

First Amendment to Development Agreement

This First Amendment to Development Agreement (“Amendment”) is entered into as of the ___ day of May, 2020 made by and between the **CITY OF BURLINGTON**, a Vermont municipal corporation (the “City”), and **BC COMMUNITY HOUSING, LLC**, a Vermont limited liability company (“BCCH”). Hereafter, the City and BCCH may each be referred to individually as a “Party” and collectively as the “Parties.”

WHEREAS, the City, BCCH, Vermont Land Trust, Inc., a Vermont non-profit corporation (“VLT”), and Champlain Housing Trust, Inc., a Vermont non-profit corporation (“CHT”) are parties to a Development Agreement fully executed on January 7, 2016 (the “Agreement”, capitalized terms used in this Amendment and not defined shall have the meanings given in the Agreement) related to the development and disposition of real property situated between North Avenue and Lake Champlain, with an address of 311 and 329 North Avenue, Burlington, as more particularly described therein (the “Property”).

WHEREAS, since the Agreement was executed, the following provisions of the Agreement have been implemented:

- The City and VLT acquired the Public Open Space, VLT conveyed to the City its interest in the Public Open Space, BCCH has released its option to repurchase the Public Open Space, and the Public Open Space is now wholly-owned by the City and managed by the Burlington Department of Parks, Recreation and Waterfront, subject to a Historic Preservation Easement and to a Conservation Easement, both held by the Vermont Housing and Conservation Board. VLT has, therefore, satisfied its obligations under the Agreement.
- BCCH obtained municipal and state land use permits for the CHT Project and for the BCCH Project, which is known as “Cambrian Rise”, and the approved site plan for Cambrian Rise differs from the Plan that is attached to the Agreement as Exhibit B.
- CHT acquired a portion of the Property from BCCH, and CHT, together with Cathedral Square Corporation, has constructed the CHT Project to include 146 rental units, of which 125 are IZ rental units; the CHT Project is anticipated to be substantially complete and ready for occupancy in the fall of 2019. Upon completion of construction, CHT shall have satisfied its obligations under the Agreement.
- BCCH has begun construction of the BCCH Project.
- The City has granted BCCH a stormwater easement over and through the Public Open Space.
- BCCH, in consultation with the Department of Parks, Recreation and Waterfront, has contributed \$25,000 towards its obligation under Article VII, Section 1 of the Agreement to contribute up to \$100,000 towards the public improvements planned for the nature trail on the Public Open Space.

WHEREAS, to account for changing market conditions, BCCH has asked the City to increase the cap imposed by the Agreement on the number of housing units permitted on the Property from 770 units to 950 units, and the City has agreed to grant that increase subject to the terms and conditions set forth in this Amendment, and to generally amend the Agreement in the manner set forth in this Amendment.

NOW THEREFORE, in consideration of the covenants, considerations and mutual benefits set forth herein, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

1. Background Information. The information set forth in the background section of this Amendment is incorporated herein by reference.
2. Site Plan. The Plan attached to and made a part of the Agreement as Exhibit B is hereby replaced with the Proposed Conditions Overall Site Plan entitled “Cambrian Rise, 311 & 329 North Avenue, Burlington, VT”, prepared by Civil Engineering Associates, Inc., dated January 2017 and last revised January 23, 2017, a copy of which is attached hereto as **Exhibit A** and made a part of this Amendment, recognizing that particular buildings depicted on such plan have been modified in accordance with detail drawings that have been approved by municipal and state permitting authorities.
3. Maximum Number of Residential Units. Article II, Section 5 of the Agreement is hereby deleted and replaced with the following: Subject to the terms and conditions set forth below in this Amendment, the Projects shall have no more than 950 total residential units. The City’s agreement to increase the maximum number of residential units from 770 to 950 is conditioned upon compliance with the terms set forth below by BCCH and its successors and assigns:
 - a. In all events, BCCH and the Projects shall comply with the requirements of the City of Burlington Department of Public Works including, without limitation, requirements associated with connection to the municipal water and sewer systems, and with the requirements of the Burlington Comprehensive Development Ordinance and with all state and municipal land use permits and approvals issued therefor including, without limitation, requirements regarding density/floor-area ratio, lot-coverage, height, setbacks, dimensional limitations, traffic, stormwater, the payment of application fees and impact fees, and the provision of affordable or inclusionary housing (both rental and owner-occupied, as the case may be).
 - b. If constructed, the additional 180 residential units will be integrated into the existing mix of 14 approved buildings in two primary ways, as follows: (i) redesigning floor plans to decrease unit sizes and (ii) increasing the height of some buildings to the limit allowed under the new zoning for this district to allow for additional units to be constructed within the 14 approved buildings. The requirement that BCCH accommodate the additional residential units within the 14 approved buildings is not intended to prohibit BCCH from modifying the area or configuration of the 14 approved buildings so long as any such modification is undertaken in compliance with Section 3(a) of this Amendment.

4. Traffic Impact; Consideration. The Burlington Department of Public Works (“DPW”) has reviewed an updated Traffic Impact Study prepared for BCCH by Resource Systems Group in connection with the proposed increase in residential density, and is concerned about the impact of increased traffic on the intersection of North Avenue, Washington Street and Berry Street. DPW proposes to address those impacts by making intersection improvements consistent with the North Avenue Corridor Study, and to use a combination of traffic impact fees paid in connection with the Projects and a Transportation Grant that has been awarded to the City. To ensure the City’s ability to timely complete such intersection improvements, in consideration of the City’s agreement to increase the cap imposed by the Agreement on the number of housing units permitted on the Property from 770 units to 950 units, BCCH agrees to pay to the City \$67,000 of the traffic impact fees payable in connection with the Projects by June 30, 2020. The \$67,000 payment is anticipated to be comprised of traffic impact fees payable in ordinary course of developing the Projects and the pre-payment traffic impact fees for future buildings. The City, acting through DPW, reserves the right to more thoroughly review the traffic impacts associated with the increase in the number of housing units on the Property through the zoning and permitting processes, and to impose additional conditions in the ordinary course of conducting such review.

5. Inclusionary Housing. The City confirms that in accordance with the Certificate of Inclusionary Housing Compliance issued by the Burlington Community & Economic Development Office dated January 10, 2019 and issued in connection with Zoning Permit ZP 19-0021CA/MA, the 125 IZ rental units that are being constructed as part of the CHT Project satisfy the IZ requirement for up to 500 total rental units at Cambrian Rise, including the 146 total rental units that are part of the CHT Project. The City further confirms that upon its receipt of a certification from CHT indicating that the CHT Project actually contains 128 IZ rental units, the Burlington Community & Economic Development Office will issue a new or amended Certificate of Inclusionary Housing Compliance to certify that the CHT Project satisfies the IZ requirement for up to 512 total rental units at Cambrian Rise, including the 146 total rental units that are part of the CHT Project. If the Projects ultimately include more than 500 or 512 units of rental housing, as the case may be, then BCCH will be obligated to satisfy IZ requirements with respect to such excess rental housing units.

6. Bike Path Connection. The City recognizes that BCCH has facilitated a \$250,000 private pledge for the build-out of a paved connection from Cambrian Rise to the Burlington Bike Path as contemplated by Article III, Section 2 of the Agreement, and that the Burlington Department of Parks, Recreation and Waterfront has determined that its preferred design for this connection costs more than \$250,000. BCCH agrees to engage its designers and engineers to redesign and construct the connection in collaboration with the Burlington Department of Parks, Recreation and Waterfront, utilizing the \$250,000 pledge, paying for any costs in excess of \$250,000 itself or through the solicitation of contributions from parties other than the City; without limiting the foregoing, BCCH will pay for the 30% design concept plans that the City commissioned. The City acknowledges that BCCH has paid \$25,000 in contribution to the design of public improvements planned for the existing nature trail on the Public Open Space, as required by Article VII Section 1 of the Agreement, and agrees that BCCH may utilize additional funds originally intended for the nature trail to instead pay for the cost of designing and constructing the paved connection path. Accordingly, Article III, Section 2 of the Agreement is hereby deleted and replaced with the following: BCCH and the City (through its Parks, Recreation & Waterfront Department) will work

collaboratively and in good faith to select a location and configuration for a paved recreation path on the Public Open Space, connecting the new public street to the City's existing recreation path, and to memorialize their agreement regarding such location and configuration in writing; such new section of the recreation path to be constructed by BCCH at its expense, however, upon its completion, it shall be owned and maintained by the City and made perpetually available to the public.

7. Except as modified hereby, the Agreement remains unmodified and in full force and effect.

Two Signature Pages to Follow

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IN WITNESS WHEREOF, this Amendment is executed by the duly authorized officers or representatives of the parties hereto.

CITY OF BURLINGTON

By: _____
Miro Weinberger, Mayor

STATE OF VERMONT
CHITTENDEN COUNTY, SS

At Burlington, in said County and State, this ____ day of May, 2020, personally appeared Miro Weinberger, Mayor of the City of Burlington and he acknowledged the within instrument by him subscribed, to be his free act and deed and the free act and deed of the City of Burlington.

Before me, _____
Notary Public
My Commission expires: 1.31.21
My Commission number: _____

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BC COMMUNITY HOUSING, LLC

By: EF Farrell, LLC, its Managing Member

By: _____
Eric F. Farrell, Sole Member

STATE OF VERMONT
CHITTENDEN COUNTY, SS

At Burlington, in said County and State, this ____ day of March, 2020, personally appeared Eric F. Farrell, Sole Member of EF Farrell, LLC, being the Managing Member of BC COMMUNITY HOUSING, LLC, and he acknowledged the within instrument by him subscribed, to be his free act and deed and the free act and deed of the entities on behalf of which he acted.

Before me, _____
Notary Public
My Commission expires: 1.31.21
My Commission number: _____

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Exhibit A

Proposed Conditions Overall Site Plan entitled “Cambrian Rise, 311 & 329 North Avenue, Burlington, VT”, prepared by Civil Engineering Associates, Inc., dated January 2017 and last revised January 23, 2017

Attached

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