

STATE OF NORTH CAROLINA

COUNTY OF CABARRUS

INFRASTRUCTURE
REIMBURSEMENT
AGREEMENT

THIS INFRASTRUCTURE REIMBURSEMENT AGREEMENT (“Agreement”) entered into as of this _____ day of _____, 20_, by and between Rocky River Road Associates, LLC, a North Carolina Limited Liability Corporation (“Developer”), and the Town of Harrisburg, a North Carolina municipal corporation (“Town”).

WHEREAS, Developer plans a mixed-use development (“Project”) on property located on Rocky River Road in the area particularly as depicted on the map attached hereto as Exhibit A (the “Property”).

WHEREAS, in order to facilitate traffic flow within and in the general area of the Project, Developer intends to construct the Road Improvements (defined below) in the location shown on the Subdivision Plan;

WHEREAS, the Town considers the development of the Project and other economic development impacts of the Project to be of significant public benefit;

WHEREAS, construction of the Road Improvements would not only facilitate the Project and the economic development benefits that would derive therefrom, it would also expand alternative traffic routes and provide increased connectivity to existing streets and roads in the area;

WHEREAS, the Town is willing to participate in the Project through an infrastructure reimbursement agreement pursuant to N.C. Session Law 2001-329 by reimbursing Developer for the cost of designing and constructing Road Improvements under the terms and conditions set forth in this Agreement;

WHEREAS, the Town has determined that the cost to the Town in reimbursing Developer for designing and constructing Road Improvements is less than it would cost the Town to design and construct the road through a public contract pursuant to G.S. 143-128 *et seq.*

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the parties agree as follows:

1. Definitions.

“Baseline Tax” refers to the total *ad valorem* real property taxes (excluding municipal service district taxes) levied by the Town on the Property during the Town’s 2019 Fiscal Year, based on the finally determined assessed value of the Property for the Town’s 2019 Fiscal Year.

“Fiscal Year” shall mean the period of time that extends from July 1st to June 30th of the immediately following calendar year. For example, fiscal year 2019 extends from July 1, 2018 to June 30, 2019.

“Force Majeure” means, as applicable, any acts of God, strikes, lockouts or other industrial disturbances, unusual adverse weather conditions, terrorism or other acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, tornadoes, hurricanes, floods, high-water washouts, other matters outside of Developer’s reasonable control.

“Maximum Tax Increment Reimbursement Amount” shall mean up to \$6,000,000, plus cumulative interest at up to 5% per annum, compounded monthly.

“Property” has the meaning set forth in the Recitals hereto.

“Road Improvements” shall mean Farmington Ridge Parkway as shown on Exhibit B, both within the Project site together with all associated improvements, including without limitation, survey and engineering costs, drainage facilities or improvements, utilities, adjacent sidewalks, street lights, planting strips, irrigation, street trees, including Street 3 and a portion of Street 1 as highlighted on Exhibit B, and including signalization of the intersection of Farmington Ridge Parkway and Rocky River Road, and associated improvements to Rocky River Road and Plaza Road Extension as required by the North Carolina Department of Transportation.

“Tax Increment Increase Amount” shall mean for each applicable Fiscal Year, the amount by which (a) the Town’s *ad valorem* taxes levied on the property as shown on Exhibit C, which includes Tax Parcel #'s 55063634200000, 55061407290000, 55061394160000, and 55062310830000, and that have been paid prior to February 1, during such Fiscal Year on the Property exceeds (b) the Baseline Tax.

2. Design and Construction. The Developer shall:

- a. design the Road Improvements;
- b. obtain all necessary regulatory approvals for construction of Road Improvements;
- c. acquire all right-of-way and temporary construction easements necessary for the construction of Road Improvements;

- d. construct the Road Improvements in accordance with all regulatory standards and approvals, including all modifications or improvements required through normal governmental inspection processes; and
 - e. upon completion of the Road Improvements, dedicate or convey, or provide for the dedication or conveyance, to the Town the Road Improvements together with those portions of the right of way thereof located on the Property.
3. Town Reimbursement. The City shall reimburse the Developer for the cost of the Road Improvements as follows:
- a. Developer may request a tax increment reimbursement payment on or before February 1 of either the first, second, or third calendar year that begins following the date of final inspection and acceptance by the Town of the Road Improvements as selected by Developer, and Town shall commence making such payments in accordance with the provisions of this Agreement for such year and for each of the eleven calendar years that immediately follow the year when the first reimbursement request is made.
 - b. By March 1 of each calendar year after receiving the reimbursement request pursuant to subsection (b) above, the Town shall make a reimbursement payment to Developer in an amount equal to 90% of the Tax Increment Increase Amount for that Fiscal Year. The parties acknowledge that only one request will be made by Developer to commence the reimbursement payments in the first year and that no further request is needed for the payments in the eleven subsequent years.
 - c. Notwithstanding subsection (c) above, in the Fiscal Year in which the Town's reimbursement payment would, along with the total amount of all previous reimbursement payments paid pursuant to subsection (c), exceed the Maximum Tax Increment Reimbursement Amount, the Town shall pay the Developer only that amount necessary to make the aggregate tax increment reimbursement payments then paid to Developer, together with the tax increment reimbursement payment then due, equal to the Maximum Tax Increment Reimbursement Amount.
 - d. The Town's obligation to make reimbursement payments shall terminate upon the earlier of: (i) the Fiscal Year in which total tax increment reimbursement payments equal the Maximum Tax Increment Reimbursement Amount; or (ii) the end of the eleventh Fiscal Year following the first Fiscal Year in which the Town made a

reimbursement payment pursuant to the terms of subsection (b) hereof (i.e. after twelve (12) yearly payments).

4. Term. This Agreement shall commence upon execution and shall continue until the Town has made its final reimbursement payment pursuant to Section 3. Notwithstanding the foregoing, the Town may terminate this Agreement if either: (a) commencement of construction of the Road Improvements has not begun by December 31, 2020; or (b) the Road Improvements are not substantially completed in a good and workman-like manner in accordance with all applicable laws and the applicable standards within thirty-six (36) months following commencement, subject, however to a day for day extension of the thirty-six (36) month completion period for *Force Majeure*, as established by Developer to the reasonable satisfaction of the Town. Notwithstanding the foregoing, Developer may terminate this Agreement at any time upon written notice to the Town if in its discretion it decides not to develop the Property or to discontinue such development.

5. Notices. All notices concerning this project should be addressed as follows:

If to the Town:

Town of Harrisburg
Haynes Brigman
4100 Main Street
Suite 101
Harrisburg, NC 28075

If to the Developer:

Rocky River Road Associates, LLC
James Merrifield
2400 South Boulevard
Suite 300
Charlotte, NC 28203

Each party may change its address for notification purposes by giving the other party written notice of the new address and the date upon which it shall become effective.

6. No Third Party Rights. This Agreement is entered into by and between the parties hereto for their exclusive benefit. The parties do not intend to create or establish by this Agreement any third-party beneficiary status or rights, and no such third-party shall be entitled to enforce any right of obligation or enjoy any benefit created or established by this Agreement.

7. Binding Effect. This Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective successors or assigns.

8. Applicable Law. This Agreement shall be enforced, interpreted and construed by and under the laws of the State of North Carolina.

9. Interpretation. Each of the parties hereto has agreed to the use of this particular

language of the provisions of this Agreement and any questions of doubtful interpretation shall not be resolved by any rule or interpretation against the drafters, but rather in accordance with the fair meaning thereof, having due regard to the benefits and rights intended to be conferred upon the parties hereto and the limitations and restrictions upon such rights and benefits intended to be provided.

10. Entire Agreement. This Agreement is the entire agreement between the parties with respect to its subject matter and there are no other representations, understandings or agreements between the parties relative to such subject matter. This Agreement supersedes all prior agreements, negotiations, representations and proposals (“prior agreements”), written or oral, except to the extent such prior agreements are incorporated by reference into this Agreement.

11. Amendment. No amendment or modification to the Agreement shall be valid until in writing and signed by both parties to this Agreement.

12. Captions. The captions and headings set forth in this Agreement are for convenience of reference only and shall not be construed as part of this Agreement.

13. Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be an original, but all of which shall together constitute one (1) and the same instrument.

IN WITNESS THEREOF, the parties have executed this Agreement as of the date first above written.

ATTEST:

Town Clerk

TOWN OF HARRISBURG

By: _____

Name: _____

Title: _____

ATTEST:

ROCKY RIVER ROAD ASSOCIATES, LLC

By: Crosland Rocky River Road, LLC, Manager

By: Crosland Manager, LLC, its Manager

By: _____

Name: _____

Title: _____

DRAFT