Development Agreement

This Development Agreement ("Agreement") is entered into as of October 26, 2017 by and between the **City of Burlington**, a Vermont municipal corporation (the "City") and **BTC Mall Associates LLC**, a Delaware limited liability company ("Owner"). Each is referred to individually as a "Party" and collectively as the "Parties."

Background

A. Owner owns the real property numbered 49 Church Street, Burlington, Vermont, Parcel No. 044-4-004-000 which is improved with a retail shopping mall known as "Burlington Town Center", and the real property numbered 75 Cherry Street, Burlington, Vermont, Parcel No. 044-4-033-000, which is improved with a parking garage (together, the "Property").

B. The Burlington Town Center mall opened in 1976 under the name "Burlington Square Mall" in conjunction with 1960s-era urban renewal development in the City of Burlington. While the existing mall originally expanded the retail base of the City's downtown, for several years it has been a chronic underperformer economically. The site is also a barrier to north-south connectivity, and has precluded the growth of a vibrant street life on Bank Street and Cherry Street.

C. The City has undertaken a community planning process known as "*planBTV – Downtown & Waterfront Master Plan*" ("PlanBTV"), which contemplates the redevelopment of the Property in a manner that would utilize the Property more intensively in order to infill downtown development and provide more active street-level uses, would include a mix of affordable and market rate downtown housing, retail and services, and would also restore and/or improve connectivity to the urban grid along Pine Street and St. Paul Street.

D. Owner desires to redevelop the Property substantially in a manner that the Owner and the City believe aligns with the vision set forth in PlanBTV, as described and depicted on the plans, drawings and other materials included within a 51 sheet plan set entitled "Burlington Town Center, Burlington, Vermont, Planning & Zoning Submission" prepared by PKSB Plus Architects, dated December 15, 2016 and last revised February 16, 2017, as supplemented by "Cellar Plan" Sheet A-050 last revised July 12, 2017, "Floor Plans 1-4th" Sheet A-051 last revised February 21, 2017, "Elevations – Bank Street & Pine Street" Sheet A-202 last revised July 12, 2017, and "Site Plan" Sheet C-103 last revised July 7, 2017, a copy of which is attached hereto as **Exhibit A** and made a part hereof (the "Plan Set"), which was approved by the Burlington Development Review Board by findings of fact and decision for File No. ZP17-0662CA/MA dated March 17, 2017, as modified by Judgment Order dated July 17, 2017 executed by the State of Vermont Superior Court, Environmental Division, in the matter captioned *Devonwood Investors, LLC 75 Cherry Street*, Docket No. 39-4-17 Vtec (such approval, as so modified and supplemented, is referred to herein as the "DRB Approval", and such project, as approved in the DRB Approval, is referred to as the "Project").

E. The Project contemplates the following features and characteristics (all numbers are approximations and may change due to final architectural and engineering requirements):

- ±272 residential housing units (collectively measuring ±299,602 sq. ft.), including a mix of unit sizes and including both market rate and affordable (i.e., inclusionary) housing units.

- ±230,328 sq. ft. of Class A commercial office space.

- ±95,000 sq. ft. of first class retail space, designed to attract a mix of local, regional and national retailers, service providers, including a primary care medical facility, and restaurants (the "Retail Space").

- ±28,062 sq. ft. that may either be used as retail space or which may be leased to a pre-school and early childhood development center tenant for the provision of childcare services.

- ±3,000 sq. ft. community space (the "Community Space").

- A ±909 space parking garage (measuring ±385,551sq. ft.), including the provision of covered long term bicycle parking facilities for 175 bicycles.

- Uncovered short term bicycle parking facilities for at least 100 bicycles.

- The re-establishment of St. Paul Street as a 60 foot-wide through, public street running between Bank Street and Cherry Street.

- The re-establishment of Pine Street as a 60 foot wide through, public street running between Bank Street and Cherry Street.

- The "activation" of the north side of Bank Street and the south side of Cherry Street between St. Paul Street and Pine Street, including (in both instances) a high level of street design including: sidewalks within the public ROW (but wider than those currently in place, to the extent that such additional width is possible); street trees; pavers; street lighting; storm water features, sub-surface utilities and infrastructure; and the creation of multiple entry points into the retail and other spaces within the Property from those streets.

- A rooftop observation deck to be made available to the public, subject to the Owner's reasonable rules and regulations and periodic, short-term closures for private rentals and events.

- The re-establishment of St. Paul Street, the re-establishment of Pine Street, and the activation of Bank and Cherry Streets (all as more particularly described above and below) are collectively referred to in this Agreement as the "Public Improvements", and the balance of the Project elements described in this Agreement are referred to as the "Private

Improvements". The foregoing description of the Project Improvements is intended to outline the Project as approved by the DRB Approval. If there is a conflict between the foregoing description of the Private Improvements and the terms and conditions of the DRB Approval, the DRB Approval shall control.

F. The Parties entered into a Pre-Development Agreement dated May 12, 2016 (the "PDA"), and both Parties have performed certain obligations required thereby, and this Agreement is intended to replace the PDA as the blueprint to guide the Parties' continued efforts to construct and complete the Project.

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 City and Owner agree as follows:

1. Project Schedule.

a. The Owner desires to commence construction of the Project (including structural demolition of the Burlington Town Center mall) on or before October 15, 2017, or as soon thereafter as possible upon approval of this Agreement, timing being of the essence, and the City agrees to cooperate in good faith with Owner to facilitate Owner's achievement of these objectives, subject to the conditions outlined in this Agreement, to join in any application to the State of Vermont for a public water supply infrastructure permit if the City's involvement is required by the State of Vermont, and to join in any other permit application to the State of Vermont if the City's involvement is required by the State of Vermont for such permit. Nothing herein shall preclude Owner from seeking permits to revise the Project to add or modify uses of the Property in a manner consistent with the applicable zoning ordinance then in effect. The Owner agrees that once construction of the Project has commenced, Owner shall diligently prosecute construction to completion, subject to any delays caused by a force majeure or other event outside the reasonable control of the Owner.

b. Owner anticipates completing the Project in accordance with the Project Schedule referenced in the DRB Approval, subject to force majeure events and the delay caused by the filing of an appeal to the DRB Approval, which was dismissed on July 17, 2017 by the Superior Court in the above-referenced Judgment Order (the "Project Schedule"), provided that notwithstanding the schedule referenced in the DRB Approval, Owner plans to complete the Public Improvements in sufficient time to be eligible for reimbursement in accordance with Section 4 of this Agreement. Each Party agrees to use best efforts to cause the Project to adhere to the Project Schedule, with the understanding that each Party's ability to timely perform under this Agreement may be contingent on the other Party's timely performance, or on timely performance by one or more third parties (including, without limitation, independent political bodies of the City of Burlington) or processes over whom the Parties have no control.

2. Sustainability; Additional Project Features; Design Modifications; Community Resources; Parking and Transportation; Additional Public Improvements.

a. Sustainability. In addition to incorporating the Public Improvements and Private

Improvements substantially as described above, Owner agrees that: (i) the final plans and design for the Project will accommodate and support alternative forms of transportation, including the use of bicycles, car-sharing, mass transit and other measures, in the manner set forth in the Plan Set and approved by the DRB Approval; (ii) the final plans and design for the Project will include the installation of rooftop solar photovoltaic electric generation infrastructure in the manner set forth in the Plan Set and approved by the DRB Approval, subject to Owner's receipt of regulatory approval from the Vermont Public Utility Commission and to Owner's entry into a reasonably acceptable interconnection agreement with Burlington Electric Department; (iii) the Project will be built consistent with the requirements of ZA-16-14, Section 4.5.8(c)(6)(A), and will strive to achieve the energy reduction goals outlined in the "Architecture 2030 Challenge," to the extent applicable to new construction, and shall provide the City, upon written request from the City, with periodic updates regarding such efforts; (iv) Owner will work with Burlington City Arts on final plans and designs for public art installations in public spaces in the Project, and the final plans and design for the Project will incorporate City-approved public art installations that are reasonably satisfactory to the Owner and at no additional cost to Owner; (v) the final plans and design for the Project will incorporate accessibility features in accordance with applicable law, and will also use reasonable efforts to incorporate so-called "universal" design standards which, if implemented, would facilitate all-ages accessibility to the Project and which are consistent with the Project as approved by the DRB Approval; and (vi) Owner shall continue to participate in the City's district energy system ("DES") initiative by reasonably cooperating with Burlington Electric Department ("BED") and Corix Utility Systems (Washington) Inc. ("Corix") in the performance of due diligence described in the Memorandum of Understanding dated October 26, 2016 made by and between BED and Corix. The Parties acknowledge that the Owner has already committed to fund a pro rata portion of the due diligence process for the DES initiative and has participated as a lead sponsor in the DES initiative. Owner agrees that the Project will connect to the DES, and Owner shall participate as a customer of the DES, if the DES satisfies the following conditions:

1. The DES rate is competitive with the comprehensive business as usual cost of Owner's alternative heating options.

2. The DES contract grants to Owner a unique rate class based on its expected DES thermal energy consumption, and that such rate class receives pricing through rate design that acknowledges the Project's rate class would be most favored customer pricing among initial DES participants (defined as those participants connecting to DES within two (2) years after commissioning), other than UVM Medical Center.

3. The DES is compatible with the two-pipe system planned by the Owner in connection with the Project.

4. As part of the DES service, Corix provides a temporary solution acceptable to Owner for heating and, potentially, cooling for those portions of the Property that are not demolished in connection with the Project until such time as the DES is operational and available to Owner. Corix and Owner will include a provision in the DES contract to specify reasonable terms related to cost, buy back and residual value of the temporary heating solution if the DES does not proceed to completion and operation.

5. The DES is backed by Corix or another credit-worthy guarantor that is reasonably satisfactory to the Owner, guarantying that if the DES is not operational and available to the Project by March 1, 2019, an adequate alternative interim heating solution will be provided to the Project. The Owner will be responsible for costs of thermal energy as outlined in the applicable Thermal Energy Services agreement, but the Owner shall bear no additional direct or indirect costs in connection with such interim heating solution.

6. BED provides all appropriate incentives available as of the date of this Agreement, or other appropriate incentives that become available after the date of this Agreement (but prior to July 1, 2019), to the Owner and/or the Property for energy efficiency generally, as well as fossil fuel reduction associated with the DES, and any other appropriate incentive that may be or become available to the Project, for the term of the DES contract.

7. The DES contract contains commercially reasonable and customary provisions acceptable to Owner.

Nothing herein shall require Owner to participate in the DES if any of the foregoing conditions have not been satisfied or if doing so would add cost to the Project, be inconsistent with permit conditions applicable to the Project, be technically incompatible with the Project, or cause delay to the Project. If the Project does not ultimately participate in the DES, the Owner will provide a letter to the City as to the reasons why the Project will not connect to the DES.

b. Housing. The Project as approved by the DRB Approval includes 272 residential housing units; however, the final unit count is subject to final construction drawings and approval of as-built design which may alter the unit count number. Owner intends to provide a mix of housing unit sizes, designs, and costs meant to attract a mix of tenants as contemplated in PlanBTV, and the DRB Approval requires that 20 percent of the total units, or 55 units if the Project includes 272 housing units, whichever is higher, shall be inclusionary units in conformity with the City's Inclusionary Zoning Ordinance ("Inclusionary Units"), comprised of the same mix of unit sizes as the market-rate units. Owner agrees that to the extent that Project amenities are made available to the residential units, they shall be equally available to both the market-rate and affordable units on the same terms and conditions. Owner intends to provide housing primarily as rental units but may offer some units for sale. Owner agrees to provide the City with an opportunity to review and comment on the unit design mix and the unit size mix for the residential component of the Project, as well as the unit location for the inclusionary housing units and the mix of rental and any ownership units, for conformity with the goals of PlanBTV, provided that Owner shall have complete discretion and shall retain final control over such issues. Nothing contained herein limits the availability of housing units in the Project for occupancy by individuals, including, without limitation, those who may be pursuing full or part time higher education, seniors or work force members.

c. Workforce Housing. In addition to the affordable, or inclusionary, housing to be included as a component of the Project, Owner shall endeavor to develop some "workforce

housing" as part of the residential component of the Project, "workforce housing" being that which targets households with incomes between 80% to 120% of the median income for the Burlington/South Burlington MSA, adjusted for household size, and it being understood that these voluntary efforts on the part of the Owner shall create no new legal obligation to create or maintain such housing.

d. Low Income Housing Tax Credits. The City agrees to use its diligent, reasonable and good faith efforts to support Owner's efforts to apply for and obtain finance subsidies and Low Income Housing Tax Credits that are normally available from either the State of Vermont or the U.S. government to qualified Vermont development projects that include Affordable Housing and/or Work Force Housing, such as that which this Project intends to offer.

e. Burlington Telecom. Owner agrees to afford Burlington Telecom the same opportunity to bid on the installation and provision of services to the Project as Owner affords to other providers of the services offered by Burlington Telecom. Owner agrees to use reasonable efforts to utilize Burlington Telecom residential and commercial services if such services are available to the Project on the time-line described herein and such services are available on terms and conditions that are competitive with other similar services on a commercial and residential basis and otherwise are satisfactory to the Owner.

f. Community Space and Rooftop Observation Space. Owner agrees to include the development of the Community Space as part of the Project. The Community Space shall be available for use by community and/or civic groups during normal business hours and pursuant to rules and regulations adopted by the Owner. The Parties agree that the Community Space may be located within an indoor portion of the rooftop observation deck. Otherwise the Owner shall locate the Community Space elsewhere on the Owner's Property, as determined by the Owner in the Owner's sole discretion. Owner will work with the City to determine how the Community Space will be designed and programmed. The City, acting through its Community and Economic Development Office ("CEDO"), will work with Owner to develop programs and uses for the Community Space that will optimize its use for the benefit of the residents of Burlington. The rooftop observation deck shall be generally open to the public daily during normal business hours except for those times when it has been used or rented for private events, shall be made available for use by non-profit and educational organizations at discounted rates, and shall include gender-neutral restrooms for use by the public during those times when it is open to the public. The use of the rooftop observation deck shall at all times be subject to the Owner's rules and regulations, including those relating to fees and charges for its rental.

g. Parking and Transportation. Owner will work with Chittenden Area Transportation Management Association (CATMA) and Green Mountain Transit ("GMT") to optimize the interplay between the transportation services that such organizations offer and the parking component of the Project. Owner shall install and implement parking garage safety measures including pervasive and adequate lighting subject to and consistent with Condition 2(c) of the DRB Approval, and a comprehensive security camera system that includes cameras at entry and exit points (including elevators) and in stairwells. Owner shall also install signage that reminds people not to leave valuables in vehicles. Parking garage stairways and elevators shall be well-lit and located where shown on the Plan Set.

h. Additional Public Improvements. In addition to the Public Improvements that are a part of the Project as permitted, and solely to the extent there are sufficient funds available within the Not to Exceed TIF Funding Amount described below in Section 4(b), the Project may include the "activation" of additional sections of Bank Street and of Cherry Street, which will be treated as "Additional Public Improvements" hereunder. Additional Public Improvements may be added to the Project in such order of priority as the City may determine. As used herein, "activation" of street sections means to include a high level of street design including sidewalks within the public ROW (which may be wider than those currently in place), street trees, pavers, street lighting, storm water features, sub-surface utilities and infrastructure. The additional street sections that may be activated as Additional Public Improvements include (1) the south side of Bank Street between St. Paul Street and Pine Street, (2) the north side of Cherry Street between St. Paul Street and Pine Street, (3) both sides of Bank Street between St. Paul Street and Church Street; (4) both sides of Cherry Street between St. Paul Street and Church Street; and (5) both sides of Cherry Street between Pine Street and Battery Street. To achieve a consistent and holistic design, the City will be responsible for conceptually designing the activation of both sides of Bank Street and both sides of Cherry Street between St. Paul Street and Pine Street (as described in Section 3(c)(i) below) even though the activation of the north side of Bank Street and the south side of Cherry Street are part of the Public Improvements and the activation of the south side of Bank Street and the north side of Cherry Street are Additional Public Improvements that may not be included in the Project. The Public Improvements and the potential Additional Public Improvements are depicted on **Exhibit B** attached hereto. In no event shall the addition or the contemplated addition of an Additional Public Improvement, or any action required in connection therewith, delay the schedule of the Project. Owner shall obtain and deliver to the City so-called Add Alternative pricing for each of the Additional Public Improvement elements described in this provision. If Owner constructs any Additional Public Improvements, then Owner's obligation to include any Additional Public Improvement in the Project shall be subject at all times to the application of the reimbursement provisions described in Section 4. Because the Additional Public Improvements are all located within existing municipal rights of way, the City may choose to construct some or all of the Additional Public Improvements itself, using funds available within the Not to Exceed TIF Funding Amount or using other funding sources, in its discretion.

3. Public Improvements; Additional Public Improvements; Construction of Public Improvements and Additional Public Improvements; Municipal Zoning.

a. Although the new segments of St. Paul Street and Pine Street are covered by the DRB Approval, the Plan Set does not incorporate construction level plans and specifications. The Parties shall work together to develop satisfactory construction plans and specifications for the new street segments. The Parties agree that the new street segments shall feature a high level of street design including: wider sidewalks (where such wider sidewalks can be accommodated); street trees; pavers; street lighting; storm water features, sub-surface utilities and infrastructure; high quality benches, trash cans and other similar items of municipal property commonly found within sidewalks, all in substantial compliance with the standards identified on **Exhibit C** attached hereto and made a part hereof, as they may be modified by mutual agreement of the Parties, which are substantially compliant with the City's "Great Streets" standards. Specifically, subject to the terms of this Agreement, the City may modify the plans and specifications as the Parties refine the

Budget applicable to the Public Improvements, subject at all times to the application of the reimbursement provisions described in Section 4.

b. Owner shall, subject to the application of the Public Improvements reimbursement provisions described in Section 4 of this Agreement, construct the Public Improvements as a component of the Project. The DRB Approval includes approval for the construction of the new segments of Pine Street and St. Paul Street and for "activating" those sections of Bank Street and Cherry Street that adjoin the Property. Owner shall not be required to pay for any zoning permits, building permits or encumbrance permits to perform the work associated with "activating" any additional sections of Bank Street and Cherry Street (i.e., any Additional Public Improvements); however, Owner will be required to obtain encumbrance and/or excavation permits prior to performing any such work so that work within the public right-of-way will be properly regulated. In connection with the construction of any Additional Public Improvements, Owner shall not be charged any fee or be required to provide any insurance beyond what is required by this Agreement and if any such fees are required, then the City shall promptly reimburse the Owner for any fee paid by the Owner.

By December 31, 2017, the City shall provide the Owner with the design standards necessary for Owner to prepare construction plans and bid packages and develop a final budget for the new segments of Pine & St. Paul Streets; if the City fails to provide such standards by this deadline, such failure shall not delay Owner's commencement of demolition or construction and Owner's bid packages and final construction budget shall instead include an allowance for the construction of the new segments of Pine & St. Paul Streets. Any Public Improvements or Additional Public Improvements to be constructed pursuant to this Agreement shall in all cases be subject to the reimbursement provisions of Section 4 of this Agreement.

In order to provide the City with reassurance that construction of the Project will continue without interruption (subject to force majeure events) once Owner commences structural demolition of existing improvements on the Property, prior to the commencement of structural demolition for the Project and the release by the City of the relevant structural demolition permit (City agrees to release any interior, non-structural demolition permit that is required upon application by Owner), Owner shall provide the City with (i) the opportunity to review evidence of a commitment to extend fully-secured equity financing for the construction of the Project in an amount not to exceed $56 million (such evidence will include, among other possible items, a copy of an executed agreement between the Owner and Rouse Properties, Inc. confirming the obligation of Rouse Properties, Inc. or a wholly subsidiary thereof to fund equity for Project construction in an amount not to exceed $56 million) together with evidence of the amount of equity financing expended to date (which shall mean a certification from the Owner of the amount expended to date on predevelopment and development expenses for both the Private Improvements and the Public Improvements), (ii) either (a) an executed term sheet from a qualified lender evidencing construction loan financing for the Project, subject to closing conditions and requirements of the lender, or (b) a letter of assurance, reasonably acceptable to the City, issued to the City by Rouse Properties, Inc., or a wholly subsidiary thereof with GAAP net worth of at least $750MM, stating that, subject to reasonable terms and conditions, the Project will commence construction in reliance on the equity commitment described above and that Owner will pursue closing of construction financing for the Project to be available to the Project not later than March 31, 2018, (iii) an

executed construction contract that covers the performance of the structural demolition work, (iv) an executed construction contract that covers the performance of the site work, foundation work and soils work for the Project, and (v) an executed construction contract that covers the performance of construction, mechanical and electrical work to enable that portion of the existing Burlington Town Center mall building that will not be demolished to continue to function once structural demolition of the Project commences.

Owner agrees that prior to commencing foundation work for the construction of the Project, it shall provide the City with a copy of an executed construction contract that contains a guaranteed maximum price to construct the Public Improvements, consistent with the agreed upon Budget required by Section 3(c)(ii)(B) of this Agreement. The guaranteed maximum price contract shall include an allowance for (i) the Public Improvements and (ii) any Additional Public Improvements the City has proposed that the Owner will construct, all in an amount up to the Not to Exceed TIF Funding Amount, less any of the approved TIF Funding Amount the City has otherwise allocated to acquisition, related, or other TIF-eligible costs.

Prior to commencement of foundation work for construction of the Project, Owner shall provide the City with evidence that the obligation to construct the Private Improvements is subject to a guaranteed maximum price contract that is secured by payment and performance bonds for the benefit of the construction lender, a completion guaranty for the benefit of the construction lender, or another customary and commercially reasonable form of financial surety reasonably satisfactory to the City. Owner further agrees that 30 days prior to the commencement of construction of the Public Improvements and Additional Public Improvements, if applicable, Owner shall provide the City with a commercially reasonable performance guaranty (if the Additional Public Improvements are built in phases each separate phase will require its own performance guaranty). The Parties agree Owner's satisfaction of Condition 11 of the DRB Approval will fulfill this Agreement's performance guaranty requirements for the Public Improvements, and that with respect to any Additional Public Improvements that Owner undertakes to perform in accordance with this Agreement Owner may satisfy its obligation to provide the City with a performance guaranty by providing the City with a performance guaranty that is analogous to that provided to satisfy Condition 11 of the DRB Approval.

Owner agrees that the City will not have an adequate remedy at law for Owner's noncompliance with the provisions of this Section 3(b) and, therefore, the City shall have the right to equitable remedies, such as, without limitation, injunctive relief and specific performance, to enforce the foregoing covenant and agreement.

c. Design and Construction of Public Improvements and Additional Public Improvements. The following provisions shall apply to the design, development and construction of the Public Improvements and any Additional Public Improvements that become part of the Project; for purposes of this Section 3(c), the design, development and construction of Public Improvements and any Additional Public Improvements that become part of the Project are referred to as the "Work":

i. Design. As stated above, by December 31, 2017, the City shall provide the Owner with the design standards necessary for the Work. The Owner shall

prepare construction plans and bid packages and develop a final budget for the new segments of St. Paul Street and Pine Street consistent with the design standards provided by the City. By July 1, 2018, the City shall provide, at its expense, conceptual designs (30% drawings) for the balance of the Work (meaning, other than for the new segments of St. Paul Street and Pine Street). Upon receipt of the conceptual designs (the 30% drawings), the Owner shall develop construction plans and bid packages and develop a final budget for such Work (meaning, all Work other than for the new segments of St. Paul Street and Pine Street) consistent with the conceptual design plans provided by the City. The Owner shall develop and deliver to the City the construction plans, bid packages and a final budget for any Work within a reasonable period of time and the City shall review and approve such materials promptly. City staff, employed by the executive branch of municipal government including by CEDO and DPW, shall be authorized to review and approve the design plans and specifications, construction plans, bid packages and budget contemplated by this Agreement.

ii. Bidding and Budget.

A. Before putting bid packages together for any hard construction costs, City and Owner shall have agreed upon the plans and specifications with respect to the Work and they will memorialize their agreement as to the final design and specifications by signing a final design and specification sheet. No material deviations from the approved plans and specifications may be made without the written prior approval of the City. Owner shall notify the City in writing of any and all proposed changes in the plans and specifications and such changes must have the prior written approval of the City before they may be implemented, provided that the City shall act in a timely and reasonable manner with respect to any such changes proposed by the Owner.

B. City and Owner have agreed upon a budget set forth in **Exhibit D** (the "Budget"). The Budget will be modified as agreed by the Parties, by amendment in writing, as plans and specifications for the Work are completed and agreed upon (the "Final Budget"), but in no event shall the Final Budget exceed the Not To Exceed TIF Funding Amount. The Final Budget shall include all costs for which Owner will be reimbursed by the City subject and pursuant to Section 4 of this Agreement, including all agreed-upon: design costs; predevelopment costs and expenses; financing expenses; demolition costs; hard construction costs; soft construction costs; construction management fees and costs; insurance expenses; permitting costs; legal fees; environmental remediation costs; costs to equip the Public Improvements and Additional Public Improvements; costs of commissioning and installing public art within municipal rights-of-

way; costs of acquiring property interests in St. Paul Street and Pine Street including the property rights of third parties who own adjacent properties or properties contiguous with the rights-of-way where the Public Improvements will be constructed; and the City's associated and related costs; subject to the understanding that the City can only legally reimburse TIF eligible expenses in accordance with applicable laws and regulations. The Parties recognize that as the Work may be designed and performed in phases in a manner agreed upon by the Parties (as described elsewhere in this Section 3), the Parties may prepare and/or agree upon a Budget and a Final Budget for just those specific phases, before a Budget and Final Budget covering all aggregate Work has been prepared/completed. Accordingly, although the Budget and Final Budget contemplated by this Agreement refer to the overall budget for the Work, as appropriate given the context, the terms Budget and Final Budget may be construed to refer to particular phases of the Work.

C. The project contingency included in the Budget and in the Final Budget shall not exceed 15% of the direct cost to construct the Work.

D. In bidding the Work, Owner shall obtain at least three bids from unrelated contractors for each element of the Work (unless the City agrees otherwise), isolate those costs for which Owner intends to seek reimbursement from the City and require quantity and unit costs to facilitate the Parties' ability to determine whether such costs are properly reimbursable in accordance with this Agreement.

E. Owner shall provide the City with all of the bids submitted from all contractors and subcontractors for the City's review and approval prior to accepting any particular bid. All bids selected will be mutually agreeable. If Owner desires to accept a bid that was not submitted by the lowest bidder, Owner shall provide the City with a written explanation for its preference.

F. If Owner's general contractor intends to perform any Work using its own forces without bidding such Work, then the cost to perform Work using the general contractor's own forces must be within 5% of the estimate provided to the City by DuBois & King, Inc. dated September 15, 2016 to perform such Work or within 5% of the amount stated in the Final Budget to perform such Work.

G. The City shall have the right to have a third party review any of the bids at its expense, provided that such review does not delay the Project and the City shall not be entitled to reject any bid that is equal to or less than the amount reflected in the Budget (as it may be modified from time to time by agreement of the Parties as

contemplated by Section 3(c)(ii)(B)) for the work covered by such bid.

H. The Parties will use the winning bids to develop and refine the Final Budget for the Work.

I. The City reserves the right to modify the plans and specifications that describe the Work and adjust the scope of the Work in response to the bids so long as the City obtains any amendments of the DRB Approval necessitated by such modifications at its expense and such modifications do not delay the Project timeline or otherwise increase the unreimbursed costs of the Project to Owner and such modifications do not increase the cost of the Work to an amount that exceeds the TIF Not to Exceed Amount less any of the approved TIF Funding Amount the City has otherwise allocated to acquisition, related, or other TIF-eligible costs.

iii. Pre-Construction.

A. Once the construction plans and specifications have been finalized for the Work, the City and its Agents, Owner and Owner's general contractor and, where appropriate, relevant subcontractors shall attend a pre-construction meeting to review the construction plans and specifications for the Work and agree upon the schedule for construction of the Work, to:

1. specify what constitutes material versus non-material changes in the Work;
2. specify the approval process that the City will require for material changes in the Work; and
3. clarify the City's process for TIF administration including identifying which costs are eligible for TIF reimbursement, what back-up will be required prior to payment and what information must be provided in Owner's request for reimbursement.

Owner shall invite the City to attend the pre-construction meeting to discuss the demolition and site preparation work at least three (3) business days prior to starting structural demolition of existing improvements. Demolition can begin no sooner than five (5) business days following the pre-construction meeting.

iv. Construction.

A. Owner shall not commence construction (for purposes of this paragraph, commencement of construction shall not be construed to

include demolition) of any Work until the City shall have approved the plans and specifications for such Work in writing in the manner described in Section 3(c), which approval shall not be unreasonably withheld or delayed.

B. No material deviations from the approved plans and specifications may be made without the written prior approval of the City.

C. Owner shall notify the City in writing of any and all proposed changes in the plans and specifications for any Work and the City shall notify Owner within three (3) business days in writing as to whether any such proposed changes have been approved, not approved, or whether the City reasonably requires a specified number of additional days to review the proposed changes. Failure to provide such notice within three (3) business days, or within such specified number of additional days, shall be deemed to be approval by the City.

D. Owner may start construction of the Private Improvements before the Work or the approval of the final plans for the Work by the City, consistent with this Agreement. Similarly, as stated above the Work may be performed in phases.

v. Construction Meetings and Inspections.

A. Weekly throughout the construction process Owner and Owner's general contractor shall invite the City and its agents to attend construction meetings to the extent that such meetings are concerned with or relate to the construction of the Work.

B. Weekly throughout the construction process, Owner and Owner's general contractor shall afford the City and its agents with full and complete access to the Work so that the City and its agents have the opportunity to effectively inspect the Work during business hours and before work is covered to determine whether the Work is being constructed in accordance with the approved plans and specifications.

C. The City's inspection representative(s) will be provided a heated workspace with access to data services in a job trailer or some other onsite location or a nearby offsite location, within one block of the project site, if Owner and the Owner's general contractor hold such meetings in such offsite location.

D. The Owner shall obtain the services of a Vermont licensed engineer, reasonably acceptable to the City, responsible to properly document and certify that the Work completed conforms with the bid

documents and construction plans and specifications, as amended and approved by the Parties.

E. The City's inspection representative(s) will be provided daily field notes that relate to the Work from the contractor's engineer within 3 business days of receipt of such reports by Owner.

F. Owner will provide submittals, requests for information (RFI) and correspondence regarding any Work to the City's inspection representative(s). Owner agrees the inspections, reports, advice, or recommendations provided to the City by its agents or inspectors is solely for the City's benefit and that Owner may not rely on the reports, advice, or recommendations made to the City by the City's agents or inspectors and that the City shall have no liability or duty to the Owner on account of the reports, advice, or recommendations produced by its agents or inspectors. Notwithstanding, the City agrees to provide the Owner with a copy of each inspection report concerning the Work prepared by the City's agents or inspectors within 3 business days of receipt of such reports by the City.

G. Owner shall provide the City and its agents with Owner's inspection reports and Owner's materials testing inspection reports relating to the Work prepared by engineers and other professionals who are licensed, certified or otherwise qualified to make such reports, which reports shall be addressed to the City (meaning that the City will be an addressee of such reports) and the City will be entitled to rely thereon.

H. Without limitation, Owner's testing agency reports and construction materials testing reports shall include such sampling and testing as may be required by the VTrans Material Sampling and Testing Manual, including without limitation the obligation to certify proper placement and compaction, and to verify that structural soils meet specifications.

I. Owner shall provide the City with contractor submittals, including any certifications required for the funding source, for review and approval within three (3) business days after receipt for any of the Work prior to the Work being initiated. Should materials be used before they are approved they will not be eligible for reimbursement if they are inconsistent with the approved construction plans and specifications for the Work.

J. Owner shall direct its engineers and other licensed professionals to provide the City with all third party inspection reports related to the Work at the same time as they are submitted to Owner or Owner's

representatives or agents.

K. If the City determines it necessary to hire its own third party inspector(s), it will be at the City's expense and the City's inspector(s) will be allowed to perform testing and take samples as they deem necessary or desirable during normal business hours. Any such inspection activities shall be insured with such types and coverage amounts of insurance as are required for Owner and Owner's contractors pursuant to subsection (ix) below and, prior to entering the construction site, and shall provide the Owner with proof of such insurance. Any such insurance policies shall name the Owner and Owner's representatives as additional insureds.

vi. Inspection Disputes.

A. If, upon its inspection of the Work, City reasonably believes there is any material deviation in the construction of the Work from what is required by the approved plans and specifications, the City shall provide written notice thereof to Owner within seventy-two (72) hours of the inspection identifying the specific deviations.

B. Within seventy-two (72) hours of Owner's receipt of the City's notice, Owner shall either commence to correct the deviations and diligently prosecute such corrections to completion, or shall provide the City with written notice as to why correction is not necessary.

C. Any dispute concerning the Work shall be resolved in accordance with the following procedure: Claims must be evaluated first by the City Engineer and then by the Director of Public Works. Should a claim be ruled in favor of the Owner, it will be allowed, in whole or in part, and paid as provided herein. Should a claim be denied in whole or in part by the Director of Public Works the Owner may appeal to the City of Burlington's Chief Administrative Officer. Should a claim be denied in whole or in part by the City of Burlington's Chief Administrative Officer, the Owner may pursue any remedy available at law or in equity.

vii. TIF Administration – Monthly and Annual Reporting.

A. To facilitate the City's ability to promptly reimburse Owner for the budgeted, agreed upon costs of performing the Work at its conclusion in accordance with Section 4 of this Agreement, quarterly (each quarterly report to be organized by month) throughout the performance of the Work Owner shall provide the City with a spreadsheet that itemizes the amounts invoiced by each contractor and subcontractor together with invoice numbers, the dates of work

covered by the invoices and brief descriptions of the work performed by each contractor and subcontractor, together with copies of:

1. requisitions submitted by contractors and subcontractors for performance of the Work that describe the Work performed;
2. evidence that the Work for which payment was requisitioned has been inspected and accepted under the inspection process outlined above; and
3. evidence of payment that corresponds to the amount requisitioned.

B. The City shall review the materials provided by Owner each month to confirm that the Work performed and the amount paid by Owner for the Work corresponds to the budgeted cost of the Work. If the City determines that the Work performed and the amount paid for the Work does not correspond to the budgeted cost of the Work, then it shall notify Owner of such determination within thirty (30) days after its receipt of Owner's submission, and the Parties shall work together in good faith to resolve the matter to their mutual satisfaction.

C. To facilitate the City's ability to promptly reimburse Owner for the budgeted, agreed upon costs of performing the Work at its conclusion in accordance with the Development Agreement, **annually (meaning prior to June 30 of each year)** throughout the performance of the Work Owner shall provide the City with annual reports with respect to items for which TIF funding is sought on forms provided by the City for such purposes, together with the back-up information and materials in the form specified by the City during the pre-construction and construction meeting process outlined above which the City must receive in order to expend TIF funds in compliance with applicable laws, rules and regulations, which information and materials must comply in form and substance with the requirements and rules of the Vermont Economic Progress Council as they may be amended from time to time.

D. In accordance with the requirements established by the Vermont Economic Progress Council, the annual reports must include information regarding the number and types of jobs - both construction and new permanent jobs - created by the Work and by the completed Project using the North American Industry Classification System (NAICS) three digit code, organized by the number of jobs created per sector per fiscal year.

viii. Certification and Completion. After the Work has been completed and accepted by the City (A) in the manner specified in the DRB Approval to the extent that such Work is covered by the DRB Approval and (B) to the extent that such Work is not covered by the DRB Approval, Owner shall provide

the City with: a certification from the Project engineer that the Work was completed in accordance with the approved plans and specification; as-built drawings in hard copy, AutoCAD and PDF formats; and all additional documentation prepared by the Project engineer with respect to the Work including, without limitation, notes, photographs, reports, quality control testing reports, change orders, and submittals.

ix. Insurance.

A. Liability Insurance. Throughout the performance of the Work, Owner agrees that Owner and Owner's general contractor shall obtain and maintain:

1. workers' compensation, disability benefit and other similar employee benefit acts as required by applicable law;
2. Commercial Auto Liability insurance on all owned, non-owned and hired automobiles with a minimum combined limit of not less than Two Million Dollars ($2,000,000) per occurrence; and
3. Commercial General Liability Insurance covering Bodily Injury, Personal/Advertising Injury, Broad Form Property Damage, Products and Completed Operations Liability and Contractual Liability with limits of at least $5,000,000 Combined Single Limit for each occurrence, to insure against all legal liability for personal injury (including death) and property damage suffered on or about the Property or in the vicinity thereof (including within the adjacent public rights of way that will be under Owner's control pursuant to encumbrance permits issued for the Project) or as a result of the exercise of rights granted pursuant to this Agreement.

B. Professional Liability Insurance. Owner's general contractor and design professionals who prepare the final plans and specifications related to the Work shall carry a professional liability policy of errors and omissions insurance of at least $2 million which names the City as an additional insured to the extent commercially available under customary practice, and Owner shall provide the City with certificates of insurance evidencing such coverage prior to the commencement of construction of the Work. If meeting such requirements would pose a hardship to any of Owner's design professionals, then the marginal cost of increasing such design professional's errors and omissions insurance coverage from $1 million to $2 million may be added to the cost of the Work as a TIF-reimbursable item by agreement of the Parties.

C. All insurance shall be obtained from an insurer licensed in Vermont

having an A.M. Best Rating of at least A-, financial size category VII or greater.

D. Owner shall seek to add the City as an additional insured on a primary non-contributory basis for any insurance policies with respect to the Work identified in this section (ix), to the extent that the City has an insurable interest. In addition, the liability policies and workers' compensation policies shall include a waiver of subrogation in favor of the City for all policies where the City is listed as additionally insured in the manner required by the previous sentence. The City agrees to pay for any incremental additional cost associated with obtaining such waiver of subrogation.

E. Owner agrees that the insurance referenced in this section (ix) specify that the coverage to benefit the City shall be primary over any insurance maintained by the City. The City agrees to pay for any incremental additional cost associated with having the coverage specify that the coverage to benefit the City shall be primary over any insurance maintained by the City.

F. Owner shall provide the City with certificates of insurance evidencing such coverages prior to the commencement of construction of the Work and annually upon the renewal thereof until certification and completion of the Work in accordance with subsection (viii) above.

G. All certificates shall contain a provision stating that the coverages afforded under said policies will not be cancelled, materially changed or not renewed without at least thirty (30) days written prior notice to the City.

H. Owner shall, at its own expense, pay all deductibles in connection with its insurance coverage. Nothing herein shall preclude the Owner from insuring the Project under an OCIP plan of insurance so long as the OCIP plan meets the coverage requirements set forth in this section.

x. Liability. Owner agrees to be liable for the acts of its contractors, agents, and employees in connection with the construction of the Project. City agrees to be liable for the acts of its contractors, agents, and employees in connection with its inspection of Project construction.

d. Design and Construction of Additional Public Improvements. The City will be responsible, at its expense, for preparing conceptual design plans (30% drawings) for any Additional Public Improvements that it desires to add to the Project. The City anticipates that it will accomplish the foregoing by July 1, 2018. Owner agrees

that so long as the City delivers the work product described above within the targeted time frame (July 1, 2018), then adding Additional Public Improvements to the Project will not delay the Project timeline or construction schedule. The Parties acknowledge that the construction of street and sidewalk improvements are scheduled for late in the construction schedule, and they agree that there are efficiencies to be gained by adding Additional Public Improvements to the Project so that the work is performed using Owner's contractors while Owner's contractors are mobilized at the Property, but only so long as the addition of Additional Public Improvements to the Project will not delay the Project timeline or construction schedule. Accordingly, even if the City fails to deliver the work product described above within the targeted time frame, then Owner will add Additional Public Improvements to the Project so long as the addition will not in fact delay the Project timeline or construction schedule. If the City however fails to deliver the work product by the prescribed date and if the Project will be delayed if Owner constructs all of the tardy Additional Public Improvements in the Owner's reasonable judgment, then Owner shall have no further obligation to construct those Additional Public Improvements that were tardy and would result in delay. If any Additional Public Improvements are added to the Project, then the terms and provisions of Section 3(c) of this Agreement shall apply to the construction of those Additional Public Improvements in the same manner as they apply to the construction of the Public Improvements. Any Additional Public Improvements added to the Project shall be constructed by the Owner in reliance on the obligation of the City to reimburse the Owner for all eligible costs incurred in constructing the Additional Public Improvements, and Owner's obligation to include and construct such Additional Public Improvements shall be limited to the amount of TIF funds that the City reasonably estimates will be available from the TIF amount generated from the incremental value of the Private Improvements. In furtherance thereof, in no event shall Additional Public Improvements be included in the Work until the City, in consultation with the Owner, has reasonably determined that sufficient TIF proceeds are likely to be generated from the incremental value of the Private Improvements or the City has otherwise agreed to fund the cost of such Additional Public Improvements from other sources.

4. Waterfront TIF District; Payment for Public Improvements.

a. Waterfront TIF District. The Property is situated within the City of Burlington's Waterfront Tax Increment Financing District (the "Waterfront TIF District"), within which the City is authorized to invest public funds to construct or acquire infrastructure improvements that facilitate private investment, all in accordance with applicable laws and regulations and following approval by the Vermont Economic Progress Council, by the Burlington City Council and with the support of the voters via a public referendum. Municipal debt incurred within the Waterfront TIF District is repaid using the incremental increase in property taxes generated by the real property located within the District over the property taxes that were generated by the District at the time that the District was first established, all as more particularly set forth and described in the laws and regulations by which the District was established and is now governed. The Vermont Legislature has authorized the City to extend the period to retain municipal and education tax

increment for the Property until June 30, 2035 as long as Owner shall have, by December 31, 2019, provided to the City, for submission to the Vermont Economic Progress Council, an executed construction contract and a completion guarantee evidencing Owner's commitment to construct not less than $50,000,000 of private development on the Property. Owner acknowledges that in addition to any other limitations set forth and described in this Agreement, the City's ability to reimburse Owner for the hard and soft costs of constructing and equipping the Public Improvements, plus the costs of acquiring real property interests in St. Paul Street and Pine Street (as further described below) is dependent on Owner's compliance with the statutory requirements and approvals required in this provision.

b. Not to Exceed TIF Funding Amount. On November 8, 2016, the voters of the City of Burlington authorized the City Council to pledge the credit of the City to secure the repayment of indebtedness or make direct payment for the purpose of funding certain public improvements and related costs serving the Waterfront TIF District in an amount not to exceed $21,830,000.00 (the "Not to Exceed TIF Funding Amount") as described more particularly in Question 4 of the November 8, 2016 municipal ballot. The City desires and intends to use such funds to pay costs included in the Final Budget (as defined in Section 3(c)). As the Project moves through the design development process and more detailed construction drawings are developed, the Parties may modify the design of the Public Improvements and may add Additional Public Improvements described in Paragraph 2(h) to the Project (provided that there are sufficient funds available within the Not to Exceed TIF Funding Amount), and the Parties shall refine the Budget to determine if the costs of the Public Improvements (and the amount of the Not to Exceed TIF Funding Amount to be spent on the Public Improvements or other related costs) should be adjusted prior to finalization. City staff, employed by the executive branch of municipal government including by CEDO and DPW, shall be authorized to review and approve the Budget as it may be modified and refined upon agreement of the Parties as detailed construction drawings and specifications are prepared.

c. Payment for Construction of Public Improvements and Additional Public Improvements. Subject to the requirements and contingencies set forth in this Agreement, Owner shall construct and equip the Public Improvements and any Additional Public Improvements in accordance with mutually agreed upon plans and specifications and in accordance with the Project Schedule. Owner shall initially construct and equip the Public Improvements and any Additional Public Improvements (except for any Additional Public Improvements that the City agrees to construct itself in accordance with Section 2(h) of this Agreement) at its own cost and expense, and the City shall reimburse Owner for the agreed-upon cost of designing, constructing and equipping the Public Improvements and any Additional Public Improvements in the manner set forth in this Agreement, subject only to the conditions stated below; provided however, that the City may partially reimburse Owner for such costs sooner at its discretion. The City acknowledges that the Owner will construct the Public Improvements and any Additional Public Improvements in reliance upon the City's agreement to reimburse Owner for the cost of designing, constructing and equipping the Public Improvements and any Additional Public Improvements in the manner described in this Agreement. The City shall cooperate in good faith and take such steps as may be reasonably necessary and appropriate to facilitate Owner's receipt of a final Unified Certificate of Occupancy for the Project prior to June 15, 2021, provided that Owner shall substantially complete the Project no later than February 28, 2021 in order to provide the City with sufficient time to inspect the work and issue a final Unified Certificate of Occupancy and sufficient time to prepare

the municipal bond for issuance no later than June 30, 2021. The City's obligation to reimburse Owner for the cost of designing, constructing and equipping the Public Improvements and Additional Public Improvements shall be subject only to the following conditions and otherwise shall be unconditional and fully binding on the City:

i. City and Owner shall have agreed upon the plans and specifications with respect to constructing and equipping the Public Improvements and any Additional Public Improvements that are added to the Project. The Parties shall memorialize their agreement as to the final design and specifications by signing Final Design and Specification Sheets once the final designs have been agreed to by the Parties. The Parties shall use their best efforts to sign the Final Design and Specification Sheet for the new segments of Pine Street and St. Paul Street not later than March 31, 2018, and to sign the Final Design and Specification Sheet for all remaining Public Improvements not later than October 31, 2018, and to sign the Final Design and Specification Sheet for any Additional Public Improvements not later than March 31, 2019;

ii. City and Owner shall have agreed upon the detailed Final Budget relative to the items for which reimbursement is sought, including the cost to design, construct and equip the Public Improvements, the cost to design, construct and equip any Additional Public Improvements that are added to the Project, the costs of acquiring real property interests in St. Paul Street and Pine Street, and together with other associated and related costs described in Question 4 of the November 8, 2016 municipal ballot;

iii. The City shall have received completed monthly and annual reports with respect to items for which TIF funding is sought on forms to be provided to the Owner by the City for such purposes in accordance with Section 3(c) of this Agreement. No other materials, forms or information shall be required of the Owner as a condition to the reimbursement. The City shall notify the Owner if any monthly report or annual report is not timely received by the City, in which case the Owner shall file such report within thirty (30) days following receipt of such notice;

iv. Owner shall have received a final Unified Certificate of Occupancy for the Project prior to June 30, 2021 unless the City agrees otherwise, as described in Section 4(d) of this Agreement. The City shall cooperate, use reasonable efforts and otherwise reasonably assist the Owner in obtaining the Unified Certificate of Occupancy by the date specified;

v. Owner shall have conveyed and the City shall have accepted the segments of St. Paul Street and Pine Street, together with the roadways, utilities and other improvements and infrastructure constructed therein and thereon, to the City in the manner required by Section 4(f);

vi. Owner and the City shall have executed an agreement memorializing the terms

of Section 4(d) in the form attached as **Exhibit E;** and

vii. Owner shall have, by December 31, 2019, provided to the City, for submission to the Vermont Economic Progress Council, an executed construction contract and a completion guarantee evidencing Owner's commitment to construct not less than $50,000,000 of private development on the Property, as described in Section 4(a) of this Agreement.

viii. Solely with respect to any Additional Public Improvements that are not complete at the time that the Project is complete and the foregoing conditions (i) through (vii) have been satisfied, the City's obligation to reimburse Owner for the cost of designing and constructing such Additional Public Improvements shall be subject to satisfaction of the foregoing conditions (i), (ii) and (iii) with respect to such Additional Public Improvements, together with the City's receipt of: the certification from the Project engineer that such Additional Public Improvements were completed in accordance with the approved plans and specifications; as-built drawings in hard copy, AutoCAD and PDF formats; and all additional documentation prepared by the Project engineer with respect to such Additional Public Improvements including, without limitation, notes, photographs, reports, quality control testing reports, change orders, and submittals, as required by Section 3(c)(viii). For clarity, the City agrees that the City shall reimburse Owner, in accordance with the terms of this Agreement, for all Work (other than any incomplete Additional Public Improvements) upon satisfaction of the conditions set forth in (i) through (vii) above, and thereafter, upon completion of such Additional Public Improvements, the City shall reimburse Owner in accordance with the terms of this Section 4(c)(viii).

Upon the satisfaction of all of the above stated conditions the City will promptly reimburse the Owner (and/or the Owner's bank per any credit agreement between the City, Owner and any such bank) all costs and expenses incurred by Owner in connection with the Project that are agreed to and are eligible to be reimbursed by the City under and in accordance with this Agreement. If for any reason the City fails to reimburse the Owner as required by this Agreement, then the Owner shall not be obligated to convey the sections of St. Paul Street and Pine Street together with the roadways, utilities and other improvements and infrastructure constructed therein and thereon as set forth in Section 4(f) unless and until such time as the City reimburses the Owner as required by this Agreement. The Parties acknowledge that, upon the satisfaction of the above stated conditions, time shall be of the essence with respect to the City's obligation to reimburse Owner for the Public Improvements and or the Additional Public Improvements as set forth in this Agreement. If, notwithstanding the satisfaction of the above-stated conditions, the City fails to reimburse the Owner for the Public Improvements and or the Additional Public Improvements as set forth in this Agreement on or before March 31, 2020, or such later date as may be agreed to by the Parties, the City shall pay in addition to all other sums agreed to be reimbursed to the Owner by the City as set forth in the Final Budget the additional carrying costs incurred by Owner in connection with Owner's TIF loan for the period from the reimbursement date to the date of conveyance to the City. The City shall execute such documentation as Owner and/or Owner's financing partner and/or third party lender may reasonably request to evidence its obligation to reimburse Owner for

the costs described in this Section 4(c) in accordance with and subject only to the satisfaction of the conditions specified above.

d. The Parties acknowledge and agree that the construction of the Public Improvements will be bid, and will be accounted for, separately from the Private Improvements, and the City is only legally able to use Waterfront TIF District funds to pay for the actual costs to construct the Public Improvements and Additional Public Improvements, to pay for the value of the real property interests in St. Paul Street and Pine Street that the City acquires as a component of the Public Improvements (as described in Section 4(f)(i)), and to pay certain other associated and related costs described in Question 4 of the November 8, 2016 municipal ballot. In addition, as stated above, the amount of money that the City is able to pay for the Public Improvements is limited by the obligation that the debt must be committed prior to June 30, 2021 (meaning, that Owner must receive a final Unified Certificate of Occupancy for the Project prior to such date unless the City agrees otherwise) and by the obligation that the tax increment generated by the Private Improvements must be sufficient to service the debt incurred by the City to pay such costs. The Parties acknowledge that the tax increment generated by the real property owned by Owner numbered 101 Cherry Street, Burlington, Vermont and identified as Parcel No. 044-4-004-001, which is improved with a four story mixed-use (retail/office) building, is also legally permitted to contribute to the payment of debt service on the municipal bonds issued to finance the City's payments under this Section 4. The City will assess the Property and 101 Cherry Street using the normal assessment procedure required by applicable state law, provided that if the City finds it necessary to ensure that the total tax increment generated by the Private Improvements, by those portions of the Property that are not part of the Project, and by 101 Cherry Street is sufficient to pay the debt service on the municipal bonds issued to finance the City's payments under this Section 4, the City shall establish the minimum assessed value of the Property upon completion of the Project so that sufficient tax increment is generated to pay the debt service on the municipal bonds, and the City shall provide Owner with documentation that reasonably substantiates the assessed value of the Property established by the City for such purposes. Any such minimum assessment of the Property shall only be in effect during the period of municipal bond repayment and only while necessary to ensure the total tax increment generated by the Private Improvements is sufficient to pay the debt service on the municipal bonds. Owner agrees not to appeal the minimum assessment of the Property in an effort to reduce it below the value established by the City pursuant to this paragraph, and Owner shall pay property taxes based upon at least that minimum assessed value during the period of municipal bond repayment regardless whether any portion of the Property is owned by an entity that is statutorily exempt from property taxation or that is subject to statutorily limited or reduced property taxation. The Owner's agreement to pay such property taxes and not to appeal such assessment during the period of municipal bond repayment is hereby established as a covenant binding upon Owner and its successors and assigns running with title to the Property and having the same degree of priority as municipal property taxes until such time as the municipal bonds shall have been paid in full. At the City's request, and subject to the reasonable requirements of Owner's construction or permanent financing, the foregoing agreement shall be memorialized by an agreement to be executed by the Parties and recorded in the land records prior to the City's payment for the Public Improvements and any Additional Public Improvements and shall be a contractual covenant binding upon Owner and its successors and assigns, running with the title to the Property regardless of the tax exempt status of the owner of any portion of the Project or Property.

e. The Parties agree and acknowledge that the Owner may pledge any rights it has to reimbursement for the agreed-upon cost of constructing the Public Improvements and any Additional Public Improvements as additional security to its lender(s) or other financing parties. At Owner's request, the City shall enter into a separate agreement with Owner and/or with Owner's construction lender solely with regard to the City's reimbursement of the agreed-upon cost of constructing the Public Improvements and any Additional Public Improvements so long as such separate agreement contains terms and conditions that are consistent with those contained in this Agreement with respect to such matters and that do not impose any additional material obligations on the City or the Owner. Without limiting the foregoing, the City agrees to work cooperatively and in good faith with the Owner's construction lender to provide the construction lender with assurance of funding for the Public Improvements in accordance with the terms and provisions of this Agreement, including without limitation by entering into a customary and commercially reasonable intercreditor agreement or collateral assignment agreement required by said construction lender (meaning that Owner may assign its rights under this Agreement to receive payment and reimbursement from the City as security for Owner's construction loan, with the understanding that although such assignment shall be a present assignment of its rights under this Agreement, the construction lender will only enforce the assignment if Owner defaults under its construction loan). There shall be no conditions to the Owner receiving the reimbursement from the City other than the conditions set forth in Section 4(c)(i) - (vii) with respect to the Project, and the condition set forth in Section 4(c)(viii) with respect to any Additional Public Improvements that are not complete at the time that the Project is complete. Owner shall not be obligated to start the construction of the Project until the City provides the required assurances to the construction lender as set forth in this section and until the City provides documentation reasonably satisfactory to the Owner that the City is obligated to reimburse the Owner for the agreed-upon cost of constructing the Public Improvements in the manner set forth in this Agreement. The City shall be obligated to provide the documentation and the assurances referenced above even if the Owner starts construction of the Project prior to finalization of such assurances and documentation.

f. St. Paul Street and Pine Street.

i. Ownership Interest. The Parties agree that Owner shall convey to the City and the City shall acquire from Owner fee simple title to the segments of St. Paul Street and Pine Street depicted as Parcels 1 and 3 on that certain survey entitled "Lot Line Adjustment for BTC Mall Associates LLC, 101 Cherry Street, Burlington Vermont, by LATITUDES Land Surveying, dated January 9, 2017 and recorded in Map Slide 533B of the City of Burlington Land Records (the "Lot Line Adjustment Survey"), which Lot Line Adjustment Survey was included in the Plans approved by the DRB Approval and was filed with the City's Administrative Officer on June 9, 2017. A copy of the as-recorded Lot Line Adjustment Survey is attached hereto as **Exhibit F**. The Owner shall at the same time convey to the City and the City shall acquire from Owner all applicable warranties from Owner's contractors, subcontractors and material suppliers, subject to easements for utilities and for other agreed-upon Project infrastructure (e.g., stormwater infrastructure, building foundations, and building protrusions for which permits and

approvals have been issued). The Owner shall convey to the City and City shall acquire from Owner the real property interests in the segments of St. Paul Street and in Pine Street by warranty deed, free and clear of all mortgages, security interests and liens (or rights to claim a mechanic's or materialman's lien under 9 V.S.A. Chapter 51) and free and clear of all encumbrances that would preclude or impair the use thereof as public streets, subject to the limitations set forth in the remainder of this paragraph; provided that Owner shall be entitled to retain the above-described easement rights and easement rights that would permit the construction of aerial walkways over St. Paul Street and Pine Street that provide clearance for vehicular traffic in accordance with applicable laws, codes and regulations, subject to Owner's ability to obtain required permits and approvals therefor. In addition, Owner shall convey to the City by warranty bill of sale the roadways, utilities and other improvements and infrastructure constructed therein and thereon. Owner discloses that a portion of the segment of Pine Street to be built between Bank and Cherry Streets is owned by a third party subject to an easement for pedestrian and vehicular access to the existing parking garage in favor of the Property; accordingly, while Owner is able to assign to the City its easement for pedestrian and vehicular access to the existing parking garage in favor of the Property, Owner is not able to convey a fee simple interest in that portion of Pine Street to the City and the City may need to acquire the right to construct, use, maintain, repair and replace the roadway, utilities and other improvements and infrastructure within that portion of Pine Street directly from the owner of that property. Neither the City's execution of this Agreement nor the issuance of the DRB Approval shall imply or be construed to imply that the City is familiar with Owner's title to the segments of St. Paul Street and Pine Street that the City intends to acquire pursuant to this Agreement, or that the City has approved or has any authority to approve any action that Owner may take in relation to the rights of third parties or that is or may be contrary to or in violation of rights held by third parties with respect thereto. Owner makes no representation concerning the rights of any third party or that Owner is able or capable of acquiring said third party rights prior to the start of construction of the Project. In the event that the Owner acquires title to any third party rights following or prior to the date of this Agreement, nothing herein shall be construed as an agreement to convey such rights to the City (or any other party) without consideration to be negotiated and agreed upon by the Parties, and nothing herein obligates the City to accept the segments of St. Paul Street and Pine Street if they are subject to any encumbrances that would preclude or impair the use thereof as public streets. The Parties will cooperate in good faith to resolve or eliminate any third party rights in such real property to the Parties' mutual satisfaction prior to the conveyance to the City. At the time of the City's reimbursement to Owner for the cost of the Public Improvements, Owner shall convey to the City the fee interest in the segments of St. Paul Street and Pine Street identified in the DRB Approval as a gift and will forgo any consideration. The City shall cooperate

with Owner's efforts to convey St. Paul Street and Pine Street to the City as a gift or "bargain sale", as defined by the Internal Revenue Code, including by executing an IRS Tax Form 8283 prepared by Owner at Owner's expense. Owner shall be solely responsible for the calculation and substantiation of the amount and other details of the bargain sale, subject to the understanding that applicable accounting rules require the City to account for any money spent to resolve or eliminate any third party rights in St. Paul Street and/or Pine Street and any money spent to reimburse Owner for demolition costs as acquisition costs. Once the City shall have acquired the new sections of St. Paul Street and Pine Street, it shall maintain them in accordance with its standard maintenance practices and standards. Nothing in this paragraph shall limit the Owner's rights to convey Parcels 2, 4 and/or 5 of the Property, as depicted on the recorded Lot Line Adjustment Survey.

ii. Prior to the City's acceptance of St. Paul and Pine Streets, Owner shall comply with the requirements of the DRB Approval and any permits issued for the Project by the Department of Public Works, and the Parties will execute a memorandum of understanding in the form attached as **Exhibit G**, which will specify their respective obligations with regard to any stormwater infrastructure situated within those municipal rights of way; without limitation, the memorandum of understanding will state that the City will not be obligated to pay for any capital repairs to the filtration systems and holding tanks that are part of the stormwater infrastructure and the City will not be obligated to maintain or inspect the filtration systems or holding tanks, but the City will agree to maintain, inspect and repair street improvements where they drain into the filtration systems and holding tanks.

iii. Temporary Street Closures. The Burlington Police Department ("BPD") is vested with the authority to allow temporary street closures, following consultation with the Department of Public Works ("DPW"), for events sponsored by private individuals and entities and has in place a process for the issuance of temporary street closure permits. The City acknowledges that the Owner intends to seek temporary street closures adjacent to the Project for fairs, events, and promotions and will not unreasonably interfere with Owner's application to close streets in connection with such events, subject to any applicable fees. If Owner desires to establish a process to facilitate its ability to close St. Paul Street and Pine Street on an expedited basis for events, fairs and other promotions, it shall develop a bi-annual or annual calendar of events and submit the calendar to BPD and DPW for their prompt review and approval, and it shall also use reasonable efforts to coordinate all public events that require temporary street closures with the Church Street Marketplace, the Burlington Business Association ("BBA") CEDO and GMT, provided that such organizations are reasonably cooperative, in advance of any closure request.

iv. On-Street Parking; Loading. As stated in Section 3(a) of this Agreement, the

new sections of St. Paul Street and Pine Street shall be constructed in substantial compliance with the City's "Great Streets" standards, in a manner agreed upon by the Parties, which are likely to physically preclude on-street parking along such street sections. The City will agree to enter into a fifteen (15) year license agreement with Owner to prohibit on-street parking and allow restricted passenger drop off and loading zones within the new sections of St. Paul Street and Pine Street daily from 6 a.m. until 7 p.m. upon the City's standard terms and conditions, including an aggregate cost to Owner of ten dollars ($10.00).

v. Temporary Relocation of Municipal Property. If Owner desires the ability to temporarily relocate benches, trash cans and other similar items of municipal property located along the new sections of St. Paul Street and Pine Street to accommodate events, fairs and other promotions, then the City shall grant Owner such temporary relocation right as long as Owner (1) accomplishes such temporary relocation (including removing and replacing the property) at its sole cost and expense, (2) stores and then returns the relocated municipal property where directed to by the City, and (3) promptly repairs and restores any damage that arises in connection with such temporary relocation (or, if appropriate, replaces damaged property) at its expense. Owner shall indicate on the bi-annual or annual calendar of events that it develops pursuant to Section 4(f)(iii) above whether it desires to exercise this temporary relocation right in connection with each event.

vi. Discontinuance. Upon the City's acquisition of the new sections of St. Paul Street and Pine Street, the City shall grant Owner a right of first offer with respect thereto upon the terms and conditions set forth on **Exhibit H** attached hereto and made a part hereof. In addition, the Parties acknowledge that if the new sections of St. Paul Street or Pine Street are ever discontinued as municipal streets, then title to the discontinued right-of-way shall belong to the owners of the adjoining lands in accordance with 19 V.S.A. § 775.

g. Sales Tax Reallocation or Exemptions. The City agrees to use its diligent, reasonable and good faith efforts to support Owner's efforts to apply for and obtain sales tax exemptions, refunds and/or abatements for items purchased during construction (Construction Sales Tax Exemption) that are normally available from the State of Vermont to qualified Vermont development projects such as the Project. Any reallocation of Project sales tax that is awarded by the State of Vermont shall be used by the Parties to pay for mutually agreed-upon expenditures that support the Project and that meet the requirements established by the State of Vermont, and the Parties shall prepare a budget for such purpose.

h. Municipal Fees.

i. Recognizing (A) the economic and non-economic benefits that are anticipated to flow from the development and construction of the Project, (B) the size and scope of the Project and the amount of the permitting fees

realized by the City in connection with the Project, and (C) the commitment of resources dedicated by the Owner to the Project, the City agrees that:

1. Owner shall only be required to pay to the Burlington Department of Planning and Zoning a municipal zoning fee of $262,500.00 in connection with the issuance of the DRB Approval. Any payment already made by the Owner over and above this amount will be applied towards the Department of Public Works fees associated with obtaining a building permit as required in Section 4(h)(i)(2) below;

2. Owner shall only be required to pay to the Burlington Department of Public Works a total of $262,500.00 to obtain all building permits required for the Project, including all of the City's building trade permits required for the Project (being building, mechanical, electrical and plumbing), including any associated inspection fees, regardless whether such fees are imposed directly on Owner or are imposed on Owner's general contractor or a subcontractor. The fees required by Subsections (4)(h)(i)(1) and 4(h)(i)(2) include the cost to obtain the Unified Certificate of Occupancy to be issued by Burlington Code Enforcement at the completion of the Project to close the DRB Approval and the building trade permits issued for the Project. Any payment already made by the Owner or any of Owner's contractors or subcontractors in connection with the Project shall be applied against the foregoing fee. For instance, fees for demolition, electrical work, enabling work and other work such as HVAC have already been paid to the Department of Public Works and shall be applied against the fees stated above.

3. Owner shall pay no more than $75,000.00 in fees under Chapter 13 of the City's Code of Ordinances ("Fire Protection and Prevention"), including without limitation any fees required for permits and inspections required thereby, such as permits related to Project fire suppression and the Project fire alarm system;

4. Owner shall pay encumbrance permit fees in accordance with the License Agreement between the City and PC Construction Company with respect to the Project for the period running from September 1, 2017 through August 31, 2020, which was approved by the City Council on August 28, 2017, as it may be amended; and

5. Owner shall pay the full impact fee in the amount of $1,297,648.95 required in connection with the Project as described in the DRB Approval, which amount includes the impact fee waiver attributable to affordable housing that is available under Section 12.0 of the City's Impact Fee Administrative Regulations last updated for fiscal year 2016 and includes a full credit for the existing retail and garage

space that will be demolished as part of the Project and applied to any building area constructed to replace the existing retail and garage space and used for a permitted use.

6. Consistent with Chapter 27, Article 2 of the Burlington Code of Ordinances, Owner shall not be obligated to pay Excavation Fees associated with the work to construct Public Improvements and Additional Public Improvements on the City's behalf.

7. Consistent with Chapter 27, Article 2 of the Burlington Code of Ordinances, Owner shall be obligated to pay only the Administrative Fee for Excavation fees (currently set at $1.58/square foot) for Private Improvements within the Right of way where Public Improvements or Additional Public Improvements are planned. For all other rights of way where Private Improvements are required and where no Public Improvements or Additional Public Improvements are planned, all Excavation Fees will apply.

ii. Owner shall apply for and obtain all zoning and building permits for the Project in the Owner's name and hold such permits for both the benefit of the Owner, and for the benefit of the Owner's general contractor and all subcontractors. Owner and Owner's contractors and subcontractors shall apply for and obtain all building and building trade permits for the Project either in the Owner's name or in the contractor's or subcontractor's name, as appropriate depending on the nature of the work covered by the permit, and shall hold such permits for the benefit of the work covered by the permit. Neither the Owner's general contractor, nor any subcontractor, shall be required to apply for and obtain a separate building or zoning permit in connection with the Project if Owner already holds such permit in connection with the Project. All work performed as part of the Project must be properly permitted and inspected; however, if a separate building or zoning permit for Owner's general contract or any subcontractor is required by the City, then the City shall not assess any fees in connection with such additional permits in excess of the fees established by this paragraph.

iii. The agreement regarding fees contained in this Section (4)(h) only applies to the Project as permitted under the DRB Approval, and only to the specific fees referenced and itemized above; any fees not referenced and itemized above shall be payable at standard rates.

iv. If Owner modifies the Project and seeks or is required to seek amendments to the Project zoning or building permits, then Owner shall pay the standard fees associated with such new or amended permits, if any.

v. This Section (4)(h) does not limit the City's right to impose, or Owner's obligation to pay, any fines, penalties or other fees that may be imposed or

assessed as the result of any violations of applicable permit conditions, ordinances, laws or regulations.

5. Cooperation; Labor and Community Workforce; Construction Management and Coordination; Further Assurances.

a. Cooperation. The Parties shall cooperate and communicate with each other on a regular basis, including by arranging joint meetings with appropriate personnel present to address issues set forth in this Agreement, to discuss any proposed changes to the Project and to discuss the Work Product (as such term is defined in Section 5(a) of this Agreement) generated as the Project progresses, so as to permit the orderly and efficient construction and development of the Project. The City will in good faith support adjustments or modifications to the Project, including changes to the program as outlined in the "Background" section to this Agreement, that are pursued by the Developer, including providing support in connection with any required municipal approvals or processes, provided that such adjustments or modifications are consistent with the City's objectives and policies, all in the City's sole discretion.

b. Labor and Community Workforce. Owner and the City agree to the following:

i. Owner will use reasonable efforts to provide jobs for qualified low and moderate income residents of Burlington and surrounding areas to construct and operate the Project. Owner will also use reasonable efforts to employ (either directly, or indirectly through its general contractor and the Project's subcontractors) the unemployed, veterans, minorities, women, New Americans (collectively, "Targeted Job Applicants"), so long as such individuals have the requisite skills and experience required for the respective job position and otherwise meet all requirements for said jobs, to construct and operate the Project.

ii. Owner shall use reasonable efforts to post notice of job openings in advance of hiring for all positions. Job openings may be advertised in specific online and physical locations identified by and recommended by CEDO.

iii. Owner and its general contractor will participate in two job fairs sponsored by the City or by one or more City affiliates prior to or during construction of the Project. Owner shall also participate in at least one post-construction job fair. The City will partner with key agencies and organizations to provide support for such job fairs.

iv. Owner agrees to identify the jobs and skills needed to operate the Project upon completion, and it shall encourage tenants of the Project to participate in jobs fairs to support recruitment of Targeted Job Applicants in permanent jobs and to encourage tenants of the Project to notify and publish job openings in specific online and physical locations identified by CEDO.

v. Owner will include in its general contract for the Project a requirement that

the labor employed to construct the Project (including without limitation labor employed by Owner and by Owner's general contractor and by the Project's subcontractors) shall be paid a "livable wage" as that term is defined in the City of Burlington Livable Wage Ordinance as is in effect on the date of this Agreement. Owner and its general contractor shall complete and return an annual reporting form provided by the City to report on its compliance with this provision, consistent with the Burlington Livable Wage Ordinance.

vi. Owner will use reasonable efforts to incorporate locally and regionally sourced materials, products and services in the Project. Owner will support and cooperate with the City's efforts to publicize the Project's use of locally and regionally sourced materials, products and services.

vii. With regard to the construction of the Private Improvements, Owner shall hire contractors and subcontractors who pay appropriate wages, properly classify employees, obey labor laws, participate (where applicable) in formal apprenticeship training programs, and provide employer funded health and retirement benefits, with the understanding that it is the Parties' intent that the foregoing shall not be understood to preclude the Owner from engaging any qualified contractor or construction manager to construct the Project. To evidence its compliance with this provision, annually throughout the construction of the Project Owner shall require contractors and subcontractors who are then working on the Project and who perform work or are expected to perform work with a value of at least $100,000 to execute and deliver to the City a compliance certificate in the form attached hereto as **Exhibit I**.

viii. With regard to the construction of the Public Improvements, the Owner shall hire contractors and subcontractors who pay appropriate wages, properly classify employees, obey labor laws, participate (where applicable) in formal apprenticeship training programs, and provide employer funded health and retirement benefits, with the understanding that it is the Parties' intent that the foregoing shall not be understood to preclude the Owner from engaging any qualified contractor or construction manager to construct the Project. To evidence its compliance with this provision, annually throughout the construction of the Project Owner shall require contractors and subcontractors who are then working on the Project and who perform work or are expected to perform work with a value of at least $100,000 to execute and deliver to the City a compliance certificate in the form attached hereto as **Exhibit I**.

ix. Owner shall solicit and review proposals from community job training programs, such as Youth Build Vermont and Vermont Works for Women, to participate in the construction of portions of the Project, provided that Owner shall not be required to utilize any such programs.

c. Construction Management and Coordination.

i. Owner and the City agree to work together in good faith to provide timely communications and other information concerning Project construction, such as potential disruptions to current mall tenants and neighboring property owners affected by the construction of the Project and to take such steps to mitigate potential construction impacts on such parties that can reasonably be expected to be effective, all as more particularly discussed in this Section 5(c); provided that nothing required herein shall alter or delay the timeline or the construction schedule for the Project.

ii. The Parties acknowledge that the City has adopted certain standard operating procedures for the issuance of a Construction Encumbrance Permit in connection with construction projects that will impact municipal assets such as streets and sidewalks, and that the issuance of a Construction Encumbrance Permit allows for the temporary closure of public streets and sidewalks to facilitate construction. Owner acknowledges that this process includes the provision of a Traffic Management Plan and a Traffic Control Plan, which must be submitted to DPW for its review and for approval by the City Council prior to DPW's issuance of a Construction Encumbrance Permit.

iii. Owner shall cause its general contractor or construction manager to meet with appropriate DPW personnel prior to commencing construction of the Project to discuss Owner's intended construction process, project phasing and means and methods of construction so that the Parties can work together to facilitate construction in a manner that will minimize disruption to the area surrounding the Property.

iv. Prior to commencing structural demolition or construction of the Project, Owner shall perform a pre-construction physical survey of all buildings, sidewalks, curbs and streets that could be impacted by demolition or construction of the Project to determine their existing physical condition.

v. Before demolition and construction commence, Owner, Owner's general contractor and the City shall jointly hold at least two meetings with members of the business community in the vicinity of the Property for the purpose of describing construction phasing and timing, and listening to community concerns with regard to the impact of Project construction, in an effort to reasonably mitigate construct impacts on the surrounding business community.

vi. Owner, or its general contractor, shall establish and operate a hotline (both telephone and web-based) for use by the surrounding business community to quickly and reliably submit information to the general contractor and project

superintendent. The hotline contact information (i.e., telephone number and website address) shall be publicized on signs posted in and around the construction zone. Owner shall maintain and share with the City upon written request a detailed log of calls received from concerned stakeholders that shall include the description of the issue and how the issue was addressed.

vii. The City, acting through CEDO, shall work with Owner to coordinate the delivery of the following services:

1. Timely communication with businesses about construction impacts, construction schedules and traffic patterns, including signage related thereto.
2. Timely communication with businesses about the availability of parking and/or shuttle services.
3. The telephone and website hotlines described above.
4. Contact information for a City communications manager or community liaison with whom Owner will coordinate the delivery of the services.
5. Contact information for an Owner communications manager or program liaison with whom CEDO will coordinate the delivery of the services.
6. As a component of the Parties' community outreach efforts in connection with the Project, the Owner will install, in cooperation with the City and Church Street Marketplace, signage and graphics placed on the Project's temporary barrier fencing to depict and describe the Project and its attributes, to communicate that downtown merchants are open for business during construction of the Project, and to engage the community.

d. Payment to CEDO. Owner shall pay CEDO the sum of Fifty Thousand Dollars ($50,000.00) per year for two (2) years during the construction term of the Project. The first payment will be made upon commencement of foundation work for the construction and the second payment will be made on or before the day that is ninety (90) days after the first anniversary of the commencement of that foundation work. Such payment shall be used by CEDO to assist businesses in the vicinity of the Project during construction, to support community outreach associated with the Project and to support workforce training efforts associated with the Project.

e. Parking During Construction. The Parties acknowledge that approximately 300 parking spaces in Owner's existing parking garage are currently leased to third parties, and that Owner will need to secure replacements for such parking spaces prior to commencing demolition of the existing garage. To assist Owner's efforts to secure replacement parking spaces, the City agrees to offer 300 parking spaces within municipal parking lots and structures to people holding parking space leases with Owner on a first come, first served basis, subject, however, to availability given that the City's College Street Garage will be partially closed for renovations during the 2017 construction season. In addition, the City shall assist Owner to identify parking resources in Burlington and South Burlington that may be available for lease. As a component of its Traffic

Management Plan, Owner shall lease off-site parking spaces for its contractors and their employees and establish a shuttle service between such off-site parking spaces and the Property, consistent with the DRB Approval.

f. Owner agrees to keep open and available to the public, and in a good state of maintenance, repair and cleanliness, the existing, public restrooms located in the portion of Owner' Property bounded by Church St., Cherry St. Bank St. and St. Paul St. until such time as the area that encompasses the restrooms is leased to a third-party tenant, at which time Owner's obligation under this paragraph shall cease, provided that the Parties agree and acknowledge that the current bathrooms require renovation and reconstruction and therefore shall be subject to temporary closure to accommodate such renovation and reconstruction.

g. The Parties agree to execute, acknowledge, if necessary, and deliver such documents, certificates or other instruments and take such other actions as may be reasonably required from time to time to carry out the intents and purposes of this Agreement.

6. No Assignment; Financing Matters. This Agreement shall not be assigned by Owner without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed so long as Donald F. Sinex continues to hold and exercise executive managerial authority regarding the development and construction of the Project. The City acknowledges that the beneficial interests in the Owner as of June 23, 2017 were transferred and are now held by Rouse Properties, Inc., a large national real estate investment trust, and Devonwood Investors, LLC, a real estate development company owned and controlled by Donald F. Sinex; and because Donald F. Sinex holds and exercises executive managerial authority regarding the development and construction of the Project, such prior transfers to Rouse Properties, Inc. and to Devonwood Investors, LLC are deemed to be permissible by the City. Notwithstanding, the Owner shall be entitled to collaterally assign this Agreement, and its rights hereunder, to any of its lender(s) and other financing parties without the City's consent, and such lender(s) and other financing parties shall have the right to assign this Agreement to a successor developer in connection with their enforcement of their collateral rights in this Agreement. The City shall execute documentation to evidence and agree to such collateral assignment as may reasonably be requested by such lender(s) or other financing parties in connection with such collateral assignment. The City acknowledges that Owner's lender(s) and other financing parties are likely to hold a mortgage of the Property and to hold other security interests with respect to the Project and the Property, and the Parties agree that upon the City's reimbursement of the costs of constructing the Public Improvements and the City's acquisition of real property interests in St. Paul Street and Pine Street, such mortgage and other security interests shall be released with respect thereto.

7. Governing Law; Venue. This Agreement shall be governed and construed in accordance with the laws of the State of Vermont, without regard to its conflicts of law rules. The Parties consent to and submit to in personam jurisdiction and venue in the State of Vermont, County of Chittenden, and in the U.S. District Court for the District of Vermont. The Parties assert that they have purposefully availed themselves of the benefits of the laws of the State of Vermont and waive any objection to in personam jurisdiction on the grounds of minimum contacts, waive any objection to venue, and waive any plea of forum non conveniens. This consent to and submission to jurisdiction is with regard to any action related to this Agreement, regardless of whether the

Parties' actions took place in the State or elsewhere in the United States.

8. Severability. If any term, covenant or condition contained in this Agreement is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect any other term, covenant or condition herein contained, provided that such invalidity does not materially prejudice any Party in their respective rights and obligations contained in the valid terms, covenants or conditions hereof, and the Parties shall cooperate to modify the Agreement to cause it to conform to the original language of the Agreement to the extent consistent with the finding of the court.

9. Construction; Headings. The Parties waive the benefit of any rule that this Agreement is to be construed against one Party or the other. The headings in this Agreement are for the purposes of reference only and shall not limit or otherwise affect the meaning hereof.

10. Integration; Modification. This Agreement, together with the exhibits referenced herein and/or attached hereto, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any prior agreements or representations, oral or written, on the same subject. The Agreement can be modified only by written agreement executed by authorized representatives of each Party.

11. No Partnership. The Parties do not intend by this Agreement to create, nor shall this Agreement be deemed to create, a partnership or a joint venture among the Parties; each Party is an independent actor and entity, and nothing in this Agreement shall be deemed to make either Party an agent or partner of the other, or to give either Party the right to bind the other in any way, notwithstanding any reference to the Project as a "public-private partnership."

12. Force Majeure. If either Party shall be delayed, hindered in or prevented from the performance of any act required hereunder, by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, restrictive state or federal governmental laws or regulations, riots, insurrection, war, terrorism, or other reason beyond its reasonable control (including the act, failure to act or default of the other Party), then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay, provided that no such event shall excuse a Party's failure to comply with any time period imposed by statute.

13. Waiver. The failure of either Party to insist on strict performance of any of the provisions of this Agreement or to exercise any right it grants will not be construed as a relinquishment of any right or a waiver of any provision of this Agreement. No waiver of any provision or right shall be valid unless it is in writing and signed by a duly authorized representative of the Party granting the waiver.

14. Incorporation by Reference. The content of the Background section to this Agreement, including without limitation the definitions set forth therein, and all exhibits hereto and the terms contained therein and the contents thereof, are incorporated into this Agreement by reference.

15. Authority. Each of the Parties warrants to the other that the person or persons executing this Agreement on behalf of such Party has the full right, power and authority to enter into and execute

this Agreement on such Party's behalf and to thereby bind the Party on whose behalf such person, and that no consent from any other person or entity is necessary as a condition precedent to the legal effect of this Agreement except as provided herein.

16. Notices. Any notices to be given pursuant to this Agreement shall be sufficient if given by a writing: deposited in the United States mails, certified mail or registered mail, return receipt requested, postage prepaid; by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender; by facsimile; or by email (provided that the electronic process used is reasonably secure and not easily susceptible to manipulation) addressed as follows:

If to the City:	City of Burlington City Hall 149 Church St. Burlington, VT 05401 Attention: Mayor Miro Weinberger
With a copy to:	City Attorney City Hall 149 Church St. Burlington, VT 05401
If to Owner:	BTC Mall Associates LLC 101 Cherry Street, Suite 440 Burlington, Vermont, 05401 Attention: Donald Sinex
With a copy to:	Brian Dunkiel, Esq. Dunkiel Saunders 91 College Street, P.O. Box 545 Burlington, Vermont 05402-0545

or to such other person, address or number as the Party entitled to such notice or communication shall have specified by notice to the other Party given in accordance with the provisions of this Section. Any such notice or other communication shall be deemed given: (i) if mailed, three days after being deposited in the mail, properly addressed and with postage prepaid; (ii) if sent by courier, the next day after being deposited with the courier, properly addressed and with prepaid; (iii) if sent by facsimile, when transmission has been electronically confirmed; and (iv) if sent by email, when transmitted as long as the sender does not receive a delivery failure notification.

17. Designated Representatives. Each Party shall designate one or more representatives to serve as the primary contact for communications relating to and issues arising under this Agreement. In the event that either Party changes its designated representative(s), it shall notify the other Party of the successor designated representative in accordance with Section 15.

18. Reporting Requirements. In the event that the Owner fails to timely file a report hereunder, the City shall provide the Owner written notice of such missing report(s) and Owner shall file such report(s) with the City within thirty (30) days of receipt of such notice. Any reporting obligations hereunder shall automatically terminate and shall cease to be of any further effect upon the completion of construction of the Project, other than reporting obligations with respect to periods prior to completion of construction of the Project.

19. Term. Notwithstanding any other provision in this Agreement, this Agreement shall expire and be of no further force and effect on the date which is the later of (a) six (6) months after substantial completion of the Project (meaning, the issuance of a permanent Unified Certificate of Occupancy for the Project) or (b) six (6) months after the City has delivered to Owner written acceptance of the Public Improvements. Owner may terminate this Agreement by formally abandoning, withdrawing and relinquishing the DRB Approval prior to commencing construction of the Project.

20. PDA. Upon the full execution of this Agreement, the PDA shall terminate and cease to be of further force or effect, and the Parties' rights, liabilities and obligations thereunder shall automatically cease without further action of the Parties.

Signature Page to Follow

In Witness Whereof, this Agreement is executed by the duly authorized officers or representatives of the Parties as of the date first set forth above.

City of Burlington

By: _____
Name: Miro Weinberger
Title: Mayor

BTC Mall Associates LLC

By: RD Burlington Associates, LLC, its sole member

By: RSE Burlington, LLC, its Managing Member

By: _____
Name: Brian Harper
Title: CEO

And By: BDM Associates LLC, a Member

By: _____
Name: Donald Sinex
Title: Manager

STATE OF VERMONT
CHITTENDEN COUNTY

At Burlington, in said County and State, on this 30th day of October 2017, personally appeared Miro Weinberger, Mayor of the City of Burlington, and he acknowledged 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, _____
Notary Public
My Commission Expires: 2.10.19

STATE OF VERMONT
CHITTENDEN COUNTY

At Burlington, in said County and State, on this 30th day of October 2017, personally appeared Donald Sinex, Manager of BDM Associates LLC, Member of BTC Mall Associates LLC, and he acknowledged this instrument, by him sealed and subscribed, to be his free act and deed individually and on behalf of such entities.

Before me, _____
Notary Public
My Commission Expires: 2.10.19

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On the 24 day of October in the year 2017 before me, the undersigned, a Notary Public in and for said State, personally appeared Brian Harper, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity as CEO of RSE Burlington, LLC, the Managing Member of RD Burlington, LLC, the sole member of BTC MALL ASSOCIATES, LLC, and that by his signature on the instrument, the LLC upon behalf of which he acted, executed the instrument.

Before me, Courtney Trone
Notary Public
My Commission Expires: July 5, 2020

COURTNEY TRONE
COMMISSION EXPIRES
Kings County
NOTARY
PUBLIC
01TR6344640
JULY 5, 2020
STATE OF NEW YORK