

STATE OF NORTH CAROLINA

COUNTY OF CABARRUS

**INFRASTRUCTURE REIMBURSEMENT**  
**AGREEMENT**

THIS INFRASTRUCTURE REIMBURSEMENT AGREEMENT (“Agreement”) entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2019, 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”) ~~and Cabarrus County (“County”).~~

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 Exhibit B;~~

WHEREAS, the Town considers the ~~development of the Project~~ construction of the Road improvements and other economic development impacts of the ~~Project~~ Road Improvements to be of significant public benefit and has recommended the Road Improvements in its comprehensive transportation plans;

WHEREAS, construction of the Road Improvements would not only facilitate the Project and the economic development benefits that would derive therefrom, but 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~~ Road Improvements through an infrastructure reimbursement agreement pursuant to ~~N.C. Session Law 2001-329~~ N.C.G.S. 160A-499 by reimbursing Developer for a portion of the cost of designing and constructing the 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.*; and

WHEREAS, the County of Cabarrus (the “County”) has also determined to participate in the Road Improvements through an infrastructure reimbursement agreement based on the benefits and rationale set forth herein and the Town and the County will share in the reimbursement for the Road Improvements as illustrated on **Exhibit D**, attached hereto.

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 1<sup>st</sup> to June 30<sup>th</sup> 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, **accruing as funds are expended on the Road Improvements**, at up to 5% per annum, compounded monthly. **The Maximum Tax Increment Reimbursement Amount is a part of the Cumulative Baseline Tax levied by the Town and the County and the reimbursement shall be apportioned as illustrated on Exhibit D, attached hereto.**

**“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 Shady Vale Lane and a portion of Dutch Creek Drive 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 #55061407290000, along with Tax Parcels #55061394160000, ~~5506364200000~~, and 55062310830000 at which time these ~~three~~ **two** parcels are properly annexed into the Town, ~~and~~ that have been paid prior to February 1 during such Fiscal Year on the Property, exceeds (b) the Baseline Tax. **An analysis of the tax increment reimbursement is attached hereto as Exhibit D for illustrative purposes.**

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;
  - f. provide maintenance of ~~the~~ Road Improvements for the duration of time there is a ~~TIF~~ ~~balance~~ reimbursement due to the Developer, but not to exceed Year 14, ~~such~~ ~~maintenance~~ to specifically include items such as potholes ~~repair~~, asphalt cracking, curb and gutter damage, and any other items that may affect the integrity of the street infrastructure system; and
  - g. provide a construction commitment in an amount adequate to repave all ~~the~~ Road Improvements ~~identified in the Agreement~~, which the Developer will fund at the completion of Year 14 unless the ~~TIF~~ reimbursement has otherwise been repaid in full by the end of Year 13.
3. Town ~~and County~~ Reimbursement. The Town ~~and County~~ 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~~ September 30<sup>th</sup> of either the first, second, or third ~~calendar~~ fiscal 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 (a) above, the Town shall make a reimbursement payment to Developer in an amount ~~of at least 85%, but no more than 90%~~ 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.



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 OF HARRISBURG

\_\_\_\_\_  
Town Clerk

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ROCKY RIVER ROAD ASSOCIATES, LLC

By: Crosland Rocky River Road, LLC, Manager By:  
Crosland Manager, LLC, its Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

PREAUDIT CERTIFICATION

This instrument has been pre-audited in a manner required by applicable law.

\_\_\_\_\_  
Finance Officer