



CITY COMMISSION MEETING  
 AGENDA FOR APRIL 8, 2014  
 5:30 P.M.

ROLL CALL

INVOCATION

PLEDGE OF ALLEGIANCE-Meg Hancock, Sophomore at PTHS

ADDITIONS/DELETIONS

PROCLAMATION: Child Abuse Prevention Month

	I.	<u>MINUTES</u>
	II.	<u>APPOINTMENTS</u>
		A. Board of Ethics
	III.	<u>MOTIONS</u>
		A. R & F Documents
	IV.	<u>MUNICIPAL ORDERS</u>
		A. Personnel Actions
		B. Lease Agreement for Armory Building Located at 2956 Park Avenue – <b>M. THOMPSON</b>
	V.	<u>ORDINANCES – ADOPTION</u>
		A. Declaration and Transfer of Surplus Property located at 510 Broadway – <b>S. ERVIN</b>
		B. Noble Park Pool Engineering Change Order #2 with ICA – <b>M. THOMPSON</b>
		C. Purchase Rear Packer Truck for Solid Waste – <b>R. MURPHY</b>
		D. Approve Addendum No. 2 to Employment Agreement for City Manager – <b>CITY MGR</b>

	<b>VI.</b>	<b><u>ORDINANCES – INTRODUCTION</u></b>
		A. Accept Grant Award. for Distracted Driving Enforcement for Police Dept – <b>S. ERVIN/POLICE CAPT. HODGSON</b>
		B. Approve Memorandum of Understanding with Higdon Development, Inc. for Development of Property Located on Bleich Road – <b>S. ERVIN</b>
	<b>VII.</b>	<b><u>CITY MANAGER REPORT</u></b>
	<b>VIII.</b>	<b><u>MAYOR &amp; COMMISSIONER COMMENTS</u></b>
	<b>IX.</b>	<b><u>PUBLIC COMMENTS</u></b>
	<b>X.</b>	<b><u>EXECUTIVE SESSION</u></b>

APRIL 8, 2014

I move that the following documents and proposals be received and filed:

**DOCUMENTS**

1. Certificate of Liability Insurance and Performance Bond for Central Paving Company of Paducah, Inc.
2. Notice of Cancellation for the Board of Commissioners of the City of Paducah, Kentucky for Tuesday, April 1, 2014
3. Agreement with Central Paving Company of Paducah, Inc. for Compost Grinding of Tree Debris and Yard Waste (ORD # 2014-03-8125)
4. U.S. Department of Housing and Urban Development PHA 5-year and Annual Plan for City of Paducah Section 8 Housing Program (MO # 1764)
5. 2014 City of Paducah Section 8 Housing Administrative Plan (MO # 1766)
6. Paducah Symphony Orchestra, Inc. Financial Statements for years ended June 30, 2012 and June 30, 2013
7. Paducah Water Works Financial Highlights for month ended February 28, 2014

**PROPOSALS**

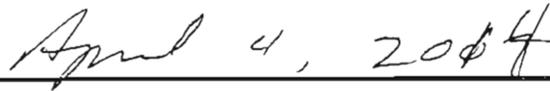
1. Proposal for Purchase of the Columbia Theatre by the Columbia Club, Inc.

CITY OF PADUCAH  
April 8, 2014

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Upon the recommendation of the City Manager, the Board of Commissioners of the City of Paducah order that the personnel changes on the attached list be approved.

  
\_\_\_\_\_  
City Manager's Signature

  
\_\_\_\_\_  
Date

CITY OF PADUCAH  
PERSONNEL ACTIONS  
April 8, 2014

TERMINATIONS - FULL-TIME (F/T)

<u>FIRE PREVENTION</u>	<u>POSITION</u>	<u>REASON</u>	<u>EFFECTIVE DATE</u>
Gowen, Christina M.	Deputy Fire Marshal	Resignation	April 10, 2014

PAYROLL ADJUSTMENTS/TRANSFERS/PROMOTIONS/TEMPORARY ASSIGNMENTS

<u>FIRE PREVENTION</u>	<u>PREVIOUS POSITION AND BASE RATE OF PAY</u>	<u>CURRENT POSITION AND BASE RATE OF PAY</u>	<u>NCS/CS</u>	<u>FLSA</u>	<u>EFFECTIVE DATE</u>
Tinsman, April K.	Permit Specialist \$15.12/Hr	Permit Technician \$16.65/Hr	NCS	Non-Ex	March 20, 2014

NEW HIRE - FULL-TIME (F/T)

<u>POLICE OPERATIONS</u>	<u>POSITION</u>	<u>RATE</u>	<u>NCS/CS</u>	<u>FLSA</u>	<u>EFFECTIVE DATE</u>
Parrish, Andrew J.	Police Officer Recruit	\$19.78/Hr	NCS	Non-Ex	May 8, 2014
<u>EPW STREETS</u>					
Smith, James	Concrete Finisher	\$17.25/Hr	NCS	Non-Ex	April 10, 2014

**Agenda Action Form  
Paducah City Commission**

Meeting Date: April 8, 2014

Short Title: Lease of the former Armory Building to Oscar Cross Boys & Girls Club

Ordinance  Emergency  Municipal Order  Resolution  Motion  
Staff Work By: Mark Thompson, Rick Murphy  
Presentation By: Mark Thompson, Parks Services Director

**Background Information:**

For the past year the City and Oscar Cross Boys & Girls Club have worked to prepare the former Armory property for use by the OCBGC for an afterschool elementary age programming facility. The City budgeted up to \$25,000 in facility repairs and OCBGC fundraised for additional repairs. The initial length of this contract is for ten years commencing January 1, 2014 with two automatic five year renewals unless either party chooses to opt out with a 90 day notice.

OCBGC will pay the City \$1 per year of the lease and will be responsible for all building repairs. The City has maintained use of the associated service building on the property.

Goal:  Strong Economy  Quality Services  Vital Neighborhoods  Restored Downtowns

Funds Available:            Account Name: N/A  
   Account Number:  
   Project Number:

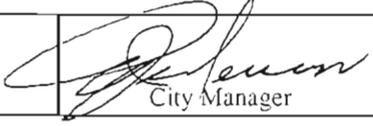
Finance
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**Staff Recommendation:**

Adopt a Municipal Order authorizing the Mayor to execute a Lease Agreement OCBGC for the former Armory, 2956 Park Avenue.

**Attachments:**

Copy of Lease Agreement

<i>MHT</i> Department Head	City Clerk	 City Manager
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MUNICIPAL ORDER NO. \_\_\_\_\_

A MUNICIPAL ORDER AUTHORIZING THE MAYOR TO EXECUTE  
A LEASE AGREEMENT BETWEEN THE CITY OF PADUCAH AND OSCAR  
CROSS BOYS & GIRLS CLUB OF PADUCAH, INC., FOR LEASE OF THE  
ARMORY BUILDING AND APPURTENANT PARKING AREA LOCATED AT 2956  
PARK AVENUE, PADUCAH, KENTUCKY

BE IT ORDERED BY THE CITY OF PADUCAH, KENTUCKY:

SECTION 1. That the Mayor is hereby authorized to execute a Lease Agreement between the City of Paducah, Kentucky and Oscar Cross Boys & Girls Club of Paducah, Inc. for lease of the Armory building and appurtenant parking area located at 2956 Park Avenue. This agreement does not include the service building.

SECTION 2. The term of the aforesaid lease authorized in Section 1 above shall commence on January 1, 2014, and expires December 31, 2023. The lease shall automatically renew for two (2) five (5) year terms, unless either party gives written notice of termination no later than 90 days prior to the end of the term or renewal term.

SECTION 3. This Order shall be in full force and effect from and after the date of its adoption.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Tammara S. Sanderson, City Clerk

Adopted by the Board of Commissioners, April 8, 2014  
Recorded by Tammara S. Sanderson, City Clerk, April 8, 2014  
\\mo\Lease - armory bldg-2956 park ave-oscar cross

# Agenda Action Form

## Paducah City Commission

Meeting Date: April 8, 2014

Short Title: **Transfer of 501-514 Broadway**

Ordinance  Emergency  Municipal Order  Resolution  Motion

Staff Work By: Steve Ervin

Presentation By: Steve Ervin Randy Davis

This action would declare 510-514 Broadway surplus property owned by the City of Paducah and authorize the transfer of the property to the sole bidder Columbia Club, Inc. for \$1.00. The property was advertised in the Paducah Sun requesting interested parties to submit a bid. No other bids were received for this property.

**Background Information:** EPA has selected the Kentucky Department for Environmental Protection for a brownfields revolving loan fund grant. The Federal EPA grant received by the Commonwealth of Kentucky is being used to capitalize a revolving loan fund from which the Kentucky Department for Environmental Protection is providing loans and sub-grants to support cleanup activities for sites contaminated with hazardous substances and petroleum. Grant funds are also being used to market and oversee the revolving loan fund program. The grant includes a total of \$650,000 for hazardous substances cleanups and \$200,000 for petroleum cleanups.

The State Sub-grant Brownfield Program seeks brownfield cleanup applications from local governments and non-profits. The Kentucky Department for Environmental Protection anticipates offering three to five sub-grants, each less than \$50,000 and totaling \$140,000. Of this amount, \$105,000 will be for hazardous waste cleanups; \$35,000 will be for petroleum cleanups.

The Columbia Club, Inc., in partnership with the City of Paducah, wishes to apply for a Brownfield Sub-grant through the Kentucky Department of Environmental Protection. The application amount will be for \$50,000 with a 20% match requirement in the amount of \$10,000. Grant funds will be used to mitigate lead based paint and asbestos contamination at the Columbia Theatre.

The City of Paducah cannot be the applicant for the Brownfield Grant as the City did not conduct a phase I environmental review prior to taking ownership. **The intent of this agenda item is to transfer the Columbia Theater to Columbia Club, Inc. so that they may be the applicant for the Kentucky Brownfield Grant.**

The attached MOU defines ownership responsibilities of the City and Columbia Club, Inc. It should be noted that this transfer is for grant purposes only. If the grant is not received by the Columbia Club, the Theater will be transferred back to the City of Paducah. Additionally, the MOU allows for a \$10,000 cash grant to offset the costs of the Brownfield Grant match, liability insurance and additional asbestos remediation as required. The cash grant will be paid only if the Columbia Club receives the Brownfield Grant.

The attached MOU has been reviewed by Counsel. At time of writing, staff is reviewing insurance

provisions within the MOU. Changes to insurance provisions of the MOU will be provided at the City Commission meeting.

Goal:  Strong Economy  Quality Services  Vital Neighborhoods  Restored Downtowns

Funds Available:      Account Name:  
   Account Number:

Finance
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Staff Recommendation: Approval  
Attachments: MOU

 Department Head	City Clerk	City Manager
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# Agenda Action Form Paducah City Commission

Meeting Date: March 25, 2014

Short Title: Noble Park Pool Engineering Change Order #2 with ICA

Ordinance  Emergency  Municipal Order  Resolution  Motion

Staff Work By: Mark Thompson  
Presentation By: Mark Thompson

**Background Information:** The original contract for the Noble Park Pool engineering with Florence & Hutcheson, now ICA, was authorized for \$98,700, Ord.2011-11-7881. However on May 8, 2012 the City chose to add the replacement of the baby pool as a portion of the project increasing the contract to \$143,200.00, Ord.2012-5-7920. The scope of the engineering has changed considerably as the project has continued. It became necessary to bid the project into three bids rather than two after the first bid came in a great deal over budget. The re-bids however saved over \$65,000 but required additional services for the coordination of three onsite contactors and the two re-bids themselves.

CO #1 in June of 2013 increased totals to \$40,995 for services increasing the contract with ICA to \$184,195.00. This is final change order closing out the engineering services of the project. The services provided in CO#2. ICA assisted the City through the mitigation process with staffing and documentation. CO# 2 totals \$13,230 making the final contract total \$197,425.

Goal:  Strong Economy  Quality Services  Vital Neighborhoods  Restored Downtowns

Funds Available: Account Name: Noble Park Pool Project  
Account Number: PA0095

 3/21/2014  
Finance

Staff Recommendation: Approval

Attachments: Change Order #2

<i>MHT</i> Department Head	City Clerk	City Manager
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# Agenda Action Form Paducah City Commission

Meeting Date: March 25, 2014

Short Title: Purchase of a Rear Packer Refuse Collection Truck for use by the EPW-Solid Waste Division

Ordinance  Emergency  Municipal Order  Resolution  Motion

Staff Work By: Mike Orenduff, EPW Solid Waste Supt.  
Randy Crouch, EPW Maintenance Supt.  
Angela Weeks, EPW Project Mgr

Presentation By: Rick Murphy, P.E., City Engineer-Public Works Director

### Background Information:

On March 18, 2014, the City of Paducah Engineering-Public Work's Department received and opened sealed bids for the purchase of a new Rear Packer Refuse Collection Truck for use by the Solid Waste Division. Two responsive bids were received, with TAG Truck Center, LLC, submitting the lowest evaluated bid in the amount of \$157,677.00. The estimated time for delivery of the new truck will be 160 days after contract execution.

Goal:  Strong Economy  Quality Services  Vital Neighborhoods  Restored Downtowns

Funds Available: Account Name: Rolling Stock / Vehicle Heavy  
Account Number: 050-2209-531-4007

 3/24/2014  
Finance

### Staff Recommendation:

To receive and file the bids and adopt an Ordinance authorizing the Mayor to enter into a contract with TAG Truck Center, LLC in the amount of \$157,677.00 for the purchase of a new Rear Packer Refuse Collection Truck to be used by the Solid Waste Collection System

### Attachments:

Ad, Original Bid Proposals, Bid Tab and Proposed Contract

 Department Head	City Clerk	City Manager
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# Agenda Action Form Paducah City Commission

Meeting Date: March 25, 2014

**Short Title: City Manager Employment Agreement Extension**

Ordinance    Emergency    Municipal Order    Resolution    Motion

Staff Work By:            Jeff Pederson  
Presentation By:         Jeff Pederson

**Background Information:**

An Employment Agreement between City Manager, Jeffrey A. Pederson, and the City of Paducah was signed on December 7, 2010. The Agreement was amended by Ordinance on December 20, 2011, subsequent to a Performance Review conducted by the City Commission.

As a result of a Performance Review conducted during November 2013, the City Commission and Mr. Pederson have agreed to renew Pederson's Employment Agreement for a three-year period, commencing December 7, 2013, through December 7, 2016.

Other sections of the Agreement are amended as follows:

- Section 4 adjusts the City Manager's salary to \$150,000 annually.
- Section 6 adjusts the City Manager's annual vacation accrued to twenty (20) days

**Staff Recommendation:** Approve the Extension of the City Manager's Employment Agreement with changes in Section 4 and Section 6, through December 7, 2016.

**Attachments:**         City Manager's Employment Agreement Extension  
                                 Ordinance

Department Head	City Clerk	 City Manager
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# Agenda Action Form

## Paducah City Commission

Meeting Date: 8 April 2014

Short Title: **KY Office of Highway Safety – Distracted Driving Enforcement**

Ordinance     Emergency     Municipal Order     Resolution     Motion

Staff Work By: Don Hodgson, Sheryl Chino  
Presentation By: Steve Ervin, Don Hodgson

Background Information: To coincide with a national campaign, the Kentucky Office of Highway Safety is offering mini grant funds for texting while driving enforcement from April 7 through April 20, 2014. This focused enforcement effort is to help reduce the collisions, injuries and fatalities that have been occurring due to driver's inattention and distraction.

The Paducah Police Department has been awarded a Highway Safety Mini-grant in the amount of \$30,000. This grant will reimburse overtime hours associated with saturation patrols, including fuel costs. There is not a match requirement for this grant application.

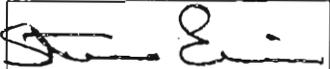
The application was originally approved by municipal order 1760.

The grant requires authorization by the Paducah City Commission to allow the Mayor to execute all grant related documents.

Goal:  Strong Economy     Quality Services     Vital Neighborhoods     Restored Downtowns

Funds Available:	Project Title:	14 Hwy Sfty Enforce	Finance
	Project #:	PO0079	
	File #:	6.256	
	Acct #:	001-1602-521.12-01, 001-1602-521.31-03	
	Budget:	\$30,000 (\$27,000 OT, \$3,000 Fuel – based on OT hrs wkd)	
	Source of Funds:	Federal Grant – no local match	

Staff Recommendation: Approval

 Department Head	City Clerk	 City Manager
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AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A GRANT AGREEMENT AND ALL DOCUMENTS RELATING THERETO WITH THE KENTUCKY OFFICE OF HIGHWAY SAFETY FOR A DISTRACTED DRIVING ENFORCEMENT GRANT AWARD

WHEREAS, the City of Paducah applied for a reimbursement grant through the Kentucky Office of Highway Safety by Municipal Order No. 1760 on March 18, 2014, for overtime traffic enforcement activities related to distracted driver traffic enforcement during the week of April 7 through April 20, 2014; and

WHEREAS, the Kentucky Office of Highway Safety has approved the application and is now ready to award this grant.

BE IT ORDAINED BY THE CITY OF PADUCAH, KENTUCKY:

SECTION 1. The Mayor is hereby authorized to execute a Grant Agreement, and all documents relating thereto, with the Kentucky Office of Highway Safety in the amount of \$30,000.00 for overtime traffic enforcement activities related to distracted driver traffic enforcement during the week of April 7 through April 20, 2014. No local cash match is required.

SECTION 2. This expenditure shall be charged to Project Account No. PO0079.

SECTION 3. This ordinance shall be read on two separate days and will become effective upon summary publication pursuant to KRS Chapter 424.

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Mayor

ATTEST:

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Tammara S. Sanderson, City Clerk

Introduced by the Board of Commissioners, April 8, 2014

Adopted by the Board of Commissioners, April 22, 2014

Recorded by Tammara S. Sanderson, City Clerk, April 22, 2014

Published by *The Paducah Sun*, \_\_\_\_\_

ord\plan\grants\police-Highway Safety-distracted driver

4-2014

# Agenda Action Form

## Paducah City Commission

Meeting Date: ~~February 25, 2013~~ *April 8, 2014*

Short Title: Lakewood Villa – Infill Development Agreement – Section 2

Ordinance  Emergency  Municipal Order  Resolution

Staff Work By: Stephen Ervin

Presentation By: Stephen Ervin

### Background Information:

Phil Higdon is requesting infill development incentives for Section 11 of Lakewood Villa. Lakewood Villa Section 1 is a 64-unit Condominium development located on Bleich Road. Section 1 is complete. Lakewood Villa Section 2 is in compliance with the following Infill Development findings:

- That a Residential Development Agreement will increase residential development in the City of Paducah.
- That the City of Paducah's economic well-being is related to and in many respects dependent upon, sustained growth of its population and tax revenue base through development of vacant properties.
- That a Residential Development Agreement will encourage development of single-family owner-occupied housing on vacant, orphaned, or underutilized land located in the mature portions of Paducah where infrastructure and services are in place.
- That a Residential Development Agreement will encourage infill development that may have been underutilized or blighted, helping to catalyze revitalization.
- That infill residential development will increase the revenue tax base necessary to meet various capital needs, especially in the area of public safety, maintain infrastructure and facilities, promote economic development, and will aid in the maintenance of existing infrastructure and facilities.
- That a Residential Development Agreement will help maintain growth through infill development, which encourages a healthy economy.
- That a Residential Development Agreement will encourage infill residential development, which will increase the population base of the City of Paducah, therefore increasing the possibilities of becoming a designated urbanized area.

The 10-year infill development agreement allows the City to reimburse the developer for the actual costs incurred in connection with the construction of qualified "municipal facilities" (streets, gutters, and other public infrastructure) within the proposed development, in an amount not to exceed the total cost of facilities or the total sum of all ad valorem real property taxes collected by the City from the property, whichever is less, over a ten year period.

Goal:  Strong Economy  Quality Services  Vital Neighborhoods  Restored Downtowns

Funds Available:      Account Name:  
   Account Number:

Finance

Staff Recommendation:

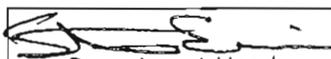
Approve agreement

Other Recommendation:

Motion:

Attachments:

Agreement  
Map

 Department Head	City Clerk	 City Manager
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**ORDINANCE 2014 -4-\_\_\_\_\_**

AN ORDINANCE OF THE CITY OF PADUCAH, KENTUCKY, APPROVING A MEMORANDUM OF UNDERSTANDING BY AND AMONG THE CITY OF PADUCAH, KENTUCKY AND HIGDON DEVELOPMENT, INC., WITH RESPECT TO THE RESIDENTIAL DEVELOPMENT OF PROPERTY WITHIN THE CORPORATE BOUNDARIES OF THE CITY OF PADUCAH AND AUTHORIZING THE EXECUTION OF VARIOUS DOCUMENTS RELATED TO SUCH MEMORANDUM OF UNDERSTANDING.

**WHEREAS**, the City of Paducah is charged with the responsibility of overseeing the proper and orderly development of vacant or underutilized properties located within its corporate boundaries and of insuring the integrity and quality of its existing residential neighborhoods; and

**WHEREAS**, the City of Paducah's economic well-being is related to and in many respects is dependent upon, sustained growth of its population and tax revenue base through the development of vacant or underutilized properties; and

**WHEREAS**, Higdon Development Inc., a Kentucky corporation, (the "Developer") is the present owner of certain tracts of real estate located within the corporate boundaries of the City of Paducah and has expressed an intent to purchase or acquire another tract of real estate located within the corporate boundaries of the City of Paducah, upon which the Developer proposes to construct a condominium/multi-family residential development, which real estate is generally bounded by Bleich Road, Lakewood Drive, Ridgewood Street and east of K-Mart, in the City of Paducah, McCracken County, Kentucky (the "Property"); and

**WHEREAS**, the residential development will encourage development of vacant or underutilized land located in the mature portions of Paducah where infrastructure and services are in place; and

**WHEREAS**, the residential development will encourage infill development on property that may have been underutilized or blighted, helping to catalyze revitalization; and

**WHEREAS**, the residential development will help maintain growth through infill development, which encourages a healthy economy; and

**WHEREAS**, the residential development agreement will encourage infill residential development, which will increase the population base of the City of Paducah, therefore increasing the possibility of becoming a designated urbanized area; and

**WHEREAS**, in order to insure that the residential development will have a positive impact on the entire community and to encourage the public purpose of infill residential development, it is necessary and desirable that the City now authorize the Memorandum of Understanding by and among the City of Paducah and the Developer.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE**

CITY OF PADUCAH, KENTUCKY, as follows:

SECTION 1. Recitals and Authorization. The City of Paducah hereby approves the Memorandum of Understanding (the "MOU") among the City and the Developer in substantially the form attached hereto and is made a part hereof. It is further determined that it is necessary and desirable and in the best interests of the City to enter into the MOU for the purposes therein specified. The Mayor of the City of Paducah is hereby authorized to execute the MOU, together with such other agreements, instruments or certifications which may be necessary to accomplish the transaction contemplated by the MOU.

SECTION 2. Severability. If any section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining parts of this Ordinance.

SECTION 3. Compliance with Open Meetings Laws. The City Commission hereby finds and determines that all formal actions relative to the adoption of this Ordinance were taken in an open meeting of this City Commission and that all deliberations of the City Commission and of its committees, if any which resulted in formal action, were in meetings open to the public in full compliance with applicable legal requirements.

SECTION 4. Conflicts. All ordinances, resolutions, orders or parts thereof in conflict with the provisions of this Ordinance, to the extent of such conflict, are hereby repealed and the provisions of this Ordinance shall prevail and be given effect.

SECTION 5. Effective Date. This Ordinance shall be read on two separate days and will become effective upon summary publication pursuant to KRS Chapter 424.

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
Tammara S. Sanderson, City Clerk

Introduced by the Board of Commissioners, April 8, 2014  
Adopted by the Board of Commissioners, April 22, 2014  
Recorded by Tammara S. Sanderson, City Clerk, April 22, 2014  
Published by the Paducah Sun, \_\_\_\_\_  
\\ord\plan\mou-higdon dev-bleich rd

ORIGINAL

MEMORANDUM OF UNDERSTANDING

This is a Memorandum of Understanding made and entered into on the \_\_\_\_ day of \_\_\_\_\_, 2014, by and between the **CITY OF PADUCAH, KENTUCKY** (the "City" or "City of Paducah"), a municipality of the second class and **HIGDON DEVELOPMENT, INC.**, a Kentucky corporation (the "Developer").

**WHEREAS**, the Developer is the present owner of a certain tract of vacant real estate generally located at 451 Bleich Road in Paducah having acquired same by deed recorded in Deed Book 1059 page 407 in the McCracken County Clerk's office, located within the corporate boundaries of the City of Paducah, upon which Developer proposes to construct a residential development, which real estate is generally bounded by Bleich Road, Lakewood Drive, Ridgewood Street and east of K-Mart, in the City of Paducah, McCracken County, Kentucky (the "Phase I Property"); and

**WHEREAS**, the Developer is also the present owner of certain tracts of real estate generally located at 319 Bleich Road in Paducah having acquired same by deed recorded in Deed Book 1036 page 499, in the aforesaid clerk's office, and has expressed an intent to purchase or otherwise acquire another tract of real estate, which is 309 Bleich Road in Paducah, and more particularly described in the deed recorded in Deed Book 989 page 50, in the aforesaid clerk's office, all located within the corporate boundaries of the City of Paducah, upon which Developer proposes to construct a residential development, which real estate is generally bounded by the Phase I Property, Bleich Road, the Olympia Avenue area and east of K-Mart, in the City of Paducah, McCracken County, Kentucky (the "Phase II Property"); and

**WHEREAS**, the City of Paducah is charged with the responsibility of overseeing the proper and orderly development of vacant or underutilized properties located within its corporate boundaries and of insuring the integrity and quality of its existing residential neighborhoods; and

**WHEREAS**, the City of Paducah's economic well-being is related to and in many respects is dependent upon, sustained growth of its population and tax revenue base through the development of vacant or underutilized properties; and

**WHEREAS**, the residential development (as defined herein) will encourage development of multi-family housing on vacant or underutilized land located in the mature portions of Paducah where infrastructure and services are in place; and

**WHEREAS**, the residential development will encourage infill development on property that may have been underutilized or blighted, helping to catalyze revitalization; and

**WHEREAS**, the residential development will help maintain growth through infill development, which encourages a healthy economy; and

**WHEREAS**, the residential development will encourage infill residential development, which will increase the population base of the City of Paducah, therefore increasing the possibility of becoming a designated urbanized area; and

**WHEREAS**, in order to insure that the residential development will have a positive impact on the entire community and to encourage the public purpose of infill residential development, it is necessary and desirable that the City now authorize the Memorandum of Understanding by and among the City of Paducah and the Developer.

**NOW, THEREFORE**, in consideration of the foregoing premises and for other value consideration, the legal adequacy and sufficiency of which is hereby acknowledged by all parties hereto, the parties do covenant and agree as follows:

**A. Developer agrees to the following:**

1. **To acquire fee ownership of 309 Bleich Road prior to Developer's submittal to the Paducah Planning Commission (the "Planning Commission") a preliminary subdivision plat for the residential development of the Phase II Property.**

2. Develop a residential development on the Phase I Property and the Phase II Property in separate phases for the exclusive use as a condominium/multiple-family residential development and construct and install all public improvements within the residential development in accordance with the final subdivision plat or plats approved by the Planning Commission, the subdivision plans and stormwater management plan as approved by the City Engineer, and all applicable subdivision regulations as set forth in Chapter 102 (the Subdivision Ordinance) of the *Code of Ordinances of the City of Paducah, Kentucky* (the "residential development"). For the purposes of this Memorandum of Understanding, public improvements shall include: streets, sidewalks, curbs, gutters, storm sewers and storm water conveyance system, water supply and distribution facilities, sanitary sewer facilities, electric distribution facilities, street lights and survey monumentation. The residential development on the Phase I Property and the Phase II Property do not have to be completed simultaneously; provided, however, the Infill Agreement (as defined herein) relative to the Phase I Property must be executed within one (1) year from the date of this Memorandum of Understanding and the Infill Agreement (as defined herein) relative to the Phase II Property must be executed within five (5) years from the date of this Memorandum of Understanding.

3. Submit to the Planning Commission for approval preliminary subdivision plats for the residential development on the Phase I Property and on the Phase II Property.

4. Submit to the Planning Commission for approval final subdivision plats for the residential development on the Phase I Property and on the Phase II Property.

5. Submit to the City Engineer for approval the subdivision plans and stormwater management plans for the residential development on the Phase I Property and the Phase II Property in compliance with the Subdivision Ordinance.

6. Restrict the use and development of the Phase I Property and the Phase II Property to only condominium/multi-family residential units, which covenant shall run with the land and shall be binding on all parties claiming under and through the Developer, unless cancelled, altered or amended by a writing entered into by the Developer, or its successors, and

the City of Paducah. This covenant on the use and development of the Phase I Property and the Phase II Property shall be incorporated in the covenants and restrictions of the Phase I Property and the Phase II Property, which will be filed with the applications for the preliminary and final subdivision plats of the residential development and ultimately placed of record in the McCracken County Clerk's office.

7. Submit to the Planning Commission an application for a Conditional Use permit to utilize the R-2 Zone properties for condominium/multi-family residential development.

**B. City agrees to the following:**

1. In consideration of the commitments and agreement of the Developer set forth above, the City agrees that upon the approval of the final subdivision plat for the residential development on the Phase I Property and acceptance of all public improvements as defined in paragraph A (2) above to be constructed and installed by Developer on the Phase I Property, and simultaneous thereto, the City of Paducah agrees to approve and enter into a residential infill development agreement in substantially the same form as attached hereto as **Exhibit A** (the "Infill Agreement") with the Developer as to the Phase I Property.

2. In consideration of the commitments and agreement of the Developer set forth above, the City agrees that upon the approval of the final subdivision plat for the residential development on the Phase II Property and acceptance of all public improvements as defined in paragraph A (1) above to be constructed and installed by Developer on the Phase II Property, and simultaneous thereto, the City of Paducah agrees to approve and enter into the Infill Agreement with the Developer as to the Phase II Property.

3. The Infill Agreement for both the Phase I Property and the Phase II Property shall evidence the City's agreement to reimburse the Developer for the actual and reasonable initial costs and expenses incurred by the Developer to construct and install the public improvements within the residential development to be developed on the Phase I Property and the Phase II Property, which public improvements are to be acquired and owned by the City, up to an amount not to exceed the total amount of ad valorem real property taxes assessed and collected by the City over a ten (10) year period, commencing with the execution of the Infill Agreement for the Phase I Property and the Infill Agreement for the Phase II Property, from the residential development constructed on the Phase I Property and the Phase II Property, respectively. In the event the conditions precedent to the execution of the Infill Agreement for the Phase I Property are not satisfied fully within one (1) year of the date of this Memorandum of Understanding and the Infill Agreement for Phase I Property is not executed within this time frame, then the City's obligation to enter into the Infill Agreement for the Phase I Property shall automatically terminate and be of no further force and effect. In the event the conditions precedent to the execution of the Infill Agreement for the Phase II Property are not satisfied fully within five (5) years of the date of this Memorandum of Understanding and the Infill Agreement for Phase II Property is not executed within this time frame, then the City's obligation to enter into the Infill Agreement for the Phase II Property shall automatically terminate and be of no further force and effect.

4. The City shall have no obligation whatsoever to reimburse the Developer in excess of the total amount of ad valorem real property taxes actually collected and received by the City annually during each year of the ten (10) year period from the Phase I Property or the Phase II Property, respectively. Further, the City's obligation to reimburse the Developer for eligible costs and expenses applicable to the Phase I Property and Phase II Property, respectively, shall automatically terminate upon payment in full of all such eligible costs and expenses or at the end of the ten (10) year period, whichever occurs first.

**C. Miscellaneous Provisions.** The following miscellaneous provisions shall apply:

1. **Assignment.** This Memorandum of Understanding shall be binding upon and shall inure to the benefit of the parties hereto, and their respective legal representatives, heirs, successors and permitted assigns. The Developer shall not assign his rights and obligations hereunder, in whole or in part, without the prior consent of the City, but in no event, shall any assignment hereunder release or relieve the Developer from any obligations of this Agreement for which the Developer shall remain fully bound to the City.

2. **Merger Clause.** It is agreed and understood between the parties that this Memorandum of Understanding represents the entire and exclusive agreement between the parties and that all prior representations, covenants, warranties, understandings and agreements are merged herein. This Memorandum of Understanding may only be modified in writing executed by all parties hereto.

3. **Construction.** This Memorandum of Understanding shall be governed and construed under the laws of the Commonwealth of Kentucky.

4. **Assurances.** The City and the Developer agree to execute such further documents and instruments as shall be necessary to fully carry out the terms of this Agreement.

5. **Amendments.** This Memorandum of Understanding may not be modified or amended unless in writing signed by both parties hereto.

6. **Execution and Delivery.** This Memorandum of Understanding shall be of no force or effect unless and until it shall have been executed by both the City and the Developer and approved by the governing body of the City of Paducah.

7. **Time.** All times referred to herein shall be strictly construed, as all of such times shall be deemed of the essence.

**[For signatures see following pages.]**

WITNESS signatures of the parties as of the year and date first above written.

DEVELOPER:

CITY:

HIGDON DEVELOPMENT, INC.

CITY OF PADUCAH, KENTUCKY

By  \_\_\_\_\_  
Philip Higdon, Vice-President

By \_\_\_\_\_  
Gayle Kaler, Mayor

Date: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT A  
Residential Infill Development Agreement

THIS INFILL DEVELOPMENT AGREEMENT (the "Infill Agreement") made and executed on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the City of Paducah, Kentucky, a city of the second class, 300 South Fifth Street, Paducah, Kentucky 42003 (hereinafter referred to as "City") and Higdon Development, Inc. (hereinafter referred to as "Developer").

WITNESSETH:

**WHEREAS**, the Board of Commissioners adopted Ordinance # \_\_\_\_\_ authorizing the approval of a Memorandum of Understanding (the MOU) between Higdon Development, Inc. as the Developer and the City of Paducah, which MOU is dated \_\_\_\_\_. 2014; and

**WHEREAS**, the Developer is the owner of a tract of real property consisting of \_\_\_\_\_ acres, which is located in Paducah, Kentucky, a document describing real property is set forth in the final plat which is entitled "Final Plat of the \_\_\_\_\_" survey dated \_\_\_\_\_ by \_\_\_\_\_ is attached thereto (the "final plat"); and

**WHEREAS**, the Developer has obtained final subdivision approval for the Developer's development of said tract of property as a subdivision for residential purposed from the Planning Commission on \_\_\_\_\_ and by the Board of Commissioners on \_\_\_\_\_, Ordinance # \_\_\_\_\_, which approval is evidenced by the final plat recorded in plat section \_\_\_\_\_, page # \_\_\_\_\_, in the McCracken County Clerk's office; and

**WHEREAS**, the Board of Commissioners of the City of Paducah finds:

That an Infill Agreement with the Developer will increase residential development in the City of Paducah.

That the City of Paducah's economic well-being is related to and in many respects dependent upon, sustained growth of its population and tax revenue base through development of vacant or underutilized properties.

That an Infill Agreement will encourage development of multi-family housing on vacant or underutilized land located in the mature portions of Paducah where infrastructure and services are in place.

That an Infill Agreement will encourage infill development on property that may have been underutilized or blighted, helping to catalyze revitalization.

That infill residential development will increase the revenue tax base necessary to meet

various capital needs, especially in the area of public safety, maintain infrastructure & facilities, promote economic development and will aid in the maintenance of existing infrastructure & facilities.

That an Infill Agreement will help maintain growth through infill development, which encourages a healthy economy.

That an Infill Agreement will encourage infill residential development, which will increase the population base of the City of Paducah, therefore increasing the possibility of becoming a designated urbanized area; and

**WHEREAS**, the City desires to provide municipal services to benefit the Developer's residential development and ultimately to the residents to be located therein, but requests the Developer to construct, at the Developer's cost, the public infrastructure and improvements which are necessary for the provision of such municipal services, including streets, gutters and other public improvements depicted on the final plat, which upon completion and acceptance by the City will become the property of the City; and

**WHEREAS**, for reason that such public infrastructure and improvements will become the property of the City upon completion of construction and acceptance by the City, the City is agreeable to reimbursing the Developer for the costs and expenses (\$\_\_\_\_\_ per \_\_\_\_\_) incurred by the Developer to construct and install such infrastructure and improvements within the residential development to the extent of the total cost and expense of same, or the amount of ad valorem real property taxes collected by the City from property located within the residential development for a period of ten (10) years, commencing with the execution of the Infill Agreement, the lesser to apply.

**NOW, THEREFORE**, in consideration of the foregoing provisions and for other valuable consideration, the receipt of which is hereby acknowledged by all parties hereto, the parties do covenant and agree as follows:

1. Construction of public infrastructure and improvements. The Developer shall construct and install within the residential development the public infrastructure and improvements which are necessary for the provision of municipal services by the City in accordance with the final plat, the subdivision plans and stormwater management plan as approved by the City Engineer and all applicable subdivision regulations as set forth in Chapter 102 (the Subdivision Ordinance) of the *Code of Ordinances of the City of Paducah, Kentucky*, which shall include streets, gutters, storm sewers and a storm water conveyance system (hereinafter referred to as "Municipal Facilities"). All Municipal Facilities shall be located in public right-of-ways dedicated by the final plat. The City Engineer shall have the right to inspect all construction of the Municipal Facilities during the construction process to ensure that construction of the Municipal Facilities are in compliance with the final plat, the subdivision plans and stormwater management plan as approved by the City Engineer and the Subdivision Ordinance.

2. Acceptance by the City. Upon completion of construction of the

Municipal Facilities, and acceptance of the Municipal Facilities by the City Engineer, the City shall accept the Municipal Facilities, at which time the Municipal Facilities shall be deemed the sole and exclusive property of the City. Upon such acceptance, the City shall thereafter maintain the Municipal Facilities at the City's costs. Notwithstanding the foregoing, it is agreed and understood by and between the parties that the City shall not be obligated to accept the Municipal Facilities which are not constructed in accordance with the final plat, the subdivision plans and stormwater management plan as approved by the City Engineer and the Subdivision Ordinance.

3. Reimbursement to the Developer for costs and expenses of constructing the Municipal Facilities. In consideration of the Developer's construction of the Municipal Facilities which are to become the property of the City, the City hereby agrees to reimburse the Developer for the actual and reasonable initial costs and expenses incurred by the Developer to construct and install the Municipal Facilities to the extent of such costs and expenses, or to the extent of the amount of ad valorem real property taxes realized and collected by the City from the City's levy and tax on the residential development for a period of ten (10) years commencing with the execution of the Infill Agreement, the lesser to apply. Reimbursement of these costs and expenses shall be subject to the following terms and conditions:

- A. Eligibility for reimbursement. Only actual costs and expenses incurred by the Developer in the construction of the Municipal Facilities which are constructed in accordance with the final plat, the subdivision plans and stormwater management plan as approved by the City Engineer and the Subdivision Ordinance shall be eligible for reimbursement. The determination of which costs and expenses are eligible and whether construction was made in accordance with the final plat, the subdivision plans and stormwater management plan as approved by the City Engineer and the Subdivision Ordinance shall be made by the City Engineer in his reasonable discretion.
- B. Time of request. The Developer shall only be entitled to make a request for reimbursement at that point in time when the Developer has fully completed construction of all of the Municipal Facilities. Any request for reimbursement shall be filed with the City on or before May 31 of any calendar year.
- C. Request for reimbursement. Any request for reimbursement shall be in written form. Each request shall itemize the costs and expenses which were incurred by the Developer in the construction of the Municipal Facilities. Such itemization shall first describe the Municipal Facilities which were constructed, then describe the material and labor incurred in the construction of such facilities and thereafter an itemization of the costs and expenses relating to same. The Developer shall attach to each request supporting documentation that verifies the costs and expenses incurred by the Developer in the construction of the Municipal Facilities. The Developer shall also provide to the City Engineer any other documentation

requested by the City Engineer which the City Engineer deems necessary or advisable in his review of the request. Each request made by the Developer shall be verified under oath.

- D. Review and approval by the City Engineer. Upon submission of the written request, the City Engineer shall evaluate the request and make a determination as to the eligibility of the costs and expenses as described in the request. As part of the evaluation, the City Engineer shall also make a determination that the Municipal Facilities were constructed in accordance with the final plat, the subdivision plans and stormwater management plan as approved by the City Engineer and the Subdivision Ordinance. In the event the City Engineer makes a determination that the Municipal Facilities, or any party thereof, were not constructed in accordance with said standards, such determination shall render the Developer's request ineligible for reimbursement. In making such a determination, the City Engineer shall provide a written description of the deficiency or deficiencies. In such event, the Developer shall not have any further right to request reimbursement under the Infill Agreement until such time that the noted deficiency or deficiencies are cured and remedied. In making his evaluation, the City Engineer shall have the right to consult with the Developer and any architect, engineer, contractor or subcontractor with whom the Developer associated with prior to or during the construction of the Municipal Facilities.
- E. Upon approval of eligibility of the costs and expenses of the Municipal Facilities, the City Engineer shall make a written report evidencing such approval. The City Engineer shall state in the written report the amount of the costs and expenses which were approved for reimbursement. In the event the City Engineer should reject any cost or expense as set forth in the request, the City Engineer shall provide an explanation in the written report for such rejection. Upon completion of the written report, the City Engineer shall cause a copy of such written report to be delivered to the Developer and to the Finance Department of the City of Paducah.
- F. Reimbursement from the Finance Department. Upon receipt of the written approval by the City Engineer, the Finance Department shall make a determination as to the amount of ad valorem real property taxes which were levied by the City for the City's sole benefit against the real property located in the residential development and actually collected and received by the City annually during each year of the ten (10) year period commencing with the execution of the Infill Agreement. The Finance Department shall make payment to the Developer in an amount equal to such taxes actually collected and received by the City annually during each year of the ten (10) year period, subject, however, to the following conditions:

- (1) The City shall have no obligation whatsoever to reimburse the Developer in excess of the sum total amount of the taxes actually collected and received by the City during the ten (10) year period. In the event such sum total amount exceeds the sum total of eligible costs and expenses, the City's obligation of reimbursement shall terminate upon full payment of such costs and expenses.
- (2) Any taxes which may be collected by the City for the benefit of others, such as the school board, etc., shall not be deemed a part of the reimbursement herein.
- (3) Only taxes actually received and collected by the City during the aforesaid ten (10) year period following the effective date of this Agreement shall be utilized in determining the reimbursement hereunder. Any taxes collected prior to or after such ten (10) year period shall not be included in such determination, regardless of the date of assessment or levy, issuance of the tax bills or in the event of any delinquency in payment.

4. Enforcement of Agreement. Each of the parties to this Agreement shall have the right to enforce the terms of this Agreement. In the event of such enforcement, or in the event of any dispute between the parties regarding the meaning or interpretation of any provision of this Agreement, all parties do hereby agree to submit such action to the McCracken Circuit Court. Each party shall have all rights and remedies as provided by law. In the event such action is filed with the McCracken Circuit Court, each party does hereby waive trial by jury. It is agreed by and between the parties that the prevailing party in such action shall have the right to recover its reasonable attorney's fees from the non-prevailing party as part of its costs of litigation.

5. Arbitration. Should any dispute arise between the parties, the parties will try to resolve the dispute by negotiation. If the dispute has not been resolved by such negotiation, the parties will submit the dispute for administered mediation. In the event a dispute cannot be resolved by mediation, the following provisions shall apply:

- (a) As to any unresolved dispute, upon the written request of any party, the dispute shall be submitted to an arbitrator to be selected by the parties. If the parties cannot agree within ten (10) days after the receipt of written notice from the other party requesting it to do so, the appointment shall be left to the American Arbitration Association.
- (b) Except as otherwise specifically set forth herein, the arbitrator shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall take place in Paducah, Kentucky.
- (c) The decision in writing of the arbitrator, when filed with the parties hereto.

shall be final and binding on both parties. The arbitrator shall award the costs and expenses incurred by the prevailing party against the non-prevailing party to such extent as determined by the arbitrator as the arbitrator deems just and equitable. Judgment may be entered upon the final decision of the arbitrator in any court having jurisdiction. Any party shall have the right to sue in court to enforce the arbitration award. In accepting arbitration, the parties expressly waive trial by jury.

6. Miscellaneous provisions. The following miscellaneous provisions shall apply:
  - A. Notices. All notices provided for herein will be in writing and addressed to the parties.
  - B. Other rights and remedies. The duties and obligations imposed by this Agreement and the rights and remedies available thereunder are in addition to and not a limitation of any duties, obligations, rights and remedies, otherwise imposed or available by law.
  - C. Governing Law. This document shall, in all respects, be governed by the laws of the state of Kentucky.
  - D. Entire Agreement. The Infill Agreement and the MOU expresses the complete agreement of the parties and supersedes all prior written or oral agreements or understandings between the City and the Developer with regard to the matters addressed herein. The making, execution and delivery of this Agreement by the parties hereto has not been induced by any representations, statements, warranties or agreements other than those expressly set forth herein and in the MOU.
  - E. Amendments. The Infill Agreement may not be modified or amended unless by in writing signed by both parties hereto.
  - F. Time. All times referred herein shall be strictly construed, as all of such times shall be deemed of the essence.
  - G. Counterparts. The Infill Agreement may be executed simultaneously or in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same agreement.
  - H. Successors and assigns. The Infill Agreement shall be binding upon the parties hereto, their heirs, successors and assigns.
  - I. Effective date of Agreement. The effective date of the Infill Agreement shall be the date that the Mayor of the City of Paducah executes the Infill

Agreement.

CITY OF PADUCAH, KENTUCKY

By \_\_\_\_\_  
Gayle Kaler, Mayor

HIGDON DEVELOPMENT, INC.

By Phillip Higdon  
Title V.P.

STATE OF KENTUCKY )

COUNTY OF McCRACKEN )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by Gayle Kaler, Mayor, City of Paducah.

My commission expires \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State at Large

STATE OF KENTUCKY )

COUNTY OF McCRACKEN )

The foregoing instrument was acknowledged before me this 20 day of February, 2014, by Phillip Higdon, Vice President (title) on behalf of Higdon Development Inc.

My commission expires Jan. 17, 2016.

Jamirana S. Brock  
Notary Public, State at Large ID 458322

ORIGINAL

MEMORANDUM OF UNDERSTANDING

This is a Memorandum of Understanding made and entered into on the \_\_\_\_ day of \_\_\_\_\_, 2014, by and between the **CITY OF PADUCAH, KENTUCKY** (the "City" or "City of Paducah"), a municipality of the second class and **HIGDON DEVELOPMENT, INC.**, a Kentucky corporation (the "Developer").

**WHEREAS**, the Developer is the present owner of a certain tract of vacant real estate generally located at 451 Bleich Road in Paducah having acquired same by deed recorded in Deed Book 1059 page 407 in the McCracken County Clerk's office, located within the corporate boundaries of the City of Paducah, upon which Developer proposes to construct a residential development, which real estate is generally bounded by Bleich Road, Lakewood Drive, Ridgewood Street and east of K-Mart, in the City of Paducah, McCracken County, Kentucky (the "Phase I Property"); and

**WHEREAS**, the Developer is also the present owner of certain tracts of real estate generally located at 319 Bleich Road in Paducah having acquired same by deed recorded in Deed Book 1036 page 499, in the aforesaid clerk's office, and has expressed an intent to purchase or otherwise acquire another tract of real estate, which is 309 Bleich Road in Paducah, and more particularly described in the deed recorded in Deed Book 989 page 50, in the aforesaid clerk's office. all located within the corporate boundaries of the City of Paducah, upon which Developer proposes to construct a residential development, which real estate is generally bounded by the Phase I Property, Bleich Road, the Olympia Avenue area and east of K-Mart, in the City of Paducah, McCracken County, Kentucky (the "Phase II Property"); and

**WHEREAS**, the City of Paducah is charged with the responsibility of overseeing the proper and orderly development of vacant or underutilized properties located within its corporate boundaries and of insuring the integrity and quality of its existing residential neighborhoods; and

**WHEREAS**, the City of Paducah's economic well-being is related to and in many respects is dependent upon, sustained growth of its population and tax revenue base through the development of vacant or underutilized properties; and

**WHEREAS**, the residential development (as defined herein) will encourage development of multi-family housing on vacant or underutilized land located in the mature portions of Paducah where infrastructure and services are in place; and

**WHEREAS**, the residential development will encourage infill development on property that may have been underutilized or blighted, helping to catalyze revitalization; and

**WHEREAS**, the residential development will help maintain growth through infill development, which encourages a healthy economy; and

**WHEREAS**, the residential development will encourage infill residential development, which will increase the population base of the City of Paducah, therefore increasing the possibility of becoming a designated urbanized area; and

**WHEREAS**, in order to insure that the residential development will have a positive impact on the entire community and to encourage the public purpose of infill residential development, it is necessary and desirable that the City now authorize the Memorandum of Understanding by and among the City of Paducah and the Developer.

**NOW, THEREFORE**, in consideration of the foregoing premises and for other value consideration, the legal adequacy and sufficiency of which is hereby acknowledged by all parties hereto, the parties do covenant and agree as follows:

**A. Developer agrees to the following:**

1. **To acquire fee ownership of 309 Bleich Road prior to Developer's submittal to the Paducah Planning Commission (the "Planning Commission") a preliminary subdivision plat for the residential development of the Phase II Property.**

2. Develop a residential development on the Phase I Property and the Phase II Property in separate phases for the exclusive use as a condominium/multiple-family residential development and construct and install all public improvements within the residential development in accordance with the final subdivision plat or plats approved by the Planning Commission, the subdivision plans and stormwater management plan as approved by the City Engineer, and all applicable subdivision regulations as set forth in Chapter 102 (the Subdivision Ordinance) of the *Code of Ordinances of the City of Paducah, Kentucky* (the "residential development"). For the purposes of this Memorandum of Understanding, public improvements shall include: streets, sidewalks, curbs, gutters, storm sewers and storm water conveyance system, water supply and distribution facilities, sanitary sewer facilities, electric distribution facilities, street lights and survey monumentation. The residential development on the Phase I Property and the Phase II Property do not have to be completed simultaneously; provided, however, the Infill Agreement (as defined herein) relative to the Phase I Property must be executed within one (1) year from the date of this Memorandum of Understanding and the Infill Agreement (as defined herein) relative to the Phase II Property must be executed within five (5) years from the date of this Memorandum of Understanding.

3. Submit to the Planning Commission for approval preliminary subdivision plats for the residential development on the Phase I Property and on the Phase II Property.

4. Submit to the Planning Commission for approval final subdivision plats for the residential development on the Phase I Property and on the Phase II Property.

5. Submit to the City Engineer for approval the subdivision plans and stormwater management plans for the residential development on the Phase I Property and the Phase II Property in compliance with the Subdivision Ordinance.

6. Restrict the use and development of the Phase I Property and the Phase II Property to only condominium/multi-family residential units, which covenant shall run with the land and shall be binding on all parties claiming under and through the Developer, unless cancelled, altered or amended by a writing entered into by the Developer, or its successors, and

the City of Paducah. This covenant on the use and development of the Phase I Property and the Phase II Property shall be incorporated in the covenants and restrictions of the Phase I Property and the Phase II Property, which will be filed with the applications for the preliminary and final subdivision plats of the residential development and ultimately placed of record in the McCracken County Clerk's office.

7. Submit to the Planning Commission an application for a Conditional Use permit to utilize the R-2 Zone properties for condominium/multi-family residential development.

**B. City agrees to the following:**

1. In consideration of the commitments and agreement of the Developer set forth above, the City agrees that upon the approval of the final subdivision plat for the residential development on the Phase I Property and acceptance of all public improvements as defined in paragraph A (2) above to be constructed and installed by Developer on the Phase I Property, and simultaneous thereto, the City of Paducah agrees to approve and enter into a residential infill development agreement in substantially the same form as attached hereto as **Exhibit A** (the "Infill Agreement") with the Developer as to the Phase I Property.

2. In consideration of the commitments and agreement of the Developer set forth above, the City agrees that upon the approval of the final subdivision plat for the residential development on the Phase II Property and acceptance of all public improvements as defined in paragraph A (1) above to be constructed and installed by Developer on the Phase II Property, and simultaneous thereto, the City of Paducah agrees to approve and enter into the Infill Agreement with the Developer as to the Phase II Property.

3. The Infill Agreement for both the Phase I Property and the Phase II Property shall evidence the City's agreement to reimburse the Developer for the actual and reasonable initial costs and expenses incurred by the Developer to construct and install the public improvements within the residential development to be developed on the Phase I Property and the Phase II Property, which public improvements are to be acquired and owned by the City, up to an amount not to exceed the total amount of ad valorem real property taxes assessed and collected by the City over a ten (10) year period, commencing with the execution of the Infill Agreement for the Phase I Property and the Infill Agreement for the Phase II Property, from the residential development constructed on the Phase I Property and the Phase II Property, respectively. In the event the conditions precedent to the execution of the Infill Agreement for the Phase I Property are not satisfied fully within one (1) year of the date of this Memorandum of Understanding and the Infill Agreement for Phase I Property is not executed within this time frame, then the City's obligation to enter into the Infill Agreement for the Phase I Property shall automatically terminate and be of no further force and effect. In the event the conditions precedent to the execution of the Infill Agreement for the Phase II Property are not satisfied fully within five (5) years of the date of this Memorandum of Understanding and the Infill Agreement for Phase II Property is not executed within this time frame, then the City's obligation to enter into the Infill Agreement for the Phase II Property shall automatically terminate and be of no further force and effect.

4. The City shall have no obligation whatsoever to reimburse the Developer in excess of the total amount of ad valorem real property taxes actually collected and received by the City annually during each year of the ten (10) year period from the Phase I Property or the Phase II Property, respectively. Further, the City's obligation to reimburse the Developer for eligible costs and expenses applicable to the Phase I Property and Phase II Property, respectively, shall automatically terminate upon payment in full of all such eligible costs and expenses or at the end of the ten (10) year period, whichever occurs first.

**C. Miscellaneous Provisions.** The following miscellaneous provisions shall apply:

1. **Assignment.** This Memorandum of Understanding shall be binding upon and shall inure to the benefit of the parties hereto, and their respective legal representatives, heirs, successors and permitted assigns. The Developer shall not assign his rights and obligations hereunder, in whole or in part, without the prior consent of the City, but in no event, shall any assignment hereunder release or relieve the Developer from any obligations of this Agreement for which the Developer shall remain fully bound to the City.

2. **Merger Clause.** It is agreed and understood between the parties that this Memorandum of Understanding represents the entire and exclusive agreement between the parties and that all prior representations, covenants, warranties, understandings and agreements are merged herein. This Memorandum of Understanding may only be modified in writing executed by all parties hereto.

3. **Construction.** This Memorandum of Understanding shall be governed and construed under the laws of the Commonwealth of Kentucky.

4. **Assurances.** The City and the Developer agree to execute such further documents and instruments as shall be necessary to fully carry out the terms of this Agreement.

5. **Amendments.** This Memorandum of Understanding may not be modified or amended unless in writing signed by both parties hereto.

6. **Execution and Delivery.** This Memorandum of Understanding shall be of no force or effect unless and until it shall have been executed by both the City and the Developer and approved by the governing body of the City of Paducah.

7. **Time.** All times referred to herein shall be strictly construed, as all of such times shall be deemed of the essence.

**[For signatures see following pages.]**

WITNESS signatures of the parties as of the year and date first above written.

DEVELOPER:

CITY:

HIGDON DEVELOPMENT, INC.

CITY OF PADUCAH, KENTUCKY

By   
Philip Higdon, Vice-President

By \_\_\_\_\_  
Gayle Kaler, Mayor

Date: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT A  
Residential Infill Development Agreement

THIS INFILL DEVELOPMENT AGREEMENT (the "Infill Agreement") made and executed on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the City of Paducah, Kentucky, a city of the second class, 300 South Fifth Street, Paducah, Kentucky 42003 (hereinafter referred to as "City") and Higdon Development, Inc. (hereinafter referred to as "Developer").

WITNESSETH:

**WHEREAS**, the Board of Commissioners adopted Ordinance # \_\_\_\_\_ authorizing the approval of a Memorandum of Understanding (the MOU) between Higdon Development, Inc. as the Developer and the City of Paducah, which MOU is dated \_\_\_\_\_, 2014; and

**WHEREAS**, the Developer is the owner of a tract of real property consisting of \_\_\_\_ acres, which is located in Paducah, Kentucky, a document describing real property is set forth in the final plat which is entitled "Final Plat of the \_\_\_\_\_" survey dated \_\_\_\_\_ by \_\_\_\_\_ is attached thereto (the "final plat"); and

**WHEREAS**, the Developer has obtained final subdivision approval for the Developer's development of said tract of property as a subdivision for residential purposed from the Planning Commission on \_\_\_\_\_ and by the Board of Commissioners on \_\_\_\_\_, Ordinance # \_\_\_\_\_, which approval is evidenced by the final plat recorded in plat section \_\_\_\_\_, page # \_\_\_\_\_, in the McCracken County Clerk's office; and

**WHEREAS**, the Board of Commissioners of the City of Paducah finds:

That an Infill Agreement with the Developer will increase residential development in the City of Paducah.

That the City of Paducah's economic well-being is related to and in many respects dependent upon, sustained growth of its population and tax revenue base through development of vacant or underutilized properties.

That an Infill Agreement will encourage development of multi-family housing on vacant or underutilized land located in the mature portions of Paducah where infrastructure and services are in place.

That an Infill Agreement will encourage infill development on property that may have been underutilized or blighted, helping to catalyze revitalization.

That infill residential development will increase the revenue tax base necessary to meet

various capital needs, especially in the area of public safety, maintain infrastructure & facilities. promote economic development and will aid in the maintenance of existing infrastructure & facilities.

That an Infill Agreement will help maintain growth through infill development, which encourages a healthy economy.

That an Infill Agreement will encourage infill residential development, which will increase the population base of the City of Paducah, therefore increasing the possibility of becoming a designated urbanized area; and

**WHEREAS**, the City desires to provide municipal services to benefit the Developer's residential development and ultimately to the residents to be located therein, but requests the Developer to construct, at the Developer's cost, the public infrastructure and improvements which are necessary for the provision of such municipal services, including streets, gutters and other public improvements depicted on the final plat, which upon completion and acceptance by the City will become the property of the City; and

**WHEREAS**, for reason that such public infrastructure and improvements will become the property of the City upon completion of construction and acceptance by the City, the City is agreeable to reimbursing the Developer for the costs and expenses (\$\_\_\_\_\_ per \_\_\_\_\_) incurred by the Developer to construct and install such infrastructure and improvements within the residential development to the extent of the total cost and expense of same, or the amount of ad valorem real property taxes collected by the City from property located within the residential development for a period of ten (10) years, commencing with the execution of the Infill Agreement, the lesser to apply.

**NOW, THEREFORE**, in consideration of the foregoing provisions and for other valuable consideration, the receipt of which is hereby acknowledged by all parties hereto, the parties do covenant and agree as follows:

1. Construction of public infrastructure and improvements. The Developer shall construct and install within the residential development the public infrastructure and improvements which are necessary for the provision of municipal services by the City in accordance with the final plat, the subdivision plans and stormwater management plan as approved by the City Engineer and all applicable subdivision regulations as set forth in Chapter 102 (the Subdivision Ordinance) of the *Code of Ordinances of the City of Paducah, Kentucky*, which shall include streets, gutters, storm sewers and a storm water conveyance system (hereinafter referred to as "Municipal Facilities"). All Municipal Facilities shall be located in public right-of-ways dedicated by the final plat. The City Engineer shall have the right to inspect all construction of the Municipal Facilities during the construction process to ensure that construction of the Municipal Facilities are in compliance with the final plat, the subdivision plans and stormwater management plan as approved by the City Engineer and the Subdivision Ordinance.

2. Acceptance by the City. Upon completion of construction of the

Municipal Facilities, and acceptance of the Municipal Facilities by the City Engineer, the City shall accept the Municipal Facilities, at which time the Municipal Facilities shall be deemed the sole and exclusive property of the City. Upon such acceptance, the City shall thereafter maintain the Municipal Facilities at the City's costs. Notwithstanding the foregoing, it is agreed and understood by and between the parties that the City shall not be obligated to accept the Municipal Facilities which are not constructed in accordance with the final plat, the subdivision plans and stormwater management plan as approved by the City Engineer and the Subdivision Ordinance.

3. Reimbursement to the Developer for costs and expenses of constructing the Municipal Facilities. In consideration of the Developer's construction of the Municipal Facilities which are to become the property of the City, the City hereby agrees to reimburse the Developer for the actual and reasonable initial costs and expenses incurred by the Developer to construct and install the Municipal Facilities to the extent of such costs and expenses, or to the extent of the amount of ad valorem real property taxes realized and collected by the City from the City's levy and tax on the residential development for a period of ten (10) years commencing with the execution of the Infill Agreement, the lesser to apply. Reimbursement of these costs and expenses shall be subject to the following terms and conditions:

- A. Eligibility for reimbursement. Only actual costs and expenses incurred by the Developer in the construction of the Municipal Facilities which are constructed in accordance with the final plat, the subdivision plans and stormwater management plan as approved by the City Engineer and the Subdivision Ordinance shall be eligible for reimbursement. The determination of which costs and expenses are eligible and whether construction was made in accordance with the final plat, the subdivision plans and stormwater management plan as approved by the City Engineer and the Subdivision Ordinance shall be made by the City Engineer in his reasonable discretion.
- B. Time of request. The Developer shall only be entitled to make a request for reimbursement at that point in time when the Developer has fully completed construction of all of the Municipal Facilities. Any request for reimbursement shall be filed with the City on or before May 31 of any calendar year.
- C. Request for reimbursement. Any request for reimbursement shall be in written form. Each request shall itemize the costs and expenses which were incurred by the Developer in the construction of the Municipal Facilities. Such itemization shall first describe the Municipal Facilities which were constructed, then describe the material and labor incurred in the construction of such facilities and thereafter an itemization of the costs and expenses relating to same. The Developer shall attach to each request supporting documentation that verifies the costs and expenses incurred by the Developer in the construction of the Municipal Facilities. The Developer shall also provide to the City Engineer any other documentation

requested by the City Engineer which the City Engineer deems necessary or advisable in his review of the request. Each request made by the Developer shall be verified under oath.

- D. Review and approval by the City Engineer. Upon submission of the written request, the City Engineer shall evaluate the request and make a determination as to the eligibility of the costs and expenses as described in the request. As part of the evaluation, the City Engineer shall also make a determination that the Municipal Facilities were constructed in accordance with the final plat, the subdivision plans and stormwater management plan as approved by the City Engineer and the Subdivision Ordinance. In the event the City Engineer makes a determination that the Municipal Facilities, or any party thereof, were not constructed in accordance with said standards, such determination shall render the Developer's request ineligible for reimbursement. In making such a determination, the City Engineer shall provide a written description of the deficiency or deficiencies. In such event, the Developer shall not have any further right to request reimbursement under the Infill Agreement until such time that the noted deficiency or deficiencies are cured and remedied. In making his evaluation, the City Engineer shall have the right to consult with the Developer and any architect, engineer, contractor or subcontractor with whom the Developer associated with prior to or during the construction of the Municipal Facilities.
- E. Upon approval of eligibility of the costs and expenses of the Municipal Facilities, the City Engineer shall make a written report evidencing such approval. The City Engineer shall state in the written report the amount of the costs and expenses which were approved for reimbursement. In the event the City Engineer should reject any cost or expense as set forth in the request, the City Engineer shall provide an explanation in the written report for such rejection. Upon completion of the written report, the City Engineer shall cause a copy of such written report to be delivered to the Developer and to the Finance Department of the City of Paducah.
- F. Reimbursement from the Finance Department. Upon receipt of the written approval by the City Engineer, the Finance Department shall make a determination as to the amount of ad valorem real property taxes which were levied by the City for the City's sole benefit against the real property located in the residential development and actually collected and received by the City annually during each year of the ten (10) year period commencing with the execution of the Infill Agreement. The Finance Department shall make payment to the Developer in an amount equal to such taxes actually collected and received by the City annually during each year of the ten (10) year period, subject, however, to the following conditions:

- (1) The City shall have no obligation whatsoever to reimburse the Developer in excess of the sum total amount of the taxes actually collected and received by the City during the ten (10) year period. In the event such sum total amount exceeds the sum total of eligible costs and expenses, the City's obligation of reimbursement shall terminate upon full payment of such costs and expenses.
- (2) Any taxes which may be collected by the City for the benefit of others, such as the school board, etc., shall not be deemed a part of the reimbursement herein.
- (3) Only taxes actually received and collected by the City during the aforesaid ten (10) year period following the effective date of this Agreement shall be utilized in determining the reimbursement hereunder. Any taxes collected prior to or after such ten (10) year period shall not be included in such determination, regardless of the date of assessment or levy, issuance of the tax bills or in the event of any delinquency in payment.

4. Enforcement of Agreement. Each of the parties to this Agreement shall have the right to enforce the terms of this Agreement. In the event of such enforcement, or in the event of any dispute between the parties regarding the meaning or interpretation of any provision of this Agreement, all parties do hereby agree to submit such action to the McCracken Circuit Court. Each party shall have all rights and remedies as provided by law. In the event such action is filed with the McCracken Circuit Court, each party does hereby waive trial by jury. It is agreed by and between the parties that the prevailing party in such action shall have the right to recover its reasonable attorney's fees from the non-prevailing party as part of its costs of litigation.

5. Arbitration. Should any dispute arise between the parties, the parties will try to resolve the dispute by negotiation. If the dispute has not been resolved by such negotiation, the parties will submit the dispute for administered mediation. In the event a dispute cannot be resolved by mediation, the following provisions shall apply:

- (a) As to any unresolved dispute, upon the written request of any party, the dispute shall be submitted to an arbitrator to be selected by the parties. If the parties cannot agree within ten (10) days after the receipt of written notice from the other party requesting it to do so, the appointment shall be left to the American Arbitration Association.
- (b) Except as otherwise specifically set forth herein, the arbitrator shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall take place in Paducah, Kentucky.
- (c) The decision in writing of the arbitrator, when filed with the parties hereto,

shall be final and binding on both parties. The arbitrator shall award the costs and expenses incurred by the prevailing party against the non-prevailing party to such extent as determined by the arbitrator as the arbitrator deems just and equitable. Judgment may be entered upon the final decision of the arbitrator in any court having jurisdiction. Any party shall have the right to sue in court to enforce the arbitration award. In accepting arbitration, the parties expressly waive trial by jury.

6. Miscellaneous provisions. The following miscellaneous provisions shall apply:
  - A. Notices. All notices provided for herein will be in writing and addressed to the parties.
  - B. Other rights and remedies. The duties and obligations imposed by this Agreement and the rights and remedies available thereunder are in addition to and not a limitation of any duties, obligations, rights and remedies, otherwise imposed or available by law.
  - C. Governing Law. This document shall, in all respects, be governed by the laws of the state of Kentucky.
  - D. Entire Agreement. The Infill Agreement and the MOU expresses the complete agreement of the parties and supersedes all prior written or oral agreements or understandings between the City and the Developer with regard to the matters addressed herein. The making, execution and delivery of this Agreement by the parties hereto has not been induced by any representations, statements, warranties or agreements other than those expressly set forth herein and in the MOU.
  - E. Amendments. The Infill Agreement may not be modified or amended unless by in writing signed by both parties hereto.
  - F. Time. All times referred herein shall be strictly construed, as all of such times shall be deemed of the essence.
  - G. Counterparts. The Infill Agreement may be executed simultaneously or in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same agreement.
  - H. Successors and assigns. The Infill Agreement shall be binding upon the parties hereto, their heirs, successors and assigns.
  - I. Effective date of Agreement. The effective date of the Infill Agreement shall be the date that the Mayor of the City of Paducah executes the Infill

Agreement.

CITY OF PADUCAH, KENTUCKY

By \_\_\_\_\_  
Gayle Kaler, Mayor

HIGDON DEVELOPMENT, INC.

By Phillip Higdon  
Title V.P.

STATE OF KENTUCKY )

COUNTY OF McCracken )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by Gayle Kaler, Mayor, City of Paducah.

My commission expires \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State at Large

STATE OF KENTUCKY )

COUNTY OF McCracken )

The foregoing instrument was acknowledged before me this 20 day of February, 2014, by Phillip Higdon, Vice President (title) on behalf of Higdon Development Inc.

My commission expires Jan. 17, 2016.

Jammara S. Brock  
Notary Public, State at Large  
70#458322