

## **RELEASE AND SETTLEMENT AGREEMENT**

This Complete Release and Settlement Agreement ("Agreement") is made this 16<sup>th</sup> day of November 2012, by and between Ozark Hills Park Properties, LLC ("OZARK"), the City of Arnold, Missouri ("CITY"), and Robert Rosenfeld (collectively, the "Parties").

### **RECITALS**

- A. On November 3, 2008, OZARK filed a lawsuit in the Circuit Court of Jefferson County, Missouri, styled Ozark Hills Park Properties, LLC v. City of Arnold, et al., Case No. 08-JE-CC001394, which was removed to the U.S. District Court for the Eastern District of Missouri on August 30, 2011 and assigned Case No. 4:11-CV-1500-JAR (the "Lawsuit").
- B. In the Lawsuit, OZARK alleges, *inter alia*, that CITY unlawfully approved a neighborhood improvement district ("NID") and further violated its due process, equal protection, and First Amendment rights in various ways. The NID at issue in this case, as set forth in OZARK'S Lawsuit, involves the condemnation and construction of the Ozark Drive Bridge (the "Bridge") over Pomme Creek.
- C. In the Lawsuit, OZARK seeks a declaratory judgment that the NID assessment against it is invalid and void. OZARK further claims to have suffered damages and seeks compensation for attorney's fees in conjunction with alleged civil rights violations as set forth in the Lawsuit.
- D. On December 30, 2008, the City filed a lawsuit in the Circuit Court of Jefferson County, Missouri, styled City of Arnold, Missouri v. Ozark Hills Park Properties, LLC, Cause Number 08JE-CC01652 (the "Condemnation Suit"), in which it sought to acquire certain property rights from OZARK to construct the NID project.
- E. On August 10, 2009, the Commissioners appointed in the Condemnation Suit returned their report, assessing damages due OZARK in the amount of \$9,609.00. OZARK timely filed its Exceptions, which were assigned Cause Number 09JE-CC00893. OZARK did not withdraw the award, which remains in the registry of the Court.
- F. OZARK warrants that it is the fee owner of the Ozarks Hills Mobile Home Park, which is located on Ozark Drive in Arnold Missouri and is situated immediately north and south of Pomme Creek.
- G. CITY desires to acquire the portion of the Ozark Hills Mobile Home Park north of Pomme Creek (the "Park Property") for public use as part of a CITY-owned park, and has indicated its willingness to acquire the Park Property through eminent domain if necessary.
- H. CITY expressly denies that the NID is invalid and void, denies any alleged wrongful purpose behind approving the NID, denies the specific allegations of fraud and/or

collusion as set forth in the Lawsuit, and overall denies liability or wrongdoing in any way as alleged in the Lawsuit.

- I. OZARK denies that the NID is valid, and further denies that the actions of CITY with regard to the NID were appropriate.
- J. In order to resolve their disputes without incurring further costs of litigation, and without any admission of liability or wrongdoing herein, the parties have agreed to fully and finally resolve all disputes relating to the subject matter of the Lawsuit, the Condemnation Suit, and the acquisition of the Park Property by CITY in lieu of condemnation.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing Recitals, the mutual covenants herein contained and other good and valuable consideration (the receipt, adequacy and sufficiency of which are hereby acknowledged by the parties by their execution hereof), the Parties hereby agree as follows:

1. AGREEMENT. OZARK and CITY agree as follows in full and final settlement of numerous pending matters, including, but not limited to, the Lawsuit, including any and all claims that could have been brought in the Lawsuit, the Condemnation Suit, and the acquisition of the Park Property in lieu of condemnation:

(a) OZARK agrees to pay a NID assessment of One Hundred Thirty-Five Thousand Dollars (\$135,000) pursuant to the pending tax bill previously issued to OZARK, Tax Bill No. NID-OZBR-01, in a one-time, lump sum payment, which CITY agrees to accept in full and final satisfaction of the tax assessment against OZARK made in said Tax Bill. Said payment will be made at the closing referenced herein.

(b) OZARK agrees to convey by deed a portion of the Ozark Hills Mobile Home Park, at least including the portion north of Pomme Creek, (the "Park Property"), with the specific boundaries and legal description to be provided by Ozark prior to closing, after consultation with a surveyor, whose cost will be paid by City.

(c) OZARK agrees to accept, and CITY agrees to pay, One Hundred Sixty Thousand Dollars (\$160,000) for the Park Property, as specifically referenced in the legal description in subpart 1(b) above. The Parties expressly agree that the conveyance and payment is in settlement in lieu of a threatened condemnation. CITY agrees to pay the cost of preparing and recording documents to subdivide and convey the aforementioned land.

(d) CITY agrees to lease back to OZARK the Park Property, at a rent of One Dollar (\$1.00) per month, on terms acceptable to OZARK, with the term of the lease commencing as of the date of closing on the Park Property, and terminating on the earlier of: (i) the removal of all

current OZARK tenants residing on the Park Property; or (ii) April 30, 2013. The term of the lease may be extended in writing signed by both parties.

(e) OZARK agrees to remove all tenants from the Park Property, on or before April 30, 2013, unless the lease is extended if more time is required to remove the tenants.

(f) CITY'S insurer, Missouri Intergovernmental Risk Management Association, shall pay OZARK the sum of Thirty Thousand Dollars (\$30,000) in settlement of claims made in the Lawsuit, and such payment shall be made at the closing referenced hereunder.

(g) OZARK will dismiss with prejudice its Exceptions in the Condemnation Suit. OZARK will withdraw and retain the Commissioner's award currently in the registry of the Court in the amount of Ninety-Six Hundred and Nine Dollars (\$9609.00) as full and final satisfaction of its claim for damages in the Condemnation Suit.

(h) OZARK agrees to dismiss the Lawsuit with prejudice and, pursuant to the terms of the Release hereunder, agrees not to file any further causes of action against CITY or its employees, officers, agent, and/or attorneys, with respect to the subject matter of the claims in the Lawsuit. The Parties agree to bear their own costs of litigation incurred in the Lawsuit, the Condemnation Case, and/or any other legal matters pertaining to the Bridge, the NID, and any and all other legal conflicts and/or disputes arising to date between the Parties.

(i) CITY agrees to waive pending grass cutting charges previously assessed against OZARK. CITY also agrees to waive all excess sewer charges relating to water usage which has heretofore occurred, including any late fees and penalties relating thereto.

(j) CITY, at closing, will provide OZARK with an agreement, in the form of Exhibit "A" attached hereto, in which CITY agrees, to construct and continuously thereafter maintain a drive and/or turnaround on CITY'S land (including the portion of the Mobile Home Park north of Pomme Creek which will become the CITY's land, as per closing, related to this settlement), immediately north of the intersection of Ozark Drive and Pomme Creek.

(k) CITY agrees to accept a dedication of the privately-owned portion of Ozark Drive north of the Bridge and directly up to the state-owned Ozark Drive right-of-way, and said dedication will be accepted in the form set forth as Exhibit B attached hereto.

2. Release of CITY. OZARK and its owner, ROBERT ROSENFELD, and for their heirs, successors and assigns, and their past, present and future agents, and for its predecessors, successors and assigns (collectively "Paragraph 2 Releasor"), finally, unconditionally, irrevocably and absolutely release, acquit, remise and forever discharge CITY, its successors and assigns and its past, present and future employees, officers, directors, city council members, agents, attorneys, representatives, partners, trustees, beneficiaries, insurers (expressly including Missouri Intergovernmental Risk Management Association), affiliates, and them and their predecessors, successors and assigns (collectively "Paragraph 2 Releasee") from any and all manner of actions, suits, debts, sums of money, interest owed, accounts, reckonings, bonds, bills, specialties, covenants, controversies, agreements, guaranties, promises, undertakings, variances, trespasses,

credit memoranda, charges, damages, judgments, executions, obligations, costs, expenses, fees (including attorneys' fees and court costs), counterclaims, claims, demands, causes of action and liabilities, and hereby finally, unconditionally, irrevocably and absolutely waive any and all offsets and defenses, in each case whether known or unknown, absolute or contingent, matured or unmatured, presently existing or hereafter discovered, at law, in equity or otherwise, whether arising by statute, common law, in contract, in tort or otherwise, that Paragraph 2 Releasor may now have or that might subsequently accrue to any of them against Paragraph 2 Releasee for any and all claims that have been made in and/or could have been made in the Lawsuit, as well as any and all claims relating in any way, directly or indirectly, to the subject matter of the Lawsuit.

3. Release of OZARK and ROSENFELD. CITY and its heirs, successors and assigns and its past, present and future agents, attorneys, representatives, partners, officials, employees, trustees and beneficiaries, and for its predecessors, successors and assigns (collectively "Paragraph 3 Releasor"), finally, unconditionally, irrevocably and absolutely release, acquit, remise and forever discharge ROBERT ROSENFELD AND OZARK, their its successors and assigns and their past, present and future employees, officers, directors, agents, attorneys, representatives, partners, trustees, beneficiaries, subsidiaries and affiliates, and them and their predecessors, successors and assigns (collectively "Paragraph 3 Releasee) from any and all manner of actions, suits, debts, sums of money, interest owed, accounts, reckonings, bonds, bills, specialties, covenants, controversies, agreements, guaranties, promises, undertakings, variances, trespasses, credit memoranda, charges, damages, judgments, executions, obligations, costs, expenses, fees (including attorneys' fees and court costs), counterclaims, claims, demands, causes of action and liabilities, and hereby finally, unconditionally, irrevocably and absolutely waive any and all offsets and defenses, in each case whether known or unknown, absolute or contingent, matured or unmatured, presently existing or hereafter discovered, at law, in equity or otherwise, whether arising by statute, common law, in contract, in tort or otherwise, that Paragraph 3 Releasor may now have or that might subsequently accrue to any of them against Paragraph 3 Releasee for any and all claims that have been made and/or could have been made in the Lawsuit, as well as any and all claims relating in any way, directly or indirectly, to the subject matter of the Lawsuit.

4. Amendment and Modification. No amendment, modification, supplement, termination, consent or waiver of any provision of this Agreement, nor consent to any departure herefrom, will in any event be effective unless the same is in writing and is signed by the party against whom enforcement of the same is sought. Any waiver of any provision of this Agreement and any consent to any departure from the terms of any provision of this Agreement is to be effective only in the specific instance and for the specific purpose for which given.

5 Enforcement of Agreement; Forum/Venue Selection. In the event any party is required to bring any action at law or in equity against the other party to enforce any of the terms hereof, the losing shall pay to the prevailing party court costs and reasonable attorneys' fees in connection with the enforcement of this Agreement. The Parties expressly agree that the sole and exclusive venue for any such cause of action shall be the Circuit Court of Jefferson County, State of Missouri.

6. Assignments. Except as provided herein, no party may assign or transfer any of its rights or obligations under this Agreement to any other person without the prior written consent of

the other parties. The parties agree that the turn-around rights set forth in paragraph 1(j) above are transferable as part of any future conveyance of OZARK's ownership of its remaining property south of Pomme Creek.

7. Entire Agreement. This Agreement constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior agreements, letters of intent, understandings, negotiations and discussions of the parties, whether oral or written.

8. Further Assurances. The parties will execute and deliver such further instruments and do such further acts and things as may be required to carry out the intent and purpose of this Agreement.

9. Governing Law. This Agreement and the rights and obligations of the parties hereunder are to be governed by and construed and interpreted in accordance with the laws of the State of Missouri applicable to contracts made and to be performed wholly within Missouri.

10. No Reliance. Except as specifically set forth in this Agreement, each party hereto has relied solely on its own knowledge and judgment and/or upon advice from its own counsel in entering into this Agreement and has not received or relied upon advice from any other party.

11. Signatory Warranty. Each person executing this Agreement warrants that he is authorized to do so on behalf of the party for whom he signs this Agreement. The Signatory for CITY warrants that he or she has received due authorization to sign this Agreement from City Council.

12. Counterparts. Each party acknowledges and consents to this Agreement being executed in counterparts, as well as that a copy of this Agreement shall have the same force and effect as an original copy of the execution of this Agreement.

13. Confidentiality. Ozark and Rosenfeld agree to keep the specific terms of this Agreement confidential except as may be required in the ordinary course of business (i.e. to the parties' attorneys, accountants, and tax consultants). The parties acknowledge that, pursuant to the Missouri Sunshine Law, this Agreement must be made available by the City pursuant to a proper Sunshine Law Request. Nonetheless, the City agrees not to disclose the specific terms of this settlement to third parties, except as may be required pursuant to the Sunshine Law or in the ordinary course of business (i.e. to the parties' attorneys, accountants, and tax consultants). Ozark and Rosenfeld agree that any such production of this Agreement by the City pursuant to the Sunshine Law shall not relieve Ozark and/or Rosenfeld of their duty to keep the terms of this Agreement confidential pursuant to this provision; thus, Ozark and Rosenfeld agree to refrain from any comment, publication of comments, or public disclosure with respect to the terms of this Agreement. This provision in no way prevents Ozark or Rosenfeld from exercising their First Amendment rights with respect to matters relating to the City that are unrelated to the terms of this Agreement.

14. Closing Date. The parties agree that the closing of the transactions provide for herein shall occur at a mutually agreeable time on or prior to December 5, 2012, at a mutually

agreeable title company or at the offices of The Wallach Law Firm, Three City Place Drive, Suite 1070, St. Louis, Missouri 63141.

OZARK HILLS PARK PROPERTIES, LLC.

BY: OM 7009

TITLE: Member / Manager

DATE: 11/16/12

ROBERT ROSENFELD

DATE: \_\_\_\_\_

THE CITY OF ARNOLD, MISSOURI

BY: [Signature]

TITLE: INTERIM CITY ADMINISTRATOR

DATE: 11-16-12

ATTEST

BY: Diane C. Waller

DATE: 11-16-2012

CITY CLERK