

Predevelopment Agreement

This Predevelopment Agreement (“Agreement”) is entered into as of _____, 2016 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, and which 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. Pursuant to a resolution adopted by the Burlington City Council on December 14, 2014, the City has established the Development Agreement Public Advisory Committee to oversee a public input process with respect to the proposed redevelopment of the Property, and to work closely with technical consultants and Owner in connection with the redevelopment of the Property.
- E. Owner, either acting directly or through an affiliate, desires to redevelop the Property substantially in a manner that aligns with the vision set forth in PlanBTV, as described and depicted on the plans, drawings and other materials included within a 42 sheet plan set entitled “Burlington City Center, Technical Review Set – Parking Above Grade” prepared by PKSB Plus Architects and dated December 23, 2015, a copy of which is attached hereto as **Exhibit A** and made a part hereof (the “Plan Set”), as revised by Concourse Level Plan Sheet A-102 dated February 24, 2016, by Plaza Level Plan Sheet A-103 dated February 24, 2016, and by the height and massing reductions to the Cherry Street portion of the Project shown on the drawing labeled “Alt Proposal”, copies of which are attached hereto as **Exhibit B** and made a part hereof (the “Revised Plan Sheets”).

F. Owner's proposed redevelopment of the Property contemplates a two phase project containing approximately the following features and characteristics (the "Project") (all numbers are approximations and the specified uses that are planned as of this time and set forth below are subject to change and modification by agreement of the Parties as described in more detail below):

- Not more than 274 residential housing units (collectively measuring $\pm 307,000$ sq. ft.), including a mix of unit sizes and including both market rate and affordable (i.e., inclusionary) housing units in compliance with the requirements of the City of Burlington Comprehensive Development Ordinance (the "Zoning Ordinance"), as it may be amended, and in compliance with the definition of a "priority housing project" under 10 V.S.A. § 6001(35) (i.e., Act 250).
- $\pm 17,700$ sq. ft. of rooftop open space as a tenant amenity.
- $\pm 340,000$ sq. ft. of Class A commercial office space, with $\pm 264,000$ sq. ft. of such space constructed as part of Phase 1 of the Project, and the $\pm 76,000$ sq. ft. balance of such space constructed as part of Phase 2 of the Project.
- $\pm 246,000$ sq. ft. of first class retail space, designed to attract a mix of local, regional and national retailers and restaurants.
- $\pm 15,500$ sq. ft. of indoor daycare space designed for an early childhood development center tenant, together with $\pm 15,000$ sq. ft. of outdoor daycare space.
- Owner shall provide a community space measuring at least $\pm 5,000$ sq. ft. for use by community and/or civic groups during normal business hours and pursuant to rules and regulations adopted and published by the Owner.
- A ± 925 space parking garage (measuring $\pm 353,000$ sq. ft.), including the provision of covered bicycle parking facilities.
- The re-establishment of St. Paul Street as a 60 foot wide through, public street running between Bank Street and Cherry Street, featuring a high level of street design including: wider sidewalks; street trees; premium 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 the street, all in accordance with plans and specifications to be agreed upon by the Parties, and subject to the rights of third parties not affiliated with Owner or the City, such as adjoining property owners. The Parties will cooperate in good faith to resolve or eliminate any such third party rights to the Parties' mutual satisfaction.
- The re-establishment of Pine Street as a 60 foot wide through, public street running between Bank Street and Cherry Street, subject to the existence of the building numbered 100 Bank Street, featuring a high level of street design including: wider

sidewalks; street trees; premium 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 the street, all in accordance with plans and specifications to be agreed upon by the Parties, and subject to the rights of third parties not affiliated with Owner or the City, such as adjoining property owners (the “Pine Street Connection”). The Parties will cooperate in good faith to resolve or eliminate any such third party rights to the Parties’ mutual satisfaction.

- The “activation” of Bank Street and 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); street trees; premium 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, all in accordance with plans and specifications to be agreed upon by the Parties.
- A rooftop observation deck made available to the public.

The re-establishment of St. Paul Street, the activation of Bank and Cherry Streets, and the construction of the Pine Street Connection (all as more particularly described above) 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”.

- G. Owner and the City desire to enter into and memorialize certain agreements to reasonably facilitate Owner’s construction of the Project substantially in accordance with the Project schedule referenced below. The Parties contemplate entering into a Development Agreement, consistent with the terms herein.

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. Phasing; Project Schedule; Market and Feasibility Study.

a. In an effort to mitigate and minimize both the construction time and the disruptions associated with a large construction project—such as noise, traffic and general community disruptions—the Project consists of two overall phases, referred to as Phase 1 and Phase 2. Phase 2 consists of the renovation of the existing retail space within the portion of the Property bounded by Church, Cherry, Bank and St. Paul Streets, the renovation of the Church Street entrance to the Property, and the construction of ±76,000 sq. ft. on such portion of the Property, contemplated to be of Class A commercial office space. Phase 1 consists of the balance of the Project, including all housing, parking, and Public Improvements. Owner desires to commence construction of the Project on or before January 1, 2017. Nothing herein shall preclude Owner from revising Phase 1

or 2 to add or modify uses of the Property in a manner consistent with the applicable zoning ordinance then in effect.

b. Owner anticipates completing Phase 1 of the Project in sub-phases in accordance with the Project Schedule attached hereto as **Exhibit C** and made a part hereof (the “Project Schedule”). 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) over whom the Parties have no control.

c. Prior to August 1, 2016, Owner shall provide the City with copies of any market studies and feasibility analyses (i) prepared by Owner or (ii) prepared for the benefit of Owner’s Project lender(s) and/or investors and available to Owner. The Parties agree that such reports customarily include data that analyze whether a market exists for the retail, commercial and residential components of a project, and whether the anticipated market demand for the retail, commercial and residential components of a project is sufficient to support the anticipated costs of developing, constructing and operating it.

2. Sustainability; Additional Project Features; Design Modifications.

a. In addition to incorporating the Public Improvements and Private Improvements substantially as described above, Owner agrees that the final plans and design for the Project will: (i) accommodate and support alternative forms of transportation, including the use of bicycles, car-sharing, mass transit and other progressive concepts; (ii) include the installation of rooftop solar photovoltaic electric generation infrastructure subject to Owner’s receipt of regulatory approval from the Vermont Public Service Board and to Owner’s entry into a reasonably acceptable interconnection agreement with Burlington Electric Department; (iii) incorporate design and building elements that would cause the Project to achieve at least LEED Gold certification, and strive to achieve the energy reduction goals outlined in the “Architecture 2030 Challenge”; (iv) incorporate City-approved public art installations that are reasonably satisfactory to the Owner; and (v) incorporate accessibility features in accordance with applicable law.

b. Owner agrees that the Project shall include at least 270 residential housing units. Owner intends to provide a mix of housing unit sizes, designs, and costs meant to attract a mix of tenants as contemplated in PlanBTV. 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 the unit design mix and the unit size mix for the residential component of the Project for conformity with the goals of PlanBTV. Without limiting the foregoing, the Parties acknowledge that the Owner has entered into a preliminary Letter of Intent with Champlain College to provide, through a Master Lease, apartment units for the exclusive purpose of serving as student housing for its students (hereinafter “Champlain Student Housing”). Owner agrees that the Champlain Student Housing component of the Project will include not more than 110 units and shall either be managed by Champlain College, or it shall be appropriately managed either by Owner (or its affiliate) or by a property management company with experience and a proven track record managing student housing. Other than the Champlain Student Housing referenced above, all other forms of purpose-

built or master-leased student housing shall be subject to the review and approval of the Burlington City Council. Nothing contained herein limits the availability of other 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. In addition to the affordable, or inclusionary, housing to be included as a component of the Project (as described in the Background section to this Agreement), 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 MAS, adjusted for household size. 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.

d. Owner agrees to revise the Plan Set to be consistent with the Revised Plan Sheets, and agrees that the plans submitted to support permit applications for the Project shall be consistent with the revised Plan Set, subject to the other provisions of this Agreement.

e. 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.

f. The City acknowledges receipt and review of satisfactory three dimensional or photo-realistic, simulated images and perspectives of the Project taken from various vantage points in and around downtown Burlington to facilitate the City’s assessment and evaluation of the Project height and massing that Owner has proposed, and the City reserves the right to further review such materials and to reasonably request additional materials for further evaluation.

3. Municipal Zoning.

a. The Parties acknowledge that as presently designed, the Project could not be approved under the terms of the Zoning Ordinance because, among other things, it exceeds applicable height and setback limitations. In order to construct the Project, Owner will require an amendment to the Zoning Ordinance to establish a new overlay district within that portion of the City of Burlington that includes the Property, within which a Project that is consistent with the Plan Set could be developed without exceeding applicable height, setback and other requirements.

b. Owner and the City agree that the present Project design, as reflected on **Exhibits A and B**, needs further refinement to take into account the Parties’ concerns regarding certain aesthetic aspects of the Project design, specifically including the uniformity of mass and of the skyline, façade articulation and design, and the location and design of vertical step-backs, and that Owner and the City are in the process of negotiating revisions to the Project design to address the Parties’ concerns. The Parties acknowledge that the zoning amendment referenced above will

include prescriptive design standards and requirements with regard to the uniformity of mass and skyline, façade articulation and design, the location and design of vertical step-backs, and primary and accent façade materials used in the Project. The Parties agree that the Project would conform with the Zoning Ordinance if the Zoning Ordinance were amended substantially in accordance with **Exhibit D** attached hereto and made a part hereof (the “Zoning Amendment Summary”) and the Project design were modified to conform with the requirements of the Zoning Amendment Summary. Notwithstanding the foregoing, the Parties agree that the Project design reflected on **Exhibit A as modified by Exhibit B** is acceptable regarding the overall square footage and floor area ratio (FAR) of the Project, and that the uses described on Exhibit D are acceptable.

c. The City shall support an amendment to the Zoning Ordinance which will permit the lawful development and use of the Project, subject to standards and criteria to be developed in consultation with Owner including, without limitation, the design criteria set forth in the Zoning Amendment Summary. The City, acting through the Office of the Mayor, shall use diligent, good faith efforts to (i) submit, or cause to be submitted, in writing to the City Planning Commission such an amendment to the Zoning Ordinance within ten (10) days of execution of this Agreement and (ii) obtain final legislative approval of such an amendment to the Zoning Ordinance within one hundred and twenty (120) days following execution of this Agreement. **The Parties agree that if the City fails to amend the Zoning Ordinance on or before the one hundred twentieth (120th) day following the date of the execution of this Agreement in a manner that will enable the Project to obtain zoning approval, then Owner shall have the right, but not the obligation, to terminate this Agreement.**

d. The City, acting through the Office of the Mayor, shall use diligent, good faith efforts to facilitate the adoption of an amendment to the Zoning Ordinance to facilitate the Project, with the understanding that only the Burlington City Council and Planning Commission have the authority to adopt amendments to the Zoning Ordinance, which must be adopted in accordance with applicable laws, ordinances and regulations. Owner shall timely submit the materials and submissions to the level of completeness necessary for the City to process an amendment to the Zoning Ordinance so as to reasonably facilitate Owner’s adherence to the Project Schedule. Without limiting the foregoing, the City agrees that so long as Owner timely submits the materials and submissions necessary to process an amendment to the Zoning Ordinance, the City’s administrative personnel shall use diligent, good faith efforts to process such submissions in a timely manner so as to reasonably facilitate Owner’s adherence to the Project Schedule.

e. In consideration of the City’s agreement to undertake efforts to support and facilitate such an amendment to the Zoning Ordinance, and in consideration of the funds expended by the City in support of the Project, Owner shall, subject to the application of the reimbursement provisions described in Section 4 of this Agreement, construct the Public Improvements as a component of the Property in the first phase of its construction of the Project. Owner covenants and agrees that prior to commencing the construction of any portion 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, together with payment and performance bonds for the City’s benefit issued by a solvent and reputable bonding company in the amount of such guaranteed maximum price, consistent with the requirements of Section 3.2.10 of the Zoning Ordinance or such other security reasonably acceptable to the City. Owner agrees that the City will

not have an adequate remedy at law for Owner's noncompliance with the provisions of this paragraph 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.

f. The Parties acknowledge that prior to constructing the Project, it will be necessary for Owner to obtain permits and approvals for the Project from the Burlington Development Review Board ("DRB"), that the DRB is an independent body not under the City's control, and that the City does not and cannot guaranty that the DRB will approve the Project even if the Zoning Ordinance is amended. During that zoning amendment process, the Owner shall make its best efforts to submit permit application materials at the earlier, legally permissible time to the level of completeness necessary for the DRB and other Boards to consider Owner's application for the permits and approvals necessary to develop and construct the Project so as to reasonably facilitate Owner's adherence to the Project Schedule. **The Parties agree that if Owner fails to obtain the necessary permits and approvals to develop and construct the Project prior to October 15, 2016, or such later date as may be communicated to the City in writing by Owner, then all of the Parties' rights and obligations under this Agreement shall terminate.**

4. Waterfront TIF District; Payment for Public Improvements.

a. Existing Legislation. 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. If approved, 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.

b. Extension of Repayment Term. As of the date of this Agreement, the City is legally permitted to incur debt within the Waterfront TIF District through December 31, 2019, and such debt must be fully paid by December 31, 2025. Owner estimates that the hard and soft costs of constructing the Public Improvements, plus the agreed-upon or appraised value of the real property interest in St. Paul Street and Pine Street that Developer will convey to the City (as further described in Section 4(e), shall not exceed a total cost to complete of \$21,829,890.00, as outlined with more particularity on **Exhibit E** attached hereto and made a part hereof (the "Not to Exceed TIF Funding Amount"). As the Project moves through the design development process and more detailed construction drawings are developed, the Parties shall refine the Not to Exceed TIF Funding Amount to determine if the direct costs of the Public Improvements (and the Not to Exceed TIF Funding Amount) should be adjusted prior to finalization.

The Parties acknowledge that the remaining available amortization period within the Waterfront TIF District severely limits the City's maximum investment in the Public Improvements; however, if the expiration date for the Waterfront TIF District were extended until

December 31, 2035, the City would anticipate being able to invest sufficient funds to construct and acquire the Public Improvements so long as the debt is committed prior to December 31, 2019, and the tax increment generated by the Property as improved by the Private Improvements would be sufficient to service the debt incurred.

The City acknowledges that but for the City's agreement to utilize the public financing resources available through the Waterfront TIF District, the Public Improvements would not be included as components of the Project or would have occurred in a significantly different and less desirable manner. Accordingly, in order to facilitate the Owner's construction of the Public Improvements and the City's payment for and acquisition of the Public Improvements, it will be necessary for the Vermont Legislature to permit the parcels that contain the Project to allow for full payment of TIF incurred debt by the end of 2035. The Parties agree to work cooperatively to facilitate adoption of a state law achieving this outcome during the 2016 legislative session ending in mid-May 2016, so as to reasonably facilitate Owner's adherence to the Project Schedule, **and they further agree that if the Vermont Legislature fails to grant such extension, then all of their rights and obligations under this Agreement shall terminate.** Notwithstanding the termination of this Agreement if the Vermont Legislature fails to grant such an extension, termination of this Agreement shall not divest the Owner of any zoning rights or development permits that Owner shall have obtained with respect to the Project or the Property.

c. Approval For Expenditure of Public Funds. If a law is enacted prior to July 1, 2016 that extends the expiration date for the portion of the Waterfront TIF District that includes the Property until December 31, 2035, then Owner shall timely provide the City with the materials and submissions to the level of completeness necessary for the City to seek approval from the Vermont Economic Progress Council, from the Burlington City Council and from the voters to expend funds from the Waterfront TIF District to pay for the Public Improvements, so as to reasonably facilitate Owner's adherence to the Project Schedule. The City agrees that so long as Owner timely submits such materials and submissions, the City shall use diligent, good faith efforts to process such submissions in a timely manner in an effort to reasonably facilitate Owner's adherence to the Project Schedule. **The Parties agree that if the City fails to obtain the necessary approvals to expend funds from the Waterfront TIF District to pay for the Public Improvements, prior to November 15, 2016, then either Party shall have the right, but not the obligation, to terminate this Agreement.** Notwithstanding the right of the City to terminate this Agreement if it fails to obtain the necessary approvals to expend funds from the Waterfront TIF District as stated immediately above, termination of this Agreement shall not divest the Owner of any zoning rights or development permits that Owner shall have obtained with respect to the Project or the Property.

d. Payment for Public Improvements; Amount of Municipal Investment. Subject to the contingencies set forth in this Agreement, Owner shall construct the Public Improvements in accordance with mutually agreed upon plans and specifications and in accordance with the Project Schedule. Owner shall initially construct the Public Improvements at its own cost and expense, and the City shall reimburse Owner for the agreed-upon cost of constructing the Public Improvements and the City shall acquire the real property interests in St. Paul Street and in Pine Street that are a component of the Public Improvements for a price agreeable to the City and the Owner or, at either Party's election, for their appraised value, using an appraisal process agreed to

by the Parties, upon Owner's receipt of a Unified Certificate of Occupancy for Phase 1 of the Project; provided however, that the City may partially reimburse Owner for such costs sooner upon 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 Unified Certificate of Occupancy for Phase 1 of the Project prior to December, 31, 2019. The Parties acknowledge and agree that the construction of the Public Improvements must be bid and 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 cost to construct the Public Improvements and to pay for the value of the real property interests in St. Paul Street and Pine Street that Owner conveys to the City as a component of the Public Improvements. 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 December 31, 2019 (meaning, that Owner must receive a Unified Certificate of Occupancy for Phase 1 of 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 debt in an amount equal to the payment made by the City to Owner. If the City finds it necessary to ensure that the tax increment generated by the Private Improvements is sufficient, the Parties shall agree upon the minimum assessed value of Phase 1 of the Project upon its completion, and Owner shall agree not to appeal such assessment in an effort to reduce it below the agreed upon value. 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 as collateral to its lender(s) or other financing parties and 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.

e. St. Paul Street and Pine Street. The Parties acknowledge that they have not yet agreed upon the nature of the real property interests required in St. Paul Street and in Pine Street that comprise elements of the Public Improvements and to be depicted on an amended Official Map. The Parties agree to negotiate in good faith to reach an agreement regarding this issue prior to determining the amount that the City will pay for the real property interests in St. Paul Street and Pine Street. The City shall acquire the real property interests in St. Paul Street and in Pine Street free and clear of all mortgages, security interests and liens and free and clear of all encumbrances that would preclude or impair the use thereof as public streets. The Parties agree to negotiate in good faith regarding certain matters concerning the transferred portions of St. Paul Street and Pine Street, including (1) the Owner's ability to erect signage on and about pedestrian sidewalks; (2) the Owner's ability to close the street on an expedited basis for events, fairs and promotions upon reasonable notice to the City; (3) a prohibition on vehicular parking along the transferred portions of St. Paul Street and Pine Street; (4) the Owner's ability to relocate benches, trash cans and other similar items located along the street, as needed, to accommodate such events; and (5) the terms upon which Owner may reacquire the transferred portions of St. Paul Street and/or Pine Street if it ceases to be used as a public, vehicular right-of-way.

f. Sales Tax Reallocation. 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/abatement 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.

5. Work Product; Project Modifications.

a. Owner acknowledges that the Project will have a major impact on downtown Burlington, and that the City has a legitimate interest in ensuring that the Project is consistent with the design principles adopted by Plan BTV, is consistent with best engineering practices, and that it is likely to generate a sufficient tax increment to pay debt service on funds paid by the City towards the Project using the borrowing capacity from the Waterfront TIF District. Accordingly, as the Project is developed in more detail, Owner will consult with the City and will use good faith efforts to provide the City with advance copies of all work product, including plans and drawings (including, without limitation, civil engineering and architectural plans and drawings), specifications (including, without limitation, with respect to exterior and interior finishes, fixtures and materials), renderings, and other materials related to the Project and its design (“Work Product”) prior to or, if necessary to meet a filing deadline, simultaneous with submitting such Work Product for formal review to any other party. The City shall have five (5) business days to provide reasonable objections to any such submissions in writing. In addition, Owner shall provide the City with advance copies of any material modifications that Owner may make to any Work Product (including, without limitation, the Plan Set) prior to, if necessary to meet a filing deadline, or simultaneous with submitting such Work Product for formal review to any other party, and the City shall have a five (5) business day opportunity to provide reasonable objections in writing.

In each instance, an objection shall not be reasonable if the proposal made by Owner is consistent with the goals set forth in this Agreement and does not adversely affect the City’s realization of its expectations under this Agreement. If the City provides Owner with any written objections, Owner shall revise and modify its Work Product or modifications to the extent necessary to satisfy such objections and shall thereafter resubmit the revised Work Product to the City for further review in accordance with this Section. If the City does not make any objections within the time periods provided for in this Agreement, then any such Work Product or modifications shall be deemed approved and available for submission for formal review by any other party. In addition, Owner may make non-material modifications to the Work Product from time to time as final design, engineering and permitting of the Project proceeds, so long as such modifications are consistent with the goals set forth in this Agreement and do not adversely affect the City’s realization of its expectations under this Agreement,

6. Cooperation; Establishment of Labor and Community Workforce Agreements; Future Negotiations; Further Assurances.

a. 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.

b. Owner and the City agree to the following:

- i. Owner will use reasonable efforts to provide jobs for qualified low and moderate income Burlington residents to construct and operate the Project, and will include in its general contract for the Project a requirement that the labor employed to construct the Project 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;
 - ii. Owner will use reasonable efforts to incorporate locally sourced materials in the Project;
 - iii. With regard to the construction of the Private Improvements, Owner will 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; and
 - iv. Owner and the City will enter into a community benefits agreement to memorialize, without limitation, the Owner’s agreement to participate in City or City-affiliate sponsored job fairs, Owner’s agreement to distribute and encourage the utilization of a list (provided by the City) of local vendors for products and services to its general contractor and lessees, and Owner’s agreement to solicit and review proposals from community job training programs such as Youth Build Vermont and Vermont Works for Women to construct portions of the Project.
- c. In addition, the Parties agree to negotiate in good faith with regard to:
 - i. the temporary closure of public streets and sidewalks to facilitate construction of the Project and other construction-related matters;
 - ii. the allocation of municipal personnel to the Project to streamline construction inspections and permit reviews;
 - iii. the total amount of construction and permit fees that Owner will pay in connection with the Project;
 - iv. the amount of property taxes payable by Owner with respect to the Property during construction of the Project which will include demolition of existing improvements, introducing uncertainty into future assessments;
 - v. entry into a parking agreement to accommodate existing monthly customers of the parking garage on the Property after the closure and demolition of the

parking garage and prior to the completion of the new structured parking that is a component of the Project;

- vi. the availability of sales tax exemptions applicable to the Public Improvements;
- vii. the establishment of long term property rights upon the completion of construction for the maintenance of private improvements on municipal property;
- viii. the entry into post-construction maintenance agreements with regard to the Public Improvements;
- ix. the entry into agreements with Burlington Electric Department regarding the provision of electricity to the Property and the availability of net-metering for the rooftop solar photovoltaic electric generation infrastructure to be included as a component of the Project; and
- x. the entry into agreements with Burlington Telecom regarding the provision of internet connectivity and service to the Property.

d. 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.

e. 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.

7. 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 holds and exercises executive managerial authority over the assignee. 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.

8. 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 federal district courts which are located in the City of Burlington. 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.

9. 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.

10. 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.

11. 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.

12. 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."

13. 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.

14. 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.

15. 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.

16. 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.

17. 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
 149 Church St.
 Burlington, VT 05401
 Attention: Miro Weinberger

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.

18. 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 17.

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

BTC Mall Associates LLC

By: BDM Associates LLC, Its Manager

By: _____
Name: Miro Weinberger
Title: Mayor

By: _____
Name: Donald Sinex
Title: Manager

Exhibit A

42 sheet plan set entitled “Burlington City Center, Technical Review Set – Parking Above Grade” prepared by PKSB Plus Architects and dated December 23, 2015.

Attached

Exhibit B

Concourse Level Plan Sheet A-102 dated February 24, 2016, Plaza Level Plan Sheet A-103 dated February 24, 2016 and “Alt Proposal” Prepared with Respect to the Cherry Street Portion of the Project.

Attached

Exhibit C

Project Schedule

Phase 1 of the Project involves that portion of the Property bounded by Cherry Street and Bank Street between St. Paul Street and Pine Street. Phase 1 is expected to commence in January 2017 with the demolition of all existing improvements located within such portion of the Property and Phase 1 if started on January 1, 2017 will be substantially completed by August 2019, substantially in accordance with the following schedule, subject to force majeure and other events outside the control of the Owner:

- Construction of the St. Paul Street roadway will be completed and placed in use by July 2018 (18 months after the commencement of construction).
- Construction of the parking garage will be completed and placed in operation by July 2018 (18 months from the commencement of construction).
- Construction of the retail space, including construction of the Pine Street Connection and the activation of Bank and Cherry Streets, will be completed and placed in operation by January 1, 2019 (24 months after the commencement of construction).
- Construction of the office space will be completed and placed in operation by January 2019 (24 months from commencement of construction).
- Construction of the residential space on Cherry Street will be completed and placed in operation by August 2019, as described below (32 months from the commencement of construction), but within such time frame the construction of the residential space on Cherry Street will proceed in two (2) sub-phases in accordance with the following schedule:
 - The affordable residential units (meaning those that satisfy inclusionary requirements under the Zoning Ordinance) will be completed and placed in operation by March 2019 (27 months from the commencement of construction).
 - The market-rate residential units will be completed and placed in operation by August 2019 (32 months from the commencement of construction).
- Construction of the residential units on Bank Street which sit atop the office tower at St. Paul and Bank Streets will be completed and placed in operation by January 2019 (24 months from the commencement of construction).

Phase 2 of the Project involves that portion of the Property bounded by Cherry Street and Bank Street between St. Paul Street and Church Street. Phase 2 consists of renovating the existing retail space and adding 76,000 s.f. of office space above the retail space. Phase 2 will begin no later than August 2019 and be substantially completed and placed in operation within 18 months after the commencement of construction.

Exhibit D

Zoning Amendment Summary

Attached

Exhibit E

Estimated Cost and Value of Public Improvements

Attached