



COMMUNITY & ECONOMIC DEVELOPMENT OFFICE

ROOM 32 • CITY HALL • BURLINGTON, VERMONT 05401
(802) 865-7144 • (802) 865-7142 (TTY) • (802) 865-7024 (FAX)

www.cedoburlington.org

September 28, 2010

TO: Burlington Community Development Corporation
From: Larry Kupferman

Re: Ground Lease amendment with the Onion River Cooperative/City Market

In March, 2001 the Burlington Community Development Corporation (BCDC) entered into a ground lease with the Onion River Cooperative at 82 and 92 South Winooski Avenue in order for the cooperative to build a Supermarket Building which is known as City Market. The lease term is an initial 20 year term with 16 successive five year renewal terms.

The current base rent is \$26,000 per year. In year 11, beginning March of 2012, the lease calls for addition rent "equal to 50% of its 'Available Cash Flow' less accelerated loan payments required by the USDA based upon the prior year's performance ('the Percentage Rent')." In this case Available Cash Flow means "Gross Cash Flow" less "Debt Service", "Capital Expenditures" and "Replacement Reserves."

In late 2008, the General Manager on City Market, Clem Nilan, requested that BCDC consider an amendment to the Ground Lease. The Board of Finance discussed and approved in concept a restructuring of the lease based on the model of the land lease for Site A on Cherry St. This was agreeable to City Market. It is proposed (as attached draft) to revise the lease to provide for two 49 year lease terms and a payment schedule to be \$50,770.36 per year (\$12,692.59 per quarter) base rent plus \$8,000 per year fee for services indexed by the CPI rate of inflation.

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SECOND AMENDMENT TO GROUND LEASE AGREEMENT

THIS SECOND AMENDMENT TO the Ground Lease Agreement executed by and between Burlington Community Development Corporation (“Lessor” or “BCDC”) and Onion River Co-op (“Lessee” or “Co-op”) is an amendment to said Ground Lease executed by the parties on or about the 27th of March, 2001 (“the Lease”) and is made as of this ____ day of October, 2010.

WHEREAS, the Lessor and Lessee have agreed that both the term of the Lease and the rent paid pursuant thereto should be amended and modified.

NOW THEREFORE, IN CONSIDERATION of the rents and of the mutual covenants and promises hereinafter set forth and set forth in the Lease, as previously amended, the parties agree to the following amendments to the Lease:

1. Paragraph 2 – Term – The Term of the Lease shall be amended and restated by substituting the following language for the all the current language contained in Paragraph 2 of the Lease:
“2. Term - The term of the lease shall begin on the date of this Second Amendment (“Rental Commencement Date) and shall end forty-nine (49) years from the Rental Commencement Date, unless sooner terminated in accordance with the terms of the Lease, as amended. Provided that no Event of Default (as defined in the Lease) by Lessee has occurred and is continuing at the expiration of the Term, the Lessee shall have the option to extend the lease term for an additional forty-nine (49) years, subject to the same terms and conditions contained herein. Unless Lessee shall notify Lessor, in writing, at least ninety (90) days prior to the expiration of the then current lease term of Lessee’s intention not to extend the term of the Lease, the Lease shall automatically be extended for the next successive term, if any such term remains.”
2. Paragraph 3 – Rental – The Rental provision of the Lease shall be amended as follows by substituting the following for all language for all the current language constained in paragraph 3 of the Lease:
3. Rental and Fee for Services -

“The Lessee’s obligation to pay rent under the Lease shall begin on the Rental Commencement Date. Lessee covenants and agrees to pay Lessor, as rental for the Leased Premises, a quarterly payment of TWELVE THOUSAND SIX HUNDRED NINETY TWO DOLLARS AND FIFTY NINE CENTS (\$12,692.59)(“Base Rent”). Such payments shall be made not later than the ____ day of each quarter, commencing on October __, 2010, and continuing thereafter during the Term of the Lease. In addition to the Base Rent, the Lessee shall pay to Lessor a fee for services in lieu of property taxes, which shall be in the amount of EIGHT THOUSAND DOLLARS (\$8,000.00) per year. This amount shall be paid on _____ each year and shall be increased after the first year of the

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Term set forth above by the rate of inflation as reflected in the Consumer Price Index, as defined in the Lease.”

3. All references to any “Percentage Rent” which may be contained in the Lease shall be deleted.

All other provisions of the Lease shall remain, in full force and effect as set forth originally in the Lease and as amended by the parties on or about December 20, 2001.

[ADD SIGNATURE BLOCKS HERE]