

BILL NO. 22-19

ORDINANCE NO. 4.596

AN ORDINANCE AUTHORIZING THE CITY OF GLADSTONE, MISSOURI, TO ENTER INTO AN ASSESSMENT CONTRACT AND AUTHORIZING AND APPROVING CERTAIN DOCUMENTS 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, the City did previously issue its industrial development revenue bonds under the Act (the "Bonds") in order for Parkside Investors, LLC, a Missouri limited liability company (together with any successors or assigns, the "Company"), to construct and improve certain real property (collectively, the "Project"); and

WHEREAS, at the request of the Company, the City desires to enter into an Assessment Contract (the "Contract") as provided herein;

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

Section 1. Public Purpose. The Council hereby finds and determines that the Project will promote the economic welfare and the development of the City, and the execution of the Contract will be in furtherance of the public purposes set forth in the Act and the completion of the Project.

Section 2. Approval and Authorization of Contract. The Contract is hereby approved in substantially the form presented to the Council at this meeting (a copy of which document shall be filed in the records of the City), and the City is hereby authorized to execute and deliver the Contract with such changes therein as shall be approved by the officials of the City executing such document, such officials' signatures thereon being conclusive evidence of their approval thereof.

Section 3. Execution of Documents. The Mayor or the City Manager of the City is hereby authorized and directed to execute the Contract 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 Contract 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 4. 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 Contract.

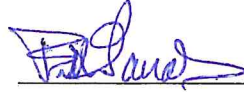
Section 5. Severability. The sections, paragraphs, sentences, clauses and phrases of this Ordinance shall be severable. In the event that any such section, paragraph, sentence, clause or phrase of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining portions of this 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 6. Governing Law. This Ordinance shall be governed exclusively by and construed in accordance with the applicable laws of the State of Missouri.

Section 7. 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.

[Signature Page Follows]

INTRODUCED, PASSED, SIGNED, AND MADE EFFECTIVE BY THE COUNCIL OF
THE CITY OF GLADSTONE, MISSOURI, THIS 23rd DAY OF MAY, 2022.



Bill Garnos, Mayor

(SEAL)

ATTEST:



Kris Keller, City Clerk

First Reading: May 23, 2022

Second Reading May 23, 2022

ASSESSMENT CONTRACT

THIS ASSESSMENT CONTRACT (this "Contract"), is made and entered into this 31st day of May, 2022 (the "Effective Date") by and among **Show Me PACE (SMP)**, a clean energy development board and political subdivision of the State of Missouri ("SMP"), **SPH Gladstone, LLC**, a Georgia limited liability company ("Lender"), **Parkside Investors, LLC**, a Missouri limited liability company] (the "Borrower") and the **City of Gladstone, Missouri**, a third class city and political subdivision duly organized and existing under the laws of the State of Missouri ("Property Owner"), and is made a part of that certain FINANCING AGREEMENT dated as of the same date made by and between Lender and Borrower, such Financing Agreement hereafter referred to as the "Loan Agreement."

WITNESSETH:

WHEREAS, Property Owner is the owner of certain real property located at 7506 North Oak Trafficway in the City of Gladstone, Missouri (the "Municipality") the further described on **Exhibit A** (the "Property"), attached hereto;

WHEREAS, Property Owner and the Borrower are parties to that certain Lease Agreement dated December 1, 2021 (the "Lease Agreement"), pursuant to which Property Owner leases the Property to Borrower and Borrower is the operator of the Property;

WHEREAS, pursuant to Section 6.2(a) of the Lease Agreement, Borrower is responsible for the payment of all taxes and assessments, general and special, and other governmental charges of any kind whatsoever that may be lawfully taxed, charged, levied, assessed or imposed upon or against or be payable for or in respect of the Property, including without limitation the PACE Special Assessments and the Annual Installments (both as defined herein);

WHEREAS, pursuant to Article 11 of the Lease Agreement, Borrower has the right to purchase the Property from Property Owner subject to satisfaction of the conditions set forth in the Lease Agreement;

WHEREAS, Municipality has adopted Ordinance Number 4.596 (the "Ordinance"), an ordinance to enable the Municipality to join SMP pursuant to the "Property Assessed Clean Energy Act," Sections §67.2800 to §67.2835, inclusive, RSMo. (the "Act");

WHEREAS, Property Owner or Borrower has obtained the written consent of all persons or entities that currently hold mortgage liens on the Property, if any, to the Loan and this Contract, both as herein defined;

WHEREAS, Borrower, pursuant to the Lease Agreement, will make energy efficiency or renewable energy improvements (as such terms are used in Section 67.2800.2 (6) & (11) of the Act) at the Property, as described on **Exhibit B** attached hereto (the "Project");

WHEREAS, Lender has agreed to make a loan to Borrower in the amount of \$8,247,407.21 (the "Loan") to be used towards the implementation of the Project;

WHEREAS, Show Me PACE has agreed to levy special assessments, collect or cause the collection of the special assessments, record such special assessments as a lien on the Property and remit payments on such special assessments to Lender to be applied to pay down the Loan, all as more particularly set forth herein;

WHEREAS, SMP is authorized to enter into this Contract pursuant to the Act and Resolution No. 2015-5, adopted by the Board of Directors of the SMP on July 15, 2015, and Resolution No. 2015-8, adopted by the Board of Directors of SMP on August 4, 2015.

NOW, THEREFORE, for and in consideration of the making of the Loan and the financing and collection arrangements between Lender, Borrower and SMP, and other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, LENDER, PROPERTY OWNER and SMP agree as follows:

Defined Terms. The following capitalized terms used in this Contract shall have the meanings defined or referenced below or in the Recitals above:

"Annual Installment" means the portion of the Loan Amount that is due in a particular year as more fully described in Sections 2 and 5 hereof.

"Collection Agreement" means the Collection Agreement dated as of May 31, 2022, between the SMP and the County Collector, wherein the SMP agrees to collect or cause the collection of the PACE Special Assessments on behalf of the County Collector.

"County Collector" means the office of the Clay County, Missouri, Collector.

"County Recorder" means the County Recorder for Clay County, Missouri.

"Foreclosure Proceeds" means the proceeds resulting from the disposition of the Property by SMP in a foreclosure.

"Lender Parties" shall have the meaning set forth in Section 13(a) hereof.

"Liabilities" shall have the meaning set forth in Section 11(a) hereof.

"Loan" shall have the meaning set forth in the Recitals above.

"Loan Amount" means the outstanding amount of all principal under the Note, accrued but unpaid interest and any applicable penalties, costs, fees, charges, late payment charges, default interest rate charges, prepayment premiums or administrative expenses related to the Loan, including without limitation, the administrative fees set forth in Section 13 hereof and any and all other administrative fees to be paid to SMP or Lender by Property Owner in connection with the Loan.

"Loan Agreement" shall have the meaning set forth in the Preamble above.

"Note" shall have the meaning given such term in the Loan Agreement.

"PACE Special Assessments" means the aggregate amount of all Annual Installments of the Loan Amount, which Annual Installments shall be levied by SMP as municipal special assessments pursuant to Section 67.2815.5 of the Act.

"SMP Parties" shall have the meaning set forth in Section 11(a) hereof.

"Tax Year" means the period from January 1 through the following December 31.

Execution of Contract by Property Owner

The execution of this Contract by the City of Gladstone, Missouri, a third class city and political subdivision duly organized and existing under the laws of the State of Missouri (the "City"), is an accommodation due to the current ownership of the Property under the provisions of Chapter 100, RSMo. Unless and until such time the City becomes the owner and operator of the Property (for example, if the Lease Agreement is terminated and the City does not deed the Property back to Borrower as contemplated in the Lease Agreement), City will have no responsibility for the payment of any Annual Installment, the Loan Amount or any other amounts under this Contract, the Loan Agreement, the Note or otherwise, and shall have no responsibility to any party hereto with respect to the enforcement of the provisions of the Lease. The provisions hereof shall be interpreted to that effect.

Payments. The Loan Amount shall be payable in Annual Installments. The Loan shall bear interest, including default interest, at the rates set forth in the Note and payments shall be due under the Note and the Loan Agreement as more fully described therein and in Section 5 of this Contract, ending upon payment in full of the Loan Amount and all other charges, fees, expenses and other amounts due under this Contract, the Loan Agreement and the Note. The amounts of the Annual Installment are based on a Loan Amount of \$8,247,407.21. The Loan shall be fully amortized over the twenty (20) year term of the Loan, and shall be repaid on the terms set forth in this Contract, the Loan Agreement and the Note. Each year during the term of this Contract, Lender shall supply SMP with the amount of the Annual Installment for such year by delivering a completed Lender Installment Certificate in the form attached hereto as Exhibit D on or before September 30 of such year. Should Lender fail to deliver a Lender Installment Certificate on or before September 30 of any year, the Annual Installment shall be presumed to be the same as the Annual Installment for the previous year, with any surplus or shortfall to be addressed by adjusting the amount of the subsequent year's Annual Installment.

Consent to PACE Special Assessments

By entering into the Contract, SMP hereby agrees to enforce the PACE Special Assessments and levy and impose the Annual Installments as special assessments pursuant to the Act. Upon execution of this Contract, SMP will cause this Contract to be recorded in the office of the County Recorder against the Property.

Property Owner hereby agrees and acknowledges: (i) that Property Owner has received or will receive a special benefit by financing the Project through SMP that equals or exceeds the total amount of the PACE Special Assessments (ii) that the Property is subject to the PACE Special Assessments and consents to the levy of the Annual Installments; (iii) that Borrower shall pay the Annual Installments when due pursuant to the terms set forth in this Contract, the Loan Agreement and the Note; (iv) that Annual Installments of the PACE Special Assessments are a lien on the Property as provided in the Act and the Ordinance; and (v) the PACE Special Assessments shall have the same lien priority as ad valorem real property taxes.

Term. This Contract shall remain in full force and in effect until the Loan Amount and all other charges, fees, expenses and other amounts due under this Contract, the Loan Agreement and the Note have been paid in full.

Annual Installments

During the Term of this Contract, SMP shall collect the Annual Installments on behalf of the County Collector pursuant to the Collection Agreement. However, in the event that the County Collector collects the Annual Installments, SMP, the Borrower, the Property Owner and the Lender agree that the County Collector may charge and collect a collection fee in the amount prescribed by law in addition to the Annual Installment shown on **Exhibit C**.

The aggregate amount of all PACE Special Assessments shall equal the Loan Amount as shown on **Exhibit C** attached and incorporated by this reference. SMP shall diligently levy, bill and collect the special assessments pursuant to this Contract. The amount of the initial Annual Installment is set forth on **Exhibit C**. The respective amounts of each of the Annual Installment are set forth on Exhibit C.

Borrower agrees to pay pursuant to the Lease Agreement the property tax bills and Annual Installments for the Property during the term of this Contract in a timely fashion so as to avoid any default or delinquency in such payment, but not later than December 31 of each year.

If Borrower fails to pay pursuant to the Lease Agreement, all or part of any Annual Installment when due, the parties hereto acknowledge and agree that (i) default interest on the unpaid amounts of the Annual Installments shall accrue in favor of Lender as set forth in the Note, (ii) such default interest shall be added to the PACE Special Assessments and shall be included as part of the Annual Installments due thereafter unless and until all such accrued and unpaid default

interest is paid in full, and (iii) such default interest shall be in addition to any and all penalties and interest that may be imposed by or accrue in favor of SMP as a result of Borrower's failure to pay real estate or other property taxes or other assessments on the Property. In addition, Annual Installments shall continue to be levied as special assessments notwithstanding Borrower's failure to pay all or part of any past Annual Installment, such that SMP shall continue to levy Annual Installments, including default interest to be paid to Lender, until the Loan Amount, including all accrued and unpaid interest, is paid in full.

Borrower hereby acknowledges and agrees that failure to pay any Annual Installment of the PACE Special Assessments, like failure to pay any property taxes pertaining to the Property, will result in penalties and interest accruing in favor of Lender on the amounts due, in addition to penalties and interest that may accrue in favor of SMP. In addition, SMP shall have the right to initiate a foreclosure action on the Property as a result of any delinquent Annual Installments of the PACE Special Assessments. Property Owner and Borrower agree not to seek a compromise of any delinquent Annual Installment pursuant to Section 140.120, RSMo. or any other statute.

The parties hereto further acknowledge and agree that SMP and Lender are each an intended third party beneficiary of Section 6.2(a) of the Lease and may enforce the same against Borrower.

Loan Amount; Prepayment

Subject to the terms and conditions in the Loan Agreement, Lender agrees to disburse to Borrower the Loan Amount.

The Loan may only be prepaid as set forth in the Loan Agreement. In the event of any permitted prepayment, Lender shall certify to Property Owner, Borrower and SMP the aggregate amount due on the Loan, including principal, interest, and fees and any prepayment premium, within thirty (30) days of receipt of a written request for prepayment from Property Owner or Borrower. SMP shall certify to Borrower and Lender any and all amounts collected by SMP and not yet remitted to Lender within fifteen (15) days of receipt of a written request for prepayment by Borrower, as well as any administrative fees payable, but not yet collected, as of the anticipated prepayment date. To the extent that SMP has received any funds from Borrower prior to Borrower's requested date of prepayment, but has not yet remitted the same to Lender, SMP shall remit the same to Lender on or before the date of Borrower's requested date of prepayment. No prepayment shall be effective, and no funds paid by Borrower or SMP will be applied to the Loan Amount, unless and until Lender receives the full Loan Amount from SMP and Borrower. Borrower acknowledges that failure of SMP to remit any funds held by SMP on or prior to Borrower's requested date of prepayment may result in additional interest due in connection with such prepayment.

Without the prior written consent of Lender, which consent may be given or withheld in Lender's sole discretion, the Loan may not be prepaid in part and, if such consent is given, any such partial prepayment must be made in strict compliance with the terms and conditions set forth in such written consent, which terms and conditions may include a prepayment penalty. Any partial prepayment in violation of this provision will not be accepted by Lender. Notwithstanding the foregoing, if Borrower decides to pay any Annual Installment in full, as opposed to payment on an installment basis, for any given year, as applicable.

Collection of Annual Installments; Payments to Lender

SMP shall follow reasonable and customary practices to collect the Annual Installments once levied, including assessing penalties and charging interest.

SMP agrees to separately account for any Annual Installment payments collected or otherwise received for the Property. SMP shall remit the collected Annual Installment payments to Lender in accordance with the payment schedule set forth in this Contract, but in no event later than ten (10) days after receipt.

Delinquent Annual Installment

If Borrower becomes delinquent in the payment of an Annual Installment, then SMP, following reasonable and customary practices, shall begin a foreclosure proceeding on the Property at the earliest times allowed under the Missouri Revised Statutes. Such foreclosure proceeding shall be prosecuted subject to the following:

SMP shall notify Lender and Property Owner in writing at least 15 days prior to initiating a foreclosure proceeding.

SMP hereby agrees to commence and diligently prosecute to completion, or cause to be commenced and diligently prosecuted to completion, such action to foreclose on the lien of the PACE Special Assessments as soon as legally permissible under the Missouri Revised Statutes.

SMP shall provide written reports to Lender regarding the status of the foreclosure proceeding no less frequent than bi-monthly.

At the election of Lender, Lender may assume control of any litigation or foreclosure proceeding initiated by SMP pursuant to this Section. If Lender elects to assume control, SMP shall take whatever actions requested by Lender regarding proceeding with, settling or dismissing any proceedings.

After a sale of the Property in connection with any foreclosure action described hereunder, SMP shall ensure that the Foreclosure Proceeds are processed as follows:

First, net proceeds from the sale are to be determined by subtracting from the sale proceeds the following:

All costs incurred by SMP in pursuing the foreclosure action;

All costs incurred by Lender in connection with the foreclosure action;

Any administrative fees to be paid to SMP under this Contract to the extent any such fees remain due and owing;

Any payments in lieu of taxes ("PILOTS") then due and owing under the Performance Agreement dated December 1, 2021 between Property Owner and Borrower, and

All actual costs, including personnel costs associated therewith, for maintenance costs, board-up costs, clean-up costs, demolition costs and all other costs that are reasonable and necessary to sell the Property, including real estate and broker fees paid in connection with the sale or lease of the Property.

Any remaining proceeds shall be paid over to Lender up to the Loan Amount, including all interest, fees and penalties. All proceeds remaining after payment to Lender of the Loan Amount, including all interest, fees and penalties, shall be retained by SMP, in accordance with applicable law.

After a foreclosure sale of the Property in connection with any delinquent Annual Installment, if the Loan is not repaid in full from the Foreclosure Proceeds, the PACE Special Assessment lien shall remain on the Property in the amount equal to the unpaid balance of the Loan, and Annual Installments shall continue to be due and payable by the Property Owner in accordance with the payment schedule attached to this Contract.

Other Obligations Payable from Special Charges

SMP will not issue or incur any obligations payable from the proceeds of the PACE Special Assessments nor voluntarily create or cause to be created any debt, lien, pledge, assignment, encumbrance or other charge upon the PACE Special Assessments or the Annual Installments, except for administrative fees as provided in this Agreement and fees, commissions, costs and other charges payable for the marketing and sale or lease of the Property in the event SMP forecloses on the Property

SMP Representations regarding Loan and Loan Documents. SMP hereby represents and warrants to Lender and to Property Owner that (i) it is and will be duly authorized under all applicable laws to execute this Contract, (ii) this Contract is and will be the valid and legally enforceable obligation of SMP, enforceable in accordance with its terms except to the extent that enforcement thereof may be subject to bankruptcy and other similar laws affecting creditors' rights generally, (iii) this Contract and the dollar amount and all other terms and conditions of the Loan as set forth herein, the Loan Agreement and the Note are in compliance with the provisions of the Act and the Ordinance, and (iv) SMP will provide a copy of this Contract to the local county assessor and county collector and will cause a copy of this Contract to be recorded in the real estate records maintained by the County Recorder. SMP shall at all times, to the extent permitted by law, defend, preserve and protect the PACE Special Assessments created by this Contract and all the rights of Lender hereunder against all claims and demands of all other persons whomsoever.

Re-Levy of Special Charge

If SMP shall have omitted to make, assess or collect any PACE Special Assessments or Annual Installments when it is required by this Contract or by the Act or Ordinance to have done so, then SMP shall either: (i) take all necessary steps to cause new PACE Special Assessments (equal in amount to those not assessed, levied or collected plus interest and penalties, if any, thereon) to be levied against the Property in addition to those PACE Special Assessments otherwise to be levied or assessed against the Property, or (ii) in its sole discretion, pay to Lender the amount of the PACE Special Assessments not collected from legally available moneys.

Waiver of Claims Against SMP

For and in consideration of SMP's execution and delivery of this Contract, Property Owner, for itself and for its successor-in-interest to the Property and for any one claiming by, through or under Property Owner, hereby waives the right to recover from the SMP and any and all officials, agents, employees, attorneys and representatives of SMP (collectively, the "SMP Parties"), and fully and irrevocably releases the SMP Parties from, any and all claims, obligations, liabilities, causes of action or damages including attorneys' fees and court costs, that Property Owner may now have or hereafter acquire against any of the SMP Parties and accruing from or related to (i) this Contract, (ii) the disbursement of the Loan Amount, (iii) the levy and collection of the Annual Installments, (iv) the imposition of the lien of the PACE Special Assessments, (v) the performance of the Project, (vi) the Project, (vii) any damage to or diminution in value of the Property that may result from construction or installation of the Project, (viii) any injury or death that may result from the construction or installation of the Project, (ix) the selection of manufacturer(s), dealer(s), supplier(s), contractor(s) and/or installer(s), and their action or inaction with respect to the Project, (x) the merchantability and fitness for any particular purpose, use or application of the Project, (xi) the amount of energy savings resulting from the Project or any assured performance guaranty, (xii) the workmanship of any third parties under any agreements including any construction contracts, and (xiii) any other matter with respect to the Program (collectively, the "Liabilities"). This release includes claims, obligations, liabilities, causes of action and damages of which Property Owner is not presently aware or which Property Owner does not suspect to exist which, if known by Property Owner, would materially affect Property Owner's release of the SMP Parties. Notwithstanding the foregoing, Property Owner's release under this section shall not extend to Liabilities arising from SMP's intentional default, gross negligence or willful misconduct.

The waivers and releases by Property Owner contained in this Section shall survive the disbursement of the Loan Amount or any portion thereof, the payment of the Loan Amount in full, the transfer or sale of the Property by Property Owner and the termination of this Contract.

Waiver of Claims Against Lender

For and in consideration of Lender's execution and delivery of this Contract, Property Owner, for itself and for its successor-in-interest to the Property and for any one claiming by, through or under Property Owner, hereby waives the right to recover from the Lender and any and all officials, agents, employees, attorneys and representatives of Lender

(collectively, the "Lender Parties"), and fully and irrevocably releases the Lender Parties from, any and all claims, obligations, liabilities, causes of action or damages including attorneys' fees and court costs, that Property Owner may now have or hereafter acquire against any of the Lender Parties and accruing from or related to the Liabilities, as defined above. This release includes claims, obligations, liabilities, causes of action and damages of which Property Owner is not presently aware or which Property Owner does not suspect to exist which, if known by Property Owner, would materially affect Property Owner's release of the Lender Parties. Notwithstanding the foregoing, Property Owner's release under this Section shall not extend to Liabilities arising from Lender's intentional default, gross negligence or willful misconduct.

The waivers and releases by Property Owner contained in this Section shall survive the disbursement of the Loan Amount or any portion thereof, the payment of the Loan Amount in full, the transfer or sale of the Property by Property Owner and the termination of this Contract.

Waiver of Claims Against Property Owner

For and in consideration of Property Owner's execution and delivery of this Contract, unless and until such time the City becomes the owner and operator of the Property (for example, if the Lease Agreement is terminated), SMP, the Borrower and Lender for themselves and for any successor-in-interest and for anyone claiming by, through or under such entities (collectively, the "Releasing Parties"), hereby waive the right to recover from the City and any and all officials, agents, employees, attorneys and representatives of City (collectively, the "City Parties"), and fully and irrevocably releases the City Parties from, any and all claims, obligations, liabilities, causes of action or damages including attorneys' fees and court costs, that Releasing Parties may now have or hereafter acquire against any of the City Parties and accruing from or related to (i) this Contract, (ii) the disbursement of the Loan Amount, (iii) the levy and collection of the Annual Installments, (iv) the imposition of the lien of the PACE Special Assessments, (v) the performance of the Project, (vi) the Project, (vii) any damage to or diminution in value of the Property that may result from construction or installation of the Project, (viii) any injury or death that may result from the construction or installation of the Project, (ix) the selection of manufacturer(s), dealer(s), supplier(s), contractor(s) and/or installer(s), and their action or inaction with respect to the Project, (x) the merchantability and fitness for any particular purpose, use or application of the Project, (xi) the amount of energy savings resulting from the Project or any assured performance guaranty, (xii) the workmanship of any third parties under any agreements including any construction contracts, and (xiii) any other matter with respect to the Program (collectively, the "Liabilities"). This release includes all claims, obligations, liabilities, causes of action and damages, known or unknown, by the City Parties or the Releasing Parties.

The waivers and releases by the Releasing Parties contained in this Section shall survive the disbursement of the Loan Amount or any portion thereof, the payment of the Loan Amount in full, the transfer or sale of the Property by City and the termination of this Contract.

Indemnification of Property Owner by Borrower

The Borrower shall indemnify and save and hold harmless the City Parties from and against all claims, demands, costs, liabilities, damages or expenses, including reasonable attorneys' fees, by or on behalf of any person, firm or corporation arising from (i) this Contract, (ii) the disbursement of the Loan Amount, (iii) the levy and collection of the Annual Installments, (iv) the imposition of the lien of the PACE Special Assessments, (v) the performance of the Project, (vi) the Project, (vii) any damage to or diminution in value of the Property that may result from construction or installation of the Project, (viii) any injury or death that may result from the construction or installation of the Project, (ix) the selection of manufacturer(s), dealer(s), supplier(s), contractor(s) and/or installer(s), and their action or inaction with respect to the Project, (x) the merchantability and fitness for any particular purpose, use or application of the Project, (xi) the amount of energy savings resulting from the Project or any assured performance guaranty, (xii) the workmanship of any third parties under any agreements including any construction contracts, and (xiii) any other matter with respect to the

Program and from the conduct or management of, or from any work or thing done in or on the Project during the Lease Term, and against and from all claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, arising during the term hereof; provided, however, the indemnification contained in this section shall not extend to the City Parties to the extent that such claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, are (i) the result of work being performed at the Project by employees or agents of the City, or (ii) the result of gross negligence or willful misconduct by the City Parties. Upon written notice from the City Parties of any such claims or demand, the Borrower shall defend them or either of them in any such action or proceeding; provided, that the City shall cooperate with the Borrower and provide reasonable assistance in such defense. All costs related to the defense of the City Parties shall be paid by the Borrower. This Section shall survive any termination of this Contract or the Lease.

Administrative Fees

Borrower shall pay a one-time administration processing fee to SMP in the amount of 1% of the PACE Amount, up to a maximum of \$32,000.00, and set forth on Schedule I. Such payment is due concurrent with closing.

The Annual Installments shall include an annual administrative fee to be collected by SMP in the amount of Three Hundred Twenty Five and 0/100 Dollars (\$325.00) per year. This fee shall be included, on an annual basis, in the Annual Installments to be set forth on Schedule of Annual Installments attached hereto as Exhibit C.

Project Completion. Upon completion of the Project, Borrower will submit to SMP and Lender a written certification from Property Owner and the contractor(s), if any, that performed the work incident to the construction and installation of the Project, stating the actual cost of the Project. If the actual cost of the Project is less than the Loan Amount advanced by the Lender, the Borrower shall immediately repay to SMP the excess of the amount advanced over such actual cost of the Project and SMP shall remit the full amount thereof to Lender.

Notices

All notices, requests, demands and other communications hereunder shall be given in writing and shall be: (a) personally delivered; (b) sent by registered or certified mail, return receipt requested, postage prepaid; or (c) sent to the parties at their respective addresses indicated herein by private overnight mail courier service. The respective addresses to be used for all such notices, demands or requests are as follows:

If to Property Owner, to:

City of Gladstone, Missouri

7010 North Holmes

Gladstone, Missouri 64118

Attn: City Manager

(with a copy to)

Richard C. McConnell

Armstrong Teasdale LLP

2345 Grand Blvd, Suite 1500

Kansas City, Missouri 64108

or to such other person or address as Property Owner shall furnish to Lender and SMP in writing.

If to Lender, to:

SPH Gladstone, LLC

3500 Lenox Road, Suite 625

Atlanta, Georgia 30326

Attention: Lisa Nordel

(with a copy to)

Polsinelli PC

900 West 48th Place, Suite 900

Kansas City, MO 64112

Attention: Daniel W. Graves, Esq.

or to such other person or address as Lender shall furnish to Property Owner and SMP in writing.

If to SMP, to:

Missouri Energy Initiative

238 East High Street, 3rd Floor

Jefferson City, MO 65101

Attention: Josh Campbell, J.D.

or to such other person or address as SMP shall furnish to Property Owner and Lender in writing.

If to Borrower, to:

Parkside Investors, LLC

1539 Swift Avenue

North Kansas City, Missouri 64116

Attention: Joseph Christensen

(with a copy to)

Withers, Brant, Igoe & Mullennix P.C.

2 South Main Street

Liberty, Missouri 64068

Attention: W. Isaac Freestone, Esq.

or to such other person or address as SMP shall furnish to Property Owner and Lender in writing.

If personally delivered, such communication shall be deemed delivered upon actual receipt (or refusal to accept delivery); if sent by registered or certified mail, such communication shall be deemed delivered upon actual receipt (or refusal to accept delivery); and if sent by overnight courier pursuant to this Section, such communication shall be deemed delivered upon receipt. Any party to this Contract may change its address for the purposes of this Contract by giving notice thereof in accordance with this Section.

Assignment or Sale by Lender. Property Owner and SMP agree that Lender may, at its option, assign the Loan, and its rights and obligations under the Loan (including this Contract, the Note and the other Loan Documents). Property Owner, SMP and Lender acknowledge and agree that there are no limitations on the right of Lender to assign its interests in the Loan.

Supremacy. In the event of any conflict, inconsistency or ambiguity between the provisions of this Contract and the provisions of the Loan Agreement, the provisions of this Contract shall control.

Compliance with Laws. Lender and Property Owner hereby agree to comply with all applicable federal, state and local lending and disclosure requirements and with the provisions of the Act.

Counterparts. This Contract may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed a single agreement.

Amendment. This Contract may be amended only by a writing signed by Property Owner, Lender and SMP.

Severability. If any one or more of the provisions of this Contract shall be found to be invalid, illegal or unenforceable in any respect of to any extent, such finding shall not affect the validity, legality or enforceability of the remaining provisions of this Contract.

Transferability. Property Owner, Lender and SMP agree that the obligations of this Contract are covenants that shall run with the land and be binding on all future owners of the Property.

Effect of Subdivision of Property. No subdivision of the Property subject to this Contract shall be valid unless an amendment to this Contract divides the total Annual Assessment due between the newly subdivided parcels pro rata to the special benefit realized by each subdivided parcel.

Waiver. THIS CONTRACT REFLECTS THE PROPERTY OWNER'S AGREEMENT TO THE IMPOSITION OF THE PACE SPECIAL ASSESSMENTS AND THE LIEN OF THE PACE SPECIAL ASSESSMENTS. THE PROPERTY OWNER HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW ANY OTHERWISE APPLICABLE REQUIREMENTS OF THE MISSOURI CONSTITUTION OR ANY OTHER PROVISION OF MISSOURI LAW FOR THE IMPOSITION OF THE PACE SPECIAL ASSESSMENTS. THE PROPERTY OWNER HEREBY WAIVES ITS RIGHT TO REPEAL THE PACE SPECIAL ASSESSMENTS BY INITIATIVE OR ANY OTHER ACTION, OR TO FILE ANY LAWSUIT OR OTHER PROCEEDING TO CHALLENGE THE PACE SPECIAL ASSESSMENTS OR ANY ASPECT OF THE PROCEEDINGS OF SMP, THE COUNTY COLLECTOR AND LENDER UNDERTAKEN IN CONNECTION WITH THE PROGRAM. THE PROPERTY OWNER HEREBY AGREES THAT SMP AND LENDER SHALL HAVE NO RESPONSIBILITY FOR THE INSTALLATION, OPERATION AND MAINTENANCE OF THE PROJECT UNLESS AND UNTIL EITHER OR BOTH OF

THEM BECOME THE LESSEE UNDER THE LEASE. THE PROPERTY OWNER HEREBY ACKNOWLEDGES THAT THE VALIDITY OF THE PACE SPECIAL ASSESSMENTS IS NOT DEPENDENT ON WHETHER THE PROJECT IS PROPERLY INSTALLED, OPERATED, MAINTAINED OR PERFORMS AS EXPECTED. NOTWITHSTANDING THE FOREGOING, CITY SHALL HAVE NO RESPONSIBILITY FOR PAYMENT OF THE PACE SPECIAL ASSESSMENTS OR ANY OTHER AMOUNT HEREUNDER UNTIL SUCH TIME AS CITY BECOMES THE OWNER AND OPERATOR OF THE PROPERTY (FOR EXAMPLE, IF THE LEASE AGREEMENT IS TERMINATED).

Executed as of the date set forth above.

PROPERTY OWNER:

City of Gladstone, Missouri, a third class city and
political subdivision duly organized and existing
under the laws of the State of Missouri

By: Scott Wingerson

Name: Scott Wingerson

Title: City Manager

LENDER:

**SHP GLADSTONE, LLC, A GEORGIA LIMITED
LIABILITY COMPANY**

By: 

Name: Jatin Desai

Title: Authorized Signatory

ACKNOWLEDGMENT

STATE OF GEORGIA

)

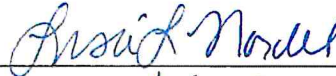
) SS.

)

COUNTY OF Fulton

On this 25th day of May, 2022, before me, the undersigned, a Notary Public, appeared **JATIN DESAI**, to me personally known, who, being by me duly sworn, did say that he is an Authorized Signatory of **SHP GLADSTONE, LLC**, a Georgia limited liability company, and that said instrument was signed on behalf of said board by authority of its members, and said individual acknowledged said instrument to be executed for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.



Printed Name: Lisa L. Nordel

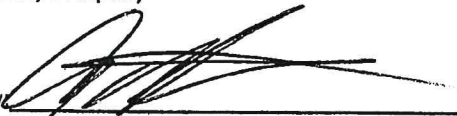
Notary Public in and for said State

Commissioned in Georgia

(SEAL)

My commission expires: 12/25/2023.

PARKSIDE INVESTORS, LLC, a Missouri limited liability company

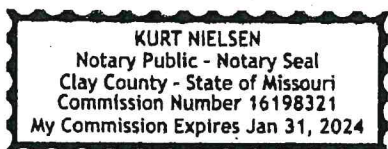
By: 
Name: Joseph Christensen
Title: Authorized Member


ACKNOWLEDGMENT

STATE OF MISSOURI)
COUNTY OF Clay) ss.
)

On this 27 day of May, 2022, before me, the undersigned, a Notary Public, appeared Joseph Christensen, to me personally known, who, being by me duly sworn, did say that he is the Authorized Member of PARKSIDE INVESTORS, LLC, Missouri limited liability company, and that said instrument was signed on behalf of said entity by authority of its members, and said individual acknowledged said instrument to be executed for the purposes therein stated and as the free act and deed of said entity.


IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.




Printed Name: Kurt Nielsen
Notary Public in and for said State
Commissioned in Missouri

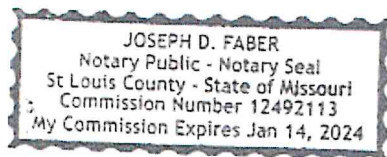
(SEAL)

My commission expires: 1/31/24

By: 
Name: Joshua Campbell
Title: Administrator

STATE OF MISSOURI)
)
) SS.
COUNTY OF COLE - ST. LOUIS)

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.



Printed Name: Joseph D. Tasa
Notary Public in and for said State
Commissioned in St. Louis

My commission expires: 1.14.24

EXHIBIT A

Legal Description of Property

LOT 1, PARKSIDE AT HOBBY HILL, A SUBDIVISION IN GLADSTONE, CLAY COUNTY, MISSOURI.

ASSESSOR'S PARCEL NUMBER (APN): 13609000102200

TAX CODE: 74-20-00-03-00-00-00-01-01-00-00-00

EXHIBIT B

Description of Project

1. BUILDING ENVELOPE
2. LIGHTING
3. PLUMBING
4. HEATING, VENTILATION AND AIR CONDITIONING

EXHIBIT C

SCHEDULE OF ESTIMATED INITIAL ANNUAL INSTALLMENT

C-PACE Installment Date	Beginning Balance	Total Payment	Interest Payment	Principal Payment	Capitalized Interest	Ending Balance	Annual District Fees	Total C-PACE Payment
5/31/2022	\$8,247,407.21	\$-	\$-	\$-	\$1,190,719.42	\$8,247,407.21		
12/31/2024	\$8,247,407.21	\$233,350.47	\$-	\$233,350.47	\$-	\$8,014,056.74	\$325.00	\$233,675.47
12/31/2025	\$8,014,056.74	\$694,517.99	\$446,894.97	\$247,623.02	\$-	\$7,766,433.71	\$325.00	\$694,842.99
12/31/2026	\$7,766,433.71	\$694,517.99	\$433,086.55	\$261,431.45	\$-	\$7,505,002.27	\$325.00	\$694,842.99
12/31/2027	\$7,505,002.27	\$694,517.99	\$418,508.11	\$276,009.88	\$-	\$7,228,992.39	\$325.00	\$694,842.99
12/31/2028	\$7,228,992.39	\$694,517.99	\$404,221.16	\$290,296.84	\$-	\$6,938,695.55	\$325.00	\$694,842.99
12/31/2029	\$6,938,695.55	\$694,517.99	\$386,928.65	\$307,589.35	\$-	\$6,631,106.21	\$325.00	\$694,842.99
12/31/2030	\$6,631,106.21	\$694,517.99	\$369,776.27	\$324,741.72	\$-	\$6,306,364.48	\$325.00	\$694,842.99
12/31/2031	\$6,306,364.48	\$694,517.99	\$351,667.41	\$342,850.58	\$-	\$5,963,513.90	\$325.00	\$694,842.99
12/31/2032	\$5,963,513.90	\$694,517.99	\$333,459.82	\$361,058.17	\$-	\$5,602,455.72	\$325.00	\$694,842.99
12/31/2033	\$5,602,455.72	\$694,517.99	\$312,414.72	\$382,103.27	\$-	\$5,220,352.45	\$325.00	\$694,842.99
12/31/2034	\$5,220,352.45	\$694,517.99	\$291,107.15	\$403,410.84	\$-	\$4,816,941.61	\$325.00	\$694,842.99
12/31/2035	\$4,816,941.61	\$694,517.99	\$268,611.40	\$425,906.60	\$-	\$4,391,035.01	\$325.00	\$694,842.99
12/31/2036	\$4,391,035.01	\$694,517.99	\$245,532.04	\$448,985.95	\$-	\$3,942,049.06	\$325.00	\$694,842.99
12/31/2037	\$3,942,049.06	\$694,517.99	\$219,823.99	\$474,694.01	\$-	\$3,467,355.06	\$325.00	\$694,842.99
12/31/2038	\$3,467,355.06	\$694,517.99	\$193,353.20	\$501,164.79	\$-	\$2,966,190.27	\$325.00	\$694,842.99
12/31/2039	\$2,966,190.27	\$694,517.99	\$165,406.30	\$529,111.69	\$-	\$2,437,078.58	\$325.00	\$694,842.99
12/31/2040	\$2,437,078.58	\$694,517.99	\$136,273.31	\$558,244.68	\$-	\$1,878,833.89	\$325.00	\$694,842.99
12/31/2041	\$1,878,833.89	\$694,517.99	\$104,771.08	\$589,746.91	\$-	\$1,289,086.99	\$325.00	\$694,842.99
12/31/2042	\$1,289,086.99	\$694,517.99	\$71,884.50	\$622,633.49	\$-	\$666,453.50	\$325.00	\$694,842.99
12/31/2043	\$666,453.50	\$703,617.53	\$37,164.04	\$666,453.50	\$-	\$-	\$325.00	\$703,942.53

The above PACE Special Assessments and Estimated Initial Annual Installments are based on the following assumptions:

1. The lender disburses all loan proceeds to the property owner or disbursing agent (as defined in the Loan Agreement) on the date Show Me PACE executes this contract. Interest accrues from the date of disbursement at the initial interest rate. Property owner acknowledges that an amount equal to all interest that shall accrue from the date of disbursement until the date of the anticipated receipt of the initial annual installment by the lender, based upon payments made on a ten (10) installment basis, shall be disbursed to lender at closing.
2. After the initial annual installment, Show Me PACE will adjust the PACE special assessments and the subsequent annual installments, if necessary, to reflect the actual PACE special assessments based upon any change in interest rate, as certified to Show Me PACE by the lender.

EXHIBIT D

LENDER'S FORM OF INSTALLMENT CERTIFICATION

Borrower	Property Tax Key No.	Date of PACE Loan	Annual Installment/ Special Charge	Interest Rate for Next Year	Number of Installments Remaining	Outstanding Loan Amount as of date of Installment Certification

The undersigned, an authorized representative of the lender hereby certifies that the information contained in this Installment Certification is true and accurate, and may be relied upon by Show Me PACE in connection with that certain Loan Agreement and those certain Assessment Contracts as detailed above.

LENDER: _____

By:	Date:
Printed Name:	Title:

SCHEDULE I

Fee Schedule

Program Fee	\$32,000.00
Lender Origination Fee	\$82,474.00
15-22, Inc. (Broker Fee)	\$123,711.00
Rainstar Capital Fee (Broker Fee)	\$82,474.00
Prepaid Capitalized Interest	\$1,190,719.42
Lender Third Party Expenses	\$22,624.00



May 18, 2022

Scott Wingerson
City Manager
7010 North Holmes Street
Gladstone, Missouri 64118

RE: May 23, 2022, City Council Meeting Agenda

Dear Mr. Wingerson,

First and foremost, I want to express our sincerest gratitude and excitement for the Parkside Apartment Project and partnership with the City of Gladstone. We are pleased to be moving forward with both phases of the project to offer more quality housing for the City of Gladstone.

We have been working diligently to deliver a project that has a meaningful impact for the community, future generations, and minimal impact on our climate, further advancing the City of Gladstone. As such, we have partnered with a financing group to obtain a ShowMe Property Assessed Clean Energy (PACE) loan. This type of financing provides funds to build this project to meet energy star certification as well as seeking a NGBS Green Bronze certification. This community will not only be a great place to live but will also give back to the residents and environment for years to come.

This brings me to the point of my letter and our urgency in obtaining City Council approval on May 23, 2022. We have reached a critical point with rising inflation, interest rates, construction costs, and timelines all of which have been out of our control. If we are unable to have this matter before the City Council on Monday, May 23, 2022, and close on or before May 31, 2022, we will lose our locked-in interest rate on this loan, resulting in the project's ability to provide the high end finishes and thoughtful amenities we desire. As such, we respectfully request that this matter be placed on the City Council's agenda for Monday, May 23, 2022.

Working with you and the City staff has been one of the highlights of my career and with the approval of this matter, we look forward to continue working with the City in the fulfillment of this great project. Please feel free to reach out to me with any questions.

Sincerely,

Joseph Christensen

Digitally signed by Joseph Christensen
DN: cn=US, E=joe@cardinalcrest.com,
O=Cardinal Crest Commercial, CN=Joseph
Christensen
Reason: I am approving this document
Date: 2022.05.19 10:15:30 -0500

Joe Christensen
CARDINAL CREST



Request for Council Action

RES ☐ # City Clerk Only

BILL ☒ # 22-19

ORD ☐ # 4.596

Date: 5/19/2022

Department: General Administration

Meeting Date Requested: 5/23/2022

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

Subject: Parkside Investors request for an assessment contract related to PACE financing

Background: The City previously issued Industrial Revenue Bonds related to the Parkside at Hobby Hill development project. The developer wishes to finance part of the project through the Property Assessed Clean Energy Program. This program will insure that the development is environmentally friendly. In order for the developer to participate in this program, certain documents are required by PACE. These documents acknowledge the transaction and form of financing, but in no way obligate the City to perform.

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 \$

Public/Board/Staff Input:

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

Scott Wingerson
Department Director/Administrator

JM
City Attorney

City Manager