

REAL ESTATE DEVELOPMENT AGREEMENT

THIS AGREEMENT (“Agreement”), is made and entered into this _____ day of _____, 2022, by and between the City of Independence, Missouri (the “City”), a Missouri municipal corporation, and Comprehensive Mental Health Services, Inc., including its affiliates, subsidiaries, successors, and assigns (“CMHS”), to further the development of City-controlled property within the Centerpoint TIF redevelopment area for use as a behavioral health center. The City and CMHS may hereinafter also be referred to individually as the “Party” and collectively as the “Parties.”

WHEREAS, the City desires to encourage and support further development within the corporate boundaries of the City, including the development of City-controlled property; and

WHEREAS, the City controls property within the Centerpoint TIF redevelopment area, generally bound by East 37th Terrace to the north, South Little Blue Parkway to the east, East 39th Street South to the south, and Centerpoint Medical Center to the west, all within the corporate boundaries of the City, as legally described in **Exhibit A**, which is attached hereto and incorporated by reference, which has been set aside for public health and safety purposes (the “Property”); and

WHEREAS, CMHS desires to develop a portion of the Property, including the construction of a behavioral health center; and

WHEREAS, the City has received the consent of Centerpoint Medical Center of Independence, LLC, to develop and use the Property in the manner described herein, such consent being attached hereto as **Exhibit B**; and

WHEREAS, the Parties desire to enter into this Agreement, as well as any agreements attached hereto and incorporated herein as exhibits, to facilitate the development of the Property.

NOW THEREFORE, in consideration of the foregoing, and of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the Parties hereby agree as follows:

SECTION 1 – Obligations and Commitments of City

The City will cause the transfer of the Property to CMHS.

SECTION 2 – Obligations and Commitments of CMHS

CMHS will secure and provide funding for the construction and operation of a behavioral health center.

SECTION 3 – Assignment of CMHS Obligations and Commitments

CMHS represents that its undertakings pursuant to this Agreement are for the purpose of constructing and operating a behavioral health center. CMHS agrees that this Agreement and the rights, duties, and obligations hereunder may not and shall not be assigned by CMHS without the prior written consent of the City.

SECTION 4 – Timeline

No later than twelve (12) months following execution of this agreement the CMHS will apply for all necessary permits related to the construction of the behavioral health center. No later than twenty-four (24) months following execution of this agreement the building will be occupied by CMHS.

SECTION 5 – Funding and Expenditures

All funding for and expenditures related to the planning, construction, and operation of a behavioral health center shall be provided by CMHS (i.e., the City will not provide any funding or pay any expenditures).

In connection with the Agreement, the City authorized a land survey of the site. As part of the Agreement, CMHS will reimburse the City an amount of \$13,550 in connection with this work which shall be provided to CMHS.

SECTION 6 – Development Criteria

The Parties agree that the engineering and construction plans and the construction of the final development plan and improvements, and the contemplated uses and occupancies thereof, shall comply with all federal, state and City building, zoning, environmental, development or other codes or regulations, subject to modifications approved by the City pursuant to the City ordinances or as required pursuant to any, zoning environmental, development or other regulations.

The Developer shall submit to the City, engineering and construction plans for the final development plan, its buildings, and improvements for the purpose of reviewing and issuing applicable building and construction permits. Building and construction permits shall be issued after approval by the appropriate City authorities pursuant to City ordinances and any other appropriate regulatory agency.

SECTION 7 – Conveyance of Property

1. The Property is owned by the City; the City will facilitate for a portion of the Property, as approved by the City, to be conveyed to CMHS.
2. CMHS recognizes that it will be responsible for all property taxes related its portion of the Property once said property has been conveyed to CMHS.

SECTION 8 – Non-performance

1. CMHS agrees that it shall take all necessary actions to effectuate the development of the Property as stated in this Agreement, and pursuant to the timeline outlined in Section 4. Should CMHS fail to comply with this Agreement, or the timeline outlined in Section 4, as determined by the City, CMHS shall convey the Property back to the City within thirty (30) days of receiving notice from the City.
2. CMHS agrees to acquire a Performance Bond equivalent to the estimated cost of constructing the project prior to the City issuing building permits.

SECTION 9 – Right of First Refusal

A Memorandum of Right of First Refusal will be filed with the Jackson County, Missouri, Recorder of Deeds; said document will outline (1) purpose for which restraint is imposed, (2) duration of restraint, and (3) method of determining price to be paid. Note that both the City and CMHS will need to sign Memorandum of Right of First Refusal.

Right of First Refusal: If CMHS wishes to sell property within 10 years of the Property being conveyed to CMHS, CMHS must notify City within fifteen (15) days of any of the following events: (1) discussions with outside parties; (2) marketing of Property for sale; or (3) any conversations, offers, or proposals which could reasonably constitute a potential sale. In such notice, CMHS shall outline all material terms of the offer, including price. The City shall respond within thirty (30) days and either exercise or decline to exercise its right. City's response (the "Matched Offer") shall outline terms the City finds reasonable and shall constitute a binding offer on the City. In calculating the Matched Offer, the appraised value of the land, as determined by an appraiser selected by the City, conveyed by the City to CMHS, shall be added to the offer for comparison. This Right of First Refusal continues in effect until conveyance of the Property in fee simple to City or to a third party pursuant to the Right of First Refusal described herein.

In the event the City elects not to exercise the Right of First Refusal, then, upon closing of the sale to another party, CMHS will compensate the City for the appraised value of the land at the time of the sale of Property to another party.

SECTION 10 – Deed Use Restriction

Restriction to be contained in the Special Warranty Deed will state (1) purpose of restriction, (2) length of restriction, (3) restriction will run with the land, and (4) that City retains right to enforce and the right of entry upon breach of the condition. Note that both the City and CMHS will need to sign the Deed.

The following restrictions and covenants are hereby declared to be covenants running with the land and shall be fully binding upon all persons or entities acquiring Property whether by descent, devise, purchase, or otherwise, and any person by the acceptance of title to Property, or any portion thereof, shall thereby agree and covenant to abide by and fully perform the following restrictions and covenants:

Property shall be used solely for a crisis intervention center for the betterment and benefit of the citizens of City of Independence, Missouri, and as such the right to enforce this restriction and covenant shall inure to City for so long as the Property is owned by an entity or person other than the City. If the Property is no longer used for the crisis intervention center, then the City may enter Property and reclaim title through an appropriate action. This covenant is to run with the land and shall be binding for a period of ten (10) years from the date hereof unless, by a vote of the majority of the City Council of the City of Independence, Missouri, with said vote taken prior to the expiration of the 10-year period and filed of record in Jackson County, Missouri, it is agreed to amend or release the same.

SECTION 11 – Indemnification; Release

CMHS shall indemnify, protect, defend, and hold the City and its officers, employees, and agents harmless from and against any and all claims, demands, liabilities, and costs, including reasonable attorneys' fees, costs and expenses, arising from damage or injury, actual or claimed, of whatsoever kind or character (including consequential and punitive damages), to persons or property occurring or allegedly occurring as a result of any acts or omissions of CMHS, its employees, agents, independent contractors, licensees, invitees or others acting by, through or under such indemnifying parties, in connection with its or their activities conducted pursuant to this Agreement and/or in connection with the ownership, use or occupancy, and development of the Property. CMHS understands that the Property is subject to restrictions on use and a right of reversion (the "Restrictive Covenants") contained in the Tax Increment Financing Redevelopment Agreement dated as of October 27, 2005, as amended, and the Special Warranty Deed dated as of April 7, 2008, copies of which documents have been provided to CMHS. CMHS further understands that the City is entering into this Agreement in reliance on the Waiver and Consent attached hereto as **Exhibit B**. The City makes no representation with respect to the sufficiency of such Waiver and Consent and takes no responsibility for defending the use by CMHS of the Property against claims that such use violates the Restrictive Covenants. CMHS hereby releases the City from any liability to CMHS, its successors or assigns, with respect to any enforcement action or proceeding relating to the Restrictive Covenants.

SECTION 12 – Entire Agreement

This Agreement constitutes the entire agreement between the Parties regarding the subject matter hereof and supersedes all prior understandings or agreements of any kind between the Parties preceding the date of this Agreement. There are no other promises, conditions, understandings, or other agreements, whether oral or written, relating to the subject matter of this Agreement.

SECTION 13 – Severability

If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable in whole or in part, the remaining provisions shall not be affected and shall continue to be valid, legal, and enforceable as though the invalid, illegal or unenforceable part had not been included in this Agreement.

SECTION 14 – Jointly Drafted

The Parties hereto agree that this Agreement has been jointly drafted and each Party has read the terms and provisions of this Agreement, has had an opportunity to seek legal review of the terms of this Agreement, and have agreed to abide by the terms and provisions herein.

SECTION 15 – Authority to Execute

The undersigned represent that they each have the authority and capacity from the respective Parties to execute this Agreement.

SECTION 16 – Notices

Any and all notices related to this Agreement shall be sent to the parties utilizing the following addresses:

City of Independence
Attn: City Manager

Comprehensive Mental Health Services
Attn: President and CEO

111 East Maple Ave.
Independence, MO 64050

17844 East 23rd St.
Independence, MO 64057

SECTION 17 – Applicable Laws

This Agreement shall be interpreted according to the laws of the State of Missouri.

SECTION 18 – Compliance with Laws

Subject to any rights to contest the same in any manner permitted by law, CMHS, its officers, directors, and principals, at its sole cost and expense, shall comply in every respect with all legal requirements, ordinances, rules, and regulations of all federal, state, county and municipal governments, agencies, bureaus, or instrumentalities thereof now in force or which may be enacted hereafter which pertain to the development and use of the Property.

SECTION 19 – Binding

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

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EXHIBIT A

Legal Description

[attached]

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EXHIBIT B

Waiver and Consent of Centerpoint Medical Center of Independence, LLC

[attached]

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