

AN ORDINANCE APPROVING A REDEVELOPMENT PLAN FOR A COMMERCIAL APARTMENT PROJECT AND A DEVELOPMENT AND PERFORMANCE AGREEMENT BETWEEN THE CITY OF CAMDENTON, MISSOURI AND GREATER OZARKS REAL ESTATE HOLDINGS, LP, FOR THE PURPOSE OF PROVIDING FUNDS TO PAY THE COSTS OF IMPROVING AN APARTMENT PROJECT IN THE CITY; AND AUTHORIZING CERTAIN AGREEMENTS AND OTHER ACTIONS BY THE CITY

WHEREAS, the City of Camdenton, Missouri, a fourth class city and political subdivision of the State of Missouri (the "City"), is authorized and empowered pursuant to the provisions of Article VI, Section 27(b) of the Missouri Constitution, as amended, and Sections 100.010 through 100.200, inclusive, of the Revised Statutes of Missouri, as amended ("RSMo," collectively, the "Act"), to purchase, construct, extend, improve and equip certain projects (as defined in Section 100.010 RSMo and as described in Article VI, Section 27(b) of the Missouri Constitution) and to issue revenue bonds for the purpose of providing funds to pay the costs of such projects and to lease or otherwise dispose of such projects to private persons or corporations for manufacturing, commercial, research and development, warehousing and industrial development purposes upon such terms and conditions as the City deems advisable; and

WHEREAS, Section 100.050 RSMo requires the City to prepare a plan in connection with any redevelopment project undertaken pursuant to the Act; and

WHEREAS, a Plan for a Commercial Project and Cost-Benefit Analysis for Poplar Place Apartments (the "Plan") was prepared and distributed on August 24, 2023, and is attached hereto as **Exhibit A**, to the affected taxing jurisdictions along with notice of a tax district hearing to be held by the City related to the improving of a commercial apartment project (the "Project"); and

WHEREAS, on September 19, 2023 the tax district hearing on the Plan was held by the City, and public comment was taken; and

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

WHEREAS, pursuant to the foregoing, the City desires to enter into the Development and Performance Agreement (the "Development and Performance Agreement") with Greater Ozarks Real Estate Holdings, LP (the "Company"), attached as **Exhibit B**, to address (1) the acquisition, construction and installation of the Project, and (2) development incentives for the Project; and

WHEREAS, the Board of Aldermen further finds and determines that it is necessary and desirable in connection with the development of the Project that the City enter into certain documents and that the City take certain other actions and approve the execution of certain other documents as herein provided;

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF CAMDENTON, MISSOURI, AS FOLLOWS:

Section 1: Authorization of the Plan. The Board of Aldermen hereby finds that (a) proper notice as required by the Act was given to all affected taxing jurisdictions regarding the Plan, and

(b) it has fairly and duly considered any and all comments submitted to the Board of Aldermen regarding the Plan. The Board of Aldermen hereby approves the Plan.

Section 2: Authorization of Development and Performance Agreement. The City is hereby authorized to enter into the Development and Performance Agreement, in substantially the form presented to and approved by the Board of Aldermen and on file with the City Clerk, with such changes therein as are approved by the officials of the City executing the document, such officials' signatures thereon being conclusive evidence of their approval thereof.

Section 3: Execution of Development and Performance Agreement. The Mayor or City Administrator of the City is hereby authorized and directed to execute the Development and Performance Agreement and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance, for and on behalf of and as the act and deed of the City. The City Clerk of the City is hereby authorized and directed to attest to and affix the seal of the City to the Development and Performance Agreement and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

Section 4: Further Authority. The Mayor, City Administrator, City Clerk and other officials, agents and employees of the City as required are hereby authorized and directed to take such further action and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance and to carry out, comply with and perform the duties of the City with respect to the Development and Performance Agreement.

Section 5: Effective Date. This Ordinance shall take effect and be in full force from and after its passage and approval by the Board of Aldermen and approval by the Mayor.

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READ THE FIRST TIME THIS 19 DAY OF SEPTEMBER, 2023.

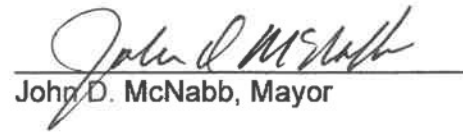
READ A SECOND TIME AND APPROVED THIS 19 DAY OF SEPTEMBER, 2023.

ATTEST:



Renée Kingston, MMC/MPEC
Assistant City Administrator/City Clerk

APPROVED:


John D. McNabb, Mayor



CITY OF CAMDENTON, MISSOURI

**PLAN FOR A COMMERCIAL PROJECT
AND COST-BENEFIT ANALYSIS**

FOR

POPLAR PLACE APARTMENTS

AUGUST 24, 2023

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* * *

I. PURPOSE OF THIS PLAN

The Board of Aldermen of the City of Camdenton, Missouri (the “City”) will consider an ordinance approving this Plan (defined below) and authorizing the issuance by the City of its taxable revenue bonds in one or more series in the aggregate principal amount of approximately \$32,000,000 (the “Bonds”), to finance costs of equipping a commercial project (the “Project”) for Greater Ozarks Real Estate Holdings, LP, a Missouri limited partnership or its designee or assigns (the “Company”) as more fully described and defined herein. The Bonds will be issued pursuant to the provisions of Article VI, Section 27(b) of the Missouri Constitution, as amended and Sections 100.010 to 100.200 of the Revised Statutes of Missouri, as amended (collectively, the “Act”).

This Plan for a Commercial Project and Cost-Benefit Analysis (the “Plan”) has been prepared to satisfy requirements of the Act and to analyze the potential costs and benefits, including the related tax impact on all affected taxing jurisdictions, of using revenue bonds to finance the Project and to facilitate abatement of *ad valorem* taxes on the bond-financed property.

II. GENERAL DESCRIPTION OF CHAPTER 100 FINANCINGS

General. The Act authorizes cities, counties, towns and villages to issue revenue bonds to finance the purchase, construction, extension and improvement of warehouses, distribution facilities, research and development facilities, office industries, agricultural processing industries, service facilities that provide interstate commerce, industrial plants and other commercial facilities. Bond proceeds may be used to finance land, buildings, fixtures and machinery.

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

If proceeds of the revenue bonds are to be used to pay the costs, or reimburse the costs, of making improvements to real property and purchasing and installing personal property, concurrently with the closing of the bonds, the company will convey to the municipality title to (1) the site on which the commercial project will be located and/or (2) the personal property included in the project. (The municipality must be the legal owner of the property while the bonds are outstanding for the property to be eligible for tax abatement, as further described below.) At the same time, the municipality will lease the project site, the improvements thereon, and/or the personal property back to the benefited company pursuant to a lease agreement. The lease agreement will require the company, acting on behalf of the municipality, to use the bond proceeds to pay, or reimburse, the costs of purchasing, constructing, improving, equipping, and installing the project, as applicable.

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

Property Tax Abatement. Under Article X, Section 6 of the Missouri Constitution and Section 137.100 of the Revised Statutes of Missouri, all property of any political subdivision is exempt from

taxation. In a typical transaction, the municipality holds fee title to the project and leases the project to the benefited company.

If the municipality and the company determine that partial tax abatement is desirable, the company may agree to make “payments in lieu of taxes.” The amount of payments in lieu of taxes is negotiable. The payments in lieu of taxes are payable by December 31 of each year, and are distributed to the municipality and to each political subdivision within the boundaries of the project in the same manner and in the same proportion as property taxes would otherwise be distributed under Missouri law.

III. DESCRIPTION OF THE PARTIES

Greater Ozarks Real Estate Holdings, LP. The Company is a limited partnership organized and existing under the laws of the State of Missouri.

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

IV. REQUIREMENTS OF THE ACT

Description of the Project. The Project to be financed by the Bonds consists of a multi-family residential development, including multiple buildings, community amenities and parking (the “Project”) to be constructed on approximately 5.47 acres generally located on the south of Roy Harmon Street and extending to the west of Cedar Street in the City.

Estimate of the Costs of the Project. The Project is estimated to cost \$32,000,000 invested in real property improvements, expected to be made beginning in the year 2023.

Source of Funds to be Expended for the Project. The sources of funds to be expended for the Project will be the proceeds of the Bonds expected to be issued in one or more series in an aggregate principal amount of approximately \$32,000,000, to be issued by the City and purchased by the Company or its designee (the “Bondholder”) and, if needed, other available funds of the Company. It is possible that during construction and installation of the Project that costs could increase because of a variety of economic and delivery factors and that the principal amount of the Bonds would increase to accommodate such costs. No such adjustment in the principal amount of the Bonds would be made to expand the scope or purpose of the Project. The Bonds will be payable solely from the revenues derived by the City from the lease or other disposition of the Project (as further described below). The Bonds will not be an indebtedness or general obligation, debt or liability of the City or the State of Missouri.

Statement of the Terms Upon Which the Project is to be Leased or Otherwise Disposed of by the City. The City will hold title to the Project under the Chapter 100 transaction. The City will lease the Project to the Company or an affiliate thereof for lease payments equal to the principal and interest payments on the Bonds. Under the terms of the lease agreement with the City, the Company will have the option to purchase the Project at any time and will have the obligation to purchase the Project at the termination of the lease. The lease between the City and the Company is expected to terminate at the end of 2033, unless terminated sooner pursuant to the terms of the lease.

Affected School District, County and City. The Camdenton R-III School District is the school district affected by the Project. Camden County, Missouri is the county affected by the Project. The City is the city affected by the Project. The Cost-Benefit Analysis attached hereto identifies all other taxing

districts affected by the Project (other than those taxing entities solely affected by the Project with respect to receipt of tax revenues from the commercial surcharge tax).

Assessed Valuation. The most recent equalized assessed valuation of the Project is \$1,045. The estimated total equalized assessed valuation of the Project Site after development of the Project is \$4,221,389 (expected for tax year 2027).

Payments in Lieu of Taxes. If this Plan is approved by the City Council, the City intends to issue the Bonds in 2023 and to provide tax abatement to the Company for the improvements to the Project Site for a period of ten years ending in 2033.

It is expected the real property investment begin in 2023 in the amount outlined above in *Estimates of the Costs of the Project*. Beginning the year the Company makes the real property investment, the Company will receive ten years of abatement of 50% on the improvements to the Project Site for all taxing jurisdictions, including the taxes imposed by Camden County Ambulance District. The Company will be required to make payments in lieu of taxes in an amount equal to 50% of the amount of ad valorem real property taxes which would have been paid in each year with respect to the improvements to the Project had the Project not been exempt from such taxes. The Company will make a payment in lieu of taxes based upon the amount of taxes being paid for the real property as it exists upon approval and issuance of the Bonds.

Cost-Benefit Analysis and Discussion of Exhibits. In compliance with Section 100.050.2(3) of the Revised Statutes of Missouri, this Plan has been prepared to show the costs and benefits to the City and to other taxing jurisdictions affected by the tax abatements and exemptions of the Project. The following is a summary of the exhibits attached to this Plan that show the direct tax impact the Project is expected to have on each taxing jurisdiction. This Plan does not attempt to quantify the overall economic impact of the Project.

Project Assumptions. **Exhibit 1** presents a list of the assumptions related to the determination of assessed valuations and the tax formulas.

Summary of Cost-Benefit Analysis. **Exhibit 2** presents a summary for each affected taxing district of (1) the total estimated tax revenues that would be generated if the Project occurred but did not receive tax abatement, (2) the total estimated value of the payments in lieu of taxes (“PILOT Amounts”) to be made by the Company for the proposed abatement period, and (3) the total estimated value of the abatement to the Company.

Real Property Tax Revenues. **Exhibit 3** provides the projected tax revenues that would be generated from the real property without tax abatement. **Exhibit 4** provides the projected real property PILOT Amount with the Project and with tax abatement. **Exhibit 5** provides the projected value of the real property tax abatement to the Company.

Sales and Use Tax Exemption. **Exhibit 6** provides the estimated impact on sales and use tax collections on the purchase of construction materials, as further described in Section VI below.

V. ASSUMPTIONS AND BASIS OF PLAN

In preparing this Plan, key assumptions have been made to estimate the fiscal impact of the abatement and exemptions proposed for the Project. See **Exhibit 1** for a summary of these assumptions.

Information necessary to complete this Plan, has been furnished by representatives of the City, representatives of the Company and its counsel, the Bondholder and other persons deemed appropriate and such information has not been independently verified for accuracy, completeness or fairness.

VI. SALES AND USE TAX EXEMPTIONS

Sales and Use Tax Exemption on Construction Materials. Qualified building materials purchased for the construction of the Project are expected to be exempt from sales and use tax pursuant to the provisions of Section 144.062 of the Revised Statutes of Missouri and the underlying bond documents upon delivery of a project exemption certificate by the City to the Company. For purposes of determining the impact of the sales and use tax exemptions for the qualified building materials on the affected taxing jurisdictions, it was assumed that \$21,783,416 of construction materials will be purchased in the State of Missouri (with \$1,742,673 to occur within Camden County, Missouri but outside the City, and \$435,668 to occur within the City), and that no construction materials will be purchased out of state subject to use tax. Based on these assumptions, the fiscal impact on the affected taxing jurisdictions of the sales and use tax exemptions for qualified building materials is as shown on **Exhibit 6** of the Cost Benefit Analysis.

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

* * *

DEVELOPMENT AND PERFORMANCE AGREEMENT

between the

CITY OF CAMDENTON, MISSOURI

and

GREATER OZARKS REAL ESTATE HOLDINGS, LP

Dated as of September 19, 2023

**Relating to the Development of
Commercial Apartment Facilities**

Prepared By:

**Gilmore & Bell, P.C.
Kansas City, Missouri**

DEVELOPMENT AND PERFORMANCE AGREEMENT

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DEVELOPMENT AND PERFORMANCE AGREEMENT

THIS DEVELOPMENT AND PERFORMANCE AGREEMENT (“Agreement”) entered into as of September 19, 2023, by and between the **CITY OF CAMDENTON, MISSOURI**, a fourth class city organized and existing under the laws of the State of Missouri (the “City”), and **GREATER OZARKS REAL ESTATE HOLDINGS, LP**, a Missouri limited partnership (the “Company”) (the City and the Company are each a “Party” or collectively the “Parties”). Capitalized terms not defined elsewhere in this Agreement shall have the meaning set forth in **Section 1.01** hereof.

RECITALS:

1. The City has received a proposal from the Company for the development of multi-family apartments within the corporate limits of the City, as more specifically described in **Exhibit B**, on certain real property of the Company (the “Project Site”).

2. The City is authorized and empowered pursuant to the provisions of Article VI, Section 27(b) of the Missouri Constitution and Sections 100.010 through 100.200, inclusive, of the Revised Statutes of Missouri, as amended (collectively, the “**Chapter 100 Act**”), to purchase, construct, extend and improve certain projects (as defined in Section 100.010 of the Revised Statutes of Missouri, as amended) and to issue revenue bonds for the purpose of providing funds to pay the costs of such projects and to lease or otherwise dispose of such projects to private persons or corporations for manufacturing, commercial, research and development, warehousing and industrial development purposes upon such terms and conditions as the City shall deem advisable.

3. Following notice to be provided to affected taxing jurisdictions in accordance with Section 100.059.1 of the Chapter 100 Act, the Board of Aldermen will consider an Ordinance or Ordinances (the “**Ordinance**”) (i) approving a plan for the Project (defined below), (ii) approving this Agreement, and (iii) authorizing the issuance of approximately \$32,000,000 in aggregate principal amount of Taxable Commercial Revenue Bonds (Poplar Place Apartment Project) (the “**Bonds**”).

4. Pursuant to the Ordinance the City will be authorized to execute and deliver (a) a Trust Indenture (the “**Indenture**”), between the City and a bond trustee to be named by the City (the “**Trustee**”), for the purpose of issuing and securing the Bonds, (b) a Lease Agreement (the “**Lease**”) with the Company, as lessee, with respect to the Bonds, under which the City, as lessor, will purchase, construct, extend and improve the Project and will lease the Project and Project Site (together, the “**Leased Property**”) to the Company, and (c) a Deed of Trust (the “**Deed of Trust**”) granted by the City to secure payment of the Bonds and other obligations related to the Indenture, the Lease, this Agreement and the Bonds.

5. Pursuant to the foregoing, the City desires to enter into this Agreement with the Company to address (1) the design and construction of the Project, and (2) development incentives for the Project.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND RULES OF INTERPRETATION

Section 1.01. Definitions. Terms not defined elsewhere in this Agreement shall have the following definitions:

“Affiliate” means a person or entity which, directly or through one or more intermediaries, owns or controls, or is controlled by or which is under common control with the Company or any of its assignees, including any special purpose entity created for the purpose of owning any of the Project Sites.

“Agreement” means this Development and Performance Agreement dated as of September 19, 2023, between the City and the Company, as from time to time amended and supplemented in accordance with the provisions hereof.

“Applicable Laws and Requirements” means any applicable constitution, treaty, statute, rule, regulation, ordinance, order, directive, code, policy, interpretation, judgment, decree, injunction, writ, determination, award, permit, license, authorization, directive, requirement or decision of or agreement with or by any Governmental Authorities.

“Bonds” shall mean any revenue bonds or other obligations issued by or on behalf of the City financing the Project in accordance with this Agreement and the Chapter 100 Act.

“Bond Counsel” means Gilmore & Bell, P.C., Kansas City, Missouri, or an attorney at law or a firm of attorneys, acceptable to the City, of nationally recognized standing in matters pertaining to the tax-exempt nature of interest on obligations issued by states and their political subdivisions duly admitted to the practice of law before the highest court of any state of the United States of America or the District of Columbia.

“Board of Aldermen” means the governing body of the City.

“Business Day” means a day which is not (1) a Saturday or Sunday, (2) any other day on which the City scheduled to be closed, or (3) a day on which the New York Stock Exchange or Federal Reserve Banks are closed.

“Chapter 100 Act” is defined in **Recital 2**.

“City Event of Default” is defined in **Section 10.03**.

“City Indemnified Parties” is defined in **Section 9.01**.

“City Administrator” means the City Administrator of the City.

“Closing” means the issuance of the Bonds and the consummation of the transfer of a leasehold interest in Leased Property to the Company pursuant to a Lease.

“Company” means Greater Ozarks Real Estate Holdings, LP, a Missouri limited partnership, and its successors and assigns.

“Company Event of Default” is defined in **Section 10.02**.

“Company Public Improvements” means those public improvements to be constructed by the Company on and around the Project Site as more specifically described in **Exhibit E**.

“Completion of Construction” means the occurrence of substantial completion of the Project.

“Construction Inspector” means a City agent or employee designated by the City to perform construction inspections.

“Effective Date” means the date of this Agreement.

“Environmental Laws” means any federal, state or local law, statute, regulation, rule or ordinance or amendments thereto, and all applicable judicial, administrative or regulatory decrees, judgments or orders relating to the protection of human health or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.* (“CERCLA”), as amended, the Resource, Conservation and Recovery Act, as amended, 42 U.S.C. 6901 *et seq.* (“RCRA”), the Toxic Substances Control Act, 15 U.S.C. Sections 2601-2671, the Clean Air Act, 42 U.S.C. 7401 *et seq.*, and the Federal Water Pollution Control Act, 33 U.S.C. 1251 to 1387, as the foregoing may be amended from time to time.

“Event of Default” means any Event of Default as provided in **Article X** hereof.

“Excusable Delay” means delays due or related to acts of terrorism, acts of war or civil insurrection, or any natural occurrence, strikes, riots, floods, earthquakes, fires, casualties, epidemic, pandemic, acts of God, labor disputes, governmental restrictions or priorities, embargos, litigation, tornadoes, approval by regulatory authorities, or any other circumstances beyond the reasonable control of the applicable party using reasonable diligence to overcome which prevent such party from performing its specific duties hereunder in a timely manner, including delay in the delivery of construction materials or construction services related to any of the foregoing; provided, however, Excusable Delay does not include circumstances directly or indirectly related to lack of financing; unanticipated, or unexpected increases in the costs of construction; or errors in business judgment by the Company; and provided that Excusable Delay shall only extend the time of performance for the period of such Excusable Delay, which shall begin on the day following the date on which the Company has knowledge of the event of Excusable Delay first occurring and shall thereafter extend until the date on which the event which has caused the Excusable Delay has been materially corrected or substantially performed, or reasonably should have been materially corrected or substantially performed, given reasonable efforts.

“Financing Documents” means the financing agreements, disbursement agreements and all other agreements and certificates executed in connection with the issuance of the Bonds.

“Governmental Authorities” or **“Governmental Authority”** means any and all jurisdictions, entities, courts, boards, agencies, commissions, offices, divisions, subdivisions, departments, bodies or authorities of any nature whatsoever of any governmental unit (federal, state, county, district, municipality, city or otherwise), whether now or hereafter in existence, including the City.

“Land Use Applications” means all applications that must be filed by the Company with the City in accordance with the City’s zoning ordinance, subdivision regulations, right-of-way and easement vacation ordinances, and building regulations to receive approval from the City to develop or provide for the development of the Project Site with the Project, which may include, but is not limited to, applications for subdivision, zoning, site plan, right-of-way and easement vacation, and building permit approvals.

“Lease” is defined in the recitals above.

“Leased Property” means the Project and the Project Site.

“Lien” is defined in **Section 5.06**.

“Permits” is defined in **Section 3.02**.

“PILOT Payments” means the payments in lieu of taxes provided for in **Article VII** hereof.

“Plan” is defined in **Section 6.07(a)**.

“Plans and Specifications” means the schematic drawings, the design development drawings, and the construction plans and specifications prepared by the Project architect for the development of the Project in accordance with **Section 4.02**.

“Project” means, collectively, the Project Site and Project Improvements as they may at any time exist.

“Project Costs” means all costs of purchasing, constructing, improving and installing the Project.

“Project Improvements” a facility comprised of rentable space operated for profit by the Company in accordance with this Agreement as a multi-family apartment complex and associated uses as described in more detail in **Exhibit B** to this Agreement, including the development requirements provided in more detail in **Exhibit F** to this Agreement.

“Project Site” means all of the real estate described in **Exhibit A** attached hereto and by this reference made a part hereof.

“Tax Abatement” means the abatement of taxes described in **Article VII**.

“Transfer” is defined in **Section 13.01**.

Section 1.02. Rules of Interpretation. Unless the context clearly indicates to the contrary or unless otherwise provided herein, the following rules of interpretation shall apply to this Agreement:

(a) The terms defined in this Agreement which refer to a particular agreement, instrument or document also refer to and include all renewals, extensions, modifications, amendments and restatements of such agreement, instrument or document; provided, that nothing contained in this sentence shall be construed to authorize any such renewal, extension, modification, amendment or restatement other than in accordance with **Section 11.04** below.

(b) The words “hereof”, “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Section, subsection and exhibit references are to this Agreement unless otherwise specified. 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.

(c) Words of gender shall be deemed and construed to include correlative words of the masculine, feminine and neuter genders. Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing person shall include individuals, corporations, partnerships, joint ventures, associations, joint stock companies, trusts, unincorporated organizations and governments and any agency or political subdivision thereof.

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

(e) In the event of some ambiguity in this Agreement, the Parties shall be deemed to have jointly authored this Agreement and nothing shall be construed against or in favor of one party based on it being deemed the sole author.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.01. Representations and Warranties of the City. The City hereby represents and warrants to the Company that:

(a) Benefit to the City and State. The City represents that the Project will significantly benefit the City and the State of Missouri by (i) stimulating economic development in the City and the State, and (ii) increasing local and state tax revenues.

(b) Due Authority. The City has full constitutional and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and this Agreement has been or will be duly and validly authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the City, enforceable in accordance with its terms.

(c) No Defaults or Violation of Law. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.

(d) No Litigation. No litigation, proceedings or investigations are pending or, to the knowledge of the City, threatened against the City with respect to the Project, the Project Site, or this Agreement. In addition, no litigation, proceedings or investigations are pending or, to the knowledge of the City, threatened against the City seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the City to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the City of, the terms and provisions of this Agreement.

(e) Governmental or Corporate Consents. Except for Board of Aldermen approval, no other consent or approval is required to be obtained from, and no action need be taken by, or document filed with, any governmental body or corporate entity in connection with the execution and delivery by the City of this Agreement.

(f) No Material Change. There has been no material adverse change in the business, financial position, prospects or results of operations of the City which could affect the City's ability to perform its obligations pursuant to this Agreement.

(g) No Default. No default or Event of Default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or an Event of Default in any material respect on the part of the City under this Agreement.

(h) Construction Permits. Except as otherwise provided herein, the City has no reason to believe that the governmental permits and licenses required by the Company to be issued by the City to construct, occupy and operate the Project will not be issued in a timely manner in order to permit the Project to be constructed pursuant to this Agreement and, further, the City will cooperate with the Company to obtain any and all such permits and licenses and shall use reasonable efforts to expedite any such permits and licenses which are within the City's control.

(i) Compliance with Laws. The City is in compliance with all Applicable Laws and Requirements with respect to any of its affairs, business, and operations as contemplated by this Agreement.

The representations and warranties set forth in this **Section 2.01** shall survive Closings.

Section 2.02. Representations and Warranties of the Company. The Company hereby represents and warrants to the City that:

(a) Benefit to the City and State. The Company represents that the Project will benefit the City and the State of Missouri by (i) stimulating economic development in the City and the State, and (ii) increasing local and state tax revenues.

(b) Due Authority. The Company has all necessary power and authority to execute and deliver and perform the terms and obligations of this Agreement and to execute and deliver the documents required of the Company herein, and such execution and delivery has been duly and validly authorized and approved by all necessary proceedings. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the Company, enforceable in accordance with its terms.

(c) No Defaults or Violation of Law. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any corporate or organizational restriction or of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing. To its knowledge the Company is not in default of its obligations under any other agreement related to the Project Site or the Project, and the execution and performance of the Company's obligations hereunder will not constitute a default under any agreement to which the Company is a party.

(d) No Litigation. No litigation, proceedings or investigations are pending or, to the knowledge of the Company (including the knowledge of any member or partner of the Company executing this Agreement), threatened against the Project or the Company (or any member, partner or Affiliate of the Company) related to the Project. In addition, no litigation, proceedings or investigations are pending or, to the knowledge of the Company (including the knowledge of any member or partner of the Company executing this Agreement), threatened against the Company (or any member, partner or Affiliate of the Company) seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the Company (or any member, partner or Affiliate of the Company) to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the Company (or any member, partner or Affiliate of the Company) of, the terms and provisions of this Agreement, or that would have a material adverse effect on the financial condition of the Company (or any member, partner or Affiliate of the Company) related to the Project.

(e) No Material Change. (i) The Company has not incurred any material liabilities or entered into any material transactions other than in the ordinary course of business and the transactions contemplated by this Agreement and (ii) there has been no material adverse change in the business, financial

position, prospects or results of operations of the Company, or any member, partner or Affiliate of the Company, which could affect the Company's ability to perform its obligations pursuant to this Agreement.

(f) Governmental or Corporate Consents. No consent or approval is required to be obtained from, and no action need be taken by, or document filed with, any governmental body or corporate entity in connection with the execution, delivery and performance by the Company of this Agreement, other than the permits, licenses, consents, approvals and other authorizations that the Company commits to obtain and comply with as set forth in **Section 3.02** hereof.

(g) No Default. No default or Event of Default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or an Event of Default in any material respect on the part of the Company under this Agreement, or any other material agreement or material instrument to which the Company is a party or by which the Company is or may be bound related to the Project.

(h) Approvals. Except as otherwise provided herein, the Company and its Affiliates have received and are in good standing with respect to all certificates, licenses, inspections, franchises, consents, immunities, permits, authorizations and approvals, governmental or otherwise, necessary to conduct and to continue to conduct their business as heretofore conducted by it and to own or lease and operate their properties as now owned or leased by it.

(i) Compliance with Laws. The Company is in compliance with all Applicable Laws and Requirements with respect to its affairs, business, and operations as contemplated by this Agreement.

The representations and warranties set forth in this **Section 2.02** shall survive the Closing and termination of this Agreement.

ARTICLE III

COMPLIANCE WITH CITY ORDINANCES

Section 3.01. General. Except as otherwise provided herein, the Company will work with the City in order to comply with all Applicable Laws and Requirements and the City's ordinances, rules and procedures in connection with the Project.

Section 3.02. Permits and Approvals. The Company will obtain and comply with any necessary permits, licenses, fees, consents, approvals, and other authorizations required from Governmental Authorities, including those required by Environmental Laws (the "**Permits**"), and the City will cooperate with the Company to obtain any and all such Permits and shall use reasonable efforts to expedite any such Permits which are within the City's control. The Company will pay for all required Permits for the Project.

ARTICLE IV

DESIGN OF THE PROJECT

Section 4.01. General. The Company will provide the City with any necessary plans and specifications for the purpose of reviewing Land Use Applications for the Project and the Company Public Improvements. The City agrees to cooperate with the Company and to process and timely consider all complete applications as received, all in accordance with the adopted municipal codes and laws of the State; provided, however, that nothing herein contained shall be construed as the City's current approval of, or acquiescence to, any approvals, the parties acknowledging that such matters can only be approved by the City in the proper exercise of its municipal functions through appropriate governmental procedures.

Section 4.02. Final Plans and Specifications. The Company will prepare and submit a site plan of the Project and the Company Public Improvements for the City's review in accordance with the City's site plan review process. The City and Company agree that (1) the approved site plan shall guide the design and construction of the Project and the Company Public Improvements; and (2) the Company may make changes from time to time to the approved site plan, as permitted by the City code.

ARTICLE V

CONSTRUCTION

Section 5.01. General. The Company will diligently proceed with the construction of the Project and the Company Public Improvements. The Company will construct the Project as market conditions permit with ultimate build out of 132 units of apartments, unless otherwise agreed to by the City Administrator, which agreement shall not be unreasonably withheld, conditioned or delayed. The Company will use commercially reasonable efforts to market the Project to potential tenants or other users until all buildings included in the Project are leased on or before September 30, 2026, subject to Excusable Delays. Construction of the Project shall be pursued in a good and workmanlike manner in accordance with the terms of this Agreement.

The Company will provide for the design, construction and completion of the Company Public Improvements, subject to the City's right to review, inspect, and approve the plans and specifications for the Company Public Improvements which approvals shall not be unreasonably conditioned, withheld or delayed.

Following approval of the final plans and specifications for the Company Public Improvements, the Company will provide written notice to the City of any material changes in the plans and specifications for the City's review and approval of such changes which approvals shall not be unreasonably conditioned, withheld or delayed.

The Company will cooperate with the City to dedicate to the City, at no cost to the City, certain right-of-way and easements over the Project Site which are, in the City's judgment, reasonably necessary for the ownership and maintenance of the Company Public Improvements and any other public facilities which will be dedicated to the City in connection with the Project. The form of any such right-of-way and/or easements shall be reasonably acceptable to the City and the Company. The City shall be under no obligation to accept the dedication or conveyance of any right-of-way or easements until the City has determined that the right-of-way or easements are necessary for the ownership and maintenance of the Company Public Improvements and any other public facilities which will be dedicated to the City in connection with the Project, and that the Company Public Improvements and any other public facilities which will be dedicated to the City in connection with the Project have been inspected and approved to the reasonable satisfaction of the City.

Section 5.02. Insurance.

(a) During the performance of its obligations under this Agreement, the Company shall cause the Leased Property to be continuously insured against such risks and in such amounts, with such deductible provisions as are customary in connection with the construction and operation of facilities of the type and size comparable to the Project. The Company shall carry and maintain, or cause to be carried and maintained, and pay or cause to be paid in a timely manner the premiums for at least the following insurance with respect to the Leased Property (unless the requirement therefor shall be waived by the City in writing):

(i) Commercial general liability (“CGL”) insurance providing coverage for those liabilities which is equal or broader than that currently covered by a CGL policy (a standard ISO CGL form) including at least the following hazards: (1) premises and operations; (2) products and completed operations; and (3) contractual liability; such insurance to be on an “occurrence” form with a combined limit of not less than the maximum amount of liability as published annually by the Department of Insurance in the Missouri Register, in accordance with Section 537.610 RSMo which is made applicable to political subdivisions pursuant to Section 537.600, RSMo;

(ii) Workers’ compensation insurance or self-insurance, subject to statutory limits and employer’s liability insurance with a limit of at least \$1,000,000 per accident and per employee, and \$1,000,000 for disease aggregate in respect of any work or operations on or about the Leased Property, or in connection with the Leased Property or its operation if applicable in accordance with the applicable worker’s compensation laws.

(b) The Company shall at their sole cost and expense obtain and shall maintain throughout the term of the Lease, a policy or policies of insurance (including, if appropriate, builder’s risk insurance) to keep the Project constantly insured against loss or damage by fire, lightning and all other risks covered by the extended coverage insurance endorsement then in use in the State of Missouri in an amount equal to the full insurable value thereof (subject to reasonable loss deductible provisions).

(c) In the event of loss or damage to any of the Project, the Net Proceeds of property insurance carried pursuant to this Section shall be applied as provided in **Sections 8.08 and 8.09** of this Agreement.

(d) Each insurance policy obtained in satisfaction of the foregoing requirements:

(i) shall be by such insurer or insurers as shall be financially responsible, and shall have a rating equal to or higher than A- or better by Best Insurance Guide and Key Ratings or shall be acceptable to the City as evidenced by a written certificate delivered to the City, and

(ii) shall be in such form and with such provisions as are generally considered standard provisions for the type of insurance involved as evidenced by a written report delivered to the City.

(e) All such policies, or a certificate or certificates of the insurers that such insurance is in full force and effect, shall be deposited with the City and, prior to expiration of any such policy, the Company shall furnish the City with satisfactory evidence that such policy has been renewed or replaced or is no longer required by this Agreement; provided, however, the Company may choose to satisfy this requirement by providing blanket policies now or hereafter maintained by the Company if the City’s insurance consultant certifies to the effect that such coverage is substantially the same as that provided by individual policies. All policies evidencing such insurance required to be obtained under the terms of this Agreement shall provide for prior written notice to the City of any cancellation or reduction in amount of coverage.

(f) In accordance with section 427.120 of the Revised Statutes of Missouri, as amended, in the event the Company shall fail to maintain, or cause to be maintained, the full insurance coverage required by this Agreement, the City shall provide written notice of such failure to the Company. In the event the Company does not provide evidence of such insurance within ten (10) Business Days of such notice, the City may (but shall be under no obligation to) contract for the required policies of insurance and pay the premiums on the same; and the Company agrees to reimburse the City to the extent of the amounts so advanced, with interest thereon at the rate of 8% per annum. The City shall notify the Company in writing that the Company has failed to maintain the insurance coverage required by this Agreement prior to purchasing any such insurance. This insurance obtained by the City may, but need not, protect the Company’s interests. The coverage that the City may purchase may not pay any claim that the Company may make or any claim that may be made against the Company in connection with the Project. The

Company may later cancel any insurance purchased by the City, but only after providing evidence that the Company has obtained insurance as required by this Agreement. The costs of the insurance obtained by the City may be more than the cost of insurance the Company may be able to obtain on their own.

(g) The City shall be named as an additional insured on all policies, if and to the extent that the City has an insurable interest, including all policies on which the Company is named as an insured. Nothing in this Agreement shall be deemed to waive the City's sovereign immunity or a defense against any tort claim based on sovereign immunity.

(h) Company shall not permit its general contractor to commence or continue work until they shall have obtained or caused to be obtained all insurance required under this Section and the City's Applicable Laws and Requirements. Company shall also require its general contractor to require all of its subcontractors to obtain all insurance required under this Section and the City's Applicable Laws and Requirements (unless general contractor's insurance satisfies all of the requirements above and covers the applicable subcontractor(s)). Said insurance shall be maintained in full force and effect until the issuance of a Certificate of Completion of Construction for the phase of improvements being constructed by such contractor or subcontractor.

Section 5.03. Liens. The Company will complete the Project free of any laborer's, materialmen's, mechanic's or other similar liens (and excepting, further, liens associated with Company's financing of the Project) ("Lien") and shall not permit any Lien to be filed or otherwise imposed on any part of the Project or the Leased Property; provided, however, that the Company shall not be in default if Liens are filed or established and Company contests in good faith said Liens and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom.

Section 5.04. Certificate of Substantial Completion. After substantial completion of the Project in accordance with the provisions of this Agreement, the Company will submit a Certificate of Substantial Completion to the City. The Certificate of Substantial Completion shall be in substantially the form attached as **Exhibit C**. The Construction Inspector shall, within thirty (30) days following delivery of the Certificate of Substantial Completion, carry out such inspections as it deems necessary to verify to its reasonable satisfaction the accuracy of the certifications contained in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be deemed accepted by the City unless, prior to the end of such 30-day period after delivery, the City furnishes the Company with specific written objections to the status of the Project, describing such objections and the measures required to correct such objections in reasonable detail.

Section 5.05. Bonds. For the Project and the Company Public Improvements and any other public facilities which will be dedicated to the City in connection with the Project, the Company will, or will ensure that its contractors shall, provide for the following bonds:

(a) **Payment Bond.** Prior to commencement of construction on the Project, including any construction on public property including but not limited to the State of Missouri or the City, and ending upon completion of the Project and the acceptance of the Company Public Improvements and any other public facilities which will be dedicated to the City in connection with the Project, the Company shall, or shall ensure that its contractors shall, maintain a payment bond in a form approved by the City Attorney and in compliance with Section 107.170, RSMo, in an amount equal to the cost of the Project and any other public facilities which will be dedicated to the City in connection with the Project covered by such bond, as determined by the City Engineer, conditioned upon the faithful performance of the provisions, terms and conditions of the construction contract. The payment bond shall name the City as an obligee and copies of certificates of such bond shall be delivered to the City.

(b) **Maintenance Bonds.** Prior to acceptance and dedication of the Company Public Improvements and any other public facilities which will be dedicated to the City in connection with the Project, the Company shall, or shall ensure that its contractors shall, provide a maintenance bond in a form approved by the City Attorney, in an amount equal to the full cost of the Company Public Improvements and any other public facilities which will be dedicated to the City in connection with the Project as approved by the City Engineer, which shall be in effect for a term of two (2) years from the date that the City issues a Certificate of Completion of Construction for such improvements covered by the bond, conditioned upon the faithful performance of the provisions, terms and conditions of the construction contract. The maintenance bond shall name the City as an obligee and copies of certificates of such bond shall be delivered to the City. With respect to maintenance issues which may arise after dedication of the improvements to the City, the City shall first make any claim which arises related to such improvements for which a bond claim may be made against the bonding company, and shall make all reasonable efforts to pursue the claim, prior to making demand upon the Company to satisfy the claim.

(c) **Indemnity for Failure to Provide Bonds.** The Company shall, or shall ensure that the Company's contractors shall, indemnify the City and its officers and employees for any actual damage resulting to the City, its officers or employees from failure of the Company to provide the bonds set forth in this Section.

(d) **One or More Construction Contracts.** The Company may enter into one or more construction contracts related to the construction of the Projects. The Company will be required to obtain a construction permit for each construction contract entered into related to the Project and provide a payment bond in the amount of each such construction contract in compliance with this **Section 6.07** prior to commencement of work related to the Project.

Section 5.06. Prevailing Wage. For any public facilities which will be dedicated to the City in connection with the Projects only, the Company will comply with all laws regarding the payment of prevailing wages to contractors or subcontractors of the Company, to the extent such laws are applicable, and will indemnify the City for any actual damage resulting to the City from failure of either the Company or any contractor or subcontractor to pay prevailing wages pursuant to applicable laws, and pay the reasonable and documented costs of defense of the City in response to any such claims. The Company shall be responsible for payment of all costs associated with the payment of prevailing wages, if applicable. The Company and the City acknowledge and agree that prevailing wage requirements do not apply to any private improvements.

ARTICLE VI

DEVELOPMENT INCENTIVES

Section 6.01. Cooperation to Implement Development Incentives. The Company shall cooperate and the City shall use best faith efforts to authorize and implement the issuance of the Bonds, as described in more detail in **Article VII** below (the "Tax Abatement").

Section 6.02. Timing of Implementation of Development Incentives. The Parties shall cooperate to complete all steps necessary to implement the Tax Abatement for the Project in order to ensure that the City has adequate time to complete the statutory processes necessary for implementation of the Tax Abatement in time to fully realize the benefits of the Tax Abatement. No Tax Abatement will be provided for any portion of the Project for which construction has not commenced within two (2) years of approval of the Plan.

Section 6.03. Bond Costs. The Company will enter into an engagement letter with Bond Counsel in substantially the form attached hereto as **Exhibit D** whereby the Company agrees to pay all

costs associated with the issuance of the Bonds. The Company will also pay the annual fees of the bond trustee for the Bonds.

Section 6.04. Estimate of the Cost of the Project.

(a) The estimated total cost of the Project is approximately \$32,000,000, which is subject to change in accordance with this Agreement.

(b) As a condition to the continued provision of the Tax Abatement as set forth herein, the Company will be required to make a cumulative minimum investment of \$32,000,000 in the Project, which is subject to change in accordance with this Agreement.

(c) In the event the Company does not commence construction within two years of approval of the Plan and have substantial completion of the Project within three years, subject to Excusable Delays or as otherwise approved by the City, then the City may terminate the Tax Abatement as contemplated by this Agreement.

Section 6.05. Terms of Abatement and Lease.

(a) Project. The City will consider issuance of the Bonds in order to provide Tax Abatement for the Project Site and the Project thereon under the Chapter 100 Act for a period of 10 years beginning in calendar year 2024 and ending in calendar year 2033 (no Tax Abatement will be available or provided in calendar year 2034). The Project Site and the Project are expected to be exempt from taxation under Chapter 100, but will be subject to the requirement to make PILOT Payments in accordance with **Article VII** below.

(b) Lease. At all times during the Tax Abatement period for the Project Site, the City must be the legal owner of the Project Site and the Project. The Project Site and the Project will be leased to the Company by the City in accordance with the terms of the Lease. The Lease will be for a term ending in the year the Tax Abatement for the Project Site and the Project ceases. The Company will have the option to purchase the Project Site and the Project at the termination of the Lease at a purchase price to be set forth in the Lease.

Section 6.06. Bonds. Under the Chapter 100 Act, the City has legal authority to take title to the Leased Property as security for bonds issued under the Chapter 100 Act. The Bonds will be issued upon such terms, in such amounts and at such time as shall be satisfactory to the City and the Company, and subject to the conditions of issuance of the Bonds set forth herein. The Bonds will not be an indebtedness or general obligation, debt or liability of the City within the meaning of any constitutional or statutory debt limitation or restriction. The parties hereby agree that the Bonds shall be able to be prepaid at any time without penalty. Upon issuance of the Bonds, the Company will make a payment to the City in the amount of \$180,000 as consideration for the purchase/lease of the Project Site.

Section 6.07. City Approvals.

(a) Prior to the issuance of the Bonds, using information supplied by the Company, the City agrees to prepare a plan and cost-benefit analysis for the Project meeting the requirements of Section 100.050 RSMo, as amended (the "**Plan**"). Approval of the Plan by a majority vote of the governing body of the City shall be a precondition to the issuance of the Bonds by the City for the Project which approval shall not be unreasonably conditioned, withheld or delayed.

(b) The Company agrees that, so long as the City has legal title to the Leased Property, the City must approve any use or additional development of the Leased Property other than for the Project, but that approval shall not be unreasonably withheld, conditioned or delayed.

(c) The approval of this Agreement shall not affect or constitute any approval required by any City department or pursuant to any City ordinance, resolution, code, regulation or any other governmental approval required by law, nor does any approval by the City pursuant to this Agreement constitute approval of the quality, structural soundness or safety of any portion of the Project. The City will not unreasonably withhold, condition or delay any consent or approval required by any City ordinance, resolution, code, regulation or any other governmental approval required by law related to the Project; provided that nothing herein shall be construed to obligate the City to grant municipal permits or other approvals the City would not be obligated to grant, acting as a political subdivision, absent this Agreement.

Section 6.08. Sales Tax Exemption. It is the City and the Company's expectation that the purchase of any and all materials used in the construction of the Project shall be exempt from taxation pursuant to Article III, Section 39(10) of the Missouri Constitution and Section 144.062, RSMo. The City shall issue the Company temporary and/or permanent sales and/or use tax exemption certificates for the purpose of providing the sales and/or use tax exemption on such materials. The Company will account for all purchases for which the sales tax exemption is used and will provide such accounting to the City at least quarterly. The Company will reimburse the City and/or the other recipients of the sales and/or use tax if it is determined that such exemption was improperly used or that the City did not have the legal authority to issue such certificate for such purposes, and to otherwise indemnify and defend the City pursuant to **Section 9.01** with respect to the use of the sales and/or use tax exemption certificates.

Section 6.09. Issuance of Bonds.

(a) The Company will cooperate with the City in the City's issuance of the Bonds in an amount to be agreed upon by the City and the Company. The Company covenants to cooperate and take all reasonable actions necessary to assist the City and its Bond Counsel and financial advisors in the preparation of the Financing Documents to issue the Bonds.

(b) At the time of issuance of the Bonds, the Company further agrees (i) to provide a closing certificate in a form mutually agreeable to the Parties (which shall include a certification regarding the accuracy of the information relating to the Company and the Project), and (ii) to cause their counsel to provide a legal opinion, subject to reasonable assumptions, qualifications and limitations.

Section 6.10. City to Select Bond Counsel, Bond Trustee, and Financial Advisor. The City shall have the right to select the designated Bond Counsel and the financial advisor (and such additional consultants as the City deems necessary for the issuance of the Bonds).

Section 6.11. Requirements Related to Project.

(a) The City and the Company acknowledge and agree that the implementation of the development incentives contemplated herein is expressly conditioned on the non-use of state or federal housing tax credit programs or subsidies, including low-income housing tax credit, for the Project.

(b) The project shall be constructed in a manner consistent with the drawings submitted to the City during the consideration of the Plan and this Agreement and attached hereto as **Exhibit F**, including the construction of off street parking to accommodate all tenants in the Project, a club house with pool, exercise and entertainments facilities and playground facilities. Failure to include such amenities contemplated in the Project design or to obtain or use any federal or state tax credits or subsidies is a Company Event of Default permitting the City to terminate the Tax Abatement for the Project.

ARTICLE VII

PROPERTY TAX EXEMPTION; PILOT PAYMENTS

Section 7.01. Property Tax Exemption. So long as the City owns title to the Project Site and the Project, and the Company constructs, maintains and operates the Project as an apartment complex with at least 132 units, the City expects that such Project Site and Project shall be exempt from *ad valorem* taxes on real property. The Project Site and Project will be leased to the Company. The Company will receive ten (10) years of abatement for the Project, subject to the requirement to make PILOT Payments as set forth in this Article VII.

The Company covenants and agrees that during each year the Project Site and Project are exempt from *ad valorem* taxes by reason of the City owning title, the Company will make annual payments in lieu of taxes to the City (each such payment, a “PILOT Payment”) as described in this Article VII relating to the Project. The City and the Company hereby agree that the Tax Abatement provided by this Agreement shall only apply to the property financed with the proceeds of the Bonds (i.e., property constituting a Project) and shall not apply to property not financed with proceeds of the Bonds.

Section 7.02. Payments In Lieu of Taxes. The Company covenants and agrees to make PILOT Payments to the City on or before each December 31, in the following amounts, for a period of 10 years beginning in calendar year 2024 and ending in calendar year 2033 (no Tax Abatement will be available or provided in calendar year 2034), equal to 50% of the real property taxes that would otherwise be due, based upon the assessed value as calculated by the County Assessor’s Office.

Section 7.03. Distribution of Pilot Payments. Within 30 days of the date of receipt of the PILOT Payments pursuant to Section 7.02, the City or other designated billing/collection agent shall distribute the PILOT Payment, after reduction for the administrative costs of the City as provided by Section 7.05 below, among the taxing jurisdictions in proportion to the amount of taxes which would have been paid in each year had the Project not been exempt from taxation pursuant to this Agreement.

Section 7.04. Obligation of City to Effect Tax Abatement. The City agrees to take all actions within its control to obtain and/or maintain in effect the exemption referred to in Section 7.01 above, including any filing required with any governmental authorities; provided, however, the City shall not be liable for any failure of any governmental taxing authority to recognize the exemption provided herein. The City covenants that it will not voluntarily take any action that may cause or induce the levy or assessment of *ad valorem* taxes on the Project. In the event such a levy or assessment should occur, the City shall, at the Company’s request and at the Company’s expense, fully cooperate with the Company in all reasonable ways to prevent and/or remove any such levy or assessment against the Project.

Section 7.05. Administration Costs. Under Section 100.050 of the Chapter 100 Act, the City may require the Company to reimburse the City for its actual costs of issuing the Bonds and administering the Plan including costs associated with this Agreement, in an amount of no greater than \$2,500 per year. The City will provide a statement for such costs to the Company not later than November 15th of each year and the Company will reimburse the City for its costs on or before December 1 of each year continuing until December 1 of the year in which this Agreement expires or is terminated.

Section 7.06. Other Property Taxes in Connection with the Project. The real property tax exemption provided by the City’s ownership of the Project is expected to apply to all interests in the Project during the period they are owned by the City. If any *ad valorem* property taxes are levied by or on behalf of any Taxing Jurisdiction against any interest in the Project during the period the City owns the Project

(including, without limitation, any *ad valorem* taxes levied against the Company's rights in the Lease), the amount of *ad valorem* tax payments related to such levy or levies which are paid by the Company and received by the City shall be credited against and reduce on a *pro rata* basis the amount of the PILOT Payments the Company is obligated to pay pursuant to this Agreement. The Company shall be responsible for any taxes related to any interest in the Project which the Company owns in its own name or granted to the Company other than pursuant to the Lease.

Section 7.07. Cessation of Operations at the Project Site. If for any reason the Company completely abandons or ceases leasing or marketing activity at the Project Site during the term of this Agreement for a period of at least 90 consecutive days, excluding any failure to occupy the Project Site for reasons related to a casualty loss, government order or other Excusable Delay, and the Company fails to exercise its option to purchase the Project Site within 90 days after such abandonment or cessation of leasing or marketing activity, the Company shall make a PILOT Payment to the City (to be distributed as provided in **Section 7.02**) with respect to the abandoned Project Site equal to 100% of the amounts that would otherwise be payable to each taxing jurisdiction if the Project Site was not owned by the City. Such payment shall be made on or before December 1 in the year in which the Company completely vacates, abandons or ceases operations and on each December 1 thereafter for each year in which the Project is, on January 1 of such year, still titled in the name of the City, and the Company has completely vacated, abandoned or ceased operations at a Project Site.

Section 7.08. No Abatement on Special Assessments, Licenses or Fees. The City and the Company hereby agree that the property tax exemptions described in this Agreement shall not apply to special assessments and shall not serve to reduce or eliminate any other licenses or fees owing to the City or any other taxing jurisdiction with respect to the Project. The Company hereby agrees to make payments with respect to all special assessments, licenses and fees which would otherwise be due with respect to the Project if such Project was not owned by the City.

Section 7.09. PILOT Reserve Account / Deed of Trust.

(a) Upon issuance of the Bonds and the delivery of the Lease, the Company shall deposit with the trustee for the Bonds an amount equal to the largest PILOT Payment to be made during the term of the Bonds (the "PILOT Reserve Requirement"). If, by 5:00 P.M. on any date on which a PILOT Payment is due under this Agreement (or the following Business Day if such date does not fall on a Business Day), the City has not received payment from the Company in the amount of the PILOT Payment due on such date, the City may withdraw an amount equal to such PILOT Payment from the PILOT Reserve Account and apply such funds to the payment of such Pilot Payments.

(b) If any funds are withdrawn from the PILOT Reserve Account in accordance with subsection (a), above, the Company shall replenish the balance of the PILOT Reserve Account to the PILOT Reserve Requirement within 30 days after receipt by the Company of written notice sent by the City stating the failure to receive payment of the Pilot Payments, the amount of funds withdrawn from the PILOT Reserve Account and applied to payment of the Pilot Payments, and the difference between the balance in the PILOT Reserve Account and the PILOT Reserve Requirement, which is to be replenished by the Company. Failure by the Company to replenish the PILOT Reserve Account within such 30-day period by check or electronic transfer to the trustee for the Bonds shall constitute an Event of Default for purposes of this Agreement and the Lease without the passage of additional time or opportunity for cure.

(c) Any interest earnings on funds held in the PILOT Reserve Account shall be the property of the Company. If requested by the Company after payment of the Pilot Payments due on December 1 in any year, the City shall remit by check to the Company any amounts in the PILOT Reserve Account in excess of the PILOT Reserve Requirement (provided that no such remittance shall be required for an amount less than \$1,000).

(d) The balance of the PILOT Reserve Account shall be applied to payment of the Pilot Payments due in the year of the final maturity of the Bonds. Any amounts remaining in the PILOT Reserve Account after payment of all Pilot Payments due and owing on such date shall be promptly returned to the Company. If the amount on deposit in the PILOT Reserve Account is less than the PILOT Payment due on such date, the difference shall be paid on such date by the Company.

(e) At any time during the term of this Agreement, and in lieu of the PILOT Reserve Requirement, the Company may elect to allow the City to file a deed of trust securing the Bonds and the payments to be made by the Company pursuant to this Agreement and the Lease Agreement, in a form mutually agreed upon by the Company and the City. If such a deed of trust is recorded, the funds in the PILOT Reserve Account, if any, will be released to the Company. The City agrees to subordinate such deed of trust to any mortgage of any lender providing funds to the Company, to be documented in the manner described in the Lease, provided that such deed of trust shall provide for the PILOT Payment due under this Agreement from enforcement proceeds under such deed of trust or mortgage in the same manner and priority as such proceeds would commonly be applied to the payment of real property taxes (after costs of enforcement/collection but before application to principal of or interest on the loan(s) secured by the deed of trust or mortgage).

ARTICLE VIII

COVENANTS AND AGREEMENTS

Section 8.01. Inspection. The City may conduct such periodic inspections of the Project as may be generally provided in the City's ordinances. In addition, the Company agrees that the City and its duly authorized agents shall have the right at reasonable times (during business hours), subject to at least five Business Days' advance written notice and to the Company's usual business proprietary, safety and security requirements, to enter upon the Project Site to examine and inspect the Project and only such records of the Company as may be required to demonstrate compliance with this Agreement.

Section 8.02. Compliance with Laws. To the best of the Company's knowledge, the Project is and will be in material compliance with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, executive orders and codes pertaining to or affecting the Project, including Environmental Laws, subject to all applicable rights of the Company to contest the same.

Section 8.03. Purchase, Construction, Improvement, Installation and Operation. The Project will be purchased, constructed, improved, installed and operated in a manner that is generally consistent with the intent of the Project described herein and in the Lease.

Section 8.04. Maintenance of Existence. The Company agrees that prior to Completion of Construction, they will maintain their corporate or limited partnership existence, and will not dissolve or otherwise dispose of all or substantially all of their assets; provided, however, that the Company may, without violating the agreement contained in this Section, consolidate with or merge into another domestic corporation, limited partnership or limited liability company (i.e., a corporation incorporated and existing under the laws of one of the states of the United States) or permit one or more other domestic corporations, limited partnerships or limited liability companies to consolidate with or merge into them, or may sell or otherwise transfer to another domestic corporation, limited partnership or limited liability company all or substantially all of their assets as an entirety and thereafter dissolve, provided, the surviving, resulting or transferee corporations, limited partnerships or limited liability companies expressly assume in writing all the obligations of the Company contained in this Agreement; and, further provided, that the surviving, resulting or transferee corporations, limited partnerships or limited liability companies, as the case may be, have a consolidated net worth (after giving effect to said consolidation, merger or transfer) at least equal to

or greater than that of the Company immediately prior to said consolidation, merger or transfer and there shall be delivered to the City and the Trustee a Certificate of an independent certified public accountant to such effect. The term "net worth", as used in this Section, shall mean the difference obtained by subtracting total liabilities (not including as a liability any capital or surplus item) from total assets of the Company and all of its subsidiaries. In addition, the Company shall represent to the City, and the City shall conclude that, in the sole reasonable opinion of the City the successor has the financial capability to fulfill the obligations of the Company under this Agreement and possesses the management experience to operate the Project.

Section 8.05. Maintenance and Repairs. Throughout the term of each Lease, the Company shall, at its own expense, (i) keep the Leased Property in reasonably safe operating condition and keep the Leased Property in good repair as apartments consistent with the condition of the Project upon completion of construction, reasonable wear, tear, depreciation and obsolescence excepted, making from time to time all repairs thereto and renewals and replacements thereof as provided in this Agreement and (ii) keep the Leased Property and all parts thereof free from filth, nuisance or conditions unreasonably increasing the danger of fires.

Section 8.06. Taxes, Assessments and Other Governmental Charges.

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

(b) Notwithstanding any other provision of this Agreement to the contrary, nothing in this Agreement shall be construed to limit or in any way restrict the availability of any provision of Missouri law which confers upon the Company the right to appeal, protest or otherwise contest any property tax valuation, assessment, classification or similar action.

(c) Nothing in this Agreement shall be construed to require the Company to make duplicate tax payments. The Company shall receive a credit against any payments in lieu of taxes due under **Article VII** hereof to the extent of any ad valorem taxes imposed with respect to the Project paid pursuant to this Section.

Section 8.07. Permits and Authorizations. The Company shall not do or permit others under their control to do any work on the Project related to any repair, rebuilding, restoration, replacement, modification or addition to the Project, or any part thereof, unless all requisite municipal and other governmental permits and authorizations shall have been first procured, except in case of an emergency. The City agrees to act promptly on all requests for such municipal permits and authorizations. All such work shall be done in a good and workmanlike manner and in strict compliance with all applicable material

building and zoning laws and governmental regulations and requirements, and in accordance with the requirements.

Section 8.08. Damage or Destruction.

(a) If a Project is damaged or destroyed by fire or any other casualty, whether or not covered by insurance, the Company, as promptly as practicable, shall repair, restore, replace or rebuild the same so that upon completion of such repairs, restoration, replacement or rebuilding the Project is of a value not less than the value thereof immediately prior to the occurrence of such damage or destruction. The Net Proceeds of casualty insurance required by **Section 5.04** hereof received with respect to such damage or loss to the Project shall be used to pay the cost of repairing, restoring, replacing or rebuilding the Project or any part thereof. Insurance monies in an amount less than \$1,000,000 may be paid to or retained by the Company to be held in trust and used as provided herein. Insurance monies in any amount of \$1,000,000 or more shall be paid to the Trustee and deposited in the Project Fund and shall be disbursed as provided in **Section 3.04** of the Lease to pay the cost of repairing, restoring, replacing or rebuilding the Project or any part thereof unless required otherwise by the deed of trust or mortgage of any lender to the Company.

(b) If any of the insurance monies paid by the insurance company as hereinabove provided remain after the completion of such repairs, restoration, replacement or rebuilding, and this Agreement has not been terminated, the excess shall be deposited in the Bond Fund created under the Indenture in the subaccount relating to the applicable portion of the Project damaged or destroyed, subject to the rights of any mortgagee. Completion of such repairs, restoration, replacement or rebuilding shall be evidenced by a certificate of completion in a form satisfactory to the City and Trustee. If the Net Proceeds are insufficient to pay the entire cost of such repairs, restoration, replacement or rebuilding, the Company shall pay the deficiency.

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

(d) The City and the Company agree that they will cooperate with each other, to such extent as such other party may reasonably require, in connection with the prosecution or defense of any action or proceeding arising out of, or for the collection of any insurance monies that may be due in the event of, any loss or damage, and that they will execute and deliver to such other parties such instruments as may be required to facilitate the recovery of any insurance monies.

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

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

Section 8.09. Lender Approval. Notwithstanding any of the requirements contained in **Section 8.08** above, the proceeds of any insurance received subsequent to a casualty shall be applied as directed by the financing documents for any lender of the Company related to the Project Site.

Section 8.10. Environmental Laws and Hazardous Substances. As used in this Section, the following terms have the following meanings:

“Hazardous Substances” means all (i) “hazardous substances” (as defined in 42 U.S.C. §9601(14)), (ii) “chemicals” subject to regulation under Title III of the Superfund Amendments and Reauthorization Act of 1986, as amended from time to time (iii) natural gas liquids, liquefied natural gas or synthetic gas, (iv) any petroleum, petroleum-based products or crude oil, or (v) any other hazardous or toxic substances, wastes or materials, pollutants, contaminants or any other substances or materials which are included under or regulated by any Environmental Law.

(a) The Company will provide the City and the Trustee with copies of any notifications of releases of Hazardous Substances or of any environmental hazards or potential hazards which are given by or on behalf of the Company to any federal, state or local or other agencies or authorities or which are received by the Company from any federal, state or local or other agencies or authorities with respect to the Leased Property. Such copies shall be sent to the City and the Trustee concurrently with their being mailed or delivered to the governmental agencies or authorities or within ten days after they are made or received by the Company.

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

(c) The Company hereby agrees that, anything to the contrary notwithstanding, it will defend, indemnify and hold harmless the City, its governing body members, employees, attorneys and agents against any and all claims, demands, actions, causes of action, loss, damage, injury, liability and/or expense (including reasonable attorneys’ fees and court costs) resulting from, arising out of, or in any way connected with the presence of Hazardous Substances on any of the Project Site.

ARTICLE IX

INDEMNIFICATION AND RELEASE

Section 9.01. Indemnity. Unless arising out of the negligence or willful misconduct of the City Indemnified Parties (defined below), the Company agrees to indemnify, defend, and hold the City, its officials, agents and employees (collectively, the **“City Indemnified Parties”**) harmless from and against any and all suits, claims, costs of defense, actual damages, injuries, liabilities, costs and/or expenses, including court costs and reasonable and documented attorneys’ fees, directly resulting from:

(a) the Company’s actions and undertaking in design, construction, leasing, operation and implementation of the Project and the performance of the terms of this Agreement;

(b) the negligence or willful misconduct of the Company, their employees, agents or independent contractors in connection with the design, construction, leasing, operation and implementation of the Project and the performance of terms of this Agreement;

(c) any unreasonable delay or expense resulting from any litigation filed against the Company by any prospective investor, prospective partner or joint venture partner, lender, co-proposer, architect, contractor, consultant or other vendor;

(d) the Company's failure to provide the bonds set forth in **Section 5.05**;

(e) the Company's failure to comply with all applicable laws regarding the payment of prevailing wages to contractors or subcontractors of the Company; or

(f) the Company's Event of Default in any term of this Agreement.

Section 9.02. Notification of Action. In the event any suit, action, investigation, claim or proceeding (collectively, an "Action") is begun or made as a result of which the Company may become obligated to one or more of the City Indemnified Parties hereunder, any one of the City Indemnified Parties shall give prompt written notice to the Company of the occurrence of such event. After receipt of such notice, the Company may elect to defend, contest or otherwise protect the City Indemnified Parties against any such Action, at the reasonable cost and expense of the Company, utilizing counsel of the Company's choice. The City Indemnified Parties shall assist, at Company's sole discretion, in the defense thereof. In the event that the Company shall fail to timely defend, contest or otherwise protect any of the City Indemnified Parties against such Action, the City Indemnified Parties shall have the right to do so, and (if such defense is undertaken by the City Indemnified Parties after notice to the Company asserting the Company's failure to timely defend, contest or otherwise protect against such Action) the reasonable and necessary cost of such defense shall be at the expense of the Company.

Section 9.03. Settlement. Any one of the City Indemnified Parties shall submit to the Company any settlement proposal that the City Indemnified Parties shall receive which may only be accepted with the approval of the Company. Neither the Company nor the City Indemnified Parties will unreasonably withhold, condition or delay its consent to a proposed settlement.

Section 9.04. Survival. The right to indemnification set forth in this Agreement arising during the term of this Agreement shall survive the Closing.

ARTICLE X

EVENTS OF DEFAULT AND REMEDIES

Section 10.01. Reserved.

Section 10.02. Company Event of Default. Subject to Excusable Delays and any applicable notice, grace or cure period provided herein, a "Company Event of Default" shall include the following:

(a) Any representation or warranty made by the Company herein or in any written statement or certificate furnished to the City proves untrue in any material respect as of the date of the issuance or making thereof and shall not be corrected or brought into compliance within forty-five (45) days after there has been given to the Company by the City a written notice specifying such untruth and requiring it to be remedied; provided, that if such untruth cannot be fully remedied within such forty-five (45) day period, but can reasonably be expected to be fully remedied and the Company is diligently attempting to remedy such untruth, such untruth shall not constitute an event of default if the Company shall immediately upon receipt of such notice diligently attempt to remedy such untruth and shall thereafter prosecute and complete the same with due diligence and dispatch;

(b) Material default by the Company in the performance or breach of any covenant or agreement of the Company in a Lease, following notice and exhaustion of the right to cure as provided in the Lease;

(c) Failure of the Company to make the PILOT Payments required to be paid hereunder within thirty (30) days after written notice and demand by the City;

(d) Default in the performance or breach of any binding written agreement (including, but not limited to, memoranda of understanding) entered into between the Company and the City related to the Project or any phase of the Project. In the event that such other agreement (including, but not limited to, memoranda of understanding) provides the Company with different or more restrictive covenants, different or additional events of default and/or greater rights and remedies than are provided to the City in this Agreement, such different or more restrictive covenants, different or additional events of default and/or greater rights and remedies shall automatically be deemed to be incorporated into this Agreement and the City shall have the benefits of such different or more restrictive covenants, different or additional events of default and/or greater rights and remedies as if specifically set forth herein.

(e) Material default in the performance or breach of any other covenant or agreement of the Company in this Agreement not specifically covered in (a) through (d) above, and continuance of such default or breach for a period of sixty (60) days after City has delivered to Company a written notice specifying such default or breach and requiring it to be remedied; provided, that if such default or breach cannot be fully remedied within such sixty (60) day period, but can reasonably be expected to be fully remedied and the Company is diligently attempting to remedy such default or breach, such default or breach shall not constitute an event of default if the Company shall, immediately upon receipt of such notice, diligently attempt to remedy such default or breach and shall thereafter prosecute and complete the same with due diligence and dispatch; provided, however, notwithstanding any other provision of this Agreement to the contrary, in no event shall a Company Event of Default be deemed to exist if the facts underlying the specific potential Company Event of Default have been caused by a City Event of Default.

Section 10.03. City Event of Default. Subject to Excusable Delays and any applicable notice, grace or cure period provided herein, a “**City Event of Default**” shall include the following:

(a) Any representation or warranty made by the City herein proves untrue in any material respect as of the date of the issuance or making thereof and shall not be corrected or brought into compliance within forty-five (45) days after there has been given to the City by the Company a written notice specifying such untruth and requiring it to be remedied; provided, that if such untruth cannot be fully remedied within such forty-five (45) day period, but can reasonably be expected to be fully remedied and the City is diligently attempting to remedy such untruth, such untruth shall not constitute an event of default if the City shall immediately upon receipt of such notice diligently attempt to remedy such untruth and shall thereafter prosecute and complete the same with due diligence and dispatch; or

(b) The occurrence and continuance of any material default in the performance or breach of any covenant or agreement of the City in this Agreement, and continuance of such default or breach for a period of sixty (60) days after there has been given to the City by Company a written notice specifying such default or breach and requiring it to be remedied; provided, that if such default or breach cannot be fully remedied within such sixty (60) day period, but can reasonably be expected to be fully remedied and the City is diligently attempting to remedy such default or breach, such default or breach shall not constitute an event of default if the City shall, immediately upon receipt of such notice, diligently attempt to remedy such default or breach and shall thereafter prosecute and complete the same with due diligence and dispatch; provided, however, notwithstanding any other provision of this Agreement to the contrary in no event will a City Event of Default be deemed to exist if the facts underlying the specific potential City Event of Default have been caused by a Company Event of Default.

Section 10.04. Remedies.

(a) Upon the occurrence and continuance of a Company Event of Default, the City shall have the right to pursue any one or more of the following courses of action: (i) to declare an event of default under a Lease; (ii) to take such actions as deemed reasonably necessary by the City to remedy the breach, the reasonable and documented costs of which may be charged to the defaulting party, or offset against any payments due under this Agreement to the defaulting Party; (iii) to terminate this Agreement with respect to the Project by written notice to the defaulting party, which termination shall be effective with respect to the Project as of the effective date which is set forth in said notice, provided that said effective date shall be at least thirty (30) days after the date of said notice; and (iv) to institute any and all proceedings permitted by law or equity including, without limitation, actions for specific performance and/or damages (but in no event shall the Company be enjoined to construct any improvement).

(b) Upon the occurrence and continuance of a City Event of Default, the Company shall have the right to pursue any one or more of the following courses of action: (i) to take such actions as deemed reasonably necessary by the Company to remedy the breach, the reasonable and documented costs of which may be charged to the City or offset against any payments due under this Agreement to the City; (ii) to terminate this Agreement by written notice to the City, which termination shall be effective as of the effective date which is set forth in said notice, provided that said effective date shall be at least thirty (30) days after the date of said notice; and (iii) to institute any and all proceedings permitted by law or equity including, without limitation, actions for specific performance and/or damages.

(c) Upon a Company Event of Default hereunder this Agreement may be terminated by written notice to the Company from the City. Upon such Project termination the Company shall make a PILOT Payment to the City equal to 100% of the amount of taxes that would be due for the year with respect to the Project assuming the Leased Property was not subject to Tax Abatement during such year; provided, however, the payment of PILOT Payments following cessation of marketing or leasing activity shall be governed by **Section 7.07**.

Section 10.05. Enforcement. In addition to the remedies specified in **Section 10.04**, upon the occurrence of a Company Event of Default, the City or any taxing jurisdictions that would benefit from the PILOT Payments provided for in this Agreement may bring an action for specific performance to enforce such payments. In the event of litigation pertaining to the enforcement of this Agreement, the losing party shall pay all costs of litigation, including reasonable attorneys' fees.

ARTICLE XI

MISCELLANEOUS PROVISIONS

Section 11.01. Consents and Cooperation. Wherever in this Agreement the consent or approval of the City is required, such consent or approval shall not be unreasonably withheld, delayed or conditioned, shall be in writing and shall be executed by a duly authorized officer or agent of the party granting such consent or approval. Further, the City and the Company agree to take such reasonable actions as may be necessary to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out such terms, provisions and intent. Any consent or approval required by the City may be provided by the City Administrator and the City Administrator may seek the input or a decision from the Board of Aldermen on any matter.

Section 11.02. Relationship. In the performance of this Agreement, the Company shall act solely as an independent contractor. Neither this Agreement nor any agreements, instruments, documents, or transactions contemplated hereby shall in any respect be interpreted, deemed or construed as making the

Company a partner, joint venturer with, or agent of, the City. The City and the Company agree that neither party will make any contrary assertion, claim or counterclaim in any action, suit, arbitration or other legal proceedings involving the City and the Company.

Section 11.03. Applicable Law. This Agreement shall be taken and deemed to have been fully executed, made by the parties in, and governed by, the laws of the State of Missouri for all purposes and intents.

Section 11.04. Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the City and the Company with respect to the matters herein and no other agreements or representations other than those contained in this Agreement have been made by the parties. This Agreement shall be amended only in writing and effective when signed by the authorized agents of the City and the Company.

Section 11.05. Counterparts. This Agreement is executed in multiple counterparts, each of which shall constitute one and the same instrument.

Section 11.06. Severability. In the event any section, term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect to the extent the remainder can be given effect without the invalid provision.

Section 11.07. Limit on Liability. The Parties agree that no official, director, officer, agent, employee, representative, attorney or consultant of the City shall be personally or otherwise in any way liable to the Company in the event of any default, breach or failure of performance by the City under this Agreement or for any amount which may become due to the Company or with respect to any agreement, indemnity, or other obligation under this Agreement.

Section 11.08. Headings. Headings of articles and sections are inserted only for convenience and are in no way to be construed as a limitation or expansion on the scope of the particular articles, sections or subsections to which they refer. Words in the singular shall include the plural, and vice versa, where appropriate.

Section 11.09. Notices. Any notice, demand, or other communication required by this Agreement to be given by either party hereto to the other shall be in writing and shall be sufficiently given or delivered if dispatched by certified United States First Class Mail, postage prepaid, or delivered personally or by a reputable overnight delivery service:

In the case of the Company to: Greater Ozarks Real Estate Holdings, LP
1660 N. Campbell Ave
Springfield, Missouri 65803
Attention: Titus Williams

With a copy to: Spencer Fane
2144 East Republic Road, Suite B300
Springfield, Missouri 65804
Attention: Shelby Wood/Matthew Wine

In the case of the City to: City of Camdenton, Missouri
437 W. US Hwy 54
Camdenton, Missouri 65020
Attention: City Administrator

With a copy to: Philip Morgan
37 N. Niangua
Camdenton, MO 65020
Attention: Camdenton City Attorney

With a copy to: Gilmore & Bell, P.C.
2405 Grand Boulevard, Suite 1100
Kansas City, Missouri 64108
Attention: Sid Douglas

or to such other address with respect to either party as that party may, from time to time, designate in writing and forward to the other as provided in this paragraph.

Section 11.10. Waiver. The failure of either Party to insist upon a strict performance of any of the terms or provisions of this Agreement, or to exercise any option, right or remedy contained in this Agreement, shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right or remedy, but the same shall continue and remain in full force and effect. No waiver by either Party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by such Party.

Section 11.11. Negotiation of Agreement. The City and Company are governmental and business entities, respectively, each having been represented and advised by competent counsel, and each has fully participated in the negotiation and drafting of this Agreement and has had ample opportunity to review and comment on all previous drafts. Accordingly, this Agreement shall be construed without regard to the rule that ambiguities in a document are to be construed against the draftsman. No inferences shall be drawn from the fact that the final, duly executed Agreement differs in any respect from any previous draft hereof.

Section 11.12. Tax Implications. The Company acknowledges and represents that (1) neither the City nor any of its officials, employees, consultants, attorneys or other agents have provided to them any advice regarding the federal or state income tax implications or consequences of this Agreement and the transactions contemplated hereby, and (2) the Company is relying solely upon its own tax advisors in this regard.

Section 11.13. Exhibits. All exhibits which are attached or referred to in this Agreement are specifically incorporated herein by reference and form an integral part hereof.

Section 11.14. Agreement to Control. In the event of any conflict between the terms of this Agreement and any other agreements between the City and the Company, the provisions of this Agreement shall control and supersede the conflict.

Section 11.15. Term of Agreement. Except as otherwise provided herein, this Agreement shall continue in force for so long as (a) any Bonds shall remain outstanding; or (b) the Project is titled in the name of the City. This Agreement shall terminate on the retirement of all Bonds issued with respect to the Project.

Section 11.16. Electronic Storage of Documents. The parties agree that the transaction described herein may be conducted and related documents may be sent, received or stored by electronic means.

Section 11.17. Employee Verification. The Company shall comply with and satisfy the requirements of Section 285.530.2, RSMo., as amended, which requires (1) any business entity receiving tax abatement (i.e., the Company) to, by sworn affidavit and provision of documentation, annually affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the business entity receiving tax abatement, and (2) every such business entity to annually sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the entity receiving tax abatement. The Company shall provide such affidavits and documentation to the City Clerk on or before November 15 of each year during the term of this Agreement, beginning November 15, 2021, and also upon execution of this Agreement.

Section 11.18. Survival of Representations. The representations of the Parties set forth in this Agreement shall survive the Closings.

ARTICLE XII

ASSIGNMENT

Section 12.01. Assignment or Sale Prior to Completion of Construction. Prior to the Completion of Construction of the Project, the Company shall not assign any of its rights hereunder (a “**Transfer**”) without first obtaining the written consent of the City, that shall not be unreasonably withheld, conditioned or delayed. Subject to the requirements of **Section 8.04**, and notwithstanding the foregoing, so long as the Company is not in default hereunder, the Company may (a) consummate a Transfer to an Affiliate without the necessity of obtaining the City’s consent, or (b) collaterally assign this Agreement to lenders providing financing for the Project. Company shall notify City of any Transfer permitted hereunder at least twenty (20) days prior to the closing on such assignment. In the event of a Transfer pursuant to this **Section 12.01**, upon delivery to the City of an assumption document as described in **Section 12.02(b)** below, the Company shall be released from any further obligations set forth herein accruing after the date of such assignment.

Section 12.02. Assignment or Sale After Completion of Construction. Following Completion of Construction of the Project, this Agreement and the rights, duties and obligations hereunder as they relate to the Project may be fully and freely assigned by the Company subject to the following:

(a) The Company shall represent to the City, and the City shall conclude that, in the sole reasonable opinion of the City the assignee has the financial capability to fulfill the obligations of the Company under this Agreement and possesses the management experience to manage and operate the Project.

(b) Every assignee shall, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of the City, assume all of the obligations of the Company under this Agreement and any agreements associated with the Tax Abatement and agree to be subject to all the conditions and restrictions to which the Company is subject.

In the event this Agreement is assigned in whole pursuant to this **Section 12.02** upon delivery to the City of the assumption document required by subparagraph (b), the Company shall be released from any further obligations set forth herein accruing after the date of such assignment. The Company shall notify City of any such assignment including presentation of the assumption of obligation instrument at least twenty (20) days prior to the closing on such assignment. At all times, without the consent of the City, the Company may collaterally assign this Agreement to lenders providing financing for the Project.

[Remainder of page intentionally blank.]

**GREATER OZARKS REAL ESTATE
HOLDINGS, LP**

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF MISSOURI)
) **ss.**
COUNTY OF _____)

BE IT REMEMBERED, that on this _____ day of _____, 2023, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came _____, _____ of Greater Ozarks Real Estate Holdings, LP, a Missouri limited partnership, who is personally known to me to be the same person who executed the within instrument on behalf of said entity, and such person duly acknowledged the execution of the same to be the free act and deed of said entity.

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

Notary Public

[SEAL]

My Commission Expires:

EXHIBIT B

DESCRIPTION OF THE PROJECT

The Project consists of developing approximately 5.5 acres with 132 units of a multi-family apartment complex with off street parking to accommodate all tenants at the Project; a clubhouse and pool with exercise and entertainment facilities; and related facilities. The Project Improvements will be constructed subject to the requirements included on **Exhibit F** to this Agreement.

EXHIBIT C

FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

CERTIFICATE OF SUBSTANTIAL COMPLETION

The undersigned, GREATER OZARKS REAL ESTATE HOLDINGS, LP (the "Company"), pursuant to that certain DEVELOPMENT AND PERFORMANCE AGREEMENT (the "Development Agreement") effective as of the _____ day of _____, 2023, by and between the CITY OF CAMDENTON, MISSOURI (the "City"), a fourth class city organized and existing under the laws of the State of Missouri, and the Company, a limited partnership organized and existing under the laws of the State of Missouri, hereby certifies to the City as follows:

1. That as of _____, 20__, the construction of the Project has been completed in accordance with the Development Agreement.

2. The Project has been completed and installed in a good and workmanlike manner and in accordance with the Plans & Specifications (as defined in the Development Agreement).

3. This Certificate of Completion of Construction is being issued by the Company to the City in accordance with the Development Agreement to evidence the Completion of Construction and the Company's satisfaction of all obligations and covenants with respect to such construction.

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Development Agreement.

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

GREATER OZARKS REAL ESTATE HOLDINGS, LP
a Missouri limited partnership

By: _____
Name: _____
Title: _____

ACCEPTED:

CITY OF CAMDENTON, MISSOURI

By: _____
Name: _____
Title: _____

(Insert Notary Form(s) and Legal Description)

EXHIBIT D

COMPANY ENGAGEMENT LETTER

[Date]

Greater Ozarks Real Estate Holdings, LP
1660 N. Campbell Ave
Springfield, Missouri 65803
Attention: Titus Williams

Re: City of Camdenton, Missouri Taxable Revenue Bonds (Poplar Place Apartment Project)

Dear Titus:

This letter is to confirm our engagement to serve as bond counsel in connection with the proposed issuance of the above-referenced bonds (the “*Bonds*”), the proceeds of which will be used to acquire and construct a commercial project to be owned by the City of Camdenton, Missouri (the “*Issuer*”) and leased to Greater Ozarks Real Estate Holdings, LP, a Missouri limited liability company, its permitted successors and assigns (“*Company*”). The purpose of this letter is to set forth our responsibilities and fees with respect to these transactions.

SCOPE OF ENGAGEMENT

In this engagement, as Chapter 100 bond counsel to the Issuer we expect to perform the following duties:

- (1) Subject to the completion of proceedings to our satisfaction, render our legal opinion (the “*Bond Opinion*”) regarding the validity and binding effect of the Bonds, and such related matters as we deem necessary or appropriate.
- (2) Examine applicable law as it relates to the authorization and issuance of the Bonds and our Bond Opinion and advise the Issuer regarding the legal authority for the issuance of the Bonds and other legal matters related to the structure of the Bonds.
- (3) Prepare or review authorizing proceedings and other legal documents necessary or appropriate to the authorization, issuance and delivery of the Bonds and the lease of the Project to the Company and coordinate the authorization and execution of documents.
- (4) Prepare the Issuer’s declaration of official intent to reimburse Project Costs paid by the Company prior to the issuance of the Bonds.
- (5) Draft the necessary public notice and proceedings for the required public hearing with respect to the Bonds.
- (6) Attend meetings and conferences related to the Bonds and otherwise consult with the parties to the transaction prior to the issuance of the Bonds.

- (7) Coordinate the closing of the transaction, and after the closing assemble and distribute transcripts of the proceedings and documentation relating to the authorization and issuance of the Bonds.
- (8) Undertake such additional duties as we deem necessary to complete the financing and to render our Bond Opinion.
- (9) Prepare the Chapter 100 Plan and related documents and coordinate notice to the affected taxing jurisdictions and related matters.

Our Bond Opinion will be addressed to the Issuer and the Company and will be delivered by us on the date the Bonds are exchanged for their purchase price (the “*Closing*”).

The Bond Opinion will be based on facts and law existing as of its date. In rendering our Bond Opinion, we will rely upon the certified proceedings and other certifications of public officials, officers of the Company and other persons furnished to us without undertaking to verify the same by independent investigation, and we will assume continuing compliance by the Issuer and the Company with applicable laws relating to the Bonds. During the course of this engagement, we will rely on the Company to provide us with complete and timely information on all developments pertaining to any aspect of the Project, the Bonds and the security for the Bonds.

ATTORNEY-CLIENT RELATIONSHIP

Upon execution of this engagement letter, the Issuer will be our client and an attorney-client relationship will exist between us and the Issuer. We assume that all other parties, including the Company, will retain such counsel, as they deem necessary and appropriate to represent their interests in this transaction. We further assume that all other parties understand that in this transaction we represent only the Issuer, we are not counsel to the Company or any other party, and we are not acting as an intermediary among the parties. Our services as bond counsel are limited to those contracted for herein; the Company’s execution of this engagement letter will constitute an acknowledgment of those limitations. Our representation of the Issuer will not affect, however, our responsibility to render an objective Bond Opinion.

FEES

Although the Issuer will be our sole client, the Company will be responsible for paying our legal fees. Based upon an estimated principal amount of \$32,000,000, our fee as Chapter 100 Bond Counsel, including the Chapter 100 process, will be: (i) \$25,000 due upon approval of the Chapter 100 Plan and the Development and Performance Agreement, (ii) \$30,000 for the first series of Bonds, and (iii) \$15,000 for any subsequent series of Bonds. The full amount of the Bond fee for the Bonds will be payable at the time of issuance of the Bonds.

RECORDS

Our own files, including lawyer work product, pertaining to the transaction will be retained by us. For various reasons, including the minimization of unnecessary storage expenses, we reserve the right to dispose of any documents or other materials retained by us after the termination of the engagement.

If the foregoing terms are acceptable to you, please so indicate by return the enclosed copy of this engagement letter dated and signed by an authorized officer, retaining the original for your files. We look forward to working with you.

Very truly yours,

ACCEPTED AND APPROVED:

**GREATER OZARKS REAL ESTATE
HOLDINGS, LP**

By: _____

Name: _____

Its: _____

Date: _____, 2023

cc:

EXHIBIT E

COMPANY PUBLIC IMPROVEMENTS

Company Public Improvements include access connections to public streets for ingress and egress to the Project and the extension of water, sewer and other public facilities to connect to the governmental services provided in accordance with Applicable Laws and Requirements.

EXHIBIT F

CONSTRUCTION AND DEVELOPMENT REQUIREMENTS

The preliminary development plan provides for 132 apartments on the Project Site. There are four, three-story buildings on the plan, a clubhouse with pool, exercise and entertainment facilities and playground. There are carports and surface parking to meet resident and guest parking needs (expected to provide 253 surface parking places and 36 spaces with covered parking). The buildings will all have elevators and interior corridors and the buildings are not walk-up apartments.

The bedroom mix of the apartments is expected to be as follows:

- 48 one bedroom/one bath units
- 60 two bedroom/two bath units
- 24 three bedroom/two bath units

Rental rates will range from approximately \$1,250 for one bedroom units to \$1,850 for the three-bedroom units, depending on phasing and time of construction and actual market conditions.

Included in this exhibit are renderings and photographs of the units to depict the quality and finishes of the Project, including the clubhouse/pool amenities. The building design proposed provides a quality mix of building materials and an attractive architectural design. The buildings are designed to have a visually distinct top, middle and first floor.

The clubhouse serves as a gathering and community resource for residents and includes a kitchen, fitness room, conference room, screening/TV room, and an outdoor patio and grilling area. The swimming pool will include a sun deck.

Primary materials are _____.

The clubhouse will be of an architectural style with materials to match the apartments buildings. Final designs for the clubhouse will be required with the final development plan. Also, designs for the carports and surface garages will also be required as part of the final development plan.

There are locations of shared trash enclosures on the plan. These enclosures will be constructed of materials to match the buildings, with and appropriate screening/landscaping.

A landscape plan was submitted with the Preliminary Development Plan and provides the required shade trees, parking lot landscaping, and street trees.

Access to the site would be from five locations, with two accesses provided on Roy Harman Drive (one connecting to Poplar Street), one access provided from Cedar Street (connecting to Dulle Drive) with Cedar Street circling the development and connecting to Poplar Street (with Poplar Street to include a round-about in the middle of the development), and a connection to Tonka Street.

The plan will include a utility plan for water, sanitary sewer and storm sewer to serve the site.