



Royal Oak
DOWNTOWN
DEVELOPMENT AUTHORITY

Meeting Date: 09/20/2017

211 Williams Street
Royal Oak, MI 48067
Phone: (248) 246-3280
downtownroyaloak.org

MEMORANDUM

DATE: September 15, 2017

TO: MEMBERS OF THE DOWNTOWN DEVELOPMENT AUTHORITY

SUBJECT: **REIMBURSEMENT AGREEMENT – 600 S MAIN (BURTON-KATZMAN)**

The Business Marketing Committee, BMC has met with representatives of Burton-Katzman on several occasions to discuss the DDA's potential assistance with their proposed development on the municipal surface parking lot at 600 S Main Street.

Based upon those discussions a draft reimbursement was prepared by the DDA's legal counsel (Kerr Russell Weber) and has been reviewed by the developer. Subsequent discussions have resulted in some revisions and it is anticipated that the revised document will be available for distribution on Monday, September 18th.

Respectfully Submitted,

Timothy E. Thwing
Executive Director

Enclosure/attachment

REIMBURSEMENT AGREEMENT

THIS REIMBURSEMENT AGREEMENT (this "Agreement") is made and entered into as of the ___ day of _____, 2017, by and between Downtown Royal Oak LLC, a Michigan limited liability company, 30100 Telegraph Road, Suite 366, Bingham Farms, Michigan 48025 ("Developer") and the City of Royal Oak Downtown Development Authority, a Michigan municipal corporation, whose address is 211 Williams Street Royal Oak, Michigan 48067 (the "DDA").

RECITALS

A. Developer has proposed to construct a development including an approximately ninety-six thousand two hundred thirty (96,230) gross square feet building, consisting of nineteen thousand sixteen (19,016) gross square feet of retail space on the first (1st) floor frontages along Main Street and Sixth Street, seventy-seven thousand two hundred fourteen (77,214) gross square feet of office and professional space (the "Building"), and a pre-cast concrete parking deck containing at least four hundred twenty-eight (428) parking spaces (the "Parking Deck"), on a parcel of land situated in the City of Royal Oak, Oakland County, Michigan, as legally described in the attached Exhibit A (the "Subject Property").

B. Developer intends to develop the Subject Property pursuant to that certain Development Agreement by and between the Developer and the City of Royal Oak, a Michigan municipal corporation (the "City") dated _____ (the "Development Agreement").

C. The City Planning Commission approved revised site plan (SP# 17-07-19) at its meeting of July 17, 2017, (the "Site Plan") attached to the final Development Agreement approved by the City Commission at its meeting of _____.

D. The buildings and improvements that will be constructed by Developer on the Subject Property pursuant to the Site Plan and Development Agreement, including the Building and Parking Deck, are sometimes collectively referred to in this Agreement as the "Improvements" and such development by Developer of the Subject Property and construction of the Improvements are sometimes collectively referred to as the "Development".

E. The Improvements will consist of certain improvements to the Subject Property including walkways, landscaping, streets, curbing, fencing, and the Parking Deck which the DDA has determined will benefit the community (the "Public Improvements").

F. The DDA will capture and retain certain tax increment revenues, as defined by the Downtown Development Act, Act 197 of Michigan Public Acts of 1975, as amended, M.C.L. § 125.1651 et seq. ("Tax Increment Revenues") generated by the Development. The Tax Increment Revenues, for purposes of this Agreement, will consist of one hundred (100%) percent of the Tax Increment Revenues generated by the Subject Property.

G. The DDA believes that the Development is important to the public and, subject to the limitations, terms and conditions of this Agreement, the DDA is willing to provide Developer the financial support provided in this Agreement, in the form of the reimbursement of the costs and expenses of the Public Improvements as also provided in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the above Recitals included in this agreement by reference and the mutual covenants and promises contained in this Agreement, Developer and the DDA agree as follows:

1. Developer will develop the Subject Property pursuant to the Site Plan and Development Agreement and any amendments and supplements to the Site Plan as may hereafter be approved by the City and/or the DDA. Developer will pay all of the costs and expenses of all of the Improvements (including, the Public Improvements) as and when incurred. Upon the completion of Improvements, provided the Reimbursement Conditions have been met to the reasonable satisfaction of the DDA, the DDA will reimburse Developer for the actual, reasonable and necessary costs and expenses incurred by Developer in connection with the construction of the Public Improvements (the "Costs of the Public Improvements"); provided any costs paid to persons or entities affiliated with the Developer are consistent with fair market prices for the goods or services obtained, subject however, to the additional terms and conditions of this Agreement. The DDA is not, and will not be obligated to reimburse Developer for or otherwise be obligated to pay any costs and expenses of the Development other than the Costs of the Public Improvements (including, any and all other costs, including interest and expenses of the Improvements other than the Costs of the Public Improvements), subject to the limitations, terms and conditions of this Agreement.

2. Developer will submit any request for reimbursement of the Costs of the Public Improvements twice annually, within thirty (30) days after paying each of the summer and winter tax bills with respect to the Subject Property and Improvements. The DDA will determine within thirty (30) days after receipt if the Reimbursement Conditions have been met to the reasonable satisfaction of the DDA. The DDA will promptly inform Developer of its decision and afford Developer an opportunity to correct any submission which is not approved. Once a request for reimbursement is approved, the costs of the Public Improvement need not be submitted for approval.

3. The DDA will reimburse Developer for the Costs of the Public Improvements subject to the limitations, terms and conditions of this Agreement only if all of the following conditions are met to the reasonable satisfaction of the DDA (the "Reimbursement Conditions"):

a. Developer commences development of the Subject Property and construction of the Improvements consisting of the Building and the Parking Deck, in accordance with the Site Plan by the Commencement Date required in the Development Agreement, and shall achieve Completion of Construction (as defined in the Development Agreement) within the time provided for in the Development Agreement, subject to extensions for Force Majeure as defined in the Development Agreement.

Commented [A1]: We don't understand how reimbursement applications work.

b. The Developer has complied with the following terms regarding the Parking Deck:

(i) At least One Hundred Fifty-Five (155) [City's Parking Map on-line notes the parcel currently has 155 spaces] of the parking spaces in the Parking Deck are made available to the general public for parking at all times (the "Public Spaces"). () of the Public Spaces may be licensed by the Developer to members of the general public on a monthly permit basis.

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(ii) The balance of all other parking spaces within the Parking Deck (the "Tenant Spaces") may be used by the Developer for employees of tenants of the Building during normal and customary business hours from 7:00 am to 6:00 pm during the week. Tenant Spaces not being utilized by employees of tenants of the Building during normal and customary business hours from 7:00 am to 6:00 pm during the week shall be made available for transient use by the general public during such times on a first come-first served basis.

(iii) The Tenant Spaces shall be made available for transient use by the general public after normal and customary business hours of 7:00 am to 6:00 pm during the week and at all times during holidays and weekends. Nothing in this paragraph is intended to displace any employee of a tenant parking in a Tenant Space after normal and customary business hours from 7:00 am to 6:00 pm or during holidays or weekends because the employee is working during such periods.

(iv) The Developer agrees to charge the general public: (i) not more than One and 00/100 (1.00) Dollar per hour during the hours of 7:00am to 6:00 pm each day; (ii) a flat fee of Five and 00/100 (\$5.00) Dollars during the hours of 6:00 pm to 7:00 am; and (iii) the maximum rate charged by the DDA or the City at their lots during special events, e.g. Arts, Beats and Eats; provided, however, (i) in no event shall parking rates charged by the Developer be less than those charged by the DDA or the City; and (ii) the Developer shall not have to provide free parking at any time. The Developer may increase its parking rates annually by an amount equal the greater of: (i) ten (10%) percent over the rate charged during the prior year; or (ii) the maximum rate charged by the DDA or the City at their parking facilities.

~~b. The Developer agrees to execute a Declaration evidencing these obligations which will not be subject to termination or modification without the consent of the DDA and the City. At least 190 of the parking spaces in the Parking Deck are made available to the general public (and not tenants of the Building) for parking at all times, the balance all other parking spaces within the Parking Deck are made available to the general public (and not tenants of the Building) after~~

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~~5:00pm on business days, and all parking spaces within the Parking Deck are made available to the general public (and not tenants of the Building) at all times on holidays and weekends. The Developer agrees to charge the general public not more than the highest rate charged by the City for parking in any City owned parking garages. The Developer agrees to execute a Declaration evidencing these obligations which will not be subject to termination or modification without the consent of the DDA and the City.~~

c. The Public Improvements are completed in accordance with the Site Plan, Development Agreement and all applicable state and federal laws, regulations and City ordinances; and

d. At the time of any request for reimbursement:

- (i) Developer is not delinquent in the payment of any real or personal property taxes or assessments with respect to the Subject Property and Improvements, in the amount and at or before the time payment thereof is required without penalty and interest;
- (ii) Developer has not been cited as being in material violation of any ordinance of the City that has not been corrected to the reasonable satisfaction of the City;
- (iii) Developer is in compliance with the obligations for public parking in the Parking Deck as described in 3b above, and
- (iv) Developer is not in material breach or material default in any provision of this Agreement or the Development Agreement.

4. The reimbursement obligations of the DDA under this Agreement will terminate automatically, without the requirement of any other action, immediately upon the date which is the tenth (10th) anniversary date of the date a "certificate of occupancy" was issued by the City of Royal Oak for the Building and Parking Deck. The time between the date of this Agreement and date of termination of this Agreement is referred to as the "Reimbursement Period".

5. Reimbursement of the Costs of the Public Improvements will be made only from and if and to the extent that Tax Increment Revenues are actually generated and received by the DDA from the Development during the Reimbursement Period. The obligation of the DDA to reimburse Developer is: (a) subject to the limitations, terms and conditions of this Agreement, and (b) limited to eighty percent (80%) of the annual amount of Tax Increment Revenues generated and captured on the new Development by the DDA during the Reimbursement Period. If, for any reason, Tax Increment Revenues during the Reimbursement Period are insufficient to fully reimburse Developer for the Public Improvements, Developer agrees that it will have no claim or recourse of any kind or nature against the DDA. The Developer may apply for an extension of the Reimbursement Period, which the DDA may grant or deny, in its discretion.

6. This Agreement shall be binding upon and inure to the benefit of Developer and the DDA, and their respective heirs, successors, assigns and permitted transferees. The rights of Developer to the reimbursement described herein are assignable (but in any event, such reimbursement rights may only be held by a single entity at any given time) by written instrument, a copy of which shall be provided to the DDA provided, however, that prior to the issuance of a certificate of occupancy for the Building and Parking Deck, any such assignment to any entity which is not affiliated with Developer or any of its members shall be subject to the prior written approval of the DDA, in its sole discretion.

7. Developer will have the option to terminate this Agreement upon twenty-one (21) days prior written notice to the DDA. Developer understands and agrees that upon its election to terminate this Agreement and, absent the further written agreement of the parties, the DDA will not be obligated to provide any reimbursement or any other economic benefits or incentives to Developer.

8. The liability of the DDA for any breach or default by the DDA under this Agreement is expressly limited to eighty (80%) percent of the Tax Increment Revenues generated by the Project and collected by the DDA during the Reimbursement Period. The DDA will have no other liability and will not be liable for any consequential, punitive or special damages.

9. Developer and the DDA, with the assistance of their respective legal counsel, have negotiated together to reach the limitations, terms and conditions of this Agreement and they have participated in the drafting of this Agreement. The parties acknowledge that this Agreement is the product of their joint effort.

10. The obligations of the DDA under this Agreement are the obligations of the DDA only and the City does not have, and will not have, any liability, obligation or responsibility under this Agreement whatsoever and Developer releases the City from any and all liability, obligation and responsibility therefore.

11. This Agreement will be interpreted and construed in accordance with Michigan law and will be subject to interpretation and enforcement only in the courts of the State of Michigan. This Agreement may be signed in counterparts and a facsimile signature of either party will be as effective as an original signature.

12. This document and any referenced attachments constitute the entire agreement and shall not be amended except in writing and agreed upon by both parties.

[Signatures appear on following pages]

This Agreement is made and executed as of the date first above written.

DOWNTOWN ROYAL OAK LLC
A Michigan limited liability company

_____ By: _____

_____ Its: _____

STATE OF MICHIGAN)
) ss.
COUNTY OF _____)

The forgoing Reimbursement Agreement was acknowledged before me this _____ day of _____, 2017, by _____ as _____ of DOWNTOWN ROYAL OAK LLC, a Michigan limited liability company.

Notary Public

_____ County, _____
My Commission Expires: _____

(Execution by DDA occurs on following page.)

**CITY OF ROYAL OAK DOWNTOWN
DEVELOPMENT AUTHORITY,**
A Michigan municipal corporation

_____ By: _____

_____ Its: _____

_____ By: _____

_____ Its: _____

STATE OF MICHIGAN)
) ss.
COUNTY OF _____)

The forgoing Reimbursement Agreement was acknowledged before me this _____ day of _____, 2017, by _____ and _____, the _____, respectively, of the City of Royal Oak Downtown Development Authority.

Notary Public

_____ County, _____
My Commission Expires: _____