

**AN ORDINANCE AUTHORIZING THE EXECUTION OF CERTAIN DOCUMENTS IN CONNECTION WITH THE SALE OF A PROJECT PREVIOUSLY FINANCED BY THE CITY UNDER THE PROVISIONS OF ARTICLE VI, SECTION 27 OF THE MISSOURI CONSTITUTION, AS AMENDED, AND SECTIONS 100.010 TO 100.200, INCLUSIVE, OF THE REVISED STATUTES OF MISSOURI, AS AMENDED; AND AUTHORIZING THE EXECUTION OF CERTAIN DOCUMENTS AND TAKING OF CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH.**

**WHEREAS**, the City of Gladstone, Missouri (the "City") is a third class city and political subdivision of the State of Missouri, duly created, organized and existing under and by virtue of the Constitution and laws of the State of Missouri; and

**WHEREAS**, the City is authorized under the provisions of Article VI, Section 27 of the Missouri Constitution, as amended, and Sections 100.010 to 100.200, inclusive, of the Revised Statutes of Missouri, as amended (collectively, the "Act"), to purchase, construct, extend and improve certain projects (as defined in the Act) for the purposes set forth in the Act and to issue industrial development revenue bonds for the purpose of providing funds to pay the costs of such projects and to lease or otherwise dispose of such projects to private persons or corporations for manufacturing, commercial, warehousing and industrial development purposes upon such terms and conditions as the City shall deem advisable; and

**WHEREAS**, in order for STKC Properties LLC, a Missouri limited liability company (together with any successors or assigns, the "Company"), to construct and renovate improvements to certain commercial facilities (collectively, the "Project"), the City did previously issue its Taxable Industrial Development Revenue Bonds (Royal Park Apartment Homes Project), Series 2019, in an aggregate principal amount not to exceed \$4,070,000 (the "Bonds"); and

**WHEREAS**, the Project has been completed and the Company desires to sell the Project; and

**WHEREAS**, the City has and does hereby find and determine that it is desirable for the economic development of the City and within the public purposes of the Act that the City facilitate the sale of the Project.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GLADSTONE, MISSOURI, AS FOLLOWS:**

**Section 1. Execution of Documents.** The Mayor or the City Manager of the City is hereby authorized and directed to execute an Amendment to Lease Agreement and Consent and Fee Joinder Rider (collectively the "City Documents") in substantially the forms presented to the City Council at this meeting, copies of which shall be filed in the records of the City. The Mayor or the City Manager of the City is hereby authorized and directed to execute the City Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of

this Ordinance, for and on behalf of and as the act and deed of the City. The City Clerk of the City is hereby authorized and directed to attest to and affix the seal of the City to the City Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

**Section 2. Approval of Assignment.** In connection with the execution of the City Documents, the City Council consents to the assignment of the Lease Agreement dated March 1, 2019, related to the Bonds from the Company to Oak Ridge, MFT, LLC and Apex Oak Ridge, LLC, both Missouri limited liability companies.

**Section 3. Further Authority.** The City shall, and the officials, agents and employees of the City are hereby authorized and directed to, take such further action, and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance and to carry out, comply with and perform the duties of the City with respect to the City Documents.

**Section 4. Severability.** The sections, paragraphs, sentences, clauses and phrases of this Ordinance shall be severable. In the event that any such section, paragraph, sentence, clause or phrase of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining portions of this Ordinance are valid, unless the court finds the valid portions of the Ordinance are so essential to and inseparably connected with and dependent upon the void portion that it cannot be presumed that the City Council has enacted the valid portions without the void ones, or unless the court finds that the valid portions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

**Section 5. Governing Law.** This Ordinance shall be governed exclusively by and construed in accordance with the applicable laws of the State of Missouri.

**Section 6. Effective Date.** This Ordinance shall be approved and shall take effect and be in full force from and after its passage by the City Council and this Ordinance is signed by the Mayor.

**INTRODUCED, READ, PASSED, AND ADOPTED BY THE COUNCIL OF THE CITY OF GLADSTONE, MISSOURI, THIS 11TH DAY OF JANUARY, 2021.**



*Jean B. Moore*  
Jean B. Moore, Mayor

(SEAL)  
ATTEST:

*Ruth E. Bocchino*  
Ruth E. Bocchino, City Clerk

First Reading: January 11, 2021

Second Reading: January 11, 2021



## *Request for Council Action*

RES  # City Clerk Only

BILL  # 21-01

ORD # 4.539

Date: 1/5/2021

Department: General Administration

Meeting Date Requested: 1/11/2021

Public Hearing: Yes  Date: [Click here to enter a date.](#)

Subject: An Ordinance authorizing the execution of certain documents in connection with the sale of a project previously financed by the City under the provisions of Article VI, Section 27 of the Missouri Constitution, as amended, and Sections 100.010 to 100.200, inclusive, of the Revised Statutes of Missouri, as amended; and authorizing the execution of certain documents and taking of certain other actions in connection therewith.

Background: On March 25, 2019, the City Council approved the issuance of its Taxable Industrial Development Revenue Bonds (Chapter 100 Tax Abatement Incentive) for STKC Properties, LLC to assist in the renovation of Royal Park Apartments (formerly French Riviera Apartments). The quality of the renovation and the tax advantages attached to the property has made the project appealing to other investors. Juan Toban, the owner of STKC Properties, has made arrangements for the sale of the property to Apex Capital Properties. In order for the tax abatement agreement to remain in place, the City Council must amend the original agreement to reflect Arcadian Properties as the new lease holder and recipient of the Chapter 100 bonds. There are no further changes to the agreement and the amendment will allow the new lender to protect themselves in the event of default. Although the new owners live in California, the group has been investing exclusively in the Kansas City area market for over four years. The new owners will be contracting with Asset Management Group (AMR), a local property management firm, to maintain the high quality of the complex established by Mr. Toban. Information pertaining to the new ownership and AMR property management is attached to the proposed Ordinance.

Budget Discussion: Funds are budgeted in the amount of \$ 0 from the N/A Fund. Ongoing costs are estimated to be \$ 0 annually. Previous years' funding was \$0

Public/Board/Staff Input: Staff recommends passage of the Ordinance

Provide Original Contracts, Leases, Agreements, etc. to: City Clerk and Vendor

Bob Baer  
Department Director/Administrator

JM  
City Attorney

SW  
City Manager

RCA DUE TO CITY CLERK WEDNESDAY 12:00 PM

## Royal Park Narrative

The Royal Park Apartments have been beautifully updated and now present an excellent opportunity for an investor and operator with a long-term plan to maintain the quality of the apartments and luxury amenities. The managers of Arcadian Properties, Josh Dale, Adam Ottke, and David Ponce, have created a new entity called Apex Capital Properties whose goal is to provide stable cash flows to its shareholders through the long-term ownership and operation of the Royal Park Apartments. Our primary investors, the Merli family, recently sold their 19-unit apartment complex in Anaheim, CA in order to exchange into Royal Park. This investment represents their primary source of retirement income. This means our goal is well-aligned with the city to continue to operate the Royal Park Apartments to a level that attracts a strong, desirable tenant. Our intention is to hold this asset indefinitely and continue to invest the capital needed to maintain the existing luxury apartments and amenities, as well as, improve the property over time.

Although the managing partners of Apex Capital Properties live in California, we have been exclusively investing in the Kansas City area for over four years. Additionally, we have contracted AMG (Asset Management Group) to be the property managers of Royal Park. AMG brings a wealth of experience managing multifamily real estate and is well-equipped to handle the management of this property.

We look forward to being a partner with the City of Gladstone and to continue to provide an exceptional place for the residents of the Royal Park Apartments to live.

# Investor Bios

## MANAGING PARTNERS

Josh Dale, Adam Ottke, and David Ponce founded Arcadian Properties in 2016 as a real estate investment group in Kansas City, Missouri. Over the last four years we have acquired 18 properties, and we currently operate 40 doors across 15 properties in the KCMO area. The portfolio is made up of single-family residences, duplexes, a four-plex, and a 19-unit multifamily apartment building.

Our investment philosophy is to purchase value-add assets with strong cash flow potential. Many of our projects have required complete renovations of the properties where we replace all major systems and finishes or even add bedrooms and bathrooms. In virtually all of the projects we have completed we still own the property today. Our goal is to develop long term, sustainable cash flows from each of our investments.

In the case of the 19-unit multifamily building, we acquired the property in 2018. We have renovated the majority of the units and have been able to increase revenues by 50% since we took ownership, with very little turnover. The property has always remained above 90% occupancy since we took ownership, and the most common reason that people have moved out was because they were buying a home.

## WHO WE ARE

Arcadian Properties' founding partners work in concert with one another every day to tackle the variety of challenges of managing a rental portfolio and identifying opportunities, internal and external, necessary to improve and grow the business.

### **Josh Dale** | Founding Partner

Josh was born to be a real estate investor. Growing up, he had personal experience working on rental properties that his family owned. In college, Josh's business education was complemented with an emphasis in Marketing and Real Estate. In his professional career, Josh is a Senior Analyst on the Data Analytics team at First American Title. This gives Josh a strong background in real estate finance, data analysis, and process automation. Josh has outstanding financial modeling and forecasting skills that he uses to develop and maintain the analyses that support Arcadian Properties' investment process.

Josh also manages the company's day-to-day financial operations, which includes accounting, rent collection, accounts payable, contractor management, and quarterly reporting. Josh's strategic vision, coupled with his entrepreneurial spirit, leads and sets Arcadian Properties' financial goals.

### **Adam Ottke | Founding Partner**

Adam graduated from Chapman University and is a natural entrepreneur. Adam created his own niche marketing and photography company, which has taken him all over the globe. Adam's design expertise and technical talents have directly transitioned to key areas of Arcadian Properties. Adam has become a subject matter expert in the leasing process, which includes marketing units, utility accounts, landlord compliance, business filings, and tenant placement. Additionally, Adam supports the renovation efforts with rendering designs used in adding or removing walls to add or redesign kitchens, bedrooms, or bathrooms.

In addition, Adam designed, created, and manages the company website, [arcadiancapital.org](http://arcadiancapital.org), along with the company email server. Adam utilizes his extensive Adobe experience to create professional quality marketing materials. He has also championed the initiative to transition all company documents, tenant applications, profiles, and maintenance requests to the cloud.

### **David Ponce | Founding Partner**

As a CPA, David brings invaluable corporate accounting and strategic tax planning experience. As a Chartered Property and Casualty Underwriter (CPCU), David handles most risk management duties including risk assessment and insurance placement of property and liability coverage. David is pursuing the Chartered Financial Analyst (CFA) designation, which will continue to support the overall successes of Arcadian Properties in the dynamic environment of real estate investment. In addition, David has been fundamental in developing business relationships with local realtors, contractors, and bankers. David's business acumen and networking skills have been instrumental in developing our local team of contacts that allow Arcadian's operations to work seamlessly.

## **INVESTORS**

### **Merli Family Trust | Investor**

Now in their mid-70s, Hans and Elke Merli have invested in real estate for over 40 years. In 1990, they moved their investments from a minority share in a property with around 50 units into the largest shareholder of a 19-unit property in Anaheim, CA. After 30 years of managing the property the Merli's recently sold it for the exchange to Royal Park. In the three decades they owned the Anaheim property, the Merli's turned it into one of the city's most respected C-Class properties, just across from Disneyland and the Anaheim Convention center, and earned multiple commendation letters from city council for its upkeep. The Merli's enjoy and take pride in their responsibilities of providing safe and comfortable homes for their tenants. Most tenants have lived at the property for over 14 years. The longest having stayed for 26 years, made the property their permanent home and raised their first children there until they saw them off to college. They look forward to continuing with real estate investments to provide cashflows that may better support their retirement.



Arcadian Capital &lt;contact@arcadiancapital.org&gt;

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## Stoneside Loan Assumption

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Jared Kenealy <jkenealy@assetmgmtgrp.com>  
To: Arcadian Capital <contact@arcadiancapital.org>

Fri, Nov 13, 2020 at 12:16 PM

### Management History:

Asset Management Group has been a management company since 2008, with leadership that has been in management for over 20 years. AMG currently manages slightly less than 5.5 MM square feet of property in the Kansas City Area across all asset types. The AMG portfolio consists of roughly 25% industrial, 25% retail, 25% office, and 25% residential properties. AMG acts as an asset manager, property manager, facilities manager for all properties. Additionally, AMG can offer leasing and other services that support the needs of an asset.

### Management Resources:

The AMG team is built on an office of 53 employee across managers, accountants, facilities managers, support staff and executives. AMG uses industry leading software, Yardi, to manage all accounting and processes. AMG prides itself on established processes and policies that encourage strong tenant relationships and collections. The size of the AMG portfolio gives properties additional advantages, such as the possibility of providing insurance through our captive, HVAC services through our ancillary companies, commercial leasing services and more.

### Residential Management Experience:

AMG currently manages 687 residential doors across 17 properties with greater than 91% occupancy throughout the entire Kansas City metro. AMG has managed as many as 1200 doors and has the operational capacity for significant growth already in place. AMG is currently a manager for institutional (Freddie/Fannie) capital for 4 properties and many past properties. The AMG Residential management team includes 5 managers, a leasing team, and supporting facilities and accounting personnel.



Jared Kenealy | *Chief Development Officer*

**ASSET MANAGEMENT GROUP**

D: 816.666.8662 | M: 816.6998554

5600 W. 95<sup>th</sup> St Ste. 307 Overland Park, KS 66207

LINKEDIN ASSETMGMTGRP.COM

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**From:** Arcadian Capital <contact@arcadiancapital.org>

**Sent:** Friday, November 6, 2020 9:36 AM

**To:** Jared Kenealy <jkenealy@assetmgmtgrp.com>

**Subject:** Stoneside Loan Assumption

[Quoted text hidden]

# **Renovation Experience Deck**

## **Before/After Complete Rehab Historical Samples**

**Prepared December 2020**



# Duplex Rehab (Photos)

Before



After



## Duplex Rehab (Results)

### Before

- Defunct
- Vacant
- Unpleasant neighborhood presence

### After

- Income-producing (Over \$2k/mo. in rent)
- Joined surrounding, recently rehabbed properties to increase area appeal
- Attracted high-quality tenants to the area

# Apartment Complex Rehab (Photos)

Before



After



## Apartment Complex Rehab (Results)

### Before

- Far below-market rents as little as \$425/mo.
- Ongoing plumbing, waste management, and storage issues
- Both interior and exterior severely lacking in visual appeal
- Tenant population did not match surrounding, quiet neighborhood

### After

- Increased average property rent 50% over 2 years
- Increased property value by over 50% with additional cost savings and improved NOI due to improved management
- Improved interior appearance attracted more reliable market tenants
- Improved exterior appreciated by tenants, neighbors, and HOA
- Identified and solved waste management issues with new trash collection contract and more frequent pickups
- Identified and solved outstanding plumbing issues
- Installed new laundry machines and refinished laundry room

## Additional After Photos (SFR Properties)





B77# 2101  
ORD 4-539

**CONSENT AND FEE JOINDER RIDER**

This Consent and Fee Joinder Rider (“**Rider**”) executed and delivered by **CITY OF GLADSTONE, MISSOURI** (“**Landlord**” or “**Ground Lessor**”) is attached to and amends the Multifamily Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (“**Security Instrument**”) entered into by \_\_\_\_\_, a \_\_\_\_\_ (“**Borrower**”) for the benefit of **ORIX REAL ESTATE CAPITAL, LLC**, a Delaware limited liability company doing business as Lument Capital (“**Lender**”), dated as of January \_\_, 2021.

Borrower and Ground Lessor, in consideration of the Indebtedness and the trust created by the Security Instrument, irrevocably grant, convey and assign to Trustee, in trust, with power of sale, the Mortgaged Property, including the Leasehold Estate, the Fee Estate in the Land and the Improvements, located in Clay County, State of Missouri and described in **Exhibit A** to the Security Instrument (collectively, the “**Project**”).

To the extent any provisions of this Rider conflict with any provisions in the body of the Security Instrument to which this Rider is attached, the provisions of this Rider shall prevail. Any terms in the body of the Security Instrument not in conflict with the provisions of this Rider remain in full force and effect. Ground Lessor shall not be bound by any terms of the Security Instrument other than those contained in this Rider.

Notwithstanding anything else in the Security Instrument to which this Rider is attached, and for valuable consideration, the receipt and sufficiency of which the parties hereto hereby acknowledge and agree, and to induce the Lender to make the Loan to Borrower described in the Security Instrument, Borrower and Ground Lessor covenant and agree as follows:

1. **Definitions**

The following terms shall be added to Section 1 (Definitions) of the Security Instrument:

- (a) “**Fee Estate**” means that fee simple interest in the Land, presently held by Ground Lessor.
- (b) “**Ground Lease**” means that certain lease evidenced by the Memorandum of Lease Agreement executed by STKC Properties LLC and Ground Lessor dated as of March 1, 2019, pursuant to which Borrower leases the Land from Ground Lessor, as such lease may be amended, modified, supplemented, renewed, and extended, but only with prior written approval of Lender.
- (c) “**Ground Lessor**” means **CITY OF GLADSTONE, MISSOURI**, that Landlord, leasing the Land to Borrower pursuant to the Ground Lease.
- (d) “**Leasehold Estate**” means Borrower’s interest in the Land and all other real property, existing pursuant to the Ground Lease, including the following:

- (iii) Borrower's right or privilege to terminate, cancel, surrender, modify, or amend the Ground Lease.
- (iv) All other options, privileges and rights granted and demised to Borrower under the Ground Lease and all appurtenances and improvements with respect to the Ground Lease.

The following term will be modified in Section 1 (Definitions) of the Security Instrument:

- (e) **"Mortgaged Property"** retains that same definition as provided in the Security Instrument, excepting that it is extended to also include Ground Lessor's present and future right, title and interest in and to those respective items, identified in the Security Instrument's definition of "Mortgaged Property."

2. **Ground Lessor Fee Joinder**

- (a) By its execution and delivery of this Rider, Ground Lessor consents and agrees to the encumbrance of the Fee Estate with the lien of the Security Instrument, granting Lender a first priority lien on the Fee Estate.
- (b) Ground Lessor agrees that it shall not without the prior written approval of Lender convey, assign, transfer, pledge, or encumber any part of the Mortgaged Property or any interest in the Mortgaged Property except as set forth in the Ground Lease and the Trust Indenture (the "**Indenture**") dated as of March 1, 2019 between Ground Lessor and Security Bank of Kansas City.
- (c) Ground Lessor acknowledges all of the following:
  - (i) Lender has not made any representations or warranties to Ground Lessor with respect to the creditworthiness of Borrower or the prospects of repayment of the Indebtedness.
  - (ii) Ground Lessor assumes full responsibility for keeping informed with respect to Borrower's business operations, if any, and financial condition to the extent Ground Lessor wishes to do so.
  - (iii) Lender will have no duty to disclose or report to Ground Lessor any information now or later known to Lender with respect to Borrower, including any information relating to any of Borrower's business operations or financial condition.
- (d) Ground Lessor acknowledges and agrees that upon the occurrence of an Event of Default, Lender or Trustee (if applicable) may take such action, without notice or demand, including foreclosure of the Mortgaged Property, as it deems advisable, to protect and enforce its rights against Borrower, , and in and to the Mortgaged

Property, including the Land, to the fullest extent under the terms of this Rider, the Security Instrument, and the other Loan Documents.

- (e) Ground Lessor has no personal liability for the repayment of the Indebtedness or the performance of any obligations under the Loan Documents.

3. **Borrower's Acquisition of the Project**

- (a) If applicable, simultaneously with Borrower's acquisition of the Fee Estate, the lien of this Security Instrument automatically, without the necessity of any further conveyance or recording, continues to cover the Fee Estate and remains prior to the Lien of any mortgage, deed of trust or other Lien placed on the Fee Estate after the date of this Security Instrument. Simultaneously with Borrower's acquisition resulting from exercise of the purchase option of the Fee Estate and Improvements, Borrower and Ground Lessor, at Borrower's sole cost and expense, including payment of Lender's and Ground Lessor's attorneys' fees and costs and out-of-pocket disbursements, will execute and deliver all documents and instruments necessary to convey and transfer Ground Lessor's interest in and to the Project to the Borrower, and to subject or further subject the Fee Estate and Improvements to the first lien of this Security Instrument or to confirm and ratify such first lien, and Borrower must provide to Lender a title insurance policy insuring the lien of this Security Instrument as a first lien on the Project. Ground Lessor will have no responsibilities in this regard in addition to those contained in the Ground Lease.

5. Ground Lessor acknowledges that Lender may provide to third parties with an existing or prospective interest in the servicing, enforcement, evaluation, performance, ownership, purchase, participation or Securitization of the Loan, including any rating agencies, any entity maintaining databases on the underwriting and performance of commercial mortgage loans, as well as governmental regulatory agencies having regulatory authority over Lender, any and all information which Lender now has or may hereafter acquire relating to the Loan and the Mortgaged Property, including public information regarding the Ground Lessor, as Lender determines necessary or desirable.

6. Ground Lessor will at all times fully perform, observe and comply with all other terms, covenants and conditions of the Ground Lease to be performed, observed or complied with by it.

7. At any time after Lender receives notice from Ground Lessor of a default by Borrower under the Ground Lease, Lender may (but will not be obligated to), make any payment, perform any obligation, and take any other action Borrower would have the right to pay, perform, or take under the Ground Lease which Lender deems necessary or desirable to cure such default. Lender may exercise its rights under this subsection immediately after receipt of notice of a default by Borrower under the Ground Lease. For purposes of exercising its rights under this Section 7, Lender will not be liable to Borrower or Ground Lessor for any action taken or omitted to be taken by Lender, in good faith, in reliance on any written notice from Ground



Lessor stating that a default by Borrower under the Ground Lease has occurred and is continuing even though Borrower may question or deny the existence or nature of such default. All expenditures made by Lender pursuant to this Section 7 to cure a default by Borrower under the Ground Lease will become an additional part of the Indebtedness as provided in the Instrument.

8. Ground Lessor will not, except in accordance with the Ground Lease and the Indenture, without the written consent of Lender (which may be given or withheld by Lender in Lender's discretion), take any of the following actions:

- (a) Accept a surrender of the Ground Lease or terminate or cancel the Ground Lease prior to the expiration of the term thereof. Notwithstanding the foregoing, the Ground Lessor will have the right to terminate the Ground Lease upon the occurrence of a default by Borrower under the Ground Lease or any transaction document related thereto (which default continues beyond applicable notice, grace and cure periods) provided that, prior to such termination, Ground Lessor provides Lender with notice of such default and an opportunity to cure in accordance with the Ground Lease. In the event that Lender does not cure such default in accordance with the Ground Lease, Ground Lessor may terminate the Ground Lease without any further notice to Borrower or Lender.
- (b) Amend, modify or change the Ground Lease, either orally or in writing, or waive any of Borrower's rights under the Ground Lease.
- (c) Encumber the Fee Estate.
- (d) Reject the Ground Lease, or assign the leasehold estate created therein pursuant to Section 365(h) of the Bankruptcy Code.

9. Ground Lessor has lawfully executed and delivered this Instrument.

10. Lender may, in accordance with all applicable laws, rules, codes and regulations of the Property Jurisdiction, foreclose on only a portion of the Mortgaged Property, including, without limitation, a foreclosure on the Leasehold Estate granted by the Borrower, in such event, said foreclosure will not affect the lien of this Security Instrument on the remaining portion of the Mortgaged Property still subject to the lien of this Security Instrument.

11. The Ground Lessor consents to the recordation of the Security Instrument.

12. **No Recourse Against Ground Lessor**

The general credit of the Ground Lessor is not obligated or available for the payment of the Indebtedness or any amount due and owing under the Indebtedness or the Security Instrument. Lender will not look to the Ground Lessor or any principal, member, director, officer, agent or employee of the Ground Lessor with respect to the indebtedness evidenced by the Security Instrument or the Indebtedness documentation or any covenant, stipulation, promise, agreement or obligation contained herein or therein. In enforcing its rights and remedies under the Security Instrument or the Indebtedness documentation Lender will look

solely to the collateral covered by the security interest granted by the Security Instrument and/or Borrower for the payment of the indebtedness secured by the Security Instrument or the Indebtedness documentation, including any guaranties, and for the performance of the provisions hereof or thereof. Lender will not seek a deficiency or other money judgment against the Ground Lessor or any principal, member, director, officer, agent or employee of the Ground Lessor (except Borrower) and will not institute any action (separate or otherwise) against the Ground Lessor by reason of any default that may occur in the performance of any of the terms and conditions of the Security Instrument or the Indebtedness documentation. This agreement on the part of Lender shall not be construed in any way so as to effect or impair the lien of the Security Instrument or Lender's right to foreclose or collect hereunder as provided by law or construed in any way so as to limit or restrict any of the rights or remedies of Lender in any foreclosure or collection proceedings or other enforcement of payment of the indebtedness secured hereby out of and from the security given therefor. All covenants, stipulations, promises, agreements and obligations are the Ground Lessor's and not of any member, director, officer, employee or agent (except Borrower) of the Ground Lessor in his or her individual capacity, and no recourse shall be had for the payment of the principal of any debt or interest thereon or for any claim based thereon or hereunder against any member, director, officer, employee or agent (except Borrower) of the Ground Lessor or any natural person executing this Rider on behalf of the Ground Lessor.

13. **Hold Harmless Provisions**

Borrower agrees that the Ground Lessor, its directors, members, officers, agents (except Borrower) and employees shall not be liable for and agrees to defend, indemnify, release and hold the Ground Lessor, its directors, members, officers, agents (except Borrower) and employees harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by, directly or indirectly, any cause whatsoever pertaining to the Mortgaged Property or arising by reason of or in connection with the use thereof or under the Security Instrument or any of the Indebtedness documentation, or (ii) liability arising from or expense incurred by the Ground Lessor's acquisition, installation, owning, leasing or financing of the Mortgaged Property, including without limiting the generality of the foregoing, all claims arising from the breach by Borrower of any of its covenants contained herein or under any of the Indebtedness documentation and all causes of action and reasonable attorneys' fees (whether by reason of third party claims or by reason of the enforcement of any provision of the Security Instrument (including, without limitation, this paragraph)) and any other expenses incurred in defending any claims, suits or actions which may arise as a result of the foregoing. The foregoing indemnities shall apply irrespective of the breach of a statutory obligation on the part of the Ground Lessor, or any of its members, directors, officers, agents, or employees or the application of any rule of comparative or apportioned liability. The foregoing indemnities are limited only to the extent of any prohibitions imposed by law, and upon the application of such prohibition by the final judgment or decision of a competent court of law, the remaining provisions of these indemnities shall remain in full force and effect.

Notwithstanding any other provisions of the Security Instrument, the obligations of Borrower pursuant to this paragraph shall remain in full force and effect after the satisfaction

of the Security Instrument until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and payment in full or the satisfaction of such claim, cause of action or prosecution relating to the matters herein described and the payment of all reasonable expenses and charges incurred by the Ground Lessor, or its respective members, directors, officers, agents (except Borrower) and employees, relating to the enforcement of the provisions herein specified.

In the event of any claim against the Ground Lessor or its members, directors, officers, agents (except Borrower) or employees by any employee or contractor of Borrower or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligations of Borrower hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, disability benefits or other employee benefit act.

Notwithstanding anything contained in the Security Instrument to the contrary, whenever Borrower is obligated under the Security Instrument to indemnify and hold harmless the Ground Lessor, its directors, members, officers, agents (except Borrower), or employees, Borrower shall be given prompt notice of any matter that arises requiring indemnification, but failure to give such notice shall not constitute a defense hereunder nor in any way impair the obligations of Borrower under this Section provided that such failure does not materially prejudice Borrower in its ability to defend the Ground Lessor or materially impair Borrower's defense. Borrower shall have the right to defend the Ground Lessor, its directors, members, officers, agents (except Borrower), and employees, and provided Borrower promptly and continuously thereafter defends the Ground Lessor, its directors, members, officers, agents (except Borrower), and employees, no other attorneys' fees of the Ground Lessor, its directors, members, officers, agents (except Borrower), and employees shall be payable by Borrower. Nevertheless, the Ground Lessor retains the right to defend itself in any action or actions covered by the indemnities in the Security Instrument, which in the reasonable opinion of the Ground Lessor, its directors, members, officers, agents (except Borrower), or employees, independent counsel is necessary to protect the interests of the Ground Lessor due to the failure or inability of Borrower to defend the Ground Lessor consistent with contemporary legal standards. In any such defense of itself, the Ground Lessor shall select its own counsel, and any and all reasonable out-of-pocket costs of such defense, including, without limitation, attorney and disbursement fees, court costs, and litigation expenses shall be paid by Borrower.

Notwithstanding anything contained in this Section 13 to the contrary, if (a) Lender, its successors or assigns or any of the foregoing's designee (collectively, the "**Lender Parties**") becomes owner or lender-in-possession of the Leasehold Estate or Fee Estate following a foreclosure, deed in lieu of foreclosure or similar transfer of the Leasehold Estate or the Fee Estate, or (b) a subsequent owner (the "**Subsequent Owner**") purchases the Leasehold Estate or Fee Estate from a Lender Party following the latter's foreclosure, deed in lieu of foreclosure or similar transfer of the Leasehold Estate or Fee Estate, no such Lender Party or Subsequent Owner shall have any obligation or liability to Ground Lessor under this Section 13 for any claims arising prior or subsequent to such Lender Party's or Subsequent Owner's ownership of

the Leasehold Estate or Fee Estate, as applicable. The Lender Parties and each Subsequent Owner shall only be obligated under this Section 13 for claims arising during the period in which such owner owns the Leasehold Estate.

Each signatory below hereby certifies that each of their statements and representations contained in this Rider and all their supporting documentation thereto are true, accurate, and complete, and that each signatory has read and understands the terms of this Rider. This Agreement has been made, presented, and delivered for the purpose of influencing Lender to make the Loan.

14. **Provisions Not Limiting.**

The provisions of Section 12 and Section 13 of this Rider shall be deemed in addition to, and shall not in any way limit, any provisions in the Ground Lease and Indenture protecting the interests of Ground Lessor.

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BIN 21-01  
Ord. 4539

**AMENDMENT TO LEASE AGREEMENT**

**THIS AMENDMENT TO LEASE AGREEMENT** (the "Amendment") is effective January 11, 2021, by and between **CITY OF GLADSTONE, MISSOURI** (the "Ground Lessor") and STKC PROPERTIES (the "Company").

**RECITALS**

A. Ground Lessor and STKC Properties LLC (the predecessor-in-interest to Company) entered into that certain Lease Agreement effective as of March 1, 2019 (the "Lease Agreement"), wherein STKC Properties LLC leased that certain property commonly known as Royal Park Apartments, located at 4-30 NW 72<sup>nd</sup> Street, Gladstone, Missouri 64118 (the "Project").

B. Ground Lessor and Company desire to amend the Lease Agreement as provided herein.

NOW, THEREFORE IN CONSIDERATION of the sum of One Dollar (\$1.00) and good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Ground Lessor and Company hereby amend the Lease Agreement as follows:

1. Article XV Miscellaneous Provisions of the Lease Agreement is hereby modified to include a new Section 15.11, which reads in its entirety as follows:

**Section 15.11. Lender Provisions.** Notwithstanding anything contained herein to the contrary and for so long as the Project is encumbered by mortgage loan from ORIX Real Estate Capital, LLC, a Delaware limited liability company doing business as Lument Capital, as lender (including its successors and assigns, the "Lender"), in the aggregate original principal amount not to exceed \$4,987,000.00 (the "Loan") or any portion thereof remains outstanding:

- (a) Lessor is hereby prohibited from terminating the Lease based on defaults that Lender is unable to cure, including defaults personal to the Borrower. In the event of such a default, consistent with Section 10.4(d) of the Lease, Lessor shall provide notice to Lender and Lessee, and if such default is not cured within applicable time frames set forth in the Lease, Lessor agrees that Lessor shall enter into a new Lease with Lender on substantially the same terms as the Lease.
- (b) Lessor shall give the Lender notice of any failure by Company to exercise any purchase options and Lender shall have the right to exercise any such purchase options notwithstanding the expiration of such rights. The parties acknowledge Section 11.4 of the Lease regarding the obligation to purchase the Project.
- (c) Lender shall not incur any personal liability under the Lease, unless and until Lender is the record title owner of the Project. If Lender obtains record title to the leasehold estate, such personal liability of the Lender and its assigns shall be limited to the value of their respective interests in the leasehold estate. Lender represents that its interest in the







**CONSENT**

The undersigned hereby join in the execution of this Amendment to evidence their consent to, and acknowledgment of, the terms and conditions contained herein.

**TRUSTEE:**

**SECURITY BANK OF KANSAS CITY**

By: \_\_\_\_\_ (SEAL)  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

21-01 4.539

## GROUND LESSOR'S ESTOPPEL CERTIFICATE

**SABAL CAPITAL II, LLC**, a Delaware limited liability company (together with its successors and assigns, including any subsequent holders of the Loan, "Lender"), has proposed to make a loan (the "Loan") to **APEX OAK RIDGE, LLC**, a Missouri limited liability company, and **OAK RIDGE MFT, LLC**, a Missouri limited liability company, jointly and severally, as tenants in common ("Tenant"). The Loan will be secured by, among other things, the leasehold estate (the "Leasehold Estate") in the real property described on Exhibit A hereto (the "Property"). The Loan will be secured by that certain first priority Leasehold Deed of Trust and Security Agreement (the "Security Instrument") executed by Tenant, as borrower for the benefit of Lender encumbering the Leasehold Estate and the improvements located on the premises demised under that certain Lease Agreement dated as of March 1, 2019 between **CITY OF GLADSTONE, MISSOURI**, a third class city and political subdivision duly organized and existing under the laws of the State of Missouri ("Landlord"), as lessor, and Tenant, as successor to STKC Properties LLC, a Missouri limited liability company, as lessee (as the same has been and may hereafter be further amended, supplemented, replaced or modified from time to time, collectively, the "Lease"). For the purpose of providing information to Lender and its successors and assigns, with the understanding that they will rely upon the information provided herein, effective as of March 12, 2021, the undersigned Landlord certifies, covenants and agrees, jointly and severally, as follows:

1. A true and complete copy of the Lease and of all amendments, assignments, nondisturbance agreements and subleases related thereto are attached hereto collectively as Exhibit B, and, except as reflected in Exhibit B, the Lease has not been modified or amended in any other respect.

2. The Lease is in full force and effect, and, to Landlord's knowledge, there is no existing default under the Lease, and Landlord knows of no event which, with notice or the passage of time or both, would constitute a default under the Lease.

3. There is no suit, action, proceeding or audit pending or, to the knowledge of Landlord, threatened against or affecting Landlord or the Property under the Lease at law or in equity or before or by any court, administrative agency, or other governmental authority which brings into question that the validity of the Lease or which, if determined adversely against Landlord, might result in any adverse change to the Leasehold Estate.

4. The only real property presently demised under the Lease is the Property, and, to Landlord's knowledge, the only person or entity presently having an interest in the Leasehold Estate as tenant under the Lease is Tenant.

5. The Lease commenced on March 28, 2019 and will expire pursuant to its terms on December 1, 2034. The Lease contains the following options to renew the term of the Lease: None.

6. This certification shall inure to the benefit of Lender, and its participants, and their respective successors and assigns, and all parties claiming by, through or under them, including any successor holder of the Loan now or hereafter held by Lender encumbering the Leasehold Estate, and a copy of this Ground Lessor's Estoppel Certificate may be delivered to any such party. The provisions hereof shall also inure to the benefit of any future lender providing leasehold financing to Tenant as if such future lender were a party hereto.

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Dated to be effective as of the date set forth in the first paragraph hereof.

**"LANDLORD":**

**CITY OF GLADSTONE, MISSOURI**

By: Scott Wingerson  
Name: Scott Wingerson  
Title: City Manager

**ATTEST:**

Ruth E. Bocchino  
Ruth E. Bocchino  
City Clerk, City of Gladstone, MO

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY COVERED BY LEASE**

The real property located at 18 NW 72<sup>nd</sup> Street in Gladstone, Missouri, as more specifically described below:

All that part of Tract 1 as shown on the Plat of Hamilton Heights, a subdivision in the city of Gladstone, Clay County, Missouri, described as follows:

Beginning at the Southeast corner of said Tract 1; thence North 0 degrees 35 minutes 15 seconds East in the East line of said Tract 305.0 feet to the Northeast corner thereof; thence West in the North line of said Tract 350.0 feet; thence South 0 degrees 35 minutes 15 seconds West and parallel to the East line of said Tract 305.0 feet to the South line thereto; thence East 350.0 feet to the point of beginning except the South 10.0 feet to the City of Gladstone, Missouri, except that part lying within 72nd Street.

**EXHIBIT B**

**DESCRIPTION AND COPIES OF LEASE, AMENDMENTS,  
ASSIGNMENTS, NONDISTURBANCE AGREEMENTS AND SUBLEASES**

Lease Agreement dated as of March 1, 2019 between Landlord, as lessor, and STKC Properties LLC, a Missouri limited liability company ("STKC"), as lessee, a memorandum of which Lease was dated as of March 1, 2019 and recorded in the Clay County Clerk's Office;

Assignment and Assumption Agreement dated as of March 12, 2021, whereby the Lease was assigned by STKC, as assignor, to Tenant, as assignee; and

Amendment to Lease Agreement dated as of March 12, 2021, by and between Landlord, as lessor, and Tenant, as lessee.