DEVELOPMENT AND LAND DISPOSITION AGREEMENT

BETWEEN

THE CITY OF NEW HAVEN

AND

[GDXP NH JV LLC]

FOR

THE CONVEYANCE OF REAL PROPERTY

KNOWN AS 183 STATE STREET AND 253 STATE STREET,
NEW HAVEN, CONNECTICUT

2025-RE-0204

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DEVELOPMENT AND LAND DISPOSITION AGREEMENT

THIS DEVELOPMENT AND LAND DISPOSITION AGREEMENT (this "Agreement") is entered into as of the ____ day of , _____, 2025 (the "Effective Date") by and between **THE CITY OF NEW HAVEN,** a municipality organized and existing under the laws of the State of Connecticut, with a mailing address at 165 Church Street, New Haven, Connecticut 06510 (the "City") and **[GDXP NH JV LLC]**, a limited liability company, organized and existing under the laws of the Delaware with a mailing address at 7 Jackson Walkway, Floor 4, Providence, RI 02903 (the "Developer"). The City and the Developer are hereinafter sometimes together referred to as the "Parties", or individually as a "Party".

PROJECT BACKGROUND

The City is the owner of parcels of real property located within the City of New Haven, Connecticut, known as 183 State Street and 253 State Street, inclusive of the portions of Crown Street and State Street (southbound) that bisect the addresses, as generally bounded by State Street, Chapel Street, the Northeast Corridor railroad right of way and Fair Street in the Downtown Neighborhood of New Haven, Connecticut and comprising approximately 3.25 acres (together, the "Property") which Property is more particularly described in Exhibit A attached hereto and made a part hereof.

The City will undertake the realignment of State Street pursuant to the State Street Redesign plan, as more particularly shown on Exhibit [ ] in order to facilitate the Project as defined below and will authorize the subdivision of the Property into two adjacent development parcels, known as Parcel A-1 and Parcel A-2, as more particularly shown in Exhibit [ ].

In December 11, 2023, the City issued a Request for Qualifications (RFQ) to redevelop the Property. In January 2024, Gilbane Development and Xenolith Partners responded to the RFP proposing a joint venture to develop the Property, and in April 2024, the City selected Gilbane Development- Xenolith Partners proposal to redevelop the Property, executing a Memorandum of Understanding (MOU) on June 25, 2024, with the understanding the Gilbane-Xenolith team would form the Developer as a joint venture.

Consistent with the Gilbane-Xenolith response to the RFQ and the MOU, the Developer has proposed developing the Property by constructing two (buildings) known as "The Iron" and the "Frontier" consisting of approximately 450 units of mixed income mixed use rental housing (the "Project"). The Project design contemplates tiered mixed income units containing Affordable Housing Units, Workforce Housing Units and Market Rate Units (each as defined herein) with outdoor public amenity space and retail space.

The Developer proposes to construct the Project in two (2) phases. Phase I will include the construction of the Frontier, comprising not less than 145 residential rental units, public amenity space and retail space. Phase I will be constructed on the northern portion of the Property known as Parcel A-2 (the "Frontier Project"). Phase II will include the construction of the Iron, comprising approximately 300 residential rental units, public amenity space and commercial space. Phase II will be constructed on the southern portion of the Property known as Parcel A-1 (the "Iron Project"). The City will transfer Parcel A-2 pursuant to the Conditions Precedent established for development of the Frontier Project and transfer Parcel A-1 pursuant to the Conditions Precedent established for the Iron Project, all pursuant to this Agreement.

The Developer further proposes meeting high standards for sustainability and energy efficiency, as well as meeting all requirements of the CHFA Multifamily Housing Design, Construction and Sustainability Standards[1].

Accordingly, the City and the Developer have negotiated the terms of this Agreement to memorialize the expectations, rights and obligations of the City and the Developer in preparation for the commencement and completion of the Project.

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 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, code 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 in this Agreement shall have the meanings set forth in this Section 1.2 below, or as may be otherwise defined within the body of this Agreement.

(f) The City and the Developer agree to work diligently and in good faith to provide any and all approvals, consents, waivers, acceptances, concurrence or permission, which shall not be unreasonably withheld, delayed or conditioned by the Party whose approval, consent, waiver, acceptance, concurrence or permission is required, whether expressly so stated, unless otherwise expressly provided herein.

(g) The City and the Developer have participated in the drafting of this Agreement and any ambiguity contained herein shall not be construed against the City or the Developer solely by virtue of the fact

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that the City or the Developer may be considered the drafter of this Agreement or any particular part hereof.

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

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

(j) Any time limits which are imposed upon the performance of the Parties hereto by the terms of this Agreement shall, if applicable, by subject to adjustment for Excusable Delay.

(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 non-survivability of obligations of another section.

Section 1.2 Defined Terms

In this Agreement, the following terms shall mean:

(a) "Affiliate" shall mean any entity that is at least fifty-one percent (51%) owned directly or indirectly by the Developer or an entity that has admitted a ninety-nine and 99/100 (99.99%) tax credit investor member so long as Developer directly or indirectly controls the managing member of such entity.

(b) "Agreement" shall mean the four corners of this instrument, and includes any appendices, exhibits or schedules incorporated by reference, as well as any amendment, modifications or supplements which may be executed by the City and the Developer subsequent to the effective date of this instrument.

(c) "Affordable Housing Units" means not less than twenty-five percent (25%) of the residential units, (approximated to be one hundred sixteen (116) units), of the Project that are restricted to Low-Income Family and Very Low-Income Family households as follows, for the duration of the Affordability Period:

(d) thirty-eight (38) units in the Frontier Project which are restricted to households whose annual gross income not greater than eighty percent (80%)of the AMI for New Haven County, Connecticut, with adjustments for the number of bedrooms in each such unit, with the average income restrictions for cush units not to exceed sixty percent (60%) of AMI and all of which units are anticipated to generate federal low income housing tax credits through income-averaging in accordance with Section 42 of the Internal Revenue Code. .

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(ii) seventy-eight (78) units in the Iron Project which are restricted to households whose annual gross income not greater than eighty (80%) of the AMI for New Haven County, Connecticut, with adjustments for the number of bedrooms in each such unit, with the average income restrictions for cush units not to exceed sixty percent (60%) of AMI and all of which units are anticipated to generate federal low income housing tax credits through income-averaging in accordance with Section 42 of the Internal Revenue Code.

(e) "Affordability Period" shall mean thirty (30) years commencing from the Project Completion Date.

(f) "AMI" means the area median income for households of various sizes in New Haven, Connecticut as determined by the United States Department of Housing and Urban Development ("HUD") for the year during which such households will occupy an Affordable Housing Unit.

(g) "CHFA" means the Connecticut Housing Finance Authority.

(h) "Certificate of Completion" shall mean a certificate issued in accordance with Section 9.3 of this Agreement.

(i) "Conditions Precedent" shall mean those conditions which must be satisfied or waived by the Developer prior to conveyance of the Property as more particularly described in Section 3.6below.

(j) "Default Notice" means any notice of an event of default delivered by either the City or the Developer under the provisions of Article X of this Agreement.

(k) "Developer Improvements" shall mean those improvements to be designed and constructed by the Developer at the Property in furtherance of the completion of the Project, pursuant to the terms and conditions of this Agreement, substantially in accordance with the Developer's Response to Request for Qualifications (the "RFQ Response") a copy of which RFQ Response is attached hereto as Exhibit [ ] and made a part hereof, and as more particularly described in Section 4.1 below and Exhibit [ ], which is attached and made a part hereof and which may be amended only in accordance with the terms of this Agreement. For the avoidance of doubt, the term Developer Improvements as used herein shall refer separately to the Frontier Project and the Iron Project as the context requires, including, but not limited to, in the context of Substantial Completion and issuance of a Certificate of Completion.

(l) "Dispute Resolution Procedure" means the procedure for resolving a dispute among or between the Parties as set forth in Section 10.3 of this Agreement.

(m) "Environmental Conditions" shall mean the environmental conditions on the Property which under applicable Environmental Laws require testing, remediation or monitoring for the uses on such Property as contemplated by this Agreement.

(n) "Environmental Laws" means any and all laws, statutes, ordinances, rules, regulations or orders of any Governmental Authority pertaining to the environment, including the federal Clean Water Act, the federal Clean Air Act, the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, the federal Water Pollution Control Amendments, the Federal Resource Conservation and Recovery Act of 1976, the federal Hazardous Materials Transportation Act of 1975, the federal Safe Drinking Water Act, the federal Toxic Substances Control Act, and any comparable or

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similar environmental laws of the State, including Title 22a of the General Statutes and the Remediation Standard Regulations ("RSRs").[2]

(o) "Environmental Work" means environmental work required to test, remediate or monitor any Existing Environmental Condition which is required to be performed pursuant to any applicable Environmental Law, including remediating any Environmental Condition in excess of the criteria in the RSRs which cannot otherwise be remediated by rendering the soil inaccessible or environmentally isolated consistent with the RSRs.

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

(q) "Event of Default" means a default by either of the Parties of its obligations or covenants hereunder after notice, if required under this Agreement, as described in Article X of this Agreement.

(r) "Excusable Delay" means any delay which is caused by a Force Majeure Event.

(s) "Force Majeure Event" means any event, act, failure to act or circumstances caused by: (i) acts of God, including without limitation, floods, hurricanes, storms, tornadoes, lightning, earthquakes, washouts, and landslides; (ii) fires, explosions or other casualties; (iii) governmental moratorium; (iv) acts of a public enemy, civil commotions or disturbances, riots, insurrections, acts of war, blockades, embargos, terrorism, effects of nuclear radiation, government shutdowns, or national or international calamities; (v) sabotage; (vi) condemnation or other exercise of the power of eminent domain other than the exercise of the power of eminent domain by the City with respect to an Excusable Delay asserted by the City; (vii) the passage or enactment of, or the new interpretation or application of statutory or regulatory requirements or the adoption of any land use plan that adversely impacts on the conveyance or development of the Property; (viii) with respect to the Developer's assertion of Excusable Delay, delays, acts, neglects or faults or violations of the terms of this Agreement on the part of the City or public officials, employees or agents or contractors; (ix) with respect to the City's assertion of Excusable Delay, delays, acts, neglects or faults on the part of the Developer or its employees, agents or contractors; (x) restraint, delay or any similar act by any utility company and any governmental authority (including any reviews and approvals required from a governmental authority), other than the City with respect to an Excusable Delay asserted by the City; (xi) 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, lockouts, or other industrial disturbance; (xii) unusual adverse weather conditions; (xiii) freight embargoes; (xiv) unusual and unanticipated delays in transportation; (xv) unavailability of, or unusual delay in the delivery of, fuel, power, supplies, equipment, materials or labor; (xvi) discovery of an Environmental Condition, including but not limited to hazardous materials, the nature or quantity of which materially affects the ability of the Developer to carry out the required work; (xvii) appeals of any zoning amendments, approvals or permits required for the Development or

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any court or administrative or governmental order directing that the construction of any portion of the Project be stopped; (xix) any other cause beyond the reasonable control of the Party asserting an Excusable Delay, (xx) the failure of any occupant of the Property to vacate the Property including the City (xxi) the failure of a third party to take any action or obtain any approval and/or consent from a governmental authority which is required by a legal requirement in order for the Developer to obtain any zoning or other governmental permit, approval and/or relief.

(t) "Frontier Project" shall have the meaning described in the Project Background, above.

(u) "Full Time Student" means a person who is enrolled in any college or university (i) as an undergraduate student who is taking at least 12 credits a semester (approximately four (4) classes) or (ii) enrolled as a graduate student taking nine credits (approximately three (3) classes), subject to the exceptions provided pursuant to Section 42 of the Internal Revenue Code, including the rules, regulations and applicable laws promulgated in connection with the definition of a full time student for the purposes of Section 42 of the Internal Revenue Code.

(v) "Iron Project" shall have the meaning described in the Project Background, above.

(w) "Legal Requirements" shall mean any and all judicial decisions, orders, injunctions, writs and any and all statutes, laws, rulings, rules, regulations, permits, certificates, or ordinances of any Governmental Authority in any way applicable to the Project including but not limited to any of the aforesaid dealing with the zoning, subdivision, design, construction, ownership, use, leasing, handicapped accessibility, maintenance, service, operation, sale, exchange or condition of the Project. "Legal Requirements" shall not mean Environmental Laws

(x) "Long Term Rental" means the lease, rental or sublet of any residential unit for a period of not less than one year, pursuant to a written lease agreement, at a periodic rent, which is fixed for duration of the lease agreement.

(y) "Low-Income Family" shall mean a family whose annual gross income does not exceed eighty percent (80%) of the median income for New Haven, Connecticut as determined by HUD.

(z) "Market Rate Units" means the residential units of the Project that are not restricted by household income.

(aa) "Permitted Encumbrances" means any exceptions to title approved by Developer prior to the date of acquisition of the Property.

(bb) "Project" shall mean the entire development at the Property contemplated by this Agreement, consisting of the improvements set forth herein.

(cc) "Project Completion Date" shall be the scheduled date for completion in accordance with the Project Schedule or the initial occupancy of the first Affordable Housing Unit, whichever date is later, which date shall be determined separately for each phase of the Project.

(dd) "Project Schedule" shall mean the schedule for construction and completion of the Project as set forth on Exhibit C attached hereto.

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(ee) "Rooming House Unit" means a residential unit, or any part thereof, leased, rented or sublet to more than three unrelated persons, provided if such persons occupy the residential unit as a family unit, the residential unit shall not be deemed a Rooming House Unit.

(ff) "Short Term Rental" means the lease, rental or sublet of any residential unit for a period of less than one year.

(gg) "State" means the State of Connecticut.

(hh) "Substantial Completion" shall mean that the Developer Improvements to be constructed completed to the extent that the buildings or structures to be erected or renovated thereon may be occupied or utilized for their intended purposes notwithstanding any punch list items as may be evidenced by an interim Certificate of Occupancy, for each of the two phases of the Project and which will be determined separately for each phase of the Project.

(ii) "Student Housing" means a residential unit, or any part thereof, leased, rented or sublet to a person who is a Full Time Student.

(jj) "Term" shall mean the period commencing on the Effective Date and ending on the date that is thirty (30) years after the Project Completion Date, as determined separately for each phase of the Project.

(kk) "Very-Low-Income Family" shall mean a household whose annual gross income does not exceed sixty percent (60%) of the median income for New Haven, Connecticut as determined by HUD.

(ll) "Workforce Housing Unit(s)" means not less than twenty percent (20%) of the Market Rate Units in the Iron Project that are restricted to households whose annual gross income does not exceed one hundred twenty percent (120%) of AMI for New Haven, Connecticut determined by HUD, with adjustments for the number of bedrooms in each such unit, provided, however, that in the event subsidy financing programs, including, but not limited to the Build For CT– Workforce Housing Program, or a successor program, are not available to subsidize a portion of the development of the Workforce Housing Units or cannot be utilized in connection with the Project, then the Workforce Housing Units shall be treated as Market Rate Units.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations and Warranties of the Developer

The Developer represents, warrants and covenants that Developer is a limited liability company, duly organized and existing under the laws of the State of Delaware and qualified to do business in the State of Connecticut; (b) Developer has the legal authority to enter into and carry out the transactions set forth in this Agreement; (c) the execution and delivery of this Agreement by Developer has been duly and validly authorized by all necessary corporate action; (d) this Agreement is a legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms; and (e) there are no agreements or contracts to which Developer is a Party which would in any manner impede or prevent 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

The City represents and warrants that (a) the City is a municipal corporation validly existing under the laws of the State of Connecticut; (b) the City has the legal power and authority to execute and deliver this Agreement and to carry out its terms and provisions; (c) said execution and delivery have been duly and validly authorized by all necessary action, (d) this Agreement is a legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms; and (e) except as expressly set forth elsewhere herein, there are no agreements or contracts to which the City is a Party which would in any manner impede or prevent the City from performing its obligations under this Agreement and/or which would impair any of the rights of Gilbane Development Company under this Agreement.

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ARTICLE III

CONVEYANCE OF THE PROPERTY

Section 3.1 Covenant of Sale

Subject to all of the terms, covenants and conditions of this Agreement (including in particular, but without limitation, the provisions of Section 3.5(b) below and the Conditions Precedent) the City covenants and agrees to sell and convey, and the Developer covenants and agrees to purchase, the Property.

Section 3.2 Condition of Property to be Conveyed

The Developer acknowledges that a complete inspection of the Property will be made immediately prior to conveyance. The Developer agrees to accept, without qualification, the Property and each Parcel A-2 and Parcel A-1 in the condition existing at the time of the conveyance of Parcel A-2 and Parcel A-1, respectively.

Section 3.3 Title and Instrument of Conveyance

(a) The sale and conveyance shall be of fee simple title to the Property and shall be by two (2) Quit Claim Deeds, first the deed to Parcel A-2 (the "Parcel A-2 Deed") and second the deed to Parcel A-1 (the "Parcel A-1 Deed" and collectively the "Deeds"), each in form reasonably satisfactory to the Developer and the City, containing no restrictions other than those contained in applicable codes, ordinances and regulations and the applicable restrictions of the Deeds and this Agreement. The Deeds shall be made expressly subject to the terms and provisions of this Agreement, which terms and provisions shall survive delivery of the Deeds.

(b) Notwithstanding any other provision of this Agreement, it is agreed and understood that the Developer shall not be required to accept either the Parcel A-2 Deed or the Parcel A-1 Deed unless it shall be able to obtain title insurance, insuring good and marketable fee simple title free and clear of all liens and encumbrances and subject only to the Permitted Encumbrances. If the City shall be unable to convey such title, the Developer shall have the right to accept such title as the City can convey or require the City use its reasonable best efforts, within an agreed upon timeframe, to provide such title, failing which, Developer may terminate this Agreement. Marketability of title shall be determined in accordance with the Standards of Title of the Connecticut Bar Association.

(c) This Agreement shall be recorded in the New Haven Land Records prior to the recording of the Parcel A-2 Deed.

(d) It is anticipated that Parcel A-2 will be conveyed to a special purpose entity formed by Developer for the purposes of undertaking the Frontier Project, which entity will be controlled by Developer. It is anticipated that Parcel A-1 will be conveyed to a separate special purpose entity formed by Developer for the purpose of undertaking the Iron Project, which entity will be controlled by the Developer. Upon conveyance of Parcel A-2, the Developer's obligations with respect to the development of the Frontier Project and Iron Project will be separate and distinct such that a breach or default under this Agreement with respect to the Frontier Project will not be deemed a breach or default under this Agreement with respect to the Iron Project and visa-verse, such that the Frontier Project and Iron Project are not cross defaulted in any manner.

Section 3.4 Purchase Price

(a) The purchase price for the Property (the "Purchase Price") shall be one million two hundred ninety thousand dollars and zero cents ($1,290,000.00), which shall be paid to the City, in two pro-rata installments based on land area, upon its delivery of each of the Parcel A-2 Deed and the Parcel A-1 Deed to the Developer, provided, however, that the Developer, in its discretion, may elect to pay a disproportionate share of the Purchase Price in connection with delivery of the Parcel A-2 Deed, but in no event shall Developer be entitled to pay less than the pro rata share of the Purchase Price in connection with the delivery of the Parcel A-2 Deed (the "Disproportionate Share Payment"). The payment shall be made by a check drawn to the order of "Treasurer, City of New Haven" or wire transfer to an account designated by the City. It is further agreed and stipulated that if the Developer elects to make a Disproportionate Share Payment in connection for Parcel A-2 and the Iron Project is abandoned for any reason, the Developer shall not be entitled to any refund of any portion of the Disproportionate Share Payment

(b) The City shall allocate fifty percent (50%) of each payment installment as follows:

(i) Fifty percent (50%) to the City's General Fund; and
(ii) Fifty percent (50%) to the Affordable Housing Development Fund

Section 3.5 Time of Sale and Conveyance

The closing for each parcel of the Property shall take place at a time and place to be mutually agreed upon by the City and the Developer, following the satisfaction of the Conditions Precedent or the waiving of any remaining Condition(s) Precedent by the City or the Developer as applicable (the "Closing Date") provided that the Closing Date shall (subject to Excusable Delay) take place within ninety (90) days of such satisfaction or waiver.

Section 3.6 Conditions Precedent to Closing Parcel A-2 (Frontier Project)

(a) The obligation of the City to sell and convey Parcel A-2 in accordance with the terms and conditions of this Agreement shall be subject to the satisfaction of the following Developer Conditions Precedent:

(i) The establishment by the Developer of the Required Frontier Project Zoning (as more particularly described in Section 7.1 below) with any and all applicable appeal periods passed;
(ii) The securing by the Developer of all final, unappealable permits and land use and other approvals required to construct and operate the Frontier Project (including without limitation as described in Section 7.2 below), which approvals shall not be subject to any conditions which (in the reasonable opinion of the Developer) would prevent such operation and which approvals may be evidenced by building plan approval issued by the Office of Building Inspections and Enforcement of the City of New Haven;
(iii) The securing by the Developer of unconditional commitments for all funding required to construct the Frontier Project, or conditional commitments for such funding where it is in the power of the Developer to meet such conditions;
(iv) All State funding requirements have been met, including but not limited to, State procurement requirements, and environmental requirements have been met (inter alia, NEPA assessment and Phase 1 Environmental Assessment);

(v) The Developer has submitted to the City an Environmental Soil Assessment;

(vi) The Developer has submitted copies of the following plans in form and substance reasonably acceptable to the City: Procurement Plan; Compliance Plan for Workforce Requirements During Construction, pursuant to Section 6.2, below; Small Contractor Utilization Plan pursuant to Section 6.3, below; Marketing Plan; Property Management Plan;

(vii) Submission to the City, and all City agency approval, of One Hundred Percent (100%) construction plans for the Frontier Project; and

(b) The obligation of the Developer to purchase Parcel A-2 and carry out the Phase I - Frontier Project in accordance with the terms and conditions of this Agreement shall be subject to the satisfaction of the following City Conditions Precedent:

(i) The City shall have secured authority for and completed the realignment of State Street and shall have secured the termination of any and all public streets or rights of way which would affect Parcel A-2 as provided for in Exhibit [__] – State Street Redesign Plan;

(ii) The City shall have authorized and completed the subdivision of the Property into Parcel A-1 and Parcel A-2;

(iii) The City shall have approved Developer's application for Tax Assessment Deferral provided application is made for the program.

Subject to Excusable Delay, the Conditions Precedent set forth in Section 3.6(a) above shall be satisfied on or about (12) months following the Effective Date (the "Frontier Precondition Period"), provided that the Developer shall have a one-time right to extend the Frontier Precondition Period by six (6) months by providing written notice to the City prior to the expiration of the Frontier Precondition Period (the "Extended Frontier Precondition Period"). Notwithstanding the foregoing, at any time following the Effective Date, the Developer may, by way of written notice to the City, seek to waive the Conditions Precedent or any remaining Conditions Precedent, and the City may by written notice to the Developer agree to accept such waiver so that a closing may take place upon a Closing Date determined in accordance with the provisions of Section 3.5 above. It is agreed, stipulated and understood that in no event may any of the Conditions Precedent be waived by the Developer without the written consent of the City.

(c) In the event that all of the Conditions Precedent are not satisfied or waived within the Extended Frontier Precondition Period, and the City and the Developer do not agree to extend the Extended Frontier Precondition Period, then the City shall not convey the Property, or any parcel thereof, to the Developer and this Agreement may be terminated by the City or the Developer by written notice, whereupon this Agreement shall be null and void and of no further effect. In the event that this Agreement shall have been recorded on the New Haven Land Records, the City and the Developer shall jointly execute a "Notice of Termination" in recordable form which Notice of Termination shall be recorded in the New Haven Land Records.

Section 3.7 <u>Conditions Precedent to Closing Parcel A-1 (Iron Project)</u>

(a) The obligation of the City to sell and convey Parcel A-1 in accordance with the terms and conditions of this Agreement shall be subject to the satisfaction of the Developer Conditions Precedent, namely:

(i) The satisfaction of Conditions Precedent to Closing Parcel A-2 (Frontier Project) as more particularly described in Section 3.6 provided the Developer is not in default of any term or provision of this Agreement after applicable notice and cure periods;

(ii) The establishment by the Developer of the Required Iron Project Zoning (as more particularly described in Section 7.1 below) with any and all applicable appeal periods passed;

(ii) The securing by the Developer of all final, unappealable permits and land use and other approvals required to construct and operate Iron Project (including without limitation as described in Section 7.2 below), which approvals shall not be subject to any conditions which (in the reasonable opinion of the Developer) would prevent such operation;

(iii) The securing by the Developer of unconditional commitments for all funding required to construct the Iron Project Developer Improvements, or conditional commitments for such funding where it is in the power of the Developer to meet such conditions and which approvals may be evidenced by building plan approval issued by Office of Building Inspections and Enforcement of the City of New Haven;

(iv) All State funding requirements have been met, including but not limited to, State procurement requirements, and environmental requirements have been met (inter alia, NEPA assessment and Phase I Environmental Assessment);

(v) The Developer has submitted to the City an Environmental Soil Assessment;

(vi) The Developer has submitted copies of the following plans in form and substance reasonably acceptable to the City: Procurement Plan; Compliance Plan for Workforce Requirements During Construction, pursuant to Section 6.2, below; Small Contractor Utilization Plan pursuant to Section 6.3, below; Marketing Plan; Property Management Plan; ;

(vii) Submission to the City, and all City agency approval, of one hundred percent (100%) construction plans; and

(b) The obligation of the Developer to purchase Parcel A-1 and carry out the Iron Project in accordance with the terms and conditions of this Agreement shall be subject to the satisfaction of the following City Conditions Precedent:

(i) The City shall have secured authority for and completed the realignment of State Street and shall have secured the termination of any and all public streets or rights of way which would affect Parcel A-1 in accordance with Exhibit [__];

(ii) The City have authorized and completed the subdivision of the Property into Parcel A-1 and Parcel A-2;

(iii) The City shall have approved Developer's application for Tax Assessment Deferral provided application is made for the program;

Subject to Excusable Delay, the Conditions Precedent set forth in Section 3.7(a) above shall be satisfied on or about twenty four (24) months of the Closing Date of the Frontier Project (the "Iron Precondition Period"), provided that the Developer shall have a one-time right to extend the Precondition Period by six (6) months by providing written notice to the City prior to the expiration of the Iron Precondition Period (the "Extended Iron Precondition Period"). Notwithstanding the foregoing, at any time following the Effective Date, the Developer may, by way of written notice to the City, seek to waive the Conditions

Precedent or any remaining Conditions Precedent, and the City may by written notice to the Developer agree to accept such waiver so that a closing may take place upon a Closing Date determined in accordance with the provisions of Section 3.5 above. It is agreed, stipulated and understood that in no event may any of the Conditions Precedent be waived by the Developer without the written consent of the City.

(c) In the event that all of the Conditions Precedent are not satisfied or waived within the Extended Iron Precondition Period, and the City and the Developer do not agree to extend the Extended Iron Precondition Period, then the City shall not convey Parcel A-1 to the Developer and this Agreement may be terminated by the City or the Developer with respect to the Iron Project by written notice, whereupon this Agreement shall be null and void and of no further effect with respect to the Iron Project. In the event that this Agreement shall have been recorded on the New Haven Land Records, the City and the Developer shall jointly execute a "Notice of Termination" in recordable form which Notice of Termination shall be recorded in the New Haven Land Records. For the avoidance of doubt, termination of this Agreement with respect to the Iron Project will not result in termination of this Agreement with respect to the Frontier Project.

Section 3.8 Real Estate Conveyance Tax and other Closing Costs

The Developer shall pay the cost of obtaining any policy of title insurance and all other customary closing costs, except for the cost of recording this Agreement and the Deed for the Property. The City will make reasonable efforts to record this Agreement and the Deed at no cost to the City, if so permitted. If not so permitted, the Developer agrees to pay the costs of recording this Agreement and the Deed. Each Party shall be responsible for payment of the legal fees of its own counsel in the negotiation and execution of this Agreement, the Deed and the transfer of the Property.

Section 3.9 Adjustments

Real estate taxes will be adjusted as of the Closing Date in accordance with the custom in the County of New Haven, State of Connecticut. In the event that the Property is exempt from taxation on the assessment date immediately preceding the date on which the Deed is recorded in the New Haven Land Records, the Developer shall be liable for taxes from the Closing Date pursuant to Conn. Gen. Stat. § 12-81a and shall make payment of such taxes in accordance therewith. Any amounts owed by the Developer under this Section 3.7 shall be due and payable in the manner and at the time set forth in Conn. Gen. Stat. § 12-81a.[3]

Section 3.10 Access and Inspections

(a) The Developer acknowledges that the City will convey the Property in an "as is" condition and that the City has not made any representations or warranties to the Developer regarding the condition of any portion of the Property, including any Environmental Conditions, upon which the Developer has relied. The Developer further acknowledges and agrees that it is relying solely upon its own inspection of the Property for all purposes, including without limitation, its conditions and suitability. The Developer acknowledges that the City does not make, has not made and specifically disclaims any representations or warranty, express or implied, regarding the Environmental Condition of any portion of the Property.

(b) Subject to the Developer obtaining and maintaining the insurance hereinafter described, the City shall provide the Developer and its designees and consultants with reasonable access to the Property

[3] Discuss: what exemption applies during the construction period? Discuss interplay between PILOT and as-of-right abatement.

(including, without limitation, unrestricted access to the Property) to perform such inspections and testing (including environmental surveys) as deemed reasonably necessary by the Developer. It is agreed and understood that the Developer shall provide its employees, designees and consultants with appropriate safety equipment for accessing the Property, and that the Developer shall be responsible for causing the Developer's contractor to observe all applicable workplace safety rules and regulations. The Developer shall itself carry and shall cause its designees and consultants to carry appropriate insurance for their anticipated activities at the Property with limits reasonably acceptable to the City, naming the City as an additional insured on such insurance policies.

Section 3.11 Environmental

On and after the date of the delivery of the respective Deed, the Developer shall indemnify, defend and hold harmless the City and the City's officials, employees, agents and successors and assigns from and against any and all liability, fines, suits, claims, demands, judgments, actions, or losses, penalties, damages, costs and expenses of any kind or nature, including, without limitation, reasonable attorneys' fees made or asserted by anyone whomsoever, due to or arising out of, any environmental conditions on the respective Property, including any existing environmental conditions, but excluding any environmental conditions (a) first arising or existing before the Closing Date, or (b) which are caused or contributed to by the City or its agents, contractors or employees. In connection with this Section 3.9, if the Developer is required to defend any such action or proceeding to which action or proceeding the City is made a Party, the City shall be entitled to appear, defend, or otherwise take part in the matter involved, at the City's election (and sole cost and expense), by counsel of its own choosing, provided that any such action does not limit or make void any liability of any insurer hereunder with respect to the claim or matter in questions. This indemnification shall become effective with respect to the applicable Property upon conveyance of the applicable Property to Developer and shall survive the termination or expiration of this Agreement.

Section 3.12 Affordable Housing Financing

(a) The City acknowledges that the Developer may be applying for federal, state and city financing, which may include but is not limited to City of New Haven funds, Project Based Section 8 Vouchers, Low Income Housing Tax Credits, Tax Exempt Bonds/Loans, Community Investment Funds, Connecticut Municipal Redevelopment Authority, Connecticut Department of Economic and Community Development Brownfields and other state and federal funds, and other construction and permanent funding and financing. The City agrees that it shall cooperate with any reasonable request of Developer, including making application with or on behalf of the Developer as may be required of certain programs, in connection with its efforts to secure the same, at no out of pocket cost to the City, which may include providing letters of support or confirmation of this agreement and the terms hereof.

(b) The Developer covenants and agrees to use all reasonable efforts to secure the subsidies described in Section 3.12(a) above and necessary to support the Affordable Housing Units described in Sections 1.2(c)(i) and 1.2(c)(ii) and the Workforce Housing Units described in Section 1.2(jj).

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ARTICLE IV

THE DEVELOPER IMPROVEMENTS

Section 4.1 General

(a) The Developer agrees, at the Developer's sole cost and expense, to design and thereafter construct the Developer Improvements so as to complete the Project in substantial accordance with all of the terms and conditions of this Agreement.

(b) Without prejudice to the specificity of any portion of the RFQ Response, it is agreed and understood that Phase I of the Project, when completed, shall, at a minimum, include (i) the new construction of the Frontier Project building on Parcel A-2 located at State Street at Chapel street of approximately seven (7) stories above grade, comprising approximately 186,725 square feet (inclusive of parking) and containing one hundred forty five (145) residential rental units of which not less than twenty-five percent (25%), approximately thirty eight (38) shall be Affordable Housing Units; (ii) approximately 5,974 square feet of rentable retail space located on the first floor and (iii) public amenity space as feasible.

(c) Without prejudice to the specificity of any portion of the RFQ Response, it is agreed and understood that in the event the Developer has completed all Phase II Developer Conditions Precedent, the Developer shall proceed with Phase II of the Project which, when completed, shall, at a minimum include (i) the new construction of the Iron Project on Parcel A-1 of approximately twelve (12) stories above grade, comprising approximately 362,522 square feet and three hundred (300) residential rental units, of which not less than twenty-five percent (25%), approximately seventy eight (78) units shall be Affordable Housing Units and of which at least twenty percent (20%) of the Market Rate Units approximately forty five (45) units shall be Workforce Housing Units; (ii) approximately 3,615 square feet of rentable retail space located on the first floor ; and (iii) a public plaza located on State Street between the Frontier Project and the Iron Project of approximately 2,500 square feet.

Section 4.2 Plan and Design

(a) Recognizing the importance of the Developer's commitment in the RFQ Response to construct the Developer Improvements therein described, the Developer agrees to deliver copies of the Developer's preliminary design plans and drawings for the Project (the "Design Documents") prior to commencement of the Project, and provided there shall be no significant increase in cost, materially adverse construction or operational impacts, or lender or funder objections, attributable thereto, to make reasonable efforts to incorporate the City's suggestions in the final Design Documents, provided further that the City delivers such suggestions within thirty (30) days following delivery of the Design Documents to the City. It is agreed and understood that the Developer shall be the ultimate decision maker in connection with any and all design considerations, provided that all such decisions made by the Developer concerning the design of the Developer Improvements shall result in the Project, being constructed and completed in accordance with all of the requirements set forth in this Agreement.

(b) Without prejudice to the generality of Section 4.2(a) above, it is agreed and understood between the Developer and the City that all residential units within the Project shall meet or exceed the CHFA Multi-Family Housing Design, Construction and Sustainability Standards (the "CHFA Standards").

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(c) It is further acknowledged, agreed and understood between the City and the Developer that in order to obtain necessary funding, the Developer may have obligations under the CHFA Energy Conservation and Sustainability Standards , over and above the CHFA Standards and in the event of a conflict between the CHFA Energy Conservation and Sustainability Standards and this Section 4.2 and/or Section 4.5 below, the CHFA Energy Conservation and Sustainability Standards shall prevail.

Section 4.3 Cooperation

(a) The Developer agrees to apply for all permits and approvals required for the construction and operation of the Developers Improvements, including (without limitation) an application for site plan review ("Site Plan Review). To the extent reasonably possible, the City shall assist the Developer in making applications for all approvals and permits required for the Developer Improvements, including any approvals required from the City of New Haven Board of Zoning Appeals (the "BZA"), the CPC, the City of New Haven Traffic Authority (the "NHTA"), the Connecticut Department of Energy and Environmental Protection ("DEEP") and any other municipal, state or federal new governmental agency, board or commission. Notwithstanding the foregoing, the Developer hereby acknowledges and understands that the CPC, the BZA and the NHTA are independent municipal decision-making bodies, and that the City does not have any authority to modify or overturn or otherwise alter any decision made by any such independent municipal body.

(b) Developer further acknowledges and understands that DEEP is an agency of the State of Connecticut and the City has no authority whatsoever over any state or federal agency, board or commission.

(c) The City and Developer acknowledge that construction staging activities will require extensive coordination and planning. For the Frontier Project, the City will provide the Developer with a License Agreement enabling use of a portion of Parcel A-1 for construction staging. The Developer acknowledges that construction staging activities for the Iron Project will require an off-site construction staging plan which is subject to review and approval of the City through normal course of permitting.

Section 4.4 Project Schedule

(a) The Developer shall commence construction of the Project substantially in accordance with the Project Schedule (provided, however, that in no event shall Developer be obligated to commence construction of (i) the Frontier Project prior to the Extended Frontier Conditions Precedent Date and (ii) the Iron Project prior to the Extended Iron Project Date, it being agreed and understood that the Project Schedule may require periodic modification to take account of Excusable Delays and unforeseen conditions and delays, and to the extent that the Developer provides the City with reasonable evidence of the need for such modifications, then the City, acting through the City's Economic Development Administrator and the Developer shall amend the Project Schedule in such manner as is mutually acceptable. If the City and the Developer cannot agree upon such Project Schedule amendments, then such dispute shall be submitted to the Dispute Resolution Procedure.

(b) Subject to Excusable Delay, the Parties agree that Substantial Completion of the Project shall on or about the date set forth in the Project Schedule unless by mutual agreement between the City and the Developer in writing, provided, however, that in the event the date of Substantial

Completion is extended by the lenders, the date of Substantial Completion provided for in the Project Schedule shall be extended to the date of Substantial Completion agreed to by the lenders.

Section 4.5 Commitment to Sustainability

(a) 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 the rehabilitation and construction of the Project Buildings, with a view to long-term responsiveness to climate change. In particular (but without limitation) the Developer shall undertake such carbon reduction measures as may be feasible, including (without limitation) the installation of roof top solar arrays to generate zero carbon electricity, as more specifically provided in Section 4.5(e) below. .

(b) The Developer agrees that the Developer shall design and build the systems serving the Project Buildings (mechanical or electrical) and the envelope of the Project Buildings in such manner as to meet the CHFA Standards.

(c) The Developer agrees to design and build the Project Buildings to meet the required checklist criteria under the Enterprise Green Communities Criteria & Certification (the "Green Communities Checklist"), attached hereto as Exhibit D and made a part hereof. Developer shall submit a copy of the completed Green Communities Checklist criteria, along with a letter from a sustainability consultant confirming that the project documents conform with the submitted Green Communities Checklist. In addition, the Developer shall endeavor to carry out the following optional criteria of the Green Communities Checklist:

(i) Item 1.5 Design for Health and Well-Being Action Plan, Steps 1-6, with the caveat that the developer shall identify and engage a local community health organization, such as the Fair Haven Community Health Center, to collaborate on producing a Health and Well-Being Action Plan. Provided, if the Developer is unable to secure a local partner health organization after reasonable good faith efforts, this criterion shall be waived;[4]

(ii) Item 1.6 Resilient Communities: Multi-Hazard Risk/Vulnerability Assessment; and

(iii) Item 5.10 Resilient Energy Systems: Critical Loads.

(d) The Developer agrees to design and install all electric heating, ventilation and air conditioning systems, and appliances and shall endeavor to design and install all electric hot water in all of the residential units comprised within the Project.

(e) In order to generate electricity for tenants, common areas, and common systems, the Developer shall endeavor to design and build a photovoltaic array with minimum module efficiency of not less than twenty percent (20%) to cover all roof area not utilized for mechanicals, passive solar lighting, or other uses serving the Project, subject to the provisions of Section 4.2(c) regarding historic compliance and approvals.

[4] To be discussed.

(f) The Developer agrees that it will provide Level 2 electric vehicle charging stations in at least five (5%) percent of the parking spaces provided within the Project. The Developer further endeavors to provide another fifteen (15%) percent of the parking spaces provided within the Project as EV-ready.

(g) In order to promote bicycling and bicycle transportation within the City, the Developer will provide an enclosed and secure bicycle storage facility at the exclusive use and direction of the Developer within the Project with the capacity of not less than ten (10) bicycles.

(h) Without limiting the generality of Section 4.2(c) and its application to other design features described herein, all obligations of the Developer pursuant to this Section 4.5 are subject to the Historic Approvals and any conditions and limitations imposed thereby.

Section 4.6 Casualty

In the event of any damage or destruction to any of the Developer Improvements during the Term, and subject to the rights of any mortgagee and investor members and subject to any agreement to the contrary with the City, the Developer agrees, to the extent feasible and commercially practicable, to use all insurance proceeds obtained as a result of such damage or destruction to restore the portion of the Developer Improvements so damaged or destroyed to the condition existing prior thereto.

Section 4.7 Prohibited Uses

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

(b) The Developer hereby agrees that no Affordable Housing Unit as defined in Section 1.2(c) above will be offered for rent, lease or sublet as Student Housing, Short Term Rental, or as Rooming House during the Affordability Period, and that no Workforce Housing Unit as defined in Section 1.2(ll) will be offered for rent, lease or sublet as Short Term Rental or as Rooming House or to a Full Time Student during the Affordability Period.

(c) The restrictions identified in Section 4.7(b) shall not be construed to apply to any residential unit which is a Market Rate Unit.

Section 4.8 Operation and Maintenance of the Property

The Developer shall, during the period it holds title to the Property, keep the Property and all improvements thereon, now or hereafter existing, in good and safe condition and repair, and shall comply with all applicable laws, ordinances, codes and regulations (federal, state or municipal) with respect to the occupancy, operation and maintenance of the same, including, but not limited to New Haven's Inclusionary Zoning Ordinance (Ordinance No. OR-2022-0002).

Section 4.9 Reimbursement of the City

The Developer shall pay all costs and expenses, including a reasonable attorney's fee, as well as any judgments and decrees which may be incurred by the City in proceedings brought to enforce compliance with the provisions of this Agreement, including, without limitation, the obligations set forth in Article IV and Article VI of this Agreement, provided that in any such case the City prevails in such enforcement actions. It is expressly understood, however, that any Mortgagee of all or any portion of the Property shall not be liable to the City for any costs, expenses, judgments and decrees which shall have accrued against the Developer, whether or not such Mortgagee shall subsequently acquire title to the Property.

ARTICLE V
MORTGAGES OF INTEREST IN PROPERTY

Section 5.1 Mortgage of Property by the Developer

(a) Notwithstanding any other provisions of this Agreement, the Developer shall at all times have the right to encumber, pledge, or convey its right, title and interest in and to the Property, or any portion or portions thereof, by way of a bona fide mortgage to secure the payment of any loan or loans obtained by the Developer to finance the acquisition of the Property and/or the Project (a "Mortgage"), provided that any mortgagee holding any such Mortgage (a "Mortgagee") taking title to the Property or part thereof (whether by foreclosure or deed in lieu of foreclosure or otherwise) shall be subject to the provisions of this Agreement and 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 Property after the date of the recording of this Agreement, including the lien of any Mortgage, except for the liens that by law have superiority over this Agreement,

(b) The City shall from time to time, upon not less than fourteen (14) days prior written notice, execute acknowledge and deliver without charge to any Mortgagee, or to any prospective Mortgagee designated by either the Developer or any Mortgagee, or to any prospective purchaser of the Developer's interest in the Property as provided for herein, a statement in writing stating that (i) 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) (ii) no notice of default has been served on the Developer (or if the City has 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) (iii) to the City's knowledge no default exists under this Agreement or state or condition that, with the giving of notice, the passage of time, or both, would become a default (or if any such default does exist, specifying the same) and (iv) the amounts due under this Agreement and any other information as may be reasonably requested.

(c) No voluntary action by the Developer to cancel, surrender, terminate or modify this Agreement shall be binding upon any Mortgagee without its prior written consent, and the City shall not enter into an agreement with the 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 any Mortgagee. In the event that the Developer and the City shall desire to

enter into any such agreement, it shall be the responsibility of the Developer to obtain the consent of each Mortgagee.

(d) Notwithstanding any other provision of this Agreement, no Mortgagee shall become personally liable under this Agreement unless and until it becomes the holder of the Developer's estate 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.

Section 5.2 Foreclosure of Mortgage/Acquisition of the Developer's Estate by Mortgagee

(a) Notwithstanding anything to the contrary in this Agreement, any Mortgagee or any entity, that, directly or indirectly, is owned and controlled by such Mortgagee (a "Designee") may acquire title to the Property by foreclosure or a transfer in lieu of foreclosure without any consent or approval by the City. If a Mortgagee or Designee acquires the Developer's estate in the Property or forecloses its Mortgage prior to issuance of a Certificate of Completion for the Project, such Mortgagee shall, at its option: (i) complete construction of the Developer Improvements in accordance with this Agreement and in all respects (other than time limitations) comply with the provisions of this Agreement with respect to the Property; or (ii) sell, assign or transfer the Developer's estate in the Property to a purchaser, assignee or transferee who shall expressly assume all of the covenants, agreements and obligations of the Developer under this Agreement, other than time limitations, which time limitations shall be reasonably extended by the City. Thereafter, such purchaser, assignee or transferee shall be deemed the "Developer" under the terms of this Agreement with respect to the Project, by written and recordable instrument reasonably satisfactory to the City filed in the New Haven Land Records. It is 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.

(b) In the event a Mortgagee completes the construction of the Developer Improvements to be constructed under this Agreement on the Property or in accordance with this Agreement (other than time limitations), the Mortgagee may sell, assign or transfer fee simple title to the Property to any purchaser, assignee or transferee, without restriction as to the consideration to be received and without the City's consent, provided that if such sale, assignment or transfer is during the Term of this Agreement, the purchaser, assignee or transferee expressly assumes all of the covenants, agreements, and obligations under this Agreement (including specifically, but without limitation, the obligation to maintain the Affordable Housing Units and pay taxes) with respect to the Property which have not yet been performed and which survive the issuance of the Certificate of Completion by written instrument, reasonably satisfactory to the City and recorded in the New Haven Land Records. Provided, further, it is the intention of the Parties that upon a sale, assignment or transfer by a Mortgagee or its designee in accordance with the terms of this Section 5.2(b), 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.

(c) If any Mortgagee acquires the Developer's estate in the Property after issuance of a Certificate of Completion but during the Term, such 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 with respect to the Project, provided any Mortgagee shall have the right to sell, assign or transfer the fee simple title to the Property on the same basis as set forth in this Agreement.

(d) If any Mortgagee becomes the holder of the Developer's estate in the Property, the City acknowledges that any claims or lawsuits or judgments obtained by the City against such Mortgagee and arising under this Agreement shall be satisfied solely out of the Mortgagee's interest in the Property.

(e) The rights of any Mortgagee under this Agreement shall extend to any Designee of the Mortgagee or any assignee or transferee of a Mortgage, provided that 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.

Section 5.3 Notice of Default to Mortgagee

(a) If the City shall deliver a Default Notice to the Developer the City shall simultaneously give a copy of such Default Notice to each Mortgagee at the address theretofore designated by the Mortgagee. Any such copy of a Default Notice shall be given in the same manner provided in the Agreement for giving notices between the City and the Developer. No Default Notice given by the City to the Developer shall be binding upon or affect the Mortgagee, unless the City shall have delivered to such Mortgagee a copy of the Default Notice. In the case of an assignment of a Mortgage or change in address of the Mortgagee, the assignee or Mortgagee, by written notice to the City, may change the address to which copies of Default Notices are to be sent.

(b) A Mortgagee shall have the right to perform any term, covenant, or condition and to remedy any default by the Developer under this Agreement with respect to the Property subject to its Mortgage within the applicable time period to cure a default afforded the Developer, plus an additional period of thirty (30) days, which period shall be reasonably extended if the default is not in the payment of money and the Mortgagee commences to remedy the default within such period and thereafter diligently prosecutes such remedy to completion with respect to the Property subject to its Mortgage. Further, the default is of a nature that possession of the Property by the Mortgagee is reasonably necessary for the Mortgagee to remedy the default, a Mortgagee shall be granted an additional period of time within which to obtain possession, provided that a 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. Additionally, the period for a Mortgagee to cure a default in the failure to substantially complete construction of any portion of the Property on which it holds a Mortgage when required to do so under this Agreement shall be extended for the period during which a Mortgagee is diligently and continuously working towards completion of the construction.

(c) The City shall accept performance by a Mortgagee of the Developer's obligations under this Agreement with the same force and effect as if furnished by the Developer. In the event that a Mortgagee elects to cure a default occasioned by the failure of the Developer to (i) complete the Developer Improvements or (ii) maintain the Affordable Housing Units in accordance with this Agreement, then, upon completion of such construction work and/or compliance with the requirements to maintain Affordable Housing Units, such curing Mortgagee shall be entitled to a Certificate of Completion with regard to the completion of the construction work in accordance with the provisions of Section 8.3 of this Agreement and/or confirmation of compliance with regard to the leasing of the Affordable Housing Units in accordance with the provisions of Section 9.2, upon which all rights of the City arising as a result of such default by the Developer shall terminate.

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Section 5.4 New Development Agreement

(a) 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 the Mortgagee or its Designee, at the request of the Mortgagee or its Designee, with respect to the Property on which the Mortgagee holds a Mortgage(s) 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 that such Mortgagee shall make written request to the City for such new agreement within sixty (60) days from the date it receives notice of such termination.

(b) In the event that the City and the Mortgagee enter into a new agreement, the City shall be under no obligation to remove from the Property the Developer or anyone holding by, through or under the Developer, and the Mortgagee shall take the Property which was the subject of the Mortgagee subject to (i) the possessory rights, if any, of the Developer and such occupants, (ii) any and all liens and encumbrances that existed at the time of the conveyance of the Property to the Developer; (iii) any other encumbrances which the City shall have entered into or approved under and in accordance with the terms of this Agreement; (iv) the lien of taxes on the Property 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 with respect to the Property shall survive the execution of any new agreement among the City, if applicable, and the Mortgagee (or its Designee) pursuant to this Section 5.4 and that such execution shall not release or be deemed to release the Developer from any liability for failure to perform any such covenant, duty or obligation. In the event that more than a single Mortgagee shall make a request for a new agreement hereunder with respect to the Property, 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.

ARTICLE VI

TOGETHER WE GROW

Section 6.1 Permanent Jobs

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

(a) notwithstanding the minimum obligations set forth in Section 6.2 and Section 6.3 below, the Developer shall use best good faith efforts to collaborate with New Haven Works and the region's workforce board (the "Workforce Alliance") towards the maximization of the use of local labor with respect to construction of the Project, to the extent to which the Developer has complete discretion concerning employment opportunities;

(b) The Developer shall advocate on behalf of New Haven Works and the Workforce Alliance with the Developer's management team and commercial and retail tenants with respect to entry into partner agreements with New Haven Works and the Workforce Alliance in order to maximize opportunities for New Haven residents to obtain permanent jobs created as a result of the Project.

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

Section 6.2 Workforce Requirements During Construction

(a) In carrying out the construction of the Project, the Developer shall comply with, or require that its general contractor for the Project comply with, all applicable City workforce requirements now and hereafter existing, including, without limitation, all Equal Employment Opportunity requirements and in particular, during the construction of the Project, the Developer agrees that it shall:

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

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

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

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

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

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

B. the Developer shall deliver to the Commission notice of all contracts to be bid, together with the opportunity to review the same and opportunity to attend all pre-bid conferences or other such meetings concerning the same as may take place;

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

D. the Developer shall comply, as a United States employer, with the Immigration and Naturalization Service (INS)'s I-9 verification process, which requires employers to confirm the employment eligibility of workers. The Developer acknowledges that an employer can be fined or otherwise sanctioned for knowingly hiring an undocumented worker; that the I-9 forms also provide employers with a "good faith" defense if they hire someone who later turns out to be working illegally in the United States; and that the Commission will monitor and report of any alleged violations of the I-9 verification process to the proper authorities.

(vi) Utilize to the most reasonable extent (and without prejudice to the specific requirements of Section 6.1 above) manpower programs sponsored or supported by the City or by the Department of Labor of the State of Connecticut (the "DoL") and notify such programs of all job vacancies arising as a result of the Project, together with the Commission's contract compliance unit, and recruitment and training programs sponsored by the City in order to ensure the hiring of qualified minority, women and physically disabled employees, trainees and apprentices it being hereby agreed and acknowledged by the Developer that if the Developer fails to meet compliance requirements and is unable to furnish reasonable evidence of such utilization or evidence of efforts at compliance, then

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the Developer shall automatically be deemed non-compliant with the Developer's obligations under this Section 6.2.

(vii) Include the provisions of Section 6.2(a)(i) and Section 6.2(b)(ii) in every subcontract or purchase order so that said provisions will be binding upon each such subcontractor or vendor.

(viii) Take such action, with respect to any subcontractor, as the City may direct as a means of enforcing the provisions of this Section 6.2, including penalties and sanctions for noncompliance and fines and penalties related to the rules of practice enforced by the City Commission on Equal Opportunities or the SBC office, whichever is applicable, provided however that, in the event the Developer becomes involved in or is threatened with litigation as a result of such direction by the City, the City will intervene in such litigation to the extent necessary to protect the interest of the City and to effectuate the City's Equal Employment Opportunity program.

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

(a) The Developer hereby acknowledges that a finding of a refusal by the Developer, or subcontractor, to comply with any portion of the requirements set forth in this Section 6.2 may result in the refusal of all future bids for any public contract with the City of New Haven, or any of its departments or divisions, until such time as the Developer, or subcontractor (as appropriate) shall bring itself into compliance with the requirements of this Section 6.2.

(b) Without prejudice to the various other penalties and sanctions available to the Commission as a result of the Developer's failure to comply with the requirements of this Section 6.2, the Developer hereby acknowledges the table of financial penalties imposable by the Commission and approved by the City's Board of Alders.

(c) The Developer shall consult with the DoL to determine the wage rate(s) appropriate for the Project, based on the wage levels required pursuant to the various governmental funding sources.

Section 6.3 <u>Small Contractor Utilization Requirements During Construction</u>

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

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

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

B. the submittal of scope specific subcontracting opportunities with the SCDP for distribution; and

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

D. verification of quotes received from subcontractors that were denied because of cost, quality, availability, etc.; and

E. the contractor identified economically feasible units of the Project that could be contracted or subcontracted to certified minority- and women-owned business enterprises in order to increase the likelihood of participation by such enterprises on the contract; and

F. conducting a networking event with owner, construction manager, and prime contractors; and

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G. holding individual trade meetings with construction manager, prime contractors and sub-contractors; and

H. the contractor followed-up initial solicitations by contacting the enterprises to determine whether the enterprises were interested in such contracting or subcontracting opportunity.

(i) To ensure equal opportunities for participation by MBEs and SBEs in the Project, the Developer or its general contractors or construction manager shall notify the SCDP of all construction contracting opportunities for all phases of the Project carried out by the Developer.

(ii) The Developer shall include the provisions of Section 6.3(a) and Section 6.3(b) in every subcontract or purchase order so that said provisions will be binding upon each such subcontractor or vendor.

(iii) The Developer and/or its general contractors or construction manager shall permit information about construction opportunities to be distributed to potential subcontractors via facsimile and email.

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

(v) The Developer shall cooperate with the SCDP in its efforts to encourage mentoring programs and management, technical, and developmental training skills through sub-contracting opportunities.

(b) The Developer shall furnish all information and reports required by the SCDP and to permit access to the Developer's records of and to require that its construction manager, general contractors and subcontractors provide access to their records in order verify compliance with the requirements of this subsection, to provide the SCDP with the opportunity to review proposed contracts prior to the award of the same and to provide such Program with notice of all pre-bid conferences and the opportunity to attend such conferences.

(c) The Developer shall take all reasonable corrective actions requested by the City to comply and to effectuate compliance with the requirements of this Section 6.3.

(d) A finding of a refusal by the Developer, or subcontractor, to comply with any portion of the Program may subject the offending party to any of the sanctions herein or therein provided for, which may include the refusal of all future bids for any public contract with the City, or any of its departments or divisions, until such time as the Developer, or subcontractor (as appropriate) shall bring itself into compliance with the requirements of this Section 6.3.

(e) The Developer shall take such action, with respect to any subcontractor, as the City may reasonably direct as a means of enforcing the provisions of this Section 6.3, including such penalties and sanctions for noncompliance as set forth in this Section 6.3 as related to the rules of practice enforced by the SCDP provided however that, in the event the Developer becomes involved in or is threatened with litigation as a result of such direction by the City, the City will

intervene in such litigation to the extent necessary to protect the interest of the City, and provided further that any such action required to be taken by the Developer shall be at no cost to the Developer. During the pendency of any legal proceedings the Developer shall continue to move forward on the Project and shall not be the guarantor of any outcomes of such litigation.

(f) The Developer acknowledges that the penalties for non-compliance with the provisions of this Section 6.3 include the following penalties, which the Developer shall bring to the attention of all contractors and subcontractors carrying out any portion of the Project:

(i) declaring the Developer or contractor to be nonresponsive and ineligible to receive the award of a contract;

(ii) declaring the Developer or contractor to be an irresponsible bidder and disqualified from eligibility for providing goods or services to the City for a period of up to twelve (12) months;

(iii) the removal of an offending contractor from the City's list of registered SBEs or MBEs; and

(iv) the imposition of a civil penalty on the Developer and/or any offending contractor of up to ten thousand dollars ($10,000.00) in any instance in which the noncompliance is determined to be willful or persistent or with blatant disregard for the provisions of this Section 6.3.

ARTICLE VII

PERMITS AND APPROVALS

Section 7.1 Zoning

(a) It is hereby agreed and acknowledged between the Developer and the City that the Property is now situated entirely within a BD-1 Zone, as defined in the City's Zoning Ordinance and all appeal period for any variances have expired (the "Required Project Zoning") and that such Required Project Zoning is all that is required from a zoning perspective for the Project to be carried out by the Developer in accordance with the terms and conditions of this Agreement, without the need for any special exceptions or other such zoning relief of any description, subject, however, to the provisions of Section 7.1(b) and 7.2 below.

(b) Notwithstanding the provisions of Section 7.1(a) above, in the event of any unforeseen circumstance which requires a modification of the Project in accordance with a modification agreement (the "Modification Agreement") agreed and executed by both the City and the Developer, but the Project, in its modified form pursuant to the Modification Agreement could not be completed within the parameters of the Required Project Zoning, then the City shall cooperate with the Developer in seeking such zoning relief as may be necessary, provided it is agreed and understood that the City's executive departments have no control over decisions made by the City's Board of Alders, the City Plan Commission or the City's Board of Zoning Appeals (as appropriate). If zoning relief is required, but not obtained (or is inadequate) following exhaustion of all administrative appeals, then it shall be the responsibility of the City and the Developer to act reasonably in the negotiation and execution of a

modification to the Modification Agreement, whereby the Project may be carried out in accordance with the Required Project Zoning, or (if appropriate) such inadequate zoning relief as may have been obtained, utilizing the Dispute Resolution Procedure to the extent necessary.

(c) To the extent that the Developer shall seek the Required Project Zoning prior to acquisition of the Property, the City shall execute such applications with respect thereto as may be reasonably necessary for such purpose.

Section 7.2 Site Plan Review

The Developer shall file for Site Plan Review (and, if applicable, Coastal Site Plan Review and/or special permits) for approval of the Developers Improvements with the City Plan Commission pursuant to the applicable sections of the Zoning Ordinance. Any changes to any matters contemplated by this Agreement approved by the City Plan Commission as part of its Site Plan Review or Coastal Site Plan 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.

Section 7.3 Permits

The Developer shall apply for all required building permits, certificates of occupancy, street openings and other permits as may be required for the construction of the Developer Improvement or the operation of the Project.

Section 7.4 Greater New Haven Water Pollution Control Authority

The Developer shall apply for and obtain such permits and approvals as may be necessary for an extension of the collection system and the lawful discharge of surface waters from the Property. To the extent required by Section 4 of the GNHWPCA Sewer Ordinance, as amended, the City's BOA consents and approves any extension of the GNHWPCA collection system.

ARTICLE VIII

THE DEVELOPER IMPROVEMENTS, CERTIFICATE OF COMPLETION AND ASSIGNMENT

Section 8.1 Construction Progress Reports

The Developer shall provide the City with construction progress reports every ninety (90) days after construction of the Developer Improvements commences. Such reports, which shall be made publicly available, shall state whether any dates on the Project Schedule have been met and any anticipated difficulties in meeting such dates and shall include a list of any and all Force Majeure Events claims to result in Excusable Delays.

Section 8.2 Insurance

The Developer shall obtain and shall cause its general contractor to obtain general liability insurance in the amount of Three Million and No/100 Dollars ($3,000,000.00) per occurrence and Three

Million and No/100 Dollars (3,000,000.00) aggregate (or Three Million and No/100 Dollars ($3,000,000.00) combined single limit) and shall name the City as an additional insured on all such insurance policies. The Parties agree that the Developer's insurance coverage obligations under this Section 8.2 may be satisfied (in whole or in part) by an insurance policy providing umbrella coverage. In addition, the Developer shall cause all construction subcontractors to obtain general liability insurance in the amount of One Million and No/100 Dollars ($1,000,000.00) per occurrence and Two Million and No/100 Dollars ($2,000,000.00) aggregate and shall name the City as an additional insured on all such insurance policies.

Section 8.3 Certificate of Completion

(a) After Substantial Completion of the Developer Improvements, the Developer shall give notice via certified mail return receipt requested to the Economic Development Administrator of the City, with a copy to the Economic Development Administrator, of the same. Notwithstanding any other provision of this Agreement, the Economic Development Administrator shall cause the Developer Improvements to be inspected within thirty (30) days of a request for a Certificate of Completion and shall furnish such Certificate of Completion within forty-five (45) days of the Developer's request for the Certificate. The Certificate of Completion shall be in such form as will enable it to be recorded on the New Haven Land Records. For the avoidance of confusion, the legal right to occupy the Project is governed exclusively by the issuance of a Certificate of Occupancy by the City under applicable laws and the Certificate of Completion referenced in this Section addresses only the Developer's satisfaction of its obligations under this Agreement.

(b) The Certificate of Completion shall be a conclusive determination that the Developer has (i) Substantially Completed the construction of the Developer Improvements and (ii) complied with all other obligations under this Agreement concerning the development of the Project (including, without limitation, the obligations set forth under Article IV and Article VI of this Agreement). Upon the issuance of the Certificate of Completion, the Developer shall have no further obligations under the terms of this Agreement except the Developer's obligations under Section 4.7 (Prohibited Uses), Section 4.8 (Operating and Maintenance of the Property), Section 4.9 (Reimbursement of the City), and Article IX (Affordable Housing), which shall continue for the duration of the Term, and except those provisions of this agreement that expressly survive termination or expiration of this Agreement.

(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 8.3, the Economic Development Administration 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 meet the requirements of Section 8.3(b) above, and what measures or acts will be in necessary for the Developer to take or perform in order to obtain such certification. Following receipt of such written statement, the Developer shall promptly carry out the corrective measures or acts described in the written statement, and a Certificate of Completion will be delivered to the Developer within thirty (30) 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.

Section 8.4 Assignment

It is hereby agreed and stipulated that prior to the issuance of a Certificate of Completion, the Developer shall not, without the City's written permission, transfer or assign any of its rights or obligations under this Agreement with respect to the Property or the Project other than to an Affiliate, which Affiliate agrees in writing to the City to assume all of the obligations of the Developer under this Agreement. 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 Developer shall provide the City with the written agreement of the Affiliate to assume all of the obligations of this Agreement in such form as shall be reasonably acceptable to the City. Any assignment of any interest in this Agreement which is made in contravention of the provisions herein shall be considered an Event of Default entitling the City exercise any and all of the rights and remedies available to it, whether set forth herein or existing at law or in equity, but in no event shall the City be entitled to punitive, special or consequential damages. Notwithstanding anything to the contrary, Developer may assign this Agreement separately with respect to the two phases to special purpose entities provided that Developer maintains control of such special purpose entities and at least a ten percent (10%) ownership interest and an operationally controlling interest in such special purpose entities.

ARTICLE IX
AFFORDABLE HOUSING

Section 9.1 **Affordable Housing Requirements**

(a) The Developer covenants and agrees that it shall maintain the Affordable Housing Units during the applicable Affordability Period for each of Parcels A-2 and A-1. The Affordability Period for each Phase of the Project shall commence upon the respective Project Completion Date. If applicable, the Developer shall further maintain the Workforce Housing Units for a period of not less than six (6) years as required by the Build For CT, or a successor program, regulations, which period shall be extended as Build For CT subsidies permit (the "Workforce Housing Period"). The Workforce Housing Period for the Iron Project shall commence upon the applicable Project Completion Date. Notwithstanding anything herein to the contrary, the Developer acknowledges that monetary damages are not an adequate remedy at law for any breach of this covenant. Accordingly, if the Developer or the Developer's successors or assigns, shall fail to comply with the provisions of this Section 9.1, then the City shall be entitled to enjoin the Developer, or the Developer's successors or assigns (as appropriate) from leasing or conducting any activity or practice contrary to the terms and conditions of this Agreement and to seek specific performance of the Developer's obligations. In the event that the Developer shall fail to comply with the Developer's obligations under this Section 9.1, the Developer shall have thirty (30) days from the date of receipt of written notice from the City of such failure, to cure the same. Notwithstanding the foregoing, if more than thirty (30) days are reasonably required for a cure, then the Developer will not be in default if the Developer commences such cure within said thirty (30) day period and thereafter diligently prosecutes such the same to completion.

(b) The Developer shall lease each Affordable Housing Unit and each Workforce Housing as a Long-Term Rental to an income qualified tenant. The Developer, or an approved successor may offer longer lease terms to their tenants.

(c) The Developer shall lease the Affordable Housing Units and the Workforce Housing Units as they become available for occupancy in accordance with the terms and conditions of this Agreement and in a manner to satisfy the Affordable Housing Unit requirements as set forth in Section 1.2(c) of this Agreement.

(d) The Developer shall permit, during normal business hours and upon reasonable notice, any duly authorized representative of the City, to inspect any books and records with respect to the incomes of tenants of the Affordable Housing Units and the Workforce Housing Units which pertain to compliance with the restrictions specified in this Agreement, subject to compliance with applicable laws related to tenant records and information.

(e) The Developer shall submit, any information, documents, or certifications reasonably requested by the City which the City shall deem reasonably necessary to substantiate the Developer's continuing compliance with the provisions of the restrictions specified in this Agreement.

(f) The Developer further agrees to submit any and all required documentation as required by the City of New Haven for the purposes of Income Restricted Unit Compliance. Income Restricted Unit Compliance will apply to all the Affordable Housing Units and the Workforce Housing Units as specified in this Agreement. The compliance monitoring will commence one-year (1) from lease up and continue during the Affordability Period and the Workforce Housing Period, as applicable.

(g) The Developer agrees to provide a written report to the Board of Alders identifying all remaining affordability restrictions applicable to the Project together with copies thereof, not later than two (2) years prior to the scheduled expiration of the longest governmental (including CHFA) affordability restrictions applicable to the Project. Such notice shall also include a statement of the intentions and plans of the Developer, if any, for continuation of affordability of the Project. The obligation of Developer pursuant to this Section 9.1(f) shall survive the expiration or termination of the Term of this Agreement and shall be binding upon the Developer's successors and/or assigns.

Section 9.2 Real Property Taxes

(a) The Developer agrees for itself and its successors and assigns that the Developer and its successor or assigns will pay all real property taxes lawfully assessed against the Property and the improvements thereon for which the Developer or its successors or assigns hold legal title for the periods during which the Developer or its successor or assigns hold such legal title, as applicable.

(b) Notwithstanding the foregoing, the parties agree that no provision of this Agreement shall be construed as waving any right the Developer or its tenants or its successors or assigns may have to contest or appeal, in the manner provided by law, any assessment made by the City with respect to the Property and the improvements thereon, or to limit the Developer to apply for any additional tax benefit for which the Developer may be eligible.

(c) Further, notwithstanding the provisions of Section 9.2(a), and 9.2(b), the City and Developer acknowledge that by approving this Agreement, the Board of Alders has consented to a tax abatement agreement for the Property, in accordance with the provisions of Section 28-4 of the Code of Ordinances of the City of New Haven as authorized by Connecticut General Statutes Section 8-215,. In accordance with the Order of the Board of Alders dated [ ] approving this Agreement (the "BOA Order"), a copy of which BOA Order is attached hereto as Exhibit [ ], real estate taxes with respect only to the Affordable Housing Units (and a pro rata portion of the common areas of the Property and Project) shall be abated for a period of twenty (20) years for each of the Frontier Project and Iron Project phase of the Project and the Developer or any successor to the Developer shall make payments in lieu of real estate taxes (the "Affordable PILOT") in an

initial amount for the Grand List Year that the final Certificate of Occupancy for each applicable phase is issued according to the following:

(i) Five Hundred Fifty Dollars and Zero Cents ($550.00) per unit for each Affordable Housing Unit in the Frontier Project; and

(ii) The then prevailing PILOT rate payment for each Affordable Housing Unit in the Iron Project, as evidenced by a letter from the Board of Alders Tax Abatement Committee, as of the expiration of the Iron Preconditions Period. The Tax Abatement Committee letter shall be appended to Exhibit [ ] in recordable form and shall be deemed an approved amendment to this Agreement. The amendment shall be recorded on the New Haven Land Records.

(iii) The applicable Affordable PILOT payment for each Affordable Housing Unit shall be increased at the compounded rate over the prior year Affordable PILOT payment by three percent (3%) per annum and in all other respects in compliance with the BOA Order.

(d) Notwithstanding the generality of the foregoing, it is hereby agreed, stipulated and understood that in the event of any conveyance or other transfer of any interest in the Project or any portion thereof in contravention of the terms of this Agreement prior to the issuance of a Certificate of Completion, the Affordable PILOT payment provided for in Section 9.2(c) shall automatically become null and void and of no further effect without the prior approval of the Board of Alders, acting by and through its Tax Abatement Committee, so that in the absence of such approval, real estate taxes with respect to the entire Project shall be due and payable in accordance with Section 9.2(a). Except as expressly provided herein to the contrary, following the issuance of a Certificate of Completion the provisions of this Section 9.2 shall inure to the benefit of any successors and/or assigns of Developer that acquire title to the Property.

(e) In the event that the Developer or its successor and assigns transfers title to the Property or any portion thereof or any improvements thereon to a Housing Authority or other entity that is statutorily exempt from real property taxes (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 ("PILOT") Agreement with the City for a term of not less than the balance of the Affordability Period, which agreement shall incorporate both the obligations contained in the Affordable PILOT, if then in existence, and shall otherwise be reasonably acceptable to the City and shall be subject to approval by the BOA. The provisions of this Section 9.2(d) shall expressly survive the Closing and be binding upon the Developer's successors or assigns and/or any portion thereof or any improvements thereon conveyed.

(f) In the event that any conveyance of title to any portion of the Property or any improvements thereon to an Exempt Entity is made in contravention of the provisions of Section 9.2(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 with the Exempt Entity and for any other damages that the City may suffer as a result of the breach of the obligations set forth in this Section 9.2.

(g) The City and the Developer acknowledge and agree that the entire savings from the full term of the abatement granted herein shall be used, and are necessary, in order to (1) to reduce rents below the levels which would be achieved in the absence of abatement; (2) to improve housing quality and

design; (3) to effect occupancy by persons and families of varying income levels, within prescribed limits; or (4) to provide necessary related facilities or services; all of which the City acknowledges are depicted and reflected in the current plans for the Project, unit mix, affordability and rent limits, financial proformas and projections for the Project.

ARTICLE X
DEFAULT AND REMEDIES

Section 10.1 Default by the Developer

The occurrence of (i) an Event of Bankruptcy; (ii) any failure by the Developer to perform any obligation (including but not limited to providing Affordable Housing Units for the duration of the Affordability Period) under this Agreement where such event or failure shall continue for more than thirty (30) days after receipt of a Default Notice and the Developer fails to provide a response to the Default Notice specifying the actions undertaken or to be undertaken to effect a cure within thirty (30) days after receipt of the Default Notice or such longer period if such default cannot reasonably be cured within thirty (30) days and Developer is utilizing good faith efforts to cure said default; or shall respond to the Default Notice but shall fail to effect the cure specified in such response; (iii) a failure to substantially complete the construction of any portion of the Project by the Substantial Completion Date, excluding any period of Excusable Delay (and for any Mortgagee, any period when the Mortgagee is diligently and continuously working towards completion of the construction), and the failure to cure such default within ninety (90) days of receipt of a Default Notice; or (iv) an assignment or transfer of the Property in violation of Section 8.4, shall be an Event of Default by the Developer.

Section 10.2 Default by the City

The occurrence of (i) a failure by the City to deliver the Deed to the Developer when required to do so under the terms and conditions of this Agreement; or (ii) a failure of the City to perform any other covenant under the terms and conditions of this Agreement where such failure is not cured by the City within thirty (30) days of notice thereof from the Developer, or unless specifically provided otherwise in this Agreement, within such longer time as may be required to cure such failure, provided the City has commenced and is diligently pursuing such cure, shall be an Event of Default by the City.

Section 10.3 Remedies

(a) Except as otherwise provided by way of the Dispute Resolution Procedure described in this Section 10.3, the City and the Developer shall have all rights and remedies available at law and in equity following the occurrence of an Event of Default, provided, however, that neither party shall be liable for punitive, special or consequential damages.

(b) Notwithstanding the provisions of Section 10.3(a) above, it is agreed and understood that the City and the Developer agree that they shall endeavor to resolve any dispute that may arise under this Agreement through the Dispute Resolution Procedure prior to filing suit in any court of competent jurisdiction. Either Party may initiate the Dispute Resolution Procedure by providing a notice of conflict to the other Party (a "Notice of Conflict") setting forth: (i) the subject of the dispute; (ii) the Party's position; and (iii) the relief requested. Within ten (10) business days of delivery of the Notice of Conflict, the receiving Party shall respond in writing with a statement of its position. At the request of either the City or the Developer, the Parties, or their duly authorized representatives having full settlement authority

(which authority of the City may be conditioned on the final approval by a separate committee charged with such authority) shall meet at a mutually acceptable time and place in the City within 15 (15) days of the Notice of Conflict in order to attempt to negotiate in good faith a resolution to the dispute.

(c) 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 on the Effective Date of the Agreement, or under such other rules as the Parties may agree upon. Mediation shall be with the AAA, or, if agreed upon, through use of a private mediator chosen by the Parties to the mediation. The Parties to the mediation shall determine if they will be submitting the dispute to mediation within sixty (60) days following the conclusion of the Dispute Resolution Procedure and shall designate the mediator within this time period. 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 between the Developer and the City. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. 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.

(d) If the dispute is not resolved under Subsection (b) or (c) above, within sixty (60) days after the conclusion of either the Dispute Resolution Procedure and/or mediation, and by agreement of the Parties, the dispute may be referred for an advisory opinion to a neutral party who shall be retained by the Parties, and such neutral party shall establish such procedures as will allow him or her to promptly consider the dispute and issue a written advisory opinion with regard to the issues in dispute. Costs and fees for the neutral party shall be equally shared by the City and the Developer. Third parties relevant to the adjudication of the dispute may be added to the advisory opinion proceedings if agreed to by the City and the Developer. 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.

(e) 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 the Dispute Resolution Procedure, mediation or seeking an advisory opinion will prejudice the rights of any Party. At the request of either the City or the Developer, the Parties shall enter into an agreement to extend the statute of limitations with respect to the subject matter of the dispute for the period of time in which the procedures described above are being utilized. Although either the City or the Developer may commence litigation while the Dispute Resolution Procedure, mediation or an advisory opinion procedure is being pursued for tolling purposes only, such Party must request that the Court stay the case until such time as completion of such Dispute Resolution Procedure, mediation or advisory opinion procedure (as the case may be) has been completed.

(f) If the dispute is not resolved in accordance with the provisions of this Section 10.3, then subject to the provisions of Section 11.14 below, both the City and the Developer shall be entitled to seek all administrative and judicial remedies available, whether at law or in equity, including (without limitation) 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.

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ARTICLE XI

GENERAL PROVISIONS

Section 11.1 Notices

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

IF TO THE DEVELOPER:

Gilbane Development Company
7 Jackson Walkway
Providence, RI 02903
Attn: Molly Stolmeier, Esq.

With a copy to:

Xenolith Partners LLC
P.O. Box 413
Bedford, NY 10506
Attn: Andrea Kretchmer

With a copy to:

Hirschen Singer & Epstein LLP
257 Park Avenue South
New York, New York 10010
Attn: Russell A. Kivler

IF TO THE CITY:

Economic Development Administration
City of New Haven
165 Church Street, 4R
New Haven, Connecticut, 06510
Attn: Economic Development Administrator

Economic Development Administration
Housing Administration and Development
City of New Haven
165 Church Street, 3rd Floor
New Haven, Connecticut, 06510
Attn: Deputy Economic Development Administrator - Housing

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With a copy to:

Office of the Corporation Counsel
City of New Haven
165 Church Street, 4th Floor
New Haven, Connecticut, 06510
Attn: Michael Pinto, Assistant Corporation Counsel

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 Party in the manner required above. 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 notice is sent by certified mail; or (iii) when agreed to by the Parties in writing.

Section 11.2 No Waiver

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

Section 11.3 Rights Cumulative

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

Section 11.4 Successors

This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the City and the Developer, provided that this Section 11.4 shall not authorize any assignment not permitted by this Agreement.

Section 11.5 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 11.6 Governing Law and Jurisdiction

This Agreement is made in the State of Connecticut and shall be governed by and construed in accordance with the laws of the State of Connecticut, without regard to its conflicts of law

principles. Subject to adherence to the Dispute Resolution Procedure, the Parties agree that the state courts of Connecticut and, to the extent appropriate, the federal courts sitting in Connecticut shall have jurisdiction over any dispute arising under this Agreement.

Section 11.7 No Partnership, Joint Venture or Agency

Nothing contained herein or done pursuant hereto shall be deemed to create, between the Parties, any partnership, joint venture or agency relationship.

Section 11.8 Consents

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

Section 11.9 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 11.10 Members and Officers Barred From Interest

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

Section 11.11 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 11.12 No Third-Party Beneficiaries

This Agreement is made solely and specifically for the benefit of the Parties and their respective 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 11.13 Survival

All provisions and conditions of this Agreement which by their terms are to be performed or satisfied prior to the conveyance of the Property shall be deemed to be satisfied upon such transfer and

shall not survive the conveyance, 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 conveyance of the Property. All other provisions shall survive the conveyance of the Property and shall expire upon the expiration of this Agreement or, if earlier, in accordance with the express provisions of this Agreement.

Section 11.14 WAIVER OF JURY TRIAL

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

Signature Pages Follow
[Remainder of This Page Intentionally Left Blank]

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IN WITNESS WHEREOF, the City and the Developer have caused this Agreement to be signed, sealed and delivered by their duly authorized officers, if applicable, as of the day and year first above written.

Signed, sealed and delivered
in the presence of:

_____

_____

CITY OF NEW HAVEN

By: _____
Justin Elicker
Its Mayor
Duly Authorized

Approved as to form and correctness
for the City of New Haven:

_____
Michael Pinto
Assistant Corporation Counsel

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

On this the day of_____, 2025 before me, the undersigned personally appeared, Justin Elicker, Mayor of the City of New Haven, one of the signers and sealers of the foregoing instrument, and acknowledged the same to be the free act and deed of the City of New Haven, and of himself as Mayor thereof, before me.

_____
Commissioner of the Superior Court/
Notary Public
My Commission Expires: _____

[Signatures continue on following page]

Signed, sealed and delivered
in the presence of:

[GDXP NH JV LLC]

_____

_____

By: _____
[Name]
Its President
Duly Authorized

COMMONWEALTH OF PENNSYLVANIA)
) ss. [ ]
COUNTY OF [ ])

On this the ___ day of _____, 2025, before me, the undersigned officer, personally appeared [ ] who acknowledged himself to be the President of Gilbane Development Company, a limited liability company, and he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained as his free act and deed and the free act and deed of the limited liability company, by signing on behalf of Gilbane Development Company by himself as such officer.

In witness whereof I hereunto set my hand.

_____
Printed Name:
Notary Public/ My Commission Expires:
Commissioner of Superior Court

[Signatures continue on following page]

EXHIBIT [ ]
The Property & Legal Description of Parcel A-1 and Parcel A-2

EXHIBIT [ ]

State Street Redesign Plan

EXHIBIT [ ]

RESPONSE TO REQUEST FOR QUALIFICATIONS

EXHIBIT [ ]

DEVELOPER IMPROVEMENTS

Frontier Project Schedule (Parcel A-2 – PHASE I)

Iron Project Schedule (Parcel A-1 – PHASE II)

EXHIBIT [ ]

PROJECT SCHEDULE AND MILESTONES

Frontier Project Schedule (Parcel A-2 – PHASE I)

Acquisition, Financial Closing and Permits by no later than the Extended Frontier Precondition Period (i.e. 18 months from the Effective Date)
Construction Start – within 30 days of the date of the Financial Closing
Construction Completion – 18 months from Construction start

Iron Project Schedule (Parcel A-1 – PHASE II)

Acquisition, Financial Closing and Permits by no later than the Extended Iron Precondition Period (i.e. 30 months from the date of the Frontier Financial Closing)
Construction Start – within 30 days of the date of the Iron Financial Closing
Construction Completion – 18 months from construction start

All dates provided herein are subject to Excusable Delay

EXHIBIT [ ]

EXCERPTS FROM GREEN COMMUNITY CHECKLIST

EXHIBIT [ ]

ORDER OF THE BOARD OF ALDERS