

INTRODUCED BY: Councilmember teve McMahon

DATE: April 24, 2023

BILL NO. 9511

ORDINANCE NO. 7227

AN ORDINANCE AUTHORIZING THE CITY OF UNIVERSITY CITY, MISSOURI, TO ISSUE ITS TAXABLE INDUSTRIAL REVENUE BONDS (DIERBERGS UNIVERSITY CITY, LLC PROJECT), SERIES 2023, IN A PRINCIPAL AMOUNT OF NOT TO EXCEED \$34,000,000 FOR THE PURPOSE OF PROVIDING FUNDS TO PAY THE COSTS OF ACQUIRING AND CONSTRUCTING AN INDUSTRIAL DEVELOPMENT PROJECT IN THE CITY AND AUTHORIZING THE CITY MANAGER TO ENTER INTO CERTAIN AGREEMENTS AND TAKE CERTAIN OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF THE BONDS.

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, after giving notice thereof as required by the Act and fairly and duly considering all comments submitted to the City Council, the City Council passed a resolution on May 8, 2023, approving a Plan for an Industrial Development Project and Cost/Benefit Analysis (the "Plan") with respect to the project to be financed with the bonds described herein; and

WHEREAS, the City Council hereby finds and determines that it is desirable for the improvement of the economic welfare and development of the City and within the public purposes of the Act that the City (1) acquire 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, (2) issue its Taxable Industrial Revenue Bonds (Dierbergs University City, LLC Project), Series 2023, in an aggregate principal amount not to exceed \$34,000,000 (the "Bonds"), for the purpose of constructing on the Project Site 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 (3) lease or otherwise dispose of the Project Site and the Project Improvements (together, the "Project") to Dierbergs University City, LLC or an affiliate thereof (the "Company"), all in accordance with and pursuant to the Act; and

WHEREAS, the City Council further finds and determines that it is necessary and desirable in connection with the implementation of the Plan and the issuance of the Bonds that the City approve and enter into certain documents and take certain other actions as herein provided.

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

Section 1. Authorization for the Project. The City is hereby authorized to provide for the acquisition and construction of the Project in the manner and as more particularly described in the Indenture and the Lease hereinafter authorized.

Section 2. Authorization of the Bonds. The City is hereby authorized to issue and sell the Bonds as described in the recitals hereto for the purpose of providing funds to pay the costs of the Project. The Bonds shall be issued and secured pursuant to the Indenture and shall have such terms, provisions, covenants and agreements as are set forth in the Indenture.

Section 3. Limitation on Liability. The Bonds and the interest thereon shall be limited obligations of the City, payable solely out of certain payments, revenues and receipts derived by the City from the Lease. Such payments, revenues and receipts shall be pledged and assigned to the bond trustee named in the Indenture (the "Trustee") as security for the payment of the Bonds as provided in the Indenture. The Bonds and the interest thereon shall not constitute general obligations of the City, the State of Missouri (the "State") or any political subdivision thereof, and neither the City nor the State shall be liable thereon. The Bonds shall not constitute an indebtedness within the meaning of any constitutional, charter or statutory debt limitation or restriction and are not payable in any manner by taxation.

Section 4. Authorization of Documents. The City is hereby authorized to enter into the following documents (collectively, the "City Documents"), in substantially the forms presented to and approved by the City Council and attached to this Ordinance, with such changes therein as shall be approved by the officials of the City executing the documents, such officials' signatures thereon being conclusive evidence of their approval thereof:

(a) Base Lease between the City and the Company, in substantially the form of **Exhibit A**, under which the City will acquire a leasehold interest in the Project Site in consideration of the City's agreement to issue the Bonds.

(b) Trust Indenture (the "Indenture") between the City and the Trustee, in substantially the form of **Exhibit B**, pursuant to which the Bonds will be issued and the City will pledge the Project and assign certain of the payments, revenues and receipts received pursuant to the Lease to the Trustee for the benefit and security of the owners of the Bonds upon the terms and conditions set forth in the Indenture.

(c) Lease Agreement (the "Lease") between the City and the Company, in substantially the form of **Exhibit C**, under which the City will lease the Project to the Company pursuant to the terms and conditions in the Lease in consideration of rental payments by the Company that will be sufficient to pay the principal of and interest on the Bonds.

(d) Bond Purchase Agreement between the City and the Company, in substantially the form of **Exhibit D**, pursuant to which the City will sell, and the Company will purchase, the Bonds.

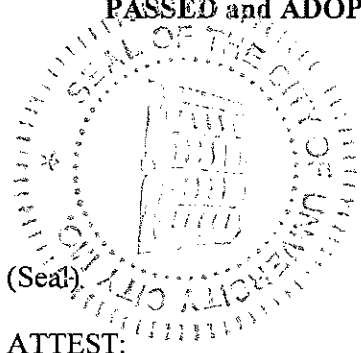
Section 5. Approval of Transfer. The City Council hereby approves the transfer of the Project to the City and hereby further approves any subsequent transfer of the Project to the Company or its designee upon payment in full of the Bonds.

Section 6. Execution of Documents. The City Manager is hereby authorized to execute the Bonds and to deliver the Bonds to the Trustee for authentication for and on behalf of and as the act and deed of the City in the manner provided in the Indenture. The City Manager is hereby authorized to execute the City Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance, for and on behalf of and as the act and deed of the City. The City Clerk is hereby authorized to attest to and affix the seal of the City to the Bonds and the City Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

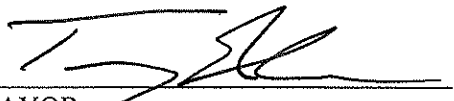
Section 7. Further Authority. The City shall, and the officials, agents and employees of the City are hereby authorized to, take such further action and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance and to carry out, comply with and perform the duties of the City with respect to the Bonds and the City Documents. The City Manager is hereby authorized, through the term of the Lease, to execute all documents on behalf of the City (including documents pertaining to the transfer of property or the financing or refinancing of the Project by the Company) as may be required to carry out and comply with the intent of this Ordinance, the Indenture and the Lease. The City Manager is further authorized, on behalf of the City, to grant such consents, estoppels and waivers relating to the Bonds, the Indenture, the Lease or the extension of the Completion Date (as defined in the Indenture) as may be requested by the Company during the term thereof; provided, such consents, estoppels and/or waivers shall not increase the principal amount of the Bonds, increase the term of the Lease or the economic incentives provided for therein, waive an Event of Default (as defined in the Indenture) or materially change the nature of the transaction unless approved by ordinance of the City Council.

Section 8. Effective Date. This Ordinance shall be in full force and effect from and after the date of its passage and approval.

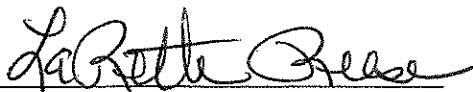
PASSED and ADOPTED THIS 8th DAY OF MAY, 2023.



(Seal)


MAYOR

ATTEST:


CITY CLERK

CERTIFIED TO BE CORRECT AS TO FORM:

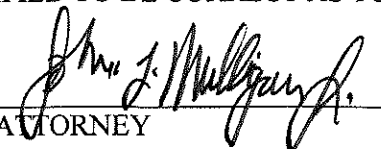

CITY ATTORNEY

EXHIBIT A

BASE LEASE

[On file in the office of the City Clerk]

(The above space is reserved for Recorder's Certification.)

TITLE OF DOCUMENT: BASE LEASE

DATE OF DOCUMENT: As of May 1, 2023

GRANTOR: DIERBERGS UNIVERSITY CITY, LLC,
 a Missouri limited liability company

GRANTOR'S MAILING ADDRESS: 16690 Swingley Ridge Road, Suite 475
 Chesterfield, Missouri 63017

GRANTEE: CITY OF UNIVERSITY CITY, MISSOURI,
 a political subdivision and body corporate organized
 and existing under the laws of the State of Missouri

GRANTEE'S MAILING ADDRESS: 6801 Delmar Boulevard
 University City, Missouri 63130

RETURN DOCUMENTS TO: Mark D. Grimm, Esq.
 Gilmore & Bell, P.C.
 211 North Broadway, Suite 2000
 St. Louis, Missouri 63102

LEGAL DESCRIPTION: See **Exhibit A**

BASE LEASE

THIS BASE LEASE, dated as of May 1, 2023 (this “Base Lease”), between **DIERBERGS UNIVERSITY CITY, LLC**, a Missouri limited liability company (the “Company”), and the **CITY OF UNIVERSITY CITY, MISSOURI**, a home-rule charter city organized and existing under the laws of the State of Missouri (the “City”).

RECITALS:

1. 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.

2. The Company owns approximately 7.50 acres of real property (as legally described on **Exhibit A**, the “Project Site”) located at the Markets at Olive, an approximately 46-acre retail development located in the City. The Project Site is the subject of an industrial development plan approved pursuant to the Act by Resolution No. _____ passed by the City Council on May ___, 2023.

3. Pursuant to the Act and Ordinance No. _____ passed by the City Council on May ___, 2023, the City is authorized to (1) issue its Taxable Industrial Revenue Bonds (Dierbergs University City, LLC Project), Series 2023, in the maximum principal amount of \$34,000,000 (the “Bonds”), for the purpose of constructing on the Project Site 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”), (2) enter into this Base Lease for the purpose of acquiring a leasehold interest in the Project Site during the construction of the Project Improvements and (3) enter into a Lease Agreement of even date herewith with the Company (the “Lease”) for the purpose of leasing the Project Site and the Project Improvements constructed thereon (together, the “Project”) back to the Company for rent sufficient to pay debt service on the Bonds.

4. In connection with the issuance of the Bonds and entering into the Lease, the City has agreed to cooperate with the Company and the contractors for the Project Improvements in acquiring the benefits of sales tax exemption for purchases of materials used to construct the Project Improvements.

5. The Company desires to lease the Project Site to the City, and the City desires to lease the Project Site from the Company, and to acquire and hold a leasehold interest for the term of this Base Lease as more fully described in this Base Lease.

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the City and the Company do hereby represent, covenant and agree as follows:

Section 1. Definitions. In addition to any words and terms defined elsewhere in this Base Lease, capitalized words and terms used in this Base Lease shall have the meanings given to such words and terms in the Lease.

Section 2. Representations by the City. The City makes the following representations as the basis for the undertakings on its part herein contained:

(a) The City is a home-rule charter city duly organized and validly existing under the laws of the State of Missouri.

(b) Under the provisions of the Act, the City has lawful power and authority to enter into the transactions contemplated by this Base Lease and to carry out its obligations hereunder.

(c) By proper action of its governing body, the City has been duly authorized to execute and deliver this Base Lease, acting by and through its duly authorized officers.

Section 3. Representations by the Company. The Company makes the following representations as the basis for the undertakings on its part herein contained:

(a) The Company is a limited liability company validly existing and in good standing under the laws of the State of Missouri.

(b) The Company has lawful power and authority to enter into this Base Lease and to carry out its obligations hereunder, and the Company has been duly authorized to execute and deliver this Base Lease, acting by and through its duly authorized officers and representatives.

(c) The Company is the owner of the Project Site and is permitted to lease the Project Site to the City pursuant to this Base Lease.

Section 4. Lease Term. This Base Lease shall become effective upon execution and delivery and, subject to earlier termination pursuant to the provisions of this Base Lease, shall have a term commencing as of the date of this Base Lease and terminating simultaneously with the termination of the Lease.

Section 5. Granting of Leasehold Estate. The Company hereby rents, leases and lets the Project Site to the City, and the City hereby rents, leases and hires the Project Site from the Company, subject to Permitted Encumbrances existing as of the date of the execution and delivery hereof, for the rentals and upon and subject to the terms and conditions herein contained.

Section 6. Rent. In addition to the City's obligations under the Lease, the City hereby agrees to pay to the Company annual rent under this Base Lease (the "Rent") equal to One Dollar and no/100 (\$1.00), which shall be due on the date of this Base Lease and on each January 1 thereafter during the term of this Base Lease. The Company hereby acknowledges that it has received the Rent due on the date of this Base Lease.

Section 7. Use and Possession of the Project Site. The City will have the rights of use and possession of the Project Site only to the extent permitted by the Lease.

Section 8. Assignability. The City will not assign, sublease, mortgage or otherwise transfer or encumber its interest in this Base Lease.

Section 9. Repairs and Maintenance. The Company shall, at its sole cost and expense, maintain and repair the Project, and all portions thereof and improvements thereto, to the extent required by the Lease. In no event shall the City be required to make any repairs, improvements, additions, replacements, reconstructions or other changes to the Project or perform any maintenance thereon.

Section 10. Taxes. Pursuant to **Section 6.2** of the Lease, the Company shall promptly pay all taxes or other governmental charges that if unpaid, would encumber the City's leasehold interest in the Project.

Section 11. Insurance. The Company shall maintain the insurance policies required by **Article VII** of the Lease.

Section 12. Condemnation. If at any time during the term of this Base Lease, there is a total or partial taking of the Project in condemnation proceedings or by any right of eminent domain or by sale in lieu thereof, the parties shall have the rights and obligations provided in the Lease, and this Base Lease shall terminate only to the extent and in the manner provided in the Lease.

Section 13. Surrender of the Project. Except as otherwise expressly provided in this Base Lease, the City shall surrender and deliver up the Project and all associated improvements thereto to the Company at the expiration or other termination of this Base Lease, to the limited extent that the City may have any rights to possession thereof as expressly provided herein, without fraud or delay.

Section 14. Covenants Against Liens. The Company shall not create or permit to be created or to remain, and the Company shall promptly discharge, any mechanic's, laborer's or materialman's lien which might be or become a lien, encumbrance or charge upon the Project or any part thereof as a result of the Company's separate actions, except as expressly permitted pursuant to the Lease. Notwithstanding the foregoing, the Company hereby acknowledges that mechanic's, laborer's or materialman's liens may be filed against the Company's fee simple interest in the Project Site despite the City's leasehold interest in the Project Site. All such liens shall be discharged prior to the termination of this Base Lease.

Section 15. Notices. Any and all notices, demands, requests, submissions, approvals, consents, disapprovals, objections, offers or other communications or documents required to be given, delivered or served or which may be given, delivered or served under or by the terms and provisions of this Base Lease or pursuant to law or otherwise, shall be made in the form and manner provided in the Lease.

Section 16. Company's Right to Terminate. The Company may terminate this Base Lease at any time pursuant to **Article XI** of the Lease.

Section 17. Conflict with the Lease. In the event of any conflict between the terms hereof and the terms of the Lease, the terms of the Lease shall control.

Section 18. Limitation on Liability of City. No provision, covenant or agreement contained in this Base Lease or any obligation herein imposed upon the City, or the breach thereof, shall constitute or give rise to or impose upon the City a pecuniary liability or a charge upon the general credit or taxing powers of the City or the State of Missouri.

Section 19. Governing Law. This Base Lease shall be construed in accordance with and governed by the laws of the State of Missouri.

Section 20. Binding Effect. This Base Lease shall be binding upon and shall inure to the benefit of the City and the Company and their respective successors and assigns.

Section 21. Severability. If for any reason any provision of this Base Lease is determined to be invalid or unenforceable, the validity and enforceability of the other provisions hereof shall not be affected thereby.

Section 22. Execution in Counterparts. This Base Lease may be executed in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

Section 23. Electronic Transaction.

(a) The parties agree that the transaction described herein may be conducted and related documents may be sent, received or stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

(b) The counterparts of this Base Lease may be executed and delivered by facsimile or electronic signature (including portable document format) by either of the parties hereto, and the receiving party may rely on the receipt of any counterpart so executed and delivered electronically or by facsimile as if the original had been received. Each party may sign and transmit an electronic signature on this Base Lease, which signature shall be binding on the party whose name is contained thereon. The intentional action in electronically signing this Base Lease shall be evidence of consent to be legally bound by this Base Lease. Each party agrees to not contest the admissibility or enforceability of the electronically signed copy of this Base Lease in any proceeding arising out of the terms and conditions of this Base Lease.

(c) Notwithstanding anything in this Section to the contrary and with respect to the recording of any electronic documents, the parties shall comply with the requirements of Section 59.569 of the Revised Statutes of Missouri.

Section 24. Date of Base Lease. The dating of this Base Lease as of May 1, 2023, is intended as and for the convenient identification of this Base Lease only and is not intended to indicate that this Base Lease was executed and delivered on said date, this Base Lease being executed and delivered and becoming effective simultaneously with the initial issuance of the Bonds (the “Effective Date”).

Section 25. Anti-Discrimination Against Israel Act. Pursuant to Section 34.600 of the Revised Statutes of Missouri, the Company certifies it is not currently engaged in and will not, for the duration of this Base Lease, engage in a boycott of goods or services from (a) the State of Israel, (b) companies doing business in or with the State of Israel or authorized by, licensed by, or organized under the laws of the State of Israel, or (c) persons or entities doing business in the State of Israel.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have executed this Base Lease as of the Effective Date.

DIERBERGS UNIVERSITY CITY, LLC,
a Missouri limited liability company

By: _____
Name: _____
Title: _____

STATE OF MISSOURI)
)
COUNTY OF ST. LOUIS) SS.

On this ____ day of _____, 2023, before me, the undersigned, a Notary Public in and for said State, appeared _____, to me personally known, who, being by me duly sworn, did say that s/he is an authorized representative of **DIERBERGS UNIVERSITY CITY, LLC**, a Missouri limited liability company, and that said instrument was signed on behalf of said company by authority of its governing body, and said officer acknowledged said instrument to be executed for the purposes therein stated and as the free act and deed of said company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid on the day and year first above written.

Name: _____

Notary Public in and for said State

My Commission Expires:

PLEASE AFFIX SEAL FIRMLY AND CLEARLY IN THIS BOX

EXHIBIT A

DESCRIPTION OF PROJECT SITE

The land situated in the County of St. Louis, State of Missouri, and described as follows:

A tract of land situated in the City of University City, the County of St. Louis, and the State of Missouri, lying in part of Section 05, Township 45 North, Range 6 East, being all of Lot 5 of Market at Olive Plat 3, a subdivision to be filed for record in the Land records of St. Louis County, Missouri, and part of Adjusted Lot 7 of Market at Olive Plat 3R, a subdivision filed for record in Plat Book 370, Page 471 of said Land Records, and part of Common Ground of Market at Olive Plat 2, a subdivision filed for record in Plat Book 370, pages 202-205 of said Land Records, and being more particularly described as follows:

Beginning at the Northwest corner of McKnight Heights, a subdivision filed for record in Plat Book 54, Page 41 of said Land Records, said Northwest corner also being on the East line of a tract of land conveyed to Bi State Development Agency of MO-IL Metropolitan District as recorded in Deed Book 13245, Page 1568 of said Land Records; thence along said East line of Bi State Development Agency of MO-IL Metropolitan District tract, North 01 degrees 20 minutes 54 seconds West, a distance of 751.82 feet to the Southern right-of-way line of Olive Boulevard as widened by Document 2022100500173 and Document 202210050174 of said Land Records; thence along said Southern right-of-way line the following courses and distances: North 88 degrees 18 minutes 06 seconds East, a distance of 119.51 feet; South 87 degrees 35 minutes 11 seconds East, a distance of 108.37 feet; South 87 degrees 35 minutes 11 seconds East, a distance of 27.92 feet; North 78 degrees 07 minutes 23 seconds East, a distance of 2.17 feet; North 78 degrees 07 minutes 23 seconds East, a distance of 44.31 feet; North 89 degrees 26 minutes 53 seconds East, a distance of 51.29 feet; South 83 degrees 41 minutes 53 seconds East, a distance of 84.96 feet; South 83 degrees 41 minutes 53 seconds East, a distance of 14.20 feet; thence leaving said Southern right-of-way line, South 00 degrees 27 minutes 36 seconds West, a distance of 345.85 feet; thence South 89 degrees 24 minutes 23 seconds West, a distance of 12.90 feet to the West line of said Common Ground of Market at Olive Plat 2; thence along said West line of Common Ground, South 00 degrees 15 minutes 25 seconds West, a distance of 89.14 feet to the Northwest corner of McKnight Downs, a subdivision filed for record in Plat Book 55 Page 89 of said Land Records of St. Louis County; thence along the West line of said McKnight Downs, South 00 degrees 15 minutes 25 seconds West, a distance of 315.75 feet to the North line of said McKnight Heights; thence along said North line the following courses and distances: North 89 degrees 44 minutes 12 seconds West, a distance of 169.69 feet; North 89 degrees 39 minutes 11 seconds West, a distance of 246.10 feet to the point of beginning.

Containing 7.500 Acres (326,700 Square Feet) by Grimes Consulting, Inc., LS-343-D, dated February 2023.

EXHIBIT B
TRUST INDENTURE

[On file in the office of the City Clerk]

CITY OF UNIVERSITY CITY, MISSOURI,

AND

**UMB BANK, N.A.,
as Trustee**

TRUST INDENTURE

Dated as of May 1, 2023

Relating to:

**\$34,000,000
(Aggregate Maximum Principal Amount)
City of University City, Missouri
Taxable Industrial Revenue Bonds
(Dierbergs University City, LLC Project)
Series 2023**

TRUST INDENTURE

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TRUST INDENTURE

THIS TRUST INDENTURE, dated as of May 1, 2023 (this “Indenture”), between the **CITY OF UNIVERSITY CITY, MISSOURI**, a home-rule charter city organized and existing under the laws of the State of Missouri (the “City”), and **UMB BANK, N.A.**, a national banking association duly organized and existing and authorized to accept and execute trusts of the character herein set forth under the laws of the United States of America, with a corporate trust office located in St. Louis, Missouri, as Trustee (the “Trustee”);

RECITALS:

1. 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.

2. Pursuant to the Act, the City Council passed Ordinance No. _____ (the “Ordinance”) on May ___, 2023, authorizing the City to (a) acquire from Dierbergs University City, LLC, a Missouri limited liability company (the “Company”), a leasehold interest in approximately 7.50 acres of real property (as legally described on **Exhibit A**, the “Project Site”) located at the Markets at Olive, an approximately 46-acre retail development located in the City and (b) issue its Taxable Industrial Revenue Bonds (Dierbergs University City, LLC Project), Series 2023, in the maximum principal amount of \$34,000,000 (the “Bonds”), to provide funds to construct on the Project Site 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”).

3. Pursuant to the Ordinance, the City is authorized to enter into this Indenture with the Trustee for the purpose of issuing and securing the Bonds, as herein provided, and to enter into a Lease Agreement of even date herewith (the “Lease”) with the Company, under which the City will lease the City’s interest in the Project Site and the Project Improvements (collectively, the “Project”) to the Company in consideration of rental payments by the Company that will be sufficient to pay the principal of and interest on the Bonds.

4. All things necessary to make the Bonds, when authenticated by the Trustee and issued as provided in this Indenture, the valid and legally binding obligations of the City, and to constitute this Indenture a valid and legally binding pledge and assignment of the Trust Estate (as defined herein) herein made for the security of the payment of the principal of and interest on the Bonds, have been done and performed, and the execution and delivery of this Indenture and the execution and issuance of the Bonds, subject to the terms hereof, have in all respects been duly authorized.

NOW, THEREFORE, THIS TRUST INDENTURE WITNESSETH:

GRANTING CLAUSES

That the City, in consideration of the premises, the acceptance by the Trustee of the trusts hereby created, the purchase and acceptance of the Bonds by the Owners (as defined herein) thereof, and of other good and valuable consideration, the receipt of which is hereby acknowledged, and in order to secure the payment of the principal of and interest on all of the Bonds issued and Outstanding (as defined herein) under this Indenture from time to time according to their tenor and effect, and to secure the performance and observance by the City of all the covenants, agreements and conditions herein and in the Bonds contained, does hereby pledge and assign to the Trustee and its successors and assigns forever, the property described in paragraphs (a), (b) and (c) below (said property being herein referred to as the "Trust Estate"), to-wit:

(a) All right, title and interest of the City in and to the Project together with the tenements, hereditaments, appurtenances, rights, easements, privileges and immunities thereunto belonging or appertaining and, to the extent permissible, all permits, certificates, approvals and authorizations;

(b) All right, title and interest of the City in, to and under the Base Lease (as defined herein) and the Lease (excluding the Unassigned Rights, as defined herein), and all rents, revenues and receipts derived by the City from the Project including, without limitation, all rentals and other amounts to be received by the City and paid by the Company under and pursuant to and subject to the provisions of the Lease; and

(c) All moneys and securities from time to time held by or now or hereafter required to be paid to the Trustee under the terms of this Indenture, and any and all other real or personal property of every kind and nature from time to time hereafter, by delivery or by writing of any kind, pledged, assigned or transferred as and for additional security hereunder by the City or by anyone in its behalf, or with its written consent, to the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

TO HAVE AND TO HOLD, all and singular, the Trust Estate with all rights and privileges hereby pledged and assigned or agreed or intended so to be, to the Trustee and its successors and assigns forever;

IN TRUST NEVERTHELESS, upon the terms and subject to the conditions herein set forth, for the equal and proportionate benefit, protection and security of all Owners from time to time of the Bonds Outstanding under this Indenture, without preference, priority or distinction as to lien or otherwise of any of the Bonds over any other of the Bonds except as expressly provided in or permitted by this Indenture;

PROVIDED, HOWEVER, that if the City pays, or causes to be paid, the principal of and interest on the Bonds, at the time and in the manner mentioned in the Bonds, according to the true intent and meaning thereof, or provides for the payment thereof (as provided in **Article XIII**), and pays or causes to be paid to the Trustee all other sums of money due or to become due to it in accordance with the terms and provisions hereof, then upon such final payments this Indenture and the rights hereby granted shall cease, determine and be void; otherwise, this Indenture shall be and remain in full force and effect.

THIS INDENTURE FURTHER WITNESSETH, and it is hereby expressly declared, covenanted and agreed by and between the parties hereto, that all Bonds issued and secured hereunder are to be issued, authenticated and delivered and that all the Trust Estate is to be held and applied under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and the City does hereby agree and covenant with the Trustee and with the respective Owners from time to time, as follows:

ARTICLE I

DEFINITIONS

Section 101. Definitions of Words and Terms. In addition to any words and terms defined in the Lease (which definitions are hereby incorporated by reference) and any words and terms defined elsewhere in this Indenture, the following words and terms as used in this Indenture shall have the following meanings, unless some other meaning is plainly intended:

“Act” means, collectively, Article VI, Section 27(b) of the Missouri Constitution and Sections 100.010 through 100.200 of the Revised Statutes of Missouri.

“Additional Rent” means the additional rental described in **Section 5.2** of the Lease.

“Approved Investor” means (a) the Company, (b) a Financing Party, (c) a “qualified institutional buyer” under Rule 144A promulgated under the Securities Act of 1933, as amended, or (d) any Person approved by the City Council.

“Authorized City Representative” means the City Manager or such other Person at the time designated to act on behalf of the City as evidenced by written certificate furnished to the Company and the Trustee containing the specimen signature of such Person and signed on behalf of the City by its City Manager. Such certificate may designate an alternate or alternates, each of whom may perform all duties of the Authorized City Representative.

“Authorized Company Representative” means the Person at the time designated to act on behalf of the Company as evidenced by written certificate furnished to the City and the Trustee containing the specimen signature of such Person and signed on behalf of the Company by an authorized officer of the Company. Such certificate may designate an alternate or alternates, each of whom may perform all duties of the Authorized Company Representative.

“Base Lease” means the Base Lease dated as of May 1, 2023, between the Company and the City, as from time to time amended and supplemented.

“Basic Rent” means the rental described in **Section 5.1** of the Lease.

“Bond” or **“Bonds”** means the Taxable Industrial Revenue Bonds (Dierbergs University City, LLC Project), Series 2023, in the maximum aggregate principal amount of \$34,000,000, issued, authenticated and delivered under and pursuant to this Indenture.

“Bond Fund” means the “City of University City, Missouri, Bond Fund -- Dierbergs University City, LLC Project” created in **Section 501**.

“Bond Purchase Agreement” means the agreement by that name with respect to the Bonds by and between the City and the Purchaser.

“Business Day” means any day other than a Saturday or Sunday or legal holiday or a day on which banks located in the city in which the principal corporate trust office or the principal payment office of the Trustee are required or authorized by law to remain closed.

“City” means the City of University City, Missouri, a home-rule charter city organized and existing under the laws of the State.

“Closing Date” means the date identified in the Bond Purchase Agreement for the initial issuance and delivery of the Bonds.

“Closing Price” means the amount specified in writing by the Purchaser and agreed to by the City as the amount required to pay for the initial issuance of the Bonds on the Closing Date, which amount shall be equal to any Project Costs spent by the Company from its own funds on or before the Closing Date, and, at the Company’s option, the costs of issuance of the Bonds if such costs are not paid for from Bond proceeds.

“Company” means Dierbergs University City, LLC, a Missouri limited liability company, and its successors or assigns.

“Completion Date” means the date of execution of the certificate required by **Section 4.5** of the Lease and **Section 504** hereof, which shall be deemed executed and filed on [*December 31, 2025*] if not actually executed and filed by [*December 31, 2025*], except as otherwise provided in **Section 4.5** of the Lease.

“Cumulative Outstanding Principal Amount” means the aggregate principal amount of all Bonds Outstanding under the provisions of this Indenture, not to exceed \$34,000,000, as reflected in the records maintained by the Trustee as provided in the Bonds and this Indenture.

“Event of Default” means, with respect to this Indenture, any Event of Default as defined in **Section 901** hereof and, with respect to the Lease, any Event of Default as described in **Section 12.1** of the Lease.

“Financing Document” means any loan agreement, credit agreement, security agreement, mortgage, participation agreement, lease agreement, sublease, ground lease, hedging agreement or other document related to the Project and executed by or on behalf of a Financing Party.

“Financing Party” means any Person providing debt, lease or equity financing (including equity contributions or commitments) or hedging arrangements, or any renewal, extension or refinancing of any such financing or hedging arrangements, or any guarantee, insurance, letters of credit or credit support for or in connection with such financing or hedging arrangements, in connection with the development, construction, ownership, lease, operation or maintenance of the Project or interests or rights in the Lease, or any part thereof, including any trustee or agent acting on any such Person’s behalf.

“Full Insurable Value” means the reasonable replacement cost of the Project less physical depreciation and exclusive of land, excavations, footings, foundation and parking lots as determined at the expense of the Company from time to time.

“Government Securities” means direct obligations of, or obligations the payment of principal of and interest on which are unconditionally guaranteed by, the United States of America.

“Indenture” means this Trust Indenture, as from time to time amended and supplemented by Supplemental Indentures in accordance with the provisions of **Article XI**.

“Investment Securities” means any of the following securities:

- (a) Government Securities;
- (b) obligations of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Financing Bank, the Federal Intermediate Credit Corporation, Federal Banks for Cooperatives, Federal Land Banks, Federal Home Loan Banks, the Farmers Home Administration and the Federal Home Loan Mortgage Corporation;
- (c) direct and general obligations of any state of the United States of America, to the payment of the principal of and interest on which the full faith and credit of such state is pledged, provided that at the time of their purchase under this Indenture such obligations are rated in either of the two highest rating categories by a nationally-recognized bond rating agency;
- (d) certificates of deposit, whether negotiable or nonnegotiable, issued by any bank or trust company organized under the laws of any state of the United States of America or any national banking association (including the Trustee or any of its affiliates), provided that such certificates of deposit shall be either (1) continuously and fully insured by the Federal Deposit Insurance Corporation, or (2) continuously and fully secured by such securities as are described above in clauses (a) through (c), inclusive, which shall have a market value at all times at least equal to the principal amount of such certificates of deposit and shall be deposited with the Trustee or a custodian bank, trust company or national banking association. The bank, trust company or national banking association holding each such certificate of deposit required to be so secured shall furnish the Trustee written evidence satisfactory to it that the aggregate market value of all such obligations securing each such certificate of deposit will at all times be an amount at least equal to the principal amount of each such certificate of deposit and the Trustee may rely on such evidence;
- (e) shares of a fund registered under the Investment Company Act of 1940, as amended, whose shares are registered under the Securities Act of 1933, as amended, having assets of at least \$100,000,000, and which shares, at the time of purchase, are rated in either of the two highest rating categories by a nationally recognized bond rating agency (without regard to any refinements or gradation of rating category by numerical modifier or otherwise); or
- (f) any other investment approved in writing by an Authorized City Representative and the Owners of all of the Outstanding Bonds.

“Lease” means the Lease Agreement dated as of May 1, 2023, between the City, as lessor, and the Company, as lessee, entered into in connection with the lease of the Project, as from time to time amended and supplemented by Supplemental Leases in accordance with the provisions thereof and of **Article XII** of this Indenture.

“Lease Term” means the period from the effective date of the Lease until the expiration thereof pursuant to **Section 3.2** of the Lease.

“Leasehold Mortgage” means any leasehold mortgage, leasehold deed of trust, assignment of rents and leases, security agreement or other agreement relating to the Project permitted pursuant to the provisions of **Section 10.4** of the Lease.

“Net Proceeds” means, when used with respect to any insurance or condemnation award with respect to the Project, the gross proceeds from the insurance or condemnation award remaining after payment of all expenses (including attorneys’ fees, the Trustee’s fees and any extraordinary expenses of the City and the Trustee) incurred in the collection of such gross proceeds.

“Outstanding” means, when used with reference to Bonds, as of a particular date, all Bonds theretofore authenticated and delivered, except:

- (a) Bonds theretofore canceled by the Trustee or delivered to the Trustee for cancellation;
- (b) Bonds deemed to be paid in accordance with the provisions of **Section 1302**; and
- (c) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered pursuant to this Indenture.

“Owner” means the registered owner of any Bond as recorded on the bond registration records maintained by the Trustee.

“Paying Agent” means the Trustee and any other bank or trust company designated by this Indenture as paying agent for the Bonds at which the principal of or interest on the Bonds shall be payable.

“Payment Date” means the date on which the principal of or interest on any Bond, whether at the stated maturity thereof or the redemption date thereof, is payable, which shall be December 1 of each year that the Bonds are Outstanding.

“Permitted Encumbrances” means, as of any particular time, as the same may encumber the Project Site, (a) liens for ad valorem taxes, special assessments and other governmental charges not then delinquent, (b) this Indenture, the Base Lease and the Lease, (c) utility, access and other easements and rights-of-way, mineral rights, restrictions, exceptions and encumbrances that will not materially interfere with or impair the operations being conducted on the Project Site or easements granted to the City, (d) such minor defects, irregularities, encumbrances, easements, rights-of-way and clouds on title as normally exist with respect to properties similar in character to the Project Site and as do not in the aggregate materially impair the property affected thereby for the purpose for which it was acquired or is held by the City, (e) liens or security interests granted pursuant to any Leasehold Mortgage or any other Financing Document, and (f) such exceptions to title set forth in the [*ALTA Commitment for Title Insurance, Commitment/File No. _____, issued by _____ on _____, 20__*].

“Person” means an individual, partnership, corporation, business trust, joint stock company, limited liability company, bank, insurance company, unincorporated association, joint venture or other entity of whatever nature.

“Plans and Specifications” means the plans and specifications prepared for and showing the Project, as amended by the Company from time to time, the same being on file at the principal office of the Company, and which shall be available for reasonable inspection during normal business hours and upon not less than one Business Day’s prior notice by the City, the Trustee and their duly appointed representatives.

“Project” means, collectively, the Project Site and the Project Improvements as they may at any time exist.

“Project Costs” means all costs of purchasing and constructing the Project, including the following:

(a) all costs and expenses necessary or incident to the acquisition, construction and improvement of the Project Improvements located on the Project Site;

(b) fees and expenses of architects, appraisers, surveyors and engineers for estimates, surveys, soil borings and soil tests and other preliminary investigations and items necessary for the commencement of construction, preparation of plans, drawings and specifications and supervision of construction, as well as for the performance of all other duties of professionals and consultants in relation to the purchase and construction of the Project or the issuance of the Bonds;

(c) all costs and expenses of every nature incurred in purchasing and constructing the Project Improvements and otherwise improving the Project Site, including the actual cost of labor and materials as payable to contractors, builders and materialmen in connection with the purchase and construction of the Project;

(d) interest accruing on the Bonds during the construction period of the Project;

(e) the cost of title insurance policies and the cost of any other insurance maintained during the construction period in accordance with **Article VII** of the Lease;

(f) reasonable expenses of administration, supervision and inspection properly chargeable to the Project, legal fees and expenses, fees and expenses of accountants and other consultants, publication and printing expenses, and initial fees and expenses of the Trustee to the extent that said fees and expenses are necessary or incident to the issuance and sale of the Bonds or the purchase and construction of the Project;

(g) all other items of expense not elsewhere specified in this definition as may be necessary or incident to: (1) the authorization, issuance and sale of the Bonds, including costs of issuance of the Bonds; (2) the purchase and construction of the Project; and (3) the financing thereof; and

(h) reimbursement to the Company or those acting for it for any of the above enumerated costs and expenses incurred and paid by them before or after the execution of the Lease.

“Project Fund” means the “City of University City, Missouri, Project Fund -- Dierbergs University City, LLC Project” created in **Section 501**.

“Project Improvements” means the buildings, structures, improvements and fixtures to be purchased, constructed, installed and otherwise improved on the Project Site pursuant to **Article IV** of the Lease and paid for in whole from proceeds of the Bonds, and all additions, alterations, modifications and improvements thereto made pursuant to the Lease.

“Project Site” means all of the real estate described in **Exhibit A** attached hereto and by this reference made a part hereof.

“Purchaser” means the Person identified in the Bond Purchase Agreement as the purchaser of the Bonds.

“State” means the State of Missouri.

“Supplemental Indenture” means any indenture supplemental or amendatory to this Indenture entered into by the City and the Trustee pursuant to **Article XI**.

“Supplemental Lease” means any supplement or amendment to the Lease entered into pursuant to **Article XII**.

“Trust Estate” means the Trust Estate described in the Granting Clauses of this Indenture.

“Trustee” means UMB Bank, N.A., St. Louis, Missouri, a national banking association duly organized and existing and authorized to accept and execute trusts of the character herein set forth under the laws of the United States of America, and its successor or successors and any other Person which at the time may be substituted in its place pursuant to and at the time serving as Trustee under this Indenture.

“Unassigned Rights” means the City’s rights under the Lease to receive moneys for its own account and the City’s rights to indemnification or to be protected from liabilities by insurance policies required by the Lease, as provided in the Lease.

Section 102. Rules of Interpretation.

(a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

(b) Unless the context otherwise indicates, words importing the singular number shall include the plural and vice versa, and words importing Persons shall include firms, associations and corporations, including governmental entities, as well as natural Persons.

(c) Wherever in this Indenture it is provided that either party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform, or not to perform, as the case may be, such act or obligation.

(d) All references in this instrument to designated “Articles,” “Sections” and other subdivisions are, unless otherwise specified, to the designated Articles, Sections and other subdivisions of this instrument as originally executed. The words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

(e) The Table of Contents and the Article and Section headings of this Indenture shall not be treated as a part of this Indenture or as affecting the true meaning of the provisions hereof.

(f) Whenever an item or items are listed after the word “including,” such listing is not intended to be a listing that excludes items not listed.

Section 103. Date of Indenture. The dating of this Indenture as of May 1, 2023, is intended as and for the convenient identification of this Indenture only and is not intended to indicate that this Indenture was executed and delivered on said date, this Indenture being executed and delivered and becoming effective simultaneously with the initial issuance of the Bonds.

ARTICLE II

THE BONDS

Section 201. Title and Amount of Bonds. No Bonds may be issued under this Indenture except in accordance with the provisions of this Article. The Bonds authorized to be issued under this Indenture shall be designated as the “City of University City, Missouri, Taxable Industrial Revenue Bonds (Dierbergs University City, LLC Project), Series 2023.” The maximum total principal amount of Bonds that may be issued hereunder is hereby expressly limited to \$34,000,000.

Section 202. Nature of Obligation. The Bonds and the interest thereon shall be special obligations of the City payable solely out of the rents, revenues and receipts derived by the City from the Project and the Lease, and not from any other fund or source of the City. The Bonds are secured by a pledge and assignment of the Trust Estate to the Trustee in favor of the Owners, as provided in this Indenture. The Bonds and the interest thereon shall not constitute general obligations of the City, the State or any political subdivision thereof, and none of the City, the State or any political subdivision thereof shall be liable thereon, and the Bonds shall not constitute an indebtedness within the meaning of any constitutional, charter or statutory debt limitation or restriction, and are not payable in any manner by taxation.

Section 203. Denomination, Number and Dating of the Bonds.

(a) The Bonds shall be issuable in the form of one fully-registered Bond, in substantially the form set forth in **Exhibit B**, in the denomination of \$0.01 or any multiple thereof.

(b) The Bonds shall be dated by the Trustee as of the date of initial delivery thereof as provided herein. If the Bonds are at any time thereafter transferred, any replacement Bonds shall be dated as of the date of authentication thereof.

Section 204. Method and Place of Payment of Bonds.

(a) The principal of and interest on the Bonds shall be payable in any coin or currency of the United States of America which on the respective dates of payment thereof is legal tender for payment of public and private debts.

(b) Payment of the principal of the Bonds shall be made upon the presentation and surrender of such Bonds at the principal payment office of any Paying Agent named in the Bonds. The payment of principal of the Bonds shall be noted on the Bonds on **Schedule I** thereto and the registration books

maintained by the Trustee pursuant to **Section 206**. Payment of the interest on the Bonds shall be made by the Trustee on each Payment Date to the Person appearing on the registration books of the Trustee hereinafter provided for as the Owner thereof on the fifteenth day (whether or not a Business Day) of the calendar month next preceding such Payment Date by check or draft mailed to such Owner at such Owner's address as it appears on such registration books.

(c) The Bonds and the original **Schedule I** thereto shall be held by the Trustee in trust, unless otherwise directed in writing by the Owner. If the Bonds are held by the Trustee, the Trustee shall, on each Payment Date, send a revised copy of **Schedule I** via facsimile or other electronic means to the Owner, the Company (if not the Owner) and the City. Absent manifest error, the amounts shown on **Schedule I** as noted by the Trustee shall be conclusive evidence of the principal amount paid on the Bonds.

(d) If there is one Owner of the Bonds, the Trustee is authorized to make the final or any interim payment of principal on such Bonds by internal bank transfer or by electronic transfer to an account at a commercial bank or savings institution designated in writing by such Owner and located in the continental United States. The Trustee is also authorized to make interest payments on such Bonds by internal bank transfer or by electronic transfer to an account at a commercial bank or savings institution designated by such Owner and located in the continental United States.

(e) If the Company or any Financing Party is the sole Owner of the Bonds, then the Company, as lessee under the Lease, may set-off its obligation to the City to pay Basic Rent under the Lease against the City's obligations to the Company, as the bondholder, to pay principal of and interest on the Bonds under this Indenture. The Trustee may conclusively rely on the absence of any written notice from the Company to the contrary as evidence that such set-off has occurred. On the final Payment Date, the Company may deliver to the Trustee for cancellation the Bonds and the Company shall receive a credit against the Basic Rent payable by the Company under **Section 5.1** of the Lease in an amount equal to the remaining principal of the Bonds so tendered for cancellation plus accrued interest thereon.

Section 205. Execution and Authentication of Bonds.

(a) The Bonds shall be executed on behalf of the City by the manual or facsimile signature of its City Manager and attested by the manual or facsimile signature of its City Clerk, and shall have the corporate seal of the City affixed thereto or imprinted thereon. If any officer whose signature or facsimile thereof appears on the Bonds ceases to be such officer before the delivery of such Bonds, 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. Any Bond may be signed by such Persons as at the actual time of the execution of such Bond are the proper officers to sign such Bond although at the date of such Bond such Persons may not have been such officers.

(b) The Bonds shall have endorsed thereon a Certificate of Authentication substantially in the form set forth in **Exhibit B**, which shall be manually executed by the Trustee. No Bond shall be entitled to any security or benefit under this Indenture or shall be valid or obligatory for any purposes until such Certificate of Authentication has been duly executed by the Trustee. The executed Certificate of Authentication upon any Bond shall be conclusive evidence that such Bond has been duly authenticated and delivered under this Indenture. The Certificate of Authentication on any Bond shall be deemed to have been duly executed if signed by any authorized signatory of the Trustee.

Section 206. Registration, Transfer and Exchange of Bonds.

(a) The Trustee shall keep books for the registration and transfer of Bonds as provided in this Indenture.

(b) The Bonds may be transferred to an Approved Investor only upon the books kept for the registration and transfer of Bonds upon surrender thereof to the Trustee duly endorsed for transfer or accompanied by an assignment duly executed by the Owner or such Owner's attorney or legal representative in such form as shall be satisfactory to the Trustee. In connection with any such transfer of the Bonds, the City and the Trustee shall receive an executed representation letter signed by the proposed assignee in substantially the form of **Exhibit C**. The Trustee has no duty or obligation to confirm that any transferee that provides such representation letter is an Approved Investor. Upon any such transfer, the City shall execute and the Trustee shall authenticate and deliver in exchange for such Bonds a new fully-registered Bond or Bonds, registered in the name of the transferee, of any denomination or denominations authorized by this Indenture, in an aggregate principal amount equal to the Outstanding principal amount of such Bonds, of the same maturity and bearing interest at the same rate.

(c) In all cases in which Bonds are exchanged or transferred hereunder the provisions of any legend restrictions on the Bonds shall be complied with and the City shall execute and the Trustee shall authenticate and deliver at the earliest practicable time Bonds in accordance with the provisions of this Indenture. All Bonds surrendered in any such exchange or transfer shall forthwith be canceled by the Trustee. The City or the Trustee may make a reasonable charge for every such exchange or transfer of Bonds sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer, and such charge shall be paid before any new Bond shall be delivered. Neither the City nor the Trustee shall be required to make any such exchange or transfer of Bonds during the 15 days immediately preceding a Payment Date on the Bonds or, in the case of any proposed redemption of Bonds, during the 15 days immediately preceding the selection of Bonds for such redemption or after such Bonds or any portion thereof has been selected for redemption.

(d) If any Owner fails to provide a certified taxpayer identification number to the Trustee, the Trustee may make a charge against such Owner sufficient to pay any governmental charge required to be paid as a result of such failure, which amount may be deducted by the Trustee from amounts otherwise payable to such Owner under such Owner's Bond.

Section 207. Persons Deemed Owners of Bonds. As to any Bond, the Person in whose name the same is registered as shown on the bond registration books required by **Section 206** shall be deemed and regarded as the absolute owner thereof for all purposes. Payment of or on account of the principal of and interest on any such Bond shall be made only to or upon the order of the Owner thereof or a legal representative thereof. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond, including the interest thereon, to the extent of the sum or sums so paid.

Section 208. Authorization of the Bonds.

(a) The Bonds are authorized in the aggregate maximum principal amount of \$34,000,000 for the purpose of providing funds to pay Project Costs, which Bonds shall be designated the "City of University City, Missouri, Taxable Industrial Revenue Bonds (Dierbergs University City, LLC Project), Series 2023." The Bonds shall be dated as provided in **Section 203(b)**, shall become due on the Completion Date (subject to prior redemption as provided in **Article III**) and shall bear interest as specified in **Section 208(f)**, payable on the dates specified in **Section 208(f)**.

(b) The Trustee is hereby designated as the Paying Agent. The Owners of a majority of Bonds then-Outstanding may designate a different Paying Agent upon written notice to the City and the Trustee.

(c) The Bonds shall be executed without material variance from the form and in the manner set forth in **Exhibit B** and delivered to the Trustee for authentication. Prior to or simultaneously with the authentication and delivery of the Bonds by the Trustee, there shall be filed with the Trustee the following:

(1) a copy of the ordinance passed by the City Council authorizing the issuance of the Bonds and the execution of this Indenture, the Base Lease, the Lease and the Bond Purchase Agreement;

(2) executed counterparts of this Indenture, the Base Lease, the Lease and the Bond Purchase Agreement;

(3) a representation letter from the Purchaser in substantially the form attached as **Exhibit C**;

(4) a request and authorization to the Trustee on behalf of the City, executed by an Authorized City Representative, to authenticate the Bonds and deliver the same to or at the written direction of the Purchaser upon payment to the Trustee, for the account of the City, of the purchase price thereof specified in the Bond Purchase Agreement. The Trustee shall be entitled to conclusively rely upon such request and authorization as to the name of the Purchaser and the amount of such purchase price; and

(5) such other certificates, statements, receipts, opinions and documents as the Trustee shall reasonably require for the delivery of the Bonds.

In authenticating Bonds, the Trustee makes no certification or representation that the Bonds have been validly issued or constitute legally binding obligations of the City.

(d) When the documents specified in subsection (c) of this Section have been filed with the Trustee, and when the Bonds have been executed and authenticated as required by this Indenture, either:

(1) the Purchaser shall pay the Closing Price to the Trustee, and the Trustee shall endorse the Bonds in an amount equal to the Closing Price and then either hold the Bonds in trust or if so directed in writing deliver the Bonds to or upon the order of the Purchaser; or

(2) the Company shall submit a requisition certificate in accordance with **Section 4.4** of the Lease, in an amount equal to the Closing Price, and the Trustee shall endorse the Bonds in an amount equal to the Closing Price and then either hold the Bonds in trust or if so directed in writing deliver the Bonds to the Company (or another purchaser designated by the Company).

In either case, the Purchaser shall be deemed to have paid over to the Trustee, and the Trustee shall be deemed to have deposited into the Project Fund, an amount equal to the Closing Price.

(e) Following the initial issuance and delivery of the Bonds, the Company may submit additional requisition certificates in accordance with **Section 4.4** of the Lease. If the Purchaser does not pay to the Trustee the amount set forth in the requisition certificates, the Purchaser will be deemed to

have advanced an amount equal to the amount set forth in the requisition certificates and the Trustee shall endorse the Bonds in an amount equal to the amount set forth in the requisition certificates. The date of endorsement of each Principal Amount Advanced as set forth on **Schedule I** to the Bonds shall be the date of the City's approval of each requisition certificate. The Trustee shall keep a record of the total requisitions submitted for the Project and shall notify the City if the requisitions submitted exceed the maximum principal amount of the Bonds.

(f) The Bonds shall bear interest at the rate of 5.0% per annum on the Cumulative Outstanding Principal Amount of the Bonds. Such interest shall be payable in arrears on each December 1, commencing on December 1, 2023, and continuing thereafter until the Cumulative Outstanding Principal Amount is paid in full, but not later than the Completion Date. Interest shall be calculated on the basis of a year of 360 days consisting of 12 months of 30 days each.

(g) The Trustee shall keep and maintain a record of the amount deposited or deemed to be deposited into the Project Fund pursuant to the terms of this Indenture as "Principal Amount Advanced" and shall enter the aggregate principal amount of the Bonds then-Outstanding on its records as the "Cumulative Outstanding Principal Amount." If the Trustee is holding the Bonds, such advanced amounts shall be reflected on **Schedule I** to the Bonds. To the extent that advances are deemed to have been made pursuant to requisitions, the Trustee's records of such advances shall be based solely on the requisitions provided to it. On each date upon which a portion of the Cumulative Outstanding Principal Amount is paid to the Owners, pursuant to the redemption provisions of this Indenture, the Trustee shall enter on its records and **Schedule I** to the Bonds (if the Trustee is holding the Bonds) the principal amount paid on the Bonds as "Principal Amount Redeemed" and shall enter the then-Outstanding principal amount of the Bonds as "Cumulative Outstanding Principal Amount." The records maintained by the Trustee as to amounts deposited into the Project Fund or principal amounts paid on the Bonds shall be the official records of the Cumulative Outstanding Principal Amount for all purposes, absent manifest error, and shall be in substantially the form of the Table of Cumulative Outstanding Principal Amount as set out in the form of Bonds in **Exhibit B**. To the extent the Company sets off its obligation to the City under the Lease against the City's obligation to the Company under this Indenture, as permitted by **Section 204(e)**, the Trustee shall not be required to confirm that such set-off has occurred. If any moneys are deposited by the Trustee into the Project Fund, then the Trustee shall provide a statement of receipts and disbursements with respect thereto to the City and the Company on a monthly basis. After the Project has been completed and the certificate of payment of all costs is filed as provided in **Section 4.5** of the Lease, the Trustee, to the extent it has not already done so pursuant to this Section or **Section 1012**, shall file a final statement of receipts and disbursements with respect thereto with the City and the Company.

Section 209. Mutilated, Lost, Stolen or Destroyed Bonds. If any Bond becomes mutilated, or is lost, stolen or destroyed, the City shall execute and the Trustee shall authenticate and deliver a new Bond of like series, date and tenor as the Bond mutilated, lost, stolen or destroyed; provided that, in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee, and in the case of any lost, stolen or destroyed Bond, there shall be first furnished to the City and the Trustee evidence of such loss, theft or destruction satisfactory to the Trustee, together with indemnity satisfactory to the Trustee to save and hold each of the City and the Trustee harmless. If any such Bond has matured, instead of delivering a substitute Bond, the Trustee may pay the same without surrender thereof. Upon the issuance of any substitute Bond, the City and the Trustee may require the payment of an amount sufficient to reimburse the City and the Trustee for any tax or other governmental charge that may be imposed in relation thereto and any other reasonable fees and expenses incurred in connection therewith.

Section 210. Cancellation and Destruction of Bonds Upon Payment.

(a) All Bonds that have been paid or redeemed or that the Trustee has purchased or that have otherwise been surrendered to the Trustee under this Indenture, either at or before maturity, shall be canceled by the Trustee immediately upon the payment, redemption or purchase of such Bonds and the surrender thereof to the Trustee.

(b) All Bonds canceled under any of the provisions of this Indenture shall be destroyed by the Trustee in accordance with applicable laws and regulations and the Trustee's policies and practices. The Trustee shall execute a certificate describing the Bonds so destroyed and shall file executed counterparts of such certificate with the City and the Company.

ARTICLE III

REDEMPTION OF BONDS

Section 301. Redemption of Bonds.

(a) The Bonds are subject to redemption and payment at any time before the stated maturity thereof, at the option of the City, upon written instructions from the Company, (1) in whole, if the Company exercises its option to purchase the Project and deposits an amount sufficient to effect such purchase pursuant to the Lease on the applicable redemption date, or (2) in part, if the Company prepays additional Basic Rent pursuant to the Lease. If only a portion of the Bonds are to be redeemed, (A) Bonds aggregating at least 10% of the maximum aggregate principal amount of Bonds authorized hereunder shall not be subject to redemption and payment before the stated maturity thereof, and (B) the Trustee shall keep a record of the amount of Bonds to remain Outstanding following such redemption. Any redemption of Bonds pursuant to this paragraph shall be at a redemption price equal to the par value thereof being redeemed, plus accrued interest thereon, without premium or penalty, to the redemption date.

(b) The Bonds are subject to mandatory redemption, in whole or in part, to the extent of amounts deposited in the Bond Fund pursuant to **Section 9.1(f)** or **9.2(c)** of the Lease, in the event of substantial damage to or destruction or condemnation of substantially all of the Project. Bonds to be redeemed pursuant to this paragraph shall be called for redemption by the Trustee on the earliest practicable date for which timely notice of redemption may be given as provided hereunder. Any redemption of Bonds pursuant to this paragraph shall be at a redemption price equal to the par value thereof being redeemed, plus accrued interest thereon, without premium or penalty, to the redemption date. Before giving notice of redemption to the Owners pursuant to this paragraph (b), money in an amount equal to the redemption price shall have been deposited in the Bond Fund.

(c) At its option, the Company may deliver to the Trustee for cancellation any Bonds owned by the Company or any Financing Party and not previously paid, and the Company shall receive a credit against the amounts payable by the Company for the redemption of such Bonds in an amount equal to the principal amount of the Bonds so tendered for cancellation, plus accrued interest.

Section 302. Effect of Call for Redemption. Before or on the date fixed for redemption, funds, Government Securities, or a combination thereof, shall be placed with the Trustee which are sufficient to pay the Bonds called for redemption and accrued interest thereon, if any, to the redemption date. Upon the happening of the above conditions and appropriate written notice having been given, the

Bonds or the portions of the principal amount of Bonds thus called for redemption shall cease to bear interest on the specified redemption date, and shall no longer be entitled to the protection, benefit or security of this Indenture and shall not be deemed to be Outstanding under the provisions of this Indenture. If the Bonds are fully redeemed before maturity and an amount of money equal to the Trustee's and the Paying Agent's agreed to fees and expenses hereunder accrued and to accrue in connection with such redemption is paid or provided for, the City shall, at the Company's direction, deliver to the Company the items described in **Section 11.2** of the Lease.

Section 303. Notice of Redemption. If the Bonds are to be called for redemption as provided in **Section 301(a)**, the Company shall deliver written notice to the City and the Trustee that it has elected to redeem all or a portion of the Bonds at least 40 days (10 days if there is one Owner) before the scheduled redemption date. The Trustee shall then deliver written notice to the Owners at least 30 days (five days if there is one Owner) before the scheduled redemption date by first-class mail (or facsimile, if there is one Owner) stating the date upon which the Bonds will be redeemed and paid, unless such notice period is waived by the Owners in writing.

ARTICLE IV

FORM OF BONDS

Section 401. Form Generally. The Bonds and the Trustee's Certificate of Authentication to be endorsed thereon shall be issued in substantially the forms set forth in **Exhibit B**. The Bonds may have endorsed thereon such legends or text as may be necessary or appropriate to conform to any applicable rules and regulations of any governmental authority or any custom, usage or requirements of law with respect thereto.

ARTICLE V

CUSTODY AND APPLICATION OF BOND PROCEEDS

Section 501. Creation of Funds. There are hereby created and ordered to be established in the custody of the Trustee the following special trust funds in the name of the City:

- (a) "City of University City, Missouri, Project Fund -- Dierbergs University City, LLC Project" (herein called the "Project Fund").
- (b) "City of University City, Missouri, Bond Fund -- Dierbergs University City, LLC Project" (herein called the "Bond Fund").

Section 502. Deposits into the Project Fund. The proceeds of the sale of the Bonds (whether actually paid or deemed paid under **Section 208(d)**, including Additional Payments (as defined in the Bond Purchase Agreement), when received, excluding such amounts required to be paid into the Bond Fund pursuant to **Section 601**, shall be deposited by the Trustee into the Project Fund. Any money received by the Trustee from any other source for the purpose of purchasing, constructing and installing the Project shall pursuant to any written directions from the Person depositing such moneys also be deposited into the Project Fund.

Section 503. Disbursements from the Project Fund.

(a) The moneys in the Project Fund shall be disbursed by the Trustee for the payment of, or reimbursement to the Company (or any other party that has made payment on behalf of the Company) for payment of, Project Costs upon receipt of requisition certificates signed by the Company in accordance with the provisions of **Article IV** of the Lease. The Trustee hereby covenants and agrees to disburse such moneys in accordance with such provisions.

(b) If, pursuant to **Section 208(d)**, the Trustee is deemed to have deposited into the Project Fund the amount specified in the requisition certificates submitted by the Company, the Trustee shall upon endorsement of the Bonds in an equal amount be deemed to have disbursed such funds from the Project Fund to the Company (or such other purchaser designated by the Company) in satisfaction of the requisition certificates.

(c) In paying any requisition under this Section, the Trustee may rely as to the completeness and accuracy of all statements in any requisition certificate if such requisition certificate is signed by an Authorized Company Representative without inquiry or investigation. It is understood that the Trustee shall not be required to make any inspections of the Project, nor any improvements with respect thereto, make any provision to obtain completion bonds, mechanic's or materialman's lien releases or otherwise supervise the Project. The approval of each requisition certificate by an Authorized Company Representative shall constitute, unto the Trustee, an irrevocable determination that all conditions precedent to the payment of the specified amounts from the Project Fund have been completed. If the City so requests in writing, a copy of each requisition certificate submitted to the Trustee for payment under this Section shall be promptly provided by the Trustee to the City. The City hereby authorizes and directs the Trustee to make disbursements in the manner and as provided for by the aforesaid provisions of the Lease.

Section 504. Completion of the Project. The completion of the purchase and construction of the Project and payment of all costs and expenses incident thereto shall be evidenced by the filing with the Trustee of the certificate required by the provisions of **Section 4.5** of the Lease. As soon as practicable after the Completion Date any balance remaining in the Project Fund shall without further authorization be transferred by the Trustee to the Bond Fund and applied as provided in **Section 4.6** of the Lease.

Section 505. Disposition Upon Acceleration. If the principal of the Bonds has become due and payable pursuant to **Section 902**, upon the date of payment by the Trustee of any moneys due as hereinafter provided in **Article IX**, any balance remaining in the Project Fund shall without further authorization be deposited in the Bond Fund by the Trustee, with advice to the City and to the Company of such action.

ARTICLE VI

REVENUES AND FUNDS

Section 601. Deposits into the Bond Fund.

(a) The Trustee shall deposit into the Bond Fund, as and when received, (1) all accrued interest on the Bonds, if any, paid by the Purchaser; (2) all Basic Rent payable by the Company to the City specified in **Section 5.1** of the Lease; (3) any Additional Rent payable by the Company specified in

Section 5.2 of the Lease; (4) any amount in the Project Fund to be transferred to the Bond Fund pursuant to **Section 504** upon completion of the Project or pursuant to **Section 505** upon acceleration of the Bonds; (5) the balance of any Net Proceeds of condemnation awards or insurance received by the Trustee pursuant to **Article IX** of the Lease; (6) the amounts to be deposited in the Bond Fund pursuant to **Sections 9.1(f)** and **9.2(c)** of the Lease; (7) all interest and other income derived from the investment of Bond Fund moneys as provided in **Section 702**; and (8) all other moneys received by the Trustee under and pursuant to any of the provisions of the Lease when accompanied by written directions from the Person depositing such moneys that such moneys are to be paid into the Bond Fund.

(b) The Trustee shall notify the Company in writing, at least 15 days before each date on which a payment is due under **Section 5.1** of the Lease, of the amount that is payable by the Company pursuant to such Section.

Section 602. Application of Moneys in the Bond Fund.

(a) Except as provided in **Section 604** and **Section 908** hereof or in **Section 4.6** of the Lease, moneys in the Bond Fund shall be expended solely for the payment of the principal of and interest on the Bonds as the same matures and becomes due or upon the redemption thereof before maturity; provided, however, that any amounts received by the Trustee as Additional Rent under **Section 5.2** of the Lease and deposited to the Bond Fund as provided in **Section 601** above, shall be expended by the Trustee for such items of Additional Rent as they are received or due without further authorization from the City.

(b) The City hereby authorizes and directs the Trustee to withdraw sufficient funds from the Bond Fund to pay the principal of and interest on the Bonds as the same becomes due and payable and to make said funds so withdrawn available to the Paying Agent for the purpose of paying said principal and interest.

(c) Whenever the amount in the Bond Fund from any source whatsoever is sufficient to redeem all of the Bonds Outstanding and to pay interest to accrue thereon before and until such redemption, the City covenants and agrees, upon request of the Company, to take and cause to be taken the necessary steps to redeem all such Bonds on the next succeeding redemption date for which the required redemption notice may be given or on such later redemption date as may be specified by the Company. The Trustee may use any moneys in the Bond Fund to redeem a part of the Bonds Outstanding in accordance with and to the extent permitted by **Article III** so long as the Company is not in default with respect to any payments under the Lease and to the extent said moneys are in excess of the amount required for payment of Bonds theretofore matured or called for redemption and past due interest, if any, in all cases when such Bonds have not been presented for payment.

(d) After payment in full of the principal of and interest, if any, on the Bonds (or provision has been made for the payment thereof as provided in this Indenture), and the fees, charges and expenses of the Trustee, the City and any Paying Agent and any other amounts required to be paid under this Indenture and the Lease, all amounts remaining in the Bond Fund shall be paid to the Company upon the expiration or sooner termination of the Lease.

Section 603. Payments Due on Days Other than Business Days. In any case where the date of maturity of principal of or interest, if any, on the Bonds or the date fixed for redemption of any Bonds is not a Business Day, then payment of principal or interest, if any, need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date

of maturity or the date fixed for redemption, and no interest, if any, shall continue to accrue for the period after such date.

Section 604. Nonpresentment of Bonds. If any Bond is not presented for payment when the principal thereof becomes due, either at maturity or otherwise, or at the date fixed for redemption thereof, if funds sufficient to pay such Bond shall have been made available to the Trustee, all liability of the City to the Owner thereof for the payment of such Bond shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such funds, without liability for interest thereon, for the benefit of the Owner of such Bond who shall thereafter be restricted exclusively to such funds for any claim of whatever nature on his part under this Indenture or on, or with respect to, said Bond. If any Bond is not presented for payment within one year following the date when such Bond becomes due, whether at maturity or otherwise, the Trustee shall without liability for interest thereon repay to the Company the funds theretofore held by it for payment of such Bond, and such Bond shall, subject to the defense of any applicable statute of limitation, thereafter be an unsecured obligation of the Company, and the Owner thereof shall be entitled to look only to the Company for payment, and then only to the extent of the amount so repaid, and the Company shall not be liable for any interest thereon and shall not be regarded as a trustee of such money.

ARTICLE VII

SECURITY FOR DEPOSITS AND INVESTMENT OF FUNDS

Section 701. Moneys to be Held in Trust. All moneys deposited with or paid to the Trustee for account of the Bond Fund or the Project Fund under any provision of this Indenture, and all moneys deposited with or paid to any Paying Agent under any provision of this Indenture, shall be held by the Trustee or Paying Agent in trust and shall be applied only in accordance with the provisions of this Indenture and the Lease, and, until used or applied as herein provided, shall constitute part of the Trust Estate and be subject to the lien hereof. Neither the Trustee nor any Paying Agent shall be under any liability for interest on any moneys received hereunder except such as may be agreed upon in writing.

Section 702. Investment of Moneys in Project Fund and Bond Fund. Moneys held in the Project Fund and the Bond Fund shall, pursuant to written direction of the Company, signed by an Authorized Company Representative, be separately invested and reinvested by the Trustee in Investment Securities which mature or are subject to redemption by the Owner before the date such funds will be needed. If the Company fails to provide written directions concerning the investment of moneys held in the Project Fund and the Bond Fund, the Trustee shall invest in the Investment Securities specified in paragraph (d) of the definition of Investment Securities, provided they mature or are subject to redemption before the date such funds will be needed. The Trustee is specifically authorized to implement its automated cash investment system to assure that cash on hand is invested and to charge its normal cash management fees and cash sweep account fees, which may be deducted from income earned on investments; provided that any such fees shall not exceed the interest income on the investment. Any such Investment Securities shall be held by or under the control of the Trustee and shall be deemed at all times a part of the fund in which such moneys are originally held, and the interest accruing thereon and any profit realized from such Investment Securities shall be credited to such fund, and any loss resulting from such Investment Securities shall be charged to such fund. After the Trustee has notice pursuant to **Section 1001(h)** of the existence of an Event of Default, the Trustee shall direct the investment of moneys in the Bond Fund and the Project Fund. The Trustee shall sell and reduce to cash a sufficient amount of such Investment Securities whenever the cash balance in any fund is insufficient for the purposes of such

fund. In determining the balance in any fund, investments in such fund shall be valued at the lower of their original cost or their fair market value as of the most recent Payment Date. The Trustee may make any and all investments permitted by the provisions of this Section through its own bond department or any affiliate or short-term investment department.

Section 703. Record Keeping. The Trustee shall maintain records designed to show compliance with the provisions of this Article and with the provisions of **Article VI** for at least six months after the payment of all of the Bonds.

ARTICLE VIII

GENERAL COVENANTS AND PROVISIONS

Section 801. Payment of Principal and Interest. The City covenants and agrees that it will, but solely from the rents, revenues and receipts derived from the Project and the Lease as described herein, deposit or cause to be deposited in the Bond Fund sufficient sums payable under the Lease promptly to meet and pay the principal of and interest on the Bonds as they become due and payable at the place, on the dates and in the manner provided herein and in the Bonds according to the true intent and meaning thereof. Nothing herein shall be construed as requiring the City to operate the Project as a business other than as lessor or to use any funds or revenues from any source other than funds and revenues derived from the Project.

Section 802. Authority to Execute Indenture and Issue Bonds. The City covenants that it is duly authorized under the Constitution and laws of the State to execute this Indenture, to lease the Project, to issue the Bonds and to pledge and assign the Trust Estate in the manner and to the extent herein set forth; that all action on its part for the execution and delivery of this Indenture and the issuance of the Bonds has been duly and effectively taken; and that the Bonds in the hands of the Owners thereof are and will be valid and enforceable obligations of the City according to the import thereof.

Section 803. Performance of Covenants. The City covenants that it will faithfully perform or cause to be performed at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in the Bonds and in all proceedings of its governing body pertaining thereto. The Trustee may take such action as it deems appropriate to enforce all such covenants, undertakings, stipulations and provisions of the City hereunder.

Section 804. Instruments of Further Assurance. The City covenants that it will do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, such Supplemental Indentures and such further acts, instruments, financing statements and other documents as the Trustee may reasonably require for the better pledging and assigning unto the Trustee the property and revenues herein described to the payment of the principal of and interest, if any, on the Bonds, upon being first indemnified by the Company for the cost thereof. The City covenants and agrees that, except as herein and in the Lease provided, it will not sell, convey, mortgage, encumber or otherwise dispose of any part of the Project or the rents, revenues and receipts derived therefrom or from the Lease, or of its rights under the Lease.

Section 805. Recordings and Filings. The City shall file or cause to be kept and filed all financing statements and hereby authorizes the Trustee to file or cause to be kept and filed continuation statements with respect to such originally filed financing statements related to this Indenture and all

supplements hereto and such other documents as may be required under the Uniform Commercial Code in order to fully preserve and protect the security of the Owners and the rights of the Trustee hereunder. The City will cooperate in causing this Indenture and all Supplemental Indentures, the Lease and all Supplemental Leases, the Base Lease and all other security instruments to be recorded and filed in such manner and in such places as may be required by law in order to fully preserve and protect the security of the Owners and the rights of the Trustee hereunder. The Trustee shall file continuation statements with respect to each Uniform Commercial Code financing statement relating to the Trust Estate filed by the City at the time of the issuance of the Bonds; provided that a copy of the filed initial financing statement is timely delivered to the Trustee. In addition, unless the Trustee has been notified in writing by the City that any such initial filing or description of collateral was or has become defective, the Trustee shall be fully protected in (a) relying on such initial filing and description of collateral in filing any financing or continuation statements or modifications thereto pursuant to this Section, and (b) filing any continuation statements in the same filing office as the initial filing was made. The Company shall be responsible for the customary fees charged by the Trustee for the preparation and filing of continuation statements and for the reasonable costs incurred by the Trustee in the preparation and filing of all continuation statements hereunder, including attorneys' fees and expenses. These fees shall be considered "extraordinary services" fees.

Section 806. Inspection of Project Books. The City covenants and agrees that all books and documents in its possession relating to the Project and the rents, revenues and receipts derived from the Project shall at all times be open to inspection by such accountants or other agencies as the Trustee may from time to time designate.

Section 807. Enforcement of Rights Under the Lease. The Trustee, as assignee, transferee, pledgee and owner of a security interest under this Indenture, in its name or in the name of the City, may enforce all assigned rights of the City and the Trustee and all obligations of the Company under and pursuant to the Lease for and on behalf of the Owners, whether or not the City is in default hereunder.

ARTICLE IX

DEFAULT AND REMEDIES

Section 901. Events of Default; Notice; Opportunity to Cure. If any of the following events occur, it is hereby defined as and declared to be and to constitute an "Event of Default":

- (a) Default in the due and punctual payment of the principal of any Bond, whether at the stated maturity or accelerated maturity thereof, or at any date fixed for redemption thereof;
- (b) Default in the due and punctual payment of the interest on any Bond, whether at the stated maturity or accelerated maturity thereof, or at any date fixed for redemption thereof;
- (c) Default as specified in **Section 12.1** of the Lease has occurred; or
- (d) Default in the performance, or breach, of any other covenant or agreement under this Indenture.

No default specified above shall constitute an Event of Default until the City, the Trustee or the Owners of 25% in aggregate principal amount of all Bonds Outstanding has given actual notice of such

default by registered or certified mail or a recognized overnight delivery service to the Company, and the Company has had 30 days after receipt of such notice to correct said default or cause said default to be corrected and has not corrected said default or caused said default to be corrected within such period; provided, however, if any such default (other than a default in the payment of any money) is such that it cannot be corrected within such period, it shall not constitute an Event of Default if corrective action is instituted by the Company within such period and diligently pursued until the default is corrected.

Section 902. Acceleration of Maturity in Event of Default.

(a) If an Event of Default has occurred and is continuing after the notice and cure period described in **Section 901** elapses, the Trustee may, and upon the written request of the City or the Owners of not less than 25% in aggregate principal amount of Bonds then-Outstanding, shall, by notice in writing delivered to the City and the Company, declare the principal of all Bonds then-Outstanding and the interest accrued thereon immediately due and payable, and such principal and interest and all other amounts due hereunder shall thereupon become and be immediately due and payable.

(b) If, at any time after such declaration, but before the Bonds have matured by their terms, all overdue installments of principal and interest upon the Bonds, together with the reasonable and proper expenses of the Trustee, and all other sums then payable by the City under this Indenture are either paid or provisions satisfactory to the Trustee are made for such payment, then and in every such case the Trustee shall, but only with the approval of a majority of the Owners of the Bonds then-Outstanding, rescind such declaration and annul such default in its entirety. In such event, the Trustee shall rescind any declaration of acceleration of installments of rent payments on the Bonds as provided in **Section 11.1** of the Lease.

(c) In case of any rescission, then and in every such case the City, the Trustee, the Company and the Owners shall be restored to their former positions and rights hereunder respectively, but no such rescission shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon.

Section 903. Surrender of Possession of Trust Estate; Rights and Duties of Trustee in Possession. If an Event of Default has occurred and is continuing after the notice and cure period described in **Section 901** elapses, the City, upon demand of the Trustee, shall forthwith surrender the possession of, and it shall be lawful for the Trustee, by such officer or agent as it may appoint, to take possession of all or any part of the Trust Estate, together with the books, papers and accounts of the City pertaining thereto, and including the rights and the position of the City under the Lease, and to hold, operate and manage the same, and from time to time make all needful repairs and improvements. The Trustee may lease the Project or any part thereof, in the name and for the account of the City, and collect, receive and sequester the rents, revenues and receipts therefrom, and out of the same and any moneys received from any receiver of any part thereof, pay and set up proper reserves for the payment of all proper costs and expenses of so taking, holding and managing the same, including without limitation (a) reasonable compensation to the Trustee, its agents and counsel, (b) any reasonable charges of the Trustee hereunder, (c) any taxes and assessments and other charges before the lien of this Indenture, and (d) all expenses of such repairs and improvements. The Trustee shall apply the remainder of the moneys so received in accordance with the provisions of **Section 908**. Whenever all that is due upon the Bonds has been paid and all defaults cured, the Trustee shall surrender possession of the Trust Estate to the City, its successors or assigns, the same right of entry, however, to exist upon any subsequent Event of Default. While in possession of such property, the Trustee shall render annually to the City and the Company a summarized statement of receipts and expenditures in connection therewith.

Section 904. Appointment of Receivers in Event of Default. If an Event of Default has occurred and is continuing after the notice and cure period described in **Section 901** elapses, and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and of the Owners under this Indenture, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the Trust Estate or any part thereof, pending such proceedings, with such powers as the court making such appointment shall confer.

Section 905. Exercise of Remedies by the Trustee.

(a) Upon the occurrence of an Event of Default, the Trustee may pursue any available remedy at law or in equity by suit, action, mandamus or other proceeding to enforce the payment of the principal of and interest on the Bonds then-Outstanding and all other amounts due hereunder, and to enforce and compel the performance of the duties and obligations of the City or the Company as herein set forth or as set forth in the Lease, respectively.

(b) If an Event of Default has occurred and is continuing after the notice and cure period described in **Section 901** elapses, and if requested in writing to do so by (1) the City (in the case of an Event of Default pursuant to **Section 12.1(a)** (but only as it relates to Additional Rent), **(b)** (but only as it relates to Unassigned Rights), **(c)** or **(d)** of the Lease), or (2) the Owners of 25% in aggregate principal amount of Bonds then-Outstanding and indemnified as provided in **Section 1001(l)**, the Trustee shall be obligated to exercise such one or more of the rights and powers conferred by this Article as the Trustee, being advised by counsel, shall deem most expedient and in the interests of the City or the Owners, as the case may be.

(c) All rights of action under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without necessity of joining as plaintiffs or defendants any Owners, and any recovery of judgment shall, subject to the provisions of **Section 908**, be for the equal benefit of all the Owners of the Outstanding Bonds.

Section 906. Limitation on Exercise of Remedies by Owners. No Owner shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust hereunder or for the appointment of a receiver or any other remedy hereunder, unless (a) a default has occurred of which the Trustee has been notified as provided in **Section 1001(h)** or of which by said subsection the Trustee is deemed to have notice, (b) such default has become an Event of Default, (c) the Owners of 25% in aggregate principal amount of Bonds then-Outstanding have made written request to the Trustee, have offered it reasonable opportunity either to proceed for such reasonable period not to exceed 60 days following such notice and to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, and have offered to the Trustee indemnity as provided in **Section 1001(l)**, and (d) the Trustee thereafter fails or refuses to exercise the powers herein granted or to institute such action, suit or proceeding in its own name; such notification, request and offer of indemnity are hereby declared in every case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the enforcement of this Indenture, or for the appointment of a receiver or for any other remedy hereunder, it being understood and intended that no one or more Owners shall have any right in any manner whatsoever to affect, disturb or prejudice this Indenture by their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of

the Owners of all Bonds then-Outstanding. Nothing in this Indenture contained shall, however, affect or impair the right of any Owner to payment of the principal of and interest on any Bond at and after the maturity thereof or the obligation of the City to pay the principal of and interest on each of the Bonds issued hereunder to the respective Owners thereof at the time, place, from the source and in the manner herein and in the Bonds expressed.

Section 907. Right of Owners to Direct Proceedings.

(a) The Owners of a majority in aggregate principal amount of Bonds then-Outstanding may, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver or any other proceedings hereunder; provided that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture, including **Section 1001(l)**.

(b) Notwithstanding any provision in this Indenture to the contrary, including paragraph (a) of this Section, the Owners shall not have the right to control or direct any remedies hereunder upon an Event of Default under **Section 12.1(a)** (but only as it relates to Additional Rent), **(b)** (but only as it relates to Unassigned Rights), **(c)** or **(d)** of the Lease.

Section 908. Application of Moneys in Event of Default.

(a) All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall be applied first to the costs and expenses of the proceedings resulting in the collection of such moneys and to the fees, expenses, liabilities and advances incurred or made by the Trustee (including any attorneys' fees and expenses) or amounts to be paid pursuant to **Section 903** and second to any obligations outstanding under the Lease. Any remaining moneys shall be deposited in the Bond Fund, and all moneys in the Bond Fund shall be applied as follows:

(1) Unless the principal of all the Bonds has become or has been declared due and payable, all such moneys shall be applied:

FIRST -- To the payment to the Persons entitled thereto of all installments of interest, if any, then due and payable on the Bonds, in the order in which such installments of interest became due and payable, and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment, ratably, according to the amounts due on such installment, to the Persons entitled thereto, without any discrimination or privilege;

SECOND -- To the payment to the Persons entitled thereto of the unpaid principal of any of the Bonds which have become due and payable (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture), in the order of their due dates, and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such interest, then to the payment, ratably, according to the amount of principal due on such date, to the Persons entitled thereto, without any discrimination or privilege.

(2) If the principal of all the Bonds has become due or has been declared due and payable, all such moneys shall be applied to the payment of the principal and interest, if any, then

due and unpaid on all of the Bonds, without preference or priority of principal over interest or of interest over principal or of any installment of interest over any other installment of interest or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the Persons entitled thereto, without any discrimination or privilege.

(3) If the principal of all the Bonds has been declared due and payable, and if such declaration thereafter has been rescinded and annulled under the provisions of **Section 910**, then, subject to the provisions of subsection (2) of this Section, if the principal of all the Bonds later becomes due or is declared due and payable, the moneys shall be applied in accordance with the provisions of subsection (1) of this Section.

(b) Whenever moneys are to be applied pursuant to the provisions of this Section, such moneys shall be applied at such times and from time to time as the Trustee shall determine, having due regard to the amount of such moneys available and which may become available for such application in the future. Whenever the Trustee shall apply such moneys, it shall fix the date (which shall be a Payment Date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such date shall cease to accrue.

(c) Whenever all of the Bonds and interest thereon, if any, have been paid under the provisions of this Section, and all fees, expenses and charges of the City and the Trustee and any other amounts required to be paid under this Indenture and the Lease have been paid, any balance remaining in the Bond Fund shall be paid to the Company as provided in **Section 602**.

Section 909. Remedies Cumulative. No remedy by the terms of this Indenture conferred upon or reserved to the Trustee or to the Owners is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Owners hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right, power or remedy accruing upon any Event of Default shall impair any such right, power or remedy or shall be construed to be a waiver of any such Event of Default or acquiescence therein; every such right, power or remedy may be exercised from time to time and as often as may be deemed expedient. If the Trustee has proceeded to enforce any right under this Indenture by the appointment of a receiver, by entry, or otherwise, and such proceedings have been discontinued or abandoned for any reason, or have been determined adversely, then and in every such case the City, the Company, the Trustee and the Owners shall be restored to their former positions and rights hereunder, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

Section 910. Waivers of Events of Default. The Trustee shall waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal of and interest, if any, on the Bonds, but only upon the written request of the Owners of at least 50% in aggregate principal amount of all the Bonds then-Outstanding, provided, however, that (a) there shall not be waived without the consent of the City an Event of Default hereunder arising from an Event of Default under **Section 12.1(a)** (but only as it relates to Additional Rent), **(b)** (but only as it relates to Unassigned Rights), **(c)** or **(d)** of the Lease, and (b) there shall not be waived without the consent of the Owners of all the Bonds Outstanding (1) any Event of Default in the payment of the principal of any Outstanding Bonds when due (whether at the date of maturity or redemption specified therein), or (2) any Event of Default in the payment when due of the interest on any such Bonds, unless before such waiver or rescission, all arrears of interest, or all arrears of payments of principal when due, as the case may be, and all reasonable expenses of the Trustee and the City (including reasonable attorneys' fees and expenses), in connection with such default, have been paid or provided for. In case of any such waiver or rescission, or in case any

proceedings taken by the Trustee on account of any such default have been discontinued or abandoned or determined adversely, then and in every such case the City, the Company, the Trustee and the Owners shall be restored to their former positions, rights and obligations hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

ARTICLE X

THE TRUSTEE

Section 1001. Acceptance of the Trusts. The Trustee hereby accepts the trusts imposed upon it by this Indenture, but only upon and subject to the following express terms and conditions, and no implied covenants or obligations shall be read into this Indenture against the Trustee:

(a) The Trustee, before the occurrence of an Event of Default and after the curing or waiver of all Events of Default that may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. If any Event of Default has occurred and is continuing, subject to **Section 1001(I)** below, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and shall use the same degree of care and skill in their exercise, as a prudent Person would exercise or use under the circumstances in the conduct of its own affairs.

(b) The Trustee undertakes to perform such duties as are specifically set forth in this Indenture, and in the absence of bad faith, negligence or willful misconduct on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee. The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or through agents, affiliates, attorneys or receivers and shall not be responsible for any misconduct or negligence on the part of any agent, attorney or receiver appointed or chosen by it with due care. The Trustee may conclusively rely upon and act or refrain from acting upon any opinion or advice of counsel, who may be counsel to the City or to the Company, concerning all matters of trust hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such agents, attorneys and receivers as may reasonably be employed in connection with the trusts hereof. The Trustee shall not be responsible for any loss or damage resulting from any action or nonaction by it taken or omitted to be taken in good faith in reliance upon such opinion or advice of counsel addressed to the City and the Trustee.

(c) The Trustee shall not be responsible for any recital herein or in the Bonds (except with respect to the Certificate of Authentication of the Trustee endorsed on the Bonds), or except as provided in the Lease and particularly **Section 10.8** thereof, for the recording or rerecording, filing or refiling of this Indenture or any security agreement in connection therewith (excluding the continuation of Uniform Commercial Code financing statements), or for insuring the Project or collecting any insurance moneys, or for the validity of the execution by the City of this Indenture or of any Supplemental Indentures or instruments of further assurance, or for the sufficiency of the security for the Bonds. The Trustee shall not be responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with **Article VII**.

(d) The Trustee shall not be accountable for the use of any Bonds authenticated and delivered hereunder. The Trustee, in its individual or any other capacity, may become the Owner or pledgee of Bonds with the same rights that it would have if it were not the Trustee. The Trustee shall not be accountable for the use or application by the City or the Company of the proceeds of any of the Bonds or of any money paid to or upon the order of the City or the Company under any provision of this Indenture.

(e) The Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, affidavit, letter, telegram or other paper or document provided for under this Indenture believed by it to be genuine and correct and to have been signed, presented or sent by the proper Person or Persons. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any Person who, at the time of making such request or giving such authority or consent is an Owner, shall be conclusive and binding upon all future Owners of the same Bond and upon Bonds issued in exchange therefor or upon transfer or in place thereof.

(f) As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, or whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established before taking, suffering or omitting any action hereunder, the Trustee may rely upon a certificate signed by an Authorized City Representative or an Authorized Company Representative as sufficient evidence of the facts therein contained, and before the occurrence of a default of which the Trustee has been notified as provided in subsection (h) of this Section or of which by said subsection it is deemed to have notice, the Trustee shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same.

(g) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty, and the Trustee shall not be answerable for other than its negligence or willful misconduct.

(h) The Trustee shall not be required to take notice or be deemed to have notice of any default hereunder except failure by the City to cause to be made any of the payments to the Trustee required to be made in **Article VI**, unless the Trustee is specifically notified in writing of such default by the City or by the Owners of at least 25% in aggregate principal amount of all Bonds then-Outstanding.

(i) At any and all reasonable times and subject to the Company's reasonable and standard security procedures, the Trustee and its duly authorized agents, attorneys, experts, engineers, accountants and representatives may, but shall not be required to, inspect any and all of the Project, and all books, papers and records of the City pertaining to the Project and the Bonds, and to take such memoranda from and in regard thereto as may be desired. The Trustee shall treat all proprietary information of the Company as confidential.

(j) The Trustee shall not be required to give any bond or surety in respect of the execution of its trusts and powers hereunder or otherwise in respect of the Project.

(k) The Trustee may, but shall not be required to, demand, in respect of the authentication of any Bonds, the withdrawal of any cash, the release of any property or the taking of any other action whatsoever within the purview of this Indenture, any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required, as a condition of such action by the Trustee deemed desirable for the purpose of establishing the right of the City to the authentication of any Bonds, the withdrawal of any cash, the release of any property or the taking of any other action by the Trustee.

(l) Notwithstanding anything in this Indenture or the Lease to the contrary, before taking any action under this Indenture other than the payments from moneys on deposit in the Project Fund or the Bond Fund, as provided herein, the Trustee may require that satisfactory indemnity be furnished to it for the reimbursement of all costs and expenses (including, without limitation, attorneys' fees and expenses) to which it may be put and to protect it against all liability which it may incur in or by reason of such action, except liability which is adjudicated to have resulted from its negligence or willful misconduct by reason of any action so taken.

(m) Notwithstanding any other provision of this Indenture to the contrary, any provision relating to the conduct of, or intended to provide authority to act, right to payment of fees and expenses, protection, immunity and indemnification to, the Trustee, shall be interpreted to include any action of the Trustee, whether it is deemed to be in its capacity as Trustee, bond registrar or Paying Agent.

(n) No provision of this Indenture or any other agreement executed in connection herewith shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers.

(o) The Trustee agrees to accept and act on instructions or directions pursuant to this Indenture sent by the City or the Company, as the case may be, by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods, provided, however, that the City or the Company, respectively, shall provide to the Trustee an incumbency certificate listing designated Persons with the authority to provide such instructions, which incumbency certificate shall be amended whenever a Person is to be added or deleted from the listing. If the City or the Company, as applicable, elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee acts upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The City or the Company, as applicable, agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions and the risk of interception and misuse by third parties.

Section 1002. Fees, Charges and Expenses of the Trustee. The Trustee shall be entitled to payment of and/or reimbursement for reasonable fees for its ordinary services rendered hereunder and all advances, agent and counsel fees and other ordinary expenses reasonably made or incurred by the Trustee in connection with such ordinary services. If it becomes necessary for the Trustee to perform extraordinary services, it shall be entitled to reasonable extra compensation therefor and to reimbursement for reasonable extraordinary expenses in connection therewith; provided that if such extraordinary

services or extraordinary expenses are caused by the negligence or willful misconduct of the Trustee, it shall not be entitled to compensation or reimbursement therefor. The Trustee shall be entitled to payment and reimbursement for the reasonable fees and charges of the Trustee as Paying Agent for the Bonds. Pursuant to the provisions of **Section 5.2** of the Lease, the Company has agreed to pay to the Trustee all reasonable fees, charges and expenses of the Trustee under this Indenture. The Trustee agrees that the City shall have no liability for any reasonable fees, charges and expenses of the Trustee, and the Trustee agrees to look only to the Company for the payment of all reasonable fees, charges and expenses of the Trustee and any Paying Agent as provided in the Lease. Upon the occurrence of an Event of Default and during its continuance, the Trustee shall have a lien with right of payment before payment on account of principal of or interest on any Bond, upon all moneys in its possession under any provisions hereof for the foregoing reasonable advances, fees, costs and expenses incurred. The Trustee's rights to compensation and indemnification shall survive its resignation or removal hereunder or the satisfaction and discharge of this Indenture and payment in full of the Bonds.

Section 1003. Notice to Owners if Default Occurs. If a default occurs of which the Trustee is by **Section 1001(h)** required to take notice or if notice of default is given as in said subsection (h) provided, then the Trustee shall give written notice thereof to the last known Owners of all Bonds then-Outstanding as shown by the bond registration books required by **Section 206** to be kept at the corporate trust office of the Trustee.

Section 1004. Intervention by the Trustee. In any judicial proceeding to which the City is a party and which, in the opinion of the Trustee and its counsel, has a substantial bearing on the interests of Owners, the Trustee may intervene on behalf of Owners and, subject to the provisions of **Section 1001(i)**, shall do so if requested in writing by the Owners of at least 25% of the aggregate principal amount of Bonds then-Outstanding.

Section 1005. Successor Trustee Upon Merger, Consolidation or Sale. With the prior written consent of the Company, any corporation or association into which the Trustee may be merged or converted or with or into which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any merger, conversion, sale, consolidation or transfer to which it is a party, shall be and become successor Trustee hereunder and shall be vested with all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges hereunder as was its predecessor, without the execution or filing of any instrument or any further act on the part of any of the parties hereto.

Section 1006. Resignation of Trustee. The Trustee and any successor Trustee may at any time resign from the trusts hereby created by giving 30 days' written notice to the City, the Company and the Owners, and such resignation shall take effect at the end of such 30 days, or upon the earlier appointment of a successor Trustee by the Owners or by the City; provided, however, that in no event shall the resignation of the Trustee or any successor Trustee become effective until such time as a successor Trustee has been appointed and has accepted the appointment. If no successor has been appointed and accepted the appointment within 30 days after the giving of such notice of resignation, the Trustee may, at the Company's expense, petition any court of competent jurisdiction for the appointment of a successor Trustee.

Section 1007. Removal of Trustee. The Trustee may be removed at any time, with or without cause, by an instrument or concurrent instruments in writing (a) delivered to the Trustee, the City and the Company and signed by the Owners of a majority in aggregate principal amount of Bonds then-

Outstanding, or (b) so long as no Event of Default under this Indenture or the Lease has occurred and is continuing, delivered to the Trustee, the City and the Owners and signed by the Company.

Section 1008. Appointment of Successor Trustee. If the Trustee hereunder resigns or is removed, or otherwise becomes incapable of acting hereunder, or if it is taken under the control of any public officer or officers or of a receiver appointed by a court, a successor Trustee (a) reasonably acceptable to the City may be appointed by the Company (so long as no Event of Default has occurred and is continuing), or (b) reasonably acceptable to the City and the Company may be appointed by the Owners of a majority in aggregate principal amount of Bonds then-Outstanding, by an instrument or concurrent instruments in writing; provided, nevertheless, that in case of any vacancy, the City, by an instrument executed and signed by its City Manager and attested by its City Clerk under its seal, may appoint a temporary Trustee to fill such vacancy until a successor Trustee shall be appointed in the manner above provided. Any such temporary Trustee so appointed by the City shall immediately and without further acts be superseded by the successor Trustee so appointed as provided above. Every such Trustee appointed pursuant to the provisions of this Section shall be a trust company or bank in good standing and qualified to accept such trusts with a corporate trust office in the State, and having, or whose obligations are guaranteed by a financial institution having, a reported capital, surplus and undivided profits of not less than \$50,000,000. If no successor Trustee has been so appointed and accepted appointment in the manner herein provided, the Trustee, at the Company's expense, or any Owner may petition any court of competent jurisdiction for the appointment of a successor Trustee, until a successor has been appointed as above provided.

Section 1009. Vesting of Trusts in Successor Trustee. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the City and the Company an instrument in writing accepting such appointment hereunder, and thereupon such successor shall, without any further act, deed or conveyance, become fully vested with all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges of its predecessor and the duties and obligations of such predecessor hereunder shall thereafter cease and terminate; but such predecessor shall, nevertheless, on the written request of the City and upon payment of its outstanding fees and expenses, execute and deliver an instrument transferring to such successor Trustee all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges of such predecessor hereunder; every predecessor Trustee shall deliver all securities and moneys held by it as Trustee hereunder to its successor. Should any instrument in writing from the City be required by any predecessor or successor Trustee for more fully and certainly vesting in such successor the trusts, powers, rights, obligations, duties, remedies, immunities and privileges hereby vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the City.

Section 1010. Right of Trustee to Pay Taxes and Other Charges. If any tax, assessment or governmental or other charge upon, or insurance premium with respect to, any part of the Project is not paid as required herein or in the Lease, the Trustee may pay such tax, assessment, governmental or other charge or insurance premium, without prejudice, however, to any rights of the Trustee or the Owners hereunder arising in consequence of such failure; any amount at any time so paid under this Section, with interest thereon from the date of payment at the rate of 10% per annum, shall become an additional obligation secured by this Indenture, and the same shall be given a preference in payment over any payment of principal of or interest on the Bonds, and shall be paid out of the proceeds of rents, revenues and receipts collected from the Project, if not otherwise caused to be paid; but the Trustee shall be under no obligation to make any such payment unless it has been requested to do so by the Owners of at least 25% of the aggregate principal amount of Bonds then-Outstanding and has been provided adequate funds for the purpose of such payment.

Section 1011. Trust Estate May be Vested in Co-Trustee.

(a) It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including particularly the State) denying or restricting the right of banking corporations or associations to transact business as trustee in such jurisdiction. It is recognized that in case of litigation under this Indenture or the Lease, and in particular in case of the enforcement of either this Indenture or the Lease upon the occurrence of an Event of Default or if the Trustee deems that by reason of any present or future law of any jurisdiction it cannot exercise any of the powers, rights or remedies herein granted to the Trustee, or take any other action which may be desirable or necessary in connection therewith, it may be necessary or desirable that the Trustee appoint an additional individual or institution as a co-trustee or separate trustee, and the Trustee is hereby authorized to appoint such co-trustee or separate trustee.

(b) If the Trustee appoints an additional individual or institution as a co-trustee or separate trustee (which appointment shall be subject to the approval of the Company), each and every remedy, power, right, claim, demand, cause of action, immunity, title, interest and lien expressed or intended by this Indenture to be exercised by the Trustee with respect thereto shall be exercisable by such co-trustee or separate trustee but only to the extent necessary to enable such co-trustee or separate trustee to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such co-trustee or separate trustee shall run to and be enforceable by either of them.

(c) Should any deed, conveyance or instrument in writing from the City be required by the co-trustee or separate trustee so appointed by the Trustee for more fully and certainly vesting in and confirming to such co-trustee or separate trustee such properties, rights, powers, trusts, duties and obligations, any and all such deeds, conveyances and instruments in writing shall, on request, be executed, acknowledged and delivered by the City.

(d) If any co-trustee or separate trustee shall die, become incapable of acting, resign or be removed, all the properties, rights, powers, trusts, duties and obligations of such co-trustee or separate trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment of a successor to such co-trustee or separate trustee.

Section 1012. Accounting. The Trustee shall render an annual accounting for the period ending December 31 of each year to the City, the Company and to any Owner requesting the same and, upon the request of the City, the Company or any Owner, a monthly accounting to such party showing in reasonable detail all financial transactions relating to the Trust Estate during the accounting period and the balance in any funds or accounts created by this Indenture as of the beginning and close of such accounting period.

Section 1013. Performance of Duties Under the Lease. The Trustee hereby accepts and agrees to perform the duties and obligations expressly assigned to it under the Lease.

ARTICLE XI

SUPPLEMENTAL INDENTURES

Section 1101. Supplemental Indentures Not Requiring Consent of Owners. The City and the Trustee may from time to time, without the consent of or notice to any of the Owners, enter into such

Supplemental Indenture or Supplemental Indentures as shall not be inconsistent with the terms and provisions hereof, for any one or more of the following purposes:

- (a) To cure any ambiguity or formal defect or omission in this Indenture, or to make any other change which, in the judgment of the Trustee, is not to the material prejudice of the Trustee or the Owners (provided that in exercising such judgment, the Trustee may rely upon the advice or opinion of counsel);
- (b) To grant to or confer upon the Trustee for the benefit of the Owners any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Owners or the Trustee or both of them;
- (c) To more precisely identify any portion of the Project or to add additional property thereto;
- (d) To conform the Indenture to amendments to the Lease made by the City and the Company; or
- (e) To subject to this Indenture additional revenues, properties or collateral.

Section 1102. Supplemental Indentures Requiring Consent of Owners.

(a) Exclusive of Supplemental Indentures covered by **Section 1101** and subject to the terms and provisions contained in this Section, and not otherwise, the Owners of not less than a majority in aggregate principal amount of the Bonds then-Outstanding may, from time to time, anything contained in this Indenture to the contrary notwithstanding, consent to and approve the execution by the City and the Trustee of such other Supplemental Indenture or Supplemental Indentures as shall be deemed necessary and desirable by the City for the purpose of modifying, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any Supplemental Indenture; provided, however, that without the consent of the Owners of 100% of the principal amount of the Bonds then-Outstanding, nothing in this Section contained shall permit or be construed as permitting (1) an extension of the maturity or a shortening of the redemption date of the principal of or the interest, if any, on any Bond issued hereunder, or (2) a reduction in the principal amount of any Bond or the rate of interest thereon, if any, or (3) a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (4) a reduction in the aggregate principal amount of Bonds the Owners of which are required for consent to any such Supplemental Indenture.

(b) If at the time the City requests the Trustee to enter into any such Supplemental Indenture for any of the purposes of this Section, the Trustee shall cause notice of the proposed execution of such Supplemental Indenture to be mailed to each Owner as shown on the bond registration books required by **Section 206**. Such notice shall briefly set forth the nature of the proposed Supplemental Indenture and shall state that copies thereof are on file at the corporate trust office of the Trustee for inspection by all Owners. If within 60 days or such longer period as may be prescribed by the City following the mailing of such notice, the Owners of not less than a majority in aggregate principal amount of the Bonds Outstanding at the time of the execution of any such Supplemental Indenture shall have consented to and approved the execution thereof as herein provided, no Owner shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the City from executing the same or from taking any action pursuant to the provisions thereof.

Section 1103. Company's Consent to Supplemental Indentures. Anything herein to the contrary notwithstanding, a Supplemental Indenture under this Article shall not become effective unless and until the Company has consented in writing to the execution and delivery of such Supplemental Indenture. The Trustee shall cause notice of the proposed execution and delivery of any Supplemental Indenture (regardless of whether it affects the Company's rights) together with a copy of the proposed Supplemental Indenture to be mailed to the Company and each Financing Party of which the Trustee has received written notice at least 15 days before the proposed date of execution and delivery of the Supplemental Indenture.

Section 1104. Opinion of Counsel. In executing, or accepting the additional trusts created by, any Supplemental Indenture permitted by this Article or the modification thereby of the trusts created by this Indenture, the Trustee and the City shall receive, and, shall be fully protected in relying upon, an opinion of counsel addressed and delivered to the Trustee and the City stating that the execution of such Supplemental Indenture is permitted by and in compliance with this Indenture and will, upon the execution and delivery thereof, be a valid and binding obligation of the City. The Trustee may, but shall not be obligated to, enter into any such Supplemental Indenture which affects the Trustee's rights, duties or immunities under this Indenture or otherwise.

ARTICLE XII

SUPPLEMENTAL LEASES

Section 1201. Supplemental Leases Not Requiring Consent of Owners. The City and the Trustee shall, without the consent of or notice to the Owners, consent to the execution of any Supplemental Lease or Supplemental Leases by the City and the Company as may be required (a) by the provisions of the Lease and this Indenture, (b) for the purpose of curing any ambiguity or formal defect or omission in the Lease, (c) so as to more precisely identify the Project or add additional property thereto or (d) in connection with any other change therein which, in the judgment of the Trustee, does not materially and adversely affect the Trustee or security for the Owners (provided that in exercising such judgment, the Trustee may rely upon the advice or opinion of counsel).

Section 1202. Supplemental Leases Requiring Consent of Owners. Except for Supplemental Leases as provided for in **Section 1201**, neither the City nor the Trustee shall consent to the execution of any Supplemental Lease or Supplemental Leases by the City or the Company without the mailing of notice and the obtaining of the written approval or consent of the Owners of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding given and obtained as provided in **Section 1102**. If at any time the City and the Company shall request the consent of the Trustee to any such proposed Supplemental Lease, the Trustee shall cause notice of such proposed Supplemental Lease to be mailed in the same manner as provided in **Section 1102** with respect to Supplemental Indentures. Such notice shall briefly set forth the nature of such proposed Supplemental Lease and shall state that copies of the same are on file in the corporate trust office of the Trustee for inspection by all Owners. If within 60 days or such longer period as may be prescribed by the City following the mailing of such notice, the Owners of not less than 50% in aggregate principal amount of the Bonds Outstanding at the time of the execution of any such Supplemental Lease shall have consented to and approved the execution thereof as herein provided, no Owner shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the City or the Company from executing the same or from taking any action pursuant to the provisions thereof.

Section 1203. Opinion of Counsel. In executing or consenting to any Supplemental Lease permitted by this Article, the City and the Trustee shall receive, and shall be fully protected in relying upon, an opinion of counsel addressed to the Trustee and the City stating that the execution of such Supplemental Lease is authorized or permitted by the Lease and this Indenture and the applicable law and will upon the execution and delivery thereof be valid and binding obligations of the parties thereto.

ARTICLE XIII

SATISFACTION AND DISCHARGE OF INDENTURE

Section 1301. Satisfaction and Discharge of this Indenture.

(a) When the principal of and interest on all the Bonds have been paid in accordance with their terms or provision has been made for such payment, as provided in **Section 1302**, and provision also made for paying all other sums payable hereunder and under the Lease, including the reasonable fees and expenses of the Trustee, the City and the Paying Agent to the date of retirement of the Bonds, then the right, title and interest of the Trustee in respect hereof shall thereupon cease, determine and be void. Thereupon, the Trustee shall cancel, discharge and release this Indenture and shall upon the written request of the City or the Company execute, acknowledge and deliver to the City such instruments of satisfaction and discharge or release as shall be required to evidence such release and the satisfaction and discharge of this Indenture, and shall assign and deliver to the City (subject to the City's obligations under **Section 11.2** of the Lease) any property at the time subject to this Indenture which may then be in its possession, except amounts in the Bond Fund required to be paid to the Company under **Section 602** and except funds or securities in which such funds are invested held by the Trustee for the payment of the principal of and interest on the Bonds.

(b) The City is hereby authorized to accept a certificate by the Trustee that the whole amount of the principal and interest, if any, so due and payable upon all of the Bonds then-Outstanding has been paid or such payment provided for in accordance with **Section 1302** as evidence of satisfaction of this Indenture, and upon receipt thereof shall cancel and erase the inscription of this Indenture from its records.

Section 1302. Bonds Deemed to be Paid.

(a) Bonds shall be deemed to be paid within the meaning of this Article when payment of the principal of and interest thereon to the due date thereof (whether such due date be by reason of maturity or upon redemption as provided in this Indenture, or otherwise), either (1) has been made or caused to be made in accordance with the terms thereof, or (2) has been provided for by depositing with the Trustee or other commercial bank or trust company having full trust powers and authorized to accept trusts in the State in trust and irrevocably set aside exclusively for such payment (A) moneys sufficient to make such payment or (B) Government Securities maturing as to principal and interest in such amounts and at such times as will ensure the availability of sufficient moneys to make such payment, or (3) has been provided for by surrendering the Bonds to the Trustee for cancellation. At such time as Bonds are deemed to be paid hereunder, as aforesaid, they shall no longer be secured by or entitled to the benefits of this Indenture, except for the purposes of such payment from such moneys or Government Securities.

(b) Notwithstanding the foregoing, in the case of Bonds which by their terms may be redeemed before the stated maturities thereof, no deposit under clause (2) of the immediately preceding

paragraph shall be deemed a payment of such Bonds as aforesaid until, as to all such Bonds which are to be redeemed before their respective stated maturities, proper notice of such redemption has been given in accordance with **Article III** or irrevocable instructions have been given to the Trustee to give such notice.

(c) Notwithstanding any provision of any other section of this Indenture which may be contrary to the provisions of this Section, all moneys or Government Securities set aside and held in trust pursuant to the provisions of this Section for the payment of Bonds shall be applied to and used solely for the payment of the particular Bonds, with respect to which such moneys and Government Securities have been so set aside in trust.

ARTICLE XIV

MISCELLANEOUS PROVISIONS

Section 1401. Consents and Other Instruments by Owners.

(a) Any consent, request, direction, approval, objection or other instrument required by this Indenture to be signed and executed by the Owners may be in any number of concurrent writings of similar tenor and may be signed or executed by such Owners in person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent and of the ownership of Bonds (other than the assignment of ownership of a Bond) if made in the following manner, shall be sufficient for any of the purposes of this Indenture, and shall be conclusive in favor of the Trustee with regard to any action taken, suffered or omitted under any such instrument, namely:

(1) The fact and date of the execution by any Person of any such instrument may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the Person signing such instrument acknowledged before him the execution thereof, or by affidavit of any witness to such execution.

(2) The fact of ownership of Bonds and the amount or amounts, numbers and other identification of such Bonds, and the date of holding the same shall be proved by the registration books of the City maintained by the Trustee pursuant to **Section 206**.

(b) In determining whether the Owners of the requisite principal amount of Bonds Outstanding have given any request, demand, authorization, direction, notice, consent or waiver under this Indenture, Bonds owned by the Company shall be disregarded and deemed not to be Outstanding under this Indenture, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Bonds which the Trustee knows to be so owned shall be so disregarded; provided, the foregoing provisions shall not be applicable if the Company is the only Owner of the Bonds. Notwithstanding the foregoing, Bonds so owned which have been pledged in good faith shall not be disregarded as aforesaid if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Bonds and the pledgee is not the Company or any affiliate thereof.

Section 1402. Limitation of Rights Under this Indenture. With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give any Person other than the parties hereto, and the Owners, if any, any right, remedy or claim under or in respect of this Indenture, this Indenture and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto, the Financing Parties, if any, and the Owners, as herein provided.

Section 1403. Notices. It shall be sufficient service of any notice, request, complaint, demand or other paper required by this Indenture to be given or filed with the City, the Trustee, the Company or the Owners if the same is duly mailed, postage prepaid, sent by overnight delivery or other delivery service, as follows:

(a) To the City:

City of University City, Missouri
6801 Delmar Boulevard
University City, Missouri 63130
ATTN: City Manager

with a copy to:

John F. Mulligan, Jr.
Attorney at Law
6 Carrswold
Clayton, Missouri 63105

(b) To the Trustee:

UMB Bank, N.A.
2 South Broadway, Suite 600
St. Louis, Missouri 63102
ATTN: Corporate Trust Department

(c) To the Company:

Dierbergs University City, LLC
16690 Swingley Ridge Road, Suite 475
Chesterfield, Missouri 63017
ATTN: Brent Beumer, Esq.

with a copy to:

Husch Blackwell LLP
8001 Forsyth Blvd., Suite 1500
Clayton, Missouri 63105
ATTN: Jonathan Giokas, Esq.

(d) To the Owners if the same is duly mailed by first-class, registered or certified mail addressed to each of the Owners of Bonds at the time Outstanding as shown by the bond registration books required by **Section 206** to be kept at the corporate trust office of the Trustee.

All notices given by certified or registered mail as aforesaid shall be deemed fully given as of the date they are so mailed, provided that any of the foregoing given to the Trustee shall be effective only upon receipt. All notices given by overnight delivery or other delivery service shall be deemed fully given as of the date when received. A duplicate copy of each notice, certificate or other communication given hereunder by either the City or the Trustee to the other shall also be given to the Company. The City, the Company and the Trustee may from time to time designate, by notice given hereunder to the

others of such parties, such other address to which subsequent notices, certificates or other communications shall be sent.

Section 1404. Severability. If any provision of this Indenture is held or deemed to be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatsoever.

Section 1405. Execution in Counterparts. This Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 1406. Governing Law. This Indenture shall be governed exclusively by and construed in accordance with the applicable laws of the State.

Section 1407. Electronic Transaction.

(a) The parties agree that the transaction described herein may be conducted and related documents may be sent, received or stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

(b) The counterparts of this Indenture may be executed and delivered by facsimile or electronic signature (including portable document format) by either of the parties hereto, and the receiving party may rely on the receipt of any counterpart so executed and delivered electronically or by facsimile as if the original had been received. Each party may sign and transmit an electronic signature on this Indenture, which signature shall be binding on the party whose name is contained thereon. The intentional action in electronically signing this Indenture shall be evidence of consent to be legally bound by this Indenture. Each party agrees to not contest the admissibility or enforceability of the electronically signed copy of this Indenture in any proceeding arising out of the terms and conditions of this Indenture.

Section 1408. City Consent and Approvals. Pursuant to the Ordinance, the City Manager is authorized to execute all documents on behalf of the City (including documents pertaining to the transfer of property or the financing or refinancing of the Project by the Company) as may be required to carry out and comply with the intent of the Ordinance, this Indenture and the Lease. The City Manager is also authorized, unless expressly prohibited herein, to grant on behalf of the City such consents, estoppels and waivers relating to the Bonds, this Indenture, the Lease or the extension of the Completion Date as may be requested by the Company during the term hereof; provided, such consents, estoppels and/or waivers shall not increase the principal amount of the Bonds, increase the term of the Lease or the economic incentives provided therein, waive an Event of Default or materially change the nature of the transaction unless approved by ordinance of the City Council.

Section 1409. Anti-Discrimination Against Israel Act. Pursuant to Section 34.600 of the Revised Statutes of Missouri, the Trustee certifies it is not currently engaged in and will not, for the duration of this Indenture, engage in a boycott of goods or services from (a) the State of Israel,

(b) companies doing business in or with the State of Israel or authorized by, licensed by, or organized under the laws of the State of Israel, or (c) persons or entities doing business in the State of Israel.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the City of University City, Missouri, has caused this Indenture to be signed in its name and behalf by its City Manager and the seal of the City to be hereunto affixed and attested by its City Clerk, and to evidence its acceptance of the trusts hereby created, UMB Bank, N.A. has caused this Indenture to be signed in its name and behalf by a duly authorized officer, all as of the date first above written.

CITY OF UNIVERSITY CITY, MISSOURI

By: _____
Gregory Rose, City Manager

[SEAL]

ATTEST:

By: _____
LaRette Reese, City Clerk

UMB BANK, N.A., as Trustee

By: _____
Name: _____
Title: _____

EXHIBIT A

PROJECT SITE

The land situated in the County of St. Louis, State of Missouri, and described as follows:

A tract of land situated in the City of University City, the County of St. Louis, and the State of Missouri, lying in part of Section 05, Township 45 North, Range 6 East, being all of Lot 5 of Market at Olive Plat 3, a subdivision to be filed for record in the Land records of St. Louis County, Missouri, and part of Adjusted Lot 7 of Market at Olive Plat 3R, a subdivision filed for record in Plat Book 370, Page 471 of said Land Records, and part of Common Ground of Market at Olive Plat 2, a subdivision filed for record in Plat Book 370, pages 202-205 of said Land Records, and being more particularly described as follows:

Beginning at the Northwest corner of McKnight Heights, a subdivision filed for record in Plat Book 54, Page 41 of said Land Records, said Northwest corner also being on the East line of a tract of land conveyed to Bi State Development Agency of MO-IL Metropolitan District as recorded in Deed Book 13245, Page 1568 of said Land Records; thence along said East line of Bi State Development Agency of MO-IL Metropolitan District tract, North 01 degrees 20 minutes 54 seconds West, a distance of 751.82 feet to the Southern right-of-way line of Olive Boulevard as widened by Document 2022100500173 and Document 202210050174 of said Land Records; thence along said Southern right-of-way line the following courses and distances: North 88 degrees 18 minutes 06 seconds East, a distance of 119.51 feet; South 87 degrees 35 minutes 11 seconds East, a distance of 108.37 feet; South 87 degrees 35 minutes 11 seconds East, a distance of 27.92 feet; North 78 degrees 07 minutes 23 seconds East, a distance of 2.17 feet; North 78 degrees 07 minutes 23 seconds East, a distance of 44.31 feet; North 89 degrees 26 minutes 53 seconds East, a distance of 51.29 feet; South 83 degrees 41 minutes 53 seconds East, a distance of 84.96 feet; South 83 degrees 41 minutes 53 seconds East, a distance of 14.20 feet; thence leaving said Southern right-of-way line, South 00 degrees 27 minutes 36 seconds West, a distance of 345.85 feet; thence South 89 degrees 24 minutes 23 seconds West, a distance of 12.90 feet to the West line of said Common Ground of Market at Olive Plat 2; thence along said West line of Common Ground, South 00 degrees 15 minutes 25 seconds West, a distance of 89.14 feet to the Northwest corner of McKnight Downs, a subdivision filed for record in Plat Book 55 Page 89 of said Land Records of St. Louis County; thence along the West line of said McKnight Downs, South 00 degrees 15 minutes 25 seconds West, a distance of 315.75 feet to the North line of said McKnight Heights; thence along said North line the following courses and distances: North 89 degrees 44 minutes 12 seconds West, a distance of 169.69 feet; North 89 degrees 39 minutes 11 seconds West, a distance of 246.10 feet to the point of beginning.

Containing 7.500 Acres (326,700 Square Feet) by Grimes Consulting, Inc., LS-343-D, dated February 2023.

EXHIBIT B
FORM OF BONDS

***THIS BOND OR ANY PORTION HEREOF MAY BE TRANSFERRED, ASSIGNED OR
NEGOTIATED ONLY AS PROVIDED IN THE HEREIN-DESCRIBED INDENTURE.***

No. 1

**Not to Exceed
\$34,000,000**

**UNITED STATES OF AMERICA
STATE OF MISSOURI**

**CITY OF UNIVERSITY CITY, MISSOURI
TAXABLE INDUSTRIAL REVENUE BOND
(DIERBERGS UNIVERSITY CITY, LLC PROJECT)
SERIES 2023**

Interest Rate

5.0%

Maturity Date

Completion Date

Dated Date

May __, 2023

OWNER:

MAXIMUM PRINCIPAL AMOUNT:

THIRTY-FOUR MILLION DOLLARS

The **CITY OF UNIVERSITY CITY, MISSOURI**, a home-rule charter city organized and existing under the laws of the State of Missouri (the “City”), for value received, promises to pay, but solely from the source hereinafter referred to, to the Owner named above, or registered assigns thereof, on the Maturity Date shown above, the principal amount shown above, or such lesser amount as may be outstanding hereunder as reflected on **Schedule I** hereto held by the Trustee as provided in the hereinafter referred to Indenture. The City agrees to pay such principal amount to the Owner in any coin or currency of the United States of America which on the date of payment thereof is legal tender for the payment of public and private debts, and in like manner to pay to the Owner hereof, either by check or draft mailed to the Owner at a stated address as it appears on the bond registration books of the City kept by the Trustee under the within mentioned Indenture or, in certain situations authorized in the Indenture, by internal bank transfer or by wire transfer to an account in a commercial bank or savings institution located in the continental United States. Interest on the Cumulative Outstanding Principal Amount (as hereinafter defined) at the per annum Interest Rate stated above shall be payable in arrears on each December 1, commencing on December 1, 2023, and continuing thereafter until the earlier of the date on which said Cumulative Outstanding Principal Amount is paid in full or the Maturity Date. Interest on each advancement of the principal amount of this Bond shall accrue from the date that such advancement is made, computed on the basis of a year of 360 days consisting of 12 months of 30 days each.

As used herein, the term “Cumulative Outstanding Principal Amount” means all Bonds outstanding under the terms of the hereinafter-defined Indenture, as reflected on **Schedule I** hereto maintained by the Trustee.

THIS BOND is one of a duly authorized series of Bonds of the City designated the “City of University City, Missouri, Taxable Industrial Revenue Bonds (Dierbergs University City, LLC Project), Series 2023,” issued in the maximum aggregate principal amount of \$34,000,000 (the “Bonds”) for the purpose of constructing 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, under the terms of a Lease Agreement dated as of May 1, 2023 (said Lease Agreement, as amended and supplemented from time to time in accordance with the provisions thereof, being herein called the “Lease”), between the City and Dierbergs University City, LLC, a Missouri limited liability company (the “Company”), all pursuant to the authority of and in full compliance with the provisions, restrictions and limitations of the Constitution, the statutes of the State of Missouri, including particularly the Act, the charter of the City and pursuant to proceedings duly had by the governing body of the City.

THE BONDS are issued under and are equally and ratably secured and entitled to the protection given by a Trust Indenture dated as of May 1, 2023 (said Trust Indenture, as amended and supplemented from time to time in accordance with the provisions thereof, being herein called the “Indenture”), between the City and UMB Bank, N.A., St. Louis, Missouri, as trustee (the “Trustee”). *Capitalized terms not defined herein shall have the meanings set forth in the Indenture.*

Reference is hereby made to the Indenture for a description of the provisions, among others, with respect to the nature and extent of the security for the Bonds, the rights, duties and obligations of the City, the Trustee and the Owners, and the terms upon which the Bonds are issued and secured.

THE BONDS are subject to redemption and payment at any time before the stated maturity thereof, at the option of the City, upon written instructions from the Company, (1) in whole, if the Company exercises its option to purchase the Project and deposits an amount sufficient to effect such purchase pursuant to the Lease on the applicable redemption date, or (2) in part, if the Company prepays additional Basic Rent pursuant to the Lease; provided, however, if only a portion of the Bonds are to be redeemed, Bonds aggregating at least 10% of the maximum principal amount of Bonds authorized under the Indenture shall not be subject to redemption and payment before the stated maturity thereof. Any redemption of Bonds pursuant to this paragraph shall be at a redemption price equal to the par value thereof being redeemed, plus accrued interest thereon, without premium or penalty, to the redemption date.

THE BONDS are subject to mandatory redemption, in whole or in part, to the extent of amounts deposited in the Bond Fund pursuant to **Section 9.1(f)** or **9.2(c)** of the Lease, in the event of substantial damage to or destruction or condemnation of substantially all of the Project. Bonds to be redeemed pursuant to this paragraph shall be called for redemption by the Trustee on the earliest practicable date for which timely notice of redemption may be given as provided in the Indenture. Any redemption of Bonds pursuant to this paragraph shall be at a redemption price equal to the par value thereof being redeemed, plus accrued interest thereon, without premium or penalty, to the redemption date. Before giving notice of redemption to the Owners pursuant to this paragraph, money in an amount equal to the redemption price shall have been deposited in the Bond Fund.

If the Bonds are to be called for optional redemption, the Company shall deliver written notice to the City and the Trustee that it has elected to redeem all or a portion of the Bonds at least 40 days (10 days if there is one Owner) before the scheduled redemption date. The Trustee shall then deliver written notice to the Owners at least 30 days (five days if there is one Owner) before the scheduled redemption date by first-class mail (or facsimile, if there is one Owner) stating the date upon which the Bonds will be redeemed and paid.

THE BONDS, including the interest thereon, are special obligations of the City and are payable solely out of the rents, revenues and receipts derived by the City from the Project and the Lease and not from any other fund or source of the City, and are secured by a pledge and assignment of the Project and of such rents, revenues and receipts, including all rentals and other amounts to be received by the City under and pursuant to the Lease, all as provided in the Indenture. The Bonds do not constitute a general obligation of the City or the State of Missouri, and neither the City nor said State shall be liable thereon, and the Bonds shall not constitute an indebtedness within the meaning of any constitutional, charter or statutory debt limitation or restriction, and are not payable in any manner by taxation. Pursuant to the provisions of the Lease, rental payments sufficient for the prompt payment when due of the principal of and interest on the Bonds are to be paid by the Company directly to the Trustee for the account of the City and deposited in a special fund created by the City and designated the “City of University City, Missouri, Bond Fund -- Dierbergs University City, LLC Project.”

THE OWNER of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any Event of Default under the Indenture, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Indenture. In certain events, on the conditions, in the manner and with the effect set forth in the Indenture, the principal of all the Bonds issued under the Indenture and then-Outstanding may become or may be declared due and payable before the stated maturity thereof, together with interest accrued thereon. Modifications or alterations of this Bond or the Indenture may be made only to the extent and in the circumstances permitted by the Indenture.

THIS BOND is transferable, as provided in the Indenture, only upon the books of the City kept for that purpose at the above-mentioned office of the Trustee by the Owner hereof in person or by such Person’s duly authorized attorney, upon surrender of this Bond together with a written instrument of transfer reasonably satisfactory to the Trustee duly executed by the Owner or such Person’s duly authorized attorney, and thereupon a new fully-registered Bond or Bonds, in an aggregate principal amount equal to the Outstanding principal amount of this Bond, shall be issued to the transferee in exchange therefor as provided in the Indenture, and upon payment of the charges therein prescribed. The City, the Trustee and any Paying Agent may deem and treat the Person in whose name this Bond is registered as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal or redemption price hereof and interest due hereon and for all other purposes.

THE BONDS are issuable in the form of one fully-registered Bond in the maximum principal amount of \$34,000,000.

THIS BOND shall not be valid or become obligatory for any purposes or be entitled to any security or benefit under the Indenture until the Certificate of Authentication hereon has been executed by the Trustee.

IT IS HEREBY CERTIFIED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by the Constitution and laws of the State of Missouri.

IN WITNESS WHEREOF, the City of University City, Missouri, has caused this Bond to be executed in its name by the manual or facsimile signature of its City Manager, attested by the manual or facsimile signature of its City Clerk and its corporate seal to be affixed hereto or imprinted hereon.

CITY OF UNIVERSITY CITY, MISSOURI

By: _____
Gregory Rose, City Manager

[SEAL]

ATTEST:

By: _____
LaRette Reese, City Clerk



CERTIFICATE OF AUTHENTICATION

This Bond is the Taxable Industrial Revenue Bond (Dierbergs University City, LLC Project), Series 2023, described in the Trust Indenture. The effective date of registration of this Bond is set forth below.

UMB BANK, N.A., as Trustee

Date

By: _____
Authorized Signatory



FORM OF ASSIGNMENT

(NOTE RESTRICTIONS ON TRANSFERS)

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

Print or Typewrite Name, Address and Social Security or
other Taxpayer Identification Number of Transferee

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints
_____ attorney to transfer the within Bond on the books kept by the Trustee
for the registration and transfer of Bonds, with full power of substitution in the premises.

Dated: _____.

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

Medallion Signature Guarantee:

EXHIBIT C

FORM OF REPRESENTATION LETTER

City of University City, Missouri
6801 Delmar Boulevard
University City, Missouri 63130
ATTN: City Manager

UMB Bank, N.A.
2 South Broadway, Suite 600
St. Louis, Missouri 63102
ATTN: Corporate Trust Department

Re: \$34,000,000 Maximum Principal Amount of Taxable Industrial Revenue Bonds
(Dierbergs University City, LLC Project), Series 2023 of the City of University City,
Missouri

Ladies and Gentlemen:

In connection with the purchase of the above-referenced bonds (the “Bonds”), the undersigned purchaser of the Bonds hereby represents, warrants and agrees as follows:

1. The undersigned understands that (a) the Bonds have been issued under and pursuant to a Trust Indenture dated as of May 1, 2023 (the “Indenture”), between the City of University City, Missouri (the “City”), and UMB Bank, N.A., as trustee (the “Trustee”), and (b) the Bonds are payable solely out of certain rents, revenues and receipts to be derived from the leasing or sale of the Project (as defined in the Indenture) to Dierbergs University City, LLC, a Missouri limited liability company (the “Company”), under a Lease Agreement dated as of May 1, 2023 (the “Lease”), between the City and the Company, with certain of such rents, revenues and receipts being pledged and assigned by the City to the Trustee under the Indenture to secure the payment of the principal of and interest on the Bonds. *Capitalized terms not defined herein shall have the meanings set forth in the Indenture.*

2. The undersigned understands that (a) the Bonds and the interest thereon are special obligations of the City payable solely out of the rents, revenues and receipts derived by the City from the Project and the Lease, and not from any other fund or source of the City, (b) the Bonds are secured by a pledge and assignment of the Trust Estate to the Trustee in favor of the Owners, as provided in the Indenture, (c) the Bonds and the interest thereon shall not constitute general obligations of the City, the State or any political subdivision thereof, and none of the City, the State or any political subdivision thereof shall be liable thereon, and (d) the Bonds do not constitute an indebtedness within the meaning of any constitutional, charter or statutory debt limitation or restriction, and are not payable in any manner by taxation.

3. The undersigned understands that the Bonds are transferable only in the manner provided for in the Indenture and discussed below and warrants that it is acquiring the Bonds for its own account with the intent of holding the Bonds as an investment, and the acquisition of the Bonds is not made with a view toward their distribution or for the purpose of offering, selling or otherwise participating in a distribution of the Bonds.

4. The undersigned is an Approved Investor.

5. The undersigned agrees not to attempt to offer, sell, hypothecate or otherwise distribute the Bonds to others unless authorized by the terms of the Indenture and, if requested by the City, upon receipt of an opinion of counsel reasonably acceptable to the City, the Company and the purchaser that all registration and disclosure requirements of the Securities and Exchange Commission and all other appropriate federal and Missouri securities laws and the securities law of any other applicable state are complied with.

6. The Company has (a) furnished to the undersigned such information about itself as the undersigned deems necessary in order for it to make an informed investment decision with respect to the purchase of the Bonds, (b) made available to the undersigned, during the course of this transaction, ample opportunity to ask questions of, and to receive answers from, appropriate officers of the City and the terms and conditions of the offering of the Bonds, and (c) provided to the undersigned all additional information which it has requested. [*Delete this paragraph if the Company is the Purchaser of the Bonds.*]

7. The undersigned is now, and was when it agreed to purchase the Bonds, familiar with the operations of the Company and fully aware of the terms and risks of the Bonds. [*Delete previous sentence if the Company is the Purchaser of the Bonds.*] The undersigned believes that the Bonds which it is acquiring is a security of the kind that it wishes to purchase and hold for investment and that the nature and amount thereof are consistent with its investment program.

8. The undersigned is fully aware of and satisfied with (a) the current status of the title to the Project and any issues related thereto and (b) the terms, amounts and providers of the insurance maintained pursuant to **Article VII** of the Lease, and the undersigned is purchasing the Bonds with full knowledge of such matters.

9. The undersigned understands and agrees that the interest on the Bonds *is* subject to federal and state income taxation.

10. The undersigned hereby directs the Trustee to hold the Bonds in trust pursuant to **Section 204(c)** of the Indenture.

Dated: _____, 20__

[PURCHASER OF BONDS]

By: _____
Name: _____
Title: _____

EXHIBIT C

LEASE AGREEMENT

[On file in the office of the City Clerk]

**CITY OF UNIVERSITY CITY, MISSOURI,
As Lessor,**

AND

**DIERBERGS UNIVERSITY CITY, LLC,
As Lessee**

LEASE AGREEMENT

Dated as of May 1, 2023

Relating to:

**\$34,000,000
(Aggregate Maximum Principal Amount)
City of University City, Missouri
Taxable Industrial Revenue Bonds
(Dierbergs University City, LLC Project)
Series 2023**

Certain rights of the City of University City, Missouri (the “City”), in this Lease Agreement have been pledged and assigned to UMB Bank, N.A., St. Louis, Missouri, as Trustee under the Trust Indenture dated as of May 1, 2023, between the City and the Trustee.

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LEASE AGREEMENT

THIS LEASE AGREEMENT, dated as of May 1, 2023 (this “Lease”), between the **CITY OF UNIVERSITY CITY, MISSOURI**, a home-rule charter city organized and existing under the laws of the State of Missouri (the “City”), as lessor, and **DIERBERGS UNIVERSITY CITY, LLC**, a limited liability company organized and existing under the laws of the State of Missouri (the “Company”), as lessee;

RECITALS:

1. 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.

2. Pursuant to the Act, the City Council passed Ordinance No. _____ (the “Ordinance”) on May ___, 2023, authorizing the City to (a) acquire a leasehold interest in approximately 7.50 acres of real property located at the Markets at Olive, an approximately 46-acre retail development located in the City (as legally described on **Exhibit A**, the “Project Site”), and (b) issue its Taxable Industrial Revenue Bonds (Dierbergs University City, LLC Project), Series 2023, in the maximum principal amount of \$34,000,000 (the “Bonds”), to provide funds to construct on the Project Site 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”).

3. Pursuant to the Ordinance, the City is authorized to enter into a Trust Indenture of even date herewith (the “Indenture”) with UMB Bank, N.A., St. Louis, Missouri, as Trustee (the “Trustee”), for the purpose of issuing and securing the Bonds, as therein provided, and to enter into this Lease with the Company under which the City will lease the City’s interest in the Project Site and the Project Improvements (collectively, the “Project”) to the Company in consideration of rental payments by the Company that will be sufficient to pay the principal of and interest on the Bonds.

4. Pursuant to the foregoing, the City desires to lease the Project to the Company and the Company desires to lease the Project from the City, for the rentals and upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, the City and the Company do hereby represent, covenant and agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions of Words and Terms. In addition to any words and terms defined elsewhere in this Lease, capitalized words and terms used in this Lease shall have the meanings given to

such words and terms in **Section 101** of the Indenture (which definitions are hereby incorporated by reference).

Section 1.2. Rules of Interpretation.

(a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

(b) Unless the context otherwise indicates, words importing the singular number shall include the plural and vice versa, and words importing Persons shall include firms, associations and corporations, including governmental entities, as well as natural Persons.

(c) Wherever in this Lease it is provided that either party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform, or not to perform, as the case may be, such act or obligation.

(d) All references in this instrument to designated “Articles,” “Sections” and other subdivisions are, unless otherwise specified, to the designated Articles, Sections and other subdivisions of this instrument as originally executed. The words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Lease as a whole and not to any particular Article, Section or other subdivision.

(e) The Table of Contents and the Article and Section headings of this Lease shall not be treated as a part of this Lease or as affecting the true meaning of the provisions hereof.

(f) Whenever an item or items are listed after the word “including,” such listing is not intended to be a listing that excludes items not listed.

Section 1.3. Date of Lease. The dating of this Lease as of May 1, 2023, is intended as and for the convenient identification of this Lease only and is not intended to indicate that this Lease was executed and delivered on said date, this Lease being executed and delivered and becoming effective simultaneously with the initial issuance of the Bonds.

ARTICLE II

REPRESENTATIONS

Section 2.1. Representations by the City. The City makes the following representations as the basis for the undertakings on its part herein contained:

(a) The City is a home-rule charter city duly organized and validly existing under the laws of the State of Missouri. Under the provisions of the Act, the City has lawful power and authority to enter into the transactions contemplated by this Lease and to carry out its obligations hereunder. By proper action of the City Council, the City has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers.

(b) As of the date of delivery hereof, the City has acquired a leasehold interest in the Project Site from the Company pursuant to the Base Lease dated as of the effective date of this

Lease (the “Base Lease”), subject to Permitted Encumbrances. Upon the Completion Date, the Base Lease and this Lease will terminate, and the City will sell its interest in the Project to the Company, all in furtherance of the public purposes of the Act.

(c) The purchase, construction and improvement of the Project and the leasing of the Project by the City to the Company will further the public purposes of the Act.

(d) To the City’s knowledge, no member of the City Council or any other officer of the City has any significant or conflicting interest, financial, employment or otherwise, in the Company or in the transactions contemplated hereby.

(e) To finance the costs of the Project, the City proposes to issue the Bonds which will be scheduled to mature as set forth in **Article II** of the Indenture and will be subject to redemption prior to maturity in accordance with the provisions of **Article III** of the Indenture.

(f) The Bonds are to be issued under and secured by the Indenture, pursuant to which the Project and the net earnings therefrom, consisting of all rents, revenues and receipts to be derived by the City from the leasing or sale of the Project, will be pledged and assigned to the Trustee as security for payment of the principal of and interest on the Bonds and amounts owing pursuant to this Lease.

(g) The City will not knowingly take any affirmative action that would permit a lien to be placed on the Project or pledge the revenues derived therefrom for any bonds or other obligations, other than the Bonds, except with the written consent of an Authorized Company Representative.

(h) The City will not operate the Project as a business or in any other manner except as the lessor thereof; provided, subsequent to an Event of Default hereunder, the City may, but is not obligated to, operate the Project in such manner as the City determines.

Section 2.2. Representations by the Company. The Company makes the following representations as the basis for the undertakings on its part herein contained:

(a) The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Missouri.

(b) The Company has lawful power and authority to enter into this Lease and to carry out its obligations hereunder, and the Company has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers and representatives.

(c) The execution and delivery of this Lease, the consummation of the transactions contemplated hereby and the performance of or compliance with the terms and conditions of this Lease by the Company will not, to the best of the Company’s knowledge, (i) conflict with or result in a breach of any of the terms, conditions or provisions of any mortgage, deed of trust, lease or any other restriction, agreement or instrument to which the Company is a party or by which it or any of its property is bound, or the Company’s organizational documents, or any order, rule or regulation applicable to the Company or any of its property of any court or governmental body, or (ii) constitute a default under any of the foregoing, or (iii) result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever

upon any of the property or assets of the Company under the terms of any instrument or agreement to which the Company is a party.

(d) The estimated costs of the purchase, construction and improvement of the Project are in accordance with sound engineering and accounting principles.

(e) The Project will comply in all material respects with all applicable building and zoning, health, environmental and safety orders and laws and all other applicable laws, rules and regulations.

ARTICLE III

GRANTING PROVISIONS

Section 3.1. Granting of Leasehold Estate. The City hereby exclusively rents, leases and lets the Project to the Company, and the Company hereby rents, leases and hires the Project from the City, subject to Permitted Encumbrances existing as of the date of the execution and delivery hereof, for the rentals and upon and subject to the terms and conditions herein contained.

Section 3.2. Lease Term. This Lease shall become effective upon its execution and delivery. Subject to earlier termination pursuant to the provisions of this Lease, the lease of the Project shall terminate on the Completion Date.

Section 3.3. Possession and Use of the Project.

(a) The City covenants and agrees that as long as neither the City nor the Trustee has exercised any of the remedies set forth in **Section 12.2** following the occurrence and continuance of an Event of Default, as defined in **Section 12.1**, the Company shall have sole and exclusive possession of the Project (subject to Permitted Encumbrances and the City's and the Trustee's right of access pursuant to **Section 10.3**) and shall and may peaceably and quietly have, hold and enjoy the Project during the Lease Term. The City covenants and agrees that it will not take any action, other than expressly pursuant to **Article XII**, to prevent the Company from having quiet and peaceable possession and enjoyment of the Project during the Lease Term and will, at the request and expense of the Company, cooperate with the Company to defend the Company's quiet and peaceable possession and enjoyment of the Project.

(b) Subject to the provisions of this Section, the Company shall have the exclusive right to use the Project for any lawful purpose contemplated by the Act. The Company shall comply in all material respects with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, local and other governments or governmental authorities, now or hereafter applicable to the Project, as to the manner of use or the condition of the Project. The Company shall also comply with the mandatory requirements, rules and regulations of all insurers under the policies carried under the provisions of **Article VII**. The Company shall pay all costs, expenses, claims, fines, penalties and damages that may in any manner arise out of, or be imposed as a result of, the failure of the Company to comply with the provisions of this Section. Notwithstanding any provision contained in this Section, however, the Company may, at its own cost and expense, contest or review by legal or other appropriate procedures the validity or legality of any such governmental statute, law, ordinance, order, judgment, decree, regulation, direction or requirement, or any such requirement, rule or regulation of an insurer, and during such contest or review the Company may refrain from complying therewith.

ARTICLE IV

PURCHASE AND CONSTRUCTION OF THE PROJECT

Section 4.1. Issuance of the Bonds. To provide funds for the payment of Project Costs, the City agrees that, upon request of the Company, it will issue, sell and cause to be delivered the Bonds to the purchaser thereof in accordance with the provisions of the Indenture and the Bond Purchase Agreement.

Section 4.2. Purchase and Construction of the Project. The City and the Company agree that the Company, as the agent of the City, shall purchase, construct and improve the Project as follows:

(a) The City will acquire a leasehold interest in the Project Site at the execution hereof. Concurrently with the execution of this Lease, (i) the Base Lease will be executed by the City and the Company and placed of record, and (ii) the commitment for title insurance or ownership and encumbrance report required by **Article VII** will be delivered to the City.

(b) On behalf of the City, the Company will purchase, construct and improve the Project Improvements on the Project Site and otherwise improve the Project Site in accordance with the Plans and Specifications. The Company may revise the Plans and Specifications from time to time as it deems necessary to carry out the Project, but revisions that would alter the intended purpose of the Project may be made only with the prior written approval of the City. The Company agrees that the aforesaid construction and improvement will, with such changes and additions as may be made hereunder, result in facilities suitable for the Company, and that all real and personal property described in the Plans and Specifications, with such changes and additions as may be made hereunder, is desirable and appropriate in connection with the Project. The provisions of this paragraph are in addition to and do not supersede the provisions of **Section 8.2**.

(c) The Company will comply with the provisions of Section 107.170 of the Revised Statutes of Missouri ("Section 107.170") to the extent applicable to the construction of the Project.

(d) The Company may enter into one or more construction contracts to complete the Project. All construction contracts entered into by or on behalf of the Company shall (i) not allow for recourse against the City by a contractor in connection with the contractor's construction of the applicable portion of the Project and (ii) include an acknowledgment that the contractor may not perfect a mechanic's lien against the City (although such acknowledgment does not preclude the contractor from perfecting a mechanic's lien against the Company's leasehold interest in the Project).

Section 4.3. Project Costs. The City hereby agrees to pay for, but solely from the Project Fund, and hereby authorizes and directs the Trustee to pay for, but solely from the Project Fund, all Project Costs upon receipt by the Trustee of requisition certificates pursuant to **Section 4.4**. The Company may not submit any requisition certificates for Project Costs incurred after the Completion Date. The maximum amount of Project Costs for which requisition certificates may be submitted is \$34,000,000.

Section 4.4. Payment for Project Costs.

(a) The City hereby authorizes and directs the Trustee to make disbursements from the Project Fund and endorse the Bonds, upon receipt by the Trustee of requisition certificates in substantially the form of **Exhibit B**, signed by an Authorized Company Representative and approved by an Authorized City Representative. The Company agrees that the information in each certificate will be accurate in all respects when given and that the Company will notify the City if the Company becomes aware of any material inaccuracies in a certificate after it is given.

(b) The Trustee may rely conclusively on any such certificate and shall not be required to make any independent inspection or investigation in connection therewith. The approval of any requisition certificate by an Authorized Company Representative and an Authorized City Representative shall constitute, unto the Trustee, an irrevocable determination that all conditions precedent to the payments requested have been completed.

Section 4.5. Establishment of Completion Date. The Completion Date shall be evidenced to the City and the Trustee by a certificate signed by an Authorized Company Representative stating (a) that the purchase and construction of the Project have been completed in accordance with the Plans and Specifications, (b) the date of completion thereof and (c) that all costs and expenses of the purchase and construction of the Project have been incurred. Notwithstanding the foregoing, such certificate shall be deemed given on December 31, 2025 if not actually filed with the City by December 31, 2025, subject to any delay to the extent caused by force majeure, including, without limitation, damage or destruction by fire or casualty, strike, lockout, civil disorder, war, terrorist threats or acts, restrictive government regulations, actions or orders (including work stoppages or quarantines), lack of issuance of any permits and/or legal authorization by the governmental entity necessary for the construction and occupation of the Project, shortage or delay in shipment of material or fuel, acts of God, unusually adverse weather or wet soil conditions, or other like causes beyond the Company's reasonable control, including without limitation any litigation, court order or judgment resulting from any litigation affecting the validity of this Lease, the Indenture, the Ordinance or the Project (collectively, a "Permitted Excuse"). No Permitted Excuse shall be deemed to exist unless the Company provides a written notice to the City, within 30 days after the Company has actual notice of the claimed event, specifying the Permitted Excuse. In no event shall a Permitted Excuse extend the Completion Date beyond December 31, 2026. The Company and the City agree to cooperate in causing such certificate to be furnished to the Trustee.

Section 4.6. Surplus in Project Fund. On or promptly after the Completion Date, the Trustee shall, as provided in **Section 504** of the Indenture, transfer any remaining moneys then in the Project Fund to the Bond Fund to be applied as directed by the Company solely (a) to the payment of principal and premium, if any, of the Bonds through the payment (including regularly scheduled principal payments, if any) or redemption thereof at the earliest date permissible under the terms of the Indenture, or (b) at the option of the Company, to the purchase of Bonds at such earlier date or dates as the Company may elect. Any amount so deposited in the Bond Fund may be invested as permitted by **Section 702** of the Indenture.

Section 4.7. Non-Project Improvements, Machinery and Equipment Property of the Company. Any improvements or items of machinery or equipment which do not constitute a part of the Project Improvements and the entire purchase price of which is paid for by the Company with its own funds, and no part of the purchase price of which is paid for from funds deposited pursuant to the terms of this Lease in the Project Fund, shall be the property of the Company and shall not constitute a part of the Project.

ARTICLE V

RENT PROVISIONS

Section 5.1. Basic Rent. The Company covenants and agrees to pay to the Trustee in same day funds for the account of the City during the Lease Term, on or before 11:00 a.m., Trustee's local time, on each Payment Date, as Basic Rent for the Project, an amount which, when added to any collected funds then on deposit in the Bond Fund and available for the payment of principal of the Bonds and the interest thereon on such Payment Date, shall be equal to the amount payable on such Payment Date as principal of the Bonds and the interest thereon as provided in the Indenture. Except as offset pursuant to the right of the Company set forth below, all payments of Basic Rent provided for in this Section shall be paid directly to the Trustee and shall be deposited in accordance with the provisions of the Indenture into the Bond Fund and shall be used and applied by the Trustee in the manner and for the purposes set forth in this Lease and the Indenture. In furtherance of the foregoing, and notwithstanding any other provision in this Lease, the Base Lease, the Indenture or the Bond Purchase Agreement to the contrary, and provided that the Company (or any Financing Party) is the sole holder of the Bonds, the Company may set-off the then-current Basic Rent payment against the City's obligation to the Company (or Financing Party), as bondholder, to pay principal of and interest on the Bonds under the Indenture in lieu of delivery of the Basic Rent on any Payment Date, upon providing the Trustee with a written statement confirming such ownership upon which the Trustee may conclusively rely. The Trustee may conclusively rely on the absence of any written notice from the Company to the contrary as evidence that such set-off has occurred. On the final Payment Date, the Company will (a) if the Trustee holds the Bonds, notify the Trustee of the Bonds not previously paid that are to be canceled or (b) if an entity other than the Trustee holds the Bonds, deliver or cause to be delivered to the Trustee for cancellation Bonds not previously paid. The Company shall receive a credit against the Basic Rent payable by the Company in an amount equal to the principal amount of the Bonds so tendered for cancellation plus accrued interest thereon.

Section 5.2. Additional Rent. The Company shall pay or cause to be paid as Additional Rent, within 30 days after receiving an itemized invoice therefor, the following amounts:

(a) all fees, charges and expenses, including agent and counsel fees and expenses, of the City, the Trustee and the Paying Agent incurred under or arising from the Indenture, the Base Lease or this Lease, including but not limited to (i) claims by contractors or subcontractors, as and when the same becomes due, (ii) any disposition of this Lease pursuant to **Article XIII** and (iii) the review and execution of any Financing Documents;

(b) all costs incident to the issuance of the Bonds (which are to be paid on the Closing Date, including the fees and expenses of the City Attorney and bond counsel) and the payment of the principal of and interest on the Bonds as the same becomes due and payable, including all costs and expenses in connection with the call, redemption and payment of all Outstanding Bonds;

(c) all fees, charges and expenses incurred in connection with the enforcement of any rights under this Lease, the Base Lease or the Indenture by the City, the Trustee or the Owners, including counsel fees and expenses;

(d) in each calendar year the Project Site is leased to the City pursuant to the Base Lease, including the calendar year in which the Base Lease and this Lease are terminated, payments in lieu of taxes ("PILOT Payments") in an amount equal to 100% of the actual real

property taxes payable on the Project to the extent the St. Louis County Assessor determines that the Project is not subject to ad valorem taxes, to be paid as provided in **Section 5.5**; and

(e) all other payments of whatever nature which the Company has agreed in writing to pay or assume under the provisions of this Lease or the Indenture.

Section 5.3. Obligations of Company Absolute and Unconditional.

(a) The obligations of the Company under this Lease to make payments of Basic Rent and Additional Rent on or before the date the same becomes due and to perform all of its other obligations, covenants and agreements hereunder shall be absolute and unconditional, without notice or demand, and without abatement, deduction, set-off (except as provided in **Section 5.1** and **Section 11.5**), counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Project has been started or completed, or whether the City's interest therein or in any part thereof is defective or nonexistent, and notwithstanding any damage to, or loss, theft or destruction of, the Project or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Project, legal curtailment of the Company's use thereof, the eviction or constructive eviction of the Company, any change in the tax or other laws of the United States of America, the State of Missouri or any political subdivision thereof, any change in the City's legal organization or status, or any default of the City hereunder, and regardless of the invalidity of any action of the City; provided, however, that nothing in this Section is intended or shall be deemed to affect or impair in any way the rights of the Company to tender Bonds for redemption in satisfaction of Basic Rent as provided in **Section 5.1** and **Section 5.4**, nor the right of the Company to terminate this Lease and purchase the Project as provided in **Article XI**.

(b) Nothing in this Lease shall be construed to release the City from the performance of any agreement on its part herein contained or as a waiver by the Company of any rights or claims the Company may have against the City under this Lease or otherwise, but any recovery upon such rights and claims shall be had from the City separately, it being the intent of this Lease that the Company shall be unconditionally and absolutely obligated to perform fully all of its obligations, agreements and covenants under this Lease (including the obligation to pay Basic Rent and Additional Rent) for the benefit of the Owners and the City. The Company may, however, at its own cost and expense and in its own name or in the name of the City, prosecute or defend any action or proceeding or take any other action involving third Persons which the Company deems reasonably necessary in order to secure or protect its rights of possession, occupancy and use hereunder, and in such event the City hereby agrees to cooperate fully with the Company and to take all action necessary to effect the substitution of the Company for the City in any such action or proceeding if the Company shall so request.

Section 5.4. Prepayment of Basic Rent.

(a) The Company may at any time and from time to time prepay all or any part of the Basic Rent provided for hereunder (subject to the limitations of **Section 301(a)** of the Indenture relating to the partial redemption of the Bonds). During such times as the amount held by the Trustee in the Bond Fund shall be sufficient to pay, at the time required, the principal of and interest on all the Bonds then-remaining unpaid, the Company shall not be obligated to make payments of Basic Rent under the provisions of this Lease.

(b) At its option, the Company may deliver to the Trustee for cancellation Bonds owned by the Company and not previously paid, and the Company shall receive a credit against amounts payable by

the Company for the redemption of Bonds in an amount equal to the principal amount of the Bonds so tendered for cancellation, plus accrued interest thereon.

Section 5.5. PILOT Payments. The parties intend for there to be no property tax abatement on the Project by virtue of the issuance of the Bonds and the execution of the Base Lease and this Lease. If, nevertheless, the St. Louis County Assessor determines that the Project or any portion thereof is not subject to ad valorem taxes, the City will notify the Company of any PILOT Payments due hereunder. The Company covenants and agrees to make such PILOT Payments on or before December 31 of each year during the term of this Lease. Each PILOT Payment shall be payable to the Collector of Revenue of St. Louis County. The Collector of Revenue shall, after deducting its customary fee for collection thereof, divide each PILOT Payment among the taxing jurisdictions in proportion to their respective then-current ad valorem tax levies. The amount of PILOT Payments due in any year, together with any other taxes due with respect to the Project, shall not collectively exceed the amount of ad valorem property taxes that would have been due with respect to the Project had the City not acquired a leasehold interest therein.

ARTICLE VI

MAINTENANCE, TAXES AND UTILITIES

Section 6.1. Maintenance and Repairs. Throughout the Lease Term the Company shall, at its own expense, keep the Project in reasonably safe operating condition and keep the Project in good repair, reasonable wear, tear, depreciation and obsolescence excepted, making from time to time all repairs thereto and renewals and replacements thereof it determines to be necessary. Without limiting the generality of the foregoing, the Company shall at all times remain in compliance with all provisions of the City's code relating to maintenance and appearance. The Company shall also comply with **Section 8.5**.

Section 6.2. Taxes, Assessments and Other Governmental Charges.

(a) Subject to subsection (b) of this Section, the Company shall promptly pay and discharge, as the same becomes due, all taxes and assessments, general and special, and other governmental charges of any kind whatsoever that may be lawfully taxed, charged, levied, assessed or imposed upon or against or be payable for or in respect of the Project, or any part thereof or interest therein (including the leasehold estate of the Company therein), or any buildings, improvements, machinery and equipment at any time installed on the Project Site by the Company, or the income therefrom, including any new taxes and assessments not of the kind enumerated above to the extent that the same are lawfully made, levied or assessed in lieu of or in addition to taxes or assessments now customarily levied against real or personal property, and further including all utility charges, assessments and other general governmental charges and impositions whatsoever, foreseen or unforeseen, which if not paid when due would impair the security of the Bonds or encumber the City's interest in the Project; provided that with respect to any special assessments or other governmental charges that are lawfully levied and assessed which may be paid in installments, the Company shall be obligated to pay only such installments thereof as become due and payable during the Lease Term.

(b) The Company may, in its own name or in the City's name, contest the validity or amount of any tax, assessment or other governmental charge which the Company is required to bear, pay and discharge pursuant to the terms of this Article by appropriate legal proceedings instituted at least 10 days before the tax, assessment or other governmental charge complained of becomes delinquent if and provided the Company (i) before instituting any such contest, gives the City written notice of its intention to do so, (ii) diligently prosecutes such contest, (iii) at all times effectively stays or prevents any official

or judicial sale of the Project, or any part thereof or interest therein, under execution or otherwise, (iv) promptly pays any final judgment enforcing the tax, assessment or other governmental charge so contested and (v) thereafter promptly procures record release or satisfaction thereof. The City agrees to cooperate fully with the Company in connection with any and all administrative or judicial proceedings related to any tax, assessment or other governmental charge. The Company shall save and hold harmless the City from any costs and expenses the City may incur related to any of the above.

(c) Nothing in this Lease shall be construed to require the Company to make duplicate tax payments or PILOT Payments. The Company shall receive a credit against the PILOT Payments to be made by the Company hereunder to the extent that any ad valorem taxes imposed with respect to the Project are paid pursuant to this Section.

Section 6.3. Utilities. All utilities and utility services used by the Company in, on or about the Project shall be paid by the Company and shall be contracted by the Company in the Company's own name, and the Company shall, at its sole cost and expense, procure any and all permits, licenses or authorizations necessary in connection therewith.

Section 6.4. Sales Tax Exemptions. The City will provide a project exemption certificate to the Company, which may be used by related entities and their respective contractors and subcontractors to purchase and pay for, exempt from sales tax, certain construction materials to be incorporated into or used up in the Project, pursuant to a Missouri Department of Revenue Project Exemption Certificate, Form 5060. The Company agrees to make, and to cause related entities and their respective contractors and subcontractors to make, such purchases in compliance with the provisions of Section 144.062 of the Revised Statutes of Missouri. Such construction materials may only include tangible personal property and materials that can only be used for the Project and that are actually used up or consumed in constructing the Project. Except as provided in the prior sentences, the acquisition and construction of the Project shall not be exempt from any sales taxes imposed by any governmental authority by virtue of the City's leasehold interest therein, and neither the City nor the Company will request any such exemption. Nothing herein shall limit the Company's right to any exemption of sales taxes not resulting from the City's leasehold interest in the Project.

ARTICLE VII

INSURANCE

Section 7.1. Title Commitment or Report. Before the effective date hereof, the Company will purchase, from a title insurance company reasonably acceptable to the City, a commitment for title insurance or provide such other report in a form reasonably acceptable to the City Attorney showing the ownership of and encumbrances on the Project Site. A copy of such report shall be provided to the City.

Section 7.2. Casualty Insurance.

(a) Prior to commencement of construction of the Project Improvements, the Company shall at its sole cost and expense obtain and shall maintain throughout the Lease Term a policy or policies of insurance (including, if appropriate, builder's risk insurance) to keep the Project constantly insured against loss or damage by fire, lightning and all other risks covered by the extended coverage insurance endorsement then in use in the State of Missouri in an amount equal to the Full Insurable Value thereof (subject to reasonable loss deductible provisions). The insurance required pursuant to this Section shall be maintained with a generally recognized responsible insurance company or companies authorized to do

business in the State of Missouri or generally recognized international insurers or reinsurers with an A.M. Best rating of not less than “A-” or the equivalent thereof as may be selected by the Company. The Company shall deliver certificates of insurance for such policies to the City and the Trustee prior to commencement of construction of the Project Improvements and promptly after renewal of each insurance policy. All such policies of insurance pursuant to this Section, and all renewals thereof, shall name the Company, the City and the Trustee as insureds, as their respective interests may appear, shall name the Trustee as loss payee and, to the extent such agreement is available from the insurer, shall contain an agreement by the insurer that, notwithstanding any right of cancellation reserved to such insurer, such policy or contract shall continue in force for at least 30 days after written notice of cancellation to the City, the Company, the Trustee and each other insured or loss payee named therein. The Trustee’s sole duty with respect to the Company’s compliance with the insurance requirements hereunder shall be to receive certificates of insurance pursuant to this Section and hold the same solely as repository for the benefit of the Owners. The Trustee makes no representation as to, and shall have no responsibility for the sufficiency or adequacy of, the insurance.

(b) In the event of loss of or damage to the Project, the Net Proceeds of casualty insurance carried pursuant to this Section shall be, unless otherwise provided by law, (i) paid over to the Trustee and applied as provided in **Article IX**, or (ii) applied as directed in writing by, or on behalf of, the Owners of 100% in principal amount of the Bonds Outstanding, subject to the rights of any Financing Party under any Financing Documents.

Section 7.3. Public Liability Insurance.

(a) The Company shall at its sole cost and expense maintain or cause to be maintained at all times during the Lease Term commercial general liability insurance (including but not limited to coverage for operations, contingent liability, operations of subcontractors, completed operations and contractual liability), under which the City, the Company and the Trustee shall be named as additional insureds, properly protecting and indemnifying the City and the Trustee, in an amount not less than the limits of liability set by Section 537.610 of the Revised Statutes of Missouri (subject to reasonable loss deductible clauses not to exceed the amounts normally or generally carried by the Company). All such policies of insurance pursuant to this Section, and all renewals thereof, shall, to the extent such agreement is available from the insurer, contain an agreement by the insurer that, notwithstanding any right of cancellation reserved to such insurer, such policy or contract shall continue in force for at least 30 days after written notice of cancellation to the Company, the City, the Trustee and each other insured named therein. Certificates of such policies shall be furnished to the City and the Trustee on the date of execution of this Lease and promptly after renewal of each insurance policy. The Trustee’s sole duty with respect to the Company’s compliance with the insurance requirements hereunder shall be to receive certificates of insurance pursuant to this Section and hold the same solely as repository for the benefit of the Owners. The Trustee makes no representation as to, and shall have no responsibility for the sufficiency or adequacy of, the insurance.

(b) In the event of a general liability occurrence, the Net Proceeds of liability insurance carried pursuant to this Section shall be applied toward the extinguishment or satisfaction of the liability with respect to which such proceeds have been paid.

Section 7.4. Blanket Insurance Policies. The Company may satisfy any of the insurance requirements set forth in this Article by using blanket policies of insurance, provided each and all of the requirements and specifications of this Article respecting insurance are complied with.

Section 7.5. Worker's Compensation. The Company agrees throughout the Lease Term to maintain or cause to be maintained the worker's compensation coverage required by the laws of the State of Missouri.

Section 7.6. Sovereign Immunity. Notwithstanding anything to the contrary contained herein, nothing in this Lease shall be construed to broaden the liability of the City beyond the provisions of Sections 537.600 to 537.610 of the Revised Statutes of Missouri or abolish or waive any defense at law that might otherwise be available to the City or its officers, agents and employees.

ARTICLE VIII

ALTERATION OF THE PROJECT

Section 8.1. Additions, Modifications and Improvements to the Project. The Company may make such additions, modifications and improvements in and to any part of the Project as the Company from time to time may deem necessary or desirable for its business purposes. All additions, modifications and improvements made by the Company pursuant to this Section shall (a) be made in a good and workmanlike manner and in strict compliance with all laws, orders and ordinances applicable thereto and (b) when commenced, be prosecuted to completion with due diligence. Any such additions, modifications and improvements shall be subject to ad valorem taxes, or if for any reason the St. Louis County Assessor determines that such additions, modifications and improvements are not subject to ad valorem taxes, the Company shall make PILOT Payments in an amount equal to the taxes that would otherwise be due but for the City's interest therein, unless otherwise agreed to by the City.

Section 8.2. Additional Improvements on the Project Site. Subject to **Section 8.5**, the Company may, at its sole cost and expense, construct on portions of the Project Site not theretofore occupied by buildings or improvements such additional buildings and improvements as the Company from time to time may deem necessary or desirable for its business purposes. All additional buildings and improvements constructed on the Project Site by the Company, and not paid for with Bond proceeds, pursuant to the authority of this Section shall not be included as Project Improvements and, during the life of this Lease, shall remain the property of the Company and may be added to, altered or razed and removed by the Company at any time. All additional buildings and improvements shall be made in a good and workmanlike manner and in strict compliance with all material laws, orders and ordinances applicable thereto and when commenced shall be prosecuted to completion with due diligence. The Company covenants and agrees (a) to make any repairs and restorations required to be made to the Project because of the construction of, addition to, alteration or removal of said additional buildings or improvements, and (b) to promptly and with due diligence either raze and remove or repair, replace or restore any of said additional buildings and improvements as may from time to time be damaged by fire or other casualty. The Company shall pay all ad valorem taxes and assessments payable with respect to such additional buildings and improvements which remain the property of the Company. If for any reason the St. Louis County Assessor determines that such additional buildings and improvements are not subject to ad valorem taxes, the Company shall make PILOT Payments in an amount equal to the taxes that would otherwise be due on such additional buildings and improvements, unless otherwise agreed to by the City.

Section 8.3. Permits and Authorizations. The Company shall not do or permit others under its control to do any work on the Project or any repair, rebuilding, restoration, replacement, modification or addition to the Project, or any part thereof, unless all requisite municipal and other governmental permits and authorizations shall have been first procured. The City agrees to act promptly on all requests

for such municipal permits and authorizations. All such work shall be done in a good and workmanlike manner and in strict compliance with all applicable material building and zoning laws and governmental regulations and requirements, and in accordance with the requirements, rules and regulations of all insurers under the policies required to be carried under the provisions of **Article VII**.

Section 8.4. Mechanics' Liens.

(a) The Company will not directly or indirectly create, incur, assume or suffer to exist any lien on or with respect to the Project, except Permitted Encumbrances, and the Company shall promptly notify the City of the imposition of any such lien of which the Company is aware and shall promptly, at its own expense, take such action as may be necessary to fully discharge or release any such lien. Whenever and as often as any mechanics' or other similar lien is filed against the Project, or any part thereof, purporting to be for or on account of any labor done or materials or services furnished in connection with any work in or about the Project, the Company shall discharge the same of record. Notice is hereby given that the City shall not be liable for any labor, services or materials furnished to the Company or anyone claiming by, through or under the Company upon credit, and that no mechanics' or other similar lien for any such labor, services or materials shall attach to or affect the reversionary or other estate of the City in and to the Project or any part thereof.

(b) Notwithstanding paragraph (a) above, and subject to the terms of any Financing Documents executed by the Company in favor and for the benefit of any Financing Party, the Company may contest any such mechanics' or other similar lien if the Company (i) within 60 days after the Company becomes aware of any such lien notifies the City and the Trustee in writing of its intention to do so, (ii) diligently prosecutes such contest, (iii) at all times effectively stays or prevents any official or judicial sale of the Project, or any part thereof or interest therein, under execution or otherwise, (iv) promptly pays or otherwise satisfies any final judgment adjudging or enforcing the contested lien claim and (v) thereafter promptly procures record release or satisfaction thereof. The Company may permit the lien so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Company is notified by the City that, in the opinion of counsel, by nonpayment of any such items, the interest of the City in the Project will be subject to loss or forfeiture. In that event, the Company shall promptly, at its own expense, take such action as may be reasonably necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim if the same shall arise at any time. The Company shall defend and save and hold harmless the City from any loss, costs or expenses the City may incur related to any such contest. The Company shall reimburse the City for any expense incurred by it in connection with the imposition of any such lien or in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim. The City shall cooperate fully with the Company in any such contest.

Section 8.5. Notice of Improvements Subject to Bonding Requirements. The Company shall notify the City in writing of any portion of the Project or any repair, renovation, modification or improvement thereto that is subject to Section 107.170 or any other law requiring payment or performance bonds for such work prior to beginning construction of the applicable portion of the Project or making such repair, renovation, modification or improvement. The failure to provide the written notification required by this Section will not be deemed to be a material breach of this Lease. However, the Company agrees and acknowledges that (a) the City and its governing body members, officers, agents and employees shall be fully indemnified by the Company, as provided in **Section 10.5**, against any claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, arising from the Company's failure to provide the written notice as required by this Section or to secure any payment or performance bonds required by Section 107.170 or other applicable law and (b) the Company's leasehold

interest under this Lease may be subject to mechanics' or other similar liens, which the Company shall promptly resolve in accordance with **Section 8.4**.

ARTICLE IX

DAMAGE, DESTRUCTION AND CONDEMNATION

Section 9.1. Damage or Destruction.

(a) If the Project is damaged or destroyed by fire or any other casualty, whether or not covered by insurance, the Company, as promptly as practicable, shall either (i) make the determination described in subsection (f) below, or (ii) repair, restore, replace or rebuild the same so that upon completion of such repairs, restoration, replacement or rebuilding the Project is of a value not less than the value thereof immediately before the occurrence of such damage or destruction or, at the Company's option, construct upon the Project Site new buildings and improvements, together with all new machinery, equipment and fixtures that are either to be attached to or are to be used in connection with the operation or maintenance thereof, provided that (A) the value thereof shall not be less than the value of such destroyed or damaged Project immediately before the occurrence of such damage or destruction and (B) the nature of such new buildings, improvements, machinery, equipment and fixtures will not impair the character of the Project as an enterprise permitted by the Act.

If the Company elects to construct any such new buildings and improvements, then for all purposes of this Lease, any reference to the words "Project Improvements" shall be deemed to also include any such new buildings and improvements and all additions thereto and all replacements and alterations thereof.

Unless the Company makes the determination described in subsection (f) below, the Net Proceeds of casualty insurance required by **Article VII** received with respect to such damage to or loss of the Project shall be used, unless otherwise provided by law, to pay the cost of repairing, restoring, replacing or rebuilding the Project or any part thereof. Insurance monies in an amount less than \$5,000,000 may be paid to or retained by the Company to be held in trust and used as provided herein. Insurance monies in an amount of \$5,000,000 or more shall be (i) paid to the Trustee, deposited in the Project Fund and disbursed as provided in **Section 4.4** to pay the cost of repairing, restoring, replacing or rebuilding the Project or any part thereof, or (ii) applied as directed in writing by, or on behalf of, the Owners of 100% in principal amount of the Bonds Outstanding. If the Company makes the determination described in subsection (f) below, the Net Proceeds shall be deposited with the Trustee and used to redeem Bonds as provided in subsection (f).

(b) If any of the insurance monies paid by the insurance company as hereinabove provided remain after the completion of such repairs, restoration, replacement or rebuilding, and this Lease has not been terminated, the excess shall be deposited in the Bond Fund, subject to the rights of any Financing Party and except as otherwise provided by law. Completion of such repairs, restoration, replacement or rebuilding shall be evidenced by a certificate of completion delivered by the Company to the City and the Trustee in accordance with the provisions of **Section 4.5**. If the Net Proceeds are insufficient to pay the entire cost of such repairs, restoration, replacement or rebuilding, the Company shall pay the deficiency.

(c) Except as otherwise provided in this Lease, in the event of any such damage by fire or any other casualty, the provisions of this Lease shall be unaffected and the Company shall remain and

continue to be liable for the payment of all Basic Rent and Additional Rent and all other charges required hereunder to be paid by the Company, as though no damage by fire or any other casualty has occurred.

(d) The City and the Company agree that they will cooperate with each other, to such extent as such other party may reasonably require, in connection with the prosecution or defense of any action or proceeding arising out of, or for the collection of any insurance monies that may be due in the event of, any loss or damage, and that they will execute and deliver to such other party such instruments as may be required to facilitate the recovery of any insurance monies.

(e) The Company agrees to give prompt written notice to the City, each Financing Party and the Trustee of all fires and other casualties occurring in, on, at or about the Project Site causing (in the Company's opinion) damage of more than \$5,000,000.

(f) If the Company determines that repairing, restoring, replacing or rebuilding the Project is not practicable or desirable, or if the Company does not have the right under any Financing Document to use any Net Proceeds for repair or restoration of the Project, any Net Proceeds of casualty insurance required by **Article VII** received with respect to such damage or loss shall, after payment of all Additional Rent then due and payable, be paid into the Bond Fund and shall be used to redeem Bonds on the earliest practicable redemption date or to pay the principal of any Bonds as the same becomes due, all subject to the rights of any Financing Party under the Financing Documents (if any). The Company agrees to be reasonable in exercising its judgment pursuant to this subsection (f). Alternatively, if the Company is the sole owner of the Bonds and it has determined that repairing, restoring, replacing or rebuilding the Project is not practicable or desirable, it may tender Bonds to the Trustee for cancellation in a principal amount equal to the Net Proceeds of the casualty insurance and retain such proceeds for its own account.

(g) The Company shall not, by reason of its inability to use all or any part of the Project during any period in which the Project is damaged or destroyed or is being repaired, restored, replaced or rebuilt, nor by reason of the payment of the costs of such repairing, restoring, replacing or rebuilding, be entitled to any reimbursement from the City, the Trustee or the Owners or to any abatement or diminution of the rentals payable by the Company under this Lease or of any other obligations of the Company under this Lease except as expressly provided in this Section.

Section 9.2. Condemnation.

(a) If during the Lease Term, title to, or the temporary use of, all or any part of the Project is condemned by or sold under threat of condemnation to any authority possessing the power of eminent domain, to such extent that the claim or loss resulting from such condemnation is greater than \$5,000,000, the Company shall, within 90 days after the date of entry of a final order in any eminent domain proceedings granting condemnation or the date of sale under threat of condemnation, notify the City, the Trustee and each Financing Party under the Financing Documents (if any) in writing as to the nature and extent of such condemnation or loss of title and whether it is practicable and desirable to acquire or construct substitute improvements.

(b) If the Company determines that such substitution is practicable and desirable, the Company shall proceed promptly with and complete with reasonable dispatch the acquisition or construction of such substitute improvements, so as to place the Project in substantially the same condition as existed before the exercise of the power of eminent domain, including the acquisition or construction of other improvements suitable for the Company's operations at the Project (which

improvements will be deemed a part of the Project and available for use and occupancy by the Company without the payment of any rent other than herein provided, to the same extent as if such other improvements were specifically described herein and demised hereby); provided, that such improvements will be acquired by the City subject to no liens, security interests or encumbrances before the lien and/or security interest afforded by the Indenture and this Lease other than Permitted Encumbrances. In such case, any Net Proceeds received from any award or awards with respect to the Project or any part thereof made in such condemnation or eminent domain proceedings, or of the sale proceeds, shall be applied in the same manner as provided in **Section 9.1** (with respect to the receipt of casualty insurance proceeds).

(c) If the Company determines that it is not practicable or desirable to acquire or construct substitute improvements, then any Net Proceeds of condemnation awards received by the Company shall, after payment of all Additional Rent then due and payable, be paid into the Bond Fund and shall be used to redeem Bonds on the earliest practicable redemption date or to pay the principal of any Bonds as the same becomes due and payable, all subject to the rights of any Financing Party under the Financing Documents (if any).

(d) The Company shall not, by reason of its inability to use all or any part of the Project during any such period of restoration or acquisition nor by reason of the payment of the costs of such restoration or acquisition, be entitled to any reimbursement from the City, the Trustee or the Owners or to any abatement or diminution of the rentals payable by the Company under this Lease or of any other obligations of the Company under this Lease except as expressly provided in this Section.

(e) The City shall cooperate fully with the Company in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Project or any part thereof, and shall, to the extent it may lawfully do so, permit the Company to litigate in any such proceedings in the name and on behalf of the City. In no event will the City voluntarily settle or consent to the settlement of any prospective or pending condemnation proceedings with respect to the Project or any part thereof without the prior written consent of the Company and each Financing Party (if any).

Section 9.3. Bondowner Approval. Notwithstanding anything to the contrary contained in this **Article IX**, the proceeds of any insurance received subsequent to a casualty or of any condemnation proceedings (or threats thereof) may before the application thereof by the City or the Trustee be applied as directed in writing by the Owners of 100% of the principal amount of Bonds Outstanding, subject and subordinate to (a) the rights of the City and the Trustee to be paid all their expenses (including attorneys' fees, trustee's fees and any extraordinary expenses of the City and the Trustee) incurred in the collection of such gross proceeds and (b) the rights of the City to any amounts then due and payable under **Section 5.2(d)**.

ARTICLE X

SPECIAL COVENANTS

Section 10.1. No Warranty of Condition or Suitability by the City; Exculpation and Indemnification. The City makes no warranty, either express or implied, as to the condition of the Project or that it will be suitable for the Company's purposes or needs. The Company releases the City and the Trustee from, agrees that the City and the Trustee shall not be liable for and agrees to hold the City and the Trustee harmless against, any loss of or damage to property or any injury to or death of any Person that may be occasioned by any cause whatsoever pertaining to the Project or the Company's use

thereof, unless such loss is the result of the City's or the Trustee's (or their respective employees, consultants or agents') respective negligence or willful misconduct. This provision shall survive termination of this Lease.

Section 10.2. Surrender of Possession. Upon accrual of the City's right of re-entry to the extent provided in **Section 12.2(b)**, the Company shall peacefully surrender possession of the Project to the City in good condition and repair; provided, however, the Company may within 90 days (or such later date as the City may agree to) after the termination of this Lease remove from the Project Site any buildings, improvements, furniture, trade fixtures, machinery and equipment owned by the Company and not constituting part of the Project. All repairs to and restorations of the Project required to be made because of such removal shall be made by and at the sole cost and expense of the Company, and during said 90-day (or extended) period the Company shall bear the sole responsibility for and bear the sole risk of loss of said buildings, improvements, furniture, trade fixtures, machinery and equipment owned by the Company and not constituting part of the Project. All buildings, improvements, furniture, trade fixtures, machinery and equipment owned by the Company that are not so removed from the Project Site before the expiration of said period shall be the separate and absolute property of the City. Notwithstanding the foregoing, if the Company has paid all obligations due and owing under the Indenture (or such obligations have been canceled by the Owners) and this Lease, the City shall convey the Project in accordance with **Section 11.2**.

Section 10.3. Right of Access to the Project. The City may conduct such periodic inspections of the Project as may be generally provided in the City's building code. In addition, the Company agrees that the City and the Trustee and their duly authorized agents may, at reasonable times during normal business hours and, except in the event of emergencies, upon not less than two Business Days' prior notice, subject to the Company's usual business, proprietary, safety, confidentiality and security requirements, enter upon the Project Site (a) to examine and inspect the Project without interference or prejudice to the Company's operations, (b) to monitor the acquisition, construction and installation of the Project pursuant to **Section 4.2** as may be reasonably necessary, (c) to examine all files, records, books and other materials in the Company's possession pertaining to the acquisition, installation or maintenance of the Project or (d) upon either (i) the occurrence and continuance of an Event of Default or (ii) the Company's failure to purchase the Project at the end of the Lease Term, to exhibit the Project to prospective purchasers, lessees or trustees.

Section 10.4. Granting of Easements; Leasehold Mortgages and Financing Arrangements.

(a) Subject to **Sections 10.4(c)** and **(d)**, if no Event of Default under this Lease has happened and is continuing, the City agrees that, at the written request of the Company, it will execute and deliver and will cause and direct the Trustee, in writing, to execute and deliver any instrument necessary or appropriate to approve, confirm and grant or release or terminate any sublease, easement, license, right-of-way or other right or privilege or any similar agreement or other arrangement, conditioned upon receipt by the City and the Trustee of: (i) a copy of the instrument of grant, release or termination or of the agreement or other arrangement, (ii) a written application signed by an Authorized Company Representative requesting such instrument, and (iii) a certificate executed by an Authorized Company Representative stating that (A) such grant or release is not detrimental to the proper conduct of the business of the Company, will not impair the effective use or interfere with the efficient and economical operation of the Project, will not materially adversely affect the security intended to be given by or under the Indenture and will be a Permitted Encumbrance and (B) the Company will defend, indemnify and save and hold harmless the City from and against all claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, arising from the execution and delivery of such instrument,

agreement or other arrangement pursuant to this Section. If no Event of Default has happened and is continuing beyond any applicable grace period, any payments or other consideration received by the Company for any such grant or with respect to or under any similar agreement or other arrangement shall be and remain the property of the Company; but, subject to **Sections 10.4(c)** and **(d)**, upon (1) termination of this Lease for any reason other than the redemption of the Bonds and/or the purchase of the Project by the Company or (2) the occurrence and continuance of an Event of Default by the Company, all rights then existing of the Company with respect to or under such grant, agreement or arrangement shall inure to the benefit of and be exercisable by the City and the Trustee.

(b) The Company may mortgage or grant a deed of trust against the leasehold estate created by this Lease, with prior notice to but without the consent of the City, provided and upon condition that a duplicate original or certified copy or photostatic copy of each such mortgage, and the loan agreement, note or other obligation secured thereby, is delivered to the City within 30 days after the execution thereof. The sale of the Company's leasehold estate at a foreclosure sale or trustee's sale under any Financing Document or any assignment in lieu thereof shall not require the consent of the City, if (i) written notice of the proposed sale or assignment is provided to the City at least 15 days prior thereto, and (ii) before such sale or assignment, all payments then owing to the City under this Lease are paid and the Bonds are paid or redeemed in full.

(c) The City acknowledges and agrees that the Company may finance and refinance its rights and interests in the Project, this Lease and the leasehold estate created hereby and, in connection therewith, the Company may execute Financing Documents with one or more Financing Parties. Notwithstanding anything contained to the contrary in this Lease, the Company may, at any time and from time to time, with prior notice to but without the consent of the City, (i) execute one or more Financing Documents upon the terms contained in this **Section 10.4** and (ii) sublease or assign this Lease, the leasehold estate, any sublease and rights in connection therewith, and/or grant liens or security interests therein, to any Financing Party. Any further sublease or assignment by any Financing Party shall be subject to the provisions of **Section 13.1**.

(d) Upon notice by the Company to the City in writing that the Company has executed one or more Financing Documents under which it has granted rights in this Lease to a Financing Party, which includes the name and address of such Financing Party, then the following provisions shall apply in respect of each such Financing Party and any Financing Party existing as of the date of the execution and delivery hereof:

(i) there shall be no merger of this Lease or of the leasehold estate created hereby with fee title to the Project, notwithstanding that this Lease or said leasehold estate and said fee title shall be owned by the same Person or Persons, without the prior written consent of each such Financing Party;

(ii) the City shall serve upon each such Financing Party (at the address, if any, provided to the City) a copy of each notice of the occurrence of an Event of Default and each notice of termination given to the Company under this Lease, at the same time as such notice is served upon the Company. No such notice to the Company shall be effective unless a copy thereof is thus served upon each Financing Party;

(iii) each Financing Party shall have the same period of time which the Company has, after the service of any required notice upon it, within which to remedy or cause to be remedied any payment default under this Lease which is the basis of the notice plus 30 days, and the City shall accept performance by any Financing Party as timely performance by the Company;

(iv) the City may exercise any of its rights or remedies with respect to any other Event of Default by the Company, subject to the rights of the Financing Parties under this **Section 10.4(d)** as to such other Event of Default. Without limiting the generality of the foregoing, any Financing Party may cause the sale of the leasehold interest of the Company to be sold at foreclosure sale conducted in accordance with applicable law and the terms of the Financing Documents, accept assignment of this Lease in lieu of foreclosure and appoint a receiver for the Project, all without obtaining the prior written consent of the City but subject to the provisions of **Section 10.4(b)**;

(v) upon the occurrence and continuance of an Event of Default by the Company under this Lease, other than a default in the payment of money, the City shall take no action to effect a termination of this Lease by service of a notice or otherwise, without first giving notice thereof to each such Financing Party and permitting each such Financing Party (or its designee, nominee, assignee or transferee) a reasonable time within which to remedy such default in the case of an Event of Default which is susceptible of being cured; provided that the period to remedy such Event of Default shall continue beyond any period set forth in this Lease to effect said cure so long as any Financing Party (or its designee, nominee, assignee or transferee) is diligently prosecuting such cure; and further provided that such Financing Party (or its designee, nominee, assignee or transferee) shall pay or cause to be paid to the City and the Trustee all expenses, including reasonable counsel fees, court costs and disbursements, incurred by the City or the Trustee in connection with any such default;

(vi) each such Financing Party (and its designees, nominees, assignees or transferees) may enter, possess and use the Project at such reasonable times and manner as are necessary or desirable to effectuate the remedies and enforce the rights under its respective Financing Documents;

(vii) this Lease may not be modified, amended, canceled or surrendered by agreement between the City and the Company, without prior notice to and the written consent of each such Financing Party; and

(viii) each such Financing Party may, on behalf of the Company and without the consent of the Company, exercise the right to purchase the Project pursuant to **Section 11.1**, upon compliance with the provisions of that Section. The Company agrees that the City will have no liability for taking direction from any Financing Party in connection with a conveyance of the Project back to the Company pursuant to **Article XI**.

(e) In connection with the execution of one or more Financing Documents, upon the request of the Company, the City agrees to execute such documents as shall be reasonably requested by any Financing Party and which are usual and customary in connection with the closing of the financing or refinancing pursuant to the Financing Documents, including, without limitation, subordination of the City's interest in the Project to any fee deed of trust. The Company agrees to reimburse the City for any and all costs and expenses incurred by the City pursuant to this Section, including reasonable attorneys' fees and expenses, in complying with such request.

(f) The Company's obligations under any mortgage or Financing Document relating to the Project entered into after the date of execution of this Lease shall be subordinate to the Company's obligations under this Lease.

(g) All deeds of trust and other security agreements secured by the Project shall recognize that PILOT Payments due and owing hereunder, if any, are to be given the same priority as real property taxes in the event of a foreclosure. To evidence such preference, all such deeds of trust or other security agreements must contain the following language (or similar language approved by the City Attorney):

Subordination of [Mortgage] to PILOT Payments. Lender agrees that for so long as the [Property] is subject to the Lease Agreement dated as of May 1, 2023 between the City of University City, Missouri (the “City”), and Dierbergs University City, LLC, the lien of the [Mortgage] shall be subject and inferior to the lien of the City thereto to the extent of any unpaid PILOT Payments (as defined in the aforementioned Lease Agreement), if any. Lender agrees that any proceeds received by Lender as a result of a foreclosure or deed in lieu of foreclosure related to the [Property] shall first be applied to pay any due and owing PILOT Payments.

(h) Notwithstanding the foregoing, the City may agree to other provisions and documents requested by the Company or any Financing Party not contemplated by this **Section 10.4**, subject to approval by ordinance of the City Council.

Section 10.5. Indemnification of City and Trustee. The Company shall defend, indemnify and save and hold harmless the City and the Trustee and their governing body members, officers, agents and employees from and against all claims, demands, costs, liabilities, damages or expenses, including attorneys’ fees, by or on behalf of any Person, firm or corporation arising from the issuance of the Bonds and the execution of this Lease (or any instrument requested by the Company pursuant to **Section 10.4**), the Indenture or any other document entered into in connection with the Bonds and from the conduct or management of, or from any work or thing done in or on the Project during the Lease Term, and against and from all claims, demands, costs, liabilities, damages or expenses, including attorneys’ fees, arising during the Lease Term from (a) any condition of the Project, (b) any breach or default on the part of the Company in the performance of any of its obligations under the Base Lease, this Lease or any related document, (c) any contract entered into in connection with the acquisition, purchase, construction, extension, installation or improvement of the Project, (d) any act of negligence of the Company or of any of its agents, contractors, servants, employees or licensees, (e) unless the Company has been released from liability pursuant to **Section 13.1**, any act of negligence of any assignee or sublessee of the Company, or of any agents, contractors, servants, employees or licensees of any assignee or sublessee of the Company, (f) obtaining any applicable state and local sales and use tax exemptions for materials or goods that become part of the Project, and (g) any violation of Section 107.170; provided, however, the indemnification contained in **Sections 10.5(a)-(e)** shall not extend (i) to the City to the extent that such claims, demands, costs, liabilities, damages or expenses, including attorneys’ fees, are (A) the result of work being performed at the Project by employees of the City, or (B) the result of negligence or willful misconduct by the City or its employees, agents or representatives, or (ii) to the Trustee to the extent that such claims, demands, costs, liabilities, damages or expenses, including attorneys’ fees, are the result of negligence or willful misconduct by the Trustee. Upon written notice from the City or the Trustee of any such claim or demand, the Company shall defend them or either of them in any such action or proceeding; provided, that the City shall cooperate with the Company and provide reasonable assistance in such defense. All costs related to the defense of the City or the Trustee shall be paid by the Company. This **Section 10.5** shall survive any termination of this Lease or the satisfaction and discharge of the Indenture.

Section 10.6. Depreciation and Other Tax Benefits. The City and the Company hereby acknowledge and agree that:

(a) this Lease is intended to be and shall be treated as a “financing lease” for federal tax purposes;

(b) the Company shall be treated, solely for federal income tax purposes, as the owner of the Project and, as such, shall be entitled to claim all depreciation and amortization deductions and other tax benefits attributable to the ownership of the Project;

(c) each party shall report and file all federal income tax returns consistent with the intended tax treatment; and

(d) the City will fully cooperate with the Company in any effort by the Company to avail itself of any such depreciation, amortization deductions and other tax benefits.

Section 10.7. Company to Maintain its Existence. The Company agrees that until the Bonds are paid or payment is provided for in accordance with the terms of the Indenture, it will maintain its existence and will not dissolve or otherwise dispose of all or substantially all of its assets; provided, however, that the Company may, without violating the agreement contained in this Section, consolidate with or merge into another Person or permit one or more other Persons to consolidate with or merge into it, or may sell or otherwise transfer to another Person all or substantially all of its assets as an entirety and thereafter dissolve, provided, the surviving, resulting or transferee Person expressly assumes in writing all of the obligations of the Company contained in this Lease and either (a) has a long-term debt rating or is controlled by or under common control with an entity with a long-term debt rating in any of the top three long-term debt rating categories established by any nationally recognized rating service, (b) is controlled by, under common control with or controls the Company or (c) is otherwise approved by the City Council.

Section 10.8. Security Interests. The City and the Company hereby authorize the Trustee to file all appropriate financing and continuation statements as may be required under the Uniform Commercial Code in order to fully preserve and protect the security of the Owners and the rights of the Trustee under the Indenture. Upon the written instructions of the Owners or pledgees of 100% of the Bonds then-Outstanding, the Trustee shall file all continuation instruments the Owners deem necessary to be filed for so long as the Bonds are Outstanding. The City and the Company shall cooperate with the Trustee in this regard by providing such information as the Trustee may require to renew such statements.

Section 10.9. Environmental Matters, Warranties, Covenants and Indemnities Regarding Environmental Matters.

(a) As used in this Section, the following terms have the following meanings:

“Environmental Laws” means any now-existing or hereafter enacted or promulgated federal, state, local or other law, statute, ordinance, order, rule, regulation or court order pertaining to (i) environmental protection, regulation, contamination or clean-up, (ii) toxic waste, (iii) underground storage tanks, (iv) asbestos or asbestos-containing materials, or (v) the handling, treatment, storage, use or disposal of Hazardous Substances, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act and the Resource Conservation and Recovery Act, all as amended from time to time.

“Hazardous Substances” means all (i) “hazardous substances” (as defined in 42 U.S.C. §9601(14)), (ii) “chemicals” subject to regulation under Title III of the Superfund Amendments and Reauthorization Act of 1986, as amended from time to time, (iii) natural gas liquids, liquefied natural gas or synthetic gas, (iv) any petroleum, petroleum-based products or crude oil, or (v) any other hazardous or

toxic substances, wastes or materials, pollutants, contaminants or any other substances or materials which are included under or regulated by any Environmental Law.

(b) The Company warrants and represents to the City and the Trustee that to the knowledge of the Company there are no conditions on the Project Site which materially violate any applicable Environmental Laws and no claims or demands have been asserted or made in writing by any third parties arising out of, relating to or in connection with any Hazardous Substances on, or allegedly on, the Project Site for any injuries suffered or incurred, or allegedly suffered or incurred, by reason of the foregoing.

(c) The Company will provide the City and the Trustee with copies of any notifications of releases of Hazardous Substances or of any environmental hazards or potential hazards in material violation of Environmental Laws which are given by or on behalf of the Company to any federal, state, local or other agencies or authorities or which are received by the Company from any federal, state, local or other agencies or authorities with respect to the Project. Such copies shall be sent to the City and the Trustee concurrently with their being mailed or delivered to the governmental agencies or authorities or within 10 days after they are made or received by the Company. The Company will provide to the City for review only, any environmental assessments (“Assessments”) and reports regarding the correction or remediation of material environmental issues required by Environmental Laws to be addressed in the Assessments (“Reports”) concerning the Project; upon the completion of the City’s review of the Assessments and Reports, the City shall immediately return to the Company all originals and copies of the Assessments and Reports.

(d) The Company warrants and represents that the Company has provided the City with copies of all emergency and hazardous chemical inventory forms (hereinafter “Environmental Notices”) showing Hazardous Substances on the Project Site given within two years preceding the date hereof, as of the date hereof, by the Company to any federal, state or local governmental authority or agency as required pursuant to the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C.A. §11001 *et seq.*, or any other applicable Environmental Laws. The Company will provide the City and the Trustee with copies of all Environmental Notices concerning Hazardous Substances on the Project Site subsequently sent to any such governmental authority or agency as required pursuant to the Emergency Planning and Community Right-to-Know Act of 1986 or any other applicable Environmental Laws. Such copies of subsequent Environmental Notices shall be sent to the City and the Trustee concurrently with their being mailed to any such governmental authority or agency.

(e) The Company will comply with and operate and at all times use, keep and maintain the Project and every part thereof (whether or not such property constitutes a facility, as defined in 42 U.S.C. § 9601 *et seq.*) in material conformance with all applicable Environmental Laws. Without limiting the generality of the foregoing, the Company will not use, generate, treat, store, dispose of or otherwise introduce any Hazardous Substance into or on the Project or any part thereof in any material respect nor cause, suffer, allow or permit anyone else to do so except in compliance with all applicable Environmental Laws.

(f) The Company agrees to defend, indemnify, protect and hold harmless the City and the Trustee and their directors, officers, shareholders, officials and employees from and against any and all claims, demands, costs, liabilities, damages or expenses, including reasonable attorneys’ fees, arising from (i) any release (as defined in 42 U.S.C. § 9601 (22)), actual or alleged, of any Hazardous Substances, upon the Project Site or respecting any products or materials previously, now or hereafter located upon the Project Site, regardless of whether such release or alleged release has occurred before the date hereof or hereafter occurs and regardless of whether such release or alleged release occurs as a result of any act, omission, negligence or misconduct of the Company or any third party or otherwise,

(ii) any violation now existing or hereafter arising (actual or alleged) of, or any other liability under or in connection with, any applicable Environmental Laws (A) relating to or affecting the Project, or (B) relating to any products or materials previously, now or hereafter located upon the Project Site, regardless of whether such violation or alleged violation or other liability is asserted or has occurred or arisen before the date hereof or hereafter is asserted or occurs or arises and regardless of whether such violation or alleged violation or other liability occurs or arises as the result of any act, omission, negligence or misconduct of the Company or any third party or otherwise, (iii) any assertion by any third party of any claims or demands for any loss or injury arising out of, relating to or in connection with any Hazardous Substances on or allegedly on the Project Site, or (iv) any material breach, falsity or failure of any of the representations, warranties, covenants and agreements contained in this Section; provided, however, that the Company's obligations under this **Section 10.9(f)** shall not apply to the City to the extent such claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, are the result of (1) work being performed at the Project by employees of the City or (2) negligence or willful misconduct of the City. The City and the Trustee shall cooperate with the Company in the defense of any matters included within the foregoing indemnity without any obligation to expend money. The City and the Trustee shall cooperate fully with the Company in defending any such claims, demands, costs, liabilities, damages or expenses. This subsection (f) shall survive any termination of this Lease.

ARTICLE XI

OPTION AND OBLIGATION TO PURCHASE THE PROJECT

Section 11.1. Option to Purchase the Project. The Company shall have, and is hereby granted, the option to purchase all or any portion of the City's interest in the Project, at any time, upon payment in full or redemption of the Outstanding Bonds to be redeemed or provision for their payment or redemption having been made pursuant to **Article XIII** of the Indenture. To exercise such option, the Company shall give written notice to the City and to the Trustee and shall specify therein the date of closing of such purchase, which date shall be not less than 15 nor more than 90 days from the date such notice is mailed, provide evidence of payment of all real property taxes with respect to the Project, and in case of a redemption of the Bonds in accordance with the provisions of the Indenture, the Company shall make arrangements satisfactory to the Trustee for the giving of the required notice of redemption. Notwithstanding the foregoing, if the City or the Trustee provides notice of its intent to exercise its remedies hereunder upon an Event of Default (a "Remedies Notice"), the Company shall be deemed to have exercised its purchase option under this Section on the 29th day following the issuance of the Remedies Notice without any further action by the Company; provided said Remedies Notice has not been rescinded by such date. The Company may rescind such exercise by providing written notice to the City and the Trustee on or before the 29th day and by taking such action as may be required to cure the default that led to the giving of the Remedies Notice. The purchase price payable by the Company if it exercises the option granted in this Section shall be the sum of the following:

- (a) an amount of money which, when added to the amount then on deposit in the Bond Fund, will be sufficient to redeem all or a portion of the then-Outstanding Bonds on the earliest redemption date next succeeding the closing date, including, without limitation, principal and interest to accrue to said redemption date and redemption expense; plus
- (b) an amount of money equal to the Trustee's and the Paying Agent's agreed to and reasonable fees, charges and expenses under the Indenture accrued and to accrue until such redemption of the Bonds; plus

(c) an amount of money equal to the City's reasonable charges and expenses incurred in connection with the Company exercising its option to purchase all or a portion of the Project (the City hereby agreeing to provide the Company with prior written notice if such charges and expenses are expected to exceed \$2,000); plus

(d) the sum of \$100.00.

Section 11.2. Conveyance of the Project. At the closing of the purchase of the Project pursuant to this Article, the City will, upon receipt of the purchase price, deliver to the Company the following:

(a) a release from the Trustee of the Project from the lien and/or security interest of the Indenture and this Lease and appropriate termination of financing statements as required under the Uniform Commercial Code; and

(b) such other documents as may be reasonably necessary to effectuate the conveyance of the Project, including without limitation a termination of the Base Lease and this Lease.

Section 11.3. Relative Position of Option and Indenture. The option to purchase the Project granted to the Company in this Article shall be and remain prior and superior to the Indenture and may be exercised whether or not the Company is in default under this Lease; provided that such option will not result in nonfulfillment of any condition to the exercise of such option (including the payment of all amounts specified in **Section 11.1**) and further provided that the option herein granted shall terminate upon the termination of this Lease.

Section 11.4. Obligation to Purchase the Project. The Company hereby agrees to purchase, and the City hereby agrees to sell, the Project upon (a) the occurrence of the expiration of the Lease Term following full payment of the Bonds or provision for payment thereof having been made in accordance with the provisions of the Indenture and (b) payment of all real property taxes with respect to the Project. The amount of the purchase price under this Section shall be the sum of the items set forth in **Sections 11.1(a)-(d)**. The purchase price shall be paid by the Company within 90 days of the expiration of the Lease Term.

Section 11.5. Right to Set-Off. At its option, to be exercised at least five days before the date of closing on any purchase of the Project, the Company may deliver to the Trustee for cancellation Bonds not previously paid, and the Company shall receive a credit against the purchase price payable by the Company in an amount equal to 100% of the principal amount of the Bonds so delivered for cancellation, plus the accrued interest thereon. The Company may set-off any payment obligation under **Section 11.1(a)** by tendering, or causing the tender of, a corresponding amount of the Bonds to the Trustee for cancellation.

ARTICLE XII

DEFAULTS AND REMEDIES

Section 12.1. Events of Default. If any one or more of the following events occurs and is continuing, it is hereby defined as and declared to be and to constitute an “Event of Default” under this Lease:

(a) default in the due and punctual payment of Basic Rent or Additional Rent within 10 days after written notice thereof from the City to the Company; or

(b) default in the due observance or performance of any other covenant, agreement, obligation or provision of this Lease on the Company’s part to be observed or performed, and such default continues for 60 days after the City or the Trustee has given the Company written notice specifying such default (or such longer period as is reasonably required to cure such default, provided that (i) the Company has commenced such cure within said 60-day period, and (ii) the Company diligently prosecutes such cure to completion); or

(c) the Company: (i) admits in writing its inability to pay its debts as they become due; or (ii) files a petition in bankruptcy or for reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the United States Bankruptcy Code as now or in the future amended or any other similar present or future federal or state statute or regulation, or files a pleading asking for such relief; or (iii) makes an assignment for the benefit of creditors; or (iv) consents to the appointment of a trustee, receiver or liquidator for all or a substantial portion of its property or fails to have the appointment of any trustee, receiver or liquidator made without the Company’s consent or acquiescence, vacated or set aside; or (v) is finally adjudicated as bankrupt or insolvent under any federal or state law; or (vi) is subject to any proceeding, or suffers the entry of a final and non-appealable court order, under any federal or state law appointing a trustee, receiver or liquidator for all or a substantial portion of its property or ordering the winding-up or liquidation of its affairs, or approving a petition filed against it under the United States Bankruptcy Code, as now or in the future amended, which order or proceeding, if not consented to by it, is not dismissed, vacated, denied, set aside or stayed within 90 days after the day of entry or commencement; or (vii) suffers a writ or warrant of attachment or any similar process to be issued by any court against all or a substantial portion of its property, and such writ or warrant of attachment or any similar process is not contested, stayed or released within 60 days after the final entry or levy or after any contest is finally adjudicated or any stay is vacated or set aside.

Section 12.2. Remedies on Default. If any Event of Default referred to in **Section 12.1** has occurred and continues beyond the period provided to cure, then the City may at the City’s election (subject, however, to any restrictions against acceleration of the maturity of the Bonds or termination of this Lease in the Indenture), then or at any time thereafter, and while such default continues, take any one or more of the following actions, in addition to the remedies provided in **Section 12.5**:

(a) cause all amounts payable with respect to the Bonds for the remainder of the term of this Lease to become due and payable, as provided in the Indenture; or

(b) give the Company written notice of intention to terminate this Lease on a date specified therein, which date shall not be earlier than 60 days after such notice is given, and if all

defaults have not then been cured, on the date so specified, the Owners shall tender or be deemed to have tendered the Outstanding principal amount of the Bonds for cancellation with instruction that such tender is in lieu of payment in accordance with **Section 11.5**, the Company's rights to possession of the Project shall cease and this Lease shall thereupon be terminated, and the City may re-enter and take possession of the Project or the City may convey the Project to the Company and bring an action against the Company for the purchase price of the Project under **Section 11.1**; provided, however, if the Company has paid all obligations due and owing under the Indenture and this Lease, the City shall convey the Project in accordance with **Section 11.2**. The Company's rights to cause the conveyance of the Project in accordance with **Section 11.2** shall survive the expiration or termination of this Lease.

Section 12.3. Survival of Obligations. The Company covenants and agrees with the City and the Owners that its obligations under this Lease shall survive the cancellation and termination of this Lease, for any cause, and that the Company shall continue to pay the Basic Rent and Additional Rent (to the extent the Bonds remain Outstanding) and perform all other obligations provided for in this Lease, all at the time or times provided in this Lease; provided, however, that upon the payment of all Basic Rent and Additional Rent required under **Article V** hereof, and upon the satisfaction and discharge of the Indenture under **Section 1301** thereof, and upon the Company's exercise of the purchase option contained in **Article XI** hereof, the Company's obligations under this Lease shall thereupon cease and terminate in full, except that obligations with respect to compensation and indemnification of the City and the Trustee shall not so terminate.

Section 12.4. Performance of the Company's Obligations by the City. Upon an Event of Default, the City, or the Trustee in the City's name, may (but shall not be obligated so to do) upon the continuance of such failure on the Company's part for 60 days after written notice of such failure is given to the Company by the City or the Trustee, and without waiving or releasing the Company from any obligation hereunder, as an additional but not exclusive remedy, make any such payment or perform any such obligation, and all reasonable sums so paid by the City or the Trustee and all necessary incidental reasonable costs and expenses incurred by the City or the Trustee (including, without limitation, attorneys' fees and expenses) in performing such obligations shall be deemed Additional Rent and shall be paid to the City or the Trustee on demand, and if not so paid by the Company, the City or the Trustee shall have the same rights and remedies provided for in **Section 12.2** in the case of default by the Company in the payment of Basic Rent.

Section 12.5. Rights and Remedies Cumulative. The rights and remedies reserved by the City and the Company hereunder are in addition to those otherwise provided by law and shall be construed as cumulative and continuing rights. No one of them shall be exhausted by the exercise thereof on one or more occasions. To the extent provided by Missouri law, the City and the Company shall each be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Lease. Notwithstanding anything in this **Section 12.5** or elsewhere in this Lease to the contrary, however, the Company's option to purchase the Project as provided in **Article XI** above shall not be terminated upon an Event of Default unless and until this Lease is terminated to the extent permitted pursuant to **Section 12.2(b)** above. The parties agree that no provision of this Lease shall be construed to allow the City to require the Company to acquire, construct or install the Project.

Section 12.6. Waiver of Breach. No waiver of any breach of any covenant or agreement herein contained shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by the Company of

any covenant, agreement or undertaking, the City may nevertheless accept from the Company any payment or payments hereunder without in any way waiving the City's right to exercise any of its rights and remedies provided for herein with respect to any such default or defaults of the Company which were in existence at the time such payment or payments were accepted by the City.

Section 12.7. Trustee's Exercise of the City's Remedies. Whenever any Event of Default has occurred and is continuing, the Trustee may, but except as otherwise provided in the Indenture shall not be obliged to, exercise any or all of the rights of the City under this Article, upon notice as required of the City unless the City has already given the required notice. In addition, the Trustee shall have available to it all of the remedies prescribed by the Indenture.

ARTICLE XIII

ASSIGNMENT AND SUBLEASE

Section 13.1. Assignment; Sublease.

(a) The Company may sublease, assign, transfer, encumber or dispose of this Lease or any interest herein or part hereof for any lawful purpose under the Act upon providing written notice to the City. The Company must obtain the written consent of the City Manager before any such disposition, except such consent shall not be required for:

- (i) an assignment to another party that continues to lease the Project to the Company;
- (ii) a disposition to an entity controlled by or under common control with or controlling the Company or an entity into which the Company is being merged or consolidated; or
- (iii) an assignment to a Financing Party.

(b) With respect to any assignment, the Company shall comply with the following conditions:

- (i) the Company shall notify the City and the Trustee of the assignment in writing;
- (ii) the Company shall provide evidence of payment of all amounts then-due under this Lease;
- (iii) such assignment shall be in writing, duly executed and acknowledged by the assignor and in proper form for recording;
- (iv) such assignment shall include the entire then unexpired term of this Lease; and
- (v) a duplicate original of such assignment shall be delivered to the City and the Trustee within 10 days after the execution thereof, together with an assumption agreement, duly executed and acknowledged by the assignee and in proper form for recording, by which the assignee shall assume all of the terms, covenants and conditions of this Lease on the part of the Company to be performed and observed.

(c) Any assignee of all the rights of the Company shall agree to be bound by the terms of this Lease and any other documents related to the issuance of the Bonds. Upon such assignment of all the rights of the Company and agreement by the assignee to be bound by the terms of this Lease and any other documents related to the issuance of the Bonds, the Company shall be released from and have no further obligations under this Lease or any other document related to the issuance of the Bonds.

(d) Notwithstanding the foregoing, the Company may, in its ordinary course of business, sublease all or portions of the Project to tenants without the prior consent of the City so long as the Company remains obligated to perform all of its obligations under this Lease and the Base Lease.

Section 13.2. Assignment of Revenues by City. The City shall assign and pledge any rents, revenues and receipts receivable under this Lease to the Trustee pursuant to the Indenture as security for payment of the principal of and interest and premium, if any, on the Bonds, and the Company hereby consents to such pledge and assignment.

Section 13.3. Prohibition Against Leasehold Mortgage of Project. The City shall not mortgage its leasehold interest in the Project but may assign its interest in and pledge any moneys receivable under this Lease to the Trustee pursuant to the Indenture as security for payment of the principal of and interest on the Bonds.

Section 13.4. Restrictions on Sale or Encumbrance of Project by City. During the Lease Term, the City agrees that, except to secure the Bonds to be issued pursuant to the Indenture and except to enforce its rights under **Section 12.2(b)**, it will not sell, assign, encumber, mortgage, transfer or convey the Project or any interest therein.

ARTICLE XIV

AMENDMENTS, CHANGES AND MODIFICATIONS

Section 14.1. Amendments, Changes and Modifications. Except as otherwise provided in this Lease or in the Indenture, subsequent to the issuance of the Bonds and before the payment in full of the Bonds (or provision for the payment thereof having been made in accordance with the provisions of the Indenture), this Lease may not be effectively amended, changed, modified, altered or terminated without the prior written consent of the Trustee, given in accordance with the provisions of the Indenture, which consent, however, shall not be unreasonably withheld, and the written consent of all of the Owners and each Financing Party.

ARTICLE XV

MISCELLANEOUS PROVISIONS

Section 15.1. Notices. All notices, certificates or other communications required or desired to be given hereunder shall be in writing and shall be deemed duly given when (a) mailed by registered or certified mail, postage prepaid, or (b) sent by overnight delivery or other delivery service which requires written acknowledgment of receipt by the addressee, addressed as follows:

(i) To the City:

City of University City, Missouri
6801 Delmar Boulevard
University City, Missouri 63130
ATTN: City Manager

with a copy to:

John F. Mulligan, Jr.
Attorney at Law
6 Carrswold
Clayton, Missouri 63105

(ii) To the Trustee:

UMB Bank, N.A.
2 South Broadway, Suite 600
St. Louis, Missouri 63102
ATTN: Corporate Trust Department

(iii) To the Company:

Dierbergs University City, LLC
16690 Swingley Ridge Road, Suite 475
Chesterfield, Missouri 63017
ATTN: Brent Beumer, Esq.

with a copy to:

Husch Blackwell LLP
8001 Forsyth Blvd., Suite 1500
Clayton, Missouri 63105
ATTN: Jonathan Giokas, Esq.

All notices given by certified or registered mail as aforesaid shall be deemed fully given as of the date they are so mailed, provided, however, that notice to the Trustee shall be effective only upon receipt. A duplicate copy of each notice, certificate or other communication given hereunder by either the City or the Company to the other shall also be given to the Trustee and any Financing Party requesting such notice. The City, the Company and the Trustee may from time to time designate, by notice given hereunder to the others of such parties, such other address to which subsequent notices, certificates or other communications shall be sent.

Section 15.2. City Shall Not Unreasonably Withhold Consents and Approvals. Wherever in this Lease it is provided that the City shall, may or must give its approval or consent, or execute supplemental agreements or schedules, the City shall not unreasonably, arbitrarily or unnecessarily withhold or refuse to give such approvals or consents or refuse to execute such supplemental agreements or schedules; provided, however, that nothing in this Lease shall be interpreted to affect the City's rights to approve or deny any additional project or matter unrelated to the Project subject to zoning, building permit or other regulatory approvals by the City.

Section 15.3. Net Lease. The parties hereto agree (a) that this Lease shall be deemed and construed to be a net lease, (b) that the payments of Basic Rent are designed to provide the City and the Trustee funds adequate in amount to pay all principal of and interest accruing on the Bonds as the same becomes due and payable, (c) that to the extent that the payments of Basic Rent are not sufficient to provide the City and the Trustee with funds sufficient for the purposes aforesaid, the Company shall be obligated to pay, and it does hereby covenant and agree to pay, upon demand therefor, as Additional Rent, such further sums of money, in cash, as may from time to time be required for such purposes, and (d) that if after the principal of and interest on the Bonds and all costs incident to the payment of the Bonds (including the fees and expenses of the City and the Trustee) have been paid in full the Trustee or the City holds unexpended funds received in accordance with the terms hereof such unexpended funds shall, after payment therefrom of all sums then due and owing by the Company under the terms of this Lease, and except as otherwise provided in this Lease and the Indenture, become the absolute property of and be paid over forthwith to the Company.

Section 15.4. Limitation on Liability of City. No provision, covenant or agreement contained in this Lease, the Indenture or the Bonds, 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 pecuniary liability or a charge upon the general credit or taxing powers of the City or the State of Missouri.

Section 15.5. Governing Law. This Lease shall be construed in accordance with and governed by the laws of the State of Missouri.

Section 15.6. Binding Effect; Third-Party Beneficiary. This Lease shall be binding upon and shall inure to the benefit of the City and the Company and their respective successors and assigns. Each Financing Party shall be a third-party beneficiary of any provisions contained herein granting rights to a Financing Party.

Section 15.7. Severability. If for any reason any provision of this Lease is determined to be invalid or unenforceable, the validity and enforceability of the other provisions hereof shall not be affected thereby.

Section 15.8. Execution in Counterparts. This Lease may be executed in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

Section 15.9. Electronic Transaction.

(a) The parties agree that the transaction described herein may be conducted and related documents may be sent, received or stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

(b) The counterparts of this Lease may be executed and delivered by facsimile or electronic signature (including portable document format) by either of the parties hereto, and the receiving party may rely on the receipt of any counterpart so executed and delivered electronically or by facsimile as if the original had been received. Each party may sign and transmit an electronic signature on this Lease, which signature shall be binding on the party whose name is contained thereon. The intentional action in electronically signing this Lease shall be evidence of consent to be legally bound by this Lease. Each

party agrees to not contest the admissibility or enforceability of the electronically signed copy of this Lease in any proceeding arising out of the terms and conditions of this Lease.

(c) Notwithstanding anything in this Section to the contrary and with respect to the recording of any electronic documents, the parties shall comply with the requirements of Section 59.569 of the Revised Statutes of Missouri.

Section 15.10. City Consents and Approvals. Pursuant to the Ordinance, the City Manager is authorized to execute all documents on behalf of the City (including documents pertaining to the transfer of property or the financing or refinancing of the Project by the Company) as may be required to carry out and comply with the intent of the Ordinance, the Indenture and this Lease. The City Manager is also authorized, unless expressly prohibited herein, to grant on behalf of the City such consents, estoppels and waivers relating to the Bonds, the Indenture, this Lease or the extension of the Completion Date as may be requested by the Company during the term hereof; provided, such consents, estoppels and/or waivers shall not increase the principal amount of the Bonds, increase the term of this Lease or the economic incentives provided for herein, waive an Event of Default or materially change the nature of the transaction unless approved by ordinance of the City Council.

Section 15.11. Anti-Discrimination Against Israel Act. Pursuant to Section 34.600 of the Revised Statutes of Missouri, the Company certifies it is not currently engaged in and will not, for the duration of this Lease, engage in a boycott of goods or services from (a) the State of Israel, (b) companies doing business in or with the State of Israel or authorized by, licensed by, or organized under the laws of the State of Israel, or (c) persons or entities doing business in the State of Israel.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed in their respective names by their duly authorized signatories, all as of the date first above written.

CITY OF UNIVERSITY CITY, MISSOURI

By: _____
Gregory Rose, City Manager

[SEAL]

ATTEST:

By: _____
LaRette Reese, City Clerk

DIERBERGS UNIVERSITY CITY, LLC,
a Missouri limited liability company

By: _____
Name: _____
Title: _____

EXHIBIT A

PROJECT SITE

The land situated in the County of St. Louis, State of Missouri, and described as follows:

A tract of land situated in the City of University City, the County of St. Louis, and the State of Missouri, lying in part of Section 05, Township 45 North, Range 6 East, being all of Lot 5 of Market at Olive Plat 3, a subdivision to be filed for record in the Land records of St. Louis County, Missouri, and part of Adjusted Lot 7 of Market at Olive Plat 3R, a subdivision filed for record in Plat Book 370, Page 471 of said Land Records, and part of Common Ground of Market at Olive Plat 2, a subdivision filed for record in Plat Book 370, pages 202-205 of said Land Records, and being more particularly described as follows:

Beginning at the Northwest corner of McKnight Heights, a subdivision filed for record in Plat Book 54, Page 41 of said Land Records, said Northwest corner also being on the East line of a tract of land conveyed to Bi State Development Agency of MO-IL Metropolitan District as recorded in Deed Book 13245, Page 1568 of said Land Records; thence along said East line of Bi State Development Agency of MO-IL Metropolitan District tract, North 01 degrees 20 minutes 54 seconds West, a distance of 751.82 feet to the Southern right-of-way line of Olive Boulevard as widened by Document 2022100500173 and Document 202210050174 of said Land Records; thence along said Southern right-of-way line the following courses and distances: North 88 degrees 18 minutes 06 seconds East, a distance of 119.51 feet; South 87 degrees 35 minutes 11 seconds East, a distance of 108.37 feet; South 87 degrees 35 minutes 11 seconds East, a distance of 27.92 feet; North 78 degrees 07 minutes 23 seconds East, a distance of 2.17 feet; North 78 degrees 07 minutes 23 seconds East, a distance of 44.31 feet; North 89 degrees 26 minutes 53 seconds East, a distance of 51.29 feet; South 83 degrees 41 minutes 53 seconds East, a distance of 84.96 feet; South 83 degrees 41 minutes 53 seconds East, a distance of 14.20 feet; thence leaving said Southern right-of-way line, South 00 degrees 27 minutes 36 seconds West, a distance of 345.85 feet; thence South 89 degrees 24 minutes 23 seconds West, a distance of 12.90 feet to the West line of said Common Ground of Market at Olive Plat 2; thence along said West line of Common Ground, South 00 degrees 15 minutes 25 seconds West, a distance of 89.14 feet to the Northwest corner of McKnight Downs, a subdivision filed for record in Plat Book 55 Page 89 of said Land Records of St. Louis County; thence along the West line of said McKnight Downs, South 00 degrees 15 minutes 25 seconds West, a distance of 315.75 feet to the North line of said McKnight Heights; thence along said North line the following courses and distances: North 89 degrees 44 minutes 12 seconds West, a distance of 169.69 feet; North 89 degrees 39 minutes 11 seconds West, a distance of 246.10 feet to the point of beginning.

Containing 7.500 Acres (326,700 Square Feet) by Grimes Consulting, Inc., LS-343-D, dated February 2023.

EXHIBIT B

FORM OF REQUISITION CERTIFICATE

Requisition No. _____
Date: _____

REQUISITION CERTIFICATE

TO: UMB BANK, N.A., AS TRUSTEE UNDER A TRUST INDENTURE DATED AS OF MAY 1, 2023, BETWEEN THE CITY OF UNIVERSITY CITY, MISSOURI, AND THE TRUSTEE, AND A LEASE AGREEMENT DATED AS OF MAY 1, 2023, BETWEEN THE CITY OF UNIVERSITY CITY, MISSOURI, AND DIERBERGS UNIVERSITY CITY, LLC

The undersigned Authorized Company Representative hereby states and certifies that:

1. A total of \$_____ is requested to pay for Project Costs. The total amount of this requisition and all prior requisitions is as follows:

<u><i>Date of Project Costs</i></u>	<u><i>Amount Submitted in this Requisition</i></u>	<u><i>Requisitions Submitted to Date (Including this Requisition)</i></u>

2. Said Project Costs shall be paid in whole from Bond proceeds in such amounts, to such payees and for such purposes as set forth on **Schedule 1**.

3. Each of the items for which payment is requested is or was desirable and appropriate in connection with the purchase and construction of the Project, has been properly incurred and is a proper charge against the Project Fund, has been paid by the Company or is justly due to the Persons whose names and addresses are stated on **Schedule 1**, and has not been the basis of any previous requisition from the Project Fund.

4. As of this date, except for the amounts referred to above, to the best of my knowledge there are no outstanding disputed statements for which payment is requested for labor, wages, materials, supplies or services in connection with the purchase and construction of the Project which, if unpaid, might become the basis of a vendors', mechanics', laborers' or materialmen's statutory or similar lien upon the Project or any part thereof.

5. Capitalized words and terms used in this Requisition Certificate have the meanings given to such words and terms in **Section 101** of the Trust Indenture.

6. With respect to this disbursement, the Company (i) certifies it has reviewed any wire instructions set forth herein to confirm such wire instructions are accurate and (ii) agrees it will not seek recourse from the Trustee as a result of losses incurred by it for making the disbursement in accordance with the instructions herein.

DIERBERGS UNIVERSITY CITY, LLC

By: _____
Authorized Company Representative

Approved this ____ day of _____, 20__.

CITY OF UNIVERSITY CITY, MISSOURI

By: _____
Gregory Rose, City Manager

SCHEDULE 1 TO REQUISITION CERTIFICATE

PROJECT COSTS

<u>Payee and Address</u>	<u>Description</u>	<u>Amount</u>
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EXHIBIT D

BOND PURCHASE AGREEMENT

[On file in the office of the City Clerk]

\$34,000,000
(AGGREGATE MAXIMUM PRINCIPAL AMOUNT)
CITY OF UNIVERSITY CITY, MISSOURI
TAXABLE INDUSTRIAL REVENUE BONDS
(DIERBERGS UNIVERSITY CITY, LLC PROJECT)
SERIES 2023

Dated as of May 1, 2023

BOND PURCHASE AGREEMENT

Honorable Mayor and City Council
City of University City, Missouri

On the basis of the representations and covenants and upon the terms and conditions contained in this Bond Purchase Agreement, Dierbergs University City, LLC, a Missouri limited liability company (the “Purchaser”), offers to purchase from the City of University City, Missouri (the “City”), the above-referenced bonds (the “Bonds”), to be issued by the City under and pursuant to Ordinance No. _____, adopted by the City Council on May ___, 2023 (the “Ordinance”) and a Trust Indenture dated as of May 1, 2023, pursuant to which the Bonds are issued (the “Indenture”), by and between the City and UMB Bank, N.A., as trustee (the “Trustee”). *Capitalized terms not otherwise defined herein shall have the meanings set forth in the Indenture.*

SECTION 1. REPRESENTATIONS AND AGREEMENTS

(a) By the City’s acceptance hereof, the City hereby represents to the Purchaser that:

(1) The City is a home-rule charter city duly organized and validly existing under the laws of the State of Missouri. The City is authorized pursuant to the Constitution and laws of the State of Missouri, its charter and the ordinances, orders and resolutions of the City, and all necessary action has been taken to authorize, issue and deliver the Bonds and to consummate all transactions contemplated by the Ordinance, this Bond Purchase Agreement, the Indenture, the Base Lease dated as of May 1, 2023 by and between the Purchaser and the City (the “Base Lease”), the Lease Agreement dated as of May 1, 2023 by and between the City and the Purchaser (the “Lease”) and any and all other agreements relating thereto. The proceeds of the Bonds shall be used for the purpose of acquiring, constructing and improving the Project and paying the costs incurred in connection with the issuance of the Bonds.

(2) There is no controversy, suit or other proceeding of any kind pending or, to the City’s knowledge, threatened wherein or whereby any question is raised or may be raised, questioning, disputing or affecting in any way the legal organization of the City or its boundaries, or the right or title of any of its officers to their respective offices, or the legality of any official act leading up to the issuance of the Bonds, or the constitutionality or validity of the obligations represented by the Bonds or the validity of the Bonds, the Ordinance, the Base Lease, the Lease, the Indenture or this Bond Purchase Agreement.

(b) The Purchaser represents as follows:

(1) *Organization.* The Purchaser is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Missouri.

(2) *No Conflict or Breach.* The execution, delivery and performance of this Bond Purchase Agreement by the Purchaser have been duly authorized by all necessary action of the Purchaser and do not and will not conflict with or result in the breach of any of the terms, conditions or provisions of, or constitute a default under, its organizational documents, any law, court or administrative regulation, decree or order applicable to or binding upon the Purchaser, or, to the best of its knowledge, any agreement, indenture, mortgage, lease or instrument to which the Purchaser is a party or by which it is bound.

(3) *Document Legal, Valid and Binding.* When executed and delivered by the Purchaser, this Bond Purchase Agreement will be, and is, a legal, valid and binding obligation, enforceable in accordance with its terms, subject, as to enforcement, to any applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting the enforcement of creditors' rights generally and further subject to the availability of equitable remedies.

(4) *Purchaser's Certificates.* Any certificate signed by an authorized officer or agent of the Purchaser and delivered to the City shall be deemed a representation and warranty by the Purchaser to the City as to the statements made therein.

SECTION 2. PURCHASE, SALE AND DELIVERY OF THE BONDS

On the basis of the representations and covenants contained herein and in the other agreements referred to herein, and subject to the terms and conditions set forth herein and in the Indenture, the Purchaser agrees to purchase from the City and the City agrees to sell to the Purchaser the Bonds on the terms and conditions set forth herein.

The Bonds shall be sold to the Purchaser by the City on the Closing Date (hereinafter defined) upon payment of an amount equal to the Closing Price (hereinafter defined), which amount shall be applied as provided in the Indenture and the Lease. From time to time after the Closing Date, the Purchaser shall make additional payments with respect to the Bonds ("Additional Payments") to the Trustee under the Indenture, which Additional Payments shall be applied to the payment of Project Costs or as provided in the Indenture and the Lease; provided that the sum of the Closing Price and all such Additional Payments shall not, in the aggregate, exceed \$34,000,000 plus the costs of issuance of the Bonds (if such costs of issuance are not paid with Bond proceeds).

As used herein, the term "Closing Date" shall mean _____, 2023, or such other date as shall be mutually agreed upon by the City and the Purchaser; the term "Closing Price" shall mean the amount specified in writing by the Purchaser and agreed to by the City as the amount required to pay for the initial issuance of the Bonds on the Closing Date, which amount shall be equal to any Project Costs spent by the Purchaser from its own funds on or before the Closing Date, and, at the Purchaser's option, the costs of issuance of the Bonds if such costs are not paid for from Bond proceeds.

The Bonds shall be issued under and secured as provided in the Ordinance and the Indenture and the Lease authorized thereby, and the Bonds shall have the maturity date and interest rate and shall be subject to redemption as set forth therein. The delivery of the Bonds shall be made in definitive form as a

fully-registered bond in the maximum aggregate principal denomination of \$34,000,000; provided, that the principal amount of the Bonds outstanding at any time shall be that amount recorded in the records of the Trustee and further provided that interest shall be payable only on the outstanding principal amount of the Bonds, as more fully provided in the Indenture.

The City will not enter into any bond purchase agreements or other agreements to issue, sell or otherwise transfer the Bonds to any party under the Indenture or otherwise except pursuant to this Bond Purchase Agreement.

SECTION 3. CONDITIONS TO THE OBLIGATIONS

The obligations hereunder shall be subject to the due performance by the parties of the obligations and agreements to be performed hereunder on or prior to the Closing Date and to the accuracy of and compliance with the representations contained herein, as of the date hereof and as of the Closing Date, and are also subject to the following conditions:

(a) There shall be delivered to the Purchaser on or prior to the Closing Date a duly certified copy of the Ordinance, the Indenture, the Base Lease, the Lease, this Bond Purchase Agreement and any other instrument contemplated thereby, and such documents shall be in full force and effect and shall not have been modified or changed except as may have been agreed to in writing by the Purchaser.

(b) The City shall confirm on the Closing Date by a certificate that at and as of the Closing Date the City has taken all action necessary to issue the Bonds and that there is no controversy, suit or other proceeding of any kind pending or, to its knowledge, threatened against the City wherein any question is raised affecting in any way the legal organization of the City, or the legality of any official act shown to have been done in the transcript of proceedings leading up to the issuance of the Bonds, or the constitutionality or validity of the obligations represented by the Bonds or the validity of the Bonds or any proceedings in relation to the issuance or sale thereof.

(c) The Purchaser shall execute a certificate, dated the Closing Date, to the effect that (1) no litigation, proceeding or investigation is pending against the Purchaser or its affiliates or, to the knowledge of the Purchaser, threatened which would (A) contest, affect, restrain or enjoin the issuance, validity, execution, delivery or performance of the Bonds, or (B) in any way contest the existence or powers of the Purchaser, (2) no litigation, proceeding or investigation is pending or, to the knowledge of the Purchaser, threatened against the Purchaser that could reasonably be expected to adversely affect its ability to perform its obligations under the Lease, (3) the representations and warranties of the Purchaser herein were and are true and correct in all material respects and not misleading as of the date made and as of the Closing Date, and (4) such other matters as are reasonably requested by the other parties in connection with the issuance of the Bonds.

SECTION 4. THE PURCHASER'S RIGHT TO CANCEL

The Purchaser may cancel its obligation hereunder to purchase the Bonds by notifying the City in writing at or before the Closing Date.

SECTION 5. CONDITIONS OF OBLIGATIONS

The obligations of the parties hereto are subject to the receipt of the approving opinion of Gilmore & Bell, P.C., Bond Counsel (if one is requested), with respect to the validity of the authorization and issuance of the Bonds.

SECTION 6. REPRESENTATIONS AND AGREEMENTS TO SURVIVE DELIVERY

All of the representations and agreements by either party shall remain operative and in full force and effect and shall survive delivery of the Bonds to the Purchaser.

SECTION 7. NOTICE

Any notice or other communication to be given under this Bond Purchase Agreement may be given in writing by mailing or delivering the same as follows:

(a) To the City:

City of University City, Missouri
6801 Delmar Boulevard
University City, Missouri 63130
ATTN: City Manager

with a copy to:

John F. Mulligan, Jr.
Attorney at Law
6 Carrswold
Clayton, Missouri 63105

(b) To the Trustee:

UMB Bank, N.A.
2 South Broadway, Suite 600
St. Louis, Missouri 63102
ATTN: Corporate Trust Department

(c) To the Purchaser:

Dierbergs University City, LLC
16690 Swingley Ridge Road, Suite 475
Chesterfield, Missouri 63017
ATTN: Brent Beumer, Esq.

with a copy to:

Husch Blackwell LLP
8001 Forsyth Blvd., Suite 1500
Clayton, Missouri 63105
ATTN: Jonathan Giokas, Esq.

SECTION 8. APPLICABLE LAW; ASSIGNABILITY

This Bond Purchase Agreement shall be governed by the laws of the State of Missouri. This Bond Purchase Agreement may be assigned by the Purchaser to any Person that expressly assumes in writing all of the obligations of the Purchaser contained in the Base Lease and the Lease; provided that the consent of the City for the assignment of this Bond Purchase Agreement shall not be required if the consent of the City is not required for such Person's assumption of the Lease under the provisions of **Article XIII** thereof. Any such assignee shall agree to be bound by the terms of this Bond Purchase Agreement. This Bond Purchase Agreement may be assigned and the Bonds may be pledged, without approval of but with notice to the City, by the Purchaser to any lender of the Purchaser as collateral for a loan secured by a deed of trust or mortgage of the Project.

SECTION 9. EXECUTION IN COUNTERPARTS; ELECTRONIC SIGNATURE

(a) This Bond Purchase Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same document.

(b) The counterparts of this Bond Purchase Agreement may be executed and delivered by facsimile or electronic signature (including portable document format) by either of the parties hereto, and the receiving party may rely on the receipt of any counterpart so executed and delivered electronically or by facsimile as if the original had been received. Each party may sign and transmit an electronic signature on this Bond Purchase Agreement, which signature shall be binding on the party whose name is contained thereon. The intentional action in electronically signing this Bond Purchase Agreement shall be evidence of consent to be legally bound by this Bond Purchase Agreement. Each party agrees to not contest the admissibility or enforceability of the electronically signed copy of this Bond Purchase Agreement in any proceeding arising out of the terms and conditions of this Bond Purchase Agreement.

SECTION 10. ANTI-DISCRIMINATION AGAINST ISRAEL ACT

Pursuant to Section 34.600 of the Revised Statutes of Missouri, the Purchaser certifies it is not currently engaged in and shall not, for the duration of this Bond Purchase Agreement, engage in a boycott of goods or services from (a) the State of Israel, (b) companies doing business in or with the State of Israel or authorized by, licensed by, or organized under the laws of the State of Israel, or (c) persons or entities doing business in the State of Israel.

[Remainder of Page Intentionally Left Blank]

Very truly yours,

DIERBERGS UNIVERSITY CITY, LLC,
a Missouri limited liability company

By: _____
Name: _____
Title: _____

DATE OF EXECUTION: _____, 2023

Accepted and Agreed to this ____ day of _____, 2023.

CITY OF UNIVERSITY CITY, MISSOURI

By: _____
Gregory Rose, City Manager

[SEAL]

ATTEST:

By: _____
LaRette Reese, City Clerk