CAPE GIRARDEAU COUNTY COMMISSION

ORDINANCE NO. 20-01

AN ORDINANCE AUTHORIZING THE COUNTY OF CAPE GIRARDEAU, MISSOURI TO ENTER INTO A LEASE PURCHASE TRANSACTION, THE PROCEEDS OF WHICH WILL BE USED TO PAY COSTS OF CONSTRUCTING, FURNISHING AND EQUIPPING IMPROVEMENTS TO THE SHERIFF'S OFFICE AND ACQUIRING DISPATCH EQUIPMENT FOR THE SHERIFF'S DEPARTMENT; AND AUTHORIZING THE EXECUTION OF CERTAIN DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

WHEREAS, the County of Cape Girardeau, Missouri (the "County") desires to authorize the delivery of Certificates of Participation (County of Cape Girardeau, Missouri, Lessee), Series 2020 (the "Series 2020 Certificates"), evidencing proportionate interests of the owners thereof in basic rent payments to be made by the County under the Lease (as defined below), to obtain funds to (a) pay the costs of constructing, furnishing and equipping improvements to the Sheriff's Office and acquiring dispatch equipment for the Sheriff's department (the "2020 Project") and (b) pay the costs of executing and delivering the Series 2020 Certificates; and

WHEREAS, the County owns the real property described on **Schedule 1** of the Second Supplemental Lease (as defined below) and the improvements, including the County's Sheriff's Office and Jail, now or hereafter located thereon (collectively, the "Leased Property"); and

WHEREAS, to facilitate the foregoing and to pay the cost thereof, it is necessary and desirable for the County to take the following actions:

1. enter into a Second Supplemental Lease Purchase Agreement (the "Second Supplemental Lease") between the Trustee, as lessor, and the County, as lessee, the form of which is attached hereto as **Exhibit A**, which amends and supplements the Lease Purchase Agreement dated as of November 1, 2011 between the Trustee and the County (the "Original Lease"), as amended and supplemented by the First Supplemental Lease Purchase Agreement dated as of November 1, 2018 between the Trustee and the County (the "First Supplemental Lease" and, together with the Original Lease and the Second Supplemental Lease, the "Lease"), pursuant to which the County leases the Leased Property from the Trustee on a year-to-year basis with an option to purchase the Trustee's interest in the Leased Property;

2. enter into a Tax Compliance Agreement (the "Tax Compliance Agreement") with the Trustee, pursuant to which the County makes certain representations and covenants related to the exclusion of the Interest Portions of Basic Rent (as defined in the Lease) under the Lease from gross income for purposes of federal income taxation, the form of which is attached hereto as **Exhibit B**;

3. approve a Second Supplemental Declaration of Trust (the "Second Supplemental Declaration of Trust") by the Trustee, the form of which is attached hereto as **Exhibit C**, which amends and supplements the Declaration of Trust dated as of November 1, 2011 by the Trustee (the "Original Declaration of Trust"), as amended and supplemented by the First Supplemental Declaration of Trust (the "First Supplemental Declaration of Trust" and, together with the Original Declaration of Trust and the Second Supplemental Declaration of Trust, the "Declaration of Trust"), pursuant to which the Series 2020 Certificates will be executed and delivered.

The Second Supplemental Lease, the Account Control Agreement and the Tax Compliance Agreement are referred to together herein as the "County Documents."

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COMMISSION OF THE COUNTY OF CAPE GIRARDEAU, MISSOURI, AS FOLLOWS:

Section 1. Authorization of the Project. The County hereby determines that the 2020 Project is in the public interest and hereby authorizes the 2020 Project.

Section 2. Approval of Sale and Delivery of the Series 2020 Certificates. The County hereby approves the sale and delivery of the Series 2020 Certificates to the Lender upon the terms set forth in the Second Supplemental Declaration of Trust. Delivery of the Series 2020 Certificates to the Lender shall occur as soon as practicable after the adoption of this Ordinance, upon payment for the Series 2020 Certificates in accordance with the Second Supplemental Declaration of Trust. The Series 2020 Certificates shall be in such denominations, shall be in such forms, shall have such other terms and provisions, and shall be executed and delivered in such manner subject to such provisions, covenants and agreements as are set forth in the Declaration of Trust.

Section 3. Limited Obligations. The Series 2020 Certificates and the interest thereon shall be limited obligations, payable solely out of the rents, revenues and receipts received by the Trustee from the County pursuant to the Lease. Neither the Lease nor the Series 2020 Certificates shall constitute a debt or liability of the County or of the State of Missouri or of any political subdivision thereof, and neither the Lease nor the Series 2020 Certificates shall constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction.

Section 4. Authorization and Approval of the County Documents and the Second Supplemental Declaration of Trust.

(a) The County Documents and the Second Supplemental Declaration of Trust are hereby approved in substantially the forms submitted to and reviewed by the County Commission on the date hereof, with such changes therein as are approved by the Presiding Commissioner. The Presiding Commissioner's execution of the County Documents will be conclusive evidence of such approval.

(b) The obligation of the County to pay Basic Rent Payments (as defined in the Lease) under the Lease is subject to annual appropriation and will constitute a current expense of the County and will not in any way be construed to be an indebtedness or liability of the County in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness or liability by the County, nor will anything contained in the Lease constitute a pledge of the general tax revenues, funds or moneys of the County, and all provisions of the Lease will be construed so as to give effect to such intent.

(c) The Presiding Commissioner is hereby authorized and directed to execute and deliver the County Documents and to approve changes to the Declaration of Trust on behalf of and as the act and deed of the County. The Clerk of the County Commission is hereby authorized to affix the County's seal to the County Documents and attest said seal.

Section 5. Further Authority. The County will, and the officials and agents of the County are hereby authorized and directed to, take such actions, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance and to carry out, comply with and perform the duties of the County with respect to the County Documents and the other documents authorized or approved hereby.

Section 6. Severability. The sections of this Ordinance shall be severable. If any section of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining sections shall remain valid, unless the court finds that: (a) the valid sections are so essential to and inseparably connected and dependent upon the void section that it cannot be presumed that the County Commission has or would have enacted the valid sections without the void ones, and (b) the valid sections, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent. The invalid provision shall be omitted and this Ordinance shall be amended to the extent possible to conform to the original intent of the County.

Section 7. Governing Law. This Ordinance shall be governed exclusively by and construed in accordance with the applicable laws of the State of Missouri.

Section 8. Effective Date. This ordinance shall be in full force and effect from and after its passage.

PASSED by the County Commission of Cape Girardeau County, Missouri this 30th day of January, 2020.

By: _____
Name: Clint D. Tracy
Title: Presiding Commissioner

By: _____
Name: Paul E. Koeper
Title: Associate Commissioner, 1st District

By: _____
Name: Charles Herbst
Title: Associate Commissioner, 2nd District

(Seal)

ATTEST:

By: _____
Name: Kara Clark Summers
Title: Clerk of the County Commission