying out of the Development, the Developer agrees to require its construction manager, general contractors and its construction subcontractors:

(1) To comply with the provisions of Ordinance § 12 1/4-9, which require that every effort be aggressively made to meet the MBE Utilization Goals. Pursuant to Ordinance



§§ 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 bids 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 contractor or 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 their portion of the Development, 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 and/or, construction manager with respect to proposals received from MBEs for the Development 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 Development, 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 Development, the Developer agrees that it or its general contractors and/or 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/construction manager 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 Development 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 and to require that its construction manager, general contractors and subcontractors provide access to their records in order to verify compliance with the requirements of this Section 7.3(C) above, 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 Section 7.3(C) above.

(6) Notwithstanding the foregoing provisions of this Section 7.3(C) above, in accordance with Ordinance § 12 ¼-11, in the event that any portion of the funding for the Developer's work under this Agreement is received from any Third Party Funding Agency and there is a conflict between any requirements set forth in this Section 7.3(A) above 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 Development. 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 Development.

**Section 7.4**    **Commitment to Sustainability**

(A)    LEED Rating System. The Developer agrees that it will design and build the core and shell of the Building to meet the checklist criteria and 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 and/or the WELL Building Standards, 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)    Sustainable Transportation Program. In order to promote bicycling to the 101 College Street Parcel, the Developer will provide showers and a private changing area for cyclists who work in the Building and will provide an enclosed bike storage facility. The Developer shall take a shared parking approach to the Development by limiting on-site parking to 175 spaces and by entering into an agreement with the Parking Authority for the use of parking spaces in the Temple Street Garage and the Temple Medical Garage as set forth in Section 11.2 below of and Exhibit Z to this Agreement. The Developer shall provide for electric charging of electrically powered vehicles as reasonably allocated by the Developer for any on-site parking. The Developer will discuss with Yale University and the CTtransit New Haven (operated by CDOT) the feasibility of providing bus stops adjacent to the 101 College Street Parcel.

(C) Climate Awareness. Consistent with the Board of Alders' Resolution Endorsing the Declaration of a Climate Emergency to Restore a Safe Climate, adopted on September 3, 2019, the Developer will take a climate awareness approach to construction of the Building, the Parking Structure and the 101 College Street Plaza and encourage its initial tenants who have signed leases prior to issuance of a certificate of occupancy to design fit-out space with a view to long-term responsiveness to climate change. The Developer will provide the City with a copy of its Climate Resiliency Plan prior to requesting a Certificate of Completion.

**Section 7.5 SOURCE NHV Pilot Project**

(A) Buy Local Resource Guide and Purchasing Program. The City and the Developer agree that opportunities exist for purchases from local sources, including Made in New Haven certified products and services. The Developer and the City shall work collaboratively to understand these opportunities and develop a resource guide and outreach opportunities with Building operations staff and future tenants.

**Section 7.6 Inclusive Public Space and Academic Programming**

(A) To further integrate the Development into the Medical District/Downtown/Hill neighborhoods and the future full build-out of Downtown Crossing, the areas on which the On-Site Public Improvements of the Development are to be located, including but not limited to the 101 College Street Plaza, 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. The Developer agrees not to erect any fence or gate to the 101 College Street Plaza. The Developer further agrees to work with the City to permit temporary events, performances and similar programs to take place on the 101 College Street to design the 100 College Street Plaza to include a mix of quiet, passive and social active group spaces .that

are accessible and appropriate to a diverse range of ages and which will promote civic engagement and connectivity between people and their surroundings.

(B) The Developer further agrees to construct an interior public walkway along the northern wall of the Building which will be open to the public during normal business hours.

(C) Notwithstanding any provision of this Agreement to the contrary, nothing contained herein will be deemed to be a gift or dedication to the general public or the City of the areas on which the On-Site Public Improvements are to be located, including but not limited to the 101 College Street Plaza and the interior public walkway described in Section 7.6(B) above.

**Section 7.7 Artistic Objects**

(A) The Development shall be designed to promote equity, diversity and inclusion as more particularly provided for in Section 5.2(H) above. The Developer will make efforts to include artistic programming on the 101 College Street Parcel, including providing visual arts in and around the exterior of the Building and in the 101 College Street Plaza. In creating such arts programming, the Developer will consult with local artists and the local arts community. Additionally, the City may include an artist in its design review of the Schematic Design for the 101 College Street Plaza as set forth in Section 5.1(B) above.

**ARTICLE VIII  
ACQUISITION OF THE 101 COLLEGE STREET PARCEL BY THE DEVELOPER**

**Section 8.1 Acquisition of the State Land by the City**

(A) Date for Acquisition of the State Land

The City agrees to use best efforts to acquire the State Land from the State on or prior to the Closing Date. The City further agrees that it will use best efforts to ensure that the deed by which the City acquires the State Land and any survey referenced therein only include

encumbrances that are acceptable to the Developer and that such deed conveys good and marketable title to the State Land.

(B) In the event that the City does not acquire the State Land 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 at least 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, except as stated in Section 15.3 below.

**Section 8.2 Access to the State Land and Other Parcels**

(A) Access to the State Land

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 State Land subject to the Developer's (or its agents' or contractors') execution of the State's 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 State Land, 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 State Land, the City shall provide similar access to the Developer and its agents and contractors to the 101 College Street Parcel.

(B) Access to Other Parcels

The City shall provide similar access or shall join in any request by the Developer to the State or third parties for the State or third parties to provide similar access to other parcels

on which the Developer wishes to perform the inspections and assessments as described in Section 8.2(A) above and as reasonably required for the Development.

(C) The City shall turn over and deliver to the Developer copies of all reports, studies, environmental assessments, surveys, plans, maps and other documents in its possession and/or control relating to the State Land and the 101 College Street Parcel, subject to the proviso, however, that no representation or warranty is being made by the City as to the accuracy or completeness of any information contained in any such documentation.

**Section 8.3   Preconditions to Developer’s Obligation to Acquire the 101 College Street Parcel**

(A) The acquisition of the 101 College Street Parcel by the Developer 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 Economic Development Administrator and shall herein be described as “Conditionally Waivable”, and some preconditions are not waivable and must be satisfied before the 101 College Street Parcel may be acquired. All waivers and conditional waivers shall be memorialized in writing. The City 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 the Closing are described below:

(1) The City shall have acquired title to the 101 College Street Parcel from the State on or before the Closing Date. This condition is not waivable.

(2) Public Financing has been obtained or commitments for such financing reasonably satisfactory to the Developer have been made to the City or the Developer to provide such financing. This precondition is waivable by the Developer.



(3) The City shall have received the financing required for the City's Traffic Improvements and/or adequate commitments satisfactory to the Developer in its reasonable discretion shall have been made to the City to fund the City's Traffic Improvements. This precondition is waivable by the Developer.

(4) Only the Acceptable Encumbrances shall continue to encumber the 101 College Street Parcel. This precondition is waivable by the Developer. If waived, then in accordance with provisions of Section 8.4(B) below, the Developer shall accept the 101 College Street Parcel subject to such encumbrances.

(5) The Developer shall have secured all permits and land use and other approvals as set forth in Article X below or as otherwise contemplated or provided elsewhere in this Agreement required by the Developer in its sole discretion to construct and operate the Development, which approvals are not subject to any conditions that are objectionable to the Developer in its sole discretion, including, but not limited to the following permits: a determination by OSTA whether a Major Traffic Generator Certificate is required, and if required, the issuance of such Certificate or an amendment to an existing Certificate, all permits required by DEEP, all: encroachment permits and other permits from CDOT, if required,; storm water runoff and sewer connection permits; street opening permits; building permits; demolition permits; Site Plan Review approvals, soil and sedimentation approvals; and approvals by the Development Commission; 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 by the Developer with respect to any of the permits and approvals required, with the proviso that if waived, the City will not be responsible for the Developer's failure to obtain such permits and approvals.

(6) All licenses, easements and agreements required for the construction, maintenance and operation of the Development as described in Article IV, Article V, Article XI, and Exhibit T herein shall have been executed by all parties to such instruments and delivered to the Developer. This precondition is waivable by the Developer.

(7) The 101 College Street 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 Improvements Contractors - Downtown Crossing - Phase 2 and the City's Traffic Improvements Contractors - Downtown Crossing - Phase 3 may reasonably require in order to complete the work required so that the 101 College Street Parcel is in the physical condition described in Exhibit R and (ii) all work required to meet this precondition shall be completed by the City within thirty (30) days of the 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.

(8) The City shall have obtained all permits required for the construction of the City's Traffic Improvements. This precondition is Conditionally Waivable.

(9) There are no further Environmental Conditions or Hazardous Materials at, on or emanating from the 101 College Street Parcel, which require testing, remediation or monitoring under Environmental Laws (other than those created by the Developer). The condition is waivable by the Developer, and the Developer may accept the 101 College Street Parcel in its "as is" "whereas" condition subject to the City's obligation to work with the

Developer to obtain funds to pay for any Remediation Work that needs to be done as set forth in Section 9.1(A) below.

(10) The 101 College Street Parcel (i) remains located within the BD-3 District under the Zoning Ordinance, (ii) the text of the Zoning Ordinance has been amended and there have been no appeals of such amendments or if such appeals have been taken, such appeals have been finally adjudicated as being without merit and the amendment upheld to (a) permit buildings in the BD-3 District to have an FAR in excess of 6.8 either as of right or by means of a bonus system which the Development as described in this Agreement and as depicted in the Schematic Design qualifies for and (b) permit footings, foundations, piers and structural supports for pedestrian connections to be located in the required 15' unobstructed area between a building foundation wall and the curb on the street on which the Building fronts and (iii) there have been no amendments to the text of the BD-3 District since the Effective Date, which the Developer, in its sole discretion, determines would materially and adversely affect the Development as described in this Agreement and as depicted on the Schematic Design. This condition is waivable.

(11) 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 Closing Date by the Developer, the Developer may elect to terminate this Agreement upon at least 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 15.3 below. Notwithstanding the foregoing, if the precondition to the Developer's obligation to acquire the 101 College Street Parcel set forth in Section 8.3(A)(9) above has not been satisfied or waived, then the Developer may terminate this

Agreement due to such condition not having been satisfied or waived only if the Effective Termination Date is no earlier than August 31, 2021 and only if the costs of Remediation exceed \$350,000 in accordance with the provisions of Section 9.2(B) below. If the precondition to the Developer's obligation to acquire the 101 College Street Parcel set forth in Section 8.3(A)(9) above is not satisfied by the Closing Date,, the Closing Date shall be extended to a date to be selected by the Developer which is no earlier than August 31, 2021 and the dates on the Project Schedule for the Developer's construction of the Development shall be correspondingly extended. If the foregoing conditions have not been satisfied or waived in writing by the Developer 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 15.1 below) and the dates for the Developer's construction of the Development shall be correspondingly extended on the Project Schedule.

**Section 8.4    Transfer of the 101 College Street Parcel to the Developer**

(A)    Scheduling the Closing

The Closing shall take place on the Closing Date set forth in the Project Schedule on Exhibit G, unless either such Closing Date has been extended due to Excusable Delay (but not longer than six (6) months) 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 the 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.

(B) Form and Content of the Quit Claim Deed

(1) The conveyance of the 101 College Street Parcel shall be by means of a Quit Claim Deed in the form attached hereto as Exhibit Q or by means of a Quit Claim Deed substantially similar thereto.

(2) The Quit Claim Deed shall convey the City's entire interest and title to the 101 College Street Parcel, except for its interest in the Drainage Pipe which the City shall retain title to.

(3) The Developer shall be entitled to the conveyance of a good and marketable fee simple title to the 101 College Street Parcel subject only to the Acceptable Encumbrances and this Agreement and accordingly cannot be required to accept the 101 College Street Parcel, unless such good and marketable title to the parcel can be delivered by the City, and the Developer is able to obtain title insurance for such parcel insuring a good and marketable fee simple title from a title insurance company reasonably acceptable to the Developer. Marketability of title shall be determined in accordance with the Standards of Title of the Connecticut Bar Association. Notwithstanding the foregoing, the Developer may, in its sole discretion, accept such title to the 101 College Street Parcel as the City is able to convey, in which event, it is agreed and understood that since the conveyance shall be by way of a Quit Claim Deed (meaning that the City will make no representations and warranties as to the status and quality of the title) and that by accepting the Quit Claim Deed from the City, the Developer will be accepting the quality of title conveyed by such Quit Claim Deed.

(4) This Agreement shall be recorded in the New Haven Land Records prior to the recording of the Quit Claim Deed. The legal description of the 101 College Street Parcel to be conveyed to the Developer shall be as set forth in Exhibit A and the Survey (Exhibit B)

(which survey shall be updated and 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).

(5) The Quit Claim Deed shall reserve unto or another instrument shall grant to the City on terms mutually agreed to by the City and the Developer and as generally described in Exhibit U, (i) a permanent easement over that portion of the 101 College Street Parcel situated below grade upon which the 101 Driveways and Tunnels will be constructed and located, all as described in Exhibit J and over, under and across the 101 College Street Parcel, the Building, the 100 College Street Plaza, and the Parking Structure as are necessary for the City to repair, maintain and replace the 101 Tunnels and Driveways; (ii) temporary construction and slope easements and (iii) permanent easements for the maintenance, repair and replacement of the Streetscape Improvements (if required) and the Drainage Pipe

(6) If the City and the Developer are unable to agree to the terms of such reservation and/or easements, such dispute(s) shall be submitted to the Dispute Resolution Procedure.

(C) Purchase Price

(1) The 101 College Street 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) Real Estate Conveyance Tax and other Closing Costs

(1) The Developer shall pay the cost of obtaining any policies of title insurance for the 101 College Street Parcel. The parties acknowledge that under the Connecticut

General Statutes, § 12-498, there will be no real estate conveyance taxes required to be paid in connection with the conveyance of the 101 College Street Parcel. The City will cause this Agreement, the Quit Claim Deed, the Parking Agreement and all other licenses, agreements, easements and permits or approvals granted in favor of the 101 College Street Parcel, the Developer, the Parking Authority or the City, in connection with this Agreement, to be recorded, so that there will be no costs of recording of these instruments and approvals. 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, the transfer of the 101 College Parcel, the Parking Agreement, and all instruments contemplated by this Agreement.

(E) Real Property Tax Adjustments

(1) The parties acknowledge that the 101 College Street Parcel will have been exempt from taxation on the assessment dates immediately preceding the date on which the Quit Claim Deed will be recorded in the New Haven Land Records by virtue of title to the lands that comprise such parcel having been vested in the City and the State. Accordingly the Developer acknowledges that it shall be liable for real property taxes from the date of the Closing pursuant to Connecticut General Statutes § 12-81a and shall make payment of such taxes in accordance therewith.

(F) Other Documents to be Delivered at the Closing

(1) At the Closing, the Developer shall provide the City with evidence of its financial ability to construct the Development in accordance with the Project Schedule set forth in Exhibit G. Such evidence may in the form of the first page and the signatory pages of the contract between the Developer and its construction manager or general contractor for the Development.

**ARTICLE IX**  
**CONDITION OF THE 101 COLLEGE STREET PARCEL AND ENVIRONMENTAL**  
**MATTERS**

**Section 9.1**    **Condition of The 101 College Street Parcel**

(A)    The condition of the 101 College Street Parcel at the Closing shall be that described in Exhibit R, except if such condition is waived by the Developer pursuant to Section 8.3(A)(7) above.

(B)    The Developer acknowledges and agrees that the City has not made any representations or warranties to the Developer regarding the condition of the 101 College Street Parcel upon which the Developer is relying and for all purposes with respect to the suitability and conditions of such parcel, the Developer is relying solely upon (i) its inspection of the 101 College Street Parcel and (ii) the City's covenants herein with respect to the City's Traffic Improvements, including the City's Critical Traffic Improvements.

(C)    The Developer acknowledges that the City does not make, has not made and specifically disclaims any representations or warranty, express or implied, regarding what the Environmental Conditions of the 101 College Street Parcel will be at the Closing; however, this acknowledgment shall not be construed to excuse the City from its obligations under Section 9.2(A) below.

**Section 9.2**    **Environmental Matters**

(A)    Prior to the Closing Date on the Project Schedule set forth in Exhibit G, the Developer will cause to have performed an environmental Phase I/Phase II investigation of the 101 College Street Parcel, provided that the Developer is permitted access to the 101 College Street Parcel as provided for in this Agreement. If the Environmental Phase I/Phase II Report discloses an Environmental Conditions and/or the presence of any Hazardous Materials on or



emanating from the 101 College Street Parcel which exceed applicable RSRS or that the 101 College Street Parcel is a Transfer Act site as defined under Connecticut General Statutes § 22a-134 et seq. (the “Transfer Act”), the Developer shall develop a plan for investigating, remediating and monitoring such Environmental Conditions and/or removing such Hazardous Materials and/or complying with the Transfer Act and an estimate of the costs of the same (the “Remediation Work”). The City and the Developer will then work cooperatively to identify and secure funding on mutually acceptable terms to pay for Remediation Work, time being of the essence in securing such funding. The City and the Developer shall adjust any dates on the Project Schedule set forth in Exhibit G, including the Closing Date, which need to be extended due to the need to secure funding for the Remediation Work and the time required to perform the environmental remediation.

(B) If by August 31, 2021, the Developer determines in its sole and absolute discretion that the Remediation Work is required in excess of Three Hundred and Fifty Thousand Dollars (\$350,000) based on certified estimates and that funding from Third Party Funding Agencies or the City for the Remediation Work is not likely to be secured within a reasonable period of time, provided that the 101 College Street Parcel has not been conveyed to the Developer, the Developer may terminate this Agreement and upon such termination, the parties shall be fully released from and have no further obligations hereunder except as provided in Section 15.3 below.

(C) The Developer and the City further agree, that the Developer shall be entitled to (but shall not be required) to apply for eligibility for the 101 College Street Parcel to participate in the Brownfield Remediation and Revitalization Program established in Connecticut General Statutes § 32-769 (the “Section 17 Program”) either prior to or subsequent to the conveyance of

the 101 College Street Parcel to the Developer 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.

(D) 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 attorney's 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 101 College Street Parcel first occurring after the Closing and while the Developer owns the 101 College Street Parcel, but excluding any Environmental Conditions (i) existing on the 101 College Street Parcel as of the date that the Developer takes title to the 101 College Street Parcel (whether first discovered after the Developer takes title to the 101 College Street Parcel or not); and (ii) first occurring after the date the Developer takes title to the 101 College Street Parcel which are caused or contributed to by the City or its agents, contractors or employees.

(E) If the Developer is required to defend any such action or proceeding, 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 which are not located on the 101 College Street Parcel, so long as the Developer did not cause or contribute to said Environmental Conditions. To the extent the issuer of an environmental insurance policy under which the Developer is insured 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 attorney's 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 101 College Street Parcel existing as of the date that the Developer takes title to the 101 College Street Parcel (whether first discovered after the Developer takes title to the 101 College Street Parcel or not) other than Environmental Conditions which are caused or contributed to by the City or its agents, contractors or employees.

## **ARTICLE X PERMITS AND APPROVALS**

### **Section 10.1 Permits**

(A) Zoning and Land Use Approvals

(1) The Developer shall apply for and obtain all zoning and land use approvals which are required for the Development. 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. Prior to filing for Site Plan Review, the Developer and members of the City Plan Department and any members of the Site Plan Review Team invited by the City Plan Department shall attend between two to three pre-

application meetings to review the Developer's planned submissions for Site Plan Review. An application to the City Plan Commission for approval of a modification to the Detailed Plans for Planned Development Unit #3 for the Pedestrian Connection from the 100 College Street Property to 333 Cedar Street shall also be filed if the Developer plans to construct the Pedestrian Connection between the 100 College Street Property and 333 Cedar Street. The Developer shall not be required to appeal a denial of any of these applications or any conditions placed on approvals to such applications which are not acceptable to the Developer in its sole discretion. Any changes to any matters contemplated by this Agreement approved by the City Plan Commission as part of its Site Plan Review or Detailed Plans 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.

(B) Other Municipal Permits

(1) The Developer shall apply to the New Haven Development Commission for review of the consistency of the proposed improvements on the 101 College Street Parcel with the objectives of the Development Plan, provided the Development Plan is still in effect (i.e., the 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.

(C) 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 to and approves any extension of the GNHWPCA collection system or the capacity of the GNHWPCA system required for the Development.

(D) State of Connecticut Permits

(1) The Developer will apply to the OSTA for a determination whether a Major Traffic Generator Certificate is required for the Development. The City and the Parking Authority shall support such application and shall request that any conditions of approval of such determination by OSTA include with respect to the Development only those traffic improvements that are proposed to be constructed by the City and the Developer pursuant to this Agreement (including Exhibits F and J). The City shall sign any applications to OSTA for which their signatures are required.

(2) The Developer will also apply to the DEEP for all permits necessary for the improvements that the Developer constructs under this Agreement and any amendments thereto, including permits required for the lawful discharge of surface waters from the 101 College Street Parcel.

(3) Additionally, the Developer shall apply to CDOT for all permits necessary to construct the Development, including all required encroachment permits.

**Section 10.2 Assistance by the City**

(A) The City shall fully and expeditiously assist the Developer in obtaining all approvals and permits required for the Development and shall support in good faith all applications required for such approvals, including without limitation any zoning relief, modifications and permits required for the Pedestrian Connections. The City shall work

cooperatively with the Developer in seeking all necessary approvals from USDOT, CDOT, OSTA and DEEP, in order to facilitate the transfer of the 101 College Street Parcel to the Developer on or before the Closing Date.

(B) The City agrees not to amend the Zoning Ordinance (including its map and text) or to adopt a land use plan which would not permit the Development contemplated by this Agreement without the need for any variances, special exceptions and/or special permits..

(C) Review of Requests for Consents and Approvals.

(1) Unless otherwise specifically provided for elsewhere in this Agreement, the City shall review all of Developer's requests for consents, approvals of submissions (other than applications for zoning and land use approvals), material certifications, product submittals, shop drawings, field changes, construction coordination sketches and waivers, and shall conduct all inspections required under this Agreement within the Review Period. The City shall notify the Developer in writing within the Review Period whether the City 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 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 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 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, subject to the consent, approval or acceptance of an Agency or Agencies, if required. The City 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.

(2) In the event that the City 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 Economic Development Administrator and the Project Manager of the impending expiration of the Review Period. In the event that the City 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 Economic Development Administrator and the Project Manager 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 as of the end of the Review Period but shall remain subject to further Agency comment and approval. Notwithstanding the foregoing, the provisions of Section 10.2(C)(2) shall not apply to (i) the inspections by the Commissioning Agent and the Commissioning Authority under Exhibit V as the same may be modified by Exhibit V-1 and the acceptance of the 101 Tunnels and Driveways by the City Engineer, the time for which review shall be governed by Exhibit V as the same may be modified by Exhibit V-1 and (ii) the City's review of certificates for payment from public financing, which review period shall be governed by the provisions of Exhibit N.

(3) In the event that the City 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 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. In such case, the denial or disapproval shall be submitted to the Dispute Resolution Procedure. 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 the Public Financing, the provisions of Exhibit L shall govern.

(D) The parties acknowledge that in connection with the submission of this Agreement to the BOA, the Developer will be submitting a traffic study to the BOA as required by Section 2 ½ -25 of the Ordinances.

## **ARTICLE XI EASEMENTS, LICENSES AND AGREEMENTS**

### **Section 11.1 Easements, Licenses and Agreements from the City and Consents by the Parking Authority**

(A) The City acknowledges that the Developer requires certain easements, licenses and/or agreements from the City with respect to City maintained right-of-ways and City owned property, in order to construct, reconstruct, operate, use, repair, and/or maintain the Project.. The Parking Authority acknowledges that the Developer requires a temporary easement from the City to construct a paved temporary driveway, as shown in Exhibit M, across a portion of land owned by the City known as 60 York Street, New Haven, CT and upon which the Parking Authority operates a parking garage known the Air Rights Garage. The City agrees to grant the licenses and easements to the Developer described in Exhibit T, including without limitation all licenses, easements and agreements required for the Pedestrian Connections and for the Developer to construct temporary Service Drives across Parcel B for access from Route 34 to the 101 College Street Parcel as described in Exhibit T, and the Parking Authority agrees to consent to the granting by the City of a temporary construction easement or license to the Developer for the Developer to construct a temporary driveway on the 60 York Street property, as shown on



Exhibit M, provided that the Developer agrees to restore the 60 York Street property to its condition prior to the Developer's construction of the temporary driveway, if requested to do so by the Parking Authority. The Parking Authority also agrees to consent to all easements required for the Temple Medical Pedestrian Connection, to the extent that its consent is required, as described in Exhibit T.

(B) The City agrees to grant any additional licenses, easements or agreements as may be required to construct and complete the Project and to operate the Development and the 101 College Street Parcel, and the Parking Authority agrees to consent to such agreements, easements and licenses granted by the City that concern properties on which the Parking Authority operates parking facilities. 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 applicable, 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, agreements and licenses in question for final approval by the City, acting through its Economic Development Administrator and, if applicable, for final approval by the Parking Authority acting through its Chairman and its Board of Commissioner,, 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 and, if applicable, consented to by the Parking Authority, the Developer will comply with the requirements for indemnification and insurance set forth in Exhibit T.

(C) The Developer agrees with respect to any such license, easement or agreement granted by the City, and, if applicable, consented to by the Parking Authority or reserved by the Developer or enjoyed by the Developer over, under and through the City's property or public

right-of-ways, , the Developer will indemnify the City or the Parking Authority (with respect to an easement or license concerning the Air Rights Garage and the Temple Medical Pedestrian Connection) for any third party claims brought against the City and/or the Parking Authority with respect to the Air Rights Garage 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 or the Parking Authority's, if applicable, or their respective contractors', employees' or officials' or agents' intentional acts or omissions or negligence, and the Developer shall maintain general liability insurance with at least \$5,000,000.00 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.

**Section 11.2 Parking Agreement among the Parking Authority, the Developer and the City**

(A) The Parties acknowledge that simultaneously with the execution of this Agreement, they are entering into the Parking Agreement substantially in the form attached hereto as Exhibit Z for the Parking Authority to make available to the Developer of a minimum of four hundred permits (400) parking permits for parking Developer's tenants (other than Yale University) and their employees and visitors in the Temple Street Garage and the Temple Medical Garage. The City agrees that as the owner of the Temple Street Garage and the Temple Medical Garage, it will be a signatory to the Parking Agreement.

(B) The parties acknowledge that to the extent that Yale University is a tenant in the Building, its employees will be provided with parking spaces in accordance with the Yale University Overall Parking Plan and the Yale Medical Area Overall Parking Plan.

(C) In the event that there is a conflict between the Parking Agreement and this Agreement, the terms of the Parking Agreement shall control.

**Section 11.3 Licenses, Easements and Agreements from Third Parties to the Developer**

(A) The City agrees, at the Developer's request, to assist the Developer in obtaining licenses, agreements, easements, and releases from any third parties which are required for the construction, operation and completion of the Development. 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 101 College Street Parcel.

**Section 11.4 City Agreements with Third Parties**

(A) It is agreed that it is the responsibility of the City to enter into all agreements with the owners of properties located at 35 College Street and 2 Church Street required for the Bypass.

(B) 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.

(C) The City agrees to enter into all licenses, agreements and easements required for the construction, ownership, maintenance, repair, and replacement of the Pedestrian Connections with the owner of the 100 College Street Property and with the owner of the 300 George Street Property, if the owner of the 300 George Street Property owns one of the Pedestrian Connections as well as any agreements required for the construction of the Temple Medical Pedestrian Connection..

**Section 11.5 Easements, Licenses and Agreements from the Developer to the City,**

(A) The Developer agrees to grant to the City such licenses, easements or agreements as the City may require and as are described in Exhibit U. The City agrees 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 aforesaid easements, licenses and agreements granted by the Developer to the City shall provide that the City shall not unreasonably interfere with any of the Developer's operations on the 101 College Street Parcel when exercising its rights under such licenses, easements and agreements. The City further agrees that with respect to any such license, easement or agreement granted by the Developer to the City or reserved by the City or enjoyed by the City over, under and through the 101 College Street Parcel, the Building, the 101 College Street Plaza, and/or the Parking Structure, the City, will indemnify the Developer for any third party claims brought against the Developer arising out of the City'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 Developer's or its contractors', or its employees' or officials' or agents' intentional acts or omissions or its own negligence, the parties acknowledging that the City is self-insured for such risks.

**ARTICLE XII  
CONSTRUCTION OF THE PROJECT**

**Section 12.1 Compliance with Applicable Laws**

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

**Section 12.2 Storage of Soil Removed from the 101 College Street Parcel**

(A) In the event that the Developer wishes to transport and/or store soil removed from the 101 College Street Parcel, the parties shall make good faith efforts to reach agreements regarding the storage and/or disposal of such soils from the 101 College Street Parcel to sites which are owned or controlled by the City or to other sites to which the City will assist the Developer in obtaining access.

**Section 12.3 Construction Details**

(A) Construction Fencing and Publicity

(1) The Developer agrees that during the construction of the improvements on the 101 College Street Parcel, the construction fencing for the 101 College Street 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 periods, a sign will be erected on the 101 College Street Parcel which will provide the names of all of the entities that have provided funding for the Project and which sign shall comply with the requirements of the City and Third Party Funding Agencies. The Developer agrees to cooperate with the City and Third Party Funding Agencies regarding publicity for the Project.

**Section 12.4 Insurance**

(A) Developer's Insurance Obligations

(1) The Developer shall cause its construction manager/general contractors for the construction of the Developer's Site and Traffic Improvements to post performance and payment bonds which name the Developer, the Developer's construction financing lenders (if permitted by the surety) and the City as obligees and the Parking Authority, with respect to the

construction of the Temple Medical Pedestrian ,beneficiaries of such performance and payment bonds.

(2) The Developer shall post a bond in such amounts as may be required by the City Plan Commission in connection with its Site Plan Review in accordance with the requirements of Connecticut General Statutes, § 8-3(g).

(3) In connection with the design and construction of the Development, the Developer shall obtain, or cause to be maintained by its construction managers/general contractors, 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 \$2,000,000.00, and 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 managers/general contractors to carry for each owned, non-owned, hired, borrowed or leased vehicle, automobile liability insurance providing \$1,000,000.00 combined single limit coverage per accident for bodily injury and property damage; (d) umbrella or excess liability insurance with a minimum limit of \$5,000,000.00 per

occurrence/general aggregate excess of all liability insurance described within the Agreement, 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 with respect to the improvements described in Exhibit M and the construction of the Temple Medical Pedestrian Bridge, all persons whom the Developer is required to indemnify under this Agreement, and any other party whom the Developer and City shall agree to shall be named as an additional insureds on all such policies by endorsement with respect to the construction activities to be performed under this Agreement by the Developer. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

(4) The Developer's construction manager/general contractor shall be named as the certificate holder on a valid certificate of insurance for all insurance coverage required herein to be maintained by the Developer's subcontractors/trade contractors. In addition, the Developer shall cause all subcontractors/trade contractors to obtain, maintain and show evidence of insurance coverage in the same minimum scope and limits of insurance as required herein for the Developer's construction manager/general contractor, with the exception of umbrella/excess liability which will not be required. These policies issued to the Developer's subcontractors (except for workers' compensation) shall name the City and all persons whom the Developer is required to indemnify as additional insureds. 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 by the Developer in addition to these requirements.

(5) At all times during the design and construction of the Development, 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 \$5,000,000.00 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.

(6) At all times during the design and construction of the Development, 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 errors and omission insurance with a minimum of \$1,000,000.00 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.

(7) 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 Development after the issuance of the Certificate of Completion, for a duration of the shorter of three (3) years after such completion or for 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.

(8) Property Insurance. With respect to (i) the Developer's Private Improvements, the Developer's On-Site Public Improvements and the Streetscape Improvements until a Certificate of Completion is issued for the same, and (ii) the 101 Tunnels and Driveways until the same 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 101 Tunnels and Driveways (with respect to insurance for such improvements), and the Developer's Private Improvements, the Developer's On-Site Public Improvements and the Streetscape 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 101 Tunnels and Driveways underlying the Building, 101 College Street Plaza and the Parking Structure and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, flood, and tornadoes, collapse, removal of debris, testing and startup, temporary buildings and removal of debris, demolition occasioned by enforcement of laws and regulations, and water damage.

(9) 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 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, and/or any Mortgagee, and subject to the rights of any Mortgagee. 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 with respect to: (i) the Developer's Private Improvements, the Developer's On-Site Public Improvements and the Streetscape Improvements until issuance of the Certificate of Completion for the same, and

(ii) the 101 Tunnels and Driveways until the acceptance by the City Engineer of the same, or such other dates as the City and Developer and any Mortgagee may agree are appropriate.

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

(11) Prior to the date on which a particular improvement is no longer required to be insured as set forth in subparagraph (9) 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.

(12) In the event that, at any time prior to the date on which insurance is no longer required to be carried under this Section 12.4(A), if the Developer or its construction managers/general contractors or subcontractors or their construction managers/contractors, subcontractors, architects, engineers, designers, 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. If the Developer or the Mortgagee cures any such deficiency in insurance coverage as provided for above, such deficiency shall not be considered an Event of Default under Section 14.1(A) below.

(13) At any time prior to the date on which a particular improvement is no longer required to be insured as set forth 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 any 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.

(14) Notwithstanding the foregoing, should the City's property or the tunnels and driveways under the 100 College Street Property 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.

(15) 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 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, such longer period as mutually and reasonably agreed upon by the Developer and the City or as is otherwise set forth in Project Schedule set forth in Exhibit G. Moreover, notwithstanding any provision of this Agreement, the Developer shall only have the obligation to undertake reconstruction or restoration of any improvements to the 101 College Street Parcel to the extent that the Developer has received adequate insurance proceeds to pay for such reconstruction or restoration.

(16) In the event that there are inadequate insurance proceeds to fully complete reconstruction or repair or 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 any Mortgagee, if required, shall enter an agreement which covers, subject to the rights of the Mortgagee, 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 (i) for the restoration of 101 College Street Parcel and (ii) to satisfy any outstanding claims or expenses as the Developer may have incurred with respect to the Development, and

which agreement shall provide for the distribution to Developer of any surplus of such proceeds. Under such circumstances, the Developer may terminate this Agreement upon 30 days' notice, and the parties shall have no rights or obligations with respect to this Agreement other than as stated in Article XV.

(17) Certificate of Insurance. As evidence of the insurance coverage required under this Agreement, the Developer shall cause to have furnished to the City's 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 within thirty (30) days' prior to expiration at the addresses specified in Section 15.3 below. The certificates shall specify all parties who are additional insureds.

(18) Waiver of Governmental Immunity. Unless requested otherwise by the City, all entities providing insurance shall waive subrogation and 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 the 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 the City's Traffic Improvements Contractors – Downtown Crossing - Phase 3 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 \$100,000.00 each accident, \$100,000.00 coverage for each employee for disease, and \$500,000.00 policy limit for disease; (b) commercial general liability insurance with respect to all operations such contractors perform providing a total limit of \$1,000,000.00 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 \$2,000,000.00 and the products completed operations coverage shall have a separate aggregate limit of not less than \$2,000,000.00 aggregate); (c) automobile liability insurance providing \$1,000,000.00 combined single limit coverage per accident for bodily injury and property damage; (d) umbrella or excess liability insurance with a minimum limit of \$5,000,000.00 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, all persons and entities entitled to indemnification under this Agreement, 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. The City represents that the foregoing insurance requirements have been or shall be contained in the City's bid documents for the City's Traffic Improvements.

(2) In addition, the City shall cause all subcontractors/trade contractors working on the City's Traffic Improvements to obtain and show evidence of insurance coverage in the amounts required herein. The City's Traffic Improvements Contractors – Downtown Crossing - Phase 3 shall be named as the certificate holder on a valid certificate of insurance for all insurance coverage required to be obtained by the City's subcontractors/trade contractors. 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, all persons entitled to indemnification and any other party that the City and the Developer agree should be named as an additional insured as additional insureds 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. The City represents that the foregoing insurance requirements were or shall be included in the City's bid documents for the City's Traffic Improvements.

(3) At all times during the design and construction of the City's Traffic Improvements, the City shall cause the City's Design-Build Contractor and 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), if any, for the City's Traffic Improvements to maintain architect's and engineer's professional liability insurance with a minimum of \$5,000,000.00 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.

(4) At all times during the design and construction of the City's Traffic Improvements, the City shall 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 \$1,000,000.00 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.

(5) 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 the shorter of three (3) 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. The City represents that these requirements were or shall be included in the City’s bid documents for the City’s Traffic Improvements.

(6) General Requirements for the City’s Insurance

(a) All such insurance required to be obtained by the City’s Traffic Improvements Contractors – Downtown Crossing - Phase 3, and the City’s design professionals and consultants 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. Each insurance policy shall be written to become effective at the time that the City or its contractors or design professionals 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. 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 15.3 below. 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.



(b) Prior to the completion of the City's Traffic Improvements, all insurance policies applicable to such traffic 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.

(c) In the event that at any time prior to the completion of the City's Traffic Improvements, any of the City's Traffic Improvements Contractors - Downtown Crossing Phase 3, architects, engineers, designers, 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 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 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. Before procuring or renewing any such insurance, the Developer shall provide the City 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 shall have the opportunity to cure any such deficiency in insurance coverage. If the City cures any such deficiency in insurance coverage as provided for above, such deficiency shall not be considered an Event of Default under Section 14.1(A) below.

(7) At any time prior to the completion of the City's Traffic Improvements, whenever any such improvement, or any significant part thereof, constructed as part of the City's Traffic Improvements, shall have been damaged or destroyed, the same shall be considered a Force Majeure Event for purposes of reconstruction and scheduling. The City will

proceed with reconstruction of the improvements so damaged or destroyed and on those portions of its improvements which were not damaged or destroyed which are not delayed by the destruction and/or damage within six (6) months of the damage or destruction and shall diligently and with prompt dispatch prosecute the same, so as to fully complete such reconstruction or repair within twelve (12) 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.

(8) In addition, the City 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, and, if there is any excess of insurance proceeds after such repair or reconstruction has been fully completed, the City 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 as caused destruction to the City's improvements, the Developer shall have the right to make a claim against any parties or on all applicable insurance policies for the loss or damage to its improvements, notwithstanding the damage or destruction to the City's improvements.

(9) Certificate of Insurance. As evidence of the insurance coverage required under this Agreement to be carried by the City's Traffic Improvements Contractors – Downtown

Crossing - Phase 3 and the City's architects, engineers designers, and subconsultants, the City, 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 sent to the Developer thirty (30) days' prior to expiration of the expiring certificates in accordance with Section 15.3 below. The certificates shall specify all parties who are additional insureds.

(10) All parties providing insurance under this Section 12.4(B) above shall waive subrogation.

### **Section 12.5 Certificate of Completion**

(A) After Substantial Completion of the Developer's Private Improvements (but not including the Tenant Improvements and the Pedestrian Connections), the Developer's On-Site Public Improvements and the Streetscape Improvements, each in accordance with the Approved Plans for such improvement, the Developer shall give notice to the Economic Development Administrator of such completion and request a Certificate of Completion for such improvements. Notwithstanding any other provision of this Agreement, the Economic Development Administrator shall inspect or shall cause such improvements to be inspected within thirty (30) days of the 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 of Completion, subject to Section 12.5(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 Developer's On-Site Public Improvements and the Streetscape Improvements in accordance with

the Approved Plans and shall state that the Developer's obligations to construct such 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 Developer's On-Site Public Improvements and the Streetscape 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 or the Pedestrian Connections, and a Certificate of Completion, may not be denied, conditioned or withheld because Tenant Improvements or Pedestrian Connections 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 12.5 above, 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, the Developer's On-Site Public Improvements and/or the Streetscape Improvements, in accordance with the Approved Plans, and what measures or acts will be 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 of the items that the Developer has failed to complete 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, Developer's On-Site Public Improvements and the Streetscape 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 12.6 Sales and Use Tax Relief**

(A) The sales and use tax relief program established under Connecticut General Statutes § 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 Innovations, Incorporated for sales and use tax relief under Connecticut General Statutes § 32-23h for purchases of taxable tangible personal property that will be made for the Development and 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 applications, and if there are then other

applications for such Sales and Use Tax Relief for projects in the City when the Developer submits its application for Sales and Use Tax Relief, then the City shall advise Connecticut Innovations,, Incorporated that the Developer’s application is the City’s first priority for the award of Sales and Use Tax Relief.

**ARTICLE XIII  
OPERATION OF THE PROJECT**

**Section 13.1 Payment of Taxes**

(A) The Developer agrees for itself and its successors and assigns that subsequent to the Closing and during the Compulsory Taxation PILOT period, the Developer and its successors and assigns will pay all taxes and assessments lawfully assessed against the 101 College Street Parcel and the improvements thereon, except as hereinafter stated in Section 13.1(C) below

(B) Notwithstanding the foregoing, the parties agree that no provision of this Agreement shall be construed as waiving any right the Developer or its successors or assigns 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 101 College Street Parcel and the improvements thereon or to apply for any assessment or tax deferral or abatement program for which it may be eligible.

(C) In the event that if during the Compulsory Taxation PILOT Period, the Developer or its successor and assigns transfers title to the 101 College Street Parcel or any portion thereof or any improvements thereon to an Exempt Entity, the Developer or its successors or assigns, as the case may be, shall require prior to such transfer that the Exempt Entity enter into a Payment in Lieu of Taxes Agreement (the “PILOT Agreement”) with the City for a term of not less than the balance of the Compulsory Taxation PILOT Period, which agreement shall be reasonably

acceptable to the City. The provisions of this Section 13.1(C) shall expressly survive the Closing and be binding upon the Developer's successors or assigns.

(D) In the event that any conveyance of title to any portion the 101 College Street Parcel or any improvements thereon to an Exempt Entity is made in contravention of the provisions of Section 13.1(C) above, then the Developer if the Developer has made the conveyance of title (or a subsequent holder of title, if the subsequent holder of title has made the conveyance of title) shall be responsible for the payment of all sums that would have been due under a PILOT Agreement between the Exempt Entity and the City 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 13.2 Repair of Tunnels and Driveways**

(A) Notwithstanding any other provision of this Agreement, once the 101 Tunnels and Driveways are accepted by the City Engineer pursuant to Section 6.3 above, during the Term, in the event that the Developer reasonably determines that any portion of the 101 Tunnels and Driveways, including, but not limited to any system relating to the operation of the 101 Tunnels and Driveways, such as the pavement (including markings) and necessary systems and equipment for fire protection and heat detection, drainage associated with the 101 Tunnels and Driveways, a pump station with controls and alarms and a force main connection to the GNHWPCA sanitary pipe (as determined to be necessary during the design process), traffic control and safety systems, signage, lighting, security (including monitoring and control devices), emergency ingress and egress, ventilation, the Structural Elements, conduits, wiring, power (regular and emergency), mechanical rooms, fuel storage, wayfinding signs, and generators with all power connections as well as the ceiling, floor and the walls of the 101

Tunnels and Driveways pose a hazard or risk to the safety and/or welfare of the public, the Building, the Parking Structure, the 101 College Street Parcel, 101 College Street Plaza, any Pedestrian Connection, any other portion of the Development, the Project, the Developer, its tenants or others, the Developer may provide the City with a Hazard Notice and provide the City with a sixty (60) day opportunity to cure the hazard or risk. Notwithstanding the foregoing, if the hazard or risk requires the replacement of a Structural Element or water infiltration into the 101 Tunnels and Driveways, then the Developer shall still provide the City with a Hazard Notice and the procedures set forth below with respect to contesting a Hazard Notice shall still apply, but the work undertaken to eliminate the hazard or risk shall be performed by the Developer with the financial responsibility for such remedial action to be allocated between the Developer and the City as set forth in Section 6.3(A) above. Moreover, temporary flooding of the 101 Tunnels and Driveways shall not constitute a hazard or risk pursuant to the terms of this subsection.

(B) The City shall have the right to dispute the existence of the hazard or risk, the costs of eliminating the hazard or risk and the responsibility for paying for such cure. In the event that the City disputes that a hazard or risk exists and/or the appropriate response to the hazard and/or the reasonable cost for such cure and/or the responsibility for paying for the cure, the City shall provide the Developer with a Notice of Dispute within fourteen (14) days of receipt of the Hazard Notice. The parties shall attempt to resolve the issue promptly.

(C) 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 whether the hazard or risk exists, the appropriate response to the hazard, and the reasonable cost for such cure. If the engineers cannot provide a solution acceptable to the City and the Developer, 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 of the City's and the Developer's engineers and their representatives, make a written determination regarding whether a hazard or risk concerning the 101 Tunnels and Driveways exists, the work required to cure such hazard or risk and the reasonable cost of such work within twenty-one (21) days of his or her selection, and with respect to water leakage into the 101 Tunnels and Driveways, the cause of such leak. Such determination shall be conclusively binding on the parties. The Developer and the City shall each pay the fees of the engineer whom such party has selected and shall share equally in the costs of the third engineer for the services performed under this subparagraph.

(D) Notwithstanding any other provision of this Agreement, the City shall cure a hazard or risk other than a hazard or risk requiring the replacement of a Structural Element or the remedying of water infiltration into the 101 Tunnels and Driveways even if the City disputes responsibility for such hazard or risk. Except with respect to the replacement of a Structural Element and eliminating water leakage into the 101 Tunnels and Driveways if either (i) the third engineer determines that a hazard or risk exists with respect to the 101 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 or (iii) if the City has provided a Notice of Dispute which disputes responsibility for the cure of the hazard or risk but does not dispute whether a hazard or risk exists or the work required to cure the hazard or risk or the reasonable costs of such cure 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 101 Tunnels and Driveways, and make the required repairs, maintenance and/or replacements to the 101 Tunnels and Driveways, and the City shall reimburse the Developer for its reasonable costs in performing the foregoing work upon demand.

(E) 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 based upon 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 upon demand, provided that the City is responsible under Section 6.3(B) above, Section 6.3(C) above, Section 6.3(D) above, and Section 6.3(E) above for such costs. . Notwithstanding the foregoing, the City shall have the right to dispute the existence of the hazard, the emergency nature of the hazard, the reasonableness and appropriateness of any costs for which the Developer seeks reimbursement of from the City, and the City's' responsibility to cure the emergency through the Dispute Resolution Procedure If the City does not reimburse the Developer for the reasonable costs of curing the emergency and it was required to do so under this Agreement, such failure shall be considered an Event of Default under Article XIV.

(F) In the event that the City or the Developer disputes the responsibility for payment for correction of the hazard, the City and the Developer shall submit the dispute to the Dispute Resolution Procedure and shall have all of the remedies for an Event of Default set forth in Article XIV. In the event the City reasonably determine that the Developer's operations in any portion of the 101 Tunnels and Driveways are posing a risk to the safety or welfare of the public or the City or the right-of-ways or easements granted to the City, the City shall deliver a Hazard Notice to the Developer and thereafter the determination of whether a hazard exists, and the corrective work required for any hazard which is found to exist and the responsibility for the payment thereof shall be determined in accordance with the procedures set forth in these Section 13.2 above, provided, however, that the City shall not undertake any work to correct the hazard, and all required corrective action shall be undertaken by the Developer with the Developer and the City submitting the issues of the financial responsibility for the corrective action to the Dispute Resolution Procedure. The failure of the Developer to undertake any required corrective action shall be considered an Event of Default by the Developer under Article XIV.

**Section 13.3 Assignment**

(A) It is hereby agreed and stipulated that prior to the issuance of the Certificate of Completion and the acceptance by the City Engineer of the 101 Tunnels and Driveways, the Developer shall not, without the City's written permission or except as provided in Section 13.4 below, transfer or assign any of its rights and/or obligations under this Agreement or in the 101 College Street Parcel (except as otherwise provided for in this Agreement) 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 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) The City shall not unreasonably withhold its consent to the Developer's transfer or assignment of any of its rights and/or obligations under this Agreement to an entity that is not an Affiliate and which establishes to the reasonable satisfaction of the City that (i) it has a net worth of at least Ten Million and 00/100 Dollars (\$10,000,000) and (ii) it or its principal owners or a parent or its development manager has at least ten (10) years of development experience (a "Qualified Transferee"). The Developer shall provide the City with prior written notice of its intent to make an assignment to a Qualified Transferee, the name and address of the Qualified Transferee, documentation that establishes that the transferee is a Qualified Transferee, and a description of the rights assigned, and upon such assignment, the written agreement of the Qualified Transferee to assume all of the obligations of this Agreement associated with the rights assigned.

(C) The City agrees that in the event that the Developer wishes to make an assignment permitted under Section 13.3(A) above or Section 13.3(B) above, at the request of the Developer, it will deliver to the Developer and its Affiliate or a Qualified Transferee, as the case may be, (if the transfer to the Qualified Transferee has been approved by the City through its Economic Development Administrator for transfers under Section 13.3(B) above), within fourteen (14) days of the making of such a request, a recital that the Developer is in compliance with all of the applicable covenants and agreements binding upon it under this Agreement to the best of the

knowledge of the City and that such assignment complies with the terms of this Agreement and will not constitute an Event of Default under this Agreement.

(D) Any assignment of any interest in this Agreement or in the 101 College Street Parcel which is in contravention of the provisions of this Section 13.3 above shall be an Event of Default entitling the City to exercise any and all of the various rights and remedies available to it, whether set forth herein or existing at law or in equity.

(E) It is further agreed by the City and the Developer that following the issuance of the Certificate of Completion for the improvements on the 101 College Street Parcel and the acceptance by the City Engineer of the 101 Tunnels and Driveways, the Developer may sell, assign or transfer any or all of its interest in the 101 College Street Parcel to any purchaser, assignee or transferee free and clear of the requirements of this Section 13.3 above without restriction as to the consideration to be received and without any requirement that the City consent to such transfer, 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 relating to the 101 College Street Parcel (including specifically, but without limitation, the obligation to pay taxes, or, if applicable, per Section 13.1(C) above, the PILOT payments), 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.

#### **Section 13.4 Nondiscrimination Covenants**

(A) 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, age, sexual orientation, gender identity or expression, marital status, physical disability or national origin in the sale, lease or rental or in the use and occupancy of the 101 College Street Parcel or any improvements erected or to be erected thereon, or any part thereof; and

(2) Comply with all federal, state and local laws in effect from time to time, prohibiting discrimination or segregation by reason of race, color, religion, gender, age, sexual orientation, gender identity or expression, marital status, physical disability or national origin in the sale, lease, or rental or in the use and occupancy of the 101 College Street Parcel or any improvements erected thereon or to be erected thereon, or any part thereof.

**Section 13.5 Mortgage of the 101 College Street 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 101 College Street Parcel and the improvements thereon, or any portion or portions thereof, by way of one or more Mortgages, provided that the Mortgagee taking title to the 101 College Street Parcel and the improvements thereon 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 101 College Street 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 101 College Street Parcel designated by Developer: a statement in writing stating: (1) 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); (2) 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); (3) 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); (4) the amounts due under this Agreement; and (5) any other information as may be reasonably requested.

(C) The City agrees that reasonable modifications to this Agreement which do not alter the basic economic terms hereof, do not increase the City's monetary obligations and/or do not adversely affect or diminish the rights, and/or increase the other obligations of the City, as may be requested from time to time by any such Mortgagee, prospective Mortgagee, prospective purchaser or Qualified Transferee shall be made.

(D) 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.

(E) Notwithstanding any other provision of this Agreement, including, but not limited to Section 9.2(D) above, Section 11.1(B) above and Section 11.1(C) above, Exhibit T, and any other indemnification obligation of Developer set forth in this Agreement, no Mortgagee (or its Designee as may have acquired Developer's estate through foreclosure) shall become personally liable under this Agreement for any claims, suits, actions or inactions arising out of events occurring prior to the date that it becomes the holder of the Developer's estate and then only upon the terms and conditions as set forth in this Agreement concerning a foreclosing Mortgagee.

(F) The time permitted for a Mortgagee to complete construction of any portion of the Development shall be extended as provided in Article XIV.

**Section 13.6 Foreclosure of Mortgage/Acquisition of Developer's Estate by Mortgagee**

(A) Notwithstanding anything to the contrary in this Agreement, any Mortgagee or its Designee may acquire title to the 101 College Street Parcel by foreclosure or a transfer in lieu of foreclosure without any consent or approval by the City.

(B) If a Mortgagee (or its Designee as may have acquired the Developer's estate through foreclosure) acquires the Developer's estate in the 101 College Street Parcel , or forecloses its Mortgage prior to issuance of a Certificate of Completion or the acceptance of the 101 Tunnels and Driveways, as applicable, such Mortgagee shall, at its option:

(1) Complete construction of the Development, in accordance with this Agreement and in all respects (other than time limitations) comply with the provisions of this Agreement; or

(2) 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 101 College Street 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. Notwithstanding the foregoing, in the event of a sale, assignment or transfer by the Mortgagee under this subsection to a Qualified Transferee, the City's consent to such sale, assignment or transfer shall not be required.

(C) Notwithstanding any other provision of this Agreement, any Mortgagee (including one who obtains title to the 101 College Street 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 101 College Street Parcel to any uses or to construct any improvements thereon, other than those uses or improvements permitted in this Agreement or as 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 shall be entitled to a Certificate of Completion and acceptance by the City Engineer of the 101 Tunnels and Driveways and may sell, assign or transfer fee simple title to the 101 College Street Parcel and the improvements thereon to any purchaser, assignee or transferee, without restriction as to the consideration to be received and without the City's consent. If such sale, assignment or transfer is during the Term of this Agreement, the purchaser, assignee or transferee shall be required to expressly assume all of the covenants, agreements, and obligations under this Agreement (including specifically, but without limitation, the obligation to pay taxes or if the purchaser, assignee or transferee is an Exempt Entity the obligation to make payments due under the PILOT Agreement), 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. It is provided further that it is the intention of the City and the Developer 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 101 College Street Parcel after issuance of a Certificate of Completion and after acceptance by the City Engineer of the 101 Tunnels and Driveways 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 101 College Street on the same basis as set forth in Section 13.6(D) above of this Agreement.

(F) If a Mortgagee becomes the holder of Developer's estate in the 101 College Street 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 with respect to the parcel acquired shall be satisfied solely out of the Mortgagee's interest in the parcel acquired.

(G) The City 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.

#### **ARTICLE XIV DEFAULT AND REMEDIES**

##### **Section 14.1 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' of written notice thereof from the City;
  - (3) a failure of the Developer to accept the conveyance of the 101 College Street 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 and if such failure is not cured within thirty (30) days following notice thereof from the City to the Developer, provided, however that

if the Developer terminates this Agreement pursuant to Section 15.1 below, the Developer's failure to accept the conveyance of the 101 College Street Parcel on the Closing Date as described above shall not be considered an Event of Default;

(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 written 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 the failure to cure such failure within ninety (90) days of written 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 written 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 Section 13.3 above; or

(9) a transfer of Developer's title to any portion of the 101 College Street Parcel or any of the improvements thereon during the Compulsory Taxation PILOT Period in violation of the terms of Section 13.1 above.

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

(1) a failure to commence construction of any portion of the City's Traffic 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 but not limited to the failure to construct the City's Traffic Improvements to the extent required under this Agreement by the Closing Date, the Milestone Dates, the Critical Dates, and the Final Completion Date set forth in the Project Schedule, Exhibit G ,excluding any period of Excusable Delay and the failure to cure the same within forty-five (45) days' of written notice thereof from the Developer;

(3) a failure by the City to deliver the Quit Claim deed to the 101 College Street Parcel to the Developer on the Closing Date, as the Closing Date may have been extended because of Excusable Delay (which period or periods of Excusable Delay may not exceed six months) or which may have been extended by the Developer or by agreement of the City and the Developer, if not cured within thirty (30) days following notice thereof from the Developer to the City;

(4) 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' of written notice thereof from the Developer, including but not limited to the failure to reimburse the Developer for its costs of eliminating a hazard to the 101 Tunnels and Driveways, the failure to pay Liquidated Damages and the failure to reimburse the Developer for its costs in completing any of the City's Traffic Improvements;

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

(6) 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 written 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 perform any covenant or agreement required to be performed by the Parking Authority under this Agreement, where such failure is not cured by the Parking Authority within forty-five (45) days' of written 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 Section 14.1(A) above, Section 14.1(B) above, and Section 14.1(C) above and the provisions of any other article of this Agreement, the provisions of such other article shall govern.

(E) No Default by Any Party

(1) A delay or failure by the Developer, 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.

(2) A default under the Parking Agreement by the Developer, the Parking Authority or the City shall not be considered an Event of Default under this Agreement.

(3) A default under any easement, license or other agreement to be given or made in accordance with this Agreement shall not be considered a default under this Agreement.

(F) Notice of Default to Mortgagee.

(1) If the City shall give a Default Notice to the Developer, the City shall simultaneously give a copy of such Default Notice to the Mortgagee at the address theretofore designated by such 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 the Developer. No Default Notice given by the City to the Developer shall be binding upon or affect the applicable Mortgagee unless a copy of such Default Notice shall be given to said Mortgagee, as so provided. In the case of an assignment of a Mortgage or change in address of the Mortgagee, the assignee or applicable Mortgagee, by written notice to the City, may change the address to which copies of Default Notices are to be sent. The City shall not exercise any right, power or remedy with respect to any default of the Developer under this Agreement, unless the City, 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 XIV for Mortgagees.

(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 such Mortgagee commences to remedy the default within such period and thereafter diligently prosecutes such remedy to completion. The City 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 101 College Street Parcel by the Mortgagee is reasonably necessary for such Mortgagee to remedy the default, such

Mortgagee shall be granted an additional period of time within which to obtain possession of the 101 College Street 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 the 101 College Street Parcel by the Mortgagee or a Designee, all Non-Curable Defaults shall be deemed to have been fully cured as to the applicable Mortgagee, the 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 shall enter into a new agreement with respect to the 101 College Street Parcel with the Mortgagee or, at the request of such Mortgagee, with a Designee 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 or



Designee makes written request to the City for such new agreement within sixty (60) days from the date it receives notice of such termination. The City shall be under no obligation to remove the Developer or anyone holding by, through or under the Developer from the 101 College Street Parcel, and the Mortgagee or Designee shall take subject to the possessory rights, if any, of the Developer and such occupants. The Mortgagee shall also take subject to (i) any and all liens and encumbrances upon the conveyance of the 101 College Street 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 liens of taxes on the 101 College Street 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 the Mortgagee (or the Designee) pursuant to this section 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 under this Agreement. 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 construction of the Developer's Private Improvements, the Developer's On-Site Public Improvements and/or the Streetscape

Improvements and/or the 101 Tunnels and Driveways in accordance with this Agreement, then, upon completion of such construction work in accordance with the Approved Plans and the acceptance of the 101 Tunnels and Driveways by the City Engineer, such curing Mortgagee shall be entitled to a Certificate of Completion in accordance with the provisions of Section 12.5 above. 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 14.2 Remedies**

(A) Dispute Resolution Procedure

(1) 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. The City, the Developer and the Parking Authority agree that they shall endeavor to resolve any dispute that may arise under this Agreement, except as otherwise provided for in 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 Procedure. 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. In the event that there is a dispute regarding whether there exists a hazard or risk to safety and/or welfare with respect to the 101 Tunnels and Driveways, the

procedure set forth in Section 13.2 above shall be followed, if applicable, before the Dispute Resolution Procedure is initiated. In the event that there is a dispute regarding the lack of completion of the City's Traffic Improvements when required to do so under Exhibit G, the procedure set forth in Article III may, at the option of the Developer, be followed before the Dispute Resolution Procedure is initiated.

(B) Mediation

If the dispute is not resolved by the parties through the Dispute Resolution Procedure, 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 upon the date that the dispute is submitted to mediation, 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 among the parties participating in the mediation. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. Subject to the provisions of Section 14.2(D) below, 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 sixty (60) days after the designation of the mediator.

(C) Advisory Opinion

If the dispute is not resolved under Section 14.2(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 seeking the advisory opinion, and such neutral party shall establish such procedures as

will allow him or her to promptly consider the dispute and issue a written advisory opinion with regard to the issues in dispute. The parties may seek an advisory opinion in addition to or in lieu of Mediation. Costs, and fees for the neutral party shall be equally shared by the parties seeking the advisory opinion. Third parties relevant to the adjudication of the dispute may be added to the advisory opinion proceedings if agreed to by the parties to the dispute. The parties agree that the neutral party's advisory opinion shall not be admissible in subsequent litigation. If an advisory opinion is agreed upon as a procedure, it shall be a condition precedent to litigation among the parties to the dispute, except as provided in Section 14.2(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 to the dispute may commence litigation with respect to the dispute 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, occurs.

(E) Remedies Subsequent to the Dispute Resolution Procedure

(1) If the dispute is not resolved by the parties in accordance with the provisions of Section 14.2(A)(1) above and a mediation or advisory opinion procedure is not pending with respect to the dispute, then, except as otherwise provided in this Agreement, 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, attorney's 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 nor the Developer shall have the right to terminate this Agreement after the 101 College Street Parcel has been conveyed to the Developer.

(2) 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 from the City only for lost profits arising under any lease entered into by the Developer provided that: (i) such lease covers not less than twenty (20%) percent of the Building's gross square footage and (ii) the Building constructed or to be constructed contains not less than 350,000 gross square feet where such loss is established to have been caused by an Event of Default described in Subsections (4), (5) and/or (6) below, as set forth in said subsections

(3) 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 101 College Street Parcel when required to do so under this Agreement, as the same may be, extended by Excusable Delay, the City shall be entitled to terminate this Agreement or to seek specific performance of the Agreement. The City shall not be entitled to any other remedies for such claimed Event of Default.

(4) Notwithstanding any other provision of this Agreement, if there is an Event of Default arising out of the City's failure to convey the 101 College Street 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 this Agreement and/or damages under Section 14.2(E)(1) and Section 14.2(E)(2) above.

(5) Notwithstanding any other provision of this Agreement, if there is an Event of Default arising out of the City's failure to meet any of the Critical Dates set forth in Exhibits G and H, or the date for the completion of the City's Traffic Improvements depicted on Exhibit R set forth in Exhibit G, then the Developer shall be entitled to seek all remedies available under Sections 14.2(E)(1) and (E)(2) above.

(6) Notwithstanding any other provision of this Agreement, if there is an Event of Default arising out of the City's failure to provide the \$10 million contribution of Public Financing required to be provided to the Developer under Section 4.1(E)(3) and/or any portion of the Contingency to which the Developer may be entitled under Section 4.1(E)(3) and the Developer has commenced construction of the Developer's Site and Traffic Improvements, then the Developer shall be entitled to seek all remedies available under Sections 14.2(E)(1) and (E)(2) above.

(7) 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 (but not any Mortgagee) 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 of the Development following the giving of 30 days' prior written notice to the Mortgagee, if any.

(8) If an Event of Default occurs because the Developer designs/constructs any portion of the Developer's Private Improvements, Developer's On-Site Public Improvements and/or the Streetscape Improvements, in a manner which does not conform in all material respects with the Approved Plans, or in the case of the 101 Tunnels and Driveways, in a manner which does not conform in all material respects with Exhibit V as the same may be modified by Exhibit V-1 in addition to any other remedy provided in Section 14.2(E)(1) above,, the City shall be entitled, subject to all rights of Mortgagees, after thirty (30) days' written notice to the Developer given within ninety (90) days following completion of the Development or portion thereof in question, to take corrective action to cause to be performed all modifications or reconstruction required for the portions of the Development in question to conform to the Approved Plans or Exhibit V, as the same may be modified by Exhibit V-1 to this Agreement, as applicable, and may charge the Developer with all reasonable costs therefor, 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 plans for any portion of the Development to the City requesting that it approve such plans as being in conformance with the Approved Plans or Exhibit V as the same may be modified by Exhibit V-1 with respect to the 101 Tunnels and Driveways, and the City so approves such plans (or is deemed so to have approved such plans under this Agreement) including but not but not limited to approvals by the City of plans submitted by the Developer in connection with its applications for building permits, sidewalk or street opening permits or other permits or if the City refers such plans for approval to the an Agency and such plans are approved, then the City may not thereafter claim that the Development or any portion thereof, as the case may be, if built substantially in accordance with the Approved Plans or other plans approved by the City or the Agency, , is not in conformance

with the Approved Plans or Exhibit V as the same may be modified by Exhibit V-1 or other City permits. Additionally, the foregoing remedies provided under this Section 14.2(E)(6) shall not be available to the City for any claimed defective work or defective material with respect to the construction of the 101 Tunnels and Driveways; the sole remedies for any such claimed defective work or defective material being those set forth in Section 4.1(A)(9) above of this Agreement.

(9) If an Event of Default occurs because the Parking Authority has failed to comply with its obligations under this Agreement after notice and an opportunity to cure as set forth above, the Developer shall be entitled to all remedies against the Parking Authority set forth in Section 14.2(E)(1) above, as limited by Section 14.2(E)(2) above.

(10) Notwithstanding any other provision of this Agreement, if an Event of Default occurs because the Developer has not complied with its obligations under Section 13.1(C) above with respect to conveying title to the 101 College Street Parcel or any portion thereof to an Exempt Entity during the Compulsory Taxation PILOT Period, the City shall be limited to the remedies set forth in Section 13.1(D) above.G

**Section 14.3 WAIVER OF JURY TRIAL**

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



**ARTICLE XV  
TERMINATION OF THE AGREEMENT**

**Section 15.1 Right to Terminate Agreement**

(A) In addition to any other right to terminate this Agreement that the Developer has under this Agreement, the Developer may terminate this Agreement upon 30 days' notice to be effective on a Termination Effective Date which shall be no later than August 31, 2020 if the Developer determines in its sole and absolute discretion that the Development is not economically viable. Upon such termination, the parties shall be fully released from and have no further obligations hereunder to each other except as set forth in Section 15.3 below.

(B) In addition to any other right to terminate this Agreement that the City has under this Agreement, in the event that the 101 College Street 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, 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 Section 15.3 below.

(C) In addition to any other right to terminate this Agreement that the Developer has under this Agreement, in the event that the 101 College Street Parcel has not been conveyed to the Developer within five (5) 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 City, the parties shall be fully released from and have no further obligations hereunder to each other, except as set forth in Section 15.3 below.

**Section 15.2 Memorandum of Understanding Regarding Future Development of the 101 College Street Parcel Upon Termination of the Agreement**

(A) Upon a termination of this Agreement by the City under Section 15.1(B) above or by the Developer under **Error! Reference source not found.**, if the City is the holder of title to the 101 College Street Parcel, then the City and the Developer shall enter into a memorandum of understanding in substantially the form attached hereto as Exhibit AA designating the Developer as the preferred developer for the development of the 101 College Street Parcel for a term of twenty-four (24) months.

**Section 15.3 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 and/or amending agreements previously entered into and cancelling and/or amending actions previously taken in furtherance of the Project as applicable, except as set forth herein above and below, including without limitation the execution of any necessary documentation to effectuate such terminations and cancellations. In the event that the Developer has obtained building permits to construct either or both of the 100 College Street Pedestrian Connections prior to the termination of this Agreement, then at the Developer's option, the provisions of this Agreement pertaining to Pedestrian Connections shall not terminate with respect to the 100 College Street Pedestrian Connections for which the Developer has obtained building permits, and the Developer or its assignee shall be allowed to construct, own, maintain, repair, replace, and use such Pedestrian Connections in accordance with the provisions of this Agreement pertaining to Pedestrian Connections, and the Developer and the City shall have all of their respective rights and obligations under this Agreement with respect to such Pedestrian

Connections.. In the event of any dispute with respect to the rights and obligations of the Developer or the City under this Section 15.3, the parties shall participate in the Dispute Resolution Procedure, and the provisions relating to the Dispute Resolution Procedure and the remedies for an Event of Default shall survive the termination of this Agreement.

**ARTICLE XVI  
GENERAL PROVISIONS**

**Section 16.1 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 101 COLLEGE STREET LLC  
150 Baker Avenue Extension  
Suite 303  
Concord, Massachusetts 01742  
Attn: Carter J. Winstanley  
Attn: Demian Gage

with copies to: Carolyn W. Kone  
Brenner, Saltzman & Wallman LLP  
271 Whitney Avenue  
New Haven, CT 06511

and to: Geoffrey Howell  
DLA Piper LLP (US)  
33 Arch Street  
Boston, MA 02110

IF TO THE CITY:

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

with copies to:

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

For Section 13.2 Notice  
add:

City of New Haven  
Attention: Giovanni Zinn, City Engineer  
200 Orange Street  
New Haven, CT 06510

(B) Insurance Notices

IF TO THE DEVELOPER:

WE 101 College, LLC  
150 Baker Avenue Extension  
Suite 303  
Concord, Massachusetts 01742  
Attention: Carter J. Winstanley  
Attention: Demian Gage

IF TO THE CITY:

Corporation Counsel  
City of New Haven  
165 Church Street  
New Haven, CT 06510  
Attention: Patricia King

with copies to:

Budget Director  
City of New Haven  
165 Church Street  
New Haven, CT 06510  
Attention: Michael Gormany

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

IF TO THE PARKING  
AUTHORITY

New Haven Parking Authority  
232 George Street  
New Haven, CT 06510  
Attn: Douglas Hausladen, Acting Executive Director

with copies to:

Rini & Associates  
Attn: Joseph L. Rini  
51 Elm Street Suite 420  
New Haven, CT 06510

Cohen & Wolf,, P.C.  
Attn: Clifford A. Merin  
1115 Broad Street  
Bridgeport, CT06604

(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 16.2 No Waiver**

No failure on the part of the City, the Developer or the Parking Authority to enforce any covenant or provision herein contained, 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 16.3 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 16.4 Successors**

This Agreement shall be binding upon and inure to the benefit of the respective successors and approved 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 XIII.

**Section 16.5 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 16.6 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 and federal courts of Connecticut shall have jurisdiction over any dispute arising under this Agreement.

**Section 16.7 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 16.8 Consents**

Where consents, approvals, waivers, 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, or unless otherwise provided by this Agreement, such consent, approval, waiver or acceptance of work may be granted (or denied) by the Economic Development Administrator.

**Section 16.9 Amendments**

The City and the Developer agree that the provisions of this Agreement, other than those that concern the Parking Authority, may be modified or amended, in whole or in part, only by written document executed by the Economic Development Administrator on behalf of the City and the Developer. The Developer and the Parking Authority agree that the provisions of this Agreement that concern the Parking Authority may be modified or amended, in whole or in part, only by written document approved by the Chairman and the Board of Commissioners of the

Parking Authority and the Developer, and the City, acting through its Economic Development Administrator, when applicable.

**Section 16.10 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 16.11 Term**

The term of this Agreement of this Agreement shall be thirty (30) years from the Effective Date.

**Section 16.12 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 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. No member, manager, officer or employee of the Developer shall be personally liable to the City or the Parking Authority or any of its successors in interest in the event of any default by the Developer for any amount which may become due to the City and/or the Parking Authority or to its successor or with respect to any other obligations arising under the terms and conditions of this Agreement.



### **Section 16.13 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 16.14 Estoppel Certificate**

The parties agree that during the Term of this Agreement, in addition to the provisions in Section 13.3(C) above and Section 13.4 above, upon the request of any party, the receiving party shall within fourteen (14) days of receipt delivery 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 16.15 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 16.16 Survival**

All provisions and conditions of this Agreement which by their terms are to be performed or satisfied prior to the transfer of the 101 College Street 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 101 College

Street Parcel. All other provisions shall survive the transfer of the 101 College Street Parcel and shall expire upon the expiration or termination 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 with respect to the Development, as evidenced by the issuance of a Certificate of Completion for the Developer's Private Improvements, the Developer's On-Site Public Improvements and the Streetscape Improvements and the acceptance by the City Engineer of the 101 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 \_\_\_\_\_  
Justin Elicker  
Its Mayor  
Duly Authorized to act herein

Approved as to form and correctness:

\_\_\_\_\_  
John R. Ward  
Special Counsel to Economic  
Development

**WE 101 COLLEGE STREET, 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 Article I, Article II, Section 5.4(B),  
Section 5.4(C), Section 10.1(D)(1), Section  
11.1(A), 11.1(B), Section 11.1(C), Section  
11.2, Section 14.1(C), Section 14.1(D),  
Section 14.1(E)(1),(2) and (3), Section 14.2,  
Section 14.3, Section 15.1, Section 15.3,  
Article XVI, Exhibit T and Exhibit Z

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

Norman Forrester

Its: Chairman

Duly Authorized to act herein

STATE OF CONNECTICUT)

COUNTY OF NEW HAVEN)

On this \_\_\_\_\_ day of \_\_\_\_\_, 2020, before me, the undersigned officer, personally appeared JUSTIN ELICKER who acknowledged himself to be the Mayor of the City of New Haven, and that as such Mayor, being authorized so to do by the Board of Alders, executed the foregoing instrument for the purposes contained therein, by signing on behalf of the City of New Haven, said act being the free act and deed of the City of New Haven and his free act and deed as such Mayor.

\_\_\_\_\_  
Notary Public  
My Commission Expires:  
Commissioner of the Superior Court

STATE OF )

COUNTY OF )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2020, 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 101 COLLEGE 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 101 COLLEGE, LLC, as his free act and deed as such Manager.

\_\_\_\_\_  
Notary Public  
My Commission Expires:  
Commissioner of the Superior Court

STATE OF CONNECTICUT)

COUNTY OF NEW HAVEN)

On this \_\_\_\_\_ day of \_\_\_\_\_, 2020, before me, the undersigned officer, personally appeared Norman Forrester, who acknowledged himself to be the Chairman of the New Haven Parking Authority, and that as such Chairman \_\_\_\_\_, 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 Chairman

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Notary Public  
My Commission Expires:  
Commissioner of the Superior Court