



COMMUNITY & ECONOMIC DEVELOPMENT OFFICE

Celebrating 30 Years ~ 1983-2013

TO: Board of Finance

FROM: Brian Pine, Assistant Director for Housing & Neighborhood Revitalization

DATE: August 29, 2013

RE: Sale of Browns Court municipal parking lot to Champlain College

Per the Letter Agreement between Champlain College and the City of Burlington dated June 25, 2013, we are seeking Board of Finance and City Council approval to execute a Purchase and Sale Agreement (P&S) for the sale of the Browns Court parking lot to Champlain College.

The City has negotiated to sell the property to Champlain College in accordance with the terms and provisions of this Agreement, to enable Champlain to combine the property with the former "Eagles Club" property, numbered 194 St. Paul Street, and to construct a redevelopment project on the combined properties, that strives to achieve the following goals and objectives:

- Develop apartment-style housing for Champlain College students;
- Realize the goals of the City's Municipal Development Plan and PlanBTV to significantly increase the supply of downtown housing;
- Enhance pedestrian activity along St. Paul Street with non-residential street-level uses, such as, but not limited to retail uses;
- Maintain for public use at least the same number of parking spaces currently available at the parking lot on the Property;
- Monetize an under-performing City asset for a price above fair market value as determined by 2 separate appraisals;
- Manage any on-site parking resources cooperatively with the City's parking management efforts, to the greatest extent possible in Champlain's sole discretion.
- Increase the grand list with private development on a property that is presently tax-exempt

Key elements of the P&S include:

Purchase Price

The purchase price to be paid by Champlain College to the City shall be One Million One Hundred Thousand and xx/100 U.S. Dollars (\$1,100,000.00).

Property Taxes

Champlain shall be subject to property taxation at its full legally assessed value following acquisition, including its full assessed value upon completion of construction of the improvements.

Operation of Parking Lot

Champlain agrees that the City 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 Champlain, until Champlain commences excavation of the building foundation for the student housing project on the Property, which shall be upon at least thirty (30) days' notice to the City. During the period when the City is using the Property as a parking lot, Champlain will not be obligated to pay taxes on the Property, and the City will be responsible for all utility, plowing, landscaping and insurance expenses associated with such use.

Provision of Public Parking

Champlain will maintain for public use at least the same number of parking spaces currently available at the Browns Court parking lot.

We will be available at the upcoming Board of Finance meeting to discuss this matter in further detail. Please feel free to contact me if you wish to discuss this matter in advance of the September 3 meeting.



CHAMPLAIN COLLEGE

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June 25, 2013

City of Burlington
Honorable Miro Weinberger, Mayor
City Hall
149 Church Street
Burlington, VT 05401

RE: Proposal to Purchase Real Property
O Browns Court, Burlington, Vermont

Dear Mayor Weinberger:

Thank you for the opportunity to discuss Champlain College's interest in purchasing the City's "*Brown's Court*" surface parking lot property at the corner of King & St Paul Street. Please let this correspondence confirm our discussions and serve as a formal offer to purchase this real property asset from the City.

As a long-time institutional community stakeholder, Champlain College has made a commitment in its master plan to provide housing, in either on-campus dormitories or off-campus apartments, up to ninety percent (90%) of its students. To that end, the College is moving forward with a redevelopment of the former *Eagles Club* parcel at the intersection of Maple and St. Paul Street site as student apartments. We believe the incorporation of the City lot into the planned redevelopment of the Eagles Club site will enhance the Project by providing additional, much needed housing at the City core, resulting in benefits to both the College and community alike. We trust the City shares this view.

With regards to the College's offer to purchase, we contemplate a clean, cash transaction with limited conditions at a purchase price significantly in excess of its appraised value. Our offer of **\$1,100,000** provides the City with more than fair compensation for the asset; a buyer that understands and shares the long-term interests of the community; and a future investment that will transform the character and face of this block of St Paul Street for all to enjoy.

The proposed purchase terms outlined below, if accepted, shall be included in a formal Purchase & Sale contract. Champlain College and the City of Burlington's legal counsel will work diligently to complete a binding Purchase & Sale contract within ten (10) days of the execution of this letter.

Outline of Purchase Offer

1. **Purchaser:** A designee of Champlain College that is acceptable to the City and which has been formed for the purpose of acquiring and developing the Project (as defined below) on the Property in a manner that results in the Property being subject to full property taxation at its full assessed value, including, without limitation, the value of the Property following its improvement.
2. **Seller:** City of Burlington.

3. **Property:** 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 collectively known as and numbered 0 Browns Court in Burlington, Vermont.

4. **Project Description:** Purchaser desires to acquire the Property, and Seller is interested in selling the Property to Purchaser, to enable Purchaser to construct an urban, mixed use redevelopment project on the Property, combined with the *Eagles Club* site, that achieves the following goals and objectives:

- a) Develop apartment-style housing for Champlain students;
- b) Enhance pedestrian activity along St. Paul Street with non-residential street-level uses, such as retail uses;
- c) Maintain for public use at least the same number of parking spaces currently available at the parking lot on the Property;
- d) Manage on-site parking resources cooperatively with the City's city-wide parking management efforts.

5. **Purchase Price:** \$1,100,000 cash due at closing.

6. **Operation of Parking Lot.** In addition to the cash paid at closing, Purchaser will also agree 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 Purchaser, until Purchaser commences construction of the Project on the Property, which shall be upon at least 30 days' notice to Seller. During the period when the Seller is using the Property as a parking lot, Seller will be responsible for all utility, plowing, landscaping and insurance expenses associated with such use.

7. **Purchase & Sale Contract:** This letter looks to the preparation and execution of a formal Purchase & Sale Contract ("Contract") containing customary terms and agreements for commercial property sales in the greater Burlington area of Vermont. The Contract will include terms and conditions summarized as follows:

- a) Purchaser shall pay a deposit in the amount of \$30,000 to be held in escrow by its counsel.
- b) Purchaser's obligation to close on the purchase of the Property will only be subject to the following contingencies:
 - Purchaser's satisfaction with the physical and environmental condition of the Property. Purchaser shall have a period of 45 days to conduct due diligence with respect to the Property. Upon execution of the Contract, Seller will provide Purchaser with copies of any material information pertaining to the Property that Seller has in its possession or that it may obtain without expense, such as surveys, engineering tests, soil tests, Phase I and/or Phase II Environmental Reports, permits, copies of existing title policies pertaining to the Property,

inspection reports, or any other items of similar significance. Purchaser will have the right, during the due diligence period, to conduct additional reviews and inspections of the Property in accordance with and subject to terms to be set forth in the Contract.

- Champlain College Board of Trustees approval of the terms and provisions of the Contract.
- c) Seller's obligation to close on the sale of the Property will be subject to the following contingencies:
- Burlington City Council approval of the terms and provisions of the Contract.
 - Purchaser's agreement to construct the Project on the Property.
 - Purchaser structuring its acquisition, development and operation of the Project on the Property in a manner that results in the Property being subject to full property taxation at its full assessed value following acquisition, including its value following construction of the Project.
 - Purchaser's agreement that in the event the 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"), it shall be an obligation of such Exempt Owner to make payments in lieu of property taxes ("PILOT") to the City of Burlington. The Contract shall describe the terms upon which such PILOT shall be calculated, due and payable.
- d) The Contract and will provide for a closing 30 days from the later of (i) the expiration of the due diligence period or (ii) the transaction receiving consent approval from the Burlington City Council.
- e) The Contract shall provide that all utility bills, tax payments and other expenses associated with the ownership of the Property shall be prorated at time of closing, provided that if Seller continues to use the Property as a public parking lot as described above, then such expenses shall not be prorated at closing.
- f) At closing, Seller shall provide Purchaser with a Warranty Deed conveying marketable title to the Property, and the Warranty Deed will control the description of the Property to be conveyed under the Contract. The Warranty Deed shall provide that if Purchaser shall fail to materially commence construction of the Project within three years of the closing date, then Seller will have the option and right to repurchase the Property for the purchase price paid by Purchaser to Seller, less an amount equal to the costs incurred by the Seller in connection with the sale and repurchase of the Property. Purchaser may satisfy its obligation to commence construction by closing on a construction loan with respect to the Project.
8. **Good Faith.** Purchaser and Seller will make mutual efforts to prepare and execute such a Contract within ten (10) days of the execution of this letter. This letter shall expire and any obligations

David Provost to Honorable Miro Weinberger
June 25, 2013

created hereby shall terminate and expire on the date that is thirty (30) days after this letter has been accepted by Seller unless the parties shall have entered into a Contract by such date or unless the parties mutually agree in writing to extend such date. The parties understand that this letter is not a contract for the purchase and sale of the property. The purpose of this letter is to outline terms and conditions which, if agreed upon, could serve as an outline for a formal purchase and sale agreement with respect to the property. The parties agree to work in good faith towards the execution of such an agreement if the proposed terms are deemed acceptable but does not create or give rise to any other obligation, except for the following obligations:

- a) Seller to provide, within fifteen (15) working days of its execution of this letter, copies of all leases, contracts, financials, and any other agreements encumbering or related to the Property that Seller has in its possession or that it may obtain without expense.
- b) From after Seller's execution of this letter and for a period of thirty (30) days thereafter, Seller shall not enter into any leases or agreements with respect to the Property, or grant any encumbrances with respect to the Property, that would persist beyond the closing date without the written consent of Purchaser, which shall not be unreasonably conditioned, delayed or withheld.

9. **Expiration of Offer:** Purchaser has provided these purchase terms with the expectation that this offer remains confidential, and will remain open for your acceptance through 6:00 PM Eastern Standard Time on June 28, 2013.

The parties understand that this is not a final contract. The purpose of this letter is to outline terms and conditions which, if agreed upon, could serve as an outline for a formal contract agreement. The parties agree to work diligently towards the execution of such and agreement if the proposed terms are deemed acceptable.

Please execute below if the terms and conditions of this offer are acceptable.

Sincerely,



David Provost
Champlain College
Senior Vice President – Finance and Administration

David Provost to Honorable Miro Weinberger
June 25, 2013

Accepted And Agreed:

Purchaser/ Champlain College its affiliates, successors, or assigns.

By David Provost 6/25/13
Duly Authorized Agent Date

Seller/ City of Burlington, its affiliates, successors, or assigns.

By: [Signature] 6/27/13
Duly Authorized Agent Date

PROPOSED CHAMPLAIN COLLEGE PURCHASE OF THE
BROWNS COURT PARKING LOT SITE

In the year Two Thousand Thirteen.....
Resolved by the City Council of the City of Burlington, as follows:

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

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

WHEREAS, in 2008, Champlain College executed an additional Memorandum of Understanding whereby Champlain College committed itself to working cooperatively with the City to coordinate its development of the Eagles Club site with City plans to develop the Browns Court parking lot site; and

WHEREAS, the City has had long standing plans to convert Browns Court to housing but has been unable to develop any particular project of its own; and

WHEREAS, given the current consensus for the need for new student housing and Champlain College's willingness to develop both the Eagle's Club site and the Brown's Court

parking lot site as a single project which addresses that need and fits with the College's Master Plan; and

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

WHEREAS, on June 27, 2013, Mayor Weinberger executed a Letter Agreement (attached hereto) with Champlain College which articulated intended terms and conditions for a proposed Purchase and Sale Agreement; and

WHEREAS, on July 15, 2013, Brian Pine, assistant Director for Housing and Neighborhood Revitalization at Burlington's Community and Economic Development Office and David J. Provost, Senior Vice President at Champlain College, as respective representatives of the parties to the proposed Purchase and Sale Agreement, presented to the City Council re same; and

WHEREAS, at its September 3, 2013 meeting, [PENDING] the Board of Finance considered the above referenced proposed sale of the Brown's Court Parking Lot site and unanimously [? PENDING ?] recommended that City Council authorize same.

NOW, THEREFORE, BE IT RESOLVED that City Council hereby approves the terms and conditions for a Purchase and Sale Agreement and all necessary documents attendant thereto ,which agreement and documents shall be in general conformance with the terms and conditions agreed to by the Mayor in the above-referenced June 27, 2013 Letter Agreement (attached hereto); and

BE IT FURTHER RESOLVED that the City Council authorizes the Mayor to execute said Purchase and Sale Agreement as well as all other necessary documents as above-referenced, subject to the review and approval of the City Attorney.