

**RESOLUTION NO. 05 23 2024D**

**A RESOLUTION ACKNOWLEDGING THE SATISFACTION OF CERTAIN CONDITIONS UNDER THE COOPERATIVE AGREEMENT AMONG THE CITY OF O'FALLON, THE SOUTH RIDGE COMMUNITY IMPROVEMENT DISTRICT AND SOUTH RIDGE SHOPPES, LLC; AND AUTHORIZING CERTAIN ACTIONS IN CONNECTION THEREWITH.**

**WHEREAS**, the City of O'Fallon (the "City") entered into a Cooperative Agreement dated as of August 22, 2019 (the "Cooperative Agreement") with the South Ridge Community Improvement District (the "CID") and South Ridge Shoppes, LLC (the "Developer") in connection with the construction/reconstruction/extension of Old Highway N (the "Improvements"); and

**WHEREAS**, pursuant to a Second Amended and Restated Transportation Project Reimbursement Agreement dated as of November 4, 2020 (the "Transportation Project Agreement"), among South Ridge Transportation Development District (the "TDD"), the City of Lake St. Louis, and SR Development, LLC, the TDD agreed to construct (and or cause the construction of) portions of the Improvements, including those portions of the Improvements located within the CID; and

**WHEREAS**, the City has been provided evidence that the Improvements have been completed in accordance with the Cooperative Agreement and the Transportation Project Agreement;

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF O'FALLON, MISSOURI, AS FOLLOWS:**

**Section 1.** The City hereby approves the Acknowledgment of Satisfaction of Conditions (the "Acknowledgment") in substantially the form attached hereto as **Attachment A**, with such changes therein as are approved by the Mayor. The Mayor's execution of the Acknowledgment will be conclusive evidence of such approval. The Mayor is hereby authorized and directed to execute and deliver the Acknowledgment on behalf of and as the act and deed of the City.

**Section 2.** The officers of the City are hereby authorized and directed to execute all documents and take such actions as they may deem necessary or advisable to carry out and perform the purposes of this Resolution and to make ministerial alterations, changes or additions to the documents herein approved, authorized and confirmed which they may approve, and the execution of such action shall be conclusive evidence of such necessity or advisability.

**Section 3.** It is hereby declared to be the intention of the City Council that each and every part, section and subsection of this Resolution shall be separate and severable from each and every other part, section and subsection hereof and that the City Council intends to adopt each said part, section and subsection separately and independently of any other part, section and subsection. If any part, section or subsection of this Resolution is determined to be or to have been unlawful or unconstitutional, the remaining parts, sections and subsections shall be and remain in full force and effect, unless the court making such finding determines that the valid portions standing alone are incomplete and are incapable of being executed in accord with the legislative intent.

**Section 4.** This Resolution shall be in full force and effect from and after its passage by the City Council and approval by the Mayor.

PASSED by the City Council for the City of O'Fallon, Missouri on this 23<sup>rd</sup> day of May, 2024.

ATTEST:

Katie Crabtree  
Katie Crabtree, Assistant City Clerk



Bill Hennessy  
Presiding Officer

APPROVED by the Mayor this 23<sup>rd</sup> day of May, 2024.

ATTEST:

Katie Crabtree  
Katie Crabtree, Assistant City Clerk



Bill Hennessy  
Bill Hennessy, Mayor

APPROVED AS TO FORM:

Kevin M. O'Keefe  
Kevin M. O'Keefe, City Attorney

## Attachment A

### ACKNOWLEDGMENT OF SATISFACTION OF CONDITIONS

THIS ACKNOWLEDGEMENT OF SATISFACTION OF CONDITION ("**Acknowledgement**"), entered into as of this 23 day of May 2024, by and among SOUTH RIDGE SHOPPES, LLC (the "**Developer**"), CITY OF O'FALLON, MISSOURI (the "**O'Fallon**"), and SOUTH RIDGE COMMUNITY IMPROVEMENT DISTRICT (the "**District**"). The Developer, O'Fallon, and the District are being sometimes collectively referred to herein as the "**Parties**", and individually as a "**Party**", as the context so requires.

#### Background:

A. Pursuant to that certain Cooperative Agreement dated as of August 22, 2019 by and among the Parties (the "**CA**"), O'Fallon agreed to cooperate in connection with the construction/reconstruction/extension of Old Highway N (the "**Future Improvements**"). Portions of the Future Improvements are located within the District. A map of the district is attached hereto as **Exhibit A**.

B. Pursuant to the CA, O'Fallon agreed to advance \$115,000.00 toward that portion of the Future Improvements located in the District (the "**City Contribution**") and the Developer agreed to advance \$54,850.00 toward that portion of the Future Improvements located in the District ("**Developer Contribution**"), and together with the City contribution, the "**Road Contributions**").

C. Pursuant to the CA, the District agreed to reimburse O'Fallon for the City Contribution and the Developer for the Developer Contribution out of sales tax revenues collected by the District ("**CID Revenues**").

D. Pursuant to Section 67.1461(16), RSMo, CID Revenues must be spent on public improvements within the boundaries of the District.

E. Pursuant to that certain Second Amended and Restated Transportation Project Reimbursement Agreement dated as of November 4, 2020 (the "**TPRA**"), among South Ridge Transportation Development District ("**TDD**"), the City of Lake St. Louis ("**Lake Saint Louis**"), and SR Development, LLC ("**Road Developer**"), the TDD agreed to construct (and or cause the construction of) portions of the Future Improvements, including those portion of the Future Improvements located within the District.

F. Section 7.4 of the TPRA provides, "Notwithstanding any provision hereof to the contrary, the parties hereto agree that any portion of the ... [Road] Contribution paid or reimbursable by the South Ridge Community Improvement District shall be used solely for that portion of the ... [Future Improvements] located within the boundaries of the ... District."

G. Those portions of the Future Improvements contemplated under the TPRA have been completed in accordance therewith.

H. The Road Contribution was used for those portions of the Future Improvements located within the District.

I. The Parties desire to confirm that the Road Contributions will only be spent on portions of the Future Improvements located within the District, as contemplated by Section 4.2 of the CA.

J. As the Developer has conveyed all of the land located within the District, the Developer intends to assign (the "**Assignment**") to RCE VENTURES, LLC ("**Assignee**"), all right to receive CID Revenues payable under the Agreement with respect to all Reimbursable Developer Costs (and any accrued interest with respect thereto) now or hereafter certified by the District.

## **ARTICLE I ROAD CONTRIBUTION**

**1.1. Satisfaction/Waiver of Condition.** The District, O'Fallon and the Developer agree that the TRPA effectively satisfies the objective of the "Joint Road Agreement" referenced in the last sentence of Section 4.2 of the CA. Therefore, the Parties hereby waive any requirement for a Joint Road Agreement and agree that the Road Contributions can be certified as Reimbursable Developer Costs and/or Reimbursable City Costs, as applicable.

## **ARTICLE II MISCELLANEOUS**

**2.1. Applicable Law; Venue.** This Acknowledgement 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. Any action arising out of, or concerning, this contract shall be brought only in the Circuit Court of St. Charles County, Missouri. All parties to this Acknowledgement consent to the exclusive jurisdiction and venue of that court.

**2.2. Representatives Not Personally Liable.** No elected or appointed official, agent, employee or representative of either City or the District shall be personally liable to any other party in the event of any default or breach by any party under this Acknowledgement, or for any amount which may become due to any party or on any obligations under the terms of this Acknowledgement.

**2.3. Entire Agreement; Amendment; Conflicts.** This Acknowledgement shall be amended only in writing and effective when executed by the Developer, O'Fallon and the District.

**2.4. Counterparts.** This Acknowledgement is executed in multiple counterparts, each of which shall constitute one and the same instrument.

**2.5. Severability.** If any term or provision of this Acknowledgement 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, unless the unenforceable or invalid term or provision is such that a court reasonably would find that the parties, or any of them, would not have entered this Acknowledgement without such term or provision, or would not have intended the remainder of this Acknowledgement to be enforced without such term or provision.

**2.6. Assignment.** The City hereby acknowledges the Assignment.

**2.7. Payment of City Fees.** Promptly following execution of this Acknowledgement, the District agrees to pay Gilmore & Bell, P.C. the invoice appended hereto as Exhibit B in the amount of \$5,000 as compensation for legal services provided to the City in connection with the Future Improvements.

**IN WITNESS WHEREOF**, the parties have caused this Acknowledgement to be executed as of the date first written above.

**SOUTH RIDGE COMMUNITY IMPROVEMENT  
DEVELOPMENT DISTRICT**

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

Name: Neil Kersten

Title: Chairman

**SOUTH RIDGE SHOPPES, LLC**

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

Name: Neil Kersten

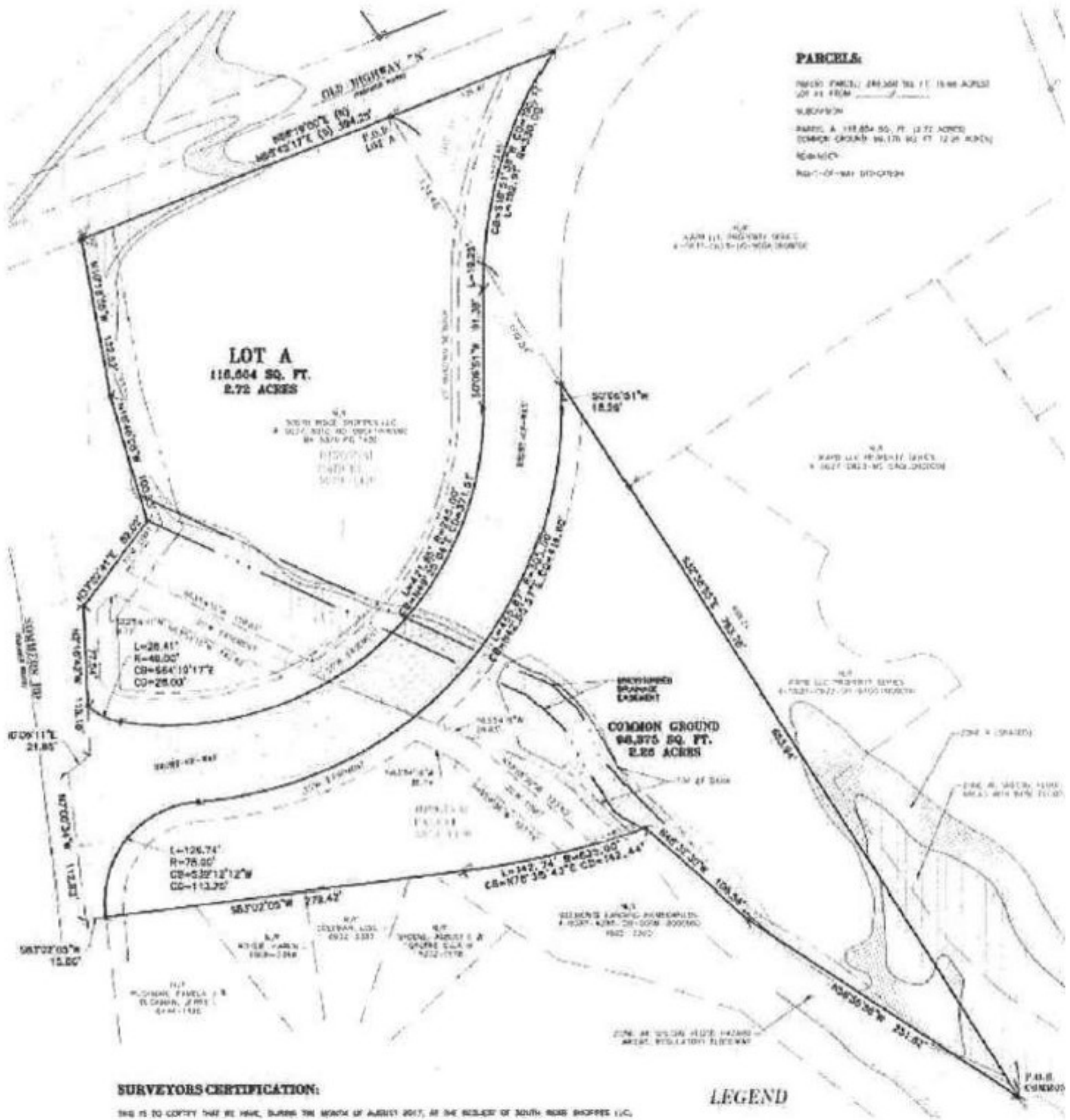
Title: Manager

CITY OF O'FALLON, MISSOURI

By:   
Name: Michael Snowden  
Title: City Administrator



# EXHIBIT A



**EXHIBIT B**



One Metropolitan Square  
211 N. Broadway, Suite 2000  
St. Louis, Missouri 63102-2746  
(314) 436-1000 / (314) 436-1166 FAX / gilmorebell.com  
EIN: 43-1611738

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**Matter No. 600516.20072**  
**Invoice No. 8053427**

**February 12, 2024**

**City of O'Fallon, Missouri**  
**South Ridge Community Improvement District**

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For legal services relating to the formation of the District, review of the Acknowledgment of Satisfaction of Conditions, and related advice.

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\$5,000.00

**WIRE or ACH INSTRUCTIONS:**

Commerce Bank of Kansas City  
Kansas City, Missouri  
(ABA #101000019)  
For the Account of Gilmore & Bell, P.C.  
(Account #280511860)

Note: Please Reference the Invoice Number

**CHECK MAILING INSTRUCTIONS:**

GILMORE & BELL, P.C.  
P.O. Box 802706  
Kansas City, MO 64180-2706

Note: Please Reference the Invoice Number

MDG  
MAS