

**THIS COVER PAGE CONTAINS CERTAIN INFORMATION FOR QUICK REFERENCE ONLY. IT IS NOT A SUMMARY OF THIS ISSUE. INVESTORS MUST READ THE ENTIRE OFFICIAL STATEMENT TO OBTAIN INFORMATION ESSENTIAL TO THE MAKING OF AN INFORMED INVESTMENT DECISION.**

**NEW ISSUE  
BOOK-ENTRY ONLY**

**NOT RATED  
BANK QUALIFIED**

*In the opinion of Gilmore & Bell, P.C., Bond Counsel, under existing law and assuming continued compliance with certain requirements of the Internal Revenue Code of 1986, as amended (the "Code"), (1) the interest on the Bonds (including any original issue discount properly allocable to an owner thereof) is excludable from gross income for federal income tax purposes, and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations, (2) the interest on the Bonds is exempt from income taxation by the State of Missouri, and (3) the Bonds are "qualified tax-exempt obligations" within the meaning of Section 265(b)(3) of the Code. See "TAX MATTERS" in this Official Statement.*

**\$4,410,000**  
**CITY OF OSAGE BEACH, MISSOURI**  
**TAX INCREMENT REFUNDING REVENUE BONDS**  
**(PREWITT'S POINT PROJECT)**  
**SERIES 2012**

**Dated: Date of Delivery**

**Due: May 1, as shown below**

The Bonds are issuable only as fully registered Bonds without coupons. Purchases of the Bonds will be made in book-entry form, in the denomination of \$5,000 or any integral multiple thereof. Principal of and semiannual interest on the Bonds will be paid from moneys available therefor under the Indenture (as hereinafter defined) by UMB Bank, N.A., Kansas City, Missouri, as Trustee (the "Trustee"). Interest on the Bonds will be payable semiannually on each May 1 and November 1, beginning November 1, 2012.

The Bonds are being issued by the City of Osage Beach, Missouri (the "City"), pursuant to a Trust Indenture dated as of September 1, 2012 by and between the City and the Trustee (the "Indenture"). The Bonds are limited obligations of the City, payable solely from Payments in Lieu of Taxes, Economic Activity Tax Revenues (each as described herein) and moneys on deposit in a Debt Service Reserve Fund. The application of Economic Activity Tax Revenues to the payment of the Bonds, as described herein, is subject to annual appropriation by the City.

THE BONDS DO NOT CONSTITUTE AN INDEBTEDNESS OF THE CITY OR THE STATE OF MISSOURI (THE "STATE") OR ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL, STATUTORY OR CHARTER PROVISION OR LIMITATION. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWERS OF THE CITY, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF ARE PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THE BONDS. THE ISSUANCE OF THE BONDS SHALL NOT, DIRECTLY, INDIRECTLY OR CONTINGENTLY, OBLIGATE THE CITY, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF TO LEVY ANY FORM OF TAXATION THEREFOR OR TO MAKE ANY APPROPRIATION FOR THEIR PAYMENT.

**The Bonds involve a high degree of risk, and prospective purchasers should read the section herein captioned "BONDOWNERS' RISKS." The Bonds may not be suitable investments for all persons, and prospective purchasers should carefully evaluate the risks and merits of an investment in the Bonds, should confer with their own legal and financial advisors and should be able to bear the risk of loss of their investment in the Bonds before considering a purchase of the Bonds.**

**MATURITY SCHEDULE**

<u>Due May 1</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Yield</u>	<u>Price</u>	<u>CUSIP</u>
2019	\$1,910,000	3.00%	3.084%	99.50%	68763WAL7
2023	2,500,000	4.15	4.268	99.00	68763WAM5

**The Bonds are subject to redemption prior to maturity in certain circumstances, as described herein. See "THE BONDS – Redemption Provisions" and "PROJECTED AVERAGE LIFE OF THE BONDS" herein.**

*The Bonds are offered when, as and if issued by the City, subject to the approval of legality by Gilmore & Bell, P.C., Kansas City, Missouri, Bond Counsel. Certain legal matters related to this Official Statement will be passed upon by Gilmore & Bell, P.C. Certain legal matters will be passed upon for the City by Edward Rucker, City Attorney. Certain legal matters will be passed upon for the Underwriter by Lewis, Rice & Fingersh, L.C. It is expected that the Bonds will be available for delivery on or about September 18, 2012.*

**STIFEL  
NICOLAUS**

The date of this Official Statement is September 6, 2012.

**CITY OF OSAGE BEACH, MISSOURI**

1000 City Parkway  
Osage Beach, Missouri 65065

**MAYOR**

Penny Lyons

**BOARD OF ALDERMEN**

Fred Catcott  
Lois Farmer  
Steven Kahrs  
John Olivarri  
Kevin Rucker  
Ron Schmitt

**ADMINISTRATIVE OFFICIALS**

Nancy Viselli, City Administrator  
Edward Rucker, City Attorney  
Karri Bell, Treasurer  
Diann Warner, City Clerk  
Cary Patterson, City Planner  
Ron White, Building Official  
Nick Edelman, City Engineer

**FINANCIAL ADVISOR**

WM Financial Strategies  
St. Louis, Missouri

**TRUSTEE**

UMB Bank, N.A.  
Kansas City, Missouri

**BOND COUNSEL**

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

**UNDERWRITER**

Stifel, Nicolaus & Company, Incorporated  
St. Louis, Missouri

**UNDERWRITER'S COUNSEL**

Lewis, Rice & Fingersh, L.C.  
St. Louis, Missouri

## REGARDING USE OF THIS OFFICIAL STATEMENT

No dealer, broker, salesperson or other person has been authorized by the City or the Underwriter to give any information or to make any representations with respect to the Bonds other than those contained in this Official Statement, and, if given or made, such other information or representations must not be relied upon as having been authorized by any of the foregoing. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of the Bonds by any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale. The information set forth herein has been furnished by the City and other sources believed to be reliable, but such information is not guaranteed as to accuracy or completeness, and is not to be construed as a representation, by the Underwriter. The information and expressions of opinion herein are subject to change without notice and neither the delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the City or others since the date hereof.

The Underwriter has reviewed the information in this Official Statement in accordance with, and as part of, its responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of that information.

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IN CONNECTION WITH THIS OFFERING, THE UNDERWRITER MAY OVERALLOTT OR EFFECT TRANSACTIONS THAT STABILIZE OR MAINTAIN THE MARKET PRICE OF THE BONDS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

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THE BONDS HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER ANY STATE SECURITIES OR "BLUE SKY" LAWS. THE BONDS ARE OFFERED PURSUANT TO AN EXEMPTION FROM REGISTRATION WITH THE SECURITIES AND EXCHANGE COMMISSION.

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### CAUTIONARY STATEMENTS REGARDING FORWARD-LOOKING STATEMENTS IN THIS OFFICIAL STATEMENT

Certain statements included or incorporated by reference in this Official Statement constitute "forward-looking statements" within the meaning of the United States Private Securities Litigation Reform Act of 1995, Section 21E of the United States Securities Exchange Act of 1934, as amended, and Section 27A of the United States Securities Act of 1933, as amended. Such statements are generally identifiable by the terminology used such as "plan," "expect," "estimate," "anticipate," "projected," "budget" or other similar words.

THE ACHIEVEMENT OF CERTAIN RESULTS OR OTHER EXPECTATIONS CONTAINED IN SUCH FORWARD-LOOKING STATEMENTS INVOLVE KNOWN AND UNKNOWN RISKS, UNCERTAINTIES AND OTHER FACTORS WHICH MAY CAUSE ACTUAL RESULTS, PERFORMANCE OR ACHIEVEMENTS DESCRIBED TO BE MATERIALLY DIFFERENT FROM ANY FUTURE RESULTS, PERFORMANCE OR ACHIEVEMENTS EXPRESSED OR IMPLIED BY SUCH FORWARD-LOOKING STATEMENTS. NEITHER THE CITY NOR ANY OTHER PARTY PLANS TO ISSUE ANY UPDATES OR REVISIONS TO THOSE FORWARD-LOOKING STATEMENTS IF OR WHEN THEIR EXPECTATIONS, OR EVENTS, CONDITIONS OR CIRCUMSTANCES UPON WHICH SUCH STATEMENTS ARE BASED OCCUR.

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## OFFICIAL STATEMENT

**\$4,410,000**

### **CITY OF OSAGE BEACH, MISSOURI TAX INCREMENT REFUNDING REVENUE BONDS (PREWITT'S POINT PROJECT) SERIES 2012**

#### INTRODUCTION

*This introduction is only a brief description and summary of certain information contained in this Official Statement and is qualified in its entirety by reference to the more complete and detailed information contained in the entire Official Statement, including the cover page and appendices hereto, and the documents summarized or described herein. A full review should be made of the entire Official Statement.*

#### **Purpose of the Official Statement**

The purpose of this Official Statement is to furnish information relating to (1) the City of Osage Beach, Missouri (the "City"), (2) the City's Tax Increment Refunding Revenue Bonds (Prewitt's Point Project), Series 2012 (the "Bonds") and (3) a retail development, known as Prewitt's Point ("Prewitt's Point"), developed by Prewitt's Hwy 54 Enterprises, LLC, a Missouri limited liability company (the "Developer"), all pursuant to the U.S. Highway 54 and Missouri Highway 42 Tax Increment Financing Plan (the "Redevelopment Plan") adopted by the Board of Aldermen of the City on July 6, 2000, as amended on August 3, 2006. For the definition of certain capitalized terms used herein and not otherwise defined, see "**Appendix A – Definitions; Summary of the Principal Documents**" hereto.

#### **The City**

The issuer of the Bonds is the City of Osage Beach, Missouri, a political subdivision of the State of Missouri. The City, located in Camden and Miller Counties, Missouri, is a fourth-class city. See the caption "**THE CITY**" herein.

#### **The Bonds**

The Bonds are being issued pursuant to The Real Property Tax Increment Allocation Redevelopment Act, Section 99.800 et seq. of the Revised Statutes of Missouri, as amended (the "TIF Act") and a Trust Indenture dated as of September 1, 2012 (the "Indenture") between the City and UMB Bank, N.A., Kansas City, Missouri (the "Trustee"). Pursuant to the TIF Act, the City designated the Prewitt Point Redevelopment Area on July 6, 2000 and, pursuant to an amendment to the Redevelopment Plan adopted on August 3, 2006, the Redevelopment Area was increased slightly in size (as increased, the "Redevelopment Area"). The Bonds are being issued for the purpose of providing funds to (1) refinance the costs of certain public improvements within the Redevelopment Area by refunding the outstanding City of Osage Beach, Missouri Tax Increment Revenue Bonds (Prewitt's Point Project), Series 2002 (the "Refunded Bonds") currently outstanding in the principal amount of \$4,510,000, (2) fund a Debt Service Reserve Fund for the Bonds and (3) pay the costs associated with the issuance of the Bonds and the refunding of the Refunded Bonds. A description of the Bonds is contained in this Official Statement under the caption "**THE BONDS.**" All references to the Bonds are qualified in their entirety by the definitive form thereof and the provisions with respect thereto included in the Indenture.

*The Bonds are subject to redemption prior to maturity as described herein. See "**THE BONDS – Redemption Provisions**" and "**PROJECTED AVERAGE LIFE OF THE BONDS**" herein.*

## Security for the Bonds

The Bonds and the interest thereon are limited obligations of the City, payable solely from Payments in Lieu of Taxes attributable to property located within Subarea 1 (as herein described), Economic Activity Tax Revenues generated by economic activities within Subarea 1 which have been appropriated to the payment of the Bonds, and moneys on deposit in a Debt Service Reserve Fund, as provided in the Indenture. The application of Economic Activity Tax Revenues to the payment of the Bonds is subject to annual appropriation by the City. See **“SOURCES OF PAYMENT AND SECURITY FOR THE BONDS”** herein. Additional tax increment revenue bonds were issued by the City in 2006 (the “Series 2006 Bonds”) to finance other costs related to the development of Prewitt’s Point that are payable from payments in lieu of taxes and economic activity tax revenues generated by economic activities within Subarea 2. The Series 2006 Bonds are currently outstanding in the principal amount of \$14,405,000. See **“SOURCES OF PAYMENT AND SECURITY FOR THE BONDS – Revenues”** herein. See **“THE PREWITT’S POINT PROJECT – Subarea 1”** herein for a map that shows the approximate boundaries of Subarea 1 and Subarea 2, and some of the businesses located in each area.

**Because the TIF Act provides that 23 years is the maximum amount of time between the adoption of an ordinance approving a redevelopment project within a redevelopment area and the retirement of obligations incurred to finance such redevelopment project costs, the obligations of the City with respect to the Bonds terminate on July 5, 2023, whether or not the principal amount thereof or interest thereon has been paid in full.**

A Debt Service Reserve Fund will be funded at the time of issuance of the Bonds in the amount of \$441,000 as additional security for the Bonds. See **“SOURCES OF PAYMENT AND SECURITY FOR THE BONDS – Indenture Funds and Accounts”** herein.

The Bonds are not secured by a mortgage on any property in the Redevelopment Area. However, the TIF Act provides that the Payments in Lieu of Taxes that are due and owing shall constitute a lien against the real estate in the Redevelopment Area from which they are derived. Upon a default in the payment of any Payments in Lieu of Taxes, the lien for such unpaid Payments in Lieu of Taxes may be enforced as provided by law. See the caption **“TAX INCREMENT FINANCING IN MISSOURI – Assessments and Collections of Ad Valorem Taxes.”**

**The Bonds do not constitute an indebtedness within the meaning of any constitutional, statutory or charter debt limitation or restriction. The issuance of the Bonds shall not, directly, indirectly or contingently, obligate the City, the State or any political subdivision thereof to levy any form of taxation therefore or to make any appropriation for their payment.**

## Bondowners’ Risks

The Bonds involve a high degree of risk, and prospective purchasers should read the section herein captioned **“BONDOWNERS’ RISKS.”** The Bonds may not be suitable investments for all persons, and prospective purchasers should carefully evaluate the risks and merits of an investment in the Bonds, should confer with their own legal and financial advisors and should be able to bear the risk of loss of their investment in the Bonds before considering a purchase of the Bonds.

## Definitions and Summary of the Indenture and Additional Information

Definitions of certain words and terms used in this Official Statement and a summary of certain provisions of the Indenture are included in this Official Statement in **Appendix A** hereto. Such definitions and summaries do not purport to be comprehensive or definitive. All references herein to the Indenture are qualified in their entirety by reference to the definitive form of such document, a copy of which may be obtained from Stifel, Nicolaus & Company, Incorporated, 501 N. Broadway, 8th Floor, St. Louis, Missouri 63102.

## **Continuing Disclosure**

The City will covenant in the Continuing Disclosure Agreement to provide certain financial information relating to the City and the Redevelopment Area, semi-annually, not later than 60 days after each May 1 and November 1, and to provide notices of the occurrence of certain enumerated events. See “**Appendix C – Form of Continuing Disclosure Agreement.**”

The City has engaged in undertakings similar to the Continuing Disclosure Agreement with respect to certain outstanding obligations of the City, to provide to the national information repositories (presently, only the Municipal Securities Rulemaking Board) the audited financial statements of the City and updates of certain operating data. In the past few years, the filings made by the City have excluded certain portions of the operating data required by the City’s continuing disclosure undertakings and, for certain fiscal years, have not been filed in a timely manner. The Continuing Disclosure Agreement contains procedures for notification of the City which are designed to promote compliance with the City’s obligations thereunder with respect to the timeliness and content of required filings.

## **THE BONDS**

*The following is a summary of certain terms and provisions of the Bonds. Reference is hereby made to the Bonds and the provisions with respect thereto in the Indenture for the detailed terms and provisions thereof.*

### **Authorization; Description of the Bonds**

The Bonds are being issued pursuant to and in full compliance with the Constitution and statutes of the State of Missouri. The Bonds will be issuable as fully registered bonds, without coupons. Purchases of the Bonds will be made in book–entry form only (as described below) in denominations of \$5,000 or any integral multiple thereof. Purchasers of the Bonds will not receive certificates representing their interests in the Bonds purchased. The Bonds will be dated as of the date of initial issuance and delivery thereof, and will mature on the date and in the principal amount set forth on the cover page of this Official Statement. The Bonds will bear interest at the rate per annum set forth on the cover page hereof, which interest will be payable semiannually on May 1 and November 1 in each year, beginning on November 1, 2012.

### **Registration, Transfer and Exchange of Bonds**

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

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

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

## Redemption Provisions

*Optional Redemption.* The Bonds are subject to optional redemption by the City in whole or in part at any time on or after May 1, 2016, at a redemption price equal to 100% of the principal amount of Bonds to be redeemed, plus accrued interest to the redemption date.

### *Special Mandatory Redemption.*

(1) The Bonds maturing on May 1, 2019 are subject to special mandatory redemption by the City on any Payment Date commencing November 1, 2012, at the redemption price of 100% of the principal amount being redeemed, together with accrued interest thereon to the date fixed for redemption, in an amount equal to the amount which is on deposit in the Redemption Account of the Debt Service Fund 40 days prior to each Payment Date (or if such date is not a Business Day, the immediately preceding Business Day).

(2) The Bonds maturing on May 1, 2023 are subject to special mandatory redemption by the City on any Payment Date, commencing on the first Payment Date on which no Bonds maturing on May 1, 2019 are Outstanding, at the redemption price of 100% of the principal amount being redeemed, together with accrued interest thereon to the date fixed for redemption, in an amount equal to the amount which is on deposit in the Redemption Account of the Debt Service Fund 40 days prior to each Payment Date (or if such date is not a Business Day, the immediately preceding Business Day).

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

*Selection of Bonds to be Redeemed.* Bonds shall be redeemed only in Authorized Denominations. When less than all of the Outstanding Bonds are to be redeemed and paid prior to maturity, such Bonds or portions of Bonds to be redeemed shall be selected in Authorized Denominations by the Trustee from such maturities and in such amounts as the City may determine, and Bonds of less than a full maturity shall be selected by the Trustee in \$5,000 units of principal amount by lot or in such other equitable manner as it may determine.

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

*Notice and Effect of Call for Redemption.* Unless waived by any Owner of Bonds to be redeemed, official notice of any redemption of any Bond shall be given by the Trustee on behalf of the City by mailing a copy of an official redemption notice by first class mail, postage prepaid, at least 30 days prior to the date fixed for redemption to the Owner of the Bond or Bonds to be redeemed at the address shown on the Register;



provided, however, that failure to give such notice by mailing as aforesaid to any Owner or any defect therein as to any particular Bond shall not affect the validity of any proceedings for the redemption of any other Bonds.

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

On or prior to the date fixed for redemption, moneys or Government Securities shall be deposited with the Trustee as provided in the Indenture to pay the Bonds called for redemption and accrued interest thereon to the redemption date. Upon the happening of the above conditions, and notice having been given as provided in the Indenture, the Bonds or the portions of the principal amount of Bonds thus called for redemption shall cease to bear interest on the specified redemption date, provided moneys sufficient for the payment of the redemption price are on deposit at the place of payment at the time, and shall no longer be entitled to the protection, benefit or security of the Indenture and shall not be deemed to be Outstanding under the provisions of the Indenture.

### **Payment and Discharge Provisions**

When the principal of and interest on all the Bonds have been paid in accordance with their terms or provision has been made for such payment, as provided in the Indenture, and provision also is made for paying all other sums payable under the Indenture, including the fees and expenses of the Trustee and the Paying Agents to the date of payment of the Bonds, then the right, title and interest of the Trustee under the Indenture shall thereupon cease, determine and be void, and thereupon the Trustee shall cancel, discharge and release the Indenture and shall execute, acknowledge and deliver to the City such instruments of satisfaction and discharge or release as shall be required to evidence such release and the satisfaction and discharge of the Indenture, and shall assign and deliver to the City any property at the time subject to the Indenture which may then be in the Trustee's possession, except amounts in the Debt Service Fund required to be paid to the City under the Indenture, and except funds or securities in which such moneys are invested and held by the Trustee for the payment of the principal of and interest on the Bonds.

### **Defeasance Provisions**

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

## **Book-Entry Only System**

### ***General***

When the Bonds are issued, ownership interests will be available to purchasers only through a book-entry only system (the “Book-Entry Only System”) maintained by The Depository Trust Company (“DTC”), New York, New York. DTC will act as securities depository for the Bonds. Initially, the Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC’S partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Bond certificate for each maturity of the Bonds will be issued, in the aggregate principal amount of such maturity, and will be deposited with DTC or the Trustee as its “FAST” agent. The following discussion will not apply to any Bonds issued in certificate form due to the discontinuance of the DTC Book-Entry Only System, as described below.

### ***DTC and its Participants***

DTC, the world’s largest depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934, as amended. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments from over 100 countries that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC, in turn, is owned by a number of Direct Participants of DTC and Members of the National Securities Clearing Corporation, Fixed Income Clearing Corporation and Emerging Markets Clearing Corporation (“NSCC,” “FICC” and “EMCC,” also subsidiaries of DTCC), as well as by the New York Stock Exchange, Inc., the American Stock Exchange LLC and the National Association of Securities Dealers, Inc. Access to the DTC system is also available to others, such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (the “Indirect Participants” and, together with the Direct Participants, the “Participants”). DTC has a Standard & Poor’s rating of “AA+”. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com).

### ***Purchase of Ownership Interests***

Purchases of the Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Bonds on DTC’s records. The ownership interest of each actual purchaser of each Bond (the “Beneficial Owner”) is, in turn, to be recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interest in the Bonds, except in the event that use of the book-entry system for the Bonds is discontinued.

So long as Cede & Co., as nominee of DTC, is the registered owner of any of the Bonds, the Beneficial Owners of such Bonds will not receive or have the right to receive physical delivery of the Bonds, and references herein to the registered owners of such Bonds shall mean Cede & Co. and shall not mean the Beneficial Owners of such Bonds.

### ***Transfers***

To facilitate subsequent transfers, all Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of the Bonds with DTC and their registration in the name of Cede & Co. or such other nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Bonds. DTC's records reflect only the identity of the Direct Participants to whose accounts such Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

### ***Notices***

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

Redemption notices shall be sent to DTC. If less than all of the Bonds are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

### ***Voting***

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to the Bonds unless authorized by a Direct Participant in accordance with DTC's Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the City as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

### ***Payments of Principal and Interest***

So long as any Bond is registered in the name of DTC's nominee, all payments of principal of, premium, if any, and interest on such Bond will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the City or the Trustee, on the payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC nor its nominee, the Trustee or the City, subject to any statutory and regulatory requirements as may be in effect from time to time. Payment of principal of, premium, if any, and interest on the Bonds to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the City or the Trustee, disbursement of such payments to Direct Participants is the responsibility of DTC, and disbursement of such payments to the Beneficial Owners is the responsibility of Direct and Indirect Participants.

### ***Discontinuation of Book-Entry Only System***

DTC may discontinue providing its services as depository with respect to the Bonds at any time by giving reasonable notice to the City or the Trustee. Under such circumstances, in the event that a successor depository is not obtained, bond certificates are required to be printed and delivered as described in the Indenture.

The use of the system of book-entry transfers through DTC (or a successor securities depository) may be discontinued as described in the Indenture. In that event, bond certificates will be printed and delivered as described in the Indenture.

None of the Underwriter, the Trustee nor the City will have any responsibility or obligations to any Direct Participants or Indirect Participants or the persons for whom they act with respect to (i) the accuracy of any records maintained by DTC or any such Direct Participant or Indirect Participant; (ii) the payment by any Participant of any amount due to any Beneficial Owner in respect of the principal of, premium, if any, or interest on the Bonds; (iii) the delivery by any such Direct Participant or Indirect Participant of any notice to any Beneficial Owner that is required or permitted under the terms of the Indenture to be given to owners of the Bonds; (iv) the selection of the Beneficial Owners to receive payment in the event of any partial redemption of the Bonds; or (v) any consent given or other action taken by DTC as Bondholder.

*The information above concerning DTC and DTC's book-entry system has been obtained from sources that the City believes to be reliable, but is not guaranteed as to accuracy or completeness by and is not to be construed as a representation by the City, the Trustee or the Underwriter. The City, the Trustee and the Underwriter make no assurances that DTC, Direct Participants, Indirect Participants or other nominees of the Beneficial Owners will act in accordance with the procedures described above or in a timely manner.*

## **SOURCES OF PAYMENT AND SECURITY FOR THE BONDS**

### **Limited Obligations; Sources of Payment**

The Bonds and the interest thereon are limited obligations of the City, payable solely from Payments in Lieu of Taxes attributable to property located within Subarea 1, Economic Activity Tax Revenues generated by economic activities within Subarea 1 which have been appropriated by the City to the payment of the Bonds and moneys on deposit in the Debt Service Reserve Fund, as provided in the Indenture. Under the Indenture, the City will pledge and assign moneys in the Revenue Fund, the Debt Service Fund, the Debt Service Reserve Fund and the Costs of Issuance Fund to the Owners as security for the payment of the Bonds and the interest thereon.

**Because the TIF Act provides that 23 years is the maximum amount of time between the adoption of an ordinance approving a redevelopment project within a redevelopment area and the retirement of obligations incurred to finance such redevelopment project costs, the obligations of the City with respect to the Bonds terminate on July 5, 2023, whether or not the principal amount thereof or interest thereon has been paid in full.**

The Bonds are not secured by a mortgage on any property in the Redevelopment Area. However, the TIF Act provides that the Payments in Lieu of Taxes that are due and owing shall constitute a lien against the real estate in the Redevelopment Area from which they are derived. Upon a default in the payment of any Payments in Lieu of Taxes, the lien for such unpaid Payments in Lieu of Taxes may be enforced as provided by law. See the caption **"TAX INCREMENT FINANCING IN MISSOURI – Assessments and Collections of Ad Valorem Taxes"** herein.

**THE BONDS SHALL NOT CONSTITUTE AN INDEBTEDNESS WITHIN THE MEANING OF ANY CONSTITUTIONAL, STATUTORY OR CHARTER DEBT LIMITATION OR RESTRICTION. THE ISSUANCE OF THE BONDS SHALL NOT OBLIGATE THE CITY TO LEVY ANY FORM OF TAXATION THEREFOR OR TO MAKE ANY APPROPRIATION FOR THEIR PAYMENT.**

### **Revenues**

Under the Indenture, moneys in Subarea 1 Subaccounts of the Pilots Account and the Economic Activity Tax Account of the Special Allocation Fund shall be paid by the City to the Trustee on the tenth day of each month (or the next Business Day thereafter if the tenth day is not a Business Day) and the City shall direct the Trustee to deposit such sums as follows: (i) all Net Revenues as of the last day of the preceding month consisting of Payments in Lieu of Taxes shall be deposited into the PILOTS Account of the Revenue Fund, and (ii) subject to annual appropriation by the City, all Net Revenues as of the last day of the preceding month consisting of Economic Activity Tax Revenues shall be deposited into the EATS Account of the Revenue Fund. The Trustee shall notify the City and the Original Purchaser if the Trustee has not received such Net Revenues on or before the 12<sup>th</sup> calendar day of each month.

A transportation development district, known as Prewitt Point Transportation Development District (the "TDD"), was formed after approval of the Redevelopment Plan and has boundaries that overlap the boundaries of the Redevelopment Area. As a result of amendments made to the Redevelopment Plan in 2006, notwithstanding the foregoing, (a) any Economic Activity Tax Revenues derived from the 1% sales tax imposed by the Prewitt Point Transportation Development District (the "TDD") shall not be transferred to the Trustee nor deposited into the Revenue Fund, but may either be retained by the TDD to pay TDD Capital Costs or shall be returned by the City to the TDD to pay TDD Capital Costs as provided in the Redevelopment Plan.

The City is not obligated to transfer (i) any amount paid under protest until the protest is withdrawn or resolved against the taxpayer or (ii) any sum received by the City which is the subject of a suit or other claim communicated to the City which suit or claim challenges the collection of such sum.

"Payments in Lieu of Taxes" are 75% of those revenues attributable to the increase in the assessed valuation of real property within the Redevelopment Area over and above the initial assessed valuation of real property in the Redevelopment Area as of the date on which tax increment financing for the Redevelopment Area was adopted. Such increase is multiplied by the then current aggregate tax rate applicable to such property to determine the Payments in Lieu of Taxes. Such Payments in Lieu of Taxes have been irrevocably pledged by the City to the payment of the Bonds. The remaining 25% of those revenues attributable to the increase in the assessed valuation of real property within the Redevelopment Area over and above the initial assessed valuation of real property in the Redevelopment Area as of the date on which tax increment financing for the Redevelopment Area was adopted will be returned to the applicable taxing districts.

"Economic Activity Tax Revenues" means 50% of the total additional revenue from taxes imposed by the City or other taxing districts (as that term is defined in Section 99.805 of the TIF Act) which are generated by economic activities within the Redevelopment Area over the amount of such taxes generated by economic activities within the Redevelopment Area in the calendar year ending December 31, 1999, but excluding therefrom any taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, taxes levied pursuant to Section 70.500, RSMo., licenses, fees or special assessments, other than payments in lieu of taxes, and personal property taxes and taxes levied for the purpose of public transportation pursuant to Section 94.660, RSMo. The TDD imposes a 1% sales tax within its boundaries, which includes the Redevelopment Area. Although one-half of the TDD's sales tax is subject to capture by the City as Economic Activity Tax Revenues, the City has agreed that such revenues may either be retained by the TDD to pay TDD Capital Costs or shall be returned by the City to the TDD to pay TDD Capital Costs as provided in the Redevelopment Plan. **THE EXPENDITURE OF ECONOMIC ACTIVITY TAX REVENUES IS SUBJECT TO ANNUAL APPROPRIATION BY THE CITY. THERE CAN BE NO ASSURANCES THAT THE CITY WILL APPROPRIATE SUCH REVENUES IN ANY YEAR AND THE INDENTURE DOES NOT OBLIGATE THE CITY TO DO SO.** Pursuant to State law, taxpayers who promptly pay their sales taxes are entitled to retain 2% of the amount of taxes owed. Because of the general unavailability of monthly utility tax invoices from property owners, lessees and other users within the Redevelopment Area, the City does not intend to annually appropriate funds derived from utility taxes.

"Subarea 1" is that portion of the Redevelopment Area on which the Lowe's Home Improvement Center, Pier 1 Imports and Outback Steakhouse are currently located. Subarea 1 also includes a tenant building of approximately 12,500 square feet which is currently vacant that is located adjacent to the Lowe's Home Improvement Center. Subarea 1 contains approximately 17.84 acres with approximately 163,000 square feet of retail space.

"Subarea 2" is the remaining portion of the Redevelopment Area and includes approximately 380,000 square feet of space, including several out parcels. The Developer has entered into leases with 18 tenants for approximately 174,700 square feet within Subarea 2, as described below. The Developer has sold tracts of real estate within Subarea 2 to Target Corporation, Hy-Vee, Inc. and to an affiliate of the Developer, Prewitt's Hwy 54 & 42 Enterprises, LLC. The businesses operating in Subarea 2 currently include Target, Hy-Vee, and Walgreens, located on the tract sold by the Developer, and Marshall's, Petco, Jack of All Trades, Patio Pleasures, Arris Pizza & Pub, Smashmouth Subs, Maurices, Levi's outlet store, Shoe Carnival, Replay (video game store), Steak 'n Shake, Anytime Fitness, Ace Automotive, West Marine, JoAnn's Fabrics and Sprint, in space leased by

the Developer. A Ross Dress for Less is scheduled to open in late summer or early fall in a new building being constructed. Revenues from businesses operating in Subarea 2 are not expected to be available to pay debt service on the Bonds.

See “**THE PREWITT’S POINT PROJECT – Subarea 1**” herein for a map that shows the approximate boundaries of Subarea 1 and Subarea 2, and some of the businesses located in each area.

### **City Annual Appropriation Obligation**

The City’s obligations under the Indenture to pay the Economic Activity Tax Revenues for application to the Bonds are subject to annual appropriation. Such moneys must be appropriated each year by the Board of Aldermen. The Indenture contains the following provisions with respect to the City’s annual appropriation obligation:

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

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

### **Indenture Funds and Accounts**

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

*First*, for transfer to the Rebate Fund when necessary, an amount sufficient to pay rebate, if any, to the United States of America, owed under Section 148 of the Code, as directed in writing by the City in accordance with the Arbitrage Instructions;

*Second*, for payment to the Trustee or any Paying Agent, an amount sufficient for payment of any fees and expenses which are due and owing to the Trustee or any Paying Agent (except as otherwise provided in the Indenture, not to exceed \$4,250 per Fiscal Year), upon delivery to the City of an invoice for such amounts;

*Third*, for transfer to the Bond Payment Account in the Debt Service Fund an amount sufficient to pay the interest becoming due and payable on the Bonds on the next Payment Date or, if the next Payment Date is May 1, the next two succeeding Payment Dates;

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

*Fifth*, for transfer to the Debt Service Reserve Fund such amount as may be required to restore any deficiency in the Debt Service Reserve Fund if the amount on deposit in the Debt Service Reserve Fund is less than the Debt Service Reserve Requirement;

*Sixth*, for payment to the City of an amount sufficient for payment of any fees and expenses which are due and owing to the City pursuant to the Indenture, upon delivery to the Trustee of an invoice for such amounts; and

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

*Debt Service Fund.* Except as otherwise provided in the Indenture, all amounts paid and credited to the Debt Service Fund shall be expended solely for the payment of the principal of, redemption premium, if any, and interest on the Bonds as the same mature and become due or upon the redemption thereof. The Trustee shall use any moneys remaining in the Debt Service Fund to redeem all or part of the Bonds Outstanding and interest to accrue thereon prior to such redemption, in accordance with and to the extent permitted by the Indenture, so long as said moneys are in excess of the amount required for payment of Bonds theretofore matured or called for redemption. The Trustee, upon the written instructions from the City, signed by the Authorized City Representative, shall use moneys in the Redemption Account of the Debt Service Fund on a best efforts basis for the purchase of Bonds in the open market to the extent practical for the purpose of cancellation at prices not exceeding the principal amount thereof plus accrued interest thereon to the date of such purchase.

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

*Debt Service Reserve Fund.* Except as otherwise provided in the Indenture, moneys in the Debt Service Reserve Fund shall be used by the Trustee without further authorization solely for the payment of the principal of and interest on the Bonds if moneys otherwise available for such purpose as provided in the Indenture are insufficient to pay the same as they become due and payable. In the event the balance of moneys in the Debt Service Fund is insufficient to pay principal of or interest on the Bonds when due and payable, moneys in the Debt Service Reserve Fund shall be transferred into the Debt Service Fund in an amount sufficient to make up such deficiency. The Trustee may use moneys in the Debt Service Reserve Fund for such purpose whether or not the amount in the Debt Service Reserve Fund at that time equals the Debt Service Reserve Requirement. Such moneys shall be used first to make up any deficiency in the payment of interest

and then principal. Moneys in the Debt Service Reserve Fund shall also be used to pay the last Bonds becoming due unless such Bonds and all interest thereon be otherwise paid.

*Costs of Issuance Fund.* Moneys in the Costs of Issuance Fund shall be disbursed, from time to time by the Trustee, upon receipt of a written request of the City signed by the Authorized City Representative and containing the statements, representations and certifications set forth in the form of such request attached as an exhibit to the Indenture and otherwise substantially in such form, for the sole purpose of paying the costs of issuing the Bonds and of refunding the Refunded Bonds. Any moneys remaining in the Costs of Issuance Fund on December 1, 2012 shall be deposited, without further authorization, into the Bond Payment Account in the Debt Service Fund.

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

**Additional Bonds**

The Indenture does not authorize the issuance of any bonds other than the Bonds. The City may, however, issue tax increment revenue bonds for that portion of the Redevelopment Area other than Subarea 1 or for redevelopment areas other than the Redevelopment Area. Any such additional bonds or obligations will not be payable out of the Payments in Lieu of Taxes or Economic Activity Tax Revenues attributable to Subarea 1 while the Bonds are outstanding.

**ESTIMATED SOURCES AND USES OF FUNDS**

Following is a summary of the anticipated sources and uses of funds in connection with the issuance of the Bonds:

*Sources of Funds:*

Par Amount of Bonds .....	\$4,410,000.00
Net Original Issue Discount .....	(34,550.00)
Available Funds from the City <sup>†</sup> .....	<u>875,113.04</u>
Total sources of funds .....	<u>\$5,250,563.04</u>

*Uses of Funds:*

Deposit to the Escrow Fund.....	\$4,641,917.50
Deposit to the Debt Service Reserve Fund .....	441,000.00
Deposit to EATS Account in the Revenue Fund .....	25,000.00
Costs of Issuance including Underwriter’s Discount.....	<u>142,645.54</u>
Total uses of funds .....	<u>\$5,250,563.04</u>

<sup>†</sup> Represents a transfer of funds from the debt service reserve fund established for the Refunded Bonds.

**REFUNDING OF REFUNDED BONDS**

The Bonds are being issued to current refund the Refunded Bonds. The City will deposit \$4,641,917.50 in the Escrow Fund established under an Escrow Letter of Instructions (the “Escrow Agreement”) from the City to UMB Bank, N.A., Kansas City, Missouri (the “Escrow Agent”). Such moneys deposited with the Escrow Agent will be held un-invested as a cash balance in the Escrow Fund and applied to pay the principal of and interest on the Refunded Bonds when called for redemption. After the issuance of the Bonds and the deposit of the proceeds thereof with the Escrow Agent pursuant to the Escrow Agreement, the Refunded Bonds shall be payable from the cash held for such purpose by the Escrow Agent. Under the Escrow Agreement, the moneys held by the Escrow Agent are irrevocably pledged to the payment of the Refunded Bonds and the interest thereon and may be applied only to such payment.



## **BONDOWNERS' RISKS**

*The following is a discussion of certain risks that could affect payments to be made with respect to the Bonds. Such discussion is not, and is not intended to be, exhaustive and should be read in conjunction with all other parts of this Official Statement and should not be considered as a complete description of all risks that could affect such payments. Prospective purchasers of the Bonds should analyze carefully the information contained in this Official Statement, including the Appendices hereto, and additional information in the form of the complete documents summarized herein and in the Appendices hereto, copies of which are available as described herein.*

### **Nature of the Obligations**

The Bonds are limited obligations of the City and are payable solely from and secured by a pledge of Payments in Lieu of Taxes attributable to property within Subarea 1, Economic Activity Tax Revenues generated by economic activity within Subarea 1 (subject to annual appropriation thereof) and certain other revenues pursuant to the Indenture and from amounts in the Debt Service Reserve Fund. The realization of such revenues is dependent upon, among other things, the capabilities of the Developer and occupants and future changes in economic and other conditions that are unpredictable and cannot be determined at this time.

### **Tax Increment Financing Litigation**

The Missouri Supreme Court upheld the constitutionality of the TIF Act (prior to certain amendments thereto) in 1987. See “**TAX INCREMENT FINANCING IN MISSOURI – The TIF Act**” herein. Nevertheless, litigation regarding the constitutionality and application of the TIF Act is currently pending in various Missouri circuit courts. Circuit courts in Missouri are trial courts and decisions in those courts are not binding on other Missouri courts. Circuit court decisions, whether favorable or unfavorable with respect to the constitutionality and application of the TIF Act, may be appealed to a Missouri Court of Appeals and, ultimately, the Missouri Supreme Court. If the plaintiffs are successful in one or more of the currently pending cases, the court’s decision may interpret the requirements of the TIF Act in a manner adverse to the establishment of tax increment financing in the Redevelopment Area. It is not possible to predict whether an adverse holding in any current or future litigation would prompt a challenge to the adoption of tax increment financing in the Redevelopment Area or how that decision would be applied by a court with respect to the Redevelopment Area. If current or future litigation challenging all or any part of the TIF Act were to be applied to the adoption of tax increment financing in the Redevelopment Area, the Payments in Lieu of Taxes attributable to property within Subarea 1 and Economic Activity Tax Revenues generated by economic activity within Subarea 1 may not be available to pay principal of and interest on the Bonds and the enforceability of the Indenture could be adversely affected. The City cannot predict or guarantee the outcome of any currently pending or future litigation challenging the constitutionality or the application of the TIF Act or the application by a court of a potential holding in any case to other tax increment projects.

### **Risk of Non-Appropriation**

The application of Economic Activity Tax Revenues in the Special Allocation Fund generated by economic activity within Subarea 1 is subject to annual appropriation by the City. Although the City has covenanted to request annually that the appropriation of such Economic Activity Tax Revenues in the Special Allocation Fund be included in the budget submitted to the Board of Aldermen for each fiscal year, there can be no assurance that such appropriations will be made by the Board of Aldermen, and the Board of Aldermen is not legally obligated to do so.

### **Environmental Conditions**

No assurance can be given that environmental conditions do not now or will not in the future exist at Prewitt’s Point which could become the subject of enforcement actions by governmental agencies. Additionally, there can be no assurance that future environmental conditions, if any, would not adversely impact the willingness of the public to frequent Prewitt’s Point. The amount of Economic Activity Tax Revenues available

for appropriation to the payment of the Bonds is dependent upon the existence of economic activity, especially the purchase of goods, at Subarea 1 within Prewitt's Point. See **"PREWITT'S POINT – Environmental Assessment"** herein.

### **Financial Feasibility of Prewitt's Point**

The two largest generators of Payments in Lieu of Taxes and Economic Activity Tax Revenues within Subarea 1 are a Lowe's Home Improvement Center, owned by Lowe's Home Centers, Inc., containing approximately 135,200 square feet and a Pier 1 Imports containing approximately 9,460 square feet. An Outback Steakhouse containing approximately 6,200 square feet is also operating within Subarea 1 and approximately 12,500 square feet of retail space within Subarea 1 is currently vacant.

Subarea 1 contains about 30% of the retail space and 15% of the total number of businesses located within the Prewitt's Point development and the Redevelopment Area. For this reason, the financial stability of the businesses located in Subarea 1 is, to a certain extent, dependent on the overall success of Prewitt's Point and Subarea 2 in attracting customers from the surrounding area. Any significant declines in occupancy of Subarea 2 could have a negative effect on the ability of businesses located in Subarea 1 to attract customers and could cause a reduction in the Economic Activity Tax Revenues generated by economic activity within Subarea 1. Subarea 2 contains approximately 380,000 square feet of occupied space and currently contains a Target, Hy-Vee, Marshall's, Petco, Walgreens, West Marine, Jo Ann Fabrics, Maurices, Shoe Carnival and several other businesses. See **"THE PREWITT'S POINT PROJECT – Overview"** and **"SUMMARY OF LEASES AND OCCUPANTS – Subarea 2"** for further discussion of Subarea 2. While there has been a significant amount of turnover in smaller tenants within Subarea 2, nearly all of the existing square footage within Subarea 2 is currently occupied.

The financial feasibility of Prewitt's Point depends in large part upon the ability of the Developer to maintain substantial occupancy throughout the term of the Bonds and, because Lowe's owns the site of its store, the continued operation of the Lowe's Home Improvement Center. If the Developer fails to maintain substantial occupancy at Prewitt's Point or if Lowe's closes its store in the Redevelopment Area, there may be insufficient Payments in Lieu of Taxes attributable to Subarea 1 and Economic Activity Tax Revenues generated by economic activities within Subarea 1 (particularly Economic Activity Tax Revenues) to pay the Bonds. See **"THE PREWITT'S POINT PROJECT – Overview"** and **"SUMMARY OF LEASES AND OCCUPANTS"** herein.

See **"THE PREWITT'S POINT PROJECT – Competition"** herein for a discussion of competing businesses and developments in the vicinity of Prewitt's Point.

### **Visibility and Access to Prewitt's Point**

When Prewitt's Point was originally constructed, the development fronted U.S. Highway 54. Since that time, the Missouri Department of Transportation has undertaken and completed a project to reroute portions of U.S. Highway 54 passing through the City. The result of this rerouting is that the road on which Prewitt's Point fronts has been renamed Osage Beach Parkway, the path of U.S. Highway 54 as it passes Prewitt's Point has been moved to the west, and potential customers driving on U.S. Highway 54 must now exit the highway onto Osage Beach Parkway in order to access Prewitt's Point. Due to the new route and elevation of U.S. Highway 54 and the surrounding topography, the Prewitt's Point development is no longer visible to drivers traveling on U.S. Highway 54. See the map below for the current locations of U.S. Highway 54 and Osage Beach Parkway relative to Prewitt's Point.



### **Reliance on the Developer, Tenants and Subsequent Property Owners**

The development of Prewitt's Point has been undertaken by the Developer and those parties contracting with the Developer. The Developer is under no obligation to continue to own Prewitt's Point for the term of the Bonds. The Developer has sold approximately 13.2 acres of Subarea 1 to Lowe's Home Centers, Inc. as the site for the Lowe's Home Improvement Center. If the Developer sells additional portions of Subarea 1 of Prewitt's Point, the payment of debt service on the Bonds will be dependent, in part, on such subsequent owners of Subarea 1 of Prewitt's Point to provide the payment of Payments in Lieu of Taxes for deposit into the Special Allocation Fund.

Prewitt's Point has been and will continue to be managed by the Developer, which has managed Prewitt's Point since its completion but has no prior experience in managing similar retail developments. See the caption "**THE PREWITT'S POINT PROJECT – The Developer and Manager.**" Owners will be dependent on current and future managers of Prewitt's Point to maintain occupancy in order to assure that Economic Activity Tax Revenues within Subarea 1 are generated, that assessed valuation is maintained and the Payments in Lieu of Taxes within Subarea 1 are thereby generated.

Even if Prewitt's Point is fully occupied, the Owners will be dependent upon the Developer, Lowe's Home Centers, Inc. or any subsequent owner(s) of Prewitt's Point to pay the Payments in Lieu of Taxes derived by Prewitt's Point. The default by any owner of all or a portion of Subarea 1 within Prewitt's Point in the payment of such Payments in Lieu of Taxes, or any delay in the payment of Payments in Lieu of Taxes, would adversely affect the revenues available to pay the Bonds. **Because of a dispute with the City concerning the**

**application of certain revenues, the Developer failed to pay and was delinquent in the payment of a portion of the Payments in Lieu of Taxes in Subarea 2 for the 2005 tax year in the amount of approximately \$325,000. The Developer ultimately paid such amount on or about July 10, 2006.**

It is contemplated that leases for Prewitt's Point will provide that each tenant is responsible for its pro rata share of any real estate taxes and assessments (including Payments in Lieu of Taxes) and certain other common area expenses. If any tenant defaults in paying its pro rata share of such taxes or other common area expenses, the Developer or any subsequent owner(s) of Prewitt's Point will be responsible for such payments although the Developer would have the right to declare a default under the tenant's lease if the tenant failed to pay the same. There can be no assurance that the Developer will have the financial ability to make such payments.

The agreement between Lowe's Home Centers, Inc. and the Developer specifically provides that Lowe's Home Centers, Inc. is under no obligation to continuously operate a business at Prewitt's Point or to remain open. In addition, none of the leases for tenants in Subarea 1 require the tenants to continuously operate a business at the leased premises; thus, a tenant may cease operations but continue to pay rent to the Developer. Under such circumstances, no Economic Activity Tax Revenues would be generated by Lowe's Home Centers, Inc. or such tenant, respectively.

There is no obligation on the part of the Developer to lease space within Subarea 1 or anywhere at Prewitt's Point to tenants which generate Economic Activity Tax Revenues.

See the caption "**SUMMARY OF LEASES AND OCCUPANTS**" herein.

### **Taxpayer Challenges and Delinquencies**

At certain times since the collection of Payments in Lieu of Taxes began within Subarea 1, the owners of property within Subarea 1 have been delinquent in the payment of taxes and Payments in Lieu of Taxes or have challenged the assessed valuation of their property and paid taxes under protest. See the caption "**HISTORIC COLLECTION OF ECONOMIC ACTIVITY TAX REVENUES AND PAYMENTS IN LIEU OF TAXES**" herein for amounts collected in each calendar year and the caption "**TAX INCREMENT FINANCING IN MISSOURI – Assessments and Collections of Ad Valorem Taxes – Appeal of Assessment**" herein for a discussion of the tax appeal process. Lowe's Home Centers, Inc. challenged the assessed valuation of its property within Subarea 1 in 2006 and paid taxes for tax years 2006 and 2007 under protest, which substantially reduced the amount of Payments In Lieu of Taxes received by the City with respect to Subarea 1 in calendar years 2007 and 2008. In 2009, after the challenge resulted in a moderate reduction of the assessed valuation of such property, portions of the amounts paid under protest were released to the City in addition to the amounts paid by Lowe's Home Centers, Inc. for tax year 2008. The Developer has at times been delinquent in the payment of taxes and Payments in Lieu of Taxes for property owned by the Developer within Subarea 1, including tax years 2005, 2006, 2008 and 2009, for which portions of the Payments in Lieu of Taxes paid by the Developer were received by the City as late as August of the following calendar year. The Developer and related entities also challenged the assessed value of property within both subareas for 2008, but the challenge was unsuccessful and no reduction was granted. There are no other current challenges pending. **Failure to pay Payments in Lieu of Taxes on time would adversely impact the timing of special mandatory redemptions of the Bonds and the payment of the Bonds.**

### **No Mortgage of the Project**

The Bonds are not secured by a mortgage on any property in the Redevelopment Area. However, the TIF Act provides that the Payments in Lieu of Taxes that are due and owing shall constitute a lien against the real estate in the Redevelopment Area from which they are derived. Upon a default in the payment of any Payments in Lieu of Taxes, the lien for such unpaid Payments in Lieu of Taxes may be enforced as provided by law. See the caption "**TAX INCREMENT FINANCING IN MISSOURI – Assessments and Collections of Ad Valorem Taxes**" herein.

## **Risk of Decline of Assessed Valuations**

There can be no assurance that the assessed value of Prewitt's Point will not decline during the term of the Bonds. If at any time during the term of the Bonds the actual assessed value is less than the current assessment, the amount of the Payments in Lieu of Taxes will be likely less and there may not be sufficient Payments in Lieu of Taxes paid into the Special Allocation Fund to meet the obligations to the Owners.

Even if the County Assessor's determination of the assessed value of Prewitt's Point equals or exceeds the current assessed value, the owners of Prewitt's Point have the right to appeal such determination. Additionally, certain tenants may also be granted the right to appeal such determination should the Developer or successor owners decline to do so. If any such appeal is not resolved prior to the time when real estate taxes and Payments in Lieu of Taxes are due, the taxpayer may pay the taxes and Payments in Lieu of Taxes under protest. In such event, the Payments in Lieu of Taxes being protested will not be available for deposit into the Special Allocation Fund until the appeal has been concluded. If the appeal is resolved in favor of the taxpayer, the assessed value of Prewitt's Point will be reduced, in which event the Payments in Lieu of Taxes may be less than expected. See the caption "**TAX INCREMENT FINANCING IN MISSOURI – Assessments and Collections of Ad Valorem Taxes**" herein.

## **Changes in State and Local Tax Laws**

Any change in the current system of collection and distribution of real property taxes, Payments in Lieu of Taxes or Economic Activity Tax Revenues in Miller County, Missouri (the "County") or the City, including without limitation the reduction or elimination of any such tax, judicial action concerning any such tax or voter initiative, referendum or action with respect to any such tax, could adversely affect the availability of revenues to pay the principal of and interest on the Bonds. There can be no assurances, however, that the current system of collection and distribution of the real property taxes, Payments in Lieu of Taxes or Economic Activity Tax Revenues in the County or the City will not be changed by any competent authority having jurisdiction to do so, including without limitation the State, the County, the City, school districts, the courts or the voters, and the Indenture does not limit the ability of the City to make any such changes with respect to City taxes and levies.

Changes in such market conditions, as well as changes in general economic conditions, could adversely affect the amount of Net Revenues collected.

## **Reduction in State and Local Tax Rates**

Any taxing district in the Redevelopment Area could lower its tax rate, which would have the effect of reducing the Payments in Lieu of Taxes (unless there was an offsetting increase in assessed valuation) or Economic Activity Tax Revenues derived from the Redevelopment Area. Such a reduction in rates could be as a result of a desire of the governing body of the taxing district to lower tax rates, the retirement of general obligation bonds of a Taxing District, taxpayer initiative, or in response to state or local litigation or legislation affecting the broader taxing structure within the taxing district, such as litigation or legislation affecting the primary reliance on ad valorem property taxes to fund elementary and secondary education in the State.

In addition, if the assessed valuation in the City rises to the extent that a rollback in tax rates is required, and if the increase in assessed valuation within Redevelopment Area is not as extensive as the increase within the City generally, the rollback in tax rates may result in a reduction in Payments in Lieu of Taxes. See "**TAX INCREMENT FINANCING IN MISSOURI – Assessments and Collections of Ad Valorem Taxes – Reassessment and Tax Rate Rollback**" herein.

## **Limitations on Remedies**

The remedies available to the Bondowners upon a default under the Indenture are in many respects dependent upon judicial action, which is often subject to discretion and delay under existing constitutional and statutory law and judicial decisions, including specifically Title 11 of the United States Code (the "Federal Bankruptcy Code"). The various legal opinions to be delivered concurrently with delivery of the Bonds will be qualified as to enforceability of the various legal instruments by limitations imposed by bankruptcy,

reorganization, insolvency or other similar laws affecting the rights of creditors generally, now or hereafter in effect; to usual equity principles which shall limit the specific enforcement under laws of the State of Missouri as to certain remedies; to the exercise by the United States of America of the powers delegated to it by the United States Constitution; and to the reasonable and necessary exercise, in certain exceptional situations, of the police power inherent in the sovereignty of the State of Missouri and its governmental bodies, in the interest of serving an important public purpose.

### **Early Redemption Prior to Maturity**

Funds on deposit in the Revenue Fund in excess of the amount required to pay rebate, if any, to the United States of America, to pay interest on the Bonds as and when due, to restore any deficiency in the Debt Service Reserve Fund and to pay certain fees and expenses, are required to be used for the purpose of redeeming Bonds prior to maturity pursuant to the redemption provisions described in this Official Statement. Any person who purchases a Bond at a price in excess of its principal amount or who holds such Bond trading at a price in excess of par should consider the fact that the Bonds are subject to redemption prior to maturity at the redemption prices described herein in the event such Bonds are redeemed prior to maturity. See the section herein captioned **“THE BONDS – Redemption Provisions.”** It is anticipated that a substantial portion of the Bonds will be redeemed prior to their stated maturity. See **“PROJECTED AVERAGE LIFE OF THE BONDS”** herein.

### **Changes in Market Conditions**

The assessments and revenue estimates used in the projected average life of the Bonds contained herein under the section captioned **“PROJECTED AVERAGE LIFE OF THE BONDS”** are based on the current status of the national and local business economy and assume a future performance of the real estate market similar to the historical performance of such market in the area of the City. However, changes in the market conditions for the City, as well as changes in general economic conditions, could adversely affect the rate of appreciation and/or inflation of the property in the Redevelopment Area and, consequently, the amount of Payments in Lieu of Taxes and Economic Activity Tax Revenues collected for deposit into the Special Allocation Fund that can be used to pay debt service on the Bonds.

### **Factors Affecting Economic Activity Tax Revenues**

Economic Activity Tax Revenues are contingent and may be adversely affected by a variety of factors, including without limitation economic conditions within the Redevelopment Area and the surrounding trade area and competition from other retail businesses, competition from internet commerce, rental rates and occupancy rates in private developments in the Redevelopment Area, suitability of Prewitt’s Point for the local market, local unemployment, availability of transportation, visibility and accessibility of the Prewitt’s Point site from the surrounding streets and roads, neighborhood changes, crime levels in the area, vandalism and rising operating costs, interruption or termination of operation of Prewitt’s Point as a result of fire, natural disaster, strikes or similar events, among many other factors.

Several large retailers have been located in the vicinity of Prewitt’s Point for a number of years, including a Wal-Mart Supercenter, a Home Depot and Osage Beach Premium Outlets. In the last year, a CVS Pharmacy, a Kohl’s Department Store and a Menards home improvement store have been completed at a development called The Shoppes at Eagles Landing and construction has commenced on the Dierbergs Lakeview Pointe Shopping Center which will include a Dierbergs Markets grocery store. See **“THE PREWITT’S POINT PROJECT – Competition,”** herein for further discussion of the location of competitors in the vicinity of Prewitt’s Point.

As a result of all of the above factors, it is difficult to predict with certainty the expected amount of Economic Activity Tax Revenues which will be available for appropriation to the repayment of the Bonds. The retail sales industry is highly competitive. Additional retail businesses outside of the Redevelopment Area and the future development of retail businesses outside of the Redevelopment Area, which are competitive with retail businesses in the Redevelopment Area may exist or may be developed after the date of this Official Statement.

In addition to the foregoing, the partial or complete destruction of Prewitt's Point, as a result of fire, natural disaster or similar casualty event or the temporary or permanent closing of one or more of such retail establishments due to strikes or failure of the business would adversely affect the Economic Activity Tax Revenues and thereby adversely affect the revenues available to pay the Bonds and the interest thereon. Any insurance maintained by the owner of or the tenants in such areas for such casualty or business interruption is not likely to include coverage for sales taxes that otherwise would be generated by the establishment.

### **Debt Service Reserve Fund**

At the time of issuance of the Bonds, the Debt Service Reserve Fund will be funded in an amount equal to \$441,000 (the "Debt Service Reserve Requirement"). See "**SOURCES OF PAYMENT AND SECURITY FOR THE BONDS – INDENTURE FUNDS AND ACCOUNTS**" herein. There can be no assurance that the amounts on deposit in the Debt Service Reserve Fund will be available if needed for payment of the Bonds in the full amount of the Debt Service Reserve Requirement because (1) of fluctuations in the market value of the securities deposited therein and/or (2) if funds are transferred to the Debt Service Fund, sufficient revenues may not be available in the Revenue Fund to replenish the Debt Service Reserve Fund to the Debt Service Reserve Requirement.

### **Determination of Taxability**

The Bonds are not subject to redemption, nor is the interest rate on the Bonds subject to adjustment, in the event of a determination by the Internal Revenue Service (the "Service") or a court of competent jurisdiction that the interest paid or to be paid on any Bond is or was includible in the gross income of the Owner of a Bond for federal income tax purposes. Such determination may, however, result in a breach of the City's tax covenants set forth in the Indenture which may constitute an event of default under the Indenture. *It may be that Bondowners would continue to hold their Bonds, receiving principal and interest as and when due, but would be required to include such interest payments in gross income for federal income tax purposes.* Likewise, the Indenture does not provide for the redemption of the Bonds or the payment of any additional interest or penalty on the Bonds if the interest thereon becomes includable in gross income for Missouri income tax purposes.

### **Risk of Audit**

The Internal Revenue Service (the "Service") has established an ongoing program to audit tax-exempt obligations to determine whether interest on such obligations should be included in gross income for federal income tax purposes. No assurance can be given that the Service will not commence an audit of the Bonds. Owners of the Bonds are advised that, if an audit of the Bonds were commenced, in accordance with its current published procedures, the Service is likely to treat the City as the taxpayer, and the Owners of the Bonds may not have a right to participate in such audit. Public awareness of any audit could adversely affect the market value and liquidity of the Bonds during the pendency of the audit, regardless of the ultimate outcome of the audit.

### **Lack of Rating and Market for the Bonds**

The Bonds have not received any credit rating by any recognized rating agency. The absence of any such rating could adversely affect the ability of holders to sell the Bonds or the price at which the Bonds can be sold. No assurance can be given that a secondary market for the Bonds will develop following the completion of the offering of the Bonds.

### **Defeasance Risks**

When any or all of the Bonds or the interest payments thereon have been paid and discharged, then the requirements contained in the Indenture and the pledge of revenues made thereunder and all other rights granted thereby shall terminate with respect to the Bonds so paid and discharged. Bonds shall be deemed to be paid within the meaning of the Indenture when payment of the principal on such Bonds, plus premium, if any, plus interest thereon to the due date thereof (whether such due date is by reason of maturity or upon redemption as provided in the Indenture, or otherwise), either (1) has been made or caused to be made in

accordance with the terms of the Indenture, or (2) provision therefore has been made by depositing with the Trustee, in trust and irrevocably setting aside exclusively for such payment, (i) moneys sufficient to make such payment or (ii) non-callable Government Securities maturing as to principal and interest in such amount and at such times as will ensure the availability of sufficient moneys to make such payment and the Trustee shall have received an opinion of Bond Counsel (which opinion may be based upon a ruling or rulings of the Internal Revenue Service) to the effect that such deposit of interest on any Bonds will not result in the interest on any Bonds then Outstanding and exempt from taxation for federal income tax purposes becoming subject to federal income taxes then in effect and that all conditions precedent to the satisfaction of the Indenture have been met. Any money and non-callable Government Securities that at any time shall be deposited with the Trustee by or on behalf of the City, for the purpose of paying and discharging any of the Bonds or the interest payments thereon, shall be assigned, transferred and set over to the Trustee in trust for the respective Owners of the Bonds, and such moneys shall be irrevocably appropriated to the payment and discharge thereof. Non-callable Government Securities include, in addition to cash and obligations pre-refunded with cash, bonds, notes, certificates of indebtedness, treasury bills and other securities constituting direct obligations of, or obligations the principal of and interest on which are fully and unconditionally guaranteed as to full and timely payment by, the United States of America. Historically, such United States obligations have been rated in the highest rating category by the rating agencies. There is no legal requirement in the Indenture that Government Securities consisting of such United States obligations be or remain rated in the highest rating category by any rating agency. Prices of municipal securities in the secondary market are subject to adjustment upward and downward in response to changes in the credit markets and that could include any Bonds defeased with Government Securities to the extent the Government Securities have a change or downgrade in rating.

## **TAX INCREMENT FINANCING IN MISSOURI**

### **Overview**

Tax increment financing is a procedure whereby cities and counties encourage the redevelopment of designated areas. The theory of tax increment financing is that, by encouraging redevelopment projects, the value of real property in a redevelopment area should increase. When tax increment financing is adopted for a redevelopment area, the assessed value of real property in the redevelopment area is frozen for tax purposes at the then current base level prior to the construction of improvements. The owners of the property continue to pay property taxes at the base level. As the property is improved, the assessed value of real property in the redevelopment area should increase above the base level. By applying the tax rate of all taxing districts having taxing power within the redevelopment area to the increase in assessed valuation of the improved property over the base level, a “tax increment” is produced. The tax increments, referred to as “payments in lieu of taxes” or “PILOTS,” are paid by the owners of property in the same manner as regular property taxes. The payments in lieu of taxes are transferred by the collecting agency to the treasurer of the city or county and deposited in a “special allocation fund.” The City is pledging only 75% of the payments in lieu of taxes to the repayment of the Bonds; the remaining payments in lieu of taxes will be returned to the applicable taxing districts.

### **The TIF Act**

The TIF Act was enacted in 1982 and was subsequently amended numerous times. The constitutional validity of the TIF Act (prior to the amendments) was upheld by the Missouri Supreme Court in *Tax Increment Financing Commission of Kansas City, Missouri v. J.E. Dunn Construction Co., Inc.*, 781 S.W.2d 70 (Mo. 1989) (en banc). The TIF Act authorizes cities and counties to provide long-term financing for redevelopment projects in “blighted” and “conservation” areas (as defined in the TIF Act) through the issuance of bonds and other obligations. Prior to the amendments to the TIF Act, such obligations were payable solely from PILOTS within the redevelopment area. Now, such obligations are also payable from 50% of the increase in certain other tax revenues generated by economic activities within the redevelopment area (including sales, utilities and earnings taxes but excluding personal property taxes, taxes for hotel or motel rooms, licenses, fees and special assessments). Such other taxes are referred to herein as “Economic Activity Tax Revenues.” The validity of certain portions of the TIF Act relating to the capture of Economic Activity Tax Revenues was upheld by the Missouri Supreme Court in *County of Jefferson v. QuikTrip Corporation*, 912 S.W.2d 487 (Mo. 1995) (en banc).



Although payments in lieu of taxes may be irrevocably pledged to the repayment of bonds, Economic Activity Tax Revenues are subject to annual appropriation by the governing body of the city or county, and there is no obligation on the part of the governing body to appropriate Economic Activity Tax Revenues in any year. See the captions **“BONDOWNERS’ RISKS – Risk of Non-Appropriation,” “BONDOWNERS’ RISKS – Factors Affecting Economic Activity Tax Revenues”** and **“BONDOWNERS’ RISKS – Tax Increment Financing Litigation”** herein.

### **Assessments and Collections of Ad Valorem Taxes**

That portion of the City in which the Redevelopment Area is located is within Miller County, Missouri (the “County”). On or before September 1 in each year, each political subdivision located within the County which imposes ad valorem taxes (the “Taxing Districts”) estimates the amount of taxes that will be required during the next succeeding fiscal year to pay interest falling due on general obligation bonds issued and the principal of bonds maturing in such year and the costs of operation and maintenance plus such amounts as shall be required to cover emergencies and anticipated tax delinquencies. The Taxing Districts certify the amount of such taxes which shall be levied, assessed and collected on all taxable tangible property in the County to the County Assessor by September 1.

All taxes levied must be based upon the assessed valuation of land and other taxable tangible property in the County as shall be determined by the records of the County Assessor and must be collected and remitted to the Taxing Districts. All the requirements, rights and remedies provided by the laws of the State for the collection of State, county, city, school and other ad valorem taxes are applicable to the collection of taxes authorized to be collected in the Redevelopment Area.

The Missouri Constitution requires uniformity in taxation of real property by directing such property to be subclassed as agricultural, residential or commercial and permitting different assessment ratios for each subclass. Residential property is currently assessed at 19% of true value in money, commercial property is assessed at 32% of true value in money, and agricultural property is assessed at 12% of true value in money. The phrase “true value in money” has been held to mean “fair market value” except with respect to agricultural property.

Real property within the County is assessed by the County Assessor. The County Assessor is responsible for preparing the tax roll each year and for submitting the tax roll to the Board of Equalization. The Board of Equalization has the authority to question and determine the proper values of real property and then adjust and equalize individual properties appearing on the tax rolls. The County Collector collects taxes for all Taxing Districts within the County limits. The County Collector deducts a commission for its services. After such collections and deductions of commission, taxes are distributed according to the Taxing District’s pro rata share.

Taxes are levied on all taxable property based on the equalized assessed value thereof determined as of January 1 in each year. Under Missouri law, each property must be reassessed every two years (in odd-numbered years). The County Collector prepares the tax bills and mails them to each taxpayer in September. Payment is due by December 31, after which they become delinquent and accrue a penalty of one percent per month. In the event of an increase in the assessed value of a property, notice of such increase must be given to the owner of the affected property, which notice is generally given in April.

*Valuation of Real Property.* The County Assessor must determine the assessed value of a property based upon the State law requirement that property be valued at its true value in money. For agricultural land, true value is based on its productive capability. As to residential and commercial property, true value in money is the fair market value of the property on the valuation date. The fair market value is arrived at by using the three universally recognized approaches to value: cost approach, the sales comparison approach and the income approach.

The cost approach is typically applied when a property is newly constructed and is based on the principle of substitution. This principle states that no informed buyer will pay more for a property than the cost to

reproduce or replace the property. Value is determined under the cost approach by adding the estimated land value to the replacement or reproduction cost of improvements reduced by estimated depreciation. Courts have held, however, that construction cost alone is not a proper basis for determining true value in money and that all factors which affect the use and utility of the property must be considered.

The sales comparison approach determines value based upon recent sales prices of comparable properties. Comparable sales are adjusted for differences in properties by comparing such items as sales price per square foot and net operating income capitalization rates.

The income approach estimates market value by discounting to present value a stream of estimated net operating income. First, the property's gross potential income is estimated based on gross rents being generated at the property. A vacancy allowance is then deducted to arrive at effective gross income. Next, allowable operating expenses are deducted to arrive at an estimate of the property's net operating income. Finally, the net operating income is divided by an appropriate capitalization rate to arrive at the estimated present value of the income stream.

*Appeal of Assessment.* State statutes set up various mechanisms for a property owner to appeal the assessment of a tax on its property. Typically, there are four issues that can be raised in property tax appeals: overvaluation, uniformity, misclassification and exemption. Overvaluation appeals are the most common appeals presented by taxpayers. An overvaluation appeal requires the taxpayer to prove that the true value in money of the property is less than that determined by the assessor. Uniformity appeals are based on the assertion that other property in the same class and county as the subject property is assessed at a lower percentage of value than the subject property. A misclassification appeal is based on an assertion that assessing authorities have improperly subclassified a property. Exemption appeals are based on claims that the property in question is exempt from taxation.

Overvaluation appeals, for the most part, must be made administratively, first, to the Board of Equalization and then to the State Tax Commission within prescribed time periods following notice of an increase in assessment. Appeals to the Board of Equalization must be filed with the County Assessor on or before the third Monday in June of each year. Appeals to the State Tax Commission must be filed by the later of August 15 and 30 days after the date of the final decision of the Board of Equalization. Where valuation is not an issue, appeals must be taken directly to the State circuit court rather than the State Tax Commission. If an appeal is pending on December 31, the due date for the payment of taxes, State statute provides a procedure for the payment of taxes under protest. If taxes are paid but not under protest, the taxpayer cannot recover the amount paid unless the taxes have been mistakenly or erroneously paid. Application for a refund of mistakenly or erroneously paid taxes must be made within one year after the tax in dispute was paid. Typically, only that portion of the taxes being disputed is identified as being paid under protest, unless a claim of exemption is being asserted. The portion of the tax paid under protest is required to be held in an interest bearing account. Unless an appeal before the Board of Equalization or State Tax Commission is pending, suit must be brought by the taxpayer to resolve the dispute within 90 days, or the escrowed funds will be released to the Collector of Revenue and distributed to the Taxing Districts.

*Reassessment and Tax Rate Rollback.* A general reassessment of all property in the State is required to be conducted every two years. When, as a result of such reassessment, the assessed valuation within a Taxing District increases by more than an allowable percentage pursuant to the Hancock Amendment (as hereinafter described), the Taxing District is required to roll back the rate of tax within the Taxing District so as to produce substantially the same amount of tax revenue as was produced in the previous year increased by an amount called a "preceding valuation factor." A "preceding valuation factor" is a percentage increase or decrease based on the average annual percentage changes in total assessed valuation of the County over the previous three or five years, whichever is greater, adjusted to eliminate the effect of boundary changes, changes from State to County assessed property, general reassessment and State ordered changes.

*The Hancock Amendment.* A Constitutional amendment limiting taxation and government spending was approved by Missouri voters on September 4, 1980, and went into effect with the 1981–82 fiscal year. The amendment (Article X, Section 22(a) of the State Constitution and popularly known as the Hancock Amendment) limits the rate of increase and the total amount of taxes that shall be imposed in any fiscal year, and provides that

the limit shall not be exceeded without voter approval. Provisions are included in the Hancock Amendment for rolling back tax rates to produce an amount of revenues equal to that of the previous year if the definition of the tax base is changed or if property is reassessed. The tax levy on the assessed valuation of new construction is exempt from this limitation in the initial year of new construction.

### **Tax Delinquencies**

All real estate upon which taxes or payments in lieu of taxes remain unpaid on the first day of January, annually, are delinquent, and the County is empowered to enforce the lien of the taxing jurisdictions thereon. The County Collector is required to compile lists of delinquent tax bills collectible by such office. All lands and lots on which taxes are delinquent and unpaid are subject to sale on the fourth Monday of August (the "Tax Sale") in each year, provided that the delinquent taxes and any penalties are not paid prior to that time. Prior to the Tax Sale, notice thereof must be published once a week for three consecutive weeks (the last publication being at least fifteen days prior to the Tax Sale), in a newspaper of general circulation within the County, and notice must also be mailed to the property owner. No proceedings for the sale of real estate for delinquent taxes are valid unless such proceedings are commenced within three years after the delinquency of such taxes.

### **Economic Activity Tax Revenues**

The Economic Activity Tax Revenues that will be pledged to the payment of the Bonds, subject to annual appropriation by the City, are 50% of the total additional revenue from taxes imposed by the City or other Taxing Districts which are generated by economic activities within the Redevelopment Area over the amount of such taxes generated by economic activities within the Redevelopment Area in calendar year 1999, but excluding any taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, taxes levied pursuant to Section 70.500, RSMo., licenses, fees or special assessments, other than payments in lieu of taxes, and personal property taxes and taxes levied for the purpose of public transportation pursuant to Section 94.660, RSMo.

Retail businesses are required to collect the sales tax from purchasers at the time of sale, and pay said amounts to the Department of Revenue of the State with the filing of returns, except for the sales tax on motor vehicles, trailers, boats and outboard motors, which is due at the time application is made for title and registration. The sales volume of a retail business determines the frequency of payments made to the Department of Revenue of the State. In most cases, the retail businesses in the City make monthly payments to the Department of Revenue of the State, which are due on the tenth day of each calendar month for sales taxes collected in the preceding calendar month. Retail businesses located in the City submit applications to the City for a merchants license and an occupancy permit, and before such license and permit are awarded verification of a tax identification number from the State is made by the City. In the event of a failure by a retail business to remit sales taxes, interest and penalties, the unpaid amount may become a lien in the nature of a judgment lien against the delinquent taxpayer. In the event of overpayment by any retail business as a result of error or duplication, provision is made under State law for refunds.

Pursuant to State law, taxpayers who promptly pay their sales taxes are entitled to retain 2% of the amount of taxes owed.

Within 30 days of receipt of sales taxes by the Department of Revenue of the State, the Director of the Department of Revenue remits to the State Treasurer for deposit in a special trust fund for the benefit of each political subdivision entitled to a sales tax distribution the amount of such sales tax receipts less 1% of such amount which constitutes a fee paid to the State for collecting and distributing the tax. The State Treasurer then distributes moneys on deposit in the special trust fund on behalf of each such political subdivision to such political subdivision on a monthly basis.

Because of the general unavailability of monthly utility tax invoices from property owners, lessees and other users within the Redevelopment Area, the City does not intend to annually appropriate funds derived from utility taxes.

**HISTORIC COLLECTION OF ECONOMIC ACTIVITY TAX REVENUES  
AND PAYMENTS IN LIEU OF TAXES**

The following table reflects the historic collection of Economic Activity Tax Revenues and Payments in Lieu of Taxes derived from Subarea 1. There can be no assurance that such levels will be maintained in the future. Although the City agrees in the Indenture that the City intends, on or before the last day of each Fiscal Year, to budget and appropriate moneys constituting Economic Activity Tax Revenues to the payment of principal of and interest on the Bonds for the next succeeding Fiscal Year, there can be no assurance that such appropriation will be made by the Board of Aldermen, and the Board of Aldermen is not legally obligated to do so. See “**THE CITY-Property Tax Levies**” and “**THE CITY-Sales Tax Rates**” herein for specific information about the current property tax rates and sales tax rates of the various political subdivisions collecting such taxes. The sales tax rates for the City and Miller County have not changed since the Redevelopment Plan was approved.

<u>Calendar Year Received</u>	<u>Payments in Lieu of Taxes Received by the City</u>	<u>Economic Activity Taxes Received by the City</u>	<u>Total Amount Available for Repayment of the Bonds</u>
2002	-	\$419,017.46	\$419,017.46
2003	\$46,552.02	561,215.61	607,776.63
2004	139,253.44	552,397.10	691,650.54
2005	115,908.09 <sup>(1)</sup>	605,088.58	720,996.67
2006	160,625.64	754,943.64	915,569.28
2007	43,498.01 <sup>(2)</sup>	657,184.65	700,682.66
2008	44,287.76 <sup>(2)</sup>	678,179.93	722,467.69
2009	327,205.63 <sup>(2)</sup>	527,732.45	854,938.08
2010	132,019.55	546,709.40	678,728.95
2011	130,370.87	559,069.28	689,440.15
2012 <sup>(3)</sup>	140,307.88	316,384.88	456,692.76

<sup>(1)</sup> Prior to the issuance of the Series 2006 Bonds, the City was authorized to utilize incremental revenues from Subarea 2 for payment of the Series 2002 Bonds. The amount in the table shown for Payments in Lieu of Taxes collected in 2004 included payments related to Subarea 2. The amounts in the table for the years 2005 and thereafter include only payments related to Subarea 1.

<sup>(2)</sup> Lowe’s Home Centers, Inc. challenged the assessed valuation of its property within Subarea 1 in 2006 and paid taxes for tax years 2006 and 2007 under protest, which substantially reduced the amount of Payments In Lieu of Taxes received by the City with respect to Subarea 1 in calendar years 2007 and 2008. In 2009, after the challenge resulted in a moderate reduction of the assessed valuation of such property, portions of the amounts paid under protest were released to the City in addition to the amounts paid by Lowe’s Home Centers, Inc. for tax year 2008. The original assessments for 2006, 2007 and 2008 were \$3,990,910, \$4,251,160 and \$4,251,260, respectively, and were adjusted to be \$3,384,000 each of the three years in dispute.

<sup>(3)</sup> Collections for 2012 include the months of January through August.

**PROJECTED AVERAGE LIFE OF THE BONDS**

Set forth below is a chart, prepared by the Underwriter, of the projected cumulative redemption of the Bonds and the projected average life of the Bonds, taking into account the special mandatory redemptions of the Bonds. **Case I** assumes that Net Revenues will equal the historical Net Revenues received in the trailing 12-month period (August 2011 through July 2012) as set forth in the caption above with annual growth of 1.00% for sales taxes and bi-annual increases of 1.00% in assessed valuation. **Case II** assumes that Net Revenues will equal 71.43% of the historical Net Revenues received in the trailing 12-month period (August 2011 through July 2012) as set forth in the caption above with no annual growth of sales taxes or in assessed valuation. **THERE IS NO ASSURANCE THAT ACTUAL EVENTS WILL CORRESPOND WITH THE ASSUMPTIONS MADE. NO GUARANTEE OR ASSURANCES MAY BE MADE THAT SUCH PROJECTIONS WILL CORRESPOND WITH THE RESULTS ACHIEVED IN THE FUTURE.** See “**SOURCES OF PAYMENT AND SECURITY FOR THE BONDS – Indenture Funds and Accounts**” herein.

<u>CASE I</u>				
<u>As of</u>	<u>Series 2012 Bonds</u>		<u>Revenues</u>	
	<u>May 1, 2019</u>	<u>May 1, 2023</u>	<u>PILOTS</u>	<u>EATS</u>
05/1/13	\$245,000		\$140,307	\$234,028
11/1/13	280,000			310,952
05/1/14	265,000		140,307	236,368
11/1/14	280,000			314,061
05/1/15	285,000		141,710	238,732
11/1/15	285,000			317,202
05/1/16	270,000	\$35,000	141,710	241,119
11/1/16		285,000		320,374
05/1/17		330,000	143,127	243,530
11/1/17		295,000		323,578
05/1/18		355,000	143,127	245,966
11/1/18		295,000		326,813
05/1/19		395,000	144,558	248,425
11/1/19		510,000		330,082
05/1/20				
11/1/20				
05/1/21				
11/1/21				
05/1/22				
11/1/22				
05/1/23				
11/1/23				

The average life of the May 1, 2019 Term Bond is 2.147 years and the average life of the May 1, 2023 Term Bond is 5.752 years.\*

<u>CASE II</u>				
<u>As of</u>	<u>Series 2012 Bonds</u>		<u>Revenues</u>	
	<u>May 1, 2019</u>	<u>May 1, 2023</u>	<u>PILOTS</u>	<u>EATS</u>
05/1/13	\$130,000		\$100,219	\$167,163
11/1/13	195,000			222,108
05/1/14	140,000		100,219	167,163
11/1/14	200,000			222,108
05/1/15	145,000		100,219	167,163
11/1/15	200,000			222,108
05/1/16	160,000		100,219	167,163
11/1/16	195,000			222,108
05/1/17	170,000		100,219	167,163
11/1/17	200,000			222,108
05/1/18	175,000	\$5,000	100,219	167,163
11/1/18		200,000		222,108
05/1/19		195,000	100,219	167,163
11/1/19		195,000		222,108
05/1/20		215,000	100,219	167,163
11/1/20		200,000		222,108
05/1/21		225,000	100,219	167,163
11/1/21		200,000		222,108
05/1/22		245,000	100,219	167,163
11/1/22		200,000		222,108
05/1/23		620,000	100,219	167,163
11/1/23				

The average life of the May 1, 2019 Term Bond is 3.208 years and the average life of the May 1, 2023 Term Bond is 8.768 years.\*

## THE PREWITT'S POINT PROJECT

### Overview

Pursuant to the TIF Act, the City designated a redevelopment area (the "Redevelopment Area") on July 6, 2000. The Redevelopment Area is located in the Highway 54/42 corridor in the City. The Redevelopment Area contains approximately 163 acres located east of U.S. Highway 54 and north of Missouri Highway 42. The Redevelopment Area was studied and determined by the City to be a "blighted area" within the meaning of the TIF Act. See "**TAX INCREMENT FINANCING IN MISSOURI**" herein.

On July 20, 2000, the City approved a development contract (the "Development Contract") authorizing Prewitt's Hwy 54 Enterprises, LLC (the "Developer") to redevelop the "commercial portion" of the Redevelopment Area. The Project planned for the construction of a general retail shopping center totaling approximately 680,000 square feet, together with all necessary parking, utilities and street improvements.

The Project was completed in two phases, the first phase consisting of improvements to Subarea 1, and the second phase consisting of improvements to Subarea 2. The first phase of the Project, Subarea 1, contains approximately 163,000 square feet of space, including two out parcels. The Developer currently has two tenants under lease, covering approximately 15,660 square feet in Subarea 1. In addition, the Developer has sold to Lowe's Home Centers, Inc. the property within Subarea 1 on which the Lowe's Home Improvement Center is located. The Lowe's Home Improvement Center contains approximately 135,200 square feet of retail space. See "**THE PREWITT'S POINT PROJECT – Subarea 1**" and "**SUMMARY OF LEASES AND OCCUPANTS**" below for further discussion of the portion of the Project within Subarea 1.

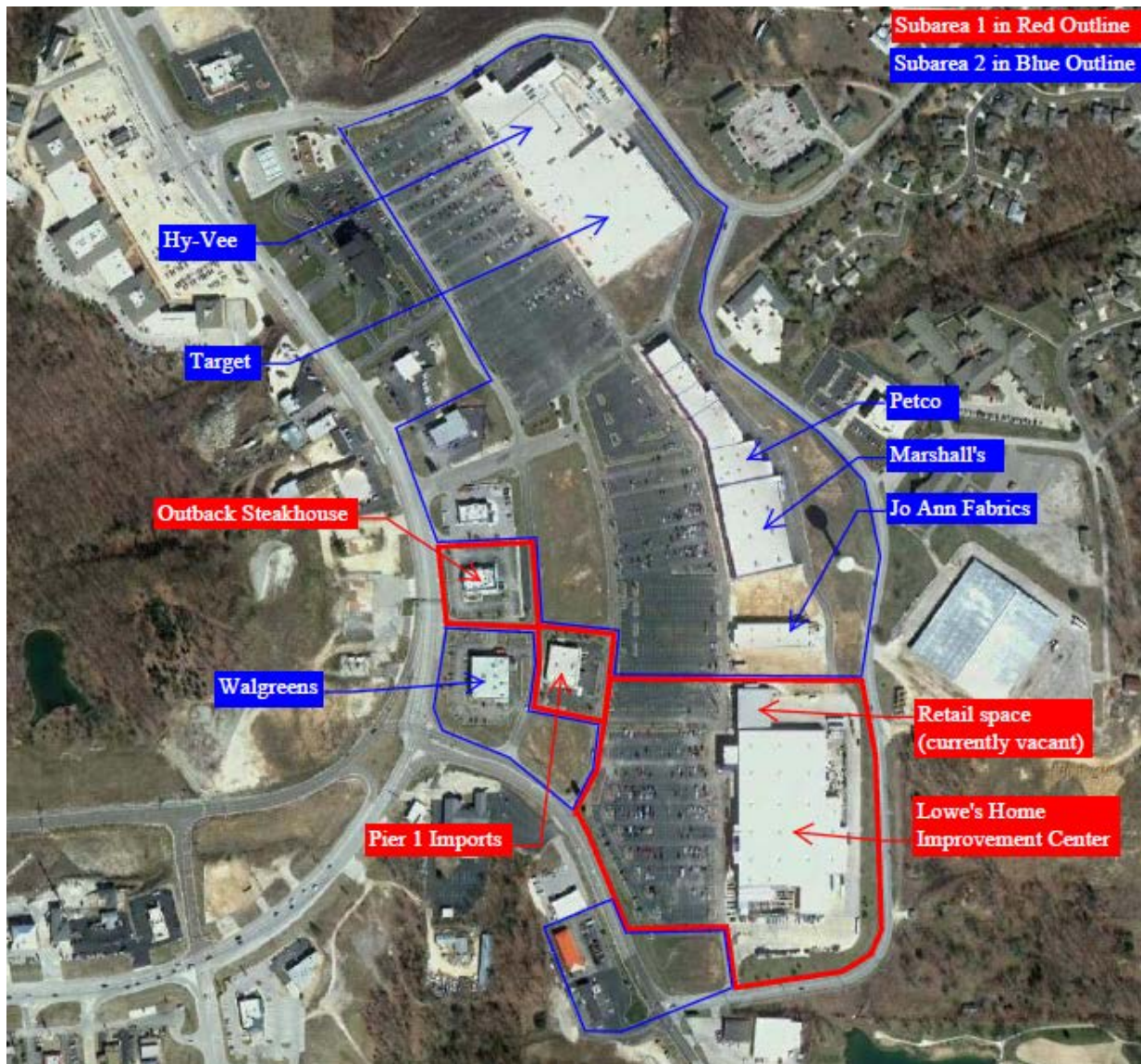
The second phase of the Project, Subarea 2, contains approximately 380,000 square feet of space, including several out parcels. The Developer currently has 18 tenants under lease, covering approximately 174,700 square feet in Subarea 2. In addition, the Developer has sold various parcels of real estate within Subarea 2. Certain spaces and out parcels within Subarea 2 have yet to be developed.

After approval of the Redevelopment Plan, but prior to the issuance of the Series 2006 Bonds and the development of the second phase of the Project, the TDD was formed to provide funds to construct some of the interior roads of the Project. The TDD imposes a sales tax in the amount of 1% for such purposes, but all of those revenues are used for TDD purposes and are not available to pay debt service on the Series 2012 Bonds. See "**SOURCES OF PAYMENT AND SECURITY FOR THE BONDS – Revenues.**"

### Subarea 1

Only Payments in Lieu of Taxes attributable to property within Subarea 1 and, subject to annual appropriation, Economic Activity Tax Revenues generated by economic activities within Subarea 1 will be available for the payment of the principal of and interest on the Bonds. Subarea 1, constituting a portion of Prewitt's Point, contains approximately 17.84 acres with approximately 163,000 square feet of retail space. Located within Subarea 1 are a Lowe's Home Improvement Center, a Pier 1 Imports and an Outback Steakhouse, which are open for business. See "**SUMMARY OF LEASES AND OCCUPANTS**" below for further discussion of the leasing and occupancy of Subarea 1.

Below is a map showing the approximate boundaries of Subarea 1 (outlined in red) and Subarea 2 (outlined in blue) and showing the locations of the major occupants of Prewitt's Point.



### The Developer and Manager

The Developer of Prewitt's Point is Prewitt's Hwy 54 Enterprises, LLC, a Missouri limited liability company. The sole member of the Developer is Gary D. Prewitt, a resident of Osage Beach, Missouri. Prewitt's Hwy 54 Enterprises, LLC was originally formed to own and lease land for commercial development. In addition to Prewitt's Point, Mr. Prewitt has developed several single tenant structures, for which he supervised all phases of development, construction, tenant negotiations and tenant finishes. Mr. Prewitt is also a principal with Lake Area Development Company, which has undertaken a small planned modular housing development.

Prewitt's Point has been and will continue to be managed by the Developer, which has managed Prewitt's Point since its completion but has no prior experience in managing similar retail developments.

The City has no other information regarding the finances, operations or capabilities of the Developer.

## **Environmental Assessment**

Miller/Lindsay, Inc., Osage Beach, Missouri, prepared an Environmental Report–Phase One dated December 1999 for the Developer. The assessment revealed no recognized environmental conditions, other than an underground storage tank on an adjacent site of a gas station, Big Boys Little Store. Miller/Lindsay, Inc. prepared a second Phase I Environmental Site Assessment dated March 29, 2000 for the Developer. The assessment revealed no evidence of a recognized environmental condition except for two adjacent properties with the potential to impact the site: a Speedee Dry Cleaners and Big Boys Little Store. No violations for these two adjacent sites were found.

## **Competition**

Prewitt's Point is located at the northeast corner of the intersection of Osage Beach Parkway and State Highway 42, less than one-half mile east of the intersection of U.S. Highway 54 and State Highway 42. Osage Beach Parkway is a business route that breaks away from U.S. Highway 54 north of the City and runs roughly parallel to U.S. Highway 54 for approximately four miles, crossing U.S. Highway 54 twice before rejoining it in the southwestern portion of the City. Numerous businesses are located along Osage Beach Parkway, including several that compete directly with the occupants of Prewitt's Point. A Home Depot is located within a half-mile to the southwest of Prewitt's Point, between Prewitt's Point and U.S. Highway 54. A Wal-Mart Supercenter is located within a mile to the southwest of Prewitt's Point. Osage Beach Premium Outlets is located approximately 1.7 miles southwest of Prewitt's Point on Osage Beach Parkway and contains 110 outlet stores offering apparel, housewares and other discount retail.

Additional tax increment financing redevelopment areas have been established and are currently being developed along Osage Beach Parkway. The City has authorized tax increment financing in connection with the development of the Dierbergs Lakeview Pointe Shopping Center ("Lakeview Point"), located approximately 1.8 miles southwest of Prewitt's Point on Osage Beach Parkway. Lakeview Point will be anchored by a Dierbergs Markets grocery store that is currently under construction and plans include approximately 50,000 to 65,000 square feet of future developments for shops and restaurants.

Approximately one mile to the north of Prewitt's Point on Osage Beach Parkway in the City of Lake Ozark, Missouri (the "City of Lake Ozark"), is a new development named The Shoppes at Eagles Landing ("Eagles Landing"). Eagles Landing is situated on a 220 acre site and currently contains a 15,000 square foot CVS Pharmacy, a 55,000 square foot Kohl's Department Store and a 162,000 square foot Menards home improvement store, with plans for a movie theater and a number of other shops and out parcels. The developer of Eagles Landing is RIS, Inc., which is a Missouri corporation of which Gary D. Prewitt is the president and sole director (Mr. Prewitt also controls the Developer). The City of Lake Ozark has authorized tax increment financing in connection with the development of Eagles Landing.

Below is a map showing the locations of some significant competitors with respect to Prewitt's Point.





## SUMMARY OF LEASES AND OCCUPANTS

### Subarea 1

Within Subarea 1 of Prewitt's Point, the Developer currently has a lease agreement with Pier 1 Imports for an approximately 9,460 square foot store that has been open since 2001 and a lease agreement with Outback Steakhouse for an approximately 6,200 square foot restaurant that has been open since 2002. The Developer has sold a tract of real estate within Subarea 1 to Lowe's Home Centers, Inc. which has constructed an approximately 135,200 square foot home improvement store with a 28,028 square foot garden center that opened for business in 2001. Subarea 1 includes approximately 12,500 square feet of additional retail space that has been leased by the Developer at times since its construction but is currently vacant.

The leases provide, and the Developer anticipates that future leases will provide, that the tenants shall pay their proportionate share of real estate taxes and assessments levied against the leased premises. The leases also require, and the Developer anticipates that future leases will require, the tenants to maintain varying levels of public liability and property damage insurance although self-insurance is permitted under certain circumstances. The current leases provide that a tenant may assign its interests in its lease only with the consent of the Developer, which shall not be unreasonably withheld. Future leases may or may not require the Developer's consent to an assignment.

### Subarea 2

The Developer has entered into leases with 18 tenants for approximately 174,700 square feet within Subarea 2, as described below. The Developer has sold tracts of real estate within Subarea 2 to Target Corporation, Hy-Vee, Inc. and to an affiliate of the Developer, Prewitt's Hwy 54 & 42 Enterprises, LLC. The remainder of Subarea 2 of Prewitt's Point has not yet been leased or sold by the Developer. The businesses operating in Subarea 2 currently include Target, Hy-Vee, and Walgreens, located on the tracts sold by the Developer, and Marshall's, Petco, Jack of All Trades, Patio Pleasures, Arris Pizza & Pub, Smashmouth Subs, Maurices, Levi's outlet store, Shoe Carnival, Replay (video game store), Steak 'n Shake, Anytime Fitness, Ace Automotive, West Marine, JoAnn's Fabrics and Sprint, in space leased by the Developer. A Ross Dress for Less is scheduled to open in late summer or early fall in a new building being constructed.

### Material Terms Related to Leases and Occupants

A summary of the material terms related to the leases and occupants was provided by the Developer at the time the Series 2002 Bonds and the Series 2006 Bonds were issued. All of the businesses operating in Subarea 1 at the time of issuance of the Series 2002 Bonds continue to operate as of the date of this Official Statement. Of the 15 businesses identified as operating in Subarea 2 at the time of issuance of the Series 2006 Bonds, only 9 businesses continue to operate (Target, Hy-Vee, Walgreen's, Marshall's, Arris Pizza and Pub, Maurices, Steak 'n Shake, Petco, and West Marine Products). The City is not able to confirm whether any of the leases for any of the businesses within the Redevelopment Area have been modified or amended since the date of the issuance of the Series 2006 Bonds.

## THE CITY

*The Bonds are not a general obligation of the City and are payable solely from the revenues described herein. The following information regarding the City is provided as general background information only.*

### General

Organized in 1958, the City of Osage Beach, Missouri is a fourth-class city organized under the laws of the State of Missouri. The City is approximately ten square miles in area and is located in Camden and Miller Counties, Missouri, at the intersection of U.S. Highway 54 and State Highway 42, approximately 45 miles southwest of Jefferson City, Missouri, in the central portion of the state. U.S. Highway 54 runs generally northeast and southwest diagonally through the middle of the City. The Lake of the Ozarks and Miller County

comprise the north and west boundaries, and Camden County and the Lake of the Ozarks State Park comprise the south and east boundaries. The City lies along the shores of the Lake of the Ozarks, one of the largest man-made lakes in the world, and has a 2010 Census population of 4,351.

The City is governed by a six-member Board of Aldermen. Two Aldermen are elected from each of three wards and the Mayor is elected at large. The Mayor and Aldermen serve two-year staggered terms. The Mayor presides over meetings of the Board of Aldermen. The City Administrator is appointed by the Board of Aldermen as the chief administrative officer of the City. The Aldermen set the policy for the City and the City Administrator is responsible for administering this policy in the day-to-day activities of City operations.

**Mayor and Board of Aldermen**

<u>Name</u>	<u>Title</u>
Penny Lyons	Mayor
Kevin Rucker	Alderman, Ward One
Ron Schmitt	Alderman, Ward One
Lois Farmer	Alderman, Ward Two
Steven Kahrs	Alderman, Ward Two
Fred Catcott	Alderman, Ward Three
John Olivarri	Alderman, Ward Three

**Administrative Officials**

Nancy Viselli, City Administrator  
Edward Rucker, City Attorney  
Karri Bell, Treasurer  
Diann Warner, City Clerk  
Cary Patterson, City Planner  
Ron White, Building Official  
Nick Edelman, City Engineer

**Population**

<u>Year</u>	<u>City of Osage Beach</u>	<u>Camden County</u>	<u>Miller County</u>
1970 Census	1,091	13,315	15,026
1980 Census	1,992	20,017	18,539
1990 Census	2,599	27,495	20,700
2000 Census	3,662	37,051	23,564
2010 Census	4,351	44,002	24,748

Source: U.S. Census Bureau.

The City is a major destination resort area and has wide fluctuations in population during the year. While the 2010 Census estimate of the City's resident population is 4,351, it is estimated that in excess of 100,000 people are present in the area during peak seasonal periods.

## Employment

Some major employers in or near Osage Beach, Missouri, include:

<u>Employer</u>	<u>Product/Service</u>	<u>Number of Employees</u>
1. Lake Regional Health System	Health Care	1,300
2. Factory Outlet Village	Retail	800-1,200
3. Camdenton R-II School District	Education	620
4. Tan-Tar-A Resort	Resort/Hotel	560
5. Wal-Mart Supercenter	Retail	430
6. School of the Osage R-II School District	Education	300
7. Hy-Vee	Groceries	200
8. Target	Retail	150
9. City of Osage Beach	Government	103
10. Central Bank of Lake of the Ozarks	Financial/Banking	102

Source: City.

The following table sets forth unemployment figures for the years shown for the City and related areas.

	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>*2012</u>
<i>Camden County</i>					
Total Labor Force	22,615	22,273	20,548	19,978	18,740
Unemployed	1,365	2,201	2,253	2,147	2,108
Unemployment Rate	6.0%	9.9%	11.0%	10.7%	11.4%
<i>Miller County</i>					
Total Labor Force	13,291	12,924	12,298	11,609	11,172
Unemployed	861	1,533	1,482	1,315	1,209
Unemployment Rate	6.5%	11.9%	12.1%	11.3%	10.8%
<i>State of Missouri</i>					
Total Labor Force	3,012,126	3,036,622	3,014,310	3,037,949	3,012,020
Unemployed	182,837	282,860	288,783	264,782	227,603
Unemployment Rate	6.1%	9.3%	9.6%	8.7%	7.5%

Source: Missouri Department of Economic Development.

\*Average January through May, 2012.

## Income Statistics

The following table sets forth certain income statistics from the U.S. Census Bureau, 2010 American Community Survey 5-Year Estimates for the City and surrounding areas:

	<u>Per Capita Income</u> <u>2010 Dollars</u>	<u>Median Family Income</u> <u>2010 Dollars</u>	<u>Median Household Income</u> <u>2010 Dollars</u>
City of Osage Beach	\$29,489	\$50,487	\$43,970
Other Entities:			
Camden County	25,509	49,863	44,617
Miller County	18,202	43,864	35,838
State of Missouri	24,724	57,661	46,262

## Property Tax Levies

The City does not impose a property tax. Set forth below are the levy rates, for each \$100 of assessed valuation, of taxing jurisdictions imposing property tax levies within the Redevelopment Area for calendar year 2011.

Miller County General	\$0.0512
Miller County Road & Bridge	0.2556
Miller County Sheltered Workshop	0.0832
Miller County Senior Services	0.0483
Miller County Health Center	0.1375
Miller County Library	0.1255
School of the Osage	2.7200
Kaiser Special Road District	0.1772
Nursing Home District	0.1741
Osage Beach Fire Protection District	0.5934

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The State of Missouri also imposes property tax levies within the Redevelopment Area, but no portion of such levies is subject to capture as Payments in Lieu of Taxes.

## Sales Tax Rates

The current sales tax rate in the City is 7.725%. The current components are as follows:

State General	4.000%
State Conservation	0.125
State Parks and Soils	0.100
Miller County General	0.500
Miller County Capital Improvement	0.500 <sup>†</sup>
Osage Beach General	1.000
Osage Beach Capital Improvement	0.500
Osage Beach Transportation	0.500
Ambulance District	0.500

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<sup>†</sup> The County's capital improvement sales tax of 0.5% expires on December 31, 2030.

None of the State's sales tax is captured by the City as Economic Activity Tax Revenues. In addition, the Prewitt Point Transportation Development District imposes a 1% sales tax within its boundaries, which includes the Redevelopment Area. Although one-half of the TDD's sales tax is subject to capture by the City as Economic Activity Tax Revenues, the City has agreed that such revenues may either be retained by the TDD to pay TDD Capital Costs or shall be returned by the City to the TDD to pay TDD Capital Costs as provided in the Redevelopment Plan.

## ABSENCE OF LITIGATION

There is no controversy, suit or other proceeding of any kind pending or, to the City's knowledge, threatened wherein or whereby any question is raised or may be raised, questioning, disputing or affecting in any way the legal organization of the City or its boundaries, or the right or title of any of its officers to their respective offices, the Redevelopment Plan, or the legality of any official act shown to have been done in connection with the issuance of the Bonds, or the constitutionality or validity of the Bonds, or any of the proceedings had in relation to the authorization, issuance or sale thereof.

## LEGAL MATTERS

Legal matters incident to the authorization, issuance and sale of the Bonds are subject to the approving legal opinion of Gilmore & Bell, P.C., Kansas City, Missouri, Bond Counsel, whose approving opinion will be delivered with the Bonds. The expected form of such opinion is attached as **Appendix B** hereto. Certain legal matters related to this Official Statement will be passed upon by Gilmore & Bell, P.C. Certain legal matters will be passed upon for the City by Edward Rucker, City Attorney. Certain legal matters will be passed upon for the Underwriter by Lewis, Rice & Fingersh, L.C., St. Louis, Missouri.

## TAX MATTERS

*The following is a summary of the material federal and State of Missouri income tax consequences of holding and disposing of the Bonds. This summary is based upon laws, regulations, rulings and judicial decisions now in effect, all of which are subject to change (possibly on a retroactive basis). This summary does not discuss all aspects of federal income taxation that may be relevant to investors in light of their personal investment circumstances or describe the tax consequences to certain types of owners subject to special treatment under the federal income tax laws (for example, dealers in securities or other persons who do not hold the Bonds as a capital asset, tax-exempt organizations, individual retirement accounts and other tax deferred accounts, and foreign taxpayers), and, except for the income tax laws of the State of Missouri, does not discuss the consequences to an owner under any state, local or foreign tax laws. The summary does not deal with the tax treatment of persons who purchase the Bonds in the secondary market. Prospective investors are advised to consult their own tax advisors regarding federal, state, local and other tax considerations of holding and disposing of the Bonds.*

### Opinion of Bond Counsel

In the opinion of Gilmore & Bell, P.C., Bond Counsel, under the law existing as of the issue date of the Bonds:

**Federal and Missouri Tax Exemption.** The interest on the Bonds (including any original issue discount properly allocable to an owner thereof) is excludable from gross income for federal income tax purposes and is exempt from income taxation by the State of Missouri.

**Alternative Minimum Tax.** Interest on the Bonds is not an item of tax preference for purposes of computing the federal alternative minimum tax imposed on individuals and corporations, but is taken into account in determining adjusted current earnings for the purpose of computing the alternative minimum tax imposed on certain corporations.

**Bank Qualification.** The Bonds are “qualified tax-exempt obligations” within the meaning of Section 265(b)(3) of the Code.

Bond Counsel’s opinions are provided as of the date of the original issue of the Bonds, subject to the condition that the City comply with all requirements of the Code that must be satisfied subsequent to the issuance of the Bonds in order that interest thereon be, or continue to be, excludable from gross income for federal income tax purposes. The City has covenanted to comply with all such requirements. Failure to comply with certain of such requirements may cause the inclusion of interest on the Bonds in gross income for federal and State of Missouri income tax purposes retroactive to the date of issuance of the Bonds. Bond Counsel is expressing no opinion regarding other federal, state or local tax consequences arising with respect to the Bonds but has reviewed the discussion under the section herein captioned **“TAX MATTERS.”**

### Other Tax Consequences

**Original Issue Discount.** For federal income tax purposes, original issue discount (“OID”) is the excess of the stated redemption price at maturity of a Bond over its issue price. The issue price of a Bond is the first price at which a substantial amount of the Bonds of that maturity have been sold (ignoring sales to bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters, placement

agents, or wholesalers). Under Section 1288 of the Code, OID on tax-exempt bonds accrues on a compound basis. The amount of OID that accrues to an owner of a Bond during any accrual period generally equals (1) the issue price of that Bond, plus the amount of OID accrued in all prior accrual periods, multiplied by (2) the yield to maturity on that Bond (determined on the basis of compounding at the close of each accrual period and properly adjusted for the length of the accrual period), minus (3) any interest payable on that Bond during that accrual period. The amount of OID accrued in a particular accrual period will be considered to be received ratably on each day of the accrual period, will be excludable from gross income for federal income tax purposes, and will increase the owner's tax basis in that Bond. Prospective investors should consult their own tax advisors concerning the calculation and accrual of OID.

***Sale, Exchange or Retirement of Bonds.*** Upon the sale, exchange or retirement (including redemption) of a Bond, an owner of the Bond generally will recognize gain or loss in an amount equal to the difference between the amount of cash and the fair market value of any property received on the sale, exchange or retirement of the Bond (other than in respect of accrued and unpaid interest) and such owner's adjusted tax basis in the Bond. To the extent a Bond is held as a capital asset, such gain or loss will be capital gain or loss and will be long-term capital gain or loss if the Bond has been held for more than 12 months at the time of sale, exchange or retirement.

***Reporting Requirements.*** In general, information reporting requirements will apply to certain payments of principal, interest and premium paid on the Bonds, and to the proceeds paid on the sale of the Bonds, other than certain exempt recipients (such as corporations and foreign entities). A backup withholding tax will apply to such payments if the owner fails to provide a taxpayer identification number or certification of foreign or other exempt status or fails to report in full dividend and interest income. The amount of any backup withholding from a payment to an owner will be allowed as a credit against the owner's federal income tax liability.

***Collateral Federal Income Tax Consequences.*** Prospective purchasers of the Bonds should be aware that ownership of the Bonds may result in collateral federal income tax consequences to certain taxpayers, including, without limitation, financial institutions, property and casualty insurance companies, individual recipients of Social Security or Railroad Retirement benefits, certain S corporations with "excess net passive income," foreign corporations subject to the branch profits tax, life insurance companies, and taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry or have paid or incurred certain expenses allocable to the Bonds. Bond Counsel expresses no opinion regarding these tax consequences. Purchasers of Bonds should consult their tax advisors as to the applicability of these tax consequences and other federal income tax consequences of the purchase, ownership and disposition of the Bonds, including the possible application of state, local, foreign and other tax laws.

## **UNDERWRITING**

Stifel, Nicolaus & Company, Incorporated (the "Underwriter") has agreed, subject to certain conditions, to purchase the Bonds from the City at a price equal to \$4,309,300 (representing the par amount of the Bonds less an underwriter's discount of \$66,150.00 and less a net original issue discount of \$34,550.00). The Underwriter is purchasing the Bonds from the City for resale in the normal course of the Underwriter's business activities. The Underwriter may sell certain of the Bonds at a price greater than such purchase price, as shown on the cover page hereof. The Underwriter reserves the right to offer any of the Bonds to one or more purchasers on such terms and conditions and at such price or prices as the Underwriter, in its discretion, shall determine.

The Underwriter has reviewed the information in this Official Statement in accordance with, and as part of, its responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction. The Underwriter has not, however, independently verified the factual and financial information contained in this Official Statement and, accordingly, expresses no view as to the sufficiency or accuracy thereof.

## **FINANCIAL ADVISOR**

The City has retained WM Financial Strategies, St. Louis, Missouri, as financial advisor (the "Financial Advisor") to assist the City in developing the plan of financing. The Financial Advisor is not

obligated to undertake, and has not undertaken to make, an independent verification or to assume any responsibility for the accuracy, completeness, or fairness of the information contained in this Official Statement. The Financial Advisor is an independent advisory firm and is not engaged in the business of underwriting, trading or distributing municipal securities or other public securities.

#### **NO RATING**

The City has not applied to Standard & Poor's Ratings Services, Moody's Investors Service, Inc. or any other similar rating service for a rating of the Bonds.

#### **MISCELLANEOUS**

The foregoing summaries of the Bonds contained herein and in the Appendices hereto do not purport to be complete and are expressly made subject to the exact provisions of the complete documents. For details of all terms and conditions, purchasers are referred to the Bonds, the Indenture and the Bond Purchase Agreement. All documents referred to in this Official Statement may be reviewed during regular business hours at the office of the Underwriter.

The delivery of this Official Statement or any sale of the Bonds described herein shall not, under any circumstance, create an implication that there has been no change in the business affairs or financial condition of the City, Prewitt's Point or the Developer since the date thereof.

The form of this Official Statement, and its distribution and use, has been approved by the City. Neither the City nor any of its officials or employees, in either their official or personal capacities, has made any warranties, representations or guarantees regarding the financial condition of the City or the City's ability to make payments required of it; and further, neither the City nor its officials or employees assumes any duties, responsibilities or obligations in relation to the issuance of the Bonds other than those either expressly or by fair implication imposed on the City. The City and its officials, officers and employees assume no duties, responsibilities or obligations with respect to the Bonds other than those imposed, either expressly or by fair implication, upon the City by the Indenture, the Continuing Disclosure Agreement or by the Redevelopment Agreement.

#### **CITY OF OSAGE BEACH, MISSOURI**

By: /s/ Penny Lyons  
Mayor



## APPENDIX A

### DEFINITIONS; SUMMARY OF THE PRINCIPAL DOCUMENTS

#### DEFINITIONS

In addition to words and terms elsewhere defined in this Official Statement, the following words and terms as used in the Indenture shall have the following meanings, unless some other meaning is plainly intended:

**“Arbitrage Instructions”** means the arbitrage investment and rebate instructions contained in the Tax Compliance Agreement, as the same may be amended or supplemented in accordance with the provisions thereof.

**“Authorized City Representative”** means the Mayor or City Administrator of the City, or such other Person at the time designated to act on behalf of the City.

**“Authorized Denominations”** means \$5,000 or any integral multiple thereof.

**“Authorized Developer Representative”** means the managing member of the Developer, or such other person at the time designated to act on behalf of the Developer.

**“Beneficial Owner”** shall mean, whenever used with respect to a Bond, the Person in whose name such Bond is recorded as the beneficial owner of such Bond by a Participant on the records of such Participant, or such Person’s subrogee.

**“Bond Purchase Agreement”** means the Bond Purchase Agreement between the City and the original purchaser of the Bonds.

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

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

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

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

**“Debt Service Reserve Requirement”** means the sum of \$441,000 to be deposited into the Debt Service Reserve Fund for the Bonds.

**“Developer”** or **“Redeveloper”** means Prewitt’s Hwy 54 Enterprises, LLC, a Missouri limited liability company, and any successors or assigns thereto permitted under the Redevelopment Agreement.

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

generated by economic activities within the Redevelopment Area over the amount of such taxes generated by economic activities within the Redevelopment Area in the calendar year ending December 31, 1999, but excluding therefrom any taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, taxes levied pursuant to Section 70.500, RSMo., licenses, fees or special assessments other than payments in lieu of taxes and penalties and interest thereon, personal property taxes, and taxes levied for the purpose of public transportation pursuant to Section 94.660, RSMo.

**“Event of Default”** means any event or occurrence as defined in the Indenture.

**“Financing Documents”** means the Indenture, the Redevelopment Agreement, the Tax Compliance Agreement, the Continuing Disclosure Agreement, the Bond Purchase Agreement and any other documents entered into in connection with the issuance of the Bonds or the payment thereof.

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

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

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

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

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

(g) any other securities or investments that are lawful for the investment of moneys held in such funds or accounts under the laws of the State.

**“Net Revenues”** means (a) all moneys on deposit (including investment earnings thereon) in the Subarea 1 Subaccount of the PILOTS Account of the Special Allocation Fund and (b) subject to annual appropriation by the City, all moneys on deposit (including investment earnings thereon) in the Subarea 1 Subaccount of the Economic Activity Tax Account of the Special Allocation Fund. Net Revenues do not include (i) any amount paid under protest until the protest is withdrawn or resolved against the taxpayer, (ii) any sum received by the City which is the subject of a suit or other claim communicated to the City which suit or claim challenges the collection of such sum or (iii) any Economic Activity Tax Revenues related to the 1% sales tax imposed by the TDD.

**“Original Purchaser”** means Stifel, Nicolaus & Company, Incorporated.

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

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

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

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

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

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

**“Payments in Lieu of Taxes”** means 75% of those payments in lieu of taxes (as defined in Sections 99.805(10) and 99.845 of the TIF Act), if any, attributable to the increase in the current equalized assessed valuation of all taxable lots, blocks, tracts and parcels of real property in the Redevelopment Area over and above the certified total initial equalized assessed valuation of the real property in the Redevelopment Area, as provided for by Section 99.845 of the TIF Act.

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

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

**“Project”** means the construction of a general retail shopping center totaling approximately 500,000 square feet, together with all necessary parking, utilities, street improvements and related infrastructure improvements, in the City of Osage Beach, Missouri, as described on an exhibit to the Indenture.

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

**“Redevelopment Agreement”** means the Tax Increment Financing Development Contract dated as of July 20, 2000, between the City and the Developer, as further amended from time to time, including the Amended and Restated Tax Increment Financing Development Contract dated as of December 7, 2006.

**“Redevelopment Area”** means the area legally described in the Redevelopment Plan.

**“Redevelopment Plan”** means the U.S. Highway 54 and Missouri Highway 42 Tax Increment Financing Plan, as amended to date and as it may be amended from time to time, including the First Amendment to the U.S. Highway 54 and Missouri Highway 42 Tax Increment Financing Plan (Alternative No.2).

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

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

**“Series 2002 Bonds”** means the Tax Increment Revenue Bonds (Prewitt’s Point Project) Series 2002, being refunded with the proceeds of the Bonds and certain other funds available to the City.

**“Special Allocation Fund”** means the Special Allocation Fund created within the Treasury of the City and ratified pursuant to the Indenture and in accordance with Section 99.845 of the TIF Act and the TIF Ordinance for the projects within the Redevelopment Area, and within the Special Allocation Fund a PILOTS Account and an Economic Activity Tax Account, and within each such Account, a Subarea 1 Subaccount.

**“State”** means the State of Missouri.

**“Supplemental Indenture”** means any indenture supplemental or amendatory to the Indenture entered into by the City and the Trustee pursuant to the Indenture.

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

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

**“TDD”** means the Prewitt Point Transportation Development District.

**“TDD Capital Costs”** means those transportation improvements constructed by or at the direction of the TDD in accordance with the petition forming the TDD, the costs of which (excluding interest) are set forth on Exhibit 7 to the Redevelopment Agreement, including the interest on obligations issued by the TDD to finance such costs.

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

**“TIF Ordinance”** means Ordinance No. 00.26 authorizing the adoption of tax increment financing within the Redevelopment Area.

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

## SUMMARY OF THE INDENTURE

*The following summarizes certain provisions of the Indenture. This summary does not purport to be complete, and reference is made to the Indenture for the complete provisions thereof.*

### **Creation of Funds; Application of Bond Proceeds**

- (a) The following funds of the City are created and established with the Trustee:
  - (1) Revenue Fund, which shall contain a PILOTS Account and an EATS Account.
  - (2) Debt Service Fund, which shall contain a Bond Payment Account and a Redemption Account.
  - (3) Debt Service Reserve Fund.
  - (4) Costs of Issuance Fund.
  - (5) Rebate Fund.

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

The Special Allocation Fund held by the City is hereby ratified and confirmed. Moneys in the Special Allocation Fund shall be paid by the City on the tenth day of each month (or the next Business Day thereafter if the tenth day is not a Business Day) to the Trustee, with (i) **75%** of all Net Revenues as of the last day of the preceding month consisting of Payments in Lieu of Taxes to be deposited into the PILOTS Account of the Revenue Fund and (ii) subject to annual appropriation by the City and **Section 602** herein, all Net Revenues as of the last day of the preceding month consisting of Economic Activity Tax Revenues to be deposited into the EATS Account of the Revenue Fund. The Trustee shall notify the City and the Original Purchaser if the Trustee has not received such Net Revenues on or before the 12<sup>th</sup> calendar day of each month (or the next Business Day thereafter if the 12<sup>th</sup> day is not a Business Day). Notwithstanding the foregoing, (a) any Economic Activity Tax Revenues derived from the 1% sales tax imposed by the TDD shall not be transferred to the Trustee nor deposited into the Revenue Fund, but may either be retained by the TDD to pay TDD Capital Costs or shall be returned by the City to the TDD to pay TDD Capital Costs as provided in the Redevelopment Plan.

### **Revenue Fund**

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

*First*, for transfer to the Rebate Fund when necessary, an amount sufficient to pay rebate, if any, to the United States of America, owed under Section 148 of the Code, as directed in writing by the City in accordance with the Arbitrage Instructions;

*Second*, for payment to the Trustee or any Paying Agent, an amount sufficient for payment of any fees and expenses which are due and owing to the Trustee or any Paying Agent (except as otherwise provided in the Indenture, not to exceed \$4,250 per Fiscal Year), upon delivery to the City of an invoice for such amounts;

*Third*, for transfer to the Bond Payment Account in the Debt Service Fund an amount sufficient to pay the interest becoming due and payable on the Bonds on the next Payment Date or, if the next Payment Date is May 1, the next two succeeding Payment Dates;

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

*Fifth*, for transfer to the Debt Service Reserve Fund such amount as may be required to restore any deficiency in the Debt Service Reserve Fund if the amount on deposit in the Debt Service Reserve Fund is less than the Debt Service Reserve Requirement;

*Sixth*, for payment to the City of an amount sufficient for payment of any fees and expenses which are due and owing to the City pursuant to the Indenture, upon delivery to the Trustee of an invoice for such amounts; and

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

## **Debt Service Fund**

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

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

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

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

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

### **Costs of Issuance Fund**

Moneys in the Cost of Issuance Fund shall be disbursed, from time to time by the Trustee, upon receipt of a written request of the City signed by the Authorized City Representative and containing the statements, representations and certifications set forth in the form of such request attached as an exhibit to the Indenture and otherwise substantially in such form, for the sole purpose of paying costs of issuance of the Bonds and the incidental costs of refunding the Series 2002 Bonds. Any moneys remaining in the Cost of Issuance Fund on December 1, 2012 shall be deposited, without further authorization, into the Bond Payment Account in the Debt Service Fund.

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

### **Debt Service Reserve Fund**

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

### **Rebate Fund**

There shall be deposited by the Trustee in the Rebate Fund such amounts as are required to be deposited therein pursuant to the Arbitrage Instructions. All money at any time deposited in the Rebate Fund and any income earned thereon shall be held in trust, to the extent required to pay arbitrage rebate to the federal government of the United States of America, and neither the City nor the Owner of any Bonds shall have any rights in or claim to such money. All amounts deposited into or on deposit in the Rebate Fund shall be governed by the Indenture and by the Arbitrage Instructions.

Pursuant to the Arbitrage Instructions, the Trustee, on behalf of the City, shall remit from the Rebate Fund rebate installments and the final rebate payments to the United States.

### **Non-Presentation of Bonds**

If any Bond is not presented for payment when the principal thereof becomes due, either at maturity or at the date fixed for redemption thereof, and provided the Trustee is holding sufficient funds for the payment thereof, all liability of the City to the Owner thereof for the payment of such Bond shall forthwith cease, terminate and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such moneys, without liability for interest thereon, for the benefit of the Owner of such Bond who shall thereafter be restricted exclusively to such moneys, for any claim of whatever nature on such Owner's part under the Indenture or on, or with respect to, said Bond.

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

### **Investment of Moneys**

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

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

### **Covenant to Request Appropriations**

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

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



## **Collection of Payments**

The City shall, at the expense of the Trust Estate, (a) take all lawful action within its control to cause the assessment of the real property and improvements within the Redevelopment Area at the times and in the manner required by the TIF Act and (b) take such lawful action within its control as may be required to cause the Director of Revenue of the State of Missouri and all other Persons to pay all Economic Activity Tax Revenues which are due to the City under the TIF Act.

## **Enforcement of Agreements**

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

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

The City shall not modify, amend or waive any provision of the Financing Documents without the prior written consent of the Trustee, whose consent shall not be unreasonably withheld or delayed. The Trustee may withhold its consent to any such proposed modification, amendment or waiver of the Financing Documents if the proposed modification, amendment or waiver may adversely affect the security for the Bonds or the interests of the Owners thereof or may adversely affect the exclusion of interest on any Bonds from gross income of the Owners thereof for federal income tax purposes for Bonds that were exempt from taxation for federal income tax purposes or as may impose additional duties on the Trustee that were not contemplated upon the original execution of this Indenture.

## **Events of Default**

If any one or more of the following events occur, it is defined as and declared to be and to constitute an "Event of Default":

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

(b) The filing by the City of a voluntary petition in bankruptcy, or failure by the City to promptly lift any execution, garnishment or attachment of such consequence as would impair the

ability of the City to carry on its operation, or adjudication of the City as a bankrupt, or assignment by the City for the benefit of creditors, or the entry by the City into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any proceedings instituted under the provisions of federal bankruptcy law, or under any similar acts which may be enacted.

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

The Trustee shall give written notice of any Event of Default to the City as promptly as practicable after the occurrence of an Event of Default of which the Trustee has notice as provided in the Indenture.

### **Acceleration**

If an Event of Default has occurred and is continuing, the Trustee may, and shall upon the written request of the Owners of a majority in aggregate principal amount of the Bonds then Outstanding, by notice in writing delivered to the City, declare the principal of all Bonds then Outstanding and the interest accrued thereon immediately due and payable.

### **Exercise of Remedies by the Trustee**

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

If an Event of Default has occurred and is continuing, and if requested so to do by the Owners of not less than 25% in aggregate principal amount of the Bonds then Outstanding and indemnified as provided in the Indenture, the Trustee shall be obligated to exercise such one or more of the rights and powers conferred by the Indenture as the Trustee, being advised by counsel, deems most expedient in the interests of the Owners; provided, however, that the Trustee shall not be required to take any action which in its good faith conclusion could result in personal liability to it.

All rights of action under the Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants any Owner, and any recovery or judgment shall, subject to the Indenture, be for the equal benefit of all the Owners of the Outstanding Bonds.

### **Limitation on Exercise of Remedies by Owners**

No Owner shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of the Indenture or for the execution of any trust under the Indenture or for the appointment of a receiver or any other remedy under the Indenture, unless:

- (i) a default has occurred of which the Trustee has notice as provided in the Indenture, and
- (ii) such default has become an Event of Default, and
- (iii) the Owners of not less than 25% in aggregate principal amount of the Bonds then Outstanding shall have made written request to the Trustee, shall have offered it reasonable opportunity either to proceed to exercise the powers granted or to institute such action, suit or proceeding in its own name, and shall have provided to the Trustee indemnity as provided in the Indenture, and

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

and such notification, request and indemnity are declared in every case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of the Indenture, and to any action or cause of action for the enforcement of the Indenture, or for the appointment of a receiver or for any other remedy under the Indenture, it being understood and intended that no one or more Owners shall have any right in any manner whatsoever to affect, disturb or prejudice the Indenture by its, his or their action or to enforce any right under the Indenture except in the manner provided in the Indenture, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner provided in the Indenture and for the equal benefit of the Owners of all Bonds then Outstanding. Nothing in the Indenture, however, shall affect or impair the right of any Owner to payment of the principal of and interest on any Bond at and after its maturity or the obligation of the City to pay the principal of and interest on each of the Bonds to the respective Owners thereof at the time, place, from the source and in the manner expressed in the Indenture and in such Bond.

### **Right of Owners to Direct Proceedings**

Any other provision in the Indenture to the contrary notwithstanding, the Owners of a majority in aggregate principal amount of the Bonds then Outstanding shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the Indenture, or for the appointment of a receiver or any other proceedings under the Indenture; provided that such direction shall not be otherwise than in accordance with the provisions of law and of the Indenture, and provided, further, that the Trustee shall have the right to decline to follow any such direction if the Trustee in good faith determines that the proceeding so directed would involve it in personal liability or the Trustee has not been indemnified as provided in the Indenture.

### **Application of Moneys in Event of Default**

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

(a) If the principal of all the Bonds has not become or has not been declared due and payable, all such moneys shall be applied:

(1) *First* – To the payment to the Owners entitled thereto of all installments of interest then due and payable on the Bonds, in the order in which such installments of interest became due and payable, with interest thereon at the rate or rates specified in the respective Bonds to the extent permitted by law, and, if the amount available is not sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the Persons entitled thereto, without any discrimination or privilege.

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

(b) If the principal of all the Bonds has become due or has been declared due and payable, all such moneys shall be applied to the payment of the principal and interest then due and

unpaid on all of the Bonds, without preference or priority of principal over interest or of interest over principal or of any installment of interest over any other installment of interest or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the Persons entitled thereto, without any discrimination or privilege;

(c) If the principal of all the Bonds has been declared due and payable, and if such declaration thereafter is rescinded and annulled under the provisions of the Indenture, then, subject to the provisions of subsection (b) above of this Section in the event that the principal of all the Bonds shall later become due or be declared due and payable, the moneys shall be applied in accordance with the provisions of subsection (a) of this Section.

Whenever moneys are to be applied pursuant to this Section, such moneys shall be applied at such times and from time to time as the Trustee shall determine, having due regard to the amount of such moneys available and which may become available for such application in the future.

### **Remedies Cumulative**

No remedy conferred by the Indenture upon or reserved to the Trustee or to the Owners is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Owners under the Indenture or existing at law or in equity or by statute.

### **Waivers of Events of Default**

The Trustee shall waive any Event of Default and its consequences and rescind any acceleration of maturity of principal upon the written request of the Owners of a majority in aggregate principal amount of the Bonds then Outstanding, except a default

- (a) in the payment of the principal of (or premium, if any) or interest on any Bond, or
- (b) in respect of a covenant or provision hereof which under the Indenture cannot be modified or amended without the consent of the owner of each Outstanding Bond affected.

In case of any such waiver or rescission, or in case any proceeding taken by the Trustee on account of any such Event of Default have been discontinued or abandoned or determined adversely, then and in every such case the City, the Trustee and the Owners shall be restored to their former positions, rights and obligations hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon.

### **Resignation or Removal of Trustee**

The Trustee and any successor Trustee may at any time resign from the trusts created by giving 30 days' written notice to the City and the Owners, and such resignation shall take effect upon the appointment of a successor Trustee pursuant to the Indenture. If at any time the Trustee ceases to be eligible in accordance with the provisions of the Indenture, it shall resign immediately in the manner provided in this Section. The Trustee may be removed for cause or without cause at any time by an instrument or concurrent instruments in writing delivered to the Trustee and the City and signed by the Owners of a majority in aggregate principal amount of Bonds then Outstanding. If no Event of Default has occurred and is continuing, or no condition exists which will become an Event of Default as provided in the Indenture, the Trustee may be removed at any time by an instrument or concurrent instruments in writing delivered to the Trustee and the Owners and signed by the City. The City or the Owners of a majority in aggregate principal amount of the Bonds then Outstanding may at any time petition any court of competent jurisdiction for the removal for cause of the Trustee. No resignation or removal of the Trustee shall become effective until a successor Trustee has accepted its appointment under the Indenture.

## **Appointment of Successor Trustee**

If the Trustee under the Indenture resigns or is removed, or otherwise becomes incapable of acting under the Indenture, or if it is taken under the control of any public officer or officers or of a receiver appointed by a court, a successor Trustee may be appointed by the Owners of a majority in aggregate principal amount of Bonds then Outstanding, by an instrument or concurrent instruments in writing; provided that, so long as no Event of Default has occurred or condition exists that with the giving of notice or the passage of time or both would constitute an Event of Default, the City, by an instrument executed and signed by the Authorized City Representative, may appoint a successor Trustee. If a successor Trustee has not been so appointed and accepted such appointment within 30 days of a notice of resignation or removal of the current Trustee, the retiring Trustee may petition a court of competent jurisdiction for the appointment of a successor Trustee to act until such time, if any, as a successor has so accepted its appointment. No resignation or removal of the Trustee shall become effective until a successor Trustee has accepted its appointment under the Indenture.

## **Qualifications of Trustee and Successor Trustees**

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

## **Satisfaction and Discharge of the Indenture**

When the principal of and interest on all the Bonds have been paid in accordance with their terms or provision has been made for such payment, as provided in the Indenture, and provision also is made for paying all other sums payable under the Indenture, including the fees and expenses of the Trustee and the Paying Agents to the date of payment of the Bonds, then the right, title and interest of the Trustee under the Indenture shall thereupon cease, determine and be void, and thereupon the Trustee shall cancel, discharge and release the Indenture, except amounts in the Debt Service Fund required to be paid to the City, and except funds or securities in which such moneys are invested and held by the Trustee for the payment of the principal of and interest on the Bonds.

## **Bonds Deemed to Be Paid**

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

Notwithstanding the foregoing, in the case of Bonds which by their terms may be redeemed prior to the stated maturities thereof, no deposit shall be deemed a payment of such Bonds as aforesaid until, as to all such Bonds which are to be redeemed prior to their respective stated maturities, proper notice of such redemption has been given in accordance with the Indenture or irrevocable instructions have been given to the Trustee to give such notice.

Notwithstanding any provision of any other Section of this Indenture which may be contrary to the provisions of this Section, all moneys or Government Securities set aside and held in trust pursuant to the provisions of this Section for the payment of Bonds and interest thereon shall be applied to and be used solely for the payment of the particular Bonds and interest thereon with respect to which such moneys and Government Securities have been so set aside in trust.

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

### **Supplemental Indentures Not Requiring Consent of Owners**

The City and the Trustee may from time to time, without the consent of or notice to any of the Owners, enter into such Supplemental Indenture or Supplemental Indentures as are not inconsistent with the terms and provisions of the Indenture, for any one or more of the following purposes:

- (a) to cure any ambiguity or formal defect or omission in the Indenture or to release property from the Trust Estate which was included by reason of an error or other mistake;
- (b) to grant to or confer upon the Trustee for the benefit of the Owners any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Owners or the Trustee or either of them;
- (c) to subject to the Indenture additional revenues, properties or collateral;
- (d) to modify, amend or supplement the Indenture or any indenture supplemental hereto in such manner as to permit the qualification of the Indenture under the Trust Indenture Act of 1939, as then amended, or any similar federal statute in effect, or to permit the qualification of the Bonds for sale under the securities laws of any state of the United States;
- (e) to provide for the refunding of any Bonds in accordance with the terms of the Indenture;
- (f) to evidence the appointment of a separate trustee or the succession of a new trustee under the Indenture;
- (g) to modify or eliminate any of the terms of the Indenture; provided, however, that:
  - (1) such Supplemental Indenture shall expressly provide that any such modifications or eliminations shall become effective only when there is no Bond Outstanding of any series issued prior to the execution of such Supplemental Indenture; and
  - (2) the Trustee may, in its discretion, decline to enter into any such Supplemental Indenture which, in its opinion, may not afford adequate protection to the Trustee when the same becomes operative;

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

### **Supplemental Indentures Requiring Consent of Owners**

In addition to Supplemental Indentures permitted by the Indenture not requiring the consent of the Owners, and not otherwise, with the consent of the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding, the City and the Trustee may from time to time enter into such other Supplemental Indenture or Supplemental Indentures as shall be deemed necessary and desirable by the City for the purpose of modifying, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in the Indenture or in any Supplemental Indenture; provided, however, that nothing in this Section contained shall permit or be construed as permitting:

- (a) an extension of the maturity of the principal of or the scheduled date of payment of interest on any Bond or any change of the redemption date on any Bond;
- (b) a reduction in the principal amount, redemption premium or any interest payable on any Bond;
- (c) a privilege or priority of any Bond or Bonds over any other Bond or Bonds;
- (d) a reduction in the aggregate principal amount of Bonds the Owners of which are required for consent to any such Supplemental Indenture; or
- (e) the modification of the rights, duties or immunities of the Trustee, without the written consent of the Trustee.

### **Opinion of Bond Counsel**

Notwithstanding anything to the contrary in the Indenture, before the City and the Trustee enter into any Supplemental Indenture pursuant to the Indenture, there shall have been delivered to the Trustee an opinion of Bond Counsel stating that such Supplemental Indenture is authorized or permitted by the Indenture and the TIF Act, complies with their respective terms, will, upon the execution and delivery thereof, be valid and binding upon the City in accordance with its terms and will not cause any Bonds then Outstanding and exempt from taxation for federal income tax purposes to become subject to federal income taxes then in effect.

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## APPENDIX B

### FORM OF OPINION OF BOND COUNSEL

Mayor and Board of Aldermen  
Osage Beach, Missouri

Stifel, Nicolaus & Company, Incorporated  
St. Louis, Missouri

UMB Bank, N.A., as Trustee  
Kansas City, Missouri

Re: \$4,410,000 City of Osage Beach, Missouri, Tax Increment Refunding Revenue Bonds  
(Prewitt's Point Project) Series 2012

Ladies and Gentlemen:

We have acted as bond counsel in connection with the issuance by the City of Osage Beach, Missouri (the "City") of the above-captioned bonds (the "Bonds"), pursuant to a Trust Indenture dated as of September 1, 2012 (the "Indenture") by and between the City and UMB Bank, N.A., as trustee (the "Trustee"). Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Indenture.

We have examined the law and such certified proceedings and other documents as we deem necessary to render this opinion. As to questions of fact material to our opinion we have relied upon the certified proceedings and other certifications of public officials furnished to us without undertaking to verify the same by independent investigation.

Based upon and subject to the foregoing, we are of the opinion, under existing law, as follows:

1. The Bonds have been duly authorized, executed and delivered by the City and are valid and legally binding special obligations of the City, payable solely from Net Revenues and other moneys pledged thereto and held by the Trustee pursuant to the Indenture. The Bonds do not constitute a general obligation of the City nor do they constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter provision, limitation or restriction, and the taxing power of the City is not pledged to the payment of the Bonds.

2. The Indenture has been duly authorized, executed and delivered by the City and constitutes the valid and legally binding agreement of the City enforceable against the City in accordance with the provisions thereof.



3. The interest on the Bonds (including any original issue discount properly allocable to an owner thereof) (i) is excludable from gross income for federal income tax purposes, (ii) is exempt from income taxation by the State of Missouri, and (iii) is not an item of tax preference for purposes of computing the federal alternative minimum tax imposed on individuals and corporations, but is taken into account in determining adjusted current earnings for the purpose of computing the alternative minimum tax imposed on certain corporations. The opinions set forth in this paragraph are subject to the condition that the City comply with all requirements of the Internal Revenue Code of 1986, as amended (the "Code"), that must be satisfied subsequent to the issuance of the Bonds in order that interest thereon be, or continue to be, excluded from gross income for federal and Missouri income tax purposes. The City has covenanted to comply with each such requirement. Failure to comply with certain of such requirements may cause the inclusion of interest on the Bonds in gross income for federal and Missouri income tax purposes retroactive to the date of issuance of the Bonds. The Bonds are "qualified tax-exempt obligations" for purposes of Section 265(b) of the Code. We express no opinion regarding other federal or Missouri tax consequences arising with respect to the Bonds.

We express no opinion regarding the accuracy, completeness or sufficiency of the Official Statement or other offering material relating to the Bonds (except to the extent, if any, stated in the Official Statement). Further, we express no opinion regarding tax consequences arising with respect to the Bonds other than as expressly set forth in this opinion.

The rights of the owners of the Bonds and the enforceability of the Bonds may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally and by equitable principles, whether considered at law or in equity.

This opinion is given as of its date, and we assume no obligation to revise or supplement this opinion to reflect any facts or circumstances that may come to our attention or any changes in law that may occur after the date of this opinion.

Very truly yours,

## APPENDIX C

### FORM OF CONTINUING DISCLOSURE AGREEMENT

This **CONTINUING DISCLOSURE AGREEMENT** dated as of September 1, 2012 (the “Continuing Disclosure Agreement”), is executed and delivered by the City of Osage Beach, Missouri (the “City”) and UMB BANK, N.A., as dissemination agent (the “Dissemination Agent”).

#### RECITALS

1. This Continuing Disclosure Agreement is executed and delivered in connection with the issuance by the City of \$4,410,000 Tax Increment Refunding Revenue Bonds (Prewitt’s Point Project) Series 2012 (the “Bonds”), pursuant to a Trust Indenture dated as of September 1, 2012 between the City and UMB Bank, N.A. as trustee (the “Indenture”).

2. The City and the Dissemination Agent are entering into this Continuing Disclosure Agreement for the benefit of the Beneficial Owners of the Bonds and in order to assist the Participating Underwriter in complying with Rule 15c2-12 of the Securities and Exchange Commission (the “Rule”). The City is the only “obligated persons” with responsibility for continuing disclosure hereunder.

In consideration of the mutual covenants and agreements herein, the City and the Dissemination Agent covenant and agree as follows:

**Section 1. Definitions.** In addition to the definitions set forth in the Indenture, which apply to any capitalized term used in this Continuing Disclosure Agreement unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

“**Annual Report**” means the audited financial statements of the City and a document or set of documents which contains updated information to the information contained in the Official Statement relating to the Bonds under the captions “**HISTORIC COLLECTION OF ECONOMIC ACTIVITY TAX REVENUES AND PAYMENTS IN LIEU OF TAXES**” and “**SUMMARY OF LEASES AND OCCUPANTS.**”

“**Beneficial Owner**” means any registered owner of any Bonds and any person which (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Bonds for federal income tax purposes.

“**Dissemination Agent**” means UMB Bank, N.A., acting in its capacity as Dissemination Agent hereunder, or any successor Dissemination Agent designated in writing by the City.

“**EMMA**” means the Electronic Municipal Market Access system for municipal securities disclosures established and maintained by the MSRB, which can be accessed at [www.emma.msrb.org](http://www.emma.msrb.org).

“**Fiscal Year**” means the 12-month period beginning on January 1 and ending on December 31 or any other 12-month period selected by the City as the Fiscal Year of the City for financial reporting purposes.

“**Material Events**” means any of the events listed in **Section 3(a)** of this Continuing Disclosure Agreement.

“**MSRB**” means the Municipal Securities Rulemaking Board, or any successor repository designated as such by the Securities and Exchange Commission in accordance with the Rule.

“**Participating Underwriter**” means any of the original underwriters of the Bonds required to comply with the Rule in connection with offering of the Bonds.

“**Rule**” means Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“**Semi-Annual Report**” means a document or set of documents which contains updated information to the information contained in the Official Statement relating to the Bonds under the captions “**HISTORIC COLLECTION OF ECONOMIC ACTIVITY TAX REVENUES AND PAYMENTS IN LIEU OF TAXES.**”

“**Semi-Annual Report Date**” means the date which is not later than each June 30 and December 31, commencing December 31, 2012.

## **Section 2. Provision of Annual and Semi-Annual Reports.**

- (a) The City shall, or shall cause the Dissemination Agent to, not later than 180 days after the end of the City’s Fiscal Year, commencing with the year ending December 31, 2012, file with the MSRB, through EMMA, the Annual Report. If audited financial statements are not available by the time the Annual Report is required to be filed pursuant to this Section, the Annual Report shall contain unaudited financial statements, and the audited financial statements shall be filed in the same manner as the Annual Report promptly after they become available.

Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues with respect to which the City is an “obligated person” (as defined by the Rule), which have been filed with the MSRB and is available through EMMA or the Securities and Exchange Commission. If the document included by reference is a final official statement, it must be available from the MSRB on EMMA. The City shall clearly identify each such other document so included by reference.

In each case, the Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in this Section; provided that the audited financial statements of the City may be submitted separately from the balance of the Annual Report and later than the date required above for the filing of the Annual Report if they are not available by that date. If the City’s fiscal year changes, it shall give notice of such change in the same manner as for a Material Event under **Section 3**.

- (b) Not later than the date specified in subsection (a) for providing the Annual Report to the MSRB, the City shall either (1) provide the Annual Report to the Dissemination Agent, with written instructions to file the Annual Report as specified in subsection (a), or (2) provide written notice to the Dissemination Agent that the City has filed the Annual Report with the MSRB (or will do so prior to the deadline specified in subsection (a)).
- (c) If the Dissemination Agent has not received either an Annual Report with filing instructions or a written notice from the City that it has filed an Annual Report with the

MSRB by the date required in subsection (a), the Dissemination Agent shall send a notice to the MSRB in substantially the form attached as **Exhibit A**.

- (d) The Dissemination Agent shall, unless the City has filed the Annual Report with the MSRB, promptly following receipt of the Annual Report and instructions required in subsection (b) above, file the Annual Report with the MSRB and file a report with the City certifying that the Annual Report has been filed pursuant to this Continuing Disclosure Agreement, stating the date it was filed with the MSRB.
- (e) The Dissemination Agent shall send notice, no later than November 1 and May 1 of each year, commencing November 1, 2012, to the City of its obligation to provide to the Dissemination Agent the information required for the Semi-Annual Report.
- (f) The City shall provide a Semi-Annual Report to the Dissemination Agent not later than each Semi-Annual Report Date, and the Dissemination Agent shall provide the Semi-Annual Report to the MSRB within **5** Business Days after receipt thereof from the City.
- (g) The Dissemination Agent shall provide the City written confirmation that the Semi-Annual Report was provided to the MSRB in accordance with **Section 2(e)** hereof.
- (h) If the Dissemination Agent shall not have received the Semi-Annual Report by the Semi-Annual Report Date, the Dissemination Agent shall so notify the MSRB within 5 Business Days of the Semi-Annual Report Date. Such notice shall be in substantially the form attached hereto as **Exhibit A**.
- (i) In addition to the foregoing requirements of this Section, the City agrees to provide copies of the most recent Annual Report and/or Semi-Annual Report to any requesting bondowner or prospective bondowner, but only after the same have been delivered to the MSRB.

### **Section 3. Reporting of Material Events.**

- (a) No later than 10 Business Days after the occurrence of any of the following events, the City shall give, or cause to be given to the MSRB, through EMMA, notice of the occurrence of any of the following events with respect to the Bonds (“**Material Events**”):
  - (1) principal and interest payment delinquencies;
  - (2) non-payment related defaults, if material;
  - (3) unscheduled draws on debt service reserves reflecting financial difficulties;
  - (4) unscheduled draws on credit enhancements reflecting financial difficulties;
  - (5) substitution of credit or liquidity providers, or their failure to perform;
  - (6) adverse tax opinions; the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bond, or other material events affecting the tax status of the Bonds;
  - (7) modifications to rights of bondholders, if material;
  - (8) bond calls, if material, and tender offers;
  - (9) defeasances;

- (10) release, substitution or sale of property securing repayment of the Bonds, if material;
  - (11) rating changes;
  - (12) bankruptcy, insolvency, receivership or similar event of the City;
  - (13) the consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
  - (14) appointment of a successor or additional trustee or the change of name of the trustee, if material.
- (b) The Dissemination Agent shall, promptly after obtaining actual knowledge of the occurrence of any event that it believes may constitute a Material Event, contact the City Administrator of the City or his or her designee, or such other person as the City shall designate in writing to the Dissemination Agent from time to time, inform such person of the event, and request that the City promptly notify the Dissemination Agent in writing whether or not to report the event pursuant to subsection (d). If in response to a request under this subsection (b), the City determines that the event does not constitute a material event, the City shall so notify the Dissemination Agent in writing and instruct the Dissemination Agent whether or not to report the occurrence pursuant to subsection (d).
- (c) Whenever the City obtains knowledge of the occurrence of a Material Event, because of a notice from the Dissemination Agent pursuant to subsection (b) or otherwise, the City shall promptly notify and instruct the Dissemination Agent in writing to report the occurrence pursuant to subsection (d).
- (d) If the Dissemination Agent receives written instructions from the City to report the occurrence of a Material Event, the Dissemination Agent shall promptly file a notice of such occurrence to the MSRB, with a copy to the City. Notwithstanding the foregoing, notice of Material Events described in subsections (a)(8) and (9) need not be given under this subsection any earlier than the notice (if any) of the underlying event is given to the registered owners of affected Bonds pursuant to the Indenture.

**Section 4. Termination of Reporting Obligation.** The City's obligations under this Continuing Disclosure Agreement shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds. If the obligations of the City under this Continuing Disclosure Agreement are assumed in full by some other entity, such person shall be responsible for compliance with this Continuing Disclosure Agreement in the same manner as if it were the City, and the City shall have no further responsibility hereunder. If such termination or substitution occurs prior to the final maturity of the Bonds, the City shall give notice of such termination or substitution in the same manner as for a Material Event under **Section 3**.

**Section 5. Dissemination Agents.** The City may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Continuing Disclosure Agreement, and may discharge any such Agent, with or without appointing a successor Dissemination Agent. The Dissemination Agent may resign as dissemination agent hereunder at any time upon 30 days prior written notice to the City. The Dissemination Agent shall not be responsible in any manner for the content of any notice or report (including without limitation the Annual Report) prepared by the City pursuant to this Continuing Disclosure Agreement. The initial Dissemination Agent is UMB BANK, N.A.

**Section 6. Amendment; Waiver.** Notwithstanding any other provision of this Continuing Disclosure Agreement, the City and the Dissemination Agent may amend this Continuing Disclosure Agreement and any provision of this Continuing Disclosure Agreement may be waived, provided that Bond Counsel or other counsel experienced in federal securities law matters provides the City and the Dissemination Agent with its written opinion that the undertaking of the City contained herein, as so amended or after giving effect to such waiver, is in compliance with the Rule and all current amendments thereto and interpretations thereof that are applicable to this Continuing Disclosure Agreement.

In the event of any amendment or waiver of a provision of this Continuing Disclosure Agreement, the City shall describe such amendment or waiver in the next Annual Report, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or, in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the City. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (1) notice of such change shall be given in the same manner as for a Material Event under **Section 3**, and (2) the Annual Report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

**Section 7. Additional Information.** Nothing in this Continuing Disclosure Agreement shall be deemed to prevent the City from disseminating any other information, using the means of dissemination set forth in this Continuing Disclosure Agreement or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Material Event, in addition to that which is required by this Continuing Disclosure Agreement. If the City chooses to include any information in any Annual Report or notice of occurrence of a Material Event, in addition to that which is specifically required by this Continuing Disclosure Agreement, the City shall not have any obligation under this Continuing Disclosure Agreement to update such information or include it in any future Annual Report or notice of occurrence of a Material Event.

**Section 8. Default.** If the City or the Dissemination Agent fails to comply with any provision of this Continuing Disclosure Agreement, any Participating Underwriter or any Beneficial Owner of the Bonds may take such actions as may be necessary and appropriate, including seeking mandamus or specific performance by court order, to cause the City or the Dissemination Agent, as the case may be, to comply with its obligations under this Continuing Disclosure Agreement. A default under this Continuing Disclosure Agreement shall not be deemed an event of default under the Indenture or the Bonds, and the sole remedy under this Continuing Disclosure Agreement in the event of any failure of the City or the Dissemination Agent to comply with this Continuing Disclosure Agreement shall be an action to compel performance.

**Section 9. Duties and Liabilities of Dissemination Agent.** The Dissemination Agent shall have only such duties as are specifically set forth in this Continuing Disclosure Agreement, and, to the extent permitted by law, the City agrees to indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including attorneys fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's negligence or wilful misconduct. The obligations of the City under this Section shall survive resignation or removal of the Dissemination Agent and payment of the Bonds. The City shall pay the fees, charges and expenses of the Dissemination Agent in connection with its administration of this Continuing Disclosure Agreement.

**Section 10. Notices.** Any notices or communications to or among any of the parties to this Continuing Disclosure Agreement may be given by registered or certified mail, return receipt requested, or by confirmed facsimile, or delivered in person or by overnight courier, and will be deemed given on the second day following the date on which the notice or communication is so mailed, as follows:

**To the City:** City of Osage Beach, Missouri  
100 City Parkway  
Osage Beach, Missouri 65065  
Attention: City Administrator  
Telephone: (573) 302-2000  
Facsimile: (573) 302-0528

**To the Dissemination Agent:** UMB BANK, N.A.  
1010 Grand Blvd., 4th Floor  
Kansas City, Missouri 64106  
Attention: Corporate Trust Department  
Telephone: (816) 860-3027  
Facsimile: (816) 860-3029

Any person may, by written notice to the other persons listed above, designate a different address or telephone number(s) to which subsequent notices or communications should be sent.

**Section 11. Beneficiaries.** This Continuing Disclosure Agreement shall inure solely to the benefit of the City, the Dissemination Agent, the Participating Underwriter, and Beneficial Owners from time to time of the Bonds, and shall create no rights in any other person or entity.

**Section 12. Severability.** If any provision in this Continuing Disclosure Agreement, the Indenture or the Bonds shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**Section 13. Counterparts.** This Continuing Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 14. Electronic Transactions.** The arrangement described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

**Section 15. Governing Law.** This Continuing Disclosure Agreement shall be governed by and construed in accordance with the laws of the State of Missouri.

**IN WITNESS WHEREOF**, the City and the Dissemination Agent have caused this Continuing Disclosure Agreement to be executed as of the day and year first above written.

**CITY OF OSAGE BEACH, MISSOURI**

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

**UMB BANK, NA, as Dissemination Agent**

By: \_\_\_\_\_  
Title: Authorized Officer



**EXHIBIT A**

**NOTICE OF FAILURE TO FILE [ANNUAL][SEMI-ANNUAL] REPORT**

**Name of Issuer:** City of Osage Beach, Missouri

**Name of Bond Issue:** \$4,410,000 Tax Increment Refunding Revenue Bonds (Prewitt's Point Project) Series 2012

**Name of Obligated Person:** City of Osage Beach, Missouri (the "City")

**Date of Issuance:** September 18, 2012

**NOTICE IS HEREBY GIVEN** that the City of Osage Beach, Missouri has not filed an [Annual][Semi-Annual] Report with respect to the above-named Bonds as required by the Continuing Disclosure Agreement dated as of September 1, 2012, between the City and UMB Bank, N.A., as Dissemination Agent. [The City has informed the Dissemination Agent that the City anticipates that the [Annual][Semi-Annual] Report will be filed by \_\_\_\_\_.]

**Dated:** \_\_\_\_\_, \_\_\_\_\_

**UMB BANK, NA**, as Dissemination Agent  
on behalf of the City of Osage Beach, Missouri

cc: City of Osage Beach, Missouri