

ORDINANCE 2023-14

AN ORDINANCE OF THE CITY OF FORT MITCHELL, KENTUCKY, GRANTING CERTAIN OCCUPATIONAL TAX INCENTIVES FOR A SIX YEAR PERIOD TO THE DEVELOPER OF THE FORT MITCHELL GATEWAY PROJECT TO PAY FOR OR REIMBURSE CERTAIN DESIGNATED COSTS RELATING TO THE PROJECT AND APPROVING A GRANT AGREEMENT BETWEEN THE CITY AND DEVELOPER IN ACCORDANCE THEREWITH.

WHEREAS, the City and Buttermilk Pike Development Company, LLC, a Kentucky limited liability company, B/FMP Land Company, LLC, a Kentucky limited liability company, MB Buttermilk, LLC, an Ohio limited liability company, and their successors, assigns and/or transferees (collectively the “Developer”) entered into a Master Development Agreement dated May 1, 2023 (the “Development Agreement”) wherein the Developer agreed to, undertake the comprehensive redevelopment of a site along Royal Drive in the City referred to as the Fort Mitchell Gateway Project (the “Project”); and

WHEREAS, the Project Site is located within the Buttermilk Pike-Royal Drive Development Area (the “Development Area”) established by the City pursuant to Ordinance 2014-16, dated November 14, 2014, in accordance with the provisions of KRS 65.7041 to KRS 65.7083 (the “TIF”); and

WHEREAS, the City agreed to pledge a portion of the incremental increase in its real property *ad valorem* taxes and occupational taxes (business occupational taxes and employee payroll occupational taxes) for a thirty (30) year period as allowed by the TIF Act to support the redevelopment of the Development Area pursuant to the terms of a Local Participation Agreement dated November 14, 2014 (the “LPA”); and

WHEREAS, the LPA has been activated, as defined by the TIF Act effective January 1, 2018 (the “Activation Date”) and the pledge of incremental revenues from the City and County of Kenton, Kentucky (the “County”) will terminate thirty (30) years thereafter on December 31, 2047 (the “Termination Date”); and

WHEREAS, in accordance with the Development Agreement, the City committed to amend the date of the LPA to allow the Activation Date to be changed to January 1, 2024; and

WHEREAS, the Project Site, in addition to the pledge of incremental revenues from the City and County as set forth in the LPA, the Project is subject to a pledge of state incremental revenues pursuant to the terms of a Tax Incentive Agreement dated June 28, 2018 (the “Tax Incentive Agreement”) between the City (or its agency) and the Kentucky Economic Development Finance Authority (“KEDFA”); and

WHEREAS, the state tax revenues pledged by the Tax Incentive Agreement are critical to the construction of the Project by the Developer; and

WHEREAS, KEDFA has objected to the City amending the dates of the LPA, and therefore the City must maintain the Activation Date of the LPA as January 1, 2018; and

WHEREAS, maintaining the Activation Date at January 1, 2018 will reduce the amount of pledged incremental occupational taxes available to the Project anticipated by the Developer in the Development Agreement by a six (6) year period, and at a time when the amount of incremental occupational taxes will be at their maximum; and

WHEREAS, in addition to incentive programs that are codified in the Kentucky Revised Statutes, such as the TIF Act, and incentives available by the use of industrial building revenues bonds set from in KRS Chapter 103, the City has the authority under its Home Rule Power, KRS 82.082, to craft incentives to encourage economic growth in their jurisdictions; and

WHEREAS, while public tax revenues must, pursuant to the Kentucky Constitution, be expended for a “public purpose”, several Kentucky Court decisions have held that the expenditure of tax revenues to promote economic development is a legitimate “public purpose”; and

WHEREAS, local incentives from the City are necessary for the Project to replace the six (6) years of TIF increment from the City that is no longer be available since Activation Date of the LPA may not be amended, and

WHEREAS, the incentives provided to the Developer to be used for the Project by this Agreement will be the same amount as the City had already agreed to provide by amending the Activation Date of the LPA.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF FORT MITCHELL, KENTUCKY AS FOLLOWS:

SECTION I

A. That the City hereby approves the reimbursement to the Developer of the incremental increase in occupational taxes to pay for or reimburse certain designated costs related to the Project in accordance with the Development Agreement, for six (6) years following the expiration of the LPA, with the understanding that the reimbursement of occupational taxes shall be governed by the terms of a Grant Agreement between the City and Developer, attached hereto as Exhibit A, which is hereby approved.

B. That the Mayor is hereby authorized and directed to execute the Grant Agreement with the Developer on behalf of the City attached hereto as Exhibit A.

SECTION III

This Ordinance shall be in full force and effect from and after its passage, attestation, recordation and publication of a summary hereof pursuant to KRS Chapter 424.

MAYOR JUDE HEHMAN

ATTEST:

CITY CLERK

Date of First Reading _____, ____, 2023

Date of Second Reading and Enactment: _____, ____, 2023

Date Published: _____, ____, 2023

EXHIBIT A
GRANT AGREEMENT

GRANT AGREEMENT

This GRANT AGREEMENT (this “Agreement”) dated this ___ day of November, 2023 (the “Effective Date”), by and among the CITY OF FORT MITCHELL, KENTUCKY, a Kentucky municipal corporation of the Home Rule Class (the “City”), the COUNTY OF KENTON, KENTUCKY, a Kentucky county organized under the laws of the Commonwealth of Kentucky (the “County”), and BUTTERMILK PIKE DEVELOPMENT COMPANY, LLC, a Kentucky limited liability company (“BPDC”), B/FMP LAND COMPANY, LLC, a Kentucky limited liability company (“B/FMP”), and MB BUTTERMILK, LLC, an Ohio limited liability company (“MB”), and their respective affiliates (BPDC, B/FMP and MB hereinafter being collectively referred to as the “Developer”);

W I T N E S S E T H

WHEREAS, the City and Developer entered into a Master Development Agreement dated May 1, 2023 (the “Development Agreement”) wherein the Developer agreed to, undertake the comprehensive redevelopment of a site along Royal Drive in the City (the “Project”), more specifically defined on Exhibit A (the “Project Site”); and

WHEREAS, the Project Site is located within the Buttermilk Pike-Royal Drive Development Area (the “Development Area”) established by the City pursuant to Ordinance 2014-16, dated November 14, 2014, in accordance with the provisions of KRS 65.7041 to KRS 65.7083 (the “TIF Act”); and

WHEREAS, the City and County each agreed to pledge a portion of the incremental increase in their real property *ad valorem* taxes and occupational taxes (business occupational taxes and employee payroll occupational taxes) for a thirty (30) year period as allowed by the TIF Act to support the redevelopment of the Development Area pursuant to the terms of a Local Participation Agreement dated November 14, 2014 (the “LPA”); and

WHEREAS, the LPA has been activated, as defined by the TIF Act effective January 1, 2018 (the “Activation Date”) and the pledge of incremental revenues from the City and County will terminate thirty (30) years thereafter on December 31, 2047 (the “Termination Date”); and

WHEREAS, in accordance with the Development Agreement, the City committed to amend the date of the LPA to allow the Activation Date to be changed to January 1, 2024, which change had also been approved by the County; and

WHEREAS, the Project Site, in addition to the pledge of incremental revenues from the City and County as set forth in the LPA, the Project is subject to a pledge of state incremental revenues pursuant to the terms of a Tax Incentive Agreement dated June 28, 2018 (the “Tax Incentive Agreement”) between the City (or its agency) and the Kentucky Economic Development Finance Authority (“KEDFA”); and

WHEREAS, the state tax revenues pledged by the Tax Incentive Agreement are critical to the construction of the Project by the Developer; and

WHEREAS, KEDFA has objected to the City amending the dates of the LPA, and therefore the City must maintain the Activation Date of the LPA as January 1, 2018; and

WHEREAS, maintaining the Activation Date at January 1, 2018 will reduce the amount of pledged incremental occupational taxes available to the Project anticipated by the Developer in the Development Agreement by a six (6) year period, and at a time when the amount of incremental occupational taxes will be at their maximum; and

WHEREAS, in addition to incentive programs that are codified in the Kentucky Revised Statutes, such as the TIF Act, and incentives available by the use of industrial building revenues bonds set forth in KRS Chapter 103, the City and County each have the authority under their respective Home Rule Powers, KRS 82.082 (for cities) and KRS 67.083 (for counties) to craft incentives to encourage economic growth in their jurisdictions; and

WHEREAS, while public tax revenues must, pursuant to the Kentucky Constitution, be expended for a “public purpose”, several Kentucky Court decisions have held that the expenditure of tax revenues to promote economic development is a legitimate “public purpose”; and

WHEREAS, local incentives from the City and County are necessary for the Project to replace the six (6) years of TIF increment from the City and County that is no longer available since Activation Date of the LPA may not be amended, and

WHEREAS, the incentives provided to the Developer to be used for the Project by this Agreement will be the same amount as the City and County had already agreed to provide by amending the Activation Date of the LPA.

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES:

1. That beginning January 1, 2048 and continuing for six (6) years thereafter, the City pledges to the Developer eighty percent (80%) of the incremental increase in occupational taxes (business license taxes and employee payroll taxes) the Project generates to the City, with the understanding the amount due the Developer shall be calculated as set forth in the LPA and as if the LPA had not expired.
2. That beginning January 1, 2048 and continuing for six (6) years thereafter, the County pledges to the Developer sixty percent (60%) of the occupational taxes (business license taxes and employee payroll taxes) the Project generates to the County. with the understanding the amount due the Developer shall be calculated as set forth in the LPA and as if the LPA had not expired.
3. That any amount due from the City and County shall be paid to the Developer, or its assigns, by July 1 of each year following the end of each calendar year.
4. The Developer may assign its rights to payments under this Grant Agreement to the Trustee for the bonds issued by the City to provide as source of payments for bonds the City has agreed to issue to pay for public infrastructure costs, the cost of garages or other costs as set forth in the Development Agreement, or to reimburse other costs as identified in the Development Agreement.

5. The City's and County's pledge of occupational taxes as set forth in this Agreement is contingent upon the Developer complying with its obligations under the Development Agreement.
6. Notwithstanding the provisions of Paragraph 5 of this Agreement, no default in the Developer's obligations under the Development Agreement shall act to suspend any City and County occupational tax payments to the Developer (or Trustee) as provided in this Agreement so long as bonds issued by the City are outstanding that rely on such occupational tax payments for their payment.

CITY:

CITY OF FORT MITCHELL, KENTUCKY

By: _____

Printed Name: Jude Hehman

Its: Mayor

Date: November ____, 2023

COUNTY:

COUNTY OF KENTON, KENTUCKY

By: _____

Printed:

Its:

Dated November ____, 2023

DEVELOPER:

Buttermilk Pike Development Company, LLC

By: _____

Printed Name: Michael T. Brandy

Its: Manager

Date: November ____, 2023

By: _____

Printed Name: Gary Blank

Its: Manager

Date: November ____, 2023

By: _____

Printed Name: Rudy Kreutzjans

Its: Manager

Date: November ____, 2023

MB Buttermilk, LLC

By: _____

Printed Name: Michael T. Brandy

Its: Manager

Date: November ____, 2023

B/FMP Land Company, LLC

By: _____

Printed Name: Michael T. Brandy

Its: Manager

Date: November ____, 2023

By: _____

Printed Name: Gary Blank

Its: Manager

Date: November ____, 2023

By: _____

Printed Name: Rudy Kreutzjans

Its: Manager

Date: November ____, 2023