

**PREFERRED DEVELOPER AGREEMENT**

by and between

**CITY OF MIDDLETOWN, CONNECTICUT**

and

**BROAD-PARK DEVELOPMENT CORPORATION, INC.**

for

**NORTH END HOMEOWNERSHIP REDEVELOPMENT**

Dated as of June 19, 2007

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## PREFERRED DEVELOPER AGREEMENT

This PREFERRED DEVELOPER AGREEMENT (this "Agreement") is made as of the 19th day of June, 2007, by and between **BROAD-PARK DEVELOPMENT CORPORATION, INC.** (the "Developer", as hereinafter defined), a Connecticut Corporation having an address of 617 Park Street, Hartford, Connecticut, 06106, and the **CITY OF MIDDLETOWN, CONNECTICUT** (the "City"), a body corporate and politic and a political subdivision of the State of Connecticut, having an address of Municipal Building, 245 deKoven Drive, Middletown, Connecticut 06457, acting in and for itself and any of its departments and agencies, including, without limitation, the Middletown Redevelopment Agency (the "Agency").

### RECITALS

**WHEREAS**, the Developer desires to acquire certain properties located in the North End of Middletown, Connecticut, and develop an affordable, homeownership housing development (the "Project").

**WHEREAS**, this Agreement (i) provides for the conveyance from the City 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; (iii) provides for the conveyance from the Developer in exchange for a restriction on such properties for the benefit of low and moderate income persons; and (iv) provides for certain financing commitments on the part of the City to assist in the development of the Project.

**WHEREAS**, the combined properties will be developed, through improvements on the properties, to provide at least twelve (12) affordable, homeownership residential units (collectively, the "Proposed Project").

**WHEREAS**, on September 7, 2004, the Common Council of the City of Middletown ("Common Council") adopted Resolution Number 144-04 ("Designation Resolution") authorizing, *inter alia*, designation of BROAD-PARK DEVELOPMENT CORPORATION, INC. ("Broad Park") as the homeownership developer of the Redevelopment Plan (as hereinafter defined) and the Mayor to execute the Memorandum of Understanding between the City and Developer following approval by the Agency, a copy of which resolution is attached hereto and made a part hereof at Exhibit P.

**WHEREAS**, on September 7, 2004, the Common Council adopted Resolution Number 145-04, authorizing the Mayor to execute all necessary documents to effectuate the transfer of the City Property (as hereinafter defined) to the Developer in accordance with the Redevelopment Plan, a copy of which resolution is attached hereto and made a part hereof at Exhibit Q.

**WHEREAS**, on March 26 2006, the Common Council adopted Resolution Number 26-06, approving the extension of the Memorandum of Understanding with Broad-Park Development Corporation, Inc. for the due diligence phase extended to August 31, 2006, a copy of which resolution is attached hereto and made a part hereof at Exhibit R.

**WHEREAS**, on November 6, 2006, the Common Council adopted Resolution Number 180-06, approving the amendment of the existing Memorandum of Understanding to extend the approval period to Monday, January 8, 2007 between the City of Middletown and Broad Park Development Corporation regarding the homeownership component of the North End Urban Renewal Plan, a copy of which resolution is attached hereto and made a part hereof at Exhibit R.

**WHEREAS**, on January 2, 2007, the Common Council adopted Resolution 06-07, giving conceptual approval to the North End Homeownership Plan and authorized entering into a Preferred Developer Agreement with the Developer, a copy of which resolution is attached hereto and made a part hereof at Exhibit R.

**WHEREAS**, the City 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 all obligations it has undertaken in accordance with this Agreement.

**WHEREAS**, the City believes that the redevelopment of the property pursuant to this Agreement is in the vital and best interests of the City and the health, safety and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state and local laws and requirements under which the Redevelopment Plan and Proposed Project have been undertaken.

**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**

Section 1.1 For purposes of this Agreement, the terms listed in Exhibit A shall, unless the context otherwise requires, have the respective meanings assigned to such terms in Exhibit A or the Section or Article of this Agreement referred to therein.

## **ARTICLE II**

### **DEVELOPER APPOINTMENT**

#### Section 2.1 Appointment.

(a) In accordance with the Designation Resolution, the City hereby appoints the Developer as the officially designated developer for the Proposed Project. This appointment is an exclusive appointment and entitles the Developer to all rights to develop the Project Area in accordance with the terms of this Agreement and in compliance with the Development Act and Redevelopment Plan. This appointment shall terminate on December 31, 2009 unless earlier terminated pursuant to the terms hereof, provided, however, the provisions of this Agreement that, by their nature, continue beyond the expiration of the Term shall remain in full force and effect until the earlier of such time as each such provision terminates as set forth therein; provided, further, however, that if, at the end of the Term, the Developer is diligently pursuing completion of the Project (in the reasonable opinion of the City) and a Developer Default, beyond any applicable notice and cure period, has not occurred, this appointment may be extended, in writing, by the City upon request of the Developer.

(b) The City hereby consents to and approves the assignment and transfer of all rights and obligations under this Agreement to Home Ownership Middletown, LLC by Broad-Park Development Corporation, Inc., without recourse and liability of any kind to Broad-Park Development Corporation, Inc. The assignment to Home Ownership Middletown, LLC is an absolute assignment of all of Broad-Park Development Corporation's rights and obligations under this Agreement and is not an

assignment as collateral security pursuant to Article XI. The City accepts and recognizes the assignment to Home Ownership Middletown, LLC and hereby relieves Broad-Park Development Corporation, Inc. from its obligations under this Agreement. Home Ownership Middletown, LLC is a Connecticut limited liability company having Broad-Park Development Corporation, Inc. and Nehemiah Housing Corporation as its members.

### ARTICLE III

#### IMPROVEMENTS OBLIGATIONS

Section 3.1 Due Diligence. The Developer acknowledges that it has had a full and complete opportunity to conduct such investigations, examinations, inspections, and analysis of the Property and market conditions, feasibility and financing analysis, leasing efforts, and any and all such other matters as the Developer, in its sole and absolute discretion, has deemed adequate, necessary or appropriate prior to its execution of this Agreement and its assumption of the obligations of the Developer hereunder, including without limitation, the obligation to acquire the Property and develop the same as contemplated by this Agreement.

Section 3.2 Developer Property. The Developer shall acquire fee simple title to all of the Developer Property and may in accordance with all Legal Requirements, merge some or all of the Parcels into a single (or multiple) larger Parcel. The Developer cannot begin making improvements at a parcel until the City of Middletown has relocated all current residents from the parcel. To satisfy requirements of the acquisition funding sources, Nehemiah Housing Corporation shall acquire fee simple title to the Developer Property on behalf of the Developer.

Section 3.3 City Property Transfer. The City shall transfer fee simple title to all of the City Property to the Developer upon the Developer's request, on a mutually agreed to date. The city may modify this Section at its convenience to assist the Developer in the acquisition of the Developer Property. To satisfy requirements of the acquisition funding sources, Nehemiah Housing Corporation shall acquire fee simple title to the City Property on behalf of the Developer.

Section 3.4 Developer's Improvements Obligations.

(a) Subject to Excusable Delays, the Developer shall commence and diligently pursue construction and Substantial Completion of all of the Improvements in accordance with the Conceptual Plan, and by the Construction Date Deadline, as they may be amended from time to time. Within ninety (90) days following the City Property Transfer Date, the relocation of all current residents, and securing all necessary project funding; the Developer shall commence demolition of the Existing Buildings that will not be rehabilitated and construction of the Site Improvements in accordance with the Conceptual Plan. The Improvements, as set forth in the approved Plans, are hereby deemed to be consistent with the requirements of the City of Middletown North End Urban/CBD Renewal Plan, dated April 1990, as amended and adopted by the Middletown Redevelopment Agency (the "Redevelopment Plan").

(b) The Developer, as conditions of the various 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 3.5 Access to the Property. Prior to the City Property Closing, the City shall permit the Developer, its agents, contractors and employees, to have access to any part of the City Property, at all reasonable times, for the purpose of obtaining data or undertaking tests concerning the City Property necessary to carry out the provisions of this Agreement or deemed appropriate to the construction of the Improvements and financing thereof; provided, however, such access does not unreasonably interfere with any Current Residents . Following the City Property Closing, the Developer shall permit the City to have access to the Property at all reasonable times for the purpose of fulfilling the terms of this Agreement or inspection of the work being performed in connection with construction of the Improvements, provided that such access does not unreasonably interfere with the fulfillment by Developer of its obligations under this Agreement or under any other related agreements with the City.

Section 3.6 Relocation. The City agrees to conduct all relocation planning for, and relocate all, Current Residents within the Project Area. The City shall use all commercially reasonable efforts to relocate such Current Residents by the Current Residents Relocation Deadline, but shall not, under any circumstances, be liable for any delay in completion of the Project associated with the City's inability to relocate the Current Residents in a timely fashion. The Developer hereby agrees to assist, and cooperate with, the City in any eviction proceedings necessary to remove the Current Residents from the Developer property

#### ARTICLE IV

##### FINANCIAL AGREEMENTS AND PROJECT FUNDING

Section 4.1 Developer's Funding Obligations. The Developer's and the City's respective obligations under this Agreement are conditioned upon the Developer securing up to \$1.3 million in funding, not including the City's commitment, from the following funding sources for completion of the Project:

- (a) Federal HOME funds through the State DECD
- (b) Any other public or private source
- (c) On or before December 31, 2007, the Developer shall provide evidence to the City that all funding for the Developer's construction obligations hereunder and required by the Developer hereunder have been secured.

Section 4.2 City's Funding Obligations.

(a) The City will provide a minimum of **\$720,000** of funding from its allocation of Community Development Block Grant funding (the "CDBG funds") or other sources for the Project, which may include a Section 108 loan from the Department of Housing and Urban Development, to be used: first, by the City for acquisition of vacant and blighted structures (the "City's Acquisition Costs"), second for relocation payments to the Current Residents, including, without limitation, any costs associated with appeals taken by any Current Residents with respect to the amount of the relocation assistance being provided and administration costs of the City in conducting the required relocation (the "Relocation Costs"), third, by the Developer for the acquisition and demolition costs ("Demolition Costs") associated with the Project, and, fourth, all other eligible project costs. Any of the City's funds remaining after payment of the City's Acquisition Costs and Relocation Costs shall be transferred to the Developer. In the event that the Relocation Costs, Demolition Costs and City's Acquisition Costs exceed

the CDBG funds, the City shall not be liable for such shortfall and the Developer shall be required to provide such additional funding as necessary to meet such shortfall.

The City's funding obligations are based on the expectation that the Project will consist of at least twelve (12) Units. The City's funding obligations shall be adjusted on a pro rata basis to reflect the total number of Units actually constructed.

(b) Notwithstanding anything to the contrary contained in this Agreement and the Exhibits attached hereto, the City shall not be required to fund any additional monies for the Project.

Section 4.3 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.

## ARTICLE V

### TRANSFER OF THE CITY PROPERTY

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

(a) fee simple title to the City Property, together with all privileges, rights, easements, and appurtenances belonging to such land and all right, title and interest (if any) of the City 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 City may have as a municipality in dedicated and accepted street rights-of-way) and all right, title and interest (if any) of the City in all development rights appurtenant thereto;

(b) fee simple title to all buildings and improvements located on the City Property, including, without limitation, the Existing Buildings; and

(c) all of the City'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 City'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 City has such items in its possession or within its control after reasonable efforts and may legally transfer the same.

### Section 5.2 Condition of City Property to be Conveyed.

(a) The signing of this Agreement by the Developer constitutes the Developer's agreement to accept the City Property in its condition as of the City Property Transfer Date, **“AS IS”**, **“WHERE IS”**, AND **“WITH ALL FAULTS”** and with any and all latent and patent defects. The City makes no representation or warranty regarding the fitness of the Property for any particular purpose,



merchantability, design, quality, condition, operation or income, compliance with drawings or specifications, absence of defects, absence of Hazardous Substances or Environmental Conditions, absence of faults, flooding, or compliance with Legal Requirements and Environmental Laws except as may be otherwise specifically contained herein. The Developer waives any and all claims it or its successors or assigns have or may have with respect to any City Property in any way related to or arising from Hazardous Substances, Environmental Laws, Release or Environmental Conditions. No person acting on behalf of City is authorized to make, and by the execution hereof the Developer hereby acknowledges that no person has made, nor is the Developer relying upon any representation, agreement, statement, warranty, guaranty or promise regarding the Property, or the transaction contemplated herein, and no representation, warranty, agreement, statement, guaranty or promise, if any, made by any person acting on behalf of the City which is not contained herein shall be valid or binding upon the City. The Developer is solely relying upon its examination of the Property, and the Developer agrees that it shall acquire the Property under the express understanding that there are no express or implied warranties by the City. The City shall have no obligation to clean-up, demolish, remediate, repair any such costs with respect to the City Property and any of the Existing Buildings or other existing improvements on the Property. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

(b) The parties hereby agree that to the extent the City Property, or any portion thereof, may be an “establishment” subject to the Transfer Act, at the City Property Closing the Developer shall prepare and deliver to the City a Form III Transfer Act filing for all required Parcels, executed by the City as the transferor, to be executed by the Developer as the Certifying Party and transferee prior to the transfer, 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.

Section 5.3 Time of Conveyance of City Property. The conveyance of possession of and fee title to the City Property to the Developer shall take place on a mutually agreed upon date as set forth in Section 3.3 herein. The City Property Transfer shall take place on such date at the Closing Location, or at such other date, time and place as may be agreed upon in writing by the City and the Developer (the aforesaid date, or such other agreed date, being referred to in this Agreement as the “City Property Transfer Date”).

Section 5.4 Closing Deliveries.

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

(i) A quit-claim deed to the City Property Parcels, subject only to the City Property Permitted Exceptions;

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

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

herein or (D) any other items customarily required by the Title Company of a seller to issue its ALTA Owners Title Policy;

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

(v) Releases of record necessary to convey title as agreed;

(vi) The Declaration recorded with respect to the Property; and

(vii) 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.

Section 5.5 Recording of Deed. The Developer shall promptly file the deed(s) to the City Property following the City Property Closing in the Land Records. The Developer shall pay all costs for recording the deed(s), including, without limitation, all conveyance taxes payable in connection with the transfer of title, if any.

## ARTICLE VI

### PLANS, COOPERATION, EASEMENTS, CONSTRUCTION AND COMPLETION

Section 6.1 Conceptual Plan. For purposes only of preparing full Plans and construction documents pursuant to this Article VI, the Developer and the City have approved that certain conceptual plan, dated January 8, 2007 (the "Conceptual Plan"), a copy of which is attached hereto and made a part hereof at Exhibit C (with the understanding that any such approvals granted by the City pursuant to this Article VI do not include any required regulatory approvals) for the Project's Improvements.

Section 6.2 Preparation and Approval of Plans. Based upon and consistent with the Conceptual Plan, the Developer will cause the Developer's Architect to prepare full Plans and construction documents for the Improvements. The Developer will deliver the Plans for the Improvements to the City and its building department. Unless required by the City building department or pursuant to any Legal Requirements, the Plans as submitted shall not be altered by the Developer without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. Notwithstanding anything to the contrary contained herein, the City's review and approval of the Plans shall not constitute a representation that the Plans are in compliance with all Legal Requirements or sufficient to construct the Improvements as intended by the Developer. The Developer hereby agrees to cause its contract with the Developer's Architect to be assignable to the City in the event of a Developer Default hereunder.

Section 6.3 Overriding Authority of City's Planning Authority and Zoning Authority. This Agreement is not intended to supplant or influence the role of the City's Planning Commission, Zoning Commission, Zoning Board of Appeals, Common 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 City shall not be construed in any way to constitute a commentary on, or approval of, any such application by the City's Planning Commission, Zoning Commission, Zoning Board of Appeals, Common Council or other regulatory body, authority or official in such capacity.

Section 6.4 Meetings.

(a) The City and the Developer shall have regularly scheduled monthly meetings throughout the Term hereof and shall, at the request of either Party, have additional meetings. In addition, the Developer shall inform the City in advance of its scheduled project meeting with its Construction Manager throughout the construction process, which meeting the City shall have the option of attending.

(b) The Developer acknowledges that the North End Action Team (“NEAT”) is a critical party in the success of the revitalization of the North End. As such, the Developer shall meet with NEAT once every two (2) months to receive input from the neighborhood and provide status reports to the neighborhood throughout the Term.

Section 6.5 Cooperation.

(a) The City 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. The Parties agree to cooperate with one another in good faith and in a timely manner with respect to such matters.

(b) The Developer hereby agrees to cooperate with, throughout the construction of the Improvements, with the Richmond Development Corp., the City’s designated rental developer for the neighborhood, and with NEAT. In exchange, the City shall use all reasonable efforts to require cooperation from Richmond Development Corp. and NEAT to affirmatively support any application to Governmental Authorities that are consistent with the Conceptual Plan and the Redevelopment Plan, including executing such documentation required by any funding agency to support public funding applications.

Section 6.6 Easements. To the extent necessary to carry out the purposes of this Agreement, the City and the Developer shall negotiate and enter into in good faith and in a timely manner, upon the Developer’s request therefore, such easements and/or licenses for construction, drainage, utilities, vaults, footings, construction signage and other similar purposes or for the relocation of existing easements, 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)(the “Easements”), provided that such easements, licenses, rights of way and other agreements are, to the extent required, approved by to the Common Council and/or Planning Commission in accordance with the Charter of the City of Middletown, do not unreasonably interfere with the use of the City’s property or impose any liability on or require an expenditure by the City, and/or provided that the Developer holds the City harmless (in a manner reasonably acceptable to the City) against such liability and pays any such expenditure.

Section 6.7 Construction.

(a) Attached hereto as Exhibit D is the Construction Schedule for the construction of the Improvements. The Developer hereby agrees that it shall Substantially Complete the Improvements by the Construction Date Deadline, subject to Excusable Delay.

(b) The Developer shall deliver to the City, with respect to the Improvements, copies of the Developer's design services agreement with the Developer's Architect, the construction management agreement with the Developer's Construction Manager and all subcontracts.

(c) The 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 City, as such City agencies as designated by the City, as an additional insured on their commercial general liability insurance.

(d) 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 Property or any of the City's land within thirty (30) days following Developer's receipt of notice of any such lien.

(e) The Developer shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the construction of such Improvements.

(f) The construction management contract entered into by the Developer for the Improvements shall require the Developer's Construction Manager thereunder to, and to require all subcontractors to, assign its contract to the City provided that (i) the assignment is effective only after termination of this Agreement following a Developer Default pursuant to Section 12.1 and only for those contracts which the City accepts by notifying the Developer's Construction Manager or subcontractor in writing and (ii) the assignment is subject to the prior rights of any Mortgagee or surety, if any, obligated under bond relating to such construction contracts.

#### Section 6.8 City Businesses and Residents.

(a) The Developer shall use all commercially reasonable efforts to hire City-based businesses to perform the work required to construct the Improvements and to operate the completed Project, including, without limitation, providing job placement and job opportunities for qualified City residents, specifically neighborhood residents, provided such hiring does not cause a material, negative impact the cost or quality of the Project and Improvements.

(b) The Developer, to the extent permitted under all Legal Requirements, shall provide a preference first to North End neighborhood residents and then to City residents seeking to sell the Units which meet the Affordability Criteria, subject to standard background checks, in order for current City residents to benefit from the revitalization of the North End in furtherance of the goals of the Redevelopment Plan.

Section 6.9 City's Audit Right of Public Funds. The City may, at its sole cost and expense, at any time within twelve (12) months after the final completion of all Improvements to be constructed by the Developer, elect to have an accountant or other qualified individual, selected by the City and reasonably acceptable to Developer, examine the Developer's books, records, invoices, purchase orders and change orders with respect to all development costs actually incurred by the Developer and paid for with Public Funds with respect to the Improvements constructed by the Developer.

Section 6.10 Compliance with Legal Requirements. Developer, its agents, employees and independent contractors (including without limitation Developer's Construction Manager and all subcontractors) shall throughout the Term hereof, comply with all applicable Legal Requirements pertaining to the Property and/or the construction and operation of the Improvements and shall not commit any act or omission that would make void or voidable any insurance policy required to be maintained by Developer hereunder.

## ARTICLE VII

### DISPUTE RESOLUTION

Section 7.1 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, by mediation in Middletown, Connecticut. 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. 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 City of Middletown. 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 7.2 Arbitration. In the event the Parties do not agree to or cannot resolve such dispute through mediation as provided in Section 7.1, such dispute shall be settled by arbitration in Middletown, Connecticut. Either Party may serve upon the other Party a written notice demanding that the dispute be resolved pursuant to this Article VII. 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 City 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 VII 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 City waive all objections to joinder of the City 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 City shall include a similar waiver in all their contracts with their respective design professionals, contractors, construction managers and subcontractors that work on the Project.

## ARTICLE VIII

### REPRESENTATIONS AND WARRANTIES OF THE CITY

Section 8.1 Due Authorization. This Agreement has been duly authorized, executed and delivered by the City and the individuals signing this Agreement and all documents executed pursuant to it, on behalf of the City are duly authorized to sign such documents on the City's behalf and to bind the City 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 City, enforceable against the City in accordance with their respective terms.

Section 8.2 No Conflict; Legal Compliance. Neither the execution, delivery, nor performance of this Agreement by the City, nor any action or omission on the part of the City 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, including but not limited to those set forth in Chapter 132 of the Connecticut General Statutes, (ii) result in a breach of any term or provision of the charter documents of the City, (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 City is a party or by which any of the properties of the City 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 City 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 8.3 Litigation and Default. To the best knowledge of the City after diligent inquiry, the City is not involved in any legal proceeding, which would prevent or materially impair the ability of the City 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 City to perform its duties and obligations under this Agreement or any of the Related Agreements. To the best of its knowledge, the City is not a party to any pending or threatened action, suit, proceeding or investigation, at law or in equity or otherwise, in, for or by any Governmental Authority arising from or related to the City Property. To the best of its knowledge, the City is not subject to, nor does any basis exist for, any order, judgment, decree or governmental restriction that would adversely affect the use and development of the City Property by the Developer as contemplated by this Agreement. Except as described herein, the City is not aware of any plan, study or effort by any Governmental Authority that in any way challenges, affects, or would challenge or affect the development of the Property by the Developer, as contemplated herein.

Section 8.4 Insolvency. The City 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 8.5 Eminent Domain and Impositions. There are no existing, or to the best of the City's knowledge, proposed eminent domain proceedings of any governmental authority other than the City affecting any of the Property except as may be required to consummate the Project. Except as contemplated by this Agreement, the City 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 Property. As of the date hereof, the City has not made any assessments for public improvements against the 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 8.6 Disclosure. To the best of its knowledge, no representation or warranty of the City hereunder, and no statement made in any document delivered to it by the Developer, 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 8.7 Liens. No work shall have been done by the City on the City Property as of the City Property Transfer Date which shall remain unpaid and which could give rise to any liens under any Legal Requirements.

Section 8.8 Title. To the best of its knowledge, fee simple title to the City Property is currently vested in the City, and no parties other than the City are required to execute this Agreement in order to bind all presently held fee interests in the City Property. No third party holds a right of first refusal, first offer, option, contract, lease, license or similar right with respect to the City Property.

Section 8.9 Environmental. With regard to the environmental condition of the City Property, the City has not received any warning, notice of violation, administrative complaint, judicial complaint, or other formal or informal notice pledging that any condition on the City Property is or has been in violation of any Environmental Laws, or informing the City that the City Property is subject to investigation or inquiry regarding the presence of any Hazardous Substance on or about the City Property or any potential violation of Environmental Laws. To the best of its knowledge, the City is not aware of any facts or circumstances which could give rise to a violation of any Environmental Laws.

Section 8.10 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 City, or whether the City has received written notice, such representation and warranty 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 William Warner, in his capacity as the City of Middletown, Director of Planning, Conservation and Development, without attribution to such specific officer of facts and matters otherwise within the personal knowledge of any other officers or employees of the City or third parties, and excluding, whether or not known by such specific individuals, any matter known to the Developer. So qualifying the City's knowledge shall in no event give rise to any personal liability on the part of William Warner or any other officer or employee of the City.

## ARTICLE IX

### REPRESENTATIONS AND WARRANTIES OF THE DEVELOPER

Section 9.1 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 City, 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 9.2 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 9.3 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 9.4 Disclosure. No representation or warranty of the Developer hereunder, and no statement made in any document delivered by it to the City, 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 9.5 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. 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 9.6 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 City of



Middletown, including, with 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 9.7 Good Standing. Developer represents and warrants that upon execution of this Agreement and at all times until Substantial Completion of the Improvements to be constructed by the Developer pursuant to the terms hereof, Broad-Park Development Corporation, Inc. and the development limited liability company, Home Ownership Middletown, LLC, are validly organized and in good standing under the laws of the State of Connecticut.

Section 9.8 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 City, 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 Romulo Samaniego, a duly authorized officer 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 City. So qualifying the Developer's knowledge shall in no event give rise to any personal liability on the part of Romulo Samaniego or any other member, manager, officer or employee of the Developer or any of their respective members or affiliates.

## ARTICLE X

### NOTICES

Section 10.1 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 with respect to a Party shall be deemed given if and when such notice or communication and any specified copies are actually received in writing by the Party. 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 X 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 City:

City of Middletown  
245 deKoven Drive  
Middletown, Connecticut 06457  
Attention: William Warner  
Telephone: (860) 344-3425  
Facsimile: (860) 344-3593

With copies at the same time to:

City of Middletown Redevelopment Agency  
245 deKoven Drive  
Middletown, Connecticut 06457  
Attention: William Warner  
Telephone: (860) 344-3425  
Facsimile: (860) 344-3593

To the Developer:

Broad-Park Development Corporation, Inc.  
617 Park Street  
Hartford, Connecticut 06106  
Attention: Romulo Samaniego  
Telephone: (860) 249-0649  
Facsimile: (860) 549-8308

With copies at the same time to:

Nehemiah Housing Corporation  
33 Ferry Street  
Middletown, CT 06457  
Attention: Michael Taylor

## ARTICLE XI

### TRANSFER AND MORTGAGES OF DEVELOPER'S INTEREST

Section 11.1 No Release. In the absence of a specific written agreement by the City to the contrary, no transfer permitted under this Article XI shall be deemed to relieve the Developer or any permitted successor or assign from its obligations under this Agreement.

Section 11.2 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 City's permission or consent but with prompt written notice to the City, to grant any Mortgagee with respect to the Developer's interest in all or any portion of the Property and the Improvements located thereon, to assign this 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 City'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 or require the City's consent thereto. The Developer shall provide copies of the Loan Documents to the City.

(b) Any Mortgage encumbering the Property shall be subject and subordinate to City's tax levies for 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, nor shall the Mortgagee, as such, be deemed to be an assignee or transferee of this 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. 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 all of the terms, covenants and conditions on the part of the Developer to be performed under this 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, 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.

Section 11.3 Assignment After Foreclosure. 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 City, and without the necessity to comply with Section 11.1, sell and assign this 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 City its written recordable agreement to be bound by all the provisions of the Agreement from and after the date thereof; and further, provided, 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 11.1 (with such modifications to Section 11.1 as may be appropriate to refer to such assignee's or transferee's principals).

Section 11.4 Rights and Duties of Mortgagee Upon Acquisition. If a Mortgagee acquires fee simple title to the Property or any part thereof by foreclosure, purchase at a foreclosure sale or deed-in-lieu of foreclosure, such Mortgagee shall:

(a) If a Certificate of Occupancy has not been issued by the City, complete construction of the Improvements on the Property in accordance with the Plans therefor and Construction Schedule 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

(b) If a Certificate of Occupancy has not been issued by the City, sell, assign or transfer (including, but not limited to, at a foreclosure by sale or pursuant to any power of sale in connection with the Mortgage) with the prior written consent of the City, which consent shall not 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 City and recorded in the Land Records.

## ARTICLE XII

### DEFAULT BY THE DEVELOPER

Section 12.1 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) If any material warranty or representation of the Developer contained in this Agreement is materially untrue as of the date made;

(b) Any conveyance of the Developer’s interest in the Property in violation of this Agreement;

(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;

(d) The default by the Developer of any other material provision of this Agreement or any Mortgage and failure by the Developer to cure such default within thirty (30) Business Days after notice thereof by the City to the Developer, provided, with the exception of monetary defaults and defaults caused by lack of funding, that if such default cannot reasonably be cured within such thirty (30) Business Day time period, then the Developer shall have an additional one hundred twenty (120) 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 one hundred twenty (120) Business Days after expiration of such thirty (30) Business Day period, unless such cure period is otherwise extended in the sole discretion of the City; and

Section 12.2 Remedies. Subject to the terms and conditions of Article XIV, during the existence of any Developer Default, the City 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:

(a) With respect to a Developer Default described in Section 12.1(a), recover from the Developer any and all actual damages, including the Relocation Costs and reasonable attorney's fees incurred by the City, arising out of or resulting from the breach of such representation or warranty;

(b) with respect to a Developer Default described in Section 12.1(b)-(d), terminate the estate held by the Developer solely and exclusively in that portion of the applicable Project Parcel for which a Certificate of Occupancy has not been furnished by the City, by exercising the City's Right of Re-Entry (which exercise shall be subject to any required legal subdivision of that portion of the Project Parcel at the time subject to the City's Right of Re-Entry, provided, however, the Developer hereby consents, as owner of the Property, to any such required subdivision and agrees to cooperate with the City in obtaining all necessary approvals from Governmental Authorities related thereto);

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

(d) terminate the City's obligations under this Agreement and the Developer's appointment under this Agreement as the designated developer; and

(e) pursue any and all rights and remedies at law or in equity.

### ARTICLE XIII

#### DEFAULT BY CITY

Section 13.1 Default. The occurrence of any one or more of the following, beyond any applicable notice and cure period, shall constitute a "City Default" as that term is used in this Agreement:

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

(b) The failure of the City to transfer the City Property on the City Property Transfer Date, or the default by the City of any other provision of this Agreement and the failure by the City to cure such default within thirty (30) Business Days after notice thereof by the Developer to the City, provided that if such default cannot reasonably be cured within such thirty (30) Business Day time period, then the City shall have an additional sixty (60) Business Day period to cure such failure and no City Default shall be deemed to exist hereunder so long as the City 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;

(c) The City shall commence a voluntary case concerning the City 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 City 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 City; or there is commenced against the City any such proceeding which remains undismissed or unstayed for a period of ninety (90) days; or the City fails to controvert in a timely manner

any such case any such proceeding, or any order approving any such proceeding is entered; or the City 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 13.2 Remedies. Upon the occurrence of any City Default, the Developer may pursue the following remedies:

(a) With respect to a City Default described in Section 13.1(a), the Developer shall be entitled to recover from the City 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 City Default described in Section 13.1(b) or (c) 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 City'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 City Default;

(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; and

(iv) pursue any and all rights and remedies at law or in equity.

#### **ARTICLE XIV**

#### **MORTGAGES**

Section 14.1 Notice of Default and Right to Cure.

(a) The Developer shall upon receiving from the City any notice of: (i) default under this Agreement; or (ii) a termination of this Agreement, shall promptly provide a copy of such notice to every Mortgagee. From and after such notice has been given to a Mortgagee, such Mortgagee shall have the same period (which period shall 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, 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 City 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 Developer Default shall occur that entitles the City to terminate this Agreement or to exercise any Right of Re-Entry, the City 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 12.1 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 12.1, following such default or act or omission), the City shall notify every Mortgagee of the

City'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 this Section 14.1(b) shall apply if, during such ninety (90) day period, any Mortgagee shall: (i) notify the City 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.

(c) If the City 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 this Section 14.1(c), the specified date for the termination of this Agreement or for the exercise of the City's Right of Re-Entry as fixed by the City in its termination or Right of Re-Entry notice, as applicable, shall be extended for a period of six (6) months, provided such Mortgagee shall, during such six (6)-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 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 six (6) month period such Mortgagee is complying with Section 14.1(c), this Agreement shall not then terminate and the City 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 14.1(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 this Section 14.1, 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 this Section 14.1 (including the period of any injunction or stay applicable to same).

#### Section 14.2 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 City 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 City. The City 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 City for such Post-Bankruptcy Agreement within sixty (60) days after the date such Mortgagee receives the City's notice of termination of this Agreement or reversion given pursuant to this Section 14.2(a); (ii) such Mortgagee or its designee shall pay or cause to be paid to the City 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 City 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 City 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 City'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 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 14.2(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 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 Parcel.

(d) If more than one Mortgagee shall request a Post-Bankruptcy Agreement pursuant to this Section, the City shall enter into such Post-Bankruptcy Agreement with the Mortgagee whose mortgage is prior in lien, or with the designee of such Mortgagee. The City, without liability to the Developer or any Mortgagee with an adverse claim, may rely upon a mortgagee 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 14.3 City Option to Cure Mortgage Default.** In an event of a default or breach by Developer under any Mortgage prior to completion of the Improvements, the City may, at its sole option, upon not less than thirty (30) days prior written notice to Developer and such Mortgage holding the Mortgage for which Developer is in default, cure such default or breach, in which case the City shall be entitled, in addition to and without limiting any other rights or remedies to which it is entitled under this Agreement, operation of law or otherwise, to reimbursement from the Developer of all costs and expenses incurred by the City in curing such default or breach and to a lien upon the Property for such reimbursement.

## **ARTICLE XV**

### **INSURANCE AND INDEMNIFICATION**

**Section 15.1 Developer's Insurance Obligations.** During the construction by the Developer of any of the Improvements, the Developer, at its cost and expense shall maintain sufficient coverage and limits with respect to the Improvements then under construction. The City shall be named as an additional insured and 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.

Section 15.2 General Requirements. The required insurance shall be written for not less than limits of liability specified in Exhibit E or as required by applicable Legal Requirements 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 City from additional limits and coverage provided under the Developer's policies. The Developer's insurance coverage shall be primary insurance with respect to the City. Any insurance or self-insurance maintained by the City 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 Improvements until their Substantial Completion. 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 City with respect to such failure.

Section 15.3 Acceptability of Insurers. All of the policies of insurance provided for hereunder to be carried by the Developer 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-VIII.

Section 15.4 Deductibles and/or Retentions. The deductible or retention amount for any insurance coverage required to be carried hereunder shall not exceed five percent (5%) of the policy amount (or amount allocated to the applicable property if a blanket policy) without the approval of the City. The Developer shall be responsible to pay all deductibles and/or retentions.

Section 15.5 Waivers of Subrogation. The policies required to be carried under this Article XV by the Developer shall contain endorsements whereby the insurers waive their rights of subrogation against the City.

Section 15.6 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. The City of Middletown shall be named additional insured on all subcontractor insurance policies.

Section 15.7 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 this 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 Improvement. Evidence of such coverage shall be provided to the City no later than thirty (30) days prior to the expiration of each policy.

Section 15.8 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 City. It is agreed that the Developer shall notify the City with reasonable promptness with information concerning the erosion of limits due to claims paid under the general aggregate limit during the construction of the 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 15.9 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 City. Ten (10) days prior written notice shall be given for non-payment of premium.

Section 15.10 Certificates of Insurance. The Developer shall deliver to the City prior to the City Property Closing, 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 City reserves the rights to require complete, certified copies of all required policies, at any time.

Section 15.11 Developer's Indemnification of City. The Developer shall defend, indemnify and hold harmless the City 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 City Indemnitees may suffer or sustain or which may be asserted or instituted against any of the City 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 (i) any negligent or willful act or omission by the Developer, its officers, directors, employees and independent contractors, (ii) any unlawful conduct by the Developer, its officers, directors, employees and independent contractors (iii) any breach of this Agreement on the part of the Developer, its officers, directors, employees and independent contractors, and (iv) failure to comply with all Legal Requirements by the Developer, its officers, directors, employees and independent contractors. The indemnity set forth in this Section 15.11 shall survive the expiration or earlier termination of this Agreement. To the extent the provisions of this Section 15.11 conflict with other provisions of this Agreement, the provisions of this Section 15.11 shall control.

Section 15.12 Environmental Indemnification. The Developer shall be liable for and fully release, indemnify, defend and hold harmless the City, its boards, commissions, agencies, officers, officials, employees, agents and contractors ("City 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 City 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 Property that occur following the City Property Transfer Date or (ii) 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. The indemnity set forth in this Section 15.12 shall survive the expiration or earlier termination of this Agreement. To the extent the provisions of this Section 15.12 conflict with other provisions of this Agreement, the provisions of this Section 15.12 shall control.

## ARTICLE XVI

### CONDEMNATION

Section 16.1 Condemnation. In the event of a Condemnation by any competent authority for any public or quasi-public use or purpose prior to Substantial Completion of the Improvements, the Developer shall be entitled to receive that portion of the award as shall represent compensation for the value of its fee simple interest in the Property and Improvements constructed to the date title to the property, or portion thereof, vests in the condemning authority, less the amount of the CDBG funds paid by the City to the Developer as of the date title to the property, or portion thereof, vests in the condemning authority, subject to the provisions of any Mortgage. If a Condemnation occurs of the entire Property, this Agreement shall cease and terminate. For the purposes of this Article, “Condemnation” shall mean 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 Construction Date Deadline Date; 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 Construction Date Deadline necessary to comply with all Legal Requirements); (iii) more than 25% 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.

Section 16.2 Partial Condemnation. In the event of a partial taking or condemnation, i.e., condemnation that is not a Condemnation, as defined herein, this Agreement (except as hereinafter provided) shall, nevertheless, continue, and Developer shall continue construction of the Improvements and/or promptly restore the Project to the extent feasible and Developer shall be entitled to receive that portion of the award as shall represent compensation for the value of its fee simple interest in the Property and Improvements constructed to the date title to the property, or portion thereof, vests in the condemning authority, less the amount of the CDBG funds paid by the City to the Developer as of the date title to the property, or portion thereof, vests in the condemning authority, subject to the provisions of any Mortgage.

## ARTICLE XVII

### MISCELLANEOUS

Section 17.1 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 and Landscaping 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.

Section 17.2 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 17.3 Amendment and Waiver. Unless otherwise provided herein, this Agreement may be amended or changed only by written instrument duly executed by the City 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 17.4 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 17.5 Confidentiality of Information. To the extent permitted by law (including, without limitation, the Freedom of Information Act), all information designated as confidential by a Party and obtained by the other Party pursuant to this Agreement shall be and remain confidential; 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 Lender or any permanent lender in connection with the 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 City, the Developer or the Project. The foregoing shall not apply to any information that (a) was previously known to the receiving Party, (b) was in the public domain through no fault of the receiving Party, or (c) was lawfully acquired by the receiving Party from other sources not subject to an agreement of confidentiality.

Section 17.6 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 17.7 Entire Agreement. This Agreement, and Exhibits attached hereto, contains the entire agreement between the Parties hereto relating to the subject matter hereof and expressly supercedes the provisions of the MOU.

Section 17.8 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 17.9 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 17.10 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) Business Days after its receipt of such request and all required supporting data therefor.

Section 17.11 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 17.12 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 17.13 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 City 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 City being a continuing party to this Agreement.

Section 17.14 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 17.15 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 City 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 17.16 Recording; Covenants Running with the Land. This Agreement shall be recorded in the Land Records no later than the Transfer 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. 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 City, and their respective successors and permitted assigns.

Section 17.17 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.

**[SIGNATURE AND ACKNOWLEDGMENT PAGES FOLLOW]**

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

WITNESS:

CITY OF MIDDLETOWN, CONNECTICUT, a  
body corporate and politic and a political  
subdivision of the State of Connecticut

\_\_\_\_\_

By: \_\_\_\_\_  
Name: Sebastian N. Giuliano  
Title: Mayor

\_\_\_\_\_

APPROVED: \_\_\_\_\_

BROAD-PARK DEVELOPMENT  
CORPORATION, INC.

\_\_\_\_\_

By: \_\_\_\_\_  
Name: Romulo E. Samaniego  
Title: Executive Director

\_\_\_\_\_

STATE OF CONNECTICUT     )  
  ) ss:  
COUNTY OF MIDDLESEX     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of June, 2007, by Sebastian Giuliano, Mayor of the City of Middletown, 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

STATE OF CONNECTICUT        )  
  ) ss:  
COUNTY OF HARTFORD        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of June, 2007, by Romulo E. Samaniego, duly authorized on behalf of Broad-Park Development Corporation, Inc., a Connecticut corporation, on behalf of the corporation.

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David R. Purvis  
Commissioner of Superior Court



## **EXHIBIT A**

### **Definitions**

“Acquisition Lender” shall mean such institutional lender as may be determined by the Developer, its successors or assigns.

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

“Affordability Criteria” shall mean, unless otherwise required by DECD, with respect to (i) twelve (12) of the Units, that the income level for any household seeking to own such Unit shall be an amount less than or equal to eighty (80%) percent of area median income as determined by HUD (“AMI”) at the time the owner initially purchases the Unit and (ii) two (2) of the Units, that the income level for any household seeking to purchase such Unit shall be an amount less than or equal to fifty (50%) percent of AMI at the time such owner initially purchases the Unit. Such Unit counts to be reduced for each income category on a pro rata basis to the extent the total number of Units constructed is less than fourteen (14).

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

“Agency” means the City of Middletown Redevelopment Agency.

“Architect Completion Certificate” means AIA Document G704, Certificate of Substantial Completion, to be executed and delivered to the Developer and the City by the Developer’s Architect, pursuant to which the Developer’s Architect shall certify to the Developer and the City that, to the best knowledge of the Developer’s Architect and based on appropriate inspection under the applicable standard of care, that the Improvements are Substantially Completed, and identifying those punch list items that have not been completed with respect to the Improvements.

“Authorized Representative” means, (a) for the Developer, Romulo E. Samaniego, 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 City, (b) for the City, William Warner and such other person as may be appointed in writing by them from time to time and (c) for the Agency, William Warner and such other person as may be appointed in writing by them from time to time.

“Building” means each of the up to six (6) structures being constructed by the Developer on the Properties containing fourteen (14) homeownership units.

“Business Day” means any day other than a Saturday, Sunday, legal holiday as recognized in the City of Middletown or the State of Connecticut.

“Certificate of Occupancy” means a Certificate of Occupancy by the Middletown Building Department.

“CDBG” means a Community Development Block Grant.

“CHFA” means the Connecticut Housing Finance Authority or any successor entity.

“DECD” means the Connecticut Department of Economic and Community Development or any successor entity.

“City Default” shall have the meaning ascribed to it in Article 13.

“City Indemnitees” has the meaning set forth in Section 15.12.

“City Property” means those Parcels set forth on Exhibit F attached hereto and made a part hereof.

“City Property Transfer” means the conveyance of the City Parcels to the Developer in accordance with the requirements of this Agreement.

“City Property Transfer Date” shall have the meaning set forth in Section 3.3.

“City Property Permitted Exceptions” means only those Title Exceptions listed on Exhibit G attached hereto and made a part hereof 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 the City Property.

“Claims” has the meaning set forth in Section 15.12.

“Closing Location” means the law offices of Purvis Law Group, LLC, unless otherwise agreed by the parties.

“Common Council” means the City of Middletown Common Council.

“Conceptual Plan” shall have the meaning ascribed to it in Section 6.1.

“Condemnation” shall have the meaning ascribed to it in Section 16.1.

“Connecticut General Statutes” means the General Statutes of Connecticut, Revision of 1958, as amended and as shall be further amended from time to time.

“Construction Date Deadline” means December 31, 2009.

“Construction Lender” means such institutional lender as may be determined by the Developer, its successors or assigns.

“Construction Loan” means that certain loan by the Construction Lender to Developer, in accordance with the Construction Loan Documents, in an amount sufficient to allow the Developer to construct the Improvements.

“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 D, as it may be revised pursuant to any Excusable Delay or otherwise in writing by the Parties.

“Current Residents” means those persons and/or households, as listed on Exhibit H, attached hereto and made a part hereof, currently residing in the Existing Buildings that the City will relocate pursuant to the terms of this Agreement.

“Current Residents Relocation Deadline” shall mean one hundred (100) days following the date of this Agreement.

“Developer” means Broad-Park Development Corporation, Inc., a Connecticut company, and its permitted successor and assignee, Home Ownership Middletown, LLC, a Connecticut limited liability company, in connection with the rights and obligations under this Agreement.

“Developer Default” shall have the meaning ascribed to it in Section 12.1.

“Developer’s Architect” means Crosskey Architects with respect to the Project, or such other similarly qualified architect licensed in the State of Connecticut, as the Developer may select.

“Developer’s Construction Manager(s)” means any such firm which may hereafter be approved by the Developer in its sole discretion and as the construction manager for the Project upon provision of prior written notice to the City.

“Developer Property” means the parcels owned by the Developer or to be acquired by the Developer from third-parties as more particularly described on Exhibit K attached hereto and made a part hereof.

“Developer Property Permitted Exceptions” means only those Title Exceptions listed on Exhibit L attached hereto and made a part hereof and such other Title Exceptions as may hereafter be approved by the City, the Developer Property Permitted Exceptions shall expressly exclude 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 Developer Property.

“Development Act” means Chapter 132 of the Connecticut General Statutes.

“Designation Resolution” shall have the meaning ascribed to it in the Recitals.

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

“Due Diligence Investigation” shall have the meaning ascribed to it in Section 3.1.

“Easements” shall have the meaning ascribed to it in Section 6.6.

“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 at, upon, under, emanating or having emanated from, emitting or having been emitted from the 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.

“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, Condemnation or any other cause whatsoever beyond the reasonable control of the Party responsible for performance, including, without limitation (i) the occurrence or continuance of a City Default (as defined in Section 13.1) to the extent the following results in actual delay in the Developer’s compliance with the Construction Schedule related to the Improvements, (ii) any third-party legal challenge that prohibits or substantially inhibits the ability of the Parties to proceed and (iii) the City’s inability to relocate the Current Residents by the Current Residents Relocation Deadline; provided, however, that for purposes of this definition, the Developer’s lack of funds to make a payment shall not be deemed to be a cause beyond the control of the Developer.

“Existing Buildings” means the buildings currently present on the Property to be demolished or rehabilitated by the Developer pursuant to the terms of this Agreement.

“Expenses” has the meaning set forth in Section 15.12.

“Governmental Approvals” means, collectively, the issuance of such zoning approvals, special use permits, variances, subdivision approvals, lot line revision approvals, resubdivision approvals and/or lot split approvals and any and all approvals from the City of Middletown, Connecticut, for itself or through its agencies and quasi-public bodies, as may be required to consummate the transactions contemplated under this Agreement, including, without limitation, as described on Exhibit M attached hereto and made a part hereof.

“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.

“HUD” means the United States Department of Housing and Urban Development.

“Improvements” means, as the context requires, each project property and approximately fourteen (14) units and the Site Improvements, Landscaping and Parking Areas as more particularly set forth in the Plans.

“Land Records” means the land records of the City of Middletown.

“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 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, prevailing wages, non-discrimination, minority/women business enterprise, public bidding, maintenance, service, operation, sale, exchange, or condition of the Project. “Legal Requirements” shall include Environmental Laws.

“Lender” shall mean collectively, or individually, as applicable, all lenders required by the project.

“Loan” means collectively, or individually, as applicable, all loans required by the project.

“Loan Default” means the occurrence of a material default under the Loan Documents following any notice required to be provided to the Developer by the holder of the 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 Lender.

“Loan Documents” shall mean collectively, or individually, as applicable, all loan documents as required by the project.

“Mortgage” shall mean any mortgage, security agreement or similar agreement creating a lien upon or security interest in the Property or any part thereof recorded in the Land Records, as security for the 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 the Loan.

“Mortgagee” means the Lender or any other such institutional lender lending funds to the Developer for the Project, collectively, or individually, as the context requires.

“MOU” means that certain Memorandum of Understanding by and between the City and Developer dated September 23, 2004.

“NEAT” means North End Action Team.

“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.

“Parcel” means, as the context requires each of the parcels comprising the City Property or Developer Property located within the Project Area, which parcels may be combined into a single parcel in accordance with all Legal Requirements.

“Parking Areas” means those portions of the Project Area designated for improvements for parking of the residents of the Project as more particularly set forth on the Plans.

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

“Permitted Exceptions” means collectively the City Property Permitted Exceptions and the Developer Property Permitted Exceptions.

“Person” means any individual or Entity.

“Plans” means the final plans, specifications, construction drawings and construction phasing plans for the Improvements listed on Exhibit N and other such plans, specifications, construction drawings and construction phasing plans as may hereafter be approved by the City and the Developer.

“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 legal description or survey attached hereto and made a part hereof at Exhibit O.

“Property” shall mean collectively the City Property and the Developer Property.

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

“Public Funds” means, CDBG funds.

“Redevelopment Plan” shall have the meaning ascribed to it is Section 3.4.

“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.

“Relocation Costs” shall have the meaning ascribed to it in Section 4.2(a).

“Right of Re-Entry” means the City’s rights pursuant to Section 12.2(b), to re-enter a Parcel upon written notice by the City 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 pursuant to which fee title to said Parcel and all Improvements thereon shall revert to the City, without payment to the Developer for the interests in the land or Improvements so reverted.

“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 N attached hereto.

“Substantial Completion” or “Substantially Complete”: means the completion of the construction of the applicable Improvements to the extent of completion necessary to obtain all Occupancy Certificates, including, without limitation, completion of (i) the exterior and interior of the applicable Building, to its finished, watertight state; (ii) all Building Systems; (iii) all Landscaping, except to the extent completion thereof has been deferred due to seasonal or weather related conditions; (iv) all driveways, entrances, and exterior walkways and (v) exterior lighting installed. The 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.

“Term” shall have the meaning ascribed to it in Section 2.1.

“Title Company” means the 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.

“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 Transfer Date, 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.

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

“Unit” shall mean, collectively or individually, as appropriate, a separate dwelling unit located in the Building.

**EXHIBIT B**

INTENTIONALLY OMITTED



**EXHIBIT C**

Conceptual Plan

**EXHIBIT D**

Construction Schedule

**EXHIBIT E**

**Developer Insurance Requirements**

**A. GENERAL REQUIREMENTS:**

The **Developer** shall be responsible for maintaining insurance coverage in force for the life of the contract of the kinds and adequate amounts to secure all of the **Developer's** obligations under this contract with an insurance company(ies) with an AM Best Rating of A-VIII or better licensed to write such insurance in the State of Connecticut and acceptable to the City of Middletown.

The insurer shall provide the City of Middletown with original completed **Certificates of insurance signed by an authorized representative of the insurance company(ies)** prior to purchase order/contract issuance. The completed Certificate shall confirm the insurer agrees to give the City of Middletown written notice at least thirty (30) days in advance of any termination, expiration, or any and all changes in coverage.

Such insurance or renewals or replacements thereof shall remain in force during the **Developer's** responsibility under this contract.

The **Developer**, at the **Developer's** own cost and expense, shall procure and maintain all insurance required and shall name the City of Middletown as an Additional Insured on all contracts, except Workers' Coverage is to be provided on a primary, noncontributory basis.

**In order to facilitate this requirement for insurance, it is recommended that the Developer forward a copy of these requirements to the Developer's insurance representative(s).**

**B. SPECIFIC REQUIREMENTS:**

**(1) Workers' Compensation Insurance-**

The Developer shall provide Statutory Workers' Compensation Insurance, including Employer's Liability with limits of:

\$100,000 Each Accident  
\$500,000 Disease, Policy Limit  
\$100,000 Disease, Each Employee

(2) **Commercial General Liability Insurance-**

The **Developer** shall carry Commercial General Liability insurance (Insurance Services Offices Incorporated Form CG-0001 or equivalent). A per occurrence limit of \$1,000,000 is required. The Aggregate Limit will be not less than \$1,000,000. Any deviation from the standard unendorsed form will be noted on the Certificate of Insurance.

(3) **Business Automobile Liability Insurance-**

The **Developer** shall carry Business Automobile Liability insurance (Insurance Services Office Incorporated Form CA-00001 or equivalent). A combined single limit each accident of \$1,000,000 is required. "Any Auto" (symbol 1 or equivalent) is required. Any deviation from the standard unendorsed form will be noted on the Certificate of Insurance

(4) **Environmental Impairment Liability Insurance-**

If applicable to this project, the **Developer** agrees to carry this coverage in the amount of not less than \$1,000,000. If the work involved is being performed by a sub-contractor, said coverage shall be provided by the designated sub-contractor. The **Developer** shall make certain this coverage is obtained prior to the inception of work.

C. **SUBCONTRACTORS REQUIREMENT:**

The Developer shall require the same insurance that is required to carry by the City of Middletown to be carried by any subcontractors and independent contractors hired by the Developer and to obtain Certificates of Insurance before subcontractors and independent contractors are permitted to begin work.

The Developer shall require that the City of Middletown be named as Additional Insureds on all subcontractors and independent contractors insurance before permitted to begin work. Coverage is to be provided on a primary noncontributory basis.

The Developer and all subcontractors and independent contractors and their insurers shall waive all rights of subrogation against the City of Middletown and its officers, agents, servants and employees for losses arising from work performed by each on this contract.

D. **OTHER**

- If any policy is written on a "claims-made" basis, the policy must be continually renewed for a minimum of two (2) years from the completion dates of this contract. If the policy is replaced and/or the retroactive date is changed, then the

expiring policy must be endorsed to extend the reporting period for claims for the policy in effect during the contract for two (2) years from the completion date.

- The City reserves the right to amend amounts of coverage required and types of coverage provided based on work or service to be performed.

**INSURANCE LANGUAGE  
APPROVED AS TO FORM:**

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**Dawn Warner  
Risk Manager**

**January 24, 2007**  
**Date**

**EXHIBIT F**

City Property

47 Rapallo Avenue, Middletown (Lot 7)

A certain piece or parcel of land, together with all buildings and improvements thereon, located in the Town of Middletown, County of Middlesex and State of Connecticut, bounded and described as follows:

Commencing at a point in the southerly property line of Rapallo Avenue, 142.5 feet east from the easterly line of Main Street, continue thence southerly along the east property line of land now or formerly of Morris and Ida Poliner, Morris Palmer, et al, and Jacob Anneberg, 109.1 feet to the north property line of land now or formerly of Rosario and Maria Scionti; continue thence easterly along a fence separating the described premises from lands now or formerly of said Scionti on the south 66.54 feet to land now or formerly of Middletown Savings Bank; continue thence northerly along the west property line of land now or formerly of said Middletown Savings Bank 108 feet to the south property line of Rapallo Avenue; continue thence westerly along the south property line of said Rapallo Avenue, 66.5 feet to the point or place of beginning.

Said premises being the same premises as the Second Piece known as Nos. 47-49 Rapallo Avenue in a Warranty Deed from Sebastian D. Daniels, Domenick R. Daniels, a/k/a Domenick R. Daniels. Jr. recorded January 3, 1986 at Volume 752 Page 145 of the Middletown Land Records.

37 Green Street, Middletown (Lot 15)

A certain piece or parcel of land, together with all buildings and improvements thereon, located on southerly side of Green Street in the City of Middletown, County of Middlesex and State of Connecticut, being known as No. 37 Green Street, and being more particularly bounded and described as follows:

Northerly: by Green Street, 28 feet, more or less;  
Easterly: by land now or formerly of Antonio and Deborah A Genovese, 90 feet, more or less;  
Southerly: by land now or formerly of Carmelo Bartolotta, Louis Bartolotta, Angelo Bartolotta, Lucy Cecchini, Helen Campisi, Anna Fazzino, and Josephine Tyrseck; and by land now or formerly of Constance M. Vitale, partly by each, in all a distance of 28 feet, more or less; and  
Westerly: by land now or formerly of David Passamano, 90 feet, more or less.

41 Green Street, Middletown (Lot 14)

A certain piece or parcel of land known as 41-43 Green Street in the City of Middletown, County of Middlesex and State of Connecticut, being Forty (40) feet, more or less, front and rear, and Ninety-two (92) feet, more or less, in depth, and is bounded:

Northerly: By said Green Street;  
Easterly: By land now or formerly of Maria Signorelli;  
Southerly: By land now or formerly of Constance M. Vitale; and  
Westerly: By land now or formerly of The Church of Saint Sebastian.

**EXHIBIT G**

City Property Permitted Exceptions

25-29 Ferry Street is presently encumbered by a Notice of Blighted Structure, in favor of the City of Middletown, dated 12/12/03 and recorded 12/17/03 at Volume 1417, Page 686 of the Middletown Land Records.

**EXHIBIT H**

Current Residents



**EXHIBIT I**

**INTENTIONALLY OMITTED**

**EXHIBIT K**

Developer Property

25 Ferry Street, Middletown (Lot 20)

A certain piece or parcel of land situated on the southerly side of Ferry Street in the City of Middletown, County of Middlesex and State of Connecticut, and being more particularly bounded and described as follows:

Northerly: About 43 ½ feet by Ferry Street  
Easterly: By land formerly of Charles C. Hamilton, et ux;  
Southerly: By land formerly of Leverett Dimock; and  
Westerly: By land formerly of the Estate of James K. Bidwell, being 99 feet, more or less, in depth.

47 Ferry Street, Middletown (Lot 24)

A certain piece or parcel of land, together with all buildings thereon, located on Southerly side of Ferry Street in the Town of Middletown, County of Middlesex and State of Connecticut, bounded as follows:

Northerly: By Ferry Street;  
Easterly: By land now or formerly of Frank Bianchi;  
Southerly: By land now or formerly of John E. Bailey; and  
Westerly: By land now or formerly of Vincenzo Muzzicato.

49 Ferry Street, Middletown (Lot 25)

A certain piece or parcel of land located on the southerly side of Ferry Street in the Town of Middletown, County of Middlesex and State of Connecticut, containing a certain frame dwelling house known and described as No. 49 Ferry Street, bounded and described as follows:

Commencing at the northwest corner of land of Salvatore and Lucia Garafola, now or formerly, which point is on Ferry Street at the northeast corner of property adjoining on the west owned now or formerly of Felice Pandolfo, et ux, and running south one hundred and seventy-five hundredths (100.75) feet to a fence; thence thirty-six and eighty-two hundredths (36.82) feet east along said fence line to other land of Salvatore and Lucia Garafola, now or formerly; thence one hundred and one and twenty-five hundredths (101.25) feet north to Ferry Street; thence thirty-nine and thirty hundredths (39.30) feet along Ferry Street to the point of beginning.

Said property is bounded:

Northerly: by Ferry Street  
Easterly: by property now or formerly of Salvatore Garafola, et ux;  
Southerly: by property now or formerly of Dr. John E. Bailey; and  
Westerly: by property now or formerly of Felice Pandolfo, et ux..

51-55 Ferry Street, Middletown (Lot 26)

A certain piece or parcel of land with all buildings and improvements thereon situated on the southerly side of Ferry Street in the Town of Middletown, County of Middlesex and State of Connecticut, bounded and described as follows:

- Northerly: by Ferry Street, Seventy-six and one half (76 ½) feet, more or less;  
Easterly: by land now or formerly of Catherine Michale, One Hundred and Five (105) feet, more or less;  
Southerly: by land now or formerly of Salvatore and Anna LaBolla, Seventy-six and one half (76 ½) feet, and  
Westerly: by land now or formerly of Sebastiano and Josephine LaRosa, One Hundred and five (105) feet, more or less.

**EXHIBIT L**

Developer Property Permitted Exceptions

NONE

**EXHIBIT M**

Governmental Approvals

**EXHIBIT N**

List of Plans

NONE

**EXHIBIT O**

Boundary of Project Area

All of both sides of Ferry Street, Green Street and Rappallo Avenue in Middletown, Connecticut.

**EXHIBIT P**

**Designation Resolution**

**Resolution Number: 144-04**

**Date:**

**RESOLUTION**

**Whereas**, the Redevelopment Agency has the authority to recommend developers for the redevelopment of the north end in accordance with the Common Council approved North End Urban Renewal Plan; and

**Whereas**, the Broad Park Development Corporation, headquartered in Hartford, Connecticut, has been developing and managing affordable housing since the 1970's; and

**Whereas**, the North End Action Team, the grassroots neighborhood organization, has endorsed Broad Park's involvement; and

**Whereas**, Broad Park has been the developer of hundreds of housing units in urban areas and has utilized new urbanist planning principals on many of their projects and has extensive experience working with neighborhood groups and leveraging public / private resources; and

**Whereas**, the Agency selected the Broad Park as the preferred and designated developer for the homeownership portion of the North End Urban Renewal Plan, with the specific condition the Broad Park work closely with the North End Action Team and that Broad Park, as their primary goal, strive to accommodate the housing needs of the existing residents.

**Now, therefore, be it resolved that Common Council of the City of Middletown:** That it designates the Broad Park Development Corporation as the designated homeownership developer for the North End Urban Renewal Plan; and

**Be it further resolved:** That the Mayor is authorized to execute the attached Memorandum of Understanding.

**Submitted by: Councilman Gerald E. Daley and  
William Warner, Director Planning, Conservation, and Development**

**Status: PASSED  
by the Common Council, City of Middletown  
at its meeting held on: SEPTEMBER 7, 2004**



**EXHIBIT Q**

**Property Transfer Resolution**

**Resolution Number:** 145-04

**Date:**

**RESOLUTION**

**Whereas**, the Redevelopment Agency selected the Richman Group as the designated developer for the multi-family rental portion and Broad Park Development Corporation as the designated developer for homeownership portion of the North End Redevelopment Plan; and

**Whereas**, the proposal received an affirmative Connecticut General Statutes Sec. 8- 24 review from the Planning and Zoning Commission;

**Now, therefore, be it resolved that Common Council of the City of Middletown:** That the Mayor is authorized to execute all necessary documents to effectuate the transfer of the city properties identified in the Redevelopment Plan to the designated developers in accordance with said plan.

**Submitted by: Councilman Gerald E. Daley and  
William Warner, Director Planning, Conservation, and Development**

**Status: PASSED  
by the Common Council, City of Middletown  
at its meeting held on: SEPTEMBER 7, 2004**

**EXHIBIT R**

**Authority Resolutions**

**Resolution Number:** 06-07

**Date:**

**RESOLUTION**

**Whereas**, the Redevelopment Agency has the authority to recommend developers for the redevelopment of the north end in accordance with the Common Council approved North End Urban Renewal Plan; and

**Whereas**, the Broad Park Development Corporation, headquartered in Hartford, Connecticut, has been developing and managing affordable housing since the 1970's; and

**Whereas**, the North End Action Team, the grassroots neighborhood organization, has endorsed Broad Park's involvement; and

**Whereas**, Broad Park has been the developer of hundreds of housing units in urban areas and has utilized new urbanist planning principals on many of their projects and has extensive experience working with neighborhood groups and leveraging public / private resources; and

**Whereas**, the Agency selected the Broad Park as the preferred and designated developer for the homeownership portion of the North End Urban Renewal Plan, with the specific condition the Broad Park work closely with the North End Action Team and that Broad Park, as their primary goal, strive to accommodate the housing needs of the existing residents; and

**Whereas**, the rental and homeownership components of the North End Redevelopment Plan are of equal importance in the revitalization of this neighborhood,

**Whereas**, Broad Park has completed the conceptual design of the North End Homeownership component of the North End Redevelopment Plan.

**Whereas**, on November 6, 2006, the Common Council approved an extension to the Memorandum of Understanding until January 8<sup>th</sup>, 2007.

**Whereas**, the Redevelopment Agency has approved the conceptual plan for homeownership in the North End.

**Now, therefore, be it resolved that Common Council of the City of Middletown:** That the Common Council approves the conceptual plan for homeownership in the North End and directs the Mayor enter into a Preferred Development Agreement with Broad Park Development Corporation.

**Submitted by:** Councilman Gerald E. Daley and  
William Warner, Director Planning, Conservation, and Development

**Status:** PASSED  
**by the Common Council, City of Middletown**  
**at its meeting held on: JANUARY 2, 2007**

**Resolution Number: 180-06**

**Date:**

**RESOLUTION**

**Whereas**, the Redevelopment Agency has the authority to recommend developers for the redevelopment of the north end in accordance with the Common Council approved North End Urban Renewal Plan; and

**Whereas**, the Broad Park Development Corporation, headquartered in Hartford, Connecticut, has been developing and managing affordable housing since the 1970's; and

**Whereas**, the North End Action Team, the grassroots neighborhood organization, has endorsed Broad Park's involvement; and

**Whereas**, Broad Park has been the developer of hundreds of housing units in urban areas and has utilized new urbanist planning principals on many of their projects and has extensive experience working with neighborhood groups and leveraging public / private resources; and

**Whereas**, the Agency selected the Broad Park as the preferred and designated developer for the homeownership portion of the North End Urban Renewal Plan, with the specific condition the Broad Park work closely with the North End Action Team and that Broad Park, as their primary goal, strive to accommodate the housing needs of the existing residents; and

**Whereas**, the rental and homeownership components of the North End Redevelopment Plan are of equal importance in the revitalization of this neighborhood,

**Whereas**, Broad Park has completed the conceptual design of the North End Homeownership component of the North End Redevelopment Plan.

**Now, therefore, be it resolved that Common Council of the City of Middletown:** That the existing Memorandum of Understanding be amended to have the City approval period extended to Monday, January 8th, 2007.

**Submitted by: Councilman Gerald E. Daley and  
William Warner, Director Planning, Conservation, and Development**

**Status: PASSED  
by the Common Council, City of Middletown  
at its meeting held on: NOVEMBER 6, 2006**