

RESOLUTION 2023-08

**A RESOLUTION APPROVING A PLAN FOR THE ACQUISITION
AND CONSTRUCTION OF A FACILITY FOR AN INDUSTRIAL
DEVELOPMENT PROJECT IN THE CITY.**

WHEREAS, the City of University City, Missouri, a home-rule charter city and political subdivision of the State of Missouri (the "City"), is authorized and empowered pursuant to the provisions of Article VI, Section 27(b) of the Missouri Constitution, Sections 100.010 through 100.200, inclusive, of the Revised Statutes of Missouri (collectively, the "Act") and the City Charter to purchase, construct, extend and improve certain projects (as defined in the Act), to issue industrial development revenue bonds for the purpose of providing funds to pay the costs of such projects and to lease or otherwise dispose of such projects to private persons or corporations for manufacturing, commercial, research and development, office industry, warehousing and industrial development purposes upon such terms and conditions as the City deems advisable; and

WHEREAS, Dierbergs University City, LLC has requested that the City issue taxable industrial revenue bonds in the maximum principal amount of \$34,000,000 to facilitate a sales and use tax exemption on the qualified building materials necessary to construct an approximately 74,000 square foot grocery store, together with one or more outparcel buildings containing approximately 5,000 to 12,000 square feet of additional commercial space; and

WHEREAS, the Act requires the City to prepare a plan in connection with any industrial development project undertaken pursuant to the Act; and

WHEREAS, a Plan for an Industrial Development Project and Cost/Benefit Analysis (the "Plan") has been prepared and is set forth as **Exhibit A**; and

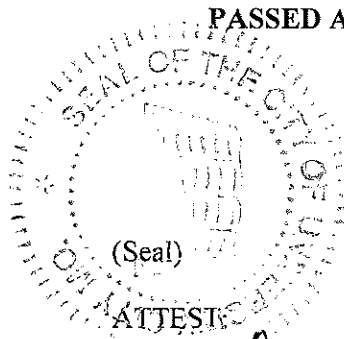
WHEREAS, notice of the City's consideration of the Plan has been given in the manner required by the Act, and the City Council has fairly and duly considered all comments submitted to the City Council regarding the proposed Plan;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF UNIVERSITY CITY, MISSOURI, AS FOLLOWS:

Section 1. Approval of the Plan. The City Council hereby approves the Plan.

Section 2. Effective Date. This Resolution shall take effect immediately upon its passage by the City Council.

PASSED AND ADOPTED this 8th day of May, 2023.



(Seal)

ATTEST

Loretta Reese
CITY CLERK

[Signature]
MAYOR

EXHIBIT A
PLAN FOR AN INDUSTRIAL DEVELOPMENT PROJECT
AND
COST/BENEFIT ANALYSIS

[On file in the office of the City Clerk]

CITY OF UNIVERSITY CITY, MISSOURI

**PLAN FOR AN INDUSTRIAL DEVELOPMENT PROJECT
AND
COST/BENEFIT ANALYSIS**

FOR

DIERBERGS UNIVERSITY CITY, LLC

I. PURPOSE OF THIS PLAN

The City of University City, Missouri (the “City”), intends to issue taxable industrial revenue bonds in a principal amount not to exceed \$34,000,000 (the “Bonds”) to finance the costs of an industrial development project (the “Project”) for Dierbergs University City, LLC, a Missouri limited liability company (including its affiliates, the “Company”). The Bonds will be issued pursuant to the provisions of Sections 100.010 to 100.200 of the Revised Statutes of Missouri and Article VI, Section 27(b) of the Missouri Constitution (collectively, the “Act”) and the City’s charter.

Gilmore & Bell, P.C. has prepared this Plan for an Industrial Development Project and Cost/Benefit Analysis (this “Plan”) to satisfy requirements of the Act and to analyze the potential costs and benefits, including the related tax impact on affected taxing jurisdictions, of using industrial revenue bonds to finance the Project. **The transactions described in this Plan are intended to provide an exemption from sales tax on materials used to construct the Project and will not be used to provide real or personal property tax abatement.**

II. DESCRIPTION OF CHAPTER 100 FINANCINGS

General. The Act authorizes cities, counties, towns and villages to issue industrial development bonds to finance the purchase, construction, extension and improvement of warehouses, distribution facilities, research and development facilities, office industries, agricultural processing industries, service facilities that provide interstate commerce, industrial plants and other commercial facilities. Additionally, Article I, Section 3 of the City Charter grants to the City “all powers possible for a city to have under the constitution and laws of Missouri, or which it would be competent for the legislature to grant.”

Issuance and Sale of Bonds. Revenue bonds issued pursuant to the Act do not require voter approval and are payable solely from revenues received from a lease or other disposition of the project. The municipality issues its bonds, and in exchange, the benefited company promises to make payments that are sufficient to pay the principal of and interest on the bonds as they become due. Thus, the municipality merely acts as a conduit for the financing.

Concurrently with the closing of the bonds, the company typically leases the site on which the industrial development project will be located to the municipality. The municipality immediately leases the project site and the improvements thereon back to the benefited company pursuant to a lease agreement. The lease agreement requires the company, acting on behalf of the municipality, to use the bond proceeds to purchase and construct the project.

Under the lease agreement, the company typically: (1) unconditionally agrees to make payments sufficient to pay the principal of and interest on the bonds as they become due; (2) agrees, at its own expense, to maintain the project, to pay all taxes and assessments with respect to the project and to maintain adequate insurance; (3) may, at its own expense, make certain additions, modifications or improvements to the project; (4) may assign its interests under the lease agreement or sublease the project while remaining responsible for payments under the lease agreement; (5) covenants to maintain its corporate existence during the term of the bond issue; and (6) agrees to indemnify the municipality for any liability the municipality might incur as a result of its participation in the transaction.

Sales/Use Tax Exemption on Construction Materials. Qualified building materials purchased for the construction of a project undertaken pursuant to the Act may be exempted from sales and use tax pursuant to the provisions of Section 144.062 of the Revised Statutes of Missouri and the underlying bond documents upon delivery of a project exemption certificate by the municipality to the company.

III. DESCRIPTION OF THE PARTIES

Dierbergs University City, LLC. The Company is an affiliate of Dierbergs Markets, Inc. (“Dierbergs”). Dierbergs is one of the largest full-line local grocery store chains in the greater St. Louis region. Four generations have managed the company, which had only one location until 1967. Today, Dierbergs employs more than 4,000 associates in 26 stores located in the St. Louis metropolitan area and one store at the Lake of the Ozarks. More information about Dierbergs is available at <https://www.dierbergs.com/>.

City of University City, Missouri. The City is a home-rule charter city and political subdivision of the State of Missouri (the “State”). The City is authorized and empowered pursuant to the provisions of the Act and its charter to purchase, construct, extend and improve certain projects (as defined in the Act) and to issue industrial development revenue bonds for the purpose of providing funds to pay the costs of such projects and to lease or otherwise dispose of such projects to private persons or corporations for manufacturing, commercial, warehousing and industrial development purposes upon such terms and conditions as the City deems advisable.

IV. REQUIREMENTS OF THE ACT

A. Description of the Project. The Project consists of acquiring a leasehold interest in approximately 7.50 acres of real property (the “Project Site”) located at the Markets at Olive, an approximately 46-acre retail development located in the City, and constructing thereon an approximately 74,000 square foot grocery store, together with one or more outparcel buildings containing approximately 5,000 to 12,000 square feet of additional commercial space (the “Project Improvements” and, together with the Project Site, the “Project”). The grocery store is expected to be substantially complete in 2024; the outparcels are expected to be substantially complete in 2025.

B. Estimate of the Costs of the Project. The acquisition of the Project Site and construction of the Project Improvements are expected to cost approximately \$34,000,000.

C. Sources of Funds to be Expended for the Project. The sources of funds to be expended for the Project will be the proceeds of the Bonds in the maximum principal amount of \$34,000,000 and other available funds of the Company. The Bonds will be payable solely from the revenues derived by the City from the lease or other disposition of the Project (as further described below). The Bonds will not be an indebtedness or general obligation, debt or liability of the City or the State. No tax revenues will be used to repay the Bonds.

D. Statement of the Terms Upon Which the Project is to be Leased or Otherwise Disposed of by the City. The City will lease the Project to the Company for lease payments equal to the principal of and interest on the Bonds. Under the terms of the lease agreement with the City, the Company will have the option to purchase the Project at any time for nominal consideration. The lease will terminate following completion of the Project (currently estimated to be in 2025), unless terminated sooner pursuant to the terms thereof.

E. Applicable School District, Community College District, County, City and Emergency Service Districts. The Project is located within the University City School District; the Community College District of St. Louis, St. Louis County, Missouri; St. Louis County, Missouri (the “County”); and the City. The Project is not located within any ambulance or fire protection district. Because this Plan is intended to provide only a sales tax exemption on qualified building materials, this Plan affects only those taxing districts that have a sales/use tax and only to the extent that the Company purchases qualified building materials within the boundaries of those taxing districts.

F. Current Assessed Valuation. The most recent equalized assessed valuation of the real property included in the Project is approximately \$2,834,600. The Company estimates the total equalized assessed valuation of the real property after development of the Project will be \$7,400,000. The St. Louis County Assessor will make the final determination of the assessed value.

G. Payments in Lieu of Taxes. This Plan is not intended to provide any abatement or exemption of real or personal property taxes. If real or personal property taxes are not levied against the Project (or any portion thereof) due to the City's lease or ownership of the Project (or any portion thereof), then the Company will make payments in lieu of taxes equal to 100% of the amount of taxes that would be due, but for the City's lease or ownership of the Project (or any portion thereof). The aggregate of any payments in lieu of taxes will be divided pro rata among the taxing districts that levy real property taxes on the Project based on the ratio of each taxing district's tax levy to the overall tax levy.

H. Sales/Use Tax Exemption. Qualified building materials purchased for the construction of the Project Improvements are expected to be exempt from sales and use tax pursuant to the provisions of Section 144.062 of the Revised Statutes of Missouri and the underlying bond documents upon delivery of a project exemption certificate by the City to the Company.

I. Cost/Benefit Analysis. As noted above, this Plan is intended to provide only a sales and use tax exemption on qualified building materials. Accordingly, this Plan affects only those taxing districts that have a sales/use tax and only to the extent that the Company purchases qualified building materials within the boundaries of those taxing districts. In compliance with Section 100.050.2(3) of the Act, this Plan shows the costs and benefits to the City and to other taxing jurisdictions affected by the sales and use tax exemption.

Sales and Use Tax Exemption. The City will grant a sales and use tax exemption on the qualified building materials necessary to construct the Project Improvements. For purposes of determining the impact of the sales and use tax exemption on the qualified building materials on the affected taxing jurisdictions granted by the City, it was assumed that:

- \$11,500,000 of the total costs of the Project Improvements will be allocated to construction material costs;
- the applicable sales tax rate is 10.238%, of which 4.225% is allocated to the State, 3.513% is allocated to the County and various countywide taxing districts (i.e., Metrolink, E-911, Children's Services, Zoo and Regional Parks and Trails), 1.500% is allocated to the City, and 1.000% is allocated to The Markets at Olive Community Improvement District (the "CID");
- the applicable use tax rate is 6.725%, of which 4.225% is allocated to the State, 1.500% is allocated to the City, and 1.000% is allocated to the CID;
- 80% of the qualified construction materials will be subject to the State's sales tax and 20% will be subject to the State's use tax;
- 20% of the qualified construction materials will be subject to the County's and various countywide districts' sales tax;
- 20% of the qualified construction materials will be subject to the City's and the CID's use tax;
- 5% of the qualified construction materials will be subject to the City's sales tax; and

- no qualified construction materials will be subject to the CID’s sales tax.

The above represent forward-looking assumptions based upon the Company’s good faith estimates regarding the Project at this point in time; actual cost and other inputs may vary due to market, site or economic conditions. Please note that any variance in these assumptions will alter the net fiscal impact of the sales and use tax exemption on the affected taxing jurisdictions.

Based on the assumptions set forth above, the net fiscal impact of the sales and use tax exemption on the qualified building materials granted by the City is approximately \$632,799, allocated as follows:

	<u>Sales Tax</u>	<u>Use Tax</u>	<u>Total</u>
State	\$388,700	\$ 97,175	\$485,875
County ¹	80,799	0	80,799
City	8,625	34,500	43,125
CID	<u>0</u>	<u>23,000</u>	<u>23,000</u>
Total	\$478,124	\$154,675	\$632,799

Ancillary Project Benefits. The Project is expected to create a significant number of construction jobs and permanent full-time and part-time jobs. The ancillary impact of those jobs was not measured for purposes of this Plan.

V. BASIS OF PLAN

In order to complete this Plan, Gilmore & Bell, P.C. has generally reviewed and relied upon information furnished by, and has participated in conferences with, representatives of the City and its counsel, representatives of the Company and its counsel and other persons as the firm has deemed appropriate. Gilmore & Bell, P.C. does not assume any responsibility for the accuracy, completeness or fairness of any of the information provided by others and has not independently verified the accuracy, completeness or fairness of such information.

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¹ Includes revenues generated by countywide taxes (including the 1% general sales tax and 0.5% public safety sales tax) that may ultimately be distributed to the City (and other cities in St. Louis County).