

**AN ORDINANCE AUTHORIZING THE BORROWING OF FUNDS IN THE AMOUNT OF NOT TO EXCEED \$80,000,000 FROM THE MISSOURI DEVELOPMENT FINANCE BOARD IN CONNECTION WITH THE PAYMENT OF CERTAIN REDEVELOPMENT COSTS DESCRIBED IN A TAX INCREMENT FINANCING PLAN PREVIOUSLY APPROVED BY THE CITY; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION OF A FIRST SUPPLEMENTAL FINANCING AGREEMENT WITH THE MISSOURI DEVELOPMENT FINANCE BOARD; AUTHORIZING THE MORTGAGING OF PROPERTY TO SECURE BONDS ISSUED BY THE MISSOURI DEVELOPMENT FINANCE BOARD; PROVIDING FOR THE ADMINISTRATION OF A SPECIAL ALLOCATION FUND AND OTHER FUNDS AND ACCOUNTS; AMENDING THE CITY BUDGET; PRESCRIBING OTHER MATTERS RELATING THERETO.**

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**WHEREAS**, the City of Branson, Missouri (the "City"), is a city of the fourth class and political subdivision of the State of Missouri duly created, organized and existing under the constitution and laws of the State of Missouri; and

**WHEREAS**, the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865 of the Revised Statutes of Missouri, as amended (the "Act"), authorizes municipalities to form tax increment financing commissions, and to undertake redevelopment projects in blighted, conservation or economic development areas, as defined in the Act; and

**WHEREAS**, on February 10, 1992, the Board of Aldermen of the City of Branson, Missouri, by Ordinance No. 92-14 created the Tax Increment Financing Commission of the City of Branson, Missouri (the "Commission"); and

**WHEREAS**, the Board of Aldermen of Branson, Missouri (the "Board of Aldermen"), did on May 31, 2005, pass Ordinance No. 2005-070 (the "Plan Ordinance") which approved an amended Branson Landing Tax Financing Increment Plan dated December 2, 2002 (as amended December 9, 2002, January 7, 2003, February 21, 2005 and May 10, 2005) (the "Redevelopment Plan") providing for the acquisition, development and construction of multiple redevelopment projects in the City of Branson, Taney County, Missouri in an area described in the Redevelopment Plan, attached hereto and incorporated herein by reference (the "Redevelopment Area").

**WHEREAS**, the City and HCW Development Company, L.L.C., (the "Developer") have entered into a Redevelopment Contract dated as of February 1, 2003, which was subsequently amended and restated pursuant to the First Amended and Restated Redevelopment Contract dated as of October 1, 2003 and a Second Amended and Restated Redevelopment Contract dated as of July 5, 2005 (collectively, the "Redevelopment Agreement," as may be amended in the future from time to time), which provides, among other things, that the City, at the request of the Developer, will issue its obligations to be secured by moneys in the Special Allocation Fund (as defined herein) for the purpose of paying a portion of the costs attributable to the Redevelopment Project (as described in the Redevelopment Plan), which costs are identified in the Redevelopment Agreement (the "Redevelopment Costs"); and

**WHEREAS**, the City has determined that it is necessary and desirable to adopt this Ordinance to provide for the financing of a portion of the Redevelopment Costs by causing the Missouri Development Finance Board (the "Board") to issue bonds (the "Series 2005A Bonds") in the principal amount of not to exceed \$80,000,000, the proceeds of which will be made available to the City pursuant to the terms of the First Supplemental Financing Agreement (defined below) between the City and the Board; and

**WHEREAS**, the City will apply the proceeds of the Series 2005A Bonds to (1) pay a portion of the Redevelopment Costs as described in the First Supplemental Financing Agreement and in the Redevelopment Plan, (2) fund a reserve fund for the Series 2005A Bonds, (3) pay a portion of the interest due on the Series 2005A Bonds and the Series 2004A Bonds previously issued by the Board for the Redevelopment Project (the "Series 2004A Bonds," as further defined herein), and (4) pay the costs of issuing the Series 2005A Bonds; and

**WHEREAS**, pursuant to Ordinance No. 2004-087 adopted on June 14, 2004 the City authorized a Future Advance Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing relating to the Parking Garage components of the Redevelopment Project and a Future Advance Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing relating to the Convention Center components of the Redevelopment Project in order to secure the Series 2004A Bonds and the City and the Board desire amend the same to secure the Series 2005A Bonds on an equal basis with the Series 2004A Bonds; and

**WHEREAS**, pursuant to the Missouri Transportation Development District Act, Section 238.200 to 238.275, inclusive, of the Revised Statutes of Missouri, as amended, the City and the Developer have caused to be formed the Branson Landing Transportation Development District (the "District") for the purpose of financing certain transportation improvements which are also Redevelopment Costs within and around the Redevelopment Area;

**WHEREAS**, the City and the District have entered into a Cooperative Agreement (the "Cooperative Agreement"), pursuant to which the City has agreed to collect and distribute the District's one cent sales tax and the District has agreed that the City shall cause to be constructed pursuant to the Cooperative Agreement certain improvements within and around the Redevelopment Area (the "District Project"), as more specifically described in the Cooperative Agreement;

**WHEREAS**, it is hereby found and determined that it is necessary and advisable and in the best interest of the City and of its inhabitants that the City cause the Board to issue the Series 2005A Bonds in the form and manner as hereinafter provided to provide funds for the above-described purposes and to provide for payments under the Financing Agreement all as more fully described herein;

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

## **ARTICLE I**

### **DEFINITIONS**

**Section 101. Definitions of Words and Terms.** In addition to words and terms defined elsewhere in this Ordinance, the following capitalized words and terms as used in this Ordinance shall have the following meanings:

**“Annually Appropriated Moneys”** means moneys of the City appropriated to make Payments and Additional Payments, as further described in the Indenture and the Financing Agreement.

**“Board”** means the Missouri Development Finance Board, a body corporate and politic of the State of Missouri.

**“Series 2004A Bonds”** means the \$40,000,000 Infrastructure Facilities Revenue Bonds (City of Branson, Missouri - Branson Landing Project), Series 2004A, issued by the Board.

**“Series 2005A Bonds”** means the not to exceed \$80,000,000 Infrastructure Facilities Revenue Bonds (City of Branson, Missouri - Branson Landing Project), Series 2005A, issued by the Board.

**“City”** means the City of Branson, Missouri, and any successors or assigns.

**“City’s Redevelopment Project Revenues”** means, subject to annual appropriation by the City, 100% of the total additional revenues (other than Economic Activity Tax Revenues, Payments in Lieu of Taxes, and TDD Revenues) received by the City during any calendar year (i) from taxes imposed by the City and 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 preceding the year in which an ordinance adopting tax increment financing for the Redevelopment Area is adopted, while tax increment financing remains in effect including without limitation retail sales tax, utility taxes (telephone, gas, water and electric) and any tax not currently in existence that may be imposed by the City affecting economic activity taxes, (ii) under the provisions of the Master Lease, and (iii) Replacement Revenues, but less (iv) Restricted Revenues, all as may be further described in the Indenture.

**“Combined Local/State TIF and TDD Revenues”** means (a) all moneys on deposit (including investment earnings thereon) in the PILOTS Account of the Special Allocation Fund less (i) an amount equal to the Subsidy Revenues, and (ii) the amount necessary for any reimbursement to any district providing emergency services within the Redevelopment Area, to the extent required by Section 99.847 or 99.848 of the TIF Act or, in lieu thereof, such amount as may be set forth in a cooperative agreement between the City and any such district, subject to the Developer’s approval; (b) subject to annual appropriation by the City, all moneys on deposit (including investment earnings thereon) in the EATS Account of the Special Allocation Fund, including the TIF Portion of TDD Sales Tax Revenues but excluding the TDD Portion of TDD Sales Tax Revenues as such terms are defined in the Indenture) but less (i) an amount equal to the Subsidy Revenues to the extent that such sum is not paid from the PILOTS Account, and (ii) reimbursement to any district providing emergency services within the Redevelopment Area, to the extent required by Section 99.847 or Section 99.848 of the TIF Act or, in lieu thereof, such amount as may be set forth in a cooperative agreement between the City and any such district, subject to the Developer’s approval, to the extent that such sum is not paid from the PILOTS Account, (c) subject to annual appropriation by the State, the State TIF Revenues, and (d) subject to annual appropriation by the District, TDD Revenues. Combined Local/State TIF and TDD Revenues do not include (i) any amount paid under protest until the protest is withdrawn or resolved against the taxpayer and (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.

**“Convention Center Mortgage”** means the First Amended and Restated Future Advance Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing related to the property described therein dated as of the date of the First Supplemental Indenture, granted by the City, as from time to time amended and supplemented in accordance with the provisions thereof.

**“Cooperative Agreement”** means an Intergovernmental Cooperative Agreement between the City and the District.

**“Developer”** means HCW Development Company, L.L.C., a Missouri limited liability company, and its successors and assigns.

**“District”** means a transportation development district and a political subdivision of the State of Missouri formed as described in the recitals to this Ordinance.

**“Economic Activity Tax Account”** means the Economic Activity Tax Account in the Special Allocation Fund described in **Section 402** hereof.

**“Economic Activity Tax Revenues”** means, subject to annual appropriation by the City as provided in the Act, 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 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 prior to the adoption of an ordinance adopting tax increment financing and by economic activity taxes generated by any Relocated Retail Establishment in the calendar year prior to its relocation to the Redevelopment Area, but excluding therefrom any taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, licenses, fees or special assessments (other than payments in lieu of taxes), personal property taxes, taxes levied for the purpose of public transportation pursuant to Section 94.660, RSMo.

**“Financing Agreement”** means the Financing Agreement between the Board and the City dated as of June 1, 2004, as amended and supplemented by the First Supplemental Financing Agreement and as further amended and supplemented from time to time.

**“First Supplemental Financing Agreement”** means the First Supplemental Financing Agreement between the Board and the City.

**“First Supplemental Indenture”** means the First Supplement Bond Trust Indenture between the Board and the Trustee.

**“Indenture”** means the Bond Trust Indenture between the Board and the Trustee, as supplemented and amended by the Supplement to Bond Trust Indenture and the First Supplemental Indenture and as further amended and supplemented from time to time.

**“Master Lease”** means that certain Master Lease between the City and the Developer dated October 27, 2003, as amended by the First Amendment to the Master Lease dated as of July 5, 2005, and as further amended from time to time.

**“Mortgaged Property”** means the real estate described in **Section 302**.

**“Ordinance”** means this Ordinance as from time to time amended in accordance with the terms hereof.

**“Parking Garage Mortgage”** means the First Amended and Restated Future Advance Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing related to the property described therein dated as of the date of the First Supplemental Indenture, granted by the City, as from time to time amended and supplemented in accordance with the provisions thereof.

**“Payments in Lieu of Taxes”** means those payments in lieu of taxes (as defined in Sections 99.805(10) and 99.845 of the 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 Act.

**“Payments”** means the Payments described in the Financing Agreement.

**“PILOTS Account”** means the PILOTS Account in the Special Allocation Fund described in **Section 402** hereof.

**“Redevelopment Agreement”** means the Redevelopment Contract dated February 1, 2003, which was subsequently amended and restated pursuant to the First Amended and Restated Redevelopment Contract dated as of October 1, 2003, and the Second Amended and Restated Redevelopment Contract dated as of July 5, 2005 by and between the City and the Developer, as further amended and/or restated from time to time.

**“Redevelopment Area”** means the area designated as the Branson Landing Tax Increment Financing Area pursuant to Ordinance No. 2003-016 of the City adopted on January 27, 2003 and Ordinance No. 2005-070 of the City adopted May 31, 2005, and described in the Redevelopment Agreement as the Redevelopment Area, as may be amended from time to time.

**“Redevelopment Costs”** means the “redevelopment project costs,” as defined in the Act, that may be paid through tax increment financing and which the City has agreed to pay under the Redevelopment Agreement.

**“Redevelopment Plan”** means the Redevelopment Plan described in the recitals hereto, which may be amended from time to time.

**“Redevelopment Project”** means the redevelopment project as described in the Redevelopment Agreement and the Redevelopment Plan.

**“Replacement Revenues”** means revenues of the City other than Annually Appropriated Moneys which may be annually appropriated by the City in substitution of Restricted Revenues, as further described in the Indenture.

**“Restricted Revenues”** means City’s Redevelopment Project Revenues which are determined by the City to be not legally available for use as specified in the Indenture or which, because of Revenue Limitations, are not available to fund shortfalls in scheduled principal and interest payments or required replenishment of the debt service reserve fund established under the Indenture, as may be further described in the Indenture.

**“Revenue Limitations”** means limitations on the use of certain revenues as further described in the Indenture.

**“Special Allocation Fund”** means the fund by that name created in **Section 402** hereof.

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

**"Subsidy Revenues"** means, for the period of determination, an amount of Payments in Lieu of Taxes and/or Economic Activity Taxes equal to the TDD Revenues, as may be further described in the Indenture.

**"Supplement to Bond Trust Indenture"** means the Supplement to Bond Trust Indenture dated as of August 1, 2005 between the Board and the Trustee.

**"TDD Revenues"** means the revenues derived by the District from the imposition of a sales tax within the District less (i) any amount paid under protest until the protest is withdrawn or resolved against the taxpayer, (ii) 1% of the TDD Sales Tax Revenues, which are retained by the City for the cost of collecting the TDD Sales Tax, or such other amount as is retained by the State of Missouri for collecting the TDD Sales Tax should the State assume the obligation of collecting the TDD Sales Tax, and (iii) any sum received by the District which is the subject of a suit or other claim communicated to the District which suit or claim challenges the collection of such sum. Notwithstanding the foregoing, the City shall have the right to cause a community improvement district to be formed in lieu of a Transportation Development District, and in such event all references herein to the "TDD" shall apply to the "CID" formed by the City.

**"Trustee"** means Commerce Bank, N.A. as trustee.

## ARTICLE II

### AUTHORIZATION AND APPROVAL OF DOCUMENTS

**Section 201. Authorization of Documents.** In connection with the issuance of the Series 2005A Bonds, the Mayor or the Mayor Pro-Tem (or such other officer of the City as may be authorized by the Board of Aldermen of the City) is hereby authorized to execute and deliver, and the City Clerk is authorized, where required, to affix the corporate seal of the City and to attest to the same, the following documents on behalf of the City, which shall be in substantially the forms of such documents presented to and reviewed by the Board of Alderman at this meeting (copies of which documents shall be filed in the records of the City), with such changes therein as shall be approved by the officers of the City executing such documents, such officers' signatures thereon being conclusive evidence of their approval thereof:

- (a) Parking Garage Mortgage;
- (b) Convention Center Mortgage;
- (c) First Supplemental Financing Agreement;
- (d) Tax Compliance Agreement (the "Tax Compliance Agreement") among the Board, the City and the Trustee;
- (e) Continuing Disclosure Agreement (the "Continuing Disclosure Agreement") between the City and Commerce Bank, N.A., as dissemination agent for the benefit of holders of the Series 2005A Bonds;
- (f) Bond Purchase Agreement (the "Bond Purchase Agreement") among the Board, the City and Citigroup Global Markets Inc., as representative of the underwriters named therein; and

(g) Official Statement relating to the Series 2005A Bonds;

(the "City Documents").

The appropriate officials of the City are hereby authorized, if requested, to provide the purchaser of the Series 2005A Bonds a letter or certification deeming the information contained in the Preliminary Official Statement, with such changes as such officials shall approve, to be "final" as of its date, except for the omission of such information as is permitted by Rule 15c2-12(b)(1) of the Securities and Exchange Commission to enable the purchaser to comply with the requirements of such Rule 15c2-12(b)(1), and to take such other actions or execute such other documents as such official in their reasonable judgment deem necessary to enable the purchaser to comply with the requirements of such Rule. The appropriate officials of the City are further authorized to execute the final Official Statement in substantially the form of the Preliminary Official Statement with such changes and additions thereto as are necessary to conform to and describe the transaction. The public distribution of the Preliminary Official Statement and final Official Statement in connection with the Series 2005A Bonds is hereby approved.

**Section 202. Approval of First Supplemental Indenture.** The City hereby approves the First Supplemental Indenture in substantially the form presented to and reviewed by the Board of Aldermen at this meeting (a copy of which document shall be filed in the records of the City).

**Section 203. Limited Obligations.** Except as provided in **Article III** hereof, the City's obligation to make Payments and Additional Payments under the Financing Agreement shall be subject to annual appropriation and shall not constitute a debt, liability or indebtedness within the meaning of any constitutional, statutory or charter debt limitation or restriction, all as more fully provided in the Financing Agreement.

**Section 204. Terms of Series 2005A Bonds.** The Series 2005A Bonds shall bear interest at a true interest cost of not to exceed 6.5% per annum, shall have a final maturity not later than the year 2035 and be issued in a principal amount not to exceed \$80,000,000. Subject to **Section 203** and **Article III** hereof, the City shall make payments at the times and in the amounts with respect to the Series 2005A Bonds as set forth in the Financing Agreement.

### ARTICLE III

#### CITY'S OBLIGATION

**Section 301. Nature of Obligation.**

(a) The City's obligation to make Payments and Additional Payments pursuant to the Financing Agreement shall be subject to annual appropriation as provided in the Financing Agreement.

Notwithstanding the foregoing, Combined Local/State TIF and TDD Revenues received by the City (other than Economic Activity Tax Revenues which must be annually appropriated by the City) shall be pledged to secure the Payments and Additional Payments in the manner described in the Financing Agreement and the Indenture.

(b) The taxing power of the City is not pledged to the payment of the Payments either as to principal or interest. The Payments shall not constitute a general obligation of the City, nor shall they constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter provision, limitation or restriction.

**Section 302. Mortgage of Property.** The Board of Aldermen authorizes the granting of a security interest in the Mortgaged Property described in **Exhibit A** to Ordinance 2004-087 of the City to secure the Series 2004A Bonds and the Series 2005A Bonds as described in the recitals hereto.

**Section 303. Use of Other Revenues.** Pursuant to the conditions and limitations set forth in the Financing Agreement and the Indenture, the City will use City's Redevelopment Project Revenues and Economic Activity Tax Revenues (less Subsidy Revenues to the extent necessary) for the payment of Payments and Additional Payments.

#### ARTICLE IV

##### ADOPTION OF TAX INCREMENT FINANCING AND THE SPECIAL ALLOCATION FUND

**Section 401. Adoption of Tax Increment Financing.** By the adoption of Ordinance Numbers 2005-071, 2005-072, 2005-073 and 2005-074 on May 31, 2005, the City has taken the necessary steps to adopt tax increment financing in certain portions of the Redevelopment Area, with the effective date of such measures to be as set forth in the ordinances of the city relating to adoption of tax increment financing for Redevelopment Project 1: Waterfront Entertainment District, Redevelopment Project 2: Convention Center, Redevelopment Project 3: North Parcel and Redevelopment Project 4: Bass Pro Pad (as described in said ordinances and the Redevelopment Plan).

**Section 402. Creation of Funds and Accounts.**

(a) The following formerly created in the treasury of the City are hereby ratified and confirmed:

(i) a Special Allocation Fund for the Branson Landing Project, and within such fund two accounts: (A) the PILOTS Account, and (B) the Economic Activity Tax Account.

(ii) a City Redevelopment Project Revenues Account, and within such account six subaccounts: (A) General Sales Tax Subaccount, (B) Transportation Sales Tax Subaccount, (C) Tourism Tax Subaccount, (D) Replacement Revenues Subaccount, (E) Master Lease Subaccount and (F) Replacement Revenues Subaccount.

(iii) a State TIF Revenue Account.

(iv) an Annually Appropriated Moneys Account.

(b) In addition to the accounts created in **Section 401(a)**, the TDD Sales Tax Revenue Account will be established pursuant to the Cooperative Agreement.

**Section 403. Administration of Funds and Accounts.** The moneys in the funds and accounts created in **Section 402** shall be administered and applied solely for the purposes, in the manner and at the times provided in the Financing Agreement and the Indenture and, in the case of the TDD Sales Tax Revenue Account, the Cooperative Agreement.

**Section 404. Investments.** Moneys in the Special Allocation Fund, the City Redevelopment Project Revenue Account, the State TIF Revenue Account and the TDD Sales Tax Revenue Account shall be continuously and adequately invested and secured as provided by the laws of the State.

ARTICLE V

MISCELLANEOUS PROVISIONS

**Section 501. Further Authority.** The officers of the City, including the Mayor, Mayor Pro-Tem, City Administrator, Finance Director and the City Clerk, are hereby authorized and directed to execute all documents, and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Ordinance and to make any changes or additions in this Ordinance and the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they determine to be in the City's best interest, and the execution or taking of such action shall be conclusive evidence of such determination.

**Section 502. Amending the Budget of the City For Fiscal Year 2004-2005.** The Board of Aldermen authorizes budget adjustments allocating to the capital budget of the City in an amount not to exceed the actual principal amount of the Series 2005A Bonds to allow for the expenditure of the proceeds of the Series 2005A Bonds not already provided for related to the purposes set forth herein. The Director of Finance is hereby authorized to adjust the accounts of the City in accordance with amounts in this budget adjustment.

**Section 503. Severability.** If any section or other part of this Ordinance, whether large or small, is for any reason held invalid, the invalidity thereof shall not affect the validity of the other provisions of this Ordinance.

**Section 504. Governing Law.** This Ordinance shall be governed exclusively by and constructed in accordance with the applicable laws of the State.

**Section 505. Effective Date.** This Ordinance shall take effect and be in full force from and after its passage by the Board of Aldermen and approval by the Mayor.

Read this first time on this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

Read this second time, passed, and truly agreed to by the Board of Aldermen of the City of Branson, Missouri, and approved by the Mayor on this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Louis E. Schaefer  
Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Lisa K Westfall  
City Clerk

\_\_\_\_\_  
Gilmore & Bell, P.C., Bond Counsel

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