

INCENTIVE AGREEMENT

THIS Incentive Agreement is made this 4th day of April, 2012, by and between the City of Lawrence, Kansas, a municipal corporation, and Ninth and New Hampshire, L.L.C., a Kansas limited liability company.

RECITALS

- A.** Pursuant to "Agreement for Construction of Parking Garage and Concerning Downtown Redevelopment," dated September 18, 2000 ("the Original Agreement"), the City of Lawrence, Kansas ("the City"), and 9-10, L.L.C., agreed to cooperate in the construction of a downtown parking garage and the formation of a tax increment financing district, the Downtown 2000 TIF District, in order to provide incentives for property owners to stimulate new construction, to encourage the rehabilitation, conservation, and redevelopment of the area, and to promote the public health, safety, and welfare.
- B.** Since that time, Ninth and New Hampshire, L.L.C. ("the Company") has purchased certain real property located within the Downtown 2000 TIF District, and is in the process of constructing a seven-story building ("the Project") that will feature a fitness center, offices, and fifty-five apartment units.
- C.** By Memorandum, dated November 8, 2010, the Company has, under the terms of the Original Agreement, requested reimbursement from the City for certain, estimated public infrastructure expenditures in the amount of \$280,852.00 (a copy of the Memorandum is affixed hereto as Exhibit A).
- D.** After reviewing the Company's November 8, 2010, Memorandum, hearing public comment at its public meeting, and considering the evidence adduced at that meeting, the Public Incentives Review Committee ("PIRC") voted 6-1 to recommend that the City approve the Company's requested reimbursement of the estimated public infrastructure expenditures identified in the November 8, 2010, Memorandum, provided that such reimbursements be made over a ten-year period as real estate taxes are collected.
- E.** At its January 3, 2012, regular public meeting, the governing body of the City approved PIRC's recommendation and voted, by a 4-1 margin, to enter into this Incentive Agreement with the Company.
- F.** The City and the Company agree that the Company's receipt of certain reimbursements, as described herein is contingent, *inter alia*, upon the execution of this Incentive Agreement and compliance with its terms.

AGREEMENT

NOW, THEREFORE, in light of the mutual promises and obligations contained herein, and in exchange for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties agree as follows:

SECTION 1. Adoption of Recitals. The above recitals are incorporated herein by reference as if set forth in full.

SECTION 2. Purpose. The purpose of this Incentive Agreement is to memorialize the agreement of the City and the Company regarding the administration of the Downtown 2000 TIF District, the extension of certain parts of the Original Agreement to the Company, as the successor to 9-10, L.C., and the City's reimbursement thereunder of certain infrastructure expenditures of the Company associated with the Project.

SECTION 3. Term. This Agreement shall commence on the date on which it is executed by the City Manager and shall expire on the date the last reimbursement payment is made under this Incentive Agreement, which is anticipated to occur no later than March, 2022.

SECTION 4. Amount of Reimbursement. The total amount of reimbursement shall be \$280,852.00 and shall be paid by the City to the Company over a ten-year period in ten equal, annual installments of \$28,085.20 ("the Annual Reimbursement Amount"), anticipated to commence no sooner than in December, 2012, and to end no later than March, 2022.

SECTION 5. Eligibility for Reimbursement. As a precondition to receiving payment of the Annual Reimbursement Amount, the Company shall certify to the City:

- a. That the Company has obtained a Certificate of Occupancy for the entire Project;
- b. That the Company has completed all public infrastructure improvements for which reimbursement is being made, as described in detail in Exhibit A; and
- c. That the Company has paid, at the time Application for Reimbursement is made, all past real estate taxes levied or assessed against the Property on which the Project is located.

The City shall withhold payment of the Annual Reimbursement Amount if the Company fails to certify on its Application for Reimbursement that all of the foregoing preconditions have been satisfied. Upon later certification that the preconditions have been satisfied, the City shall disburse any withheld funds to the Company.

SECTION 6. Application for Reimbursement. The Company shall, for each year that reimbursement is being sought, file with the City a written Application for Reimbursement requesting payment of the Annual Reimbursement Amount. Any such Application for Reimbursement shall be filed with the City within thirty (30) days following the Company's payment to Douglas County, Kansas, of the December real estate taxes for the property on which the Project is located. As part of its Application for Reimbursement, the Company shall certify to the City that it is eligible for reimbursement in accordance with Section 5, *supra*.

SECTION 7. Real Estate Tax Payments May Be Made on Bi-annual Basis. The Company may elect to pay its annual real estate taxes in two installments, one in May and one in December, as currently permitted by law. However, as set forth above, the Company shall not be eligible to receive the Annual Reimbursement Amount unless it meets all eligibility requirements of Section 5, *supra*. Also, if it elects to pay its real estate taxes on a bi-annual basis, the Company may only seek payment of the Annual Reimbursement Amount after its payment of the real estate taxes in December.

SECTION 8. Effect of Paying Real Estate Taxes Under Protest. If the Company's real estate tax payments have been made under protest, or the Company has filed an application to appeal the assessment of real estate taxes for any year and such dispute remains pending, the Company shall, in its Application for Reimbursement, notify the City of that fact. And, so long as the Company pursues the appeal, then the non-payment of real estate taxes for the period in question shall not be used by the City as a basis for withholding payment of the Annual Reimbursement Amount (provided that all other previous real estate taxes have been paid to date and all other conditions for eligibility of Section 5, *supra*, have been satisfied).

SECTION 9. Payment of the Annual Reimbursement Amount. Within thirty (30) days from the date that the Company has filed its Application for Reimbursement with the City, assuming that all preconditions for payment have been met by the Company, the City shall pay the Annual Reimbursement Amount to the Company, its successors, or its assigns.

SECTION 10. Payments Made to the Company, to its Successors, or to its Assigns. Upon proper application, and assuming that all preconditions for payment have been satisfied, the Annual Reimbursement Amount shall be made to the Company or any person or lender to whom the Company has assigned rights to the payment of the Annual Reimbursement Amount. The Company shall provide written notice to the City of any outright or collateral assignment of the Annual Reimbursement Amount payments. The City acknowledges that the Company may in fact assign or pledge the future stream of payments of the Annual Reimbursement Amount to a lender as security for a loan on the Project.

SECTION 11. Effect of Foreclosure. In the event of foreclosure or notice to the City of the exercise of rights of the lender under the terms of any assignment, the City shall make the payment of the Annual Reimbursement Amount, assuming all preconditions therefor have been met and that the lender has complied with all terms of this Incentive Agreement, to such lender. The Company agrees that, in the event of foreclosure or other action that would require the City respond to preserve its rights in a court of law or other tribunal, to reimburse the City for its reasonable attorneys' fees in responding to such matter.

SECTION 12. The Company's Responsibilities.

- (a) The Company agrees to adhere to the following terms of the Original Agreement, modified as follows:
 - (i) The Company agrees to provide Notice and any additional requested information to the City regarding commercial tenants to whom it has leased space in the Project and whether such commercial tenants anticipate collecting and paying Kansas Retailer's Sales Tax, as set forth in Article VII, Subsection (b) of the Original Agreement. The Company shall also request that any such commercial tenant provide to the City, simultaneously with its submission to the Kansas Department of Revenue, a copy of its sales tax return.
 - (ii) Pursuant to Article VII, Subsection (c) of the Original Agreement, the City may, up to one year after the issuance of a Certificate of Occupancy for the Project, with reasonable advance notice to the Company, review, audit, and copy, the Company's books and records as such books and records relate to its request hereunder for reimbursement for the expenditure of infrastructure costs, as detailed in Exhibit A.
- (b) The Company shall provide written Notice to the City and County Appraiser upon completion of the Project and the issuance of a final Certificate of Occupancy.
- (c) The Company shall provide written Notice to the City if there is any substantial change in the Project or its administration.

SECTION 13. The Company's Documentation of Project Costs Eligible for Reimbursement. The City and the Company recognize, acknowledge, and agree that the Company's November 8, 2010, Memorandum requesting reimbursement for the expenditure of funds for certain public infrastructure costs was based on estimates and that the actual costs for each item in each category may vary somewhat from those estimates. Upon request by the City, the Company shall furnish evidence of the actual costs for items in the November 8, 2010, Memorandum.

SECTION 14. Adjustment of Annual Reimbursement Amount. In the event that the actual costs of the items set forth in Exhibit A are less than that estimated in that document, then the Annual Reimbursement Amount shall be adjusted downward accordingly so that the City only reimburses the Company for its actual expenditures related to the items listed in Exhibit C. In the event that the actual costs of the items set forth in Exhibit C exceeds the amount estimated in that document, then there shall be no adjustment to the Annual Reimbursement Amount and the Company shall be responsible for those additional costs.

SECTION 15. Effect on Original Agreement. This Incentive Agreement establishes the extension of the Original Agreement to the Company and the Project. Certain terms and conditions are adopted herein explicitly. Any terms not expressly adopted herein that are necessary to the operation of this document are adopted herein by implication. Otherwise, this Incentive Agreement has no effect on the Original Agreement and does not make the Company a party to the Original Agreement. While noting that other sections of the Original Agreement may not be relevant to this Incentive Agreement, the City explicitly recognizes that, because TIF bonds were not issued for the Project, that there is no requirement on the Company – as would be required by the Original Agreement – that the Company lease at least 80% of the ground floor to commercial tenants that charge sales tax.

SECTION 16. Restrictive Covenants of the Original Agreement. The Company acknowledges that the Project shall be subject to the restrictive covenants established in the Original Agreement.

SECTION 17. Consent to Assignment. In accordance with Article XI of the Original Agreement, the City hereby consents to the Assignment from 9-10, L.C., to the Company of certain rights and obligations appearing thereunder.

SECTION 18. Other Agreements. Nothing in this Incentive Agreement prohibits the City and the Company from entering into other agreements regarding the Project, its connection to the City's adjoining parking facility, or the City's right of way (the alley) located to the west of the Project.

SECTION 19. Execution. For purposes of executing this Incentive Agreement, this document, if signed and transmitted by facsimile machine or telecopier, is to be treated as an original document. This Incentive Agreement may be executed in one or more counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original and all of which together shall constitute one instrument.

SECTION 20. Notices. Notices required under this Incentive Agreement shall be sent to the parties as follows:

If to City, to:

City of Lawrence, Kansas
Attn: Assistant City Manager
Diane Stoddard
6 East 6th Street
P.O. Box 708
Lawrence, Kansas 66044

With a copy to:

Attn: City Attorney's Office
Toni R. Wheeler, City Attorney
6 East 6th Street
P.O. Box 708
Lawrence, Kansas 66044

If to the Company, to:

Douglas J. Compton
601 North Iowa Street
P.O. Box 1797
Lawrence, Kansas 66044

With a copy to:

William N. Fleming, Esq.
110 McDonald Avenue
Suite 192
Lawrence, Kansas 66044

SECTION 21. Liberal Construction. This Incentive Agreement shall be liberally construed to achieve the economic development objectives and purposes of this Agreement, the Original Agreement, and the Downtown 2000 TIF District. Should any provision of this Incentive Agreement be determined to be void, invalid, unenforceable, or illegal, such provision shall be null and void, but the remaining provisions shall be unaffected thereby and shall continue to be valid and enforceable.


SECTION 22. Entire Agreement. This Incentive Agreement and those relevant portions of the Original Agreement applicable herein constitute the entire agreement between the parties and may not be modified or amended except in a writing executed by the parties in the same manner as this agreement.

SECTION 23. Governing Law. This Incentive Agreement shall be governed and construed according to the laws of the state of Kansas.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the undersigned have caused this Incentive Agreement to be executed as of the date noted above.

**Company: Ninth and New Hampshire,
L.L.C., a Kansas limited liability company**



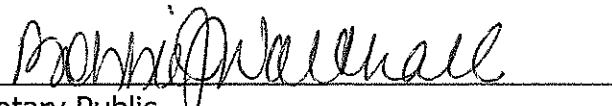
Douglas J. Compton, Manager

ACKNOWLEDGMENT

STATE OF KANSAS)
)
COUNTY OF DOUGLAS) ss:

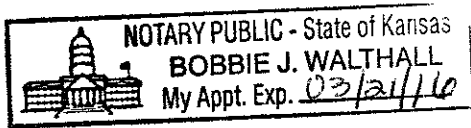
The foregoing Incentive Agreement was acknowledged before me this 4th day of April, 2012, by Douglas J. Compton, Manager, in behalf of Ninth and New Hampshire, L.L.C., a Kansas limited liability Company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year last above written.

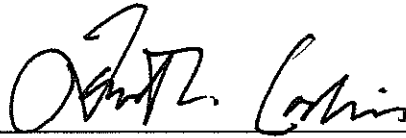


Notary Public

My commission expires: 03/21/16



**CITY: CITY OF LAWRENCE, KANSAS, a
municipal corporation**



David L. Corliss, City Manager

ACKNOWLEDGMENT

STATE OF KANSAS)
)
COUNTY OF DOUGLAS) ss:

The foregoing Incentive Agreement was acknowledged before me this 4th day of April, 2012, by David L. Corliss, City Manager, in behalf of City of Lawrence, Kansas, a municipal corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year last above written.



Notary Public

My commission expires: 03/21/14

