

Pre-Development Agreement

This Pre-Development Agreement (“Agreement”) is entered into as of March ____, 2024 by and between the **City of Burlington**, a Vermont municipal corporation (the “City”) and Memorial Block, LLC, a Vermont limited liability company and single-purpose entity under the control of Eric Farrell and Joseph Larkin (“Developer”). Each is referred to individually as a “Party” and collectively as the “Parties.”

Background

- A. The “Memorial Block” is the city block in Burlington, Vermont bounded by Main Street, South Winooski Avenue, College Street, and South Union Street, measuring ±3.81 acres. The City owns ±2.95 acres, or 77%, of the Memorial Block including the historic Central Fire Station (the “CFS”), the Fletcher Free Library, Memorial Auditorium and the Main Street parking lot. The northeast corner of the Memorial Block is owned by the College Street Congregational Church (measuring ±0.58 acres), and Developer holds site control over the remaining ±0.28 acres including the properties numbered 230 Main Street, 234 Main Street and 236 Main Street located between Memorial Auditorium and the Main Street parking lot. An orthophoto outlining the boundaries of the City-owned portions of the Memorial Block is attached hereto as **Exhibit A**.
- B. The City seeks to redevelop the Memorial Block (the “Project”) as anticipated in *planBTV - Downtown and Waterfront Master Plan* adopted on June 10, 2013, and has entered into a Letter of Intent dated November 9, 2023 with Developer’s principals, Eric Farrell and Joe Larkin, in which the Parties agreed to work diligently to execute a formal and binding pre-development agreement on or before March 29, 2024 reflecting the expressions contained therein, including the following description of the Parties’ vision and goals with respect to the Project (the “Project Principles”¹):

“The redevelopment plan should reflect the following important elements and goals:

- The architectural design of the Memorial Block should be inspirational and welcoming. It should honor both the history of the City and the promise of its future.
- The architectural design of the Memorial Block should reflect its central role as an important point of entry into Downtown Burlington.
- The Memorial Block should represent a meaningful connection between adjacent neighborhoods, encouraging pedestrian movement in support of the businesses and services all along the way.

¹ The Letter of Intent refers to the “Gateway Block”; the quoted language below replaces the term “Gateway Block” with the term “Memorial Block” but is otherwise a direct quote from the Letter of Intent.

- The Memorial Block design should embrace the presence of the College Street Congregational Church and the Fletcher Free Library buildings and endeavor to create a vibrant pedestrian streetscape surrounding these important community resources.
- The Memorial Block should maintain the historic integrity of the Central Fire Station, repurposing it to serve in many capacities, such as additional public space, as a function space for an adjacent hotel, or some combination of public and private uses. The potential relocation of the Central Fire Station will be thoroughly studied to ensure the highest level of public safety and to improve the working conditions of fire department members.
- The Memorial Block should include a Central Public Assembly & Activity Space to replace Memorial Auditorium, although not of equal size nor equivalent in use, anchoring the core of the Block and serving as the heart of this new community. Alternatively, such space could be comprised of a combination of a portion of Memorial Auditorium that is retained and new Central Public Assembly & Activity Space. New public space on the Memorial Block should include space dedicated to youth. Such spaces can be either owned privately, or owned by a public/private partnership, or a combination thereof.
- If no portion of Memorial Auditorium is retained, then the Central Public Assembly & Activity Space should include a Veterans Memorial using the plaques that are currently on display in the lobby of Memorial Auditorium,
- After nearly 100 years of public ownership of most of the properties in the Memorial Block, the public should be included in the process of re-envisioning this area.
- The Memorial Block may include hotel use with a minimum of 100 rooms, serving as a vibrant anchor for the Block.
- The Memorial Block should result in the creation of a minimum of 200 units of housing, including a mix of housing types, and both affordable and market-rate units. The affordable housing must satisfy the City's requirement for inclusionary housing units, which requirements will be more specifically articulated in the Development Agreement.
- The Memorial Block should explore secure rooftop greenspaces, where feasible, for the enjoyment of the residents, business employees, hotel guests and the general public, when appropriate (i.e., during public events). Rooftop solar should be considered wherever feasible.
- The Memorial Block should be designed to advance the City's Net Zero Energy goals.

- All parking for the Memorial Block should be located within an understory garage, not visible from the surrounding streets except for the required garage entrances. The garage should include a component of public parking. Incidental surface parking and drop-off zones should be allowed at the entrances to the hotel, residential buildings, Fletcher Free Library, and the College Street Congregational Church. Surface parking should not otherwise be allowed within the Memorial Block.
- The architectural plans for the Memorial Block should be coordinated with, be complementary to, and otherwise support the significant improvements planned for the Main Street corridor.”

C. Developer and the City desire to enter into and memorialize certain agreements to reasonably facilitate Developer’s development of the Project substantially in accordance with the Project schedule referenced below.

Now therefore, in consideration of the covenants, considerations and mutual benefits set forth herein, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the City and Developer agree as follows:

1. Preliminary Project Schedule. The Parties desire to determine, by December 31, 2024, whether the Project is viable. To determine viability, the Parties agree to work together in good faith to implement the terms of this Agreement and to enter into subsequent agreements as reasonably necessary to achieve mutually desired outcomes. If the Parties determine that the Project is viable, they anticipate negotiating and executing either a formal development agreement or a ground lease and other Implementing Documents (defined below) by June 30, 2025, after which Developer would obtain all necessary municipal, state and federal land use and regulatory permits for the Project (“Project Permits”) by June 30, 2026 and would commence Project construction by October 31, 2026.

2. Due Diligence Period. To determine whether the Project is viable, Developer agrees to undertake and perform due diligence with respect to the Memorial Block, as described below, from the date of this Agreement until December 31, 2024 (the “Due Diligence Period”). In the event the Developer has made a good faith effort to perform its due diligence requirements, as set forth below, but has not been able to complete such undertakings and analysis by December 31, 2024, through no fault of its own, or in part due to the City’s inability to perform its obligations as set forth below, then the Developer shall have the right to extend the Due Diligence Period to June 30, 2025, subject to the consent of the City, which consent shall not be unreasonably withheld.

(a) Physical Due Diligence and Title Work. During the Due Diligence Period, Developer agrees to undertake and perform physical due diligence with respect to the Memorial Block in accordance with the following:

- (i) Developer shall be entitled, during the Due Diligence Period, to perform a physical evaluation of Memorial Auditorium, the Main Street parking lot, and the CFS,

including an engineering and environmental review to ascertain their physical condition, and legal review of the City's title to such property, including but not limited to a review of title and survey records to determine the existence or materiality of any encumbrances affecting use, occupancy, or enjoyment.

(ii) Developer agrees that in conducting any inspections or investigations, Developer and its agents shall: (A) not damage any part of the City's property; (B) promptly pay when due the costs of all tests, investigations, and examinations; and (C) not permit any liens to attach to the City's property by reason of the exercise of Developer's rights hereunder. If any damage occurs to the City's property as a result of Developer's due diligence or any activities upon the Memorial Block by Developer or its agents, Developer shall promptly restore the damaged property to the condition that existed prior to the commencement of the due diligence or such other activities, at Developer's sole cost and expense, and save and hold the City and its successors and assigns harmless from any claim, damage, cost or expense, including reasonable attorneys' fees, for any property damage or for any personal injuries arising in whole or in part from any inspections or investigations performed by Developer or its agents. Developer's obligations under this provision shall survive the termination of this Agreement for any reason.

(iii) During the Due Diligence Period, Developer shall have reasonable access to Memorial Auditorium, the CFS and to the Main Street parking lot for the purpose of performing due diligence as set forth above, provided that (A) Developer shall not perform any invasive environmental testing without the City's prior written consent, (B) all inspections of the CFS shall be coordinated in advance with the Burlington Fire Department and with the Burlington Community Economic Development Office ("CEDO"), and (C) Developer shall only be permitted to enter into Memorial Auditorium while accompanied by a representative of the City. The City shall reasonably cooperate with Developer to facilitate Developer's access to and due diligence of Memorial Auditorium. Developer acknowledges that portions of Memorial Auditorium are being occupied by, or are being used for storage by, others, and Developer agrees that its due diligence shall not disturb such use.

(iv) Developer acknowledges and agrees that this Agreement only provides Developer with a limited license for the purposes described herein and for no other purposes and for no other periods, and does not constitute, and no provision shall be construed to constitute, the grant, conveyance or assignment of any interest in real estate or a lease of any portion of the Memorial Block or any rights extending beyond the period and purposes identified above. The Developer shall at its own cost and expense comply with any and all laws, ordinances, regulations, codes and other legal requirements relating to its activities hereunder.

(v) Throughout the effective period of this Agreement, Developer, at Developer's own cost and expense, will maintain a policy or policies of commercial general liability insurance (or its equivalent) insuring the City and Developer against all claims or demands for personal injuries to or death of any person, and damage to or destruction or loss of property, which may or may be claimed to have occurred on the

Memorial Block or in the vicinity of the same arising from the acts or omissions of Developer. Such policies shall be 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 a single accident or occurrence. The Developer shall deliver to the City certificates evidencing such insurance coverage prior to its entry onto the Memorial Block (other than those portions which Developer already controls), which certificates shall name the City as an additional insured.

(vi) The City shall not be liable for any personal injury or damage to property which Developer or its employees, contractors, agents, or invitees may incur, regardless of the cause thereof, unless the cause of such injury or damage is a willful or grossly negligent act by the City, its officers, employees, and agents. Developer hereby releases the City from all such liability except as otherwise stated, it being the intent of the parties that Developer shall maintain adequate insurance to cover any such losses. Developer hereby agrees to defend, indemnify and hold harmless the City, its officers, employees and agents, from and against any and all damages to the Memorial Block, any personal injuries, claims, damages, losses, suits, judgments, costs and expenses (including without limitation reasonable attorney's fees) arising from Developer's use of and access to the Memorial Block or breach of this Agreement including, but not limited to, the amounts of deductibles on Developer's insurance policies, or any costs resulting from Developer's failure to acquire insurance coverage as required hereunder, and any costs arising from subrogation under worker's compensation or liability claims. The indemnification provisions set forth above shall survive termination of this Agreement.

(b) Programmatic Due Diligence. In addition to its conduct of physical due diligence, during the Due Diligence Period Developer agrees to undertake and perform programmatic due diligence with respect to the Project to determine its viability in accordance with the following:

(i) Program. Develop a program for the Project consistent with the Project Principles, in terms of the various uses of space within the Project (e.g., housing, hotel, retail, office, public assembly, structured parking, park space, photovoltaic power generation, etc.), the square footages and/or unit counts devoted to each use, the quantity and mix of housing units, the number of structured parking spaces, and any other information or metrics relevant to a determination of viability. The number of housing units in the Project may vary from the Project Principles as a result of this effort.

(ii) Concept Plans and Drawings. Engage civil engineers, architects, landscape architects and other professionals to develop concept plans and drawings for the Project, including scaled site plans and elevation drawings, sufficient to depict the proposed program for the Project. The concept (schematic) plans and drawings should depict the Project layout and also identify and describe proposed infrastructure and utility improvements and include a proposed phasing schedule.

(iii) Market Feasibility Assessment. Engage reputable, independent third-party market consultants to assist in the assessment of the feasibility of developing the Project with the proposed program. Such market feasibility assessments should include estimates

of the approximate values of the completed elements of the Project.

(iv) Regulatory Feasibility Assessment. Engage civil engineers, architects, land use attorneys and/or other land use planning professionals to assess the feasibility of obtaining all necessary land use and regulatory permits and approvals to develop the Project with the proposed program. If the regulatory feasibility assessment concludes that current municipal zoning would not permit the Project to be developed as proposed, then it should identify such limitations and propose solutions to overcome or remove such limitations.

(v) Sources and Uses of Funds. Develop a preliminary budget for the Project, including a sources and uses table, to include estimated hard and soft costs typically associated with the development and construction of a project that includes the desired programmatic elements and to include typical development and construction contingencies and forward-looking cost escalators to account for the anticipated construction timeline. If the Project is proposed to be developed in phases over time, then the preliminary budget shall address the first phase with details sufficient to support the commencement of the Project with an estimated timeline, sequence and schematic designs for future phases that demonstrate the financial feasibility of completing the Project over the proposed timeline.

(vi) Appraisal. Developer shall engage a Qualified Appraiser, mutually selected by Developer and the City, to determine the existing value of the Memorial Block and its constituent parcels and improvements (meaning, prior to the construction of the Project), subject to a mutually agreed-upon set of assumptions and parameters to be determined by the Parties (the “Appraisal”). Such parameters shall include, but not be limited to, existing physical deficiencies and/or atypical building and site conditions that would negatively impact the financial feasibility of developing any portion of the Memorial Block. As used herein, the term “Qualified Appraiser” shall mean an MAI-certified appraiser or other professionally licensed appraiser with at least five (5) years’ experience appraising commercial real property similar in location, nature and quality to the properties that comprise the Memorial Block; provided, however, that the term “Qualified Appraiser” shall not include any individual who has any professional, business, family or personal affiliation with a Party that would compromise his or her independence; such exception shall not include work the “Qualified Appraiser” may have performed on behalf of a bank or lending institution in connection with one or more properties owned by the Developer.

(c) Termination. If at any time during the Due Diligence Period Developer determines, in its sole discretion, that the Memorial Block is not suitable for Developer’s intended use, Developer may terminate this Agreement upon written notice to the City, and thereafter the Developer will have no further obligations to the City except for those obligations that explicitly survive termination.

(d) Share Work Product. Developer agrees to share the work-product produced by its activities described in this Section 2 with CEDO staff for their review so that the City can evaluate whether Developer’s proposals implement the Project Principles in a manner that is reasonably likely to be acceptable to the City, and whether the Parties will be able to relocate the CFS in the

manner described below to facilitate the Project. Developer agrees to use good faith efforts to provide its work product by the end of the Due Diligence period so that City staff has sufficient time to review and comment upon such materials in an effort to move the Project beyond the Due Diligence Period. The Parties acknowledge that if the City, after review by CEDO staff, determines, in its reasonably exercised discretion, that the Project satisfies the requirements set forth in this Agreement, it will be necessary to obtain authorization from the Burlington City Council to deliver site control to Developer in the manner contemplated by Section 7 of this Agreement and to provide Developer with the right, pursuant to the Implementing Documents (as defined in Section 7), to proceed to obtain Project Permits and to work towards the construction of the Project and the relocation of the CFS.

(e) The City acknowledges the Developer will be expending considerable time and expense to satisfy its obligations during the Due Diligence Period; Developer acknowledges that it is undertaking such efforts and incurring such expenses at its own risk, and that the City does not guaranty that the Project will be feasible or that the Project will proceed beyond the due diligence phase.

3. Central Fire Station Relocation. The City commits to relocating the CFS to a new public safety facility on Pine Street by a date that will facilitate Developer's construction of the Project thereon, subject to Developer's performance under Section 3(b) and Section 3(d).

(a) The City agrees to investigate the feasibility of relocating the CFS to a new public safety facility to be constructed on City-owned property on Pine Street including by determining whether existing zoning and land use regulations and institutional controls permit the construction of a new public safety facility on the target property. The City acknowledges and agrees that the relocation of the CFS is an absolute requirement of the Developer for the Project and, accordingly, the City agrees to work diligently and in good faith to identify a City-owned location for the new public safety facility in satisfaction of the requirements set forth in this Section 3, including by completing its zoning and land use analysis by September 30, 2024 in order to afford Developer a reasonable time to fulfill its obligations under Section 3(b).

(b) Developer shall investigate the feasibility of relocating the CFS to a new public safety facility to be constructed on City-owned property on Pine Street (to be identified by the City), including (i) the estimated cost to develop, construct and equip a new public safety facility to the City's specifications, (ii) the proposed timeline for the construction and relocation project, (iii) the availability and cost of financing for the construction and relocation project, and (iv) the projected monthly carrying costs of the completed project.

(c) The City shall participate and support Developer's investigations by providing Developer with specifications and requirements for the new public safety facility sufficient for the Developer to undertake its obligations as set forth herein. Developer shall have the right to determine when the new public safety facility is constructed in coordination with its development schedule for the Project.

(d) To facilitate the City's relocation of the CFS to a new public safety facility on a schedule that facilitates the Project, Developer agrees to construct a replacement public safety

facility to the City's specifications on property located on Pine Street that is currently City-owned, and to (i) net lease the new public safety facility to the City, if the City retains ownership of the underlying land; or (ii) if the City is required to transfer the City-owned property to the Developer in order to facilitate the Developer's financing, then to ground lease the land and building to the City until such time as the City's Chief Administrative Officer determines that the City has capacity to bond for its purchase and, if required, the voters shall have authorized the City to bond for its purchase. In the event of (ii) above, the transfer of the City-owned property to the Developer shall be at no cost. The rent payable under the ground lease will be established at a rate that covers Developer's carrying costs with respect to the new public safety facility (i.e., Developer's cost of constructing and owning the new public safety facility, including soft costs, financing costs including a reasonable return on equity and debt service costs). The purchase price for the completed public safety facility will equal Developer's total costs of development, construction and ownership of the new public safety facility, together with any operating and/or carrying costs that shall not have been reimbursed through the payment of rent.

4. City Commitments. To facilitate Developer's ability to develop plans for the Project and to commit to a Project timeline, the City agrees to the following commitments should the Project proceed:

(a) Properties. The City will contribute the following properties to the Project: Memorial Auditorium, the CFS, the Main Street parking lot, and the surface parking lot serving the Fletcher Free Library.

(b) Ravine Sewer. Once Developer and the City shall have fully committed to a specific, designed and permitted Project, the City agrees that it will abandon the existing ravine sewer line that runs through the Main Street parking lot, at its expense, by a date that will facilitate Developer's construction of the Project thereon.

(c) Library Improvements. The City agrees to work in good faith with Developer to coordinate Developer's planned improvements for the Memorial Block with the improvements the City has planned for the Fletcher Free Library.

(d) Public Process. The City agrees to engage the public to solicit feedback regarding desired public uses to be incorporated into the program for the Project.

(e) Review of Developer Submissions. The City will timely review Developer's work product regarding the Project program, design, construction phasing, infrastructure elements, and deal structure, and shall use good faith efforts to timely provide Developer with constructive feedback to indicate its areas of approval and any items of concern.

(f) Funding Sources. The City will investigate and identify potential funding sources and financial benefits that may be available to the Project by reason of the City's involvement, support and/or sponsorship, including the identification of any requirements associated with particular funding sources, and will communicate its findings to Developer to assist the Developer to develop its sources and uses proposal.

(g) Regulatory Assistance. If Developer's regulatory feasibility assessment concludes that current municipal zoning would not permit the Project to be developed as proposed, the City will work with Developer in good faith to develop solutions to, or to overcome or remove, such limitations. If the Parties determine that it will be necessary to amend the City's Comprehensive Development Ordinance ("Zoning Ordinance") to permit the Project to proceed, then the City, acting through the Office of the Mayor, will use diligent, good faith efforts to facilitate the adoption of an amendment or amendments to the Zoning Ordinance to facilitate the Project, with the understanding that only the Burlington City Council and Planning Commission have the authority to adopt amendments to the Zoning Ordinance, which must be adopted in accordance with applicable laws, ordinances and regulations.

5. Developer Commitments. Developer agrees to the following commitments should the Project proceed:

(a) Properties. Developer will contribute the following properties to the Project: 230 Main Street, 234 Main Street, and 236 Main Street. Developer represents that it currently controls such properties, and that it holds the option and right to acquire fee title to such properties should the Project proceed. At the time that Developer contributes such properties to the Project, it will provide the City with copies of its title reports, title and survey materials, and title insurance policies with respect thereto.

(b) College Street Congregational Church Parking Lot. Developer agrees to use commercially reasonable, good faith efforts to (i) acquire fee title to the surface parking lot serving the College Street Congregational Church for inclusion in the Project, and to contribute such property to the Project should the Project proceed, or (ii) facilitate the repurposing of the surface parking lot into green space to be retained by the Church for its use, in either case consistent with the final plan to develop the Project. At the time that Developer contributes such property to the Project, it will provide the City with copies of its title reports, title and survey materials, and title insurance policies with respect thereto.

(c) Financial Capacity. On or before June 1, 2024, Developer agrees to provide the City with information regarding the experience, qualifications and financial capability of the Developer and its principals, and their ability to implement a feasible plan for the Project (including the identification of possible equity sources, debt sources and associated financial sureties), together with information listing the Developer's real estate development experience managing an investment and development team, including architects, engineers, attorneys, contractors, investors and lenders, capable of designing, financing, constructing, operating and managing the Project long-term. The Parties agree to cooperate as needed to facilitate the completion of these disclosures and assessments, including appropriate treatment of proprietary or confidential information. If the City after reasonable review is not satisfied with such disclosures and assessments, then the City shall have the right to terminate this Agreement. The City shall make such determination on or before July 1, 2024.

6. Further Agreements. Developer agrees to use good faith efforts to provide City staff with the work product produced by its activities described in Section 2 of this Agreement on or before sixty (60) days prior to the end of the Due Diligence Period, so that City staff has sufficient time

to review and comment upon such materials in an effort to move the Project beyond the Due Diligence Period. If the Parties determine at the end of the Due Diligence Period that the Project is viable and that it is necessary for them to memorialize further agreements with respect to the Project including, without limitation, with respect to the relocation of the CFS, prior to or concurrent with their entry into the Implementing Documents (as further discussed in Section 7, below), the Parties will use good faith efforts to negotiate a Development Agreement to encompass and address such further commitments and agreements for presentation to the Burlington City Council for its review and approval. The intent of the Development Agreement would be for the Parties to make reciprocal commitments covering the period from the end of the Due Diligence Period to the execution of the Implementing Documents described in Section 7 below.

7. Implementing Documents. Upon the expiration of the Due Diligence Period, or the period covered by the Development Agreement referenced in Section 6 above, the Parties intend for Developer to convey to the City those elements of the Memorial Block that the City does not already own, and for the City (a) to ground lease to Developer those portions of the Memorial Block that are to be redeveloped, and/or (b) to establish other legal structure(s) that the Parties determine to be appropriate and in the best interests of the Project and the mutual best interests of each Party (collectively, “Implementing Documents”). In making such a determination, the Parties recognize that an appropriate legal structure for the Project may be one in which the City maintains ownership of all or a portion of the land using a mechanism other than a ground lease, and each Party shall act in good faith to consider the interests of the other Party. If the Parties determine that the Project is viable and that they desire for Developer to proceed to obtain Project Permits and work towards the construction of the Project and the relocation of the CFS to a new public safety facility, the City would prepare a draft ground lease for review and approval by Developer, and Developer would prepare drafts of the other Implementing Documents for review and approval by the City, in each case with the intent of drafting documents which, upon execution, would deliver site control to Developer. The City’s execution of the Implementing Documents will require authorization from the Burlington City Council, and if authorization is granted it would be conditioned on Developer’s conveyance of real property to the City, if required by the Implementing Documents, in the manner contemplated by this Agreement. The Parties anticipate that the Implementing Documents would include, without limitation, the following concepts:

(a) The consideration payable to the City pursuant to the Implementing Documents will reflect, among other factors, the value of: Developer’s acquisition of 230 Main Street, 234 Main Street and 236 Main Street and contribution of such properties to the Project (as established by the Appraisal); Developer’s acquisition of the College Street Congregational Church surface parking lot, if applicable, and contribution of such property to the Project (as established by the Appraisal); the City’s contribution of Memorial Auditorium, the CFS, the Main Street parking lot, and the surface parking lot serving the Fletcher Free Library to the Project (as established by the Appraisal); Developer’s costs to restore or demolish Memorial Auditorium; the Project’s provision of public amenities, including infrastructure upgrades, assembly space, youth-led space, structured parking, and park space; the Project’s provision of workforce, affordable and market housing; the Project’s effect on the municipal Grand List; the Project’s generation of municipal meals and rooms tax; the Project’s generation of municipal sales tax, and; the Project’s profitability.

(b) The City will reserve easements for water and sewer infrastructure through portions

of the subject property that will be identified on a plan attached to the Implementing Documents.

(c) The Implementing Documents will include infrastructure and construction requirements established by the Burlington Department of Public Works.

(d) The Implementing Documents will be effective upon full execution, but if the Implementing Documents include a ground lease it will not take effect until all Project Permits will have issued and Developer will have satisfied all commencement contingencies and is prepared to commence construction, and in that case the ground lease will provide that once construction commences the lease term will be 99 years.

(e) Commencement pursuant to the Implementing Document will be contingent on (i) the Parties' entry into a mutually satisfactory agreement with regard to the relocation of the CFS, (ii) Developer's receipt of all Project Permits, issued without conditions to which either Party objects, and such permits having become final and unappealable, (iii) the City's approval of the final Project program, plans and specifications, (iv) Developer being able to demonstrate to the City's reasonable satisfaction that it has sufficient financial capacity, through a mixture of equity and a debt financing, and other municipal, state, federal and private sources and considerations, to construct an agreed-upon scope of the work (it being understood that the Project will be constructed in phases), and (v) Developer's entry into a construction contract with a capable, reputable general contractor or construction manager which establishes either a guaranteed maximum price or lump sum price consistent with Developer's available sources of debt and equity financing, for a fixed construction term, to construct the first phase of the Project. If the contingencies are not satisfied by a date certain, the City shall have the right to the remedies set forth in the Implementing Documents. The Parties acknowledge that it will be necessary for Developer to obtain permits and approvals for the Project from the Burlington Development Review Board ("DRB"), that the DRB is an independent body not under the City's control, and that the City does not and cannot guaranty that the DRB will approve the Project.

(f) Developer will commit to a design process that engages public participation and solicits public feedback regarding the public spaces that are a component of the Project at the commencement of the design process and thereafter at intervals throughout the design process.

(g) The City will provide Developer with active support during the regulatory review process.

(h) The Implementing Documents will grant Developer the ability to establish "pad sites" to be transferred or subleased to entities which would then own individual buildings constructed as components of the Project, subject to the Implementing Documents. The Implementing Documents will allow for the establishment of an air-space condominium, as permitted by the Vermont Common Interest Ownership Act, to facilitate the establishment and transfer of such "pad sites".

(i) If the Implementing Documents include a ground lease it will establish a capital reserve requirement and will address the disposition of improvements at the expiration of the lease term.

(j) The Implementing Documents will include provisions designed to anticipate and address the needs of Project lenders.

8. Within one week of the full execution of this Agreement, Developer shall provide the City with an organizational chart which shall, without limitation, confirm that Eric Farrell and Joe Larkin are Developer's principals with operational authority and control over Developer's activities.

9. Confidentiality. Developer recognizes that this Agreement is a public record and that communications and correspondence between the parties are subject to Vermont's public meeting laws and public records laws. The City agrees, however, that to the extent the City requires Developer to disclose to or provide the City with material nonpublic, confidential information or material in connection with the Project, the City will work in good faith with Developer to maintain the confidentiality of such information or material in a manner that complies with applicable law.

10. No Assignment. This Agreement shall not be assigned by Developer without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed so long as Eric Farrell and Joe Larkin hold and exercise executive managerial authority over the assignee.

11. Cooperation; Further Assurances. The Parties shall cooperate and communicate with each other on a regular basis, including by arranging joint meetings with appropriate personnel present to address issues set forth in this Agreement, to discuss any proposed changes to the Project and to discuss the work product generated as the Project progresses, so as to permit the orderly and efficient development of the Project. The Parties agree to execute, acknowledge, if necessary, and deliver such documents, certificates or other instruments and take such other actions as may be reasonably required from time to time to carry out the intents and purposes of this Agreement.

12. Governing Law; Venue. This Agreement shall be governed and construed in accordance with the laws of the State of Vermont, without regard to its conflicts of law rules. The Parties consent to and submit to in personam jurisdiction and venue in the State of Vermont, County of Chittenden, and in the federal district courts which are located in the City of Burlington. The Parties assert that they have purposefully availed themselves of the benefits of the laws of the State of Vermont and waive any objection to in personam jurisdiction on the grounds of minimum contacts, waive any objection to venue, and waive any plea of forum non conveniens. This consent to and submission to jurisdiction is with regard to any action related to this Agreement, regardless of whether the Parties' actions took place in the State or elsewhere in the United States.

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

14. Construction; Headings. The Parties waive the benefit of any rule that this Agreement is to

be construed against one Party or the other. The headings in this Agreement are for the purposes of reference only and shall not limit or otherwise affect the meaning hereof.

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

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

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

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

19. Authority. Each of the Parties warrants to the other that the person or persons executing this Agreement on behalf of such Party has the full right, power and authority to enter into and execute this Agreement on such Party's behalf and to thereby bind the Party on whose behalf such person, and that no consent from any other person or entity is necessary as a condition precedent to the legal effect of this Agreement.

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

If to the City:	City of Burlington 149 Church St. Burlington, VT 05401 Attention: Mayor Attention: CEDO Director
-----------------	--

If to Developer: Memorial Block LLC
 Attention: Eric Farrell
 Attention: Joe Larkin

With a copy to:

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

Signature Page to Follow

DRAFT

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

City of Burlington

Memorial Block LLC

By: _____
Name: Miro Weinberger
Title: Mayor

By: _____
Name: Eric Farrell
Title: Authorized Agent

By: _____
Name: Joseph Larkin
Title: Authorized Agent

DRAFT

Exhibit A
Orthophoto of Memorial Block

DRAFT