

ORDINANCE NO. 967

AUTHORIZING AND DIRECTING THE ISSUANCE AND DELIVERY OF THE \$150,000 PRINCIPAL AMOUNT MUNICIPAL BUILDING APPROPRIATION NOTE, SERIES 2014, OF THE CITY OF AVA, MISSOURI, FOR THE PURPOSE OF PROVIDING FUNDS FOR THE ACQUISITION OF THE CITY'S MUNICIPAL BUILDING; PRESCRIBING THE FORM AND DETAILS OF SAID NOTE; AND PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON SAID NOTE AS THEY BECOME DUE, AND FIXING THE TIME WHEN THIS ORDINANCE SHALL BECOME EFFECTIVE.

WHEREAS, the City of Ava, Missouri (the "City"), is a city of the fourth class and municipal corporation of the State of Missouri, duly created, organized and existing under and by virtue of the Constitution and laws of the State of Missouri; and

WHEREAS, funds are needed to finance the costs of the acquisition of real property and improvements commonly known as 404 South Jefferson Street, Ava, Missouri 65608 for use by the City as a city hall and municipal building (the "Project") and the Board of Aldermen of the City hereby finds and determines that it is desirable and in the best interests of the City that the City issue its special limited obligation appropriation note for the purpose of providing funds to pay the costs of the Project; and

WHEREAS, it is necessary at this time to authorize the issuance and delivery of the \$150,000 principal amount Note for the purpose aforesaid;

NOW, THEREFORE, Be it Resolved by the Board of Aldermen of the City of Ava, Missouri, as follows:

ARTICLE I

DEFINITIONS

Section 101. Definitions of Words and Terms. In addition to words and terms defined elsewhere in this Ordinance, the following words and terms as used in this Ordinance shall have the following meanings:

"**Business Day**" means each Monday, Tuesday, Wednesday, Thursday or Friday on which commercial banking institutions located in the City are open for business.

"**City**" means the City of Ava, Missouri, a city of the fourth class and municipal corporation of the State of Missouri, and any successors or assigns.

"**Code**" means the Internal Revenue Code of 1986, as amended.

"**Holder**" means the registered holder of the Note.

"**Note**" means the Municipal Building Appropriation Note, Series 2014, authorized and issued by the City pursuant to this Ordinance.

“**Ordinance**” means this Ordinance adopted by the Board of Aldermen of the City on July 2, 2014.

“**Project Fund**” means the Project Fund referred to in Section 501 of this Ordinance.

ARTICLE II

AUTHORIZATION OF THE NOTE

Section 201. Authorization of the Note. The Note is being issued pursuant to and in full compliance with the Constitution and statutes of the State of Missouri. The Note is being issued for the purpose of providing funds to pay the costs of the Project.

Section 202. Description of the Note. The Note shall consist of a single Note in the aggregate original principal amount of \$150,000. The Note shall be dated as of the date of its original issuance and delivery and shall bear interest from its dated date or from the most recent Interest Payment Date to which interest has been paid or duly provided for at the rate of 4.375% per annum.

Principal and interest on the Note, determined as described below, shall be payable as follows: (i) all accrued and unpaid interest shall be payable on each June 30 (each an “**Interest Payment Date**”), beginning June 30, 2015, until final payment of all unpaid principal and the accrued interest thereon on June 30, 2017, and (ii) principal shall be due in the following amounts and on the following dates, subject to prepayment prior to maturity as set forth herein:

<u>Principal Payment Date</u>	<u>Principal Amount Due</u>
June 30, 2015	\$50,000
June 30, 2016	50,000
June 30, 2017	50,000

Payments shall be applied first to interest then to principal. Interest shall be calculated for the actual days outstanding on the basis of a 360 day year.

The Note shall be substantially in the form set forth in Article IV hereof, and shall be subject to registration, transfer, and exchange as provided in Section 205 hereof.

Section 203. Designation of Paying Agent and Registrar. The City shall act as its own paying agent for the payment of principal of, premium, if any, and interest on the Note and bond registrar and transfer agent with respect to the registration, transfer and exchange of the Note (the “**Paying Agent**” and “**Registrar**”).

Section 204. Method and Place of Payment of Note. The principal of, premium, if any, and interest on the Note shall be payable by check or draft of the City to the Holder in lawful money of the United States of America to the Holder in whose names the Note registered at the close of business on the fifteenth day of the month containing each Interest Payment Date (the “**Record Date**”) at its address as it appears on the registration books maintained by the City, as Registrar.

The City, as Paying Agent and Registrar, shall keep in its office a record of payment of principal of, prepayment premium, if any, and interest on the Note.

Notwithstanding the foregoing, so long as Town & Country Bank, a Missouri banking corporation, is the sole holder of the Note, the City agrees to deposit sufficient amounts to pay all amounts due under the Note on each Interest Payment Date into an account with Town & Country Bank, and hereby authorizes Town & Country Bank, to automatically debit the amount due on each Interest Payment Date on such Interest Payment Date from any account of the City; provided, however, that no such automatic debit shall be permitted for any such payment unless the City shall have appropriated moneys for the payment of such amount from moneys of the type on deposit in such account.

Section 205. Registration Provisions. The City will, as long as the Note herein authorized remains outstanding, cause to be kept at its principal office books for the registration of the Note as herein provided.

The Note when issued shall be registered in the name of the Holder thereof on the registration books kept by the City, as Paying Agent and Registrar, for that purpose.

The Note shall be made payable to the Holder thereof. The Note shall be transferable only upon the registration books maintained by the Registrar by the Holder thereof in person or by his attorney duly authorized in writing, upon surrender thereof at the principal office of the City, as Registrar, together with a written instrument of transfer satisfactory to the City, as Registrar, duly executed by the Holder or his duly authorized attorney. Upon the transfer of the Note and the payment of any fee, tax or governmental charge, the Registrar shall issue in the name of the transferee a single Note of the same aggregate principal amount and maturity as the surrendered Note, registered in the name of the transferee.

The City, as Paying Agent and Registrar, shall not be required to register a transfer or exchange the Note for a period of 15 days next preceding an Interest Payment Date on the Note. The City, as Paying Agent and Registrar, shall not be required to exchange or register a transfer of (a) the Note during the 45-day period next preceding the prepayment of all or a portion of the Note.

The City may deem and treat the person in whose name the Note shall be registered as the absolute owner of such Note, whether such Note shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal, prepayment price, and interest on such Note and for all other purposes, and all such payments so made to any such Holder or upon his order shall be valid and effectual to satisfy and discharge the liability upon such Note to the extent of the sum or sums so paid, and neither the City nor the Registrar, nor the Paying Agent shall be affected by any notice to the contrary, but such registration may be changed as herein provided.

In all cases in which the privilege of exchanging the Note or registering the transfer of the Note is exercised, the Registrar shall authenticate and deliver the Note in accordance with the provisions of this Ordinance. For every such exchange or registration of transfer of the Note, the Registrar may make a charge to the Holder sufficient to reimburse it for any tax or other governmental charge required to be paid with respect to such exchange or registration of transfer. The fees and charges of the Registrar for making any exchange or registration of transfer provided for by this Ordinance and the expense of any Note printing necessary to effect the subsequent exchange or registration of transfer of any Note shall be paid by the City.

Section 206. Execution and Delivery of the Note. The President of the Board of Aldermen of the City and the City Clerk are hereby authorized and directed to prepare and execute the Note in the manner hereinbefore specified, and, when duly executed, to deliver the Note to Town &

Country Bank, the original purchaser thereof, on payment of the purchase price. Such purchase price shall be 100% of the principal amount of the Note.

The Note shall be executed in the name and for and on behalf of the City by the manual or facsimile signature of the President of the Board of Aldermen of the City and attested by the manual signature of the City Clerk, and the seal of the City shall be affixed to or imprinted on the Note. In case any officer whose signature or facsimile thereof appears on any Note shall cease to be such officer before the delivery of such Note, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if such person had remained in office until delivery. The Note may be signed by such persons who at the actual time of the execution of such Note shall be the proper officers to sign such Note although at the date of such Note such persons may not have been such officers.

The Note, signed and sealed as herein provided, shall be and constitute a valid and binding special limited obligation of the City according to the terms hereof, although the exchange or transfer thereof may be made at a date or dates after any officer whose signature is affixed thereto shall have ceased to be the incumbent of his or her office.

### ARTICLE III

#### PREPAYMENT OF NOTE

Section 301. (a) Optional Prepayment. At the option of the City, the Note may be called for payment prior to maturity, in whole or in part, at any time, any partial prepayment of principal to be in inverse order of maturity, at 100% of the principal amount thereof being prepaid, plus accrued interest thereon to the date of prepayment, without premium.

(b) Mandatory Prepayment. The Note shall be subject to mandatory prepayment in full prior to maturity and the City shall prepay the Note, at 100% of the principal amount thereof, plus accrued interest to the prepayment date, without premium, on each June 30 unless the City Financing Amount shall have been budgeted and appropriated by the City pursuant to Section 602 hereof for the then next succeeding fiscal year of the City.

Section 302. Notice of Prepayment. Unless waived by the Holders, Notice of prepayment pursuant to Section 301(a) hereof indicating the principal portion of the Note to be prepaid, shall be given by the City by mailing a copy of the prepayment notice at least five (5) days but not more than 60 days prior to the date fixed for prepayment to the Holder thereof. Any notice mailed as provided in this Section shall be conclusively presumed to have been duly given, whether or not the Holder receives the notice.

Section 303. Selection of Principal Amount of Note to Be Prepaid. The principal amount of the Note shall be prepaid in inverse order of maturity and, except with respect to the prepayment of the entire outstanding principal amount of the Note, only in the principal amount of \$5,000 or any integral multiple thereof.

Section 304. Effect of Call for Prepayment. Whenever any portion of the Note is called for prepayment as provided in this Article, all interest on such portion of the Note shall cease from and after the date for which such call is made, provided funds are available for its prepayment at the price hereinbefore specified.

ARTICLE IV

FORM OF NOTE

Section 401. Form of Note. The Note shall be in substantially the following form, with appropriate variations, omissions and insertions as permitted or required by this Ordinance:

(FORM OF PROMISSORY NOTE)

PROMISSORY NOTE

HOLDER: \_\_\_\_\_

FOR VALUE RECEIVED, the undersigned, the City of Ava, Missouri, a city of the fourth class and municipal corporation of the State of Missouri (the "City"), with its principal office at 127 SW 2<sup>nd</sup> Street, Ava, Missouri 65608, hereby promises to pay to the Holder shown above, or registered assigns, but solely from the source and in the manner hereinafter set forth, the sum of One Hundred Fifty Thousand Dollars (\$150,000) plus interest on the outstanding principal balance hereof from the date hereof at the rate of 4.375% per annum, calculated on the basis of actual days outstanding on the basis of a 360 day year, payable as follows: (i) all accrued and unpaid interest shall be payable on each June 30 (each an "Interest Payment Date"), beginning June 30, 2015, until final payment of all unpaid principal and the accrued interest thereon on June 30, 2017, and (ii) principal shall be due in the following amounts and on the following dates, subject to prepayment prior to maturity as set forth herein:

<u>Principal Payment Date</u>	<u>Principal Amount Due</u>
June 30, 2015	\$50,000
June 30, 2016	50,000
June 30, 2017	50,000

Payments shall be applied first to interest then to principal.

The principal of and interest payable on this Note on any Interest Payment Date or on any date on which a prepayment shall occur shall be paid by check or draft mailed by the City, as Paying Agent and Registrar, to the person in whose name such Note is registered at the maturity or prepayment date thereof. The interest payable on this Note on any Interest Payment Date shall be paid by check or draft mailed by the City Paying Agent and Registrar, to the person in whose name such Note is registered on the registration books maintained by the City, as Paying Agent and Registrar, at the close of business on the fifteenth day of the calendar month containing such Interest Payment Date. The principal of and interest on this Note shall be payable in lawful money of the United States of America.

THIS NOTE is an authorized Note without coupons of the City designated "Municipal Building Appropriation Note, Series 2014" aggregating the principal amount of \$150,000 (the "Note"), issued by the City for the purpose of paying the costs of acquiring real property and improvements commonly known as 404 South Jefferson Street, Ava, Missouri 65608 for use by the City as a city hall and municipal building (the "Project"), under the authority of and in full compliance with the Constitution and laws of the State of Missouri, and pursuant to the Ordinance adopted by the Board of Aldermen of the City with respect thereto (the "Ordinance").

THIS NOTE may be prepaid prior to maturity, at the option of the City, in whole or in part at any time on any Interest Payment Date, prepayments of principal being made in inverse order of maturity, at the prepayment price of 100% of the principal amount thereof being prepaid plus accrued interest thereon to the date of prepayment.

THIS NOTE shall be subject to mandatory prepayment in full prior to maturity and the City shall prepay the Note, at the principal amount thereof, plus accrued interest to the prepayment date, without premium, on each June 30 unless the City Financing Amount (as defined in the Ordinance) shall have been budgeted and appropriated by the City pursuant to Section 602 of the Ordinance for the then next succeeding fiscal year of the City.

Unless waived by the Holders, in the event the City shall elect to so prepay the Note prior to maturity as aforesaid, the City shall give written notice of its intention to prepay said Note on a specified date, identifying the portion of the Note to be prepaid, said notice to be given by United States mail addressed to the Holder thereof, said notice to be mailed at least five (5) days but not more than 60 days prior to the date fixed for prepayment. Whenever any portion of the Note is called for prepayment as aforesaid, all interest on said portion of the Note shall cease from and after the date for which such call is made, provided funds are available for the payment of said Note at the price hereinbefore specified.

THE PRINCIPAL AMOUNT OF THE NOTE shall be prepaid in inverse order of maturity and, except with respect to the prepayment of the entire outstanding principal amount of the Note, only in the principal amount of \$5,000 or any integral multiple thereof.

THIS NOTE and the interest thereon are special limited obligations of the City payable solely out of moneys budgeted and appropriated with respect thereto. The Note shall not constitute a general obligation of the City or an indebtedness of the City within the meaning of any constitutional or statutory debt limitation or restriction. Neither the City officers nor employees shall be liable for the payment of principal of or interest on the Note. Neither the Ordinance nor this Note impose upon the City any obligation to make payments in any year beyond the last Fiscal Year for which the City Financing Amount has been budgeted and appropriated, nor is the City obligated to budget and appropriate the City Financing Amount for the then next succeeding Fiscal Year.

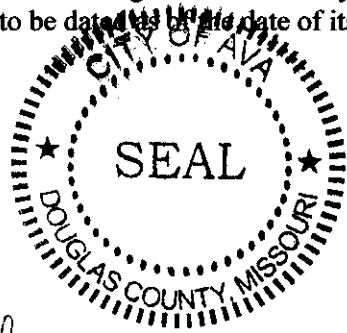
THIS NOTE is issuable in the form of a single Note without coupons in the principal amount of \$150,000. This Note is transferable as provided in the Ordinance only upon the books kept for that purpose at the principal office of the City, as Paying Agent and Registrar, by the Holder hereof in person, or by his duly authorized attorney, upon surrender of this Note, together with a written instrument of transfer satisfactory to the City, as Paying Agent and Registrar, duly executed by the Holder or his duly authorized attorney, and thereupon, a new Note in the same aggregate principal amount, shall be issued to the transferee in exchange therefor as provided in the Ordinance, and upon payment of the charges therein prescribed. The City may deem and treat the person in whose name this Note is registered as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal hereof or prepayment price hereof and interest due hereon and for all other purposes.

When all of the Note shall have been paid and discharged or provision for its payment and discharge has been made in accordance with the terms of the Ordinance, then the requirements contained in the Ordinance and the rights granted thereunder shall terminate.

IT IS HEREBY DECLARED AND CERTIFIED that all acts, conditions and things required to be done and to exist precedent to and in the issuance of the Note have been done and

performed and do exist in due and regular form and manner as required by the Constitution and laws of the State of Missouri.

IN WITNESS WHEREOF, THE CITY OF AVA, MISSOURI has caused this Note to be executed by the manual or facsimile signature of the President of the Board of Aldermen of the City and attested by the manual signature of the City Clerk and its official seal to be affixed or imprinted hereon, and this Note to be dated as of the date of its original issuance and delivery.



(Seal)

ATTEST:

Suzanne Welsh  
City Clerk

CITY OF AVA, MISSOURI

By Burcky Jtk  
President of the Board of Aldermen

Effective Date  
of Registration: 7-2-2014

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FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto

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(Print or Type Name, Address and Social  
Security Number of Transferee)

the within Note, and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the within Note on the books kept for the registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_.

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NOTICE: The signature to this assignment must correspond with the name of the Holder as it appears on the face of the within Note in every particular.

Signature Guaranteed By:

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NOTICE: Signature(s) must be guaranteed by an eligible guarantor institution as defined by SEC Rule 17Ad-15 (17 CFR 240.17Ad-15).

By \_\_\_\_\_  
Title:

## ARTICLE V

### APPLICATION OF NOTE PROCEEDS

Section 501. Disposition of Note Proceeds. All proceeds derived from the sale of the Note shall be deposited in a separate fund (the "**Project Fund**"), to be established in the City treasury and maintained by the City Treasurer and invested pursuant to the provisions hereof and shall be used by the City solely for the purpose of paying the costs of the Project, for which the Note has been authorized, as hereinbefore provided, in accordance with the plans and specifications therefor approved by the Board of Aldermen and on file in the office of the City Clerk, including any alterations in or amendments to said plans and specifications approved by the Board of Aldermen.

Section 502. Withdrawals from Project Fund. The City Treasurer shall make withdrawals from the Project Fund solely for the purpose of paying the costs of the Project, as hereinbefore provided. Such withdrawals shall be made only for a purpose within the scope of this Ordinance and the amount of such payment shall represent only the contract price of the property, equipment, labor, materials or service being paid for or, if such payment is not being made pursuant to an express contract, such payment shall not be in excess of the reasonable value thereof.

Section 503. Surplus in Project Fund. Upon completion of the Project, as hereinbefore provided, as certified to the Board of Aldermen by the City Administrator, any surplus remaining in the Project Fund shall be retained in the Project Fund and used to pay the principal of and interest on the Note.

## ARTICLE VI

### PAYMENT OF THE NOTE

Section 601. Special Limited Obligations.

(a) The Note and the interest thereon shall be special limited obligations of the City payable solely out of the amounts budgeted and appropriated with respect thereto as provided in this Ordinance. The Note and the interest thereon shall not constitute a general obligation of the City nor an indebtedness of the City within the meaning of any constitutional or statutory debt limitation or restriction.

(b) No provision, covenant or agreement contained in this Ordinance or the Note or any obligation herein or therein imposed upon the City, or the breach thereof, shall constitute or give rise to or impose upon the City a charge upon its general credit or taxing powers. In making the agreements, provisions and covenants set forth in this Ordinance, the City has not obligated itself except with respect to the amounts budgeted and appropriated with respect thereto as hereinabove provided. None of the Mayor of the City, the Board of Aldermen of the City, or the City's officers, employees, or other agents nor any person executing the Note shall be liable personally on the Note by reason of the issuance thereof.

Section 602. City's Covenant to Request Appropriations. The City covenants and agrees that the City Administrator, or any other officer at any time charged with the responsibility of formulating budget proposals, is hereby directed to include in the budget proposals submitted to the Board of Aldermen in any year that the Note shall remain Outstanding hereunder, a request or requests for amounts sufficient to pay the entire outstanding principal balance of the Note and interest on the Note

coming due in such fiscal year (such amount being herein referred to as the “City Financing Amount”). The first such request has been submitted and appropriated under applicable law for the fiscal year of the City commencing July 1, 2014 (such fiscal year appropriation is attached as **Exhibit A** hereto), and subsequent requests for appropriations shall be made in each fiscal year of the City thereafter so that an amount equal to the City Financing Amount be available for the purpose of paying the principal of and interest on the Note. It is the intention of the City that the decision to appropriate the City Financing Amount shall be made solely by the Board of Aldermen and not by any other official of the City. The City presently expects to, in each fiscal year of the City while the Note is Outstanding, appropriate funds in an amount equal to the City Financing Amount for the next succeeding fiscal year of the City in order that such funds will be available for the purpose of paying the principal of and interest on the Note. The City shall furnish the Holder with copies of its annual budget and a certificate stating whether it has appropriated the City Financing Amount for such fiscal year promptly after the budget is adopted and in no event later than June 30 of each year.

Notwithstanding any provision or covenant contained in this Ordinance or the Note, the City is not obligated to budget and appropriate the City Financing Amount for any future fiscal year of the City. The City shall be under no obligation to levy any taxes in order to raise revenues to pay the principal of and interest on the Note except to the extent required during any fiscal year of the City for which the City is obligated. In no event shall the City be obligated to levy any tax in excess of the maximum levy permitted by law.

Nothing in this Ordinance shall be construed to release the City from the performance of any agreement on its part herein contained or as a waiver by the City of any rights or claims which the City may have against the Holder under this Ordinance or otherwise, but any recovery upon such rights and claims shall be had from the Holder separately, it being the intent of this Ordinance that the City shall be unconditionally and absolutely obligated to perform fully all of its obligations, agreements and covenants under this Ordinance and the Note for the benefit of the Holder, but only during a given fiscal year of the City. The City may, however, at its own cost and expense and in its own name or in the name of the Holder, prosecute or defend any action or proceeding or take any other action involving third persons which the City deems reasonably necessary in order to secure or protect its rights hereunder, and in such event the Holder hereby agrees to cooperate fully with the City and to take all action necessary to effect the substitution of the City for the Holder in any such action or proceeding if the City shall so request.

Section 603. Payments to Constitute Currently Budgeted Expenditures of City. The City acknowledges and agrees that the payments on the Note hereunder shall constitute currently budgeted expenditures of the City. The City’s obligations under this Ordinance shall be from year to year only (as further provided in Section 604 hereof), and shall not constitute a general obligation of the City or an indebtedness, liability or a mandatory payment obligation of the City in any ensuing fiscal year beyond the then current fiscal year. Since the City has no obligation to make any payments under this Ordinance or the Note beyond those appropriated for the City’s then current fiscal year, the election requirements and other limitations of law concerning the creation of indebtedness by the City are inapplicable to this Ordinance and the Note. No provision of this Ordinance or the Note shall be construed or interpreted as creating a general obligation or other indebtedness of the City within the meaning of any constitutional or statutory debt limitation. Neither this Ordinance nor the Note shall directly or indirectly obligate the City to make any payments beyond those appropriated for the City’s then current fiscal year. No provision of this Ordinance or the Note shall be construed to pledge or to create a lien on any class or source of City moneys, nor shall any provision of this Ordinance or the Note restrict the future issuance of any City bonds or obligations payable from any class or source of City moneys.

Section 604. Non-appropriation. In the event that the Board of Aldermen of the City shall not budget and appropriate, specifically with respect to this Ordinance and the Note, on or before June 30 of each year, the City Financing Amount, an Event of Non-appropriation shall be deemed to have occurred. In the event that during any fiscal year of the City while the Note is outstanding, any additional amounts shall become due which were not included in the City's current budget, or which exceed the amounts which were included therefor in the City's current budget, then, in the event that moneys are not specifically budgeted and appropriated to pay such additional amounts within 30 days subsequent to the date upon which such additional amounts are due, an Event of Non-appropriation shall be deemed to have occurred.

If an Event of Non-appropriation occurs, the City shall not be obligated to make any payments provided for herein which accrue after the last day of the then current fiscal year of the City.

Section 605. Payment of the Note. The City Treasurer is authorized and directed to withdraw from the funds and accounts of the City, to the extent moneys are budgeted and appropriated thereof, and forward to the Holder of the Note, sums sufficient to pay both principal of and interest on the Note as and when the same become due.

## ARTICLE VII

### DEPOSIT AND INVESTMENT OF FUNDS

Section 701. Deposits of Moneys. Cash moneys in each of the funds and accounts created by and referred to in this Ordinance shall be deposited with a bank or banks located in the State of Missouri which are members of the Federal Deposit Insurance Corporation, and all such bank deposits shall be continuously and adequately secured by the banks holding such deposits as provided by the laws of the State of Missouri. All moneys held in the funds and accounts created by this Ordinance shall be kept separate and apart from all other funds of the City so that there shall be no commingling of such funds with any other funds of the City.

Section 702. Investment of Funds. Moneys held in any fund or account referred to in this Ordinance may be invested by the City Treasurer at the direction of the Board of Aldermen pursuant to and in compliance with the provisions hereof in direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America, or in such other obligations as may be permitted by law; provided, however, that no such investment shall be made for a period extending longer than to the date when the moneys invested may be needed for the purpose for which such fund or account was created. All interest on any investments held in any fund or account shall accrue to and become a part of such fund or account.

Section 703. Tax Covenants. The City covenants that it will not take any action or permit any action to be taken or omit to take any action or permit the omission of any action reasonably within its control which action or omission will cause the Note to be "arbitrage bonds" within the meaning of Section 148(a) of the Code, will cause the Note to be subject to treatment under Section 141(a) of the Code as "private activity bonds," or will cause the interest on the Note to be included in gross income for federal income taxation purposes or otherwise adversely affect the exemption of the interest on the Note from federal and State of Missouri taxation. These covenants shall survive the payment of the Note and the termination of this Ordinance as provided in Article IX of this Ordinance.

Section 704. Small Issuer Rebate Exception. It is expected that the City will not be required to make any rebate payments to the United States with respect to the Note pursuant to the

exception provided by Section 148(f)(4)(D) of the Code. In the event the Note is determined not to qualify for such exception, the City agrees to make the rebate calculations and payments and to take all other actions required to satisfy the provisions of Section 148(f) of the Code.

## ARTICLE VIII

### DEFAULT AND REMEDIES

Section 801. Remedies. The provisions of this Ordinance, including the covenants and agreements herein contained, shall constitute a contract between the City and the Holder of the Note. The Holder of the Note shall have the right:

(a) By mandamus or other suit, action or proceedings at law or in equity to enforce its rights against the City and its officers, agents and employees, and to require and compel duties and obligations required by the provisions of this Ordinance or by the Constitution and laws of the State of Missouri;

(b) By suit, action or other proceedings in equity or at law to require the City, its officers, agents and employees to account as if they were the trustees of an express trust; and

(c) By suit, action or other proceedings in equity or at law to enjoin any acts or things which may be unlawful or in violation of the rights of the Holder as the owner of the Note.

Section 802. Limitation on Rights of Holder. The Holder shall not have any right in any manner whatever by its action to affect, disturb or prejudice the security granted and provided for herein, or to enforce any right hereunder, except in the manner herein provided.

Section 803. Limitations on Remedies. Notwithstanding any provision of this Ordinance to the contrary, a judgment requiring a payment of money may be entered against the City by reason of a default hereunder only as to the portion of the principal of and interest on the Note which would otherwise have been payable hereunder during the then last fiscal year of the City for which the City Financing Amount has been budgeted and appropriated; and

A judgment requiring a payment of money may be entered against the City by reason of an Event of Non-appropriation only as to the liabilities described in this section of this Ordinance.

Section 804. Remedies Cumulative. No remedy conferred herein upon the Holder is intended to be exclusive of any other remedy, but each such remedy shall be cumulative and in addition to every other remedy and may be exercised without exhausting and without regard to any other remedy conferred herein. No waiver of any default or breach of duty or contract by the Holder shall extend to or affect any subsequent default or breach of duty or contract or shall impair any rights or remedies thereon. No delay or omission of the Holder to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein. Every substantive right and every remedy conferred upon the Holder by this Ordinance may be enforced and exercised from time to time and as often as may be deemed expedient. In case any suit, action or proceedings taken by the Holder on account of any default or to enforce any right or exercise any remedy shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Holder, then, and in every such case, the City and the Holder shall each be restored to its former position and rights hereunder, respectively, and all rights, remedies, powers and duties of the Holder shall continue as if no such suit, action or other proceedings had been brought or taken.

## ARTICLE IX

### DEFEASANCE

Section 901. Defeasance. When all of the Note shall have been paid and discharged, then the requirements contained in this Ordinance, except as otherwise provided herein, and all other rights granted hereby shall terminate. The Note shall be deemed to have been paid and discharged within the meaning of this Ordinance if there shall have been deposited with a bank located in the State of Missouri and having full trust powers, at or prior to the maturity or prepayment date of said Note, in trust for and irrevocably appropriated thereto, moneys and/or direct obligations of, or obligations the principal of and interest on which are guaranteed by, the United States of America or securities which represent an undivided interest in such obligations or securities to the extent that the Treasury of the United States of America is ultimately responsible for payment thereof which, together with the interest to be earned on any such obligations, will be sufficient for the payment of the principal of said Note and interest accrued to the date of maturity or prepayment, as the case may be, or if default in such payment shall have occurred on such date, then to the date of the tender of such payments, provided always that if any of the principal such Note shall be prepaid prior to the maturity thereof, the City shall have elected to prepay such principal of the Note and notice of such prepayment shall have been given. Any moneys and obligations which at any time shall be deposited with a bank by or on behalf of the City, for the purpose of paying and discharging any of the principal of the Note, shall be and are hereby assigned, transferred and set over to such bank in trust for the Holder, and such moneys shall be and are hereby irrevocably appropriated to the payment and discharge hereof. All moneys deposited with such bank shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Ordinance.

## ARTICLE X

### MISCELLANEOUS PROVISIONS

Section 1001. Severability. If any section or other part of this Ordinance, whether large or small, shall for any reason be held invalid, the invalidity thereof shall not affect the validity of the other provisions of this Ordinance.

Section 1002. Governing Law. This Ordinance shall be governed exclusively by and construed in accordance with the applicable laws of the State of Missouri.

Section 1003. Private Sale. The Board of Aldermen of the City hereby declares that it is in its best interest to sell the Note at private sale since a public sale of the Note would cause additional expense to the City and since the condition of the current financial markets makes such a public sale not feasible or the best course of action for the City.

Section 1004. Designation As Qualified Tax-Exempt Obligations. The Board of Aldermen of the City hereby designates the Note as a Qualified Tax-Exempt Obligation pursuant to Section 265(b)(3)(B) of the Code. The officers of the City are authorized to execute appropriate agreements in connection therewith.

Section 1005. Further Authorization. The Mayor of the City, President of the Board of Aldermen of the City, City Clerk, City Treasurer and the officers, officials and employees of the City are hereby authorized, empowered and directed to do all such acts and things and to execute, acknowledge and deliver all such documents (including, without limiting the generality of the foregoing, any bond

purchase agreement requested by the purchaser of the Note, any closing certificate, non-arbitrage certificate or any tax compliance agreement in connection with the issuance of the Note) as may in its discretion be deemed necessary or desirable in order to carry out or comply with the terms and provisions of this Ordinance and to make ministerial alterations, changes or additions in the foregoing agreements, statements, instruments or other documents herein approved, authorized and confirmed which they may approve and the execution or taking of such action shall be taken as conclusive evidence of its necessity or advisability. All of the acts and undertakings of such officers which are in conformity with the intent and purposes of this Ordinance, whether heretofore or hereafter taken or done shall be and the same are hereby in all respects, ratified, confirmed and approved.

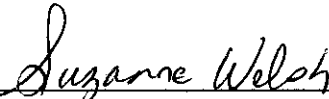
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Section 1006. Effective Date. This Ordinance shall be in full force and effect from and after the date of its passage by the Board of Aldermen of the City.

PASSED THIS 2<sup>nd</sup> DAY OF July, 2014.

  
\_\_\_\_\_  
President of the Board of Aldermen

Attest:

  
\_\_\_\_\_  
City Clerk

I, the undersigned, City Clerk of the CITY OF AVA, MISSOURI, hereby certify that the above and foregoing is a true and correct copy of the Ordinance of the City passed by the Board of Aldermen on July 2, 2014, authorizing the City to proceed with the issuance and delivery of the City's Municipal Building Appropriation Note, Series 2014, in the principal amount of \$150,000 as the same appears in the records of the City, and that said Ordinance has not been modified, amended or repealed and that the same remains in full force and effect as of the date hereof.

WITNESS my hand and seal of the City this 3<sup>rd</sup> day of July, 2014.



  
\_\_\_\_\_  
City Clerk