



**CITY OF BURLINGTON
DEPARTMENT OF PUBLIC WORKS**

645 Pine Street, Suite A
Post Office Box 849
Burlington, VT 05402-0849
802.863.9094 VOICE
802.863.0466 FAX
802.863.0450 TTY
www.burlingtonvt.gov/dpw

Chapin Spencer
DIRECTOR OF PUBLIC WORKS

M E M O R A N D U M

To: Hannah Cormier, Clerks Office
From: Chapin Spencer, Director
Date: November 28, 2016
Re: Public Works Commission Agenda - **Special Commission Meeting**

Please find information below regarding the next **Special** Commission Meeting.

Date: **December 6, 2016**
Time: 6:30 – 8:00 p.m.
Place: **149 Church St – Conference Room 12**

A G E N D A

ITEM

- 1 Call to Order – Welcome – Chair Comments
- 2 Agenda
- 3 10 Min Public Forum (3 minute per person time limit)
- 4 60 Min Brown's Court Lot & Champlain College Development
 - A Communication, P. Cashman
 - B Commissioner Discussion
 - C Public Comment
 - D Action Requested –Vote
- 5 **Adjournment & Next Meeting Date – 12-21-16**

Non-Discrimination

The City of Burlington will not tolerate unlawful harassment or discrimination on the basis of political or religious affiliation, race, color, national origin, place of birth, ancestry, age, sex, sexual orientation, gender identity, marital status, veteran status, disability, HIV positive status or genetic information. The City is also committed to providing proper access to services, facilities, and employment opportunities. For accessibility information or alternative formats, please contact Human Resources Department at 865-7145.



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MEMORANDUM

December 6, 2016

TO: Public Works Commission

FROM: Chapin Spencer, Director of Public Works
Noelle MacKay, Director CEDO

RE: Purchase and Sale of Browns Court to Champlain College

Purpose:

We respectfully request the Public Works Commission adopt the following motion at its December 6, 2016 meeting:

To recommend to the City Council the sale to Champlain College of the Browns Court Parking Lot as proposed because the proposed sale is consistent with the Downtown Parking & Transportation Management Plan adopted by the City in December 2016, and that the City has taken appropriate steps to safeguard public parking in the proposed transaction.

History of the Property:

In 1958, the City of Burlington acquired the land, known now as the Browns Court Parking Lot, in order to create a downtown parking lot. The lot was financed by a \$65,000 loan, of which \$45,750 was earmarked for acquisition and \$19,250 for development costs. The lot was built and has been used as such since. It is owned by the Clerk Treasurer's Office in the City and is currently equipped with 40x ten hour meters.

In November 2000, the City Council unanimously adopted a resolution "endorsing the concept of converting City-owned surface parking lots located in residential zoning districts to residential uses." The Browns Court parcel was identified as a feasible site for housing development located in the "Residential High Density zoning district." In August 2002 and again in March 2006, the City Council unanimously endorsed the recommendations of both the Mayor's Affordable Housing Task Force and the Housing Super Committee, including the recommendation that "the City-owned parking lot located on Browns Court should be redeveloped for housing that is affordable to a range of incomes."

In April 2007, with a commitment that CEDO would “work with DPW on developing a plan that will replace or mitigate the loss of public parking that results from converting Browns Court parking lot to housing,” the City Council authorized CEDO to issue a Request for Qualifications (RFQ) for developing mixed-income housing on Browns Court.

Browns Court, the City and Champlain College

While the RFQ failed to produce a viable project, the City followed up quickly in June 2008, entering into a City Council-approved Memorandum of Understanding with Champlain College, authorizing Champlain College to expand outside of its then “authorized areas” of development to purchase the “Eagles Club” property which abuts the Browns Court parking lot. In exchange Champlain College committed to building the required parking for its project and working cooperatively with the City on a parking solution that supported the successful development of Browns Court by the City “while also supporting additional public parking within the combined projects.” The parties committed to working together in good faith to develop their projects in tandem so as to optimize construction efficiencies.

The recession delayed progress by either party, but in 2013, the City having no new independent plan to develop housing on Browns Court, executed a Letter of Intent with Champlain College for sale of the Browns Court property for a larger scale Champlain College student housing project to be constructed by a third party/developer. In June 2013, the City Council authorized Mayor Weinberger to execute a Purchase and Sale re Browns Court with Champlain College. Champlain College then moved through the permitting process for its project and received permits for a 105 unit/314 bed facility.

Champlain College’s developer backed out of the deal following Council approval of the Letter of Intent, however, and it has taken until now to repackage the project financially and otherwise. The Board of Finance (11/21/2016) recommended to City Council and City Council on Monday (11/28/16) authorized execution of a revised Purchase and Sale with Champlain College for the Browns Court property.

Public parking will be preserved, provided, maintained and operated by Champlain College in their project. The Development Review Board approval for the project requires that “spaces of on-site parking located at the Project shall be made available to the general public pursuant to the City permit conditions, of which at least 40 spaces shall be available to the general public nights, weekends, and holidays, and another 25 spaces shall be available to the general public at all times. Unless the City has developed and is prepared to implement upon issuance of the Certificate of Occupancy for the Project a parking management strategy Champlain College shall make the on-site spaces available to the general public and self-manage the parking operation.”

This represents a net increase of 25 public parking available on nights and weekends – and a decrease of 15 spaces during regular work day hours.

DPW Involvement & Larger Parking Plan

In 2014, DPW, CEDO and others initiated two parking studies – one focused on the downtown and the other focused on residential areas. The goal was to develop a comprehensive understanding of parking supply and demand, and to identify optimal parking management strategies that best utilize the limited parking and land resources in the City. The downtown study specifically called for “severely reducing or eliminating surface parking lots and street-facing at grade parking, and replacing with higher or better uses – more dense development, green space, or amenities for alternative modes of transportation.” The resulting Residential Parking Management Plan and Downtown Parking and Transportation Management Plan were subsequently reviewed and accepted by a combination of the Public Works Commission and the City Council in late 2015. The Downtown Parking & Transportation Plan specifically called attention to this redevelopment project; “an example of converting a current surface lot to an increase in housing supply is the proposed Champlain College Housing project at King Street and St. Paul Street.” These efforts met the commitment CEDO made in 2007 to work on developing a plan that will replace or mitigate the loss of public parking that results from converting Browns Court parking lot to housing.

Revenue Impacts

DPW has participated in planning both for itself and for the City with an eye to making sure that its Traffic Fund finances are robust going forward despite this modest reduction of metered spaces. In support of the recommended sale of the Browns Court Lot, focused attention was given in September and October of 2016 to quantify the average collection of this lot over time. Extrapolating from this sample shows an expected gross annual revenue from the Browns Court Lot of \$26,422 and an expected operating cost of \$8,345 for a projected net annual revenue of \$18,077. Past City Annual Reports don't provide individual lot collection tallies past 1959 however assuming a constant net revenue and adjusting for inflation the net earnings of the lot would have exceeded its cost in 1980. The lot since then has financially supported the City's traffic and parking activities for the last 36 years. That said, the Browns Court Parking Lot revenue is a small fraction (about half of one percent) of the parking system's \$5M annual revenue – and we expect higher utilization of surrounding meters to compensate for much of this loss. Overall, due to operational efficiencies and rate changes, Traffic Fund revenues and its net income have grown over the past several years. Moving forward, revenue from the publicly available parking retained in the lot per the Development Review Board approval will be retained by Champlain College.

Construction Phase

In support of initial redevelopment activities on the Eagles Landing parcel it is expected that Champlain College will immediately purchase meter bags for the six southernmost spaces in the Browns Court lot, however the remaining 34x spaces will remain available through the holidays. Full closure of the lot and removal of City equipment is expected to begin in the first week of January 2017. In order to inform customers of these changes in a timely manner, DPW will conduct communication efforts with parkers and maintain coordination with Champlain College to identify any changes as they develop. In support of offering alternative parking for customers

DPW Traffic and Parking will also review meter composition in adjacent blocks and determine if opportunities exist to provide more ten hour meters to compensate for the loss of ten hour meters in Browns Court. The construction is expected to take approximately 18 months and the public parking on the site is projected to open in the early fall of 2018.

Recommendation

Article 19 of the City Charter states that the Public Works Commission “shall also from time to time recommend to the city council the acquisition or construction of municipal parking lots or garages, and the city council shall not authorize such acquisition or construction without such recommendation, nor shall the city council dispose of or lease to others for operation any lot or garage without the recommendation of said board.”

City staff has reviewed many of the DPW Commission minutes over the eight years this redevelopment project has advanced and received past Council support to sell the lot. To date we have not found record of the DPW Commission providing its recommendation so we are now seeking this guidance.

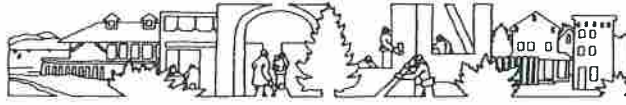
The City as a whole, and DPW in particular, is fully satisfied that this project has fulfilled the 2007 goal referenced above of “developing a plan that will replace or mitigate the loss of public parking that results from converting Browns Court parking lot to housing” while achieving the City’s long held goal of redeveloping this surface lot for much needed housing.

Requested Public Works Commission Action:

Approve the following motion:

To recommend to the City Council the sale to Champlain College of the Browns Court Parking Lot as proposed because the proposed sale is consistent with the Downtown Parking & Transportation Management Plan adopted by the City in December 2016, and that the City has taken appropriate steps to safeguard public parking in the proposed transaction

Please do not hesitate to contact either of us should you have any questions prior to the upcoming Commission meeting. Thank you for your time.



COMMUNITY & ECONOMIC DEVELOPMENT OFFICE

149 CHURCH STREET • ROOM 32 • CITY HALL • BURLINGTON, VT 05401
(802) 865-7144 • (802) 865-7024 (FAX)
www.burlingtonvt.gov/cedo

November 22, 2016

To: City Council
From: Noelle MacKay, CEDO Director; Bob Rusten CAO
Cc: Eileen Blackwood, Mayor's Office

Re: Purchase and Sale of Brown's Court to Champlain College

This memo requests approval to move forward with a purchase and sale agreement between the City and Champlain College with respect to the property located west of Brown's Court at the southeast intersection of King Street and St. Paul Street.

In 2013, City Council authorized the Administration to move forward with the purchase and sale of the property so that Champlain College could develop housing on this site as well as the adjacent parcel located at the corner of St. Paul Street and Maple Street.

The memo, Draft Purchase and Sale Agreement and supporting attachments contemplates a transaction that is substantially similar to the transaction that was approved by the City Council in June 2013. The purchase price remains \$1,100,000. Material modifications to the transaction are summarized as follows:

Property Taxes:

- In 2013, Champlain College had agreed that a private developer would acquire, construct and operate the project, so that the property would be subject to full property taxation at its full assessed value. Since 2013, the project developer has withdrawn from the project (Champlain was unable to identify an acceptable alternative developer), and Champlain College has now chosen to construct and operate the project itself.
- Because Champlain College is an educational institution, its property is not fully taxable (real property owned by Champlain College is partially taxable).
- In consideration of the infrastructure improvements that the City will be making in the vicinity of the property which will benefit the project, Champlain College has agreed that for 20 years beginning July 1, 2017, it will pay the City the annual sum of \$260,000 as a development fee, together with a fee payment determined by multiplying (i) the assessed valuation of the Combined Property and the Project, meaning their fair market value at such time adjusted for the common level of appraisal in the City of Burlington for similarly situated property, as determined by the City, net of the existing taxable value for real property owned by an exempt or partially exempt entity, *multiplied by* (ii) twenty-five percent (25%) of the municipal tax rate for the City of Burlington applicable to commercial and non-homestead real property (See table below). This will be substantially equal to what the City would have receive if this was a taxable entity.

- The infrastructure improvements considered include the environmental remediation on the property as well as Great Streets improvements that have a nexus to the site. The \$260,000 is based on a fair share analysis of those TIF improvements.
- After 20 years (beginning July 1, 2037), Champlain College will pay an annual fee (to help defer the City cost to provide municipal services) in the amount of \$260,000 (See table below). Champlain College negotiated a flat fee to provide predictability for future financial planning purposes.

If Taxable		Under Proposed Agreement	
First 20 years (using FY 16 tax rates/numbers)			
Paid to the City for General Fund	\$ 51,649	Paid to the City for General Fund	(base + 25%) \$51,649
Paid to the State Ed Fund	\$ 113,349	Paid to the Stat Ed Fund	(base) \$ 33,390
Kept for the City for TIF	\$ 349,178	Paid to City by Development Fee	\$260,000
Total	\$ 514,176		\$345,039
After 20 years (using FY 16 tax rates/numbers)			
Paid to the City for General Fund	\$51,649	Paid to the City for General Fund	(base) \$ 15,215
Paid to the State Ed Fund	\$113,349	Paid to the State Ed Fund	(base) \$33,390
Paid to the State Ed Fund	\$239,876		
Paid to the City for General Fund	\$109,302	Paid to City by Project Fee	\$260,000
Total	\$ 514,176		\$308,605
Total to City for General Fund	\$160,951		\$275,215

Environmental Reimbursement:

- Since 2013, Champlain College has performed Phase I and Phase II environmental site assessments on the property, and has discovered that there are some substances present in the soil that must be excavated and properly disposed of under Vermont law in accordance with a Corrective Action Plan approved by the Vermont Department of Environmental Conservation.
- As often occurs in such circumstances, the City, as seller, is agreeing to reimburse Champlain College for a portion of the cost that Champlain College will incur to remediate those soils.
- The estimated cost of the work is \$466,877.00, but if the actual cost exceeds the estimate then the parties will equally share the additional cost. The City's financial exposure is capped at \$633,438.50. It is anticipated that this will be paid by TIF revenues.
- The City is required to make the reimbursement payment to Champlain College after the work has been completed, the contractors performing the work have been paid, and the performance of the work has been accepted by the Vermont DEC.

Browns Court Easement:

- The project involves the construction of a terrace, a retaining wall, a stairway, a ramp, and landscaping improvements at the southern end of Browns Court within the public right of way, and Champlain College has sought an easement from the City for that purpose.

- Because DPW has traditionally used the southern end of Browns Court for winter snow storage, the construction of improvements in that location will make it difficult for the City to maintain the street.
- Since 2013, Champlain College has acquired the two houses that front Browns Court and which have vehicular access from Browns Court. Upon acquisition of the property, Champlain College will own all of the real property with frontage on Browns Court.
- Because Champlain College will own all of the real property with frontage on Browns Court, Champlain College has agreed to be responsible for the maintenance of the pavement and sidewalk improvements within Browns Court under an exclusive easement of the right of way. Champlain College will also be permitted to control on-street parking on Browns Court, and to erect signage on Browns Court subject to the City's review and approval, not to be unreasonably withheld. Champlain College will not be permitted to install a gate across Browns Court without the City's consent, not to be unreasonably withheld.

Project Description

- In 2013, the parties agreed to broad project goals and objectives; since then, Champlain College has obtained Burlington Development Review Board approval to construct the project, so the project is now described with reference to the DRB approval.

Parking:

- In 2013, the parties agreed to that the project would maintain for public use at least the same number of parking spaces currently available at the existing parking lot. Since then, Champlain College has obtained Burlington Development Review Board approval to construct the project.
- The DRB approval for the project requires that "spaces of on-site parking located at the Project shall be made available to the general public pursuant to the City permit conditions, of which at least 40 spaces shall be available to the general public nights, weekends, and holidays, and another 25 spaces shall be available to the general public at all times. Unless the City has developed and is prepared to implement upon issuance of the Certificate of Occupancy for the Project a parking management strategy Champlain College shall make the on-site spaces available to the general public and self-manage the parking operation."
- In light of this requirement, the Agreement now requires Champlain College to construct and operate the project in accordance with the DRB approval.
- The City has the right to continue using the property as a municipal parking lot until Champlain College is ready to commence construction.

City Council: Request that the City Council approve the purchase and sale agreement and authorize the Mayor to execute the appropriate documents contingent upon receipt by City Council of the Public Works Commission recommendation.

If you have any questions, certainly feel free to contact me.

Resolution Relating to

**PROPOSED CHAMPLAIN COLLEGE PURCHASE OF THE
BROWNS COURT PARKING LOT SITE**

RESOLUTION _____

Sponsor(s): Bd. of Finance

Introduced: _____

Referred to: _____

Action: _____

Date: _____

Signed by Mayor: _____

CITY OF BURLINGTON

In the year Two Thousand Sixteen

Resolved by the City Council of the City of Burlington, as follows:

1 That WHEREAS, Champlain College is hoping to purchase the Browns Court parking lot site owned by
2 City; and

3 WHEREAS, in 2008, Champlain College purchased an abutting property, the Eagles Club site, located
4 at the corner of St. Paul and Maple Streets, with all necessary City Council approval required by a 1994
5 Memorandum of Understanding between Champlain College and the City which requires Champlain College
6 to seek and receive City Council approval before purchasing properties outside delineated boundaries; and

7 WHEREAS, in 2008, Champlain College executed an additional Memorandum of Understanding
8 whereby Champlain College committed itself to working cooperatively with the City to coordinate its
9 development of the Eagles Club site with City plans to develop the Browns Court parking lot site; and
10 WHEREAS, the City had long standing plans to convert Browns Court to housing but was unable to
11 get traction for any particular project of its own; and

12 WHEREAS, given recent consensus for the need for new student housing and Champlain College's
13 preparedness to develop both the Eagle's Club site and the Brown's Court parking lot site as a single project
14 which addresses that need and fits with the College's Master Plan; and

15 WHEREAS, Champlain College's project will preserve public parking at the site; and

16 WHEREAS, on June 25, 2013, Mayor Weinberger executed a Letter Agreement with Champlain
17 College which articulated a plan for intended terms and conditions for a proposed Purchase and Sale
18 Agreement; and

WHEREAS, on September 9, 2013, the City Council authorized Mayor Miro Weinberger to execute a Purchase and Sale Agreement in substantial conformance with the terms and conditions agreed to by the Mayor in the above-referenced June 25, 2013 Letter Agreement and authorized the Mayor to execute said Purchase and Sale Agreement, subject to the review and approval of the City Attorney; and

WHEREAS, over the past three years, the City and Champlain College have worked to address issues which prevented execution of the proposed 2013 Purchase and Sale Agreement and are now prepared to move ahead with a new agreement per the accompanying Purchase and Sale Agreement (with attached referenced documents); and

WHEREAS, at its November 21, 2016 meeting, the Board of Finance considered the above-referenced proposed sale of the Brown's Court parking lot site and unanimously recommended that the City Council authorize such sale contingent upon receipt of a recommendation from the Public Works Commission; and

WHEREAS, the Public Works Commission will meet on December 7, 2016 to consider its recommendation to the City Council as required by the City Charter.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby approves the sale of the Brown's Court parking lot site to Champlain College upon substantially the terms and conditions contained in the accompanying draft Purchase and Sale Agreement and the attachments thereto; and

BEIT FURTHER RESOLVED that upon acceptance by the City Council of the recommendation of the Public Works Commission, the Mayor is authorized to execute a Purchase and Sale Agreement and any other documents necessary or desirable in connection therewith, subject to the review and approval of the City Attorney's office.

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (the “Agreement”) is effective _____, 2016 and is made by and between the **City of Burlington**, a municipal corporation situated in Chittenden County, Vermont (the “Seller”) and **Champlain College Incorporated**, a Vermont non-profit educational corporation with its principal place of business in Burlington, Vermont (the “Buyer”).

Background

A. Seller owns, in fee simple, two parcels of land measuring 0.357 acres and 0.04 acres, respectively, comprised of open land and a surface parking lot, identified by the City of Burlington as Parcel Nos. 049-3-027-000 (0.357 acres) and 049-3-041-000 (0.04 acres), and known as and numbered 1 Browns Court and 14 Browns Court, Burlington, Vermont (the “Property”).

B. Buyer wishes to purchase the Property from Seller, and Seller wishes to sell the Property to Buyer in accordance with the terms and provisions of this Agreement, to enable Buyer to combine the Property with the former “Eagles Club” property, numbered 194 St. Paul Street, and in order to construct a redevelopment project (the “Project”) on the combined properties (the “Combined Property”) materially and substantially in accordance with and subject to the terms and conditions of Burlington Development Review Board approvals numbered 14-0671CA/MA, 14-0672CA/MA and 14-0721CA/MA, as modified by Consented To Order dated March 16, 2015 executed by the State of Vermont Superior Court, Environmental Division, in the matter captioned *In Re: Appeal of Eagles Place, LLC*, Docket No. 55-4-14 Vtec as it has been or may be amended (the “Approvals”).

C. In connection with and as appurtenances to the Project, and in order to satisfy certain terms and conditions of the Approvals, Buyer desires to obtain from Seller certain easements and licenses to use lands and premises located within the St. Paul Street, King Street and Browns Court rights of way for specific, limited purposes (the “Appurtenant Rights and Easements”).

D. Environmental investigations of the Property indicate that polycyclic aromatic hydrocarbons (PAHs) and arsenic are present in the soil in excess of permissible levels, and that construction of the Project will require the removal and disposal of such soils, together with “urban fill” material, at an approved facility in accordance with a Corrective Action Plan prepared by KAS, Inc. dated June 4, 2015 (Project #508130310) which has been submitted for approval to the Vermont Department of Environmental Conservation (the “CAP”), and Seller has agreed to reimburse Buyer for the cost of implementing the CAP with respect to the Property in the manner described in this Agreement.

Now Therefore, in consideration of the foregoing, (which are incorporated into this Agreement by reference) and the mutual covenants and agreements herein set forth, and in reliance on the representations and warranties contained herein, the parties hereby agree as follows:

Section 1. Sale and Purchase; Buyer’s Acknowledgment.

a. Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase from Seller, the Property and the Appurtenant Rights and Easements, in accordance with the terms and conditions set forth in this Agreement. The Appurtenant Rights and Easements are more particularly described in Section 7 of this Agreement. Seller represents that it intends to merge the Property with the real property numbered 194 St. Paul Street to create the Combined Property as a single, undivided parcel of land.

b. By purchasing the Property at the Closing, Buyer is agreeing that it has had an adequate opportunity to conduct its due diligence on the Property and, subject to the exceptions and limitations on

liability contained herein, is acquiring the Property in its current "as is" condition based solely on its own due diligence. Seller shall have no liability as to the failure of the Property, or any part thereof, to comply with any applicable laws and regulations, including without limitation, building codes, zoning, land use, subdivision, water supply and wastewater or Act 250. Seller affirmatively represents that Seller believes that the Property is properly zoned for the Project as herein described. The provisions of this Section shall survive Closing.

Section 2. **Purchase Price.** The purchase price (the "Purchase Price") to be paid by Buyer to Seller for the Property shall be One Million One Hundred Thousand and xx/100 U.S. Dollars (\$1,100,000.00). Buyer shall pay the Purchase Price to Seller as follows:

a. A deposit of Thirty Thousand Dollars (\$30,000.00) payable as provided in Section 3, by Buyer's check made within three (3) business days after the Seller's execution of this Agreement (the "Deposit").

b. The balance of the Purchase Price, subject to adjustment and to apportionment as set forth below, shall be paid at Closing (as defined below), by bank cashier's check, certified check or check drawn on an attorney trust account, in each case payable to Seller, or by wire transfer pursuant to written wire instructions given by Seller to Buyer no less than three (3) business days prior to the Closing.

Section 3. **Deposit.** The Deposit shall be held by Paul Frank & Collins (the "Escrow Agent") in a non-interest bearing escrow account. The Deposit shall be applied to the Purchase Price at Closing. In the event the Closing does not occur, the Deposit shall be disbursed as provided herein.

Section 4. **Closing Conditions.** Seller's obligation to close shall be conditioned upon the following ("Seller's Closing Conditions"):

a. **Burlington City Council Approval.** Seller's receipt of approval for the transaction described by this Agreement from Burlington City Council.

b. **Development Agreement.** At Closing, Buyer and Seller shall execute a Development Agreement in the form attached hereto as **Exhibit B** and made a part hereof.

c. **Commencement of Construction.** Prior to Closing, Buyer shall provide Seller with evidence, to Seller's reasonable satisfaction of Buyer's obligation and commitment to materially commence construction of the Project on the Property within six months of the Closing Date. For purposes of this provision, the material commencement of construction requires the commencement of construction of building improvements and not only the excavation and removal of asphalt and soil.

Section 5. **Representations and Warranties.**

a. **Representations and Warranties of Seller:** Seller hereby represents and warrants to Buyer that:

i. Seller is the record owner of the Property and Buyer will be conveyed good, insurable, and marketable title to the Property at Closing, subject to Seller's ability to continue to use and operate the Property as a public parking lot after the Closing as described herein.

ii. Seller is a Vermont municipal entity, which, subject to Section 4(a) herein, has the full power and authority to enter into, execute, deliver, and consummate the transaction contemplated by this Agreement and any instruments and agreements contemplated herein. Subject to Section 4(a), Seller has taken all action required by law or by its charter to authorize

the execution, delivery, and consummation of the transaction contemplated hereby.

iii. The consummation of the transaction contemplated by this Agreement will not violate or be in conflict with any provision of Seller's governing documents, or any other agreement or instrument to which Seller is a party or by which Seller is bound, or any judgment, decree, order, statute, rule or regulation applicable to Seller.

iv. This Agreement constitutes the legal, valid and binding obligation of Seller in accordance with its terms.

b. Representations and Warranties of Buyer. Buyer hereby represents and warrants to Seller that:

i. Buyer is a Vermont non-profit corporation, validly existing and in good standing under the laws of the State of Vermont and has the full power and authority to enter into, execute, deliver, and consummate the transaction contemplated by this Agreement and any instruments and agreements contemplated herein. Buyer has taken all action required by law or by its organizational or corporate documents to authorize the execution, delivery, and consummation of the transaction contemplated hereby.

ii. The consummation of the transaction contemplated by this Agreement will not violate or be in conflict with any provision of Buyer's governing documents, or any other agreement or instrument to which Buyer is a party or by which Buyer is bound, or any judgment, decree, order, statute, rule or regulation applicable to Buyer.

iii. This Agreement constitutes the legal, valid and binding obligation of Buyer in accordance with its terms.

Section 6. **Closing; Operation of a Parking Lot.**

a. The closing and transfer of title to the Property (the "Closing") shall take place at an agreed upon location in Burlington, Vermont within ninety (90) days of the transaction receiving approval from the Burlington City Council (the "Closing Date"), provided that the Closing shall occur no later than December 15, 2016 and if the Closing shall not have occurred by such date then Seller shall have the right to terminate this Agreement.

b. Buyer agrees that Seller will have the right to continue to use and operate the Property as a public parking lot after the Closing, and to retain all rents and income from such operations without any obligation to pay rent to Buyer, until Buyer commences excavation of the building foundation for the Project on the Property, which shall be upon at least thirty (30) days' notice to Seller. During the period when the Seller is using the Property as a parking lot: Buyer will not be obligated to pay taxes on the Property; Seller will be responsible for all utility, plowing, landscaping and insurance expenses associated with such use; and Seller agrees to hold Buyer harmless from and against any cost, expense or liability arising out of Seller's operation of a parking lot on the Property. The parking meters located on the Property are and shall remain the Seller's personal property, and the Seller shall remove them from the Property at its expense prior to Buyer's commencement of excavation/construction, provided that Seller may, in its discretion, choose to abandon in place some or all of the poles that support the meters.

Section 7. **Transfer Documents.** Seller shall deliver to Buyer, at the Closing, against payment of the Purchase Price, in form satisfactory to Buyer and its counsel:

a. A copy of the Burlington City Council approval for the transaction described by this Agreement.

b. A Vermont Warranty Deed in the form of **Exhibit A** attached hereto and made a part hereof, sufficient to convey good, insurable, and marketable title to the Property subject to (1) taxes assessed on the Grand List not delinquent on the date of Closing, which the Buyer shall assume and agree to pay as part of the consideration for the Warranty Deed subject to such taxes being prorated between Seller and Buyer on such date; (2) the provisions of state laws and regulations, municipal ordinances, public laws and special acts; (3) all easements, rights of way, covenants, conditions, permits, and other restrictions on use of record and affecting the Property, and all rights of the public and others legally entitled thereto in any portion of the Property lying within the boundaries of a public road, way, street, trail, or alley, in each case not meaning to reinstate any claims barred by operation of the Vermont Marketable Record Title Act, 27 V.S.A. § 601 et seq.; (4) Buyer's agreement to construct the improvements on the Combined Property in accordance with the terms and conditions of the Approvals; and (5) the obligations set forth in the Development Agreement.

c. A completed Vermont Property Transfer Tax Return.

d. The Development Agreement in the form attached hereto as **Exhibit B** and made a part hereof for execution by both parties.

e. The Reimbursement Agreement in the form of **Exhibit C** attached hereto and made a part hereof for execution by both parties in satisfaction of Seller's agreement and commitment to reimburse Buyer for the cost of implementing the CAP with respect to the Property.

f. The Easement Agreement in the form of **Exhibit D** attached hereto and made a part hereof for execution by both parties in partial satisfaction of Seller's agreement and commitment to grant Buyer the Appurtenant Rights and Easements.

g. The License Agreement in the form of **Exhibit E** attached hereto and made a part hereof for execution by both parties in partial satisfaction of Seller's agreement and commitment to grant Buyer the Appurtenant Rights and Easements. The parties' execution of the Easement Agreement the License Agreement together fully satisfy Seller's agreement and commitment to grant Buyer the Appurtenant Rights and Easements.

h. Such other instruments as the Buyer may reasonably request to effectuate the transaction contemplated by this Agreement without additional liability to Seller.

Section 8. Title. Buyer shall cause title to the Property to be examined and shall notify Seller in writing prior to _____, 2016 of the existence of encumbrances and defects in the title which render Seller's title to the Property unmarketable as defined herein. Seller shall have at least thirty (30) days from the time Seller receives such notice to use commercially reasonable efforts to remove the specified encumbrances or defects, which may include, without limitation, the Seller's agreement to instruct the closing or settlement agent to disburse to any mortgagee or lien holder an amount sufficient to release the lien or claim. If, on the date set for Closing or the expiration of such thirty (30) day period, whichever is later, Seller is then unable to convey marketable title free and clear of one or more encumbrances and defects specified in such notice, Buyer in full satisfaction of Buyer's obligations hereunder, shall either: (a) accept such title to the Property as Seller can convey without reduction in the Purchase Price; or (b) terminate this Agreement, in which case, Seller shall direct the Escrow Agent to promptly return the Deposit to Buyer, and upon Buyer's receipt of the Deposit, all further rights and liabilities of the parties hereto be reason of this Agreement shall terminate.

This Section shall not be construed to be a waiver of a claim against marketability by Buyer for a defect arising between the date of Buyer's examination of title and the date of Closing, which defect(s) in that event shall be removed or corrected by Seller prior to Closing. If Seller is unable to remove such title defects prior to Closing, Buyer may elect to either accept such title to the Property as Seller can convey without reduction in the Purchase Price, or terminate this Agreement, in which case, Seller shall promptly direct the Escrow Agent to return the Deposit to Buyer, whereupon all further rights and liabilities of the parties hereto by reason of this Agreement shall terminate.

As used herein, marketable title shall be defined with reference to the Vermont Marketable Title Act (27 V.S.A. § 601 *et seq.*) and the Title Standards of the Vermont Bar Association now in force.

Section 9. **Adjustments to Purchase Price.** All utility bills, tax payments and other expenses associated with the ownership of the Property shall be prorated at the time of Closing, provided that if Seller continues to use the Property as a public parking lot following Closing in the manner described above in Section 6(b), then such expenses shall be prorated as of the date that Seller ceases to use the Property as a public parking lot rather than at the time of Closing.

Section 10. **Vermont Property Transfer Tax.** Buyer shall pay any Vermont Property Transfer Tax due in connection with the purchase and sale of the Property.

Section 11. **Risk of Loss.** The risk of loss due to damage to the Property by natural disaster or environmental accident resulting in the Property being rendered undevelopable for purposes of the Project is on Seller until the Closing. In the event of a casualty loss prior to Closing, or other loss by natural disaster or environmental accident, Buyer may, in full satisfaction of Buyer's obligations hereunder, either: (a) elect in writing to terminate this Agreement, and upon such notification Seller shall direct Escrow Agent to promptly return the Deposit to Buyer, and upon Buyer's receipt of the Deposit, all further rights and liabilities of the parties hereto by any reason of this Agreement shall be at an end; or (b) elect to close the transaction without reduction in the Purchase Price, in which case Seller shall pay to Buyer all funds received by Seller on account of any casualty loss, if any, and shall assign to Buyer all pending claims for insurance then in process, if any, and shall cooperate with Buyer to allow Buyer to collect the proceeds of the insurance.

Section 12. **Default and Termination.**

a. If Buyer shall fail to complete the purchase of the Property as provided herein for reasons other than as set forth in Sections 8 or 11 or is otherwise in default of its obligations under this Agreement, Seller's sole remedy shall be to terminate this Agreement and retain the Deposit.

b. If Seller shall fail to complete the sale of the Property as provided herein for reasons other than as set forth in Sections 4, 8 or 11 or is otherwise in default of its obligations under this Agreement, Buyer may terminate this Agreement and receive back the Deposit, or pursue alternative legal or equitable remedies provided by law, including specific performance and damages.

c. In the event that a legal action is instituted arising out of a breach of this Agreement, the substantially prevailing party shall be entitled to have its reasonable attorneys' fees and costs paid by the other party.

Section 13. **Escrow Agent.** The Escrow Agent's duties shall be limited to the duties outlined herein. The parties hereto shall indemnify and hold harmless the Escrow Agent from and against all costs, expenses and fees, including legal fees, incurred as a result of a dispute hereunder, unless the dispute is

caused by Escrow Agent's breach of the terms of this Agreement, gross negligence, or willful misconduct.

Section 14. **Commissions and Fees.** The parties warrant and represent to each other that they have no knowledge of any real estate broker or agent to whom a commission may be payable as a result of this transaction or any such knowledge of any other finder's fees or commissions related thereto, and each party agrees to indemnify and hold harmless the other for all claims or demands of any real estate agent or broker claiming by, through, or under such party, which indemnification shall also include payment of costs and attorneys' fees incurred by a party in defense of a claim for such real estate commissions or fees.

Section 15. **Binding Contact; Governing Law.** This Agreement shall bind and inure to the benefit of the parties hereto and their respective representatives, heirs, successors and assigns. Each individual executing this Agreement represents and warrants that he or she has the requisite power and authority to execute this Agreement on behalf of the party for which he or she acted, and in doing so to bind such party to the terms and provisions hereof. This Agreement shall be governed by Vermont law (without giving effect to conflicts of laws principles), and each party hereto hereby irrevocably and unconditionally (a) submits to the personal jurisdiction of the state and federal courts situated in Chittenden County, Vermont over any suit, action or proceeding arising out of or relating to this Agreement, and (b) waives any and all personal rights under the laws of any state to object to jurisdiction within the State of Vermont or venue in the state and federal courts situated in Chittenden County, Vermont.

Section 16. **Assignment.** Neither party shall have the right to assign its rights and obligations under this Agreement to any party without first obtaining the other party's consent, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Buyer shall have right to assign, at or prior to Closing, its rights and obligations hereunder to an entity is acceptable to the City and which has been formed for the purpose of acquiring and developing the Project on the Property. Seller shall accept performance from such assignee, and Seller shall tender its required performance hereunder to such assignee, as if such assignee is the named Buyer herein. Upon Seller's request, such assignee(s) shall execute an assumption of Buyer's rights and obligations under this Agreement.

Section 17. **Further Assurances.** The parties agree to execute, acknowledge 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 intent and purpose of this Agreement.

Section 18. **Notices.** Any notice or other communication to be given hereunder shall be in writing and either hand delivered, mailed via certified mail with return receipt requested, faxed, sent by email using a secure format (e.g., pdf) or sent by nationally recognized overnight courier (e.g., Federal Express) to such party at the address or number set forth below:

If to Seller: Noelle MacKay
Director of Community and Economic Development Office
City Hall, Room 32
149 Church Street
Burlington, Vermont 05401
Tel: (802) 865-7154
Email: nmackay@burlingtonvt.gov

with a copy to: Jeremy Farkas, Esq.
Murphy Sullivan Kronk

275 College Street
P.O. Box 4485
Burlington, VT 05406-4485
Telephone No.: (802) 861-7000
Fax No.: (802) 861-7007
Email: jfarkas@mskvt.com

If to Buyer: David Provost
Senior Vice President - Finance and Administration
Champlain College
163 South Willard Street
P.O. Box 670
Burlington, VT 05402-0670
Tel: (802) 860-2700
Email: djprovost@champlain.edu

with a copy to: Mark Hall, Esq.
Paul Frank + Collins
One Church Street
P. O. Box 1307
Burlington, T. 05402-1307
Tel: (802) 658-2311
Email: mhall@pfclaw.com

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 fax, upon receipt of transmission confirmation; (iii) if sent by email, as long as a delivery failure has not been received; (iv) if sent by overnight service, next-day after sending; or (v) if hand delivered, upon delivery.

Section 19. **Incorporation by Reference.** All exhibits hereto and the terms contained therein are made a part of this Agreement and the contents thereof are hereby incorporated by reference.

Section 20. **Survival.** Except as otherwise expressly set forth herein, the terms, conditions, warranties, covenants, indemnity provisions and representations of this Agreement shall not survive the Closing and transfer of title to the Property.

Section 21. **Entire Agreement; Amendment.** This Agreement, together with any exhibits attached hereto, embodies the entire agreement and understanding between the parties relating to the subject matter hereof and there are no covenants, promises, agreements, conditions or understandings, oral or written, except as herein set forth. This Agreement may not be amended, waived or discharged except by an instrument in writing executed by the party against whom such amendment, waiver or discharge is to be enforced.

Section 22. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. This Agreement may be evidenced by a copy sent by facsimile, .pdf or other secure electronic format and each such copy shall be deemed an original, shall be binding upon the parties for all purposes herein, and shall constitute one and the same instrument.

Section 23. **Captions; Headings.** The captions and section numbers appearing in this Agreement are inserted only as a matter of convenience. They do not define, limit, construe or describe the scope or intent of such sections, nor in any way affect this Agreement or have any substantive effect.

Signature Page to Follow

IN WITNESS WHEREOF, the parties have executed or caused this Agreement to be executed as of the date first mentioned above.

IN PRESENCE OF:

SELLER

City of Burlington

By: _____
Miro Weinberger, Mayor

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

At Burlington, Vermont this ____ day of _____, 2016, personally appeared Miro Weinberger, Mayor of the City of Burlington, to me known to be the person who executed the foregoing instrument, and he acknowledged this instrument, by him sealed and subscribed, to be his free act and deed for himself and on behalf of the City of Burlington.

Before me: _____
Notary Public
My Commission Expires: 2.10.19

BUYER

Champlain College Incorporated

By: _____
David Provost
Senior Vice President - Finance and
Administration

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

At Burlington, Vermont this ____ day of _____, 2016, personally appeared David Provost, Senior Vice President - Finance and Administration for Champlain College Incorporated, to me known to be the person who executed the foregoing instrument, and he acknowledged this instrument, by him signed and sealed, to be his free act and deed for himself and on behalf of Champlain College Incorporated.

Before me, _____
Notary Public
My commission expires: 2.10.19

EXHIBIT A
FORM OF WARRANTY DEED
ATTACHED

DRAFT

WARRANTY DEED

KNOW ALL PERSONS BY THESE PRESENTS that the CITY OF BURLINGTON, a Vermont municipal corporation with its principal office at 149 Church Street, in the City of Burlington, County of Chittenden, and State of Vermont, "Grantor", in consideration of Ten or More Dollars paid to its full satisfaction by CHAMPLAIN COLLEGE INCORPORATED, a Vermont non-profit educational corporation with its principal office in the City of Burlington, County of Chittenden, and State of Vermont, "Grantee", by these presents, does freely GIVE, GRANT, SELL, CONVEY AND CONFIRM unto the said Grantee, Champlain College Incorporated, and its successors and assigns forever, certain lands known as and numbered 1 Browns Court and 14 Browns Court in the City of Burlington, County of Chittenden, and State of Vermont (the "Property"), described as follows, viz:

Being two lots of land that include four parcels identified as "City of Burlington N/F, VOL. 154, PG 492, 0.10 Acre", "City of Burlington N/F, VOL. 148, PG 688, 0.09 Acre", "City of Burlington N/F, VOL. 154, PG 493, 0.17 Acre" and as "City of Burlington N/F, VOL. 154, PG 493, 0.04 Acre" on a Property Plat entitled "Lands of Champlain College, Inc. and The City of Burlington" prepared by Lamoureux & Dickinson Consulting Engineers, Inc., dated November 27, 2013, last revised October 7, 2016, and recorded in Map Slide ____ of the City of Burlington Land Records.

Being a portion of the lands and premises conveyed by the following instruments:

- Warranty Deed from Shirley Grossman to the City of Burlington dated April 18, 1958 and recorded in Volume 154 at Page 492 of the City of Burlington Land Records.
- Guardian's Deed from William H. Berg, Guardian of Sarah M. Rugg, to the City of Burlington dated April 28, 1958 and recorded in Volume 148 at Page 688 of the City of Burlington Land Records.
- Warranty Deed from Lilla H. Lee to the City of Burlington dated January 23, 1958 and recorded in Volume 154 at Page 493 of the City of Burlington Land Records.

Reference is hereby made to the aforementioned instruments, the records thereof and to the references therein contained, all in further aid of this description.

By its acceptance of this Warranty Deed, Grantee hereby merges title to the real property conveyed hereby with the adjacent real property numbered 194 St. Paul Street which Grantee acquired by deed recorded in Volume 1040 at Page 38 of the City of Burlington Land Records, which combined parcels of real property are referred to herein as the "Combined Property".

The Property is conveyed subject to (1) taxes assessed on the Grand List not delinquent on the date of Closing, which the Grantee shall assume and agree to pay as part of the consideration for the Warranty Deed subject to such taxes being prorated between Grantor and Grantee on such date; (2) the provisions of state laws and regulations, municipal ordinances, public laws and special acts; (3) all easements, rights of way, covenants, conditions, permits, and other restrictions on use of record and affecting the Property, and all rights of the public and others legally entitled thereto in any portion of the Property lying within the boundaries of a public road, way, street, trail, or alley, in each case not meaning to reinstate any claims barred by operation of the Vermont Marketable Record Title Act, 27 V.S.A. § 601 et seq.; (4) Grantee's agreement to construct and operate the improvements on the Combined Property in accordance with the terms and conditions of the Burlington Development Review Board approvals numbered 14-0671CA/MA, 14-0672CA/MA and 14-0721CA/MA, as modified by Consented To Order dated March 16, 2015 executed by the State of Vermont Superior

Court, Environmental Division, in the matter captioned *In Re: Appeal of Eagles Place, LLC*, Docket No. 55-4-14 Vtec, as the same may be modified or amended from time to time (which improvements are referred to herein as the “Project”); and (5) the obligations of Grantee and its successors and assigns under a Development Agreement of even date made by and between Grantor and Grantee.

By its acceptance of this Deed, Grantee covenants and agrees that in the event Grantee shall fail to materially commence construction of the Project on the Property within five years of the date of this Deed (for purposes of this covenant, the material commencement of construction requires the commencement of construction of building improvements and not only the excavation and removal of asphalt and soil), then Grantor will have the option and right to repurchase the Property for the purchase price paid by Grantee to Grantor, less an amount equal to the costs incurred by the Grantor in connection with the sale and repurchase of the Property and less the amount paid by Grantor to reimburse Grantee for the cost of implementing the approved Corrective Action Plan with respect to the Property as more fully described in a Reimbursement Agreement of even date herewith made by and between Grantor and Grantee.

The right of way for the roadway known as Browns Court is not included in the real property conveyed hereby. In recognition of the fact that part of the traveled portion of the Browns Court roadway, together with appurtenant sidewalks and curbing and together with an electrical pole line located adjacent to such roadway, has been found to be situated on the Property rather than within the Browns Court right of way, Grantor hereby reserves to itself and its successors and assigns an easement and right of way for the operation, maintenance, repair and replacement of roadway improvements, including a roadway and appurtenant sidewalks and curbing, and for the operation, maintenance, repair and replacement of electrical utility infrastructure, including without limitation utility poles, wires and electrical equipment, over, along, upon and beneath a portion of the Property described as being a strip of land westerly of and adjacent to the right of way for Browns Court, identified as “1,047 SF Easement Proposed to Be Conveyed From Champlain College, Inc. to the City of Burlington” on an Easement Plan entitled “Lands of Champlain College, Inc. and The City of Burlington, 194 St. Paul Street, Burlington, Vermont” prepared by Lamoureux & Dickinson Consulting Engineers, Inc. as Sheet No. EP, dated September 21, 2016, a copy of which is attached as **Exhibit A** hereto and made a part hereof, together with the right to modify, repair and replace such roadway and utility infrastructure in connection with modifications of and upgrades to the roadway infrastructure operated by the City of Burlington and the electrical utility infrastructure operated by Burlington Electric Department. Grantor further reserves to itself such easements and rights of way for access and construction as may be reasonably necessary to exercise the roadway and utility easements reserved hereby, provided that if feasible Grantor shall use Browns Court for access and construction rather than the Property itself. Grantee shall not construct any surface or subsurface improvements to that portion of the Property that is subject to the roadway and utility easements reserved hereby, and Grantor shall have the right to remove any surface or subsurface improvements that interfere with, obstruct or other frustrate the roadway and utility easements reserved hereby.

TO HAVE AND TO HOLD the said granted Property, with all the privileges and appurtenances thereof, to the said Grantee, Champlain College Incorporated, and its successors and assigns, to their own use and behoof forever; and the said Grantor, the City of Burlington, for itself and its successors and assigns, does covenant with the said Grantee, Champlain College Incorporated, and its successors and assigns, that until the ensembling of these presents, it is the sole owner of the Property and has good right and title to convey the same in manner aforesaid, that they are FREE FROM EVERY ENCUMBRANCE, except as aforesaid. And it does hereby engage to WARRANT AND DEFEND the same against all lawful claims whatever, except as aforesaid.

Signature Page to Follow

IN WITNESS WHEREOF, the undersigned duly authorized agent for the City of Burlington, hereunto set his hand and seal this ____ day of _____, 2016.

IN PRESENCE OF:

CITY OF BURLINGTON

Witness:

By:

Miro Weinberger, Mayor

STATE OF VERMONT
CHITTENDEN COUNTY

At Burlington, in said County and State, on this ____ day of _____, 2016, 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

EXHIBIT B
FORM OF DEVELOPMENT AGREEMENT
ATTACHED

DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is made on _____, 2016 by and between the **City of Burlington**, a municipal corporation situated in Chittenden County, Vermont (the "City") and **Champlain College Incorporated**, a Vermont non-profit educational corporation with its principal place of business in Burlington, Vermont (the "College").

Background

- A. The College owns a parcel of land adjacent to the Property numbered 194 St. Paul Street which it acquired by deed recorded in Volume 1040 at Page 38 of the City of Burlington Land Records ("194 St. Paul").
- B. By Warranty Deed of even date with this Agreement, the City has conveyed the College two parcels of land measuring 0.357 acres and 0.04 acres, respectively, comprised of open land and a surface parking lot, identified by the City of Burlington as Parcel Nos. 049-3-027-000 (0.357 acres) and 049-3-041-000 (0.04 acres), and known as and numbered 1 Browns Court and 14 Browns Court, Burlington, Vermont (the "Property").
- C. The City's agreement to sell and transfer the Property to the College was conditioned, in part, on the execution of this Development Agreement at Closing.

Now Therefore, in consideration of the foregoing and the mutual covenants and agreements herein set forth, and in reliance on the representations and warranties contained herein, the parties hereby agree as follows:

- 1. Construction of Project. The College represents that it has merged the Property with 194 St. Paul to create a single, undivided parcel of land, referred to herein as the "Combined Property". The College shall construct the improvements on the Combined Property in accordance with the terms and conditions of the Burlington Development Review Board approvals numbered 14-0671CA/MA, 14-0672CA/MA and 14-0721CA/MA, as modified by Consented To Order dated March 16, 2015 executed by the State of Vermont Superior Court, Environmental Division, in the matter captioned *In Re: Appeal of Eagles Place, LLC*, Docket No. 55-4-14 Vtec, as the same may be modified or amended from time to time (which improvements are referred to herein as the "Project").
- 2. City Improvements. The voters of the City of Burlington have approved the expenditure of funds within the City of Burlington's Downtown TIF District to perform and construct infrastructure improvements in the vicinity of the Combined Property that will benefit the Combined Property, including, without limitation, streetscape, lighting, stormwater, utilities and transportation upgrades (collectively, the "Improvements").
- 3. Development Fee. The College acknowledges and agrees that the City's construction of the Improvements will benefit the Combined Property and the Project, and in order to induce the City to construct the Improvements and to induce the City to transfer and convey the Property to the College in accordance with the Purchase and Sale Agreement referenced above, the College agrees that beginning on July 1, 2017 and then continuing annually on July 1 of each year for a term of twenty (20) years through and including July 1, 2036, the College shall pay the City an annual development fee in the amount of \$260,000 in a lump sum for the purpose of providing the City with an additional source of funds from which to service the debt instruments used by the City to finance the cost of constructing the Improvements and for other related costs associated with the City's administration of its Downtown Tax Increment Finance District (the "Development Fee").

4. Fee for Services.

a. Obligation. The College agrees, for itself and its successors and assigns, that in order to provide the City with an additional source of funds from which to pay for the provision of municipal services to the improvements constructed on the Combined Property from time to time (including, without limitation, the Project), in the event the Combined Property is ever owned in whole or in part by an entity that is statutorily exempt from property taxation or that is subject to statutorily limited or reduced property taxation (an "Exempt Owner", which term includes, without limitation, Champlain College Incorporated), it shall be an obligation of such Exempt Owner to pay a fee to the City in the consideration of the City's provision of municipal services to the Project and the Combined Property ("Fee for Services") upon and subject to the terms and conditions set forth in this Agreement.

b. Fee for Services Calculations and Payment Dates. Beginning on July 1, 2017 and then continuing annually for a term of twenty (20) years through and including fiscal year 2036-37 which ends on June 30, 2037, the College shall pay the City an annual Fee for Services payment calculated in accordance with this Section 4(b). The annual amount of Fee for Services payment due and payable on the Combined Property in accordance with this Section 4(b) will be determined by multiplying (i) the assessed valuation of the Combined Property and the Project, meaning their fair market value at such time adjusted for the common level of appraisal in the City of Burlington for similarly situated property, as determined by the City, net of the existing taxable value for real property owned by an exempt or partially exempt entity, multiplied by (ii) twenty-five percent (25%) of the municipal tax rate for the City of Burlington applicable to commercial and non-homestead real property. The Fee for Services payment required by this Section 4(b) shall be due and payable concurrently with real property taxes in the City of Burlington, and when delinquent shall bear interest at the legal rate, which is currently 12% per annum. Currently real property taxes in the City of Burlington are due and payable in quarterly installments due August 12th, November 12th, March 12th and June 12th.

c. Additional Fee for Services Payment. Beginning on July 1, 2037 and then continuing annually on July 1 of each year, the College shall pay the City an annual Fee for Services payment in the amount of \$260,000 in a lump sum for the purpose of providing the City with an additional source of funds from which to defray the costs of providing municipal services to the Combined Property.

d. The City may, in its sole discretion, use the payments received pursuant to this Section 4 as a source from which to pay debt service and related costs for projects located within its Downtown Tax Increment Finance District.

5. Dispute Resolution.

a. In the event the Exempt Owner disputes the City's determination of the fair market value of the Combined Property and Project and the parties cannot negotiate and agree upon a resolution of such dispute, then the dispute shall be subject to a binding determination made by a "qualified appraiser" to establish such fair market value in accordance with the procedures set forth below, which shall be initiated upon the City's receipt of a written request therefor sent by the Exempt Owner. If the parties cannot agree to an appraiser, the appraiser shall be selected as follows: within ten (10) days of the date of the City's receipt of the Exempt Owner's written request for a binding determination, the parties shall exchange a list of three (3) acceptable and qualified appraisers and the first person to appear on both lists shall be selected as the arbitrator. A "qualified appraiser" means an MAI appraiser licensed in the State of Vermont with at least five (5) years' experience appraising commercial properties in Chittenden County, Vermont that are similar to the then-existing improvements constructed on the Combined Property. In the event the selected appraiser declines to undertake the appraisal, or if no appraiser appears on both lists,

the parties shall promptly submit new lists with three (3) qualified appraisers who are different than those who appeared on their prior lists until an appraiser has been selected.

b. The appraisal shall be performed at the sole cost and expense of the College. The appraiser shall be instructed to appraise the Combined Property and the Project for use as a building that includes market rate apartment units, market rate retail space, and a market rate parking lot.

c. If the fair market value of the Combined Property and Project as determined by the appraiser is less than 90% or is more than 110% of the City's determination of the fair market value, then either party shall have the option to commission a second appraisal by providing notice of such election within ten (10) business days of the parties' receipt of the appraiser's determination of fair market value. In such event, the fair market value of the Combined Property and Project shall be the average of the values determined by the first and second appraisals. The second appraisal shall be performed by a second qualified appraiser at the sole cost and expense of the party who commissioned the performance of the second appraisal.

d. The fair market value of the Combined Property and Project determined pursuant to this Section 5 – whether by negotiation, by one appraisal or by the average of two appraisals – shall be binding on the parties for three (3) years thereafter.

e. The foregoing dispute resolution procedures shall be the exclusive mechanism to resolve disputes between the parties related to valuation of the Combined Property and Project for purposes of establishing the fair market value of the Combined Property and Project.

6. Lien; Enforcement. By accepting title to the Combined Property, each Exempt Owner shall have covenanted and agreed to make Fee for Services payments to the City in accordance with the terms and provisions set forth herein. The obligation to make Fee for Services payments shall be secured by a lien on the Combined Property. Such lien shall be a first lien on the Combined Property, underlying all mortgages, attachments, liens, or other encumbrances thereon, and all estates thereof or therein. Such lien shall remain in full force and effect for a period of fifteen (15) years from the date that such Fee for Services payments became due, and when the Fee for Services payments secured by a lien in accordance with this provision remain unpaid more than six (6) months after the creation of such lien, such lien may be foreclosed in the same manner as provided by law for the foreclosure of mortgages on real estate. Except as otherwise provided above, and regardless of any future repeal, replacement or modification of the system of real property taxation in Vermont, such lien shall have the same force and effect as a lien created and described by 32 V.S.A. § 5061, shall be filed and noticed in accordance with 32 V.S.A. § 5071, shall have the nature and effect of a lien described by 32 V.S.A. § 5072, shall be filed in the form prescribed by 32 V.S.A. § 5073, shall be foreclosed in the manner described by 32 V.S.A. § 5075, and may be discharged in the manner described by 32 V.S.A. § 5076. In construing the applicability of the referenced statutes to the lien established hereby, allowance shall be made for the differences between the establishment and administration of Fee for Services payments versus the establishment and administration of real property taxes, and references to specific statutory citations shall be construed and understood to include any successors to such statutes in the event that the current statutes are revised or repealed.

7. Change in Exempt Status. In the event the State of Vermont eliminates or materially modifies the property tax exemption applicable to an Exempt Owner (a “Change in Exempt Status”), then the City and the College shall modify the terms and requirements of this Agreement, including without limitation the College's obligation to make Fee for Services payments and to pay the Development Fee, such that the combined amount of the College's payment obligations under this Agreement and the College's property tax obligations after the Change in Exempt Status shall not exceed the combined amount of the

College's payment obligations under this Agreement and the College's property tax obligations prior to the Change in Exempt Status.

8. Continuing Effect; Default. The terms, provisions and obligations of this Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns; without limiting the foregoing, the terms, provisions and obligations of this Agreement shall run with title to the Combined Property, regardless whether this Agreement has been recorded at length in the Burlington Land Records. If the College shall default or fail to comply with its obligations set forth in this Agreement, including without limitation its obligation to construct the Project and its obligation to pay a Fee for Services and the Development Fee, the City may pursue all available legal or equitable remedies provided by law, including specific performance and damages. In the event that a legal action is instituted arising out of a breach of this Agreement, the substantially prevailing party shall be entitled to have its reasonable attorneys' fees and costs paid by the other party.

9. Miscellaneous. Each individual executing this Agreement represents and warrants that he or she has the requisite power and authority to execute this Agreement on behalf of the party for which he or she acted, and in doing so to bind such party to the terms and provisions hereof. This Agreement shall be governed by Vermont law (without giving effect to conflicts of laws principles), and each party hereto hereby irrevocably and unconditionally (a) submits to the personal jurisdiction of the state and federal courts situated in Chittenden County, Vermont over any suit, action or proceeding arising out of or relating to this Agreement, and (b) waives any and all personal rights under the laws of any state to object to jurisdiction within the State of Vermont or venue in the state and federal courts situated in Chittenden County, Vermont. The parties agree to execute, acknowledge 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 intent and purpose of this Agreement. In the event any term, covenant or condition herein contained 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 either party in their respective rights and obligations contained in the valid terms, covenants or conditions hereof. This Agreement, together with any exhibits attached hereto, embodies the entire agreement and understanding between the parties relating to the subject matter hereof and there are no covenants, promises, agreements, conditions or understandings, oral or written, except as herein set forth. This Agreement may not be amended, waived or discharged except by an instrument in writing executed by the party against whom such amendment, waiver or discharge is to be enforced. The captions and section numbers appearing in this Agreement are inserted only as a matter of convenience; they do not define, limit, construe or describe the scope or intent of such sections, nor in any way affect this Agreement or have any substantive effect.

Signature Page to Follow

IN WITNESS WHEREOF, the parties have executed or caused this Agreement to be executed as of the date first mentioned above.

IN PRESENCE OF:

City of Burlington

By: _____
Miro Weinberger, Mayor

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

At Burlington, Vermont this ____ day of _____, 2016, personally appeared Miro Weinberger, Mayor of the City of Burlington, , to me known to be the person who executed the foregoing instrument, and he acknowledged this instrument, by him sealed and subscribed, to be his free act and deed for himself and on behalf of the City of Burlington.

Before me: _____
Notary Public
My Commission Expires: 2.10.19

Champlain College Incorporated

By: _____
David Provost
Senior Vice President - Finance and
Administration

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

At Burlington, Vermont this ____ day of _____, 2016, personally appeared David Provost, Senior Vice President - Finance and Administration for Champlain College Incorporated, to me known to be the person who executed the foregoing instrument, and he acknowledged this instrument, by him signed and sealed, to be his free act and deed for himself and on behalf of Champlain College Incorporated.

Before me, _____
Notary Public
My commission expires: 2.10.19

EXHIBIT C

FORM OF REIMBURSEMENT AGREEMENT

ATTACHED

DRAFT

REIMBURSEMENT AGREEMENT

This Reimbursement Agreement ("Agreement") is made as of _____, 2016, by and between **City of Burlington**, a municipal corporation situated in Chittenden County, Vermont (the "Seller") and **Champlain College Incorporated**, a Vermont non-profit educational corporation with its principal place of business in Burlington, Vermont ("the "Buyer"). Each of Buyer and Seller are a "party" to this Agreement, and they are sometimes collectively referred to as the "parties."

Whereas, Seller and Buyer are parties to a Purchase and Sale Agreement dated _____, 2016 (the "Contract") for the purchase of two parcels of land measuring 0.357 acres and 0.04 acres, respectively, comprised of open land and a surface parking lot, identified by the City of Burlington as Parcel Nos. 049-3-027-000 (0.357 acres) and 049-3-041-000 (0.04 acres), and known as and numbered 1 Browns Court and 14 Browns Court, Burlington, Vermont (the "Property");

Whereas, the Contract recites that environmental investigations of the Property indicate that polycyclic aromatic hydrocarbons (PAHs) and arsenic are present in the soil in excess of permissible levels, and that construction of the Project (as defined therein) will require the removal and disposal of such soils, together with "urban fill" material, at an approved facility in accordance with a Corrective Action Plan prepared by KAS, Inc. dated June 4, 2015 (Project #508130310) which has been submitted to the Vermont Department of Environmental Conservation ("DEC") for approval (the "CAP"), and Seller has agreed to reimburse Buyer for the cost of implementing the CAP with respect to the Property, including, but not limited to, soil analysis, removal and disposal, as well as reasonable administrative and legal fees associated with implementing the CAP, up to the maximum amount of \$633,438.50 (the "Maximum Cost of the Work");

Whereas, Buyer intends to enter into a contract (or contracts) with H. P. Cummings Construction Co., a Massachusetts corporation, to implement the CAP with respect to the Property with an estimated full value of \$466,877.00 (the "Estimated Cost of the Work"). The CAP will be implemented after the closing on the purchase and sale of the Property pursuant to the Contract (the "Closing"). Buyer desires to obtain Seller's agreement to reimburse Buyer for the cost of implementing the CAP with respect to the Property up to the Maximum Cost of Work.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties hereto agree as follows:

1. Reimbursement of the Cost of the Work. Seller shall reimburse Buyer for the cost of implementing the CAP with respect to the Property as follows: Seller shall reimburse Buyer an amount up to the Estimated Cost of the Work; once Seller has paid the full amount of the Estimated Cost of the Work, then Seller and Buyer shall each pay one-half of any additional cost of implementing the CAP with respect to the Property, provided that Seller's total liability shall be limited to the Maximum Cost of the Work. Seller's liability and obligation to reimburse Buyer for the cost of implementing the CAP with respect to the Property shall be limited to the Maximum Cost of the Work under and pursuant to this Agreement. Except as specifically set forth in this Agreement, Seller shall have no liability or obligation arising from or with respect to Buyer's efforts to remediate the Property. In no event shall Seller have any liability or obligation arising from or with respect to the remediation of environmental conditions on the former "Eagles Club" property, numbered 194 St. Paul Street, which is adjacent to the Property and which Buyer intends to develop together with the Property as a single, unified development project.
2. Reimbursement Payments. Seller shall make reimbursement payments to Buyer, but only after Buyer has provided Seller with evidence to Seller's reasonable satisfaction that: (a) the DEC has approved the CAP; (b) Buyer has entered into a contract to perform the work that implements the approved CAP; (c) the work has been completed; (d) the contractors performing the work have been paid; and (e) the performance of the work has been accepted by the DEC consistent with the Property's enrollment in the Brownfields Reuse and Environmental Limited Liability Protection Act program (the "Buyer Deliverables"). Seller shall make reimbursement payments to Buyer within thirty (30) days of

Seller's receipt of the Buyer Deliverables. Once the work has been completed and Seller shall have reimbursed Buyer for the cost of implementing the CAP with respect to the Property up to the Maximum Cost of the Work, Seller shall have no further liability with respect to the environmental condition of the Property.

3. Notices. Any notice or other communication to be given hereunder shall be in writing and mailed, certified with return receipt requested, faxed, sent by email using a secure format (e.g., pdf) or sent by nationally recognized overnight courier (e.g., Federal Express) to such party at the address or number set forth below:

Seller: Noelle MacKay
Director of Community and Economic Development Office
City Hall, Room 32
149 Church Street
Burlington, Vermont 05401
Tel: (802) 865-7154
Email: nmackay@burlingtonvt.gov

with a copy to: Jeremy Farkas, Esq.
Murphy Sullivan Kronk
275 College Street
P.O. Box 4485
Burlington, VT 05406-4485
Telephone No.: (802) 861-7000
Fax No.: (802) 861-7007
Email: jfarkas@mskvt.com

Buyer: David Provost
Senior Vice President - Finance and Administration
Champlain College
163 South Willard Street
P.O. Box 670
Burlington, VT 05402-0670
Tel: (802) 860-2700
Email: djprovost@champlain.edu

with a copy to: Mark Hall, Esq.
Paul Frank + Collins
One Church Street
P. O. Box 1307
Burlington, T. 05402-1307
Tel: (802) 658-2311
Email: mhall@pfclaw.com

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 fax, upon receipt of transmission confirmation; (iii) if sent by email, as long as a delivery failure has not been received; or (iv) if sent by overnight service, next-day after sending.

4. Construction: Interpretation. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. No party, nor its counsel, shall be deemed the drafter of this Agreement for purposes of construing the provisions of this Agreement, and all provisions of this Agreement shall be construed in accordance with their fair

meaning, and not strictly for or against any party. Whenever the approval or consent of any party is required hereunder, such approval or consent is not to be unreasonably withheld, conditioned or delayed.

5. Miscellaneous. This Agreement shall be governed and construed in accordance with the laws of the State of Vermont without reference to its conflicts of laws provisions; it contains the entire agreement and understanding by and between the parties hereto affecting the subject matter hereof, superseding any and all previous agreements, written or oral, between said parties and affecting the same; it may be modified or amended only in writing signed by the parties as provided herein; each of the individuals executing this Agreement represents and warrants that he or she has full power and authority to enter into the same and to bind the party on whose behalf he or she is acting; it shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns. This Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. All such counterparts may be evidenced by facsimile and each such facsimile shall be deemed an original, shall be binding upon the parties for all purposes herein, and, together with any other counterparts, shall constitute one and the same instrument. In the event legal action is instituted arising out of a breach of this Agreement, the substantially prevailing party shall be entitled to reasonable attorney's fees and court costs.

Buyer:

Seller:

Champlain College Incorporated

City of Burlington

By:

David Provost
Senior Vice President
Finance and Administration

By:

Miro Weinberger, Mayor

EXHIBIT D
FORM OF EASEMENT AGREEMENT
ATTACHED

DRAFT

EASEMENT DEED and AGREEMENT

KNOW ALL PERSONS BY THESE PRESENTS, that the **City of Burlington**, a Vermont municipality (the "**Grantor**"), in consideration of Ten and More Dollars paid to the Grantor's full satisfaction by **Champlain College Incorporated**, a Vermont non-profit educational corporation with its principal offices in Burlington, Vermont (the "**Grantee**"), and in consideration of the mutual promises contained herein, by these presents does freely GIVE, GRANT, SELL, CONVEY, and CONFIRM to the Grantee rights and easements over certain lands and premises in the City of Burlington, Chittenden County, Vermont more particularly described as follows:

Being an exclusive easement (the "Improvement Easement") over that portion of the Browns Court right of way identified as "775 SF Improvement Easement Proposed to Be Conveyed From the City of Burlington to Champlain College, Inc." on an Easement Plan entitled "Lands of Champlain College, Inc. and The City of Burlington, 194 St. Paul Street, Burlington, Vermont" prepared by Lamoureux & Dickinson Consulting Engineers, Inc. as Sheet No. EP, dated September 21, 2016 and last revised November 16, 2016, a copy of which is attached as **Exhibit A** hereto and made a part hereof (the "Easement Plan"), subject to the Conditions of Grant set forth below.

Being an exclusive easement (the "ROW Easement") over the balance of the roadway located within the Browns Court right of way and over the sidewalks located within the Browns Court right of way (meaning, net of the area subject to the Improvement Easement), depicted on the Easement Plan as "3484 SF ROW Easement Proposed to Be Conveyed From the City of Burlington to Champlain College, Inc.", subject to the Conditions of Grant set forth below.

The Improvement Easement and the ROW Easement are collectively referred to herein as the "Easements" and the areas burdened by the Easements are referred to as the "Easement Areas".

Grantor acquired the lands burdened by the Easements by Warranty Deed from Lilla H. Lee dated January 23, 1958 and recorded in Volume 154 at Page 493 of the City of Burlington Land Records.

Reference is hereby made to the instruments described above, the records thereof, and the references contained therein in further aid of this description. The Easements are granted subject to (1) the provisions of state laws and regulations, municipal ordinances, public laws and special acts; (2) the terms and conditions set forth herein below; and (3) all easements, rights of way, covenants, conditions, permits, and other restrictions on use of record and affecting the property described herein, not meaning to reinstate any claims barred by operation of the Vermont Marketable Record Title Act, 27 V.S.A. § 601 et seq.

TO HAVE AND TO HOLD the rights and Easements granted hereby, with all the privileges and appurtenances thereto, to the Grantee, **Champlain College Incorporated**, its successors and assigns, to their own use and behoof throughout the term hereof. The Grantor, **City of Burlington**, for itself and its successors and assigns, does covenant with the Grantee, its successors and assigns, that until the ensembling of these presents, the Grantor has authority over the use of the Easement area in the manner described herein (as set forth in 24 V.S.A. App. § 3-48 (49)), and has good right and title to grant the Easement in the manner described in this Easement Deed and Agreement, and that the Easement Area is FREE FROM EVERY ENCUMBRANCE, except as stated in this Easement Deed and Agreement; and the Grantor hereby engages to WARRANT AND DEFEND the same against all lawful claims whatever, except as stated in this Easement Deed and Agreement.

CONDITIONS OF GRANT

In consideration of the Easements granted by this Easement Deed and Agreement (“Agreement”) and the mutual promises contained in this Agreement, the receipt and sufficiency of which is acknowledged, the Grantor and the Grantee agree that the Easements granted by this Agreement are granted upon and subject to the following terms and conditions:

1. **Use of the Improvement Easement.** The Improvement Easement is granted solely for the construction, maintenance, repair, replacement, operation and beneficial use of a terrace, a retaining wall, a stairway, a ramp, landscaping and related and appurtenant improvements, all of which shall be constructed and maintained in accordance with and subject to the terms and conditions of Burlington Development Review Board approvals numbered 14-0671CA/MA, 14-0672CA/MA and 14-0721CA/MA and the plans and drawings approved thereby, as modified by Consented To Order dated March 16, 2015 executed by the State of Vermont Superior Court, Environmental Division, in the matter captioned *In Re: Appeal of Eagles Place, LLC*, Docket No. 55-4-14 Vtec, as such approvals may be modified or amended from time to time (the “Approvals”). Subject to the terms and conditions of this Agreement, the Improvement Easement may be used by Grantee, its successors and assigns, and its and their respective tenants, licensees, invitees, agents and contractors, and the occupants of the Eagles Landing Property (as such term is defined below).
2. **Eagles Landing Project.** The Improvement Easement shall only be used as an appurtenance to the combined parcel of land formerly known as and numbered 1 Browns Court, 14 Browns Court and 194 St. Paul Street, Burlington, Vermont, which Grantee acquired by (a) Deed recorded in Volume 1040 at Page 38 of the City of Burlington Land Records and by (b) Warranty Deed from the City of Burlington of even date with this Agreement, which combined parcel is referred to herein as the “Eagles Landing Property”. Grantee intends to construct on the Eagles Landing Property a multi-family residential project that includes commercial retail space and on-site structured parking (the “Eagles Landing Project”) constructed in accordance with and subject to the terms and conditions of the Approvals.
3. **Use of the ROW Easement.** The ROW Easement is granted solely for the purpose of maintaining (including without limitation, snow plowing, sanding, salting and snow and ice removal), repairing and replacing the street and sidewalk improvements (including pavement and curbing) situated within the Browns Court right-of-way, for on-street parallel parking – at Grantee’s sole option – to benefit adjacent real property owned by Grantee or its wholly-owned subsidiaries, for physical access to and from the benefited real property identified below in this paragraph and for no other purpose. Grantee shall not install any gate across the Browns Court right-of-way and will not install any signage within the Browns Court right-of-way in each case without the Grantor’s prior written consent, which consent shall not be unreasonably withheld. Grantee covenants and agrees that during the term of this Agreement, Grantee shall be solely responsible and obligated for the maintenance, repair and replacement of the street and sidewalk improvements situated within the Browns Court right-of-way. The ROW Easement is granted for the benefit of the Eagles Landing Property, the Eagles Landing Project, the real property numbered 8 Browns Court, the real property numbered 10-12 Browns Court, the real property numbered 123 King Street, the foregoing parties’ respective tenants and invitees, and for others who use the Browns Court right-of-way (including, without limitation, for mail and package deliveries). Grantee acknowledges that 8 Browns Court and 10-12 Browns Court are presently owned by Eagles Place LLC, which is a wholly-owned subsidiary of Grantee. Grantor reserves such rights and easements as may be necessary and desirable for the operation, maintenance, repair and replacement of any and all electrical and water/sewer utility infrastructure, including without limitation utility poles, wires, electrical equipment, pipes, pumps, and storm drains located within the ROW Easement area, and the ROW Easement is granted subject to

the any existing rights or easements held by Grantor or others to operate, maintain, repair and replace additional existing utility lines, equipment and infrastructure located within the ROW Easement area. To further clarify the extent of the ROW Easement, Grantee has no right to alter the use of the Browns Court right-of-way from those uses specified herein without first negotiating a new and separate agreement with Grantor; before Grantor would agree to grant Grantee any additional property rights with respect to the Browns Court right-of-way, the parties would need to negotiate a new and separate agreement.

4. **ROW Easement Maintenance Obligations.** Grantee covenants and agrees to faithfully perform its obligations under Section 3 to at least the same maintenance standard and at least as frequently as the City of Burlington removes snow and ice from King Street adjacent to Browns Court ("Grantee's Maintenance Obligations"). Grantee acknowledges that Browns Court provides the sole means of vehicular access to 8 Browns Court and 10-12 Browns Court and in addition provides a means of pedestrian access to 123 King Street, 8 Browns Court and 10-12 Browns Court, and that such properties are intended third party beneficiaries of Grantee's Maintenance Obligations, and the owners of such properties shall have standing to enforce Grantee's obligations under this Agreement against Grantee in any court of competent jurisdiction. If Grantee fails to perform Grantee's Maintenance Obligations to the reasonable satisfaction of the City of Burlington Department of Public Works, Grantor may perform Grantee's Maintenance Obligations on behalf of Grantee and Grantee shall be liable to Grantor for all reasonable expenses incurred by Grantor thereby.

5. **Term of Easements.** The Easements granted hereby shall remain in force and effect for so long as the improvements comprising the Eagles Landing Project are situated upon the Eagles Landing Property. Upon the demolition or removal of the improvements comprising the Eagles Landing Project for any reason including without limitation due to casualty damage or condemnation, then the Easements granted hereby shall terminate from the date of the commencement of such demolition or removal, provided that Grantee shall have an additional sixty (60) days from the date of termination to remove the improvements from the Improvement Easement area and to restore both of the Easement Areas to a safe, clean and neat condition reasonably acceptable to the City of Burlington Department of Public Works; if Grantee refuses to perform such obligations, the Grantor may perform such obligations on behalf of Grantee and Grantee shall be liable for all reasonable expenses incurred by the Grantor thereby. Notwithstanding anything herein that may be construed to the contrary, Grantor may terminate the ROW Easement at any time upon written notice to Grantee, at which time Grantor shall resume the obligation to maintain, repair and replace the street and sidewalk improvements situated within the Browns Court right-of-way.

6. **Restoration of Damage.** Any damage to the Browns Court roadway or any components thereof or elements situated therein (including, without limitation, pavement, sidewalks, curbing, greenbelts and utilities) caused by or arising from Grantee's use and operation of the Easement Areas shall be promptly properly repaired, restored, and re-paved (if applicable) in a commercially reasonable manner by Grantee at its expense to the reasonable satisfaction of the City of Burlington Department of Public Works. Grantee shall have no responsibility to repair, restore, and/or re-pave damage caused by Grantor as in the course of Grantor's exercise of the rights reserved pursuant to Section 3 of this Agreement. All such work is to be performed in a neat and orderly, good, and workmanlike manner using high quality materials in compliance with all rules, regulations, laws, ordinances, building codes, permits, approvals, or orders of every governmental authority with jurisdiction. During the performance of any such work, the affected area shall be maintained in a neat and orderly manner.

7. **Indemnity.** Grantee shall indemnify, defend and save Grantor harmless from and against any and all liability, claims, demands, damages, expenses, fees, fines, penalties, suits, proceedings, actions and causes of action of every kind and nature, including costs and reasonable attorneys' fees, suffered or

incurred as a result of any breach by Grantee, or its agents, servants, employees, visitors or licensees of any covenant or condition of this Agreement, as a result of use or occupancy of the Easement Areas by Grantee, its successors and assigns, and its and their respective tenants, licensees, invitees, agents and contractors, and the occupants of the Eagles Landing Property, or the negligence or willful misconduct of Grantee, or its agents, servants, employees, visitors or licensees; provided, however, that the obligations of the Grantee under this Section shall not extend to the negligence or willful misconduct of Grantor, or its employees, agents or representatives.

8. **Liability Insurance.** Grantee, at its cost and expense, shall maintain a policy or policies of liability insurance insuring the Grantee against all claims or demands for personal injuries to or death of any person, and damage to or destruction or loss of property, that may or may be claimed to have occurred on or within the Easement Areas or in the vicinity of the same. Such policies shall cover such risks and be in such amounts as the Grantor from time to time may reasonably request, but in any event in an amount not less than Two Million Dollars and 00/100 (\$2,000,000.00) for injury to or death of any one person or for damage to or destruction or loss of property in any one occurrence. Upon demand by Grantor, Grantee shall deliver to Grantor certificates of such insurance coverage evidencing that such coverage is actually in effect, which certificates shall name Grantor as an additional insured.

9. **No Waiver.** The failure of Grantor or Grantee to insist in any one or more instances upon the strict performance of any of the terms, covenants, conditions and agreements of this Agreement, or to exercise any option herein conferred, shall not be considered as waiving or relinquishing for the future any such terms, covenants or conditions, agreements or options, but the same shall continue and shall remain in full force and effect.

10. **123 King Street.** Grantor and Grantee acknowledge that the real property numbered 123 King Street is presently benefited by a resident parking permit that authorizes the residents of that property to park one vehicle on Browns Court, and that such parking permit will be revoked by reason of the grant of the ROW Easement. In consideration of the Grantor's grant of the ROW Easement, Grantee agrees that for so long as the ROW Easement is in force and effect, Grantee shall provide 123 King Street with one free parking space on the Eagle's Landing Property (such as within the parking garage that is a component of the Eagle's Landing Project) once the Eagle's Landing Project is substantially complete and operational. The parking space provided to 123 King Street shall not reduce the number of parking spaces required to be made available to the public in accordance with the Approvals.

11. **Miscellaneous.** No modifications of any provisions of this Agreement shall be effective unless in writing and executed by the parties hereto (or their permitted successors or assigns). This Agreement shall be subject to and interpreted in accordance with the laws of the State of Vermont. This Agreement, including the exhibits hereto and the instruments and agreements referenced herein, constitutes the entire understanding between the parties hereto as to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof. Should any provisions of this Agreement be determined to be unenforceable, the remaining provisions shall continue to be effective and binding on the same parties. The captions and section numbers appearing in this Agreement are inserted only as a matter of convenience; they do not define, limit, construe, or describe the scope or intent of such sections, nor in any way affect this Agreement or have any substantive effect. Each party to this Agreement, and each undersigned individual acting as agent for and on behalf of a party, represents and covenants that each party has full power, authority, and legal light to execute and carry out this Agreement and that the provisions hereof constitute valid, binding, and enforceable obligations imposed upon each such party charged with performance thereof. In all instances where Grantor takes action to enforce the terms of this Agreement and Grantor substantially prevails in such action, Grantee shall be liable to Grantor for all attorneys' fees and other costs incurred by Grantor in connection or arising from with such enforcement.

Signature Page to Follow

DRAFT

IN WITNESS WHEREOF, the parties have executed or caused this Agreement to be executed as of the date first mentioned above.

IN PRESENCE OF:

City of Burlington

By: _____

Miro Weinberger, Mayor

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

At Burlington, Vermont this ____ day of _____, 2016, personally appeared Miro Weinberger, Mayor of the City of Burlington, to me known to be the person who executed the foregoing instrument, and he acknowledged this instrument, by him sealed and subscribed, to be his free act and deed for himself and on behalf of the City of Burlington.

Before me: _____
Notary Public
My Commission Expires: 2.10.19

Champlain College Incorporated

By: _____

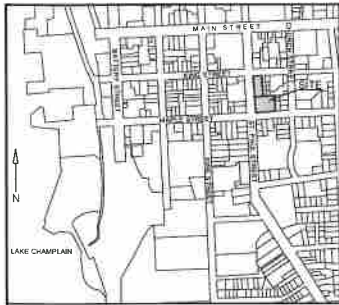
David Provost
Senior Vice President - Finance and Administration

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

At Burlington, Vermont this ____ day of _____, 2016, personally appeared David Provost, Senior Vice President - Finance and Administration for Champlain College Incorporated, to me known to be the person who executed the foregoing instrument, and he acknowledged this instrument, by him signed and sealed, to be his free act and deed for himself and on behalf of Champlain College Incorporated.

Before me, _____
Notary Public
My commission expires: 2.10.19

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LOCATION MAP

NOT TO SCALE

LEGEND

- PROJECT PROPERTY LINE
- ABUTTING PROPERTY LINE
- ROW EASEMENT ALONG BROWNS COURT PROPOSED TO BE CONVEYED FROM THE CITY OF BURLINGTON TO CHAMPLAIN COLLEGE, INC.
- IMPROVEMENT EASEMENT ALONG BROWNS COURT PROPOSED TO BE CONVEYED FROM THE CITY OF BURLINGTON TO CHAMPLAIN COLLEGE, INC.
- 5,245 SF LICENSE AREA WITHIN THE ST PAUL STREET RIGHT OF WAY FOR THE BENEFIT OF CHAMPLAIN COLLEGE, INC.

NOTES:

1. THIS EASEMENT PLAN IS BASED ON A PLAN ENTITLED "LANDS OF CHAMPLAIN COLLEGE, INC. AND THE CITY OF BURLINGTON, 1/4 ST. PAUL STREET, BURLINGTON VERMONT, PROPERTY PLAT" BY LAMOREUX AND DICKINSON, DATED 11-27-13.
2. SEE THE ABOVE REFERENCED PLAT FOR THE SURVEY NOTES.
3. THE PURPOSE OF THIS PLAN IS TO DEPICT THE PROPOSED EASEMENTS BY AND BETWEEN CHAMPLAIN COLLEGE, INC. AND THE CITY OF BURLINGTON.
4. THE PROPOSED BUILDING, SIDEWALKS AND DRIVES SHOWN HEREON ARE IN THEIR PROPOSED LOCATIONS AND DO NOT EXIST AT THE TIME OF PREPARATION OF THIS PLAN.

KING STREET

MAPLE STREET

ST PAUL STREET

5,245 SF LICENSE AREA WITHIN THE ST PAUL STREET RIGHT OF WAY FOR THE BENEFIT OF CHAMPLAIN COLLEGE, INC.

GRAPHIC SCALE



11-16-16 DRAFT

REVISIONS		DATE	BY
THIS PLAN WITH LATER REVISIONS SHALL BE USED FOR THE PURPOSES SHOWN BELOW.			
☐ SKETCH/CONCEPT	☐ ACT. 2ND REVIEW	PROJECT NO.	
☐ PRELIMINARY	☐ CONSTRUCTION	13556	
☐ FINAL LOCAL REVIEW	☐ RECORD DRAWING	SURVEY	
LANDS OF		DESIGN	
CHAMPLAIN COLLEGE, INC.		DLM	
AND		DRAWN	
THE CITY OF BURLINGTON		CHECKED	
134 ST. PAUL STREET BURLINGTON, VERMONT		DATE	
EASEMENT PLAN		8/23/16	
SCALE		AS NOTED	
LAMOUREUX & DICKINSON		SHEET NO.	
Consulting Engineers, Inc.		EP	
11 Main Street			
Burlington, VT 05402			
TEL: 802-253-1001			

EXHIBIT E
FORM OF LICENSE AGREEMENT
ATTACHED

LICENSE AGREEMENT
EAGLES LANDING PROJECT
ST. PAUL STREET, KING STREET AND MAPLE STREET

This LICENSE AGREEMENT (“Agreement”) is made by and between the **City of Burlington**, a municipal corporation organized and validly existing under the laws of the State of Vermont (hereinafter “CITY”) and **Champlain College Incorporated**, a Vermont non-profit educational corporation with its principal place of business in Burlington, Vermont (hereinafter “LICENSEE”).

WHEREAS, the CITY owns the public rights-of-way for St. Paul Street, King Street and Maple Street, including the lands adjacent to and situated to the north, west and south of the combined parcel of land formerly known as and numbered 1 Browns Court, 14 Browns Court and 194 St. Paul Street, Burlington, Vermont, which LICENSEE acquired by (a) Deed recorded in Volume 1040 at Page 38 of the City of Burlington Land Records and by (b) Warranty Deed from the City of Burlington of even date with this Agreement, which combined parcel is referred to herein as the “Eagles Landing Property”; and

WHEREAS, LICENSEE has agreed to develop and construct apartment-style housing for its students, together with ground floor retail uses and underground parking, on the Eagles Landing Property (the “Eagles Landing Project”) in accordance with and subject to the terms and conditions of Burlington Development Review Board approvals numbered 14-0671CA/MA, 14-0672CA/MA and 14-0721CA/MA and the plans and drawings approved thereby, as modified by Consented To Order dated March 16, 2015 executed by the State of Vermont Superior Court, Environmental Division, in the matter captioned *In Re: Appeal of Eagles Place, LLC*, Docket No. 55-4-14 Vtec, as such approvals may be modified, amended or replaced from time to time (the “Approvals”); and

WHEREAS, the Eagles Landing Project, as permitted and approved by the Approvals, contemplates the construction and maintenance of landscaping and site improvements within portions of the rights-of-way for St. Paul Street, King Street and Maple Street adjacent to the Eagles Landing Property, and LICENSEE proposes to license from the CITY portions of the rights-of-way for St. Paul Street, King Street and Maple Street abutting the Eagles Landing Property in order to exclusively occupy them to construct and maintain landscaping and improvements appurtenant to LICENSEE’s use of the Eagles Landing Property; and

WHEREAS such uses would promote greater economic vitality in that area of St. Paul Street, King Street and Maple Street; and

WHEREAS, the Department of Public Works has reviewed the proposal and determined that the activities and needs of the CITY for these rights-of-way will not be impaired by the construction, use, repair, replacement and maintenance of the Eagles Landing Project as permitted and approved by the Approvals provided such activities are conducted in conformance with the conditions established by this Agreement; and

WHEREAS, in addition to the review by the Department of Public Works, the City Council's License Committee also reviewed the proposed licensing of these portions of the St. Paul Street, King Street and Maple Street rights-of-way and recommended approval by the full City Council; and

WHEREAS, such use of public thoroughfares for periods in excess of 30 days requires and did receive approval of the City Council on _____, pursuant to Charter Sec. 48(49) and Code of Ordinances, Chap. 27, Sec. 27-32.

W I T N E S S E T H:

The CITY and LICENSEE enter into the following License Agreement:

1. The CITY grants to LICENSEE a license (the "License") to exclusively occupy those portions of the St. Paul Street, King Street and Maple Street rights-of-way that extend from the northerly, westerly and southerly boundaries of the Eagles Landing Property to the boundaries of the sidewalks along St. Paul Street, King Street and Maple Street that are closest to the Eagles Landing Property (the "Licensed Area", which shall extend to the building-side of such sidewalks and not to the street-side of such sidewalks, meaning to exclude the sidewalks themselves from the Licensed Area in the manner depicted as "5,245 SF License Area Within the St. Paul Street Right of Way for the Benefit of Champlain College, Inc." on an Easement Plan entitled "Lands of Champlain College, Inc. and The City of Burlington, 194 St. Paul Street, Burlington, Vermont" prepared by Lamoureux & Dickinson Consulting Engineers, Inc. as Sheet No. EP, dated September 21, 2016 and last revised November 16, 2016, a copy of which is attached as **Exhibit A** hereto and made a part hereof) for the purpose of constructing, occupying, using, repairing, replacing and maintaining the landscaping and site improvements that have been authorized and approved by the Approvals.
2. The License shall expire at midnight ten (10) years from the date of this Agreement.
3. The License shall be automatically renewed for successive, additional five (5) year periods for so long as the improvements comprising the Eagles Landing Project are situated upon the Eagles Landing Property. Upon the demolition or removal of the improvements comprising the Eagles Landing Project for any reason, including without limitation due to casualty damage or in connection with the redevelopment of the Eagles Landing Property, then this Agreement and the License granted hereby shall terminate from the date of the commencement of such demolition or removal (which may be the date of damage, if applicable), provided that LICENSEE shall have an additional sixty (60) days from the date of termination to remove the landscaping and site improvements from the Licensed Area and to restore the Licensed Area to a safe, clean and neat condition reasonably acceptable to the CITY'S Department of Public Works; if LICENSEE refuses to perform such obligations, the CITY may perform such obligations on behalf of LICENSEE and LICENSEE shall be liable for all reasonable expenses incurred by the CITY thereby.
4. This Agreement run with the title to the Eagles Landing Property and shall bind and inure to the benefit of LICENSEE and its successors and assigns.

5. LICENSEE agrees to pay a License Fee of \$1.00 per year in consideration of the rights and privileges granted in this Agreement.

6. LICENSEE shall be responsible for obtaining (and paying the fees for) all necessary City permits, including excavation, obstruction, meter bag, zoning and building permits, prior to construction, repair, or maintenance of the landscaping and site improvements within the Licensed Area. The plans for and the construction of future maintenance or repair of the landscaping and site improvements within the Licensed Area shall be subject to applicable local ordinances, federal and state statutes and rules, including the Americans with Disabilities Act and its standards for accessibility.

7. LICENSEE shall perform all work in the CITY'S rights-of-way, including within the Licensed Area, in a good and workmanlike manner, in conformance with the requirements of any and all permits and permit requirements required for such work, including the Approvals, and shall be made at LICENSEE's sole cost and expense. LICENSEE shall perform all work so as to cause no unnecessary damage or disturbance to the CITY'S rights of way or the utilities located therein or the public's rights in them. In each and every instance, following the completion of work performed by LICENSEE, LICENSEE shall restore each portion of the right-of-way abutting or adjacent to the Licensed Area in as good or better state and condition as they were in immediately prior to LICENSEE's entry onto the right-of-way and or work upon it.

8. LICENSEE shall restore the CITY'S rights-of-way affected by any construction, use, repair, or maintenance of or within the Licensed Area immediately following any such activity, in accordance with all applicable governmental regulations, permits, laws and approvals and such restoration shall be made at LICENSEE's sole cost and expense.

9. All utilities located in the subject rights-of-way abutting and adjacent to the Eagles Landing Property at the time of application for a permit shall be depicted on a site plan submitted with the application and plans for such work, such depiction to include the type and location of each utility. Prior to beginning any work done pursuant to this Agreement, a then-current drawing of utilities located in and adjacent to the Licensed Area shall be prepared by LICENSEE and submitted to the CITY.

10. LICENSEE shall construct, use, repair, and maintain the Licensed Area in a manner that protects all utilities, existing or future, located within the rights-of-way adjacent and abutting the Eagles Landing Property and shall be responsible for any and all expenses assumed by a utility to repair damages caused to the utility by the construction, use, maintenance and repair of the landscaping and site improvements within the Licensed Area and shall reimburse said utility for the same.

11. LICENSEE shall permit the owners of the utilities located in the subject rights-of-way abutting or adjacent to the Eagles Landing Property to use the area under, upon, and over the Licensed Area for the purpose of maintaining or repairing said utilities and LICENSEE shall assume all risk of loss to the landscaping and site improvements within the Licensed Area associated with such utility work.

12. LICENSEE shall conduct its licensed activities in a manner that does not impair the public rights of way, other than what is licensed hereby, including the protection of pedestrians traveling upon the public rights of way in the vicinity of the Licensed Area.

13. LICENSEE's construction, use, repair, and maintenance of the Licensed Area shall occur at its sole risk. LICENSEE shall indemnify, hold harmless and defend the CITY from and against any and all claims, liens, damages, losses and causes of action which may be asserted by it or its employees and or agents or any third party as a result of any such activity, except for claims arising from the CITY's negligence or willful misconduct. LICENSEE further agrees to make no claim against the CITY or any of its officers, employees, agents or representatives for any loss or damage caused by the CITY's use or maintenance of its right-of-way. Any damage to the Licensed Area or to the landscaping and site improvements constructed therein caused by the CITY'S use or maintenance of its rights-of-way is solely the responsibility of LICENSEE.

14. LICENSEE shall be responsible for the maintenance and upkeep of the Licensed Area and of the landscaping and site improvements constructed therein. LICENSEE shall maintain and use the Licensed Area in a manner that protects the public from all hazards reasonably foreseeable to result from the construction, maintenance and use of the Licensed Area for the purposes contemplated by LICENSEE.

15. LICENSEE will be responsible for clearing access points to the Licensed Area after the CITY's plowing of roads and sidewalks. Any ice or snow buildup around the Licensed Area will be LICENSEE's responsibility to remove and control.

16. LICENSEE shall ensure that snow, water, ice, or other matter that is removed from the Licensed Area shall not be placed or blown or permitted to be in the City's rights-of-way.

17. LICENSEE agrees provide and maintain the following types and amounts of insurance throughout the term of this Agreement to insure against all legal liability for injuries to persons (including wrongful death) and damages to property suffered on or about the Licensed Area, the affected public rights-of-way or as a result of the exercise of rights granted pursuant to this Agreement. Insurance shall be obtained from an insurer having an A.M. Best Insurance Rating of at least A-, financial size category VII or greater. [www.ambest.com].

A. Commercial General Liability Coverage: Commercial General Liability Insurance including but not limited to Bodily Injury, Personal/Advertising Injury, Broad Form Property Damage, Products and Completed Operations Liability and Contractual Liability with limits of, at a minimum, \$2,000,000 Combined Single Limit for each occurrence. LICENSEE shall list CITY as an Additional Insured on its Commercial General Liability Policy. The CITY reserves the right to reasonably increase such insurance requirements from time to time by written notice to LICENSEE to ensure that they remain commercially reasonable.

B. Certificates of Insurance: LICENSEE shall provide CITY with such Certificates of Insurance, as required above, prior to the commencement of the Agreement and from

time to time throughout the term of this Agreement, as it may be extended or renewed. All Certificates shall contain a provision stating that the coverage's afforded under said policies will not be cancelled, materially changed or not renewed without forty-five (45) days written prior notice, except fifteen (15) days for non-payment of premium, to CITY. LICENSEE shall provide CITY with renewal certificates until such certificates are no longer necessary under the terms of this agreement.

C. Mutual Waiver of Subrogation: In the event of fire or other loss to the premises, CITY and LICENSEE mutually waive their rights of subrogation and recovery against each other, their officers, agents employees, and other persons under their control for losses to that part of the premises under their control.

Signature Page to Follow

DATED at Burlington, Vermont this _____ day of _____, 2016.

City of Burlington

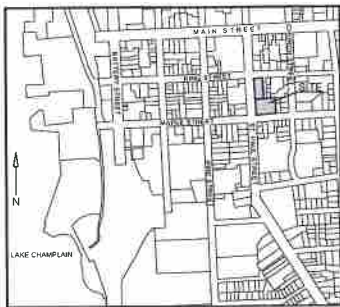
Witness

By: _____
Miro Weinberger
Mayor and Duly Authorized Agent

Champlain College Incorporated

Witness

By: _____
David Provost
Senior Vice President - Finance and
Administration



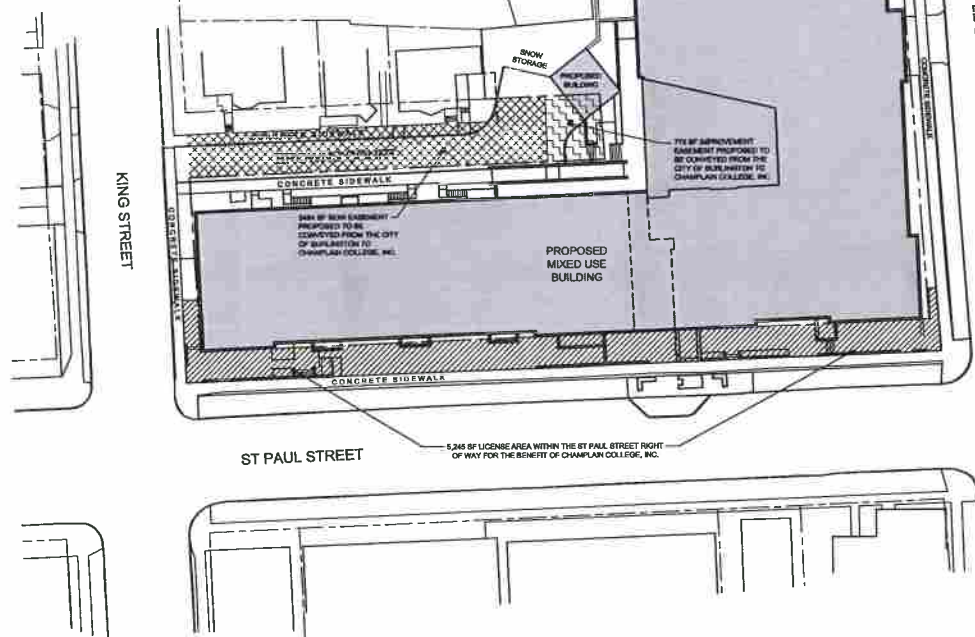
LOCATION MAP
NOT TO SCALE

LEGEND:

- PROJECT PROPERTY LINE
- ABUTTING PROPERTY LINE
- ROW EASEMENT ALONG BROWNS COURT
PROPOSED TO BE CONVEYED FROM THE CITY
OF BURLINGTON TO CHAMPLAIN COLLEGE, INC.
- IMPROVEMENT EASEMENT ALONG BROWNS COURT
PROPOSED TO BE CONVEYED FROM THE CITY
OF BURLINGTON TO CHAMPLAIN COLLEGE, INC.
- 5,245 SF LICENSE AREA WITHIN THE ST PAUL
STREET RIGHT OF WAY FOR THE BENEFIT OF
CHAMPLAIN COLLEGE, INC.

NOTES:

1. THIS EASEMENT PLAN IS BASED ON A PLAN
ENTITLED "LANDS OF CHAMPLAIN COLLEGE, INC. AND
THE CITY OF BURLINGTON 194 ST. PAUL STREET,
BURLINGTON VERMONT. PROPERTY PLAT BY
LANOUREUX AND DICKINSON, DATED 11-27-13
2. SEE THE ABOVE REFERENCED PLAT FOR THE
SURVEY NOTES
3. THE PURPOSE OF THIS PLAN IS TO DEPICT THE
PROPOSED EASEMENTS BY AND BETWEEN
CHAMPLAIN COLLEGE, INC. AND THE CITY OF
BURLINGTON.
4. THE PROPOSED BUILDING, SIDEWALKS AND DRIVES
SHOWN HEREON ARE IN THEIR PROPOSED
LOCATIONS AND DO NOT EXIST AT THE TIME OF
PREPARATION OF THIS PLAN.



ST PAUL STREET

5,245 SF LICENSE AREA WITHIN THE ST PAUL STREET RIGHT
OF WAY FOR THE BENEFIT OF CHAMPLAIN COLLEGE, INC.

GRAPHIC SCALE



11-16-16 DRAFT

DATE	DESCRIPTION	BY
REVISIONS		
THESE PLANS WITH LATEST REVISIONS SHOULD ONLY BE USED FOR THE PURPOSES BELOW:		
☐ SKETCH/CONCEPT	☐ ACT 250 REVIEW	PROJECT NO.
☐ PRELIMINARY	☐ CONSTRUCTION	13006
☐ FINAL LOCAL REVIEW	☐ RECORD DRAWING	SURVEY
LANDS OF CHAMPLAIN COLLEGE, INC. AND THE CITY OF BURLINGTON		DESIGN
194 ST. PAUL STREET BURLINGTON, VERMONT		DATE
EASEMENT PLAN		CHECKED
		ABR/03
		SCALE
		AS NOTED
		SHEET NO.
		EP

LANOUREUX & DICKINSON
Consulting Engineers, Inc.
11 Howe Drive
Burlington, VT 05402
TEL: 802-254-4494

Burlington Department of Public Works Special Commission Meeting
Draft Minutes, 6 December 2016
149 Church Street

Commissioners Present: Robert Alberry (*via phone*); Tiki Archambeau (Vice Chair); Jim Barr; Solveig Overby (*via phone until 7:55pm*); Jeff Padgett (Chair); Justine Sears. **Commissioners Absent:** Chris Gillman (Clerk).

Item 1 – Call to Order – Welcome – Chair Comments

Chair Padgett calls meeting to order at 6:34pm and makes opening comments.

Item 2 – Agenda

Commissioner Barr makes motion to approve agenda and is seconded by Vice Chair Archambeau.

Action taken: motion approved;

Commissioner Alberry: Aye

Vice Chair Archambeau: Aye

Commissioner Barr: Aye

Clerk Gillman: *not present*

Commissioner Overby: Aye

Chair Padgett: Aye

Commissioner Sears: Aye

Item 3 – Public Forum (3 minute per person time limit)

No member of the public speaks.

Item 4 – Brown's Court Lot & Champlain College Development

A) Communication by the Director of Public Works, Chapin Spencer, the Director of CEDO, Noelle MacKay, and the Assistant Director of DPW Parking & Traffic, Patrick Cashman, who speak on the city's disposition of the Brown's Ct surface lot to Champlain College for the Eagles Landing Project, bringing this to the Commission's attention because it involves the sale of a surface parking lot, new housing being developed in the city, an annual payment of fees to the city in the amount of \$260,000/year, the inclusion of parking in the development, the 28 November 2016 City Council decision to approve the execution of the revised sale, and apologizing to the Commission for the timing of this meeting.

B) Commission Questions

Commissioner Overby comments on questions she emailed to Director Spencer hoping to have them entered into the record, not agreeing with the sale of municipal property like this instead preferring something such as a long term lease, not agreeing with the short term process of this hearing, and not supporting the position being discussed.

Commissioner Sears asks if the project will include leased parking; the Champlain College Associate Vice President for CPAS, John Caulo, answers that parking will be a as-yet-to-be-determined combination and that students would be restricted from parking there; Director MacKay further answer that in the permits for this project it is clear 40 parking spaces will be available to the public.

Vice Chair Archambeau asks how the sale will negatively impact on the Traffic Fund: Director Spencer answers that it will only be a one-half of one-percent loss on the Traffic Fund, that creating more downtown residences is more important, and that reclaiming surface lots is a part of that process. Vice Chair Archambeau comments that instead of having a parking lot generating revenue for the Traffic Fund the Commission will now have to ask for handouts from the City Council: the Assistant City Attorney, Richard Haesler, responds that the Traffic Fund is a separate self-generating fund and that any

money from the sale of city property going through the City Council will have to be requested for said fund, and thus the suggested second motion requesting such being included in the meeting packet. Vice Chair Archambeau asks what the specific financial loss would be to the Traffic Fund with the sale of the lot: Director Spencer and Assistant Director Cashman answer it will be about \$18,000/year but that the Traffic Fund is healthier than ever. Vice Chair Archambeau asks what the impact will be with 40 parking spaces at least temporarily gone: Assistant Director Cashman answers that the city is looking into expanding 10-hour (brown top) meters onto adjacent streets by replacing 3-hour (blue top) meters with them; Director Spencer further answers that replacing those meters will require Commission approval soon. Vice Chair Archambeau asks how the project morphed from being a potential site for affordable housing in the original plan, dating from year 2000, to the current proposal; Director MacKay answers that the city tried for 8 years to collect proposals for affordable housing and then the recession occurred; City Attorney Haesler further answers that after the recession Champlain College approached the City Council with a student housing proposal in 2013; Vice President Caulo further answers that a certain percentage of the housing is inclusive to Pell-eligible students.

Commissioner Sears comments that the addition of student housing could relieve some of the housing pressure in the city; Vice President Caulo responds that Eagles Landing will account for 50 percent of Champlain College's efforts to construct 600 off-campus beds for its students.

Vice Chair Archambeau asks if Champlain College will be allowed to collect future revenues from parking: Assistant Director Cashman answers that is correct. Vice Chair Archambeau asks how parking rates will be regulated: Director Spencer answers regulation will be up to Champlain College but they will cooperate with the Downtown Parking Management District. Vice Chair Archambeau asks how long there will be 40 fewer spaces; Vice President Caulo answers they would likely not be replaced until the end of the 18-month construction due to the nature of the project but that the college would try to open some back up as construction allows.

Commissioner Barr comments that parking rates are dictated by market forces and speaks in favor of adding language to the motion asking the City Council to approve sales funds for the Traffic Fund.

Chair Padgett comments that the Commission should consider the language of any recommendation due to dates of the transaction plan being so recent as listed in the packet; City Attorney Haesler responds that the dates of the transaction plan are mislabeled in the packet and the plan had come before the Commission in October 2015. Chair Padgett comments that the Commission is required by City Charter to make a recommendation to the City Council on this issue.

Commissioner Sears asks to go over some of the Commissioner Overby's emailed comments. Director MacKay responds to Commissioner Overby's comment on Page 28 *Development Agreement* ("Annual development fee of \$260,000 for 20 years. This amount should not remain static for 20 years but should increase by a percentage each year to account for anticipated increases in municipal tax rate.") that the annual development fee of \$260,000 for 20 years was deemed fair after review; Vice President Caulo further responds that this is a debt payment and not a tax; Vice Chair Archambeau asks if Champlain College can sell this property to another party after the sale to which Director MacKay answers that Champlain College can't convey it to another party unless the city okays it first. Director MacKay responds to Commissioner's Overby's comment on Page 39 *Conditions of Grant* ("Is the Eagles Landing Project to be built on the combined properties, identified here as 'a multi-family residential project that includes commercial retail space' a project that serves a college function?") that the project will be built on the both pieces of property. Director MacKay responds to Commissioner Overby's comment on Page 34 *Reimbursement Agreement* ("Except \$466, 877 proposed \$1.1 million sales price will be spent on CAP remediation of property. Net revenue to city for sale would then only be \$633, 123.") that the city will reimburse Champlain College for remediation and that when an assessment was original done the property was assessed at \$900,000; Vice President Caulo further responds that when the original assessment was done the property was presumed to be a clean site which in subsequent years has been discovered to not be the case due to soil contamination which has affected the price.

C) Public Comment

No member of the public speaks.

D) Commissioner Discussion

Chair Padgett comments on crafting the language of the motion; City Attorney Haesler responds that it is preferable from the City's point-of-view if the Commission can either give thumbs up or thumbs down for recommending sale in one motion and then create a second motion which asks for funds to be appropriated. Chair Padgett comments on whether the City Council can choose to abide or not abide by the Commission's recommendation anyways.

Commissioner Overby leaves

E) Motion made by Vice Chair Archambeau to recommend to the City Council the sale to Champlain College of the Brown's Court parking lot as proposed and consider using the remaining proceeds of the sale for capital upgrades of the city's parking system prior to the disbursement of said funds.

Seconded by Commissioner Barr.

Discussion

Action taken: motion approved;

Commissioner Alberry: Aye

Vice Chair Archambeau: Aye

Commissioner Barr: Aye

Clerk Gillman: *not present*

Commissioner Overby: *not present*

Chair Padgett: Aye

Commissioner Sears: Aye

Motion made by Commissioner Barr to acknowledge Commissioner Overby's comments she had emailed and acknowledge that she made it clear she was against the proposal.

Seconded by Vice Chair Archambeau.

Discussion

Action taken: motion approved;

Commissioner Alberry: Aye

Vice Chair Archambeau: Aye

Commissioner Barr: Aye

Clerk Gillman: *not present*

Commissioner Overby: *not present*

Chair Padgett: Aye

Commissioner Sears: Aye

Item 5 – Adjournment & Next Meeting Date – December 21, 2016

Motion to adjourn made by Vice Chair Archambeau and seconded by Commissioner Barr.

Action taken: motion approved;

Commissioner Alberry: Aye

Vice Chair Archambeau: Aye

Commissioner Barr: Aye

Clerk Gillman: *not present*

Commissioner Overby: *not present*

Chair Padgett: Aye

Commissioner Sears: Aye

Meeting adjourned at 8:03pm.

Burlington Department of Public Works Special Commission Meeting
Final Minutes, 6 December 2016
149 Church Street

Commissioners Present: Robert Alberry (*via phone*); Tiki Archambeau (Vice Chair); Jim Barr; Solveig Overby (*via phone until 7:55pm*); Jeff Padgett (Chair); Justine Sears. **Commissioners Absent:** Chris Gillman (Clerk).

Item 1 – Call to Order – Welcome – Chair Comments

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Item 2 – Agenda

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Action taken: motion approved;

Commissioner Alberry: Aye

Vice Chair Archambeau: Aye

Commissioner Barr: Aye

Clerk Gillman: *not present*

Commissioner Overby: Aye

Chair Padgett: Aye

Commissioner Sears: Aye

Item 3 – Public Forum (3 minute per person time limit)

No member of the public speaks.

Item 4 – Brown's Court Lot & Champlain College Development

A) Communication by the Director of Public Works, Chapin Spencer, the Director of CEDO, Noelle MacKay, and the Assistant Director of DPW Parking & Traffic, Patrick Cashman, who speak on the city's disposition of the Brown's Ct surface lot to Champlain College for the Eagles Landing Project, bringing this to the Commission's attention because it involves the sale of a surface parking lot, new housing being developed in the city, an annual payment of fees to the city in the amount of \$260,000/year, the inclusion of parking in the development, the 28 November 2016 City Council decision to approve the execution of the revised sale, and apologizing to the Commission for the timing of this meeting.

B) Commission Questions

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Commissioner Sears asks if the project will include leased parking; the Champlain College Associate Vice President for CPAS, John Caulo, answers that parking will be a as-yet-to-be-determined combination and that students would be restricted from parking there; Director MacKay further answer that in the permits for this project it is clear 40 parking spaces will be available to the public.

Vice Chair Archambeau asks how the sale will negatively impact on the Traffic Fund: Director Spencer answers that it will only be a one-half of one-percent loss on the Traffic Fund, that creating more downtown residences is more important, and that reclaiming surface lots is a part of that process. Vice Chair Archambeau comments that instead of having a parking lot generating revenue for the Traffic Fund the Commission will now have to ask for handouts from the City Council: the Assistant City Attorney, Richard Haesler, responds that the Traffic Fund is a separate self-generating fund and that any

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Commissioner Barr comments that parking rates are dictated by market forces and speaks in favor of adding language to the motion asking the City Council to approve sales funds for the Traffic Fund.

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Commissioner Overby leaves

E) Motion made by Vice Chair Archambeau to recommend to the City Council the sale to Champlain College of the Brown's Court parking lot as proposed and consider using the remaining proceeds of the sale for capital upgrades of the city's parking system prior to the dispersment of said funds.

Seconded by Commissioner Barr.

Discussion

Action taken: motion approved;

Commissioner Alberry: Aye

Vice Chair Archambeau: Aye

Commissioner Barr: Aye

Clerk Gillman: *not present*

Commissioner Overby: *not present*

Chair Padgett: Aye

Commissioner Sears: Aye

Motion made by Commissioner Barr to acknowledge Commissioner Overby's comments she had emailed and acknowledge that she made it clear she was against the proposal.

Seconded by Vice Chair Archambeau.

Discussion

Action taken: motion approved;

Commissioner Alberry: Aye

Vice Chair Archambeau: Aye

Commissioner Barr: Aye

Clerk Gillman: *not present*

Commissioner Overby: *not present*

Chair Padgett: Aye

Commissioner Sears: Aye

Item 5 – Adjournment & Next Meeting Date – December 21, 2016

Motion to adjourn made by Vice Chair Archambeau and seconded by Commissioner Barr.

Action taken: motion approved;

Commissioner Alberry: Aye

Vice Chair Archambeau: Aye

Commissioner Barr: Aye

Clerk Gillman: *not present*

Commissioner Overby: *not present*

Chair Padgett: Aye

Commissioner Sears: Aye

Meeting adjourned at 8:03pm.

DPW Involvement & Larger Parking Plan

In 2014, DPW, CEDO and others initiated two parking studies – one focused on the downtown and the other focused on residential areas. The goal was to develop a comprehensive understanding of parking supply and demand, and to identify optimal parking management strategies that best utilize the limited parking and land resources in the City. The downtown study specifically called for “severely reducing or eliminating surface parking lots and street-facing at grade parking, and replacing with higher or better uses – more dense development, green space, or amenities for alternative modes of transportation.” The resulting Residential Parking Management Plan and Downtown Parking and Transportation Management Plan were subsequently reviewed and accepted by a combination of the Public Works Commission and the City Council in late 2015. The Downtown Parking & Transportation Plan specifically called attention to this redevelopment project; “an example of converting a current surface lot to an increase in housing supply is the proposed Champlain College Housing project at King Street and St. Paul Street.” These efforts met the commitment CEDO made in 2007 to work on developing a plan that will replace or mitigate the loss of public parking that results from converting Browns Court parking lot to housing.

Revenue Impacts

DPW has participated in planning both for itself and for the City with an eye to making sure that its Traffic Fund finances are robust going forward despite this modest reduction of metered spaces. In support of the recommended sale of the Browns Court Lot, focused attention was given in September and October of 2016 to quantify the average collection of this lot over time. Extrapolating from this sample shows an expected gross annual revenue from the Browns Court Lot of \$26,422 and an expected operating cost of \$8,345 for a projected net annual revenue of \$18,077. Past City Annual Reports don't provide individual lot collection tallies past 1959 however assuming a constant net revenue and adjusting for inflation the net earnings of the lot would have exceeded its cost in 1980. The lot since then has financially supported the City's traffic and parking activities for the last 36 years. That said, the Browns Court Parking Lot revenue is a small fraction (about half of one percent) of the parking system's \$5M annual revenue – and we expect higher utilization of surrounding meters to compensate for much of this loss. Overall, due to operational efficiencies and rate changes, Traffic Fund revenues and its net income have grown over the past several years. Moving forward, revenue from the publicly available parking retained in the lot per the Development Review Board approval will be retained by Champlain College.

Construction Phase

In support of initial redevelopment activities on the Eagles Landing parcel it is expected that Champlain College will immediately purchase meter bags for the six southernmost spaces in the Browns Court lot, however the remaining 34x spaces will remain available through the holidays. Full closure of the lot and removal of City equipment is expected to begin in the first week of January 2017. In order to inform customers of these changes in a timely manner, DPW will conduct communication efforts with parkers and maintain coordination with Champlain College to identify any changes as they develop. In support of offering alternative parking for customers

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Summary of Comments on DPW Commission Packet 12-6-16 with SJO Comments.pdf

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 Author: SOVERBY Subject: Highlight Date: 12/5/2016 11:03:08 PM

The value of this publicly owned property is not just in the annual parking revenue but as a land asset for the city which should be available in for city needs in perpetuity. It should not be sold outright but a long term lease granted, for a term of say 60 years. (similar to the lease term granted to president-elect Donald Trump on the Old Post Office building which has been renovated into a luxury hotel.)

 Author: SOVERBY Subject: Highlight Date: 12/5/2016 10:55:20 PM

Estimate is for \$18,077 net annual revenue from the required public parking that replaces Browns Court lot is to go to Champlain College.

Because DPW has traditionally used the southern end of Browns Court for winter snow storage, the construction of improvements in that location will make it difficult for the City to maintain the street.

Since 2013, Champlain College has acquired the two houses that front Browns Court and which have vehicular access from Browns Court. Upon acquisition of the property, Champlain College will own all of the real property with frontage on Browns Court.

Because Champlain College will own all of the real property with frontage on Browns Court, Champlain College has agreed to be responsible for the maintenance of the pavement and sidewalk improvements within Browns Court under an exclusive easement of the right of way. Champlain College will also be permitted to control on-street parking on Browns Court, and to erect signage on Browns Court subject to the City's review and approval, not to be unreasonably withheld. Champlain College will not be permitted to install a gate across Browns Court without the City's consent, not to be unreasonably withheld.

ct Description

In 2013, the parties agreed to broad project goals and objectives; since then, Champlain College has obtained Burlington Development Review Board approval to construct the project, so the project is now described with reference to the DRB approval.

ng:

In 2013, the parties agreed to that the project would maintain for public use at least the same number of parking spaces currently available at the existing parking lot. Since then, Champlain College has obtained Burlington Development Review Board approval to construct the project. The DRB approval for the project requires that "spaces of on-site parking located at the Project shall be made available to the general public pursuant to the City permit conditions, of which at least 40 spaces shall be available to the general public nights, weekends, and holidays, and another 25 spaces shall be available to the general public at all times. Unless the City has developed and is prepared to implement upon issuance of the Certificate of Occupancy for the Project a parking management strategy Champlain College shall make the on-site spaces available to the general public and self-manage the parking operation."

In light of this requirement, the Agreement now requires Champlain College to construct and operate the project in accordance with the DRB approval.

The City has the right to continue using the property as a municipal parking lot until Champlain College is ready to commence construction.

ouncil: Request that the City Council approve the purchase and sale agreement and authorize the r to execute the appropriate documents contingent upon receipt by City Council of the Public s Commission recommendation.

have any questions, certainly feel free to contact me.



Author: SOVERBY Subject: Highlight Date: 12/5/2016 11:01:39 PM

Does this mean that at the time of issuance of a Certificate of Occupancy for the project, if the city has a parking management strategy in place, then the city will manage the general public parking that is part of the project?

ability contained herein, is acquiring the Property in its current "as is" condition based solely on its own due diligence. Seller shall have no liability as to the failure of the Property, or any part thereof, to comply with any applicable laws and regulations, including without limitation, building codes, zoning, land use, subdivision, water supply and wastewater or Act 250. Seller affirmatively represents that Seller believes that the Property is properly zoned for the Project as herein described. The provisions of this Section shall survive Closing.

Section 2. **Purchase Price.** The purchase price (the "Purchase Price") to be paid by Buyer to Seller for the Property shall be One Million One Hundred Thousand and xx/100 U.S. Dollars (\$1,100,000.00). Buyer shall pay the Purchase Price to Seller as follows:

a. A deposit of Thirty Thousand Dollars (\$30,000.00) payable as provided in Section 3, by Buyer's check made within three (3) business days after the Seller's execution of this Agreement (the "Deposit").

b. The balance of the Purchase Price, subject to adjustment and to apportionment as set forth below, shall be paid at Closing (as defined below), by bank cashier's check, certified check or check drawn on an attorney trust account, in each case payable to Seller, or by wire transfer pursuant to written wire instructions given by Seller to Buyer no less than three (3) business days prior to the Closing.

Section 3. **Deposit.** The Deposit shall be held by Paul Frank & Collins (the "Escrow Agent") in a non-interest bearing escrow account. The Deposit shall be applied to the Purchase Price at Closing. In the event the Closing does not occur, the Deposit shall be disbursed as provided herein.

Section 4. **Closing Conditions.** Seller's obligation to close shall be conditioned upon the following "Seller's Closing Conditions":

a. **Burlington City Council Approval.** Seller's receipt of approval for the transaction described by this Agreement from Burlington City Council.

b. **Development Agreement.** At Closing, Buyer and Seller shall execute a Development Agreement in the form attached hereto as **Exhibit B** and made a part hereof.

c. **Commencement of Construction.** Prior to Closing, Buyer shall provide Seller with evidence, to Seller's reasonable satisfaction of Buyer's obligation and commitment to materially commence construction of the Project on the Property within six months of the Closing Date. For purposes of this provision, the material commencement of construction requires the commencement of construction of building improvements and not only the excavation and removal of asphalt and soil.

Section 5. **Representations and Warranties.**

a. **Representations and Warranties of Seller:** Seller hereby represents and warrants to Buyer that:

i. Seller is the record owner of the Property and Buyer will be conveyed good, insurable, and marketable title to the Property at Closing, subject to Seller's ability to continue to use and operate the Property as a public parking lot after the Closing as described herein.

ii. Seller is a Vermont municipal entity, which, subject to Section 4(a) herein, has the full power and authority to enter into, execute, deliver, and consummate the transaction contemplated by this Agreement and any instruments and agreements contemplated herein. Subject to Section 4(a), Seller has taken all action required by law or by its charter to authorize

 Author: SOVERBY Subject: Highlight Date: 12/5/2016 11:15:31 PM

Purchase price of One Million One Hundred Thousand dollars was set in 2013 when first plans for the project were developed and failed, according to the summary documents in the packet. This price should be re-negotiated considering three years have passed since it was originally negotiated. (However, this publicly owned land asset, a finite resource, should not be sold but leased for this private use for a term matching the anticipated lifespan of the building.)

 Author: SOVERBY Subject: Highlight Date: 12/5/2016 11:15:49 PM

caused by Escrow Agent's breach of the terms of this Agreement, gross negligence, or willful misconduct.

Section 14. **Commissions and Fees.** The parties warrant and represent to each other that they have no knowledge of any real estate broker or agent to whom a commission may be payable as a result of this transaction or any such knowledge of any other finder's fees or commissions related thereto, and each party agrees to indemnify and hold harmless the other for all claims or demands of any real estate agent or broker claiming by, through, or under such party, which indemnification shall also include payment of costs and attorneys' fees incurred by a party in defense of a claim for such real estate commissions or fees.

Section 15. **Binding Contact; Governing Law.** This Agreement shall bind and inure to the benefit of the parties hereto and their respective representatives, heirs, successors and assigns. Each individual executing this Agreement represents and warrants that he or she has the requisite power and authority to execute this Agreement on behalf of the party for which he or she acted, and in doing so to bind such party to the terms and provisions hereof. This Agreement shall be governed by Vermont law (without giving effect to conflicts of laws principles), and each party hereto hereby irrevocably and unconditionally (a) submits to the personal jurisdiction of the state and federal courts situated in Chittenden County, Vermont over any suit, action or proceeding arising out of or relating to this Agreement, and (b) waives any and all personal rights under the laws of any state to object to jurisdiction within the State of Vermont or venue in the state and federal courts situated in Chittenden County, Vermont.

Section 16. **Assignment.** Neither party shall have the right to assign its rights and obligations under this Agreement to any party without first obtaining the other party's consent, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Buyer shall have right to assign, at or prior to Closing, its rights and obligations hereunder to an entity is acceptable to the City and which has been formed for the purpose of acquiring and developing the Project on the Property. Seller shall accept performance from such assignee, and Seller shall tender its required performance hereunder to such assignee, as if such assignee is the named Buyer herein. Upon Seller's request, such assignee(s) shall execute an assumption of Buyer's rights and obligations under this Agreement.

Section 17. **Further Assurances.** The parties agree to execute, acknowledge 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 intent and purpose of this Agreement.

Section 18. **Notices.** Any notice or other communication to be given hereunder shall be in writing and either hand delivered, mailed via certified mail with return receipt requested, faxed, sent by email using a secure format (e.g., pdf) or sent by nationally recognized overnight courier (e.g., Federal Express) to such party at the address or number set forth below:

If to Seller: Noelle MacKay
Director of Community and Economic Development Office
City Hall, Room 32
149 Church Street
Burlington, Vermont 05401
Tel: (802) 865-7154
Email: nmackay@burlingtonvt.gov

with a copy to: Jeremy Farkas, Esq.
Murphy Sullivan Kronk



Author: SOVERBY Subject: Highlight Date: 12/5/2016 11:09:04 PM

If this collection of agreements is between the city and Champlain College, and the goodwill of Champlain College is being used to sell this arrangement to to city residents and taxpayers, it's not appropriate for Champlain College to have the right to transfer its rights to someone else to develop the property, requiring the city to "tender it's required performance herunder to such assignee, as if such assignee is [Champlain College]."

DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is made on _____, 2016 by and between the **City of Burlington**, a municipal corporation situated in Chittenden County, Vermont (the "City") and **Champlain College Incorporated**, a Vermont non-profit educational corporation with its principal place of business in Burlington, Vermont (the "College").

Background

- A. The College owns a parcel of land adjacent to the Property numbered 194 St. Paul Street which it acquired by deed recorded in Volume 1040 at Page 38 of the City of Burlington Land Records ("194 St. Paul").
- B. By Warranty Deed of even date with this Agreement, the City has conveyed the College two parcels of land measuring 0.357 acres and 0.04 acres, respectively, comprised of open land and a surface parking lot, identified by the City of Burlington as Parcel Nos. 049-3-027-000 (0.357 acres) and 049-3-041-000 (0.04 acres), and known as and numbered 1 Browns Court and 14 Browns Court, Burlington, Vermont (the "Property").
- C. The City's agreement to sell and transfer the Property to the College was conditioned, in part, on the execution of this Development Agreement at Closing.

Now Therefore, in consideration of the foregoing and the mutual covenants and agreements herein set forth, and in reliance on the representations and warranties contained herein, the parties hereby agree as follows:

1. Construction of Project. The College represents that it has merged the Property with 194 St. Paul to create a single, undivided parcel of land, referred to herein as the "Combined Property". The College shall construct the improvements on the Combined Property in accordance with the terms and conditions of the Burlington Development Review Board approvals numbered 14-0671CA/MA, 14-0672CA/MA and 14-0721CA/MA, as modified by Consented To Order dated March 16, 2015 executed by the State of Vermont Superior Court, Environmental Division, in the matter captioned *In Re: Appeal of Eagles Place, LLC*, Docket No. 55-4-14 Vtec, as the same may be modified or amended from time to time (which improvements are referred to herein as the "Project").

2. City Improvements. The voters of the City of Burlington have approved the expenditure of funds within the City of Burlington's Downtown TIF District to perform and construct infrastructure improvements in the vicinity of the Combined Property that will benefit the Combined Property, including, without limitation, streetscape, lighting, stormwater, utilities and transportation upgrades (collectively, the "Improvements").

3. Development Fee. The College acknowledges and agrees that the City's construction of the Improvements will benefit the Combined Property and the Project, and in order to induce the City to construct the Improvements and to induce the City to transfer and convey the Property to the College in accordance with the Purchase and Sale Agreement referenced above, the College agrees that beginning on July 1, 2017 and then continuing annually on July 1 of each year for a term of twenty (20) years through and including July 1, 2036, the College shall pay the City an annual development fee in the amount of \$260,000 in a lump sum for the purpose of providing the City with an additional source of funds from which to service the debt instruments used by the City to finance the cost of constructing the Improvements and for other related costs associated with the City's administration of its Downtown Tax Increment Finance District (the "Development Fee").



Author: SOVERBY Subject: Highlight Date: 12/5/2016 9:53:38 AM

Annual development fee of \$260,000 for 20 years. This amount should not remain static for 20 years but should increase by a percentage each year to account anticipated increases in municipal tax rate.

Fee for Services.

a. Obligation. The College agrees, for itself and its successors and assigns, that in order to provide the City with an additional source of funds from which to pay for the provision of municipal services to the improvements constructed on the Combined Property from time to time (including, without limitation, the Project), in the event the Combined Property is ever owned in whole or in part by an entity that is statutorily exempt from property taxation or that is subject to statutorily limited or reduced property taxation (an "Exempt Owner", which term includes, without limitation, Champlain College Incorporated), it shall be an obligation of such Exempt Owner to pay a fee to the City in the consideration of the City's provision of municipal services to the Project and the Combined Property ("Fee for Services") upon and subject to the terms and conditions set forth in this Agreement.

b. Fee for Services Calculations and Payment Dates. Beginning on July 1, 2017 and then continuing annually for a term of twenty (20) years through and including fiscal year 2036-37 which ends June 30, 2037, the College shall pay the City an annual Fee for Services payment calculated in accordance with this Section 4(b). The annual amount of Fee for Services payment due and payable on the Combined Property in accordance with this Section 4(b) will be determined by multiplying (i) the assessed valuation of the Combined Property and the Project, meaning their fair market value at such time assessed for the common level of appraisal in the City of Burlington for similarly situated property, as determined by the City, net of the existing taxable value for real property owned by an exempt or partially exempt entity, multiplied by (ii) twenty-five percent (25%) of the municipal tax rate for the City of Burlington applicable to commercial and non-homestead real property. The Fee for Services payment required by this Section 4(b) shall be due and payable concurrently with real property taxes in the City of Burlington, and when delinquent shall bear interest at the legal rate, which is currently 12% per annum. Currently real property taxes in the City of Burlington are due and payable in quarterly installments due August 12th, November 12th, March 12th and June 12th.

c. Additional Fee for Services Payment. Beginning on July 1, 2037 and then continuing annually on July 1 of each year, the College shall pay the City an annual Fee for Services payment in the amount of \$260,000 in a lump sum for the purpose of providing the City with an additional source of funds from which to defray the costs of providing municipal services to the Combined Property.

d. The City may, in its sole discretion, use the payments received pursuant to this Section 4 as a source from which to pay debt service and related costs for projects located within its Downtown Tax Incremental Finance District.

Dispute Resolution.

a. In the event the Exempt Owner disputes the City's determination of the fair market value of the Combined Property and Project and the parties cannot negotiate and agree upon a resolution of such dispute, then the dispute shall be subject to a binding determination made by a "qualified appraiser" to establish such fair market value in accordance with the procedures set forth below, which shall be initiated upon the City's receipt of a written request therefor sent by the Exempt Owner. If the parties do not agree to an appraiser, the appraiser shall be selected as follows: within ten (10) days of the date of the City's receipt of the Exempt Owner's written request for a binding determination, the parties shall exchange a list of three (3) acceptable and qualified appraisers and the first person to appear on both lists shall be selected as the arbitrator. A "qualified appraiser" means an MAI appraiser licensed in the State of Vermont with at least five (5) years' experience appraising commercial properties in Chittenden County, Vermont that are similar to the then-existing improvements constructed on the Combined Property. In the event the selected appraiser declines to undertake the appraisal, or if no appraiser appears on both lists,

 Author: SOVERBY Subject: Highlight Date: 12/5/2016 11:22:45 PM

I don't understand this calculation. What is the purpose using fair market value "net of the existing taxable value for real property owned by an exempt or partially exempt entity"? Is document trying to set the fee for services rate at 25% of commercial property tax rate but reduce the basis upon which that rate is applied? Explain how the calculation would work if the property was assessed at the \$633,123 net sales price?

 Author: SOVERBY Subject: Highlight Date: 12/5/2016 10:00:23 AM

Starting July 1, 2037, College pays \$260,00 annual fee for municipal services. This should not be set as a static amount 20 years from now as there is no way to know what the College's situation or the City's situation might be at that time. Fee for service payments should be based upon the tax rates and property values in 2037.

REIMBURSEMENT AGREEMENT

This Reimbursement Agreement ("Agreement") is made as of _____, 2016, by and between the **City of Burlington**, a municipal corporation situated in Chittenden County, Vermont (the "**Seller**") and **Champlain College Incorporated**, a Vermont non-profit educational corporation with its principal place of business in Burlington, Vermont ("the "**Buyer**"). Each of Buyer and Seller are a "party" to this Agreement, and they are sometimes collectively referred to as the "parties."

Whereas, Seller and Buyer are parties to a Purchase and Sale Agreement dated _____, 2016 (the "Contract") for the purchase of two parcels of land measuring 0.357 acres and 0.04 acres, respectively, comprised of open land and a surface parking lot, identified by the City of Burlington as Parcel Nos. 049-027-000 (0.357 acres) and 049-3-041-000 (0.04 acres), and known as and numbered 1 Browns Court and 14 Browns Court, Burlington, Vermont (the "**Property**");

Whereas, the Contract recites that environmental investigations of the Property indicate that polycyclic aromatic hydrocarbons (PAHs) and arsenic are present in the soil in excess of permissible levels, and that construction of the Project (as defined therein) will require the removal and disposal of such soils, together with "urban fill" material, at an approved facility in accordance with a Corrective Action Plan prepared by KAS, Inc. dated June 4, 2015 (Project #508130310) which has been submitted to the Vermont Department of Environmental Conservation ("DEC") for approval (the "**CAP**"), and Seller has agreed to reimburse Buyer for the cost of implementing the CAP with respect to the Property, including, but not limited to, soil analysis, removal and disposal, as well as reasonable administrative and legal fees associated with implementing the CAP, up to the maximum amount of \$633,438.50 (the "**Maximum Cost of the Work**");

Whereas, Buyer intends to enter into a contract (or contracts) with H. P. Cummings Construction Co., a Massachusetts corporation, to implement the CAP with respect to the Property with an estimated full value of \$466,877.00 (the "**Estimated Cost of the Work**"). The CAP will be implemented after the closing on the purchase and sale of the Property pursuant to the Contract (the "**Closing**"). Buyer desires to obtain Seller's agreement to reimburse Buyer for the cost of implementing the CAP with respect to the Property up to the Maximum Cost of Work.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties hereto agree as follows:

1. **Reimbursement of the Cost of the Work.** Seller shall reimburse Buyer for the cost of implementing the CAP with respect to the Property as follows: Seller shall reimburse Buyer an amount up to the Estimated Cost of the Work; once Seller has paid the full amount of the Estimated Cost of the Work, then Seller and Buyer shall each pay one-half of any additional cost of implementing the CAP with respect to the Property, provided that Seller's total liability shall be limited to the Maximum Cost of the Work. Seller's liability and obligation to reimburse Buyer for the cost of implementing the CAP with respect to the Property shall be limited to the Maximum Cost of the Work under and pursuant to this Agreement. Except as specifically set forth in this Agreement, Seller shall have no liability or obligation arising from or with respect to Buyer's efforts to remediate the Property. In no event shall Seller have any liability or obligation arising from or with respect to the remediation of environmental conditions on the former "Eagles Club" property, numbered 194 St. Paul Street, which is adjacent to the Property and which Buyer intends to develop together with the Property as a single, unified development project.

2. **Reimbursement Payments.** Seller shall make reimbursement payments to Buyer, but only after Buyer has provided Seller with evidence to Seller's reasonable satisfaction that: (a) the DEC has approved the CAP; (b) Buyer has entered into a contract to perform the work that implements the approved CAP; (c) the work has been completed; (d) the contractors performing the work have been paid; and (e) the performance of the work has been accepted by the DEC consistent with the Property's enrollment in the Brownfields Reuse and Environmental Limited Liability Protection Act program (the "**Buyer Deliverables**"). Seller shall make reimbursement payments to Buyer within thirty (30) days of



Author: SOVERBY Subject: Highlight Date: 12/5/2016 11:20:11 PM

Expect \$466,877 of proposed \$1.1 million sales price will be spent on CAP remediation of the property. Net revenue to city for sale would then only be \$633,123.



Author: SOVERBY Subject: Highlight Date: 12/5/2016 10:48:18 AM

Seller reimburses buyer for remediation.

CONDITIONS OF GRANT

consideration of the Easements granted by this Easement Deed and Agreement (“Agreement”) and the mutual promises contained in this Agreement, the receipt and sufficiency of which is acknowledged, the Grantor and the Grantee agree that the Easements granted by this Agreement are granted upon and subject to the following terms and conditions:

Use of the Improvement Easement. The Improvement Easement is granted solely for the construction, maintenance, repair, replacement, operation and beneficial use of a terrace, a retaining wall, a stairway, a ramp, landscaping and related and appurtenant improvements, all of which shall be constructed and maintained in accordance with and subject to the terms and conditions of Burlington Development Review Board approvals numbered 14-0671CA/MA, 14-0672CA/MA and 14-0721CA/MA and the plans and drawings approved thereby, as modified by Consented To Order dated March 16, 2015 executed by the State of Vermont Superior Court, Environmental Division, in the matter captioned *In Re: Appeal of Eagles Place, LLC*, Docket No. 55-4-14 Vtec, as such approvals may be modified or amended from time to time (the “Approvals”). Subject to the terms and conditions of this Agreement, the Improvement Easement may be used by Grantee, its successors and assigns, and its and their respective tenants, licensees, invitees, agents and contractors and the occupants of the Eagles Landing Property (as such term is defined below).

Eagles Landing Project. The Improvement Easement shall only be used as an appurtenance to the combined parcel of land formerly known as and numbered 1 Browns Court, 14 Browns Court and 194 Paul Street, Burlington, Vermont, which Grantee acquired by (a) Deed recorded in Volume 1040 at Page 38 of the City of Burlington Land Records and by (b) Warranty Deed from the City of Burlington of the same date with this Agreement, which combined parcel is referred to herein as the “Eagles Landing Property”. **Grantee intends to construct on the Eagles Landing Property a multi-family residential project that includes commercial retail space and on-site structured parking (the “Eagles Landing Project”) constructed in accordance with and subject to the terms and conditions of the Approvals.**

Use of the ROW Easement. The ROW Easement is granted solely for the purpose of maintaining (including without limitation, snow plowing, sanding, salting and snow and ice removal), repairing and replacing the street and sidewalk improvements (including pavement and curbing) situated within the Browns Court right-of-way, for on-street parallel parking – at Grantee’s sole option – to benefit adjacent real property owned by Grantee or its wholly-owned subsidiaries, for physical access to and from the benefited real property identified below in this paragraph and for no other purpose. Grantee shall not install any gate across the Browns Court right-of-way and will not install any signage within the Browns Court right-of-way in each case without the Grantor’s prior written consent, which consent shall not be unreasonably withheld. Grantee covenants and agrees that during the term of this Agreement, Grantee shall be solely responsible and obligated for the maintenance, repair and replacement of the street and sidewalk improvements situated within the Browns Court right-of-way. The ROW Easement is granted for the benefit of the Eagles Landing Property, the Eagles Landing Project, the real property numbered 8 Browns Court, the real property numbered 10-12 Browns Court, the real property numbered 123 King Street, the foregoing parties’ respective tenants and invitees, and for others who use the Browns Court right-of-way (including, without limitation, for mail and package deliveries). **Grantee acknowledges that Browns Court and 10-12 Browns Court are presently owned by Eagles Place LLC, which is a wholly-owned subsidiary of Grantee.** Grantor reserves such rights and easements as may be necessary and reasonable for the operation, maintenance, repair and replacement of any and all electrical and water/sewer utility infrastructure, including without limitation utility poles, wires, electrical equipment, pipes, pumps, storm drains located within the ROW Easement area, and the ROW Easement is granted subject to



Author: SOVERBY Subject: Highlight Date: 12/5/2016 10:34:09 PM

Is the Eagles Landing Project to be built on the combined properties, identified here as "a multi-family residential project that includes commercial retail space" a project that serves a college function?



Author: SOVERBY Subject: Highlight Date: 12/5/2016 10:53:15 AM

Eagles Place LLC owns 8 Browns Court and 10-12 Browns Court. A wholly owned subsidiary of Champlain College.

LICENSE AGREEMENT
EAGLES LANDING PROJECT
ST. PAUL STREET, KING STREET AND MAPLE STREET

This LICENSE AGREEMENT (“Agreement”) is made by and between the **City of Burlington**, a municipal corporation organized and validly existing under the laws of the State of Vermont hereinafter “CITY”) and **Champlain College Incorporated**, a Vermont non-profit educational corporation with its principal place of business in Burlington, Vermont (hereinafter “LICENSEE”).

WHEREAS, the CITY owns the public rights-of-way for St. Paul Street, King Street and Maple Street, including the lands adjacent to and situated to the north, west and south of the combined parcel of land formerly known as and numbered 1 Browns Court, 14 Browns Court and 194 St. Paul Street, Burlington, Vermont, which LICENSEE acquired by (a) Deed recorded in Volume 040 at Page 38 of the City of Burlington Land Records and by (b) Warranty Deed from the City of Burlington of even date with this Agreement, which combined parcel is referred to herein as the “Eagles Landing Property”; and

WHEREAS, LICENSEE has agreed to develop and construct apartment-style housing for its students, together with ground floor retail uses and underground parking, on the Eagles Landing Property (the “Eagles Landing Project”) in accordance with and subject to the terms and conditions of Burlington Development Review Board approvals numbered 14-0671CA/MA, 14-0672CA/MA and 14-0721CA/MA and the plans and drawings approved thereby, as modified by Consented To Order dated March 16, 2015 executed by the State of Vermont Superior Court, Environmental Division, in the matter captioned *In Re: Appeal of Eagles Place, LLC*, Docket No. 55-4-14 Vtec, as such approvals may be modified, amended or replaced from time to time (the “Approvals”); and

WHEREAS, the Eagles Landing Project, as permitted and approved by the Approvals, contemplates the construction and maintenance of landscaping and site improvements within portions of the rights-of-way for St. Paul Street, King Street and Maple Street adjacent to the Eagles Landing Property, and LICENSEE proposes to license from the CITY portions of the rights-of-way for St. Paul Street, King Street and Maple Street abutting the Eagles Landing Property in order to **exclusively occupy them** to construct and maintain landscaping and improvements appurtenant to LICENSEE’s use of the Eagles Landing Property; and

WHEREAS such uses would promote greater economic vitality in that area of St. Paul Street, King Street and Maple Street; and

WHEREAS, the Department of Public Works has reviewed the proposal and determined that the activities and needs of the CITY for these rights-of-way will not be impaired by the construction, use, repair, replacement and maintenance of the Eagles Landing Project as permitted and approved by the Approvals provided such activities are conducted in conformance with the conditions established by this Agreement; and



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"exclusively occupy them"-->.the rights of way on St. Paul, King Street and Maple Street? No public access?
Champlain College only?