

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

READ FIRST TIME: September 15, 2022 READ SECOND TIME: October 6, 2022

I hereby certify that Ordinance No. 22.71 was duly passed on October 6, 2022 by the Board of Aldermen of the City of Osage Beach. The votes thereon were as follows:

Ayes: 6 Nays: 0 Abstentions: 0 Absent: 0

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

October 6, 2022
Date

Tara Berreth
Tara Berreth, City Clerk

Approved as to form:

Edward B. Rucker
Edward B. Rucker, City Attorney

I hereby approved Ordinance No. 22.71.

Michael Harmison
Michael Harmison, Mayor

October 6, 2022
Date

Tara Berreth
Tara Berreth, City Clerk

EXHIBIT A

PLAN FOR AN INDUSTRIAL DEVELOPMENT PROJECT

(On file in the office of the City Clerk)

EXHIBIT B
BASE LEASE

(On file in the office of the City Clerk)

EXHIBIT C

LEASE AGREEMENT

(On file in the office of the City Clerk)

EXHIBIT D
TRUST INDENTURE

(On file in the office of the City Clerk)

EXHIBIT E

BOND PURCHASE AGREEMENT

(On file in the office of the City Clerk)