



**MEETING DATE:** 5/3/2022

**DEPARTMENT:** Administration

**AGENDA ITEM:** Bill No. 2937-22, Approval of the Issuance of Tax Increment Revenue Bonds (Smithville Commons Project), Series 2022 - first reading

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**REQUESTED BOARD ACTION:**

A motion for approval of Bill No. 2937-22, Approval of the Issuance of Tax Increment Revenue Bonds (Smithville Commons Project), Series 2022 - first reading by title only.

**SUMMARY:**

In October of 2021, the developers of the Marketplace TIF (the "TIF") approached the City's special counsel with a request to determine the City's interest in issuing tax increment revenue bonds (the "TIF Bonds") to make payment of reimbursable project costs to the Developer relating to the Marketplace TIF and the Smithville Commons Community Improvement District (the "CID"). Staff has met with special counsel Gilmore and Bell as well as financial advisors Piper Sandler to understand the overall process and steps that are expected of the City.

Issuance of TIF Bonds would be completed by the City, with all costs related to the financing to be paid from the proceeds of the TIF Bonds and the Developer. The TIF bonds would be secured and payable solely by TIF revenues and CID revenues generated by the project available after all distributions are made to the City and other taxing districts. No City obligation would exist to cover any revenue shortfall.

To complete the process of issuing TIF Bonds, a Funding Agreement was drafted to ensure certain costs were paid by the Developer and not provided by the City, and was approved by the Board on January 18, 2022.

Prior to the issuance of the TIF Bonds, a Bond Revenue Study (the "Revenue Study") was required to project the revenue generation of the TIF and the CID to determine if the revenues would be sufficient to make debt service payments on the TIF Bonds. The authorization of this study required the City to release a Request for Proposal. RFP #22-10 was released on January 26, 2022 and closed on February 7, 2022 at 10:00 AM. The Board approved a contract with PGAV Planners, LLC to complete the attached Revenue Study on February 15, 2022.

The Revenue Study projects both future retail sales, along with the resulting Economic Activity Taxes ("EATs") and CID revenues, and real property assessed valuations, along with projected Payments In Lieu of Taxes ("PILOTs"). Over the remaining life of the TIF (the TIF expiration date is 10/2/2040), the projected revenue equals \$25,318,544.

Based on preliminary debt service schedules provided by UMB Bank, n.a. ("UMB"), as placement agent (attached to this RFA), the annual revenue is expected to be 1.4 times

the projected annual debt service on the bonds. The expected annual surpluses (revenues over debt service) will initially fund a separate business interruption fund and then to begin redeeming bonds prior to their stated maturity. Based on the Revenue Study and the preliminary debt service estimates, it is expected that the TIF Bonds could be fully repaid by the year 2035.

The impact on the City of issuing the TIF Bonds will be minimal. There is no impact on the City's capacity to issue any debt for its own purposes. Further, there is no pledge of any City revenue to cover the debt service on the TIF Bonds. The only potential impact on the City is its ability to issue additional debt this calendar year. UMB is contemplating simultaneously issuing the TIF Bonds in two series, one being bank-qualified. An issuer is only able to issue bonds as bank-qualified if they do not expect to issue more than \$10 million in a calendar year. By issuing a series of TIF Bonds bank-qualified, the City will have little to no capacity to issue additional debt this calendar year. However, City staff does not currently anticipate the need to issue additional debt this year.

Attached to this Ordinance are the following documents:

- (1) Trust Indenture between the City and UMB, as Trustee. This document provides for the issuance of the TIF Bonds and pledges the TIF revenues and CID revenues for the payment of principal and interest on the TIF Bonds, after required payments are made to or for the benefit of the City and certain taxing districts.
- (2) Financing Agreement between the City and the CID. This document provides that the District will appropriate its revenues for the payment of debt service on the TIF Bonds, after required payments are made to or for the benefit of the City and the CID.
- (3) Private Placement Agreement among the City, the Developer and UMB, as Placement Agent. This document provides that the City will sell the TIF Bonds to the purchasers specified by the Placement Agent upon the terms and conditions set forth in the Private Placement Agreement, so long as they are within the parameters provided for in the Ordinance.
- (4) Tax Compliance Agreement among the City, UMB as Trustee and the CID. This document sets forth certain terms and conditions relating to the use and investment of the proceeds of the TIF Bonds and to establish and maintain the tax-exempt status of the TIF Bond the interest on which is excluded from gross income for federal income tax purposes.
- (5) Preliminary Private Placement Memorandum. This document provides information related to the issuance of the TIF Bonds, including the Bond Revenue Study, information on the development, the TIF and the CID. It will be distributed by the Placement Agent in connection with the offering of the TIF Bonds. The Bond Revenue Study included in the Preliminary Private Placement Memorandum provides an analysis by an independent firm of projections of revenue expected to

be generated for payment of debt service by the TIF and the CID. It details the Projected PILOTs, EATs and CID sales tax revenues over the life of the TIF.

**PREVIOUS ACTION:**

August 1, 2017 – Approval of the Smithville Commons Tax Increment Financing Plan

August 1, 2017 – Approval of a Reimbursement Agreement with the Smithville Area Fire Protection District

August 1, 2017 – Approval of a Reimbursement Agreement with the Northland Regional Ambulance District

October 3, 2017 – Approval and designation of a Redevelopment Project and adopted tax increment financing for that Redevelopment Project

November 21, 2017 – Approval of the First Amendment to the Smithville Commons Tax Increment Financing Development Plan

November 21, 2017 – Approval of the Original Redevelopment Agreement

January 18, 2022 – Approval of the Funding Agreement Relating to Bond Issuance for Marketplace TIF

February 15, 2022 – Award of RFP #22-10 Revenue Bond Study to PGAV Planners, LLC

**POLICY OBJECTIVE:**

[Click or tap here to enter text.](#)

**FINANCIAL CONSIDERATIONS:**

[Click or tap here to enter text.](#)

**ATTACHMENTS:**

☒ Ordinance

☐ Resolution

☐ Staff Report

☒ Other:

Preliminary Debt Service Schedule

Bond Revenue Study

Trust Indenture between the City and UMB Bank, n.a., as Trustee

Financing Agreement between the City and the CID

Private Placement Agreement

Tax Compliance Agreement

Preliminary Private Placement Memorandum

☒ Contract

☐ Plans

☐ Minutes

**AN ORDINANCE AUTHORIZING THE ISSUANCE OF TAX INCREMENT REVENUE BONDS (SMITHVILLE COMMONS PROJECT), SERIES 2022 OF THE CITY OF SMITHVILLE, MISSOURI, AND AUTHORIZING CERTAIN OTHER ACTIONS AND DOCUMENTS RELATED TO THE BONDS.**

1. The City of Smithville, Missouri (the "City") is authorized and empowered under the Revised Statutes of Missouri, as amended, to issue bonds for the purpose of providing funds to finance the costs of certain redevelopment projects.

2. A plan for redevelopment known as the "Smithville Commons Tax Increment Financing Plan" (the "Original Redevelopment Plan"), as amended by the First Amendment to the Smithville Commons Tax Increment Financing Plan (the "First Amended Plan," together with the Original Redevelopment Plan, the "Redevelopment Plan") for an area designated therein as the redevelopment area (the "Redevelopment Area"), as legally described in the Redevelopment Plan, has been prepared and reviewed by the Tax Increment Financing Commission of the City of Smithville, Missouri (the "Commission") and the City, pursuant to the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865, inclusive, of the Revised Statutes of Missouri, as amended (the "TIF Act").

3. On August 1, 2017, the Board of Aldermen adopted (a) Ordinance No. 2969-17 (i) approving the Redevelopment Plan and finding the Redevelopment Area to be a "blighted area" within the meaning of the TIF Act and (ii) designating Development Associates Smithville, LLC, a Missouri limited liability company (the "Developer"), as the developer to implement the Redevelopment Projects of the Redevelopment Plan (as therein defined), (b) Ordinance No. 2971-17, authorizing the execution and delivery of a contract (the "Redevelopment Agreement") between the City and the Developer, and (c) Ordinance No. 2972-17 authorizing the execution and delivery of a Reimbursement Agreement with the Northland Regional Ambulance District and a Reimbursement Agreement with the Smithville Area Fire Protection District to provide for the reimbursement of revenues to the respective taxing jurisdiction (the "Reimbursement Agreements").

4. On October 3, 2017, the Board of Aldermen adopted Ordinance No. 2970-17 which approved and designated an area (the "Redevelopment Project") within the Redevelopment Area for redevelopment contemplated as a commercial and retail development and adopted tax increment financing for the Redevelopment Project.

5. On November 21, 2017, the Board of Aldermen adopted Ordinance No. 2986-17 which approved the First Amended Plan and the First Amendment to the Redevelopment Agreement, which provided for an amended capital contribution to the Smithville School District.

6. The Smithville Commons Community Improvement District (the "District") is authorized and empowered under the Missouri Community Improvement District Act, Sections 67.1401 through 67.1571 of the Revised Statutes of Missouri, as amended (the "CID Act"), to fund, promote, plan, design, construct, improve, maintain, and operate certain improvements, or to assist in any such activity. Pursuant to the CID Act, on August 1, 2017, Ordinance No. 2974-17

was approved by the Board of Aldermen creating the District for the purpose of funding certain improvements and services within the Redevelopment Area (the "CID Project"). The voters of the District have approved the imposition of a sales tax at the rate of 1.0% for the purpose of paying the cost of the CID Project and financing the costs of formation and operation of the District.

5. In order to provide financing for reimbursable project costs as provided in the Redevelopment Plan and the Redevelopment Agreement, the City has determined that it is in the best interest of the City (a) to issue its Tax Increment Revenue Bonds (Smithville Commons Project), Series 2022 (the "Bonds") for the purpose of (i) financing reimbursable project costs described under the Redevelopment Agreement (the "Project"), (ii) funding a debt service reserve for the Bonds, and (iii) paying the costs of issuance of the Bonds.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMAN OF THE CITY OF SMITHVILLE, MISSOURI, AS FOLLOWS:**

**Section 1. Approval of Execution and Delivery of the Bonds.** The City hereby approves the execution, delivery and sale by the City of the Bonds for the purpose of (a) financing costs of the Project, (b) funding a debt service reserve for the Bonds, and (c) paying the costs of issuance of the Bonds. The Bonds shall be secured as provided in the herein approved Indenture. The Bonds may be issued in one or multiple series, including on a taxable basis, and shall be sold on the terms as provided in the herein approved Private Placement Agreement among the City, the Developer and UMB Bank, N.A., as placement agent (the "Placement Agent"); provided that (1) a series of taxable Bonds may be issued in a principal amount not to exceed \$3,000,000, shall bear interest at various interest rates not to exceed a true interest cost of 4.25% per annum, shall have a final maturity not later than 2031 and shall not be subject to optional redemption prior to maturity, (2) a series of tax-exempt Bonds shall be issued in a principal amount not to exceed \$13,000,000, shall bear interest at various interest rates not to exceed a true interest cost of 5.00% per annum, shall have a final maturity not later than 2039, and shall be subject to optional redemption prior to maturity no later than 2031.

**Section 2. Authorization of Documents.** The City is hereby authorized to enter into the following documents (the "City Documents"), in substantially the forms on file in the office of the City Clerk, with such changes therein as shall be approved by the officers of the City executing such documents, such officers' signatures thereon being conclusive evidence of their approval thereof:

- (a) Trust Indenture (the "Indenture"), between the City and UMB Bank, N.A., as Trustee (the "Trustee"), pursuant to which the Bonds shall be issued;
- (b) Financing Agreement (the "Financing Agreement"), between the City and the District, relating to the transfer of certain moneys to the City and the Trustee for the payment of a portion of the debt service on the Bonds;
- (c) Private Placement Agreement (the "Private Placement Agreement") by and among the City, the Developer and the Placement Agent pursuant to which the City will sell the Bonds to the purchasers specified by the Placement Agent upon the terms and conditions as set forth in the Private Placement Agreement; and

- (d) Tax Compliance Agreement among the City, the Trustee and the District entered into in order to set forth certain representations, facts, expectations, terms and conditions relating to the use and investment of the proceeds of the Bonds, to establish and maintain the exclusion of interest on the portion of the Bonds expected to have interest excluded from gross income for federal income tax purposes, and to provide guidance for complying with applicable arbitrage rebate provisions of Code § 148(f) as set forth in the Tax Compliance Agreement.

**Section 3. Preliminary and Final Private Placement Memorandum.** The information related to the City contained in the Preliminary Private Placement Memorandum, in the form filed in the records of the City, is hereby approved, and the information related to the City contained in the final Private Placement Memorandum is hereby authorized and approved by supplementing, amending and completing the Preliminary Private Placement Memorandum, with such changes and additions thereto as are necessary to conform to and describe the transactions related to the Bonds. The use and public distribution of the Private Placement Memorandum by the Placement Agent in connection with the reoffering of the Bonds is hereby authorized. The proper officials of the City are hereby authorized to execute and deliver a certificate pertaining to information related to the City contained in such Private Placement Memorandum as prescribed therein, dated as of the date of payment for and delivery of the Bonds.

**Section 4. Execution of Documents.** The City is hereby authorized to enter into and the Mayor, the City Administrator, the City Clerk and other officials and officers of the City are hereby authorized and directed to execute and deliver, for and on behalf of and as the act and deed of the City, 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 5. Severability.** The sections, paragraphs, sentences, clauses and phrases of this Ordinance shall be severable. In the event that any such section, paragraph, sentence, clause or phrase of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining portions of this Ordinance are valid, unless the court finds the valid portions of the Ordinance are so essential to and inseparably connected with and dependent upon the void portion that it cannot be presumed that the City Council has enacted the valid portions without the void ones, or unless the court finds that the valid portions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

**Section 6. Effective Date.** This Ordinance shall take effect and be in full force from and after the date of its passage by the City Council and approval by the Mayor.

*[remainder of page intentionally left blank]*

**PASSED** by the Board of Aldermen, and **APPROVED** by the Mayor, of the City of Smithville, Missouri, this \_\_\_\_ day of \_\_\_\_\_ 2022.

(SEAL)

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Damien Boley, Mayor

ATTEST:

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Linda Drummond, City Clerk

First Reading: 5/3/2022

Second Reading:

Ordinance  
Tax Increment Revenue Bonds  
(Smithville Commons Project), Series 2022



## City of Smithville, MO

Tax Increment Revenue Bonds

(Smithville Commons Project)

Series 2022A (taxable)

## Pricing Summary

Maturity	Type of Bond	Coupon	Yield	Maturity Value	Price	Dollar Price
12/01/2022	Serial Coupon	3.150%	3.150%	465,000.00	100.000%	465,000.00
12/01/2023	Serial Coupon	3.350%	3.350%	250,000.00	100.000%	250,000.00
12/01/2024	Serial Coupon	3.500%	3.500%	285,000.00	100.000%	285,000.00
12/01/2025	Serial Coupon	3.650%	3.650%	335,000.00	100.000%	335,000.00
12/01/2026	Serial Coupon	3.800%	3.800%	375,000.00	100.000%	375,000.00
12/01/2027	Serial Coupon	3.950%	3.950%	415,000.00	100.000%	415,000.00
12/01/2028	Serial Coupon	4.100%	4.100%	445,000.00	100.000%	445,000.00
12/01/2029	Serial Coupon	4.250%	4.250%	150,000.00	100.000%	150,000.00
<b>Total</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>\$2,720,000.00</b>	<b>-</b>	<b>\$2,720,000.00</b>

## Bid Information

Par Amount of Bonds	\$2,720,000.00
Gross Production	\$2,720,000.00
Bid (100.000%)	2,720,000.00
Total Purchase Price	\$2,720,000.00
Bond Year Dollars	\$10,570.67
Average Life	3.886 Years
Average Coupon	3.8943460%
Net Interest Cost (NIC)	3.8943460%
True Interest Cost (TIC)	3.8854864%

## City of Smithville, MO

Tax Increment Revenue Bonds  
(Smithville Commons Project)  
Series 2022B (tax-exempt, BQ)

### Pricing Summary

Maturity	Type of Bond	Coupon	Yield	Maturity Value	Price	Dollar Price
12/01/2029	Serial Coupon	3.550%	3.550%	335,000.00	100.000%	335,000.00
12/01/2030	Serial Coupon	3.750%	3.750%	520,000.00	100.000%	520,000.00
12/01/2031	Serial Coupon	3.950%	3.950%	560,000.00	100.000%	560,000.00
12/01/2032	Serial Coupon	4.100%	4.100%	600,000.00	100.000%	600,000.00
12/01/2033	Serial Coupon	4.200%	4.200%	645,000.00	100.000%	645,000.00
12/01/2034	Serial Coupon	4.300%	4.300%	690,000.00	100.000%	690,000.00
12/01/2035	Serial Coupon	4.400%	4.400%	740,000.00	100.000%	740,000.00
12/01/2036	Serial Coupon	4.500%	4.500%	790,000.00	100.000%	790,000.00
12/01/2037	Serial Coupon	4.600%	4.600%	850,000.00	100.000%	850,000.00
12/01/2039	Term 1 Coupon	4.750%	4.750%	4,265,000.00	100.000%	4,265,000.00
<b>Total</b>	-	-	-	<b>\$9,995,000.00</b>	-	<b>\$9,995,000.00</b>

#### Bid Information

Par Amount of Bonds	\$9,995,000.00
Gross Production	\$9,995,000.00
Bid (100.000%)	9,995,000.00
Total Purchase Price	\$9,995,000.00
Bond Year Dollars	\$143,280.67
Average Life	14.335 Years
Average Coupon	4.5253801%
Net Interest Cost (NIC)	4.5253801%
True Interest Cost (TIC)	4.5073137%

## City of Smithville, MO

Tax Increment Revenue Bonds

(Smithville Commons Project)

Series 2022A (taxable) and Series 2022B (tax-exempt, BQ)

## Debt Service Schedule

Date	Principal	Coupon	Interest	Total P+I
12/01/2022	465,000.00	3.150%	290,750.66	755,750.66
12/01/2023	250,000.00	3.350%	530,510.00	780,510.00
12/01/2024	285,000.00	3.500%	522,135.00	807,135.00
12/01/2025	335,000.00	3.650%	512,160.00	847,160.00
12/01/2026	375,000.00	3.800%	499,932.50	874,932.50
12/01/2027	415,000.00	3.950%	485,682.50	900,682.50
12/01/2028	445,000.00	4.100%	469,290.00	914,290.00
12/01/2029	485,000.00	3.766%	451,045.00	936,045.00
12/01/2030	520,000.00	3.750%	432,777.50	952,777.50
12/01/2031	560,000.00	3.950%	413,277.50	973,277.50
12/01/2032	600,000.00	4.100%	391,157.50	991,157.50
12/01/2033	645,000.00	4.200%	366,557.50	1,011,557.50
12/01/2034	690,000.00	4.300%	339,467.50	1,029,467.50
12/01/2035	740,000.00	4.400%	309,797.50	1,049,797.50
12/01/2036	790,000.00	4.500%	277,237.50	1,067,237.50
12/01/2037	850,000.00	4.600%	241,687.50	1,091,687.50
12/01/2038	905,000.00	4.750%	202,587.50	1,107,587.50
12/01/2039	3,360,000.00	4.750%	159,600.00	3,519,600.00
<b>Total</b>	<b>\$12,715,000.00</b>	<b>-</b>	<b>\$6,895,653.16</b>	<b>\$19,610,653.16</b>

### Yield Statistics

Bond Year Dollars	\$153,851.33
Average Life	12.100 Years
Average Coupon	4.4820237%
Net Interest Cost (NIC)	4.4820237%
True Interest Cost (TIC)	4.4559717%
Bond Yield for Arbitrage Purposes	4.4559717%
All Inclusive Cost (AIC)	4.8350267%

### IRS Form 8038

Net Interest Cost	4.4820237%
Weighted Average Maturity	12.100 Years

## City of Smithville, MO

Tax Increment Revenue Bonds

(Smithville Commons Project)

Series 2022A (taxable) and Series 2022B (tax-exempt, BQ)

## Total Issue Sources And Uses

Dated 05/19/2022 | Delivered 05/19/2022

	Series 2022A (taxable)	Series 2022B (tax-exempt)	Issue Summary
<b>Sources Of Funds</b>			
Par Amount of Bonds	\$2,720,000.00	\$9,995,000.00	\$12,715,000.00
<b>Total Sources</b>	<b>\$2,720,000.00</b>	<b>\$9,995,000.00</b>	<b>\$12,715,000.00</b>
<b>Uses Of Funds</b>			
Costs of Issuance	90,092.65	331,057.35	421,150.00
Deposit to Debt Service Reserve Fund (DSRF)	236,935.75	870,651.75	1,107,587.50
Deposit to Project Construction Fund	2,390,975.00	8,792,000.00	11,182,975.00
Rounding Amount	1,996.60	1,290.90	3,287.50
<b>Total Uses</b>	<b>\$2,720,000.00</b>	<b>\$9,995,000.00</b>	<b>\$12,715,000.00</b>

## City of Smithville, MO

Tax Increment Revenue Bonds

(Smithville Commons Project)

Series 2022A (taxable) and Series 2022B (tax-exempt, BQ)

## Detail Costs Of Issuance

Dated 05/19/2022 | Delivered 05/19/2022

### COSTS OF ISSUANCE DETAIL

Financial Advisor	\$63,575.00
Bond Counsel	\$95,000.00
Underwriter's Counsel	\$30,000.00
Trustee & Counsel Fees	\$3,000.00
Trustee Origination	\$2,500.00
DTC	\$800.00
CUSIP	\$550.00
Placement Agent fee	\$190,725.00
Developer Counsel Fees	\$20,000.00
Revenue Study Consultant	\$15,000.00
<b>TOTAL</b>	<b>\$421,150.00</b>

## City of Smithville, MO

Tax Increment Revenue Bonds

(Smithville Commons Project)

Series 2022A (taxable) and Series 2022B (tax-exempt, BQ)

## Coverage Ratio

Date	Total Revenues	Total D/S	Coverage
12/01/2022	1,051,952.00	757,001.33	1.3896303x
12/01/2023	1,092,293.00	782,855.00	1.3952686x
12/01/2024	1,127,048.00	809,480.00	1.3923111x
12/01/2025	1,187,072.00	849,505.00	1.3973691x
12/01/2026	1,223,397.00	877,277.50	1.3945382x
12/01/2027	1,260,167.00	903,027.50	1.3954913x
12/01/2028	1,280,799.00	916,635.00	1.3972835x
12/01/2029	1,308,768.00	938,390.00	1.3946952x
12/01/2030	1,330,234.00	952,777.50	1.3961644x
12/01/2031	1,359,260.00	973,277.50	1.3965801x
12/01/2032	1,381,594.00	991,157.50	1.3939197x
12/01/2033	1,411,719.00	1,011,557.50	1.3955895x
12/01/2034	1,434,955.00	1,029,467.50	1.3938808x
12/01/2035	1,466,220.00	1,049,797.50	1.3966694x
12/01/2036	1,490,395.00	1,067,237.50	1.3964980x
12/01/2037	1,522,845.00	1,091,687.50	1.3949459x
12/01/2038	1,547,996.00	1,107,587.50	1.3976286x
12/01/2039	3,796,851.00	3,519,600.00	1.0787734x
12/01/2040	1,260,155.00	-	-
<b>Total</b>	<b>\$27,533,720.00</b>	<b>\$19,628,318.83</b>	<b>-</b>

# SMITHVILLE COMMONS PROJECT BOND REVENUE STUDY

Prepared for:  
City of Smithville, MO

April 25, 2022

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**PCAV**PLANNERS  
ST. LOUIS, MISSOURI

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## SECTION 1 - INTRODUCTION

### NATURE OF THE ASSIGNMENT AND PURPOSE OF THE REPORT

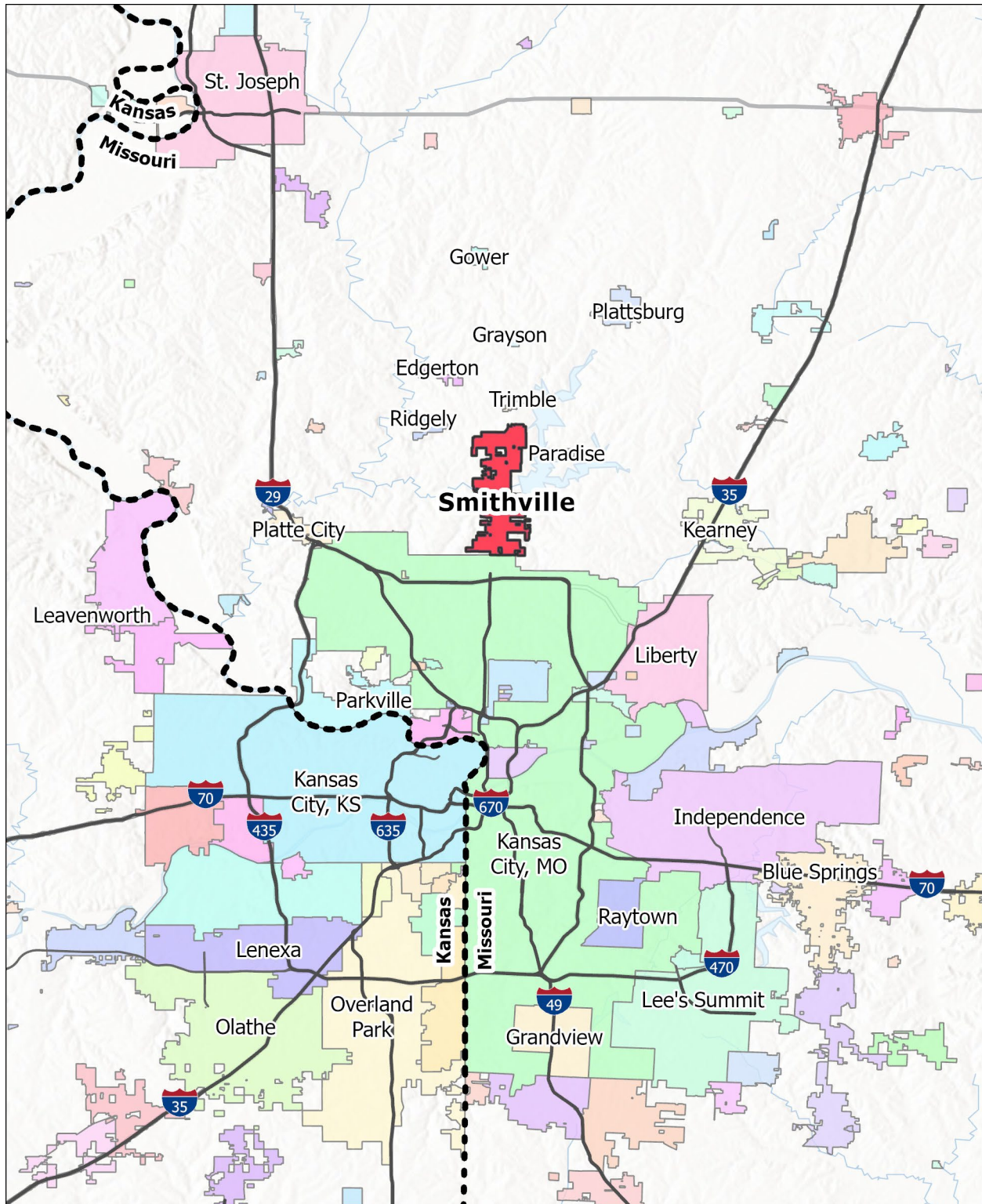
On August 1, 2017, the City of Smithville, Missouri (the "City") adopted Ordinance number 2969-17 approving the Smithville Commons Tax Increment Financing Redevelopment Plan ("the Original Plan"), establishing the Smithville Commons Redevelopment Area (the "Redevelopment Area" or "Area"). On November 21, 2017, the City approved Ordinance No. 2986-17, the First Amendment to the Smithville Commons Tax Increment Financing Redevelopment Plan (the First Amendment together with the Original Plan, hereinafter referred to as "the Plan"). This study addresses the Smithville Commons retail development project (the "Redevelopment Project" or "Project") under development within the Area. The map below shows the boundary of the Redevelopment Area.

Figure 1 – Smithville Commons Redevelopment Area



PGAV Planners, LLC ("PGAV") has developed an independent analysis of the taxable sales, sales tax revenue generation, and property tax revenue generation potential of economic activity within the Area. The revenues will be used to make payments on bonds (the "Bonds").

PGAV, headquartered in St. Louis, Missouri, is a nationally recognized firm with expertise in the preparation of bond feasibility studies. PGAV has performed analyses of historic trends and projections of real property taxes, sales taxes and taxes associated with various types of tax increment financing districts and other special taxing districts in support of bond financings and refundings. Recent locations where PGAV has been involved with financial feasibility analyses include St. Louis, Missouri; Columbus, Ohio; Chicago, Illinois; Bristol, Virginia; New Orleans, Louisiana; and Fountain, Colorado. PGAV has personnel who are members of the National Federation of Municipal Analysts ("NFMA"). PGAV Planners is a member of the Council of Development Finance Agencies ("CDFA").



## Regional Location Overview

Smithville Commons  
Smithville, Missouri

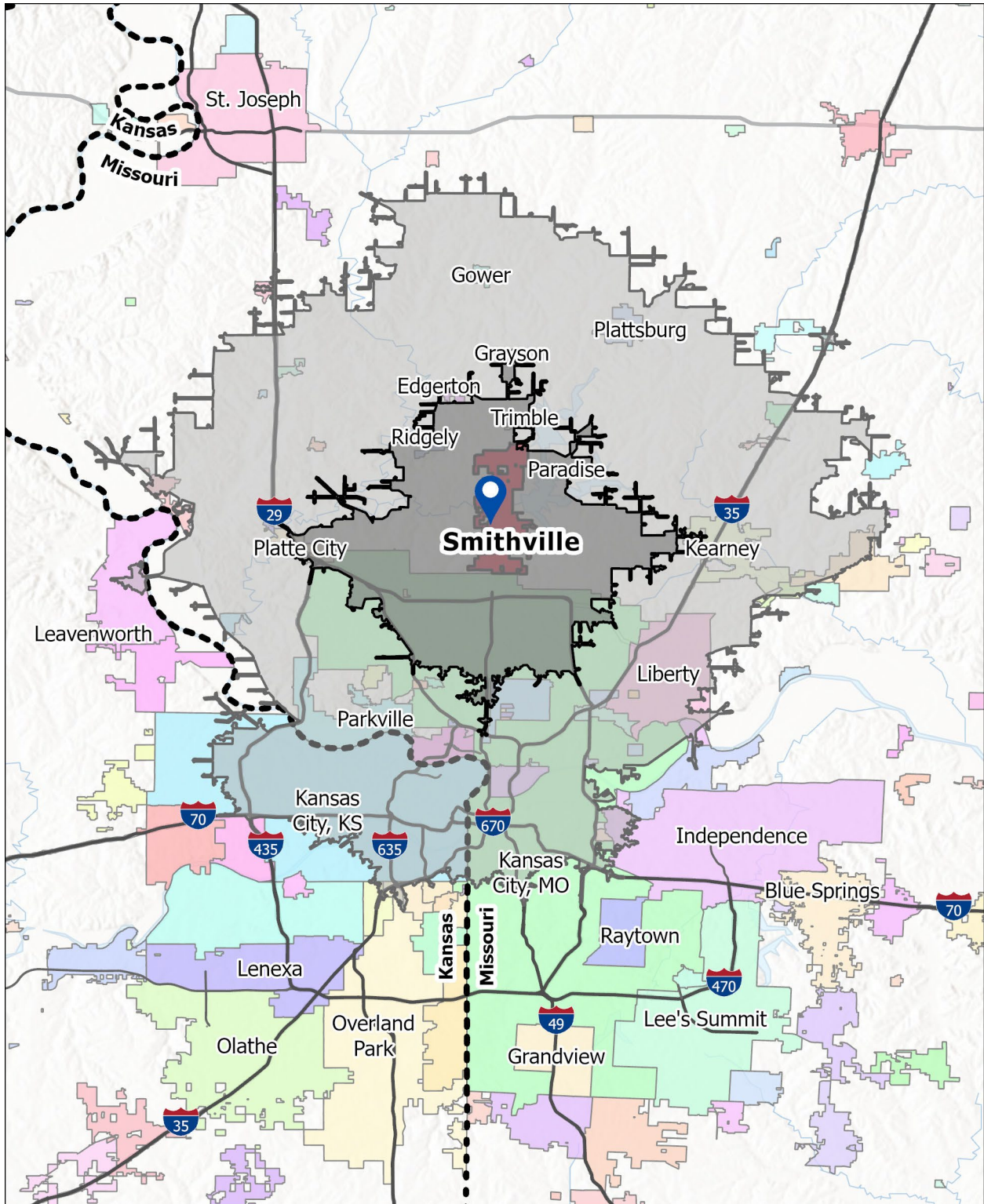
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PGAV PLANNERS LLC



## TRADE AREA OVERVIEW

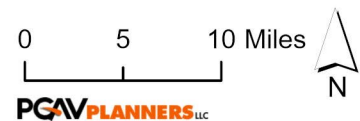
Two trade areas are defined as drivetime buffers based on visitor data which is further discussed later in this report. The Primary Trade Area ("PTA") is defined as the area within a fifteen-minute drive of the Project. The PTA primarily encompasses Smithville, Ridgely, Edgerton, Grayson, Trimble, Paradise, Platte City, and portions of northern Kansas City, MO. The Secondary Trade Area ("STA") is defined as the area within a thirty-minute drive of the Area. The Project's connectivity to major transportation corridors by way of its proximity to Interstate 435 results in a relatively large STA. The STA extends south of the Missouri River into downtown Kansas City, Missouri and Kansas, Wyandotte, KS, Independence, MO, beyond Kearney, MO to the east, beyond Gower, MO to the north, and as far west as Leavenworth, KS. Due to Smithville's location at the northern edge of the metro's urbanized area, nearer to more rural suburbs, it is likely that the Project will attract more of its STA customers from areas within the STA located north of the Missouri River. These trade areas are shown on the map on the following page.





## Trade Area Overview

Smithville Commons  
Smithville, Missouri



## SECTION 2 - DEMOGRAPHICS ANALYSIS

### POPULATION AND HOUSEHOLDS

Approximately 35 percent of Missouri's population lives in the Kansas City, MO-KS MSA. In 2021, the MSA was home to more than 2 million residents and had grown in population by 20 percent since 2000. Clay County is home to approximately 12 percent of the MSA's population and has grown at an annualized rate 1.8 percent since 2000, faster than growth in the MSA (1.1%) and Missouri (0.6%) during the same period. In 2021, Smithville was home to 10,299 residents and has grown in population at an annualized rate of 3.3 percent since 2000; nearly doubling in population and growing faster than the county, MSA, and the State. Smithville's population is projected to grow at an annualized rate 1.5 percent through 2026, faster than the projected growth in the Kansas City MSA, when the city's population is estimated to reach 11,113 residents.

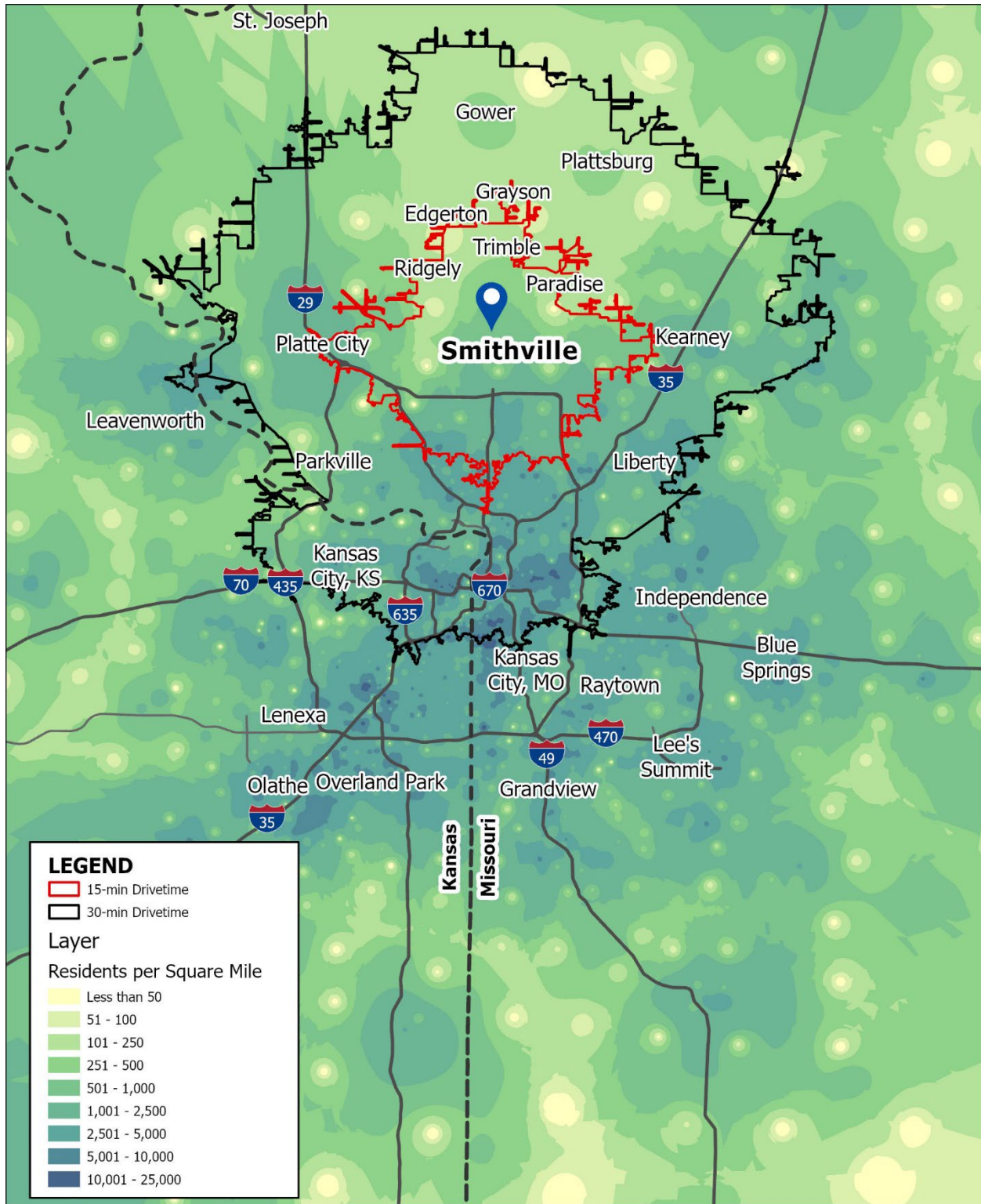
In 2021, there were an estimated 80,788 residents living in the PTA. The PTA has grown at annualized rate 3.2 percent since 2000, nearly doubling its population from 2000. The PTA's population is estimated to grow at a rate of 1.6 percent, faster than all geographies study for the analysis, through 2026 when the PTA's population is estimated to reach 87,319 residents. Based on the PTA's current average household size of 2.58 and projected population growth, new residents are expected to create demand for 2,561 new housing units within a 15-minute drive time of the Project. While most of the metropolitan area's existing population lives inside of the I-435 and I-470 rings, outer ring cities have experienced the greatest growth in population in recent years. It is estimated that this trend will continue through 2026, with the Northlands projected to continue growing in population while areas in the urban core projected to decline. The table below and maps on the following pages show population trends within the PTA and STA.

Table 1 – Population and Households

<b>Population</b>						
	<b>Primary Market Area 15-minute Drive Time Area</b>	<b>Secondary Market Area 30-minute Drive Time Area</b>	<b>City of Smithville</b>	<b>Clay County</b>	<b>Kansas City, MO-KS MSA</b>	<b>State of Missouri</b>
<b>Population Totals</b>						
2000 Population	46,164	526,939	5,757	184,006	1,811,254	5,595,211
2010 Population	67,219	565,419	8,434	221,939	2,009,342	5,988,927
2021 Population	80,788	629,973	10,299	252,741	2,188,599	6,249,983
2026 Population (Est.)	87,319	662,656	11,113	267,621	2,281,512	6,382,827
<b>Population Change</b>						
Annual Pop Growth Rate 2000 - 2021	3.2%	1.0%	3.3%	1.8%	1.1%	0.6%
Annual Pop Growth Rate (Est.) 2021 - 2026	1.6%	1.0%	1.5%	1.2%	0.8%	0.4%
<b>Household Size</b>						
2020 Household Size	2.55	2.46	2.68	2.50	2.50	2.43
Households with Children	37%	33%	38%	35%	34%	31%
<b>Housing Units Needed</b>						
Est. Additional Residents by 2025	6,531	32,683	814	14,880	92,913	132,844
Housing Units Needed	2,561	13,286	304	5,952	37,165	54,668

Source: U.S. Census, ESRI (2021)





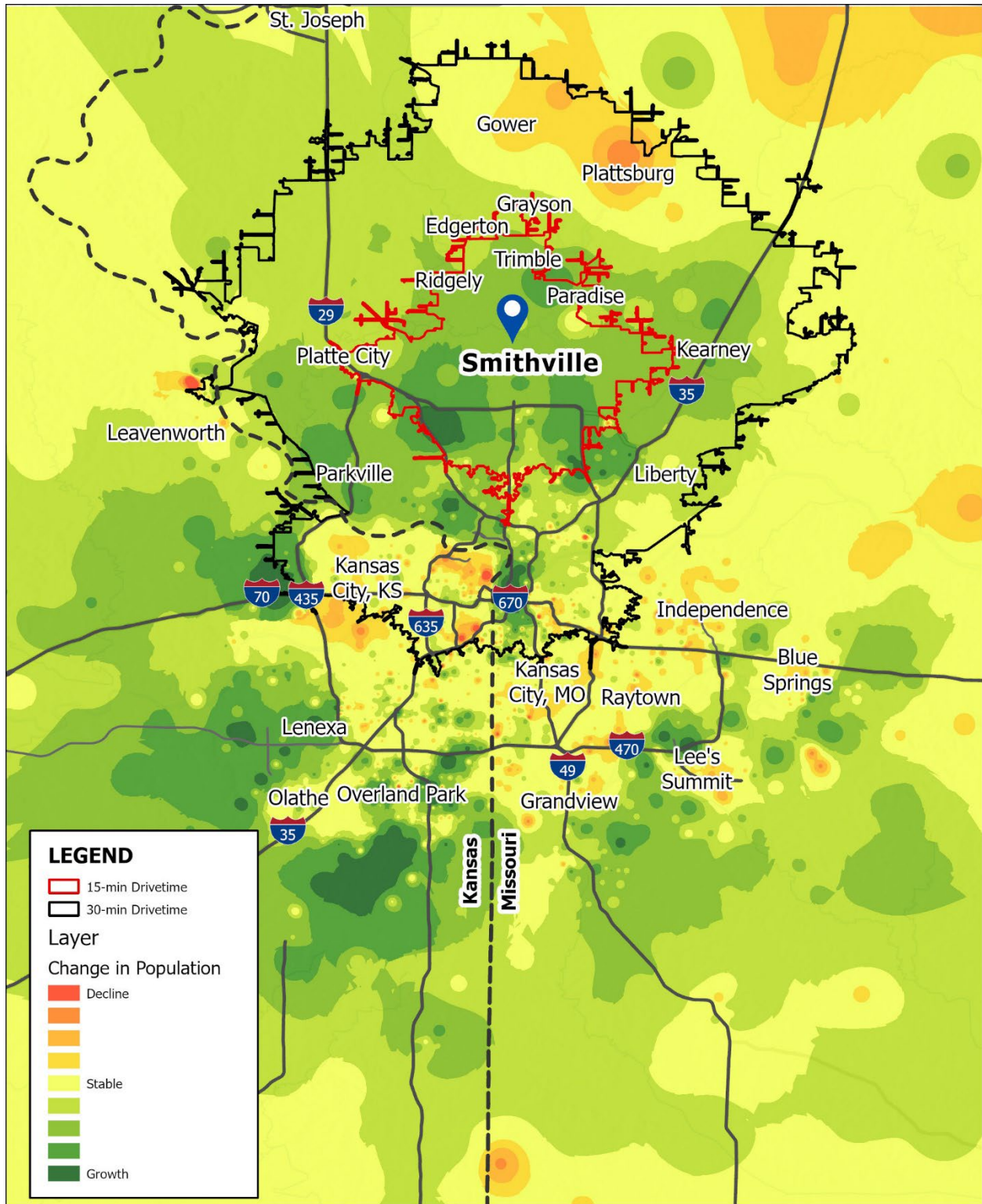
## 2021 Population Density

Smithville Commons  
Smithville, Missouri

0 4.95 9.9 Miles

PGAV PLANNERS<sup>UC</sup>

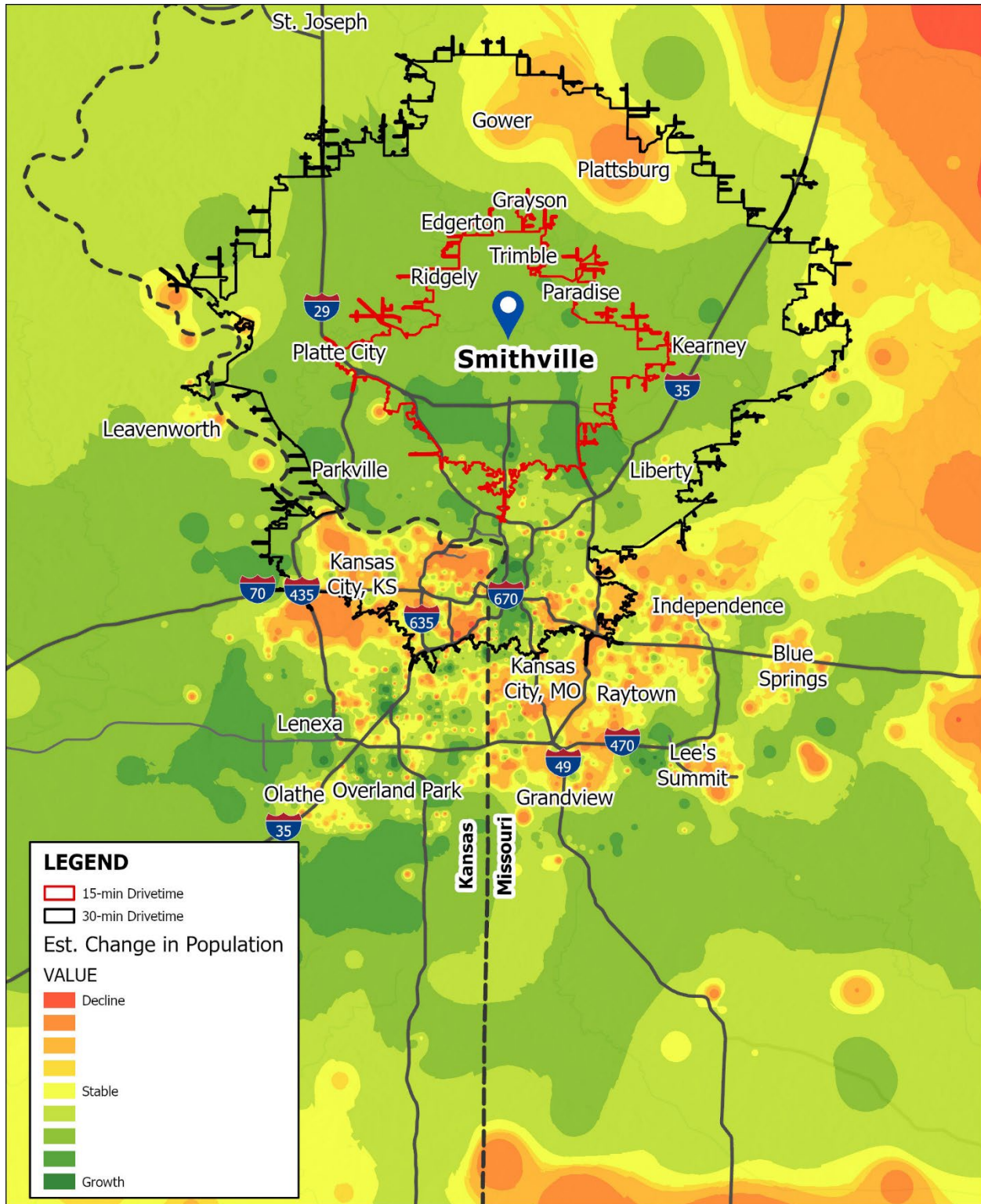




## Change in Population 2010 - 2021

Smithville Commons  
Smithville, Missouri





## Projected Change in Population 2021 - 2026

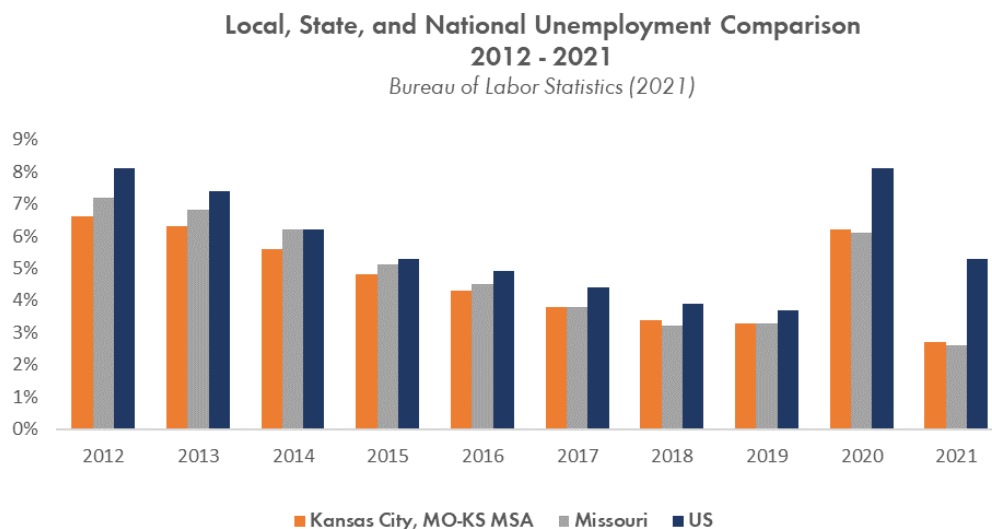
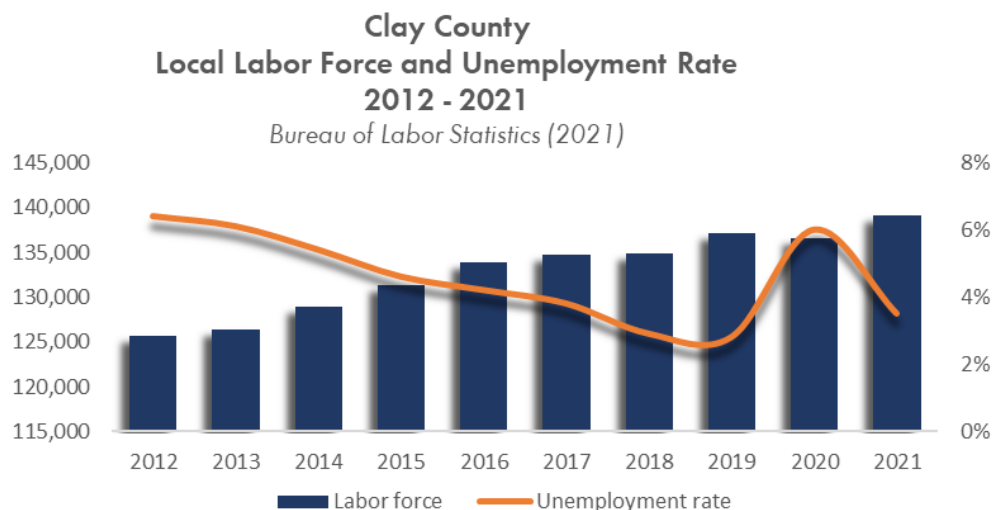
Smithville Commons  
Smithville, Missouri

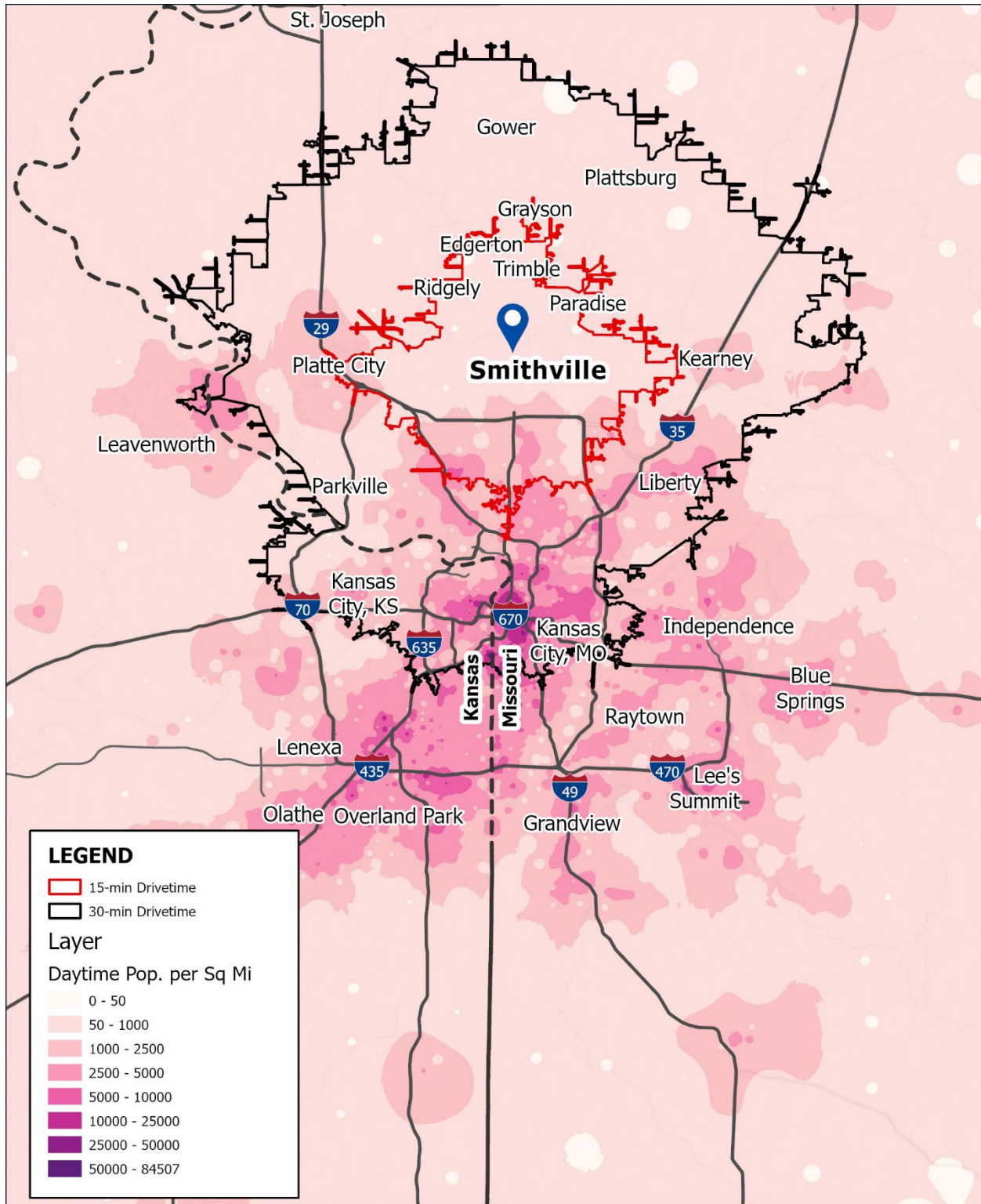
0 5 10 Miles  
PGAV PLANNERS<sup>uc</sup>



## EMPLOYMENT

The Kansas City, MO-KS MSA has a diverse economy anchored by government, services (education, health, leisure/hospitality, professional), retail trade, manufacturing, and transportation/warehousing/logistics sectors. Ford Motor Co., Honeywell, Hallmark Cards, and North Kansas City-based Cerner Corporation (Fortune 500) are among the region's largest employers. Over the past ten years, unemployment in Missouri and the Kansas City, MO-KS MSA has been lower than the national average, even during 2020 and 2021 when effects from the Covid-19 pandemic increased unemployment nationwide. The labor force in the MSA has grown since by 9.1 percent since 2012, and unemployment has declined from a high of 6.6 percent in 2012 to 2.9 percent in 2021. Unemployment in the MSA had doubled to 6.1 percent from 2019 to 2020, which is consistent with nationwide increases in unemployment associated with the Covid-19 pandemic. In 2021, unemployment in the MSA returned to the pre-COVID low of 2.9 percent. The map on the following page provides an overview of daytime population density, which identifies major employment concentrations within the Kansas City metro area.





## 2021 Daytime Population Density

Smithville Commons  
Smithville, Missouri

0 5 10 Miles

PGAV PLANNERS<sub>UC</sub>





## INCOME

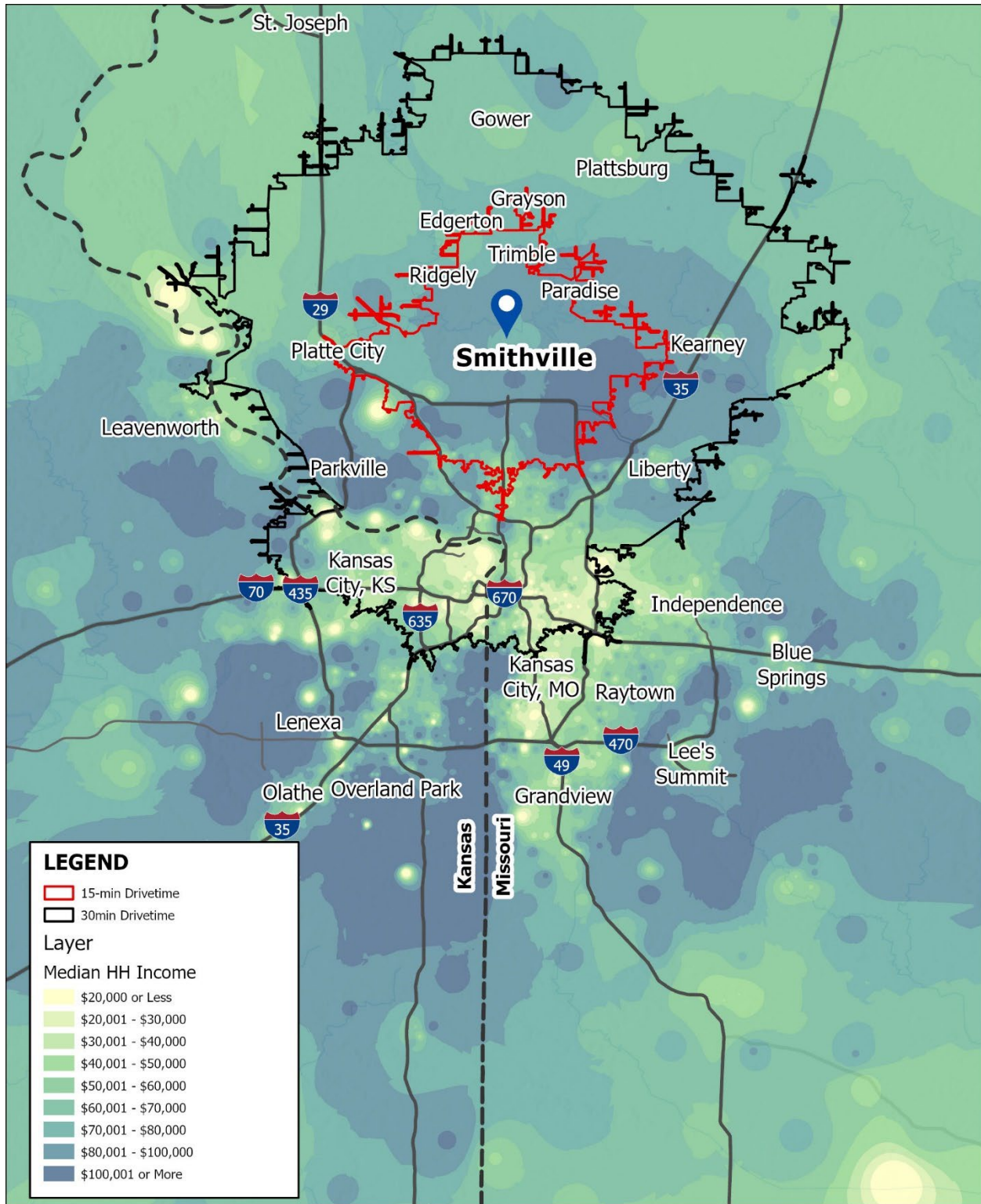
Smithville's median household income of \$74,878 is higher than the median household income in Clay County and the Kansas City MSA. Median household income in Smithville is estimated to grow at an annualized rate of 2 percent through 2026, when median household income is estimated to reach \$82,621. The PTA's median household income of \$82,071 is highest among all geographies studied for this analysis and is estimated to grow at an annualized rate of 2.2 percent through 2026 when median household income is estimated to reach \$90,714. Estimated annualized growth in median household income, an average of 2.1 percent, compares favorably across all geographies studied for this analysis. A comparison of household and per capita income is shown in the table below.

Table 2 – Household Income

Household Income	Primary Market Area 15-minute Drive Time Area	Secondary Market Area 30-minute Drive Time Area	City of Smithville	Clay County	Kansas City, MO-KS MSA	State of Missouri
<i>Income by Range</i>						
Less than \$25,000	9%	21%	13%	12%	16%	21%
\$25,000 to \$49,999	19%	24%	20%	23%	19%	23%
\$50,000 to \$74,999	17%	18%	18%	19%	18%	19%
\$75,000 to \$99,999	14%	12%	14%	14%	15%	13%
\$100,000 to \$149,999	25%	16%	23%	20%	18%	14%
\$150,000 or more	16%	10%	13%	12%	15%	11%
<i>Median Household Income</i>						
2021 Per Capita Income	\$38,139	\$30,635	\$32,565	\$33,854	\$36,452	\$31,398
2021 Median Household Income	\$82,071	\$56,382	\$74,878	\$68,149	\$70,082	\$56,668
<i>Household Income Trends</i>						
2026 Median Household Income (Est.)	\$90,714	\$62,755	\$82,621	\$76,083	\$77,639	\$62,175
2010 - 2026 Estimated Annual Increase	2.0%	2.2%	2.0%	2.2%	2.1%	1.9%

Source: U.S. Census, ESRI (2021)

The map on the following page shows median household income within the PTA and STA. The highest concentrations of the MSA's high income households are primarily located outside to the I-435 and I-470 rings, in the Northlands between the Missouri River and I-435, and along the I-35 corridor.

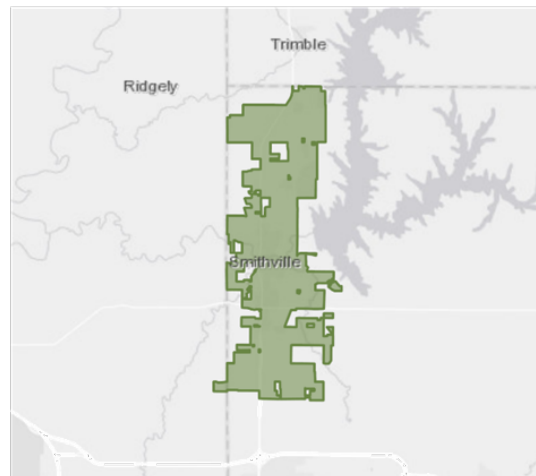


## 2021 Median Household Income

Smithville Commons  
Smithville, Missouri



## AREA OVERVIEW

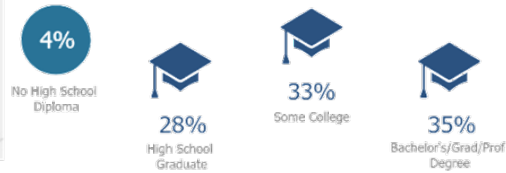


## POPULATION TRENDS AND KEY INDICATORS

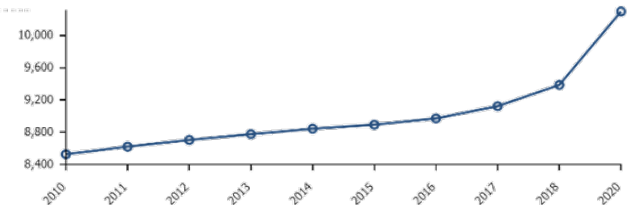
Smithville City, MO

<b>10,299</b>	<b>3,811</b>	<b>2.68</b>	<b>\$243,304</b>	<b>\$12,334</b>	<b>\$630</b>	<b>109</b>	<b>194</b>	<b>17</b>
Population	Households	Avg Size Household	Median Home Value	Average Spent on Mortgage & Basics	Median Contract Rent	Wealth Index	Housing Affordability	Diversity Index

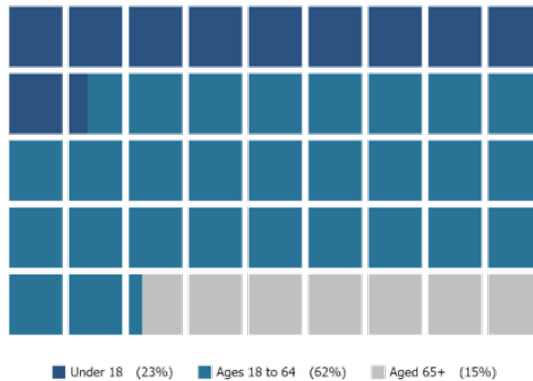
## EDUCATION



## Historical Trends: Population



## POPULATION BY AGE



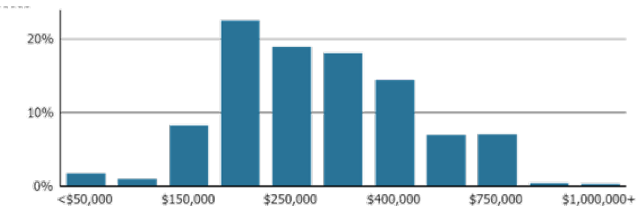
## BUSINESS



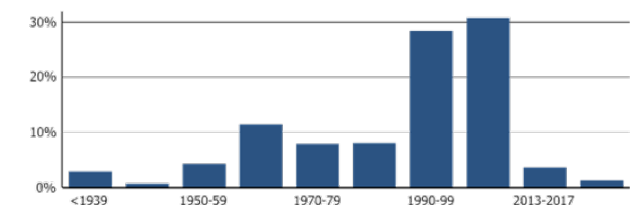
## INCOME



## Home Value



## Housing: Year Built

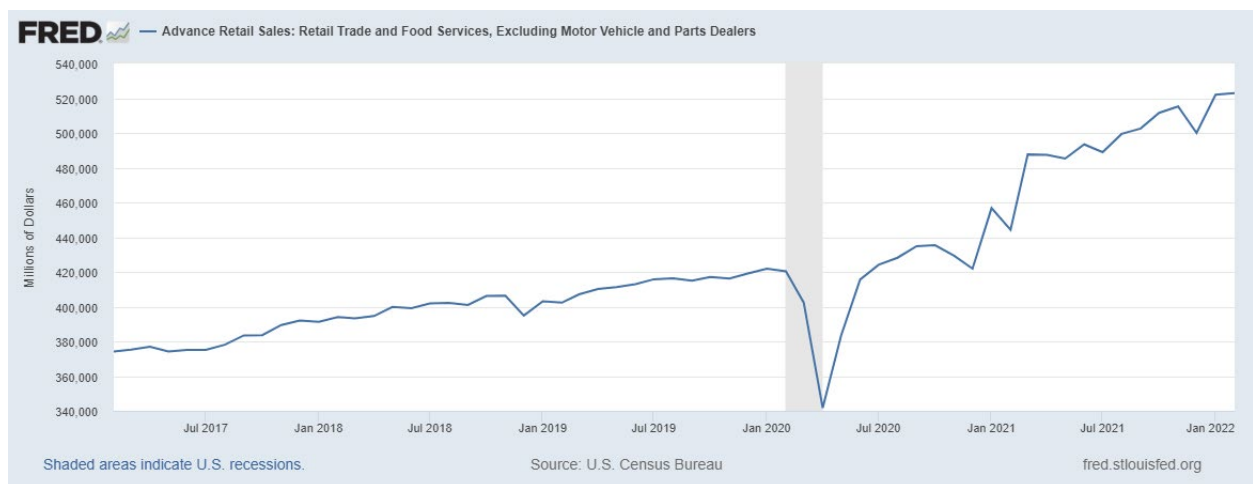


## NATIONAL ECONOMIC OUTLOOK

The Bureau of Economic Analysis' February 24, 2022 estimate of Gross Domestic Product ("GDP") stated that, in the fourth quarter of 2021, real GDP increased 7% compared to the same quarter in the prior year. This acceleration was led by an increase in exports and accelerations in inventory investment and customer spending.<sup>1</sup> A survey of forecasters by the Federal Reserve Bank of Philadelphia predicts real GDP will increase 3.9% in the first quarter of 2022.<sup>2</sup>

Figure 1, below, shows monthly nationwide retail sales (seasonally adjusted and excluding vehicles and parts dealers' sales). The source information for this figure is the U.S. Department of Commerce and the Census Bureau's monthly "Advance Monthly Sales for Retail and Food Services" release.<sup>3</sup>

*Figure 1 - Nationwide Retail Sales and Food Services Excluding Motor Vehicles and Parts Dealers*



<sup>1</sup>Bureau of Economic Analysis, "National Income and Product Accounts Gross Domestic Product"; <http://www.bea.gov/newsreleases/national/gdp/gdpnewsrelease.htm>

<sup>2</sup>Federal Reserve Bank of Philadelphia: Survey of Professional Forecasters

<sup>3</sup>The advance estimates are based on a subsample of the Census Bureau's full retail and food services sample. A stratified random sampling method is used to select approximately 5,000 retail and food services firms whose sales are then weighted and benchmarked to represent the complete universe of over three million retail and food services firms. Responding firms account for approximately 65% of the dollar volume estimate. For an explanation of the measures of sampling variability included in this report, please see: [http://www.census.gov/retail/marts/how\\_surveys\\_are\\_collected.html](http://www.census.gov/retail/marts/how_surveys_are_collected.html)

## SECTION 3 – REVENUE PROJECTIONS

### OVERVIEW OF AVAILABLE REVENUE SOURCES

There are three sources of revenue available to support the repayment of the Bonds. These sources of revenue are described in the Redevelopment Agreement entered into by and between the City and Development Associates Smithville, LLC (the “Developer”). These sources of revenue are as follows:

1. Payments In Lieu Of Taxes (“PILOTs”), as defined by the TIF Act, are one hundred percent (100%) of the incremental real property taxes generated within the Area (excluding certain taxes not captured by TIF). The change in assessed valuation is determined by subtracting a certified base assessed valuation for the Area from the equalized assessed valuation for the Area for current and future tax years. The incremental revenue is determined by multiplying the change in assessed valuation by the applicable tax levy, divided by one hundred. These revenues are deposited into the PILOTs Account of the Special Allocation Fund maintained by the County.
2. Economic Activity Taxes (“EATs”), as defined by the TIF Act, are the total additional revenue from taxes which are imposed by a municipality and other taxing districts (including the Smithville Commons Community Improvement Development District (the “District”) and excluding certain taxes not captured by TIF), and which are generated by economic activities within the Area over the amount of such taxes generated by economic activities within such Area in the calendar year prior to the adoption of the ordinance designating the Area, while tax increment financing remains in effect, but excluding personal property taxes, taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, licenses, fees or special assessments. The TIF Act definition of EATs also includes utility taxes; however, the Developer has waived all rights to any utility tax revenues and no utility tax revenues will be available for repayment of the Bonds.
3. Community Improvement District Sales Tax Revenues (“CID Sales Tax”) means an additional one-cent (1%) sales tax imposed on retail sales within Area. During the tax increment finance term, which is to say through October 2, 2040, half of CID Sales Tax revenues will be captured as EATs.



## BASIS OF REVENUE GENERATION – THE REDEVELOPMENT PROJECT

The Area's basis of revenue generation is the development of a retail shopping center anchored by a Price Chopper and also including a Domino's Pizza, Taco Bell, Burger King, Scooter's Coffee, Porter's Ace Hardware, and an additional retail space of approximately 7,800 square feet in size which is yet to be leased. Table 3, below, shows estimated sales associated with the existing and planned retail businesses within Smithville Commons. A more detailed analysis of trends and estimated performance of the Price Chopper store is provided in the following section of this report.

Table 3 – Smithville Commons Taxable Sales Estimates

Project Component	Status	Size	Units	Estimated Sales per Unit	2021	2022	2023	2024	2025	2026	2027
Price Chopper	Opened October 2020	61,613	Sq.Ft.	\$ 467	\$ 28,800,000	\$ 29,664,000	\$ 30,553,920	\$ 31,470,538	\$ 32,414,654	\$ 33,387,093	\$ 34,388,706
Porter's Ace Hardware	Opened October 2020	14,498	Sq.Ft.	\$ 155	\$ 2,250,000	\$ 2,317,500	\$ 2,387,025	\$ 2,458,636	\$ 2,532,395	\$ 2,608,367	\$ 2,686,618
Scooter's Coffeehouse	Opened July 2019	495	Sq.Ft.	\$ 1,414	\$ 700,000	\$ 721,000	\$ 742,630	\$ 764,909	\$ 787,856	\$ 811,492	\$ 835,837
Taco Bell	Opened December 2019	2,045	Sq.Ft.	\$ 645	\$ 1,320,000	\$ 1,320,000	\$ 1,359,600	\$ 1,400,388	\$ 1,442,400	\$ 1,485,672	\$ 1,530,242
Burger King	Opened December 2021	3,000	Sq.Ft.	\$ 33	\$ 100,000	\$ 1,120,000	\$ 1,153,600	\$ 1,188,208	\$ 1,223,854	\$ 1,260,570	\$ 1,298,387
Domino's Pizza	Opened Summer 2021	1,200	Sq.Ft.	\$ 442	\$ 530,000	\$ 1,060,000	\$ 1,091,800	\$ 1,124,554	\$ 1,158,291	\$ 1,193,039	\$ 1,228,831
Retail	In Lease Up	7,800	Sq.Ft.	\$ 350		\$ 390,000	\$ 780,000	\$ 1,170,000	\$ 2,340,000	\$ 2,730,000	\$ 2,811,900
Totals					\$ 33,700,000	\$ 36,592,500	\$ 38,068,575	\$ 39,577,232	\$ 41,899,449	\$ 43,476,233	\$ 44,780,520

### Price Chopper

Price Chopper is a Kansas City area-based, family-owned grocery chain. Founded as a single fruit stand in 1948, the chain now operates fifty-two (52) stores throughout the Kansas City metro area and has become regarded among the best regional community grocers in the U.S. In 2020, a new Price Chopper located within the District.

### Principal Competitors

There are currently nine Price Chopper stores operating within the STA. The nearest store to the Smithville location in Platte City, a 15- to 20-minute drive west. Price Chopper operates large-format grocery stores ranging from approximately 50,000 square feet to 80,000 square feet. Competitors in the Northlands area include: Walmart, Aldi, Hy-Vee, and Sprouts Farmer's Market. Walmart and Aldi may be considered Price Chopper's principal competitors in terms of product lines and "low-cost" price structures for broad consumer appeal. Whereas, Hy-Vee and Sprouts Farmers Market specialize in natural and organic foods in the *Specialty Food Stores* (NAICS 72223) market.

### Market Potential and Absorption

PGAV analyzed consumer spending, retail demand, and visitation data to estimate the market potential and absorption for Price Chopper.

The Spending Potential Index (SPI) is a measure of consumer spending patterns and represents household spending on products and services relative to a national average of 100. As an example, an SPI of 120 means that households within the trade area spend 20 percent more than the average U.S. household in that category. This index is helpful for understanding retail potential in that it identifies the types of retail and service categories

in which consumers within each trade area tend to spend more money, and those categories in which new businesses may be supported by these spending patterns. In 2021, households in the PTA had an SPI of 104. This indicates that households in the PTA were 4 percent more likely than the average U.S. household to spend money on food at home (groceries), spending \$5,686 on average per household.

The PTA's the *Food Services & Drinking Places* (NAICS 722) industry, which includes traditional grocery stores, has a retail leakage/surplus factor of 16.6. This represents a condition where demand exceeds supply, indicating that some retail potential within the PTA is lost to outside areas, and that retailers may be better suited for retailers to capture more local demand. The PTA's retail gap totals \$33.1 million or \$1,051 per household of additional spending that may be captured by establishments in the *Food Services & Drinking Places* industry. The *Food Services & Drinking Places* (NAICS 722) industry accounts for approximately 10 percent of retail demand within the PTA, with an additional \$3.3 million in total or \$105 per household in retail spending may be captured by grocery stores in the PTA.

A review of visitor demographics for three Price Chopper locations in the Northland area (Platte City, Parkville, and Liberty) reveals that the typical Price Chopper customer has an average household income ranging from \$86,400 to \$116,000, or \$97,933 on average. Applying these customer demographics to households within the PTA, it is estimated that 39 percent of households (12,279 households) within the PTA may be potential Price Chopper customers.

Based upon these consumer spending, retail demand, visitation trends, it is estimated that Price Choppers' potential customer households may spend approximately \$5,791, on average, for food at home (groceries). This equates to a total spending potential of \$71.1 million which may be captured by grocery stores in the PTA. PGAV estimates that, on average Price Chopper may capture approximately 44 percent (\$31 million) of consumer spending on food at home.

#### Estimated Annual Sales

Based on a study of economic and demographic data, as well as PGAV's institutional knowledge of grocery store financial performance in the region, PGAV conservatively estimates that this Price Chopper location will reach stabilization in 2022 and may generate \$467 PSF on an annual basis over the remaining life of the District. This estimate is substantially consistent with current with Price Chopper's current performance and anticipated stabilization of retail sales. Table 3, on the previous page, provides a summary of estimated taxable sales for Price Chopper.

## TERM OF TIF, REDEVELOPMENT PLAN, AND TIMING OF REVENUE FLOWS

The capture of incremental tax revenues is authorized for a period of twenty-three years from the date of the ordinance approving the Redevelopment Project and adopting tax increment financing therein. Revenues available for the repayment of the Bonds may be generated during the period of October 3, 2017 to October 2, 2040.

A lag occurs between the time that sales tax revenues are generated and the time they are collected, distributed, and deposited to the Special Allocation Fund. It is anticipated that this time lag is approximately three months for sales tax revenues. The amount of sales tax revenues available at any given time also depends on when retailers pay sales taxes (i.e., whether on a monthly, quarterly, or annual basis). The retail tenants at Smithville Commons are expected to pay their sales taxes monthly.

Real estate taxes are due by December 31 each year, so revenues from PILOTS are collected by the County between November of the tax year through January of the following year and are then distributed to the County for deposit to the Special Allocation Fund. The aggregate equalized assessed value of the Redevelopment Area, as measured on a parcel-by-parcel basis, must exceed the base equalized assessed value in order to generate incremental real property tax revenue.

Projections of future revenues are based on a series of assumptions developed from existing available information. These assumptions are described in the balance of this section and **Section 3** and applied to the revenue tables herein. These tables provide assumptions and calculations used to generate the projections of revenues available for repayment of the Bonds.

## REAL PROPERTY TAX REVENUES (PILOTS)

To calculate incremental real property tax revenues, the base value of the existing property is subtracted from the value generated by new development. More specifically, the TIF Act stipulates that the initial equalized assessed valuation (base EAV) be determined and:

*(1) That portion of taxes levied upon each taxable lot, block, tract, or parcel of real property which is attributable to the initial equalized assessed value of each such taxable lot, block, tract, or parcel of real property in the area selected for the redevelopment project shall be allocated to and, when collected, shall be paid by the county collector to the respective affected taxing district in the manner required by law in the absence of the adoption of tax increment financing. (R.S. Mo. 99.845(1))*

Once the base EAV is determined by the County Assessor, any property taxes generated from an increase in the EAV (payment in lieu of taxes or "PILOTS") is used to pay redevelopment costs, determined by:

*(2) Payments in lieu of taxes attributable to the increase in the current equalized assessed valuation of each taxable lot, block, tract, or parcel of real property in the area selected for the redevelopment project over and above the initial equalized assessed value of each such unit of property in the area selected for the redevelopment project shall be allocated to and, when collected, shall be paid into a special fund called the "Special Allocation Fund" of the municipality for the purpose of paying redevelopment costs and obligations incurred in the payment thereof...(R.S. Mo. 99.845(2)(a))*

## BASE EQUALIZED ASSESSED VALUATION

The initial assessed valuation for the Area has been certified by the County Assessor to be \$52,430. A copy of the certification is included in the Appendix.

## REAL PROPERTY TAX RATE

The real property tax levies of the various taxing districts that comprise the real property tax rate are detailed in **Table 4 – 2021 Property Tax Rate Information**. The State of Missouri Blind Pension Fund Tax and the Merchant's and Manufacturer's Replacement Tax, also known as the Commercial Surcharge, are not subject to capture by TIF per the TIF Act.

*Table 4 – 2021 Property Tax Rate Information*

### 2021 Real Property Tax Rates per \$100 <sup>1</sup>

Smithville Commons Redevelopment Area  
Smithville, MO

Jurisdiction	Current Property Tax Rate Subject to Capture by TIF (\$100)	Current Property Tax Rate (\$100)
Clay County Services	\$ 0.001462	\$ 0.001462
Clay County Development Services	\$ 0.001028	\$ 0.001028
Clay County Health	\$ 0.000857	\$ 0.000857
Clay County Mental Health	\$ 0.000857	\$ 0.000857
Northland Regional Ambulance District	\$ 0.003940	\$ 0.003940
Mid-Continent Public Library	\$ 0.003153	\$ 0.003468
Smithville	\$ 0.004126	\$ 0.004126
Smithville Fire District #1	\$ 0.004906	\$ 0.007769
Smithville School District	\$ 0.048404	\$ 0.048404
<b>Total Tax Rate for TIF</b>	<b>\$ 0.068733</b>	<b>\$ 0.071911</b>

Source: City of Smithville

<sup>1</sup> Actual tax rates will vary from year-to-year.

The property tax rates may be adjusted every year. Some adjustments are required to ensure compliance with the Missouri Constitution, which limits the amount of increase in tax levies (not including taxes from new construction) that may occur without voter approval. While any future adjustments that may occur are unknown (including an increase due to voter approval or decrease due to constitutional requirements or otherwise), the 2021 real property tax rate is used to project future property tax revenues. Real property tax rates are certified in the fall of each tax year. Additionally, additional revenues directly attributable to a voter-approved increase to a taxing district's real property tax rate are not considered PILOTs and not subject to capture by the TIF without the consent of such taxing district. Voter approved increases to the Mid-Continent Library and the Smithville Fire District #1 are not included.

Further, the Smithville School District receives a capital contribution of 60% of the increment derived from their real property tax rate. 40% of the increment flows into the Special Allocation Fund for payment of project costs pursuant to the Redevelopment Agreement. Both the Northland Regional Ambulance District and the Smithville Fire District #1 receive a reimbursement rate of 75% of the increment derived from their respective real property

tax rate pursuant to the TIF Act, with 25% of the respective increment flows into the Special Allocation Fund available for payment of project costs pursuant to the Redevelopment Agreement.

## REAL PROPERTY TAX (PILOTS) REVENUE PROJECTIONS

**Table 5**, below, shows estimated assessed values. These values are based on a review of existing property values within the Area as well as comparable retail properties in Clay County.

*Table 5 – Property Values*

ParcelID	Use	2021 Appraised Value	2021 Assessed Value	Estimated 2022 Appraised Value	Estimated 2022 Assessed Value
5802000100200	Vacant Land	\$ 738,400	\$ 88,610	\$ 738,400	\$ 88,610
5802000100205	Vacant Land	\$ 548,600	\$ 175,550	\$ 548,600	\$ 175,550
5802000100206	Commercial Site	\$ 1,456,800	\$ 466,180	\$ 1,456,800	\$ 466,180
5802000100207	Price Chopper	\$ 8,330,600	\$ 2,665,790	\$ 8,330,600	\$ 2,665,790
5802000100209	Vacant Land	\$ 600	\$ 70	\$ 600	\$ 70
5802000100208	Porters Ace Hardware	\$ 1,787,100	\$ 571,870	\$ 1,787,100	\$ 571,870
5802000100401	Vacant Land	\$ 46,300	\$ 5,560	\$ 46,300	\$ 5,560
5802000100210	Retail (includes Dominoes)	\$ 309,600	\$ 99,070	\$ 309,600	\$ 99,070
5802000100201	Scooter's Coffeehouse	\$ 369,800	\$ 118,340	\$ 369,800	\$ 118,340
5802000100202	Taco Bell	\$ 927,500	\$ 296,800	\$ 927,500	\$ 296,800
5802000100204	Burger King	\$ 458,100	\$ 146,590	\$ 927,500	\$ 296,800
<b>Totals</b>		<b>\$14,973,400</b>	<b>\$4,634,430</b>	<b>\$15,442,800</b>	<b>\$4,784,640</b>

For the purposes of this analysis, the total market value of the Area is assumed to grow at a rate of three percent (3%) each reassessment year. Reassessment occurs every odd-numbered calendar year. New construction, however, is assessed in the year following completion. Detailed projections of PILOT revenues are shown on **Table 6 - Projection of Incremental Real Property Taxes (PILOTS)**, on the following page.

Table 6 – Projection of Incremental Property Taxes (PILOTs)

Revenue Sources	Prog. Yr.	Projected Revenues by Year in Dollars									
		2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
		4	5	6	7	8	9	10	11	12	13
<b>Estimated Real Property Values and Tax Revenues</b>											
Total Market Value		\$ 14,973,400	\$ 15,442,800	\$ 15,906,084	\$ 15,906,084	\$ 16,383,267	\$ 16,383,267	\$ 16,874,765	\$ 16,874,765	\$ 17,381,007	\$ 17,381,007
Total Assessed Value		\$ 4,791,488	\$ 4,941,696	\$ 5,089,947	\$ 5,089,947	\$ 5,242,645	\$ 5,242,645	\$ 5,399,925	\$ 5,399,925	\$ 5,561,922	\$ 5,561,922
Estimated Base EAV		\$ 52,430	\$ 52,430	\$ 52,430	\$ 52,430	\$ 52,430	\$ 52,430	\$ 52,430	\$ 52,430	\$ 52,430	\$ 52,430
Estimated Incremental Assessed Value		\$ 4,739,058	\$ 4,889,266	\$ 5,037,517	\$ 5,037,517	\$ 5,190,215	\$ 5,190,215	\$ 5,347,495	\$ 5,347,495	\$ 5,509,492	\$ 5,509,492
Total Taxes Paid on Total Assessed Value (Full Rates)		\$ 345,998	\$ 356,845	\$ 367,550	\$ 367,550	\$ 378,577	\$ 378,577	\$ 389,934	\$ 389,934	\$ 401,632	\$ 401,632
Taxes Paid on Total Assessed Value (TIF Rate)		\$ 329,333	\$ 339,658	\$ 349,847	\$ 349,847	\$ 360,343	\$ 360,343	\$ 371,153	\$ 371,153	\$ 382,288	\$ 382,288
Taxes Paid on Estimated Base EAV (TIF Rate)		\$ 3,604	\$ 3,604	\$ 3,604	\$ 3,604	\$ 3,604	\$ 3,604	\$ 3,604	\$ 3,604	\$ 3,604	\$ 3,604
40% of School District PILOTs		\$ 91,756	\$ 94,664	\$ 97,534	\$ 97,534	\$ 100,491	\$ 100,491	\$ 103,536	\$ 103,536	\$ 106,673	\$ 106,673
75% of Ambulance District PILOTs		\$ 14,004	\$ 14,448	\$ 14,886	\$ 14,886	\$ 15,337	\$ 15,337	\$ 15,802	\$ 15,802	\$ 16,281	\$ 16,281
75% of Fire Protection District PILOTs		\$ 17,437	\$ 17,990	\$ 18,536	\$ 18,536	\$ 19,097	\$ 19,097	\$ 19,676	\$ 19,676	\$ 20,272	\$ 20,272
<b>Estimated Total Available PILOTs</b>		<b>\$ 202,533</b>	<b>\$ 208,952</b>	<b>\$ 215,288</b>	<b>\$ 215,288</b>	<b>\$ 221,814</b>	<b>\$ 221,814</b>	<b>\$ 228,535</b>	<b>\$ 228,535</b>	<b>\$ 235,459</b>	<b>\$ 235,459</b>

Revenue Sources	Prog. Yr.	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040
		14	15	16	17	18	19	20	21	22	23
<b>Estimated Real Property Values and Tax Revenues</b>											
Total Market Value		\$ 17,902,438	\$ 17,902,438	\$ 18,439,511	\$ 18,439,511	\$ 18,992,696	\$ 18,992,696	\$ 19,562,477	\$ 19,562,477	\$ 20,149,351	\$ 20,753,832
Total Assessed Value		\$ 5,728,780	\$ 5,728,780	\$ 5,900,643	\$ 5,900,643	\$ 6,077,663	\$ 6,077,663	\$ 6,259,993	\$ 6,259,993	\$ 6,447,792	\$ 6,641,226
Estimated Base EAV		\$ 52,430	\$ 52,430	\$ 52,430	\$ 52,430	\$ 52,430	\$ 52,430	\$ 52,430	\$ 52,430	\$ 52,430	\$ 52,430
Estimated Incremental Assessed Value		\$ 5,676,350	\$ 5,676,350	\$ 5,848,213	\$ 5,848,213	\$ 6,025,233	\$ 6,025,233	\$ 6,207,563	\$ 6,207,563	\$ 6,395,362	\$ 6,588,796
Total Taxes Paid on Total Assessed Value (Full Rates)		\$ 413,681	\$ 413,681	\$ 426,091	\$ 426,091	\$ 438,874	\$ 438,874	\$ 452,040	\$ 452,040	\$ 465,602	\$ 479,570
Taxes Paid on Total Assessed Value (TIF Rate)		\$ 393,756	\$ 393,756	\$ 405,569	\$ 405,569	\$ 417,736	\$ 417,736	\$ 430,268	\$ 430,268	\$ 443,176	\$ 456,471
Taxes Paid on Estimated Base EAV (TIF Rate)		\$ 3,604	\$ 3,604	\$ 3,604	\$ 3,604	\$ 3,604	\$ 3,604	\$ 3,604	\$ 3,604	\$ 3,604	
40% of School District PILOTs		\$ 109,903	\$ 109,903	\$ 113,231	\$ 113,231	\$ 116,658	\$ 116,658	\$ 120,188	\$ 120,188	\$ 123,824	
75% of Ambulance District PILOTs		\$ 16,774	\$ 16,774	\$ 17,281	\$ 17,281	\$ 17,805	\$ 17,805	\$ 18,343	\$ 18,343	\$ 18,898	
75% of Fire Protection District PILOTs		\$ 20,886	\$ 20,886	\$ 21,519	\$ 21,519	\$ 22,170	\$ 22,170	\$ 22,841	\$ 22,841	\$ 23,532	
<b>Estimated Total Available PILOTs</b>		<b>\$ 242,590</b>	<b>\$ 242,590</b>	<b>\$ 249,935</b>	<b>\$ 249,935</b>	<b>\$ 257,500</b>	<b>\$ 257,500</b>	<b>\$ 265,292</b>	<b>\$ 265,292</b>	<b>\$ 273,318</b>	

## SALES TAX COLLECTION

The State of Missouri's Department of Revenue ("MoDOR") collects and distributes all sales taxes. Each month (or quarterly or annually for smaller retailers), retailers report to MoDOR their total taxable sales for the prior month and pay their sales tax obligation according to the total sales tax rate in the area. In the month following the retailer's report, MoDOR remits to each affected taxing district the sales taxes owed less a one percent (1%) collection fee and a two percent (2%) timely payment discount. This process creates a lag of ninety days from the sale event to the deposit of sales taxes with each affected taxing district (e.g., Clay County, the CID, or the City) and then to the Special Allocation Fund.

## ECONOMIC ACTIVITY TAXES GENERATED BY THE DISTRICT

The TIF Act defines Economic Activity Taxes (EATs) as follows:

2. ...fifty percent of the total additional revenue from taxes imposed by the municipality, or other taxing district, which are generated by economic activities within the area of the redevelopment project over the amount of such taxes generated by economic activities within the area of the redevelopment project in the calendar year prior to the adoption of the redevelopment project by ordinance, while tax increment financing remains in effect, but excluding taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotel and motels, licenses, fees or special assessments and personal property taxes, other than payments in lieu of taxes, shall be allocated to, and paid by the collecting officer to the treasurer or other designated financial officer of the municipality, who shall deposit such funds in a separate segregated account within the special allocation fund. (R.S. Mo. 99.845).

Simply put, fifty percent (50%) of the economic activity taxes (in this case, retail sales taxes) that exceed the certified Economic Activity Tax Base are available for deposit into the Special Allocation Fund.

## BASE SALES TAXES

Clay County and the City have certified that the Economic Activity Tax Base is \$0 which figure is the total of the sales tax collections associated with the CID and other local sales taxes. The Developer shall make a payment to the City in an amount equal to the lesser of (1) the difference between (a) \$289,138.50 and (b) the sales tax revenues actually received by the City from all economic activity in Redevelopment Area in each applicable calendar year or (2) \$50,000, if the sales tax revenues received by the City from the economic activity within the Redevelopment Area for calendar year does not equal or exceed \$289,138.50.



## SALES TAX RATES

The following sales taxes are subject to capture for deposit into the special allocation fund for the TIF District include:

1. Clay County (0.875%) – County sales taxes captured by TIF are calculated as fifty percent (50%) of the effective 2017 sales tax rates imposed by the County. County sales taxes captured by TIF are comprised of County General Fund (0.75%) and County Law Enforcement Fund (0.125%). Sales taxes generated from the County Children’s Services tax (0.25%) are not captured by TIF.
2. City of Smithville (1.5%) – City sales taxes captured by TIF are calculated as fifty percent of sales tax revenues collect from the 1.5 percent sales tax rate which is comprised of the City General Fund (1%) and City Transportation Sales Tax Fund (0.5%). Sales taxes generated from the City’s Capital Improvement Sales Tax (0.5%) and Park and Stormwater Sales Tax (0.5%) are not captured by TIF.
3. Smithville Area Fire Protection (0.5%) – Fire district sales taxes captured by TIF are calculated as twenty-five percent (25%) of the fire district’s 0.5% sales tax rate.
4. Kansas City Zoological District (0.125%)
5. Smithville Commons CID Sales Tax (1%)

TIF sales tax collections end on October 2, 2040.

## PROJECTED ECONOMIC ACTIVITY TAXES (EATs) REVENUES FOR TIF

Detailed projections of estimated sales tax revenues captured by TIF are shown on **Tables 7A, 7B, and 7C – Projection of Estimated Incremental Retail Sales and Sales Tax Revenues**, on the following page.

**Table 7A** shows estimated incremental retail sales generated the Project. Based on these estimates of incremental retail sales, **Table 7B** shows the estimated gross sales tax revenues to be generated for local taxing districts by the Project’s projected retail sales. **Table 7C** shows a projection of the total estimated incremental EATs sales tax revenues generated by the Project for TIF. EATs sale tax revenues for TIF are calculated as described in the previous section, *Sales Tax Rates*.

Table 7A, 7B, and 7C – Projection of Estimated Incremental Retail Sales and Sales Tax Revenues

Table 7A - Estimated Incremental Taxable Sales Retail Sales

Estimated Taxable Sales Volume	Estimated Retail Sales	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043
		\$ 36,592,500	\$ 38,068,575	\$ 39,577,232	\$ 41,899,449	\$ 43,476,233	\$ 44,780,520	\$ 45,676,130	\$ 46,589,653	\$ 47,521,446	\$ 48,471,875	\$ 49,441,312	\$ 50,430,138	\$ 51,438,741	\$ 52,467,516	\$ 53,516,866	\$ 54,587,204	\$ 55,678,948	\$ 56,792,527	\$ 57,928,377	\$ 59,086,945	\$ 60,268,684	\$ 61,474,057

Table 7B - Estimated Gross Total Local Sales Taxes

Local Sales Taxes	Rates	Projected Revenues by Year in Dollars																					
		2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043
County General Fund	0.750%	\$ 266,210	\$ 276,949	\$ 287,924	\$ 304,818	\$ 316,290	\$ 325,778	\$ 332,294	\$ 338,940	\$ 345,719	\$ 352,633	\$ 359,686	\$ 366,879	\$ 374,217	\$ 381,701	\$ 389,335	\$ 397,122	\$ 405,064	\$ 413,166	\$ 421,429	\$ 429,858	\$ 438,455	\$ 447,224
County Childrens Services	0.250%	\$ 88,737	\$ 92,316	\$ 95,975	\$ 101,606	\$ 105,430	\$ 108,593	\$ 110,765	\$ 112,980	\$ 115,240	\$ 117,544	\$ 119,895	\$ 122,293	\$ 124,739	\$ 127,234	\$ 129,778	\$ 132,374	\$ 135,021	\$ 137,722	\$ 140,476	\$ 143,286	\$ 146,152	\$ 149,075
County Law Enforcement Fund (Public Safety)	0.125%	\$ 44,368	\$ 46,158	\$ 47,987	\$ 50,803	\$ 52,715	\$ 54,296	\$ 55,382	\$ 56,490	\$ 57,620	\$ 58,772	\$ 59,948	\$ 61,147	\$ 62,369	\$ 63,617	\$ 64,889	\$ 66,187	\$ 67,511	\$ 68,861	\$ 70,238	\$ 71,643	\$ 73,076	\$ 74,537
City General Fund	1.000%	\$ 354,947	\$ 369,265	\$ 383,899	\$ 406,425	\$ 421,719	\$ 434,371	\$ 443,058	\$ 451,920	\$ 460,958	\$ 470,177	\$ 479,581	\$ 489,172	\$ 498,956	\$ 508,935	\$ 519,114	\$ 529,496	\$ 540,086	\$ 550,888	\$ 561,905	\$ 573,143	\$ 584,606	\$ 596,298
City Transportation Sales Tax Fund	0.500%	\$ 177,474	\$ 184,633	\$ 191,950	\$ 203,212	\$ 210,860	\$ 217,186	\$ 221,529	\$ 225,960	\$ 230,479	\$ 235,089	\$ 239,790	\$ 244,586	\$ 249,478	\$ 254,467	\$ 259,557	\$ 264,748	\$ 270,043	\$ 275,444	\$ 280,953	\$ 286,572	\$ 292,303	\$ 298,149
City Capital Improvement Sales Tax	0.500%	\$ 177,474	\$ 184,633	\$ 191,950	\$ 203,212	\$ 210,860	\$ 217,186	\$ 221,529	\$ 225,960	\$ 230,479	\$ 235,089	\$ 239,790	\$ 244,586	\$ 249,478	\$ 254,467	\$ 259,557	\$ 264,748	\$ 270,043	\$ 275,444	\$ 280,953	\$ 286,572	\$ 292,303	\$ 298,149
City Park and Stormwater Sales Tax	0.500%	\$ 177,474	\$ 184,633	\$ 191,950	\$ 203,212	\$ 210,860	\$ 217,186	\$ 221,529	\$ 225,960	\$ 230,479	\$ 235,089	\$ 239,790	\$ 244,586	\$ 249,478	\$ 254,467	\$ 259,557	\$ 264,748	\$ 270,043	\$ 275,444	\$ 280,953	\$ 286,572	\$ 292,303	\$ 298,149
Smithville Area Fire Protection	0.500%	\$ 177,474	\$ 184,633	\$ 191,950	\$ 203,212	\$ 210,860	\$ 217,186	\$ 221,529	\$ 225,960	\$ 230,479	\$ 235,089	\$ 239,790	\$ 244,586	\$ 249,478	\$ 254,467	\$ 259,557	\$ 264,748	\$ 270,043	\$ 275,444	\$ 280,953	\$ 286,572	\$ 292,303	\$ 298,149
Kansas City Zoological District	0.125%	\$ 44,368	\$ 46,158	\$ 47,987	\$ 50,803	\$ 52,715	\$ 54,296	\$ 55,382	\$ 56,490	\$ 57,620	\$ 58,772	\$ 59,948	\$ 61,147	\$ 62,369	\$ 63,617	\$ 64,889	\$ 66,187	\$ 67,511	\$ 68,861	\$ 70,238	\$ 71,643	\$ 73,076	\$ 74,537
Smithville Commons CID	1.000%	\$ 354,947	\$ 369,265	\$ 383,899	\$ 406,425	\$ 421,719	\$ 434,371	\$ 443,058	\$ 451,920	\$ 460,958	\$ 470,177	\$ 479,581	\$ 489,172	\$ 498,956	\$ 508,935	\$ 519,114	\$ 529,496	\$ 540,086	\$ 550,888	\$ 561,905	\$ 573,143	\$ 584,606	\$ 596,298
<b>Total Estimated Gross Local Sales Taxes Generated</b>	<b>5.250%</b>	<b>\$ 1,863,473</b>	<b>\$ 1,938,642</b>	<b>\$ 2,015,471</b>	<b>\$ 2,133,729</b>	<b>\$ 2,214,027</b>	<b>\$ 2,280,448</b>	<b>\$ 2,326,057</b>	<b>\$ 2,372,578</b>	<b>\$ 2,420,030</b>	<b>\$ 2,468,430</b>	<b>\$ 2,517,799</b>	<b>\$ 2,568,155</b>	<b>\$ 2,619,518</b>	<b>\$ 2,671,908</b>	<b>\$ 2,725,346</b>	<b>\$ 2,779,853</b>	<b>\$ 2,835,450</b>	<b>\$ 2,892,159</b>	<b>\$ 2,950,003</b>	<b>\$ 3,009,003</b>	<b>\$ 3,069,183</b>	<b>\$ 3,130,566</b>

Table 7C - Estimated Incremental Sales Taxes Captured by TIF

EATs Sales Taxes for TIF	Rates	Projected Revenues by Year in Dollars																					
		2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043
County General Fund	0.750%	\$ 133,105	\$ 138,474	\$ 143,962	\$ 152,409	\$ 158,145	\$ 162,889	\$ 166,147	\$ 169,470	\$ 172,859	\$ 176,316	\$ 179,843	\$ 183,440	\$ 187,108	\$ 190,851	\$ 194,668	\$ 198,561	\$ 202,532	\$ 206,583	\$ 210,714	\$ 214,929	\$ 219,227	\$ 223,612
County Law Enforcement Fund (Public Safety)	0.125%	\$ 22,184	\$ 23,079	\$ 23,994	\$ 25,402	\$ 26,357	\$ 27,148	\$ 27,691	\$ 28,245	\$ 28,810	\$ 29,386	\$ 29,974	\$ 30,573	\$ 31,185	\$ 31,808	\$ 32,445	\$ 33,093	\$ 33,755	\$ 34,430	\$ 35,119	\$ 35,821	\$ 36,538	\$ 37,269
City General Fund	1.000%	\$ 177,474	\$ 184,633	\$ 191,950	\$ 203,212	\$ 210,860	\$ 217,186	\$ 221,529	\$ 225,960	\$ 230,479	\$ 235,089	\$ 239,790	\$ 244,586	\$ 249,478	\$ 254,467	\$ 259,557	\$ 264,748	\$ 270,043	\$ 275,444	\$ 280,953	\$ 286,572	\$ 292,303	\$ 298,149
City Transportation Sales Tax Fund	0.500%	\$ 88,737	\$ 92,316	\$ 95,975	\$ 101,606	\$ 105,430	\$ 108,593	\$ 110,765	\$ 112,980	\$ 115,240	\$ 117,544	\$ 119,895	\$ 122,293	\$ 124,739	\$ 127,234	\$ 129,778	\$ 132,374	\$ 135,021	\$ 137,722	\$ 140,476	\$ 143,286	\$ 146,152	\$ 149,075
Smithville Area Fire Protection *	0.500%	\$ 44,368	\$ 46,158	\$ 47,987	\$ 50,803	\$ 52,715	\$ 54,296	\$ 55,382	\$ 56,490	\$ 57,620	\$ 58,772	\$ 59,948	\$ 61,147	\$ 62,369	\$ 63,617	\$ 64,889	\$ 66,187	\$ 67,511	\$ 68,861	\$ 70,238	\$ 71,643	\$ 73,076	\$ 74,537
Kansas City Zoological District	0.125%	\$ 22,184	\$ 23,079	\$ 23,994	\$ 25,402	\$ 26,357	\$ 27,148	\$ 27,691	\$ 28,245	\$ 28,810	\$ 29,386	\$ 29,974	\$ 30,573	\$ 31,185	\$ 31,808	\$ 32,445	\$ 33,093	\$ 33,755	\$ 34,430	\$ 35,119	\$ 35,821	\$ 36,538	\$ 37,269
Smithville Commons CID	1.000%	\$ 177,474	\$ 184,633	\$ 191,950	\$ 203,212	\$ 210,860	\$ 217,186	\$ 221,529	\$ 225,960	\$ 230,479	\$ 235,089	\$ 239,790	\$ 244,586	\$ 249,478	\$ 254,467	\$ 259,557	\$ 264,748	\$ 270,043	\$ 275,444	\$ 280,953	\$ 286,572	\$ 292,303	\$ 298,149
<b>Total Estimated EATs Sales Taxes for TIF</b>	<b>4.000%</b>	<b>\$ 665,526</b>	<b>\$ 692,372</b>	<b>\$ 719,811</b>	<b>\$ 762,046</b>	<b>\$ 790,724</b>	<b>\$ 814,446</b>	<b>\$ 830,735</b>	<b>\$ 847,349</b>	<b>\$ 864,296</b>	<b>\$ 881,582</b>	<b>\$ 899,214</b>	<b>\$ 917,198</b>	<b>\$ 935,542</b>	<b>\$ 954,253</b>	<b>\$ 973,338</b>	<b>\$ 992,805</b>	<b>\$ 1,012,661</b>	<b>\$ 1,032,914</b>	<b>\$ 1,053,572</b>	<b>\$ 1,074,644</b>	<b>\$ 1,096,137</b>	<b>\$ 1,118,059</b>

\* Smithville Area Fire Protection receives 75% of the incremental sales taxes generated by their sales tax levy and, as a result, 25% of this jurisdiction's incremental sales taxes are subject to capture by TIF.

## PROJECTED TOTAL REVENUES

No private independent market study has been prepared or provided to PGAV. Assumptions have been made regarding the performance of existing and contemplated retail uses. The actual tax revenues generated will vary from these projections.

The sales figures used in this document reflect taxable sales only. Pharmaceutical sales and SNAP food stamp sales are not subject to sales tax, and therefore we have not included these sales in our projections. Retail sales are estimated to grow at a rate of one percent (1%) on an average annual basis after stabilization. Stabilization occurs at a retailer after a maturation period, which occurs in the retail stores early life. Typically, over the first two or three years of a retailer store's operations, sales volume increases steadily, and at rates of 10% or more. After this initial period, sales "stabilize" or reach a relatively level sales volume that grows more slowly, or gradually, over time.

Projections of growth in assessed value are based on our firm's observations of changes in assessed valuations and tax rates associated with similar commercial retail property over time. Our firm's observation is that a well-maintained commercial retail center with low vacancy will experience increases in the property tax bill associated with such a property at an average rate of 1.5% each year. Since future changes in tax rates are difficult to predict with any degree of certainty, our estimates of growth in real property tax revenue rely on the reassessment schedule (every odd year in Missouri) since we know that the assessment may change every odd year.

**Table 8 – Revenue Projection Summary**, below, shows the total projected PILOTs and Sales Tax Revenues estimated to be available for the repayment of the Bonds. Estimated revenues generated from PILOTs totals \$4.3 million. This figure is calculated as the sum of estimated annual PILOT revenues shown in **Table 6 - Projection of Incremental Property Taxes (PILOTs)**. Estimated Incremental EATs for TIF totals \$16.6 million. This figure is calculated as the sum of the estimated annual EATs sales tax revenues as shown in **Tables 7C – Projection of Incremental EATs for TIF**. “Bottom-Half CID Sales Tax Not Captured by TIF” totals \$4.4 million. This figure is calculated as 50 percent of the total estimated incremental CID sales taxes generated as shown in **Table 7B – Estimated Gross Total Local Sales Taxes**. The Smithville Commons Redevelopment Area is estimated to generate a total of \$25.3 million over the remaining life of the TIF district for repayment of bonds.

Table 8 – Revenue Projection Summary

Revenue Projections Summary Smithville Commons Redevelopment Area Smithville, MO				
Year	Estimated PILOTs	Estimated Incremental EATs for TIF	Bottom-Half CID Sales Tax Not Captured by TIF	Total Revenues
2022	\$ 208,952	\$ 665,526	\$ 177,474	\$ 1,051,952
2023	\$ 215,288	\$ 692,372	\$ 184,633	\$ 1,092,293
2024	\$ 215,288	\$ 719,811	\$ 191,950	\$ 1,127,048
2025	\$ 221,814	\$ 762,046	\$ 203,212	\$ 1,187,072
2026	\$ 221,814	\$ 790,724	\$ 210,860	\$ 1,223,397
2027	\$ 228,535	\$ 814,446	\$ 217,186	\$ 1,260,167
2028	\$ 228,535	\$ 830,735	\$ 221,529	\$ 1,280,799
2029	\$ 235,459	\$ 847,349	\$ 225,960	\$ 1,308,768
2030	\$ 235,459	\$ 864,296	\$ 230,479	\$ 1,330,234
2031	\$ 242,590	\$ 881,582	\$ 235,089	\$ 1,359,260
2032	\$ 242,590	\$ 899,214	\$ 239,790	\$ 1,381,594
2033	\$ 249,935	\$ 917,198	\$ 244,586	\$ 1,411,719
2034	\$ 249,935	\$ 935,542	\$ 249,478	\$ 1,434,955
2035	\$ 257,500	\$ 954,253	\$ 254,467	\$ 1,466,220
2036	\$ 257,500	\$ 973,338	\$ 259,557	\$ 1,490,395
2037	\$ 265,292	\$ 992,805	\$ 264,748	\$ 1,522,845
2038	\$ 265,292	\$ 1,012,661	\$ 270,043	\$ 1,547,996
2039	\$ 273,318	\$ 1,032,914	\$ 275,444	\$ 1,581,676
2040	\$ -	\$ 1,053,572	\$ 206,583	\$ 1,260,155
<b>TOTALS</b>	<b>\$ 4,315,093</b>	<b>\$ 16,640,385</b>	<b>\$ 4,363,066</b>	<b>\$ 25,318,544</b>

## BASIS FOR PROJECTIONS

This Report and the financial projections contained herein are based on estimates, assumptions, and information provided by the Developer and various other sources considered to be reliable. The Developer has provided PGAV information with respect to tenants that will engage in retail operations within the Area. PGAV has conducted independent research with respect to the economic characteristics of these tenants. PGAV neither verified nor audited the information that was provided by others. Information provided by others is assumed to be reliable, but PGAV assumes no responsibility for its accuracy or certainty. The analysis is based, in part, on assumptions and conditions provided by these various sources. PGAV believes that the assumptions used in this analysis constitute a reasonable basis for its preparation.

No professional standards or guidance relevant to the preparation of this Report exist or have been developed by any professional agency. The National Federation of Municipal Analysts has developed recommended guidelines for the production of expert work products such as this Report, and PGAV adheres to these guidelines in its work. PGAV has prepared this Report based on standards and methodology the firm has developed over the course of preparing hundreds of similar analyses of historical trends and projections of sales taxes associated with various types of taxing districts in support of bond financings throughout the country over the past 25 years.

PGAV's methodology for preparing this Report includes the review of economic and demographic data, both current and historic, in order to develop assumptions about future growth. In light of this information, PGAV develops reasonable assumptions about future growth and applies those assumptions to the projections of future revenue in this Report.

The projections presented in this document are forward-looking and involve certain assumptions and judgments regarding future events. Although the projections formulated in this Report are based on currently available information, they are also based on assumptions about the future state of the national and regional economy and the local real estate markets, as well as assumptions about future actions by various parties, which cannot be assured or guaranteed. The ability to achieve the results described herein depends on the timing and probability of a complex series of future events, both internal and external to the Redevelopment Project. Any event or action that alters an assumed event, assumption, or condition used to achieve the projections contained herein will cause a deviation from all financial projections contained in this analysis and may render them obsolete. 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. PGAV assumes no responsibility for any degree of risk involved. PGAV assumes no liability should market conditions change.

Accordingly, PGAV does not express an opinion as to whether or not the Redevelopment Project will achieve the results projected herein if economic, environmental, legislative, or physical events or conditions occur that would significantly affect the projected revenue streams. Specifically, there are a number of situations that could occur that would have major impacts on the revenue projections presented herein. Examples of events that could affect the projected availability of revenues include: changes in taxing provisions and/or market acceptance of commercial additions to the Redevelopment Project that affect the amount of sales tax revenues generated within the Redevelopment Project; and changes in legislation.

The terms of PGAV's engagement for this study do not provide for reporting on events subsequent to the date of this Report. Therefore, PGAV accepts no responsibility to either update or revise this Report subsequent to its issuance.

This Report is intended solely for the internal use of the County, the District, the City, the City's legal counsel, the City's financial advisor, bond underwriter, and its counsel, and bond counsel. Neither this Report 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 PGAV regarding any representations therein with respect to PGAV's organization and work product. Included in any offering statement must be a document signed by a representative of PGAV which document constitutes PGAV's written consent to this Report's use in such offering statement.

## **CONFLICTS OF INTEREST**

PGAV has no financial interest in the issuance and/or sale of the Bonds.

## **PAYMENT TO PGAV**

Payment to PGAV for the preparation of this Report is not contingent on the sale of the Bonds.

## **OTHER WORK FOR ISSUER OR DISTRICT**

PGAV has not conducted any work on behalf of the City or the Issuer in the prior five years.

## **SECTION 4 – CONDITIONS AND ASSUMPTIONS**

### **CONTINUED PUBLIC SUPPORT**

The successful ongoing administration of the statutory mechanisms generating revenues within the Area will require the commitment of the governing authority of the County and the City, property owner(s) and retailers. Likewise, it is assumed that the Missouri legislature will not make any future changes to State law or pass other legislation that will negatively affect economic development districts in existence prior to such changes or legislation.

### **COURT ACTION**

The results of future court decisions, unknown at this time, which could impact, either positively or negatively, the future performance of the Redevelopment Project as envisioned.

### **COMPETENT STAFF SUPPORT**

The future success of the Redevelopment Project will depend, to a great degree, on the presence of competent support on the part of the Trustee and the governing authority of the City, the County, and the District in order to adhere to schedules and to execute the administrative duties required to provide funds for debt payments.

### **NATURAL DISASTERS**

Future success of the retailers within the Redevelopment Project could be affected by fires, floods, storms, or other "acts of God," or civil unrest that could interrupt, halt or otherwise disturb commercial retail activity within the City.

### **ECONOMIC AND MARKET STABILITY**

National, regional, and local economic stability will need to prevail over the life of the Redevelopment Area and continue to support the need for retail uses at this location. In addition, prolonged labor strikes or terrorist attacks at the national, regional, or local level could adversely affect the business environment or business productivity at this location.

# APPENDIX



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**CITY OF SMITHVILLE, MISSOURI**

**and**

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

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**TRUST INDENTURE**

**Dated as of May 17, 2022**

**Relating to:**

**[\$[Principal Amount]  
City of Smithville, Missouri  
Tax Increment Revenue Bonds  
(Smithville Commons Project)  
Series 2022**

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## **TRUST INDENTURE**

**THIS TRUST INDENTURE** (the “Indenture”), made and entered into as of May \_\_, 2022, by and between the **CITY OF SMITVHILLE, MISSOURI**, a fourth-class city and political subdivision duly organized and validly existing under the Constitution and 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 out under the laws of the United States of America, and having a corporate trust office located in Kansas City, Missouri, as trustee (the “Trustee”);

### **RECITALS:**

**1.** The City is authorized and empowered under the Revised Statutes of Missouri, as amended, to issue bonds for the purpose of providing funds to finance the costs of certain redevelopment projects and to pay certain costs related to the issuance of such bonds.

**2.** A plan for redevelopment known as the “Smithville Commons Tax Increment Financing Plan” (the “Original Redevelopment Plan”), as amended by the First Amendment to the Smithville Commons Tax Increment Financing Plan (the “First Amended Plan,” together with the Original Redevelopment Plan, the “Redevelopment Plan”), for an area designated therein as the redevelopment area (the “Redevelopment Area”), as legally described in the Redevelopment Plan, has been prepared and reviewed by the Tax Increment Financing Commission of the City of Smithville, Missouri (the “Commission”) and the City, pursuant to the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865, inclusive, of the Revised Statutes of Missouri, as amended (the “TIF Act”).

**3.** On August 1, 2017, the Board of Aldermen adopted (a) Ordinance No. 2969-17 (i) approving the Redevelopment Plan and finding the Redevelopment Area to be a “blighted area” within the meaning of the TIF Act and (ii) designating Development Associates Smithville, LLC, a Missouri limited liability company (the “Developer”), as the developer to implement the Redevelopment Projects of the Redevelopment Plan (as therein defined), (b) Ordinance No. 2971-17, authorizing the execution and delivery of a contract (the “Redevelopment Agreement”) between the City and the Developer, and (c) Ordinance No. 2972-17 authorizing the execution and delivery of a Reimbursement Agreement with the Northland Regional Ambulance District and a Reimbursement Agreement with the Smithville Area Fire Protection District to provide for the reimbursement of revenues to the respective taxing jurisdiction (the “Reimbursement Agreements”).

**4.** On October 3, 2017, the Board of Aldermen adopted Ordinance No. 2970-17 which approved and designated an area (the “Redevelopment Project”) within the Redevelopment Area for redevelopment contemplated as a commercial and retail development and adopted tax increment financing for the Redevelopment Project.

**5.** On November 21, 2017, the Board of Aldermen adopted Ordinance No. 2986-17 which approved the First Amended Plan and the First Amendment to the Redevelopment Agreement, which provided for an amended capital contribution to the Smithville School District.

**6.** The Smithville Commons Community Improvement District (the “District”) is authorized and empowered under the Missouri Community Improvement District Act, Sections 67.1401 through 67.1571 of the Revised Statutes of Missouri, as amended (the “CID Act”), to fund, promote, plan, design, construct, improve, maintain, and operate certain improvements, or to assist in any such activity. Pursuant to the CID Act, on August 1, 2017 Ordinance No. 2974-17 was approved by the Board of Aldermen creating the District for the purpose of funding certain improvements and services (the “CID Project”). The voters

of the District have approved the imposition of a sales tax at the rate of 1.0% for the purpose of paying the cost of the CID Project and financing the costs of formation and operation of the District.

7. The City has determined that it is in the best interests of the City to issue its Tax Increment Revenue Bonds (Smithville Commons Project) Series 2022, in the aggregate principal amount of \$[Principal Amount] (the “Bonds”), for the purpose of (a) financing certain Redevelopment Project Costs, (b) funding a debt service reserve for the Bonds, and (c) paying the costs of issuance of the Bonds.

8. On \_\_\_\_\_, 2022, the Board of Aldermen of the City adopted Ordinance No. \_\_\_\_\_ (the “Bond Ordinance”), authorizing the issuance of the Bonds pursuant to this Indenture for the above purposes.

9. Pursuant to the Bond Ordinance, the City is authorized to execute and deliver this Indenture and a Financing Agreement between the City and the District (the “Financing Agreement”) for the purpose of issuing and securing the Bonds as hereinafter provided.

10. All things necessary to make the Bonds, when authenticated by the Trustee and issued as in this Indenture provided, the valid, legal and binding obligations of the City, and to constitute this Indenture a valid, legal and binding pledge and assignment of the property, rights, interests and revenues herein made for the security of the payment of the principal of and interest on the Bonds issued hereunder, 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 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 thereof, and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in order to secure the payment of the principal of and interest on the Bonds 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 transfer, pledge and assign, without recourse, to the Trustee and its successors and assigns in trust forever, and does hereby grant a security interest unto the Trustee and its successors in trust and its assigns, in and to all and singular the property described in paragraphs (a) and (b) below (said property being herein referred to as the “Trust Estate”), to wit:

(a) All Net Revenues derived by the City under and pursuant to and subject to the provisions of the Redevelopment Agreement or otherwise (excluding the City’s rights to payment of its fees and expenses and to be indemnified in certain events) and the Pledged Revenues; and

(b) All moneys and securities from time to time held by the Trustee under the terms of this Indenture (except payments required to be made to meet the requirements of Section 148(f) of the Code, as defined below, whether or not held in the Rebate Fund, as defined below) and any and all other property (real, personal or mixed) 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 transferred, pledged, assigned and/or granted or agreed or intended so to be, to the Trustee and its successors and assigns in trust forever;

**IN TRUST NEVERTHELESS**, upon the terms and conditions herein set forth for the equal and proportionate benefit, security and protection of all present and future Owners of the Bonds Outstanding, without preference, priority or distinction as to participation in the lien, benefit and protection hereof of one Bond over or from the others, except as herein otherwise expressly provided;

**PROVIDED, NEVERTHELESS**, and these presents are upon the express condition, that if the City or its successors or assigns pays or causes to be paid the principal of such Bonds with interest, according to the provisions set forth in the Bonds, or provides for the payment or redemption of such Bonds by depositing or causing to be deposited with the Trustee the entire amount of funds or securities required for payment or redemption thereof when and as authorized by the provisions of **Article IX** hereof, and also pays or causes to be paid all other sums payable hereunder by the City, then these presents and the estate and rights hereby granted shall cease, terminate and become void; otherwise this Indenture shall be and remain in full force;

**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 of the Bonds, as follows:

## **ARTICLE I**

### **DEFINITIONS; RULES OF CONSTRUCTION**

**Section 101. Definitions of Words and Terms.** In addition to words and terms elsewhere defined herein, the following words and terms as used in this Indenture shall have the following meanings, unless some other meaning is plainly intended:

**“Ambulance District”** means the Northland Regional Ambulance District and its successors and assigns.

**“Ambulance District PILOTS Reimbursement”** means 75% of the property taxes imposed by the Ambulance District and treated as Payments in Lieu of Taxes, which amount is paid to or retained by the Ambulance District pursuant to the Reimbursement Agreements.

**“Approved Investors”** means, (a) an “accredited investor” under Rule 501(a) of Regulation D promulgated under the Securities Act of 1933, or (ii) a “qualified institutional buyer” under Rule 144A promulgated under the Securities Act of 1933.

**“Arbitrage Instructions”** means the investment restrictions related to the funds and accounts held by the Trustee contained in the Tax Compliance Agreement, as the same may be amended or supplemented in accordance with the provisions thereof.

**“Authorized City Representative”** means the Mayor, City Administrator or Assistant 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 Trustee containing the specimen signature of such Person and signed on behalf of the City by its Mayor. Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the Authorized City Representative.

**“Authorized Denominations”** means \$100,000 or any integral multiple of \$5,000 in excess thereof or, if the Outstanding principal amount of the Bonds is less than \$100,000, an amount equal to the Outstanding principal amount of the Bonds.\$5,000 or any integral multiple thereof.

**“Authorized District Representative”** means the authorized representative of the District designated to act on behalf of the District as evidenced by a written certificate furnished to the Trustee containing the specimen signature of such person and signed on behalf of the District by its chief executive officer.

**“Authorized Developer Representative”** means the managing member of the Developer, or such other person at the time designated to act on behalf of the Developer as evidenced by a written certificate furnished to the Trustee containing the specimen signature of such person and signed on behalf of the Developer by its authorized member.

**“Bonds”** means the Tax Increment Revenue Bonds (Smithville Commons Project) Series 2022 issued under this Indenture.

**“Bond Counsel”** means Gilmore & Bell, P.C. or any other attorney or firm of attorneys with a nationally recognized standing in the field of municipal bond financing and experienced in matters relating to the tax exemption of interest payable on obligations of states and their instrumentalities and political subdivisions, and which is selected by the City and acceptable to the Trustee.

**“Bond Ordinance”** means Ordinance No. \_\_\_\_\_ of the City adopted on \_\_\_\_\_, 2022, authorizing the execution and delivery of this Indenture and the Financing Documents, and the issuance of the Bonds.

**“Bondowner” or “Owner” or “Registered Owner”** means the person in whose name such Bond is registered on the Register.

**“Business Day”** means any day other than a Saturday, Sunday or any other day on which banking institutions in the city in which the corporate trust office of the Trustee is located are required or authorized by law to close.

**“Cede & Co.”** means Cede & Co., as nominee of The Depository Trust Company, New York, New York, or any successor nominee of the Securities Depository with respect to the Bonds.

**“CID Act”** means the Community Improvement District Act, Sections 67.1401 to 67.1571, inclusive, of the Revised Statutes of Missouri, as amended.

**“CID Agreement”** means the Cooperative Agreement among the City, the District and the Developer dated as of July 16, 2019.

**“CID Operating Costs”** means the actual, reasonable expenses which are reasonably necessary for the operation of the District which shall include, but is not limited to, costs associated with notices, publications, meetings, supplies, equipment, photocopying, insurance, the engagement of special legal counsel, financial auditing services, and other consultants or services including companies engaged by the District (or the City on behalf of the District) to review applications for reimbursement for payment of

District improvement costs, and shall also include reasonable attorneys' fees for the formation of the District.

**"CID Revenues"** means the revenues received by the District from the 1% sales tax imposed by the District within its boundaries and within the Redevelopment Project **exclusive** of (a) the District's CID Operating Costs to be paid from CID Revenues other than the Economic Activity Tax Revenues derived from the CID sales tax, (b) Economic Activity Tax Revenues derived from the CID sales tax, and (c) the administrative fee retained by the City in the amount of 1% of all revenues received by the District from such sales tax imposed by the District to be paid from CID Revenues other than the Economic Activity Tax Revenues derived from the CID sales tax.

**"City"** means the City of Smithville, Missouri, a fourth-class city and political subdivision of the State.

**"City Administrative Fee"** means all documented costs and expenses reasonably incurred by the City for planning, legal, financial, administrative and other costs associated with the review, consideration, approval and implementation of the Redevelopment Plan, including the Redevelopment Project and the Redevelopment Agreement, plus 1% of the total revenues distributed to the District.

**"Code"** means the Internal Revenue Code of 1986, as amended, and the applicable regulations, temporary regulations and proposed regulations thereunder.

**"Debt Service Fund"** means the fund by that name created in **Section 401** hereof.

**"Debt Service Requirements"** means for any period of time for which calculated, the aggregate of the payments to be made during such period in respect of principal (whether at maturity or otherwise) and interest on Bonds; provided that such payments are excluded from Debt Service Requirements to the extent that cash or Investment Securities are on deposit in an irrevocable escrow or trust account and such amounts (including, where appropriate, the earnings or other increment to accrue thereon) are required to be applied to pay principal or interest on the Bonds and are sufficient to pay such principal or interest.

**"Debt Service Reserve Fund"** means the fund by that name created in **Section 401** hereof.

**"Debt Service Reserve Requirement"** means (1) with respect to the Bond Proceeds Account, the sum of \$\_\_\_\_\_ to be deposited into the Bond Proceeds Account of the Debt Service Reserve Fund for the Bonds, which is a sum, at the date of original issuance and delivery of the Bonds, is not greater than the least of (A) **10%** of the original aggregate principal amount of the Bonds, (B) the maximum annual Debt Service Requirements on the Bonds in any future fiscal year following such date, or (C) **125%** of the average future annual Debt Service Requirements on the Bonds, plus (2) with respect to the Business Interruption Account, the sum of \$\_\_\_\_\_ to be deposited into the Business Interruption Account of the Debt Service Reserve Fund.

**"Developer"** or **"Redeveloper"** means Development Associates Smithville, LLC, a Missouri limited liability company, and any successors or assigns thereto permitted under the Redevelopment Agreement.

**"District"** means the Smithville Commons Community Improvement District and its successors and assigns.

**"Economic Activity Tax Revenues"** means 50% of the total additional revenue from taxes imposed by the City or other taxing districts (as that term is defined in Section 99.805 of the TIF Act) which

are generated by economic activities within the Redevelopment Project over the amount of such taxes generated by economic activities within the Redevelopment Project in the calendar year ending December 31, 2016, but excluding therefrom any taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, taxes levied pursuant to Section 70.500, RSMo., licenses, fees or special assessments other than payments in lieu of taxes and penalties and interest thereon, personal property taxes, and taxes levied for the purpose of public transportation pursuant to Section 94.660, RSMo., excluding the Fire District EATs Reimbursement, and excluding the Grocery Store Sales Tax Payment.

**“Event of Default”** means any event or occurrence as defined in **Section 701** hereof.

**“Extraordinary Expense Fund”** means the fund by that name created in Section 401.

**“Financing Agreement”** means the Financing Agreement between the City and the District related to the Bonds, as amended from time to time.

**“Financing Documents”** means this Indenture, the Financing Agreement, the Redevelopment Agreement, the Tax Compliance Agreement, the CID Agreement, the Reimbursement Agreements, the Private Placement Agreement and any other documents entered into in connection with the issuance of the Bonds or the payment thereof.

**“Fire District”** means the Smithville Area Fire Protection District.

**“Fire District EATs Reimbursement”** means 75% of the sales taxes collected by the Fire District from all Fire District sales tax revenues from within the Redevelopment Area while tax increment financing is in effect in such area, which amount is retained by the Fire District pursuant to the Reimbursement Agreements.

**“Fire District PILOTS Reimbursement”** means 75% of the property taxes collected by the Fire District and treated as Payments in Lieu of Taxes, which amount is paid to the Fire District by the City pursuant to the Reimbursement Agreements.

**“First Amended Plan”** means the First Amendment to the Smithville Commons Tax Increment Financing Plan.

**“First Amendment to the Redevelopment Agreement”** means the First Amendment to the Tax Increment Financing Agreement Between the City of Smithville and Development Associates Smithville, LLC dated November 21, 2017.

**“Fiscal Year”** means the fiscal year adopted by the City for accounting purposes, which as of the execution of this Indenture commences on November 1 and ends October 31.

**“Force Majeure”** means strikes, lockouts, other labor or industrial disturbances, civil disturbances, future valid orders of any governmental authorities, act of the public enemy, war, riot, sabotage, blockade, embargo, failure or inability to secure material or labor by reason of priority or similar regulation or orders of any governmental authorities, lightning, earthquake, fire, storm, hurricane, pandemic, flood, washout, explosion, act of God, or any other similar cause beyond the reasonable control of the Developer.

**“Government Securities”** means direct obligations of, or obligations the payment of the principal of and interest on which are unconditionally guaranteed as to full and timely payment by the United States of America and backed by the full faith and credit thereof.

**“Grocery Store Sales Tax Payment”** means a payment from the Developer to the City in an amount equal to the lesser of (1) the difference between (a) \$289,138.50 and (b) the sales tax revenues actually received by the City from all economic activity in the Redevelopment Area in the applicable calendar year or (2) \$50,000, if the sales tax revenues received by the City from the economic activity within the Redevelopment Area for a calendar year does not equal or exceed \$289,138.50, as described in the Redevelopment Agreement.

**“Immediate Notice”** means notice given no later than the close of business on the date required by the provisions of this Indenture by telegram, telex, telecopier or other telecommunication device to such phone numbers or addresses as are specified in **Section 1102** hereof or such other phone number or address as the addressee shall have directed in writing, the receipt of which is confirmed by telephone, promptly followed by written notice by first-class mail, postage prepaid to such addressees.

**“Investment Securities”** means any of the following securities purchased in accordance with **Section 502** hereof, if and to the extent the same are at the time legal for investment of the funds being invested:

- (a) Government Securities;
- (b) bonds, notes or other obligations of the State, or any political subdivision of the State, that at the time of their purchase are rated in either of the two highest rating categories by a nationally recognized rating service;
- (c) 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, including, without limitation, the Trustee or any of its affiliates, that are continuously and fully secured by any one or more of the securities described in clause (a), (b) or (d) and have a market value at all times at least equal to the principal amount of such repurchase agreement and are held in a custodial or trust account for the benefit of the City;
- (d) obligations of Government National Mortgage Association, the Federal Financing Bank, the Federal Intermediate Credit Corporation, Federal Banks for Cooperatives, Federal Land Banks, Federal Home Loan Banks and Farm Service Agency;
- (e) certificates of deposit, U.S. dollar denominated deposit accounts or time deposits, whether negotiable or nonnegotiable, issued by any bank or trust company organized under the laws of the United States or any state, including, without limitation, the Trustee or any of its affiliates, provided that such certificates of deposit or time deposits shall be either (1) continuously and fully insured by the Federal Deposit Insurance Corporation, or (2) continuously and fully secured by such securities as are described above in clauses (a) through (d) above, inclusive, which shall have a market value at all times at least equal to the principal amount of such certificates of deposit or time deposits;
- (f) money market mutual funds that are invested in Government Securities; and
- (g) any other securities or investments that are lawful for the investment of moneys held in such funds or accounts under the laws of the State.

**“Letter of Representations”** means, collectively, the blanket letters from the City and the Trustee to the Securities Depository representing the matters necessary to qualify the Bonds pursuant to **Section 208**.

**“Net Revenues”** means (a) all moneys on deposit (including investment earnings thereon) in the PILOTS Account of the Special Allocation Fund but excluding the Ambulance District PILOTS Reimbursement, the Fire District PILOTS Reimbursement, the School District PILOTS Reimbursement and the City Administrative Fee, (b) subject to annual appropriation by the City, all moneys on deposit (including investment earnings thereon) in the Economic Activity Tax Account of the Special Allocation Fund, but excluding the Fire District EATs Reimbursement, the Grocery Store Sales Tax Payment and the City Administrative Fee determined based on the amount of Economic Activity Tax Revenues, and (c) subject to annual appropriation by the District, all CID Revenues (including investment earnings thereon) paid by or on behalf of the District to the Trustee as provided in **Section 401** herein. Net Revenues do not include (i) any amount paid under protest until the protest is withdrawn or resolved against the taxpayer, (ii) any sum received by the City which is the subject of a suit or other claim communicated to the City which suit or claim challenges the collection of such sum until such suit or claim is resolved in favor of the City, (iii) any amounts set aside in escrow pursuant to State law that the City reasonably believes were collected and/or paid to the City erroneously.

**“Opinion of Counsel”** means a written opinion of an attorney or firm of attorneys addressed to the Trustee, for the benefit of the Trustee and the Owners of the Bonds, who may be (except as otherwise expressly provided in this Indenture) counsel to the City, the District, the Owners of the Bonds or the Trustee, and who is acceptable to the Trustee.

**“Outstanding”** means when used with reference to Bonds, as of a particular date, all Bonds theretofore authenticated and delivered under this Indenture except:

- (a) Bonds theretofore canceled by the Trustee or delivered to the Trustee for cancellation;
- (b) Bonds which are deemed to have been paid in accordance with **Section 902** hereof;
- (c) Bonds alleged to have been mutilated, destroyed, lost or stolen which have been paid as provided in **Section 206** hereof; and
- (d) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered pursuant to this Indenture.

**“Owner”** or **“Bondowner”** or **“Registered Owner”** means the Person in whose name any Bond is registered on the Register.

**“Paying Agent”** means the Trustee and any other bank or trust institution organized under the laws of any state of the United States of America or any national banking association designated by this Indenture as paying agent for the Bonds at which the principal of and interest on such Bonds shall be payable.

**“Payment Date”** means any date on which the principal of or interest on any Bonds is payable.

**“Payments in Lieu of Taxes”** means those payments in lieu of taxes (as defined in Sections 99.805(10) and 99.845 of the TIF Act), if any, attributable to the increase in the current equalized assessed valuation of all taxable lots, blocks, tracts and parcels of real property in the Redevelopment Project over and above the certified total initial equalized assessed valuation of the real property in the Redevelopment Project, as provided for by Section 99.845 of the TIF Act, excluding the Ambulance District PILOTS Reimbursement, the Fire District PILOTS Reimbursement and the School District PILOTS Reimbursement.



**“Person”** means any natural person, firm, partnership, association, corporation, limited liability company or public body.

**“Placement Agent”** means UMB Bank, N.A., Kansas City, Missouri.

**“Placement Agreement”** means the Private Placement Agreement among the City, the Developer and the Placement Agent related to the purchase and sale of the Bonds.

**“Pledged Revenues”** means all Net Revenues and all moneys held in the Project Fund, the Revenue Fund, the Debt Service Fund and the Debt Service Reserve Fund under this Indenture, together with investment earnings thereon.

**“Project”** means the construction of Project Improvements (as contemplated in the Redevelopment Agreement) in the City of Smithville, Missouri, as described on **Exhibit D** attached hereto.

**“Project Costs”** means the cost of the design and construction of the Project and other related costs of the Project.

**“Public Improvement Costs”** means all actual and reasonable costs and expenses which are incurred by or at the direction of the District with respect to the construction of District improvements, as described in the CID Agreement.

**“Rebate Fund”** means the fund by that name created in **Section 401** hereof.

**“Record Date”** for the interest payable on any Payment Date means the 15<sup>th</sup> calendar day, whether or not a Business Day, of the month next preceding such Payment Date.

**“Redevelopment Agreement”** means the Tax Increment Redevelopment Agreement dated August 1, 2017 between the City and the Developer, as amended by the First Amendment to the Redevelopment Agreement.

**“Redevelopment Area”** means the area legally described in **Exhibit A** to the Redevelopment Agreement.

**“Redevelopment Plan”** means the Smithville Commons Tax Increment Financing Plan, as amended to date by the First Amended Plan and as it may be amended from time to time, as described in the recitals to this Indenture.

**“Redevelopment Project”** means the redevelopment project located within the Redevelopment Area as contemplated by the Redevelopment Agreement and the Redevelopment Plan.

**“Register”** means the registration books of the City kept by the Trustee to evidence the registration, transfer and exchange of Bonds.

**“Registrar”** means the Trustee when acting as such under this Indenture.

**“Reimbursable Project Cost”** means any cost for the Project pursuant to the Redevelopment Plan and the Redevelopment Agreement and, any Public Improvement Costs incurred by the Developer and approved by the City for reimbursement pursuant to the Redevelopment Plan and the Redevelopment Agreement.

**“Replacement Bonds”** means, if the City determines not to use the book-entry system of the Securities Depository pursuant to **Section 208**, one or more Bond certificates in principal amounts corresponding to the identifiable beneficial owners’ interests in the Bonds pursuant to the records of the Securities Depository.

**“Revenue Fund”** means the fund by that name created in **Section 401** hereof.

**“Reimbursement Agreements”** means the Reimbursement Agreement (Northland Regional Ambulance District) between the City and the Ambulance District dated July 17, 2027 and the Reimbursement Agreement (Smithville Area Fire Protection District) between the City and the Fire District dated as of August 1, 2017.

**“Securities Depository”** means The Depository Trust Company, New York, New York, or any successor Securities Depository appointed pursuant to **Section 208**.

**“School District”** means the Smithville R-II School District of Clay County, Missouri.

**“School District PILOTS Reimbursement”** means 40% of the Payments in Lieu of Taxes received by the City that are attributable to ad valorem taxes imposed by the School District to the increase in the current equalized assessed valuation of all taxable lots, blocks, tracts and parcels of real property in the Redevelopment Project over and above the certified total initial equalized assessed valuation of the real property in the Redevelopment Project, as provided for by Section 99.845 of the TIF Act, to be paid to the School District as reimbursement for capital improvement costs in accordance with the Redevelopment Agreement.

**“Special Allocation Fund”** means the Special Allocation Fund created within the Treasury of the City and ratified pursuant to **Section 401** herein and in accordance with Section 99.845 of the TIF Act and the TIF Ordinance for the projects within the Redevelopment Area, and within the Special Allocation Fund a PILOTS Account and an Economic Activity Tax Account.

**“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 X** hereof.

**“Tax Compliance Agreement”** means the Tax Compliance Agreement of even date herewith, between the City and the Trustee, as from time to time amended in accordance with the provisions thereof.

**“Taxing Districts”** means any political subdivision of the State having the power to levy taxes with boundaries in the Redevelopment Area.

**“TIF Act”** means the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865, inclusive, of the Revised Statutes of Missouri, as amended.

**“TIF Ordinance”** means Ordinance No. 2970-17 authorizing the adoption of tax increment financing within the Redevelopment Project.

**“Trust Estate”** means the Trust Estate described in the granting clauses of this Indenture.

**“Trustee”** means UMB Bank, N.A., Kansas City, Missouri, in its capacity as trustee hereunder, and its successor or successors and any other association or corporation which at any time may be substituted in its place pursuant to and at the time serving as trustee under this Indenture.

#### **Section 102. Rules of Construction.**

For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

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

(b) Words importing the singular number shall include the plural and vice versa and words importing person shall include firms, associations and corporations, including public bodies, as well as natural persons.

(c) The table of contents hereto and the headings and captions herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Indenture.

(d) Terms used in an accounting context and not otherwise defined shall have the meaning ascribed to them by accounting principles generally accepted in the United States of America.

(e) 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.

### **ARTICLE II**

#### **THE BONDS**

#### **Section 201. Authorization, Issuance and Terms of Bonds.**

(a) *Authorized Amount of Bonds.* No Bonds may be issued under this Indenture except in accordance with the provisions of this Article. The total principal amount of the Bonds is limited to \$[Principal Amount].

(b) *Title of Bonds.* The general title of the Bonds authorized to be issued under this Indenture shall be “Tax Increment Revenue Bonds (Smithville Commons Project), Series 2022.”

(c) *Form of Bonds.* The Bonds shall be substantially in the form set forth in **Exhibit A** attached hereto, and 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 usage or requirement of law with respect thereto.

(d) *Denominations.* The Bonds shall be issuable as fully registered Bonds in the Authorized Denominations.

(e) *Numbering.* Unless the City directs otherwise, the Bonds shall be numbered from R-1 upward.

(f) *Dating.* The Bonds shall be dated their date of delivery.

(g) *Method and Place of Payment.* The principal of and interest on the Bonds shall be payable in any coin or currency of the United States of America which, at the respective dates of payment thereof, is legal tender for the payment of debts due the United States of America. Payment of the principal of or interest on any Bond shall be made (i) by check or draft of the Trustee mailed to the person in whose name such Bond is registered on the Register as of the close of business of the Trustee on the Record Date for such Payment Date or (ii) or in the case of a principal or interest payment to the Securities Depository or any Owner of \$500,000 or more in aggregate principal amount of Bonds, by electronic transfer to such Owner upon written notice delivered to the Trustee not less than 5 days prior to the Record Date from and signed by such owner containing electronic transfer instructions including the name of the bank (which shall be in the continental United States), ABA routing number and account name and account number to which such Owner wishes to have such transfer directed.

## **Section 202. Nature of Obligations.**

(a) The Bonds and the interest thereon shall be special, limited obligations of the City payable solely from the Pledged Revenues and other moneys pledged thereto and held by the Trustee as provided herein, and are secured by a transfer, pledge and assignment of and a grant of a security interest in the Trust Estate to the Trustee and in favor of the Owners of the Bonds, as provided in this Indenture.

(b) The Bonds and the interest thereon do not constitute a debt of the City, the State or any political subdivision thereof, and do not constitute an indebtedness within the meaning of any constitutional, statutory or charter debt limitation or restriction. The issuance of the Bonds shall not, directly, indirectly or contingently, obligate the City, the District, the State or any political subdivision thereof to levy any form of taxation therefor or to make any appropriation for their payment.

(c) No recourse shall be had for the payment of the principal of or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement contained in this Indenture, against any past, present or future elected official of the City or any trustee, officer, official, employee or agent of the City, as such, either directly or through the City or any successor to the City, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such member of the City, trustee, officer, official, employee or agent as such is hereby expressly waived and released as a condition of and in consideration for the execution of this Indenture and the issuance of any of the Bonds.

(d) **The obligations of the City with respect to the application of Economic Activity Tax Revenues and Payments in Lieu of Taxes to the repayment of the Bonds terminate on October 2, 2040, whether or not the principal amount thereof or interest thereon has been paid in full.**

## **Section 203. Execution, Authentication and Delivery of Bonds.**

(a) The Bonds shall be executed on behalf of the City by the manual or facsimile signature of the Mayor and attested by the manual or facsimile signature of the City Clerk, and shall have the corporate seal of the City affixed thereto or imprinted thereon. If any officer whose signature appears on any Bonds ceases to be such officer before the delivery of such Bonds, such signature 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 the Persons who, 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 A** hereto, 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 purpose unless and until such Certificate of Authentication has been duly executed by the Trustee. Such 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, but it shall not be necessary that the same authorized signatory sign the Certificate of Authentication on all of the Bonds that may be issued hereunder at any one time.

#### **Section 204. Registration, Transfer and Exchange of Bonds.**

(a) The Trustee is hereby appointed Registrar and as such shall keep the Register for the registration and for the transfer of Bonds as provided in this Indenture. Each Bond when issued shall be registered in the name of the Owner thereof on the Register.

(b) Any Bond may be transferred only upon the Register upon surrender thereof to the Trustee duly endorsed for transfer or accompanied by an assignment duly executed by the Owner or his attorney or legal representative in such form as shall be satisfactory to the Trustee. Upon any such transfer, the City shall execute and the Trustee shall authenticate and deliver in exchange for such Bond a new fully registered Bond or Bonds, registered in the name of the transferee, of the same series and maturity and in any Authorized Denomination authorized by this Indenture. The Bonds may only be purchased by or transferred to Approved Investors.

(c) Any Bond, upon surrender thereof at the corporate trust office of the Trustee or such other payment office as the Trustee shall designate, together with an assignment duly executed by the Owner or his attorney or legal representative in such form as shall be satisfactory to the Trustee, may, at the option of the Owner thereof, be exchanged for Bonds of the same series and maturity, of any Authorized Denomination authorized by this Indenture, bearing interest at the same rate, and registered in the name of the Owner.

(d) In all cases in which Bonds are exchanged or transferred hereunder, 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.

(e) No service charge shall be made for any registration, transfer or exchange of Bonds, but the Trustee may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any transfer or exchange of Bonds, and such charge shall be paid before any such new Bond shall be delivered. The fees and charges of the Trustee for making any transfer or exchange and the expense of any bond printing necessary to effect any such transfer or exchange shall be paid by the City. In the event any registered owner fails to provide a correct taxpayer identification number to the Trustee, the Trustee may impose a charge against such registered owner sufficient to pay any governmental charge required to be paid as a result of such failure. In compliance with Section 3406 of the Code, such amount may be deducted by the Trustee from amounts otherwise payable to such registered owner hereunder or under the Bonds.

(f) At reasonable times and under reasonable regulations established by the Trustee, the Register may be inspected and copied by the City or the Owners (or a designated representative thereof) of 10% or more in principal amount of Bonds then Outstanding, such ownership and the authority of any such designated representative to be evidenced to the satisfaction of the Trustee.

(g) The Person in whose name any Bond is registered on the Register shall be deemed and regarded as the absolute owner of such Bond for all purposes, and 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 registered Owner thereof or his legal representative. 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 205. Description of Bonds.**

(a) There shall be issued and secured by this Indenture the Bonds in an aggregate principal amount of \$[Principal Amount].

(b) The Bonds shall become due in the amounts on the maturity dates, subject to redemption and payment prior to their maturities as provided in **Article III** hereof, and shall bear interest at the rates specified below (computed on the basis of a 360-day year of twelve 30-day months) from the date thereof or from the most recent Payment Date to which interest has been paid or duly provided for, payable semiannually on June 1 and December 1 in each year, beginning on December 1, 2022.

**SERIAL BONDS**

<b><u>Maturity</u></b> <b><u>December 1</u></b>	<b><u>Principal</u></b> <b><u>Amount</u></b>	<b><u>Interest</u></b> <b><u>Rate</u></b>
2022	\$	%
2023		
2024		
2025		
2026		
2027		
2028		
2029		
2030		
2031		
2032		

**TERM BONDS**

<b><u>Maturity</u></b> <b><u>December 1</u></b>	<b><u>Principal</u></b> <b><u>Amount</u></b>	<b><u>Interest</u></b> <b><u>Rate</u></b>
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(c) The Trustee is hereby designated as the Paying Agent for the payment of the principal of and interest on the Bonds.

(d) The Bonds shall be executed substantially in the form and manner set forth in **Exhibit A** attached hereto 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) A copy of the Bond Ordinance, certified by the City Clerk of the City, approving the issuance of the Bonds and authorizing the execution of this Indenture and the other Financing Documents.

(2) An original executed counterpart of this Indenture and the other Financing Documents.

(3) An opinion of Bond Counsel to the effect that the Bonds constitute valid and legally binding obligations of the City and that the interest on the Bonds is excludable from gross income of the owners thereof for federal income tax purposes.

(4) A copy of the Redevelopment Plan, certified by the City Clerk of the City.

(5) A request and authorization to the Trustee on behalf of the City, executed by an Authorized City Representative, to execute the Bonds, to deliver the Bonds as directed by the Placement Agent upon payment of the purchase price thereof. The Trustee shall be entitled to conclusively rely upon such request and authorization as to the name of the purchaser(s) and the amount of such purchase price.

(6) An opinion of Bond Counsel to the effect that the Bonds are exempt from registration under the Securities Act of 1933, as amended, and this Indenture is exempt from qualification under the Trust Indenture Act of 1939, as amended.

(7) An executed investor letter in the form attached hereto as **Exhibit E** from each of the original purchasers of the Bonds.

(8) Such other certificates, statements, receipts, opinions and documents required by any of the foregoing documents or as the Trustee (or its counsel) or Bond Counsel shall reasonably require for the delivery of the Bonds.

(e) When the documents mentioned in paragraph (d) of this Section have been filed with the Trustee, and when the Bonds have been executed and authenticated as required by this Indenture, the Trustee shall deliver the Bonds as directed in writing by the Placement Agent, but only upon payment to the Trustee of the purchase price thereof.

**Section 206. 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 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. In the case of any lost, stolen or destroyed Bond, there shall be first furnished to the Trustee evidence of such loss, theft or destruction satisfactory to the Trustee, together with indemnity to the City and the Trustee satisfactory to the Trustee to save and hold harmless both the Trustee and the City. If any such Bond has matured, is about to mature or has been called for redemption, instead of issuing 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 by the Owner 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 207. Cancellation and Destruction of Bonds Upon Payment.** All Bonds which have been paid or redeemed or which the Trustee has purchased or which have otherwise been surrendered to the Trustee under this Indenture, either at or before maturity, shall be immediately canceled upon the

payment, redemption or purchase of such Bonds and the surrender thereof to the Trustee and periodically destroyed by the Trustee in accordance with applicable record retention requirements. The Trustee shall, at their written request, execute a certificate describing the Bonds so canceled, and shall file an executed counterpart of such certificate with the City.

#### **Section 208. Book-Entry System.**

(a) The Bonds will initially be registered on the Register maintained by the Trustee in the name of Cede & Co., and beneficial owners will not receive certificates representing their respective interests in the Bonds, except if the Trustee issues Replacement Bonds as provided below. It is anticipated that during the term of the Bonds, the Securities Depository will make book-entry transfers among the participants in the Securities Depository (the “DTC Participants”) and receive and transmit notices with respect to, and payments of principal of and interest on, the Bonds until and unless the Trustee authenticates and delivers Replacement Bonds to the beneficial owners as described below.

(b) The Trustee agrees to give the various written notices to the Securities Depository in accordance with the Letter of Representations, including, without limitation, on or prior to each Payment Date a notice to the Securities Depository specifying the amounts of each payment on such Payment Date allocable to interest and to principal.

(c) If the Securities Depository determines to discontinue providing its services with respect to the Bonds and the City cannot obtain a qualified successor Securities Depository, or if DTC Participants holding a majority interest in the Bonds determine not to use the book-entry system of the Securities Depository, the City shall execute and the Trustee shall authenticate and deliver one or more Replacement Bonds to the DTC Participants in principal amounts corresponding to the identifiable beneficial owners’ interests in the Bonds. The Trustee may conclusively rely on information provided by the Securities Depository as to the identities and addresses of the DTC Participants and the beneficial owners and their interests in the Bonds. In such event, all references to the Securities Depository herein shall relate to the period of time when the Securities Depository, or the Trustee as agent of the Securities Depository, has possession of at least one Bond. Upon the issuance of Replacement Bonds, all references herein to obligations imposed upon or to be performed by the Securities Depository shall be deemed to be imposed upon and performed by the Trustee, to the extent applicable, with respect to such Replacement Bonds.

(d) If the Securities Depository resigns, is unable to properly discharge its responsibilities or is no longer qualified to act as a securities depository and registered clearing agency under the Securities Exchange Act of 1934, as amended, or other applicable state or federal statute or regulation, the Trustee, with the written consent of the City, may appoint a successor Securities Depository, provided the Trustee receives written evidence satisfactory to the Trustee with respect to the ability of the successor Securities Depository to discharge its responsibilities. Any successor Securities Depository must be a securities depository that is a registered clearing agency under the Securities Exchange Act of 1934, as amended, or other applicable state or federal statute or regulation. Upon the appointment of a successor Securities Depository, the former Securities Depository will surrender the Bonds, together with assignments duly executed in accordance with the provisions of **Section 204**, to the Trustee for transfer to the successor Securities Depository, and the Trustee shall cause the authentication and delivery of Bonds to the successor Securities Depository in appropriate denominations and form as provided herein and as directed by the successor Securities Depository.

### **ARTICLE III**

#### **REDEMPTION OF BONDS**

**Section 301. Redemption of Bonds Generally.** The Bonds shall be subject to redemption prior to maturity in accordance with the terms and provisions set forth in this Article.

**Section 302. Redemption of Bonds.**

(a) *Optional Redemption.*

The Bonds are subject to optional redemption by the City in whole or in part at any time on or after December 1, 20\_\_\_\_, at a redemption price equal to 100% of the principal amount of Bonds to be redeemed, plus accrued interest to the redemption date.

(b) *Special Mandatory Redemption.*

(1) The Bonds maturing December 1, 20\_\_\_\_ and thereafter are subject to special mandatory redemption by the City in order of maturity on each December 1 commencing December 1, 20\_\_\_\_, at the redemption price of 100% of the principal amount being redeemed, together with accrued interest thereon to the date fixed for redemption, in an amount equal to the amount which is on deposit in the Redemption Account of the Debt Service Fund 40 days prior to each Payment Date (or if such date is not a Business Day, the immediately preceding Business Day).

(2) The Bonds are subject to special mandatory redemption by the City, in whole but not in part, on any date in the event that moneys in the applicable account of the Debt Service Fund and the Debt Service Reserve Fund are sufficient to redeem all of the Bonds at a redemption price of 100% of such Bonds Outstanding, together with accrued interest thereon to the date fixed for redemption.

(c) *Mandatory Redemption.* The Bonds maturing December 1, \_\_\_\_ (the "Term Bonds") will be subject to mandatory redemption and payment prior to maturity pursuant to the mandatory redemption requirements set forth below at a Redemption Price equal to 100% of the principal amount thereof plus accrued interest to the Redemption Date. The Trustee shall redeem on December 1 in each year, the following principal amounts of such Bonds:

**December 1**

**Amount**

\_\_\_\_\_  
\*Final Maturity

At its option, to be exercised on or before the 45th day next preceding any mandatory Redemption Date, the City may: (1) deliver to the Trustee for cancellation Term Bonds subject to mandatory redemption on said mandatory Redemption Date, in any aggregate principal amount desired; or (2) furnish the Trustee funds, together with appropriate instructions, for the purpose of purchasing any Term Bonds subject to mandatory redemption on said mandatory Redemption Date from any Registered Owner thereof whereupon the Trustee shall expend such funds for such purpose to such extent as may be practical; or (3) receive a credit with respect to the mandatory redemption obligation of the City under this Section for any Term Bonds subject to mandatory redemption on said mandatory Redemption Date that, prior to such date, have been redeemed (other than through the operation of the mandatory redemption requirements of this subsection (c)) and canceled by the Trustee and not theretofore applied as a credit against any redemption obligation under this subsection (c). Each Term Bond so delivered or previously purchased or redeemed shall be credited at 100% of the principal amount thereof on the obligation of the City to redeem Term

Bonds of the same Stated Maturity on such mandatory Redemption Date, and any excess of such amount shall be credited on future mandatory redemption obligations for Term Bonds of the same Stated Maturity in chronological order, and the principal amount of Term Bonds of the same Stated Maturity to be redeemed by operation of the requirements of this Section shall be accordingly reduced. If the City intends to exercise any option granted by the provisions of clauses (1), (2) or (3) above, the City will, on or before the 45th day next preceding each mandatory Redemption Date, furnish the Trustee a written certificate indicating to what extent the provisions of said clauses (1), (2) and (3) are to be complied with respect to such mandatory redemption payment and any Term Bonds to be credited pursuant to (3) above.

### **Section 303. Selection of Bonds to be Redeemed.**

(a) Bonds shall be redeemed only in Authorized Denominations. When less than all of the Outstanding Bonds are to be optionally redeemed and paid prior to maturity, such Bonds or portions of Bonds to be redeemed shall be selected in Authorized Denominations by the Trustee from such maturities and in such amounts as the City may determine, and Bonds of less than a full maturity shall be selected by the Trustee in Authorized Denominations by lot or in such other equitable manner as it may determine.

(b) In the case of a partial redemption of Bonds when Bonds of denominations greater than the minimum Authorized Denomination are then Outstanding, then for all purposes in connection with such redemption each Authorized Denomination unit of face value shall be treated as though it was a separate Bond of the denomination of the minimum Authorized Denomination. If one or more, but not all, of the minimum Authorized Denomination units of principal amount represented by any Bond are selected for redemption, then upon notice of intention to redeem such minimum Authorized Denomination unit or units, the Owner of such Bond or his attorney or legal representative shall forthwith present and surrender such Bond to the Trustee (i) for payment of the redemption price (including the interest to the date fixed for redemption) of the minimum Authorized Denomination unit or units of principal amount called for redemption, and (ii) for exchange, without charge to the Owner thereof, for a new Bond or Bonds of the aggregate principal amount of the unredeemed portion of the principal amount of such Bond. If the Owner of any such Bond of a denomination greater than minimum Authorized Denomination fails to present such Bond to the Trustee for payment and exchange as aforesaid, said Bond shall, nevertheless, become due and payable on the redemption date to the extent of the minimum Authorized Denomination unit or units of principal amount called for redemption (and to that extent only) and shall cease to accrue interest on the principal amount so called for redemption.

### **Section 304. Notice of Redemption of Bonds.**

(a) In the case of Bonds called for redemption under **Section 302**, the Trustee shall call Bonds for redemption and payment as herein provided and shall give notice of redemption as provided below upon receipt by the Trustee at least 35 days prior to the redemption date of a written request of the City. The foregoing provisions of this Section shall not apply in the case of any mandatory redemption of Bonds under this Bond Indenture, and the Trustee shall call Bonds for redemption and shall give notice of redemption pursuant to such mandatory redemption requirements without the necessity of any action by the City.

Unless waived by any Owner of Bonds to be redeemed, official notice of any redemption of any Bond shall be given by the Trustee on behalf of the City by mailing a copy of an official redemption notice by first class mail, postage prepaid, at least 20 days prior to the date fixed for redemption to the Owner of the Bond or Bonds to be redeemed at the address shown on the Register; provided, however, that failure to give such notice by mailing as aforesaid to any Owner or any defect therein as to any particular Bond shall not affect the validity of any proceedings for the redemption of any other Bonds.

- (b) All official notices of redemption shall be dated and shall state:
- (1) the redemption date,
  - (2) the redemption price,
  - (3) if less than all Outstanding Bonds are to be redeemed, the identification of the Bonds to be redeemed (such identification to include interest rates, maturities, CUSIP numbers and such additional information as the Trustee may reasonably determine),
  - (4) that on the redemption date the redemption price will become due and payable upon each such Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after said date, and
  - (5) the place where such Bonds are to be surrendered for payment of the redemption price, which place of payment shall be the corporate trust office of the Trustee or such other payment office as the Trustee may designate.

In addition to the foregoing notice, the Trustee shall also comply with any mandatory requirements or guidelines published by the Securities and Exchange Commission relating to providing notices of redemption. The failure of the Trustee to comply with any such requirements shall not affect or invalidate the redemption of said Bonds.

- (c) The Trustee shall mail by first-class mail to the City a copy of such redemption notice.

Any provision in this Indenture to the contrary notwithstanding, any notice of optional redemption pursuant to **Section 302** shall state that it is conditioned upon receipt by the Trustee of sufficient moneys to redeem the Bonds, and such notice and optional redemption shall be of no effect if by no later than the scheduled redemption date, sufficient moneys to redeem the Bonds are not on deposit with and available to the Trustee.

So long as the Securities Depository is effecting book-entry transfers of the Bonds, the Trustee shall provide the notices specified in this Section only to the Securities Depository. It is expected that the Securities Depository shall, in turn, notify its Participants and that the Participants, in turn, will notify or cause to be notified the beneficial owners. Any failure on the part of the Securities Depository or a Participant, or failure on the part of a nominee of a beneficial owner of a Bond to notify the beneficial owner of the Bond so affected, shall not affect the validity of the redemption of such Bond.

**Section 305. Effect of Call for Redemption.** On or prior to the date fixed for redemption, moneys or Government Securities shall be deposited with the Trustee as provided in **Section 402** hereof to pay the Bonds called for redemption and accrued interest thereon to the redemption date. Upon the happening of the above conditions, and notice having been given as provided in **Section 304** hereof, 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, provided moneys sufficient for the payment of the redemption price are on deposit at the place of payment at the time, 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.

## ARTICLE IV

### FUNDS AND REVENUES

#### **Section 401. Creation of Funds; Application of Bond Proceeds.**

(a) The following funds of the City are hereby created and established with the Trustee:

(1) Revenue Fund, which shall contain a PILOTs Account, an EATs Account, and a CID Account.

(2) Debt Service Fund, which shall contain a Bond Payment Account and a Redemption Account.

(3) Debt Service Reserve Fund, with a Bond Proceeds Account and a Business Interruption Account.

(4) Project Fund.

(6) Rebate Fund.

(7) Extraordinary Expense Fund.

Each fund and account shall be maintained by the Trustee as a separate and distinct trust fund and the moneys therein shall be held, managed, invested, disbursed and administered as provided in this Indenture. All moneys deposited in the funds and accounts shall be used solely for the purposes set forth in this Indenture. The Trustee shall keep and maintain adequate records pertaining to each fund and account, each series of the Bonds and all disbursements therefrom.

(b) The net proceeds received from the sale of the Bonds shall be deposited or paid simultaneously with the delivery of the Bonds as follows:

(1) the accrued interest, if any, received from the sale of the Bonds shall be deposited in the Bond Payment Account of the Debt Service Fund;

(2) an amount equal to \$\_\_\_\_\_ from the proceeds of the Bonds shall be deposited in the Bond Proceeds Account of the Debt Service Reserve Fund; and

(3) the remaining moneys from the proceeds of the Bonds shall be deposited into the Project Fund.

(c) The Special Allocation Fund held by the City is hereby ratified and confirmed. Moneys in the Special Allocation Fund shall be paid by the City on the tenth day of each month (or the next Business Day thereafter if the tenth day is not a Business Day) to the Trustee, with (A) all Net Revenues as of the last day of the preceding month consisting of Payments in Lieu of Taxes (excluding amounts held for the Ambulance District PILOTs Reimbursement, the Fire District PILOTs Reimbursement, the School District PILOTs Reimbursement and amounts retained as the City Administrative Fee) accompanied by written notice identifying the Net Revenues as Payments in Lieu of Taxes and directing the Trustee that such amounts are to be deposited into the PILOTs Account of the Revenue Fund, and (B) subject to annual appropriation by the City and **Section 602** herein, all Net Revenues as of the last day of the preceding month consisting of Economic Activity Tax Revenues (excluding the Fire District EATs Reimbursement, the

Grocery Store Sales Tax Payment and amounts retained as the City Administrative Fee) accompanied by written notice identifying the Net Revenues as Economic Activity Tax Revenues and directing the Trustee that such amounts are to be deposited into the EATS Account of the Revenue Fund. The Trustee shall notify the City and the Placement Agent if the Trustee has not received such Net Revenues on or before the 12<sup>th</sup> calendar day of each month (or the next Business Day thereafter if the 12<sup>th</sup> day is not a Business Day), or if any funds are received without the required notice related thereto directing the deposit of such funds into the appropriate account of the Revenue Fund.

(d) Any CID Revenues collected by or on behalf of the District, and transferred to the Trustee by the District or the City pursuant to the Financing Agreement and as provided herein on or before the tenth day of each month (or the next Business Day thereafter if the tenth day is not a Business Day) and accompanied by written notice identifying such amounts as CID Revenues shall be deposited into the CID Account in the Revenue Fund. The Trustee shall notify the City, the Placement Agent, and the District if the Trustee has not received such Net Revenues on or before the 12<sup>th</sup> calendar day of each month (or the next Business Day thereafter if the 12<sup>th</sup> day is not a Business Day), or if any funds are received without the required notice related thereto directing the deposit of such funds into the appropriate account of the Revenue Fund.

**Section 402. Revenue Fund.** Moneys in the Revenue Fund on the 40<sup>th</sup> day prior to each Payment Date (or at any time in the event of rebate payable to the United States of America) shall be applied by the Trustee to the extent necessary for the purposes and in the amounts as follows, drawing *first* on the CID Revenue Account in the Revenue Fund, *second* on the PILOTs Account in the Revenue Fund, and *third* on the EATs Account in the Revenue Fund:

*First*, for transfer to the Rebate Fund when necessary, an amount sufficient to pay rebate, if any, to the United States of America, owed under Section 148 of the Code, as directed in writing by the City in accordance with the Arbitrage Instructions and an amount equal to all fees, charges, advances and expenses related to the calculations necessary to determine the amount of rebate, if any, that may be due and payable;

*Second*, to the Trustee, an amount equal to all fees, charges, advances and expenses of the Trustee due and payable pursuant to this Indenture (fees, charges, advances and expenses of the Trustee incurred in connection with the Trustee's ordinary services under this Indenture shall not exceed \$5,000 per Fiscal Year; provided the Trustee or other person or entity shall also be entitled to compensation for (i) services, if any, as dissemination agent and (ii) extraordinary services rendered and reimbursed for extraordinary out of pockets costs and expenses incurred, in accordance with **Section 802** of this Indenture);

*Third*, for payment to the City of an amount sufficient for payment of any fees and expenses that may be owing pursuant to **Section 609** and **Section 610** hereof, upon delivery to the Trustee of a written request (which shall be accompanied by an invoice) for such amounts;

*Fourth*, for transfer to the Bond Payment Account in the Debt Service Fund an amount sufficient to pay the interest on the Bonds on the next two succeeding Payment Dates;

*Fifth*, for transfer to the Bond Payment Account in the Debt Service Fund an amount sufficient to pay the principal of and premium, if any, due on the Bonds by their terms on the next two succeeding Payment Dates;

*Sixth*, for deposit to the Bond Proceeds Account of the Debt Service Reserve Fund until the Bond Proceeds Account has been funded or restored in an amount equal to the Debt Service Reserve Requirement applicable to the Bond Proceeds Account;

*Seventh*, for deposit to the Business Interruption Account of the Debt Service Reserve Fund until the Business Interruption Account has been funded or restored to the Debt Service Reserve Requirement applicable to the Business Interruption Account;

*Eighth*, transfer to the Extraordinary Expense Fund, an amount (not to exceed \$10,000 per Fiscal Year) sufficient to cause the balance in said fund to equal \$20,000; and

*Ninth*, for transfer to the Redemption Account of the Debt Service Fund, all remaining funds to redeem Bonds pursuant to the Special Mandatory Redemption provisions contained in **Section 302(b)** of this Indenture in Authorized Denominations which shall be applied to the payment of the principal of and accrued interest on all Bonds which are subject to redemption on the next succeeding Payment Date.

If necessary, on the Business Day prior to each Payment Date, drawing *first* on the CID Account in the Revenue Fund, *second* on the PILOTs Account in the Revenue Fund, and *third* on the EATs Revenue Account in the Revenue Fund, the Trustee shall transfer to the Bond Payment Account in the Debt Service Fund an amount sufficient to pay the principal of or interest on the Bonds due on the next Payment Date.

**For purposes of the transfers set forth above, the CID Revenues allocable to pay the Debt Service Requirements for the Bonds shall not exceed 9.2% of the Debt Service Requirements for the Bonds for each calendar year (or such other percentage as provided in writing by the City to the Trustee permitted by law based on amounts paid from the Project Fund and eligible for payment from the CID Revenues).**

#### **Section 403. Debt Service Fund.**

(a) Except as otherwise provided herein, all amounts paid and credited to the Debt Service Fund shall be expended solely for the payment of the principal of, redemption premium, if any, and interest on the Bonds as the same mature and become due or upon the redemption thereof.

(b) The City hereby authorizes and directs the Trustee to withdraw sufficient moneys from the Debt Service Fund to pay the principal of and interest on the Bonds as the same become due and payable and to make said moneys so withdrawn available to the Paying Agent for the purpose of paying said principal of and interest on the Bonds.

(c) The Trustee shall use any moneys remaining in the Debt Service Fund to redeem all or part of the Bonds Outstanding and interest to accrue thereon prior to such redemption, in accordance with and to the extent permitted by **Article III** hereof, so long as said moneys are in excess of the amount required for payment of Bonds theretofore matured or called for redemption. The Trustee, upon the written instructions from the City, signed by the Authorized City Representative, shall use moneys in the Redemption Account of the Debt Service Fund on a best efforts basis for the purchase of Bonds in the open market to the extent practical for the purpose of cancellation at prices not exceeding the principal amount thereof plus accrued interest thereon to the date of such purchase.

(d) Except as provided in **Section 402**, if the moneys in the Debt Service Fund are insufficient to pay all accrued interest on the Bonds on any Payment Date, then such moneys shall be applied ratably, according to the amounts due on such installment, to the Persons entitled thereto without any discrimination



or privilege, and any unpaid portion shall accrue to the next Payment Date, with interest thereon at the rate or rates specified in the Bonds to the extent permitted by law. Except as provided in **Section 402**, if the moneys in the Debt Service Fund are insufficient to pay the principal of the Bonds on the maturity date thereof, then such moneys shall be applied ratably, according to the amounts of principal due on such date, to the Persons entitled thereto without any discrimination or privilege.

(e) After payment in full of the principal of and interest on the Bonds (or provision has been made for the payment thereof as specified in this Indenture), and the fees, charges and expenses of the Trustee and any Paying Agents and any other amounts required to be paid under this Indenture, all amounts remaining in the Debt Service Fund consisting of (i) Payments in Lieu of Taxes and Economic Activity Tax Revenues shall be paid to the City for deposit into the Special Allocation Fund, and (ii) CID Revenues shall be paid to the District.

#### **Section 404. Project Fund.**

(a) Moneys in the Project Fund shall be disbursed by the Trustee from time to time, upon receipt of a written request of the Authorized City Representative and containing the statements, representations and certifications set forth in the form of such request attached as **Exhibit B** hereto and otherwise substantially in such form, to pay costs related to the issuance of the Bonds or to pay, or reimburse the Developer for payment of, the costs of the Project as described on **Exhibit D**. Any moneys remaining on deposit in the Project Fund when the portion of the Project financed with the proceeds of the Bonds is completed, as stated in a certificate delivered by the Authorized City Representative to the Trustee, shall immediately be transferred by the Trustee to the Bond Payment Account in the Debt Service Fund.

(b) In making payments and disbursements pursuant to this Section, the Trustee may rely upon the written requests and accompanying certificates and statements. The Trustee is not required to make any independent investigation or inspection in connection with the matters set forth in the written requests.

**Section 405. Debt Service Reserve Fund.** Except as otherwise provided in this Indenture, moneys in the Debt Service Reserve Fund shall be used by the Trustee without further authorization solely for the payment of the principal of and interest on the Bonds if moneys otherwise available for such purpose as provided in **Section 403** hereof are insufficient to pay the same as they become due and payable. In the event the balance of moneys in the Debt Service Fund is insufficient to pay principal of or interest on the Bonds when due and payable, moneys in the Debt Service Reserve Fund shall be transferred into the Debt Service Fund in an amount sufficient to make up such deficiency, using the moneys in the Business Interruption Account until all such money has been expended and then moneys in the Bond Proceeds Account. The Trustee may use moneys in the Debt Service Reserve Fund for such purpose whether or not the amount in the Debt Service Reserve Fund at that time equals the Debt Service Reserve Requirement. Such moneys shall be used first to make up any deficiency in the payment of interest and then principal. Moneys in the Bond Proceeds Account and the Business Interruption Account of the Debt Service Reserve Fund shall also be used to pay the last Bonds becoming due unless such Bonds and all interest thereon be otherwise paid. The amount on deposit in the Debt Service Reserve Fund shall be valued by the Trustee 45 days prior to each Payment Date (or if such date is not a Business Day, the immediately preceding Business Day) and the Trustee shall give immediate written notice to the City if such amount is less than the Debt Service Reserve Requirement. For the purpose of determining the amount on deposit in the Debt Service Reserve Fund, the value of any investments shall be valued at their fair market value on the date of valuation. Moneys in the Debt Service Reserve Fund that are in excess of the Debt Service Reserve Requirement shall be deposited by the Trustee without further authorization in the Debt Service Fund.

#### **Section 406. Rebate Fund.**

(a) There shall be deposited by the Trustee in the Rebate Fund such amounts as are required to be deposited therein pursuant to the Arbitrage Instructions. Subject to the transfer provisions provided in subsection (b) below, all money at any time deposited in the Rebate Fund and any income earned thereon shall be held in trust, to the extent required to pay arbitrage rebate to the federal government of the United States of America, and neither the City, the District nor the Owner of any Bonds shall have any rights in or claim to such money. All amounts deposited into or on deposit in the Rebate Fund shall be governed by this Section and by the Arbitrage Instructions (which is incorporated herein by reference).

(b) Pursuant to the Arbitrage Instructions, the Trustee, on behalf of the City, shall remit from the Rebate Fund rebate installments and the final rebate payments to the United States in accordance with the written direction of, or on behalf of, the City. Any moneys remaining in the Rebate Fund after redemption and payment of all of the Bonds and payment and satisfaction of any arbitrage rebate, or provision made therefore, consisting of (i) Payments in Lieu of Taxes and Economic Activity Tax Revenues shall be paid to the City for deposit into the Special Allocation Fund and (ii) CID Revenues shall be paid to the District.

(c) Notwithstanding any other provision of this Indenture, including in particular this Article, the obligation to remit arbitrage rebate to the United States and to comply with all other requirements of this Section, the preceding Section and the Arbitrage Instructions shall survive the defeasance or payment in full of the Bonds.

#### **Section 407. Extraordinary Expense Fund.**

(a) Amounts on deposit in the Extraordinary Expense Fund shall be used only for the purpose of paying the fees, expenses and other costs, including legal fees, incurred by the City in connection with the defense or interpretation of the Indenture, or an audit, questionnaire or other request for information from the Internal Revenue Service, the Securities Exchange Commission or other federal or state entity or regulatory authority in connection with the Bonds, including legal fees incurred and any rebate obligations, fines or penalties owed. The Trustee will disburse moneys from the Extraordinary Expense Fund upon receipt by the Trustee of a written request signed by the Authorized City Representative that includes identification of the persons or entities owed such fees, expenses and other costs.

(b) In making payments and disbursements pursuant to this Section, the Trustee may conclusively rely upon the written requests and accompanying certificates and statements. The Trustee is not required to make any independent inspection or investigation in connection with the matters set forth in the written requests.

(c) Upon the payment in full of the principal of and interest due on the Bonds (or provision having been made for the payment thereof as specified in this Indenture) and the fees, charges and expenses of the Trustee and any Paying Agents, and any other amounts required to be paid under this Indenture, all amounts remaining on deposit in the Extraordinary Expense Fund with respect to the Bonds shall be paid to the City for deposit into the Special Allocation Fund.

**Section 408. Non-Presentation of Bonds.** If any Bond is not presented for payment when the principal thereof becomes due, either at maturity or at the date fixed for redemption thereof, and provided the Trustee is holding sufficient funds for the payment thereof, all liability of the City to the Owner thereof for the payment of such Bond shall forthwith cease, terminate and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such moneys, without liability for interest thereon, for the benefit

of the Owner of such Bond who shall thereafter be restricted exclusively to such moneys, for any claim of whatever nature on such Owner's part under this Indenture or on, or with respect to, said Bond.

Any moneys so deposited with and held by the Trustee not so applied to the payment of Bonds within one year after the date on which the same have become due shall be paid by the Trustee to the City without liability for interest thereon, free from the trusts created by this Indenture. Thereafter, Owners shall be entitled to look only to the City for payment, and then only to the extent of the amount so repaid by the Trustee. The City shall not be liable for any interest on the sums paid to it pursuant to this Section and shall not be regarded as a trustee of such money.

**Section 409. Separation of Revenues.** The Trustee shall establish separate subaccounts within the Funds and Accounts or otherwise segregate moneys within such Funds and Accounts, on a book-entry basis or in such other manner as the Trustee may deem necessary or convenient, to separately account for the CID Revenues consistent with the purposes for which the CID Revenues are authorized.

## **ARTICLE V**

### **SECURITY FOR DEPOSITS AND INVESTMENT OF MONEYS**

**Section 501. Moneys to be Held in Trust.** All moneys deposited with or paid to the Trustee for the account of any 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, until used or applied as herein provided, shall (except for the Rebate Fund) 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 as otherwise provided herein.

**Section 502. Investment of Moneys.**

(a) Moneys in all funds and accounts under any provision of this Indenture shall be continuously invested and reinvested by the Trustee in Investment Securities at the written direction of the City given by the Authorized City Representative or, if such written directions are not received, then in Investment Securities described in subparagraph (f) of the definition thereof. Moneys on deposit in all funds and accounts may be invested only in Investment Securities which mature or are subject to redemption at the option of the owner thereof prior to the date such funds are expected to be needed. The Trustee may make investments through its investment division or short-term investment department.

(b) All investments and the interest earnings or profit therefrom shall constitute a part of the fund or account from which the moneys used to acquire such investments have come. The Trustee shall sell and reduce to cash a sufficient amount of investments in a fund or account whenever the cash balance therein is insufficient to pay the amounts required to be paid therefrom. The Trustee may transfer investments from any fund or account to any other fund or account in lieu of cash when required or permitted by the provisions of this Indenture. In determining the balance in any fund or account, investments shall be valued at the lower of their original cost or their fair market value on the most recent Payment Date, except as otherwise provided in **Section 405** hereof. The Trustee shall not be liable for any loss resulting from any investment made in accordance herewith.

## **ARTICLE VI**

### **PARTICULAR COVENANTS AND PROVISIONS**

**Section 601. Authority to Issue Bonds and Execute Indenture.** The City covenants that it is duly authorized under the laws of the State to execute and deliver 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 limited obligations of the City according to the import thereof.

**Section 602. Covenant to Request Appropriations.**

***Annual Appropriation.*** The City intends, on or before the last day of each Fiscal Year, to budget and appropriate moneys constituting Economic Activity Tax Revenues to the repayment of the principal of and interest on the Bonds for that Fiscal Year. The City shall deliver written notice to the Trustee no later than 15 days after the commencement of its Fiscal Year stating whether or not the Board of Aldermen has appropriated such funds during such Fiscal Year. If the Board of Aldermen shall have made the appropriation, the failure of the City to deliver the foregoing notice on or before the 15<sup>th</sup> day after the commencement of its Fiscal Year shall not constitute an event of default and, on failure to receive such notice 15 days after the commencement of the City's Fiscal Year, the Trustee shall request the City confirm in writing whether or not such appropriation has been made.

***Payments to Constitute Current Expenses of the City.*** The City acknowledges that the application of Economic Activity Tax Revenues under this Indenture shall constitute currently budgeted expenditures of the City, and shall not in any way be construed or interpreted as creating a liability or a general obligation or debt of the City in contravention of any applicable constitutional or statutory limitation or requirements concerning the creation of indebtedness by the City, nor shall anything contained in this Indenture constitute a pledge of the general credit, tax revenues, funds or moneys of the City. The City's obligations to apply Economic Activity Tax Revenues under the Indenture shall be from year to year only, and shall not constitute a mandatory payment obligation of the City in any ensuing Fiscal Year beyond the then current Fiscal Year. Neither this Indenture nor the issuance of the Bonds shall directly or indirectly obligate the City to levy or pledge any form of taxation or make any appropriation or make any payments beyond those appropriated for the City's then current Fiscal Year in contravention of any applicable constitutional or statutory limitation or requirements concerning the creation of indebtedness by the City, but in each Fiscal Year Economic Activity Tax Revenues shall be payable solely from the amounts budgeted or appropriated therefor by the City, for such year; provided, however, that nothing in this Indenture shall be construed to limit the rights of the owners of the Bonds or the Trustee to receive any amounts which may be realized from the Trust Estate pursuant to this Indenture.

**Section 603. Performance of Covenants.** The City covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in the Bonds and in all proceedings pertaining thereto.

**Section 604. 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 further acts, instruments, financing statements and other documents as the Trustee may reasonably require for the better assuring, transferring, pledging and assigning to the Trustee, and granting a security interest unto the Trustee in and to the Trust Estate and the other property and revenues herein described. The Redevelopment Agreement, the CID Agreement, the Financing Agreement and all other documents or instruments required by the Trustee shall be delivered to and held by the Trustee.

**Section 605. General Limitation on City Obligations.** ANY OTHER TERM OR PROVISION OF THIS INDENTURE OR ANY OTHER DOCUMENT EXECUTED IN CONNECTION

WITH THE TRANSACTION WHICH IS THE SUBJECT HEREOF TO THE CONTRARY NOTWITHSTANDING, THE CITY SHALL NOT BE REQUIRED TO TAKE OR OMIT TO TAKE, OR REQUIRE ANY OTHER PERSON OR ENTITY TO TAKE OR OMIT TO TAKE, ANY ACTION WHICH WOULD CAUSE IT OR ANY PERSON OR ENTITY TO BE, OR RESULT IN IT OR ANY PERSON OR ENTITY BEING, IN VIOLATION OF ANY LAW OF THE STATE.

**Section 606. Recording and Filing.** The City shall file or cause to be kept and filed all financing statements, and the Trustee shall 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 necessary to be kept and filed in such manner and in such places as may be required by law in order to preserve and protect fully the security of the Owners of the Bonds and the rights of the Trustee hereunder. Unless otherwise notified in writing by the City, the Trustee may conclusively rely upon the originally filed financing statements in filing any continuation statements. The City hereby authorizes the filing of uniform commercial code financing statements to reflect the security interests granted hereby. In carrying out its duties under this Section, the Trustee shall be entitled to rely on an Opinion of Counsel specifying what actions are required to comply with this Section.

**Section 607. Possession and Inspection of Books and Documents.** The City and the Trustee covenant and agree that all books and documents in their possession relating to the Bonds, the Special Allocation Fund, the Net Revenues and to the distribution of proceeds thereof shall at all reasonable times and upon reasonable notice be open to inspection by such accountants or other agencies or Persons as the other party may from time to time designate. On or before October 31 of each year (or if such date is not a Business Day, the immediately preceding Business Day), commencing October 31, 2022, the Trustee shall provide written notice to the City of the following:

- (a) the aggregate amount of money on deposit in the Revenue Fund on such date;
- (b) any deficiency in the Debt Service Reserve Fund as of such date; and
- (c) the amount of scheduled debt service payable on the Bonds during the immediately succeeding Fiscal Year.

**Section 608. Tax Covenants.** The City and the Trustee covenant and agree with respect to the interest on any of the Bonds that is excluded from gross income for federal income tax purposes:

(a) The City shall not use or permit the use of any proceeds of the Bonds or any other funds of the City, and the Trustee shall not use any proceeds of the Bonds or any other funds of the City held by the Trustee, directly or indirectly, to acquire any securities or obligations, and shall not use or permit the use of any amounts received by the City or the Trustee in any manner, and shall not take or permit to be taken any other action or actions, which would cause any Bond to be an “arbitrage bond” within the meaning of Section 148(a) of the Code, or “federally guaranteed” within the meaning of Section 149(b) of the Code. If at any time the City is of the opinion that for purposes of this subsection (a) it is necessary to restrict or limit the yield on or change in any way the investment of any moneys held by the Trustee under this Indenture, the City shall so instruct the Trustee in writing and the Trustee shall act in accordance with such instructions. The City shall be deemed in compliance with this Section to the extent it follows the Arbitrage Instructions or an opinion of Bond Counsel with respect to the investment of funds hereunder. The Trustee shall be deemed in compliance with this Section to the extent it follows the written instructions of the City or an opinion of Bond Counsel with respect to the investment of funds hereunder.

(b) The City shall not (to the extent within its power or direction) use or permit the use of any proceeds of the Bonds or any other funds of the City, directly or indirectly, in any manner, and shall not

take or permit to be taken any other action or actions, which would result in any of the Bonds being treated as other than an obligation described in Section 103(a) of the Code.

(c) The City will not (to the extent within its power or direction) use any portion of the proceeds of the Bonds, including any investment income earned on such proceeds, directly or indirectly, in a manner that would cause any Bond to be a “private activity bond” within the meaning of Section 141 (a) of the Code.

(d) The Trustee agrees to comply with any written letter or opinion of Bond Counsel which sets forth the requirements to comply with any statute, regulation or ruling that may apply to the Trustee hereunder and relating to reporting requirements or other requirements necessary to preserve the exclusion from federal gross income of the interest on the Bonds.

(e) The foregoing covenants of this Section shall remain in full force and effect notwithstanding the defeasance of the Bonds pursuant to **Article IX** hereof or any other provision of this Indenture, until the final scheduled payment of all Bonds Outstanding.

**Section 609. Collection of Payments.** The City shall, at the expense of the Trust Estate, (a) take all lawful action within its control to cause the assessment of the real property and improvements within the Redevelopment Area, and the collection of Payments in Lieu of Taxes, at the times and in the manner required by the TIF Act, (b) take such lawful action within its control as may be required to cause the Director of Revenue of the State of Missouri and all other Persons to pay all Economic Activity Tax Revenues which are due to the City under the TIF Act, and (c) take all lawful action within its control to collect, or enforce all remedies to collect, the CID Revenues required to be paid by the District to the City pursuant to the CID Agreement. The Trustee shall, upon written direction of a majority of the Owners of the Bonds then Outstanding and upon being indemnified as provided in **Section 801(I)**, and at the expense of the Trust Estate, take such lawful action within its control to cause the assessment of the real property and improvements within Redevelopment Area at the times and in the manner required by the TIF Act, and cause the payment of the sales taxes associated with the Economic Activity Tax Revenues that are due to the City pursuant to the Redevelopment Agreement. The City covenants and agrees that, so long as the Bonds are Outstanding, the City will not authorize or grant real property tax abatement within the Redevelopment Area.

**Section 610. Enforcement of Agreements.**

(a) The City shall enforce the provisions of the Financing Documents in such manner as the City deems prudent and advisable in its good faith discretion. The City may enforce all appropriate available remedies thereunder, including particularly any actual, agreed or liquidated damages for failure to perform under the Financing Documents, and shall transfer to the Trustee for deposit to the Revenue Fund all sums received on account of such damages.

(b) The City shall notify the Trustee in writing as to any material failure of performance under the Financing Documents, and at the time of such notification the City shall also advise the Trustee what action the City proposes to take in enforcing available remedies. If, in the sole judgment of the Trustee, such action is less likely to be effective than some other or additional action, the Trustee may so advise the City promptly in writing. If, within 30 days following advice by the Trustee that some additional or other action would be more effective, or less than 30 days if so directed by a majority of the Owners, the City has not taken such other or additional action, and the Trustee has not, after consultation with the City, withdrawn such advice, upon receipt of indemnification satisfactory to it, the Trustee shall have the right to take such action, whether the action was suggested by the Trustee or otherwise, as the Trustee may deem most expedient and in the interest of the Owners of the Bonds. In furtherance of the rights granted to the Trustee

by this Section, the City hereby assigns to the Trustee all of the rights it may have in the enforcement of the Financing Documents, further authorizing the Trustee in its own name or in the name of the City to bring such actions, employ such counsel, execute such documents and do such other things as may in the judgment of the Trustee be necessary or appropriate under the circumstance at the expense of the Trust Estate.

(c) The City shall not modify, amend or waive any provision of the Financing Documents without the prior written consent of the Trustee, whose consent may be based upon the advice or opinion of counsel. The Trustee may withhold its consent to any such proposed modification, amendment or waiver of the Financing Documents if the proposed modification, amendment or waiver may adversely affect the security for the Bonds or may adversely affect the exclusion of interest on any Bonds from gross income of the Owners thereof for federal income tax purposes for Bonds that were exempt from taxation for federal income tax purposes or as may impose additional duties on the Trustee that were not contemplated upon the original execution of this Indenture. In exercising such judgment and in providing any consent pursuant to this Section, the Trustee may rely on an Opinion of Counsel.

**Section 611. Monthly Report.** The City shall provide to the Trustee, no later than the fifteenth day of each month, commencing June 15, 2022, a report of the Economic Activity Tax Revenues, Payments in Lieu of Taxes, and CID Revenues received by the City and transferred to the Trustee, which report shall be substantially in the form attached hereto as **Exhibit C**.

## **ARTICLE VII**

### **DEFAULT AND REMEDIES**

**Section 701. Events of Default.** If any one or more 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 performance or observance of any of the covenants, agreements or conditions on the part of the City in this Indenture or in the Bonds contained, and the continuance thereof for a period of 30 days after written notice thereof has been given (i) to the City by the Trustee, or (ii) to the Trustee (which notice of default the Trustee shall be required to accept) and the City by the Owners of not less than 25% in aggregate principal amount of Bonds then Outstanding; provided, however, if any default is such that it cannot be corrected within such 30-day period, it shall not constitute an Event of Default if corrective action is instituted by the City within such period and diligently pursued until the default is corrected; or

(b) The filing by the City of a voluntary petition in bankruptcy, or failure by the City to promptly lift any execution, garnishment or attachment of such consequence as would impair the ability of the City to carry on its operation, or adjudication of the City as a bankrupt, or assignment by the City for the benefit of creditors, or the entry by the City into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any proceedings instituted under the provisions of federal bankruptcy law, or under any similar acts which may hereafter be enacted.

(c) The failure to pay the principal of, redemption premium, if any, or interest on the Bonds when due.

The Trustee shall give written notice of any Event of Default to the City as promptly as practicable after the occurrence of an Event of Default of which the Trustee has notice as provided in **Section 801(h)** hereof.

**Section 702. No Acceleration.** The Bonds shall not in any event be subject to acceleration prior to maturity.

**Section 703. Surrender of Possession of Trust Estate; Rights and Duties of Trustee in Possession.** If an Event of Default has occurred and is continuing, 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 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, but not limited to, (i) reasonable compensation to the Trustee, its agents and counsel, and (ii) any reasonable charges of the Trustee hereunder, and the Trustee shall apply the remainder of the moneys so received in accordance with **Section 708** hereof.

Whenever all that is due upon the Bonds has been paid and all defaults made good, 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 the Trust Estate, the Trustee shall render annually to the City a summarized statement of receipts and expenditures in connection therewith.

**Section 704. Appointment of Receivers in Event of Default.** If an Event of Default has occurred and is continuing, 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 and of the earnings, income, products and profits thereof, pending such proceedings, with such powers as the court making such appointment shall confer.

**Section 705. Exercise of Remedies by the Trustee.** If an Event of Default has occurred and is continuing, the Trustee may pursue any available remedy at law or equity by suit, action, mandamus or other proceeding to enforce the payment of the principal of and interest on the Bonds then Outstanding, and to enforce and compel the performance of the duties and obligations of the City as herein set forth.

If an Event of Default has occurred and is continuing, and if requested so to do by the Owners of not less than 25% in aggregate principal amount of the Bonds then Outstanding and indemnified as provided in **Section 801(1)** hereof, 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, deems most expedient in the interests of the Owners; provided, however, that the Trustee shall not be required to take any action which in its good faith conclusion could result in personal liability to it.

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 the necessity of joining as plaintiffs or defendants any Owner, and any recovery or judgment shall, subject to **Section 708** hereof, be for the equal benefit of all the Owners of the Outstanding Bonds.



**Section 706. 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:

(i) a default has occurred of which the Trustee has notice as provided in **Section 801(h)** hereof, and

(ii) such default has become an Event of Default, and

(iii) the Owners of not less than 25% in aggregate principal amount of the Bonds then Outstanding shall have made written request to the Trustee, shall have offered it reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, and shall have provided to the Trustee indemnity as provided in **Section 801(1)** hereof, and

(iv) the Trustee shall thereafter fail or refuse to exercise the powers herein granted or to institute such action, suit or proceeding in its own name;

and such notification, request and 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 its, his or 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, however, shall affect or impair the right of any Owner to payment of the principal of and interest on any Bond at and after its maturity or the obligation of the City to pay the principal of and interest on each of the Bonds to the respective Owners thereof at the time, place, from the source and in the manner herein and in such Bond expressed.

**Section 707. Right of Owners to Direct Proceedings.** Any other provision herein to the contrary notwithstanding, the Owners of a majority in aggregate principal amount of the Bonds then Outstanding shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement 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, and provided, further, that the Trustee shall have the right to decline to follow any such direction if the Trustee in good faith determines that the proceeding so directed would involve it in personal liability or the Trustee has not been indemnified as provided in **Section 801** hereof.

**Section 708. Application of Moneys in Event of Default.** Upon an Event of Default, all moneys held or received by the Trustee pursuant to this Indenture or the Financing Documents pursuant to any right given or action taken under this Article shall, after payment of the reasonable fees, costs, advances and expenses of the Trustee and the proceedings resulting in the collection of such moneys (including without limitation attorneys' fees and expenses), subject to the limitations contained in **Article IV** herein, be deposited in the Debt Service Fund. All moneys in the Debt Service Fund, the Debt Service Reserve Fund, the Project Fund and the Revenue Fund shall be applied as follows:

*First* – To the payment to the Owners entitled thereto of all installments of interest then due and payable on the Bonds, in the order in which such installments of interest became due and payable, with interest thereon at the rate or rates specified in the respective

Bonds to the extent permitted by law, and, if the amount available is not 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 Owners entitled thereto of the unpaid principal of any of the Bonds that have become due and payable (other than Bonds called for redemption for the payment of which moneys or securities are held pursuant to this Indenture), in the order of their due dates, and, if the amount available is not sufficient to pay in full such principal due on any particular date, together with such interest, then to the payment ratably, according to the amounts of principal due on such date, to the Persons entitled thereto without any discrimination or privilege.

Whenever moneys are to be applied pursuant to 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.

**For purposes of the transfers set forth above, the CID Revenues allocable to pay the Debt Service Requirements for the Bonds shall not exceed 9.2% of the Debt Service Requirements for the Bonds for each calendar year (or such other percentages as provided in writing by the City to the Trustee permitted by law based on amounts paid from the Project Fund and eligible for payment from the CID Revenues).**

**Section 709. Remedies Cumulative.** No remedy conferred by this Indenture 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.

**Section 710. Delay or Omission Not Waiver.** 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, and every such right, power or remedy may be exercised from time to time and as often as may be deemed expedient.

**Section 711. Effect of Discontinuance of Proceedings.** 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 the City, the Trustee, the District 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 712. Waivers of Events of Default.** The Trustee shall waive any Event of Default and its consequences upon the written request of the Owners of a majority in aggregate principal amount of the Bonds then Outstanding; provided that there shall not be waived without the written consent of the Owners of all the Bonds Outstanding any Event of Default in the payment of the principal of any Outstanding Bonds at their maturity or upon the redemption thereof, or unless, prior to such waiver or rescission, all arrears of payments of principal when due, all fees, charges and expenses of the City and the Trustee in connection with such Event of Default shall have been paid or provided for. However, no Default involving the nonpayment of the fees, charges or expenses of the Trustee shall be waived without the prior written consent of the Trustee. In case of any such waiver or rescission, or in case any proceeding taken by the Trustee on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case the City, the Trustee and the Bondowners 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.

## ARTICLE VIII

### THE TRUSTEE

**Section 801. Acceptance of Trusts.** The Trustee hereby accepts the trusts imposed upon it by this Indenture, and agrees to perform said trusts as a corporate trustee ordinarily would perform said trusts under a corporate 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, prior to the occurrence of an Event of Default and after the curing of all Events of Default which 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, 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 under reasonably similar circumstances would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or through agents, attorneys, receivers, employees or such other professionals but shall not be answerable for the conduct of the same in accordance with the standard specified above, provided the Trustee has exercised reasonable care in making such selection. The Trustee may act and conclusively rely upon the opinion or advice of counsel, who may, without limitation, be counsel to the City or an employee of the Trustee, concerning all matters of trust hereof and the duties hereunder, and, subject to the restrictions of **Section 802** hereof, may in all cases pay such reasonable compensation to all such agents, attorneys, receivers, employees and other such professionals 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 and shall be fully protected in reliance upon such opinion or advice of counsel.

(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 for the recording, re-recording or filing of this Indenture or any security agreements in connection therewith (except as provided in **Section 606** herein), or for insuring any of the improvements constructed in the Redevelopment Area or collecting any insurance moneys, or for the validity of the execution by the City of this Indenture or of any or instruments of further assurance, or for the sufficiency of the security for 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 V** hereof. The Trustee makes no representations as to the value or condition of the Trust Estate or any part thereof, or as to the validity or sufficiency of this Indenture or of the Bonds. The Trustee shall not be accountable for the use or application by the City of any of the Bonds or the proceeds thereof or of any money paid to or upon the order of the City under any provision of this Indenture.

(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 of Bonds with the same rights which it would have if it were not Trustee.

(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 and in accordance with 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 the Owner of any Bond, shall be conclusive and binding upon all future Owners of the same Bond and upon Bonds issued in exchange therefore 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 deems it desirable that a matter be proven or established prior to taking, suffering or omitting any action hereunder, the Trustee shall be entitled to rely upon a certificate signed by an Authorized City Representative, an Authorized District Representative or Authorized Developer Representative as sufficient evidence of the facts therein contained. Prior to the occurrence of an Event of 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 of any default or Event of Default, other than a failure to make any payment on the Bonds when due, unless the Trustee is specifically notified in writing of such Event of Default by the City or by the Owners of at least 10% in aggregate principal amount of all Bonds then Outstanding.

(i) At any and all reasonable times the Trustee and its duly authorized agents, attorneys, experts, engineers, accountants and representatives shall have the right, but shall not be required, to inspect any and all of the Project, the Redevelopment Area, including all books, papers and records of the City or the District pertaining to the Bonds, and to take copies of such memoranda from and in regard thereto as may be desired.

(j) The Trustee shall not be required to give any bond or surety in respect of the execution of its trusts and powers hereunder.

(k) The Trustee shall have the right, but shall not be required, to demand, in respect of the authentication of any Bonds, the withdrawal of any funds, or any action whatsoever within the purview of this Indenture, 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 as are deemed desirable for the purpose of establishing the right of the City to the authentication of any Bonds, the withdrawal of any funds or the taking of any other action by the Trustee.

(l) Anything herein to the contrary notwithstanding, before taking any action under this Indenture, other than any action under **Article II** hereof concerning the payment of principal and interest on the Bonds, declaring an Event of Default and accelerating the maturity of the Bonds, the Trustee may, in its discretion, require that satisfactory indemnity be furnished to it by the

Owners or other parties for the reimbursement of all reasonable fees, costs, liabilities, losses, claims and expenses to which it or its agents or counsel may be put and to protect it against all liability including environmental, except liability which is adjudicated to have resulted from its negligence or willful misconduct by reason of any action so taken.

(m) All moneys received by the Trustee shall, until used, applied or invested as herein provided, be held in trust for the purposes for which they were received but need not be segregated from other funds, except to the extent required by law or this Indenture. The Trustee shall be under no liability for interest on any moneys received hereunder, except to account for interest earned from Investment Securities.

(n) Notwithstanding the effective date of this Indenture or anything to the contrary in this Indenture, the Trustee shall have no liability or responsibility for any act or event relating to this Indenture that occurs prior to the date the Trustee formally executes this Indenture and commences acting as Trustee hereunder.

(o) No provision of this Indenture shall be deemed to require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of its rights or powers, if the Trustee has reasonable grounds for believing that repayment of those funds or, in the alternative, adequate indemnity against such risk or liability is not reasonably assured to it.

(p) The Trustee has no obligation or liability to the Bondowners for the payment of interest or premium, if any, on or principal of the Bonds, but rather the Trustee's sole obligations are to administer, for the benefit of the City and the Bondowners, the Funds established hereunder.

(q) In the event the Trustee shall receive inconsistent or conflicting requests and indemnity from two or more groups of Bondowners, each representing less than a majority of the aggregate principal amount of the Bonds then Outstanding, the Trustee, in its sole discretion, may determine what action, if any, shall be taken.

(r) The Trustee shall have no responsibility with respect to any information in any offering memorandum or other disclosure material distributed with respect to the Bonds. The Trustee shall have no responsibility for compliance with securities laws in connection with issuance of the Bonds.

(s) The Trustee's immunities and protections from liability, and its right to payment of compensation and indemnification in connection with performance of its duties and obligations under this Indenture, shall survive the Trustee's resignation or removal, or the final payment of the Bonds.

(t) The Trustee is under no duty, obligation or responsibility to verify any insurance policy, audit, schedule, statement, report, surety bond or other instrument required or directed to be delivered or filed with the Trustee by any provision of this Indenture nor is the Trustee under any duty of any other character with respect to the foregoing except to hold the foregoing as a repository for Bondowners to verify compliance with this Indenture or deliver a copy from time to time during reasonable business hours to any Bondowner desiring to inspect the foregoing (provided that the Bondowner pays the associated costs).

(u) The Trustee will not be liable for any error of judgment made in good faith by an authorized officer of the Trustee, unless it is proved that the Trustee was negligent in ascertaining the pertinent facts.

(v) Whether or not expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of, conveying rights or duties, or affording protection to the Trustee, whether in its capacity as Trustee, Paying Agent, Bond Registrar or any other capacity, will be subject to the provisions of this Section.

(w) 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, except that:

(i) this subsection shall not be construed to affect the limitation of the Trustee's duties and obligations provided in this Section or the Trustee's right to rely on the truth of statements and the correctness of opinions as provided in this Section;

(ii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Owners of not less than a majority in principal amount of the Bonds then Outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture;

(iii) subject to subsection (l) above, no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial or environmental liability 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 adequate indemnity against such risk or liability is not reasonably assured to it;

(iv) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder; and

(v) the Trustee shall not be liable for any error of judgment made in good faith by any one of its directors, officers or employees unless it is established that the Trustee was negligent in ascertaining the pertinent facts.

**Section 802. Fees, Charges and Expenses of the Trustee.** The Trustee shall be entitled to payment of and/or reimbursement for reasonable fees (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) by the City for its ordinary services rendered hereunder and all agent and counsel fees and other ordinary costs and expenses reasonably made or incurred by the Trustee in connection with such ordinary services and, if it becomes necessary that the Trustee perform extraordinary services, it shall be entitled to reasonable extra compensation therefore and to reimbursement for reasonable and necessary extraordinary costs and expenses in connection therewith; provided that if such extraordinary services or extraordinary expenses are occasioned by the neglect or willful misconduct of the Trustee it shall not be entitled to compensation or reimbursement therefore. The Trustee shall be entitled to payment and reimbursement for the reasonable fees and charges of the Trustee as Paying Agent and as Registrar for the Bonds. Upon the occurrence of an Event of Default

and during its continuance, the Trustee shall have a first lien with right of payment prior to payment on account of principal of or interest on any Bond, upon all moneys in its possession under any provisions hereof for the foregoing advances, fees, costs and expenses incurred. If moneys in the Revenue Fund are insufficient to make payment to the Trustee for its fees and expenses, as provided in subparagraph *Second* of **Section 402** on any Payment Date, the unpaid portion shall be carried forward to the next Payment Date, together with interest thereon at the Trustee's base lending rate plus 2%.

**Section 803. Notice of Default.** If a default or Event of Default occurs of which the Trustee is required to take notice or notice is given to the Trustee as provided in **Section 801(h)** hereof, then the Trustee shall give written notice thereof to the City and within 30 days (five Business Days if the maturity of the Bonds has been accelerated pursuant to **Section 702** hereof) by first class mail to the Owners of all Bonds then Outstanding as shown by the Register.

**Section 804. 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 of the Bonds, the Trustee may intervene on behalf of Owners and shall do so if requested in writing by the Owners of at least 25% in the aggregate principal amount of Bonds then Outstanding, provided that the Trustee shall first have been provided indemnity provided under **Section 801(i)** hereof as it may require against the reasonable costs, expenses and liabilities which it may incur in or by reason of such proceeding, including without limitation attorneys' fees and expenses.

**Section 805. Successor Trustee Upon Merger, Consolidation or Sale.** Any corporation or association with or into which the Trustee may be merged or converted or with or into which it may be consolidated, or to which the Trustee 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, provided such corporation or association is otherwise eligible under **Section 808** hereof, 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 806. Resignation or Removal 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 and the Owners, and such resignation shall take effect upon the appointment of a successor Trustee pursuant to **Section 807** hereof. If at any time the Trustee ceases to be eligible in accordance with the provisions of this Indenture, it shall resign immediately in the manner provided in this Section. The Trustee may be removed for cause or without cause at any time by an instrument or concurrent instruments in writing delivered to the Trustee and the City and signed by the Owners of a majority in aggregate principal amount of Bonds then Outstanding. If no Event of Default has occurred and is continuing, or no condition exists which will become an Event of Default as provided in **Section 701(a)** hereof, the Trustee may be removed at any time by an instrument or concurrent instruments in writing delivered to the Trustee and the Owners and signed by the City. The City or the Owners of a majority in aggregate principal amount of the Bonds then Outstanding may at any time petition any court of competent jurisdiction for the removal for cause of the Trustee. No resignation or removal of the Trustee shall become effective until a successor Trustee has accepted its appointment under **Section 809** hereof.

**Section 807. Appointment of Successor Trustee.** In case the Trustee hereunder shall resign or be removed, or shall otherwise become incapable of acting hereunder, or in case it shall be taken under the control of any public officer or officers or of a receiver appointed by a court, a successor Trustee may be appointed by (i) the City (provided no Default, Event of Default or condition which, with the giving of notice, the passage of time or both, would constitute a Default or an Event of Default has occurred and is

continuing), or (ii) the Owners of a majority in aggregate principal amount of Bonds then Outstanding, by an instrument or concurrent instruments in writing. In case of such vacancy the City may appoint a temporary Trustee, to fill such vacancy, until a successor Trustee shall be appointed in the manner above provided. If no successor has been appointed within 60 days after notice of the resignation or removal is given, the Trustee may petition a court of competent jurisdiction to appoint a successor; and any such temporary Trustee so appointed by the City or a court shall immediately and without further acts be superseded by the successor Trustee so appointed. Any successor Trustee or temporary Trustee must have the qualifications provided for in Section 809.

**Section 808. Qualifications of Trustee and Successor Trustees.** The Trustee and every successor Trustee appointed hereunder shall be a trust institution or commercial bank qualified to do business in the State, shall be in good standing and qualified to accept such trusts, shall be subject to examination by a federal or state bank regulatory authority, and shall have a reported capital and surplus of not less than \$50,000,000, or must provide a guaranty of the full and prompt performance by the Trustee of its obligations under this Indenture and any other agreements made in connection with the Bonds, on terms satisfactory to the City, by a guarantor with such combined capital and surplus. If such institution publishes reports of conditions at least annually pursuant to law or regulation, then for the purposes of this Section the capital and surplus of such institution shall be deemed to be its capital and surplus as set forth in its most recent report of condition so published.

**Section 809. Vesting of Trusts in Successor Trustee.** Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the City an instrument in writing accepting such appointment hereunder, and thereupon such successor shall become fully vested with all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges of its predecessor and the obligations of the predecessor Trustee hereunder shall cease and terminate; but such predecessor shall, nevertheless, on the written request of the City, and upon the payment of its outstanding fees and expenses, 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; and 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 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 810. 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 Financing Documents, and in particular in case of the enforcement of either upon an Event of Default, or if the Trustee deems that by reason of any present or future law of any jurisdiction it may not 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 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 co-trustee or separate trustee, 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 him or it 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 dies, becomes incapable of acting, resigns or is 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 811. Annual Statement.** Unless providing statements more frequently, the Trustee shall render an annual statement for each Fiscal Year to the City and, if so requested and the expense thereof is paid, to any Owner requesting the same. The annual statement shall show in reasonable detail all financial transactions relating to the Trust Estate during the accounting period and shall include a break-down of money deposited into each account of the Revenue Fund and the balance in any funds and accounts created by this Indenture as of the beginning and close of such accounting period.

**Section 812. Paying Agents; Registrar; Appointment and Acceptance of Duties; Removal.**

(a) The Trustee is hereby designated and agrees to act as Paying Agent and as Registrar for and in respect of the Bonds.

(b) The City may appoint one or more additional Paying Agents for the Bonds. Each Paying Agent other than the Trustee shall signify its acceptance of the duties and obligations imposed upon it by this Indenture by executing and delivering to the City and the Trustee a written acceptance thereof. The City may remove any Paying Agent other than the Trustee and any successors thereto, and appoint a successor or successors thereto; provided that any such Paying Agent designated by the City shall continue to be a Paying Agent of the City for the purpose of paying the principal of and interest on the Bonds until the designation of a successor as such Paying Agent and acceptance by such successor of the appointment. Each Paying Agent is hereby authorized to pay or redeem Bonds when such Bonds are duly presented to it for payment or redemption, which Bonds shall thereafter be delivered to the Trustee for cancellation.

(c) The Paying Agent may at any time resign and be discharged of the duties and obligations created by this Indenture by giving at least 60 days' notice to the City and the Trustee. The Paying Agent may be removed by the City at any time by an instrument signed by the City and filed with the Paying Agent and the Trustee. In the event of the resignation or removal of the Paying Agent, the Paying Agent shall pay over, assign and deliver any moneys held by it in such capacity to its successor or, if there be no successor, to the Trustee.

If the City fails to appoint a Paying Agent hereunder, or the Paying Agent resigns or is removed, or is dissolved, or if the property or affairs of the Paying Agent are taken under the control of any state or federal court or administrative body because of bankruptcy or insolvency, or for any other reason, and the City has not appointed its successor as Paying Agent, the Trustee shall ipso facto be deemed to be the Paying Agent for all purposes of this Indenture until the appointment by the City of the Paying Agent or successor Paying Agent, as the case may be. The Trustee shall give each Owner notice by first-class mail of the appointment of a Paying Agent or successor Paying Agent other than the Trustee.

## **ARTICLE IX**

### **SATISFACTION AND DISCHARGE OF THE INDENTURE**

#### **Section 901. Satisfaction and Discharge of the 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 902** hereof, and provision also is made for paying all other sums payable hereunder, including the fees and expenses of the Trustee and the Paying Agents to the date of payment of the Bonds, then the right, title and interest of the Trustee under this Indenture shall thereupon cease, determine and be void, and thereupon the Trustee shall cancel, discharge and release this Indenture and shall 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 any property at the time subject to this Indenture which may then be in the Trustee's possession, except amounts in the Debt Service Fund required to be paid to the City under **Article IV** hereof, and except funds or securities in which such moneys are invested and 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 of the Trustee stating that the whole amount of the principal and interest so due and payable upon all of the Bonds then Outstanding has been paid or provision for such payment has been made in accordance with **Section 902** hereof as evidence of satisfaction of this Indenture, and upon receipt thereof the City shall cancel and erase the inscription of this Indenture from its records.

#### **Section 902. Bonds Deemed to Be Paid.**

(a) Bonds shall be deemed to be paid within the meaning of this Article when payment of the principal on such Bonds, plus premium, if any, plus interest thereon to the due date thereof (whether such due date is by reason of maturity or upon redemption as provided in this Indenture, or otherwise), either (1) has been made or caused to be made in accordance with the terms hereof, or (2) provision therefore has been made by depositing with the Trustee, in trust and irrevocably setting aside exclusively for such payment, (i) moneys sufficient to make such payment or (ii) non-callable 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 and the Trustee shall have received an opinion of Bond Counsel (which opinion may be based upon a ruling or rulings of the Internal Revenue Service) to the effect that such deposit of interest on any Bonds will not result in the interest on any Bonds then Outstanding and exempt from taxation for federal income tax purposes becoming subject to federal income taxes then in effect and that all conditions precedent to the satisfaction of this Indenture have been met. At such time as a Bond is deemed to be paid hereunder as aforesaid, such Bond shall no longer be secured by or be entitled to the benefits of this Indenture, except for the purposes of any such payment from such moneys or Government Securities.

(b) Notwithstanding the foregoing, in the case of Bonds which by their terms may be redeemed prior to the stated maturities thereof, no deposit under clause (2) of subsection (a) above shall be deemed a payment of such Bonds as aforesaid until, as to all such Bonds which are to be redeemed prior to their respective stated maturities, proper notice of such redemption has been given in accordance with **Article III** hereof 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 and interest thereon shall be applied to and be used solely for the payment of the particular Bonds and interest thereon with respect to which such moneys and Government Securities have been so set aside in trust.

(d) If the entire amount necessary to pay Outstanding Bonds has not been deposited with the Trustee, and the final payment to pay Outstanding Bonds is more than 90 days subsequent to such deposit, the Trustee shall receive a verification report of a firm of independent certified public accountants that the moneys and Government Securities deposited with the Trustee are sufficient to pay when due the principal or redemption price, if any, and interest on the Bonds on or prior to the applicable redemption or maturity date.

(e) Upon the payment in full of the principal of and interest on the Bonds (or provision has been made for the payment thereof as specified in this Indenture) and the fees, charges and expenses of the Trustee and any Paying Agents, and any other amounts required to be paid under this Indenture, all amounts remaining on deposit in the Funds consisting of the CID Revenues shall be paid to the District and all other amounts remaining on deposit in the Funds shall be paid to the City for deposit into the Special Allocation Fund.

## **ARTICLE X**

### **SUPPLEMENTAL FINANCING DOCUMENTS**

**Section 1001. Supplemental Financing Documents 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 supplements to the Financing Documents as are not inconsistent with the terms and provisions hereof, for any one or more of the following proposes:

(a) to cure any ambiguity or formal defect or omission in any Financing Document or to release property which was included by reason of an error or other mistake;

(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 either of them;

(c) to subject to any Financing Document additional revenues, properties or collateral;

(d) to modify, amend or supplement the Indenture in such manner as to permit the qualification of this Indenture under the Trust Indenture Act of 1939, as then amended, or any similar federal statute hereafter in effect, or to permit the qualification of the Bonds for sale under the securities laws of any state of the United States;

(e) to provide for the refunding of any Bonds in accordance with the terms hereof;

(f) to evidence the appointment of a separate trustee or the succession of a new trustee hereunder;

(g) to modify or eliminate any of the terms of any Financing Documents; provided, however, that:

(1) such amendment to a Financing Document shall expressly provide that any such modifications or eliminations shall become effective only when there is no Bond Outstanding issued prior to the execution of such amended Financing Document; and

(2) the Trustee may, in its discretion, decline to enter into any such amendment to a Financing Document which, in its opinion, may not afford adequate protection to the Trustee when the same becomes operative;

(h) to make any other change which, in the sole judgment of the Trustee, does not materially adversely affect the security of the Owners. In exercising such judgment the Trustee may rely on an Opinion of Counsel.

**Section 1002. Supplemental Financing Documents Requiring Consent of Owners.** In addition to supplements to Financing Documents permitted by **Section 1001** hereof and subject to the terms and provisions contained in this Section, and not otherwise, with the consent of the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding, the City and the Trustee may from time to time enter into such other amendment to the Financing Documents 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 a Financing Document; provided, however, that nothing in this Section contained shall permit or be construed as permitting:

(a) an extension of the maturity of the principal of or the scheduled date of payment of interest on any Bond or any change of the redemption date on any Bond;

(b) a reduction in the principal amount, redemption premium or any interest payable on any Bond;

(c) a privilege or priority of any Bond or Bonds over any other Bond or Bonds;

(d) a reduction in the aggregate principal amount of Bonds the Owners of which are required for consent to any such Supplemental Indenture; or

(e) the modification of the rights, duties or immunities of the Trustee, without the written consent of the Trustee.

If at any time the City requests the Trustee to enter into any amendment to a Financing Document for any of the purposes of this Section, the Trustee shall cause notice of the proposed execution of such amendment to be sent to each Owner. Such notice shall briefly set forth the nature of the proposed amendment 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 shall be prescribed by the City following the sending 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 amendment have consented to and approved the execution thereof as herein provided, no Owner of any Bond 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. Upon the execution of any such amendment as in this Section permitted and provided, the Financing Documents shall be and be deemed to be modified and amended in accordance therewith.

**Section 1003. Opinion of Bond Counsel.** Notwithstanding anything to the contrary in **Sections 1001 or 1002** hereof, before the City and the Trustee enter into any amendment to a Financing

Document pursuant to **Sections 1001 or 1002** hereof, there shall have been delivered to the Trustee an opinion of Bond Counsel stating that such amendment is authorized or permitted by this Indenture, the TIF Act and the CID Act, complies with their respective terms, will, upon the execution and delivery thereof, be valid and binding upon the City in accordance with its terms and will not cause any Bonds then Outstanding and exempt from taxation for federal income tax purposes to become subject to federal income taxes then in effect.

## **ARTICLE XI**

### **MISCELLANEOUS PROVISIONS**

**Section 1101. Consents and Other Instruments by Owners.** 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, 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:

(a) The fact and date of the execution by any person of any such instrument (other than the assignment of a Bond) 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.

(b) 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 Register. In all cases where Bonds are owned by persons other than the City, the Developer or an assignee of the City or the Developer, 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, or held by or for the account of, the City, the Developer or any affiliate or any Person controlling, controlled by or under common control with either of them, shall be disregarded and deemed not to be Outstanding under this Indenture.

**Section 1102. Notices.** Except as otherwise provided herein, it shall be sufficient service of any notice, request, complaint, demand or other paper required by this Indenture to be given to or filed with the City or the Trustee if the same is duly mailed by registered or certified mail, postage pre-paid, return receipt requested, or sent by telegram, telecopy or telex or other similar communication, or when given by telephone, confirmed by telephone, on the same day, addressed as follows, provided that notices to the Trustee shall be effective only upon receipt:

(1) To the City at:  
City of Smithville, Missouri  
107 West Main Street  
Smithville, Missouri 64089  
Attention: City Administrator  
Telephone: (816) 532-3897

(2) To the Trustee at:  
UMB Bank, N.A.

1010 Grand Boulevard, 4<sup>th</sup> Floor  
Kansas City, Missouri 64106  
Attn: Corporate Trust Services  
Telephone: (816) 860-3248

- (3) To the Developer at:  
Development Associates Smithville, LLC  
c/o Cadence Commercial Real Estate  
10985 Cody, Suite 220  
Overland Park, Kansas 66210

With a copy to:

Korb Maxwell  
Polsinelli  
900 W. 48<sup>th</sup> Place, Suite 900  
Kansas City, MO 64112  
Telephone: (816) 360-4327

- (4) To the District at:  
  
Development Associates Smithville, LLC  
c/o Cadence Commercial Real Estate  
10985 Cody, Suite 220  
Overland Park, Kansas 66210

With a copy to:

Korb Maxwell  
Polsinelli  
900 W. 48<sup>th</sup> Place, Suite 900  
Kansas City, MO 64112  
Telephone: (816) 360-4327

- (5) To the Owners:

By first-class mail addressed to each of the Owners of all Bonds at the time Outstanding, as shown by the Register. Any notice so mailed to the Owners of the Bonds shall be deemed given at the time of mailing whether or not actually received by the Owners.

In the event of any notice to a party other than the City, a copy of said notice shall be provided to the City. The above parties may from time to time designate, by notice given hereunder to the other parties, such other address to which subsequent notices, certificates or other communications shall be sent.

**Section 1103. Limitation of Rights Under the Indenture.** With the exception of rights herein expressly conferred and as otherwise provided in this Section, nothing expressed or mentioned in or to be implied by this Indenture or the Bonds is intended or shall be construed to give any Person other than the parties hereto, and the Owners of the Bonds, any right, remedy or claim under or in respect to this Indenture. This Indenture and all of the covenants, conditions and provisions hereof are, except as otherwise provided

in this Section, intended to be and are for the sole and exclusive benefit of the parties hereto and the Owners of the Bonds as herein provided.

**Section 1104. Suspension of Mail Service.** If, because of the temporary or permanent suspension of mail service or for any other reason, it is impossible or impractical to mail any notice in the manner herein provided, then such delivery of notice in lieu thereof as shall be made with the approval of the Trustee shall constitute a sufficient notice.

**Section 1105. Business Days.** If any date for the payment of principal of or interest on the Bonds or the taking of any other action hereunder is not a Business Day, then such payment shall be due, or such action shall be taken, on the first Business Day thereafter; provided, however, any interest that accrues on any unmatured or unredeemed Bonds from the due date shall be payable on the next succeeding Payment Date.

**Section 1106. Immunity of Officers, Employees and Members of City.** No recourse shall be had for the payment of the principal of or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement in this Indenture contained against any past, present or future officer, director, member, employee or agent of the City, the governing body of the City, or of any successor public corporation, as such, either directly or through the City or any successor public corporation, under any rule of law or equity, statute or constitution, or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officers, directors, members, employees or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Indenture and the issuance of such Bonds.

**Section 1107. No Sale.** The City covenants and agrees that, except as provided herein or in the Redevelopment Agreement, it will not sell, convey, assign, pledge, encumber or otherwise dispose of any part of the moneys subject to this Indenture.

**Section 1108. 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 circumstances, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or Sections in this Indenture contained shall not affect the remaining portions of this Indenture, or any part thereof.

**Section 1109. Execution in Counterparts.** This Indenture may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 1110. Electronic Transaction.** The parties agree that the transaction described herein may be conducted and related documents may be sent, received and stored by electronic means. In addition, the transaction described herein may be conducted and related documents may be sent, received and 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 1111. Governing Law.** This Indenture shall be governed exclusively by and construed in accordance with the applicable laws of the State.

**Section 1112. Anti-Discrimination Against Israel Act.**

(a) The State has adopted the “Anti-discrimination Against Israel Act,” Section 34.600, Revised Statutes of Missouri (the “Act”), which provides that “[a] public entity shall not enter into a contract with a company to acquire or dispose of services, supplies, information technology, or construction unless the contract includes a written certification that the company is not currently engaged in and shall not, for the duration of the contract, engage in a boycott of goods or services from the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel.” The Act provides that any contract that fails to comply with the Act’s provisions shall be void as against public policy.

(b) The Trustee hereby certifies and agrees that, to the extent the Act is applicable to this Indenture, the Trustee is not currently engaged in and shall not, for the duration of this Indenture, engage in a boycott of goods or services from the State of Israel, companies doing business in or with Israel or authorized by, licensed by or organized under the laws of the State of Israel or persons or entities doing business with the State of Israel, in all respects within the meaning of the Act.

(c) The foregoing certification shall not be deemed an admission or agreement that the Act is applicable to this Indenture but the foregoing certification is provided if the Act is applicable. If the Act is initially deemed or treated as applicable to this Indenture, but it is subsequently determined not to apply to this Indenture for any reason including by reason of applicable federal law, including without limitation, 50 U.S.C. Section 4607, the repeal or amendment of the Act or any ruling of a court of competent jurisdiction as to the unenforceability or invalidity of the Act, then the foregoing certification shall cease and not exist.



**IN WITNESS WHEREOF**, the City of Smithville, Missouri has caused these presents to be signed in its name and behalf and its corporate seal to be hereunto affixed and attested by its duly authorized officers, and to evidence its acceptance of the trusts hereby created, UMB Bank, N.A., has caused these presents to be signed in its name and behalf by its duty authorized officer, all as of the day and year first above written.

**CITY OF SMITHVILLE, MISSOURI**

[SEAL]

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

Indenture

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

By \_\_\_\_\_  
Title:

Indenture

**EXHIBIT A**

**FORM OF BONDS**

**THE TRANSFER OF THIS BOND IS SUBJECT TO RESTRICTIONS. THIS BOND MAY ONLY BE TRANSFERRED TO APPROVED INVESTORS IN ACCORDANCE WITH THE TERMS AND CONDITIONS CONTAINED IN THE INDENTURE.**

**EXCEPT AS OTHERWISE PROVIDED IN THE INDENTURE (DESCRIBED HEREIN), THIS GLOBAL BOND MAY BE TRANSFERRED, IN WHOLE BUT NOT IN PART, ONLY TO ANOTHER NOMINEE OF THE SECURITIES DEPOSITORY (DESCRIBED HEREIN) OR TO A SUCCESSOR SECURITIES DEPOSITORY OR TO A NOMINEE OF A SUCCESSOR SECURITIES DEPOSITORY.**

**UNITED STATES OF AMERICA  
STATE OF MISSOURI**

Registered  
No. R-\_\_\_\_

Registered  
\$\_\_\_\_\_

**CITY OF SMITHVILLE, MISSOURI**

**SPECIAL OBLIGATION REVENUE BOND  
(SMITHVILLE COMMONS PROJECT)  
SERIES 2022**

**Rate of Interest:**

**Maturity Date:**

**Dated Date:**

**CUSIP No.**

\_\_\_\_\_%

\_\_\_\_\_

REGISTERED OWNER:

\_\_\_\_\_

PRINCIPAL AMOUNT:

\_\_\_\_\_ DOLLARS.

The **CITY OF SMITHVILLE, MISSOURI**, a fourth-class city and an incorporated political subdivision duly organized and validly existing under the Constitution and laws of the State of Missouri (the "City"), for value received, hereby promises to pay to the registered owner shown above, or registered assigns, the Principal Amount shown above on the Maturity Date shown above, and to pay interest thereon from the Dated Date shown above or from the most recent Interest Payment Date to which interest has been paid or duly provided for, at the Rate of Interest per annum shown above. Interest shall be payable semiannually on June 1 and December 1 in each year (each, an "Interest Payment Date"), beginning on December 1, 2022. Interest shall be calculated on the basis of a 360-day year of twelve 30-day months.

Except as otherwise provided herein, the capitalized terms herein shall have the meanings as provided in the Indenture (as hereinafter defined). REFERENCE IS MADE TO THE INDENTURE AND THE REDEVELOPMENT AGREEMENT FOR A COMPLETE DESCRIPTION OF THE CITY OBLIGATIONS HEREUNDER.

The principal of this Bond shall be paid at maturity or upon earlier redemption to the Person in whose name this Bond is registered on the Register at the maturity or redemption date thereof. The interest payable on this Bond on any Payment Date shall be paid by UMB Bank, N.A., Kansas City, Missouri (the "Trustee") to the person in whose name this Bond is registered on the Register at the close of business on the fifteenth day (whether or not a Business Day) of the calendar month next preceding such Payment Date. Such interest shall be payable (a) by check or draft mailed by the Trustee to the address of such registered Owner shown on the Register or (b) in the case of a principal or interest payment the Securities Depository or any Owner of \$500,000 or more in aggregate principal amount of Bonds, by electronic transfer to such registered Owner upon written notice given to the Trustee not less than 5 days prior to the Record Date for such interest and signed by such registered Owner, containing the electronic transfer instructions including the name of the bank (which shall be in the continental United States), ABA routing number and account name and account number to which such Registered Owner wishes to have such transfer directed. The principal or redemption price of and interest on the Bonds shall be payable by check or draft in any coin or currency that, on the respective dates of payment thereof, is legal tender for the payment of public and private debts.

This Bond is one of an authorized series of fully registered bonds of the City designated "City of Smithville, Missouri, Tax Increment Revenue Bonds (Smithville Commons Project), Series 2022," in the aggregate principal amount of \$[Principal Amount] (the "Bonds"). **The obligations of the City with respect to the application of Economic Activity Tax Revenues and Payments in Lieu of Taxes to the repayment of the Bonds terminate on October 2, 2040, whether or not the principal amount thereof or interest thereon has been paid in full.**

The Bonds are being issued pursuant to a Trust Indenture dated as of May \_\_, 2022, between the City and the Trustee (the "Indenture"), for the purpose of (a) financing certain Redevelopment Project Costs, (b) funding the debt service reserve fund, and (c) paying the costs of issuance of the Bonds, all under the authority of and in full compliance with the Constitution and laws of the State of Missouri.

The Bonds constitute special, limited obligations of the City payable as to principal, premium, if any, and interest solely from the Pledged Revenues and other moneys pledged thereto and held by the Trustee pursuant to the Indenture. The Bonds shall not constitute debts or liabilities of the City, the State of Missouri or any political subdivision thereof within the meaning of any constitutional or statutory debt limitation or restriction.

The Bonds are subject to redemption as follows:

(a) *Optional Redemption.* The Bonds are subject to optional redemption by the City in whole or in part at any time on or after December 1, 20\_\_, at a redemption price equal to 100% of the principal amount of Bonds to be redeemed, plus accrued interest to the redemption date.

(b) *Special Mandatory Redemption.*

(1) The Bonds maturing December 1, 20\_\_ are subject to special mandatory redemption by the City in order of maturity on each December 1 commencing December 1, 20\_\_, at the redemption price of 100% of the principal amount being redeemed, together with accrued interest thereon to the date fixed for redemption, in an amount equal to the amount which is on

deposit in the Redemption Account of the Debt Service Fund 40 days prior to each Payment Date (or if such date is not a Business Day, the immediately preceding Business Day).

(2) The Bonds are subject to special mandatory redemption by the City, in whole but not in part, on any date in the event that moneys in the applicable account of the Debt Service Fund (and, with respect to the last series of Bonds Outstanding, the Debt Service Reserve Fund) are sufficient to redeem all of the Bonds of the applicable series at a redemption price of 100% of such Bonds Outstanding, together with accrued interest thereon to the date fixed for redemption.

[(c) *Mandatory Redemption.* The Bonds maturing December 1, 20\_\_ (the “Term Bonds”) will be subject to mandatory redemption and payment prior to maturity in the amounts and on the dates as set forth in the Indenture at a Redemption Price equal to 100% of the principal amount thereof plus accrued interest to the Redemption Date.]

Bonds shall be redeemed only in Authorized Denominations. When less than all of the Outstanding Bonds are to be redeemed and paid prior to maturity, such Bonds or portions of Bonds to be redeemed shall be selected in Authorized Denominations by the Trustee from such maturities and in such amounts as the City may determine.

Unless waived by any Owner of Bonds to be redeemed, official notice of any redemption of any Bond shall be given by the Trustee on behalf of the City by mailing a copy of an official redemption notice by first class mail, postage prepaid, at least 20 days prior to the date fixed for redemption to the Owner of the Bond or Bonds to be redeemed at the address shown on the Register.

The City, the Tax Increment Financing Commission of the City of Smithville, Missouri, the commissioners of said Commission, the elected officials, officers and employees of the City and any person executing the Bonds shall not be personally liable for such obligations by reason of the issuance thereof.

The Bonds are issuable in the form of fully registered Bonds without coupons in the denomination of \$100,000 or any integral multiple of \$5,000 in excess thereof.

This Bond may be transferred or exchanged, as provided in the Indenture, only upon the books for the registration, transfer and exchange thereof (the “Register”) kept by the Trustee, upon surrender of this Bond together with a written instrument of transfer satisfactory to the Trustee duly executed by the registered Owner or the registered Owner’s duly authorized agent, whereupon a new Bond of the same series and maturity and in the same principal amount outstanding as the Bond which was presented for transfer or exchange shall be issued to the transferee in exchange therefore as provided in the Indenture, and upon payment of the charges therein prescribed. The City and the Trustee may deem and treat the Person in whose name this Bond is registered on the Register 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 may only be purchased by or transferred to Approved Investors.** No such assignment, transfer or conveyance shall be effective as against the City unless and until such registered owner has delivered to the City and the Trustee written notice thereof that discloses the name and address of the purchaser or transferee and such assignment, transfer or conveyance shall be made only upon receipt by the Trustee of a letter in substantially the form attached to the Indenture executed by the proposed purchaser or transferee.

This Bond shall not be valid or binding on the City 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 issuance of the Bonds have existed, happened and been performed in due time, form and manner as required by law.

**IN WITNESS WHEREOF**, the **CITY OF SMITHVILLE, MISSOURI** has executed this Bond by causing it to be signed by the manual or facsimile signature of its Mayor and attested by the manual or facsimile signature of its City Clerk, and its official seal to be affixed or imprinted hereon, and this Bond to be dated as of the Dated Date shown above.

Registration Date: \_\_\_\_\_

**CITY OF SMITHVILLE, MISSOURI**

**CERTIFICATE OF AUTHENTICATION**

This Bond is one of the Bonds described in the within-mentioned Indenture.

By: \_\_\_\_\_  
Mayor

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

(SEAL)

ATTEST:

By: \_\_\_\_\_  
Authorized Signatory

By: \_\_\_\_\_  
City Clerk

---

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**ASSIGNMENT**

**FOR VALUE RECEIVED**, the undersigned sells, assigns and transfers unto

---

(Print or Type Name, Address and Social  
Security Number or other Taxpayer Identification Number of Transferee)

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints  
\_\_\_\_\_ agent to transfer the within Bond on the books  
kept by the Trustee for the registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_.

---

**NOTICE:** The signature to this assignment must  
correspond with the name of the Registered  
Owner as it appears upon the face of the within  
Bond in every particular.

Medallion Signature Guarantee:

**EXHIBIT B**

Request No. \_\_\_\_\_

Date: \_\_\_\_\_

**WRITTEN REQUEST FOR DISBURSEMENT FROM THE  
PROJECT FUND – CITY OF SMITHVILLE, MISSOURI, TAX  
INCREMENT REVENUE BONDS (SMITHVILLE COMMONS  
PROJECT), SERIES 2022**

To: UMB Bank, N.A., as Trustee  
Kansas City, Missouri  
Attention: Corporate Trust Department

as Trustee under the Indenture of Trust, dated as of May \_\_, 2022, from the City of Smithville, Missouri to said Trustee (the “Indenture”)

Pursuant to **Section 404** of the Indenture, the City of Smithville, Missouri (the “City”) requests payment from the Project Fund in accordance with this request and said **Section 404** and hereby states and certifies as follows:

1. The date and number of this request are as set forth above.
2. All terms in this request shall have and are used with the meanings specified in the Indenture.
3. The names of the persons, firms or corporations to whom the payments requested hereby are due, the amounts to be paid and the general classification and description of the costs for which each obligation requested to be paid hereby was incurred are as set forth on Attachment I hereto.
4. These costs have been incurred and are presently due and payable and are reasonable costs that are payable or reimbursable under the Indenture and each item thereof is a proper charge against the Project Fund.
5. Each item listed above has not previously been paid or reimbursed from moneys in the Project Fund and no part thereof has been included in any other Disbursement Request previously filed with the Trustee under the provisions of the Indenture or reimbursed from Bond proceeds.
6. With respect to any such requisition, the City (i) certifies they have reviewed any wire instructions set forth in such written disbursement direction to confirm such wire instructions are accurate, and (ii) agrees they will not seek recourse from the Trustee as a result of losses incurred by it for making the disbursement in accordance with the disbursement direction.



**CITY OF SMITHVILLE, MISSOURI**

By: \_\_\_\_\_  
Authorized City Representative

**ATTACHMENT I  
TO WRITTEN REQUEST FOR DISBURSEMENT FROM  
THE PROJECT FUND – CITY OF SMITHVILLE, MISSOURI,  
TAX INCREMENT REVENUE BONDS  
(SMITHVILLE COMMONS PROJECT), SERIES 2022**

REQUEST NO. \_\_\_\_\_

DATED \_\_\_\_\_, \_\_\_\_

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**SCHEDULE OF PAYMENTS REQUESTED**

Person, firm or corporation to whom payment is due	Amount to be paid	General classification and description of the costs for which the Obligation to be paid was incurred
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**EXHIBIT C**

[Date]

UMB Bank, N.A.  
1010 Grand Blvd, 4<sup>th</sup> Floor  
Kansas City, Missouri 64106  
Attention: Corporate Trust Department

UMB Bank, N.A.  
1010 Grand Blvd.  
Kansas City, Missouri  
Attention:

Re: Tax Increment Revenue Bonds (Smithville Commons Project), Series 2022

Ladies and Gentlemen:

Please be advised that during the month of \_\_\_\_\_, [year], the City of Smithville, Missouri received the following Economic Activity Tax Revenues attributable to the following sources to be deposited into the EATs Account of the Revenue Fund:

		<u>Percentage of Total</u>
Clay County	\$ _____	_____ %
Smithville	\$ _____	_____ %
Zoological District	\$ _____	_____ %
Smithville Area Fire District	\$ _____	_____ %

Total EATS: \$ \_\_\_\_\_

During such period, the City of Smithville, Missouri received the following Payments in Lieu of Taxes from property owners within the Redevelopment Area to be deposited into the PILOTs Account of the Revenue Fund:

<u>Taxpayer</u>	<u>Payments in Lieu of Taxes</u>	<u>Percentage of Total</u>
	\$ _____	_____ %

Total PILOTS: \$ \_\_\_\_\_

During such period, the City of Smithville, Missouri, received the following CID Revenues to be deposited into the CID Account in the Revenue Fund: \$ \_\_\_\_\_. Permitted percentage of CID Revenues for Debt Service (\_\_\_\_ %) \$ \_\_\_\_\_

From the Total PILOTS, the City has retained the following amounts pursuant to the Indenture:

Ambulance District PILOTS Reimbursement	\$ _____
Fire District PILOTS Reimbursement:	\$ _____
School District PILOTS Reimbursement:	\$ _____

From the Total EATs, the City has retained the following amounts pursuant to the Indenture:

Fire District EATs Reimbursement:	\$ _____
Grocery Store Sales Tax Payment	\$ _____

From the CID Revenues, the City has retained \$\_\_\_\_\_ as the City's 1.0% administrative fee and \$\_\_\_\_\_ as District Operating Expenses, pursuant to the Financing Agreement and the CID Agreement.

From the Payments in Lieu of Taxes and Economic Activity Tax Revenues, the City has retained \$\_\_\_\_\_ as the City Administrative Fee.

All moneys so received, totaling \$\_\_\_\_\_, have been transferred to UMB Bank, N.A., as Trustee (the "Trustee") under the Trust Indenture dated as of May \_\_, 2022 between the Trustee and the City of Smithville. All capitalized terms not defined herein shall have the meanings ascribed for them in said Indenture.

CITY OF SMITHVILLE, MISSOURI

By: \_\_\_\_\_  
Title:

## **EXHIBIT D**

### **PROJECT DESCRIPTION AND COSTS PAID WITH PROCEEDS OF BONDS**

The Project includes the construction of an approximately 65,500+ square foot grocery store anchor tenant building and other primary and secondary retail uses, including installing roadways and access points as described in the Redevelopment Plan.

**EXHIBIT E**

**FORM OF INITIAL INVESTOR LETTER**

City of Smithville, Missouri  
Smithville, Missouri  
ATTN: City Administrator

UMB Bank, N.A., as Trustee  
Kansas City, Missouri  
ATTN: Corporate Trust Department

UMB Bank, N.A., as Placement Agent  
Kansas City, Missouri

Re: Smithville, Missouri Tax Increment Revenue Bonds (Smithville Commons Project) Series 2022

Ladies and Gentlemen:

In connection with the purchase of the above-referenced Bonds (the “Bonds”), the undersigned (the “Investor”) hereby represents, warrants and agrees as follows:

1. The Investor understands that (a) the Bonds are being issued under and pursuant to a Trust Indenture dated as of May 15, 2022 (the “Indenture”), between the City of Smithville, Missouri (the “Issuer”) and UMB Bank, N.A., as trustee (the “Trustee”), and (b) the Bonds are payable solely out of certain revenues and receipts to be received by the Trustee as provided in the Indenture. Capitalized terms not defined herein have the meanings set forth in the Indenture.

2. The Investor 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 its distribution or for the purpose of offering, selling or otherwise participating in a distribution of the Bonds. The Investor is an Approved Investor as defined in the Indenture.

3. The Investor agrees not to attempt to offer, sell, or otherwise distribute the Bonds to others unless authorized by the terms of the Indenture.

4. The Investor has been provided (a) such information as the Investor deems necessary to make an informed investment decision with respect to the purchase of the Bonds, (b) ample opportunity to ask questions of, and to receive answers from, appropriate officers of the City, the Developer and others related to the Project, the Redevelopment Plan and the terms and conditions of the Bonds, and (c) all additional information which it has requested.

5. The Investor is familiar with the Project and fully aware of terms and risks of the Bonds. The Investor believes the Bonds that it is acquiring are 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. The Investor is able to bear the economic risk of an investment in the Bonds, including a complete loss of such investment.

Dated: \_\_\_\_\_

Investor Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

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**FINANCING AGREEMENT**

**BETWEEN THE**

**SMITHVILLE COMMONS COMMUNITY IMPROVEMENT DISTRICT**

**AND THE**

**CITY OF SMITHVILLE, MISSOURI**

**DATED AS OF MAY \_\_, 2022**

**RELATING TO**

**\$(Principal Amount)**  
**TAX INCREMENT REVENUE BONDS**  
**(SMITHVILLE COMMONS PROJECT)**  
**SERIES 2022**

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# **FINANCING AGREEMENT**

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## **FINANCING AGREEMENT**

This **FINANCING AGREEMENT** (the “Financing Agreement”) is dated as of May \_\_, 2022 between the **SMITHVILLE COMMONS COMMUNITY IMPROVEMENT DISTRICT**, a community improvement district and political subdivision of the State of Missouri (the “District”) and the **CITY OF SMITHVILLE, MISSOURI**, a fourth-class city and political subdivision of the State of Missouri (the “City”).

### **RECITALS:**

**1.** The City is authorized and empowered under the Revised Statutes of Missouri, as amended, to issue bonds for the purpose of providing funds to finance the costs of certain redevelopment projects and to pay certain costs related to the issuance of such bonds.

**2.** A plan for redevelopment known as the “Smithville Commons Tax Increment Financing Plan” (the “Original Redevelopment Plan”), as amended by the First Amendment to the Smithville Commons Tax Increment Financing Plan (the “First Amended Plan,” together with the Original Redevelopment Plan, the “Redevelopment Plan”) for an area designated therein as the redevelopment area (the “Redevelopment Area”), as legally described in the Redevelopment Plan, has been prepared and reviewed by the Tax Increment Financing Commission of Smithville, Missouri (the “Commission”) and the City, pursuant to the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865, inclusive, of the Revised Statutes of Missouri, as amended (the “TIF Act”).

**3.** On August 1, 2017, the Board of Aldermen adopted (a) Ordinance No. 2969-17 (i) approving the Redevelopment Plan and finding the Redevelopment Area to be a “blighted area” within the meaning of the TIF Act and (ii) designating Development Associates Smithville, LLC, a Missouri limited liability company (the “Developer”), as the developer to implement the Redevelopment Projects of the Redevelopment Plan (as therein defined), (b) Ordinance No. 2971-17, authorizing the execution and delivery of a contract (the “Redevelopment Agreement”) between the City and the Developer, and (c) Ordinance No. 2972-17 authorizing the execution and delivery of a Reimbursement Agreement with the Northland Regional Ambulance District and a Reimbursement Agreement with the Smithville Area Fire Protection District to provide for the reimbursement of revenues to the respective taxing jurisdiction (the “Reimbursement Agreements”).

**4.** On October 3, 2017, the Board of Aldermen adopted Ordinance No. 2970-17 which approved and designated an area (the “Redevelopment Project”) within the Redevelopment Area for redevelopment contemplated as a commercial and retail development and adopted tax increment financing for the Redevelopment Project.

**5.** On November 21, 2017, the Board of Aldermen adopted Ordinance No. 2986-17 which approved the First Amended Plan and the First Amendment to the Redevelopment Agreement, which provided for an amended capital contribution to the Smithville School District.

**6.** The Smithville Commons Community Improvement District (the “District”) is authorized and empowered under the Missouri Community Improvement District Act, Sections 67.1401 through 67.1571 of the Revised Statutes of Missouri, as amended (the “CID Act”), to fund, promote, plan, design, construct, improve, maintain, and operate certain improvements, or to assist in any such activity. Pursuant to the CID Act, on August 1, 2017 Ordinance No. 2974-17 was approved by the Board of Aldermen creating the District for the purpose of funding certain improvements and services (the “CID

Project”). The voters of the District have approved the imposition of a sales tax at the rate of 1.0% for the purpose of paying the cost of the CID Project and financing the costs of formation and operation of the District.

7. The City has determined that it is in the best interests of the City to issue its Tax Increment Revenue Bonds (Smithville Commons Project) Series 2022, in the aggregate principal amount of \$[Principal Amount] (the “Bonds”), for the purpose of (a) financing certain Redevelopment Project Costs, (b) funding a debt service reserve for the Bonds, and (c) paying the costs of issuance of the Bonds.

8. On \_\_\_\_\_, 2022, the Board of Aldermen of the City adopted Ordinance No. \_\_\_\_\_ (the “Bond Ordinance”), authorizing the issuance of the Bonds pursuant to the Trust Indenture (the “Indenture”) dated as of the date hereof between the City and UMB Bank, N.A., as trustee for the above purposes.

9. Pursuant to the Bond Ordinance, the City is authorized to execute and deliver this Financing Agreement between the City and the District for the purpose of issuing and securing the Bonds as hereinafter provided.

10. The City and the District are entering into this Financing Agreement pursuant to which the City and the District will transfer certain funds to be used to pay debt service of the Bonds.

#### **AGREEMENT:**

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

#### **ARTICLE I**

##### **DEFINITIONS**

**Section 1.1. Definitions of Words and Terms.** Unless the context requires otherwise, capitalized terms used in this Financing Agreement but not defined herein shall have the same meanings as set forth in **Section 101** of the Indenture.

#### **ARTICLE II**

##### **THE DISTRICT**

**Section 2.1. Representations by the District.** The District represents and warrants to the City and the Trustee as follows:

(a) The District is a community improvement district and political subdivision, duly organized and existing under the laws of the State of Missouri, including particularly the CID Act.

(b) The District has lawful power and authority to enter into, execute and deliver this Financing Agreement and to carry out its obligations hereunder. By proper action of its Board of Directors, the District has been duly authorized to execute and deliver this Financing Agreement, acting by and through its duly authorized officers.

(c) The execution and delivery of this Financing Agreement, the consummation of the transactions contemplated by this Financing Agreement and the performance of or compliance with the terms and conditions of this Financing Agreement by the District will not conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any agreement or instrument to which the District is a party or by which it or any of its property is bound, or by any of the constitutional or statutory laws, rules, regulations or orders applicable to the District or any of its property, 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 District under the terms of any instrument or agreement to which the District is a party.

(d) There is no litigation or proceeding pending or threatened against the District or any other person affecting the right of the District to execute or deliver this Financing Agreement or the ability of the District to otherwise comply with the obligations under this Financing Agreement. Neither the execution and delivery of this Financing Agreement by the District, nor compliance by the District with its obligations under this Financing Agreement, require the approval of any regulatory body or any other entity, which approval has not been obtained.

(e) The District has duly completed all required proceedings and approvals in connection with the establishment of the District and the Project, and the imposition of the District Sales Taxes (defined below), all in accordance with the CID Act.

## **Section 2.2. Collection and Application of District Sales Taxes.**

(a) The District hereby ratifies and confirms the establishment of an account held by the City (the "District Revenue Fund") into which all proceeds of the 1.0% sales tax imposed by the District on retail sales within the boundaries of the District (the "District Sales Taxes") are to be deposited. The District confirms that it has imposed the District Sales Taxes at the rate of 1.0% of retail sales. In no event while Bonds are Outstanding under the Indenture shall the District take any action to repeal or reduce the amount of District Sales Taxes imposed or enter into any agreements that would prohibit the District Sales Taxes from being generally applicable taxes. The District agrees that a portion of the District Sales Taxes in the District Revenue Fund shall be considered Economic Activity Tax Revenues subject to deposit into the Special Allocation Fund in accordance with Section 99.845 of the Revised Statutes of Missouri, as amended.

(b) The District hereby authorizes and directs the City to perform all functions incident to the administration, collection, enforcement and operation of the District Sales Taxes or to provide for the performance of such functions by the Missouri Department of Revenue. The District shall direct the transfer of all proceeds of its District Sales Taxes that may lawfully be collected to the City for deposit into the District Revenue Fund, subject to the provisions in **Section 2.3** below. The District's Board of Directors may, in its sole discretion, direct the City in making investments of any or all of the moneys deposited in the District Revenue Fund in accordance with applicable laws relating to investment of the District's funds. In the absence of any direction for investments by the District, the City may invest moneys in the District Revenue Fund in accordance with applicable laws relating to the investment of the District's funds. All interest earned upon the balance in the District Revenue Fund shall be credited to the District Revenue Fund.

(c) The City, on behalf of the District, shall keep accurate records of the amount of District Sales Taxes collected and such records shall be open to the inspection of officers of the District, the Trustee, the Bondholders and the general public to the extent allowed under Missouri law.

(d) Subject to appropriation by the District, upon receipt of proceeds of the District Sales Taxes, the City shall transfer to the Economic Activity Tax Account of the City's Special Allocation Fund such amounts as are required to be deposited into the Special Allocation Fund pursuant to the TIF Act. Subject to appropriation by the District, on the 10th day (and if such day is not a Business Day, the next succeeding Business Day) of each calendar month during the term of this Financing Agreement, the District hereby directs the payment by the City to the Trustee of the portion of the District Sales Taxes representing Economic Activity Tax Revenues pursuant to the TIF Act.

(e) Subject to appropriation by the District, on the 10th day (and if such day is not a Business Day, the next succeeding Business Day) of each calendar month during the term of this Financing Agreement, the District hereby directs the payment by the City to the Trustee of all remaining CID Revenues on deposit in the District Revenue Fund.

**Section 2.3. Appropriation; Budget.** The District has adopted a budget for the 2022 fiscal year which appropriates the District Sales Taxes collected during such fiscal year for application as provided in **Sections 2.2(d) and (e)**. The District hereby covenants and agrees to include in the budget proposal submitted to the District's Board of Directors for each fiscal year a request for an appropriation of the District Sales Taxes collected during such fiscal year for deposit in the Revenue Fund under the Indenture. The City, on behalf of the District, shall deliver written notice to the Trustee no later than 15 days after the commencement of each fiscal year of the District if the Board of Directors of the District has not appropriated funds in an amount equal to the District Sales Taxes received during such fiscal year. The parties hereto acknowledge and agree that the payment of District Sales Taxes to the Trustee shall constitute currently budgeted expenditures of the District and shall not in any way be construed or interpreted as creating a liability or a general obligation or debt of the District in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the District, nor shall anything contained herein constitute a pledge of the general credit, tax revenues, funds or moneys of the District. The District's obligations under this Financing Agreement shall be from year to year only, and shall not constitute a mandatory payment obligation of the District in any ensuing fiscal year beyond the then current fiscal year. If in any fiscal year the Board of Directors of the District fails to adopt a budget, the budget for the prior fiscal year shall continue. Any District Sales Taxes so appropriated are pledged by the District to payment of the Bonds and shall be transferred by the City to the Revenue Fund at the times and in the manner provided in the Indenture and in **Section 2.2(d) and (e)** herein.

**Section 2.4. Records of the District.** The District shall keep proper books of record and account in which full, true and correct entries will be made of all dealings or transactions of or in relation to the business affairs of the District in accordance with accounting principles generally accepted in the United States of America, and the District will furnish to the City such information not otherwise available to the City as it may reasonably request concerning the District, including such statistical and other operating information requested on a periodic basis, in order to determine whether the covenants, terms and provisions of this Financing Agreement have been met. The City, on behalf of the District, will furnish to the Trustee annually by each October 31 a certificate of the Authorized District Representative to the effect that during the preceding fiscal year the District complied with the terms, covenants and provisions of this Financing Agreement and such information as the Trustee may reasonably request concerning the District Sales Taxes, including such statistical and other operating information requested, in order to enable such parties to determine whether the covenants, terms and provisions of this Financing Agreement have been complied with. For that purpose all pertinent books, documents and vouchers relating to the Project, the District and its District Sales Taxes shall at all times during regular business hours be open to inspection.

**Section 2.5. Budget and Reporting Requirements.** The District (or the City on its behalf) shall comply with the budgetary and reporting requirements contained in the Revised Statutes of Missouri, including without limitation the following:

(a) The District shall prepare and submit a proposed annual budget to the City in accordance with Section 67.1471.2 of the Revised Statutes of Missouri, as amended.

(b) The District shall submit an annual report to the City Clerk and the Missouri Department of Economic Development in accordance with Section 67.1471.4 of the Revised Statutes of Missouri, as amended.

(c) The District shall submit an annual financial report to the Missouri State Auditor in accordance with Section 105.145 of the Revised Statutes of Missouri, as amended.

**Section 2.6. Administrative Fees and Operating Expenses.**

(a) The City shall be entitled to retain from the District Sales Taxes the amount equal to 1.0% of the total District Sales Taxes collected by the City on behalf of the District (including the portion of such collections required to be deposited in the Special Allocation Fund), as payment for the City's services in the administration of the District and the collection of the District Sales Taxes pursuant to the CID Agreement.

(b) The District shall pay, or shall reimburse itself for the payment of, from that portion of the District Sales Taxes which is not required to be deposited in the Special Allocation Fund, the operating costs of the District described in the CID Agreement (the "District Operating Expenses"), as budgeted and approved by the District.

(c) Promptly following the adoption of each annual budget by the Board of Directors of the District, the City, on behalf of the District, shall provide written notice to the Trustee of the amount of operating expenses of the District included in such budget so that the Trustee can determine the District Operating Expenses for such fiscal year in accordance with the provisions of the Indenture.

**Section 2.7. Restriction on Transfer of District's Interests.** The District will not sell, assign, transfer or convey its interests in the District Sales Taxes or this Financing Agreement except pursuant to this Financing Agreement. Other than the CID Agreement, the District will not enter into any tax-sharing agreement or other similar arrangement with respect to the District Sales Taxes and agrees that any additional financing of the costs of the Project for the District will be financed by the City.

**Section 2.8. Indemnification.** To the extent permitted by law, the District agrees to indemnify the City and any past, present or future elected official, trustee, officer, employee or agent of the City for and to hold them harmless against all liabilities, claims, costs and expenses incurred without negligence or willful misconduct on the part of the City or such past, present or future elected official, trustee, officer, employee or agent of the City, on account of any action taken or omitted to be taken by the City in accordance with the terms of this Financing Agreement, the Bonds or the Indenture or any action taken at the request of or with the consent of the District, including the costs and expenses of the City in defending itself against any such claim, action or proceeding brought in connection with the exercise or performance of any of its powers or duties under this Financing Agreement, the Bonds or the Indenture.

**Section 2.9. Audit.** The District will cause, at its expense, an annual audit of the District to be completed by a firm of certified public accountants and will, within 180 days of the end of the District's fiscal year (i) present such audit at a regular or special meeting at the District for approval by the District and (ii) cause to be delivered to the Trustee and the City a certificate of the firm of certified public accountants performing the audit to the effect that in the performance of its examination it discovered no failure on the part of the District to comply with the requirements of this Financing Agreement, or, if such failure to comply was noted, specifying the nature thereof.

**Section 2.10. Cooperative Agreement.** The District will comply with, or cause to be complied with, all of the terms, provisions, covenants and agreements applicable to District under the Cooperative Agreement. The District shall enforce the provisions of the Cooperative Agreement in such manner as the District deems prudent and advisable in its good faith discretion. The District may enforce all appropriate available remedies thereunder, including particularly any actual, agreed or liquidated damages for failure to perform under the Cooperative Agreement, and hereby directs the City to transfer to the Trustee for deposit to the Revenue Fund all sums received on account of such damages.

### **ARTICLE III**

#### **THE CITY**

**Section 3.1. Representations by the City.** The City represents and warrants to the Trustee and the District, as follows:

(a) The City (i) is a fourth-class city duly organized and validly existing under the laws of the State of Missouri, (ii) has lawful power and authority to enter into, execute and deliver this Financing Agreement and to carry out its obligations hereunder, and (iii) by all necessary action has been duly authorized to execute and deliver this Financing Agreement, acting by and through its duly authorized officers.

(b) The execution and delivery of this Financing Agreement by the City will not conflict with or result in a breach of any of the terms of, or constitute a default under, any agreement or instrument to which the City is a party, or by any of the constitutional or statutory laws, rules or regulations applicable to the City.

(c) There is no litigation or proceeding pending or, to the knowledge of the City, threatened against the City or any other person affecting the right of the City to execute this Financing Agreement or to otherwise comply with the obligations under this Financing Agreement. Neither the execution and delivery of this Financing Agreement by the City, nor compliance by the City with its obligations under this Financing Agreement, require the approval of any regulatory body or any other entity, which approval has not been obtained.

(d) No elected official, officer or employee of the City has any significant or conflicting interest, financial or otherwise, in the Project or in the transactions contemplated hereby.

(e) The City has duly completed all required proceedings and approvals in connection with the execution and delivery of this Financing Agreement and the collection of Revenues hereunder, all in accordance with the TIF Act and the CID Act.

**Section 3.2. Assignment by the City.** The City, by means of the Indenture and as security for the payment of the principal of, and redemption premium, if any, and interest on the Bonds, will assign, pledge and grant a security interest in all of its rights, title and interests in, to and under this



Financing Agreement to the Trustee for the benefit of the Owners (reserving its rights to payments owed to the City for its benefit).

**Section 3.3. Restriction on Transfer of City's Interests.** The City will not sell, assign, transfer or convey its interests in this Financing Agreement except pursuant to the Indenture and this Financing Agreement.

**Section 3.4. Application of Proceeds.** The City covenants and agrees to cause the proceeds of the Bonds and the District Sales Tax that it may receive to be applied in accordance with the Indenture and this Financing Agreement. The City agrees that it will pay to the Trustee any of the District Sales Tax and the Economic Activity Tax Revenues it has received on or before the 10th day of each month.

**Section 3.5. Enforcement of Agreements.**

(a) The City shall enforce the provisions of the Financing Documents in such manner as the City deems prudent and advisable in its good faith discretion. The City may enforce all appropriate available remedies thereunder, including particularly any actual, agreed or liquidated damages for failure to perform under the Bond Documents, and shall transfer to the Trustee for deposit to the Revenue Fund all sums received on account of such damages.

(b) The City shall notify the Trustee in writing as to any material failure of performance under the Financing Documents, and at the time of such notification the City shall also advise the Trustee what action the City proposes to take in enforcing available remedies. If, in the sole judgment of the Trustee, such action is less likely to be effective than some other or additional action, the Trustee may, or at the request of the Owners of a majority in aggregate principal amount of the Bonds then Outstanding, shall so advise the City promptly in writing. If, within 30 days following advice by the Trustee that some additional or other action would be more effective, the City has not taken such other or additional action, and the Trustee has not, after consultation with the City, withdrawn such advice, upon receipt of indemnification satisfactory to it, the Trustee is hereby authorized to take such action, whether the action was suggested by the Trustee or otherwise, as the Trustee may deem most expedient and in the interest of the Owners of the Bonds. In furtherance of the rights granted to the Trustee by this Section, the City hereby assigns to the Trustee all of the rights it may have in the enforcement of the Financing Documents, further authorizing the Trustee in its own name or in the name of the City to bring such actions, employ such counsel, execute such documents and do such other things as may in the judgment of the Trustee be necessary or appropriate under the circumstance at the expense of the Trust Estate.

## **ARTICLE IV**

### **EVENTS OF DEFAULT AND REMEDIES**

**Section 4.1. Events of Default Defined.** The term "Event of Default" shall mean any one or more of the following events:

(a) Failure by the District or the City to timely transfer any Net Revenues to the City or the Trustee (as applicable), as provided herein.

(b) Failure to make any payment on the Bonds when due.

(c) Failure by the District or the City to observe and perform any covenant, condition or agreement under this Financing Agreement, the Indenture or any other document entered into in connection with the financing of the Project, other than as referred to in the preceding

subparagraphs (a) and (b) of this Section, for a period of 30 days after written notice of such default has been given to the defaulting party, during which time such default is neither cured by the defaulting party nor waived in writing by the Trustee, provided that, if the failure stated in the notice cannot be corrected within said 30-day period, the Trustee may consent in writing to an extension of such time prior to its expiration if corrective action is instituted by the defaulting party within the 30-day period and diligently pursued to completion and if such consent, in the judgment of the Trustee, does not materially adversely affect the security of the Owners of the Bonds.

(d) Any representation or warranty by the District or the City herein or in any certificate or other instrument delivered under or pursuant to this Financing Agreement or the Indenture or in connection with the financing of the Project shall prove to have been false, incorrect, misleading or breached in any material respect on the date when made, unless waived in writing by the Trustee or cured by the defaulting party within 30 days after notice thereof has been given to the defaulting party.

**Section 4.2. Remedies on an Event of Default.** Whenever any Event of Default shall have occurred and be continuing, the Trustee, as the assignee of the City, shall give written notice to the defaulting party of such Event of Default and after five (5) Business Days after such notice, the Trustee may immediately proceed to take whatever other action at law or in equity is necessary and appropriate to exercise or to cause the exercise of the rights and powers set forth herein or in the Indenture, as may appear necessary or desirable to collect the amounts payable pursuant to this Financing Agreement then due and thereafter to become due or to enforce the performance and observance of any obligation, agreement or covenant under this Financing Agreement or the Indenture.

Any amount collected pursuant to action taken under this Section shall be paid to the Trustee and applied, first, to the payment of any reasonable costs, expenses and fees incurred by the Trustee as a result of taking such action and, next, any balance shall be transferred to the Revenue Fund and applied in accordance with the Indenture and, then, to cure any other Event of Default.

Notwithstanding the foregoing, the Trustee shall not be obligated to take any step that in its opinion will or might cause it to expend time or money or otherwise incur liability, unless and until indemnity satisfactory to it has been furnished to the Trustee at no cost or expense to the Trustee, except as otherwise provided in **Section 801(l)** of the Indenture.

**Section 4.3. No Remedy Exclusive.** No remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Financing Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon an Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Trustee to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

**Section 4.4. Agreement to Pay Attorneys' Fees and Expenses.** In connection with any Event of Default, if the Trustee employs attorneys or incurs other expenses for the collection of amounts payable hereunder or the enforcement of the performance or observance of any covenants or agreements herein contained, the City and the District agree, should they be the defaulting party hereunder, subject to appropriation of funds, that they will, on demand therefor, pay to the Trustee the reasonable fees of such attorneys and such other reasonable expenses so incurred by the Trustee. In connection with any Event of Default, if the City employs attorneys or incurs other expenses for the enforcement of the performance or

observance of any covenants or agreements herein contained, the defaulting party agrees that they will, to the extent they are the defaulting party or caused the City to be the defaulting party, on demand therefor, pay to the City the reasonable fees of such attorneys and such other reasonable expenses so incurred by the City.

**Section 4.5. Notice of an Event of Default.** The parties hereto shall each promptly give to the Trustee written notice of any Event of Default of which they shall have actual knowledge or written notice, but the parties hereto shall not be liable for failing to give such notice.

**Section 4.6. Remedial Rights Assigned to the Trustee.** Upon the execution and delivery of the Indenture, the City will thereby have assigned to the Trustee all rights and remedies conferred upon or reserved to the City by this Financing Agreement, reserving only the City's rights to payments for its own benefit. The Trustee shall have the exclusive right to exercise such rights and remedies conferred upon or reserved to the City by this Financing Agreement in the same manner and to the same extent, but under the limitations and conditions imposed thereby and hereby. The Owners of the Bonds shall be deemed third party creditor beneficiaries of all representations, warranties, covenants and agreements contained herein.

## **ARTICLE V**

### **MISCELLANEOUS**

**Section 5.1. Terms of Financing Agreement.** This Financing Agreement shall be effective from and after its execution and delivery and shall continue in full force and effect until all of the principal of, redemption premium, if any, and interest on all the Bonds shall have been paid in accordance with their terms or provision has been made for such payment, as provided in the Indenture, and provision shall also be made for paying all other sums payable under the Indenture, including the fees, costs and expenses of the Trustee and the Paying Agent to the date of retirement of the Bonds.

**Section 5.2. Notices.** All written notices required by this Financing Agreement shall be in writing and shall be served either personally or by certified mail, or by any other delivery service which obtains a receipt for delivery unless any such notice required by law and such law provides a different form of delivery or service. Any such notice or demand served personally shall be delivered to the party being served (provided that such notice may be delivered to the receptionist or any other person apparently in charge of such party's office at its address hereinafter set forth), and shall be deemed complete upon the day of actual or attempted delivery, as shown by an affidavit of the person so delivering such notice. Any notice so served by certified mail shall be deposited in the United States mail with postage thereon fully prepaid and addressed to the party or parties so to be served at its address hereinafter stated, and service of any such notice by certified mail shall be deemed complete on the date of actual or attempted delivery as shown by the certified mail receipt. Service of any such notice by another delivery service shall be deemed complete upon the date of actual or attempted delivery as shown on the receipt obtained by such delivery service. Notices shall be sent to the address provided in the Indenture.

Each party shall have the right to specify that notice be addressed to any other address by giving to the other parties ten (10) days written notice thereof.

**Section 5.3. Performance Date Not a Business Day.** If any date for the taking of any action hereunder is on a Saturday, Sunday or business holiday of the State, then such action shall be taken on the first Business Day thereafter with the same force and effect as if made on the date fixed for payment or performance.

**Section 5.4. Binding Effect.** This Financing Agreement shall inure to the benefit of and shall be binding upon the parties hereto, and their respective successors and assigns.

**Section 5.5. Amendments, Changes and Modifications.** This Financing Agreement may not be effectively amended, changed, modified, altered or terminated without the prior concurring written consent of all the parties hereto and compliance with the requirements of **Article X** of the Indenture.

**Section 5.6. Execution in Counterparts.** This Financing Agreement 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 5.7. No Pecuniary Liability.** All covenants, obligations and agreements contained in this Financing Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future director, officer, agent or employee of the parties hereto in other than their official capacity. No provision hereof shall be construed to impose any personal or pecuniary liability upon any present or future director, officer, agent or employee of the parties hereto, and all such liability is hereby expressly waived and released as a condition of and consideration for the execution of this Financing Agreement and the issuance of the Bonds. With respect to any action for specific performance or any action in the nature of a prohibitory or mandatory injunction, neither the City nor any of its directors, trustees, officers, officials, employees or agents shall be liable for any action taken by the City, or for any failure to take action, in accordance with the terms of this Financing Agreement.

**Section 5.8. Entire Agreement.** This Financing Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof, and supersedes and replaces any and all prior oral agreements or written agreements, arrangements, and understandings related thereto.

**Section 5.9. Severability.** If any provision of this Financing Agreement, or any covenant, stipulation, obligation, agreement, act or action, or part thereof made, assumed, entered into or taken thereunder, or any application of such provision, is for any reason held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Financing Agreement or any other covenant, stipulation, obligation, agreement, act or action, or part thereof, made, assumed, entered into, or taken, each of which shall be construed and enforced as if such illegal or invalid portion were not contained herein. Such illegality or invalidity of any application thereof shall not affect any legal and valid application thereof, and each such provision, covenant, stipulation, obligation, agreement, act or action, or part thereof, shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

**Section 5.10. Governing Law.** This Financing Agreement shall be governed by and construed in accordance with the laws of the State.

**Section 5.11. Electronic Transactions.** The transaction described herein may be conducted and related documents may be stored, delivered and received 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.



**SMITHVILLE COMMONS COMMUNITY  
IMPROVEMENT DISTRICT**

By: \_\_\_\_\_  
Chairman

(Seal)

ATTEST:

By: \_\_\_\_\_  
Secretary

Financing Agreement

**CITY OF SMITHVILLE, MISSOURI**

By: \_\_\_\_\_  
Mayor

(Seal)

ATTEST:

By: \_\_\_\_\_  
City Clerk

**PRIVATE PLACEMENT AGREEMENT**

relating to

\$ \_\_\_\_\_  
**CITY OF SMITHVILLE, MISSOURI  
TAX INCREMENT REVENUE BONDS  
(SMITHVILLE COMMONS PROJECT)  
SERIES 2022**

May \_\_\_, 2022

City of Smithville, Missouri  
107 West Main Street  
Smithville, Missouri 64089  
Attention: City Administrator

Development Associates Smithville, LLC  
c/o Cadence Commercial Real Estate  
10985 Code, Suite 220  
Overland Park, Kansas 66210  
Attention: Justin Kaufmann

Ladies and Gentlemen:

On behalf of the representations, warranties and covenants and upon the terms and conditions contained in this Private Placement Agreement (this “**Private Placement Agreement**” or this “**Agreement**”), the undersigned, UMB Bank, N.A. (the “**Placement Agent**”), hereby agrees to privately place for the City of Smithville, Missouri (the “**City**”) its \$ \_\_\_\_\_ aggregate principal amount of Tax Increment Revenue Bonds (Smithville Commons Project) Series 2022 (the “**Bonds**”) with the original purchasers set forth on **Exhibit A** to this Agreement. The Bonds are being issued by the City pursuant to a Trust Indenture, dated as May 15, 2022 (the “**Indenture**”), between the City and UMB Bank, N.A., as bond trustee (the “**Bond Trustee**” or the “**Trustee**”) and are payable from moneys pledged or provided pursuant to the terms of the Indenture and the Financing Agreement, dated as of May 15, 2022 (the “**Financing Agreement**”), between the City and the Smithville Commons Community Improvement District (the “**District**”).

The City is issuing the Bonds pursuant to the term of (i) the Bond Ordinance (as defined herein), (ii) the Indenture and (iii) the Tax Increment Redevelopment Agreement, dated as of August 1, 2017 (as amended, the “**Redevelopment Agreement**”), between the City and Development Associates Smithville, LLC, a Missouri limited liability company (the “**Developer**”). The Bonds are being issued for the purpose of (i) financing certain Project Costs (as defined in the Indenture), (ii) funding a debt service reserve fund for the Bonds, and (iii) paying the costs of issuance of the Bonds, all as more fully described in the Indenture.

This offer is made subject to acceptance of this Agreement by the City and the Developer on or before 5:00 p.m. (central time) on the date hereof.

Terms not otherwise defined in this Agreement shall have the meaning ascribed thereto in the Indenture.



**1. Introductory.** We understand that the City proposes to issue and sell the Bonds pursuant to an ordinance adopted by the governing body of the City on May 17, 2022 (the “**Bond Ordinance**”) and the Indenture.

The Bonds and the interest thereon will be special, limited obligations of the City payable solely and only from the amounts pledged therefor pursuant to the Indenture. The Bonds and the interest thereon shall not constitute an indebtedness of the City, the State of Missouri (the “**State**”) or any political subdivision thereof within the meaning of any constitutional, statutory or other debt limitation or restriction and are not payable in any manner by taxation. The issuance of the Bonds does not, directly, indirectly or contingently, obligate the City, the District, the State or any political subdivision thereof to levy any form of general taxation therefor or to make any appropriation for their payment. The City, the District, the State, any political subdivision thereof, and any of their respective directors, officers, employees or agents or any person executing the Bonds shall not be liable for such obligations except to the extent set forth in the Indenture and the Financing Agreement.

The City and the Developer each acknowledge and agree with respect solely to itself that (i) this Agreement is an arm’s-length commercial transaction, (ii) in connection with such transaction, the Placement Agent is acting solely as an agent for the City and not as an advisor (including, without limitation, a Municipal Advisor (as such term is defined in Section 975(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act)), principal or a fiduciary of the City or the Developer, (iii) the Placement Agent has not assumed a fiduciary responsibility in favor of the City or the Developer with respect to the placement of the Bonds or the process leading thereto (whether or not the Placement Agent or any affiliate thereof has advised or is currently advising the City on other matters) or any other obligation to the City or the Developer except the obligations expressly set forth in this Agreement, (iv) the City and the Developer have each consulted with their own legal and financial advisors to the extent it deemed appropriate in connection with the placement of the Bonds and (v) the Placement Agent is acting solely as a placement agent with respect to the Bonds and is not serving as an underwriter in connection with the transactions described herein.

**2. Purchase, Sale and Delivery of the Bonds.** On the basis of the representations, warranties and covenants contained herein and in the other agreements referred to herein, and subject to the terms and conditions herein set forth, at the Closing Date the Placement Agent agrees to privately place for the City and the City agrees to sell the Bonds to the purchasers identified by the Placement Agent at the prices set forth on **Schedule I** hereto. The Placement Agent initially agrees to privately place the Bonds at the prices set forth on **Schedule I** hereto. The Placement Agent will be paid from the proceeds of the Bonds a placement fee for its services under this Agreement in the amount of \$\_\_\_\_\_ (the “**Placement Fee**”).

The Bonds shall have the maturities and interest rates, shall be sold at the prices and be subject to redemption as set forth in the Indenture and on **Schedule I** hereto.

Payment for the Bonds shall be made by federal wire transfer in immediately available federal funds payable to the order of the Bond Trustee for the account of the City (the “**Closing**”), at the offices of Gilmore & Bell, P.C., Kansas City, Missouri (“**Bond Counsel**”), at 10:00 a.m. (local time), on May \_\_\_\_, 2022, or such other place, time or date as shall be mutually agreed upon by the City, the Developer and the Placement Agent. The date of such delivery and payment is herein called the “**Closing Date**.” The Bonds so to be delivered will be delivered as definitive bonds in fully registered form, with CUSIP numbers imprinted thereon, in such denominations as we request. On the Closing Date, the Trustee will, at the written request and authorization of the City, hold the Bonds pursuant to DTC’s FAST procedures.

**3. Transaction Documents.** On or prior to the Closing Date, the Placement Agent shall have received the following documents in form and substance satisfactory to the Placement Agent and its counsel:

(a) Bond Counsel Opinion. The approving opinion of Bond Counsel, dated the Closing Date, addressed to the City, the Trustee and the Placement Agent relating to the due authorization,

execution and delivery of the Bonds, the tax-exempt status of the interest on the Bonds for federal or Missouri income tax purposes, and certain other matters, all in form and substance acceptable to the Placement Agent and the City.

(b) Developer's Counsel Opinion. The opinion of Polsinelli PC, Kansas City, Missouri, counsel to the Developer, dated the Closing Date, addressed to the City, the Trustee, Bond Counsel and the Placement Agent, in form and substance reasonably acceptable to such parties and their counsel and to Bond Counsel.

(c) Developer's Certificate. A certificate of the Developer dated the Closing Date, signed by an authorized officer of each Developer, on behalf of the Developer, in form and substance reasonably satisfactory to the City, the Placement Agent, their respective counsel and to Bond Counsel.

(d) Bonds. The Bonds.

(e) Private Placement Memorandum. The Private Placement Memorandum executed and approved on behalf of the parties thereto by duly authorized officials thereof.

(f) Indenture. The Indenture, duly executed by the parties thereto.

(g) Financing Agreement. The Financing Agreement, duly executed by the parties thereto.

(h) Tax Compliance Agreement. The Tax Compliance Agreement, duly executed by the parties thereto.

(i) Continuing Disclosure Agreement. The Continuing Disclosure Agreement, duly executed by the parties thereto.

(j) District Resolution(s). Resolution(s) of the District authorizing and approving, as appropriate, the execution and delivery of the Transaction Documents to which it is a party, together with a certificate dated the Closing Date to the effect that such resolution(s) have not been modified, amended or repealed.

(k) Developer Resolution(s). Resolution(s) of the Developer authorizing and approving, as appropriate, the execution and delivery of the Transaction Documents to which it is a party, together with a certificate dated the Closing Date to the effect that such resolution(s) have not been modified, amended or repealed.

(l) Certificates. Other certificates listed on a closing agenda to be approved by counsel to the City, Bond Counsel, counsel to the Developer and counsel to the Placement Agent, including any certificates or representations of the Developer required in order for Bond Counsel to deliver the opinion referred to in **Section 3(a)** of this Agreement.

(m) Form 8038. A completed form 8038-G (Information Return for Tax-Exempt Governmental Obligations).

(n) Placement Agent's Counsel Opinion. The opinion of FisherBroyles, LLP, counsel to the Placement Agent, dated the Closing Date, addressed to the Placement Agent and the City, in form and substance acceptable to Bond Counsel.

(o) Other Closing Materials. Such additional legal opinions, certificates, proceedings, instruments and other documents as Bond Counsel or counsel for the Placement Agent, the Developer

or the City may reasonably request to evidence compliance with all legal requirements, the truth and accuracy, as of the Closing, of the representations herein and the due performance or satisfaction of all agreements then to be performed and all conditions then to be satisfied.

The foregoing documents are hereinafter referred to as the “**Transaction Documents.**”

The City and the Developer have each authorized the use of the Private Placement Memorandum in connection with the offer, sale and distribution of the Bonds.

**4. Representations and Warranties of the City.** The City hereby represents and warrants to the Placement Agent and to the Developer that:

(a) Status. The City is and will be at Closing a political subdivision organized and existing under the laws of the State with the power and authority to issue the Bonds.

(b) Authorization By Law. The City is authorized by the laws of the State, including particularly the TIF Act, (i) to issue, sell and deliver the Bonds for the purposes set forth in the opening paragraphs hereof, (ii) to enter into and perform its obligations under the Transaction Documents to which it is a party, and (iii) to pledge and assign to the Trustee the Trust Estate (as defined in the Indenture) in accordance with the provisions of the Indenture.

(c) Power and Authority. The City has full power and authority to consummate the transactions to be performed by it under the Transaction Documents to which it is a party.

(d) Private Placement Memorandum. The information contained in the Private Placement Memorandum with respect to the City under the captions “THE CITY” and “ABSENCE OF LITIGATION - The City” does not and, as of the Closing Date, will not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make any statement made therein, in light of the circumstances under which it was made, not misleading.

(e) Necessary Action. Prior to the Closing, the City shall have taken all necessary action to be taken by it for: (i) the issuance and sale of the Bonds upon the terms set forth herein; (ii) the approval, execution, delivery and receipt by the City of the Transaction Documents to which it is a party and any and all such other agreements and documents as may be required to be executed, delivered and received by the City in order to carry out, give effect to, and consummate the transactions contemplated hereby; (iii) the pledge and assignment of the Trust Estate to the Trustee; and (iv) making the proceeds of the Bonds available to the Developer in the amounts and subject to the terms of the Indenture and the Development Agreement.

(f) Documents Binding. The Bonds when executed, issued, authenticated, delivered and paid for as herein and in the Indenture provided, and the Transaction Documents, to which the City is a party, when executed will have been duly authorized and issued and will constitute legal, valid and binding obligations of the City, enforceable in accordance with their respective terms (subject as to enforcement to any applicable bankruptcy, reorganization, insolvency, moratorium or other law or laws affecting the enforcement of creditors’ rights generally or against municipal corporations such as the City from time to time in effect and further subject to the availability of equitable remedies).

(g) No Litigation. Except as described in the Private Placement Memorandum, there is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending or, to the knowledge of the City, threatened against the City wherein an unfavorable decision, ruling or finding would materially adversely affect the tax-exempt status of the interest on the Bonds for federal or Missouri income tax purposes (as described in the Private Placement Memorandum), the existence or powers of the City, the transactions contemplated hereby

or the validity or enforceability in accordance with their respective terms of this Agreement, the Indenture, the Financing Agreement, the Tax Compliance Agreement, the Bonds or any agreement or instrument to which the City is a party used or contemplated for use in the consummation of the transactions contemplated hereby or by the Private Placement Memorandum.

(h) No Conflict or Breach. The execution and delivery by the City of this Agreement, the Indenture, the Financing Agreement, the Tax Compliance Agreement, the Bonds and the other documents contemplated hereby to be executed and delivered by the City, and compliance with the provisions thereof, and the pledge of the Trust Estate to the Trustee pursuant to the Indenture, do not conflict with or constitute on the part of the City a breach of or a default under any existing law, court or administrative regulation, decree, order, agreement, indenture, mortgage or lease by which the City is or may be bound.

(i) Certificates. Any certificate signed by an authorized officer of the City and delivered to the Placement Agent shall be deemed a representation and warranty by the City to the Placement Agent as to the statements made therein.

**5. Developer's Representations and Warranties.** In order to induce the Placement Agent to enter into this Agreement and in order to induce the City to enter into the Transaction Documents to which it is a party, and to issue the Bonds, and in consideration of the foregoing and the execution and delivery of this Agreement, the Developer represents and warrants to and covenants on behalf of itself with the City and the Placement Agent as follows:

(a) Status. The Developer is a limited liability company duly organized, validly existing and in good standing under the laws of the State. The Developer has all material licenses and permits necessary in order to carry on its business as currently conducted and has obtained all material licenses and permits required to be obtained as of the date hereof in connection with the facilities financed or refinanced with the proceeds of the Bonds. The Developer is not in violation of and has not received any notice of an alleged violation of or liability under any zoning, land use, environmental, pollution control, hazardous waste or similar laws or regulations that would have a material adverse effect on the operations or financial affairs of the Developer or the acquisition, construction and equipping of the Redevelopment Project. The Developer has full right, power and authority to authorize, approve, enter into, execute and deliver the Transaction Documents to which it is a party and to perform such other acts and things as are provided for in the Transaction Documents.

(b) No Conflict or Breach. The execution, delivery, performance (where applicable) and approval by the Developer of the Transaction Documents to which it is a party, and full compliance with the provisions of such Transaction Documents, have been duly authorized by all necessary corporate action of the Developer and do 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, the Developer's Articles of Organization or Operating Agreement, any law, court or administrative regulation, decree or order, or any agreement, indenture, mortgage, lease or instrument to which the Developer is a party or by which it is or may be bound.

(c) Corporate Action. The Developer has duly authorized all necessary action to be taken by it for: (i) the issuance and sale of the Bonds by the City upon the terms and conditions set forth herein and to be set forth in the Private Placement Memorandum, and (ii) the execution, delivery and performance (where applicable) of the Transaction Documents to which it is a party and any and all such other agreements and documents as may be required to be executed, delivered and performed by the Developer in order to carry out, effectuate and consummate the transactions contemplated hereby and by such Transaction Documents.

(d) Private Placement Memorandum True and Correct. The description and information contained in the Private Placement Memorandum relating to: the Developer; the Developer's organization, operations, company structure, and affairs; application by the Developer of the proceeds to be received from the sale of the Bonds; the Redevelopment Project, the District; and the Transaction Documents to which the Developer is a party and the Developer's participation in the transactions contemplated by the Transaction Documents are, and with respect to the Private Placement Memorandum, as of its date, true and correct and do not, and with respect to the Private Placement Memorandum, as of its date, contain any untrue statement of any material fact and do not, and with respect to the Private Placement Memorandum, as of its date, omit to state any material fact necessary to make any statement made therein, in light of the circumstances under which it was made, not misleading.

(e) Tax Status of Bonds. The Developer will not take or omit to take any action which action or failure to act will in any way cause or result in the proceeds from the sale of the Bonds being applied in a manner other than as provided in the Transaction Documents and as described in the Private Placement Memorandum.

(f) No Litigation. Except as may be described in the Private Placement Memorandum, to the Developer's knowledge after reasonable inquiry, there is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending or, to the knowledge of the Developer, threatened against or affecting the Developer wherein an unfavorable decision, ruling or finding could have a material adverse effect on the financial condition of the Developer or the operation by the Developer of its property or the transactions contemplated by the Transaction Documents or on the validity or enforceability in accordance with its terms of any of the Transaction Documents or any other agreement or instrument to which the Developer is a party or by which it is bound or would in any way contest the existence or powers of the Developer.

(g) Documents Legal, Valid and Binding. The Developer shall, on or before the Closing, execute and deliver the applicable Transaction Documents and said Transaction Documents, when executed and delivered by the Developer and all of the other parties thereto, will be, and this Agreement is, the legal, valid and binding obligation of the Developer enforceable against it 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.

(h) Compliance with Laws and Regulations. The Developer shall conduct its affairs and carry on its business and operations in such manner as to comply in all material respects with any and all applicable laws of the United States of America and the several states thereof and to observe and conform in all material respects to all valid orders, regulations or requirements of any governmental authority applicable to the conduct of its business and operations and the ownership of its property.

(i) Project. To the best of Developer's knowledge after reasonable inquiry, any notification of or filing with, or consent or approval of any governmental agency or entity required with respect to the issuance of the Bonds or the acquisition, construction and equipping of the Project, either has been made or obtained or will be prior to the time such are required to be obtained. The financing as contemplated in the Private Placement Memorandum is consistent with and does not violate or conflict with the terms of the various consents or approvals of any such agencies or entities.

(j) Certificates. Any certificate signed by an authorized officer or agent of the Developer and delivered to the City or the Placement Agent shall be deemed a representation and warranty by the Developer to such parties as to the statements made therein.

(k) No Default Under Transaction Documents. To the best of Developer's knowledge after reasonable inquiry, no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a breach of or an event of default by the Developer under any of the Transaction Documents to which it is a party.

(l) Supplements to Private Placement Memorandum. If the Private Placement Memorandum is supplemented or amended pursuant to subsection (m) of this **Section 5**, at the time of such supplement or amendment thereto, the information contained in the Private Placement Memorandum with respect to the Developer and related matters as provided in subsection (d) of this **Section 5** as so supplemented or amended will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(m) Subsequent Events. If between the date of the Private Placement Memorandum and the Closing Date any event shall occur which might or would cause the information contained in the Private Placement Memorandum with respect to the Developer and related matters in subsection (d) of this **Section 5** to contain any untrue statement of a material fact or to omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, the Developer shall notify the Placement Agent thereof, and if in the opinion of the Placement Agent, such event requires the preparation and publication of a supplement or amendment to the Private Placement Memorandum, the Developer will, at its expense, supplement or amend the Private Placement Memorandum in a form and in a manner approved by the Placement Agent.

(n) Payment of Taxes and Other Charges. The Developer shall pay or cause to be paid as they become due and payable all taxes, assessments and other governmental charges lawfully levied or assessed or imposed upon the Developer or its property or any part thereof or upon any income therefrom; provided, however, that the Developer shall not be required to pay and discharge or cause to be paid and discharged any such tax, assessment or governmental charge to the extent that the amount, applicability or validity thereof shall be contested in good faith by appropriate proceedings in accordance with applicable laws.

(o) Rights, Licenses and Permits. The Developer shall procure and maintain all material rights, licenses and permits necessary in the operation of its business and affairs; provided, however, that the Developer shall not be required to procure or maintain in effect any right, license or permit that the governing board of the Developer shall have determined in good faith is not in the best interests of the Developer and is no longer desirable in the conduct of its business and that lack of such compliance will not materially impair the ability of the Developer to pay or perform its obligations under the Transaction Documents.

(p) No Federal Guarantee. The Bonds are not federally guaranteed within the meaning of Section 149(b) of the Code.

**6. Placement Agent Undertaking Regarding Transfers.** On or before the Closing, the Placement Agent will provide evidence to the City that the Placement Agent has provided notice on the services of Bloomberg L.P. that the Bonds may only be transferred to Approved Investors (as defined in the Indenture).

**7. Indemnity, Hold Harmless and Contribution.**

(a) Developer. The Developer agrees to indemnify and hold harmless the City, the Placement Agent, each director, member, officer, employee or agent of the City or of the Placement Agent and each person, if any, who has the power, directly or indirectly, to direct or cause the direction of the management and policies of the City, or of the Placement Agent through the ownership of voting securities, by contract or otherwise (collectively in this subsection (a) called the "**Indemnified Parties**"), from and against any and all

losses, claims, demands, damages, liabilities or reasonable expenses whatsoever caused by (i) any breach of the undertakings or representations of the Developer contained herein; or (ii) any untrue or misleading statement, whether actual or alleged, of a material fact contained in the Private Placement Memorandum or caused by any omission, whether actual or alleged, from the Private Placement Memorandum of any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading, insofar as such statements appear in, or matter omitted pertains to material appearing in, any section of the Private Placement Memorandum that either: (A) was prepared from information furnished by the Developer or its agents (including, without limitation, attorneys, accountants or consultants); or (B) contains information about the Developer, the District or the Project; or (C) both.

In case a claim shall be made or any action shall be brought against one or more of the Indemnified Parties in respect of which indemnity can be sought against the Developer pursuant to the preceding paragraph, the Indemnified Parties shall promptly notify the Developer in writing, and the Developer shall promptly assume the defense thereof, including, with the consent of the Placement Agent and the City, which consents shall not be unreasonably withheld, the employment of counsel, the payment of all expenses and the right to negotiate and consent to settlement. Any one or more of the Indemnified Parties shall have the right to employ separate counsel with respect to any such claim or in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Indemnified Parties unless the employment of such counsel has been specifically authorized in writing by the Developer or there is a conflict of interest that would prevent counsel for the Developer from adequately representing the Developer and the Indemnified Parties. The Developer shall not be liable for any settlement of any such action effected without its written consent, but if settled with the written consent of the Developer or if there be a final judgment for the plaintiff in any such action which the Developer is required hereunder to assume the defense of, the Developer agrees to indemnify and hold harmless the Indemnified Parties from and against any loss or liability by reason of such settlement or judgment.

(b) Survival. The covenants and agreements contained in this **Section 7** shall survive the delivery of the Bonds.

**8. Conditions to Obligations of Placement Agent.** The obligation of the Placement Agent to place the Bonds and the obligation of the City to sell the Bonds, in each case on the Closing Date, will be subject to the accuracy of the representations and warranties of the Developer and the City herein, to the accuracy of statements to be made on behalf of the City and the Developer hereunder, to the performance by the City and the Developer of their obligations hereunder and to the following additional conditions precedent:

(a) At the Closing Date, the Bond Ordinance, the Transaction Documents, and all official action of the City relating thereto and all actions taken by the Trustee and the Developer in connection therewith shall be in full force and effect and shall not have been amended, modified or supplemented, and the Private Placement Memorandum shall not have been amended or supplemented except as may have been agreed to by the Placement Agent.

(b) The Placement Agent shall have received each of the documents set forth in **Section 3** of this Agreement.

All opinions, letters, certificates, instruments and other documents mentioned above or elsewhere in this Agreement shall be deemed to be in compliance with the provisions hereof if, but only if, they are in form and substance satisfactory to the Placement Agent.

**9. Right to Termination.** The Placement Agent shall have the right to cancel its obligation to place the Bonds upon written notification by the Placement Agent to the City and the Developer if between the date hereof and the date of the Closing:

(a) (i) legislation shall be enacted or be actively considered for enactment by the Congress, or recommended to the Congress for passage by the President of the United States, or favorably reported for passage to either House of the Congress by any committee of such House to which such legislation has been referred for consideration or introduced with an effective date which would, if enacted, apply to the Bonds, or (ii) a decision by a federal court of the United States or the United States Tax Court shall be rendered, or a ruling, regulation, release or other promulgation by or on behalf of the Treasury Department of the United States, the Internal Revenue Service or other governmental agency shall be made or proposed with respect to federal taxation upon revenues or other income pledged by the City under the Indenture, or upon interest on the Bonds or securities of the general character of the Bonds, or (iii) other action or events shall have occurred or transpired, any of which has the purpose or effect, directly or indirectly, in the reasonable opinion of Bond Counsel or counsel to the Placement Agent, of materially adversely affecting the federal or State of Missouri income tax consequences of any of the transactions contemplated in connection herewith, or, in the reasonable opinion of the Placement Agent, materially adversely affects the market for the Bonds or the ability of the Placement Agent to enforce contracts for the sale of the Bonds at the contemplated offering price; or

(b) there shall exist any fact or any event shall have occurred which either (i) makes untrue or incorrect any statement of a material fact or material information contained in the Private Placement Memorandum as then amended or supplemented or (ii) is not reflected in the Private Placement Memorandum as then amended or supplemented but should be reflected therein in order to make the statements and information contained therein not misleading in any material respect; or

(c) there shall have occurred any outbreak or escalation of hostilities or any national or international calamity or crisis, including a financial crisis, the effect of which on the financial markets of the United States being such as, in the reasonable opinion of the Placement Agent, would materially adversely affect the market for the Bonds or the ability of the Placement Agent to enforce contracts for the sale of the Bonds at the contemplated offering prices; or

(d) there shall be in force a general suspension of trading on the New York Stock Exchange or a general banking moratorium shall have been declared by federal, Missouri or New York authorities, the effect of which on the financial markets of the United States is such as would materially adversely affect the market for the Bonds or the ability of the Placement Agent to enforce contracts for the sale of the Bonds at the contemplated offering prices; or

(e) legislation shall be enacted or considered for enactment by the Congress, or recommended to the Congress for passage by the President of the United States, or introduced in either House of Congress by any Committee of such House to which such legislation has been referred for consideration, or a decision, order or decree of a court of competent jurisdiction shall be rendered, or an order, ruling, regulation or Private Placement Memorandum of or on behalf of the Securities and Exchange Commission or the Municipal Securities Rulemaking Board shall be rendered or made, with the purpose or effect that the issuance, offering or sale of the Bonds, as contemplated by this Agreement or by the Private Placement Memorandum, is or would be in violation of any provision of the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, or the Trust Indenture Act of 1939, as amended, or with the purpose or effect of otherwise prohibiting the issuance, offering or sale of the Bonds as contemplated by this Agreement or by the Private Placement Memorandum; or

(f) in the reasonable opinion of the Placement Agent, the market price of the Bonds, or the market price generally of obligations of the general character of the Bonds, might be adversely affected because: (i) additional material restrictions not in force as of the date hereof shall have been imposed upon trading in securities generally by any governmental authority or by any national securities



exchange; (ii) the New York Stock Exchange or other national securities exchange, or any governmental authority, shall impose, as to the Bonds or similar obligations, any material restrictions which are neither now in force nor have been announced to become effective prior to the Closing, or increase materially those now in force or so announced, with respect to the extension of credit by, or the charge to the net capital requirements of, underwriters, or (iii) the President of the United States of America, a member of his cabinet or the Securities and Exchange Commission, including a lesser official acting on the behalf of any of them, or a member of the Congress, shall have announced the intended introduction of legislation to achieve the same effect as that described in clause (a) or (e) of this paragraph.

To the Placement Agent's actual knowledge, no events listed in the subsections above (excluding subsection (b)) that would permit the Placement Agent to cancel its obligations pursuant to this Agreement have occurred.

#### **10. Expenses.**

(a) If the Bonds are sold to the bond purchaser or purchasers by the City, the City shall cause the Trustee to pay solely out of the proceeds of the Bonds the following expenses incident to the performances of its obligations hereunder: (i) the cost of preparing, duplicating (or printing), mailing and delivering the Transaction Documents, including the costs of delivering electronic copies of the Preliminary Private Placement Memorandum and the Private Placement Memorandum; (ii) the Placement Fee and any applicable DALCOMP, MSRB, BMA, DTC and CUSIP charges; (iii) the fees and disbursements of Bond Counsel, the Trustee, the City, counsel to the City, the financial advisor to the City and counsel to the Placement Agent; and (iv) all other fees and expenses reasonably incurred in connection with the preparation of the Transaction Documents and/or the initial offering and sale of the Bonds except those to be paid by the Placement Agent pursuant to the last paragraph of this **Section 10**.

(b) Except as otherwise provided above in this **Section 10**, the Placement Agent shall pay all travel, postage, photocopying, telephone, fax, computer, word processing and other similar expenses incurred by them or any of them in connection with its placement of the Bonds.

**11. Notices.** Any notice or other communication to be given to the City under this Agreement may be given by delivering the same in writing to the City at its address set forth above, and any notice or other communication to the Developer may be given by delivering the same in writing to the Developer at its address set forth above. Any notice or other communication to be given to the Placement Agent under this Agreement may be given by delivering the same in writing to UMB Bank, N.A., 928 Grand Boulevard, 14<sup>th</sup> Floor, Kansas City, Missouri 64106, Attention: Scott Crist.

**12. Benefits; Successors.** This Agreement is made solely for the benefit of the City, the Developer and the Placement Agent and no other person shall acquire or have any right hereunder or by virtue hereof.

**13. Governing Law.** This Agreement shall be governed by the laws of the State.

**14. Survival.** All of the representations, warranties and agreements of the City, the Placement Agent and the Developer hereunder shall remain operative and be in full force and effect regardless of any investigations made by and on behalf of the Placement Agent, and shall survive the delivery of the Bonds to the Placement Agent.

**15. Counterparts.** This Agreement may be simultaneously executed in counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

**16. Effectiveness.** This Agreement (i) shall become effective upon the execution of the acceptance hereof by the City and the Developer and (ii) supersedes all prior agreements between the City, the Developer and the Placement Agent regarding the issuance of the Bonds.

**17. Electronic Transaction.** The parties agree that the transaction described herein may be conducted and related documents may be sent, received and stored by electronic means. In addition, the transaction described herein may be conducted and related documents may be sent, received and 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.

**18. Anti-Discrimination Against Israel Act.** Pursuant to Section 34.600 of the Revised Statutes of Missouri, the Placement Agent certifies it is not currently engaged in and shall not, for the duration of this Private Placement 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 this page intentionally left blank)*

Very truly yours,

**UMB BANK, N.A.**, as Placement Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Accepted:

**CITY OF SMITHVILLE, MISSOURI**

By: \_\_\_\_\_  
Mayor

Date: May \_\_\_\_, 2022

Accepted:

**DEVELOPMENT ASSOCIATES  
SMITHVILLE, LLC**, a Missouri limited liability  
company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: May \_\_\_\_, 2022

**EXHIBIT A**

<u>Original Purchaser</u>	<u>20   Term Bond</u>	<u>20   Term Bond</u>	<u>Total Principal Amount</u>
Total			

**SCHEDULE I TO PRIVATE PLACEMENT AGREEMENT**

**MATURITY SCHEDULE**

\$ \_\_\_\_\_

**CITY OF SMITHVILLE, MISSOURI  
TAX INCREMENT REVENUE BONDS  
(SMITHVILLE COMMONS PROJECT)  
SERIES 2022**

<u>Maturity</u> <u>(December 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Price</u>	<u>Yield</u>
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**TAX COMPLIANCE AGREEMENT**

**Dated as of May 15, 2022**

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**Among**

**CITY OF SMITHVILLE, MISSOURI,**

**SMITHVILLE COMMONS COMMUNITY IMPROVEMENT DISTRICT**

**And**

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

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**[\$[Principal Amount]  
City of Smithville, Missouri  
Tax Increment Revenue Bonds  
(Smithville Commons Project)  
Series 2022**

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# **TAX COMPLIANCE AGREEMENT**

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**Exhibit A** – Debt Service Schedule and Proof of Bond Yield

**Exhibit B** – IRS Form 8038-G

Schedule A – Attachment to Form 8038-G

**Exhibit C** – Description of Property Comprising the Financed Facility

**Exhibit D** – Sample Annual Compliance Checklist

**Exhibit E** – Sample Final Written Allocation

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## **TAX COMPLIANCE AGREEMENT**

**THIS TAX COMPLIANCE AGREEMENT** (the “Tax Agreement”), entered into as of May 15, 2022, among the **CITY OF SMITHVILLE, MISSOURI**, a political subdivision organized and existing under the laws of the State of Missouri (the “Issuer”), the **SMITHVILLE COMMONS COMMUNITY IMPROVEMENT DISTRICT** (the “District”) and **UMB BANK, N.A.**, national banking association duly organized and existing under the laws of the United States of America, as Trustee (the “Trustee”);

### **RECITALS**

1. This Tax Agreement is being executed and delivered in connection with the issuance by the Issuer of \$[Principal Amount] principal amount of Tax Increment Revenue Bonds (Smithville Commons Project), Series 2022 (the “Bonds”), under a Trust Indenture dated the date of this Tax Agreement (the “Indenture”) between the Issuer and the Trustee and the Financing Agreement (the “Financing Agreement”) dated as of the date of this Tax Agreement between the Issuer and the Smithville Commons Community Improvement District (the “District”) for the purposes described in this Tax Agreement, in the Indenture, and in the Financing Agreement.

2. The Internal Revenue Code of 1986, as amended (the “Code”), and the applicable Regulations and rulings issued by the U.S. Treasury Department (the “Regulations”), impose certain limitations on the uses and investment of the Bond proceeds and of certain other money relating to the Bonds and set forth the conditions under which the interest on the Bonds will be excluded from gross income for federal income tax purposes.

3. The Issuer and the Trustee are entering into this Tax Agreement in order to set forth certain facts, covenants, representations, and expectations relating to the use of Bond proceeds and the property financed or refinanced with those proceeds and the investment of the Bond proceeds and of certain other related money, in order to establish and maintain the exclusion of the interest on the Bonds from gross income for federal income tax purposes.

4. The Issuer adopted a Tax-Exempt Financing Compliance Policy and Procedure (the “Tax Compliance Procedure”) for the purpose of setting out general procedures to continuously monitor and comply with the federal income tax requirements set out in the Code and the Regulations. This Tax Agreement is entered into as required by the Tax Compliance Procedure to set out specific tax compliance procedures applicable to the Bonds.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual representations, covenants and agreements set forth in this Tax Agreement, the Issuer and the Trustee represent, covenant and agree as follows:

### **ARTICLE I**

#### **DEFINITIONS**

**Section 1.1. Definitions of Words and Terms.** Except as otherwise provided in this Tax Agreement or unless the context otherwise requires, capitalized words and terms used in this Tax Agreement have the same meanings as set forth in the Indenture, and certain other words and phrases

have the meanings assigned in Code §§ 103, 141-150 and the Regulations. The following words and terms used in this Tax Agreement have the following meanings:

**“Adjusted Gross Proceeds”** means the Gross Proceeds of the Bonds reduced by amounts (a) in a Bona Fide Debt Service Fund or a reasonably required reserve or replacement fund, (b) that as of the Issue Date are not expected to be Gross Proceeds, but which arise after the end of the applicable spending period, and (c) representing grant repayments or sale or Investment proceeds of any purpose Investment.

**“Available Construction Proceeds”** means the sale proceeds of the Bonds, increased by (i) Investment earnings on the sale proceeds, (ii) earnings on amounts in a reasonably required reserve or replacement fund allocable to the Bonds but not funded from the Bonds, and (iii) earnings on such earnings, reduced by sale proceeds (A) in any reasonably required reserve fund or (B) used to pay issuance costs of the Bonds. Available Construction Proceeds do not include Investment earnings on amounts in a reasonably required reserve or replacement fund after the earlier of (a) the second anniversary of the Issue Date or (b) the date the Financed Facility is substantially completed. If the Issuer has elected under Code § 148(f)(4)(C)(vi)(IV) to rebate earnings on a reasonably required reserve or replacement fund, then Available Construction Proceeds do not include any earnings on such account.

**“Bona Fide Debt Service Fund”** means a fund, which may include Bond proceeds, that (a) is used primarily to achieve a proper matching of revenues with principal and interest payments within each Bond Year; and (b) is depleted at least once each Bond Year, except for a reasonable carryover amount not to exceed the greater of (1) the earnings on the fund for the immediately preceding Bond Year, or (2) one-twelfth of the principal and interest payments on the Bonds for the immediately preceding Bond Year.

**“Bond”** or **“Bonds”** means any Bond or Bonds described in the recitals, authenticated and delivered under the Indenture.

**“Bond Compliance Officer”** means the Issuer’s Finance Director, or other person named in the Tax Compliance Procedure.

**“Bond Counsel”** means Gilmore & Bell, P.C., or other firm of nationally recognized bond counsel acceptable to the Issuer.

**“Bond Year”** means each one-year period (or shorter period for the first Bond Year) ending December 1, or another one-year period selected by the Issuer.

**“Code”** means the Internal Revenue Code of 1986, as amended.

**“Compliance Account”** means the account by that name created under the Indenture, to provide for the payment of certain expenses as described in **Section 2.1(i)(2)** of this Tax Agreement.

**“Computation Date”** means each date on which arbitrage rebate for the Bonds is computed. The Issuer may treat any date as a Computation Date, subject to the following limits:

- (a) the first rebate installment payment must be made for a Computation Date not later than 5 years after the Issue Date;
- (b) each subsequent rebate installment payment must be made for a Computation Date not later than five years after the previous Computation Date for which an installment payment was made; and

(c) the date the last Bond is discharged is the final Computation Date.

The Issuer selects May \_\_, 2027 as the first Computation Date but reserves the right to select a different date consistent with the Regulations.

**“Debt Service Fund”** means, collectively, the Bond Payment Account and the Redemption Account which are contained in the Debt Service Fund established with the Trustee under the Indenture. The Bond Payment Account will be used to pay principal of and interest on any Bonds when they become due on scheduled mandatory redemption dates. The Redemption Account will be used to redeem the Bonds.

**“Debt Service Reserve Fund”** means the debt service reserve fund established with the Trustee under the Indenture.

**“District”** means the Smithville Commons Community Improvement District and its successors and assigns, or any body, agency or instrumentality of the State of Missouri succeeding to or charged with the powers, duties and functions of the District.

**“Financing Agreement”** means the Financing Agreement, dated the date of this Tax Agreement, between the Issuer and the District, as amended and supplemented in accordance with the provisions of the Financing Agreement.

**“Final Written Allocation”** means the Final Written Allocation of expenditures prepared by the Bond Compliance Officer in accordance with the Tax Compliance Procedure and **Section 4.2(b)** of this Tax Agreement.

**“Financed Facility”** means the portion of the Project being financed or refinanced with the proceeds of the Bonds as described on **Exhibit D**.

**“Financing Agreement”** means the Financing Agreement dated the date of this Tax Agreement, between the Issuer and the District as from time to time amended by Supplemental Financing Agreements in accordance with the provisions of the Financing Agreement.

**“Gross Proceeds”** means (a) sale proceeds (any amounts actually or constructively received by the Issuer from the sale of the Bonds, including amounts used to pay underwriting discount or fees, but excluding pre-issuance accrued interest), (b) Investment proceeds (any amounts received from investing sale proceeds, or other Investment proceeds), (c) any amounts held in a sinking fund for the Bonds, (d) any amounts held in a pledged fund or reserve fund for the Bonds, and (e) any other replacement proceeds.

Specifically, Gross Proceeds includes (but is not limited) to amounts held in the following funds and accounts:

- (1) Debt Service Fund, and therein a Bond Payment Account and a Redemption Account.
- (2) Debt Service Reserve Fund, and therein a Bond Proceeds Account and a Business Interruption Account.
- (3) Project Fund.
- (4) Rebate Fund (to the extent funded with sale proceeds or Investment proceeds of the Bonds).

(5) Extraordinary Expense Fund.

**“Guaranteed Investment Contract”** is any Investment with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate, including any agreement to supply Investments on two or more future dates (*e.g.*, a forward supply contract).

**“Indenture”** means the Trust Indenture, dated the date of this Tax Agreement, between the Issuer and the Trustee, as amended and supplemented in accordance with the provisions of the Indenture.

**“Investment”** means any security, obligation, annuity contract or other investment-type property that is purchased directly with, or otherwise allocated to, Gross Proceeds. This term does not include a tax-exempt bond, except for “specified private activity bonds” as defined in Code § 57(a)(5)(C), but it does include the investment element of most interest rate caps.

**“IRS”** means the United States Internal Revenue Service.

**“Issue Date”** means May \_\_, 2022.

**“Issuer”** means the City of Smithville, Missouri and its successors and assigns, or any body, agency or instrumentality of the State of Missouri succeeding to or charged with the powers, duties and functions of the Issuer.

**“Management Agreement”** means a legal agreement defined in Regulations § 1.141-3(b) as a management, service, or incentive payment contract with an entity that provides services involving all or a portion of any function of the Financed Facility, such as a contract to manage the entire Financed Facility or a portion of the Financed Facility. Contracts for services that are solely incidental to the primary governmental function of the Financed Facility (for example, contracts for janitorial, office equipment repair, billing, or similar services), however, are not treated as Management Agreements.

**“Measurement Period”** means, with respect to each item of property financed as part of the Financed Facility, the period beginning on the later of (a) the Issue Date or (b) the date the property is placed in service and ending on the earlier of (1) the final maturity date of the Bonds or (2) the end of the expected economic useful life of the property.

**“Minor Portion”** means the lesser of \$100,000 or 5% of the sale proceeds of the Bonds.

**“Net Proceeds”** means the sale proceeds of the Bonds (excluding pre-issuance accrued interest), less any proceeds deposited in a reasonably required reserve or replacement fund, plus all Investment earnings on such sale proceeds.

**“Non-Qualified Use”** means use of Bond proceeds or the Financed Facility in a trade or business carried on by any Non-Qualified User. The rules set out in Regulations § 1.141-3 determine whether Bond proceeds or the Financed Facility are “used” in a trade or business. Generally, ownership, a lease, or any other use that grants a Non-Qualified User a special legal right or entitlement with respect to the Financed Facility, will constitute use under Regulations § 1.141-3.

**“Non-Qualified User”** means any person or entity other than a Qualified User.

**“Opinion of Bond Counsel”** means the written opinion of Gilmore & Bell, P.C. or other nationally recognized firm of bond counsel. Unless otherwise specifically noted herein an Opinion of Bond Counsel must conclude that the action or proposed action or the failure to act or proposed failure to act for which the opinion is required will not adversely affect the exclusion of the interest on the Bonds from gross income for federal income tax purposes.

**“Post-Issuance Tax Requirements”** means those requirements related to the use of proceeds of the Bonds, the use of the Financed Facility and the investment of Gross Proceeds after the Issue Date of the Bonds.

**“Project”** means all of the property being acquired, developed, constructed, renovated, and equipped by the Issuer using Bond proceeds and Qualified Equity, all as described on **Exhibit D**.

**“Qualified Equity”** means funds (but excluding an existing equity ownership interest in real property or tangible personal property) that are not derived from proceeds of a tax-exempt financing that are spent on the Project on a date that is no earlier than a date on which such expenditures would be eligible for reimbursement by proceeds of the Bonds under Regulations § 1.150-2(d)(2) and ending not later than the date the Project is capable of and actually used at substantially its designed level.

**“Qualified Use Agreement”** means any of the following:

(a) A lease or other short-term use by members of the general public who occupy the Financed Facility on a short-term basis in the ordinary course of the Issuer’s governmental purposes.

(b) Agreements with Qualified Users or Non-Qualified Users to use all or a portion of the Financed Facility for a period up to 200 days in length pursuant to an arrangement whereby (1) the use of the Financed Facility under the same or similar arrangements is predominantly by natural persons who are not engaged in a trade or business and (2) the compensation for the use is determined based on generally applicable, fair market value rates that are in effect at the time the agreement is entered into or renewed. Any Qualified User or Non-Qualified User using all or any portion of the Financed Facility under this type of arrangement may have a right of first refusal to renew the agreement at rates generally in effect at the time of the renewal.

(c) Agreements with Qualified Users or Non-Qualified Users to use all or a portion of the Financed Facility for a period up to 100 days in length pursuant to arrangements whereby (1) the use of the property by the person would be general public use but for the fact that generally applicable and uniformly applied rates are not reasonably available to natural persons not engaged in a trade or business, (2) the compensation for the use under the arrangement is determined based on applicable, fair market value rates that are in effect at the time the agreement is entered into or renewed, and (3) the Financed Facility was not constructed for a principal purpose of providing the property for use by that Qualified User or Non-Qualified User. Any Qualified User or Non-Qualified User using all or any portion of the Financed Facility under this type of arrangement may have a right of first refusal to renew the agreement at rates generally in effect at the time of the renewal.

(d) Agreements with Qualified Users or Non-Qualified Users to use all or a portion of the Financed Facility for a period up to 50 days in length pursuant to a negotiated arm’s-length arrangement at fair market value so long as the Financed Facility was not constructed for a principal purpose of providing the property for use by that person.

**“Qualified User”** means a State, territory, possession of the United States, the District of Columbia, or any political subdivision thereof, or any instrumentality of such entity, but it does not include the United States or any agency or instrumentality of the United States.

**“Reasonable Retainage”** means Gross Proceeds retained by the Issuer for reasonable business purposes, such as to ensure or promote compliance with a construction contract; provided that such amount may not exceed (a) for purposes of the 18-month spending test, 5% of net sale proceeds of the Bonds on the date 18 months after the Issue Date, or (b) for purposes of the 2-year spending test, 5% of the Available Construction Proceeds as of the end of the 2-year spending period.

**“Rebate Analyst”** means Gilmore & Bell, P.C. or any successor Rebate Analyst selected pursuant to this Tax Agreement.

**“Regulations”** means all Regulations issued by the U.S. Treasury Department to implement the provisions of Code §§ 103 and 141 through 150 and applicable to the Bonds.

**“Revenue Fund”** means the Revenue Fund created under the Indenture, into which the Trustee shall deposit all Net Revenues.

**“Revenues”** means the amounts pledged under the Indenture to the payment of principal of, premium, if any, and interest on the Bonds, consisting generally of “Net Revenues” (as defined in the Indenture).

**“Tax Agreement”** means this Tax Compliance Agreement as it may from time to time be amended and supplemented in accordance with its terms.

**“Tax Compliance Procedure”** means the Issuer’s Tax-Exempt Financing Compliance Policy and Procedure, dated August 21, 2012, as it may from time to time be amended.

**“Tax-Exempt Bond File”** means documents and records for the Bonds, maintained by the Bond Compliance Officer pursuant to the Tax Compliance Procedure.

**[“Tax Revenues”** means all (a) Economic Activity Tax Revenues (subject to appropriation by the Issuer), excluding the Fire District EATs Reimbursement, the Grocery Store Sales Tax Payment and the City Administrative Fee; (b) Payments in Lieu of Taxes, excluding Fire District PILOTs Reimbursement, the School District PILOTs reimbursement and the City Administrative Fee; and (c) CID Revenues (subject to appropriation by the District).]

**“Transcript”** means the Transcript of Proceedings relating to the authorization and issuance of the Bonds.

**“Trustee”** means UMB Bank, n.a., and its successor or successors and any other corporation or association which at any time may be substituted in its place at the time serving as Trustee under the Indenture.

**“Yield”** means yield on the Bonds, computed under Regulations § 1.148-4, and yield on an Investment, computed under Regulations § 1.148-5.

## ARTICLE II

### GENERAL REPRESENTATIONS AND COVENANTS

**Section 2.1. Representations and Covenants of the Issuer and the District.** The Issuer represents and covenants as follows:

*(a) Organization and Authority.*

(1) The Issuer (1) is a political subdivision organized and existing under the laws of the State of Missouri, and (2) has lawful power and authority to issue the Bonds for the purposes set forth in the Indenture, to enter into, execute and deliver the Indenture, the Financing Agreement, the Bonds, and this Tax Agreement and to carry out its obligations under this Tax Agreement and under such documents, and (3) by all necessary action has been duly authorized to execute and deliver the Indenture, the Financing Agreement, the Bonds, and this Tax Agreement, acting by and through its duly authorized officials.

(2) The District is (1) a community improvement district and political subdivision organized and existing under the laws of the State of Missouri, and (2) has lawful power and authority to enter into, execute and deliver the Financing Agreement and this Tax Agreement and to carry out its obligations under this Tax Agreement and under such documents, and (3) by all necessary action has been duly authorized to execute and deliver the Financing Agreement and this Tax Agreement, acting by and through its duly authorized officials.

*(b) Tax-Exempt Status of Bonds—General Representation and Covenants.* In order to maintain the exclusion of the interest on the Bonds from gross income for federal income tax purposes, the Issuer and District (1) will take whatever action, and refrain from whatever action, necessary to comply with the applicable requirements of the Code; (2) will not use or invest, or permit the use or Investment of, any Bond proceeds, other money held under the Indenture, or other funds of the Issuer, in a manner that would violate applicable provisions of the Code; and (3) will not use, or permit the use of, any portion of the Financed Facility in a manner that would cause any Bond to become a “private activity bond” as defined in Code § 141.

*(c) Governmental Obligations—Use of Proceeds.* The proceeds of the Bonds will be used to finance the Financed Facility.

*(d) Governmental Obligations—Private Security or Payment – No Impermissible Agreements.*

(1) As of the Issue Date the Issuer expects that none of the principal and interest on the Bonds will be (under the terms of the Bonds or any underlying arrangement) directly or indirectly:

(i) secured by (A) any interest in property used or to be used for a Non-Qualified Use, or (B) any interest in payments in respect of such property; or

(ii) derived from payments (whether or not such payments are made to the Issuer) in respect of property, or borrowed money, used or to be used for a Non-Qualified Use.

(2) For purposes of the foregoing, taxes of general application, including Tax Revenues, are not treated as private payments or as private security. Tax Revenues will be the primary source of repayment of the Bonds. Tax Revenues are generally applicable taxes because they are an enforced contribution exacted pursuant to legislative authority as part of the taxing power, are imposed and collected for the purpose of raising revenue to be used for governmental purposes, have a uniform rate of collection that applies to all persons of the same classification in the appropriate jurisdiction and have a generally applicable manner of collection and determination. No taxpayer has entered into any “impermissible agreement” relating to the payment of Tax Revenues. An “impermissible agreement” generally includes any agreement described in Regulations § 1.141-4(e)(4)(ii), including the following:

(i) An agreement to be personally liable for a tax that does not impose personal liability.

(ii) An agreement to provide additional credit support such as a guaranty or to pay unanticipated shortfalls in tax collections.

(iii) An agreement as to the minimum market value of property subject to a property tax.

(iv) An agreement not to challenge or to seek deferral of a tax.

(v) Any similar agreement that causes a tax to fail to have a generally applicable manner of determination or collection.

(3) The Issuer will not permit any private security or payment with respect to the Bonds without first consulting with Bond Counsel.

(e) *No Private Loan.* Not more than 5% of the Net Proceeds of the Bonds will be loaned directly or indirectly to any Non-Qualified User.

(h) *Limit on Maturity of Bonds.* A list of the assets included in the Financed Facility and a computation of the “average reasonably expected economic life” is attached to this Tax Agreement as **Exhibit C**. Based on this computation, the “average maturity” of the Bonds of \_\_\_\_ years, as computed by Bond Counsel, does not exceed 120% of the average reasonably expected economic life of the Financed Facility (\_\_\_\_ years).

(i) *Expenditure of Bond Proceeds.*

(1) The Issuer will evidence each allocation of the proceeds of the Bonds and Qualified Equity for the Project to an expenditure in writing. No allocation will be made more than 18 months following the later of (i) the date of the expenditure or (ii) the date the Financed Facility was placed in service.

(2) Reimbursement of Expenditures; Official Intent. The Issuer will not allocate any proceeds of the Bonds to reimburse and expenditure paid prior to the Issue Date.

(j) *Registered Bonds.* The Indenture requires that all of the Bonds will be issued and held in registered form within the meaning of Code § 149(a).



(k) *Bonds Not Federally Guaranteed.* The Issuer and the District will not take any action or permit any action to be taken which would cause any Bond to be “federally guaranteed” within the meaning of Code § 149(b).

(l) *IRS Form 8038-G.* Bond Counsel will prepare Form 8038-G (Information Return for Tax-Exempt Governmental Obligations) based on the representations and covenants of the Issuer contained in this Tax Agreement or otherwise provided by the Issuer and the District. Bond Counsel will sign the return as a paid preparer following completion and will then deliver copies to the Issuer for execution and for the Issuer’s records. The Issuer agrees to timely execute and return to Bond Counsel the execution copy of Form 8038-G for filing with the IRS. A copy of the “as-filed” copy along with proof of filing will be included as **Exhibit B**.

(m) *Hedge Bonds.* At least 85% of the net sale proceeds of the Bonds will be used to carry out the governmental purpose of the Bonds within three years after the Issue Date, and not more than 50% of the proceeds of the Bonds will be invested in Investments having a substantially guaranteed Yield for four years or more.

(n) *Compliance with Future Tax Requirements.* The Issuer and the District understand that the Code and the Regulations may impose new or different restrictions and requirements on the Issuer in the future. The Issuer and the District will comply with such future restrictions that are necessary to maintain the exclusion of the interest on the Bonds from gross income for federal income tax purposes.

(o) *Single Issue; No Other Issues.* The Bonds constitute a single “issue” under Regulations § 1.150-1(c).

(p) *Interest Rate Swap.* As of the Issue Date the Issuer and the District have not entered into an interest rate swap agreement or any other similar arrangement designed to modify its interest rate risk with respect to the Bonds. The Issuer and the District will not enter into any such arrangement in the future without first consulting with Bond Counsel.

(q) *Guaranteed Investment Contract.* As of the Issue Date of the Bonds, the Issuer and the District do not expect to enter into a Guaranteed Investment Contract for any Gross Proceeds of the Bonds. The Issuer will be responsible for complying with **Section 4.4(d)** if it decides to enter into a Guaranteed Investment Contract at a later date.

(r) *Bank Qualified Tax-Exempt Obligation.* The Bonds are not “qualified tax-exempt obligations” under Code § 265(b)(3).

**Section 2.2. Representations and Covenants of the Trustee.** The Trustee represents and covenants to the Issuer as follows:

(a) The Trustee will comply with the provisions of this Tax Agreement that apply to it as Trustee and any written letter or Opinion of Bond Counsel, specifically referencing the Bonds and received by the Trustee, that sets forth any action necessary to comply with any statute, regulation or ruling that may apply to it as Trustee and relating to reporting requirements or other requirements necessary to maintain the exclusion of the interest on the Bonds from gross income for federal income tax purposes.

(b) The Trustee, acting on behalf of the Issuer, may from time to time cause a firm of attorneys, consultants or independent accountants or an Investment banking firm to provide the Trustee

with such information as it may request in order to determine all matters relating to (1) the Yield on the Bonds as it relates to any data or conclusions necessary to verify that the Bonds are not “arbitrage bonds” within the meaning of Code § 148, and (2) compliance with arbitrage rebate requirements of Code § 148(f). The Issuer will pay all costs and expenses incurred in connection with supplying the foregoing information.

**Section 2.3. Survival of Representations and Covenants.** All representations, covenants and certifications of the Issuer and the Trustee contained in this Tax Agreement or in any certificate or other instrument delivered by the Issuer or the Trustee under this Tax Agreement, will survive the execution and delivery of such documents and the issuance of the Bonds, as representations of facts existing as of the date of execution and delivery of the instruments containing such representations. The foregoing covenants of this Section will remain in full force and effect notwithstanding the defeasance of the Bonds.

### ARTICLE III

#### ARBITRAGE CERTIFICATIONS AND COVENANTS

**Section 3.1. General.** The purpose of this **Article III** is to certify, under Regulations § 1.148-2(b), the Issuer’s expectations as to the sources, uses and investment of Bond proceeds and other money, in order to support the Issuer’s conclusion that the Bonds are not arbitrage bonds. The person executing this Tax Agreement on behalf of the Issuer is an officer of the Issuer responsible for issuing the Bonds.

**Section 3.2. Reasonable Expectations.** The facts, estimates and expectations set forth in this **Article III** are based upon and in reliance upon the Issuer’s understanding of the documents and certificates that comprise the Transcript, and the representations, covenants and certifications of the parties contained therein. To the Issuer’s knowledge, the facts and estimates set forth in this Tax Agreement are accurate, and the expectations of the Issuer set forth in this Tax Agreement are reasonable. The Issuer has no knowledge that would cause it to believe that the representations, warranties and certifications described in this Tax Agreement are unreasonable or inaccurate or may not be relied upon.

**Section 3.3. Purpose of Financing.** The Bonds are being issued for the purpose of providing funds to finance the Financed Facility.

**Section 3.4. Funds and Accounts.** The following funds and accounts have been established under the Indenture:

- Revenue Fund, and therein a PILOTs Account, an EATs Account, and a CID Account.
- Debt Service Fund, and therein a Bond Payment Account and a Redemption Account.
- Debt Service Reserve Fund, and therein a Bond Proceeds Account and a Business Interruption Account.
- Project Fund.
- Rebate Fund
- Extraordinary Expense Fund.

**Section 3.5. Amount and Use of Bond Proceeds and Other Money.**

(a) *Amount of Bond Proceeds.* The total proceeds to be received by the Issuer from the sale of the Bonds will be as follows:

Principal Amount	[\$[Principal Amount]].00
Total Proceeds Received by Issuer	\$

(b) *Use of Bond Proceeds.* The Bond proceeds are expected to be allocated to expenditures as follows:

(a) The accrued interest, if any, received from the sale on the Bonds will be deposited in the Debt Service Fund.

(b) an amount equal to \$\_\_\_\_\_ from the proceeds of the Bonds shall be deposited in the Bond Proceeds Account of the Debt Service Reserve Fund; and

(c) the remaining moneys from the proceeds of the Bonds shall be deposited into the Project Fund.

**Section 3.6. Multipurpose Issue.** The Issuer is applying the arbitrage rules to separate financing purposes of the issue that have the same initial temporary period as if they constitute a single issue for purposes pursuant to Regulations § 1.148-9(h)(3)(i).

**Section 3.7. No Advance Refunding.** No proceeds of the Bonds will be used more than 90 days following the Issue Date to pay principal or interest on any other debt obligation.

**Section 3.8. No Current Refunding.** No proceeds of the Bonds will be used to pay principal or interest on any other debt obligation.

**Section 3.9. Project Completion.** The Issuer has incurred, or will incur within 6 months after the Issue Date, a substantial binding obligation to a third party to spend at least 5% of the Net Proceeds of the Bonds on the Financed Facility. The completion of the Financed Facility and the allocation of the Net Proceeds of the Bonds to expenditures will proceed with due diligence. At least 85% of the Net Proceeds of the Bonds will be allocated to expenditures on the Financed Facility within three years after the Issue Date.

**Section 3.10. Sinking Funds.** The Issuer is required to make periodic payments in amounts sufficient to pay the principal of and interest on the Bonds. Such payments will be deposited into the Debt Service Fund. Except for the Debt Service Fund and the Debt Service Reserve Fund, no sinking fund or other similar fund that is expected to be used to pay principal of or interest on the Bonds has been established or is expected to be established. The Debt Service Fund is used primarily to achieve a proper matching of revenues with principal and interest payments on the Bonds within each Bond Year, and the Issuer expects that the Debt Service Fund will qualify as a Bona Fide Debt Service Fund.

**Section 3.11. Reserve, Replacement and Pledged Funds.**

(a) *Debt Service Reserve Fund.* The Indenture establishes a bond proceeds account in the debt service reserve fund to be funded at the time of issuance of the Bonds in an amount equal to \$\_\_\_\_\_, the Debt Service Reserve Requirement. The amount to be held in the Debt Service

Reserve Fund will not exceed the least of (1) 10% of the stated principal amount of the Bonds, (2) the maximum annual principal and interest requirements on the Bonds (determined as of the Issue Date), or (3) 125% of the average annual principal and interest requirements on the Bonds (determined as of the Issue Date). If the aggregate initial offering price of the Bonds to the public is less than 98% or more than 102% of par, such offering price must be used in clause (1) in lieu of the stated principal amount. Any amounts in the Debt Service Reserve Fund in excess of the Debt Service Reserve Requirement will be transferred to the Project Fund or, if the Financed Facility is complete, to the Debt Service Fund.

(b) *Debt Service Reserve Fund – Business Interruption Account.* The Indenture establishes the Business Interruption Account in the Debt Service Reserve Fund to be funded over time from Net Revenues until the amount on deposit in the account reaches \$\_\_\_\_\_, the Debt Service Reserve Requirement for the Business Interruption Account for the Bonds. Amounts on deposit in the Business Interruption Account of the Debt Service Reserve Fund are to be applied by the Trustee solely for the payment of the principal of and interest on the Bonds if other available moneys (including amounts on deposit in the Debt Service Fund and the Bond Proceeds Account of the Debt Service Reserve Fund) are insufficient to pay the Bonds as they become due and payable. Any amounts in the Business Interruption Account of the Debt Service Reserve Fund in excess of the Debt Service Reserve Requirement for the Business Interruption Account will be transferred to the Revenue Fund.

(c) *No Other Replacement or Pledged Funds.* None of the Bond proceeds will be used as a substitute for other funds that were intended or earmarked to pay costs of the Financed Facility, and that instead has been or will be used to acquire higher yielding Investments. Except for the Debt Service Fund and the Debt Service Reserve Fund, there are no other funds pledged or committed in a manner that provides a reasonable assurance that such funds would be available for payment of the principal of or interest on the Bonds if the Issuer encounters financial difficulty.

(d) *Other Funds and Accounts.* The Revenue Fund is expected to be used for the temporary deposit of Tax Revenues until such amounts are transferred to other funds and accounts in accordance with the Indenture. The Extraordinary Expense Fund is expected to be used for any expenses related to fees incurred by the City to interpret or defend the Indenture, or any audit or request from any federal or state entity or regulatory authority in connection with the Bonds. Therefore, amounts held in these funds and accounts are not pledged or committed in a manner that provides a reasonable assurance that such funds would be available for payment of the principal of or interest on the Bonds if the Issuer encounters financial difficulty.

**Section 3.12. Purpose Investment Yield.** The proceeds of the Bonds will not be used to purchase an Investment for the purpose of carrying out the governmental purpose of the financing.

### **Section 3.13. Issue Price and Yield on Bonds.**

(a) *Issue Price.* In the Placement Agent's Closing Certificate, the Placement Agent has certified that (1) all of the Bonds have been the subject of an initial offering to the public at prices no higher than those shown on the inside cover page of the Private Placement Memorandum for the Bonds, without accrued interest (the "Offering Prices"), and (2) the Placement Agent expects that at least 10% of each maturity of the Bonds will be sold to the public at initial offering prices no higher than said Offering Prices. The aggregate initial offering price of the Bonds is \$[Principal Amount], without accrued interest.

(b) *Bond Yield.* Based on the Offering Prices of the Bonds, the Yield on the Bonds is \_\_\_\_\_%, as computed by Bond Counsel as shown on **Exhibit A**. The Issuer has not entered into an interest rate swap agreement with respect to any portion of the proceeds of the Bonds.

#### **Section 3.14. Miscellaneous Arbitrage Matters.**

(a) *No Abusive Arbitrage Device.* The Bonds are not and will not be part of a transaction or series of transactions that has the effect of (1) enabling the Issuer to exploit the difference between tax-exempt and taxable interest rates to gain a material financial advantage, and (2) overburdening the tax-exempt bond market.

(b) *No Over-Issuance.* The sale proceeds of the Bonds, together with expected Investment earnings thereon and other money contributed by the Issuer, do not exceed the cost of the governmental purpose of the Bonds as described above.

**Section 3.15. Conclusion.** On the basis of the facts, estimates and circumstances set forth in this Tax Agreement, the Issuer does not expect that the Bond proceeds will be used in a manner that would cause any Bond to be an “arbitrage bond” within the meaning of Code § 148 and the Regulations.

### **ARTICLE IV**

#### **POST-ISSUANCE TAX REQUIREMENTS, POLICIES AND PROCEDURES**

##### **Section 4.1. General.**

(a) *Purpose of Article.* The purpose of this Article is to supplement the Tax Compliance Procedure and to set out specific policies and procedures governing compliance with the federal income tax requirements that apply after the Bonds are issued. The Issuer recognizes that interest on the Bonds will remain excludable from gross income only if the Post-Issuance Tax Requirements are followed after the Issue Date. The Issuer further acknowledges that written evidence substantiating the Post-Issuance Tax Requirements must be retained in order to permit the Bonds to be refinanced with tax-exempt obligations and substantiate the position that interest on the Bonds is exempt from gross income in the event of an audit of the Bonds by the IRS.

(b) *Written Policies and Procedures of the Issuer.* The Issuer intends for the Tax Compliance Procedure, as supplemented by this Tax Agreement, to be its primary written policies and procedures for monitoring compliance with the Post-Issuance Tax Requirements for the Bonds and to supplement any other formal policies and procedures related to tax compliance that the Issuer has established. The provisions of this Tax Agreement are intended to be consistent with the Tax Compliance Procedure. In the event of any inconsistency between the Tax Compliance Procedure and this Tax Agreement, the terms of this Tax Agreement will govern.

(c) *Bond Compliance Officer.* The Issuer and the District acknowledge that the investment and expenditure of proceeds of the Bonds are within the control of the Issuer, and that substantially all of the proceeds of the property financed by the Bonds is controlled by the Issuer. For these reasons, the District is relying on the Issuer and the Bond Compliance Officer to carry out the Post-Issuance Tax Requirements as set out in this Tax Agreement and the Tax Compliance Procedure. The Issuer has agreed to undertake the obligations imposed on it by the Tax Compliance Procedure. The District will cooperate with the Issuer when necessary to enable the Issuer to fulfill its Post-Issuance Tax Requirements will,

through its Bond Compliance Officer, sign Form 8038-T in connection with the payment of arbitrage rebate or Yield reduction payments, participate in any federal income tax audit of the Bonds or related proceedings under a voluntary compliance agreement procedures (VCAP) or undertake a remedial action procedure pursuant to Regulations §§ 1.141-12. In each case, all costs and expenses incurred by the Issuer shall be treated as a reasonable cost of administering the Bonds and the Issuer shall be entitled to reimbursement and recovery of its costs to the same extent as provided in the Indenture or State law.

#### **Section 4.2. Record Keeping; Use of Bond Proceeds and Use of Financed Facility.**

(a) *Record Keeping.* The Bond Compliance Officer will maintain the Tax-Exempt Bond File for the Bonds in accordance with the Tax Compliance Procedure. Unless otherwise specifically instructed in advice or a written Opinion of Bond Counsel or to the extent otherwise provided in this Tax Agreement, the Bond Compliance Officer shall retain records related to the Post-Issuance Tax Requirements until 3 years following the final maturity of (1) the Bonds or (2) any obligation issued to refund the Bonds. Any records maintained electronically must comply with Section 4.01 of Revenue Procedure 97-22, which generally provides that an electronic storage system must (i) ensure an accurate and complete transfer of the hardcopy records which indexes, stores, preserves, retrieves and reproduces the electronic records, (ii) include reasonable controls to ensure integrity, accuracy and reliability of the electronic storage system and to prevent unauthorized alteration or deterioration of electronic records, (iii) exhibit a high degree of legibility and readability both electronically and in hardcopy, (iv) provide support for other books and records of the Issuer and (v) not be subject to any agreement that would limit the ability of the IRS to access and use the electronic storage system on the Issuer's premises.

(b) *Accounting and Allocation of Bond Proceeds and Qualified Equity to Expenditures.* The Bond Compliance Officer will account for the investment and expenditure of Bond proceeds in the level of detail required by the Tax Compliance Procedure. The Bond Compliance Officer will supplement the expected allocation of Bond proceeds and Qualified Equity to expenditures with a Final Written Allocation as required by the Tax Compliance Procedure. A sample form of Final Written Allocation is attached as **Exhibit E**.

(c) *Annual Compliance Checklist.* Attached as **Exhibit D** is a sample Annual Compliance Checklist for the Bonds. The Bond Compliance Officer will prepare and complete an Annual Compliance Checklist for the Financed Facility at least annually in accordance with the Tax Compliance Procedure. If the Annual Compliance Checklist identifies a deficiency in compliance with the requirements of this Tax Agreement, the Bond Compliance Officer will take the actions identified in advice of Bond Counsel or as described in the Tax Compliance Procedure to correct any deficiency.

(d) *Opinions of Bond Counsel.* The Bond Compliance Officer is responsible for obtaining and delivering to the Issuer and the Trustee any advice or Opinion of Bond Counsel required under the provisions of this Tax Agreement, including any advice or Opinion of Bond Counsel required by this Tax Agreement or the Annual Compliance Checklist.

**Section 4.3. Temporary Periods/Yield Restriction.** Except as described below, the Issuer will not invest Gross Proceeds at a Yield greater than the Yield on the Bonds:

(a) *Project Fund.* Bond proceeds deposited in the Project Fund and investment earnings on those proceeds may be invested without Yield restriction for up to 3 years following the Issue Date. If any unspent proceeds remain in the Project Fund after 3 years, those amounts may continue to be invested without Yield restriction so long as the Issuer pays to the IRS all Yield reduction payments in accordance

with Regulations § 1.148-5(c). These payments are required whether or not the Bonds are exempt from the arbitrage rebate requirements of Code § 148.

(b) *Debt Service Fund.* To the extent that the Debt Service Fund qualifies as a Bona Fide Debt Service Fund, money in such account may be invested without Yield restriction for 13 months after the date of deposit. Earnings on such amounts may be invested without Yield restriction for one year after the date of receipt of such earnings.

(c) *Debt Service Reserve Fund- Bond Proceeds Account.* Money in the bond proceeds account of the Debt Service Reserve Fund may be invested without Yield restriction up to the least of (1) 10% of the stated principal amount of the Bonds, (2) the maximum annual principal and interest requirements on the Bonds (determined as of the Issue Date), or (3) 125% of the average annual principal and interest requirements on the Bonds (determined as of the Issue Date). If the aggregate initial offering price of the Bonds to the public is less than 98% or more than 102% of par, such offering price must be used in clause (1) in lieu of the stated principal amount.

(d) *Debt Service Reserve Fund – Business Interruption Account.* Money in the Business Interruption Account of the Debt Service Reserve Fund, in the aggregate, may be invested without Yield restriction to the extent that such amounts, when added to the Debt Service Reserve Requirement for the Bond Proceeds Account, does not exceed 15% of the original principal amount of the Bonds, so long as the Issuer pays to the IRS all Yield reduction payments in accordance with Regulations § 1.148-5(c).

(e) *Minor Portion.* In addition to the amounts described above, Gross Proceeds not exceeding the Minor Portion may be invested without Yield restriction.

#### **Section 4.4. Fair Market Value.**

(a) *General.* No Investment may be acquired with Gross Proceeds for an amount (including transaction costs) in excess of the fair market value of such Investment, or sold or otherwise disposed of for an amount (including transaction costs) less than the fair market value of the Investment. The fair market value of any Investment is the price a willing buyer would pay to a willing seller to acquire the Investment in a bona fide, arm's-length transaction. Fair market value will be determined in accordance with Regulations § 1.148-5.

(b) *Established Securities Market.* Except for Investments purchased for a Yield-restricted defeasance escrow, if an Investment is purchased or sold in an arm's-length transaction on an established securities market (within the meaning of Code § 1273), the purchase or sale price constitutes the fair market value. Where there is no established securities market for an Investment, market value must be established using one of the paragraphs below. The fair market value of Investments purchased for a Yield-restricted defeasance escrow must be determined in a bona fide solicitation for bids that complies with Regulations § 1.148-5.

(c) *Certificates of Deposit.* The purchase price of a certificate of deposit (a "CD") is treated as its fair market value on the purchase date if (1) the CD has a fixed interest rate, a fixed payment schedule, and a substantial penalty for early withdrawal, (2) the Yield on the CD is not less than the Yield on reasonably comparable direct obligations of the United States, and (3) the Yield is not less than the highest Yield published or posted by the CD issuer to be currently available on reasonably comparable CDs offered to the public.

(d) *Guaranteed Investment Contracts.* The Issuer is applying Regulations § 1.148-5(d)(6)(iii)(A) to the Bonds. The purchase price of a Guaranteed Investment Contract is treated as its fair market value on the purchase date if all of the following requirements are met:

(1) Bona Fide Solicitation for Bids. The Issuer or the Trustee makes a bona fide solicitation for the Guaranteed Investment Contract, using the following procedures:

(i) The bid specifications are in writing and are timely forwarded to potential providers.

(ii) The bid specifications include all “material” terms of the bid. A term is material if it may directly or indirectly affect the Yield or the cost of the Guaranteed Investment Contract.

(iii) The bid specifications include a statement notifying potential providers that submission of a bid is a representation (A) that the potential provider did not consult with any other potential provider about its bid, (B) that the bid was determined without regard to any other formal or informal agreement that the potential provider has with the Issuer, the Trustee, or any other person (whether or not in connection with the bond issue), and (C) that the bid is not being submitted solely as a courtesy to the Issuer, the Trustee, or any other person, for purposes of satisfying the requirements of the Regulations.

(iv) The terms of the bid specifications are “commercially reasonable.” A term is commercially reasonable if there is a legitimate business purpose for the term other than to increase the purchase price or reduce the Yield of the Guaranteed Investment Contract.

(v) The terms of the solicitation take into account the Issuer’s reasonably expected deposit and draw-down schedule for the amounts to be invested.

(vi) All potential providers have an equal opportunity to bid. For example, no potential provider is given the opportunity to review other bids (*i.e.*, a last look) before providing a bid.

(vii) At least three “reasonably competitive providers” are solicited for bids. A reasonably competitive provider is a provider that has an established industry reputation as a competitive provider of the type of Investments being purchased.

(2) Bids Received. The bids received must meet all of the following requirements:

(i) At least three bids are received from providers that were solicited as described above and that do not have a “material financial interest” in the issue. For this purpose, (A) a lead underwriter in a negotiated underwriting transaction is deemed to have a material financial interest in the issue until 15 days after the Issue Date of the issue, (B) any entity acting as a financial advisor with respect to the purchase of the Guaranteed Investment Contract at the time the bid specifications are forwarded to potential providers has a material financial interest in the issue, and (C) a provider that is



a related party to a provider that has a material financial interest in the issue is deemed to have a material financial interest in the issue.

(ii) At least one of the three bids received is from a reasonably competitive provider, as defined above.

(iii) If an agent or broker is used to conduct the bidding process, the agent or broker did not bid to provide the Guaranteed Investment Contract.

(3) Winning Bid. The winning bid is the highest Yielding bona fide bid (determined net of any broker's fees).

(4) Fees Paid. The obligor on the Guaranteed Investment Contract certifies the administrative costs that it pays (or expects to pay, if any) to third parties in connection with supplying the Guaranteed Investment Contract.

(5) Records. The Issuer and the Trustee retain the following records with the Bond documents until three years after the last outstanding Bond is redeemed:

(i) A copy of the Guaranteed Investment Contract.

(ii) The receipt or other record of the amount actually paid for the Guaranteed Investment Contract, including a record of any administrative costs paid by the Issuer or the Trustee, and the certification as to fees paid, described in paragraph (d)(4) above.

(iii) For each bid that is submitted, the name of the person and entity submitting the bid, the time and date of the bid, and the bid results.

(iv) The bid solicitation form and, if the terms of Guaranteed Investment Contract deviated from the bid solicitation form or a submitted bid is modified, a brief statement explaining the deviation and stating the purpose for the deviation.

(e) *Other Investments*. If an Investment is not described above, the fair market value may be established through a competitive bidding process, as follows:

(1) at least three bids on the Investment must be received from persons with no financial interest in the Bonds (*e.g.*, as underwriters or brokers); and

(2) the Yield on the Investment must be equal to or greater than the Yield offered under the highest bid.

#### **Section 4.5. Certain Gross Proceeds Exempt from the Rebate Requirement.**

(a) *General*. A portion of the Gross Proceeds of the Bonds may be exempt from rebate pursuant to one or more of the following exceptions. The exceptions typically will not apply with respect to all Gross Proceeds of the Bonds and will not otherwise affect the application of the Investment limitations described in **Section 4.3**. Unless specifically noted, the obligation to compute, and if necessary, to pay rebate as set forth in **Section 4.6** applies even if a portion of the gross proceeds of the

Bonds is exempt from the rebate requirement. To the extent all or a portion of the Bonds is exempt from rebate the Rebate Analyst may account for such fact in connection with its preparation of a rebate report described in **Section 4.6**. The Issuer may defer the final rebate Computation Date and the payment of rebate for the Bonds to the extent permitted by Regulations § 1.148-7(b)(1) and § 1.148-3(e)(2) but only in accordance with specific written instructions provided by the Rebate Analyst.

(b) *Applicable Spending Exceptions.*

(1) The 2-year spending exception is unavailable for the Bonds because the Issuer does not expect that at least 75% of the Available Construction Proceeds will be used for construction or rehabilitation expenditures for property owned by the Issuer.

(2) The following optional rebate spending exceptions can apply to the Bonds:

- (i) 6-month Exception (Code § 148(f)(4)(B) and Regulations § 1.148-7(c))
- (ii) 18-month Exception (Regulations § 1.148-7(d)).

(c) *Special Elections Made with Respect to Spending Exception Elections.* No special elections are being made in connection with the application of the spending exceptions.

(d) *Bona Fide Debt Service Fund.* To the extent that the Debt Service Fund qualifies as a Bona Fide Debt Service Fund, Investment earnings in the account cannot be taken into account in computing arbitrage rebate.

(e) *Documenting Application of Spending Exception.* At any time prior to the first Computation Date, the Issuer may engage the Rebate Analyst to determine whether one or more spending exceptions has been satisfied, and the extent to which the Issuer must continue to comply with **Section 4.6** hereof.

(f) *General Requirements for Spending Exception.* The following general requirements apply in determining whether a spending exception is met.

(1) Using Adjusted Gross Proceeds or Available Construction Proceeds to pay principal of any Bonds is not taken into account as expenditure for purposes of meeting any of the spending tests.

(2) The six-month spending exception generally is met if all Adjusted Gross Proceeds of the Bonds are spent within six months following the Issue Date. The test may still be satisfied even if up to 5% of the sale proceeds remain at the end of the initial six-month period, so long as this amount is spent within one year of the Issue Date.

(3) The 18-month spending exception generally is met if all Adjusted Gross Proceeds of the Bonds are spent in accordance with the following schedule:

<b>Time Period After the Issue Date</b>	<b>Minimum Percentage of Adjusted Gross Proceeds Spent</b>
6 months	15%
12 months	60%
18 months (Final)	100%

(4) For purposes of applying the 18-month spending exceptions only, the failure to satisfy the **final** spending requirement is disregarded if the Issuer uses due diligence to complete the Financed Facility and the failure does not exceed the lesser of 3% of the aggregate issue price the Bonds or \$250,000. **No such exception applies for any other spending period.**

(6) For purposes of applying the 18-month spending exceptions only, the Bonds meet the applicable spending test even if, at the end of the **final** spending period, proceeds not exceeding a Reasonable Retainage remain unspent, so long as such Reasonable Retainage is spent within 30 months (in the case of the 18-month exception) after the Issue Date.

#### **Section 4.6. Computation and Payment of Arbitrage Rebate.**

(a) *Rebate Fund.* The Trustee will keep the Rebate Fund separate from all other funds and will administer the Rebate Fund under this Tax Agreement. Any Investment earnings derived from the Rebate Fund will be credited to the Rebate Fund, and any Investment loss will be charged to the Rebate Fund.

(b) *Computation of Rebate Amount.* The Trustee will provide the Rebate Analyst Investment reports relating to each fund held by the Trustee that contains Gross Proceeds of the Bonds at such times as reports are provided to the Issuer, and not later than ten days following each Computation Date. The Issuer will provide the Rebate Analyst with copies of Investment reports for any funds containing Gross Proceeds that are held by a party other than the Trustee annually as of the end of each Bond Year and not later than ten days following each Computation Date. Each Investment report provided to the Rebate Analyst will contain a record of each Investment, including (1) purchase date, (2) purchase price, (3) information establishing the fair market value on the date such Investment was allocated to the Bonds, (4) any accrued interest paid, (5) face amount, (6) coupon rate, (7) frequency of interest payments, (8) disposition price, (9) any accrued interest received, and (10) disposition date. Such records may be supplied in electronic form. The Rebate Analyst will compute rebate following each Computation Date and deliver a written report to the Trustee and the Issuer together with an opinion or certificate of the Rebate Analyst stating that arbitrage rebate was determined in accordance with the Regulations. Each report and opinion will be provided not later than 45 days following the Computation Date to which it relates. In performing its duties, the Rebate Analyst may rely, in its discretion, on the correctness of financial analysis reports prepared by other professionals. If the sum of the amount on deposit in the Rebate Fund and the value of prior rebate payments is less than the arbitrage rebate due, the Issuer will, within 55 days after such Computation Date, pay to the Trustee from available Tax Revenues the amount of the deficiency for deposit into the Rebate Fund. If the sum of the amount on deposit in the Rebate Fund and the value of prior rebate payments is greater than the Rebate Amount, the Trustee will transfer such surplus in the Rebate Fund to the Debt Service Fund. After the final Computation Date or at any other time if the Rebate Analyst has advised the Trustee, any money left in the Rebate Fund will be paid to the Issuer and may be used for any purpose not prohibited by law.

(c) *Rebate Payments.* Within 60 days after each Computation Date, the Trustee must pay (but solely from money in the Rebate Fund or provided by the Issuer) to the United States the rebate amount then due, determined in accordance with the Regulations. Each payment must be (1) accompanied by IRS Form 8038-T and such other forms, documents or certificates as may be required by the Regulations, and (2) mailed or delivered to the IRS at the address shown below, or to such other location as the IRS may direct:

Internal Revenue Service Center  
Ogden, UT 84201

**Section 4.7. Successor Rebate Analyst.** If the firm acting as the Rebate Analyst resigns or becomes incapable of acting for any reason, or if the Issuer desires that a different firm act as the Rebate Analyst, then the Issuer by an instrument or concurrent instruments in writing delivered to the firm then serving as the Rebate Analyst and any other party to this Tax Agreement, will engage a successor Rebate Analyst. In each case the successor Rebate Analyst must be a firm of nationally recognized bond counsel or a firm of independent certified public accountants and such firm must expressly agree to undertake the responsibilities assigned to the Rebate Analyst hereunder. In the event the firm acting as the Rebate Analyst resigns or becomes incapable of acting for any reason and the Issuer fails to appoint a qualified successor Rebate Analyst within thirty (30) days following notice of such resignation then the Trustee will appoint a firm to act as the successor Rebate Analyst.

**Section 4.8. Filing Requirements.** The Trustee and the Issuer will file or cause to be filed with the IRS such reports or other documents as are required by the Code in accordance with advice of Bond Counsel.

**Section 4.9. Survival after Defeasance.** Notwithstanding anything in the Indenture to the contrary, the obligation to pay arbitrage rebate to the United States will survive the payment or defeasance of the Bonds.

## ARTICLE V

### MISCELLANEOUS PROVISIONS

**Section 5.1. Term of Tax Agreement.** This Tax Agreement will be effective concurrently with the issuance and delivery of the Bonds and will continue in force and effect until the principal of, redemption premium, if any, and interest on all Bonds have been fully paid and all such Bonds are cancelled; provided that, the provisions of **Article IV** of this Tax Agreement regarding payment of arbitrage rebate and all related penalties and interest will remain in effect until all such amounts are paid to the United States.

**Section 5.2. Amendments.** This Tax Agreement may be amended from time to time by the parties to this Tax Agreement without notice to or the consent of any of the Bondowners, but only if such amendment is in writing and is accompanied by an Opinion of Bond Counsel to the effect that, under then existing law, assuming compliance with this Tax Agreement as so amended such amendment will not cause interest on any Bond to be included in gross income for federal income tax purposes. No such amendment will become effective until the Issuer and the Trustee receive this Opinion of Bond Counsel.

**Section 5.3. Opinion of Bond Counsel.** The Issuer and the Trustee may deviate from the provisions of this Tax Agreement if furnished with an Opinion of Bond Counsel addressed to each of

them to the effect that the proposed deviation will not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes. The Issuer and the Trustee will comply with any further or different instructions provided in an Opinion of Bond Counsel to the effect that the further or different instructions need to be complied with in order to maintain the validity of the Bonds or the exclusion from gross income of interest on the Bonds.

**Section 5.4. Reliance.** In delivering this Tax Agreement the Issuer and the Trustee are making only those certifications, representations and agreements as are specifically attributed to them in this Tax Agreement. Neither the Issuer nor the Trustee is aware of any facts or circumstances which would cause it to question the accuracy of the facts, circumstances, estimates or expectations of any other party providing certifications as part of this Tax Agreement and, to the best of its knowledge, those facts, circumstances, estimates and expectations are reasonable. The parties to this Tax Agreement understand that its certifications will be relied upon by the law firm of Gilmore & Bell, P.C., in rendering its opinion as to the validity of the Bonds and the exclusion from federal gross income of the interest on the Bonds.

**Section 5.5. Severability.** If any provision in this Tax Agreement or in the Bonds is determined to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not be affected or impaired.

**Section 5.6. Benefit of Agreement.** This Tax Agreement is binding upon the Issuer and the Trustee and their respective successors and assigns, and inures to the benefit of the parties to this Tax Agreement and the owners of the Bonds. Nothing in this Tax Agreement or in the Indenture or the Bonds, express or implied, gives to any person, other than the parties to this Tax Agreement and their successors and assigns, and the owners of the Bonds, any benefit or any legal or equitable right, remedy or claim under this Tax Agreement.

**Section 5.7. Default; Breach and Enforcement.** Any misrepresentation of a party contained herein or any breach of a covenant or agreement contained in this Tax Agreement may be pursued by the Bondowners or the other party or parties to this Tax Agreement pursuant to the terms of the Indenture or any other document which references this Tax Agreement and gives remedies for a misrepresentation or breach thereof.

**Section 5.8. Execution in Counterparts.** This Tax Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute the same instrument.

**Section 5.9. Governing Law.** This Tax Agreement will be governed by and construed in accordance with the laws of the State of Missouri.

**Section 5.10. Electronic Transactions.** The parties agree that the transaction described in this Tax Agreement may be conducted, and related documents may be sent, received and stored, by electronic means.

[Remainder of this page intentionally left blank.]

The parties to this Tax Agreement have caused this Tax Agreement to be duly executed by their duly authorized officers as of the Issue Date of the Bonds.

**CITY OF SMITHVILLE, MISSOURI**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**SMITHVILLE      COMMONS      COMMUNITY  
IMPROVEMENT DISTRICT**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

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

By: \_\_\_\_\_  
Title:



**EXHIBIT A**

**DEBT SERVICE SCHEDULE AND PROOF OF BOND YIELD**

**EXHIBIT B**

**IRS FORM 8038-G**

## EXHIBIT C

## DESCRIPTION OF PROPERTY COMPRISING THE FINANCED FACILITY

[illegible]

**EXHIBIT D****SAMPLE  
ANNUAL COMPLIANCE CHECKLIST**

<b>Name of tax-exempt bonds (“Bonds”) financing Financed Asset:</b>	<b>\$(Principal Amount) City of Smithville, Missouri Tax Increment Revenue Bonds (Smithville Commons Project), Series 2022</b>
<b>Issue Date of Bonds:</b>	<b>May __, 2022</b>
<b>Placed in service date of Project Facility:</b>	
<b>Name of Bond Compliance Officer:</b>	
<b>Period covered by request (“Annual Period”):</b>	

Item	Question	Response
<b>1. Private Security or Payment</b>	Has the Issuer or the District entered into any agreement or arrangement with any entity whereby the entity makes payments to the Issuer or the District for the use of any portion of the Financed Facility (e.g., a lease) or agrees to provide security for the Bonds (e.g., a guarantee)?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	Has the Issuer or the District entered into any special agreement or arrangement with any entity relating to the payment of the taxes securing the Bonds (i.e., the PILOTS, the EATs, or the CID Sales Taxes)?	
	If Yes, contact Bond Counsel and include description of resolution in the Tax-Exempt Bond File.	

Item	Question	Response
<b>2. Rebate Calculations</b>	Has the Issuer obtained required rebate calculations for the Bonds?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	If Yes, include a copy in the Tax-Exempt Bond File, if No; consult with the Rebate Analyst and include all correspondence in the Tax-Exempt Bond File.	

Item	Question	Response
<b>3. Continuing Disclosure Filings</b>	Was the annual report (including audited financial statements and any other financial information and operating data required for the Bonds) timely filed with the MSRB on EMMA?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	If No, arrange to file the appropriate failure to file notice required for the Bonds with the MSRB on EMMA. In addition, contact Bond Counsel and file the deficient material with the MSRB on EMMA and include a description of the reason for the delay in the Tax-Exempt Bond File.	

Item	Question	Response
<b>4.</b> <b>Material</b> <b>Event</b> <b>Filings</b>	<p>Did any of the following events occur with respect to the Bonds?</p> <ul style="list-style-type: none"> <li>• principal and interest payment delinquencies;</li> <li>• non-payment related defaults, if material;</li> <li>• unscheduled draws on debt service reserves reflecting financial difficulties;</li> <li>• unscheduled draws on credit enhancements reflecting financial difficulties;</li> <li>• substitution of credit or liquidity providers, or their failure to perform;</li> <li>• adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;</li> <li>• modifications to rights of bondholders, if material;</li> <li>• bond calls, if material, and tender offers;</li> <li>• defeasances;</li> <li>• release, substitution or sale of property securing repayment of the Bonds, if material;</li> <li>• rating changes;</li> <li>• bankruptcy, insolvency, receivership or similar event of the obligated person;</li> <li>• the consummation of a merger, consolidation, or acquisition involving the obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;</li> <li>• appointment of a successor or additional trustee or the change of name of the trustee, if material;</li> <li>• incurrence of a financial obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the obligated person, any of which affect security holders, if material; and</li> <li>• default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the obligated person, any of which reflect financial difficulties.</li> </ul>	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<p>If “Yes,” was Bond Counsel contacted and notice of the material event filed with the MSRB on EMMA?</p> <p>If No, contact Bond Counsel immediately and prepare and file any required notice with the MSRB on EMMA.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No

**Bond Compliance Officer:** \_\_\_\_\_

**Date Completed:** \_\_\_\_\_

## EXHIBIT E

### SAMPLE FINAL WRITTEN ALLOCATION

**[\$[Principal Amount]  
City of Smithville, Missouri  
Tax Increment Revenue Bonds  
(Smithville Commons Project)  
Series 2022**

#### **Final Written Allocation**

The undersigned is the Bond Compliance Officer of the City of Smithville, Missouri (the “Issuer”) and in that capacity is authorized to execute federal income tax returns required to be filed by the Issuer and to make appropriate elections and designations regarding federal income tax matters on behalf of the Issuer. This allocation of the proceeds of the bond issue referenced above (the “Bonds”) is necessary for the Issuer to satisfy ongoing reporting and compliance requirements under federal income tax laws.

*Purpose.* This document, together with the schedules and records referred to below, is intended to memorialize allocations of Bond proceeds to expenditures for purposes of §§ 141 and 148 of the Internal Revenue Code (the “Code”). All allocations are or were previously made no later than 18 months following the date the expenditure was made by the Issuer or, if later, the date the “project” was “placed in service” (both as defined below), and no later than 60 days following the 5th anniversary of the issue date of the Bonds.

*Background.* The Bonds were issued on May \_\_, 2022 (the “Issue Date”), by Issuer. The Bonds were issued in order to provide funds needed to construct, equip and furnish an economic development project (the “Project”). The Bonds were issued pursuant to an Ordinance of the Issuer and a Trust Indenture dated as of May 15, 2022 between the Issuer and UMB Bank, N.A., as trustee. Proceeds of the Bonds were deposited to the following accounts:

Debt Service Reserve Fund.  
Project Fund.

*Sources Used to Fund Project Costs and Allocation of Proceeds to Project Costs.* A portion of the costs of the Project was paid from sale proceeds of the Bonds and the remaining portion of the costs of the Project was paid from earnings from the investment of bond sale proceeds as shown on **Schedule 1** to this Final Written Allocation.

*Identification of Financed Assets.* The portions of the Project financed from Bond proceeds (i.e., the “Financed Facility” referenced in the Tax Compliance Agreement) are listed on page 1 of **Schedule 2** to this Final Written Allocation.

*Identification and Timing of Expenditures for Arbitrage Purposes.* For purposes of complying with the arbitrage rules, the Issuer allocates the proceeds of the Bonds to the various expenditures described in the invoices, requisitions or other substantiation attached as **Schedule 2** to this Final Written Allocation. In each case, the cost requisitioned was either paid directly to a third party or reimbursed the Issuer for an amount it had previously paid or incurred. Amounts received from the sale of the Bonds and

retained as underwriters discount are allocated to that purpose and spent on the Issue Date. Amounts allocated to interest expense are treated as paid on the interest payment dates for the Bonds.

*Placed In Service.* The Project was “placed in service” on the date set out on **Schedule 2** to this Final Written Allocation. For this purpose, the assets are considered to be “placed in service” as of the date on which, based on all the facts and circumstances: (a) the constructing and equipping of the asset has reached a degree of completion which would permit its operation at substantially its design level; and (b) the asset is, in fact, in operation at that level.

This allocation has been prepared based on statutes and regulations existing as of this date. The Issuer reserves the right to amend this allocation to the extent permitted by future Treasury Regulations or similar authorities.

**CITY OF SMITHVILLE, MISSOURI**

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

Dated: \_\_\_\_\_

Name of Legal Counsel/Law Firm Reviewing Final Written Allocation:

\_\_\_\_\_  
Date of Review: \_\_\_\_\_



**SCHEDULE 1**  
**TO FINAL WRITTEN ALLOCATION**

**ALLOCATION OF SOURCES AND USES**

**SCHEDULE 2**  
**TO FINAL WRITTEN ALLOCATION**

**IDENTIFICATION OF FINANCED ASSETS**  
**&**  
**DETAILED LISTING OF EXPENDITURES**

## NEW ISSUE – BOOK-ENTRY ONLY

NOT RATED

*In the opinion of Gilmore & Bell, P.C., Bond Counsel, under existing law and assuming continued compliance with certain requirements of the Internal Revenue Code of 1986, as amended (the “Code”), (1) the interest on the Bonds (including any original issuance discount properly allocable to an owner thereof) is excludable from gross income for federal income tax purposes, and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations, and (2) the interest on the Bonds is exempt from Missouri income taxation by the State of Missouri. The Bonds have not been designated as “qualified tax-exempt obligations” within the meaning of Section 265(b)(3) of the Code. See the caption “TAX MATTERS” in this Private Placement Memorandum.*

\$11,345,000\*

**CITY OF SMITHVILLE, MISSOURI  
TAX INCREMENT REVENUE BONDS  
(SMITHVILLE COMMONS PROJECT)  
SERIES 2022**

**Dated: Date of Delivery****Due: December 1, as shown on the inside cover page**

The Tax Increment Revenue Bonds (Smithville Commons Project) Series 2022 (the “Bonds”) are being issued by the City of Smithville, Missouri (the “City”) pursuant to a Trust Indenture, dated as of May 15, 2022 (the “Indenture”), between the City and UMB Bank, N.A., as bond trustee (the “Trustee”). **The Bonds are special, limited obligations of the City payable solely from Pledged Revenues (as defined herein), consisting of Net Revenues (as defined herein) and certain moneys on deposit under the Indenture.** Interest on the Bonds will be payable semiannually on June 1 and December 1 in each year, beginning on December 1, 2022.

THE BONDS DO NOT CONSTITUTE A GENERAL OBLIGATION OF THE CITY AND DO NOT CONSTITUTE AN INDEBTEDNESS OF THE CITY, THE DISTRICT (AS DEFINED HEREIN), THE STATE OF MISSOURI (THE “STATE”) OR ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL, STATUTORY OR CHARTER DEBT LIMITATION OR RESTRICTION. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWERS OF THE CITY, THE DISTRICT, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THE BONDS. THE ISSUANCE OF THE BONDS SHALL NOT, DIRECTLY, INDIRECTLY OR CONTINGENTLY, OBLIGATE THE CITY, THE DISTRICT, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF TO LEVY ANY FORM OF TAXATION THEREFOR OR TO MAKE ANY APPROPRIATION FOR THEIR PAYMENT.

**The Bonds may be transferred only in Authorized Denominations. The Bonds shall be sold to the original purchasers thereof on the closing date only upon prior delivery to the City and the Trustee of an Investor Letter in substantially the form of Exhibit E to the Indenture (the form of which is included as Appendix A-1 to this Private Placement Memorandum), signed by the original purchaser, stating that the transferee is an Approved Investor (as defined herein) and certain other matters set forth in the form thereof. The Bonds may be subsequently transferred to Approved Investors.**

The Bonds are subject to redemption prior to maturity in certain circumstances as described in this Private Placement Memorandum under the caption “THE BONDS – Redemption.”

Prospective investors are advised that none of the property comprising the Redevelopment Project is pledged as security for the Bonds. Neither the Developer nor any affiliate of the Developer or any partner, shareholder, officer, director, agent or representative of the Developer, has pledged its credit or assets or has provided any guaranty, surety or undertaking of any kind, moral or otherwise, to pay the principal of, premium, if any, and interest on the Bonds. **There is no mortgage securing the Bonds.**

An investment in the Bonds involves a high degree of risk, and prospective purchasers should read the section herein captioned “INVESTMENT CONSIDERATIONS AND RISKS.” The Bonds are not suitable investments for all persons, and prospective purchasers should carefully evaluate the risks and merits of an investment in the Bonds, should confer with their own legal and financial advisors and should be able to bear the risk of loss of their investment in the Bonds before considering a purchase of the Bonds.

The Bonds will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York (“DTC”). Individual purchases of interests in the Bonds will be made in book-entry form only. Purchasers of such interests (the “Beneficial Owners”) will not receive certificates representing their interests in the Bonds. So long as Cede & Co., as nominee of DTC, is the owner of the Bonds, references herein to the owners or registered owners shall mean Cede & Co., as aforesaid, and shall not mean the Beneficial Owners of the Bonds. Principal of, redemption premium, if any, and interest on the Bonds is payable to the registered owners of the Bonds as described in this Private Placement Memorandum.

The Bonds are offered when, as and if issued by the City and accepted by the purchasers thereof, subject to the approval of legality by Gilmore & Bell, P.C., Kansas City, Missouri, Bond Counsel, and certain other conditions. Certain legal matters will be passed upon for the Developer by Polsinelli PC, Kansas City Missouri; and for the Placement Agent by FisherBroyles, LLP. Piper Sandler & Co. served as municipal advisor to the City in connection with the issuance of the Bonds. It is expected that the Bonds will be available for delivery through DTC on or about May \_\_\_, 2022.



acting as Placement Agent

The date of this Private Placement Memorandum is May \_\_\_, 2022

\* Preliminary; subject to change.

**DATED DATE, MATURITY DATES, PRINCIPAL AMOUNTS,  
INTEREST RATES AND PRICES\***

**\$11,345,000\***

**City of Smithville, Missouri  
Tax Increment Revenue Bonds  
(Smithville Commons Project)  
Series 2022**

**Dated: Date of Issuance and Delivery**

**Term Bonds**

\$1,550,000 \_\_\_\_\_% Term Bonds due December 1, 2025; Price: \_\_\_\_\_%

\$1,955,000 \_\_\_\_\_% Term Bonds due December 1, 2029; Price: \_\_\_\_\_%

\$2,515,000 \_\_\_\_\_% Term Bonds due December 1, 2033; Price: \_\_\_\_\_%

\$2,340,000 \_\_\_\_\_% Term Bonds due December 1, 2036; Price: \_\_\_\_\_%

\$2,985,000 \_\_\_\_\_% Term Bonds due December 1, 2039; Price: \_\_\_\_\_%

*The City may elect to issue all or a portion of the Bonds as taxable bonds in a separate series of Bonds. If all a portion of the Bonds were issued on a taxable basis, such Bonds would be issued pursuant to the Indenture on a parity basis with any of the Bonds issued on a tax-exempt basis. This Preliminary Private Placement Memorandum has been prepared on the assumption that all of the Bonds will be issued on a tax-exempt basis.*

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\* Preliminary; subject to change.



**CITY OF SMITHVILLE, MISSOURI**

107 W Main Street  
Smithville, Missouri 64089  
(816) 532-3897

**Elected Officials**

Damien Boley, Mayor

Marvin Atkins, Alderman (Ward 3)  
John Chevalier, Jr., Alderman (Ward 2)  
Dan Hartman, Alderman (Ward 1)  
Kelly Kobylski, Alderman (Ward 3)  
Ronald Russell, Alderman (Ward 2)  
Dan Ulledahl, Alderman (Ward 1)

**Administrative Officials**

Cynthia Wagner, City Administrator  
Anna Mitchell, Assistant City Administrator  
Stephen Larson, Finance Director  
Linda Drummond, City Clerk

**BOND COUNSEL**

Gilmore & Bell, P.C.  
Kansas City, Missouri

**MUNICIPAL ADVISOR TO THE CITY**

Piper Sandler & Co.  
Leawood, Kansas

**TRUSTEE**

UMB Bank, N.A.  
Kansas City, Missouri

**DEVELOPER**

Development Associates Smithville, LLC  
Overland Park, Kansas

**DEVELOPER'S & DISTRICT'S COUNSEL**

Polsinelli PC  
Kansas City, Missouri

**PLACEMENT AGENT**

UMB Bank, N.A.  
Kansas City, Missouri

**PLACEMENT AGENT'S COUNSEL**

FisherBroyles, LLP

## **REGARDING USE OF THIS PRIVATE PLACEMENT MEMORANDUM**

No dealer, broker, salesperson or other person has been authorized by the City, the District, the Developer or the Placement Agent to give information or to make any representations with respect to the Bonds, other than those contained in this Private Placement Memorandum, and, if given or made, such other information or representations must not be relied upon as having been authorized by any of the foregoing. This Private Placement Memorandum is being furnished by the City and the Developer for the purpose of each such investor's consideration of the purchase of the Bonds as described herein, and is not to be used for any other purpose or made available to anyone not directly concerned with the decision regarding such purchase. The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Private Placement Memorandum, nor any sale hereunder implies that there has been no change in the matters described herein since the date hereof. This Private Placement Memorandum does not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of the Bonds by any person in any jurisdiction in which it is unlawful for such person to make such an offer, solicitation or sale. Interested investors are being provided the opportunity to ask questions and examine documents and records as they may desire, and are advised to contact the Placement Agent to secure further information concerning the Bonds.

**THE BONDS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT AND THE INDENTURE HAS NOT BEEN QUALIFIED UNDER THE TRUST INDENTURE ACT OF 1939, AS AMENDED, IN RELIANCE UPON EXEMPTIONS CONTAINED IN SUCH ACTS. THE REGISTRATION OR QUALIFICATION OF THE BONDS IN ACCORDANCE WITH APPLICABLE PROVISIONS OF SECURITIES LAWS OF ANY STATES IN WHICH THE BONDS HAVE BEEN REGISTERED OR QUALIFIED AND THE EXEMPTION FROM REGISTRATION OR QUALIFICATION IN OTHER STATES CANNOT BE REGARDED AS A RECOMMENDATION THEREOF. NEITHER THESE STATES NOR ANY OF THEIR AGENCIES HAVE PASSED UPON THE MERITS OF THE BONDS OR THE ACCURACY OR COMPLETENESS OF THIS PRIVATE PLACEMENT MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY MAY BE A CRIMINAL OFFENSE.**

**AN INVESTMENT IN THE BONDS INVOLVES A HIGH DEGREE OF RISK, AND PROSPECTIVE PURCHASERS SHOULD READ THE SECTION HEREIN CAPTIONED "INVESTMENT CONSIDERATIONS AND RISKS." THE BONDS ARE NOT SUITABLE INVESTMENTS FOR ALL PERSONS, AND PROSPECTIVE PURCHASERS SHOULD CAREFULLY EVALUATE THE RISKS AND MERITS OF AN INVESTMENT IN THE BONDS, SHOULD CONFER WITH THEIR OWN LEGAL AND FINANCIAL ADVISORS AND SHOULD BE ABLE TO BEAR THE RISK OF LOSS OF THEIR INVESTMENT IN THE BONDS BEFORE CONSIDERING A PURCHASE OF THE BONDS. THE BONDS HAVE RISK CHARACTERISTICS WHICH REQUIRE CAREFUL ANALYSIS AND CONSIDERATION BEFORE A DECISION TO PURCHASE IS MADE. THE BONDS SHOULD BE PURCHASED BY INVESTORS WHO HAVE ADEQUATE EXPERIENCE TO EVALUATE THE MERITS AND RISKS OF THE BONDS.**

**PROSPECTIVE INVESTORS ARE NOT TO CONSTRUE THE CONTENTS OF THIS PRIVATE PLACEMENT MEMORANDUM OR ANY PRIOR OR SUBSEQUENT COMMUNICATION FROM THE PLACEMENT AGENT, ITS AFFILIATES, OFFICERS AND EMPLOYEES OR ANY PROFESSIONAL ASSOCIATED WITH THIS OFFERING AS INVESTMENT OR LEGAL ADVICE. EACH PROSPECTIVE INVESTOR SHOULD CONSULT ITS OWN COUNSEL, ACCOUNTANT AND OTHER ADVISORS AS TO FINANCIAL, LEGAL AND RELATED MATTERS CONCERNING THE INVESTMENT DESCRIBED HEREIN.**

**CAUTIONARY STATEMENTS REGARDING FORWARD-  
LOOKING STATEMENTS IN THIS PRIVATE PLACEMENT MEMORANDUM**

Certain statements included or incorporated by reference in this Private Placement Memorandum constitute “forward-looking statements” within the meaning of the United State Private Securities Litigation Reform Act of 1995, Section 21E of the United States Securities Exchange Act of 1934, as amended, and Section 27A of the United States Securities Act of 1933, as amended. Such statements are generally identifiable by the terminology used such as “plan”, “expect”, “estimate”, “anticipate”, “budget” or other similar words. Such forward looking statements include, among others, certain statements under the sections in this Private Placement Memorandum captioned **“PLAN OF FINANCE,” “PROJECTED ANNUAL DEBT SERVICE COVERAGE,” “INVESTMENT CONSIDERATIONS AND RISKS,” “THE SMITHVILLE COMMONS PROJECT,” “REVENUE STUDY”** and in **Appendix D** to this Private Placement Memorandum.

**THE ACHIEVEMENT OF CERTAIN RESULTS OR OTHER EXPECTATIONS CONTAINED IN SUCH FORWARD-LOOKING STATEMENTS INVOLVE KNOWN AND UNKNOWN RISKS, UNCERTAINTIES AND OTHER FACTORS WHICH MAY CAUSE ACTUAL RESULTS, PERFORMANCE OR ACHIEVEMENTS DESCRIBED TO BE MATERIALLY DIFFERENT FROM ANY FUTURE RESULTS, PERFORMANCE OR ACHIEVEMENTS EXPRESSED OR IMPLIED BY SUCH FORWARD-LOOKING STATEMENTS. INCLUDED IN SUCH RISKS AND UNCERTAINTIES ARE (i) THOSE RELATING TO THE POSSIBLE INVALIDITY OF THE UNDERLYING ASSUMPTIONS AND ESTIMATES, (ii) POSSIBLE CHANGES OR DEVELOPMENTS IN SOCIAL, ECONOMIC, BUSINESS, INDUSTRY, MARKET, LEGAL AND REGULATORY CIRCUMSTANCES, AND (iii) CONDITIONS AND ACTIONS TAKEN OR OMITTED TO BE TAKEN BY THIRD PARTIES, INCLUDING CUSTOMERS, SUPPLIERS, BUSINESS PARTNERS AND COMPETITORS, AND LEGISLATIVE, JUDICIAL AND OTHER GOVERNMENTAL AUTHORITIES AND OFFICIALS. ASSUMPTIONS RELATED TO THE FOREGOING INVOLVE JUDGMENTS WITH RESPECT TO, AMONG OTHER THINGS, FUTURE ECONOMIC, COMPETITIVE, AND MARKET CONDITIONS AND FUTURE BUSINESS DECISIONS, ALL OF WHICH ARE DIFFICULT OR IMPOSSIBLE TO PREDICT ACCURATELY. FOR THESE REASONS, THERE CAN BE NO ASSURANCE THAT THE FORWARD-LOOKING STATEMENTS INCLUDED IN THIS PRIVATE PLACEMENT MEMORANDUM WILL PROVE TO BE ACCURATE.**

**UNDUE RELIANCE SHOULD NOT BE PLACED ON FORWARD-LOOKING STATEMENTS. ALL FORWARD-LOOKING STATEMENTS INCLUDED IN THIS PRIVATE PLACEMENT MEMORANDUM ARE BASED ON INFORMATION AVAILABLE TO THE CITY AND THE DEVELOPER ON THE DATE HEREOF, AND THE CITY AND THE DEVELOPER ASSUME NO OBLIGATION TO UPDATE ANY SUCH FORWARD-LOOKING STATEMENTS IF OR WHEN THE EXPECTATIONS OR EVENTS, CONDITIONS OR CIRCUMSTANCES ON WHICH SUCH STATEMENTS ARE BASED OCCUR OR FAIL TO OCCUR.**



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## PRIVATE PLACEMENT MEMORANDUM

relating to

\$11,345,000\*

### CITY OF SMITHVILLE, MISSOURI TAX INCREMENT REVENUE BONDS (SMITHVILLE COMMONS PROJECT) SERIES 2022

#### INTRODUCTION

The following introductory statement is subject in all respects to more complete information contained elsewhere in this Private Placement Memorandum. The order and placement of materials in this Private Placement Memorandum, including the Appendices, are not to be deemed to be a determination of relevance, materiality or relative importance, and this Private Placement Memorandum, including the cover page and the Appendices, must be considered in its entirety. The offering of the Bonds to potential investors is made only by means of the entire Private Placement Memorandum.

For definitions of certain capitalized terms used herein and not otherwise defined, see the definitions included in the form of the Indenture attached as Appendix A-1 to this Private Placement Memorandum.

#### Purpose of the Private Placement Memorandum

The purpose of this Private Placement Memorandum is to furnish information relating to (1) the City of Smithville, Missouri (the “**City**”), (2) the City’s Tax Increment Revenue Bonds (Smithville Commons Project) Series 2022 being issued in the original principal amount of \$11,345,000\* (the “**Bonds**”), (3) the Smithville Commons Community Improvement District (the “**District**”) (4) the Redevelopment Project (as defined herein) being redeveloped by Development Associates Smithville, LLC, a Missouri limited liability company (the “**Developer**”).

#### The City

The City is a fourth class city and political subdivision duly organized and validly existing under the laws of the State of Missouri (the “**State**”). For further information concerning the City, see the caption “**THE CITY**” in this Private Placement Memorandum.

The City is authorized under the laws of the State, including, but not limited to the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865, inclusive, of the Revised Statutes of Missouri, as amended (the “**TIF Act**”), to issue bonds for the purpose of providing funds to finance the costs of certain redevelopment projects and to pay certain costs related to the issuance of the Bonds.

#### The Developer

The Developer is a limited liability company organized and validly existing under the laws of the State of Missouri. See the caption “**THE SMITHVILLE COMMONS PROJECT – The Developer**” in this Private Placement Memorandum for further information with respect to the Developer.

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\* Preliminary; subject to change.

## **The Bonds**

The City will issue the Bonds pursuant to a Trust Indenture, dated as of May 15, 2022 (the “**Indenture**”), between the City and UMB Bank, N.A., as trustee (the “**Trustee**”), for the purpose of providing funds to (i) finance certain Redevelopment Project Costs (as defined in the Indenture), (ii) fund a debt service reserve fund for the Bonds, and (iii) pay the costs of issuance of the Bonds. See the caption “**PLAN OF FINANCE**” in this Private Placement Memorandum.

A description of the Bonds is contained in this Private Placement Memorandum under the caption “**THE BONDS**.” All references to the Bonds are qualified in their entirety by the definitive form thereof and the provisions with respect thereto included in the Indenture.

The Bonds are subject to redemption prior to maturity as described under the caption “**THE BONDS – Redemption**” in this Private Placement Memorandum.

**The Bonds are payable only from the Net Revenues and certain other funds held by the Trustee under the terms of the Indenture, all as described in this Private Placement Memorandum under the caption “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS.”**

## **The Redevelopment Project**

On August 1, 2017, the Board of Aldermen of the City adopted an ordinance approving the Smithville Commons Tax Increment Financing Plan (the “**Redevelopment Plan**”).

On October 3, 2017, the Board of Aldermen adopted an ordinance approving the redevelopment project provided for in the Redevelopment Plan (the “Redevelopment Project” or the “Project”) within an approximately 66.32 acre area of the City generally located between Cliff Drive and U.S. Highway 169 (the “**Redevelopment Area**”) and adopted tax increment financing therein pursuant to the TIF Act.

The Redevelopment Plan provides for the following Redevelopment Project within the Redevelopment Area:

- (i) acquisition of all property rights for the Redevelopment Area by the Developer;
- (ii) completion of site work and infrastructure improvements;
- (iii) construction of an approximately 65,000 square foot grocery store;
- (iv) construction of an approximately 15,120 square foot tractor and farm supply store;
- (v) construction of an approximately 12,000 square foot hardware store; and
- (v) construction of approximately 19,250 square feet of additional commercial space.

The City and the Developer entered into a Tax Increment Redevelopment Agreement dated August 1, 2017 (as amended and supplemented, the “**Redevelopment Agreement**”), pursuant to which the Developer agreed to redevelop the Redevelopment Area through the construction of the Redevelopment Project.

The Developer undertook the development of the Redevelopment Project, which provides for the redevelopment and financing of the retail center known as “Smithville Commons” in a single phase. See the caption “**THE SMITHVILLE COMMONS PROJECT**” in this Private Placement Memorandum.

## **The Smithville Commons Community Improvement District and CID Sales Tax**

On August 1, 2017, the Board of Aldermen of the City adopted an ordinance approving the petition for and establishing the Smithville Commons Community Improvement District (the “**District**”). The District is a political subdivision of the State with authority to impose certain taxes to carry out its purposes pursuant to the provisions of Sections 67.1401 to 67.1571 of the Revised Statutes of Missouri (the “**CID Act**”). The boundaries of the District are coterminous to the boundaries of the Redevelopment Area.

The District was created for the purpose of imposing and levying a sales tax on retail sales occurring within the District. Voters of the District approved a CID sales tax in the amount of 1% that became effective on April 1, 2020 and will terminate 23 years later on March 31, 2043 (the “**CID Sales Tax**”).

Pursuant to the Cooperative Agreement, dated as of July 16, 2019 (the “**CID Agreement**”), among the City, the District and the Developer, the Indenture, and a Financing Agreement, dated as of May 15, 2022 (the “**Financing Agreement**”), between the City and the District, the CID Revenues (as defined herein) will be available for the payment of 9.2% of the debt service on the Bonds.

Fifty percent (50%) of the revenues from the CID Sales Tax, excluding certain items as described in the TIF Act, will be captured as Economic Activity Tax Revenues pursuant to the TIF Act and will be available, subject to annual appropriation by the City, as Economic Activity Tax Revenues for payment of the Bonds under the Indenture. See the captions “**SECURITY AND SOURCES OF PAYMENT FOR THE BONDS**” and “**THE SMITHVILLE COMMONS COMMUNITY IMPROVEMENT DISTRICT AND THE CID SALES TAX**” in this Private Placement Memorandum.

### **Security and Sources of Payment for the Bonds**

In General. The Bonds and the interest thereon are special, limited obligations of the City, payable solely from the Pledged Revenues held by the Trustee as provided in the Indenture, and are secured by a transfer, pledge and assignment of and a grant of a security interest in the Trust Estate to the Trustee and in favor of the Owners of the Bonds, as provided in the Indenture. The “**Trust Estate**” consists of:

(a) All Net Revenues derived by the City under and pursuant to and subject to the provisions of the Redevelopment Agreement or otherwise (excluding the City’s rights to payment of its fees and expenses and to be indemnified in certain events) and the Pledged Revenues; and

(b) All moneys and securities from time to time held by the Trustee under the terms of the Indenture (except payments required to be made to meet the requirements of Section 148(f) of the Code, as defined below, whether or not held in the Rebate Fund, as defined in the Indenture) and any and all other property (real, personal or mixed) 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 of the Indenture.

“**Pledged Revenues**” means all Net Revenues and all moneys held in the Project Fund, the Revenue Fund, the Debt Service Fund and the Debt Service Reserve Fund under the Indenture, together with investment earnings thereon.

“**Net Revenues**” means (a) all moneys on deposit (including investment earnings thereon) in the PILOTS Account of the Special Allocation Fund but excluding the Fire District PILOTS Reimbursement, the School District PILOTS Reimbursement and the City Administrative Fee, (b) subject to annual appropriation by the City, all moneys on deposit (including investment earnings thereon) in the Economic Activity Tax Account of the Special Allocation Fund, but excluding the Fire District EAT’s Reimbursement, the Grocery Store Sales Tax Payment and the City Administrative Fee determined based on the amount of Economic Activity Tax

Revenues, and (c) subject to annual appropriation by the District, all CID Revenues (including investment earnings thereon) paid by or on behalf of the District to the Trustee as provided in the Indenture and the Financing Agreement. Net Revenues do not include (i) any amount paid under protest until the protest is withdrawn or resolved against the taxpayer, (ii) any sum received by the City which is the subject of a suit or other claim communicated to the City which suit or claim challenges the collection of such sum until such suit or claim is resolved in favor of the City, (iii) any amounts set aside in escrow pursuant to State law that the City reasonably believes were collected and/or paid to the City erroneously.

**Because the TIF Act provides that 23 years is the maximum amount of time for the retirement of obligations incurred to finance redevelopment project costs, the obligation of the City to transfer Economic Activity Tax Revenues and Payments in Lieu of Taxes to the Trustee for the repayment of the Bonds terminates on October 2, 2040 whether or not the principal amount thereof or interest thereon has been paid in full. However, CID Revenues allocable to repayment of the Bonds shall not exceed 9.2% of the Debt Service Requirements for the Bonds. See the caption “SMITHVILLE COMMONS COMMUNITY IMPROVEMENT DISTRICT AND CID SALES TAX” in this Private Placement Memorandum.**

<u>Source of Revenues</u>	<u>Start Date</u>	<u>End Date</u>
Payments in Lieu of Taxes and Economic Activity Tax Revenues	October 3, 2017	October 2, 2040
CID Sales Taxes	April 1, 2020	March 31, 2043

See the caption “**SECURITY AND SOURCES OF PAYMENT FOR THE BONDS**” in this Private Placement Memorandum.

Financing Agreement. In connection with the issuance of the Bonds, the City and the District are entering into the Financing Agreement pursuant to which the parties have agreed to certain reporting and budgeting procedures relating to the operation of the District and affirmed that the CID Revenues shall be collected, applied and administered in accordance with the CID Agreement.

Debt Service Reserve Fund. The Bonds are secured by amounts on deposit in the Debt Service Reserve Fund. The Bond Proceeds Account of the Debt Service Reserve Fund for the Bonds will be funded initially from proceeds of the Bonds in the amount of \$1,030,300\*. The Business Interruption Account of the Debt Service Fund will be funded in an amount up to \$1,030,300\* over time from funds deposited into and applied from the Revenue Fund. Amounts in the Debt Service Reserve Fund will be available to pay principal of and interest on the Bonds, in the event that there are not sufficient moneys available in the Debt Service Fund for the Bonds for such purpose, and to make the final payment of principal of and interest on the Bonds. See the caption “**SECURITY AND SOURCES OF PAYMENT FOR THE BONDS – Indenture Funds and Accounts – Application of Moneys in the Revenue Fund**” and “- Debt Service Reserve Fund” in this Private Placement Memorandum

No Mortgage or General Obligation. The Bonds are not secured by a mortgage on any property in the Redevelopment Area. However, under the TIF Act, Payments in Lieu of Taxes that are due and owing constitute a lien against the real estate in the Redevelopment Area from which they are derived. Upon a default in the payment of any Payments in Lieu of Taxes on real property in the Redevelopment Area, the lien for such unpaid Payments in Lieu of Taxes may be enforced as provided by Missouri law. See the caption “**TAX INCREMENT FINANCING IN MISSOURI - Assessment and Collection of Ad Valorem Taxes**” in this Private Placement Memorandum.

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\* Preliminary; subject to change.

**THE BONDS DO NOT CONSTITUTE A GENERAL OBLIGATION OF THE CITY, THE DISTRICT, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF AND DO NOT CONSTITUTE AN INDEBTEDNESS OF THE CITY, THE DISTRICT, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT RESTRICTION OR LIMITATION. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE CITY, THE DISTRICT, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THE BONDS. THE ISSUANCE OF THE BONDS SHALL NOT, DIRECTLY, INDIRECTLY OR CONTINGENTLY, OBLIGATE THE CITY, THE DISTRICT, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF TO LEVY ANY FORM OF TAXATION THEREFOR OR TO MAKE ANY APPROPRIATION FOR THEIR PAYMENT.**

Prospective investors are advised that none of the property comprising the Redevelopment Area, the District or the Redevelopment Project is pledged as security for the Bonds and neither the Developer nor any affiliate of the Developer or any partner, shareholder, officer, director, agent or representative of such entities, has pledged its credit or assets or has provided any guaranty, surety or undertaking of any kind, moral or otherwise, to pay the principal of, premium, if any, and interest on the Bonds. See the caption **“SECURITY AND SOURCES OF PAYMENT FOR THE BONDS”** in this Private Placement Memorandum.

No recourse shall be had for the payment of the principal of or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement in the Indenture, the Financing Agreement or the Redevelopment Agreement, contained, against any past, present or future elected official of the City or the District or any trustee, officer, official, employee or agent of the City or the District, nor shall such recourse be had against the Developer, its principals, shareholders, members, affiliates, revenues or assets, as such, either directly or through the City or any successor thereto under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise.

#### **Restrictions on Transfers of the Bonds**

The Bonds contain certain restrictions on transferability. Prospective investors should review the captions **“THE BONDS – Registration, Transfer and Exchange”** and **“NOTICE TO INVESTORS”** in this Private Placement Memorandum.

#### **Investment Considerations and Risks**

Purchase of the Bonds will constitute an investment subject to significant risks, including the risk of nonpayment of principal and interest and the loss of all or part of the investment. There can be no assurance that the Redevelopment Area will be developed further nor that the Net Revenues will be sufficient to pay the principal of, premium, if any, and interest on the Bonds and to avoid a default on such Bonds in the future. Prospective purchasers should carefully evaluate the risks and merits of an investment in the Bonds, confer with their own legal and financial advisors and be able to bear the risk of loss of their investment in the Bonds before considering a purchase of the Bonds. See the caption **“INVESTMENT CONSIDERATIONS AND RISKS”** in this Private Placement Memorandum.

#### **Revenue Study**

PGAV Planners, St. Louis, Missouri (the **“Consultant”**), has produced a report on the revenue generation potential of the Redevelopment Area based solely on the retail establishments currently operating a business and other retail space available to be leased within the Redevelopment Area (see the caption **“THE SMITHVILLE COMMONS PROJECT”** in this Private Placement Memorandum). Such report, entitled **“Smithville Commons Project Bond Revenue Study”** dated April 25, 2022 (the **“Revenue Study”**), is included in this Private Placement Memorandum as **Appendix D**. The Revenue Study includes a forecast of retail sales



of the Smithville Commons Project and a forecast of real property tax collections for the Smithville Commons Project based on actual and projected development activity within the Redevelopment Area.

The purpose of the Revenue Study is to provide a projection of the potential tax revenues available from the Redevelopment Area pursuant to the TIF Act and the CID Act to support the payment of debt service on the Bonds.

**The Consultant has not been engaged to perform, and has not performed, since the date of its report, any update of the projections contained in the Revenue Study.**

The financial forecast contained in the Revenue Study is based on certain assumptions, estimates and opinions as discussed in the Revenue Study. Certain of the assumptions, estimates and opinions contained in the Revenue Study may not materialize as unforeseen events and circumstances may occur subsequent to the date of the Revenue Study. Therefore, there usually will be differences between the forecasted and actual results and those differences may be material. There is no assurance that actual events will correspond with the Revenue Study or the assumptions, estimates or opinions on which they are based. The Revenue Study should be read in its entirety by prospective investors for a full understanding of the forecasted statements, assumptions and qualifications contained therein.

See the caption “**REVENUE STUDY**” in this Private Placement Memorandum and **Appendix D** to this Private Placement Memorandum.

#### **Continuing Disclosure**

The City and the District will enter into a continuing disclosure certificate to provide certain ongoing disclosure information to the Bondowners. See the caption “**CONTINUING DISCLOSURE**” in this Private Placement Memorandum and **Appendix C** to this Private Placement Memorandum for a description of such undertaking.

#### **Definitions, Financing Documents and Additional Information**

The form of the Indenture, including the definitions of certain words and terms used in this Private Placement Memorandum, is attached to this Private Placement Memorandum as **Appendix A-1**. The form of the Financing Agreement is attached to this Private Placement Memorandum as **Appendix A-2**. All references herein to such documents are qualified in their entirety by reference to the definitive forms of such documents, copies of which may be obtained from UMB Bank, N.A., 1010 Grand Boulevard, Kansas City, Missouri 64106, and will be provided to any prospective purchaser requesting the same upon payment of the cost of complying with such request. **Appendix B** contains the proposed form of opinion which is anticipated to be rendered by Bond Counsel at the time of delivery of the Bonds. **Appendix C** contains the form of the Continuing Disclosure Certificate. **Appendix D** contains the Revenue Study.

#### **THE CITY**

*The Bonds are not a general obligation of the City and are payable solely from the revenues described herein. The following information regarding the City is provided as general background information only.*

#### **General**

The City is a fourth-class city and political subdivision, duly created and existing under the laws of the State of Missouri. The City was founded in 1824 on the Little Platte River and was the second oldest settlement in Clay County, Missouri (the “**County**”). Because the City was subjected to occasional flooding, the Army Corps of Engineers built a dam, impounding potential floodwaters and creating Smithville Lake, a popular recreational

destination. The City is located in the northwestern part of Clay County, Missouri, with a small portion extending into Platte County, Missouri, approximately 20 miles north of Kansas City, Missouri, and 14 miles east of the Kansas City International Airport (KCI). The City's estimated population is approximately 10,406.

The City is governed by a Mayor and a six-member Board of Aldermen elected from three wards, each serving staggered two-year terms. The City Administrator is appointed by the Mayor with the approval of a majority of the Board of Aldermen. The appointment is for an indefinite term. The City Administrator is the budget officer of the City and works directly with the Finance Director and the Board of Aldermen in preparing the budget for each year. The City Administrator has continuing responsibility throughout the year in proper implementation and administration of the City budget. Tax rates are established by the Board of Aldermen to support the budget adopted. As required by state law, the aggregate City budget may not include any expenditures in excess of anticipated revenues plus any unencumbered balances. The City's fiscal year ends on October 31.

### **General Economic and Demographic Information**

**Population.** The following table sets forth certain population information for the City, the County and the State.

	<u>1990</u>	<u>2000</u>	<u>2010</u>	<u>2020</u>
City of Smithville	2,786	5,514	8,425	10,406
Clay County	153,411	184,006	221,939	253,335
State of Missouri	5,117,073	5,595,211	5,988,927	6,154,913

*Source:* U.S. Census Bureau

**Income.** The median family income and per capital income, according to the U.S. Census Bureau American Community Survey 5-year Estimates for the City, Clay County and the State are as follows:

	<u>Median Household Income</u>	<u>Median Family Income</u>	<u>Per Capita Income</u>
City of Smithville	\$82,398	\$94,145	\$33,509
Clay County	70,510	85,622	34,560
State of Missouri	57,409	76,060	30,810

*Source:* U.S. Census Bureau American Community Survey 5-year Estimates (2019).

**Major Area Employers.** Because of the City's location, employment opportunities for residents of the City are available both within the City and throughout the Kansas City metropolitan area. Listed below are the major employers located in the Kansas City Metropolitan Statistical Area (MSA):

<u>Employers</u>	<u>Product/Service</u>	<u>Approximate Number of Full-Time Equivalent Employees</u>
Federal Government	Government	28,395
The University of Kansas Health System	Healthcare	12,839
Cerner Corporation	Healthcare information systems	12,778
HCA Midwest Health	Healthcare	10,076
Saint Luke's Health System	Healthcare	9,056
Children's Mercy	Healthcare	7,460
Ford Kansas City Assembly Plant	Vehicle Manufacturing	7,250
T-Mobile US Inc.	Wireless carrier	6,000
Hallmark Cards Inc.	Greeting cards/media/marketing	5,400
Honeywell Federal Manufacturing & Technologies	Military defense manufacturing	4,812

*Source:* Kansas City Business Journal (July 2021).

**Unemployment Rates.** The following table sets forth certain seasonally adjusted labor force and unemployment information for the Kansas City MSA and the State as of December of each year.

	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>
<i>Kansas City MSA</i>					
Total Labor Force	1,130,392	1,130,688	1,149,322	1,153,283	1,164,666
Unemployed	40,951	37,176	37,285	50,957	39,291
Unemployment Rate	3.6%	3.3%	3.2%	4.4%	3.4%
<i>State of Missouri</i>					
Total Labor Force	3,048,580	3,057,685	3,100,780	3,051,663	3,058,440
Unemployed	107,199	97,065	108,602	135,112	101,988
Unemployment Rate	3.5%	3.2%	3.5%	4.4%	3.3%

*Source:* Missouri Economic Research and Information Center.

## THE BONDS

*The following is a summary of certain terms and provisions of the Bonds. Reference is hereby made to the Bonds and the provisions with respect to the Bonds in the Indenture for the detailed terms and provisions thereof.*

### General

The Bonds are being issued pursuant to and in full compliance with the Constitution and statutes of the State of Missouri, including particularly the TIF Act. The Bonds will be issuable as fully registered bonds, without coupons, in denominations of \$100,000 and integral multiples of \$5,000 in excess thereof or, if the Outstanding principal amount of the Bonds is less than \$100,000, an amount equal to the Outstanding principal amount of the Bonds (“**Authorized Denominations**”). The Bonds will be dated as of the date of initial issuance and delivery thereof.

The Bonds shall bear interest at the rate set forth on the inside cover page hereof (computed on the basis of a 360-day year of twelve 30-day months) from their date or from the most recent Interest Payment Date to

which interest has been paid or duly provided for, payable on June 1 and December 1 in each year, beginning on December 1, 2022.

### **Method and Placement of Payment on the Bonds**

The principal of and interest on the Bonds shall be payable in any coin or currency of the United States of America which, at the respective dates of payment thereof, is legal tender for the payment of debts due the United States of America. Payment of the principal of or interest on any Bond shall be made (i) by check or draft of the Trustee mailed to the Person in whose name such Bond is registered on the Register as of the commencement of business of the Trustee on the Record Date for such Payment Date, or (ii) in the case of a principal or interest payment to the Securities Depository or any Owner of \$500,000 or more in aggregate principal amount of Bonds, by electronic transfer to such Owner upon written notice delivered to the Trustee not less than 5 days prior to the Record Date from and signed by such Owner containing electronic transfer instructions including the name of the bank (which shall be in the continental United States), ABA routing number and account name and account number to which such Owner wishes to have such transfer directed.

Payment of principal of, premium, if any, and interest on the Bonds will be made directly to DTC or its nominee, Cede & Co., by the Trustee. See **Appendix E** to this Private Placement Memorandum. If the Bonds are not in a book-entry-only system, payment of principal of, premium, if any, and interest on the Bonds will be made as otherwise described in this Private Placement Memorandum and the Indenture.

### **Registration, Transfer and Exchange**

Any Bond may be transferred only upon the Register upon surrender thereof to the Trustee duly endorsed for transfer or accompanied by an assignment duly executed by the Owner or his attorney or legal representative in such form as shall be satisfactory to the Trustee. Upon any such transfer, the City shall execute and the Trustee shall authenticate and deliver in exchange for such Bond a new fully registered Bond or Bonds, registered in the name of the transferee, of the same series and maturity and in any Authorized Denomination authorized by the Indenture. **The Bonds may only be purchased by or transferred to Approved Investors (see the caption “NOTICE TO INVESTORS” in this Private Placement Memorandum).**

“**Approved Investors**” means, (a) an “accredited investor” under Rule 501(a) of Regulation D promulgated under the Securities Act of 1933, or (ii) a “qualified institutional buyer” under Rule 144A promulgated under the Securities Act of 1933.

Any Bond, upon surrender thereof at the corporate trust office of the Trustee or such other payment office as the Trustee shall designate, together with an assignment duly executed by the Owner or his attorney or legal representative in such form as shall be satisfactory to the Trustee, may, at the option of the Owner thereof, be exchanged for Bonds of the same series and maturity, of any Authorized Denomination authorized by the Indenture, bearing interest at the same rate, and registered in the name of the Owner.

In all cases in which Bonds are exchanged or transferred under the Indenture, the City shall execute and the Trustee shall authenticate and deliver at the earliest practicable time Bonds in accordance with the provisions of the Indenture. All Bonds surrendered in any such exchange or transfer shall forthwith be canceled by the Trustee.

No service charge shall be made for any registration, transfer or exchange of Bonds, but the Trustee may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any transfer or exchange of Bonds, and such charge shall be paid before any such new Bond shall be delivered. The fees and charges of the Trustee for making any transfer or exchange and the expense of any bond printing necessary to effect any such transfer or exchange shall be paid by the City. In the event any registered owner fails to provide a correct taxpayer identification number to the Trustee, the Trustee may impose a charge against such registered owner sufficient to pay any governmental charge required to be paid as

a result of such failure. In compliance with Section 3406 of the Code, such amount may be deducted by the Trustee from amounts otherwise payable to such registered owner hereunder or under the Bonds.

At reasonable times and under reasonable regulations established by the Trustee, the Register may be inspected and copied by the City or the Owners (or a designated representative thereof) of 10% or more in principal amount of Bonds then Outstanding, such ownership and the authority of any such designated representative to be evidenced to the satisfaction of the Trustee.

The Person in whose name any Bond is registered on the Register shall be deemed and regarded as the absolute owner of such Bond for all purposes, and 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 registered Owner thereof or his legal representative. 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.

## Redemption

Optional Redemption. The Bonds are subject to optional redemption by the City in whole or in part at any time on or after December 1, 20\_\_, at a redemption price equal to 100% of the principal amount of Bonds to be redeemed, plus accrued interest to the redemption date.

### Special Mandatory Redemption.

(1) The Bonds maturing December 1, 20\_\_ and thereafter are subject to special mandatory redemption by the City in order of maturity on each December 1 commencing December 1, 20\_\_, at the redemption price of 100% of the principal amount being redeemed, together with accrued interest thereon to the date fixed for redemption, in an amount equal to the amount which is on deposit in the Redemption Account of the Debt Service Fund 40 days prior to each Payment Date (or if such date is not a Business Day, the immediately preceding Business Day).

(2) The Bonds are subject to special mandatory redemption by the City, in whole but not in part, on any date in the event that moneys in the applicable account of the Debt Service Fund and the Debt Service Reserve Fund are sufficient to redeem all of the Bonds at a redemption price of 100% of such Bonds Outstanding, together with accrued interest thereon to the date fixed for redemption.

Mandatory Sinking Fund Redemption. The Bonds maturing in the years 2025\*, 2029\*, 2033\*, 2036\* and 2039\* (the “**Term Bonds**”) will be subject to mandatory redemption and payment prior to maturity pursuant to the mandatory redemption requirements set forth below at a Redemption Price equal to 100% of the principal amount thereof plus accrued interest to the Redemption Date. The Trustee shall redeem on December 1 in each year, the following principal amounts of such Bonds:

### Term Bonds Maturing December 1, 2025\*

<u>Year</u>	<u>Principal Amount*</u>
2022	\$475,000
2023	320,000
2024	355,000
2025 <sup>(1)</sup>	400,000

\* Preliminary; subject to change.

<sup>(1)</sup> Final Maturity

Term Bonds Maturing December 1, 2029\*

<u>Year</u>	<u>Principal Amount*</u>
2026	\$435,000
2027	475,000
2028	505,000
2029 <sup>(1)</sup>	540,000

\* Preliminary; subject to change.

<sup>(1)</sup> Final Maturity

Term Bonds Maturing December 1, 2033\*

<u>Year</u>	<u>Principal Amount*</u>
2030	\$570,000
2031	610,000
2032	645,000
2033 <sup>(1)</sup>	690,000

\* Preliminary; subject to change.

<sup>(1)</sup> Final Maturity

Term Bonds Maturing December 1, 2036\*

<u>Year</u>	<u>Principal Amount*</u>
2034	\$730,000
2035	780,000
2036 <sup>(1)</sup>	830,000

\* Preliminary; subject to change.

<sup>(1)</sup> Final Maturity

Term Bonds Maturing December 1, 2039\*

<u>Year</u>	<u>Principal Amount*</u>
2037	\$885,000
2038	940,000
203 <sup>(1)</sup>	1,160,000

\* Preliminary; subject to change.

<sup>(1)</sup> Final Maturity

At its option, to be exercised on or before the 45<sup>th</sup> day next preceding any mandatory Redemption Date, the City may: (1) deliver to the Trustee for cancellation Term Bonds subject to mandatory redemption on said mandatory Redemption Date, in any aggregate principal amount desired; or (2) furnish the Trustee funds, together with appropriate instructions, for the purpose of purchasing any Term Bonds subject to mandatory redemption on said mandatory Redemption Date from any Registered Owner thereof whereupon the Trustee shall expend such funds for such purpose to such extent as may be practical; or (3) receive a credit with respect to the mandatory redemption obligation of the City under the mandatory sinking fund redemption requirement for any Term Bonds subject to mandatory redemption on said mandatory Redemption Date that, prior to such date, have been redeemed (other than through the operation of the mandatory sinking fund redemption requirements of the Indenture) and canceled by the Trustee and not theretofore applied as a credit against any

redemption obligation under the mandatory sinking fund redemption requirements of the Indenture. Each Term Bond so delivered or previously purchased or redeemed shall be credited at 100% of the principal amount thereof on the obligation of the City to redeem Term Bonds of the same Stated Maturity on such mandatory Redemption Date, and any excess of such amount shall be credited on future mandatory redemption obligations for Term Bonds of the same Stated Maturity in chronological order, and the principal amount of Term Bonds of the same Stated Maturity to be redeemed by operation of the mandatory sinking fund redemption requirements shall be accordingly reduced. If the City intends to exercise any option granted by the provisions of clauses (1), (2) or (3) above, the City will, on or before the 45<sup>th</sup> day next preceding each mandatory Redemption Date, furnish the Trustee a written certificate indicating to what extent the provisions of said clauses (1), (2) and (3) are to be complied with respect to such mandatory redemption payment and any Term Bonds to be credited pursuant to (3) above.

Selection of Bonds to be Redeemed. Bonds shall be redeemed only in Authorized Denominations. When less than all of the Outstanding Bonds are to be optionally redeemed and paid prior to maturity, such Bonds or portions of Bonds to be redeemed shall be selected in Authorized Denominations by the Trustee from such maturities and in such amounts as the City may determine, and Bonds of less than a full maturity shall be selected by the Trustee in Authorized Denominations by lot or in such other equitable manner as it may determine.

In the case of a partial redemption of Bonds when Bonds of denominations greater than the minimum Authorized Denomination are then Outstanding, then for all purposes in connection with such redemption each Authorized Denomination unit of face value shall be treated as though it was a separate Bond of the denomination of the minimum Authorized Denomination. If one or more, but not all, of the minimum Authorized Denomination units of principal amount represented by any Bond are selected for redemption, then upon notice of intention to redeem such minimum Authorized Denomination unit or units, the Owner of such Bond or his attorney or legal representative shall forthwith present and surrender such Bond to the Trustee (i) for payment of the redemption price (including the interest to the date fixed for redemption) of the minimum Authorized Denomination unit or units of principal amount called for redemption, and (ii) for exchange, without charge to the Owner thereof, for a new Bond or Bonds of the aggregate principal amount of the unredeemed portion of the principal amount of such Bond. If the Owner of any such Bond of a denomination greater than minimum Authorized Denomination fails to present such Bond to the Trustee for payment and exchange as aforesaid, said Bond shall, nevertheless, become due and payable on the redemption date to the extent of the minimum Authorized Denomination unit or units of principal amount called for redemption (and to that extent only) and shall cease to accrue interest on the principal amount so called for redemption.

Notice of Redemption.

Unless waived by any Owner of Bonds to be redeemed, official notice of any redemption of any Bond shall be given by the Trustee on behalf of the City by mailing a copy of an official redemption notice by first class mail, postage prepaid, at least 20 days prior to the date fixed for redemption to the Owner of the Bond or Bonds to be redeemed at the address shown on the Register; provided, however, that failure to give such notice by mailing as aforesaid to any Owner or any defect therein as to any particular Bond shall not affect the validity of any proceedings for the redemption of any other Bonds.

All official notices of redemption shall be dated and shall state:

- (1) the redemption date,
- (2) the redemption price,

(3) if less than all Outstanding Bonds are to be redeemed, the identification of the Bonds to be redeemed (such identification to include interest rates, maturities, CUSIP numbers and such additional information as the Trustee may reasonably determine),

(4) that on the redemption date the redemption price will become due and payable upon each such Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after said date, and

(5) the place where such Bonds are to be surrendered for payment of the redemption price, which place of payment shall be the corporate trust office of the Trustee or such other payment office as the Trustee may designate.

In addition to the foregoing notice, the Trustee shall also comply with any mandatory requirements or guidelines published by the Securities and Exchange Commission relating to providing notices of redemption. The failure of the Trustee to comply with any such requirements shall not affect or invalidate the redemption of said Bonds.

Any provision in the Indenture to the contrary notwithstanding, any notice of optional redemption shall state that it is conditioned upon receipt by the Trustee of sufficient moneys to redeem the Bonds, and such notice and optional redemption shall be of no effect if by no later than the scheduled redemption date, sufficient moneys to redeem the Bonds are not on deposit with and available to the Trustee.

*So long as the Securities Depository is effecting book-entry transfers of the Bonds, the Trustee shall provide the redemption notices specified in the Indenture only to the Securities Depository. It is expected that the Securities Depository shall, in turn, notify its Participants and that the Participants, in turn, will notify or cause to be notified the beneficial owners. Any failure on the part of the Securities Depository or a Participant, or failure on the part of a nominee of a beneficial owner of a Bond to notify the beneficial owner of the Bond so affected, shall not affect the validity of the redemption of such Bond.*

Effect of Call for Redemption. On or prior to the date fixed for redemption, moneys or Government Securities shall be deposited with the Trustee as provided in the Indenture hereof to pay the Bonds called for redemption and accrued interest thereon to the redemption date. Upon the happening of the above conditions, and notice having been given as provided in the Indenture, 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, provided moneys sufficient for the payment of the redemption price are on deposit at the place of payment at the time, and shall no longer be entitled to the protection, benefit or security of the Indenture and shall not be deemed to be Outstanding under the provisions of the Indenture.

## **SECURITY AND SOURCES OF PAYMENT FOR THE BONDS**

### **Limited Obligations; Sources of Payment**

The Bonds and the interest thereon shall be special, limited obligations of the City payable from and are secured by a transfer, pledge and assignment of and a grant of a security interest in the Trust Estate to the Trustee and in favor of the Bondowners, as provided in the Indenture.

The “**Trust Estate**” for the Bonds consists of:

(a) All Net Revenues derived by the City under and pursuant to and subject to the provisions of the Redevelopment Agreement or otherwise (excluding the City’s rights to payment of its fees and expenses and to be indemnified in certain events) and the Pledged Revenues; and



(b) All moneys and securities from time to time held by the Trustee under the terms of the Indenture (except payments required to be made to meet the requirements of Section 148(f) of the Code, as defined below, whether or not held in the Rebate Fund, as defined in the Indenture) and any and all other property (real, personal or mixed) 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 of the Indenture.

See the caption “**Net Revenues**” below for the definition of Net Revenues, along with the definition of certain related terms.

***Because the TIF Act provides that 23 years is the maximum amount of time for the retirement of obligations incurred to finance redevelopment project costs, the obligation of the City to transfer Net Revenues to the Trustee for the repayment of the Bonds terminates on October 2, 2040 whether or not the principal amount thereof or interest thereon has been paid in full.***

Payments in Lieu of Taxes (as defined in Sections 99.805(10) and 99.845 of the TIF Act), if any, attributable to the increase in the current equalized assessed valuation of all taxable lots, blocks, tracts and parcels of real property in the Redevelopment Project over and above the certified total initial equalized assessed valuation of the real property in the Redevelopment Project, as provided for by Section 99.845 of the TIF Act, excluding the Ambulance District PILOTs Reimbursement, the Fire District PILOTs Reimbursement and the School District PILOTs Reimbursement, will be used for the repayment of the Bonds.

Fifty percent of the Economic Activity Taxes generated within the Redevelopment Area, subject to annual appropriation by the City, excluding the Fire District EATs Reimbursement (as defined herein) and the Grocery Store Sales Tax Payments (as defined herein), will be used for the repayment of the Bonds.

The CID Revenues (which excludes the CID Operating Costs, the portion of the revenues of the CID Sales Tax captured as Economic Activity Tax Revenues and the administrative fee retained by the City in the amount of 1% of all revenues received by the District from the CID Sales Tax), subject to annual appropriation by the CID, will be used for the repayment of the Bonds.

The Bond Proceeds Account of the Debt Service Reserve Fund will be initially funded in the amount of \$1,030,300\* as additional security for the Bonds. The Business Interruption Account of the Debt Service Fund will be funded in an amount up to \$1,030,300\* over time from funds deposited into and applied from the Revenue Fund. Except as otherwise provided in the Indenture, moneys in the Debt Service Reserve Fund shall be used by the Trustee without further authorization solely for the payment of the principal of and interest on the Bonds if moneys otherwise available for such purpose as provided in the Indenture are insufficient to pay the same as they become due and payable and to retire the last Outstanding Bonds.

The Bonds are not secured by a mortgage on any property in the Redevelopment Area. However, the TIF Act provides that the Payments in Lieu of Taxes that are due and owing shall constitute a lien against the real estate in the Redevelopment Area from which they are derived. Upon a default in the payment of any Payments in Lieu of Taxes, the lien for such unpaid Payments in Lieu of Taxes may be enforced as provided by law. See the caption “**TAX INCREMENT FINANCING IN MISSOURI – Assessments and Collections of Ad Valorem Taxes**” in this Private Placement Memorandum.

The Bonds and interest thereon shall not be deemed to constitute a debt or liability of the City, the District, the State or of any political subdivision thereof within the meaning of any state constitutional or statutory debt limitation or restriction and shall not constitute a pledge of the full faith and credit of the City, the District, the State or of any political subdivision thereof, but shall be payable solely from the funds provided for in the

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\* Preliminary; subject to change.

Indenture. The issuance of the Bonds shall not, directly, indirectly or contingently, obligate the City, the District, the State or any political subdivision thereof to levy any form of taxation therefor or to make any appropriation for their payment. None of the City, the District or the State shall, in any event, be liable for the payment of the principal of, redemption premium, if any, or interest on the Bonds or for the performance of any pledge, mortgage, obligation or agreement of any kind whatsoever which may be undertaken by the City. No breach by the City of any such pledge, mortgage, obligation or agreement may impose any liability, pecuniary or otherwise, upon the City, the District, the State or any charge upon their respective general credit or against their respective taxing powers.

## Revenues

There are three primary revenue sources for the Bonds: (a) Economic Activity Tax Revenues; (b) Payments in Lieu of Taxes; and (c) CID Revenues.

Economic Activity Taxes. The following table shows the sales taxes currently imposed within the Redevelopment Area and the taxes that are available for payment of the Bonds. Based on a certification of the City with respect to sales taxes received in the Redevelopment Area during calendar year 2016, the City and County sales taxes that are available for payment of the Bonds generated \$0.00 in total revenues to the City and the County before the adoption of tax increment financing; 50% of the revenues from those sales taxes above that amount are available for payment of the Bonds. However, pursuant to the Redevelopment Agreement, if the sales tax revenues received by the City from the economic activity within the Redevelopment Area do not equal or exceed \$289,138.50, the Developer will make the Grocery Store Sales Tax Payment. **“Grocery Store Sales Tax Payment”** means a payment from the Developer to the City in an amount equal to the lesser of (1) the difference between (a) \$289,138.50 and (b) the sales tax revenues actually received by the City from all economic activity in the Redevelopment Area in the applicable calendar year or (2) \$50,000, if the sales tax revenues received by the City from the economic activity within the Redevelopment Area for a calendar year does not equal or exceed \$289,138.50, as described in the Redevelopment Agreement.

The following table sets forth the sales taxes imposed in the Redevelopment Agreement and the portion of those sales taxes available for the payment of debt service on the Bonds as economic activity taxes:

	<u>Tax Rate</u>	<u>Available for Bonds</u>
State	4.225%	-
Clay County	1.125	0.4375%
City of Smithville	2.500	0.7500
Smithville Area Fire Protection District	0.500	0.1250
Kansas City Zoological District	0.125	0.0625
Smithville Commons Community Imp. District	<u>1.000</u>	<u>0.500</u>
<b>Total Sales Tax</b>	<b><u>9.475%</u></b>	<b><u>1.875%</u></b>

Per the TIF Act, if any voters in a taxing district approve a new sales tax or an increase to an existing sales tax, the revenues generated within the Redevelopment Area attributed to the new sales tax or increase will not be subject to capture and placed in the Special Allocation Fund without the consent of the taxing district. Currently, the City has authorized a capital improvement sales tax and a park/stormwater sales tax after approval of the Redevelopment Plan and have not consented to the capture of those revenues within the Redevelopment Area.

CID Revenues. The District’s boundaries match the boundaries of the Redevelopment Area. All retailers within the District are subject to the 1% CID Sales Tax. One-half of the revenues received from the CID Sales Tax will be captured as Economic Activity Taxes. The remaining funds available after (a) the District’s CID Operating Costs, (b) Economic Activity Tax Revenues derived from the CID sales tax, and (c) the administrative fee retained by the City in the amount of 1% of all revenues received by the District from such

sales tax imposed by the District to be paid from CID Revenues other than the Economic Activity Tax Revenues derived from the CID sales tax, will be available for payment of debt service on the Bonds

Payments in Lieu of Taxes. The base value (initial assessed value) of property within the Redevelopment Area has been certified at \$52,430 (see the caption “**TAX INCREMENT FINANCING IN MISSOURI – Overview**” in this Private Placement Memorandum). The total assessed value of property within the Redevelopment Area (including the base) since 2017 is as follows:

<u>Year</u>	<u>Assessed Valuation</u>
2017	\$ 52,430
2018	52,430
2019	50,260
2020	498,370
2021	4,634,430

Per the TIF Act, if voters in a taxing district approve an increase to the taxing district’s levy rate, any additional revenues generated within the Redevelopment Area that are directly attributable to the new increase will not be captured and placed into the Special Allocation Fund without the consent of the taxing district. Currently, the Mid-Continent Public Library and the Smithville Fire Protection District have authorized levy increases after approval of the Redevelopment Plan and have not consented to the capture of those revenues within the Redevelopment Area.

#### **City Annual Appropriation Obligation**

The City’s obligations under the Indenture to pay the Economic Activity Taxes for application to the Bonds are subject to annual appropriation. Such moneys must be appropriated each year by the Board of Aldermen. The Indenture contains the following provisions with respect to the City’s annual appropriation obligation:

Annual Appropriation. The City intends, on or before the last day of each Fiscal Year, to budget and appropriate moneys constituting Economic Activity Tax Revenues to the repayment of the principal of and interest on the Bonds for that Fiscal Year. The City shall deliver written notice to the Trustee no later than 15 days after the commencement of its Fiscal Year stating whether or not the Board of Aldermen has appropriated such funds during such Fiscal Year. If the Board of Aldermen shall have made the appropriation, the failure of the City to deliver the foregoing notice on or before the 15<sup>th</sup> day after the commencement of its Fiscal Year shall not constitute an event of default and, on failure to receive such notice 15 days after the commencement of the City’s Fiscal Year, the Trustee shall request the City confirm in writing whether or not such appropriation has been made.

Payments to Constitute Current Expenses of the City. The City acknowledges that the application of Economic Activity Tax Revenues under the Indenture shall constitute currently budgeted expenditures of the City, and shall not in any way be construed or interpreted as creating a liability or a general obligation or debt of the City in contravention of any applicable constitutional or statutory debt limitation or restriction concerning the creation of indebtedness by the City, nor shall anything contained in the Indenture constitute a pledge of the general credit, tax revenues, funds or moneys of the City. The City’s obligations to apply Economic Activity Tax Revenues under the Indenture shall be from year to year only, and shall not constitute a mandatory payment obligation of the City in any ensuing Fiscal Year beyond the then current Fiscal Year. Neither the Indenture nor the issuance of the Bonds shall directly or indirectly obligate the City to levy or pledge any form of taxation or make any appropriation or make any payments beyond those appropriated for the City’s then current Fiscal Year in contravention of any applicable constitutional or statutory debt limitation or restriction concerning the creation of indebtedness by the City, but in each Fiscal Year Economic Activity Tax Revenues shall be payable solely from the amounts budgeted or appropriated therefor by the City, for such year; provided, however, that nothing in the

Indenture shall be construed to limit the rights of the owners of the Bonds or the Trustee to receive any amounts which may be realized from the Trust Estate pursuant to the Indenture.

### **District Annual Appropriation Obligation**

The District's obligation to pay the CID Revenues for application to the Bonds is subject to annual appropriation. Such moneys must be appropriated each year by the Board of Directors of the District. The CID Agreement, the Financing Agreement and the Indenture require the payment of the CID Revenues, subject to annual appropriation, to the CID Account of the Revenue Fund. ***The District cannot use the CID Revenues for any purposes other than to make payments with respect to the Bonds and pay CID Operating Costs without obtaining the Board of Aldermen's approval of amendments to the CID Agreement and the Financing Agreement.***

### **Net Revenues**

Pursuant to the Indenture, "**Net Revenues**" means (a) all moneys on deposit (including investment earnings thereon) in the PILOTS Account of the Special Allocation Fund but excluding the Ambulance District PILOTS Reimbursement, the Fire District PILOTS Reimbursement, the School District PILOTS Reimbursement and the City Administrative Fee, (b) subject to annual appropriation by the City, all moneys on deposit (including investment earnings thereon) in the Economic Activity Tax Account of the Special Allocation Fund, but excluding the Fire District EATs Reimbursement, the Grocery Store Sales Tax Payment and the City Administrative Fee determined based on the amount of Economic Activity Tax Revenues, and (c) subject to annual appropriation by the District, all CID Revenues (including investment earnings thereon) paid by or on behalf of the District to the Trustee as provided in the Indenture. Net Revenues do not include (i) any amount paid under protest until the protest is withdrawn or resolved against the taxpayer, (ii) any sum received by the City which is the subject of a suit or other claim communicated to the City which suit or claim challenges the collection of such sum until such suit or claim is resolved in favor of the City, (iii) any amounts set aside in escrow pursuant to State law that the City reasonably believes were collected and/or paid to the City erroneously.

The following definitions set forth in the Indenture are used in determining Net Revenues:

"**CID Revenues**" means the revenues received by the District from the 1% sales tax imposed by the District within its boundaries and within the Redevelopment Project exclusive of (a) the CID Operating Costs to be paid from CID Revenues other than the Economic Activity Tax Revenues derived from the CID sales tax, (b) Economic Activity Tax Revenues derived from the CID sales tax, and (c) the administrative fee retained by the City in the amount of 1% of all revenues received by the District from such sales tax imposed by the District to be paid from CID Revenues other than the Economic Activity Tax Revenues derived from the CID sales tax.

"**City Administrative Fee**" means all documented costs and expenses reasonably incurred by the City for planning, legal, financial, administrative and other costs associated with the review, consideration, approval and implementation of the Redevelopment Plan, including the Redevelopment Project and the Redevelopment Agreement, plus 1% of the total revenues distributed to the District.

"**CID Operating Costs**" means the actual, reasonable expenses which are reasonably necessary for the operation of the District which shall include, but is not limited to, costs associated with notices, publications, meetings, supplies, equipment, photocopying, insurance, the engagement of special legal counsel, financial auditing services, and other consultants or services including companies engaged by the District (or the City on behalf of the District) to review applications for reimbursement for payment of District improvement costs, and shall also include reasonable attorneys' fees for the formation of the District.

**“Economic Activity Tax Revenues”** means 50% of the total additional revenue from taxes imposed by the City or other taxing districts (as that term is defined in Section 99.805 of the TIF Act) which are generated by economic activities within the Redevelopment Project over the amount of such taxes generated by economic activities within the Redevelopment Project in the calendar year ending December 31, 2016, but excluding therefrom any taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, taxes levied pursuant to Section 70.500, RSMo., licenses, fees or special assessments other than payments in lieu of taxes and penalties and interest thereon, personal property taxes, and taxes levied for the purpose of public transportation pursuant to Section 94.660, RSMo., excluding the Fire District EATs Reimbursement and the Grocery Store Sales Tax Payment.

**“Ambulance District PILOTS Reimbursement”** means 75% of the property taxes imposed by the Ambulance District and treated as Payments in Lieu of Taxes, which amount is paid to or retained by the Ambulance District pursuant to the Reimbursement Agreements.

**“Fire District EATs Reimbursement”** means 75% of the sales taxes collected by the Fire District from all Fire District sales tax revenues from within the Redevelopment Area while tax increment financing is in effect in such area, which amount is retained by the Fire District pursuant to the Reimbursement Agreements.

**“Fire District PILOTS Reimbursement”** means 75% of the property taxes collected by the Fire District and treated as Payments in Lieu of Taxes, which amount is paid to the Fire District by the City pursuant to the Reimbursement Agreements

**“Grocery Store Sales Tax Payment”** means a payment from the Developer to the City in an amount equal to the lesser of (1) the difference between (a) \$289,138.50 and (b) the sales tax revenues actually received by the City from all economic activity in the Redevelopment Area in the applicable calendar year or (2) \$50,000, if the sales tax revenues received by the City from the economic activity within the Redevelopment Area for a calendar year does not equal or exceed \$289,138.50, as described in the Redevelopment Agreement.

**“Payments in Lieu of Taxes”** means those payments in lieu of taxes (as defined in Sections 99.805(10) and 99.845 of the TIF Act), if any, attributable to the increase in the current equalized assessed valuation of all taxable lots, blocks, tracts and parcels of real property in the Redevelopment Project over and above the certified total initial equalized assessed valuation of the real property in the Redevelopment Project, as provided for by Section 99.845 of the TIF Act, excluding the Ambulance District PILOTS Reimbursement, the Fire District PILOTS Reimbursement and the School District PILOTS Reimbursement.

**“Reimbursement Agreements”** means the Reimbursement Agreement (Northland Regional Ambulance District) between the City and the Ambulance District dated July 17, 2027 and the Reimbursement Agreement (Smithville Area Fire Protection District) between the City and the Fire District dated as of August 1, 2017.

**“School District PILOTS Reimbursement”** means 40% of the Payments in Lieu of Taxes received by the City that are attributable to ad valorem taxes imposed by the School District to the increase in the current equalized assessed valuation of all taxable lots, blocks, tracts and parcels of real property in the Redevelopment Project over and above the certified total initial equalized assessed valuation of the real property in the Redevelopment Project, as provided for by Section 99.845 of the TIF Act, to be paid to the School District as reimbursement for capital improvement costs in accordance with the Redevelopment Agreement.

## **Indenture Funds and Account**

### Deposit of Funds to Revenue Fund.

The Special Allocation Fund held by the City is ratified and confirmed pursuant to the Indenture. Moneys in the Special Allocation Fund shall be paid by the City on the 10<sup>th</sup> day of each month (or the next Business Day thereafter if the 10<sup>th</sup> day is not a Business Day) to the Trustee, with (A) all Net

Revenues as of the last day of the preceding month consisting of Payments in Lieu of Taxes (excluding amounts held for the Ambulance District PILOT's Reimbursement, the Fire District PILOT's Reimbursement, the School District PILOT's Reimbursement and amounts retained as the City Administrative Fee) accompanied by written notice identifying the Net Revenues as Payments in Lieu of Taxes and directing the Trustee that such amounts are to be deposited into the PILOT's Account of the Revenue Fund, and (B) subject to annual appropriation by the City and the terms of the Indenture, all Net Revenues as of the last day of the preceding month consisting of Economic Activity Tax Revenues (excluding the Fire District EAT's Reimbursement, the Grocery Store Sales Tax Payment and amounts retained as the City Administrative Fee) accompanied by written notice identifying the Net Revenues as Economic Activity Tax Revenues and directing the Trustee that such amounts are to be deposited into the EATS Account of the Revenue Fund. The Trustee shall notify the City and the Placement Agent if the Trustee has not received such Net Revenues on or before the 12<sup>th</sup> calendar day of each month (or the next Business Day thereafter if the 12<sup>th</sup> day is not a Business Day), or if any funds are received without the required notice related thereto directing the deposit of such funds into the appropriate account of the Revenue Fund.

Any CID Revenues collected by or on behalf of the District, and transferred to the Trustee by the District or the City pursuant to the Financing Agreement and as provided in the Indenture on or before the 10<sup>th</sup> day of each month (or the next Business Day thereafter if the 10<sup>th</sup> day is not a Business Day) and accompanied by written notice identifying such amounts as CID Revenues shall be deposited into the CID Account in the Revenue Fund. The Trustee shall notify the City, the Placement Agent, the District if the Trustee has not received such Net Revenues on or before the 12<sup>th</sup> calendar day of each month (or the next Business Day thereafter if the 12<sup>th</sup> day is not a Business Day), or if any funds are received without the required notice related thereto directing the deposit of such funds into the appropriate account of the Revenue Fund.

Application of Moneys in the Revenue Fund. Moneys in the Revenue Fund on the 40<sup>th</sup> day prior to each Payment Date (or at any time in the event of rebate payable to the United States of America) shall be applied by the Trustee to the extent necessary for the purposes and in the amounts as follows, drawing first on the CID Revenue Account in the Revenue Fund, second on the PILOT's Account in the Revenue Fund, and third on the EAT's Account in the Revenue Fund:

*First*, for transfer to the Rebate Fund when necessary, an amount sufficient to pay rebate, if any, to the United States of America, owed under Section 148 of the Code, as directed in writing by the City in accordance with the Arbitrage Instructions and an amount equal to all fees, charges, advances and expenses related to the calculations necessary to determine the amount of rebate, if any, that may be due and payable;

*Second*, to the Trustee, an amount equal to all fees, charges, advances and expenses of the Trustee due and payable pursuant to the Indenture (fees, charges, advances and expenses of the Trustee incurred in connection with the Trustee's ordinary services under the Indenture shall not exceed \$5,000 per Fiscal Year; provided the Trustee or other person or entity shall also be entitled to compensation for (i) services, if any, as dissemination agent and (ii) extraordinary services rendered and reimbursed for extraordinary out of pockets costs and expenses incurred, in accordance with the Indenture);

*Third*, for payment to the City of an amount sufficient for payment of any fees and expenses that may be owing pursuant to the Indenture to collect Net Revenues and to enforce the Financing Documents, upon delivery to the Trustee of a written request (which shall be accompanied by an invoice) for such amounts;

*Fourth*, for transfer to the Bond Payment Account in the Debt Service Fund an amount sufficient to pay the interest on the Bonds on the next two succeeding Payment Dates;

*Fifth*, for transfer to the Bond Payment Account in the Debt Service Fund an amount sufficient to pay the principal of and premium, if any, due on the Bonds by their terms on the next two succeeding Payment Dates;

*Sixth*, for deposit to the Bond Proceeds Account of the Debt Service Reserve Fund until the Bond Proceeds Account has been funded or restored in an amount equal to the Debt Service Reserve Requirement applicable to the Bond Proceeds Account;

*Seventh*, for deposit to the Business Interruption Account of the Debt Service Reserve Fund until the Business Interruption Account has been funded or restored to the Debt Service Reserve Requirement applicable to the Business Interruption Account;

*Eighth*, transfer to the Extraordinary Expense Fund, an amount (not to exceed \$10,000 per Fiscal Year) sufficient to cause the balance in said fund to equal \$20,000; and

*Ninth*, for transfer to the Redemption Account of the Debt Service Fund, all remaining funds to redeem Bonds pursuant to the special mandatory redemption provisions contained in the Indenture (see the caption “**THE BONDS – Redemption – Special Mandatory Redemption**” in this Private Placement Memorandum) in Authorized Denominations which shall be applied to the payment of the principal of and accrued interest on all Bonds which are subject to redemption on the next succeeding Payment Date.

If necessary, on the Business Day prior to each Payment Date, drawing first on the CID Account in the Revenue Fund, second on the PILOTs Account in the Revenue Fund, and third on the EATs Revenue Account in the Revenue Fund, the Trustee shall transfer to the Bond Payment Account in the Debt Service Fund an amount sufficient to pay the principal of or interest on the Bonds due on the next Payment Date.

**For purposes of the transfers set forth above, the CID Revenues allocable to pay the Debt Service Requirements for the Bonds shall not exceed 9.2% of the Debt Service Requirements for the Bonds for each calendar year (or such other percentage as provided in writing by the City to the Trustee permitted by law based on amounts paid from the Project Fund and eligible for payment from the CID Revenues).**

Project Fund. Moneys in the Project Fund shall be disbursed by the Trustee from time to time, upon receipt of a written request of the Authorized City Representative and containing the statements, representations and certifications set forth in the form of such request attached to the Indenture and otherwise substantially in such form, to pay costs related to the issuance of the Bonds or to pay, or reimburse the Developer for payment of, the costs of the Project as described in the Indenture. Any moneys remaining on deposit in the Project Fund when the portion of the Project financed with the proceeds of the Bonds is completed, as stated in a certificate delivered by the Authorized City Representative to the Trustee, shall immediately be transferred by the Trustee to the Bond Payment Account in the Debt Service Fund.

Debt Service Fund. Except as otherwise provided in the Indenture, all amounts paid and credited to the Debt Service Fund shall be expended solely for the payment of the principal of, redemption premium, if any, and interest on the Bonds as the same mature and become due or upon the redemption thereof.

Debt Service Reserve Fund. Except as otherwise provided in the Indenture, moneys in the Debt Service Reserve Fund shall be used by the Trustee without further authorization solely for the payment of the principal of and interest on the Bonds if moneys otherwise available for such purpose are insufficient to pay the same as they become due and payable. In the event the balance of moneys in the Debt Service Fund is insufficient to pay principal of or interest on the Bonds when due and payable, moneys in the Debt Service Reserve Fund shall be transferred into the Debt Service Fund in an amount sufficient to make up

such deficiency, using the moneys in the Business Interruption Account until all such money has been expended and then moneys in the Bond Proceeds Account. The Trustee may use moneys in the Debt Service Reserve Fund for such purpose whether or not the amount in the Debt Service Reserve Fund at that time equals the Debt Service Reserve Requirement. Such moneys shall be used first to make up any deficiency in the payment of interest and then principal. Moneys in the Bond Proceeds Account and the Business Interruption Account of the Debt Service Reserve Fund shall also be used to pay the last Bonds becoming due unless such Bonds and all interest thereon be otherwise paid. The amount on deposit in the Debt Service Reserve Fund shall be valued by the Trustee 45 days prior to each Payment Date (or if such date is not a Business Day, the immediately preceding Business Day) and the Trustee shall give immediate written notice to the City if such amount is less than the Debt Service Reserve Requirement. For the purpose of determining the amount on deposit in the Debt Service Reserve Fund, the value of any investments shall be valued at their fair market value on the date of valuation. Moneys in the Debt Service Reserve Fund that are in excess of the Debt Service Reserve Requirement shall be deposited by the Trustee without further authorization in the Debt Service Fund.

**“Debt Service Reserve Requirement”** means (1) the sum of \$1,030,300\* to be deposited into the Bond Proceeds Account of the Debt Service Reserve Fund for the Bonds, which is a sum, at the date of original issuance and delivery of the Bonds, is not greater than the least of (A) 10% of the original aggregate principal amount of the Bonds, (B) the maximum annual Debt Service Requirements on the Bonds in any future fiscal year following such date, or (C) 125% of the average future annual Debt Service Requirements on the Bonds, plus (2) the sum of \$1,030,300\* to be deposited into the Business Interruption Account of the Debt Service Reserve Fund.

**Rebate Fund.** There shall be deposited by the Trustee in the Rebate Fund such amounts as are required to be deposited therein pursuant to the Arbitrage Instructions. Subject to the transfer provisions provided in the Indenture, all money at any time deposited in the Rebate Fund and any income earned thereon shall be held in trust, to the extent required to pay arbitrage rebate to the federal government of the United States of America, and neither the City, the District nor the Owner of any Bonds shall have any rights in or claim to such money. All amounts deposited into or on deposit in the Rebate Fund shall be governed by the Indenture and by the Arbitrage Instructions.

**Extraordinary Expense Fund.** Amounts on deposit in the Extraordinary Expense Fund shall be used only for the purpose of paying the fees, expenses and other costs, including legal fees, incurred by the City in connection with the defense or interpretation of the Indenture, or an audit, questionnaire or other request for information from the Internal Revenue Service, the Securities Exchange Commission or other federal or state entity or regulatory authority in connection with the Bonds, including legal fees incurred and any rebate obligations, fines or penalties owed. The Trustee will disburse moneys from the Extraordinary Expense Fund upon receipt by the Trustee of a written request signed by the Authorized City Representative that includes identification of the persons or entities owed such fees, expenses and other costs.

## **No Additional Bonds**

The Indenture does not authorize the issuance of any bonds other than the Bonds.

## **TAX INCREMENT FINANCING IN MISSOURI**

### **Overview**

Tax increment financing is a procedure whereby cities and counties encourage the redevelopment of designated areas. The theory of tax increment financing is that, by encouraging redevelopment projects, the

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\* Preliminary; subject to change.



value of real property in a redevelopment area should increase. When tax increment financing is adopted for a redevelopment area, the assessed value of real property in the redevelopment area is frozen for tax purposes at the then current rates for all similarly-situated property owners prior to the construction of improvements (the “**Base Value**”). The owners of the property continue to pay property taxes at the Base Value. As the property is improved, the assessed value of real property in the redevelopment area should increase above the Base Value. By applying the tax rate of all Taxing Districts (as defined herein) having taxing power within the redevelopment area to the increase in assessed valuation of the improved property over the Base Value, a “tax increment” is produced. The tax increments, referred to as “payments in lieu of taxes” or “PILOTs,” are paid by the owners of property in the same manner as regular property taxes. The payments in lieu of taxes are transferred by the collecting agency to the treasurer of the city or county and deposited in a “special allocation fund.” All or a portion of the moneys in the fund are used to pay directly for redevelopment project costs or to retire bonds or other obligations issued to pay such costs. The Base Value for the Redevelopment Area was certified at \$52,430.

### **The TIF Act**

The TIF Act was enacted in 1982 and has been amended several times in subsequent years. The constitutional validity of the TIF Act (prior to the amendments) was upheld by the Missouri Supreme Court in *Tax Increment Financing Commission of Kansas City, Missouri v. J.E. Dunn Construction Co., Inc.*, 781 S.W.2d 70 (Mo. 1989). The TIF Act authorizes cities and counties to provide long-term financing for redevelopment projects in “blighted,” “conservation” and “economic development” areas (as defined in the TIF Act) through the issuance of bonds and other obligations. Prior to the amendments to the TIF Act, such obligations were payable solely from PILOTs derived from the redevelopment area. As a result of amendments to the TIF Act, such obligations are also payable from economic activity tax revenues derived from the redevelopment area, except those economic activity tax revenues expressly excluded in the TIF Act. The validity of certain portions of amendments to the TIF Act relating to the capture of economic activity tax revenues was upheld by the Missouri Supreme Court in *County of Jefferson v. QuikTrip Corporation*, 912 S.W.2d 487 (Mo. 1995) (en banc).

Although payments in lieu of taxes may be irrevocably pledged to the repayment of bonds, economic activity tax revenues are subject to annual appropriation by the governing body of the city or county, and there is no obligation on the part of the governing body to appropriate economic activity tax revenues in any year. See the caption “**INVESTMENT CONSIDERATIONS AND RISKS – Risk of Non-Appropriation**” in this Private Placement Memorandum.

Section 99.848 of the TIF Act allows for certain emergency service taxing districts to receive reimbursement from the special allocation fund of some or all of the tax increment generated from such districts’ tax levies. With respect to Redevelopment Area, the City has entered into agreements with the Northland Regional Ambulance District to reimburse such district 75% of the payments in lieu of taxes generated from such district’s real property tax levy and the Smithville Area Fire Protection District to reimburse such district 75% of the payments in lieu of taxes and economic activity tax revenues generated from the districts’ real property levy and sales tax rate.

In addition, the Redevelopment Agreement requires that 40% of the payments in lieu of taxes received by the City that are attributable to ad valorem taxes imposed the Smithville R-II School District of Clay County, Missouri in the Redevelopment Area be paid to said school district as reimbursement for capital improvements costs.

### **Assessment and Collection of Ad Valorem Taxes**

General. The City and the Redevelopment Area are located within Clay County, Missouri (the “**County**”). On or before September 1 in each year, each political subdivision located within the County which imposes ad valorem taxes (the “**Taxing Districts**”) is required to estimate the amount of taxes that will be required during the next succeeding fiscal year to pay interest falling due on general obligation bonds issued and the principal

of bonds maturing in such year and the costs of operation and maintenance plus such amounts as shall be required to cover emergencies and anticipated tax delinquencies. The Taxing Districts certify the amount of such taxes which shall be levied, assessed and collected on all taxable tangible property in the County to the County Assessor by September 1.

All taxes levied must be based upon the assessed valuation of land and other taxable tangible property in the County as shall be determined by the records of the County Assessor and must be collected and remitted to the Taxing Districts. All the laws, rights and remedies provided by the laws of the State for the collection of State, county, city, school and other ad valorem taxes are applicable to the collection of taxes authorized to be collected in the redevelopment area.

The Missouri Constitution requires uniformity in taxation of real property by directing such property to be subclassed as agricultural, residential or commercial and permitting different assessment ratios for each subclass. Agricultural real property is currently assessed at 12% of true value in money, residential property is currently assessed at 19% of true value in money and commercial, industrial and all other real property is assessed at 32% of true value in money. The phrase "true value in money" has been held to mean "fair market value" except with respect to agricultural property.

Real property within the County is assessed by the County Assessor. The County Assessor is responsible for preparing the tax roll each year and for submitting the tax roll to the Board of Equalization. The Board of Equalization has the authority to question and determine the proper values of real property and then adjust and equalize individual properties appearing on the tax rolls. The County Collector collects taxes for all Taxing Districts within the County limits. The County Collector and the County Assessor deduct a commission for their services. After such collections and deductions of commission, taxes are distributed according to the Taxing District's pro rata share.

Taxes are levied on all taxable property based on the equalized assessed value thereof determined as of January 1 in each year. Under Missouri law, each property must be reassessed every two years (in odd-numbered years). The County Collector prepares the tax bills and mails them to each taxpayer in September. Payment is due by December 31, after which taxes become delinquent and accrue a penalty of one percent per month. In the event of an increase in the assessed value of a property, notice of such increase must be given to the owner of the affected property, which notice is generally given in April.

Valuation of Real Property. The County Assessor must determine the assessed value of a property based upon the State law requirement that property be valued at its true value in money. For agricultural land, true value is based on its productive capability. As to residential and commercial property, true value in money is the fair market value of the property on the valuation date. The fair market value is arrived at by using the three universally recognized approaches to value: cost approach, the sales comparison approach and the income approach.

The cost approach is typically applied when a property is newly constructed and is based on the principle of substitution. This principle states that no informed buyer will pay more for a property than the cost to reproduce or replace the property. Value is determined under the cost approach by adding the estimated land value to the replacement or reproduction cost of improvements reduced by estimated depreciation. Courts have held, however, that construction cost alone is not a proper basis for determining true value in money and that all factors which affect the use and utility of the property must be considered.

The sales comparison approach determines value based upon recent sales prices of comparable properties. Comparable sales are adjusted for differences in properties by comparing such items as sales price per square foot and net operating income capitalization rates.

The income approach estimates market value by discounting to present value a stream of estimated net operating income. First, the property's gross potential income is estimated based on gross rents being generated

at the property. A vacancy allowance is then deducted to arrive at effective gross income. Next, allowable operating expenses are deducted to arrive at an estimate of the property's net operating income. Finally, the net operating income is divided by an appropriate capitalization rate to arrive at the estimated present value of the income stream.

Appeal of Assessment. State statutes establish various mechanisms for a property owner to appeal the assessment of a tax on its property. Typically, there are four issues that can be raised in property tax appeals: overvaluation, uniformity, misclassification and exemption. Overvaluation appeals are the most common appeals presented by taxpayers. An overvaluation appeal requires the taxpayer to prove that the true value in money of the property is less than that determined by the assessor. Uniformity appeals are based on the assertion that other property in the same class and county as the subject property is assessed at a lower percentage of value than the subject property. A misclassification appeal is based on an assertion that assessing authorities have improperly subclassed a property. Exemption appeals are based on claims that the property in question is exempt from taxation.

Overvaluation appeals generally must be made administratively, first to the Board of Equalization and then to the State Tax Commission, within prescribed time periods following notice of an increase in assessment. Appeals to the Board of Equalization must be filed with the County Clerk as Secretary of the Board of Equalization on or before the third Monday in June of each year. Appeals to the State Tax Commission must be filed by the later of December 31 or 30 days after the date of the final decision of the Board of Equalization. Where valuation is not an issue, appeals must be taken directly to the State circuit court rather than the State Tax Commission. If an appeal is pending on December 31, the due date for the payment of taxes, State statutes provide a procedure for the payment of taxes under protest. If taxes are paid but not under protest, the taxpayer cannot recover the amount paid unless the taxes have been mistakenly or erroneously paid. Application for a refund of mistakenly or erroneously paid taxes must be made within one year after the tax in dispute was paid. Typically, only that portion of the taxes being disputed is identified as being paid under protest, unless a claim of exemption is being asserted. The portion of the tax paid under protest is required to be held in an interest bearing account. Unless an appeal before the Board of Equalization or State Tax Commission is pending, suit must be brought by the taxpayer to resolve the dispute within 90 days, or the escrowed funds will be released to the Collector of Revenue and distributed to the Taxing Districts.

Reassessment and Tax Rate Rollback. As previously stated, a general reassessment of all property in the State is required to be conducted every two years. When, as a result of such reassessment, the assessed valuation within a Taxing District increases by more than an allowable percentage, the Taxing District is required to roll back the rate of tax within the Taxing District so as to produce substantially the same amount of tax revenue as was produced in the previous year increased by an amount called a "preceding valuation factor." A "preceding valuation factor" is a percentage increase or decrease based on the average annual percentage changes in total assessed valuation of the County over the previous three or five years, whichever is greater, adjusted to eliminate the effect of boundary changes, changes from State to County assessed property, general reassessment and State ordered changes.

The Hancock Amendment. An amendment to the Missouri Constitution limiting taxation and government spending was approved by Missouri voters on September 4, 1980, and went into effect with the 1981-82 fiscal year. The amendment (Article X, Sections 16 through 24 of the Missouri Constitution, and commonly known as the Hancock Amendment) limits the rate of increase and the total amount of taxes that shall be imposed in any fiscal year, and provides that the limit shall not be exceeded without voter approval. Provisions are included in the Hancock Amendment for rolling back tax rates to produce an amount of revenues equal to that of the previous year if the definition of the tax base is changed or if property is reassessed. The tax levy on the assessed valuation of new construction is exempt from this limitation in the initial year of new construction.

## **Tax Delinquencies**

All real estate upon which taxes or payments in lieu of taxes remain unpaid on the first day of January, annually, are delinquent, and the County Collector is empowered to enforce the lien of the taxing jurisdictions thereon. Whenever the County Collector is unable to collect any taxes on the tax roll, having diligently endeavored and used all lawful means to do so, the County Collector is required to compile lists of delinquent tax bills collectible by such office. All lands and lots on which taxes are delinquent and unpaid are subject to suit to collect delinquent tax bills or suit for foreclosure of the tax liens. Upon receiving a judgment, the Sheriff must advertise the sale of the land, fixing the date of sale within 30 days after the first publication of the notice. Delinquent taxes, with penalty, interest and costs, may be paid to the County Collector at any time before the property is sold therefor. No action for recovery of delinquent taxes shall be valid unless initial proceedings therefor are commenced within five years after delinquency of such taxes.

## **Economic Activity Tax Revenues**

The Economic Activity Taxes that are available for the payment of the Bonds, subject to annual appropriation by the City, are 50% of the total additional revenue from taxes imposed by the City or other Taxing Districts and which are generated by economic activities within the Redevelopment Area over the amount of such taxes generated by economic activities within the Redevelopment Area in calendar year 2016, but excluding therefrom any taxes, licenses or fees excluded from tax increment financing by Missouri law.

Retail businesses are required to collect the sales tax from purchasers at the time of sale, and pay said amounts to the Missouri Department of Revenue with the filing of returns, except for the sales tax on motor vehicles, trailers, boats and outboard motors, which is due at the time application is made for title and registration. The sales volume of a retail business determines the frequency of payments made to the Department of Revenue. In most cases, the retail businesses in the City make monthly payments to the Department of Revenue, which are due on the tenth day of each calendar month for sales taxes collected in the preceding calendar month. Retail businesses located in the City submit applications to the City for a merchant's license and an occupancy permit, and before such license and permit are awarded verification of a tax identification number from the State is made by the City. In the event of a failure by a retail business to remit sales taxes, interest and penalties, the unpaid amount may become a lien in the nature of a judgment lien against the delinquent taxpayer. In the event of overpayment by any retail business as a result of error or duplication, provision is made under State law for refunds.

Pursuant to State law, taxpayers who promptly pay their sales taxes are entitled to retain 2% of the amount of taxes owed. Within 30 days of receipt of sales taxes by the Department of Revenue, the Director of the Department of Revenue remits to the State Treasurer for deposit in a special trust fund for the benefit of each political subdivision entitled to a sales tax distribution the amount of such sales tax receipts less 1% of such amount which constitutes a fee paid to the State for collecting and distributing the tax. The State Treasurer then distributes moneys on deposit in the special trust fund to the applicable political subdivisions, including the City, on a monthly basis.

Under the Redevelopment Agreement, no utility taxes will be collected as Economic Activity Taxes or otherwise made available for the repayment of the Bonds.

## **SMITHVILLE COMMONS COMMUNITY IMPROVEMENT DISTRICT AND CID SALES TAX**

### **Community Improvement District**

Pursuant to the provisions of Sections 67.1401 to 67.1571 of the Revised Statutes of Missouri, as amended (the "**CID Act**") the Developer petitioned the City and the City adopted an ordinance on August 1, 2017, creating the Smithville Commons Community Improvement District (the "**District**"). The District is a political

subdivision of the State and is authorized to impose certain taxes to carry out its purposes. The District was created for the purpose of imposing a 1% sales tax (the “**CID Sales Tax**”) on retail sales occurring within the boundaries of the District, which are coterminous with the Redevelopment Area.

On April 29, 2019, the Board of Directors of the District adopted a resolution calling an election to submit a question to the qualified voters within the District (the qualified voters in this case are the landowners within the Redevelopment Area) a ballot proposition to consider the CID Sales Tax. The imposition of the CID Sales Tax was approved by a majority of such voters and the Board of Directors for the District notified the Department of Revenue of the State of Missouri that the measure had passed. The CID Sales Tax went into effect on April 1, 2020 and will sunset on March 31, 2043.

### **CID Agreement**

The City, the District and the Developer entered into a CID Agreement which sets out the priority of payment of the CID Revenues, including the City serving as the District’s agent in connection the collection and disposition of revenues from the CID Sales Tax. Revenues from the CID Sales Tax (the “**District Sales Tax Revenues**”) received by the City shall be applied pursuant to the CID Agreement. Pursuant to the TIF Act and the TIF Plan, 50% of the revenues from the CID Sales Tax levied in the Redevelopment Area (the “**TIF Portion of CID Revenues**”) will be captured as Economic Activity Tax Revenues and, as described below, deposited into the Special Allocation Fund maintained by the City.

Pursuant to the CID Agreement and the Financing Agreement and so long as the Bonds remain outstanding, the City on behalf of the District shall, not later than the fifteen (15<sup>th</sup>) day of each month, distribute the District Sales Tax Revenues received in the preceding month in the following order of priority (capitalized terms in the following that are not otherwise defined in this Private Placement Memorandum shall the meaning ascribed to such terms in the CID Agreement):

- (a) The TIF Portion of the CID Revenues shall be deposited into the Economic Activity Taxes Account of the Special Allocation Fund and shall be expended in accordance with the Redevelopment Plan and the Redevelopment Agreement (the remaining balance of District Sales Tax Revenues are referred to as the “**Uncaptured District Revenues**”).
- (b) The City, on behalf of the District, shall pay the Administrative Fee or other amounts owing to the City from the Uncaptured District Revenues.
- (c) The City, on behalf of the District, shall pay the Operating Costs of the District from the Uncaptured District Revenues.
- (d) The City, on behalf of the District, shall make the remaining Uncaptured District Revenues available to pay debt service on the Bonds.

## **PLAN OF FINANCE**

### **Purpose of the Bonds**

The City will issue the Bonds pursuant to the Indenture for the purpose of providing funds to (i) finance, refinance and reimburse Redevelopment Project Costs, (ii) fund a deposit to the debt service reserve fund with respect to the Bonds, and (iii) pay the costs of issuance of the Bonds.

## Sources and Uses of Bond Funds

Following is a summary of the anticipated sources and uses of funds in connection with the issuance of the Bonds:

### Sources of Funds:

Principal Amount of Bonds	\$ _____
Plus / Less: Original Issue Premium / Discount	_____
Previously-collected Net Revenues	_____
Total Sources of Funds	<u>\$ _____</u>

### Uses of Funds:

Deposit to the Project Account of the Project Fund <sup>(1)</sup>	\$ _____
Deposit to the Bond Proceeds Account of the Debt Service Reserve Fund	_____
Total Uses of Funds	<u>\$ _____</u>

- <sup>(1)</sup> Funds deposited in the Project Account of the Project Fund are expected to be disbursed in full on the date the Bonds are issued to (i) reimburse the Developer for previously incurred Reimbursable Project Costs and (ii) pay the costs incurred in connection with the issuance of the Bonds.

## THE SMITHVILLE COMMONS PROJECT

### Overview

Pursuant to the Redevelopment Agreement, the Developer agreed to design, develop and construct the Redevelopment Project in the Redevelopment Area, including the demolition of the existing improvements that were located on the site. The Redevelopment Area consists of approximately 66.32 acres in the City generally located between Cliff Drive and U.S. Highway 169.

The Redevelopment Project includes the following redevelopment projects within the Redevelopment Area:

- (i) acquisition of all property rights for the Redevelopment Area by the Developer;
- (ii) completion of site work and infrastructure improvements;
- (iii) construction of an approximately 65,000 square foot grocery store;
- (iv) construction of an approximately 15,120 square foot tractor and farm supply store;
- (v) construction of an approximately 12,000 square foot hardware store; and
- (v) construction of approximately 19,250 square feet of additional commercial space.

The Developer completed a 61,613 square foot Cosentino's Price Chopper in October 2020. In addition, the following businesses have opened within the Redevelopment Project: (i) Scooter's Coffee; (ii) Taco Bell; (iii) Porter's Ace Hardware; (iv) Burger King; and (v) Domino's Pizza (along with approximately 7,800 square feet of additional leasable space available in the same building).

In connection with the proposed development, the Developer acquired the Redevelopment Area for approximately \$3.7 million. The following table sets for the budget for the development of the Redevelopment Project included in the Redevelopment Agreement:

<u>Project Costs</u>	<u>Total Costs</u>	<u>Estimated Reimbursable Project Costs</u>	<u>Estimated CID Reimbursable Project Costs</u>	<u>Estimated Other Funding Sources</u>
Acquisition Price	\$ 3,700,000	\$ 3,700,000	\$ 0	\$ 0
Site work / Infrastructure – Grocery / Hardware / Access	3,250,000	1,477,214	1,772,786	0
Site work / Infrastructure – Off-site Improvements	1,900,000	1,900,000	0	0
Site Work / Infrastructure – Tractor Supply Instructure	550,000	0	00	550,000
<u>Hard Construction Costs:</u>				
Grocery	6,550,000	1,984,140	0	4,586,860
Grocery Outfitting / FF&E	5,000,000	0	0	5,000,000
Hardware	1,680,000	0	0	1,680,000
Tractor Supply	1,875,000	0	0	1,875,000
Pad Sites	3,360,000	0	0	3,360,000
<u>Soft Costs:</u>				
Architecture	724,950	0	0	724,950
Engineering	724,950	0	0	724,950
Title & Survey	50,000	0	0	50,000
Legal	350,000	0	0	350,000
Interest Carry	500,000	0	0	500,000
Property Taxes	106,600	0	0	106,600
Environmental	30,000	0	0	30,000
Appraisal	25,000	0	0	25,000
Geotechnical	40,000	0	0	40,000
Loan Origination Fees	80,000	0	0	80,000
Lender Inspections	40,000	0	0	40,000
Developer Fees	1,000,000	0	0	1,000,000
Commissions	250,000	0	0	250,000
Subtotal	31,786,500	9,061,354	1,772,7860	20,952,360
10% Contingency	3,178,650	906,135	177,279	2,095,236
Total	<u>\$ 34,965,150</u>	<u>\$ 9,967,489</u>	<u>\$ 1,950,065</u>	<u>\$ 23,047,596</u>

### **Current Businesses within the Redevelopment Area**

As of the date hereof, the following business are currently operating within the Redevelopment Area:

<u>Business</u>	<u>Type of Business</u>	<u>Opened</u>
Cosentino's Price Chopper	Grocery Store	October, 2020
Porter's Ace Hardware	Hardware Store	October, 2020
Taco Bell	Fast Food Restaurant	December, 2019
Burger King	Fast Food Restaurant	December, 2021
Scooter's Coffee	Coffee Shop	July, 2019
Domino's Pizza	Fast Food Restaurant	Summer, 2021

The Cosentino Price Chopper is operating in a 61,613 square foot building constructed by the Developer and is operated by Cosentino Enterprises, Inc. (the “**Grocery Tenant**”) pursuant to terms of a Lease Agreement, dated as of December 31, 2019 (as amended, the “**Grocery Lease**”), between the Developer and the Grocery Tenant. The term of the Grocery Lease commenced on November 1, 2020 and will terminate on October 31, 2040, subject to the option of the Grocery Tenant to extend the term for up to an additional 20 years consisting of four renewal periods of five years each.

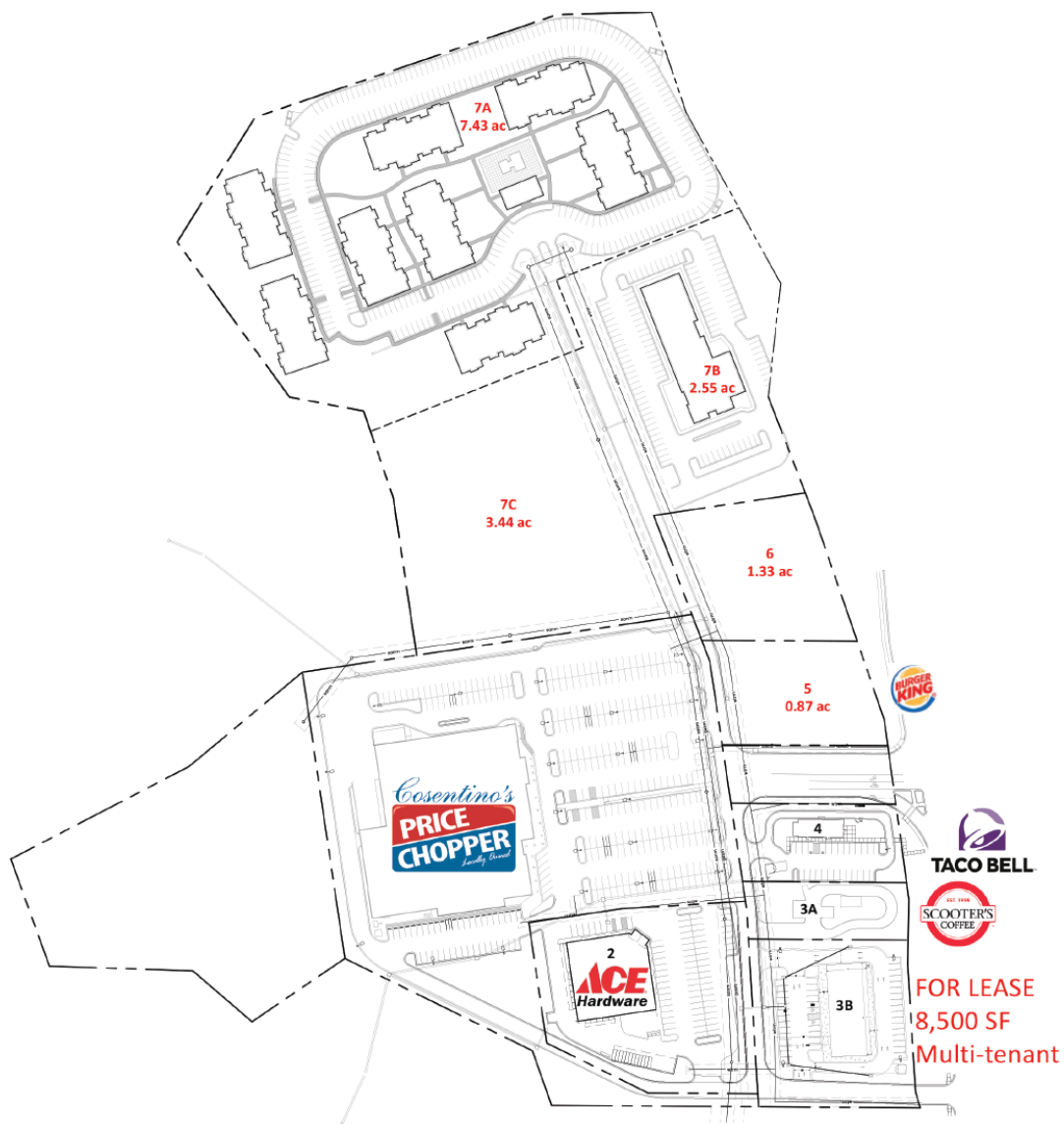
The Scooter’s Coffee is operating in an approximately 495 square foot building constructed and operated by the tenant pursuant to a Ground Lease, dated as of July 2, 2019 (the “**Scooter’s Coffee Lease**”), between the Developer and Freedom Enterprises, LLC, as successor tenant. The term of the Scooter’s Coffee Lease commenced on January 20, 2020 and will terminate on January 31, 2035, subject to the tenant’s option to extend the term for up to an additional 15 years consisting of three renewal periods of five years each.

Each of the other businesses operating within the Redevelopment Area are operated on tracts within the Redevelopment Area that have been sold by the Developer to third parties for development and to either operate the related business or, in some cases, leasing to third parties operating business.

*(Reminder of this page intentionally left blank)*



The following map depicts the current development in the Redevelopment Area and the portions thereof available for future development.



Note: the Domino's Pizza is located in the multi-tenant building constructed on Lot 3B.

## Environmental Assessment

In connection with the acquisition of the real estate located within the Redevelopment Area, Cadence Commercial Real Estate, an affiliate of the Developer, obtained a Phase I Environmental Site Assessment Report from Environmental Works, Inc., Kansas City, Missouri. The Environmental Assessment noted a temporary concrete plant was located on the site, including a 1,000 gallon off-road diesel mobile aboveground storage tank, during 2000-2003 for use in fulfilling a Missouri Department of Transportation contract for development of U.S. Highway 169. The report did not find the temporary use of the site for concrete mixing to be a concern and, based on the findings of the assessment, no further actions were recommended.

## The Developer

The Developer is Smithville Development Associates, LLC, a Missouri limited liability company (the “Developer”). The Developer is affiliated with Cadence Commercial Real Estate (“Cadence”), an Overland Park, Kansas based developer and investor in retail properties, with a specific focus on grocery anchored neighborhood shopping centers. Cadence has built, acquired, and redeveloped over 500,000 square feet of grocery space and ancillary retail in the Kansas City MSA since its inception in 2016 including White Oak Marketplace (Price Chopper), Blue Springs North (Price Chopper), Arrowhead Shopping Center (Sun Fresh), Raintree Shopping Center (Price Chopper) Brookside Shopping Center (Price Chopper), Twin Trails Shopping Center (Carniceria El Torito Hispanic Grocer). Cadence has become one of the dominant players in grocery store and grocery anchored retail in the Kansas City MSA area as a result. Cadence also has a full service brokerage department which allows all needs of a development to be met in a streamlined fashion. Cadence oversees and manages a portfolio worth over \$100 Million in total commercial real estate assets.

## Manager

The Developer manages the Smithville Commons development and has the exclusive responsibility for the operation, maintenance, service and repair of the development.

## REVENUE STUDY

PGAV Planners, St. Louis, Missouri (the “Consultant”), has produced a report on the revenue generation potential of the Redevelopment Area based solely on the retail establishments currently operating a business and other retail space available to be leased within the Redevelopment Area (see the caption “**THE SMITHVILLE COMMONS PROJECT**” in this Private Placement Memorandum). Such report, entitled “Smithville Commons Project Bond Revenue Study” dated April 25, 2022 (the “Revenue Study”), is included in this Private Placement Memorandum as **Appendix D**. The Revenue Study includes a forecast of retail sales of the Smithville Commons Project and a forecast of real property tax collections for the Smithville Commons Project based on actual and projected retail activity within the Redevelopment Area.

**The Consultant has not been engaged to perform, and has not performed, since the date of its report, any update of the projections contained in the Revenue Study.**

The financial forecast contained in the Revenue Study, including the portion of the forecast relating to the ability of existing owners and businesses to generate Net Revenues within the Redevelopment Area, which are sufficient to meet the debt service requirements of the Bonds, is based on certain assumptions, estimates and opinions discussed in the Revenue Study. Certain of the Consultant’s assumptions, estimates and opinions may not materialize and unforeseen events and circumstances may occur subsequent to the date of the Revenue Study. Therefore, there will usually be differences between the forecasted and actual results and those differences may be material. There is no assurance that actual events will correspond with the Revenue Study or the assumptions, estimates or opinions on which they are based. The Revenue Study should be read in its entirety by prospective investors for a full understanding of the forecasted statements, assumptions and qualifications contained therein.

The Placement Agent has reviewed the information in this Private Placement Memorandum in accordance with, and as part of, its responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Placement Agent does not guarantee the accuracy or completeness of such information, including specifically but without limitation the information contained in the Revenue Study or any information excerpted therefrom. See the caption “**INVESTMENT CONSIDERATIONS AND RISKS**” in this Private Placement Memorandum and **Appendix D** to this Private Placement Memorandum.

The Revenue Study analyzes the revenue generation potential of the indicated retailers for the purpose of projecting the potential Net Revenues. Certain financial and statistical data included in this Private Placement Memorandum have been excerpted from the Revenue Study. The City, the District, the Developer and the Placement Agent make no representation or warranty, express or implied as to the accuracy or completeness of any financial, technical or statistical data or any estimates, projections, assumptions or expressions of opinion set forth in the Revenue Study, and there is no obligation to update such information after the delivery of the Bonds. The Consultant has consented to the inclusion of its report in this Private Placement Memorandum.

The Revenue Study is forward-looking and involves certain assumptions and judgments regarding future events. Although the Revenue Study is based on currently available information, it is also based on assumptions about the future state of the national and regional economy and the local real estate markets as well as assumptions about future actions by various parties, which cannot be assured or guaranteed. The Revenue Study is not a prediction or assurance that a certain level of performance will be achieved or that certain events will occur. The actual results will vary from the projections in the Revenue Study, and the variations may be material. Prospective purchasers of the Bonds should carefully review **Appendix D**, including particularly the assumptions underlying the forecasted Payments in Lieu of Taxes, Economic Activity Tax Revenues and CID Revenues.

## PROJECTED ANNUAL DEBT SERVICE COVERAGE

The following table provides the projected annual debt service coverage ratio for the Bonds based on the projected Economic Activity Tax Revenues, Payments in Lieu of Taxes and CID Revenues described in the Revenue Study attached as **Appendix D** to this Private Placement Memorandum. The projected annual debt service coverage ratio set forth in the following table assumes the deposit of such revenues into the Revenue Fund and does not take into account the application of certain funds for the payment of certain fees and expenses and any rebate obligations related to the Bonds (see the caption “**SECURITY AND SOURCES OF PAYMENT FOR THE BONDS**” in this Private Placement Memorandum). Potential investors are cautioned that the information in this section represents “forward-looking statements” as described under the caption “**INVESTMENT CONSIDERATIONS AND RISKS – Forward-Looking Statements**” in this Private Placement Memorandum.

<u>Year</u>	<u>Revenues<sup>(1)</sup></u>	<u>Annual Debt Service<sup>*, (2)</sup></u>	<u>Projected Annual Debt Service Coverage Ratio</u>
2022	\$1,051,952	\$697,648	1.51x
2023	1,092,293	724,640	1.51x
2024	1,127,048	751,000	1.50x
2025	1,187,072	786,415	1.51x
2026	1,223,397	810,615	1.51x
2027	1,260,167	837,130	1.51x
2028	1,280,799	852,405	1.50x
2029	1,308,768	871,750	1.50x
2030	1,330,234	885,010	1.50x
2031	1,359,260	903,920	1.50x
2032	1,381,594	916,350	1.51x
2033	1,411,719	937,485	1.51x
2034	1,434,955	951,955	1.51x
2035	1,466,220	972,755	1.51x
2036	1,490,395	991,555	1.50x
2037	1,522,845	1,013,355	1.50x
2038	1,547,996	1,030,300	1.50x
2039	2,611,976 <sup>(3)</sup>	1,209,880	2.16x

\* Preliminary; subject to change.

(1) See Table 8 in the Revenue Study.

(2) Assumes an average interest rate of 3.9386% on the Bonds, the maturity schedule set forth on the inside cover page of this Private Placement Memorandum and the mandatory sinking fund redemption requirements set forth under the caption “**THE BONDS – Redemption – Mandatory Sinking Fund Redemption**” in this Private Placement Memorandum.

(3) Includes funds on deposit in the Bond Proceeds Account of the Debt Service Reserve Fund in the amount of \$1,030,300\*.

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## INVESTMENT CONSIDERATION AND RISKS

The Bonds are speculative securities and an investment in the Bonds is subject to a number of significant risk factors. Prospective purchasers of the Bonds should make such investigations and obtain such additional information from the City, the Placement Agent, the Developer and others as they deem advisable in connection with their evaluation of the suitability of the Bonds for investment.

Before purchasing any of the Bonds, prospective investors and their professional advisors should carefully consider, among other things, the following risk factors, which are not meant to be an exhaustive listing of all risks associated with the purchase of the Bonds. The order of presentation of the risk factors does not necessarily reflect the order of their importance. Prospective purchasers of the Bonds should analyze carefully the information contained in this Private Placement Memorandum, including the appendices hereto, and additional information in the form of the complete documents summarized herein, copies of which are available as described in this Private Placement Memorandum.

This Private Placement Memorandum is furnished solely for consideration by prospective purchasers of the Bonds with the experience and financial expertise to understand and evaluate the significant degree of risk inherent in the investment. Purchase of the Bonds will constitute an investment subject to a significant degree of risk, including the risk of nonpayment of principal and interest.

### Limited Offering; Restrictions on Transfer

The Bonds have not been registered pursuant to the Securities Act of 1933, as amended (the “**Securities Act**”), in reliance upon exemption therefrom. Accordingly, the Bonds are being offered solely on a private placement basis to the original purchasers. Neither the Bonds nor any beneficial interest therein may be resold or transferred by any purchaser, except under the conditions described under the captions “**THE BONDS - Registration, Transfer and Exchange**” and “**NOTICE TO INVESTORS**” in this Private Placement Memorandum. The offering of the Bonds is being made to a limited number of knowledgeable and experienced investors who are not purchasing with a view to distributing the Bonds. Each purchaser must be an Approved Investor. *Each purchaser of the Bonds offered hereby will be deemed to have represented and warranted that (i) it is an Approved Investor, (ii) it is acquiring the Bonds for its own account or for the account of an Approved Investor, and not with a view to the further distribution thereof but expressly reserves the right to sell the Bonds and (iii) it will sell, transfer or otherwise dispose of the Bonds only in minimum denominations of \$100,000 and any integral multiple of \$5,000 in excess thereof.* Moreover, the Bonds are a substantially illiquid investment and are being issued in minimum initial denominations of \$100,000 or integral multiples of \$5,000 in excess thereof. There may be a limited secondary market for the Bonds; therefore, Bonds should not be purchased by an investor unless the investor is able to hold such Bonds indefinitely.

The foregoing standards are only minimum requirements for prospective purchasers of the Bonds. The satisfaction of such standards does not necessarily mean that the Bonds are a suitable investment for a prospective investor. Accordingly, each prospective investor is urged to consult with its own legal, tax and financial advisors to determine whether an investment in the Bonds is appropriate in light of its individual legal, tax and financial situation.

### Limited Sources of Revenue for Debt Service

The Bonds are limited obligations of the City, payable solely and only from the Pledged Revenues and are secured by a pledge of the same to the Trustee in favor of the Bondowners, as provided in the Indenture. The Bond proceeds will be used to pay such Redevelopment Project Costs and to reimburse the Developer for certain Redevelopment Project Costs already expended by the Developer. No assurance can be given that Net

Revenues will be realized in amounts sufficient to pay the principal of and interest on the Bonds as such obligations become due. **The Bonds and the interest thereon are not a debt or general obligation of the City, the District or the State and do not constitute an indebtedness of the City, the District or the State within the meaning of any constitutional or statutory debt limitation or restriction.**

Because the TIF Act provides that 23 years is the maximum amount of time for the retirement of obligations incurred to finance redevelopment project costs, the obligation of the City to transfer Economic Activity Tax Revenues and Payments in Lieu of Taxes to the Trustee for the repayment of the Bonds terminates on October 2, 2040 whether or not the principal amount thereof or interest thereon has been paid in full.

**In addition, the CID Revenues allocable to pay the Debt Service Requirements for the Bonds shall not exceed 9.2% of the Debt Service Requirements for the Bonds for each calendar year (or such other percentage as provided in writing by the City to the Trustee permitted by law based on amounts paid from the Project Fund and eligible for payment from the CID Revenues).**

### **Factors Affecting Economic Activity Tax Revenues and CID Revenues**

Economic Activity Taxes and CID Revenues are contingent and may be adversely affected by a variety of factors, including without limitation economic conditions within the Redevelopment Area and the surrounding trade area and competition from other retail businesses, rental rates and occupancy rates in private developments in the Redevelopment Area, suitability of the Redevelopment Area for the local market, local unemployment, availability of transportation, neighborhood changes, online shopping, e-commerce, crime levels in the area, vandalism and rising operating costs, interruption or termination of operation of businesses in the Redevelopment Area as a result of fire, natural disaster, strikes, pandemics or similar events, among many other factors. As a result of all of the above factors, it is difficult to predict with certainty the expected amount of Economic Activity Taxes and CID Revenues which will be available for appropriation to the repayment of the Bonds. The retail sales industry is highly competitive. Existing retail businesses outside of the Redevelopment Area and the future development of retail businesses outside of the Redevelopment Area, which are competitive with retail businesses in the Redevelopment Area, may exist or may be developed after the date of this Private Placement Memorandum.

In addition to the foregoing, the partial or complete destruction of business in the Redevelopment Area, as a result of fire, natural disaster, man-made disasters or similar casualty event or the temporary or permanent closing of one or more of such retail establishments due to strikes or failure of the business, would adversely affect the Economic Activity Taxes and the CID Revenues and thereby adversely affect the revenues available to pay the Bonds and the interest thereon. Any insurance maintained by the owner of or the tenants in such areas for such casualty or business interruption is not likely to include coverage for sales taxes that otherwise would be generated by the establishment.

Products that are eligible for the federal food stamp program and pharmaceutical products that are purchased cannot, by law, be subject to state or local sales taxes. To the extent that products are sold to shoppers who purchase goods with food stamps or purchase pharmaceutical items, the expected amount of Economic Activity Tax Revenues and CID Revenues that will be available for appropriation for payment of the principal of and interest on the Bonds would be reduced.

### **Exempt Properties**

Missouri law exempts certain uses and property owners from the payment of real property taxes, including Payments in Lieu of Taxes, or the collection of sales taxes. There is no obligation on the part of the Developer to lease any space to entities that are not exempt from such taxes. If the Developer leases space to entities that are exempt from paying such taxes, the revenues may not materialize at the expected level.

## **Coronavirus and Other Pandemics**

Since December 2019, a novel strain of coronavirus (which leads to the disease known as “**COVID-19**”), has spread throughout the world and has been characterized by the World Health Organization as a pandemic. The impact of the COVID-19 pandemic on the U.S. economy has been and may continue to be broad based and to negatively impact national, state and local economies.

In response to the pandemic, the President of the United States and the Governor of the State made various declarations of emergency. On August 27, 2021, the Governor of the State terminated certain prior executive orders relating to the pandemic and signed Executive Order 21-09, which represents a more targeted state of emergency declaration that acknowledges the continued needs of Missouri’s health care system. Cities and counties have the ability, and continue, to impose local public health orders restricting economic activities within the State.

There are no current COVID-19-related public health orders in the City or the County relating to masks or capacity limitations. The County’s health department maintains a website where current information regarding COVID-19 in the County and the City is available.

According to the City’s administration, to date, COVID-19 has not had a material adverse impact on the City’s revenues. Nevertheless, the long-term impact of the COVID-19 pandemic (including any future variants thereof) or any future pandemic on the Economic Activity Tax Revenues or CID Revenues is difficult to determine at this point. The City cannot predict (a) the duration or extent of the COVID-19 (including any future variants thereof) or other pandemic; (b) the duration or expansion of any related business closings, public health orders, regulations and legislation; (c) what effect the COVID-19 (including any future variants thereof) pandemic or any other pandemic will continue to have on global, national, and local economies; (d) whether recent job losses resulting from COVID-19-related business closures or any future business closures will be temporary or permanent and what effect such losses will have on consumer confidence; (e) the impact the COVID-19 (including any future variants thereof) or any future pandemic will have on the willingness of the public to shop or dine in the retail operations located in the Redevelopment Area; or (f) the interest of businesses to sign contracts to lease or purchase property, or locate operations, within the Redevelopment Area. The generation of Economic Activity Tax Revenues and CID Revenues is dependent upon such activities. Developments regarding COVID-19 continue to occur on a daily basis and the extent to which COVID-19 will impact the Economic Activity Tax Revenues and CID Revenues in the future is highly uncertain and cannot be predicted. Neither the City nor the Placement Agent can predict the effect the spread of COVID-19 (including any future variants thereof) or other pandemic will have on Economic Activity Tax Revenues or CID Revenues.

## **No Pledge or Mortgage of the Redevelopment Project**

Payment of the principal of and interest on the Bonds is not secured by any deed of trust, mortgage or other lien on property within the Redevelopment Area or any portion thereof; however, under the TIF Act, PILOTs that are due and owing constitute a lien against the real estate in Redevelopment Area from which they are derived. Upon a default in the payment of any Payments in Lieu of Taxes, the lien for unpaid Payments in Lieu of Taxes may be enforced by the County.

No portion of the Redevelopment Project itself nor any revenues, assets, leases, lease payment, agreements or rights of such Redevelopment Project are pledged to the Trustee under the Indenture. Therefore, in the event of a default, the Trustee will not have the ability to sell the Redevelopment Project or any portion thereof to retire the Bonds nor look to the Developer or any principal or affiliate thereof or to any other asset or collateral to secure repayment of the Bonds. The Bonds are not the obligation of the Developer or its members, shareholders or affiliates. The Bonds are payable solely from the Pledged Revenues (and the pledge of the Trust Estate under the Indenture).

## **Revenue Study and Financial Projections**

The forecasted annual Payments in Lieu of Taxes, Economic Activity Tax Revenues and CID Revenues contained in the Revenue Study and included or reflected in this Private Placement Memorandum are based on various assumptions concerning facts and events over which the City, the Developer or the Placement Agent have no control. No representation or warranty is or can be made about the amount or timing of any future income, loss, occupancy, valuation, increased assessment or revenues, or that actual results will be consistent with the Revenue Study or with the forecasts contained therein. The information in the Revenue Study is based on various assumptions, estimates and opinions. There is no assurance that actual events will correspond with the projections or the assumptions, estimates and opinions on which they are based.

The Revenue Study is forward-looking and involves certain assumptions and judgments regarding future events. Although the Revenue Study is based on currently available information, it is also based on assumptions about the future state of the national and regional economy and the local real estate markets as well as assumptions about future actions by various parties, which cannot be assured or guaranteed. The Revenue Study is not a prediction or assurance that a certain level of performance will be achieved or that certain events will occur. The actual results will vary from the Revenue Study, and the variations may be material. Prospective Bondowners should read the Revenue Study carefully and form their own opinions about the validity and reasonableness of such assumptions. See attached **Appendix D** and the caption “**REVENUE STUDY**” in this Private Placement Memorandum.

## **Risk of Non-Appropriation**

Economic Activity Tax Revenues. The application of Economic Activity Tax Revenues to the payment of the principal of and interest on the Bonds is subject to annual appropriation by the City. Although the City has covenanted in the Financing Agreement and in the Indenture that the appropriation of the Economic Activity Tax Revenues to the Special Allocation Fund will be included in the budget submitted to the Board of Aldermen for each fiscal year, there can be no assurance that such appropriation will be made by the Board of Aldermen, and the Board of Aldermen is not legally obligated to make any such appropriation.

CID Revenues. The application of CID Revenues to the payment of the principal of and interest on the Bonds is subject to annual appropriation by the District. Although the District has covenanted in the Financing Agreement that the appropriation of the CID Revenues will be included in the budget submitted to the board of directors for each fiscal year, there can be no assurance that such appropriation will be made by the board of directors, and the board of directors is not legally obligated to make any such appropriation.

## **Reduction in Assessed Valuation of the Property**

There can be no assurance that the assessed valuation of the property within the Redevelopment Area subject to Payments in Lieu of Taxes will equal or exceed the forecasted assessed value. Even if the assessed value is initially determined as forecasted, there can be no assurance that such assessed value will be maintained throughout the term of the Bonds. If at any time during the term of the Bonds the actual assessed value is less than forecasted, the amount of Payments in Lieu of Taxes may be less than forecasted and there may not be sufficient Payments in Lieu of Taxes to meet the obligations to the Bondowners.

Even if the County Assessor’s determination of the assessed valuation of property within the Redevelopment Area subject to Payments in Lieu of Taxes equals or exceeds the forecasted assessed value, the owners of such property have the right to appeal such determination. If any such appeal is not resolved prior to the time when real estate taxes and Payments in Lieu of Taxes are due, the taxpayer may pay the taxes and Payments in Lieu of Taxes in protest. In such event, that portion of taxes and Payments in Lieu of Taxes being protested will not be available for deposit into the Special Allocation Fund until the appeal has been concluded. If the appeal is resolved in favor of the taxpayer, the assessed valuation of property within the Redevelopment



Area subject to Payments in Lieu of Taxes will be reduced, in which event the Payments in Lieu of Taxes may be less than forecasted.

### **Environmental Conditions**

No assurance can be given that environmental conditions do not now or will not in the future exist at the Redevelopment Area or any development which could become the subject of enforcement actions by governmental agencies. Additionally, there can be no assurance that future environmental conditions, if any, would not adversely impact the willingness of the public to frequent the Redevelopment Area or any retail establishments. The amount of Pledged Revenues is largely dependent upon the taxable sales occurring within the Redevelopment Area.

### **Amendment to the TIF Act**

It is not possible to predict whether additional amendments to the TIF Act will be proposed in future Missouri legislative sessions, the nature of any such future proposed amendments, or whether such future proposed amendments will become law. Future amendments to the TIF Act may negatively affect the amounts of Payments in Lieu of Taxes and Economic Activity Tax Revenues available to pay principal and interest on the Bonds.

### **Accurate Calculation of Tax Increment Revenues**

Retailers within the Redevelopment Area may not accurately collect or accurately report all sales taxes. No assurances can be provided that the calculations of Net Revenues from the Redevelopment Area will be accurately computed.

### **Reliance on Developer, Tenants and Property Owners and Ongoing Financial Feasibility of the Redevelopment Project**

The physical development of the Redevelopment Area required by the Redevelopment Agreement is substantially complete. To receive timely payment of principal and interest on the Bonds, Owners must rely solely on the financial ability of the Developer or other property owners, as well as subsequent owner(s) within the Redevelopment Area and current and future tenants within the Redevelopment Area, to pay the Payments in Lieu of Taxes. No representation is made herein as to such entities' financial ability to make the Payments in Lieu of Taxes when due.

The Developer manages the development of the Redevelopment Area. The Developer is not obligated under the Redevelopment Agreement to lease space within the Redevelopment Area to businesses that make retail sales. The Owners will be dependent on the Developer and any future manager or owner of the Redevelopment Area to assure that sufficient CID Revenues and Economic Activity Taxes are generated for payment of the Bonds.

There is no obligation on the part of any retailer to remain open for business. Thus, a retailer may cease operations, but continue to own or pay rent to the property owner. Under such circumstances, no CID Revenues or Economic Activity Taxes would be generated by sales from such retailer.

### **Tax Increment Financing and Community Improvement District Litigation – In General**

From time to time cases are filed in a Missouri court challenging certain aspects of the TIF Act or the CID Act. Circuit courts in Missouri are trial courts and decisions in those courts are not binding on other Missouri courts. Circuit court decisions, whether favorable or unfavorable with respect to the constitutionality and application of the TIF Act or the CID Act, may be appealed to a Missouri Court of Appeals, and, ultimately, the Missouri Supreme Court. If the plaintiffs are successful in one or more of the currently pending cases, the

court's decision may interpret the requirements of the TIF Act or the CID Act in a manner adverse to the establishment of tax increment financing for the Redevelopment Area or the CID Sales Tax. It is not possible to predict whether an adverse holding in any current or future litigation would prompt a challenge to the adoption of tax increment financing in Redevelopment Area or the CID Sales Tax. If current or future litigation challenging all or any part of the TIF Act or the CID Act were to be applied to the adoption of tax increment financing in Redevelopment Area or the CID Sales Tax, the Economic Activity Tax Revenues or the CID Revenues may not be available to pay principal of and interest on the Bonds, the enforceability of the Indenture could be adversely affected. None of the City or any other party involved in the issuance and sale of the Bonds can predict or guarantee the outcome of any currently pending or future litigation challenging the constitutionality or the application of the TIF Act, the CID Act or the application by a court of a potential holding in any case to other tax increment projects or community improvement districts.

### **Changes in State and Local Tax Laws**

The Revenue Study assumes no substantial change in the basis of extending, levying and collecting real property taxes, Payments in Lieu of Taxes, Economic Activity Tax Revenues and CID Revenues. Any change in the current system of collection and distribution of real property taxes, Payments in Lieu of Taxes, Economic Activity Tax Revenues and CID Revenues in the County or the City, including without limitation the reduction or elimination of any such tax, judicial action concerning any such tax or voter initiative, referendum or action with respect to any such tax, could adversely affect the availability of revenues to pay the principal of and interest on the Bonds. There can be no assurance that the current system of collection and distribution of the real property taxes, Payments in Lieu of Taxes, Economic Activity Tax Revenues or CID Revenues in the County or the City will not be changed by any competent authority having jurisdiction to do so, including without limitation the State, the County, the City, school districts, the courts or the voters, and none of the documents relating to the issuance of the Bonds or the establishment of the Redevelopment Plan or the CID limits the ability of the City to make any such changes with respect to City taxes and levies.

In addition, if the assessed valuation in the City rises to the extent that a rollback in tax rates is required, and if the increase in assessed valuation within the Redevelopment Aea is not as extensive as the increase within the City generally, the rollback in tax rates may result in a reduction in Payments in Lieu of Taxes. See **“TAX INCREMENT FINANCING IN MISSOURI – Assessments and Collections of Ad Valorem Taxes – Reassessment and Tax Rate Rollback”** in this Private Placement Memorandum.

### **Change in State and Local Tax Rates**

Any Taxing District in the Redevelopment Area could lower its tax rate, which would have the effect of reducing the Payments in Lieu of Taxes or sales taxes derived from the Redevelopment Area. Such a reduction in rates could be as a result of a desire of the governing body of the Taxing District to lower tax rates, the retirement of general obligation bonds of the Taxing District, taxpayer initiative, or in response to state or local litigation or legislation affecting the broader taxing structure within the Taxing District, such as litigation or legislation affecting the primary reliance on ad valorem property taxes to fund elementary and secondary education in the State.

Pursuant to the TIF Act, if the voters in a Taxing District vote to approve an increase in such Taxing District's levy rate for ad valorem tax on real property, any additional revenues generated within an existing redevelopment project area that are directly attributable to the newly voter-approved incremental increase in such Taxing District's levy rate shall not be considered Payments in Lieu of Taxes subject to deposit into a special allocation fund without the consent of such Taxing District. Revenues will be considered directly attributable to the newly voter-approved incremental increase to the extent that they are generated from the difference between the Taxing District's actual levy rate currently imposed and the maximum voter approved levy rate at the time that the redevelopment project was adopted. If the voters in a Taxing District vote to approve an increase in such Taxing District's sales tax or use tax, other than the renewal of an expiring sales or use tax, any additional revenues generated within an existing redevelopment project area that are directly

attributable to the newly voter-approved incremental increase in such Taxing District's levy rate shall not be considered economic activity taxes subject to deposit into a special allocation fund without the consent of such Taxing District. No Taxing District, including the City, is under any obligation to consent to revenues from a future voter-approved tax being subjected to tax increment financing and deposited in the City's special allocation fund.

### **Debt Service Reserve Fund**

At the time of issuance of the Bonds, the Bond Proceeds Account Debt Service Reserve Fund will be funded in an amount equal to \$1,030,300.00\*. See "**SECURITY AND SOURCES OF PAYMENT FOR THE BONDS — Indenture Funds And Accounts**" in this Private Placement Memorandum. The Business Interruption Account of the Debt Service Reserve Funds is expected to be funded from funds transferred from the Revenue Fund until the amount on deposit therein is equal to \$1,030,300\*. There can be no assurance that the amounts on deposit in the Debt Service Reserve Fund will be available if needed for payment of the Bonds in the full amount of the Debt Service Reserve Requirement because (1) of fluctuations in the market value of the securities deposited therein and/or (2) if funds are transferred to the Debt Service Fund, sufficient revenues may not be available in the Revenue Fund to replenish the Debt Service Reserve Fund to the Debt Service Reserve Requirement.

### **Redemption of Bonds**

The Bonds are subject to redemption, in whole or in part, prior to maturity. If the Bonds are redeemed prior to their maturity, the Owners thereof will not receive the rate of interest indicated for the term of their initial investment, and, if so redeemed, the Owners may not be able to reinvest the proceeds thereof at comparable rates.

Purchasers of Bonds at a price in excess of their principal amount should consider the fact that the Bonds are subject to redemption at a redemption price equal to their principal amount plus accrued interest under certain circumstances. See the caption "**THE BONDS – Redemption**" in this Private Placement Memorandum.

### **Defeasance Risk**

When any or all of the Bonds or the interest payments thereon have been paid and discharged, then the requirements contained in the Indenture and the pledge of revenues made thereunder and all other rights granted thereby shall terminate with respect to the Bonds so paid and discharged. Bonds shall be deemed to be paid within the meaning of the Indenture when payment of the principal on such Bonds, plus premium, if any, plus interest thereon to the due date thereof (whether such due date is by reason of maturity or upon redemption as provided in the Indenture, or otherwise), either (1) has been made or caused to be made in accordance with the terms of the Indenture, or (2) provision therefor has been made by depositing with the Trustee, in trust and irrevocably setting aside exclusively for such payment, (i) moneys sufficient to make such payment or (ii) non-callable 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 and the Trustee shall have received an opinion of Bond Counsel (which opinion may be based upon a ruling or rulings of the Internal Revenue Service) to the effect that such deposit of interest on any Bonds will not result in the interest on any Bonds then Outstanding and exempt from taxation for federal income tax purposes becoming subject to federal income taxes then in effect and that all conditions precedent to the satisfaction of the Indenture have been met. Any money and non-callable Government Securities that at any time shall be deposited with the Trustee by or on behalf of the City, for the purpose of paying and discharging any of the Bonds or the interest payments thereon, shall be assigned, transferred and set over to the Trustee in trust for the respective Owners of the Bonds, and such moneys shall be irrevocably appropriated to the payment and discharge thereof. Non-callable

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\* Preliminary; subject to change.

Government Securities include, in addition to cash and obligations pre-refunded with cash, bonds, notes, certificates of indebtedness, treasury bills and other securities constituting direct obligations of, or obligations the principal of and interest on which are fully and unconditionally guaranteed as to full and timely payment by, the United States of America. Historically, such United States obligations have been rated in the highest rating category by the rating agencies. There is no legal requirement in the Indenture that Government Securities consisting of such United States obligations be or remain rated in the highest rating category by any rating agency. Prices of municipal securities in the secondary market are subject to adjustment upward and downward in response to changes in the credit markets and a change or downgrade in the rating of Government Securities could affect the price of Bonds defeased with such Government Securities.

### **Determination of Taxability**

The Bonds are not subject to redemption, nor are the interest rates on the Bonds subject to adjustment, in the event of a determination by the Internal Revenue Service (the “**Service**”) or a court of competent jurisdiction that the interest paid or to be paid on any Bond is or was includible in the gross income of the Owner of a Bond for federal income tax purposes. Such determination may, however, result in a breach of the City’s tax covenants set forth in the Indenture which may constitute an event of default under the Indenture. It may be that Owners would continue to hold their Bonds, receiving principal and interest as and when due, but would be required to include such interest payments in gross income for federal income tax purposes. Likewise, the Indenture does not provide for the redemption of the Bonds or the payment of any additional interest or pen

### **Future Changes in the Law**

There can be no assurance that the Missouri state legislature will not enact legislation that will amend the applicable state tax increment financing laws, state community improvement district laws or other laws or the Constitution of the State of Missouri resulting in a reduction of tax revenues, and consequently, an adverse effect on the revenues otherwise available to pay the debt service on any of the Bonds. Various state and federal laws, regulations and constitutional provisions apply to the obligations created by the Bonds. There is no assurance that there will not be any change in, interpretation of, or addition to such applicable laws, provisions and regulations which would have a material effect, either directly or indirectly, on the City or the taxing authority of the City.

### **Limitations on Remedies**

The remedies available to the Owners upon a default under the Indenture are in many respects dependent upon judicial action, which is often subject to discretion and delay under existing constitutional and statutory law and judicial decisions, including specifically Title 11 of the United States Code. The various legal opinions to be delivered concurrently with delivery of the Bonds will be qualified as to enforceability of the various legal instruments by limitations imposed by bankruptcy, reorganization, insolvency or other similar laws affecting the rights of creditors generally, now or hereafter in effect; to usual equity principles which shall limit the specific enforcement under laws of the State as to certain remedies; to the exercise by the United States of America of the powers delegated to it by the United States Constitution; and to the reasonable and necessary exercise, in certain exceptional situations, of the police power inherent in the sovereignty of the State and its governmental bodies, in the interest of serving an important public purpose.

### **Lack of Rating and Market for the Bonds**

The Bonds have not received a credit rating by any rating agency. The absence of a rating could affect the ability of owners of the Bonds to sell their Bonds or the price at which their Bonds can be sold. No assurance can be given that a secondary market for the Bonds will develop following the completion of the offering of the Bonds. The Bonds are not readily liquid and no person should invest in the Bonds with funds such person may need to convert readily into cash. Bondowners should be prepared to hold their Bonds to the stated

maturity date. The Placement Agent will not be obligated to repurchase or place any of the Bonds, and no representation is made concerning the existence of any secondary market for the Bonds. No assurance can be given that any secondary market will develop following the completion of the offering of the Bonds and no assurance can be given that the initial offering price for the Bonds will continue for any period of time.

### **Risk of Audit**

The Internal Revenue Service has established an ongoing program to audit tax-exempt obligations to determine whether interest on such obligations should be included in gross income for federal income tax purposes. No assurance can be given that the Internal Revenue Service will not commence an audit of the Bonds. Owners of the Bonds are advised that, if an audit of the Bonds were commenced, in accordance with its current published procedures, the Internal Revenue Service would likely treat the City as the taxpayer, and the owners of the Bonds may not have a right to participate in such audit. Public awareness of any audit could adversely affect the market value and liquidity of the Bonds during the pendency of the audit, regardless of the ultimate outcome of the audit.

### **Cybersecurity Risks**

The City relies on its information systems to provide security for processing, transmission and storage of confidential personal, health-related, credit and other information. It is possible that the City's security measures will not prevent improper or unauthorized access or disclosure of personally identifiable information resulting from cyber-attacks. Security breaches, including electronic break-ins, computer viruses, attacks by hackers and similar breaches can create disruptions or shutdowns of the City and the services it provides, or the unauthorized disclosure of confidential personal, health-related, credit and other information. Any failure to maintain proper functionality and security of information systems could interrupt the City's operations, delay receipt of revenues (including Payments in Lieu of Taxes, Economic Activity Tax Revenues and CID Revenues), subject it to liability claims or regulatory penalties. The City has purchased an insurance policy to help mitigate its risk of loss in the event of a cyber-security event.

### **Amendments to Financing Documents**

Certain amendments to the Indenture and the Financing Agreement may be made without notice to or the consent of the Owners of the Bonds. Certain other amendments to the Indenture and the Financing Agreement may be made with the consent of the Owners of not less than a majority in principal amount of the Bonds then Outstanding affected by such supplemental indentures and certain other amendments may be made only with the consent of the Owners of 100% of the Bonds then outstanding. Such amendments may adversely affect the security of the Owners of the Bonds. In addition to the foregoing, in some jurisdictions outside the State, there are a variety of trust instruction procedure ("TIP") statutes, which generally allow judicially supervised remedies for trust estates of trustees that have a nexus, such as an office of the Trustee, with such jurisdiction. Under such TIP statutes, such jurisdictions may allow or order the Trustee to amend the documents relating to the Bonds, including the Indenture, in contravention of the manner provided for in such documents, including without limitation allowing the Trustee to disregard provisions requiring the consent of the Owners of the Bonds prior to certain amendments of these documents.

### **Forward-Looking Statements**

Certain statements included in or incorporated by reference in this Private Placement Memorandum that are not purely historical are "forward-looking statements" within the meaning of the United States Private Securities Litigation Reform Act of 1995, Section 21E of the United States Securities Exchange Act of 1934, as amended, and Section 27A of the United States Securities Act of 1933, as amended, and reflect the Developer's current expectations, hopes, intentions or strategies regarding the future. Such statements may be identifiable by the terminology used such as "plan," "expect," "estimate," "budget," "intend" or other similar words. Such

forward-looking statements include, among others, certain statements under this section captioned “INVESTMENT CONSIDERATIONS AND RISKS.”

THE ACHIEVEMENT OF CERTAIN RESULTS OR OTHER EXPECTATIONS CONTAINED IN SUCH FORWARD-LOOKING STATEMENTS INVOLVE KNOWN AND UNKNOWN RISKS, UNCERTAINTIES AND OTHER FACTORS WHICH MAY CAUSE ACTUAL RESULTS, PERFORMANCE OR ACHIEVEMENTS DESCRIBED TO BE MATERIALLY DIFFERENT FROM ANY FUTURE RESULTS, PERFORMANCE OR ACHIEVEMENTS EXPRESSED OR IMPLIED BY SUCH FORWARD-LOOKING STATEMENTS, INCLUDED IN SUCH RISKS AND UNCERTAINTIES ARE (i) THOSE RELATING TO THE POSSIBLE INVALIDITY OF THE UNDERLYING ASSUMPTIONS AND ESTIMATES, (ii) POSSIBLE CHANGES OR DEVELOPMENTS IN SOCIAL ECONOMIC, BUSINESS, INDUSTRY, MARKET, LEGAL AND REGULATORY CIRCUMSTANCES, AND (iii) CONDITIONS AND ACTIONS TAKEN OR OMITTED TO BE TAKEN BY THIRD PARTIES, INCLUDING CUSTOMERS, SUPPLIERS, BUSINESS PARTNERS AND COMPETITORS, AND LEGISLATIVE, JUDICIAL AND OTHER GOVERNMENTAL AUTHORITIES AND OFFICIALS. ASSUMPTIONS RELATED TO THE FOREGOING INVOLVE JUDGMENTS WITH RESPECT TO, AMONG OTHER THINGS, FUTURE ECONOMIC, COMPETITIVE, AND MARKET CONDITIONS AND FUTURE BUSINESS DECISIONS, ALL OF WHICH ARE DIFFICULT OR IMPOSSIBLE TO PREDICT ACCURATELY. FOR THESE REASONS, THERE CAN BE NO ASSURANCE THAT THE FORWARD-LOOKING STATEMENTS INCLUDED IN THIS PRIVATE PLACEMENT MEMORANDUM WILL PROVE TO BE ACCURATE.

UNDUE RELIANCE SHOULD NOT BE PLACED ON FORWARD-LOOKING STATEMENTS. ALL FORWARD-LOOKING STATEMENTS INCLUDED IN THIS PRIVATE PLACEMENT MEMORANDUM ARE BASED ON INFORMATION AVAILABLE TO THE CITY AND THE DEVELOPER ON THE DATE HEREOF, AND NEITHER THE CITY NOR THE DEVELOPER ASSUMES ANY OBLIGATION TO UPDATE ANY SUCH FORWARD-LOOKING STATEMENTS IF OR WHEN THEIR EXPECTATIONS OR EVENTS, CONDITIONS OR CIRCUMSTANCES ON WHICH SUCH STATEMENTS ARE BASED OCCUR OR FAIL TO OCCUR.

#### **In Summary**

*The foregoing is intended only as a summary of certain risk factors attendant to an investment in the Bonds. An investment in the Bonds involves a substantial element of risk. In order to identify risk factors and make an informed investment decision, potential investors should be thoroughly familiar with this entire Private Placement Memorandum (including the Appendices to this Private Placement Memorandum) in order to make a judgment as to whether the Bonds are an appropriate investment.*

#### **ABSENCE OF LITIGATION**

##### **The City**

There is no litigation, controversy or other proceeding of any kind pending, or to the City’s knowledge, threatened in which any matter is raised or may be raised questioning, disputing, challenging or affecting in any way the legal organization of the City, the right or title of any of the City’s officers to their respective offices, the Financing Documents, the legality of any official act taken in connection with the issuance of the Bonds or the legality of any of the proceedings had or documents entered into in connection with the authorization, issuance or sale of the Bonds.

## **The Developer**

There is no litigation, proceedings or investigation pending or, to the knowledge of the corporate officers of the Developer, threatened against the Developer, except litigation involving claims the probable recoveries in which and the estimated costs and expenses of defense of which, (i) will be entirely within the applicable insurance policy limits (subject to applicable deductibles) of the Developer, or (ii) if adversely determined, will not materially and adversely affect the ability of the Developer to perform its obligations under the documents relating to the Bonds and the Redevelopment Project.

In addition, no litigation, proceedings or investigations are pending or, to the knowledge of the corporate officers of the Developer, threatened against the Developer seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of the Financing Documents, the Bonds or any other required documents by the City, or any other required documents by the Developer, or which would in any manner challenge or adversely affect the corporate existence or powers of the Developer to enter into and carry out the transactions described in or contemplated by or the execution, delivery, validity or performance by the Developer of the terms and provisions of the Redevelopment Agreement or any other documents relating to the issuance of the Bonds or relating to the development of the Redevelopment Project to which it is a party.

## **The District**

There is no litigation, controversy or other proceeding of any kind pending, or to the District's knowledge, threatened in which any matter is raised or may be raised questioning, disputing, challenging or affecting in any way the legal organization of the District, the right or title of any of the District's officers to their respective offices, the legality of any official act taken in connection with the imposition of the CID Sales Tax or the legality of any of the proceedings had or documents entered into in connection with the authorization, issuance or sale of the Financing Document or the Bonds.

## **MUNICIPAL ADVISOR**

Piper Sandler & Co. (the "**Municipal Advisor**"), is a registered municipal advisor with the Securities and Exchange Commission and the Municipal Securities Rulemaking Board. The Municipal Advisor is employed by the City to render certain professional services, including advising the City on a plan of financing relating to the Bonds. The Municipal Advisor is not obligated to verify, and has not reviewed or undertaken an independent verification of, the accuracy, completeness or fairness of the information contained in this Official Statement.

## **LEGAL MATTERS**

Legal matters incident to the authorization, issuance and sale of the Bonds by the Issuer are subject to the approving legal opinion of Gilmore & Bell, P.C., Kansas City, Missouri, Bond Counsel, whose approving opinion will be delivered with the Bonds. A copy of the proposed form of such opinion is attached as **Appendix B** to this Private Placement Memorandum. Certain legal matters will be passed upon for (i) the Developer and the District by Polsinelli PC, Kansas City, Missouri, and (ii) the Placement Agent by FisherBroyles, LLP.

The legal opinions to be delivered concurrently with the delivery of the Bonds express the professional judgment of the attorneys rendering the opinions as to the legal issues explicitly addressed therein. By rendering a legal opinion, the opinion giver does not become an insurer or guarantor of that expression of professional judgment, of the transactions opined upon or of the future performance of parties to such transaction, and the rendering of an opinion does not guarantee the outcome of any legal dispute that may arise out of the transaction.

## TAX MATTERS

*The following is a summary of the material federal and State of Missouri income tax consequences of holding and disposing of the Bonds and assumed that all of the Bonds are issued on a tax-exempt basis. This summary is based upon laws, regulations, rulings and judicial decisions now in effect, all of which are subject to change (possibly on a retroactive basis). This summary does not discuss all aspects of federal income taxation that may be relevant to investors in light of their personal investment circumstances or describe the tax consequences to certain types of owners subject to special treatment under the federal income tax laws (for example, dealers in securities or other persons who do not hold the Bonds as a capital asset, tax-exempt organizations, individual retirement accounts and other tax deferred accounts, and foreign taxpayers), and, except for the income tax laws of the State of Missouri, does not discuss the consequences to an owner under any state, local or foreign tax laws. The summary does not deal with the tax treatment of persons who purchase the Bonds in the secondary market. Prospective investors are advised to consult their own tax advisors regarding federal, state, local and other tax considerations of holding and disposing of the Bonds.*

### Opinion of Bond Counsel

In the opinion of Gilmore & Bell, P.C., Bond Counsel, under the law existing as of the issue date of the Bonds:

Federal and Missouri Tax Exemption. The interest on the Bonds (including any original issuance discount properly allocable to an owner thereof) is excludable from gross income for federal income tax purposes and is exempt from Missouri income taxation by the State of Missouri.

Alternative Minimum Tax. The interest on the Bonds is not an item of tax preference for purposes of computing the federal alternative minimum tax.

Bank Qualification. The Bonds have not been designated as “qualified tax-exempt obligations” for purposes of Section 265(b) of the Code.

Bond Counsel’s opinions are provided as of the date of the original issue of the Bonds, subject to the condition that the City comply with all requirements of the Code that must be satisfied subsequent to the issuance of the Bonds in order that interest thereon be, or continue to be, excludable from gross income for federal income tax purposes. The City has covenanted to comply with all such requirements. Failure to comply with certain of such requirements may cause the inclusion of interest on the Bonds in gross income for federal income tax purposes retroactive to the date of issuance of the Bonds. Bond Counsel is expressing no opinion regarding other federal, state or local tax consequences arising with respect to the Bonds but has reviewed the discussion under the heading “**TAX MATTERS.**”

### Other Tax Consequences

Original Issue Discount. For federal income tax purposes, original issue discount is the excess of the stated redemption price at maturity of a Bond over its issue price. The stated redemption price at maturity of a Bond is the sum of all payments on the Bond other than “qualified stated interest” (*i.e.*, interest unconditionally payable at least annually at a single fixed rate). The issue price of a Bond is generally the first price at which a substantial amount of the Bonds of that maturity have been sold to the public. Under Section 1288 of the Code, original issue discount on tax-exempt bonds accrues on a compound basis. The amount of original issue discount that accrues to an owner of a Bond during any accrual period generally equals (1) the issue price of that Bond, plus the amount of original issue discount accrued in all prior accrual periods, multiplied by (2) the yield to maturity on that Bond (determined on the basis of compounding at the close of each accrual period and properly adjusted for the length of the accrual period), minus (3) any interest payable on that Bond during that accrual period. The amount of original issue discount accrued in a particular accrual period will be considered to be received ratably on each day of the accrual period, will be excludable from gross income for federal income tax purposes, and will increase the owner’s tax basis in that Bond. Prospective investors should consult their own tax advisors concerning the calculation and accrual of original issue discount.



Original Issue Premium. For federal income tax purposes, premium is the excess of the issue price of a Bond over its stated redemption price at maturity. The stated redemption price at maturity of a Bond is the sum of all payments on the Bond other than “qualified stated interest” (i.e., interest unconditionally payable at least annually at a single fixed rate). The issue price of a Bond is generally the first price at which a substantial amount of the Bonds of that maturity have been sold to the public. Under Section 171 of the Code, premium on tax-exempt bonds amortizes over the term of the Bond using constant yield principles, based on the purchaser’s yield to maturity. As premium is amortized, the owner’s basis in the Bond and the amount of tax-exempt interest received will be reduced by the amount of amortizable premium properly allocable to the owner, which will result in an increase in the gain (or decrease in the loss) to be recognized for federal income tax purposes on sale or disposition of the Bond prior to its maturity. Even though the owner’s basis is reduced, no federal income tax deduction is allowed. Prospective investors should consult their own tax advisors concerning the calculation and accrual of bond premium.

Sale, Exchange or Retirement of Bonds. Upon the sale, exchange or retirement (including redemption) of a Bond, an owner of the Bond generally will recognize gain or loss in an amount equal to the difference between the amount of cash and the fair market value of any property received on the sale, exchange or retirement of the Bond (other than in respect of accrued and unpaid interest) and such owner’s adjusted tax basis in the Bond. To the extent a Bond is held as a capital asset, such gain or loss will be capital gain or loss and will be long-term capital gain or loss if the Bond has been held for more than 12 months at the time of sale, exchange or retirement.

Reporting Requirements. In general, information reporting requirements will apply to certain payments of principal, interest and premium paid on the Bonds, and to the proceeds paid on the sale of the Bonds, other than certain exempt recipients (such as corporations and foreign entities). A backup withholding tax will apply to such payments if the owner fails to provide a taxpayer identification number or certification of foreign or other exempt status or fails to report in full dividend and interest income. The amount of any backup withholding from a payment to an owner will be allowed as a credit against the owner’s federal income tax liability.

Collateral Federal Income Tax Consequences. Prospective purchasers of the Bonds should be aware that ownership of the Bonds may result in collateral federal income tax consequences to certain taxpayers, including, without limitation, financial institutions, property and casualty insurance companies, individual recipients of Social Security or Railroad Retirement benefits, certain S corporations with “excess net passive income,” foreign corporations subject to the branch profits tax, life insurance companies, and taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry or have paid or incurred certain expenses allocable to the Bonds. Bond Counsel expresses no opinion regarding these tax consequences. Purchasers of Bonds should consult their tax advisors as to the applicability of these tax consequences and other federal income tax consequences of the purchase, ownership and disposition of the Bonds, including the possible application of state, local, foreign and other tax laws.

## CONTINUING DISCLOSURE

The City and the District have agreed in a Continuing Disclosure Certificate to provide certain financial information, operating data, and notices of certain events to the Municipal Securities Rulemaking Board (the “**MSRB**”), in compliance with Rule 15c2-12 (the “**Rule**”) promulgated by the Securities and Exchange Commission. The form of the proposed Continuing Disclosure Certificate is included in **Appendix C** to this Private Placement Memorandum.

A failure by the City or the CID to comply with the requirements of the Continuing Disclosure Certificate will not constitute an Event of Default under the Indenture (although Bondowners will have any available remedy at law or in equity).

The City has engaged in undertakings similar to the Continuing Disclosure Certificate with respect to other obligations previously issued by the City to provide to the MSRB the audited financial statements of the City and updates of certain operating data of the City. During the previous five years, the City has not failed to comply, in all material respects, with any previous undertakings it has entered into with respect to Rule 15c2-12.

The CID has not previously entered into any continuing disclosure agreement or undertaking.

### **CERTAIN RELATIONSHIPS**

Gilmore & Bell, P.C., Bond Counsel, is representing the City in connection with the issuance of the Bonds and has represented the Placement Agent in transactions unrelated to the issuance of the Bonds, but is not representing the Placement Agent in connection with the issuance of the Bonds.

### **PRIVATE PLACEMENT OF BONDS**

UMB Bank, N.A. (the “**Placement Agent**”), pursuant to a Private Placement Agreement among the City, the Developer and the Placement Agent, has agreed, subject to certain conditions contained therein, to use its best efforts to privately place the Bonds at the aggregate purchase price of \$\_\_\_\_\_. The Placement Agent will receive a placement fee in the amount of \$\_\_\_\_\_. The obligations of the Placement Agent to use its best efforts to place the Bonds is subject to certain terms and conditions set forth in the Private Placement Agreement.

### **NOTICE TO INVESTORS**

The Bonds have not been registered under the Securities Act or under applicable state securities laws and may not be offered or sold within the United States or to U.S. persons (as such terms are defined in the Securities Act) except pursuant to an exemption from, or in a transaction not subject to, the registration requirements thereunder.

**The Bonds may only be purchased by or transferred to Approved Investors.**

**Each initial purchaser will be required to delivery to the City and the Trustee a letter in substantially the form attached as Exhibit E to the Indenture executed by the proposed purchaser or transferee.**

“**Approved Investors**” means, (a) an “accredited investor” under Rule 501(a) of Regulation D promulgated under the Securities Act of 1933, or (ii) a “qualified institutional buyer” under Rule 144A promulgated under the Securities Act of 1933.

Each purchaser of the Bonds offered hereby will be deemed to have represented and agreed as follows (terms used herein that are defined in the Securities Act are used herein as defined therein):

**The purchaser (i) is an accredited investor or a qualified institutional buyer, and (ii) is acquiring such Bonds for its own account or for the account of a qualified institutional buyer, as the case may be, and understands that any subsequent owner of the Bonds is required to be an “accredited investor” under Rule 501(a) of Regulation D or a “qualified institutional buyer” as defined in Rule 144A.**

### **Notice Regarding Restriction on Use of Retirement Plan Assets to Purchasers of the Bonds**

In addition, by its acceptance of a Bond, each purchaser and subsequent transferee of a Bond will be deemed to have represented and warranted that either (i) no portion of the assets used by such purchaser or

transferee to acquire and hold the Bonds constitutes assets of any employee benefit plan subject to Title I of the Employee Retirement Income Security Act of 1974, as amended (“**ERISA**”), or Section 4975 of the Internal Revenue Code of 1986, as amended (the “**Code**”), or the applicable provisions of any federal, state, local or non-United States laws which are similar to the provisions of Title I of ERISA or Section 4975 of the Code (“**Similar Laws**”) or (ii) the purchase and holding of such Bond by such purchaser or transferee will not constitute a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code or violation of any applicable Similar Laws.

## **NO RATINGS**

The City has not applied to any rating service for a rating on the Bonds.

## **MISCELLANEOUS**

The references herein to the TIF Act, the CID Act, the Indenture, the Financing Agreement, the CID Agreement, the Redevelopment Plan and the Redevelopment Agreement are brief outlines of certain provisions of such documents and do not purport to be complete. Reference is made to the TIF Act, the CID Act, and such documents for full and complete statements of their provisions. Copies of such documents are on file at the offices of the Placement Agent (see the section herein captioned “**INTRODUCTION - Definitions, Summaries of Documents and Additional Information**”) and following delivery of the Bonds will be on file at the office of the Trustee.

Any statements in this Private Placement Memorandum involving matters of opinion or forecast, whether or not expressly so stated, are intended as such and not as representations of fact. This Private Placement Memorandum is not to be construed as a contract or agreement between the City, the Developer, the District, the Placement Agent and the purchasers or owners of the Bonds.

The agreement of the City with the owners of the Bonds is fully set forth in the Indenture, and neither any advertisement of the Bonds nor this Private Placement Memorandum is to be construed as constituting an agreement with the purchasers of the Bonds.

The cover page and the attached Appendices are integral parts of this Private Placement Memorandum and must be read together with all of the foregoing statements.

The information presented in this Private Placement Memorandum has been furnished by sources believed by the Placement Agent to be reliable.

Neither the City, the District nor any of their respective officials, officers or employees make any warranties or representations regarding either the accuracy or sufficiency of the material furnished in this Private Placement Memorandum, except as otherwise expressly set forth herein. Neither the City, the District nor any of their respective officials, officers or employees assumes any duties, responsibility or obligations with respect to the Bonds other than those imposed, either expressly or by fair implication, upon such party by the Indenture, the Bonds, the Redevelopment Agreement or any other agreements executed in connection with the transactions described herein.

The Developer has reviewed the information contained in this Private Placement Memorandum under the captions **“INTRODUCTION – The Redevelopment Project,” “INTRODUCTION – The Smithville Commons Community Improvement District and CID Sales Tax,” “SMITHVILLE COMMONS COMMUNITY IMPROVEMENT DISTRICT AND CID SALES TAX,” “THE SMITHVILLE COMMONS PROJECT,” “ABSENCE OF LITIGATION – The District” and “ABSENCE OF LITIGATION – The Developer.”** The execution and delivery of this Private Placement Memorandum has been duly authorized by the Developer.

**SMITHVILLE DEVELOPMENT ASSOCIATES,**  
**LLC**, a Missouri limited liability company

By: \_\_\_\_\_

**APPENDIX A-1**  
**FORM OF THE INDENTURE**

**APPENDIX A-2**  
**FORM OF THE FINANCING AGREEMENT**

**APPENDIX B**  
**FORM OF BOND COUNSEL OPINION**

## **APPENDIX C**

### **FORM OF THE CONTINUING DISCLOSURE CERTIFICATE**



**APPENDIX D**  
**REVENUE STUDY**

**APPENDIX E**  
**BOOK-ENTRY ONLY SYSTEM**

## APPENDIX E

### BOOK-ENTRY ONLY SYSTEM

*The information provided immediately below concerning DTC and the Book-Entry-Only System, as it currently exists, has been obtained from DTC and is not guaranteed as to accuracy or completeness by, and is not to be construed as a representation by, the Placement Agent, the City or the Developer.*

#### General

When the Bonds are issued, ownership interests will be available to purchasers only through a book-entry-only system (the “**Book-Entry-Only System**”) maintained by DTC. DTC will act as securities depository for the Bonds. Initially, the Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee). The following discussion will not apply to any Bonds issued in certificate form due to the discontinuance of the DTC Book-Entry-Only System, as described below.

#### DTC and its Participants

DTC, the world’s largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC’s participants (“**Direct Participants**”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“**DTCC**”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“**Indirect Participants**”). DTC has a Standard & Poor’s rating of AA+. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com).

#### Purchase of Ownership Interests

Purchases of the Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Bonds on DTC’s records. The ownership interest of each actual purchaser of each Bond (the “**Beneficial Owner**”) is, in turn, to be recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase, but Beneficial Owners, however, are expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interest in the Bonds, except in the event that use of the book-entry system for the Bonds is discontinued.

So long as Cede & Co., as nominee of DTC, is the registered owner of any of the Bonds, the Beneficial Owners of such Bonds will not receive or have the right to receive physical delivery of the Bonds, and references

herein to the bondowners or registered owners of such Bonds shall mean Cede & Co. and shall not mean the Beneficial Owners of such Bonds.

## **Transfers**

To facilitate subsequent transfers, all Bonds deposited by Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of the Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Bonds. DTC's records reflect only the identity of the Direct Participants to whose accounts such Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

## **Notices**

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

Redemption notices shall be sent to DTC. If less than all of the Bonds are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

## **Voting**

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to the Bonds unless authorized by a Direct Participant in accordance with DTC's Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the Authority of the securities as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Bonds are credited on the record date identified in a listing attached to the Omnibus Proxy.

## **Payments of Principal and Interest**

So long as any Bond is registered in the name of DTC's nominee, all payments of principal of, premium, if any, and interest on such Bond will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the Authority or the Paying Agent or Bond Registrar, on payable dates in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC nor its nominee, the Trustee, the Borrower or the Authority, subject to any statutory and regulatory requirements as may be in effect from time to time. Payment of principal of, premium, if any, and interest on the Bonds to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Trustee, disbursement of such payments to Direct Participants is the responsibility of DTC, and disbursement of such payments to the Beneficial Owners is the responsibility of Direct and Indirect Participants.

## **Discontinuation of Book-Entry-Only System**

DTC may discontinue providing its services as a securities depository with respect to the Bonds at any time by giving reasonable notice to the Authority or the Trustee. Under such circumstances, in the event that a successor depository is not obtained, the Bonds are required to be printed and delivered as described in the Loan and Trust Agreement.

The use of the system of book-entry transfers through DTC (or a successor securities depository) may be discontinued as described in the Indenture. In that event, the Bonds will be printed and delivered as described in the Indenture.

*The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that the Placement Agent, the City and the Developer believe to be reliable, but none of the Placement Agent, the City or the Developer takes any responsibility for the accuracy thereof, and neither the DTC Participants nor the Beneficial Owners should rely on the foregoing information with respect to such matters but should instead confirm the same with DTC or the DTC Participants, as the case may be.*