

APPENDIX D

BURLINGTON COMMUNITY DEVELOPMENT CORPORATION

LEASE AGREEMENT

WITH

WESTLAKE RESIDENTIAL

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EXHIBIT 9

LEASE AGREEMENT

THIS AGREEMENT (this "Agreement" or "Lease") is made this ^{15th} day of ~~July~~ ^{September}, 2005, by and between Burlington Community Development Corporation, a Vermont non-profit corporation, with an address of _____ (hereinafter the "Landlord") and Westlake Residential Partners, LLC, a Vermont limited liability company, with an address of 70 South Winooski Avenue, Burlington, Vermont 05401 (hereinafter the "Tenant").

WITNESSETH:

Section 1. Demise, Description of Premises. Landlord does hereby demise, let, rent and lease unto the Tenant, and the Tenant hereby hires and rents from the Landlord, Unit C-1 of the Westlake Area Condominium. Unit C-1 is the first (lower) level of the Westlake Parking Garage constructed as part of the Westlake Project on the corner of Cherry and Battery Street in Burlington, Vermont. Unit C-1 contains approximately fifty-six (56) parking spaces. Unit C-1 is shown on those certain plans entitled "Westlake Area Condominium" prepared by Civil Engineering Associates, dated June 23, 2005. Included in this Lease are all rights, easements and agreements appurtenant to Unit C-1 and all the appurtenant rights and easements of Landlord as unit owner in the Westlake Area Condominium necessary for or incidental to the operation of C-1 as a parking facility for the unit owners of Unit E (collectively the "Premises"). Subject to Landlord's rights and obligations as specifically set forth herein, Landlord shall retain all rights and be subject to all obligations of a Unit owner under the Master Declaration, Westlake Area Condominium, dated July __, 2005 (the "Master Declaration"). Tenant acknowledges and agrees that Landlord's obligations hereunder arise at the time Landlord acquires title to Unit C-1.

Section 2. Term of Lease. Said Premises are hereby leased to Tenant, subject to all of the terms and conditions contained herein, for a term of Twenty (20) years commencing on the thirtieth (30th) day following the issuance by the City of Burlington of a Final Certificate of Occupancy for completion and occupancy of the Premises and ending on the twentieth (20th) anniversary of said date (the "Lease Term") unless said term is sooner terminated as hereinafter provided. In no event shall the Lease Term commence after June 15, 2006.

Section 3. Rent and Triple Net Payments.

(a) Rent. Tenant agrees to pay to Landlord, annual rent in the amount of Seventy Two Thousand and 00/100 Dollars (\$72,000.00) during the term of this Lease (the "Annual Rent"). Tenant agrees to pay without demand the Rent in annual installments on the date the Lease Term commences and on each anniversary until the end of the Lease Term. A penalty of 15% shall be due on any payment that is more than five (5) days late.

(b) Maintenance and Replacement. Consistent with Section 6.05 of the Master Declaration, Tenant will share equally with the Unit Owner of Unit C-2 in the Westlake Area Condominium, through the payment of common area charges or

otherwise, the cost of operation, periodic maintenance, repair, replacement and security of the parking structure (C-2), but said obligation shall not include costs attributable to equipment and access areas that serve the second floor of the parking garage exclusively.

(c) Capital Reserve Fund. Additionally, on an annual basis, Tenant shall pay to the Landlord the sum of \$6,000.00 as a contribution ("Tenant's Contribution") toward a capital reserve fund ("Fund"). Tenant's Contributions shall be accumulated in the Fund and shall be used, together with an equal contribution from the Unit Owner of Unit C-2 in the Westlake Area Condominium ("C-2 Contribution") to pay the cost of replacement and repair of any portion, or all, of the parking garage structure.

Section 4. Declaration, Bylaws and Rules and Regulations. Tenant acknowledges and agrees that this Lease is subject to and subordinate to that certain Master Declaration of Westlake Area Condominium, dated July __, 2005, as may be amended from time to time, and that Tenant shall at all times comply with the terms and conditions of the same. Tenant further agrees to comply with and abide by all rules and regulations adopted by the Westlake Area Condominium Association. To the extent necessary, Tenant acknowledges and agrees that the foregoing instruments are incorporated by reference and are made a part of this Lease. Tenant shall use the Premises as a parking garage and storage for the benefit of the Residential Condominium Building on Unit E of the Westlake Area Condominium Association and in conformance with all permits and approvals for the Premises.

Section 5. Option to Purchase; Option Price. As additional consideration for this Lease, Landlord hereby sells, gives, grants and conveys unto Tenant the sole and exclusive option to purchase the Premises during the Lease Term ("Option to Purchase"). Tenant may exercise its Option to Purchase at any time during the Lease Term by sending written notice via certified mail return receipt requested to Landlord at Landlord's address set forth in Section 12 of this Lease. In the event Tenant exercises its Option to Purchase, the Tenant shall pay to Landlord for the Premises the sum of Seventy Two Thousand and 00/100 Dollars (\$72,000.00) times each year (prorated for any portion of a year) remaining on the Lease Term plus Four Hundred Forty-Eight Thousand and 00/100 (\$448,000.00). In no event shall the Landlord convey less than every parking space contained on or within the Premises.

Section 6. Purchase. In the event the Tenant does not exercise its Option to Purchase prior to the termination of the Lease Term, Tenant shall purchase the Premises from the Landlord on the last day of the Lease Term in accordance with the terms and provisions of the Purchase and Sale Agreement attached hereto as Exhibit 1 and executed herewith.

Section 7. Quiet Enjoyment. Landlord covenants that the said Tenant, on paying all rent required to be paid by Tenant, and performing the other covenants and undertakings by the Tenant to be performed, shall and may peaceably have and enjoy said Premises for the term aforesaid in accordance with the terms of this Lease.

Section 8. Successors and Assigns. All rights and liabilities herein given to, or imposed upon, the respective parties hereto shall extend to and bind the several respective heirs, executors, administrators, successors and assigns of the said.

Section 9. Entire Agreement, Applicable Law. This Lease with any exhibits and riders attached hereto contains the entire agreement of the parties and no representations, inducements, promises or agreements not embodied herein shall be of any force or effect, unless the same are in writing and signed by or on behalf of the party to be charged. The captions of particular sections are inserted as a matter of convenience only and in no way affect or define the scope or intent of this Lease or any provision thereof. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Vermont.

Section 10. Partial Invalidity. If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

Section 11. Waiver of Rule of Construction. The parties waive the benefit of any rule that this Agreement is to be construed strictly against one party or the other by virtue of the circumstances of the drafting of this Agreement.

Section 12. Notices. Any notices to be given pursuant to this Lease shall be sufficient if given by a writing deposited in the United States mails, certified mail or registered mail, postage prepaid, and addressed as follows:

If to Landlord:	Brendan Keleher Burlington Community Development Corporation City Hall, 149 Church Street Burlington, Vermont 05401
With a Copy to:	Richard C. Whittlesey, Esq. Roesler, Whittlesey, Meekins & Amidon 84 Pine Street, 400 Financial Plaza Burlington, Vermont 05402
If to Tenant:	David Scheuer c/o Retrovest Companics 70 South Winooski Avenue Burlington, VT 05401
With a Copy to:	Robert J. Foley, Esq. Paul Frank + Collins P.C. One Church Street, PO Box 1307 Burlington, Vermont 05402

or to such other person or address as the party entitled to notice shall have specified by written notice to the other party given in accordance with the provisions of this Section 36.

Section 13. Assignment. Tenant may assign, sublet or otherwise convey its rights, title and interest under this Lease to any party which is owned or controlled by one or more of the members of the Tenant without the consent of the Landlord. Tenant may further assign, sublet or otherwise convey its rights, title and interest under this Lease to the Westlake Residential Condominium Association without the consent of the Landlord. Tenant may assign, sublet or otherwise convey its rights, title and interest under this Lease to any other party with the prior consent of the Landlord, which consent shall not be unreasonably withheld.

Section 14. No Alterations Without Consent. No alteration, addition, or improvement to the Premises shall be made by the Tenant without the prior written consent of the Landlord, which consent shall not be unreasonably withheld or delayed.

Section 15. Insurance. During the term of this Lease, the Tenant, at its sole cost and expense, and for the benefit of the Landlord, shall carry and maintain the following types of insurance in the amounts specified:

(a) Fire and extended coverage insurance covering the betterments and improvements of Tenant against loss or damage by fire and against loss or damage by other risks now or hereafter embraced by "extended coverage", so-called, in an amount not less than full replacement cost.

(b) Comprehensive public liability insurance, including property damage, insuring Tenant against liability for injury to persons or property occurring in or about the Premises or arising out of the ownership, maintenance, use, or occupancy thereof.

Landlord will carry and maintain all other insurance on the Premises and Tenant shall pay Landlord in accordance with Section 3.B above.

Section 16. As-Is. Tenant had a full opportunity to inspect the Premises and is leasing the Premises in its as-is condition.

Section 17. Subordination. Tenant acknowledges and agrees that its interest under this Lease shall be subordinate to any mortgage recorded prior to the date of this Lease.

Section 18. Recording of Notice. Landlord and Tenant agree that either party may record a Notice of Lease or Short Form Lease in the City of Burlington Land Records evidencing this Lease.

Section 19. Indemnification. Tenant shall indemnify and save harmless Landlord from and against any and all liability, claims, demands, damages, expenses, fees, fines, penalties, suits, proceedings, actions and causes of action of every kind and nature suffered or incurred as a result of any breach by Tenant, its agents, servants, employees, visitors or licensees of any covenant or condition of this Lease, or as a result of Tenant's use or occupancy of the Premises, or the carelessness, negligence or improper conduct of Tenant, its agents, servants, employees, visitors or licensees; provided, however, that it is understood and agreed that the obligations of Tenant hereunder shall not extend to the negligence or willful misconduct of the Landlord, its agents or representatives.

Landlord shall indemnify Tenant from and against claims which are for personal injury, death or property damage relating to incidents occurring in or around the Premises that are caused by the negligence or willful misconduct of Landlord, its agents or employees; provided, however that it is understood and agreed that the obligations of Landlord hereunder shall not extend to the negligence or willful misconduct of Tenant, its agents, employees, visitors, or licensees.

Section 20. Default. If any one or more of the following events (herein sometimes referred to as "events of default") shall happen:

(a) If default shall be made in the due and punctual payment of rent, or additional rent payable under this Lease, or any part thereof, when and as the same shall become due and payable, and such default shall continue for a period of thirty (30) days and for an additional forty-eight (48) hours after written notice from Landlord that such rent has not been paid within said fifteen (30) day grace period; or

(b) If default shall be made by Tenant in the performance or compliance with any of the agreements, terms, covenants or conditions in the Lease provided, other than those referred to in the foregoing subparagraph (A), for a period of thirty (30) days after notice from Landlord to Tenant specifying the items in default, or in the case of a default or contingency which cannot with due diligence be cured within said thirty (30) day period, if Tenant fails to commence within said thirty (30) day period the steps necessary to cure the same and thereafter to prosecute the curing of such default with due diligence (it being understood that the time of Tenant within which to cure shall be extended for such period as may be necessary to complete the same with all due diligence)

then and in any such event of default, Landlord may at any time thereafter give written notice Tenant specifying such event or events of default and stating that this Lease and the term hereby demised shall expire and terminate on the date specified in such notice, and upon the date so specified, all rights of Tenant under this Lease shall expire and terminate.

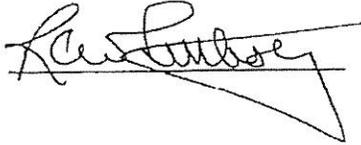
Section 21. Access. Landlord and Landlord's agents shall have the right to enter the Premises upon reasonable notice in a reasonable manner and at all reasonable times to examine the same.

Section 22. Maintenance. Tenant shall maintain the Premises in a good and clean condition, reasonable wear and tear excepted. Tenant's maintenance of the Premises shall include but not be limited to servicing and maintenance of access control equipment, HVAC, fire suppression apparatus, sump pumps, as well as crack treatment and repair, painting and cleaning when required.



IN WITNESS WHEREOF, the parties have executed this Lease, in duplicate originals, as of the date first above-written.

IN PRESENCE OF:



LANDLORD

Burlington Community Development Corporation

By: 

TENANT

Westlake Residential Partners, LLC

By: _____
