

AN ORDINANCE OF THE CITY OF OSAGE BEACH, MISSOURI, AMENDING THE OSAGE BEACH COMMONS REDEVELOPMENT AGREEMENT AND ORDINANCE 17-63 PREVIOUSLY ADOPTED ON SEPTEMBER 23, 2017 BY EXTENDING THE CONSTRUCTION SCHEDULE AND CERTAIN DEADLINES THEREIN DUE TO EXCUSABLE DELAY CAUSED BY THE COVID-19 PANDEMIC.

**WHEREAS** on September 21, 2017, the City of Osage Beach, Missouri (the “City”) and TSG Osage Beach, LLC (the “Developer”) entered into a Tax Increment Financing Redevelopment Agreement (the “Agreement”) with respect to the Osage Beach Commons Tax Increment Financing Plan; and,

**WHEREAS**, the City and Developer acknowledge that economic and social uncertainty caused by the worldwide COVID-19 pandemic (the “Pandemic”) has had, and continues to have, far-reaching impacts on the conduct of commerce that are well-known to them, and the Pandemic has led to a multitude of federal, state and local emergency declarations, executive orders and public health guidelines that affect business decisions; and,

**WHEREAS**, under the Agreement, the Developer is required, subject to Excusable Delays<sup>1</sup> to complete construction of the Public Improvements no later than September 21, 2020, and to achieve Substantial Completion of the Project no later than September 21, 2021 (the “Deadlines”); and,

**WHEREAS**, the Developer has advised the City that the far reaching impacts of the Pandemic prevent it from meeting the Deadlines as currently set out in the Agreement, and the Developer has requested that the City acknowledge that Developer’s obligation to meet those deadlines is excused under the provisions of Section 8.5 of the Agreement on the basis of Excusable Delay; and,

**WHEREAS**, the Developer has requested that the dates of the Deadlines, and certain other related dates in the Agreement, be adjusted, and that such adjustments be deemed an Amendment to the Agreement; and,

**WHEREAS**, the Board of Aldermen hereby finds that the Developer’s obligations to meet the Deadlines are excused as a result of Excusable Delay that still continues without foreseeable end; and,

**WHEREAS**, the Board of Aldermen concludes that it is in the best interests of the City to amend the Agreement, through this Ordinance, consistent with the foregoing premises, and to alter certain dates in the Agreement, all as more specifically set forth below.

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

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<sup>1</sup> Capitalized words or phrases used but not defined in this Ordinance have the same meaning given to such term in the Agreement.

Section 1. The Agreement is hereby amended as follows:

(a) The dates for the following milestones in the Project Schedule set out on Exhibit D to the Agreement are hereby amended by mutual agreement to the following dates:

Complete Construction of Public Improvements: To occur no later than September 21, 2023

Achieve Substantial Completion of the Project: To occur no later than September 21, 2024

(b) The commencement date of the ten (10) year Revenue Protection Period in Section 4.5 of the Agreement is hereby amended by mutual agreement from January 1, 2021 to January 1 of the year immediately following the Substantial Completion of the Project as defined in Section 1.2 of the Agreement; or January 1, 2024 whichever occurs first;

(c) The date January 31, 2022 on the first line of Subsection 4.5.B. appearing on page 18 of the Agreement, (the due date of the first report by Developer of City Revenue) is hereby amended by mutual agreement to January 31 of the second year immediately following substantial completion of the Project or January 31, 2025 whichever occurs first; and

(d) Exhibit L to the Agreement is hereby amended by mutual agreement by deleting the specific years at the top of the annual revenue columns to the right of the Rate column (2019 – 2042), and designating as the calendar year to be considered as “Series 1” that date which is January 1 of the year immediately following the Substantial Completion of the Project; or January 1, 2024 whichever occurs first, and each subsequent Series shall be the next ensuing calendar year (i.e., if the January 1 immediately following the Substantial Completion of the Project is January 1, 2024, then the Projected Amount of City Revenue shown on Exhibit L as being for Series 3 would be the Projected Amount of City Revenue for 2026).

Except as hereby amended, the Agreement remains in full force and effect.

Section 2. Severability

The chapters, sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional or otherwise invalid by the valid judgment or degree of any Court of any competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this ordinance since the same would have been enacted by the Board of Aldermen without the incorporation in this ordinance of any such unconstitutional or invalid phrase, clause, sentence, paragraph or section.

Section 3. Repeal of Ordinances not to affect liabilities, etc.

Whenever any part of this ordinance shall be repealed or modified, either expressly or by implication, by a subsequent ordinance, that part of the ordinance thus repealed or modified shall continue in force until the subsequent ordinance repealing or modifying the ordinance shall go into effect unless therein otherwise expressly provided; but no suit, prosecution, proceeding, right, fine or penalty instituted, created, given, secured or accrued under this ordinance previous

to its repeal shall not be affected, released or discharged but may be prosecuted, enjoined and recovered as fully as if this ordinance or provisions had continued in force, unless it shall be therein otherwise expressly provided.

Section 4. That this Ordinance shall be in full force and effect from and after the date of passage and approval of the Mayor.

READ FIRST TIME: September 3, 2020      READ SECOND TIME: September 3, 2020

I hereby certify that Ordinance No. 20.57 was duly passed on September 3, 2020, 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.

September 3, 2020  
Date

Tara Berreth  
Tara Berreth, City Clerk

Approved as to form:

Edward B. Rucker  
Edward B. Rucker, City Attorney

I hereby approve Ordinance No.20.57.

John Olivarri  
John Olivarri, Mayor

September 3, 2020  
Date

Tara Berreth  
Tara Berreth, City Clerk

