

Memorandum of Agreement

This Memorandum of Agreement (“Memorandum”) dated _____, 2017 is made by and between the **City of Burlington**, a Vermont municipal corporation (the “City”) and **BTC Mall Associates LLC**, a Delaware limited liability company (“Owner”). Each is referred to individually as a “Party” and collectively as the “Parties.”

Background

A. Owner owns the real property numbered 49 Church Street, Burlington, Vermont, Parcel No. 044-4-004-000 which is improved with a retail shopping mall known as “Burlington Town Center”, and the real property numbered 75 Cherry Street, Burlington, Vermont, Parcel No. 044-4-033-000, which is improved with a parking garage (together, the “Property”), which Owner acquired by Special Warranty Deed dated December 16, 2013 and recorded in Volume 1239 at Page 621 of the City of Burlington Land Records.

B. The Parties have entered into a Development Agreement (the “Agreement”) dated _____, 2017, with respect to Owner’s redevelopment of the Property with a project more particularly described therein (the “Project”). Capitalized terms used in this Memorandum and not defined shall have the meanings given in the Agreement.

C. Certain elements of the Project are described and referred to in the Agreement as the “Private Improvements”, certain elements of the Project are described and referred to in the Agreement as the “Public Improvements” and certain elements of the Project are described and referred to in the Agreement as the “Additional Public Improvements”.

D. The Agreement contemplates that the City will incur municipal bond debt within its Waterfront Tax Increment Financing District (the “Waterfront TIF District”) to finance certain costs associated with the Public Improvements and the Additional Public Improvements; specifically, the Agreement contemplates that the City will use such municipal bond debt to (1) directly pay for or reimburse itself for certain costs in connection with the Public Improvements and the Additional Public Improvements and (2) reimburse Owner for certain costs incurred by Owner in connection with the Public Improvements and the Additional Public Improvements (collectively, the “TIF Costs”), and the Agreement acknowledges that the tax increment generated by the Private Improvements must be sufficient to service the debt incurred by the City to pay the TIF Costs.

E. To ensure that the tax increment generated by the Private Improvements will be sufficient to service the debt incurred by the City to pay the TIF Costs, the Agreement authorizes the City to establish a minimum assessed value of the Property upon completion of the Project so that sufficient tax increment is generated to pay the debt service on the municipal bonds, in the manner described therein and memorialized by this Memorandum.

The foregoing recitals and the following information accurately reflects the agreement between the Parties contained in the Agreement with respect to the matters described above:

1. The Parties acknowledge that the tax increment generated by the real property owned by Owner numbered 101 Cherry Street, Burlington, Vermont and identified as Parcel No. 044-4-004-001, which is improved with a four story mixed-use (retail/office) building, is also (i.e., in addition to the Property) legally permitted to contribute to the payment of debt service on the municipal bonds issued to finance the City's payment of the TIF Costs under and in accordance with the Agreement.

2. The City will assess the Property and 101 Cherry Street using the normal assessment procedure required by applicable state law, provided that if the City finds it necessary to ensure that the total tax increment generated by the Private Improvements, by those portions of the Property that are not part of the Project, and by 101 Cherry Street is sufficient to pay the debt service on the municipal bonds issued to finance the City's payment of the TIF Costs under and in accordance with the Agreement, the City shall establish the minimum assessed value of the Property so that sufficient tax increment is generated to pay the debt service on the municipal bonds, and the City shall provide Owner with documentation that reasonably substantiates the assessed value of the Property established by the City for such purposes.

3. Any such minimum assessment of the Property shall only be in effect during the period of municipal bond repayment and only while necessary to ensure the total tax increment generated by the Private Improvements is sufficient to pay the debt service on the municipal bonds.

4. Owner agrees not to appeal the minimum assessment of the Property in an effort to reduce it below the value established by the City pursuant to the agreement memorialized by this Memorandum, and Owner shall pay property taxes based upon at least that minimum assessed value during the period of municipal bond repayment regardless whether any portion of the Property is owned by an entity that is statutorily exempt from property taxation or that is subject to statutorily limited or reduced property taxation. The Owner's agreement to pay such property taxes and not to appeal such assessment during the period of municipal bond repayment is hereby established as a covenant binding upon Owner and its successors and assigns running with title to the Property until such time as the municipal bonds shall have been paid in full.

5. This Memorandum shall be executed by the Parties and recorded in the City of Burlington land records and is intended to provide notice to third parties of the agreements contained in the Agreement and described herein. A copy of the Agreement is maintained at the offices of each Party, including at City Hall, Burlington, Vermont. The agreement memorialized by this Memorandum shall be a contractual covenant binding upon Owner and its successors and assigns, running with the title to the Property regardless of the tax exempt status of the owner of any portion of the Project or Property. This Memorandum is not intended to amend or modify the terms and conditions of the Agreement. To the extent that the terms and conditions of this Memorandum differ from the terms and conditions of the Agreement, the terms and conditions of the Agreement shall govern and prevail.

Signature Page to Follow

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

BTC Mall Associates LLC

By: BDM Associates LLC, Its Manager

Witness By: _____
Name: Donald Sinex
Title: Manager

Date: _____

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

At Burlington, in said County and State, this ____ day of _____, 2017 personally appeared Donald Sinex, to me known, being the Manager of BDM Associates LLC, being the Manager 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: 2/10/19

City of Burlington

Witness By: _____
Miro Weinberger, Mayor

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

At Burlington, in said County and State, this ____ day of _____, 2017 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: 2/10/19