MUNICIPAL ORDER 21-2025

A MUNICIPAL ORDER AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE A MEMORANDUM OF AGREEMENT WITH 54 GRAND LLC PROVIDING THAT THE CITY SHALL REIMBURSE 54 GRAND LLC SEVENTY-FIVE PERCENT (75%) OF THE TOTAL AD VALOREM (EXCLUDING SCHOOL TAX), GENERAL FUND NET PROFITS, AND GENERAL FUND OCCUPATIONAL TAX REVENUES DERIVED FROM PROPERTY LOCATED AT 3001 HIGHWAY 54 CONTAINING 14.183 ACRES, MORE OR LESS, OVER A DESIGNATED PERIOD OF AT LEAST FIVE (5) YEARS.

WHEREAS, 54 Grand LLC will acquire real property consisting of 14.183 acres, more or less, located at 3001 Highway 54 (hereafter "the Property"); and

WHEREAS, 54 Grand LLC intends to develop the Property for commercial purposes, which will have substantial benefit to the citizens of Owensboro, and the City desires to provide an incentive for 54 Grand LLC to commercially develop the Property.

NOW, THEREFORE, BE IT ORDERED BY THE CITY OF OWENSBORO, KENTUCKY, AS FOLLOWS:

Section 1. That the Mayor be, and he hereby is authorized and directed to execute a Memorandum of Agreement with 54 Grand LLC providing that the City will reimburse 54 Grand LLC in the amount of seventy-five percent (75%) of the total ad valorem (excluding school tax), general fund net profits, and general fund occupational tax revenues derived from the Property over a designated period of at least five (5) years. A copy of said Memorandum of Agreement is attached hereto and incorporated by reference herein.

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INTRODUCED, PUBLICLY READ AND FINALLY APPROVED ON ONE

READING, this the 16th day of September, 2025.

_____
Thomas H. Watson, Mayor

ATTEST:

_____
Beth Davis, City Clerk

<u>**MEMORANDUM OF AGREEMENT**</u>

THIS MEMORANDUM OF AGREEMENT made and entered into this _____ day of September, 2025, by and between CITY OF OWENSBORO, KENTUCKY, a municipality of the home rule class, 101 East Fourth Street, P. O. Box 10003, Owensboro, Kentucky 42302-9003, (hereafter referred to as "City"), and 54 Grand LLC, (hereafter referred to as "Developer"). City and Developer are each a "Party" and collectively the "Parties".

RECITALS

WHEREAS, Developer is the owner of a certain tract of real property consisting of approximately 14.183 acres, more or less, which is located at 3001 Ky. Hwy. 54, Owensboro, Kentucky (hereinafter referred to as "Subject Property"); and

WHEREAS, Developer intends to develop the Subject Property for commercial purposes, which will have substantial benefit to the citizens of Owensboro; and

WHEREAS, the City of Owensboro desires to provide an incentive for Developer to commercially develop the Subject Property.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants and conditions contained herein, the Parties agree as follows:

<u>SECTION 1. INCENTIVE</u>:

(A)   Developer agrees to build a commercial development on the Subject Property and to begin such development within forty-eight (48) months of the date of this Agreement. The Reimbursement Term shall

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begin on a date selected by Developer within seventy-two (72) months of the date of the Agreement. The Reimbursement Term shall end sixty (60) months after the date selected by Developer; provided, however, if Developer is able to document capital expenditures on the Subject Property of at least $50,000,000.00, the Reimbursement Term will end eighty-four (84) months after the date selected by Developer.

(B)   Under the terms of this Agreement, the City will reimburse the Developer in the amount of seventy-five percent (75%) of the total ad valorem (excluding school tax), general fund net profits, and general fund occupational tax revenues derived from any property located therein, over the Reimbursement Term.

(C)   Expenses to be reimbursed by City to Developer under this Agreement shall be paid solely from all real and personal property, general fund occupational, and net profits tax/fee revenues (excluding school taxes/fees, franchise bank deposit taxes, any and all in lieu of present or future taxes/fees, and any taxes levied and restricted to a specific purpose) derived by the City, hereafter referred to as "Tax Revenues," over the maximum five-year Reimbursement Term. The City's obligation to reimburse Developer shall commence on the first day of the next fiscal quarter after the Reimbursement Term begins.

(D)   It is understood that all reimbursements provided in this Agreement shall be made solely to the present Developer and not to any subsequent developer, purchasers, tenants, or other interests present or future.

(E)   Accounting: The Director of Finance and Support Services is authorized and directed to collect and deposit all Tax Revenues derived by the City from Subject Property, in a separate, dedicated account established for the Subject Property. To assist the Finance Department in tracking Tax Revenues derived from the development, sale, and/or lease of real and personal property within Subject Property, Developer shall, at its own expense, promptly provide the City with a copy of the final subdivision plat approved by the Owensboro Metropolitan Planning Commission and filed in the Office of the Daviess County Clerk, any deeds of conveyance, and the names and mailing addresses of any person, firm or corporation with a leasehold interest in any portion of Subject Property.

(F)   It is agreed that in the event the Developer sells, transfers and/or leases any part of Subject Property, Developer shall continue to receive the incentive payments as defined in this Agreement. It is understood that the incentive payments are to be paid directly to the Developer regardless of who owns and/or leases the property provided the Developer is in compliance with all terms of this Agreement.

(G)   Payment under this Agreement is contingent upon those entities or persons from whom such Tax Revenues were derived, properly reporting such to the City of Owensboro. In the event that an entity or person does not properly report such Tax Revenues in a sufficient format to enable the City to attribute those Tax Revenues to Subject Property, the payment will

be withheld until a proper reporting has been received and processed. City and Developer agree that both shall immediately utilize any and all available means or authority to require those entities or persons to immediately and properly report such Tax Revenues so as not to delay further payment to Developer.

(H) Limitation on Reimbursement of Expenses: The City's maximum liability to Developer for reimbursement shall not exceed fifty percent (50%) of the total verified sum of all Tax Revenues collected by the City over the five (5) year Reimbursement Term.

SECTION 2. TERM: This Agreement shall commence upon its execution by both Parties and in the absence of a default by either Party, shall remain in full force and effect until the end of the Reimbursement Term.

SECTION 3. DEFAULT; REMEDIES: This Agreement may be terminated by the City, by written notice, in the event Developer breaches any one or more of the terms and conditions set forth herein, including failure to timely commence construction in accordance with Section 1. This Agreement may be terminated by Developer in the event the City fails to pay Developer the incentive on the terms and conditions set forth herein, and fails to cure said breach within a reasonable time after written notice thereof by Developer.

Upon a material breach of this Agreement by either Party, the non-breaching Party shall be entitled to all remedies at law or equity, including but not limited to, specific performance or mandatory injunctive relief, rescission, or

compensatory and consequential damages arising therefrom; provided, however, the City's total liability shall in no event exceed the unpaid incentive.

SECTION 4. NOTICES: Any written notices or requests required under the terms of this Agreement shall be given to the following:

CITY:

        City of Owensboro
        Attention: City Manager
        P. O. Box 10003
        101 East 4th Street
        Owensboro, Kentucky 42302-9003

DEVELOPER: 54 Grand LLC
        c/o Martin T. Walker
        2882 Settles Road
        Owensboro, KY 42303

SECTION 5. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement and understanding between the Parties and supersedes all prior agreements, promises, communications, representations, whether oral or written, by any employee, officer, or representative of either Party hereto. There are no promises, representations, covenants, undertakings, restrictions, or conditions, other than those expressly set forth herein. Any subsequent amendment hereto shall be in writing and executed by authorized representatives of both Parties. This Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and assigns, provided, however, that this Agreement shall not be transferred or assigned at any time by Developer without the express written consent of the City.

SECTION 6: APPLICABLE LAW: This Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

The Parties hereby agree that the state courts of Daviess County and the Commonwealth of Kentucky shall have exclusive jurisdiction to hear and determine any claims or disputes.

SECTION 7. SEVERABILITY: The provisions of this Agreement are independent of and severable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason, other provisions herein may be invalid or unenforceable, in whole or in part. If a court of competent jurisdiction determines that any provision of this Agreement is invalid or unenforceable as written, a court may interpret, construe, rewrite or revise such provision, to the fullest extent allowed by law, so as to make it valid and enforceable consistent with the intent of the Parties. In the event a court of competent jurisdiction finally determines that any portion of this Agreement is invalid or unenforceable as written, neither Party shall have any liability to the other as a result thereof.

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Agreement as of the day and year first hereinabove written.

CITY OF OWENSBORO:

By: _____
        Thomas H. Watson, Mayor

ATTEST:

_____
Beth Davis, City Clerk

DEVELOPER:

_____

Martin T. Walker, Member