

HEILMANN, EKMAN & ASSOCIATES, INC.

ATTORNEYS AT LAW
231 SOUTH UNION STREET

P.O. BOX 216
BURLINGTON, VERMONT 05402-0216

THOMAS F. HEILMANN
CHRISTOPHER D. EKMAN

JAMES M. COOLEY
WILLIAM L. GAGNON
DAVID D. AMAN

(802) 864-4555 • FAX (802) 864-4659

jcooley@healaw.com

October 7, 2013

Burlington Community Development Corporation
Attn. Kenneth A. Shatz, Esq.
149 Church Street, Room 11
Burlington, VT 05401

Re: *Property taxes for Westlake Parking Garage Unit C-1 and Westlake Condominium
Unit E Parking*

Dear Mr. Shatz:

I write on behalf of Westlake Parking, LLC (“Westlake”) regarding a tax bill received from the City on Unit C-1 of the Westlake Parking Garage in which Westlake is designated as the “lessee.” Attached is a copy of this bill. As you know, Westlake leases the first floor of the parking garage from the owner, Burlington Community Development Corporation (“BCDC”). The property is, in turn, subleased to the unit owners of the Westlake Residential Condominium (Unit E) who are already responsible for property tax bills. Westlake was very surprised to receive a property tax bill from the City of Burlington on this parcel (incorrectly listing Westlake Residential Partners LLC as the lessee) having received no notice whatsoever of the new assessment or its identification as a taxpayer from the City of Burlington or BCDC.

Westlake disputes that it has any tax obligation at law as a lessee for this parcel and has no obligation under the lease to pay the tax. See the attached letter to the Board of Assessors. When it entered the lease with BCDC, Westlake understood that it would not be responsible for paying property taxes. The lease is silent on the obligation of Westlake or BCDC to pay taxes on the parcel. This absence of any provision addressing the obligation of the lessor or lessee to pay taxes reflects the underlying premise of both parties that no property taxes would be assessed on the parcel. Westlake’s willingness to pay the amount of rent contemplated under the lease was grounded on this basic premise of the structure of the lease arrangement. The City and BCDC certainly never advised of an intention to treat Westlake as the party responsible for property taxes. In fact, the Lease Agreement does not require Westlake Parking, LLC to pay the property taxes, but rather states that “[BCDC] shall retain all rights and be subject to all obligations of a Unit owner under the Master Declaration, Westlake Area Condominium....” See attached Lease Agreement. Under the terms of the lease, there is simply no obligation for Westlake, as lessee, to pay the taxes.

We are hopeful that the City will agree to delete the tax bill and amend the Grand List. It is not our intention to have the City assess taxes to BCDC. If, however, the City does not take the action requested and Westlake is somehow forced to pay the taxes on this Unit, Westlake believes it is entitled to reduce the rent payments made under the Lease in an amount equal to the tax payments.

Please feel free to contact me with your thoughts and comments.

Sincerely,

James M. Cooley, Esq.

HEILMANN, EKMAN & ASSOCIATES, INC.

ATTORNEYS AT LAW
231 SOUTH UNION STREET

P.O. BOX 216
BURLINGTON, VERMONT 05402-0216

THOMAS F. HEILMANN
CHRISTOPHER D. EKMAN

JAMES M. COOLEY
WILLIAM L. GAGNON
DAVID D. AMAN

(802) 864-4555 • FAX (802) 864-4659

jcooley@healaw.com

October 7, 2013

The Board of Assessors
Office of the Assessor
City Hall
149 Church Street, Room 17
Burlington, VT 05401

Re: *Request to withdraw/cancel taxes and amend the Grand List for Parcel 044-2-014.004
and 044-2-145.001*
Payment under protest for Parcel No. 044-2-145.001

Dear Board of Assessors:

I represent Westlake Parking, LLC ("Westlake" hereinafter). I write to address the tax bills received by Westlake on the above two parcels. Westlake hereby requests that the taxes assessed on these two parcels be withdrawn and cancelled and that the Grand List be amended to remove Westlake as a taxpayer. Westlake intends to pay the taxes for Parcel No. 044-2-145.001 under protest. We request that this payment be refunded for the reasons set forth below.

Westlake Parking Garage – Level 1 (Parcel No. 044-2-014.004)

Westlake leases the first level of the Westlake Parking Garage located at 25 Cherry Street from the unit owner, Burlington Community Development Corporation ("BCDC" hereinafter), a corporation wholly owned and controlled by the City of Burlington. The lease was entered into between Westlake and BCDC in March of 2007. Westlake entered into the lease on the basis that it would not bear any tax liability for the parcel. The lease does not include any tax obligation on the part of Westlake to pay the property taxes. The fact that the lease does not address any obligation on the part of Westlake or BCDC evidences the understanding of both parties that the parcel would not be subject to property tax assessments. For its part, Westlake's agreement to the amount of rent under the lease was premised on not being obligated for the payment of property taxes.

The historical treatment of the property also confirms this premise. Since 2010/2011, the property has been placed on the grand list in the name of both BCDC and the City Treasurer, but no assessment was made on the property and, therefore, no taxes were payable. In 2009/2010, the property was listed to BCDC alone. The identity of the party to whom the property was listed for the years 2006/2007 – 2007/2008 is unknown at this time. However, one thing is clear

- Westlake was never listed as a taxpayer or taxed on the property at any time between 2007 and 2012.

For 2012/2013, the City of Burlington changed the listing by adding Westlake Residential Partners, LLC as “lessee.” The City changed the identity of the responsible taxpayer with absolutely no notice to Westlake. Such a notice is required by law. See 32 VSA § 4111 (requiring notice of assessment). The tax bill sent to Westlake on or about July 26, 2013 was its first notice that the City is asserting a tax obligation against Westlake. As the bill was sent after the grievance period, my client was denied its right to grieve the assessment or otherwise protest its identification as a responsible taxpayer. This violates settled principles of Vermont law.

Westlake hereby requests that the Board withdraw and cancel the tax levied upon Westlake and modify the Grand List in order to remove its name as taxpayer for the above parcel. See 32 VSA §§ 4261 (allowing correction of errors to the grand list with approval of the selectboard); 4262 (requiring listers to correct defective grand list); 4112 (allowing listers to perform any act which is necessary to render an abstract valid or to correct defective or missing notice); see also Murdoch v. Town of Shelburne, 2007 VT 93; 182 Vt. 587; 939A.2d 458 (2007) (discussing authority of listers to modify the grand list before and after lodging).

The taxes at issue were improperly assessed to my client. As stated, Westlake was not given notice of the change to the listing or the City’s assessment as a “lessee” and, therefore, was denied the opportunity to grieve the assessment and its identification as a taxpayer. Additionally, my client, as a lessee under a 20-year lease, is not responsible for the property tax by law. See Sherburne Corp. v. Sherburne, 145 Vt. 581; 496 A.2d 175 (1985) (real estate could not properly be listed to lessee under 40 year lease with Town where Town retained fee title and retained indicia of ownership); Magoon v. Board of Civil Auth., 140 Vt. 612; 442A.2d 1276 (1982) (trial court was in error in concluding that the defendant could list a leased parcel to the lessee because the fee simple title was owned by the State of Vermont); Hutchins v. Barre Water Co., 74 Vt. 36; 52 A. 70 (1901) (tax was properly assessed on fee owner of land despite possession of the property by City of Barre); Hughes v. Vail, 57 Vt. 41 (1885) (lessee of quarry could not be taxed under statute allowing taxation of the “owner” of property).

BCDC has not transferred sufficient indicia of ownership of the parcel to justify the assessment of the property tax to Westlake. BCDC enjoys the benefits of ownership of the property by receiving rental payments, maintenance and repair payments, and contributions to a capital reserve fund by Westlake. The Lease specifically recognizes BCDC’s ownership when it states that BCDC “retain[s] all rights and ... obligations of a Unit owner under the Master Declaration, Westlake Area Condominium.” See Lease Agreement at p. 1, attached hereto. The Lease also restricts Westlake from acting as the owner of the parcel. The Lease forbids Westlake from making alterations to the unit without approval from BCDC, allows termination of the lease by BCDC upon default, and requires that BCDC be given access to the unit upon notice. See Lease Agreement at p. 4-6. Because the lease is only for a 20-year period (See Lease Agreement at p. 1), this is not a situation where Westlake should be taxed as the effective owner of the property based upon a perpetual lease theory. See 32 VSA § 3610 (Taxation of perpetual leased lands); see also Doubleday v. Stockbridge, 109 Vt. 167; 194 A. 462 (1937) (tax properly

assessed upon lessee where lease period was for 999 years, lessee pre-paid all lease payments, and lease agreement required lessee to pay all taxes).

Finally, the City's listing incorrectly identifies Westlake Residential Partners, LLC as the lessee. Westlake Residential Partners, LLC is not the lessee of the unit in question. See Lease Agreement. On that basis alone, the tax should be withdrawn and cancelled.

For the reasons set forth above, the tax assessment should be deleted, the tax bill cancelled, and the Grand List amended to remove any mention of Westlake Residential Partners and/or Westlake Parking, LLC.

Unit E Parking – Westlake Residential Condominium (Parcel No. 044020145.001)

Westlake has owned the Unit E parking spaces at the Westlake Condominium since March of 2007. It was not taxed on this property between the 2006/2007 tax year and the 2012/2013 tax year. Apparently, the City of Burlington changed its position on the tax liability for this property in conjunction with the 2013/2014 assessment. Again, Westlake was not given notice of this assessment. Westlake's first notice of the assessment was its tax bill received sometime after July 26, 2013. Because of the City's failure to give the notice required by law, Westlake was denied its right to grieve the assessment or otherwise contest the change in the taxation status of the property.

The parcel in question is also improperly assessed as "land." The unit in question is a condominium unit within the Westlake Residential Condominium. The City's property summary, however, describes the property as "Residential Vacant Land" and denotes that the current assessed value is based upon the value of the land. This, of course, is an improper assessment as State law forbids an assessment of the land where condominium units are located on the land and being taxed in their own right. See 27 VSA § 1322 ("Neither the building, the property nor any of the common areas and facilities shall be deemed to be a parcel.").

Finally, when my client and related entities entered into an agreement with the City of Burlington to develop these properties, including Unit E, there was no understanding that Westlake would bear responsibility for paying the property taxes for the parking spaces in question. In fact, the parties understood that the parcel would not be taxed.

Again, we request that the City amend the Grand list and withdraw and delete the tax obligation to my Westlake on this parcel.

Thank you for your attention to this matter. If you have any questions or concerns of would like to discuss this matter further, please feel free to contact me at the phone number listed above.

Sincerely,

James M. Cooley, Esq.

EILEEN M. BLACKWOOD, ESQ.
City Attorney
EUGENE M. BERGMAN, ESQ.
Sr. Assistant City Attorney
RICHARD W. HAESLER, JR., ESQ.
Assistant City Attorney
GREGG M. MEYER, ESQ.
Assistant City Attorney
KIMBERLEE J. STURTEVANT, ESQ.
Assistant City Attorney



149 Church St., Room 11
Burlington, VT 05401-8489
Phone: (802) 865-7121
Fax: (802) 865-7123
TTY: (802) 865-7142

CITY OF BURLINGTON, VERMONT
OFFICE OF
THE CITY ATTORNEY
AND
CORPORATION COUNSEL

November 4, 2013

James M. Cooley, Esq.
Heilmann, Ekman & Associates, Inc.
Attorneys at Law
231 South Union Street
P.O. Box 216
Burlington, VT 05402-0216

Re: Property taxes for Westlake Parking Garage C-1 and Westlake Condominium Unit E
Parking

Dear Mr. Cooley:

Thank you for your letter of October 7, 2013. We apologize that it took some time to unravel this matter before it made its way to me. Similarly, I hope your client will accept the City's apology that the tax bill came to your client without advance notice. Apparently, the State Tax Department is proactively reviewing tax exemptions in much more aggressive manner than years past, and the City Assessor's Office has had to make unanticipated changes to a number of its assessments of long standing. Meanwhile, the tax bills go out from the Clerk Treasurer's Office and, quite simply, the two offices did not coordinate around these changes.

That said, I have reviewed your letter and offer the following as a response:

With regard to the Burlington Community Development Corporation's ("BCDC") lease with Westlake Parking, LLC ("Westlake"), our analysis is that this triple-net lease is a "capital lease"; i.e. a fixed-term lease that is similar to a loan agreement for purchase of a capital asset on installments. BCDC's role, under the lease, is limited to financing the asset; no different than a bank or mortgage company holding title under a capital lease. The lease is structured as debt service on the asset of which your client is the constructive and beneficial owner. The debt service consists of twenty \$72,000.00 annual payments and a balloon payment of \$448,000.00. It is structured to cover your client's costs attributable to construction of the asset. Thus, even

though the lease agreement does not specifically state that it is a capital lease, it clearly operates as one.

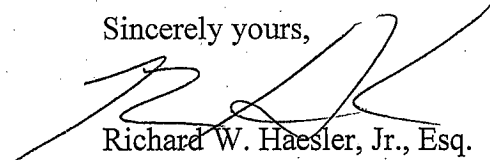
The language you have referenced, "that Landlord shall retain all rights and be subject to all obligations of a Unit Owner under the Master Declaration", is irrelevant to the issue of taxes, given the nature of the Lease. Your client is undoubtedly treating the C-1 garage as an asset and via the triple-net provision, has assumed all costs associated with the lease.

Your letter of October 7, 2013 indicates that "[w]hen it entered the lease with BCDC, Westlake understood that it would not be responsible for paying property taxes." It is unclear where this understanding came from because the Master Declaration is silent on the issue of taxes. Additionally, your client's sublease to the Westlake Residential Condominium Association, Inc. specifically provides that "[t]he parties acknowledge and agree that this is a triple-net sub-lease, and in the event Landlord [Westlake Parking, LLC] is required to pay additional real estate taxes or assessments to Burlington Community Development Corporation under the terms of the Lease between them, all additional taxes or assessments shall be passed through under the terms of this sub-lease, which Tenant agrees to assume and pay when due." The reference to real estate taxes clarifies that your client was aware that real estate taxes on the property for which your client would be responsible were a future possibility under your client's lease with BCDC. The language also shows your client's forethought in having taken steps to specifically address the possibility of the property's being deemed taxable at some future date.

In fact, because the State did not subject the property to real estate taxes from 2007 until now, your client (and the sub-lessee) has benefited, but now the State Tax Department has ruled that the property is taxable, so it is proper for the bill to go to your client.

I am certainly available to discuss any further questions or concerns your client may have regarding this matter.

Sincerely yours,

A handwritten signature in black ink, appearing to read "R. Haesler, Jr.", written over the typed name.

Richard W. Haesler, Jr., Esq.
City Attorney and Corporation Counsel

cc: Bob Rusten, CAO for the City of Burlington
John Vickery, Burlington City Assessor

LEASE AGREEMENT

THIS AGREEMENT (this "Agreement" or "Lease") is made this ^{MARCH} 12th day of February, 2007, by and between **Burlington Community Development Corporation**, a Vermont non-profit corporation with an address of 149 Church Street, Burlington, Vermont 05401 (hereinafter "**Landlord**") and **Westlake Parking, LLC**, a Vermont limited liability company, with an address of 70 South Winooski Avenue, Burlington, Vermont 05401 (hereinafter "**Tenant**").

W I T N E S S E T H :

Section 1. Demise, Description of Premises. Landlord does hereby demise, let, rent and lease unto the Tenant, and the Tenant hereby hires and rents from the Landlord, Unit C-1 of the Westlake Area Condominium. Unit C-1 is the first (lower) level of the Westlake Parking Garage constructed as part of the Westlake Project on the corner of Cherry and Battery Street in Burlington, Vermont. Unit C-1 contains approximately fifty-six (56) parking spaces. Unit C-1 is shown on those certain plans entitled "Westlake Area Condominium" prepared by Civil Engineering Associates, Inc., dated June 23, 2005 and recorded in Map Slides 387A-387D and 388A-388B and in Volume 925, Pages 746-752 of the City of Burlington Land Records. Included in this Lease are all rights, easements and agreements appurtenant to Unit C-1 and all the appurtenant rights and easements of Landlord as unit owner in the Westlake Area Condominium necessary for or incidental to the operation of Unit C-1 as a parking facility for the unit owners of Unit E (collectively the "Premises"). Subject to Landlord's rights and obligations as specifically set forth herein, Landlord shall retain all rights and be subject to all obligations of a Unit owner under the Master Declaration, Westlake Area Condominium, dated July 27, 2005 and recorded in Volume 925, Pages 709-752 of the City of Burlington Land Records (the "Master Declaration").

Section 2. Term of Lease. Said Premises are hereby leased to Tenant, subject to all of the terms and conditions contained herein, for a term of twenty (20) years commencing on the day following the issuance by the City of Burlington of a Temporary Zoning Certificate of Occupancy allowing completion and occupancy of the Premises and ending on the twentieth (20th) anniversary of said date (the "Lease Term") unless said term is sooner terminated as hereinafter provided.

Section 3. Rent and Triple Net Payments.

(a) Rent. Tenant agrees to pay to Landlord, annual rent in the amount of Seventy-Two Thousand and 00/100 Dollars (\$72,000.00) during the term of this Lease (the "Annual Rent"). Tenant agrees to pay without demand the Annual Rent in annual installments on the date the Lease Term commences and on each anniversary until the end of the Lease Term. A penalty of fifteen percent (15%) shall be due on any payment that is more than five (5) days late.

(b) Maintenance and Repair. Consistent with Section 6.05 of the Master Declaration, Tenant will share equally with the Unit Owner of Unit C-2 in the Westlake

Area Condominium, through the payment of common area charges or otherwise, the cost of operation, periodic maintenance, repair, and security of the parking structure (Unit C-2), but said obligation shall not include costs attributable to equipment and access areas that serve the second floor of the parking garage exclusively, including but not limited to costs associated with cleaning, striping, utilities, ventilation, sprinklers or fire alarm systems. Likewise, Tenant shall be solely responsible for utilities, ventilation, fire alarms, sprinklers, cleaning and maintenance associated with the use and occupancy of Unit C-1.

(c) Capital Reserve Fund. On an annual basis, for the term of this Lease, Tenant shall pay to the Landlord the sum of Six Thousand and 00/100 Dollars (\$6,000.00) as a contribution ("Tenant's Contribution") toward a capital reserve fund ("Fund"). Tenant's Contributions shall be accumulated in the Fund and shall be used, together with an equal contribution from the Unit Owner of Unit C-2 in the Westlake Area Condominium ("C-2 Contribution") to pay the cost of replacement of any portion, or all, of the parking garage structure. Landlord shall provide Tenant with an annual accounting of any funds expended pursuant to this Section 3 (c). At the termination of this lease and the purchase of Unit C-1 by Tenant, or Tenant's assignee/designee pursuant to Section 5 or 6 herein, Tenant's share of all unexpended funds shall be paid over to Tenant or its designee/assignee.

Section 4. Declaration, Bylaws and Rules and Regulations. Tenant acknowledges and agrees that this Lease is subject to and subordinate to that certain Master Declaration of Westlake Area Condominium, dated July 27, 2005 and recorded in Volume 925, Pages 709-752 of the City of Burlington Land Records, and as it may be amended from time to time, and that Tenant shall at all times comply with the terms and conditions of the same. Tenant further agrees to comply with and abide by all rules and regulations adopted by the Westlake Area Condominium Association. To the extent necessary, Tenant acknowledges and agrees that the foregoing instruments are incorporated by reference and are made a part of this Lease. Tenant shall use the Premises as a parking garage and storage for the benefit of the Residential Condominium Building on Unit E of the Westlake Area Condominium Association and in conformance with all permits and approvals for the Premises.

Section 5. Option to Purchase; Option Price. As additional consideration for this Lease, Landlord hereby sells, gives, grants and conveys unto Tenant or its assignee the sole and exclusive option to purchase the Premises during the Lease Term ("Option to Purchase"). Tenant may exercise its Option to Purchase at any time during the Lease Term by sending written notice via certified mail return receipt requested to Landlord at Landlord's address set forth in Section 12 of this Lease. In the event Tenant or Tenant's assignee exercises its Option to Purchase, the Tenant or its assignee shall pay to Landlord for the Premises the sum of Seventy-Two Thousand and 00/100 Dollars (\$72,000.00) times each year (prorated for any portion of a year) remaining on the Lease Term plus Four Hundred Forty-Eight Thousand and 00/100 Dollars (\$448,000.00). In no event shall the Landlord convey less than every parking space contained on or within the Premises.

Section 6. Purchase. In the event the Tenant does not exercise its Option to Purchase prior to the termination of the Lease Term, Tenant or its assignee shall purchase the Premises from the Landlord on the last day of the Lease Term in accordance with the terms and provisions of the Purchase and Sale Agreement attached hereto as Exhibit 1 and executed herewith.

Section 7. Quiet Enjoyment. Landlord covenants that the said Tenant, on paying all rent required to be paid by Tenant, and performing the other covenants and undertakings by the Tenant to be performed, shall and may peaceably have and enjoy said Premises for the term aforesaid in accordance with the terms of this Lease.

Section 8. Successors and Assigns. All rights and liabilities herein given to, or imposed upon, the respective parties hereto shall extend to and bind their several respective heirs, executors, administrators, successors and assigns.

Section 9. Entire Agreement, Applicable Law. This Lease with any exhibits and riders attached hereto contains the entire agreement of the parties and no representations, inducements, promises or agreements not embodied herein shall be of any force or effect, unless the same are in writing and signed by or on behalf of the party to be charged. The captions of particular sections are inserted as a matter of convenience only and in no way affect or define the scope or intent of this Lease or any provision thereof. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Vermont.

Section 10. Partial Invalidity. If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

Section 11. Waiver of Rule of Construction. The parties waive the benefit of any rule that this Agreement is to be construed strictly against one party or the other by virtue of the circumstances of the drafting of this Agreement.

Section 12. Notices. Any notices to be given pursuant to this Lease shall be sufficient if given by a writing deposited in the United States mails, certified mail or registered mail, postage prepaid, and addressed as follows:

If to Landlord:	Jonathan P.A. Leopold Jr. Burlington Community Development Corporation City Hall, 149 Church Street Burlington, Vermont 05401
-----------------	--

With a Copy to:	Richard C. Whittlesey, Esq. Roesler, Whittlesey & Skiff 84 Pine Street, 400 Financial Plaza Burlington, Vermont 05402
-----------------	--

If to Tenant:	David Scheuer c/o Retrovest Companies 70 South Winooski Avenue
---------------	--

Burlington, Vermont 05401

With a Copy to:

Peter M. Collins, Esq.
Paul Frank + Collins P.C.
One Church Street,
PO Box 1307
Burlington, Vermont 05402

or to such other person or address as the party entitled to notice shall have specified by written notice to the other party given in accordance with the provisions of this Section 12.

Section 13. Assignment. Tenant may assign, sublet or otherwise convey its rights, title and interest under this Lease to any party which is owned or controlled by one or more of the members of the Tenant without the consent of the Landlord. Tenant may further assign, sublet or otherwise convey its rights, title and interest under this Lease to the Westlake Residential Condominium Association, Inc. without the consent of the Landlord. Tenant may assign, sublet or otherwise convey its rights, title and interest under this Lease to any other party with the prior consent of the Landlord, which consent shall not be unreasonably withheld.

Section 14. No Alterations Without Consent. No alteration, addition, or improvement to the Premises shall be made by the Tenant without the prior written consent of the Landlord, which consent shall not be unreasonably withheld or delayed.

Section 15. Insurance. During the term of this Lease, the Tenant, at its sole cost and expense, and for the benefit of the Landlord, shall carry and maintain the following types of insurance in the amounts specified:

(a) Fire and extended coverage insurance covering the betterments and improvements of Tenant against loss or damage by fire and against loss or damage by other risks now or hereafter embraced by "extended coverage", so-called, in an amount not less than full replacement cost.

(b) Comprehensive public liability insurance, including property damage, insuring Tenant against liability for injury to persons or property occurring in or about the Premises or arising out of the ownership, maintenance, use, or occupancy thereof.

Landlord will carry and maintain all other insurance on the Premises and Tenant shall pay Landlord in accordance with Section 3(b) above.

Section 16. As-Is. Tenant had a full opportunity to inspect the Premises and is leasing the Premises in its as-is condition.

Section 17. Subordination. Tenant acknowledges and agrees that its interest under this Lease shall be subordinate to any mortgage recorded prior to the date of this Lease. Landlord and Tenant agree to cooperate with each other regarding written subordination agreements and/or other documentation which may be required by their respective lenders from time to time.

Section 18. Recording of Notice. Landlord and Tenant agree that either party may record a Notice of Lease or Short Form Lease in the City of Burlington Land Records evidencing this Lease.

Section 19. Indemnification Tenant shall indemnify and save harmless Landlord 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 suffered or incurred as a result of any breach by Tenant, its agents, servants, employees, visitors or licensees of any covenant or condition of this Lease, or as a result of Tenant's use or occupancy of the Premises, or the carelessness, negligence or improper conduct of Tenant, its agents, servants, employees, visitors or licensees; provided, however, that it is understood and agreed that the obligations of Tenant hereunder shall not extend to the negligence or willful misconduct of the Landlord, its agents or representatives.

Landlord shall indemnify Tenant from and against claims which are for personal injury, death or property damage relating to incidents occurring in or around the Premises that are caused by the negligence or willful misconduct of Landlord, its agents or employees; provided, however that it is understood and agreed that the obligations of Landlord hereunder shall not extend to the negligence or willful misconduct of Tenant, its agents, employees, visitors, or licensees.

Section 20. Default. If any one or more of the following events (herein sometimes referred to as "events of default") shall happen:

(a) If default shall be made in the due and punctual payment of rent, or additional rent payable under this Lease, or any part thereof, when and as the same shall become due and payable, and such default shall continue for a period of thirty (30) days and for an additional forty-eight (48) hours after written notice from Landlord that such rent has not been paid within said thirty (30) day grace period; or

(b) If default shall be made by Tenant in the performance or compliance with any of the agreements, terms, covenants or conditions in the Lease provided, other than those referred to in the foregoing subparagraph (A), for a period of thirty (30) days after notice from Landlord to Tenant specifying the items in default, or in the case of a default or contingency which cannot with due diligence be cured within said thirty (30) day period, if Tenant fails to commence within said thirty (30) day period the steps necessary to cure the same and thereafter to prosecute the curing of such default with due diligence (it being understood that the time of Tenant within which to cure shall be extended for such period as may be necessary to complete the same with all due diligence)

then and in any such event of default, Landlord may at any time thereafter give written notice Tenant specifying such event or events of default and stating that this Lease and the term hereby demised shall expire and terminate on the date specified in such notice, and upon the date so specified, all rights of Tenant under this Lease shall expire and terminate.

Section 21. Access. Landlord and Landlord's agents shall have the right to enter the Premises upon reasonable notice in a reasonable manner and at all reasonable times to examine the same. The owner of Unit C-2 shall have an easement onto Unit C-1 for the purpose of maintenance, inspection and repair.

Section 22. Maintenance. Tenant shall maintain the Premises in a good and clean condition, reasonable wear and tear excepted. Tenant's maintenance of the Premises shall include but not be limited to servicing and maintenance of access control equipment, HVAC, fire suppression apparatus, sump pumps, as well as crack treatment and repair, painting and cleaning when required.

IN WITNESS WHEREOF, the parties have executed this Lease, in duplicate originals, as of the date first above-written.

IN PRESENCE OF:

LANDLORD

Burlington Community Development Corporation

By: _____

TENANT

Westlake Parking, LLC

By: _____

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

At Burlington in said County this ____ day of February, 2007 personally appeared _____, duly authorized agent of Burlington Community Development Corporation, and he/she acknowledged this instrument signed by him/her to be his/her free act and deed and the free act and deed of Burlington Community Development Corporation.

Before me _____

Notary Public

Print Name _____

My commission expires 2/10/11

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

At Burlington in said County this 8th day of ^{MARCH} ~~February~~, 2007 personally appeared DAVID SCHEUER, duly authorized agent of Westlake Parking, LLC, and he/she acknowledged this instrument signed by him/her to be his/her free act and deed and the free act and deed of Westlake Parking, LLC.

Before me Michelle Holgate
Notary Public
Print Name Michelle Holgate
My commission expires 2/10/11