



July 18, 2020

VIA EMAIL & U.S. MAIL

BTC Mall Associates LLC
c/o Brookfield Properties
250 Vesey Street, 15th Floor
New York, NY 10281
Attention: Aanen Olsen, Senior Vice President

Re: Notice of Default

Development Agreement dated as of October 26, 2017 made by and between the City of Burlington ("City"), as "Owner", and BTC Mall Associates LLC ("BTC"), as "Developer", as amended by Letter Agreement dated August 27, 2018 and fully executed on September 7, 2018 (as amended, the "Development Agreement"; capitalized terms used in this letter and not defined shall have the meanings given in the Development Agreement)

Dear Mr. Olsen,

I am writing on behalf of the City to notify BTC that it is in default of its obligations under the Development Agreement.

BTC's failure to commence construction of the Project following demolition of the Burlington Town Center mall and parking garage constitutes a breach of its obligation to diligently prosecute construction of the Project to completion as required by Sections 1(a) and 3(b) of the Development Agreement. As a result of its breach, BTC will not be able to construct the Public Improvements in sufficient time to be eligible for reimbursement in accordance with the Development Agreement and in compliance with the statutory requirements applicable to the City's expenditure of funds in the Waterfront TIF District (which are referenced in the Development Agreement). The City has and will continue to suffer harm resulting from BTC's breach, and has been denied the benefit of its bargain.

Pursuant to Section 3(b) of Development Agreement, BTC provided the City with a letter from Brian Harper, CEO of Rouse Properties, LLC (predecessor-in-interest to Brookfield Properties), dated October 26, 2017 (the "Reliance Letter"), which stated in part:

"The undersigned ("Rouse"), the general partner of the sole member of the managing member of the joint venture that owns BTC Mall Associates, LLC (the "Owner") hereby states...that it has entered into a LLC joint venture agreement with BDM Associates, LLC, dated as of June 23, 2017 **that requires Rouse,**

among other things, to invest equity in the Owner that may be used to finance the construction of the Project. The Owner plans to commence construction in reliance on the available equity financing. The available equity financing may be used by the Owner as needed to fund construction until such time as the Owner secures debt financing for the project.”

In follow up to that letter, by email dated November 13, 2017 Eric Dinenberg, Executive Vice President, Development, Construction and Operations for Rouse Properties, wrote to Mayor Weinberger stating, in part:

“I confirm that BTC Mall Associates, LLC (Owner) is diligently pursuing the finalization of our Foundation work contract and I expect that we will have an executed agreement for the Foundation work by mid to late December. Upon finalization and execution of this contract, the executed agreement will be available for review by the City. Further, as we previously wrote to you in our previous letter our equity commitment and our related funds remain fully available to pay construction costs incurred to construct the project, including the enabling work and the Foundation work.”

After having used such equity financing to demolish the mall and parking garage, BTC failed to authorize the use of such equity financing to construct the Project despite its supposed “availability” and “commitment.” The City relied on the assurances and commitments made by Rouse/Brookfield to authorize demolition of the Burlington Town Center mall and parking garage, and expects them to be honored as required by law. But for those assurances and commitments, the City would not have released permits authorizing the demolition work.

Until now, the City has withheld commencing legal action arising from BTC’s and Brookfield/Rouse’s failure to honor their promises, assurances, and commitments to continuously construct the Project following demolition of the mall and parking garage. The City has done so in an attempt to give Brookfield time to familiarize itself with the Project, and to refashion the scope of the Project to better suit Brookfield’s view of the market. Brookfield’s agents and representatives have repeatedly assured the City that Brookfield is committed to the Project and that it would not divest its ownership interest in BTC. Critically, Brookfield and BTC have stated that BTC intends to recommence construction and then complete the Project after concluding its due diligence and redesign work.

Last week, Brookfield informed the City that it intends to exit BTC in settlement of its ongoing partnership dispute with Devonwood Investors LLC. This is in direct contravention of its earlier reassurances to the City. It appears to the City that Brookfield has been contemplating this action for some time, and that its earlier assurances and reassurances were knowingly false when made and designed to induce the City’s continued support of the Project.



In addition to breaching promises made to the City upon which the City relied, BTC, including Brookfield, has failed to perform in accordance with the following terms and provisions of the Development Agreement (emphasis added where shown):

1. “The Owner agrees that once construction of the Project has commenced, **Owner shall diligently prosecute construction to completion**, subject to any delays caused by a force majeure or other event outside the reasonable control of the Owner.” (Section 1(a) of Development Agreement).
2. “Owner plans to complete the Public Improvements in sufficient time to be eligible for reimbursement in accordance with Section 4 of this Agreement. Each Party agrees to use **best efforts** to cause the Project to adhere to the Project Schedule.” (Section 1(b) of Development Agreement).
3. “In order to provide the City with **reassurance that construction of the Project will continue without interruption** (subject to force majeure events) once Owner commences structural demolition of existing improvements on the Property, prior to the commencement of structural demolition for the Project and the release by the City of the relevant structural demolition permit (City agrees to release any interior, non-structural demolition permit that is required upon application by Owner), Owner shall provide the City with (i) the opportunity to review **evidence of a commitment to extend fully-secured equity financing for the construction of the Project in an amount not to exceed \$56 million** (such evidence will include, among other possible items, a **copy of an executed agreement between the Owner and Rouse Properties, Inc. confirming the obligation of Rouse Properties, Inc. or a wholly subsidiary thereof to fund equity for Project construction in an amount not to exceed \$56 million**) together with evidence of the amount of equity financing expended to date (which shall mean a certification from the Owner of the amount expended to date on predevelopment and development expenses for both the Private Improvements and the Public Improvements), (ii) either (a) an executed term sheet from a qualified lender evidencing construction loan financing for the Project, subject to closing conditions and requirements of the lender, or (b) a **letter of assurance, reasonably acceptable to the City, issued to the City by Rouse Properties, Inc., or a wholly subsidiary thereof with GAAP net worth of at least \$750MM, stating that, subject to reasonable terms and conditions, the Project will commence construction in reliance on the equity commitment described above and that Owner will pursue closing of construction financing for the Project to be available to the Project not later than March 31, 2018**, (iii) an executed construction contract that covers the performance of the structural demolition work, (iv) an executed construction contract that covers the performance of the site work, foundation work and soils work for the Project, and (v) an executed construction contract that covers the performance of construction, mechanical and electrical work to enable that portion of the existing Burlington Town Center mall building that will not be demolished to continue to



function once structural demolition of the Project commences.” (Section 3(b) of Development Agreement).

4. “BTC agrees to provide the City with complete and accurate information related to the cost of demolishing the existing improvements and designing the new segments of Pine Street and St. Paul Street for which BTC expects reimbursement under the Development Agreement, including bidding materials, contracts, and other materials reasonably requested by the City, within 14 days of the date of this letter.” (Section 4 of the Letter Agreement).

5. “BTC will also provide information for all hard and soft costs which have been incurred to date and for which BTC expects reimbursement under the Development Agreement.” (Section 4 of the Letter Agreement).

Brookfield and BTC’s actions also: (a) breach the covenant of good faith and fair dealing, (b) fraudulently induced the City to release permits authorizing the demolition of the mall and parking garage, and (c) fraudulently induced the City to petition the Vermont Economic Progress Counsel with a Substantial Change Request for Burlington’s Waterfront TIF District. Further, the City believes that Brookfield and BTC acted in bad faith since the Letter Agreement was finalized by:

- (i) claiming that BTC required modifications to the Development Agreement so that it could promptly commence construction of the Project foundation in anticipation of receiving debt financing and then failing to commence construction despite the continued “availability” of equity, and
- (ii) claiming that BTC remained fully committed to the Project, while secretly designing alternative project designs for the property, and
- (iii) claiming that Brookfield was committed to the Project and that it would not divest its ownership interest in BTC until after construction was complete, and then secretly negotiating to exit the partnership that controls the Project prior to commencing construction.

The City intends to pursue all available legal and equitable remedies arising from or in connection with Brookfield’s and BTC’s breach, fraud, misrepresentation, and bad faith, including claims for monetary damages, lost property tax revenue, and specific performance.

The City reminds Brookfield and BTC, including all of their constituent members, managers and employees, of their obligations to preserve all Electronically Stored Information (“ESI”) relevant to the Project. Relevant ESI includes all emails (both personal and from company email addresses), text messages and voice mails concerning Brookfield’s relationship with Devonwood, and Brookfield’s commitment to the Project. In the event all ESI is not preserved



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the City will seek sanctions in any forthcoming litigation under Rule 37(e) of the Federal Rules of Civil Procedure and/or the Vermont Rules of Civil Procedure. If any relevant ESI has already been lost or destroyed, please notify the City of the nature of the ESI, the date of destruction or loss, and the reason for such loss or destruction.

Very truly yours,



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