

1
2 **Resolution Relating to**

RESOLUTION
Sponsor(s): Councilors Bushor,
Aubin, Knodell: Bd. of Finance

Introduced: _____

Referred to: _____

Action: _____

Date: _____

Signed by Mayor: _____

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6 PROPOSED CHAMPLAIN COLLEGE PURCHASE OF THE
7 BROWNS COURT PARKING LOT SITE

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13 **CITY OF BURLINGTON**

14 In the year Two Thousand Thirteen.....

15 Resolved by the City Council of the City of Burlington, as follows:

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17 That WHEREAS, Champlain College is hoping to purchase the Browns Court parking lot site owned
18 by the City; and

19 WHEREAS, in 2008, Champlain College purchased an abutting property, the Eagles Club site,
20 located at the corner of St. Paul and Maple Streets, with all necessary City Council approval required by a
21 1994 Memorandum of Understanding between Champlain College and the City (attached) which
22 Memorandum requires Champlain College to seek and receive City Council approval before purchasing
23 properties outside delineated boundaries; and

24 WHEREAS, in 2008, Champlain College executed an additional Memorandum of Understanding
25 whereby Champlain College committed itself to working cooperatively with the City to coordinate its
26 development of the Eagles Club site with City plans to develop the Browns Court parking lot site; and

27 WHEREAS, the City has had long standing plans to convert Browns Court to housing but has
28 been unable to develop any particular project of its own; and

29 WHEREAS, given the current consensus for the need for new student housing and Champlain
30 College's willingness to develop both the Eagle's Club site and the Brown's Court parking lot site as a
31 single project which addresses that need and fits with the College's Master Plan; and

32 WHEREAS, Champlain College's project will preserve public parking at the site; and

33 WHEREAS, on June 27, 2013, Mayor Weinberger executed a Letter Agreement (attached hereto)
34 with Champlain College which articulated intended terms and conditions for a proposed Purchase and
35 Sale Agreement; and

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Resolution Relating to PROPOSED CHAMPLAIN COLLEGE PURCHASE OF THE BROWNS COURT PARKING LOT SITE

WHEREAS, on July 15, 2013, Brian Pine, Assistant Director for Housing and Neighborhood Revitalization at Burlington’s Community and Economic Development Office and David J. Provost, Senior Vice President at Champlain College, as respective representatives of the parties to the proposed Purchase and Sale Agreement, presented to the City Council re same; and

WHEREAS, at its September 3, 2013 meeting, Board of Finance considered the above referenced proposed sale of the Brown’s Court Parking Lot site and unanimously recommended that City Council authorize same;

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby approves the request by Champlain College to purchase the Brown’s Court property located at St. Paul and King Streets, Burlington, Vermont, as a property requiring such approval pursuant to the 1994 Memorandum of Understanding referenced above; and

BE IT FURTHER RESOLVED that City Council hereby approves the terms and conditions for a Purchase and Sale Agreement and all necessary documents attendant thereto, which agreement and documents shall be in general conformance with the terms and conditions agreed to by the Mayor in the above-referenced June 27, 2013 Letter Agreement; and

BE IT FURTHER RESOLVED that the City Council authorizes the Mayor to execute said Purchase and Sale Agreement as well as all other necessary documents as above-referenced, subject to the review and approval of the City Attorney.

MEMORANDUM OF UNDERSTANDING AND AGREEMENT

This Memorandum of Understanding and Agreement ("Agreement") made and entered into this 27th day of October, 1994, by and between the City of Burlington, a Vermont municipal corporation ("City"), and Champlain College, Inc., a Vermont institution of higher education ("Champlain");

W I T N E S S E T H :

WHEREAS, it is in the best interest of both the City and Champlain that a comprehensive agreement be reached which will provide to both entities and to the Champlain College neighborhood opportunity to co-exist in the most advantageous manner possible; and

WHEREAS, to that end, the President and administrative staff at Champlain and the Mayor and administrative staff of the City have carried out comprehensive negotiations to achieve a solution to current and prospective problems and needs which will be beneficial to Champlain, the City and the entire City community; and

WHEREAS, the result of such negotiations has been the negotiation of this Agreement by the City and Champlain including as a fundamental principle that it will be most desirable to allow Champlain opportunity for reasonable growth within its established "Core Campus", "Transitional Area", and "Authorized Areas", (hereinafter defined) while simultaneously establishing definitive boundaries concerning

such campus so that the surrounding residential neighborhoods can be protected, and parking and traffic problems dealt with in the most efficient fashion; and

WHEREAS, prior to the execution of this Agreement, it was necessary for both the City's Planning Commission and City Council, Champlain's Board of Trustees and the general public to have opportunity to fully consider the Agreement, and to have full input with respect thereto prior to execution hereof; and,

NOW THEREFORE, IT IS AGREED by and between the City and Champlain as follows:

1. The "Core Campus" is defined as the central campus of Champlain College, the boundaries of which shall be as set forth on the map attached hereto and incorporated herein as Exhibit A, and defined on said map as "Core Campus":

2. "Transitional Area" is that area as defined on said Exhibit A as "UC Transitional".

3. "Authorized Areas" include the "Core Campus", the "Transitional Areas", and the central business district (as defined in the City's Zoning ordinance.)

4. The duration of this Agreement shall be twenty (20) years from the date of execution hereof. During the term hereof, Champlain shall not acquire, lease and/or utilize any additional property within the City located outside of the Authorized Areas that is not currently being utilized by Champlain, herein or except as may be mutually

agreed between the City's City Council and Champlain's Board of Trustees. Provided, however, the restrictions contained in this Paragraph shall not apply to the rental or leasing by Champlain of rooms in private homes for not more than two students in any particular building.

5. Notwithstanding the foregoing section, Champlain shall also have the right to acquire and to utilize buildings located outside of the "Authorized Areas" which are currently utilized for fraternity house, sorority house or institutional usage.

6. It is acknowledged by the parties hereto that the City's zoning standards have recently been amended to permit Champlain to develop that portion of its campus within the Core Campus at a lot coverage not exceeding sixty percent (60%) rather than the former maximum of forty percent (40%).

7. Champlain shall commit that there shall be no net loss of green space currently in existence within the Core Campus as a result of creating additional parking spaces. It shall be permissible for Champlain to convert existing green space areas to parking areas provided that an equal amount of existing lot coverage such as paved area is reconverted to green space. Champlain shall be authorized to attempt to meet future parking requirements at off-campus locations provided such locations are within a reasonable walking or shuttle bus distance from the campus and function as a workable part of an overall parking program.

8. The properties fronting on Harrington Terrace and Jackson Court shall be rezoned in such a fashion that only residential use shall be permitted. Champlain shall not acquire and/or utilize properties located on either of such streets for its institutional purposes.

9. The City shall permit Champlain to utilize the so-called Coolidge House at 312 Maple Street for administrative office purposes, and accept such use by Champlain.

10. Champlain shall either use the premises at 380 Maple Street for its residential purposes or shall convey such property with a covenant calling for subsequent residential use by the purchaser thereof for the duration of the final Agreement.

11. The City recognizes Champlain's need for and will support the development by Champlain within the above-described "Authorized Areas" of housing units for 100 students to be built in a "townhouse" format of 25 units. The City recognizes that such units may also be appropriately placed within 300 feet westerly of the centerline of South Willard Street (230 feet westerly of the centerline of South Willard Street for the so-called "Cannon" property) within the "Transitional Area" should such properties be acquired by Champlain, with some of such units also being permissibly placed on the property known and designated as 195 South Willard Street, or on Maple Street within the "Core Campus" area.

12. Should the properties referenced in Section 11 be acquired by Champlain, the existing buildings, additions thereto, and the land extending to 300 feet westerly of the centerline of South Willard Street (230 feet westerly of the centerline of South Willard Street for the "Cannon" property) may be used for institutional purposes. Champlain shall utilize the balance of such lot or lots to the westerly boundary line thereof as open space in order to create a buffer zone between the residential properties fronting on South Union Street and the more intense institutional use by Champlain of the properties fronting on South Willard Street. The westerly portion of such lots will be used for green space and passive recreation (reading, sitting, etc.) purposes. Champlain shall permit the general public to utilize such green space for such passive recreation purposes subject to reasonable controls by Champlain. However, if Champlain acquires the "Cannon" property, it shall have the right to use the existing brick barn/carriage house which borders the westerly boundary of said property for institutional purposes.

13. The City shall agree not to impose or implement resident-only parking on either Maple Street from South Prospect Street to South Union Street or on South Willard Street. Champlain shall not contest in any fashion the implementation of resident-only parking on Harrington Terrace, Jackson Court and Summit Street.

14. Champlain shall further endeavor to eliminate its existing parking deficit of 150 spaces by a combination of solutions including, without limitation, off-site parking lots, underground or decked parking in dual footprint structures, a parking garage if economically feasible, increased transit use, participation in a shuttle program, ride-sharing, van pools for working students, flex time class scheduling modules, restrictions on student car ownership and other demand-side techniques to reduce trip generation to and from the campus. Additionally, Champlain shall join and remain at all times throughout the duration of this Agreement a member of the so-called "parking consortium" made up of the University of Vermont, the Medical Center Hospital of Vermont, Trinity College and the University Health Center, Inc., which consortium is working to find solutions for parking and transportation needs which are jointly acceptable to the institutions and to the City. However, this Agreement shall not be construed to require that Champlain be participatory in any particular solution which the parking consortium may decide to implement. Champlain shall be excused from further commitment to the shuttle program at the Park and Ride facility proximate to the Burlington International Airport.

15. Upon the execution hereof, Champlain shall commit to making every effort to meet all of its institutional needs over the next twenty (20) years within the Authorized

Areas and/or by acquiring existing institutional, fraternity house or sorority house properties, as well as off-site shuttle lots for parking purposes. Champlain will use its best efforts to carry out such expansion within the Authorized Areas and will consult with the City before attempting to develop facilities outside the Burlington city limits.

16. If any change should occur during the term of this Agreement which causes Champlain to need to sell any properties it may have acquired subsequent to this date, Champlain shall grant to the City a right of first refusal to acquire such properties in the following manner: if Champlain receives a bona fide offer from any person or other entity to purchase one or more of the properties described in this section, Champlain shall send to the City a copy of the proposed contract (except for the name of the buyer) and notify the City of the intention of Champlain to accept the same. The City shall have the right within thirty (30) days to accept the terms of said contract in writing, and within seventy (70) days thereafter to purchase the property or properties in its own name, for the purchase price and on the terms specified in said contract. If the City shall not so elect within said period, Champlain may then sell the properties to the said buyer provided the said sale is on the same terms and conditions and for the price set forth in the said contract sent to the City. Champlain

shall have the right to attempt to sell multiple properties simultaneously as a package, and in such event, the City's right of first refusal herein must be exercised as to the entirety of the properties then being offered as a package. In the event the City fails to exercise the aforesaid right of first refusal in connection with a proposed sale, then such right shall be extinguished upon the consummation of said sale; however, if such sale is not consummated, the right of first refusal shall remain in effect during the entire term of this Agreement. If for any reason the City is unable or unwilling to close on the purchase of said property within the seventy (70) day period described herein, the City's right of first refusal shall lapse as to that property or properties.

17. Champlain's "College Master Plan" shall be amended to reflect the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the City and Champlain have executed this Agreement through the signatures of their duly authorized officers as of the day and date first above written.

CITY OF BURLINGTON

Cicci M. Givens
Witness

By: Peter C. Brownell
Mayor Peter C. Brownell
Duly Authorized

Michelle J. Givens
Witness

STATE OF VERMONT
COUNTY OF CHITTENDEN, SS.

At Burlington, Vermont this 27th day of October, 1994,
Peter C. Brownell, Mayor, Duly Authorized Agent of the City
of Burlington, personally appeared and he acknowledges this
instrument, by him sealed and subscribed, to be his free act
and deed and the free act and deed of the City of
Burlington.

Before me, Cecilia M. Gilman
Notary Public

CHAMPLAIN COLLEGE, INC.

By: Roger A. Perry
Roger A. Perry, President
Duly Authorized

Cecilia M. Gilman
Witness

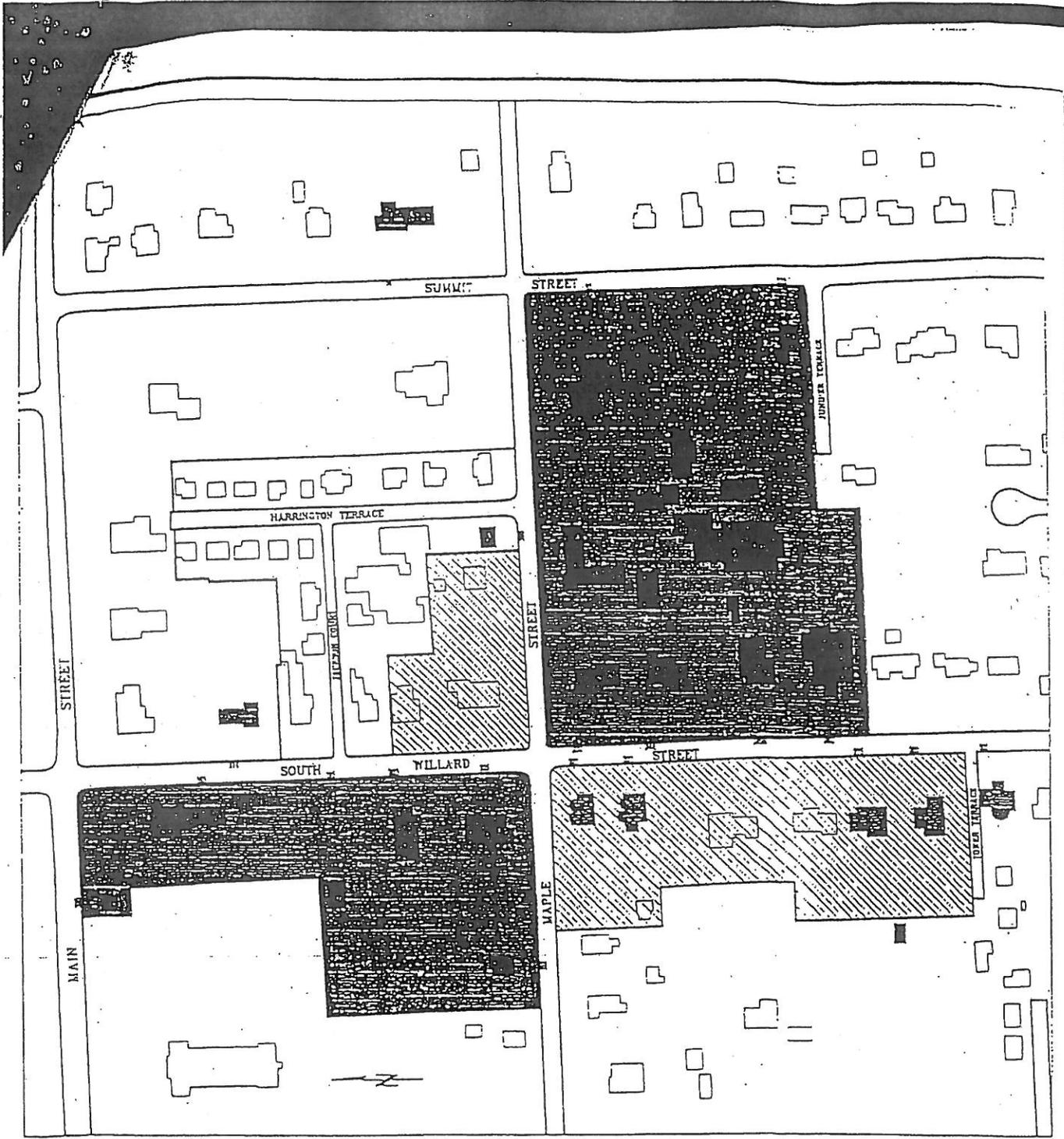
Michelle J. Gurney
Witness

STATE OF VERMONT
COUNTY OF CHITTENDEN, SS.

At Burlington, Vermont this 27th day of October, 1994,
Roger A. Perry, President, Duly Authorized Agent for
Champlain College, Inc., personally appeared and he
acknowledges this instrument, by him sealed and subscribed,
to be his free act and deed and the free act and deed of
Champlain College, Inc.

Before me, Cecilia M. Gilman
Notary Public

doc044.cob



Champlain College Proposed Core Campus Map

- Core Campus
- UC Transitional
- Residential
- Champlain College Buildings



CHAMPLAIN COLLEGE

163 South Willard Street
P.O. Box 670
Burlington, VT 05402-0670
(802) 860-2700 | (800) 570-5858
fax (802) 860-2767
www.champlain.edu

June 25, 2013

City of Burlington
Honorable Miro Weinberger, Mayor
City Hall
149 Church Street
Burlington, VT 05401

RE: Proposal to Purchase Real Property
O Browns Court, Burlington, Vermont

Dear Mayor Weinberger:

Thank you for the opportunity to discuss Champlain College's interest in purchasing the City's "Brown's Court" surface parking lot property at the corner of King & St Paul Street. Please let this correspondence confirm our discussions and serve as a formal offer to purchase this real property asset from the City.

As a long-time institutional community stakeholder, Champlain College has made a commitment in its master plan to provide housing, in either on-campus dormitories or off-campus apartments, up to ninety percent (90%) of its students. To that end, the College is moving forward with a redevelopment of the former *Eagles Club* parcel at the intersection of Maple and St. Paul Street site as student apartments. We believe the incorporation of the City lot into the planned redevelopment of the Eagles Club site will enhance the Project by providing additional, much needed housing at the City core, resulting in benefits to both the College and community alike. We trust the City shares this view.

With regards to the College's offer to purchase, we contemplate a clean, cash transaction with limited conditions at a purchase price significantly in excess of its appraised value. Our offer of **\$1,100,000** provides the City with more than fair compensation for the asset; a buyer that understands and shares the long-term interests of the community; and a future investment that will transform the character and face of this block of St Paul Street for all to enjoy.

The proposed purchase terms outlined below, if accepted, shall be included in a formal Purchase & Sale contract. Champlain College and the City of Burlington's legal counsel will work diligently to complete a binding Purchase & Sale contract within ten (10) days of the execution of this letter.

Outline of Purchase Offer

1. **Purchaser:** A designee of Champlain College that is acceptable to the City and which has been formed for the purpose of acquiring and developing the Project (as defined below) on the Property in a manner that results in the Property being subject to full property taxation at its full assessed value, including, without limitation, the value of the Property following its improvement.
2. **Seller:** City of Burlington.

David Provost to Honorable Miro Weinberger
June 25, 2013

3. **Property:** Two parcels of land measuring 0.357 acres and 0.04 acres, respectively, comprised of open land and a surface parking lot, identified by the City of Burlington as Parcel Nos. 049-3-027-000 (0.357 acres) and 049-3-041-000 (0.04 acres), and collectively known as and numbered 0 Browns Court in Burlington, Vermont.
4. **Project Description:** Purchaser desires to acquire the Property, and Seller is interested in selling the Property to Purchaser, to enable Purchaser to construct an urban, mixed use redevelopment project on the Property, combined with the *Eagles Club* site, that achieves the following goals and objectives:
 - a) Develop apartment-style housing for Champlain students;
 - b) Enhance pedestrian activity along St. Paul Street with non-residential street-level uses, such as retail uses;
 - c) Maintain for public use at least the same number of parking spaces currently available at the parking lot on the Property;
 - d) Manage on-site parking resources cooperatively with the City's city-wide parking management efforts.
5. **Purchase Price:** \$1,100,000 cash due at closing.
6. **Operation of Parking Lot.** In addition to the cash paid at closing, Purchaser will also agree that Seller will have the right to continue to use and operate the Property as a public parking lot after the closing, and to retain all rents and income from such operations without any obligation to pay rent to Purchaser, until Purchaser commences construction of the Project on the Property, which shall be upon at least 30 days' notice to Seller. During the period when the Seller is using the Property as a parking lot, Seller will be responsible for all utility, plowing, landscaping and insurance expenses associated with such use.
7. **Purchase & Sale Contract:** This letter looks to the preparation and execution of a formal Purchase & Sale Contract ("Contract") containing customary terms and agreements for commercial property sales in the greater Burlington area of Vermont. The Contract will include terms and conditions summarized as follows:
 - a) Purchaser shall pay a deposit in the amount of \$30,000 to be held in escrow by its counsel.
 - b) Purchaser's obligation to close on the purchase of the Property will only be subject to the following contingencies:
 - Purchaser's satisfaction with the physical and environmental condition of the Property. Purchaser shall have a period of 45 days to conduct due diligence with respect to the Property. Upon execution of the Contract, Seller will provide Purchaser with copies of any material information pertaining to the Property that Seller has in its possession or that it may obtain without expense, such as surveys, engineering tests, soil tests, Phase I and/or Phase II Environmental Reports, permits, copies of existing title policies pertaining to the Property,

inspection reports, or any other items of similar significance. Purchaser will have the right, during the due diligence period, to conduct additional reviews and inspections of the Property in accordance with and subject to terms to be set forth in the Contract.

- Champlain College Board of Trustees approval of the terms and provisions of the Contract.
- c) Seller's obligation to close on the sale of the Property will be subject to the following contingencies:
- Burlington City Council approval of the terms and provisions of the Contract.
 - Purchaser's agreement to construct the Project on the Property.
 - Purchaser structuring its acquisition, development and operation of the Project on the Property in a manner that results in the Property being subject to full property taxation at its full assessed value following acquisition, including its value following construction of the Project.
 - Purchaser's agreement that in the event the Property is ever owned in whole or in part by an entity that is statutorily exempt from property taxation or that is subject to statutorily limited or reduced property taxation (an "Exempt Owner"), it shall be an obligation of such Exempt Owner to make payments in lieu of property taxes ("PILOT") to the City of Burlington. The Contract shall describe the terms upon which such PILOT shall be calculated, due and payable.
- d) The Contract and will provide for a closing 30 days from the later of (i) the expiration of the due diligence period or (ii) the transaction receiving consent approval from the Burlington City Council.
- e) The Contract shall provide that all utility bills, tax payments and other expenses associated with the ownership of the Property shall be prorated at time of closing, provided that if Seller continues to use the Property as a public parking lot as described above, then such expenses shall not be prorated at closing.
- f) At closing, Seller shall provide Purchaser with a Warranty Deed conveying marketable title to the Property, and the Warranty Deed will control the description of the Property to be conveyed under the Contract. The Warranty Deed shall provide that if Purchaser shall fail to materially commence construction of the Project within three years of the closing date, then Seller will have the option and right to repurchase the Property for the purchase price paid by Purchaser to Seller, less an amount equal to the costs incurred by the Seller in connection with the sale and repurchase of the Property. Purchaser may satisfy its obligation to commence construction by closing on a construction loan with respect to the Project.

8. **Good Faith.** Purchaser and Seller will make mutual efforts to prepare and execute such a Contract within ten (10) days of the execution of this letter. This letter shall expire and any obligations

David Provost to Honorable Miro Weinberger
June 25, 2013

created hereby shall terminate and expire on the date that is thirty (30) days after this letter has been accepted by Seller unless the parties shall have entered into a Contract by such date or unless the parties mutually agree in writing to extend such date. The parties understand that this letter is not a contract for the purchase and sale of the property. The purpose of this letter is to outline terms and conditions which, if agreed upon, could serve as an outline for a formal purchase and sale agreement with respect to the property. The parties agree to work in good faith towards the execution of such an agreement if the proposed terms are deemed acceptable but does not create or give rise to any other obligation, except for the following obligations:

- a) Seller to provide, within fifteen (15) working days of its execution of this letter, copies of all leases, contracts, financials, and any other agreements encumbering or related to the Property that Seller has in its possession or that it may obtain without expense.
- b) From after Seller's execution of this letter and for a period of thirty (30) days thereafter, Seller shall not enter into any leases or agreements with respect to the Property, or grant any encumbrances with respect to the Property, that would persist beyond the closing date without the written consent of Purchaser, which shall not be unreasonably conditioned, delayed or withheld.

9. **Expiration of Offer:** Purchaser has provided these purchase terms with the expectation that this offer remains confidential, and will remain open for your acceptance through 6:00 PM Eastern Standard Time on June 28, 2013.

The parties understand that this is not a final contract. The purpose of this letter is to outline terms and conditions which, if agreed upon, could serve as an outline for a formal contract agreement. The parties agree to work diligently towards the execution of such an agreement if the proposed terms are deemed acceptable.

Please execute below if the terms and conditions of this offer are acceptable.

Sincerely,



David Provost
Champlain College
Senior Vice President – Finance and Administration

David Provost to Honorable Miro Weinberger
June 25, 2013

Accepted And Agreed:

Purchaser/ Champlain College its affiliates, successors, or assigns.

By David Provost 6/25/13
Duly Authorized Agent Date

Seller/ City of Burlington, its affiliates, successors, or assigns.

By: [Signature] 6/27/13
Duly Authorized Agent Date