

AS OF APRIL 13, 2005

MASTER AGREEMENT

BY

TOWN OF WEST HARTFORD

AND

BBS DEVELOPMENT, LLC

_____, _____

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MASTER AGREEMENT

This MASTER AGREEMENT (this “Agreement”) is made as of the _____ day of _____, _____, by and between **BBS DEVELOPMENT, LLC** (the “Developer”, as hereinafter defined), a Georgia limited liability company having an address c/o JDA Development Co., LLC, 29 Berlin Road, Cromwell, Connecticut 06416 and the **TOWN OF WEST HARTFORD** (the “Town”), a body corporate and politic and a political subdivision of the State of Connecticut having an address of 50 South Main Street, West Hartford, Connecticut 06107-2431.

RECITALS

A. The Developer desires to acquire and/or develop certain properties located in West Hartford, Connecticut, into a mixed-use retail, office, residential and public improvement development project known as “Blue Back Square”.

B. This Agreement (i) provides for the conveyance from the Town to the Developer of certain properties to be included in the Project; (ii) requires the acquisition by the Developer from third parties of certain other properties to be included in the Project; and (iii) provides for the conveyance from the Developer to the Town of certain properties to be included in the Project and to be owned by the Town following the completion of certain Public Improvements (hereinafter defined) thereon.

C. The combined properties will be developed, through new construction and rehabilitation, by the Developer, to provide up to approximately 160,000 gross square feet of residential space, approximately 247,621 gross square feet of retail space (including approximately 158,019 rentable square feet of general retail space, approximately 30,000 rentable square feet of restaurant space, a theatre containing approximately 24,300 rentable square feet and an American Legion building containing approximately 8,000 gross square feet), approximately 177,658 gross square feet of office space, and a health club containing approximately 30,000 rentable square feet, together with associated parking, and two public parking garages, and additions by the Town to the existing West Hartford Public Library, Town Hall and Police Station (collectively, the “Proposed Project”).

D. On July 14, 2004, the Town Council of the Town adopted an ordinance in substantially the form attached hereto as Exhibit S (the “Bond Ordinance”) authorizing, inter alia, the issuance of bonds and temporary notes of the Town in the total amount of **\$48,821,543** and appropriating the proceeds thereof in order to pay the cost of the Public Improvements portion of the Proposed Project.

E. On July 14, 2004, the Town adopted an ordinance in the form attached hereto as Exhibit T (the “SSD Ordinance”) authorizing, inter alia, the establishment of a Special Services District pursuant to §§7-339m et seq. of the Connecticut General Statutes and encompassing the real property described on Exhibit D attached hereto, which ordinance shall take effect upon approval at referendum to be conducted as provided therein and in accordance with the provisions of said Connecticut General Statutes.

F. As part of the Project financing, the Town expects to receive \$12,612,500, some or all of which will be used to construct or renovate certain municipal buildings.

G. The Town and Developer shall exercise all reasonable efforts to expedite the Project through the efficient and timely processing and coordination of all matters relating to the Project in which it is involved, including, without limitation, review of documents, Plans and site plans and all obligations it has undertaken in accordance with this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE I

DEFINITIONS

For purposes of this Agreement, the following terms shall, unless the context otherwise requires, have the respective meanings assigned to such terms in this Article I or the Section or Article of this Agreement referred to below:

“Active Environmental Remediation Activities” means, with respect to the North Garage Property and as certified by Developer’s LEP: (1) remediation of soil at the entire North Garage Property in accordance with the RSRs to comply with (a) the applicable pollutant mobility criteria and (b) the direct exposure criteria applicable to (i) properties used for residential purposes, or (ii) industrial/commercial purposes, provided that (A) an ELUR has been recorded to allow the use of such standards in accordance with the RSRs, or (B) such industrial/commercial standards have been satisfied under the RSRs but for the preparation and recording of an appropriate ELUR consistent with the terms of this Agreement; (2) the removal of Free Product at the North Garage Property to the maximum extent practicable in accordance with Regulations of Connecticut State Agencies Sections 22a-133k-2(g) and 22a-449(d)-106(f), based upon Developer’s LEP’s reasonable judgment; (3) the completed installation of an operational subsurface ventilation system in the North Garage which is effective at preventing the migration of vapors into the North Garage; (4) any additional remediation activities as necessary to make the North Garage Property available for its intended use as a public parking garage; and (5) commercially reasonable efforts based upon Developer’s LEP’s reasonable judgment have been made to determine the Environmental Conditions beyond the North Garage Property boundary emanating or having emanated from the North Garage Property.

“Additional Closing Deliveries of the Developer” has the meaning set forth in Exhibit NN attached hereto.

“Additional Covenants of the Developer” has the meaning set forth in Exhibit NN attached hereto.

“Affiliate” means any Person controlling, under common control with or controlled by the party in question.

“Agreement” has the meaning set forth in the initial paragraph of this Agreement, as such Agreement may be amended from time to time.

“American Legion” means Hayes-Velhage Post No. 96 American Legion, Incorporated, its successors and assigns.

“American Legion Building” means the two-story building containing a total of approximately 8,000 gross square feet, designed to be constructed on the American Legion Parcel at the location shown on the Site Plan. Any conflict between the American Legion Building as defined herein and “American Legion Building” as described in the Site Plan shall be controlled by the Site Plan.

“American Legion – North Garage Cross-Easement Agreement” means the cross-easement agreement to be entered into by the parties thereto substantially in the form attached hereto as Exhibit B.

“American Legion Parcel” means the parcel of land identified on Exhibit C attached hereto.

“American Legion Property” means, collectively, the American Legion Building and the American Legion Parcel.

“Anticipated Grand Opening Date” means that date set forth as the Anticipated Grand Opening Date in the Construction Schedule (as such date may be extended by agreement of the Parties due to Excusable Delays).

“Architect Completion Certificate” means AIA Document G704, Certificate of Substantial Completion, to be executed and delivered to the Developer and the Town by the Developer’s Architect, pursuant to which the Developer’s Architect shall certify to the Developer and the Town that, to the best knowledge of the Developer’s Architect and based on appropriate inspection under the applicable standard of care, that the portion of the Public Improvements then being certified has been Substantially Completed, and identifying those Punch List Items that have not been completed with respect to such portion of the Public Improvements.

“Arts Theater” means enclosed space in one or more auditoriums for audiovisual presentations by any recognized method or medium, including exhibition of telecasts and current motion pictures and classic motion pictures and independent and foreign language motion pictures; for lectures and educational programs; for theatrical (live) and musical (recorded or live) presentations, and for all uses or services incidental or accessory to the foregoing, but expressly excluding any facility which would constitute any form of Adult-Oriented Establishment regulated pursuant to West Hartford Code of Ordinances, Chapter 177, Article IX.

“Authorized Representative” means, (a) for the Developer, Kenneth D. Narva, Robert N. Wiener and Lucy Wildrick, each of whom may act individually unless otherwise indicated, and such other persons as may be appointed in writing by them from time to time and with prior written notice of such appointment provided to the Town, and (b) for the Town, the Town Manager and such other person as may be appointed in writing by him from time to time.

“BANs” means, collectively, all temporary notes issued by the Town in anticipation of the issuance of the Bonds by the Town.

“BBS Area” means that portion of the North Municipal Lot and Parcel A described or shown on Exhibit Q attached hereto.

“Blue Back Square Improvements” means the portion of the Site Improvements to be located on the BBS Area.

“Blue Back Square SSD” means the Special Services District to be established by the Town pursuant to Section 4.3 for the purpose of availing itself of certain special tax revenue allocations. The boundaries of the Blue Back Square SSD are identified on Exhibit D attached hereto.

“Bond Ordinance” has the meaning set forth in the Recitals.

“Bond Proceeds” means the proceeds derived from the sale of the Bonds as set forth in Article IV.

“Bonds” means the one or more series of bonds to be issued by the Town pursuant to the Bond Ordinance to permanently finance the Public Improvements Cost.

“Building” means, as the context requires, Building A, Building B-1, Building B-2, Building B-3, Building C, Building D, the Pad Building, the American Legion Building, the North Garage, the South Garage, the Town Hall Addition, the Police Station Addition or the Library Addition.

“Building A” means the Existing Education Building, as the same may be demolished and renovated by the Developer (subject to the Façade Restrictions) together with such mixed-use building as may be built by the Developer contiguous to the Existing Education Building or the front primary façade thereof, containing a total of approximately 86,720 square feet of rentable area, including approximately 86,720 rentable square feet of retail space (including general retail space, restaurant(s) and an Arts Theater), all designed to be constructed on Parcel A at the locations shown on the Site Plan and in accordance with the Site Plan. Any conflict between Building A as defined herein and “Building A” as described in the Site Plan shall be controlled by the Site Plan.

“Building B” means, collectively, Building B-1, Building B-2 and Building B-3.

“Building B-1” means the mixed-use commercial building, containing a total of approximately 128,669 square feet of rentable area, including approximately 68,539 rentable square feet of retail and restaurant space, and approximately 60,130 rentable square feet of office space, together with below-grade structured parking for approximately 102 motor vehicles, all designed to be constructed on Parcel B at the locations shown on the Site Plan and in accordance with the Site Plan. Any conflict between Building B-1 as defined herein and “Building B-1” as described in the Site Plan shall be controlled by the Site Plan.

“Building B-2” means the mixed-use residential and commercial building, containing a total of approximately 11,625 rentable square feet of retail and restaurant space, all designed to be constructed on Parcel B at the locations shown on the Site Plan and in accordance with the Site Plan. Any conflict between Building B-2 as defined herein and “Building B-2” as described in the Site Plan shall be controlled by the Site Plan.

“Building B-3” means the mixed use residential and commercial building, containing a total of approximately 65,989 square feet of rentable area, including approximately 57,899 square feet of residential space and approximately 8,090 rentable square feet of retail space, all designed to be constructed on Parcel B at the locations shown on the Site Plan and in accordance with the Site Plan. Any conflict between Building B-3 as defined herein and “Building B-3” as described in the Site Plan shall be controlled by the Site Plan.

“Building B – North Garage Cross-Easement Agreement” means the Reciprocal Easement Agreement to be entered into between the Town and the Developer substantially in the form attached hereto as Exhibit X.

“Building C” means the mixed-use commercial building, containing a total of approximately 152,590 square feet of rentable area, including a health club of approximately 30,000 rentable square feet, office space of approximately 108,725 rentable square feet and retail space of approximately 13,865 rentable square feet, together with below-grade structured parking for approximately 62 motor vehicles, all designed to be constructed on Parcel C/D at the locations shown on the Site Plan and in accordance with the Site Plan. Any conflict between Building C as defined herein and “Building C” as described in the Site Plan shall be controlled by the Site Plan.

“Building C/Building D - South Garage Cross-Easement Agreement” means the Reciprocal Easement Agreement to be entered into between the Town and the Developer substantially in the form attached hereto as Exhibit FF.

“Building D” means the mixed-use residential and commercial building, containing approximately 102,016 square feet of residential space and approximately 20,580 rentable square feet of retail and restaurant space, together with below-grade structured parking for approximately 89 motor vehicles, all designed to be constructed on Parcel C/D at the locations shown on the Site Plan and in accordance with the Site Plan. Any conflict between Building D as defined herein and “Building D” as described in the Site Plan shall be controlled by the Site Plan.

“Building Systems” means with respect to a particular building or building addition (a) all electrical, mechanical, plumbing, security, HVAC, telephone, cable, water, gas, storm sewer, sanitary sewer, and all other utility systems and connections necessary and customary for the operation and maintenance of said building or building addition in accordance with all Legal Requirements, as shown on the Plans, and (b) all life safety and support systems specified in the Plans or otherwise required under any Legal Requirement, including all sprinkler, smoke detection, security and fire prevention systems, together with all equipment, machinery, flues, piping, wiring, ducts, ductwork, panels, instrumentation and other appurtenances related to any of the items listed under clause (a) or clause (b) above.

“Business Day” means any day other than a Saturday, Sunday, legal holiday as recognized in the Town of West Hartford or the State of Connecticut, or any other day on which, in the State of Connecticut, the United States Post Office has no scheduled deliveries.

“Certificate of Completion” means a Certificate of Completion issued pursuant to the provisions of Article XIX certifying to the Substantial Completion of that portion of the Improvements described therein.

“Certifying Party” shall have that meaning set forth in Connecticut General Statutes § 22a-134(6).

“Change” has the meaning set forth in Section 11.3.

“Change Order” means a Developer Change Order or a Town Change Order, as the context requires.

“Claims” has the meaning set forth in Section 20.4.

“Closing” means, individually, as the context requires, the Town Property Closing, the North Garage Closing, or the South Garage Closing, and “Closings” means, collectively, the Town Property Closing, the North Garage Closing, and the South Garage Closing.

“Closing Date” means, individually, as the context requires, the Town Property Closing Date, the North Garage Closing Date, or the South Garage Closing Date.

“Closing Date Deadline” means the Town Property Closing Date Deadline.

“Closing Location” means the law offices of Day, Berry & Howard, LLP, CityPlace I, Hartford, Connecticut, unless otherwise agreed by the parties.

“Completion Notice” means that certain notice to be executed and delivered to the Town by the Developer in connection with the applicable Closing, in the form attached hereto as Exhibit E.

“Condemnation” means any eminent domain proceeding affecting all or any part of the Improvements or the real property on which they are located which: (a) by its terms would be permanent in nature or, if temporary, would extend beyond the applicable Construction Date Deadline or Closing Date Deadline; and (b) involves a taking of (i) any building; (ii) any parking spaces necessary to comply with any Legal Requirement (unless replaced with sufficient parking spaces prior to the applicable Construction Date Deadline or Closing Date Deadline necessary to comply with all Legal Requirements); (iii) more than 10% of the real property on which the applicable building is located if such taking would materially adversely affect the operation of the Improvements; (iv) any of the real property on which the Improvements are located which would cause the Improvements, as built, to violate any Legal Requirement; or (v) any means of access to said real property from a public street unless replaced by a substantially equivalent means of access prior to the applicable Construction Date Deadline or Closing Date Deadline.

“Construction Date Deadline” means, individually, as the context requires, the South Garage Construction Date Deadline, the Library Addition Construction Date Deadline, the North Garage Construction Date Deadline, or the Site Improvements Construction Date Deadline, each as set forth in Exhibit GG attached hereto.

“Construction Easement” means that certain Construction Easement to be entered into by the Developer and the Town substantially in the form attached hereto as Exhibit OO.

“Construction Lender” means the lender of the Construction Loan or, if there is more than one such lender, the administrative agent for the lenders of the Construction Loan, their successors or assigns.

“Construction Loan” has the meaning set forth in Section 3.1(a).

“Construction Loan Documents” means the promissory note evidencing the Construction Loan, any loan agreement providing for advances of the Construction Loan proceeds, any mortgage securing the Construction Loan and any other document, instrument or agreement evidencing or securing the Construction Loan, including, but not limited to, all supplements, extensions,

modifications, amendments, substitutions and replacements now or hereinafter executed by the Developer.

“Construction Schedule” means the construction schedule attached hereto as Exhibit GG, as it may be revised pursuant to Section 14.3, pursuant to any Excusable Delay or otherwise in writing by the Parties.

“Declaration” means a Declaration of Restrictive Covenants substantially in the form of Exhibit AA attached hereto, which the Developer intends to record on the Town Property Closing Date with respect to each Project Parcel.

“Default Rate” the lesser of (x) that per annum interest rate equal to the so-called "prime rate" of interest as published in the Wall Street Journal (or any similar successor publication if the Wall Street Journal ceases to publish the “prime rate”) from time to time, plus three (3) percentage points, and (y) the maximum legal rate.

“DEP” means the State of Connecticut Department of Environmental Protection.

“Developer” means BBS Development, LLC, a Georgia limited liability company, its successors and permitted assigns, pursuant to Article XXII, in connection with the rights and obligations assigned. As of the date hereof, the members of Developer include: Ronus, Inc., a Georgia corporation, and Raymond Road Associates, LLC, a Connecticut limited liability company.

“Developer Change Order” means a change in or modification or supplement to the Plans meeting the requirements of Section 11.3.

“Developer Indemnities” has the meaning set forth in Section 20.4(b).

“Developer Soft Costs” means (a) customary and standard out-of-pocket costs paid by the Developer to third parties for the Public Improvements to be constructed by the Developer pursuant to the Plans (excluding the Town Park) and not attributable to labor, materials and equipment, including, but not limited to, fees of outside accountants, legal fees, permit fees, inspection fees, architectural and engineering fees, design fees, environmental consultant fees, traffic consultant fees, parking consultant fees, insurance premiums, recording and filing fees, title insurance premiums and fees, surveyor’s fees, appraisal fees, and costs of all environmental reports, audits, analyses, assessments and investigations, and (b) with respect to the development, construction and equipping of the North Garage and the South Garage, all fees, costs and expenses attributable to or incurred with respect to the Construction Loan, including, without limitation, interest, points, loan commitment fees, letter of credit fees, participation fees, lender syndication fees, loan administration fees, application fees, processing and underwriting fees, legal fees, appraisal fees, engineering fees, environmental consultant fees, geotechnical engineering fees, mortgage broker fees and other fees, title insurance premiums, title reinsurance premiums, loan closing costs, the costs and expenses of complying with any reserve restrictions, underwriting requirements or loan participation requirements with respect to the portion of the Construction Loan attributable to financing of the North Garage and South Garage to be constructed by the Developer, and including any such costs resulting from the increase in the Construction Loan to accommodate the construction financing of the North Garage and South Garage (such Developer Soft Costs described in this paragraph (b) not to exceed \$3,005,948 unless the applicable Construction Date Deadline has been extended due to an Excusable Delay resulting from any act or omission of the Town, in which case the Developer Soft

Costs shall include all foregoing financing costs incurred by the Developer and arising from the failure to repay, on the original Construction Date Deadline, the Construction Loan proceeds advanced to the Developer to finance the development, construction and equipping of the North Garage and South Garage; provided, however, in no event shall any Excusable Delay caused by the pending litigation described on Exhibit TT or any further litigation related to such litigation be deemed an Excusable Delay resulting from any act or omission of the Town hereunder). Any costs of the nature described in subparagraph (b) that are incurred by the Developer in connection with the Construction Loan but which are not clearly identified by any invoice, contract or receipt (or other evidence reasonably acceptable to the Town) as attributable solely to the portion of the Construction Loan utilized by the Developer to finance its obligations with respect to the North Garage and the South Garage, shall be equitably allocated by the Developer between such Public Improvements (or portion thereof to which they are partially attributable) and to the Private Improvements.

“Developer’s Architect” means, with respect to any portion of the Project, one or more of the Persons identified on Exhibit SS with respect to such portion or such other similarly qualified architect licensed in the State of Connecticut, as the Developer may select, subject to the approval of the Town with respect to the Public Improvements to be constructed by the Developer, which approval shall not be unreasonably withheld, conditioned or delayed.

“Developer’s Construction Manager(s)” means, with respect to any portion of the Project, one or more of the Persons identified on Exhibit I attached hereto with respect to such portion or such other firm which may hereafter be approved by the Developer in its sole discretion and as the construction manager for such portion of the Project upon provision of prior written notice to the Town, subject to the approval by the Town with respect to a substitute construction manager for any portion of the Project comprising a Public Improvement (which approval shall not be unreasonably withheld, conditioned or delayed); provided, however, any construction manager retained by the Developer solely in a consultant or advisory capacity (and not as a constructor or in a contractual relationship with any contractor or subcontractor performing labor or providing materials to the Project) shall not be a “Construction Manager” for purposes of this Agreement.

“Development Property” means the Other Property and the Town Property.

“Dispute Resolution Procedure” means the procedure for resolving disputes between the parties hereto as set forth in Section 15.1.

“Easements” means, collectively, the Construction Easement, the Building C/Building D-South Garage Cross-Easement Agreement, the American Legion – North Garage Cross - Easement Agreement, the Building B - North Garage Cross-Easement Agreement and any other easements or no-build restrictions set forth in any deed or other agreement between the Developer and the Town entered into pursuant to the terms of this Agreement.

“EEB Lease” means the lease of the Existing Education Building to be entered into by the Developer, as landlord, and the Town, as tenant, substantially in the form of Exhibit F attached hereto.

“EEB Notice of Lease” means the Notice of Lease to be entered into by the Developer and the Town in the form of Schedule B to the EEB Lease.

“ELUR” has the meaning set forth in Section 20.1(b).

“Entity” means any general partnership, limited partnership, limited liability company, limited liability partnership, corporation, joint venture, trust, business trust, cooperative, association or other legal business entity or Governmental Authority.

“Environmental Condition” means the presence of any Hazardous Substance equal to or in excess of any applicable criterion in the RSRs at, upon, under, emanating or having emanated from, emitting or having been emitted from the North Garage Property and/or any of the Other Property.

“Environmental Law” means any federal, state, local or municipal law, rule, order, regulation, statute, ordinance, code or requirement of any governmental authority regulating or imposing standards of conduct or other obligations concerning air, water, solid waste, Environmental Conditions, Hazardous Substances, worker and community right-to-know, hazardous communication, noise, radioactive materials, resource protection, subdivision, or inland wetlands and watercourses.

“Environmental Remediation” has the meaning set forth in Section 20.1(a).

“Environmental Reports” means, collectively, the environmental reports listed on Exhibit LL.

“Excusable Delay” means any actual delay in Substantial Completion of the applicable Improvements due to strikes, lockouts, or other labor or industrial disturbance, civil disturbance, act of the public enemy, war, riot, sabotage, blockade, embargo, lightning, earthquake, fire, casualty, storm, hurricane, tornado, flood, washout, explosion, or any other cause whatsoever beyond the reasonable control of the Party responsible for performance, including, without limitation, (a) with respect to Substantial Completion of any Public Improvement to be constructed by the Developer to the extent any of the following results in actual delay in the Developer’s compliance with the Construction Schedule: (i) the failure of the Town or any department or board thereof, in accordance with the terms hereof or of the EEB Lease, to vacate and deliver possession of the Existing Education Building, or (ii) the failure of the Town to review and respond to Plan approval requests or Change Order approval requests and information within the time frames set forth in Sections 11.2, 11.3 or 11.4 or (iii) the occurrence or continuance of a Town Default (as defined in Section 24.1), (b) with respect to Substantial Completion of any Public Improvement to be constructed by the Town, to the extent the following results in actual delay in the Town’s compliance with the Construction Schedule, the occurrence or continuance of a Developer Default (as defined in Section 23.1), (c) with respect to Substantial Completion of any Private Improvement to be constructed by the Developer: (i) the failure of the Town or any department or board thereof, in accordance with the terms hereof or of the EEB Lease, to vacate and deliver possession of the Existing Education Building, or (ii) the occurrence or continuance of a Town Default (as defined in Section 24.1), or (iii) to the extent the following results in actual delay in the Developer’s compliance with the Construction Schedule related to the Private Improvements, the failure of the Town to review and respond to Plan approval requests or Change Order approval requests and information with respect to the Public Improvements within the time frames set forth in Sections 11.2, 11.3 or 11.4 or, with respect to the Private Improvements, and (d) any third-party legal challenge that prohibits or substantially inhibits the ability of the Parties to proceed; provided, however, that for purposes of this definition, the Developer’s lack of funds shall not be deemed to be a cause beyond the control of the Developer unless otherwise solely and directly caused by the occurrence of an event described in subparagraph (a); and provided, further, however, that for purposes of this definition, the Town’s lack of funds shall not be deemed to be a cause beyond the control of the Town unless otherwise solely and directly caused by the occurrence of a Developer Default.

“Existing Education Building” means the building, together with all Building Systems, owned by the Town and located on Parcel A and currently occupied by the Town of West Hartford Board of Education.

“Expenses” has the meaning set forth in Section 20.4.

“Façade Restrictions” means the restrictions substantially set forth in Exhibit H attached hereto with respect to maintaining certain portions of the existing front façade of the Existing Education Building.

“Form III” shall have the meaning set forth in Connecticut General Statutes § 22a-134(12).

“Form IV” shall have the meaning set forth in Connecticut General Statutes § 22a-134(13).

“Form IV Verification” shall have the meaning set forth in Connecticut General Statutes § 22a-134(23).

“Free Product” means “light non-aqueous phase liquid” as defined in Regulations of Connecticut State Agencies Section 22a-133k-1(a)(33) or “free product” as defined in Regulations of Connecticut State Agencies Section 22a-449(d)-101(d)(26).

“Governmental Authority” means any and all courts, boards, agencies, councils, commissions, offices, officials or authorities of any nature whatsoever of any governmental unit (federal, state, county, district, municipal, city, or otherwise), whether now or hereafter in existence, which have jurisdiction over all or any portion of the Project.

“Hazardous Substance” means any substance or material that is defined, listed or otherwise regulated by any federal, state or local governmental entity under any Environmental Law as a hazardous substance, hazardous waste, pollutant, contaminant, toxic waste or chemical, including without limitation, petroleum, petroleum product or by-product, waste petroleum, or any fraction thereof.

“Improvements” means, as the context requires, the American Legion Building, Building A, Building B-1, Building B-2, Building B-3, Building C, Building D, the Pad Building, the North Garage, the South Garage, the Site Improvements, the Town Hall Addition, the Police Station or the Library Addition.

“Interested Owner” has the meaning set forth in the definition of “Tax Payment Agreement” in this Article I.

“JDA” means JDA West Hartford, LLC, a Connecticut limited liability company.

“Land Records” means the land records of the Town of West Hartford.

“Landscaping” means, with respect to any Building, all trees, shrubbery, bushes, grass, fences, decking, patios, sidewalks, irrigation systems, exterior lighting, flag poles, retaining walls, entry fountains, and other landscaping or decorative improvements contemplated by or depicted in the Plans or the Site Plan with respect to said Building.

“Legal Requirements” means any and all judicial decisions, orders, injunctions, writs, and any and all statutes, laws, rulings, rules, regulations, permits, certificates, or ordinances of any Governmental Authority in 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 include Environmental Laws.

“LEP” means a licensed environmental professional as defined in §22a-133v of the Connecticut General Statutes, as amended.

“Library” means the Town of West Hartford Public Library located at the real property known as 20 South Main Street, West Hartford, Connecticut.

“Library Addition” means the building addition to the Library, designed by the Town and to be constructed by the Town on the North Municipal Parcel at the locations shown on the Site Plan and in accordance with the Plans, together with all Building Systems, Landscaping, Personal Property, amenities and improvements contemplated by or depicted on the Plans with respect thereto. Any conflict between Library Addition as defined herein and “Library Addition” as described in the Plans shall be controlled by the Plans, which plans the Town may amend from time to time in its sole discretion.

“Library Addition Construction Date Deadline” means 1:00 p.m. Eastern Standard Time on the later to occur of: (i) the date set forth as the Library Addition Construction Date Deadline in the Construction Schedule, and (ii) six (6) months prior to the Anticipated Grand Opening Date.

“Loan Default” means the occurrence of a material default under the Construction Loan Documents following any notice required to be provided to the Developer by the holder of the Construction Loan and following the expiration of any applicable grace or cure periods specified therein, without such default having been cured by the Developer or waived by the Construction Lender.

“Major Subcontractor” means any subcontractor under a subcontract between the Developer and/or the Developer’s Construction Manager and any subcontractor or material supplier which provides for an aggregate contract price equal to or greater than \$500,000.

“Mortgage” shall mean any mortgage, security agreement or similar agreement creating a lien upon or security interest in the Development Property or any part thereof recorded in the Land Records, as security for a loan to the Developer or loan guaranty or reimbursement obligation incurred by the Developer for purposes of completing, developing, equipping, or operating the Project or any part thereof and/or completing the obligations set forth in this Agreement, and or refinancing any such loan or loans.

“Mortgagee” means any holder of a Mortgage who has notified the Town pursuant to Section 21 of its name and address and the recording data pertaining to its Mortgage.

“Municipal Parcel” means, collectively, the South Municipal Parcel and the North Municipal Parcel.

“Necessary Change” means changes to the Plans and Change Orders to the Plans that are (a) required by any Governmental Authority having jurisdiction over the Project to comply with any Legal Requirement, (b) required to cure any defects or discrepancies in the Plans, (c) necessary because of the unavailability (through no fault of Developer) of materials, equipment, furnishings or appliances or to avoid significant delays in construction attributable to the unavailability (through no fault of Developer) of materials, equipment, furnishings or appliances, or (d) involve minor Changes authorized by the Developer’s Architect so long as they are not inconsistent with the intent of the Plans or the functionality of the applicable Building. Each Necessary Change shall be memorialized by Change Order in accordance with the provisions of Section 11.3 hereof.

“Net Cost Increase” means, with respect to a Town Change Order, the aggregate of all increases attributable to the subject Change, in the cost of the labor, materials, supplies, equipment, general conditions, construction and services required to construct, equip, complete and install (“Cost of the Work”) to the extent such increases due to the subject Change actually increase the Cost of the Work which is the subject of the Change, as determined by the Developer’s Architect, and after taking into account all additions and credits involved in any one Change. The mark-up for general conditions, overhead and profit involved in any such Change shall be equivalent to that provided for in the construction management contract(s) and subcontracts related to the Private Improvements, such mark-up to be memorialized in writing between the Parties when such contracts have been negotiated.

“North Garage” means the structured parking facility containing structured parking for no less than 463 motor vehicles unless such number is limited by the actions of any Governmental Authority, designed to be constructed on the North Garage Parcel at the locations shown on the Site Plan and in accordance with the Plans, together with all Building Systems, Landscaping, Personal Property, amenities and improvements contemplated by or depicted on the Plans with respect thereto. Any conflict between North Garage as defined herein and “North Garage” as described in the Plans shall be controlled by the Plans.

“North Garage Closing” has the meaning set forth in Section 6.2

“North Garage Closing Date” has the meaning set forth in Section 6.2.

“North Garage Construction Date Deadline” means 1:00 p.m. Eastern Standard Time on the date set forth for the North Garage Construction Date Deadline in the Construction Schedule. The North Garage Construction Date Deadline shall be extended (but not beyond twelve (12) months following the initial North Garage Construction Date Deadline, unless such extension is necessary for the Developer to complete Active Environmental Remediation Activities) by that number of days by which Substantial Completion of the North Garage has been delayed by reason of Excusable Delays. The North Garage Construction Date Deadline is also subject to extension pursuant to Sections 11.3 and 11.4 of this Agreement.

“North Garage Cost Savings” means the positive balance, if any, of (a) \$11,100,642.00, less (b) the Public Development Costs incurred by the Developer with respect to the North Garage (excluding the Net Cost Increase, if any, of Town Change Orders related to the North Garage) and paid to the Developer pursuant to Section 5.4(d) and Section 6.4(a)(i), to the extent not previously allocated by the Developer to the Public Development Costs of any other Public Improvement to be constructed by the Developer.

“North Garage Parcel” means, collectively, the parcels of land and air space identified on Exhibit K attached hereto.

“North Garage Parcel Permitted Exceptions” means only those Title Exceptions listed on Exhibit L attached hereto, and such other Title Exceptions as may hereafter be approved by the Town, but expressly excluding, however, any liens, security interests, assignments, or other instruments securing the any indebtedness, and any and all mechanics’, materialmen’s, laborers’, surveyors’, architects’, or other liens (other than those bonded off in a manner reasonably acceptable to the Town and the Title Company) which have attached or which may hereafter attach to all or any portion of the North Garage Parcel.

“North Garage Property” means, collectively, the North Garage Parcel and the buildings and improvements located thereon, including, without limitation, the North Garage. For purposes of the scope of Active Environmental Remediation Activities only, the North Garage Property shall include Isham Road, the proposed “New Street” and such portions of Raymond Road as are reasonably necessary to provide and maintain without interruption pedestrian and/or vehicular access to the North Garage.

“North Municipal Parcel” means Parcel One described on Exhibit BB, on which the Town is to construct the Library Addition pursuant to Section 9.2, and on which the Developer is to construct a portion of the Site Improvements (including a portion of the Blue Back Square Improvements) pursuant to Section 10.1.

“North Parking Lot” means that portion of Parcel B identified as the “North Parking Lot” on Exhibit HH attached hereto, on which the Developer is to construct a surface parking lot containing no less than 28 parking spaces unless such number is limited by the actions of any Governmental Authority.

“North Parking Lot License Agreement” means the Parking Meter License Agreement to be entered into by the Town and the Developer substantially in the form attached hereto as Exhibit M.

“Occupancy Certificates” means all temporary or permanent certificates of occupancy, licenses, permits and certificates required to be issued by any Governmental Authority in order to own, operate, lease and occupy all or any portion of the Improvements in compliance with all Legal Requirements, but does not include the licenses, permits and certificates described on Exhibit EE attached hereto with respect to any of the Public Improvements.

“Other Property” shall mean that portion of the Project Area, with all improvements now or hereafter located thereon, acquired or to be acquired by the Developer from Persons other than the Town, which portion of the Project Area is bounded by Isham Road, Memorial Road and Raymond Road and is more particularly described on Exhibit MM attached hereto.

“Pad Building” means the one-story building, containing a total of approximately 2,993 gross square feet, designed to be constructed on the Pad Premises at the locations shown on the Site Plan and in accordance with the Site Plan. Any conflict between Pad Building as defined herein and “Pad Building” as described in the Site Plan shall be controlled by the Site Plan.

“Pad Lease” means that certain Ground Lease Agreement to be entered into by the Parties on the Town Property Closing Date substantially in the form attached hereto as Exhibit R.

“Pad Notice of Lease” means that certain Notice of Lease to be entered into by the Developer and the Town substantially in the form of Exhibit B to the Pad Lease.

“Pad Premises” means the land demised under the Pad Lease.

“Parcel” means, as the context requires, Parcel A, Parcel B, Parcel C/D, the American Legion Parcel, the North Garage Parcel, the North Municipal Parcel or the South Municipal Parcel.

“Parcel A” means the parcel of land identified on Exhibit O attached hereto, together with the buildings and improvements located thereon.

“Parcel A Permitted Exceptions” means only those Title Exceptions listed on Exhibit P attached hereto and such other Title Exceptions as may hereafter be approved by the Developer, but expressly excluding, however, any liens, security interests, assignments, or other instruments securing any indebtedness, and any and all mechanics’, materialmen’s, laborers’, surveyors’, architects’, or other liens (other than those bonded off in a manner reasonably acceptable to the Developer and the Title Company) which have attached or which may hereafter attach to all or any portion of Parcel A.

“Parcel B” means the parcel of land identified on Exhibit U attached hereto, together with the buildings and improvements located thereon.

“Parcel C/D” means the parcel of land identified on Exhibit V attached hereto, together with the improvements located thereon.

“Parcel C/D Permitted Exceptions” means only those Title Exceptions listed on Exhibit W attached hereto and such other Title Exceptions as may hereafter be approved by the Developer, but expressly excluding, however, any liens, security interests, assignments, or other instruments securing any indebtedness, and any and all mechanics’, materialmen’s, laborers’, surveyors’, architects’, or other liens (other than those bonded off in a manner reasonably acceptable to the Developer and the Title Company) which have attached or which may hereafter attach to all or any portion of Parcel C/D.

“Parties” means, collectively, the Developer and the Town.

“Payments” has the meaning set forth in Section 10.3(a)(ii).

“Payment Bond” means a payment bond in the form of AIA Document A312 or such other form approved by the Developer, the Construction Lender and the Town, with each of the Developer’s Construction Managers, as principal, with a surety company approved by the Construction Lender and licensed to do business in the State of Connecticut, as surety, and with a dual obligee rider in favor of the Town (and, if required by the Construction Lender, in favor of the Construction Lender), all such approvals not to be unreasonably withheld, conditioned or delayed.

“Performance Bond” means a performance bond in the form of AIA Document A312 or such other form approved by the Construction Lender and the Town, with Developer’s Construction Manager or each of Developer’s Major Subcontractors, as principal, with a surety company approved by the Construction Lender and licensed to do business in the State of Connecticut, as surety, with a

dual obligee rider in favor of the Town (and, if required by the Construction Lender, in favor of the Construction Lender), all such approvals not to be unreasonably withheld, conditioned or delayed.

“Permitted Exceptions” means, as the context requires, the Parcel A Permitted Exceptions, the Parcel C/D Permitted Exceptions, or the North Garage Parcel Permitted Exceptions.

“Person” means any individual or Entity.

“Personal Property” means, with respect to any building or building addition, all fixtures, accessions, machinery or equipment set forth in the Plans.

“Plans” means (a) with respect to the Public Improvements, other than Environmental Remediation required under Article XX for Environmental Conditions relating to the North Garage Property, the final plans, specifications, construction drawings and construction phasing plans for the Public Improvements listed on Exhibit Z (to be attached to this Agreement in accordance with Section 11.2), which have been approved by the Town and the Developer prior to the Town Property Closing Date, as the same may be modified pursuant to the provisions of Sections 11.3 and 11.4, and (b) with respect to the Private Improvements, the final plans, specifications, construction drawings and construction phasing plans for the Private Improvements approved by the Developer, as they may be amended from time to time by the Developer, provided that such amendments are consistent with the Site Plan.

“Police Station” means the Town of West Hartford Police Station located at 103 Raymond Road, West Hartford, Connecticut.

“Police Station Addition” means the building addition to the Police Station, that may be designed and constructed by the Town on the South Municipal Parcel at the locations shown on the Site Plan and in accordance with the Plans, together with all Building Systems, Landscaping, Personal Property, amenities and improvements contemplated by or depicted on the Plans with respect thereto. Any conflict between Police Station Addition as defined herein and “Police Station Addition” as described in the Plans shall be controlled by the Plans, which Plans the Town may amend from time to time in its sole discretion.

“Private Improvements” means, collectively, Building A, Building B-1, Building B-2, Building B-3, Building C, the Pad Building, Building D and the American Legion Building.

“Private Improvements Obligations” has the meaning set forth in Section 16.1.

“Project” means the actual implementation of the Proposed Project, pursuant to the terms of this Agreement.

“Project Area” means the real property within the limits of the bold dashed line shown on the drawing attached hereto as Exhibit A.

“Project Parcel” means any of Parcel A, Parcel B, or Parcel C/D.

“Proposed Project” has the meaning set forth in the Recitals to this Agreement.

“Public Development Costs” means, the aggregate cost incurred by the Developer to acquire the North Garage Parcel (but not exceeding \$2,809,040 for the cost of acquiring the North Garage

Parcel), to develop, construct, equip, complete, finance and install the Public Improvements (excluding the Town Park) to be constructed by the Developer in accordance with the Plans and all Legal Requirements, or reasonably expected to be incurred by the Developer after Substantial Completion in achieving full completion of the Project after any Closing in compliance with this Agreement, including, without limitation, all Developer Soft Costs; provided, however, that “Public Development Costs” shall not include any costs incurred by the Developer in connection with the construction or installation (a) of the Mechanical Equipment, Vertical Shafts, Additional Facilities or Telecommunications Facilities (as such terms are defined in the American Legion – North Garage Cross-Easement Agreement), and (b) such portions of any Common Walls and Supporting Components (as such terms are defined in the American Legion – North Garage Cross-Easement Agreement) that would not be required but for the location of the American Legion Building beneath a portion of the North Garage .

“Public Improvements” means, collectively, the South Garage, the North Garage, the Site Improvements, the Library Addition, the Town Hall Addition, the Police Station Addition, and the Town Park.

“Public Improvements Budget” means that certain final budget which allocates (a) the estimated Public Development Costs (including, without limitation, the Developer Soft Costs) among the Public Improvements (excluding the Town Park) to be constructed by the Developer in accordance with the Plans therefor and all Legal Requirements, and (b) the Town Allowance (including the Town Soft Costs) among the Public Improvements to be constructed by the Town pursuant to the terms of this Agreement, which Public Improvements Budget is attached hereto as Exhibit CC.

“Public Improvements Cost” means, collectively, the Public Development Costs and the Town Allowance.

“Punch List Certificate” means a certificate to be executed and delivered to the Town and the Developer by the Developer’s Architect, pursuant to which the Developer’s Architect shall certify to the Town and the Developer that, to the best knowledge of the Developer’s Architect, all Punch List Items have been completed, constructed and installed in substantial accordance with the Plans for the applicable Improvement and all Legal Requirements.

“Punch List Items” means those items of construction, decoration, landscaping and mechanical adjustment relating to the Improvement with respect to which a Punch List Certificate applies which, individually or in the aggregate, are minor in character and do not materially interfere with the full use, enjoyment and occupancy of the applicable Improvements or any material amenity constituting a part of such Improvements, and the appurtenances thereto, and for which it may be reasonably anticipated that the completion shall occur within ninety (90) days (one hundred eighty (180) days for items of a seasonal nature) after Substantial Completion, subject to extension for Excusable Delay. The Punch List Items may include by way of example only, and not limitation, certain of the trees, shrubbery and bushes to the extent prudent practice would require such items be planted after Substantial Completion as a result of weather conditions.

“Related Agreements” means, collectively, the EEB Lease, the Pad Lease, the South Garage Ground Lease, the Easements, the North Parking Lot License Agreement, the Tax Assessment Fixing Agreement, and the ELURs.

“Release” means (a) any spill, discharge, leak, emission, migration, or other release of any Hazardous Substance; (b) a spill as defined in Connecticut General Statutes § 22a-452c; (c) a release as defined in Connecticut General Statutes § 22a-6u; (d) a release as defined in Regulations of Connecticut State Agencies § 22a-133k-1(a)(50); (e) any discharge, spillage, uncontrolled loss, seepage or filtration of a Hazardous Substance reportable under Connecticut General Statutes § 22a-450; or (f) the presence of any Environmental Condition attributable to any other historical event or condition.

“Request for Payment” has the meaning set forth in Section 10.3(a)(ii)(2).

“Right of Re-Entry” means, subject to the terms and conditions of Article XXV, the Town’s rights pursuant to Sections 23.2(b)(1), to re-enter a Project Parcel acquired by the Developer from the Town upon written notice by the Town to the Developer and all Mortgagees of its exercise of such right of re-entry and to terminate the Developer’s (or its transferee’s) estate therein and (except with respect to Parcel C/D under certain circumstances as more particularly described in the deed thereto from the Town to the Developer) pursuant to which fee title to said Project Parcel and all improvements thereon shall revert to the Town, without payment to the Developer for the interests in the land or Improvements so reverted, but subject to any Related Agreement or Declaration that benefits any other real property or Improvement and to any Tax Payment Agreement that benefits an Interested Owner of any Improvement on such Project Parcel for which a Certificate of Completion for such Improvement has been issued.

“RRA Affiliate” means any of the following: (a) JDA, (b) Street-Works, (c) any Affiliate of JDA and/or Street-Works, (d) Blue Back Square, LLC, a limited liability company now or hereafter formed and whose members include (but may not be limited to) Ronus, Inc. and BBS Development, LLC, a Georgia limited liability company, or (e) any other type or form of person or entity provided that JDA, Street-Works and/or an Affiliate of JDA and/or Street-Works continue to be one of the managing members, managers or co-managers of the Developer until the Public Improvements and Private Improvements to be constructed by Developer pursuant to the terms of this Agreement are Substantially Complete.

“RSRs” means, collectively, the Remediation Standard Regulations, Regulations of Connecticut State Agencies, Section 22a-133k-1, et seq.

“Site Improvements” means those certain exterior improvements designed to be constructed within the Project Area, including, without limitation, sidewalks, roadways, trash receptacles, planting pots, planters and plantings, bike racks, lighting fixtures, trees, bushes and other landscaping, sprinklers, bollards, benches and other public seating, decorative improvements, retaining walls and other streetscape improvements and utilities, as more particularly shown and described on the plans listed on Exhibit J attached hereto.

“Site Improvements Construction Date Deadline” means 1:00 p.m. Eastern Standard Time on the date set forth for the Site Improvements Construction Date Deadline in the Construction Schedule. The Site Improvements Construction Date Deadline shall be extended (but not beyond twelve (12) months following the initial Site Improvements Construction Date Deadline) by that number of days by which Substantial Completion of the Site Improvements has been delayed by reason of Excusable Delays. The Site Improvements Construction Date Deadline is also subject to extension pursuant to Sections 11.3 and 11.4 of this Agreement.

“Site Improvements Cost Savings” means the positive balance, if any, of (a) \$13,162,447, less (b) the Public Development Costs incurred by the Developer with respect to the Site Improvements (excluding the Net Cost Increase, if any, of Town Change Orders related to the Site Improvements) and paid to the Developer pursuant to Section 10.3(a), to the extent not previously allocated by the Developer to the Public Development Costs of any other Public Improvement to be constructed by the Developer.

“Site Plan” means the final site plans for the Proposed Project described on Exhibit DD attached hereto, as they have been approved and as they may be amended from time to time pursuant to the regulations, provisions and procedures of all municipal Governmental Authorities having jurisdiction with respect to such final approval or amendment.

“South Garage” means the structured parking facility containing structured parking for no less than 548 motor vehicles unless such amount is limited by the actions of the Governmental Authority, designed to be constructed on the South Municipal Parcel at the locations shown on the Site Plan and in accordance with the Plans, together with all Building Systems, Landscaping, Personal Property, amenities and improvements contemplated by or depicted on the Plans with respect thereto. Any conflict between South Garage as defined herein and “South Garage” as described in the Plans shall be controlled by the Plans.

“South Garage Closing” has the meaning set forth in Section 8.2.

“South Garage Closing Date” has the meaning set forth in Section 8.2.

“South Garage Construction Date Deadline” means 1:00 p.m. Eastern Standard Time on the date set forth for the South Garage Construction Date Deadline in the Construction Schedule. The South Garage Construction Date Deadline shall be extended (but not beyond twelve (12) months following the initial South Garage Construction Date Deadline) by that number of days by which Substantial Completion of the South Garage has been delayed by reason of Excusable Delays. The South Garage Construction Date Deadline is also subject to extension pursuant to Sections 11.3 and 11.4 of this Agreement.

“South Garage Cost Savings” means the positive balance, if any, of (a) \$10,810,453.00, less (b) the Public Development Costs incurred by the Developer with respect to the South Garage (excluding the Net Cost Increase, if any, of Town Change Orders related to the South Garage) and paid to the Developer pursuant to Section 8.4(a)(i) and Section 5.4(c), to the extent not previously allocated by the Developer to the Public Development Costs of any other Public Improvement to be constructed by the Developer.

“South Garage Lease” means that certain Ground Lease Agreement to be entered into by the Parties on the Town Property Closing Date substantially in the form attached hereto as Exhibit PP.

“South Garage Notice of Lease” means that certain Notice of Lease to be entered into by the Developer and the Town substantially in the form of Exhibit B to the South Garage Lease.

“South Garage Property” means, collectively, the South Garage and the real property demised under the South Garage Lease.

“South Municipal Parcel” means Parcel Two described on Exhibit BB, on which the Town may construct the Town Hall Addition and may construct the Police Station Addition pursuant to Section 9.3, and on which the Developer is to construct the South Garage pursuant to Section 8.1 and a portion of the Site Improvements pursuant to Section 10.1.

“SSD Administrative Expenses” means the administrative expenses of maintaining the Blue Back Square SSD, subject to the budget adopted by the Board of Commissioners of the Blue Back Square SSD.

“SSD Parking Facilities License/Services Agreement” means an agreement substantially in the form attached hereto as Exhibit II, to be entered into between the Town and the Blue Back Square SSD on the South Garage Closing Date.

“SSD Revenues” means, collectively: (1) the revenue from the special tax to be levied by the Town at the recommendation of the Board of Commissioners of the Blue Back Square SSD in any tax year following the year in which the Blue Back Square SSD is established, (2) during the license of such facilities under the term of the SSD Parking Facilities License/Service Contract, the gross income from the North Garage and the South Garage, and (3) any revenues generated from permit or other charges levied by the Blue Back Square SSD for use of public amenities and improvements operated by the Blue Back Square SSD under license from the Town.

“Street-Works” means Street-Works Associates, LLC, a New York limited liability company.

“Substantial Casualty” means, with respect to the applicable Improvements as the context requires, any damage or destruction to all or any portion of the applicable portion of such Improvements which may, in the reasonable opinion of the Developer’s Architect, equal or exceed \$500,000 in the aggregate.

“Substantial Completion” or “Substantially Complete”:

(a) means, with respect to the applicable Public Improvements as the context requires, the completion of the construction of such Improvements, including, but not limited to, the construction and installation of the Building Systems, in substantial accordance with the Plans therefor, all applicable Legal Requirements and this Agreement, in a good and workmanlike manner, and in accordance with good construction and engineering practices, free from known defects (structural, mechanical, or otherwise) in design, workmanship, and materials (other than Punch List Items), and the only additional construction that has to be effected are Punch List Items. Substantial Completion shall include the construction, installation, completion, and (if appropriate) operation in their intended fashion in accordance with the Plans therefor and in compliance with all Legal Requirements of the following:

(i) the foundation, all structural components, including, without limitation, areas designed for heavier live loads, and the roof of the applicable building or building addition;

(ii) the exterior and interior of the applicable building or building addition, to its finished, watertight state;

(iii) all Building Systems;

(iv) all Personal Property

(v) all Landscaping, except to the extent completion thereof has been deferred due to seasonal or weather related conditions (provided that, in such event, reasonable reserves have been established within the Public Improvements Budget to pay the costs of completion thereof);

(vi) all other amenities and improvements, including all appurtenances thereto, contemplated by the Plans therefor;

(vii) all driveways, entrances, and exterior walkways;

(viii) all outside hoists removed from the applicable building or building addition and construction debris and materials removed from or within all or any portion of the applicable real property on which the Improvements are located;

(ix) complete trash facilities;

(x) exterior lighting installed; and

(xi) with respect to the Substantial Completion of the North Garage, the Active Environmental Remediation Activities.

In addition, the subject Public Improvements will not be considered Substantially Complete and Developer shall not be deemed to have achieved Substantial Completion until: (i) all Occupancy Certificates have been issued with respect thereto and a copy thereof delivered to the Town, (ii) the Developer has instructed or caused to be instructed the Town's personnel in the operation of all Building Systems and equipment (unless the Developer has made a good faith effort to do so, but has been prevented from doing so through the fault of the Town) or has made arrangements satisfactory to the Town with respect thereto; and (iii) the Developer has delivered to the Town one set of as-built plans and all applicable written warranties relating to the Public Improvements, including, but not limited to the Building Systems (or made copies thereof available for on-site inspection by the Town, with the originals to be delivered as part of the Additional Closing Deliveries of Developer with respect to the subject Public Improvement).

(b) means, with respect to the applicable Private Improvements, the completion of the construction of the applicable Private Improvements to the extent of completion necessary to obtain a certificate of occupancy for the Building shell. The applicable Private Improvements shall be completed (to the extent stated above) in substantial accordance with the Plans, all applicable Legal Requirements and this Agreement, in a good and workmanlike manner, and in accordance with good construction and engineering practices, free from known defects (structural, mechanical, or otherwise) in design, workmanship, and materials. Subject to the space included in the applicable Building being completed only to a "building shell" condition for purposes hereof, Substantial Completion shall include the construction, installation, completion, and (if appropriate) operation in their intended fashion substantially in accordance with the Plans and in compliance with all Legal Requirements of the following:

- (xii) the foundation, all structural components, including, without limitation, areas designed for heavier live loads, and the roof of the applicable Building;
- (xiii) the exterior and interior of the applicable Building, to its finished, watertight state;
- (xiv) all Building Systems (or, in the case of any portion of the Building not utilized for dwellings, trunk lines for the applicable Building Systems);
- (xv) all Landscaping, except to the extent completion thereof has been deferred due to seasonal or weather related conditions;
- (xvi) all other exterior amenities and improvements, including all appurtenances thereto, contemplated by the Site Plan and the Plans therefor;
- (xvii) all driveways, entrances, and exterior walkways;
- (xviii) all outside hoists removed from the applicable Building and construction debris and materials removed from or within all or any portion of the applicable real property on which the Improvements are located;
- (xix) complete trash facilities;
- (xx) exterior lighting installed;
- (xxi) all lobby improvements; and
- (xxii) all ground floor common areas of the Building, the design or location of which is not dependent upon the design and completion of individual retail and office space.

“Substantial Damage” means any damage or destruction of any Improvement, the effect of which is that the portion or portions of such Improvement remaining cannot, in the good faith judgment of the Party identified in the applicable provision in which the defined term is being utilized, be practically and economically used for the purposes for which such Improvement was being used prior to the damage or destruction and, with respect to the Existing Education Building, within the term of the EEB Lease.

“Survey” means an as-built ALTA/ACSM Land Title Survey for the applicable Public Improvement prepared by the Surveyor, certified by the Surveyor as of a date no earlier than thirty (30) days prior to the applicable Closing Date.

“Tax Assessment Fixing Agreement” means that certain Tax Assessment Fixing Agreement between the Town and the Developer with respect to Parcel C/D, which Tax Assessment Fixing Agreement shall be substantially in the form attached hereto as Exhibit Y.

“Tax Payment Agreement” means any Tax Payment Agreement recorded by the Developer with respect to a Project Parcel, the sole purpose of which shall be to provide a mechanism whereby any owner of a real property interest in such Project Parcel (an “Interested Owner”), in order to

protect its interest therein, shall be entitled, but not obligated, to pay any real estate taxes, payments in lieu of taxes, SSD Taxes or similar taxes and assessments if any other owner of a real property interest in such Project Parcel fails to pay the same and such failure could result in a tax lien or other governmental lien against the Interested Owner's interest in such real property, to collect interest thereon at the same rate of interest that may be collected by the Town with respect to overdue real property taxes, to sue the non-paying owner for payment therefor, to record a notice of lien with respect thereto and to foreclose such lien in the manner in which a mortgage is foreclosed.

"Title Company" means (a) with respect to Parcel A or Parcel C/D, First American Title Insurance Company or such other title insurance company licensed to issue policies of title insurance in the State of Connecticut which may hereafter be approved by the Developer in its sole discretion, and (y) with respect to the North Garage Parcel, such title insurance company licensed to issue policies of title insurance in the State of Connecticut which is designated by the Town no later than at least ninety days prior to the North Garage Construction Date Deadline.

"Title Exception" means any lien, mortgage, security interest, encumbrance, pledge, assignment, claim, charge, lease (surface, space, mineral, or otherwise), condition, restriction, option, conditional sale contract, right of first refusal, restrictive covenant, exception, easement (temporary or permanent), right-of-way, encroachment, overlap or other outstanding claim, interest, estate or equity of any nature whatsoever.

"Title Policy" means an ALTA owner's extended coverage policy of title insurance issued by the Title Company and dated the date of the applicable Closing, which shall be issued in a policy amount equal to the fair market value of the land and improvements being insured (as reasonably determined by the insured), and insuring fee simple indefeasible title to the applicable real property in the insured, subject to only the applicable Permitted Exceptions, without exception for bankruptcy or creditor's rights, with any standard area and boundary exception endorsed to except only shortages in area, without any exception for rights of parties in possession, and with any standard exception as to taxes limited to taxes for the then current year and subsequent years not yet due and payable, and such other endorsements and modifications to the form of owner policy which may be reasonably requested by the insured, including survey endorsements, a "comprehensive" or ALTA 9 endorsement, a separate tax lot endorsement, a "Fairway endorsement", an ALTA 3.1 completed structure zoning endorsement with parking and subdivision coverage, an access endorsement, a non-imputation endorsement in favor of any equity investor, an endorsement deleting the creditors' rights exclusion, the co-insurance provisions and the arbitration clause and an endorsement insuring the legal description of the applicable land is the same as that shown on the Survey.

"Town Allowance" means the amount of \$12,612,500 (which includes the Town Soft Costs) for the construction of the Library Addition, Town Hall Addition and/or Police Station Addition.

"Town Change Order" means a change or modification or supplement to the Plans requested by the Town pursuant Section 11.4 and meeting the requirements of Section 11.4.

"Town Hall" means the Town of West Hartford Municipal Building located at 50 South Main Street, West Hartford, Connecticut.

"Town Hall Addition" means the building addition to the south end of the Town Hall designed by and which may be constructed by the Town on the Municipal Parcel at the locations (if any) shown on the Site Plan and in accordance with the Plans, together with all Building Systems,

Personal Property, amenities and improvements contemplated by or depicted on the Plans with respect thereto, subject to modification by the Town in its sole discretion at its sole cost, so long as such modification does not adversely affect the obligations of the Developer hereunder, including its obligations to complete any of the Public Improvements or the Private Improvements Obligations in accordance with the Construction Schedule.

“Town Indemnitees” has the meaning set forth in Section 20.4(a).

“Town Manager” means the Town Manager of the Town as described in Section 1 of Chapter V of the Town Charter, or any successor thereto as the chief executive officer of the Town.

“Town Park” means that certain passive green space, designed to be constructed on land owned by the Town and located on the east side of Raymond Road, West Hartford, Connecticut, at the location shown on the Town Park Plan (as defined in Section 12.8). Any conflict between Town Park as defined herein and “Town Park” as described in the Town Park Plans shall be controlled by the Town Park Plans.

“Town Property” means, collectively, Parcel A and Parcel C/D, together with the buildings and improvements located thereon, including, without limitation, the Existing Education Building.

“Town Property Closing” has the meaning set forth in Section 5.3.

“Town Property Closing Date” has the meaning set forth in Section 5.3.

“Town Property Closing Date Deadline” means 1:00 p.m. Eastern Standard Time on July 31, 2006, as such date may be extended by mutual agreement of the Parties or otherwise pursuant to the terms of this Agreement.

“Town Soft Costs” means out-of-pocket costs paid by the Town to third parties for the Public Improvements to be constructed by the Town pursuant to the Plans for architectural, engineering and design fees, excluding legal fees.

“Town’s Architect” means such qualified architect as the Town may select for design of the Library Addition, Town Hall Addition and the Police Station Addition.

“Town’s Construction Manager” means, with respect to the Library Addition, Town Hall Addition and the Police Station Addition, the Person(s) now or hereafter selected by the Town, if any, as the construction manager or general contractor for such portion of the Public Improvements.

“Transfer Act” means the Connecticut Property Transfer Act, Connecticut General Statutes § 22a-134 et seq.

“Tri-Party Agreement” means an agreement to be entered into among the Construction Lender, the Town and the Developer, materially consistent with the terms of this Agreement.

“Zoning Approvals” means, collectively, (a) the rezoning of any real property on which the Private Improvements are to be located to the Central Business District-High Intensive (CBDH) zoning district, to the extent such real property is not located in such zoning district, (b) the

establishment and/or amendment of one or more Special Development Districts encompassing Parcel A, Parcel B, and or Parcel C/D, as may be required by the Developer including the waiver of parking and yard requirements and increases in building heights and floor area ratios pursuant to the regulations, with respect thereto, (c) the establishment of one or more Special Development Districts encompassing (or the amendment of the existing Special Development District #36 to add thereto) the North Garage Parcel, the South Garage, the land on which the Town Park will be located, the Town Hall Addition, the North Municipal Parcel and/or the South Municipal Parcel, (d) the establishment of one Special Development District encompassing the American Legion Parcel or the amendment of one of the Special Development Districts referred to in the foregoing paragraph (c) to include the American Legion Parcel, (e) the issuance of such subdivision approvals, lot line revision approvals, resubdivision approvals and/or lot split approvals as may be required to consummate the transactions contemplated under this Agreement, including, without limitation, the establishment of each of Parcel A, the North Garage Parcel, Parcel B, Parcel C/D, the American Legion Parcel, the North Municipal Parcel and the South Municipal Parcel as separate building lots, (f) such special use permits as may be required by the Developer, in its sole discretion, for the use of the American Legion Building by the American Legion, (g) special use permits, as necessary, for the Town's operation of the Town Hall Addition, the Police Station Addition, North Garage, South Garage, South Municipal Parcel, Library Addition or Blue Back Square Improvements, the Developer's operation of a theater within Building A or the Developer's operation of the Pad Building, and (h) a wetlands approval with respect to the Town Park.

ARTICLE II

CONDITIONS PRECEDENT TO TOWN PROPERTY CLOSING AND DEVELOPER'S OBLIGATIONS

Section 2.1 Conditions Precedent to Town Property Closing and Developer's Obligations. The Town's and the Developer's obligations to consummate the Town Property Closing, and the Developer's obligations to construct the Public Improvements (excluding the Library Addition, the Town Hall Addition and the Police Station Addition) and to perform the Developer's other obligations hereunder, are subject to satisfaction of the following conditions precedent on or before the Town Property Closing Date Deadline:

- (a) The conditions set forth in Sections 3.1 and 3.2 have been satisfied;
- (b) The Developer has obtained the Zoning Approvals applicable to the development of the Private Improvements (which Zoning Approvals shall not contain any conditions that are not acceptable to the Developer in its sole discretion), the Town and/or the Developer has obtained the Zoning Approvals applicable to the development of the Public Improvements to be constructed by the Developer (which Zoning Approvals shall not contain any conditions that are not acceptable to the Developer in its sole discretion), and any appeal of such Zoning Approvals under Connecticut General Statutes §§8-8(b) and 8-8(c) has been adjudicated by the Superior Court in favor of the defendants or a withdrawal or settlement thereof has been approved by the Superior Court;
- (c) The Developer has obtained a State Traffic Commission certificate for the Project (or a determination that no such certificate is required for the Project), which certificate shall not contain any conditions that are not acceptable to the Developer in its sole discretion;

(d) The Blue Back Square SSD has been established pursuant to the terms of this Agreement, or such other terms as are mutually agreed to by the Developer and the Town in writing, and prior to the Town Property Closing (x) the Blue Back Square SSD shall be approved at referendum by the requisite holders of taxable interests in real property located within the Blue Back Square SSD, (y) either: (i) the Blue Back Square SSD shall be approved at a town-wide referendum if the Blue Back Square SSD has been submitted to a town-wide referendum by petition of the electors of the Town, or (ii) the period for submitting a town-wide referendum petition shall have passed without a petition therefor having been filed, and (z) the Blue Back Square SSD shall not have been dissolved by the owners of taxable property within the Blue Back Square SSD nor shall the SSD Ordinance have been repealed;

(e) The Developer has acquired, or contemporaneously with the consummation of the Town Property Closing, is acquiring fee simple title to the Other Property;

(f) The Developer has entered into one or more construction contracts or construction management contracts with the Developer's Construction Manager covering the construction and rehabilitation of the Improvements to be constructed by the Developer hereunder and provided to the Town copies of such contracts, and the Developer has delivered Performance Bonds and Payment Bonds to the Town with respect to the Improvements to be constructed by the Developer;

(g) The Developer has obtained all building permits necessary to construct the Improvements which it is obligated to construct hereunder, to the extent that the commencement date therefor as shown on the Construction Schedule is within one month after the Town Property Closing (i.e., Building C, the North Garage, the South Garage and a foundation permit for Building D), or the only condition precedent to issuance of the building permits therefor is payment of the building permit application fees with respect thereto;

(h) The Developer has delivered to the Town detailed Plans for the Public Improvements (other than the Library Addition, the Town Hall Addition and the Police Station Addition) prepared by or on behalf of the Developer's Architect and the Town has approved said Plans for the Public Improvements;

(i) Contemporaneously with the Town Property Closing, the Tri-Party Agreement has been executed and delivered by the Town, the Developer and the Construction Lender;

(j) Contemporaneously with the Town Property Closing, the Developer and the Town shall have entered into the Tax Assessment Fixing Agreement, the South Garage Lease, the Pad Lease, the EEB Lease and the Easements described in Article V and shall have amended this Agreement to incorporate those exhibits noted as "To Be Attached" on the Exhibits attached hereto;

(k) If under the provisions of the West Hartford Town Charter an action taken by the West Hartford Town Council in a timely manner and in good faith prior to the Town Property Closing Date and necessary to fulfill the Town's obligations under this Agreement or related to the Proposed Project may be submitted to a Town-wide referendum initiated by

petition of the electors of the Town, either: (i) if such a sufficient petition shall have been submitted, the action shall not have been invalidated at such referendum, or (ii) the period for submitting such a petition shall have passed without a sufficient petition having been filed; and

(l) There is no action, suit or proceeding, which, in the reasonable judgment of the Town Manager upon the advice of the Town's counsel, would materially adversely affect the Developer's financial condition or its ability to perform its obligations hereunder. The Parties acknowledge that one or more of the matters described on Exhibit TT may exist on the Town Property Closing Date, but agree that such existence does not preclude the foregoing condition from being satisfied.

ARTICLE III

FINANCIAL AGREEMENTS AND PROJECT FUNDING

Section 3.1 Developer's Funding Obligations. The Developer's and the Town's respective obligations under this Agreement are conditioned upon the Developer securing the following funding for completion of the Project:

(a) On or before the Town Property Closing Date, the Developer shall close on a construction loan from the Construction Lender in the aggregate principal amount of approximately \$87,000,000 to \$90,500,000 (the "Construction Loan") to fund a portion of the Developer's obligations hereunder other than those obligations funded by the Town prior to or during construction of the Public Improvements to be constructed by the Developer hereunder, which Construction Loan shall be subject to such terms and conditions as are satisfactory to the Developer in its sole discretion.

(b) On or before the Town Property Closing Date, the Developer shall have provided the Town with evidence reasonably satisfactory to the Town that the Developer has or will have sufficient funds to pay in full the portion of the estimated cost of the Private Improvements that is in excess of that portion of the Construction Loan to be advanced for the construction of the Private Improvements. Such evidence shall be deemed to be reasonably satisfactory to the Town if it is satisfactory to the Construction Lender, as evidenced by the closing of the Construction Loan with conditions imposed by the Construction Lender that are reasonably acceptable to the Town.

Section 3.2 Town's Bonding Obligations. The Town shall agree to enact a bond ordinance providing an authorization of Bonds to (a) satisfy the Town's obligations hereunder with respect to payment to the Developer of up to **\$35,073,542** for the Public Development Costs, (b) provide the Town Allowance to the Town in the amount of **\$12,612,500** to meet the estimated costs of the design and construction of the Library Addition, the Town Hall Addition and the Police Station Addition as provided in Article IX below, and (c) provide the Town the amount of **\$1,135,501** to meet estimated issuance costs in connection with the Bonds and the BANs and net temporary interest cost on the BANs. The Bonds in the total amount of **\$48,821,543**, represent the Town's total funding requirement under this Agreement. Notwithstanding anything to the contrary contained in this Agreement and the Exhibits attached hereto, the Town shall not be required to fund any additional monies for the Public Development Costs, except as required hereunder with respect to a Town Change Order issued pursuant to Section 11.4 herein. The Town's and Developer's respective

obligations under this Agreement are conditioned upon the West Hartford Town Council's enactment of the Bond Ordinance which, in the opinion of the Town's bond counsel, shall be final in all respects, including the expiration of any and all applicable periods for the filing of petitions for repeal of the Bond Ordinance.

Section 3.3 Financing Documents. Subject to any applicable restrictions set forth in this Agreement, the Parties hereto shall enter into all documents necessary or appropriate to complete the Project financing, as such documents may be required by the relevant funding sources, at such times as are necessary to initiate and complete the Project in accordance with the terms of this Agreement.

Section 3.4 Town's Covenants. The Town agrees that it shall not seek or rely on any source of funding from the State of Connecticut, or any agency, quasi-agency, or political subdivision thereof, the pursuit of which could adversely affect the Developer's rights or obligations under this Agreement or the Related Agreements, including, without limitation, with respect to the Construction Schedule.

ARTICLE IV

BONDS

Section 4.1 Generally. The Bonds shall be issued at such times, in such amounts and with such terms as the Town may determine in its sole discretion. It is anticipated that the Bond Proceeds, or the proceeds of BANs, shall be used to satisfy the Town's obligations under this Agreement with respect to the payment of Public Development Costs and any other payments to the Developer required hereunder, to fund in part or in whole the Town Allowance for design and construction of the Library Addition, the Town Hall Addition and the Police Station Addition as provided in Article IX below and as described in Exhibit CC, and to fund issuance costs in connection with the Bonds and the BANs and net temporary interest cost on the BANs.

Section 4.2 Bond Terms. The total principal amount of the Bonds shall not exceed **\$48,821,543**.

Section 4.3 Blue Back Square Special Services District.

(a) Prior to the Town Property Closing, the Town shall cause a referendum or referenda of the holders of taxable interests in real property located within the boundaries of the proposed Blueback Square SSD to be held to approve the SSD Ordinance.

(b) The Blue Back Square SSD shall have the power to (and shall) contract with the Town for operation and maintenance of the Public Improvements within the boundaries of the Blue Back Square SSD, including the North Garage, the South Garage, and the Site Improvements, and the administration of the Blue Back Square SSD. On or before the earlier to occur of the South Garage Closing and the North Garage Closing, the Town and the Blue Back Square SSD shall enter into the SSD Parking Facilities License/Service Contract, pursuant to which the Blue Back Square SSD shall pay a fee to the Town equal to the sum of the SSD Revenues less any amounts needed to meet operational, administrative, maintenance or repair expenditures which the Blue Back Square SSD is obligated to make to persons or entities other than the Town.

(c) The Blue Back Square SSD shall remain in existence unless dissolved pursuant to the terms of the SSD Ordinance or applicable law. Neither Blue Back Square, LLC, BBS Development LLC nor any of their respective Affiliates shall support any dissolution of the Blue Back Square SSD after the Town Property Closing Date. In the event of any such dissolution while any of the original Bonds are outstanding, any outstanding obligations of the Blue Back Square SSD shall remain in existence and shall be assumed by the Town; provided, however, that in such case the West Hartford Town Council shall be entitled to continue the levy in order to pay such obligations (subject to the original limitations and cap set forth in the SSD Ordinance).

(d) SSD Revenues shall be paid into the general fund of the Town into separate accounts which shall be maintained by the Town to account for the payment of the Blue Back Square SSD to the Town under the SSD Parking Facilities License/Service Contract.

Section 4.4 Covenant Against Transfer To Tax Exempt Entities. Developer hereby agrees that during the remaining term of any of the Bonds issued under the Bond Ordinance, that it shall not sell or transfer fee title to any of the Private Improvements in the Project Area to any entity if such transfer would make the transferred property exempt from taxation pursuant to § 12-81 and § 7-399m of the Connecticut General Statutes, as amended from time to time prior to any such transfer (other than the sale or transfer of the American Legion Parcel and any improvements constructed thereon to the American Legion).

Section 4.5 Tax Exempt Bond Status. The Developer agrees that during the remaining term of any of the Bonds issued under the Bond ordinance, that it shall not knowingly take any action that would adversely affect the exemption from federal income taxation of interest on the Bonds as determined by the Town and its counsel in its reasonable discretion.

Section 4.6 Developer Payment in Lieu of SSD Levy.

(a) Developer hereby agrees that in addition to the Town's remedies pursuant to Section 23.2 hereof and subject to the terms and conditions of this Section 4.6, the Developer shall be obligated to pay to the Blue Back Square SSD the Payment in Lieu of SSD (as defined herein) on a semi-annual basis on each July 1 and January 1 (following the Substantial Completion date referenced in Section 4.6(a)(ii)) if the following circumstances are met:

(i) The Town Property Closing Date has occurred and the aggregate maximum levy which may be imposed under the SSD Ordinance on all Taxable Interests in Real Estate has not yet reached \$1,714,000.00 utilizing the \$3.45/square foot maximum levy applicable to commercial property interests and the \$1.00/square foot maximum levy applicable to residential property interests ; and

(ii) The Developer fails to Substantially Complete any Private Improvement by the Substantial Completion date therefor identified on the Construction Schedule as the result of any litigation brought by any third party to invalidate any Zoning Approval, the Bond Ordinance, the SSD Ordinance or this Agreement.

(b) As used herein, "Payment in Lieu of SSD" means, with respect to the six month period immediately preceding the applicable semi-annual payment date, an amount equal to the positive balance of the current debt service for such period on the Bonds (and any current

interest payments payable on the BANs) issued pursuant to the terms of this Agreement for the purposes set forth in this Agreement (but not in excess of an aggregate annual amount of \$1,714,000), less the total of:

- (i) the Increased Tax Revenue (hereinafter defined) for such period;
- (ii) the aggregate levy imposed under the SSD Ordinance on all Taxable Interests in Real Estate for such period; and
- (iii) the income from the North Garage and the South Garage for such period after deduction for amounts needed to meet operational, maintenance or repair expenditures for such garages, and operational or administrative expenditures for the Blue Back Square SSD, for such period pursuant to the Blue Back Square SSD budget.

(c) As used herein "Increased Tax Revenue" shall mean the positive balance of the sum of:

(i) all real and personal property taxes assessed against Parcel A, Parcel B, Parcel C/D, the American Legion Parcel and New Street (so-called, so long as it is owned by the Developer), together with all improvements and personal property located thereon (but with respect to either of Parcel B or the American Legion Parcel, only if such improvements are the improvements contemplated for such Parcels under the terms of this Agreement), with respect to the period in question, plus

(iii) all payments for such period payable under the Tax Assessment Fixing Agreement,

less:

(iii) all real and personal property taxes that would have been assessed for such period against the Other Property, together with the improvements and personal property located thereon, if, as of the applicable Grand List date used to calculate taxes for such period, such land, improvements and personal property were in the condition that existed as of the Grand List immediately preceding the Town Property Closing Date and the Zoning Approvals had not been issued, and less:

(iv) any real and personal property taxes that are paid by the Town with respect to such period under the terms of the EEB Lease.

(d) The payment required under this Section 4.6 shall constitute a lien on Developer's interests in any of Parcel C/D, Parcel A or Parcel B (and the improvements located thereon) then owned by the Developer at the time the Payment in Lieu of SSD is due and payable, which lien shall have priority over the lien of any Mortgage, lien or other encumbrance encumbering Developer's interests in any of Parcel C/D, Parcel A or Parcel B from and after the date of recording of this Agreement, and the Construction Lender shall expressly agree to such priority in the Tri-Party Agreement. The parties intend that the Payment in Lieu of SSD is an obligation of Developer only (including the original Developer and any successor Developer pursuant to Article XXII). Notwithstanding anything to the contrary contained herein, (x) all payments required under this Section 4.6 (except as to accrued unpaid payments) shall cease as of the date on which the aggregate levy imposed under the SSD Ordinance on all Taxable Interests in Real Estate first reaches \$1,714,000.00, and (y) no Payment in Lieu of SSD shall be payable by any unit owner of any residential condominium unit located in a Building for which a

Certificate of Completion has been issued nor constitute a lien on such unit or any undivided interest in the common elements appurtenant to such condominium unit. Nothing herein shall restrict the ability of the Developer and the Town to negotiate an early retirement of the Bonds as an alternative to the Payment in Lieu of SSD provided the same is not prohibited by the terms of the Bonds.

ARTICLE V

TRANSFER OF THE TOWN PROPERTY

Section 5.1 Covenant of Transfer. Subject to all the terms, covenants and conditions of this Agreement, the Town covenants and agrees to convey to the Developer on the Town Property Closing Date, and the Developer covenants and agrees to accept:

(a) fee simple title to the Town Property, together with all privileges, rights, easements, and appurtenances belonging to such land and all right, title and interest (if any) of the Town in and to any streets, alleys, passages, and other rights-of-way or appurtenances included in, adjacent to or used in connection with such land (subject to any rights that the Town may have as a municipality in dedicated and accepted street rights-of-way) and all right, title and interest (if any) of the Town in all development rights appurtenant thereto;

(b) fee simple title to all buildings and improvements located on the Town Property, including, without limitation, the Existing Education Building, and all fixtures, systems and facilities owned by the Town and located on the Town Property; and

(c) all of the Town's right, title and interest, if any, in all intangible assets of any nature relating to the foregoing property, including, without limitation, all of the Town's right, title and interest in all (i) warranties, guaranties and indemnities by and claims against third parties relating to components of the foregoing property (including without limitation, any guarantees or warranties, if any, with respect to the roof, heating system and other building systems), (ii) licenses, permits, approvals, development rights, certificates, variances, consents and similar documents evidencing rights relating to any of the foregoing property, and (iii) plans, specifications, drawings, surveys, engineering and other design products, soils (including borings) tests and reports, project budgets and schedules, and other technical descriptions and documents relating to the property described in subparagraphs (a) and (b) above, in each case only to the extent that the Town has such items in its possession or within its control after reasonable efforts and may legally transfer the same.

Section 5.2 Condition of Town Property to be Conveyed. The Town Property shall be conveyed to the Developer in the condition existing as of the date hereof, normal wear and tear excepted. The Town has not made and does not make any representations or warranties as to the physical condition, expenses, operations, legality of occupancy, governmental compliance or any other matter or thing affecting or relating to the Town Property, or the use thereof, except as herein specifically set forth. The Developer hereby expressly acknowledges and represents that no such representations or warranties have been made to it, and agrees to purchase the Property **"AS IS, WHERE IS, WITH ALL FAULTS"**, and the Developer waives any and all claims it or its

successors or assigns have or may have with respect to any Town Property in any way related to or arising from Hazardous Substances, Environmental Laws or Environmental Conditions, except as set forth below with respect to Parcel A.

The Parties acknowledge that Parcel A may be an “establishment” subject to the Transfer Act. At the time of conveyance of Parcel A, the Town shall prepare and deliver to the Developer a Form III Transfer Act filing for Parcel A and executed by the Town as the transferor, to be executed by the Developer as the Certifying Party and transferee prior to the transfer, except that Developer’s LEP shall prepare the Environmental Condition Assessment Form as defined in Connecticut General Statutes § 22a-134(17) and Developer shall pay the initial filing fee and prepare, deliver and be responsible for all other necessary forms, fees and filings under the Transfer Act with respect to such filing. Notwithstanding the foregoing, the Town shall, to the extent required by Environmental Law, be responsible for any costs associated with addressing Environmental Conditions on other than the Other Property and Parcel C/D that originated from Parcel A.

Section 5.3 Time of Conveyance. The conveyance and, subject to the EEB Lease with respect to the Existing Education Building, delivery of possession of the Town Property to the Developer (the “Town Property Closing”) shall take place on the fifteenth (15th) Business Day following written notice from the Developer to the Town that the conditions precedent in Section 2.1 have been satisfied or will be satisfied contemporaneously with the Town Property Closing, or such other date as may be mutually agreed to by the Parties. The Town Property Closing shall take place on such date at the Closing Location, at 10:00 a.m. local time, or at such other date, time and place as may be agreed upon in writing by the Town and the Developer (the aforesaid date, or such other agreed date, being referred to in this Agreement as the “Town Property Closing Date”); provided, however, that absent the written agreement of the Parties to the contrary, this Agreement shall terminate on the Town Property Closing Date Deadline if the Town Property Closing has not occurred on or before such date.

Section 5.4 Payments. On the Town Property Closing Date, the Town shall pay the Developer, the following sums to a bank account designated by the Developer in cash or via wire transfer or other form of immediately available funds:

(a) an amount equal to the Town Soft Costs incurred by the Town and reimbursed to the Town by the Developer on or before the Town Property Closing Date, not to exceed \$1,012,000;

(b) an amount equal to the Developer Soft Costs incurred by the Developer through the Town Property Closing Date with respect to the Site Improvements (as evidenced by receipts, invoices or contracts with respect thereto delivered to the Town on or before the Town Property Closing Date), which amount payable on the Town Property Closing Date for such Developer Soft Costs shall not exceed \$1,360,989; and

(c) an amount equal to the Developer Soft Costs incurred by the Developer through the Town Property Closing Date with respect to the South Garage (as evidenced by receipts, invoices or contracts with respect thereto delivered to the Town on or before the Town Property Closing Date), which amount payable on the Town Property Closing Date for such Developer Soft Costs shall not exceed \$418,487; and

(d) an amount equal to the Developer Soft Costs incurred by the Developer through the Town Property Closing Date with respect to the North Garage (as evidenced by receipts, invoices or contracts with respect thereto delivered to the Town on or before the Town Property Closing Date), which amount payable on the Town Property Closing Date for such Developer Soft Costs shall not exceed \$434,008.

Section 5.5 Closing Deliveries.

(a) On the Town Property Closing Date, the Town shall deliver or cause to be delivered, to the Developer, the following original documents, each executed and, if required, witnessed and acknowledged:

(i) A special warranty deed to Parcel A, subject only to the Parcel A Permitted Exceptions (including the Town's Right of Re-Entry);

(ii) A special warranty deed to Parcel C/D, subject only to the Parcel C/D Permitted Exceptions (including the Town's Right of Re-Entry);

(iii) The Building C/Building D-South Garage Cross-Easement Agreement;

(iv) The Construction Easement;

(v) Any transfer tax declaration(s) in the form required by applicable Governmental Authorities;

(vi) The EEB Lease and the EEB Notice of Lease;

(vii) The South Garage Lease and the South Garage Notice of Lease;

(viii) The Pad Lease and the Pad Notice of Lease;

(ix) Such evidence, certificates or documents as may be reasonably required by the Title Company relating to: (A) mechanics' or materialmen's liens; (B) parties in possession; or (C) the status and capacity of the Town and the authority of the person or persons who are executing the various documents on behalf of the Town in connection with the transfer of the Town Property, and in any event, appropriate resolutions to enter into and close the transaction contemplated herein;

(x) A bill of sale and general assignment substantially in the form attached hereto as Exhibit G;

(xi) Copies of keys to all locks on the Existing Education Building;

(xii) An executed and acknowledged termination of lease in recordable form or an executed affidavit in recordable form that complies with the provisions of Connecticut General Statutes §47-12a, sufficient to evidence termination of that certain lease recorded in Volume 396, Page 294 of the West Hartford Land Records;

(xiii) A legal opinion from the Town's counsel opining that this Agreement and the documents executed and delivered by the Town in connection herewith have been duly authorized, executed and delivered by the Town, and are the legally valid and binding obligations of the Town, enforceable against the Town in accordance with their respective terms, the form, scope and opinion giver to be reasonably acceptable to the Developer and the Construction Lender;

(xiv) The materials described in Section 5.2 to enable Developer to make a Form III Transfer Act filing with respect to Parcel A and the improvements located thereon;

(xv) If the Town desires to be a party to the Declaration recorded with respect to each of Parcel A and Parcel C/D, each such Declaration;

(xvi) The Tax Assessment Fixing Agreement; and

(xvii) Such other documents as may be reasonably necessary or appropriate to effect the consummation of the transaction which is the subject of this Article V.

(b) On the Town Property Closing Date, the Developer shall deliver or cause to be delivered, to the Town, the following original documents, each executed and, if required, witnessed and acknowledged:

(i) The Building C/D - South Garage Cross-Easement Agreement;

(ii) The EEB Lease and the EEB Notice of Lease;

(iii) The Construction Easement;

(iv) The South Garage Lease and South Garage Notice of Lease;

(v) The Pad Lease and the Pad Notice of Lease;

(vi) A bill of sale and general assignment substantially in the form attached hereto as Exhibit G;

(vii) Any Declaration and Tax Payment Agreement that the Developer executes as of the Town Property Closing Date;

(viii) The Tax Assessment Fixing Agreement; and

(ix) A legal opinion from the Developer's outside counsel opining that this Agreement and the documents executed and delivered by the Developer in connection herewith have been duly authorized, executed and delivered by the Developer, and are the legally valid and binding obligations of the Developer, enforceable against the Developer in accordance with their respective terms.

(c) The Developer's obligation to acquire the Town Property or the Other Property shall be conditioned upon the ability of the Developer to obtain a Title Policy with respect to each parcel of real property contained therein.

Section 5.6 Covenants of the Town

(a) The obligations of the Developer to acquire the Town Property shall be subject to the satisfaction of all of the following conditions precedent on or before the Town Property Closing Date:

(i) Except for the applicable Permitted Exceptions, there are no existing agreements affecting Parcel A, the Existing Education Building, or Parcel C/D or granting a right of possession to all or any portion of the Town Property that will be binding on the Developer or on any of the Town Property following the Town Property Closing;

(ii) There is no action, suit, proceeding or claim affecting the Town or the Town Property, the premises demised under the South Garage Lease or the Pad Lease or any portion thereof relating to or arising out of the ownership, operation, use or occupancy of any of the Town Property or said premises pending or being prosecuted in any court or by or before any Governmental Authority. The Parties acknowledge that one or more of the matters described on Exhibit TT may exist on the Town Property Closing Date, but agree that such existence does not preclude the foregoing condition from being satisfied;

(iii) All of the representations and warranties set forth in Article XVII are true and correct as of the Town Property Closing Date (provided that the same may be qualified to the extent the Town, after the date hereof, becomes aware of facts or circumstances which cause any of the same to be or become untrue or incorrect, all of which qualifications shall be subject to Developer's reasonable approval as a condition to Developer's obligation to close the transaction contemplated hereunder);

(b) Until the Town Property Closing, the Town shall:

(i) Keep the Town Property insured against fire and other hazards covered by extended coverage endorsement and commercial general liability insurance against claims for bodily injury, death and property damage occurring in, on or about the Town Property.

(ii) Operate and maintain the Town Property in a businesslike and commercially reasonable manner, and deliver the Existing Education Building in its present condition, normal wear and tear excepted, and without damage to the primary front façade; provided that in the event of any loss or damage to the Existing Education Building as described in Section 27.1, the provisions of Section 27.1 shall control.

(iii) Enter into only those third party contracts which are necessary to carry out its obligations under Section 5.6(b)(ii) and for the normal business operation of the Board of Education and which shall be cancelable, and cancelled, by the Town prior to the Town Property Closing.

(iv) Not create any new encumbrance or lien affecting the Town Property other than liens and encumbrances (A) that can be discharged prior to the Town Property Closing, and (B) that in fact are discharged at the Town's expense prior to or contemporaneously with the Town Property Closing.

Section 5.7 Conditions Precedent. The conditions precedent set forth above are included solely for the benefit of the Developer and the Developer may, in its sole discretion, elect to waive any of the conditions precedent set forth in Section 5.5(a), Section 5.5(c), or Section 5.6 by giving written notice to the Town of its election to waive any such condition precedent at any time on or before the Town Property Closing Date. If any of such condition precedent has not been satisfied by the then currently effective Town Property Closing Date Deadline, the Developer may, at its sole option, extend any then effective Town Property Closing Date Deadline by such period of time as the Developer, in its sole discretion elects by written notice to the Town (and upon each such extension the date to which the Town Property Closing Date Deadline has been extended by the Developer as aforesaid shall be the Town Property Closing Date Deadline for purposes of this Agreement) to allow all such unsatisfied conditions to be satisfied, and the Town covenants that if the Developer extends the Town Property Closing Date Deadline (or further extends any extended Town Property Closing Date Deadline) pursuant to the foregoing the Town shall diligently and in good faith attempt to satisfy, or cause to be satisfied, all such conditions on or before the then effective extended Town Property Closing Date Deadline.

ARTICLE VI

NORTH GARAGE

Section 6.1 Covenant of Transfer. Subject to all the terms, covenants and conditions of this Agreement, the Developer covenants and agrees, on or before the North Garage Construction Date Deadline, to construct the North Garage on the North Garage Parcel in substantial accordance with the Plans and all Legal Requirements, and to convey the North Garage Property to the Town, and the Town covenants and agrees to accept fee simple title to the North Garage Property.

Section 6.2 Time of Conveyance. Subject to the other provisions of this Article VI and Developer's completion of Active Environmental Remediation Activities, the conveyance and delivery of possession of the North Garage Property to the Town (the "North Garage Closing") shall take place on the twentieth (20th) Business Day following Substantial Completion of the North Garage, at the Closing Location, at 10:00 a.m. local time or at such other time and place as may be agreed upon in writing by the Town and the Developer (the aforesaid date, such later date designated by the Developer, or such other earlier agreed date, being referred to in this Agreement as the "North Garage Closing Date"). Developer's completion of Active Environmental Remediation Activities shall be performed in a manner reasonably consistent with the Environmental Work Plan prepared by the Developer's LEP and identified in Exhibit RR attached hereto, and any addenda thereto.

Section 6.3 Covenants of the Developer. The obligations of the Town to acquire the North Garage Property shall be subject to the satisfaction of all of the following conditions precedent:

(a) on or before the first date on which the Construction Lender advances Construction Loan proceeds for the construction of the North Garage, the Developer shall have (i) pre-leased at least 70,000 square feet of retail space to be located in Building A and/or Building B-1, or (ii) met such greater pre-leasing requirement of the Construction Lender applicable to Building A and Building B-1 as a condition to the first advance of Construction Loan proceeds for the Proposed Project; provided, however, that if the Construction Lender's pre-leasing requirement applies to the entire Proposed Project, it shall be pro rated between the portions south and north of Memorial Road (on the basis of the rentable area to be included in

the Private Improvements) in order to establish the pre-leasing requirement applicable to Building A and Building B-1 under this Section 6.3(a)(ii);

(b) without the consent of the Town, the North Garage Closing Date shall not occur earlier than twenty-four (24) months following the Town Property Closing Date;

(c) on or before the North Garage Closing Date:

(i) a temporary certificate of occupancy shall have been issued for the Building B-1 shell and at least one non-residential tenant space located within Building B-1 shall have received a temporary or permanent certificate of occupancy;

(ii) the Surveyor shall have delivered the Survey to the Town and the Survey shall show that, except as permitted under the American Legion – North Garage Cross-Easement Agreement and the Building B – North Garage Cross-Easement Agreement, (x) all Improvements are located entirely within the boundaries of the North Garage Parcel, (y) no Improvements encroach onto any portion of the North Garage Parcel subject to any easement or other Title Exception (except for de minimis encroachments as to which the Title Policy provides affirmative insurance against the forced removal thereof), and (z) except as set forth in clause (i) above, no Improvements encroach over any front yard set back line, side yard set back line, rear yard set back line or similar Legal Requirement;

(iii) at the Town's option (to be exercised by the Town at least ten (10) Business Days prior to the anticipated North Garage Closing Date), the Title Company shall have issued or be prepared, upon payment of its regularly scheduled premium by the Town, to issue the Title Policy with respect to the North Garage Property to the Town;

(iv) all Additional Covenants of the Developer listed in Exhibit NN attached hereto, as applied to the North Garage Property shall have been satisfied by the Developer;

(v) Except for the North Garage Parcel Permitted Exceptions, there are no existing agreements affecting the North Garage Property or granting a right of possession to all or any portion of the North Garage Property to a third party that will be binding on the Town or the North Garage Property following the North Garage Closing;

(d) the Certificate of Completion for the North Garage has been issued or will be issued contemporaneously with the North Garage Closing; and

(i) to the extent not previously certified by the Developer's LEP, the Developer's LEP has certified that the Active Environmental Remediation Activities have been completed at the North Garage Property.

Section 6.4 Covenants of the Town. The obligations of the Developer to convey the North Garage Property to the Town shall be subject to the satisfaction of the following conditions precedent:

(a) the payment by the Town to the Developer on the North Garage Closing Date of the following sums to a bank account designated by the Developer in cash or via wire transfer or other form of immediately available funds:

(i) an amount equal to the balance of (A) the aggregate amount (not to exceed \$11,100,642.00 plus any South Garage Cost Savings and any Site Improvements Costs Savings) of all Public Development Costs incurred by the Developer with respect to the North Garage, as detailed in the actual Public Improvements Budget for the North Garage delivered to the Town in connection with the North Garage Closing (but excluding any Net Cost Increase described in Section 6.4(a)(ii)), less (B) the amount paid to the Developer by the Town on the Town Property Closing Date pursuant to Section 5.4(d), plus

(ii) the Net Cost Increase attributable to Town Change Orders, if any, relating to the North Garage.

Section 6.5 Closing Deliveries.

(a) On the North Garage Closing Date, the Developer shall deliver or cause to be delivered, to the Town, the following original documents, each duly executed and, if required, witnessed and acknowledged, together with the “Additional Closing Deliveries of the Developer” listed on Exhibit NN attached hereto, as applied to the North Garage Property:

(i) A special warranty deed to the North Garage Property, subject only to the North Garage Parcel Permitted Exceptions;

(ii) A bill of sale and general assignment substantially in the form attached hereto as Exhibit G;

(iii) a Form III or IV Transfer Act filing and all other necessary forms, fees and filings with respect to the North Garage Property, executed by the Developer as the Certifying Party and the transferor, and the Developer shall remain responsible for the initial filing fee and any other forms, fees and filings required by the DEP under the Transfer Act with respect to such conveyance;

(iv) The Building B - North Garage Cross-Easement Agreement;

(v) All keys to all locks on the North Garage Property; and

(vi) If on the North Garage Closing Date, based upon Developer’s LEP’s reasonable judgment, there is off-site Environmental Remediation that is not completed, the Developer shall deliver a performance bond to the Town in a form reasonably satisfactory to the Town, which performance bond shall cover 125% of the cost of completion of any such identified off-site Environmental Remediation, as calculated by the Developer’s LEP and communicated to the Town prior to the Closing. The amount of this bond shall be supplemented by Developer from time to time after the Closing, should there be additional off-site Environmental Remediation identified, based upon Developer’s LEP’s reasonable judgment.

(b) On the North Garage Closing Date, the Town shall execute and deliver to the Developer, and shall cause the Blue Back Square SSD to execute and deliver, the following original documents, each duly executed and, if required, witnessed and acknowledged:

- (i) to the extent not previously executed and delivered, the SSD Parking Facilities License/Service Contract;
- (ii) The Building B - North Garage Cross-Easement Agreement; and
- (iii) the Form III or IV described in Section 6.5(a)(iii), executed by the Town as transferee.

Section 6.6 Developer's Use of the North Garage. Notwithstanding anything to the contrary contained herein, at any time prior to the transfer of title to the North Garage Property to the Town, the Developer shall be entitled to utilize the North Garage for the parking of motor vehicles utilized by Persons providing labor and materials in connection with any portion of the Improvements which the Developer is obligated to construct under this Agreement and to provide up to 40 parking spaces for use in connection with the American Legion Building; provided, however, that Developer shall be entitled to charge, collect and retain for its own benefit all parking fees and other charges in connection with such use. The Town shall also be entitled to utilize the North Garage for parking of its employees during the hours of their employment on the same basis as the North Garage is available to other users (other than the payment of any fee); provided, however, that the number of parking spaces available for the Town's employees shall not exceed the number of parking spaces displaced by the Developer's construction activities in the Project Area. The Developer, Developer's Construction Manager and any subcontractors utilizing the North Garage shall be required to carry automobile liability and physical damage coverage in the amounts set forth in Exhibit KK with the Town listed as an additional insured. If the Town's employees utilize the North Garage for parking, the Developer, the Developer's Construction Manager and all subcontractors shall have no liability for any injury to person or property resulting from the actions or omissions of any Town employee (and repair of any such property damage to the North Garage shall not be a condition to the North Garage Closing), and the Town's insurance (or self-insurance) shall be available to cover any and all liability for personal injury or property damage related thereto.

ARTICLE VII

NORTH PARKING LOT LICENSE AGREEMENT

Section 7.1 License Agreement. The Parties hereby agree to enter into the North Parking Lot License Agreement upon completion of the North Parking Lot (including installation of the parking meters by the Developer as part of the Site Improvements).

ARTICLE VIII

SOUTH GARAGE

Section 8.1 Covenants of Transfer. Subject to all the terms, covenants and conditions of this Agreement, the Developer covenants and agrees, on or before the South Garage Construction Date Deadline, to construct the South Garage on the South Municipal Parcel in substantial accordance with the Plans and all Legal Requirements.

Section 8.2 Time of Conveyance. Subject to the other provision of this Article VIII, the delivery of possession of the South Garage to the Town and the acceptance by the Town of the South Garage (the "South Garage Closing") shall take place on the twentieth (20th) Business Day following

Substantial Completion of the South Garage, at 10:00 a.m. local time, at the Closing Location, or at such other time and place as may be agreed upon in writing by the Town and the Developer (the aforesaid date, such later date designated by the Developer, or such other earlier agreed date, being referred to in this Agreement as the “South Garage Closing Date”).

Section 8.3 Covenants of the Developer. The obligations of the Town to accept the South Garage shall be subject to the satisfaction of all of the following conditions precedent on or before the South Garage Closing Date:

(a) the Surveyor shall have delivered the Survey to the Town and the Survey shall show that, except as provided in the Building C/Building D - South Garage Cross-Easement Agreement, (i) all Improvements are located entirely within the boundaries of the South Municipal Parcel, (ii) no Improvements encroach onto any portion of the South Municipal Parcel subject to any easement or other Title Exception (except for de minimis encroachments as to which the Title Policy provides affirmative insurance against the forced removal thereof), and (iii) no Improvements encroach over any front yard set back line, side yard set back line, rear yard set back line or similar Legal Requirement;

(b) a temporary certificate of occupancy has been issued for the Building C shell and at least one non-residential tenant space located within Building C has received a temporary or permanent certificate of occupancy.

(c) on or before the closing of the Construction Loan, the Developer shall have (i) pre-leased at least 40,000 square feet of space to be located in Building C or (ii) met such greater pre-leasing requirement of the Construction Lender applicable to Building C as a condition to the closing of the Construction Loan; provided, however, that if the Construction Lender’s pre-leasing requirement applies to the entire Proposed Project, it shall be pro rated between the Private Improvements (on the basis of the non-residential rentable area to be included in the Private Improvements) in order to establish the pre-leasing requirement applicable to Building C under this Section 8.3(c)(ii);

(d) the Certificate of Completion for the South Garage has been issued or will be issued contemporaneously with the South Garage Closing; and

(e) all Additional Covenants of the Developer listed in Exhibit NN herein, as applied to the South Garage, shall have been satisfied by the Developer.

Section 8.4 Covenants of the Town. The obligations of the Developer to deliver the South Garage to the Town shall be subject to the satisfaction of the following conditions precedent on or before the South Garage Closing Date:

(a) Payment by the Town to the Developer of the following sums to a bank account designated by the Developer in cash or via wire transfer or other form of immediately available funds:

(i) an amount equal to the balance of (A) the aggregate amount (not to exceed \$10,810,453.00 plus any North Garage Cost Savings and any Site Improvements Costs Savings) of all Public Development Costs incurred by the Developer with respect to the South

Garage, as detailed in the actual Public Improvements Budget for the South Garage delivered to the Town in connection with the South Garage Closing (but excluding any Net Cost Increase described in Section 8.4(a)(ii)), less (B) the amount paid to the Developer by the Town on the Town Property Closing Date pursuant to Section 5.4(c), plus

(ii) an amount equal to the Net Cost Increase attributable to Town Change Orders, if any, relating to the South Garage.

Section 8.5 Closing Deliveries.

(a) On the South Garage Closing Date, the Town shall execute and deliver, and, where appropriate, shall cause the Blue Back Square SSD to execute and deliver, the following original documents, each duly executed and, if required, witnessed and acknowledged:

(i) To the extent not previously executed and delivered, the SSD Parking Facilities License/Service Contract (with a copy to the Developer); and

(ii) a Termination of Lease and Notice of Lease with respect to the South Garage Lease substantially in the form of Exhibit C to the South Garage Lease.

(b) On the South Garage Closing Date, the Developer shall deliver or cause to be delivered, to the Town, the following original documents, each duly executed and, if required, witnessed and acknowledged, together with the “Additional Closing Deliveries of the Developer” listed on Exhibit NN attached hereto, as applied to the South Garage:

(i) A special warranty deed to the South Garage;

(ii) A bill of sale and general assignment substantially in the form attached hereto as Exhibit G;

(iii) All keys to all locks on the South Garage; and

(iv) a Termination of Lease and Notice of Lease with respect to the South Garage Lease substantially in the form of Exhibit C to the South Garage Lease.

Section 8.6 Mutual Covenants of the Parties.

(a) No later than thirty (30) days following the later to occur of the Substantial Completion of the South Garage and the Substantial Completion of Building C, the Town and the Developer shall amend the Building C/Building D - South Garage Cross-Easement Agreement to the extent reasonably necessary to reflect the actual encroachments of the applicable Improvements onto land owned by the other Party and, if the SSD Parking Facilities License/Service Contract has been entered into, the Town shall use commercially reasonable efforts to obtain the prior written consent of the Blue Back Square SSD to such amendment.

(b) No later than thirty (30) days following the later to occur of the Substantial Completion of the South Garage and the Substantial Completion of Building D, the Town and the Developer shall amend the Building C/Building D - South Garage Cross-Easement Agreement to the extent reasonably necessary to reflect the actual encroachments of the

applicable Improvements onto land owned by the other Party and, if the SSD Parking Facilities License/Service Contract has been entered into, the Town shall use commercially reasonable efforts to obtain the prior written consent of the Blue Back Square SSD to such amendment.

ARTICLE IX

LIBRARY ADDITION, TOWN HALL ADDITION AND POLICE STATION ADDITION

Section 9.1 Generally. The Town covenants and agrees, at its sole cost and expense, to design and construct the Library Addition (and, at the Town's election, the Town Hall Addition and the Police Station Addition) in substantial accordance with the terms of this Agreement, the Plans and all Legal Requirements, and to obtain all construction and operational permits necessary to do so. The Town's obligations to construct the Library Addition are conditioned upon the satisfaction of the following conditions precedent:

- (a) The conditions precedent to the Developer's obligations set forth in Section 2.1 have been satisfied;
- (b) The Town has entered into one or more construction contracts or construction management contracts with the Town's Construction Manager for the construction of the applicable Public Improvements; and
- (c) The Town has obtained all building permits, Zoning Approvals and other approvals necessary to construct the applicable Public Improvement.

Section 9.2 Completion of Library Addition. The Town covenants and agrees, on or before the Library Addition Construction Date Deadline, to complete construction of the shell (including all exterior work) of the Library Addition in substantial accordance with the Plans and all Legal Requirements, such that all scaffolding, construction, construction equipment and construction materials located in all areas visible from the Private Improvements or the Blue Back Square Improvements or that interfere with the use of the Blue Black Square Improvements can be removed (and shall be removed by the Town) on or before such date. The Town acknowledges that such completion and removal is necessary to enable the Developer to substantially complete the Site Improvements (including, without limitation grading and site work) adjacent to the Library, the Blue Back Square Improvements, the Pad Building and/or Building A and ready the areas for the Anticipate d Grand Opening Date.

Section 9.3 Police Station Addition.

- (a) The Town shall not be obligated to construct the Police Station Addition; provided, however, that if the Town commences construction of the Police Station Addition, the Town shall fence in any ongoing construction activities related thereto in order to avoid any unreasonable interference with the Developer's construction of the Site Improvements in any adjacent areas.

Section 9.4 EEB Lease and Possession of the Existing Education Building.

- (a) The Town covenants and agrees to vacate or cause the vacating of the Existing Education Building and the remaining premises demised under the EEB Lease, and to

deliver possession thereof free and clear of all occupants and personal property in accordance with the terms of the EEB Lease and irrespective of whether or not the Town Hall Addition has been completed. Subject to Excusable Delays, the Developer shall promptly commence construction of Building A following expiration of the EEB Lease and the vacating of the Existing Education Building in accordance with the terms of the EEB Lease.

ARTICLE X

SITE IMPROVEMENTS

Section 10.1 Covenant of Transfer. Subject to all the terms, covenants and conditions of this Agreement, the Developer covenants and agrees, on or before the Site Improvements Construction Date Deadline, to Substantially Complete the Site Improvements and to deliver the Site Improvements to the Town, and the Town covenants and agrees to accept the Site Improvements.

Section 10.2 Covenants of the Developer. The obligations of the Town to accept the Site Improvements shall be subject to the satisfaction of all of the Additional Covenants of the Developer listed in Exhibit NN herein, to the extent applicable to the Site Improvements, on or before the Site Improvements Construction Date Deadline.

Section 10.3 Covenants of the Town. The obligations of the Developer to deliver the Site Improvements to the Town shall be subject to the satisfaction of the following terms and conditions:

(a) The Town shall pay to the Developer, to a bank account designated by the Developer in cash or via wire transfer or other form of immediately available funds, an amount equal to the sum of (i) the aggregate amount (not to exceed Thirteen Million One Hundred Sixty-Two Thousand Four Hundred Forty-Seven Dollars (\$13,162,447) plus any South Garage Cost Savings and any North Garage Costs Savings) of all Public Development Costs incurred by the Developer with respect to the Site Improvements, plus (ii) the Net Cost Increase attributable to Town Change Orders, if any, relating to the Site Improvements which sum shall be payable as follows:

(i) A portion of the Public Development Costs with respect to the Site Improvements in an amount not exceeding \$1,360,989 shall be payable by the Town on the Town Property Closing Date pursuant to the provisions of Section 5.4(b);

(ii) The Town shall, on the terms and conditions set forth below, make construction payments ("Payments") to the Developer of the remaining balance to pay the Public Development Costs incurred by the Developer with respect to the Site Improvements, within ten (10) Business Days following the satisfaction of each of the following conditions:

(1) There shall be no more than one Payment per month;

(2) The Developer shall have submitted to the Town a completed request for Payment on AIA Document Forms G702 and G703, each in an amount not less than \$10,000 (except that the final payment request may be for a lesser amount), that includes true and correct copies of all invoices and bills for Public Development Costs incurred in connection with the portion of the work which is the subject of the applicable payment (each a "Request for Payment");

(3) The Developer shall have delivered to the Town (with respect to that portion of the work performed on private land) mechanics' lien waivers for services and materials provided in connection with the work covered by the previous Payment;

(4) The undisbursed portion of the amount identified in Section 10.3(a) (excluding the retainage provided for in the next paragraph) shall be sufficient, in the Town's reasonable discretion, to pay all remaining Public Development Costs estimated to be incurred in connection with the completion of the Site Improvements, or the Developer shall have provided evidence to the Town of additional funds to pay any such deficiency;

(5) If the Request for Payment includes a request to pay hard costs, the Developer shall be entitled to receive in respect of said hard costs an amount equal to ninety-five percent (95%) of the amount for which a Payment has been requested. The Town shall have no obligation to make a Payment for any sums for materials stored on land other than the Project Area or other land owned by the Town and subject to the Construction Easement; and

(6) Upon the Substantial Completion of the Site Improvements and delivery by the Developer to the Town of a detailed Public Improvements Budget identifying the Public Development Costs incurred by the Developer with respect to the Site Improvements, the Town shall pay any remaining Public Development Costs with respect to the Site Improvements (up to the remaining balance of the amount identified in Section 10.3(a)) to the Developer, excluding any retainage held pursuant to Section 10.3(a)(ii)(5), which retainage shall be released as follows: (a) as to all construction trades providing labor and materials on any portion of the Site Improvements consisting of roadways, sidewalks or the walkways or other improved surface areas of the BBS Area, the retainage shall be released no later than the occurrence of the first freeze-thaw following Substantial Completion of the Site Improvements, and (b) all other retainage shall be released no later than six (6) months following final completion of the Site Improvements.

(b) Upon Substantial Completion of the Site Improvements, the Town shall execute and deliver to the Developer a Certificate of Completion for the Site Improvements. Nothing herein shall prevent the Developer from requesting and the Town from issuing, (at its discretion) Certificates of Completion with respect to individual components of the Site Improvements (i.e., the Site Improvements located on land south of Memorial Road or north of Memorial Road, or the Site Improvements to be completed on an individual Parcel with respect to which a Certificate of Completion is being issued for the Building located thereon), provided that such portion of the Site Improvements for which a Certificate of Completion is being requested are Substantially Completed.

ARTICLE XI

PUBLIC IMPROVEMENTS PLANS

Section 11.1 Site Plan and Existing Drawings. For purposes only of preparing full Plans and construction documents pursuant to this Article XI, the Developer and the Town have approved the Site Plan and the schematic drawings and the design development documents (with the understanding that any such approvals granted by the Town pursuant to this Article XI do not include any required regulatory approvals) for the Project's Public Improvements.

Section 11.2 Preparation and Approval of Plans. Based upon and consistent with the Site Plan, the schematic drawings and the design development documents, the Developer will cause the

Developer's Architect to prepare full Plans and construction documents for the Public Improvements (other than the Library Addition, Town Hall Addition and the Police Station Addition) and for the Mechanical Equipment (as defined in the American Legion-North Garage Cross-Easement Agreement). All of such Plans shall be prepared in accordance with industry standards, including, without limitation, Factory Mutual Engineering Standards and Acceptance, to allow bids to be obtained on the work described therein. The Plans shall include all architectural, mechanical, electrical and plumbing drawings and specifications necessary to complete the construction of the Public Improvements. The Developer shall deliver the Plans for the Public Improvements (other than the Library Addition, the Town Hall Addition and the Police Station Addition) to the Town at least forty-five (45) days prior to the Town Property Closing Date (unless otherwise agreed to by the Parties). Within fifteen (15) Business Days following receipt of the draft Plans for any portion of the Public Improvements, the Town shall either (i) approve same, or (ii) respond with written comments explaining to the Developer and Developer's Architect the reason for its disapproval and suggested revisions to the Plans to render them in form satisfactory to the Town. If the Town fails to either approve or disapprove the Plans that have been proposed and delivered by the Developer within said fifteen (15) Business Day period, the Town shall be deemed to have approved the Plans in question. The process to approve the Plans as described in this Section 11.2 shall continue until the Town approves the Plans in their entirety. The Town and the Developer shall cooperate with each other to develop and approve, and each shall approve, the Plans for the Public Improvements at least forty-five (45) days prior to the Town Property Closing Date in order to allow sufficient time for the Developer to obtain bids from the Developer's Construction Manager for the construction of the Public Improvements which the Developer is obligated to construct under this Agreement and to enter into contracts for said work on or before the Town Property Closing Date.

Section 11.3 Developer Change Orders. The Developer shall not change or otherwise modify or supplement the Plans with respect to any of the Public Improvements (each a "Change" and, collectively, "Changes") except pursuant to a change order requested by the Developer and approved in writing by the Town and the Developer's Architect prior to the effectiveness thereof, and that satisfies each and every condition and requirement of this Section 11.3 (each a "Developer Change Order" and, collectively, "Developer Change Orders"). Each Developer Change Order shall (i) be in writing, numbered in sequence and signed by the Developer; (ii) be certified by the Developer and the Developer's Construction Manager for the applicable Public Improvement to be in compliance with all Legal Requirements; and (iii) contain an estimate by the Developer and the Developer's Construction Manager of changes in the Construction Schedule and the Public Improvements Budget that will result from the proposed Developer Change Order. The Town's failure to respond, within ten (10) Business Days following receipt of the Developer's written request for approval of a Developer Change Order containing the information specified in the foregoing sentence, shall be deemed approval. Notwithstanding the foregoing, the Developer shall not be obligated to obtain the Town's prior written approval of any Developer Change Order (but shall provide the Town with copies of such Developer Change Orders) so long as (1) (a) the Change does not result in any material change to the Plans or to the architectural appearance or quality of the Public Improvements, (b) the Change does not impair the structural integrity of the applicable Public Improvements, and (c) the Change does not adversely affect the performance of the mechanical, electrical, building and fire safety systems of the applicable Public Improvements, or (2) the Change is a Necessary Change (other than a Change described in paragraph (c) of the definition of "Necessary Change", in which case the Developer Change Order will require the approval of the Town, which approval shall not be unreasonably withheld, delayed or conditioned and the Town's failure to respond, within five (5) Business Days following receipt of the Developer's written request for approval of such Developer Change Order containing the information specified above for

Developer Change Orders, shall be deemed approval thereof). The Developer will bear the cost of Changes implemented pursuant to this Section 11.3, including, but not limited to changes in Plans to comply with Legal Requirements or cure defects or discrepancies in the Plans, and Changes due to the existence of any unknown conditions. Notwithstanding anything to the contrary contained herein, to the extent a Change is required due to a act or omission or breach of a Legal Requirement by the Developer, the Developer's Architect, Developer's Construction Manager, contractors or subcontractors or their respective agents, employees or contractors, any increase in the cost of construction of the Public Improvements being constructed by Developer attributable to such Change shall be borne solely by Developer. TIME SHALL BE OF THE ESSENCE with respect to the Town's obligations to review and respond to the Developer's requests for approval of Developer Change Orders.

Section 11.4 Town Requested Changes. Should the Town wish to implement Changes in the Plans applicable to a particular Public Improvement to be constructed by the Developer under the terms of this Agreement, the Town will notify the Developer of such proposed Change. The Developer shall within ten (10) Business Days have the Developer's Construction Manager provide to the Town detailed cost estimate and Construction Schedule impact information relative to the proposed Change. No later than five (5) Business Days following receipt by the Town of the information specified in the foregoing sentence, the Town shall provide Developer with written notice of its intent to proceed (a "Notice of Intent to Proceed") or not to proceed with the requested Change; the Town's failure to respond within such five (5) Business Day time period shall constitute notice of intent not to proceed with the requested Change. If the Town issues a Notice of Intent to Proceed, the Developer shall approve or disapprove the Change within five (5) Business Days thereafter; the Developer's failure to disapprove the Change within such time period shall constitute deemed approval thereof. TIME SHALL BE OF THE ESSENCE with respect to the Developer's obligations to provide detailed cost estimate and Construction Schedule impact information and to review and respond to the Town's Notice of Intent to Proceed and with respect to the Town's obligations to respond to the Developer's cost estimate and Construction Schedule impact information with the requested Change. Following approval (or deemed approval) by both the Town and the Developer of such proposed Change, the following change order procedure will be followed: each change order for such Change requested by the Town shall (i) be in writing, numbered in sequence and signed by the Developer and the Town (although the Town's signature shall not be required with respect to any Change Order deemed approved as provided above in this Section 11.4); (ii) be certified by the Developer and the Developer's Construction Manager for the applicable Public Improvement to be in compliance with all Legal Requirements; (iii) contain an estimate by the Developer and the Developer's Construction Manager of changes in the Construction Schedule that will result from the proposed change order; and (iv) contain an estimate by the Developer and the Developer's Construction Manager of all increases, decreases and other changes in the Public Improvement Costs that will result from the proposed Change, which estimate shall be based on the Cost of the Work included in the Change and shall be shown on an itemized basis (each such Change Order which satisfies each and every condition and requirement of this Section 11.4, a "Town Change Order" and, collectively, "Town Change Orders"). The amount payable by the Town hereunder with respect to a Public Improvement shall be increased by the Net Cost Increase related to any Town Change Order with respect to such Public Improvement.

ARTICLE XII

PUBLIC IMPROVEMENTS

Section 12.1 Construction of Public Improvements and Acquisition of Town Property.
The parties hereby acknowledge that the Developer's obligations and rights with respect to the construction of the Public Improvements is an integral component to the consideration which the Developer is paying for the acquisition of the Town Property. The Town waives bids for the construction of all Public Improvements to be constructed by the Developer.

Section 12.2 Maintenance of the Public Improvements.

(a) Subject to the Developer's obligations under Section 12.2(b) hereof, the Town, at its own cost and expense, shall maintain, repair, operate, refurbish and replace (including capital items) all Public Improvements to the extent such Improvements are located in the street right-of-way, on land owned by the Town or on land in which the Developer has granted an access and maintenance easement to the Town, including, without limitation, the North Garage, the South Garage, and all Site Improvements (including, without limitation, the Blue Back Square Improvements, and all sidewalks, roads, light fixtures, sprinklers, lawns, trees, bushes and other landscaping, container planters and plantings, benches and other public seating, decorative improvements, retaining walls and other streetscape improvements installed by the Developer pursuant to the performance of its obligations hereunder, and underground utilities and lighting serving any of the foregoing) and make all necessary repairs, replacements and capital expenditures, in order to keep same in good, safe and clean condition and repair and in a manner at least equivalent to the manner in which the Town is then maintaining similar improvements throughout the Town of West Hartford.

(b) Notwithstanding anything to the contrary contained in Section 12.2(a), the Developer (or subsequent owner of the abutting private land) shall be responsible for sweeping of and the removal of snow and ice from the portions of those sidewalks identified as "Developer's Area" on the drawing attached hereto as Exhibit JJ, and shall be responsible for all legal liability for failure to do so.

(c) Notwithstanding anything to the contrary contained herein, the Developer shall be responsible for the repair or re-execution of the work of any Public Improvement resulting from construction defects or construction that does not conform to the Plans for one (1) year from the date of Substantial Completion of any such Public Improvement; provided, however, that the one-year period for correction of the work shall be extended with respect to portions of the work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of such work.

Section 12.3 Modifications of the Public Improvements.

(a) So long as neither Blue Back Square, LLC nor any of its Affiliates have supported a dissolution of the Blue Back Square SSD that has resulted in dissolution of the Blue Back Square SSD, except with respect to modifications or alterations that are necessary to protect the safety of the public, without the prior written consent of the Developer, which consent shall not be unreasonably withheld, conditioned or delayed, or if the Developer no

longer holds any interest in any of the Private Improvements or any of the land underlying any of the Private Improvements, without the prior written consent of the then owners of Building A, Building B-1 and Building B-2, the Town shall not (i) make or permit any Material Modification (hereinafter defined) to the Blue Back Square Improvements, (ii) make any modification to the BBS Area that is inconsistent with the intended purpose of the BBS Area for pedestrian travel and as a central public gathering space for the Project (information booths, movable kiosks and similar improvements being consistent with such intended purpose provided that they do not materially adversely obstruct visibility of or access to retail portions of the Project), or (iii) violate the no-build restriction contained in the deed to Parcel A to be delivered to the Developer at the Town Property Closing (which affects a portion of the BBS Area).

(b) Except with respect to modifications or alterations that are necessary to protect the safety of the public and comply with the Town's insurance carrier and consultant's recommendations, the Town shall not make or permit any Material Modification to the North Garage without the prior written consent of the Developer, or if the Developer no longer holds any interest in any of the Private Improvements or any of the land underlying any of the Private Improvements, without the prior written consent of the then owners of Building B-1 and Building B-2;

(c) Except with respect to modifications or alterations that are necessary to protect the safety of the public, the Town shall not make or permit any Material Modification to the South Garage without the prior written consent of the Developer, or if the Developer no longer holds any interest in any of the Private Improvements or any of the land underlying any of the Private Improvements, without the prior written consent of the then owners of Building C and Building D;

(d) As used herein, "Material Modification" means any such modification or alteration which individually or in the aggregate (i) will materially adversely affect pedestrian or vehicular access to any of the Private Improvements, or (ii) will have a materially adverse effect on the Project (including any Legal Requirements with respect to parking for the Private Improvements).

(e) In the event that the consent of the then owner of any real property is required pursuant to this Section 12.3 and there is more than one owner of such real property, then the requisite consent shall be deemed given if the holders of a majority of the undivided interests in such real property consent to such to the Material Modification; provided, however, that if any such real property is held in a common interest community form of ownership, the declaration establishing such community may grant or delegate the power to give or withhold any such consent to the applicable unit owner's association and/or the executive board or board of directors of such association.

Section 12.4 Building Permits and Other Fees. The Developer shall not be required to pay any building permit application fees or other fees to the Town in connection with the construction of the Public Improvements.

Section 12.5 Prevailing Wages. In constructing the Public Improvements, to the extent applicable the Developer shall comply with the requirements set forth in Connecticut General Statutes

§31-53, as that section exists on the date of this Agreement (or as it may be amended or recodified from time to time provided such amendment or recodification automatically and legally applies retroactively to this Agreement) (the "Prevailing Wage Statute"). The Developer shall include covenants in its architect's agreement for the Public Improvements and in all construction-related contracts with respect to the Public Improvements, including its contract with the Developer's Construction Manager for the Public Improvements, which covenants shall require those entities to comply with the Prevailing Wage Statute.

Section 12.6 Town's Covenants regarding the North Garage and the South Garage.

(a) The Town shall operate or cause the operation of the North Garage, South Garage and North Parking Lot at rates that bear a reasonable relationship to the parking rates in the public parking garage and lots owned by the Town and located west of the Project Area, although such rates may be consistently higher and the first half hour of parking in the North Garage and the South Garage need not be provided at no cost. The North Garage and the South Garage shall be open for public parking during prescribed hours set by the Town; provided, however, that access through the North Garage and South Garage to the underground parking garages on Parcel B and Parcel C/D, respectively shall be unlimited access. Hourly, daily, weekly and monthly public parking shall be offered in the North Garage and the South Garage and the Town shall work with the Developer in providing public parking during hours sufficient to accommodate parking for early morning appointments in the medical offices to be located in the Proposed Project and parking for patrons of the retail, restaurant and theater space to be located in the Proposed Project.

(b) No later than the opening date of the health club to be located in Building C, the Town and the Developer or the Town and the health club operator shall enter into a parking agreement in accordance with the parameters set forth on Exhibit QQ attached hereto. No later than such opening date, the Developer shall use commercially reasonable efforts (which shall not include the payment of money or other consideration) to cause the health club operator to enter into such a parking agreement with the Town.

Section 12.7 Town's Audit Right of Public Development Cost. The Town may, at its sole cost and expense, at any time within six (6) months after the final completion of all Public Improvements to be constructed by the Developer, elect to have an accountant or other qualified individual, selected by the Town and reasonably acceptable to Developer, examine the Developer's books, records, invoices, purchase orders and Change Orders (collectively, the "Records") with respect to all Public Development Costs actually incurred by the Developer with respect to the Public Improvements constructed by the Developer. In the event that the Town, after having reasonable opportunity to examine the Records, determines that the aggregate amount of the Developer's Actual Costs is less than **\$35,073,542** plus the aggregate Net Cost Increase, if any, of all Town Change Orders for the Public Improvements constructed by Developer, then the Town may send a written notice ("Audit Statement") to Developer of such determination, specifying in reasonable detail the basis for the Town's determination and the amount of any refund claimed to be due the Town. The Developer shall pay the Town such amount within thirty (30) days following its receipt of the Audit Statement; provided, however, that the Developer shall be entitled to contest the amount of the refund claimed by the Town in the Audit Statement. If, in spite of good faith efforts, within forty-five (45) days after receipt by Developer of the Audit Statement the Parties are unable to mutually agree with respect to any refund that may be due to the Town, the Parties shall designate a reputable independent

firm of certified public accountants not regularly engaged by either ("Expense Arbiter") whose determination made in accordance with this Section shall be binding upon the Parties. Either party shall be entitled to request agreement as to the designation of the Expense Arbiter by written notice to the other party (an "Arbiter Request"), which Arbiter Request shall contain the names and addresses of two (2) or more independent firms of certified public accountants who are not regularly engaged by and are acceptable to the party sending the Arbiter Request (any of whom, if acceptable to the Party receiving the Arbiter Request as evidenced by notice given by the receiving Party to the other Party within such thirty (30) day period, shall be the agreed upon Expense Arbiter). In the event that the Parties shall be unable to agree upon the designation of the Expense Arbiter within thirty (30) days after receipt of an Arbiter Request, then either Party shall have the right to request the American Arbitration Association (or any successor thereto) to designate as the Expense Arbiter an independent firm of certified public accountants not regularly engaged by either Party. The fees and expenses of the Expense Arbiter shall be paid equally by the parties. The Expense Arbiter shall hold a hearing within thirty (30) days after selection at which representatives of the Parties shall have an opportunity to present their respective positions and evidence and shall render its determination within sixty (60) days thereafter. In the event that the Expense Arbiter determines that the aggregate amount of the Developer's Actual Costs is less than **\$35,073,542** plus the Aggregate Net Cost Increase, if any, all Town Change Orders for the Public Improvements constructed by Developer, then the Developer shall refund such deficiency to the Town within fifteen (15) days of such determination. The Expense Arbiter's determination shall be binding upon the Parties and enforceable in a court of competent jurisdiction.

Section 12.8 Town Park. The Developer shall apply for and use commercially reasonable efforts to obtain any inlands wetlands approval and building permit necessary to construct the Town Park in accordance with plans mutually agreed upon by the Town and the Developer (the "Town Park Plans"). The Town, as owner of the site on which the Town Park is located, will join in any and all such applications required to be signed by the owner of such property for the Developer to obtain such approvals (at no cost to the Town except as provided in subparagraph (a) below). The Town, as owner of the site on which the Town Park is located, shall use commercially reasonable efforts to obtain the issuance of a special use permit and an amendment of the Special Development District plan for the site to enable construction and operation of the Town Park. The Developer will join in any such applications as a co-applicant, at no cost to the Developer other than the payment of the standard application fee for the special use permit. If the Developer and the Town obtain all such approvals on or before the twenty-fourth (24th) month following the Town Property Closing Date, the Developer shall design and construct the Town Park in accordance with the Town Park Plans and the Construction Schedule, including filling and re-grading of the site to the limits indicated on the Town Park Plans, seeding the site and planting four trees in each of the corner paving areas to be located at the northeast and southeast corners of Raymond Road and Memorial Road, as shown on the Town Park Plans. All such work shall be at the Developer's sole cost and expense; provided, however, that if the Developer encounters the presence of any Hazardous Substance at, upon or under the Town Park, which materially increases the Developer's costs, the Developer, upon recognizing such Hazardous Substance, shall be entitled to stop the work in the affected area and report the condition to the Town in writing. Within ten (10) Business Days after such written notice is delivered by the Developer to the Town, the Town shall notify the Developer of its election to acknowledge the presence of such Hazardous Substance or to reasonably promptly obtain, at its sole cost and expense, the services of an environmental consultant to verify and estimate the anticipated costs related to the presence or absence of such Hazardous Substance and provide a written report of such findings to the Developer (the "Town Park Notice"). Within five (5) Business Days of such acknowledgement or the Town's receipt of such environmental consultant's report (whichever is

later), the Town shall elect by written notice to the Developer (a) to reimburse the Developer for the reasonable additional costs of constructing the Town Park which are attributable to such Hazardous Substance, (b) to reasonably address such Hazardous Substance such that the Developer does not further incur additional costs related to same (with evidence thereof provided to the Developer) at the Town's sole cost and expense, or (c) to release the Developer in writing of all of the Developer's unperformed obligations with respect to design and construction of the Town Park (the "Town Park Election"). The Town's failure to provide said Town Park Notice to the Developer within such ten (10) Business Day period or to provide said Town Park Election to the Developer within such five (5) Business Day period shall be deemed an election to release the Developer of all of the Developer's unperformed obligations with respect to design and construction of the Town Park, and such release shall be automatic without further action of the Town; provided, however, that the Town may request reasonable extensions of time for providing the Town Park Notice and/or the Town Park Election to the Developer (which shall not be unreasonably denied by the Developer), and the Town shall provide a written release with respect to such Hazardous Substance at, upon or under the Town Park upon the request of the Developer. Notwithstanding anything to the contrary contained herein, the Developer shall have no obligation to defend or pursue the appeal of any permit for which it is obligated to use commercially reasonable efforts to obtain hereunder.

ARTICLE XIII

PERMITS AND APPROVALS

Section 13.1 Special Development Districts. The Parties acknowledge that one or more of the Parcels included in the Project may be contained in the same Special Development District (as defined in the West Hartford Zoning Ordinance) as one or more other Parcels. Each of the Developer and the Town hereby agree, for themselves, their successors and assigns, to execute any application for amendment of the Special Development District plan (an "SDD Amendment Application") applicable to the subject Special Development District in which its Parcel is located and proposed by the owner (the "Proposing Owner") of any other Parcel located in such Special Development District, reserving to such Party, its successors and assigns the right to contest the Proposing Owner's application on its merits.

Section 13.2 Overriding Authority of Town's Planning Authority and Zoning Authority. This Agreement is not intended to supplant or influence the role of the Town's Plan and Zoning Commission, Town Council or other regulatory body, authority or official with respect to any aspect of any application which may now be, or hereinafter become necessary to complete the Project. The execution of this Agreement by the Town shall not be construed in any way to constitute a commentary on, or approval of, any such application by the Town's Plan and Zoning Commission, Town Council or other regulatory body, authority or official in such capacity.

Section 13.3 Common Interest Community. In the event that any portion of the Private Improvements or any land underlying any portion of the Private Improvements is submitted to the common interest community form of ownership, the declaration establishing such common interest community shall delegate to the Association (and to the executive board or board of directors thereof) the authority of the unit owners to consent to an SDD Amendment Application relating to the real property comprising or containing the common interest community and shall require said executive board or board of directors to execute any such application, provided, however, that nothing herein shall preclude the unit owners, the unit owners' association and/or the executive board or board of directors thereof from contesting such application on its merits.

ARTICLE XIV

COOPERATION; CONSTRUCTION COORDINATION

Section 14.1 Cooperation. The Town and the Developer acknowledge that the Project includes the interrelationship of the various parcels of real property included within the Project Area and that the construction, development and operation of such real property, including the improvements to be located thereon, will require cooperation between the Parties in a number of areas which may not be apparent until final design or completion of construction of the Improvements, including, without limitation, the coordination of systems and permits for storm water discharge, sanitary sewer discharge, and stationery source emissions and the construction, development and operation of utility facilities. The Parties agree to cooperate with one another in good faith and in a timely manner with respect to such matters.

Section 14.2 Easements and Licenses.

(a) The Town and the Developer agree to join in the Easements.

(b) To the extent not attached to this Agreement as an exhibit, the Town and the Developer shall negotiate and enter into in good faith and in a timely manner, upon the Developer's request therefor, such easements and/or licenses for construction, drainage, utilities, vaults, footings, construction signage and other similar purposes, as may be reasonably necessary to permit or facilitate performance of the Developer's obligations with respect to the Project (including, without limitation, such easements, rights or way or other agreements with utility providers), provided that such easements, licenses, rights of way and other agreements are acceptable to the Town Council in accordance with the Charter of the Town of West Hartford, do not unreasonably interfere with the use of the Town's property or impose any liability on or require an expenditure by the Town, and/or provided that the Developer indemnifies the Town (in a manner reasonably acceptable to the Town) against such liability and pays any such expenditure.

Section 14.3 Construction Schedule. Attached hereto as Exhibit GG is a construction schedule for the construction of the Improvements. Not less than thirty days prior to the Town Property Closing Date, the Parties shall agree upon a critical path construction schedule for the coordinated construction of the Improvements, which shall become part of the construction contracts entered into by the Town and the Developer, and which shall reflect the Parties' obligations under this Agreement with respect to the schedule required for completion of the Public Improvements and Private Improvements. The Town shall promptly review and respond to plans, permit applications and requests for inspections during construction of any of the Private Improvements or the Public Improvements, all in accordance with a schedule to be agreed upon between the Town staff and the Developer.

Section 14.4 Construction Coordination. The Parties shall provide for coordination of the activities of their respective Construction Managers in connection with the construction of the Improvements. The Parties shall require their Construction Managers to participate with each other and with the Parties in reviewing their construction schedules when directed to do so by either party.

Section 14.5 Construction Staging. The Parties shall coordinate with each other with respect to the storage of their materials and equipment. The Parties shall perform their respective construction obligations in connection with a construction staging plan mutually agreeable to the Parties.

Section 14.6 Safety Precautions and Programs.

(a) The Party responsible for construction of a particular Improvement shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the construction of such Improvement.

(b) The Parties shall take reasonable precautions, and shall cause their respective Construction Managers, to take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to other property adjacent to the site on which the proposed Improvement is being constructed, employees, materials and equipment.

Section 14.7 Street Rights-of-Way. In the event that any public roads not previously dedicated and accepted by the Town are constructed by the Developer as part of the Project, the Developer shall comply with all Legal Requirements with respect to the construction of such roads and the dedication of rights-of-way with respect thereto to the Town.

Section 14.8 Construction Contracts.

(a) The provisions of Connecticut General Statutes §§ 49-41, 49-41a and 49-41b, as they currently exist, are incorporated herein by reference.

(b) The Town shall deliver to the Developer copies of the Town's design services agreement with the Town's Architect and construction management agreement(s) or construction contract(s) with the Town's Construction Manager with respect to the Town Hall Addition, Police Station Addition and Library Addition. The Developer shall deliver to the Town, with respect to the Public Improvements, copies of the Developer's design services agreement with the Developer's Architect, the construction management agreement(s) with the Developer's Construction Manager and all subcontracts. The Developer shall deliver to the Town, with respect to the Private Improvements, copies of the Developer's construction management contracts with the Developer's Construction Manager and all subcontracts with Major Subcontractors.

(c) Except to the extent inconsistent with the provisions incorporated in Section 14.8(a), each construction management contract entered into by the Developer for the Public Improvements and for the Private Improvements to be located on a Project Parcel for which the Town holds a Right of Re-Entry shall require the Developer's Construction Manager thereunder to supply, and to require all subcontractors and material suppliers hired for the Project to supply partial lien waivers relating for payments actually received and work actually performed.

(d) Each construction management agreement and architect's agreement entered into by the Developer shall require that the Developer's Construction Manager and all

subcontractors shall name the Town as an additional insured on their commercial general liability insurance.

(e) The Developer shall require the Developer's Construction Manager, at its expense, to bond or obtain a release for any and all mechanic's liens filed against the Public Improvements or any of the Town's land within thirty (30) days following Developer's receipt of notice of any such lien.

Section 14.9 Construction Interference. Except as otherwise specifically provided herein or in the Related Agreements, the Developer's construction activities shall not unreasonably interfere with the use of or access to the Town buildings, including, but not limited to, the Town Hall, Police Station and Library.

Section 14.10 Outdoor Dining. The Parties agree that in order to maximize the pedestrian-friendly nature of the Project, the best location for restaurant outdoor dining within the Project is at curbside instead of in areas adjacent to the Private Improvements. The Parties agree to cooperate with one another in achieving the goal of locating restaurant outdoor dining areas at curbside at no fee to the Developer.

ARTICLE XV

DISPUTE RESOLUTION

Section 15.1 Mediation. The Parties shall reasonably attempt to resolve any dispute arising between the Parties hereto concerning any matter of performance under, or interpretation or breach of, this Agreement, or any dispute over a Change Order, by mediation in West Hartford, Connecticut in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect or as otherwise agreed by the Parties. Request for mediation by a Party shall be filed in writing with the other Party and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration, but in such event, the mediation shall proceed in advance of such arbitration, which shall be stayed pending mediation for a period of fourteen (14) days from the date of filing, unless otherwise agreed to by the Parties or for such longer period provided by court order. The Parties shall each pay one-half of the mediator's fee and filing fees. The mediator with respect to any construction or design matter shall have at least ten years' experience in the construction industry and at least six years' experience as a mediator in cases involving complex construction. Both Parties shall each have a representative present at the mediation who has authority to bind it to a written settlement agreement subject to the requirements and limitations of the charter and ordinances of the Town of West Hartford. Positions and statements made by any Party during mediation may not be used against it in later proceedings if the Parties fail to reach a settlement agreement during mediation. Agreements reached in any mediation proceeding shall be enforceable as settlement agreements in any court having jurisdiction thereof. In no event shall any mediator be permitted to serve as an arbitrator for that or any other dispute that is not resolved pursuant to mediation, unless agreed to by both Parties.

Section 15.2 Arbitration. In the event the Parties do not agree to or cannot resolve such dispute through mediation as provided in Section 15.1, such dispute shall be settled by arbitration in West Hartford, Connecticut, which arbitration, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect (including the applicable procedures referenced below). Either Party

may serve upon the other Party a written notice demanding that the dispute be resolved pursuant to this Article XV. Within ten (10) days after the giving of the above mentioned notice, each of the Parties hereto shall nominate and appoint an arbitrator and shall notify the other Party in writing of the name and address of the arbitrator so chosen. Upon the appointment of the two arbitrators as hereinabove provided, said two arbitrators shall forthwith, and within ten (10) days after the appointment of the second arbitrator, and before exchanging views as to the question at issue appoint in writing a third arbitrator and give written notice of such appointment to each of the Parties hereto. In the event that the two arbitrators shall fail to appoint or agree upon such third arbitrator within said ten (10) day period, a third arbitrator shall be selected by the Parties themselves if they so agree upon a third arbitrator within a further period of ten (10) days. If any arbitrator shall not be appointed or agreed upon within the time herein provided, then either Party on behalf of both may request such appointment by the American Arbitration Association (or a successor or similar organization if the American Arbitration Association is no longer in existence). Said arbitrators shall be sworn faithfully and fairly to determine the question at issue. The three arbitrators shall each be duly qualified in the subject matter of the dispute under arbitration and shall afford to the Developer and the Town the privilege of cross-examination, on the question at issue, and shall, with all possible speed (and, if no time period is specified in the applicable procedures referenced below, within 60 days after appointment of the third arbitrator unless otherwise agreed to by the Parties) , make their determination in writing and shall give notice to the Parties hereto of such determination. The concurring determination of any two of said three arbitrators shall be binding upon the Parties hereto, or, in case no two of the arbitrators shall render a concurring determination, then the determination of the third arbitrator appointed shall be binding upon the Parties hereto. Each Party shall pay the fees of the arbitrator appointed by it, and the fees of the third arbitrator shall be divided equally between the Parties. In the event that any arbitrator appointed as aforesaid shall thereafter die or become unable or unwilling to act, his or her successor shall be appointed in the same manner provided in this Article XV for the appointment of the arbitrator so dying or becoming unable or unwilling to act. Any Mortgagee may appear and participate in said arbitration proceedings. The foregoing agreement to arbitrate shall be specifically enforceable under applicable law in any court of competent jurisdiction. Each of the Developer and the Town waive all objections to joinder of the Town or the Developer as a party to any mediation, arbitration or litigation related to this Project in which the other Party is joined or is otherwise positioned as a party and in which its conduct or its performance under this Agreement is in any way relevant to the subject of a dispute. Each of the Developer and the Town shall obtain a similar waiver from all their respective design professionals, contractors, construction managers and subcontractors that work on the Project. Notwithstanding anything to the contrary contained in the Construction Industry Arbitration Rules of the American Arbitration Association, the (a) Fast Track procedures shall apply in any case in which no Party's total disclosed claim or counterclaim exceeds \$250,000, (b) the Regular Track procedures shall apply in any case in which any Party's total disclosed claim or counterclaim exceeds \$250,000, and (c) the Large, Complex Construction Case Track procedures shall apply in any case in which any Party's total disclosed claim or counterclaim exceeds \$1,000,000.

ARTICLE XVI

DEVELOPER'S PRIVATE IMPROVEMENTS OBLIGATIONS

Section 16.1 Developer's Private Improvements Obligations.

(a) Subject to Excusable Delays, the Developer shall commence, diligently pursue and complete construction of all of the Private Improvements (excluding the Town Park)

in accordance with the Site Plan and the Construction Schedule, as they may be amended from time to time, including, the development within the Project Area of the following (as such uses and square footage may be adjusted in the final Site Plan, collectively, the “Private Improvements Obligations”): (i) subject to the provisions of Section 16.2, up to approximately 160,000 square feet of residential space, (ii) not less than approximately 247,621 square feet of retail space (including general retail, restaurant, a theater, a health club and the American Legion Building), (iii) not less than approximately 177,658 square feet of office space, (iv) not less than approximately 102 structured parking spaces on Parcel B, approximately 62 structured parking spaces in Building C and approximately 89 parking spaces in Building D, and (iv) interior courtyards and other appropriate Landscaping.

(b) The Developer, as conditions of the various Zoning Approvals and other governmental approvals issued in connection with the Project, may have other construction obligations related to the Project that are geographically located outside the Project Area. The Developer shall complete such construction obligations in accordance with the terms of such approvals.

Section 16.2 Residential Housing.

(a) The Developer acknowledges and agrees that the inclusion of a residential neighborhood as part of the Project is a material inducement to the Town’s participation in the Project and it is the Developer’s intention to construct approximately 160,000 square feet of residential condominiums within the Project in Building D and Building B-3. However, the Parties acknowledge that market forces and financing and equity pre-sale requirements will affect the actual timing and/or construction of such residential housing.

(b) Pursuant to the terms of the SSD Ordinance, the Developer has agreed that to the extent that certificates of occupancy for at least 160,000 square feet of residential space in the Project have not been issued as of the date which is the thirtieth (30th) month following the imposition of the first levy upon a Taxable Interest in Real Estate (as defined in the SSD Ordinance), then the levy attributable to Commercial Land Uses (as defined in the SSD Ordinance) in the Blue Back SSD shall be increased by an amount equal to the difference between the actual levy on existing Residential Land Uses (as defined in the SSD Ordinance) and \$160,000;

(c) With respect to Building D, the Developer has also agreed to enter into the Tax Assessment Fixing Agreement on the Town Property Closing Date and shall use all commercially reasonable efforts to follow the financing, marketing and construction schedule set forth in Exhibit N-1 attached hereto;

(d) With respect to Building B-3, the Developer shall use all commercially reasonable efforts to follow the financing, marketing and construction schedule set forth in Exhibit N-2 attached hereto. The Parties acknowledge that due to equity and financing requirements, together with the need to analyze the results of the marketing plan for Building D for purposes of determining the type, number and square footage of units to be included in Building B-3, any marketing of Building B-3 likely will not commence prior to the conclusion of the Building D marketing phase.

(e) Notwithstanding anything to the contrary contained in this Agreement (including, without limitation, the Construction Schedule, Section 16.2 or Exhibit N-1), the Developer has agreed to the Right of Re-Entry with respect to that portion of Parcel C/D relating to Building D (as described in Exhibit V) in the event that the Developer fails to commence construction of Building D prior to the date which is six years and two months following the Town Property Closing Date (the “Outside Commencement Date”) or to complete construction of Building D on or before the twentieth month following the Outside Commencement Date (each of such dates subject to extension by the Developer for Excusable Delay).

(f) Unless the Town otherwise consents, in the event that construction of either Building D or Building B-3 has not commenced prior to the Anticipated Grand Opening Date, then the Developer will grade the affected area consistent with the remaining portion of the applicable Project Parcel and plant grass seed and maintain a lawn thereon.

Section 16.3 Tenant Leases. The Developer agrees to include a covenant in all of its leases of commercial space in the Project Area requiring tenants and their employees to park in locations other than public streets when they are present at the Project for the purpose of the operation of the tenant’s business and requiring such tenants to deliver to the Developer at least once per year (and more frequently upon request of the Developer) the names of all employees and the license plate numbers for all motor vehicles utilized by such tenants and their employees to transport them to the Project. The Developer agrees to use commercially reasonable efforts to enforce such lease provisions. Upon request of the Town (but not more frequently than twice per calendar year), the Developer shall deliver a list of the employee names and license plate numbers furnished by the Developer’s tenants. This covenant shall be applied on a building by building basis, such that default of this covenant by the owner of one building shall not constitute a default by the owner of any other building in the Project.

ARTICLE XVII

REPRESENTATIONS AND WARRANTIES OF THE TOWN

Section 17.1 Due Authorization. This Agreement has been duly authorized, executed and delivered by the Town and the individuals signing this Agreement and all documents executed pursuant to it, on behalf of the Town are duly authorized to sign such documents on the Town’s behalf and to bind the Town to their respective terms, or will be at the time such executed documents are delivered to the Developer, whereupon this Agreement and such other documents will constitute the legal, valid and binding agreements of the Town, enforceable against the Town in accordance with their respective terms.

Section 17.2 No Conflict; Legal Compliance. Neither the execution, delivery, nor performance of this Agreement by the Town, nor any action or omission on the part of the Town required pursuant hereto, nor the consummation of the transactions contemplated by this Agreement will (i) result in a breach or violation of, or constitute a default under, any Legal Requirement, (ii) result in a breach of any term or provision of the charter documents of the Town, (iii) constitute a default or result in the cancellation, termination, acceleration of, any obligation, or other breach or violation of any loan or other agreement, instrument, indenture, lease, or other material document to which the Town is a party or by which any of the properties of the Town is bound, or give any Person the right to challenge any such transaction, to declare any such default, cancellation, termination,

acceleration, breach or violation or to exercise any remedy or obtain any other relief under any such loan or other agreement, instrument, indenture, lease, or other material document or under any Legal Requirement, or (iv) result in the imposition or creation of any Title Exception other than a Permitted Exception. The Town neither is nor will be required to give any notice to or obtain any consent from any Person in connection with the execution and delivery of this Agreement which has not already been given or obtained.

Section 17.3 Litigation and Default. To the best knowledge of the Town after diligent inquiry, the Town is not involved in any legal proceeding, which would prevent or materially impair the ability of the Town to perform its duties and obligations under this Agreement or any of the Related Agreements and no event has occurred which, with due notice or lapse of time or both, could constitute a material breach of any Legal Requirement which could prevent or materially impair the ability of the Town to perform its duties and obligations under this Agreement or any of the Related Agreements. Notwithstanding the foregoing, the Town makes no representation or warranty with respect to the matters described on Exhibit TT, and the Parties agree that such matters are excluded from the operation of this Section 17.3.

Section 17.4 Notice of Non-Compliance. To the best knowledge of the Town after reasonable inquiry and except as otherwise disclosed in the Environmental Reports, the Town has not received any written notice that the Town Property is not in material compliance with the Legal Requirements and Environmental Laws applicable to its current use which would prevent or materially impair the ability of the Town to perform its duties and obligations under this Agreement or any of the Related Agreements.

Section 17.5 Insolvency. The Town has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by its creditors, (iii) suffered the appointment of a receiver to take possession of all, or substantially all, of its assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of its assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.

Section 17.6 Eminent Domain and Impositions. There are no existing, or to the best of the Town's knowledge, proposed eminent domain proceedings of any governmental authority other than the Town affecting any of the Town Property, the South Municipal Parcel or the North Municipal Parcel. The Town has not initiated or proposed any eminent domain proceedings that currently affect the Town Property. Except as contemplated by this Agreement with respect to the Blue Back Square SSD, the Town has no currently pending or planned public improvements that will result in any charge being levied or assessed against, or will result in the creation of a lien upon, the Town Property. As of the date hereof, the Town has not made any assessments for public improvements against the Town Property that are not of record, including, without limitation, those for construction of sewer and water lines and mains, street lights, streets, sidewalks and curbs.

Section 17.7 Disclosure. To the best of its knowledge, no representation or warranty of the Town hereunder omits to state a material fact necessary to make the statements herein, in light of the circumstances in which they were made, not misleading.

Section 17.8 Best Knowledge: Received Written Notice. Whenever a representation or warranty is made in this Agreement on the basis of the best of knowledge of the Town, or whether the Town has received written notice, such representation and warranty is made with the exclusion of any

facts disclosed to or otherwise known by the Developer, and is made solely on the basis of the actual, as distinguished from implied, imputed and constructive, knowledge on the date that such representation or warranty is made, without further inquiry or investigation, of Barry R. Feldman, Jim Francis, or Ron Van Winkle, without attribution to such specific officer of facts and matters otherwise within the personal knowledge of any other officers or employees of the Town or third parties, and excluding, whether or not known by such specific individuals, any matter known to the Developer. So qualifying the Town's knowledge shall in no event give rise to any personal liability in the part of Barry R. Feldman, Jim Francis or Ron Van Winkle or any other officer or employee of the Town.

ARTICLE XVIII

REPRESENTATIONS AND WARRANTIES OF THE DEVELOPER

Section 18.1 Due Authorization. This Agreement has been duly authorized, executed and delivered by the Developer and the individuals signing this Agreement and all documents executed pursuant to it, on behalf of Developer are duly authorized to sign such documents on Developer's behalf and to bind Developer to their respective terms, or will be at the time such executed documents are delivered to the Town, whereupon this Agreement and such other documents will constitute the legal, valid and binding agreements of the Developer, enforceable against the Developer in accordance with their respective terms.

Section 18.2 No Conflict; Legal Compliance. Neither the execution, delivery, nor performance of this Agreement by the Developer, nor any action or omission on the part of the Developer required pursuant hereto, nor the consummation of the transactions contemplated by this Agreement will (i) result in a breach or violation of, or constitute a default under, any Legal Requirement, (ii) result in a breach of any term or provision of the operating agreement or articles of organization of the Developer, (iii) constitute a default or result in the cancellation, termination, acceleration of, any obligation, or other breach or violation of any loan or other agreement, instrument, indenture, lease, or other material document to which the Developer is a party or by which any of the properties of the Developer is bound, or give any Person the right to challenge any such transaction, to declare any such default, cancellation, termination, acceleration, breach or violation or to exercise any remedy or obtain any other relief under any such loan or other agreement, instrument, indenture, lease, or other material document or under any Legal Requirement, or (iv) result in the imposition or creation of any Title Exception other than a Permitted Exception. The Developer neither is, nor will be required to, give any notice to or obtain any consent from any Person in connection with the execution and delivery of this Agreement which has not already been given or obtained.

Section 18.3 Insolvency. The Developer has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by its creditors, (iii) suffered the appointment of a receiver to take possession of all, or substantially all, of its assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of its assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.

Section 18.4 Disclosure. No representation or warranty of the Developer, and no statement made in any document delivered by it to the Town, omits to state a material fact necessary to make

the statements herein or therein, in light of the circumstances in which they were made, not misleading.

Section 18.5 Litigation and Default. The Developer is not involved in any legal proceeding, which would prevent or materially impair the ability of the Developer to perform its duties and obligations under this Agreement or any of the Related Agreements and no event has occurred which, with due notice or lapse of time or both, could constitute a material breach of any Legal Requirement which could prevent or materially impair the ability of the Developer to perform its duties and obligations under this Agreement or any of the Related Agreements (provided that the same may be qualified to the extent the Developer, after the date hereof, becomes aware of facts or circumstances which cause any of the same to be or become untrue or incorrect, all of which qualifications shall be subject to the Town Manager's reasonable approval (after consultation with counsel) as a condition to the Town's Closing Date obligations hereunder). Notwithstanding the foregoing, the Developer makes no representation or warranty with respect to the matters described on Exhibit TT, and the Parties agree that such matters are excluded from the operation of this Section 18.5. The Developer and all Persons having an interest in Developer are not, nor have ever been, the subject of a criminal investigation involving a felony.

Section 18.6 Financial Statements. Upon reasonable advance written notice from the Town, the Developer shall provide access to the financial statements of the Developer and its members for inspection by appropriate Town staff during construction of the Public Improvements by the Developer.

Section 18.7 Tax Returns and Tax Payments. The Developer has properly prepared and filed all tax returns and reports which it has been required to file through the date hereof, and all taxes, interest and penalties of any kind shown due thereon, or otherwise attributable to any operations, activities or transactions of the Developer on or prior to the date hereof, have been paid or fully provided for, except for taxes incurred in the ordinary course that are not yet due. To the best of the Developer's knowledge, no claims are pending or threatened against the Developer for taxes, interest or penalties, whether federal, state, local or foreign, no tax examination of the Developer is being conducted by federal, state, local or foreign agents, and there is no valid basis for the assertion of any claim for taxes, interest or penalties against the Developer which have not been either paid or provided for on the Financial Statement, except for taxes incurred in the ordinary course that are not yet due.

Section 18.8 No Delinquent Obligations. The Developer represents and warrants that neither it nor its members or managers have any delinquent accounts of any type or nature with the Town of West Hartford, including, without limitation, real property or personal property tax accounts. The Developer represents that none of its members have a criminal record for any matter other than a motor vehicle violation.

Section 18.9 Good Standing. Developer represents and warrants that upon execution of this Agreement and at all times until Substantial Completion of the Private Improvements and Public Improvements to be constructed by the Developer pursuant to the terms hereof, BBS Development, LLC (or, if this Agreement has been assigned to and assumed by Blue Back Square LLC, then Blue Back Square LLC) is and shall be a limited liability company validly organized and in good standing under the laws of the State of Georgia and authorized to do business in the State of Connecticut.

Section 18.10 Best Knowledge: Received Written Notice. Whenever a representation, warranty or other statement is made in this Agreement or in any Related Agreement on the basis of the best of knowledge of the Developer, or is qualified by the Developer having received written notice, such representation, warranty or other statement is made with the exclusion of any facts disclosed to or otherwise known by the Town, and is made solely on the basis of the current, conscious, and actual, as distinguished from implied, imputed and constructive, knowledge on the date that such representation or warranty is made, without inquiry or investigation or duty thereof, of Robert Wiener, Kenneth Narva, Lucy Wildrick, Richard Heapes or David Hidalgo, the principals of a co-managing member of a co-managing member of the Developer having primary responsibility for the development of the Project, without attribution to such specific individuals of facts and matters otherwise within the personal knowledge of any other members, managers, officers or employees of the Developer or of any of their respective members or affiliates or of any third party, and excluding, whether or not actually known by such specific individuals, any matter known to the Town. So qualifying the Developer's knowledge shall in no event give rise to any personal liability on the part of Robert Wiener, Kenneth Narva, Lucy Wildrick, Richard Heapes or David Hidalgo or any other member, manager, officer or employee of the Developer or any of their respective members or affiliates.

ARTICLE XIX

CERTIFICATES OF COMPLETION

Section 19.1 Certificates of Completion. Following Substantial Completion of each of Building A, Building B-1, Building B-2, Building B-3, Building C, Building D, the Pad Building, the North Garage, the South Garage, the Town Park, or the Site Improvements in accordance with the provisions of this Agreement, and no later than the earlier to occur of a Closing with respect thereto or twenty (20) Business Days following the written request (a "Certificate Request") by the Developer (which may take the form of a Completion Notice), the Town shall furnish the Developer with a Certificate of Completion certifying to the Substantial Completion (provided Substantial Completion, in the Town's reasonable discretion, has occurred) of the Improvements for which Developer has delivered a Certificate Request and specifying any remaining items to be completed with respect to said Improvements (such as Punch List Items that the Town is satisfied will be completed within a reasonable period of time). The Town may rely on the Developer's Architect with respect to provision of all information required by the Town to issue a Certificate of Completion and Developer shall require the Developer's Architect to cooperate with the Town with respect to such required information. The Certificate of Completion issued by the Town shall (a) terminate the Right of Re-Entry in favor of the Town with respect to the Project Parcel(s) and/or Improvements covered thereby, (b) evidence the satisfaction and termination of the agreements and covenants in this Agreement and any deed from the Town for the Project Parcel(s) covered thereby with respect to the obligations of the Developer, its successors and assigns to construct the applicable Improvements on the Project Parcel (other than Punch List Items), and (c) release the Project Parcel(s) and the Improvements covered thereby from any liability arising out of or attributable to the breach of any obligation under this Agreement by the owner of any other Improvement or Project Parcel. The Certificate of Completion shall be in a form proper for recording on the Land Records. As a pre-condition to the Town's issuance of a Certificate of Completion for any Improvement, to the extent that the insurance required to be carried by the Developer pursuant to Article XXVI is made on a claims-made basis, the Developer shall deliver to the Town evidence that such insurance shall remain in effect for two (2) years following the date of Substantial Completion of the applicable Improvement.

Section 19.2 Refusal or Failure to Provide Certificate of Completion. If the Town refuses or fails to provide a Certificate of Completion in accordance with this Article XIX, the Town shall, within fifteen (15) Business Days following the Certificate Request, provide the Developer with a written statement indicating in reasonable detail in which respects the Developer has failed to complete the subject Improvements in accordance with the provisions of this Agreement (or that the Developer's Architect has failed to provide the Town with the information the Town requires to evaluate the Certificate Request), and specifying the measures or acts necessary, in the opinion of the Town for the Developer to take or perform in order to obtain such certificate. The parties shall work in good faith to resolve any disputes relating to issuance of a Certificate of Completion.

ARTICLE XX

ENVIRONMENTAL

Section 20.1 Developer's Obligations.

(a) The Parties acknowledge that Environmental Conditions may exist relating to the North Garage Property and the remainder of the Other Property, and that the North Garage Property is an "establishment" as that term is defined in the Transfer Act. Prior to the conveyance of the North Garage Property to the Town, the Developer shall have: (i) prepared a Form III or IV Transfer Act filing, as applicable, for the transfer of such property and all other necessary forms, fees and filings, executed by the Developer as the Certifying Party and transferor and by the Town as transferee, and the Developer shall deliver to the Town such Form III or IV, the initial filing fee and any other forms and fees necessary in order to complete the conveyance of the North Garage Property to the Town in accordance with the Transfer Act. As the Certifying Party, the Developer shall comply with the applicable requirements of the Transfer Act, the RSRs and all other Environmental Laws that may apply to the Environmental Conditions at, on, under, emanating or having emanated from the North Garage Property and shall perform such on-site and off-site investigative, mitigation, containment, removal and post-remedial and other monitoring activities as necessary to bring the North Garage Property (including any Environmental Conditions emanating or having emanated from the North Garage Property) into compliance with the Transfer Act and the RSRs, including the industrial / commercial criteria of the RSRs to the extent applicable (such activities are hereinafter referred to as the "Environmental Remediation"). In the event Free Product at or emanating or having emanated from the North Garage Parcel is identified, the Developer shall promptly take all necessary and appropriate actions to remove such Free Product to the maximum extent practicable in accordance with Regulations of Connecticut State Agencies Sections 22a-133k-2(g) and 22a-449(d)-106(f), based upon Developer's LEP's reasonable judgment. The Developer shall also perform such other investigative, mitigation, containment, removal and post-remedial and other monitoring activities, if any, as necessary to bring the remainder of the Other Property into compliance with the RSRs.

(b) The Developer, in its reasonable discretion and in connection with the performance of the Environmental Remediation and prior to the conveyance of the North Garage Property to the Town, may endeavor to record one or more Environmental Land Use Restrictions ("ELURs") (as defined in Connecticut General Statutes § 22a-133o) on the North Garage Property. The Developer may also, in its reasonable discretion, make use of applicable remedial

alternatives that comply with the RSRs (“Remedial Alternatives”) as part of the Environmental Remediation. In no event shall any ELUR, Remedial Alternative or Environmental Remediation prevent or materially interfere with the use of the North Garage Property as contemplated in this Agreement. The Town shall cooperate with the Developer’s efforts to record such ELURs and shall provide all necessary approvals or signatures for such ELURs and Remedial Alternatives in accordance with the procedures set forth in this Article XX. The Town agrees and accepts that such ELURs and Remedial Alternatives may limit the use of the North Garage Property, or portions thereof, to commercial/industrial use, prohibit the use of ground water at or under the North Garage Property for drinking or other domestic uses, require reasonable measures necessary to limit actual and potential contact with or exposure to pollutants remaining on the North Garage Property, including contaminated soil, or such other limitations, requirements or conditions as required by and in conformance with the RSRs or the action or requirements of DEP. The Developer agrees to provide the Town with a reasonable advance opportunity to review and comment on any ELUR and Environmental Alternative prior to implementation of same.

(c) The Town acknowledges that the Developer is conducting the Environmental Remediation as part of a larger remediation activity and agrees that the Developer may, in accordance with the procedures set forth in this Article XX, manage the Environmental Remediation as reasonably necessary and appropriate to accomplish such remediation activity. The Developer acknowledges that the North Garage, a multi-level parking structure, will be constructed on the North Garage Parcel and that a surface parking lot will be constructed on the North Parking Lot, and Developer agrees that any ELUR, Remedial Alternative and any Environmental Remediation shall not unreasonably interfere with these intended uses. The Town agrees that any ELUR, Environmental Remediation and Remedial Alternative that is consistent with the provisions of Section 20.1(b) and (c) shall not constitute an unreasonable interference with the intended use of the North Garage.

Section 20.2 Cooperation.

(a) The Parties recognize and agree that the Environmental Remediation, any Remedial Alternative, and any ELUR shall require ongoing communication and cooperation between the Parties and the Parties shall endeavor to work together as necessary to implement and complete same, at no additional expenses to the Town except as expressly set forth herein. The Parties agree to reasonably cooperate with each other to the extent either should require data or information at any time for purposes of compliance with Environmental Laws, including the securing of any necessary permits or approvals from any governmental agency and the Developer’s reasonable cooperation with the Town’s efforts to secure a covenant not to sue under Connecticut General Statutes § 22a-133aa or § 22a-133bb. The Developer shall provide the Town with copies of all documents relating to the Environmental Remediation and any Remedial Alternative and ELUR that the Developer intends to submit to the DEP at least five (5) days prior to their intended submission. The Town may, at its discretion and expense, provide comments for the Developer’s consideration on such documents prior to their submission or as soon as practicable should the requirements of DEP not allow for five (5) days, or as otherwise agreed to by the Parties. To the extent same may be required, and to the extent consistent with the provisions of this Article XX, the Town agrees to timely provide, at its expense, all signatures or other approvals as necessary for any permits or other documents required for the

Environmental Remediation, including, without limitation, ELURs and Remedial Alternatives. The Developer shall not impede the Town's ability, at its discretion and sole expense, to observe the Environmental Remediation and the Active Environmental Remediation Activities and collect split or duplicate samples. The Developer shall provide the Town with notice at least one week in advance of the Active Environmental Remediation Activities, Environmental Remediation, and any other sampling or monitoring at the North Garage Property.

(b) In recognition of the Developer's Environmental Remediation obligations as set forth herein and its necessary control of the process associated with the discharge of those obligations, prior to the conveyance of the North Garage Property to the Town, the Town agrees that it shall use all commercially reasonable efforts to not, without the prior knowledge and approval of the Developer, such approval not to be unreasonably withheld, or, except as required by law, initiate any requests or inquiries, or conduct substantive communications, written or oral, with any federal or state governmental agency concerning any Environmental Conditions on or at the North Garage Property. The foregoing provisions of this Section 20.2(b) shall not apply to: (i) the Town's access to the files or other public records of the Town or any such federal or state agency; (ii) any regulatory or advisory agency of the Town acting in its official capacity, whether through the members of that body or through their staff, provided that the Town makes commercially reasonable efforts to request that such regulatory or advisory agency of the Town promptly notify the Developer prior to initiating or engaging in such communications and afford the Developer the opportunity to participate in such communications; (iii) the Town's response to requests or inquiries from any such agency or other third party related to such Environmental Conditions, provided that (subject to commercially reasonable efforts) the Town promptly notifies the Developer of such request or inquiry prior to responding and informs the federal or state governmental agency or other third party that the Town and the Developer have agreed that the Developer has the opportunity to participate in such response; or (iv) any independent inquiry by any of the Town's insurers, underwriters or insurance consultants, provided that the Town makes commercially reasonable efforts to request that the Town's insurers, underwriters or insurance consultants promptly notify the Developer of the intended independent inquiry and afford the Developer the opportunity to participate in such independent inquiry.

(c) Except as otherwise explicitly provided for in this Article XX, the Developer shall fully undertake and complete the Active Environmental Remediation Activities, Environmental Remediation, and any Remedial Alternative and ELUR at no expense to the Town.

(d) The Developer agrees that any Environmental Remediation undertaken by the Developer with respect to the American Legion Parcel shall not adversely affect the Town's rights or liabilities under this Agreement. Any costs or obligations of the Developer to remediate the American Legion Parcel in compliance with the RSRs shall not be borne by the Town.

(e) Notwithstanding anything to the contrary in this Agreement, in no event shall this Agreement in any way supplant, influence, restrict or limit the Town's duties, rights and obligations with respect to the protection of human health or the environment.

Section 20.3 Access.

Subsequent to the transfer of the North Garage Property or any interest therein to the Town, the Town agrees to provide the Developer and the Developer's representatives, including the Developer's contractors, agents, employees, and LEP, reasonable access to the North Garage Property for all purposes consistent with the Environmental Remediation. In furtherance thereof, the Developer will reserve in its deed(s) to the Town an easement (the "Environmental Work Easement") on, over, across, through and under the North Garage Property (including, without limitation, the North Garage) for purpose of access to and through the North Garage Property and performance of the Environmental Remediation; provided, however, that such Environmental Work Easement shall immediately terminate upon the Town's receipt of a "Verification" (as that term is defined in Connecticut General Statutes § 22a-134(19)) prepared by the Developer's LEP that the North Garage Property has been fully investigated and remediated in accordance with the Transfer Act and the RSRs. Except to the extent otherwise required by any governmental agency or Environmental Laws or with the prior agreement with the Town, all Environmental Remediation related to the North Garage Property shall be conducted during normal business hours and under such reasonable conditions so as to minimize any interference with the Town's use and/or occupancy of the North Garage Property. Except as provided in Section 20.4, the Developer shall release, defend, indemnify and hold the Town harmless from and against any damage or claim related to or arising from any and all Environmental Conditions in existence at, emanating or having emanated from the North Garage Property, which Environmental Conditions existed or arose prior to the transfer of the North Garage Property, as well as any damage or claim related to or arising from Developer's acts and omissions related to or arising from any Environmental Conditions. Developer shall promptly repair all impact or alteration to the North Garage Property arising from its activities with respect thereto, unless such impact or alteration is a necessary part of the Environmental Remediation, in which case the Developer shall take reasonable actions to repair such impact or alteration within a reasonable period of time. The Town shall allow the Developer reasonable access to space and utilities as necessary for the Environmental Remediation and the Town shall allow the Developer to install utility connections and to use the utilities with respect to same; provided, however, that such utility connections and utilities shall be at the sole cost of the Developer and the Developer shall be responsible for obtaining and maintaining all necessary and appropriate insurance coverage and for all damages and expenses related to such utility usage and utility connections, and for any property damage and unreasonable service interruptions resulting from such utility usage and utility connections. Further, subsequent to the transfer of the North Garage Property to the Town, the Town shall not unreasonably modify or disrupt the implementation of any Environmental Remediation undertaken in accordance with the provisions of this Article XX, except as authorized by law, or by any ELUR or Remedial Alternatives implemented by the Developer. The Town shall reimburse the Developer for any reasonable and necessary damages reasonably incurred as a result of such modification or disruption.

The Parties agree that, subsequent to the transfer of the North Garage Property to the Town, any entity acquiring a leasehold or other tenancy or occupancy interest or security interest or any other interest in the North Garage Property shall acquire such interest subject to the terms of this Article XX and, upon request of the Developer, shall confirm such subordination of its interest to this Article XX and any of the ELURs by signing any documents reasonably requested by the Developer, including without limitation a subordination agreement as described in the RSRs.

Section 20.4 Indemnification; Limitation on Liability.

(a) The Developer shall be liable for and fully release, indemnify, defend and hold harmless the Town, its boards, commissions, agencies (including, without limitation, the West Hartford Board of Education) officers, officials, employees, agents and contractors ("Town Indemnitees"), from and against any and all Environmental Remediation, and any and all liability, loss, cost and expenses, including reasonable attorneys fees and costs and environmental consultant costs, ("Expenses") imposed upon or sustained, suffered or incurred by, and all litigation, demands, investigations and proceedings of every kind or nature ("Claims"), including but not limited to any Claims asserted and Expenses sought by any federal or state environmental agency, instituted or asserted against, or otherwise involving, the Town in any way related to, arising from or in connection with: (i) any and all Environmental Conditions at, on, under, emanating or having emanated from the Other Property (excluding the North Garage Parcel and the proposed "New Street"), (ii) any and all Environmental Conditions at, on, under, emanating or having emanated from the North Garage Parcel, which Environmental Conditions existed or arose prior to the transfer of the North Garage Property to the Town, (iii) any and all Environmental Conditions at, on, under, emanating or having emanated from said "New Street", which Environmental Conditions existed or arose prior to the transfer of said "New Street" to the Town or the formal acceptance thereof by the Town as a public street, or (iv) in connection with any failure of the Developer to undertake and complete its obligations under this Agreement related to Environmental Conditions, Environmental Laws, Hazardous Substances, Active Environmental Remediation Activities, or Environmental Remediation. Notwithstanding the foregoing, in no event shall the Developer have any liability for or should this Section 20.4(a) apply to: (x) any Environmental Condition at the North Garage Property or any part thereof which is first created subsequent to the Transfer of the North Garage Property to the Town, (y) any Environmental Condition at the North Garage Property which is solely attributable to acts or omissions of the Town or others occurring subsequent to the transfer of the North Garage Property to the Town, other than such acts or omissions of the Developer or its contractors, agents, LEP or other representatives, (z) any violation by any of the Town Indemnitees of any ELUR that affects the North Garage Property and which ELUR is consistent with the provisions of this Article XX or (aa) any off-site remediation required for any Environmental Condition which originated from Parcel A and is the responsibility of the Town under Section 5.2. It is further understood that this indemnification extends to and is intended for the benefit of the Town Indemnitees only, and that this indemnification does not extend to or create any rights or causes of action in or for the benefit of any other individuals or entities.

(b) The Town shall be liable for and shall indemnify, defend and hold harmless the Developer, its members, officers, employees, agents and contractors ("Developer Indemnitees") from and against any and all Expenses imposed upon or sustained, suffered or incurred by, and all Claims of every kind or nature instituted or asserted against, or otherwise involving, the Developer for Expenses and Claims raised by any third party or sought by any federal, state or local environmental agency, in connection with (i) any Environmental Condition at the North Garage Property which is solely attributable to acts or omissions of the Town occurring subsequent to the transfer of the North Garage Property or any interest therein to the Town, other than such acts of the Developer or its contractors, agents, LEP or other representatives, or (ii) any violation by any of the Town Indemnitees of any ELUR that affects the North Garage Property and which ELUR is consistent with the provisions of this Article XX.

It is further understood that this indemnification extends to and is intended for the benefit of the Developer Indemnitees only, and that this indemnification does not extend to or create any rights or causes of action in or for the benefit of any other individuals or entities.

Section 20.5 Survival. The Parties agree that the provisions of this Article XX shall survive any and all Closings, except as otherwise set forth in Section 20.3 with respect to easements and other provisions for access to the North Garage Property by the Developer. To the extent the provisions of this Article XX conflict with other provisions of this Agreement, the provisions of this Article XX shall control.

ARTICLE XXI

NOTICES

Section 21.1 Notices. Any notice which may be or is required to be given hereunder must be in writing and must be: (i) personally delivered, (ii) transmitted by United States mail, as registered or certified matter, return receipt requested, and postage prepaid, (iii) transmitted by facsimile (with answer back confirmation), or (iv) transmitted by nationally recognized overnight courier service to the applicable Party at its address listed below. Except as otherwise specified herein, all notices and other communications shall be deemed to have been duly given and received, whether or not actually received, on (a) the date of receipt if delivered personally, (b) two (2) calendar days after the date of posting if transmitted by registered or certified mail, return receipt requested, (c) the date of transmission with confirmed answer back if transmitted by facsimile, or (d) one (1) Business Day after pick-up if transmitted by nationally recognized overnight courier service, whichever shall first occur. A notice or other communication not given as herein provided shall be deemed given if and when such notice or communication and any specified copies are actually received in writing by the Party and all other Persons to whom they are required or permitted to be given. Any Party hereto may change its address for purposes hereof by notice given to the other Parties in accordance with the provisions of this Article XXI, but such notice shall not be deemed to have been duly given unless and until it is actually received by the other Parties.

Notices hereunder shall be directed:

To the Town:

Town of West Hartford
50 South Main Street
West Hartford, Connecticut 06107
Attention: Town Manager
Telephone: (860) 523-3224
Facsimile: (860) 523-3225

With copies at the same time to:

Town of West Hartford
50 South Main Street
West Hartford, Connecticut 06107-2431
Attention: Deputy Corporation Counsel
Telephone: (860) 523-3171
Facsimile: (860) 523-3162

and

Town of West Hartford
50 South Main Street
West Hartford, Connecticut 06107-2431
Attention: Director of Community Service
Telephone: (860) 523-3284
Facsimile: (860) 570-3770

and

Robinson & Cole LLP
280 Trumbull Street
Hartford, Connecticut 06103-3597
Attention: S. Frank D'Ercole, Esq.
Telephone: (860) 275-8200
Facsimile: (860) 275-8299

To the Developer:

Blue Back Square, LLC
c/o Street-Works, LLC
30 Glenn Street
White Plains, New York 10603
Attention: Mr. Kenneth D. Narva
Tele phone: (914) 949-6505 ext. 222
Facsimile: (914) 949-1694

With copies at the same time to:

Blue Back Square LLC
c/o Ronus Properties
3290 Northside Parkway, Suite 250
Atlanta, Georgia 30327
Attention: Richard S. Langhorne
Telephone: (678) 553-4055
Facsimile: (678) 553-4054

and to:

Blue Back Square, LLC
c/o JDA Development Co., LLC
29 Berlin Road
Cromwell, Connecticut 06416
Attention: Mr. Robert N. Wiener
Telephone: (860) 635-4500 x-1
Facsimile: (860) 635-1493

and to:

Day, Berry & Howard LLP
One Canterbury Green
Stamford, Connecticut 06901-2047
Attn: Michael P. Byrne, Esq.
Telephone: (203) 977-7349
Facsimile: (203) 977-7301

ARTICLE XXII

TRANSFER AND MORTGAGE OF DEVELOPER'S INTEREST

Section 22.1 Transfers Prior to Issuance of Certificate of Completion.

(a) Except as provided in Sections 22.1(b) and 22.3, the Developer agrees that prior to Substantial Completion of all of the Improvements to be constructed by the Developer pursuant to the terms of this Agreement, (i) the Developer will not transfer its interest in any Project Parcel or the Improvements located thereon, and (ii) the managers or managing members of the Developer will include (but will not be limited to) an RRA Affiliate; provided, however, that nothing herein shall restrict the Developer's right, and the Developer shall be entitled, to enter into space leases for any Private Improvement at any time.

(b) The Developer shall be entitled to convey all or any portion of its interest in a Project Parcel and/or the Improvements located thereon, or any part thereof, prior to Substantial Completion of all of the Improvements to be constructed by the Developer pursuant to the terms of this Agreement, upon compliance with the following:

(i) the transferee or transferees (A) shall have been approved as such, in writing, by the Town, which approval shall not be unreasonably withheld, conditioned or delayed, or (B) is an RRA Affiliate (or, if more than one transferees, are RRA Affiliates), as certified to the Town by the Developer, which certification shall be accompanied by document evidencing such affiliation as may be reasonably requested by the Town, or (C) is acquiring a residential unit in a condominium, cooperative, planned community or other common interest community (statutory or common law) or any interest therein; and

(ii) the transferee or transferees (excluding any transferee described in Section 22.1(b)(i)(C)) of any interest in the Project Parcel or the Improvements located thereon, or any part thereof, by valid instrument in writing, satisfactory to the Town in its reasonable discretion, shall have expressly assumed, for themselves and their successors, all obligations of any Person, including the Developer, to begin and complete the construction of the Improvements to be constructed on said Project Parcel and otherwise comply with all terms of the Master Agreement applicable to such Project Parcel; provided, however, that if the applicable transfer is a transfer of an interest in Parcel B or Parcel C/D, the transferee shall be entitled to acquire the rights and assume the obligations with respect to only one of the buildings to be located on the applicable Project Parcel (and any related Improvements as identified in said written assumption agreement), in which case such transferee shall not be liable with respect to any obligations hereunder with respect to any other building to be located on such Project Parcel.

The Developer acknowledges that it shall be reasonable for the Town to withhold its approval of a transferee pursuant to Section 22.1(b)(i) on the basis of any pending third party litigation seeking to invalidate any Zoning Approval, the Bond Ordinance, the SSD Ordinance or this Agreement.

(c) In the absence of a specific written agreement by the Town to the contrary, no transfer permitted under Section 22.1(b) shall be deemed to relieve the Developer or any permitted successor or assign from its obligations under this Agreement.

Section 22.2 Transfers Subsequent to Substantial Completion of the Improvements to be Constructed by the Developer. Following Substantial Completion of the Improvements to be constructed by the Developer hereunder, the Developer may convey all or any portion of its interest in such Project Parcel and/or the Improvements located thereon to any transferee or transferees without restriction other than acceptance by the transferee of the ongoing Blue Back Square SSD tax obligations with respect to such Project Parcel or interest conveyed therein.

Section 22.3 Mortgages.

(a) Notwithstanding any contrary provision contained in this Agreement, the Developer at all times shall have the absolute right, exercisable at any time and from time to time, without the necessity of securing the Town's permission or consent but with prompt written notice to the Town, to grant any Mortgage with respect to the Developer's interest in all or any portion of the Development Property and the Improvements located thereon, to assign this Agreement and any Related Agreement as collateral security for such Mortgage(s), and to enter into any and all extensions, modifications, amendments, replacements and refinancings of such Mortgages as the Developer may desire. Each Mortgagee shall have the unrestricted right to assign, sell, participate, securitize and otherwise deal with its interest in its Mortgage and its loan without restriction and without the Town's permission or consent. No foreclosure of a Mortgage or deed-in-lieu of foreclosure of a Mortgage or the exercise of any other remedy by a Mortgagee shall constitute a prohibited transfer under Section 22.1 or require the Town's consent thereto. The Developer shall provide copies of the Construction Loan Documents to the Town.

(b) Subject to the terms of Article XXV and of the Tri-Party Agreement, any Mortgage encumbering the Town Property shall be subject and subordinate to the Town's Right of Re-Entry. The Developer also acknowledges and agrees that the Town's tax levies for both

property taxes (including, with respect to Building D, taxes payable pursuant to the Tax Assessment Fixing Agreement) and the SSD Levy shall be superior in right to any mortgage encumbering any real property located within the Project Area owned by the Developer.

(c) The granting of a Mortgage or other security interest by the Developer shall not be deemed to constitute an assignment or transfer of this Agreement or any Related Agreement, nor shall the Mortgagee, as such, be deemed to be an assignee or transferee of this Agreement or any Related Agreement so as to require the Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of the Developer to be performed under this Agreement or any Related Agreement. However, the purchaser at any sale of the encumbered real property in any proceedings for the foreclosure of the Mortgage, or the transferee of the encumbered real property under any deed in lieu of the foreclosure of the Mortgage shall be deemed to be an assignee or transferee permitted hereunder, and shall be deemed to have agreed to perform (subject to the other provisions of this Article and to Article XXV) all of the terms, covenants and conditions on the part of the Developer to be performed under this Agreement or any Related Agreement with respect to such real property from and after the date of such purchase and transfer, but only for so long as such purchaser or transferee is the owner of such real property and provided further that in any action brought to enforce the obligation of any such transferee as the party under this Agreement or any Related Agreement, the judgment or decree shall be enforceable against such transferee only to the extent of its interest in said real property and any such judgment shall not be subject to execution on, nor be a lien on, assets of such transferee other than its interest in said real property.

(d) The Mortgagee or other acquirer of said real property pursuant to foreclosure, deed in lieu of foreclosure or other proceedings may, upon acquiring the real property, without further consent of the Town, and without the necessity to comply with Section 22.1, sell and assign this Agreement and any Related Agreement and its right, title and interest thereunder on such terms and to such persons and organizations as are acceptable to the Mortgagee or acquirer and thereafter be relieved of all obligations under this Agreement; provided, however, that such assignee has delivered to the Town its written recordable agreement to be bound by all the provisions of the Agreement from and after the date thereof; and further, provided, however, that any such person or organization to which Mortgagee or other acquirer sells and assigns this Agreement shall thereafter be subject to the terms of Section 22.1 (with such modifications to Section 22.1(a)(ii) as may be appropriate to refer to such assignee's or transferee's principals).

Section 22.4 Rights and Duties of Mortgagee Upon Acquisition Prior to Issuance of Certificate of Completion.

(a) If a Mortgagee acquires fee simple title to a Project Parcel or any part thereof by foreclosure, purchase at a foreclosure sale or deed-in-lieu of foreclosure, prior to issuance of a Certificate of Completion for such Project Parcel, such Mortgagee shall, subject to the provisions of the Tri-Party Agreement, at its option:

(i) Complete construction of the Improvements on such Project Parcel in accordance with the Plans therefor and all Legal Requirements and in all respects (subject to

reasonable extensions of time limitations) comply with the provisions of this Agreement with respect thereto; or

(ii) Sell, assign or transfer (including, but not limited to, at a foreclosure by sale or pursuant to any power of sale in connection with the Mortgage) with the prior written consent of the Town, which consent shall not be unreasonably withheld or delayed (but without restriction as to the consideration received), fee simple title to the Project Parcel or such portion thereof to a purchaser, assignee or transferee who shall expressly assume all of the covenants, agreements and obligations of the Developer under this Agreement with respect to the Project Parcel (subject to reasonable extensions of time limitations), by written instrument reasonably satisfactory to the Town and recorded in the Land Records.

(b) In the event a Mortgagee completes the construction of the Improvements on any Project Parcel in accordance with this Agreement, as evidenced by a Certificate of Completion issued in accordance with Article IX by either the Town or such Mortgagee, the Mortgagee may sell, assign, or transfer fee simple title to the Project Parcel to any purchaser, assignee or transferee without restriction as to the consideration to be received and without the Town's consent, but upon prior written notice to the Town.

Section 22.5 Rights and Duties of a Mortgagee upon Acquisition after Issuance of a Certificate of Completion. If a Mortgagee acquires fee simple title to a Project Parcel after issuance of a Certificate of Completion with respect thereto, the Mortgagee shall have the right to sell, assign or transfer the fee simple title to the Project Parcel on the same basis as set forth in Section 22.2.

Section 22.6 Failure to Assign Agreement by Town Property Closing Date. In the event that, on or before the Town Property Closing Date, the Developer does not assign all of its right, title and interest in this Agreement to Blue Back Square, all references to "Blue Back Square, LLC" in the form documents attached to this Agreement will be revised to read "BBS Development, LLC" and all signature and acknowledgment blocks will be revised accordingly.

ARTICLE XXIII

DEFAULT BY THE DEVELOPER

Section 23.1 Default. The occurrence of any one or more of the following, beyond any applicable notice and cure period, shall constitute a "Developer Default" as that term is used in this Agreement:

(a) Any conveyance of the Developer's interest in a Project Parcel in violation of Section 22.1(a);

(b) If any warranty or representation of the Developer contained in this Agreement is materially untrue as of the date made;

(c) The Developer shall cease doing business as a going concern, make an assignment for the benefit of its creditors, admit in writing its inability to pay its debts as they become due, file a petition commencing a voluntary case under any chapter of the Bankruptcy

Code, 11 U.S.C. § 101 *et seq.* (the "Bankruptcy Code"), file a petition seeking for itself any reorganization, composition, readjustment, liquidation, dissolution or similar arrangement under the Bankruptcy Code or any other present or future law or regulation; or files an answer admitting the material allegations of a petition filed against it in any such proceeding, consents to the filing of such a petition or acquiesces in the appointment of a trustee, receiver, custodian or other similar official for the Developer or of all or substantially all of the Developer's assets or properties, or institutes any proceeding for the dissolution or liquidation of the Developer; a case, proceeding or other action shall be instituted against the Developer, seeking the entry of an order for relief against the Developer, to adjudicate the Developer as a bankrupt or insolvent, or seeking reorganization, arrangement, readjustment, liquidation, dissolution or similar relief against the Developer under the Bankruptcy Code or other present or future rule or regulation, which case, proceeding or other action either results in the entry or issuance of any other order or judgment having a similar effect or remains undismissed for sixty (60) days, or within sixty (60) days after the appointment, without the Developer's consent or acquiescence, of any trustee, receiver, custodian or other similar official for Developer or for all or any substantial part of the Developer's assets and properties, such appointment shall not be vacated; or

(d) The failure, on or before the applicable deadline therefor set forth in this Agreement (including the Construction Schedule) with respect thereto, to Substantially Complete any Improvement required to be completed by the Developer under the terms of this Agreement, and the failure to cure such default within thirty (30) Business Days after notice thereof by the Town to the Developer and each Mortgagee, provided that if such default cannot reasonably be cured within such thirty (30) Business Day time period, then the Developer shall have such additional time as may be reasonably necessary to cure such failure and no Developer Default shall be deemed to exist hereunder so long as the Developer commences such cure within the initial thirty (30) Business Day period and diligently and in good faith pursues such cure to completion within ninety (90) Business Days after expiration of such thirty (30) Business Day period.

(e) The default by the Developer of any other material provision of this Agreement or any Related Agreement and the failure by the Developer to cure such default within thirty (30) Business Days after notice thereof by the Town to the Developer, provided that if such default cannot reasonably be cured within such thirty (30) Business Day time period, then the Developer shall have an additional sixty (60) Business Day period to cure such failure and no Developer Default shall be deemed to exist hereunder so long as the Developer commences such cure within the initial thirty (30) Business Day period and diligently and in good faith pursues such cure to completion within sixty (60) Business Days after expiration of such thirty (30) Business Day period.

(f) The failure of the Developer, as the result of any litigation brought by any third party to invalidate any Zoning Approval, the Bond Ordinance, the SSD Ordinance or this Agreement, to diligently pursue construction of the Improvements required to be completed by the Developer under the terms of this Agreement, for a period of thirty (30) Business Days, which failure is not cured by materially resuming construction within fifteen (15) Business Days after written notice thereof delivered by the Town to the Developer and each Mortgagee; provided, however, that the failure to so resume construction shall not constitute a Developer

Default under this Section 23.1(f) so long as the Developer or any Mortgagee is diligently seeking to remedy the effect of such litigation or defending such litigation.

Section 23.2 Remedies. Subject to the terms and conditions of Article XXV and the Tri-Party Agreement, during the existence of any Developer Default, the Town may pursue any of the following remedies:

(a) With respect to any Developer Default described in Section 23.1(b), the Town shall be entitled to recover from the Developer any and all actual damages, including reasonable attorney's fees incurred by the Town, arising out of or resulting from such default.

(b) With respect to a Developer Default described in Section 23.1(a), (c), (d), (e) and (f), the Town may pursue any one or more of the following remedies, it being the intent hereof that none of such remedies shall be to the exclusion of any other; provided, however, that any such right shall not apply to individual parts or parcels of the Project Parcel or any other Project Parcel (or, in the case of parts or Project Parcels leased, to the leasehold interests) for which a Certificate of Completion has been issued as provided in this Agreement:

(1) If the applicable Project Parcel was acquired from the Town, terminate the estate held by the Developer in the applicable Project Parcel by exercising the Town's Right of Re-Entry;

(2) With respect to a Developer Default under Section 23.1(d), exercise any rights the Town may have under any Payment Bond or Performance Bond and complete the construction of the Public Improvements, as applicable, in the Town's sole option;

(3) Pursue an action for specific performance of the Developer's obligations under this Agreement;

(4) Pursue an action for any and all actual damages incurred by or asserted against the Town as a result of the Developer Default; and

(5) Terminate the Town's obligations under this Agreement.

In the event of the exercise of the Town's Right of Re-Entry, the Parties agree to cooperate with each other in good faith to release and/or modify any Easement that is no longer applicable (in the context of the rights exercised by the Town, the rights of any Mortgagee and the development and continued operation of the Parcels and any Improvements located or to be located thereon).

ARTICLE XXIV

DEFAULT BY TOWN

Section 24.1 Default. The occurrence of any one or more of the following, beyond any applicable notice and cure period, shall constitute a "Town Default" as that term is used in this Agreement:

(a) If any warranty or representation of the Town contained in this Agreement is materially untrue as of the date made;

(b) The failure of the Town to make any payment due hereunder when due;

(c) The default by the Town under Section 9.2, Article XI or Article XIX and the failure by the Town to cure such default within ten (10) Business Days after notice thereof by the Developer to the Town, provided that if such default cannot reasonably be cured within such ten (10) Business Day time period, then the Town shall have such additional time as may be reasonably necessary to cure such failure and no Town Default shall be deemed to exist hereunder so long as the Town commences such cure within the initial ten (10) Business Day period and diligently and in good faith pursues such cure to completion within thirty (30) Business Days after the expiration of said ten (10) Business Day period;

(d) The default by the Town under Section 9.4(b) or the failure of the Town to vacate the Existing Education Building in accordance with the terms of the EEB Lease;

(e) The default by the Town of any other provision of this Agreement or any Related Agreement (other than the failure to vacate the Existing Education Building in accordance with the terms of the EEB Lease) not expressly referenced elsewhere in this Section 24.1, and the failure by the Town to cure such default within thirty (30) Business Days after notice thereof by the Developer to the Town, provided that if such default cannot reasonably be cured within such thirty (30) Business Day time period, then the Town shall have an additional sixty (60) Business Day period to cure such failure and no Town Default shall be deemed to exist hereunder so long as the Town commences such cure within the initial thirty (30) Business Day period and diligently and in good faith pursues such cure to completion within such resulting ninety (90) Business Day period from the date of the Developer's notice;

(f) The Town shall commence a voluntary case concerning the Town under Title 11 of the United States Code entitled "Bankruptcy" as now or hereafter in effect, or any successor thereto or any other present or future bankruptcy or insolvency statute (the "Bankruptcy Code"); or the Town commences any other proceedings under any reorganization, arrangement, readjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction whether now or hereafter in effect relating to the Town; or there is commenced against the Town any such proceeding which remains undismissed or unstayed for a period of ninety (90) days; or the Town fails to controvert in a timely manner any such case any such proceeding, or any order approving any such proceeding is entered; or the Town by any act or failure to act indicates its consent to, approval of, or acquiescence in any proceeding or the appointment of any custodian or the like of or for it for any substantial part of its property or suffers any such appointment to continue undischarged or unstayed for a period of ninety (90) days.

Section 24.2 Remedies. Upon the occurrence of any Town Default, the Developer may pursue the following remedies:

(a) With respect to a Town Default described in Section 24.1(a), the Developer shall be entitled to recover from the Town any and all actual damages, including

reasonable attorneys' fees incurred by the Developer, arising out of or resulting from the breach of such representation or warranty.

(b) With respect to a Town Default described in Section 24.1(b), (c), (e) or (f), the Developer may pursue any one or more of the following remedies concurrently or successively, it being the intent hereof that none of such remedies shall be to the exclusion of any other:

(i) Pursue an action for specific performance of the Town's obligations under this Agreement;

(ii) Pursue an action for any and all actual damages incurred by or asserted against the Developer as a result of the Town Default; and

(iii) Exercise or pursue any other remedy or cause of action permitted under this Agreement or any Related Agreement or conferred upon the Developer at law or in equity.

(c) With respect to a Town Default described in Section 24.1(d), the Developer may pursue any and all rights and remedies at law or in equity.

Section 24.3 Time is of the Essence.

(a) The Parties recognize that time is of the essence with respect to the dates in this Agreement, the Parties' obligations as set forth in the Construction Schedule and the obligation of the Town to vacate the EEB Lease pursuant to the terms thereof.

Section 24.4 Payments by the Town. Notwithstanding anything to the contrary contained herein, if the Town fails to make any payment due under this Agreement in full when due, that portion of the payment that remains unpaid shall bear interest at the Default Rate from the date due until paid in full by the Town to the Developer.

ARTICLE XXV

MORTGAGES

Section 25.1 Consent of Mortgagee Required. No cancellation, surrender or modification of this Agreement or any Related Agreement shall be effective as to any Mortgagee unless consented to in writing by such Mortgagee.

Section 25.2 Notice of Default and Right to Cure.

(a) The Town, upon providing the Developer any notice of: (i) default under this Agreement; or (ii) a termination of this Agreement, shall contemporaneously provide a copy of such notice to every Mortgagee. No such notice by the Town to the Developer with respect to a default by the Developer or exercise of any remedies by the Town following a Developer Default shall be deemed to have been duly given unless and until a copy thereof has been so provided to every such Mortgagee. From and after such notice has been given to a Mortgagee, such Mortgagee shall have the same period (which period may run simultaneously with the

Developer's cure period), after the giving of such notice to it, for remedying any default or acts or omissions that are the subject matter of such notice or causing the same to be remedied, as is given the Developer hereunder after the giving of such notice to the Developer, plus in each instance, the additional periods of time specified in Section 25.2(b) and Section 25.2(c), to remedy, commence remedying or cause to be remedied the defaults or acts or omissions that are the subject matter of such notice specified in any such notice. If any default occurs for which the Developer is not entitled to notice of default, the Town shall provide notice of such default to the Mortgagee, and from and after such notice, such Mortgagee shall have the time period specified in subsections (b) and (c) of this Section to remedy, commence remedying or cause to be remedied the defaults or acts or omissions that are the subject matter of such notice specified in any such notice. The Town shall accept any performance by or at the instigation of such Mortgagee as if the same had been done by the Developer. The Developer authorizes each Mortgagee to take any such action at such Mortgagee's option and does hereby authorize entry upon the Project Area by the Mortgagee for such purpose.

(b) Notwithstanding anything to the contrary contained herein, if any default shall occur that entitles the Town to terminate this Agreement or to exercise any Right of Re-Entry, the Town shall have no right to terminate this Agreement or exercise such Right of Re-Entry unless, following the expiration of any cure period set forth in Section 23.1 in which the Developer may cure such default or the act or omission that gave rise to such default (or if there is no cure period set forth in Section 23.1, following such default or act or omission), the Town shall notify every Mortgagee of the Town's right to terminate this Agreement or to exercise any Right of Re-Entry at least ninety (90) days in advance of the proposed effective date of such termination or exercise of Right of Re-Entry. The provisions of Section 25.2(c) shall apply if, during such ninety (90) day period, any Mortgagee shall: (i) notify the Town of such Mortgagee's desire to nullify such notice; (ii) pay or cause to be paid any payments then due and in arrears as specified in the termination notice or Right of Re-Entry notice to such Mortgagee and that may become due during such ninety (90) day period; and (iii) comply or, if such non-monetary defaults are incapable of being cured within the remainder of such ninety (90) day period, in good faith commence to comply, with all non-monetary requirements of this Agreement then in default and reasonably susceptible of being complied with by such Mortgagee; provided however, that such Mortgagee shall not be required during such ninety (90) day period to cure or commence to cure any default consisting of the Developer's failure to satisfy and discharge any lien, charge or encumbrance against the Developer's interest in this Agreement or the Project Area junior in priority to the lien held by such Mortgagee. The Parties shall negotiate in good faith with the Mortgagee to incorporate a provision into the Tri-Party Agreement which reduces the ninety (90) day period referenced in this Section 25.2(b) (and in any corresponding provision in the South Garage Lease and the Pad Lease) with respect to a Developer Default described in Section 23.1(f).

(c) If the Town shall elect to terminate this Agreement or to exercise any Right of Re-Entry by reason of any Developer Default, and a Mortgagee shall have proceeded in the manner provided for by Section 25.2(b), the specified date for the termination of this Agreement or for the exercise of the Town's Right of Re-Entry as fixed by the Town in its termination or Right of Re-Entry notice, as applicable, shall be extended for a period of twelve (12) months, provided such Mortgagee shall, during such twelve (12)-month period: (i) pay or cause to be paid the monetary obligations of the Developer under this Agreement as the same

become due, and continue its good faith efforts to perform all of the Developer's other obligations under this Agreement, excepting (A) obligations of the Developer to satisfy or otherwise discharge any lien, charge or encumbrance against the Developer's interest in this Agreement or the Project Area junior in priority to the lien of the mortgage held by such Mortgagee, and (B) past non-monetary obligations then in default and not reasonably susceptible of being cured by such Mortgagee; and (ii) if not enjoined or stayed, diligently take steps to acquire or sell the Developer's interest in this Agreement by foreclosure of the Mortgage or other appropriate means and prosecute the same to completion with due diligence.

(d) If at the end of such twelve (12) month period such Mortgagee is complying with Section 25.2(c), this Agreement shall not then terminate and the Town shall not exercise its Right of Re-Entry, and the time for completion by such Mortgagee of its proceedings shall continue so long as such Mortgagee is enjoined or stayed or for so long as such Mortgagee proceeds to complete steps to acquire or sell the Developer's interest in this Agreement by foreclosure of the Mortgage or by other appropriate means with reasonable diligence and continuity. Nothing in this Section 25.2(d), however, shall be construed to require a Mortgagee to continue such foreclosure proceedings after the default has been cured. If the default shall be cured and the Mortgagee shall discontinue such foreclosure proceedings, this Agreement shall continue in full force and effect as if the Developer had not defaulted under this Agreement.

(e) If a Mortgagee is complying with Section 25.2(c), upon the acquisition of the Developer's interest in the real property encumbered by the Mortgagee's Mortgage by such Mortgagee or its designee or any other purchaser at a foreclosure sale or otherwise, this Agreement shall continue in full force and effect as if the Developer had not defaulted under this Agreement, and the deadlines for construction of the Improvements to be constructed hereunder by the Developer automatically shall be extended by the period of time which was necessary for the Mortgagee to conclude the proceedings described in Section 25.2(d) (including the period of any injunction or stay applicable to same).

Section 25.3 Post-Bankruptcy Agreement.

(a) In the event of the termination of this Agreement or exercise of the Right of Re-Entry as a result of rejection of this Agreement in any state or federal insolvency or bankruptcy proceedings, the Town shall, in addition to providing the notices of default, termination and exercise of Right of Re-Entry as required by the foregoing Sections of this Article, provide each Mortgagee with written notice that the Agreement has been terminated and/or that the Right of Re-Entry has been exercised, together with a statement of all sums that would at that time be due by the Developer under this Agreement but for such termination, and of all other defaults, if any, then known to the Town. The Town agrees to enter into a new Agreement ("Post-Bankruptcy Agreement") with such Mortgagee or its designee, effective as of the date of termination or reversion, upon the terms, covenants and conditions (but excluding requirements which are not applicable or which have already been fulfilled) of this Agreement, provided: (i) such Mortgagee shall make written request upon the Town for such Post-Bankruptcy Agreement within sixty (60) days after the date such Mortgagee receives the Town's notice of termination of this Agreement or reversion given pursuant to this Section 25.3(a); (ii) such Mortgagee or its designee shall pay or cause to be paid to the Town at the time of the execution and delivery of such Post-Bankruptcy Agreement, any and all sums that would at the

time of execution and delivery thereof be due by the Developer pursuant to this Agreement but for such termination or reversion and, in addition thereto, all reasonable expenses, including reasonable attorney's fees, that the Town shall have incurred by reason of such termination or reversion and the execution and delivery of the New Agreement and have not otherwise been received by the Town from the Developer or other party in interest under the Developer; and (iii) such Mortgagee or its designee shall agree to remedy any of the Developer's defaults of which the Mortgagee was notified by the Town's notice of termination or reversion and that are reasonably susceptible of being so cured by Mortgagee or its designee, including but not limited to the Developer's obligation to construct the remaining Improvements in accordance with the terms and conditions of the Master Agreement and the deadlines for construction of the Improvements to be constructed hereunder by the Developer automatically shall be extended by a reasonable period of time.

(b) Any Post-Bankruptcy Agreement made pursuant to Section 25.3(a) shall be prior to any mortgage or other lien, charge or encumbrance on the fee of the Project Parcel, and the developer under such Post-Bankruptcy Agreement shall have the same right, title and interest in and to the reverted Project Parcel and the buildings and improvements thereon as the Developer had under this Agreement.

(c) The developer under any such Post-Bankruptcy Agreement shall be liable to perform the obligations imposed on the developer by such Post-Bankruptcy Agreement only during the period such person has ownership of the applicable Project Parcel.

(d) If more than one Mortgagee shall request a Post-Bankruptcy Agreement pursuant to this Section, the Town shall enter into such Post-Bankruptcy Agreement with the Mortgagee whose mortgage is prior in lien, or with the designee of such Mortgagee. The Town, without liability to the Developer or any Mortgagee with an adverse claim, may rely upon a mortgage title insurance policy issued by a responsible title insurance company doing business within the State of Connecticut as the basis for determining the appropriate Mortgagee who is entitled to such Post-Bankruptcy Agreement.

Section 25.4 Miscellaneous Mortgage Issues.

(a) Nothing contained herein shall require any Mortgagee or its designee, as a condition to its exercise of rights hereunder, to cure any default of the Developer not reasonably susceptible of being cured by such Mortgagee or its designee, including but not limited to the default referred to in Section 23.1(c) hereof, in order to comply with the provisions of Section 25.2 or as a condition of entering into the Post-Bankruptcy Agreement provided for by Section 25.3.

(b) The Town shall give each Mortgagee prompt notice of any mediation, arbitration or legal proceedings between the Town and the Developer involving obligations under this Agreement or any Related Agreement. Each Mortgagee shall have the right to intervene in any such proceedings and be made a party to such proceedings, and the parties hereto do hereby consent to such intervention. If any Mortgagee shall not elect to intervene or become a party to any such proceedings, the Town shall give the Mortgagee notice of, and a copy of any award or decision made in any such proceedings, which shall be binding on all

Mortgagees not intervening after receipt of notice of arbitration. If the Developer shall fail to appoint an arbitrator after notice from the Town, as provided in Section 15.2, a Mortgagee (in order of seniority if there is more than one) shall have an additional period of thirty (30) days, after notice by the Town that the Developer has failed to appoint such arbitrator, to make such appointment, and the arbitrator so appointed shall thereupon be recognized in all respects as if he had been appointed by the Developer.

(c) If the Developer seeks to enter into a Mortgage, the Town shall amend this Agreement from time to time to the extent reasonably requested by a Mortgagee proposing to make the Developer a loan secured by a lien upon the Developer's interest in the Proposed Project, provided such proposed amendments do not materially adversely affect the rights of the Town or the obligations of the Developer under this Agreement.

(d) Notices from the Town to the Mortgagee shall be mailed to the address furnished to the Town by the Mortgagee, and those from the Mortgagee to the Town shall be mailed to the address designated pursuant to the provisions of Article XXI. Such notices, demands and requests shall be given in the manner described in and shall in all respects be governed by the provisions of Article XXI.

ARTICLE XXVI

INSURANCE AND INDEMNIFICATION

Section 26.1 Developer's Insurance Obligations. During the construction by the Developer of any of the Public Improvements and Private Improvements, the Developer, at its cost and expense shall maintain (or shall cause the Developer's Construction Manager to maintain) the insurance described herein with respect to the Public Improvements and Private Improvements then under construction. The Town shall be named as an additional insured and loss payee with respect to any property insurance carried by Developer hereunder with respect to the South Garage and the Site Improvements; provided, however, that all insurance proceeds with respect to any casualty with respect to the South Garage shall be utilized as required by the Construction Loan Documents (subject to the payment to the Town therefrom of the reasonable cost of demolishing, at the Town's option, the South Garage if it is not rebuilt by the Developer). Any Mortgagee also shall be listed as an additional insured and loss payee on all of the property insurance policies carried by the Developer and as an additional insured on all such liability insurance policies. The policies shall provide sufficient limits, as provided in Exhibit KK.

Section 26.2 General Requirements. The required insurance shall be written for not less than limits of liability specified in Exhibit KK or as required by applicable federal or state law, regulation or requirement, whichever coverage is greater. It is agreed that the scope and limits of insurance coverage specified are minimum requirements and shall in no way limit or exclude the Town from additional limits and coverage provided under the Developer's policies. The Developer's insurance coverage shall be primary insurance with respect to the Town. Any insurance or self-insurance maintained by the Town shall be excess of the Developer's insurance and shall not contribute with it. All required insurance, whether written on an occurrence or claims-made basis, shall be maintained without interruption during the construction of the Public Improvements until their respective Closing Date or final completion, or required extensions, as applicable and, with respect to the Private Improvements, until their respective Substantial Completion dates. The

Developer shall pay all costs including, but not limited to premiums, deductibles, retentions, defense costs, taxes and audit charges earned and payable under the required insurance. If the Developer fails to purchase or maintain the required insurance, the Developer shall bear all reasonable costs including, but not limited to, reasonable attorney's fees and costs of litigation, properly incurred by the Town with respect to such failure.

Section 26.3 Acceptability of Insurers. All of the policies of insurance provided for hereunder shall be with reputable companies licensed and authorized to issue such policies in such amounts in the State of Connecticut and having a Best's rating of at least A-X.

Section 26.4 Deductibles and/or Retentions. The deductible or retention amount for any insurance coverage required to be carried hereunder shall not exceed ten percent (10%) of the policy amount (or amount allocated to the applicable property if a blanket policy) without the approval of the Town. The Developer shall be responsible to pay all deductibles and/or retentions.

Section 26.5 Subcontractors. The Developer shall include all subcontractors working on the Proposed Project as an additional insured under its liability policies or shall obtain from such subcontractors separate certificates and endorsements for each such subcontractor. Subcontractor's coverage shall be subject to all of the requirements stated herein.

Section 26.6 Claims-Made Form. If the insurance coverage is underwritten on a claims-made basis, the retroactive date shall be prior to or coincident with the date of the Master Agreement. The certificate of insurance shall state the retroactive date and that the coverage is claims-made. The Developer shall maintain coverage without interruption during the construction and for two (2) years following Substantial Completion of the applicable Public Improvement and Private Improvement. Evidence of such coverage shall be provided to the Town no later than thirty (30) days prior to the expiration of each policy.

Section 26.7 Aggregate Limits. If a general aggregate limit is used, the general aggregate limit shall apply separately to the Project or shall be twice the occurrence limit. All aggregate limits must be declared to the Town. It is agreed that the Developer shall notify the Town with reasonable promptness with information concerning the erosion of limits due to claims paid under the general aggregate limit during the construction of the Public Improvements and the Private Improvements. If the general aggregate limit is eroded for the full limit, the Developer agrees to reinstate or purchase additional limits to meet the minimum limit requirements stated herein. The Developer shall be responsible to pay the premium.

Section 26.8 Notice of Cancellation or Non-Renewal. For other than non-payment of premium, each insurance policy required herein shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the Town. Ten (10) days prior written notice shall be given for non-payment of premium.

Section 26.9 Certificates of Insurance. The Developer shall deliver to the Town prior to the commencement of work, certificates signed by a person authorized by the insurer to bind coverage on its behalf, showing the required insurance to be in full force and effect. The certificates shall show or be accompanied by evidence of payment of such premiums. If the premium covers more than one (1) year and may be paid in installments, then only an annual installment must be paid

in advance. Renewal of expiring certificates shall be filed thirty (30) days prior to expiration. The Town reserves the rights to require complete, certified copies of all required policies, at any time.

Section 26.10 Town's Insurance Obligations. During the construction by the Town of the Library Addition, Town Hall Addition, and/or Police Station Addition, the Town, shall be responsible for purchasing and maintaining its own liability and property insurance and, at its option, may purchase and maintain (or may cause the Town's Construction Manager purchase and maintain) such insurance as will protect the Town against claims that may arise from the construction operations. The Developer agrees that the Town may self-insure any or all of the insurance coverage.

Section 26.11 Developer's Indemnification of Town. The Developer shall defend, indemnify and hold harmless the Town Indemnitees from and against any and all demands, losses, judgments, damages, suits, claims, actions and liabilities, in law or in equity, of every kind and nature whatsoever and the reasonable costs and expenses thereof, including, without limitation, reasonable attorney's fees which any of the Town Indemnitees may suffer or sustain or which may be asserted or instituted against any of the Town Indemnitees in connection with the Project or this Agreement and resulting from, arising out of or in connection with injury or death of any individual person or property damage due to the negligence of the Developer, its officers, directors and employees. The indemnity set forth in this Section 26.12 shall survive the expiration or earlier termination of this Agreement.

Section 26.12 Town's Indemnification of Developer. The Town shall defend, indemnify and hold harmless the Developer Indemnitees from and against any and all demands, losses, judgments, damages, suits, claims, actions, and liabilities, in law or in equity, of every kind and nature whatsoever and the reasonable costs and expenses thereof, including, without limitation, reasonable attorneys' fees which any of the Developer Indemnitees may suffer or sustain or which may be asserted or instituted against any of the Developer Indemnitees in connection with the Project or this Agreement and resulting from, arising out of or in connection with injury or death of any individual person or property damage due to any negligence of the Town, its officers, directors, contractors and employees. The indemnity set forth in this Section 26.13 shall survive the expiration or earlier termination of this Agreement.

Section 26.13 Owner's Controlled Insurance Program, Contractor's Pollution Liability Insurance Coverage and Pollution Legal Liability Insurance Coverage. Notwithstanding anything to the contrary contained herein, the Town and the Developer shall cooperate with one another to obtain comprehensive coverage during construction of the Project, which may include implementation of an Owner Controlled Insurance Program ("OCIP") with respect to the entire Project (exclusive of environmental coverage) and, if reasonably possible, a single carrier (via an OCIP or as a separate policy) for both Contractor's Pollution Liability ("CPL") insurance coverage and Pollution Legal Liability ("PLL") insurance coverage. Prior to the North Garage Closing Date, the Town and Developer agree to work together to secure a mutually acceptable PLL policy, the term of which will commence on the North Garage Closing Date. Developer agrees to pay the cost of CPL insurance coverage and to contribute 50%, up to the maximum amount of \$100,000, toward the premium for this PLL insurance coverage, which shall include the following terms if they are reasonably available:

- (a) CPL policy (occurrence trigger) with limits of \$5 million per occurrence/\$10 million aggregate for a policy term of two (2) years (assuming two (2) years of

construction), plus three (3) years of extended completed operations subject to a self-insured retention for each and every claim not to exceed \$250,000. Coverage to include third party damage, third party bodily injury, cleanup claims and related defense costs resulting from Covered Operations, as defined including onsite transportation and claims from scheduled disposal sites. If any of such terms are not reasonably available, the Parties will mutually agree on the best available substitute.

(b) PLL policy (claims made trigger) with limits of \$5 million per loss/\$10 million aggregate for a policy term of ten (10) years for unknown, pre-existing pollution conditions and five (5) years for new pollution conditions subject to a self-insured retention for each and every claim not to exceed \$250,000 or such lesser amount as the Parties may agree. Coverage to include third party damage, third party bodily injury, cleanup claims and related defense costs from contaminants on, under, at, or migrating through the property. Future business interruption coverage may be available.

(c) Town and Developer are both insureds. If Developer's Mortgagee(s) are named as an additional insured, Developer shall pay any additional resulting premiums.

(d) Town and Developer will work together to obtain a PLL policy which includes first-dollar coverage for costs of defense provided that such a policy may be obtained at a cost deemed reasonable to the Town. In the event that such a policy cannot be obtained, the parties agree to allocate these self-insured retention costs as follows: 1) for claims or suits (whether based on tort, statute or otherwise) in which the Town and Developer may both be determined to be liable, the Town will reserve the right to control selection of defense counsel subject to the terms of the policy and will pay all costs of defense; the Town and Developer will share equally all other costs and damages associated with the claim or suit based on a negotiated amount or adjudication of the same or, 2) for willful or wanton acts or omissions, sole responsibility for the claim or suit or cause of action, violations, fees, penalties and administrative costs, the responsible party will pay 100% of the costs.

ARTICLE XXVII

CASUALTY AND CONDEMNATION

Section 27.1 Casualty or Condemnation of Existing Education Building.

(a) If, at any time prior to the Town Property Closing, in the Town's reasonable judgment, a Condemnation or Substantial Casualty occurs with respect to the Existing Education Building, then on the Town Property Closing Date, the Parties shall not enter into the EEB Lease or the EEB Notice of the Lease.

(b) If, at any time prior to the Town Property Closing, an eminent domain proceeding other than a Condemnation occurs or any damage or destruction other than a Substantial Casualty occurs, with respect to the Existing Education Building, in the Town's reasonable judgment, then the Town shall:

(i) assign to the Developer the Town's portion of any condemnation award attributable to the Existing Education Building and Parcel A; provided, however, that nothing in this Section 27.1(b)(i) shall be deemed to prevent the Town from pursuing and retaining a separate award for any moving expenses and for the value of the Town's personal property, provided that such claim shall not reduce the award attributable to the Existing Education Building and Parcel A; and

(ii) at the Town's expense, repair or restore the Existing Education Building to a condition in which the Town can use the Existing Education Building for its intended purpose, and, if such repair or restoration is such that it cannot reasonably be accomplished prior to the Town Property Closing Date, the EEB Lease shall be revised accordingly to provide that the Town shall complete such repair or restoration within a reasonable time thereafter (but in no event later than the termination date of the EEB Lease).

Section 27.2 Casualty or Condemnation of the South Garage. If, at any time following the South Garage Closing, all or part of the South Garage, Building C or Building D, or one or more Common Walls, or one or more Supporting Components shall be taken by condemnation, power of eminent domain, or sale in lieu thereof, or damaged or destroyed by any casualty, then the terms of the Building C/Building D – South Garage Cross-Easement Agreement shall apply with respect to the rights and obligations of the Town and the respective owner(s) of Building C and Building D. As used herein, the terms “Common Walls” and “Supporting Components” shall have the meanings ascribed thereto in the Building C/Building D – South Garage Cross-Easement Agreement.

Section 27.3 Casualty or Condemnation of the North Garage. If, at any time following the North Garage Closing, all or part of the North Garage, Building B-1, Building B-2 or Building B-3, or one or more Common Walls, or one or more Supporting Components shall be taken by condemnation, power of eminent domain, or sale in lieu thereof, or damaged or destroyed by any casualty, then the terms of the Building B – North Garage Cross-Easement Agreement shall apply with respect to the rights and obligations of the Town and the respective owner(s) of Building B-1, Building B-2 and Building B-3. As used herein, the terms “Common Walls” and “Supporting Components” shall have the meanings ascribed thereto in the Building B – North Garage Cross-Easement. .

Section 27.4 Casualty of Building A. If at any time after the Town Property Closing Date and prior to the eighteenth (18th) anniversary of the issuance of the first bond to be issued pursuant to Article IV of this Agreement (or such twentieth (20th) anniversary if bond anticipation notes are not issued) (the “Bond Maturity Date”), Building A is damaged or destroyed by casualty, then, to the extent of net insurance proceeds (after deducting the reasonable collection costs thereof), the Party owning such structure shall repair or restore such damaged or destroyed improvement to substantially the same condition existing prior to such damage or destruction.

Section 27.5 Condemnation of Building A. If, at any time following the Town Property Closing Date and prior to the Bond Maturity Date, all or part of Building A shall be taken by condemnation, power of eminent domain, or sale in lieu thereof, then the Party owning such structure, without cost to any other Party, shall commence and thereafter proceed with reasonable diligence (subject to a reasonable time allowance for the purpose of receiving the condemnation proceeds) to repair, restore, replace, or rebuild the structure to a good, safe and sightly condition

(to the extent of net condemnation proceeds (after deducting the reasonable collection costs thereof)).

ARTICLE XXVIII

PRORATIONS AND CLOSING COSTS

Section 28.1 Prorations.

(a) Taxes.

(i) Real estate taxes, personal property taxes, special assessments (and installments thereof), and other governmental taxes and charges relating to the North Garage Property (collectively, "North Garage Taxes") payable during the year in which the North Garage Closing occurs shall be prorated as of the North Garage Closing Date. If the North Garage Closing occurs before the actual North Garage Taxes payable during such year are known, the proration of North Garage Taxes shall be upon the basis of the value of the North Garage Property with the completed construction of the North Garage; provided, however, that if the North Garage Taxes payable during the year in which the North Garage Closing occurs are thereafter determined to be more or less (excluding any tax exemption due to Town ownership) than the North Garage Taxes payable during the preceding year, the Town and the Developer promptly (but no later than thirty (30) days after such Taxes are determined) shall adjust the proration of North Garage Taxes and the Developer or the Town, as the case may be, shall pay to the other any amount required as a result of such adjustment. This covenant shall not merge with the deed delivered hereunder but shall survive the North Garage Closing.

(ii) Real estate taxes, personal property taxes, special assessments (and installments thereof), and other governmental taxes and charges relating to the South Garage Property (collectively, "South Garage Taxes") payable during the year in which the South Garage Closing occurs shall be prorated as of the South Garage Closing Date. If the South Garage Closing occurs before the actual South Garage Taxes payable during such year are known, the proration of South Garage Taxes shall be upon the basis of the value of the South Garage Property with the completed construction of the South Garage; provided, however, that if the South Garage Taxes payable during the year in which the South Garage Closing occurs are thereafter determined to be more or less (excluding any tax exemption due to Town ownership) than the South Garage Taxes payable during the preceding year, the Town and the Developer promptly (but no later than thirty (30) days after such Taxes are determined) shall adjust the proration of South Garage Taxes and the Developer or the Town, as the case may be, shall pay to the other any amount required as a result of such adjustment. This covenant shall not merge with the deed delivered hereunder but shall survive the South Garage Closing.

(b) Miscellaneous Charges. Vault charges, sewer charges, and utility charges actually paid or payable as of the applicable Closing Date shall be prorated as of said Closing Date.

Section 28.2 Generally. All prorations shall be made on a 365 day calendar year basis, using actual number of days in the month. All prorations shall be paid in cash at the applicable Closing to the Party entitled to receive same by the other Party.

ARTICLE XXIX

MISCELLANEOUS

Section 29.1 Interpretation. Unless otherwise specified herein: (a) the singular includes the plural and the plural the singular; (b) words importing any gender include the other genders; (c) references to Persons include their permitted successors and assigns; (d) words and terms which include a number of constituent parts, things or elements, including the terms Improvements, Building Systems, Landscaping, and Personal Property, shall be construed as referring separately to each constituent part, thing, or element thereof, as well as to all of such constituent parts, things or elements as a whole; (e) references to statutes are to be construed as including all rules and regulations adopted pursuant to the statute referred to and all statutory provisions consolidating, amending or replacing the statute referred to; (f) references to agreements and other contractual instruments shall be deemed to include all subsequent amendments thereto or changes therein entered into in accordance with their respective terms; (g) the words “approve”, “consent” and “agree” or derivations of said words or words of similar import mean, unless otherwise expressly provided herein, the prior approval, consent or agreement in writing of the Person holding the right to approve, consent or agree with respect to the matter in question, and the words “require”, “judgment” and “satisfy” or derivations of said words or words of similar import mean the requirement, judgment or satisfaction of the Person who or which may make a requirement or exercise judgment or who or which must be satisfied, which approval, consent, agreement, requirements, judgment or satisfaction shall be in the sole and absolute discretion of the Person holding the right to approve, consent or agree, or who may make a requirement or judgment, or who must be satisfied; (h) the words “include” or “including” or words of similar import, shall be deemed to be followed by the words “without limitation”; (i) the words, “hereto” or “hereby” or “herein” or “hereof” or “hereunder”, or words of similar import, refer to this Agreement in its entirety; (j) all references to Articles and Sections are to the Articles and Sections of this Agreement; (k) in computing any time period hereunder, the day of the act, event or default after which the designated time period begins to run is not to be included, and the last day of the period so computed is to be included, unless any such last day is not a Business Day, in which event such time period shall run until the next day which is a Business Day; and (l) the headings of Articles and Sections contained in this Agreement are inserted as a matter of convenience and shall not affect the construction of this Agreement. Notwithstanding anything to the contrary contained herein, (x) in no event shall any owner of any Project Parcel or Private Improvement be liable for the breach of this Agreement by, or for the obligations hereunder of, the owner of any other Project Parcel or Private Improvement, and (y) in no event shall any owner of one Building located on a Project Parcel be liable for the breach of this Agreement by, or for the obligations hereunder of, the owner of any other Building located on the same Project Parcel.

Section 29.2 Applicable Law. This Agreement shall in all respects be governed by, and construed in accordance with, the substantive federal laws of the United States and the laws of the State of Connecticut. All duties and obligations under this Agreement are to be performed in the State of Connecticut and venue for purposes of any actions brought under this Agreement, or under any agreement or other document executed in conjunction herewith, shall be the state or federal courts located within and having jurisdiction over the State of Connecticut.

Section 29.3 Amendment and Waiver. Subject to Section 25.1, this Agreement may be amended or changed only by written instrument duly executed by the Town and the Developer, and any alleged amendment or change which is not so documented shall not be effective as to any such

Party. Provisions of this Agreement may be waived by the Party hereto which is entitled to the benefit thereof by evidencing such waiver in writing, executed by such Party.

Section 29.4 Severability. If any provision of this Agreement or the application thereof to any Person or circumstance shall, for any reason and to any extent, be invalid or unenforceable but the extent of the invalidity or unenforceability does not destroy the basis of the bargain between the Parties hereto as contained herein, the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by applicable law.

Section 29.5 Confidentiality of Information. To the extent permitted by law (including, without limitation, the Freedom of Information Act), all information obtained by either Party from the other Party pursuant to this Agreement shall be and remain confidential regardless of whether any Closing occurs; provided, however, that the foregoing shall not prevent either Party from disclosing such information, if any, as may reasonably be required to carry out its obligations hereunder (including without limitation disclosure to its lenders, attorneys, accountants or consultants retained for the purposes of this transaction) or as reasonably requested by potential or current investors in the Developer or as reasonably requested by the Construction Lender or any permanent lender in connection with the Construction Loan or any permanent loan or as may be required by applicable law or in connection with any litigation or alternative dispute resolution proceedings between the Parties to this Agreement or as required by law, court order or any rule, regulation or order of any governmental authority or agency having jurisdiction over the Town, the Developer or the Project.

Section 29.6 Exhibits; Conflict. All exhibits to this Agreement are hereby incorporated herein for any and all purposes. If any conflict shall be found to exist between the provisions of this Agreement and the provisions of any exhibit, the provisions of this Agreement shall prevail.

Section 29.7 Entire Agreement. This Agreement, and exhibits attached hereto, contains the entire agreement between the Parties hereto relating to the subject matter hereof.

Section 29.8 Estoppels. Each Party shall, without charge, at any time and from time to time, within ten (10) days after written request by the other or by any Mortgagee, execute and deliver a commercially reasonable certificate or certificates evidencing: (a) whether this Agreement is in force and effect; (b) whether this Agreement has been modified or amended in any respect and, if so, submitting copies of or otherwise specifically identifying such modifications or amendments; (c) whether, to the best knowledge of such Party, the other Party has complied with all of its warranties, representations and covenants contained herein and, if the other Party has not so complied, identifying with reasonable specificity the nature of such non-compliance; (d) stating whether or not any notice of default has been given to the other Party which has not been cured and, if so, including a copy of such notice, and (e) such other matters as either Party or any Mortgagee may reasonably request.

Section 29.9 Further Assurances. At any time or times after the date hereof, each party shall execute, have acknowledged, and deliver to the others any and all instruments, and take any and all other actions, as the other parties may reasonably request to effectuate the transactions described herein.

Section 29.10 Consent. Except as otherwise provided herein, each Party agrees to use its reasonable efforts to respond to a request for consent or approval hereunder within fifteen (15) days after its receipt of such request and all required supporting data therefor.

Section 29.11 Other Activities. The parties hereto and their Affiliates shall not be prohibited or restricted from investing in or conducting, and may invest in and/or conduct, business of any nature whatsoever, including the ownership and operation of commercial real estate. The investing in or conducting of any such business by any party or any Affiliate thereof shall not give rise to any claim for an accounting by the other Party or any claim to any interest therein or the profits therefrom.

Section 29.12 Multiple Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which shall constitute but one instrument.

Section 29.13 Successors and Assigns. This Agreement shall be binding on, and shall inure to the benefit of, the parties hereto and their respective successors and permitted assigns. The Town shall have no right to assign any or all of its rights or obligations under this Agreement, it being acknowledged that the Developer is relying upon the Town being a continuing party to this Agreement.

Section 29.14 No Partnership. Nothing contained in this Agreement shall be construed to create a partnership or joint venture between the parties or their successors in interest.

Section 29.15 Mutual Representation. Each of the parties hereto represents to the other that it has had no dealings, negotiations, or consultations with any broker, representative, employee, agent or other intermediary in connection with the Agreement or the transfers contemplated herein. The parties agree that each will indemnify, defend and hold the other free and harmless from the claims of any other broker(s), representative(s), employee(s), agent(s) or other intermediary(ies) claiming to have represented the Town or the Developer, respectively, or otherwise to be entitled to compensation in connection with this Agreement or the transfers contemplated herein. This provision shall survive the Closings.

Section 29.16 Recording; Covenants Running with the Land. This Agreement shall be recorded in the Land Records on the Town Property Closing Date; provided, however, that if any exhibit hereto is recorded separately at such time, it may be omitted from the recorded copy of this Agreement and incorporated herein by reference to such recorded document. Following such recording, the covenants and restrictions set forth herein shall run with and bind the land in the Project Area, and shall inure to the benefit of and be enforceable by the Developer and the Town, and their respective successors and permitted assigns. Notwithstanding any provision herein and without intending to affect the rights and obligations of the Parties hereto, the Parties agree that the Developer's release and indemnification obligations under Section 20.4 in connection with Environmental Conditions at, on, under, emanating or having emanated from the North Garage Parcel shall survive and run with and bind Parcel A only and the owner thereof during its period of ownership.

Section 29.17 Assessment of Buildings. The Town agrees to separately assess each building comprising a portion of the Private Improvements. The Developer agrees to deliver to the Town's Tax Assessor, within one hundred twenty (120) days after the end of each calendar year that occurs while any of the original Bonds are outstanding, an annual summary income statement for

such calendar year with respect to non-residential space included in each of Building A, Building B-1, Building B-2, Building B-3, the Pad Building, Building C and Building D.

Section 29.18 WAIVER OF TRIAL BY JURY. EACH OF THE PARTIES TO THIS AGREEMENT HEREBY (I) KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION ARISING IN ANY WAY IN CONNECTION WITH THIS AGREEMENT, AND (II) ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND (III) ACKNOWLEDGES THAT IT HAS DISCUSSED THIS WAIVER WITH SUCH LEGAL COUNSEL. EACH OF THE PARTIES TO THIS AGREEMENT FURTHER ACKNOWLEDGES THAT (I) IT HAS READ AND UNDERSTANDS THE MEANING AND RAMIFICATIONS OF THIS WAIVER, AND (II) THIS WAIVER IS A MATERIAL INDUCEMENT FOR IT TO ENTER INTO THIS AGREEMENT.

Section 29.19 Application; Termination

(a) Unless and until the consummation of the Town Property Closing pursuant to the terms hereof, the Developer shall have no obligation to construct the Improvements or the Town Park and no obligation under Article XX.

(b) If the Town Property Closing does not occur on or before the Town Property Closing Deadline, either party may terminate this Agreement by written notice of termination delivered to the other party.

(c) If, in the Developer's reasonable judgment and in spite of its good faith commercially reasonable efforts, any condition to the Town Property Closing set forth in this Agreement is incapable of being satisfied on or before the Town Property Closing Deadline, the Developer may terminate this Agreement by written notice of termination delivered to the Town.

Section 29.20 Authorized Representatives. The Authorized Representatives of the Parties are those individuals having responsibility for the administration and implementation of this Agreement by the Party for whom they act as Authorized Representative. Such Authorized Representative is hereby authorized and directed, on behalf of the Party for whom it acts as Authorized Representative, to administer and implement such Party's rights and obligations under this Agreement and the Related Agreements (including, without limitation, exercising the rights and implementing and/or overseeing performance of the obligations of such Party).

SIGNATURE AND ACKNOWLEDGMENT PAGES FOLLOW

In witness whereof, the Developer and the Town have executed this Agreement as of the date first above written.

WITNESS:

TOWN OF WEST HARTFORD, a body
corporate and politic and a political
subdivision of the State of Connecticut

By: _____
Name: Barry R. Feldman
Title: Town Manager

APPROVED: _____

BBS DEVELOPMENT, LLC

By: Raymond Road Associates, LLC
Its Manager

By: _____
Robert N. Wiener
Its Manager

and By: _____
Kenneth D. Narva
Its Manager

STATE OF CONNECTICUT)
) ss:
COUNTY OF HARTFORD)

The foregoing instrument was acknowledged before me this ____ day of _____,
_____, by Barry R. Feldman, Town Manager of the Town of West Hartford, Connecticut, a body
politic and corporate constituting a political subdivision of the State of Connecticut, on behalf of said
political subdivision.

Commissioner of Superior Court
Notary Public
My Commission expires:

EXHIBIT A

MAP OF PROJECT AREA

EXHIBIT B

FORM OF AMERICAN LEGION – NORTH GARAGE CROSS-EASEMENT AGREEMENT

EXHIBIT C

AMERICAN LEGION PARCEL LEGAL DESCRIPTION

A certain piece or parcel of land, together with the buildings and improvements located thereon, located on the west side of Raymond Road in the Town of West Hartford, County of Hartford and State of Connecticut, and shown as "LOT 4 AREA 4,740 S.F." on that certain map entitled "Subdivision Plan, BBS Development, LLC, North Campus" prepared by Langan Engineering and Environmental Services, Job No. 7612501, Date 3/24/04 Scale 1" = 40', Drawing No. 07.00N, Sheet 3 of 4, which map is on file or to be filed in the Town Clerk's Office of the Town of West Hartford (the 'Survey'), and which piece or parcel of land is more particularly bounded and described as follows:

Commencing at a point on the west side of Raymond Road at the intersection of the west line of Raymond Road and the south line of Isham Road at the northeast corner of the herein described parcel, as shown on the Survey, thence running:

- 1) South 12° 59' 24" East, a distance of 115.14 feet to a point; thence
- 2) South 75° 59' 50" West, a distance of 35.55 feet to a point; thence
- 3) North 14° 00' 10" West, a distance of 130.79 feet to a point; thence
- 4) North 77° 00' 36" East, a distance of 22.85 feet to a point; thence
- 5) Southerly along a curve to the right, having an arc distance of 23.56 feet, a radius of 15.00 feet and a central angle of 90° 00' 00" and being subtended by a chord which bears South 57° 59' 24" East 21.21 feet to the Point of Beginning.

Encompassing an area of 0.108 acres, more or less.

EXCLUDING AND EXCEPTING FROM THE PREMISES HEREIN CONVEYED ALL THAT CERTAIN AIR SPACE LYING ABOVE THE HEREIN DESCRIBED PARCEL WHICH LIES ABOVE THAT CERTAIN PLANE WHICH IS AT THE ELEVATION OF 121.0 FEET ABOVE MEAN SEA LEVEL BASED UPON THAT CERTAIN DATUM LEVEL KNOWN AS THE NATIONAL GEODETIC VERTICAL DATUM OF 1929.

EXHIBIT D

BOUNDARIES OF BLUE BACK SQUARE SSD

EXHIBIT E

FORM OF COMPLETION NOTICE

THIS COMPLETION NOTICE (this "Notice") has been executed as of this ____ day of _____, _____, by _____, LLC, a Connecticut limited liability company (the "Developer"), to and for the benefit of the TOWN OF WEST HARTFORD, a body politic and corporate constituting a political subdivision of the State of Connecticut (the "Town").

R E C I T A L S:

A. The Developer and the Town have entered into that certain Master Agreement dated as of _____ (the "Master Agreement"). Unless otherwise defined herein, all initially capitalized terms shall have the respective meanings assigned to such terms in the Master Agreement.

B. This Notice is the Completion Notice contemplated by and provided for under the Master Agreement, including, without limitation, Section _____ thereof.

NOW, THEREFORE, for and in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, the Developer hereby represents and warrants to, and agrees with, the Town as follows:

1. Delivery of Completion Items. The Developer has attached to this Notice (a) an original counterpart of the Architect Completion Certificate as executed by the Developer's Architect; and (b) true, correct and complete copies of all Occupancy Certificates required in order to occupy or use the _____ **[SPECIFY PUBLIC IMPROVEMENT]** in compliance with all Legal Requirements. The Developer hereby represents, warrants and certifies to the Town that, to the best of its knowledge after due investigation and diligent inquiry, the _____ **[SPECIFY PUBLIC IMPROVEMENT]** has been Substantially Completed in accordance with the Plans therefor and all other Legal Requirements.

[SIGNATURE PAGES AND ACKNOWLEDGEMENTS FOLLOW]

IN WITNESS WHEREOF, the undersigned has executed this Completion Notice as an instrument under seal as of _____, _____.

_____, LLC

By: _____

Name: _____

Title: _____

Address for notices:

EXHIBIT F

FORM OF EEB LEASE

EXHIBIT G

FORM OF BILL OF SALE AND GENERAL ASSIGNMENT

BILL OF SALE AND GENERAL ASSIGNMENT

This BILL OF SALE AND GENERAL ASSIGNMENT (this "Assignment") is made as of the ___ day of _____, _____, from the _____ (the "Transferor") a _____ having an address of _____ to _____ (the "Transferee"), a _____ having an address _____.

WHEREAS, in connection with the conveyance of the real property described on Exhibit A attached hereto (the "Real Property"), Transferor hereby conveys, transfers, sets over and assigns to Transferee all of Transferor's right, title and interest in and to all (i) personal property, if any, owned by Transferor located at the Real Property, including, without limitation, the personal property listed in Exhibit B attached hereto (collectively, the "Personal Property"); (ii) intangible assets of any nature relating to the Real Property or improvements located thereon (the "Improvements"), including, without limitation, all of Transferor's right, title and interest in and to all (a) warranties and guaranties relating to the Personal Property and Improvements in the possession of Transferor, (b) all licenses, permits, and approvals relating to the Real Property and the Improvements (but not any part thereof relating to other real property or improvements), and (c) all plans and specifications relating to the Real Property and the Improvements, in each case to the extent that Transferor may legally transfer or assign the same (collectively, the "Intangible Property"). Transferor represents and warrants to Transferee that Transferor has not pledged, hypothecated or collaterally assigned any of the Personal Property or Intangible Property, and has not granted any lien, security interest or other encumbrance on any of the Personal Property.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Transferor does hereby sell, deliver, transfer, set-over and assign unto Transferee the Personal Property in its "AS IS" condition WITH ALL FAULTS, WITHOUT EXPRESS OR IMPLIED WARRANTY OF ANY KIND OR NATURE OTHER THAN AS SET FORTH HEREIN, and the Intangible Property to have and to hold the same unto Transferee and Transferee's successors and assigns, forever.

Transferee hereby accepts the Personal Property in its "AS IS" condition and assumes the rights, title and obligations of owner of the Intangible Property to have and to hold the same unto it and its successors and assigns, forever.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Transferor has duly executed this Assignment as an instrument under seal as of the date first above written.

TRANSFEROR:

[_____]

By: _____

Name:

Title:

TRANSFeree:

[_____]

By: _____

Name:

Title:

EXHIBIT H

FAÇADE RESTRICTIONS

This conveyance is made upon the express condition, and Grantee covenants, that Grantee and its successors and assigns shall not permanently remove the Substantive Design Elements (hereinafter defined) of the Primary Façade (hereinafter defined) of the existing building located on the land conveyed herein. Adjustments and modifications to parts of the “Substantive Design Elements” (hereinafter defined) may be undertaken, but the overall design intent of the Substantive Design Elements of the Primary Façade will remain; provided, however, that the foregoing covenants and restrictions shall not prohibit Grantee, its successors and assigns: (i) from temporarily removing and storing any or all of the Substantive Design Elements during any construction activity affecting the building or the land, provided that the Substantive Design Elements are restored to locations of equal prominence on the Primary Façade of any new structure erected on the land, or (ii) in the event of a condemnation affecting the Substantive Design Elements or any portion thereof, or in the event of material damage to the water tightness or structural integrity of any of the Substantive Design Elements resulting from any casualty, from demolishing all or any portion of the Substantive Design Elements in their entirety and replacing or modifying any of the Substantive Design Elements with a new structure or structures of indeterminate size and dimensions and without the foregoing restrictions upon the Substantive Design Elements. For the purposes hereof, “Substantive Design Elements” shall mean and be limited to those portions of the primary façade facing South Main Street of the existing building located at 28 South Main Street, West Hartford, Connecticut (the “Primary Façade”) identified as “Wood Cupola”, “Limestone Panel Pediment”, “Limestone (Turned) Columns” and “Limestone Panels” by cross-hatching on the rendering of said Primary Façade attached hereto as Schedule 1 and made a part hereof.

Schedule 1

EXHIBIT I

LIST OF DEVELOPER'S CONSTRUCTION MANAGER(S)

[DIMEO CONSTRUCTION COMPANY]

EXHIBIT J

LIST OF PLANS FOR SITE IMPROVEMENTS

[TO BE ATTACHED PRIOR TO EXECUTION OF MASTER AGREEMENT]

EXHIBIT K

NORTH GARAGE PARCEL LEGAL DESCRIPTION

PARCEL ONE:

A certain piece or parcel of land, together with the buildings and improvements located thereon, located on the South side of Isham Road in the Town of West Hartford, County of Hartford and State of Connecticut, and shown as "LOT 3 AREA = 35,730 S.F." on that certain map entitled "Subdivision Plan, BBS Development, LLC, North Campus" prepared by Langan Engineering and Environmental Services, Job No. 7612501, Date 3/24/04 Scale 1" = 40', Drawing No. 07.00N, Sheet 3 of 4, which map is on file or to be filed in the Town Clerk's Office of the Town of West Hartford (the "Survey"), and which piece or parcel of land is more particularly bounded and described as follows:

Commencing at a point on the south side of Isham Road at the northeast corner of the herein described parcel, as shown on the Survey, thence running:

- 1) North 77° 00' 36" East, a distance of 230.53 feet to a point; thence
- 2) South 14° 00' 10" East, a distance of 130.79 feet to a point; thence
- 3) South 75° 59' 50" West, a distance of 271.30 feet to a point; thence
- 4) North 13° 56' 24" West, a distance of 94.91 feet to a point; thence
- 5) Northerly along a curve to the right, having an arc distance of 63.50 feet, a radius of 40.00 feet and a central angle of 90° 57' 00" and being subtended by a chord which bears North 31° 32' 06" East 57.04 feet to the Point of Beginning.

Encompassing an area of 0.821 acres, more or less.

PARCEL TWO:

That certain air space above the following described piece or parcel of land located in the Town of West Hartford, County of Hartford and State of Connecticut, which air space lies above that certain plane which is at the elevation of 121.0 feet above mean sea level based upon that certain datum level known as the National Geodetic Vertical Datum of 1929:

Commencing at a point on the west side of Raymond Road at the intersection of the west line of Raymond Road and the south line of Isham Road at the northeast corner of the following described parcel, as shown on the Survey, thence running:

- 1) South 12° 59' 24" East, a distance of 115.14 feet to a point; thence
- 2) South 75° 59' 50" West, a distance of 35.55 feet to a point; thence
- 3) North 14° 00' 10" West, a distance of 130.79 feet to a point; thence
- 4) North 77° 00' 36" East, a distance of 22.85 feet to a point; thence
- 5) Southerly along a curve to the right, having an arc distance of 23.56 feet, a radius of 15.00 feet and a central angle of 90° 00' 00" and being subtended by a chord which bears South 57° 59' 24" East 21.21 feet to the Point of Beginning.

Reserving unto the Grantor, its successors and assigns, an easement (the "Environmental Remediation Easement") in, over, through and across the land and improvements herein conveyed (collectively, the "Property") for access to, egress from, and access under, above, and through the Property, by Grantor, its agents, employees, contractors, representatives and invitees, for the purposes of conducting "Environmental Remediation" as defined in, pursuant to and in accordance with Grantor's obligations under the terms of that certain Master Agreement by and between Grantor and Grantee and recorded in Volume __, Page ____ of the West Hartford Land Records (the "Master Agreement"). Such Environmental Remediation Easement shall terminate in accordance with the terms of the Master Agreement.

Reserving also unto the Grantor, its successors and assigns, an exclusive perpetual easement in and to the land described in Schedule 1 attached hereto and made a part hereof (the "Easement Area") for the installation, operation, maintenance, repair, restoration and replacement of an underground parking garage and related improvements (collectively, the "Subterranean Improvements") and for pedestrian and vehicular ingress and egress through the Subterranean Improvements. Grantee covenants for itself, its successors and assigns, not to use or permit others to use the Easement Area in any manner that would interfere with or damage the Subterranean Improvements or interfere with the easement rights reserved herein. The Grantee hereby agrees for itself, its successors and assigns that no building or other structure used or intended to be used for supporting or sheltering any occupancy shall be erected, constructed or maintained on the surface of the land above the Easement Area, which restriction shall run with and be binding upon such land and be appurtenant to the land designated as Lot 3 and shown on the Survey ("Parcel B") and inure to the benefit of the Grantor and any subsequent holder of an interest in Parcel B. Grantor's construction within and use of the subterranean easement described herein shall not interfere with any utilities located in the Easement Area; provided, however, that any such utilities may be relocated at the Grantor's expense in connection with such construction with the prior consent of the Grantee, which consent shall not be unreasonably withheld, conditioned or delayed. The ingress and egress easements described in this paragraph also shall benefit the tenants, subtenants, agents, employees, licensees, guests, invitees, and independent contractors of the Grantor, its successors and assigns. Grantee acknowledges that the Grantor has granted or may hereafter also grant a subeasement in gross in the subterranean easement above for the benefit of Hayes-Velhage Post No. 96 American Legion, Incorporated ("Post 96"), for use solely by its employees and members to provide ingress and egress to parking within the above-described parking garage; provided, however, such subeasement in gross shall terminate no later than the Parking Termination Date. As used herein, the "Parking Termination Date" shall mean the earlier to occur of the following after the acquisition of the American Legion Parcel (as defined in the Master Agreement) by Post 96: (x) the date on which the American Legion Building (as defined in the Master Agreement) or the American Legion Parcel, or any portion thereof or interest therein, is sold, transferred or conveyed to any third party, or (y) the date on which the American Legion Building or the land on which it is located, or any portion thereof, is used for any purpose other than an American Legion Post chartered by The American Legion. **[INCLUSION OF THIS PARAGRAPH IN THE LEGAL DESCRIPTION DEPENDS UPON THE TIMING OF THE DEED TO THE TOWN FOR "NEW STREET" AS SHOWN ON THE SURVEY. IF NEW STREET IS CONVEYED TO THE TOWN PRIOR TO THE NORTH GARAGE PARCEL, THE RESERVATION WILL BE IN THE NEW STREET DEED.]**

[As used in this Exhibit, the term “Grantee” shall mean the Town of West Hartford and the term “Grantor” shall mean the Developer. Legal Description is set up for use in deed.]

EXHIBIT L

NORTH GARAGE PARCEL PERMITTED EXCEPTIONS

1. Reserved easements contained in that certain Special Warranty Deed from the Developer to the Town conveying fee title to the North Garage Property. [SEE EXHIBIT K OF MASTER AGREEMENT FOR RESERVED EASEMENTS.]

2. The Declaration, the Building B - North Garage Cross-Easement Agreement, the American Legion – North Garage Cross-Easement Agreement, the Master Agreement, the Construction Easement, and any ELUR consistent with the provisions of Article XX.

EXHIBIT M

FORM OF NORTH PARKING LOT LICENSE

EXHIBIT N-1

BUILDING D RESIDENTIAL

1. During the period commencing with the issuance of the final unappealable Zoning Approvals and through the fifth month following the Town Property Closing Date:
 - Develop and implement a marketing plan
 - Construct a model unit
 - Start preparation of construction drawings for construction financing and guaranteed maximum price construction contract and to enable Developer to obtain (if capable of being issued separately from full building permits), foundation and structural frame building permits at the time the Developer obtains a building permit for Building C

2. Fifth month following the Town Property Closing Date through the twelfth month following the Town Property Closing Date:
 - Complete construction drawings for interior fitup

3. Twelve months after the Town Property Closing Date (or such date when would allow sufficient time to construct Building D and open Building D for occupancy when all of the retail space in Building A, Building B-1 and Building C opens for business (i.e., the Anticipated Grand Opening Date, which is expected to occur 26 months following the Town Property Closing Date)) and provided that the construction lender's and the equity investor's pre-sale requirements have been met:
 - File for remaining portions of building permit(s) to build Building D

4. Provided that the building permit has been issued, complete construction of Building D to enable occupancy as set forth above

Note: Dates are approximate and subject to Excusable Delays, market and financing forces.

EXHIBIT N-2

BUILDING B-3 RESIDENTIAL

1. Commencing approximately five months after the Town Property Closing Date and continuing through the tenth month following the Town Property Closing Date:
 - Evaluate the Building D sales and marketing plan results
 - Develop and implement a marketing plan for Building B-3
 - Seek construction loan financing for construction of Building B-3 if the marketing plan is fruitful and, if commercially reasonable financing can be arranged, arrange for same, begin construction drawings and, if needed, construction of model unit (which may be located in Building D or elsewhere)

2. Provided that marketing plan is fruitful and commercially reasonable financing has been arranged, during the next four months:
 - Complete construction drawings
 - File for building permit at end of such period

3. Provided that building permit has been issued, commence construction of Building B-3 and complete construction within 14 months thereafter (i.e., 28-32 months after the Town Property Closing Date)

Note: Dates are approximate and subject to Excusable Delays, market and financing forces.

EXHIBIT O

PARCEL A LEGAL DESCRIPTION

A certain piece or parcel of land, together with the buildings and improvements located thereon, located on the east side of South Main Street in the Town of West Hartford, County of Hartford and State of Connecticut, and shown as "LOT 2 AREA = 84,639 S.F." on that certain map entitled "Subdivision Plan, BBS Development, LLC, North Campus" prepared by Langan Engineering and Environmental Services, Job No. 7612501, Date 3/24/04, Scale 1" = 40', Drawing No. 07.00N, Sheet 3 of 4, which map is on file or to be filed in the Town Clerk's Office of the Town of West Hartford (the "Survey"), and which piece or parcel of land is more particularly bounded and described as follows:

Commencing at a point on the north side of Memorial Road which point is 60.51 feet west of the intersection of the west line of Isham Road and the north line of Memorial Road, as shown on the Survey, thence running:

- 1) South 79° 43' 20" West, a distance of 326.51 feet to a point; thence
- 2) Northerly along a curve to the right, having an arc distance of 23.19 feet, a radius of 12.00 feet and a central angle of 110° 42' 30" and being subtended by a chord which bears North 44° 55' 25" West 19.74 feet to a point; thence
- 3) Northerly along a curve to the left, having an arc distance of 83.72 feet, a radius of 1451.80 feet and a central angle of 3° 18' 15" and being subtended by a chord which bears North 08° 46' 37" East 83.71 feet to a point; thence
- 4) North 07° 07' 22" East, a distance of 188.25 feet to a point; thence
- 5) South 82° 33' 36" East, a distance of 203.93 feet to a point; thence
- 6) North 75° 59' 50" East, a distance of 29.96 feet to a point; thence
- 7) South 80° 26' 41" East, a distance of 38.86 feet to a point; thence
- 8) North 75° 59' 49" East, a distance of 56.22 feet to a point; thence
- 9) South 13° 56' 24" East, a distance of 51.17 feet to a point; thence
- 10) South 76° 03' 36" West, a distance of 5.11 feet to a point; thence
- 11) South 13° 56' 24" East, a distance of 135.51 feet to a point; thence
- 12) Westerly along a curve to the right, having an arc distance of 23.76 feet, a radius of 15.00 feet and a central angle of 90° 46' 25" and being subtended by a chord which bears South 31° 26' 48" West 21.36 feet to a point; thence
- 13) South 76° 50' 01" West, a distance of 55.39 feet to the point of beginning.

Encompassing an area of 1.943 acres, more or less.

TOGETHER with a perpetual easement (the "Appurtenant Access and Maintenance Easement") over the following described real property of the Town (the "Easement Area"):

A certain strip of land, located on land owned by the Town of West Hartford on the East side of South Main Street in the Town of West Hartford, County of Hartford and State of Connecticut, and shown as "EASEMENT J AREA = 3,924 S.F." on that certain map entitled "Subdivision Plan, Raymond Road Associates, LLC, North Campus" prepared by Langan Engineering and Environmental Services, Job No. 7612501, Date 3/24/04 Scale 1" = 40', Drawing No. 07.00N, Sheet 1 of 2, which map is on file or to be filed in the Town Clerk's Office of the Town of West Hartford (the "Survey"), and which strip of land is more particularly bounded and described as follows:

Commencing at the northwest corner of Lot 2 and the southwest corner of Lot 1, as shown on the Survey, then running South 82° 33' 36" East, a distance of 61.33 feet to the true Point of Beginning as shown on the following referenced plan; thence

1. North 07° 08' 47" East, a distance of 30.00 feet; thence
2. South 82° 33' 36" East, a distance of 130.94 feet; thence
3. South 06° 34' 19" West, a distance of 30.00 feet; thence
4. North 82° 33' 36" West, a distance of 130.94 feet to the Point of Beginning.

Encompassing an area of 0.090 Acres.

The Appurtenant Access and Maintenance Easement shall be for the purpose of inspecting, operating, maintaining, repairing, restoring, removing, rebuilding and replacing any improvements now or hereafter located on the property herein conveyed and for the purpose of inspecting, operating, maintaining, repairing, restoring, removing, rebuilding and replacing any encroachments of building design features, including, without limitation, awnings, balconies, signs, flags, banners, cornices, eaves, and other similar components of or attachments to any building now or hereafter located on the land herein conveyed and which project into or over the Easement Area (collectively, the "Projecting Elements"), so long as such Projecting Elements are located at least eight (8) feet six (6) inches (8'6") above any sidewalk located or to be located in the Easement Area (unless otherwise consented to by the Town); provided, however, that the exercise of such easement rights shall not unreasonably interfere with the operation of the servient land; and, further, provided, however, that the Grantee shall provide prior written notice to the Grantor at least two (2) business days in advance of any such entry onto the servient land for maintenance, repair, restoration, removal, rebuilding or replacement activities, except in the event of an emergency.

The Grantor hereby agrees for itself, its successors and assigns that, so long as any of the Bonds (as defined in the Master Agreement) remain outstanding, Grantor, its successors and assigns shall not make any change that would materially, adversely impact the Easement Area. The foregoing restriction shall run with said land of the Grantor and be binding upon such land and be appurtenant to the land herein conveyed and inure to the benefit of the Grantee and any subsequent holder of an interest in the land herein conveyed.

The land herein-conveyed is subject to the following terms and conditions:

1. This conveyance is made upon the express condition, and Grantee covenants, that Grantee and its successors and assigns shall not permanently remove the Substantive Design Elements (hereinafter defined) of the Primary Façade (hereinafter defined) of the existing building located on the land conveyed herein. Adjustments and modifications to parts of the "Substantive Design Elements" (hereinafter defined) may be undertaken, but the overall design intent of the Substantive Design Elements of the Primary Façade will remain; provided, however, that the foregoing covenants and restrictions shall not prohibit Grantee, its successors and assigns: (i) from temporarily removing and storing any or all of the Substantive Design Elements during any construction activity affecting the building or the land, provided that the Substantive Design Elements are restored to locations of equal prominence on the Primary Façade of any new structure erected on the land, or (ii) in the event of a condemnation affecting the Substantive Design Elements or any portion thereof, or in the event of material damage to the water tightness or structural integrity of any of the Substantive Design Elements resulting from any casualty, from demolishing all or any portion of the Substantive Design Elements in their entirety and replacing or modifying any of the Substantive Design Elements with a new structure or structures of indeterminate size and dimensions and without the foregoing restrictions upon the Substantive Design Elements. For the purposes hereof, "Substantive Design Elements" shall mean and be limited to those portions of the primary façade facing South Main Street (the "Primary Façade") identified as "Wood Cupola", "Limestone Panel Pediment", "Limestone (Turned) Columns" and "Limestone Panels" by cross-hatching on the rendering of the Primary Façade of said existing building attached hereto as Schedule 1 and made a part hereof.

2. Right of Re-Entry in favor of the Grantor as described in and subject to the terms of that certain Master Agreement between the Grantor and the Grantee dated as of _____, _____ and recorded contemporaneously herewith in the Land Records of the Town of West Hartford.

3. Subject to a non-exclusive easement for pedestrian access in and to the real property described on Schedule 2 attached hereto and made a part hereof (the "Town Access and Maintenance Easement Area"); provided, however, that the Town of West Hartford (the "Town"), at its own cost and expense, shall maintain, repair, operate, refurbish and replace (including capital items) all site improvements located within the Maintenance Easement Area, including, without limitation, all sidewalks, roads, light fixtures, sprinklers, lawns, trees, bushes and other landscaping, container planters and plantings, benches and other public seating, decorative improvements, retaining walls and other streetscape improvements installed by the Developer pursuant to the performance of its obligations under the Master Agreement, and underground utilities and lighting serving any of the foregoing) make all necessary repairs, replacements and capital expenditures, in order to keep same in good, safe and clean condition and repair and in a manner at least equivalent to the manner in which the Town of West Hartford is then maintaining similar improvements throughout the Town of West Hartford. The Town's maintenance and repair obligations shall be performed in such a manner so as not to unreasonably interfere with the easement rights granted hereunder or the rights of others in and to the easement areas. The Town shall take all reasonable efforts to minimize disturbance to the easement areas, and to perform such work at such times and in such a manner that minimizes interference with the Grantee's use, enjoyment of and access to Parcel A and any improvements now or hereafter located thereon. Grantee shall have the right to continue to use the Town Access and Maintenance Easement Area for any uses and purposes which do not unreasonably interfere with the exercise of the easement

rights granted with respect thereto. Without limiting the generality of the foregoing, the Grantee reserves the right to use, to the extent permitted by law, any sidewalk now or hereafter located on the Town Access and Maintenance Easement Area for outdoor dining and related facilities operated by any occupant of Parcel A or the Pad Building.

4. The land (the "Land") and the improvements conveyed herein are conveyed subject to an option (the "Repurchase Option") in favor of the Town with respect to the land and the improvements located on the land at the time the Repurchase Option is exercised by the Town (the "Improvements"):

(a) The Repurchase Option shall be exercisable only by the Town, and not by any successor or assign thereof.

(b) The Repurchase Option may be exercised by the Town, at any time after the 100th year anniversary of the recording of this Deed, by delivering written notice of such exercise to the Grantee, its successors or assigns at the mailing address of the owner of the Land and Improvements shown in the Town's Grand List. The closing shall take place no later than sixty (60) days after the establishment of the Fair Market Value (hereinafter defined) of the Improvements, upon payment by the Town of the Option Price to the Grantee, its successors and assigns, and transfer of title to the Land and the Improvements to the Town by quitclaim deed (but free and clear of all mortgages and other voluntary liens).

(c) The amount to be paid by the Town for the land, together with the improvements then located thereon, shall be equal to the sum (the "Option Price") of (a) \$1, which shall be the portion of the Option Price allocated to the Land, plus (b) an amount equal to the Fair Market Value of the Improvements, which shall be the portion of the Option Price allocated to the Improvements. If the Grantee, its successors and assigns and the Town do not agree as to such Fair Market Value within thirty (30) days from the date of sale, the issue shall be determined pursuant to the following procedure:

(i) The Fair Market Value of the Improvements shall be determined by the appraisal process set forth in this paragraph, and for purposes of this paragraph the Date of Value shall be deemed to be the date as of which the fair market value of said improvements is determined by such appraisal process. Within ten (10) business days after expiration of such thirty (30) day period, the Town and the Grantor, its successors and assigns each shall appoint in writing a different appraiser, which appraiser shall have at least ten (10) years of experience appraising improvements similar to the Improvements in the Greater Hartford, Connecticut area. The two appraisers so appointed shall appoint a third appraiser meeting the foregoing qualifications. If one party has appointed an appraiser hereunder, and the other party fails to appoint an appraiser hereunder within the time period specified above, the Fair Market Value of the Improvements will be established by the appraiser appointed by such first party, and such other party hereby consents to the same. The appraiser or appraisers appointed under this paragraph shall be instructed to conduct and complete their independent appraisals within sixty (60) days of their appointments, and to appraise the fair market value of the Improvements as of the Date of Value. If two appraisers are appointed and they fail to appoint a third appraiser within ten (10) business days after their appointment, either party may request such appointment by the president or executive secretary of the chapter of the Appraisal Institute (or its successor) located nearest to the real property. If the president or secretary referred to above fails to appoint a third appraiser within ten (10) business days after request, then either party may petition the presiding

judge of the state or federal court sitting where the real property is located to appoint the third appraiser. The two closest of the three appraisals shall be added together and their total divided by two. The resulting quotient shall be the Fair Market Value of the Improvements for purposes of the Repurchase Option. The Town and the Grantee shall bear equal portions of the fees and costs of the appraisers in connection with the appraisal process.

[As used in this Exhibit, the term "Grantor" shall mean the Town of West Hartford and the term "Grantee" shall mean the Developer. Legal description is set up for use in deed.]

Schedule 1

[For purposes of exhibits attached to the Master Agreement, see Schedule 1 to Exhibit H of the Master Agreement.]

Schedule 2

A certain piece or parcel of land located on the easterly side of South Main Street in the Town of West Hartford, County of Hartford and State of Connecticut, and shown as "EASEMENT B AREA = 2,604 S.F." on that certain map entitled "Subdivision Plan, BBS Development, LLC, North Campus" prepared by Langan Engineering and Environmental Services, Job No. 7612501, Date 3/24/04 Scale 1" = 40', Drawing No. 07.00N, Sheet 3 of 4, which map is on file or to be filed in the Town Clerk's Office of the Town of West Hartford (the "Survey"), and which piece or parcel of land is more particularly bounded and described as follows:

Commencing at a point on the east of Isham Road at the southeast corner of Lot 1 and the northeast corner of Lot 2, as shown on the Survey; thence running:

- 1) South 13° 56' 24" East, a distance of 51.17 feet to a point; thence
- 2) South 76° 03' 36" West, a distance of 15.62 feet to a point; thence
- 3) North 14° 00' 10" West, a distance of 0.73 feet to a point; thence
- 4) Northerly along a curve to the left, having an arc distance of 59.86 feet, a radius of 16.00 feet and a central angle of 214° 21' 42" and being subtended by a chord which bears North 64° 40' 37" West 30.57 feet to a point; thence
- 5) North 82° 33' 36" West, a distance of 56.17 feet to a point; thence
- 6) North 13° 58' 50" West, a distance of 26.34 feet to a point;
- 7) South 80° 26' 41" East, a distance of 38.86 feet to a point; thence
- 8) North 75° 59' 49" East, a distance of 56.22 feet thence to the Point of Beginning.

Encompassing an area of 0.060 acres, more or less.

EXHIBIT P

PARCEL A PERMITTED EXCEPTIONS

1. Restrictions, reservations and Right of Re-Entry contained in that certain Special Warranty Deed from the Town to the Developer conveying fee title to Parcel A, together with the buildings and improvements thereon. [SEE EXHIBIT Q OF MASTER AGREEMENT FOR RESTRICTIONS, RESERVATIONS AND RIGHT OF RE-ENTRY.]

2. The Master Agreement.

EXHIBIT Q

LEGAL DESCRIPTION OF BBS AREA

A certain piece or parcel of land, together with the buildings and improvements located thereon, located on the east side of South Main Street in the Town of West Hartford, County of Hartford and State of Connecticut, and shown as 'EASEMENT A AREA = 21,952 S.F.' on that certain map entitled "Subdivision Plan, BBS Development, LLC, North Campus" prepared by Langan Engineering and Environmental Services, Job No. 7612501, Date 3/24/04 Scale 1" = 40' Drawing No. 07.00N, Sheet 3 of 4, which map is on file or to be filed in the Town Clerk's Office of the Town of West Hartford (the "Survey"), and which piece or parcel of land is more particularly bounded and described as follows:

Commencing at a point on the east side of South Main Street, which point is 105.07 feet north of the northwest corner of Lot 2 and the southwest corner of Lot 1, both as shown on the Survey, thence running:

- 1) South 66° 00' 45" East, a distance of 52.83 feet to a point; thence
- 2) South 82° 52' 37" East, a distance of 11.77 feet to a point; thence
- 3) South 07° 07' 21" West, a distance of 28.40 feet to a point; thence
- 4) South 82° 51' 37" East, a distance of 34.65 feet to a point; thence
- 5) South 07° 08' 23" West, a distance of 20.58 feet to a point; thence
- 6) North 82° 51' 37" West, a distance of 10.00 feet to a point; thence
- 7) South 07° 08' 23" West, a distance of 9.20 feet to a point; thence
- 8) South 82° 49' 47" East, a distance of 92.57 feet to a point; thence
- 9) North 52° 08' 23" East, a distance of 13.08 feet to a point; thence
- 10) North 07° 08' 23" East, a distance of 24.58 feet to a point; thence
- 11) North 75° 59' 50" East, a distance of 93.76 feet to a point; thence
- 12) South 13° 56' 24" East, a distance of 127.37 feet to a point; thence
- 13) South 76° 03' 36" West, a distance of 15.62 feet to a point; thence
- 14) North 14° 00' 10" West, a distance of 0.73 feet to a point; thence
- 15) Southerly along a curve to the left, having an arc distance of 59.86 feet, a radius of 16.00 feet and a central angle of 214° 21' 42" and being subtended by a chord which bears North 64° 40' 37" West 30.57 feet to a point; thence
- 16) North 82° 33' 36" West, a distance of 56.17 feet to a point; thence
- 17) North 13° 58' 50" West, a distance of 26.34 feet to a point; thence
- 18) South 75° 59' 50" West, a distance of 29.96 feet to a point; thence
- 19) North 82° 33' 36" West, a distance of 203.93 feet to a point; thence
- 20) North 07° 07' 22" East, a distance of 96.53 feet to a point; thence
- 21) North 04° 34' 48" East, a distance of 8.54 feet to the Point of Beginning.

Encompassing an area of 0.504 acres, more or less.

EXHIBIT R
FORM OF PAD LEASE

EXHIBIT S

FORM OF BOND ORDINANCE

EXHIBIT T

FORM OF SSD ORDINANCE

EXHIBIT U

PARCEL B LEGAL DESCRIPTION

A certain piece or parcel of land, together with the buildings and improvements located thereon, located on the west side of Raymond Road in the Town of West Hartford, County of Hartford and State of Connecticut, and shown as "LOT 5 AREA = 101,634 S.F." on that certain map entitled "Subdivision Plan, BBS Development, LLC, North Campus" prepared by Langan Engineering and Environmental Services, Job No. 7612501, Date 3/24/04 Scale 1" = 40', Drawing No. 07.00N, Sheet 3 of 4, which map is on file or to be filed in the Town Clerk's Office of the Town of West Hartford (the 'Survey'), and which piece or parcel of land is more particularly bounded and described as follows:

Commencing at a point on the east side of Isham Road at the northwest corner of the herein described parcel, as shown on the Survey, thence running:

- 1) North 75° 59' 50" East, a distance of 305.75 feet to a point, thence
- 2) South 12° 59' 24" East, a distance of 314.92 feet to a point; thence
- 3) Westerly along a curve to the right, having an arc distance of 33.37 feet, a radius of 21.49 feet and a central angle of 88° 59' 14" and being subtended by a chord which bears South 31° 30' 13" West 30.12 feet to a point; thence
- 4) South 75° 59' 50" West, a distance of 234.25 feet to a point; thence
- 5) South 76° 51' 18" West, a distance of 30.03 feet to a point; thence
- 6) Northerly along a curve to the right, having an arc distance of 23.35 feet, a radius of 15.00 feet and a central angle of 89° 12' 20" and being subtended by a chord which bears North 58° 32' 32" West 21.07 feet to a point; thence
- 7) North 13° 56' 24" West, a distance of 320.51 feet to the Point of Beginning.

Encompassing an area of 2.333 acres, more or less.

EXHIBIT V

PARCEL C/D LEGAL DESCRIPTION

A certain piece or parcel of land, together with the buildings and improvements located thereon, located on the west side of Raymond Road in the Town of West Hartford, County of Hartford and State of Connecticut, and shown as "LOT 6 AREA = 90,687 S.F." on that certain map entitled "Subdivision Plan, BBS Development, LLC, South Campus" prepared by Langan Engineering and Environmental Services, Job No. 7612501, Date 3/24/04 Scale 1" = 40', Drawing No. 07.00S, Sheet 4 of 4, which map is on file or to be filed in the Town Clerk's Office of the Town of West Hartford (the 'Survey'), and which piece or parcel of land is more particularly bounded and described as follows:

Commencing at a point on the west side of Raymond Road at the intersection of the south line of Memorial Road and the west line of Raymond Road which point is the northeast corner of the herein described parcel, as shown on the Survey, thence running:

- 1) South 08° 17' 07" East, a distance of 138.81 feet to a point; thence
- 2) South 75° 59' 49" West, a distance of 206.49 feet to a point; thence
- 3) North 14° 00' 10" West, a distance of 22.11 feet to a point; thence
- 4) South 75° 59' 50" West, a distance of 33.00 feet to a point; thence
- 5) South 14° 00' 10" East, a distance of 8.00 feet to a point; thence
- 6) South 75° 59' 50" West, a distance of 4.00 feet to a point; thence
- 7) South 14° 00' 10" East, a distance of 4.00 feet to a point; thence
- 8) South 75° 59' 50" West, a distance of 112.00 feet to a point; thence
- 9) South 14° 00' 10" East, a distance of 10.00 feet to a point; thence
- 10) South 75° 59' 50" West, a distance of 115.00 feet to a point; thence
- 11) South 14° 00' 10" East, a distance of 38.00 feet to a point; thence
- 12) South 75° 59' 50" West, a distance of 74.81 feet to a point; thence
- 13) North 41° 45' 56" West, a distance of 53.01 feet to a point; thence
- 14) North 14° 00' 10" West, a distance of 150.01 feet to a point; thence
- 15) North 79° 20' 24" East, a distance of 75.80 feet to a point; thence
- 16) North 75° 59' 49" East, a distance of 493.22 feet to a point; thence
- 17) Southerly along a curve to the right, having an arc distance of 25.06 feet, a radius of 15.00 feet and a central angle of 95° 43' 03" and being subtended by a chord which bears South 56° 08' 39" East 22.24 feet to the Point of Beginning.

Encompassing an area of 2.082 acres, more or less.

TOGETHER WITH an exclusive perpetual easement in and to the land described in Schedule 1 attached hereto and made a part hereof (the 'Easement Area') for the installation, operation, maintenance, repair, restoration and replacement of an underground parking garage and related improvements (collectively, the 'Improvements'). Grantor covenants for itself, its successors and assigns, not to use or permit others to use the Easement Area in any manner that would interfere with or damage the Improvements or interfere with the easement rights granted herein. The Grantor hereby agrees for itself, its successors and assigns that no building or other structure used or intended to be used for supporting or sheltering any occupancy shall be erected,

constructed or maintained on the surface of the land above the Easement Area (excluding the South Garage (as defined in the Master Agreement) in the location initially constructed), which restriction shall run with said land of the Grantor and be binding upon such land and be appurtenant to the land herein conveyed and inure to the benefit of the Grantee and any subsequent holder of an interest in the land herein conveyed.

Subject to a perpetual easement for the parking of motor vehicles in favor of the Grantor over the following portion of the land herein conveyed (the "Parking Easement Area"):

A certain piece or parcel of land, located on the west side of Raymond Road in the Town of West Hartford, County of Hartford and State of Connecticut, and shown as "EASEMENT E AREA = 3,733 S.F." on that certain map entitled "Subdivision Plan, Raymond Road Associates, LLC, South Campus" prepared by Langan Engineering and Environmental Services, Job No. 7612501, Date 3/24/04 Scale 1" = 40', Drawing No. 07.00S, Sheet 2 of 2, which map is on file or to be filed in the Town Clerk's Office of the Town of West Hartford (the "Survey"), and which piece or parcel of land is more particularly bounded and described as follows:

Commencing at a point on the west side of Raymond Road, which point is 18.09 feet north of the northeast corner of Lot 7 and the southeast corner of Lot 6, both as shown on the Survey, thence running:

- 1) South 08° 17' 07" East, a distance of 18.09 feet to a point; thence
- 2) South 75° 59' 49" West, a distance of 206.49 feet to a point; thence
- 3) North 14° 00' 10" West, a distance of 18.00 feet to a point; thence
- 4) North 75° 59' 49" East, a distance of 208.29 feet to the Point of Beginning.

Encompassing an area of 0.086 acres, more or less.

To the extent permitted by law, the Grantor shall be entitled to construct, at its sole cost and expense, one open-sided carport structure (the "Carport") on the Parking Easement Area for the purpose of sheltering police motor vehicles; provided, however, that the Grantor shall construct such Carport in accordance with all laws, ordinances, rules and regulations applicable thereto ("Legal Requirements"), in a good and workmanlike manner and pursuant to plans approved by Grantee (which approval shall not be unreasonably withheld, conditioned or delayed), and the Grantor, at its sole cost and expense, shall maintain the Carport and any paved parking area in good order, repair and condition and in compliance with all Legal Requirements and free of all snow and ice. Such reserved easements shall be subject to the Grantee's right to utilize the Parking Easement Area for any purpose that does not unreasonably interfere with the exercise of the Grantor's rights hereunder (including, without limitation, the use of any area not shown on the Site Plan (as defined in the Master Agreement) as a paved parking area. In the event that the Carport constructed by the Grantor shall interfere with the access to the Grantee's improvements for maintenance, repair, and rebuilding, the Grantee is hereby granted an access easement through adjacent portions of the Grantor's land sufficient to provide reasonable access to such improvements.

The land herein conveyed is subject to a Right of Re-Entry in favor of the Grantor as described in and subject to the terms of that certain Master Agreement between the Grantor and

the Grantee dated as of _____, _____ and recorded contemporaneously herewith in the Land Records of the Town of West Hartford (the "Master Agreement"); provided, however, that the Town's exercise of the Right of Re-Entry shall be subject to satisfaction of the following conditions precedent in the event that a Certificate of Completion (as defined in the Master Agreement) has been issued with respect to either, but not both, of Building C and Building D:

(a) If a Certificate of Completion has been issued with respect to Building C, Parcel C/D shall be divided (and any applicable Special Development District(s) shall be amended as necessary) by creating the resulting "Parcel C" and "Parcel D" described on Schedule 2 attached hereto and made a part hereof, and merging or consolidating the resulting "Parcel D" with the South Municipal Parcel (as defined in the Master Agreement), subject to a perpetual non-exclusive easement in favor of said "Parcel C" on, over, through and across that portion of the Parcel C/D Entrance Easement Area (as defined in that certain Reciprocal Easement Agreement between the Grantor and the Grantee relating to property conveyed herein and recorded in the West Hartford Land Records contemporaneously herewith (the "Cross-Easement Agreement")) located on said "Parcel D", for the purpose of providing ingress and egress to and from the South Garage (as defined in the Cross-Easement Agreement) and Memorial Road, for vehicular and pedestrian ingress and egress to and from Memorial Road and the South Garage.

(b) If a Certificate of Completion has been issued with respect to Building D, Parcel C/D shall be divided (and any applicable Special Development District(s) shall be amended as necessary) by creating the resulting "Parcel C" and "Parcel D" described on Schedule 2 attached hereto and made a part hereof, and merging or consolidating the resulting "Parcel C" with the South Municipal Parcel, subject to a perpetual non-exclusive easement in favor of said "Parcel D" on, over, through and across that portion of the Parcel C/D Entrance Easement Area located on said "Parcel C", for the purpose of providing ingress and egress to and from the South Garage and Memorial Road, for vehicular and pedestrian ingress and egress to and from Memorial Road and the South Garage.

(c) The Grantor and Grantee, their successors and assigns, shall cooperate to prepare, execute and file all applications necessary to obtain such resubdivision approvals, lot line adjustment approvals, lot consolidation approvals and Special Development District amendments as may be necessary to accommodate such division of Parcel C/D.

[As used in this Exhibit, the term "Grantor" shall mean the Town of West Hartford and the term "Grantee" shall mean the Developer. The legal description is set up for use in the deed.]

Schedule 1

A certain piece or parcel of land, located southerly of Memorial Road in the Town of West Hartford, County of Hartford and State of Connecticut, and shown as "EASEMENT H AREA = 4,370 S.F." on that certain map entitled "Subdivision Plan, BBS Development, LLC, South Campus" prepared by Langan Engineering and Environmental Services, Job No. 7612501, Date 3/24/04, Scale 1" = 40', Drawing No. 07.00S, Sheet 4 of 4, which map is on file or to be filed in the Town Clerk's Office of the Town of West Hartford (the "Survey"), and which piece or parcel of land is more particularly bounded and described as follows:

Commencing at a point on the south side of Memorial Road at the northwest corner of Lot 6 and a northeast corner of Lot 7, both as shown on the Survey, thence running South 14° 00' 10" East, a distance of 150.01 feet to a point; thence, South 41° 45' 56" East, a distance of 53.01 feet to a point; thence North 75° 59' 50" East, a distance of 74.81 feet to a point; thence North 14° 00' 10" East, a distance of 38.00 feet to a point; thence North 75° 59' 50" East, a distance of 115.00 feet to the True Point of Beginning; thence running:

- 1) South 14° 00' 10" East, a distance of 38.00 feet to a point; thence
- 2) South 75° 59' 50" West, a distance of 115.00 feet to a point; thence
- 3) North 14° 00' 10" West, a distance of 38.00 feet to a point; thence
- 4) North 75° 59' 50" East, a distance of 115.00 feet to the Point of Beginning.

Encompassing an area of 0.100 acres, more or less.

Schedule 2

LEGAL DESCRIPTION OF "PARCEL C" AND "PARCEL D"

"PARCEL C"

A certain piece or parcel of land, together with the buildings and improvements located thereon, located on the west side of Raymond Road in the Town of West Hartford, County of Hartford and State of Connecticut, and shown as 'PARCEL C = 47,100 S.F.' on that certain map entitled "Project Parcels C&D West Hartford Connecticut" prepared by Langan Engineering and Environmental Services, Job No. 7612501, Date 04/29/04, Scale 1" = 80', which map is on file or to be filed in the Town Clerk's Office of the Town of West Hartford (the "Survey"), and which piece or parcel of land is more particularly bounded and described as follows:

Commencing at a point on the west side of Raymond Road at the intersection of the south line of Memorial Road and the west line of Raymond Road which point is the northeast corner of the herein described parcel, as shown on the Survey, thence running:

- 18) South 08° 17' 07" East, a distance of 138.81 feet to a point; thence
- 19) South 75° 59' 49" West, a distance of 206.49 feet to a point; thence
- 20) North 14° 00' 10" West, a distance of 22.11 feet to a point; thence
- 21) South 75° 59' 50" West, a distance of 33.00 feet to a point; thence
- 22) South 14° 00' 10" East, a distance of 8.00 feet to a point; thence
- 23) South 75° 59' 50" West, a distance of 4.00 feet to a point; thence
- 24) South 14° 00' 10" East, a distance of 4.00 feet to a point; thence
- 25) South 75° 59' 50" West, a distance of 63.00 feet to a point; thence
- 26) North 14° 00' 10" West, a distance of 144.50 feet to a point; thence
- 27) North 75° 59' 49" East, a distance of 305.39 feet to a point; thence
- 28) Southerly along a curve to the right, having an arc distance of 25.06 feet, a radius of 15.00 feet and a central angle of 95° 43' 03" and being subtended by a chord which bears South 56° 08' 39" East 22.24 feet to the Point of Beginning.

Encompassing an area of 1.0813 acres, more or less.

"PARCEL D"

A certain piece or parcel of land, together with the buildings and improvements located thereon, located on the west side of Raymond Road in the Town of West Hartford, County of Hartford and State of Connecticut, and shown as 'PARCEL D = 43,587 S.F.' on that certain map entitled "Project Parcels C&D West Hartford Connecticut" prepared by Langan Engineering and Environmental Services, Job No. 7612501, Date 04/29/04, Scale 1" = 80', which map is on file or to be filed in the Town Clerk's Office of the Town of West Hartford (the "Survey"), and which piece or parcel of land is more particularly bounded and described as follows:

Commencing at a point on the south side of Memorial Road which point is the northwest corner of the herein described parcel, as shown on the Survey, thence running:

- 1) North 79° 20' 24" East, a distance of 75.80 feet to a point; thence
- 2) North 75° 59' 49" East, a distance of 187.83 feet to a point; thence
- 3) South 14° 00' 10" East, a distance of 144.50 feet to a point; thence
- 4) South 75° 59' 50" West, a distance of 49.00 feet to a point; thence
- 5) South 14° 00' 10" East, a distance of 10.00 feet to a point; thence
- 6) South 75° 59' 50" West, a distance of 115.00 feet to a point; thence
- 7) South 14° 00' 10" East, a distance of 38.00 feet to a point; thence
- 8) South 75° 59' 50" West, a distance of 74.81 feet to a point; thence
- 9) North 41° 45' 56" West, a distance of 53.01 feet to a point; thence
- 10) North 14° 00' 10" West, a distance of 150.01 feet to the Point of Beginning.

Encompassing an area of 1.007 acres, more or less.

EXHIBIT W

PARCEL C/D PERMITTED EXCEPTIONS

1. Restrictions, reservations and Right of Re-Entry contained in that certain Special Warranty Deed from the Town to the Developer conveying fee title to Parcel C/D, together with the improvements thereon [SEE EXHIBIT V OF THE MASTER AGREEMENT FOR RESTRICTIONS AND RESERVATIONS AND RIGHT OF RE-ENTRY.]

2. The Master Agreement.

EXHIBIT X

FORM OF BUILDING B – NORTH GARAGE CROSS-EASEMENT AGREEMENT

EXHIBIT Y

FORM OF TAX ASSESSMENT FIXING AGREEMENT FOR BUILDING D

EXHIBIT Z

LIST OF PLANS
FOR PUBLIC IMPROVEMENTS

[TO BE ATTACHED PRIOR TO EXECUTION OF MASTER AGREEMENT]

EXHIBIT AA

FORM OF DECLARATION

EXHIBIT BB

LEGAL DESCRIPTION OF MUNICIPAL PARCEL

Parcel One [North Municipal Parcel]:

A certain piece or parcel of land, together with the buildings and improvements located thereon, located on the east side of South Main Street in the Town of West Hartford, County of Hartford and State of Connecticut, and shown as "LOT 1 AREA = 62,045 S.F." on that certain map entitled "Subdivision Plan, BBS Development, LLC, North Campus" prepared by Langan Engineering and Environmental Services, Job No. 7612501, Date 3/24/04, Scale 1" = 40', Drawing No. 07.00N, Sheet 3 of 4, which map is on file or to be filed in the Town Clerk's Office of the Town of West Hartford (the "Survey"), and which piece or parcel of land is more particularly bounded and described as follows:

Commencing at a point on the easterly side of South Main Street at the southwest corner of the herein described parcel (Lot 1) and the northwest corner of Lot 2 as shown on the Survey; thence running;

- 1) North 07° 07' 22" East, a distance of 96.53 feet to a point; thence
- 2) North 04° 34' 48" East, a distance of 113.99 feet to a point; thence
- 3) South 85° 24' 58" East, a distance of 253.98 feet to a point; thence
- 4) South 13° 56' 24" East, a distance of 207.22 feet to a point; thence
- 5) South 75° 59' 49" West, a distance of 56.22 feet to a point; thence
- 6) North 80° 26' 41" West, a distance of 38.86 feet to a point; thence
- 7) South 75° 59' 50" West, a distance of 29.96 feet to a point; thence
- 8) North 82° 33' 36" West, a distance of 203.93 feet to the Point of Beginning.

Encompassing an area of 1.424 acres, more or less.

Parcel Two [SOUTH MUNICIPAL PARCEL]:

A certain piece or parcel of land, together with the buildings and improvements located thereon, located on the east side of South Main Street in the Town of West Hartford, County of Hartford and State of Connecticut, and shown as 'LOT 7 AREA = 498,104 S.F.'" on that certain map entitled "Subdivision Plan, BBS Development, LLC, South Campus" prepared by Langan Engineering and Environmental Services, Job No. 7612501, Date 3/24/04 Scale 1" = 40', Drawing No. 07.00S, Sheet 4 of 4, which map is on file or to be filed in the Town Clerk's Office of the Town of West Hartford (the "Survey"), and which piece or parcel of land is more particularly bounded and described as follows:

Commencing at a point on the west side of Raymond Road at the southeast corner of Lot 6 and the northeast corner of the herein described parcel, both as shown on the Survey, thence running:

- 1) South 08° 17' 07" East, a distance of 455.45 feet to a point; thence

- 2) Southerly along a curve to the right, having an arc distance of 22.66 feet, a radius of 15.00 feet and a central angle of $86^{\circ} 34' 10''$ and being subtended by a chord which bears South $34^{\circ} 59' 58''$ West 20.57 feet to a point; thence
- 3) South $78^{\circ} 17' 03''$ West, a distance of 1105.07 feet to a point; thence
- 4) Northerly along a curve to the right, having an arc distance of 32.36 feet, a radius of 15.00 feet and a central angle of $123^{\circ} 35' 30''$ and being subtended by a chord which bears North $39^{\circ} 55' 12''$ West 26.44 feet to a point; thence
- 5) North $21^{\circ} 52' 33''$ East, a distance of 495.56 feet to a point; thence
- 6) Northerly along a curve to the left, having an arc distance of 189.76 feet, a radius of 1451.80 feet and a central angle of $7^{\circ} 29' 20''$ and being subtended by a chord which bears North $18^{\circ} 07' 53''$ East 189.62 feet to a point; thence
- 7) Northerly along a curve to the right, having an arc distance of 16.76 feet, a radius of 14.39 feet and a central angle of $66^{\circ} 43' 33''$ and being subtended by a chord which bears North $47^{\circ} 44' 59''$ East 15.82 feet to a point; thence
- 8) North $79^{\circ} 20' 24''$ East, a distance of 201.76 feet to a point; thence
- 9) South $14^{\circ} 00' 10''$ East, a distance of 150.01 feet to a point; thence
- 10) South $41^{\circ} 45' 56''$ East, a distance of 53.01 feet to a point; thence
- 11) North $75^{\circ} 59' 50''$ East, a distance of 74.81 feet to a point; thence
- 12) North $14^{\circ} 00' 10''$ West, a distance of 38.00 feet to a point; thence
- 13) North $75^{\circ} 59' 50''$ East, a distance of 115.00 feet to a point; thence
- 14) North $14^{\circ} 00' 10''$ West, a distance of 10.00 feet to a point; thence
- 15) North $75^{\circ} 59' 50''$ East, a distance of 112.00 feet to a point; thence
- 16) North $14^{\circ} 00' 10''$ West, a distance of 4.00 feet to a point; thence
- 17) North $75^{\circ} 59' 50''$ East, a distance of 4.00 feet to a point; thence
- 18) North $14^{\circ} 00' 10''$ West, a distance of 8.00 feet to a point; thence
- 19) North $75^{\circ} 59' 50''$ East, a distance of 33.00 feet to a point; thence
- 20) South $14^{\circ} 00' 10''$ East, a distance of 22.11 feet to a point; thence
- 21) North $75^{\circ} 59' 49''$ East, a distance of 206.49 feet to the Point of Beginning.

Encompassing an area of 11.431 acres, more or less.

EXHIBIT CC

PUBLIC IMPROVEMENTS BUDGET

Public Improvement Constructed by Developer		Estimated Public Development Costs
South Garage		\$10,810,453
North Garage		\$11,100,642
Site Improvements		<u>\$13,162,447</u>
TOTAL ESTIMATED PUBLIC DEVELOPMENT COSTS		<u>\$35,073,542</u>
Public Improvement Constructed by Town		Town Allowance
Town Hall Addition and Renovation		\$ 7,000,000
Library Addition and Renovation		<u>\$ 5,612,500</u>
TOTAL TOWN ALLOWANCE		<u>\$12,612,500</u>

EXHIBIT DD

SITE PLAN INDEX

[TO BE ATTACHED PRIOR TO EXECUTION OF MASTER AGREEMENT]

EXHIBIT EE

LIST OF EXCLUDED LICENSES, PERMITS AND CERTIFICATES

**[TO BE FINALIZED PRIOR TO EXECUTION OF MASTER AGREEMENT. IF NONE,
EXHIBIT WILL READ 'none']**

EXHIBIT FF

FORM OF BUILDING C/BUILDING D – SOUTH GARAGE CROSS-EASEMENT
AGREEMENT

EXHIBIT GG

CONSTRUCTION SCHEDULE

EXHIBIT HH

SKETCH OF NORTH PARKING LOT

EXHIBIT II

FORM OF SSD PARKING FACILITIES LICENSE/SERVICE AGREEMENT

EXHIBIT JJ

MAINTENANCE SKETCH

EXHIBIT KK

DEVELOPER INSURANCE REQUIREMENTS

Commercial General Liability: \$1,000,000 combined single limit per occurrence for premises-operations, independent contractors' protective, products-completed operations, contractual liability, personal injury and broad form property damage (including coverage for explosion, collapse and underground hazards). Developer shall continue to provide products completed operations coverage for two (2) years after the Substantial Completion of each Private and Public Improvement.

Automobile Liability and Physical Damage Coverage: \$ 1,000,000 combined single limit per occurrence for any auto, including statutory uninsured/underinsured motorists coverage and \$1,000 medical payments. Policy shall include collision and comprehensive coverage for any auto used for purpose of this Project. When required by law, the policy shall be endorsed to include Form MCS-90, "Endorsement for Motor carrier Policies of Insurance for public Liability under Sections 29 & 30 of the motor Carrier Act of 1980".

Umbrella Liability: \$25,000,000 per occurrence following form.

Workers' Compensation and Employer's Liability: Workers' compensation Connecticut statutory limits. Policy shall include employer's liability for limits of \$1,000,000 each accident, \$1,000,000 disease/policy limit, \$1,000,000 disease/each employee. If Developer decides not to procure workers' compensation in accordance with Connecticut law, the Developer agrees to comply with the Connecticut Workers' Compensation Act (the "Act") requirements for withdrawing from the provisions of the Act, including, but not limited to, filing the appropriate notice of withdrawal with the Workers' Compensation Commissioner. In lieu of providing Workers' Compensation insurance and providing the Town with proof thereof, the Developer agrees to hold the Town harmless from any and all suits, claims and actions arising from personal injuries sustained by any of Developer's workers during the course or performance of this Agreement, however caused.

Professional Liability: \$5,000,000 per occurrence for all professional services, including, without limitation, errors and omissions coverage, used for the Project, including but not limited to Construction Managers, Architects, Engineers, Environmental Consultants. Such coverage shall not be required of Developer's Construction Manager if it does not provide design services, and any such insurance requirement shall be deemed satisfied if carried directly by the professional.

Property Insurance: Builder's Risk and/or All Risk insurance coverage on the Public Improvements and Private Improvements in the amount of 100% of the replacement cost for the period during construction and subsequent to transfer as required. If the policy is written on a Co-Insurance basis, the policy shall contain an Agreed Amount Endorsement. Policy shall include coverage for property damage, damage to existing property, boiler and machinery, rental income, business interruption, demolition, increased cost of construction, debris removal, expediting costs, extra expense, decontamination expense, protection and preservation of property, professional

fees, landscaping, offsite storage, transit, land and water contaminant or pollutant cleanup, removal, and disposal, mold, windstorm, earthquake, flood and waiver of subrogation.

EXHIBIT LL

LIST OF ENVIRONMENTAL REPORTS PERFORMED
WITH RESPECT TO THE TOWN PROPERTY, THE SOUTH MUNICIPAL PARCEL AND
THE NORTH MUNICIPAL PARCEL

Document Name	Prepared By	Document Date
Phase I Environmental Site Assessment Report, Board of Education Building, 28 South Main Street, West Hartford, Connecticut	Langan Engineering and Environmental Services	11/13/03
Phase I Environmental Site Assessment Report, West Hartford Town Hall / Police Station and Municipal Court, 50 South Main Street and 103/105 Raymond Road, West Hartford, Connecticut	Langan Engineering and Environmental Services	11/13/03
Limited Phase II Site Investigation Report, Proposed Blue Back Square, West Hartford, Connecticut	Langan Engineering and Environmental Services	12/24/03

EXHIBIT MM

LEGAL DESCRIPTION OF OTHER PROPERTY

A certain piece or parcel of land located on the east side of Isham Road in the Town of West Hartford, County of Hartford and State of Connecticut, and shown as "AREA = 157,860 S.F." on that certain map entitled "PROJECT BLUE BACK SQUARE ISHAM ROAD BLOCK, West Hartford, Connecticut" prepared by Langan Engineering and Environmental Services, Job No. 7612501, Date 3-23-04 Scale 1" = 60' Dwg. No. EXHIBIT, (the "Survey"), and which piece or parcel of land is more particularly bounded and described as follows:

Commencing at a point at the intersection of the west line of Raymond Road with the south line of Isham Road, thence running:

- 1) South 12° 59' 24" East, a distance of 480.07 feet to a point; thence
- 2) Southerly along a curve to the right, having an arc distance of 39.34 feet, a radius of 25.00 feet and a central angle of 90° 09' 38" and being subtended by a chord which bears South 31° 30' 13" West 30.12 feet to a point; thence
- 3) South 76° 51' 18" West, a distance of 260.28 feet to a point; thence
- 4) Northerly along a curve to the right, having an arc distance of 23.35 feet, a radius of 15.00 feet and a central angle of 89° 12' 20" and being subtended by a chord which bears North 58° 32' 32" West 21.07 feet to a point; thence
- 5) North 13° 56' 24" West, a distance of 465.42 feet to a point; thence
- 6) Easterly along a curve to the right, having an arc distance of 63.50 feet, a radius of 40.00 feet and a central angle of 90° 57' 00" and being subtended by a chord which bears North 31° 32' 06" East 57.04 feet to a point; thence
- 7) North 77° 00' 36" East, a distance of 253.11 feet to a point; thence
- 8) Southerly along a curve to the right, having an arc distance of 23.56 feet, a radius of 15.00 feet and a central angle of 90° 00' 00" and being subtended by a chord which bears South 57° 59' 24" East 21.21 feet to the Point of Beginning.

Encompassing an area of 3.624 acres, more or less.

EXHIBIT NN

PUBLIC IMPROVEMENT TRANSFER REQUIREMENTS

“Additional Covenants of the Developer” shall mean the following:

- (a) the applicable Public Improvement shall have been Substantially Completed;
- (b) the Completion Notice with respect to the applicable Public Improvement shall have been executed and delivered to the Town by the Developer;
- (c) the Architect Completion Certificate with respect to the applicable Public Improvement shall have been executed by the applicable Developer’s Architect and delivered to the Town as well as “as-built” drawing for the applicable Public Improvement;
- (d) the Punch List Certificate shall have been executed and delivered to the Town and the Developer by the Developer’s Architect and, if any Punch List Item will not be completed prior to the applicable Closing Date, the Developer shall have delivered to the Town assurances reasonably acceptable to the Town (e.g., escrows, credits or reserves) that such Punch List Items (other than those of a seasonal nature) will be completed by the Developer within sixty (60) days after the applicable date of Substantial Completion (subject to Excusable Delays), or, such other time period agreed to by the Town;
- (e) there shall have occurred no Condemnation; provided, however, that the parties’ rights and obligations with respect to a Condemnation affecting the South Garage prior to the South Garage Closing shall be governed by the terms of the South Garage Lease;
- (f) there shall have occurred no unrepaired Substantial Casualty and, in the case of any casualty other than a Substantial Casualty, the proceeds thereof have been or will be used to repair any such casualty; provided, however, that if an unrepaired Substantial Casualty shall exist as of the applicable Closing Date and all other conditions to the applicable Closing have been satisfied, then the applicable Closing Date may be extended, but not more than one hundred eighty (180) days beyond the applicable Construction Date Deadline, to allow the Developer, using diligent efforts, a reasonable period of time to repair any such Substantial Casualty;
- (g) no Loan Default exists;
- (h) In the event there exists, as of the applicable Closing Date, any Mortgage encumbering the applicable Parcel (other than a mortgage encumbering the South Municipal Parcel granted by the Town) or mechanics’ or materialmen’s lien(s) imposed against the applicable Parcel, then Developer shall cause such mortgage or lien to be released or insured over by the Title Company as of the applicable Closing Date;
- (i) Neither the Developer nor the applicable Parcel or Public Improvement is the subject of any pending litigation or legal proceeding that would prohibit the conveyance

of such Parcel or Public Improvement to the Town or prohibit or materially impair the use of the Public Improvement as a public parking garage;

(j) The Developer has notified the Town in writing as to any pending litigation or legal proceeding related to the Proposed Project in which the Developer or any Project Parcel is the subject and with respect to which the Town is not a party;

(k) Except for the applicable Parcel's Permitted Exceptions (and, with respect to the South Garage, the Building C/D – South Garage Cross-Easement and the easements, terms and restrictions contained in the deed to Parcel C/D that affect the South Municipal Parcel), there are no existing agreements affecting the applicable Parcel or granting a right of possession to all or any portion of the applicable Parcel to a third party that will be binding on the Town or the applicable Parcel following the applicable Closing that have not been consented to by the Town.

The conditions precedent set forth above and in Sections of the Agreement referencing this Exhibit, are included solely for the benefit of the Town and the Town may, in its sole discretion, elect to waive any of the conditions precedent set forth in this Exhibit and any such Section by giving written notice to the Developer of its election to waive any such condition precedent at any time on or before the applicable Closing Date; provided, however, that the Town may not waive issuance of the Certificate of Completion for the applicable Public Improvement without consent of the Developer. If any of such conditions precedent has not been satisfied on or before the applicable Closing Date, the Town may, at its sole option, extend any then effective applicable Closing Date by such period of time as the Town, in its sole discretion elects by written notice to the Developer (and upon each such extension the date to which the applicable Closing Date has been extended by the Town as aforesaid shall be the applicable Closing Date for purposes of this Agreement) to allow all such unsatisfied conditions to be satisfied, and the Developer covenants that if the Town extends the applicable Closing Date (or further extends any extended applicable Closing Date) pursuant to the foregoing the Developer shall diligently and in good faith attempt to satisfy, or cause to be satisfied, all such conditions on or before the then effective extended applicable Closing Date. If the Town and the Developer disagree as to whether Substantial Completion of the applicable Public Improvement has occurred or whether the Certificate of Completion shall be issued, then either Party also shall be entitled to extend the applicable Closing Date to enable the parties to resolve such disagreement in accordance with the provisions of Section 15.1 and Section 15.2.

“Additional Closing Deliveries of the Developer” shall mean the following:

(l) Any transfer tax declaration(s) in the form required by applicable Governmental Authorities;

(m) A non-foreign person affidavit in customary form sworn to by Seller as required by Section 1445 of the Internal Revenue Code;

(n) Such evidence, certificates or documents as may be reasonably required by the Title Company relating to: (i) mechanics' or materialmen's lien releases or waivers; (ii) parties in possession; or (iii) the status and capacity of the Developer and the authority of the person or persons who are executing the various documents on behalf of the Developer in

connection with the transfer of the applicable Public Improvement and/or Parcel, and in any event, appropriate resolutions to enter into and close the transaction contemplated herein;

(o) Copies of executed lien waivers from all mechanics' and materialmen who have furnished labor or materials to the applicable Public Improvement and/or Parcel within the preceding ninety (90) days (other than with respect to Public Improvements to be constructed on the Municipal Parcel);

(p) One mylar copy of the as-built plans and all original applicable written warranties relating to the applicable Public Improvement, including, but not limited to, the Building Systems;

(q) Public Improvements Budget detailing the actual Public Development Costs incurred by the Developer with respect to the particular Public Improvements included in any particular Closing;

(r) A certificate of the Developer certifying that the conditions precedent to the applicable Closing (described or referenced in Section 6.3 as to the North Garage Closing and in Section 8.3 as to the South Garage Closing) have been satisfied or been waived in writing by the Town (and identifying any such conditions precedent that have been so waived);

(s) Such other documents as may be reasonably necessary or appropriate to effect the consummation of the transactions which is the subject of this Agreement; and

(t) All representations and warranties of the Developer included in Article XVIII are true in all material respects as of the applicable Closing Date, subject to such matters of which the Developer has notified the Town in writing prior to the applicable Closing Date and with respect to which the Town has raised no reasonable objection in writing within ten (10) days after notice thereof from the Developer with a copy of this Exhibit NN.

EXHIBIT OO

FORM OF CONSTRUCTION EASEMENT

EXHIBIT PP

FORM OF SOUTH GARAGE LEASE

EXHIBIT QQ

PARAMETERS OF HEALTH CLUB PARKING AGREEMENT

The Town will issue validation cards to the health club tenant, for use by its members, at \$15/month per card (based upon a fifty percent (50%) discount of a municipal parking rate of \$1.50 per hour), entitling each cardholder to 20 hours of parking per month at the municipal garages in the Project. The health club tenant will be entitled to purchase up to 2,000 cards per month. The health club tenant will agree to pay for at least \$10,000 worth of cards on a monthly basis during its tenancy (payable no later than the first day of each calendar month) commencing no later than one year after the issuance of a certificate of occupancy for the health club space. In the event the Town changes its parking rates, then the rates set forth above will be changed to reflect a fifty percent (50%) discount of the then current parking rates for 20 hours per month.

EXHIBIT RR

IDENTIFICATION OF ENVIRONMENTAL WORK PLAN

Work Plan for Site Remediation 33 Raymond Road West Hartford, Connecticut
Prepared for Raymond Road Associates. Prepared by Langan Engineering and Environmental
Services, Inc. 19 March 2004 7612504, together with Addendum to Work Plan for Site
Remediation 33 Raymond Road West Hartford, Connecticut dated May 5, 2004.

EXHIBIT SS

DEVELOPER'S ARCHITECT

North Garage and South Garage

Desman Associates

Private Improvements

[_____]

EXHIBIT TT

1. The appeal of the entry by the Superior Court of a dispositive ruling in favor of the defendants in Docket No. CV-04-4006511-S, West Farms Mall, LLC vs. Town Of West Hartford; West Hartford Town Council; Barry Feldman; Blue Back Square LLC; BBS Development LLC; Raymond Road Associates LLC; Hayes-Velhage Post No. 96 American Legion; Grody Company and Anthony Donatelli, and any further litigation related thereto.

2. The appeal or possible appeal of the entry by the Superior Court of a dispositive ruling in favor of the defendants with respect to any of the following matters, and any further litigation related thereto:
 - a. Sadler, Jasyn et al v. Town of W. Hartford et al, Docket number HHD-CV-04-4001119-S

 - b. Sadler, Jasyn et al v. Town of W. Hartford et al, Docket number HHD-CV-04-4001388-S

 - c. Sadler, Jasyn et al v. Town of W. Hartford et al, Docket number HHD-CV-04-4001448-S

 - d. Sadler, Jasyn et al v. Town of W. Hartford et al, Docket number HHD-CV-04-4002125-S

 - e. Town Center West Associates v. West Hartford Town Council et al, HHD-CV-04-4001353-S

3. The appeal or possible appeal of the entry by the Superior Court of a dispositive ruling in favor of the defendants in Barbara Scully et al v. Town of W. Hartford et al, JD Hartford, return date 4/19/05, and any further litigation related thereto.

4. The appeal or possible appeal of the State Traffic Commission Certificate issued for the Project.