

SETTLEMENT AGREEMENT

Following mediation with the assistance of Michael Marks, Esq., the signatories below (“Parties”) have reached the following settlement agreement in reference to all of the issues arising out of or related to *Eagles Place, LLC*, Docket No. 55-4-14 Vtec (“Lawsuit”).

The Parties shall prepare a conformed copy of this Agreement in the form of a stipulation for submission to the Vermont Environmental Court within seven days after the ratification of this Agreement by the Burlington City Council. All deadlines for responding to any pending motions in the Lawsuit are hereby extended to until September 24, 2014.

This Agreement is contingent upon ratification by the City Council for the City of Burlington no later than September 22, 2014.

1. Stipulated Approval of Permit. The Parties shall jointly request that the Vermont Environmental Court approve conditional use and site plan approval, subject to the following agreements, final plans and conditions, for the construction of a mixed use building with ground-floor commercial space, residential units and enclosed parking (“Project”). The development merges three existing lots: 14-0671CA/MA (194 St. Paul St. (Ward 6, DT)(Tax Lot No. 049-3-028-000); 14-0672CA/MA (1 Browns Court (Ward 6, DT)(Tax Lot No. 049-3-027-000); and 14-0721CA/MA (14 Browns Court (Ward 6, DT)(Tax Lot No. 049-3-041-000). The Stipulated Approval shall contain the following provisions and conditions.

A. The Project shall be completed and maintained in accordance with the Plans hereby approved by the Parties. Compliance with these Plans, which are attached to this Agreement (“Plans”), shall be a condition of the approval.

B. Parking.

Champlain College shall require that residents of Eagles Landing with cars display a distinctive sticker on their cars, so that residents of the neighborhood and the College can identify the car as being owned by an Eagles Landing Resident. The Parties anticipate that this requirement will allow neighbors to identify vehicles violating parking restrictions under the terms of the Joint Institutional Parking Management Plan (“JIPMP”) and report those violations. Champlain will respond to complaints by those



located in the neighborhood and take appropriate enforcement actions. At least 42 spaces must always remain open to transient parking during evening, weekend, and holiday hours.

- C. Other Conditions. Other Conditions to these approvals are attached as Exhibit 1 to this Agreement.
- D. All findings and conditions of the Burlington Development Review Board in its April 3, 2014 decision, as modified by the terms of this Agreement, shall remain in full force and effect. All findings and conditions shall be subject to amendments to the permit in accordance with law. In the event of an application for a permit amendment, notice shall be provided to other parties as required by law. In the event Eagles Place LLC or Champlain College submits an application to amend the Permit that is the subject of this Agreement, it shall provide personal written notice to be mailed to each of Jacob Webster, Allan Hunt and Frank von Turkovich for so long as they own the properties they now own in the vicinity of the property that is the subject of this Agreement.

2. Other Agreements. The Parties shall in good faith work together and take such other actions as are reasonable to implement this Agreement. The Parties will not oppose any applications for related permits required for the approval, construction or use of the project that is the subject of this Lawsuit. Upon submission of the stipulated conditional use and site plan approval to the Court, the pending motion to dismiss shall be withdrawn with prejudice. The Parties acknowledge that the attached Plans will be revised, subject to the approval of the City of Burlington, to include 66 parking spaces and screening of the rooftop mechanicals.

3. Fees and Costs. No Party may file a motion with the Court seeking attorney's fees or costs.

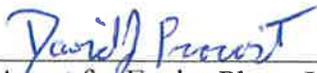
4. Actions by Others. In the event that persons or entities who are not Parties to this Agreement should intervene in the Lawsuit and object to the issuance of a Stipulated Approval in accordance with this Agreement, the Parties shall continue to support the issuance of a Stipulated Approval in accordance with this Agreement, but shall have no obligation to actively participate in the Lawsuit. In the event that a person or an entity who is not a Party to this Agreement proposes permit terms or conditions that would materially alter the permit provisions provided by this Agreement, Champlain College shall give reasonable notice to the other Parties to this Agreement, and such other

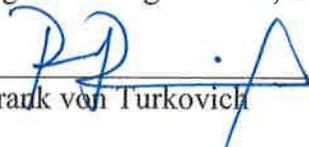


Parties may object to any alteration of the permit provisions provided by this Agreement. In the event that the Environmental Court approves permit terms or conditions that would materially alter the permit provisions provided by this Agreement, a Party adversely affected may challenge such material alterations by motion for reconsideration to the Environmental Court or appeal to the Vermont Supreme Court.

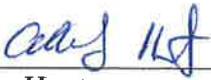
5. Miscellaneous. This Agreement represents a compromise to avoid litigation. By making this Agreement, no Party makes any admission concerning the strength or weakness of any claim and no party makes any admission of wrongdoing or liability. This Agreement is a comprehensive agreement (except for a single, separate, written agreement dated today between Eagles Place and von Turkovich, Webster and Hunt); all prior understandings and discussions are merged into this Agreement. The Parties shall execute such additional documents as are reasonably requested to implement this Agreement. This Agreement shall be interpreted under the laws of the State of Vermont. All Parties were represented by counsel in the drafting of this Agreement, or have chosen to proceed without representation of counsel. The presumption against the drafter shall not apply to the construction of this Agreement. Any participation by the mediator in the drafting of this Agreement was in his capacity as mediator in recording mutually agreeable settlement terms, and does not constitute legal advice to any of the Parties. The Parties rely solely on their counsel for legal advice and the suitability of this Agreement. Copies of this Agreement shall be as effective as the original. This Agreement shall be binding upon the successors, heirs and assigns of the Parties.

Dated at Burlington, Vermont, this 3<sup>rd</sup> day of September, 2014.

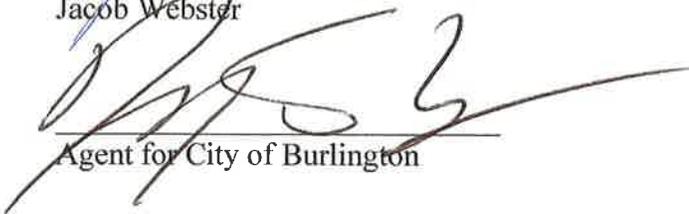
  
Agent for Eagles Place, LLC and Champlain College

  
Frank von Turkovich



  
Allan Hunt

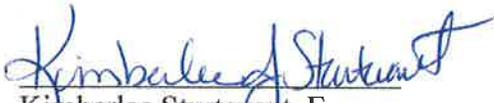
  
Jacob Webster

  
Agent for City of Burlington

Approved as to form:

  
Franklin L. Kochman, Esq.  
Counsel for von Turkovich and Hunt

  
Mark Hall, Esq.  
Counsel for Eagles Place, LLC and Champlain College

  
Kimberlee Sturtevant, Esq.  
Counsel for City of Burlington

EXHIBIT

**Project Permit Conditions**

1. **Prior to release of the zoning permit**, review and approval of sight distances, turning radii, and retaining walls by the city engineer shall be required.
2. **Prior to release of the zoning permit**, a wastewater capacity letter from the Department of Public Works shall be obtained.
3. **Prior to release of the zoning permit**, a plan or mutual agreement for snow storage and/or removal, particularly for Browns Court, shall be executed between Champlain College and the City of Burlington.
4. **Prior to release of the zoning permit**, removal of the street tree for the Maple Street garage entrance shall be reviewed and approved by the City Arborist.



5. **Prior to release of the zoning permit**, revised project plans depicting the following shall be submitted, subject to staff review and approval:
  - a. Bicycle parking sign details;
  - b. Additional shrubs planted to screen the Browns Court garage openings;
  - c. Outdoor and garage lighting details compliant with Sec. 5.5.2 of these findings; and,
  - d. Commercial mailbox details.
6. **Prior to release of the zoning permit**, all required permissions and encroachment agreements for work and development (including the final extent, layout, and components of such construction) within the public ROW shall be sought and granted.
7. **Prior to release of the zoning permit**, the following stormwater management conditions shall be met:
  - a. The applicant shall obtain written approval of the Erosion Prevention and Sediment Control Plan from the Stormwater Administrator;
  - b. The applicant shall obtain the written approval of the Stormwater Management Plan from the Stormwater Administrator; and,
  - c. A letter of credit or escrow agreement shall be executed with the City of Burlington for all construction site stormwater management and erosion control measures. The agreement shall be in an amount sufficient to cover the complete cost of administration and construction associated with remedying a problem associated with construction site stormwater management or erosion control. The standard forms for the letter of credit or escrow agreement are available at the Planning & Zoning Department.
8. **Prior to filing the property plat mylar**, the plat shall be signed and sealed by the VT licensed land surveyor who prepared it.
9. At least **7 days prior to the issuance of a certificate of occupancy**, the applicant shall pay to the Planning & Zoning Department the impact fee as calculated by staff based on the net new square footage of the proposed development.
10. **Prior to issuance of a certificate of occupancy**, the project engineer must certify in writing that, among other things, the project EPSC plan as approved by the Department of Public Works has been complied with and final site stabilization has occurred. This certification shall be filed with the Department of Planning & Zoning.
11. **Prior to issuance of a certificate of occupancy**, the public parking included in this project shall be guaranteed by way of a legally binding agreement, subject to review and approval by the City Attorney. If and when the use is no longer associated with Champlain College student housing, the public parking realized by way of the 2 height bonuses shall continue to be provided.
12. At any time in the future, should the use no longer be associated with Champlain College student housing, an assessment of the parking requirements for the proposed use under the zoning ordinance in effect at that time shall be made. Provisions for accommodating the required parking will likely require development of a parking management plan, as the JIPMP will no longer apply.
13. A Corrective Action Plan (CAP) with the VT Department of Environmental Conservation may be required. **Prior to issuance of a certificate of occupancy**, documentation that the site has been appropriately addressed by way of a CAP or written verification from VT Department of Environmental Conservation that a CAP is not required shall be submitted.
14. All occupants of the building shall be held to the code of conduct contained in the Champlain College residential handbook as long as the use of the building is associated with Champlain College.

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*JK*  
*DWH*

15. Days and hours of construction shall be limited to Monday – Friday, 7:00 AM – 6:00 PM and Saturday, 8:00 AM – 5:00 PM. No construction activity shall be allowed on Sunday.
16. This project is subject to the inclusionary housing requirements of Article 9. These requirements shall be met as articulated in the January 31, 2014 memorandum from John Caulo, Associate Vice President – Campus Planning & Auxiliary Services to Brian Pine, Assistant Director for Housing regarding Eagles Landing Student Apartment Project / Inclusionary Zoning. The annual reporting required by this memorandum shall also include the percentage of residents within the building qualifying under the standards for inclusionary housing.
17. The ADA entrance ramp access suggested within the lower level plan (A1) shall be included within this development proposal to assure accessibility between the Maple Street parking deck and the elevator access to upper (residential) floors.
18. All new utility lines shall be buried.
19. All exterior signs shall require a separate sign permit.
20. A State of Vermont wastewater permit is required.
21. All new construction shall meet the Guidelines for Energy Efficient Construction pursuant to the requirements of Article VI. Energy Conservation, Section 8 of the City of Burlington Code of Ordinances.
22. Standard permit conditions 1-15 which follow.

**Standard Permit Conditions:**

1. **Other City, State or Federal Permits.** The owner is solely responsible for obtaining all other required City, state and federal approvals. Failure to do so may invalidate this Zoning Permit and result in enforcement actions.  
**Note: All projects receiving a Zoning Permit also require a Construction Permit or written confirmation that a Construction Permit is not required from Department of Public Works-Inspection Services Division (DPW-ISD).** All construction permits must be closed out by way of approved inspections by DPW-ISD before issuance of a Unified Certificate of Occupancy (UCO) by the Code Enforcement Office as per Condition 3, below.
2. **Time Limits.** This zoning permit shall become invalid unless work or action authorized by the permit is commenced within one year of a final judgment approving this permit. The owner shall complete the approved project and obtain a UCO (combined Zoning and Building certificates of occupancy, still applicable even if a zoning or building permit was not required) within two years of a final judgment approving this permit, or be subject to enforcement actions.

These time limits are binding upon the owner unless one of the following apply: a) longer or shorter time limits are specifically imposed by a condition of approval; or b) the time limits are tolled by additional state or federal permitting for the project or by an appeal; or c) an extension of time has been granted. An extension of time must be requested in writing PRIOR to the expiration of the permit. If the owner has enacted the permit and it lapses, the owner may be responsible to obtain a new zoning permit, if required, which shall be subject to the current Comprehensive Development Ordinance (CDO).

3. **Unified Certificate of Occupancy (UCO):** It shall be unlawful to use or occupy (or allow the use or occupancy of) any land or structure or part thereof which has been created, changed, converted, or wholly or partly altered or enlarged in its use or structure without a UCO.

**If the project is partially completed,** meets “prior to issuance of a UCO” conditions of approval, meets all health and safety standards, and all municipal fees for the project are paid, a Temporary Zoning CO may be requested and issued. **Upon completion of the project,** applicant shall request and obtain a Final UCO from the Code Enforcement Office (located at 645 Pine Street). Additional information on how to request and obtain this UCO is available at this office. **Failure to obtain a certificate of occupancy** places the property in violation of the CDO and is subject to enforcement.

In addition, **Failure to obtain a UCO within the time limits above is subject to** “after the fact” fees ranging from \$75 - \$1500 (in addition to the UCO fee).

4. **Project Modifications.** The project shall be completed as shown on the plans, which have been stamped “approved” and dated by the administrative officer. The project shall not deviate from the approved plans or conditions of approval without prior written approval from the administrative officer.
5. **Property Inspection.** By acceptance of this permit, the owner authorizes City Officials and/or their authorized representatives, access to the subject property for the purpose of observing work in progress, inspecting and/or measuring the property or improvements until such time the project has been issued a Final UCO.
6. **Completion and Maintenance of Improvements and Landscaping.** Owner or successor in interest is responsible for completing all improvements shown on approved plans. By acceptance of this permit, Owner agrees to maintain all improvements in a satisfactory condition. Any landscaping installed according to the approved plan which becomes diseased or dies shall be replaced by similar species and size no later than the first available planting season.
7. **Off-Site Drainage.** Issuance of this permit does not authorize the discharge of stormwater runoff or other surface drainage from the subject premises onto adjoining property or properties including but not limited to the public Right of Way.
8. **Errors.** The owner is solely responsible for the accuracy of all information contained in the Zoning Permit application. Any errors contained therein may invalidate the Zoning Permit and may result in enforcement action by the City.
9. **Transfer of Ownership. All zoning permits run with the land.** In the event of a transfer of ownership, partial or whole, of the subject premises, the transferee shall become permittee and subject to compliance with the terms and conditions of this permit.
10. **Violations/Penalties.** A violation of any of the conditions of this permit or of any provision of the CDO may result in enforcement actions, including but not limited to a penalty of up to two hundred dollars (\$200) per day, municipal tickets, and/or additional permitting fees.
11. **Incorporation and Reference of All Plans Presented.** This approval incorporates by reference all plans and drawings presented and all verbal representations by the applicant on the subject application to the extent that they are not in conflict with other stated conditions or regulations.

12. **For Properties Involved in Boundary Disputes.** Boundary disputes are not within the jurisdiction of the administrative officer or the Development Review Board. When an application is submitted and the boundary of the subject property is called into question, the boundary will be determined based upon the best evidence available, for instance a survey or other official document. If a permit is issued and contrary evidence is presented to the City after the fact, such as a survey or Superior Court ruling with respect to the boundary lines, the permit may be amended or revoked by the City.  
If the permit is amended or revoked, owner shall bear all costs to remedy the situation, including removal of the structure(s) if necessary, that is if the structure(s) is/are unable to meet the requirements of the CDO and receive an amended permit in light of the actual boundary line.
13. **Damage to City Property.** The Owner is responsible for any damage to the City of Burlington's property, including but not limited to its right-of-way, sewer/water lines, etcetera, that occurs during the site improvements authorized by this permit. If damage occurs, the Owner shall restore the property to a condition equal to or better than the condition of the property prior to such damage.
14. **City Rights-of-Way and Ownership.** Permit approval does NOT authorize any work to be undertaken within the public ROW. Any work in the ROW can only occur with prior authorization by DPW and City Council, as required. Any work or improvements that are taken within the City's right of way does not diminish the City's ownership or authority regarding said right of way.
15. **Liquor License Required.** An approval of any use that includes the sale of alcoholic beverages is contingent upon the receipt of a liquor license from the City of Burlington or the State of Vermont, whichever is applicable.

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