AN ORDINANCE APPROVING AN ESCROW AND DISBURSING AGREEMENT WITH LEGACY PARK SPORTS, LLC AND HEARTLAND BANK AND TRUST COMPANY REPRESENTING SPRINGFIELD COMMUNITY BANKS FOR PAYMENT OF PROJECT COSTS RELATED TO THE LEGACY PARK SPORTS COMPLEX

PROPOSED AMENDMENT NO. 1 – AGENDA ITEM 2024-119

WHEREAS, the City of Springfield is a home rule unit as defined in Article VII, Section 6(a) of the 1970 Illinois Constitution and has jurisdiction over matters pertaining to its government and affairs; and

WHEREAS, the City Council previously adopted ordinance number 205-05-21 authorizing the execution of a development agreement with Legacy Park Sports, LLC, for a sports complex; and

WHEREAS, ordinance 182-04-23 authorized an amended Development Agreement with Legacy Park Sports, LLC due to adjustments to the development plans and timeline; and

WHEREAS, ordinance 449-10-23 authorized a Second Amendment and Restated Development Agreement with Legacy Park Sports, LLC which requires that certain sales tax and hotel motel tax collected by City be placed into a tax incentive fund to provide certain incentive payments to Developer for construction of a sports tourism facility; and

WHEREAS, Ordinance ______________ authorized the issuance of Taxable Sports Complex Revenue Bonds, Series 2024 of the City of Springfield, Sangamon County, Illinois; and

WHEREAS, the City desires to enter into an Escrow and Disbursing Agreement with Legacy Park Sports, LLC, and Heartland Bank and Trust Company representing Springfield Community Banks for the purpose of approving and authorizing distributions of authorized Taxable Sports Complex Revenue Bonds, Series 2024 of the City of Springfield, Sangamon County, Illinois funds in accordance with Ordinance ________________ and the Second Amended and Restated Development Agreement; and

WHEREAS, it is in the best interest of the City to approve an Escrow and Disbursing Agreement with Legacy Park Sports, LLC for reimbursement of Project Costs advanced by developer.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SPRINGFIELD, ILLINOIS:

Section 1: That the City Council hereby approves the Escrow and Disbursing Agreement with Legacy Park Sports, LLC and Heartland Bank and Trust Company representing Springfield Community Banks (attached hereto as Exhibit A) for the approval and disbursement of Taxable Sports Complex Revenue Bonds, Series 2024 of the City of Springfield, Sangamon

County, Illinois funds in accordance with Ordinance ______________ and the Second Amended and Restated Development Agreement. The Mayor and City Clerk are hereby authorized to execute any necessary documents on behalf of the City of Springfield.

Section 2: That this ordinance shall become effective immediately upon its passage and recording by the City Clerk.

PASSED: ____________________, 2024

RECORDED: ________________, 2024

ATTEST: ________________________
City Clerk Frank Lesko

Requested by: Mayor Misty Buscher

SIGNED: ______________________, 2024

____
Mayor Misty Buscher

Approved as to legal sufficiency:

4/16/24

Office of Corporation Counsel / Date

ESCROW AND
DISBURSING AGREEMENT
(All Sports Complex Funds)

THIS ESCROW AND DISBURSING AGREEMENT ("Escrow Agreement")~~,~~ is made and entered into this ________ day of April, 2024, by and among **LEGACY PARK SPORTS, LLC**, an Illinois limited liability company ("Developer"), **CITY OF SPRINGFIELD**, an Illinois municipal corporation ("City"), **HEARTLAND BANK AND TRUST COMPANY** representing a collaboration of **SPRINGFIELD COMMUNITY BANKS** including Bank and Trust Company, Carrollton Bank, First Bankers Trust, Illinois National Bank, Security Bank, and West Central Bank (collectively "~~Banks~~Bond Holder"), **BANK OF SPRINGFIELD** ("Developer's Lender"), and **THE TITLE CENTER, LLC**, an Illinois limited liability company ("Escrow Agent").

WHEREAS, City and Developer have entered into a Development Agreement for The Legacy Pointe Sports Complex dated June 15, 2021, as amended by the First Amended and Restated Development Agreement dated April 27, 2023, and Second Amended and Restated Development Agreement dated October 3, 2023 (collectively, "Development Agreement"), which requires that certain sales tax and hotel motel tax collected by City be placed into a tax incentive fund ("Sports Complex Incentive Fund") to provide certain incentive payments to Developer for construction of a sports tourism facility ("Sports Complex");~~.~~

WHEREAS, the Development Agreement allows and provides a process issuance of limited obligation b~~B~~onds that are secured by and payable solely from tax revenue as provided for in the Development Agreement ("Sports Complex Revenue Bonds") proceeds of which shall be held by City as disbursed by the Bond Holder in the Sports Park Development Assistance Account ("Project Account");~~.~~

WHEREAS, Developer has or is about to begin construction of infrastructure and improvements for the Sports Complex and will be paying for from private funds and seeking reimbursement or seeking direct payment for all or a portion of those expenses from available funds from the Sports Complex Revenue Bonds sale proceeds; ~~.~~and

WHEREAS, City and has requested Escrow Agent to review documentation submitted by Developer, approvals by City and Bond Holder ~~Banks~~, and make disbursements for reimbursement or direct payment of Project Costs. ~~advanced by Developer~~ Provided that at no time shall the City's payment or reimbursement of Project ~~or for contribution of~~ C~~c~~osts ~~on a~~exceed 50% ~~basis~~ of the total Project Costs expended for the Sports Complex as provided for in the Development Agreement and Sports Complex Revenue Bonds. City, ~~Banks~~Bond Holder, and Developer acknowledge that such review is not required by Development Agreement, but the parties prefer that all monies paid from the Sports Complex Incentive Fund and Sports Park Development Assistance Account (as defined below) be paid through Escrow Agent.

NOW, THEREFORE, in consideration of the recitals set forth above, that are incorporated into this Escrow Agreement herein, and the mutual agreements set forth below, the parties hereto agree as follows:

ARTICLE 1: DISBURSEMENT REQUEST AND DOCUMENTATION

Prior to each disbursement of funds, the party listed below shall furnish or cause to be furnished to Escrow Agent the following:

A. ~~Developer's Submissions~~Project Costs Eligible for Mechanics Liens. ~~The~~For Project Costs eligible for a mechanic's lien, Developer shall provide to ~~Banks~~Bond Holder, City, Developer's Bank, and Escrow Agent the following:

1. ~~Construction Costs Paid Directly by Developer. For Project Costs paid for by Developer, Developer will submit:~~

~~a) a signed~~ D~~d~~isbursement requisition, in a form substantially similar to the Disbursement Requisition form attached as Exhibit A, which is properly completed and signed;

2. Source of funds cover sheet, in a form substantially similar to the Source of Funds cover sheet attached as Exhibit B, indicating the source of the funds, if any, for the requested payment or reimbursement of the Project Cost being submitted and setting forth the cumulative amount and percentage of the Project Costs paid by the Developer;

3. ~~b)~~ Developer's affidavit setting forth all contractors and material suppliers that are being used on the Project for which reimbursement or contribution is being sought, the amounts of the contracts, amount paid to date, and balance due;

4. Contract with the contractor will be submitted with the initial requisition for contractor's work, when applicable, and any change orders thereafter entered into;

5. Contractor documentation required to be submitted under the Development Agreement including Insurance Certificates, Apprenticeship Participation Statement, Prevailing Wage Violations Statement, and OSHA Violations Statement, will be included with the first request for reimbursement that includes the contractor;

6. ~~c)~~ C~~c~~ontractor's affidavit setting forth all subcontractors and material suppliers that are being used on the ~~Project~~ Sports Complex under its contract with Developer, the amounts of any subcontracts, amount paid subcontractors and material suppliers to date, and any balance due; ~~and~~

7. Contractor's Invoice and schedule of values if applicable;

8. Contractor's certified payroll that complies with the Development Agreement;

9. ~~d)~~ L~~l~~ien waivers, paid invoices, or such other documentation necessary to substantiate payment of Project Costs as may be reasonably acceptable to Escrow Agent;~~,~~ and

10. W-9's completed and signed for all parties being paid.

B. ~~2.~~ Project Costs Not Eligible for Mechanics Liens. For professional fees, bank charges, and other project expenses not generally covered by mechanic's liens, Developer will provide to Bond Holder, City, Developer's Bank, and Escrow Agent the following:~~submit~~:

1. Disbursement requisition, in a form substantially similar to the Disbursement Requisition form attached as Exhibit A, which is properly completed and signed;

2. Source of funds cover sheet, in a form substantially similar to the Source of Funds cover sheet attached as Exhibit B, indicating the source of the funds, if any, for the requested payment or reimbursement of the Project Cost being submitted and setting forth the cumulative amount and percentage of the Project Costs paid by the Developer;

~~a) a signed disbursement requisition, in a form substantially similar to the Disbursement Requisition form attached as Exhibit A;~~

~~b)~~3. Contract/engagement letter with the contractor will be submitted with the initial requisition for contractor's work, when applicable;

4. Contractor's invoice(s) indicating work performed and amount ~~charged;~~to be paid or ~~and~~

~~c)~~ receipts indicating payment, lien waivers, statements acknowledging payment for services, or such other documentation necessary to substantiate payment of Project Costs as may be reasonably acceptable to Escrow Agent, if reimbursement is being requested.

5. W-9's completed and signed for all parties being paid.

ARTICLE 2: APPROVAL OF DISBURSEMENT REQUESTS.

A. City Approval. The City shall review the disbursement requisition and documentation submitted by the Developer and ~~provide~~, within thirty (30) days of receipt of Developer's disbursement request, provide to ~~Title Company~~Escrow Agent, Bond Holder, Developer's Lender, and Developer the City's~~:~~

~~1.~~ signed approval and certification of the disbursement requested by Developer and such ~~;~~
~~2.~~ additional supporting documentation as required by Escrow Agent.

B. Bond Holder Approval. ~~Banks~~Bond Holder shall ~~provide~~, review the disbursement requisition and documentation submitted by the Developer and, within thirty (30) days of receipt of Developer's disbursement request, provide to ~~Title Company~~Escrow Agent, City, Developer's Lender, and Developer the Bond Holder's ~~:~~

~~1.~~ signed approval ~~and certification~~ of the disbursement requested by Developer and such ~~;~~

~~2.~~ additional supporting documentation as required by Escrow Agent.

ARTICLE 3: FUNDING OF DISBURSEMENT REQUISITIONS.

Each disbursement requisition approved by the City and Bond Holder will be funded as indicated Source of Funds cover sheet.

A. Sports Complex Tax Incentive Funds. Upon its approval of a disbursement requisition, the City will cause funds to the extent requested in the Source of Funds cover sheet to be transferred from the Sports Park Development ~~Assistant~~ Assistance Account held by City to be deposited with Escrow Agent in the form of a wire transfer as soon as possible but no later than ~~within~~ thirty (30) days of ~~Banks'~~ Bond Holder's and City's approval of Developer's disbursement request. Such funds will be transferred in accordance with the An Ordinance Providing for the Issuance of Taxable Sports Complex Revenue Bonds, Series 2024 of the City of Springfield, Sangamon County, Illinois, City Ordinance No. ____________________ and the Development Agreement.

B. Sports Complex Revenue Bond Funds. Upon the City's and Bond Holder's approval of a disbursement requisition, the Bond Holder will cause, to the extent requested in the Source of Funds cover sheet, proceeds from the Sports Complex Revenue Bonds to be advanced and transferred to the Escrow Agent in the form of a wire transfer as soon as possible but no later than two (2) business days after Bond Holder's receipt of City's approval of Developer's disbursement request. Such funds will be transferred in accordance with the An Ordinance Providing for the Issuance of Taxable Sports Complex Revenue Bonds, Series 2024 of the City of Springfield, Sangamon County, Illinois, City Ordinance No. ____________________ and the Development Agreement.

C. Developer's Funds. Upon the City's and Bond Holder's approval of a disbursement requisition, the Developer will cause, to the extent requested in the Source of Funds cover sheet, funds from Developer's accounts to be transferred to the Escrow Agent in the form of a wire transfer as soon as possible but no later than two (2) business days after Developer's receipt of Bond Holder's and City's approval of Developer's disbursement request.

D. Developer's ~~Banks'~~ Lender's Funds. Upon the City's and Bond Holder's approval of a disbursement requisition, Developer will cause, to the extent requested in the Source of Funds cover sheet, funds from Developer's loans from Developer's Lender to be transferred to the Escrow Agent in the form of a wire transfer as soon as possible but no later than two (2) business days after Developer's receipt of Bond Holder's and City's approval of Developer's disbursement request.

ARTICLE 4: DISBURSEMENT OF FUNDS BY ESCROW AGENT

A. Escrow Agent Review. The Escrow Agent will review and ensure the following:

1. Distribution Requisition submitted is signed by the Developer;
2. City's approval of the Disbursement Requisition is signed by the City;
3. Bond Holder's approval is signed by the Bond Holder; and
4. The affidavits, lien waivers, invoices, and other construction documentation submitted are sufficient to allow the ~~Title Company~~ Escrow Agent to issue a Standard ALTA Construction Loan Policy (the Policy), together with Standard Interim Mechanics Lien Endorsement and such other endorsements as the lenders hereunder may request. If such policy were issued to a lender prior to Escrow Agent's first disbursement of funds

hereunder, then Escrow Agent could furnish or be prepared to furnish a date down endorsement and interim mechanic's lien endorsement covering the requested disbursement.

B. Escrow Agent Disbursement of Funds. The Escrow Agent will disburse the funds requested under the Disbursement Requisition to Developer or parties indicated on the Disbursement Requisition for the Project Costs and expenses within two (2) business days of Escrow Agent's receipt of the requested funds and the required approvals from City and the Bond Holder.

C. Deviation from Agreement. Any requested deviation of these requirements of the Escrow Agreement must be made in writing signed by ~~Banks~~Bond Holder, City, and Developer. Escrow Agent will have no liability for the consequences of any such deviation.

ARTICLE ~~2~~5: GENERAL CONDITIONS

A. ~~Banks~~Bond Holder, City, and Developer understand and agree that Escrow Agent's duties are to disburse deposits pursuant to the provisions of this Escrow Agreement, and Escrow Agent's liability arising from the performance of those duties regarding the release of mechanic~~'~~s lien rights shall extend only to those persons to whom Escrow Agent is making payments and only for those amounts being paid. Escrow Agent has no liability for any lien rights associated with work previously completed or completed by persons not receiving direct payments from Escrow Agent. Escrow Agent will use the same care and diligence in the collection and examination of sworn statements, waivers, affidavits, supporting waivers, and releases of lien for the above purpose as it would use were Escrow Agent required by this Escrow Agreement to furnish mechanic's lien coverage to a construction trustee and no greater. If funds are to be disbursed to Developer rather than contractors or subcontractors, the collection and examination of the required statements, waivers, etc., by Escrow Agent shall not be construed by City as an assurance by Escrow Agent that the contractor or subcontractors have in fact been paid by Developer.

B. The parties understand that Escrow Agent makes no representation that a title insurance policy insuring over mechanic's lien claims will necessarily issue without additional title insurance underwriting requirements being met.

C. Escrow Agent may, at its discretion and for its benefit in assisting it to fulfill its obligations hereunder, take whatever steps it may deem necessary to verify the accuracy of any sworn statements required hereunder. It is further understood that Escrow Agent reserves the right in its discretion to suspend further disbursement in the event any intentional discrepancies, misstatements, or omissions are detected in any statements submitted and that such suspension may be continued until such discrepancies, misstatements, or omissions are corrected or explained to the satisfaction of Escrow Agent.

D. The functions and duties assumed by Escrow Agent include only those described in this Escrow Agreement and Escrow Agent is not obligated to act except in accordance with the terms and conditions of this Escrow Agreement. Escrow Agent does not insure that the project will be completed, nor does it insure that the project, when completed, will be in accordance with plans and specifications, nor that sufficient funds will be available for completion, nor does it make the certification of the inspector/architect its own, nor does it assume any liability for same.

E. Bond Holder, City, and Developer agree to obtain any inspection they may desire or require prior to disbursement and approval of any such inspection shall be a condition to the approval of Bond Holder prior to any disbursement.

F. Escrow Agent shall not be responsible for any loss of documents or funds not in its custody. Documents or funds deposited in the United States mail shall not be construed as being in custody of Escrow Agent.

G. Deposits made pursuant to these instructions may be invested on behalf of any party or parties hereto, provided, that any direction to Escrow Agent for each investment shall be expressed in writing and contain the consent of all other parties to this Escrow Agreement, and also provided that Escrow Agent is provided the taxpayer's identification number and investment forms as required. Escrow Agent will, upon request, furnish information concerning its procedure and fee schedules for investment of funds.

Except as to deposits of funds for which Escrow Agent has received express written direction concerning investment or other handling, the parties hereto agree that Escrow Agent shall be under no duty to invest or reinvest any deposits at any time held by it hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be duly executed and delivered as of the date first written above.

CITY: **CITY OF SPRINGFIELD**

By:__________________________________
Misty Buscher, Mayor

DEVELOPER: **LEGACY PARK SPORTS, LLC**

By:__________________________________
Dirk McCormick, Manager

~~BANKS~~BOND HOLDER: **HEARTLAND BANK AND TRUST COMPANY**

By:__________________________________
Grant Franklin, Senior Vice President

DEVELOPER'S LENDER: BANK OF SPRINGFIELD

By: __________________________________
Name: ________________________________
Its: ___________________________________

ESCROW AGENT: THE TITLE CENTER, LLC~~,~~

By:__________________________________
Name: ________________________________
~~ITS~~Its: ______________________________________

EXHIBIT A

DISBURSEMENT REQUISITION

To: The City of Springfield under the Development Agreement for Legacy Pointe Sports Complex effective June 15, 2021, as amended ("Agreement"), by and between the City of Springfield, Illinois, and Legacy Park Sports, LLC ("Developer").

Date: _______________, 20___

Pursuant to Article V of the Agreement, the undersigned hereby requests disbursement of funds for Project Costs from the appropriate account of the Sports Complex Accoount to The Title Center, as escrow agent for payment of the following Project Costs to:

_____ reimburse the Developer or

_____ pay the vendor listed below with any balance due paid by the Developer.

Vendor	Total Amount	Development Assistance	Purpose

Developer hereby certifies:

(a) that each request herein has been properly incurred, is a proper charge against the Sports Complex Tax Incentive Fund, and has not been the basis of any previous requisition;

(b) that all amounts previously disbursed and to be disbursed pursuant to such requisition are for the Project Costs (as defined in the above-mentioned Agreement);

(c) that except for any amount stated in the attachments to this certificate due for services or materials to the particular vendor or supplier, there is no outstanding indebtedness to the particular vendor or supplier known to the person signing this certificate, after due inquiry, which is due as of the date of this requisition for labor, wages, materials, supplies or services in connection with such construction, which, if unpaid, would be the basis of a lien upon the Project;

(d) that no vendor's, mechanic's, laborer's, materialmen's, or other lien which has not been discharged of record, have been filed with respect to the Project or any part thereof;

(e) that no Event of Default exists under the Agreement; and

(f) that attached hereto are documentation reasonably necessary to evidence and support the expenditures requested hereby including, as appropriate, invoices, paid receipts, statements, lien waivers, canceled checks, agreements, or other information.

This Disbursement Requisition is being made without prejudice to any rights against third Parties which exist as of the date hereof or which may subsequently come into being.

_______________________________________ LEGACY PARK SPORTS, LLC

By: ______________________________________
Its Authorized Representative

I have reviewed this Disbursement Requisition and documentation included from the Developer, the certification of the Developer's engineer, and the field observations and reports of the City's construction supervisor and approve payment and certify the Project Costs requested.

_______________________________________ Office of Planning and Economic Development
_______________________________________ City of Springfield, Illinois

By: ______________________________________
Its Authorized Representative

I have reviewed this Disbursement Requisition and documentation included from the Developer, the certification of the Developer's engineer, and the field observations and reports of the City's construction supervisor and approve payment and certify the Project Costs requested.

_______________________________________ Heartland Bank and Trust Company

By: ______________________________________
Its: ______________________________________

EXHIBIT B

SOURCE OF FUNDS

DISBURSEMENT REQUISITION ___/___/___

Construction Costs

Development Assistance (City)

✓	Source of Requested Funds	Amount		
____	Sports Complex Tax Incentive Fund	$____________	or	☐ All Available Funds
____	Sports Complex Revenue Bonds (Heartland)	$____________	or	☐ All Funds Requested
____	No Development Assistance Funds Requested			

Developer's Contribution of Funds

✓	Source of Developer's Funds	Amount		
____	Developer's Funds	$____________	or	☐ Entire Amount
____	Bank Loan (BOS)	$____________	or	☐ Entire Amount
____	No Funds Provided			

Project Costs of Sports Facility to Date

		Developer's Contribution		Development Assistance*	
	Total	Amount	%	Amount	%
Amount Prior to this Requisition	$____________	$____________	____	$____________	____
Amount Including this Requisition	$____________	$____________	____	$____________	____

* Not to exceed $33,500,000 or 50% of Construction Costs