THIRD AMENDMENT TO SECOND AMENDED AND RESTATED DEVELOPMENT AGREEMENT

This THIRD AMENDMENT TO SECOND AMENDED AND RESTATED DEVELOPMENT AGREEMENT (this “Amendment”) is made and entered into as of the 3rd day of June, 2014, by and among HBN FRONT STREET DISTRICT, INC., a Connecticut corporation (“Developer”), the CAPITAL REGION DEVELOPMENT AUTHORITY (formerly known as the Capital City Economic Development Authority), a body corporate and public constituting a public instrumentality and political subdivision of the State of Connecticut (the “Authority”), and the STATE OF CONNECTICUT, acting by and through the Secretary of the Office of Policy and Management (the “State”). This Amendment amends and modifies that certain Second Amended and Restated Development Agreement, dated as of June 19, 2008, by and among the parties hereto, as amended by Amendment #1, dated December 22, 2010, and that certain Second Amendment to Second Amended and Restated Development Agreement dated July 17, 2013 (as amended, the “Existing Agreement”). Capitalized words and terms used herein, and not otherwise defined herein, have the respective meanings assigned to such words and terms in the Existing Agreement.

RECITALS

WHEREAS, the parties entered into the Existing Agreement, pursuant to which Developer has been designated and acts as the private developer of the E/R/R District, and under which the respective roles, responsibilities and obligations of the parties in the development of the E/R/R District are set forth; and

WHEREAS, the Existing Agreement contemplates a Phase I consisting of retail and entertainment uses, and a Phase II to consist of residential, retail and entertainment uses; and

WHEREAS, Developer has leased a portion of the E/R/R District for completion of Phase I and operation of the retail and entertainment facilities thereon, pursuant to that certain Site Lease (Tract 1), dated November 3, 2008, between the Authority, as Landlord, and Developer, as tenant; and

WHEREAS, Developer’s affiliate, FSD Apartments, LLC (“FSDA”), has leased an additional portion of the E/R/R District for completion of Phase II and operation of the retail and residential facilities thereon, pursuant to that certain Site Lease (Tract 2), dated December 17, 2013, between the Authority, as Landlord, and FSDA, as tenant; and

WHEREAS, the parties now wish to proceed with the further development of the E/R/R District beyond Phase I and Phase II; and
WHEREAS, the parties now wish to amend certain terms and conditions of the Existing Agreement in order for such further development to proceed on terms and conditions acceptable to the parties.

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties, agreements, covenants and guarantees set forth herein, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATIONS

Section 1.01. New Definitions.

Definitions of the following terms are hereby added to Section 1.01 of the Existing Agreement, each in its proper alphabetical location:

“Campus Project” is defined in the Phase III Development Agreement.

“Material Developer Default” is defined in the Phase III Development Agreement.

“Phase III” means the development of the Phase III Lot in accordance with the Phase III Development Agreement.

“Phase III Construction Commencement Deadline” is defined in the Phase III Development Agreement.

“Phase III Development Agreement” means the Phase III Development Agreement dated June __, 2014 by and among Developer, State, the Authority and the University setting forth the terms and conditions for the development and construction of Phase III.

“Phase III Lot” means that portion of the E/R/R District consisting of Parcel F, Parcel K and the HTB Parcel.

“Phase IV” is defined in Section 6.04(c).

“Phase IV Commencement Date” is defined in Section 6.04(e).

“University” means the University of Connecticut.
ARTICLE II

MODIFICATIONS TO ARTICLE VI OF EXISTING AGREEMENT

Section 2.01. Section 6.04 of the Existing Agreement is deleted and the following is added in its place:

"Section 6.04 Scope of Private Development.

(a) Subject to the terms and conditions set forth in this Agreement and the other Operative Agreements and to the Permitted Encumbrances, Developer will have the right to construct such private development improvements on the Private Development Parcels as are shown on the Concept Plans, consisting of retail, restaurant and entertainment space for Phase I, retail, restaurant and entertainment space, residential units and related community facilities and amenities for Phase II, the uses for Phase III set forth in the Phase III Development Agreement and such uses as the State Parties and Developer shall agree for Phase IV. The retail, restaurant and entertainment space developed in the E/R/R District (whether developed in Phase I, Phase II or Phase IV) is collectively herein called the “Retail Component,” and the residential units and related facilities and amenities (whether developed in Phase II or Phase IV) are collectively called the “Residential Component.” The Residential Component and the Retail Component are referred to together herein as the “Private Components.” The minimum development commitment for the Retail Component of Phase I that is set forth in subsection (b) of this section is referred to herein as the “Minimum Development Commitment.”

(b) Construction of the Private Components is expected to proceed in up to four (4) phases. Phases I and II shall involve Parcels A, B, C and D, and together consist of not less than one hundred fifteen (115) residential units and not less than sixty-seven thousand five hundred (67,500) square feet of retail, restaurant and entertainment space. Phase I, located on Parcels A and B, includes at least sixty thousand (60,000) leasable square feet of retail, restaurant and entertainment space. Public vias separating portions of the Private Component for Phase I and providing ingress and egress to the North Garage and South Garage, as shown on Plans approved by the State Parties in accordance with this Agreement, have been constructed as part of Phase I and shall be owned by Developer during the term of the applicable Acceptable Ground Lease, but shall not count toward the Minimum Development Commitment. Developer has also constructed the Developer Public Improvements for Phase I, as shown on Developer Public Improvements Plans approved by the State Parties in accordance with this Agreement. Phase I does not include any residential units. The parties agree that Phase I has been completed in accordance with this Agreement.

(c) The Commencement of Construction of Phase II, which will include not less than one hundred fifteen (115) residential units and not less than seven thousand five hundred (7,500) additional leasable square feet of retail, restaurant and entertainment space (or such other totals agreed to in writing by Developer and the State Parties, in their sole discretion) located on Parcels C and D (the “Phase II Minimum Development Commitment”), will be scheduled to commence as provided in this Section 6.04. The construction and development of Phase III shall
commence and be conducted in accordance with the terms and conditions of the Phase III Development Agreement. If Developer and the State Parties hereafter reach agreement on the scope, uses, schedule and funding of a fourth phase on any or all of West Parcel 2 ("Phase IV"), Developer shall be entitled to develop Phase IV, subject to and in accordance with the terms and conditions set forth in this Agreement.

(d) Subject only to Uncontrollable Circumstances and State Default, and to the Authority disbursing to Developer the proceeds of the Housing Assistance and DECD disbursing to Developer the Phase II Urban Act Grant (in accordance with the disbursement requirements of the Authority and DECD, respectively), Commencement of Construction of Phase II shall occur no later than December 31, 2013 (the "Phase II Construction Commencement Deadline"), and Phase II shall be substantially completed no later than twenty-four (24) months following the Phase II Construction Commencement Deadline. In the event that Commencement of Construction of Phase II has not occurred by the Phase II Construction Commencement Deadline for any reason other than Uncontrollable Circumstances or State Default, the State Parties may terminate this Agreement by written notice to Developer at any time thereafter; provided that if Developer Commences Construction of Phase II prior to receipt of such notice from the State Parties, then such right of the State Parties to terminate this Agreement due to the failure to Commence Construction of Phase II by the Phase II Construction Commencement Deadline shall be waived.

(e) Developer is obligated to construct and complete Phase II in accordance with the terms of this Agreement and to construct and complete Phase III in accordance with the terms and conditions of the Phase III Development Agreement. Except to the extent of delay caused by Uncontrollable Circumstances or State Default, if Developer fails to (i) notify the State Parties in writing by the earlier of (A) eighteen (18) months following Substantial Completion of construction of Phase III, and (B) forty-two (42) months after the Phase III Construction Commencement Deadline that it intends to proceed with Phase IV, or, in the event Developer fails to provide such notice and the State then provides written notice to Developer of such failure, Developer does not provide notice to the State Parties within five (5) days of such notice from the State that it intends to proceed with Phase IV, or (ii) Commence Construction of Phase IV by the earlier of (A) thirty (30) months following Substantial Completion of construction of Phase III and (B) fifty-four (54) months after the Phase III Construction Commencement Deadline (the "Phase IV Commencement Date"), Developer's development rights as to all undeveloped Private Development Parcels (which shall not include the Phase III Lot) will, at the State's option upon notice to Developer, lapse and the State Parties shall thereafter be entitled to deal with any Private Development Parcel in their discretion, including the designation of and transfer to any subsequent developer, subject only to any provisions of this Agreement and the Declaration applicable thereto; provided that if Developer has taken substantial steps toward the development of the remaining Private Components, including the expenditure of significant sums after completion of Phase III for architectural and design costs for Phase IV prior to the Phase IV Commencement Date, Developer shall be entitled to a reasonable extension of construction commencement of Phase IV of up to twelve (12) additional months. Except to the extent of delay caused by Uncontrollable Circumstances or State Default, if Developer defaults on its
obligation to timely Commence Construction of or to complete Phase IV, Developer shall, at the State's option, forfeit any further development rights within or relating to the E/R/R District; provided, that such forfeiture shall not affect Developer's right or obligation to develop and construct Phase III in accordance with the Phase III Development Agreement.

(f) Notwithstanding Section 6.04(e) above, the State shall not transfer development rights to the remaining Private Components to a third party nor shall the State Parties be allowed to develop the remaining portions of the E/R/R District, unless an independent parking consultant selected by the State has verified that there shall be sufficient parking on or within the vicinity of the E/R/R District in order to accommodate such development and not negatively impact the sufficiency of parking for Phase I, Phase II and Phase III.

(g) Each of the Private Components will be consistent in scope, configuration, quality and design with the applicable Concept Plan and the Developer shall construct the Private Components in accordance with plans and specifications approved by the State Parties; provided, however, that Phase III shall be developed and constructed in accordance with the Phase III Development Agreement.

(h) In the event that Developer requires access to a Private Development Parcel prior to a Takedown of such Private Development Parcel in order to proceed with preliminary site work on such Parcel, the parties shall enter into a site access agreement on customary terms mutually satisfactory to the State Parties and Developer, which agreement shall permit Developer access to the parcel to perform such preliminary site work.

(i) If Developer proceeds with Phase IV as contemplated by this Article VI, Developer will complete Phase IV in a diligent manner on a schedule to be reasonably acceptable to Developer and the State Parties.

(j) Subject to the terms and conditions set forth in this Agreement and the other Operative Agreements, the Permitted Encumbrances, and receipt of all necessary Governmental Permits, and provided that the same shall not adversely affect the tax-exempt status of the interest on the Bonds or otherwise materially adversely affect repayment of the Bonds, Developer shall have the right to construct retail uses on the first level of the South Garage in areas set forth in the South Garage Plans for such use, provided that such construction is undertaken in accordance with the same schedule as that for Phase II. In the event Developer does not construct such retail uses during the period set forth for the construction of Phase II, the Developer shall have a first right of refusal with respect to the terms of any agreement reached with a third party to construct retail uses on the first level of the South Garage in the areas set forth in the South Garage Plans for such use.”

Section 2.03. Section 6.05 of the Existing Agreement is amended by adding the following as a new subsection (d):

“(d) The schedule for the development and construction of Phase III shall be set forth in the Phase III Development Agreement.”
**Section 2.04.** Section 6.06 of the Existing Agreement is deleted and the following is added in its place:

“Section 6.06 Approval of Concept Plan.

The parties have completed concept plans for the development for Phase I and Phase II of the E/R/R District. The concept plan for Phase II is attached to this Agreement as Schedule 6.06. With respect to Phase III, the Phase III Development Agreement shall set forth the agreement of the Developer and the State Parties as to the concept plan for Phase III and such supplements or revisions to such concept plans as are necessary and appropriate to provide for the development of Phase III in a manner otherwise conforming with any applicable provisions of this Agreement or the Declaration (including any amendments to this Agreement or the Declaration as may be entered into to account for the development of Phase III). As used in this Agreement, “Concept Plan” means, with respect to Phase II, the concept plan attached as Schedule 6.06, as such concept plan may supplemented or revised in accordance with this Section 6.06. The Concept Plan may from time to time be otherwise modified or supplemented by further agreement of Developer and the State Parties. All development within the E/R/R District shall substantially conform to the applicable Concept Plan and it is the intent of the parties that Phase I, Phase II and any additional or subsequent development of Private Components (other than Phase III which shall be governed by the Phase III Development Agreement) shall be subject to the provisions of this Agreement relating to the preparation and modification of a Milestone Schedule and a Project Schedule, approval of designs and plans and other similar provisions of this Agreement governing the design and development process, with such changes in the case of such additional and subsequent development as the parties may agree are necessary and reasonable in the circumstances.”

**ARTICLE III**

**MODIFICATIONS TO ARTICLE VII OF EXISTING AGREEMENT**

**Section 3.01.** Section 7.01(b) of the Existing Agreement is amended by deleting the fifth sentence thereof and adding the following in its place:

“In addition, the State Parties shall improve Parcels C, D and F for surface parking, including, without limitation, paving, stripping and appropriate sidewalks and landscaping, fencing and lighting, consistent with the overall design of Phase I and removal of all construction activities from Parcel F; provided, however, the State Parties shall not be required to provide the Phase II Parking if Developer notifies the State Parties prior to completion of Phase I that it intends to start construction of Phase II within twelve (12) months following Substantial Completion of Phase I and provided, further, that Developer and the State Parties acknowledge that notwithstanding the improvement of Parcel F for surface parking, the Phase II Lot includes Parcel F and such surface parking shall be lost in connection with the construction and development of the Campus Project.”
ARTICLE IV

MODIFICATIONS TO ARTICLE VIII OF EXISTING AGREEMENT

Section 4.01. Section 8.01 of the Existing Agreement is amended by deleting the second sentence thereof and adding the following in its place:

“Except for the Private Development Parcels necessary for Developer to (i) satisfy the Minimum Development Commitment and the Phase II Minimum Development Commitment and (ii) construct and develop Phase III in accordance with the Phase III Development Agreement, Takedowns of further Private Development Parcels are optional to Developer, subject to the provisions of Section 6.04 hereof providing for the lapse of Developer’s development rights. The terms and conditions of the Takedown of the Phase III Lot shall be governed by the Phase III Development Agreement and the terms and conditions set forth in this Article VIII shall be inapplicable thereto.”

Section 4.02. Section 8.02(b) of the Existing Agreement is amended by deleting clause (v) and adding the following in its place:

“(v) Developer has provided the following to the State Parties, all in such form as shall be reasonably acceptable to the State Parties: a copy of a completed contract with the Developer Construction Manager covering all work necessary to achieve Substantial Completion of the Private Components and Developer Public Improvements to be constructed, for Phase I, on the Phase I Lot, and, for Phase II, on the Phase II Lot, and for Phase IV, on West Parcel 2, together with, for Phase II, a collateral assignment of such contract to the State Parties as security for the Housing Assistance, and, for each Phase, evidence of satisfactory Payment Bond with respect to the obligations of the Developer Construction Manager, and Payment Bonds and Performance Bonds with respect to the obligations of each subcontractor whose aggregate value of work on the Private Components exceeds $250,000, in each case with a rider to such Payment Bonds and Performance Bonds naming the State Parties as co-obligees. Developer’s obligations under this clause (v) with respect to Phase III shall be set forth in the Phase III Development Agreement.”

Section 4.03. Clause (vi) of Section 8.02(b) of the Existing Agreement is deleted and the following is added in its place:

“Developer has provided to the State Parties satisfactory assurances of completion of the Private Components and Developer Public Improvements to be constructed, for Phase I, on the Phase I Lot, for Phase II, on the Phase II Lot, and, for Phase IV, on West Parcel 2, covering cost-overrun and Uncontrollable Circumstance risk”.

Section 4.04. Section 8.10 of the Existing Agreement is deleted and the following is added in its place:
Section 8.10 Ongoing Environmental Covenant of State.

At each Takedown, the State shall deliver to Developer or, if applicable, the Developer Affiliate to which rights in a Private Development Parcel are being conveyed, for its benefit and the benefit of its successors and permitted assigns, an undertaking with respect to Existing Environmental Conditions substantially to the following effect:

(i) the State shall remain responsible for Existing Environmental Conditions, except to the extent such Existing Environmental Conditions are exacerbated by the actions of Developer or such Developer Affiliate, its successors or assigns, or any of their Permittees occupying, using or performing work with respect to the Private Components located on such Parcel; provided that (A) the State shall remain responsible for Existing Environmental Conditions if any exacerbation is caused by Developer’s construction of the Private Components in accordance with the Private Component Plans, (B) the State’s responsibility for Existing Environmental Conditions on the Phase II Lot shall include paying for the incremental difference in the costs to Developer for soil disposal attributable to the environmental condition of such soil, and shall be subject to the availability and limited to the proceeds of the Phase II Urban Act Grant, and (C) the State’s responsibility, if any, for remediation of Existing Environmental Conditions on the Phase III Lot Parcel shall be as set forth in the Phase III Development Agreement;

(ii) the State shall reimburse Developer or such Developer Affiliate, as applicable, and its successors and permitted assigns for any environmental expenses, including expenses of monitoring, investigation, mitigation, containment or removal, to the extent such expenses are attributable to Existing Environmental Conditions, except for and to the extent any such expenses that are attributable to the exacerbation of Existing Environmental Conditions by the actions of, Developer, such Developer Affiliate, its successors or assigns, or any of their Permittees as provided in Section 8.10(a)(i) above, provided that (A) reimbursement of any legal expenses incurred in connection therewith (1) shall not include legal expenses incurred in any litigation, and (2) shall not exceed $15,000 in the aggregate, (B) the State’s obligations with respect to such expenses attributable to Existing Environmental Conditions on the Phase II Lot shall be subject to the availability and limited to the proceeds of the Phase II Urban Act Grant, and (C) the State’s obligations, if any, with respect to such expenses attributable to Existing Environmental Conditions on the Phase III Lot shall be set forth in the Phase III Development Agreement;

(iii) notwithstanding the terms of clauses (i) and (ii) above, the State shall not be responsible for, and will have no reimbursement obligation under clause (ii) above with respect to, the environmental expenses resulting from any penetration or disturbance of, or damage to, any pad, cap, membrane, ventilation system or other structure or system constructed or installed on, under or around such Parcel in accordance with the RAP, caused by the actions of Developer or such Developer Affiliate, its successors or assigns, or any of their Permittees occupying, using or performing work with respect to such Parcel, or any Release that results from any such penetration, disturbance or damage, and all costs incurred in repairing or restoring such structure or system or in containing, mitigating or remediating any such Release, shall be at the sole risk and expense of Developer or such Developer Affiliate, as applicable, or its successors or assigns;
and

(iv) in the event of any payment by or on behalf of the State of environmental expenses pursuant to clause (ii) above, Developer or such Developer Affiliate, as applicable, or its successors and assigns shall be required to pursue, at the direction and sole expense of the State, any responsible third parties against which they may have recourse for such environmental expense and reimburse the State from any amounts so recovered. The undertakings of the State pursuant to this Section 8.10 are referred to herein as the Environmental Covenant. In no event shall the Environmental Covenant require the State to remediate Environmental Conditions on West Parcel 2.”

ARTICLE V

MODIFICATIONS TO ARTICLE IX OF EXISTING AGREEMENT

Section 5.01. Article IX of the Existing Agreement is amended by deleting the first paragraph of Section 9.06 and adding the following in its place:

“The payments due from Developer to the Authority under the Private Development District Legislation (the “PILOT Payments”) shall be as follows for the Private Development Parcels comprising Phase I (the “Phase I PILOT Payments”), for the Private Development Parcels comprising Phase II (the “Phase II PILOT Payments”), and for the Phase III Retail Space (as defined in the Phase III Development Agreement) (the “Phase III PILOT Payments”), respectively;”

Section 5.02. Article IX of the Existing Agreement is amended by deleting Section 9.06(e) and adding the following in its place:

“(e) Until the date on which Developer or its affiliate enters into a master lease for the Phase III Retail Space (as defined in the Phase III Development Agreement) with the University (the “Phase III PILOT Commencement Date”), no Phase III PILOT Payments shall be due and owing from Developer. Thereafter, Phase III PILOT Payments shall be based upon the City’s assessed value of the Phase III Retail Space, and the amounts that would be payable to the City with respect to the Phase III Retail Space if the Phase III Retail Space were not part of the tax district created by the Private Development District Legislation (the “Phase III City Tax Payment Amount”), subject to the abatements hereafter described.

(f) The Phase III PILOT Payments shall be (i) zero (0) each year for a period of three (3) years commencing on the Phase III PILOT Commencement Date; (ii) ten percent (10%) of the Phase III City Tax Payment Amount for years four (4) through seven (7) after the Phase III PILOT Commencement Date; (iii) twenty percent (20%) of the Phase III City Tax Payment Amount for years eight (8) through eleven (11) after the Phase III PILOT Commencement Date; and (iv)
thirty percent (30%) of the Phase III City Tax Payment Amount for years twelve (12) through fifteen (15) after the Phase III PILOT Commencement Date. Thereafter, the Phase III PILOT Payments each year shall equal the Phase III City Tax Payment Amount for such year.

(g) Developer (or its affiliate) shall make such PILOT Payments to the Authority on a semi-annual basis at the same times that real estate property taxes are typically payable to the City. The Authority may impose interest on any delinquent PILOT Payments at the same rate and on the same terms as is then charged by the City on delinquent real estate property tax payments, and Developer or its affiliate shall pay such interest upon demand by the Authority.”

ARTICLE VI

MODIFICATIONS TO ARTICLE X OF EXISTING AGREEMENT

Section 6.01. Article X of the Existing Agreement is amended by adding the following as a new Section 10.04:

“Section 10.04. Phase III.

The obligations of Developer with respect to Phase III as to the maintenance of books and records, financial reporting, financial controls and auditing (including accounting and recordkeeping requirements) and the making of books and records available to the Independent Auditor and the Auditors of Public Accounts shall be set forth in the Phase III Development Agreement.”

ARTICLE VII

MODIFICATIONS TO ARTICLE XI OF EXISTING AGREEMENT

Section 7.01. Section 11.02 of the Existing Agreement is amended by adding the following as a new sentence therein:

“The insurance requirements for Phase III shall be set forth in the Phase III Development Agreement.”

ARTICLE VIII

TERMINATION OF PHASE III DEVELOPMENT AGREEMENT

Section 8.01. In the event of the termination of the Phase III Development Agreement for any reason other than a Material Developer Default, this Amendment shall terminate and be of no further force and effect and the rights, duties and obligations of Developer and the State Parties with respect to the E/R/R District shall be determined by the terms and conditions of the
Existing Agreement as if this Amendment and the Phase III Development Agreement had not been executed and delivered by the parties thereto.

**ARTICLE IX**

**MISCELLANEOUS**

**Section 9.01.** Sections 16.04, 16.06, 16.07, 16.08, 16.09, 16.10, 16.11, 16.13, 16.14, 16.15, 16.16, 16.17, 16.18 and 16.20 of the Existing Agreement are incorporated into this Amendment and shall apply to this Amendment.

**Section 9.02.** As of the date of this Amendment, the Existing Agreement, as amended by this Amendment, and all of the Operative Agreements now in effect and, with respect to Phase III, the Phase III Development Agreement, shall constitute the entire understanding among the State, the Authority and Developer as to the subject matter thereof, and shall supersede any and all other previous understandings, oral or written.

**Section 9.03.** The Existing Agreement, except as modified by this Amendment, is otherwise hereby ratified and confirmed, and the Existing Agreement, as modified by this Amendment, is and shall remain in full force and effect.

[SPACE INTENTIONALLY PROVIDED – SIGNATURE PAGES NEXT FOLLOW]
[DEVELOPER SIGNATURE PAGE]

IN WITNESS WHEREOF, the undersigned has caused this Amendment to be signed by its duly authorized representative, as such and not individually, as of the day and year first written above.

HBN FRONT STREET DISTRICT, INC.

By: [Signature]

Name: Helen Nitkin
Title: President
[AUTHORITY SIGNATURE PAGE]

IN WITNESS WHEREOF, the undersigned has caused this Amendment to be signed by its duly authorized representative, as such and not individually, as of the day and year first written above.

CAPITAL REGION DEVELOPMENT AUTHORITY

By: [Signature]

Name: Michael Freimuth
Title: Executive Director
[STATE SIGNATURE PAGE]

IN WITNESS WHEREOF, the undersigned has caused this Amendment to be signed by its duly authorized representative, as such and not individually, as of the day and year first written above.

STATE OF CONNECTICUT, acting by and through the Secretary of the Office of Policy and Management

By: [Signature]

Name: Karen K. Buffkin
Title: Deputy Secretary of the Office of Policy and Management