Final for Council Packets

TAX CREDIT PURCHASE AGREEMENT

This **TAX CREDIT PURCHASE AGREEMENT** (the "**Agreement**") is made and entered into as of________________, 2025, by and between **CITY OF LEE'S SUMMIT, MISSOURI**, a municipality of the State of Missouri ("**Seller**") and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association ("**Buyer**").

WHEREAS, prior to December 15, 2025, Seller intends to make a cash contribution in the amount of Six Million and no/100 Dollars ($6,000,000.00) (the "**Contribution**") to the Missouri Development Finance Board (the "**MDFB**") to be utilized in connection with the Downtown Market Plaza (Green Street) project to be located at 209 SE Green Street, Lee's Summit, Missouri 64063 (the "**Project**"), and the MDFB has approved or is estimated to approve an award of Three Million and no/100 Dollars ($3,000,000.00) of MDFB tax credits to be issued for the 2025 calendar year (the "**Credits**") with respect to the Contribution, pursuant to Sections 100.286.6 and 100.286.7 of the Missouri Revised Statutes ("**RSMo**"), as will be evidenced by a Certificate of Eligibility to be issued by the MDFB to Seller (the "**Seller's Credit Certificate**");

WHEREAS, Buyer desires to purchase and receive the Credits from Seller and Seller desires to sell and transfer the Credits to Buyer for a purchase price of ninety-three cents ($0.93) for each one dollar ($1.00) of Credits actually sold and delivered by Seller to Buyer, in Buyer's name (the "**Purchase Price**"), which is estimated to equal Two Million Seven Hundred Ninety-Thousand and no/100 Dollars ($2,790,000.00).

NOW THEREFORE, in consideration of the mutual undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Transfer of the Credits. Seller agrees to sell, transfer and assign to Buyer all of Seller's right, title and interest in the Credits and Buyer agrees to purchase from and accept the transfer and assignment from Seller of all of Seller's right, title and interest in up to Three Million and no/100 Dollars ($3,000,000.00) of the Credits.

2. Manner of Delivery of Credits and Payment of Purchase Price; Closing Date; Post-Closing Date Obligations of Seller.

a. Manner Delivery of Credits. Within three (3) business days of Seller's receipt of the Seller's Credit Certificate, Seller shall send to Buyer by e-mail, at the e-mail address listed in **Section 8(g)**, a copy of the Seller's Credit Certificate. Within three (3) business days of Buyer's receipt of a copy of the Seller's Credit Certificate, Buyer shall send to Seller by e-mail, at the e-mail address listed in **Section 8(g)**, a completed MDFB Form L (Request for Transfer) naming Seller as the assignor of the Credits and Buyer as the assignee of the Credits (the "**Transfer Form**"). Within three (3) business days of Seller's receipt of the Transfer Form, Seller shall execute, notarize, and send to Buyer by overnight mail, at the mailing address listed in **Section 8(g)**, an original copy of the Transfer Form and any other requisite documentation necessary to cause the MDFB to transfer the Credits to Buyer in Buyer's name (collectively, the "**Transfer Documentation**"). Within three (3) business days of Buyer's receipt of the Transfer

Documentation, Buyer shall execute, notarize, and send the Transfer Documentation to the MDFB. The parties anticipate that the MDFB will issue a new Credit certificate to Buyer, in Buyer's name, evidencing Buyer as the owner of the Credits ("**Buyer's Credit Certificate**"). If Buyer's Credit Certificate is delivered to Seller by the MDFB, Seller agrees to promptly deliver Buyer's Credit Certificate to Buyer. To the extent that Buyer fails to receive Buyer's Credit Certificate on or before December 15, 2025, this Agreement shall become null and void, unless the parties mutually agree to extend this date in writing.

b. **Manner and Delivery of Purchase Price**. Within three (3) business days following Buyer's receipt of Buyer's Credit Certificate, in Buyer's name, from the MDFB (or from Seller, if Buyer's Credit Certificate is delivered to Seller by the MDFB), Buyer shall pay to Seller the Purchase Price by wire transfer in accordance with the payment instructions attached hereto as **EXHIBIT A**. The date on which Seller receives the Purchase Price is referred to herein as the "**Closing Date**."

c. **Post-Closing Date Obligations of Seller.**

(i) **Notice of Sale and Purchase.** Seller shall perfect the purchase and sale of the Credits by notifying the MDFB in writing within thirty (30) calendar days following the Closing Date and shall provide any information as may be required by the MDFB to administer and carry out the provisions of this section. Seller shall provide to Buyer a copy of such notice simultaneously with its transmittal to the MDFB.

(ii) **Compliance with the Tax Credit Accountability Act of 2004** (Senate Bill 1099, §§ 135.800 – 135.830, RSMo., the "**TCA Act**"). Seller agrees to comply with all post-Closing date requirements of the TCA Act.

3. **Representations and Warranties of Seller**. For purposes of this Agreement, Seller specifically represents and warrants to Buyer, as of the date of this Agreement and as of the Closing Date, as follows, all of which are material to Buyer and the truth and accuracy of which have been relied upon by Buyer in executing and performing Buyer's commitments and obligations under this Agreement:

a. Seller is a municipality of the State of Missouri in good standing and has the authority to enter into this Agreement with Buyer and to carry out the transactions contemplated hereunder. The execution, delivery, and performance by Seller of this Agreement have been duly authorized by all necessary action on its part.

b. Seller will be the owner of record of all of the Credits, and Seller has not performed and will not perform any acts or fail to perform any acts that would result in the failure of the MDFB to issue the Seller's Credit Certificate or Buyer's Credit Certificate, or post issuance, cause the revocation of any of the Credits, or execute any other instruments which might prevent Buyer or its assignees from deriving the full benefits of any of the terms or conditions of this Agreement.

c. The Credits will be validly issued to Seller by the MDFB pursuant to Sections 100.286.6 and 100.286.7, RSMo, are freely transferable, are not subject to recapture and may be utilized by Buyer and/or its transferees to offset either Missouri corporate or personal income taxes (other than withholding taxes) pursuant to Chapter 143, RSMo, or Missouri financial institutions taxes (including insurance premiums taxes) pursuant to Chapter 148, RSMo. Unused Credits in the hands of Buyer and/or its assignees may be carried forward for up to five (5) tax years following the 2025 tax year.

d. All Transfer Documentation to be delivered to Buyer with respect to the Credits hereunder will be duly assigned to Buyer, and/or Buyer's assignees, and the Credits will be freely transferable by Buyer and/or its assignees, pursuant to applicable Missouri law.

e. The Credits to be assigned to Buyer are and will be valid under Missouri law and regulations, are not subject to any proceeding that would make such Credits invalid or cancellable and are free and clear of liens or encumbrances of any kind.

f. Seller shall undertake to do all that is legal and reasonably necessary under Missouri law and regulations to keep the Credits valid and not subject to cancellation.

g. Except as provided in this Agreement, Seller has not pledged, assigned, transferred or otherwise disposed of or encumbered the Credits or any of its right, title, or interest in and to the Credits and no third party has any right, title or interest therein.

h. Seller represents that it has not sought rulings from the Missouri Department of Revenue ("**DOR**"), the MDFB or the Internal Revenue Service in regard to this transaction.

i. Seller represents that it has paid or will pay to the MDFB the four percent (4%) fee that has or will be assessed by the MDFB on Seller's approved application for the Contribution.

j. Seller represents that it has and will continue to comply in all respects with the TCA Act, which requires, among other obligations, for Seller to annually report to the MDFB for three (3) years following the date of the issuance of the Credits about: (i) whether the property is used for residential, commercial or governmental purposes; (ii) the projected or actual Project cost and labor cost; and (iii) the Project's date of completion.

k. Seller represents that Seller intends to report the proceeds from the sale of the Credits as taxable income on its Missouri income tax return in accordance with § 100.286.7, RSMo.

4. **<u>Representations and Warranties of Buyer</u>**. For purposes of this Agreement, Buyer specifically represents and warrants to Seller, as of the date of this Agreement and as of the Closing Date, as follows, all of which are material to Seller and the truth and accuracy of which have been relied upon by Seller in executing and performing Seller's commitments and obligations under this Agreement:

a. Buyer is national banking association and has the authority and financial capacity to purchase the Credits pursuant to this Agreement and to carry out the transactions contemplated hereunder.

b. The execution, delivery, and performance by Buyer of this Agreement have been duly authorized by all necessary action on its part.

c. In executing this Agreement, Buyer acknowledges that it has sought or will seek its own tax advice from a qualified tax professional; and that Buyer has not relied upon any documents, summaries, projections or other information directly or indirectly provided by Seller regarding the tax implications of the transactions contemplated hereunder.

d. Buyer or its assignees have sufficient relevant Missouri tax liabilities to utilize all Credits purchased by Buyer from Seller pursuant to this Agreement.

e. Buyer is aware that the Credits are freely transferable but may not be sold for less than seventy-five percent (75%) or more than one hundred percent (100%) of the Credits' par value. Buyer is also aware that the Credits have a five (5) year carryforward period, and that all Credits must be claimed within ten (10) years of the date of the Contribution. Buyer understands that the Credits may not be claimed by any taxpayer on amended returns for the taxpayer's previously filed returns beyond the immediately preceding tax year in which the Credit is acquired, and only if that preceding tax year return has not yet been filed with the DOR.

f. Buyer represents that Buyer intends to report the difference between the face value of the Credits and the Purchase Price as taxable income on its Missouri income tax return in accordance with § 100.286.7, RSMo.

5. Seller's Indemnity. To the extent allowed by law, Seller agrees to indemnify Buyer and hold Buyer harmless against any and all actual damages, liabilities, penalties, interest, costs and expenses, including reasonable attorneys' fees (including costs of collection), suffered or incurred by Buyer by reason of the subsequent invalidity or cancellation of any of the Credits, including without limitation, recapture and/or penalties caused by Seller's failure to comply in any manner with all applicable requirements of the TCA Act. Seller agrees that it shall promptly provide Notice to Buyer of, and attach to such Notice a copy of, any correspondence from the MDFB or DOR challenging, canceling, revoking, terminating, reducing, suspending, disallowing and/or recapturing or otherwise with respect to the Credits or any portion thereof. This indemnity shall continue in effect and survive the closing of the sale and purchase of the Credits.

6. Breach of Agreement by Seller. By executing this Agreement, Seller is agreeing to sell to Buyer the Credits for the Purchase Price according to the terms of this Agreement. Subject to the time requirements of **Section 2.a.** above, if Seller fails to deliver the Seller's Credit Certificate or the Transfer Documentation to Buyer or its assigns in accordance with the terms of this Agreement, then Seller will be deemed to be in breach of its obligations contained herein. For the avoidance of doubt, to the extent that the MDFB issues to Seller the Seller Credit Certificate and Seller sells the Credits to any unrelated third party absent a breach by Buyer, Seller shall also be in breach of this Agreement. In the event of either breach by Seller, Seller has fourteen (14) days to cure the breach ("**Seller's Cure Period**") and deliver the Seller's Credit Certificate or Transfer Documentation, as applicable, to Buyer. To the extent that Seller fails to cure the breach by delivering the Seller's Credit Certificate or the Transfer Documentation, as applicable, to Buyer by the last day of Seller's Cure Period, Seller agrees to pay to Buyer immediately thereafter an amount equal to seven percent (7%) of the face value of the Seller's Credit Certificate plus all of Buyer's reasonable attorneys and consultants' fees and other out-of-pocket costs and expenses (including costs of collection) necessary to compensate Buyer for the damages resulting from Seller's breach of this Agreement, in addition to all other rights and remedies that Buyer and Buyer's assignees may have under law or in equity.

7. **<u>Breach of Agreement by Buyer</u>**. By executing this Agreement, Buyer is agreeing to purchase from Seller the Credits for the Purchase Price according to the terms of this Agreement. Subject to the time requirements of **<u>Section 2.a.</u>** above, to the extent that Buyer fails to accept delivery from Seller of the Transfer Documentation when tendered by Seller to Buyer in accordance with the terms of this Agreement by executing, notarizing, and delivering such Transfer Documentation to the MDFB, Buyer will be deemed to be in breach of this Agreement. In the event of such a breach by Buyer, Buyer has fourteen (14) days to cure the breach ("**Buyer's Cure Period**") and accept delivery of the Transfer Documentation from Seller. To the extent that Buyer fails to cure the breach by accepting delivery of the Transfer Documentation from Seller by the last day of Buyer's Cure Period, Buyer agrees to pay to Seller immediately thereafter an amount equal to seven percent (7%) of the face value of the Credits described in such Transfer Documentation plus all of Seller's reasonable attorneys and consultants' fees, and other out-of-pocket costs and expenses (including costs of collection) necessary to compensate Seller for the damages resulting from Buyer's breach of this Agreement, in addition to all other rights and remedies that Seller may have under law or in equity.

8. **<u>General Provisions</u>**.

a. **<u>Entire Agreement</u>**. This Agreement contains the entire agreement and understanding of Seller and Buyer regarding the subject matter hereof, and all prior writings, oral agreements, discussions and negotiations are superseded by this Agreement.

b. **<u>Severability</u>**. The agreements and covenants contained herein are severable, and in the event any portion of this Agreement is held to be invalid or unenforceable by any court of competent jurisdiction, this Agreement shall continue in full force and effect and shall be interpreted as if such invalid agreement or covenant were not contained herein.

c. **<u>Governing Law; Modification of Agreement; Headings</u>**. This Agreement shall be construed by and governed in accordance with the laws of the State of Missouri, without regard to its conflicts of law provisions. No modification of this Agreement shall be valid unless in writing, signed by the parties hereto. The headings in this Agreement are for reference purposes only and shall not be used in construing or interpreting this Agreement.

d. **<u>Successors</u>**. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that this

Agreement may not be assigned by any party without the prior written consent of the other party hereto. Consent for Seller may be given as set forth in paragraph h of this Section.

e. Remedies. Each party to this Agreement will bear its respective expenses incurred in connection with the preparation, execution and performance of this Agreement. Any party hereto shall have the right to maintain an action in any court of competent jurisdiction to enforce and/or to recover damages for a breach of the rights and/or obligations created by, or provided pursuant to, this Agreement. If such court action is successful, the prevailing party shall be reimbursed by the other party for all fees and expenses (including reasonable attorneys' fees) actually and reasonably incurred in connection with such action (including, without limitation, the investigation, defense, settlement or appeal of such action, and costs of collection).

f. Counterpart; Electronic Signatures. This Agreement and any amendments hereof may be executed in several counterparts and by each party on a separate counterpart, each of which when so executed and delivered, shall be an original and all of which together shall constitute one instrument. In proving this Agreement, it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom enforcement is sought. This Agreement and any amendments may be signed by facsimile transmission, PDF, or other electronic signature and any such signature shall be deemed an original.

g. Notice. All notices and other communication permitted or required hereunder shall be in writing and shall be delivered (i) by depositing same in the mail, as registered or certified mail, postage prepaid; (ii) by personal delivery; (iii) by PDF via e-mail delivery; or (iv) by overnight mail by a nationally-recognized delivery service, to a party at its address set forth below, or to such other address as the party may specify by notice given to the other party in the manner prescribed and shall be effective upon sending.

If to Seller:

City of Lee's Summit, Missouri
Office of the City Attorney
220 SE Green Street
Lee's Summit, MO 64063
Attn: David Bushek, Chief Counsel of Econ. Dev. & Planning
E-Mail: David.Bushek@cityofls.net

If to Buyer:

U.S. Bank National Association
505 North Seventh Street
St. Louis, MO 63101
Mail Code: SL-MO-T10F
Attention: Robert P. Espeland, Senior Vice President
E-mail: robert.espeland@usbank.com

With a copy to (which copy shall not constitute notice):

Thompson Coburn LLP
One US Bank Plaza, Suite 3500

St. Louis, MO 63101
Attention: Garrett M. Fischer
E-mail: gfischer@thompsoncoburn.com

h. **Cooperation; Further Assurances.** The parties shall at all times endeavor to agree on the interpretation and application of this Agreement and shall make every attempt through cooperation or consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation when a dispute occurs. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as the other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby. Any consent or approval required or requested to be provided by Seller pursuant to the terms of this Agreement may be given by the City Manager, who may seek the advice, consent or approval of the City Council is his or her discretion.

[The signature page follows.]

IN WITNESS WHEREOF, each of the undersigned has executed this Agreement as of the day and year first above written.

SELLER:

CITY OF LEE'S SUMMIT, MISSOURI,
a municipality of the State of Missouri

By: ______________________________
Name: Mark Dunning
Title: City Manager

Attest:

____
Trisha Fowler-Arcuri, City Clerk

Approved as to Form:

____
David Bushek
Chief Counsel of Economic Development & Planning

BUYER:

U.S. BANK NATIONAL ASSOCIATION,
a national banking association

By: ______________________________
Name: Vedad Alagic
Title: Vice President

EXHIBIT A

TAX CREDIT PURCHASE AGREEMENT

SELLER'S WIRE INSTRUCTIONS

[This exhibit is redacted pursuant to Section 610.021(23), RSMo, which authorized the City to hold as closed records the personal identification numbers, digital certificates, physical and virtual keys, access codes or authorization codes that are used to protect the security of electronic transactions between a public governmental body and a person or entity doing business with a public governmental body. The final version of this Agreement will include all required information.]

Bank:

ABA:

Bank Address:

Account Name:

Account Number:

Bank Contact: