

Amendment 16 to Council Bill No. 56-2016

BY: Mary Kay Sigaty

**Legislative Day No. 17
Date: November 7, 2016**

Amendment No. 16

(This amendment provides for the ownership and operation of the TIF garage.)

1 On page 15, after line 24, insert:

2 “ **Section 11. Be it further enacted by the County Council of Howard County,**
3 **Maryland,** That bonds shall not be issued unless an Ownership and Operating Agreement is
4 **executed that includes each element of Exhibit D, which is entitled “DOWNTOWN**
5 **COLUMBIA TIF - Ownership and Operation of TIF Garage.”**”

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7 Attach Exhibit D, which is attached to this Amendment, to the Bill.

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EXHIBIT D

FINAL VERSION

June 27, 2016

DOWNTOWN COLUMBIA TIF

Ownership and Operation of TIF Garage

This summary is intended to reflect the understanding of The Howard Research and Development Corporation (“HRD”) and the Howard County administration as to the primary terms relating to the ownership and operation of the TIF Garage (hereinafter defined).

- HRD will ground lease to Howard County, Maryland (the “County”) the approximately 2 acres of land (the “TIF Garage Parcel”) on which the approximately 2500-space garage to be financed with a portion of the Downtown Columbia Development District TIF Bonds (the “TIF Garage”) will be built.
- The TIF Garage and the TIF Garage Parcel will be subject to a reciprocal easement agreement (REA) for ingress, egress, utilities, etc. (not as to use regarding the TIF Garage Parcel) with other parcels in the Crescent owned by HRD. The REA, which must be reviewed and approved by the County, is not intended in any way to limit the police power of the County.
- HRD will build the TIF Garage to specifications agreed to by the County and in accordance with all County Code requirements, and dedicate it to the County upon completion. The County will be the owner of the TIF Garage.
- The initial term (the “Initial Term”) of the ground lease will be the estimated useful life of the TIF Garage (which is currently estimated to be approximately 50 years). The ground rent under the ground lease will be \$1 per year.
- The TIF Garage will be a public garage which will be available for the general public, including without limitation to visitors and employees of the retail/restaurant businesses and employees and patrons of office tenants in the area commonly referred to as Merriweather District Area 3 in Downtown Columbia (the “Area”) being developed by HRD, along with patrons of Merriweather Post Pavilion events.
- While the TIF Bonds are outstanding, the County will covenant with the trustee (the “Bond Trustee”) for the benefit of the holders of the TIF Bonds to operate, maintain, repair and, with insurance proceeds, if needed (to the extent the County receives such insurance proceeds), restore the TIF Garage as a parking garage available for use by the general public and subject to the conditions described herein. The County will covenant in the ground lease to maintain casualty insurance on the TIF Garage in the amount of its full replacement value through the County’s insurance program with the Local Government Insurance Trust. The TIF Garage will be a separately scheduled property under such insurance. “TIF Bonds” shall mean TIF Bonds issued by the County to finance the construction of the TIF Garage, any subsequent series of TIF Bonds issued by

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the County to refinance the TIF Garage and any refunding bonds issued by the County as additional bonds under the bond indenture for the initial TIF Bonds.

- The ground lease will contain an agreement by the County that it shall record, after the TIF Bonds are no longer outstanding, an amendment to the REA or a separate covenant, revocable as described below, with respect to the TIF Garage requiring the County to continue to operate, maintain, repair and, with insurance proceeds, if needed (to the extent the County receives such insurance proceeds), restore the TIF Garage as a parking garage available for use by the general public and subject to the conditions outlined herein until the earlier of the date on which (i) a parking garage is no longer required for use by the general public, including without limitation tenants in, or patrons of, any buildings in the Area, or (ii) the County determines that termination of such use covenant is necessary to protect or promote the public health, safety or welfare of the County. In the event of (ii) above, the County may terminate such covenant after ninety (90) days' notice to HRD and a public hearing and seek to sell or sublet the TIF Garage as hereinafter provided without any damages being required to be paid by the County to HRD, its affiliates or its successors and assigns. If the County determines to so terminate such use covenant, (a) the ground lease shall end at the end of the initial term and the County shall have no options to renew the ground lease, and (b) the County shall not use the TIF Garage Parcel for any purpose other than parking.
- After the TIF Bonds are no longer outstanding, if after complying with the County Code requirements with respect to disposition of County property (including any County Council approvals, the County determines that the TIF Garage is no longer needed for a public purpose, the County shall provide ninety (90) days' notice to HRD of its intent to sell the TIF Garage and provide information to HRD regarding the process for the sale of the TIF Garage. Any proposed purchaser of the TIF Garage shall have a book value of equity, as determined by GAAP, of not less than \$100,000,000, and the proposed purchaser shall agree to (i) to continue to use the TIF Garage as a parking garage available for use by the general public, and (ii) not to charge for parking for office tenants unless a majority of other available parking for office users in Downtown Columbia charge for use of their parking spaces and any parking charges by such proposed purchaser are consistent with the charges for such other parking spaces.
- If after the TIF Bonds are no longer outstanding, the County wants to sublet the TIF Garage before the end of the Initial Term of the ground lease, the County shall provide ninety (90) days' notice to HRD prior to the sublet and HRD shall have the right to approve any proposed sublessee unless the proposed sublessee has a book value of equity, as determined by GAAP, of not less than \$100,000,000, and the proposed sublessee agrees (i) to continue to use the TIF Garage as a parking garage available for use by the general public, and (ii) not to charge for parking for office tenants unless a majority of other available parking for office users in Downtown Columbia charge for use of their parking spaces and any parking charges by such proposed sublessee are consistent with the charges for such other parking spaces. If the County sublets the TIF Garage in accordance with the foregoing provisions, the ground lease shall end at the end of the Initial Term and the sublessee shall have no options to renew the ground lease.

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- At least 450 days prior to the last day of the initial term, and any renewal term, of the ground lease, HRD will notify the County that the term of the ground lease will expire unless renewed by the County. At least 360 days prior to the last day of the initial term, and any renewal term, of the ground lease, the County will notify HRD in writing if the County intends to extend the initial term, and any renewal term, of the ground lease. Any renewal term shall be for a period of 10 years. The maximum term of the ground lease shall be 99 years. Upon the County Executive's determination that it will not seek to renew the Ground Lease after the Initial Term or any renewal term or the 99-year limit is set to end, the County shall follow the County's requirements for disposition of property as outlined in the County Code and transfer the TIF Garage to HRD for \$1.00.
- In recognition of the critical aspect that a comprehensive parking operations program for Downtown Columbia and Merriweather Post Pavilion will have on the success of the redevelopment of Downtown Columbia, the TIF Garage shall be operated by the County in accordance with this agreement.
- The essential elements of the agreement will be as follows:
 - The TIF Garage will be owned and controlled by the County.
 - The County will make all decisions with respect to the operation of the TIF Garage; however, the County will consider the advantages of having the TIF Garage managed by the same parking management firm (the "Parking Manager") and the same security services firm (the "Security Firm") that manage and provide security for the parking assets in Downtown Columbia owned by HRD.
 - The contracts between the County and the Parking Manager and the Security Firm for the TIF Garage will be "qualified management contracts" under IRS guidelines.
 - The County will determine how and when to control access to the TIF Garage, which may include entry stations and/or access arms.
 - The TIF Garage shall be subject to the following two conditions applicable to the general public, including without limitation tenants, employees and customers in buildings in the Area:
 - While the TIF Bonds are outstanding, the County will, subject to the conditions hereinafter described, covenant with the Bond Trustee for the benefit of the holders of the TIF Bonds that parking shall be available to the general public, including without limitation office tenants and their visitors and employees without charge. If the County determines that the termination of such covenant is necessary to protect or promote the public health, safety or welfare of the County, the County may terminate such covenant after ninety (90) days' notice to HRD and a public hearing. In making such determination, the County shall consider all relevant factors, including but not limited to: (i) the effect that charging for parking at the TIF Garage would have on regulating traffic on roads, including but not limited to (1) control of traffic in any congested areas; (2) the regulation of parking in congested areas during business hours, to insure that the general public may have parking privileges for reasonable periods; and (3) the

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control of traffic into and out of the congested areas; (ii) the effect that the charging for parking at the TIF Garage would have on the use and availability of other public or private parking facilities and any street parking in Downtown Columbia; (iii) whether other available parking for office users in Downtown Columbia charge for use of their parking, (iv) the effect such a termination would have on the ability to retain existing tenants and attract new tenants to the office buildings in the Area after such a termination, (v) the impact such a termination may have on the net operating income and corresponding taxable property value of such office buildings, and (vi) the impact of any additional costs the owners of such office buildings would have to absorb to lease such office buildings as a result of such termination.

- The TIF Garage will include spaces (as determined by the Downtown Revitalization Shared Parking Methodology during the SDP process) available to the general public and serving retail and restaurant uses which benefit from higher rates of turnover. The County will employ operational measures to encourage turnover (including time-limits), to insure they are available for customers and employees of these businesses, especially during Merriweather Post Pavilion events.
- To the extent the County's operating expenses for the TIF Garage are in excess of operating revenue from the TIF Garage, HRD or its successors or assigns will agree to contribute to the County an amount to be mutually agreed to by the County and HRD or its successors or assigns to reimburse the County for a portion of such operating expenses. An amount equal to parking charges collected by the County from the operation of the TIF Garage (the "operating revenues") shall be deemed to be applied against the operating expenses of the TIF Garage. If the County determines to terminate the "no parking charge" covenant as described above, any contributions to be made by HRD or its successors or assigns shall be reduced proportionately by the ratio of (i) the prior amount of such contribution to (ii) the prior excess of operating expenses over operating revenue from the TIF Garage or a similar arrangement mutually agreed to by the parties.

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