

BILL NO. 453

ORDINANCE NO. 434

INTRODUCED BY: Trustees Slama, Fortune, Young, Graves and Whitmore

AN ORDINANCE APPROVING A RIGHT OF ENTRY AGREEMENT WITH TWIN OAKS-MANCHESTER, LLC

BE IT ORDAINED by the Board of Trustees of the Village of Twin Oaks, St. Louis County, Missouri, as follows:

Section 1. A Right of Entry Agreement between the Village and Twin Oaks – Manchester LLC pertaining to real property at 1381 Big Bend Road, said instrument being attached hereto as Exhibit “A” and incorporated in this Ordinance by reference, is approved.

Section 2. The Chairman and Village Clerk are authorized to execute said Agreement on behalf of the Board of Trustees and the Clerk/Controller is authorized to enter into contracts with environmental inspection firms for the purpose of determining suitability for development as a government Center.

Section 3. This Ordinance shall be in full force and effect from and after its passage as provided by law.

PASSED and APPROVED this 6th day of August, 2014.

Dennis L. Whitmore
Dennis L. Whitmore, Chairman
Board of Trustees

ATTEST:

Kathy A. Runge
Kathy A. Runge, Village Clerk

First Reading: 08-06-2014

Second Reading: 08-06-2014

RIGHT OF ENTRY AGREEMENT

This Right of Entry Agreement ("Agreement") is dated as of August 13, 2014 (the "Effective Date"), by and between the VILLAGE OF TWIN OAKS ("Municipality"), and TWIN OAKS-MANCHESTER, LLC ("Owner").

A. Owner is the owner of certain vacant real property containing approximately 47,045 square feet commonly known as 1381 Big Bend Road, Twin Oaks, MO (the "Property").

B. Owner and Municipality are negotiating the terms of an agreement pursuant to which Owner will donate the Property to Municipality (the "Donation Agreement").

C. Prior to execution of the Donation Agreement, Owner has agreed to grant Municipality access to the Property in accordance with this Agreement.

In consideration of the foregoing, 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 agree as follows:

1. Owner hereby agrees to permit Municipality, its authorized representatives, agents, employees, engineers, consultants, and contractors (collectively, the "Municipality Permitted Parties") the right to enter upon the Property to conduct surveys, testings, investigations, and inspections of the Property connected to Municipality's acquisition thereof, and other activities incidental thereto (collectively, the "Permitted Activities"), all in accordance with the terms of this Agreement. All costs and expenses of the Permitted Activities shall be borne by Municipality.

2. In exercising the Permitted Activities, the Municipality Permitted Parties shall, at all times: (i) obtain any and all required licenses or permits; (ii) comply with any and all applicable laws; (iii) maintain in place reasonable commercial general liability insurance (including contractual liability coverage) against claims for bodily injury, personal injury, death, and property damage occurring in connection with the Permitted Activities, with a limit of not less than ONE MILLION DOLLARS (\$1,000,000) each Occurrence and THREE MILLION DOLLARS (\$3,000,000) General Aggregate. Such policy(ies) shall name Owner as an additional insured, and copies of certificates evidencing such insurance will be provided upon Owner's request; and (iv) give Owner reasonable advance notice of any entry upon the Property to conduct the Permitted Activities.

3. As consideration for permission to enter the Property, Municipality agrees, except to the extent that any of the same shall be caused by the gross negligence or willful misconduct of Owner, to indemnify, defend, and hold harmless Owner and its officers, directors, affiliates, agents, employees, and contractors (each an "Indemnified Party" and collectively the "Indemnified Parties") by, from, and against any and all claims, demands, losses, judgment, liens, liabilities, damages, and costs or expenses, including but not limited to reasonable attorneys' fees, investigative and discovery costs, court costs, and all other sums ("Indemnified Costs") that any or all of the Indemnified Parties may pay, or become obligated to pay, on account of any claim or assertion of liability for liens, personal injury or death, or property damage, or any other liability ("Claims") arising or alleged to have arisen out of any act or omission of the Municipality Permitted Parties in connection with the entry onto the Property or the breach of the terms of this Agreement. Except for the Indemnified Parties' gross negligence or willful misconduct, Municipality hereby assumes all risks arising out of the Permitted Activities and hereby releases and discharges the Indemnified Parties from any and all

Indemnified Costs that the Municipality Permitted Parties may pay, or become obligated to pay, on account of any related Claims. Notwithstanding the foregoing, Municipality shall in no event (unless caused by the negligence or willful misconduct of the Municipality Permitted Parties) be obligated to indemnify, defend, or hold any Indemnified Party harmless by, from, or against any Indemnified Costs that relate to or arise out of the existing environmental condition of the Property. Nothing herein shall be construed to authorize the Municipality Permitted Parties to subject all or any portion of the Property to any mechanics or similar liens arising out of the Permitted Activities.

4. The right of entry granted by this Agreement shall terminate upon the earlier of written notice of termination from Owner to Municipality or transfer of the Property by Owner to Municipality; provided, however, that the obligations under this Agreement to indemnify, defend, and hold harmless shall survive termination of the right of entry granted by this Agreement.

5. This Agreement shall be governed by the laws of the State of Missouri, and jurisdiction and venue in connection with any litigation regarding the matters addressed in this Agreement shall be exclusively limited to any state court of competent jurisdiction located in the County of St. Louis, Missouri, or any United States District Court of competent jurisdiction located in the State of Missouri. Any provision of this Agreement that shall be prohibited or unenforceable shall be deemed ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

6. This Agreement may be executed simultaneously in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any party may execute this Agreement by transmittal of a facsimile signature or email attachment.

7. This Agreement is binding upon and shall inure to the benefit of the successors and permitted assigns of the parties hereto. Neither party shall assign all or any part of its rights, interests, or obligations hereunder to another party without the written consent of the other party.

In Witness Whereof, the parties have caused their duly authorized representatives to execute this Agreement as of the date first above written.

MUNICIPALITY:

OWNER:

VILLAGE OF TWIN OAKS

TWIN OAKS - MANCHESTER, LLC

By: Dennis L. Whitmore
DENNIS L. WHITMORE, Chairman

By: [Signature]
Name: John C. Popp
Title: man

ATTEST: Kathy A. Runge
Village Clerk