

CITYPLACE ESCROW AGREEMENT

This CityPlace Escrow Agreement (the “Escrow Agreement”) is entered into as of _____, 2021 (the “Effective Date”) by and between the City of Burlington, a Vermont municipal corporation (the “City”), BTC Mall Associates LLC, a Delaware limited liability company (“BTC”), and Dunkiel Saunders Elliot Raubvogel & Hand PLLC (the “Escrow Agent”).

Recitals

- A. BTC owns certain real property depicted as Parcels 1, 2, and 3 on a plan entitled “Lot Line Adjustment for BTC Mall Associates LLC, 101 Cherry Street, Burlington, Vermont” prepared by LATITUDES Land Surveying dated January 9, 2017, last revised January 24, 2017, consisting of 1 sheet, recorded in Map Slide 533B of the City of Burlington Land Records (the “Plan”), numbered 49 Church Street, Burlington, Vermont, Parcel No. 044-4-004-000 and 75 Cherry Street, Burlington, Vermont, Parcel No. 044-4-033-000 (together, the “BTC Property”).
- B. BTC and the City entered into that certain Development Agreement dated as of October 26, 2017, as amended by Letter Agreement dated August 27, 2018 and fully executed on September 7, 2018 (as amended, the “Original Development Agreement”) with respect to the redevelopment of the BTC Property.
- C. BTC and the City are in dispute concerning the Original Development Agreement and wish to resolve their dispute by entering into the transaction described in this Escrow Agreement (the “Transaction”).
- D. BTC, the City, and Escrow Agent desire to enter into this Escrow Agreement (i) through which BTC, the City, and SD Ireland (the “Contractor”) will execute and deliver into escrow certain documents necessary to effectuate the Transaction in the forms attached as Exhibits hereto, (ii) to memorialize the terms and conditions applicable to Escrow Agent’s holding, release, and recording, as applicable, of the escrowed documents, and (iii) to set forth certain other terms and conditions of the Transaction.

Agreement

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, BTC, and Escrow Agent, agree as follows:

- 1. Incorporation of Recitals and Exhibits. The recitals above are true and correct and are incorporated herein as a binding part of this Escrow Agreement. The Schedules and Exhibits attached hereto are incorporated herein as a binding part of this Escrow Agreement.
- 2. Appointment of Escrow Agent. BTC and the City appoint Escrow Agent to act as an escrow agent in accordance with the terms and conditions set forth in this Escrow Agreement, and Escrow Agent accepts such appointment.

3. Delivery of Executed Documents.

- a. Simultaneous with the execution of this Escrow Agreement, BTC and the City have delivered to Escrow Agent, to hold pursuant to the requirements of this Escrow Agreement, their respective fully-executed and notarized (as applicable) original counterpart signature pages (in duplicate) to the following documents (collectively, the “Initial Transaction Documents”):
 - i. Warranty Deed of BTC conveying to the City fee simple title to those portions of the BTC Property described on Exhibit A attached hereto (collectively, the “Street Parcels”) in the form of that attached hereto as Exhibit B (the “Deed”);
 - ii. Termination of that certain Construction, Operation and Reciprocal Easement Agreement dated December 29, 1999, recorded in Book 643, page 96 of the Burlington Land Records in the form of that attached hereto as Exhibit C (the “Macy’s Termination”);
 - iii. Temporary Construction Easement and Agreement over the Street Parcels in the form of that attached hereto as Exhibit F (the “Temporary Construction Easement”);
 - iv. Amended and Restated Development Agreement in the form of that attached hereto as Exhibit G (the “A&R DA”);
 - v. Litigation Resolution Agreement in the form of that attached hereto as Exhibit H (the “Litigation Resolution Agreement”), including each of the Litigation Resolution Documents as defined therein and attached as exhibits thereto;
 - vi. Memorandum of Amended and Restated Development Agreement in the form of that attached as Exhibit K to the A&R DA (the “Memorandum of A&R DA”) (with lender consent page to follow as provided in Section 5(c));
 - vii. Agreement Memorializing Section 4(e) of the A&R DA attached as Exhibit E to the A&R DA (the “Section 4(e) Memo”) (with lender consent page to follow as provided in Section 5(c)); and
 - viii. Right of First Offer attached as Exhibit G to the A&R DA (the “ROFO”).
- b. In addition, simultaneous with the execution of this Escrow Agreement, BTC, the Contractor, and the City have delivered to Escrow Agent, to hold pursuant to the requirements of this Escrow Agreement, their respective fully-executed and notarized (as applicable) original counterpart signature pages (in triplicate) to the following documents (collectively, the “MPI Transaction Documents”, and together with the Initial Transaction Documents, the “Transaction Documents”):
 - i. Release of Temporary Construction Easement in the form of that attached hereto as Exhibit I (the “Release of Temporary Construction Easement”); and
 - ii. Construction Contract in the form of that attached hereto as Exhibit J (the “MPI Construction Contract”).
- c. Upon delivery of the Transaction Documents into Escrow as provided in this Escrow Agreement, BTC and the City shall file with the Superior Court the Stipulation to

Stay that is attached as Exhibit A to the Litigation Resolution Agreement.

4. Furtherance of Revised Project During Escrow. Defined terms used in this Section 4 but not otherwise defined in this Escrow Agreement have the meanings given to them in the A&R DA.

- a. BTC and the City acknowledge and agree that BTC's current concept plan prepared with respect to the Public Improvements, attached as Exhibit N hereto, was prepared in connection with BTC's application for the Revised Project and is currently undergoing review through the DRB process and is thus subject to ongoing technical review by the City's departments, and nothing set forth in this Escrow Agreement shall be construed to limit the effect of such process and review. In connection therewith, and as provided below in this Section 4, BTC and the City shall work together to develop satisfactory construction plans and specifications for the Public Improvements prior to release of the Initial Transaction Documents from escrow.
- b. The project area for BTC's design of the Public Improvements shall be between the existing rights-of-way for Cherry Street and Bank Street, excluding the south side of Bank Street and the north side of Cherry Street, taking into account conceptual design plans prepared by the City that modify the layout of the new segment of Pine Street to incorporate a portion of the real property numbered 77 Pine Street f/k/a 2 Burlington Square and conceptual design plans prepared by the City that modify the layout of the new segment of St. Paul Street to incorporate a portion of the real property numbered 150 Bank St., and shall not include the adjacent intersections. Recognizing that the Public Improvements are public infrastructure, BTC shall direct its design team to receive, consider and reflect design input provided by the City's design team.
- c. The scope of the Public Improvements will include alternatives, as directed by the City, and at the City's cost (which may be reimbursable to the City to the extent there are funds available under the TIF Waterfall), for offsite improvements required in connection with the City's payment to acquire necessary rights from the owners of 100 Bank Street, 150 Bank Street and 77 Pine Street. BTC and the City agree that the new street segments shall feature a high level of street design including: wider sidewalks (where such wider sidewalks can be accommodated); street trees; pavers; street lighting; storm water features, sub-surface utilities and infrastructure; high quality benches, trash cans and other similar items of municipal property commonly found within sidewalks, all in substantial compliance with the City's "Great Streets" standards.
- d. No later than March 30, 2021, BTC will submit to the City BTC's initial draft plans and specifications for the Public Improvements based on the Revised Project layout, and the City will respond in writing to BTC with comments on the same no later than 15 days thereafter. BTC shall in good faith consider and, where appropriate, incorporate the City's feedback to the Public Improvement plans, provided that if BTC disagrees with the City's feedback on the Public Improvement plans, BTC shall notify the City in writing within 7 days of receipt of the City's feedback, whereupon the City shall have 7 days to provide further feedback to BTC, and whereafter such 7-day review and comment periods shall continue until BTC and the City have resolved outstanding concerns or one of BTC or the City has declared an impasse.

Failure of either BTC or the City to timely respond to the other as provided in this Section 4(d) shall be considered the deemed approval of the party who has failed to respond. For clarity, City staff, employed by the executive branch of municipal government including by CEDO and DPW, shall be authorized to review and approve the Public Improvement plans and specifications as provided herein.

- e. BTC and the City intend that the review process set forth above in this Section 4 will result in completed and mutually agreed upon 100% design plans and specifications for the Public Improvements no later than May 15, 2021, and that such 100% plans and specifications will become the “Final Public Improvement Plans” as defined in, and to be attached as Exhibit A to, the A&R DA, subject to the release of the Initial Transaction Documents from escrow as provided in Section 5 below.
 - f. Concurrent with BTC’s March 30, 2021 submission to the City of BTC’s plans and specifications for the Public Improvements based on the Revised Project layout, BTC shall identify the components of such plans and specifications comprising the scope of work to be performed under the MPI Construction Contract. BTC and the City agree that the scope of such work shall consist of all below-grade work shown on the plans and specifications for the Public Improvements, plus at-grade road and concrete sidewalks (or, by subtraction, all of the improvements shown on the plans and specifications for the Public Improvements excepting granite, landscaping, and street furniture).
 - g. Concurrent with, and subject to, the review process outlined above in this Section 4 with respect to the Public Improvements plans and specifications, BTC and the City will exchange comments and responses on the scope of the work to be performed under the MPI Construction Contract. BTC and the City intend that such review process will result, no later than May 15, 2021, in completed and mutually agreed upon 100% design plans and specifications for the work to be performed under the MPI Construction Contract (the “MPI Plans and Specs”), and that the MPI Plans and Specs will be attached as the scope of work to the Construction Contract, subject to the release of the Initial Transaction Documents from escrow as provided in Section 5 below.
 - h. A preliminary budget with respect to the Work is attached as Exhibit O hereto. This preliminary budget does not exceed the currently Estimated TIF Funding Amount. This preliminary budget identifies currently anticipated TIF Eligible Costs and the anticipated allocation and distribution of TIF Eligible Costs according to the TIF Waterfall. This preliminary budget includes both (i) those TIF Eligible Costs that Owner has incurred or anticipates incurring after September 5, 2020, and (ii) those TIF Eligible Costs that Owner had incurred as of September 5, 2020. This preliminary budget will be modified as agreed by BTC and the City, by amendment in writing, as plans and specifications for the Public Improvements are completed and agreed upon as provided above in this Section 4. BTC and the City intend that the process set forth in this Section 4(h) will result in an advanced and mutually agreed upon preliminary budget no later than May 15, 2021, and that such advanced preliminary budget will become the “Advanced Preliminary Budget” as defined in, and to be attached as Exhibit D to, the A&R DA, subject to the release of the Initial Transaction Documents from escrow as provided in Section 5 below.
5. Release of Initial Transaction Documents. Escrow Agent agrees to hold, release, record (as

applicable), or return the Initial Transaction Documents as described below and subject to the following conditions and in accordance with the following requirements:

- a. The City has, by May 15, 2021, subject to the provisions set forth below in this Section 5(a), delivered to Escrow Agent (with a copy to BTC) notice in the form of that attached hereto as Exhibit K (the “Notice of Deed Acceptance”) of the City’s acceptance of the Deed.

BTC and the City acknowledge and agree that as of the Effective Date, (i) the City is in the process of completing its environmental due diligence with respect to the Street Parcels, and (ii) title to the Street Parcels is encumbered by matters other than those excepted in the Deed. The City and BTC shall have until May 15, 2021 (or such later date as may be mutually agreed to by the City and BTC), (x) for the City to complete its due diligence and determine, in its sole discretion, whether it will accept the environmental condition of the Street Parcels, and (y) for BTC to deliver to the Escrow Agent to hold in accordance with the terms of this Escrow Agreement all releases, discharges or other instruments necessary or appropriate to cure all title defects and/or to remove all title exceptions, other than (1) those listed in the Deed, (2) any standard preprinted exceptions to title set forth in a title insurance commitment for the Street Parcels in a form acceptable to the City, and (3) such additional title exceptions, if any, as the City may agree to accept in its sole discretion.

Without limitation to the foregoing, BTC shall have delivered to the Escrow Agent, no later than May 15, 2021, an executed partial discharge of that certain Mortgage, Security Agreement, Assignment of Leases and Rents, Financing Statement and Fixture Filing granted by BTC Mall Associates, LLC in favor of RSE Burlington, LLC, dated as of September 3, 2020 and recorded in Book 1533, page 315 of the Burlington Land Records (the “Brookfield Discharge”), which Brookfield Discharge shall be substantially in the form attached as Exhibit D and suitable for recording

Not later than May 15, 2021 (or such later date as may be mutually agreed to by the City and BTC), the City shall either deliver the Notice of Deed Acceptance, or, in the City’s discretion, if (i) BTC is not by such date able to convey to the City the Street Parcels subject only to the encumbrances described in this Section 5(a) and/or (ii) the City has determined in its sole discretion that it cannot accept environmental conditions at the Street Parcels, deliver a notice of termination of this Escrow Agreement subject to and in accordance with the following procedure:

- i. Prior to so terminating this Escrow Agreement, the City will promptly communicate in writing to BTC any concerns discovered during the course of the City’s continuing due diligence and/or in connection with BTC’s efforts to clear title (as provided in this Section 5(a)), and the parties will diligently, reasonably and in good faith cooperate with each other to attempt to resolve such concerns and/or to modify the Transaction (neither party having any obligation to modify the Transaction if the parties cannot reach agreement after such efforts, and neither party having any obligation to

- continue such efforts longer than sixty (60) days from the date of the City's written communication of such concerns) to allow the Transaction (as it may be so modified) to proceed.
- ii. Any notice of termination of this Escrow Agreement shall be delivered in writing to the Escrow Agent (with a copy to BTC), which written notice shall describe in reasonable detail the specific reasons and basis for termination.
 - iii. If, within ten (10) business days after the date the City delivers the termination notice to Escrow Agent, the Escrow Agent has not received written objection (the "Termination Response Notice") from BTC (with a copy to the City), the Escrow Agent shall return the parties' respective signature pages to the Transaction Documents and return any releases, discharges or title curative documents to BTC, and the parties' obligations under this Escrow Agreement shall automatically cease.
 - iv. If BTC timely provides the Termination Response Notice, BTC must include with its Termination Response Notice reasonable detail of BTC's objections and identify, with reasonable specificity, the basis for BTC's position that the conditions giving rise to the City's right to issue the termination notice have not been met.
 - v. If BTC timely provides the Termination Response Notice, this Escrow Agreement shall not terminate and the Escrow Agent will not release any Transaction Documents or title curative documents until the Escrow Agent receives written instructions from both BTC and the City confirming termination of the Escrow Agreement, or (ii) after giving effect to the dispute resolution process set forth below in this Section 5(a), a court order requiring such release. The parties shall thereafter work together cooperatively and in good faith for a period of up to thirty (30) days to resolve any dispute as to whether the conditions for termination of this Escrow Agreement have been satisfied. In the event that the parties cannot resolve such dispute within such thirty (30) day period, then they shall engage a mutually agreeable mediator and cooperate in good faith to resolve such dispute through mediation. In the event that the dispute is not resolved within thirty (30) days from the commencement of mediation, then either party may elect to pursue litigation to resolve the dispute. Neither party may pursue litigation prior to first exhausting the dispute resolution process set forth herein.
- b. The City has, by May 15, 2021, delivered to Escrow Agent (with a copy to BTC) notice in the form of that attached hereto as Exhibit L (the "Notice of Plans and Budget Acceptance") of the City's acceptance of the Final Public Improvement Plans, the Advanced Preliminary Budget, and the MPI Plans and Specs. The City shall, promptly following the parties' finalization of the Final Public Improvement Plans, the Advanced Preliminary Budget, and the MPI Plans and Specs, but no later than May 15, 2021 (or such later date as may be mutually agreed to by the City and BTC), either (i) deliver the Notice of Plans and Budget Acceptance, or (ii) if the Final Public Improvement Plans, the Advanced Preliminary Budget, and/or the MPI Plans and Specs are not finalized and agreed to by such time, deliver a notice of termination of this Escrow Agreement subject to and in accordance with the dispute resolution procedure set forth in Section 5(a) above.

- c. BTC has, by May 15, 2021 (or such later date as may be mutually agreed to by the City and BTC), delivered to Escrow Agent (with a copy to the City) original notarized counterpart signature pages of the lender consent pages to each of the Memorandum of A&R DA and the Section 4(e) Memo (collectively, the “Lender Consents”).
 - d. Upon receipt, if ever, of the Notice of Deed Acceptance, the Notice of Plans and Budget Acceptance, and the Lender Consents as provided in this Section 5, Escrow Agent shall:
 - i. Date the Initial Transaction Documents as of the date of the later of the Notice of Deed Acceptance or the Notice of Plans and Budget Acceptance.
 - ii. Attach the Final Public Improvement Plans as Exhibit A to the A&R DA, attach the Advanced Preliminary Budget as Exhibit D to the A&R DA, attach the MPI Plans and Specs to the Construction Contract, and attach the Lender Consents to their respective agreements.
 - iii. Electronically submit Vermont Form PTT-172 relating to the conveyance of the Street Parcels and Vermont Form PTT-172 relating to the conveyance of the Temporary Construction Easement (collectively, the “PTTRs”) (reflecting a closing date of the date of the Initial Transaction Documents) to the Vermont Department of Taxes.
 - iv. Record the following Initial Transaction Documents among the Burlington Land Records in the order as follows: (A) the Macy’s Termination, the Brookfield Discharge, and any other releases, discharges or title curative documents delivered to the Escrow Agent pursuant to Section 5(a) above in any order, (B) the Deed, and the accompanying PTTR, and (C) the Temporary Construction Easement, and the accompanying PTTR, the Memorandum of A&R DA, the Section 4(e) Memo, and the ROFO, in any order.
 - v. Pay all recording costs and all taxes arising in connection therewith, with funds therefor having been paid by the parties as provided in Section 8.
 - vi. Deliver to each of BTC and the City one fully executed original of each of the A&R DA and the Litigation Resolution Agreement and any other documents being released from escrow.
 - e. Upon release of the Initial Transaction Documents from escrow as provided in this Section 5, BTC and the City agree that the Initial Transaction Documents will be in full force and effect.
 - f. Upon release of the Initial Transaction Documents from escrow as provided in this Section 5, BTC and the City will (i) file with the Superior Court the Stipulation for Dismissal attached as Exhibit B to the Litigation Resolution Agreement, and (ii) exchange the Limited Releases attached as Exhibit C to the Litigation Resolution Agreement.
6. Release of MPI Transaction Documents. Escrow Agent agrees to hold, release, record (as

applicable), or return the MPI Transaction Documents as described below and subject to the following conditions and in accordance with the following requirements:

- a. The Initial Transaction Documents shall have been released from escrow.
- b. The City has delivered to Escrow Agent (with a copy to BTC) notice (in the form of that attached hereto as Exhibit M (the “MPI Trigger Notice”) of BTC’s (i) failure to Commence Construction of the Revised Project on or prior to the Revised Project Construction Commencement Deadline, and/or (ii) failure to maintain Continuous and Ongoing Construction of the Revised Project from and after having timely met its obligation Commence Construction until Completion, and/or (iii) failure to timely complete and deliver the Public Improvements pursuant to the A&R DA, in each instance as such terms are defined in the A&R DA and all as provided in and subject to the conditions of the A&R DA.
- c. If, within ten (10) business days after the date the City delivers the MPI Trigger Notice to Escrow Agent, the Escrow Agent has not received written objection (the “Response Notice”) from BTC (with a copy to the City), the Escrow Agent shall date the Release of Temporary Construction Easement as of the Date of the MPI Trigger Notice and record the same in the Burlington Land Records and date the Construction Contract as of the date of the MPI Trigger Notice and deliver to each of the City, BTC, and the Contractor one fully executed original of the Construction Contract (with the MPI Plans and Specs attached thereto). Upon release of the Construction Contract from escrow as provided in this Section 6(c), BTC, the City, and the Contractor agree that the Construction Contract will be in full force and effect.
- d. If BTC timely provides the Response Notice, BTC must, (i) include with its Response Notice reasonable detail of BTC’s objections and identify, with reasonable specificity, the basis for BTC’s position that the conditions of the A&R DA giving rise to the City’s right to issue the MPI Trigger Notice have not been met, and (ii) within thirty (30) Business Days of its timely delivery of the Response Notice, BTC must obtain a court order prohibiting the release from Escrow of the MPI Transaction Documents.
- e. If BTC timely provides the Response Notice, the Escrow Agent will not release the MPI Transaction Documents until the earlier to occur of (i) the Escrow Agent receives written instructions from both BTC and the City directing the Escrow Agent to release the MPI Transaction Documents, (ii) thirty-one (31) days from and after BTC having timely provided the Response Notice if within such time BTC has not obtained a court order prohibiting the release from Escrow of the MPI Transaction Documents, or (iii) the entry of an order from a court of competent jurisdiction directing the release of the MPI Transaction Documents. Upon the occurrence of the earliest such event, the Escrow Agent shall date the MPI Transaction Documents as of the date to occur of the earliest such event, record the Release of Temporary Construction Easement among the Burlington Land Records, and deliver to each of the City, BTC, and the Contractor one fully executed original of the Construction Contract (with the MPI Plans and Specs attached thereto). Upon release of the Construction Contract from escrow as provided in this Section 6(e), BTC, the City, and the Contractor agree that the Construction Contract will be in full force and effect.
- f. If the MPI Transaction Documents have not been released from escrow pursuant to

this Section 6, then the Escrow Agent shall return the MPI Transaction Documents to BTC upon issuance of a Unified Certificate of Occupancy for the final Phase of construction of BTC's Revised Project (each, as defined in the A&R DA).

7. Remedies. In the event of any violation or threatened violation of any of the provisions of this Escrow Agreement by BTC, the City, or the Contractor, the City or BTC, as applicable, shall have the right to apply to a court of competent jurisdiction for an injunction against such violation or threatened violation and/or for a decree of specific performance. BTC, the City, and the Contractor acknowledge and agree that the City and BTC would have no adequate remedy at law in the event of default hereunder and that the City and BTC, as applicable, shall be entitled to seek equitable relief to remedy the same, including without limitation with respect to any dispute relating to the issuance by the City of a MPI Trigger Notice. If either BTC or the City shall initiate any action or proceeding to enforce its remedies under this Escrow Agreement, the prevailing party in such action or proceeding shall have the right to recover from the other party all reasonable costs and expenses of such action or proceeding, including reasonable attorneys' fees. This Section 7 shall survive termination of this Escrow Agreement.

8. Other Terms of Conveyance of Street Parcels.

- a. Recording and Transfer Costs. Recording and transfer costs shall be allocated in accordance with Vermont custom. Accordingly, the City shall bear the cost of recording the Deed and the PTTR for the transfer of the Street Parcels, and shall be responsible for payment of any property transfer tax relating to the conveyance of the Street Parcels. BTC shall bear the cost of recording the Temporary Construction Easement (and its PTTR), the Macy's Release, the Brookfield Discharge, the Release of Temporary Construction Easement and any other releases, discharges or other title curative documents delivered to the Escrow Agent pursuant to Section 5(a) above, and shall be responsible for any land gains tax and/or non-resident withholding arising in connection with the conveyance of the Street Parcels by BTC to the City. The City and BTC shall share equally the fees of the Escrow Agent. The City's represents that its ability to pay the cost of the fees of the Escrow Agent in any year beyond the City's current fiscal year is subject to appropriation by the City Council. The City shall use its best efforts to obtain such appropriation. In no event shall BTC be required to pay more than 50% of the Escrow Agent's fees hereunder.
- b. Representations and Warranties of BTC. BTC hereby represents and warrants to the City as follows (as of the Effective Date and as of the date of the release of escrow):
 - i. BTC is a limited liability company, duly formed, validly existing, and in good standing under the laws of the State of Delaware, and authorized to transact business and in good standing under the laws of the State of Vermont. BTC has full power and authority to execute this Escrow Agreement and to consummate the Transaction.
 - ii. The execution, delivery, and performance of this Escrow Agreement by BTC and the consummation by BTC of the Transaction have been duly and validly authorized by all requisite actions of BTC. Assuming the due execution and delivery of this Escrow Agreement by the City, this Escrow Agreement

constitutes the valid and binding obligation of BTC, enforceable against BTC in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, and other laws affecting the rights of creditors generally, and by equitable limitations and principles.

- iii. The execution, delivery, and performance of this Escrow Agreement by BTC and the consummation by BTC of the Transactions will not: (i) violate any legal requirement or any order of any court or governmental authority that is binding on BTC or the BTC Property; or (ii) result in a breach of or default under (a) any contract or other agreement to which BTC is a party or by which the BTC Property is bound or (b) any provision of the organizational documents of BTC.
- iv. BTC is not the subject debtor under any federal, state, or local bankruptcy or insolvency proceeding, or any other proceeding for dissolution, liquidation, or winding up of its assets.
- v. There are no present or pending, civil, administrative, criminal, labor, judicial or similar type of demand, condemnation, claim, complaint, litigation, suit, action, hearing, proceeding, audit, charge, grievance, indictment, allegation, notice of violation/enforcement notice, alternative dispute resolution mechanism, arbitration, governmental investigation or other legal proceeding (collectively, "Actions") pending against BTC or, to BTC's knowledge, threatened against BTC, relating to the ownership, operation, development, use, or occupancy of the Street Parcels except as to Actions initiated by the City and otherwise except as set forth on Schedule 8(b)(v) hereto.
- vi. Other than this Escrow Agreement and with respect to the Transaction, BTC is not a party to any agreement to sell the Street Parcels or any portion thereof (including any option agreement or any agreement containing a right of first refusal or right of first offer with respect thereto), and (ii) BTC is not a party to any other unrecorded contract or agreement respecting the Street Parcels or any portion thereof that would be binding on the City after the release of escrow.
- vii. There are no leases, licenses or other rights of occupancy encumbering the Street Parcels or any portion thereof.
- viii. BTC has made available to the City copies of all material final environmental reports in its possession or control concerning environmental conditions on the BTC Property. A list of those reports is set forth on Schedule 8(b)(viii) (the "Environmental Reports").
- ix. Except as set forth in the Environmental Reports there have been no submissions made to, claims made by, or requests for information made by, any governmental authority with respect to environmental matters at or concerning the BTC Property or any portion thereof.
- x. BTC is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986, as amended.
- xi. BTC is not acting, directly or indirectly, for or on behalf of any natural person, entity, governmental authority and association of persons, entities and/or governmental authorities (collectively, a "Person") named by the United States Treasury Department as a Specifically Designated National

and Blocked Person, or for or on behalf of any Person designated in Executive Order 13224 as a Person who commits, threatens to commit, or supports terrorism. BTC is not engaged in the Transaction directly or indirectly on behalf of, or facilitating such Transaction directly or indirectly on behalf of, any such Person.

- c. Representations and Warranties of the City. The City hereby represents and warrants to BTC as follows (as of the Effective Date and as of the date of the release of escrow):
 - i. The City is a municipal corporation, duly formed, validly existing, and in good standing under the laws of the State of Vermont. The City has full power and authority to execute this Escrow Agreement and to consummate the Transaction.
 - ii. The execution, delivery, and performance of this Escrow Agreement by the City and the consummation by the City of the Transaction have been duly and validly authorized by all requisite actions of the City. Assuming the due execution and delivery of this Escrow Agreement by BTC, this Escrow Agreement constitutes the valid and binding obligation of the City, enforceable against the City in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, and other laws affecting the rights of creditors generally, and by equitable limitations and principles.
 - iii. The execution, delivery, and performance of this Escrow Agreement by the City and the consummation by the City of the Transactions will not: (i) violate any legal requirement or any order of any court or governmental authority that is binding on the City; or (ii) result in a breach of or default under (a) any contract or other agreement to which the City is a party or (b) any provision of the organizational documents of the City.
 - iv. The City is not the subject debtor under any federal, state, or local bankruptcy or insolvency proceeding, or any other proceeding for dissolution, liquidation, or winding up of its assets.
 - v. The City acknowledges that the Environmental Reports have been provided to the City by BTC “as is”, and that BTC makes no warranty as to their accuracy or completeness.
- d. This Section 8 shall survive termination of this Escrow Agreement and the delivery and recording of the Deed.

9. Term. The term of this Escrow Agreement shall commence as of the Effective Date and continue until all of the Transaction Documents are released in accordance with this Escrow Agreement or this Escrow Agreement is sooner terminated as provided by its terms.

10. Cooperation in Conveyance of Street Parcels.

- a. The parties acknowledge and agree that the defined term “Street Parcels” as used herein is adopted for convenience of drafting and is not intended as a characterization that is meant to limit the full use of such parcels as transportation corridors and public

rights of way. BTC shall reasonably cooperate with the City as necessary (and at no material cost to BTC) to ensure the conveyance of the Street Parcels to the City fully accomplishes the City's purpose for such parcels to be accepted as public rights of way.

- b. Owner will convey to the City the fee interest in the Street Parcels for no distinct monetary consideration. In conformance with and subject to Applicable Law, the City shall cooperate (at no material cost to the City) with Owner's efforts to convey the Street Parcels to the City as a gift or "bargain sale", as defined by the Internal Revenue Code, including by executing an IRS Tax Form 8283 prepared by Owner at Owner's expense. Owner shall be solely responsible for the calculation and substantiation of the amount and other details of the bargain sale.

11. Notices. Notices and other communications required or permitted under this Escrow Agreement shall be in writing and delivered by hand against receipt, or shall be sent (i) by recognized overnight delivery service, (ii) by certified or registered mail, postage prepaid, with return receipt requested, or (iii) by email, provided that such email notes in both the subject line and body of the email that it is an official notice being sent under this Escrow Agreement, and is immediately followed by notice under either subsection (i) or (ii) above. All notices shall be addressed as follows:

If to the City: City of Burlington
 City Hall
 149 Church St.
 Burlington, VT 05401
 Attention: Mayor Miro Weinberger
 Email: miro@burlingtonvt.gov

With a copy to: City Attorney
 City Hall
 149 Church St.
 Burlington, VT 05401
 Email: eblackwood@burlingtonvt.gov

If to BTC: BTC Mall Associates LLC
 101 Cherry Street, Suite 440
 Burlington, Vermont, 05401
 Attention: Donald Sinex
 Email: dsinex@devonwoodinvestors.com

With a copy to: Brian Dunkiel, Esq.
 Dunkiel Saunders
 91 College Street, P.O. Box 545
 Burlington, Vermont 05402-0545
 Email: bdunkiel@dunkielsaunders.com

And to :

Roger Roisman, Esq.

35 Northwoods Lane
Boynton Beach, Florida 33436
Email: roger@rmroisman.com

If to Escrow Agent: Brian Dunkiel, Esq.
Dunkiel Saunders
91 College Street, P.O. Box 545
Burlington, Vermont 05402-0545
Email: bdunkiel@dunkielsaunders.com

or to such other addresses as may be designated by a proper notice. Notices shall be deemed to be effective upon receipt (or refusal thereof) if personally delivered, sent by recognized overnight delivery service, or sent by certified or registered mail, postage prepaid, with return receipt requested; or upon receipt if such delivery is by email (as evidenced by email confirmation, provided that if such notice cannot be transmitted because of a problem affecting the receiving party's computer, the deadline for receiving such notice shall be extended through the next business day, and if email confirmation indicates that it was sent after 5:00 p.m. (local time) on such day it shall be deemed to have been given on the succeeding business day.

12. Concerning the Escrow Agent.

- a. The Escrow Agent undertakes to perform only such duties as are expressly set forth in this Escrow Agreement, and no implied duties or obligations shall be read into this Escrow Agreement against the Escrow Agent. The Escrow Agent shall not in any way be bound by a notice of modification or cancellation of this Escrow Agreement without the written consent of the Escrow Agent.
- b. The Escrow Agent shall not be responsible or liable, in any manner whatsoever, for the sufficiency or correctness as to form, manner or execution or validity of any instrument deposited in escrow, or as to the identity, authority or rights of any person executing the same. Escrow Agent makes no representations concerning, and has no responsibility as to the validity, genuineness or sufficiency of any of the documents or instruments delivered to it hereunder.
- c. The Escrow Agent's duties hereunder shall be limited to the safekeeping of amounts deposited in escrow, instruments or documents received by it as Escrow Agent, and for the disposition of the same in accordance with the terms and provision of this Escrow Agreement. The Escrow Agent shall not be liable for any error of judgment or for any action taken or omitted to be taken by it in good faith, or for any mistake of fact or law, or for anything which it may do or refrain from doing in connection herewith, except only for its willful misconduct.
- d. The Escrow Agent may act in reliance upon advice of counsel in reference to any matter connected herewith, and shall be fully protected in respect of any action taken or suffered in good faith by it in accordance with the opinion of such counsel, except for an act or omission which constitutes willful misconduct.
- e. Escrow Agent may act in reliance upon any instrument, order, judgment, certification, demand, notice, or other writing delivered to it and reasonably believed by it in good faith to be genuine and to be signed or presented by the proper person or persons and shall be entitled to rely upon any such writing without being required

to determine the authenticity or genuineness of any signature or the correctness of any fact stated therein or the authorization of persons to issue such writings or the propriety or validity of the service thereof and shall not be liable in connection with the performance by it of its duties pursuant to the provisions thereof, except for its own willful misconduct.

- f. The Escrow Agent may resign at any time by written notice to BTC and the City. The Escrow Agent may be removed as escrow agent hereunder by the City by giving not less than thirty (30) days prior written notice thereof to the Escrow Agent. In either such event, the City shall designate a successor escrow agent (the “Successor Escrow Agent”) within thirty (30) days. Any Successor Escrow Agent shall have the same rights and obligations under the Escrow Agreement as the Escrow Agent; provided, however, that any Successor Escrow Agent shall not be liable for any acts or omissions of any prior Escrow Agent.
- g. Upon termination of this Escrow Agreement, the Escrow Agent may request from any and all of the parties hereto such additional assurances, certificates, satisfactions, releases and/or other documents as it may deem appropriate to evidence the termination of this Escrow Agreement and the parties shall promptly comply with such request.
- h. This Escrow Agreement sets forth exclusively the duties and responsibilities of the Escrow Agent with respect to any and all matters pertinent hereto. Except as otherwise expressly provided herein, the Escrow Agent shall not refer to, and shall not be bound by, the provisions of any other agreement.
- i. Except in cases of the Escrow Agent’s willful misconduct, the BTC and the City hereby each severally agree to indemnify the Escrow Agent and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or any other expenses, fees or charges of any character or nature which Escrow Agent may incur or with which it may be threatened by reason of the Escrow Agent’s actions as the Escrow Agent under this Escrow Agreement; and, in connection therewith, except in cases of willful misconduct, to indemnify the Escrow Agent against any and all expenses, including without limitation, reasonable attorneys’ fees and expenses (including but not limited to all fees and costs incident to any appeals which may result). The Escrow Agent may itself defend any suit brought against it and shall be equally entitled to receive reasonable attorneys’ fees and expenses (including but not limited to all fees and costs incident to any appeals which may result).
- j. If BTC, the City, and/or the Escrow Agent are in disagreement about the interpretation of this Escrow Agreement, or about the rights and obligations or the propriety of any action contemplated by Escrow Agent under this Escrow Agreement, or if the Escrow Agent receives any conflicting demands or claims regarding any moneys, instruments or documents delivered to the Escrow Agent, the Escrow Agent may, but shall not be required to, file an action in interpleader to resolve any disagreement. The Escrow Agent shall be indemnified for all costs, including, without limitation, reasonable attorneys’ fees and expenses (including but not limited to all fees and costs incident to any appeals that may result), in connection with any interpleader action, and shall be fully protected in suspending all or a part of its activities under this Escrow Agreement until a final and unappealable judgment or order in the interpleader action is received.

13. Miscellaneous.

- a. Accounting. The parties understand and acknowledge that applicable accounting rules regarding TIF reimbursement require the City to account for any money to be spent to resolve or eliminate any third-party rights in the Street Parcels and any money to be spent to reimburse Owner for demolition costs as acquisition costs.
- b. Further Assurances. BTC, the City, Escrow Agent, and the Contractor will fully cooperate with each other in connection with the subject matter hereof, and execute such other documents, affidavits and other items as may be reasonably necessary to effectuate the terms of this Escrow Agreement, including without limitation such other documents as may be reasonably necessary or otherwise required by the Escrow Agent or the City's title insurance company.
- c. Integration and Modification. This Escrow 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. This Escrow Agreement can be modified only by written agreement executed by authorized representatives of each party.
- d. Assignment. This Escrow Agreement may not be assigned by BTC, the City, or the Contractor except in connection with a permitted assignment of the A&R DA (as provided therein).
- e. Successors and Assigns. This Escrow Agreement will inure to the benefit of and will bind BTC, the City, Escrow Agent, and the Contractor, and each of their respective heirs, estates, successors or permitted assigns.
- f. 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 U.S. District Court for the District of Vermont. 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.
- g. Headings and General Application. The headings and captions contained in this Escrow Agreement are for reference purposes only and do not in any way affect the meaning or interpretation hereof. If the context requires, words used in the singular will be read as including the plural and vice versa, and pronouns of any gender will include all genders. The words "herein", "hereof", "hereunder", and other similar compounds of the word "here" refer to the entire Escrow Agreement and not to any particular provisions or section.
- h. Waiver. The failure of any party to insist on strict performance of any of the provisions of this Escrow 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
- i. Severability. This Escrow Agreement is intended to be performed in accordance with, and only to the extent permitted, applicable laws and regulations. If any provisions of this Escrow Agreement, or the application thereof to any person, entity, or circumstance, for any reason and to any extent, is invalid or unenforceable, neither the remainder of this Escrow Agreement, nor the application of such provision to other persons, entities or circumstances or other instruments will be affected thereby, but rather, the same will be enforced to the greatest extent permitted by law.
 - j. Counterparts. This Escrow Agreement may be executed in multiple counterparts, each of which will constitute an original, but all of which will constitute one document. Each person signing this Escrow Agreement on behalf of BTC, the City, Escrow Agent, and the Contractor represents and warrants that he or she has full authority to do so and that this Escrow Agreement binds such party. Execution and delivery of this Escrow Agreement by pdf format and delivery by email shall be sufficient and shall be binding on the parties for all purposes.

Signature Pages Follow

IN WITNESS WHEREOF, this Escrow Agreement is executed by the duly authorized officers or representatives of the parties as of the Effective Date.

BTC MALL ASSOCIATES LLC

By: RD Burlington Associates LLC, Its Sole Member
By: Devonwood City Place Investors, LLC, Its
Managing Member

By: _____
Name: Donald F. Sinex
Title: Managing Member

STATE OF _____
_____ COUNTY, SS.

At _____, in said County and State, this ____ day of February, 2021 personally appeared Donald F. Sinex, to me known, being the Managing Member of Devonwood City Place Investors, LLC, being the Managing Member of RD Burlington Associates LLC, being the sole Member of BTC Mall Associates LLC, and he acknowledged this instrument, by him signed, to be his free act and deed individually and on behalf of the entities on which he acted.

Before me _____
Notary Public
Commission Expires:
Commission Number:

CITY OF BURLINGTON

By: _____
Name: Miro Weinberger
Title: Mayor

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

At Burlington, in said County and State, this ____ day of February, 2021 personally appeared Miro Weinberger, to me known, being the Mayor of the City of Burlington, and he acknowledged this instrument, by him signed, to be his free act and deed and the free act and deed of the City of Burlington.

Before me _____
Notary Public
Commission Expires:
Commission Number:

ESCROW AGENT

Dunkiel Saunders Elliot Raubvogel & Hand PLLC

By: _____

Name: Brian Dunkiel, Esq.

Title: _____

SCHEDULES AND EXHIBITS

Schedules

Schedule 8.b.v.	List of Actions
Schedule 8.b.viii.	Environmental Reports

Exhibits

A	Legal Description of Street Parcels
B	Form of Deed
C	Form of Macy's Release
D	Form of Brookfield Discharge
E	Reserved
F	Form of Temporary Construction Easement
G	Form of A&R DA
H	Form of Litigation Resolution Agreement
I	Form of Release of Temporary Construction Easement
J	Form of MPI Construction Contract
K	Form of Notice of Deed Acceptance
L	Form of Notice of Plans and Budget Acceptance
M	Form of MPI Trigger Notice
N	Concept Plan for Public Improvements
O	Preliminary Budget

20374538.15

Schedule 8.b.v

List of Actions

1. 100 Bank LLC v. RD Burlington Associates, LLC, No. 496-8-20 Cncv (Vt. Super. Ct.)
2. PC Construction Company v. BTC Mall Associates, LLC, AAA Case No. 01-20-0012-7929 (American Arbitration Association)
3. Barbara McGrew, Lynn Martin, Michael Long, & Steven Goodkind v. Devonwood Investors, LLC & BTC Mall Associates, LLC, No. 118-2-19 Cncv (Vt. Super. Ct., Chittenden Unit)

Schedule 8.b.viii

Environmental Reports

1. ATC Soil Vapor Survey Report, CityPlace Burlington, Burlington, VT, ATC Project No. 280EM00375, May 20, 2019
2. ATC Asbestos Clearance Report, Burlington Town Center, Burlington, VT, ATC Project # 280BS01126, VT State Project Permit # 1017369, January 23, 2018
3. ATC Final Visual Inspection Report, Burlington Town Center, Burlington, VT, ATC Project # 280BS01310, April 17, 2018
4. ATC Final Visual Inspection Report – Tar on Columns, Burlington Town Center, Burlington, VT, Vermont State Permit # 318057, ATC Project # 280BS01126, May 11, 2018
5. ATC Perimeter Air Sampling Report, Burlington Town Center, Burlington, VT, ATC Project # 280BS01126, VT State Project Permit # 280BS01310, April 17, 2018
6. ATC Soil Quality Results Report, City Place Burlington, Burlington, Vermont (Site #2016-4625), August 8, 2018
7. Vermont Department of Environmental Conservation, Waste Management and Prevention Division, Sites Management Section, I-Rule CORRECTIVE ACTION PLAN Checklist, Site Number: 2016-4624, Site Name: CityPlace Burlington (former Burlington Town Center), Site Address: 49 Church Street, Site City/Town: Burlington, VT, Report Title: Final Corrective Action Plan, Report Date: July 18, 2018, Consultant: ATC, Report Author: Erik Urch
8. ATC Evaluation of Corrective Action Alternatives, City Place Burlington, Burlington, Vermont, June 14, 2018
9. ATC Soil Vapor Evaluation Report, CityPlace Burlington, 49 Church Street, Burlington, VT, ATC Project No. 280EM00249, October 22, 2018
10. ECS Environmental Data Gap Analysis, Burlington Town Center Mall, 49 Church St., Burlington, VT, Project No. 08-224541.00, August 2016
11. ATC Initial Site Investigation Report, Burlington Town Center Mall, 49 Church Street, Burlington, VT, ATC Project No. 0822454100, April 2017

Exhibit A

Legal Description of Street Parcels

Being a portion only of the lands and premises conveyed to BTC Mall Associates LLC by (i) the Special Warranty Deed of The Burlington Town Center LLC dated December 16, 2013 and recorded in Book 1239 at Page 621 of the City of Burlington Land Records, and (ii) the Special Warranty Deed of The Burlington Town Center LLC dated December 16, 2013 and recorded in Book 1239 at Page 628 of the City of Burlington Land Records.

The lands and premises consist of two parcels of land, which are depicted as "Parcel 1" and "Parcel 3" in a plan entitled "Lot Line Adjustment for BTC Mall Associates LLC, 101 Cherry Street, Burlington, Vermont" prepared by LATITUDES Land Surveying dated January 9, 2017, last revised January 24, 2017, consisting of 1 sheet, recorded in Map Slide 533B of the City of Burlington Land Records (the "Plan").

The aforesaid parcels of land are more particularly described as follows:

Parcel 1

Beginning at a rebar flush with the ground at the southwest corner of Parcel 1; thence N 01°49'03" W, 323.23 feet, to a point at the northwest corner of Parcel 1 on the south line of the Cherry Street right of way; thence N 88°10'59" E, 60.00 feet, along the south line of the Cherry Street right of way to a point at the northwest corner of Parcel 2 (as depicted on the Plan); thence S 01°49'03" E, 248.02 feet, to a point at the southwest corner of Parcel 2; thence S 88°10'57" W, 41.55 feet, to a point; thence S 01°52'00" E, 75.09 feet, to capped rebar "CEA" flush with the ground at the southeast corner of Parcel 1; thence S 87°49'17" W, 18.51 feet, to the point of beginning.

Parcel 1 consists of 0.37 acres, more or less.

Parcel 3

Beginning at a point at the southwest corner of a parcel now or formerly owned by Marsha Milot Trust on the north line of the Bank Street right of way. Said point being the southeast corner of Parcel 3; thence N 02°18'18" W, 120.30 feet, to a point at the northwest corner of a parcel now or formerly owned by Marsha Milot Trust; thence N 86°37'28" W, 0.11 feet, to a point on at the southwest corner of Parcel 4 (as depicted on the Plan); thence N 02°21'14" W, 80.45 feet, to a point at the northwest corner of Parcel 4 on the south line of the Cherry Street right of way; thence S 88°10'48" W, 60.00 feet, along the south line of the Cherry Street right of way, to a point at the northeast corner of Parcel 2; thence S 02°21'14" E, 341.86 feet, to the north line of the Bank Street right of way, to a point at the southeast corner of Parcel 2; thence N 87°42'53" E, 27.00 feet, along the north line of the Bank Street right of way, to a point; thence N 87°33'01" E, 7.82 feet, along the north line of the Bank Street right of way, to a capped rebar "CEA" flush with the ground; thence N 87°30'49" E, 25.19 feet, along the north line of the Bank Street right of way, to the point of beginning.

Parcel 3 consists of 0.47 acres, more or less.

Exhibit B

Form of Deed

WARRANTY DEED

KNOW ALL PERSONS BY THESE PRESENTS that BTC Mall Associates LLC, a Delaware limited liability company having a principle office in the City of Burlington in the County of Chittenden and State of Vermont, Grantor, in consideration of **TEN AND MORE DOLLARS** paid to its full satisfaction by the City of Burlington, a Vermont municipal corporation in the County of Chittenden and State of Vermont, Grantee, does freely **GIVE, GRANT, SELL, CONVEY AND CONFIRM** unto the said Grantee, City of Burlington, and its successors and assigns forever, certain lands and premises in the City of Burlington, in the County of Chittenden and State of Vermont, described as follows, viz:

Being a portion only of the lands and premises conveyed to BTC Mall Associates LLC by (i) the Special Warranty Deed of The Burlington Town Center LLC dated December 16, 2013 and recorded in Book 1239 at Page 621 of the City of Burlington Land Records, and (ii) the Special Warranty Deed of The Burlington Town Center LLC dated December 16, 2013 and recorded in Book 1239 at Page 628 of the City of Burlington Land Records.

The lands and premises conveyed by this deed consist of two parcels of land, which are depicted as “Parcel 1” and “Parcel 3” in a plan entitled “Lot Line Adjustment for BTC Mall Associates LLC, 101 Cherry Street, Burlington, Vermont” prepared by LATITUDES Land Surveying dated January 9, 2017, last revised January 24, 2017, consisting of 1 sheet, recorded in Map Slide 533B of the City of Burlington Land Records (the “Plan”).

The aforesaid parcels of land are more particularly described as follows:

Parcel 1

Beginning at a rebar flush with the ground at the southwest corner of Parcel 1; thence N 01°49’03” W, 323.23 feet, to a point at the northwest corner of Parcel 1 on the south line of the Cherry Street right of way; thence N 88°10’59” E, 60.00 feet, along the south line of the Cherry Street right of way to a point at the northwest corner of Parcel 2 (as depicted on the Plan); thence S 01°49’03” E, 248.02 feet, to a point at the southwest corner of Parcel 2; thence S 88°10’57” W, 41.55 feet, to a point; thence S 01°52’00” E, 75.09 feet, to capped rebar “CEA” flush with the ground at the southeast corner of Parcel 1; thence S 87°49’17” W, 18.51 feet, to the point of beginning.

Parcel 1 consists of 0.37 acres, more or less.

Parcel 3

Beginning at a point at the southwest corner of a parcel now or formerly owned by Marsha Milot Trust on the north line of the Bank Street right of way. Said point being the southeast corner of Parcel 3; thence N 02°18’18” W, 120.30 feet, to a point at the northwest corner of a parcel now or formerly owned by Marsha Milot Trust; thence N 86°37’28” W, 0.11 feet, to a point on at the

southwest corner of Parcel 4 (as depicted on the Plan); thence N 02°21'14" W, 80.45 feet, to a point at the northwest corner of Parcel 4 on the south line of the Cherry Street right of way; thence S 88°10'48" W, 60.00 feet, along the south line of the Cherry Street right of way, to a point at the northeast corner of Parcel 2; thence S 02°21'14" E, 341.86 feet, to the north line of the Bank Street right of way, to a point at the southeast corner of Parcel 2; thence N 87°42'53" E, 27.00 feet, along the north line of the Bank Street right of way, to a point; thence N 87°33'01" E, 7.82 feet, along the north line of the Bank Street right of way, to a capped rebar "CEA" flush with the ground; thence N 87°30'49" E, 25.19 feet, along the north line of the Bank Street right of way, to the point of beginning.

Parcel 3 consists of 0.47 acres, more or less.

The parcels conveyed by this deed may be subject to, and may have the benefit of, the following:

Easements encumbering the parcels and covenants and limitations concerning covenants appurtenant to the parcels, all as set forth in that certain Declaration of Reciprocal Easements made and declared by FM Burlington Company, dated September 29, 1982 and recorded in Book 283 at Page 500 of the City of Burlington Land Records, as amended by that certain Amendment to Declaration of Reciprocal Easements between Donohue O'Brien Burlington Square Associates Limited Partnership and Burlington Seven Associates Limited Partnership dated June 28, 1989 and recorded in Book 597 at Page 368 of the City of Burlington Land Records, as assigned by Assignment of Reciprocal Easement Agreement from Donohue O'Brien Burlington Square Associates Limited Partnership to DK Burlington Town Center Limited Partnership dated December 11, 2000 and recorded in Volume 665 at Page 344 of the City of Burlington Land Records, and as further amended by that certain Second Amendment to Declaration of Reciprocal Easements between DK Burlington Town Center LLC and Burlington Seven Associates Limited Partnership dated January 5, 2004 and recorded in Book 853 at Page 639 of the City of Burlington Land Records.

Terms and conditions of State of Vermont Land Use Permit No. 4C0101 and 4C0116, and amendments thereto, terms and conditions of all City of Burlington municipal land use permits, findings and approvals issued with respect to the parcels.

TO HAVE AND TO HOLD said granted premises, with all the privileges and appurtenances thereof, to the said Grantee, its successors and assigns, to their own use and behoof forever;

AND, the said Grantor, BTC Mall Associates LLC for itself and its successors and assigns, does covenant with the said Grantee, City of Burlington, and its successors and assigns that until the ensealing of these presents it is the sole owner of the premises, and have good right and title to convey the same in manner aforesaid, and that they are **FREE FROM EVERY ENCUMBRANCE** except as aforesaid;

AND the said Grantor hereby engages to **WARRANT AND DEFEND** the same against all lawful claims whatsoever, except as aforesaid.

Signature Page to Follow

IN WITNESS WHEREOF, the undersigned Grantor has set its hand and seal effective the ____ day of _____, 2021.

BTC Mall Associates LLC

By: RD Burlington Associates LLC, Its Sole Member

By: Devonwood City Place Investors, LLC, Its
Managing Member

By: _____
Name: Donald F. Sinex
Title: Managing Member

STATE OF _____
_____ COUNTY, SS.

At _____, in said County and State, this ____ day of February, 2021 personally appeared Donald F. Sinex, to me known, being the Managing Member of Devonwood City Place Investors, LLC, being the Managing Member of RD Burlington Associates LLC, being the sole Member of BTC Mall Associates LLC, and he acknowledged this instrument, by him signed, to be his free act and deed individually and on behalf of the entities on which he acted.

Before me _____

Notary Public

Commission Expires:

Commission Number:

Exhibit C

Form of Macy's Release

**TERMINATION OF CONSTRUCTION, OPERATION AND RECIPROCAL
EASEMENT**

THIS TERMINATION OF RECIPROCAL EASEMENT AGREEMENT (this "Termination Agreement"), is made and entered into as of the ____ day of _____, 2021 (the "Effective Date"), by and between BTC Mall Associates, LLC, a Delaware limited liability company ("BTC") and Devonwood Cherry Street Associates, LLC, a Vermont limited liability company ("DCSA").

WHEREAS, BTC is the owner of certain lands and premises depicted as "Parcel 1", "Parcel 2", "Parcel 3", "Parcel 4" and "Parcel 5" on a plan entitled "Lot Line Adjustment for BTC Mall Associates LLC, 101 Cherry Street, Burlington, Vermont" prepared by LATITUDES Land Surveying dated January 9, 2017, last revised January 24, 2017, consisting of 1 sheet, recorded in Map Slide 533B of the City of Burlington Land Records (the "Plan"), numbered 49 Church Street, Burlington, Vermont, Parcel No. 044-4-004-000 and 75 Cherry Street, Burlington, Vermont, Parcel No. 044-4-033-000 (collectively, the "BTC Property"), which BTC Property BTC acquired by Special Warranty Deed of The Burlington Town Center LLC dated December 16, 2013 and recorded in Volume 1239 at Page 621 of the City of Burlington Land Records and Special Warranty Deed of The Burlington Town Center LLC dated December 16, 2013 and recorded in Volume 1239 at Page 628 of the City of Burlington Land Records;

WHEREAS, DCSA is the owner of certain lands and premises located at 67 Cherry Street, Burlington, Vermont, which are located south of and adjacent to the BTC Property (the "DCSA Property"), which lands and premises are the site of the former Macy's Department Store and were acquired by DCSA by Special Warranty Deed of RD Burlington Anchor Associates, LLC dated January 22, 2021 and recorded in Volume ____ at Page ____ of the City of Burlington Land Records in connection with the corporate dissolution of RD Burlington Anchor Associates, LLC and distribution of assets to its sole member, DCSA;

WHEREAS, BTC and DCSA, as successors-in-interest to Donohue O'Brian Burlington Square Associates Limited Partnership and The May Department Stores Company, respectively, are the sole current parties to and are subject to and the beneficiaries of that certain Construction, Operation and Reciprocal Easement Agreement dated December 29, 1999, recorded in Volume 643 at Page 96 of the City of Burlington Land Records and that certain Separate Agreement dated as of December 29, 1999 (collectively, the "REA"), and as the REA was subsequently assigned to BTC pursuant to that certain REA Assignment Agreement between Macy's Retail Holding's LLC (predecessor in interest to RD Burlington Anchor Associates, LLC) and BTC dated November 1, 2017 and recorded in Volume 1378 at Page 333 of the City of Burlington Land Records; and

WHEREAS, BTC and DCSA have now wish to terminate the REA as described in further detail below;

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Termination. Effective as of the Effective Date, the REA and each of the party's rights and obligations thereunder are hereby terminated and shall cease to be of any further force or effect.
2. Governing Law; Jurisdiction. This Termination Agreement shall be interpreted and construed in accordance of the laws of the State of Vermont, without regard to its conflicts of laws provisions.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Termination Agreement as of the Effective Date.

BTC MALL ASSOCIATES LLC

By: RD Burlington Associates LLC, Its Sole Member
By: Devonwood City Place Investors, LLC, Its
Managing Member

By: _____
Name: Donald F. Sinex
Title: Managing Member

STATE OF _____
_____ COUNTY, SS.

At _____, in said County and State, this ____ day of February, 2021 personally appeared Donald F. Sinex, to me known, being the Managing Member of Devonwood City Place Investors, LLC, being the Managing Member of RD Burlington Associates LLC, being the sole Member of BTC Mall Associates LLC, and he acknowledged this instrument, by him signed, to be his free act and deed individually and on behalf of the entities on which he acted.

Before me _____
Notary Public
Commission Expires:
Commission Number:

DEVONWOOD CHERRY STREET ASSOCIATES, LLC

By: _____
Name: Donald F. Sinex
Title: Manager

STATE OF _____
_____ COUNTY, SS.

At _____, in said County and State, this ____ day of February, 2021 personally appeared Donald F. Sinex, to me known, being the Manager of Devonwood Cherry Street Associates, LLC, and he acknowledged this instrument, by him signed, to be his free act and deed and the free act and deed of Devonwood Cherry Street Associates, LLC.

Before me _____
Notary Public
Commission Expires:
Commission Number:

Exhibit D

Form of Brookfield Discharge

This instrument prepared by, and
when recorded, return to:

Roger M. Roisman, Esq.
35 Northwoods Lane
Boynton Beach, FL 33436

Tax Parcel No.: 044-4-004-000

PARTIAL RELEASE OF MORTGAGE

KNOW ALL PERSONS BY THESE PRESENTS that **RSE BURLINGTON, LLC**, a Delaware limited liability company (“Lender”) hereby releases the following described property from the lien, force and effect of a certain Mortgage, Security Agreement, Assignment of Leases and Rents, Financing Statement and Fixture Filing (the “Mortgage”) executed and delivered by **BTC MALL ASSOCIATES, LLC**, a Delaware limited liability company, to the Lender, dated as of September 3rd, 2020, and recorded in Book 1533, Pages 315-334 of the City of Burlington Land Records:

The following description represents Parcels 1 and 3 as depicted on a survey plat titled “Lot Line Adjustment for BTC Mall Associates LLC” by Latitudes Land Surveying, LS No. 59685, dated 1/9/2017, last revised January 24, 2017, consisting of 1 sheet, recorded in Map Slide 533B of the City of Burlington Land Records.

Parcel 1

Beginning at a rebar flush with the ground at the south west corner of parcel 1; thence N 01°49’03” W, 323.23 feet, to a point at the north west corner of parcel 1 on the south line of the Cherry Street right of way; thence N 88°10’59” E, 60.00 feet, along the south line of the Cherry Street right of way to a point at the north west corner of parcel 2; thence S 01°49’03” E, 248.02 feet, to a point at the south west corner of parcel 2; thence S 88°10’57” W, 41.55 feet, to a point; thence S 01°52’00” E, 75.09 feet, to capped rebar “CEA” flush with the ground at the south east corner of parcel 1; thence S 87°49’17” W, 18.51’ feet, to the point of beginning.

Parcel 1 contains 0.37 acres, more or less.

Parcel 3

Beginning at a point at the south west corner of a parcel now or formerly owned by Marsha Milot Trust on the north line of the Bank Street right of way. Said point being the south east corner of parcel 3; thence N 02°18’18” W, 120.30 feet, to a point at the north west corner of a parcel now or formerly owned by Marsha Milot Trust; thence N 86°37’28” W, 0.11 feet, to a point on at the south west corner of parcel 4; thence N 02°21’14” W, 80.45 feet, to a point at the north west corner of parcel 4 on the south line of the Cherry Street right of way; thence S 88°10’48” W, 60.00 feet, along the south line of the Cherry Street right of way, to a

point at the north east corner of parcel 2; thence S 02°21'14" E, 341.86 feet, to the north line of the Bank Street right of way, to a point at the south east corner of parcel 2; thence N 87°42'53" E, 27.00 feet, along the north line of the Bank Street right of way, to a point; thence N 87°33'01" E, 7.82 feet, along the north line of the Bank Street right of way, to a capped rebar "CEA" flush with the ground; thence N 87°30'49" E, 25.19 feet, along the north line of the Bank Street right of way, to the point of beginning. Parcel 3 contains 0.47 acres, more or less.

The lien of the said Mortgage is to remain in full force and effect on all other property described in said Mortgage that has not been previously released.

Dated in Chicago, Illinois, this _____ day of _____, 2021.

LENDER
RSE BURLINGTON, LLC, a Delaware
limited liability company

By: _____
Its Duly Authorized Agent

STATE OF ILLINOIS
COOK COUNTY, ss.

At Chicago, Illinois, this _____ day of _____, 2021, _____, duly authorized agent of RSE BURLINGTON, LLC, personally appeared and s/he acknowledged this instrument, by her/him sealed and subscribed, to be her/his free act and deed and the free act and deed of RSE BURLINGTON, LLC, before me.

Print Name: _____
Notary Public
Commission No. _____
My Commission Expires: _____

20452004.1

Exhibit E

Reserved

Exhibit F

Form of Temporary Construction Easement

TEMPORARY CONSTRUCTION EASEMENT AND AGREEMENT

This Temporary Construction Easement and Agreement (the “**Easement Agreement**”), dated to be effective as of _____, 2021, is made and entered into by and between the City of Burlington, a Vermont municipal corporation (“**Grantor**”), and BTC Mall Associates LLC, a Delaware limited liability company (“**Grantee**”), all with respect to the following:

BACKGROUND

A. Grantor is the owner of certain real property depicted as Parcel 1 and Parcel 3 on a plan entitled “Lot Line Adjustment for BTC Mall Associates LLC, 101 Cherry Street, Burlington, Vermont” prepared by LATITUDES Land Surveying dated January 9, 2017, last revised January 24, 2017, consisting of 1 sheet, recorded in Map Slide 533B of the City of Burlington Land Records (the “**Plan**”) (collectively, the “**Street Parcels**”), which Street Parcels were conveyed by Grantee to Grantor by Warranty Deed dated as of even date herewith and recorded immediately prior to this Easement Agreement in the Burlington Land Records.

B. Grantee is the owner of certain real property depicted as Parcel 2 on the Plan (the “**Private Parcel**”) on which Grantee intends to construct certain private improvements pursuant to and in conformance with all necessary approvals therefor (the “**Private Improvements**”).

C. Grantee further anticipates constructing certain public street, sidewalk, utility, and associated streetscape improvements on the Street Parcels, all as further described in the A&R DA (as defined below) (the “**Public Improvements**”), in connection with Grantee’s construction of the Private Improvements.

D. Grantee’s construction of the Private Improvements and the Public Improvements is governed, among other things, by that certain Amended and Restated Development Agreement (the “**A&R DA**”) entered into by Grantor and Grantee as of even date herewith.

E. Grantor now desires to grant to Grantee, and Grantee now desires to accept from Grantor, a temporary construction easement over and across the Street Parcels, which easement, subject to the terms, covenants, conditions and limitations set forth herein, shall be for the purpose of supporting Grantee’s ongoing and continuous construction activities with respect to the Public Improvements and the Private Improvements.

EASEMENT AGREEMENT

NOW, THEREFORE, in consideration of the Background recitals set forth above, the mutual promises contained in this Easement Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and Grantee agree as follows:

1. Grant. Subject to all of the terms, covenants, conditions and limitations set forth in this Easement Agreement, Grantor hereby GIVES, GRANTS, SELLS, CONVEYS, AND

CONFIRMS to Grantee, and Grantee's successors and assigns, a temporary construction easement over, under, through and across the Street Parcels, all for the purpose of supporting, facilitating and enabling Grantee's ongoing and continuous construction activities with respect to the Public Improvements and the Private Improvements (the "**Easement**").

TO HAVE AND TO HOLD the Easement and all rights under this Easement Agreement, with all of the privileges and appurtenances thereof, to Grantee, and Grantee's successors and assigns.

Grantee hereby accepts the Easement subject to all encumbrances of record affecting the Easement and the Street Parcels, without warranty of title, and subject to the terms and conditions contained in this Easement Agreement.

2. Condition of Street Parcels. Grantee accepts the condition of the Easement in the Street Parcels in its "as is" condition, and Grantor shall not be under any obligation to maintain, repair or replace the Street Parcels or have any other obligation in regards to the Street Parcels or any improvements made to the Street Parcels by or for Grantee.

Except as provided in this Easement Agreement, Grantor shall retain the right to make full use of the Street Parcels, except for such use as might endanger or interfere with Grantee's use and enjoyment of the Easement rights under this Easement Agreement.

3. Additional Conditions.

a. Use. The Street Parcels shall be used by Grantee, or its contractors, suppliers, materialmen, subcontractors, employees, agents and invitees engaged to construct the Private Improvements or Public Improvements ("**Grantee Related Parties**"), only in support of ongoing and continuous construction activities with respect to the Public Improvements and the Private Improvements and for no other purposes. The Easement rights granted hereby shall be strictly limited to and contained wholly within the Street Parcels and shall not extend to any other property owned by Grantor without Grantor's prior written consent, which such consent may be granted or withheld at Grantor's sole discretion.

b. Required Permits. Before entering the Street Parcels in connection with the permissions granted herein, the Grantee shall secure all governmental licenses, permits and approvals issued by the City of Burlington and any other governmental authorities, necessary to permit the construction activities undertaken by or for Grantee within the Street Parcels.

c. Damage to Property. Grantee will make reasonable efforts, and cause all Grantee Related Parties to make reasonable efforts, to avoid any damage or injury to any improvements on the Street Parcels, and any surrounding or other areas owned by Grantor or any third party, and Grantee will be responsible for promptly repairing any damage or injury to the Street Parcels or improvements thereon, and any surrounding or other areas owned by Grantor or any third party. This Section 3(c) shall survive the expiration or earlier termination of this Easement Agreement.

d. Applicable Law. Grantee covenants that in connection with the use and improvement of the Street Parcels under this Easement Agreement, Grantee and all Grantee

Related Parties shall comply in all material respects with all applicable laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, zoning requirements, permits, licenses, authorizations, directions, and requirements of all governments, departments, commissions, boards, courts, authorities, agencies, officials, and officers, foreseen and unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to Grantee's construction efforts within the Street Parcels, including, but not limited to, Environmental Laws and the conditions of any permit approval for the Public Improvements and the Private Improvements ("**Applicable Laws**"). This Section 3(d) shall survive the expiration or earlier termination of this Easement Agreement.

e. Construction Fence. The Street Parcels shall be enclosed by a construction fence or other similar fencing/barrier (the "**Construction Fence**"). The Construction Fence shall be installed in conformance with the requirements of Applicable Laws. Grantee shall coordinate the location and dimensions of any gates for the Construction Fence with Grantor prior to installation. No use of the Street Parcels may be made by Grantee prior to installation of the Construction Fence. The current and existing construction fence that surrounds Parcel 2 with its existing gates and entryways is satisfactory to the Grantor, provided that Grantee continues to maintain and operate such fence in conformance with permits approved therefor and all other Applicable Laws.

f. Pedestrian and Vehicular Traffic. Grantee and all Grantee Related Parties shall not cause or suffer any unreasonable disruption of or unreasonable interference with pedestrian or vehicular traffic on public streets, roads and rights-of-way surrounding or in the vicinity of the Street Parcels except as may be permitted by the Grantor at the Grantor's sole discretion. Grantor acknowledges, however, that subject to Applicable Laws (i) Grantee and Grantee Related Parties will utilize public streets, roads and rights-of-way surrounding or in the vicinity of the Street Parcels for purposes of ingress and egress from and to the Street Parcels in a manner and intensity that is typical for a development project of the size and scope of the Private Improvements and Public Improvements, including ingress and egress by construction vehicles, and (ii) given such typical construction uses, the Grantor acknowledges and understands that pedestrian ways (e.g., sidewalks) may be temporarily closed and/or rerouted during the construction period subject to Grantee obtaining encumbrance agreements from the City and otherwise complying with Applicable Laws.

g. Erosion and Debris. Grantee shall be obligated and solely responsible for adequate and continuous control of erosion, dust, mud and gravel and other debris arising out of Grantee's exercise of the rights granted herein, including, without limitation, the provision of cover for any stockpiled fill material with plastic or visqueen or other suitable material to prevent fugitive dust, if reasonably required by Grantor or any other governmental authority, such cover to be satisfactory to the requiring authority. Grantee will be obligated to prevent storm water or sediment run-off resulting from any exercise of the rights granted herein, including, without limitation, any drainage or run-off that is prohibited, requires permitting or is otherwise regulated under Applicable Laws. Grantee will maintain the Street Parcels, and surrounding areas, free from accumulation of waste materials, rubbish, excessive dust and dirt, and the like caused by or

arising from any exercise of the rights granted herein or other activities associated with the construction of the Private Improvements and the Public Improvements.

h. Hazardous Materials.

i. Grantee's use of the Street Parcels shall specifically exclude, without limitation, any storage, use, location or presence thereon of any fuel, petroleum products, or any other hazardous substances, except in the normal course of the operation of construction equipment in furtherance to the construction activities permitted in this Easement Agreement and then provided such use is in conformance with Applicable Laws. For purposes of the foregoing, and the other provisions of this Easement Agreement, "hazardous substances" shall mean and include any hazardous, dangerous, deleterious or toxic waste, substance or material, including any waste, substance or material subject to regulation under Environmental Law. The term "**Environmental Law**" shall mean any federal, state or local law, common law, order, rule or regulation pertaining or relating to protection of the environment, natural resources or human health or safety, and specifically includes, without limitation, the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6901 et seq., as amended, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. §§ 9601 et seq., as amended, the Clean Water Act, 33 U.S.C. §§ 1251 et seq., as amended, the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq., as amended, the Clean Air Act, 42 U.S.C. §§ 7401 et seq., as amended, the Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101 et seq., as amended, the Endangered Species Act of 1973, 16 U.S.C. §§ 1531 et seq., as amended, and the rules and regulations promulgated under either of them and any similar federal, state or local laws.

ii. Grantee and all Grantee Related Parties will not cause or suffer any discharge, escape, spill, disposal or release of any petroleum products or other hazardous substance of any nature. If any such discharge, spill, disposal, escape or release occurs as a result of the actions of Grantee or any Grantee Related Party, or as a result of such parties' failure to act, Grantee shall be solely obligated to undertake and liable for clean-up and remediation of the same in accordance with all Environmental Laws, including, without limitation, applicable rules and regulations of the State of Vermont and any other governmental authority, and also in accordance with good prevailing practices in the construction and environmental engineering industries. Grantee shall immediately notify Grantor of the occurrence of any such discharge, spill, disposal, escape or release.

iii. This Section 3(h) shall survive the expiration or earlier termination of this Easement Agreement.

4. Insurance. Grantee shall maintain insurance coverage as required under the A&R DA hereto through the term of this Easement Agreement.

5. Termination. Upon termination of this Easement Agreement, Grantee shall immediately vacate its use of the Street Parcels, remove all property and equipment belonging to

Grantee or any Grantee Related Party, and, if necessary, restore the Street Parcels to operable condition. This Easement Agreement shall terminate as follows:

a. This Easement Agreement and the rights and obligations hereunder (except those expressly provided to survive termination) shall automatically terminate, and Grantor shall have the right to record one or more instruments evidencing the release of this Easement Agreement in the Burlington Land Records, upon Grantee's substantial completion of, and Grantor's acceptance of, the Public Improvements as provided in the A&R DA, which may occur in phases coinciding with the phased construction of the Public Improvements pursuant to Applicable Laws. In the event the City accepts the completed Public Improvements in phases, the Easement will automatically terminate with respect to the portion of the improved Street Parcels so accepted by the City.

b. Notwithstanding the foregoing, or anything else to the contrary set forth in this Easement Agreement, this Easement Agreement and the rights and obligations hereunder (except those expressly provided to survive termination) shall automatically terminate, and Grantor shall have the right to record an instrument evidencing the release of this Easement Agreement in the Burlington Land Records, upon Grantees' (i) failure to Commence Construction of the Revised Project on or prior to the Revised Project Construction Commencement Deadline, and/or (ii) failure to maintain Continuous and Ongoing Construction of the Revised Project from and after having timely met its obligation to Commence Construction until Completion, and/or (iii) failure to timely complete and deliver the Public Improvements pursuant to the A&R DA, in each instance as such terms are defined in the A&R DA and all as provided in and subject to the conditions of the A&R DA.

6. Indemnity.

- a. Except for the gross negligence or willful misconduct by the Grantor, or any of its boards, officers, agents, employees, assigns and successors in interest, Grantee undertakes and agrees to defend, indemnify and hold harmless the Grantor and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the Grantor, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including Grantee's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Easement Agreement by Grantee or its subcontractors of any tier.
- b. If Grantor, its officers, agents, or employees are notified of any claims asserted against it to which this indemnification provision may apply, the Grantor shall immediately thereafter notify the Grantee in writing that a claim to which the indemnification provision may apply has been filed. Grantee shall immediately

retain counsel and otherwise provide a complete defense against the entire claim or suit. The Grantor retains the right to participate, at its own expense, in the defense of any claim, and to approve all proposed settlements of claims to which this provision applies.

- c. Rights and remedies available to the Grantor under this provision are cumulative of those provided for elsewhere in this Easement Agreement and those allowed under the laws of the United States and the State of Vermont.
- d. Under no conditions shall the Grantor be obligated to indemnify the Grantee or any third party, nor shall the Grantor be otherwise liable for expenses or reimbursement including attorney’s fees, collection costs, or other costs of the Grantee or any third party.

This Section 6 shall survive the expiration or earlier termination of this Easement Agreement.

7. Notice. Notices and other communications required or permitted under this Escrow Agreement shall be in writing and delivered by hand against receipt, or shall be sent (i) by recognized overnight delivery service, (ii) by certified or registered mail, postage prepaid, with return receipt requested, or (iii) by email, provided that such email notes in both the subject line and body of the email that it is an official notice being sent under this Escrow Agreement, and is immediately followed by notice under either subsection (i) or (ii) above. All notices shall be addressed as follows:

- If to the City: City of Burlington
City Hall
149 Church St.
Burlington, VT 05401
Attention: Mayor Miro Weinberger
Email: miro@burlingtonvt.gov
- With a copy to: City Attorney
City Hall
149 Church St.
Burlington, VT 05401
Email: eblackwood@burlingtonvt.gov
- If to Owner: BTC Mall Associates LLC
101 Cherry Street, Suite 440
Burlington, Vermont, 05401
Attention: Donald Sinex
Email: dsinex@devonwoodinvestors.com
- With a copy to: Brian Dunkiel, Esq.
Dunkiel Saunders
91 College Street, P.O. Box 545

Burlington, Vermont 05402-0545
Email:bdunkiel@dunkielsaunders.com

or to such other addresses as may be designated by a proper notice. Notices shall be deemed to be effective upon receipt (or refusal thereof) if personally delivered, sent by recognized overnight delivery service, or sent by certified or registered mail, postage prepaid, with return receipt requested; or upon receipt if such delivery is by email (as evidenced by email confirmation, provided that if such notice cannot be transmitted because of a problem affecting the receiving party's computer, the deadline for receiving such notice shall be extended through the next business day, and if email confirmation indicates that it was sent after 5:00 p.m. (local time) on such day it shall be deemed to have been given on the succeeding business day.

8. Limitation of Liability. Grantor is not responsible for, and has no liability to Grantee or to anyone else for, any loss, cost, damage or injury, including death, of any person or damage to property of any kind to the extent resulting from, arising out of, or in connection with the use of the Street Parcels pursuant to this Easement Agreement, except to the extent such loss, cost, damage or injury, including death, of any person or damage to property results from Grantor's gross negligence or willful misconduct.

9. Default. If Grantee fails to perform in accordance with the terms, covenants and conditions of this Easement Agreement, or is otherwise in breach or default of any of the terms, covenants and conditions of this Easement Agreement (in any case a "Default"), then Grantor, after giving thirty (30) days' prior written notice to Grantee of the alleged Default and upon the Grantee's failure to cure such Default within said 30-day period; provided that no such cure period shall be allowed for (a) any breach of the Grantee's insurance obligations described herein, (b) any failure to secure a timely release of a lien as described herein, (c) any Default that is not reasonably susceptible of cure, (d) Grantee's failure to Recommence Construction by the Outside Restart Date, or (e) Grantee's failure or default as set forth in Section 5(b) of this Easement and Agreement:

Grantor, at its election and without obligation to do so, may take such action and expend such sums as Grantor in its ordinary business judgment may deem necessary or appropriate to cure the subject uncured Default, in whole or in part, or to protect the interests of Grantor. All sums, including reasonable third party attorneys' fees, incurred by Grantor in connection with the consideration or exercise of this remedy shall be due and payable from Grantee to Grantor, within thirty (30) days after demand from time to time.

10. Mechanics' Liens. Grantee shall not permit or suffer any mechanics' or other liens to attach to Street Parcels or any portion thereof or interest therein by reason of any exercise of the rights granted herein or any other conduct on or in relation to Street Parcels arising by, through or under the Grantee. In the event a claim for any such lien is recorded against Street Parcels, or any portion thereof or interest therein, Grantee at its sole expense shall obtain the removal or bonding off of such claim within thirty (30) days after it is initially recorded and thereafter diligently pursue release of such claim as a matter of public record. If such release is not timely secured, then at any time thereafter Grantor, as the case may be, at its

election and without obligation to do so, may secure the release of the lien claim by any means available, including bonding, settlement or otherwise, in which case Grantee shall, within ten (10) business days after demand from time to time, reimburse Grantor for its costs and expenses incurred in securing the lien release, including all settlement amounts and reasonable third party attorneys' fees. Further, Grantee will indemnify Grantor against any such lien claims, as provided above.

11. Recordation. This Easement Agreement shall be recorded in the real property records of the City of Burlington, Vermont.

12. Miscellaneous.

a. Entire Agreement; Incorporation of Background. This Easement Agreement contains the entire agreement and understanding of the parties with respect to the entire subject matter hereof, and there are no representations, inducements, promises or agreements, oral or otherwise, not embodied herein. This Easement Agreement specifically supersedes any and all prior discussions, agreements, proposals, negotiations and representations relating hereto. The Background recitals set forth at the beginning of this Easement Agreement are incorporated herein by this reference.

b. Counterparts. This Easement Agreement may be executed in any number of counterparts, any or all of which may contain the signatures of less than all the parties, and all of which shall be construed together as but a single instrument and shall be binding on the parties as though one originally executed document.

c. Severability. If any clause or provision of this Easement Agreement shall be held to be invalid in whole or in part, then the remaining clauses and provisions, or portions thereof, shall nevertheless be and remain in full force and effect.

d. Waivers and Amendments. No provision of this Easement Agreement may be waived to any extent unless and except to the extent the waiver is specifically set forth in a written instrument executed by the party to be bound thereby. This Easement Agreement may be amended or modified only by an instrument to that effect executed by the parties hereto, and only to the extent expressly set forth therein.

e. Successors and Assigns. The terms, covenants and conditions of this Easement Agreement shall be binding on and inure to the benefit of the successors and assigns of all parties hereto as specifically provided in this Easement Agreement.

f. Captions. The captions of each section are added as a matter of convenience only and shall be considered of no effect in the construction of any provision of this Easement Agreement.

g. Attorneys' Fees. If any party hereto shall bring any suit or action against another for relief, declaratory or otherwise, arising out of this Easement Agreement, the prevailing party shall have and recover against the non-prevailing party, in addition to all court

costs and disbursements, such sum as the applicable court may adjudge to be reasonable attorneys' fees.

h. Right to Enjoin. In the event of any violation or threatened violation of any of the provisions of this Easement Agreement by Grantor, Grantee shall have the right to apply to a court of competent jurisdiction for an injunction against such violation or threatened violation and/or for a decree of specific performance.

i. Governing Law. This Easement Agreement shall be governed by and interpreted in accordance with the laws of the State of Vermont.

j. Survival. Any and all terms, warranties, conditions and provisions of this Easement Agreement which are not fully performed or discharged as of any termination of this Easement Agreement shall survive such termination and remain in full force and effect thereafter, with the Grantee remaining liable to satisfy all applicable obligations and duties.

k. Time of the Essence. Time shall be of the essence with respect to the performance and observance of the covenants, agreements, terms, conditions and provisions set forth herein.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Easement Agreement to become effective as of the date first written above.

BTC MALL ASSOCIATES LLC

By: RD Burlington Associates LLC, Its Sole Member
By: Devonwood City Place Investors, LLC, Its
Managing Member

By: _____
Name: Donald F. Sinex
Title: Managing Member

STATE OF _____
_____ COUNTY, SS.

At _____, in said County and State, this ____ day of February, 2021 personally appeared Donald F. Sinex, to me known, being the Managing Member of Devonwood City Place Investors, LLC, being the Managing Member of RD Burlington Associates LLC, being the sole Member of BTC Mall Associates LLC, and he acknowledged this instrument, by him signed, to be his free act and deed individually and on behalf of the entities on which he acted.

Before me _____
Notary Public
Commission Expires:
Commission Number:

CITY OF BURLINGTON

By: _____
Name: Miro Weinberger
Title: Mayor

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

At Burlington, in said County and State, this ____ day of February, 2021 personally appeared Miro Weinberger, to me known, being the Mayor of the City of Burlington, and he acknowledged this instrument, by him signed, to be his free act and deed and the free act and deed of the City of Burlington.

Before me _____
Notary Public
Commission Expires:
Commission Number:

Exhibit G

Form of A&R DA

Attached

Exhibit H

Form of Litigation Resolution Agreement

Attached

Exhibit I

Form of Release of Temporary Construction Easement

RELEASE OF TEMPORARY CONSTRUCTION EASEMENT

This RELEASE OF TEMPORARY CONSTRUCTION EASEMENT (the “Release”) is made as of _____, 202__ (the “Effective Date”) by and between City of Burlington, a Vermont municipal corporation (the “City”), and BTC Mall Associates LLC, a Delaware limited liability company (“BTC,” collectively the “Parties”).

Background

A. The Parties entered into that certain Temporary Construction Easement and Agreement, dated _____, 2021, recorded in Book ____, at Page ____ of the Burlington Land Records (the “Easement Agreement”).

B. The Parties now desire to release and terminate the Easement Agreement.

Agreement

NOW, THEREFORE, in consideration of the Background recitals set forth above, the mutual promises contained in this Release and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and BTC agree as follows:

1) **Release and Termination of Easement Agreement.** The Easement Agreement is hereby terminated and of no further force or effect, and neither Party to the Easement Agreement shall have any further rights against the other Party or obligations to the other party under the Easement Agreement, except with respect to any such obligations that expressly survive termination of the Easement Agreement.

2) **Entire Agreement; Amendment; Incorporation of Recitals.** This Release contains the entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and there are no representations, inducements, promises or agreements, oral or otherwise, not embodied herein. This Release specifically supersedes any and all prior discussions, agreements, proposals, negotiations and representations relating hereto. This Release may be amended or modified only by an instrument to that effect executed by the Parties, and only to the extent expressly set forth therein. The recitals set forth at the beginning of this Release are incorporated herein by this reference.

3) **Counterparts.** This Release may be executed in any number of counterparts, all of which shall be construed together as but a single instrument and shall be binding on the Parties as though originally executed on one originally executed document.

4) **Severability.** If any clause or provision of this Release shall be held to be invalid in whole or in part, then the remaining clauses and provisions, or portions thereof, shall nevertheless be and remain in full force and effect.

5) Successors and Assigns. The terms, covenants and conditions of this Release shall be binding on and inure to the benefit of the successors and assigns of the Parties.

6) Attorneys' Fees. If any party hereto shall bring any suit or action against another for relief, declaratory or otherwise, arising out of this Release, the prevailing party shall have and recover against the other party, in addition to all court costs and disbursements, such sum as the applicable court may adjudge to be reasonable attorneys' fees.

7) Governing Law. This Release shall be governed by and interpreted in accordance with the laws of the State of Vermont, without regard to conflicts of laws principles thereof.

8) Authority. Each party (the "Representing Party") represents to the other that the Representing Party has full power and authority to execute, deliver and perform this Release; that the individual executing this Release on behalf of the Representing Party is fully empowered and authorized to do so; and that this Release constitutes a valid and legally binding obligation of the Representing Party enforceable against the Representing Party in accordance with its terms.

[Signature Pages Follow]

In Witness Whereof, this Release is executed by the duly authorized officers or representatives of the Parties as of the Effective Date.

BTC Mall Associates LLC

By: RD Burlington Associates LLC, Its Sole Member

By: Devonwood City Place Investors, LLC, Its
Managing Member

By: _____
Name: Donald F. Sinex
Title: Managing Member

STATE OF _____
_____ COUNTY, SS.

At _____, in said County and State, this ____ day of _____, 20__ personally appeared Donald F. Sinex, to me known, being the Managing Member of Devonwood City Place Investors, LLC, being the Managing Member of RD Burlington Associates LLC, being the sole Member of BTC Mall Associates LLC, and he acknowledged this instrument, by him signed, to be his free act and deed individually and on behalf of the entities on which he acted.

Before me _____
Notary Public
Commission Expires:
Commission Number:

City of Burlington

By: _____
Name:
Title:

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

At Burlington, in said County and State, this ____ day of _____, 20__ personally appeared _____, to me known, being the _____ of the City of Burlington, and he acknowledged this instrument, by him signed, to be his free act and deed and the free act and deed of the City of Burlington.

Before me _____
Notary Public
Commission Expires:
Commission Number:

Exhibit J

Form of MPI Construction Contract

Attached

AGREEMENT made as of the [] day of [] in the year 20[]

BETWEEN the Owner:

(Name, legal status, address and other information)

BTC Mall Associates, LLC, a Delaware limited liability company
101 Cherry Street, Suite 440
Burlington, Vermont 05701

and the Contractor:

(Name, legal status, address and other information)

SD Ireland
Attention: Scott Ireland
193 Industrial Avenue
Williston, VT

and the Contract Beneficiary: The City of Burlington, Vermont

City of Burlington
Attention: City Attorney
City Hall
149 Church Street
Burlington, Vermont 05401

for the following Project:

(Name, location and detailed description)

Construction of below-grade improvements, plus at-grade road and concrete sidewalks, on new segments of Pine Street and St. Paul Street between Bank Street and Cherry Street, in accordance with the final construction drawings attached to this Agreement (the "MPI Plans and Specs"), including any amendment or Change Order approved by the parties and the Beneficiary. The Project scope and Work may include alternatives, as directed by the Beneficiary, and at the Beneficiary's cost, for offsite improvements required in connection with the Beneficiary's payment to acquire rights from the owners of 100 Bank Street, 150 Bank Street, and 77 Bank Street.

The Engineer:

(Name, legal status, address and other information)

Engineering Ventures
208 Flynn Ave
Burlington, VT 05401

The Owner, Contractor and Beneficiary agree as follows.

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TABLE OF ARTICLES

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- 2 THE WORK OF THIS CONTRACT
- 3 RELATIONSHIP OF THE PARTIES
- 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 5 CONTRACT SUM
- 6 CHANGES IN THE WORK
- 7 COSTS TO BE REIMBURSED
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- 16 ENUMERATION OF CONTRACT DOCUMENTS

EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract, if any, Drawings, Specifications, and any other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 16.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others. Upon completion in accordance with the terms hereof, the Work shall be delivered free and clear of all liens.

ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner and Beneficiary to cooperate with the Engineer and exercise the Contractor's skill and judgment in furthering the interests of the Owner and Beneficiary; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's and Beneficiary's interests and in accordance with applicable laws and to a standard commensurate with Class A commercial development projects. The Owner, and only to the extent it relates to a Change Order or alternative proposed by the Beneficiary, the Beneficiary agrees to furnish and

approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

The Beneficiary is owner of the property on which the Work is to be performed and will be the owner of the Work upon delivery. The Owner and Contractor are entering into this Agreement for good and valuable consideration, the sufficiency of which Owner and Contractor hereby acknowledge, pursuant to their obligations set forth in connection with that certain Escrow Agreement by and between the Beneficiary and the Owner, dated as of even date herewith (the "Escrow Agreement").

Contractor acknowledges and agrees that: (i) it is the "Contractor" as defined in the Escrow Agreement, (ii) the terms and conditions of the Escrow Agreement that are applicable to the Contractor are hereby incorporated herein by reference as if fully set forth herein, and (iii) Contractor is bound by the terms and conditions of the Escrow Agreement that are applicable to the Contractor.

This Agreement may not be assigned by Owner or Contractor without the prior written consent of the Beneficiary, which consent Beneficiary may grant or withhold in its sole discretion.

ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 4.1 The date of commencement of the Work shall be:
(Check one of the following boxes.)

The date of this Agreement.

A date set forth in a notice to proceed issued by the Beneficiary pursuant to and in accordance with the terms of the Escrow Agreement. Beneficiary's notice to proceed may limit the scope of the Work to be performed under this Agreement to reflect Owner's actual construction of certain Public Improvements (as defined in and pursuant to Owner's obligations set forth in connection with the Escrow Agreement), if any, as of the date of the Notice to Proceed.

§ 4.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 4.3 Substantial Completion

§ 4.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:
(Check one of the following boxes and complete the necessary information.)

Not later than 180 calendar days from the date of commencement of the Work.

§ 4.3.2 Intentionally deleted

§ 4.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 4.3, liquidated damages, if any, shall be assessed as set forth in Section 5.1.6.

ARTICLE 5 CONTRACT SUM

§ 5.1 The Owner alone shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Contractor's Fee, but excludes any costs arising out of any Change Orders proposed by the Beneficiary or any alternatives directed by the Beneficiary. The City of Burlington, as the Beneficiary under this Contract, shall bear no obligation or responsibility to pay the Contractor for the Contract Sum or any portion thereof, but the Contractor shall nonetheless be fully obligated to complete the improvements pursuant to this Contract regardless of the status of payment of the Contract Sum. Contractor agrees to look solely to Owner (and not the Beneficiary) for payment for the Work. Notwithstanding the foregoing, the Beneficiary shall bear the costs related to, and shall directly pay the Contractor for, any Change Orders directed by the Beneficiary or any alternatives directed by the Beneficiary, as permitted under the Project scope. Each such Change Order or alternative directed by the Beneficiary shall provide for payment by the Beneficiary to the Contractor, and specific payment terms relating thereto.

§ 5.1.1 The Contractor's Fee:

(State a lump sum, percentage of Cost of the Work, or other provision for determining the Contractor's Fee.)

5% of the cost of the Work (excluding any costs arising out of any Change Orders proposed by the Beneficiary or any alternatives directed by the Beneficiary)

§ 5.1.2 The method of adjustment of the Contractor's Fee for changes in the Work:

5% of the amount of any approved Change Order proposed or ordered by Owner.

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work: No payment for any other matter except the 5% fee specified above in 5.1.1 and 5.1.2. shall be due and payable by Owner to the Contractor under this Contract.

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§ 5.1.4 Rental rates for Contractor-owned equipment shall not exceed the standard rental rate paid at the place of the Project.

§ 5.1.5 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

The Beneficiary shall be entitled to liquidated damages if the Project is not timely completed as stated in this Contract in the amount of five hundred dollars (\$500.00) per day, subject to the provisions of Section 14.2. No other damages shall be paid to nor shall the Beneficiary be entitled to any other damages for a late delivery by the Contractor.

§ 5.2 Cost to be Paid by Owner.

§ 5.2.1 The Contract Sum (Cost of the Work plus the Contractor Fee) is not guaranteed by the Contractor, Owner shall pay Contractor all Costs as defined in this Agreement that the Contractor incurs in completing the Work hereunder, excluding only any Costs arising out any Change Orders proposed by the Beneficiary or any alternatives directed by the Beneficiary. And Cost shall include and be adjusted for additions and deductions by Change Order (other than those proposed by the Beneficiary) as provided in the Contract Documents. The Cost as defined in this section is referred to in the Contract Documents as the amount to be paid by the Owner to the Contractor for completion of the Work, excluding any costs arising out any Change Orders proposed by the Beneficiary or any alternatives directed by the Beneficiary. As set forth in Section 5.1, the Beneficiary shall directly pay the Contractor for any costs arising out any Change Orders proposed by the Beneficiary or any alternatives directed by the Beneficiary, and any such Change Order or alternative directed by the Beneficiary shall provide the specific payment terms relating thereto.

§ 5.2.2 To the extent that the Contract Documents are anticipated to require further development, the Contract Sum includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 Adjustments to the Contract Sum on account of changes in the Work may be determined by any of the methods listed in Article 7 of AIA Document A201™–2017, General Conditions of the Contract for Construction.

§ 6.2 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to “cost” and “fee,” and not by Articles 5, 7 and 8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3 In calculating adjustments to the Contract Sum, the terms “cost” and “costs” as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term “fee” shall mean the Contractor's Fee as defined in Section 5.1.1 of this Agreement.

§ 6.4 Intentionally deleted

ARTICLE 7 COSTS TO BE REIMBURSED

§ 7.1 Cost of the Work

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work, excluding any costs arising out of any Change Orders proposed by the Beneficiary or any alternatives directed by the Beneficiary. The Cost of the Work shall include only the items set forth in this Article 7.

§ 7.1.2 Where, pursuant to the Contract Documents (including any Change Order or alternative proposed or directed by the Beneficiary), any cost is subject to the Owner's or the Beneficiary's prior approval, the Contractor shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard paid at the place of the Project, except with prior approval of the Owner or, with respect to costs to be borne by the Beneficiary hereunder, the prior written approval of the Beneficiary.

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 7.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

§ 7.2.2.1 Wages or salaries of the Contractor's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

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§ 7.2.3 Wages or salaries of the Contractor's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 Costs paid or incurred by the Contractor, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments, and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.3 Subcontract Costs

Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Contractor shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Contractor, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of the Contractor's site office, including general office equipment and supplies.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Contractor, with the Owner's prior approval.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Contractor is liable.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Contractor is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Contractor resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Contractor had reason to believe that the required design, process or product was an infringement of a copyright or a patent, and the Contractor failed to promptly furnish such information to the Engineer as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements, shall not be included in the Cost of the Work used to calculate the Contractor's Fee.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

§ 7.6.8 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 7.6.10 Expenses incurred in accordance with the Contractor's standard written personnel policy for relocation and temporary living allowances of the Contractor's personnel required for the Work, with the Owner's prior approval.

§ 7.6.11 That portion of the reasonable expenses of the Contractor's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201-2017.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Contractor, and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Contractor; (2) any entity in which any stockholder in, or management employee of, the Contractor holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Contractor; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Contractor.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 10. If the Owner fails to authorize the transaction in writing, the Contractor shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 10.

ARTICLE 8 COSTS NOT INCLUDED IN COST OF WORK

§ 8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 15;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Contractor's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Article 7;
- .5 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Contractor, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Article 7; and

- 8 Costs arising out of any Change Orders proposed by the Beneficiary or any alternatives directed by the Beneficiary, which shall be paid for directly by the Beneficiary to the Contractor in accordance with the applicable Change Order or alternative.

ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

§ 9.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be obtained.

§ 9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 9.3 The Beneficiary shall have the rights of the Owner under this Article 9 with respect to any Beneficiary directed Change Orders.

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

§ 10.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Contractor shall deliver such bids to the Engineer and Owner with an indication as to which bids the Contractor intends to accept. The Owner then has the right to review the Contractor's list of proposed subcontractors and suppliers in consultation with the Engineer and, subject to Section 10.1.1, to object to any subcontractor or supplier. Any advice of the Engineer, or approval or objection by the Owner, shall not relieve the Contractor of its responsibility to perform the Work in accordance with the Contract Documents. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

§ 10.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Contractor may require that a Change Order be issued to adjust the Contract Sum by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 10.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Contractor shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor in Article 11.

§ 10.3 The Beneficiary shall have the rights of the Owner under this Article 10 with respect to any Beneficiary directed Change Orders.

ARTICLE 11 ACCOUNTING RECORDS

The Contractor shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner and the Beneficiary with respect to any Beneficiary directed Change Orders. The Owner and the Owner's auditors, and with respect to any Beneficiary directed Change Orders, the Beneficiary and the Beneficiary's auditors, shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Contractor shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 12 PAYMENTS

§ 12.1 Progress Payments

§ 12.1.1 Based upon Applications for Payment submitted to the Engineer by the Contractor, and Certificates for Payment issued by the Engineer, the Owner shall make progress payments on account of the Contract Sum to the Contractor, as provided below and elsewhere in the Contract Documents.

§ 12.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

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§ 12.1.3 Provided that an Application for Payment is received by the Engineer not later than the « » day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the « » day of the « » month. If an Application for Payment is received by the Engineer after the application date fixed above, payment of the amount certified shall be made by the Owner not later than « » (« ») days after the Engineer receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 12.1.4 With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Engineer to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

§ 12.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Contract Sum but not otherwise allocated to another line item or included in a Change Order; and (3) the Contractor's Fee.

§ 12.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Engineer may require. The schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 12.1.5.2 Intentionally deleted

§ 12.1.5.3 When the Contractor allocates costs from a contingency to another line item in the schedule of values, the Contractor shall submit supporting documentation to the Engineer.

§ 12.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the percentage of that portion of the Work which has actually been completed.

§ 12.1.7 In accordance with AIA Document A201-2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 12.1.7.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner (or the Beneficiary with respect to any Beneficiary directed Change Orders), suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Engineer determines, in the Engineer's professional judgment, to be reasonably justified; and
- .4 The Contractor's Fee, computed upon the Cost of the Work described in the preceding Sections 12.1.7.1.1 and 12.1.7.1.2 at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a

fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 12.1.7.1.1 and 12.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 12.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner (or the Beneficiary with respect to any Beneficiary directed Change Orders);
- .2 The amount, if any, for Work that remains uncorrected and for which the Engineer has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Engineer may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner’s auditors (or the Beneficiary’s auditors with respect to any Beneficiary directed Change Orders) in such documentation; and
- .6 Retainage withheld pursuant to Section 12.1.8.

§ 12.1.8 Retainage

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§ 12.1.8.1. For each progress payment made toward a Beneficiary directed Change Order prior to Substantial Completion, the Beneficiary may withhold the following amount, as retainage, from the payment otherwise due: 10%

§ 12.1.8.2 Upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes any retainage withheld from Prior Applications for Payment.

§ 12.1.9 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 12.1.10 Except with the Owner’s prior written approval, or in the case of Change Orders directed by the Beneficiary or alternatives directed by the Beneficiary under the Project Scope, the Beneficiary’s prior written approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

§ 12.1.11 The Owner and the Contractor, or in the case of Change Orders directed by the Beneficiary or alternatives directed by the Beneficiary under the Project Scope, the Beneficiary and the Contractor, shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

§ 12.1.12 In taking action on the Contractor’s Applications for Payment the Engineer shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor, and such action shall not be deemed to be a representation that (1) the Engineer has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 12.1.4 or other supporting data; (2) that the Engineer has made exhaustive or continuous on-site inspections; or (3) that the Engineer has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner’s auditors acting in the sole interest of the Owner. Such examinations, audits, and verifications, if required by the Beneficiary, will be performed by the Beneficiary’s auditors acting in the sole interest of the Beneficiary.

§ 12.2 Final Payment

§ 12.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract, except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Engineer in accordance with Section 12.2.2.

§ 12.2.2 Within 30 days of the Owner's receipt of the Contractor's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Engineer that it will not conduct an audit. Within 30 days of the Beneficiary's receipt of the Contractor's final accounting for the Cost of the Work applicable to any Beneficiary directed Change Orders, the Beneficiary shall conduct an audit of the Cost of the Work or notify the Engineer that it will not conduct an audit.

§ 12.2.2.1 If any party conducts an audit of the Cost of the Work, the party shall, within 30 days after completion of the audit, submit a written report based upon the auditors' findings to the Engineer.

§ 12.2.2.2 Within seven days after receipt of the written report described in Section 12.2.2.1, or receipt of notice that no party will conduct an audit, and provided that the other conditions of Section 12.2.1 have been met, the Engineer will either issue to the Owner (and the Beneficiary with respect to any Beneficiary directed Change Orders) a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Engineer's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 12.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Engineer is not responsible for verifying the accuracy of the Contractor's final accounting.

§ 12.2.2.3 If any auditors' report concludes that the Cost of the Work, as substantiated by the Contractor's final accounting, is less than claimed by the Contractor, the Contractor shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Engineer's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the auditors becoming binding on the Contractor. Pending a final resolution of the disputed amount, the Owner, or as applicable, the Beneficiary, shall pay the Contractor the amount certified in the Engineer's final Certificate for Payment.

§ 12.2.3 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Engineer's final Certificate for Payment, or as follows:

« »

§ 12.2.4 Intentionally deleted

§ 12.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

« » % « »

ARTICLE 13 DISPUTE RESOLUTION

§ 13.1 Initial Decision Maker

The Engineer will serve as Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to the Agreement, to serve as Initial Decision Maker.

§ 13.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

- [« »] Arbitration pursuant to Section 15 of AIA Document A201–2017
- [« »] Litigation in a court of competent jurisdiction
- [« »] Other (*Specify*)

If the Owner and Contractor, or the Beneficiary and the Contractor as applicable, do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction and the substantially prevailing party shall be entitled to reasonable attorneys' fees and expenses to the extent deemed reasonable and appropriate under all the circumstances by the court having jurisdiction over such litigation.

ARTICLE 14 TERMINATION OR SUSPENSION

§ 14.1 Termination

§ 14.1.1 Subject to the Beneficiary's prior written approval, which may be given or withheld in the Beneficiary's sole discretion, the Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017. Absent Beneficiary's prior written approval, which may be given or withheld in Beneficiary's sole discretion, Contractor shall not have any right to terminate or suspend its obligations to complete the Work in the event of any Owner default and/or in the event of Owner's bankruptcy, insolvency, dissolution, or other circumstance affecting Owner's ability to pay Contractor under this Agreement. In all events, Contractor expressly assumes the obligation to complete the Work on Beneficiary's behalf and expressly waives any right under this Agreement, at common law or in equity to be paid by Beneficiary (other than with respect to Beneficiary directed Change Orders). Contractor acknowledges that it has entered into the Contract for good and valuable consideration.

§ 14.1.2 Termination by the Owner for Cause

§ 14.1.2.1 If, subject to Beneficiary's prior approval (which may be given or withheld in the Beneficiary's sole discretion), the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Contractor under Article 14 of AIA Document A201–2017 shall not exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Contractor to the date of termination;
- .2 Add the Contractor's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 14.1.2.2 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 14.1.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 14, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

§ 14.1.3 Intentionally deleted

« »

§ 14.2 Suspension

Subject to the Beneficiary’s prior approval (which may be given or withheld in the Beneficiary’s sole discretion), the Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Contract Sum and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term “profit” shall be understood to mean the Contractor’s Fee as described in Article 5 and Section 6.4 of this Agreement.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 15.2.1 The Owner’s representative:
(Name, address, email address and other information)

« »William Fellows
BTC Mall Associates, LLC
101 Cherry Street, Suite 440
Burlington, Vermont 05401
wfellows@devonwoodinvestors.com
« »
« »
« »
« »
« »

§ 15.2.2 The Beneficiary’s Representative:
Name: Chapin Spencer, Director, City of Burlington Department of Public Works
Address: 645 Pine St Ste A, Burlington, VT 05401
Email Address: cspencer@burlingtonvt.gov

§ 15.3 The Contractor’s representative:
(Name, address, email address and other information)

Scott Ireland
193 Industrial Avenue
Williston, VT 05495
SCOTT@SDIRELAND.COM
« »
« »
« »
« »
« »

§ 15.4 No party’s representative shall be changed without ten days’ prior notice to the other parties.

§ 15.5 Insurance and Bonds

§ 15.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A102™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents. The Beneficiary shall be an additionally named insured in all required policies of insurance.

§ 15.5.2 The Contractor shall provide payment and performance bonds as set forth in AIA Document A102™–2017 Exhibit A, and elsewhere in the Contract Documents. The Beneficiary shall be a named beneficiary and shall be entitled to rely upon and enforce all such bonds.

§ 15.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

« »

§ 15.7 Other provisions: This Contract may not be amended by the Owner and Contractor without the prior written approval of the Beneficiary, which shall not be unreasonably withheld or delayed, except with respect to the material terms hereof the modification of which are expressly subject to the Beneficiary’s sole discretion

§ 15.8 This Agreement may be executed in any number of counterparts, any or all of which may contain the signatures of less than all the parties, and all of which shall be construed together as but a single instrument and shall be binding on the Parties as though one originally executed document. Signatures to this Agreement transmitted by electronic means shall be valid and effective to bind the party so signing.

« »

ARTICLE 16 ENUMERATION OF CONTRACT DOCUMENTS

§ 16.1 This Agreement is comprised of the following documents:

- .1 AIA Document A102™–2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A102™–2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™–2017, General Conditions of the Contract for Construction
- .4 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

(Insert the date of the E203-2013 incorporated into this Agreement.)

« »

- .5 Drawings [to be provided prior to execution]

Number	Title	Date

- .6 Specifications

Section	Title	Date	Pages

- .7 Addenda, if any:

Number	Date	Pages

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 16.

- .8 Other Exhibits:
(Check all boxes that apply.)

[] AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

« »

[« »] The Sustainability Plan:

Title	Date	Pages

[« X »] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
Burlington Standard Contract Conditions for Construction Contractors.			

To the extent of any inconsistency between the Burlington Standard Contract Conditions for Construction Contractors and any other Contract Document, the conditions of the Burlington Standard Contract Conditions for Construction Contractors shall prevail.

- 9 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor’s bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

« Escrow Agreement and associated documents »

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

By: RD Burlington Associates LLC,
Its Sole Member

By: Devonwood City Place Investors, LLC,
Its Managing Member

By: Donald F Sinex, LLC,
Its Managing Member

(Printed name and title)

CONTRACTOR (Signature)

Scott Ireland, CEO

(Printed name and title)

Beneficiary: City of Burlington, Miro Weinberger, Mayor

20417888.5

Exhibit K

Form of Notice of Deed Acceptance

_____, 2021

City of Burlington
City Hall
149 Church Street
Burlington, VT 05401

Dunkiel Saunders Elliot Raubvogel & Hand PLLC
91 College Street, P.O. Box 545
Burlington, Vermont 05402-0545

With copies to:
BTC Mall Associates LLC
101 Cherry Street, Suite 440
Burlington, Vermont, 05401
Attention: Donald Sinex
Email: dsinex@devonwoodinvestors.com

Brian Dunkiel, Esq.
Dunkiel Saunders
91 College Street, P.O. Box 545
Burlington, Vermont 05402-0545
Email: bdunkiel@dunkielsaunders.com

Roger Roisman, Esq.
35 Northwoods Lane
Boynton Beach, Florida 33436
Email: roger@rmroisman.com

Re: **Notice of Deed Acceptance**

Dear Escrow Agent:

Reference is hereby made to that certain CityPlace Escrow Agreement (the “Escrow Agreement”) entered into as of February __, 2021 by and between the City of Burlington (the “City”), BTC Mall Associates LLC (“BTC”), and Dunkiel Saunders Elliot Raubvogel & Hand PLLC (the “Escrow Agent”).

This letter shall serve as the Notice of Deed Acceptance as defined in and pursuant to Section 5(a) of the Escrow Agreement.

Thank you for your attention to this matter.

Sincerely,

Mayor Miro Weinberger

Exhibit L

Form of Notice of Plans and Budget Acceptance

_____, 2021

City of Burlington
City Hall
149 Church Street
Burlington, VT 05401

Dunkiel Saunders Elliot Raubvogel & Hand PLLC
91 College Street, P.O. Box 545
Burlington, Vermont 05402-0545

With copies to:
BTC Mall Associates LLC
101 Cherry Street, Suite 440
Burlington, Vermont, 05401
Attention: Donald Sinex
Email: dsinex@devonwoodinvestors.com

Brian Dunkiel, Esq.
Dunkiel Saunders
91 College Street, P.O. Box 545
Burlington, Vermont 05402-0545
Email: bdunkiel@dunkielsaunders.com

Roger Roisman, Esq.
35 Northwoods Lane
Boynton Beach, Florida 33436
Email: roger@rmroisman.com

Re: **Notice of Plans and Budget Acceptance**

Dear Escrow Agent:

Reference is hereby made to that certain CityPlace Escrow Agreement (the “Escrow Agreement”) entered into as of February ___, 2021 by and between the City of Burlington (the “City”), BTC Mall Associates LLC (“BTC”), and Dunkiel Saunders Elliot Raubvogel & Hand PLLC (the “Escrow Agent”).

On behalf of the City, this letter shall serve as the Notice of Plans and Budget Acceptance, as defined in and pursuant to Section 5(b) of the Escrow Agreement.

Thank you for your attention to this matter.

Sincerely,

Mayor Miro Weinberger

Exhibit M

Form of MPI Trigger Notice

_____, 202__

City of Burlington
City Hall
149 Church Street
Burlington, VT 05401

Dunkiel Saunders Elliot Raubvogel & Hand PLLC
91 College Street, P.O. Box 545
Burlington, Vermont 05402-0545

With copies to:
BTC Mall Associates LLC
101 Cherry Street, Suite 440
Burlington, Vermont, 05401
Attention: Donald Sinex
Email: dsinex@devonwoodinvestors.com

Brian Dunkiel, Esq.
Dunkiel Saunders
91 College Street, P.O. Box 545
Burlington, Vermont 05402-0545
Email: bdunkiel@dunkielsaunders.com

Roger Roisman, Esq.
35 Northwoods Lane
Boynton Beach, Florida 33436
Email: roger@rmroisman.com

Re: **MPI Trigger Notice**

Dear Escrow Agent:

Reference is hereby made to that certain CityPlace Escrow Agreement (the “Escrow Agreement”) entered into as of February ____, 2021 by and between the City of Burlington (the “City”), BTC Mall Associates LLC (“BTC”), and Dunkiel Saunders Elliot Raubvogel & Hand PLLC (the “Escrow Agent”), and to that certain Amended and Restated Development Agreement (the “A&R DA”) entered into as of _____, 2021 by and between the City and BTC.

This letter shall serve as an MPI Trigger Notice as defined in and pursuant to Section 6(b) of the Escrow Agreement. BTC has [(i) failed to Commence Construction of the Revised Project on or prior to the Revised Project Construction Commencement Deadline, and/or (ii) failed to maintain Continuous and Ongoing Construction of the Revised Project from and after having timely met its obligation Commence Construction until Completion, and/or (iii) failed to timely complete and deliver the Public Improvements pursuant to the A&R DA, in each instance as such terms are defined in the A&R DA and all as provided in and subject to the conditions of the A&R DA.]¹

The City expects timely compliance with the terms of the Escrow Agreement resulting from the giving of this notice. If you have any questions please do not hesitate to contact me immediately. Thank you for your attention to this matter.

Sincerely,

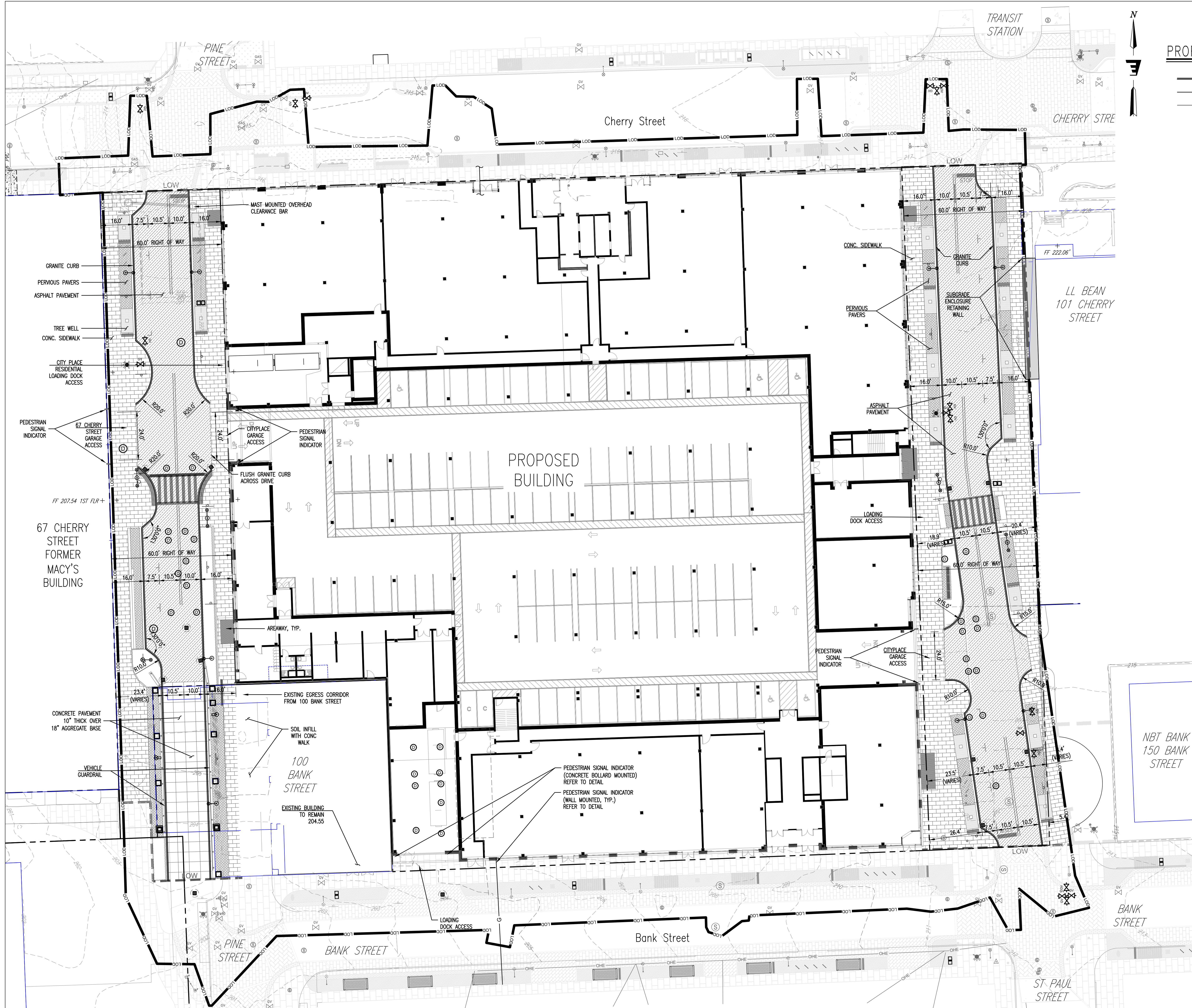
Mayor Miro Weinberger

¹ Note to Draft: City to specify event(s) in signed notice.

Exhibit N

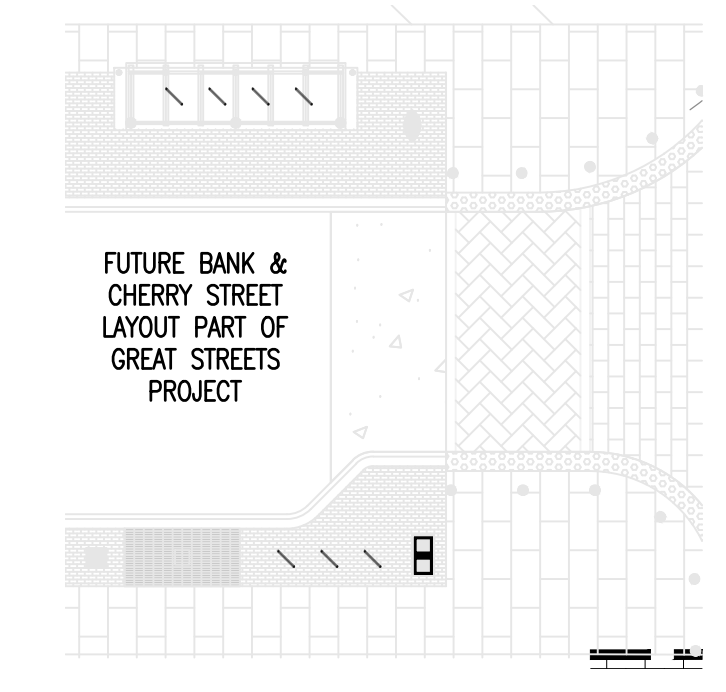
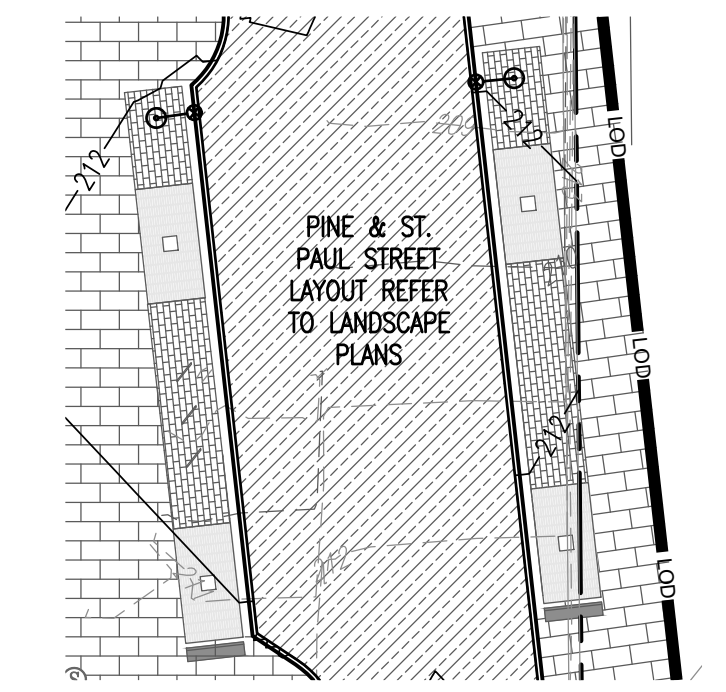
Concept Plan for Public Improvements

Attached



PROPOSED FEATURES LEGEND

- EDGE OF PAVEMENT/CURB
- 250 — MAJOR CONTOUR
- 251 — MINOR CONTOUR
- SIGN
- SITE LIGHT
- CATCH BASIN
- DRAINAGE MANHOLE
- WATER VALVE
- HYDRANT
- SEWER MANHOLE



67 CHERRY STREET FORMER MACY'S BUILDING

PROPOSED BUILDING

100 BANK STREET

Bank Street

BANK STREET

ST. PAUL STREET

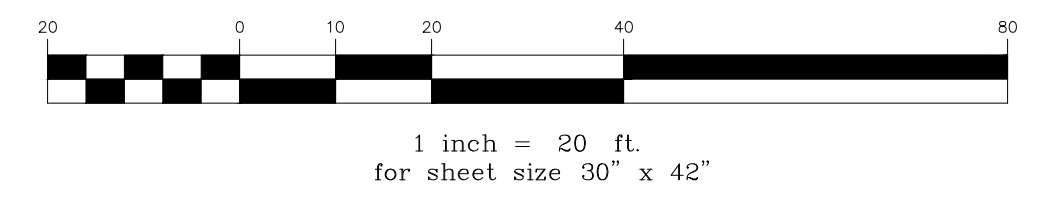
LL BEAN 101 CHERRY STREET

TRANSIT STATION

Cherry Street

CHERRY STREET

GRAPHIC SCALE



fff
freeman french freeman
 81 Maple Street • Burlington VT 05401
 802-464-4244 • www.ftrf.com
 Architecture • Planning • Interiors

ENGINEERING VENTURES INC.
 100 North Main Street • Burlington VT 05401
 802-255-1111 • www.engvent.com
 Civil • Site Engineering

SE GROUP
 131 Church St. Suite 330
 Burlington, VT 05401 | 802.362.0098
 www.segroup.com
 Landscape Architecture / Streetscape

CITYPLACE
BURLINGTON
 ZONING SUBMISSION - NOT FOR CONSTRUCTION

OWNER
BTC MALL ASSOCIATES, LLC

A PROJECT BY
DEVONWOOD INVESTORS, LLC
 DONA SENEZ, MANAGING DIRECTOR

PROJECT NO. A1947.00	CONSULTANT PROJ. # 14660
ORIGINATOR DATE 10/15/20	SCALE As Indicated
DRAWN BY HKW	CHECKED BY KW
DATE LOG: Zoning Submission	15 Oct 2020

SHEET CONTENTS

Site Plan

SHEET NO.
C-103

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Exhibit O

Preliminary Budget

Attached