

NOTICE OF MEETING AND BOARD OF ALDERMEN AGENDA



CITY OF OSAGE BEACH BOARD OF ALDERMEN MEETING

1000 City Parkway
Osage Beach, MO 65065
573.302.2000
www.osagebeach.org

TENTATIVE AGENDA

REGULAR MEETING

September 15, 2022 - 6:00 PM
CITY HALL

**** Note:** All cell phones should be turned off or on a silent tone only. If you desire to address the Board, please sign the attendance sheet located at the podium. Agendas are available on the back table in the Council Chambers. Complete meeting packets are available on the City's website at www.osagebeach.org.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

MAYOR'S COMMUNICATIONS

- A. Proclamation authorizing the Mayor - Constitution Week September 17-23, 2022

CITIZEN'S COMMUNICATIONS

This is a time set aside on the agenda for citizens and visitors to address the Mayor and Board on any topic that is not a public hearing. For those here in person, speakers will be restricted to three minutes unless otherwise permitted. Minutes may not be donated or transferred from one speaker to another.

Visitors attending via online will be in listen only mode. Any questions or comments for the Mayor and Board may be sent to the City Clerk at tberreth@osagebeach.org no later than 10:00 AM on the Board's meeting day (the 1st and 3rd Thursday of each month). Submitted questions and comments may be read during the Citizen's Communications section of the agenda.

The Board of Aldermen will not take action on any item not listed on the agenda, nor will it respond to questions, although staff may be directed to respond at a later time. The Mayor and Board of Aldermen welcome and value input and feedback from the public.

Is there anyone here in person who would like to address the Board?

APPROVAL OF CONSENT AGENDA

If the Board desires, the consent agenda may be approved by a single motion.

- ▶ Minutes of Board of Aldermen Special Meeting - August 31, 2022
Minutes of Board of Aldermen Regular Meeting - September 1, 2022
- ▶ Bills List - September 15, 2022

UNFINISHED BUSINESS

- A. Bill 22-63 - An ordinance of the City of Osage Beach, Missouri, authorizing the Mayor to execute the Missouri Highways and Transportation Commission Transportation Alternatives Funds Program Agreement to fund Pedestrian Improvements for the Hwy 42 Sidewalk Project. *Second Reading*

NEW BUSINESS

- A. Public Hearing - Lake Regional Health System Endorsement Request for Critical Care Transport Truck
- B. Public Hearing - Development proposal for The Preserve at Sycamore Creek
- C. Bill 22-74 - An ordinance of the City of Osage Beach, Missouri, designating certain tracts of land in the City of Osage Beach, Missouri, as a blighted area; approving the development plan for The Preserve at Sycamore Creek; approving a development agreement in connection with the development plan; and authorizing the City to enter into a development agreement and take certain other actions in connection therewith. *First Reading*
- D. Bill 22-71 - An ordinance of the City of Osage Beach, Missouri, an ordinance authorizing the City of Osage Beach, Missouri, to issue its taxable industrial revenue bonds (The Preserve at Sycamore Creek Project), Series 2022, in a principal amount not to exceed \$63,000,000, for the purpose of providing funds to pay the costs of acquiring, constructing and improving a facility for an industrial development project in the city; approving a plan for the project; and authorizing the city to enter into certain agreements and take certain other actions in connection therewith. *First Reading*
- E. Bill 22-65 - An ordinance of the City of Osage Beach, Missouri, enacting new Sections 112.010 through 112.040 dealing with the Lake Ozark-Osage Beach Joint Sewer Treatment Plant and Joint Sewer Board and ratifying all prior actions taken by City representatives to the Joint Sewer Board. *First Reading*
- F. Bill 22-66 - An ordinance of the City of Osage Beach, Missouri, setting out the terms of the Building

Code Board of Appeals as used by the City pursuant to the Uniform Building Codes previously adopted by the City, *First Reading*

- G. Bill 22-67 - An ordinance of the City of Osage Beach, Missouri, amending Chapter 600 concerning terms of the Liquor Control Board. *First Reading*
- H. Bill 22-68 - An ordinance of the City of Osage Beach, Missouri, concerning the Tax Increment Financing Commission amending Section 135.120 for the Terms of Members of the Commission and Section 135.140 Organization of the Commission and Section 135.160 Conduct of Meetings. *First Reading*
- I. Bill 22-69 - An ordinance of the City of Osage Beach, Missouri, amending Sections 111.020, 111.040 and 111.050 of the Osage Beach Municipal Code concerning the purposes, terms and meetings of the Citizens Advisory Committee. *First Reading*
- J. Bill 22-70- An ordinance of the City of Osage Beach, Missouri, amending Sections 400.020 Membership, 400.030 Officers, 400.110 Subdivision Requirements concerning the Planning Commission and creating two new Sections 400.035 Conduct of Meetings and 400.045 Zoning Officer. *First Reading*
- K. Bill 22-72 - An ordinance of the City of Osage Beach, Missouri, repealing Section 405.680 concerning the Board of Adjustment within the Zoning Code and enacting in its place four new Sections 405.680, 405.681, 405.682 405.683 concerning the Board of Adjustment within the Zoning Code. *First Reading*
- L. Bill 22-73 An ordinance of the City of Osage Beach, Missouri, authorizing the expenditure of funds for the Elks Lodge 2517 Veterans Parade Event Support Request, in an amount not to exceed \$2,000. *First Reading*
- M. Resolution 2022-06 - A resolution of the City of Osage Beach, Missouri, supporting the application for the Department of Transportation Reconnecting Communities Pilot (RCP) Discretionary Grant Program for Osage Beach Reconnecting Communities Planning Project
- N. Bill 22-77 - An ordinance of the City of Osage Beach, Missouri, authorizing the City Administrator to execute an agreement with the Lake of the Ozarks Council of Local Governments (LOCLG) for grant services and technical support for the Osage Beach Reconnecting Communities Planning Project grant application through the U.S. Department of Transportation Reconnecting Communities Pilot (RCP) Discretionary Grant Program for an amount not to exceed \$5,000. *First and Second Reading*
- O. Motion to approve the purchase of Police laptops and GIS equipment that was included in an Camden County ARPA grant that was recently awarded to the City for an amount not to exceed 50,119.28.
- P. Bill 22-75 - An ordinance of the City of Osage Beach, Missouri, amending Ordinance No. 21.78 Adopting the 2022 Annual Operating Budget, Transfer of Funds for Necessary Expenses for computer and GIS equipment. *First and Second Reading*
- Q. Bill 22-76 - An ordinance of the City of Osage Beach, Missouri, authorizing and directing the City Administrator to contract with American Swimming Pool Co. to repair, clean, sanitize the pool and decking at Grand Harbor Condo Association in the amount not to exceed \$117,456.39 as settlement for damage to the Grand Harbor Pool which occurred during the winter of 2021 due to freezing of the sewer pipe located adjacent to the pool. *First Reading*

STAFF COMMUNICATIONS

COMMUNICATIONS FROM MEMBERS OF THE BOARD OF ALDERMEN

ADJOURN

Remote viewing is available on Facebook at *City of Osage Beach, Missouri* and on YouTube at *City of Osage Beach*.

Representatives of the news media may obtain copies of this notice by contacting the following:

Tara Berreth, City Clerk
1000 City Parkway
Osage Beach, MO 65065
573.302.2000 x 1020

If any member of the public requires a specific accommodation as addressed by the Americans with Disabilities Act, please contact the City Clerk's Office forty-eight (48) hours in advance of the meeting at the above telephone number.

City of Osage Beach
Agenda Item Summary

Date of Meeting: September 15, 2022

Originator:

Presenter:

Agenda Item:

Proclamation authorizing the Mayor - Constitution Week September 17-23, 2022

Requested Action:

Ordinance Referenced for Action:

Deadline for Action:

Budgeted Item:

Budget Line Information (if applicable):

Department Comments and Recommendation:

City Attorney Comments:

City Administrator Comments:



PROCLAMATION
CONSTITUTION WEEK

September 17-23, 2022

WHEREAS: September 17, 2022, marks the two hundred thirty-fifth anniversary of the framing of the Constitution of the United States of America by the Constitutional Convention, outlining the fundamental principles by which our nation is governed; and

WHEREAS: our Constitution, the guardian of our liberties, embodies the principles of limited government in a Republic dedicated to the rule by law; and establishing basic governing principles for society. These include popular sovereignty, federalism, judicial review, individual rights, and separation of powers through a system of checks and balances; and

WHEREAS: in 1955 the Daughters of the American Revolution began the traditional celebration of the Constitution, a resolution was later adopted by the U.S. Congress and signed into public law on August 2, 1965, by President Dwight D. Eisenhower; and

WHEREAS: the Daughters of the American Revolution, Wazhazhe Chapter, SDAR Lake of the Ozarks, consider it a privilege and duty to celebrate this magnificent document and its memorable anniversary.

NOW, THEREFORE, I, Michael Harmison/Mayor, do hereby proclaim September 17-23, 2022, as Constitution Week and asks our citizens to reflect on the ideals outlined in the Constitution of the United States as amended over time and recognize the efforts and sacrifices of not only our Nation's Founding Fathers, the crafters of our Constitution, but also the brave individuals that have defended it and to reaffirm the ideals of the Constitution by vigilantly protecting the freedoms guaranteed to us through this guardian of our liberties.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Seal of the City of Osage Beach to be affixed this 15th day of September 2022.

Michael Harmison, Mayor

ATTEST:

Tara Berreth, City Clerk

MINUTES OF THE SPECIAL MEETING OF THE BOARD OF ALDERMEN OF THE
CITY OF OSAGE BEACH, MISSOURI
AUGUST 31, 2022

The Board of Aldermen of the City of Osage Beach, Missouri, conducted a Special Meeting on Wednesday August 31, 2022, at 6:00 PM. The following were present in person: Mayor Michael Harmison, Alderman Tyler Becker, Alderman Phyllis Marose, Alderman Bob O'Steen, and Alderman Kevin Rucker, and Alderman Kellie Schuman. Alderman Richard Ross arrived at 6:20pm. Tara Berreth, City Clerk, was present and performed the duties of that office. Appointed and Management staff present were City Administrator Jeana Woods, City Attorney Ed Rucker, City Treasurer Kerri Bell.

NEW BUSINESS

Public Comments

Chris Foster – Would like to see tourism be part of the policy. As well as make local developers a priority.
Gary Mitchell - Make sure to get copies from other cities and see how they handle TIF applications and policies.

Discussion - Tax Incentive Policies and Guidelines

After a lengthy discussion the Board asked for staff to gather further information.

ADJOURN

There being no further business to come before the Board, the meeting adjourned at 7:55 pm.

I, Tara Berreth, City Clerk of the City of Osage Beach, Missouri, do hereby certify that the above foregoing is a true and complete journal of proceedings of the regular meeting of the Board of Aldermen of the City of Osage Beach, Missouri, on August 31, 2022, and approved September 15, 2022.

Tara Berreth/City Clerk

Michael Harmison/Mayor

All meetings maybe viewed on www.osagebeach.org, Facebook or You tube.

**MINUTES OF THE REGULAR MEETING OF THE BOARD OF
ALDERMEN OF THE CITY OF OSAGE BEACH, MISSOURI
September 1, 2022**

The Board of Aldermen of the City of Osage Beach, Missouri, conducted a Regular Meeting on Thursday, September 1, 2022, at 6:00 PM. The following were present in person: Mayor Michael Harmison, Alderman Tyler Becker, Alderman Richard Ross, Alderman Kellie Schuman, Alderman Phyllis Marose, Alderman Bob O'Steen and Alderman Kevin Rucker. City Clerk Tara Berreth present and performed the duties for the City Clerk's office. Appointed and Management staff present were City Administrator Jeana Woods, Assistant City Administrator Mike Welty, City Attorney Ed Rucker, Building Official Ron White, Police Lt. Mike O'Day, City Planner Cary Patterson, Parks and Rec Manager Eric Gregory, Public Work Operations Manager and Dave Van Leer with Cochran Engineering.

APPROVAL OF CONSENT AGENDA

Alderman Rucker made a motion to approve the consent agendas as presented. This motion was seconded by Alderman Schuman. Motion passes with unanimous voice vote.

UNFINISHED BUSINESS

None

NEW BUSINESS

Public Hearing - Osage Beach Park Master Plan:

Citizens:

Stacy Pyrtle, Blake Otis, Adam Vanderpool, Jan Pyrtle, Janis Gentile, Dan Foster

Comments:

- ✓ The City is lucky to be partnering with the Magic Dragon Trails
- ✓ The parks will draw more visitors to the lake area.
- ✓ Vital asset to the community
- ✓ Want to create parks that people will want to come here and live and stay here
- ✓ Want to be a family friendly environment.

Discussion - Osage Beach City Park Master Plan Update

Darrin Barr from Ballard & King stated that Parks Master Plan Project is in the beginning phases. Met with some Aldermen and residents throughout the day. Got some great ideas. Hoping that the Survey produces some incite as to what the citizens would like to see in the parks.

Bill 22-63 - An ordinance of the City of Osage Beach, Missouri, authorizing the Mayor to execute the Missouri Highways and Transportation Commission Transportation Alternatives Funds Program Agreement to fund Pedestrian Improvements for the Hwy 42 Sidewalk Project. *First Reading*

Alderman Rucker made a motion to approve the first reading of Bill 22-63. This motion was seconded by Alderman Becker. Motion passes unanimously with a voice vote.

STAFF COMMUNICATIONS

City Administrator Woods – Good Job Mike Welty on writing the grant.

Asst. City Administrator Welty – Attended the 4 State Airport Conference. Learned a lot.

City Clerk Berreth – MML coming up and hosting Region IV Clerks at City Hall for clerks' classes on Saturday and Sunday before the conference.

City Planner Patterson – Developers are starting to come in wanting to develop on vacant land. 2 housing developments are getting ready to break ground very soon.

Public Works Operations Manager Crooks – Gave a brief explanation on how sewer lift stations overflow when the city experiences heavy rains.

Parks and Rec Manager Gregory – Great conversations with residents and Alderman regarding the Parks Master Plan. Please take time to fill out the Parks Survey.

COMMUNICATIONS FROM MEMBERS OF THE BOARD OF ALDERMEN

- Alderman Rucker – Good meeting regarding TIF policy. Want staff to investigate Claw backs.
Land clearing – There is a new method “Air Curtain Destructor” Please let the citizens in your wards know when burning.
Thank you to Dan Fields for the article in the 8/24/2022 paper. Great Job.
Questing the future of the donations for Bike Week. Due to the fact of the large donate that they recently received this year.
- Alderman Schuman – Have a safe Labor Day Weekend.
- Alderman Becker – Asked the status of the Bellwood Estates. Answer – Still in the discovery phase.
Check into the Ordinance that was referenced during the special workshop and Eldon not having to do a 353 Ordinance.
- Alderman Marose - Thank you to Jan and Stacy Pyrtle for all their work with Magic Dragon Trail.
- Alderman Ross - Thank you to the Police Department for their help on Wilson Drive.
Wingfest – September 14, 2022, at Regalia Hotel

MAYOR'S COMMUNICATIONS

Nothing to report

EXECUTIVE SESSION

Alderman Ross moved to open the closed session meeting. Alderman Marose seconded the motion. The following roll call vote was taken to open the meeting: “Ayes”: Alderman Ross, Alderman Marose, Alderman Becker, Alderman Schuman, and Alderman O’Steen, Alderman Rucker. The meeting was therefore opened.

Notice is given that the agenda includes a roll call vote to close the meeting as allowed by RSMo. Section 610.021 (2) Leasing, Purchase, or Sale of Real Estate by a public governmental body where public knowledge of the transaction might adversely affect the legal consideration therefor.

ADJOURN CLOSED SESSION

Alderman Marose moved to close the meeting. Alderman O’Steen seconded the motion. The following roll call vote was taken to open the meeting: “Ayes”: Alderman Ross, Alderman Marose, Alderman Becker, Alderman Schuman, and Alderman O’Steen, Alderman Rucker. The meeting was therefore closed

No announcements were made following the closed session.

ADJOURN REGULAR MEETING

There being no further business to come before the Board, the meeting adjourned at 8:15 pm. I, Tara Berreth, City Clerk of the City of Osage Beach, Missouri, do hereby certify that the above foregoing is a true and complete journal of proceedings of the regular meeting of the Board of Aldermen of the City of Osage Beach, Missouri, on September 1, 2022, and approved September 15, 2022.

Tara Berreth/City Clerk

Michael Harmison/Mayor

**CITY OF OSAGE BEACH
BILLS LIST
September 15, 2022**

Bills Paid Prior to Board Meeting	\$	240,901.80
Payroll Paid Prior to Board Meeting	\$	152,462.62
SRF Transfer Prior to Board Meeting	\$	-
TIF Transfer Dierbergs	\$	-
Bills Pending Board Approval	\$	272,818.58
Total Expenses	\$	666,183.00

DEPARTMENT	FUND	VENDOR NAME	DESCRIPTION	AMOUNT
NON-DEPARTMENTAL	General Fund	FAMILY SUPPORT PAYMENT CENTER	Case #01450465	282.00
			Case #01812565	173.08
		MO DEPT OF REVENUE	State Withholding	4,369.00
			Fed WH	12,315.25
		INTERNAL REVENUE SERVICE	FICA	7,869.61
			Medicare	1,840.48
		ICMA	Loan Repayment	33.77
			Loan Repayment	225.00
			Loan Repayment	233.04
			Loan Repayment	143.78
			Loan Repayment	216.93
			Loan Repayment	182.34
			Loan Repayment	277.41
			Loan Repayment	233.43
			Retirement 457 &	2,292.67
			Retirement 457	1,070.00
			Loan Repayments	31.43
			Loan Repayments	134.84
			Loan Repayments	310.70
			Loan Repayments	92.92
			Loan Repayments	215.76
			Loan Repayments	113.03
			Loan Repayments	127.21
			Loan Repayments	115.98
			Retirement Roth IRA %	51.74
			Retirement Roth IRA	215.00
		TREASURER OF THE STATE OF MISSOURI	UNCLAIMED PROPERTY	142.50
			UNCLAIMED PROPERTY	641.63
		ONE TIME VENDOR	Bond Refund:210481959-01	105.50
			Bond Refund:191166527-01	105.50
			Bond Refund:191166527-01	130.00
			Bond Refund:210481837-01	353.00
			Bond Refund:210482040-01	35.00
			Bond Refund:191166258-01	90.00
			Bond Refund:191165798-01	62.00
			REFUND OVRPMNT RUMMAGE SAL	15.00
			TOTAL:	34,846.53
City Administrator	General Fund	WELTY, MIKE	MILEAGE 4 STATE AP CONF-WE	94.19
			FICA	636.29
		INTERNAL REVENUE SERVICE	Medicare	148.82
			MCMA 6/2022-5/31/2023-J. W	150.00
		MO MUNICIPAL LEAGUE	Retirement 401%	102.62
			Retirement 401	615.77
		ICMA		
			TOTAL:	1,747.69
City Clerk	General Fund	INTERNAL REVENUE SERVICE	FICA	197.40
			Medicare	46.17
		ICMA	Retirement 401%	31.84
			Retirement 401	191.02
			TOTAL:	466.43
City Treasurer	General Fund	INTERNAL REVENUE SERVICE	FICA	594.62
			Medicare	139.06
		ICMA	Retirement 401%	95.92
			Retirement 401	575.44

DEPARTMENT	FUND	VENDOR NAME	DESCRIPTION	AMOUNT		
			TOTAL:	1,405.04		
Municipal Court	General Fund	INTERNAL REVENUE SERVICE	FICA	92.67		
			Medicare	21.67		
		ICMA	Retirement 401%	14.95		
			Retirement 401	89.68		
		SMITH, GARY L	JULY MUNICIPAL JUDGE SERVI	1,763.16		
			AUG MUNICIPAL JUDGE SERVIC	881.58		
		TOTAL:	2,863.71			
City Attorney	General Fund	INTERNAL REVENUE SERVICE	FICA	404.16		
			Medicare	94.52		
		ICMA	Retirement 401%	65.19		
			Retirement 401	391.13		
		TOTAL:	955.00			
Building Inspection	General Fund	INTERNAL REVENUE SERVICE	FICA	517.35		
			Medicare	121.00		
		ICMA	Retirement 401%	83.45		
			Retirement 401	500.68		
		TOTAL:	1,222.48			
Building Maintenance	General Fund	ALLIED SERVICES LLC	CITY HALL TRASH SERVICE	253.80		
		INTERNAL REVENUE SERVICE	FICA	61.94		
			Medicare	14.48		
		SUMMIT NATURAL GAS OF MISSOURI INC	SERVICE 7/18-8/15/22	30.00		
		B & H CLEANING	CITY HALL JANITORIAL SERVI	2,136.69		
		TOTAL:	2,496.91			
Parks	General Fund	ALLIED SERVICES LLC	PARK TRASH SERVICE	105.97-		
			INTERNAL REVENUE SERVICE	FICA	515.08	
		ICMA	Medicare	120.46		
			Retirement 401%	37.95		
		AT&T MOBILITY-CELLS	Retirement 401	1,162.31		
			AMEREN MISSOURI	PARKS DEPT CELL PHONES	46.23	
		HATCHERY RD SIGN 7/14-8/14	73.79			
			CP MAINT BLDG 7/15-8/15/22	54.16		
		CP #2 DISPLAY C 7/15-8/15/	11.51			
		CP SOCCER FIELDS 7/15-8/15/	77.95			
		CP #2 DISPLAY D 7/15-8/15/	11.51			
		CP BALL FIELDS 7/15-8/15/2	975.28			
		CP #2 DISPLAY B 7/15-8/15/	12.67			
		CP #2 DISPLAY A 7/15-8/15/	11.51			
		CP #2 IRRIG PUMP 7/15-8/14	11.75			
		HOME DEPOT CREDIT SERVICES	PLANTS,WHISKEY BARREL,SOIL	325.48		
		TOTAL:	3,341.67			
		Human Resources	General Fund	INTERNAL REVENUE SERVICE	FICA	221.01
					Medicare	51.68
ICMA	Retirement 401%			35.65		
	Retirement 401			213.88		
CAPITAL ONE, N.A.	WATER, FUN POPS, DRINK MIX			95.78		
TOTAL:	618.00					
Overhead	General Fund	AT & T/CITY HALL	CH PH SVC 8/5/22	1,047.27		
		XEROX CORPORATION	CITY HALL COPIER LEASE	227.81		

DEPARTMENT	FUND	VENDOR NAME	DESCRIPTION	AMOUNT
		MITEL CLOUD SERVICES INC	PH SVC RECRDING 9/1-9/30/2	2,216.43
		RICOH USA INC	PLOTTER MAINTENANCE	<u>254.95</u>
			TOTAL:	3,746.46
Police	General Fund	INTERNAL REVENUE SERVICE	FICA	3,377.49
			Medicare	789.90
		ICMA	Retirement 401%	498.02
			Retirement 401	3,097.54
		XEROX CORPORATION	POLICE COPIER LEASE	227.81
		HENDRICKS, BLAIR	MEALS CSI CLASS- B. HENDRI	<u>525.00</u>
			TOTAL:	8,515.76
911 Center	General Fund	AT & T/CITY HALL	911 LINE 8/5/22	235.00
		INTERNAL REVENUE SERVICE	FICA	730.41
			Medicare	170.83
		ICMA	Retirement 401%	82.54
			Retirement 401	616.00
		MITEL CLOUD SERVICES INC	PD RECORDING SVC 9/1-9/30/	<u>231.81</u>
			TOTAL:	2,066.59
Planning	General Fund	INTERNAL REVENUE SERVICE	FICA	240.13
			Medicare	56.16
		ICMA	Retirement 401%	38.73
			Retirement 401	<u>232.38</u>
			TOTAL:	567.40
Engineering	General Fund	COCHRAN ENGINEERING	GRANT APP FEE SC22-1416	<u>2,500.00</u>
			TOTAL:	2,500.00
Information Technology	General Fund	INTERNAL REVENUE SERVICE	FICA	161.15
			Medicare	37.69
		ICMA	Retirement 401%	25.99
			Retirement 401	155.95
		AT&T INTERNET/IP SERVICES	PARK INTERNET 8/11/22	823.72
			LCF INTERNET 8/11/22	1,243.07
			GG INTERNET 8/11/22	<u>769.14</u>
			TOTAL:	3,216.71
Economic Development	General Fund	INTERNAL REVENUE SERVICE	FICA	119.91
			Medicare	28.04
		ICMA	Retirement 401%	19.34
			Retirement 401	<u>116.04</u>
			TOTAL:	283.33
NON-DEPARTMENTAL	Transportation	MO DEPT OF REVENUE	State Withholding	403.99
		INTERNAL REVENUE SERVICE	Fed WH	934.16
			FICA	806.40
			Medicare	188.59
		ICMA	Retirment 457 &	140.14
			Retirement 457	<u>34.00</u>
			TOTAL:	2,507.28
Transportation	Transportation	ALLIED SERVICES LLC	TRANS TRASH SERVICE	67.83
		INTERNAL REVENUE SERVICE	FICA	806.39
			Medicare	188.61
		ICMA	Retirement 401%	91.48

DEPARTMENT	FUND	VENDOR NAME	DESCRIPTION	AMOUNT
			Retirement 401	548.90
		CARD SERVICES 0248	TRAILER JACK	199.99
			WORK BOOTS	89.99
		STOCKMAN CONSTRUCTION CORP	INDUSTRIAL DR IMPROV OB22-	84,995.08
		XEROX CORPORATION	TRANSPORTATION COPIER LEAS	83.79
		AMEREN MISSOURI	5757 CHAPEL SVC 7/17-8/15/	270.71
		AMEREN MISSOURI	792 PASSOVER LTS 7/14-8/14	64.14
			1095 MACE RD LTS 7/14-8/14	24.48
			1075 NICHOLS LTS 7/17-8/15	201.03
			872 PASSOVER LTS 7/14-8/14	79.84
			MACE RD RNDABT 7/14-8/14/2	47.66
			680 PASSOVER LTS 7/14-8/14	46.48
		COCHRAN ENGINEERING	INDUSTRIAL DR PRJCT SUPP #	3,614.50
		B & H CLEANING	PW-TRANS JANITORIAL SERVIC	371.10
		CAPITAL ONE, N.A.	WATER	10.72
			HEADLAMPS- NIGHT WORK ON P	173.64
			PARTS FOR WORK ON PRKWY	65.41
			COOLER	27.92
			TV- PW CONF ROOM	97.29
		ANDERSON ENGINEERING INC	PARKWAY EXT ENGINEERING	23,799.23
			TOTAL:	115,966.21
NON-DEPARTMENTAL	Water Fund	MO DEPT OF REVENUE	State Withholding	682.07
		INTERNAL REVENUE SERVICE	Fed WH	1,862.65
			FICA	1,062.01
			Medicare	248.39
		ICMA	Retirment 457 &	367.66
			Retirement 457	146.00
			TOTAL:	4,368.78
Water	Water Fund	ALLIED SERVICES LLC	WATER TRASH SERVICE	67.83
		GOEHRI, GEORGE	SEPT INSURANCE PREMIUM	59.25
		INTERNAL REVENUE SERVICE	FICA	1,062.01
			Medicare	248.39
		ICMA	Retirement 401%	171.29
			Retirement 401	1,027.75
		XEROX CORPORATION	WATER COPIER LEASE	83.79
		AMEREN MISSOURI	5757 CHAPEL SVC 7/17-8/15/	270.71
		AMEREN MISSOURI	LK RD 54-29 WELL 7/14-8/14	1,401.74
			COLUMBIA CLG WELL 7/14-8/1	2,765.03
			COLUMBIA CLG WELL 7/14-8/1	15.84
		DEVORE, CALEB	MILEAGE REIMB 8/20-8/26/22	112.50
		B & H CLEANING	PW-WATER JANITORIAL SERVIC	371.10
		CAPITAL ONE, N.A.	WATER	10.72
			TV- PW CONF ROOM	97.29
		SCHILEY, PAUL	MILEAGE REIMB 8/13-8/19/22	52.50
			TOTAL:	7,817.74
NON-DEPARTMENTAL	Sewer Fund	MO DEPT OF REVENUE	State Withholding	529.94
		INTERNAL REVENUE SERVICE	Fed WH	1,049.51
			FICA	1,092.84
			Medicare	255.60
		ICMA	Retirment 457 &	142.45
			Retirement 457	58.00
		MO DEPT NATURAL RESOURCES/ENVIR QUALIT	SWR CONNECT FEES 9/2021-8/	4,430.80
			TOTAL:	7,559.14

DEPARTMENT	FUND	VENDOR NAME	DESCRIPTION	AMOUNT
Sewer	Sewer Fund	ALLIED SERVICES LLC	SEWER TRASH SERVICE	67.83
		INTERNAL REVENUE SERVICE	FICA	1,092.85
			Medicare	255.58
		ICMA	Retirement 401%	156.84
			Retirement 401	940.91
		CARD SERVICES 0248	WORK BOOTS	90.00
		XEROX CORPORATION	SEWER COPIER LEASE	83.78
		AMEREN MISSOURI	GRINDER PUMPS & LIFT STATI	3,234.43
			798 MANOR G/P 7/14-8/14/22	15.24
			4631 WINDSOR G/P 7/14-8/14	15.24
			500 ST MORITZ S/P 7/19-8/1	43.21
			5757 CHAPEL L/S 7/17-8/15/	29.16
			HAWTHORN DR L/S 7/25-8/23/	110.57
			5757 CHAPEL SVC 7/17-8/15/	781.52
			253 W END L/S 7/17-8/15/22	38.19
			5676 ROCKWOOD L/S 7/25-8/2	12.67
			696 PASSOVER G/P 7/14-8/14	11.75
			1089 OB RD L/S 7/14-8/14/2	11.97
			1075 RUNABOUT 7/27-8/25/22	17.12
			5707 OB PKWY 7/14-8/14/22	13.15
			GRINDER PUMPS & LIFT STATI	5,229.52
			GRINDER PUMPS & LIFT STATI	8,018.77
		LIEDEL JR, BRIAN	MILEAGE REIMB 8/12-8/19/22	75.00
		B & H CLEANING	PW-SEWER JANITORIAL SERVIC	371.11
		MCKINNEY, GREGORY	MILES, MEALS TPC TRNG-MCKI	171.53
		MENARDS COMMERCIAL	ELECTRICIAN POUCH	31.99
			COUPLINGS	34.53
			PVC & HOSE CLAMPS	9.97
			TOOL POUCH- PUMP TRUCK	31.99
			PVC & HOSE- SMALL PUMP TRK	9.97
			PARTS FOR REPAIR- KWI K	34.53
		CAPITAL ONE, N.A.	WATER	10.72
			TV- PW CONF ROOM	97.30
		HOME DEPOT CREDIT SERVICES	ADHESIVE	12.15
		CAMPBELL, FRANK	MILEAGE REIMB 8/5-8/12/22	89.25
			MEALS TCP TRNG- F. CAMPBEL	75.00
		STONER CODY	MILEAGE REIMB 8/12-8/19/22	232.50
			TOTAL:	21,557.84
NON-DEPARTMENTAL	Ambulance Fund	MO DEPT OF REVENUE	State Withholding	446.00
		INTERNAL REVENUE SERVICE	Fed WH	963.15
			FICA	1,010.59
			Medicare	236.36
		ICMA	Loan Repayment	134.33
			Loan Repayment	156.06
			Retirment 457 &	127.79
		ONE TIME VENDOR	AMB OVERPAYMENT	262.36
			AMB OVERPAYMENT	253.05
			TOTAL:	3,589.69
Ambulance	Ambulance Fund	INTERNAL REVENUE SERVICE	FICA	1,010.59
			Medicare	236.36
		ICMA	Retirement 401%	83.24
			Retirement 401	499.48
			TOTAL:	1,829.67

DEPARTMENT	FUND	VENDOR NAME	DESCRIPTION	AMOUNT
NON-DEPARTMENTAL	Lee C. Fine Airpor	MO DEPT OF REVENUE INTERNAL REVENUE SERVICE ICMA	State Withholding	194.20
			Fed WH	281.06
			FICA	374.38
			Medicare	87.56
			Retirment 457 &	25.43
			Retirement 457	45.00
			Loan Repayments	74.35
			Loan Repayments	30.39
			Loan Repayments	<u>37.15</u>
			TOTAL:	1,149.52
Lee C. Fine Airport	Lee C. Fine Airpor	ALLIED SERVICES LLC INTERNAL REVENUE SERVICE ICMA DISH NETWORK B & H CLEANING CAPITAL ONE, N.A.	LCF TRASH SERVICE	65.79
			FICA	374.38
			Medicare	87.56
			Retirement 401%	41.90
			Retirement 401	337.44
			SERV 8/29-9/28/22	87.08
			GG JANITORIAL SERVICES	219.38
			ICE	19.44
			ICE	<u>25.92</u>
			TOTAL:	1,258.89
NON-DEPARTMENTAL	Grand Glaize Airpo	MO DEPT OF REVENUE INTERNAL REVENUE SERVICE ICMA	State Withholding	67.80
			Fed WH	268.33
			FICA	266.03
			Medicare	62.21
			Retirment 457 &	13.00
			Retirement 457	<u>30.00</u>
			TOTAL:	707.37
Grand Glaize Airport	Grand Glaize Airpo	ALLIED SERVICES LLC AMEREN MISSOURI INTERNAL REVENUE SERVICE ICMA CHARTER COMMUNICATIONS HOLDING CO LLC B & H CLEANING	GG TRASH SERVICE	65.79
			GG AP HANGAR 7/28-8/28/22	50.89
			GG TBLC EXT D 7/28-8/28/22	271.83
			GG AP SHOP 7/28-8/28/22	19.23
			957 AIRPORT RD 7/28-8/28/2	11.51
			GG AP TBLC EXT D 7/28-8/28	12.67
			GG AP HANGAR 7/28-8/28/22	27.63
			GG AP SLEEPY 7/28-8/28/22	145.41
			FICA	266.03
			Medicare	62.21
			Retirement 401%	23.98
			Retirement 401	233.94
			GG CABLE SERV 8/16-9/15/22	108.22
			LCF JANITORIAL SERVICES	<u>430.62</u>
			TOTAL:	1,729.96

DEPARTMENT	FUND	VENDOR NAME	DESCRIPTION	AMOUNT
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===== FUND TOTALS =====

10	General Fund	70,859.71
20	Transportation	118,473.49
30	Water Fund	12,186.52
35	Sewer Fund	29,116.98
40	Ambulance Fund	5,419.36
45	Lee C. Fine Airport Fund	2,408.41
47	Grand Glaize Airport Fund	2,437.33

GRAND TOTAL:		240,901.80
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TOTAL PAGES: 7

DEPARTMENT	FUND	VENDOR NAME	DESCRIPTION	AMOUNT
City Treasurer	General Fund	STAPLES BUSINESS ADVANTAGE	MARKER, CORRCTNG TAPE, PAPER	13.24
			TOTAL:	13.24
Building Inspection	General Fund	CINTAS CORPORATION	BLDG DEPT UNIFORM RENTAL	1.36
			BLDG DEPT UNIFORM RENTAL	1.36
			TOTAL:	2.72
Building Maintenance	General Fund	PRAIRIEFIRE COFFEE & ROASTERS	COFFEE	69.90
		AB PEST CONTROL INC	CH PEST CONTROL	135.00
		CINTAS CORPORATION	BLDG DEPT UNIFORM RENTAL	4.46
			BLDG DEPT UNIFORM RENTAL	4.46
			CH FLOOR MATS	78.88
		STAPLES BUSINESS ADVANTAGE	PAPER TOWELS	33.98
			RESTROOM TOWELS	67.96
			PLATES & PAPER TOWELS	112.95
			RETURN SPONGES & HORNET SP	11.70
			TRASH BAGS	77.84
			PAPER TOWELS & TOILET PAPE	101.18
		CATALYST ELECTRIC	SVC CALL- CH BUILDING SIGN	240.00
		LINDYSPRING LAKE OF THE OZARKS	5-GAL BOTTLED WATER	7.29
			5-GAL BOTTLED WATER	7.29
			SEPT WATER COOLER RENTAL	28.00
		COMMERCIAL ZONE PRODUCTS	NEW TRASH CANS	1,397.21
			TOTAL:	2,354.70
Parks	General Fund	MOTOR HUT INC	HYDRAULIC FLUID	239.84
		CULLIGAN LAKE OF THE OZARKS	WATER SOFTENER 8/1-8/31/22	100.00
		CORE & MAIN LP	COUPLINGS & INSERTS	343.28
		CINTAS CORPORATION	PARKS DEPT UNIFORM RENTAL	7.00
			PARKS DEPT UNIFORM RENTAL	3.60
		COCHRAN ENGINEERING	OSAGE BEACH PRK MSTR PLAN	4,850.00
			TOTAL:	5,543.72
Human Resources	General Fund	LAKE REGIONAL OCCUPATIONAL MEDICINE	PRE EMPLOYMENT SCREENING	240.00
			POST ACCIDENT SCREENING	45.00
		MO MUNICIPAL LEAGUE	2022 MML CONFERENCE- C. LE	420.00
		VALIDITY SCREENING SOLUTIONS	PRE EMPLOYMENT SCREENING	109.50
			TOTAL:	814.50
Overhead	General Fund	PITNEY BOWES GLOBAL	LEASE PAYMENT 6/30-9/29/20	417.66
			TOTAL:	417.66
Police	General Fund	LEON UNIFORM CO INC	SPRAY FLAP	22.00
		O'REILLY AUTOMOTIVE STORES INC	WIPER BLADES- PD 23	52.18
		HEDRICK MOTIV WERKS LLC	OIL CHNG & ROTATE TIRES- P	69.50
			OIL CHNG & ROTATE TIRES-PD	69.50
		ALPHAGRAPHICS OF OSAGE BEACH	BUSINESS CARDS- STARK & RI	99.00
			TOTAL:	312.18
Engineering	General Fund	COCHRAN ENGINEERING	OSAGE BEACH VETERANS MEMOR	3,473.75
			ENG GENERAL CONSULT 07/202	13,786.00
			LIFT STN IMPROV ENG 07/202	367.50
			AUTUMN LANE ENG 07/2022	2,277.50
			GREENWOOD DRAINAGE 07/2022	1,053.75
			BLUFF DR END 07/2022	1,250.00
			ANTIOCH WTR & SWR ENG 07/2	157.50

DEPARTMENT	FUND	VENDOR NAME	DESCRIPTION	AMOUNT
			AMY LANE ENG 07/2022	6,396.25
			WATER MAIN LOOPING ENG 07/	832.50
			TAN TAR A L/S ENG 07/2022	4,406.25
			WELL PLUGGING ENG 07/2022	356.25
			CASE RD DRIVEWAY ENG 07/20	490.00
			SIDEWALK/ DRIVEWAY ENG 07/	367.50
			CITY PARK CULVERT ENG 07/2	78.75
			ELBOW CAY SNYDER ENG 07/20	1,721.25
			253 W END CIR ENG 07/2022	780.00
			ELBOW CAY G/S DESIGN 07/20	525.00
			GENERAL INSPECTIONS 07/202	483.75
			PRECISION PAINT WORK 07/20	127.50
			TOPSIDER ENG 07/2022	472.50
			OSAGE BEACH COMMONS 07/202	915.00
			AUTUMN LANE ENG 07/2022	<u>52.50</u>
			TOTAL:	40,371.00
Transportation	Transportation	SCHEPPERS INTERNATIONAL TRUCK CENTER I	BELT FANS- TRK 63	51.05
			BELT FAN- TRK 66	51.05
		AMERICAN WATER WORKS ASSOC	AWWA MEMB 11/1/2022-10/31/	75.68
		MO ONE CALL SYSTEM INC	LOCATES	67.50
		O'REILLY AUTOMOTIVE STORES INC	MINI BULBS- VAN	16.36
			OIL & AIR FILTER- VAN	21.80
			CONNECTOR FOR TRAILER #6	12.99
			FUEL FILTER- KUBOTA TRACTO	3.84
			O-RING FOR PAINT SPRAYER	2.54
		SASCO PAVEMENT COATINGS INC	GLASS BEADS-PNT PKWY & STR	1,400.00
		CROWN POWER & EQUIPMENT	PIN FOR KUBOTA TRACTOR	162.05
			PARTS FOR KUBOTA TRACTOR	225.90
		CORE & MAIN LP	RETURN GASKET	170.00-
			RETURN GASKET	0.00
		CINTAS CORPORATION	TRANSPO DEPT UNIFORM RENTA	1.75
			TRANS DEPT UNIFORMS	158.94
			TRANS DEPT FLOOR MATS	10.33
			TRANSPO DEPT UNIFORM RENTA	1.75
			TRANS DEPT UNIFORMS	158.94
			TRANS DEPT FLOOR MATS	10.33
		MEYER ELECTRIC CO INC	SIGNAL CYCLING- WALMART	450.00
		DELTA GASES INC	GRINDING WHEEL, PARTS-BCKT	65.35
		AMAZON CAPITAL SERVICES INC	INVISIBLE & PACKING TAPE	6.21
			MOSQUITO REPELLENT	29.91
			CLEANING & HAND WIPES	49.73
			AMAZON CAPITAL SERVICES IN	49.98
			STROBE LIGHTS-ZERO TURN MO	30.98
		COCHRAN ENGINEERING	INDUSTRIAL DR PRJCT SUPP #	7,229.00
		NICK'S TRUE VALUE HARDWARE	SLOW VEHICLE TRIANGLES	103.96
			SAW KIT,UTILITY BLADE-BCKT	36.98
			PAINT SUPPLIES- PARKWAY	45.75
		TRAFFIC CONTOL CORP	TRAFFIC CONTOL CORP	<u>120.00</u>
			TOTAL:	10,480.65
Water	Water Fund	USABBLUEBOOK	INJECTOR BODIES	152.00
			CHEMICAL FEED SUPPLIES	1,233.69
			CHEMICAL INJECTORS	351.06
		ELECTRIC CONTROLS COMPANY INC	SCADA DIALER & ON-SITE SVC	6,136.53
		AMERICAN WATER WORKS ASSOC	AWWA MEMB 11/1/2022-10/31/	75.66

DEPARTMENT	FUND	VENDOR NAME	DESCRIPTION	AMOUNT
		MO ONE CALL SYSTEM INC	LOCATES	67.50
		O'REILLY AUTOMOTIVE STORES INC	ANTIFREEZE	84.95
			FUSES FOR BLUFF	4.99
		POSTMASTER	SEPT UTILITY BILLING POSTA	550.00
		CORE & MAIN LP	COUPLINGS & INSERTS-INVENT	280.75
		OZARK APPLICATORS, LLC	SWISS VLG TOWER CLEANOUT	26,350.00
		CINTAS CORPORATION	WATER DEPT UNIFORM RENTAL	1.75
			WATER DEPT UNIFORMS	131.32
			WATER DEPT FLOOR MATS	10.33
			WATER DEPT UNIFORM RENTAL	1.75
			WATER DEPT UNIFORMS	131.32
			WATER DEPT FLOOR MATS	10.33
		PARKWAY PLAZA TIRE	TIRE DISPOSAL & BRAKES- TR	1,291.70
		AMAZON CAPITAL SERVICES INC	INVISIBLE & PACKING TAPE	6.21
			MOSQUITO REPELLENT	29.91
			CLEANING & HAND WIPES	49.73
		ENVIRO-CLEAR	WTR DISTRIBUTN TRNG- C. DE	550.00
			WTR DISTRIBUTN TR- J. LUTT	550.00
			WTR DISTRIBUTN TRN- T. STO	550.00
			WTR TRTMNT TRNG- P. SCHILE	650.00
		A-1 RENTAL NORTH	HYDRO-VAC RENTAL	2,783.33
			TOTAL:	42,034.81
Sewer	Sewer Fund	ELECTRIC CONTROLS COMPANY INC	SCADA DIALER & ON-SITE SVC	6,136.53
		GRAINGER INC	SOFT START- STN 52-16	3,165.62
			GRINDER STATION RELAYS	527.10
			LIFE JACKET	64.71
			SOFT START- INVENTORY	3,165.62
		AMOS SEPTIC SERVICE INC	PUMPOUT @ KWI-KAR	3,964.50
		AMERICAN WATER WORKS ASSOC	AWWA MEMB 11/1/2022-10/31/	75.66
		MO ONE CALL SYSTEM INC	LOCATES	67.50
		MODERN SANITATION TRANSFER STATION	TRASH CLEANUP- PUBLIC WORK	110.40
		MUNICIPAL EQUIPMENT CO	CONTROL PANELS	10,101.85
			COMMUNICATIONS RNWL-ELBOW	360.00
			COMMUNICATIONS RNWL-RED HE	360.00
			RPLCMNT PUMPS- STN 29-1	14,402.93
			CONTRACTORS FOR INVENTORY	1,199.65
			RPLCMNT PUMP- STN 37-1	13,620.91
		O'REILLY AUTOMOTIVE STORES INC	HEADLIGHTS- SMALL PUMP TRK	8.04
		POSTMASTER	SEPT UTILITY BILLING POSTA	550.00
		BOWLING ELECTRIC MACHINE	CAPACITORS FOR INVENTORY	59.00
		BUTLER SUPPLY CO	BOLT- CL-005 FOGGER	66.01
			PVC- CL-005 FOGGER	92.69
		CORE & MAIN LP	MANHOLE FRAMES & COVERS	3,817.10
			SEWER PARTS FOR INVENTORY	218.75
		PRECISION AUTO & TIRE SERVICE LLC	OIL CHNG & BATTERY- TRK 50	325.42
		MO STATE AGENCY FOR SURPLUS PROPERTY	TOTES FOR OIL	200.00
			HAND TOOLS,CHAIN, CABLE,RO	84.00
			HAZMAT CABINET	125.00
		JCI INDUSTRIES INC	PANELS FOR INVENTORY	2,545.00
			CONTROL PANEL- INVENTORY	3,110.00
		CINTAS CORPORATION	SEWER DEPT UNIFORM RENTAL	1.75
			SEWER DEPT UNIFORMS	171.51
			SEWER DEPT FLOOR MATS	10.32
			SEWER DEPT UNIFORM RENTAL	1.75
			SEWER DEPT UNIFORMS	171.51

DEPARTMENT	FUND	VENDOR NAME	DESCRIPTION	AMOUNT
			SEWER DEPT FLOOR MATS	10.32
		MCINTIRE MANAGEMENT GROUP	ODOR CNTRL FOG SYSTM-L/S C	30,300.00
		AMAZON CAPITAL SERVICES INC	INVISIBLE & PACKING TAPE	6.20
			MOSQUITO REPELLENT	29.92
			CLEANING & HAND WIPES	49.73
			FLASHLIGHT	155.64
			WEBCAM WITH MICROPHONE	29.90
		REEVES-WIEDEMAN COMPANY	HOLE SAW ARBOR	10.75
			DRAIN CAP & SEALANT- STN 5	18.20
			PVC CEMENT- TRK 50	14.35
		CARDINAL PUMP COMPANY	GRINDER PANELS FOR INVENTO	3,804.00
		HALLIDAY PRODUCTS INC	CRANE MOUNT	395.85
		HELTON ELECTRIC LLC	SVC CALL- L/S 53-1	378.10
		TPC TRAINING	ELECTRICITY TRNG -F. CAMPB	1,195.00
			ELECTRICITY TRNG -G. MCKIN	<u>1,195.00</u>
			TOTAL:	106,473.79
Ambulance	Ambulance Fund	QUADMED INC	MEDICAL SUPPLIES	<u>260.25</u>
			TOTAL:	260.25
Lee C. Fine Airport	Lee C. Fine Airpor	NAEGLER OIL CO	7,434 GAL LCF JET FUEL	30,632.90
			7,436 GAL LCF JET FUEL	32,864.34
		CINTAS CORPORATION	LCF UNIFORM RENTAL	8.99
			LCF UNIFORM RENTAL	8.99
		O'REILLY AUTOMOTIVE STORES INC	OIL FLTR, MOTOR OIL-MOWER	18.80
		STAPLES BUSINESS ADVANTAGE	REGISTER TAPE	65.66
			TONER- AIRPORTS	<u>99.77</u>
			TOTAL:	63,699.45
Grand Glaize Airport	Grand Glaize Airpo	CINTAS CORPORATION	GG UNIFORM RENTAL	3.97
			GG UNIFORM RENTAL	3.97
		O'REILLY AUTOMOTIVE STORES INC	BRAKE CLEANER	3.99
			SCRWDRVR SET & SOCKET SET	<u>27.98</u>
			TOTAL:	39.91
===== FUND TOTALS =====				
10	General Fund			49,829.72
20	Transportation			10,480.65
30	Water Fund			42,034.81
35	Sewer Fund			106,473.79
40	Ambulance Fund			260.25
45	Lee C. Fine Airport Fund			63,699.45
47	Grand Glaize Airport Fund			39.91

	GRAND TOTAL:			272,818.58

City of Osage Beach

Agenda Item Summary

Date of Meeting: September 15, 2022
Originator: Mike Welty, Assistant City Administrator
Presenter: Mike Welty, Assistant City Administrator

Agenda Item:

Bill 22-63 - An ordinance of the City of Osage Beach, Missouri, authorizing the Mayor to execute the Missouri Highways and Transportation Commission Transportation Alternatives Funds Program Agreement to fund Pedestrian Improvements for the Hwy 42 Sidewalk Project. *Second Reading*

Requested Action:

Second Reading of Bill #22-63

Ordinance Referenced for Action:

Board of Aldermen approval required per Section 110.230. Ordinances, Resolutions, Etc. – Generally and Section 110.240 Adoption of Ordinances.

Deadline for Action:

None

Budgeted Item:

Not Applicable

Budget Line Information (if applicable):

Not Applicable

Department Comments and Recommendation:

At the Second Board of Alderman meeting in June 2022, the board approved a resolution in support of staff pursuing a TAP Grant for the Highway 42 Sidewalk. The City Staff recently received notification that we have been awarded the Hwy 42 TAP Grant. This request is to authorize the Mayor to sign a Missouri Highways and Transportation Commission Transportation Alternatives Funds Program Agreement with the Missouri Department of Transportation to assist the City with funding a 4,488 ft. sidewalk project on Hwy 42 (Route 42) from Columbia Avenue to School of the Osage Drive.

The grant will fund construction of the project at an amount not to exceed \$455,616 (75%), with City match of \$151,872 (25%) = Construction estimate total \$607,488. Engineering and construction inspection services will be funded 100% by the City. The

estimated out-of-pocket City expenditures (25% construction match + 100% engineering services) is \$242,000. This will be a FY2023 project and will be included in the upcoming FY2023 budget.

I recommend approval.

City Attorney Comments:

Per City Code 110.230, Bill 22-63 is in correct form.

City Administrator Comments:

The first reading was read and approved on September 1, 2022. I concur with the department's recommendation.

AN ORDINANCE OF THE CITY OF OSAGE BEACH, MISSOURI, AUTHORIZING THE MAYOR TO EXECUTE THE MISSOURI HIGHWAYS AND TRANSPORTATION ALTERNATIVES FUNDS PROGRAM AGREEMENT TO FUND PEDESTRIAN IMPROVEMENTS FOR THE HYW 42 SIDEWALK PROJECT.

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF OSAGE BEACH, AS FOLLOWS:

Section 1. That the Board of Aldermen to authorize the Mayor to sign a contract with for the Missouri Highways and Transportation Commission State Block Grant Agreement for the pedestrian improvements – Highway 42 sidewalks under substantially the same or similar terms and conditions as set forth in “Exhibit A”.

Section 2. Total expenditures or liability authorized under this Ordinance shall not exceed Six Hundred Seven Thousand Four Hundred Eighty-Eight Dollars. (\$607,488.00)

Section 3. The City Administrator is hereby authorized to take such further actions as are necessary to carry out the intent of this Ordinance and Contract.

Section 4. This Ordinance shall be in full force and effect from date of passage and approval by the Mayor.

READ FIRST TIME: September 1, 2022

READ SECOND TIME:

I hereby certify that the above Ordinance No. 22.63 was duly passed on , by the Board of Aldermen of the City of Osage Beach. The votes thereon were as follows:

Ayes:

Nays:

Abstain:

Absent:

This Ordinance is hereby transmitted to the Mayor for his signature.

Date
Approved as to form:

Tara Berreth, City Clerk

Edward B. Rucker, City Attorney

I hereby approve Ordinance No. 22.63.

Michael Harmison, Mayor

Date

ATTEST:

Tara Berreth, City Clerk

EXHIBIT A

CCO Form: FS25
Approved: 04/95 (MGB)
Revised: 03/17 (MWH)
Modified:

FDA Number: 20.205
CFDA Title: Highway Planning and Construction
Award name/number: TAP - 9901()
Award Year: FY 2022
Federal Agency: Federal Highway Administration, Department of Transportation

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION TRANSPORTATION ALTERNATIVES FUNDS PROGRAM AGREEMENT

THIS AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and the City of Osage Beach (hereinafter, City).

WITNESSETH:

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations in this Agreement, the parties agree as follows:

(1) PURPOSE: The United States Congress has authorized, in Fixing America's Surface Transportation Act (FAST); 23 U.S.C. §101, §106 and §213; SAFETEA-LU §1404 funds to be used for transportation alternatives activities. The purpose of this Agreement is to grant the use of such transportation enhancement funds to the (City).

(2) LOCATION: The transportation alternatives funds which are the subject of this Agreement are for the project at the following location:

Construct approximately 4488 feet of sidewalks on Route 42 from Columbia Avenue to School of the Osage Drive.

The general locations of the project is shown on attachment marked "Exhibit A" and incorporated herein by reference.

(3) REASONABLE PROGRESS POLICY: The project as described in this agreement is subject to the reasonable progress policy set forth in the Local Public Agency (LPA) Manual and the final deadline specified in Exhibit B attached hereto and incorporated herein by reference. In the event, the LPA Manual and the final deadline within Exhibit B conflict, the final deadline within Exhibit B controls. If the project is within a Transportation Management Area that has a reasonable progress policy in place, the

project is subject to that policy. If the project is withdrawn for not meeting reasonable progress, the City agrees to repay the Commission for any progress payments made to the City for the project and agrees that the Commission may deduct progress payments made to the City from future payments to the City. The City may not be eligible for future Transportation Alternatives Funds if the City does not meet the reasonable progress policy.

(4) INDEMNIFICATION:

(A) To the extent allowed or imposed by law, the City shall defend, indemnify and hold harmless the Commission, including its members and the Missouri Department of Transportation (MoDOT or Department) employees, from any claim or liability whether based on a claim for damages to real or personal property or to a person for any matter relating to or arising out of the City's wrongful or negligent performance of its obligations under this Agreement.

(B) The City will require any contractor procured by the City to work under this Agreement:

1. To obtain a no cost permit from the Commission's district engineer prior to working on the Commission's right-of-way, which shall be signed by an authorized contractor representative (a permit from the Commission's district engineer will not be required for work outside of the Commission's right-of-way); and

2. To carry commercial general liability insurance and commercial automobile liability insurance from a company authorized to issue insurance in Missouri, and to name the Commission, and MoDOT and its employees, as additional named insureds in amounts sufficient to cover the sovereign immunity limits for Missouri public entities as calculated by the Missouri Department of Insurance, Financial Institutions and Professional Registration, and published annually in the Missouri Register pursuant to Section 537.610, RSMo. The City shall cause insurer to increase the insurance amounts in accordance with those published annually in the Missouri Register pursuant to Section 537.610, RSMo.

(C) In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either party's rights or defenses with regard to each party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitution or law.

(5) AMENDMENTS: Any change in this Agreement, whether by modification or supplementation, must be accomplished by a formal contract amendment signed and approved by the duly authorized representatives of the City and the Commission.

(6) COMMISSION REPRESENTATIVE: The Commission's District Engineer is designated as the Commission's representative for the purpose of administering the provisions of this Agreement. The Commission's representative may designate by written

notice other persons having the authority to act on behalf of the Commission in furtherance of the performance of this Agreement.

(7) NONDISCRIMINATION ASSURANCE: With regard to work under this Agreement, the City agrees as follows:

(A) Civil Rights Statutes: The City shall comply with all state and federal statutes relating to nondiscrimination, including but not limited to Title VI and Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000d and §2000e, *et seq.*), as well as any applicable titles of the "Americans with Disabilities Act" (42 U.S.C. §12101, *et seq.*). In addition, if the City is providing services or operating programs on behalf of the Department or the Commission, it shall comply with all applicable provisions of Title II of the "Americans with Disabilities Act".

(B) Administrative Rules: The City shall comply with the administrative rules of the United States Department of Transportation relative to nondiscrimination in federally-assisted programs of the United States Department of Transportation (49 C.F.R. Part 21) which are herein incorporated by reference and made part of this Agreement.

(C) Nondiscrimination: The City shall not discriminate on grounds of the race, color, religion, creed, sex, disability, national origin, age or ancestry of any individual in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The City shall not participate either directly or indirectly in the discrimination prohibited by 49 C.F.R. §21.5, including employment practices.

(D) Solicitations for Subcontracts, Including Procurements of Material and Equipment: These assurances concerning nondiscrimination also apply to subcontractors and suppliers of the City. These apply to all solicitations either by competitive bidding or negotiation made by the City for work to be performed under a subcontract including procurement of materials or equipment. Each potential subcontractor or supplier shall be notified by the City of the requirements of this Agreement relative to nondiscrimination on grounds of the race, color, religion, creed, sex, disability or national origin, age or ancestry of any individual.

(E) Information and Reports: The City shall provide all information and reports required by this Agreement, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Commission or the United States Department of Transportation to be necessary to ascertain compliance with other contracts, orders and instructions. Where any information required of the City is in the exclusive possession of another who fails or refuses to furnish this information, the City shall so certify to the Commission or the United States Department of Transportation as appropriate and shall set forth what efforts it has made to obtain the information.

(F) Sanctions for Noncompliance: In the event the City fails to comply with the nondiscrimination provisions of this Agreement, the Commission shall impose

such contract sanctions as it or the United States Department of Transportation may determine to be appropriate, including but not limited to:

1. Withholding of payments under this Agreement until the City complies; and/or
2. Cancellation, termination or suspension of this Agreement, in whole or in part, or both.

(G) Incorporation of Provisions: The City shall include the provisions of paragraph (7) of this Agreement in every subcontract, including procurements of materials and leases of equipment, unless exempted by the statutes, executive order, administrative rules or instructions issued by the Commission or the United States Department of Transportation. The City will take such action with respect to any subcontract or procurement as the Commission or the United States Department of Transportation may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that in the event the City becomes involved or is threatened with litigation with a subcontractor or supplier as a result of such direction, the City may request the United States to enter into such litigation to protect the interests of the United States.

(8) ASSIGNMENT: The City shall not assign, transfer or delegate any interest in this Agreement without the prior written consent of the Commission.

(9) LAW OF MISSOURI TO GOVERN: This Agreement shall be construed according to the laws of the State of Missouri. The City shall comply with all local, state and federal laws and regulations relating to the performance of this Agreement.

(10) CANCELLATION: The Commission may cancel this Agreement at any time for a material breach of contractual obligations by providing the City with written notice of cancellation. Should the Commission exercise its right to cancel this Agreement for such reasons, cancellation will become effective upon the date specified in the notice of cancellation sent to the City.

(11) ACCESS TO RECORDS: The City and its contractors must maintain all records relating to this Agreement, including but not limited to invoices, payrolls, etc. These records must be available at no charge to the Federal Highway Administration (FHWA) and the Commission and/or their designees or representatives during the period of this Agreement and any extension, and for a period of three (3) years after the date on which the City receives reimbursement of their final invoice from the Commission.

(12) FEDERAL-AID PROVISIONS: Because responsibility for the performance of all functions or work contemplated as part of this project is assumed by the City, and the City may elect to construct part of the improvement contemplated by this Agreement with its own forces, a copy of Section II and Section III, as contained in the United States Department of Transportation Form Federal Highway Administration FHWA 1273

"Required Contract Provisions, Federal-Aid Construction Contracts," is attached and made a part of this Agreement as Exhibit C. Wherever the term "the contractor" or words of similar import appear in these sections, the term "the City" is to be substituted. The City agrees to abide by and carry out the condition and obligations of "the contractor" as stated in Section II, Equal Opportunity, and Section III, Nonsegregated Facilities, as set out in Form FHWA 1273.

(13) ACQUISITION OF RIGHT OF WAY: With respect to the acquisition of right of way necessary for the completion of the project, City shall acquire any additional necessary right of way required for this project and in doing so agrees that it will comply with all applicable federal laws, rules and regulations, including 42 U.S.C. 4601-4655, the Uniform Relocation Assistance and Real Property Acquisition Act, as amended and any regulations promulgated in connection with the Act.

(14) MAINTENANCE OF DEVELOPMENT: The City shall maintain the herein contemplated improvements without any cost or expense to the Commission. All maintenance by the City shall be done for the safety of the general public and the esthetics of the area. In addition, if any sidewalk or bike trails are constructed on the Commission's right-of-way pursuant to this Agreement, the City shall inspect and maintain the sidewalk or bike trails constructed by this project in a condition reasonably safe to the public and, to the extent allowed by law, shall indemnify and hold the Commission harmless from any claims arising from the construction and maintenance of said sidewalk or bike trails. If the City fails to maintain the herein contemplated improvements, the Commission or its representatives, at the Commission's sole discretion shall notify the City in writing of the City's failure to maintain the improvement. If the City continues to fail in maintaining the improvement, the Commission may remove the herein contemplated improvement whether or not the improvement is located on the Commission's right of way. Any removal by the Commission shall be at the sole cost and expense of the City. Maintenance includes but is not limited to mowing and trimming between shrubs and other plantings that are part of the improvement.

(15) PLANS: The City shall prepare preliminary and final plans and specifications for the herein improvements. The plans and specifications shall be submitted to the Commission for the Commission's review and approval. The Commission has the discretion to require changes to any plans and specifications prior to any approval by the Commission.

(16) REIMBURSEMENT: The cost of the contemplated improvements will be borne by the United States Government and by the City as follows:

(A) Any federal funds for project activities shall only be available for reimbursement of eligible costs which have been incurred by City. Any costs incurred by City prior to authorization from FHWA and notification to proceed from the Commission are **not** reimbursable costs. The federal share for this project will be 80% percent not to exceed four hundred fifty-five thousand six hundred sixteen dollars

(\$455,616.00). The calculated federal share for seeking federal reimbursement of participating costs for the herein improvements will be determined by dividing the total federal funds applied to the project by the total participating costs. Any costs for the herein improvements which exceed any federal reimbursement or are not eligible for federal reimbursement shall be the sole responsibility of City. The Commission shall not be responsible for any costs associated with the herein improvement unless specifically identified in this Agreement or subsequent written amendments.

(17) PROGRESS PAYMENTS: The City may request progress payments be made for the herein improvements as work progresses but not more than once every two weeks. Progress payments must be submitted monthly. The City shall repay any progress payments which involve ineligible costs.

(18) PROMPT PAYMENTS: Progress invoices submitted to MoDOT for reimbursement more than thirty (30) calendar days after the date of the vendor invoice shall also include documentation that the vendor was paid in full for the work identified in the progress invoice. Examples of proof of payment may include a letter or e-mail from the vendor, lien waiver or copies of cancelled checks. Reimbursement will not be made on these submittals until proof of payment is provided. Progress invoices submitted to MoDOT for reimbursement within thirty (30) calendar days of the date on the vendor invoice will be processed for reimbursement without proof of payment to the vendor. If the City has not paid the vendor prior to receiving reimbursement, the City must pay the vendor within two (2) business days of receipt of funds from MoDOT.

(19) PERMITS: The City shall secure any necessary approvals or permits from any federal or state agency as required for the completion of the herein improvements. If this improvement is on the right of way of the Commission, the City must secure a permit from the Commission prior to the start of any work on the right of way. The permits which may be required include, but are not limited to, environmental, architectural, historical or cultural requirements of federal or state law or regulation.

(20) INSPECTION OF IMPROVEMENTS AND RECORDS: The City shall assure that representatives of the Commission and FHWA shall have the privilege of inspecting and reviewing the work being done by the City's contractor and subcontractor on the herein project. The City shall also assure that its contractor, and all subcontractors, if any, maintain all books, documents, papers and other evidence pertaining to costs incurred in connection with the Transportation Enhancement Program Agreement, and make such materials available at such contractor's office at all reasonable times at no charge during this Agreement period, and for three (3) years from the date of final payment under this Agreement, for inspection by the Commission, FHWA or any authorized representatives of the Federal Government and the State of Missouri, and copies shall be furnished, upon request, to authorized representatives of the Commission, State, FHWA, or other Federal agencies.

(21) CREDIT FOR DONATIONS OF FUNDS, MATERIALS, OR SERVICES: A person may offer to donate funds, materials or services in connection with this project.

Any donated funds, or the fair market value of any donated materials or services that are accepted and incorporated into this project shall be credited according to 23 U.S.C. §323.

(22) DISADVANTAGED BUSINESS ENTERPRISES (DBE): The Commission will advise the City of any required goals for participation by disadvantaged business enterprises (DBEs) to be included in the City's proposal for the work to be performed. The City shall submit for Commission approval a DBE goal or plan. The City shall comply with the plan or goal that is approved by the Commission and all requirements of 49 C.F.R. Part 26, as amended.

(23) VENUE: It is agreed by the parties that any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, or regarding its alleged breach, shall be instituted only in the Circuit Court of Cole County, Missouri.

(24) NOTICE TO BIDDERS: The City shall notify the prospective bidders that disadvantaged business enterprises shall be afforded full and affirmative opportunity to submit bids in response to the invitation and will not be discriminated against on grounds of race, color, sex, or national origin in consideration for an award.

(25) FINAL AUDIT: The Commission may, in its sole discretion, perform a final audit of project costs. The United States Government shall reimburse the City, through the Commission, any monies due. The City shall refund any overpayments as determined by the final audit.

(26) OMB AUDIT: If the City expend(s) seven hundred fifty thousand dollars (\$750,000) or more in a year in federal financial assistance it is required to have an independent annual audit conducted in accordance with 2 CFR Part 200. A copy of the audit report shall be submitted to MoDOT within the earlier of thirty (30) days after receipt of the auditor's report(s), or nine (9) months after the end of the audit period. Subject to the requirements of 2 CFR Part 200, if the City expend(s) less than seven hundred fifty thousand dollars (\$750,000) a year, the City may be exempt from auditing requirements for that year but records must be available for review or audit by applicable state and federal authorities.

(27) FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT OF 2006: The City shall comply with all reporting requirements of the Federal Funding Accountability and Transparency Act (FFATA) of 2006, as amended. This Agreement is subject to the award terms within 2 C.F.R. Part 170.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date last written below.

Executed by the City this day of _____ .

Executed by the Commission this day of _____.

MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION

CITY OF OSAGE BEACH

Title _____

By _____
Title City Administrator Jeana Woods

ATTEST:

ATTEST:

Secretary to the Commission

By _____
Title _____

Approved as to Form:

Approved as to Form:

Commission Counsel

Title _____

Ordinance No _____

Exhibit A - Location of Project

City of Osage Beach:

- Hwy 42 Sidewalks –
Columbia Blvd. to the intersection at School of the Osage Drive

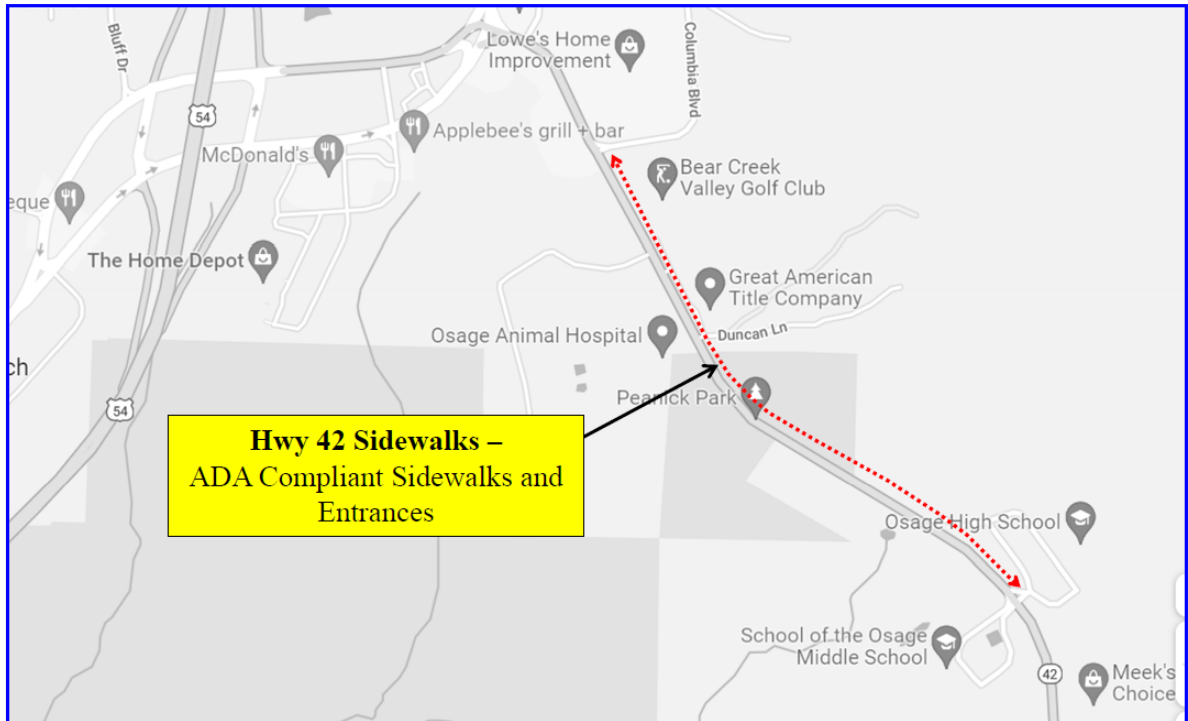


Exhibit B – Project Schedule

Project Description: TAP 9901 ()

Construct approximately 4488 feet of sidewalks on Route 42 from Columbia Avenue to School of the Osage.

Task	Date
Date funding is made available or allocated to recipient	9/1/2022
Solicitation for Professional Engineering Services (advertised)	10/1/2022
Engineering Services Contract Approved	11/1/2022
Preliminary and Right-of-Way Plans Submittal (if Applicable)	8/1/2023
Plans, Specifications & Estimate (PS&E) Submittal	1/1/2024
Plans, Specifications & Estimate (PS&E) Approval	3/1/2024
Advertisement for Letting	5/1/2024
Bid Opening	6/1/2024
Construction Contract Award or Planning Study completed (REQUIRED)	8/1/2024

*Note: the dates established in the schedule above will be used in the applicable ESC between the sponsor agency and consultant firm.

**Schedule dates are approximate as the project schedule will be actively managed and issues mitigated through the project delivery process. The Award Date or Planning Study Date deliverable is not approximate and a Supplemental Agreement is required to modify this date.

Exhibit C - Required Contract Provisions
Federal-Aid Construction Contracts

City of Osage Beach
Agenda Item Summary

Date of Meeting: September 15, 2022
Originator: Jeana Woods, City Administrator
Presenter: Jeana Woods, City Administrator

Agenda Item:

Public Hearing - Lake Regional Health System Endorsement Request for Critical Care Transport Truck

Requested Action:

Public Hearing

Ordinance Referenced for Action:

RSMo Section 190.190 - Ground Ambulance License

Deadline for Action:

None

Budgeted Item:

Not Applicable

Budget Line Information (if applicable):

Not Applicable

Department Comments and Recommendation:

Not Applicable

City Attorney Comments:

Not Applicable

City Administrator Comments:

Lake Regional Health System is seeking a resolution of endorsement from the City of Osage Beach Board of Aldermen to pursue an ambulance service license for the purpose of deploying a critical care transport truck to transport critically ill patients between Lake Regional Health System and other health care facilities. The licensed service to be provided by Lake Regional Health System is intended to be non-competitive with area ambulance districts and for the sole purpose of critical ill transport. See enclosed letter from Lake Regional Health System.

In compliance with Missouri Statute 190.109 - Ground Ambulance License, the City of Osage Beach is required to hold a Public Hearing regarding said request. The Public Hearing was announced on August 12, 2022; press release is enclosed.



07/29/22

Jeana Woods, City Administrator
1000 City Parkway
Osage Beach, MO 65065

Re: Critical care transport truck

Dear Jeana,

Lake Regional Health System is seeking endorsement from the City of Osage Beach for the purpose of deploying a critical care transport truck which will provide transport of critically ill patients to higher levels of care. The purchase of this truck has been made possible by grant monies received from CARES Act funding during the COVID19 pandemic, making this objective feasible. Pursuant to the statute, a public hearing regarding this matter is being requested.

This critical care transport service is being developed in compliance with all applicable laws and regulations pertaining to the operation of a ground ambulance service, as required by the Missouri Department of Health and Senior Services Bureau of Emergency Medical Services. This letter aims to comply with RSMo section 190.109, which requires endorsement from each ambulance district or fire protection district that is authorized to provide ambulance service, or from a municipality not within an ambulance district or fire protection district that is authorized to provide ambulance service, in which the ambulance service proposes to operate.

Financial investments related to the operation and maintenance of the critical care transport truck will be absorbed by Lake Regional Health System; enhancing the availability of critical care services for the community with no added cost to the City or its residents.

This service will be non-competitive with area ambulance districts and will be utilized for critical care transport only. Occasionally, patients require care from larger facilities necessitating lengthy transfer time; potentially as much as 4 to 8 hours round trip. These types of transfers can cause significant disruption of 911 services in instances when local ambulances are required to accomplish the transfer. Utilization of the critical care transport truck will enhance the public's access to ambulance services by allowing surrounding ambulance districts to keep their units available for their service areas; permitting them to respond more quickly to emergency needs of the communities they serve. The addition of this service can support further development of the regional emergency medical service system by providing a more efficient mechanism for transport of critical patients 24 hours per day, 7 days per week. As the transport truck is designed to accomplish transport of stable, but critically ill patients, it will not be

equipped or properly staffed for emergency 911 response. For this reason, mutual aid will not be possible.

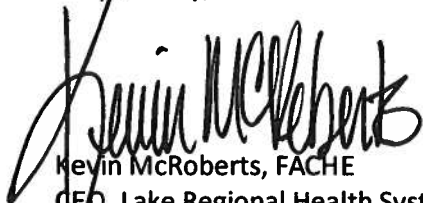
Lake Regional Health System is Joint Commission accredited and is designated as a level III trauma center. Regulatory compliance and operations for the critical care transport truck will be overseen by the Director of Emergency Services, Shawn Andreasen, RN, CEN. Shawn is certified in emergency nursing and has over 17 years of air ambulance experience. Joseph Sohal MD, has agreed to act as Medical Director for the critical care transport truck. Dr. Sohal is Board Certified and has 15 years experience in critical care medicine. Under the direction of this leadership, a skilled team of emergency medical technicians, paramedics, registered nurses and respiratory therapists will help ensure our sickest patients reach their destination safely. Competency of these individuals will be evaluated by the Health System routinely.

If the City has identified prospects to further expand the use of the critical care transport truck to add further benefit to the Lake Area, discussions are encouraged. Lake Regional has proudly served the Lake Area for over 40 years and welcomes opportunities to partner with surrounding organizations, governments and agencies to improve health care for the community.

With your support, we hope to further enhance our capabilities as a Health System and provide this advanced service for our most critically ill patients. Should additional information be required to assist you in your decision to support this initiative, please don't hesitate to contact me directly. I will be more than happy to answer any questions you may have. We look forward to your feedback and public hearing details.

Thank you in advance for your kind consideration of this request.

Respectfully,

A handwritten signature in black ink, appearing to read "Kevin McRoberts". The signature is stylized with a large, sweeping initial "K" and a long, horizontal stroke extending to the right.

Kevin McRoberts, FACHE
CEO, Lake Regional Health System
(573) 348-8391
kmcroberts@lakeregional.com

enclosures

Lake Regional Health System
Demonstration of Compliance
RSMo 190.109
Critical Care Transport Truck

The critical care transport service is being developed in compliance with all applicable laws and regulations pertaining to the operation of a ground ambulance service, as required by the Missouri Department of Health and Senior Services Bureau of Emergency Medical Services. The information below summarizes project compliance with RSMo 190.109. This service will be a non-competitive with area ambulance districts and will be utilized for transport only.

RSMo Section 190.109 requirements	Demonstration of Compliance
Service will provide a benefit to public health that outweighs the associated costs	Financial investments related to the operation and maintenance of the critical care transport truck will be absorbed by Lake Regional Health System; enhancing the availability of critical care services for the community with no added cost to the City or it's residents.
Service will maintain or enhance the public's access to ambulance services	The addition of this service will accomplish timely and expedited transfer of critically ill patients while allowing area ambulances to remain in service for 911 emergency call, thus expanding public access to ambulance services.
Service will maintain or improve the public health and promote the continued development of the regional emergency medical service system	The addition of this service will improve public health by providing critical care transport for patients requiring a higher level of care. The service will promote continued development of the regional emergency medical service by relieving area ambulance districts of transport tasks, thus expanding emergency response coverage for the community. As the transport truck is designed to accomplish transport of stable, but critically ill patients, it will not be equipped or properly staffed for emergency 911 response.
Service demonstrates the appropriate expertise in the operation of ambulance services	Regulatory compliance and operations for the critical care transport truck will be overseen by the Director of Emergency Services, Shawn Andreasen, RN, CEN. Shawn is certified in emergency care and has over 17 years of air ambulance experience. Joseph Sohal, MD, has agreed to act as Medical Director. Dr. Sohal is Board Certified and has 15 years experience in critical care medicine. Emergency technicians, paramedics, registered nurses and respiratory therapists will help ensure our sickest patients reach their destination safely. Competency of these individuals will be evaluated by the Health System routinely, as required by Joint Commission regulations.
Service demonstrates the financial resources necessary for the operation of the proposed ambulance services	Costs associated with the operation, maintenance and staffing of the critical care transport truck will be budgeted annually and absorbed by Lake Regional Health System.

Thank you in advance for your kind consideration of this request.



NEWS RELEASE

For Release: Immediate Release
August 12, 2022

Contact: Jeana Woods
City Administrator
City of Osage Beach
573.302.2010 x1010
jwoods@osagebeach.org

-City of Osage Beach-

Lake Regional Health System Endorsement Request

Osage Beach, MO – Lake Regional Health System is seeking a resolution of endorsement from the City of Osage Beach Board of Aldermen to pursue an ambulance service license for the purpose of deploying a critical care transport truck to transport critically ill patients between Lake Regional Health System and other health care facilities. The licensed service to be provided by Lake Regional Health System is intended to be non-competitive with area ambulances districts and for the sole purpose of critical ill transport.

In compliance with Missouri Statute 190.109 - Ground Ambulance License, the City of Osage Beach will hold a *Public Hearing* regarding this request at the Board of Aldermen's regular meeting on
Thursday, September 15, 2022, 6 PM.

###

Never miss any information from the City of Osage Beach; sign up for all City alerts at www.osagebeach.org. Click on the "Notify Me Sign Up" and follow the easy steps.

City of Osage Beach
Agenda Item Summary

Date of Meeting: September 15, 2022
Originator: Edward Rucker, City Attorney
Presenter: Edward Rucker, City Attorney

Agenda Item:

Public Hearing - Development proposal for The Preserve at Sycamore Creek

Requested Action:

Public Hearing

Ordinance Referenced for Action:

A Public Hearing is to be held pursuant to RSMo Sections 353.060 and 353.100, and City Code Chapter 140.

Deadline for Action:

None

Budgeted Item:

Not Applicable

Budget Line Information (if applicable):

Not Applicable

Department Comments and Recommendation:

Not Applicable

City Attorney Comments:

There will be two public opportunities to comment on the Tegethoff Development proposal for a housing development to be called The Preserve at Sycamore Creek. This is the first of these opportunities.

City Administrator Comments:

Not Applicable

City of Osage Beach
Agenda Item Summary

Date of Meeting: September 15, 2022
Originator: Edward Rucker, City Attorney
Presenter: Edward Rucker, City Attorney

Agenda Item:

Bill 22-74 - An ordinance of the City of Osage Beach, Missouri, designating certain tracts of land in the City of Osage Beach, Missouri, as a blighted area; approving the development plan for The Preserve at Sycamore Creek; approving a development agreement in connection with the development plan; and authorizing the City to enter into a development agreement and take certain other actions in connection therewith.

First Reading

Requested Action:

First Reading of Bill #22-74

Ordinance Referenced for Action:

Board of Aldermen approval required per Section 110.230. Ordinances, Resolutions, Etc. – Generally and Section 110.240 Adoption of Ordinances.

Deadline for Action:

None

Budgeted Item:

No

Budget Line Information (if applicable):

Not Applicable

Department Comments and Recommendation:

Not Applicable

City Attorney Comments:

Per City Code 110.230, Bill 22-74 is in correct form. This ordinance approves findings and development plan under Chapter 353 for the Preserve at Sycamore Creek, a housing project for new apartments along Nichols Road.

City Administrator Comments:

I concur with the department's recommendation.

AN ORDINANCE DESIGNATING CERTAIN TRACTS OF LAND IN THE CITY OF OSAGE BEACH, MISSOURI, AS A BLIGHTED AREA; APPROVING THE DEVELOPMENT PLAN FOR THE PRESERVE AT SYCAMORE CREEK; APPROVING A DEVELOPMENT AGREEMENT IN CONNECTION WITH THE DEVELOPMENT PLAN; AND AUTHORIZING THE CITY TO ENTER INTO A DEVELOPMENT AGREEMENT AND TAKE CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH.

WHEREAS, the City of Osage Beach, Missouri (the “City”), is authorized and empowered to undertake certain redevelopment projects pursuant to Chapter 353 of the Revised Statutes of Missouri (“Chapter 353”) and Ordinance No. 22.52 (the “Urban Redevelopment Ordinance”); and

WHEREAS, the Development Plan for The Preserve at Sycamore Creek (the “Development Plan”), attached hereto as Exhibit A, has been prepared and submitted to the City in connection with the proposed redevelopment of approximately 22.4 acres of real property located at 4470 Nichols Road, 1170 Nichols Road, 1167 Nichols Road and 1157 Nichols Road in the City (collectively, the “Redevelopment Area”); and

WHEREAS, the Development Plan contemplates the use of real property tax abatement to incentivize a redevelopment project consisting of a multi-building, multi-family housing development comprised of approximately 268 rental units, a clubhouse and amenity space (the “Redevelopment Project”); and

WHEREAS, attached hereto as Exhibit B is an analysis prepared by PGAV Planners (the “Blight Analysis”), which documents the current conditions of the Redevelopment Area and supports a finding that the Redevelopment Area is a “blighted area” as defined in Chapter 353; and

WHEREAS, implementation of the Development Plan through the completion of the Redevelopment Project will remediate the conditions that cause the Redevelopment Area to be a blighted area; and

WHEREAS, in accordance with Chapter 353 and the Urban Redevelopment Ordinance, the Board of Aldermen held a public hearing regarding the blight designation, the proposed Development Plan and the contemplated grant of tax abatement on October 6, 2022, at which hearing all interested persons and taxing districts were given the opportunity to be heard (the “Public Hearing”); and

WHEREAS, the Board of Aldermen hereby finds and determines that it is desirable for the improvement of the economic welfare and development of the City to approve the Development Plan; and

WHEREAS, the Redevelopment Project is also the subject of a Plan for an Industrial Development Project (the “Chapter 100 Plan”) approved by Ordinance No. 22.71 (Bill No. 22-

71), which Chapter 100 Plan allows for a sales tax exemption on construction materials used to construct the Redevelopment Project; and

WHEREAS, the Board of Aldermen further finds and determines that it is necessary and desirable in connection with the implementation of the Development Plan and the Chapter 100 Plan to enter into a Development Agreement, in substantially the form of Exhibit C, with the developer of the Redevelopment Project and an urban redevelopment corporation to be created by the Developer (the “Development Agreement”).

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF OSAGE BEACH, MISSOURI, AS FOLLOWS:

Section 1. Findings. Upon due consideration of the Development Plan, the Blight Analysis and the testimony presented at the Public Hearing, the Board of Aldermen finds that:

(a) the Redevelopment Area is a “blighted area” as defined in Chapter 353, and redevelopment of the Redevelopment Area is necessary for the public interest, convenience and necessity; and

(b) the approval of the Development Plan and its implementation is necessary for the health, safety, morals and welfare of the public.

Section 2. Approval of Development Plan. The Development Plan is hereby approved.

Section 3. Approval of Development Agreement. The City is hereby authorized to enter into the Development Agreement, in substantially the form presented to and approved by the Board of Aldermen and attached to this Ordinance as Exhibit C, with such changes therein as shall be approved by the officials of the City executing the Development Agreement, such officials’ signatures thereon being conclusive evidence of their approval thereof. The Mayor is hereby authorized to execute the Development Agreement and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance, for and on behalf of and as the act and deed of the City. The City Clerk is hereby authorized to attest to and affix the seal of the City to the Development Agreement and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

Section 4. Developer Substitution. Notwithstanding the form of the Development Agreement approved in substantially final form pursuant to Section 3, at the request of The Preserve at Sycamore Creek, LLC (the “Developer”), any entity controlled by the Developer or under common control with the Developer may be inserted as the Developer in the Development Agreement prior to execution (it being understood that the Developer may wish to create an affiliated or subsidiary entity to develop the Redevelopment Project). The Developer shall designate the urban redevelopment corporation to be party to the Developer Agreement.

Section 5. Further Authority. The City shall, and the officials, agents and employees of the City are hereby authorized to, take such further action and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance and to carry out, comply with and perform the duties of the City with respect to the Development Plan and the Development Agreement. The Mayor and the City Administrator are hereby authorized, through the term of the Development Agreement, to execute all documents on behalf of the City (including documents pertaining to the financing or refinancing of the Redevelopment Project by the Developer) as may be required to carry out and comply with the intent of this Ordinance and the Development Agreement. The Mayor and the City Administrator are further authorized, on behalf of the City, to grant such consents, estoppels and waivers relating to the Development Agreement as may be requested during the term thereof; provided, such consents, estoppels and/or waivers shall not increase the amount or duration of the economic incentives provided in the Development Agreement, waive an event of default or materially change the nature of the transaction. The City Clerk is authorized to attest to and affix the seal of the City to any document authorized by this Section.

Section 6. Severability. The sections of this Ordinance shall be severable. If any section of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining sections shall remain valid, unless the court finds that: (a) the valid sections are so essential to and inseparably connected with and dependent upon the void section that it cannot be presumed that the Board of Aldermen has or would have enacted the valid sections without the void one; and (b) the valid sections, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

Section 7. Effective Date. This Ordinance shall be in full force and effect from and after the date of passage and approval of the Mayor.

(Remainder of Page Intentionally Left Blank)

READ FIRST TIME:

READ SECOND TIME:

I hereby certify that Ordinance No. 22.74 was duly passed on _____ by the Board of Aldermen of the City of Osage Beach. The votes thereon were as follows:

Ayes:

Nays:

Abstentions:

Absent:

This Ordinance is hereby transmitted to the Mayor for his signature.

Date

Tara Berreth, City Clerk

Approved as to form:

Edward B. Rucker, City Attorney

I hereby approved Ordinance No. 22.74.

Michael Harmison, Mayor

Date

Tara Berreth, City Clerk

EXHIBIT A
DEVELOPMENT PLAN

(On file in the office of the City Clerk)

EXHIBIT B
BLIGHT ANALYSIS

(On file in the office of the City Clerk)

EXHIBIT C

DEVELOPMENT AGREEMENT

(On file in the office of the City Clerk)

DEVELOPMENT AGREEMENT
FOR
THE PRESERVE AT SYCAMORE CREEK PROJECT
AMONG THE
CITY OF OSAGE BEACH, MISSOURI,
THE PRESERVE AT SYCAMORE CREEK, LLC
AND THE
[*REDEVELOPMENT CORPORATION*]
Dated: _____, 2022

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Exhibit C - Form of Transferee Agreement

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT is made and entered into as of this _____ day of _____, 2022 (this “Agreement”), by and among the **CITY OF OSAGE BEACH, MISSOURI**, a fourth-class city organized and existing under the laws of the State of Missouri (the “City”), **THE PRESERVE AT SYCAMORE CREEK, LLC**, a Missouri limited liability company (together with its permitted successors and assigns, the “Developer”), and the [***REDEVELOPMENT CORPORATION***], a Missouri urban redevelopment corporation (together with its permitted successors and assigns, the “Corporation”) (the City, the Developer and the Corporation may individually be referred to herein as a “Party” and collectively as the “Parties”).

RECITALS

A. The Developer owns approximately 22.4 acres of real property located at 4470 Nichols Road, 1170 Nichols Road, 1167 Nichols Road and 1157 Nichols Road in the City (collectively and as legally described on **Exhibit A**, the “Redevelopment Area”).

B. On _____, 2022, pursuant to Chapter 353 of the Revised Statutes of Missouri (“Chapter 353”), the Developer submitted the “Development Plan for the Preserve at Sycamore Creek” (the “Development Plan”), which contemplates redeveloping the Redevelopment Area into a multi-building, multi-family housing development comprised of approximately 268 rental units, a clubhouse and amenity space (the “Redevelopment Project”).

C. The Board of Aldermen held a public hearing with respect to the Redevelopment Project on October 6, 2022.

D. On October 6, 2022, the Board of Aldermen adopted Ordinance No. _____ (the “Approving Ordinance”) (a) finding and declaring the Redevelopment Area to be a blighted area within the meaning of Section 353.020(2) of the Revised Statutes of Missouri, (b) approving the Development Plan and (c) authorizing and directing the City to enter into an agreement with the Developer and the Corporation in substantially the form of this Agreement.

E. In furtherance of the Redevelopment Project and pursuant to Article VI, Section 27(b) of the Missouri Constitution and Sections 100.010 through 100.200 of the Revised Statutes of Missouri, the Board of Aldermen, on October 6, 2022, also adopted Ordinance No. _____, authorizing the City to issue its Taxable Industrial Revenue Bonds (The Preserve at Sycamore Creek Project), Series 2022, in the maximum principal amount of \$63,000,000 (the “Bonds”) and approving certain documents in connection therewith for the purpose of facilitating a sales tax exemption on construction materials for the Redevelopment Project (the issuance of the Bonds and the execution of the related documents are referred to herein as the “Chapter 100 Transaction”).

F. The City and the Corporation now wish to have the Developer undertake, in accordance with the Development Plan, the redevelopment of the Redevelopment Area and the implementation of the Redevelopment Project for the public purposes described in the Development Plan, including, without limitation, the remediation of conditions that cause the Redevelopment Area to be a “blighted area” as defined in Chapter 353.

G. The City, the Corporation and the Developer desire to enter into this Agreement to describe the process by which the Developer will complete or cause the completion of the Redevelopment Project and the terms upon which the Redevelopment Project will receive real property tax abatement as

contemplated by the Development Plan and sales tax exemption as contemplated by the Chapter 100 Transaction.

NOW, THEREFORE, for and in consideration of the foregoing Recitals (which are incorporated into this Agreement as an integral part hereof) and the promises, covenants and agreements contained herein, the Parties hereby agree as follows:

ARTICLE I

DEFINITIONS; EXHIBITS; INCORPORATED ITEMS

Section 1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, the following capitalized words and terms shall have the following meanings:

“Affiliate” means any entity that is controlled by the Developer or controlled by the same entity or entities that control the Developer.

“Assessor” means the Camden County Assessor.

“Certificate of Substantial Completion” means the Certificate of Substantial Completion, in substantially the same form as **Exhibit B**, to be delivered by the Developer pursuant to **Section 2.6**.

“Chapter 100 Documents” means the trust indenture, base lease, lease agreement and bond purchase agreement approved by Ordinance No. _____ and executed as part of the Chapter 100 Transaction.

“City Code” means the Osage Beach City Code, as the same may be amended from time to time.

“Collector” means the Camden County Collector of Revenue.

“Construction Financing Date” means the earliest of (a) the date upon which the Developer closes on a construction loan for the Redevelopment Project, (b) the date upon which the Developer expends equity equaling at least 2.5% of the estimated total costs of the Redevelopment Project, or (c) the date upon which the Developer acquires the Project Site.

“Construction Inspector” means such licensed engineer or architect either employed by or retained and designated by the City from time to time, and/or such individuals as may be designated to carry out inspections on behalf of the City’s planning and public works departments.

“PILOTs” means, collectively, (a) any ad valorem real property taxes that are not abated by operation of Chapter 353 (i.e., for the first 10 years of the tax abatement period, ad valorem real property taxes based on the then-current tax levy and the assessed value of the land included in the Project Site, exclusive of improvements, in the year prior to the Corporation’s acquisition of the Project Site, as required by Section 353.110.1, R.S.Mo.) and (b) payments in lieu of ad valorem real property taxes imposed pursuant to **Section 4.1**.

“Project Expenses” means all construction and operational costs incurred by the Developer to construct and operate the Redevelopment Project. Construction costs include, but are not limited to, acquisition costs, financing costs, interest payments and all hard and soft costs incurred by the Developer for construction and development of the Redevelopment Project. Operational costs are business expenses including but not limited to audit and tax return expenses, property maintenance, repairs and replacements,

utility costs, insurance costs, property tax liability, professional and management fees, miscellaneous expenses, and all other costs reasonably and necessarily incurred by the Developer for construction and operation of the Redevelopment Project. Principal payments on debt service, and state and federal corporate and income taxes shall not be considered operating expenses.

“Project Revenues” means revenues received by the Developer from operation of the Redevelopment Project in the ordinary course of business, including rental payments, tenant and visitor fees and charges, cash and non-cash proceeds from the sale of any portion of the Redevelopment Project and any other revenue streams associated with the Redevelopment Project.

“Project Site” means the real property within the Redevelopment Area that the Developer determines is necessary to complete the Redevelopment Project.

“Total Development Cost” means all reasonable or necessary costs associated and incidental to the Redevelopment Project and incurred by the Developer, including but not limited to, acquisition costs and all hard and soft costs incurred by the Developer for construction and development of the Redevelopment Project, including but not limited to, FF&E costs, costs of studies, surveys, plans and specifications, professional services, including but not limited to, architectural, engineering, legal, marketing, financial, planning or special services, financial costs, interest during construction, utilities and taxes during construction, and development fees (not to exceed 5% of costs).

“Transferee Agreement” means the Transferee Agreement, in substantially the same form as **Exhibit C**, to be entered into in conjunction with certain transfers of property within the Redevelopment Area.

Section 1.2 Exhibits. The following exhibits are attached to and incorporated into this Agreement:

- (a) Exhibit A – Legal Description of the Redevelopment Area
- (b) Exhibit B – Form of Certificate of Substantial Completion
- (c) Exhibit C – Form of Transferee Agreement

ARTICLE II

REDEVELOPMENT PROJECT

Section 2.1 Redevelopment Project. Subject to the terms and conditions of this Agreement, the Developer shall construct, or cause the construction of, the Redevelopment Project in accordance with the Development Plan, this Agreement and all applicable federal, state and local laws, rules, regulations, ordinances and approvals.

Section 2.2 Project Site Acquisition.

(a) The Developer hereby confirms and represents that, as of the date of this Agreement, either it or an Affiliate owns or controls the Project Site.

(b) The Corporation shall acquire the Project Site during the first six months of the calendar year in which the Redevelopment Project is expected to receive a post-completion assessment by the

Assessor (with the purpose of the Corporation's acquisition to be the initiation of the tax abatement contemplated by the Development Plan and this Agreement).

- (c) The Corporation shall immediately transfer title to the Project Site back to the Developer.

Section 2.3 Relocation. The relocation of any person or business from the Redevelopment Area, if any, shall be completed in conformance with applicable state law and City Code provisions. The Parties acknowledge that no relocations are anticipated.

Section 2.4 Schedule. The Developer shall complete the Redevelopment Project within 26 months following the commencement thereof, subject to any excusable delay permitted by **Section 3.1**; provided, however, in no event shall the required date to complete the Redevelopment Project be extended beyond 32 months following the commencement thereof.

Section 2.5 City Approvals to Control. The Developer shall obtain or cause to be obtained all necessary zoning, building and other permits and approvals in conjunction with the completion of the Redevelopment Project. Notwithstanding anything to the contrary contained herein or in the Development Plan, the applicable zoning, building and other permits and approvals shall control the specific development of the Redevelopment Project.

Section 2.6 Substantial Completion. After substantial completion of the Redevelopment Project in accordance with the provisions of this Agreement, the Developer shall furnish to the Construction Inspector a Certificate of Substantial Completion certifying the substantial completion of the Redevelopment Project. The Construction Inspector shall, within 60 days following delivery of the Certificate of Substantial Completion, carry out such inspections as he deems necessary to verify to his reasonable satisfaction the accuracy of the certifications contained in the Certificate of Substantial Completion. If the Construction Inspector fails to approve or reject the Certificate of Substantial Completion in writing within such 60-day period, then the Developer shall notify the City in writing of its failure to take action on the Certificate of Substantial Completion, and the City shall have 30 days from receipt of such notice to accept or reject the Certificate of Substantial Completion in writing. The Certificate of Substantial Completion shall be deemed accepted by the Construction Inspector unless, prior to the end of the additional 30-day period, the Construction Inspector furnishes the Developer with specific written objections to the status of the Redevelopment Project, describing such objections and the measures required to correct such objections in reasonable detail. Upon acceptance of the Certificate of Substantial Completion by the Construction Inspector or upon the lapse of the additional 30-day period without any written objections thereto, the Developer may record the Certificate of Substantial Completion with the Camden County Recorder of Deeds, and the same shall constitute evidence of the satisfaction of the Developer's agreements and covenants to complete the Redevelopment Project.

Section 2.7 Insurance.

(a) The Developer will cause there to be insurance for the Redevelopment Project as hereinafter set forth at all times during the process of constructing the Redevelopment Project and continuing (with respect to (ii) and (iii) below) during the term of this Agreement. The policies for such insurance shall be placed with financially sound and reputable insurers licensed to transact business in the State of Missouri. The Developer shall, from time to time at the request of the City, furnish the City with "Acord" certificates of insurance on:

- (i) Builder's risk insurance, written on the so called "Builder's Risk – Completed Value Basis," in an amount equal to 100% of the projected insurable value of the Redevelopment

Project at the date of completion (the Parties acknowledge that such insurance may not be available until demolition is complete and vertical construction begins);

(ii) Property and casualty insurance to keep the Redevelopment Project constantly insured against loss or damage by fire, lightning and all other risks covered by the extended coverage insurance endorsement then in use in the State of Missouri in an amount equal to the Full Insurable Value thereof (subject to reasonable loss deductible clauses). "Full Insurable Value" means the actual replacement cost of the Redevelopment Project;

(iii) Commercial liability insurance with coverages of not less than the current absolute statutory waivers of sovereign immunity in Sections 537.600 and 537.610 of the Revised Statutes of Missouri (which for calendar year 2022 is equal to \$3,065,952 for all claims arising out of a single accident or occurrence and \$459,893 for any one person in a single accident or occurrence). Further, the policy shall be adjusted upward annually, to remain at all times not less than the inflation-adjusted sovereign immunity limits as published in the Missouri Register on an annual basis by the Department of Insurance pursuant to Section 537.610 of the Revised Statutes of Missouri; and

(iv) Workers' compensation insurance, with statutorily required coverage.

(b) Simultaneously with the execution of this Agreement and annually thereafter prior to the delivery of the Certificate of Substantial Completion, the Developer shall provide evidence of contractual liability insurance (in form and substance reasonably acceptable to the City Attorney) covering the Developer's obligations to indemnify the City, as provided in this Agreement, by an insurance company with a rating by a reputable rating agency indicating excellent or superior financial strength (i.e., an A.M. Best rating of "A-" or better). The Developer agrees to provide immediate written notice to the City when a cancellation, termination, expiration or modification of the applicable contractual liability policy occurs.

ARTICLE III

EXCUSABLE DELAY

Section 3.1 Excusable Delay. Notwithstanding anything to the contrary contained herein, in the Development Plan or in the Approving Ordinance, the time periods provided for herein shall be automatically extended by the number of days of delay caused by actions or events beyond the control of the Developer (but not to exceed six months), including acts of God, labor disputes, strikes, lockouts, civil disorder, war, lack of issuance of any permits and/or legal authorization by the governmental entity necessary for the Developer to proceed with the construction or cause the construction of the Redevelopment Project (provided all conditions precedent to the issuance of said permits and/or authorizations have been met and such permits or authorizations were applied for in a timely manner), shortage or delay in the shipment of material or fuel, governmental action, fire, unusually adverse weather conditions, wet soil conditions, unavoidable casualties, litigation relating to the Approving Ordinance, the Chapter 100 Transaction or any element of the Redevelopment Project, or any causes beyond the Developer's reasonable control, or by any other cause that the City Administrator in her reasonable discretion determines may justify the delay (an "Excusable Delay"). The Parties agree that as of the date of this Agreement, no condition or event exists that would justify an Excusable Delay. The Developer shall notify the City in writing within 30 days after a claimed event of the cause of the Excusable Delay. An Excusable Delay shall not include any condition or circumstance caused or extended by the Developer, the Corporation or an Affiliate or attributable to actions or inaction by the Developer, the Corporation or an Affiliate.

ARTICLE IV

TAX ABATEMENT AND SALES TAX EXEMPTION

Section 4.1 Tax Abatement.

(a) Ad valorem real property tax abatement pursuant to Chapter 353 and the Development Plan shall begin in the year in which the Corporation acquires title to the Project Site, as described in **Section 2.2(b)**, and, subject to **Section 5.2**, shall continue for 19 additional years (i.e., 20 years of tax abatement total).

(i) During the first five years of the tax abatement period (expected to be 2025 through 2029, inclusive), the Project Site shall annually be subject to unabated ad valorem real property taxes determined based on the then-current tax levy and the assessed value of the land included in the Project Site, exclusive of improvements, in the year prior to the Corporation's acquisition of the Project Site (as required by Section 353.110.1 of the Revised Statutes of Missouri).

(ii) For the next ensuing five years of the tax abatement period (expected to be 2030 through 2034, inclusive), PILOTs shall equal the 25% of the ad valorem real property taxes that would otherwise be due on the Project Site and the improvements thereon, but for the application of the Development Plan and this Agreement.

(iii) For the next ensuing five years of the tax abatement period (expected to be 2035 through 2039, inclusive), PILOTs shall equal 50% of the ad valorem real property taxes that would otherwise be due on the Project Site and the improvements thereon, but for the application of the Development Plan and this Agreement.

(iv) For the next ensuing five years of the tax abatement period (expected to be 2040 through 2044, inclusive), PILOTs shall equal 75% of the ad valorem real property taxes that would otherwise be due on the Project Site and the improvements thereon, but for the application of the Development Plan and this Agreement.

(b) Following the period described in subsection (a)(iv), the Project Site, including the improvements thereon, shall be subject to assessment and payment of all ad valorem taxes based on the full true value of the Project Site and the improvements thereon.

(c) The PILOTs shall be paid to the Collector annually by December 31. The Parties acknowledge their expectation that the real property tax bills provided by the Collector will reflect the appropriate amount of taxes due pursuant to this Agreement. However, the failure of the Collector to provide tax bills reflecting the appropriate amount of PILOTs due with respect to the Project Site pursuant to this Agreement will not excuse the Developer or any subsequent owner from paying all PILOTs by December 31 of the applicable year.

(d) The City, the Developer and the Corporation shall cooperate in good faith with the Collector to ensure that real property tax bills accurately reflect the abatement. The Developer shall cause copies of this Agreement, the approved or deemed approved Certificate of Substantial Completion and the deed showing acquisition of the Project Site by the Corporation pursuant to **Section 2.2(b)** to be filed with the Collector prior to the initiation of the tax abatement described above.

(e) Upon the sale of the Redevelopment Project to an entity other than an Affiliate any time prior to July 1 of the 10th year of the abatement period, the Developer shall, within 30 days thereafter,

submit to the City a report of its sale price, Total Development Cost and any other reasonable information necessary (including, without limitation, sale contracts, settlement statements and other financial information related to the sale of the Redevelopment Project) for the City to conduct the “Compounded Annual Rate of Return” analysis and calculation of the “Excess Return on Sale PILOT” described below. The report shall:

- (i) be performed by a certified public accountant or such other experienced financial professional; and
- (ii) include the calculation of the Compounded Annual Rate of Return using the following formula (n = number of years, to the nearest tenth of a year, between the Construction Financing Date and the sale date of the Redevelopment Project):

$$\text{Compounded Annual Rate of Return} = (\text{Sale Price} / \text{Total Development Cost})^{(1/n)} - 1$$

If the Compounded Annual Rate of Return is 7.50% or less, then no Excess Return on Sale PILOT is due. If the Compounded Annual Rate of Return is greater than 7.50%, then the Excess Return on Sale PILOT shall equal the amount that, if subtracted from the “sale price” of the Redevelopment Project in the above formula, would result in a Compounded Annual Rate of Return of 7.50%.

The City shall have 45 days to review the report. If no written objections to the report are provided by the City to the Developer before the conclusion of such 45-day period, the report shall be deemed accepted by the City. Upon acceptance or deemed acceptance of the report, the City shall notify the Developer of the Excess Return on Sale PILOT due for the applicable year and the Developer shall, within 30 days thereafter, remit any Excess Return on Sale PILOT to the City. The City will then remit any Excess Return on Sale PILOT to the applicable taxing districts pro rata based on each taxing district’s then-current tax levy. Failure by the Developer to remit the Excess Return on Sale PILOT in a timely manner shall result in the suspension of tax abatement until such Excess Return on Sale PILOT is paid.

(f) The Developer shall, no later than September 1 of each applicable year (i.e., beginning with the 4th year of the abatement period and continuing through each year that the Redevelopment Project receives tax abatement), submit to the City an annual report of its Project Revenues, Project Expenses, and any other information necessary to conduct a “Rolling 3-Year Rate of Return” analysis and calculation of the “Excess Annual Return PILOT.” The report shall:

- (i) be performed by a certified public accountant or such other experienced financial professional as the City Administrator may approve in his or her sole discretion,
- (ii) apply to the 36-month period ending on December 31 of the year prior to the September 1 report due date (the “Calculation Period”); and
- (iii) include the following calculations:

(A) Calculate “Net Income” during the Calculation Period using this formula:

$$\text{Net Income} = \text{Project Revenues during Calculation Period} - \text{Project Expenses during Calculation Period}$$

(B) Calculate the Rolling 3-Year Rate of Return using this formula:

$$\text{Rolling 3-Year Rate of Return} = (\text{Net Income} / \text{Total Development Cost}) / 3$$

(C) If the Rolling 3-Year Rate of Return is 7.50% or less, then no Excess Annual Return PILOT is due.

(D) If the Rolling 3-Year Rate of Return is greater than 7.50%, then the Excess Annual Return PILOT shall equal the amount that, if subtracted from Net Income in the above calculations would result in a Rolling 3-Year Rate of Return of 7.50%, **but in no event shall the Excess Annual Return PILOT due for any year result in the payment of ad valorem real property taxes and PILOTs for such year in excess of the amount of ad valorem real property taxes that would be due if there was no real property tax abatement that year.**

The City shall have 45 days to review the report. If no written objections to the report are provided by the City to the Developer before the conclusion of such 45-day period, the report shall be deemed accepted by the City and the City shall notify the Assessor and the Collector of any Excess Annual Return PILOT due so that it may be added to the Redevelopment Project's property tax bill. Any failure by the Assessor or the Collector to correctly account for the Excess Annual Return PILOT on the property tax bill shall not relieve the Developer of its obligation to pay any Excess Annual Return PILOT due under this Agreement by December 31 of the applicable year.

Section 4.2 Emergency Service District Payments. Notwithstanding any provision hereof to the contrary, the Developer shall make or cause to be made any payments to emergency service districts required by Section 353.110 of the Revised Statutes of Missouri. The Parties acknowledge their expectation that the real property tax bills provided by the Collector will reflect the appropriate amount of payments to emergency service districts due pursuant to this Agreement. However, the failure of the Collector to provide tax bills reflecting the appropriate amount of payments to emergency service districts due with respect to the Project Site pursuant to this Agreement will not excuse the Developer or any subsequent owner from paying all taxes by December 31 of the applicable year.

Section 4.3 Sales Tax Exemption and Chapter 100 Transaction.

(a) The City shall issue the Bonds and close the Chapter 100 Transaction simultaneously with the execution of this Agreement.

(b) Upon issuance of the Bonds (or such earlier time as the Board of Aldermen may approve), the City will provide a project exemption certificate to the Developer or its designee for the purpose of exempting the purchase of construction materials for the Redevelopment Project from sales and use taxes to the extent provided by law.

(c) Promptly following the acceptance or deemed acceptance of the Certificate of Substantial Completion pursuant to **Section 2.6**, the City and the Developer shall cooperate to cause the termination of the Chapter 100 Documents as described in **Article XI** of the Lease Agreement between the City and the Developer entered into as part of the Chapter 100 Transaction.

(d) The Developer will use commercially reasonable efforts to maximize purchases of construction materials within the City (provided, however, nothing in this Section will require the Developer to purchase materials within the City if the same materials may be purchased for a lesser price elsewhere).

Section 4.4 Permitting Fees. The City, in its discretion, may consider requests from the Developer to waive or reduce generally applicable permitting fees with respect to the Redevelopment Project.

Section 4.5 Fee Reimbursement. All Parties agree and acknowledge that Developer, in accordance with Section 135.025 of the City of Osage Beach Code, will be applying for fee reimbursement. The City agrees to cooperate with Developer in its application for fee reimbursement. The anticipated fee reimbursement is expected to be 28%, as shown in **Exhibit D** hereof.

ARTICLE V

DEFAULT AND REMEDIES

Section 5.1 Default. The occurrence and continuance of any one or more of the following shall constitute an “Event of Default:”

(a) the Developer or subsequent property owner fails to make or cause the punctual payment of PILOTs or payments to emergency service districts owed on or before the due date and such failure is not cured to the City Attorney’s satisfaction within 10 days after the City gives written notice of the default to the Developer or subsequent property owner (provided, however, that all unabated ad valorem real property taxes paid after their due dates will be subject to interest and penalties at the rate of 18% per annum from the date such payments were first due); or

(b) the Developer fails to timely perform, in all material respects, any obligation or covenant of the Developer under this Agreement, and such failure is not cured to the City Attorney’s satisfaction within 30 days after the City gives written notice thereof to the Developer, or if it cannot reasonably be cured within 30 days, then, subject to **Section 2.4** and **Section 3.1**, for such additional time as may be necessary to cure such default so long as the Developer is diligently proceeding to effect a cure of such default; or

(c) the Developer commits an Event of Default as defined in any of the Chapter 100 Documents.

Section 5.2 Remedies; Results of Termination.

(a) Upon the occurrence of an Event of Default, (i) the City or any other taxing district levying an ad valorem real property tax in the Redevelopment Area may bring an action against the Developer or subsequent property owner to enforce any remedy available by law, including specific performance to enforce any payments due under this Agreement, and/or (ii) the City may terminate this Agreement.

(b) Upon the termination of this Agreement pursuant to this Section, a declaration of abandonment shall be filed with the Camden County Recorder of Deeds, and the Project Site and the improvements thereon shall from that date be subject to assessment and payment of all ad valorem taxes based on the full true value of the Project Site and the improvements thereon.

ARTICLE VI

GENERAL PROVISIONS

Section 6.1 Modifications; Successors and Assigns. The terms, conditions and provisions of this Agreement and of the Development Plan shall not be modified or amended except by mutual agreement in writing among the City, the Developer and the Corporation (provided that if the Corporation has already transferred the Project Site to the Developer pursuant to **Section 2.2(c)**, no agreement of the Corporation is

necessary). This Agreement shall be binding upon and inure to the benefit of the City, the Developer and the Corporation and their respective assigns and successors in interest or title to all or any portion of the Redevelopment Area; provided, neither the Corporation nor the Developer may assign its rights under this Agreement except in accordance with the provisions of **Section 6.2**.

Section 6.2 Right to Transfer the Project Site and Redevelopment Project.

(a) *Transfer.* Subject to the provisions of subsections (b) and (c) below, the Developer or the Corporation may voluntarily sell, lease, assign, transfer, convey and/or otherwise dispose of (hereinafter collectively referred to as a “Transfer”) its respective interest in the Redevelopment Area or any portion thereof to any entity without the City’s prior written consent, if the transferor provides written notice to the City within 30 days following such Transfer. Upon a Transfer, unless otherwise expressly elected by the transferor, all of the transferor’s rights and obligations hereunder with respect to the subject property, including, without limitation, those concerning construction, maintenance, use, tax abatement and the payment of PILOTs and payments to emergency service districts, shall transfer to such transferee, and the transferor shall be released from any and all further obligations under this Agreement with respect to the subject property.

(b) *Transfer to Third Party Prior to Completion of Construction.* If the proposed Transfer (i) is to a party other than the Corporation or an Affiliate and (ii) occurs before the City’s acceptance or deemed acceptance of the Certificate of Substantial Completion, then such Transfer shall include an assignment of this Agreement and be subject to the requirements of subsection (c) below and to the City Administrator’s prior written consent (which consent shall not be unreasonably withheld or delayed upon a reasonable demonstration that the proposed transferee is sufficiently experienced and financially capable to undertake and complete the Redevelopment Project and the proposed assignee provides evidence to the City Attorney’s satisfaction that it will satisfy the requirements of **Section 2.7** and **Section 6.10** at the time of assignment). In the event of any Transfer under this subsection, all rights and obligations of the transferor hereunder with respect to the subject property, including, without limitation, those concerning construction, maintenance, use, tax abatement and the payment of PILOTs and payments to emergency service districts, shall transfer to the transferee, and the transferor shall be released from any and all further obligations under this Agreement with respect to the subject property.

(c) *Transferee Agreement.* No such Transfer shall occur without the prior execution of a Transferee Agreement with the City. The parties agree that the intention of each Transferee Agreement is to protect the transferor and the City by ensuring that transferees of property within the Redevelopment Area receive actual notice of the rights, duties and obligations contained in this Agreement prior to taking ownership, and nothing contained in a Transferee Agreement that is in accordance with **Exhibit C** shall be deemed to impose any rights, duties or obligations that are not imposed pursuant to this Agreement.

(d) *Financing.* Notwithstanding anything herein to the contrary, the City hereby approves, and no prior consent or Transferee Agreement shall be required in connection with, the right of a Party to encumber or collaterally assign its interest in the Redevelopment Area or any portion thereof or its rights and interests in this Agreement to secure loans, advances or extensions of credit to finance or from time to time refinance all or any part of the Redevelopment Project, or the right of the holder of any such encumbrance or transferee of any such collateral assignment (or trustee or agent on its behalf) to transfer such interest by foreclosure or transfer in lieu of foreclosure under such encumbrance or collateral assignment; provided that all entities lending credit to such Party that will obtain a secured interest in the Party’s interest in the Redevelopment Area and the Redevelopment Project, through a mortgage, deed of trust or other security instrument, will include the following language (or such other language acceptable to the City Attorney) in the applicable mortgage, deed of trust or other security instrument:

Recognition of Lender to terms of Development Agreement. Lender agrees that for so long as the [property description] is subject to and receiving abatement of ad valorem real property taxes pursuant to the Development Agreement dated _____, 2022 among the City of Osage Beach, Missouri, The Preserve at Sycamore Creek, LLC and the [*Redevelopment Corporation*], the [Mortgage] shall be subject to the terms of the Development Agreement and the Lender's rights under such [Mortgage] shall be subordinate to the payment of the PILOTs and other costs under the Development Agreement.

Section 6.3 Indemnification and Hold Harmless.

(a) The indemnification and covenants contained in this Section shall survive expiration or earlier termination of this Agreement.

(b) The Developer hereby agrees that, anything to the contrary herein notwithstanding, it will defend, indemnify and hold harmless the City, its governing body members, employees and agents against any and all claims, demands, actions, causes of action, losses, damages, injuries, liabilities and/or expenses (including attorneys' fees and court costs) resulting from, arising out of, or in any way connected with (i) the Developer's or the Corporation's failure to comply with any provision of this Agreement, (ii) the negligence or intentional misconduct of the Developer, the Corporation or an Affiliate, or their respective officers, employees and agents, (iii) the presence of hazardous wastes, hazardous materials or other environmental contaminants on any property within the Redevelopment Area, or (iv) otherwise arising out of the construction of the Redevelopment Project, the adoption of the Development Plan, the administration of this Agreement or the Chapter 100 Transaction. If the validity or construction of Chapter 353, the Approving Ordinance and/or any other ordinance of the City adopted in connection with this Agreement, the Development Plan or the Chapter 100 Transaction or affecting the proposed Redevelopment Project are contested in court, the Developer shall defend, hold harmless and indemnify the City from and against all claims, demands and/or liabilities of any kind whatsoever including, without limitation, any claim for attorney fees and court costs, and the Developer shall pay any monetary judgment and all court costs rendered against the City, if any.

(c) Notwithstanding anything herein to the contrary, the City shall not be liable to the Developer or the Corporation for damages or otherwise if all or any part of Chapter 353, the Approving Ordinance and/or any other ordinance of the City adopted in connection with this Agreement, the Development Plan, the Chapter 100 Transaction or the Redevelopment Project is declared invalid or unconstitutional in whole or in part by the final (as to which all rights of appeal have expired or have been exhausted) judgment of any court of competent jurisdiction.

(d) Notwithstanding the foregoing terms of this Section, the Developer is not obligated to defend, hold harmless or indemnify the City with respect to any matter or expense resulting from or arising out of the gross negligence or willful misconduct of the City.

Section 6.4 Notice. Whenever notice or other communication is called for herein to be given or is otherwise given pursuant hereto, it shall be in writing and shall be sufficiently given or delivered if dispatched by certified United States first-class mail, postage prepaid, or delivered personally, addressed as follows:

(a) In the case of the City, to:

City of Osage Beach
1000 City Parkway

Osage Beach, Missouri 65065
Attn: City Administrator

with copies to:

City of Osage Beach
1000 City Parkway
Osage Beach, Missouri 65065
Attn: City Attorney

and

Gilmore & Bell, P.C.
One Metropolitan Square
211 N. Broadway, Suite 2000
St. Louis, Missouri 63102
Attn: Mark A. Spykerman, Esq.

(b) In the case of the Developer, to:

The Preserve at Sycamore Creek, LLC
P.O. Box 6331
Fishers, Indiana 46038
Attn: Jeffrey J. Tegethoff

with a copy to:

Husch Blackwell LLP
190 Carondelet Plaza, Suite 600
Clayton, Missouri 63105
Attn: David Richardson, Esq.

(c) In the case of the Corporation, to:

[*Redevelopment Corporation*]
c/o The Preserve at Sycamore Creek, LLC
P.O. Box 6331
Fishers, Indiana 46038
Attn: Jeffrey J. Tegethoff

with a copy to:

Husch Blackwell LLP
190 Carondelet Plaza, Suite 600
Clayton, Missouri 63105
Attn: David Richardson, Esq.

All said notices by mail shall be deemed given on the day of deposit in the mail. A change of designated officer or address may be made by a Party by providing written notice of such request to the other Parties.

Section 6.5 Severability. The provisions of this Agreement shall be deemed severable. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions of this Agreement shall remain valid unless the court finds that (a) the valid provisions are so essentially and inseparably connected with and so dependent upon the invalid provision that it cannot be presumed that the Parties would have agreed to the valid provisions without the invalid one or (b) the valid provisions, standing alone, are incomplete and incapable of being executed in accordance with the intent of the Parties.

Section 6.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri.

Section 6.7 Developer's Right of Termination. At any time the Developer may, by giving written notice to the City and the Corporation, terminate this Agreement. Upon termination of this Agreement, the Parties shall have no further rights or obligations hereunder except as may expressly survive termination.

Section 6.8 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

Section 6.9 Reimbursement of City Expenses. The Developer shall reimburse the City or cause reimbursement to the City for the City's reasonable and actual expenses incurred by the City in connection with the approval and administration of the Development Plan, this Agreement and the Chapter 100 Documents, including, without limitation, bond counsel and trustee fees, to the extent not paid from funds deposited with the City pursuant to the Preliminary Funding Agreement dated _____, 2022 between the City and the Developer.

Section 6.10 Federal Work Authorization Program. The Developer and any subsequent owner receiving tax abatement will comply with and satisfy the requirements of Section 285.530.2 of the Revised Statutes of Missouri, which requires (a) any business entity receiving tax abatement to, by sworn affidavit and provision of documentation, annually affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the business entity receiving tax abatement, and (b) every such business entity to annually sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the entity receiving tax abatement. The Developer or subsequent owner shall provide such affidavit and documentation to the City upon execution of this Agreement and annually on or before November 15 of each year during the term of this Agreement, beginning November 15, 2023.

Section 6.11 Recording. The Developer shall, within 30 days of execution, record this Agreement in the real property records of the Camden County Recorder of Deeds and upon such recording shall provide a copy to the City.

Section 6.12 Electronic Transaction. The Parties agree that the transaction described herein may be conducted and related documents may be sent, received or stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 6.13 Anti-Discrimination Against Israel Act. Pursuant to Section 34.600 of the Revised Statutes of Missouri, the Developer and the Corporation each certifies it is not currently engaged in and will not, for the duration of this Agreement, engage in a boycott of goods or services from (a) the

State of Israel, (b) companies doing business in or with the State of Israel or authorized by, licensed by, or organized under the laws of the State of Israel, or (c) persons or entities doing business in the State of Israel.

[Remainder of page intentionally left blank. Signature pages to follow.]

IN WITNESS WHEREOF, the Parties have set their hands and seals the day and year first above written.

CITY OF OSAGE BEACH, MISSOURI

(SEAL)

By: _____
Michael Harmison, Mayor

Attest:

Tara Berreth, City Clerk

**THE PRESERVE AT SYCAMORE CREEK,
LLC**, a Missouri limited liability company

By: _____
Jeffrey J. Tegethoff, Manager

[*REDEVELOPMENT CORPORATION*]

By: _____
Name: _____
Title: _____

[Development Agreement]

EXHIBIT A

LEGAL DESCRIPTION OF THE REDEVELOPMENT AREA

The land situated in the County of Camden, State of Missouri, and described as follows:

A tract of land situated in and being a part of the SE 1/4 of Section 9 and the NE 1/4 of Section 16, T 39 N, R 16 W and a part of the tracts of land described by deeds recorded in Book 407, Page 05, Book 276, Page 214, Book 526, Page 957, Book 682, Page 088, Book 671, Page 593 and Book 758, Page 283 in the Records of Camden County, Missouri and being more particularly described as follows:

Commencing at a U post set in concrete marking the SW Corner of the SE 1/4 of the SE 1/4 of Section 9, T 39 N, R 16 W; thence S 01° 20' 58" W, 63.34 feet to a 1 inch iron pipe marking the Northeasterly Corner of a tract of land described by deed recorded in Book 543, Page 485 in the Records of Camden County, Missouri for the point of beginning; thence N 88° 44' 11" W along the Northerly Line of said tract of land described by deed recorded in Book 543, Page 485, 262.27 feet to a 3/8 inch iron pin; thence leaving said Northerly Line along the Easterly Line of a tract of land described by deed recorded in Book 395, Page 023 in said Records along the following courses: thence N 04° 06' 08" W, 249.56 feet to a 3/8 inch iron pin in concrete; thence N 35° 00' 45" E, 242.61 feet to a pipe in concrete; thence N 49° 39' 55" E, 265.77 feet to a 3/8 inch iron pin; thence N 52° 44' 58" E, 899.46 feet to a 3/8 inch iron pin in concrete; thence N 46° 06' 25" E, 183.07 feet to a 3/8 inch iron pin in concrete; thence leaving said Easterly Line S 85° 35' 26" E along the Northerly Line of a tract of land described by deed recorded in Book 407, Page 005 in said Records 328.70 feet to a set 1/2 inch rebar; thence continuing along said Northerly Line S 43° 35' 26" E, 57.98 feet to a 1/2 inch rebar set on the Westerly Right of Way Line of Nichols Road; thence leaving said Northerly Line along said Right of Way Line along the following courses: thence S 02° 31' 04" E, 93.02 feet; thence along a curve to the right 136.83 feet, the radius being 273.09 feet and the long chord being S 11° 50' 09" W, 135.40 feet; thence S 26° 11' 21" W, 113.14 feet; thence along a curve to the right 157.65 feet; the radius being 339.62 feet and the long chord being S 39° 29' 15" W, 156.24 feet; thence S 52° 47' 09" W, 304.35 feet; thence along a curve to the left 84.11 feet, the radius being 378.91 feet and the long chord being S 46° 25' 36" W, 83.94 feet; thence S 40° 04' 03" W, 236.65 feet to a set 1/2 inch rebar; thence leaving said Right of Way Line S 80° 15' 01" W along the Northerly Line of a tract of land described by deed recorded in Book 407, Page 005 in said Records 57.57 feet to a set 1/2 inch rebar; thence leaving said Northerly Line S 10° 08' 08" E along the Westerly Line of said tract of land described by deed recorded in Book 407, Page 005 in said Records 48.35 feet to a 1/2 inch rebar set on said Right of Way Line; thence along said Right of Way Line along the following courses: thence S 40° 04' 03" W, 19.95 feet; thence along a curve to the right 143.79 feet, the radius being 538.87 feet and the long chord being S 47° 42' 42" W, 143.36 feet; thence S 55° 21' 21" W, 235.32 feet; thence along a curve to the left 73.05 feet, the radius being 459.65 feet and the long chord being S 50° 48' 12" W, 72.97 feet; thence S 46° 15' 03" W, 53.03 feet; thence along a curve to the left 235.63 feet, the radius being 851.54 feet and the long chord being S 38° 19' 25" W, 234.88 feet to a 1/2 inch rebar set on the Right of Way Line of US Route 54; thence leaving said Right of Way Line of Nichols Road S 70° 05' 10" W along said Right of Way Line of US Route 54 54.66 feet to a 1/2 inch rebar set on the Easterly Line of said tract of land described by deed recorded in Book 543, Page 485 in said Records; thence leaving said Right of Way Line N 00° 56' 45" E along said Easterly Line 229.60 feet to the point of beginning.

EXHIBIT B

FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

CERTIFICATE OF SUBSTANTIAL COMPLETION

THE PRESERVE AT SYCAMORE CREEK, LLC (the “Developer”), pursuant to that certain Development Agreement dated as of _____, 2022 (the “Agreement”), among the City of Osage Beach, Missouri (the “City”), the Developer and the [*Redevelopment Corporation*], hereby certifies to the City as follows:

1. That as of _____, 20____, the Redevelopment Project has been substantially completed in accordance with the Agreement.
2. The Redevelopment Project has been completed in a workmanlike manner and in accordance with all applicable zoning, building and other permits issued by the City.
3. Lien waivers for the Redevelopment Project have been obtained.
4. This Certificate of Substantial Completion is accompanied by the project architect’s certificate of substantial completion on AIA Form G-704 (or the substantial equivalent thereof), a copy of which is attached hereto as Appendix A and by this reference incorporated herein, certifying that the Redevelopment Project has been substantially completed in accordance with the Agreement.
5. This Certificate of Substantial Completion is being issued by the Developer to the City in accordance with the Agreement to evidence the Developer’s satisfaction of all obligations and covenants with respect to the Redevelopment Project.
6. The City’s acceptance (below) in writing to this Certificate of Substantial Completion and the recordation of this Certificate of Substantial Completion with the Camden County Recorder of Deeds, shall evidence the satisfaction of the Developer’s agreements and covenants to complete the Redevelopment Project.
7. This Certificate of Substantial Completion is given without prejudice to any rights against third parties which exist as of the date hereof or which may subsequently come into being.
8. All certifications or statements made or set forth in this Certificate of Substantial Completion are made solely for the benefit of the City and shall not be relied upon or used for any purpose by any third party in any proceeding, claim or contest of any kind, nature or character.
9. *All capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement.*

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand this ____ day of _____, 20__.

**THE PRESERVE AT SYCAMORE CREEK,
LLC**

By: _____
Name: _____
Title: _____

ACCEPTED:

CITY OF OSAGE BEACH, MISSOURI

By: _____
Mayor

(Insert Notary Form(s) and Legal Description; Attach AIA Form G-704)

EXHIBIT C

FORM OF TRANSFeree AGREEMENT

This **TRANSFeree AGREEMENT** (this “Transferee Agreement”) is entered into this ____ day of _____, 20____, by and between the **CITY OF OSAGE BEACH, MISSOURI** (the “City”) and _____, a [state][entity type] (the “Transferee”).

RECITALS

A. The real property to be purchased by the Transferee and legally described in **Exhibit A** attached hereto (the “Redevelopment Area”) is part of the Redevelopment Project described in the Development Plan for the Preserve at Sycamore Creek (the “Development Plan”) approved by the City pursuant to Ordinance No. ____ adopted by the Board of Aldermen on October 6, 2022 (the “Approving Ordinance”).

B. The Redevelopment Area and the Redevelopment Project are subject to that certain Development Agreement dated as of _____, 2022 (the “Development Agreement”) among the City, The Preserve at Sycamore Creek, LLC (the “Developer”) and the [*Redevelopment Corporation*], which Development Agreement was recorded in the Camden County Recorder of Deeds Office on _____, 2022, as Document No. ____.

C. **Section 6.2** of the Development Agreement requires, as a condition precedent to certain transfers of the Redevelopment Area, that the proposed transferee enter into and deliver to the City this Transferee Agreement, obligating the Transferee to comply with the requirements of the Development Plan and the obligations of the Developer under the Development Agreement.

D. The parties desire to enter into this Transferee Agreement to satisfy the conditions precedent set forth in **Section 6.2** of the Development Agreement.

NOW, THEREFORE, for and in consideration of the promises and the covenants entered herein, the City and the Transferee agree as follows:

1. The Transferee has entered into a purchase contract with the Developer, or an authorized successor or assign, pursuant to which the Transferee will acquire the Redevelopment Area.

2. The Transferee acknowledges that it has been provided with and/or has reviewed the Approving Ordinance and the Development Agreement.

3. The Transferee acknowledges and agrees that its acquisition, use and enjoyment of the Redevelopment Area and any future disposition of the Redevelopment Area are subject to the terms of the Development Agreement.

4. The Transferee acknowledges that in the event of the sale, lease, sublease, assignment or other voluntary or involuntary disposition of the Redevelopment Area, the obligations of the Development Agreement shall continue and shall inure to and be binding upon the heirs, executors, administrators, successors and assigns of the respective subsequent transferees as if they were in every case specifically named and shall be construed as a covenant running with the land and enforceable as if such purchaser, tenant, transferee or other possessor thereof were originally a party to and bound by the Development Agreement. The Transferee assumes the duty to notify any purchaser, tenant, transferee or other possessor of the Redevelopment Project of its rights, duties and obligations under the Development Agreement.

5. The parties agree that the intention of this Transferee Agreement is to ensure that the Transferee has actual notice of the rights, duties and obligations contained in the Development Agreement prior to taking ownership of the Redevelopment Area, and nothing contained in this Transferee Agreement shall be deemed to impose any rights, duties or obligations that are not imposed pursuant to the Development Agreement.

6. This Transferee Agreement shall be governed by the laws of the State of Missouri.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

CITY OF OSAGE BEACH, MISSOURI

(SEAL)

By: _____
Mayor

Attest:

City Clerk

[TRANSFEE]

By: _____
Name: _____
Title: _____

EXHIBIT A TO TRANSFEREE AGREEMENT

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EXHIBIT D
ESTIMATED FEE REIMBURSEMENT
(to be attached)

Tegethoff Development - The Preserve

EXHIBIT D - Development Agreement

Estimated Fee Reimbursement - July 31, 2022

Building Type A , total of 8 Total # of units per Bldg: 28 Const value \$3,420,000.00 each building	Fees each building Const Value \$3,420,000.00	Total Fees x 8 Buildings Const Value \$27,360,000.00	Chapter 135.025 - Economic Development Fee Reimbursement Estimate
Building Type A - Permit Fee	\$11,160.00	\$59,040.00	\$29,520.00
2" Water Meter \$960.48 each	\$960.48	\$7,683.84	\$0.00
Water Impact for multi-family 1 Bedroom, per unit fee: 14 x \$718.75	\$10,062.50	\$80,500.00	\$80,500.00
Water Impact for multi-family 2 Bedrooms, per unit fee: 14 x \$862.50	\$12,075.00	\$96,600.00	\$0.00
Sewer multi-family Area 7 1 Bedroom: 14 x \$1,409.00	\$19,726.00	\$157,808.00	\$157,808.00
Sewer multi-family Area 7 2 Bedroom: 14 x \$1,691.00	\$23,674.00	\$189,392.00	\$0.00
Sewer Plant Capacity - Class A \$860.00 x 28	\$24,080.00	\$192,640.00	\$0.00
Grand Total	<u>\$101,737.98</u>	<u>\$783,663.84</u>	<u>\$267,828.00</u> 34.2%

Building Type C , total of 2 Total # of units per Bldg: 22 Const value \$3,320,000.00 each building	Fees each building Const Value \$3,320,000.00	Total Fees x 2 Buildings Const Value \$6,640,000.00	Chapter 135.025 - Economic Development Fee Reimbursement Estimate
Building Type C - Permit Fee	\$10,960.00	\$17,600.00	\$1,584.00
2" Water Meter \$960.48 each	\$960.48	\$1,920.96	\$0.00
Water Impact for multi-family 1 Bedroom, per unit fee: 2 x \$718.75	\$1,437.50	\$2,875.00	\$2,875.00
Water Impact for multi-family 2 Bedrooms, per unit fee: 14 x \$862.50	\$12,075.00	\$24,150.00	\$0.00
Water Impact for multi-family 3 Bedrooms, per unit fee: 6 x \$1,006.25	\$6,037.50	\$12,075.00	\$0.00
Sewer multi-family Area 7 1 Bedroom: 2 x \$1,409.00	\$2,818.00	\$5,636.00	\$5,636.00
Sewer multi-family Area 7 2 Bedroom: 14 x \$1,691.00	\$23,674.00	\$47,348.00	\$0.00
Sewer multi-family Area 7 3 Bedroom: 6 x \$1,973.00	\$11,838.00	\$23,676.00	\$0.00
Sewer Plant Capacity - Class A \$860.00 x 22	\$18,920.00	\$37,840.00	\$0.00
Grand Total	<u>\$88,720.48</u>	<u>\$173,120.96</u>	<u>\$10,095.00</u> 5.8%

Building Type: Clubhouse Const value \$2,000,000.00	Total Fees	Chapter 135.025 - Economic Development Fee Reimbursement Estimate
Clubhouse - Permit Fee	\$8,320.00	\$0.00
5/8" Water Meter	\$300.15	\$0.00
Water Impact for 5/8" Meter	\$1,150.00	\$0.00
Sewer Development Charge - Area 7	\$2,255.00	\$0.00
Plant Capacity Fee - Class A	<u>\$860.00</u>	<u>\$0.00</u>
Grand Total	<u>\$12,885.15</u>	<u>\$0.00</u> 0.0%

Site Development Fee		
Estimated Site Development Fee	<u>\$8,819.55</u>	<u>\$3,527.82</u> 40.0%

	Total Fees	Chapter 135.025 - Economic Development Fee Reimbursement Estimate
Building A (8 total)	\$783,663.84	\$267,828.00
Building C (2 total)	\$173,120.96	\$10,095.00
Clubhouse	\$12,885.15	\$0.00
Site Development Fees	<u>\$8,819.55</u>	<u>\$3,527.82</u>
GRAND TOTAL PERMIT FEES	<u>\$978,489.50</u>	<u>\$281,450.82</u> 28.8%

Notes:

Calculations for fee reimbursement on 1-bedroom units; 1-bedroom rents within 5% of current adjusted monthly rent per CPI-U adjustment as of June 30, 2022; estimated fees as of July 31, 2022.

**Development Plan
The Preserve at Sycamore Creek
Osage Beach, Missouri**

Prepared for

The Board of Alderman of the City of Osage Beach, Missouri

on behalf of

Tegethoff Development, LLC

By

Husch Blackwell LLP



September 8, 2022

**Development Plan
The Preserve at Sycamore Creek**

**Osage Beach, Missouri
Tegethoff Development, LLC**

Introduction

This Development Plan (this “**Plan**”) sets forth a program of development intended to provide additional residential housing in the City of Osage Beach, Missouri, located at on Nichols Road, Osage Beach, Missouri and legally described in **Exhibit A** and depicted on **Exhibit B**, both attached to and incorporated in this Plan by reference (the “**Development Area**”).

Chapter 353 Plan Provisions and Requirements

Chapter 353 as a redevelopment tool is available to all Missouri cities regardless of size. Chapter 353 encourages redevelopment by providing for real property tax abatement for properties within designated redevelopment areas. Under Chapter 353, real property acquired by an Urban Redevelopment Corporation (as that term is used in Chapter 353) and used in accordance with an approved redevelopment plan may receive tax relief in the form of partial real property tax abatement for a period of up to twenty-five years. Taxation of personal property remains unaffected. Approval of tax abatement will assist in the reconstruction and rehabilitation of the Development Area and facilities therein, promote the health, safety and welfare of the City and restore the Development Area from its current blighted and economically underutilized state to an economically productive state following the expiration of the tax abatements.

Before authorizing a development project, and granting property tax abatement, the governing body of a city must schedule and hold a public hearing, notify affected taxing districts in writing, and provide to the taxing districts a written statement identifying the estimated impact of the proposed property tax abatement. Following the public hearing, the city may approve the project and the tax abatement by ordinance. The ordinance must set the time for acquisition of property by the Urban Redevelopment Corporation and for expiration of the development rights granted.

(a) Legal Description. See attached Exhibit A.

(b) Design Plan.

The principal objectives of this Plan are the development and construction of a new garden style apartment complex to be constructed on a vacant and rundown golf course in the City of Osage Beach, Missouri (the “City”).

The proposed Development is consistent with the City’s Comprehensive Plan to provide additional residential housing in the City. Additionally, the Future Land Use Map indicates that the Area is for future commercial development. Under the Comprehensive Plan, “Commercial” is described as including, among other things, “*apartments and condominiums*.” Furthermore, the proposed Development satisfies the Comprehensive Plan’s projection that over 800 acres of land will need to be developed by 2025 to meet the projected housing demand.

The Development will consist of approximately ten (10) separate buildings, sitting on 22.4 acres of land, containing approximately 268 rental units and a clubhouse amenity space for residents. In total, the buildings will contain approximately 296,780 square feet of space and approximately 432 beds, with a mixture of unit types ranging from one bedroom to three bedroom units. The clubhouse is anticipated to be an amenity space that contains a pool, coffee bar, dog run, and other tenant focused amenities.

The boundaries of the proposed redevelopment area include the following parcels (the “Area”):

- 4470 Nichols Rd. (Parcel #08-2.0-09.0-000.0-001-049.000)
- 1170 Nichols Rd. (Parcel #08-5.0-16.0-000.0-001-003.000)
- 1167 Nichols Rd. (Parcel #08-2.0-09.0-000.0-001-044.000)
- 1157 Nichols Rd. (Parcel #08-2.0-09.0-000.0-001-044.001)

A map of the Area is attached hereto as Exhibit C.

- (c) Stages of Project. It is anticipated the development project will be constructed in one phase, with substantial completions of the entirety of the project anticipating taking 18-20 months.
- (d) Property to be Demolished. The development will call for the demolition of the existing one story building on the property along with the existing golf course facilities.
- (e) Building Rehabilitation. There will be no rehabilitation of existing buildings.
- (f) New Construction. The buildings will be constructed out of a wood frame and high end features including quartz countertops, balconies, shaker style cabinetry, stainless steel appliances, etc.
- (g) Open Space. The proposed development will not consist of any open public space for nonresidents and no portion of the property will be an area of public use or belong to the City, County, State or any political subdivision.
- (h) Property for Public Agencies. No portion of the Development will be sold, donated, exchanged, or leased to any public agency or political subdivision of the Federal, State, or local government.
- (i) Zoning Changes. The majority of the parcels located within the Area are currently zoned A-1. One parcel within the Area is zoned C-1. It is anticipated the Development will require the entirety of the Area to be re-zoned to R-3 “Multi-Family District” or such other designation as determined in consultation with the City. Developer has met with various City officials and the City has been supportive of the Development. Developer anticipates that it will work closely with the proper City officials to make sure the correct zoning designation is achieved.
- (j) Street Changes. Currently, there are no proposed changes in streets or street levels to accommodate the Development.

(k) Utility Changes. Developer plans on servicing the Development with new utilities which will need to be run during the development stage.

(l) Tax Abatement. Chapter 353 allows for grants of real property tax abatement for a total maximum period of twenty-five years. This Plan calls for a grant of abatement of taxes on real property only within the Development Area for a period of twenty (20) years. Throughout this twenty year period and thereafter, all affected taxing districts will continue to receive personal property taxes on existing and new equipment and personalty. A study entitled “Nichols Road Chapter 353 Qualifications Study” chronicling conditions of blight in the Development Area (the “**Blight Analysis**”) has been performed and has concluded that evidence of physical, social and economic conditions of blight exist in the Development Area. A copy of the Blight Analysis is attached as **Exhibit D** and is incorporated in this Plan by reference and sets forth the factors which support this determination

Developer is seeking one hundred percent (100%) real property tax abatement for five (5) years, a seventy-five percent (75%) real property tax abatement for the following five (5) years, a fifty percent (50%) real property tax abatement for the following five (5) years, and a twenty-five percent (25%) real property tax abatement for the following five (5) years. This abatement is being sought under Chapter 353 for the Development. Notwithstanding the foregoing, by operation of Chapter 353, RSMo., the Developer shall pay taxes during the first ten (10) years of the abatement period based on assessed value of the land, exclusive of improvements, in the year preceding the year in which the urban redevelopment corporation acquires title to the property. These taxes will be credited against any additional annual Payment In Lieu of Taxes (“PILOTs”) required in a development agreement among the City, the Developer and an urban redevelopment corporation to achieve the net abatement levels described above.

Notwithstanding the foregoing, the Developer shall also make payments to any applicable emergency service districts under Section 353.110.4(2), RSMo.

Developer is also seeking a sales tax exemption on construction materials pursuant to Chapter 100 of the Revised Statutes of Missouri, as amended. This exemption would be utilized during the construction of the Development. Approval of tax abatement will assist in the reconstruction and rehabilitation of the Development Area and facilities therein, promote the health, safety and welfare of the City and restore the Development Area from its current blighted and economically underutilized state to an economically productive state following the expiration of the tax abatements.

(m) Acquisition Plan. The property is currently under contract to purchase from the current landowners. Developer’s current extension option expires on August 29, 2022. Developer has the option to extend for two (2) additional ninety (90) day periods, provided, however, that Developer must pay additional non-refundable money to the current landowners to exercise each option. Developer’s acquisition of all of the property is contingent upon securing all of the necessary financing for the Development, including the approval by the City of the requested economic development assistance (including the real estate tax abatement and sales tax exemption on construction materials).

(n) Eminent Domain by City. The use of eminent domain by the city is not being requested.

No portion of the property will be acquired via eminent domain.

- (o) Financing. In addition to seeking the sales tax exemption on construction materials and the real estate tax abatement to make the Development financially feasible, Developer anticipates using conventional debt and equity financing for the Development. Developer anticipates the debt to be privately financed by a construction lender. Developer anticipates the following sources and amounts of funds:

- Equity – Approximately \$18.1 million.
- First Mortgage/Construction Loan – Approximately \$42.2 million

- (p) Management. Key individuals of Developer include:

- *Jeff Tegethoff*

Jeff Tegethoff is the President and Chief Executive Officer of the Developer. Jeff primarily focuses on sourcing transactions, raising equity and securing debt funding for the purchase of real estate assets for Developer. Since 1997, he has been involved with operating assets related to private placement of family office and institutional equity and has extensive experience in driving investor returns across venture capital, private equity, and real estate.

- *Matt Cremer*

Matt Cremer is the Chief Operating Officer of Developer. He is a principal of Developer and oversees the overall operations of Developer and its affiliates. He leads the team's oversight of Developer's acquisitions, development, and asset management of all real estate holdings. Matt has been in this role with Developer since 2019, and has been in the real estate investment industry since 2015.

- *Allyn Witt*

Allyn Witt is the Vice President of Development of Developer. Allyn provides daily oversight of key project components including timeline, budget, and construction draws by coordinating communication within the development team and making regularly scheduled on-site visits. With over five (5) years of experience in central Missouri multi-family real estate, Allyn ensures a high quality product is delivered that exceeds the expectations of residents.

- (q) Public Property. The Development will not consist of any property which is in public use or belonging to the City, County, State, or any political subdivision.

- (r) Political Subdivisions affected by the tax abatement. A tax impact analysis showing the economic impact of this Plan on the political subdivisions whose boundaries includes any of the parcels of property within the Area (the "**Taxing Districts**") is set forth in **Exhibit E** attached hereto. As stated above, a copy of the tax impact analysis was mailed to each applicable Taxing District with notice of the public hearing prior to the approval of the Plan. The projections contained in the tax impact analysis are based on assumptions, projections, and information provided by sources considered reliable. However, external factors may influence these projections. Changes in national, regional, and local economic

and real estate market conditions and trends may impact the anticipated development. Changes may also be caused by legislative, environmental, or physical events or conditions. These projections are not provided as predictions or assurances that a certain level of performance will be achieved or that certain events will occur. The actual results will vary from the projections described herein, and those variations may be material.

(s) Applicant's background and identity.

Tegethoff Development, LLC (together with its affiliates, the "Developer") is a luxury lifestyle developer that has developed properties throughout the Midwest. Developer has experience in master planned suburban mixed-use developments, historic renovations, and boutique urban apartment projects, and has developed first-class assets throughout the communities in which it operates. The Developer's roots in the Midwest and on-the-ground perspective allow Developer to anticipate the trends driving the future of real estate in each market. Developer focuses on thinking strategically, building locally, and investing prudently to curate a collection of highly desirable, location-driven properties that offer modern amenities desired by residents.

To date, Developer has developed, constructed, and/or managed over 2,600 apartments, and over 200,000 square feet of commercial space in the St. Louis, Indianapolis, Kansas City, and Cincinnati metropolitan areas. Developer's completed projects have an estimated value of over \$700 Million and Developer currently has over \$400 Million under construction. To Developer's knowledge, there are no threatened or pending litigation or unresolved claims against Developer, the nature of which would need to be disclosed if the Developer were applying for or participating in a transaction using public debt financing or which might be considered a regulated securities transaction.

Developer's past successes include:

- *Summit at West Pryor (Lee's Summit, Missouri)*

In Lee's Summit, Missouri, Developer successfully completed the construction of an approximately \$57 million mixed-use project that contained approximately 240 apartment units and approximately 22,000 square feet of first floor commercial space. Developer is currently undertaking construction of an approximately 287 unit apartment building, known as *Signature at West Pryor*, and the completion of an approximately 55 unit townhouse project, known as *Vanguard Villas*, in the same development.

- *Wildhorse (Chesterfield, Missouri)*

In Chesterfield, Missouri a suburb of St. Louis, Developer successfully completed an approximately \$57 million mixed-use development called *Wildhorse*. *Wildhorse* contains approximately 188 apartment units and approximately 25,000 square feet of commercial space. *Wildhorse* also includes Ruth's Chris Steakhouse and a high-end fashion salon. Across the street from *Wildhorse*, a principal of Developer is leading the development of Wildhorse Village, an approximately 90 acre mixed-use, master planned development.

- *Hibernia (St. Louis, Missouri)*

In St. Louis, Developer completed the development of Hibernia, an approximately 108,000 square foot mixed-use project in the Dogtown area of St. Louis that includes approximately

100 apartments, approximately 16,000 square feet of commercial space, and approximately 127 sub-surface dedicated parking spaces. The first floor of Hibernia contains a local neighborhood grocer.

- *Expo at Forest Park (St. Louis, Missouri)*

Additionally, Developer is nearly complete with the ground-up construction of *Expo at Forest Park*. Upon completion, the \$91 million project will include approximately 287 apartment units, approximately 20,000 square feet of retail space and structured parking. *Expo at Forest Park* also includes a local neighborhood grocer located on the first floor.

Right of Assignment

Prior to completion of the Development, Developer may assign its rights under this Plan and any contract with the City or another party upon the written consent of the City, which consent will not be unreasonably withheld. After the completion of the Development the Developer shall have the right to assign its rights under this Plan and any contract with the City or another party to any affiliate, and to other assignees, so as such other assignees give assurances reasonably satisfactory to the City that the intention and purposes of this Plan will be carried out.

Plan Amendments

This Plan may be amended from time to time by the Board of Alderman by ordinance. Any such amendment that substantially departs from the terms of any redevelopment agreement between the City and the Developer shall additionally require approval by any other affected developer or sub-developer.

Exhibit A

Legal Description of Development Area

A tract of land situated in and being a part of the SE 1/4 of Section 9 and the NE 1/4 of Section 16, T 39 N, R 16 W and a part of the tracts of land described by deeds recorded in Book 407, Page 05, Book 276, Page 214, Book 526, Page 957, Book 682, Page 088, Book 671, Page 593 and Book 758, Page 283 in the Records of Camden County, Missouri and being more particularly described as follows:

Commencing at a U post set in concrete marking the SW Corner of the SE 1/4 of the SE 1/4 of Section 9, T 39 N, R 16 W; thence S 01° 20' 58" W, 63.34 feet to a 1 inch iron pipe marking the Northeasterly Corner of a tract of land described by deed recorded in Book 543, Page 485 in the Records of Camden County, Missouri for the point of beginning; thence N 88° 44' 11" W along the Northerly Line of said tract of land described by deed recorded in Book 543, Page 485, 262.27 feet to a 3/8 inch iron pin; thence leaving said Northerly Line along the Easterly Line of a tract of land described by deed recorded in Book 395, Page 023 in said Records along the following courses: thence N 04° 06' 08" W, 249.56 feet to a 3/8 inch iron pin in concrete; thence N 35° 00' 45" E, 242.61 feet to a pipe in concrete; thence N 49° 39' 55" E, 265.77 feet to a 3/8 inch iron pin; thence N 52° 44' 58" E, 899.46 feet to a 3/8 inch iron pin in concrete; thence N 46° 06' 25" E, 183.07 feet to a 3/8 inch iron pin in concrete; thence leaving said Easterly Line S 85° 35' 26" E along the Northerly Line of a tract of land described by deed recorded in Book 407, Page 005 in said Records 328.70 feet to a set 1/2 inch rebar; thence continuing along said Northerly Line S 43° 35' 26" E, 57.98 feet to a 1/2 inch rebar set on the Westerly Right of Way Line of Nichols Road; thence leaving said Northerly Line along said Right of Way Line along the following courses: thence S 02° 31' 04" E, 93.02 feet; thence along a curve to the right 136.83 feet, the radius being 273.09 feet and the long chord being S 11° 50' 09" W, 135.40 feet; thence S 26° 11' 21" W, 113.14 feet; thence along a curve to the right 157.65 feet; the radius being 339.62 feet and the long chord being S 39° 29' 15" W, 156.24 feet; thence S 52° 47' 09" W, 304.35 feet; thence along a curve to the left 84.11 feet, the radius being 378.91 feet and the long chord being S 46° 25' 36" W, 83.94 feet; thence S 40° 04' 03" W, 236.65 feet to a set 1/2 inch rebar; thence leaving said Right of Way Line S 80° 15' 01" W along the Northerly Line of a tract of land described by deed recorded in Book 407, Page 005 in said Records 57.57 feet to a set 1/2 inch rebar; thence leaving said Northerly Line S 10° 08' 08" E along the Westerly Line of said tract of land described by deed recorded in Book 407, Page 005 in said Records 48.35 feet to a 1/2 inch rebar set on said Right of Way Line; thence along said Right of Way Line along the following courses: thence S 40° 04' 03" W, 19.95 feet; thence along a curve to the right 143.79 feet, the radius being 538.87 feet and the long chord being S 47° 42' 42" W, 143.36 feet; thence S 55° 21' 21" W, 235.32 feet; thence along a curve to the left 73.05 feet, the radius being 459.65 feet and the long chord being S 50° 48' 12" W, 72.97 feet; thence S 46° 15' 03" W, 53.03 feet; thence along a curve to the left 235.63 feet, the radius being 851.54 feet and the long chord being S 38° 19' 25" W, 234.88 feet to a 1/2 inch rebar set on the Right of Way Line of US Route 54; thence leaving said Right of Way Line of Nichols Road S 70° 05' 10" W along said Right of Way Line of US Route 54 54.66 feet to a 1/2 inch rebar set on the Easterly Line of said tract of land described by deed recorded in Book 543, Page 485 in said Records; thence leaving said Right of Way Line N 00° 56' 45" E along said Easterly Line 229.60 feet to the point of beginning.

Exhibit B

Site Plan of Development Area

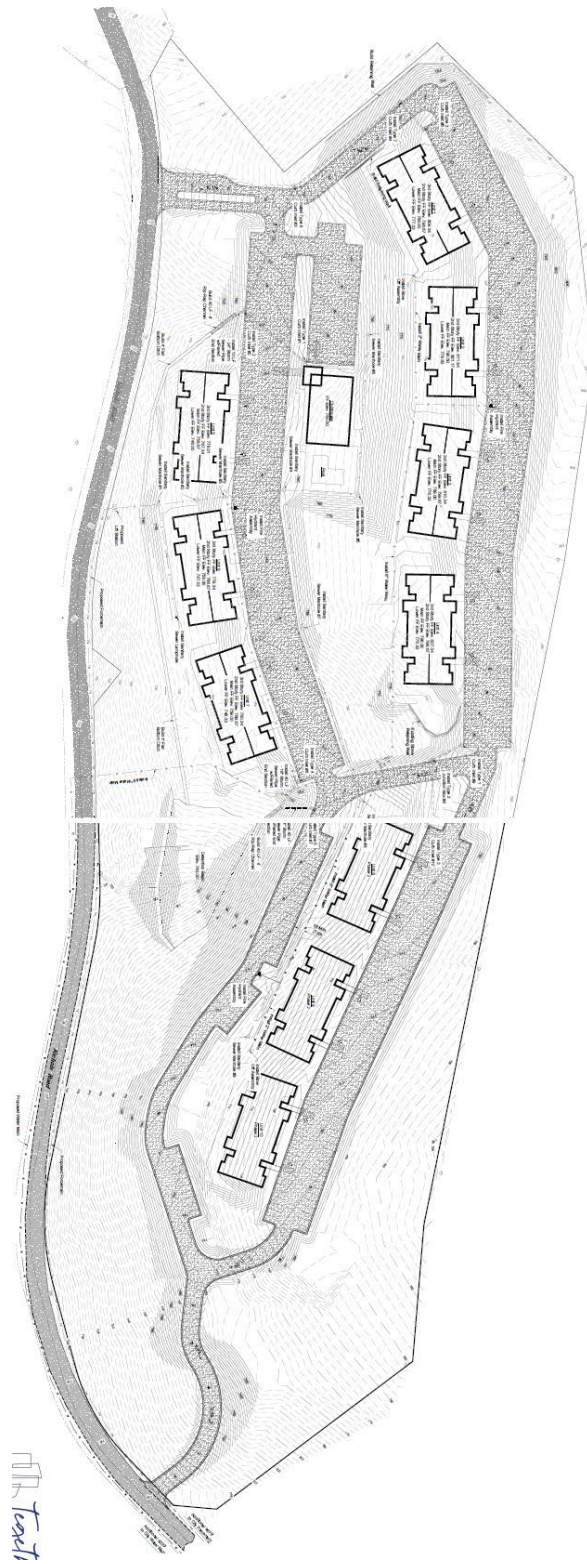


EXHIBIT C

Map of Development Area

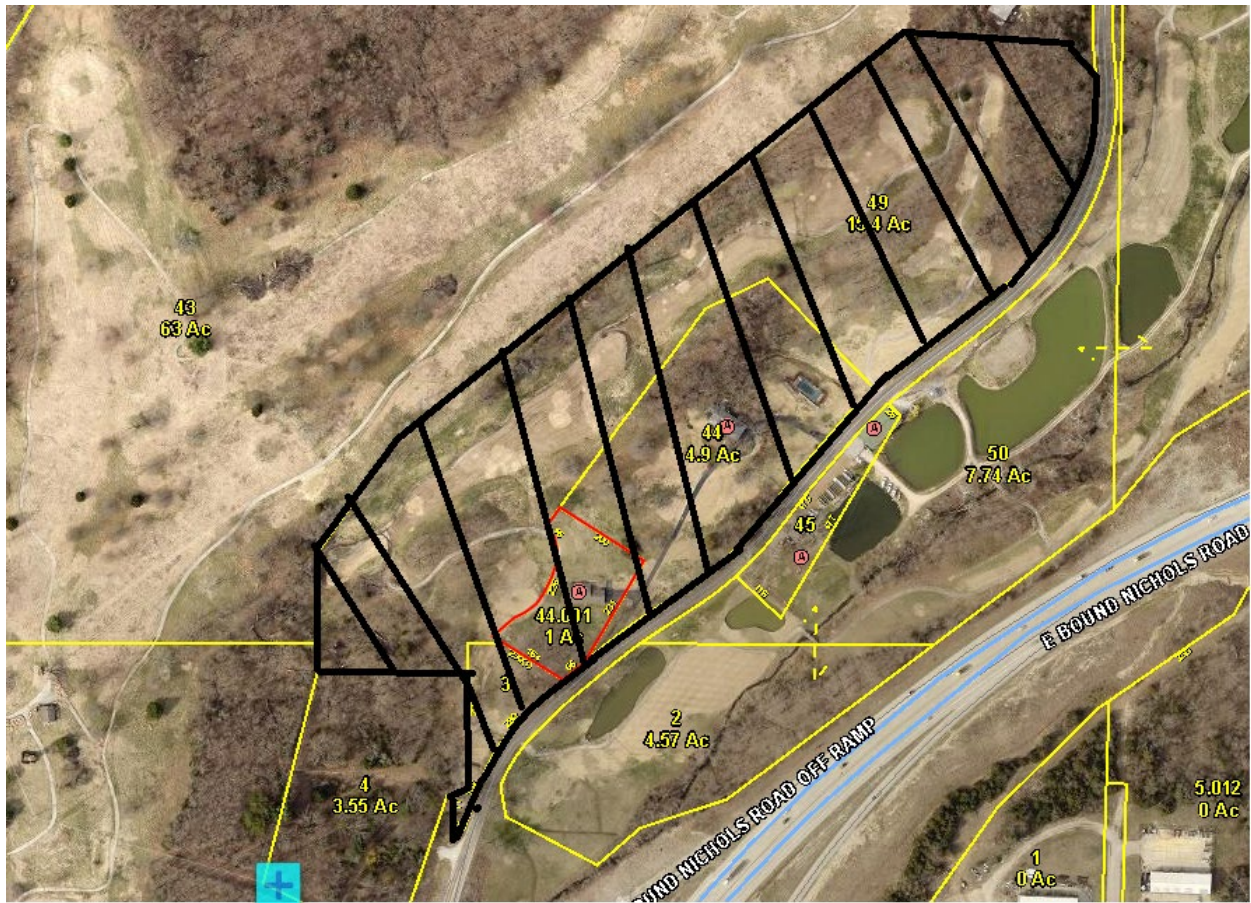


EXHIBIT D

Blighted Analysis

[attached]

Nichols Road

Chapter 353 Qualifications Study

August 11, 2022

PGAV **PLANNERS**

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INTRODUCTION	1
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SECTION 1

INTRODUCTION

AREA DESCRIPTION AND BACKGROUND

The Nichols Road Redevelopment Area (hereinafter referred to as the “Area”) comprises nearly 22 acres of land within the City of Osage Beach, MO (the “City”). The Area includes a disused, vacant and unattended golf course and a residential property that appears to be equally untended and unused. The boundaries of the Area are shown on **Plate 1 –Area Boundary** included in **Appendix A** and further described in the written boundary description also contained in **Appendix A**.

GENERAL HISTORY OF THE AREA

The Area had been developed for use as a golf course and residential home sometime in the 1990s. After 15-20 years of use, the land is no longer used for golfing. The Area includes two residential homes, one of which is currently occupied and one of which is currently vacant.

SECTION 2

BASIS FOR DESIGNATION AS A BLIGHTED AREA

STATUTORY DEFINITION OF BLIGHTED AREA

Missouri law allows cities and counties to: (1) identify and designate redevelopment areas that qualify as “Blighted areas” under the Urban Redevelopment Corporations Law, Chapter 353, RSMo. (“Chapter 353”); (2) adopt a development plan that designates an area in need of redevelopment and states the objectives to be attained and the redevelopment project to be undertaken; (3) approve a redevelopment project for implementation of such development plan; and (4) utilize the tools outlined in Chapter 353 to assist in reducing or eliminating those factors and conditions that cause the area to qualify as a “Blighted area” through the completion of a redevelopment project. Chapter 353 defines “Area” as follows:

“Area”, that portion of the city which the legislative authority of such city has found or shall find to be blighted so that the clearance, replanning, rehabilitation, or reconstruction thereof is necessary to effectuate the purposes of this law. Any such area may include buildings or improvements not in themselves blighted, and any real property, whether improved or unimproved, the inclusion of which is deemed necessary for the effective clearance, replanning, reconstruction or rehabilitation of the area of which such buildings, improvements or real property form a part. (Section 353.020(1), RSMo.)

To qualify as an Area under Chapter 353, the land that is to be designated must exhibit certain characteristics that meet the criteria as established in the definition for a “Blighted area.” The definition of “Blighted area” (Section 353.020(2), RSMo.) in Chapter 353 was recently amended to cross-reference the definition of “Blighted area” in Section 99.805, RSMo.:

“Blighted area”, an area which, by reason of the predominance of insanitary or unsafe conditions, deterioration of site improvements, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, retards the provision of housing accommodations or constitutes an economic or social liability or a menace to the public health, safety, or welfare in its present condition and use. (Section 99.805(1), RSMo.)

ANALYSIS OF BLIGHTED AREA FACTORS

This Section documents the conditions found to be present in the Area and contains the analysis of how such conditions cause the Area to be a “Blighted Area” pursuant to Chapter 353.

This analysis is based upon on-site investigations of the Area conducted by PGAV Planners staff on July 9, 2022. PGAV Planners staff also relied upon their extensive experience, knowledge of the real estate market, and professional expertise in the preparation of this analysis. Photographs illustrating representative blighting conditions were taken during the site visit and are displayed in **Appendix B – Existing Conditions Photos**. This report will not reflect changes in conditions or events that have occurred after the date of the site visits or publication of this report.

Findings Regarding Insanitary or Unsafe Conditions:

- The Area is neglected and overgrown. Although this golf course, which is a commercial use, is predominantly zoned A-1 Agricultural, the lawns and fairways should still be tended in a manner commensurate with the property’s prior commercial land use. Such failure to maintain the grounds results in a nuisance, which the City recognizes in Section 215.200 of its Zoning Ordinance, as a nuisance to the public generally as an insanitary condition.
- The residential property within the Area appears to be vacant and unsecured. Upon our inspection, we found the front-door to the property open. A vacant or neglected single-family home is an unsafe condition as such condition is conducive to crime and a fire hazard.

Findings Regarding Deterioration of Site Improvements:

Deterioration refers to the physical deterioration of buildings and other above-ground improvements, below-grade supporting structures such as water, sewer, and electric utilities, and surface site improvements such as parking areas, roadways and drives, and lighting fixtures, signage, etc.

Deterioration may be evident in a variety of exterior and interior building components, including foundation, exterior walls, doors, windows, floors, roofs, wiring, plumbing, etc. Minor defects, such as a lack of painting, loose or missing roof tiles, floor or ceiling plates, holes and cracks over limited areas, or damaged fascia materials, may indicate deterioration resulting from deferred maintenance.

The Area exhibits several physical conditions that exemplify deterioration of site improvements, including:

- The cart paths throughout the Area are deteriorated and overgrown.
- There are two residential homes within the Area; one having an address of 1157 Nichols Rd. and the other having an address of 1167 Nichols Rd. Both of the residential structures show deterioration:
 - 1157 Nichols Road:
 - The chimney is in need of significant repair. Currently, a trap covers the top of the chimney to prevent the intrusion of outside elements into the home.
 - The home is covered with vinyl siding, however, inappropriate installation of the siding enables the intrusion of water between the siding and the exterior wall material underneath. This has caused water damage and, over time, has deteriorated the underlying exterior wall and window frame material.
 - 1167 Nichols Road:
 - The lower level of this home shows water damage to the walls and floor. According to the property owner, water intrusion has been a regularly recurring issue that has damaged the home over time.
 - A portion of the home is overgrown with vegetation as a vine covers the top portion of a three-season room. This has caused deterioration to the home.

Findings Regarding Economic Liability

The Area, by reason of both a predominance of insanitary or unsafe conditions and the deterioration of site improvements, constitutes an economic liability to those taxing districts that depend on tax revenues from the Area to fund governmental services.

The Area has a total assessed valuation of \$46,710, as determined by the Camden County Assessor's Office. This total assessed value amount for the Area has not changed since 2011. This fact indicates that the Area has been economically stagnant for more than a decade, does not contribute to the economic independence of the City of Osage Beach and also challenges the ability of affected taxing jurisdictions to pay for services. The total assessed value of all of the real estate within the Osage Beach Fire Protection District, which covers the Area, increased approximately 1.7% on an average annual average basis from 2011 to 2021. The Area should have at least kept up with overall increases in value in order to be an economic asset rather than a liability and a drag on jurisdictional tax revenue.

SUMMARY

The Area meets the definition of a “Blighted area” set forth in Chapter 353 because the predominance and combination of insanitary or unsafe conditions and the deterioration of site improvements present in the Area constitute an economic liability.

APPENDICES

APPENDIX A

REDEVELOPMENT AREA BOUNDARY MAP AND LEGAL DESCRIPTION



Redevelopment Area Boundary Description

The Redevelopment Area includes all land having Camdenton County parcel identification numbers:

1. 08-5.0-16.0-000.0-001-003.000,
2. 08-2.0-09.0-000.0-001-049.000,
3. 08-2.0-09.0-000.0-001-044.001, and
4. 08-2.0-09.0-000.0-001-044.000.

APPENDIX B

EXISTING CONDITIONS PHOTOS



Above: Deteriorated golf cart path.



Above: Deteriorated driveway.



Above: Open and unsecured vacant home.



Above: Overgrown lawn and weeds.



Above: Deteriorated window frame at 1157 Nichols Rd.



Above: Deteriorated window frame and chimney at 1157 Nichols Rd.



Above: Deteriorated walls at 1167 Nichols Rd.



Above: Vegetation overtaking three-season room at 1167 Nichols Rd.



Above: Overgrown lawn and weeds as Area transitions from residential to disused golf course.

EXHIBIT E

Taxing Districts

[attached]

TAXING DISTRICTS (Exhibit E)

State of Missouri

Attn: Mr. Gerald Robinett
Department of Revenue – Excise Tax Unit
Harry S. Truman State Office Building
301 West High Street
Jefferson City, Missouri 65101

Camden County Senior Fund

Attn: Mr. Jim Rogers
Chairman
1 Court Circle Northwest
Camdenton, Missouri 65020

Camden County Road & Bridge

Attn: Mr. Patrick Wolf
Road & Bridge Administrator
1 Court Circle Northwest
Camdenton, Missouri 65020

Osage Beach Fire Protection District

Attn: Paul Berardi
Fire Chief
1170 Bluff Drive
Osage Beach, Missouri 65065

Camden County

Attn: Hon. Greg Hasty
Presiding Commissioner
1 Court Circle Northwest
Camdenton, Missouri 65020

Camden County Developmental Disability Resources

Mr. Ed Thomas
Executive Director
5816 Osage Beach Parkway, Suite 108
Osage Beach, Missouri 65065

Camden County Library District

Attn: Mr. Michael Davis
Director
89 Rodeo Road
Camdenton, Missouri 65020

Camdenton R-III School District

Attn: Dr. Sean Kirksey
Superintendent
172 Dare Boulevard
PO Box 1409
Camdenton, Missouri 65020

Nichols Road Chapter 353 Redevelopment Area

Tax Impact Statement

September __, 2022

Prepared by Husch Blackwell LLP

I. INTRODUCTION

This Memorandum and the accompanying tables comprise the Tax Impact Statement for the Nichols Road Chapter 353 Redevelopment Area (the “Area”). The Area is generally comprised of 4470 Nichols Rd., 1170 Nichols Rd., 1167 Nichols Rd., and 1157 Nichols Rd., located in Osage Beach, Missouri (the “City”).

Tegethoff Development, LLC (the “Developer”), or an affiliate thereof, plans to redevelop the existing vacant golf course for use as approximately 268 residential apartments and amenity space (the “Project”).

This analysis is for a Project that is not yet constructed. The user of this analysis is cautioned to study the assumptions noted on each of the attached tables, in addition to the assumptions stated in the following paragraphs.

II. REAL PROPERTY TAX ABATEMENT

1. Tax Abatement Period

The Project is planned for construction over a 26 to 32-month period.

This analysis reviews the impact of the proposed tax abatement for the Project on the affected taxing jurisdictions. The proposed tax abatement is expected to

begin in 2023. The Area will receive 20 years of real property tax abatement, with 100% real property tax abatement for 5 years, 75% real property tax abatement for the following 5 years, 50% real property tax abatement for the following 5 years, and 25% for the final 5 years, however, during which time, pursuant to a development agreement entered into by and among the City, the Developer, and urban redevelopment corporation. Notwithstanding the foregoing, by operation of Chapter 353, RSMo., the Developer shall pay taxes during the first 10 years of the abatement period based on assessed value of the land, exclusive of improvements, in the year preceding the year in which the urban redevelopment corporation acquires title to the property. These taxes will be credited against any additional annual Payment In Lieu of Taxes (“PILOTs”) required in the Development Agreement to achieve the net abatement levels described above.

Notwithstanding the foregoing, the Development Agreement also requires that the Developer make payments to any applicable emergency service districts under Section 353.110.4(2), RSMo. These payments will effectively eliminate tax abatement for the Osage Beach Fire Protection District.

2. Base Equalized Assessed Value (EAV)

The current total equalized assessed value of the Redevelopment Area is \$46,780.00.

3. Tax Rates

The total property tax rate levied against the real property within the Area is \$4.1633 per \$100 of assessed valuation. See Table 2 attached in Appendix A.

4. Projected Market Value and Assessed Value

See Table 1 attached in Appendix A. The assumptions used in this analysis to project future market values are approximations based on information used on other recent projections in the Osage Beach area. At the time the Project is completed, the Camden County Assessor (the “Assessor”) will appraise the actual project as constructed. Since the Project has not yet been redeveloped, the Assessor cannot determine the future appraised value for purposes of levying real property taxes.

5. Growth in Market Value

The Project’s market value is projected to grow two percent (2%) after full build-out at each reassessment year (on odd-numbered years).

III. FISCAL IMPACT

Table 3 attached in Appendix A show the taxes and PILOTs

paid and taxes abated pursuant to the development program, anticipated tax abatement schedule, and anticipated redevelopment agreement between the City and the Developer.

IV. GENERAL ASSUMPTIONS AND CONDITIONS

These projections are intended to be interpreted and used based on the assumptions used for their preparation. Projections formulated in this document are based on currently available information and the assumptions as stated. Husch Blackwell LLP believes that the assumptions used in this analysis constitute a reasonable basis for its preparation.

This Memorandum and the financial projections contained herein are based on assumptions, projections, and information provided by the Developer and various other sources considered reliable. Husch Blackwell LLP neither verified nor audited the information that was provided by the other sources. Information provided by others is assumed to be reliable, but Husch Blackwell LLP assumes no responsibility for its accuracy or certainty.

In addition to the impact on these projections of actual implementation activities, external factors may influence these assumptions and projections as well. Changes in the national, regional, and local economic and real estate market conditions and trends may impact the real estate market and

redevelopment activity. Changes or modifications may also be caused by economic, environmental, legislative, or physical events or conditions. Husch Blackwell LLP assumes no liability should market conditions change or the schedule is not met.

The tax revenue projections contained in this report represent prospective information, opinions, and estimates regarding a development project that is not yet constructed. These projections are not provided as predictions or assurances that a certain level of performance will be achieved or that certain events will occur. The actual results will vary from the projections described herein and the variations may be material. Because the future is uncertain, there is risk associated with achieving the results projected. Husch Blackwell LLP assumes no responsibility for any degree of risk involved.

This report and the information included herein are intended for the purposes of providing a preliminary concept of the performance of this potential project for use by the City, and should not be used for other purposes. Neither this document nor its contents may be referred to or quoted, in whole or in part, for any purpose including, but not limited to, any official statement for a bond issue and consummation of a bond sale, any registration statement, prospectus, loan, or other agreement or document, without prior review and written approval by

Husch Blackwell LLP regarding any representation therein with respect to Husch Blackwell LLP organization and work product.

APPENDIX A

List of Tables
Nichols Road Chapter 353 Redevelopment Area
Osage Beach, MO

Table 1	Parcel and EAV Information
Table 2	2022 Real Property Tax Rates Per \$100 of Assessed Valuation
Table 3	Tax Abatement Summary

Table 1

Parcel and EAV Information
Nichols Road Chapter 353 Redevelopment
Osage Beach, Missouri

Parcel ID	2023 Assessed Value* - Base EAV		
	Land	Improvements	Total Base EAV of Property
08-2.0-09.0-000.0-001-049.000	\$10,618	\$ -	\$10,618
08-5.0-16.0-000.0-001-003.000	\$694	\$ -	\$694
08-2.0-09.0-000.0-001-044.000	\$2,560	\$16,820	\$19,380
08-2.0-09.0-000.0-001-044.001	\$1,071	\$15,953	\$17,024

Source: Camden County Assessor

Parcel ID	Projected Appraised Value of Property at Completion	Residential Assessment Rate	Projected Assessed Value of Property at Completion
	\$54,286,567	19%	\$10,314,465

*Assumes 2022 Assessed Values with 2% Growth

Table 2

2021 Real Property Tax Rates Per \$100 of Assessed Valuation
Nichols Road 353 Redevelopment
Osage Beach, Missouri

Taxing Jurisdiction	Tax Rate*
State of Missouri	0.0300
Camden County	0.1100
Senior Citizen Tax	0.0460
Library Tax	0.0963
SB40 CCDDR	0.0576
Osage Beach Fire	0.7434
Camden School	2.9700
Osage Beach Road/Bridge	0.1100
Total Real Property Tax Rate	4.1633

Source: Camden County – 2021 Tax Rates

* Actual tax rates will vary from year-to-year due to changes in adopted tax rates, State mandated rollbacks resulting from increased assessed value through reassessment and/or bond issues and debt retirement. For the purposes of this Tax Impact Statement, 2021 tax rates are assumed to remain constant during the term of the tax abatement.

Table 3

Tax Abatement Summary
Nichols Road Chapter 353 Redevelopment
Osage Beach, Missouri
(Without Development)

Year	Assessed Value Land	Assessed Value Improvements	Total Assessed Value	Assessed Value with Abatement (N/A)	State of Missouri	Camden County	Senior Citizen Tax	Library Tax	SB40 CCDDR	Osage Beach Fire	Camden School	Osage Beach Road/Bridge	Total
0	\$14,650.00	\$32,130.00	\$46,780.00	-	\$14.03	\$51.46	\$21.52	\$45.05	\$26.95	\$347.76	\$1,389.37	\$51.46	\$1,947.59
0	\$14,943.00	\$32,772.60	\$47,715.60	-	\$14.31	\$52.49	\$21.95	\$45.95	\$27.48	\$354.72	\$1,417.15	\$52.49	\$1,986.54
1	\$14,943.00	\$32,772.60	\$47,715.60	-	\$14.31	\$52.49	\$21.95	\$45.95	\$27.48	\$354.72	\$1,417.15	\$52.49	\$1,986.54
2	\$15,241.86	\$33,428.05	\$48,669.91	-	\$14.60	\$53.54	\$22.39	\$46.87	\$28.03	\$361.81	\$1,445.50	\$53.54	\$2,026.27
3	\$15,241.86	\$33,428.05	\$48,669.91	-	\$14.60	\$53.54	\$22.39	\$46.87	\$28.03	\$361.81	\$1,445.50	\$53.54	\$2,026.27
4	\$15,546.70	\$34,096.61	\$49,643.31	-	\$14.89	\$54.61	\$22.84	\$47.81	\$28.59	\$369.05	\$1,474.41	\$54.61	\$2,066.80
5	\$15,546.70	\$34,096.61	\$49,643.31	-	\$14.89	\$54.61	\$22.84	\$47.81	\$28.59	\$369.05	\$1,474.41	\$54.61	\$2,066.80
6	\$15,857.63	\$34,778.55	\$50,636.18	-	\$15.19	\$55.70	\$23.29	\$48.76	\$29.17	\$376.43	\$1,503.89	\$55.70	\$2,108.14
7	\$15,857.63	\$34,778.55	\$50,636.18	-	\$15.19	\$55.70	\$23.29	\$48.76	\$29.17	\$376.43	\$1,503.89	\$55.70	\$2,108.14
8	\$16,174.78	\$35,474.12	\$51,648.90	-	\$15.49	\$56.81	\$23.76	\$49.74	\$29.75	\$383.96	\$1,533.97	\$56.81	\$2,150.30
9	\$16,174.78	\$35,474.12	\$51,648.90	-	\$15.49	\$56.81	\$23.76	\$49.74	\$29.75	\$383.96	\$1,533.97	\$56.81	\$2,150.30
10	\$16,498.28	\$36,183.60	\$52,681.88	-	\$15.80	\$57.95	\$24.23	\$50.73	\$30.34	\$391.64	\$1,564.65	\$57.95	\$2,193.30
11	\$16,498.28	\$36,183.60	\$52,681.88	-	\$15.80	\$57.95	\$24.23	\$50.73	\$30.34	\$391.64	\$1,564.65	\$57.95	\$2,193.30
12	\$16,828.25	\$36,907.27	\$53,735.52	-	\$16.12	\$59.11	\$24.72	\$51.75	\$30.95	\$399.47	\$1,595.94	\$59.11	\$2,237.17
13	\$16,828.25	\$36,907.27	\$53,735.52	-	\$16.12	\$59.11	\$24.72	\$51.75	\$30.95	\$399.47	\$1,595.94	\$59.11	\$2,237.17
14	\$17,164.81	\$37,645.42	\$54,810.23	-	\$16.44	\$60.29	\$25.21	\$52.78	\$31.57	\$407.46	\$1,627.86	\$60.29	\$2,281.91
15	\$17,164.81	\$37,645.42	\$54,810.23	-	\$16.44	\$60.29	\$25.21	\$52.78	\$31.57	\$407.46	\$1,627.86	\$60.29	\$2,281.91
16	\$17,508.11	\$38,398.32	\$55,906.43	-	\$16.77	\$61.50	\$25.72	\$53.84	\$32.20	\$415.61	\$1,660.42	\$61.50	\$2,327.55
17	\$17,508.11	\$38,398.32	\$55,906.43	-	\$16.77	\$61.50	\$25.72	\$53.84	\$32.20	\$415.61	\$1,660.42	\$61.50	\$2,327.55
18	\$17,858.27	\$39,166.29	\$57,024.56	-	\$17.11	\$62.73	\$26.23	\$54.91	\$32.85	\$423.92	\$1,693.63	\$62.73	\$2,374.10
19	\$17,858.27	\$39,166.29	\$57,024.56	-	\$17.11	\$62.73	\$26.23	\$54.91	\$32.85	\$423.92	\$1,693.63	\$62.73	\$2,374.10
20	\$18,215.43	\$39,949.62	\$58,165.05	-	\$17.45	\$63.98	\$26.76	\$56.01	\$33.50	\$432.40	\$1,727.50	\$63.98	\$2,421.59
				Total	\$344.97	\$1,264.88	\$528.95	\$1,107.34	\$662.34	\$8,548.28	\$34,151.73	\$1,264.88	\$47,873.37

Tax Abatement Summary (cont'd)
Nichols Road 353 Redevelopment
Osage Beach, Missouri
(With Development)

Year	Assessed Value Land	Assessed Value Improvements	Total Assessed Value But For Abatement	Assessed Value with Abatement	State of Missouri	Camden County	Senior Citizen Tax	Library Tax	SB40 CCDDR	Osage Beach Fire	Camden School	Osage Beach Road/Bridge	Total
0	\$14,650.00	\$32,130.00	\$46,780.00	\$46,780.00	\$14.03	\$51.46	\$21.52	\$45.05	\$26.95	\$347.76	\$1,389.37	\$51.46	\$1,947.59
0	\$14,943.00	\$32,772.60	\$47,715.60	\$47,715.60	\$14.31	\$52.49	\$21.95	\$45.95	\$27.48	\$354.72	\$1,417.15	\$52.49	\$1,986.54
1	\$14,943.00	\$10,299,522.00	\$10,314,465.00	\$14,943.00	\$4.48	\$16.44	\$6.87	\$14.39	\$8.61	\$76,677.73	\$443.81	\$16.44	\$77,188.77
2	\$15,241.86	\$10,505,512.44	\$10,520,754.30	\$14,943.00	\$4.48	\$16.44	\$6.87	\$14.39	\$8.61	\$78,211.29	\$443.81	\$16.44	\$78,722.32
3	\$15,241.86	\$10,505,512.44	\$10,520,754.30	\$14,943.00	\$4.48	\$16.44	\$6.87	\$14.39	\$8.61	\$78,211.29	\$443.81	\$16.44	\$78,722.32
4	\$15,546.70	\$10,715,622.69	\$10,731,169.39	\$14,943.00	\$4.48	\$16.44	\$6.87	\$14.39	\$8.61	\$79,775.51	\$443.81	\$16.44	\$80,286.55
5	\$15,546.70	\$10,715,622.69	\$10,731,169.39	\$14,943.00	\$4.48	\$16.44	\$6.87	\$14.39	\$8.61	\$79,775.51	\$443.81	\$16.44	\$80,286.55
6	\$15,857.63	\$10,929,935.14	\$10,945,792.77	\$2,736,448.19	\$820.93	\$3,010.09	\$1,258.77	\$2,635.20	\$1,576.19	\$81,371.02	\$81,272.51	\$3,010.09	\$174,954.82
7	\$15,857.63	\$10,929,935.14	\$10,945,792.77	\$2,736,448.19	\$820.93	\$3,010.09	\$1,258.77	\$2,635.20	\$1,576.19	\$81,371.02	\$81,272.51	\$3,010.09	\$174,954.82
8	\$16,174.78	\$11,148,533.85	\$11,164,708.63	\$2,791,177.16	\$837.35	\$3,070.29	\$1,283.94	\$2,687.90	\$1,607.72	\$82,998.44	\$82,897.96	\$3,070.29	\$178,453.91
9	\$16,174.78	\$11,148,533.85	\$11,164,708.63	\$2,791,177.16	\$837.35	\$3,070.29	\$1,283.94	\$2,687.90	\$1,607.72	\$82,998.44	\$82,897.96	\$3,070.29	\$178,453.91
10	\$16,498.28	\$11,371,504.52	\$11,388,002.80	\$2,847,000.70	\$854.10	\$3,131.70	\$1,309.62	\$2,741.66	\$1,639.87	\$84,658.41	\$84,555.92	\$3,131.70	\$182,022.99
11	\$16,498.28	\$11,371,504.52	\$11,388,002.80	\$5,694,001.40	\$1,708.20	\$6,263.40	\$2,619.24	\$5,483.32	\$3,279.74	\$84,658.41	\$169,111.84	\$6,263.40	\$279,387.57
12	\$16,828.25	\$11,598,934.61	\$11,615,762.86	\$5,807,881.43	\$1,742.36	\$6,388.67	\$2,671.63	\$5,592.99	\$3,345.34	\$86,351.58	\$172,494.08	\$6,388.67	\$284,975.32
13	\$16,828.25	\$11,598,934.61	\$11,615,762.86	\$5,807,881.43	\$1,742.36	\$6,388.67	\$2,671.63	\$5,592.99	\$3,345.34	\$86,351.58	\$172,494.08	\$6,388.67	\$284,975.32
14	\$17,164.81	\$11,830,913.31	\$11,848,078.11	\$5,924,039.06	\$1,777.21	\$6,516.44	\$2,725.06	\$5,704.85	\$3,412.25	\$88,078.61	\$175,943.96	\$6,516.44	\$290,674.82
15	\$17,164.81	\$11,830,913.31	\$11,848,078.11	\$5,924,039.06	\$1,777.21	\$6,516.44	\$2,725.06	\$5,704.85	\$3,412.25	\$88,078.61	\$175,943.96	\$6,516.44	\$290,674.82
16	\$17,508.11	\$12,067,531.57	\$12,085,039.68	\$9,063,779.76	\$2,719.13	\$9,970.16	\$4,169.34	\$8,728.42	\$5,220.74	\$89,840.18	\$269,194.26	\$9,970.16	\$399,812.39
17	\$17,508.11	\$12,067,531.57	\$12,085,039.68	\$9,063,779.76	\$2,719.13	\$9,970.16	\$4,169.34	\$8,728.42	\$5,220.74	\$89,840.18	\$269,194.26	\$9,970.16	\$399,812.39
18	\$17,858.27	\$12,308,882.20	\$12,326,740.47	\$9,245,055.35	\$2,773.52	\$10,169.56	\$4,252.73	\$8,902.99	\$5,325.15	\$91,636.99	\$274,578.14	\$10,169.56	\$407,808.64
19	\$17,858.27	\$12,308,882.20	\$12,326,740.47	\$9,245,055.35	\$2,773.52	\$10,169.56	\$4,252.73	\$8,902.99	\$5,325.15	\$91,636.99	\$274,578.14	\$10,169.56	\$407,808.64
20	\$18,215.43	\$12,555,059.85	\$12,573,275.28	\$9,429,956.46	\$2,828.99	\$10,372.95	\$4,337.78	\$9,081.05	\$5,431.65	\$93,469.73	\$280,069.71	\$10,372.95	\$415,964.81
			Total		\$23,954.09	\$87,831.67	\$36,729.61	\$76,892.64	\$45,991.86	\$1,603,224.31	\$2,371,455.15	\$87,831.67	\$4,333,910.99

City of Osage Beach
Agenda Item Summary

Date of Meeting: September 15, 2022
Originator: Edward Rucker, City Attorney
Presenter: Edward Rucker, City Attorney

Agenda Item:

Bill 22-71 - An ordinance of the City of Osage Beach, Missouri, an ordinance authorizing the City of Osage Beach, Missouri, to issue its taxable industrial revenue bonds (The Preserve at Sycamore Creek Project), Series 2022, in a principal amount not to exceed \$63,000,000, for the purpose of providing funds to pay the costs of acquiring, constructing and improving a facility for an industrial development project in the city; approving a plan for the project; and authorizing the city to enter into certain agreements and take certain other actions in connection therewith. *First Reading*

Requested Action:

First Reading of Bill #22-71

Ordinance Referenced for Action:

Board of Aldermen approval required per Section 110.230. Ordinances, Resolutions, Etc. – Generally and Section 110.240 Adoption of Ordinances.

Deadline for Action:

None

Budgeted Item:

None

Budget Line Information (if applicable):

Not Applicable

Department Comments and Recommendation:

Not Applicable

City Attorney Comments:

Per City Code 110.230, Bill 22-71 is in correct form. Recommend adoption, this ordinance is a necessary step if the Board desires to proceed with The Preserve at Sycamore Creek project.

City Administrator Comments:

I concur with the department's recommendation.

AN ORDINANCE AUTHORIZING THE CITY OF OSAGE BEACH, MISSOURI, TO ISSUE ITS TAXABLE INDUSTRIAL REVENUE BONDS (THE PRESERVE AT SYCAMORE CREEK PROJECT), SERIES 2022, IN A PRINCIPAL AMOUNT NOT TO EXCEED \$63,000,000, FOR THE PURPOSE OF PROVIDING FUNDS TO PAY THE COSTS OF ACQUIRING, CONSTRUCTING AND IMPROVING A FACILITY FOR AN INDUSTRIAL DEVELOPMENT PROJECT IN THE CITY; APPROVING A PLAN FOR THE PROJECT; AND AUTHORIZING THE CITY TO ENTER INTO CERTAIN AGREEMENTS AND TAKE CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH.

WHEREAS, the City of Osage Beach, Missouri (the “City”), is authorized and empowered pursuant to the provisions of Article VI, Section 27(b) of the Missouri Constitution and Sections 100.010 through 100.200 of the Revised Statutes of Missouri (collectively, the “Act”) to purchase, construct, extend and improve certain projects (as defined in the Act), to issue industrial development revenue bonds for the purpose of providing funds to pay the costs of such projects and to lease or otherwise dispose of such projects to private persons or corporations for manufacturing, commercial, office industry, warehousing and industrial development purposes upon such terms and conditions as the City deems advisable; and

WHEREAS, in Attorney General Opinion 180-81, the Missouri Attorney General determined that the construction and rental of multi-family apartments for profit is a commercial enterprise; and

WHEREAS, a Plan for an Industrial Development Project (the “Plan”) has been prepared in the form of Exhibit A, attached hereto and incorporated herein by reference; and

WHEREAS, notice of the City’s consideration of the Plan has been given in the manner required by the Act, and the Board of Aldermen has fairly and duly considered all comments submitted to the Board of Aldermen regarding the proposed Plan; and

WHEREAS, the Board of Aldermen hereby finds and determines that it is desirable for the improvement of the economic welfare and development of the City and within the public purposes of the Act that the City: (1) issue its Taxable Industrial Revenue Bonds (The Preserve at Sycamore Creek Project), Series 2022, in the maximum principal amount of \$63,000,000 (the “Bonds”), for the purpose of acquiring a leasehold interest in certain real property located at 4470 Nichols Road, 1170 Nichols Road, 1167 Nichols Road and 1157 Nichols Road in the City (collectively, the “Project Site,” as more fully described in the below-defined Indenture) and constructing thereon a multi-building, multi-family housing development comprised of approximately 268 rental units, a clubhouse and amenity space (the “Project Improvements,” as more fully described in the Indenture and, together with the acquisition of a leasehold interest in the Project Site, the “Project”), and (2) lease the Project to The Preserve at Sycamore Creek, LLC (the “Developer”); and

WHEREAS, the Project is also the subject of the Development Plan for The Preserve at Sycamore Creek (the “Development Plan”) and the Development Agreement (the “Development

Agreement”) among the City, the Developer and an urban redevelopment corporation to be formed by the Developer approved by Ordinance No. _____, which Development Plan and Development Agreement allow for real property tax abatement for the Project; and

WHEREAS, the Development Agreement also contemplates the issuance of the Bonds for the purpose of facilitating a sales tax exemption on construction materials used to construct the Project Improvements; and

WHEREAS, the Board of Aldermen further finds and determines that it is necessary and desirable in connection with the implementation of the Plan and the issuance of the Bonds that the City enter into certain documents and take certain other actions as herein provided.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF OSAGE BEACH, MISSOURI, AS FOLLOWS:

Section 1. Approval of the Plan. The Board of Aldermen hereby approves the Plan.

Section 2. Authorization for the Project. The City is hereby authorized to provide for the purchase and construction of the Project, in the manner and as more particularly described in the Indenture and the Lease Agreement hereinafter authorized.

Section 3. Authorization of the Bonds. The City is hereby authorized to issue and sell the Bonds as described in the recitals hereto for the purpose of providing funds to pay the costs of the Project. The Bonds shall be issued and secured pursuant to the Indenture and shall have such terms, provisions, covenants and agreements as are set forth in the Indenture.

Section 4. Limitation on Liability. The Bonds and the interest thereon shall be limited obligations of the City, payable solely out of certain payments, revenues and receipts derived by the City from the Lease Agreement. Such payments, revenues and receipts shall be pledged and assigned to the bond trustee named in the Indenture (the “Trustee”), as security for the payment of the Bonds as provided in the Indenture. The Bonds and the interest thereon shall not constitute general obligations of the City, the State of Missouri (the “State”) or any other political subdivision thereof, and neither the City nor the State shall be liable thereon. The Bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction and are not payable in any manner by taxation.

Section 5. Authorization of Documents. The City is hereby authorized to enter into the following documents (collectively, the “City Documents”), in substantially the forms presented to and approved by the Board of Aldermen and attached to this Ordinance, with such changes therein as shall be approved by the officials of the City executing the City Documents, such officials’ signatures thereon being conclusive evidence of their approval thereof:

(a) Base Lease between the City and the Developer, in substantially the form of Exhibit B, attached hereto and incorporated herein by reference, pursuant to which the Developer will lease the Project to the City pursuant to the terms and conditions contained therein.

(b) Lease Agreement (the “Lease Agreement”) between the City and the Developer, in substantially the form of Exhibit C, attached hereto and incorporated herein by reference, pursuant to which the City will lease the Project to the Developer pursuant to the terms and conditions contained therein, in consideration of rental payments by the Developer that will be sufficient to pay the principal of and interest on the Bonds.

(c) Trust Indenture (the “Indenture”) between the City and the Trustee, in substantially the form of Exhibit D, attached hereto and incorporated herein by reference, pursuant to which the Bonds will be issued and the City will pledge the Project and assign certain of the payments, revenues and receipts received pursuant to the Lease Agreement to the Trustee for the benefit and security of the owners of the Bonds upon the terms and conditions set forth therein.

(d) Bond Purchase Agreement between the City and the Developer, in substantially the form of Exhibit E, attached hereto and incorporated herein by reference, pursuant to which the Developer will purchase the Bonds.

Section 6. Developer Substitution. Notwithstanding the forms of the City Documents approved in substantially final form pursuant to Section 5, at the request of the Developer, any entity controlled by the Developer or under common control with the Developer may be inserted as the Developer in the City Documents prior to execution (it being understood that the Developer may wish to create an affiliated or subsidiary entity to develop the Project).

Section 7. Execution of Documents. The Mayor is hereby authorized to execute the Bonds and to deliver the Bonds to the Trustee for authentication for and on behalf of and as the act and deed of the City in the manner provided in the Indenture. The Mayor is hereby authorized to execute the City Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance, for and on behalf of and as the act and deed of the City. The City Clerk is hereby authorized to attest to and affix the seal of the City to the Bonds, the City Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

Section 8. Further Authority. The City shall, and the officials, agents and employees of the City are hereby authorized to, take such further action and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance and to carry out, comply with and perform the duties of the City with respect to the Bonds and the City Documents. The Mayor and the City Administrator are hereby authorized, through the term of the Lease Agreement, to execute all documents on behalf of the City (including documents pertaining to the financing or refinancing of the Project by the Developer) as may be required to carry out and comply with the intent of this Ordinance, the Indenture and the Lease Agreement. The Mayor and the City Administrator are further authorized, on behalf of the City, to grant such consents, estoppels and waivers relating to the Bonds, the Indenture or the Lease Agreement as may be requested during the term thereof; provided, such consents, estoppels and/or waivers shall not increase the principal amount of the Bonds, increase the term of the Lease Agreement or the economic incentives provided therein,

waive an event of default or materially change the nature of the transaction. The City Clerk is authorized to attest to and affix the seal of the City to any document authorized by this Section.

Section 9. Severability. The sections of this Ordinance shall be severable. If any section of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining sections shall remain valid, unless the court finds that: (a) the valid sections are so essential to and inseparably connected with and dependent upon the void section that it cannot be presumed that the Board of Aldermen has or would have enacted the valid sections without the void one; and (b) the valid sections, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

Section 10. Effective Date. This Ordinance shall be in full force and effect from and after the date of passage and approval of the Mayor.

READ FIRST TIME:

READ SECOND TIME:

I hereby certify that Ordinance No. 22.71 was duly passed on _____ by the Board of Aldermen of the City of Osage Beach. The votes thereon were as follows:

Ayes:

Nays:

Abstentions:

Absent:

This Ordinance is hereby transmitted to the Mayor for his signature.

Date

Tara Berreth, City Clerk

Approved as to form:

Edward B. Rucker, City Attorney

I hereby approved Ordinance No. 22.71.

Michael Harmison, Mayor

Date

Tara Berreth, City Clerk

EXHIBIT A

PLAN FOR AN INDUSTRIAL DEVELOPMENT PROJECT

(On file in the office of the City Clerk)

EXHIBIT B

BASE LEASE

(On file in the office of the City Clerk)

EXHIBIT C

LEASE AGREEMENT

(On file in the office of the City Clerk)

EXHIBIT D
TRUST INDENTURE

(On file in the office of the City Clerk)

EXHIBIT E

BOND PURCHASE AGREEMENT

(On file in the office of the City Clerk)

CITY OF OSAGE BEACH, MISSOURI

**PLAN FOR AN INDUSTRIAL DEVELOPMENT PROJECT
AND
COST-BENEFIT ANALYSIS**

THE PRESERVE AT SYCAMORE CREEK

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* * *

I. PURPOSE OF THIS PLAN

The City of Osage Beach, Missouri (the “City”), intends to issue taxable industrial revenue bonds in a principal amount not to exceed \$63,000,000 (the “Bonds”) to finance the costs of a proposed industrial development project (the “Project”) for the benefit of The Preserve at Sycamore Creek, LLC (the “Developer”). The Bonds will be issued pursuant to the provisions of Sections 100.010 to 100.200 of the Revised Statutes of Missouri (“Chapter 100”) and Article VI, Section 27(b) of the Missouri Constitution (together with Chapter 100, the “Act”). The Bonds will initially be owned by the Developer and cannot be transferred, other than to the Developer’s affiliates and lenders, without the City’s prior approval.

Gilmore & Bell, P.C. has prepared this Plan for an Industrial Development Project and Cost-Benefit Analysis (this “Plan”) to satisfy requirements of the Act and to analyze the potential costs and benefits, including the related tax impact on all affected taxing jurisdictions, of using industrial revenue bonds to finance the Project and to facilitate a sales and use tax exemption on construction materials used to complete the Project.

II. DESCRIPTION OF CHAPTER 100 FINANCINGS

General. Chapter 100 authorizes cities, counties, towns and villages to issue industrial development revenue bonds to finance the purchase, construction, extension and improvement of warehouses, distribution facilities, research and development facilities, office industries, agricultural processing industries, service facilities that provide interstate commerce, and industrial plants, including the real estate either within or without the limits of such municipalities, buildings, fixtures, and machinery. In addition, Article VI, Section 27(b) of the Missouri Constitution authorizes cities, counties, towns and villages to issue revenue bonds for the purpose of paying all or part of the cost of purchasing, constructing, extending or improving any facility for manufacturing, commercial, warehousing and industrial development purposes, including the real estate, buildings, fixtures and machinery. Under Attorney General Opinion 180-81, the Missouri Attorney General determined that the construction and rental of multi-family apartments for profit is a commercial enterprise.

Issuance and Sale of Bonds. Revenue bonds issued pursuant to the Act do not require voter approval and are payable solely from revenues received from a lease or other disposition of the project. The municipality issues its bonds and in exchange, the benefitted company promises to make payments that are sufficient to pay the principal of and interest on the bonds as they become due. Thus, the municipality merely acts as a conduit for the financing.

Concurrently with the closing of the bonds, the benefitted company will lease the site on which the project will be located to the municipality. The municipality will immediately lease the project site and the improvements thereon back to the benefitted company pursuant to a lease agreement. The lease agreement will require the benefitted company, acting on behalf of the municipality, to use the bond proceeds to purchase and construct the project.

Under the lease agreement, the benefitted company typically: (1) unconditionally agrees to make payments sufficient to pay the principal of and interest on the bonds as they become due; (2) agrees, at its own expense, to maintain the project, to pay all taxes and assessments with respect to the project and to maintain adequate insurance; (3) may, at its own expense, make certain additions, modifications or improvements to the project; (4) may assign its interests under the lease agreement or sublease the project while remaining responsible for payments under the lease agreement; (5) covenants to maintain its corporate existence during the term of the bond issue; and (6) agrees to indemnify the municipality for certain liability the municipality might incur as a result of its participation in the transaction.

Sales and Use Tax Exemption. The purpose of this Plan is to provide a sales and use tax exemption on qualified building materials. Under the Act and other applicable state law, qualified building materials can be exempt from sales and use tax if approved by the municipality. The sales and use tax exemption is evidenced by a project exemption certificate issued by the municipality.

Property Tax Abatement. While the Act is often used to facilitate real or personal property tax abatement, the Developer is not seeking, and this Plan does not authorize, any real or personal property tax abatement or exemption. However, a separate Development Plan for The Preserve at Sycamore Creek, requesting 20 years of partial real property tax abatement pursuant to Chapter 353 of the Revised Statutes of Missouri ("Chapter 353"), has been prepared and submitted to the City. As required by Chapter 353, a written tax impact statement regarding the proposed real property tax abatement will be provided to the affected taxing districts.

III. DESCRIPTION OF THE PARTIES

The Preserve at Sycamore Creek, LLC. The Developer has been formed for the sole purpose of acquiring and constructing the Project. The Developer is an affiliate of Tegethoff Development, LLC, a luxury lifestyle developer that has developed properties throughout the Midwest, including several similarly sized multi-family and mixed-use projects such as Summit at West Pryor in Lee's Summit, Missouri, Wildhorse in Chesterfield, Missouri, and Expo at Forest Park in St. Louis, Missouri.

City of Osage Beach, Missouri. The City is a fourth-class city and political subdivision of the State of Missouri. The City is authorized and empowered pursuant to the provisions of the Act to purchase, construct, extend, equip and improve certain projects (as defined in the Act), to issue industrial development revenue bonds for the purpose of providing funds to pay the costs of such projects and to lease or otherwise dispose of such projects to private persons or corporations for manufacturing, commercial, warehousing and industrial development purposes upon such terms and conditions as the City deems advisable.

IV. REQUIREMENTS OF THE ACT

A. Description of the Project. The Project consists of acquiring a leasehold interest in approximately 22.4 acres of real property located at 4470 Nichols Road, 1170 Nichols Road, 1167 Nichols Road and 1157 Nichols Road in the City (collectively, the "Project Site") and constructing thereon a multi-building, multi-family housing development comprised of approximately 268 rental units, a clubhouse and amenity space (the "Project Improvements" and, together with the acquisition of a leasehold interest in the Project Site, the "Project"). The Project is expected to be completed within 26 months of commencement.

B. Estimate of the Costs of the Project. The acquisition and construction of the Project are estimated to cost approximately \$60,300,000. The Bonds will be issued in the maximum principal amount of \$63,000,000 to provide for contingencies.

C. Sources of Funds to be Expended for the Project. The sources of funds to be expended for the Project will be the proceeds of the Bonds in the maximum principal amount of \$63,000,000 and other available funds of the Developer. The Bonds will be payable solely from the revenues derived by the City from the lease or other disposition of the Project (as further described below). The Bonds will not be an indebtedness or general obligation, debt or liability of the City or the State of Missouri. No tax revenues will be used to repay the Bonds.

D. Statement of the Terms Upon Which the Project is to be Leased or Otherwise Disposed of by the City. During construction of the Project Improvements, the City will lease or sublease the Project to the Developer for lease payments equal to the principal of and interest on the Bonds. Under the terms of the lease agreement with the City, the Developer will have the option to purchase the Project at any time

for nominal consideration. All leases or subleases entered into in furtherance of this Plan in connection with the Project Improvements will terminate following completion of the Project Improvements.

E. Affected School District, Community College District, Emergency Service Providers, County and City. The Camdenton Reorganized School District No. R-3 of Camden County, Missouri, is the school district affected by the Project. No community college or ambulance district is affected by the Project. The Osage Beach Fire Protection District is the fire protection district affected by the Project. Camden County, Missouri, is the county affected by the Project. The City of Osage Beach, Missouri, is the city affected by the Project. A Cost-Benefit Analysis showing the impact of the proposed sales and use tax exemption on qualified building materials is included below. As noted above, this Plan does not provide for real or personal property tax abatement; however, a separate Development Plan submitted to the City pursuant to Chapter 353 requests 20 years of partial real property tax abatement. Accordingly, no property tax districts are impacted by this Plan, except to the extent (1) such districts receive additional tax revenues associated with the Project's assessed value (after conclusion of the 20-year partial tax abatement period proposed pursuant to Chapter 353) and (2) such districts also impose a sales or use tax. A written tax impact statement regarding the Chapter 353 real property tax abatement will be provided to the affected taxing districts.

F. Current Assessed Valuation. The most recent equalized assessed valuation of the real property included in the Project is \$46,780. The total equalized assessed valuation of real property included in the Project after construction of the Project Improvements is estimated to be approximately \$10,314,465.

G. Payments in Lieu of Taxes. This Plan does not provide for any property tax abatement or any payments in lieu of taxes. However, as noted above, a written tax impact statement regarding real property tax abatement under Chapter 353 and associated payments in lieu of taxes will be provided to the affected taxing districts.

H. Sales and Use Tax Exemption. Qualified building materials purchased for the construction of the Project Improvements are expected to be exempt from sales and use tax pursuant to the provisions of Section 144.062 of the Revised Statutes of Missouri and the Bond documents upon delivery of a project exemption certificate by the City to the Developer.

I. Cost-Benefit Analysis. In compliance with Section 100.050.2(3) of the Revised Statutes of Missouri, this Plan has been prepared to show the costs and benefits to the City and to other taxing jurisdictions affected by the sales and use tax exemption for the Project. This Plan does not attempt to quantify the overall economic impact of the Project.

The City will grant a sales and use tax exemption on the qualified building materials necessary to construct the Project Improvements. For purposes of determining the impact of the exemption granted by the City on the affected taxing jurisdictions, it was assumed that:

- \$18,000,000 of the total costs of the Project Improvements will be allocated to construction material costs;
- the applicable sales tax rate is 7.725%, of which 4.225% is allocated to the State of Missouri, 1.500% is allocated to Camden County and 2.000% is allocated to the City;
- the applicable use tax rate is 5.725%, of which 4.225% is allocated to the State of Missouri and 1.500% is allocated to Camden County;
- 80% of the qualified construction materials will be subject to the State's sales tax and 20% will be subject to the State's use tax;

- 20% of the qualified construction materials will be subject to the County's sales and use taxes; and
- 20% of the qualified construction materials will be subject to the City's sales tax.

Please note that any variance in these assumptions will alter the net fiscal impact of the sales and use tax exemption on the affected taxing jurisdictions.

Based on the assumptions set forth above, the net fiscal impact of the sales and use tax exemption on the qualified building materials granted by the City is approximately \$940,500, allocated as follows:

	<u>Sales Tax</u>	<u>Use Tax</u>	<u>Total</u>
State of Missouri	\$ 608,400	\$ 152,100	\$ 760,500
Camden County	54,000	54,000	108,000
City of Osage Beach	72,000	n/a	72,000
Total	\$ 734,400	\$ 206,100	\$ 940,500

The City believes that the Developer's investment in the Project will create construction jobs during the construction period, spur additional investment in the City and add to the City's population. The Project will also generate significant real property taxes after conclusion of the 20-year Chapter 353, partial abatement period and significant personal property taxes from residents of the Project. These ancillary impacts were not measured for purposes of this Plan. This Plan does not attempt to quantify the overall economic impact of the Project.

V. ASSUMPTIONS AND BASIS OF PLAN

As described herein, this Plan includes assumptions that impact the amount of the sales and use tax exemption proposed for the Project.

In addition to the foregoing, in order to complete this Plan, Gilmore & Bell, P.C. has generally reviewed and relied upon information furnished by, and has participated in conferences with, representatives of the City and its counsel, representatives of the Developer and its counsel and other persons as the firm has deemed appropriate. Gilmore & Bell, P.C. does not assume any responsibility for the accuracy, completeness or fairness of any of the information provided by others and has not independently verified the accuracy, completeness or fairness of such information.

* * *

EXHIBIT B

(The above space is reserved for Recorder's Certification.)

TITLE OF DOCUMENT:	BASE LEASE
DOCUMENT DATED AS OF:	[*Date*], 2022
GRANTOR:	THE PRESERVE AT SYCAMORE CREEK, LLC
GRANTOR'S MAILING ADDRESS:	P.O. Box 6331 Fishers, Indiana 46038
GRANTEE:	CITY OF OSAGE BEACH, MISSOURI
GRANTEE'S MAILING ADDRESS:	1000 City Parkway Osage Beach, Missouri 65065
RETURN DOCUMENTS TO:	Mark A. Spykerman, Esq. Gilmore & Bell, P.C. 211 North Broadway, Suite 2000 St. Louis, Missouri 63102
LEGAL DESCRIPTION:	See Exhibit A

BASE LEASE

THIS BASE LEASE (this “Base Lease”) is made and entered into as of [*Date*], 2022 (the “Effective Date”), by and between **THE PRESERVE AT SYCAMORE CREEK, LLC**, a limited liability company organized and existing under the laws of the State of Missouri (the “Developer”), and the **CITY OF OSAGE BEACH, MISSOURI**, a fourth-class city organized and existing under the laws of the State of Missouri (the “City”).

RECITALS:

A. The City is authorized and empowered pursuant to the provisions of Article VI, Section 27(b) of the Missouri Constitution and Sections 100.010 through 100.200 of the Revised Statutes of Missouri (collectively, the “Act”) to purchase, construct, extend and improve certain projects (as defined in the Act), to issue industrial development revenue bonds for the purpose of providing funds to pay the costs of such projects and to lease or otherwise dispose of such projects to private persons or corporations for manufacturing, commercial, office industry, warehousing and industrial development purposes upon such terms and conditions as the City deems advisable. Under Attorney General Opinion 180-81, the Missouri Attorney General determined that the construction and rental of multi-family apartments for profit is a commercial enterprise.

B. Pursuant to the Act, the Board of Aldermen passed Ordinance No. _____ on October 6, 2022 (the “Ordinance”), authorizing the City to issue its Taxable Industrial Revenue Bonds (The Preserve at Sycamore Creek Project), Series 2022, in the maximum principal amount of \$63,000,000 (the “Bonds”), for the purpose of (a) acquiring a leasehold interest in approximately 22.4 acres of real property located at 4470 Nichols Road, 1170 Nichols Road, 1167 Nichols Road and 1157 Nichols Road in the City (collectively and as legally described on **Exhibit A**, the “Project Site”) and (b) constructing thereon a multi-building, multi-family housing development comprised of approximately 268 rental units, a clubhouse and amenity space (the “Project Improvements”).

C. Pursuant to the Act and the Ordinance, the City is authorized to (a) enter into a Trust Indenture of even date herewith with UMB Bank, N.A., as trustee, for the purpose of issuing and securing the Bonds, as therein provided, (b) enter into this Base Lease with the Developer under which the City will acquire a leasehold interest in the Project Site and (c) enter into a Lease Agreement of even date herewith (the “Lease”) with the Developer under which the City will, or will cause the Developer to, construct the Project Improvements and will lease the Project Improvements, as they may at any time exist, together with the City’s leasehold interest in the Project Site (collectively, the “Project”) to the Developer in consideration of rental payments by the Developer that will be sufficient to pay the principal of and interest on the Bonds.

D. In connection with the issuance of the Bonds and the execution of the Lease, the City has agreed to cooperate with the Developer and the contractors for the Project Improvements in acquiring the benefits of sales tax exemption for purchases of materials used to construct the Project Improvements.

E. The Developer desires to lease the Project to the City, and the City desires to lease the Project from the Developer and to acquire and hold a leasehold interest for the term of this Base Lease as more fully described in this Base Lease.

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the City and the Developer do hereby represent, covenant and agree as follows:

Section 1. Definitions. In addition to any words and terms defined elsewhere in this Base Lease, capitalized words and terms used in this Base Lease shall have the meanings given to such terms in the Lease.

Section 2. Representations by the City. The City makes the following representations as the basis for the undertakings on its part herein contained:

- (a) The City is an incorporated political subdivision of the State of Missouri.
- (b) Under the provisions of the Act, the City has lawful power and authority to enter into the transactions contemplated by this Base Lease and to carry out its obligations hereunder.
- (c) By proper action of its governing body, the City has been duly authorized to execute and deliver this Base Lease, acting by and through its duly authorized officers.

Section 3. Representations by the Developer. The Developer makes the following representations as the basis for the undertakings on its part herein contained:

- (a) The Developer is a limited liability company validly existing and in good standing under the laws of the State of Missouri.
- (b) The Developer has lawful power and authority to enter into this Base Lease and to carry out its obligations hereunder, and the Developer has been duly authorized to execute and deliver this Base Lease, acting by and through its duly authorized officers and representatives.
- (c) The Developer is the owner of the Project Site and is permitted to lease the Project to the City pursuant to this Base Lease.

Section 4. Lease Term. This Base Lease shall become effective upon execution and delivery and, subject to earlier termination pursuant to the provisions of this Base Lease, shall have a term commencing as of the date of this Base Lease and terminating simultaneously with the payment of all amounts due under **Section 11.1** or **Section 11.4** of the Lease. Upon such payment, all of the City's rights, title and interest in the Project under this Base Lease shall revert to the Developer without the requirement of any action by the City or the Trustee.

Section 5. Granting of Leasehold Estate. The Developer hereby rents, leases and lets the Project to the City, and the City hereby rents, leases and hires the Project from the Developer, subject to Permitted Encumbrances existing as of the date of the execution and delivery hereof, for the rentals and upon and subject to the terms and conditions herein contained.

Section 6. Rent. In addition to the City's obligations under the Lease and the Development Agreement, the City hereby agrees to pay to the Developer annual rent under this Base Lease (the "Rent") equal to One Dollar and no/100 (\$1.00), which shall be due on the date of this Base Lease and on each January 1 thereafter during the term of this Base Lease. The Developer hereby acknowledges that it has received the Rent due on the date of this Base Lease.

Section 7. Use and Possession of the Project. The City will have the rights of use and possession of the Project only to the extent permitted by the Lease; provided, if the City terminates the Lease pursuant to **Section 12.2(b)** thereof, the City will have the right to possession of the Project until the

payment of all amounts due under **Section 11.1** or **Section 11.4** of the Lease, and will have the right to operate or sell its interest in the Project upon whatever terms and conditions it deems prudent.

Section 8. Assignability. The City will not assign, sublease, mortgage or otherwise transfer or encumber its interest in this Base Lease except to the Developer pursuant to the Lease.

Section 9. Repairs and Maintenance. The Developer shall, at its sole cost and expense, maintain and repair the Project, and all portions thereof and improvements thereto, to the extent required by the Lease. In no event shall the City be required to make any repairs, improvements, additions, replacements, reconstructions or other changes to the Project or perform any maintenance thereon.

Section 10. Taxes. Pursuant to **Section 6.2** of the Lease, the Developer shall promptly pay all taxes or other governmental charges, that if unpaid, would encumber the City's leasehold interest in the Project.

Section 11. Insurance. The Developer shall maintain the insurance policies required by **Article VII** of the Lease.

Section 12. Condemnation. If, at any time during the term of this Base Lease, there shall be a total or partial taking of the Project in condemnation proceedings or by any right of eminent domain or by sale in lieu thereof, the parties shall have the rights and obligations provided in the Lease, and this Base Lease shall terminate only to the extent and in the manner provided in the Lease.

Section 13. Surrender of the Project. Except as otherwise expressly provided in this Base Lease, the City shall surrender and deliver up the Project and all associated improvements to the Developer at the expiration or other termination of this Base Lease, to the limited extent that the City may have any rights to possession thereof as expressly provided herein, without fraud or delay.

Section 14. Notices. Any and all notices, demands, requests, submissions, approvals, consents, disapprovals, objections, offers or other communications or documents required to be given, delivered or served or which may be given, delivered or served under or by the terms and provisions of this Base Lease or pursuant to law or otherwise, shall be made in the form and manner provided in the Lease.

Section 15. Developer's Right to Terminate. The Developer may terminate this Base Lease at any time by exercising its option to purchase the City's interest in the Project pursuant to **Article XI** of the Lease.

Section 16. Conflict with the Lease. In the event of any conflict between the terms hereof and the terms of the Lease, the terms of the Lease shall control.

Section 17. Limitation on Liability of City. No provision, covenant or agreement contained in this Base Lease or any obligation herein imposed upon the City, or the breach thereof, shall constitute or give rise to or impose upon the City a pecuniary liability or a charge upon the general credit or taxing powers of the City or the State of Missouri. Such limitation shall not apply to any liability or charge directly resulting from the City's breach of any material provision, covenant or agreement contained herein.

Section 18. Governing Law. This Base Lease shall be construed in accordance with and governed by the laws of the State of Missouri.

Section 19. Binding Effect. This Base Lease shall be binding upon and shall inure to the benefit of the City and the Developer and their respective successors and assigns.

Section 20. Severability. If for any reason any provision of this Base Lease is determined to be invalid or unenforceable, the validity and enforceability of the other provisions hereof shall not be affected thereby.

Section 21. Execution in Counterparts. This Base Lease may be executed in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

Section 22. Electronic Transaction. The parties agree that the transaction described herein may be conducted and related documents may be sent, received or stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 23. Subordination of Base Lease. By its execution hereof, each of the Developer and the City hereby agrees that this Base Lease shall be, is and shall continue to be, subordinate and inferior to that certain Deed of Trust dated _____, 2022, executed by the Developer for the benefit of [*Lender*] (the "Fee Deed of Trust") until all [*Obligations*] (as such term is defined in the Fee Deed of Trust) have been indefeasibly paid and performed in full, including but not limited to, all future advances and future obligations secured by the Fee Deed of Trust. Such subordination shall be self-operative and shall be irrespective of the time, manner, order of recording or perfection or any other priority that ordinarily would result under the Uniform Commercial Code as enacted in each and every applicable jurisdiction, and as amended from time to time, and other applicable law for the order of granting or perfecting any security interests referred to herein.

Section 24. Anti-Discrimination Against Israel Act. Pursuant to Section 34.600 of the Revised Statutes of Missouri, the Developer certifies it is not currently engaged in and shall not, for the duration of this Base Lease, engage in a boycott of goods or services from (a) the State of Israel, (b) companies doing business in or with the State of Israel or authorized by, licensed by or organized under the laws of the State of Israel or (c) persons or entities doing business in the State of Israel.

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**THE PRESERVE AT SYCAMORE CREEK,
LLC,**
a Missouri limited liability company

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CITY OF OSAGE BEACH, MISSOURI

(SEAL)

By: _____
Michael Harmison, Mayor

Attest:

Tara Berreth, City Clerk

ACKNOWLEDGMENT

STATE OF MISSOURI)
) SS.
COUNTY OF CAMDEN)

On this ____ day of _____, 2022, before me, the undersigned, a Notary Public in and for said State, appeared **MICHAEL HARMISON**, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the **CITY OF OSAGE BEACH, MISSOURI**, a fourth-class city and political subdivision of the State of Missouri, and that the seal affixed to the foregoing instrument is the corporate seal of said City, and that said instrument was signed and sealed by authority of its Board of Aldermen, and said officer acknowledged said instrument to be executed for the purposes therein stated and as the free act and deed of said City.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Name: _____

Notary Public in and for said State

My Commission Expires:

PLEASE AFFIX SEAL FIRMLY AND CLEARLY IN THIS BOX

[Base Lease]

EXHIBIT A

LEGAL DESCRIPTION OF PROJECT SITE

The land situated in the County of Camden, State of Missouri, and described as follows:

A tract of land situated in and being a part of the SE 1/4 of Section 9 and the NE 1/4 of Section 16, T 39 N, R 16 W and a part of the tracts of land described by deeds recorded in Book 407, Page 05, Book 276, Page 214, Book 526, Page 957, Book 682, Page 088, Book 671, Page 593 and Book 758, Page 283 in the Records of Camden County, Missouri and being more particularly described as follows:

Commencing at a U post set in concrete marking the SW Corner of the SE 1/4 of the SE 1/4 of Section 9, T 39 N, R 16 W; thence S 01° 20' 58" W, 63.34 feet to a 1 inch iron pipe marking the Northeasterly Corner of a tract of land described by deed recorded in Book 543, Page 485 in the Records of Camden County, Missouri for the point of beginning; thence N 88° 44' 11" W along the Northerly Line of said tract of land described by deed recorded in Book 543, Page 485, 262.27 feet to a 3/8 inch iron pin; thence leaving said Northerly Line along the Easterly Line of a tract of land described by deed recorded in Book 395, Page 023 in said Records along the following courses: thence N 04° 06' 08" W, 249.56 feet to a 3/8 inch iron pin in concrete; thence N 35° 00' 45" E, 242.61 feet to a pipe in concrete; thence N 49° 39' 55" E, 265.77 feet to a 3/8 inch iron pin; thence N 52° 44' 58" E, 899.46 feet to a 3/8 inch iron pin in concrete; thence N 46° 06' 25" E, 183.07 feet to a 3/8 inch iron pin in concrete; thence leaving said Easterly Line S 85° 35' 26" E along the Northerly Line of a tract of land described by deed recorded in Book 407, Page 005 in said Records 328.70 feet to a set 1/2 inch rebar; thence continuing along said Northerly Line S 43° 35' 26" E, 57.98 feet to a 1/2 inch rebar set on the Westerly Right of Way Line of Nichols Road; thence leaving said Northerly Line along said Right of Way Line along the following courses: thence S 02° 31' 04" E, 93.02 feet; thence along a curve to the right 136.83 feet, the radius being 273.09 feet and the long chord being S 11° 50' 09" W, 135.40 feet; thence S 26° 11' 21" W, 113.14 feet; thence along a curve to the right 157.65 feet; the radius being 339.62 feet and the long chord being S 39° 29' 15" W, 156.24 feet; thence S 52° 47' 09" W, 304.35 feet; thence along a curve to the left 84.11 feet, the radius being 378.91 feet and the long chord being S 46° 25' 36" W, 83.94 feet; thence S 40° 04' 03" W, 236.65 feet to a set 1/2 inch rebar; thence leaving said Right of Way Line S 80° 15' 01" W along the Northerly Line of a tract of land described by deed recorded in Book 407, Page 005 in said Records 57.57 feet to a set 1/2 inch rebar; thence leaving said Northerly Line S 10° 08' 08" E along the Westerly Line of said tract of land described by deed recorded in Book 407, Page 005 in said Records 48.35 feet to a 1/2 inch rebar set on said Right of Way Line; thence along said Right of Way Line along the following courses: thence S 40° 04' 03" W, 19.95 feet; thence along a curve to the right 143.79 feet, the radius being 538.87 feet and the long chord being S 47° 42' 42" W, 143.36 feet; thence S 55° 21' 21" W, 235.32 feet; thence along a curve to the left 73.05 feet, the radius being 459.65 feet and the long chord being S 50° 48' 12" W, 72.97 feet; thence S 46° 15' 03" W, 53.03 feet; thence along a curve to the left 235.63 feet, the radius being 851.54 feet and the long chord being S 38° 19' 25" W, 234.88 feet to a 1/2 inch rebar set on the Right of Way Line of US Route 54; thence leaving said Right of Way Line of Nichols Road S 70° 05' 10" W along said Right of Way Line of US Route 54 54.66 feet to a 1/2 inch rebar set on the Easterly Line of said tract of land described by deed recorded in Book 543, Page 485 in said Records; thence leaving said Right of Way Line N 00° 56' 45" E along said Easterly Line 229.60 feet to the point of beginning.

EXHIBIT C

CITY OF OSAGE BEACH, MISSOURI,
As Lessor,

AND

THE PRESERVE AT SYCAMORE CREEK, LLC,
As Lessee

LEASE AGREEMENT

Dated as of [*Date*], 2022

Relating to:

\$63,000,000
(Aggregate Maximum Principal Amount)
City of Osage Beach, Missouri
Taxable Industrial Revenue Bonds
(The Preserve at Sycamore Creek Project)
Series 2022

Certain rights of the City of Osage Beach, Missouri (the “City”), in this Lease Agreement have been pledged and assigned to UMB Bank, N.A., as Trustee under the Trust Indenture dated as of [*Date*], 2022, between the City and the Trustee.

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LEASE AGREEMENT

THIS LEASE AGREEMENT, dated as of [*Date*], 2022 (this “Lease”), between the **CITY OF OSAGE BEACH, MISSOURI**, a fourth-class city organized and existing under the laws of the State of Missouri (the “City”), as lessor, and **THE PRESERVE AT SYCAMORE CREEK, LLC**, a limited liability company organized and existing under the laws of the State of Missouri (the “Developer”), as lessee;

RECITALS:

1. The City is authorized and empowered pursuant to the provisions of Article VI, Section 27(b) of the Missouri Constitution and Sections 100.010 through 100.200 of the Revised Statutes of Missouri (collectively, the “Act”) to purchase, construct, extend and improve certain projects (as defined in the Act), to issue industrial development revenue bonds for the purpose of providing funds to pay the costs of such projects and to lease or otherwise dispose of such projects to private persons or corporations for manufacturing, commercial, office industry, warehousing and industrial development purposes upon such terms and conditions as the City deems advisable. Under Attorney General Opinion 180-81, the Missouri Attorney General determined that the construction and rental of multi-family apartments for profit is a commercial enterprise.

2. Pursuant to the Act, the Board of Aldermen passed Ordinance No. _____ on October 6, 2022 (the “Ordinance”), authorizing the City to issue its Taxable Industrial Revenue Bonds (The Preserve at Sycamore Creek Project), Series 2022, in the maximum principal amount of \$63,000,000 (the “Bonds”), for the purpose of (a) acquiring a leasehold interest in approximately 22.4 acres of real property located at 4470 Nichols Road, 1170 Nichols Road, 1167 Nichols Road and 1157 Nichols Road in the City (collectively and as legally described on **Exhibit A**, the “Project Site”) and (b) constructing thereon a multi-building, multi-family housing development comprised of approximately 268 rental units, a clubhouse and amenity space (the “Project Improvements”).

3. Pursuant to the Act and the Ordinance, the City is authorized to (a) enter into a Trust Indenture of even date herewith (the “Indenture”) with UMB Bank, N.A., as trustee (the “Trustee”), for the purpose of issuing and securing the Bonds, as therein provided, (b) enter into a Base Lease of even date herewith (the “Base Lease”) with the Developer under which the City will acquire a leasehold interest in the Project Site and (c) enter into this Lease with the Developer under which the City will, or will cause the Developer to, construct the Project Improvements and will lease the Project Improvements, as they may at any time exist, together with the City’s leasehold interest in the Project Site (collectively, the “Project”) to the Developer in consideration of rental payments by the Developer that will be sufficient to pay the principal of and interest on the Bonds.

4. The City and the Developer acknowledge and agree that title to the Project is subject and subordinate to the Deed of Trust (the “Fee Deed of Trust”) granted by the Developer to [*Lender*] and its successors and assigns (the “Lender”), pursuant to various loan documents (the “Loan Documents”) evidencing the loan made by the Lender and secured by the Fee Deed of Trust.

5. In consideration of the terms and conditions of this Lease, the Ordinance, issuance of the Bonds and certain other agreements, the City, the [*Redevelopment Corporation*] and the Developer have concurrently herewith entered into a Development Agreement of even date herewith (the “Development Agreement”).

6. Pursuant to the foregoing, the City desires to lease the Project to the Developer and the Developer desires to lease the Project from the City, for the rentals and upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, the City and the Developer do hereby represent, covenant and agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions of Words and Terms. In addition to any words and terms defined elsewhere in this Lease, capitalized words and terms used in this Lease shall have the meanings given to such words and terms in **Section 101** of the Indenture (which definitions are hereby incorporated by reference).

Section 1.2. Rules of Interpretation.

(a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

(b) Unless the context otherwise indicates, words importing the singular number shall include the plural and vice versa, and words importing persons shall include firms, associations and corporations, including governmental entities, as well as natural persons.

(c) Wherever in this Lease it is provided that either party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform, or not to perform, as the case may be, such act or obligation.

(d) All references in this instrument to designated “Articles,” “Sections” and other subdivisions are, unless otherwise specified, to the designated Articles, Sections and other subdivisions of this instrument as originally executed. The words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Lease as a whole and not to any particular Article, Section or other subdivision.

(e) The Table of Contents and the Article and Section headings of this Lease shall not be treated as a part of this Lease or as affecting the true meaning of the provisions hereof.

(f) Whenever an item or items are listed after the word “including,” such listing is not intended to be a listing that excludes items not listed.

(g) Whenever the City is required to “cooperate,” “cooperate fully” or “act promptly” on a matter set forth in this Lease, the City’s cooperation shall be deemed to be reasonable cooperation and the City’s promptness shall be deemed to be reasonable promptness; provided, however, the City shall not be required to incur any costs, expenses, obligations or liabilities in providing such reasonable cooperation and promptness.

Section 1.3. Incorporation.

(a) The Recitals hereof are all incorporated into this Lease as if fully and completely set out in this Section.

(b) The Exhibits to this Lease are hereby incorporated into and made a part of this Lease.

ARTICLE II

REPRESENTATIONS

Section 2.1. Representations by the City. The City makes the following representations as the basis for the undertakings on its part herein contained:

(a) The City is an incorporated political subdivision duly organized and validly existing under the laws of the State of Missouri. Under the provisions of the Act, the City has lawful power and authority to enter into the transactions contemplated by this Lease and to carry out its obligations hereunder. By proper action of its Board of Aldermen, the City has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers.

(b) As of the date of delivery hereof, the City agrees to acquire a leasehold interest in the Project Site pursuant to the Base Lease and to construct or cause the construction of the Project Improvements. The City agrees to lease the Project to the Developer and to sell the Project to the Developer if the Developer exercises its option to purchase the Project or upon termination of this Lease, all for the purpose of furthering the public purposes of the Act.

(c) To the City's knowledge, no member of the Board of Aldermen or any other officer of the City has any significant or conflicting interest, financial, employment or otherwise, in the Developer or in the transactions contemplated hereby.

(d) To finance the costs of the Project, the City proposes to issue the Bonds, which will be scheduled to mature as set forth in **Article II** of the Indenture and will be subject to redemption prior to maturity in accordance with the provisions of **Article III** of the Indenture.

(e) The Bonds are to be issued under and secured by the Indenture, pursuant to which the Project and the net earnings therefrom, consisting of all rents, revenues and receipts to be derived by the City from the leasing or sale of the Project, will be pledged and assigned to the Trustee as security for payment of the principal of and interest on the Bonds and amounts owing pursuant to this Lease.

(f) The City will not knowingly take any affirmative action that would permit a lien to be placed on the Project or pledge the revenues derived therefrom for any bonds or other obligations, other than the Bonds, except with the written consent of the Authorized Developer Representative; provided, however, the City's execution of this Lease, the Base Lease, the Indenture and the Development Agreement shall not be deemed to violate this **Section 2.1(f)**.

(g) The City will not operate the Project as a business or in any other manner except as the lessor thereof.

Section 2.2. Representations by the Developer. The Developer makes the following representations as the basis for the undertakings on its part herein contained:

(a) The Developer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Missouri.

(b) The Developer has lawful power and authority to enter into this Lease and to carry out its obligations hereunder, and the Developer has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers and representatives.

(c) The execution and delivery of this Lease, the consummation of the transactions contemplated hereby and the performance of or compliance with the terms and conditions of this Lease by the Developer will not, to the Developer's knowledge, conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any mortgage, deed of trust, lease or any other restriction or any agreement or instrument to which the Developer is a party or by which it or any of its property is bound, or the Developer's organizational documents, or any order, rule or regulation applicable to the Developer or any of its property of any court or governmental body, or constitute a default under any of the foregoing, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Developer under the terms of any instrument or agreement to which the Developer is a party.

(d) The Project will comply in all material respects with all applicable building and zoning, health, environmental and safety orders and laws and all other applicable laws, rules and regulations.

ARTICLE III

GRANTING PROVISIONS

Section 3.1. Granting of Leasehold Estate. The City hereby exclusively rents, leases and lets the Project to the Developer, and the Developer hereby rents, leases and hires the Project from the City, subject to the Base Lease and other Permitted Encumbrances existing as of the date of the execution and delivery hereof, for the rentals and upon and subject to the terms and conditions herein contained. The City and the Developer agree and acknowledge that title to the Project is subject to the lien granted to the Lender by the Developer and no further notice of the Fee Deed of Trust is required for the Lender to have all Lender rights and protections provided herein and in the Indenture.

Section 3.2. Lease Term. This Lease shall become effective upon its execution and delivery. Subject to earlier termination pursuant to the provisions of this Lease, the lease of the Project shall terminate on the Completion Date.

Section 3.3. Possession and Use of the Project.

(a) The City covenants and agrees that as long as neither the City nor the Trustee has exercised any of the remedies set forth in **Section 12.2** following the occurrence and continuance of an Event of Default, as defined in **Section 12.1**, the Developer shall have sole and exclusive possession of the Project (subject to Permitted Encumbrances and the City's and the Trustee's right of access pursuant to **Section 10.3**) and shall and may peaceably and quietly have, hold and enjoy the Project during the Lease

Term. The City covenants and agrees that it will not take any action, other than expressly pursuant to **Article XII**, the Indenture, the Base Lease and the Development Agreement to prevent the Developer from having quiet and peaceable possession and enjoyment of the Project during the Lease Term and will, at the request and expense of the Developer, cooperate with the Developer to defend the Developer's quiet and peaceable possession and enjoyment of the Project.

(b) Subject to the provisions of this Section, the Developer shall have the exclusive right to use the Project for any lawful purpose contemplated by the Act and consistent with the terms of the Development Agreement. The Developer shall comply in all material respects with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, local and other governments or governmental authorities, now or hereafter applicable to the Project, as to the manner of use or the condition of the Project, or that otherwise may be applicable by virtue of the City's interest in the Project. The Developer shall also comply with the mandatory requirements, rules and regulations of all insurers under the policies carried under the provisions of **Article VII**. The Developer shall pay all costs, expenses, claims, fines, penalties and damages that may in any manner arise out of, or be imposed as a result of, the failure of the Developer to comply with the provisions of this Section. Notwithstanding any provision contained in this Section, however, the Developer may, at its own cost and expense, contest or review by legal or other appropriate procedures the validity or legality of any such governmental statute, law, ordinance, order, judgment, decree, regulation, direction or requirement, or any such requirement, rule or regulation of an insurer, and during such contest or review the Developer may refrain from complying therewith.

ARTICLE IV

PURCHASE AND CONSTRUCTION OF THE PROJECT

Section 4.1. Issuance of the Bonds. To provide funds for the payment of Project Costs, the City agrees that, upon request of the Developer, it will issue, sell and cause to be delivered the Bonds to the purchaser thereof in accordance with the provisions of the Indenture and the Bond Purchase Agreement.

Section 4.2. Purchase and Construction of the Project. The City and the Developer agree that the Developer, as the agent of the City, shall, but solely from the Project Fund, purchase and construct the Project as follows:

(a) The City will acquire a leasehold interest in the Project Site at the execution hereof. Concurrently with the execution of this Lease, (i) the Base Lease will be executed by the City and the Developer and placed of record, and (ii) the commitment for title insurance or ownership and encumbrance report required by **Article VII** will be delivered to the City and the Trustee.

(b) On behalf of the City, the Developer will purchase and construct the Project Improvements on the Project Site and otherwise improve the Project Site in accordance with the Plans and Specifications. The Developer may revise the Plans and Specifications from time to time as it deems necessary to carry out the Project, but revisions that affect the status of the Project as a "project" under the Act or that would materially alter the accuracy of the description of the Project in the Plan for an Industrial Development Project and Cost-Benefit Analysis distributed under the Act may be made only with the prior written approval of the City. The Developer agrees that the aforesaid construction and improvement will, with such changes and additions as may be made hereunder, result in facilities suitable for use by the Developer for its purposes, and that all real and

personal property described in the Plans and Specifications, with such changes and additions as may be made hereunder, is desirable and appropriate in connection with the Project. The provisions of this paragraph are in addition to and do not supersede any of the provisions of **Article VIII**.

(c) The Developer will comply with the provisions of Section 107.170 of the Revised Statutes of Missouri to the extent applicable to the construction of the Project.

(d) The Developer will cause the purchase and construction of the Project to be completed on or before the Completion Date, except as otherwise provided in **Section 4.5**.

(e) The Project Improvements shall be constructed in a good and workmanlike manner and in strict compliance with all applicable laws, orders and ordinances.

Section 4.3. Project Costs. The City hereby agrees to pay for, but solely from the Project Fund, and hereby authorizes and directs the Trustee to pay for, but solely from the Project Fund, all Project Costs upon receipt by the Trustee of a certificate pursuant to **Section 4.4**. The Developer may not submit any requisition certificates for Project Costs incurred after the Completion Date. The Developer must submit all requisition certificates for Project Costs incurred before the Completion Date within three months after the Completion Date. The maximum amount of Project Costs for which requisitions may be submitted is expressly limited to \$63,000,000.

Section 4.4. Payment for Project Costs. The City hereby authorizes and directs the Trustee to make disbursements from the Project Fund and to endorse the Bonds, upon receipt by the Trustee of certificates in substantially the form of **Exhibit B**, signed by the Authorized Developer Representative and approved by the Authorized City Representative. Upon request by the City, the Developer shall provide the City with copies of invoices, bills, lien waivers and other reasonable documentation to support each submitted requisition certificate. The Trustee may rely conclusively on any such certificate and shall not be required to make any independent inspection or investigation in connection therewith. The approval of any requisition certificate by the Authorized Developer Representative and the Authorized City Representative shall constitute, unto the Trustee, an irrevocable determination that all conditions precedent to the payments requested have been completed.

Section 4.5. Establishment of Completion Date. The Completion Date shall be evidenced to the City and the Trustee by a certificate signed by the Authorized Developer Representative stating (a) that the purchase and construction of the Project have been substantially completed in accordance with the Plans and Specifications, (b) the date of completion thereof, and (c) that all costs and expenses of the purchase and construction of the substantial completion of the Project have been incurred. Notwithstanding the foregoing, such certificate shall be deemed given on the last day of the 26th month following the commencement of the Project Improvements if not actually filed with the City by such date, subject to any delay permitted by **Section 3.1** of the Development Agreement (a "Permitted Excuse"). No Permitted Excuse shall be deemed to exist unless the Developer provides written notice to the City, within 30 days after the Developer has actual notice of the claimed event, specifying the Permitted Excuse. In no event shall a Permitted Excuse extend the Completion Date beyond the last day of the 32nd month following the commencement of the Project Improvements. The Developer and the City agree to cooperate in causing such certificate to be furnished to the Trustee.

Section 4.6. Surplus in Project Fund. Upon receipt of the certificate described in **Section 4.5** and payment from the Project Fund of the Project Costs described therein, the Trustee shall, as provided in **Section 504** of the Indenture, transfer any remaining moneys then in the Project Fund to the Bond Fund to be applied as directed by the Developer solely to (a) the payment of principal and premium, if any, of the

Bonds through the payment (including regularly scheduled principal payments, if any) or redemption thereof at the earliest date permissible under the terms of the Indenture, or (b) at the option of the Developer, to the purchase of Bonds at such earlier date or dates as the Developer may elect. Any amount so deposited in the Bond Fund may be invested as permitted by **Section 702** of the Indenture.

Section 4.7. Project Property of the City. The Project Site and the Project Improvements located thereon at the execution hereof which the Developer desires to lease to the City, all work and materials related to the Project as such work progresses, and all additions or enlargements thereto or thereof, the Project as fully completed, anything under this Lease which becomes, is deemed to be, or constitutes a part of the Project, and the Project as repaired, rebuilt, rearranged, restored or replaced by the Developer under the provisions of this Lease, except as otherwise specifically provided herein, shall immediately when erected or installed become the absolute leasehold property of the City, subject only to Permitted Encumbrances, the Fee Deed of Trust and the Leasehold Mortgage, if any. Upon reasonable request and at the expense of the Developer, the City agrees to cooperate with the Developer regarding the enforcement of any claims the Developer may have against third parties relating to the purchase and construction of the Project.

Section 4.8. Non-Project Improvements, Machinery and Equipment Property of the Developer. Any improvements or items of machinery or equipment which do not constitute a part of the Project and the entire purchase price of which is paid for by the Developer with the Developer's own funds, and no part of the purchase price of which is paid for from funds deposited pursuant to the terms of this Lease in the Project Fund, shall be the property of the Developer and shall not constitute a part of the Project.

ARTICLE V

RENT PROVISIONS

Section 5.1. Basic Rent. The Developer covenants and agrees to pay to the Trustee in same day funds for the account of the City during the Lease Term, on or before 11:00 a.m., Trustee's local time, on each Payment Date, as Basic Rent for the Project, an amount which, when added to any collected funds then on deposit in the Bond Fund and available for the payment of principal of the Bonds and the interest thereon on such Payment Date, shall be equal to the amount payable on such Payment Date as principal of the Bonds and the interest thereon as provided in the Indenture. Except as offset pursuant to the right of the Developer set forth below, all payments of Basic Rent provided for in this Section shall be paid directly to the Trustee and shall be deposited in accordance with the provisions of the Indenture into the Bond Fund and shall be used and applied by the Trustee in the manner and for the purposes set forth in this Lease and the Indenture. In furtherance of the foregoing, and notwithstanding any other provision in this Lease, the Base Lease, the Indenture, the Bond Purchase Agreement or the Development Agreement to the contrary, and provided that the Developer is the sole holder of the Bonds, the Developer may set-off the then-current Basic Rent payment against the City's obligation to the Developer as bondholder to pay principal of and interest on the Bonds under the Indenture in lieu of delivery of the Basic Rent on any Payment Date, without providing notice of such set-off to the Trustee. The Trustee may conclusively rely on the absence of any notice from the Developer to the contrary as evidence that such set-off has occurred and that pursuant to the set-off, the City is deemed to have paid its obligation to the Developer as bondholder to pay principal of and interest on the Bonds under the Indenture. On the final Payment Date, the Developer will (a) if the Trustee holds the Bonds, notify the Trustee of the Bonds not previously paid that are to be canceled or (b) if an entity other than the Trustee holds the Bonds, deliver or cause to be delivered to the Trustee for cancellation Bonds not previously paid. The Developer shall receive a credit against the Basic Rent payable

by the Developer in an amount equal to the principal amount of the Bonds so tendered for cancellation plus accrued interest thereon.

Section 5.2. Additional Rent. The Developer shall pay as Additional Rent, within 30 days after receiving an itemized invoice therefor, the following amounts:

(a) all fees, charges and expenses, including agent and counsel fees and expenses, of the City, the Trustee and the Paying Agent incurred under or arising from the Indenture, this Lease, the Base Lease or the Development Agreement, including, but not limited to, claims by contractors or subcontractors, as and when the same becomes due;

(b) all costs incident to the issuance of the Bonds (which are to be paid on the Closing Date) and the payment of the principal of and interest on the Bonds as the same becomes due and payable, including all costs and expenses in connection with the call, redemption and payment of all Outstanding Bonds;

(c) all fees, charges and expenses incurred in connection with the enforcement of any rights under this Lease, the Base Lease, the Indenture or the Development Agreement by the City, the Trustee or the Owners, including counsel fees and expenses; and

(d) all other payments of whatever nature which the Developer has agreed in writing to pay or assume under the provisions of this Lease, the Base Lease, the Development Agreement or the Indenture.

Section 5.3. Obligations of the Developer Absolute and Unconditional.

(a) The obligations of the Developer under this Lease to make payments of Basic Rent and Additional Rent on or before the date the same becomes due and to perform all of its other obligations, covenants and agreements hereunder shall be absolute and unconditional, without notice or demand, and without abatement, deduction, set-off (except as described in **Section 5.1**), counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Project has been started or completed, or whether the City's interest therein or to any part thereof is defective or nonexistent, and notwithstanding any damage to, loss, theft or destruction of, the Project or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Project, legal curtailment of the Developer's use thereof, the eviction or constructive eviction of the Developer, any change in the tax or other laws of the United States of America, the State of Missouri or any political subdivision thereof, any change in the City's legal organization or status, or any default of the City hereunder, and regardless of the invalidity of any action of the City; provided, however, that nothing in this **Section 5.3** is intended or shall be deemed to affect or impair in any way the rights of the Developer to tender Bonds for redemption in satisfaction of Basic Rent as provided in **Section 5.1** and **Section 5.4**, nor the right of the Developer to repurchase the Project and terminate this Lease as provided in **Article XI**.

(b) Nothing in this Lease shall be construed to release the City from the performance of any agreement on its part herein contained or as a waiver by the Developer of any rights or claims the Developer may have against the City under this Lease or otherwise, but any recovery upon such rights and claims shall be had from the City separately, it being the intent of this Lease that the Developer shall be unconditionally and absolutely obligated to perform fully all of its obligations, agreements and covenants under this Lease

(including the obligation to pay Basic Rent and Additional Rent) for the benefit of the Owners and the City. The Developer may, however, at its own cost and expense and in its own name or in the name of the City, prosecute or defend any action or proceeding or take any other action involving third Persons which the Developer deems reasonably necessary in order to secure or protect its right of possession, occupancy and use hereunder, and in such event the City hereby agrees, at the Developer's expense, to cooperate fully with the Developer and to take all action necessary to effect the substitution of the Developer for the City in any such action or proceeding if the Developer shall so request.

Section 5.4. Prepayment of Basic Rent.

(a) The Developer may at any time and from time to time prepay all or any part of the Basic Rent provided for hereunder (subject to the limitations of **Section 301(a)** of the Indenture relating to the partial redemption of the Bonds). During such times as the amount held by the Trustee in the Bond Fund shall be sufficient to pay, at the time required, the principal of and interest on all the Bonds then-remaining unpaid, the Developer shall not be obligated to make payments of Basic Rent under the provisions of this Lease.

(b) At its option, the Developer may deliver to the Trustee for cancellation Bonds owned by the Developer and not previously paid, and the Developer shall receive a credit against amounts payable by the Developer for the redemption of Bonds in an amount equal to the principal amount of the Bonds so tendered for cancellation, plus accrued interest thereon.

ARTICLE VI

MAINTENANCE, TAXES AND UTILITIES

Section 6.1. Maintenance and Repairs. Throughout the Lease Term the Developer shall, at its own expense, keep the Project in reasonably safe operating condition and keep the Project in good repair, reasonable wear, tear, depreciation and obsolescence excepted, making from time to time all repairs thereto and renewals and replacements thereof it determines to be necessary. Without limiting the generality of the foregoing, the Developer shall at all times remain in compliance with all provisions of the City's code relating to maintenance and appearance that are applicable to the Project.

Section 6.2. Taxes, Assessments and Other Governmental Charges.

(a) Subject to subsection (b) of this Section, the Developer shall promptly pay and discharge, as the same becomes due, all taxes and assessments, general and special, and other governmental charges of any kind whatsoever that may be lawfully taxed, charged, levied, assessed or imposed upon or against or be payable for or in respect of the Project, or any part thereof or interest therein (including the leasehold estate of the Developer therein) or any buildings, improvements, machinery and equipment at any time installed on the Project Site by the Developer, or the income therefrom, including any new taxes and assessments not of the kind enumerated above to the extent that the same are lawfully made, levied or assessed in lieu of or in addition to taxes or assessments now customarily levied against real or personal property, and further including all utility charges, assessments and other general governmental charges and impositions whatsoever, foreseen or unforeseen, which if not paid when due would impair the security of the Bonds or encumber the City's interest in the Project; provided that with respect to any special assessments or other governmental charges that are lawfully levied and assessed which may be paid in installments, the Developer shall be obligated to pay only such installments thereof as become due and payable during the Lease Term.

(b) The Developer may contest the validity or amount of any tax, assessment or other governmental charge which the Developer is required to bear, pay and discharge pursuant to the terms of this Article by appropriate legal proceedings instituted at least 10 days before the tax, assessment or other governmental charge complained of becomes delinquent if and provided (i) the Developer, before instituting any such contest, gives the City written notice of its intention to do so, (ii) the Developer diligently prosecutes any such contest and at all times effectively stays or prevents any official or judicial sale therefor, under execution or otherwise, and (iii) the Developer promptly pays any final judgment enforcing the tax, assessment or other governmental charge so contested and thereafter promptly procures record release or satisfaction thereof. The City agrees to cooperate fully with the Developer in connection with any and all administrative or judicial proceedings related to any tax, assessment or other governmental charge. The Developer shall save and hold harmless the City from any costs and expenses the City may incur related to any of the above.

(c) Nothing in this Lease shall be construed to require the Developer to make duplicate tax payments. The Developer shall receive a credit against the payments to be made by the Developer under the Development Agreement to the extent that any ad valorem taxes imposed with respect to the Project are paid pursuant to this Section.

Section 6.3. Utilities. All utilities and utility services used by the Developer in, on or about the Project shall be paid by the Developer and shall be contracted by the Developer in the Developer's own name, and the Developer shall, at its sole cost and expense, procure any and all permits, licenses or authorizations necessary in connection therewith.

ARTICLE VII

INSURANCE

Section 7.1. Title Commitment. Before leasing any real property to the City, the Developer will purchase, from a title insurance company reasonably acceptable to the City, a commitment for title insurance or provide such other report in a form reasonably acceptable to the City showing the ownership of and encumbrances on the Project Site. Copies of such report shall be provided to the City and the Trustee.

Section 7.2. Casualty Insurance.

(a) Prior to commencement of construction of the Project Improvements, the Developer shall at its sole cost and expense obtain (or cause to be obtained) a policy or policies of insurance (including, if appropriate, builder's risk insurance) to keep the Project constantly insured against loss or damage by fire, lightning and all other risks covered by the extended coverage insurance endorsement then in use in the State of Missouri in an amount equal to the Full Insurable Value thereof (subject to reasonable loss deductible provisions). The insurance required pursuant to this Section shall be maintained from commencement of construction through the Lease Term with a generally recognized responsible insurance company or companies authorized to do business in the State of Missouri or generally recognized international insurers or reinsurers with an A.M. Best rating of not less than "A-" or the equivalent thereof as may be selected by the Developer. The Developer shall deliver (or cause to be delivered) certificates of insurance for such policies to the City and the Trustee no later than 30 days after commencement of construction of the Project Improvements and promptly after renewal of each insurance policy. All such policies of insurance pursuant to this Section, and all renewals thereof, shall name the City and the Developer as insureds, as their respective interests may appear, shall name the Trustee as loss payee and

shall contain a provision that such insurance may not be canceled by the issuer thereof without at least 10 days' advance written notice to the City, the Developer and the Trustee.

(b) In the event of loss or damage to the Project, the Net Proceeds of casualty insurance carried pursuant to this Section shall be (i) paid over to the Trustee and applied as provided in **Article IX**, or (ii) applied as directed by, or on behalf of, the Owners of 100% in principal amount of the Bonds Outstanding, subject to the rights of the Lender under the Loan Documents and any Financing Party under any Financing Document.

Section 7.3. Public Liability Insurance.

(a) The Developer shall at its sole cost and expense maintain or cause to be maintained at all times during the Lease Term commercial general liability insurance (including but not limited to coverage for operations, contingent liability, operations of subcontractors, completed operations and contractual liability), under which the City, the Developer and the Trustee shall be named as additional insureds, properly protecting and indemnifying the City and the Trustee, in an amount not less than the limits of liability set by Section 537.610 of the Revised Statutes of Missouri (subject to reasonable loss deductible clauses not to exceed the amounts normally or generally carried by the Developer). The policies of said insurance shall contain a provision that such insurance may not be canceled by the issuer thereof without at least 10 days' advance written notice to the City, the Developer and the Trustee. Certificates of such policies shall be furnished to the Trustee on the date of execution of this Lease and not less than 30 days before the expiration date of each insurance policy.

(b) In the event of a general liability occurrence, the Net Proceeds of liability insurance carried pursuant to this Section shall be applied toward the extinguishment or satisfaction of the liability with respect to which such proceeds have been paid.

Section 7.4. Blanket Insurance Policies. The Developer may satisfy any of the insurance requirements set forth in this Article by using blanket policies of insurance, provided each and all of the requirements and specifications of this Article respecting insurance are complied with.

Section 7.5. Worker's Compensation. The Developer agrees throughout the Lease Term to maintain or cause to be maintained the worker's compensation coverage required by the laws of the State of Missouri.

Section 7.6. Sovereign Immunity. Notwithstanding anything to the contrary contained herein, nothing in this Lease shall be construed to broaden the liability of the City beyond the provisions of Sections 537.600 to 537.610 of the Revised Statutes of Missouri or abolish or waive any defense at law that might otherwise be available to the City or its officers, agents and employees.

ARTICLE VIII

ALTERATION OF THE PROJECT

Section 8.1. Additions, Modifications and Improvements to the Project. The Developer may make such additions, modifications and improvements in and to any part of the Project as the Developer from time to time may deem necessary or desirable for its business purposes. All additions, modifications and improvements made by the Developer pursuant to this Section shall (a) be made in a

good and workmanlike manner and in compliance with all material laws, orders and ordinances applicable thereto, and (b) when commenced, be prosecuted to completion with due diligence.

Section 8.2. Additional Improvements on the Project Site. The Developer may, at its sole cost and expense, construct on portions of the Project Site not theretofore occupied by buildings or improvements such additional buildings and improvements as the Developer from time to time may deem necessary or desirable for its business purposes. All additional buildings and improvements constructed on the Project Site by the Developer, and not paid for with Bond proceeds, pursuant to the authority of this Section shall not be included in the Project and, during the life of this Lease, shall remain the property of the Developer and may be added to, altered or razed and removed by the Developer at any time. All additional buildings and improvements shall be made in a good and workmanlike manner and in compliance with all material laws, orders and ordinances applicable thereto and when commenced shall be prosecuted to completion with due diligence. The Developer covenants and agrees (a) to make any repairs and restorations required to be made to the Project because of the construction of, addition to, alteration or removal of said additional buildings or improvements, and (b) to promptly and with due diligence either raze and remove or repair, replace or restore any of said additional buildings and improvements as may from time to time be damaged by fire or other casualty.

Section 8.3. Permits and Authorizations. The Developer shall not do or permit others under its control to do any work on the Project or any repair, rebuilding, restoration, replacement, modification or addition to the Project, or any part thereof, unless all requisite municipal and other governmental permits and authorizations shall have been first procured. The City agrees to act promptly on all requests for such municipal permits and authorizations. All such work shall be done in a good and workmanlike manner and in compliance with all applicable material building and zoning laws and governmental regulations and requirements, and in accordance with the requirements, rules and regulations of all insurers under the policies required to be carried under the provisions of **Article VII**.

Section 8.4. Mechanics' Liens.

(a) The Developer will not directly or indirectly create, incur, assume or suffer to exist any mechanics' or other similar lien on or with respect to the Project, except Permitted Encumbrances, and the Developer shall promptly notify the City of the imposition of any such lien of which the Developer is aware and shall promptly, at its own expense, take such action as may be necessary to fully discharge or release any such lien. Whenever and as often as any mechanics' or other similar lien is filed against the Project, or any part thereof, purporting to be for or on account of any labor done or materials or services furnished in connection with any work in or about the Project, the Developer shall discharge the same of record. Notice is hereby given that the City shall not be liable for any labor or materials furnished to the Developer or anyone claiming by, through or under the Developer upon credit, and that no mechanics' or other similar lien for any such labor, services or materials shall attach to or affect the reversionary or other estate of the City in and to the Project or any part thereof.

(b) Notwithstanding **Section 8.4(a)**, the Developer may contest any such mechanics' or other similar lien if the Developer (i) within 60 days after the Developer becomes aware of any such lien notifies the City and the Trustee in writing of its intention so to do, (ii) diligently prosecutes such contest, (iii) at all times effectively stays or prevents any official or judicial sale of the Project, or any part thereof or interest therein, under execution or otherwise, (iv) promptly pays or otherwise satisfies any final judgment adjudging or enforcing such contested lien claim and (v) thereafter promptly procures record release or satisfaction thereof. The Developer may permit the lien so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Developer is notified by the City that, in the opinion of

counsel, by nonpayment of any such items, the interest of the City in the Project will be subject to loss or forfeiture. In that event, the Developer shall promptly, at its own expense, take such action as may be reasonably necessary to duly discharge or remove any such lien if the same shall arise at any time. The Developer shall save and hold harmless the City from any loss, costs or expenses the City may incur related to any such contest. The Developer shall reimburse the City for any expense incurred by it in connection with the imposition of any such lien or in order to discharge or remove any such lien. The City shall cooperate fully with the Developer in any such contest.

ARTICLE IX

DAMAGE, DESTRUCTION AND CONDEMNATION

Section 9.1. Damage or Destruction.

(a) If the Project is damaged or destroyed by fire or any other casualty, whether or not covered by insurance, the Developer, as promptly as practicable, subject to any delay to the extent caused by such fire or other casualty, shall either (i) make the determination described in **Section 9.1(f)**, or (ii) repair, restore, replace or rebuild the same so that upon completion of such repairs, restoration, replacement or rebuilding the Project is of a value not less than the value thereof immediately before the occurrence of such damage or destruction or, at the Developer's option, construct upon the Project Site new buildings and improvements, together with all new machinery, equipment and fixtures that are either to be attached to or are to be used in connection with the operation or maintenance thereof, provided that (A) the value thereof shall not be less than the value of such destroyed or damaged Project immediately before the occurrence of such damage or destruction and (B) the nature of such new buildings, improvements, machinery, equipment and fixtures will not impair the character of the Project as a "project" permitted by the Act.

If the Developer elects to construct any such new buildings and improvements, then for all purposes of this Lease, any reference to the words "Project Improvements" shall be deemed to also include any such new buildings and improvements and all additions thereto and all replacements and alterations thereof.

Unless the Developer makes the determination described in **Section 9.1(f)**, the Net Proceeds of casualty insurance required by **Article VII** received with respect to such damage to or loss of the Project shall be used to pay the cost of repairing, restoring, replacing or rebuilding the Project or any part thereof, subject to the rights of the Lender under the Fee Deed of Trust and related Loan Documents. Subject to the provisions of the Fee Deed of Trust and related Loan Documents, insurance monies in an amount less than \$100,000 may be paid to or retained by the Developer to be held in trust and used as provided herein. Subject to the provisions of the Fee Deed of Trust and related Loan Documents, insurance monies in an amount of \$100,000 or more shall be (i) paid to the Trustee, deposited in the Project Fund and disbursed as provided in **Section 4.4** to pay the cost of repairing, restoring, replacing or rebuilding the Project or any part thereof, or (ii) if determined by the Owners of 100% in principal amount of the Bonds Outstanding, applied as directed by, or on behalf of, such Owners of 100% in principal amount of the Bonds Outstanding, subject to the rights of the Lender. If the Developer makes the determination described in **Section 9.1(f)**, the Net Proceeds shall be deposited with the Trustee and used to redeem Bonds as provided in **Section 9.1(f)**, subject to the rights of the Lender under the Fee Deed of Trust and related Loan Documents.

(b) If any of the insurance monies paid by the insurance company as hereinabove provided remain after the completion of such repairs, restoration, replacement or rebuilding, and this Lease has not been terminated, the excess shall be deposited in the Bond Fund, subject to the rights of the Lender, any leasehold mortgagee or any other Financing Party. Completion of such repairs, restoration, replacement or

rebuilding shall be evidenced by a certificate of completion provided to the City and the Trustee. If the Net Proceeds are insufficient to pay the entire cost of such repairs, restoration, replacement or rebuilding, the Developer shall pay the deficiency.

(c) Except as otherwise provided in this Lease, in the event of any such damage by fire or any other casualty, the provisions of this Lease shall be unaffected and the Developer shall remain and continue to be liable for the payment of all Basic Rent and Additional Rent and all other charges required hereunder to be paid by the Developer, as though no damage by fire or any other casualty has occurred.

(d) The Developer will prosecute or defend any action or proceeding arising out of, or for the collection of any insurance monies that may be due in the event of, any loss or damage.

(e) The Developer agrees to give prompt written notice to the City, the Trustee and the Lender of all fires and any other casualties occurring in, on, at or about the Project Site.

(f) If the Developer determines that rebuilding, repairing, restoring or replacing the Project is not practicable or desirable, or if the Developer does not have the right under the Fee Deed of Trust, any Leasehold Mortgage or any other Financing Document to use any Net Proceeds for repair or restoration of the Project, any Net Proceeds of casualty insurance required by **Article VII** received with respect to such damage or loss shall, after payment of all Additional Rent then due and payable, be paid into the Bond Fund and used to redeem Bonds on the earliest practicable redemption date or to pay the principal of any Bonds as the same becomes due, all subject to the rights of the Lender under the Loan Documents, any mortgagee under the Leasehold Mortgage (if any) and any Financing Party under the Financing Documents (if any). The Developer agrees to be reasonable in exercising its judgment pursuant to this subsection. Alternatively, if the Developer is the sole owner of the Bonds and it has determined that rebuilding, repairing, restoring or replacing the Project is not practicable or desirable, it may tender Bonds to the Trustee for cancellation in a principal amount equal to the Net Proceeds of the casualty insurance and retain such proceeds for its own account.

(g) The Developer shall not, by reason of its inability to use all or any part of the Project during any period in which the Project is damaged or destroyed or is being repaired, rebuilt, restored or replaced, nor by reason of the payment of the costs of such repairing, rebuilding, restoring or replacing, be entitled to any reimbursement from the City, the Trustee or the Owners or to any abatement or diminution of the rentals payable by the Developer under this Lease or of any other obligations of the Developer under this Lease except as expressly provided in this Section.

(h) The rights of the City and the Trustee in and to any Net Proceeds are and will at all times be subject to the rights of the Lender with respect to such Net Proceeds.

(i) Nothing herein shall be deemed to authorize the Developer to allow an unsafe, dangerous, unhealthy or injurious condition to exist on the Project or any portion thereof, in violation of any applicable laws, codes and ordinances due to a fire or other casualty.

Section 9.2. Condemnation.

(a) If during the Lease Term, title to, or the temporary use of, all or any part of the Project is condemned by or sold under threat of condemnation to any authority possessing the power of eminent domain, to such extent that the claim or loss resulting from such condemnation is greater than \$100,000, the Developer shall, within 90 days after the date of entry of a final order in any eminent domain proceedings granting condemnation or the date of sale under threat of condemnation, notify the City, the

Trustee, the Lender, any mortgagee under the Leasehold Mortgage (if any) and any Financing Party under the Financing Documents (if any) in writing as to the nature and extent of such condemnation or loss of title and whether it is practicable and desirable to acquire or construct substitute improvements.

(b) If the Developer determines that such substitution is practicable and desirable, the Developer shall proceed promptly with and complete with reasonable dispatch the acquisition or construction of such substitute improvements, so as to place the Project in substantially the same condition as existed before the exercise of the power of eminent domain, including the acquisition or construction of other improvements suitable for the Developer's operations at the Project (which improvements will be deemed a part of the Project and available for use and occupancy by the Developer without the payment of any rent other than herein provided, to the same extent as if such other improvements were specifically described herein and demised hereby); provided, that such improvements will be acquired by the City subject to no liens, security interests or encumbrances before the lien and/or security interest afforded by the Indenture and this Lease other than Permitted Encumbrances (including, without limitation, any liens held by the Lender in and to the substitute Project). In such case, any Net Proceeds received from any award or awards with respect to the Project or any part thereof made in such condemnation or eminent domain proceedings, or of the sale proceeds, shall be applied in the same manner as provided in **Section 9.1** (with respect to the receipt of casualty insurance proceeds).

(c) If the Developer determines that it is not practicable or desirable to acquire or construct substitute improvements, or if the Developer does not have the right under the Fee Deed of Trust to use any Net Proceeds of condemnation awards received by the Developer, then any Net Proceeds of condemnation awards received by the Developer shall, after payment of all Additional Rent then due and payable, be paid into the Bond Fund and shall be used to redeem Bonds on the earliest practicable redemption date or to pay the principal of any Bonds as the same becomes due and payable, all subject to the rights of the Lender under the Loan Documents, any mortgagee under the Leasehold Mortgage (if any) and any Financing Party under the Financing Documents (if any).

(d) The Developer shall not, by reason of its inability to use all or any part of the Project during any such period of restoration or acquisition nor by reason of the payment of the costs of such restoration or acquisition, be entitled to any reimbursement from the City, the Trustee or the Owners or to any abatement or diminution of the rentals payable by the Developer under this Lease nor of any other obligations hereunder except as expressly provided in this Section.

(e) The City shall cooperate fully with the Developer in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Project or any part thereof, and shall, to the extent it may lawfully do so, permit the Developer to litigate in any such proceeding in the name and on behalf of the City. In no event will the City voluntarily settle or consent to the settlement of any prospective or pending condemnation proceedings with respect to the Project or any part thereof without the prior written consent of the Developer and the Lender.

Section 9.3. Bondowner Approval. Notwithstanding anything to the contrary contained in this **Article IX**, subject to the rights of the Lender, the proceeds of any insurance received subsequent to a casualty or of any condemnation proceedings (or threats thereof) may before the application thereof by the City or the Trustee be applied as directed by the Owners or pledgees of 100% of the principal amount of Bonds Outstanding, subject and subordinate to (a) the rights of the City and the Trustee to be paid all their expenses (including attorneys' fees, trustee's fees and any extraordinary expenses of the City and the Trustee) incurred in the collection of such gross proceeds and (b) the rights of the City to any amounts then due and payable under the Development Agreement.

ARTICLE X

SPECIAL COVENANTS

Section 10.1. No Warranty of Condition or Suitability by the City; Exculpation and Indemnification. The City makes no warranty, either express or implied, as to the condition of the Project or that it will be suitable for the Developer's purposes or needs. The Developer releases the City and the Trustee from, agrees that the City and the Trustee shall not be liable for and agrees to hold the City and the Trustee harmless against, any loss or damage to property or any injury to or death of any Person that may be occasioned by any cause whatsoever pertaining to the Project or the Developer's use thereof, unless such loss is the result of the City's or the Trustee's negligence or willful misconduct. This provision shall survive termination of this Lease.

Section 10.2. Surrender of Possession. Upon accrual of the City's right of re-entry to the extent provided in **Section 12.2(b)**, the Developer shall peacefully surrender possession of the Project to the City in good condition and repair; provided, however, the Developer may within 90 days (or such later date as the City may agree to) after the termination of this Lease remove from the Project Site any buildings, improvements, furniture, trade fixtures, machinery and equipment owned by the Developer and not constituting part of the Project. All repairs to and restorations of the Project required to be made because of such removal shall be made by and at the sole cost and expense of the Developer, and during said 90-day (or extended) period the Developer shall bear the sole responsibility for and bear the sole risk of loss of said buildings, improvements, furniture, trade fixtures, machinery and equipment owned by the Developer and not constituting part of the Project. All buildings, improvements, furniture, trade fixtures, machinery and equipment owned by the Developer which are not so removed from the Project Site before the expiration of said period shall be the separate and absolute property of the City. Notwithstanding the foregoing, if the Developer has paid all obligations due and owing under the Indenture (or such obligations have been canceled), this Lease and the Development Agreement, the City shall convey the Project in accordance with **Section 11.2**.

Section 10.3. Right of Access to the Project. The City may conduct such periodic inspections of the Project as may be generally provided in the City's municipal code. In addition, the Developer agrees that the City and the Trustee and their duly authorized agents may, at reasonable times during normal business hours and, except in the event of emergencies, upon not less than two Business Days' prior notice, subject to the Developer's usual business, proprietary, safety, confidentiality and security requirements, enter upon the Project Site (a) to examine and inspect the Project without interference or prejudice to the Developer's operations, (b) to monitor the acquisition, construction and installation of the Project pursuant to **Section 4.2** as may be reasonably necessary, (c) to examine all files, records, books and other materials in the Developer's possession pertaining to the acquisition, installation or maintenance of the Project, or (d) upon either (i) the occurrence and continuance of an Event of Default or (ii) the Developer's failure to purchase the Project at the end of the Lease Term, to exhibit the Project to prospective purchasers, lessees or trustees.

Section 10.4. Granting of Easements; Leasehold Mortgages and Financing Arrangements.

(a) Subject to **Sections 10.4(c)** and **(d)**, if no Event of Default under this Lease has happened and is continuing, the City agrees that it will execute and deliver and will cause and direct the Trustee to execute and deliver any instrument necessary or appropriate to confirm and grant, release or terminate any sublease, easement, license, right-of-way or other right or privilege or any such agreement or other arrangement, upon receipt by the City and the Trustee of: (i) a copy of the instrument of grant, release or

termination or of the agreement or other arrangement, (ii) a written application signed by the Authorized Developer Representative requesting such instrument, and (iii) a certificate executed by the Authorized Developer Representative stating that such grant or release is not detrimental to the proper conduct of the business of the Developer, will not impair the effective use or interfere with the efficient and economical operation of the Project, will not materially adversely affect the security intended to be given by or under the Indenture or the Development Agreement, will be a Permitted Encumbrance, and that the Developer will defend, indemnify and save and hold harmless the City from and against all claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, arising from the execution and delivery of such instrument, agreement or other arrangement pursuant to this Section. If no Event of Default has happened and is continuing beyond any applicable grace period, any payments or other consideration received by the Developer for any such grant or with respect to or under any such agreement or other arrangement shall be and remain the property of the Developer; but, subject to **Sections 10.4(c) and (d)**, upon (A) termination of this Lease for any reason other than the redemption of the Bonds and/or the purchase of the Project by the Developer or (B) the occurrence and continuance of an Event of Default by the Developer, all rights then existing of the Developer with respect to or under such grant, agreement or other arrangement shall inure to the benefit of and be exercisable by the City and the Trustee.

(b) Subject to the Fee Deed of Trust, the Developer may mortgage or grant a deed of trust against the leasehold estate created by this Lease, with prior notice to but without the consent of the City, provided and upon condition that a duplicate original or certified copy or photostatic copy of each such mortgage, and the note or other obligation secured thereby, is delivered to the City within 30 days after the execution thereof. The sale of the Developer's leasehold estate at a foreclosure sale or trustee's sale under the Leasehold Mortgage or any assignment in lieu thereof shall not require the consent of the City, if (i) written notice of the proposed sale or assignment is provided to the City at least 15 days prior thereto, and (ii) before such sale or assignment, all payments then owing to the City under the Development Agreement are paid.

(c) The City acknowledges and agrees that the Developer may finance and refinance its rights and interests in the Project, this Lease and the leasehold estate created hereby and, in connection therewith and subject to the terms of the Loan Documents, the Developer may execute Financing Documents with one or more Financing Parties. Notwithstanding anything contained to the contrary in this Lease, the Developer may, at any time and from time to time, with prior notice to but without the consent of the City, (i) execute one or more Financing Documents upon the terms contained in this **Section 10.4** and (ii) sublease or assign this Lease, the leasehold estate, any sublease and rights in connection therewith, and/or grant liens or security interests therein, to any Financing Party. Any further sublease or assignment by any Financing Party shall be subject to the provisions of **Section 13.1(c)**.

(d) As long as the Fee Deed of Trust remains outstanding or upon notice by the Developer to the City in writing that the Developer has executed one or more Financing Documents under which it has granted rights in this Lease to a Financing Party, which includes the name and address of such Financing Party, then the following provisions shall apply in respect of each such Financing Party:

(i) there shall be no merger of this Lease or of the leasehold estate created hereby with fee title to the Project, notwithstanding that this Lease or said leasehold estate and said fee title shall be owned by the same Person or Persons, without the prior written consent of each such Financing Party;

(ii) the City shall serve upon each such Financing Party (at the address, if any, provided to the City) a copy of each notice of the occurrence of an Event of Default and each notice of termination given to the Developer under this Lease, at the same time as such notice is served

upon the Developer. No such notice to the Developer shall be effective unless a copy thereof is thus served upon each such Financing Party;

(iii) each such Financing Party shall have the same period of time which the Developer has, after the service of any required notice upon it, plus 30 days, within which to remedy or cause to be remedied any payment default under this Lease which is the basis of the notice, and the City shall accept performance by any Financing Party as timely performance by the Developer;

(iv) the City may exercise any of its rights or remedies with respect to any Event of Default by the Developer, subject to the rights of any Financing Party under this **Section 10.4(d)** as to such Event of Default. Without limiting the generality of the foregoing, the holder of the Fee Deed of Trust may cause the sale of the fee simple interest or the leasehold interest of the Developer to be sold at foreclosure sale conducted in accordance with applicable law and the terms of the Fee Deed of Trust, accept assignment of this Lease in lieu of foreclosure and appoint a receiver for the Project, all without obtaining the prior written consent of the City but subject to the provisions of **Section 10.4(b)**;

(v) upon the occurrence and continuance of an Event of Default by the Developer under this Lease, other than a default in the payment of money, the City shall take no action to effect a termination of this Lease by service of a notice or otherwise, without first giving notice thereof to each such Financing Party and permitting each such Financing Party (or its designee, nominee, assignee or transferee) a reasonable time within which to remedy such default in the case of an Event of Default which is susceptible of being cured (provided that the period to remedy such Event of Default shall continue beyond any period set forth in this Lease to effect said cure so long as the Financing Party (or its designee, nominee, assignee or transferee) is diligently prosecuting such cure); provided that the Financing Party (or its designee, nominee, assignee or transferee) shall pay or cause to be paid to the City and the Trustee all expenses, including reasonable counsel fees, court costs and disbursements incurred by the City or the Trustee in connection with any such default;

(vi) each such Financing Party (and its designees, nominees, assignees or transferees) may enter, possess and use the Project at such reasonable times and manner as are necessary or desirable to effectuate the remedies and enforce its rights under its respective Financing Documents;

(vii) except for terminations of this Lease expressly authorized herein, this Lease may not be modified, amended, canceled or surrendered by agreement between the City and the Developer, without the prior written consent of each such Financing Party; and

(viii) each such Financing Party may, upon an event of default under any of its respective Financing Documents, on behalf of the Developer and without the consent of the Developer, but only having first caused the redemption of the Bonds, exercise the right to purchase the Project pursuant to **Section 11.1**, upon compliance with the provisions of that Section. The Developer agrees that the City will have no liability for taking direction from any Financing Party in connection with a conveyance of the Project back to the Developer pursuant to **Article XI**.

The City acknowledges that the Lender is a Financing Party and is entitled to the benefits of **Sections 10.4(d)(i)-(viii)**.

(e) In connection with the execution of one or more Financing Documents, upon the request of the Developer, the City agrees to execute such documents as shall be reasonably requested by the Lender or any other Financing Party and which are usual and customary in connection with the closing of the financing or refinancing pursuant to the Financing Documents, including, without limitation, subordination of the City's leasehold interest in the Project to any new fee deed of trust or any modification of the existing Fee Deed of Trust. Moreover, to facilitate the recordation of a new fee deed of trust or a modification of the existing Fee Deed of Trust, the City agrees to subordinate its leasehold interest in the Project to the Financing Documents. The Developer agrees to reimburse the City for any and all costs and expenses incurred by the City pursuant to this Section, including reasonable attorneys' fees and expenses, in complying with such request.

(f) The Developer's obligations under any mortgage or Financing Document relating to the Project entered into after the date of execution of this Lease (except for any construction loans or other Financing Documents related to the Project that the Developer and the Lender hereafter execute), the execution of which shall be expressly subject to the prior written consent of the Lender in accordance with the Fee Deed of Trust, shall be subordinate to the Developer's obligations under this Lease.

(g) Notwithstanding the foregoing, the City may agree to other provisions and documents requested by the Developer, the Lender or any Financing Party not contemplated by this **Section 10.4**, subject to approval by the Board of Aldermen.

Section 10.5. Indemnification of City and Trustee. The Developer shall indemnify and save and hold harmless the City and the Trustee and their governing body members, officers, agents and employees from and against all claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, by or on behalf of any Person, firm or corporation arising from the issuance of the Bonds and the execution of the Development Agreement, this Lease (or any instrument requested by the Developer pursuant to **Section 10.4**) or the Indenture and from the conduct or management of, or from any work or thing done in or on the Project during the Lease Term, and against and from all claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, arising during the Lease Term from (a) any condition of the Project, (b) any breach or default on the part of the Developer in the performance of any of its obligations under the Development Agreement, this Lease, the Base Lease or any related document, (c) any contract entered into in connection with the acquisition, purchase, construction, extension, installation or improvement of the Project, (d) any act of negligence of the Developer or of any of its agents, contractors, servants, employees or licensees, (e) unless the Developer has been released from liability pursuant to **Section 13.1(c)**, any act of negligence of any assignee or sublessee of the Developer, or of any agents, contractors, servants, employees or licensees of any assignee or sublessee of the Developer, (f) obtaining any applicable state and local sales and use tax exemptions for materials or goods that become part of the Project, and (g) any violation of Section 107.170 of the Revised Statutes of Missouri; provided, however, the indemnification contained in **Sections 10.5(a)-(e)** shall not extend (i) to the City to the extent that such claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, are (A) the result of work being performed at the Project by employees of the City, or (B) the result of negligence or willful misconduct by the City or its employees, agents or contractors, or (ii) to the Trustee to the extent that such claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, are the result of negligence or willful misconduct by the Trustee. Upon written notice from the City or the Trustee of any such claim or demand, the Developer shall defend them or either of them in any such action or proceeding; provided, that the City shall cooperate with the Developer and provide reasonable assistance in such defense. All costs related to the defense of the City or the Trustee pursuant to this **Section 10.5** shall be paid by the Developer. This **Section 10.5** shall survive any termination of the Development Agreement and this Lease or the satisfaction and discharge of the Indenture.

Section 10.6. Depreciation, Investment Tax Credit and Other Tax Benefits. This Lease is intended to convey to the Developer all of the benefits and burdens of ownership and to cause the Developer to be treated as the owner of the Project for federal income tax purposes. The Trustee, the Developer and the City agree to treat this Lease in a manner consistent with such treatment. The Developer alone shall be entitled to all of the federal income tax attributes of ownership of the Project, including without limitation the right to claim depreciation, amortization deductions, investment tax credits or any other tax benefits. The City agrees that any depreciation, amortization deductions, investment tax credits or any other tax benefits with respect to the Project or any part thereof shall be made available to the Developer, and the City will fully cooperate with the Developer in any effort by the Developer to avail itself of any such depreciation, amortization deductions, investment tax credits or other tax benefits.

Section 10.7. Developer to Maintain its Existence. The Developer agrees that until the Bonds are paid or payment is provided for in accordance with the terms of the Indenture, it will maintain its corporate existence in good standing, and will not dissolve or otherwise dispose of all or substantially all of its assets; provided, however, that the Developer may, without violating the agreement contained in this Section, consolidate with or merge into another Person or permit one or more other Persons to consolidate with or merge into it, or may sell or otherwise transfer to another Person all or substantially all of its assets as an entirety and thereafter dissolve or convert into a different type of legal entity, if the surviving, resulting or transferee Person expressly assumes in writing all of the obligations of the Developer contained in this Lease. This Section does not limit the Developer's transfer rights under **Section 13.1**.

Section 10.8. Security Interests. The City and the Developer hereby authorize the Trustee to file all appropriate financing and continuation statements as may be required under the Uniform Commercial Code in order to fully preserve and protect the security of the Owners and the rights of the Trustee under the Indenture. Upon the written instructions of the Owners or pledgees of 100% of the Bonds then-Outstanding, the Trustee shall file all instruments the Owners deem necessary to be filed and shall continue or cause to be continued such instruments for so long as the Bonds are Outstanding. Notwithstanding the foregoing, the Trustee shall not be obligated to file any original instrument unless such instrument has been prepared by an attorney acceptable to the Trustee (any attorneys' fees incurred in connection therewith shall be paid by the Developer), and the Trustee shall not be responsible for the accuracy or sufficiency of any such original instrument. The City and the Developer shall cooperate with the Trustee in this regard by providing such information as the Trustee may require to file or to renew such statements.

Section 10.9. Environmental Matters, Warranties, Covenants and Indemnities Regarding Environmental Matters.

(a) As used in this Section, the following terms have the following meanings:

"Environmental Laws" means any now-existing or hereafter enacted or promulgated federal, state, local, or other law, statute, ordinance, order, rule, regulation or court order pertaining to (i) environmental protection, regulation, contamination or clean-up, (ii) toxic waste, (iii) underground storage tanks, (iv) asbestos or asbestos-containing materials, or (v) the handling, treatment, storage, use or disposal of Hazardous Substances, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act and the Resource Conservation and Recovery Act, all as amended from time to time.

"Hazardous Substances" means all (i) "hazardous substances" (as defined in 42 U.S.C. §9601(14)), (ii) "chemicals" subject to regulation under Title III of the Superfund Amendments and Reauthorization Act of 1986, as amended from time to time, (iii) natural gas liquids, liquefied natural gas or synthetic gas,

(iv) any petroleum, petroleum-based products or crude oil, or (v) any other hazardous or toxic substances, wastes or materials, pollutants, contaminants or any other substances or materials which are included under or regulated by any Environmental Law.

(b) The Developer warrants and represents to the City and the Trustee that to the knowledge of the Developer there are no conditions on the Project Site which materially violate any applicable Environmental Laws and no claims or demands have been asserted or made in writing by any third parties arising out of, relating to or in connection with any Hazardous Substances on, or allegedly on, the Project Site for any injuries suffered or incurred, or allegedly suffered or incurred, by reason of the foregoing.

(c) The Developer will provide the City and the Trustee with copies of any notifications of releases of Hazardous Substances or of any environmental hazards or potential hazards in material violation of Environmental Laws which are given by or on behalf of the Developer to any federal, state or local or other agencies or authorities or which are received by the Developer from any federal, state or local or other agencies or authorities with respect to the Project Site. Such copies shall be sent to the City and the Trustee concurrently with their being mailed or delivered to the governmental agencies or authorities or within 10 days after they are received by the Developer. The Developer will provide to the City for review only, any environmental assessments ("Assessments") and reports regarding the correction or remediation of material environmental issues required by Environmental Laws to be addressed in the Assessments ("Reports") concerning the Project; upon the completion of the City's review of the Assessments and the Reports, the City shall immediately return to the Developer all originals and copies of the Assessments and Reports.

(d) The Developer warrants and represents that the Developer has provided the City and the Trustee with copies of all emergency and hazardous chemical inventory forms (hereinafter "Environmental Notices") showing Hazardous Substances on the Project Site given within two years preceding the date hereof, as of the date hereof, by the Developer to any federal, state or local governmental authority or agency as required pursuant to the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C.A. §11001 *et seq.*, or any other applicable Environmental Laws. The Developer will provide the City and the Trustee with copies of all Environmental Notices concerning Hazardous Substances on the Project Site subsequently sent to any such governmental authority or agency as required pursuant to the Emergency Planning and Community Right-to-Know Act of 1986 or any other applicable Environmental Laws. Such copies of subsequent Environmental Notices shall be sent to the City and the Trustee concurrently with their being mailed to any such governmental authority or agency.

(e) The Developer will comply with and operate and at all times use, keep and maintain the Project and every part thereof (whether or not such property constitutes a facility, as defined in 42 U.S.C. § 9601 *et seq.*) in material conformance with all applicable Environmental Laws. Without limiting the generality of the foregoing, the Developer will not use, generate, treat, store, dispose of or otherwise introduce any Hazardous Substance into or on the Project or any part thereof nor cause, suffer, allow or permit anyone else to do so except in material compliance with all applicable Environmental Laws.

(f) The Developer agrees to indemnify, protect and hold harmless the City and the Trustee and their directors, officers, shareholders, officials or employees from and against any and all claims, demands, costs, liabilities, damages or expenses, including reasonable attorneys' fees, arising from (i) any release (as defined in 42 U.S.C. § 9601 (22)), actual or alleged, of any Hazardous Substances, upon the Project Site or respecting any products or materials previously, now or hereafter located upon the Project Site, regardless of whether such release or alleged release has occurred before the date hereof or hereafter occurs and regardless of whether such release or alleged release occurs as a result of any act, omission, negligence or

misconduct of the Developer or any third party or otherwise (except, with respect to the City, to the extent such release occurs as a result of any negligence or willful misconduct of the City), (ii) any violation now existing or hereafter arising (actual or alleged) of, or any other liability under or in connection with, any applicable Environmental Laws (A) relating to or affecting the Project Site, or (B) relating to any products or materials previously, now or hereafter located upon the Project Site, regardless of whether such violation or alleged violation or other liability is asserted or has occurred or arisen before the date hereof or hereafter is asserted or occurs or arises and regardless of whether such violation or alleged violation or other liability occurs or arises, as the result of any act, omission, negligence or misconduct of the Developer or any third party or otherwise (except, with respect to the City, to the extent such violation occurs as a result of any negligence or willful misconduct of the City), (iii) any assertion by any third party of any claims or demands for any loss or injury arising out of, relating to or in connection with any Hazardous Substances on or allegedly on the Project Site, or (iv) any material breach, falsity or failure of any of the representations, warranties, covenants and agreements contained in this Section; provided, however, that the Developer's obligations under this **Section 10.9(f)** shall not apply to the extent such claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, are the result of (1) work being performed at the Project by employees, agents or contractors of the City or (2) negligence or willful misconduct by the City or its employees, agents or contracts, or the Trustee. The City shall cooperate with the Developer in the defense of any matters included within the foregoing indemnity without any obligation to expend money. This **Section 10.9(f)** shall survive any termination of this Lease.

ARTICLE XI

OPTION AND OBLIGATION TO PURCHASE THE PROJECT

Section 11.1. Option to Purchase the Project. The Developer shall have, and is hereby granted, the option to purchase all or any portion of the City's interest in the Project, at any time, upon payment in full or redemption of the Outstanding Bonds to be redeemed or provision for their payment or redemption having been made pursuant to **Article XIII** of the Indenture. To exercise such option, the Developer shall give written notice to the City and to the Trustee, and shall specify therein the date of closing of such purchase, which date shall be not less than 15 nor more than 90 days from the date such notice is mailed, and, in case of a redemption of the Bonds in accordance with the provisions of the Indenture, the Developer shall make arrangements satisfactory to the Trustee for the giving of the required notice of redemption. Notwithstanding the foregoing, if the City or the Trustee provides notice of its intent to exercise its remedies hereunder upon an Event of Default (a "Remedies Notice"), the Developer shall be deemed to have exercised its repurchase option under this Section on the 29th day following the issuance of the Remedies Notice without any further action by the Developer; provided said Remedies Notice has not been rescinded by such date. The Developer may rescind such exercise by providing written notice to the City and the Trustee on or before the 29th day and by taking such action as may be required to cure the default that led to the giving of the Remedies Notice. The purchase price payable by the Developer if it exercises the option granted in this Section shall be the sum of the following:

- (a) an amount of money which, when added to the amount then on deposit in the Bond Fund, will be sufficient to redeem all or a portion of the then-Outstanding Bonds on the earliest redemption date next succeeding the closing date, including, without limitation, principal and interest to accrue to said redemption date and redemption expense; plus

(b) an amount of money equal to the Trustee's and the Paying Agent's agreed to and reasonable fees, charges and expenses under the Indenture accrued and to accrue until such redemption of the Bonds; plus

(c) an amount of money equal to the City's reasonable charges and expenses incurred in connection with the Developer exercising its option to purchase all or a portion of the Project; plus

(d) an amount of money equal to all payments due and payable pursuant to the Development Agreement through the end of the calendar year in which the date of purchase occurs; plus

(e) the sum of \$10.00.

Section 11.2. Conveyance of the Project. At the closing of the purchase of the Project pursuant to this Article, the City will upon receipt of the purchase price deliver to the Developer the following:

(a) a release from the Trustee of the Project from the lien and/or security interest of the Indenture and this Lease and appropriate termination of financing statements as required under the Uniform Commercial Code; and

(b) such other documents as may be reasonably necessary to effectuate the conveyance of the Project, including without limitation a termination of the Base Lease and this Lease.

Section 11.3. Relative Position of Option and Indenture. The option to purchase the Project granted to the Developer in this Article shall be and remain prior and superior to the Indenture and may be exercised whether or not the Developer is in default under this Lease; provided that such option will not result in nonfulfillment of any condition to the exercise of any such option (including the payment of all amounts specified in **Section 11.1**) and further provided that the option herein granted shall terminate upon the termination of this Lease.

Section 11.4. Obligation to Purchase the Project. The Developer hereby agrees to purchase, and the City hereby agrees to sell, the Project upon the occurrence of (a) the expiration of the Lease Term following full payment of the Bonds or provision for payment thereof having been made in accordance with the provisions of the Indenture, and (b) the final payment due under the Development Agreement. The amount of the purchase price under this Section shall be the sum of the items set forth in **Sections 11.1(a)-(e)**. The purchase price shall be paid by the Developer within 90 days of the expiration of the Lease Term.

Section 11.5. Right to Set-Off. At its option, to be exercised at least five days before the date of closing such purchase, the Developer may deliver to the Trustee for cancellation Bonds not previously paid, and the Developer shall receive a credit against the purchase price payable by the Developer in an amount equal to 100% of the principal amount of the Bonds so delivered for cancellation, plus the accrued interest thereon. The Developer may set-off any payment obligation under **Section 11.1(a)** by tendering a corresponding amount of the Bonds to the Trustee for cancellation.

ARTICLE XII

DEFAULTS AND REMEDIES

Section 12.1. Events of Default. If any one or more of the following events occurs and is continuing, it is hereby defined as and declared to be and to constitute an “Event of Default” under this Lease:

(a) default in the due and punctual payment of Basic Rent or Additional Rent within 10 days after written notice thereof from the City to the Developer and the Lender; or

(b) default in the due observance or performance of any other covenant, agreement, obligation or provision of this Lease on the Developer’s part to be observed or performed, and such default continues for 60 days after the City or the Trustee has given the Developer and the Lender written notice specifying such default (or such longer period as is reasonably required to cure such default, provided that (i) the Developer or the Lender, as applicable, has commenced such cure within said 60-day period, and (ii) the Developer or the Lender, as applicable, diligently prosecutes such cure to completion); or

(c) the Developer: (i) admits in writing its inability to pay its debts as they become due; or (ii) files a petition in bankruptcy or for reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the Bankruptcy Code as now or in the future amended or any other similar present or future federal or state statute or regulation, or files a pleading asking for such relief; or (iii) makes an assignment for the benefit of creditors; or (iv) consents to the appointment of a trustee, receiver or liquidator for all or a substantial portion of its property or fails to have the appointment of any trustee, receiver or liquidator made without the Developer’s consent or acquiescence, vacated or set aside; or (v) is finally adjudicated as bankrupt or insolvent under any federal or state law; or (vi) is subject to any proceeding, or suffers the entry of a final and non-appealable court order, under any federal or state law appointing a trustee, receiver or liquidator for all or a substantial portion of its property or ordering the winding-up or liquidation of its affairs, or approving a petition filed against it under the Bankruptcy Code, as now or in the future amended, which order or proceeding, if not consented to by it, is not dismissed, vacated, denied, set aside or stayed within 90 days after the day of entry or commencement; or (vii) suffers a writ or warrant of attachment or any similar process to be issued by any court against all or any substantial portion of its property, and such writ or warrant of attachment or any similar process is not contested, stayed or released within 60 days after the final entry or levy or after any contest is finally adjudicated or any stay is vacated or set aside; or

(d) an event of default under the Development Agreement, as described in **Section 5.1** thereof.

The Trustee shall give the Lender notice of the occurrence of any Event of Default of which the Trustee has notice pursuant to the terms of the Indenture. The Lender may, at its election, but shall have no obligation to, cure such Event of Default.

Section 12.2. Remedies on Default. If any Event of Default referred to in **Section 12.1** has occurred and continues beyond the period provided to cure, then the City may at the City’s election (subject, however, to any restrictions against acceleration of the maturity of the Bonds or termination of this Lease

in the Indenture), then or at any time thereafter, and while such default continues, take any one or more of the following actions, in addition to the remedies provided in **Section 12.5**:

(a) cause all amounts payable with respect to the Bonds for the remainder of the term of this Lease to become due and payable, as provided in the Indenture; or

(b) give the Developer written notice of intention to terminate this Lease on a date specified therein, which date shall not be earlier than 60 days after such notice is given, and if all defaults have not then been cured, on the date so specified, the Owners shall tender or be deemed to have tendered the Outstanding principal amount of the Bonds for cancellation with instruction that such tender is in lieu of payment in accordance with **Sections 11.1** and **11.5**, the Developer's or the Lender's rights to possession of the Project shall cease and this Lease shall thereupon be terminated, and the City may re-enter and take possession of the Project or the City may convey the Project to the Developer and bring an action against the Developer for the purchase price of the Project under **Section 11.1**; provided, however, if the Developer has paid all obligations due and owing under the Indenture, this Lease, the Base Lease and the Development Agreement, the City shall convey the Project in accordance with **Section 11.2**. The Developer's rights to cause the conveyance of the Project in accordance with **Section 11.2** shall survive the expiration or termination of this Lease.

If the City defaults on any of its obligations under this Lease, the Developer's sole remedy for such default shall be to sue for specific performance of this Lease.

Section 12.3. Survival of Obligations. The Developer covenants and agrees with the City and the Owners that its obligations under this Lease shall survive the cancellation and termination of this Lease, for any cause, and that the Developer shall continue to pay the Basic Rent and Additional Rent (to the extent the Bonds remain Outstanding) and perform all other obligations provided for in this Lease, all at the time or times provided in this Lease; provided, however, that upon the payment of all Basic Rent and Additional Rent required under **Article V**, and upon the satisfaction and discharge of the Indenture under **Section 1301** thereof, and upon the Developer's exercise of the purchase option contained in **Article XI**, the Developer's obligations under this Lease shall thereupon cease and terminate in full, except that the obligations contained in **Section 10.5** with respect to indemnification of the City and the Trustee shall not so terminate.

Section 12.4. Performance of the Developer's Obligations by the City. Upon an Event of Default, the City, or the Trustee in the City's name, may (but shall not be obligated so to do) upon the continuance of such failure on the Developer's part for 60 days after written notice of such failure is given to the Developer by the City or the Trustee, and without waiving or releasing the Developer from any obligation hereunder, as an additional but not exclusive remedy, make any such payment or perform any such obligation, and all reasonable sums so paid by the City or the Trustee and all necessary incidental reasonable costs and expenses incurred by the City or the Trustee (including, without limitation, attorneys' fees and expenses) in performing such obligations shall be deemed Additional Rent and shall be paid to the City or the Trustee on demand, and if not so paid by the Developer, the City or the Trustee shall have the same rights and remedies provided for in **Section 12.2** in the case of default by the Developer in the payment of Basic Rent.

Section 12.5. Rights and Remedies Cumulative. The rights and remedies reserved by the City and the Developer hereunder are in addition to those otherwise provided by law and shall be construed as cumulative and continuing rights. No one of them shall be exhausted by the exercise thereof on one or more occasions. The City and the Developer shall each be entitled to specific performance and injunctive

or other equitable relief for any breach or threatened breach of any of the provisions of this Lease, notwithstanding the availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity. Notwithstanding anything in this **Section 12.5** or elsewhere in this Lease to the contrary, however, the Developer's option to purchase the property as provided in **Article XI** above shall not be terminated upon an Event of Default unless and until this Lease is terminated to the extent permitted pursuant to **Section 12.2(b)**. The parties agree that no provision of this Lease shall be construed to allow the City to require the Developer to acquire, construct or install the Project.

Section 12.6. Waiver of Breach. No waiver of any breach of any covenant or agreement herein contained shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by the Developer of any covenant, agreement or undertaking by the Developer, the City may nevertheless accept from the Developer any payment or payments hereunder without in any way waiving the City's right to exercise any of its rights and remedies provided for herein with respect to any such default or defaults of the Developer which were in existence at the time such payment or payments were accepted by the City.

Section 12.7. Trustee's Exercise of the City's Remedies. Whenever any Event of Default has occurred and is continuing, the Trustee may, but except as otherwise provided in the Indenture shall not be obliged to, exercise any or all of the rights of the City under this Article, upon notice as required of the City unless the City has already given the required notice. In addition, the Trustee shall have available to it all of the remedies prescribed by the Indenture.

ARTICLE XIII

ASSIGNMENT AND SUBLEASE

Section 13.1. Assignment; Sublease.

(a) The Developer may assign, transfer, encumber or dispose of this Lease or any interest herein or part hereof for any lawful purpose under the Act. Except as otherwise provided in this Section, the Developer must obtain the City's prior written consent before any such disposition, unless such disposition is to (i) any party related to the Developer by one of the relationships described in Section 267(b) of the Internal Revenue Code of 1986, as amended, (ii) any party controlled by or under common control with the Developer, (iii) any affiliated entity (including any joint venture) in which the Developer has an ownership interest, directly or indirectly, or (iv) the Lender. Notwithstanding the foregoing, the Lender may sell at foreclosure sale or by deed in lieu of foreclosure, the interest of the Developer in this Lease.

(b) With respect to any assignment, the Developer or the Lender, as applicable, shall comply with the following conditions:

- (i) the Developer shall notify the City of the assignment in writing;
- (ii) such assignment shall be duly executed and acknowledged by the assignor and in proper form for recording;
- (iii) such assignment shall include the entire then unexpired term of this Lease; and
- (iv) a duplicate original of such assignment shall be delivered to the City and the Trustee within 10 days after the execution thereof, together with an assumption agreement, duly

executed and acknowledged by the assignee and in proper form for recording, by which the assignee shall assume all of the terms, covenants and conditions of this Lease on the part of the Developer to be performed and observed.

(c) Any assignee of all the rights of the Developer shall agree to be bound by the terms of this Lease, the Base Lease, the Development Agreement and any other documents related to the issuance of the Bonds. Upon such assignment of all the rights of the Developer and agreement by the assignee to be bound by the terms of this Lease, the Base Lease, the Development Agreement and any other documents related to the Bonds, the Developer shall be released from and have no further obligations under this Lease, the Base Lease, the Development Agreement or any other document related to the issuance of the Bonds.

(d) Notwithstanding the foregoing, the Developer may, in its ordinary course of business, sublease all or portions of the Project to tenants without the prior consent of the City so long as the Developer remains obligated to perform all of its obligations under this Lease, the Base Lease and the Development Agreement.

Section 13.2. Assignment of Revenues by City. The City shall assign and pledge any rents, revenues and receipts receivable under this Lease, to the Trustee pursuant to the Indenture as security for payment of the principal of and interest and premium, if any, on the Bonds, and the Developer hereby consents to such pledge and assignment.

Section 13.3. Prohibition Against Leasehold Mortgage of Project. The City shall not mortgage its leasehold interest in the Project but may assign its interest in and pledge any moneys receivable under this Lease to the Trustee pursuant to the Indenture as security for payment of the principal of and interest on the Bonds.

Section 13.4. Restrictions on Sale or Encumbrance of Project by City. During the Lease Term, the City agrees that, except to secure the Bonds to be issued pursuant to the Indenture and except to enforce its rights under **Section 12.2(b)**, it will not sell, assign, encumber, mortgage, transfer or convey the Project or any interest therein.

ARTICLE XIV

AMENDMENTS, CHANGES AND MODIFICATIONS

Section 14.1. Amendments, Changes and Modifications. Except as otherwise provided in this Lease or in the Indenture, subsequent to the issuance of the Bonds and before the payment in full of the Bonds (or provision for the payment thereof having been made in accordance with the provisions of the Indenture), this Lease may not be effectively amended, changed, modified, altered or terminated without the prior written consent of the Trustee, given in accordance with the provisions of the Indenture, which consent, however, shall not be unreasonably withheld, and the written consent of all of the Owners, the Lender and any other Financing Party.

ARTICLE XV

MISCELLANEOUS PROVISIONS

Section 15.1. Notices. All notices, certificates or other communications required or desired to be given hereunder shall be in writing and shall be deemed duly given when (a) mailed by registered or certified mail, postage prepaid, or (b) sent by overnight delivery or other delivery service which requires written acknowledgment of receipt by the addressee, addressed as follows:

(i) To the City:

City of Osage Beach
1000 City Parkway
Osage Beach, Missouri 65065
Attn: City Administrator

with copies to:

City of Osage Beach
1000 City Parkway
Osage Beach, Missouri 65065
Attn: City Attorney

and

Gilmore & Bell, P.C.
One Metropolitan Square
211 N. Broadway, Suite 2000
St. Louis, Missouri 63102
Attn: Mark A. Spykerman, Esq.

(ii) To the Trustee:

UMB Bank, N.A.
2 S. Broadway, Suite 600
St. Louis, Missouri 63102
Attn: Corporate Trust Department

(iii) To the Developer:

The Preserve at Sycamore Creek, LLC
P.O. Box 6331
Fishers, Indiana 46038
Attn: Jeffrey J. Tegethoff

with a copy to:

Husch Blackwell LLP
190 Carondelet Plaza, Suite 600
Clayton, Missouri 63105
Attn: David Richardson, Esq.

(iv) To the Lender:

[*Lender*]

Attn: _____

All notices given by certified or registered mail as aforesaid shall be deemed fully given as of the date they are so mailed, provided, however, that notice to the Trustee shall be effective only upon receipt. A duplicate copy of each notice, certificate or other communication given hereunder by either the City or the Developer to the other shall also be given to the Trustee and the Lender. The City, the Developer, the Trustee and the Lender may from time to time designate, by notice given hereunder to the others of such parties, such other address to which subsequent notices, certificates or other communications shall be sent.

Section 15.2. City Shall Not Unreasonably Withhold Consents and Approvals. Wherever in this Lease it is provided that the City shall, may or must give its approval or consent, or execute supplemental agreements or schedules, the City shall not unreasonably, arbitrarily or unnecessarily withhold or refuse to give such approvals or consents or refuse to execute such supplemental agreements or schedules; provided, however, that nothing in this Lease shall be interpreted to affect the City's rights to approve or deny any additional project or matter unrelated to the Project subject to zoning, building permit or other regulatory approvals by the City.

Section 15.3. Net Lease. The parties hereto agree (a) that this Lease shall be deemed and construed to be a net lease, (b) that the payments of Basic Rent are designed to provide the City and the Trustee funds adequate in amount to pay all principal of and interest accruing on the Bonds as the same becomes due and payable, (c) that to the extent that the payments of Basic Rent are not sufficient to provide the City and the Trustee with funds sufficient for the purposes aforesaid, the Developer shall be obligated to pay, and it does hereby covenant and agree to pay, upon demand therefor, as Additional Rent, such further sums of money, in cash, as may from time to time be required for such purposes, and (d) that if after the principal of and interest on the Bonds and all costs incident to the payment of the Bonds (including the fees and expenses of the City and the Trustee) have been paid in full the Trustee or the City holds unexpended funds received in accordance with the terms hereof such unexpended funds shall, after payment therefrom of all sums then due and owing by the Developer under the terms of this Lease, and except as otherwise provided in this Lease and the Indenture, become the absolute property of and be paid over forthwith to the Developer.

Section 15.4. Limitation on Liability of City. No provision, covenant or agreement contained in this Lease, the Indenture or the Bonds, or any obligation herein or therein imposed upon the City, or the breach thereof, shall constitute or give rise to or impose upon the City a pecuniary liability or a charge upon the general credit or taxing powers of the City or the State of Missouri.

Section 15.5. Governing Law. This Lease shall be construed in accordance with and governed by the laws of the State of Missouri.

Section 15.6. Binding Effect; Third-Party Beneficiary. This Lease shall be binding upon and shall inure to the benefit of the City and the Developer and their respective successors and assigns. The Lender shall be a third-party beneficiary of any provisions contained herein granting rights to the Lender.

Section 15.7. Severability. If for any reason any provision of this Lease shall be determined to be invalid or unenforceable, the validity and enforceability of the other provisions hereof shall not be affected thereby.

Section 15.8. Execution in Counterparts. This Lease may be executed in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

Section 15.9. Electronic Transaction. The parties agree that the transaction described herein may be conducted and related documents may be sent, received or stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 15.10. City Consent. Pursuant to the Ordinance, the Mayor and the City Administrator are authorized to execute all documents on behalf of the City (including documents pertaining to the transfer of property or the financing or refinancing of the Project by the Developer) as may be required to carry out and comply with the intent of the Ordinance, the Indenture and this Lease. The Mayor and the City Administrator are also authorized, unless expressly prohibited herein, to grant on behalf of the City such consents, estoppels and waivers relating to the Bonds, the Indenture, the Base Lease, this Lease or the Development Agreement as may be requested during the term hereof; provided, such consents, estoppels and/or waivers shall not increase the principal amount of the Bonds, increase the term of this Lease or the economic incentives provided herein, waive an Event of Default or materially change the nature of the transaction unless otherwise approved by the Board of Aldermen.

Section 15.11. Subordination of Lease. By its execution hereof, each of the Developer and the City hereby agrees that this Lease shall be, is and shall continue to be, subordinate and inferior to the Fee Deed of Trust and the other Loan Documents until all [*Obligations*] (as such term is defined in the Fee Deed of Trust) have been indefeasibly paid and performed in full, including but not limited to, all future advances and future obligations secured by the Fee Deed of Trust and the other Loan Documents. Such subordination shall be self-operative and shall be irrespective of the time, manner, order of recording or perfection or any other priority that ordinarily would result under the Uniform Commercial Code as enacted in each and every applicable jurisdiction, and as amended from time to time, and other applicable law for the order of granting or perfecting any security interests referred to herein.

Section 15.12. Anti-Discrimination Against Israel Act. Pursuant to Section 34.600 of the Revised Statutes of Missouri, the Developer certifies it is not currently engaged in and shall not, for the duration of this Lease, engage in a boycott of goods or services from (a) the State of Israel, (b) companies doing business in or with the State of Israel or authorized by, licensed by or organized under the laws of the State of Israel or (c) persons or entities doing business in the State of Israel.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed in their respective names by their duly authorized signatories, all as of the date first above written.

CITY OF OSAGE BEACH, MISSOURI

(SEAL)

By: _____
Michael Harmison, Mayor

Attest:

Tara Berreth, City Clerk

**THE PRESERVE AT SYCAMORE CREEK,
LLC,**
a Missouri limited liability company

By: _____
Jeffrey J. Tegethoff, Manager

EXHIBIT A

PROJECT SITE

The land situated in the County of Camden, State of Missouri, and described as follows:

A tract of land situated in and being a part of the SE 1/4 of Section 9 and the NE 1/4 of Section 16, T 39 N, R 16 W and a part of the tracts of land described by deeds recorded in Book 407, Page 05, Book 276, Page 214, Book 526, Page 957, Book 682, Page 088, Book 671, Page 593 and Book 758, Page 283 in the Records of Camden County, Missouri and being more particularly described as follows:

Commencing at a U post set in concrete marking the SW Corner of the SE 1/4 of the SE 1/4 of Section 9, T 39 N, R 16 W; thence S 01° 20' 58" W, 63.34 feet to a 1 inch iron pipe marking the Northeasterly Corner of a tract of land described by deed recorded in Book 543, Page 485 in the Records of Camden County, Missouri for the point of beginning; thence N 88° 44' 11" W along the Northerly Line of said tract of land described by deed recorded in Book 543, Page 485, 262.27 feet to a 3/8 inch iron pin; thence leaving said Northerly Line along the Easterly Line of a tract of land described by deed recorded in Book 395, Page 023 in said Records along the following courses: thence N 04° 06' 08" W, 249.56 feet to a 3/8 inch iron pin in concrete; thence N 35° 00' 45" E, 242.61 feet to a pipe in concrete; thence N 49° 39' 55" E, 265.77 feet to a 3/8 inch iron pin; thence N 52° 44' 58" E, 899.46 feet to a 3/8 inch iron pin in concrete; thence N 46° 06' 25" E, 183.07 feet to a 3/8 inch iron pin in concrete; thence leaving said Easterly Line S 85° 35' 26" E along the Northerly Line of a tract of land described by deed recorded in Book 407, Page 005 in said Records 328.70 feet to a set 1/2 inch rebar; thence continuing along said Northerly Line S 43° 35' 26" E, 57.98 feet to a 1/2 inch rebar set on the Westerly Right of Way Line of Nichols Road; thence leaving said Northerly Line along said Right of Way Line along the following courses: thence S 02° 31' 04" E, 93.02 feet; thence along a curve to the right 136.83 feet, the radius being 273.09 feet and the long chord being S 11° 50' 09" W, 135.40 feet; thence S 26° 11' 21" W, 113.14 feet; thence along a curve to the right 157.65 feet; the radius being 339.62 feet and the long chord being S 39° 29' 15" W, 156.24 feet; thence S 52° 47' 09" W, 304.35 feet; thence along a curve to the left 84.11 feet, the radius being 378.91 feet and the long chord being S 46° 25' 36" W, 83.94 feet; thence S 40° 04' 03" W, 236.65 feet to a set 1/2 inch rebar; thence leaving said Right of Way Line S 80° 15' 01" W along the Northerly Line of a tract of land described by deed recorded in Book 407, Page 005 in said Records 57.57 feet to a set 1/2 inch rebar; thence leaving said Northerly Line S 10° 08' 08" E along the Westerly Line of said tract of land described by deed recorded in Book 407, Page 005 in said Records 48.35 feet to a 1/2 inch rebar set on said Right of Way Line; thence along said Right of Way Line along the following courses: thence S 40° 04' 03" W, 19.95 feet; thence along a curve to the right 143.79 feet, the radius being 538.87 feet and the long chord being S 47° 42' 42" W, 143.36 feet; thence S 55° 21' 21" W, 235.32 feet; thence along a curve to the left 73.05 feet, the radius being 459.65 feet and the long chord being S 50° 48' 12" W, 72.97 feet; thence S 46° 15' 03" W, 53.03 feet; thence along a curve to the left 235.63 feet, the radius being 851.54 feet and the long chord being S 38° 19' 25" W, 234.88 feet to a 1/2 inch rebar set on the Right of Way Line of US Route 54; thence leaving said Right of Way Line of Nichols Road S 70° 05' 10" W along said Right of Way Line of US Route 54 54.66 feet to a 1/2 inch rebar set on the Easterly Line of said tract of land described by deed recorded in Book 543, Page 485 in said Records; thence leaving said Right of Way Line N 00° 56' 45" E along said Easterly Line 229.60 feet to the point of beginning.

EXHIBIT B

FORM OF REQUISITION CERTIFICATE

Requisition No. _____
Date: _____

REQUISITION CERTIFICATE

TO: UMB BANK, N.A., AS TRUSTEE UNDER A TRUST INDENTURE DATED AS OF [*DATE*], 2022, BETWEEN THE CITY OF OSAGE BEACH, MISSOURI, AND THE TRUSTEE, AND THE LEASE AGREEMENT DATED AS OF [*DATE*], 2022, BETWEEN THE CITY OF OSAGE BEACH, MISSOURI, AND THE PRESERVE AT SYCAMORE CREEK, LLC

The undersigned Authorized Developer Representative hereby states and certifies that:

1. A total of \$ _____ is requested to pay for Project Costs associated with the acquisition of the Project Site and the construction of the Project Improvements. The total amount of this requisition and all prior requisitions is as follows:

<u>Date of Project Costs</u>	<u>Amount Submitted in this Requisition</u>	<u>Requisitions Submitted to Date (Including this Requisition)</u>

2. Said Project Costs shall be paid in whole from Bond proceeds in such amounts, to such payees and for such purposes as set forth on **Schedule 1**.

3. Each of the items for which payment is requested are or were desirable and appropriate in connection with the purchase and construction of the Project, have been properly incurred and are a proper charge against the Project Fund, and have been paid by the Developer or are justly due to the Persons whose names and addresses are stated on **Schedule 1**, and have not been the basis of any previous requisition from the Project Fund.

4. As of this date, except for the amounts referred to above, to the best of my knowledge there are no outstanding disputed statements for which payment is requested for labor, wages, materials, supplies or services in connection with the purchase and construction of the Project which, if unpaid, might become the basis of a vendors', mechanics', laborers' or materialmen's statutory or similar lien upon the Project or any part thereof.

5. Capitalized words and terms used in this Requisition Certificate have the meanings given to such words and terms in **Section 101** of the Trust Indenture.

THE PRESERVE AT SYCAMORE CREEK, LLC

By: _____
Authorized Developer Representative

Approved this _____ day of _____, 20____.

CITY OF OSAGE BEACH, MISSOURI

By: _____
Authorized City Representative

SCHEDULE 1 TO REQUISITION CERTIFICATE

PROJECT COSTS

<u>Payee and Address</u>	<u>Description</u>	<u>Amount</u>
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EXHIBIT D

CITY OF OSAGE BEACH, MISSOURI,

AND

**UMB BANK, N.A.,
as Trustee**

TRUST INDENTURE

Dated as of [*Date*], 2022

Relating to:

**\$63,000,000
(Aggregate Maximum Principal Amount)
City of Osage Beach, Missouri
Taxable Industrial Revenue Bonds
(The Preserve at Sycamore Creek Project)
Series 2022**

TRUST INDENTURE

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TRUST INDENTURE

THIS TRUST INDENTURE, dated as of [*Date*], 2022 (this “Indenture”), between the **CITY OF OSAGE BEACH, MISSOURI**, a fourth-class city organized and existing under the laws of the State of Missouri (the “City”), and **UMB BANK, N.A.**, a national banking association duly organized and existing and authorized to accept and execute trusts of the character herein set forth under the laws of the United States of America, with a corporate trust office located in St. Louis, Missouri, as Trustee (the “Trustee”);

RECITALS:

1. The City is authorized and empowered pursuant to the provisions of Article VI, Section 27(b) of the Missouri Constitution and Sections 100.010 through 100.200 of the Revised Statutes of Missouri (collectively, the “Act”) to purchase, construct, extend and improve certain projects (as defined in the Act), to issue industrial development revenue bonds for the purpose of providing funds to pay the costs of such projects and to lease or otherwise dispose of such projects to private persons or corporations for manufacturing, commercial, office industry, warehousing and industrial development purposes upon such terms and conditions as the City deems advisable. Under Attorney General Opinion 180-81, the Missouri Attorney General determined that the construction and rental of multi-family apartments for profit is a commercial enterprise.

2. Pursuant to the Act, the Board of Aldermen passed Ordinance No. _____ on October 6, 2022 (the “Ordinance”), authorizing the City to issue its Taxable Industrial Revenue Bonds (The Preserve at Sycamore Creek Project), Series 2022, in the maximum principal amount of \$63,000,000 (the “Bonds”), for the purpose of (a) acquiring a leasehold interest in approximately 22.4 acres of real property located at 4470 Nichols Road, 1170 Nichols Road, 1167 Nichols Road and 1157 Nichols Road in the City (collectively and as legally described on **Exhibit A**, the “Project Site”) and (b) constructing thereon a multi-building, multi-family housing development comprised of approximately 268 rental units, a clubhouse and amenity space (the “Project Improvements”).

3. Pursuant to the Act and the Ordinance, the City is authorized to (a) enter into this Indenture with the Trustee for the purpose of issuing and securing the Bonds, as herein provided, (b) enter into a Base Lease of even date herewith (the “Base Lease”) with The Preserve at Sycamore Creek, LLC (the “Developer”) under which the City will acquire a leasehold interest in the Project Site and (c) enter into a Lease Agreement of even date herewith (the “Lease”) with the Developer under which the City will, or will cause the Developer to, construct the Project Improvements and will lease the Project Improvements, as they may at any time exist, together with the City’s leasehold interest in the Project Site (collectively, the “Project”) to the Developer in consideration of rental payments by the Developer that will be sufficient to pay the principal of and interest on the Bonds.

4. All things necessary to make the Bonds, when authenticated by the Trustee and issued as provided in this Indenture, the valid and legally binding obligations of the City, and to constitute this Indenture a valid and legally binding pledge and assignment of the Trust Estate (as defined herein) herein made for the security of the payment of the principal of and interest on the Bonds, have been done and performed, and the execution and delivery of this Indenture and the execution and issuance of the Bonds, subject to the terms hereof, have in all respects been duly authorized.

NOW, THEREFORE, THIS TRUST INDENTURE WITNESSETH:

GRANTING CLAUSES

That the City, in consideration of the premises, the acceptance by the Trustee of the trusts hereby created, the purchase and acceptance of the Bonds by the Owners (as defined herein) thereof, and of other good and valuable consideration, the receipt of which is hereby acknowledged, and in order to secure the payment of the principal of and interest on all of the Bonds issued and Outstanding (as defined herein) under this Indenture from time to time according to their tenor and effect, and to secure the performance and observance by the City of all the covenants, agreements and conditions herein and in the Bonds contained, does hereby pledge and assign to the Trustee and its successors and assigns forever, the property described in paragraphs (a), (b) and (c) below (said property being herein referred to as the "Trust Estate"), to-wit:

(a) All right, title and interest of the City in and to the Project together with the tenements, hereditaments, appurtenances, rights, easements, privileges and immunities thereunto belonging or appertaining and, to the extent permissible, all permits, certificates, approvals and authorizations;

(b) All right, title and interest of the City in, to and under the Lease (excluding the Unassigned Rights, as defined herein), and all rents, revenues and receipts derived by the City from the Project including, without limitation, all rentals and other amounts to be received by the City and paid by the Developer under and pursuant to and subject to the provisions of the Lease; and

(c) All moneys and securities from time to time held by or now or hereafter required to be paid to the Trustee under the terms of this Indenture, and any and all other real or personal property of every kind and nature from time to time hereafter, by delivery or by writing of any kind, pledged, assigned or transferred as and for additional security hereunder by the City or by anyone in its behalf, or with its written consent, to the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

TO HAVE AND TO HOLD, all and singular, the Trust Estate with all rights and privileges hereby pledged and assigned or agreed or intended so to be, to the Trustee and its successors and assigns forever;

IN TRUST NEVERTHELESS, upon the terms and subject to the conditions herein set forth, for the equal and proportionate benefit, protection and security of all Owners from time to time of the Bonds Outstanding under this Indenture, without preference, priority or distinction as to lien or otherwise of any of the Bonds over any other of the Bonds except as expressly provided in or permitted by this Indenture;

PROVIDED, HOWEVER, that if the City pays, or causes to be paid, the principal of and interest on the Bonds, at the time and in the manner mentioned in the Bonds, according to the true intent and meaning thereof, or provides for the payment thereof (as provided in **Article XIII**), and pays or causes to be paid to the Trustee all other sums of money due or to become due to it in accordance with the terms and provisions hereof, then upon such final payments this Indenture and the rights hereby granted shall cease, determine and be void; otherwise, this Indenture shall be and remain in full force and effect.

THIS INDENTURE FURTHER WITNESSETH, and it is hereby expressly declared, covenanted and agreed by and between the parties hereto, that all Bonds issued and secured hereunder are to be issued, authenticated and delivered and that all the Trust Estate is to be held and applied under, upon

and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and the City does hereby agree and covenant with the Trustee and with the respective Owners from time to time, as follows:

ARTICLE I

DEFINITIONS

Section 101. Definitions of Words and Terms. In addition to any words and terms defined in the Lease (which definitions are hereby incorporated by reference) and any words and terms defined elsewhere in this Indenture, the following words and terms as used in this Indenture shall have the following meanings, unless some other meaning is plainly intended:

“Act” means, collectively, Article VI, Section 27(b) of the Missouri Constitution and Sections 100.010 through 100.200 of the Revised Statutes of Missouri.

“Additional Rent” means the additional rental described in **Section 5.2** of the Lease.

“Approved Investor” means (a) the Developer, (b) an affiliate of the Developer, (c) the Lender, (d) a “qualified institutional buyer” under Rule 144A promulgated under the Securities Act of 1933, or (e) any general business corporation or enterprise with total assets in excess of \$100,000,000.

“Authorized City Representative” means the Mayor, the City Administrator or such other Person at the time designated to act on behalf of the City as evidenced by written certificate furnished to the Developer and the Trustee containing the specimen signature of such Person and signed on behalf of the City by its Mayor or City Administrator. Such certificate may designate an alternate or alternates, each of whom may perform all duties of the Authorized City Representative.

“Authorized Developer Representative” means the Person at the time designated to act on behalf of the Developer as evidenced by written certificate furnished to the City and the Trustee containing the specimen signature of such Person and signed on behalf of the Developer by an authorized officer of the Developer. Such certificate may designate an alternate or alternates, each of whom may perform all duties of the Authorized Developer Representative.

“Base Lease” means the Base Lease dated as of [*Date*], 2022 between the City and the Developer, as may be amended from time to time.

“Basic Rent” means the rental described in **Section 5.1** of the Lease.

“Bond” or **“Bonds”** means the Taxable Industrial Revenue Bonds (The Preserve at Sycamore Creek Project), Series 2022, in the maximum aggregate principal amount of \$63,000,000, issued, authenticated and delivered under and pursuant to this Indenture.

“Bond Fund” means the “City of Osage Beach, Missouri, Series 2022 Bond Fund – The Preserve at Sycamore Creek” created in **Section 501**.

“Bond Purchase Agreement” means the agreement by that name with respect to the Bonds by and between the City and the Purchaser.

“Business Day” means any day other than a Saturday or Sunday or legal holiday or a day on which banks located in the city in which the principal corporate trust office or the principal payment office of the Trustee are required or authorized by law to remain closed.

“City” means the City of Osage Beach, Missouri, a fourth-class city organized and existing under the laws of the State.

“Closing Date” means the date identified in the Bond Purchase Agreement for the initial issuance and delivery of the Bonds.

“Closing Price” means the amount specified in writing by the Purchaser and agreed to by the City as the amount required to pay for the initial issuance of the Bonds on the Closing Date, which amount shall be equal to (a) any Project Costs spent by the Developer from its own funds before the Closing Date, and, at the Developer’s option, the costs of issuance of the Bonds if such costs are not paid for from Bond proceeds, or (b) the aggregate principal amount of the Bonds, if all of the proceeds of the Bonds are being transferred to the Trustee on the Closing Date.

“Completion Date” means the date of execution of the certificate required by **Section 4.5** of the Lease and **Section 504** hereof, which shall be deemed executed and filed on the last day of the 26th month following the commencement of the Project Improvements if not actually executed and filed by such date, except as otherwise provided in **Section 4.5** of the Lease, including an extension to the last day of the 32nd month following the commencement of the Project Improvements in the event of a Permitted Excuse.

“Cumulative Outstanding Principal Amount” means the aggregate principal amount of all Bonds Outstanding under the provisions of this Indenture, not to exceed \$63,000,000, as reflected in the records maintained by the Trustee as provided in the Bonds and this Indenture.

“Developer” means The Preserve at Sycamore Creek, LLC and its successors or assigns.

“Development Agreement” means the Development Agreement dated as of [*Date*], 2022 among the City, the [*Redevelopment Corporation*] and the Developer.

“Event of Default” means, with respect to this Indenture, any Event of Default as defined in **Section 901** hereof and, with respect to the Lease, any Event of Default as described in **Section 12.1** of the Lease.

“Fee Deed of Trust” means the Deed of Trust executed by the Developer for the benefit of the Lender recorded against the Project Site prior to the City’s acquisition of the Project Site.

“Financing Document” means any loan agreement, credit agreement, mortgage, participation agreement, lease agreement, sublease, ground lease, hedging agreement or other document related to the Project and executed by or on behalf of a Financing Party, including, without limitation, any loan agreement, credit agreement, mortgage or other document executed in connection with the loans made to the Developer by the Lender.

“Financing Party” means any Person providing debt, lease or equity financing (including equity contributions or commitments) or hedging arrangements, or any renewal, extension or refinancing of any such financing or hedging arrangements, or any guarantee, insurance, letters of credit or credit support for or in connection with such financing or hedging arrangements, in connection with the development,

construction, ownership, lease, operation or maintenance of the Project or interests or rights in the Lease, or any part thereof, including any trustee or agent acting on any such Person's behalf. The Lender is a Financing Party.

"Full Insurable Value" means the reasonable replacement cost of the Project less physical depreciation and exclusive of land, excavations, footings, foundation and parking lots as determined at the expense of the Developer from time to time.

"Government Securities" means (a) noncallable, nonredeemable direct obligations of the United States of America, and (b) obligations the timely payment of the principal of and interest on which is fully and unconditionally guaranteed by the United States of America, and (c) securities or receipts evidencing ownership interests in obligations or specified portions (such as principal or interest) of obligations described in (a) or (b).

"Indenture" means this Trust Indenture, as from time to time amended and supplemented by Supplemental Indentures in accordance with the provisions of **Article XI**.

"Investment Securities" means any of the following securities:

- (a) Government Securities;
- (b) bonds, notes or other obligations of the State or any political subdivision of the State, which at the time of their purchase are rated in either of the two highest rating categories by a nationally recognized rating service;
- (c) obligations of Fannie Mae, the Government National Mortgage Association, the Federal Financing Bank, the Federal Intermediate Credit Corporation, Federal Banks for Cooperatives, Federal Land Banks, Federal Home Loan Banks, the Farmers Home Administration and the Federal Home Loan Mortgage Corporation;
- (d) repurchase agreements with any bank, bank holding company, savings and loan association, trust company, or other financial institution organized under the laws of the United States or any state, that are continuously and fully secured by any one or more of the securities described in clause (a), (b) or (c) above and that have a market value at all times at least equal to the principal amount of such repurchase agreements and are held in a custodial or trust account;
- (e) certificates of deposit, time deposits or demand deposits, whether negotiable or nonnegotiable, issued by any bank or trust company organized under the laws of the United States or any state, provided that such certificates of deposit, time deposits or demand deposits shall be either (1) continuously and fully insured by the Federal Deposit Insurance Corporation, or (2) continuously and fully collateralized by such securities as are described above in clauses (a) through (d), inclusive, which shall have a market value at all times at least equal to the principal amount of such certificates of deposit, time deposits or demand deposits;
- (f) money market funds registered under the Investment Company Act of 1940, whose shares are registered under the Securities Act of 1933, and which are rated in any of the three highest rating categories by a nationally recognized rating service; or

(g) any other investment approved in writing by the Authorized City Representative and the Owners of all of the Outstanding Bonds.

“Lease” means the Lease Agreement dated as of [*Date*], 2022 between the City, as lessor, and the Developer, as lessee, as from time to time amended and supplemented by Supplemental Leases in accordance with the provisions thereof and of **Article XII**.

“Lease Term” means the period from the effective date of the Lease until the expiration thereof pursuant to **Section 3.2** of the Lease.

“Leasehold Mortgage” means any leasehold mortgage, leasehold deed of trust, assignment of rents and leases or other agreement relating to the Project permitted pursuant to the provisions of **Section 10.4** of the Lease and subject to the express, prior written consent of the Lender.

“Lender” means [*Lender*] and its successors or assigns.

“Net Proceeds” means, when used with respect to any insurance or condemnation award with respect to the Project, the gross proceeds from the insurance or condemnation award remaining after payment of all expenses (including attorneys’ fees, the Trustee’s fees and any extraordinary expenses of the City and the Trustee) incurred in the collection of such gross proceeds.

“Outstanding” means, when used with reference to Bonds, as of a particular date, all Bonds theretofore authenticated and delivered, except:

- (a) Bonds previously canceled by the Trustee or delivered to the Trustee for cancellation;
- (b) Bonds deemed to be paid in accordance with the provisions of **Section 1302**; and
- (c) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered pursuant to this Indenture.

“Owner” means the registered owner of any Bond as recorded on the bond registration records maintained by the Trustee, and for any actions requiring the consent of an Owner hereunder, the Lender.

“Paying Agent” means the Trustee and any other bank or trust company designated by this Indenture as paying agent for the Bonds at which the principal of or interest on the Bonds shall be payable.

“Payment Date” means the date on which the principal of or interest on any Bond, whether at the stated maturity thereof or the redemption date thereof, is payable, which shall be December 1 of each year that the Bonds are Outstanding.

“Permitted Encumbrances” means, as of any particular time, as the same may encumber the Project Site, (a) liens for ad valorem taxes and special assessments not then delinquent, (b) this Indenture, the Base Lease, the Lease and the Development Agreement, (c) utility, access and other easements and rights-of-way, mineral rights, restrictions, exceptions and encumbrances that will not materially interfere with or impair the operations being conducted on the Project Site or easements granted to the City, (d) such minor defects, irregularities, encumbrances, easements, rights-of-way and clouds on title as normally exist with respect to properties similar in character to the Project Site and as do not in the aggregate materially impair the property affected thereby for the purpose for which it was acquired or is held by the City,

(e) liens, security interests or encumbrances granted pursuant to the Lease, any Leasehold Mortgage, the Fee Deed of Trust or any other Financing Documents, and (f) such exceptions to title set forth in the ALTA Commitment for Title Insurance, Commitment No. 243629-535-405, prepared by Lawyers Land Title of Lake Ozark, Inc. as agent for Agents National Title Insurance Company.

“Person” means an individual, partnership, corporation, business trust, joint stock company, limited liability company, bank, insurance company, unincorporated association, joint venture or other entity of whatever nature.

“Plans and Specifications” means the plans and specifications prepared for and showing the Project, as amended by the Developer from time to time before the Completion Date, the same being on file at the principal office of the Developer, and which shall be available for reasonable inspection during normal business hours and upon not less than one Business Day’s prior notice by the City, the Trustee and their duly appointed representatives.

“Project” means, collectively, the Project Site and the Project Improvements as they may at any time exist.

“Project Costs” means all costs of purchasing and constructing the Project, including the following:

(a) all costs and expenses necessary or incident to the acquisition, construction and improvement of the Project;

(b) fees and expenses of architects, appraisers, surveyors and engineers for estimates, surveys, soil borings and soil tests and other preliminary investigations and items necessary to the commencement of construction, preparation of plans, drawings and specifications and supervision of construction, as well as for the performance of all other duties of professionals and consultants in relation to the purchase and construction of the Project or the issuance of the Bonds;

(c) all costs and expenses of every nature incurred in purchasing and constructing the Project Improvements and otherwise improving the Project Site, including the actual cost of labor and materials as payable to contractors, builders and materialmen in connection with the purchase and construction of the Project;

(d) interest accruing on the Bonds during the construction period of the Project;

(e) the cost of title insurance policies and the cost of any other insurance maintained during the period of construction of the Project in accordance with **Article VII** of the Lease;

(f) reasonable expenses of administration, supervision and inspection properly chargeable to the Project, legal fees and expenses, fees and expenses of accountants and other consultants, publication and printing expenses, and initial fees and expenses of the Trustee to the extent that said fees and expenses are necessary or incident to the issuance and sale of the Bonds or the purchase and construction of the Project;

(g) all other items of expense not elsewhere specified in this definition as may be necessary or incident to: (1) the authorization, issuance and sale of the Bonds, including costs of issuance of the Bonds; (2) the purchase and construction of the Project; and (3) the financing thereof; and

(h) reimbursement to the Developer or those acting for it for any of the above enumerated costs and expenses incurred and paid by them before or after the execution of the Lease.

“Project Fund” means the “City of Osage Beach, Missouri, Series 2022 Project Fund – The Preserve at Sycamore Creek” created in **Section 501**.

“Project Improvements” means a multi-building, multi-family housing development comprised of approximately 268 rental units, a clubhouse and amenity space, and any other improvements located on the Project Site to the extent paid for in whole with Bond proceeds, and all additions, alterations, modifications and improvements thereof made pursuant to the Lease.

“Project Site” means all of the real estate described in **Exhibit A**.

“Purchaser” means the Person identified in the Bond Purchase Agreement as the purchaser of the Bonds.

“State” means the State of Missouri.

“Supplemental Indenture” means any indenture supplemental or amendatory to this Indenture entered into by the City and the Trustee pursuant to **Article XI**.

“Supplemental Lease” means any supplement or amendment to the Lease entered into pursuant to **Article XII**.

“Trust Estate” means the Trust Estate described in the Granting Clauses of this Indenture.

“Trustee” means UMB Bank, N.A., a national banking association duly organized and existing and authorized to accept and execute trusts of the character herein set forth under the laws of the United States of America, and its successor or successors and any other Person which at the time may be substituted in its place pursuant to and at the time serving as Trustee under this Indenture.

“Unassigned Rights” means the City’s rights under the Lease to receive moneys for its own account and the City’s rights to indemnification or to be protected from liabilities by insurance policies required by the Lease, as provided in the Lease.

Section 102. Rules of Interpretation.

(a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

(b) Unless the context otherwise indicates, words importing the singular number shall include the plural and vice versa, and words importing persons shall include firms, associations and corporations, including governmental entities, as well as natural persons.

(c) Wherever in this Indenture it is provided that either party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform, or not to perform, as the case may be, such act or obligation.

(d) All references in this instrument to designated “Articles,” “Sections” and other subdivisions are, unless otherwise specified, to the designated Articles, Sections and other subdivisions of this instrument as originally executed. The words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

(e) The Table of Contents and the Article and Section headings of this Indenture shall not be treated as a part of this Indenture or as affecting the true meaning of the provisions hereof.

(f) Whenever an item or items are listed after the word “including,” such listing is not intended to be a listing that excludes items not listed.

(g) Whenever the City is required to “cooperate,” “cooperate fully” or “act promptly” on a matter set forth in this Indenture, the City’s cooperation shall be deemed to be reasonable cooperation and the City’s promptness shall be deemed to be reasonable promptness; provided, however, the City shall not be required to incur any costs, expenses, obligations or liabilities in providing such reasonable cooperation and promptness.

Section 103. Incorporation.

(a) The Recitals hereof are all incorporated into this Indenture as if fully and completely set out in this Section.

(b) The Exhibits to this Indenture are hereby incorporated into and made a part of this Indenture.

ARTICLE II

THE BONDS

Section 201. Title and Amount of Bonds. No Bonds may be issued under this Indenture except in accordance with the provisions of this Article. The Bonds authorized to be issued under this Indenture shall be designated as the “City of Osage Beach, Missouri, Taxable Industrial Revenue Bonds (The Preserve at Sycamore Creek Project), Series 2022.” The maximum total principal amount of Bonds that may be issued hereunder is hereby expressly limited to \$63,000,000.

Section 202. Nature of Obligation. The Bonds and the interest thereon shall be special obligations of the City payable solely out of the rents, revenues and receipts derived by the City from the Project and the Lease, and not from any other fund or source of the City. The Bonds are secured by a pledge and assignment of the Trust Estate to the Trustee in favor of the Owners, as provided in this Indenture. The Bonds and the interest thereon shall not constitute general obligations of the City, the State or any other political subdivision thereof, and none of the City, the State or other political subdivision thereof shall be liable thereon, and the Bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and are not payable in any manner by taxation.

Section 203. Denomination, Number and Dating of the Bonds.

(a) The Bonds shall be issuable in the form of one fully-registered Bond, in substantially the form set forth in **Exhibit B**, in the denomination of \$0.01 or any multiple thereof.

(b) The Bonds shall be dated by the Trustee as of the date of initial delivery thereof as provided herein. If the Bonds are at any time thereafter transferred, any replacement Bonds shall be dated as of the date of authentication thereof.

Section 204. Method and Place of Payment of Bonds.

(a) The principal of and interest on the Bonds shall be payable in any coin or currency of the United States of America which on the respective dates of payment thereof is legal tender for payment of public and private debts.

(b) Payment of the principal of the Bonds shall be made upon the presentation and surrender of such Bonds at the principal payment office of any Paying Agent named in the Bonds. The payment of principal of the Bonds shall be noted on the Bonds on **Schedule I** thereto and the registration books maintained by the Trustee pursuant to **Section 206**. Payment of the interest on the Bonds shall be made by the Trustee on each Payment Date to the Person appearing on the registration books of the Trustee hereinafter provided for as the Owner thereof on the fifteenth day (whether or not a Business Day) of the calendar month next preceding such Payment Date by check or draft mailed to such Owner at such Owner's address as it appears on such registration books.

(c) The Bonds and the original **Schedule I** thereto shall be held by the Trustee in trust, unless otherwise directed in writing by the Owner. If the Bonds are held by the Trustee, the Trustee shall, on each Payment Date, send a revised copy of **Schedule I** via facsimile or other electronic means to the Owner, the Developer (if not the Owner) and the City. Absent manifest error, the amounts shown on **Schedule I** as noted by the Trustee shall be conclusive evidence of the principal amount paid on the Bonds.

(d) If there is one Owner of the Bonds, the Trustee is authorized to make the final or any interim payment of principal on such Bonds by internal bank transfer or by electronic transfer to an account at a commercial bank or savings institution designated in writing by such Owner and located in the United States. The Trustee is also authorized to make interest payments on such Bonds by internal bank transfer or by electronic transfer to an account at a commercial bank or savings institution designated by such Owner and located in the United States.

(e) If the Developer is the sole Owner of the Bonds, then the Developer, as lessee under the Lease, may set-off its obligation to the City to pay Basic Rent under the Lease against the City's obligations to the Developer, as Owner of the Bonds, to pay the principal of and interest on the Bonds under this Indenture. The Trustee may conclusively rely on the absence of any notice from the Developer to the contrary as evidence that such set-off has occurred and that pursuant to the set-off, the Developer, as lessee under the Lease, is deemed to have paid to the City the Basic Rent due under the Lease and the City is deemed to have paid to the Developer, as Owner of the Bonds, the principal of and interest on the Bonds due under this Indenture. On the final Payment Date, the Developer may deliver to the Trustee for cancellation the Bonds and the Developer shall receive a credit against the Basic Rent payable by the Developer under **Section 5.1** of the Lease in an amount equal to the remaining principal of the Bonds so tendered for cancellation plus accrued interest thereon.

Section 205. Execution and Authentication of Bonds.

(a) The Bonds shall be executed on behalf of the City by the manual or facsimile signature of its Mayor and attested by the manual or facsimile signature of its City Clerk, and shall have the corporate seal of the City affixed thereto or imprinted thereon. If any officer whose signature or facsimile thereof appears on the Bonds ceases to be such officer before the delivery of such Bonds, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if such Person had remained in office until delivery. Any Bond may be signed by such Persons as at the actual time of the execution of such Bond are the proper officers to sign such Bond although at the date of such Bond such Persons may not have been such officers.

(b) The Bonds shall have endorsed thereon a Certificate of Authentication substantially in the form set forth in **Exhibit B**, which shall be manually executed by the Trustee. No Bond shall be entitled to any security or benefit under this Indenture or shall be valid or obligatory for any purposes until such Certificate of Authentication has been duly executed by the Trustee. The executed Certificate of Authentication upon any Bond shall be conclusive evidence that such Bond has been duly authenticated and delivered under this Indenture. The Certificate of Authentication on any Bond shall be deemed to have been duly executed if signed by any authorized signatory of the Trustee.

Section 206. Registration, Transfer and Exchange of Bonds.

(a) The Trustee shall keep books for the registration and transfer of Bonds as provided in this Indenture.

(b) The Bonds may be transferred to an Approved Investor only upon the books kept for the registration and transfer of Bonds upon surrender thereof to the Trustee duly endorsed for transfer or accompanied by an assignment duly executed by the Owner or such Owner's attorney or legal representative in such form as shall be satisfactory to the Trustee. In connection with any such transfer of the Bonds, the City and the Trustee shall receive an executed representation letter signed by the proposed assignee in substantially the form of **Exhibit C**. Upon any such transfer, the City shall execute and the Trustee shall authenticate and deliver in exchange for such Bonds a new fully-registered Bond or Bonds, registered in the name of the transferee, of any denomination or denominations authorized by this Indenture, in an aggregate principal amount equal to the Outstanding principal amount of such Bonds, of the same maturity and bearing interest at the same rate.

(c) In all cases in which Bonds are exchanged or transferred hereunder the provisions of any legend restrictions on the Bonds shall be complied with and the City shall execute and the Trustee shall authenticate and deliver at the earliest practicable time Bonds in accordance with the provisions of this Indenture. All Bonds surrendered in any such exchange or transfer shall forthwith be canceled by the Trustee. The City or the Trustee may make a reasonable charge for every such exchange or transfer of Bonds sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer, and such charge shall be paid before any new Bonds shall be delivered. Neither the City nor the Trustee shall be required to make any such exchange or transfer of Bonds during the 15 days immediately preceding a Payment Date on the Bonds or, in the case of any proposed redemption of Bonds, during the 15 days immediately preceding the selection of Bonds for such redemption or after such Bonds or any portion thereof has been selected for redemption.

(d) If any Owner fails to provide a certified taxpayer identification number to the Trustee, the Trustee may make a charge against such Owner sufficient to pay any governmental charge required to be

paid as a result of such failure, which amount may be deducted by the Trustee from amounts otherwise payable to such Owner under such Owner's Bond.

Section 207. Persons Deemed Owners of Bonds. As to any Bond, the Person in whose name the same is registered as shown on the bond registration books required by **Section 206** shall be deemed and regarded as the absolute owner thereof for all purposes. Payment of or on account of the principal of and interest on any such Bond shall be made only to or upon the order of the Owner thereof or a legal representative thereof. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond, including the interest thereon, to the extent of the sum or sums so paid.

Section 208. Authorization of the Bonds.

(a) The Bonds are authorized in the aggregate maximum principal amount of \$63,000,000 for the purpose of providing funds to pay Project Costs, which Bonds shall be designated the "City of Osage Beach, Missouri, Taxable Industrial Revenue Bonds (The Preserve at Sycamore Creek Project), Series 2022." The Bonds shall be dated as provided in **Section 203(b)**, shall become due on the Completion Date (subject to prior redemption as provided in **Article III**) and shall bear interest as specified in **Section 208(f)**, payable on the dates specified in **Section 208(f)**.

(b) The Trustee is hereby designated as the Paying Agent. The Owners of a majority of Bonds then-Outstanding may designate a different Paying Agent upon written notice to the City and the Trustee.

(c) The Bonds shall be executed without material variance from the form and in the manner set forth in **Exhibit B** and delivered to the Trustee for authentication. Prior to or simultaneously with the authentication and delivery of the Bonds by the Trustee, there shall be filed with the Trustee the following:

(1) An original or certified copy of the ordinance passed by the Board of Aldermen authorizing the issuance of the Bonds and the execution of this Indenture, the Development Agreement, the Bond Purchase Agreement, the Base Lease and the Lease;

(2) Executed counterparts or copies of this Indenture, the Development Agreement, the Bond Purchase Agreement, the Base Lease and the Lease;

(3) A representation letter from the Purchaser in substantially the form attached as **Exhibit C**;

(4) A request and authorization to the Trustee on behalf of the City, executed by the Authorized City Representative, to authenticate the Bonds and deliver the same to or at the written direction of the Purchaser upon payment to the Trustee, for the account of the City, of the purchase price thereof specified in the Bond Purchase Agreement. The Trustee shall be entitled to conclusively rely upon such request and authorization as to the name of the Purchaser and the amount of such purchase price; and

(5) Such other certificates, statements, receipts and documents as the Trustee shall reasonably require for the delivery of the Bonds.

(d) When the documents specified in subsection (c) of this Section have been filed with the Trustee, and when the Bonds have been executed and authenticated as required by this Indenture, either:

(1) The Purchaser shall pay the Closing Price to the Trustee, and the Trustee shall endorse the Bonds in an amount equal to the Closing Price and then either hold the Bonds in trust or if so directed in writing deliver the Bonds to or upon the order of the Purchaser; or

(2) The Developer shall submit a requisition certificate in accordance with **Section 4.4** of the Lease, in an amount equal to the Closing Price, and the Trustee shall authenticate and endorse the Bonds in an amount equal to the Closing Price and then either hold the Bonds in trust or if so directed in writing deliver the Bonds to the Developer (or another purchaser designated by the Developer).

In either case, the Purchaser shall be deemed to have paid over to the Trustee, and the Trustee shall be deemed to have deposited into the Project Fund, an amount equal to the Closing Price. In authenticating Bonds, the Trustee makes no certification or representation that the Bonds have been validly issued or constitute legally binding obligations of the City.

(e) Following the initial issuance and delivery of the Bonds, the Developer may submit additional requisition certificates in accordance with **Section 4.4** of the Lease. If the Purchaser does not pay to the Trustee the amount set forth in the requisition certificates, the Purchaser will be deemed to have advanced an amount equal to the amount set forth in the requisition certificates and, if the Trustee is holding the Bonds, the Trustee shall endorse the Bonds in an amount equal to the amount set forth in each requisition certificate. The date of endorsement of each Principal Amount Advanced as set forth on **Schedule I** to the Bonds shall be the date of the City's approval of each requisition certificate. The Trustee shall keep a record of the total requisitions submitted to the Trustee for the Project, and shall notify the City if the requisitions submitted exceed the maximum principal amount of the Bonds.

(f) The Bonds shall bear interest at the rate of 5.0% per annum on the Cumulative Outstanding Principal Amount of the Bonds. Such interest shall be payable in arrears on each December 1, commencing on December 1, 2023, and continuing thereafter until the Cumulative Outstanding Principal Amount is paid in full, but not later than the Completion Date. Interest shall be calculated on the basis of a year of 360 days consisting of 12 months of 30 days each.

(g) The Trustee shall keep and maintain a record of the amount deposited or deemed to be deposited into the Project Fund pursuant to the terms of this Indenture as "Principal Amount Advanced" and shall enter the aggregate principal amount of the Bonds then-Outstanding on its records as the "Cumulative Outstanding Principal Amount." If the Trustee is holding the Bonds, such advanced amounts shall be reflected on **Schedule I** to the Bonds. To the extent that advances are deemed to have been made pursuant to a requisition, the Trustee's records of such advances shall be based solely on the requisitions provided to it. On each date upon which a portion of the Cumulative Outstanding Principal Amount is paid to the Owners, pursuant to the redemption provisions of this Indenture, the Trustee shall enter on its records and **Schedule I** to the Bonds (if the Trustee is holding the Bonds) the principal amount paid on the Bonds as "Principal Amount Redeemed," and shall enter the then-Outstanding principal amount of the Bonds as "Cumulative Outstanding Principal Amount." The records maintained by the Trustee as to amounts deposited into the Project Fund or principal amounts paid on the Bonds shall be the official records of the Cumulative Outstanding Principal Amount for all purposes, absent manifest error, and shall be in substantially the form of the Table of Cumulative Outstanding Principal Amount as set out in the Form of Bonds in **Exhibit B**. If any moneys are deposited by the Trustee into the Project Fund, then the Trustee shall provide a statement of receipts and disbursements with respect thereto to the City and the Developer on a monthly basis. After the Project has been completed and the certificate of payment of all costs is filed as provided in **Section 504**, the Trustee, to the extent it has not already done so pursuant to this Section or

Section 1012, shall file a final statement of receipts and disbursements with respect thereto with the City and the Developer.

Section 209. Mutilated, Lost, Stolen or Destroyed Bonds. If any Bond becomes mutilated, or is lost, stolen or destroyed, the City shall execute and the Trustee shall authenticate and deliver a new Bond of like series, date and tenor as the Bond mutilated, lost, stolen or destroyed; provided that, in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee, and in the case of any lost, stolen or destroyed Bond, there shall be first furnished to the City and the Trustee evidence of such loss, theft or destruction satisfactory to the Trustee, together with indemnity satisfactory to the Trustee to save, defend and hold each of the City and the Trustee harmless. If any such Bond has matured, instead of delivering a substitute Bond, the Trustee may pay the same without surrender thereof. Upon the issuance of any substitute Bond, the City and the Trustee may require the payment of an amount sufficient to reimburse the City and the Trustee for any tax or other governmental charge that may be imposed in relation thereto and any other reasonable fees and expenses incurred in connection therewith.

Section 210. Cancellation and Destruction of Bonds Upon Payment.

(a) All Bonds that have been paid or redeemed or that have otherwise been surrendered to the Trustee under this Indenture, either at or before maturity, shall be canceled by the Trustee immediately upon the payment or redemption of such Bonds and the surrender thereof to the Trustee.

(b) All Bonds canceled under any of the provisions of this Indenture shall be destroyed by the Trustee in accordance with applicable laws and regulations and the Trustee's policies and practices. The Trustee shall execute a certificate describing the Bonds so destroyed, and shall file executed counterparts of such certificate with the City and the Developer.

ARTICLE III

REDEMPTION OF BONDS

Section 301. Redemption of Bonds.

(a) The Bonds are subject to redemption and payment at any time before the stated maturity thereof, at the option of the City, upon written instructions from the Developer, (1) in whole, if the Developer exercises its option to purchase the Project and deposits an amount sufficient to effect such purchase pursuant to the Lease on the applicable redemption date, or (2) in part, if the Developer prepays additional Basic Rent pursuant to the Lease. If only a portion of the Bonds are to be redeemed, (A) Bonds aggregating at least 10% of the maximum aggregate principal amount of Bonds authorized hereunder shall not be subject to redemption and payment before the stated maturity thereof, and (B) the Trustee shall keep a record of the amount of Bonds to remain Outstanding following such redemption. Any redemption of Bonds pursuant to this paragraph shall be at a redemption price equal to the par value thereof being redeemed, plus accrued interest thereon, without premium or penalty, to the redemption date.

(b) The Bonds are subject to mandatory redemption, in whole or in part, to the extent of amounts deposited in the Bond Fund pursuant to **Section 9.1(f)** or **9.2(c)** of the Lease, in the event of substantial damage to or destruction or condemnation of substantially all of the Project. Bonds to be redeemed pursuant to this paragraph shall be called for redemption by the Trustee on the earliest practicable date for which timely notice of redemption may be given as provided hereunder. Any redemption of Bonds

pursuant to this paragraph shall be at a redemption price equal to the par value thereof being redeemed, plus accrued interest thereon, without premium or penalty, to the redemption date. Before giving notice of redemption to the Owners pursuant to this paragraph (b), money in an amount equal to the redemption price shall have been deposited in the Bond Fund.

(c) At its option, the Developer may deliver to the Trustee for cancellation any Bonds owned by the Developer and not previously paid, and the Developer shall receive a credit against the amounts payable by the Developer for the redemption of such Bonds in an amount equal to the principal amount of the Bonds so tendered for cancellation, plus accrued interest.

Section 302. Effect of Call for Redemption. Before or on the date fixed for redemption, funds, Government Securities, or a combination thereof, shall be placed with the Trustee which are sufficient to pay the Bonds called for redemption and accrued interest thereon, if any, to the redemption date. Upon the happening of the above conditions and appropriate written notice having been given, the Bonds or the portions of the principal amount of Bonds thus called for redemption shall cease to bear interest on the specified redemption date, and shall no longer be entitled to the protection, benefit or security of this Indenture and shall not be deemed to be Outstanding under the provisions of this Indenture. If the Bonds are fully redeemed before maturity and an amount of money equal to the Trustee's and the Paying Agent's agreed to fees and expenses hereunder accrued and to accrue in connection with such redemption is paid or provided for, the City shall, at the Developer's direction, deliver to the Developer the items described in **Section 11.2** of the Lease.

Section 303. Notice of Redemption. If the Bonds are to be called for redemption as provided in **Section 301(a)**, the Developer shall deliver written notice to the City and the Trustee that it has elected to redeem all or a portion of the Bonds at least 40 days (10 days if there is one Owner) before the scheduled redemption date. The Trustee shall then deliver written notice to the Owners at least 30 days (five days if there is one Owner) before the scheduled redemption date by facsimile or other electronic communication and by first-class mail stating the date upon which the Bonds will be redeemed and paid, unless such notice period is waived by the Owners in writing.

ARTICLE IV

FORM OF BONDS

Section 401. Form Generally. The Bonds and the Trustee's Certificate of Authentication to be endorsed thereon shall be issued in substantially the forms set forth in **Exhibit B**. The Bonds may have endorsed thereon such legends or text as may be necessary or appropriate to conform to any applicable rules and regulations of any governmental authority or any custom, usage or requirements of law with respect thereto.

ARTICLE V

CUSTODY AND APPLICATION OF BOND PROCEEDS

Section 501. Creation of Funds. There are hereby created and ordered to be established in the custody of the Trustee the following special trust funds in the name of the City:

(a) “City of Osage Beach, Missouri, Series 2022 Project Fund – The Preserve at Sycamore Creek” (herein called the “Project Fund”).

(b) “City of Osage Beach, Missouri, Series 2022 Bond Fund – The Preserve at Sycamore Creek” (herein called the “Bond Fund”).

Section 502. Deposits into the Project Fund. The proceeds of the sale of the Bonds (whether actually paid or deemed paid under **Section 208(d)**), including Additional Payments provided for in the Bond Purchase Agreement, when received, excluding such amounts required to be paid into the Bond Fund pursuant to **Section 601**, shall be deposited by the Trustee into the Project Fund. Any money received by the Trustee from any other source for the purpose of purchasing, constructing and installing the Project shall pursuant to any written directions from the Person depositing such moneys also be deposited into the Project Fund.

Section 503. Disbursements from the Project Fund.

(a) The moneys in the Project Fund shall be disbursed by the Trustee for the payment of, or reimbursement to the Developer (or any other party that has made payment on behalf of the Developer) for payment of, Project Costs upon receipt of requisition certificates signed by the Developer in accordance with the provisions of **Article IV** of the Lease. The Trustee hereby covenants and agrees to disburse such moneys in accordance with such provisions.

(b) If, pursuant to **Section 208(d)**, the Trustee is deemed to have deposited into the Project Fund the amount specified in the requisition certificates submitted by the Developer in accordance with the provisions of **Article IV** of the Lease, the Trustee shall upon endorsement of the Bonds in an equal amount be deemed to have disbursed such funds from the Project Fund to the Developer (or such other purchaser designated by the Developer) in satisfaction of the requisition certificates. If the Trustee is holding the Bonds, such deemed disbursement will be deemed to have been made on each date the Trustee endorses the Bonds with respect to such additional amounts.

(c) In paying any requisition under this Section, the Trustee may rely as to the completeness and accuracy of all statements in such requisition certificate if such requisition certificate is signed by the Authorized Developer Representative. If the City so requests in writing, a copy of each requisition certificate submitted to the Trustee for payment under this Section shall be promptly provided by the Trustee to the City. The City hereby authorizes and directs the Trustee to make disbursements in the manner and as provided for by the aforesaid provisions of the Lease.

Section 504. Completion of the Project. The completion of the purchase, construction and installation of the Project and payment of all costs and expenses incident thereto shall be evidenced by the filing with the Trustee of the certificate required by the provisions of **Section 4.5** of the Lease. As soon as practicable after the Completion Date any balance remaining in the Project Fund shall without further authorization be transferred by the Trustee to the Bond Fund and applied as provided in **Section 4.6** of the Lease.

Section 505. Disposition Upon Acceleration. If the principal of the Bonds has become due and payable pursuant to **Section 902**, upon the date of payment by the Trustee of any moneys due as hereinafter provided in **Article IX**, any balance remaining in the Project Fund shall without further authorization be deposited in the Bond Fund by the Trustee, with advice to the City and to the Developer of such action.

ARTICLE VI

REVENUES AND FUNDS

Section 601. Deposits into the Bond Fund.

(a) The Trustee shall deposit into the Bond Fund, as and when received, (1) all accrued interest on the Bonds, if any, paid by the Purchaser; (2) all Basic Rent payable by the Developer to the City specified in **Section 5.1** of the Lease; (3) any Additional Rent payable by the Developer specified in **Section 5.2** of the Lease; (4) any amount in the Project Fund to be transferred to the Bond Fund pursuant to **Section 504** or **Section 505**; (5) subject to the terms and conditions of the Fee Deed of Trust and the other Financing Documents executed in favor of the Lender, the balance of any Net Proceeds of condemnation awards or insurance received by the Trustee pursuant to **Article IX** of the Lease; (6) the amounts to be deposited in the Bond Fund pursuant to **Sections 9.1(f)** and **9.2(c)** of the Lease; (7) all interest and other income derived from the investment of Bond Fund moneys as provided in **Section 702**; and (8) all other moneys received by the Trustee under and pursuant to any of the provisions of the Lease when accompanied by directions from the Person depositing such moneys that such moneys are to be paid into the Bond Fund.

(b) The Trustee shall notify the Developer in writing, at least 15 days before each date on which a payment is due under **Section 5.1** of the Lease, of the amount that is payable by the Developer pursuant to such Section.

Section 602. Application of Moneys in the Bond Fund.

(a) Except as provided in **Section 604** and **Section 908** hereof or in **Section 4.6** of the Lease, moneys in the Bond Fund shall be expended solely for the payment of the principal of and interest on the Bonds as the same matures and becomes due or upon the redemption thereof before maturity; provided, however, that any amounts received by the Trustee as Additional Rent under **Section 5.2** of the Lease and deposited to the Bond Fund as provided in **Section 601** above, shall be expended by the Trustee for such items of Additional Rent as they are received or due without further authorization from the City.

(b) The City hereby authorizes and directs the Trustee to withdraw sufficient funds from the Bond Fund to pay the principal of and interest on the Bonds as the same becomes due and payable and to make said funds so withdrawn available to the Paying Agent for the purpose of paying said principal and interest.

(c) Whenever the amount in the Bond Fund from any source whatsoever is sufficient to redeem all of the Bonds Outstanding and to pay interest to accrue thereon before and until such redemption, the City covenants and agrees, upon request of the Developer, to take and cause to be taken the necessary steps to redeem all such Bonds on the next succeeding redemption date for which the required redemption notice may be given or on such later redemption date as may be specified by the Developer. The Trustee may use any moneys in the Bond Fund to redeem a part of the Bonds Outstanding in accordance with and to the extent permitted by **Article III** so long as the Developer is not in default with respect to any payments under the Lease and to the extent said moneys are in excess of the amount required for payment of Bonds theretofore matured or called for redemption and past due interest, if any, in all cases when such Bonds have not been presented for payment.

(d) After payment in full of the principal of and interest, if any, on the Bonds (or provision has been made for the payment thereof as provided in this Indenture), and the fees, charges and expenses of the

Trustee, the City and any Paying Agent and any other amounts required to be paid under this Indenture, the Lease and the Development Agreement, all amounts remaining in the Bond Fund shall be paid to the Developer upon the expiration or sooner termination of the Lease.

Section 603. Payments Due on Days Other than Business Days. In any case where the date of maturity of principal or interest, if any, on the Bonds or the date fixed for redemption of any Bonds is not a Business Day, then payment of principal or interest, if any, need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest, if any, shall continue to accrue for the period after such date.

Section 604. Nonpresentment of Bonds. If any Bond is not presented for payment when the principal thereof becomes due, either at maturity or otherwise, or at the date fixed for redemption thereof, if funds sufficient to pay such Bond shall have been made available to the Trustee, all liability of the City to the Owner thereof for the payment of such Bond shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such funds, without liability for interest thereon, for the benefit of the Owner of such Bond who shall thereafter be restricted exclusively to such funds for any claim of whatever nature on his part under this Indenture or on, or with respect to, said Bond. If any Bond is not presented for payment within one year following the date when such Bond becomes due, whether at maturity or otherwise, the Trustee shall without liability for interest thereon repay to the Developer the funds theretofore held by it for payment of such Bond, and such Bond shall, subject to the defense of any applicable statute of limitation, thereafter be an unsecured obligation of the Developer, and the Owner thereof may look only to the Developer for payment, and then only to the extent of the amount so repaid, and the Developer shall not be liable for any interest thereon and shall not be regarded as a trustee of such money.

ARTICLE VII

SECURITY FOR DEPOSITS AND INVESTMENT OF FUNDS

Section 701. Moneys to be Held in Trust. All moneys deposited with or paid to the Trustee for account of the Bond Fund or the Project Fund under any provision of this Indenture, and all moneys deposited with or paid to any Paying Agent under any provision of this Indenture, shall be held by the Trustee or Paying Agent in trust and shall be applied only in accordance with the provisions of this Indenture and the Lease, and, until used or applied as herein provided, shall constitute part of the Trust Estate and be subject to the lien hereof. Neither the Trustee nor any Paying Agent shall be under any liability for interest on any moneys received hereunder except such as may be agreed upon in writing.

Section 702. Investment of Moneys in Project Fund and Bond Fund. Moneys held in the Project Fund and the Bond Fund shall, pursuant to written direction of the Developer, signed by the Authorized Developer Representative, be separately invested and reinvested by the Trustee in Investment Securities which mature or are subject to redemption by the Owner before the date such funds will be needed. If the Developer fails to provide written directions concerning the investment of moneys held in the Project Fund and the Bond Fund, the Trustee is authorized to invest in the Investment Securities specified in paragraph (e) of the definition of Investment Securities, provided they mature or are subject to redemption before the date such funds will be needed. The Trustee is specifically authorized to implement its automated cash investment system to assure that cash on hand is invested and to charge its normal cash management fees and cash sweep account fees, which may be deducted from income earned on

investments; provided that any such fees shall not exceed the interest income on the investment. The Trustee shall be provided ample time to clear any such fees that exceed interest income on the investment. Any such Investment Securities shall be held by or under the control of the Trustee and shall be deemed at all times a part of the fund in which such moneys are originally held, and the interest accruing thereon and any profit realized from such Investment Securities shall be credited to such fund, and any loss resulting from such Investment Securities shall be charged to such fund. After the Trustee has notice pursuant to **Section 1001(h)** of the existence of an Event of Default, the Trustee shall direct the investment of moneys in the Bond Fund and the Project Fund. The Trustee shall sell and reduce to cash a sufficient amount of such Investment Securities whenever the cash balance in any fund is insufficient for the purposes of such fund. In determining the balance in any fund, investments in such fund shall be valued at the lower of their original cost or their fair market value as of the most recent Payment Date. The Trustee may make any and all investments permitted by the provisions of this Section through its own bond department or any affiliate or short-term investment department.

Section 703. Record Keeping. The Trustee shall maintain records designed to show compliance with the provisions of this Article and with the provisions of **Article VI** while any of the Bonds are Outstanding.

ARTICLE VIII

GENERAL COVENANTS AND PROVISIONS

Section 801. Payment of Principal and Interest. The City covenants and agrees that it will, but solely from the rents, revenues and receipts derived from the Project and the Lease as described herein, deposit or cause to be deposited in the Bond Fund sufficient sums payable under the Lease promptly to meet and pay the principal of and interest on the Bonds as they become due and payable at the place, on the dates and in the manner provided herein and in the Bonds according to the true intent and meaning thereof. Nothing herein shall be construed as requiring the City to operate the Project as a business other than as lessor or to use any funds or revenues from any source other than funds and revenues derived from the Project.

Section 802. Authority to Execute Indenture and Issue Bonds. The City covenants that it is duly authorized under the Constitution and laws of the State to execute this Indenture, to issue the Bonds and to pledge and assign the Trust Estate in the manner and to the extent herein set forth; that all action on its part for the execution and delivery of this Indenture and the issuance of the Bonds has been duly and effectively taken; and that the Bonds in the hands of the Owners thereof are and will be valid and enforceable obligations of the City according to the import thereof.

Section 803. Performance of Covenants. The City covenants that it will faithfully perform or cause to be performed at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in the Bonds and in all proceedings of its Board of Aldermen pertaining thereto. The Trustee may take such action as it deems appropriate to enforce all such covenants, undertakings, stipulations and provisions of the City hereunder.

Section 804. Instruments of Further Assurance. The City covenants that it will do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, such Supplemental Indentures and such further acts, instruments, financing statements and other documents as the Trustee may reasonably require for the better pledging and assigning unto the Trustee the property and revenues herein

described to the payment of the principal of and interest, if any, on the Bonds, upon being first indemnified by the Developer for the cost thereof. The City covenants and agrees that, except as herein and in the Lease provided, it will not sell, convey, mortgage, encumber or otherwise dispose of any part of the Project or the rents, revenues and receipts derived therefrom or from the Lease, or of its rights under the Lease.

Section 805. Recordings and Filings. The City shall file or cause to be kept and filed all financing statements, and hereby authorizes and directs the Trustee to file or cause to be kept and filed continuation statements with respect to such originally filed financing statements related to this Indenture and all supplements hereto and such other documents as may be required under the Uniform Commercial Code in order to fully preserve and protect the security of the Owners and the rights of the Trustee hereunder. The City will cooperate in causing this Indenture and all Supplemental Indentures, the Lease and all Supplemental Leases and all other security instruments to be recorded and filed in such manner and in such places as may be required by law in order to fully preserve and protect the security of the Owners and the rights of the Trustee hereunder. The Trustee shall file continuation statements with respect to each Uniform Commercial Code financing statement relating to the Trust Estate filed by the City at the time of the issuance of the Bonds; provided that a copy of the filed initial financing statement is timely delivered to the Trustee. In addition, unless the Trustee has been notified in writing by the City that any such initial filing or description of collateral was or has become defective, the Trustee shall be fully protected in (a) relying on such initial filing and description of collateral in filing any financing or continuation statements or modifications thereto pursuant to this Section, and (b) filing any continuation statements in the same filing office as the initial filing was made. The Developer shall be responsible for the customary fees charged by the Trustee for the preparation and filing of continuation statements and for the reasonable costs incurred by the Trustee in the preparation and filing of all continuation statements hereunder, including attorneys' fees and expenses. These fees shall be considered "extraordinary services" fees.

Section 806. Inspection of Project Books. The City covenants and agrees that all books and documents in its possession relating to the Project and the rents, revenues and receipts derived from the Project shall at all times be open to inspection by such accountants or other agencies as the Trustee may from time to time designate.

Section 807. Enforcement of Rights Under the Lease. The Trustee, as assignee, transferee, pledgee, and owner of a security interest under this Indenture, in its name or in the name of the City, may enforce all assigned rights of the City and the Trustee and all obligations of the Developer under and pursuant to the Lease for and on behalf of the Owners, whether or not the City is in default hereunder.

ARTICLE IX

DEFAULT AND REMEDIES

Section 901. Events of Default; Notice; Opportunity to Cure. If any of the following events occur, it is hereby defined as and declared to be and to constitute an "Event of Default":

- (a) Default in the due and punctual payment of the principal of any Bond, whether at the stated maturity or accelerated maturity thereof, or at any date fixed for redemption thereof;
- (b) Default in the due and punctual payment of the interest on any Bond, whether at the stated maturity or accelerated maturity thereof, or at any date fixed for redemption thereof;

- (c) Default as specified in **Section 12.1** of the Lease has occurred; or
- (d) Default in the performance, or breach, of any other covenant or agreement under this Indenture.

No default specified above shall constitute an Event of Default until the City, the Trustee or the Owners of 25% in aggregate principal amount of all Bonds Outstanding has given actual notice of such default by registered or certified mail or recognized overnight delivery service to the Developer and the Lender, and the Developer and the Lender have had 30 days after receipt of such notice to correct said default or cause said default to be corrected and have not corrected said default or caused said default to be corrected within such period; provided, however, if any such default (other than a default in the payment of any money) is such that it cannot be corrected within such period, it shall not constitute an Event of Default if corrective action is instituted by the Developer, the Lender or the City, as the case may be, within such period and diligently pursued until the default is corrected. Nothing herein shall constitute an obligation of the Lender to cure any defaults hereunder.

Section 902. Acceleration of Maturity in Event of Default.

(a) If an Event of Default has occurred and is continuing after the notice and cure period described in **Section 901** elapses, the Trustee may, and upon the written request of the City or the Owners of not less than 25% in aggregate principal amount of Bonds then-Outstanding, shall, by notice in writing delivered to the City, the Lender and the Developer, declare the principal of all Bonds then-Outstanding and the interest accrued thereon immediately due and payable, and such principal and interest and all other amounts due hereunder shall thereupon become and be immediately due and payable.

(b) If, at any time after such declaration, but before the Bonds have matured by their terms, all overdue installments of principal and interest upon the Bonds, together with the reasonable and proper expenses of the Trustee, and all other sums then payable by the City under this Indenture are either paid or provisions satisfactory to the Trustee are made for such payment, then and in every such case the Trustee shall, but only with the approval of a majority of the Owners of the Bonds then-Outstanding, rescind such declaration and annul such default in its entirety. In such event, the Trustee shall rescind any declaration of acceleration of installments of rent payments on the Bonds as provided in **Section 11.1** of the Lease.

(c) In case of any rescission, then and in every such case the City, the Trustee, the Developer and the Owners shall be restored to their former positions and rights hereunder respectively, but no such rescission shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon.

Section 903. Surrender of Possession of Trust Estate; Rights and Duties of Trustee in Possession. If an Event of Default has occurred and is continuing after the notice and cure period described in **Section 901** elapses, the City, upon demand of the Trustee, shall forthwith surrender the possession of, and it shall be lawful for the Trustee, by such officer or agent as it may appoint, to take possession of all or any part of the Trust Estate, together with the books, papers and accounts of the City pertaining thereto, and including the rights and the position of the City under the Lease, and to hold, operate and manage the same, and from time to time make all needful repairs and improvements. The Trustee may lease the Project or any part thereof, in the name and for account of the City, and collect, receive and sequester the rents, revenues and receipts therefrom, and out of the same and any moneys received from any receiver of any part thereof pay, and set up proper reserves for the payment of all proper costs and expenses of so taking, holding and managing the same, including without limitation (a) reasonable compensation to the Trustee, its agents and counsel, (b) any reasonable charges of the Trustee hereunder, (c) any taxes and assessments

and other charges before the lien of this Indenture, (d) all expenses of such repairs and improvements and (e) any amounts payable under the Development Agreement. The Trustee shall apply the remainder of the moneys so received in accordance with the provisions of **Section 908**. Whenever all that is due upon the Bonds has been paid and all defaults cured, the Trustee shall surrender possession of the Trust Estate to the City, its successors or assigns, the same right of entry, however, to exist upon any subsequent Event of Default. While in possession of such property, the Trustee shall render annually to the City and the Developer a summarized statement of receipts and expenditures in connection therewith.

Section 904. Appointment of Receivers in Event of Default. If an Event of Default has occurred and is continuing after the notice and cure period described in **Section 901** elapses, and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and of the Owners under this Indenture, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the Trust Estate or any part thereof, pending such proceedings, with such powers as the court making such appointment shall confer.

Section 905. Exercise of Remedies by the Trustee.

(a) Upon the occurrence of an Event of Default, the Trustee may pursue any available remedy at law or in equity by suit, action, mandamus or other proceeding to enforce the payment of the principal of and interest on the Bonds then-Outstanding and all other amounts due hereunder, and to enforce and compel the performance of the duties and obligations of the City or the Developer as herein set forth or as set forth in the Lease, respectively.

(b) If an Event of Default has occurred and is continuing after the notice and cure period described in **Section 901** elapses, and if requested in writing to do so by (1) the City (in the case of an Event of Default pursuant to **Section 12.1(a)** (but only as it relates to Additional Rent), **(b)** (but only as it relates to Unassigned Rights), **(c)** or **(d)** of the Lease), or (2) the Owners of 25% in aggregate principal amount of Bonds then-Outstanding and indemnified as provided in **Section 1001(I)**, the Trustee shall be obligated to exercise such one or more of the rights and powers conferred by this Article as the Trustee, being advised by counsel, shall deem most expedient and in the interests of the City or the Owners, as the case may be.

(c) All rights of action under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without necessity of joining as plaintiffs or defendants any Owners, and any recovery of judgment shall, subject to the provisions of **Section 908**, be for the equal benefit of all the Owners of the Outstanding Bonds.

Section 906. Limitation on Exercise of Remedies by Owners. No Owner shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust hereunder or for the appointment of a receiver or any other remedy hereunder, unless (a) a default has occurred of which the Trustee has been notified as provided in **Section 1001(h)** or of which by said subsection the Trustee is deemed to have notice, (b) such default has become an Event of Default, (c) the Owners of 25% in aggregate principal amount of Bonds then-Outstanding have made written request to the Trustee, have offered it reasonable opportunity either to proceed for such reasonable period not to exceed 60 days following such notice and to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, and have offered to the Trustee indemnity as provided in **Section 1001(I)**, and (d) the Trustee thereafter fails or refuses to exercise the powers herein granted or to institute such action, suit or proceeding in its own name; such notification, request and offer of indemnity are hereby

declared in every case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the enforcement of this Indenture, or for the appointment of a receiver or for any other remedy hereunder, it being understood and intended that no one or more Owners shall have any right in any manner whatsoever to affect, disturb or prejudice this Indenture by their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of the Owners of all Bonds then-Outstanding. Nothing in this Indenture contained shall, however, affect or impair the right of any Owner to payment of the principal of and interest on any Bond at and after the maturity thereof or the obligation of the City to pay the principal of and interest on each of the Bonds issued hereunder to the respective Owners thereof at the time, place, from the source and in the manner herein and in the Bonds expressed.

Section 907. Right of Owners to Direct Proceedings.

(a) The Owners of a majority in aggregate principal amount of Bonds then-Outstanding may, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver or any other proceedings hereunder; provided that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture, including **Section 1001(l)**.

(b) Notwithstanding any provision in this Indenture to the contrary, including paragraph (a) of this Section, the Owners shall not have the right to control or direct any remedies hereunder upon an Event of Default under **Section 12.1(a)** (but only as it relates to Additional Rent), **(b)** (but only as it relates to Unassigned Rights), **(c)** or **(d)** of the Lease.

Section 908. Application of Moneys in Event of Default.

(a) All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall be applied first to the costs and expenses of the proceedings resulting in the collection of such moneys and of the fees, expenses, liabilities and advances incurred or made by the Trustee (including any attorneys' fees and expenses) or amounts to be paid pursuant to **Section 903** and second to any obligations outstanding under the Lease and the Development Agreement. Any remaining moneys shall be deposited in the Bond Fund and applied as follows:

(1) Unless the principal of all the Bonds has become or has been declared due and payable, all such moneys shall be applied:

FIRST -- To the payment to the Persons entitled thereto of all installments of interest, if any, then due and payable on the Bonds, in the order in which such installments of interest became due and payable, and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment, ratably, according to the amounts due on such installment, to the Persons entitled thereto, without any discrimination or privilege;

SECOND -- To the payment to the Persons entitled thereto of the unpaid principal of any of the Bonds which have become due and payable (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture), in the order of their due dates, and, if the amount available shall not be sufficient

to pay in full Bonds due on any particular date, together with such interest, then to the payment, ratably, according to the amount of principal due on such date, to the Persons entitled thereto, without any discrimination or privilege.

(2) If the principal of all the Bonds has become due or has been declared due and payable, all such moneys shall be applied to the payment of the principal and interest, if any, then due and unpaid on all of the Bonds, without preference or priority of principal over interest or of interest over principal or of any installment of interest over any other installment of interest or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the Persons entitled thereto, without any discrimination or privilege.

(3) If the principal of all the Bonds has been declared due and payable, and if such declaration thereafter has been rescinded and annulled under the provisions of **Section 910**, then, subject to the provisions of subsection (2) of this Section, if the principal of all the Bonds later becomes due or is declared due and payable, the moneys shall be applied in accordance with the provisions of subsection (1) of this Section.

(b) Whenever moneys are to be applied pursuant to the provisions of this Section, such moneys shall be applied at such times and from time to time as the Trustee shall determine, having due regard to the amount of such moneys available and which may become available for such application in the future. Whenever the Trustee shall apply such moneys, it shall fix the date (which shall be a Payment Date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such date shall cease to accrue.

(c) Whenever all of the Bonds and interest thereon, if any, have been paid under the provisions of this Section, and all fees, expenses and charges of the City and the Trustee and any other amounts required to be paid under this Indenture and the Lease have been paid (including any amounts payable under the Development Agreement), any balance remaining in the Bond Fund shall be paid to the Developer as provided in **Section 602**.

Section 909. Remedies Cumulative. No remedy by the terms of this Indenture conferred upon or reserved to the Trustee or to the Owners is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Owners hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right, power or remedy accruing upon any Event of Default shall impair any such right, power or remedy or shall be construed to be a waiver of any such Event of Default or acquiescence therein; every such right, power or remedy may be exercised from time to time and as often as may be deemed expedient. If the Trustee has proceeded to enforce any right under this Indenture by the appointment of a receiver, by entry, or otherwise, and such proceedings have been discontinued or abandoned for any reason, or have been determined adversely, then and in every such case the City, the Developer, the Trustee and the Owners shall be restored to their former positions and rights hereunder, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

Section 910. Waivers of Events of Default. The Trustee shall waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal of and interest, if any, on the Bonds, but only upon the written request of the Owners of at least 50% in aggregate principal amount of all the Bonds then-Outstanding, provided, however, that (a) there shall not be waived without the consent of the City an Event of Default hereunder arising from an Event of Default under **Section 12.1(a)** (but only as it relates to Additional Rent), (b) (but only as it relates to Unassigned Rights), (c) or (d) of the Lease,

and (b) there shall not be waived without the consent of the Owners of all the Bonds Outstanding (1) any Event of Default in the payment of the principal of any Outstanding Bonds when due (whether at the date of maturity or redemption specified therein), or (2) any Event of Default in the payment when due of the interest on any such Bonds, unless before such waiver or rescission, all arrears of interest, or all arrears of payments of principal when due, as the case may be, and all reasonable expenses of the Trustee and the City (including reasonable attorneys' fees and expenses), in connection with such default, have been paid or provided for. In case of any such waiver or rescission, or in case any proceedings taken by the Trustee on account of any such default have been discontinued or abandoned or determined adversely, then and in every such case the City, the Developer, the Trustee and the Owners shall be restored to their former positions, rights and obligations hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

ARTICLE X

THE TRUSTEE

Section 1001. Acceptance of the Trusts. The Trustee hereby accepts the trusts imposed upon it by this Indenture, but only upon and subject to the following express terms and conditions, and no implied covenants or obligations shall be read into this Indenture against the Trustee:

(a) The Trustee, before the occurrence of an Event of Default and after the curing or waiver of all Events of Default that may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. If any Event of Default has occurred and is continuing, subject to **Section 1001(I)** below, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and shall use the same degree of care and skill in their exercise, as a prudent Person would exercise or use under the circumstances in the conduct of its own affairs.

(b) The Trustee undertakes to perform such duties as are specifically set forth in this Indenture, and in the absence of bad faith, negligence or willful misconduct on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct. The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or through agents, affiliates, attorneys or receivers and shall not be responsible for any misconduct or negligence on the part of any agent, attorney or receiver appointed or chosen by it with due care. The Trustee may conclusively rely upon and act or refrain from acting upon any opinion or advice of counsel, who may be counsel to the City or to the Developer, concerning all matters of trust hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such agents, attorneys and receivers as may reasonably be employed in connection with the trusts hereof. The Trustee shall not be responsible for any loss or damage resulting from any action or nonaction by it taken or omitted to be taken in good faith in reliance upon such opinion or advice of counsel addressed to the City and the Trustee.

(c) The Trustee shall not be responsible for any recital herein or in the Bonds (except with respect to the Certificate of Authentication of the Trustee endorsed on the Bonds), or except as provided in the Lease and particularly **Section 10.8** thereof, for the recording or rerecording, filing or refiling of this Indenture or any security agreement in connection therewith (excluding the

continuation of Uniform Commercial Code financing statements), or for insuring the Project or collecting any insurance moneys, or for the validity of the execution by the City of this Indenture or of any Supplemental Indentures or instruments of further assurance, or for the sufficiency of the security of the Bonds. The Trustee shall not be responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with **Article VII**.

(d) The Trustee shall not be accountable for the use of any Bonds authenticated and delivered hereunder. The Trustee, in its individual or any other capacity, may become the Owner or pledgee of Bonds with the same rights that it would have if it were not the Trustee. The Trustee shall not be accountable for the use or application by the City or the Developer of the proceeds of any of the Bonds or of any money paid to or upon the order of the City or the Developer under any provision of this Indenture.

(e) The Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, affidavit, letter, telegram or other paper or document provided for under this Indenture believed by it to be genuine and correct and to have been signed, presented or sent by the proper Person or Persons. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any Person who, at the time of making such request or giving such authority or consent is an Owner, shall be conclusive and binding upon all future Owners of the same Bond and upon Bonds issued in exchange therefor or upon transfer or in place thereof.

(f) As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, or whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established before taking, suffering or omitting any action hereunder, the Trustee may rely upon a certificate signed by the Authorized City Representative or the Authorized Developer Representative as sufficient evidence of the facts therein contained, and before the occurrence of a default of which the Trustee has been notified as provided in subsection (h) of this Section or of which by said subsection it is deemed to have notice, the Trustee shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same.

(g) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty, and the Trustee shall not be answerable for other than its negligence or willful misconduct.

(h) The Trustee shall not be required to take notice or be deemed to have notice of any default hereunder except failure by the City to cause to be made any of the payments to the Trustee required to be made in **Article VI**, unless the Trustee is specifically notified in writing of such default by the City or by the Owners of at least 25% in aggregate principal amount of all Bonds then-Outstanding.

(i) At any and all reasonable times and subject to the Developer's reasonable and standard security procedures, the Trustee and its duly authorized agents, attorneys, experts, engineers, accountants and representatives may, but shall not be required to, inspect any and all of the Project, and all books, papers and records of the City pertaining to the Project and the Bonds, and to take such memoranda from and in regard thereto as may be desired. The Trustee shall treat all proprietary information of the Developer as confidential.

(j) The Trustee shall not be required to give any bond or surety in respect to the execution of its trusts and powers hereunder or otherwise in respect of the Project.

(k) The Trustee may, but shall not be required to, demand, in respect of the authentication of any Bonds, the withdrawal of any cash, the release of any property, or any action whatsoever within the purview of this Indenture, any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required, as a condition of such action by the Trustee deemed desirable for the purpose of establishing the right of the City to the authentication of any Bonds, the withdrawal of any cash, the release of any property or the taking of any other action by the Trustee.

(l) Notwithstanding anything in this Indenture or the Lease to the contrary, before taking any action under this Indenture other than the payments from moneys on deposit in the Project Fund or the Bond Fund, as provided herein, the Trustee may require that satisfactory indemnity be furnished to it for the reimbursement of all costs and expenses (including, without limitation, attorneys' fees and expenses) to which it may be put and to protect it against all liability which it may incur in or by reason of such action, except liability which is adjudicated to have resulted from its negligence or willful misconduct by reason of any action so taken.

(m) Notwithstanding any other provision of this Indenture to the contrary, any provision relating to the conduct of or intended to provide authority to act, right to payment of fees and expenses, protection, immunity and indemnification to the Trustee, shall be interpreted to include any action of the Trustee, whether it is deemed to be in its capacity as Trustee, bond registrar or Paying Agent.

(n) The Trustee agrees to accept and act on instructions or directions pursuant to this Indenture sent by the City or the Developer, as the case may be, by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods, provided, however, that the City or the Developer, respectively, shall provide to the Trustee an incumbency certificate listing designated Persons with the authority to provide such instructions, which incumbency certificate shall be amended whenever a Person is to be added or deleted from the listing. If the City or the Developer, as applicable, elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee acts upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The City or the Developer, as applicable, agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

(o) The Trustee shall have no responsibility with respect to any information, statement or recital in any official statement, offering memorandum or other disclosure material prepared or distributed with respect to the Bonds and shall have no responsibility for compliance with any state or federal securities laws in connection with the Bonds.

(p) None of the provisions of this Indenture shall require the Trustee to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers if it has reasonable grounds

for believing that repayment of such funds or indemnity satisfactory to it against such risk or liability is not assured to it.

Section 1002. Fees, Charges and Expenses of the Trustee. The Trustee shall be entitled to payment of and/or reimbursement for reasonable fees for its ordinary services rendered hereunder and all advances, agent and counsel fees and other ordinary expenses reasonably made or incurred by the Trustee in connection with such ordinary services. If it becomes necessary for the Trustee to perform extraordinary services, it shall be entitled to reasonable extra compensation therefor and to reimbursement for reasonable extraordinary expenses in connection therewith; provided that if such extraordinary services or extraordinary expenses are caused by the negligence or willful misconduct of the Trustee, it shall not be entitled to compensation or reimbursement therefor. The Trustee shall be entitled to payment and reimbursement for the reasonable fees and charges of the Trustee as Paying Agent for the Bonds. Pursuant to the provisions of **Section 5.2** of the Lease, the Developer has agreed to pay to the Trustee all reasonable fees, charges and expenses of the Trustee under this Indenture. The Trustee agrees that the City shall have no liability for any reasonable fees, charges and expenses of the Trustee, and the Trustee agrees to look only to the Developer for the payment of all reasonable fees, charges and expenses of the Trustee and any Paying Agent as provided in the Lease. Upon the occurrence of an Event of Default and during its continuance, the Trustee shall have a lien with right of payment before payment on account of principal of or interest on any Bond, upon all moneys in its possession under any provisions hereof for the foregoing reasonable advances, fees, costs and expenses incurred. The Trustee's rights to compensation and indemnification shall survive the satisfaction and discharge of this Indenture or its resignation or removal hereunder and payment in full of the Bonds.

Section 1003. Notice to Owners if Default Occurs. If a default occurs of which the Trustee is by **Section 1001(h)** required to take notice or if notice of default is given as in said subsection (h) provided, then the Trustee shall give written notice thereof to the last known Owners of all Bonds then-Outstanding as shown by the bond registration books required by **Section 206** to be kept at the corporate trust office of the Trustee.

Section 1004. Intervention by the Trustee. In any judicial proceeding to which the City is a party and which, in the opinion of the Trustee and its counsel, has a substantial bearing on the interests of Owners, the Trustee may intervene on behalf of Owners and, subject to the provisions of **Section 1001(l)**, shall do so if requested in writing by the Owners of at least 25% of the aggregate principal amount of Bonds then-Outstanding.

Section 1005. Successor Trustee Upon Merger, Consolidation or Sale. With the prior written consent of the Developer, any corporation or association into which the Trustee may be merged or converted or with or into which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any merger, conversion, sale, consolidation or transfer to which it is a party, shall be and become successor Trustee hereunder and shall be vested with all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges hereunder as was its predecessor, without the execution or filing of any instrument or any further act on the part of any of the parties hereto.

Section 1006. Resignation of Trustee. The Trustee and any successor Trustee may at any time resign from the trusts hereby created by giving 30 days' written notice to the City, the Developer and the Owners, and such resignation shall take effect at the end of such 30 days, or upon the earlier appointment of a successor Trustee by the Owners or by the City; provided, however, that in no event shall the resignation of the Trustee or any successor Trustee become effective until such time as a successor Trustee

has been appointed and has accepted the appointment. If no successor has been appointed and accepted the appointment within 30 days after the giving of such notice of resignation, the Trustee, at the Developer's expense, may petition any court of competent jurisdiction for the appointment of a successor Trustee.

Section 1007. Removal of Trustee. The Trustee may be removed at any time, with or without cause, by an instrument or concurrent instruments in writing (a) delivered to the Trustee, the City and the Developer and signed by the Owners of a majority in aggregate principal amount of Bonds then-Outstanding, or (b) so long as no Event of Default under this Indenture or the Lease has occurred and is continuing, delivered to the Trustee, the City and the Owners and signed by the Developer.

Section 1008. Appointment of Successor Trustee. If the Trustee hereunder resigns or is removed, or otherwise becomes incapable of acting hereunder, or if it is taken under the control of any public officer or officers or of a receiver appointed by a court, a successor Trustee (a) reasonably acceptable to the City may be appointed by the Developer (so long as no Event of Default has occurred and is continuing), or (b) reasonably acceptable to the City and the Developer may be appointed by the Owners of a majority in aggregate principal amount of Bonds then-Outstanding, by an instrument or concurrent instruments in writing; provided, nevertheless, that in case of such vacancy, the City, by an instrument executed and signed by its Mayor or City Administrator and attested by its City Clerk under its seal, may appoint a temporary Trustee to fill such vacancy until a successor Trustee shall be appointed in the manner above provided. Any such temporary Trustee so appointed by the City shall immediately and without further acts be superseded by the successor Trustee so appointed as provided above. Every such Trustee appointed pursuant to the provisions of this Section shall be a trust company or bank in good standing and qualified to accept such trusts with a corporate trust office in the State, and having, or whose obligations are guaranteed by a financial institution having, a reported capital, surplus and undivided profits of not less than \$50,000,000. If no successor Trustee has been so appointed and accepted appointment in the manner herein provided, the Trustee, at the Developer's expense, or any Owner may petition any court of competent jurisdiction for the appointment of a successor Trustee, until a successor has been appointed as above provided.

Section 1009. Vesting of Trusts in Successor Trustee. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the City and the Developer an instrument in writing accepting such appointment hereunder, and thereupon such successor shall, without any further act, deed or conveyance, become fully vested with all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges of its predecessor and the duties and obligations of such predecessor hereunder shall thereafter cease and terminate; but such predecessor shall, nevertheless, on the written request of the City, execute and deliver an instrument transferring to such successor Trustee all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges of such predecessor hereunder; every predecessor Trustee shall deliver all securities and moneys held by it as Trustee hereunder to its successor. Should any instrument in writing from the City be required by any predecessor or successor Trustee for more fully and certainly vesting in such successor the trusts, powers, rights, obligations, duties, remedies, immunities and privileges hereby vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the City.

Section 1010. Right of Trustee to Pay Taxes and Other Charges. If any tax, assessment or governmental or other charge upon, or insurance premium with respect to, any part of the Project is not paid as required herein or in the Lease, the Trustee may pay such tax, assessment, governmental charge or insurance premium, without prejudice, however, to any rights of the Trustee or the Owners hereunder arising in consequence of such failure; any amount at any time so paid under this Section, with interest thereon from the date of payment at the rate of 10% per annum, shall become an additional obligation

secured by this Indenture, and the same shall be given a preference in payment over any payment of principal of or interest on the Bonds, and shall be paid out of the proceeds of rents, revenues and receipts collected from the Project, if not otherwise caused to be paid; but the Trustee shall be under no obligation to make any such payment unless it has been requested to do so by the Owners of at least 25% of the aggregate principal amount of Bonds then-Outstanding and has been provided adequate funds for the purpose of such payment.

Section 1011. Trust Estate May be Vested in Co-Trustee.

(a) It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including particularly the State) denying or restricting the right of banking corporations or associations to transact business as trustee in such jurisdiction. It is recognized that in case of litigation under this Indenture or the Lease, and in particular in case of the enforcement of either this Indenture or the Lease upon the occurrence of an Event of Default or if the Trustee deems that by reason of any present or future law of any jurisdiction it cannot exercise any of the powers, rights or remedies herein granted to the Trustee, or take any other action which may be desirable or necessary in connection therewith, it may be necessary or desirable that the Trustee appoint an additional individual or institution as a co-trustee or separate trustee, and the Trustee is hereby authorized to appoint such co-trustee or separate trustee.

(b) If the Trustee appoints an additional individual or institution as a co-trustee or separate trustee (which appointment shall be subject to the approval of the Developer), each and every remedy, power, right, claim, demand, cause of action, immunity, title, interest and lien expressed or intended by this Indenture to be exercised by the Trustee with respect thereto shall be exercisable by such co-trustee or separate trustee but only to the extent necessary to enable such co-trustee or separate trustee to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such co-trustee or separate trustee shall run to and be enforceable by either of them.

(c) Should any deed, conveyance or instrument in writing from the City be required by the co-trustee or separate trustee so appointed by the Trustee for more fully and certainly vesting in and confirming to such co-trustee or separate trustee such properties, rights, powers, trusts, duties and obligations, any and all such deeds, conveyances and instruments in writing shall, on request, be executed, acknowledged and delivered by the City.

(d) If any co-trustee or separate trustee shall die, become incapable of acting, resign or be removed, all the properties, rights, powers, trusts, duties and obligations of such co-trustee or separate trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment of a successor to such co-trustee or separate trustee.

Section 1012. Accounting. The Trustee shall render an annual accounting for the period ending December 31 of each year to the City, the Developer and to any Owner requesting the same and, upon the request of the City, the Developer or any Owner (at such Owner's expense), a monthly accounting to any such party, showing in reasonable detail all financial transactions relating to the Trust Estate during the accounting period and the balance in any funds or accounts created by this Indenture as of the beginning and close of such accounting period.

Section 1013. Performance of Duties Under the Lease. The Trustee hereby accepts and agrees to perform all duties and obligations specifically assigned to it under the Lease.

ARTICLE XI

SUPPLEMENTAL INDENTURES

Section 1101. Supplemental Indentures Not Requiring Consent of Owners. The City and the Trustee may from time to time, without the consent of or notice to any of the Owners, enter into such Supplemental Indenture or Supplemental Indentures as shall not be inconsistent with the terms and provisions hereof, for any one or more of the following purposes:

- (a) To cure any ambiguity or formal defect or omission in this Indenture, or to make any other change which, in the judgment of the Trustee, is not to the material prejudice of the Trustee or the Owners (provided the Trustee is entitled to receive and may conclusively rely upon an opinion of counsel in exercising such judgment);
- (b) To grant to or confer upon the Trustee for the benefit of the Owners any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Owners or the Trustee or both of them;
- (c) To more precisely identify any portion of the Project or to add additional property thereto;
- (d) To conform the Indenture to amendments to the Lease made by the City and the Developer; or
- (e) To subject to this Indenture additional revenues, properties or collateral.

Section 1102. Supplemental Indentures Requiring Consent of Owners.

(a) Exclusive of Supplemental Indentures covered by **Section 1101** and subject to the terms and provisions contained in this Section, and not otherwise, the Owners of not less than a majority in aggregate principal amount of the Bonds then-Outstanding may, from time to time, anything contained in this Indenture to the contrary notwithstanding, consent to and approve the execution by the City and the Trustee of such other Supplemental Indenture or Supplemental Indentures as shall be deemed necessary and desirable by the City for the purpose of modifying, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any Supplemental Indenture; provided, however, that without the consent of the Owners of 100% of the principal amount of the Bonds then-Outstanding, nothing in this Section contained shall permit or be construed as permitting (1) an extension of the maturity or a shortening of the redemption date of the principal of or the interest, if any, on any Bond issued hereunder, or (2) a reduction in the principal amount of any Bond or the rate of interest thereon, if any, or (3) a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (4) a reduction in the aggregate principal amount of Bonds the Owners of which are required for consent to any such Supplemental Indenture.

(b) If at the time the City requests the Trustee to enter into any such Supplemental Indenture for any of the purposes of this Section, the Trustee shall cause notice of the proposed execution of such Supplemental Indenture to be mailed to each Owner as shown on the bond registration books required by **Section 206**. Such notice shall briefly set forth the nature of the proposed Supplemental Indenture and shall state that copies thereof are on file at the corporate trust office of the Trustee for inspection by all Owners. If within 60 days or such longer period as may be prescribed by the City following the mailing of such

notice, the Owners of not less than a majority in aggregate principal amount of the Bonds Outstanding at the time of the execution of any such Supplemental Indenture shall have consented to and approved the execution thereof as herein provided, no Owner shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the City from executing the same or from taking any action pursuant to the provisions thereof.

Section 1103. Developer's Consent to Supplemental Indentures. Anything herein to the contrary notwithstanding, a Supplemental Indenture under this Article shall not become effective unless and until the Developer has consented in writing to the execution and delivery of such Supplemental Indenture. The Trustee shall cause notice of the proposed execution and delivery of any Supplemental Indenture (regardless of whether it affects the Developer's rights) together with a copy of the proposed Supplemental Indenture to be mailed to the Developer and any Financing Party of which the Trustee has received written notice at least 15 days before the proposed date of execution and delivery of the Supplemental Indenture.

Section 1104. Opinion of Counsel. In executing, or accepting the additional trusts created by, any Supplemental Indenture permitted by this Article or the modification thereby of the trusts created by this Indenture, the Trustee and the City shall receive, and, shall be fully protected in relying upon, an opinion of counsel addressed and delivered to the Trustee and the City stating that the execution of such Supplemental Indenture is permitted by and in compliance with this Indenture and will, upon the execution and delivery thereof, be a valid and binding obligation of the City. The Trustee may, but shall not be obligated to, enter into any such Supplemental Indenture which affects the Trustee's rights, duties or immunities under this Indenture or otherwise.

ARTICLE XII

SUPPLEMENTAL LEASES

Section 1201. Supplemental Leases Not Requiring Consent of Owners. The City and the Trustee shall, without the consent of or notice to the Owners, consent to the execution of any Supplemental Lease or Supplemental Leases by the City and the Developer as may be required (a) by the provisions of the Lease and this Indenture, (b) for the purpose of curing any ambiguity or formal defect or omission in the Lease, (c) so as to more precisely identify the Project or add additional property thereto or (d) in connection with any other change therein which, in the judgment of the Trustee, does not materially and adversely affect the Trustee or security for the Owners (provided the Trustee is entitled to receive and may conclusively rely upon an opinion of counsel in exercising such judgment).

Section 1202. Supplemental Leases Requiring Consent of Owners. Except for Supplemental Leases as provided for in **Section 1201**, neither the City nor the Trustee shall consent to the execution of any Supplemental Lease or Supplemental Leases by the City or the Developer without the mailing of notice and the obtaining of the written approval or consent of the Owners of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding given and obtained as provided in **Section 1102**. If at any time the City and the Developer shall request the consent of the Trustee to any such proposed Supplemental Lease, the Trustee shall cause notice of such proposed Supplemental Lease to be mailed in the same manner as provided in **Section 1102** with respect to Supplemental Indentures. Such notice shall briefly set forth the nature of such proposed Supplemental Lease and shall state that copies of the same are on file in the corporate trust office of the Trustee for inspection by all Owners. If within 60 days or such

longer period as may be prescribed by the City following the mailing of such notice, the Owners of not less than 50% in aggregate principal amount of the Bonds Outstanding at the time of the execution of any such Supplemental Lease shall have consented to and approved the execution thereof as herein provided, no Owner shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Developer or the City from executing the same or from taking any action pursuant to the provisions thereof.

Section 1203. Opinion of Counsel. In executing or consenting to any Supplemental Lease permitted by this Article, the City and the Trustee shall receive, and shall be fully protected in relying upon, an opinion of counsel addressed to the Trustee and the City stating that the execution of such Supplemental Lease is authorized or permitted by the Lease and this Indenture and the applicable law and will upon the execution and delivery thereof be valid and binding obligations of the parties thereto.

ARTICLE XIII

SATISFACTION AND DISCHARGE OF INDENTURE

Section 1301. Satisfaction and Discharge of this Indenture.

(a) When the principal of and interest on all the Bonds have been paid in accordance with their terms or provision has been made for such payment, as provided in **Section 1302**, and provision also made for paying all other sums payable hereunder and under the Lease and the Development Agreement, including the reasonable fees and expenses of the Trustee, the City and the Paying Agent to the date of retirement of the Bonds, then the right, title and interest of the Trustee in respect hereof shall thereupon cease, determine and be void. Thereupon, the Trustee shall cancel, discharge and release this Indenture and shall upon the written request of the City or the Developer execute, acknowledge and deliver to the City such instruments of satisfaction and discharge or release as shall be required to evidence such release and the satisfaction and discharge of this Indenture, and shall assign and deliver to the City (subject to the City's obligations under **Section 11.2** of the Lease) any property at the time subject to this Indenture which may then be in its possession, except amounts in the Bond Fund required to be paid to the Developer under **Section 602** and except funds or securities in which such funds are invested held by the Trustee for the payment of the principal of and interest on the Bonds.

(b) The City is hereby authorized to accept a certificate by the Trustee that the whole amount of the principal and interest, if any, so due and payable upon all of the Bonds then-Outstanding has been paid or such payment provided for in accordance with **Section 1302** as evidence of satisfaction of this Indenture, and upon receipt thereof shall cancel and erase the inscription of this Indenture from its records.

Section 1302. Bonds Deemed to be Paid.

(a) Bonds shall be deemed to be paid within the meaning of this Article when payment of the principal of and interest thereon to the due date thereof (whether such due date be by reason of maturity or upon redemption as provided in this Indenture, or otherwise), either (1) have been made or caused to be made in accordance with the terms thereof, or (2) have been provided for by depositing with the Trustee or other commercial bank or trust company having full trust powers and authorized to accept trusts in the State in trust and irrevocably set aside exclusively for such payment (A) moneys sufficient to make such payment or (B) Government Securities maturing as to principal and interest in such amount and at such times as will ensure the availability of sufficient moneys to make such payment, or (3) have been provided for by

surrendering the Bonds to the Trustee for cancellation. When the Bonds are deemed to be paid hereunder, as aforesaid, they shall no longer be secured by or entitled to the benefits of this Indenture, except for the purposes of such payment from such moneys or Government Securities.

(b) Notwithstanding the foregoing, in the case of Bonds which by their terms may be redeemed before the stated maturities thereof, no deposit under clause (2) of the immediately preceding paragraph shall be deemed a payment of such Bonds as aforesaid until, as to all such Bonds which are to be redeemed before their respective stated maturities, proper notice of such redemption has been given in accordance with **Article III** or irrevocable instructions have been given to the Trustee to give such notice.

(c) Notwithstanding any provision of any other section of this Indenture which may be contrary to the provisions of this Section, all moneys or Government Securities set aside and held in trust pursuant to the provisions of this Section for the payment of Bonds shall be applied to and used solely for the payment of the particular Bonds, with respect to which such moneys and Government Securities have been so set aside in trust.

ARTICLE XIV

MISCELLANEOUS PROVISIONS

Section 1401. Consents and Other Instruments by Owners.

(a) Any consent, request, direction, approval, objection or other instrument required by this Indenture to be signed and executed by the Owners may be in any number of concurrent writings of similar tenor and may be signed or executed by such Owners in person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent and of the ownership of Bonds (other than the assignment of ownership of a Bond) if made in the following manner, shall be sufficient for any of the purposes of this Indenture, and shall be conclusive in favor of the Trustee with regard to any action taken, suffered or omitted under any such instrument, namely:

(1) The fact and date of the execution by any Person of any such instrument may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the Person signing such instrument acknowledged before him the execution thereof, or by affidavit of any witness to such execution.

(2) The fact of ownership of Bonds and the amount or amounts, numbers and other identification of such Bonds, and the date of holding the same shall be proved by the registration books of the City maintained by the Trustee pursuant to **Section 206**.

(b) In determining whether the Owners of the requisite principal amount of Bonds Outstanding have given any request, demand, authorization, direction, notice, consent or waiver under this Indenture, Bonds owned by the Developer shall be disregarded and deemed not to be Outstanding under this Indenture, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Bonds which the Trustee knows to be so owned shall be so disregarded; provided, the foregoing provisions shall not be applicable if the Developer is the only Owner of the Bonds. Notwithstanding the foregoing, Bonds so owned which have been pledged in good faith shall not be disregarded as aforesaid if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Bonds and the pledgee is not the Developer or any affiliate thereof. The parties hereto acknowledge that, as of the date of execution and delivery of this Indenture, the

Lender is the pledgee of the Bonds and shall be deemed to be the sole holder of the Bonds for purposes of any request, demand, authorization, direction, notice, consent or waiver under this Indenture.

Section 1402. Limitation of Rights Under this Indenture. With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give any Person other than the parties hereto, and the Owners, if any, any right, remedy or claim under or in respect to this Indenture, this Indenture and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto, the Lender and the Owners, as herein provided.

Section 1403. Rights of Lender. The City and the Trustee agree that in addition to any other rights to assign the Bonds as set forth herein, the Developer may collaterally assign its interest in the Bonds to the Lender for the purpose of securing the Developer's obligations to the Lender in connection with the financing or refinancing of the Project. If a collateral assignment is made by the Developer, the City and the Trustee agree, at the expense of the Developer, to execute such consents, estoppels and other documents related thereto as the Lender shall reasonably request and in such form and with such terms as the City and the Trustee deem appropriate.

Section 1404. Notices. It shall be sufficient service of any notice, request, complaint, demand or other paper required by this Indenture to be given or filed with the City, the Trustee, the Developer, the Lender or Owners if the same is duly mailed, postage prepaid, sent by overnight delivery or other delivery service, as follows:

(a) To the City:

City of Osage Beach
1000 City Parkway
Osage Beach, Missouri 65065
Attn: City Administrator

with copies to:

City of Osage Beach
1000 City Parkway
Osage Beach, Missouri 65065
Attn: City Attorney

and

Gilmore & Bell, P.C.
One Metropolitan Square
211 N. Broadway, Suite 2000
St. Louis, Missouri 63102
Attn: Mark A. Spykerman, Esq.

(b) To the Trustee:

UMB Bank, N.A.
2 S. Broadway, Suite 600
St. Louis, Missouri 63102
Attn: Corporate Trust Department

(c) To the Developer:

The Preserve at Sycamore Creek, LLC
P.O. Box 6331
Fishers, Indiana 46038
Attn: Jeffrey J. Tegethoff

with a copy to:

Husch Blackwell LLP
190 Carondelet Plaza, Suite 600
Clayton, Missouri 63105
Attn: David Richardson, Esq.

(d) To the Lender:

[*Lender*]

Attn: _____

(e) To the Owners if the same is duly mailed by first-class, registered or certified mail addressed to each of the Owners of Bonds at the time Outstanding as shown by the bond registration books required by **Section 206** to be kept at the corporate trust office of the Trustee.

All notices given by certified or registered mail as aforesaid shall be deemed fully given as of the date they are so mailed, provided that any of the foregoing given to the Trustee shall be effective only upon receipt. All notices given by overnight delivery or other delivery service shall be deemed fully given as of the date when received. A duplicate copy of each notice, certificate or other communication given hereunder by either the City or the Trustee to the other shall also be given to the Developer and the Lender. The City, the Developer, the Lender and the Trustee may from time to time designate, by notice given hereunder to the others of such parties, such other address to which subsequent notices, certificates or other communications shall be sent.

Section 1405. Severability. If any provision of this Indenture is held or deemed to be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatsoever.

Section 1406. Execution in Counterparts. This Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 1407. Governing Law. This Indenture shall be governed exclusively by and construed in accordance with the applicable laws of the State.

Section 1408. Electronic Transaction. The parties agree that the transaction described herein may be conducted and related documents may be sent, received or stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 1409. City Consent. Pursuant to the Ordinance, the Mayor and the City Administrator are authorized to execute all documents on behalf of the City (including documents pertaining to the transfer of property or the financing or refinancing of the Project by the Developer) as may be required to carry out and comply with the intent of the Ordinance, this Indenture and the Lease. The Mayor and the City Administrator are also authorized, unless expressly prohibited herein, to grant on behalf of the City such consents, estoppels and waivers relating to the Bonds, this Indenture, the Base Lease, the Lease or the Development Agreement as may be requested during the term thereof; provided, such consents, estoppels and/or waivers shall not increase the principal amount of the Bonds, increase the term of the Lease or the economic incentives provided therein, waive an Event of Default or materially change the nature of the transaction unless otherwise approved by the Board of Aldermen.

Section 1410. Anti-Discrimination Against Israel Act. Pursuant to Section 34.600 of the Revised Statutes of Missouri, the Trustee certifies it is not currently engaged in and shall not, for the duration of this Indenture, engage in a boycott of goods or services from (a) the State of Israel, (b) companies doing business in or with the State of Israel or authorized by, licensed by or organized under the laws of the State of Israel or (c) persons or entities doing business in the State of Israel.

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IN WITNESS WHEREOF, the City of Osage Beach, Missouri, has caused this Indenture to be signed in its name and behalf by its Mayor and the seal of the City to be hereunto affixed and attested by its City Clerk, and to evidence its acceptance of the trusts hereby created, UMB Bank, N.A. has caused this Indenture to be signed in its name and behalf by a duly authorized officer, all as of the date first above written.

CITY OF OSAGE BEACH, MISSOURI

(SEAL)

By: _____
Michael Harmison, Mayor

Attest:

Tara Berreth, City Clerk

[Trust Indenture]

UMB BANK, N.A., as Trustee

By: _____
Name: _____
Title: _____

[Trust Indenture]

EXHIBIT A

PROJECT SITE

The land situated in the County of Camden, State of Missouri, and described as follows:

A tract of land situated in and being a part of the SE 1/4 of Section 9 and the NE 1/4 of Section 16, T 39 N, R 16 W and a part of the tracts of land described by deeds recorded in Book 407, Page 05, Book 276, Page 214, Book 526, Page 957, Book 682, Page 088, Book 671, Page 593 and Book 758, Page 283 in the Records of Camden County, Missouri and being more particularly described as follows:

Commencing at a U post set in concrete marking the SW Corner of the SE 1/4 of the SE 1/4 of Section 9, T 39 N, R 16 W; thence S 01° 20' 58" W, 63.34 feet to a 1 inch iron pipe marking the Northeasterly Corner of a tract of land described by deed recorded in Book 543, Page 485 in the Records of Camden County, Missouri for the point of beginning; thence N 88° 44' 11" W along the Northerly Line of said tract of land described by deed recorded in Book 543, Page 485, 262.27 feet to a 3/8 inch iron pin; thence leaving said Northerly Line along the Easterly Line of a tract of land described by deed recorded in Book 395, Page 023 in said Records along the following courses: thence N 04° 06' 08" W, 249.56 feet to a 3/8 inch iron pin in concrete; thence N 35° 00' 45" E, 242.61 feet to a pipe in concrete; thence N 49° 39' 55" E, 265.77 feet to a 3/8 inch iron pin; thence N 52° 44' 58" E, 899.46 feet to a 3/8 inch iron pin in concrete; thence N 46° 06' 25" E, 183.07 feet to a 3/8 inch iron pin in concrete; thence leaving said Easterly Line S 85° 35' 26" E along the Northerly Line of a tract of land described by deed recorded in Book 407, Page 005 in said Records 328.70 feet to a set 1/2 inch rebar; thence continuing along said Northerly Line S 43° 35' 26" E, 57.98 feet to a 1/2 inch rebar set on the Westerly Right of Way Line of Nichols Road; thence leaving said Northerly Line along said Right of Way Line along the following courses: thence S 02° 31' 04" E, 93.02 feet; thence along a curve to the right 136.83 feet, the radius being 273.09 feet and the long chord being S 11° 50' 09" W, 135.40 feet; thence S 26° 11' 21" W, 113.14 feet; thence along a curve to the right 157.65 feet; the radius being 339.62 feet and the long chord being S 39° 29' 15" W, 156.24 feet; thence S 52° 47' 09" W, 304.35 feet; thence along a curve to the left 84.11 feet, the radius being 378.91 feet and the long chord being S 46° 25' 36" W, 83.94 feet; thence S 40° 04' 03" W, 236.65 feet to a set 1/2 inch rebar; thence leaving said Right of Way Line S 80° 15' 01" W along the Northerly Line of a tract of land described by deed recorded in Book 407, Page 005 in said Records 57.57 feet to a set 1/2 inch rebar; thence leaving said Northerly Line S 10° 08' 08" E along the Westerly Line of said tract of land described by deed recorded in Book 407, Page 005 in said Records 48.35 feet to a 1/2 inch rebar set on said Right of Way Line; thence along said Right of Way Line along the following courses: thence S 40° 04' 03" W, 19.95 feet; thence along a curve to the right 143.79 feet, the radius being 538.87 feet and the long chord being S 47° 42' 42" W, 143.36 feet; thence S 55° 21' 21" W, 235.32 feet; thence along a curve to the left 73.05 feet, the radius being 459.65 feet and the long chord being S 50° 48' 12" W, 72.97 feet; thence S 46° 15' 03" W, 53.03 feet; thence along a curve to the left 235.63 feet, the radius being 851.54 feet and the long chord being S 38° 19' 25" W, 234.88 feet to a 1/2 inch rebar set on the Right of Way Line of US Route 54; thence leaving said Right of Way Line of Nichols Road S 70° 05' 10" W along said Right of Way Line of US Route 54 54.66 feet to a 1/2 inch rebar set on the Easterly Line of said tract of land described by deed recorded in Book 543, Page 485 in said Records; thence leaving said Right of Way Line N 00° 56' 45" E along said Easterly Line 229.60 feet to the point of beginning.

EXHIBIT B

FORM OF BONDS

***THIS BOND OR ANY PORTION HEREOF MAY BE TRANSFERRED, ASSIGNED OR
NEGOTIATED ONLY AS PROVIDED IN THE HEREIN-DESCRIBED INDENTURE.***

No. 1

**Not to Exceed
\$63,000,000**

**UNITED STATES OF AMERICA
STATE OF MISSOURI**

**CITY OF OSAGE BEACH, MISSOURI
TAXABLE INDUSTRIAL REVENUE BOND
(THE PRESERVE AT SYCAMORE CREEK PROJECT)
SERIES 2022**

Interest Rate

5.0%

Maturity Date

Completion Date¹

Dated Date

_____, 2022

OWNER:

MAXIMUM PRINCIPAL AMOUNT:

SIXTY-THREE MILLION DOLLARS

The **CITY OF OSAGE BEACH, MISSOURI**, a fourth-class city organized and existing under the laws of the State of Missouri (the “City”), for value received, promises to pay, but solely from the source hereinafter referred to, to the Owner named above, or registered assigns thereof, on the Maturity Date shown above, the principal amount shown above, or such lesser amount as may be outstanding hereunder as reflected on **Schedule I** hereto held by the Trustee as provided in the hereinafter referred to Indenture. The City agrees to pay such principal amount to the Owner in any coin or currency of the United States of America which on the date of payment thereof is legal tender for the payment of public and private debts, and in like manner to pay to the Owner hereof, either by check or draft mailed to the Owner at a stated address as it appears on the bond registration books of the City kept by the Trustee under the within mentioned Indenture or, in certain situations authorized in the Indenture, by internal bank transfer or by wire transfer to an account in a commercial bank or savings institution located in the United States. Interest on the Cumulative Outstanding Principal Amount (as hereinafter defined) at the per annum Interest Rate stated above shall be payable in arrears on each December 1, commencing on December 1, 2023, and continuing thereafter until the earlier of the date on which said Cumulative Outstanding Principal Amount

¹ “Completion Date” means the date of execution of the certificate required by **Section 4.5** of the herein-defined Lease and **Section 504** of the herein-defined Indenture, which shall be deemed executed and filed on the last day of the 26th month following the commencement of the herein-defined Project Improvements if not actually executed and filed by such date, except as otherwise provided in **Section 4.5** of the Lease, including an extension to the last day of the 32nd month following the commencement of the Project Improvements in the event of a Permitted Excuse (as defined in the Indenture).

is paid in full on the Maturity Date. Interest on each advancement of the principal amount of this Bond shall accrue from the date that such advancement is made, computed on the basis of a year of 360 days consisting of 12 months of 30 days each.

As used herein, the term “Cumulative Outstanding Principal Amount” means all Bonds outstanding under the terms of the hereinafter-defined Indenture, as reflected on **Schedule I** hereto maintained by the Trustee.

THIS BOND is one of a duly authorized series of Bonds of the City designated the “City of Osage Beach, Missouri, Taxable Industrial Revenue Bonds (The Preserve at Sycamore Creek Project), Series 2022,” in the maximum aggregate principal amount of \$63,000,000 (the “Bonds”), to be issued for the purpose of acquiring a leasehold interest in approximately 22.4 acres of real property located at 4470 Nichols Road, 1170 Nichols Road, 1167 Nichols Road and 1157 Nichols Road in the City (collectively, the “Project Site”) and constructing thereon a multi-building, multi-family housing development comprised of approximately 268 rental units, a clubhouse and amenity space (the “Project Improvements”). The City will lease the Project Site and the Project Improvements (collectively, the “Project”) to The Preserve at Sycamore Creek, LLC, a Missouri limited liability company (the “Developer”), under the terms of a Lease Agreement dated as of [*Date*], 2022 (said Lease Agreement, as amended and supplemented from time to time in accordance with the provisions thereof, being herein called the “Lease”), between the City and the Developer, all pursuant to the authority of and in full compliance with the provisions, restrictions and limitations of the Constitution and the statutes of the State of Missouri, including particularly the Act, and pursuant to proceedings duly had by the Board of Aldermen.

THE BONDS are issued under and are equally and ratably secured and entitled to the protection given by a Trust Indenture dated as of [*Date*], 2022 (said Trust Indenture, as amended and supplemented from time to time in accordance with the provisions thereof, being herein called the “Indenture”), between the City and UMB Bank, N.A., as trustee (the “Trustee”). *Capitalized terms not defined herein shall have the meanings set forth in the Indenture.*

Reference is hereby made to the Indenture for a description of the provisions, among others, with respect to the nature and extent of the security for the Bonds, the rights, duties and obligations of the City, the Trustee and the Owners, and the terms upon which the Bonds are issued and secured.

THE BONDS are subject to redemption and payment at any time before the stated maturity thereof, at the option of the City, upon written instructions from the Developer, (1) in whole, if the Developer exercises its option to purchase the Project and deposits an amount sufficient to effect such purchase pursuant to the Lease on the applicable redemption date, or (2) in part, if the Developer prepays additional Basic Rent pursuant to the Lease; provided, however, if only a portion of the Bonds are to be redeemed, Bonds aggregating at least 10% of the maximum principal amount of Bonds authorized under the Indenture shall not be subject to redemption and payment before the stated maturity thereof. Any redemption of Bonds pursuant to this paragraph shall be at a redemption price equal to the par value thereof being redeemed, plus accrued interest thereon, without premium or penalty, to the redemption date.

THE BONDS are subject to mandatory redemption, in whole or in part, to the extent of amounts deposited in the Bond Fund pursuant to **Section 9.1(f)** or **9.2(c)** of the Lease, in the event of substantial damage to or destruction or condemnation of substantially all of the Project. Bonds to be redeemed pursuant to this paragraph shall be called for redemption by the Trustee on the earliest practicable date for which timely notice of redemption may be given as provided in the Indenture. Any redemption of Bonds pursuant to this paragraph shall be at a redemption price equal to the par value thereof being redeemed, plus accrued

interest thereon, without premium or penalty, to the redemption date. Before giving notice of redemption to the Owners pursuant to this paragraph, money in an amount equal to the redemption price shall have been deposited in the Bond Fund.

If the Bonds are to be called for optional redemption, the Developer shall deliver written notice to the City and the Trustee that it has elected to redeem all or a portion of the Bonds at least 40 days (10 days if there is one Owner) before the scheduled redemption date. The Trustee shall then deliver written notice to the Owners at least 30 days (five days if there is one Owner) before the scheduled redemption date by facsimile or other electronic communication and by first-class mail stating the date upon which the Bonds will be redeemed and paid.

THE BONDS, including interest thereon, are special obligations of the City and are payable solely out of the rents, revenues and receipts derived by the City from the Project and the Lease and not from any other fund or source of the City, and are secured by a pledge and assignment of the Project and of such rents, revenues and receipts, including all rentals and other amounts to be received by the City under and pursuant to the Lease, all as provided in the Indenture. The Bonds do not constitute a general obligation of the City or the State of Missouri, and neither the City nor said State shall be liable thereon, and the Bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and are not payable in any manner by taxation. Pursuant to the provisions of the Lease, rental payments sufficient for the prompt payment when due of the principal of and interest on the Bonds are to be paid by the Developer directly to the Trustee for the account of the City and deposited in a special fund created by the City and designated the “City of Osage Beach, Missouri, Series 2022 Bond Fund – The Preserve at Sycamore Creek.”

THE OWNER of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any Event of Default under the Indenture, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Indenture. In certain events, on the conditions, in the manner and with the effect set forth in the Indenture, the principal of all the Bonds issued under the Indenture and then-Outstanding may become or may be declared due and payable before the stated maturity thereof, together with interest accrued thereon. Modifications or alterations of this Bond or the Indenture may be made only to the extent and in the circumstances permitted by the Indenture.

THIS BOND is transferable, as provided in the Indenture, only upon the books of the City kept for that purpose at the above-mentioned office of the Trustee by the Owner hereof in person or by such Owner’s duly authorized attorney, upon surrender of this Bond together with a written instrument of transfer reasonably satisfactory to the Trustee duly executed by the Owner or such Owner’s duly authorized attorney, and thereupon a new fully-registered Bond or Bonds, in an aggregate principal amount equal to the Outstanding principal amount of this Bond, shall be issued to the transferee in exchange therefor as provided in the Indenture, and upon payment of the charges therein prescribed. The City, the Trustee and any Paying Agent may deem and treat the Person in whose name this Bond is registered as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal or redemption price hereof and interest due hereon and for all other purposes.

THE BONDS are issuable in the form of one fully-registered Bond in the maximum principal amount of \$63,000,000.

THIS BOND shall not be valid or become obligatory for any purposes or be entitled to any security or benefit under the Indenture until the Certificate of Authentication hereon has been executed by the Trustee.

IT IS HEREBY CERTIFIED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by the Constitution and laws of the State of Missouri.

IN WITNESS WHEREOF, the City of Osage Beach, Missouri, has caused this Bond to be executed in its name by the manual or facsimile signature of its Mayor, attested by the manual or facsimile signature of its City Clerk and its corporate seal to be affixed hereto or imprinted hereon.

CITY OF OSAGE BEACH, MISSOURI

(SEAL)

By: _____
Michael Harmison, Mayor

Attest:

Tara Berreth, City Clerk

CERTIFICATE OF AUTHENTICATION

This Bond is the Taxable Industrial Revenue Bond (The Preserve at Sycamore Creek Project), Series 2022, described in the Indenture. The effective date of registration of this Bond is set forth below.

UMB BANK, N.A., as Trustee

Date

By: _____
Authorized Signatory

SCHEDULE I

TABLE OF CUMULATIVE OUTSTANDING PRINCIPAL AMOUNT

**CITY OF OSAGE BEACH, MISSOURI
TAXABLE INDUSTRIAL REVENUE BOND
(THE PRESERVE AT SYCAMORE CREEK PROJECT)
SERIES 2022**

Bond No. 1

Date	Principal Amount Advanced	Principal Amount Redeemed	Cumulative Outstanding Principal Amount	Notation Made By

FORM OF ASSIGNMENT

(NOTE RESTRICTIONS ON TRANSFERS)

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

Print or Typewrite Name, Address and Social Security or
other Taxpayer Identification Number of Transferee

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints
_____ attorney to transfer the within Bond on the books kept by the Trustee
for the registration and transfer of Bonds, with full power of substitution in the premises.

Dated: _____.

NOTICE: The signature to this assignment must
correspond with the name as it appears upon the
face of the within Bond in every particular.

Medallion Signature Guarantee:

EXHIBIT C

FORM OF REPRESENTATION LETTER

City of Osage Beach
1000 City Parkway
Osage Beach, Missouri 65065
Attn: City Administrator

UMB Bank, N.A., as Trustee
2 S. Broadway, Suite 600
St. Louis, Missouri 63102
Attn: Corporate Trust Department

Re: \$63,000,000 Maximum Principal Amount of Taxable Industrial Revenue Bonds (The Preserve at Sycamore Creek Project), Series 2022 of the City of Osage Beach, Missouri

Ladies and Gentlemen:

In connection with the purchase of the above-referenced Bonds (the “Bonds”), the undersigned purchaser of the Bonds hereby represents, warrants and agrees as follows:

1. The undersigned fully understands that (a) the Bonds have been issued under and pursuant to a Trust Indenture dated as of [*Date*], 2022 (the “Indenture”), between the City of Osage Beach, Missouri (the “City”), and UMB Bank, N.A., as trustee (the “Trustee”), and (b) the Bonds are payable solely out of certain rents, revenues and receipts to be derived from the leasing or sale of the Project (as defined in the Indenture) to The Preserve at Sycamore Creek, LLC, a Missouri limited liability company (the “Developer”), under a Lease Agreement dated as of [*Date*], 2022 (the “Lease”), between the City and the Developer, with certain of such rents, revenues and receipts being pledged and assigned by the City to the Trustee under the Indenture to secure the payment of the principal of and interest on the Bonds. *Capitalized terms not defined herein shall have the meanings set forth in the Indenture.*

2. The undersigned understands that the Bonds are transferable only in the manner provided for in the Indenture and discussed below and warrants that it is acquiring the Bonds for its own account with the intent of holding the Bonds as an investment, and the acquisition of the Bonds is not made with a view toward their distribution or for the purpose of offering, selling or otherwise participating in a distribution of the Bonds.

3. The undersigned agrees not to attempt to offer, sell, hypothecate or otherwise distribute the Bonds to others unless authorized by the terms of the Indenture and, if requested by the City, upon receipt of an opinion of counsel reasonably acceptable to the City, the Developer and the purchaser that all registration and disclosure requirements of the Securities and Exchange Commission and all other appropriate federal and Missouri securities laws and the securities law of any other applicable state are complied with.

4. The Developer has (a) furnished to the undersigned such information about itself as the undersigned deems necessary in order for it to make an informed investment decision with respect to the purchase of the Bonds, (b) made available to the undersigned, during the course of this transaction, ample opportunity to ask questions of, and to receive answers from, appropriate officers of the City and the terms

and conditions of the offering of the Bonds, and (c) provided to the undersigned all additional information which it has requested. [*Delete this paragraph if the Developer is the Purchaser of the Bonds.*]

5. The undersigned is now, and was when it agreed to purchase the Bonds, familiar with the operations of the Developer and fully aware of the terms and risks of the Bonds. [*Delete previous sentence if the Developer is the Purchaser of the Bonds.*] The undersigned believes that the Bonds which it is acquiring is a security of the kind that it wishes to purchase and hold for investment and that the nature and amount thereof are consistent with its investment program.

6. The undersigned is fully aware of and satisfied with (a) the current status of the title to the Project and any issues related thereto and (b) the terms, amounts and providers of the insurance maintained pursuant to **Article VII** of the Lease, and the undersigned is purchasing the Bonds with full knowledge of such matters.

7. The undersigned understands and agrees that the interest on the Bonds *is* subject to federal and state income taxation.

8. The undersigned hereby directs the Trustee to hold the Bonds in trust pursuant to **Section 204(c)** of the Indenture.

9. The undersigned is (a) the lessee under the Lease, (b) an affiliate of the lessee under the Lease, (c) the Lender, (d) a “qualified institutional buyer” under Rule 144A promulgated under the Securities Act of 1933, or (e) any general business corporation or enterprise with total assets in excess of \$100,000,000.

Dated: _____, 20__

[PURCHASER OF BONDS]

By: _____
Name: _____
Title: _____

\$63,000,000
(AGGREGATE MAXIMUM PRINCIPAL AMOUNT)
CITY OF OSAGE BEACH, MISSOURI
TAXABLE INDUSTRIAL REVENUE BONDS
(THE PRESERVE AT SYCAMORE CREEK PROJECT)
SERIES 2022

Dated as of [*Date*], 2022

BOND PURCHASE AGREEMENT

Honorable Mayor and Board of Aldermen
Osage Beach, Missouri

On the basis of the representations and covenants and upon the terms and conditions contained in this Bond Purchase Agreement, The Preserve at Sycamore Creek, LLC, a Missouri limited liability company (the “Purchaser”), offers to purchase from the City of Osage Beach, Missouri (the “City”), the above-referenced bonds (the “Bonds”), to be issued by the City under and pursuant to Ordinance No. _____ adopted by the Board of Aldermen of the City on October 6, 2022 (the “Ordinance”), and a Trust Indenture dated as of [*Date*], 2022 (the “Indenture”) by and between the City and UMB Bank, N.A., as trustee (the “Trustee”). *Capitalized terms not otherwise defined herein shall have the meanings set forth in the Indenture.*

SECTION 1. REPRESENTATIONS AND AGREEMENTS

(a) By the City’s acceptance hereof, the City hereby represents to the Purchaser that:

(1) The City is an incorporated political subdivision of the State of Missouri duly organized and validly existing under the laws of the State of Missouri. The City is authorized pursuant to the Constitution, the laws of the State of Missouri and the ordinances, orders and resolutions of the City, and all necessary action has been taken, to authorize, issue and deliver the Bonds and to consummate all transactions contemplated by the Ordinance, this Bond Purchase Agreement, the Indenture, the Base Lease dated as of [*Date*], 2022 (the “Base Lease”) by and between the City and the Purchaser, the Lease Agreement dated as of [*Date*], 2022 (the “Lease”) by and between the City and the Purchaser, the Development Agreement dated as of [*Date*], 2022 (the “Development Agreement”) by and among the City, the [*Redevelopment Corporation*] and the Purchaser, and any and all other agreements relating thereto. The proceeds of the Bonds shall be used for the purpose of acquiring a leasehold interest in the Project Site, constructing the Project Improvements and paying the costs incurred in connection with the issuance of the Bonds.

(2) There is no controversy, suit or other proceeding of any kind pending or, to the City’s actual knowledge, threatened wherein or whereby any question is raised or may be raised, questioning, disputing or affecting in any way the legal organization of the City or its boundaries,

or the right or title of any of its officers to their respective offices, or the legality of any official act leading up to the issuance of the Bonds, or the constitutionality or validity of the obligations represented by the Bonds or the validity of the Bonds, the Ordinance, the Base Lease, the Lease, the Indenture, the Development Agreement or this Bond Purchase Agreement.

(b) The Purchaser represents as follows:

(1) *Organization.* The Purchaser is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Missouri.

(2) *No Conflict or Breach.* The execution, delivery and performance of this Bond Purchase Agreement by the Purchaser has been duly authorized by all necessary action of the Purchaser and does not and will not conflict with or result in the breach of any of the terms, conditions or provisions of, or constitute a default under, its organizational documents, any law, court or administrative regulation, decree or order applicable to or binding upon the Purchaser, or, to the best of its knowledge, any agreement, indenture, mortgage, lease or instrument to which the Purchaser is a party or by which it is bound.

(3) *Document Legal, Valid and Binding.* When executed and delivered by the Purchaser, this Bond Purchase Agreement will be, and is, a legal, valid and binding obligation, enforceable in accordance with its terms, subject, as to enforcement, to any applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting the enforcement of creditors' rights generally and further subject to the availability of equitable remedies. The Person executing this Bond Purchase Agreement on behalf of the Purchaser has been duly authorized to execute this Bond Purchase Agreement.

(4) *Purchaser's Certificates.* Any certificate signed by an authorized officer or agent of the Purchaser and delivered to the City shall be deemed a representation and warranty by the Purchaser to the City as to the statements made therein.

SECTION 2. PURCHASE, SALE AND DELIVERY OF THE BONDS

On the basis of the representations and covenants contained herein and in the other agreements referred to herein, and subject to the terms and conditions set forth herein and in the Indenture, the Purchaser agrees to purchase from the City and the City agrees to sell to the Purchaser the Bonds on the terms and conditions set forth herein.

The Bonds shall be sold to the Purchaser by the City on the Closing Date (hereinafter defined) upon payment of an amount equal to the Closing Price (hereinafter defined), which amount shall be applied as provided in the Indenture and the Lease. From time to time after the Closing Date, the Purchaser shall make additional payments with respect to the Bonds ("Additional Payments") to the Trustee under the Indenture, which Additional Payments shall be applied to the payment or reimbursement of Project Costs or as provided in the Indenture and the Lease; provided that the sum of the Closing Price and all such Additional Payments shall not, in the aggregate, exceed \$63,000,000 plus the costs of issuance of the Bonds (if such costs of issuance are not paid with Bond proceeds).

As used herein, the term "Closing Date" shall mean _____, 2022, or such other date as shall be mutually agreed upon by the City and the Purchaser; the term "Closing Price" shall mean the amount specified in writing by the Purchaser and agreed to by the City as the amount required to pay for the initial

issuance of the Bonds on the Closing Date, which amount shall be equal to (a) any Project Costs spent by the Purchaser from its own funds on or before the Closing Date, and, at the Purchaser's option, the costs of issuance of the Bonds if such costs are not paid for from Bond proceeds, or (b) the aggregate principal amount of the Bonds, if all of the proceeds of the Bonds are being transferred to the Trustee on the Closing Date.

The Bonds shall be issued under and secured as provided in the Ordinance, the Indenture and the Lease authorized thereby and the Bonds shall have the maturity date and interest rate and shall be subject to redemption as set forth therein. The delivery of the Bonds shall be made in definitive form as a fully-registered bond in the maximum aggregate principal denomination of \$63,000,000; provided, that the principal amount of the Bonds Outstanding at any time shall be that amount recorded in the records of the Trustee, absent manifest error, and further provided that interest on the Bonds shall be payable only on the Outstanding principal amount of the Bonds, as more fully provided in the Indenture.

SECTION 3. CONDITIONS TO THE OBLIGATIONS

The obligations hereunder shall be subject to the due performance by the parties of the obligations and agreements to be performed hereunder on or prior to the Closing Date and to the accuracy of and compliance with the representations contained herein, as of the date hereof and as of the Closing Date, and are also subject to the following conditions:

(a) There shall be delivered to the Purchaser on or prior to the Closing Date a duly certified copy of the Ordinance, the Indenture, the Base Lease, the Lease, the Development Agreement, this Bond Purchase Agreement and any other instrument contemplated thereby, and such documents shall be in full force and effect and shall not have been modified or changed except as may have been agreed to in writing by the Purchaser.

(b) The City shall confirm on the Closing Date by a certificate that at and as of the Closing Date the City has taken all action necessary to issue the Bonds and that there is no controversy, suit or other proceeding of any kind pending or, to its knowledge, threatened against the City wherein any question is raised affecting in any way the legal organization of the City, or the legality of any official act shown to have been done in the transcript of proceedings leading up to the issuance of the Bonds, or the constitutionality or validity of the obligations represented by the Bonds or the validity of the Bonds or any proceedings in relation to the issuance or sale thereof.

(c) The Purchaser shall execute a certificate, dated the Closing Date, to the effect that (1) no litigation, proceeding or investigation is pending against the Purchaser or its affiliates or, to the knowledge of the Purchaser, threatened which would (A) contest, affect, restrain or enjoin the issuance, validity, execution, delivery or performance of the Bonds, or (B) in any way contest the corporate existence or powers of the Purchaser, (2) no litigation, proceeding or investigation is pending or, to the knowledge of the Purchaser, threatened against the Purchaser that could reasonably be expected to adversely affect its ability to perform its obligations hereunder or under the Base Lease, the Lease or the Development Agreement, (3) the representations and warranties of the Purchaser herein were and are true and correct in all material respects and not misleading as of the date made and as of the Closing Date, and (4) such other matters as are reasonably requested by the other parties in connection with the issuance of the Bonds.

SECTION 4. THE PURCHASER'S RIGHT TO CANCEL

The Purchaser may cancel its obligation hereunder to purchase the Bonds by notifying the City in writing at or before the Closing Date.

SECTION 5. REPRESENTATIONS AND AGREEMENTS TO SURVIVE DELIVERY

All of the representations and agreements by either party shall remain operative and in full force and effect, and shall survive delivery of the Bonds to the Purchaser.

SECTION 6. NOTICE

Any notice or other communication to be given under this Bond Purchase Agreement may be given in writing by mailing or delivering the same as follows:

(a) To the City:

City of Osage Beach
1000 City Parkway
Osage Beach, Missouri 65065
Attn: City Administrator

with copies to:

City of Osage Beach
1000 City Parkway
Osage Beach, Missouri 65065
Attn: City Attorney

and

Gilmore & Bell, P.C.
One Metropolitan Square
211 N. Broadway, Suite 2000
St. Louis, Missouri 63102
Attn: Mark A. Spykerman, Esq.

(b) To the Trustee:

UMB Bank, N.A.
2 South Broadway, Suite 600
St. Louis, Missouri 63102
Attn: Corporate Trust Department

(c) To the Purchaser:

The Preserve at Sycamore Creek, LLC
P.O. Box 6331
Fishers, Indiana 46038
Attn: Jeffrey J. Tegethoff

with a copy to:

Husch Blackwell LLP
190 Carondelet Plaza, Suite 600
Clayton, Missouri 63105
Attn: David Richardson, Esq.

SECTION 7. APPLICABLE LAW; ASSIGNABILITY

This Bond Purchase Agreement shall be governed by the laws of the State of Missouri. This Bond Purchase Agreement may be assigned by the Purchaser to any Person that expressly assumes in writing all of the obligations of the Developer contained in the Base Lease and the Lease; provided that the consent of the City for the assignment of this Bond Purchase Agreement shall not be required if the consent of the City is not required for such Person's assumption of the Lease under the provisions of **Article XIII** thereof. Any such assignee shall agree to be bound by the terms of this Bond Purchase Agreement. This Bond Purchase Agreement may be assigned and the Bonds may be pledged, without approval of but with notice to the City, by the Purchaser to any lender of the Purchaser or the Developer as collateral for a loan secured by a deed of trust or mortgage of the Project.

SECTION 8. EXECUTION IN COUNTERPARTS

This Bond Purchase Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same document.

SECTION 9. ANTI-DISCRIMINATION AGAINST ISRAEL ACT

Pursuant to Section 34.600 of the Revised Statutes of Missouri, the Purchaser certifies it is not currently engaged in and shall not, for the duration of this Bond Purchase Agreement, engage in a boycott of goods or services from (a) the State of Israel, (b) companies doing business in or with the State of Israel or authorized by, licensed by or organized under the laws of the State of Israel or (c) persons or entities doing business in the State of Israel.

[Remainder of Page Intentionally Left Blank]

Very truly yours,

**THE PRESERVE AT SYCAMORE CREEK,
LLC**, a Missouri limited liability company

By: _____
Jeffrey J. Tegethoff, Manager

DATE OF EXECUTION: _____, 2022.

Accepted and Agreed to this _____ day of _____, 2022.

CITY OF OSAGE BEACH, MISSOURI

By: _____
Michael Harmison, Mayor

[SEAL]

ATTEST:

Tara Berreth, City Clerk

[Bond Purchase Agreement]

City of Osage Beach
Agenda Item Summary

Date of Meeting: September 15, 2022
Originator: Edward Rucker, City Attorney
Presenter: Edward Rucker, City Attorney

Agenda Item:

Bill 22-65 - An ordinance of the City of Osage Beach, Missouri, enacting new Sections 112.010 through 112.040 dealing with the Lake Ozark-Osage Beach Joint Sewer Treatment Plant and Joint Sewer Board and ratifying all prior actions taken by City representatives to the Joint Sewer Board. *First Reading*

Requested Action:

First Reading of Bill #22-65

Ordinance Referenced for Action:

Board of Aldermen approval required per Section 110.230. Ordinances, Resolutions, Etc. – Generally and Section 110.240 Adoption of Ordinances.

Deadline for Action:

None

Budgeted Item:

Not Applicable

Budget Line Information (if applicable):

Not Applicable

Department Comments and Recommendation:

Not Applicable

City Attorney Comments:

Per City Code 110.230, Bill 22-65 is in correct form. Requested by Alderman Rucker.

City Administrator Comments:

Ordinance change request by Alderman Rucker.

AN ORDINANCE OF THE CITY OF OSAGE BEACH, MISSOURI, ENACTING NEW SECTIONS 112.010 THROUGH 112.040 DEALING WITH THE LAKE OZARK-OSAGE BEACH JOINT SEWER TREATMENT PLANT AND JOINT SEWER BOARD AND RATIFYING ALL PRIOR ACTIONS TAKEN BY CITY REPRESENTATIVES TO THE JOINT SEWER BOARD..

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF OSAGE BEACH, MISSOURI AS FOLLOWS:

Section 1. There is hereby enacted a new Sections 112.010 through 112.040 numbered and titled as follows:

Section 112.010 Purpose

The purpose of this ordinance is to provide the representation to the Joint Board of the Lake Ozark-Osage Beach Sewage Treatment Plant as described in the By Laws for the Lake Ozark-Osage Beach Joint Sewer Board and the Agreement for Joint Design, Construction, Ownership, Operation and Maintenance of The Lake Ozark-Osage Beach Sewage Treatment Plant signed March 7, 1984.

Section 112.020 Members

Osage Beach will have 4 members representing the City on the Lake Ozark-Osage Beach Sewage Treatment Plant Board herein referred to as “Joint Sewer Board.”

The Mayor and the Public Works Operations Manager will serve as members of the Joint Sewer Board as virtue of their positions.

Section 112.030 Appointed Members

There will be (1) Alderman l appointed by the Mayor and approved by the Board of Alderman to serve a one year term on the Lake Ozark-Osage Beach Joint Sewer Board to representing the City of Osage Beach. This appointment to be made at the first meeting in May.

There will be one (1) City staff personnel appointed by the Mayor and approved by the Board of Alderman to serve a three year term on the Lake Ozark-Osage Beach Joint Sewer Board to representing the City of Osage Beach. This appointment to be made at the first meeting in May as required.

Section 112.040 Vacancy’s

The Mayor shall fill any vacancy that occurs on the Joint Sewer Board by the same manner as outlined in Section 112.030.

Section 2. Ratification of Prior Actions

In all other respects, all actions taken or done by any representative of the city serving on the Joint Sewer Board, and the appointment of any such representative, at any time between the adoption of the Agreement for Joint Design Construction Ownership Operation and Maintenance of the Lake Ozark, Osage Beach Joint Sewer Treatment Plant on March 7th 1984, and the date of the adoption of this ordinance, are hereby ratified and reaffirmed by the Board of Alderman on behalf of the city.

Section 3. Severability

The chapters, sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional or otherwise invalid by the valid judgment or degree of any Court of any competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this ordinance since the same would have been enacted by the Board of Aldermen without the incorporation in this ordinance of any such unconstitutional or invalid phrase, clause, sentence, paragraph or section.

Section 4. Repeal of Ordinances not to affect liabilities, etc.

Whenever any part of this ordinance shall be repealed or modified, either expressly or by implication, by a subsequent ordinance, that part of the ordinance thus repealed or modified shall continue in force until the subsequent ordinance repealing or modifying the ordinance shall go into effect unless therein otherwise expressly provided; but no suit, prosecution, proceeding, right, fine or penalty instituted, created, given, secured or accrued under this ordinance previous to its repeal shall not be affected, released or discharged but may be prosecuted, enjoined and recovered as fully as if this ordinance or provisions had continued in force, unless it shall be therein otherwise expressly provided.

Section 5. That this Ordinance shall be in full force and effect from and after the date of passage and approval of the Mayor.

READ FIRST TIME: _____ READ SECOND TIME: _____

I hereby certify that Ordinance No.22.65 was duly passed on _____ by the Board of Aldermen of the City of Osage Beach. The votes thereon were as follows:

Ayes:

Nays:

Abstentions:

Absent:

This Ordinance is hereby transmitted to the Mayor for his signature.

Date

Tara Berreth, City Clerk

Approved as to form:

Edward B. Rucker, City Attorney

I hereby approve Ordinance No.22.65.

Michael Harmison, Mayor

Date

Tara Berreth, City Clerk

City of Osage Beach
Agenda Item Summary

Date of Meeting: September 15, 2022
Originator: Edward Rucker, City Attorney
Presenter: Edward Rucker, City Attorney

Agenda Item:

Bill 22-66 - An ordinance of the City of Osage Beach, Missouri, setting out the terms of the Building Code Board of Appeals as used by the City pursuant to the Uniform Building Codes previously adopted by the City, *First Reading*

Requested Action:

First Reading of Bill #22-66

Ordinance Referenced for Action:

Board of Aldermen approval required per Section 110.230. Ordinances, Resolutions, Etc. – Generally and Section 110.240 Adoption of Ordinances.

Deadline for Action:

None

Budgeted Item:

Not applicable

Budget Line Information (if applicable):

Not Applicable

Department Comments and Recommendation:

Not Applicable

City Attorney Comments:

Per City Code 110.230, Bill 22-66 is in correct form. Requested by Alderman Rucker.

City Administrator Comments:

Ordinance change request by Alderman Rucker.

AN ORDINANCE OF THE CITY OF OSAGE BEACH, MISSOURI, SETTING OUT THE TERMS OF THE BUILDING CODE BOARD OF APPEALS AS USED BY THE CITY PURSUANT TO THE UNIFORM BUILDING CODES PREVIOUSLY ADOPTED BY THE CITY

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF OSAGE BEACH, MISSOURI AS FOLLOWS:

Section 1. There is hereby enacted within the Code of Ordinances of the City of Osage Beach a new Article IX within Chapter 500 consisting of new Sections 500.260, 500.270, 500.280, 500.290 and 500.300 to read as follows:

Section 500.260 Purpose

The purpose of the Board of Appeals is to hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretation of the Building Codes adopted by the City of Osage Beach. An application for appeal shall be based on a claim that the true intent of the code or the rules legally adopted have been incorrectly interpreted, the provisions of the code do not fully apply, or an equally good or better form of construction is proposed. The board shall not have the authority to waive requirements of the codes.

Section 500.270 Members

The Mayor shall make appointments to the Board of Appeals, with the approval of the majority of the Board of Aldermen. The Board of Appeals will have 5 members and 2 alternates who are qualified by experience and training to pass on matters pertaining to building construction and are not employed by the City of Osage Beach. The Mayor shall make appointments to the Board of Appeals, with the approval of the majority of the Board of Aldermen. Expiring terms will be filled during the month of May. Terms shall expire June 1. At the request of the Mayor an alternate shall serve in the absence of or the disqualification of any regular member. All members and alternates shall be removable for cause by the Board of Alderman upon written charges. Members shall serve a term of five (5) years unless filling an unexpired term. The Mayor shall specify the term expiration date at the time a member is appointed. Expiring terms will be filled during the month of May. Terms shall expire June 1.

Section 500.280 Vacancy's

Whenever a vacancy in membership occurs, the City Building Official shall notify the Mayor and the Board of Aldermen of said vacancy and said vacancy will be filled for the unexpired term by appointment. The Mayor shall fill any vacancy that occurs on the Board of Appeals by the same manner as outlined in section 500.270.

Section 500.290 Meetings

Meetings will be posted and follow Chapter 610, RS Mo. Conduct of the meetings will be guided by the most recent edition Roberts Rules of Order.

The Board of Appeals shall elect its own Chairperson who shall serve for one (1) year. Meetings of the Board shall be held at the call of the City Building Official and at such other times as the Building Official or the Board of Appeals may determine. Such Chairperson, or in his/her absence the Acting Chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the City Clerk and shall be a public record. All testimony, objections thereto and rulings thereon, shall be recorded in the minutes by the Building Department's secretary and filed in the City Clerk's office. A minimum of 4 members must be present to conduct a meeting.

Section 500.300 Role of the Building Official

The Building Official shall be an ex officio of the Board of Appeals but shall not have a vote on any matters before the board. The Building Official shall take immediate action in accordance with the decision of the board.

Section 3. Severability

The chapters, sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional or otherwise invalid by the valid judgment or decree of any Court of any competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this ordinance since the same would have been enacted by the Board of Aldermen without the incorporation in this ordinance of any such unconstitutional or invalid phrase, clause, sentence, paragraph or section.

Section 4. Repeal of Ordinances not to affect liabilities, etc.

Whenever any part of this ordinance shall be repealed or modified, either expressly or by implication, by a subsequent ordinance, that part of the ordinance thus repealed or modified shall continue in force until the subsequent ordinance repealing or modifying the ordinance shall go into effect unless therein otherwise expressly provided; but no suit, prosecution, proceeding, right, fine or penalty instituted, created, given, secured or accrued under this ordinance previous to its repeal shall not be affected, released or discharged but may be prosecuted, enjoined and recovered as fully as if this ordinance or provisions had continued in force, unless it shall be therein otherwise expressly provided.

Section 5. That this Ordinance shall be in full force and effect from and after the date of passage and approval of the Mayor.

READ FIRST TIME: _____ READ SECOND TIME: _____

I hereby certify that Ordinance No.22.66 was duly passed on _____ by the Board of Aldermen of the City of Osage Beach. The votes thereon were as follows:

Ayes:

Nays:

Abstentions:

Absent:

This Ordinance is hereby transmitted to the Mayor for his signature.

Date

Tara Berreth, City Clerk

Approved as to form:

Edward B. Rucker, City Attorney

I hereby approve Ordinance No.22.66

Michael Harmison, Mayor

Attest

Tara Berreth/City Clerk

City of Osage Beach
Agenda Item Summary

Date of Meeting: September 15, 2022
Originator: Edward Rucker, City Attorney
Presenter: Edward Rucker, City Attorney

Agenda Item:

Bill 22-67 - An ordinance of the City of Osage Beach, Missouri, amending Chapter 600 concerning terms of the Liquor Control Board. *First Reading*

Requested Action:

First Reading of Bill #22-67

Ordinance Referenced for Action:

Board of Aldermen approval required per Section 110.230. Ordinances, Resolutions, Etc. – Generally and Section 110.240 Adoption of Ordinances.

Deadline for Action:

None

Budgeted Item:

No

Budget Line Information (if applicable):

Not Applicable

Department Comments and Recommendation:

Not Applicable

City Attorney Comments:

Per City Code 110.230, Bill 22-67 is in correct form. Requested by Alderman Rucker.

City Administrator Comments:

Ordinance changes requested by Alderman Rucker.

AN ORDINANCE OF THE CITY OF OSAGE BEACH, MISSOURI, AMENDING SECTION 600.030 CONCERNING TERMS OF THE LIQUOR CONTROL BOARD

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF OSAGE BEACH, MISSOURI AS FOLLOWS:

Section 1. Section 600.030 of the Osage Beach Code of Ordinances is hereby repealed.

Section 2. There is hereby enacted within Title IV, Chapter 600, Article 1, new Sections 600.030, 600.031, 600.032 and 600.033 as follows:

Section 600.030 Liquor Control Board Established

There is hereby established the Osage Beach Liquor Control Board.

Section 600.031 Purposes.

1. The duty of the Liquor Control Board shall be to determine whether applications for license comply with the provisions of this Chapter. Licenses shall only be granted to persons of good character. In determining the good character of the applicant, the Liquor Control Board shall also apply the criteria set out in Section 600.140.
2. The Liquor Control Board shall not recommend a license for Board of Aldermen approval without first having reviewed the recommendations of the Police Chief. The Liquor Control Board shall not be required to hold any hearing of any kind whatsoever in determining whether a new license shall be granted or an old license renewed but may hold hearings if it deems such hearings in the public interest are in the best interest for the public.
3. No license shall be issued without the written approval by a majority vote of the Board of Liquor Control, and approval by the Board of Aldermen.
4. All applications for licenses new and renewal and all petitions so filed with such applications shall be referred to the Liquor Control Board by transmitting all applications to the Police Chief who shall review and make recommendation on all applications to the other members of the Liquor Control Board. The review of the applications for license shall normally be completed and presented to the City Collector or designee within thirty (30) working days of the date of the application. The Liquor Control Board shall also draw up and approve a form of application, which the City Collector or designee shall use. The Board may, at its option, issue a letter of intent to issue a license. The license applicant shall be presented to the Board within thirty (30) days of the issuance of the letter.

Section 600.032 Membership.

The membership of the Osage Beach Liquor Control Board shall consist of one (1) Alderman, the Police Chief, the Chairman of Planning Commission, and the City Collector. The City Collector who shall serve as Chairman of the Board.

Section 600.033 Terms and Appointments.

One alderman shall be appointed by the Mayor and approved by a majority of the Board of Alderman to serve a one year term expiring June 1. Expiring May 31 appoints will be made in May with term beginning June 1 term will be filled during the month of May.

Section 600.034 Appeals.

An applicant aggrieved by a decision of the Liquor Control Board, or any citizen maintaining a residence, place of business, or owning property within six hundred (600) feet of the property upon which the licensed establishment is located, may file a petition with the Board of Aldermen within ten (10) days after the action by the Liquor Control Board appealing said action. The Board of Aldermen shall have the final authority and may act as it deems appropriate under law.

Section 3. Severability

The chapters, sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional or otherwise invalid by the valid judgment or degree of any Court of any competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this ordinance since the same would have been enacted by the Board of Aldermen without the incorporation in this ordinance of any such unconstitutional or invalid phrase, clause, sentence, paragraph or section.

Section 4. Repeal of Ordinances not to affect liabilities, etc.

Whenever any part of this ordinance shall be repealed or modified, either expressly or by implication, by a subsequent ordinance, that part of the ordinance thus repealed or modified shall continue in force until the subsequent ordinance repealing or modifying the ordinance shall go into effect unless therein otherwise expressly provided; but no suit, prosecution, proceeding, right, fine or penalty instituted, created, given, secured or accrued under this ordinance previous to its repeal shall not be affected, released or discharged but may be prosecuted, enjoined and recovered as fully as if this ordinance or provisions had continued in force, unless it shall be therein otherwise expressly provided.

Section 5. That this Ordinance shall be in full force and effect from and after the date of passage and approval of the Mayor.

READ FIRST TIME: _____ READ SECOND TIME: _____

I hereby certify that Ordinance No.22.67 was duly passed on _____ by the Board of Aldermen of the City of Osage Beach. The votes thereon were as follows:

Ayes:

Nays:

Abstentions:

Absent:

This Ordinance is hereby transmitted to the Mayor for his signature.

Date

Tara Berreth, City Clerk

Approved as to form:

Edward B. Rucker, City Attorney

I hereby approve Ordinance No.22.67.

Michael Harmison, Mayor

Date

Tara Berreth, City Clerk

Chapter 600 Alcoholic Beverages

Section 600.030 Committee Established.

There is hereby established the Osage Beach Liquor Control Board.

Section 600.031 Purposes.

The duty of the Liquor Control Board shall be to determine whether applications for license comply with the provisions of this Chapter. Licenses shall only be granted to persons of good character. In determining the good character of the applicant, the Liquor Control Board shall also apply the criteria set out in Section 600.140.

The Liquor Control Board shall not recommend a license for Board of Aldermen approval without first having reviewed the recommendations of the ~~Chief of Police~~ **Police Chief**. The Liquor Control Board shall not be required to hold any hearing of any kind whatsoever in determining whether a new license shall be granted or an old license renewed but may hold hearings if it deems such hearings ~~in the public interest~~ **are in the best interest for the public**.

No license shall be issued without the written approval by a majority vote of the Board of Liquor Control, and approval by the Board of Aldermen.

All applications for licenses **new and renewal** ~~and all petitions so filed with such applications~~ shall be referred to ~~the Liquor Control Board by transmitting all applications to the Chief of Police~~ **the Police Chief** who shall review and make recommendation on all applications to **the** other members of the Liquor Control Board. The review of the applications for license shall normally be completed and presented to the City Collector **or designee** within thirty (30) working days of the date of the application. The Liquor Control Board shall also draw up and approve a form of application, which the City Collector **or designee** shall use. ~~The Board may, at its option, issue a letter of intent to issue a license. The license applicant shall be presented to the Board within thirty (30) days of the issuance of the letter.~~

****Any applicant aggrieved by a decision of the Liquor Control Board, or any citizen maintaining a residence, place of business, or owning property within six hundred (600) feet of the property upon which the licensed establishment is located, may file a petition with the Board of Aldermen within ten (10) days after the action by the Liquor Control Board appealing said action. The Board of Aldermen shall have the final authority and may act as it deems appropriate under law.

Should be paragraph be in an appeal process.

Section 600.032 Membership.

The membership of the Osage Beach Liquor Control Board shall consist of one (1) Alderman, the ~~Chief of Police~~ **Police Chief**, the Chairman of Planning Commission, and the City Collector. **The City Collector** ~~who~~ shall serve as Chairman of the Board.

Section 600.033 Terms and Appointments.

One alderman shall be appointed by the Mayor and approved by a majority of the Board of Alderman to serve a one year term expiring June 1. ~~Expiring May 31 appoints will be made in May with term beginning June 1 term will be filled during the month of May.~~

City of Osage Beach
Agenda Item Summary

Date of Meeting: September 15, 2022
Originator: Edward Rucker, City Attorney
Presenter: Edward Rucker, City Attorney

Agenda Item:

Bill 22-68 - An ordinance of the City of Osage Beach, Missouri, concerning the Tax Increment Financing Commission amending Section 135.120 for the Terms of Members of the Commission and Section 135.140 Organization of the Commission and Section 135.160 Conduct of Meetings. *First Reading*

Requested Action:

First Reading of Bill #22-68

Ordinance Referenced for Action:

Board of Aldermen approval required per Section 110.230. Ordinances, Resolutions, Etc. – Generally and Section 110.240 Adoption of Ordinances.

Deadline for Action:

None

Budgeted Item:

Not Applicable

Budget Line Information (if applicable):

Not Applicable

Department Comments and Recommendation:

Not Applicable

City Attorney Comments:

Per City Code 110.230, Bill 22-68 is in correct form. Requested by Alderman Rucker.

City Administrator Comments:

Ordinance changes requested by Alderman Rucker.

AN ORDINANCE OF THE CITY OF OSAGE BEACH, MISSOURI, CONCERNING THE TAX INCREMENT FINANCING COMMISSION AMENDING SECTIONS 135.120 FOR THE TERMS OF MEMBERS OF THE COMMISSION AND SECTION 135.140 ORGANIZATION OF THE COMMISSION AND 135.160 CONDUCT OF MEETINGS

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF OSAGE BEACH, MISSOURI AS FOLLOWS:

Section 1. Sections 135.120, 135.140, and 135.160 of the Osage Beach Code of Ordinances are hereby repealed.

Section 2. There is hereby enacted, new Sections 135.120, 135.140, 135.160; all to read as follows:

Section 135.120 Term of Members.

A. With regard to the term of the first six (6) members appointed by the Mayor with the consent of the Board:

- Two (2) shall be designated to serve for terms of two (2) years;
- Two (2) shall be designated to serve for terms of three (3) years; and
- Two (2) shall be designated to serve for terms of four (4) years.

Thereafter, members appointed by the Mayor with the consent of the Board of Aldermen shall serve for a term of four (4) years. All vacancies shall be filled for the unexpired terms in the same manner as were the original appointments. Terms will expire June 1 and shall be appointed during the month of May.

B. At the option of the members appointed under Section 135.110 of this Article, the members who are appointed by the school board and other taxing districts may serve on the Commission for a term which coincides with the length of time such redevelopment project, redevelopment plan or the designation of the area for which they were appointed is being considered for approval by the Commission, or for a definite term pursuant to Section 99.820.2 of the Act. If the members representing the school district and other taxing districts are appointed for a term coinciding with the length of time a redevelopment project, plan or area is approved; such term will terminate upon final approval of such redevelopment project, redevelopment plan or designation of the area by the Board.

Section 135.140. Organization of Commission.

The Commission shall organize itself and elect from its six (6) members appointed by the Mayor, a chairperson, and a vice chairperson to serve for one (1) year terms or until their successors are elected.

Section 135.160 Conduct of Meetings

The committee will be guided by Robert's Rules of Order and the Missouri Open Meetings and Records Law, as amended.

Section 2. Severability

The chapters, sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional or otherwise invalid by the valid judgment or degree of any Court of any competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this ordinance since the same would have been enacted by the Board of Aldermen without the incorporation in this ordinance of any such unconstitutional or invalid phrase, clause, sentence, paragraph or section.

Section 3. Repeal of Ordinances not to affect liabilities, etc.

Whenever any part of this ordinance shall be repealed or modified, either expressly or by implication, by a subsequent ordinance, that part of the ordinance thus repealed or modified shall continue in force until the subsequent ordinance repealing or modifying the ordinance shall go into effect unless therein otherwise expressly provided; but no suit, prosecution, proceeding, right, fine or penalty instituted, created, given, secured or accrued under this ordinance previous to its repeal shall not be affected, released or discharged but may be prosecuted, enjoined and recovered as fully as if this ordinance or provisions had continued in force, unless it shall be therein otherwise expressly provided.

Section 4. That this Ordinance shall be in full force and effect from and after the date of passage and approval of the Mayor.

READ FIRST TIME: _____ READ SECOND TIME: _____

I hereby certify that Ordinance No.22.68 was duly passed on _____ by the Board of Aldermen of the City of Osage Beach. The votes thereon were as follows:

Ayes:

Nays:

Abstentions:

Absent:

This Ordinance is hereby transmitted to the Mayor for his signature.

Date

Tara Berreth, City Clerk

Approved as to form:

Edward B. Rucker, City Attorney

I hereby approve Ordinance No.22.68.

Michael Harmison, Mayor

Date

Tara Berreth, City Clerk

[City of Osage Beach, MO / Government Code / Finance and Purchasing](#)
[Article IV Tax Increment Financing Commission](#)

[Section 135.100 Creation of Tax Increment Financing Commission.](#)

[Ord. No. 15.96 §1, 12-17-2015]

There is created pursuant to Section 99.820.2 of the Act, a commission to be known as the "Tax Increment Financing Commission of Osage Beach, Missouri," (the "Commission"). The Commission shall have continuous existence unless and until terminated by the adoption of an ordinance of the Board of Aldermen terminating it.

[Section 135.110 Composition — Appointment of Members.](#)

[Ord. No. 15.96 §1, 12-17-2015]

[A.](#)

The Commission shall be composed of members to be appointed as follows:

[1.](#)

Six (6) members shall be appointed by the Mayor of the City, with the consent of the Board of Aldermen.

[2.](#)

For projects within Miller County, two (2) members shall be appointed by the Presiding Commissioner of the County of Miller, with the consent of the majority of the County Commission of the County of Miller. For projects within Camden County, two (2) members shall be appointed by the Presiding Commissioner of the County of Camden, with the consent of the majority of the County Commission of the County of Camden.

[3.](#)

Within thirty (30) days after the receipt of notice of a proposed redevelopment area, redevelopment plan or redevelopment project required by Section 99.830 of the Act, two (2) members shall be appointed by the school board whose district is included within such proposed redevelopment area. The manner of selection of the members is left to the discretion of the affected district.

[4.](#)

Within thirty (30) days after the receipt of notice of a proposed redevelopment area, redevelopment plan or redevelopment project required by Section 99.830 of the Act, one (1) member shall be appointed, in any manner agreed upon by the affected districts, to represent all other districts levying ad valorem taxes (excluding the representatives of the Board) within the area selected for a redevelopment plan.

[Section 135.120 Term of Members.](#)

[Ord. No. 15.96 §1, 12-17-2015]

[A.](#)

With regard to the term of the first six (6) members appointed by the Mayor with the consent of the Board:

[1.](#)

Two (2) shall be designated to serve for terms of two (2) years;

[2.](#)

Two (2) shall be designated to serve for terms of three (3) years; and

[3.](#)

Two (2) shall be designated to serve for terms of four (4) years.

Thereafter, members appointed by the Mayor with the consent of the Board of Aldermen shall serve for a term of four (4) years. All vacancies shall be filled for the unexpired terms in the same manner as were the original appointments. **Terms will expire June 1 and shall be appointed during the month of May.**

B.

At the option of the members appointed under Section [135.110](#) of this Article, the members who are appointed by the school board and other taxing districts may serve on the Commission for a term which coincides with the length of time such redevelopment project, redevelopment plan or the designation of the area for which they were appointed is being considered for approval by the Commission, or for a definite term pursuant to Section 99.820.2 of the Act. If the members representing the school district and other taxing districts are appointed for a term coinciding with the length of time a redevelopment project, plan or area is approved; such term will terminate upon final approval of such redevelopment project, redevelopment plan or designation of the area by the Board.

Section 135.140. Organization of Commission. [Ord. No. 15.96 §1, 12-17-2015]

The Commission, ~~upon the effective date of this Article (February 3, 2000),~~ shall organize itself and elect from its six (6) members appointed by the Mayor, a chairperson, **and a vice chairperson** ~~–treasurer and secretary, each~~ to serve for one (1) year terms or until their successors are elected. (Can't find anywhere in state status that we need to do all of this. Maybe you can find it, if not here is the changes to this section.)

Section 135.160 **Conduct of Meetings**

A. ~~The Commission shall meet regularly and shall adopt such rules and regulations for operations as shall enable it to maintain an orderly procedure for its business and to effectively and efficiently exercise the powers authorized by the Statute and delegated to it by the Board.~~ **The committee will be guided by Robert's Rules of Order and the Missouri Open Meetings and Records Law, as amended.**

City of Osage Beach
Agenda Item Summary

Date of Meeting: September 15, 2022
Originator: Edward Rucker, City Attorney
Presenter: Edward Rucker, City Attorney

Agenda Item:

Bill 22-69 - An ordinance of the City of Osage Beach, Missouri, amending Sections 111.020, 111.040 and 111.050 of the Osage Beach Municipal Code concerning the purposes, terms and meetings of the Citizens Advisory Committee. *First Reading*

Requested Action:

First Reading of Bill #22-69

Ordinance Referenced for Action:

Board of Aldermen approval required per Section 110.230. Ordinances, Resolutions, Etc. – Generally and Section 110.240 Adoption of Ordinances.

Deadline for Action:

None

Budgeted Item:

Not Applicable

Budget Line Information (if applicable):

Not Applicable

Department Comments and Recommendation:

Not Applicable

City Attorney Comments:

Per City Code 110.230, Bill 22-69 is in correct form. Requested by Alderman Rucker.

City Administrator Comments:

Ordinance changes requested by Alderman Rucker.

AN ORDINANCE OF THE CITY OF OSAGE BEACH, MISSOURI, AMENDING SECTIONS 111.020, 111.040 AND 111.050 OF THE OSAGE BEACH MUNICIPAL CODE CONCERNING THE PURPOSES, TERMS AND MEETINGS OF THE CITIZENS ADVISORY COMMITTEE

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF OSAGE BEACH, MISSOURI AS FOLLOWS:

Section 1. Sections 111.020, 111.040 and 111.050 of the Osage Beach Code of Ordinances are hereby repealed.

Section 2. There is hereby enacted, new Sections 111.020, 111.040, 111.050 to read as follows:

Section 111.020 Purposes.

The general purpose of the Osage Beach Citizen Advisory Committee is to provide for the sharing of information between the residents of Osage Beach on matters of public concern and to assist the City in fulfilling the City of Osage Beach mission statement.

Section 111.040 Terms and Appointments.

- A. Members shall serve a term of three (3) years. Terms shall expire May 31.. The Mayor or a member of the Board of Aldermen may submit nominations for expired terms to the City Clerk by May 1 for appointments as aforesaid in this Chapter. The Board of Aldermen shall approve nominees for the Advisory Committee at its last meeting in May each year, or as soon thereafter as possible.
- B. Whenever a vacancy in membership occurs, the City Clerk shall notify the Mayor and the Board of Aldermen of said vacancy and said vacancy will be filled for the unexpired term by appointment. The Board of Aldermen may remove any member for cause by majority vote.
- C. When there are more individual nominations than open positions on the Citizens Advisory Committee, the Board of Aldermen shall vote by paper ballot, in the following manner: each member of the Board shall cast one vote for one person for each open position. The City Clerk shall read the results of the ballots aloud as the votes are tabulated. A nominee must receive a majority of the votes to be selected to serve. If additional rounds of balloting are necessary to fill the available vacancies, the individual with the fewest votes on the most recent round of balloting shall be removed from consideration.

Section 111.050 Meetings

- A. The committee will be guided by Robert's Rules of Order and the Missouri Open Meetings and Records Law, as amended.
- B. The Citizen Advisory Committee may be asked to review and provide a recommendation on any topic or issue as requested by the Mayor, or a majority of the Board of Aldermen.
- C. The Citizen Advisory Committee shall elect a Chairman and a Vice Chairman to conduct the meetings. The agenda for meetings shall be established by the ~~Chairman~~ or Vice Chairman and published by the City Clerk.
- D. A majority of the members appointed to the Osage Beach Citizen Advisory Committee shall constitute a quorum.
- E. The City Administrator may assign staff members to attend meetings.
- F. Meetings of the Osage Beach Citizen Advisory Committee shall be noticed and conducted in accordance with Chapter 610, Revised Statutes of Missouri, and guided by the most recent edition of Roberts Rules of Order.

Section 3. Severability

The chapters, sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional or otherwise invalid by the valid judgment or degree of any Court of any competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this ordinance since the same would have been enacted by the Board of Aldermen without the incorporation in this ordinance of any such unconstitutional or invalid phrase, clause, sentence, paragraph or section.

Section 4. Repeal of Ordinances not to affect liabilities, etc.

Whenever any part of this ordinance shall be repealed or modified, either expressly or by implication, by a subsequent ordinance, that part of the ordinance thus repealed or modified shall continue in force until the subsequent ordinance repealing or modifying the ordinance shall go into effect unless therein otherwise expressly provided; but no suit, prosecution, proceeding, right, fine or penalty instituted, created, given, secured or accrued under this ordinance previous to its repeal shall not be affected, released or discharged but may be prosecuted, enjoined and recovered as fully as if this ordinance or provisions had continued in force, unless it shall be therein otherwise expressly provided.

Section 5. That this Ordinance shall be in full force and effect from and after the date of passage and approval of the Mayor.

READ FIRST TIME: _____ READ SECOND TIME: _____

I hereby certify that Ordinance No.22.69 was duly passed on _____ by the Board of Aldermen of the City of Osage Beach. The votes thereon were as follows:

Ayes:

Nays:

Abstentions:

Absent:

This Ordinance is hereby transmitted to the Mayor for his signature.

Date

Tara Berreth, City Clerk

Approved as to form:

Edward B. Rucker, City Attorney

I hereby approve Ordinance No.22.69.

Michael Harmison, Mayor

Date

Tara Berreth, City Clerk

REDLINE THE EDITS RELATING TO THE CITIZENS ADVISOR COMMITTEE

Section 111.020 Purposes.

The general purpose of the Osage Beach Citizen Advisory Committee is to provide for the sharing of information between the residents of Osage Beach on matters of public concern and to assist the City in fulfilling the City of Osage Beach mission statement. ~~At the request of the Board of Aldermen, the Osage Beach Citizen Advisory Committee may review and provide a recommendation on a topic or issue.~~

Section 111.040 Terms and Appointments.

- A. Members shall serve a term of three (3) years. ~~Membership shall be divided into three (3) classes of equal size. Terms shall expire June 1~~ **May 31**. ~~All members currently serving on the Osage Beach Citizen Advisory Committee as of July 1, 2011, shall continue to serve until their terms expire. The Board of Aldermen shall specify the term expiration date at the time a member is appointed. The Mayor or a member of the Board of Aldermen may submit nominations for expired terms to the City Clerk by May 1 June 1 for appointments as aforesaid in this Chapter. Expiring terms will be filled during the month of May.~~ The Board of Aldermen shall approve nominees ~~and for three-year terms on~~ **for** the Advisory Committee at its ~~first~~ **last** meeting in ~~June~~ **May** each year, or as soon thereafter as possible.
- B. Whenever a vacancy in membership occurs, the City Clerk shall notify the **Mayor and the** Board of Aldermen of said vacancy ~~vacant position~~, and said vacancy ~~will~~ **may** be filled for the unexpired term by appointment. The Board of Aldermen may remove any member for cause by majority vote.
- C. When there are more individual nominations than open positions on the Citizens Advisory Committee, the Board of Aldermen shall vote by paper ballot, in the following manner: each member of the Board shall cast one vote for one person for each open position. The City Clerk shall read the results of the ballots aloud as the votes are tabulated. A nominee must receive a majority of the votes to be selected to serve. If additional rounds of balloting are necessary to fill the available vacancies, the individual with the fewest votes on the most recent round of balloting shall be removed from consideration.

Section 111.050 Meetings

- A. The committee will be guided by Robert's Rules of Order and the Missouri Open Meetings and Records Law, as amended.

- B. ~~Meetings~~ The Citizen Advisory Committee may be asked to review and provide a recommendation on any topic or issue as deemed called by the Mayor, or a majority of the Board of Aldermen or the City Administrator.
- C. The Citizen Advisory Committee shall elect a Chairman and a Vice Chairman to conduct the meetings. The agenda for meetings shall be established by the Mayor, Chairman or Vice Chairman and publish by the City Clerk or designee. ~~or a majority of the Board of Aldermen or the City Administrator. Whomever authorized the meeting.~~
- D. A majority of the members appointed to the Osage Beach Citizen Advisory Committee shall constitute a quorum.
[Ord. No. 20.40, 7-16-2020]
- E. The City Administrator may assign staff members to attend meetings.
- F. Meetings of the Osage Beach Citizen Advisory Committee shall be noticed and conducted in accordance with Chapter 610, RSMo, and the most recent Roberts Rules of Order.

City of Osage Beach
Agenda Item Summary

Date of Meeting: September 15, 2022
Originator: Edward Rucker, City Attorney
Presenter: Edward Rucker, City Attorney

Agenda Item:

Bill 22-70- An ordinance of the City of Osage Beach, Missouri, amending Sections 400.020 Membership, 400.030 Officers, 400.110 Subdivision Requirements concerning the Planning Commission and creating two new Sections 400.035 Conduct of Meetings and 400.045 Zoning Officer. *First Reading*

Requested Action:

First Reading of Bill #22-70

Ordinance Referenced for Action:

Board of Aldermen approval required per Section 110.230. Ordinances, Resolutions, Etc. – Generally and Section 110.240 Adoption of Ordinances.

Deadline for Action:

None

Budgeted Item:

Not Applicable

Budget Line Information (if applicable):

Not Applicable

Department Comments and Recommendation:

Not Applicable

City Attorney Comments:

Per City Code 110.230, Bill 22-70 is in correct form. Requested by Alderman Rucker.

City Administrator Comments:

Ordinance changes requested by Alderman Rucker.

AN ORDINANCE OF THE CITY OF OSAGE BEACH, MISSOURI, AMENDING SECTIONS 400.020, 400.030 400.110 CONCERNING THE PLANNING COMMISSION AND CREATING TWO NEW SECTIONS 400.035 AND 400.045

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF OSAGE BEACH, MISSOURI AS FOLLOWS:

Section 1. Sections 400.020, 400.030, and 400.110 of the Osage Beach Code of Ordinances are hereby repealed.

Section 2. There is hereby enacted, new Sections 400.020, 400.030, 400.035, 400.045 and 400.110 of all to read as follows:

Section 400.020 Planning Commission — Membership — Terms — Vacancy — Removal.

The Planning Commission shall consist of not more than fifteen (15) nor less than seven (7) members, including:

1. The Mayor, if the Mayor chooses to be a member;
2. A member of the Board of Aldermen selected by the Board, if the Board chooses to have a member serve on the Commission; and
3. Not more than fifteen (15) nor less than five (5) citizens appointed by the Mayor and approved by the Board of Aldermen. All citizen members of the Commission shall serve without compensation. The term of each of the citizen members shall be for four (4) years, except that the terms of the citizen members first appointed shall be for varying periods so that succeeding terms will be staggered. The expiring terms will be filled during the month of May with terms expiration being June 1. Any vacancy in a membership shall be filled for the unexpired term through an appointment by the Mayor and approval of the Board of Alderman. The Board of Aldermen may remove any citizen member for cause stated in writing and after public hearing.

Section 400.030 Officers — Meetings — Records.

A. The Planning Commission shall elect a Chairperson and Secretary from among the citizen members. The term of Chairperson and Secretary shall be for one (1) year with eligibility for re-election. These positions will be filled at the June meeting.

B. The Planning Commission shall hold regular meetings and special meetings as provided by rule and shall adopt rules for the transaction of business and keep a record of its proceedings. These records shall be public records.

C. The Planning Commission shall appoint employees and staff necessary for its work and may contract with city planners and other professional persons for the services that it requires. The expenditures of the Commission exclusive of grants and gifts shall be within the amounts appropriated for the purpose by the Board of Aldermen.

Section 400.035 Conduct of Meetings

The commission will be guided by Robert's Rules of Order and the Missouri Open Meetings and Records Law, as amended.

Section 400.045 Zoning Officer

Wherever required under Missouri law for a zoning officer the person serving as city-planner pursuant to section 115.010 A 5 shall also be the zoning officer.

Section 400.110 Subdivision Regulations.

- A. Subdivision regulations may include requirements as to the extent and manner in which the streets of a subdivision or any designated portions thereto shall be graded and improved as well as including requirements as to the extent and manner of the installation of all utility facilities and compliance with all these requirements is a condition precedent to the approval of the plat. The regulations or practice of the Board of Aldermen may provide for the tentative approval of the plat before the improvements and installations, but any tentative approval shall not be entered on the plat. The regulations may provide that, in lieu of the completion of the work and installations before the final approval of a plat, the Board of Aldermen may accept a bond in an amount and with surety and conditions satisfactory to it providing for and securing the actual construction and installation of the improvements and utilities within a period specified by the Board of Aldermen and expressed in the bond. The Board may enforce the bond by all appropriate, legal, and equitable remedies. The regulations may provide, in lieu of the completion of the work and installations before the final approval of a plat, for an assessment or other method whereby the Board is put in an assured position to do the work and make the installations at the cost of the owners of the property within the subdivision. The regulations may provide for the dedication, reservation or acquisition of land and open spaces necessary for public uses indicated on the City plan and for appropriate means for providing for the compensation including reasonable charges against the subdivision, if any, and over a period and in a manner as is in the public interest.

- B. Before adoption of its subdivision regulations or any amendment thereof, the Board of Aldermen thereon shall hold a duly advertised public hearing.

Section 3. Severability

The chapters, sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional or otherwise invalid by the valid judgment or degree of any Court of any competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this ordinance since the same would have been enacted by the Board of Aldermen without the incorporation in this ordinance of any such unconstitutional or invalid phrase, clause, sentence, paragraph or section.

Section 4. Repeal of Ordinances not to affect liabilities, etc.

Whenever any part of this ordinance shall be repealed or modified, either expressly or by implication, by a subsequent ordinance, that part of the ordinance thus repealed or modified shall continue in force until the subsequent ordinance repealing or modifying the ordinance shall go into effect unless therein otherwise expressly provided; but no suit, prosecution, proceeding, right, fine or penalty instituted, created, given, secured or accrued under this ordinance previous to its repeal shall not be affected, released or discharged but may be prosecuted, enjoined and recovered as fully as if this ordinance or provisions had continued in force, unless it shall be therein otherwise expressly provided.

Section 5. That this Ordinance shall be in full force and effect from and after the date of passage and approval of the Mayor.

READ FIRST TIME: _____ READ SECOND TIME: _____

I hereby certify that Ordinance No.22.70 was duly passed on _____ by the Board of Aldermen of the City of Osage Beach. The votes thereon were as follows:

Ayes:

Nays:

Abstentions:

Absent:

This Ordinance is hereby transmitted to the Mayor for his signature.

Date

Tara Berreth, City Clerk

Approved as to form:

Edward B. Rucker, City Attorney

I hereby approve Ordinance No.22.70 .

Michael Harmison, Mayor

Date

Tara Berreth, City Clerk

Planning commission redline

Section 400.020 Planning Commission — Membership — Terms — Vacancy — Removal.

The Planning Commission of any municipality shall consist of not more than fifteen (15) nor less than seven (7) members, including:

1. The Mayor, if the Mayor chooses to be a member;
2. A member of the Board of Aldermen selected by the Board, if the Board chooses to have a member serve on the Commission; and
3. Not more than fifteen (15) nor less than five (5) citizens appointed by the Mayor and approved by the Board of Aldermen. All citizen members of the Commission shall serve without compensation. The term of each of the citizen members shall be for four (4) years, except that the terms of the citizen members first appointed shall be for varying periods so that succeeding terms will be staggered. **The expiring terms will be filled during the month of May with terms expiration being June 1.** Any vacancy in a membership shall be filled for the unexpired term **by with the appointment by the Mayor and approval of the Board of Alderman.** ~~as aforesaid.~~ The Board of Aldermen may remove any citizen member for cause stated in writing and after public hearing.

Section 400.030 Officers — Meetings — Records.

A. The Planning Commission shall elect a ~~Chairman~~ **Chairperson** and Secretary from among the citizen members. The term of ~~Chairman~~ **Chairperson** and Secretary shall be for one (1) year with eligibility for re-election. **These positions will be filled at the June meeting.**

B. The Planning Commission shall hold regular meetings and special meetings as provided by rule and shall adopt rules for the transaction of business and keep a record of its proceedings. These records shall be public records.

C. The Planning Commission shall appoint employees and staff necessary for its work and may contract with ~~€~~ city planners and other professional persons for the services that it requires. The expenditures of the Commission exclusive of grants and gifts shall be within the amounts appropriated for the purpose by the Board of Aldermen.

Section 400.035 Meetings

The committee commission will be guided by Robert's Rules of Order and the Missouri Open Meetings and Records Law, as amended.

Section 400.045 Zoning officer

Wherever required under Missouri law for a zoning officer the person serving as city planner pursuant to section 115.010 A 5 shall also be the zoning officer.

Section 400.110 Subdivision Regulations.

A. Subdivision regulations may include requirements as to the extent and manner in which the streets of a subdivision or any designated portions thereto shall be graded and improved as well as including requirements as to the extent and manner of the installation of all utility facilities

and compliance with all these requirements is a condition precedent to the approval of the plat. The regulations or practice of the Board of Aldermen may provide for the tentative approval of the plat ~~previous to~~ before the improvements and installations, but any tentative approval shall not be entered on the plat. The regulations may provide that, in lieu of the completion of the work and installations ~~previous to~~ before the final approval of a plat, the Board of Aldermen may accept a bond in an amount and with surety and conditions satisfactory to it providing for and securing the actual construction and installation of the improvements and utilities within a period specified by the Board of Aldermen and expressed in the bond. The Board may enforce the bond by all appropriate, legal, and equitable remedies. The regulations may provide, in lieu of the completion of the work and installations ~~previous to~~ before the final approval of a plat, for an assessment or other method whereby the Board is put in an assured position to do the work and make the installations at the cost of the owners of the property within the subdivision. The regulations may provide for the dedication, reservation or acquisition of land and open spaces necessary for public uses indicated on the City plan and for appropriate means for providing for the compensation including reasonable charges against the subdivision, if any, and over a period and in a manner as is in the public interest.

B. Before adoption of its subdivision regulations or any amendment thereof, the Board of Aldermen thereon shall hold a duly advertised public hearing.

City of Osage Beach
Agenda Item Summary

Date of Meeting: September 15, 2022
Originator: Edward Rucker, City Attorney
Presenter: Edward Rucker, City Attorney

Agenda Item:

Bill 22-72 - An ordinance of the City of Osage Beach, Missouri, repealing Section 405.680 concerning the Board of Adjustment within the Zoning Code and enacting in its place four new Sections 405.680, 405.681, 405.682 405.683 concerning the Board of Adjustment within the Zoning Code. *First Reading*

Requested Action:

First Reading of Bill #22-72

Ordinance Referenced for Action:

Board of Aldermen approval required per Section 110.230. Ordinances, Resolutions, Etc. – Generally and Section 110.240 Adoption of Ordinances.

Deadline for Action:

None

Budgeted Item:

Not Applicable

Budget Line Information (if applicable):

Not Applicable

Department Comments and Recommendation:

Not Applicable

City Attorney Comments:

Per City Code 110.230, Bill 22-72 in correct form. Requested by Alderman Rucker.

City Administrator Comments:

Ordinance changes requested by Alderman Rucker.

AN ORDINANCE OF THE CITY OF OSAGE BEACH, MISSOURI, REPEALING SECTION 405.680 CONCERNING THE BOARD OF ADJUSTMENT WITHIN THE ZONING CODE AND ENACTING IN ITS PLACE FOUR NEW SECTIONS 405.680, 405.681, 405.682 405.683 CONCERNING THE BOARD OF ADJUSTMENT WITHIN THE ZONING CODE

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF OSAGE BEACH, MISSOURI AS FOLLOWS:

Section 1. Section 405.680 of the Osage Beach Code of Ordinances are hereby repealed.

Section 2. There is hereby enacted, new Sections 405.680. 405.681, 405.682, and 405.683 all to read as follows:

Section 405.680 Purpose

The Board of Adjustment shall follow the regulations and restrictions pursuant to Sections 89.010 to 89.140, Revised Statutes of Missouri and Chapter 405 of this Code of Ordinances and may determine and vary their application in harmony with their general purpose and intent, and in accordance with general or specific rules therein contained.

Section 405.681 Members

The Mayor shall make appointments to the of a Board of Adjustment, with the approval of the majority of the Board of Aldermen. Members shall serve a term of five (5) years unless filling an unexpired term. The Mayor shall specify the term expiration date at the time a member is appointed. Expiring terms will be filled during the month of May. Terms shall expire June 1. The Board of Adjustment shall consist of five (5) members and up to (3) alternates all shall be residents of the City. The membership of the first (1st) Board appointed shall serve respectively, one (1) for one (1) year, one (1) for two (2) years, one (1) for three (3) years, one (1) for four (4) years, and one (1) for five (5) years. Thereafter members shall be appointed for terms of five (5) years each. At the request of the Mayor or City Planner an alternate shall serve in the absence of or the disqualification of any regular member. All members and alternates shall be removable for cause by the Board of Alderman upon written charges and after public hearing.

Section 405.682 Vacancy's

Whenever a vacancy in membership occurs, the City Planner shall notify the Mayor and the Board of Aldermen of said vacancy. The Mayor shall fill any vacancy that occurs on the Board of Adjustment by the same manner as outlined in section 405.681. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

Section 405.683 Meetings

Meetings will be posted and follow Chapter 610, RS Mo. Conduct of the meetings will be guided by the most recent edition of Roberts Rules of Order. The Board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to Sections 89.010 to 89.140, RS Mo. The Board of Adjustment shall elect its own Chairperson who shall serve for one (1) year. Meetings of the Board shall be held at the call of the Chairperson or City Planner and at such other times as the Board may determine. Such Chairperson, or in his/her absence the Acting ~~Chairman~~ Chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the City Clerk and shall be a public record. All testimony, objections thereto and rulings thereon, shall be recorder in the minutes by the Planning Departments secretary and filed in the City Clerk's office. The Planning and Zoning Official shall be an ex officio of the Board of Adjustment but shall not have a vote on any matters before the board. The Planning and Zoning Official shall take immediate action in accordance with the decision of the board. Four (4) of the five (5) members appointed to the Osage Beach Board of Adjustment shall constitute a quorum. Appeals must have 4 votes to be accepted.

Section 2. Severability

The chapters, sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional or otherwise invalid by the valid judgment or degree of any Court of any competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this ordinance since the same would have been enacted by the Board of Aldermen without the incorporation in this ordinance of any such unconstitutional or invalid phrase, clause, sentence, paragraph or section.

Section 3. Repeal of Ordinances not to affect liabilities, etc.

Whenever any part of this ordinance shall be repealed or modified, either expressly or by implication, by a subsequent ordinance, that part of the ordinance thus repealed or modified shall continue in force until the subsequent ordinance repealing or modifying the ordinance shall go into effect unless therein otherwise expressly provided; but no suit, prosecution, proceeding, right, fine or penalty instituted, created, given, secured or accrued under this ordinance previous to its repeal shall not be affected, released or discharged but may be prosecuted, enjoined and recovered as fully as if this ordinance or provisions had continued in force, unless it shall be therein otherwise expressly provided.

Section 4. That this Ordinance shall be in full force and effect from and after the date of passage and approval of the Mayor.

READ FIRST TIME: _____ READ SECOND TIME: _____

I hereby certify that Ordinance No.22.72 was duly passed on _____ by the Board of Aldermen of the City of Osage Beach. The votes thereon were as follows:

Ayes:

Nays:

Abstentions:

Absent:

This Ordinance is hereby transmitted to the Mayor for his signature.

Date

Tara Berreth, City Clerk

Approved as to form:

Edward B. Rucker, City Attorney

I hereby approve Ordinance No.22.72.

Michael Harmison, Mayor

Date

Tara Berreth, City Clerk

BOARD OF ZONING ADJUSTMENT REDLINE

CURRENT SECTION

Section 405.680 Appointment — Term — Vacancies — Organization.

The Mayor shall provide for the appointment of a Board of Adjustment, with the approval of the Board of Aldermen, and in the regulations and restrictions adopted pursuant to the authority of Sections 89.010 to 89.140, RSMo., may provide that the Board of Adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained. The Board of Adjustment shall consist of five (5) members, who shall be residents of the City. The membership of the first (1st) Board appointed shall serve respectively, one (1) for one (1) year, one (1) for two (2) years, one (1) for three (3) years, one (1) for four (4) years, and one (1) for five (5) years. Thereafter members shall be appointed for terms of five (5) years each. Three (3) alternate members may be appointed to serve in the absence of or the disqualification of the regular members. All members and alternates shall be removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. The Board shall elect its own Chairman who shall serve for one (1) year. The Board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to Sections 89.010 to 89.140, RSMo. Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine. Such Chairman, or in his/her absence the Acting Chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record. All testimony, objections thereto and rulings thereon, shall be taken down by a reporter employed by the Board for that purpose.

NEW SECTIONS

Section 405.681 Purpose

The Board of Adjustment shall follow the regulations and restrictions adopted pursuant to the authority of Sections 89.010 to 89.140, RS Mo. ~~may provide that~~ The Board of Adjustment may determine and vary their application in harmony with their general purpose and intent, and in accordance with general or specific rules therein contained.

Section 405.682 Members

The Mayor shall make ~~provide for the~~ appointments to the of a Board of Adjustment, with the approval of the majority of the Board of Aldermen. Members shall serve a term of five (5) years unless filling an unexpired term. The Mayor shall specify the term expiration date at the time a member is appointed. Expiring terms will be filled during the month of May. Terms shall expire ~~June 1~~. The Board of Adjustment shall consist of five (5) members ~~and up to (3) alternates all~~ who shall be residents of the City. The membership of the first (1st) Board appointed shall serve respectively, one (1) for one (1) year, one (1) for two (2) years, one (1) for three (3) years, one (1) for four (4) years, and one (1) for five (5) years. Thereafter members shall be appointed for terms of five (5) years each. ~~Three (3) alternate members may be appointed to serve in the absence of or the disqualification of the regular members. Three (3) alternate members may be appointed by the Mayor.~~ At the request of the Mayor an alternate shall serve in the absence of or the disqualification of any regular member. All members and alternates shall be removable for cause by the ~~Board of Alderman~~ appointing authority upon written charges and after public hearing.

Section 405.683 Vacancy's

Whenever a vacancy in membership occurs, the City Planner shall notify the Mayor and the Board of Aldermen of said vacancy. The Mayor shall fill any vacancy that occurs on the Board of Adjustment by the same manner as outlined in section 405.682. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

Section 405.684 Meetings

Meetings will be posted and follow Chapter 610, RS Mo. Conduct of the meetings will be guided ~~be~~ by the most recent edition of Roberts Rules of Order. The Board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to Sections 89.010 to 89.140, RS Mo. The Board of Adjustment shall elect its own ~~Chairman~~ Chairperson who shall serve for one (1) year. Meetings of the Board shall be held at the call of the ~~Chairman~~ Chairperson and at such other times as the Board may determine. Such ~~Chairman~~ Chairperson, or in his/her absence the Acting ~~Chairman~~ Chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the City Clerk and shall be a public record. All testimony, objections thereto and rulings thereon, shall be recorder in the minutes by the Planning Departments secretary and filed in the City Clerk's office. ~~The Board shall keep minutes of its proceedings, showing the vote of each member upon question, or, if absent or~~

~~failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record. All testimony, objections thereto and rulings thereon, shall be taken down by a reporter employed by the Board for that purpose.~~

The Planning and Zoning Official shall be an ex officio of the Board of Adjustment but shall not have a vote on any matters before the board. The Planning and Zoning Official shall take immediate action in accordance with the decision of the board.

Four (4) of the five (5) members appointed to the Osage Beach Board of Adjustment shall constitute a quorum. Appeals must have 4 votes to be accepted.

City of Osage Beach
Agenda Item Summary

Date of Meeting: September 15, 2022
Originator: Jeana Woods, City Administrator
Presenter: Jeana Woods, City Administrator

Agenda Item:

Bill 22-73 An ordinance of the City of Osage Beach, Missouri, authorizing the expenditure of funds for the Elks Lodge 2517 Veterans Parade Event Support Request, in an amount not to exceed \$2,000. *First Reading*

Requested Action:

Second Reading of Bill #22-73

Ordinance Referenced for Action:

Board of Aldermen approval required for the distribution of funds from the Community Promotions - Community Event Support account per Municipal Code Section 110.300 Expenditures from Community Promotions - Community Event Support Budget Item.

Deadline for Action:

None

Budgeted Item:

Yes

Budget Line Information (if applicable):

Budget Line Item/Title: 10-21-754255 Community Event Support

FY2022 Budgeted Amount: \$ 13,000

FY2022 Expenditures to Date (08/31/2022): (\$ 7,000)

FY2022 Available: \$ 6,000

FY2022 Requested Amount: \$ 2,000

Department Comments and Recommendation:

Not Applicable

City Attorney Comments:

Per City Code 110.230, Bill 22-73 is in correct form.

City Administrator Comments:

In the Economic Development Department, account 10-21-754255-Community Event Support, \$13,000 is budgeted for event support. Per City Code 110.300, the intent is for the purpose of supporting event activities that bring visitors, trade, and business into the City. Applications are submitted to the City Administrator and Board of Aldermen approval is required.

Enclosed is the Elks Lodge Veterans Parade Event Support application with supplemental information submitted. The request is for \$2,000. The parade event is scheduled to be held on November 5, 2022.

To date, the Board of Aldermen has approved three requests for FY2022 totaling \$7,000; Guinness World Record Boat Parade, Lake of the Ozarks Bikefest, and the LOZ En Plein Air Arts Festival.

AN ORDINANCE OF THE CITY OF OSAGE BEACH, MISSOURI, AUTHORIZING THE EXPENDITURE OF FUNDS FOR THE VETERAN'S DAY PARADE 2021 EVENT SUPPORT REQUEST IN THE AMOUNT OF \$2,000.00

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF OSAGE BEACH, AS FOLLOWS:

Section 1. That the expenditure of funds for advertising in an amount of Two Thousand Dollars (\$2,000.00) is hereby authorized to Lake of the Ozarks Elks Lodge #2517 for the Veteran's Day Parade held on November 5, 2022.

Section 2. The City Administrator is hereby authorized to take such further actions as are necessary to carry out the intent of this Ordinance.

Section 3. Severability

The chapters, sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional or otherwise invalid by the valid judgement or degree of any Court of any competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this ordinance since the same would have been enacted by the Board of Aldermen without the incorporation in this ordinance of any such unconstitutional or invalid phrase, clause, sentence, paragraph or section.

Section 4. Repeal of Ordinances not to affect liabilities, etc.

Whenever any part of this ordinance shall be repealed or modified, either expressly or by implication, by a subsequent ordinance, that part of the ordinance thus repealed or modified shall continue in force until the subsequent ordinance repealing or modifying the ordinance shall go into effect unless therein otherwise expressly provided; but no suit, prosecution, proceeding, right, fine or penalty instituted, created, given, secured or accrued under this ordinance previous to its repeal shall not be affected, released or discharged but may be prosecuted, enjoined and recovered as fully as if this ordinance or provisions had continued in force, unless it shall be therein otherwise expressly provided.

Section 5. This Ordinance shall take effect and be in full force from and after its passage by the Board of Aldermen and approval by the Mayor.

READ FIRST TIME:

READ SECOND TIME:

I hereby certify that the above Ordinance No. 21.73 was duly passed on , by the Board of Aldermen of the City of Osage Beach. The votes thereon were as follows:

Ayes:

Nays:

Abstentions:

Absent:

This Ordinance is hereby transmitted to the Mayor for his signature.

Date

Tara Berreth, City Clerk

Approved as to form:

Edward B. Rucker, City Attorney

I hereby approve Ordinance No. 21.73.

Date

Michael Harmison, Mayor

ATTEST:

Tara Berreth, City Clerk

City of Osage Beach
Agenda Item Summary

Date of Meeting: September 15, 2022
Originator: Jeana Woods, City Administrator
Presenter: Jeana Woods, City Administrator

Agenda Item:

Resolution 2022-06 - A resolution of the City of Osage Beach, Missouri, supporting the application for the Department of Transportation Reconnecting Communities Pilot (RCP) Discretionary Grant Program for Osage Beach Reconnecting Communities Planning Project

Requested Action:

Resolution #2022-06

Ordinance Referenced for Action:

Board of Aldermen approval required per Section 110.230. Ordinances, Resolutions, Etc. – Generally and Section 110.240 Adoption of Ordinances.

Deadline for Action:

Yes - Resolution is required as part of the application process; application is due October 13, 2022.

Budgeted Item:

Not Applicable

Budget Line Information (if applicable):

Not Applicable

Department Comments and Recommendation:

Not Applicable

City Attorney Comments:

Per City Code 110.230, Resolution 2022-06 is in correct form.

City Administrator Comments:

The Lake of the Ozarks Council of Local Governments (LOCLG) and representatives of the Lake of the Ozarks Trails Initiative will be presenting the project and grant details. The U.S. Department of Transportation Reconnecting Communities Pilot (RCP)

Discretionary Grant Program was created in the President's Bipartisan Infrastructure Law for the purpose of reconnecting communities by providing technical assistance and hands-on planning support for projects. A first-of-its kind pilot program. Awards for successful applicants are estimated to occur in 2023 with an expectation of awarded funds to be obligated by 2025.

If the resolution to support said application is approved, a contract follows this item for the purpose of contracting with the LOCLG for grant services regarding said application, in partnership with the Lake of the Ozark Trails as sub-applicant.

RESOLUTION 2022-06

A RESOLUTION OF THE CITY OF OSAGE BEACH, MISSOURI, OF SUPPORT OF APPLICATION FOR THE U.S. DEPARTMENT OF TRANSPORTATION RECONNECTING COMMUNITIES PILOT (RCP) DISCRETIONARY GRANT PROGRAM FOR OSAGE BEACH RECONNECTING COMMUNITIES PLANNING PROJECT

WHEREAS, the City of Osage Beach, Missouri believes the Magic Dragon Trails Initiative to develop multi-surface destination trails throughout the City of Osage Beach and the Lake of the Ozarks Area will improve quality of life, increase property values, showcase the beauty of the Lake of the Ozarks and will spur economic growth; and

WHEREAS, the City of Osage Beach supports application for funds through the U.S. Department of Transportation Reconnecting Communities Pilot (RCP) Discretionary Grant Program with application due on October 13, 2022, for the purpose of feasibility, preliminary engineering and design, review, and planning, with sub-applicant, Magic Dragon Trails doing business as Branches for the Lake; and

WHEREAS, the City of Osage Beach supports said grant application and related work to be preformed by way of contract with the Lake of the Ozarks Council of Local Governments (LOCLG); and

WHEREAS, the City of Osage Beach will provide the matching portion of funds, shared with the sub-applicant, as applied for when the funding is awarded.

NOW THEREFORE, BE IT RESOLVED BY THE CITY OF OSAGE BEACH in the State of Missouri, THAT:

The Mayor and Board of Aldermen of the City of Osage Beach, Missouri do hereby support the application for the Osage Beach Reconnecting Communities Planning Project.

I hereby certify that the above Resolution 2022-06 was duly passed on _____, by the Board of Aldermen of the City of Osage Beach. The votes thereon were as follows:

Ayes:

Nays:

Abstain:

Absent:

Date

Tara Berreth, City Clerk

Approved as to form:

Edward B. Rucker, City Attorney

Reconnecting Communities Pilot Planning Grant

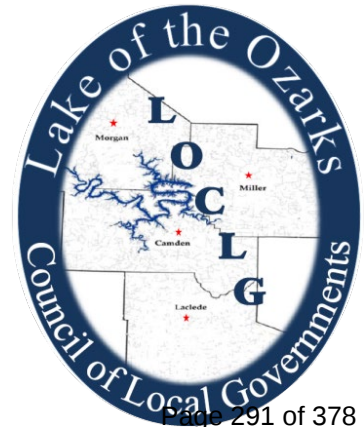
City of Osage Beach – Osage
Beach Parkway



Magic Dragon Trails
LAKE OF THE OZARKS



U.S. Department
of Transportation



What is the RCP ?

- The RCP Reconnecting Communities Pilot Grant Program is to reconnect communities by removing, retrofitting, or mitigating transportation facilities such as highways and rail lines that create barriers to community connectivity including mobility, access, or economic development.
- Bipartisan Infrastructure Law(BIL) allocates up to \$195 million for the RCP program. It allocates \$50 million for Planning Grants, which includes funding for technical assistance, and \$145 million for Capital Construction Grant funds
- The program provides technical assistance and grant funding for planning and capital construction to address infrastructure barriers, restore community connectivity, and improve people's lives.
- The variety of transformative solutions to knit communities back together can include:
 - high-quality public transportation
 - infrastructure removal
 - pedestrian walkways and overpasses
 - capping and lids
 - linear parks and trails
 - roadway redesigns and complete streets conversions,
 - main street revitalization

RCP Grant Types & Deliverables

- The RCP Program provides funding for two types of grants
- Planning Grants fund the study of removing, retrofitting, or mitigating an existing facility to restore community connectivity; to conduct public engagement; and other transportation planning activities
- Capital Construction Grants are to carry out a project to remove, retrofit, mitigate, or replace an existing eligible facility with a new facility that reconnects communities
- The primary goal of the RCP Program is to reconnect communities harmed by **transportation infrastructure**, through community-supported planning activities and capital construction projects that are championed by those communities
- Addresses four main DOT Strategic Plan priorities
 - Safety
 - Economic Strength and Global Competitions
 - Climate and Sustainability
 - Transformation

Application Process

- Approval of MOA with LOCLG- Grant Writing Services- \$10,0000 split 50/50 with the Applicant and Sub-Applicant.
- Lead Applicant is City of Osage Beach, Sub-Applicant is Magic Dragon Trails
- Application must be submitted by **11:59 PM EDT on Thursday October 13, 2022.**
- Application must be submitted through [grants.gov](https://www.grants.gov) to the *USDOT*
- Planning grants may range from \$100,000 to \$2 Million for public engagement, feasibility studies, and other planning activities. 80/20 match.
- Eligible applicants
 - State
 - Units of Government
 - Tribal Government
 - Metropolitan Planning Organization
 - Non-profit organization

Planning Grants Activities and Costs

We are requesting \$1.5M for:

- Conceptual and preliminary engineering or design and planning studies that support the environmental review for a construction project.
- Public engagement activities, including community visioning or other place-based strategies for public input into project plans.
- Data Collection as required for this grant.
- Planning studies to assess the feasibility of removing, retrofitting, or mitigating an existing eligible facility to reconnect communities, including assessments of:
 - Current traffic patterns on the facility and the surrounding street network.
 - Capacity of existing transportation networks to maintain mobility needs.
 - Alternative roadway designs or other uses for the right-of-way, for roads and bridges
 - The project's impact on the mobility of people.
 - The project's impact on safety and circulation.
 - The estimated cost to restore community connectivity and to convert the system to a different design or use, including bridges and roadways to accommodate access of pedestrian and bicyclist.
 - The project's anticipated economic impact and development opportunities.
 - The project's environmental, public health, and community impacts.

Planning Grants Activities and Costs

- Other planning activities in advance of the project, such as:
 - locally-driven land use and zoning reform,
 - transit-oriented development,
 - housing supply, in particular location-efficient affordable housing,
 - managing gentrification and neighborhood change,
 - proposed project impact mitigation,
 - green and open space, local history and culture,
 - access and mobility barriers,
 - jobs and workforce, or other necessary planning activities as put forth by the applicant that do not result in construction.

Planning Grants Cost Sharing & Matching

- Cost sharing for the Planning grants are an 80/20 match- $\$1.5\text{M} = \$300,000$ split between applicants
- Matching funds may include non-Federal sources such as:
 - State funds originating from programs funded by State revenue,
 - Local funds originating from State or local revenue-funded programs,
 - Philanthropic funds, or Private funds
- Grant recipients may also use in-kind or cash contributions toward local match requirements so long as those contributions meet the federal legal requirements.
- In-kind contributions may include compensation for community members' time, materials, pro bono work provided to the project by third parties, and donations from private sponsors.
- As noted above, the cost sharing may consist partially or entirely of in-kind contributions as well as contributions from the private sector and/or philanthropic organizations.
- RCP Program Funds are administered on a reimbursement basis. Grant recipients will generally be required to pay project costs up front using their own funds, and then request reimbursement for those costs through billings.

Project Narrative Completion

The narrative is where the applicant to states their case for meeting the merit criteria. This process will take some time to develop. **Approval** to apply for the grant is **needed ASAP 30 days will be quite the challenge but we will succeed!!!**

- **Overview** - This section should provide an introduction, describe barriers posed by the eligible facility, describe the history and character of the community most impacted by the facility, and any other high-level background information that would be useful to understand the rest of the application.
- **Location & Map** - This section should describe the location of the eligible facility that creates barriers to community connectivity, including to mobility, access, or economic development, as well as a description of the surrounding community impacted by the facility. This section should include a detailed geographic description and map of the facility location and identify elements of the existing transportation network.
- **Response to Merit Criteria** - This section should describe how the project addresses each of the merit criteria:
 - Equity, Environmental Justice, and Community Engagement.
 - Mobility and Community Connectivity.
 - Community-based Stewardship, Management, and Partnerships.
 - Equitable Development and Shared Prosperity.

**Thank you
for your time....
Any questions**

City of Osage Beach

Agenda Item Summary

Date of Meeting: September 15, 2022
Originator: Jeana Woods, City Administrator
Presenter: Jeana Woods, City Administrator

Agenda Item:

Bill 22-77 - An ordinance of the City of Osage Beach, Missouri, authorizing the City Administrator to execute an agreement with the Lake of the Ozarks Council of Local Governments (LOCLG) for grant services and technical support for the Osage Beach Reconnecting Communities Planning Project grant application through the U.S. Department of Transportation Reconnecting Communities Pilot (RCP) Discretionary Grant Program for an amount not to exceed \$5,000. *First and Second Reading*

Requested Action:

First & Second Reading of Bill #22-77

Ordinance Referenced for Action:

Board of Aldermen approval is required for purchases/agreements not budgeted per Municipal Code Chapter 135; Article II: Purchasing, Procurement, Transfers, and Sales.

Deadline for Action:

Yes - Grant application is due October 13, 2022

Budgeted Item:

No - Funding may be provided by unrestricted Transportation Fund monies.

Budget Line Information (if applicable):

Budget Line Item/Title: 20-00-733800 Professional Services

FY2022 Budgeted Amount: \$ 1,500

FY2022 Expenditures to Date (09/08/2022): (\$ 371)

FY2022 Available: \$ 1,129

FY2022 Requested Amount: \$ 5,000

Department Comments and Recommendation:

Not Applicable

City Attorney Comments:

Per City Code 110.230, Bill 22-77 is in correct form.

City Administrator Comments:

Upon an approval of Resolution 2022-06 to support a grant opportunity through the U.S. Department of Transportation Reconnecting Communities Pilot (RCP) Discretionary Grant Program for the Osage Beach Reconnecting Communities Planning project, authorization to contract with LOCLG is being requested. The grant deadline is October 13, 2022. The City of Osage Beach, grant Applicant, and the Lake of the Ozarks Trails, dba Branches of the Lake, grant Sub-applicant, will share the cost of the LOCLG services. The LOCLG agreement total is \$10,000, the City's portion is \$5,000.

This is not a budgeted item in the FY2022 Operating Budget and an amendment will be needed. Due to the amount, if approved an line item transfer will be completed. Expenditure may be funded with Transportation Fund unrestricted monies.

AN ORDINANCE OF THE CITY OF OSAGE BEACH, MISSOURI, AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE AN AGREEMENT WITH THE LAKE OF THE OZARKS COUNCIL OF LOCAL GOVERNMENTS (LOCLG) FOR GRANT SERVICES AND TECHNICAL SUPPORT FOR THE OSAGE BEACH RECONNECTING COMMUNITIES PLANNING PROJECT GRANT APPLICATION THROUGH THE U.S. DEPARTMENT OF TRANSPORTATION RECONNECTING COMMUNITIES PILOT (RCP) DISCRETIONARY GRANT PROGRAM FOR AN AMOUNT NOT TO EXCEED \$5,000.

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF OSAGE BEACH, MISSOURI, AS FOLLOWS, WIT.

Section 1. The Board of Aldermen hereby authorizes the City Administrator to execute on behalf of the City an agreement with the Lake of the Ozarks Council of Local Governments (LOCLG) for grant services and technical support.

Section 3. Total expenditures or liability authorized under this Ordinance shall not exceed Five Thousand Dollars. (\$5,000.00)

Section 4. The City Administrator is hereby authorized to take such further actions as are necessary to carry out the intent of this Ordinance and Contract.

Section 5. This Ordinance shall be in full force and effect from date of passage and approval by the Mayor.

READ FIRST TIME:

READ SECOND TIME:

I hereby certify that the above Ordinance No. 22.77 was duly passed on , by the Board of Aldermen of the City of Osage Beach. The votes thereon were as follows:

Ayes:

Nays:

Abstentions:

Absent:

This Ordinance is hereby transmitted to the Mayor for her signature.

Date

Tara Berreth, City Clerk

Approved as to form:

Edward B. Rucker, City Attorney

I hereby approve Ordinance No. 22.77.

Date

Michael Harmison, Mayor

ATTEST:

Tara Berreth, City Clerk

**RECONNECTING COMMUNITIES PILOT PLANNING GRANT
SERVICE AGREEMENT BETWEEN
CITY OF OSAGE BEACH, MISSOURI AND MAGIC DRAGON TRAILS AND
THE LAKE OZARK COUNCIL OF LOCAL GOVERNMENTS.**

This Agreement is made and entered into on the _____ day of _____, 2022, by and between, the City of Osage Beach, and Magic Dragon Trails, doing business as Branches for the Lake, and the Lake of the Ozarks Council of Local Governments, 985 E Hwy 54., Camdenton, Missouri 65020, hereinafter referred to as "LOCLG".

WHEREAS, the City and Magic Dragon Trails have requested the LOCLG prepare a grant application for the Reconnecting Communities Pilot Planning Grant and LOCLG is desirous of preparing such an application:

NOW, THEREFORE, in consideration of the following mutual covenants, conditions and agreements, the parties do hereby agree as follows:

1. SERVICES TO BE PROVIDED

LOCLG agrees to provide services and/or materials under this Service Agreement (hereinafter referred to collectively as "Services") pursuant to the provisions and specifications identified by the City to completely prepare a draft application for the Reconnecting Communities Pilot Planning Grant for the Osage Beach Multi-surface Trails Planning Project. Scope of Services include the completion of the Reconnecting Communities Pilot Planning Grant Application submit completed applications and applicable documentation to USDOT by required deadline. LOCLG will complete and gather need information from reliable source to develop a complete application.

2. CHANGES IN SCOPE OF SERVICES

LOCLG agrees to provide City and Magic Dragon Trails with timely progress reports as no less frequently than monthly.

3. PAYMENT TO LOCLG

City agrees to compensate LOCLG \$5,000.00 upon receipt of a complete and satisfactory grant application.

Magic Dragon Trails agrees to compensate LOCLG \$5,000.00 upon receipt of a complete a complete and satisfactory grant application.

4. CONTRACT TERM

TERM. The grant application shall be completed and delivered to the City Administrator by October 13, 2022. Time is the essence of this contract and any lateness or delay in delivery is a material and complete breach of this agreement.

5. INDEPENDENT LOCLG

City and Magic Dragon Trails agree that LOCLG is an independent contractor and shall not represent itself as an agent or employee of City for any purpose in the performance of LOCLG's duties under this Agreement. Accordingly, LOCLG shall be responsible for payment of all federal, state, and local taxes as well as business license fees arising out of LOCLG activities in accordance with this Agreement. For purposes of this Agreement taxes shall include, but not be limited to, Federal and State Income, Social Security and Unemployment Insurance taxes.

6. INDEMNIFICATION

Each party shall bear the risk of their own negligence and represents to the other they are fully insured, therefore. To the fullest extent as permitted by law and regulation the LOCLG shall indemnify and hold harmless the City and its officials employees and agents from any and all claims damages losses and expenses, direct or indirect of consequential (including but not limited to fees and charges for attorneys or other professional and costs related to any court action or arbitration) arising out of or resulting from the performance of this agreement or the actions of the LOCLG or its official agents or employees under this agreement. Such indemnification by the LOCLG shall survive the termination or conclusion of this agreement.

Under no circumstances will the City indemnify or hold harmless the LOCLG and any such provision to the contrary in any document shall be void and ineffective.

7. CITY NOT RESPONSIBLE FOR EXPENSES

City shall not be liable to LOCLG for any expenses paid or incurred by LOCLG unless otherwise agreed to in this agreement.

8. TERMINATION OF AGREEMENT AND NON-APPROPRIATION CLAUSE

City upon thirty (30) days' written notice to the LOCLG may terminate this Agreement without cause.

This Agreement may be terminated for cause, by either party by the non-breaching party giving notice to the other party of the breach or substantial failure to perform in accordance with the provisions of this agreement and if such failure is not corrected within ten (10) days of the receipt of such notification.

9. PROHIBITED INTEREST

Conflict of Interest. LOCLG represents and warrants that LOCLG has no business, professional, personal, or other interest that would conflict in any manner or degree with the performance of its obligations under this Agreement. No officer or employee of the City either elected or appointed, shall in any manner received any benefit of this agreement.

Notice of Potential Conflict. If any such actual or potential conflict of interest arises under this Agreement, LOCLG shall immediately inform the Company in writing of such conflict. Termination for Material Conflict. If, in the reasonable judgment of the City, such conflict poses a material conflict to and with the performance of LOCLG's obligations under this Agreement, then the City may terminate the Agreement immediately upon written notice to LOCLG; such termination of the Agreement shall be effective upon the receipt of such notice by LOCLG.

10. NON-COLLUSION

LOCLG guarantees that this Agreement is not a product of collusion with any other Vendor and no effort has been made to fix any overhead, profit, or cost element of any proposed price.

11. SUCCESSORS AND ASSIGNMENT

LOCLG shall not assign its interest in this Agreement without the written consent of City.

12. NOTICES

All notices which may be required by this Agreement, or any rule of law shall be effective when received by certified mail sent (but also copied in email) to the following addresses:

LOCLG: _____

(email)

City: Jeana Woods
City Administrator
1000 City Parkway
Osage Beach, Missouri 65065
jwoods@osagebeach.org

13 OWNERSHIP RIGHTS

Notwithstanding anything to the contrary in any other part of this Agreement or any of the Attachments hereto, City and LOCLG agree that City shall have full ownership rights in the drawing, design, text and image database created pursuant to this Agreement, including the images and data provided by City to assist LOCLG in the performance of its responsibilities under this Service Agreement.

14 GOVERNING LAW

This Agreement shall be governed by and in accordance with the laws of Missouri. All disputes under this contract and any litigation resulting under this contract shall be filed, tried, remain in, and be ultimately resolved in the Circuit Court of Camden or Miller County on in any appeal therefrom within the courts of the State of Missouri. The parties, in consideration of the terms and conditions of this agreement, hereby knowingly, intelligently, and voluntarily agree and waive any and all removal rights to federal court or the right to

litigate the claim or any part thereof in courts of any other state for any reason. This Agreement is not subject to arbitration.

15 COMPLIANCE WITH LAW

LOCLG represents that it is in compliance with all Federal, State, and Local laws, regulations, or orders, as amended or supplemented. The implementation of this Agreement will be carried out in strict compliance with all Federal, State, or Local laws regarding discrimination in employment.

LOCLG represents that it is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Missouri and is qualified to do business in the State of Missouri.

16 WAIVER

No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent, or subsequent breach of the same or any other provision hereof. No term or provision hereof shall be deemed waived, and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. A waiver shall not constitute a waiver of such in the future unless said waiver is also made for future occurrences in writing signed by the waiving party.

17. SEVERABILITY

The invalidity of one or more of the phrases, sentences, clauses, or sections contained in this Service Agreement shall not affect the validity of the remaining portion of this Service Agreement so long as the material purposes of this Service Agreement can be determined and effectuated. If any provision of this Service Agreement is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Service Agreement shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.

18 ENTIRE AGREEMENT

This Service Agreement shall constitute the entire understanding between City and LOCLG and shall supersede all prior understandings and agreements relating to the subject matter hereof and may be amended only by written mutual agreement of the parties.

19 HEADINGS

The subject headings of the paragraphs are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This Service Agreement shall be deemed to have been drafted by both parties and no purposes of interpretation shall be made to the contrary.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by duly authorized representatives and made effective the day and year first above written.

City of Osage Beach:

LOCLG:

Signature

Signature

Jeana Woods
City Administrator

Printed Name

Title

Date

Date

Magic Dragon Trails, dba Branches of the Lake:

Signature

Printed Name

Title

Date

City of Osage Beach

Agenda Item Summary

Date of Meeting: September 15, 2022
Originator: Mike Welty, Assistant City Administrator
Presenter: Mike Welty, Assistant City Administrator

Agenda Item:

Motion to approve the purchase of Police laptops and GIS equipment that was included in an Camden County ARPA grant that was recently awarded to the City for an amount not to exceed 50,119.28.

Requested Action:

Motion to Approve

Ordinance Referenced for Action:

Board of Aldermen approval required for purchases over \$25,001 per Municipal Code Chapter 135; Article II: Purchasing, Procurement, Transfers, and Sales.

Deadline for Action:

Yes -We need to get these items purchased prior to the end of the year in order to ensure the expense hit the current budget.

Budgeted Item:

No - See Dept. Comment section

Budget Line Information (if applicable):

Budget Line Item/Title: 10-14-774250 Computer Equipment

FY2022 Budgeted Amount:	\$10,575.00
FY2022 Expenditures to Date (09/07/22):	(\$ 10,747.00)
FY2022 Available:	\$(-172.00)

FY2022 Requested Amount:	\$38,192.00
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Budget Line Item/Title: 20-00-774255 Machinery and Equipment

FY2022 Budgeted Amount:	\$12,316.00
FY2022 Expenditures to Date (09/07/22):	(\$ 10,698.00)
FY2022 Available:	\$1,618.00

FY2022 Requested Amount:	\$3,092.43
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Budget Line Item/Title: 300-00-774255 Machinery and Equipment

FY2022 Budgeted Amount:	\$13,216.00
FY2022 Expenditures to Date (09/07/22):	(\$ 9,063.00)
FY2022 Available:	\$4,153.00
 FY2022 Requested Amount:	 \$3,092.43

Budget Line Item/Title: 35-00-774255 Machinery and Equipment

FY2022 Budgeted Amount:	\$4,816.00
FY2022 Expenditures to Date (09/07/22):	(\$ 6,265.00)
FY2022 Available:	\$(-1,499.00)
 FY2022 Requested Amount:	 \$3,092.44

Budget Line Item/Title: 20-00-744700 Mobile Devices and Service

FY2022 Budgeted Amount:	\$5,580.00
FY2022 Expenditures to Date (09/07/22):	(\$ 3,037.00)
FY2022 Available:	\$2,543.00
 FY2022 Requested Amount:	 \$883.32

Budget Line Item/Title: 30-00-744700 Mobile Devices and Service

FY2022 Budgeted Amount:	\$4,740.00
FY2022 Expenditures to Date (09/07/22):	(\$ 2,709.00)
FY2022 Available:	\$2,031.00
 FY2022 Requested Amount:	 \$883.33

Budget Line Item/Title: 35-00-744700 Mobile Devices and Service

FY2022 Budgeted Amount:	\$9,180.00
FY2022 Expenditures to Date (09/07/22):	(\$ 5,318.00)
FY2022 Available:	\$3,862.00
 FY2022 Requested Amount:	 \$883.33

Department Comments and Recommendation:

Over the summer, Chief Davis, Kevin Crooks and I worked on a Camden County ARPA Grant application that would provide updated IT Equipment to our Police Officers and

Public Works Staff. The county recently awarded the grant to the city. None of the items we requested through the grant were included in the 2022 budget and these purchases need board approval and will require budget amendments. The county grant application and additional documentation are attached. Here is a summary of the items and costs awarded through this grant:

1. 11 Panasonic Toughbooks = Cost is \$38,192.00. A budget amendment will be needed to add this amount to 10-14-774250 Computer Equipment. Unfortunately, after our grant application was turned in to the county, the cost of these laptops changed. The cost went up by \$3,289.00. Additional approval was required from the county and is attached along with an updated quote. These purchases do not have any future budget impact and simply replace older end of life toughbooks. This purchase is being made through a cooperative bid agreement. The details are listed in the grant application.
2. 1 Cooperhead ViperMag Utility Locating System and R2 Trimble Unit = Cost is \$9,277.30. A budget amendment will be needed to add this amount to 20/30/35-00-774255 Machinery and Equipment (Split Equally \$3,092.43 per department). The purchase of these items doubles our ability to locate utilities out in the field. This is a key purchase as we continue to expand our GIS capability. This will allow for individual departments (Sewer/Water/Trans) to assist with tagging their own assets, improving efficiency as we continue to build a GIS system to include all city-owned utilities. These purchases do not have any future budget impact other than end of life replacement. This purchase is being made using informal bidding procedures and sole source bidding procedures. The details are listed in the grant application.
3. 2 iPad Pro Tablets with cellular service = Cost is \$2,649.98. A budget amendment will be needed to add this amount to 20/30/35-00-744700 Mobile Devices and Service (Split Equally \$883.32 per department). These new iPads greatly improve our ability to upload data to our GIS System. Currently, we use the standard 8th generation iPads to upload GIS data in the field. Using these devices, it takes about 15 minutes to upload each asset tagged in the field. With the new iPad Pro Tablets assets uploaded in the field will take just a few seconds. This will greatly improve our day-to-day efficiency as we continue to build out our GIS system. Future budget impact will be minimal. We are adding cellular plans for these devices to future budgets while at the same time removing the devices that they currently use. This purchase is being made using informal bidding procedures. The details are listed in the grant application.

The county has also made the city aware that there are additional funds still available through this grant. I am currently working with Chief Davis and Kevin Crooks on a second application. This second County ARPA grant application will follow the same path as this one did with additional in-car technology upgrades for the police and additional GIS and work order system upgrades for Public Works. More details will be brought before the Board for approval later in the year. I recommend approval.

City Attorney Comments:

Not Applicable

City Administrator Comments:

I concur with the department's recommendation. A budget amendment will follow this request. This purchase, with grant, is a net zero cost to the City.

Camden County ARPA ACT

Please notice all funds requested must met guidelines for ARPA ACT

Date of Submission: _____

Date of Received: _____

Project #__	Request for ARPA Funds from Camden County
Name of Organization	
Address	
Office Phone	
Cell Phone (Optional)	
Primary Contact	
Email/Contact #	
Secondary Contact	
Email/Contact #	
Project Name	
FFIE#	
Expected Cost of Project	
Term of Project - Dates	
Is Project:	New, Complete, or In Progress
Has the applicant previously applied for ARPA Funding ? Please provide date submitted	
Has the applicant applied for any other funding that could overlap? Please note type	
Does the applicant have insurance coverage that might cover the project?	

Category List #	Purpose of ARPA Funding by Category and Project Detail
1.	Medical Expense
2.	Public Health Expense
3.	Payroll Expense
4.	Compliance with COVID-19 Expenses
5.	Provisional Support Expense
6.	Other COVID-19 Expenses

Submit A-J as Exhibits	Purpose of Project and Funding Need Explanation
a.	Purpose of Project
b.	Explanation need for funding of Project
c.	Describe activities use of the Project funds
	Purchases or Expenses Already Occurred
d.	Has the entity completed a Certification Form
e.	Provide a copy of Procurement Policy
f.	Provide a copy of Cost Cerifications/Bids if required
g.	Provide a copy of Cost Certification/Contracts/Analysis of Project
h.	Provide a copy of Contracts already entered into for ARPA
i.	Documentation of ALL Purchases for Project
j.	Documentation of Medical Care Activities in Detail and
	Include Deduction Costs to Prevent Duplication
<i>This application is still under review and is subject to change.</i>	

Camden County ARPA ACT

All Exhibits - A, B, C - Purpose of ARPA ACT Funding by Category and Project Detail

A Purpose of Project:

Mobile Data Computers - To seek funding for replacement of Mobile Data Computers for the Police Department and Ambulance Service to continue their day-to-day operations without disruption. These devices allow our personnel to quickly identify citizens, view their legal history, the history of their vehicle, and provide a electronic connection to the City's Communication Center. They will replace cradle point modems that are currently in the vehicles that have reached the end of their lifespan and will be phased out of service in the very near future, which in turn will not allow the Officers and EMS staff to be able to communicate important information from the Communications Center to the units in the field.

IPads and GIS Equipment – To seek funding to upgrade the City's GIS capabilities and to upgrade the ipads used to operate the GIS equipment. As the lake area and the City of Osage Beach continue to grow, it becomes more and more important for the city to expand our ability to locate underground utilities and improve our ability to accurately map this infrastructure. In doing so we will be able to provide more accurate and timely locates for area contractors, allow for a safer construction environment due to the improved accuracy, provide more detailed GIS maps for use by city staff, contractors, and citizens; and reduce the cost of claims against the city from mislocated infrastructure.

B and C: Explanation need for funding of Project and Describe activities use of the Project funds:

Mobile Data Computers - Our current laptops do not have the necessary option to install cellular service and the current modems have reached their end of life. We need to purchase 11 laptop computers with the necessary options to connect wirelessly.

The quotes received are \$34,903.00 from Turn-Key Mobile Inc and \$39,350 from Rugged Depot.

The city has a good working relationship with Turn-Key Mobile Inc and would accept their bid as the lowest and best bid.

IPads and GIS Equipment – The City currently employs one Locator/GIS Tech. Having a second set of GIS locating equipment will allow water or sewer department staff to assist with locating duties specific to our their department. The Ipad that our Locator/GIS tech currently uses is end of life and no longer support the functions it is needed for. The city currently averages around 120 locate request per month. Having the second set of GIS

Camden County ARPA ACT

equipment available for staff member to use will allow our Locator/GIS Tech to focus more on adding existing infrastructure to our system which will improve the accuracy of our GIS mapping. Additionally, having the second GIS unit and Ipad will improve efficiency and allow us to further improve our locate response times.

Quotes received are detailed below:

Two iPad® Pro 12.9" (2021) 256GB

AT&T Cost - \$1,324.99 each

B & H Phot Video Audio - \$1,399.00 each

The city has a long-standing relationship with AT&T and we consider their quote to be the lowest and best. Additionally, AT&T does provide some support for their device whereas the other vendor does not provide any support.

One Copperhead ViperMag Complete Utility Locating System

Both quotes provided are the same price - \$2,375.00

The city is fine with either vendor

One R2 Trimble Unit with Accessories

Seiler Geo Spatial - \$6902.30

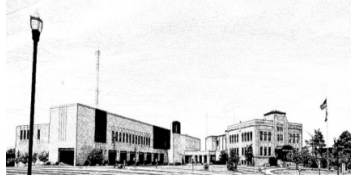
The city has purchased GIS Equipment from Seiler previously with good result and they do provide support for the device they provide. Seiler is the Sole Source provider of this equipment in the State of Missouri. We consider their quote to be the lowest and best.

Total Combined Grant Request = \$46,830.28

Camden County ARPA ACT

All Exhibits – D through H

- D Has the entity completed a Certification Form? - Yes, See attached
- E Provide a copy of Procurement Policy - Yes, See attached
- F Provide a copy of Cost Certifications/Bids if required - Yes, See attached
- G Provide a copy of Cost Certification/Contracts/Analysis of Project – Analysis of Project provided in Exhibits A, B, and C.
- H Provide a copy of Contracts already entered into for ARPA – The City of Osage will apply for State ARPA Grants related to Water and Sewer infrastructure upgrades, but those applications have not been submitted yet.



Instructions for Submitting ARPA Reimbursement Requests

- Complete Application and Certification and submit exhibits to summarize all of your entity's reimbursable cost
- Submit Application and Documentation to:

jimmy_laughlin@camdenmo.org & tammy_mayer@camdenmo.org

- Point of Contact to email or call:

Camden County Commission
573-346-4440 ext:1244

greg_hasty@camdenmo.org
james_gohagan@camdenmo.org
don_williams@camdenmo.org

Camden County Auditor
Jimmy Laughlin
573-346-4440 ext:1341
jimmy_laughlin@camdenmo.org

- The County will then process your eligible invoices through our Accounts Payable process and issue payment as soon as possible.
- Please attach your most recent W-9

Internal Use Only:

C] Approved by:

Paid

ck#:

FEDERAL FUNDING CERTIFICATION

I, Jeana Woods, am the chief executive of the City of Osage Beach and I certify that:

1. I have the authority on behalf of the City of Osage Beach to request payment from Camden County pursuant to Section 14.435 of SS SCS HCS HB 2014, from the allocation of funds to Camden County from the Coronavirus Relief Fund as created in the American Rescue Plan Act.
2. I understand that Camden County will rely on this certification as a material representation in making payment to the City of Osage Beach.
3. Camden County's proposed uses of the funds provided as payment under Section 14.435 of SS SCS HCS HB 2014 will be used only to cover those costs that-
 - a. Are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19) ("necessary expenditures");
 - b. Were not accounted for in the budget most recently approved as of March 3, 2021, for the City of Osage Beach; and
 - c. Were incurred during the period that begins on March 3, 2021, and ends on December 31, 2024.
4. Funds provided as payment from Camden County pursuant to this certification for necessary expenditures that were incurred during the period that begins on March 3, 2021, and ending on December 31, 2024, that are not expended on those necessary expenditures on or before March 3, 2021, by the political subdivision or its grantee(s), must be returned to Camden County.
5. Funds provided as payment from Camden County pursuant to this certification must adhere to official federal guidance issued or to be issued on what constitutes a necessary expenditure. Any funds expended by a political subdivision or its grantee(s) in any manner that does not adhere to official federal guidance shall be returned to Camden County.
6. Any local government entity receiving funds pursuant to this certification shall retain documentation of all uses of the funds, including but not limited to invoices and/or sales receipts. Such documentation shall be produced to Camden County upon request.
7. Any funds provided pursuant to this certification cannot be used as a revenue replacement for lower than expected tax or other revenue collections.
8. Funds received pursuant to this certification cannot be used for expenditures for which a local government entity has received any other emergency COVID-19 supplemental funding (whether state, federal or private in nature) for that same expense.
9. A county or city not within a county may use funds received pursuant to this certification to make a grant to any other political subdivision within its jurisdiction. Such a grant shall be used solely for necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19), that were not accounted for in the budget most recently approved as of March 11, 2021, and that were incurred during the period that begins on March 3,

2021, and ends on December 31, 2021. The county-or-city, or public entity within a county issuing the grant is responsible for the documentation requirements in section 6 of this certification.

I certify under the penalties of perjury set forth in Section 575.040, RSMo, that I have read the above certification and my statements contained herein are true and correct to the best of my knowledge.

By:

Signature:

Title:

Date:

Subscribed and sworn to before me this _____day of _____, 2021.

Notary Public

My commission expires

ARTICLE I
Budget and Finance in General

Section 135.010. Definitions. [Ord. No. 15.96 §1, 12-17-2015¹]

The following words, terms and phrases, when used in Chapter 135, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

APPOINTED OFFICIAL — The following positions are deemed the Appointed Officials: City Administrator, City Clerk, Police Chief, Building Official, City Planner, City Treasurer, and City Attorney.[**Ord. No. 21.34, 7-1-2021**]

BIDDERS LIST — A list maintained by the office of the City Clerk used to identify potential suppliers of materials and services. The bidders list contains business firms that have advised and supplied appropriate contact information to the office of the City Clerk in order to be notified of City bidding opportunities on particular items, services, and/or projects.

CITY — The City of Osage Beach, Missouri.

COMMODITIES — Supplies, materials, or other goods that have value to the City that are used or consumed by the City in its operations; for example, office supplies, repair parts, tools, chemicals, uniforms, etc.

CONFIDENTIAL INFORMATION — Information not available to the public. Information made available to an employee only due to the relative position or rank within employment at the City.

CONTRACTUAL SERVICES — Labor and/or services performed for the City by persons not employed by the City, and may include the use of equipment, furnishing of commodities, or other items under a formal or legally binding agreement.

DEPARTMENT MANAGER — Full-time employee designated with broad areas of responsibility within the City. The following positions for the purposes of this Chapter are deemed the Department Managers: the Appointed Officials, as defined in this Chapter, Assistant City Administrator, Human Resources Generalist, Airport Manager, IT Manager, Public Works Operations Manager, and the Parks and Recreation Manager.[**Ord. No. 21.34, 7-1-2021**]

EQUIPMENT — Personal property of durable nature; for example, office furniture, vehicles, etc.

INVITATION FOR BIDS (IFB) — Includes documents with specifications utilized for soliciting competitive bids to be submitted in sealed envelopes to the office of the City Clerk or other designated official for the purchase of commodities or other items that have value to the City for the City's use.

MANAGEMENT TEAM — The following positions shall be deemed the Management Team: the Appointed Officials, as defined within this chapter, Assistant City

1. Editor's Note: Former Chapter 135, Finance and Purchasing, comprised of Sections 135.010 through 135.240, which derived from Code 1975 §§22.010, 24.095; CC 1985 §§2-301 – 2-302, 2-326 – 2-338; RO 2006 135.010 – 135.240; Ord. No. 90.12 §1, 5-17- 1990; Ord. No. 91.33 §§1 – 3, 12-5-1991; Ord. No. 96.38 §§1 – 2, 9-19-1996; Ord. No. 00.06 §§1 – 9, 2-3-2000; Ord. No. 05.17 §§1 – 2, 4-7-2005; Ord. No. 06.56 §1, 12-21- 2006; Ord. No. 11.55 §1, 11-3-2011, was repealed 12-17-2015 by §1 of Ord. No. 15.96.

Administrator, Human Resources Generalist, Airport Manager, IT Manager, Public Works Operations Manager, and the Parks and Recreation Manager. **[Ord. No. 21.34, 7-1-2021]**

NON-REOCCURRING REVENUE APPROPRIATIONS — Revenue appropriations not considered operationally reoccurring from year to year. This includes, but is not limited to, grants and other reimbursements from outside sources. **[Ord. No. 21.34, 7-1-2021]**

PROCUREMENT — The process and the function of purchasing, renting, or otherwise obtaining City commodities, services, equipment, or construction on behalf of the City.

PROFESSIONAL SERVICES — Services within the scope of practice of architecture, engineering, or those performed by an architect, professional engineer, registered land surveyor, or other professional service allowed per State statute in connection with this professional practice.

PURCHASING AGENT or AGENT — Shall be the City Administrator or his/her designee.

REQUEST FOR PROPOSAL (RFP) — Includes documents utilized for obtaining proposals for professional and other contractual services which are evaluated against predetermined criteria and other competing proposals with the possibility of negotiation post-bid opening.

REQUEST FOR QUALIFICATIONS (RFQ) — Includes documents utilized for obtaining proposals for architectural, engineering, and land surveying services which are evaluated against predetermined criteria and other competing proposals with the possibility of negotiation post-bid opening. Price shall not be a predetermined criteria per Sections 8.285 to 8.291, RSMo.

RESPONSIBLE BIDDER — A person or entity who has the capability in all respects to fully perform the contract requirements, and possesses the experience, integrity, reliability, capacity, facilities, equipment, and credit necessary to assure good faith performance.

RESPONSIVE BIDDER — A person or entity who has submitted a bid or offer which conforms in all material respects to the requirements set forth in the IFB (Invitation for Bid) or RFP (Request for Proposal).

SUPERVISOR — A person who has been designated as a supervisor within a specific department and has the authority and responsibility for overseeing, scheduling, and performance of other employees as outlined in the City's Organizational Chart. **[Ord. No. 21.34, 7-1-2021]**

SURPLUS PROPERTY — Tangible City property that has been deemed by the Board of Aldermen obsolete, scrap, or surplus as to the needs of said department, Board, or agency of the City.

USER DEPARTMENT — Refers to the department assigned to or responsible for a commodity or service.

VENDOR — A supplier of commodities, services and/or equipment.

Section 135.020. Budget and Financial Control. [Ord. No. 15.96 §1, 12-17-2015]

A. Administration.

1. The City Administrator or his/her designee shall be the Budget Officer of the City.
2. *Fiscal year.* The fiscal year of the City shall begin on January 1 and end on December 31.
3. *Financial reporting.*
 - a. The City Administrator or his/her designee shall make monthly and annual reports to the Mayor and Board of Aldermen showing the financial condition of the City in relation to the budget.
 - b. Annually, the City Administrator or his/her designee shall prepare a financial report covering all funds and operations, published for the public, and presented to the Mayor and Board of Aldermen.
4. *Audit.* All funds, accounts, and financial transactions of the City shall be subject to an independent audit on an annual basis by a certified public accountant selected by the Mayor and Board of Aldermen. Audits shall comply with all applicable State law.

B. Budget.

1. *Preparation and proposed budget.*
 - a. An annual budget shall be prepared by the City Administrator or his/her designee for each fiscal year and shall represent a complete financial plan for the City.
 - b. A proposed budget shall be sent to the Mayor and Board of Aldermen for review before the required date of adoption and shall be made available for public inspection during regular office hours in the office of the City Clerk.
 - c. All appropriations not expended at the fiscal year end shall become part of the beginning fund balances for the next fiscal year and may be appropriated for that fiscal year or future years.
 - d. All funds within the budget shall be balanced. Anticipated revenues, including unexpended balances from prior years, shall not be less than anticipated expenditures.
2. *Adoption.* The Mayor and Board of Aldermen shall adopt the annual budget prior to the first day of the fiscal year. A public hearing shall precede the adoption of the budget.
3. *Budget modification.* No expenditure within any fund shall be made unless appropriations have been made to meet that expenditure within the adopted budget. **[Ord. No. 21.34, 7-1-2021]**
 - a. Transfers.

- (1) Personnel, And Operations & Maintenance Accounts.
 - (a) A department manager may request in writing to the City Administrator a transfer of personnel, and operations & maintenance account expenditure appropriations of an amount equal to or less than five thousand dollars (\$5,000.00) from one (1) or more account line items for use in other personnel, and operations & maintenance account expenditures within the same fund.
 - (b) Transfer requests equal to or greater than five thousand one dollars (\$5,001.00) shall be approved by the Board of Aldermen in the form of an amendment to the budget ordinance.
- (2) Capital Accounts.
 - (a) A department manager may request in writing to the City Administrator a transfer of capital account expenditure appropriations of an amount less than ten percent (10%) from one (1) or more account line items for use in other capital account expenditures within the same fund.
 - (b) Transfer requests equal to or greater than ten percent (10%) shall be approved by the Board of Aldermen in the form of an amendment to the budget ordinance.
- (3) When reasonably possible, transfer requests should be completed prior to purchase.
- (4) Transfers may not increase total fund expenditure appropriations.
- b. Budget Amendments.
 - (1) Personnel, And Operations & Maintenance Accounts.
 - (a) Increases in expenditure appropriations for personnel, and operations & maintenance account line items equal to or greater than five thousand one dollars (\$5,001.00) shall be approved by the Board of Aldermen in the form of an amendment to the budget ordinance.
 - (b) The City Administrator may approve increases in expenditure appropriations for personnel, and operations & maintenance account line items that are equal to or less than five thousand dollars (\$5,000.00).
 - (2) Capital Accounts.
 - (a) Increases in expenditure appropriations from any capital account line items when the increase is both less than or equal to ten percent (10%) and less than or equal to five thousand dollars (\$5,000.00) may be approved by the City Administrator.

- (b) All other increases in capital account line items shall be approved by the Board of Aldermen in the form of an amendment to the budget ordinance.
- (3) If total fiscal year expenditures in any fund are over budget, a budget amendment shall be brought before the Board of Aldermen for approval before the close of the fiscal year.
- (4) Increases or decreases in one-time or non-reoccurring revenue appropriations within a budgeted fund that are equal to or greater than five thousand one dollars (\$5,001.00) shall be approved by the Board of Aldermen in the form of an amendment to the budget ordinance.
- (5) When reasonably possible, budget amendment requests should be completed prior to purchase.

C. *Reserves.* [Ord. No. 16.85 §1, 12-15-2016]

1. *Reserves established.* The City shall establish and maintain fund reserves for the General Fund, Transportation Fund, Water Fund, Sewer Fund, Lee C Fine Fund, and the Grand Glaize Fund. Refer to the Osage Beach Reserve Policy as adopted by the Board of Aldermen on December 1, 2016, Exhibit A to this ordinance and held on file in the City offices.
2. *Target reserve levels.* Target levels as described below shall be established and maintained by fund and detailed within the annual adopted budget.
 - a. The target level for the Governmental Fund Reserves, the General Fund and the Transportation Fund, shall be twenty-five percent (25%) of the most recent 3-year average of personnel and operation and maintenance expenditures plus an annual contribution for the Capital Reserve based on a Capital Plan Schedule. The twenty-five percent (25%) reserves shall consist of an Emergency Reserve set at fifteen percent (15%) and a Stability Reserve set at ten percent (10%).
 - b. The target level of the Water Fund and the Sewer Fund shall be sixteen percent (16%) of the most recent 3-year average of personnel and operation and maintenance expenditures plus an annual contribution for the Capital Reserve based on a Capital Plan Schedule. The sixteen percent (16%) reserves shall consist of an Operating Reserve.
 - c. The target level of the Lee C Fine Airport Fund and the Grand Glaize Airport Fund shall be eight percent (8%) of the most recent 3-year average of personnel and operation and maintenance expenditures plus an annual contribution for the Capital Reserve based on a Capital Plan Schedule. The eight percent (8%) reserves shall consist of an Operating Reserve.
3. *Accountability.* It shall be the responsibility of the City Administrator, or his or her designee, to maintain and account for the fund reserves established under this Section.

D. Reserves. [Ord. No. 19.87, 12-19-2019]

1. Investment Policy Established. The City shall establish an investment policy defining procedures and practices in which City funds are to be managed ensuring investment activities meet the legalities and effectiveness of fiscal management. This policy shall apply to the investment of all operating and reserve funds of the City of Osage Beach.
2. The Osage Beach Investment Policy, as adopted by the Board of Aldermen, is attached hereto as Exhibit A.²

Section 135.025. Economic Development Fee Reimbursement Program. [Ord. No. 19.57, 9-19-2019]

- A. In recognition of the fact that in certain limited cases the existing economic development tools are insufficient or inapplicable to the proposed project, the Board of Aldermen acting under the strict terms of this Section may by contract with a developer enter into an agreement to reimburse certain fees as set forth in this Section.
- B. The Mayor or the City Administrator may, where either or both believe it to be in the best interests of the City, make a written recommendation to the Board of Aldermen, that the use of this economic development fee reimbursement program is necessary to support either:
 1. A tourism-related economic development project; or
 2. A new residential project consisting of:
 - a. At least twenty (20) new single-family residences priced for sale at two hundred thousand dollars (\$200,000.00) or less or, if held as rental property, a monthly rent of one thousand fifty dollars (\$1,050.00) or less exclusive of utilities. The benefit of any fee reimbursement for this category shall not apply until at least twenty-five percent (25%) of such units have been completed and offered for sale; or
 - b. A single project of at least forty (40) multifamily units each priced under one hundred seventy-five thousand dollars (\$175,000.00) or, if held as rental property, a monthly rent of nine hundred dollars (\$900.00) or less exclusive of utilities. The benefit of any fee reimbursement for this category shall not apply until at least twenty-five percent (25%) of such units have been completed and offered for sale.
- C. Once the minimum number of units necessary to qualify for the fee reimbursement issued pursuant to this Section shall have been completed and offered for sale, the City Administrator may, if the contract with the developer so provides, adjust any future fees due on the project to retroactively apply the fee reimbursement to all the units constructed, as set out in the schedule of fees imposed included in the ordinance under which the Board of Aldermen approved reimbursements pursuant to this Section for the project.

2. Editor's Note: Exhibit A is included as an attachment to this Chapter.

- D. The prices set forth in Subsections (A) and (B) above shall be indexed in Subsection (I) of this Section.
- E. Any fee reimbursement granted under this Section shall apply only to units built within five (5) years of the Board's approval of the reimbursement. The Board may extend the reimbursement one time for an additional five (5) years where it finds such extension to be in the best interest of the City.
- F. If any property is sold, or offered for sale, for more than the amount agreed in the schedule of prices adopted by the Board of Aldermen and the developer, the certificate of occupancy shall stand revoked until the waived fees are paid in full.
- G. If any property is rented/leased, or offered for rent/lease, for more than the amount agreed in the schedule of prices adopted by the Board of Aldermen and the developer, the certificate of occupancy shall stand revoked until the waived fees are paid in full.
- H. The recommendation required in Subsection (B) above shall state in detail:
 - 1. Project name and location.
 - 2. Nature of the project, including the size and number of bedrooms and bathrooms for each dwelling unit in the project.
 - 3. Owner or sponsor of the project.
 - 4. A schedule of the fees by category, percentage and anticipated dollar amount to be paid and the amount eligible for reimbursement.
 - 5. Certify that the proposed fee reimbursement does not adversely impact any ongoing City operations or City debt obligations.
 - 6. Provide a budget for the project demonstrating the fee reimbursement(s) requested are necessary for the project to proceed.
 - 7. A written schedule of the dates and amounts of the fees to be reimbursed on a building-by-building or unit-by-unit basis.
 - 8. In the event the properties are intended as rental units, the recommendation shall specify the duration of the rent limitations contained herein for a period not to exceed fifteen (15) years.
 - 9. The City will give favorable consideration and projects are encouraged to request reimbursement of no more than fifty percent (50%) of the eligible fees under this Section.
 - 10. The City will evaluate each reimbursement request made under this Section by comparing the sale or rental price of each unit against the requested fee reimbursement.
 - 11. Fee reimbursements will be distributed as per the contract between the developer, applicant and the City.
 - 12. Upon receipt of the written recommendation of the Mayor or the City

Administrator as described in Subsection (B) above, the Board of Aldermen may, acting by duly adopted ordinance, direct the City Administrator grant reimbursement pursuant to either one-fourth (1/4), one-half (1/2) or three-fourths (3/4) of any or all of the following fees:

- a. Water impact fee: Section 705.320.
 - b. Sewer development charge: Section 710.410.
 - c. Building permit fee: Section 500.020, Subsection 109.1.
 - d. Site development fee: Section 510.120.
 - e. Demolition permit fees: Section 500.175.
- I. The base price for single-family residence or multifamily units as referenced in Subsection (B)(2) above, shall be adjusted, upwards only, effective on January 1 each year in accordance with the percentage increase, if any, in the Consumer Price Index for All Urban Consumers (CPI-U); US City Average; for all items, not seasonally adjusted, the year 2019 equals 100 as the reference base (the "Index"), as published by the United States Department of Labor, Bureau of Labor Statistics. Should the Bureau of Labor Statistics discontinue the publication of the Index, or publish the same less frequently, the City may adopt a substitute index or procedure that reasonably reflects and monitors consumer prices.

ARTICLE II
Purchasing, Procurement, Transfers, and Sales

Section 135.030. General Powers and Provisions. [Ord. No. 15.96 §1, 12-17-2015]

- A. The City Administrator shall be the purchasing agent for the City. All purchases and the final authority on whether to use informal and/or formal sealed competitive bidding, or negotiated requests for proposals shall be the responsibility of the City Administrator and shall be made under his/her discretion and supervision. All such purchases, bidding, and negotiations shall be made in accordance with the purchasing rules and procedures approved by the Board of Aldermen and set forth in this Code.
- B. *Requisitions And Estimates.*
1. All departments shall provide detailed requisitions or estimates of their requirements for supplies, equipment, and contractual services during the annual budget preparation process or at such time requested by the City Administrator or his/her designee.
 2. A City department shall not be prevented from revising any requisition or estimate due to unforeseen details emerging after the completion of the annual budget process.
 3. The City Administrator or his/her designee shall have the authority to revise any estimate or requisition as to quantity, quality, or estimated cost.
- C. *Preferences.* The City accepts the responsibility to its residents of ensuring that the maximum value is obtained for each public dollar spent. For all purchases the City shall consider the following preferences:
1. *Local products.* It is the goal of the City to give local or resident businesses preference to the extent that all other factors are equal with no sacrifice of loss in quality. Preference shall be given to purchases of items or contracts for service within the boundaries of the City when quality is equal to or better and delivered price is the same or less. Preference may also be given whenever entire competing bids are comparable.
 2. *State products.* Preference shall be given to purchases of items manufactured, mined, produced, or grown within the State of Missouri and to all firms, corporations, and individuals doing business as a Missouri firm, corporation, or individuals when quality is equal to or better and delivered price is the same or less. When using contracts based on the performance or service, preference may be given to firms, corporations, or individuals doing business as a Missouri firm, corporation, or individual which maintains a Missouri office or place of business, when the quality of performance promised is equal or better and the price quoted is the same or less. Preference may also be given whenever entire competing bids are comparable. (Section 34.070, 34.073 and 34.076, RSMo.)
 3. *United States products.* Preference shall be given to purchases of items or contracts for service within the boundaries of the United States of America

when quality is equal to or better and delivered price is the same or less. Preference may also be given whenever entire competing bids are comparable. (Section 34.353, RSMo.)

D. *Payment Procedures.*

1. *General procedures.*

a. *Requisition.* The user department manager of the using department is responsible for all procurement and purchasing of commodities and/or contracting for services based on the approved annual budget of said department and in accordance with the City's Purchase and Procurement Code as stated in this Chapter as well as any applicable Federal or State laws and regulations.

b. *Receiving.*

(1) Upon receipt of commodities the using department shall inspect and/or test all commodities upon delivery or pickup and shall confirm said commodities with supplier's receiving report against the original order. User departments shall exercise reasonable care to ensure quantity and quality of delivered goods is as ordered.

(2) In the event non-conforming commodities are delivered due to non-conformance with the specifications ordered or for other reasons that are not acceptable to the using department the department shall notify the vendor immediately so appropriate corrective action may be taken. Documentation of action to remedy the situation shall be made and shall accompany the receiving report.

c. *Payment.*

(1) An invoice is a vendor's statement of commodities or services provided and charges due from the City. Upon receipt of an invoice the using department's manager shall be responsible for appropriate classification and brief explanation of charges with documental approval by way of signature.

(2) Department managers are responsible for reconciling all invoices for commodities or services purchased for said department. All reconciled invoices shall be accompanied with corresponding receiving report, bills of lading, order confirmations, or other verification of purchases and/or deliveries and forwarded to accounts payable for payment.

(3) The office of the City Treasurer shall be responsible for recording expenditures and payment of invoices.

2. *Credit cards.* Department managers may be issued upon Board of Aldermen authorization a City credit card with a credit limit not to exceed five thousand dollars (\$5,000.00) for the purpose of travel, training, and other authorized purchases related to City operations. The following regulations shall apply:

- a. No personal purchases, purchases not pertaining to City business, or cash advances shall be made;
 - b. All expenditures shall be conducted in accordance with the City's Purchase and Procurement Code as stated in this Chapter as well as any applicable Federal or State laws and/or regulations;
 - c. Department managers are responsible for his/her credit card and for the proper classification, retention of receipts and other appropriate verification of purchases and monthly reconciliation of all credit card expenditures.
 3. *Petty cash.* The City Treasurer may create petty cash funds as needed within the City departments for the purpose of routine purchases of less than one hundred dollars (\$100.00). The size of said funds shall be determined by the City Treasurer. The following regulations shall apply:
 - a. No personal or payroll checks shall be cashed;
 - b. All expenditures shall be conducted in accordance with the City Code as stated in this Chapter as well as any applicable Federal or State laws and regulations;
 - c. The manager of the using department shall be the authorized custodian of any petty cash funds established within their department and shall be responsible for authorizing reimbursements, ensuring classification of reimbursed expenditures, and replenishing the fund;
 - d. The using department shall request to the office of the City Treasurer replenishing funds on a regular basis;
 - e. Replenishment of funds shall only be made with valid receipt or other means of certifying an expenditure;
 - f. All petty cash funds shall be subject to unscheduled audits by the office of the City Treasurer. Petty cash audits shall be done at least annually.
 4. *Grants.* Any proceeds from Federal, State, private, or other source grants shall be expended for the special purpose stated by the terms of said grant. Grant expenditures shall be made in accordance with the City's Purchase and Procurement Code as stated in this Chapter as well as any applicable Federal or State laws and regulations. All grants in which the City participates shall be administered by the City Administrator or his/her designee. All grants in which the City participates shall be tracked and reconciled by the City Treasurer or his/her designee.
- E. *Ethics.* Any attempt to realize personal gain through elected office, public employment or any effort to influence any elected official or employee to disobey or divert from any law, City Code, or immoral standard is a breach in ethical standards.
1. *Confidential information.* It shall be a breach of ethical standards for any elected official, employee, or former employee, to knowingly use confidential

information for actual or anticipated personal gain, or for actual or anticipated personal gain on behalf of another.

2. *Conflicts of interest.* Elected officials and employees are prohibited from participating directly or indirectly in a contract for purchase or sale when a conflict of interest exists as stated in Section 120.020. Upon discovery of actual or potential conflict of interest, an employee shall promptly file with the City Administrator or his/her designee a written statement as to the conflict. An elected official shall promptly file with the City Clerk a written statement as to the conflict.
3. *Gifts and rebates.* Gifts and/or rebates offered, given, or an agreement to offer or give, to any elected official or employee is prohibited. Gifts and/or rebates provided to all employees equally may be allowed when approved by the City Administrator or his/her designee.
4. *Kickbacks.* It shall be a breach of ethical standards for any payment, gratuity, offer of employment, or any other form of bribery to be made by or on behalf of a contractor or subcontractor under a contract to the City, or any person associated therewith, as an inducement for an award.
5. *Personal purchases/discounts.* Purchases for elected officials or employees by the City are prohibited. Elected officials or employees are also prohibited from using the City's name or the official's or employee's position to obtain special consideration in personal purchases. Corporate discounts that are offered by business firms to all City employees equally may be allowed when approved by the City Administrator or his/her designee.

Section 135.040. Purchasing and Procurement — Competitive Bidding. [Ord. No. 15.96 §1, 12-17-2015]

- A. Any purchases or contracts made shall be made only after liberal competition, unless defined otherwise.
- B. *Authority And Responsibilities Appropriated Within The Adopted Annual Budget. [Ord. No. 21.34, 7-1-2021]*

Amount	Authorization	Bid Procedure
Equal to/less than \$2,500.00	Supervisor	Small purchases 135.040(C)(1)
Equal to/less than \$10,000.00	Department Manager	Informal bids 135.040(C)(2)
Equal to/less than \$15,000.00	Assistant City Administrator	Informal bids 135.040(C)(2)
Equal to/less than \$25,000.00	City Administrator	Informal bids 135.040(C)(2)
Equal to/greater than \$25,001.00	Board of Aldermen	Formal bids 135.040(D)

C. *Informal Bidding.* **[Ord. No. 21.34, 7-1-2021]**

1. Small Purchases. Purchases that are equal to or less than two thousand five hundred dollars (\$2,500.00) shall be obtained under the following guidelines:
 - a. Non-repetitive purchases not to exceed an aggregate amount of two thousand five hundred dollars (\$2,500.00) may be made as approved by the Supervisor for his/her appropriate department. Purchases shall not be artificially divided to constitute a small purchase under this Section.
 - b. When reasonably possible, approval should be given prior to purchase.
 - c. All purchases not within their approved annual operating budget shall follow budget modification guidelines.
 - d. Such purchases under this Section shall not interfere with the procurement of items in an existing contractual obligation, services or items already within a cooperative contract with another agency, or for other items of procurement through another established City policy.
2. Informal Purchases. Purchases equal to or greater than two thousand five hundred one dollars (\$2,501.00) and up to twenty-five thousand dollars (\$25,000.00) shall be obtained under the following guidelines:
 - a. Department Managers. Purchases procured by individual departments that are equal to or greater than two thousand five hundred one dollars (\$2,501.00) and up to ten thousand dollars (\$10,000.00) shall be approved by the Department Manager for his/her appropriate department.
 - b. Assistant City Administrator. Purchases procured by individual departments under the direct supervision of the Assistant City Administrator up to fifteen thousand dollars (\$15,000.00) shall be approved by the Assistant City Administrator.
 - c. City Administrator. The City Administrator may approve purchases up to twenty-five thousand dollars (\$25,000.00).
 - d. Competitive quotations shall be solicited and documented from more than one (1) qualified supplier. Verbal quotes are authorized. Methods of soliciting bids should include direct mail request to prospective vendors; fax or phone requests; and/or electric media requests, such as email or other online formats.
 - e. If fewer than two (2) proposals from qualified vendors are received, staff recommendation shall be brought to the Board of Aldermen for approval.
 - f. The City Administrator or his/her designee may also choose to advertise using the formal bidding procedures if it is deemed by the City Administrator to be in the best interest of the City.
 - g. All purchases not within their approved annual operating budget shall follow budget modification guidelines.
 - h. When reasonably possible, appropriate approval should be given prior to

purchase.

- i. Purchases shall not be artificially divided to constitute an informal purchase under this Section.
- j. Such purchases under this Section shall not interfere with the procurement of items in an existing contractual obligation, services or items already within a cooperative contract with another agency, or for other items of procurement through another established City policy.

D. *Formal Bidding.*

1. *Formal.* Purchases and contracts equal to or greater than twenty-five thousand and one dollars (\$25,001.00) shall be approved by the Board of Aldermen under the following guidelines: **[Ord. No. 21.34, 7-1-2021]**
 - a. *Bidding method.* Purchases and contracts shall be procured through formal competitive sealed bidding procedures unless it is determined, in writing, by the City Administrator or his/her designee that this method is not practical. Factors for this determination include:
 - (1) Specifications of the bid can be prepared to permit the award on the basis of either the lowest or the lowest evaluated bid price(s); and/or
 - (2) The specifics of the purchase such as supplies, time, place and/or performance are not appropriate for the use of competitive sealed bidding.
 - b. *Public notice.*
 - (1) An Invitation for Bid (IFB) shall be published, stating a general description, once in at least one (1) local newspaper of the general circulation and on site at City Hall and electronically via the City's website no less than fifteen (15) calendar days prior to stated bid opening.
 - (2) Notice of the bid invitation shall be sent, stating a general description, to all prospective bidders who have requested their names be added to the bidder's list on file with and maintained by the office of the City Clerk pertaining to all published IFBs.
 - c. *Bid opening.*
 - (1) Sealed bids shall be delivered to and held by the office of the City Clerk who shall conduct the public bid opening at said date and time established by the formal notice.
 - (2) The names of the bidders, the prices, and the items offered, shall be recorded by the office of the City Clerk and be posted for public inspection. The delivery terms, and/or other bid specifications items shall be recorded by the user department manager.
 - d. *Evaluation.*

- (1) All bids are evaluated against the criteria included in the bid specifications as formally advertised.
 - (2) The user department manager and/or City Administrator shall review all bids recorded by the office of the City Clerk.
 - (3) The user department manager shall check and document at least three (3) references of any proposed awardee which has previously not done business with the City within a 4-year period.
 - (4) Changes to the bids or the IFB are not allowed after opening of the bids.
 - (5) A contract modification may be made only after formal approval of the contract.
 - (6) A pending contract modification may not be considered in evaluating procurement.
- e. *Award.*
- (1) The Board of Aldermen may accept and/or reject any or all bids and shall make the final award as determined to be the most advantageous to the City, taking into consideration price, bid solicitation and specifications.
 - (2) The City Administrator or his/her designee shall give written notification of award to the successful bidder.
- f. *Non-responsive and unacceptable bids.*
- (1) The City may reject any bid which is materially non-responsive to the requirements set forth in the formal bid specifications.
 - (2) The City Administrator may re-solicit bids if bids received as a result of a solicitation for bids are not acceptable for any reason. Such re-solicitation shall not be for the purpose of directing the award to particular bidder.
- g. *Prohibitions.*
- (1) *Competitive price sharing.* Otherwise known as 'auctioneering,' price/cost sharing between vendors is prohibited when soliciting bids either in informal or formal, verbal or written, bid soliciting.
 - (2) *Contract splitting.* Contracts shall not otherwise be divided or split to constitute small quantities and/or amounts or divided into artificial phases or sub-contracts for the purpose of circumventing the requirements of formal bidding.
- h. *Records.* The office of the City Clerk shall keep records of all bids and all contracts awarded which shall be open for public inspection. The office of the City Treasurer shall keep all invoice and payment records.

Section 135.050. Purchasing and Procurement — Competitive Proposals. [Ord. No. 15.96 §1, 12-17-2015]

A. *Authority And Responsibilities.* Appropriated within the adopted annual budget. **[Ord. No. 21.34, 7-1-2021]**

Amount	Authorization
Equal to/less than \$10,000	Department Manager
Equal to/less than \$15,000	Assistant City Administrator
Equal to/less than \$25,000	City Administrator
Equal to/greater than \$25,001	Board of Aldermen

1. Department Managers. Purchases procured by individual departments that are equal to or less than ten thousand dollars (\$10,000.00) shall be approved by the Department Manager for his/her appropriate department.
2. Assistant City Administrator. Purchases procured by individual departments under the direct supervision of the Assistant City Administrator up to fifteen thousand dollars (\$15,000.00) shall be approved by the Assistant City Administrator.
3. City Administrator. The City Administrator may approve purchases up to twenty-five thousand dollars (\$25,000.00).
4. Purchases and contracts equal to or greater than twenty-five thousand one dollars (\$25,001.00) shall require the approval of the Board of Aldermen.
5. If fewer than two (2) proposals from qualified vendors are received, staff recommendation shall be brought to the Board of Aldermen for approval.
6. All purchases not within their approved annual operating budget shall follow budget modification guidelines.

B. *Conditions For Use.*

1. *Request for Qualifications (RFQ).* RFQs may be used in lieu of competitive bidding procedures where it is necessary to demonstrate competence and qualifications for the type of services required. Price shall not be a factor in determining the best proposal. The City Administrator or his/her designee shall negotiate these contracts on the basis of predetermined criteria as outlined in Section 8.285 to 8.291, RSMo.
 - a. RFQ uses:
 - (1) Required professional services; includes, engineers, architects, and land surveyors.
 - (2) Optional professional services; includes legal and financial services.
2. *Request for Proposal (RFP).* RFPs may be used in lieu of competitive bidding procedures under specific circumstances where it is necessary to ensure fair and reasonable price, product, and/or service analysis, but not to prevent

competition for technical superiority or price. This method allows for the possibility for negotiations of specific applicable conditions and is only used when competitive bidding is not practical or not advantageous to the City as determined by the City Administrator or his/her designee.

a. RFP may be used for the following:

- (1) Optional professional services; including, but not limited to, legal, financial services, and other professional people who, in keeping with the standards of their discipline, will not enter into a competitive bidding process;
- (2) Complex services; or
- (3) Non-standard items.

C. *Public Notice.*

1. Notice of a proposal invitation shall be published, stating a general description, once in at least one (1) local newspaper of the general circulation and on site at City Hall and electronically via the City's website no less than fifteen (15) calendar days prior to stated proposal opening.
2. Competitive proposal packets may be mailed to proposers who have participated in previous competitive proposal on similar items and/or who have expressed an interest on the specific item and who are on the prospective bidder's list on file with the office of the City Clerk. Notice of the invitation shall be sent, stating a general description, to all prospective bidders who have requested their names be added to the bidder's list on file with and maintained by the office of the City Clerk pertaining to all competitive proposal published.

D. *Proposal Opening.*

1. Sealed proposals shall be delivered to and held by the office of the City Clerk at said date and time established by the formal notice.
2. The names of each proposer shall be recorded by the office of the City Clerk and shall be posted for public inspection.

E. *Post-Opening Proposal Discussion.* Post-opening negotiations, discussions, and clarifications may be made with each proposer by the user department manager and/or the City Administrator or his/her designee as needed to the extent of one's own proposal.

F. *Evaluation.*

1. The evaluated criteria shall be predetermined factors as formally advertised which measure the differences on how well a proposer meets the desired qualifications and performance characteristics.
2. Reasonableness and credibility of price may be considered. Pursuant to Section 8.285 to 8.291 RSMo., price cannot be a factor in the selection of engineers, architects, and land surveyors.

3. The user department manager and/or City Administrator shall review all proposals recorded by the office of the City Clerk.
4. The user department manager shall check and document at least three (3) references of any proposed awardee which has previously not done business with the City within a 4-year period.
5. Changes to the proposal are not allowed after opening of the proposals.
6. Contract modification may be made by the Board of Aldermen only after formal approval of the contract.
7. A pending contract modification may not be considered in evaluating procurement.

G. Award. [Ord. No. 21.34, 7-1-2021]

1. The City may accept and/or reject any or all proposals and shall make the final award as determined to be the most advantageous to the City.
2. The City Administrator or his/her designee shall give written notification of award to the successful proposer.

H. Non-Responsive And Unacceptable Proposals.

1. The City may reject any proposal which is materially non-responsive to the requirements set forth in the formal specifications.
2. The City Administrator may re-solicit proposals if proposals received as a result of a solicitation are not acceptable for any reason. Such re-solicitation shall not be for the purpose of directing the award to a particular proposer.

I. Records. The office of the City Clerk shall keep records of all competitive proposals and such records shall be open for public inspection.

Section 135.060. Purchasing and Procurement — Correction/Withdrawal/Cancellation. [Ord. No. 15.96 §1, 12-17-2015]

- A. Bids or proposals may be revised, modified, or withdrawn by the bidder/proposer at any time by written or electronic notice received by the office of the City Clerk prior to the opening.
- B. After bid or proposal opening, bid/proposal documentation shall be irrevocable as to preserve fair competition.
- C. Bids, proposals, or other solicitation for purchases or procurements may be cancelled or rejected if it is determined by the City Administrator or his/her designee that such action is in the best interest of the City. This determination shall be in writing and shall be kept in the contract and/or final purchase/invoice file.

Section 135.070. Purchasing and Procurement — Cooperative Purchasing/Sole Source Procurement/Emergency Purchases. [Ord. No. 15.96 §1, 12-17-2015]

- A. *Cooperative Purchasing.* It is the goal of the City to participate in the cooperative

procurement program with the State of Missouri, the County of Camden and/or Miller, or other governmental body. In lieu of purchasing requirements set out in this Chapter, purchasing may be authorized based on bids received by another governmental entity, provided that all of the following criteria are met:

1. The other governmental entity must have competitively bid the purchase using procedures which are substantially similar to the procedures which would have been required by this Chapter had the City of Osage Beach bid the purchase itself.
2. Verification can be made as to the fact that the bid procedures were indeed followed by the other governmental entity.
3. The successful bidder to the other governmental entity must state, in writing, to the City of Osage Beach that the City of Osage Beach is authorized to make the same purchase at the same price.
4. *Authority And Responsibilities Appropriated Within The Adopted Annual Budget. [Ord. No. 21.34, 7-1-2021]*

Amount	Authorization
Equal to/less than \$2,500.00	Supervisor
Equal to/less than \$10,000.00	Department Manager
Equal to/less than \$15,000.00	Assistant City Administrator
Equal to/less than \$25,000.00	City Administrator
Equal to/greater than \$25,001.00	Board of Aldermen

- a. Supervisors. Purchases procured by individual departments that are equal to or less than two thousand five hundred dollars (\$2,500.00) may be made as approved by the supervisor for his/her appropriate department.
- b. Department Managers. Purchases procured by individual departments that are equal to or less than two thousand five hundred one dollars (\$2,501.00) and up to ten thousand dollars (\$10,000.00) shall be approved by the Department Manager for his/her appropriate department.
- c. Assistant City Administrator. Purchases procured by individual departments under the direct supervision of the Assistant City Administrator up to fifteen thousand dollars (\$15,000.00) shall be approved by the Assistant City Administrator.
- d. City Administrator. The City Administrator may approve purchases up to twenty-five thousand dollars (\$25,000.00).
- e. Purchases and contracts equal to or greater than twenty-five thousand one dollars (\$25,001.00) shall require the approval of the Board of Aldermen prior to purchase.
- f. All purchases not within their approved annual operating budget shall follow budget modification guidelines.

- g. When reasonably possible, appropriate approval should be given prior to purchase.
- B. *Sole Source Procurement.* A contract may be awarded without competition when it has been determined by the City Administrator that there is only one (1) feasible source.
- 1. *Defined.* A sole source is defined as follows:
 - a. *Proprietary.* When there is no substitute for items deemed necessary or a product is only available from one (1) manufacturer or single distributor; and/or
 - b. *History.* When the City purchases from the same vendor as it has in the past for the purpose of staying consistent.
 - 2. *Procedure and records.*
 - a. Appropriate negotiations shall determine price, delivery, and other terms necessary for purchase.
 - b. Determination of sole source shall be documented and made part of the purchase/invoice file.
 - c. The user department manager shall check and document at least three (3) references of any proposed awardee which has previously not done business with the City within a 4-year period.
 - 3. *Authority And Responsibilities Appropriated Within The Adopted Annual Budget. [Ord. No. 21.34, 7-1-2021]*
 - a. Supervisors. Purchases procured by individual departments that are equal to or less than two thousand five hundred dollars (\$2,500.00) may be made as approved by the Supervisor for his/her appropriate department.
 - b. Department Managers. Purchases procured by individual departments that are equal to or less than two thousand five hundred one dollars (\$2,501.00) and up to ten thousand dollars (\$10,000.00) shall be approved by the Department Manager for his/her appropriate department.
 - c. Assistant City Administrator. Purchases procured by individual departments under the direct supervision of the Assistant City Administrator up to fifteen thousand dollars (\$15,000.00) shall be approved by the Assistant City Administrator.
 - d. Purchases and contracts equal to or greater than twenty-five thousand one dollars (\$25,001.00) shall require the approval of the Board of Aldermen.
 - e. All purchases not within their approved annual operating budget shall follow budget modification guidelines.
 - f. When reasonably possible, approval should be given prior to purchase.
- C. *Emergency Purchases. [Ord. No. 21.34, 7-1-2021]*

1. *Defined.* An emergency is a disaster declared by the Mayor or when a breakdown in machinery or equipment or termination of essential services that may vitally affect the health, safety, or welfare of the employees or the public.
2. *Authority And Responsibilities.* The approval authority is set forth as follows:
 - a. City Administrator. Approval of emergency purchases equal to or less than fifty thousand dollars (\$50,000.00).
 - b. Board of Aldermen. City Administrator or his/her designee shall obtain approval of emergency purchases equal to or greater than fifty thousand and one dollars (\$50,001.00) at the next Board of Aldermen meeting, if time permits, or by means of a concentrated effort to poll the Board of Aldermen to obtain an agreement of the majority.

Section 135.080. Transfers and Sales. [Ord. No. 15.96 §1, 12-17-2015]

A. Disposal Of City Property.

1. *Authority.* The City Administrator shall be responsible for the effective disposal of all surplus property of the City.
 - a. Annually, or as needed, all departments shall submit to the City Administrator or his/her designee a detailed report of City property to be declared surplus. The report shall be the responsibility of the department manager from which the stated property was last assigned and shall include a detailed description of the property including any surveys, drawings, appraisals, photos, or any other identifying and/or descriptive information that may be pertinent to the disposal of the stated property.
 - b. The City Administrator or his/her designee shall provide a report to the Board of Aldermen of all property deemed surplus and the recommended method of disposal.
2. Property deemed surplus may be disposed of in the following methods:
 - a. *Transfer.* The City Administrator or his/her designee may notify all departments of surplus property on hand for disposal. A department manager may submit a request to the City Administrator or his/her designee stating the interest in and the reasons for need in stated surplus property from the other City department. The City Administrator may approve the transfer of surplus items between City departments based on current need of said department;
 - b. *Trade-in.* When a department is replacing its surplus property with a like-kind item(s) the City Administrator or his/her designee may approve the possible trade-in of stated property. The IFB shall request prices with or without the stated trade-in and should indicate that the award may be made on either basis. The City Administrator or his/her designee shall compare the stated trade-in value versus the expected sale price based on current market evaluations and shall determine the best method of disposal;

- c. *Sale.* Sale of surplus property requires Board of Aldermen approval and may be handled by the following methods:
 - (1) *Sale by auction.* Auction, including online auction venues, shall be publicly advertised to include a general description of the item(s) to be sold, method of auction, and shall be placed in at least one (1) local newspaper of general circulation and on site at City Hall and electronically via the City's website no less than fifteen (15) calendar days prior to sale's end date and time. Items shall be sold to the highest registered bidder;
 - (2) *Sale by sealed bids.* Public notice shall be made of the sale which shall include a general description of the item(s) to be sold and placed in at least one (1) local newspaper of general circulation and on site at City Hall and electronically via the City's website no less than fifteen (15) calendar days prior to sale's end date and time. Sealed bids shall be delivered to and held by the office of the City Clerk who shall conduct the bid opening at said date and time established by the formal notice;
 - (3) *Sale by salvage.* When surplus property is deemed unfit for sale by auction or sealed bids the City Administrator or his/her designee shall approve the sale to a licensed scrap and/or recycle dealer/business;
- d. *Destruction.* Property that has been deemed by the City Administrator or his/her designee to be surplus and has no monetary value or use to the City may be disposed of by means of proper destruction based on the specific item(s) stated as such. It shall be the responsibility of the department manager to ensure effective and legal disposal of approved said item(s);
- e. *Donation.* In the event property has been deemed by the City Administrator or his/her designee to be surplus and of no use to the City, the Board of Aldermen may elect to donate stated property to a charity or other not-for-profit organizations.

B. *Disposal Of Seized, Unclaimed, Or Abandoned Property.*

- 1. *Proceeds of sales.* All property coming into the custody of the City of Osage Beach in the nature of lost, unclaimed, seized, or abandoned property shall be sold and/or disposed of in accordance with Section 542.301, RSMo.
- 2. *State, Federal forfeiture proceedings.* The Police Chief shall have the authority to permit Police Department participation in any State or Federal forfeiture proceedings. The Police Chief may apply to receive any property or cash which may become available to the City pursuant to any State or Federal forfeiture proceedings. Upon receipt of any forfeited property or cash the Board of Aldermen shall act to accept or reject it, paying all liens and other encumbrances, and shall designate the use of the forfeited property or cash pursuant to the provisions of the law under which it was forfeited.

ARTICLE III
Agency and Trust Fund

Section 135.090. Establishment and Purpose of Agency and Trust Fund. [Ord. No. 15.96 §1, 12-17-2015]

- A. There is hereby established an Agency and Trust Fund.
- B. The purpose of this fund is to receive gifts and endowments made to the City of Osage Beach for special purposes and accurately safeguard the monies.
- C. The accounts shall be maintained as per Governments Finance Officers Association publication "Governmental Accounting, Auditing, and Financial Reporting," copyright 1988 and any updates.

ARTICLE IV
Tax Increment Financing Commission

Section 135.100. Creation of Tax Increment Financing Commission. [Ord. No. 15.96 §1, 12-17-2015]

There is created pursuant to Section 99.820.2 of the Act, a commission to be known as the "Tax Increment Financing Commission of Osage Beach, Missouri," (the "Commission"). The Commission shall have continuous existence unless and until terminated by the adoption of an ordinance of the Board of Aldermen terminating it.

Section 135.110. Composition — Appointment of Members. [Ord. No. 15.96 §1, 12-17-2015]

- A. The Commission shall be composed of members to be appointed as follows:
1. Six (6) members shall be appointed by the Mayor of the City, with the consent of the Board of Aldermen.
 2. For projects within Miller County, two (2) members shall be appointed by the Presiding Commissioner of the County of Miller, with the consent of the majority of the County Commission of the County of Miller. For projects within Camden County, two (2) members shall be appointed by the Presiding Commissioner of the County of Camden, with the consent of the majority of the County Commission of the County of Camden.
 3. Within thirty (30) days after the receipt of notice of a proposed redevelopment area, redevelopment plan or redevelopment project required by Section 99.830 of the Act, two (2) members shall be appointed by the school board whose district is included within such proposed redevelopment area. The manner of selection of the members is left to the discretion of the affected district.
 4. Within thirty (30) days after the receipt of notice of a proposed redevelopment area, redevelopment plan or redevelopment project required by Section 99.830 of the Act, one (1) member shall be appointed, in any manner agreed upon by the affected districts, to represent all other districts levying ad valorem taxes (excluding the representatives of the Board) within the area selected for a redevelopment plan.

Section 135.120. Term of Members. [Ord. No. 15.96 §1, 12-17-2015]

- A. With regard to the term of the first six (6) members appointed by the Mayor with the consent of the Board:
1. Two (2) shall be designated to serve for terms of two (2) years;
 2. Two (2) shall be designated to serve for terms of three (3) years; and
 3. Two (2) shall be designated to serve for terms of four (4) years.

Thereafter, members appointed by the Mayor with the consent of the Board of Aldermen shall serve for a term of four (4) years. All vacancies shall be filled for the unexpired terms in the same manner as were the original appointments.

- B. At the option of the members appointed under Section 135.110 of this Article, the members who are appointed by the school board and other taxing districts may serve on the Commission for a term which coincides with the length of time such redevelopment project, redevelopment plan or the designation of the area for which they were appointed is being considered for approval by the Commission, or for a definite term pursuant to Section 99.820.2 of the Act. If the members representing the school district and other taxing districts are appointed for a term coinciding with the length of time a redevelopment project, plan or area is approved; such term will terminate upon final approval of such redevelopment project, redevelopment plan or designation of the area by the Board.

Section 135.130. Voting Authorization. [Ord. No. 15.96 §1, 12-17-2015]

Those Commission members who are appointed by the school board and other taxing districts shall only be authorized to vote on matters specifically and directly relating to the redevelopment plan, redevelopment project or redevelopment area upon which their affected taxing districts levy ad valorem taxes.

Section 135.140. Organization of Commission. [Ord. No. 15.96 §1, 12-17-2015]

The Commission, upon the effective date of this Article (February 3, 2000), shall organize itself and elect from its six (6) members appointed by the Mayor, a chairperson, vice chairperson, treasurer and secretary, each to serve for one (1) year terms or until their successors are elected.

Section 135.150. Powers. [Ord. No. 15.96 §1, 12-17-2015]

The Board of Aldermen hereby authorizes and approves the exercise by the Tax Increment Financing Commission of all the powers delegable under the Real Property Tax Increment Allocation Redevelopment Act and in particular those enumerated in Section 99.820(3) thereof.

Section 135.160. Meetings. [Ord. No. 15.96 §1, 12-17-2015]

The Commission shall meet regularly and shall adopt such rules and regulations for operations as shall enable it to maintain an orderly procedure for its business and to effectively and efficiently exercise the powers authorized by the Statute and delegated to it by the Board.

Section 135.170. Records and Minutes of Meetings. [Ord. No. 15.96 §1, 12-17-2015]

The Commission shall keep records and minutes of its meetings and shall report annually to the Board with regard to its activities.



Turn-Key Mobile, Inc.

4510 Country Club Dr
Jefferson City, MO 65109

573-893-9888 Office 314-754-9794 Fax

Proposal

Date	Proposal #
6/10/2022	28770

Name / Address
City of Osage Beach 1000 City Parkway Osage Beach, MO 65065

Sales Rep	Prepared By	PO #	Accepted By
FW	Terry		

Item	Description	Qty	Rate	Total
FZ-55FZ005VM	Panasonic Win10 Pro, Intel Core i5-1145G7 (up to 4.4GHz), vPro, 14.0" FHD 1000 nit Gloved Multi Touch, 16GB, 512GB OPAL SSD, Intel Wi-Fi 6, Bluetooth, 4G LTE Band 14 (EM7511), GPS, Dual Pass (Ch1:GPS/Ch2:WWAN), Infrared Webcam, Standard Battery, TPM 2.0, Emissive Backlit Keyboard, Flat	11	2,481.00	27,291.00
CF-SVCLTNF5Y	Panasonic Toughbook 2 Year Extension on Manufacturer's Warranty and 5 Year Protection Plus Accidental Breakage	11	692.00	7,612.00
Contract-Jasper County	Jasper County Sheriff's Office Contract # JCSO 2021-001 (Computers and Network Technology)			0.00
Proposals are good for 15 days. Please ask your rep for updated pricing and availability.		Total \$34,903.00		

Shipping is included.

Signature _____



WE DON'T DO FRAGILE!

Sales Quotation

Quotation No.:63368

Page 1 of 1

Tel: 281-305-5037

Ofc: 281-259-6613

Fax:

timothy.grayewski@ruggeddepot.com

Order Date: 06/07/2022

Valid Until: 07/07/2022

Customer Number: C30435

Rep: TD Team

Terms: ON_INVOICE (WIRE/CHECK)

Customer Ref:

Bill To:

Osage Beach MO Police Dept.
1000 City Parkway

Osage Beach MO 65065
USA
573-302-2010 x1100

Ship To:

Osage Beach MO Police Dept.
1000 City Parkway

Osage Beach MO 65065
USA
573-302-2010 x1100

Item Code	Description	Condition	Quantity	Price	Total
FZ-55FZ005VM	Win10 Pro, Intel Core i5-1145G7 (up to 4.4Ghz), vPro, 14.0" FHD 1000 nit Gloved Multi Touch, 16GB, 512GB OPAL SSD, Intel Wi-Fi 6, Bluetooth, 4G LTE Band 14 (EM7511), GPS, Dual Pass (Ch1:GPS/Ch2:WWAN), Infrared Webcam, Standard Battery, TPM 2.0, Emissive Backlit Keyboard, Flat		11	2,797.00	30,767.00
CF-SVCLTNF5Y	PROTECTION PLUS WARRANTY - CF-31, FZ-55, CF-20, LAPTOP (YEARS 1, 2, 3, 4 and 5)		11	750.00	8,250.00

Freight	\$333.00
Tax	\$0.00
Total	\$39,350.00

FZ-55 30 day lead time

Terms and Conditions

- * Any refunds, for any reason (including cancellations), if payment was made with American Express, refund will be less 4% American Express merchant processing charge.
- * All shipments are FOB Destination, Freight Prepaid & Add, unless using customer shipping account, if freight not shown on quote, it will be added to Invoice.
- * Payment must be made in U.S. dollars.
- * Pricing and quantities are subject to change.
- * Rugged Solutions America LLC reserves the right to substitute products of equal or greater specifications.
- * Invoices are subject to late payment charges of 18% per year computed monthly after due date.
- * All products are sold "AS IS"
- * No credit allowed for goods returned without prior approval.
- * ALL RETURNS MUST BE ACCOMPANIED BY A RETURN MATERIAL AUTHORIZATION NUMBER AND ARE SUBJECT TO A 20% RESTOCKING/HANDLING FEE; IF A SPECIAL ORDER PART, ADDITIONAL VENDOR RESTOCKING/HANDLING FEES MAY APPLY.
- * Claims for loss or damage in shipment must be made to the carrier by the Customer. All others must be made to Rugged Solutions America LLC within 2 days of receipt of goods. All goods shipped at the buyer's risk.
- * Customer also agrees to pay such attorney's fees and costs as are actually incurred for the collection of this amount whether or not suit is instituted.
- * All product and services on this invoice will remain the property of Rugged Solutions America LLC and will be fully encumbered until full payment has been remitted.
- * Terms orders are based off from payment being made via check or ACH or Wire. If Credit Card is presented as payment, an administrative fee of 3.5% plus \$25.00 will be added to the corrected invoice.

Rugged Solutions America LLC strives to bring our customers the best possible price everyday.

Mobility Summary

Mobility Overview

- 2 Total Devices
- Unlimited Data

Total Cost

Plans	\$76.00/mo
Devices	\$45.00/mo
Total Monthly Cost	\$121.00/mo
Devices	\$2,649.98
Total One-Time Cost	\$2,649.98

Mobility Details

Plans

Unlimited – Primary

Included

- Unlimited data
- AT&T Business Fast Track or First Priority™

Access Charges

2 × Data Only Device with Tethering at \$38.00 each	\$76.00/mo
---	------------

Monthly Plan Cost	\$76.00/mo
--------------------------	-------------------

Devices (2)

iPad® Pro 12.9" (2021) 256GB with 2-Year Contract (2)

Monthly Cost

AT&T Protect Advantage for Business for 4	\$45.00/mo
---	------------

One-Time Cost

Base One-Time Cost at \$1,324.99 each	\$2,649.98
---------------------------------------	------------

This information is provided to you for informational purposes only. The terms of the identified plans can be found in the applicable brochures at the links below. AT&T may revise these terms at any time. In the event of a conflict between this information and the applicable business agreement, the applicable business agreement will control. AT&T disclaims all warranties including, but not limited to, implied warranties of merchantability or fitness for a particular purpose. In no event shall AT&T be liable for any damages relating to the use or results of the calculator. The quoted rates are estimates of the monthly charges for the identified plans only and are based on the information provided by you. These rates do not include additional devices, features or services. Quoted rates supersede those in the applicable brochures, which are standard published rates, and not the discounted rates quoted herein, based on national, state or local contracts. Rates are subject to change and do not include taxes, fees, overage charges or surcharges. Activation fees, additional deposits and other restrictions may apply.

FirstNet Rate Plans - Agency Paid - Pooled & Unlimited

Primary Users	https://www.firstnet.com/firstnetprimary
Primary Users (State/Local Gov)	https://www.firstnet.com/firstnetgovprimary
Extended Primary Users	https://www.firstnet.com/firstnetextended
Extended Primary Users (State/Local Gov)	https://www.firstnet.com/firstnetgovextended

FirstNet Machine-to-Machine Rate Plans

Primary Users	https://www.firstnet.com/firstnetprimarym2m
Primary Users (State/Local Gov)	https://www.firstnet.com/firstnetgovprimarym2m
Extended Primary Users	https://www.firstnet.com/firstnetextendedm2m
Extended Primary Users (State/Local Gov)	https://www.firstnet.com/firstnetgovextendedm2m

FirstNet Enhanced Push-to-Talk Rate Plans

Primary Users	https://www.firstnet.com/epttonlyprimary
Primary Users (NASPO)	https://www.firstnet.com/epttonlyprimarynaspo
Primary Users (NPPGov)	https://www.firstnet.com/epttonlyprimarynppgov
Extended Primary Users	https://www.firstnet.com/epttonlyextprimary
Extended Primary Users (NASPO)	https://www.firstnet.com/epttonlyextprimarynaspo
Extended Primary Users (NPPGov)	https://www.firstnet.com/epttonlyextprimarynppgov

FirstNet Enhanced Push-to-Talk Bolt-Ons

Primary Users	https://www.firstnet.com/epttboltonprimary
Primary Users (NASPO)	https://www.firstnet.com/epttboltonprimarynaspo
Primary Users (NPPGov)	https://www.firstnet.com/epttboltonprimarynppgov
Extended Primary Users	https://www.firstnet.com/epttboltonextprimary
Extended Primary Users (NASPO)	https://www.firstnet.com/epttboltonextprimarynaspo
Extended Primary Users (NPPGov)	https://www.firstnet.com/epttboltonextprimarynppgov

FirstNet International Roaming Packages

International Pass Packages	https://www.firstnet.com/internationalterms
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Limitations and exclusions apply. See terms and conditions for more information.

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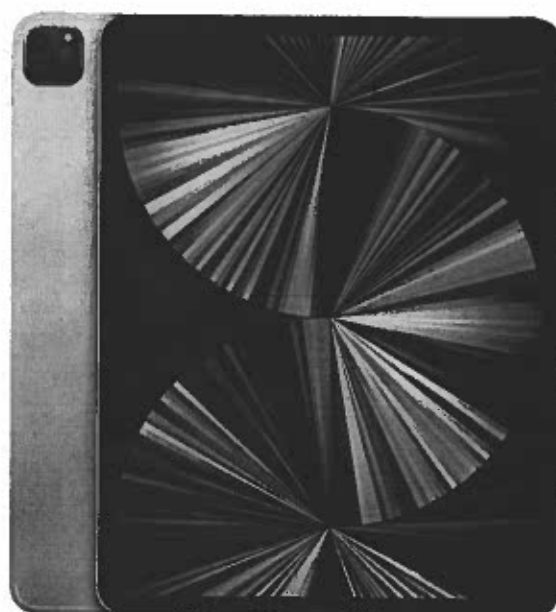
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36 Questions, 47 Answers



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\$1,399.00

 Space Gray
- \$50

11"
- \$300

12.9"
\$1,399.00

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Experience the next level of ultimate with the silver **Apple 12.9" iPad Pro**, which features performance that is supercharged by Apple's M1 8-Core chip with an 8-Core GPU and a 16-Core Neural Engine, a Liquid Retina XDR display, and more. **Press  Enter for Accessibility**

Shipping Restriction(s)

Press  Enter for Accessibility menu n people rn more >



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Mike Welty

From: Kevin Crooks
Sent: Wednesday, June 29, 2022 10:22 AM
To: Mike Welty
Subject: FW: County Grant/ Trimble R2/ Vipermag Utility Locator.
Attachments: R2dmOBMO_V2.pdf

From: Kevin Crooks
Sent: Friday, May 27, 2022 2:17 PM
To: Mike Welty <mwelty@osagebeach.org>
Subject: County Grant/ Trimble R2/ Vipermag Utility Locator.

Mike, I was incorrect there is still no current x-grip available for an Ipad Pro 12.9", as such the attached quote is sans a pole mount. (\$6,902.30)

Quantity 1- Copperhead Part# VIP-MAG Vipermag Locator- \$2,600.00 with accessories.



COPPERHEAD VIPERMAG COI AND METAL LOCATOR

Copperhead

\$2,375⁰⁰

Select Item

ViperMag Locator Kit w/Carry Bag ▾

Quantity

- 1 +

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Only 4 left!



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Discount shown at checkout.

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DAYS HRS MINS

SPEND \$100+ GET
\$49 Perimeter Probe

Classroom
\$100 Restaurant Card

**Copperhead ViperMag Complete
Utility Locating System**

Part # VP-3MAG

Be the first to review this product

Product Questions
Email to a Friend

Estimated Delivery Date
06/29/2022 - 06/30/2022

In Stock: Yes
\$2,376.00

Add to Cart

Add to Wishlist



Sales Quotation

Quote Number

00075444

Contact Name Kevin Crooks
Email kcrooks@osagebeach.org
Phone (573) 302-2020 ext. 2000

Date Issued 5/26/2022
Expiration Date 8/5/2022
Account Number 124446

Ship To:

Ship To Name City of Osage Beach, MO
Ship To 5757 Chapel Drive
Osage Beach, Missouri 65065
United States

Bill To:

Bill To Name City of Osage Beach, MO
Bill To 1000 City Parkway
Osage Beach, Missouri 65065
United States

Quantity	Part Number	Description	Sale Price	Subtotal
1.00	R2-101-01 	Trimble R2, single receiver - No Radio	\$2,205.00	\$2,205.00
1.00	R2-CFG-001-42	Trimble R2 Configuration Level - Sub-Foot mode	\$3,530.00	\$3,530.00
1.00	101070-00-01 	Trimble Geospatial Accessory - Dual Battery Charger with Power Supply and Power Cord (North America)	\$665.00	\$665.00
1.00	192670 	BPack, Li-Ion, INDUS, 2S1P, 7.4V, 2700mAh, 71x39x20.3mm	\$140.00	\$140.00
1.00	5128-20 	ROVER ROD,2M,CF,SNAP-LOC -One-piece design locks at 2m and collapses to 1.354 meters -Weighs 1.6 pounds	\$362.30	\$362.30

This is not an invoice: Applicable sales tax, customs duties, and/or shipping charges will apply.

Total Price

\$6,902.30

St. Louis Kansas City Indianapolis Chicago Milwaukee Omaha Lansing Detroit

SALES • SERVICE • RENTALS • SUPPORT • TRAINING

www.seilergeo.com



Sales Quotation

Quote Number

00075444

This product and/or associated accessories may be subject to export controls under United States law and must not be exported or re-exported without prior authorization from either the United States Department of State or Commerce, as applicable.

Scheduled delivery times could be delayed due to vendor supply or Seiler personnel availability during the COVID19 Stay Home, Stay Safe orders, depending on location. Please communicate with your Seiler sales representative to ensure your timeline needs can be met before signing this quotation.

Please Contact Us:

Name Scott Smith
Address 11801 W. 86th Terrace
Lenexa
Kansas, 66214
United States
Phone (816) 331-3383
Mobile (816) 518-7541
Email ssmith@seilerinst.com
Fax (816) 331-7199

Terms: ☐ Net 30 Days ☐ Credit Card ☐ Financing

Net 30 upon approved credit application. Please inquire to sales rep on financing options available.

This Sales Quotation is subject to and governed by the Terms and Conditions of Sale referred to at <https://www.seilergeo.com/general-terms-and-conditions/> which are hereby incorporated into this Quotation by reference. Any terms and conditions contained in any purchase order, order confirmation, or other document or communication you send or provide to Seiler which are in addition to or different from those set forth in said Terms and Conditions of Sale found at the above-link which are not separately agreed to by Seiler in writing are hereby considered material, objected to, and shall be null, void, and of no force or effect.

This Sales Quotation is subject to the [Seiler Maximum Liability and Indemnification](#), version 041421. By signing this Sales Quotation, you are also agreeing to be bound by the terms and conditions of that Agreement.

Your signature below acknowledges acceptance of terms and conditions of this quote. Please sign and return via email or fax.

Signed: _____ Date: _____

Name: _____ Title: _____

From: [Mike Welty](#)
To: [Todd Davis](#)
Subject: Fw: Updated Laptop Quote
Date: Tuesday, September 6, 2022 8:30:34 AM
Attachments: [image004.png](#)
[Jimmy Laughlin2.vcf](#)

Mike Welty
Assistant City Administrator
City of Osage Beach
1000 City Parkway
Osage Beach, MO 65065
(573)302-2000 ext. 1011
fax (573)302-2039
mwelty@osagebeach.org
www.osagebeach.org

"OPTIMISM IS THE FAITH THAT LEADS TO ACHIEVEMENT. NOTHING CAN BE DONE WITHOUT HOPE AND CONFIDENCE" HELEN KELLER

From: Jimmy Laughlin <jimmy_laughlin@camdenmo.org>
Sent: Friday, September 2, 2022 10:00 AM
To: Mike Welty <mwelty@osagebeach.org>
Cc: Todd Davis <tdavis@osagebeach.org>
Subject: RE: Updated Laptop Quote

Mike,
I got confirmation from the Commission they were ok with the cost increase of around \$3,500.
Please order and get us the documentation.
Thanks

Jimmy Laughlin
Camden County Auditor



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From: Mike Welty <mwelty@osagebeach.org>
Sent: Tuesday, August 30, 2022 1:56 PM
To: Jimmy Laughlin <jimmy_laughlin@camdenmo.org>
Cc: Todd Davis <tdavis@osagebeach.org>
Subject: RE: Updated Laptop Quote

Jimmy,

Just wanted to touch base and see if you had reviewed my email. I am still wanting to catch up with you or one of your staff members to discuss these issues further. I tried to leave you a voice mail, but your mailbox is full.

Mike Welty
Assistant City Administrator
City of Osage Beach
1000 City Parkway
Osage Beach, MO 65065
(573)302-2000 ext. 1011
fax (573)302-2039
mwelty@osagebeach.org
www.osagebeach.org

"OPTIMISM IS THE FAITH THAT LEADS TO ACHIEVEMENT. NOTHING CAN BE DONE WITHOUT HOPE AND CONFIDENCE" HELEN KELLER

From: Mike Welty
Sent: Wednesday, August 24, 2022 11:21 AM
To: 'Jimmy Laughlin' <jimmy_laughlin@camdenmo.org>
Cc: Todd Davis <tdavis@osagebeach.org>
Subject: RE: Updated Laptop Quote

Jimmy,

I have checked all of the quotes we provided. The only one that changed is the one attached. If you compare it to the one, we submitted with the grant, the costs went up about \$3,300. What is the next set?

Also, will we receive any official response from the county letting us know that the grant has been awarded to the city? Once we get the cost for these police laptops straighten out, can I proceed with purchasing this equipment.

One more thing, one of the County commissioners reached out to our mayor stating that there are more grant funds available from the county. With that said, I am putting together another grant request. Is the deadline still 12/31? Once grant funds are awarded do they have to be spend prior to the end of the year?

Sorry for all the question. I actually have even more questions. You have always been very helpful, and I wonder if maybe we could have a quick phone call sometime next week with you or one of your staff members to address my questions. Thanks in advance.

Mike Welty
Assistant City Administrator
City of Osage Beach
1000 City Parkway
Osage Beach, MO 65065
(573)302-2000 ext. 1011
fax (573)302-2039
mwelty@osagebeach.org
www.osagebeach.org

"OPTIMISM IS THE FAITH THAT LEADS TO ACHIEVEMENT. NOTHING CAN BE DONE WITHOUT HOPE AND CONFIDENCE " HELEN KELLER

From: Mike Welty
Sent: Wednesday, August 17, 2022 1:23 PM
To: Jimmy Laughlin <jimmy_laughlin@camdenmo.org>
Subject: RE: Updated Laptop Quote

Jimmy,

Thank you. Let me get all the quotes updated so we can see the full cost change I will get back to you.

Mike Welty
Assistant City Administrator
City of Osage Beach
1000 City Parkway
Osage Beach, MO 65065
(573)302-2000 ext. 1011
fax (573)302-2039
mwelty@osagebeach.org
www.osagebeach.org

"OPTIMISM IS THE FAITH THAT LEADS TO ACHIEVEMENT. NOTHING CAN BE

From: Jimmy Laughlin <jimmy_laughlin@camdenmo.org>
Sent: Wednesday, August 17, 2022 12:36 PM
To: Mike Welty <mwelty@osagebeach.org>
Subject: RE: Updated Laptop Quote

Mike,

I did forget, sorry. How much did the quotes go up and I will share the issue with the Commission and try to see what can be done. Let me know and we will let you know.

Thanks

Jimmy Laughlin
Camden County Auditor



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From: Mike Welty <mwelty@osagebeach.org>
Sent: Wednesday, August 17, 2022 12:23 PM
To: Jimmy Laughlin <jimmy_laughlin@camdenmo.org>
Cc: Todd Davis <tdavis@osagebeach.org>
Subject: FW: Updated Laptop Quote
Importance: High

Jimmy,

As I stated when we spoke in the hallway at the courthouse last week, some of our quotes did go up. I know that the commission approved our grant the other day. How much was awarded, and did you add any cushion?

I haven't checked the other quotes yet.

Mike Welty
Assistant City Administrator
City of Osage Beach
1000 City Parkway
Osage Beach, MO 65065
(573)302-2000 ext. 1011
fax (573)302-2039
mwelty@osagebeach.org
www.osagebeach.org

"OPTIMISM IS THE FAITH THAT LEADS TO ACHIEVEMENT. NOTHING CAN BE DONE WITHOUT HOPE AND CONFIDENCE" HELEN KELLER

From: Todd Davis <tdavis@osagebeach.org>
Sent: Wednesday, August 17, 2022 12:14 PM
To: Mike Welty <mwelty@osagebeach.org>
Subject: Updated Laptop Quote
Importance: High

Mike,

Attached is the new quote for the laptops.

It is \$3289.00 higher. And it is only good for 15 days.

Todd Davis
City of Osage Beach
Police Chief
Osage Beach Police Department
1000 City Parkway
Osage Beach, MO 65065
Phone: 573-302-2010 ext. 1100
Fax: 573-348-3277
tdavis@osagebeach.org
FBINAA Session #238



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Turn-Key Mobile, Inc.

4510 Country Club Dr
Jefferson City, MO 65109

573-893-9888 Office 314-754-9794 Fax

Proposal

Date	Proposal #
8/16/2022	29145

Name / Address
City of Osage Beach 1000 City Parkway Osage Beach, MO 65065

Sales Rep	Prepared By	PO #	Accepted By
FW	Terry		

Item	Description	Qty	Rate	Total
FZ-55FZ005KM	Panasonic Win10 Pro (Win11 DG), i5-1145G7 (up to 4.4GHz), 14.0 FHD 1000 nit Gloved Multi Touch, 16GB, 512GB OPAL SSD, Intel Wi-Fi 6, BT, 4G LTE Band 14 (EM7511), GPS, Dual Pass (Ch1:GPS/Ch2:WWAN), Infrared Webcam, NO USB-C, Standard Battery, TPM 2.0, Emissive Backlit Keyboard	11	2,780.00	30,580.00
CF-SVCLTNF5Y	Panasonic Toughbook 2 Year Extension on Manufacturer's Warranty and 5 Year Protection Plus Accidental Breakage	11	692.00	7,612.00
Contract-Jasper County	Jasper County Sheriff's Office Contract # JCSO 2021-001 (Computers and Network Technology)			0.00

Proposals are good for 15 days. Please ask your rep for updated pricing and availability.

Total

\$38,192.00

Shipping is included.

Signature _____

City of Osage Beach

Agenda Item Summary

Date of Meeting: September 15, 2022
Originator: Jeana Woods, City Administrator
Presenter: Jeana Woods, City Administrator

Agenda Item:

Bill 22-75 - An ordinance of the City of Osage Beach, Missouri, amending Ordinance No. 21.78 Adopting the 2022 Annual Operating Budget, Transfer of Funds for Necessary Expenses for computer and GIS equipment. *First and Second Reading*

Requested Action:

First & Second Reading of Bill #22-75

Ordinance Referenced for Action:

Board of Aldermen approval required for certain budget amendments per Municipal Code Chapter 135; Section 135.020 Budget and Financial Control.

Deadline for Action:

None

Budgeted Item:

Not Applicable

Budget Line Information (if applicable):

Not Applicable

Department Comments and Recommendation:

Not Applicable

City Attorney Comments:

Per City Code 110.230, Bill 22-75 is in correct form.

City Administrator Comments:

The following budget amendment is necessary to support the motion request to the purchase various computers and GIS equipment, funded with grant monies to be received. Net zero effect on the FY2022 Operating Budget.

	<u>Original Item</u>	<u>Amended Item</u>	<u>Increase/(Decrease)</u>
10-00-440160 Grants-Emergency Mgmt	\$ 0	\$ 38,192	\$ 38,192

10-14-774250 Computer Equipment	\$ 10,575	\$ 48,767	\$ 38,192
20-00-440180 Grants - Transportation	\$199,395	\$203,370	\$ 3,975
20-00-744700 Mobile Devices & Service	\$ 5,580	\$ 6,463	\$ 883
20-00-774255 Machinery & Equipment	\$ 12,316	\$ 15,408	\$ 3,092
30-00-440200 Grant Revenue	\$ 5,130	\$ 9,105	\$ 3,975
30-00-744700 Mobile Devices & Service	\$ 4,740	\$ 5,623	\$ 883
30-00-774255 Machinery & Equipment	\$ 13,216	\$ 16,308	\$ 3,092
35-00-440200 Grant Revenue	\$ 0	\$ 3,975	\$ 3,975
35-00-744700 Mobile Devices & Service	\$ 9,180	\$ 10,063	\$ 883
35-00-774255 Machinery & Equipment	\$ 4,816	\$ 7,908	\$ 3,092

AN ORDINANCE OF THE CITY OF OSAGE BEACH, MISSOURI, AMENDING ORDINANCE NO. 21.78 ADOPTING THE 2022 ANNUAL OPERATING BUDGET, TRANSFER OF FUNDS FOR NECESSARY EXPENSES FOR COMPUTER AND GIS EQUIPMENT.

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF OSAGE BEACH, AS FOLLOWS, TO WIT:

Section 1. That the 2022 Annual Operating Budget adopted as Ordinance No. 21.78 is hereby amended by appropriating additional funds or reducing appropriations as follows:

	Original Item	Amended Item
10-00-440160 Grants – Emergency Management	\$ 0	\$ 38,192
10-14-774250 Computer Equipment	\$ 10,575	\$ 48,767
20-00-440180 Grants-Transportation	\$ 199,395	\$ 203,370
20-00-744700 Mobile Devices & Service	\$ 5,580	\$ 6,463
20-00-774255 Machinery & Equipment	\$ 12,316	\$ 15,408
30-00-440200 Grant Revenue	\$ 5,130	\$ 9,105
30-00-744700 Mobile Devices & Service	\$ 4,740	\$ 5,623
30-00-774255 Machinery & Equipment	\$ 13,216	\$ 16,308
30-00-440200 Grant Revenue	\$ 0	\$ 3,975
30-00-744700 Mobile Devices & Service	\$ 9,180	\$ 10,063
30-00-774255 Machinery & Equipment	\$ 4,816	\$ 7,908

Section 2. In all other respects the 2022 Annual Operating Budget adopted in Ordinance No. 21.78 remains in full force and effect.

Section 3. That this Ordinance shall be in full force and effect upon date of passage and approval by the Mayor.

READ FIRST TIME:

READ SECOND TIME:

I hereby certify that the above Ordinance No. 22.75 was duly passed on _____, by the Board of Aldermen of the City of Osage Beach. The votes thereon were as follows:

Ayes:

Nays:

Abstain:

Absent:

This Ordinance is hereby transmitted to the Mayor for his signature.

Date

Tara Berreth, City Clerk

Approved as to form:

Edward B. Rucker, City Attorney

I hereby approve Ordinance No. 22.75

Michael Harmison, Mayor

Date

ATTEST:

Tara Berreth, City Clerk

City of Osage Beach

Agenda Item Summary

Date of Meeting: September 15, 2022
Originator: Edward Rucker, City Attorney
Presenter: Edward Rucker, City Attorney

Agenda Item:

Bill 22-76 - An ordinance of the City of Osage Beach, Missouri, authorizing and directing the City Administrator to contract with American Swimming Pool Co. to repair, clean, sanitize the pool and decking at Grand Harbor Condo Association in the amount not to exceed \$117,456.39 as settlement for damage to the Grand Harbor Pool which occurred during the winter of 2021 due to freezing of the sewer pipe located adjacent to the pool. *First Reading*

Requested Action:

First Reading of Bill #22-76

Ordinance Referenced for Action:

Board of Aldermen approval required per Section 110.230. Ordinances, Resolutions, Etc. – Generally and Section 110.240 Adoption of Ordinances. Board of Aldermen approval required for purchases over \$25,001 per Municipal Code Chapter 135; Article II: Purchasing, Procurement, Transfers, and Sales.

Deadline for Action:

None

Budgeted Item:

No - Sewer Fund Reserves

Budget Line Information (if applicable):

Budget Line Item/Title: 35-00-752100 Self-Insurance Claim

FY2022 Budgeted Amount: \$ 0

FY2022 Expenditures to Date (MM/DD/YY): (\$ 0)

FY2022 Available: \$ 0

FY2022 Requested Amount: \$117,456

Department Comments and Recommendation:

Not Applicable

City Attorney Comments:

Per City Code 110.230, Bill 22-76 is in correct form.

City Administrator Comments:

Action requested by Mayor Harmison. If approved, funds may be made available from restricted funds within the Sewer Fund.

AN ORDINANCE OF THE CITY OF OSAGE BEACH, MISSOURI, AUTHORIZING AND DIRECTING THE CITY ADMINISTRATOR TO CONTRACT WITH AMERICAN SWIMMING POOL CO. TO REPAIR CLEAN AND SANITIZE THE POOL AND DECKING AT GRAND HARBOR CONDO ASSOCIATION IN THE AMOUNT NOT TO EXCEED \$117,456.39 AS SETTLEMENT FOR DAMAGE TO THE GRAND HARBOR POOL WHICH OCCURRED DURING THE WINTER OF 2021 DUE TO FREEZING OF THE SEWER PIPE LOCATED ADJACENT TO THE POOL

WHEREAS; the Grand Harbor Condo Association had made a claim to the city for damages to the swimming pool on their property due to the leakage of sewerage into the pool because of a frozen sewer pipe during the winter of 2021; and,

WHEREAS, the Board of Aldermen hereby finds and conclude that the city should offer settlement in the amount not to exceed \$117 456.39 for the claim; and,

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF OSAGE BEACH, MISSOURI AS FOLLOWS:

Section 1. The City Administrator is authorized and directed to contract with American Swimming Pool Co. to repair clean and sanitize the pool and decking at Grand Harbor Condo Association in the amount not to exceed \$117,456.39 pursuant to the Scope of Work (Exhibit “A”) attached to this ordinance and incorporated by reference as if fully set out herein, all as settlement for damage to the Grand Harbor Pool which occurred during the winter of 2021 due to freezing of the sewer pipe located adjacent to the pool, in exchange for a complete release of all claims based on the damage to the pool arising out of the freezing and bursting of the sewer pipe located next to the pool during the Winter of 2021.

Section 2. Severability

The chapters, sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional or otherwise invalid by the valid judgment or degree of any Court of any competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this ordinance since the same would have been enacted by the Board of Aldermen without the incorporation in this ordinance of any such unconstitutional or invalid phrase, clause, sentence, paragraph or section.

Section 3. Repeal of Ordinances not to affect liabilities, etc.

Whenever any part of this ordinance shall be repealed or modified, either expressly or by implication, by a subsequent ordinance, that part of the ordinance thus repealed or modified shall continue in force until the subsequent ordinance repealing or modifying the ordinance shall go into effect unless therein otherwise expressly provided; but no suit, prosecution, proceeding, right, fine or penalty instituted, created, given, secured or accrued under this ordinance previous

to its repeal shall not be affected, released or discharged but may be prosecuted, enjoined and recovered as fully as if this ordinance or provisions had continued in force, unless it shall be therein otherwise expressly provided.

Section 4. That this Ordinance shall be in full force and effect from and after the date of passage and approval of the Mayor.

READ FIRST TIME: _____ READ SECOND TIME: _____

I hereby certify that Ordinance No.22.76 was duly passed on _____ by the Board of Aldermen of the City of Osage Beach. The votes thereon were as follows:

Ayes:

Nays:

Abstentions:

Absent:

This Ordinance is hereby transmitted to the Mayor for his signature.

Date

Tara Berreth, City Clerk

Approved as to form:

Edward B. Rucker, City Attorney

I hereby approve Ordinance No.22.76 .

Michael Harmison, Mayor

Date

Tara Berreth, City Clerk



Specification Sheet / Quote

Grand Harbor
744 Malibu Road, Osage Beach, MO 65065

01 - Pool Interior	\$21,746.00
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01-01 Plaster - Type: TBD	\$12,924.00
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Type: Type Pebble Sheen, Color TBD
Prep, Install/Labor, and Travel.

The pool will be drained, pressure washed, treated with TSP (tri-sodium phosphate) a bond coat will be applied, the pool will also be acid washed before plaster. For (30) days following the plaster, we will brush down the walls of the swimming pool and maintain the proper chemical levels in the swimming pool to promote proper bonding of the Plaster. We will be on location to do this maintenance 4-5 times per week during this process.

01-02 HydroBlast	\$5,374.00
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Hydro blasting the pool will remove a large amount of existing plaster to provide adequate bonding of the new plaster.

01-03 Tile	\$2,823.00
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We will remove the existing tile and replace it with new tile.
Includes waterproofing tile line.
Includes spotter tile for steps if requested.

Tile Type: TBD

01-04 Tile and Coping Prep	\$625.00
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02 - Pool Exterior	\$73,550.00
02-01 Demolition of concrete	\$7,500.00
02-02 Gravel Work	\$6,000.00
Excavate for removal of existing plumbing, add miscellaneous gravel and grade out for new slab.	
02-03 Concrete install	\$39,450.00
Includes 3 pumps and color of concrete to match existing concrete as much as possible.	
Included- removing tripping hazard on deck with elevated area, leveling out and adding a step by gate. (no additional cost)	
02-04 Fence Removal and Install	\$13,600.00
Remove rail from pool area	
Remove Glass from rail, transport to safe area	
Install rail when concrete work is finished	
Adjusting rails to match new concrete and make repairs to rails.	
02-05 Coping	\$7,000.00
Remove and Replace existing Coping.	
Coping type TBD. Replacing with existing or using travertine included in price	
03 – Other Work	\$15,001.00
03-01 Electrical	\$2,650.00
Replacing electrical lines where necessary	
Bonding all existing areas around pool, the pool itself, lighting, handrails, equipment, fencing, and all areas necessary	
03-02 Engineering & Surveying	\$3,450.00
Includes getting new pool deck engineered and surveyed to Match existing grade.	

03-03 Hazard and Cleanup	\$3,500.00
Mediation of gravel inside pool area with lime treatment	
03-04 Plumbing	\$3,726.00
Includes replumbing and replacing existing plumbing lines. Adding new Sch 40 2" PVC lines where accessible on pool to new equipment.	
03-05 Facilities and cleanup	\$1,175.00
Includes having porta potty put on location, dumpster, and final cleanup.	
03-06 Permit and Administration	\$500.00
Includes permit fees, and time applying for permits	
04 - Pool Equipment	\$7,159.39
04-01 Lighting	
Replacing lighting	\$2,294.98
(1) 120v 100ft color pool intellibrite 5g (1) Lighting Controller	
	\$977.99
04-02 Autofill	
(1) Jandy 110/220v Levolar w/ sensor & Valve	
04-03 Taxes on equipment	\$477.55
State, County, and City sales tax.	
04-04 Install/Labor	\$500.00
Install of all equipment listed and install of pool cover	
04-05 Safety Equipment & Misc Parts	\$808.87
Including safety equipment for pool area, and replacing cup mounts for handrails.	
04-06 LoopLoc Safety Cover	\$2,100.00

Project Total

\$117,456.39

Client Signature

Date

Contractor Signature

Date

