



**CITY OF DARDENNE PRAIRIE
2032 HANLEY ROAD
DARDENNE PRAIRIE, MO 63368**

**BOARD OF ALDERMEN
SPECIAL MEETING AGENDA
April 12th, 2023
6:00 p.m.**

CALL MEETING TO ORDER

PLEDGE OF ALLEGIANCE

INVOCATION

ROLL CALL

Mayor Gotway
Alderman Costlow
Alderman Johnson
Alderman Reilly
Alderman Sansone
Alderman Ungerboeck
Alderman Wandling

CONSENT AGENDA

1. None

ITEMS REMOVED FROM CONSENT AGENDA

PUBLIC COMMENT

PUBLIC HEARINGS

1. Public Hearing to consider the establishment of the Encore Community Improvement District (the "District") pursuant to the Missouri Community Improvement District Act, sections 67.1401 through 67.1571, inclusive, of the Revised Statutes of Missouri, as amended.

NEW BUSINESS

1. **Bill #23-15**

AN ORDINANCE APPROVING A MASTER DEVELOPMENT AND PERFORMANCE AGREEMENT IN CONNECTION WITH THE ACQUISITION AND CONSTRUCTION OF AN INDUSTRIAL DEVELOPMENT PROJECT IN THE CITY OF DARDENNE PRAIRIE, MISSOURI; AUTHORIZING THE ISSUANCE OF THE CITY'S TAXABLE INDUSTRIAL REVENUE BONDS (ENCORE PROJECT) IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$68,000,000, FOR THE PURPOSE OF PROVIDING FUNDS TO PAY THE COSTS OF THE PROJECT; APPROVING A PLAN FOR THE PROJECT; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

2. **Bill #23-16**

AN ORDINANCE ESTABLISHING THE ENCORE COMMUNITY IMPROVEMENT DISTRICT; AND AUTHORIZING CERTAIN ACTIONS AND DOCUMENTS IN CONNECTION THEREWITH.

3. **Bill #23-17**

AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF O'FALLON, MO, FOR CERTAIN ROADWAY IMPROVEMENTS.

STAFF COMMUNICATIONS

1. City Attorney
2. City Engineer
3. City Administrator
4. Aldermen
5. Mayor

CLOSED SESSION

Roll call vote to hold closed session pursuant to RSMo 610.021 section _____

- Litigation and Privileged Communications (1)
- Real Estate (2)
- Personnel (3)
- Labor (9)
- Bid Specs (11)
- Audit (17)

RETURN TO REGULAR MEETING AGENDA

ADJOURNMENT

ORDINANCE NO. _____

AN ORDINANCE APPROVING A MASTER DEVELOPMENT AND PERFORMANCE AGREEMENT IN CONNECTION WITH THE ACQUISITION AND CONSTRUCTION OF AN INDUSTRIAL DEVELOPMENT PROJECT IN THE CITY OF DARDENNE PRAIRIE, MISSOURI; AUTHORIZING THE ISSUANCE OF THE CITY'S TAXABLE INDUSTRIAL REVENUE BONDS (ENCORE PROJECT) IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$68,000,000, FOR THE PURPOSE OF PROVIDING FUNDS TO PAY THE COSTS OF THE PROJECT; APPROVING A PLAN FOR THE PROJECT; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

WHEREAS, the City of Dardenne Prairie, Missouri, a fourth-class 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 and Sections 100.010 through 100.200, inclusive, of the Revised Statutes of Missouri, as amended (collectively, the "Act") to issue and sell its negotiable interest bearing bonds for the purpose of paying all or part of the cost of purchasing, constructing, extending, or improving any facility to be leased or otherwise disposed of pursuant to law to private persons or corporations for manufacturing, commercial, warehousing and industrial development purposes, including the real estate, buildings, fixtures and machinery associated therewith, upon such terms and conditions as the City deems advisable; and

WHEREAS, a Plan for an Industrial Development Project and Cost-Benefit Analysis (the "Plan") has been prepared in the form attached hereto as **Exhibit A**; and

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

WHEREAS, the Board of Aldermen hereby finds and determines that the purchase, construction, extension, and improvement of the Project is expedient for the good government of the City, the preservation of peace and good order, the benefit of trade and commerce and the health of the inhabitants thereof, serves a proper public and valid municipal purpose and is within the public purposes of the Act that the City: (a) issue its Taxable Industrial Revenue Bonds (Encore Project) in several series (*i.e.*, a separate series for various phases of the Project (as defined below)), in the maximum aggregate principal amount of \$68,000,000 (the "Bonds"), for the purpose of acquiring the real property located at the northwest intersection of Feise Road and Bryan Road in the City (the "Project Site," as more fully described in the below-defined Master Development and Performance Agreement) and constructing thereon a mixed-use development consisting of approximately 190 residential rental apartments and approximately 25,000 square feet of commercial/retail space to be completed in three phases (collectively, the "Project Improvements," all as more fully described in the Master Development and

Performance Agreement), (b) lease the Project Site and the Project Improvements (together, the “Project”) to KaLeCo LLC (the “Master Developer”) and/or the developers of each phase of the Project (each a “Phase Developer”), and (c) enter into a Master Development and Performance Agreement with the Master Developer, under which the Master Developer will make, or cause to be made, certain payments in lieu of taxes in consideration of the City issuing the Bonds; and

WHEREAS, the Board of Aldermen 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 enter into certain documents and take certain other actions as herein provided.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF DARDENNE PRAIRIE, MISSOURI, AS FOLLOWS:

SECTION 1. Approval of the Plan. The Board of Aldermen hereby approves the Plan in the form attached as **Exhibit A**.

SECTION 2. Authorization for the Project. The City is hereby authorized to provide for the purchase and construction of the Project, in the manner and as more particularly described in the Master Development and Performance Agreement, the Indenture, the Base Lease and the Lease Agreement as hereinafter authorized.

SECTION 3. Authorization of the Bonds. The City is hereby further 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 4. Limitation on Liability. The Bonds and the interest thereon shall be special, limited obligations of the City, payable solely out of certain payments, revenues and receipts derived by the City from the applicable Lease Agreement. Such payments, revenues and receipts shall be pledged and assigned to the bond trustee named in the respective Indenture (the “Trustee”), as security for the payment of the Bonds as provided in the respective 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 or statutory debt limitation or restriction and are not payable in any manner by taxation.**

SECTION 5. 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 Board of Aldermen 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. Master Development and Performance Agreement (the “Master Development and Performance Agreement”) between the City and the Master Developer, in substantially the form attached as **Exhibit B**, pursuant to which the Master Developer will make, or cause to be made, certain payments in lieu of taxes.

B. One or more Base Leases (collectively, the “Base Leases”) between the Master Developer or a Phase Developer and the City, in substantially the form attached as **Exhibit C**, pursuant to which the Master Developer or a Phase Developer will lease a portion of the Project Site to the City while the applicable portion of the Project Improvements to be constructed thereon are under construction.

C. One or more Special Warranty Deeds from the Master Developer or a Phase Developer, as grantor, to the City, as grantee, in substantially the form attached as **Exhibit D**, pursuant to which the Master Developer or a Phase Developer will transfer title to the applicable portions of the Project to the City following completion of the Project Improvements (or the applicable portion thereof).

D. One or more Lease Agreements (collectively, the “Lease Agreements”) between the City and the Master Developer or a Phase Developer, in substantially the form attached as **Exhibit E**, pursuant to which the City will lease the applicable portion of the Project to the Master Developer or a Phase Developer in consideration of rental payments by the Master Developer or the Phase Developer that will be sufficient to pay the principal of and interest on the applicable series of the Bonds.

E. One or more Trust Indentures (collectively, the “Indentures”) between the City and the Trustee, in substantially the form attached as **Exhibit F**, pursuant to which a series of Bonds will be issued and the City will pledge the applicable portion of the Project and assign certain of the payments, revenues and receipts received pursuant to the applicable Lease Agreement to the Trustee for the benefit and security of the owners of such series of Bonds.

F. One or more Bond Purchase Agreements between the City and the Master Developer or a Phase Developer, in substantially the form attached as **Exhibit G**, pursuant to which the Master Developer or a Phase Developer will purchase the applicable series of Bonds.

SECTION 6. Execution of Documents.

A. The Mayor and/or City Administrator are hereby authorized to execute each series of the Bonds and to deliver such 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 Indentures. The Mayor and/or City Administrator are 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 each series of 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.

B. To accommodate future financing and refinancing of portions of the Project and/or transfers of portions of the Project to Phase Developers, the Master Developer (or a Phase

Developer) may request that the City issue separate series of Bonds relating to specific portions of the Project (*i.e.*, a separate series for various phases of the Project). Upon receipt of such request and tender of any outstanding Bonds for cancellation (if required), the Mayor or the City Administrator may execute and the City Clerk or the Deputy City Clerk may attest to and affix the seal of the City to the applicable series of Bonds and the related City Documents (which shall be in substantially the same forms as the City Documents attached to this Ordinance but only applicable to the appropriate series of Bonds and portion of the Project). The Bonds and the applicable City Documents may be approved by the Mayor or the City Administrator without further Board of Aldermen action or approval so long as the City Documents do not (1) increase the total aggregate principal of all series of the Bonds above the aggregate maximum principal amount authorized by this Ordinance (*i.e.*, \$68,000,000), (2) extend the final maturity date of a series of Bonds beyond December 1 of the 12th calendar year following the applicable Transfer Date (as defined in the Master Development and Performance Agreement), or (3) decrease the total amount of PILOT Payments (as defined in the Master Development and Performance Agreement) due with respect to the entire Project. The Mayor or the City Administrator's signature on the Bonds and the City Documents shall be conclusive evidence of her or his approval thereof.

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 Mayor and/or the City Administrator are hereby authorized, through the term of the Master Development and Performance Agreement, 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) as may be required to carry out and comply with the intent of this Ordinance and the City Documents. The Mayor and/or the City Administrator are further authorized, on behalf of the City, to grant such consents, estoppels and waivers relating to the Bonds and the City Documents as may be requested during the term thereof; provided, such consents, estoppels and/or waivers shall first be approved by an ordinance of the Board of Aldermen. The City Clerk or the Deputy City Clerk is authorized to attest to and affix the seal of the City to any document authorized by this Section.

SECTION 8. Severability. If any term, condition, or provision of this Ordinance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective and each and every remaining provision hereof shall be valid and shall be enforced to the fullest extent permitted by law, it being the intent of the Board of Aldermen that it would have enacted this Ordinance without the invalid or unenforceable provisions. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the City and shall thereafter be binding.

SECTION 9. Effective Date. This Ordinance shall be in full force and take effect from and after its final passage and approval.

SECTION 10. Savings. Nothing contained herein shall in any manner be deemed or construed to alter, modify, supersede, supplant or otherwise nullify any other Ordinance of the City or the requirements thereof whether or not relating to or in any manner connected with the subject matter hereof, unless expressly set forth herein.

Read two times and passed this ____ day of April, 2023.

As Presiding Officer and as Mayor

Attest:

City Clerk

Approved this ____ day of April, 2023.

Mayor

Attest:

City Clerk

EXHIBIT A

PLAN FOR AN INDUSTRIAL DEVELOPMENT PROJECT

(On file in the office of the City Clerk)

EXHIBIT B

MASTER DEVELOPMENT AND PERFORMANCE AGREEMENT

(On file in the office of the City Clerk)

EXHIBIT C

FORM OF BASE LEASE

(On file in the office of the City Clerk)

EXHIBIT D

FORM OF SPECIAL WARRANTY DEED

(On file in the office of the City Clerk)

EXHIBIT E

FORM OF LEASE AGREEMENT

(On file in the office of the City Clerk)

EXHIBIT F

FORM OF TRUST INDENTURE

(On file in the office of the City Clerk)

EXHIBIT G

FORM OF BOND PURCHASE AGREEMENT

(On file in the office of the City Clerk)

CITY OF DARDENNE PRAIRIE, MISSOURI

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

KALECo LLC PROJECT

TABLE OF CONTENTS

	<u>Page</u>
I. PURPOSE OF THIS PLAN	1
II. DESCRIPTION OF CHAPTER 100 FINANCINGS	1
General	1
Issuance and Sale of Bonds	1
Property Tax Abatement	2
Sales Tax Exemption.....	2
III. DESCRIPTION OF THE PARTIES	2
KaLeCo LLC.....	2
City of Dardenne Prairie, Missouri	2
IV. REQUIREMENTS OF THE ACT	2
Description of the Project.....	2
Estimate of the Costs of the Project.....	3
Sources of Funds to be Expended for the Project.....	3
Statement of the Terms Upon Which the Project is to be Leased or Otherwise Disposed of by the City	3
Affected School District, Community College District, Emergency Service Providers, County and City	3
Current Assessed Valuation	3
Payments in Lieu of Taxes	4
Sales Tax Exemption.....	4
Cost-Benefit Analysis	4
V. ASSUMPTIONS AND BASIS OF PLAN.....	5
Schedule 1 - Summary of Key Assumptions (Property Tax Abatement)	
Attachment A - Cost-Benefit Analysis	
Exhibit 1. Summary of Cost-Benefit Analysis	
Exhibit 2. Projected Real Property Tax Revenues on Project Site (No Project Improvements)	
Exhibit 3. Projected Real Property Tax Revenues on Project (Without Abatement)	
Exhibit 4. Projected Real Property Payments in Lieu of Taxes (PILOTs)	
Exhibit 5. Projected Value of Real Property Tax Abatement	
Exhibit 6. Projected Value of Sales and Use Tax Exemption on Construction Materials	

* * *

CITY OF DARDENNE PRAIRIE, MISSOURI

**PLAN FOR AN INDUSTRIAL DEVELOPMENT
PROJECT AND
COST-BENEFIT ANALYSIS
KALECO LLC PROJECT**

I. PURPOSE OF THIS PLAN

The City of Dardenne Prairie, Missouri (the “City”), intends to issue one or more series of taxable industrial revenue bonds in an aggregate principal amount of not to exceed \$68,000,000 (the “Bonds”) to finance the costs of a proposed industrial development project (the “Project”) for the benefit of KaLeCo LLC (the “Developer”). The Bonds will be issued pursuant to the provisions of Sections 100.010 to 100.200 of the Revised Statutes of Missouri (“Chapter 100”) and Article VI, Section 27(b) of the Missouri Constitution (collectively with Chapter 100, the “Act”).

Gilmore & Bell, P.C. has prepared this Plan for an Industrial Development Project and Cost-Benefit Analysis (this “Plan”) to satisfy requirements of the Act and to analyze the potential costs and benefits, including the related tax impact on all affected taxing jurisdictions, of using industrial revenue bonds to finance the Project and to facilitate abatement of ad valorem taxes on the bond-financed property.

II. DESCRIPTION OF CHAPTER 100 FINANCINGS

General. Chapter 100 authorizes cities, counties, towns and villages to issue industrial development revenue bonds to finance the purchase, construction, extension and improvement of warehouses, distribution facilities, research and development facilities, office industries, agricultural processing industries, service facilities that provide interstate commerce and industrial plants, including the real estate either within or without the limits of such municipalities, buildings, fixtures and machinery. In addition, Article VI, Section 27(b) of the Missouri Constitution authorizes cities, counties, towns and villages to issue revenue bonds for the purpose of paying all or part of the cost of purchasing, constructing, extending or improving any facility for manufacturing, commercial, warehousing and industrial development purposes, including the real estate, buildings, fixtures and machinery. Under Attorney General Opinion 180-81, the Missouri Attorney General determined that the construction and rental of multi-family apartments for profit is a commercial enterprise.

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

Concurrently with the closing of the bonds, the company will convey title or lease to the municipality the site on which the project will be located. (The municipality must be the legal owner of the property while the bonds are outstanding for the property to be eligible for tax abatement, as further described below.) The municipality will immediately lease the project site and the improvements thereon back to the benefited company pursuant to a lease agreement. The lease agreement will require the company, acting on behalf of the municipality, to use the bond proceeds to purchase and construct the project.

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

Property Tax Abatement. Under Article X, Section 6 of the Missouri Constitution and Section 137.100 of the Revised Statutes of Missouri, all property of any political subdivision is exempt from taxation. In a typical Chapter 100 transaction, the municipality holds fee title to the project and leases the project to the benefited company. Although the Missouri Supreme Court has held that the leasehold interest is taxable, it is taxable only to the extent that the economic value of the lease is less than the actual market value of the lease. See *Iron County v. State Tax Commission*, 437 S.W.2d 665 (Mo. 1968)(*en banc*) and *St. Louis County v. State Tax Commission*, 406 S.W.2d 644 (Mo. 1966)(*en banc*). If the rental payments under the lease agreement equal the actual debt service payments on the bonds, the leasehold interest should have no “bonus value” and the bond-financed property should be exempt from ad valorem taxation while the bonds are outstanding.

If the municipality and the company determine that partial tax abatement is desirable, the company may agree to make payments in lieu of taxes (sometimes referred to as “PILOTs”). The amount of PILOTs is negotiable. The PILOTs are payable by December 31 of each year and are distributed to the municipality and to each political subdivision within the boundaries of the project in the same manner and in the same proportion as property taxes would otherwise be distributed under Missouri law.

Sales Tax Exemption. In addition to property tax abatement, qualified building materials can be exempt from sales tax if approved by the municipality. The sales tax exemption is evidenced by a project exemption certificate issued by the municipality.

III. DESCRIPTION OF THE PARTIES

KaLeCo LLC. The Developer is a Missouri limited liability company that was formed for the sole purpose of acquiring, constructing and owning the Project. The managing member of the Developer has been involved in several similarly sized multi-family residential and mixed-use projects throughout the St. Louis metropolitan area.

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

IV. REQUIREMENTS OF THE ACT

A. Description of the Project. The Project consists of acquiring approximately 17.25 acres of land located at 1575 Bryan Road in the City (the “Project Site”) and constructing thereon a mixed-use development consisting of residential and commercial uses (collectively, the “Project Improvements” and, together with the acquisition of the Project Site, the “Project”). It is expected the Project Improvements will

be completed in three phases (each, a “Phase”). Phase 1 contemplates the construction of approximately 17,000 square feet of commercial/retail space. Phase 2 contemplates the construction of 190 residential rental apartments. Phase 3 contemplates the construction of approximately 9,000 square feet of commercial/retail space. Phase 1 is expected to be completed in 2025, Phase 2 is expected to be completed in 2026 and Phase 3 is expected to be completed in 2030.

B. *Estimate of the Costs of the Project.* The acquisition and construction of the Project are expected to cost approximately \$66,000,000. The Bonds will be authorized in an aggregate maximum principal amount of \$68,000,000 to provide for contingencies and soft costs.

C. *Sources of Funds to be Expended for the Project.* The sources of funds to be expended for the Project will be the proceeds of the Bonds and other available funds of the Developer. The City intends to issue a separate series of Bonds for each Phase of the Project, and the aggregate maximum principal amount of all such Bonds will not exceed \$68,000,000. The Bonds will be payable solely from the revenues derived by the City from the lease or other disposition of the Project (as further described below). The Bonds will not be an indebtedness or general obligation, debt or liability of the City or the State of Missouri. No tax revenues will be used to repay the Bonds.

D. *Statement of the Terms Upon Which the Project is to be Leased or Otherwise Disposed of by the City.* During the construction period, the Developer will lease the Project Site to the City. After construction of each Phase is complete, the Developer will convey fee title to that Phase of the Project, together with the portion of the Project Site upon which it is located, to the City. The City will immediately lease the applicable portion of the Project back to the Developer for lease payments equal to the principal of and interest on the respective series of Bonds, plus certain payments in lieu of taxes. Under the terms of each lease agreement with the City, the Developer will have the option to purchase the applicable portion of the Project at the termination of such lease. Unless terminated sooner pursuant to the terms thereof, each lease will terminate on December 31 of the twelfth year following completion of the respective Phase.

E. *Affected School District, Community College District, Emergency Service Providers, County and City.* The Wentzville R-IV School District, St. Charles County, Missouri, is the school district affected by the Project. St. Charles Community College is the community college district affected by the Project. The O’Fallon Fire Protection District (the “Fire District”) is the fire protection district affected by the Project. The St. Charles County Ambulance District (the “Ambulance District”) is the ambulance district affected by the Project. St. Charles County, Missouri, is the county affected by the Project. The City is the city affected by the Project. The Cost-Benefit Analysis attached hereto identifies all other taxing jurisdictions affected by the Project (other than those taxing jurisdictions solely affected by the Project with respect to receipt of tax revenues from the commercial surcharge tax).

F. *Current Assessed Valuation.* The most recent equalized assessed valuation of the real property included in the Project is \$68,361, consisting of land classified as agricultural real property. The Developer estimates the total equalized assessed valuation of the real property included in the Project after completion of all three Phases will be approximately \$5,539,306. This calculation relies on several assumptions, including the construction schedule for each Phase, the market value of each completed Phase and the future appreciation of property values. The St. Charles County Assessor will make the final determination of the assessed value of the Project.

G. *Payments in Lieu of Taxes.* If this Plan is approved by the City, the City intends to issue the Bonds, take possession of each Phase of the Project and extend tax abatement to the Developer. Each Phase of the Project is expected to have its own 12-year abatement period. During the applicable abatement period, the Developer will make PILOTs equal to the following:

(1) In each year up to and including the year in which a particular Phase is completed, the Developer will continue to pay 100% of the real property taxes due with respect to such Phase; and

(2) In each of the 12 calendar years following the year in which a particular Phase is completed, the Developer will pay 100% of the real property taxes that would otherwise be due to the Fire District and the Ambulance District with respect to such Phase, but for the City's ownership thereof.

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

I. Cost-Benefit Analysis. In compliance with Section 100.050.2(3) of the Act, this Plan has been prepared to show the costs and benefits to the City and to other taxing jurisdictions affected by the tax abatement of the Project. **Attachment A** to this Plan is the Cost-Benefit Analysis with respect to the Project. The following is a summary of the exhibits attached to the Cost-Benefit Analysis that show the direct tax impact the Project is expected to have on each taxing jurisdiction and key ancillary benefits expected to be derived from the Project. Neither this Plan nor the Cost-Benefit Analysis attempts to quantify the overall economic impact of the Project.

Summary of Cost-Benefit Analysis (Real Property Tax Abatement). **Exhibit 1** provides a summary for each affected taxing jurisdiction of the total estimated tax revenues that would be generated if the Project Improvements were not constructed, the total estimated tax revenues that would be generated if the Project did not receive tax abatement, the total estimated PILOTs to be made by the Developer with respect to the Project and the total estimated value of the abatement to the Developer. Please note that the actual value of the Project may differ from the estimated value assumed in this Plan and may impact the PILOTs to be made to applicable taxing jurisdictions and the value of the abatement to the Developer.

Real Property Tax Revenues. **Exhibit 2** provides the total estimated tax revenues that would be generated on the Project Site if the Project Improvements were not constructed. **Exhibit 3** provides the total estimated tax revenues that would be generated if the Project did not receive tax abatement. **Exhibit 4** provides the total estimated PILOTs to be made by the Developer with respect to the Project. **Exhibit 5** provides and the total estimated value of the abatement to the Developer. On the latter three exhibits, the commercial surcharge tax was applied to Phases 1 and 3 of the Project (i.e., the commercial portions of the Project) at a rate of \$0.53 per \$100 of assessed valuation.

Sales Tax Exemption on Construction Materials. **Exhibit 6** provides the estimated value of the sales and use tax exemption on construction materials purchased for the Project Improvements. Key assumptions used to calculate this value are also included in **Exhibit 6**.

Ancillary Project Benefits. The City believes that the Developer's investment in the Project will create construction jobs during the construction period and spur additional investment in the City and surrounding area. The commercial portions of the Project will create new jobs and generate sales taxes, and the location of the residential uses near the commercial uses will enhance the viability and economic performance of the businesses occupying the commercial/retail spaces and other adjacent commercial areas. Both the residential and commercial portions of the Project

will generate personal property taxes, which are not subject to any tax abatement. These ancillary impacts were not measured for purposes of this Plan. Neither this Plan nor the Cost-Benefit Analysis attempts to quantify the overall economic impact of the Project.

V. ASSUMPTIONS AND BASIS OF PLAN

In preparing this Plan, we have made some key assumptions to estimate the fiscal impact of the abatement proposed for the Project. See **Schedule 1** and **Exhibit 6** for a summary of these assumptions.

In addition to the foregoing, in order to complete this Plan, we have generally reviewed and relied upon information furnished to us by, and have participated in conferences with, representatives of the City, representatives of the Developer and its counsel, and other persons as we have deemed appropriate. We do not assume any responsibility for the accuracy, completeness or fairness of any of the information provided to us, and we have not independently verified the accuracy, completeness or fairness of such information.

* * *

SCHEDULE 1

SUMMARY OF KEY ASSUMPTIONS (PROPERTY TAX ABATEMENT)

1. The acquisition and construction of the Project Improvements will be completed in three Phases. Phase 1, consisting of the construction of approximately 17,000 square feet of commercial/retail space, will be completed in 2025. Phase 2, consisting of the construction of approximately 190 residential rental apartments, will be completed in 2026. Phase 3, consisting of the construction of approximately 9,000 square feet of commercial/retail space, will be completed in 2030.

2. Each Phase of the Project, together with the portion of the Project Site upon which it is located, will be owned by the City and leased to the Developer. As long as any portion of the Project is owned by the City, such portion will be exempt from ad valorem property taxes.

3. Phase 1 will be excluded from the calculation of ad valorem property taxes from 2026 through 2037. Phase 2 will be excluded from the calculation of ad valorem property taxes from 2027 through 2038. Phase 3 will be excluded from the calculation of ad valorem property taxes from 2031 through 2042.

4. During the applicable abatement period, the Developer will make PILOTs equal to the following:

(1) In each year up to and including the year in which a particular Phase is completed, 100% of the real property taxes that are due; and

(2) In each of the 12 calendar years following the year in which a particular Phase is completed, 100% of the real property taxes that would otherwise be due to the Fire District and the Ambulance District with respect to such Phase, but for the City's ownership thereof.

5. Property taxes are calculated using the following formula:

$$(\text{Assessed Value} * \text{Tax Rate}) / 100$$

6. The assessed value of Phases 1 and 3 of the Project (i.e., the commercial portions of the Project) is calculated using the following formula:

$$\text{Estimated Value} * \text{Assessment Ratio of 32\%}$$

7. The assessed value of Phase 2 of the Project (i.e., the residential portion of the Project) is calculated using the following formula:

$$\text{Estimated Value} * \text{Assessment Ratio of 19\%}$$

8. The Developer estimates the estimated value of Phase 1 will be \$4,635,000; the estimated value of Phase 2 will be \$18,355,100; and the estimated value of Phase 3 will be \$1,053,000.

9. Each Phase will be assessed in the first full year after construction of such Phase is complete. Each Phase will be reassessed in every odd-numbered year thereafter. The assessed valuation will increase by 2% in each reassessment year.

10. The tax rates used in this Plan and the Cost-Benefit Analysis reflect the rates in effect for the tax year 2022. The tax rates were held constant through the 2042 tax year. The commercial surcharge tax will only be levied against Phases 1 and 3 of the Project (i.e., the commercial portions of the Project).

* * *

ATTACHMENT A
COST-BENEFIT ANALYSIS

**City of Dardenne Prairie, Missouri
(KaLeCo LLC Project)**

COST-BENEFIT ANALYSIS

Exhibit 1 - Summary of Cost-Benefit Analysis

Taxing Jurisdiction	Projected Tax Revenues on Project Site if Project Improvements are Not Built	Projected Tax Revenues on Project Without Abatement	Projected PILOT Amount	Value of Projected Tax Abatement
State of Missouri	\$ 380	\$ 20,145	\$ -	\$ 20,145
Development Disabilities Resource Board	1,547	82,124	-	82,124
St. Charles County Dispatch & Alarm	468	24,845	-	24,845
St. Charles County Road & Bridge	2,434	129,196	-	129,196
City of Dardenne Prairie	1,226	65,068	-	65,068
St. Charles Community College	2,407	127,718	-	127,718
Wentzville School District	63,807	3,386,213	-	3,386,213
St. Charles City-County Library District	2,414	128,121	-	128,121
St. Charles County Ambulance District	3,256	172,776	172,776	-
O'Fallon Fire Protection District	11,927	632,951	632,951	-
Commercial Surcharge	-	122,699	-	122,699
	\$ 89,866	\$ 4,891,855	\$ 805,726	\$ 4,086,128

Exhibit 3 - Projected Real Property Tax Revenues on Project (Without Abatement)

Estimated Assessed Value of Phase 1 (Commercial)	\$ 1,483,200	\$ 1,512,864	\$ 1,512,864	\$ 1,543,121	\$ 1,543,121	\$ 1,573,984	\$ 1,573,984	\$ 1,605,463	\$ 1,605,463
Estimated Assessed Value of Phase 2 (Residential)	\$ -	\$ 3,487,469	\$ 3,487,469	\$ 3,557,218	\$ 3,557,218	\$ 3,628,363	\$ 3,628,363	\$ 3,700,930	\$ 3,700,930
Estimated Assessed Value of Phase 3 (Commercial)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 336,960	\$ 336,960	\$ 343,699	\$ 343,699
Estimated Assessed Value of Project	\$ 1,483,200	\$ 5,000,333	\$ 5,000,333	\$ 5,100,340	\$ 5,100,340	\$ 5,539,306	\$ 5,539,306	\$ 5,650,093	\$ 5,650,093

Taxing Jurisdiction	Tax Rate per \$100	Tax Rate per \$100								
		2026	2027	2028	2029	2030	2031	2032	2033	2034
State of Missouri	0.0300	\$ 445	\$ 1,500	\$ 1,500	\$ 1,530	\$ 1,530	\$ 1,662	\$ 1,662	\$ 1,695	\$ 1,695
Development Disabilities Resource Board	0.1223	1,814	6,115	6,115	6,238	6,238	6,775	6,775	6,910	6,910
St. Charles County Dispatch & Alarm	0.0370	549	1,850	1,850	1,887	1,887	2,050	2,050	2,091	2,091
St. Charles County Road & Bridge	0.1924	2,854	9,621	9,621	9,813	9,813	10,658	10,658	10,871	10,871
City of Dardenne Prairie	0.0969	1,437	4,845	4,845	4,942	4,942	5,368	5,368	5,475	5,475
St. Charles Community College	0.1902	2,821	9,511	9,511	9,701	9,701	10,536	10,536	10,746	10,746
Wentzville School District	5.0428	74,795	252,157	252,157	257,200	257,200	279,336	279,336	284,923	284,923
St. Charles City-County Library District	0.1908	2,830	9,541	9,541	9,731	9,731	10,569	10,569	10,780	10,780
St. Charles County Ambulance District	0.2573	3,816	12,866	12,866	13,123	13,123	14,253	14,253	14,538	14,538
O'Fallon Fire Protection District	0.9426	13,981	47,133	47,133	48,076	48,076	52,214	52,214	53,258	53,258
Commercial Surcharge ¹	0.5300	7,861	8,018	8,018	8,179	8,179	10,128	10,128	10,331	10,331
	7.6323	\$ 113,202	\$ 363,157	\$ 363,157	\$ 370,420	\$ 370,420	\$ 403,546	\$ 403,546	\$ 411,617	\$ 411,617

Estimated Assessed Value of Phase 1 (Commercial)	\$ 1,637,573	\$ 1,637,573	\$ 1,670,324	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Estimated Assessed Value of Phase 2 (Residential)	\$ 3,774,949	\$ 3,774,949	\$ 3,850,448	\$ 3,850,448	\$ -	\$ -	\$ -	\$ -	\$ -
Estimated Assessed Value of Phase 3 (Commercial)	\$ 350,573	\$ 350,573	\$ 357,585	\$ 357,585	\$ 364,736	\$ 364,736	\$ 372,031	\$ 372,031	\$ 372,031
Estimated Assessed Value of Project	\$ 5,763,094	\$ 5,763,094	\$ 5,878,356	\$ 4,208,032	\$ 364,736	\$ 364,736	\$ 372,031	\$ 372,031	\$ 372,031

Taxing Jurisdiction	Tax Rate per \$100	Tax Rate per \$100								Total
		2035	2036	2037	2038	2039	2040	2041	2042	
State of Missouri	0.0300	\$ 1,729	\$ 1,729	\$ 1,764	\$ 1,262	\$ 109	\$ 109	\$ 112	\$ 112	\$ 20,145
Development Disabilities Resource Board	0.1223	7,048	7,048	7,189	5,146	446	446	455	455	82,124
St. Charles County Dispatch & Alarm	0.0370	2,132	2,132	2,175	1,557	135	135	138	138	24,845
St. Charles County Road & Bridge	0.1924	11,088	11,088	11,310	8,096	702	702	716	716	129,196
City of Dardenne Prairie	0.0969	5,584	5,584	5,696	4,078	353	353	360	360	65,068
St. Charles Community College	0.1902	10,961	10,961	11,181	8,004	694	694	708	708	127,718
Wentzville School District	5.0428	290,621	290,621	296,434	212,203	18,393	18,393	18,761	18,761	3,386,213
St. Charles City-County Library District	0.1908	10,996	10,996	11,216	8,029	696	696	710	710	128,121
St. Charles County Ambulance District	0.2573	14,828	14,828	15,125	10,827	938	938	957	957	172,776
O'Fallon Fire Protection District	0.9426	54,323	54,323	55,409	39,665	3,438	3,438	3,507	3,507	632,951
Commercial Surcharge ¹	0.5300	10,537	10,537	10,748	1,895	1,933	1,933	1,972	1,972	122,699
	7.6323	\$ 419,849	\$ 419,849	\$ 428,246	\$ 300,762	\$ 27,838	\$ 27,838	\$ 28,395	\$ 28,395	\$ 4,891,855

¹ Applicable only to the Commercial Portions of the Project.

Exhibit 4 - Projected Real Property Payments in Lieu of Taxes (PILOTs)

Estimated Assessed Value of Phase 1 (Commercial)	\$ 1,483,200	\$ 1,512,864	\$ 1,512,864	\$ 1,543,121	\$ 1,543,121	\$ 1,573,984	\$ 1,573,984	\$ 1,605,463	\$ 1,605,463
Estimated Assessed Value of Phase 2 (Residential)	\$ -	\$ 3,487,469	\$ 3,487,469	\$ 3,557,218	\$ 3,557,218	\$ 3,628,363	\$ 3,628,363	\$ 3,700,930	\$ 3,700,930
Estimated Assessed Value of Phase 3 (Commercial)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 336,960	\$ 336,960	\$ 343,699	\$ 343,699
Estimated Assessed Value of Project	\$ 1,483,200	\$ 5,000,333	\$ 5,000,333	\$ 5,100,340	\$ 5,100,340	\$ 5,539,306	\$ 5,539,306	\$ 5,650,093	\$ 5,650,093
PILOT (all entities but fire and ambulance districts)	0%	0%	0%	0%	0%	0%	0%	0%	0%
PILOT (fire and ambulance districts)	100%	100%	100%	100%	100%	100%	100%	100%	100%

Taxing Jurisdiction	Tax Rate per									
	\$100	2026	2027	2028	2029	2030	2031	2032	2033	2034
State of Missouri	0.0300	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Development Disabilities Resource Board	0.1223	-	-	-	-	-	-	-	-	-
St. Charles County Dispatch & Alarm	0.0370	-	-	-	-	-	-	-	-	-
St. Charles County Road & Bridge	0.1924	-	-	-	-	-	-	-	-	-
City of Dardenne Prairie	0.0969	-	-	-	-	-	-	-	-	-
St. Charles Community College	0.1902	-	-	-	-	-	-	-	-	-
Wentzville School District	5.0428	-	-	-	-	-	-	-	-	-
St. Charles City-County Library District	0.1908	-	-	-	-	-	-	-	-	-
St. Charles County Ambulance District	0.2573	3,816	12,866	12,866	13,123	13,123	14,253	14,253	14,538	14,538
O'Fallon Fire Protection District	0.9426	13,981	47,133	47,133	48,076	48,076	52,214	52,214	53,258	53,258
Commercial Surcharge	0.5300	-	-	-	-	-	-	-	-	-
	7.6323	\$ 17,797	\$ 59,999	\$ 59,999	\$ 61,199	\$ 61,199	\$ 66,466	\$ 66,466	\$ 67,795	\$ 67,795

Estimated Assessed Value of Phase 1 (Commercial)	\$ 1,637,573	\$ 1,637,573	\$ 1,670,324	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Estimated Assessed Value of Phase 2 (Residential)	\$ 3,774,949	\$ 3,774,949	\$ 3,850,448	\$ 3,850,448	\$ -	\$ -	\$ -	\$ -	\$ -
Estimated Assessed Value of Phase 3 (Commercial)	\$ 350,573	\$ 350,573	\$ 357,585	\$ 357,585	\$ 364,736	\$ 364,736	\$ 372,031	\$ 372,031	\$ 372,031
Estimated Assessed Value of Project	\$ 5,763,094	\$ 5,763,094	\$ 5,878,356	\$ 4,208,032	\$ 364,736	\$ 364,736	\$ 372,031	\$ 372,031	\$ 372,031
PILOT (all entities but fire and ambulance districts)	0%	0%	0%	0%	0%	0%	0%	0%	0%
PILOT (fire and ambulance districts)	100%	100%	100%	100%	100%	100%	100%	100%	100%

Taxing Jurisdiction	Tax Rate per									
	\$100	2035	2036	2037	2038	2039	2040	2041	2042	Total
State of Missouri	0.0300	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Development Disabilities Resource Board	0.1223	-	-	-	-	-	-	-	-	-
St. Charles County Dispatch & Alarm	0.0370	-	-	-	-	-	-	-	-	-
St. Charles County Road & Bridge	0.1924	-	-	-	-	-	-	-	-	-
City of Dardenne Prairie	0.0969	-	-	-	-	-	-	-	-	-
St. Charles Community College	0.1902	-	-	-	-	-	-	-	-	-
Wentzville School District	5.0428	-	-	-	-	-	-	-	-	-
St. Charles City-County Library District	0.1908	-	-	-	-	-	-	-	-	-
St. Charles County Ambulance District	0.2573	14,828	14,828	15,125	10,827	938	938	957	957	172,776
O'Fallon Fire Protection District	0.9426	54,323	54,323	55,409	39,665	3,438	3,438	3,507	3,507	632,951
Commercial Surcharge	0.5300	-	-	-	-	-	-	-	-	-
	7.6323	\$ 69,151	\$ 69,151	\$ 70,534	\$ 50,492	\$ 4,376	\$ 4,376	\$ 4,464	\$ 4,464	\$ 805,726

Exhibit 5 - Projected Value of Real Property Tax Abatement

Estimated Assessed Value of Phase 1 (Commercial)	\$ 1,483,200	\$ 1,512,864	\$ 1,512,864	\$ 1,543,121	\$ 1,543,121	\$ 1,573,984	\$ 1,573,984	\$ 1,605,463	\$ 1,605,463
Estimated Assessed Value of Phase 2 (Residential)	\$ -	\$ 3,487,469	\$ 3,487,469	\$ 3,557,218	\$ 3,557,218	\$ 3,628,363	\$ 3,628,363	\$ 3,700,930	\$ 3,700,930
Estimated Assessed Value of Phase 3 (Commercial)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 336,960	\$ 336,960	\$ 343,699	\$ 343,699
Estimated Assessed Value of Project	\$ 1,483,200	\$ 5,000,333	\$ 5,000,333	\$ 5,100,340	\$ 5,100,340	\$ 5,539,306	\$ 5,539,306	\$ 5,650,093	\$ 5,650,093
Abatement (all entities but fire and ambulance districts)	100%	100%	100%	100%	100%	100%	100%	100%	100%
Abatement (fire and ambulance districts)	0%	0%	0%	0%	0%	0%	0%	0%	0%

Taxing Jurisdiction	Tax Rate per									
	\$100	2026	2027	2028	2029	2030	2031	2032	2033	2034
State of Missouri	0.0300	\$ 445	\$ 1,500	\$ 1,500	\$ 1,530	\$ 1,530	\$ 1,662	\$ 1,662	\$ 1,695	\$ 1,695
Development Disabilities Resource Board	0.1223	1,814	6,115	6,115	6,238	6,238	6,775	6,775	6,910	6,910
St. Charles County Dispatch & Alarm	0.0370	549	1,850	1,850	1,887	1,887	2,050	2,050	2,091	2,091
St. Charles County Road & Bridge	0.1924	2,854	9,621	9,621	9,813	9,813	10,658	10,658	10,871	10,871
City of Dardenne Prairie	0.0969	1,437	4,845	4,845	4,942	4,942	5,368	5,368	5,475	5,475
St. Charles Community College	0.1902	2,821	9,511	9,511	9,701	9,701	10,536	10,536	10,746	10,746
Wentzville School District	5.0428	74,795	252,157	252,157	257,200	257,200	279,336	279,336	284,923	284,923
St. Charles City-County Library District	0.1908	2,830	9,541	9,541	9,731	9,731	10,569	10,569	10,780	10,780
St. Charles County Ambulance District	0.2573	-	-	-	-	-	-	-	-	-
O'Fallon Fire Protection District	0.9426	-	-	-	-	-	-	-	-	-
Commercial Surcharge	0.5300	7,861	8,018	8,018	8,179	8,179	10,128	10,128	10,331	10,331
	7.6323	\$ 95,405	\$ 303,158	\$ 303,158	\$ 309,221	\$ 309,221	\$ 337,080	\$ 337,080	\$ 343,822	\$ 343,822

Estimated Assessed Value of Phase 1 (Commercial)	\$ 1,637,573	\$ 1,637,573	\$ 1,670,324	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Estimated Assessed Value of Phase 2 (Residential)	\$ 3,774,949	\$ 3,774,949	\$ 3,850,448	\$ 3,850,448	\$ -	\$ -	\$ -	\$ -	\$ -
Estimated Assessed Value of Phase 3 (Commercial)	\$ 350,573	\$ 350,573	\$ 357,585	\$ 357,585	\$ 364,736	\$ 364,736	\$ 372,031	\$ 372,031	\$ 372,031
Estimated Assessed Value of Project	\$ 5,763,094	\$ 5,763,094	\$ 5,878,356	\$ 4,208,032	\$ 364,736	\$ 364,736	\$ 372,031	\$ 372,031	\$ 372,031
Abatement (all entities but fire and ambulance districts)	100%	100%	100%	100%	100%	100%	100%	100%	100%
Abatement (fire and ambulance districts)	0%	0%	0%	0%	0%	0%	0%	0%	0%

Taxing Jurisdiction	Tax Rate per									
	\$100	2035	2036	2037	2038	2039	2040	2041	2042	Total
State of Missouri	0.0300	\$ 1,729	\$ 1,729	\$ 1,764	\$ 1,262	\$ 109	\$ 109	\$ 112	\$ 112	\$ 20,145
Development Disabilities Resource Board	0.1223	7,048	7,048	7,189	5,146	446	446	455	455	82,124
St. Charles County Dispatch & Alarm	0.0370	2,132	2,132	2,175	1,557	135	135	138	138	24,845
St. Charles County Road & Bridge	0.1924	11,088	11,088	11,310	8,096	702	702	716	716	129,196
City of Dardenne Prairie	0.0969	5,584	5,584	5,696	4,078	353	353	360	360	65,068
St. Charles Community College	0.1902	10,961	10,961	11,181	8,004	694	694	708	708	127,718
Wentzville School District	5.0428	290,621	290,621	296,434	212,203	18,393	18,393	18,761	18,761	3,386,213
St. Charles City-County Library District	0.1908	10,996	10,996	11,216	8,029	696	696	710	710	128,121
St. Charles County Ambulance District	0.2573	-	-	-	-	-	-	-	-	-
O'Fallon Fire Protection District	0.9426	-	-	-	-	-	-	-	-	-
Commercial Surcharge	0.5300	10,537	10,537	10,748	1,895	1,933	1,933	1,972	1,972	122,699
	7.6323	\$ 350,698	\$ 350,698	\$ 357,712	\$ 250,270	\$ 23,461	\$ 23,461	\$ 23,931	\$ 23,931	\$ 4,086,128

Exhibit 6 - Projected Value of Sales and Use Tax Exemption on Construction Materials

The City will grant a sales and use tax exemption on the qualified building materials necessary to construct the Project Improvements. For purposes of determining the impact of the sales tax exemption on the qualified building materials on the affected taxing jurisdictions granted by the City, certain assumptions must be made as to the total costs of the building materials and as to the business locations of the vendors selling the building materials. The assumptions related to the business locations of the vendors selling the building materials are important, as wholly-intrastate sales are subject to state and local sales tax at the tax rate applicable at the vendors’ business locations while interstate sales made by non-Missouri vendors are subject to use tax at the tax rate applicable at the delivery location. This Plan and Cost-Benefit Analysis assumes that:

- \$7,625,000 of the total costs of the Project Improvements will be allocated to construction material costs;
- the applicable sales tax rate at the Project Site is 8.450%, of which 4.225% is allocated to the State of Missouri, 1.725% is allocated to St. Charles County and 2.500% is allocated to the City;
- the applicable use tax rate at the Project Site is 5.950%, of which 4.225% is allocated to the State of Missouri and 1.725% is allocated to St. Charles County;
- 80% of the qualified construction materials will be subject to the State’s sales tax and 20% will be subject to the State’s use tax;
- 20% of the qualified construction materials will be subject to the County’s sales and use taxes; and
- 5% of the qualified construction materials will be subject to the City’s sales tax.

Please note that any variance in these assumptions will alter the net fiscal impact of the sales tax exemption on the affected taxing jurisdictions.

Based on the assumptions set forth above, the estimated net fiscal impact of the sales and use tax exemption on the qualified building materials granted by the City is approximately \$384,300, allocated as follows:

	<u>Sales Tax</u>	<u>Use Tax</u>	<u>Total</u>
State of Missouri	\$257,725.00	\$64,431.25	\$322,156.25
County of St. Charles	26,306.25	26,306.25	52,612.50
City of Dardenne Prairie	<u>9,531.25</u>	<u>-</u>	<u>9,531.25</u>
TOTAL	<u>\$293,562.50</u>	<u>\$90,737.50</u>	<u>\$384,300.00</u>

* * *

GILMORE & BELL, P.C.
DRAFT – APRIL 7, 2023
FOR DISCUSSION PURPOSES ONLY

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

TITLE OF DOCUMENT:	MASTER DEVELOPMENT AND PERFORMANCE AGREEMENT
DATE OF DOCUMENT:	April 12, 2023
GRANTOR:	CITY OF DARDENNE PRAIRIE, MISSOURI
GRANTOR'S MAILING ADDRESS:	2032 Hanley Road Dardenne Prairie, Missouri 63368
GRANTEE:	KALECO LLC
GRANTEE'S MAILING ADDRESS:	c/o KaLeCo LLC 210 Dogwood Prairie Dr. Dardenne Prairie, MO 63368
RETURN DOCUMENTS TO:	Shannon W. Creighton, Esq. Gilmore & Bell, P.C. 211 North Broadway, Suite 2000 St. Louis, Missouri 63102
LEGAL DESCRIPTION:	See Exhibit A

MASTER DEVELOPMENT AND PERFORMANCE AGREEMENT

between the

CITY OF DARDENNE PRAIRIE, MISSOURI

and

KALECO LLC

dated as of

April 12, 2023

TABLE OF CONTENTS

	<u>Page</u>
Recitals.....	1
ARTICLE I	
DEFINITIONS	
1.1. Definitions	2
ARTICLE II	
PROJECT COSTS	
2.1. Project Costs	6
ARTICLE III	
OWNERSHIP OF THE PROJECT SITE; SCHEDULE; CONSTRUCTION OF THE PROJECT; CITY APPROVALS	
3.1. Ownership of Property	7
3.2. Project Construction	7
3.3. Construction Contracts; Insurance	8
3.4. Competitive Bids; Prevailing Wage; Federal Work Authorization	8
3.5. Governmental Approvals	9
3.6. Concept Site Plan; Approved Site Plan; Zoning	9
3.7. Certificate of Substantial Completion.....	9
3.8. Excusable Delay	10
3.9. Access Agreement	10
ARTICLE IV	
INCENTIVES	
4.1. Partial Real Property Tax Abatement	11
4.2. Maximum Cumulative Property Tax Abatement Value	15
4.3. Sales Tax Exemption	15
4.4. No Abatement on Special Assessments, Personal Property Taxes, Licenses or Fees	16
4.5. Bond Documents to Control.	16
4.6. Community Improvement District and Transportation Development District.	16
4.7. Future Legislation.	17
ARTICLE V	
EVENTS OF DEFAULT	
5.1. Events of Default.	17

5.2.	Remedies of Default	18
5.3.	Interest on Late Payments.....	18

ARTICLE VII

GENERAL PROVISIONS

6.1.	Term of Agreement.....	19
6.2.	Payments in Last Year.....	19
6.3.	Transfers to Phase Developers, Successors and Assigns.....	19
6.4.	Notices	20
6.5.	Release and Indemnification.....	21
6.6.	Choice of Law.....	22
6.7.	Counterparts.....	22
6.8.	Severability	22
6.9.	No Waiver of Sovereign Immunity.....	23
6.10.	No Third Party Beneficiaries	23

ARTICLE VII

REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE PARTIES

7.1.	Representations of the City.....	23
7.2.	Representations of the Master Developer	23
7.3.	Survival of Covenants.....	25
	Signatures.....	26

- Exhibit A – Legal Description of Project Site
- Exhibit B – Concept Site Plan
- Exhibit C – Developer’s Affidavit
- Exhibit D – Certificate of Substantial Completion
- Exhibit E – Form of Phase Development Agreement
- Exhibit F – Form of District Project Agreement

MASTER DEVELOPMENT AND PERFORMANCE AGREEMENT

THIS MASTER DEVELOPMENT AND PERFORMANCE AGREEMENT (this “*Agreement*”) is made and entered into as of April 12, 2023, by and between the **CITY OF DARDENNE PRAIRIE, MISSOURI**, a fourth-class city organized and existing under the laws of the State of Missouri (the “*City*”), and **KALECO LLC**, a Missouri limited liability company (the “*Master Developer*”).

RECITALS

A. The City is authorized and empowered pursuant to the provisions of Article VI, Section 27(b) of the Missouri Constitution and Sections 100.010 through 100.200 of the Revised Statutes of Missouri (collectively, the “*Act*”) to issue and sell its negotiable interest bearing bonds for the purpose of paying all or part of the cost of purchasing, constructing, extending, or improving any facility to be leased or otherwise disposed of pursuant to law to private persons or corporations for manufacturing, commercial, warehousing and industrial development purposes, including the real estate, buildings, fixtures and machinery associated therewith, upon such terms and conditions as the City deems advisable.

B. The Master Developer has acquired or has contracts to acquire approximately 17.25 acres of land located at the northwest intersection of Feise Road and Bryan Road in the City (as legally described on **Exhibit A**, the “*Project Site*”), upon which it proposes to construct, or cause to be constructed, a mixed-use development consisting of approximately 190 residential rental apartments and approximately 25,000 square feet of commercial/retail space in three phases (collectively, the “*Project Improvements*”).

C. Pursuant to the Act, the Board of Aldermen of the City passed Ordinance No. [**ORD NO**] on April 12, 2023 (the “*Ordinance*”), which approved (a) a Plan for an Industrial Development Project and Cost-Benefit Analysis (the “*Plan*”) related to the acquisition of the Project Site and construction of the Project Improvements (collectively, the “*Project*”) that contemplates (1) partial real property tax abatement for the Project, and (2) a sales tax exemption on materials used in the construction of the Project; (b) the issuance of taxable industrial revenue bonds in several series (*i.e.*, a separate series for various phases of the Project) and related documents; and (c) this Agreement that describes the terms and conditions upon which the real property tax abatement and the sales tax exemption, as well as the creation of a community improvement district and a transportation development district on the Project Site (collectively, and as further described herein, the “*Incentives*”), will be granted.

D. The Board of Aldermen hereby finds and determines that the purchase, construction, extension, and improvement of the Project is expedient for the good government of the City, the preservation of peace and good order, the benefit of trade and commerce and the health of the inhabitants thereof, and serves a proper public and valid municipal purpose.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and mutual promises contained herein and other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

1.1. Definitions. In addition to the words and terms defined in the Recitals, the following words and terms shall have the following meanings:

“*Approved Site Plan*” means the detailed final plan or final plans approved by the City for the Project Site in conjunction with the Article IV of Chapter 405 of the Municipal Code.

“*Assessor*” means the Assessor of St. Charles County, Missouri.

“*Base Lease*” means the respective Base Lease executed by and between the City and the Master Developer or applicable Phase Developer in connection with a phase of the Project, as the same may be amended from time to time.

“*Board of Aldermen*” means the Board of Aldermen of the City.

“*Bond Counsel*” means Gilmore & Bell, P.C., St. Louis, Missouri, or an attorney at law or a firm of attorneys selected by the City of nationally recognized standing in matters pertaining to obligations issued by states and their political subdivisions.

“*Bond Documents*” means this Agreement and the trust indentures, leases, bond purchase agreements and other documents to be entered into in connection with the issuance of the Bonds.

“*Bonds*” means the City’s Taxable Industrial Revenue Bonds (KaLeCo LLC Project), which shall be issued from time to time in several series (*i.e.*, a separate series for various phases of the Project), in the maximum aggregate principal amount of \$68,000,000 allocated among the various phases of the Project, in accordance with the Act, the Ordinance, the Plan and this Agreement. The aggregate principal amount of Bonds allocated to a phase of the Project shall be set forth in the bond purchase agreement for the applicable series of Bonds. Following the issuance of a series of Bonds, the aggregate principal amount of such series may be reallocated among the other series of Bonds to accurately reflect the allocation of the costs of acquiring and constructing the Project among the various phases so long as the maximum aggregate principal allocated among all series of Bonds does not exceed \$68,000,000.

“*CID*” means The Encore Community Improvement District, and its successors and assigns.

“*CID Act*” means the Community Improvement District Act, Sections 67.1401 to 67.1571 of the Revised Statutes of Missouri, as amended.

“*CID Sales Tax*” means the one percent (1%) community improvement district sales and use tax to be imposed by the CID for a period not to exceed twenty-seven (27) years from the date of creation of the CID on all retail sales made in the boundaries of the CID that are subject to taxation pursuant to the provisions of Sections 144.010 to 144.525, inclusive, of the Revised Statutes of Missouri, with certain exceptions listed in the CID Act.

“*CID/TDD Obligations*” means the notes, bonds or other obligations issued by or on behalf of the CID and/or the TDD to reimburse the Master Developer or a Phase Developer the extent necessary for the costs incurred in completing the CID/TDD Projects, subject to limits contained in the District Project Agreement.

“*CID/TDD Projects*” means that portion of the Project Improvements consisting of infrastructure to be dedicated to the City or other governmental entity as more specifically described in the District Project Agreement.

“*City Administrator*” means the person duly appointed as City Administrator pursuant to the Municipal Code.

“*City Attorney*” means Hamilton Weber LLC or any other person or law firm appointed as the City Attorney pursuant to the Municipal Code.

“*Collector*” means (a) the Collector of Revenue of St. Charles County, Missouri, or (b) if the Collector of Revenue of St. Charles County, Missouri, will not perform the responsibilities of the Collector hereunder, the City Administrator of the City or his designee.

“*Commencement of the Phase 1 Project Improvements*” means when building permits for the Phase 1 Project Improvements have been obtained and the foundation for at least 50% of the square footage of the Phase 1 Project Improvements has been poured.

“*Commencement of the Phase 2 Project Improvements*” means when building permits for the Phase 2 Project Improvements have been obtained and the foundation for at least 50% of the square footage of the Phase 2 Project Improvements has been poured.

“*Commencement of the Phase 3 Project Improvements*” means when building permits for the Phase 3 Project Improvements have been obtained and the foundation for at least 50% of the square footage of the Phase 3 Project Improvements has been poured.

“*Community Benefit Payment*” shall have the meaning set forth in the District Project Agreement.

“*Completion Date*” means the respective date of substantial completion for each of Phase 1, Phase 2 and Phase 3 of the Project.

“*Concept Site Plan*” means the Project Site Area Plan as defined in Section 405.250 of the Municipal Code, a copy of which is set forth on **Exhibit B**, incorporated by reference herein, and depicting the conceptual program for construction of the Work.

“*Cumulative Property Tax Abatement Value*” means, for each phase of the Project, as of and for any year determined and calculated, the cumulative amount of property tax abatement received for such phase.

“*District Project Agreement*” means the District Project Agreement by and among the City, the Master Developer and, upon formation, the CID and the TDD, in substantially the form attached hereto as **Exhibit F**, as amended from time to time.

“*Event of Default*” means any Event of Default as provided in **Section 5.1**.

“*Excess Property Tax Abatement PILOT*” means, if the Cumulative Property Tax Abatement Value for any phase of the Project is greater than the Maximum Cumulative Property Tax Abatement Value for such phase, an additional PILOT shall be paid pursuant to **Section 4.2** in the amount of the difference

between the Cumulative Property Tax Abatement Value for such phase and the Maximum Cumulative Property Tax Abatement Value for such phase.

“Governmental Approvals” means all plat approvals, re-zoning or other zoning changes, planned unit development approvals, site plan approvals, conditional use permits, variances, building permits, architectural review or other subdivision, zoning or similar approvals, or approvals required by the Municipal Code or this Agreement for the completion of the Project.

“Initial Funding Agreement” means the Initial Funding Agreement dated as of October 5, 2022, between the City and Mia Rose Investments LLC, as may be amended from time to time in accordance with its terms.

“Lease” means the respective Lease Agreement executed by and between the City and the Master Developer or applicable Phase Developer in connection with a Phase of the Project, as the same may be amended from time to time.

“Master Developer” means KaLeCo LLC, a Missouri limited liability company, and its successors or assigns.

“Maximum Cumulative Property Tax Abatement Value” means (a) with respect to the Phase 1 Project and Phase 2 Project, an amount equal to 110% of \$3,812,676; and (b) with respect to the Phase 3 Project, an amount equal to 110% of \$273,452.

“Municipal Code” means the Municipal Code of the City of Dardenne Prairie, Missouri, as may be amended from time to time.

“Phase Developer” means the developer of a phase of the Project acting pursuant to a Phase Development Agreement, and its successors or assigns.

“Phase 1 Project” means, collectively, the Phase 1 Project Improvements and the Phase 1 Project Site.

“Phase 1 Project Improvements” means the approximately 17,000 square feet of commercial/retail space to be constructed upon the Phase 1 Project Site in accordance with the Approved Site Plan.

“Phase 1 Project Site” means the portion of the Project Site upon which the Phase 1 Project Improvements are located.

“Phase 2 Project” means, collectively, the Phase 2 Project Improvements and the Phase 2 Project Site.

“Phase 2 Project Improvements” means the approximately 190 residential rental apartments to be constructed upon the Phase 2 Project Site in accordance with the Approved Site Plan.

“Phase 2 Project Site” means the portion of the Project Site upon which the Phase 2 Project Improvements are located.

“Phase 3 Project” means, collectively, the Phase 3 Project Improvements and the Phase 3 Project Site.

“Phase 3 Project Improvements” means the approximately 9,000 square feet of commercial/retail space to be constructed upon the Phase 3 Project Site in accordance with the Approved Site Plan.

“Phase 3 Project Site” means the portion of the Project Site upon which the Phase 3 Project Improvements are located.

“Phase Development Agreement” means a Phase Development Agreement executed by and between the City and a Phase Developer, in substantially the form attached hereto as **Exhibit E**, wherein the Master Developer assigns its rights and responsibilities under this Agreement with respect to any phase to a Phase Developer.

“PILOT Payments” means the payments in lieu of taxes to be made by the Master Developer or applicable Phase Developer in the amounts required by **Article IV**.

“Project” means, collectively, the Phase 1 Project, the Phase 2 Project, and the Phase 3 Project.

“Project Improvements” means, collectively, the Phase 1 Project Improvements, the Phase 2 Project Improvements, and the Phase 3 Project Improvements.

“Project Site” means the approximately 17.25 acres of land located at the northwest intersection of Feise Road and Bryan Road in the City (as legally described on **Exhibit A**), and consisting of the Phase 1 Project Site, the Phase 2 Project Site, and the Phase 3 Project Site.

“Related Party” means any party related to the Master Developer or a Phase Developer, as the case may be, by one of the relationships described in Section 267(b) of the United States Internal Revenue Code of 1986, as amended, or any party controlled by or under common control with the Master Developer or a Phase Developer, as applicable.

“State” means the State of Missouri.

“TDD” means The Encore Transportation Development District, and its successors and assigns.

“TDD Act” means the Missouri Transportation Development District Act, Sections 238.200 through 238.280 of the Revised Statutes of Missouri, as amended.

“TDD Sales Tax” means the one percent (1%) transportation development district sales tax to be imposed by the TDD for a period not to exceed forty (40) years from the date of creation of the TDD on all retail sales made in the boundaries of the TDD that are subject to taxation pursuant to the provisions of Sections 144.010 to 144.525, inclusive, of the Revised Statutes of Missouri, with certain exceptions listed in the TDD Act.

“Transfer Date” means the date on which the Master Developer, a Phase Developer or an applicable Related Party transfers fee title of a portion of the Project to the City.

“Work” means:

(a) construction of improvements to be dedicated to the City on and around the Project Site and as set forth on the Approved Site Plan, including the following:

- (1) storm and sanitary sewers, stormwater control, detention facilities and other infrastructure improvements required to obtain all necessary approvals and permits,
 - (2) water mains,
 - (3) construction, reconstruction and/or relocation of other utilities,
 - (4) traffic-related improvements as set forth pursuant to the terms of the District Project Agreement, and
- (b) construction of the Project Improvements, as set forth on the Approved Site Plan.

ARTICLE II

PROJECT COSTS

2.1. Project Costs.

(a) *Preliminary Costs; Issuance Costs.* The City and the Master Developer hereby acknowledge that the Master Developer is responsible for funding all costs incurred by the City in connection with the implementation of the Incentives including, but not limited to, preparation of the Plan and the negotiation and preparation of the memorandum of understanding related to the Project, the District Project Agreement and this Agreement including, without limitation, attorney and consultant fees, the fees of any bond trustee, title work and recording fees and all other reasonable and customary costs of the Incentives and the Bonds. As partial payment of the fees set forth above, the City hereby acknowledges receipt pursuant to the Initial Funding Agreement of an initial deposit of funds in the amount of \$20,000.00. The Master Developer shall make future deposits as follows: (a) upon the City's adoption of the ordinance authorizing the issuance of the Bonds and execution of this Agreement, the Master Developer shall deposit an additional sum of \$95,000.00 with the City (less the amount on deposit with the City pursuant to the Initial Funding Agreement), and (b) prior to or simultaneously with the issuance of each series of Bonds, the Master Developer or applicable Phase Developer shall make a deposit with the City or the trustee of \$20,000.00 (plus any trustee fees and recording fees and other reasonable costs of issuance). The City and/or the trustee shall disburse said funds to the applicable party upon receipt of invoices for fees and out-of-pocket expenses incurred for services performed by the parties identified above.

(b) *Advance Upon Creation of TDD.* The Developer shall promptly, upon request of the City, advance funds to the City (but not in excess of \$40,000.00) to pay or reimburse the City for administrative and legal fees and reasonable out-of-pocket expenses incurred or charged by the City in connection with the creation of the TDD.

(c) *Construction Costs.* The Master Developer shall be solely responsible for funding or obtaining financing to fund all costs of acquiring and constructing the Project. Notwithstanding the foregoing, the City acknowledges and agrees that the Project will be completed in three phases. Accordingly, the funding or financing of each Phase of the Project may be provided by the applicable Phase Developer.

(d) *No Waivers.* Nothing in this Agreement shall be construed to waive any application fee or other cost to the Master Developer or a Phase Developer associated with any Governmental Approval required by the Municipal Code, including but not limited to application fees for zoning changes and building permits.

(e) *Costs Related to Early Termination or Assignments.* If this Agreement is terminated as to any phase of the Project before the payment in full of the applicable series of Bonds or the expiration of the applicable Lease or the rights and interests of the Master Developer and all applicable Phase Developers under this Agreement are assigned pursuant to **Section 6.3** hereof, the Master Developer or applicable Phase Developer shall pay any costs of the City in connection therewith, including the City’s legal fees and bond counsel fees.

ARTICLE III

**OWNERSHIP OF THE PROJECT SITE; SCHEDULE;
CONSTRUCTION OF THE PROJECT; CITY APPROVALS**

3.1. Ownership of the Project Site. The Master Developer represents that either it and/or a Related Party has acquired or has contracts to acquire all of the real property included in the Project Site and required for construction of the Project.

3.2. Project Construction.

(a) The Master Developer or applicable Phase Developer shall commence and substantially complete, or cause the commencement and substantial completion of, each phase of the Project in accordance with the following schedule (subject to extension under the conditions set forth in **Section 3.8** or as approved in writing by the City):

	Commencement of Phase	Substantial Completion of Phase
Phase 1	January 1, 2024	December 31, 2025
Phase 2	January 1, 2024	December 31, 2026
Phase 3	January 1, 2028	December 31, 2030

(b) Substantial completion shall be determined by the City’s acceptance or deemed acceptance of the Certificate of Substantial Completion for the applicable phase pursuant to **Section 3.7**. Notwithstanding anything to the contrary herein, if the Master Developer or applicable Phase Developer has not completed the activities referenced above within the applicable time periods described above, such failure shall be a default only with respect to the applicable phase of the Project, not the entire Project, and the City may terminate this Agreement with respect to the applicable phase of the Project upon 10 days’ written notice to the Master Developer and applicable Phase Developer.

(c) Upon reasonable advance notice, the Master Developer or applicable Phase Developer shall meet with the Mayor, the City Administrator and such other City staff and consultants as designated by the Mayor or the City Administrator to review and discuss the design and construction of the Work to enable the City to monitor the status of construction and the aesthetics of the Work and to determine that the Work is being performed and completed in accordance with this Agreement and the Municipal Code.

(d) Construction of the Work shall be pursued in a good and workmanlike manner in accordance with the terms of this Agreement.

3.3. Construction Contracts; Insurance.

(a) All construction contracts for the Work shall state that the contractor has no recourse against the City in connection with the contractor's construction of the applicable portion of the Work. The Master Developer or applicable Phase Developer shall obtain or shall require any contractor to obtain workers' compensation, commercial public liability and builder's risk insurance coverage in the amounts required by the Bond Documents for each applicable phase and shall deliver evidence of such insurance to the City in accordance with the provisions of the Bond Documents. The insurance required by this Section shall be maintained by the contractors for the duration of the construction of the applicable portion of the Work by an insurance company with a rating by a reputable rating agency indicating excellent or superior financial strength (i.e., an A.M. Best rating of "A:VI" or better). The Master Developer agrees to provide immediate written notice to the City when a cancellation, termination, expiration or modification of any such policy occurs.

(b) In addition to the insurance requirements set forth in subsection (a), the Master Developer or applicable Phase Developer shall maintain contractual liability insurance covering the Master Developer's or applicable Phase Developer's indemnification obligations under **Sections 4.3 and 6.5**. The contractual liability insurance shall be placed with such insurance carriers and contain such terms and conditions as shall be reasonably acceptable to the City Attorney. The Master Developer or applicable Phase Developer shall provide the City with a current certificate of insurance to evidence the current effectiveness of such insurance coverage upon the execution of this Agreement and from time to time thereafter upon written request of the City. The Master Developer or applicable Phase Developer shall cause the City to be named as an additional insured under the contractual liability insurance coverage required by this subsection. The Master Developer or applicable Phase Developer shall furnish the City with an additional insured endorsement ("AIE") issued by each applicable insurance carrier to evidence the coverages required in this subsection, which AIE shall utilize the Standard ISO Additional Insured Endorsement, 1985 Broad Form. The certificates and AIE for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf, and are to be received and approved by the City before services commence. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.4. Competitive Bids; Prevailing Wage; Federal Work Authorization.

(a) The Master Developer or applicable Phase Developer shall comply with all federal, State and local laws relating to the construction of each applicable portion of the Project, including, but not limited to, Sections 107.170 and 292.675 of the Revised Statutes of Missouri and laws relating to the payment of prevailing wages and competitive bidding, to the extent such laws are applicable to the Project or portions thereof.

(b) The Master Developer and each Phase Developer will comply with and satisfy the requirements of Section 285.530.2 of the Revised Statutes of Missouri, which requires (1) any business entity receiving tax abatement to, by sworn affidavit and provision of documentation, annually affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the business entity receiving tax abatement, and (2) every such business entity to annually sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the entity receiving tax abatement. The Master Developer shall provide such affidavit, in substantially the form attached as **Exhibit C**, and documentation to the City Administrator or his designee upon execution of this Agreement and on or before November 15 of each year during the term of this Agreement, beginning November 15, 2023. Each Phase Developer shall provide such affidavit, in substantially the form attached as **Exhibit C**, and documentation to the City Administrator or his designee upon execution of the applicable Phase Development Agreement and on or before November 15 of each

year during the term of this Agreement, beginning on the first November 15 following execution of the applicable Phase Development Agreement.

3.5. Governmental Approvals. The Master Developer or applicable Phase Developer shall obtain or cause to be obtained all necessary Governmental Approvals and shall be subject to all lawful inspections and perform such necessary acts as are required under the ordinances of the City. The City agrees to cooperate with the Master Developer or applicable Phase Developer and to process and timely consider all complete applications for the Governmental Approvals as received, all in accordance with the Municipal Code and laws of the State; provided, however, that nothing herein contained shall be construed as the City's current approval of, or acquiescence to, any Governmental Approvals, the parties acknowledging that such matters can only be approved by the City in the proper exercise of its municipal functions through appropriate governmental procedures.

3.6. Concept Site Plan; Approved Site Plan; Zoning.

(a) *Approval of Concept Site Plan and Approved Site Plan.* The City hereby approves the Concept Site Plan; provided, however, that notwithstanding any provision of this Agreement to the contrary, such approval does not exempt the Master Developer or applicable Phase Developer from any Area Plan or plat review and approval process required by the Municipal Code. The parties agree that only the Approved Site Plan shall govern the ultimate design and construction of the Project.

(b) *Changes.* The Master Developer or applicable Phase Developer may only make changes from time to time to the Approved Site Plan in accordance with the provisions of the Municipal Code.

(c) *Planned Zoning.* The Project will be developed pursuant to Article IV of Chapter 405 of the Municipal Code, and the Master Developer, or applicable Phase Developer, agree to timely file all applicable rezoning and Area Plan approval requests. The Master Developer, or applicable Phase Developer, acknowledges that the City may impose certain conditions for the Project as part of such zoning and/or Area Plan approvals.

3.7. Certificate of Substantial Completion.

(a) The Master Developer or applicable Phase Developer shall furnish a Certificate of Substantial Completion for each phase of the Project, each in substantially the form of **Exhibit D**, which is hereby incorporated by reference, to the City.

(b) The appropriate City official shall diligently process each submitted Certificate of Substantial Completion, including making such inspections as may be reasonably necessary to verify the accuracy of the project architect's certifications accompanying each Certificate of Substantial Completion. The appropriate City official shall accept or reject each Certificate of Substantial Completion in writing within 45 days following delivery to the City. If the City fails to approve or reject a Certificate of Substantial Completion in writing within such 45-day period, then the Master Developer or applicable Phase Developer shall notify the City in writing of the City's failure to take action on that Certificate of Substantial Completion and the City shall have 45 days from receipt of such notice to accept or reject that Certificate of Substantial Completion in writing. If the City has not accepted or rejected the Certificate of Substantial Completion within such 45-day period, the Certificate of Substantial Completion shall be deemed accepted by the City. If the appropriate City official rejects a Certificate of Substantial Completion, such rejection shall specify in reasonable detail in what respects the Master Developer or applicable Phase Developer has failed to complete the Work in reasonable accordance with the provisions of this Agreement, or in what respects the Master Developer or applicable Phase Developer is otherwise in default, and what

measures or acts the Master Developer or applicable Phase Developer must take or perform, in the good faith opinion of such City official, to obtain such acceptance.

(c) The City may issue any and all appropriate certificates of occupancy in accordance with the Municipal Code, even if the City has not yet accepted a Certificate of Substantial Completion for that particular phase of the Project.

(d) The Transfer Date of each phase of the Project shall each occur within 30 days of the City's acceptance or deemed acceptance of the respective Certificate of Substantial Completion and the Master Developer's or applicable Phase Developer's receipt of waivers of all mechanics' lien rights with respect to the applicable portion of the Project.

3.8. Excusable Delay. Notwithstanding anything to the contrary contained herein or in the Plan, the schedule for completion of the Project Improvements described in **Section 3.2** shall be automatically extended by the number of days of delay caused by actions or events beyond the control of the Master Developer or applicable Phase Developer, including, without limitation, damage or destruction by fire or casualty, strike, lockout, civil disorder, war, restrictive government regulations, lack of issuance of any permits and/or legal authorization by the governmental entity necessary for the construction and occupation of the Project (provided that reasonable efforts have been made to obtain said permits/authorizations and all conditions precedent to the issuance of said permits and/or authorizations have been met), shortage or delay in shipment of material or fuel, acts of God, pandemic, unusually adverse weather or wet soil conditions, or other like causes beyond the Master Developer's or applicable Phase Developer's reasonable control, including without limitation any litigation, court order or judgment resulting from any litigation affecting the validity of this Agreement or the Bond Documents (collectively, an "*Excusable Delay*"). The parties agree that as of the date of this Agreement, no condition or event exists that would justify an Excusable Delay. Notwithstanding the foregoing, no Excusable Delay will be deemed to exist unless the Master Developer or applicable Phase Developer notifies the City in writing of such Excusable Delay within 30 days after the commencement of the event causing such Excusable Delay (or within 30 days after the date that the Master Developer or applicable Phase Developer should reasonably have determined that such event will cause such Excusable Delay). An Excusable Delay shall not include any condition or circumstance caused or extended by the Master Developer or applicable Phase Developer or applicable Related Party or attributable to the action or inaction of the Master Developer or applicable Phase Developer or applicable Related Party, and the Master Developer or applicable Phase Developer or applicable Related Party shall have the burden of proof in establishing such Excusable Delay. If unforeseen site conditions on the Project Site, or applicable portion thereof, such as unknown environmental contamination or geotechnical conditions not identified prior to the inception of the applicable portion of the Project, cause significant delay in preparing the applicable portion of the Project Site for construction of the applicable Project Improvements, the deadlines provided in **Section 3.2** shall be extended for that period of time which the Master Developer or applicable Phase Developer can demonstrate to the reasonable satisfaction of the City Administrator to be necessary to remediate such conditions.

3.9. Access Agreement. The City and the Master Developer acknowledge that, as part of the Project, certain road improvements in and surrounding the Project Site, specifically access to Bryan Road and certain improvements to the intersection of Bryan and Feise Roads, are necessary. The City and the Master Developer acknowledge that such road improvements cannot be made without the approval of the City of O'Fallon, Missouri, and both parties agree to use good faith efforts to negotiate and enter into a separate agreement with the City of O'Fallon, Missouri, following the execution of this Agreement outlining the rights and obligations of the several parties with respect to said road improvements (the "*Access Agreement*").

ARTICLE IV
INCENTIVES

4.1. Partial Real Property Tax Abatement.

(a) In accordance with the provisions of the Act, the Plan and the Bond Documents, the City will issue the Bonds in several series in connection with the development of the Project or separate portions thereof. With respect to each phase of the Project, the City will initially obtain a leasehold interest in the applicable portion of the Project Site pursuant to a Base Lease between the City and the Master Developer or applicable Phase Developer and, subsequently, as of the Transfer Date, acquire fee simple title to the applicable phase of the Project. The City expects each phase of the Project to be exempt from ad valorem real property taxes so long as the City owns fee simple title thereto. Accordingly, the parties acknowledge that no property tax exemption will exist until the transfer to the City of fee simple title to the applicable phase of the Project is completed on the Transfer Date, as described in the Lease.

(b) The parties acknowledge and agree that it is currently expected that the City Administrator or his designee shall act as the Collector for purposes of the calculating, collecting and disbursing PILOT Payments due hereunder in accordance with the following provisions:

(i) Following any Transfer Date, the City Administrator shall obtain from the Assessor, as soon as reasonably available, the Assessor's most recent assessed valuation with respect to each applicable portion of the Project in accordance with Article X, Section 4(b) of the Missouri Constitution and Section 137.115 of the Revised Statutes of Missouri, as amended. To facilitate the assessment, the Master Developer, or applicable Phase Developer, agrees to provide to the City Administrator and the Assessor such information as the City Administrator and/or the Assessor may reasonably require. If the Assessor fails to perform at least a bi-annual assessment of the value of each applicable portion of the Project, the City will determine, at the Master Developer's or applicable Phase Developer's expense, an assessment of the value of each applicable portion of the Project using the same methodology and factors that would be used by the Assessor.

(ii) The City Administrator shall promptly notify the Master Developer and the applicable Phase Developers of the assessed valuations for their respective parcels in writing, and shall provide copies of any supporting documentation provided by the Assessor to the City Administrator relating to such valuation. The Master Developer or applicable Phase Developer shall notify the City Administrator and the Assessor if the Master Developer or applicable Phase Developer has not received such notice for their respective parcel by July 1.

(iii) Upon receiving the most recent assessed valuation of each applicable portion of the Project from the Assessor, the City Administrator shall notify the Master Developer and each applicable Phase Developer of the amount of PILOT Payments due hereunder. The Master Developer or applicable Phase Developer shall notify the City Administrator if it has not received such notice by December 1.

(iv) The amount of PILOT Payments due with respect to each phase of the Project for each year shall be calculated as follows:

(1) *PILOT Payments to Emergency Service Districts.* Pursuant to Section 100.050 of the Act, certain emergency service districts may elect to be reimbursed up to

100% of the taxes they would have otherwise received, but for the tax abatement. The O’Fallon Fire Protection District (the “*Fire District*”) and the St. Charles County Ambulance District (the “*Ambulance District*”) are two such emergency service districts. Unless otherwise agreed to in writing by the Fire District, the Ambulance District or other applicable emergency service provider pursuant to Section 100.050 of the Act, in each year that this Agreement is in effect, the Master Developer or applicable Phase Developer will make PILOT payments equal to 100% of the real property taxes that the Fire District, the Ambulance District and any other applicable emergency service provider pursuant to Section 100.050 of the Act would have otherwise received notwithstanding the abatement of the Project or any portion thereof contemplated by this Agreement; ***plus***

(2) *Additional PILOT Payments with respect to each Phase of the Project.* In addition to the PILOT Payments to the Fire District, the Ambulance District and any other applicable emergency service provider pursuant to Section 100.050 of the Act, as described above, the Master Developer or applicable Phase Developer will make the following PILOT Payments with respect to each phase of the Project:

(A) For each year up to and including the year in which the Transfer Date of the applicable phase of the Project occurs, the Master Developer or applicable Phase Developer will make PILOT Payments equal to 100% of the real property taxes that would otherwise be due (excluding any PILOT Payments paid to the Fire District, the Ambulance District and any other applicable emergency service provider pursuant to Section 100.050 of the Act under subsection **4.1(b)(iv)(1)** above), notwithstanding the City’s leasehold ownership of the applicable phase of the Project under the Base Lease.

(B) For each of the 12 calendar years following the Transfer Date (i.e., those years the applicable phase of the Project is owned in fee by the City), the Master Developer or applicable Phase Developer will make PILOT Payments equal to 0% of the real property taxes that would otherwise be due (excluding any PILOT Payments paid to the Fire District, the Ambulance District and any other applicable emergency service provider pursuant to Section 100.050 of the Act under **Section 4.1(b)(iv)(1)** above), but for the City’s ownership of the applicable phase of the Project. Notwithstanding the foregoing, if the Fire District, the Ambulance District and any other applicable emergency service provider pursuant to Section 100.050 of the Act agree to a PILOT payment under **Section 4.1(b)(iv)(1)** above that is less than 100% of the taxes it would have otherwise received but for the abatement of the Project or any portion thereof contemplated by this Agreement, the PILOT payments paid by the Master Developer or applicable Phase Developer under this subsection will be modified to result in substantially the same economic benefit to the Master Developer or applicable Phase Developer without the Fire District, the Ambulance District or applicable emergency service provider’s agreement; ***plus***

(3) *Additional PILOT Payments for failure to meet Substantial Completion deadline.* Notwithstanding anything to the contrary herein, if any phase of the Project Improvements has not been substantially completed by the date set forth in the schedule for completion of such Project Improvements in **Section 3.2(a)** (subject to extension under the conditions set forth in **Section 3.8** or as approved in writing by the City), the Master Developer shall make an additional PILOT Payment equal to \$10,000 per year for each applicable phase of the Project until the earlier of (1) the Project Improvements for the

applicable phase are substantially completed, or (2) the City terminates this Agreement with respect to the applicable phase of the Project following notice as described in **Section 3.2(b)**.

(v) Notwithstanding any provision of this Agreement to the contrary, the value of the aggregate real property tax abatement to the Master Developer or any applicable Phase Developer shall not exceed the Maximum Cumulative Property Tax Abatement Value for the applicable Phase. Following the Transfer Date (i.e., those years the applicable phase of the Project is owned in fee by the City), the Cumulative Property Tax Abatement Value for the applicable phase will be measured annually pursuant to **Section 4.2**, and the tax abatement contemplated by this Section will terminate after the Cumulative Property Tax Abatement Value for such phase equals or exceeds the Maximum Cumulative Property Tax Abatement Value for the applicable phase.

(vi) Each PILOT Payment shall be payable to the Collector. The Master Developer and each applicable Phase Developer covenants and agrees to make such PILOT Payments with respect to their respective parcels on or before December 31 of each year during the term of this Agreement. The Master Developer's or applicable Phase Developer's failure to receive notices under **(b)(ii)** or **(b)(iii)** of this Section does not relieve the Master Developer or applicable Phase Developer of its obligation to make the applicable PILOT Payments by December 31 as provided herein.

(vii) Within 30 days after receipt of each PILOT Payment, the Collector shall, after deducting a fee of one percent of the PILOT Payments (or an amount equal to the then current fee charged by the Collector of Revenue of St. Charles County, Missouri for the collection of real property tax payments, whichever is higher) for collection thereof and subject to **(b)(iv)(1)** of this Section, divide each PILOT Payment among the taxing jurisdictions in proportion to the amount of the then-current ad valorem tax levy of each taxing jurisdiction.

(c) The Master Developer or applicable Phase Developer shall purchase the applicable phase of the Project pursuant to **Section 11.4** of the Lease no later than (i) December 31 of the 12th calendar year following the Transfer Date of the respective portion of the Project (by way of example, if the Transfer Date of the Phase 1 Project occurs in 2026, the Master Developer or the Phase Developer for Phase 1 shall purchase the Phase 1 Project by December 31, 2038; if the Transfer Date of the Phase 2 Project occurs in 2027 the Master Developer or Phase Developer for Phase 2 shall purchase the Phase 2 Project by December 31, 2039; and if the Transfer Date of the Phase 3 Project occurs in 2031 the Master Developer or Phase Developer for Phase 2 shall purchase the Phase 2 Project by December 31, 2043), or (ii) the expiration of the term of this Agreement as to the applicable phase of the Project. Notwithstanding any provision of this Agreement to the contrary, the Master Developer or applicable Phase Developer shall purchase the applicable phase of the Project pursuant to **Section 11.4** of the Lease no later than December 31 of the year following the Transfer Date in which the Maximum Cumulative Property Tax Abatement Value is attained.

(d) If title to the Project or the applicable portion thereof is not conveyed by the City to the Master Developer or applicable Phase Developer before January 1 following the earlier of (1) the expiration of the term of this Agreement as to the applicable phase of the Project, or (2) the date determined in accordance with paragraph (c) above, then on December 31 of such year and each year thereafter until title to the Project or the applicable portion thereof as described in (c) above is transferred to the Master Developer or applicable Phase Developer, the Master Developer or applicable Phase Developer shall pay to the Collector a PILOT Payment equal to 100% of the real property taxes that would otherwise be due

with respect to the Project or the applicable portion thereof, but for the City's ownership of the Project or the applicable portion thereof.

(e) The property tax exemption provided by the City's ownership of the Project or the applicable portion thereof is expected to apply to all interests in the Project or portion thereof during the period it is owned by the City. If any ad valorem real property taxes are levied by or on behalf of any taxing jurisdiction against any interest in the Project or the applicable portion thereof while the City owns the Project or portion thereof (including, without limitation, any ad valorem taxes levied against the Master Developer's or applicable Phase Developer's rights in the Lease), the amount of the PILOT Payments the Master Developer or applicable Phase Developer is obligated to pay pursuant to this Agreement shall be reduced by the amount of ad valorem tax payments paid by the Master Developer or applicable Phase Developer and received by the Collector with respect to the Project or applicable portion thereof. The Master Developer or applicable Phase Developer shall be responsible for any taxes related to any interest in the Project or applicable portion thereof that the Master Developer or applicable Phase Developer owns in its own name or granted to the Master Developer or applicable Phase Developer other than pursuant to the Lease. Notwithstanding **Section 4.3** below, there shall be no reduction in PILOT Payments for any sales taxes imposed by any governmental authority, including the Missouri Department of Revenue, in connection with the Master Developer's or applicable Phase Developer's acquisition of construction materials for real property improvements or equipment at the Project Site.

(f) If the Master Developer or applicable Phase Developer exercises its option to purchase the applicable phase of the Project pursuant to **Section 11.1** of the Lease before the Collector notifies the Master Developer or applicable Phase Developer of the annual PILOT Payment due under this Agreement, the Master Developer or applicable Phase Developer shall pay to the City an amount equal to 100% of the ad valorem real property taxes that would have been payable to each taxing jurisdiction, but for the City's ownership of the applicable phase of the Project, for the preceding calendar year (the "*Escrowed Amount*"). Once the Collector notifies the Master Developer or applicable Phase Developer of the PILOT Payment due hereunder for the calendar year in which the Master Developer or applicable Phase Developer purchases the applicable phase of the Project, the Master Developer or applicable Phase Developer will forward the Collector's notification to the City, and the City will use the Escrowed Amount to pay the PILOT Payment to the Collector and refund the remaining amount, if any, to the Master Developer or applicable Phase Developer.

(g) If the Master Developer or applicable Phase Developer exercises its option to purchase the applicable phase of the Project pursuant to **Section 11.1** of the Lease after receiving notification of the PILOT Payment due under this Agreement for the calendar year in which the Master Developer or applicable Phase Developer purchases the applicable phase of the Project, the Master Developer or applicable Phase Developer shall pay that amount to the Collector (to be distributed as provided in herein) prior to closing on the purchase of the applicable phase of the Project.

(h) The City and the Master Developer and each applicable Phase Developer acknowledge and agree that the amounts payable hereunder shall constitute payments due the City under the applicable Lease. Neither the Master Developer nor any applicable Phase Developer shall be entitled to any extension of payment of such amounts as a result of a filing by or against the Master Developer or applicable Phase Developer in any bankruptcy court, and the filing of any such action not discharged within ninety (90) days of its filing shall constitute an Event of Default hereunder.

4.2. Maximum Cumulative Property Tax Abatement Value.

(a) No later than January 31 of each year, the Master Developer or any applicable Phase Developer shall submit, or cause to be submitted, to the City a detailed written calculation of the Cumulative Property Tax Abatement Value as of December 31 of the prior calendar year for each applicable phase, based on the PILOT Payments made pursuant to **Section 4.1** and any information reasonably requested by the City to verify the Cumulative Property Tax Abatement Value. The City shall review the calculation of the Cumulative Property Tax Abatement Value and, within 60 days of the City's receipt of the calculation and any additional information requested by the City, provide written confirmation of the calculation or objection to the calculation. Any objection to the calculation shall be accompanied by a description of the basis for the objection and the Master Developer or any applicable Phase Developer shall then have 15 days to submit a corrected calculation. If the City fails to confirm or object to any calculation within 60 days from the City's receipt of such calculation and any additional information requested by the City, such calculation shall be deemed confirmed by the City.

(b) Notwithstanding anything to the contrary contained herein, if, at any time, the calculation of the Cumulative Property Tax Abatement Value (as confirmed or deemed confirmed by the City) for a phase equals or exceeds the Maximum Cumulative Property Tax Abatement Value for such phase, then no further tax abatement for such phase will be permitted by this Agreement. If the Maximum Cumulative Property Tax Abatement Value for a phase is exceeded, then the information submitted by the Master Developer or applicable Phase Developer to the City pursuant to subsection (a) shall include a calculation of the Excess Property Tax Abatement PILOT due for the applicable phase. Such calculation shall be reviewed by the City in the manner described in subsection (a) and upon receiving confirmation by the City, the Master Developer or applicable Phase Developer shall pay the Excess Property Tax Abatement PILOT to the Collector within 30 days, which shall be distributed among the taxing jurisdictions in proportion to the amount of the then-current ad valorem tax levy of each taxing jurisdiction pursuant to **Section 4.1(b)(vii)**.

4.3. Sales Tax Exemption.

(a) Simultaneously with the closing of the Bonds or a series thereof (or such earlier time if approved by the City Administrator), the City will provide a Missouri Department of Revenue Project Exemption Certificate, Form 5060 (the "*Tax Exemption Certificate*") to the Master Developer or a Phase Developer, as applicable, in order to obtain an exemption from state and local sales taxes for construction materials incorporated into the Project Improvements. The Master Developer or a Phase Developer, as applicable, is permitted to purchase and pay for, exempt from sales tax, certain construction materials to be incorporated into or used up in the Project Improvements, pursuant to the Tax Exemption Certificate. The Master Developer or a Phase Developer, as applicable, agrees to make such purchases in compliance with the provisions of Section 144.062 of the Revised Statutes of Missouri, as amended. Such construction materials may only include tangible personal property and materials that will only be used for the Project Improvements and that are actually used up or consumed in constructing the Project Improvements. Examples provided by the Missouri Department of Revenue include sandpaper, fuel to run equipment and drill bits that are actually used up in the construction of the Project Improvements. Examples of items that are not consumed are hand tools, drinking water coolers, hardhats and bulldozers. The examples in the prior sentences are not intended to be exhaustive. Except as provided herein, the acquisition and construction of the Project Improvements shall not be exempt from any sales taxes imposed by any governmental authority by virtue of the City's ownership of the Project Improvements, and neither the City nor the Master Developer (or applicable Phase Developer) will request any such exemption. Nothing herein shall limit the Master Developer's or applicable Phase Developer's right to any exemption of sales taxes not resulting from the City's lease or ownership of the Project Improvements. Upon issuance of the Tax Exemption Certificate, the Master Developer, a Phase Developer or their designee, as applicable, agrees to provide a

final project summary to the City regarding construction materials related to the Project purchased under this Agreement. If the initial series of the Bonds are not issued by December 31, 2023 (subject to any extension granted by the City in its sole and absolute discretion), the Master Developer or applicable Phase Developer hereby agree to immediately pay all sales and use taxes that otherwise would have been due with respect to the construction materials for the Project Improvements.

(b) Upon a determination by the Missouri Department of Revenue that any purchase made by the Master Developer or applicable Phase Developer using the Tax Exemption Certificate described in subsection (a) above was not exempt from sales tax, the Master Developer or applicable Phase Developer shall pay to the Missouri Department of Revenue all sales taxes so determined to be due (whether by virtue of failure of the Master Developer or applicable Phase Developer to comply with the terms of this Agreement or the procedures and requirements of the Missouri Department of Economic Development or otherwise). The Master Developer shall indemnify and defend the City and its officers, employees and agents against and from any and all causes of action or actions in law or equity, liens, claims damages, loss, costs or expenses of any nature whatsoever by any person or entity, arising out of the City's furnishing of the Tax Exemption Certificate. There shall be no reduction in PILOT Payments for any sales taxes paid by the Master Developer or applicable Phase Developer in connection with the Project.

4.4. No Abatement on Special Assessments, Personal Property Taxes, Licenses or Fees.

The City and the Master Developer and each Phase Developer hereby agree that the property tax exemptions described in this Agreement shall not apply to special assessments or ad valorem personal property taxes and shall not serve to reduce or eliminate any other licenses or fees owing to the City or any other taxing jurisdiction with respect to the Project or any portion thereof. The Master Developer, each Phase Developer and any other subsequent owners of the Project or applicable portions thereof will make payments with respect to all special assessments, personal property taxes, licenses and fees that would otherwise be due with respect to the Project or applicable portions thereof if such Project or applicable portions thereof were not owned by the City.

4.5. Bond Documents to Control. In the event of any inconsistency between this Agreement and the Bond Documents, the Bond Documents shall control.

4.6. Community Improvement District and Transportation Development District.

(a) Pursuant to the CID Act, the Master Developer has caused a petition for the creation of the CID to be filed with the City, which was approved on April 12, 2023, pursuant to Ordinance No. _____ following a properly noticed and duly held public hearing. Following the acquisition of the Project Site by the Master Developer, the Master Developer shall cause the CID's board of directors to submit a ballot proposition to the CID's qualified voters to authorize the imposition of the CID Sales Tax. So long as the CID is in existence, the CID's boundaries shall cover, at a minimum, all portions of the Project Site used for commercial/retail uses. The existence of the CID is expressly contingent upon the closing of the transaction contemplated by that certain Commercial Sale Contract – Land dated October 8, 2021 between Cora Bopp Family Limited Partnership, L.P. and the Master Developer (as amended and assigned, the "*Sale Contract*"). In the event the transaction contemplated by the Sale Contract fails to close prior to September 30, 2023, the existence of the CID shall automatically terminate and any outstanding CID/TDD Obligations issued by or on behalf of the CID shall be null and void.

(b) Pursuant to the TDD Act, the Master Developer and any applicable Phase Developer shall, following acquisition of the Project Site, (i) petition the Circuit Court of St. Charles County, Missouri for the creation of the TDD, and (ii) cause the TDD's board of directors to submit a ballot proposition to the TDD's qualified voters to authorize the imposition of the TDD Sales Tax. So long as the TDD is in existence, the TDD's boundaries shall, at all times, cover, at a minimum, all portions of the Project Site

used for commercial/retail uses. The City agrees to cooperate with and assist the Master Developer and any applicable Phase Developer in all proceedings relating to the creation of the TDD.

(c) The parties acknowledge and agree that the creation of the CID and the TDD shall be solely for the purpose of providing additional tax revenues for funding a portion of the CID/TDD Projects. The Master Developer and any applicable Phase Developer shall cause the CID's and the TDD's board of directors to authorize and enter into the District Project Agreement (in substantially the form attached hereto as **Exhibit F**), which provides terms related to (1) the Master Developer and any applicable Phase Developer's agreement to advance all funds for and complete the CID/TDD Projects, (2) the issuance of the CID/TDD Obligations to reimburse the Master Developer or a Phase Developer to the extent necessary for the costs incurred in completing the CID/TDD Projects, subject to limits contained in the District Project Agreement, (3) the term of and limitations on the use of the CID Sales Tax and the TDD Sales Tax, and (4) the operation and governance of the CID and the TDD. If the CID's board of directors fails to authorize and execute the District Project Agreement within 30 days following the acquisition of the Project Site by the Master Developer (subject to any extension granted by the City in its sole and absolute discretion), at the written request of the City, the Master Developer and any applicable Phase Developer covenant and agree to execute all necessary documents and assist the City in abolishment of the CID in accordance with the CID Act. The petition to create the TDD shall expressly state that the TDD's continued existence shall be expressly contingent upon the TDD's board of directors authorizing and executing the District Project Agreement within 30 days following formation (subject to any extension granted by the City in its sole and absolute discretion).

(d) To offset the City's future expenses related to the CID/TDD Projects, the Master Developer or applicable Phase Developer shall make the Community Benefit Payment to the City as set forth in the District Project Agreement.

4.7. Future Legislation. The City and the Master Developer and each Phase Developer acknowledge that the Project is expected to be completed in phases over several years. During such time, changes to federal, state or local laws might be enacted that could prevent the full implementation of the Incentives contemplated by this Agreement. The City shall have no liability to the Master Developer or any Phase Developer if any legislation is enacted that precludes the City from implementing the Incentives contemplated by this Agreement in full or in part. In the event the City is precluded from implementing the Incentives contemplated by this Agreement in full or in part, the City agrees to work in good faith with the Master Developer or any applicable Phase Developer to consider alternative economic incentives for the Project or applicable portion thereof reasonably comparable to the Incentives contemplated herein.

ARTICLE V

EVENTS OF DEFAULT

5.1. 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 with respect to a phase of the Project hereunder:

(a) the Master Developer or applicable Phase Developer fails to make any PILOT Payment required to be paid hereunder with respect to the applicable phase of the Project within 10 business days after written notice and demand given by the City to the Master Developer or applicable Phase Developer;

(b) the Master Developer fails to make the Community Benefit Payment required to be paid under the terms of the District Project Agreement within 10 business days after written notice and demand given by the City to the Master Developer;

(c) the City, the Master Developer or applicable Phase Developer fails to perform any of its material obligations hereunder with respect to the applicable phase of the Project for a period of 30 days (or such longer period as the City (if the Master Developer and/or a Phase Developer is the defaulting party) or the Master Developer or applicable Phase Developer (if the City is the defaulting party) may agree in writing) following written notice to the defaulting party of such failure, or if such failure is not subject to cure within such 30 days after such notice, the defaulting party fails to initiate action to cure the default within such 30 days after such notice is given and fails to pursue such action diligently; or

(d) any representation of the City, the Master Developer or applicable Phase Developer contained herein with respect to the applicable phase of the Project proves to be materially false or erroneous and is not corrected or brought into compliance within 30 days (or such longer period as the City (if the Master Developer and/or a Phase Developer is the defaulting party) or the Master Developer or applicable Phase Developer (if the City is the defaulting party) may agree in writing) following written notice to the defaulting party specifying the false or erroneous representation and requiring it to be remedied, or if such matter is not subject to cure within such 30 days after such notice, the defaulting party fails to initiate action to cure the default within such 30 days after such notice is given and fails to pursue such action diligently.

5.2. Remedies on Default.

(a) As provided in the Bond Documents, any Event of Default referred to in **Section 5.1** with respect to a phase of the Project, shall also constitute an Event of Default under the Bond Documents for the applicable phase, affording the City the remedies specified therein, to the extent permitted by State law.

(b) Upon the occurrence of an Event of Default with respect to a phase of the Project, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default, including, but not limited to proceedings to compel specific performance by the defaulting party or to terminate this Agreement. The Master Developer or applicable Phase Developer shall pay all costs of the prevailing party in any such action under this Section.

(c) In addition, the City or any taxing jurisdiction that would benefit from the PILOT Payments provided for in this Agreement may bring an action for specific performance to enforce such payments. In any judicial or non-judicial proceeding to enforce any right or remedy of the trustee under the Bond Documents or the City hereunder, there shall be allowed and included in the judgment or decree all expenditures and expenses (including without limitation, attorneys' fees and the costs of obtaining title reports, title insurance, environmental reports, appraisal reports, insurance, past due taxes and assessments with respect to the Project) which may be paid or incurred in connection with the exercise by the trustee or the City of such party's rights and remedies provided or referred to in this Agreement or the Bond Documents, together with interest thereon at the statutory rate of interest, and the same shall be Additional Rent as defined in **Section 5.2** of the Lease.

5.3. Interest on Late Payments. Any amounts due hereunder that are not paid when due shall bear interest at the interest rate of 18% per annum from the date such payment was first due.

ARTICLE VI

GENERAL PROVISIONS

6.1. Term of Agreement. This Agreement shall become effective upon execution by the parties hereto (and with respect to a Phase Developer, upon execution of a Phase Development Agreement) and shall terminate as to any applicable phase upon the earliest to occur of the following:

(a) with respect to a phase of the Project, the payment in full of the Bonds (or any bonds issued to refund the Bonds) issued in connection with such phase of the Project and the payment of all amounts due under this Agreement applicable to such phase of the Project;

(b) with respect to a phase of the Project, the occurrence and continuance of an Event of Default beyond the cure period and the subsequent termination of this Agreement with respect to such phase of the Project pursuant to the provisions of this Agreement; or

(c) with respect to a phase of the Project, the expiration of the applicable Lease for such phase as set forth in the applicable Bond Documents.

6.2. Payments in Last Year. The foregoing provisions of **Section 6.1** shall not relieve the Master Developer or applicable Phase Developer or a Related Party of its obligation to make any PILOT Payment with respect to the applicable phase of the Project owing during the year in which this Agreement terminates, to the extent the Master Developer or applicable Phase Developer (or subsequent owners of the Project or portions thereof) receives the ad valorem tax exemption contemplated for that year.

6.3. Transfers to Phase Developers, Successors and Assigns.

(a) *Transfer to Master Developer or Related Party.* The Master Developer may, at any time, voluntarily sell, lease, assign, transfer, convey and/or otherwise dispose of (hereinafter collectively referred to as a “*Transfer*”) its interest in the Project or any portion thereof to a Related Party of the Master Developer without the City’s prior written consent, if written notice of such Transfer is given to the City within thirty (30) days after the Transfer.

(b) *Transfer to Unrelated Entities Before Substantial Completion.* If the Certificate for Substantial Completion with respect to a phase of the Project has not yet been approved or deemed approved, no Transfer of the Project or any portion thereof with respect to such phase of the Project, except as may be permitted by subsection (a) above, shall occur without (i) the City’s prior written consent to the Transfer (as evidenced by the City’s execution of acknowledgment attached to the Phase Development Agreement), (ii) the Phase Developer’s execution of a Phase Development Agreement, (iii) the City’s receipt of evidence of the Phase Developer’s compliance with **Section 3.3** and **3.4(b)** and the workers’ compensation, commercial public liability and builder’s risk insurance coverage in the amounts required by the Bond Documents for the applicable phase at the time of the assignment and (iv) if applicable, the City’s receipt and approval of a public improvement guarantee pursuant to Section 410.130 of the Municipal Code for the applicable phase of the Project, which may be provided by either the Master Developer or applicable Phase Developer.

(c) *Transfer to Unrelated Entities After Substantial Completion.* If the Certificate for Substantial Completion with respect to a phase of the Project has been approved or deemed approved, the Master Developer, Phase Developer (or successor in title) may Transfer the Project or any portion thereof with respect to such phase of the Project so long as the proposed Phase Developer enters into a Phase Development Agreement with the City and the City receives evidence of the Phase Developer’s compliance

with **Section 3.3** and **3.4(b)** and the workers' compensation, commercial public liability and builder's risk insurance coverage in the amounts required by the Bond Documents for the applicable phase at the time of the assignment.

(d) *Phase Development Agreement.* The Parties agree that, except as may be permitted above, no Transfer shall occur without the prior execution of a Phase Development Agreement with respect to the applicable phase of the Project. The Parties agree that the intention of each Phase Development Agreement is to protect the transferor and the City by ensuring that transferee receive actual notice of the rights, duties and obligations contained in this Agreement before taking ownership.

(e) *Effect of Transfer.* Upon a Transfer, unless otherwise expressly elected by the transferor, all of the transferor's rights and obligations hereunder with respect to the applicable phase of the Project, including, without limitation, those concerning construction, maintenance and use of the Project, the payment of PILOT Payments and obligation to defend, indemnify and hold harmless City pursuant to **Sections 4.3** and **6.5**, shall transfer to the applicable Phase Developer, and the transferor shall be released from any and all further obligations under this Agreement with respect to the applicable phase of the Project.

(f) *Leases in Ordinary Course of Business Exempt from this Section.* The Parties acknowledge that the Master Developer or applicable Phase Developer will enter into leases with tenants in the ordinary course of operating the Project as a multi-use development. Notwithstanding anything to the contrary contained herein, no prior consent of the City or execution of a Phase Development Agreement (other than as otherwise required by the Municipal Code) will be required for any lease to a tenant in the ordinary course of business. The Parties acknowledge and agree that no portion of the Project may be leased or sold as owner-occupied residences so long as the City shall hold fee simple title to the applicable Project phase.

(g) *Financing.* Notwithstanding anything herein to the contrary, the City hereby approves, and no prior consent or execution of a Phase Development Agreement shall be required by the City in connection with, the right of a party to encumber or collaterally assign its interest in the Project or any portion thereof or its rights and interests in this Agreement to secure loans, advances or extensions of credit to finance or from time to time refinance all or any part of the costs of the Project, or the right of the holder of any such encumbrance or any such collateral assignment (or trustee or agent on its behalf) to transfer such interest by foreclosure or transfer in lieu of foreclosure under such encumbrance or collateral assignment.

6.4. 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 mailed by registered or certified mail, postage prepaid, or sent by overnight delivery or other delivery service which requires written acknowledgment of receipt by the addressee, addressed as follows:

(a) If to the City:

City of Dardenne Prairie, Missouri
2032 Hanley Road
Dardenne Prairie, Missouri 63368
Attn: City Administrator

with copies to:

Hamilton Weber LLC
200 N. Third Street
St. Charles, Missouri 63301
Attn: John A. Young, Esq.

and

Gilmore & Bell, P.C.
211 North Broadway, Suite 2000
St. Louis, Missouri 63102
Attn: Shannon W. Creighton, Esq.

(b) If to the Master Developer:

KaLeCo LLC
210 Dogwood Prairie Dr.
Dardenne Prairie, MO 63368
Attn: James A. Cook, Jr.

with a copy to:

Sandberg Phoenix & von Gontard, P.C.
120 South Central Avenue, Suite 1600
Clayton, Missouri 63105
Attn: Andrew Ruben, Esq.

(c) To any Phase Developer at the address provided by the Phase Developer and on file with the City.

The City, the Master Developer and any Phase Developer may from time to time designate, by notice given hereunder to the other party, such other address to which subsequent notices, certificates or other communications shall be sent.

6.5. Release and Indemnification.

(a) The indemnification and covenants contained in this Section shall survive expiration or earlier termination of this Agreement.

(b) The Master Developer hereby agrees that, anything to the contrary herein notwithstanding, it will defend, indemnify and hold harmless the City, its governing body members, employees, attorneys and agents against any and all claims, demands, actions, causes of action, loss, damage, injury, liability and/or expense (including reasonable attorneys' fees and court costs) resulting from, arising out of, or in any way connected with (1) the Master Developer's or applicable Phase Developer's failure to comply with any provision of this Agreement, the Bond Documents, the District Project Agreement or the Access Agreement, (2) the negligence or intentional misconduct of the Master Developer, a Phase Developer or an affiliate thereof or its respective employees and agents, (3) the presence of hazardous wastes, hazardous materials or other environmental contaminants on the Project Site, (4) any loss or damage to property or any injury to or death of any person occurring in or about the Project Site in connection with any activities, acts or omissions of the Master Developer, a Phase Developer or a Related Party or any of its respective

contractors, agents or employees, (5) the issuance or use of the Tax Exemption Certificate, or (6) otherwise arising out of the adoption or administration of this Agreement, the Bond Documents, the District Project Agreement, the Access Agreement, the creation of the CID or the TDD, the imposition of the CID Sales Tax or the TDD Sales Tax, the issuance of the CID/TDD Obligations or the construction of the Project. In the event that the validity or construction of the Act, the CID Act, the TDD Act and/or any ordinance of the City adopted in connection with this Agreement, the Bond Documents, the District Project Agreement, the Access Agreement or the Project are contested in court, the City shall be defended, held harmless and indemnified by the Master Developer from and against all claims, demands and/or liabilities of any kind whatsoever including, without limitation, any claim for reasonable attorneys' fees and court costs, and the Master Developer shall pay any monetary judgment and all court costs rendered against the City, if any.

(c) Notwithstanding anything herein to the contrary, the City, its governing body, employees, attorneys and agents shall not be liable to the Master Developer, any Phase Developer or any Related Party for damages or otherwise in the event that all or any part of the Act, the CID Act, the TDD Act and/or any other ordinance of the City adopted in connection with this Agreement, the Bond Documents, the District Project Agreement, the Access Agreement or the Project is declared invalid or unconstitutional in whole or in part by the final (as to which all rights of appeal have expired or have been exhausted) judgment of any court of competent jurisdiction.

(d) Notwithstanding the foregoing terms of this Section, the Master Developer shall have no obligation to defend, hold harmless or indemnify the City with respect to any matter or expense resulting from or arising out of the gross negligence or willful misconduct of the City.

(e) All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and not of any of the City's governing body members, employees, attorneys or agents in their individual capacities.

6.6. Choice of Law; Consent to Jurisdiction; Waiver of Jury Trial. This Agreement shall be taken and deemed to have been fully executed, made by the parties in, and governed by the laws of State for all purposes and intents. THE PARTIES HEREBY IRREVOCABLY (A) SUBMIT TO THE EXCLUSIVE JURISDICTION OF ANY MISSOURI STATE COURT SITTING IN ST. CHARLES COUNTY, MISSOURI, IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, (B) AGREE THAT ALL CLAIMS IN RESPECT TO SUCH SUIT, ACTION OR PROCEEDING MAY BE HELD AND DETERMINED IN ANY OF SUCH COURTS, (C) WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH ANY PARTY MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT, AND (D) WAIVE ANY CLAIM THAT SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVE THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY ACTION IN WHICH THE EITHER THE CITY OR THE MASTER DEVELOPER ARE PARTIES RELATING TO OR ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

6.7. Counterparts. This Agreement is executed in multiple counterparts, each of which shall constitute one and the same instrument.

6.8. Severability. If any term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect, to the extent the remainder can be given effect without the invalid provision.

6.9. No Waiver of Sovereign Immunity. Nothing in this Agreement shall be construed or deemed to constitute a waiver of the City's sovereign immunity.

6.10. No Third Party Beneficiaries. This Agreement constitutes a contract solely between the City and the Master Developer. Except with respect to a Phase Developer upon its execution of a Phase Development Agreement, no third party has any beneficial interest in or derived from this Agreement.

ARTICLE VII

REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE PARTIES

7.1. Representations of the City. The City makes the following covenants, which are true and correct on the date hereof:

(a) *No Violations.* The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.

(b) *No Litigation.* To the City's knowledge, no litigation, proceedings or investigations are pending and served or threatened against the City with respect to the Project or this Agreement. In addition, no litigation, proceedings or investigations are pending and served or, to the knowledge of the City, threatened against the City seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of the Bonds or this Agreement or which would in any manner challenge or adversely affect the existence or powers of the City to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the City of, the terms and provisions of this Agreement.

(c) *No Default.* To the City's knowledge, no default or Event of Default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or an Event of Default in any material respect on the part of the City under this Agreement.

7.2. Representations of the Master Developer. The Master Developer makes the following representations and warranties, which representations and warranties are true and correct on the date hereof:

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

(b) *Due Authorization.* The Master Developer has the right, power and authority to enter into, execute, deliver and perform this Agreement. The execution, delivery and performance by the Master Developer of this Agreement has been duly authorized by all necessary action, and does not violate the articles of organization or the operating agreement of the Master Developer, as the same may be amended and supplemented.

(c) *No Violations.* The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any corporate

or organizational restriction or of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.

(d) *No Litigation.* To the Master Developer's knowledge, there is no litigation, proceeding or investigation by or before any court, governmental commission, board, bureau or any other administrative agency pending or threatened against the Master Developer with respect to the Project or this Agreement or seeking to restrain, enjoin or in any way limit the approval or execution and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the Master Developer to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the Master Developer of, the terms and provisions of this Agreement.

(e) *No Default.* No default or Event of Default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or an Event of Default in any material respect on the part of the Master Developer under this Agreement, or any other material agreement or material instrument related to the Master Developer's ability to perform pursuant to this Agreement to which the Master Developer is a party or by which the Master Developer is or may be bound.

(f) *Compliance with Laws.* With respect to its ability to perform pursuant to this Agreement, the Master Developer is, to its knowledge, in compliance with all valid laws, ordinances, orders, decrees, decisions, rules, regulations and requirements of every duly constituted governmental authority, commission and court applicable to any of its affairs, business and operations as contemplated by this Agreement.

(g) *Accuracy of Project Data.* The Master Developer has provided certain financial and other information regarding the Project (the "*Project Data*") to the City. The parties agree that project costs, estimated tax revenues and other financial information included within the Project Data may change as the Project evolves from concept to completion, and such changes may be material. Nevertheless, the Master Developer represents that (1) the most recently supplied Project Data was, to the Master Developer's knowledge, developed and provided in good faith and (2) to the Master Developer's knowledge, the Concept Site Plan set forth on **Exhibit B** is a good faith representation of the uses that the Master Developer will endeavor to locate on the Project Site.

(h) *Anti-Discrimination Against Israel Act.* Pursuant to Section 34.600 of the Revised Statutes of Missouri, the Master Developer certifies it is not currently engaged in and shall not, for the duration of this Agreement, engage in a boycott of goods or services from (1) the State of Israel, (2) 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 (3) persons or entities doing business in the State of Israel.

(i) *Project Certifications.* The Master Developer has obtained (or prior to the applicable time required will obtain) and will maintain all government permits, certificates and consents (including without limitation appropriate environmental approvals) necessary to conduct its business and to purchase and construct the Project. The Project is and will be in material compliance with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, executive orders and codes pertaining to or affecting the Project, including environmental laws, subject to all applicable rights of the Master Developer to contest the same. Each phase of the Project will be completed in a manner that is substantially consistent with the description of the applicable phase of the Project herein and in the applicable Lease.

7.3. Survival of Covenants. All applicable representations and warranties of the Master Developer and the City contained in **Sections 7.1** and **7.2** hereof will survive the execution and delivery of this Agreement and the issuance of the Bonds, as representations of facts existing as of the date of execution and delivery of this Agreement. The Master Developer covenants and agrees that the obligations under **Section 6.5** hereof shall survive the cancellation and termination of this Agreement, for any cause, and that the Master Developer shall continue to make the payments required hereunder and perform all other obligations specified herein, all at the time or times provided herein; provided, however, that when all payments required hereunder have been made, the Master Developer's obligations under this Agreement (except for **Section 6.5** hereof) shall thereupon cease and terminate in full.

[Remainder of Page Intentionally Left Blank]

EXHIBIT A

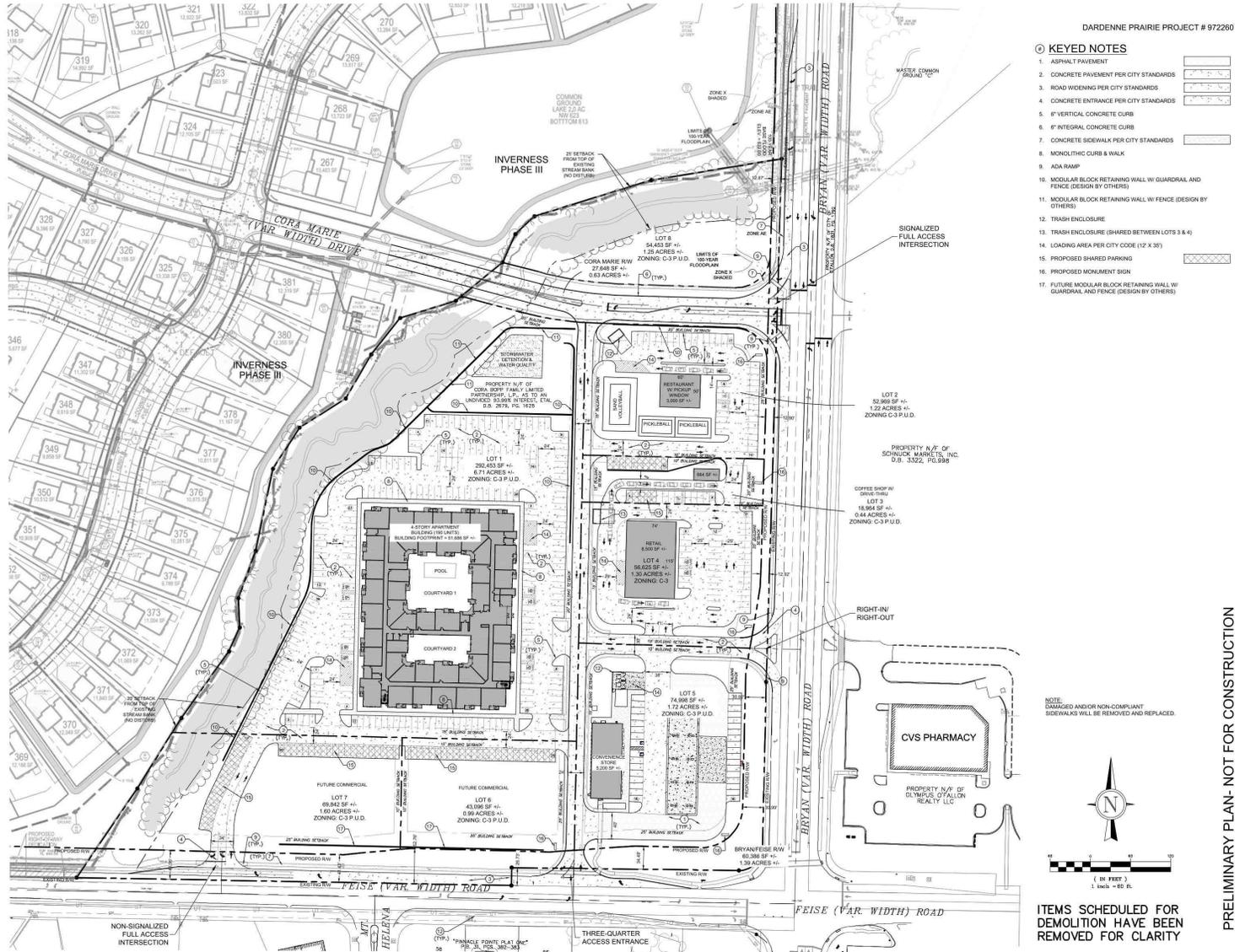
LEGAL DESCRIPTION OF PROJECT SITE

A tract of land being part of Section 1, Township 46 North — Range 2 East, St. Charles County, Missouri and being more particularly described as:

Commencing at a point in the North line of property described in deed to Cora Bopp Family Limited Partnership, L.P., etal, recorded in Book 2679 page 1626 of the St. Charles County records, being the Southwest corner of "Bryan Meadows Subdivision", a subdivision according to the plat thereof recorded in Plat Book 9 page 19 of the St. Charles County records; thence Eastwardly along the North line of said Bopp property, being also the South line of said "Bryan Meadows Subdivision", South 89 degrees 03 minutes 52 seconds East 1248.44 feet to a point in the West line of Bryan Road, 100 feet wide, as widened by deed recorded in Book 1884 page 71 of the St. Charles County records; thence Southwardly along the West line of Bryan Road, 100 feet wide, as widened by said Book 1884 page 71, South 01 degree 42 minutes 05 seconds West 904.47 feet to the ACTUAL POINT OF BEGINNING; thence Southwardly along the West line of Bryan Road, 100 feet wide, as widened by said Book 1884 page 71 and by Book 1884 page 69 of the St. Charles County records, the following courses and distances: South 01 degree 42 minutes 05 seconds West 782.54 feet, South 01 degree 14 minutes 27 seconds West 247.69 feet and along a curve to the right whose radius point bears North 88 degrees 45 minutes 33 seconds West 35.00 feet from the last mentioned point, a distance of 54.66 feet to a point in the North line of Feise Road, varying width, as widened by the aforesaid Book 1884 page 69 of the St. Charles County records; thence Westwardly along said North line of Feise Road, as widened, North 89 degrees 17 minutes 03 seconds West 339.65 feet to the Northwest corner of said widening; thence Southwardly along the West line of said widening, South 01 degree 05 minutes 49 seconds West 26.73 feet to a point in the North line of Feise Road, 60 feet wide, said point being 20.00 feet perpendicularly distant North of the centerline; thence Westwardly along said North line of Feise Road, 60 feet wide, being 20.00 feet perpendicularly distant North of and parallel to the centerline, North 88 degrees 57 minutes 51 seconds West 650.09 feet to a point; thence leaving said road line, North 34 degrees 17 minutes 53 seconds East 161.25 feet to a point; thence North 31 degrees 55 minutes 13 seconds East 124.37 feet to a point; thence North 35 degrees 34 minutes 37 seconds East 122.38 feet to a point; thence North 24 degrees 25 minutes 54 seconds East 39.18 feet to a point; thence North 02 degrees 40 minutes 47 seconds West 43.80 feet to a point; thence North 19 degrees 57 minutes 42 seconds East 75.15 feet to a point; thence North 11 degrees 55 minutes 45 seconds East 125.52 feet to a point; thence North 32 degrees 51 minutes 47 seconds East 73.36 feet to a point; thence North 57 degrees 46 minutes 30 seconds East 81.67 feet to a point; thence North 29 degrees 59 minutes 37 seconds East 76.05 feet to a point; thence North 38 degrees 29 minutes 03 seconds East 69.58 feet to a point; thence North 72 degrees 44 minutes 24 seconds East 87.27 feet to a point; thence North 50 degrees 29 minutes 54 seconds East 91.27 feet to a point; thence North 23 degrees 49 minutes 56 seconds East 45.40 feet to a point; thence North 46 degrees 58 minutes 12 seconds East 39.05 feet to a point; thence North 72 degrees 48 minutes 18 seconds East 182.93 feet to a point; thence North 80 degrees 42 minutes 20 seconds East 197.54 feet to the point of beginning and containing 17.250 acres according to a survey by Volz Incorporated during March, 2022.

EXHIBIT B

CONCEPT SITE PLAN



- DARDENNE PRAIRIE PROJECT # 972280
- KEYED NOTES**
1. ASPHALT PAVEMENT
 2. CONCRETE PAVEMENT PER CITY STANDARDS
 3. ROAD WIDENING PER CITY STANDARDS
 4. CONCRETE ENTRANCE PER CITY STANDARDS
 5. 6" VERTICAL CONCRETE CURB
 6. 6" INTEGRAL CONCRETE CURB
 7. CONCRETE SIDEWALK PER CITY STANDARDS
 8. MONOLITHIC CURB & WALK
 9. ADA RAMP
 10. MODULAR BLOCK RETAINING WALL W/ GUARDRAIL AND FENCE (DESIGN BY OTHERS)
 11. MODULAR BLOCK RETAINING WALL W/ FENCE (DESIGN BY OTHERS)
 12. TRASH ENCLOSURE
 13. TRASH ENCLOSURE (SHARED BETWEEN LOTS 3 & 4)
 14. LOADING AREA PER CITY CODE (12 X 35')
 15. PROPOSED SHARED PARKING
 16. PROPOSED MONUMENT SIGN
 17. FUTURE MODULAR BLOCK RETAINING WALL W/ GUARDRAIL AND FENCE (DESIGN BY OTHERS)

NOTE: DAMAGED AND/OR NON-COMPLIANT SIDEWALKS WILL BE REMOVED AND REPLACED.

(1/4" = 100' - 0")
1 inch = 60 feet

ITEMS SCHEDULED FOR DEMOLITION HAVE BEEN REMOVED FOR CLARITY

ENGENUITY
BUILDINGS VALUE
BY DESIGN

170297 ALBERTA SUITE 107 WYNDING
CHERRY RD SE CALDWELL ID 83406
WWW.ENGENUITYBYDESIGN.COM
PH: 208.737.7338

MIA ROSE HOLDINGS

PREPARED FOR: CONTACTS: TOM KAMIAN
JIM COOK

**THE PRAIRIE ENCORE
P.U.D. AREA PLAN**

1575 BRYAN ROAD
DARDENNE PRAIRIE, MISSOURI 63686

Project No.	Description	Date
22-0113		

03-10-2023
Thomas R. Bann, P.E.
MOM PE 2018000174

DATE: 3/19/2023
SCALE: 1"=60'

OVERALL
SITE PLAN

C300

EXHIBIT C

DEVELOPER'S AFFIDAVIT

STATE OF MISSOURI)
) SS
COUNTY OF _____)

I, the undersigned, am over the age of 18 years and have personal knowledge of the matters stated herein.

I am a duly authorized officer of _____, a _____ (the "Developer"), and am authorized by the Developer to attest to the matters set forth herein.

I hereby affirm the Developer's enrollment and participation in a "federal work authorization program" as defined in Section 285.525 of the Revised Statutes of Missouri.

The Developer does not **[**have any employees**][**knowingly employ any person who is an "unauthorized alien" as defined in Section 285.525 of the Revised Statutes of Missouri, as amended.**]**.

Further Affiant Sayeth Not.

[KALECO LLC**][**PHASE DEVELOPER**]**

By: _____
Name: _____
Title: _____

Subscribed and sworn to before me this _____ day of _____, 20__.

Notary Public

My commission expires on: _____

EXHIBIT D

CERTIFICATE OF SUBSTANTIAL COMPLETION (Phase _____ Project Improvements)

[KALECO LLC**][**PHASE DEVELOPER**]** (the “Developer”), pursuant to that certain Master Development and Performance Agreement dated as of April 12, 2023, between the City of Dardenne Prairie, Missouri (the “City”), and KaLeCo LLC (the “Master Developer”) **[**and that certain Phase Development Agreement dated _____, 20____, between the City and the Developer**]** (collectively, the “Agreement”), hereby certifies to the City as follows:

1. Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Agreement.

2. That as of _____, 20____, the Work applicable to the Phase _____ Project Improvements has been substantially completed in accordance with the Agreement and all applicable Governmental Approvals.

3. The Phase _____ Project Improvements have been completed in a workmanlike manner and in accordance with (a) the plans and permits approved by the City, including the Approved Site Plan, and (b) the applicable zoning and other ordinances that govern the construction of the Project.

4. Lien waivers for the Phase _____ Project Improvements have been obtained.

5. This Certificate of Substantial Completion is accompanied by the project architect’s certificate of substantial completion on AIA Form G-704 (or the substantial equivalent thereof, a copy of which is attached hereto as **Appendix A** and by this reference incorporated herein), certifying that the Phase _____ Project Improvements have been substantially completed in accordance with the Agreement and the Bond Documents.

6. This Certificate of Substantial Completion is being issued by the Developer to the City in accordance with the Agreement to evidence the satisfaction of all obligations and covenants of the Developer under the Agreement and the Bond Documents with respect to the construction of the Phase _____ Project Improvements.

7. The City’s acceptance (below) in writing to this Certificate of Substantial Completion shall evidence the satisfaction of all obligations and covenants of the Developer under the Agreement and the Bond Documents with respect to the construction of the Phase _____ Project Improvements.

This Certificate of Substantial Completion is given without prejudice to any rights against third parties which exist as of the date hereof or which may subsequently come into being. All certifications or statements made or set forth in this Certificate of Substantial Completion are made solely for the benefit of the City and shall not be relied upon or used for any purpose by any third party in any proceeding, claim or contest of any kind, nature or character.

All capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand this _____ day of _____, 20__.

[KALECO LLC**][**PHASE DEVELOPER**]**

By: _____
Name: _____
Title: _____

ACCEPTED:

CITY OF DARDENNE PRAIRIE, MISSOURI

By: _____
Name: _____
Title: _____

(Insert Notary Form(s) and Legal Description)

EXHIBIT E

FORM OF PHASE DEVELOPMENT AGREEMENT

This **PHASE DEVELOPMENT AGREEMENT** (this “Phase Development Agreement”) is entered into this ____ day of _____, 20__, between **KALECO LLC** (the “Master Developer”) and [****PHASE DEVELOPER****] (the “Phase Developer”) regarding the Phase ____ Project described in the Master Development and Performance Agreement dated as of April 12, 2023 (the “Master Development and Performance Agreement”) by and between the City of Dardenne Prairie, Missouri (the “City”) and the Master Developer. *Capitalized terms used, but not otherwise defined herein, shall have the meanings set forth in the Master Development and Performance Agreement.*

RECITALS

A. The real property to be acquired and developed by the Phase Developer is legally described in **Exhibit A** attached hereto (the “Phase ____ Project Site”).

B. The Phase ____ Project Site is part of the Project described in the Plan for an Industrial Development Project and Cost-Benefit Analysis (the “Plan”) and the Master Development and Performance Agreement approved by the City pursuant to Ordinance No. [****ORD NO****] adopted on April 12, 2023 (the “Ordinance”).

C. The Master Development and Performance Agreement permits the Master Developer to assign certain rights and obligations with respect to the Project to the Phase Developer pursuant to a Phase Development Agreement in substantially the form as this Phase Development Agreement.

NOW, THEREFORE, for and in consideration of the promises and the covenants entered herein, City and Transferee agree as follows:

1. The Phase Developer has acquired the Phase ____ Project Site or has entered into a purchase contract to acquire the Phase ____ Project Site.

2. The Phase Developer acknowledges that it has been provided with and/or has reviewed the Master Development and Performance Agreement and intends to redevelop the Phase ____ Project Site in accordance with such document. The Phase Developer further acknowledges that it has been provided with and/or has reviewed the District Project Agreement dated as of April 12, 2023 (the “*District Project Agreement*”) among the City, the Master Developer, The Encore Community Improvement District and The Encore Transportation Development District and agrees to comply with the terms of such document as they relate to the Phase ____ Project Site.

3. The Master Developer hereby assigns all rights, responsibilities and obligations in the Master Development and Performance Agreement and the District Project Agreement with respect to the Phase ____ Project to the Phase Developer. The Phase Developer acknowledges and agrees that its acquisition, use and enjoyment of the Phase ____ Project and any future disposition of the Phase ____ Project are subject to the terms of the Master Development and Performance Agreement and the District Project Agreement. The Phase Developer hereby assumes all the rights, responsibilities and obligations of the Master Developer in the Master Development and Performance Agreement with respect to the Phase ____ Project, and agrees to perform all obligations of the Master Developer under the Master Development and Performance Agreement and the District Project Agreement (to the extent not already performed by the Master Developer or an authorized successor or assign of the Master Developer) with respect to the Phase ____ Project and in consideration thereof, may receive the Incentives available to the

Phase _____ Project under the terms of the Master Development and Performance Agreement and the District Project Agreement.

4. The Phase Developer specifically acknowledges its obligation to make PILOT Payments with respect to the Phase _____ Project pursuant to the **Section 4.1** of the Master Development and Performance Agreement and the Phase Developer's obligation to defend, indemnify and hold harmless the City pursuant to **Sections 4.3** and **6.5** of the Master Development and Performance Agreement and **Section 7.03** of the District Project Agreement.

5. The Phase Developer acknowledges that in the event of its sale, lease, sublease, assignment, or other voluntary or involuntary disposition of the Phase _____ Project Site, the obligations of the Master Development and Performance Agreement and the District Project Agreement shall continue and shall inure to and be binding upon the heirs, executors, administrators, successors and assigns of the respective subsequent transferees as if they were in every case specifically named and shall be construed as a covenant running with the land and enforceable as if such purchaser, tenant, transferee or other possessor thereof were originally a party to and bound by the Master Development and Performance Agreement and the District Project Agreement. The Phase Developer assumes the duty to notify any purchaser, tenant, transferee or other possessor of the Phase _____ Project Site of its rights, duties and obligations under the Master Development and Performance Agreement and the District Project Agreement.

6. This Phase Development Agreement shall not be deemed to take effect until a fully-executed copy thereof has been delivered to and consented to by the City.

[**7. The Phase Developer has provided the City all required documentation pursuant to **Section 6.3**[****(b)****][****(c)****] of the Master Development and Performance Agreement.**]

[**8. No consent of the City is required for the assignment contemplated by this Phase Development Agreement because the Phase Developer is a Related Entity to the Master Developer.**]

IN WITNESS WHEREOF, the Master Developer and Phase Developer have executed this Phase Development Agreement as of the day and year first above written.

KALECO LLC

By: _____
Name: _____
Title: _____

[**PHASE DEVELOPER**]

By: _____
Name: _____
Title: _____

ACKNOWLEDGEMENT

Pursuant to **Section 6.3** of the Master Development and Performance Agreement, the City hereby **[**consents to**][**acknowledges**]** the assignment contemplated by this Phase Development Agreement.

CITY OF DARDENNE PRAIRIE, MISSOURI

By: _____
_____, City Administrator

EXHIBIT A TO PHASE DEVELOPMENT AGREEMENT

[**Legal description to be inserted**]

EXHIBIT F
FORM OF DISTRICT PROJECT AGREEMENT

GILMORE & BELL, P.C.
DRAFT – APRIL 4, 2023
FOR DISCUSSION PURPOSES ONLY

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

TITLE OF DOCUMENT:	BASE LEASE
DATE OF DOCUMENT:	[**DOCUMENT DATE**]
GRANTOR:	[**DEVELOPER NAME**]
GRANTOR'S MAILING ADDRESS:	_____ _____
GRANTEE:	CITY OF DARDENNE PRAIRIE, MISSOURI
GRANTEE'S MAILING ADDRESS:	2032 Hanley Road Dardenne Prairie, Missouri 63368
RETURN DOCUMENTS TO:	Shannon W. Creighton, Esq. Gilmore & Bell, P.C. 211 North Broadway, Suite 2000 St. Louis, Missouri 63102
LEGAL DESCRIPTION:	See Exhibit A

BASE LEASE

THIS BASE LEASE (this “Base Lease”) is made and entered into as of [**DOCUMENT DATE**] (the “Effective Date”), by and between [**DEVELOPER NAME**], [**a Missouri _____**] (the “Developer”), and the **CITY OF DARDENNE PRAIRIE, MISSOURI**, a fourth-class city organized and existing under the laws of the State of Missouri (the “City”).

RECITALS:

A. The City is authorized and empowered pursuant to the provisions of Article VI, Section 27(b) of the Missouri Constitution and Sections 100.010 through 100.200 of the Revised Statutes of Missouri, as amended (collectively, the “Act”) to issue and sell its negotiable interest bearing bonds for the purpose of paying all or part of the cost of purchasing, constructing, extending, or improving any facility to be leased or otherwise disposed of pursuant to law to private persons or corporations for manufacturing, commercial, warehousing and industrial development purposes, including the real estate, buildings, fixtures and machinery associated therewith, upon such terms and conditions as the City deems advisable.

B. Pursuant to the Act and Ordinance No. [**ORD NO**] adopted by the Board of Aldermen of the City on April 12, 2023 (the “Ordinance”), the City approved an industrial development plan for certain real property located at the northwest intersection of Feise Road and Bryan Road in the City (the “Project Site”) and is authorized to issue its Taxable Industrial Revenue Bonds (Encore Project) in several series (*i.e.*, a separate series for various phases of the Project (as defined below)), in the maximum aggregate principal amount of \$68,000,000, for the purpose of acquiring the Project Site and constructing thereon a mixed-use development consisting of approximately 190 residential rental apartments and approximately 25,000 square feet of commercial/retail space to be completed in three phases (collectively, the “Project Improvements”). The Project Site and the Project Improvements are collectively referred to herein as the “Project.”

C. The Developer owns a portion of the Project Site as legally described on **Exhibit A** (the “Phase [** _____ **] Project Site”).

D. Pursuant to the Ordinance and the terms of the Master Development and Performance Agreement dated as of April 12, 2023 (as amended and supplemented, the “Master Development and Performance Agreement”), by and between the City and KaLeCo LLC (the “Master Developer”) related to the Project, the City is authorized to (1) issue its Taxable Industrial Revenue Bonds (Encore Project), Series [** _____ **], in the maximum principal amount of \$[**PRINCIPAL AMT**], with respect to the Phase [** _____ **] Project (as defined below) (the “Series [** _____ **] Bonds”), pursuant to a Trust Indenture of even date herewith with UMB Bank, N.A., as trustee (the “Indenture”); (2) enter into this Base Lease for the purpose of acquiring a leasehold interest in Phase [** _____ **] Project Site; and (3) enter into a lease agreement of even date herewith with the Developer (the “Lease”) for the purpose of leasing the portion of the Project Improvements to be constructed on the Phase [** _____ **] Project Site, consisting of approximately _____ (the “Phase [** _____ **] Project Improvements”), as they may at any time exist, together with the City’s leasehold interest in the Phase [** _____ **] Project Site (collectively, the “Phase [** _____ **] Project”) back to the Developer for rent sufficient to pay debt service on the Series [** _____ **] Bonds.

E. In connection with the issuance of the Series [** _____ **] Bonds and the execution of the Lease, the City has agreed to cooperate with the Master Developer, the Developer and the contractors

for the Phase [** _____ **] Project Improvements in acquiring the benefits of sales tax exemption for purchases of materials used to construct the Phase [** _____ **] Project Improvements.

F. The Developer desires to lease the Phase [** _____ **] Project to the City, and the City desires to lease the Phase [** _____ **] Project from the Developer 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 Developer 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 **Section 101** of the Indenture and in **Section 1.1** of the Master Development and Performance Agreement (which definitions are hereby incorporated by reference).

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 fourth-class city and political subdivision 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 Developer. The Developer makes the following representations as the basis for the undertakings on its part herein contained:

- (a) The Developer is a [** _____ **] validly existing and in good standing under the laws of the State of [**Missouri**].
- (b) The Developer has lawful power and authority to enter into this Base Lease and to carry out its obligations hereunder, and the Developer has been duly authorized to execute and deliver this Base Lease, acting by and through its duly authorized officers and representatives.
- (c) The Developer is the owner of the Phase [** _____ **] Project Site and is permitted to lease the Phase [** _____ **] Project located thereon 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 Effective Date. The term of this Base Lease shall terminate upon earlier of the transfer of fee title to the City following completion of the Phase [** _____ **] Project or the termination of the Lease.

Section 5. Granting of Leasehold Estate. The Developer hereby rents, leases and lets the Phase [** _____ **] Project to the City, and the City hereby rents, leases and hires the Phase [** _____ **] Project from the Developer, 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 and the Master Development and Performance Agreement, the City hereby agrees to pay to the Developer 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 Developer hereby acknowledges the receipt and sufficiency of the Rent due on the date of this Base Lease.

Section 7. Use and Possession of the Phase [_____ **] Project.** The City will have the rights of use and possession of the Phase [** _____ **] Project 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 Developer shall, at its sole cost and expense, maintain and repair the Phase [** _____ **] Project, and all portions thereof and improvements thereto. In no event shall the City be required to make any repairs, improvements, additions, replacements, reconstructions or other changes to the Phase [** _____ **] Project or perform any maintenance thereon.

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

Section 11. Insurance. The Developer 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 shall be a total or partial taking of the Phase [** _____ **] 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 Phase [_____ **] Project.** Except as otherwise expressly provided in this Base Lease, the City shall surrender and deliver up the Phase [** _____ **] Project and all associated improvements to the Developer 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. 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 15. Developer's Right to Terminate. The Developer may terminate this Base Lease at any time pursuant to **Article XI** of the Lease.

Section 16. 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 17. 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 18. Governing Law. This Base Lease shall be construed in accordance with and governed by the laws of the State of Missouri.

Section 19. Binding Effect. This Base Lease shall be binding upon and shall inure to the benefit of the City and the Developer and their respective successors and assigns.

Section 20. Severability. If for any reason any provision of this Base Lease shall be determined to be invalid or unenforceable, the validity and enforceability of the other provisions hereof shall not be affected thereby.

Section 21. 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 22. Electronic Transaction. 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.

Section 23. Subordination of Base Lease. By its execution hereof, each of the Developer and the City hereby agree that this Base Lease shall be, is and shall continue to be, subordinate and inferior to the Fee Deed of Trust until all Secured Obligations (as such term is defined in the Fee Deed of Trust) have been indefeasibly paid and performed in full, including but not limited to, all future advances and future obligations secured by the Fee Deed of Trust. Such subordination shall be self-operative and shall be irrespective of the time, manner, order of recording or perfection or any other priority that ordinarily would result under the Uniform Commercial Code as enacted in each and every applicable jurisdiction, and as amended from time to time, and other applicable law for the order of granting or perfecting any security interests referred to herein.

Section 24. Anti-Discrimination Against Israel Act. Pursuant to Section 34.600 of the Revised Statutes of Missouri, the Developer certifies it is not currently engaged in and shall 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]

EXHIBIT A

LEGAL DESCRIPTION OF PHASE [_____ **] PROJECT SITE**

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

GILMORE & BELL, P.C.
DRAFT – APRIL 4, 2023
FOR DISCUSSION PURPOSES ONLY

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

TITLE OF DOCUMENT: SPECIAL WARRANTY DEED

DATE OF DOCUMENT: **[**TRANSFER DATE**]**

GRANTOR: **[**DEVELOPER NAME**]**

GRANTOR'S MAILING ADDRESS: _____

Attn: _____

GRANTEE: CITY OF DARDENNE PRAIRIE, MISSOURI

GRANTEE'S MAILING ADDRESS: 2032 Hanley Road
Dardenne Prairie, Missouri 63368

LEGAL DESCRIPTION: See **Exhibit A**

RETURN DOCUMENTS TO: Shannon W. Creighton, Esq.
Gilmore & Bell, P.C.
211 North Broadway, Suite 2000
St. Louis, Missouri 63102

REFERENCE BOOK & PAGE: N/A

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED is made and entered into as of [**TRANSFER DATE**], by and between [**DEVELOPER NAME**], [**a Missouri _____**], with a mailing address of _____ (the “Grantor”), to the **CITY OF DARDENNE PRAIRIE, MISSOURI**, a fourth-class city organized and existing under the laws of the State of Missouri, with a mailing address of 2032 Hanley Road, Dardenne Prairie, Missouri 63368 (the “Grantee”).

WITNESSETH, THAT THE GRANTOR, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration to it paid by the Grantee (the receipt and sufficiency of which is hereby acknowledged) does by these presents, **BARGAIN AND SELL, CONVEY AND CONFIRM** unto the Grantee, its successors and assigns, that certain real property situated in the County of St. Charles, State of Missouri and legally described on **Exhibit A** attached hereto and incorporated herein by reference (the “Property”).

TO HAVE AND TO HOLD the same, together with all rights, easements and appurtenances to the same belonging unto the Grantee and unto its successors and assigns forever; the Grantor hereby covenanting that Grantor and Grantor’s successors and assigns, shall **WARRANT AND DEFEND** the title to the Property unto the Grantee and unto the Grantee’s successors and assigns forever, against the lawful claims and demands of all persons claiming by, through or under the Grantor, but none other, subject to the Permitted Encumbrances as defined in the Trust Indenture dated as of [**DOCUMENT DATE**] between the Grantee and UMB Bank, N.A., as trustee, and accepting however all general and special taxes and assessments, including sewer assessments (if any), due and payable from and after the date of this Deed.

IN WITNESS WHEREOF, the Grantor and the Grantee have executed this Special Warranty Deed as of the day and year above written.

“GRANTOR”

[**DEVELOPER NAME**],
[**a Missouri _____**]

By: _____
Name: [**AUTHORIZED OFFICER NAME**]
Title: [**Manager**]

GRANTEE'S ACCEPTANCE

The conveyance by [****DEVELOPER NAME****], [****a Missouri _____****], as Grantor, to the City of Dardenne Prairie, Missouri, as Grantee, by the Special Warranty Deed to which this Acceptance is attached, for Property described in **Exhibit A** attached hereto, is hereby accepted by the City of Dardenne Prairie, Missouri, pursuant to Section 49.292.2 RSMo., as amended, as of the ____ day of _____, 20____.

“GRANTEE”

CITY OF DARDENNE PRAIRIE, MISSOURI

(SEAL)

By: _____
Name: James W. Knowles, III
Title: City Administrator

ATTEST:

By: _____
Name: Kimberlie Clark
Title: City Clerk

EXHIBIT A

LEGAL DESCRIPTION OF PHASE [_____ **] PROJECT SITE**

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

GILMORE & BELL, P.C.
DRAFT – APRIL 4, 2023
FOR DISCUSSION PURPOSES ONLY

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

TITLE OF DOCUMENT: LEASE AGREEMENT

DATE OF DOCUMENT: **[**DOCUMENT DATE**]**

GRANTOR: CITY OF DARDENNE PRAIRIE, MISSOURI

GRANTOR'S MAILING ADDRESS: 2032 Hanley Road
Dardenne Prairie, Missouri 63368

GRANTEE: **[**DEVELOPER NAME**]**

GRANTEE'S MAILING ADDRESS: _____

RETURN DOCUMENTS TO: Shannon W. Creighton, Esq.
Gilmore & Bell, P.C.
211 North Broadway, Suite 2000
St. Louis, Missouri 63102

LEGAL DESCRIPTION: See **Exhibit A**

**CITY OF DARDENNE PRAIRIE, MISSOURI,
as Lessor,**

and

[DEVELOPER NAME**],
as Lessee**

LEASE AGREEMENT

Dated as of [DOCUMENT DATE**]**

Relating to:

[\$PRINCIPAL AMT**]
(Aggregate Maximum Principal Amount)
City of Dardenne Prairie, Missouri
Taxable Industrial Revenue Bonds
(Encore Project)
Series [** _____ **]**

Certain rights of the City of Dardenne Prairie, Missouri (the “City”), in this Lease Agreement have been pledged and assigned to UMB Bank, N.A., as trustee under the Trust Indenture dated as of [DOCUMENT DATE**], between the City and the Trustee.**

TABLE OF CONTENTS

Page

ARTICLE I

DEFINITIONS

Section 1.1. Definitions of Words and Terms..... 2
Section 1.2. Rules of Interpretation 2
Section 1.3. Incorporation..... 3

ARTICLE II

REPRESENTATIONS

Section 2.1. Representations by the City 3
Section 2.2. Representations by the Developer 4

ARTICLE III

GRANTING PROVISIONS

Section 3.1. Granting of Leasehold Estate..... 5
Section 3.2. Lease Term 5
Section 3.3. Possession and Use of the Phase [** _____ **] Project..... 5

ARTICLE IV

PURCHASE AND CONSTRUCTION OF THE PHASE [_____ **] PROJECT**

Section 4.1. Issuance of the Series [** _____ **] Bonds..... 6
Section 4.2. Purchase and Construction and Equipping of the Phase [** _____ **] Project..... 6
Section 4.3. Phase [** _____ **] Project Costs 7
Section 4.4. Payment for Phase [** _____ **] Project Costs..... 7
Section 4.5. Establishment of Completion Date 8
Section 4.6. Surplus in Project Fund..... 8
Section 4.7. Phase [** _____ **] Project Property of the City 9
Section 4.8. Non-Phase [** _____ **] Project Improvements, Machinery and Equipment Property
of the Developer..... 9

ARTICLE V

RENT PROVISIONS

Section 5.1. Basic Rent..... 9
Section 5.2. Additional Rent..... 10
Section 5.3. Obligations of the Developer Absolute and Unconditional 10
Section 5.4. Prepayment of Basic Rent..... 11

ARTICLE VI

MAINTENANCE, TAXES AND UTILITIES

Section 6.1. Maintenance and Repairs..... 12
Section 6.2. Taxes, Assessments and Other Governmental Charges..... 12
Section 6.3. Utilities..... 13
Section 6.4. Property Tax Exemption..... 13

ARTICLE VII

INSURANCE

Section 7.1. Title Commitment..... 13
Section 7.2. Casualty Insurance..... 13
Section 7.3. Public Liability Insurance..... 14
Section 7.4. Blanket Insurance Policies..... 14
Section 7.5. Worker’s Compensation 14
Section 7.6. Sovereign Immunity 14

ARTICLE VIII

ALTERATION OF THE PHASE [_____ **] PROJECT**

Section 8.1. Additions, Modifications and Improvements to the Phase [** _____ **] Project 14
Section 8.2. Additional Improvements on the Phase [** _____ **] Project Site 15
Section 8.3. Permits and Authorizations..... 15
Section 8.4. Mechanics’ Liens..... 16

ARTICLE IX

DAMAGE, DESTRUCTION AND CONDEMNATION

Section 9.1. Damage or Destruction 17
Section 9.2. Condemnation..... 18
Section 9.3. Bondowner Approval..... 19

ARTICLE X

SPECIAL COVENANTS

Section 10.1. No Warranty of Condition or Suitability by the City; Exculpation and Indemnification. 20
Section 10.2. Surrender of Possession 20
Section 10.3. Right of Access to the Phase [** _____ **] Project..... 20
Section 10.4. Granting of Easements; Leasehold Mortgages and Financing Arrangements 21
Section 10.5. Indemnification of City and Trustee..... 25
Section 10.6. Depreciation, Investment Tax Credit and Other Tax Benefits..... 25
Section 10.7. Developer to Maintain its Existence 26
Section 10.8. Security Interests..... 26
Section 10.9. Environmental Matters, Warranties, Covenants and Indemnities Regarding
Environmental Matters 26

ARTICLE XI

OPTION AND OBLIGATION TO PURCHASE THE PHASE [_____ **] PROJECT**

Section 11.1. Option to Purchase the Phase [** _____ **] Project..... 28
Section 11.2. Conveyance of the Phase [** _____ **] Project 29
Section 11.3. [Reserved]..... 29
Section 11.4. Obligation to Purchase the Phase [** _____ **] Project..... 29

ARTICLE XII

DEFAULTS AND REMEDIES

Section 12.1. Events of Default 30
Section 12.2. Remedies on Default..... 31
Section 12.3. Survival of Obligations 31
Section 12.4. Performance of the Developer’s Obligations by the City 32
Section 12.5. Rights and Remedies Cumulative 32
Section 12.6. Waiver of Breach 32
Section 12.7. Trustee’s Exercise of the City’s Remedies 32

ARTICLE XIII

ASSIGNMENT AND SUBLEASE

Section 13.1. Assignment; Sublease 32
Section 13.2. Assignment of Revenues by City..... 33
Section 13.3. Prohibition Against Fee Mortgage of Phase [** _____ **] Project 33
Section 13.4. Restrictions on Sale or Encumbrance of Phase [** _____ **] Project by City 34

ARTICLE XIV

AMENDMENTS, CHANGES AND MODIFICATIONS

Section 14.1. Amendments, Changes and Modifications 34

ARTICLE XV

MISCELLANEOUS PROVISIONS

Section 15.1. Notices 34
Section 15.2. City Shall Not Arbitrarily Withhold Consents and Approvals 35
Section 15.3. Net Lease 36
Section 15.4. Limitation on Liability of City..... 36
Section 15.5. Governing Law 36
Section 15.6. Binding Effect..... 36
Section 15.7. Severability 36
Section 15.8. Execution in Counterparts..... 36
Section 15.9. Electronic Storage..... 36
Section 15.10. City Consent 36
Section 15.11. Anti-Discrimination Against Israel Act..... 37

- Exhibit A - Phase [**_____**] Project Site
- Exhibit B - Phase [**_____**] Project Improvements
- Exhibit C - Form of Requisition Certificate
- Exhibit D - Form of Special Warranty Deed

LEASE AGREEMENT

THIS LEASE AGREEMENT, dated as of **[**DOCUMENT DATE**]** (the “Lease”), between the **CITY OF DARDENNE PRAIRIE, MISSOURI**, a fourth-class city organized and existing under the laws of the State of Missouri (the “City”), as lessor, and **[**DEVELOPER NAME**]**, **[**a Missouri limited liability company**]** (the “Developer”);

RECITALS:

A. The City is authorized and empowered pursuant to the provisions of Article VI, Section 27(b) of the Missouri Constitution and Sections 100.010 through 100.200 of the Revised Statutes of Missouri, as amended (collectively, the “Act”) to issue and sell its negotiable interest bearing bonds for the purpose of paying all or part of the cost of purchasing, constructing, extending, or improving any facility to be leased or otherwise disposed of pursuant to law to private persons or corporations for manufacturing, commercial, warehousing and industrial development purposes, including the real estate, buildings, fixtures and machinery associated therewith, upon such terms and conditions as the City deems advisable.

B. Pursuant to the Act and Ordinance No. **[**ORD NO**]** adopted by the Board of Aldermen of the City on April 12, 2023 (the “Ordinance”), the City approved an industrial development plan for certain real property located at the northwest intersection of Feise Road and Bryan Road in the City (the “Project Site”) and is authorized to issue its Taxable Industrial Revenue Bonds (Encore Project) in several series (*i.e.*, a separate series for various phases of the Project (as defined below)), in the maximum aggregate principal amount of \$68,000,000, for the purpose of acquiring the Project Site and constructing thereon a mixed-use development consisting of approximately 190 residential rental apartments and approximately 25,000 square feet of commercial/retail space to be completed in three phases (collectively, the “Project Improvements”). The Project Site and the Project Improvements are collectively referred to herein as the “Project.”

C. Pursuant to the Ordinance and the terms of the Master Development and Performance Agreement dated as of April 12, 2023 (as amended and supplemented, the “Master Development and Performance Agreement”), by and between the City and KaLeCo LLC (the “Master Developer”) related to the Project, the City is authorized to (1) issue its Taxable Industrial Revenue Bonds (Encore Project), Series **[** _____ **]**, in the maximum principal amount of \$**[**PRINCIPAL AMT**]**, with respect to the Phase **[** _____ **]** Project (as defined below) (the “Series **[** _____ **]** Bonds”) and enter into a Trust Indenture of even date herewith (the “Indenture”) with UMB Bank, N.A., as trustee (the “Trustee”), for the purpose of issuing and securing the Series **[** _____ **]** Bonds, as therein provided; (2) enter into a Base Lease of even date herewith with the Developer for the purpose of acquiring a leasehold interest in a portion of the Project Site as legally described on **Exhibit A** (the “Phase **[** _____ **]** Project Site”); and (3) enter into this Lease under which the City will, or will cause the Developer to, construct a portion of the Project Improvements on the Phase **[** _____ **]** Project Site, consisting of approximately _____, the “Phase **[** _____ **]** Project Improvements,” all as more fully described on **Exhibit B**), and lease the Phase **[** _____ **]** Project Improvements, as they may at any time exist, together with the City’s leasehold interest in the Phase **[** _____ **]** Project Site (collectively, the “Phase **[** _____ **]** Project”) back to the Developer for rent sufficient to pay debt service on the Series **[** _____ **]** Bonds. Upon completion of the Phase **[** _____ **]** Project Improvements, the City will acquire fee title to the Phase **[** _____ **]** Project.

D. The City and the Developer acknowledge and agree that title to the Phase [** _____ **] Project is subject and subordinate to the _____ Deed of Trust (the “Fee Deed of Trust”), granted by the Developer to [**LENDER**] and its successors and assigns (the “Lender”), pursuant to various loan documents (the “Loan Documents”) evidencing the loan made by the Lender and secured by the Fee Deed of Trust (the “Loan”) prior to the Developer’s conveyance of fee title to the Phase [** _____ **] Project Site to the City in connection with the Phase [** _____ **] Project.

E. In consideration of the terms and conditions of this Lease, the Ordinance, issuance of the Series [** _____ **] Bonds and certain other agreements, the City and the Developer have concurrently herewith entered into a Phase Development Agreement of even date herewith (the “Phase Development Agreement”), pursuant to which the Developer has agreed to make certain payments in lieu of taxes.

F. Pursuant to the foregoing, the City desires to lease the Phase [** _____ **] Project to the Developer and the Developer desires to lease the Phase [** _____ **] 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 Developer 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 and in **Section 1.1** of the Master Development and Performance Agreement (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.

(g) Whenever the City is required to “cooperate,” “cooperate fully” or “act promptly” on a matter set forth in this Lease, the City’s cooperation shall be deemed to be reasonable cooperation and the City’s promptness shall be deemed to be reasonable promptness; provided, however, that, notwithstanding any provision contained herein to the contrary, the City shall not be required to incur any costs, expenses, obligations or liabilities in providing such reasonable cooperation and promptness, nor shall it be deemed to have waived its governmental duties, obligations, legislative prerogatives, or sovereign immunity.

Section 1.3. Incorporation.

(a) The Recitals hereof are all incorporated into this Lease as if fully and completely set out in this Section.

(b) The Exhibits to this Lease are hereby incorporated into and made a part of this Lease.

ARTICLE II

REPRESENTATIONS

Section 2.1. Covenants of the City. The City makes the following covenants as the basis for the undertakings on its part herein contained, that:

(a) The City is a fourth-class 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 its Board of Aldermen, 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 agrees to initially acquire a leasehold interest in the Phase [** _____ **] Project Site, and, upon substantial completion of the Phase [** _____ **] Project Improvements, to acquire fee simple title to the Phase [** _____ **] Project, subject to Permitted Encumbrances. The City agrees to lease the Phase [** _____ **] Project to the Developer and sell the Phase [** _____ **] Project to the Developer if the Developer exercises its option to purchase the Phase [** _____ **] Project or upon termination of this Lease, all for the purpose of furthering the public purposes of the Act.

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

(d) To finance the costs of the Phase [** _____ **] Project, the City proposes to issue the Series [** _____ **] 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.

(e) The Series [** _____ **] Bonds are to be issued under and secured by the Indenture, pursuant to which the Phase [** _____ **] 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 Phase [** _____ **] Project, will be pledged and assigned to the Trustee as security for payment of the principal of and interest on the Series [** _____ **] Bonds and amounts owing pursuant to this Lease.

(f) The City will not knowingly take any affirmative action that would permit a lien to be placed on the Phase [** _____ **] Project or pledge the revenues derived therefrom for any Series [** _____ **] Bonds or other obligations, other than the Series [** _____ **] Bonds, except with the written consent of the Authorized Developer Representative; provided, however, the City's execution of this Lease, the Base Lease, the Indenture and the Master Development and Performance Agreement shall not be deemed to violate this **Section 2.1(f)**.

(g) The City will not operate the Phase [** _____ **] 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 Phase [** _____ **] Project in such manner as the City deems best.

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

(a) The Developer is a [** _____ **] duly organized, validly existing and in good standing under the laws of the State of [**Missouri**].

(b) The Developer has lawful power and authority to enter into this Lease and to carry out its obligations hereunder, and the Developer 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 Developer will not, to the best of the Developer's knowledge, conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any mortgage, deed of trust, lease or any other restrictions or any agreement or instrument to which the Developer is a party or by which it or any of its property is bound, or the Developer's organizational documents, or any order, rule or regulation applicable to the Developer or any of its property of any court or governmental body, or constitute a default under any of the foregoing, or 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 Developer under the terms of any instrument or agreement to which the Developer is a party.

(d) The Phase [** _____ **] 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, and the estimated costs of the purchase, construction and

improvement of the Phase [** _____ **] Project are in accordance with sound engineering and accounting principles.

ARTICLE III

GRANTING PROVISIONS

Section 3.1. Granting of Leasehold Estate. The City hereby exclusively rents, leases and lets the Phase [** _____ **] Project to the Developer, and the Developer hereby rents, leases and hires the Phase [** _____ **] 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. The City and the Developer agree and acknowledge that title to the Phase [** _____ **] Project is subject to the lien granted to the Lender by the Developer prior to the Developer's conveyance of the Phase [** _____ **] Project Site to the City in connection with the Phase [** _____ **] Project, and no further notice of the Fee Deed of Trust is required for the Lender to have all Lender rights and protections provided herein and in the Indenture.

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 Phase [** _____ **] Project shall terminate on the earliest of the following:

(a) December 31 of the 12th calendar year following the Transfer Date of the Phase [** _____ **] Project; or

(b) the date the Cumulative Property Tax Abatement Value (as confirmed or deemed confirmed by the City) for a phase equals or exceeds the Maximum Cumulative Property Tax Abatement Value (as such terms are defined in the Master Development and Performance Agreement).

Section 3.3. Possession and Use of the Phase [_____ **] 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** hereof following the occurrence and continuance of an Event of Default, as defined in Section 12.1 hereof, the Developer shall have sole and exclusive possession of the Phase [** _____ **] Project (subject to Permitted Encumbrances and the City's and the Trustee's right of access pursuant to **Section 10.3** hereof) and shall peaceably and quietly have, hold and enjoy the Phase [** _____ **] Project during the Lease Term. The City covenants and agrees that it will not take any action, other than expressly pursuant to **Article XII**, the Indenture, the Base Lease and the Master Development and Performance Agreement to prevent the Developer from having quiet and peaceable possession and enjoyment of the Phase [** _____ **] Project during the Lease Term and will, at the request and expense of the Developer, cooperate with the Developer to defend the Developer's quiet and peaceable possession and enjoyment of the Phase [** _____ **] Project.

(b) Subject to the provisions of this Section, the Developer shall have the exclusive right to use the Phase [** _____ **] Project for any lawful purpose contemplated by the Act and consistent with the terms of the Master Development and Performance Agreement. The Developer 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 Phase [** _____ **] Project, as to the manner of use or the condition of the

Phase [** _____ **] Project, or that otherwise may be applicable by virtue of the City's ownership of the Phase [** _____ **] Project Site. The Developer shall also comply with the mandatory requirements, rules and regulations of all insurers under the policies carried under the provisions of **Article VII**. The Developer 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 Developer to comply with the provisions of this Section. Notwithstanding any provision contained in this Section, however, the Developer 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 Developer may refrain from complying therewith.

ARTICLE IV

PURCHASE AND CONSTRUCTION OF THE PHASE [** _____ **] PROJECT

Section 4.1. Issuance of the Series [_____ **] Bonds.** To provide funds for the payment of Phase [** _____ **] Project Costs, the City agrees that, upon request of the Developer, it will issue, sell and cause to be delivered the Series [** _____ **] Bonds to the purchaser thereof in accordance with the provisions of the Indenture and the Bond Purchase Agreement. The proceeds of the sale of the Bonds, when received, shall be paid over to the Trustee for the account of the City. The Trustee shall promptly deposit such proceeds, if and when received, as provided in the Indenture to be used and applied as hereinafter provided in this Lease and in the Indenture. Alternatively, the Trustee shall (pursuant to **Section 208(d)** of the Indenture) endorse the Bonds in an amount equal to the requisition certificates submitted pursuant to **Section 4.4** hereof. In that event, so long as the sole Owner of the Bonds is the lessee under the Lease, the purchaser of the Bonds shall be deemed to have deposited funds with the Trustee in an amount equal to the amount stated in the requisition certificate.

Section 4.2. Purchase and Construction of the Phase [_____ **] Project.** The City and the Developer agree that the Developer, as the agent of the City, shall, but solely from the Project Fund, purchase and construct the Phase [** _____ **] Project as follows:

(a) The City will acquire a leasehold interest in the Phase [** _____ **] Project Site at the execution hereof and fee title to the Phase [** _____ **] Project on the Transfer Date. Concurrently with the execution of this Lease, (i) the Base Lease will be executed by the City and the Developer 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 and the Trustee. The Developer shall deliver to the City an updated commitment for title insurance or ownership and encumbrance report, a special warranty deed to the City, and any other necessary instruments for transfer of fee title to the Phase [** _____ **] Project on or before the Transfer Date.

(b) On behalf of the City, the Developer will purchase and construct the Phase [** _____ **] Project Improvements on the Phase [** _____ **] Project Site and otherwise improve the Phase [** _____ **] Project Site in accordance with the Plans and Specifications. The Developer may revise the Plans and Specifications from time to time as it deems necessary to carry out the Phase [** _____ **] Project, but revisions that affect the status of the Phase [** _____ **] Project as a "project" under the Act, that would materially alter the accuracy of the description of the Phase [** _____ **] Project in the Plan for an Industrial Development

Project and Cost/Benefit Analysis distributed under the Act, or contravene any of the terms and provisions of the Approved Site Plan as defined in the Master Development and Performance Agreement, may be made only with the prior written approval of the City. The Developer agrees that the aforesaid construction and improvement will, with such changes and additions as may be made hereunder, result in facilities suitable for use by the Developer for its purposes, 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 Phase [** _____ **] Project. The provisions of this paragraph are in addition to and do not supersede any of the provisions of **Article VIII**.

(c) The Developer will comply with the provisions of Section 107.170 of the Revised Statutes of Missouri to the extent applicable to the construction of the Phase [** _____ **] Project.

(d) The Developer will cause the purchase and construction of the Phase [** _____ **] Project Improvements to be completed on or before _____, 20____, except as otherwise provided in **Section 4.5**.

(e) The Phase [** _____ **] Project Improvements shall be constructed in a good and workmanlike manner and in strict compliance with all applicable laws, orders and ordinances. If such construction commences before the receipt of proceeds from the sale of the Bonds, the Developer agrees to advance all funds necessary therefor.

Section 4.3. Phase [_____ **] 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 related to the Phase [** _____ **] Project upon receipt by the Trustee of a certificate pursuant to **Section 4.4**. The Developer may not submit any requisition certificates for Project Costs associated with the Phase [** _____ **] Project Improvements incurred after the Completion Date. The Developer must submit all requisitions for Project Costs related to the Phase [** _____ **] Project incurred before the Completion Date within three months after the Completion Date. The maximum amount of all Project Costs related to the Phase [** _____ **] Project for which requisitions may be submitted is expressly limited to \$[**PRINCIPAL AMT**].

Section 4.4. Payment for Phase [_____ **] Project Costs.**

(a) The City hereby authorizes and directs the Trustee to make disbursements from the Project Fund and endorse the Series [** _____ **] Bonds, upon receipt by the Trustee of certificates in substantially the form attached as **Exhibit C**, signed by the Authorized Developer Representative and approved by the Authorized City Representative. The Developer agrees that the information in each certificate will be accurate in all respects when given, and that the Developer will notify the City if the Developer becomes aware of any material inaccuracies in a certificate after the date on which it is given. Each such certificate shall:

(i) request payment or reimbursement of a specified amount of such funds (which amount shall be equal to the value of the property being transferred to the City or added to the Project Improvements simultaneously with any request) and directing to whom such amount shall be paid (which may include the Developer in the event of a reimbursement);

(ii) describe each item of Phase [** _____ **] Project Costs for which payment is being requested;

(iii) state that each item for which payment is requested is or was provided for in the Plans and Specifications, has been properly incurred and is a proper charge against the Phase [** _____ **] Project Fund, that the amount requested either has been paid by the Developer, or is justly due, and has not been the basis of any previous requisition from the Phase [** _____ **] Project Fund; and

(iv) state that, except for the amounts, if any, stated in said certificate, to the best of its knowledge, there are no outstanding disputed amounts for which payment is requested for labor, wages, materials, supplies or services in connection with the purchase, construction, and equipping of the Phase [** _____ **] Project Improvements which, if unpaid, might become the basis of a vendors', mechanics', laborers' or materialmen's statutory or other similar lien upon the Phase [** _____ **] Project or any part thereof.

(b) Upon request by the City, the Developer shall provide the City with copies of invoices, bills, lien waivers and other reasonable documentation to support each submitted requisition certificate. 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 the Authorized Developer Representative and the 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 of the Phase [** _____ **] Project Improvements shall be evidenced to the City and the Trustee by a certificate signed by the Authorized Developer Representative stating (a) that the purchase, construction and improving of the Phase [** _____ **] Project Improvements 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, construction and improving of the Phase [** _____ **] Project Improvements have been incurred. Notwithstanding the foregoing, (i) such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being, and (ii) such certificate shall be deemed given on _____, 20____ if not actually filed with the City by _____, 20____, subject to extension under the conditions set forth in **Section 3.8** of the Master Development and Performance Agreement (collectively, a "Permitted Excuse"). No Permitted Excuse shall be deemed to exist unless the Developer complies with the provisions of **Section 3.8** of the Master Development and Performance Agreement. In no event shall a Permitted Excuse extend the Completion Date of the Phase [** _____ **] Project Improvements beyond _____, 20____. The Developer and the City agree to cooperate in causing each such certificate to be furnished to the Trustee. The Transfer Date of the Phase [** _____ **] Project shall occur promptly after the Completion Date and within 30 days of the Developer's receipt of waivers of all mechanics' lien rights with respect to the Phase [** _____ **] Project Improvements. The Developer and the City agree to cooperate in causing notice of the Transfer Date to be furnished to the Trustee and the St. Charles County Assessor. The parties agree that upon transfer of fee simple title to the City of Phase [** _____ **] Project Improvements on the Transfer Date, the City's leasehold interest under the Base Lease and fee simple title interest will merge and the Developer's leasehold interest under this Lease will, subject to the terms hereof, continue without interruption.

Section 4.6. Surplus in Project Fund. Upon receipt of the certificate described in **Section 4.5** for the Phase [** _____ **] Project Improvements and payment from the Project Fund of the Project Costs described therein, 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 Developer solely to (a) the payment of principal and premium, if any, of the Series [** _____ **] 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 Developer, to the purchase of Series [** _____ **] Bonds at such earlier date or dates as the Developer may elect. Any amount so deposited in the Bond Fund may be invested as permitted by **Section 702** of the Indenture.

Section 4.7. Phase [_____ **] Project Property of the City.** The Phase [** _____ **] Project Site and the Phase [** _____ **] Project Improvements located thereon at the execution hereof and which the Developer desires to convey to the City, together with all work and materials related to the Phase [** _____ **] Project as such work progresses, and all additions or enlargements thereto or thereof, the Phase [** _____ **] Project as fully completed, and anything under this Lease which becomes, is deemed to be, or constitutes a part of the Phase [** _____ **] Project, and the Phase [** _____ **] Project as repaired, rebuilt, rearranged, restored or replaced by the Developer under the provisions of this Lease, except as otherwise specifically provided herein, shall immediately when erected or installed become the absolute property of the City, subject only to this Lease, the Indenture, Permitted Encumbrances, the Fee Deed of Trust and the Leasehold Mortgage, if any. Upon reasonable request of and at the expense of the Developer, the City agrees to cooperate with the Developer regarding the enforcement of any claims the Developer may have against third parties relating to the construction and equipping of the Phase [** _____ **] Project.

Section 4.8. Non-Phase [_____ **] Project Improvements, Machinery and Equipment Property of the Developer.** Any improvements or items of machinery or equipment which do not constitute part of the Phase [** _____ **] Project and the entire purchase price of which is paid for by the Developer with the Developer's 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 Developer and shall not constitute a part of the Phase [** _____ **] Project for purposes of **Section 6.4** and therefore are subject to taxation to the extent provided by law.

ARTICLE V

RENT PROVISIONS

Section 5.1. Basic Rent. The Developer 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 Phase [** _____ **] Project, an amount which, when added to any collected funds then on deposit in the Bond Fund and available for the payment of principal on the Series [** _____ **] Bonds and the interest thereon on such Payment Date, shall be equal to the amount payable on such Payment Date as principal of the Series [** _____ **] Bonds and the interest thereon as provided in the Indenture. Except as offset pursuant to the right of the Developer 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, the Bond Purchase Agreement, the Master Development and Performance Agreement or the Phase Development Agreement to the contrary, and provided that the Developer (or any Financing Party holding a mortgage or Deed of Trust on the Phase [** _____ **] Project) is the sole holder of the Series [** _____ **] Bonds, the Developer, upon providing the Trustee with a written

statement confirming such ownership upon which the Trustee may conclusively rely, may set-off the then-current Basic Rent payment against the City's obligation to the Developer as bondholder to pay principal of and interest on the Series [** _____ **] Bonds under the Indenture in lieu of delivery of the Basic Rent on any Payment Date, without providing notice of such set-off to the Trustee. The Trustee may conclusively rely on the absence of any notice from the Developer to the contrary as evidence that such set-off has occurred and that pursuant to the set-off, the City is deemed to have paid its obligation to the Developer as bondholder to pay principal of and interest on the Series [** _____ **] Bonds under the Indenture. On the final Payment Date, the Developer will (a) if the Trustee holds the Series [** _____ **] Bonds, notify the Trustee of the Series [** _____ **] Bonds not previously paid that are to be canceled, or (b) if an entity other than the Trustee holds the Series [** _____ **] Bonds, deliver or cause to be delivered to the Trustee for cancellation Series [** _____ **] Bonds not previously paid. The Developer shall receive a credit against the Basic Rent payable by the Developer in an amount equal to the principal amount of the Series [** _____ **] Bonds so tendered for cancellation plus accrued interest thereon.

Section 5.2. Additional Rent. The Developer 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, this Lease, the Base Lease, the Phase Development Agreement, including, but not limited to, claims by contractors or subcontractors and legal costs associated with the transfer of title to the Phase [** _____ **] Project on the Transfer Date, as and when the same become due;

(b) all costs incident to the issuance of the Series [** _____ **] Bonds (which are to be paid on the Closing Date) and the payment of the principal of and interest on the Series [** _____ **] Bonds as the same become due and payable, including all costs and expenses in connection with the call, redemption and payment of all Outstanding Series [** _____ **] Bonds;

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

(d) all costs incident to the preparation, execution, issuance and delivery of an additional series of bonds and/or additional City Documents (as defined in the Ordinance) in connection with the Phase [** _____ **] Project pursuant to **Section 6(b)** of the Ordinance, if any; and

(e) all other payments of whatever nature which the Developer has agreed in writing to pay or assume under the provisions of this Lease, the Base Lease, the Master Development and Performance Agreement, the Phase Development Agreement or the Indenture.

Section 5.3. Obligations of the Developer Absolute and Unconditional.

(a) The obligations of the Developer under this Lease to make payments of Basic Rent and Additional Rent on or before the date the same become 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 described in **Section 5.1** hereof), 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 Phase [** _____ **] Project has been started or completed, or whether the City's title thereto or to any part thereof is defective or nonexistent, and notwithstanding any damage to, loss, theft or destruction of, the Phase [** _____ **] 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 Phase [** _____ **] Project, legal curtailment of the Developer's use thereof, the eviction or constructive eviction of the Developer, 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 5.3(a)** or **Section 5.3(b)** is intended or shall be deemed to affect or impair in any way the rights of the Developer to tender Series [** _____ **] Bonds for redemption in satisfaction of Basic Rent as provided in **Section 5.1** and **Section 5.4** hereof, nor the right of the Developer to terminate this Lease and repurchase the Phase [** _____ **] Project as provided in **Article XI** hereof.

(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 Developer of any rights or claims the Developer 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 Developer 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 Developer 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 Developer deems reasonably necessary in order to secure or protect its right of possession, occupancy and use hereunder, and in such event the City hereby agrees, at the Developer's expense, to cooperate fully with the Developer and to take all action necessary to effect the substitution of the Developer for the City in any such action or proceeding if the Developer shall so request.

Section 5.4. Prepayment of Basic Rent.

(a) The Developer 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 Series [** _____ **] 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 Series [** _____ **] Bonds then remaining unpaid, the Developer shall not be obligated to make payments of Basic Rent under the provisions of this Lease.

(b) At its option, the Developer may deliver to the Trustee for cancellation Series [** _____ **] Bonds owned by the Developer and not previously paid, and the Developer shall receive a credit against amounts payable by the Developer for the redemption of Series [** _____ **] Bonds in an amount equal to the principal amount of the Series [** _____ **] Bonds so tendered for cancellation, plus accrued interest thereon.

ARTICLE VI

MAINTENANCE, TAXES AND UTILITIES

Section 6.1. Maintenance and Repairs. Throughout the Lease Term the Developer shall, at its own expense, keep the Phase [** _____ **] Project in reasonably safe operating condition and keep the Phase [** _____ **] 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 Developer shall at all times remain in compliance with all provisions of the City's Municipal Code relating to maintenance and appearance. The Developer shall also comply with **Section 8.5** hereof.

Section 6.2. Taxes, Assessments and Other Governmental Charges.

(a) Subject to subsection (b) of this Section, the Developer shall promptly pay and discharge, as the same become 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 Phase [** _____ **] Project, or any part thereof or interest therein (including the leasehold estate of the Developer therein) or any buildings, improvements, machinery and equipment at any time installed on the Phase [** _____ **] Project Site by the Developer, 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 Series [** _____ **] Bonds or encumber the City's title to the Phase [** _____ **] 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 Developer shall be obligated to pay only such installments thereof as become due and payable during the Lease Term.

(b) The Developer 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 Developer 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 (i) the Developer, before instituting any such contest, gives the City written notice of its intention to do so, (ii) the Developer diligently prosecutes any such contest, at all times effectively stays or prevents any official or judicial sale therefor, under execution or otherwise, and (iii) the Developer promptly pays any final judgment enforcing the tax, assessment or other governmental charge so contested and thereafter promptly procures record release or satisfaction thereof. The City agrees to cooperate fully with the Developer in connection with any and all administrative or judicial proceedings related to any tax, assessment or other governmental charge. The Developer 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 Developer to make duplicate tax payments. The Developer shall receive a credit against the PILOT Payments (as defined in the Master Development and Performance Agreement and the Phase Development Agreement) to be made by the Developer under the Master Development and Performance Agreement and the Phase Development Agreement to the extent of any ad valorem taxes imposed with respect to the Phase [** _____ **] Project paid pursuant to this Section.

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

Section 6.4. Property Tax Exemption. The City and the Developer expect that while the Phase [** _____ **] Project is owned in fee simple by the City and subject to this Lease, the Phase [** _____ **] Project will be exempt from all ad valorem property taxes by reason of such ownership, and the City agrees that it will (at the expense of the Developer) cooperate with the Developer to defend such exemption against all parties. The City and the Developer further acknowledge and agree that the City's obligations hereunder are contingent upon the Developer making the payments and otherwise complying with the applicable terms of the Master Development and Performance Agreement and the Phase Development Agreement during the term of this Lease. The terms and conditions of the Master Development and Performance Agreement and the Phase Development Agreement are incorporated herein as if fully set forth herein.

ARTICLE VII

INSURANCE

Section 7.1. Title Commitment. Before conveying title to any real property to the City, the Developer 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 Phase [** _____ **] Project Site. Copies of such report shall be provided to the City and the Trustee.

Section 7.2. Casualty Insurance.

(a) Prior to commencement of construction of the Phase [** _____ **] Project Improvements, the Developer shall at its sole cost and expense obtain a policy or policies of insurance (including, if appropriate, builder's risk insurance) to keep the Phase [** _____ **] 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 from commencement of construction through the Lease Term 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:VI" or the equivalent thereof as may be selected by the Developer. The Developer shall deliver certificates of insurance for such policies to the City and the Trustee no later than 30 days after commencement of construction of the Phase [** _____ **] 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 City and the Developer as insureds, as their respective interests may appear, shall name the Trustee as loss payee, subject to the rights of the Lender under the Loan Documents and any Financing Party under any Financing Document, and shall contain a provision that such insurance may not be canceled by the issuer thereof without at least 30 days' advance written notice to the City, the Developer and the Trustee.

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

Section 7.3. Public Liability Insurance.

(a) The Developer 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 Developer 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 \$10,000 without the City's prior written consent). The policies of said insurance shall contain a provision that such insurance may not be canceled by the issuer thereof without at least 30 days' advance written notice to the City, the Developer and the Trustee. Certificates of such policies shall be furnished to the Trustee and the City on the date of execution of this Lease and not less than 30 days before the expiration date of each insurance policy.

(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 Developer 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 Developer 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 of sovereign immunity that might otherwise be available to the City or its officers, agents and employees.

ARTICLE VIII

ALTERATION OF THE PHASE [_____ **] PROJECT**

Section 8.1. Additions, Modifications and Improvements to the Phase [_____ **] Project.**

(a) The Developer may make such additions, modifications and improvements in and to any part of the Phase [** _____ **] Project as the Developer from time to time may deem necessary or desirable for its business purposes. All additions, modifications and improvements made by the

Developer pursuant to this Section shall (i) be made in a good and workmanlike manner and in strict compliance with all laws, orders and ordinances applicable thereto, and (ii) when commenced, be prosecuted to completion with due diligence. Any such other additions, modifications and improvements shall be subject to ad valorem taxes, or if for any reason the St. Charles County Assessor determines that such additions, modifications and improvements are not subject to ad valorem taxes, the Developer shall make payments in lieu of taxes in an amount equal to 100% of the taxes that would otherwise be due but for the City's interest therein, unless otherwise agreed to by the City.

(b) The Developer shall, following the Completion Date of the Phase [** _____ **] Project Improvements, notify the City in writing of any improvements to the Phase [** _____ **] Project that in the aggregate are reasonably expected to exceed \$1,000,000 during any calendar year. If such improvements constitute personal property, any such improvements shall remain the property of the Developer, shall not become part of the Phase [** _____ **] Project, and shall be subject to *ad valorem* taxes.

Section 8.2. Additional Improvements on the Phase [_____ **] Project Site.** Subject to **Section 8.1(b)** and **Section 8.5** hereof, the Developer may, at its sole cost and expense, construct on portions of the Phase [** _____ **] Project Site not theretofore occupied by buildings or improvements such additional buildings and improvements as the Developer from time to time may deem necessary or desirable for its business purposes. All additional buildings and improvements constructed on the Phase [** _____ **] Project Site by the Developer, and not paid for with Series [** _____ **] Bond proceeds, pursuant to the authority of this Section shall not be included in the Phase [** _____ **] Project and, during the life of this Lease, shall remain the property of the Developer and may be added to, altered or razed and removed by the Developer 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 Developer covenants and agrees (a) to make any repairs and restorations required to be made to the Phase [** _____ **] 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 Developer shall pay all ad valorem taxes and assessments payable with respect to such additional buildings and improvements which remain the property of the Developer. If for any reason the St. Charles County Assessor determines that such additional buildings and improvements are not subject to ad valorem taxes, the Developer shall make payments in lieu of taxes in an amount equal to 100% of the taxes that would otherwise be due.

Section 8.3. Permits and Authorizations. The Developer shall not do or permit others under its control to do any work on the Phase [** _____ **] Project or any repair, rebuilding, restoration, replacement, modification or addition to the Phase [** _____ **] 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 Developer will not directly or indirectly create, incur, assume or suffer to exist any lien on or with respect to the Phase [** _____ **] Project, except Permitted Encumbrances, and the Developer shall promptly notify the City of the imposition of such lien of which the Developer 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 Phase [** _____ **] 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 Phase [** _____ **] Project, the Developer shall discharge the same of record. Notice is hereby given that the City shall not be liable for any labor or materials furnished the Developer or anyone claiming by, through or under the Developer 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 Phase [** _____ **] Project or any part thereof.

(b) Notwithstanding paragraph (a) above, the Developer may contest any such mechanics' or other similar lien if the Developer (i) within 60 days after the Developer becomes aware of any such lien notifies the City and the Trustee in writing of its intention so to do, (ii) diligently prosecutes such contest, (iii) at all times effectively stays or prevents any official or judicial sale of the Phase [** _____ **] Project, or any part thereof or interest therein, under execution or otherwise, (iv) promptly pays or otherwise satisfies any final judgment adjudging or enforcing such contested lien claim, and (v) thereafter promptly procures record release or satisfaction thereof. The Developer may permit the lien so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Developer is notified by the City that, in the opinion of counsel, by nonpayment of any such items, the interest of the City in the Phase [** _____ **] Project will be subject to loss or forfeiture. In that event, the Developer 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 Developer shall save and hold harmless the City from any loss, costs or expenses the City may incur related to any such contest. The Developer 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 Developer in any such contest.

Section 8.5. Notice of Improvements Subject to Bonding Requirements. The Developer shall notify the City in writing of any portion of the Phase [** _____ **] Project and, following the Completion Date of the Phase [** _____ **] Project Improvements, any subsequent repair, renovation, modification or improvement of the Phase [** _____ **] Project that is subject to Section 107.170 of the Revised Statutes of Missouri or any other law requiring payment or performance bonds for such work prior to beginning construction of the Phase [** _____ **] Project or subsequent 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 Developer agrees and acknowledges that (a) the City and its governing body members, officers, agents and employees shall be fully indemnified by the Developer, as provided in **Section 10.5** hereof, against any claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, arising from the Developer's failure to provide the written notice as required by this Section or secure any payment or performance bonds required by Section 107.170 of the Revised Statutes of Missouri or other applicable law, and (b) the Developer's leasehold interest under this Lease may be subject to mechanics' or other similar liens, which the Developer shall promptly resolve in accordance with **Section 8.4** hereof.

ARTICLE IX

DAMAGE, DESTRUCTION AND CONDEMNATION

Section 9.1. Damage or Destruction.

(a) If the Phase [** _____ **] Project is damaged or destroyed by fire or any other casualty, whether or not covered by insurance, the Developer, 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 Phase [** _____ **] Project is of a value not less than the value thereof immediately before the occurrence of such damage or destruction or, at the Developer's option, construct upon the Phase [** _____ **] Project Site new buildings and improvements thereafter 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 Phase [** _____ **] 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 Phase [** _____ **] Project as a "project" permitted by the Act.

If the Developer elects to construct any such new buildings and improvements, for all purposes of this Lease, any reference to the words "Phase [** _____ **] 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 Developer makes the determination described in subsection (f) below, the Net Proceeds of casualty insurance required by **Article VII** received with respect to such damage or loss to the Phase [** _____ **] Project shall be used to pay the cost of repairing, restoring, replacing or rebuilding the Phase [** _____ **] Project or any part thereof, subject to the rights of the Lender under the Fee Deed of Trust and related Loan Documents. Subject to the provisions of the Fee Deed of Trust and related Loan Documents, insurance monies in an amount less than \$100,000 may be paid to or retained by the Developer to be held in trust and used as provided herein. Subject to the provisions of the Fee Deed of Trust and related Loan Documents, insurance monies in an amount of \$100,000 or more shall be (i) paid to the Trustee and deposited in the Project Fund and shall be disbursed as provided in **Section 4.4** to pay the cost of repairing, restoring, replacing or rebuilding the Phase [** _____ **] Project or any part thereof, or (ii) if determined by the Owners of 100% in principal amount of the Series [** _____ **] Bonds Outstanding, applied as directed by, or on behalf of, such Owners of 100% in principal amount of the Series [** _____ **] Bonds Outstanding, subject to the rights of the Lender. If the Developer makes the determination described in subsection (f) below, the Net Proceeds shall be deposited with the Trustee and used to redeem Series [** _____ **] Bonds as provided in subsection (f), subject to the rights of the Lender under the Fee Deed of Trust and related Loan Documents.

(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 the Lender, any leasehold mortgagee or any other Financing Party. Completion of such repairs, restoration, replacement or rebuilding shall be evidenced by a certificate of completion provided to the City and the Trustee. If the Net Proceeds are insufficient to pay the entire cost of such repairs, restoration, replacement or rebuilding, the Developer 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 Developer shall remain and continue liable for the payment of all Basic Rent and Additional Rent and all other charges required hereunder to be paid by the Developer, as though no damage by fire or any other casualty has occurred.

(d) The Developer will prosecute or defend 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.

(e) The Developer agrees to give prompt written notice to the City, the Trustee and the Lender of all fires and any other casualties occurring in, on, at or about the Phase [** _____ **] Project Site.

(f) If the Developer determines that rebuilding, repairing, restoring or replacing the Phase [** _____ **] Project is not practicable or desirable, or if the Developer does not have the right under the Fee Deed of Trust, any Leasehold Mortgage or any other Financing Document to use any Net Proceeds for repair or restoration of the Phase [** _____ **] 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 Series [** _____ **] Bonds on the earliest practicable redemption date or to pay the principal of any Series [** _____ **] Bonds as the same becomes due, all subject to rights of the Lender under the Loan Documents, any mortgagee under the Leasehold Mortgage (if any) and any Financing Party under the Financing Documents (if any). The Developer agrees to be reasonable in exercising its judgment pursuant to this subsection (f). Alternatively, if the Developer is the sole owner of the Series [** _____ **] Bonds and it has determined that rebuilding, repairing, restoring or replacing the Phase [** _____ **] Project is not practicable or desirable, it may tender Series [** _____ **] 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 Developer shall not, by reason of its inability to use all or any part of the Phase [** _____ **] Project during any period in which the Phase [** _____ **] Project is damaged or destroyed or is being repaired, rebuilt, restored or replaced, nor by reason of the payment of the costs of such rebuilding, repairing, restoring or replacing, 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 Developer under this Lease or of any other obligations of the Developer under this Lease except as expressly provided in this Section.

(h) The rights of the City and the Trustee in and to any Net Proceeds are and will at all times be subject to the rights of the Lender with respect to such Net Proceeds.

(i) Nothing herein shall be deemed to authorize the Developer to allow an unsafe, dangerous, unhealthy or injurious condition to exist on the Phase [** _____ **] Project or any portion thereof, in violation of any applicable laws, codes and ordinances due to a fire or other casualty.

Section 9.2. Condemnation.

(a) If during the Lease Term, title to, or the temporary use of, all or any part of the Phase [** _____ **] 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 \$100,000, the Developer 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, the Lender, any mortgagee under the Leasehold Mortgage (if any) and any 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 Developer determines that such substitution is practicable and desirable, the Developer shall proceed promptly with and complete with reasonable dispatch the acquisition or construction of such substitute improvements, so as to place the Phase [** _____ **] 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 Developer's operations at the Phase [** _____ **] Project (which improvements will be deemed a part of the Phase [** _____ **] Project and available for use and occupancy by the Developer 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 (including, without limitation, any liens held by the Lender in and to the substitute Phase [** _____ **] Project). In such case, any Net Proceeds received from any award or awards with respect to the Phase [** _____ **] 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 Developer determines that it is not practicable or desirable to acquire or construct substitute improvements, or if the Developer does not have the right under the Fee Deed of Trust to use any Net Proceeds of condemnation awards received by the Developer, then any Net Proceeds of condemnation awards received by the Developer shall, after payment of all Additional Rent then due and payable, be paid into the Bond Fund and shall be used to redeem Series [** _____ **] Bonds on the earliest practicable redemption date or to pay the principal of any Series [** _____ **] Bonds as the same becomes due and payable, all subject to the rights of the Lender under the Loan Documents, any mortgagee under the Leasehold Mortgage (if any) and any Financing Party under the Financing Documents (if any).

(d) The Developer shall not, by reason of its inability to use all or any part of the Phase [** _____ **] 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 Developer under this Lease nor of any other obligations hereunder except as expressly provided in this Section.

(e) The City shall cooperate fully with the Developer in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Phase [** _____ **] Project or any part thereof, and shall, to the extent it may lawfully do so, permit the Developer to litigate in any such proceeding 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 Phase [** _____ **] Project or any part thereof without the prior written consent of the Developer and the Lender.

Section 9.3. Bondowner Approval. Notwithstanding anything to the contrary contained in this **Article IX**, subject to the rights of the Lender, 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 by the Owners or pledgees of 100% of the principal amount

of Series [** _____ **] 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 the Master Development and Performance Agreement.

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 Phase [** _____ **] Project or that it will be suitable for the Developer's purposes or needs. The Developer 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 or damage to property or any injury to or death of any Person that may be occasioned by any cause whatsoever pertaining to the Phase [** _____ **] Project or the Developer's use thereof, unless such loss is the result of the City's or the Trustee's 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 Developer shall peacefully surrender possession of the Phase [** _____ **] Project to the City in good condition and repair; provided, however, the Developer may within 90 days (or such later date as the City may agree to) after the termination of this Lease remove from the Phase [** _____ **] Project Site any buildings, improvements, furniture, trade fixtures, machinery and equipment owned by the Developer and not constituting part of the Phase [** _____ **] Project. All repairs to and restorations of the Phase [** _____ **] Project required to be made because of such removal shall be made by and at the sole cost and expense of the Developer, and during said 90-day (or extended) period the Developer shall bear the sole responsibility for and bear the sole risk of loss for said buildings, improvements, furniture, trade fixtures, machinery and equipment owned by the Developer and not constituting part of the Phase [** _____ **] Project. All buildings, improvements, furniture, trade fixtures, machinery and equipment owned by the Developer and which are not so removed from the Phase [** _____ **] Project Site before the expiration of said period shall be the separate and absolute property of the City. Notwithstanding the foregoing, if the Developer has paid all obligations due and owing under the Indenture (or such obligations have been canceled), this Lease and the Master Development and Performance Agreement, the City shall convey the Phase [** _____ **] Project in accordance with **Section 11.2**.

Section 10.3. Right of Access to the Phase [_____ **] Project.** The City may conduct such periodic inspections of the Phase [** _____ **] Project as may be generally provided in the City's Municipal Code. In addition, the Developer 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 Developer's usual business, proprietary, safety, confidentiality and security requirements, enter upon the Phase [** _____ **] Project Site (a) to examine and inspect the Phase [** _____ **] Project without interference or prejudice to the Developer's operations, (b) to monitor the acquisition, construction and installation provided for in **Section 4.2** hereof as may be reasonably necessary, (c) to examine all files, records, books and other materials in the Developer's possession pertaining to the acquisition, installation or maintenance of the Phase [** _____ **] Project, or (d) upon either (i) the occurrence and continuance of an Event of

Default, or (ii) the Developer's failure to purchase the Phase [** _____ **] Project at the end of the Lease Term, to exhibit the Phase [** _____ **] Project to prospective purchasers, lessees or trustees.

Section 10.4. Granting of Easements; Fee Deed of Trust 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 it will execute and deliver and will cause and direct the Trustee to execute and deliver any instrument necessary or appropriate to confirm and grant, release or terminate any sublease, easement, license, right-of-way or other right or privilege or any such agreement or other arrangement, 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 the Authorized Developer Representative requesting such instrument, and (iii) a certificate executed by the Authorized Developer Representative stating that such grant or release is not detrimental to the proper conduct of the business of the Developer, will not impair the effective use or interfere with the efficient and economical operation of the Phase [** _____ **] Project, will not materially adversely affect the security intended to be given by or under the Indenture or the Master Development and Performance Agreement, will be a Permitted Encumbrance, and that the Developer 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 any 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 Developer for any such grant or with respect to or under any such agreement or other arrangement shall be and remain the property of the Developer; but, subject to **Sections 10.4(c)** and **(d)** hereof, upon (A) termination of this Lease for any reason other than the redemption of the Series [** _____ **] Bonds and/or the purchase of the Phase [** _____ **] Project by the Developer, or (B) the occurrence and continuance of an Event of Default by the Developer, all rights then existing of the Developer with respect to or under such grant shall inure to the benefit of and be exercisable by the City and the Trustee.

(b) Subject to the Fee Deed of Trust, the Developer 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 note or other obligation secured thereby, is delivered to the City within 30 days after the execution thereof. The sale of the Developer's leasehold estate at a foreclosure sale or trustee's sale under the Leasehold Mortgage 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 the Master Development and Performance Agreement are paid.

(c) The City acknowledges and agrees that the Developer may finance and refinance its rights and interests in the Phase [** _____ **] Project, this Lease and the leasehold estate created hereby and, in connection therewith and subject to the terms of the Loan Documents, the Developer may execute Financing Documents with one or more Financing Parties. Notwithstanding anything contained to the contrary in this Lease, the Developer 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(c)** hereof.

(d) As long as the Fee Deed of Trust remains outstanding or upon notice by the Developer to the City in writing that the Developer 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:

(i) there shall be no merger of this Lease or of the leasehold estate created hereby with fee title to the Phase [**_____**] 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 Developer under this Lease, at the same time as such notice is served upon the Developer. No such notice to the Developer shall be effective unless a copy thereof is thus served upon each such Financing Party;

(iii) each such Financing Party shall have the same period of time which the Developer 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 Developer;

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

(v) upon the occurrence and continuance of an Event of Default by the Developer 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 the Financing Party (or its designee, nominee, assignee or transferee) is diligently prosecuting such cure); provided that the 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 Phase [**_____**] Project at such reasonable times and manner as are necessary or desirable to effectuate the remedies and enforce its rights under its respective Financing Documents;

(vii) except for terminations of this Lease expressly authorized herein, this Lease may not be modified, amended, canceled or surrendered by agreement between the City and the Developer, without prior written consent of each such Financing Party; and

(viii) each such Financing Party may, upon an event of default under any of its respective Financing Documents, on behalf of the Developer and without the consent of the Developer, but only having first caused the redemption of the Series [** _____ **] Bonds, exercise the right to purchase the Phase [** _____ **] Project pursuant to **Section 11.1**, upon compliance with the provisions of that Section. The Developer agrees that the City will have no liability for taking direction from any Financing Party in connection with a conveyance of the Phase [** _____ **] Project back to the Developer pursuant to **Article XI**.

The City acknowledges that the Lender is a Financing Party and is entitled to the benefits of **Sections 10.4(d)(i)-(viii)** above.

(e) In connection with the execution of one or more Financing Documents, upon the request of the Developer, the City agrees to execute such documents as shall be reasonably requested by the Lender or any other 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 fee interest in the Phase [** _____ **] Project to any new fee deed of trust or any modification of the existing Fee Deed of Trust. Moreover, to facilitate the recordation of a new fee deed of trust or a modification of the existing Fee Deed of Trust, the City agrees to transfer its fee interest in the Phase [** _____ **] Project to the Developer; provided that the Developer re-conveys the Phase [** _____ **] Project back to the City immediately following the recordation of such document via a special warranty deed in a form reasonably acceptable to the City. This Lease (or the Indenture or any related document) shall not merge into any such deed or otherwise be affected by any such transfer. The Developer 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 Developer's obligations under any mortgage or Financing Document relating to the Phase [** _____ **] Project entered into after the date of execution of this Lease (except for any construction loans or other Financing Documents related to the Phase [** _____ **] Project that the Developer and the Lender hereafter execute), the execution of which shall be expressly subject to the prior written consent of the Lender in accordance with the Fee Deed of Trust, shall be subordinate to the Developer's obligations under this Lease.

(g) Notwithstanding the foregoing, the City may agree to other provisions and documents requested by the Developer, the Lender or any Financing Party not contemplated by this **Section 10.4**, subject to approval by the Board of Aldermen.

(h) The Fee Deed of Trust and any other security agreements secured by the Phase [** _____ **] Project shall recognize that payments in lieu of taxes (PILOTs) due and owing under the Master Development and Performance Agreement are to be given the same priority as real property taxes in the event of a foreclosure. To evidence such preference, all such deeds or trusts or other security obligations must contain the provisions in substantially the form provided below or language approved by the City Attorney acknowledging that any proceeds received by a Lender as a result of a foreclosure or deed in lieu of foreclosure related to the Phase [** _____ **] Project shall first be applied to pay any PILOTs due and owing:

(i) Consent to Sale and Lease. Grantee hereby consents to the (i) lease of the Phase [** _____ **] Project Site and the Phase [** _____ **] Project Improvements, if any, as defined in the Master Development and Performance Agreement dated as of _____, 2023, between the City of Dardenne Prairie, Missouri (the “City”) and Grantor (the “Master Development and Performance Agreement”), which includes the [Real Property], from Grantor to the City pursuant to a Base Lease dated as of _____, 2023, between Grantor and the City, (ii) lease of the Phase [** _____ **] Project Site and Phase [** _____ **] Project Improvements from the City to Grantor pursuant to a Lease Agreement dated as of _____, 2023, between Grantor and the City (the “Lease”), and, if applicable, (iii) sale and transfer of the Phase [** _____ **] Project Site and the Phase [** _____ **] Project Improvements pursuant to a Special Warranty Deed to be dated the Transfer Date, as defined in the Master Development and Performance Agreement, between Grantor and the City. Such leases and sale shall not be deemed to be a default under the Fee Deed of Trust.

(ii) Notice of Foreclosure. So long as the Lease is outstanding, Grantee and the Trustee under the Fee Deed of Trust shall provide the City with written notice of any intended foreclosure sale under the Fee Deed of Trust concurrently with any such notice given to Grantor. Such notice shall be given by certified mail addressed to the City, 2032 Hanley Road, Dardenne Prairie, MO 63368, Attn: City Administrator.

(iii) Application of Proceeds in Foreclosure. Upon any foreclosure sale of the Phase [** _____ **] Project Site, or any part thereof, the proceeds of such sale or sales shall be applied as follows:

A. First, to the City, the amount of all “PILOT Payments” (as such term is defined in the Master Development and Performance Agreement) relating to the Phase [** _____ **] Project Site due and owing under the Master Development and Performance Agreement for the year during which the foreclosure occurs and prior years;

B. Second, to all fees, charges, costs and expenses of exercising the power of sale and consummating the sale;

C. Third, to the City, the amount of all costs and expenses (including reasonable attorneys’ fees) of the City actually incurred in connection with the foreclosure sale;

D. Fourth, to Grantee, all advances made for repairs, taxes, insurance, liens, assessments and prior encumbrances with respect to on the Phase [** _____ **] Project Site, and any interest thereon;

E. Fifth, to the payment of principal and interest on the debt secured hereby; and

F. Sixth, paying to Grantor, any surplus as required by law.

(iv) PILOT Payments. Grantee acknowledges that, as part of the Master Development and Performance Agreement, Grantor has agreed to make certain PILOT Payments as defined therein. Notwithstanding anything to the contrary contained herein or in the Bond, Grantee agrees that for so long as the Lease remains in effect, the lien of the Fee Deed of Trust shall be subject

and inferior to the lien of the City thereto to the extent of any unpaid PILOT Payments relating to the Phase [** _____ **] Project Site that are to be paid in lieu of ad valorem real estate taxes. Grantee agrees that any proceeds received by Grantee as a result of a foreclosure or deed in lieu of foreclosure related to the Phase [** _____ **] Project Site shall first be applied to pay any such PILOT Payments then due and owing that are to be paid in lieu of ad valorem real estate taxes.

(v) Amendment. No provision of this Fee Deed of Trust, relating to the City or the PILOT Payments, will be amended without the City's prior written consent.

Section 10.5. Indemnification of City and Trustee. The Developer 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 Series [** _____ **] Bonds and the execution of the Master Development and Performance Agreement, this Lease (or any instrument requested by the Developer pursuant to **Section 10.4** hereof) or the Indenture and from the conduct or management of, or from any work or thing done in or on the Phase [** _____ **] 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 Phase [** _____ **] Project, (b) any breach or default on the part of the Developer in the performance of any of its obligations under the Master Development and Performance Agreement, this Lease, the Base Lease or any related document, (c) any contract entered into in connection with the acquisition, purchase, construction, extension, installation or improvement of the Phase [** _____ **] Project, including mechanic's liens, (d) any act of negligence or intentional misconduct of the Developer or of any of its agents, contractors, servants, employees or licensees, (e) unless the Developer has been released from liability pursuant to **Section 13.1(c)**, any act of negligence or intentional misconduct of any assignee or sublessee of the Developer, or of any agents, contractors, servants, employees or licensees of any assignee or sublessee of the Developer, (f) obtaining of any applicable state and local sales and use tax exemptions for materials or goods that become part of the Phase [** _____ **] Project, and (g) any violation of Section 107.170 of the Revised Statutes of Missouri; 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 Phase [** _____ **] Project by employees of the City, or (B) the result of the willful misconduct by the City or (ii) to the Trustee to the extent that such claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, are the result of the willful misconduct by the Trustee. Upon written notice from the City or the Trustee of any such claims or demand, the Developer shall defend them or either of them in any such action or proceeding; provided, that the City shall cooperate with the Developer and provide reasonable assistance in such defense. All costs related to the defense of the City or the Trustee shall be paid by the Developer. This **Section 10.5** shall survive any termination of the Master Development and Performance Agreement and this Lease or the satisfaction and discharge of the Indenture.

Section 10.6. Depreciation, Investment Tax Credit and Other Tax Benefits. This Lease is intended to convey to the Developer all of the benefits and burdens of ownership and to cause the Developer to be treated as the owner of the Phase [** _____ **] Project for federal income tax purposes. The Trustee, the Developer and the City agree to treat this Lease in a manner consistent with such treatment. The Developer alone shall be entitled to all of the federal income tax attributes of ownership of the Phase [** _____ **] Project, including without limitation the right to claim depreciation, amortization deductions, investment tax credits or any other tax benefits. The City agrees

that any depreciation, amortization deductions, investment tax credits or any other tax benefits with respect to the Phase [** _____ **] Project or any part thereof shall be made available to the Developer, and the City will fully cooperate with the Developer in any effort by the Developer to avail itself of any such depreciation, amortization deductions, investment tax credit or other tax benefits.

Section 10.7. Developer to Maintain its Existence. The Developer agrees that until the Series [** _____ **] Bonds are paid or payment is provided for in accordance with the terms of the Indenture, it will maintain its corporate existence in good standing, and will not dissolve or otherwise dispose of all or substantially all of its assets; provided, however, that the Developer 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 or convert into a different type of legal entity, if the surviving, resulting or transferee Person expressly assumes in writing all the obligations of the Developer contained in this Lease, and the surviving, resulting or transferee Person either (a) is a Related Party, or (b) is otherwise approved by the Board of Aldermen.

Section 10.8. Security Interests. The City and the Developer 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 Series [** _____ **] Bonds then-Outstanding, the Trustee shall file all instruments the Owners deem necessary to be filed and shall continue or cause to be continued such instruments for so long as the Series [** _____ **] Bonds are Outstanding. Notwithstanding the foregoing, the Trustee shall not be obligated to file any original instrument unless such instrument has been prepared by an attorney acceptable to the Trustee (any attorneys' fees incurred in connection therewith shall be paid by the Developer), and the Trustee shall not be responsible for the accuracy or sufficiency of any such original instrument. The City and the Developer shall cooperate with the Trustee in this regard by providing such information as the Trustee may require to file or 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 Developer warrants and represents to the City and the Trustee that to the knowledge of the Developer there are no conditions on the Phase [** _____ **] 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 Phase [** _____ **] Project Site for any injuries suffered or incurred, or allegedly suffered or incurred, by reason of the foregoing.

(c) The Developer 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 Developer to any federal, state or local or other agencies or authorities or which are received by the Developer from any federal, state or local or other agencies or authorities with respect to the Phase [** _____ **] Project Site. 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 Developer. The Developer 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 Phase [** _____ **] Project; upon the completion of the City’s review of the Assessments and the Reports, the City shall immediately return to the Developer all originals and copies of the Assessments and Reports.

(d) The Developer warrants and represents that the Developer has provided the City and the Trustee with copies of all emergency and hazardous chemical inventory forms (hereinafter “Environmental Notices”) showing Hazardous Substances on the Phase [** _____ **] Project Site given within two years preceding the date hereof, as of the date hereof, by the Developer 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 Developer will provide the City and the Trustee with copies of all Environmental Notices concerning Hazardous Substances on the Phase [** _____ **] 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 Developer will comply with and operate and at all times use, keep and maintain the Phase [** _____ **] Project and every part thereof (whether or not such property constitutes a facility, as defined in 42 U.S.C. § 9601 *et seq.*) in conformance with all applicable Environmental Laws. Without limiting the generality of the foregoing, the Developer will not use, generate, treat, store, dispose of or otherwise introduce any Hazardous Substance into or on the Phase [** _____ **] Project or any part thereof nor cause, suffer, allow or permit anyone else to do so except in material compliance with all applicable Environmental Laws.

(f) The Developer agrees to defend, indemnify, protect and hold harmless the City and the Trustee and their directors, officers, shareholders, officials or 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 Phase [** _____ **] Project Site or respecting any products or materials previously, now or thereafter located upon the Phase [** _____ **] 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 Developer or any third party, (ii) (A) any violation now existing or hereafter arising (actual or alleged) of, or any other liability under or in connection with, any applicable Environmental Laws relating to or affecting the Phase [** _____ **] Project Site, or (B) any violation now existing or hereafter arising, or any other liability, under or in connection with, any applicable Environmental Laws relating to any products or materials previously, now or hereafter located upon the Phase [** _____ **] 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 Developer or any third party, (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 Phase [** _____ **] Project Site, or (iv) any material breach, falsity or failure of any of the representations, warranties, covenants and agreements contained in this Section. The City shall cooperate with the Developer in the defense of any matters included within the foregoing indemnity without any obligation to expend money. This **Section 10.9(f)** shall survive any termination of this Lease.

ARTICLE XI

OPTION AND OBLIGATION TO PURCHASE THE PHASE [** _____ **] PROJECT

Section 11.1. Option to Purchase the Phase [_____ **] Project.** The Developer shall have, and is hereby granted, the option to purchase all or any portion of the City's interest in the Phase [** _____ **] Project at any time, upon payment in full or redemption of the Outstanding Series [** _____ **] 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 Developer shall (a) 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, (b) provide evidence of payment of all real property taxes and/or PILOTs due with respect to the Phase [** _____ **] Project Site, and, (c) in case of a redemption of the Series [** _____ **] Bonds in accordance with the provisions of the Indenture, the Developer 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 Developer shall be deemed to have exercised its repurchase option under this Section on the 29th day following the issuance of the Remedies Notice without any further action by the Developer; provided said Remedies Notice has not been rescinded by such date (such option to take place on the 29th day following the issuance of the Remedies Notice). The Developer 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 Developer in the event of its exercise of 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 Series [** _____ **] 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 Series [** _____ **] Bonds; plus

(c) an amount of money equal to the City's reasonable charges and expenses incurred in connection with the Developer exercising its option to purchase all or a portion of the Phase [** _____ **] Project; plus

(d) an amount of money equal to all payments due and payable pursuant to the Master Development and Performance Agreement through the end of the calendar year in which the date of purchase occurs; plus

(e) the sum of \$10.00.

Section 11.2. Conveyance of the Phase [_____ **] Project.** At the closing of the purchase of the Phase [** _____ **] Project pursuant to this Article, the City will upon receipt of the purchase price deliver to the Developer the following:

(a) a release from the Trustee of the Phase [** _____ **] 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) documents, including without limitation a special warranty deed as to the Phase [** _____ **] Project, in substantially the form attached as **Exhibit D**, conveying to the Developer fee simple title to the Phase [** _____ **] Project, as it then exists, in recordable form, subject to the following: (i) those liens and encumbrances, if any, to which title to the Phase [** _____ **] Project was subject when conveyed to the City; (ii) those liens and encumbrances created by the Developer or to the creation or suffering of which the Developer consented; (iii) those liens and encumbrances resulting from the failure of the Developer to perform or observe any of the agreements on its part contained in this Lease; (iv) Permitted Encumbrances other than the Indenture and this Lease; and (v) if the Phase [** _____ **] Project or any part thereof is being condemned, the rights and title of any condemning authority.

Section 11.3. [Reserved]

Section 11.4. Obligation to Purchase the Phase [_____ **] Project.**

(a) The Developer hereby agrees to purchase, and the City hereby agrees to sell, the Phase [** _____ **] Project upon the occurrence of (i) the expiration of the Lease Term following full payment of the Series [** _____ **] Bonds or provision for payment thereof having been made in accordance with the provisions of the Indenture, (ii) payment of all real property taxes and/or PILOTs due with respect to the Phase [** _____ **] Project, and (iii) the final payment due under the Master Development and Performance Agreement and the Phase Development Agreement. The amount of the purchase price under this Section shall be the sum of the items set forth in **Sections 11.1(a)-(e)**. The purchase price shall be paid by the Developer within 90 days of the expiration of the Lease Term.

(b) The Developer hereby agrees to purchase, and the City hereby agrees to sell, the Phase [** _____ **] Project pursuant to **Section 4.1(g)** of the Phase Development Agreement. The amount of the purchase price under this subsection shall be an amount sufficient to redeem the Series

[** _____ **] Bonds attributable to the Phase [** _____ **] Project, plus accrued interest and the fees and expenses of the City and the Trustee.

Section 11.5. Right to Set-Off. At its option, to be exercised at least five (5) days before the date of closing such purchase, the Developer may deliver to the Trustee for cancellation Series [** _____ **] Bonds not previously paid, and the Developer shall receive a credit against the purchase price payable by the Developer in an amount equal to 100% of the principal amount of the Series [** _____ **] Bonds so delivered for cancellation, plus the accrued interest thereon. The Developer may set-off any payment obligation under **Section 11.1(a)** by tendering a corresponding amount of the Series [** _____ **] 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 Developer and the Lender; or

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

(c) the Developer: (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 material portion of its property or fails to have the appointment of any trustee, receiver or liquidator made without the Developer’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 material 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 any 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; or

(d) an Event of Default with respect to the Phase [** _____ **] Project under the Master Development and Performance Agreement, as defined in **Section 5.1** thereof.

The Trustee shall give the Lender notice of the occurrence of any Event of Default of which the Trustee has notice pursuant to the terms of the Indenture. The Lender may, at its election, but shall have no obligation to, cure such Event of Default.

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 Series [** _____ **] 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 Series [** _____ **] Bonds for the remainder of the term of this Lease to become due and payable, as provided in the Indenture; or

(b) give the Developer 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 Series [** _____ **] Bonds for cancellation with instruction that such tender is in lieu of payment in accordance with **Section 11.1**, the Developer's or the Lender's rights to possession of the Phase [** _____ **] Project shall cease and this Lease shall thereupon be terminated, and the City may re-enter and take possession of the Phase [** _____ **] Project or the City may convey the Phase [** _____ **] Project to the Developer and bring an action against the Developer for the purchase price of the Phase [** _____ **] Project under **Section 11.1**; provided, however, if the Developer has paid all obligations due and owing under the Indenture, this Lease, the Base Lease, the Master Development and Performance Agreement and the Phase Development Agreement, the City shall convey the Phase [** _____ **] Project in accordance with **Section 11.2**. The Developer's rights to cause the conveyance of the Phase [** _____ **] Project in accordance with **Section 11.2** shall survive the expiration or termination of this Lease.

If the City defaults on any of its obligations under this Lease, the Developer's sole remedy for such default shall be to sue for specific performance of this Lease.

Section 12.3. Survival of Obligations. The Developer covenants and agrees with the City and Owners that its obligations under this Lease shall survive the cancellation and termination of this Lease, for any cause, and that the Developer shall continue to pay the Basic Rent and Additional Rent (to the extent the Series [** _____ **] 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 except for the indemnification contained in **Section 10.5** hereof, upon the payment of all Basic Rent and Additional Rent required under **Article V**, and upon the satisfaction and discharge of the Indenture under **Section 1301** thereof, and upon the Developer's exercise of the purchase option contained in **Article XI**, the Developer'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 Developer'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 Developer's part for 60 days after written notice of such failure is given to the Developer by the City or the Trustee, and without waiving or releasing the Developer 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 Developer, the City or the Trustee shall have the same rights and remedies provided for in **Section 12.2** hereof in the case of default by the Developer in the payment of Basic Rent.

Section 12.5. Rights and Remedies Cumulative. The rights and remedies reserved by the City and the Developer 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. The City and the Developer 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 the availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity. Notwithstanding anything in this **Section 12.5** or elsewhere in this Lease to the contrary, however, the Developer's option to re-purchase the property 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 Developer to acquire, construct or install the Phase [** _____ **] 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 Developer of any covenant, agreement or undertaking by the Developer, the City may nevertheless accept from the Developer 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 Developer 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 Developer 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. Except as otherwise provided in this Section or in **Section 10.4** hereof, the Developer must obtain

the City's prior written consent before any such disposition, unless such disposition is to (i) the Master Developer or a Related Party, or (ii) the Lender. Notwithstanding the foregoing, the Lender may sell at foreclosure sale or by deed in lieu of foreclosure, the interest of the Developer in this Lease, but subject to the provisions of the Master Development and Performance Agreement, the Indenture and this Lease.

(b) With respect to any assignment, the Developer or the Lender, as applicable, shall comply with the following conditions:

(i) the Developer shall notify the City and the Trustee of the proposed assignment in writing;

(ii) such assignment shall be in writing, duly executed and acknowledged by the assignor and in proper form for recording;

(iii) such assignment shall include the entire then unexpired term of this Lease; and

(iv) 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 Developer to be performed and observed.

(c) Any assignee of all the rights of the Developer shall agree to be bound by the terms of this Lease, the Base Lease, the Master Development and Performance Agreement and any other documents related to the issuance of the Series [** _____ **] Bonds. Upon such assignment of all the rights of the Developer and agreement by the assignee to be bound by the terms of this Lease, the Base Lease, the Master Development and Performance Agreement and any other documents related to the Series [** _____ **] Bonds, the Developer shall be released from and have no further obligations under this Lease, the Base Lease, the Master Development and Performance Agreement or any other document related to the issuance of the Series [** _____ **] Bonds. As permitted by **Section 6(b)** of the Ordinance, the City may reissue the Series [** _____ **] Bonds and enter into amendments to or new versions of this Lease, the Base Lease, the Master Development and Performance Agreement and other documents related to the Series [** _____ **] Bonds to accommodate separate ownership and financing of various portions of the Phase [** _____ **] Project.

(d) Notwithstanding the foregoing, the Developer may, in its ordinary course of business, sublease all or portions of the Phase [** _____ **] Project to tenants without the prior consent of the City so long as the Developer remains obligated to perform all of its obligations under this Lease, the Base Lease and the Master Development and Performance Agreement.

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 Series [** _____ **] Bonds, and the Developer hereby consents to such pledge and assignment.

Section 13.3. Prohibition Against Fee Mortgage of Phase [_____ **] Project.** The City shall not mortgage its fee or leasehold interest in the Phase [** _____ **] 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 Series [** _____ **] Bonds.

Section 13.4. Restrictions on Sale or Encumbrance of Phase [_____ **] Project by City.** During the Lease Term, the City agrees that, except to secure the Series [** _____ **] 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 Phase [** _____ **] 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 Series [** _____ **] Bonds and before the payment in full of the Series [** _____ **] 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, the Lender and any other 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 Dardenne Prairie, Missouri
2032 Hanley Road
Dardenne Prairie, Missouri 63368
Attn: City Administrator

with copies to:

Hamilton Weber LLC
200 N. Third Street
St. Charles, Missouri 63301
Attn: John A. Young, Esq.

and

Gilmore & Bell, P.C.
211 North Broadway, Suite 2000
St. Louis, Missouri 63102
Attn: Shannon W. Creighton, Esq.

(ii) To the Trustee:

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

(iii) To the Developer:

[**DEVELOPER NAME**]

Attn: [**AUTHORIZED OFFICER NAME**]

with a copy to:

Attn: _____

(iv) To the Lender:

[**LENDER**]

Attn: _____

with a copy to:

Attn: _____

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 Developer to the other shall also be given to the Trustee and the Lender. The City, the Developer 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 Arbitrarily 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 arbitrarily withhold or refuse to give such approvals or consents or refuse to execute such supplemental agreements or schedules; provided, however, that, notwithstanding any provision contained herein to the contrary, 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 Phase [** _____ **] Project subject to zoning, building permit or other regulatory approvals by the City, nor shall the City be deemed to have waived any other of its governmental duties, obligations, legislative prerogatives, or sovereign immunity.

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 Series [** _____ **] 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 Developer 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 Series [** _____ **] Bonds and all costs incident to the payment of the Series [** _____ **] 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 Developer 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 Developer.

Section 15.4. Limitation on Liability of City. No provision, covenant or agreement contained in this Lease, the Indenture or the Series [** _____ **] 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 Developer and their respective successors and assigns. The Lender shall be a third-party beneficiary of any provisions contained herein granting rights to the Lender.

Section 15.7. Severability. If for any reason any provision of this Lease shall be 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. 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.

Section 15.10. City Consent. Pursuant to the Ordinance, the Mayor or the City Administrator are 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 Phase [** _____ **] Project by the Developer) as may be required to carry out and comply with the intent of the Ordinance, the Indenture and this Lease. The Mayor or the City Administrator are also authorized, to grant on behalf of the City such consents, estoppels and waivers relating to the Series [** _____ **] Bonds, the Indenture, the Base Lease, this Lease or the Master Development and Performance Agreement as may be requested

during the term hereof; provided, such consents, estoppels and/or waivers are first approved by the Board of Aldermen.

Section 15.11. Anti-Discrimination Against Israel Act. Pursuant to Section 34.600 of the Revised Statutes of Missouri, the Developer certifies it is not currently engaged in and shall 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]

EXHIBIT A

PHASE [_____ **] PROJECT SITE**

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

EXHIBIT B

PHASE [_____ **] PROJECT IMPROVEMENTS**

The Phase [** _____ **] Project Improvements consist of _____ and any other improvements located on the Phase [** _____ **] Project Site, to the extent paid for in whole with Series [** _____ **] Bond proceeds.

EXHIBIT C

FORM OF REQUISITION CERTIFICATE

Requisition No. _____
Date: _____

REQUISITION CERTIFICATE

TO: UMB BANK, N.A., AS TRUSTEE UNDER A TRUST INDENTURE DATED AS OF [DOCUMENT DATE**], BETWEEN THE CITY OF DARDENNE PRAIRIE, MISSOURI, AND THE TRUSTEE, AND THE LEASE AGREEMENT DATED AS OF [**DOCUMENT DATE**], BETWEEN THE CITY OF DARDENNE PRAIRIE, MISSOURI, AND [**DEVELOPER NAME**]**

The undersigned Authorized Developer Representative hereby states and certifies that (*capitalized words and terms used herein shall have the meanings given to such words and terms in the above-referenced Trust Indenture*):

1. A total of \$ _____ is requested to pay for Project Costs associated with the acquisition of the Phase [** _____ **] Project Site and the construction of the Phase [** _____ **] Project Improvements, which amount is equal to the value of the property being transferred to the City or the cost of the Phase [** _____ **] Project Site or Phase [** _____ **] Project Improvements. The total amount of this requisition and all prior requisitions are 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 Series [** _____ **] Bond proceeds in such amounts, to such payees and for such purposes as set forth on **Schedule 1** hereto.

3. Each of the items for which payment is requested are provided for in the Plans and Specifications, are desirable and appropriate in connection with the purchase and construction of the Phase [** _____ **] Project, have been properly incurred and are a proper charge against the Project Fund, and have been paid by the Developer or are justly due to the Persons whose names and addresses are stated on **Schedule 1**, and have 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 Phase [** _____ **]

Project which, if unpaid, might become the basis of a vendors', mechanics', laborers' or materialmen's statutory or similar lien upon the Phase [** _____ **] 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.

[DEVELOPER NAME**]**

By: _____
Authorized Developer Representative

Approved this _____ day of _____, 20__.

CITY OF DARDENNE PRAIRIE, MISSOURI

By: _____
Authorized City Representative

SCHEDULE 1 TO REQUISITION CERTIFICATE

PHASE [_____ **] PROJECT COSTS**

<u>Payee and Address</u>	<u>Description</u>	<u>Amount</u>
--------------------------	--------------------	---------------

EXHIBIT D

FORM OF SPECIAL WARRANTY DEED

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

TITLE OF DOCUMENT: SPECIAL WARRANTY DEED

DATE OF DOCUMENT: **[**TRANSFER DATE**]**

GRANTOR: **[**DEVELOPER NAME**]**

GRANTOR'S MAILING ADDRESS: _____

Attn: _____

GRANTEE: CITY OF DARDENNE PRAIRIE, MISSOURI

GRANTEE'S MAILING ADDRESS: 2032 Hanley Road
Dardenne Prairie, Missouri 63368

LEGAL DESCRIPTION: See **Exhibit A**

RETURN DOCUMENTS TO: Shannon W. Creighton, Esq.
Gilmore & Bell, P.C.
211 North Broadway, Suite 2000
St. Louis, Missouri 63102

REFERENCE BOOK & PAGE: N/A

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED is made and entered into as of **[**TRANSFER DATE**]**, by and between **[**DEVELOPER NAME**]**, **[**a Missouri _____**]**, with a mailing address of _____ (the “Grantor”), to the **CITY OF DARDENNE PRAIRIE, MISSOURI**, a fourth-class city organized and existing under the laws of the State of Missouri, with a mailing address of 2032 Hanley Road, Dardenne Prairie, Missouri 63368 (the “Grantee”).

WITNESSETH, THAT THE GRANTOR, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration to it paid by the Grantee (the receipt and sufficiency of which is hereby acknowledged) does by these presents, **BARGAIN AND SELL, CONVEY AND CONFIRM** unto the Grantee, its successors and assigns, that certain real property situated in the County of St. Charles, State of Missouri and legally described on **Exhibit A** attached hereto and incorporated herein by reference (the “Property”).

TO HAVE AND TO HOLD the same, together with all rights, easements and appurtenances to the same belonging unto the Grantee and unto its successors and assigns forever; the Grantor hereby covenanting that Grantor and Grantor’s successors and assigns, shall **WARRANT AND DEFEND** the title to the Property unto the Grantee and unto the Grantee’s successors and assigns forever, against the lawful claims and demands of all persons claiming by, through or under the Grantor, but none other, subject to the Permitted Encumbrances as defined in the Trust Indenture dated as of **[**DOCUMENT DATE**]** between the Grantee and UMB Bank, N.A., as trustee, and accepting however all general and special taxes and assessments, including sewer assessments (if any), due and payable from and after the date of this Deed.

IN WITNESS WHEREOF, the Grantor and the Grantee have executed this Special Warranty Deed as of the day and year above written.

“GRANTOR”

[DEVELOPER NAME**]**,
[a Missouri _____**]**

By: _____
Name: **[**AUTHORIZED OFFICER NAME**]**
Title: **[**Manager**]**

GRANTEE'S ACCEPTANCE

The conveyance by [****DEVELOPER NAME****], [****a Missouri _____****], as Grantor, to the City of Dardenne Prairie, Missouri, as Grantee, by the Special Warranty Deed to which this Acceptance is attached, for Property described in **Exhibit A** attached hereto, is hereby accepted by the City of Dardenne Prairie, Missouri, pursuant to Section 49.292.2 RSMo., as amended, as of the ____ day of _____, 20____.

“GRANTEE”

CITY OF DARDENNE PRAIRIE, MISSOURI

(SEAL)

By: _____
Name: James W. Knowles, III
Title: City Administrator

ATTEST:

By: _____
Name: Kimberlie Clark
Title: City Clerk

EXHIBIT A

LEGAL DESCRIPTION OF PHASE [_____ **] PROJECT SITE**

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

GILMORE & BELL, P.C.
DRAFT – APRIL 4, 2023
FOR DISCUSSION PURPOSES ONLY

TRUST INDENTURE

Dated as of [DOCUMENT DATE**]**

CITY OF DARDENNE PRAIRIE, MISSOURI,

AND

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

Relating to:

[\$PRINCIPAL AMT**]
(Aggregate Maximum Principal Amount)
City of Dardenne Prairie, Missouri
Taxable Industrial Revenue Bonds
(Encore Project)
Series [** _____ **]**

TRUST INDENTURE

TABLE OF CONTENTS

Page

Parties 1
Recitals..... 1
Granting Clauses..... 2

ARTICLE I

DEFINITIONS

Section 101. Definitions of Words and Terms 3
Section 102. Rules of Interpretation 9
Section 103. Incorporation..... 10

ARTICLE II

THE SERIES [_____ **] BONDS**

Section 201. Title and Amount of Series [** _____ **] Bonds..... 10
Section 202. Nature of Obligation 10
Section 203. Denomination, Number and Dating of the Series [** _____ **] Bonds 11
Section 204. Method and Place of Payment of Series [** _____ **] Bonds 11
Section 205. Execution and Authentication of Series [** _____ **] Bonds 12
Section 206. Registration, Transfer and Exchange of Series [** _____ **] Bonds 12
Section 207. Persons Deemed Owners of Series [** _____ **] Bonds 13
Section 208. Authorization of the Series [** _____ **] Bonds..... 13
Section 209. Mutilated, Lost, Stolen or Destroyed Series [** _____ **] Bonds 15
Section 210. Cancellation and Destruction of Series [** _____ **] Bonds Upon Payment 16

ARTICLE III

REDEMPTION OF SERIES [_____ **] BONDS**

Section 301. Redemption of Series [** _____ **] Bonds 16
Section 302. Effect of Call for Redemption..... 17
Section 303. Notice of Redemption..... 17

ARTICLE IV

FORM OF SERIES [_____ **] BONDS**

Section 401. Form Generally 17

ARTICLE V

CUSTODY AND APPLICATION OF SERIES [_____ **] BOND PROCEEDS**

Section 501. Creation of Funds..... 17
Section 502. Deposits into the Project Fund..... 18
Section 503. Disbursements from the Project Fund..... 18
Section 504. Completion of the Phase [** _____ **] Project 18

Section 505. Deposits into and disbursements from the Costs of Issuance Fund.....
Section 506. Disposition Upon Acceleration 19

ARTICLE VI

REVENUES AND FUNDS

Section 601. Deposits Into the Bond Fund 19
Section 602. Application of Moneys in the Bond Fund..... 19
Section 603. Payments Due on Days Other than Business Days..... 20
Section 604. Nonpresentment of Series [** _____ **] Bonds 20

ARTICLE VII

SECURITY FOR DEPOSITS AND INVESTMENT OF FUNDS

Section 701. Moneys to be Held in Trust..... 21
Section 702. Investment of Moneys in Project Fund and Bond Fund 21
Section 703. Record Keeping 21

ARTICLE VIII

GENERAL COVENANTS AND PROVISIONS

Section 801. Payment of Principal and Interest 22
Section 802. Authority to Execute Indenture and Issue Series [** _____ **] Bonds 22
Section 803. Performance of Covenants..... 22
Section 804. Instruments of Further Assurance 22
Section 805. Recordings and Filings 22
Section 806. Inspection of Project Books 23
Section 807. Enforcement of Rights Under the Lease 23

ARTICLE IX

DEFAULT AND REMEDIES

Section 901. Events of Default; Notice; Opportunity to Cure 23
Section 902. Acceleration of Maturity in Event of Default 24
Section 903. Surrender of Possession of Trust Estate; Rights and Duties of Trustee in Possession..... 24
Section 904. Appointment of Receivers in Event of Default..... 25
Section 905. Exercise of Remedies by the Trustee 25
Section 906. Limitation on Exercise of Remedies by Owners 25

Section 907.	Right of Owners to Direct Proceedings	26
Section 908.	Application of Moneys in Event of Default.....	26
Section 909.	Remedies Cumulative	27
Section 910.	Waivers of Events of Default.....	27

ARTICLE X

THE TRUSTEE

Section 1001.	Acceptance of the Trusts.....	28
Section 1002.	Fees, Charges and Expenses of the Trustee	31
Section 1003.	Notice to Owners if Default Occurs.....	31
Section 1004.	Intervention by the Trustee	31
Section 1005.	Successor Trustee Upon Merger, Consolidation or Sale.....	31
Section 1006.	Resignation of Trustee	32
Section 1007.	Removal of Trustee.....	32
Section 1008.	Appointment of Successor Trustee	32
Section 1009.	Vesting of Trusts in Successor Trustee.....	32
Section 1010.	Right of Trustee to Pay Taxes and Other Charges	33
Section 1011.	Trust Estate May be Vested in Co-Trustee.....	33
Section 1012.	Accounting.....	34
Section 1013.	Performance of Duties Under the Lease	34

ARTICLE XI

SUPPLEMENTAL INDENTURES

Section 1101.	Supplemental Indentures Not Requiring Consent of Owners.....	34
Section 1102.	Supplemental Indentures Requiring Consent of Owners.....	34
Section 1103.	Developer’s Consent to Supplemental Indentures	35
Section 1104.	Opinion of Counsel.....	35

ARTICLE XII

SUPPLEMENTAL LEASES

Section 1201.	Supplemental Leases Not Requiring Consent of Owners.....	36
Section 1202.	Supplemental Leases Requiring Consent of Owners.....	36
Section 1203.	Opinion of Counsel.....	36

ARTICLE XIII

SATISFACTION AND DISCHARGE OF INDENTURE

Section 1301.	Satisfaction and Discharge of this Indenture	36
Section 1302.	Series [** _____ **] Bonds Deemed to be Paid.....	37

ARTICLE XIV

MISCELLANEOUS PROVISIONS

Section 1401.	Consents and Other Instruments by Owners.....	38
Section 1402.	Limitation of Rights Under this Indenture.....	38
Section 1403.	Rights of Lender	38
Section 1404.	Notices	39
Section 1405.	Severability	40
Section 1406.	Execution in Counterparts.....	40
Section 1407.	Governing Law	40
Section 1408.	Electronic Transaction	40
Section 1409.	City Consent	41
Section 1410.	Anti-Discrimination Against Israel Act	41
Signature and Seals		42
Exhibit A - Phase [** _____ **] Project Site		
Exhibit B - Phase [** _____ **] Project Improvements		
Exhibit C - Form of Series [** _____ **] Bonds		
Exhibit D - Form of Representation Letter		

TRUST INDENTURE

THIS TRUST INDENTURE dated as of **[**DOCUMENT DATE**]** (this “Indenture”), between the **CITY OF DARDENNE PRAIRIE, MISSOURI**, a fourth-class 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 and Sections 100.010 through 100.200 of the Revised Statutes of Missouri, as amended (collectively, the “Act”) to issue and sell its negotiable interest bearing bonds for the purpose of paying all or part of the cost of purchasing, constructing, extending, or improving any facility to be leased or otherwise disposed of pursuant to law to private persons or corporations for manufacturing, commercial, warehousing and industrial development purposes, including the real estate, buildings, fixtures and machinery associated therewith, upon such terms and conditions as the City deems advisable.

2. Pursuant to the Act, the Board of Aldermen passed Ordinance No. **[**ORD NO**]** on April 12, 2023 (the “Ordinance”), authorizing the City to issue its Taxable Industrial Revenue Bonds (Encore Project) in several series (*i.e.*, a separate series for various phases of the Project (as defined below)), in the maximum aggregate principal amount of \$68,000,000, for the purpose of acquiring certain real property located at the northwest intersection of Feise Road and Bryan Road in the City (the “Project Site”) and constructing thereon a mixed-use development consisting of approximately 190 residential rental apartments and approximately 25,000 square feet of commercial/retail space to be completed in three phases (collectively, the “Project Improvements”). The Project Site and the Project Improvements are collectively referred to herein as the “Project.”

3. Pursuant to this Indenture, the Ordinance and the terms of the Master Development and Performance Agreement dated as of April 12, 2023 (as amended and supplemented, the “Master Development and Performance Agreement”), by and between the City and KaLeCo LLC (the “Master Developer”) related to the Project, the City is issuing its Taxable Industrial Revenue Bonds (Encore Project), Series **[**_____**]**, in the maximum principal amount of \$**[**PRINCIPAL AMT**]**, with respect to the Phase **[**_____**]** Project (as defined below) (the “Series **[**_____**]** Bonds”), for the purpose of (a) acquiring a portion of the Project Site (as legally described on **Exhibit A**, the “Phase **[**_____**]** Project Site”), and (b) constructing thereon a portion of the Project Improvements, consisting of approximately _____, the “Phase **[**_____**]** Project Improvements,” all as more fully described on **Exhibit B**). The Phase **[**_____**]** Project Site and the Phase **[**_____**]** Project Improvements are collectively referred to herein as the “Phase **[**_____**]** Project.”

4. All things necessary to make the Series **[**_____**]** 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 Series **[**_____**]** Bonds, have been done and performed, and the execution and delivery of this Indenture and the execution and issuance of the Series **[**_____**]** 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 Series [** _____ **] 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 Series [** _____ **] 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 Series [** _____ **] 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 Phase [** _____ **] Project, subject to the Developer's rights under the Lease, 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 Lease (excluding the Unassigned Rights, as defined herein), and all rents, revenues and receipts derived by the City from the Phase [** _____ **] Project including, without limitation, all rentals and other amounts to be received by the City and paid by the Developer 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 Series [** _____ **] Bonds Outstanding under this Indenture, without preference, priority or distinction as to lien or otherwise of any of the Series [** _____ **] Bonds over any other of the Series [** _____ **] 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 Series [** _____ **] Bonds, at the time and in the manner mentioned in the Series [** _____ **] Bonds, according to the true intent and meaning thereof, or provides for the payment thereof (as provided in **Article XIII** hereof), 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 Series [** _____ **] 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 words and terms defined in the Lease and in the Master Development and Performance Agreement, which definitions shall be deemed to be incorporated herein, 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, as amended.

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

“**Approved Investor**” means (a) the Developer, (b) a Related Party as defined in the Master Development and Performance Agreement, (c) the Lender or (d) any Person approved by the Board of Aldermen of the City.

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

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

“**Base Lease**” means the Base Lease dated as of [**DOCUMENT DATE**] between the City and the Developer, as may be amended from time to time.

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

“**Bond Fund**” means the “City of Dardenne Prairie, Missouri, Series [** _____ **] Bond Fund – Encore Project” created in **Section 501** hereof.

“Bond Purchase Agreement” means the agreement by that name with respect to the Series [** _____ **] 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 Dardenne Prairie, Missouri, a fourth-class 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 Series [** _____ **] 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 Series [** _____ **] Bonds on the Closing Date, which amount shall be equal to any Project Costs spent by the Developer from its own funds before the Closing Date, and, at the Developer’s option, the costs of issuance of the Series [** _____ **] Bonds if such costs are not paid for from Series [** _____ **] Bond proceeds.

“Completion Date” has the meaning set forth in the Master Development and Performance Agreement.

“Costs of Issuance Fund” means the “City of Dardenne Prairie, Missouri, Costs of Issuance Fund – Taxable Industrial Revenue Bonds (Encore Project) Series [** _____ **]” created in **Section 501** hereof.

“Cumulative Outstanding Principal Amount” means the aggregate principal amount of all Series [** _____ **] Bonds Outstanding under the provisions of this Indenture, not to exceed \$[**PRINCIPAL AMT**], as reflected in the records maintained by the Trustee as provided in the Series [** _____ **] Bonds and this Indenture.

“Deed” means the Special Warranty Deed, pursuant to which the Developer will convey title to the Phase [** _____ **] Project to the City on the Transfer Date.

“Developer” means [**DEVELOPER NAME**], a [**a Missouri _____ **], and its successors or assigns.

“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.

“Fee Deed of Trust” means the _____ Deed of Trust dated as of _____, 20____, executed by the Developer for the benefit of the Lender recorded against the Phase [** _____ **] Project Site prior to the City’s acquisition of the Phase [** _____ **] Project Site.

“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 Phase [** _____ **] Project and executed by or on behalf of a Financing Party,

including, without limitation, any loan agreement, credit agreement, security agreement, mortgage or other document executed in connection with the loans made to the Developer by the Lender.

“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 Phase [** _____ **] Project or interests or rights in the Lease, or any part thereof, including any trustee or agent acting on any such Person’s behalf. The Lender is a Financing Party.

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

“Government Securities” means (a) noncallable, nonredeemable direct obligations of the United States of America, and (b) obligations the timely payment of the principal of, and interest on, which is fully and unconditionally guaranteed by the United States of America, and (c) securities or receipts evidencing ownership interests in obligations or specified portions (such as principal or interest) of obligations described in (a) or (b).

“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) bonds, notes or other obligations of the State or any political subdivision of the State, which at the time of their purchase are rated in either of the two highest rating categories by a nationally recognized rating service;
- (c) obligations of Fannie Mae, 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, Farmers Home Administration and Federal Home Loan Mortgage Corporation;
- (d) repurchase agreements with any bank, bank holding company, savings and loan association, trust company, or other financial institution organized under the laws of the United States or any state, that are continuously and fully secured by any one or more of the securities described in clause (a), (b) or (c) above and that have a market value at all times at least equal to the principal amount of such repurchase agreement and are held in a custodial or trust account;
- (e) certificates of deposit, time deposits or demand deposits, whether negotiable or nonnegotiable, issued by any bank or trust company organized under the laws of the United States or any state, provided that such certificates of deposit, time deposits or demand deposits shall be either (1) continuously and fully insured by the Federal Deposit Insurance Corporation, or (2) continuously and fully collateralized by such securities as are described above in clauses

(a) through (d), inclusive, which shall have a market value at all times at least equal to the principal amount of such certificates of deposit, time deposits or demand deposits;

(f) money market funds registered under the Investment Company Act of 1940, whose shares are registered under the Securities Act of 1933, and having a rating of AAAm-G, AAA-m, or AA-m if rated by S&P or a rating of Aaa, Aa1 or Aa2 if rated by Moody's; or

(g) any other investment approved in writing by the Authorized City Representative and the Owners of all of the Outstanding Series [** _____ **] Bonds.

“Lease” means the Lease Agreement dated as of [**DOCUMENT DATE**] between the City, as lessor, and the Developer, as lessee, as from time to time amended and supplemented by Supplemental Leases in accordance with the provisions thereof and of **Article XII**.

“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 or other agreement relating to the Phase [** _____ **] Project permitted pursuant to the provisions of **Section 10.4** of the Lease executed by the Developer for the benefit of the Lender recorded against the Phase [** _____ **] Project Site and subject to the express, prior written consent of the Lender.

“Lender” means [**LENDER**] and its successors or assigns.

“Master Developer” means KaLeCo LLC, a Missouri limited liability company, and its successors or assigns.

“Master Development and Performance Agreement” means the Master Development and Performance Agreement dated as of April 12, 2023, between the City and the Master Developer, as amended and supplemented from time to time.

“Net Proceeds” means, when used with respect to any insurance or condemnation award with respect to the Phase [** _____ **] 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 Series [** _____ **] Bonds, as of a particular date, all Series [** _____ **] Bonds theretofore authenticated and delivered, except:

(a) Series [** _____ **] Bonds subsequently canceled by the Trustee or delivered to the Trustee for cancellation;

(b) Series [** _____ **] Bonds deemed to be paid in accordance with the provisions of **Section 1302**; and

(c) Series [** _____ **] Bonds in exchange for or in lieu of which other Series [** _____ **] Bonds have been authenticated and delivered pursuant to this Indenture.

“Owner” means the registered owner of any Series [** _____ **] Bond as recorded on the bond registration records maintained by the Trustee, and for any actions requiring the consent of an Owner hereunder, the Lender.

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

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

“Permitted Encumbrances” means, as of any particular time, as the same may encumber the Phase [** _____ **] Project Site, (a) liens for ad valorem taxes and special assessments not then delinquent, (b) this Indenture, the Lease and the Master Development and Performance Agreement, (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 Phase [** _____ **] Project Site or easements granted to the City, (d) such minor defects, irregularities, encumbrances, easements, mechanic’s liens, rights-of-way and clouds on title as normally exist with respect to properties similar in character to the Phase [** _____ **] 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, security interests or encumbrances granted pursuant to the Lease, any Leasehold Mortgage, the Fee Deed of Trust or any other Financing Documents, and (f) such exceptions to title set forth in the Owner’s Policy of Title Insurance, Policy No. _____ dated _____, 20____ prepared by _____, as agent for _____.

“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 Phase [** _____ **] Project, as amended from time to time pursuant to the terms of the Master Development and Performance Agreement, the same being on file at the principal office of the Master Developer and/or the Developer, 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.

“Principal Amount Advanced” means the amount set forth in each requisition certificate in accordance with **Section 4.4** of the Lease, as reflected in the records maintained by the Trustee as provided in the Bonds and this Indenture.

“Project Costs” means all costs of purchasing and constructing the Phase [** _____ **] Project, including the following:

- (a) all costs and expenses necessary or incident to the acquisition, construction and improvement of the Phase [** _____ **] Project;
- (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 to 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 Phase [** _____ **] Project or the issuance of the Series [** _____ **] Bonds;

(c) all costs and expenses of every nature incurred in purchasing and constructing the Phase [** _____ **] Project Improvements and otherwise improving the Phase [** _____ **] 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 Phase [** _____ **] Project;

(d) interest accruing on the Series [** _____ **] Bonds until the substantial Completion Date;

(e) the cost of title insurance policies and the cost of any other insurance maintained until the substantial Complete Date;

(f) reasonable expenses of administration, supervision and inspection properly chargeable to the Phase [** _____ **] Project, legal fees and expenses, fees and expenses of Bond Counsel and City Attorney, 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 Series [** _____ **] Bonds or the purchase and construction of the Phase [** _____ **] 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 Series [** _____ **] Bonds, including costs of issuance of the Series [** _____ **] Bonds; (2) the purchase and construction of the Phase [** _____ **] Project; and (3) the financing thereof; and

(h) reimbursement to the Developer 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 Dardenne Prairie, Missouri, Series [** _____ **] Project Fund – Encore Project” created in **Section 501**.

“Purchaser” means the entity identified in the Bond Purchase Agreement as the purchaser of the Series [** _____ **] Bonds.

“Series [_____ **] Bond”** or **“Series [** _____ **] Bonds”** means the Taxable Industrial Revenue Bonds (Encore Project), Series [** _____ **], in the maximum aggregate principal amount of \$[**PRINCIPAL AMT**], issued, authenticated and delivered under and pursuant to this Indenture.

“State” means the State of Missouri.

“Phase [_____ **] Project”** means, collectively, the Phase [** _____ **] Project Site and the Phase [** _____ **] Project Improvements as they may at any time exist.

“Phase [_____ **] Project Improvements”** means the buildings, structures, improvements and fixtures to be purchased, constructed, installed and otherwise improved on the Phase [** _____ **] Project Site pursuant to **Article IV** of the Lease and which are paid for in whole from the proceeds of the Series [** _____ **] Bonds, including the improvements as described in **Exhibit B**, and all additions, alterations, modifications and improvements thereof made pursuant to the Lease.

“Phase [_____ **] Project Site”** means all of the real estate as described in **Exhibit A**.

“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**.

“Transfer Date” means the date on which the Developer transfers fee title to the Phase [** _____ **] Project to the City pursuant to **Section 4.5** of the Lease, which date shall be no later than 30 days after the Completion Date and the Developer’s receipt of waivers of all mechanics’ lien rights with respect to the Phase [** _____ **] Project.

“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 corporation 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.

(g) Whenever the City is required to “cooperate,” “cooperate fully” or “act promptly” on a matter set forth in this Indenture, the City’s cooperation shall be deemed to be reasonable cooperation and the City’s promptness shall be deemed to be reasonable promptness; provided, however, that, notwithstanding any provision contained herein to the contrary, the City shall not be required to incur any costs, expenses, obligations or liabilities in providing such reasonable cooperation and promptness, nor shall it be deemed to have waived its governmental duties, obligations, legislative prerogatives, or sovereign immunity.

Section 103. Incorporation.

(a) The Recitals hereof are all incorporated into this Indenture as if fully and completely set out in this Section.

(b) The Exhibits to this Indenture are hereby incorporated into and made a part of this Indenture.

ARTICLE II

THE SERIES [_____ **] BONDS**

Section 201. Title and Amount of Series [_____ **] Bonds.** No Series [** _____ **] Bonds may be issued under this Indenture except in accordance with the provisions of this Article. The Series [** _____ **] Bonds authorized to be issued under this Indenture shall be designated as the “City of Dardenne Prairie, Missouri, Taxable Industrial Revenue Bonds (Encore Project), Series [** _____ **].” The maximum total principal amount of Series [** _____ **] Bonds that may be issued hereunder is hereby expressly limited to \$[**PRINCIPAL AMT**].

Section 202. Nature of Obligation. The Series [** _____ **] Bonds and the interest thereon shall be special, limited obligations of the City payable solely out of the rents, revenues and receipts derived by the City from the Phase [** _____ **] Project and the Lease, and not from any other fund or source of the City. The Series [** _____ **] 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 Series [** _____ **] 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 related political subdivision thereof shall be liable thereon, and the Series [** _____ **] Bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and are not payable in any manner by taxation.

Section 203. Denomination, Number and Dating of the Series [_____ **] Bonds.**

(a) The Series [** _____ **] Bonds shall be issuable in the form of one fully-registered Series [** _____ **] Bond, in substantially the form set forth in **Exhibit C**, in the denomination of \$100,000 or any integral multiple of \$0.01 in excess thereof, or if the principal amount of the Series [** _____ **] Bonds is less than \$100,000, then an amount equal to the principal amount of the Series [** _____ **] Bonds.

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

Section 204. Method and Place of Payment of Series [_____ **] Bonds.**

(a) The principal of and interest on the Series [** _____ **] 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 Series [** _____ **] Bonds shall be made upon the presentation and surrender of such Series [** _____ **] Bonds at the principal payment office of any Paying Agent named in the Series [** _____ **] Bonds. The payment of principal on the Series [** _____ **] Bonds shall be noted on the Series [** _____ **] Bonds on **Schedule I** thereto and the registration books maintained by the Trustee pursuant to **Section 206** hereof. Payment of the interest on the Series [** _____ **] 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 Series [** _____ **] 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 Series [** _____ **] 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 Developer (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 Series [** _____ **] Bonds.

(d) If there is one Owner of the Series [** _____ **] Bonds, the Trustee is authorized to make the final or any interim payments of principal on such Series [** _____ **] 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 United States. The Trustee is also authorized to make interest payments on such Series [** _____ **] 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 United States.

(e) If the Developer is the sole Owner of the Series [** _____ **] Bonds, then the Developer may set-off its obligation to the City as lessee to pay Basic Rent under the Lease against the City's obligations to the Developer as the bondholder to pay principal of and interest on the Series [** _____ **] Bonds under this Indenture. The Trustee may conclusively rely on the absence of any notice from the Developer to the contrary as evidence that such set-off has occurred and that pursuant to

the set-off, the Developer is deemed to have paid its obligation to the City as lessee to pay Basic Rent under the Lease and the City is deemed to have paid its obligation to the Developer as bondholder to pay principal of and interest on the Series [** _____ **] Bonds under this Indenture. On the final Payment Date, the Developer may deliver to the Trustee for cancellation the Series [** _____ **] Bonds and the Developer shall receive a credit against the Basic Rent payable by the Developer under **Section 5.1** of the Lease in an amount equal to the remaining principal of the Series [** _____ **] Bonds so tendered for cancellation plus accrued interest thereon.

Section 205. Execution and Authentication of Series [_____ **] Bonds.**

(a) The Series [** _____ **] Bonds shall be executed on behalf of the City by the manual or facsimile signature of its Mayor or City Administrator 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 Series [** _____ **] Bonds ceases to be such officer before the delivery of such Series [** _____ **] 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 Series [** _____ **] Bond may be signed by such Persons as at the actual time of the execution of such Series [** _____ **] Bond are the proper officers to sign such Series [** _____ **] Bond although at the date of such Series [** _____ **] Bond such Persons may not have been such officers.

(b) The Series [** _____ **] Bonds shall have endorsed thereon a Certificate of Authentication substantially in the form set forth in **Exhibit C**, which shall be manually executed by the Trustee. No Series [** _____ **] 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 Series [** _____ **] Bond shall be conclusive evidence that such Series [** _____ **] Bond has been duly authenticated and delivered under this Indenture. The Certificate of Authentication on any Series [** _____ **] 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 Series [_____ **] Bonds.**

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

(b) The Series [** _____ **] Bonds may be transferred to an Approved Investor only upon the books kept for the registration and transfer of Series [** _____ **] 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 Series [** _____ **] Bonds, the City and the Trustee shall receive an executed representation letter signed by the proposed assignee in substantially the form of **Exhibit D**. Upon any such transfer, the City shall execute and the Trustee shall authenticate and deliver in exchange for such Series [** _____ **] Bond a new fully-registered Series [** _____ **] Bond or Series [** _____ **] 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 Series [** _____ **] Bond, of the same maturity and bearing interest at the same rate.

(c) In all cases in which Series [** _____ **] Bonds are exchanged or transferred hereunder the provisions of any legend restrictions on the Series [** _____ **] Bonds shall be complied with and the City shall execute and the Trustee shall authenticate and deliver at the earliest practicable time Series [** _____ **] Bonds in accordance with the provisions of this Indenture. All Series [** _____ **] 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 Series [** _____ **] 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 such new Series [** _____ **] Bond shall be delivered. Neither the City nor the Trustee shall be required to make any such exchange or transfer of Series [** _____ **] Bonds during the 15 days immediately preceding a Payment Date on the Series [** _____ **] Bonds or, in the case of any proposed redemption of Series [** _____ **] Bonds, during the 15 days immediately preceding the selection of Series [** _____ **] Bonds for such redemption or after such Series [** _____ **] 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 Series [** _____ **] Bond.

Section 207. Persons Deemed Owners of Series [_____ **] Bonds.** As to any Series [** _____ **] 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 Series [** _____ **] 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 Series [** _____ **] Bond, including the interest thereon, to the extent of the sum or sums so paid.

Section 208. Authorization of the Series [_____ **] Bonds.**

(a) The Series [** _____ **] Bonds are authorized in the aggregate maximum principal amount of \$[**PRINCIPAL AMT**] for the purpose of providing funds to pay Project Costs, which Series [** _____ **] Bonds shall be designated the "City of Dardenne Prairie, Missouri, Taxable Industrial Revenue Bonds (Encore Project), Series [** _____ **]." The Series [** _____ **] Bonds shall be dated as provided in **Section 203(b)**, shall become due on December 1 of the 12th calendar year following the Transfer 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 Series [** _____ **] Bonds then-Outstanding may designate a different Paying Agent upon written notice to the City and the Trustee.

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

(1) An original or certified copy of the ordinance passed by the Board of Aldermen authorizing the issuance of the Series [** _____ **] Bonds and the execution of this Indenture, the Master Development and Performance Agreement, the Phase Development Agreement applicable to the Phase [** _____ **] Project, the Bond Purchase Agreement, the Base Lease, the Lease and the Deed;

(2) Executed counterparts or copies of this Indenture, the Master Development and Performance Agreement, the Bond Purchase Agreement, the Base Lease and the Lease;

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

(4) A request and authorization to the Trustee on behalf of the City, executed by the Authorized City Representative, to authenticate the Series [** _____ **] 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;

(5) An opinion of counsel nationally recognized on the subject of municipal bonds selected by the City to the effect that the Bonds constitute valid and legally binding limited and special revenue obligations of the City; and

(6) Such other certificates, statements, receipts, opinions and documents as the Trustee shall reasonably require for the delivery of the Series [** _____ **] Bonds.

(d) When the documents specified in subsection (c) of this Section have been filed with the Trustee, and when the Series [** _____ **] 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 Series [** _____ **] Bonds in an amount equal to the Closing Price and then either hold the Series [** _____ **] Bonds in trust or if so directed in writing deliver the Series [** _____ **] Bonds to or upon the order of the Purchaser; or

(2) The Developer 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 authenticate and endorse the Series [** _____ **] Bonds in an amount equal to the Closing Price and then either hold the Series [** _____ **] Bonds in trust or if so directed in writing deliver the Series [** _____ **] Bonds to the Developer (or another purchaser designated by the Developer).

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 Series [** _____ **] Bonds, the Developer 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 certificate, the Purchaser will be deemed to have advanced an amount equal to the amount set forth in the requisition certificate and, if the Trustee is holding the Series [** _____ **] Bonds, the Trustee shall endorse the Series

[** _____ **] Bonds in an amount equal to the amount set forth in each requisition certificate. The date of endorsement of each Principal Amount Advanced as set forth on **Schedule I** to the Series [** _____ **] 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 to the Trustee for the Phase [** _____ **] Project, and shall notify the City if the requisitions submitted exceed the maximum principal amount of the Series [** _____ **] Bonds.

(f) The Series [** _____ **] Bonds shall bear interest at the rate of _____ % per annum on the Cumulative Outstanding Principal Amount of the Series [** _____ **] Bonds. Such interest shall be payable in arrears on each December 1, commencing on December 1, 20_____, and continuing thereafter until the Cumulative Outstanding Principal Amount is paid in full, but not later than December 1 of the 12th calendar year following the Transfer 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 Series [** _____ **] Bonds then Outstanding on its records as the "Cumulative Outstanding Principal Amount." If the Trustee is holding the Series [** _____ **] Bonds, such advanced amounts shall be reflected on **Schedule I** to the Series [** _____ **] Bonds. To the extent that advances are deemed to have been made pursuant to a requisition, 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 Series [** _____ **] Bonds (if the Trustee is holding the Series [** _____ **] Bonds) the principal amount paid on the Series [** _____ **] Bonds as "Principal Amount Redeemed," and shall enter the then-Outstanding principal amount of the Series [** _____ **] 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 Series [** _____ **] 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 Series [** _____ **] Bonds in **Exhibit C**. To the extent the Developer sets off its obligation to the City as lessee under the Lease against the City's obligations to the Developer 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 Developer on a monthly basis. After the Phase [** _____ **] 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** hereof, shall file a final statement of receipts and disbursements with respect thereto with the City and the Developer.

Section 209. Mutilated, Lost, Stolen or Destroyed Series [_____ **] Bonds.** If any Series [** _____ **] Bond becomes mutilated, or is lost, stolen or destroyed, the City shall execute and the Trustee shall authenticate and deliver a new Series [** _____ **] Bond of like series, date and tenor as the Bond mutilated, lost, stolen or destroyed; provided that, in the case of any mutilated Series [** _____ **] Bond, such mutilated Series [** _____ **] Bond shall first be surrendered to the Trustee, and in the case of any lost, stolen or destroyed Series [** _____ **] 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, defend and hold each of the City and the Trustee harmless. If any such Series [** _____ **] Bond has matured, instead of delivering a substitute Series [** _____ **] Bond, the Trustee may pay the same without surrender thereof. Upon

the issuance of any substitute Series [** _____ **] 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 Series [_____ **] Bonds Upon Payment.**

(a) All Series [** _____ **] Bonds that have been paid or redeemed, that the Trustee has purchased, or that the Series [** _____ **] Bonds 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 or redemption of such Series [** _____ **] Bonds and the surrender thereof to the Trustee.

(b) All Series [** _____ **] 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 Series [** _____ **] Bonds so destroyed, and shall file executed counterparts of such certificate with the City and the Developer.

ARTICLE III

REDEMPTION OF SERIES [_____ **] BONDS**

Section 301. Redemption of Series [_____ **] Bonds.**

(a) The Series [** _____ **] 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 Developer, (1) in whole, if the Developer, in accordance with the terms of the Lease, exercises its option to purchase the Phase [** _____ **] 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 Developer prepays additional Basic Rent pursuant to the Lease. If only a portion of the Series [** _____ **] Bonds are to be redeemed, (A) Series [** _____ **] Bonds aggregating at least 10% of the maximum aggregate principal amount of Series [** _____ **] 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 Series [** _____ **] Bonds to remain Outstanding following such redemption. Any redemption of Series [** _____ **] 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 Series [** _____ **] Bonds are subject to mandatory redemption, in whole or in part, to the extent of amounts deposited in the Bond Fund pursuant to **Sections 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 Phase [** _____ **] Project. Series [** _____ **] 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 Series [** _____ **] 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 Developer may deliver to the Trustee for cancellation any Series [** _____ **] Bonds owned by the Developer and not previously paid, and the Developer shall receive a credit against the amounts payable by the Developer for the redemption of such Series [** _____ **] Bonds in an amount equal to the principal amount of the Series [** _____ **] 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 Series [** _____ **] 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 Series [** _____ **] Bonds or the portions of the principal amount of Series [** _____ **] 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 Series [** _____ **] 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 Developer's direction, deliver to the Developer the items described in **Section 11.2** of the Lease.

Section 303. Notice of Redemption. If the Series [** _____ **] Bonds are to be called for redemption as provided in **Section 301(a)**, the Developer shall deliver written notice to the City and the Trustee that it has elected to redeem all or a portion of the Series [** _____ **] 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 facsimile or other electronic communication and by first-class mail stating the date upon which the Series [** _____ **] Bonds will be redeemed and paid, unless such notice period is waived by the Owners in writing.

ARTICLE IV

FORM OF SERIES [** _____ **] BONDS

Section 401. Form Generally. The Series [** _____ **] Bonds and the Trustee's Certificate of Authentication to be endorsed thereon shall be issued in substantially the forms set forth in **Exhibit C**. The Series [** _____ **] 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 SERIES [** _____ **] 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 Dardenne Prairie, Missouri, Series [** _____ **] Project Fund – Encore Project” (herein called the “Project Fund”);

(b) “City of Dardenne Prairie, Missouri, Series [** _____ **] Bond Fund – Encore Project” (herein called the “Bond Fund”); and

(c) “City of Dardenne Prairie, Missouri, Series [** _____ **] Costs of Issuance Fund – Encore Project (herein called the “Cost of Issuance Fund”).

Section 502. Deposits into the Project Fund. The proceeds of the sale of the Series [** _____ **] 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 Phase [** _____ **] 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 Developer (or any other party that has made payment on behalf of the Developer) for payment of, Project Costs upon receipt of requisition certificates signed by the Developer 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 **Sections 208(d) and (e)** hereof, the Trustee is deemed to have deposited into the Project Fund the amount specified in the requisition certificates submitted by the Developer to the Trustee in accordance with the provisions of **Article IV** of the Lease, the Trustee shall upon endorsement of the Series [** _____ **] Bonds in an equal amount be deemed to have disbursed such funds from the Project Fund to the Developer (or such other purchaser designated by the Developer) in satisfaction of the requisition certificate. If the Trustee is holding the Series [** _____ **] Bonds, such deemed disbursement will be deemed to have been made on the date the Trustee endorses the Series [** _____ **] Bonds with respect to such additional amount.

(c) In paying any requisition under this Section, the Trustee may rely as to the completeness and accuracy of all statements in such requisition certificate if such requisition certificate is signed by the Authorized Developer Representative. 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 Phase [_____ **] Project.** The completion of the purchase, construction and installation of the Phase [** _____ **] Project Improvements 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 of the Phase [** _____ **] Project Improvements 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. Deposits into and Disbursements from the Costs of Issuance Fund. Any money deposited by the Developer in the Costs of Issuance Fund shall be used solely to pay costs of issuing the Bonds or be refunded to the Developer as hereinafter provided. The Trustee shall without further authorization disburse from the Costs of Issuance Fund, to the extent available, money sufficient to pay the amounts shown in a closing memorandum provided to the Trustee on or before the date of delivery of the Bonds and as a condition thereto, which shall have attached thereto the statements, invoices and related items described in said closing memorandum. The Trustee may rely conclusively on the amounts due as shown in the closing memorandum and will not be required to make any independent inspection or investigation in connection therewith. Any funds not used to pay costs of issuance by January 1, 20____ shall, with the written direction of the City, be refunded to the Developer.

Section 506. Disposition Upon Acceleration. If the principal of the Series [** _____ **] 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 Developer 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 Series [** _____ **] Bonds, if any, paid by the Purchaser; (2) all Basic Rent payable by the Developer to the City specified in **Section 5.1** of the Lease; (3) any Additional Rent payable by the Developer 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** hereof upon completion of the Project, or pursuant to **Section 506** hereof upon acceleration of the Bonds; (5) subject to the terms and conditions of the Fee Deed of Trust and the other Financing Documents executed in favor of the Lender, 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 investments of Bond Fund moneys as provided in **Section 702** hereof; 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 Developer 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 Developer 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 the interest on the Series [** _____ **] Bonds as the same mature and become 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 (i) without further authorization from the City for payment of the Trustee's and

paying agent's fees and (ii) disbursed for such other items of Additional Rent as they are received or due in accordance with the written direction of 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 the interest on the Series [** _____ **] 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 Series [** _____ **] Bonds Outstanding and to pay interest to accrue thereon before and until such redemption, the City covenants and agrees, upon request of the Developer, to take and cause to be taken the necessary steps to redeem all such Series [** _____ **] 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 Developer. The Trustee may use any moneys in the Bond Fund to redeem a part of the Series [** _____ **] Bonds Outstanding in accordance with and to the extent permitted by **Article III** so long as the Developer 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 Series [** _____ **] Bonds theretofore matured or called for redemption and past due interest, if any, in all cases when such Series [** _____ **] Bonds have not been presented for payment.

(d) After payment in full of the principal of and interest, if any, on the Series [** _____ **] 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, the Lease and the Master Development and Performance Agreement, all amounts remaining in the Bond Fund shall be paid to the Developer 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 Series [** _____ **] Bonds or the date fixed for redemption of any Series [** _____ **] 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 Series [_____ **] Bonds.** If any Series [** _____ **] 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 Series [** _____ **] Bond shall have been made available to the Trustee, all liability of the City to the Owner thereof for the payment of such Series [** _____ **] Bond shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such fund or funds, without liability for interest thereon, for the benefit of the Owner of such Series [** _____ **] Bond who shall thereafter be restricted exclusively to such fund or funds for any claim of whatever nature on his part under this Indenture or on, or with respect to, said Series [** _____ **] Bond. If any Series [** _____ **] Bond is not presented for payment within one year following the date when such Series [** _____ **] Bond becomes due, whether by maturity or otherwise, the Trustee shall without liability for interest thereon repay to the Developer the funds theretofore held by it for payment of such Series [** _____ **] Bond, and such Series [** _____ **] Bond shall, subject to the defense of any applicable statute of limitation, thereafter be an unsecured obligation of the Developer, and the Owner thereof shall be entitled to look only to the Developer for payment, and then only to the extent of the

amount so repaid, and the Developer 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 Developer, signed by the Authorized Developer 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 Developer fails to provide written directions concerning investment of moneys held in the Project Fund and the Bond Fund, the Trustee shall invest and reinvest in such Investment Securities specified in paragraph (e) 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. The Trustee shall be provided ample time to clear any such fees that exceed 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)** hereof 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** while any of the Series [** _____ **] Bonds are Outstanding.

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 Phase [** _____ **] 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 the interest on the Series [** _____ **] Bonds as they become due and payable at the place, on the dates and in the manner provided herein and in the Series [** _____ **] Bonds according to the true intent and meaning thereof. Nothing herein shall be construed as requiring the City to operate the Phase [** _____ **] 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 Phase [** _____ **] Project.

Section 802. Authority to Execute Indenture and Issue Series [_____ **] Bonds.** The City covenants that it is duly authorized under the Constitution and laws of the State to execute this Indenture, to issue the Series [** _____ **] 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 Series [** _____ **] Bonds has been duly and effectively taken; that the Series [** _____ **] 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 Series [** _____ **] Bonds and in all proceedings of its Board of Aldermen 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 Series [** _____ **] Bonds, upon being first indemnified by the Developer 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 Phase [** _____ **] 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 cause to be kept and filed all financing statements, and hereby directs and 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 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 Series [** _____ **] 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 descriptions in filing any financing or continuation statements or modifications thereto pursuant to this Section, and (b) filing any continuation statements in the same filing offices as the initial filings were made. The Developer 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 Phase [** _____ **] Project and the rents, revenues and receipts derived from the Phase [** _____ **] 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 Developer 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 Series [** _____ **] 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 Series [** _____ **] 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 Series [** _____ **] Bonds Outstanding has given actual notice of such default by registered or certified mail or recognized overnight delivery service to the Developer and the Lender, and the Developer and the Lender have had 30 days after receipt of such notice to correct said default or cause said default to be corrected and have 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 Developer, the Lender or the City, as

the case may be, within such period and diligently pursued until the default is corrected. Nothing herein shall constitute an obligation of the Lender to cure any defaults hereunder.

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** hereof 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 Series [** _____ **] Bonds then-Outstanding, shall, by notice in writing delivered to the City, the Lender and the Developer, declare the principal of all Series [** _____ **] 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 Series [** _____ **] Bonds have matured by their terms, all overdue installments of principal and interest upon the Series [** _____ **] 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 Series [** _____ **] 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 Series [** _____ **] Bonds as provided in **Section 12.2** of the Lease.

(c) In case of any rescission, then and in every such case the City, the Trustee, the Developer 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** hereof 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 Phase [** _____ **] Project or any part thereof, in the name and for 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 having a lien that is senior to this Indenture, (d) all expenses of such repairs and improvements, and (e) any amounts payable under the Master Development and Performance Agreement. 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 Series [** _____ **] 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 Developer 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** hereof 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 Series [** _____ **] 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 Developer 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** hereof 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)** of the Lease), or (2) the Owners of 25% in aggregate principal amount of Series [** _____ **] Bonds then-Outstanding and indemnified as provided in **Section 1001(I)** hereof, 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 Series [** _____ **] Bonds may be enforced by the Trustee without the possession of any of the Series [** _____ **] 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 Series [** _____ **] 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)** hereof 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 Series [** _____ **] 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(I)** hereof, 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 Series [** _____ **] 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 Series [** _____ **] Bond at and after the maturity thereof or the obligation of the City to pay the principal of and interest on each of the Series [** _____ **] Bonds issued hereunder to the respective Owners thereof at the time, place, from the source and in the manner herein and in the Series [** _____ **] Bonds expressed.

Section 907. Right of Owners to Direct Proceedings.

(a) The Owners of a majority in aggregate principal amount of Series [** _____ **] 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(I)** hereof.

(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** of the Lease, except with respect to a default of payment of Basic Rent under **Section 12.1(a)** 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 of 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** hereof and second, be applied to the obligations outstanding under the Lease and the Master Development and Performance Agreement. Any remaining moneys shall be deposited in the Bond Fund and applied as follows:

(1) Unless the principal of all the Series [** _____ **] 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 Series [** _____ **] 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 Series [** _____ **] Bonds which shall have become due and payable (other than Series [** _____ **] 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 Series [** _____ **] 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 Series [** _____ **] Bonds shall have become due or shall have 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 Series [** _____ **] 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 Series [** _____ **] Bond over any other Series [** _____ **] 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 Series [** _____ **] Bonds shall have been declared due and payable, and if such declaration shall thereafter have 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 Series [** _____ **] Bonds shall later become due or be 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 dates shall cease to accrue.

(c) Whenever all of the Series [** _____ **] 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 (including any amounts payable under the Master Development and Performance Agreement), any balance remaining in the Bond Fund shall be paid to the Developer as provided in **Section 602** hereof.

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 Developer, 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 Series [** _____ **] Bonds, but only upon the written request of the Owners of at least 50% in aggregate principal amount of all the Series [** _____ **] 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** of the Lease, except with respect to a default of

payment of Basic Rent under **Section 12.1(a)** of the Lease, and (b) there shall not be waived without the consent of the Owners of all the Series [** _____ **] Bonds Outstanding (1) any Event of Default in the payment of the principal of any Outstanding Series [** _____ **] 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 Series [** _____ **] 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 proceeding taken by the Trustee on account of any such default shall have been discontinued or abandoned or determined adversely, then and in every such case the City, the Developer, 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, and agrees to perform all ministerial duties and obligations of the City hereunder (except as otherwise provided in **Section 805** hereof), 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 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 Developer, 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 Series [** _____ **] Bonds (except with respect to the Certificate of Authentication of the Trustee endorsed on the Series [** _____ **] 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 Phase [** _____**] 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 of the Series [** _____**] 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** hereof.

(d) The Trustee shall not be accountable for the use of any Series [** _____**] Bonds authenticated and delivered hereunder. The Trustee, in its individual or any other capacity, may become the Owner or pledgee of Series [** _____**] 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 Developer of the proceeds of any of the Series [** _____**] Bonds or of any money paid to or upon the order of the City or the Developer 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 Series [** _____**] Bond and upon Series [** _____**] 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 shall be entitled to rely upon a certificate signed by the Authorized City Representative or an Authorized Developer 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** hereof, 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 Series [** _____**] Bonds then-Outstanding.

(i) At any and all reasonable times and subject to the Developer'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 Phase [** _____ **] Project, and all books, papers and records of the City pertaining to the Phase [** _____ **] Project and the Series [** _____ **] Bonds, and to take such memoranda from and in regard thereto as may be desired. The Trustee shall treat all proprietary information of the Developer as confidential.

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

(k) The Trustee may, but shall not be required to, demand, in respect of the authentication of any Series [** _____ **] Bonds, the withdrawal of any cash, the release of any property, or any 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 Series [** _____ **] Bonds, the withdrawal of any cash, 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, 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) The Trustee agrees to accept and act on instructions or directions pursuant to this Indenture sent by the City or the Developer, as the case may be, by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods, provided, however, that the City or the Developer, 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 Developer, 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 Developer, 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.

(o) The Trustee shall have no responsibility with respect to any information, statement or recital in any official statement, offering memorandum or any other disclosure material prepared or distributed with respect to the Series [** _____ **] Bonds and shall have no responsibility for compliance with any state or federal securities laws in connection with the Series [** _____ **] Bonds.

(p) None of the provisions of this Indenture shall require the Trustee to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers if it has reasonable grounds for believing that repayment of such funds or indemnity satisfactory to it against such risk or liability is not assured to it.

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 Series [** _____ **] Bonds. Pursuant to the provisions of **Section 5.2** of the Lease, the Developer 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 Developer 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 Series [** _____ **] Bond, upon all moneys in its possession under any provisions hereof for the foregoing reasonable advances, fees, costs and expenses incurred. The Trustee's right to compensation and indemnification shall survive the satisfaction and discharge of this Indenture or its resignation or removal hereunder and payment in full of the Series [** _____ **] Bonds.

Section 1003. Notice to Owners if Default Occurs. If a default occurs of which the Trustee is by **Section 1001(h)** hereof 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 Series [** _____ **] 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(l)** hereof, shall do so if requested in writing by the Owners of at least 25% of the aggregate principal amount of Series [** _____ **] Bonds then-Outstanding.

Section 1005. Successor Trustee Upon Merger, Consolidation or Sale. With the prior written consent of the Developer, 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 Developer 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, at the Developer's expense, may 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 Developer and signed by the Owners of a majority in aggregate principal amount of Series [** _____ **] 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 Developer.

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 Developer (so long as no Event of Default has occurred and is continuing), or (b) reasonably acceptable to the City and the Developer may be appointed by the Owners of a majority in aggregate principal amount of Series [** _____ **] Bonds then-Outstanding, by an instrument or concurrent instruments in writing; provided, nevertheless, that in case of such vacancy, the City, by an instrument executed and signed by its Mayor or City Administrator 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 trust with a corporate trust office in the State, and 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 Developer'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 Developer 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, 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 Phase [** _____ **] Project is not paid as required herein or in the Lease, the Trustee may pay such tax, assessment or governmental 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 Series [** _____ **] Bonds, and shall be paid out of the proceeds of rents, revenues and receipts collected from the Phase [** _____ **] 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 Series [** _____ **] Bonds then-Outstanding and shall have 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 Developer), 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 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 Developer and to any Owner requesting the same and, upon the request of the City, the Developer or any Owner (at such Owner's expense), a monthly accounting to any 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 all duties and obligations 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 the Trustee shall be entitled to receive and may conclusively rely upon an opinion of counsel in exercising such judgment);

(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 either of them;

(c) To more precisely identify any portion of the Phase [** _____ **] Project or to add additional property thereto;

(d) To conform the Indenture to amendments to the Lease made by the City and the Developer; 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** hereof 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 Series [** _____ **] 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 Series [** _____ **] 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 Series [** _____ **] Bond issued hereunder, or (2) a reduction in the principal amount of any Series [** _____ **] Bond or the rate of interest thereon, if any, or (3) a privilege or priority of any Bond or Series [** _____ **] Bonds over any other Series [** _____ **] Bond or Series [** _____ **] Bonds, or (4) a reduction in the aggregate principal amount of Series [** _____ **] 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** hereof. 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 Series [** _____ **] 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. Developer'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 Developer and any financing party shall have 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 Developer's rights) together with a copy of the proposed Supplemental Indenture to be mailed to the Developer and any 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 Developer 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 Phase [** _____ **] 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 the Trustee is entitled to receive and may conclusively rely upon an opinion of counsel in exercising such judgment).

Section 1202. Supplemental Leases Requiring Consent of Owners. Except for Supplemental Leases as provided for in **Section 1201** hereof, neither the City nor the Trustee shall consent to the execution of any Supplemental Lease or Supplemental Leases by the City or the Developer 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 Series [** _____ **] Bonds at the time Outstanding given and obtained as provided in **Section 1102** hereof. If at any time the City and the Developer 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** hereof 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 Series [** _____ **] 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 Trustee or the City 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 executing 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 Series [** _____ **] Bonds have been paid in accordance with their terms or provision has been made for such payment, as provided in **Section 1302** hereof, and provision also made for paying all other sums payable hereunder and under the Lease

and the Master Development and Performance Agreement, including the reasonable fees and expenses of the Trustee, the City and Paying Agent to the date of retirement of the Series [** _____ **] 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 Developer 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 Developer under **Section 602** hereof 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 Series [** _____ **] 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 Series [** _____ **] Bonds then-Outstanding has been paid or such payment provided for in accordance with **Section 1302** hereof 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. Series [_____ **] Bonds Deemed to be Paid.**

(a) Series [** _____ **] 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) have been made or caused to be made in accordance with the terms thereof, or (2) have 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 amount and at such times as will ensure the availability of sufficient moneys to make such payment, or (C) have been provided for by surrendering the Series [** _____ **] Bonds to the Trustee for cancellation. When the Series [** _____ **] 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 Series [** _____ **] 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 Series [** _____ **] Bonds as aforesaid until, as to all such Series [** _____ **] Bonds which are to be redeemed before their respective stated maturities, proper notice of such redemption has been given in accordance with **Article III** hereof or irrevocable instructions shall 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 Series [** _____ **] Bonds shall be applied to and used solely for the payment of the particular Series [** _____ **] 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 Series [** _____ **] 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 Series [** _____ **] Bonds and the amount or amounts, numbers and other identification of such Series [** _____ **] 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** hereof.

(b) In determining whether the Owners of the requisite principal amount of Series [** _____ **] Bonds Outstanding have given any request, demand, authorization, direction, notice, consent or waiver under this Indenture, Series [** _____ **] Bonds owned by the Developer 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 Series [** _____ **] Bonds which the Trustee knows to be so owned shall be so disregarded; provided, the foregoing provisions shall not be applicable if the Developer is the only Owner of the Series [** _____ **] Bonds. Notwithstanding the foregoing, Series [** _____ **] 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 Series [** _____ **] Bonds and the pledgee is not the Developer or any affiliate thereof. The parties hereto acknowledge that, as of the date of execution and delivery of this Indenture, the Lender is the pledgee of the Series [** _____ **] Bonds and shall be deemed to be the sole holder of the Series [** _____ **] Bonds for purposes of any request, demand, authorization, direction, notice, consent or waiver under this Indenture.

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 Series [** _____ **] 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 to 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 Lender and the Owners, as herein provided.

Section 1403. Rights of Lender. The City and the Trustee agree that in addition to any other rights to assign the Series [** _____ **] Bonds as set forth herein, the Developer may collaterally assign its interest in the Series [** _____ **] Bonds to the Lender for the purpose of securing the

Developer's obligations to the Lender in connection with the financing or refinancing of the Phase [** _____ **] Project. In the event of a collateral assignment made by the Developer, the City and the Trustee agree, at the expense of the Developer, to execute such consents, estoppels and other documents related thereto as the Lender shall reasonably request and in such form with such terms as the City and the Trustee deem appropriate.

Section 1404. 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 Developer, the Lender or 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 Dardenne Prairie, Missouri
2032 Hanley Road
Dardenne Prairie, Missouri 63368
Attn: City Administrator

with copies to:

Hamilton Weber LLC
200 N. Third Street
St. Charles, Missouri 63301
Attn: John A. Young, Esq.

and

Gilmore & Bell, P.C.
One Metropolitan Square, Suite 2000
St. Louis, Missouri 63102
Attn: Shannon W. Creighton, Esq.

(b) To the Trustee:

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

(c) To the Developer:

[**DEVELOPER NAME**]

Attn: _____

with a copy to:

Attn: _____

(d) To the Lender:

[**LENDER**]

Attn: _____

with a copy to:

Attn: _____

(e) To the Owners if the same is duly mailed by first-class, registered or certified mail addressed to each of the Owners of Series [** _____ **] Bonds at the time Outstanding as shown by the bond registration books required by **Section 206** hereof 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 Developer and the Lender. The City, the Developer, the Lender 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 1405. 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 whatever.

Section 1406. 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 1407. Governing Law. This Indenture shall be governed exclusively by and construed in accordance with the applicable laws of the State.

Section 1408. Electronic Transaction. 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.

Section 1409. City Consent. Pursuant to the Ordinance, the Mayor or the City Administrator are 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 Master Developer or the Developer) as may be required to carry out and comply with the intent of the Ordinance, this Indenture and the Lease, including such easement, licenses, rights-of-way, plats and similar documents as may be requested by the Developer. The Mayor or the City Administrator are authorized, without further action by the Board of Aldermen, to reallocate the aggregate principal amount of the Series [** _____ **] Bonds among the other series of bonds issued for the Project and execute all necessary documents to accurately reflect the allocation of the costs of acquiring and constructing the Project among the various phases so long as the maximum aggregate principal allocated among all series of bonds does not exceed \$68,000,000.

Section 1410. 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 shall 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 Dardenne Prairie, Missouri, has caused this Indenture to be signed in its name and behalf by its City Administrator 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 DARDENNE PRAIRIE, MISSOURI

By: _____
City Administrator

[SEAL]

ATTEST:

By: _____
City Clerk

[Trust Indenture]

UMB BANK, N.A., as Trustee

By: _____
Name: _____
Title: Authorized Officer

[Trust Indenture]

EXHIBIT A

PHASE [_____ **] PROJECT SITE**

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

EXHIBIT B

PHASE [_____ **] PROJECT IMPROVEMENTS**

The Phase [** _____ **] Project Improvements consist of _____ and any other improvements located on the Phase [** _____ **] Project Site, to the extent paid for in whole with Series [** _____ **] Bond proceeds.

EXHIBIT C

FORM OF SERIES [_____ **] BONDS**

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

No. _____

**Not to Exceed
\$[**PRINCIPAL AMT**]**

**UNITED STATES OF AMERICA
STATE OF MISSOURI**

**CITY OF DARDENNE PRAIRIE, MISSOURI
TAXABLE INDUSTRIAL REVENUE BOND
(ENCORE PROJECT)
SERIES [** _____ **]**

Interest Rate

Maturity Date

Dated Date

_____ %

**December 1 of the 12th
Calendar Year Following the
Transfer Date**

_____, 20__

OWNER:

MAXIMUM PRINCIPAL AMOUNT:

_____ **DOLLARS**

The **CITY OF DARDENNE PRAIRIE, MISSOURI**, a fourth-class 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 United States. Interest on the Cumulative Outstanding Principal Amount (as hereinafter defined) at the per annum Interest Rate stated above, payable in arrears on each December 1, commencing on December 1, 20____, 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 Series [** _____ **] 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 Series [** _____ **] Bonds outstanding under the terms of the hereinafter-defined Indenture, as reflected on **Schedule I** hereto maintained by the Trustee.

THIS SERIES [_____ **] BOND** is one of a duly authorized series of Series [** _____ **] Bonds of the City designated the “City of Dardenne Prairie, Missouri, Taxable Industrial Revenue Bonds (Encore Project), Series [** _____ **],” in the maximum aggregate principal amount of \$[**PRINCIPAL AMT**] (the “Series [** _____ **] Bonds”), to be issued for the purpose of acquiring certain real property in the City (the “Phase [** _____ **] Project Site”) and constructing thereon _____ (the “Phase [** _____ **] Project Improvements”). The City will lease the Phase [** _____ **] Project Site and the Phase [** _____ **] Project Improvements (collectively, the “Project”) to [**DEVELOPER NAME**], a [**a Missouri _____ **] (the “Developer”), under the terms of a Lease Agreement dated as of [**DOCUMENT DATE**] (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 the Developer, 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, and pursuant to proceedings duly had by the Board of Aldermen.

THE SERIES [_____ **] BONDS** are issued under and are equally and ratably secured and entitled to the protection given by a Trust Indenture dated as of [**DOCUMENT DATE**] (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. 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 Series [** _____ **] Bonds, the rights, duties and obligations of the City, the Trustee and the Owners, and the terms upon which the Series [** _____ **] Bonds are issued and secured.

THE SERIES [_____ **] 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 Developer, (1) in whole, if the Developer exercises its option to purchase the Phase [** _____ **] 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 Developer prepays additional Basic Rent pursuant to the Lease; provided, however, if only a portion of the Series [** _____ **] Bonds are to be redeemed, Series [** _____ **] Bonds aggregating at least 10% of the maximum principal amount of Series [** _____ **] Bonds authorized under the Indenture shall not be subject to redemption and payment before the stated maturity thereof. Any redemption of Series [** _____ **] 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 SERIES [_____ **] BONDS** are subject to mandatory redemption, in whole or in part, to the extent of amounts deposited in the Bond Fund pursuant to **Sections 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 Phase [** _____ **] Project. Series [** _____ **] 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 Series [** _____ **] 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 Series [** _____ **] Bonds are to be called for optional redemption, the Developer shall deliver written notice to the City and the Trustee that it has elected to redeem all or a portion of the Series [** _____ **] 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 Owner of this Series [** _____ **] Bond at least 30 days (five days if there is one Owner) before the scheduled redemption date by facsimile or other electronic communication and by first-class mail stating the date upon which the Series [** _____ **] Bonds will be redeemed and paid.

THE SERIES [_____ **] BONDS**, including 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 Phase [** _____ **] 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 Phase [** _____ **] 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 Series [** _____ **] 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 Series [** _____ **] Bonds shall not constitute an indebtedness within the meaning of any constitutional 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 Series [** _____ **] Bonds are to be paid by the Developer 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 Dardenne Prairie, Missouri, Series [** _____ **] Bond Fund – Encore Project.”

THE OWNER of this Series [** _____ **] 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 Series [** _____ **] 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 Series [** _____ **] Bond or the Indenture may be made only to the extent and in the circumstances permitted by the Indenture.

THIS SERIES [_____ **] 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 Series [** _____ **] 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 Series [** _____ **] Bond or Series [** _____ **] Bonds, in the same aggregate principal amounts, 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 Series [** _____ **] 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 SERIES [_____ **] BONDS** are issuable in the form of one fully-registered Series [** _____ **] Bond in the maximum principal amount of \$[**PRINCIPAL AMT**].

THIS SERIES [_____ **] 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 Series [** _____ **] 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 Dardenne Prairie, Missouri, has caused this Series [** _____ **] Bond to be executed in its name by the manual or facsimile signature of its City Administrator, attested by the manual or facsimile signature of its City Clerk and its corporate seal to be affixed hereto or imprinted hereon.

CITY OF DARDENNE PRAIRIE, MISSOURI

By: _____
City Administrator

[SEAL]

ATTEST:

By: _____
City Clerk

CERTIFICATE OF AUTHENTICATION

This Series [** _____ **] Bond is the Taxable Industrial Revenue Bond (Encore Project), Series [** _____ **], described in the Indenture. The effective date of registration of this Series [** _____ **] 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 Series [** _____ **] Bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Series [** _____ **] Bond on the books kept by the Trustee for the registration and transfer of such Series [** _____ **] 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 Series [** _____ **] Bond in every particular.

Medallion Signature Guarantee:

EXHIBIT D

FORM OF REPRESENTATION LETTER

City of Dardenne Prairie, Missouri
2032 Hanley Road
Dardenne Prairie, Missouri 63368
Attn: City Administrator

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

Re: \$[**PRINCIPAL AMT**] Maximum Principal Amount of Taxable Industrial Revenue Bonds (Encore Project), Series [** _____ **] of the City of Dardenne Prairie, Missouri

Ladies and Gentlemen:

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

1. The undersigned fully understands that (a) the Series [** _____ **] Bonds have been issued under and pursuant to a Trust Indenture dated as of [**DOCUMENT DATE**] (the “Indenture”), between the City of Dardenne Prairie, Missouri (the “City”), and UMB Bank, N.A., as trustee (the “Trustee”), and (b) the Series [** _____ **] Bonds are payable solely out of certain rents, revenues and receipts to be derived from the leasing or sale of the Phase [** _____ **] Project (as defined in the Indenture) to [**DEVELOPER NAME**], a [**a Missouri _____ **] (the “Developer”), under a Lease Agreement dated as of [**DOCUMENT DATE**] (the “Lease”), between the City and the Developer, 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 Series [** _____ **] Bonds. *Capitalized terms not defined herein shall have the meanings set forth in the Indenture.*

2. The undersigned understands that the Series [** _____ **] Bonds are transferable only in the manner provided for in the Indenture and discussed below and warrants that it is acquiring the Series [** _____ **] Bonds for its own account with the intent of holding the Series [** _____ **] Bonds as an investment, and the acquisition of the Series [** _____ **] 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 Series [** _____ **] Bonds.

3. The undersigned agrees not to attempt to offer, sell, hypothecate or otherwise distribute the Series [** _____ **] 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 Developer 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.

4. The Developer 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 Series [** _____ **] 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 Series [** _____ **] Bonds, and (c) provided to the undersigned all additional information which it has requested. *[**Delete this paragraph if the Developer is the purchaser of the Series [** _____ **] Bonds.**]*

5. The undersigned is now, and was when it agreed to purchase the Series [** _____ **] Bonds, familiar with the operations of the Developer and fully aware of terms and risks of the Series [** _____ **] Bonds. *[**Delete previous sentence if the Developer is the purchaser of the Series [** _____ **] Bonds.**]* The undersigned believes that the Series [** _____ **] 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.

6. 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 Series [** _____ **] Bonds with full knowledge of such matters.

7. The undersigned understands and agrees that the interest on the Series [** _____ **] Bonds *is* subject to federal and state income taxation.

8. The undersigned hereby directs the Trustee to hold the Series [** _____ **] Bonds in trust pursuant to **Section 204(c)** of the Indenture.

9. The undersigned is (a) the Developer, (b) a Related Party as defined in the Master Development and Performance Agreement, (c) the Lender or (d) a Person approved by the Board of Aldermen of the City.

10. 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 related political subdivision thereof shall be liable thereon, and (d) the Bonds do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and are not payable in any manner by taxation.

Dated: _____, 20__

[PURCHASER OF SERIES [_____ **]
BONDS]**

By: _____
Name: _____
Title: _____

GILMORE & BELL, P.C.
DRAFT – APRIL 4, 2023
FOR DISCUSSION PURPOSES ONLY

§[PRINCIPAL AMT**]
(AGGREGATE MAXIMUM PRINCIPAL AMOUNT)
CITY OF DARDENNE PRAIRIE, MISSOURI
TAXABLE INDUSTRIAL REVENUE BONDS
(ENCORE PROJECT)
SERIES [** _____ **]**

Dated as of [DOCUMENT DATE**]**

BOND PURCHASE AGREEMENT

Honorable Mayor and Board of Aldermen
City of Dardenne Prairie, Missouri

On the basis of the representations and covenants and upon the terms and conditions contained in this Bond Purchase Agreement, [**DEVELOPER NAME**], [**a Missouri _____**] (the “Purchaser”), offers to purchase from the City of Dardenne Prairie, Missouri (the “City”), the above-referenced bonds with respect to the Phase [** _____ **] Project (the “Series [** _____ **] Bonds”), to be issued by the City under and pursuant to Ordinance No. [**ORD NO**] adopted by the Board of Aldermen of the City on April 12, 2023 (the “Ordinance”), and a Trust Indenture dated as of [**DOCUMENT DATE**] (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 and the Master Development and Performance Agreement (defined below).*

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 fourth-class city duly organized and validly existing under the laws of the State of Missouri. The City is authorized pursuant to the Constitution and the laws of the State of Missouri and the ordinances and resolutions of the City, and all necessary action has been taken to authorize, issue and deliver the Series [** _____ **] Bonds and to consummate all transactions contemplated by the Ordinance, this Bond Purchase Agreement, the Indenture, the Base Lease dated as of [**DOCUMENT DATE**] (the “Base Lease”) by and between the City and the Purchaser, the Lease Agreement dated as of [**DOCUMENT DATE**] (the “Lease”) by and between the City and the Purchaser, the Master Development and Performance Agreement dated as of April 12, 2023 (as amended and supplemented, the “Master Development and Performance Agreement”) by and between the City and KaLeCo LLC (the “Master Developer”), and any and all other agreements relating thereto. The proceeds of the Series [** _____ **] Bonds shall be used for the purpose of acquiring, constructing and improving the Phase [** _____ **] Project Site and Phase [** _____ **] Project Improvements and paying the costs incurred in connection with the issuance of the Series [** _____ **] Bonds.

(2) There is no controversy, suit or other proceeding of any kind pending and served or, to the City's actual 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 Series [** _____ **] Bonds or the constitutionality or validity of the obligations represented by the Series [** _____ **] Bonds or the validity of the Series [** _____ **] Bonds, the Ordinance, the Base Lease, the Lease, the Indenture, the Master Development and Performance Agreement or this Bond Purchase Agreement.

(b) The Purchaser represents as follows:

(1) *Organization.* The Purchaser is a [** _____ **] duly organized, validly existing, and duly authorized to transact business 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 has been duly authorized by all necessary action of the Purchaser and does 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. The Person executing this Bond Purchase Agreement on behalf of the Purchaser has been duly authorized to execute this Bond Purchase Agreement by action of its _____.

(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 SERIES [_____ **] 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 Series [** _____ **] Bonds on the terms and conditions set forth herein.

The Series [** _____ **] 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 Series [** _____ **] Bonds ("Additional Payments") to the Trustee under the Indenture, which Additional Payments shall be applied to the payment or reimbursement 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

[\$**PRINCIPAL AMT**] plus the costs of issuance of the Series [** _____ **] Bonds (if such costs of issuance are not paid with Series [** _____ **] Bond proceeds).

As used herein, the term “Closing Date” shall mean [**CLOSING DATE**], 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 Series [** _____ **] Bonds on the Closing Date, which amount shall be equal to (a) any Project Costs spent by the Purchaser from its own funds (including costs of issuance of the Series [** _____ **] Bonds if such costs are not paid for from Bond Proceeds) on or before the Closing Date, or (b) the aggregate principal amount of the Series [** _____ **] Bonds, if all of the proceeds of the Series [** _____ **] Bonds are being transferred to the Trustee on the Closing Date.

The Series [** _____ **] Bonds shall be issued under and secured as provided in the Ordinance, the Indenture and the Lease authorized thereby and the Series [** _____ **] Bonds shall have the maturity, interest rate and shall be subject to redemption as set forth therein. The delivery of the Series [** _____ **] Bonds shall be made in definitive form as a fully-registered bond in the maximum aggregate principal denomination of \$[**PRINCIPAL AMT**]; provided, that the principal amount of the Series [** _____ **] Bonds outstanding at any time shall be that amount recorded in the records of the Trustee, absent manifest error, and further provided that interest shall be payable on the Series [** _____ **] Bonds only on the outstanding principal amount of the Series [** _____ **] Bonds, as more fully provided in the Indenture.

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, the Master Development and Performance Agreement, the Phase Development Agreement applicable to the Phase [** _____ **] Project, 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 Series [** _____ **] 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 Series [** _____ **] Bonds, or the constitutionality or validity of the obligations represented by the Series [** _____ **] Bonds or the validity of the Series [** _____ **] 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 Series [** _____ **] Bonds, or (B) in any way contest the corporate 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 hereunder or under the Lease or the Master Development and Performance Agreement, (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 Series [** _____ **] Bonds.

SECTION 4. THE PURCHASER’S RIGHT TO CANCEL

The Purchaser may cancel its obligation hereunder to purchase the Series [** _____ **] 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, with respect to the validity of the authorization and issuance of the Series [** _____ **] 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 Series [** _____ **] 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 Dardenne Prairie, Missouri
2032 Hanley Road
Dardenne Prairie, Missouri 63368
Attn: City Administrator

with copies to:

Hamilton Weber LLC
200 N. Third Street
St. Charles, Missouri 63301
Attn: John A. Young, Esq.

and

Gilmore & Bell, P.C.
One Metropolitan Square, Suite 2000
St. Louis, Missouri 63102
Attn: Shannon W. Creighton, Esq.

(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:

[**DEVELOPER NAME**]

Attn: [**AUTHORIZED OFFICER NAME**]

with a copy to:

Attn: _____

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, in whole as to all or any part of the Series [**_____**] Bonds to any Related Party that expressly assumes in writing all of the obligations of the Purchaser contained in the Lease. Any such assignee shall agree to be bound by the terms of this Bond Purchase Agreement. This Bond Purchase Agreement may be assigned, 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 Phase [**_____**] Project and the Series [**_____**] Bonds may be pledged, without approval of 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 Phase [**_____**] Project.

SECTION 9. EXECUTION OF COUNTERPARTS

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.

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,

[DEVELOPER NAME**],**
[**a Missouri _____**]

By: _____
Name: [**AUTHORIZED OFFICER NAME**]
Title: [**Manager**]

Accepted and Agreed.

CITY OF DARDENNE PRAIRIE, MISSOURI

By: _____
City Administrator

**PETITION FOR THE CREATION OF A
COMMUNITY IMPROVEMENT DISTRICT**

To the City of Dardenne Prairie, Missouri:

THIS PETITION FOR THE CREATION OF A COMMUNITY IMPROVEMENT DISTRICT (this “**Petition**”), for the creation of a community improvement district within a certain limited portion of the City of Dardenne Prairie, Missouri (the “**City**”), is filed with the Clerk of the City (the “**City Clerk**”) and submitted to the City in accordance with the Community Improvement District Act, Sections 67.1401 to 67.1571 of the Revised Statues of Missouri, as amended (the “**CID Act**”).

The undersigned (collectively or individually as context may require, the “**Petitioner**”) is the owner or representative of the owner of record of more than fifty percent (50%) (a) by assessed value of all real property within the hereinafter described community improvement district, and (b) per capita of all owners of real property within the hereinafter described community improvement district.

Petitioner hereby petitions and requests that the Board of Aldermen of the City (the “**Board of Aldermen**”) hold a public hearing to approve and adopt this Petition and create a community improvement district, to be known as THE ENCORE COMMUNITY IMPROVEMENT DISTRICT (the “**District**”), as described herein and in accordance with the CID Act.

In support of this Petition and request, Petitioner states as follows:

1. **DESCRIPTION OF THE DISTRICT**

A. Name of District

The name of the District shall be “**The Encore Community Improvement District.**”

B. Legal Description

The District includes all of the real property legally described on Exhibit A, attached hereto and made a part hereof (the “**District Property**”).

C. Boundary Map

A map graphically depicting the boundaries of the District, which boundaries are contiguous, is attached hereto and made a part hereof as Exhibit B (the “**District Boundary Map**”).

2. **FIVE YEAR PLAN**

A five-year plan for the proposed District providing a description of the purposes of the District, the services it will provide, the improvements to be made in the District, an estimate of the costs of such services and improvements, the anticipated sources of funds to pay the costs, and the anticipated term of the sources of funds to pay the costs is set forth in the Five-Year Plan attached hereto as **Exhibit C**, and incorporated herein by reference.

3. **GOVERNANCE OF THE DISTRICT**

A. Type of District

The District shall be a separate political subdivision governed by a five (5) person Board of Directors appointed by the Mayor of the City (the “**Mayor**”) with the consent of the City’s Board of Alderman in accordance with section 67.1451.5 of the CID Act. The Board of Directors and the District shall have all the authority and powers granted to community improvement districts and political subdivisions under the CID Act and as otherwise provided by law, except as restricted in this Petition.

B. Board of Directors

1. Number

The District shall be governed by a Board of Directors consisting of five (5) directors (the “**Directors**”, or individually a “**Director**”).

2. Qualifications

So long as Petitioner or Petitioner’s affiliates, successors and/or assigns, including Purchaser, as defined herein, have any interest in real property within the District, at least three (3) of the five (5) directors shall be legally authorized representatives of Petitioner or Petitioner’s affiliates, successors and/or assigns, as applicable.

Each Director, during the entire term, shall meet the following requirements:

- (a) be at least 18 years of age; and
- (b) either (i) a fee owner of real property within the District or a legally authorized representative thereof or (ii) an owner of a business or a legally authorized representative of a business operating within the District (an “**Owner**”).

3. The Initial Directors

Subject to appointment by the Mayor with the consent of the Board of Aldermen in accordance with section 67.1451.5 of the CID Act, the initial Directors to serve on the Board of Directors and their respective terms shall be the following individuals, to be appointed as representatives of the Petitioner:

Name	Initial Term
1. Thomas Kaiman	4 years
2. James A. Cook Jr.	4 years
3. William Levinson	2 years
4. TBD	2 years
5. TBD	2 years

4. Terms

The initial Directors named above shall serve for the terms set out opposite their names or until their successors are appointed in accordance with the CID Act and this Petition.

5. Successor Directors

Successor Directors, shall be appointed in the same manner and shall be appointed to serve four-year terms; *provided that* in the event, for any reason, a Director is not able to serve his or her full term (an “**Exiting Director**”), any resulting vacancy to the Board of Directors shall be filled by the appointment by the Mayor and Board of Aldermen of a Director (an “**Interim Director**”) to serve for the remainder of the term of such Exiting Director in accordance with section 67.1451.5 of the CID Act and this Petition. Any such Interim Director shall meet the qualifications of Section 3.B.2 of this Petition and of Section 67.1451.2 of the CID Act.

4. **REAL PROPERTY TAXES; BUSINESS LICENSE TAXES**

The District does not seek to submit to qualified voters any proposition to levy real property taxes or business license taxes. Therefore, the maximum real property tax levy is zero and the maximum rate of a business license is zero.

5. **SPECIAL ASSESSMENTS**

The District does not seek to submit to qualified voters any proposition to levy a special assessment.

6. **SALES TAXES**

Pursuant to section 67.1545 of the CID Act, the District shall have the power to, by resolution, levy, subject to approval by the qualified voters of the District in accordance

with the CID Act, the CID sales tax of one percent (1%) on all taxable sales and services at retail occurring within the District (“**CID Sales Tax**”). The District shall maintain the levy of the CID Sales Tax at such rate until the earlier of the full satisfaction and defeasance of the CID obligations or the termination of the District.

7. **ASSESSED VALUE**

As of the date of this Petition, the total assessed value of all of the real property within the District is estimated at \$68,361.00.

8. **BLIGHT DETERMINATION REQUEST**

Petitioner does not seek a determination that the property within the District is a “blighted area,” as that term is used and defined in the CID Act.

9. **LIFE OF DISTRICT**

The District will continue to exist and function until the earlier of: (i) the full satisfaction and defeasance of all CID obligations or (ii) the date which is twenty-seven (27) years from the date of the ordinance establishing the District.

10. **REQUEST TO ESTABLISH DISTRICT**

By execution and submittal of this Petition, the Petitioner requests that the Board of Aldermen hold a public hearing in accordance with section 67.1421 of the CID Act and adopt an ordinance to establish the District as set out in this Petition and in accordance with the CID Act and this Petition.

11. **NOTICE TO PETITIONER**

The signature of the Petitioner may not be withdrawn later than seven (7) days after this Petition is filed with the City Clerk.

12. **BORROWING CAPACITY AND REVENUE GENERATION**

Petitioner does not seek limitations on the borrowing capacity or revenue generation of the District.

13. **SEVERABILITY; CONFLICTS**

If any provision of this Petition shall be held or determined to be invalid, inoperative or unenforceable as applied in any particular case, or in all cases, because it conflicts with any other provision or provisions of this Petition 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 contained in this Petition invalid, inoperative or unenforceable to any extent whatsoever.

The undersigned request that the Board of Aldermen of the City of Dardenne Prairie, Missouri establish The Encore Community Improvement District according to the preceding Petition and authorize the creation of the District.

14. **CONTINGENCY**

The existence of the District is expressly contingent upon the closing of the transaction contemplated by that certain Commercial Sale Contract – Land dated October 8, 2021, between Cora Bopp Family Limited Partnership, L.P. and KaLeCo LLC (“**Purchaser**”) (as amended and assigned, the “**Sale Contract**”). In the event the transaction contemplated by the Sale Contract fails to close prior to September 30, 2023, the existence of the District shall automatically terminate and any outstanding CID obligations shall be null and void.

PETITIONER:

NAME OF OWNER: Cora Bopp Family Limited Partnership, a Missouri limited partnership

TELEPHONE NUMBER: 314-814-3030

MAILING ADDRESS: 12715 Irene Marie Way
St. Louis, MO 63141

NAME OF SIGNER AND BASIS OF LEGAL AUTHORITY TO SIGN: Lee Ann Difani, Susan A. Buster, and Donald W. Prestien as Manager of Bopp Family, L.L.C., a Missouri limited liability company, as general partner of the Cora Bopp Family Limited Partnership

SIGNER'S TELEPHONE NUMBER: 314-814-3030

SIGNER'S MAILING ADDRESS: 12715 Irene Marie Way
St. Louis, MO 63141

TYPE OF ENTITY: Missouri Limited Partnership

MAP: See **Exhibit B**

PARCEL IDENTIFICATION NUMBERS: 4-0033-S001-00-0001.2000000

ASSESSED VALUE: **\$68,361.00, Total Assessed Value**

[SIGNATURE PAGES OF PETITIONER FOLLOWS]

PETITIONER:

NAME OF OWNER: ALDRICH GST TRUST FBO Lee Ann Difani u/a
Dated September 12, 1989

TELEPHONE NUMBER: 314-814-3030

MAILING ADDRESS: 12715 Irene Marie Way
St. Louis, MO 63141

NAME OF SIGNER AND BASIS OF LEGAL AUTHORITY TO SIGN: Lee Ann Difani as Trustee

SIGNER'S TELEPHONE NUMBER: 314-814-3030

SIGNER'S MAILING ADDRESS: 12715 Irene Marie Way
St. Louis, MO 63141

TYPE OF ENTITY: Trust

MAP: See **Exhibit B**

PARCEL IDENTIFICATION NUMBERS: 4-0033-S001-00-0001.2000000

ASSESSED VALUE: **\$68,361.00, Total Assessed Value**

[SIGNATURE PAGE OF PETITIONER FOLLOWS]

PETITIONER:

NAME OF OWNER: ALDRICH GST TRUST FBO Karen L. Lindner u/a
Dated September 12, 1989

TELEPHONE NUMBER: 314-620-5247

MAILING ADDRESS: 540 Spitz Drive
Fenton, MO 63026

NAME OF SIGNER AND BASIS OF LEGAL AUTHORITY TO SIGN: Karen L. Lindner as Trustee

SIGNER'S TELEPHONE NUMBER: 314-620-5247

SIGNER'S MAILING ADDRESS: 540 Spitz Drive
Fenton, MO 63026

TYPE OF ENTITY: Trust

MAP: See Exhibit B

PARCEL IDENTIFICATION NUMBERS: 4-0033-S001-00-0001.2000000

ASSESSED VALUE: **\$68,361.00, Total Assessed Value**

[SIGNATURE PAGE OF PETITIONER FOLLOWS]

PETITIONER:

NAME OF OWNER: GRACE L BUSCH REVOCABLE LIVING TRUST
Dated February 28, 1997, As Amended

TELEPHONE NUMBER: 314-878-9329

MAILING ADDRESS: 12769 Mason Manor
Creve Coeur, MO 63141

NAME OF SIGNER AND BASIS OF LEGAL AUTHORITY TO SIGN: Grace L. Busch and Susan A. Buster as Co-Trustees

SIGNER'S TELEPHONE NUMBER: 314-878-9329

SIGNER'S MAILING ADDRESS: 127369 Mason Manor
Creve Coeur, MO 63141

TYPE OF ENTITY: Revocable Living Trust

MAP: See **Exhibit B**

PARCEL IDENTIFICATION NUMBERS: 4-0033-S001-00-0001.2000000

ASSESSED VALUE: **\$68,361.00, Total Assessed Value**

[SIGNATURE PAGES OF PETITIONER FOLLOWS]

By executing this Petition on this 25 day of March 2023, the undersigned represents and warrants that Grace L. Busch and Susan A. Buster are authorized to execute this Petition on behalf of the property owner named immediately above. The undersigned also acknowledges that the undersigned's signature may not be withdrawn later than seven (7) days after this Petition is filed with the City Clerk of the City.

By: Grace L. Busch
Grace L. Busch, Co-Trustee

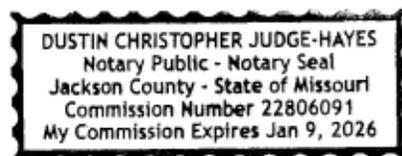
STATE OF MO)
COUNTY OF Jackson) SS.

On this 25 day of March in the year 2023 before me, Dustin C. Judge-Hayes, a Notary Public in and for said state, personally appeared Grace L. Busch as Co-Trustee of the GRACE L. BUSCH REVOCABLE LIVING TRUST Dated February 28, 1997, As Amended, known to me to be the person who executed the Petition on behalf of said trust and acknowledged to me that she executed the same for the purposes therein stated.

Subscribed and affirmed before me this 25 day of March, 2023.

Notary Public: Dustin C. Judge-Hayes
Printed Name: Dustin C. Judge-Hayes
My Commission Expires: 01-09-2026

[SEAL] Notary Public



PETITIONER:

NAME OF OWNER: BUSCH FAMILY GST TRUST FBO Mary L. Biderman

TELEPHONE NUMBER: 314-221-5921

MAILING ADDRESS: 832 Minarca Dr.
Des Peres, MO 63131

NAME OF SIGNER AND BASIS OF LEGAL AUTHORITY TO SIGN: Mary L. Biderman as Trustee

SIGNER'S TELEPHONE NUMBER: 314-221-5921

SIGNER'S MAILING ADDRESS: 832 Minarca Dr.
Des Peres, MO 63131

TYPE OF ENTITY: Trust

MAP: See Exhibit B

PARCEL IDENTIFICATION NUMBERS: 4-0033-S001-00-0001.2000000

ASSESSED VALUE: **\$68,361.00, Total Assessed Value**

[SIGNATURE PAGE OF PETITIONER FOLLOWS]

PETITIONER:

NAME OF OWNER: BUSCH FAMILY GST TRUST FBO Susan A. Buster

TELEPHONE NUMBER: 314-303-8795

MAILING ADDRESS: 1751 Golden Lake Ct.
Chesterfield, MO 63017

NAME OF SIGNER AND BASIS OF
LEGAL AUTHORITY TO SIGN: Susan A. Buster as Trustee

SIGNER'S TELEPHONE NUMBER: 314-303-8795

SIGNER'S MAILING ADDRESS: 1751 Golden Lake Ct.
Chesterfield, MO 63017

TYPE OF ENTITY: Trust

MAP: See **Exhibit B**

PARCEL IDENTIFICATION NUMBERS: 4-0033-S001-00-0001.2000000

ASSESSED VALUE: **\$68,361.00, Total Assessed Value**

[SIGNATURE PAGE OF PETITIONER FOLLOWS]

PETITIONER:

NAME OF OWNER: BUSCH FAMILY GST TRUST FBO Jeanne L. Buchner

TELEPHONE NUMBER: 314-469-7431

MAILING ADDRESS: 2138 Butterfield Ct.
Maryland Heights, MO 63043

NAME OF SIGNER AND BASIS OF LEGAL AUTHORITY TO SIGN: Jeanne L. Buchner as Trustee

SIGNER'S TELEPHONE NUMBER: 314-469-7431

SIGNER'S MAILING ADDRESS: 2138 Butterfield Ct.
Maryland Heights, MO 63043

TYPE OF ENTITY: Trust

MAP: See **Exhibit B**

PARCEL IDENTIFICATION NUMBERS: 4-0033-S001-00-0001.2000000

ASSESSED VALUE: **\$68,361.00, Total Assessed Value**

[SIGNATURE PAGE OF PETITIONER FOLLOWS]

PETITIONER:

NAME OF OWNER: DONALD W. PRESTIEN REVOCABLE TRUST
Dated March 13, 2015

TELEPHONE NUMBER: 314-680-1122

MAILING ADDRESS: 3028 Lake Country Lane
Wildwood, MO 63038

NAME OF SIGNER AND BASIS OF LEGAL AUTHORITY TO SIGN: Donald W. Prestien and Joan C. Prestien as Co-Trustees

SIGNER'S TELEPHONE NUMBER: 314-680-1122

SIGNER'S MAILING ADDRESS: 3028 Lake Country Lane
Wildwood, MO 63038

TYPE OF ENTITY: Revocable Trust

MAP: See Exhibit B

PARCEL IDENTIFICATION NUMBERS: 4-0033-S001-00-0001.2000000

ASSESSED VALUE: **\$68,361.00, Total Assessed Value**

[SIGNATURE PAGES OF PETITIONER FOLLOWS]

PETITIONER:

NAME OF OWNER: JOAN C. PRESTIEN REVOCABLE TRUST Dated
March 13, 2015

TELEPHONE NUMBER: 314-960-5113

MAILING ADDRESS: 3028 Lake Country Lane
Wildwood, MO 63038

NAME OF SIGNER AND BASIS OF LEGAL AUTHORITY TO SIGN: Donald W. Prestien and Joan C. Prestien as Co-Trustees

SIGNER'S TELEPHONE NUMBER: 314-960-5113

SIGNER'S MAILING ADDRESS: 3028 Lake Country Lane
Wildwood, MO 63038

TYPE OF ENTITY: Revocable Trust

MAP: See **Exhibit B**

PARCEL IDENTIFICATION NUMBERS: 4-0033-S001-00-0001.2000000

ASSESSED VALUE: **\$68,361.00, Total Assessed Value**

[SIGNATURE PAGES OF PETITIONER FOLLOWS]

By: Joan C. Prestien
Joan C. Prestien, Co-Trustee

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

On this 15TH day of March in the year 2023 before me, TYLER BARBIERI, a Notary Public in and for said state, personally appeared Joan C. Prestien as Co-Trustee of the JOAN C. PRESTIEN REVOCABLE TRUST Dated March 13, 2015, known to me to be the person who executed the Petition on behalf of said trust and acknowledged to me that she executed the same for the purposes therein stated.

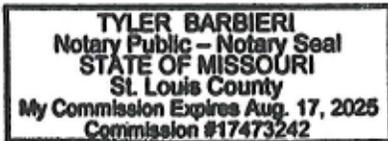
Subscribed and affirmed before me this 15TH day of March, 2023.

Notary Public: Tyler Barbieri

[SEAL] Notary Public

Printed Name: TYLER BARBIERI

My Commission Expires: AUG. 17, 2025



PETITIONER:

NAME OF OWNER: HAROLD H. PRESTIEN REVOCABLE TRUST
Dated November 22, 2011

TELEPHONE NUMBER: 618-980-5159

MAILING ADDRESS: 208 Rebekah Court
Waterloo, IL 62298

NAME OF SIGNER AND BASIS OF LEGAL AUTHORITY TO SIGN: Harold H. Prestien and Yvonne M. Prestien as Co-Trustees

SIGNER'S TELEPHONE NUMBER: 618-980-5159

SIGNER'S MAILING ADDRESS: 208 Rebekah Court
Waterloo, IL 62298

TYPE OF ENTITY: Revocable Trust

MAP: See Exhibit B

PARCEL IDENTIFICATION NUMBERS: 4-0033-S001-00-0001.2000000

ASSESSED VALUE: **\$68,361.00, Total Assessed Value**

[SIGNATURE PAGES OF PETITIONER FOLLOWS]

PETITIONER:

NAME OF OWNER: YVONNE M. PRESTIEN REVOCABLE TRUST
Dated November 22, 2011

TELEPHONE NUMBER: 618-980-0375

MAILING ADDRESS: 208 Rebekah Court
Waterloo, IL 62298

NAME OF SIGNER AND BASIS OF LEGAL AUTHORITY TO SIGN: Harold H. Prestien and Yvonne M. Prestien as Co-Trustees

SIGNER'S TELEPHONE NUMBER: 618-980-0375

SIGNER'S MAILING ADDRESS: 208 Rebekah Court
Waterloo, IL 62298

TYPE OF ENTITY: Revocable Trust

MAP: See **Exhibit B**

PARCEL IDENTIFICATION NUMBERS: 4-0033-S001-00-0001.2000000

ASSESSED VALUE: **\$68,361.00, Total Assessed Value**

[SIGNATURE PAGES OF PETITIONER FOLLOWS]

By executing this Petition on this 25th day of March 2023, the undersigned represents and warrants that Harold H. Prestien and Yvonne M. Prestien are authorized to execute this Petition on behalf of the property owner named immediately above. The undersigned also acknowledges that the undersigned's signature may not be withdrawn later than seven (7) days after this Petition is filed with the City Clerk of the City.

By: Harold H. Prestien
Harold H. Prestien, Co-Trustee

STATE OF Immanuel)
COUNTY OF Monroe) SS.

On this 25th day of March in the year 2023 before me, Patsy L. Hicks, a Notary Public in and for said state, personally appeared Harold H. Prestien as Co-Trustee of the YVONNE M. PRESTIEN REVOCABLE TRUST Dated November 22, 2011, known to me to be the person who executed the Petition on behalf of said trust and acknowledged to me that he executed the same for the purposes therein stated.

Subscribed and affirmed before me this 25th day of March, 2023.

Notary Public: Patsy L. Hicks

[SEAL] Notary Public

Printed Name: Patsy L. Hicks

My Commission Expires: 7/18/2023



PETITIONER:

NAME OF OWNER: CHARLES W. PRESTIEN REVOCABLE TRUST
Dated December 8, 2011

TELEPHONE NUMBER: 314-803-3739

MAILING ADDRESS: 17416 West Bridle Trail
Wildwood, MO 63038

NAME OF SIGNER AND BASIS OF LEGAL AUTHORITY TO SIGN: Charles W. Prestien and Pamela S. Prestien as Co-Trustees

SIGNER'S TELEPHONE NUMBER: 314-803-3739

SIGNER'S MAILING ADDRESS: 17416 West Bridle Trail
Wildwood, MO 63038

TYPE OF ENTITY: Revocable Living Trust

MAP: See Exhibit B

PARCEL IDENTIFICATION NUMBERS: 4-0033-S001-00-0001.2000000

ASSESSED VALUE: **\$68,361.00, Total Assessed Value**

[SIGNATURE PAGES OF PETITIONER FOLLOWS]

By executing this Petition on this 25 day of March 2023, the undersigned represents and warrants that Charles W. Prestien and Pamela S. Prestien are authorized to execute this Petition on behalf of the property owner named immediately above. The undersigned also acknowledges that the undersigned's signature may not be withdrawn later than seven (7) days after this Petition is filed with the City Clerk of the City.

By: Charles W. Prestien
Charles W. Prestien, Co-Trustee

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

On this 25TH day of March in the year 2023 before me, TYLER BARBIERI, a Notary Public in and for said state, personally appeared Charles W. Prestien as Co-Trustee of the CHARLES W. PRESTIEN REVOCABLE TRUST Dated December 8, 2011, known to me to be the person who executed the Petition on behalf of said trust and acknowledged to me that he executed the same for the purposes therein stated.

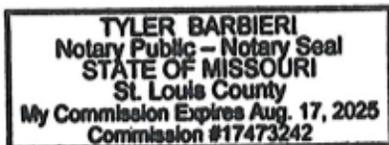
Subscribed and affirmed before me this 25TH day of March, 2023.

Notary Public: [Signature]

[SEAL] Notary Public

Printed Name: TYLER BARBIERI

My Commission Expires: AUG. 17, 2025



PETITIONER:

NAME OF OWNER: PAMELA S. PRESTIEN REVOCABLE TRUST
Dated December 8, 2011

TELEPHONE NUMBER: 314-803-4807

MAILING ADDRESS: 17416 West Bridle Trail
Wildwood, MO 63038

NAME OF SIGNER AND BASIS OF LEGAL AUTHORITY TO SIGN: Charles W. Prestien and Pamela S. Prestien as Co-Trustees

SIGNER'S TELEPHONE NUMBER: 314-803-4807

SIGNER'S MAILING ADDRESS: 17416 West Bridle Trail
Wildwood, MO 63038

TYPE OF ENTITY: Revocable Living Trust

MAP: See **Exhibit B**

PARCEL IDENTIFICATION NUMBERS: 4-0033-S001-00-0001.2000000

ASSESSED VALUE: **\$68,361.00, Total Assessed Value**

[SIGNATURE PAGES OF PETITIONER FOLLOWS]

By: Pamela S. Prestien
Pamela S. Prestien, Co-Trustee

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

On this 25TH day of March in the year 2023 before me, TYLER BARBIERI, a Notary Public in and for said state, personally appeared Pamela S. Prestien as Co-Trustee of the PAMELA S. PRESTIEN REVOCABLE TRUST Dated December 8, 2011, known to me to be the person who executed the Petition on behalf of said trust and acknowledged to me that she executed the same for the purposes therein stated.

Subscribed and affirmed before me this 25TH day of March, 2023.

Notary Public: 

[SEAL] Notary Public

Printed Name: TYLER BARBIERI

My Commission Expires: AUG. 17, 2025

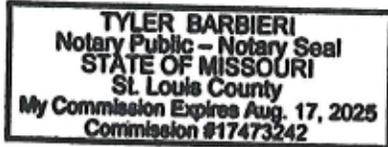


Exhibit A

Legal Description of District

A tract of land being part of Section 1, Township 46 North — Range 2 East, St. Charles County, Missouri and being more particularly described as:

Commencing at a point in the North line of property described in deed to Cora Bopp Family Limited Partnership, L.P., etal, recorded in Book 2679 page 1626 of the St. Charles County records, being the Southwest corner of "Bryan Meadows Subdivision", a subdivision according to the plat thereof recorded in Plat Book 9 page 19 of the St. Charles County records; thence Eastwardly along the North line of said Bopp property, being also the South line of said "Bryan Meadows Subdivision", South 89 degrees 03 minutes 52 seconds East 1248.44 feet to a point in the West line of Bryan Road, 100 feet wide, as widened by deed recorded in Book 1884 page 71 of the St. Charles County records; thence Southwardly along the West line of Bryan Road, 100 feet wide, as widened by said Book 1884 page 71, South 01 degree 42 minutes 05 seconds West 904.47 feet to the ACTUAL POINT OF BEGINNING; thence Southwardly along the West line of Bryan Road, 100 feet wide, as widened by said Book 1884 page 71 and by Book 1884 page 69 of the St. Charles County records, the following courses and distances: South 01 degree 42 minutes 05 seconds West 782.54 feet, South 01 degree 14 minutes 27 seconds West 247.69 feet and along a curve to the right whose radius point bears North 88 degrees 45 minutes 33 seconds West 35.00 feet from the last mentioned point, a distance of 54.66 feet to a point in the North line of Feise Road, varying width, as widened by the aforesaid Book 1884 page 69 of the St. Charles County records; thence Westwardly along said North line of Feise Road, as widened, North 89 degrees 17 minutes 03 seconds West 339.65 feet to the Northwest corner of said widening; thence Southwardly along the West line of said widening, South 01 degree 05 minutes 49 seconds West 26.73 feet to a point in the North line of Feise Road, 60 feet wide, said point being 20.00 feet perpendicularly distant North of the centerline; thence Westwardly along said North line of Feise Road, 60 feet wide, being 20.00 feet perpendicularly distant North of and parallel to the centerline, North 88 degrees 57 minutes 51 seconds West 650.09 feet to a point; thence leaving said road line, North 34 degrees 17 minutes 53 seconds East 161.25 feet to a point; thence North 31 degrees 55 minutes 13 seconds East 124.37 feet to a point; thence North 35 degrees 34 minutes 37 seconds East 122.38 feet to a point; thence North 24 degrees 25 minutes 54 seconds East 39.18 feet to a point; thence North 02 degrees 40 minutes 47 seconds West 43.80 feet to a point; thence North 19 degrees 57 minutes 42 seconds East 75.15 feet to a point; thence North 11 degrees 55 minutes 45 seconds East 125.52 feet to a point; thence North 32 degrees 51 minutes 47 seconds East 73.36 feet to a point; thence North 57 degrees 46 minutes 30 seconds East 81.67 feet to a point; thence North 29 degrees 59 minutes 37 seconds East 76.05 feet to a point; thence North 38 degrees 29 minutes 03 seconds East 69.58 feet to a point; thence North 72 degrees 44 minutes 24 seconds East 87.27 feet to a point; thence North 50 degrees 29 minutes 54 seconds East 91.27 feet to a point; thence North 23 degrees 49 minutes 56 seconds East 45.40 feet to a point; thence North 46 degrees 58 minutes 12 seconds East 39.05 feet to a point; thence North 72 degrees 48 minutes 18 seconds East 182.93 feet to a point; thence North 80 degrees 42 minutes 20 seconds East 197.54 feet to the point of beginning and containing 17.250 acres according to a survey by Volz Incorporated during March, 2022.

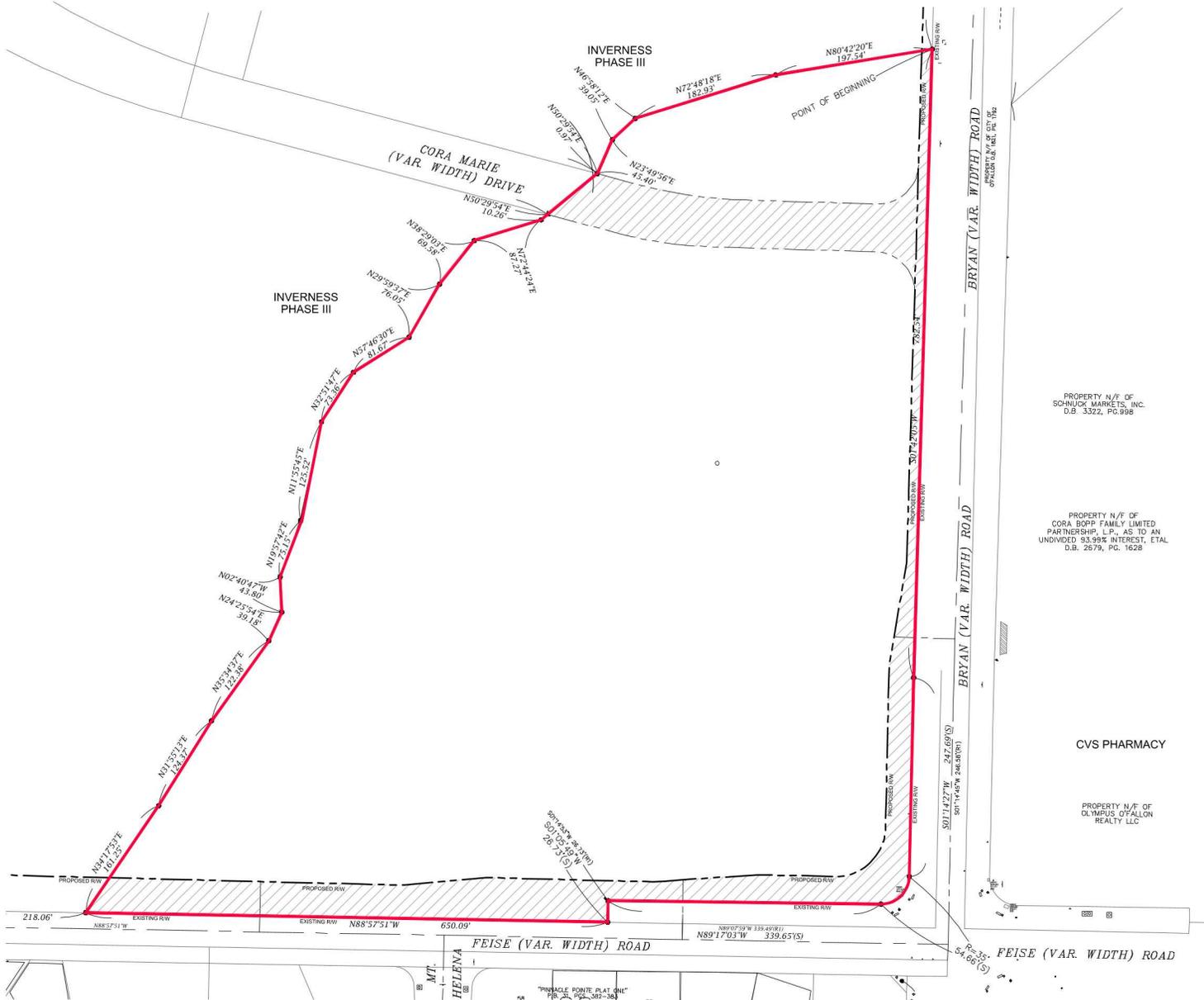
Exhibit B

Boundary Map of the District

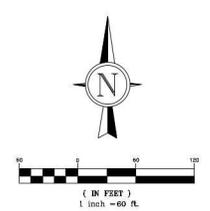
The boundaries of the District are outlined as shown on the map below.

THE ENCORE COMMUNITY IMPROVEMENT DISTRICT (CID) DARDENNE PRAIRIE, MO

DARDENNE PRAIRIE PROJECT # 972260



- LEGEND**
- 1. PUBLIC ROADWAY RIGHT OF WAY TO BE DEDICATED
 - 2. LIMITS OF PROPOSED CID BOUNDARY



ENGENUITY

**BUILDING VALUE
BY DESIGN**

17087 N. BUTTE AVE
CHESNEY, MO 63025
PH: 636.343.0000
WWW.THEENGUITY.COM
MEMBER SINCE 10/17/2018

PREPARED FOR:

MIA ROSE HOLDINGS

CONTACTS: TOM KAIMAN
JIM COOK

THE PRAIRIE ENCORE
P.U.D. AREA PLAN

1575 BRYAN ROAD
DARDENNE PRAIRIE, MISSOURI 63366

Project No.	22-0113	
No.	Description	Date

PRELIMINARY PLAN- NOT FOR CONSTRUCTION

03-10-2023
Thomas E. Shank III
MO# PE-23-19000174

DATE: 3/10/2023
SCALE: 1"=60'

CID EXHIBIT

C100

Exhibit C

**FIVE-YEAR PLAN
THE ENCORE COMMUNITY IMPROVEMENT DISTRICT**

The Petitioner of the foregoing Petition to Create a Community Improvement District (the “Petitioner”) proposes to create The Encore Community Improvement District (the “District”) pursuant to the Community Improvement District Act, Sections 67.1401 to 67.1571, RSMo, as amended, (the “CID Act”). Section 67.1421 of the CID Act requires that the petition for the creation of the proposed District be accompanied by a five-year plan, which includes a description of the purposes of the proposed District, the services it will provide, the improvements it will make, an estimate of the costs of these services and improvements to be incurred, the anticipated sources of funds to pay the costs, and the anticipated term of the sources of funds to pay the costs. This Five-Year Plan (the “Plan”) is presented in order to comply with the statutory requirement referenced above.

This Plan contains the following: (A) a description of the location and formation of the proposed District; (B) a description of the anticipated sources of funds to pay the costs, the anticipated term of the sources of funds to pay the costs and a description of the anticipated proposed District revenues over a five-year period; (C) a summary of the improvements and services to be provided by the proposed District over a five-year period; (D) an estimate of costs of the services and improvements to be incurred over a five-year period; (E) a description of the governance of the proposed District; and (F) an anticipated schedule for the proposed District’s improvements, activities and services over a five-year period. This Plan is an integral and composite part of the Petition for the Creation of a Community Improvement District (the “Petition”) to which it is attached and incorporated therein by reference.

A. District Location and Formation

The proposed District consists of one (1) parcel and totaling approximately 17.25 acres. The proposed District is generally bounded by and adjacent to Bryan Road to the east of the parcel and Feise Road to the south of the parcel. The parcel locator number is 4-0033-S0001-00-0001.2000000, in the City of Dardenne Prairie, Missouri (the “City”). The proposed district is contiguous. The District is proposed to be a political subdivision of the State of Missouri.

B. Source of Funds and Anticipated Term; Estimate of District Revenues

The proposed District is being formed to raise revenues by imposing an additional sales tax (the “CID Sales Tax”) at the rate of one percent (1.0%) on all taxable retail sales within its boundaries which are subject to taxation pursuant to Sections 144.010 to 144.525, RSMo, as amended, except sales of motor vehicles, trailers, boats or outboard motors and sales to or by public utilities and providers of communications, cable or video services. The District shall maintain the levy of the CID Sales Tax at such rate until the full satisfaction and defeasance of the CID obligations (not to exceed the date which is twenty-seven (27) years from

the date of the ordinance establishing the District). An estimate of revenues from the CID 1% Sales Tax is attached hereto and incorporated by reference herein.

The imposition of the CID Sales Tax is subject to approval by the qualified voters within the proposed District. To the extent that there are no registered voters within the proposed District, the CID Act provides that the qualified voters are the owners of one or more parcels of real property located within the proposed District. Once the proposed District is established by ordinance of the City, the proposed District's Board will submit the question of whether it shall be authorized to impose the CID Sales Tax to the qualified voters for approval in accordance with this Plan.

Notwithstanding anything in the CID Act, the proposed District shall have no power to levy real property taxes, special assessment tax, or business license taxes.

C. Summary of Improvements and Services

In general, the purpose of the proposed District is to undertake any of the public improvements or provide for any activities or services set forth in the CID Act. The proposed District may provide assistance to or to construct, reconstruct, install, repair, maintain, and equip certain public improvements, and to support business activity and economic development in the proposed District and to provide services and activities as allowed under Section 67.1461 of the CID Act.

Pursuant to Section 67.1461 of the CID Act, the proposed District may acquire by purchase, lease, gift, grant, bequest, devise or otherwise, any real property within its boundaries, personal property, or any interest in such property. The proposed District may also sell, lease, exchange, transfer, assign, mortgage, pledge, hypothecate, or otherwise encumber or dispose of any real or personal property or any interest in such property. The proposed District may dedicate to the City, with the City's consent, streets, sidewalks, parks, and other real property and improvements located within its boundaries for public use. In addition, the proposed District may enter into one or more agreements with the City for the purpose of abating any declared public nuisance within the boundaries of the proposed District including, but not limited to, the stabilization, repair or maintenance or demolition and removal of buildings or structures.

Specifically, the proposed District will provide funding for those powers of a district provided under Section 67.1461 of the CID Act and for various public improvements in connection with the development of the commercial development located within the District, together with any public improvements, activities or services allowed under the CID Act (such improvements, activities or services are currently expected to include those items identified in the table captioned "**CID Project Costs**" attached hereto) (the "CID Project"). The proposed District may fund any portion of the costs of acquisition, design, construction, operation, and maintenance of the CID Project.

The CID Act mandates that existing City services will continue to be provided within a proposed District at the same level as before the proposed District was created (unless services are decreased throughout the City) and that any proposed District services shall be in addition to existing City services. The Petitioner anticipates that City services will continue to be provided

within the proposed District at the same level as before the proposed District was created, and the proposed District will not cause the level of City services within the proposed District to diminish.

D. Estimated Costs

The total estimated cost of the CID Project over the initial five-year period is approximately \$2,874,323 excluding cost of issuance¹, if any, and the proposed District's administrative fees and expenses, including but not limited to, fees and costs related to the proposed District's formation, planning consultants, advisors, auditors and legal counsel. An estimate of the costs associated with the proposed CID project is attached hereto and incorporated by reference herein.

The CID Sales Tax revenues may be used to fund either direct costs of the CID Project or financing costs of the CID Project, or both. To fund any or all of its activities in connection with the exercise of the powers under Section 67.1461 of the CID Act, the proposed District may borrow money from any public or private source and issue obligations or cause obligations to be issued on its behalf, in one or more series, and provide security for repayment of the same as provided in the CID Act. The District does not intend to limit its ability to issue debt under the CID Act.

On an annual basis, revenues from the CID Sales Tax will be applied as follows: (a) first, to fund the on-going administrative costs of the proposed District, the amount of which will be determined by the proposed District's Board in connection with the adoption of the annual budget of the proposed District, and (b) second, to fund the costs of the CID Project directly or to pay principal and interest on any obligations issued by or on behalf of the proposed District to finance the costs of the CID Project.

E. Governance

The District will be governed by a Board of Directors consisting of five (5) members appointed by the Mayor with the consent of the Board of Aldermen, as provided in the Petition and the CID Act. Successor Directors shall be appointed by the Mayor with the consent of the Board of Aldermen by resolution according to a slate submitted by the Board of Directors to the City. The District's budgets and policies will be refined annually, within the limitations set forth in this Plan, by the District's Board of Directors. It is anticipated that the District will enter into a Cooperation Agreement or similar Agreement with the City regarding the operation of the District (the "Agreement"), the imposition and collection of the CID Sales Tax, and any other relevant aspects of the overall financing for the CID Project and administration and operation of the District, including reimbursement to the City for the reasonable and actual expenses incurred by the City in relation to the District in accordance with the CID Act.

F. Anticipated Schedule

¹"Cost of Issuance" shall mean all costs reasonably incurred by the proposed District in furtherance of the issuance of any bonds or notes, singly or in series, issued by or on behalf of the proposed District pursuant to the CID Act, if any, including, but not limited to accrued interest, the fees and expenses of financial advisors, municipal advisors and consultants, the proposed District's attorneys (including issuer's counsel and bond counsel), underwriters' discounts and fees, the costs of printing any obligations of the proposed District and any official statements relating thereto, the cost, if any, of credit enhancement, capitalized interest, debt services reserves and the fees of any rating agency rating any obligations of the proposed District.

The following pages summarize the improvements, activities and services anticipated for the proposed District over the initial five-year period.

<u>Year</u>	<u>Improvements, Activities and Services</u>
2023	<ul style="list-style-type: none"> • Approval of ordinance establishing District • Approval of Agreement between District and City (and other parties thereto) • Notice of CID creation to the State of Missouri • CID Project commences • Board authorizes election for imposition of CID Sales Tax • District holds mail-in election to impose CID Sales Tax • District provides for CID Sales Tax collection • District provides for its on-going administration
2024	<ul style="list-style-type: none"> • CID Project continues • District provides for CID Sales Tax collection • District provides for its on-going administration, including CID Annual Report and Annual Budget
2025	<ul style="list-style-type: none"> • CID Project complete • Approval of Certificates of Reimbursable Costs • Issuance of District obligations, if any • District provides for CID Sales Tax collection • Financial monitoring and payment/reimbursement for project expenditures and/or repayment of District obligations, if any • District provides for its on-going administration, including CID Annual Report and Annual Budget
2026	<ul style="list-style-type: none"> • District provides for CID Sales Tax collection

2027

- Financial monitoring and payment/reimbursement for project expenditures and/or repayment of District obligations, if any
- District provides for its on-going administration, including CID Annual Report and Annual Budget
- District provides for CID Sales Tax collection
- Financial monitoring and payment/reimbursement for project expenditures and/or repayment of District obligations, if any
- District provides for its on-going administration, including CID Annual Report and Annual Budget

[The remainder of this page was intentionally left blank, see next page.]

CID Project Costs

*CID Project Estimates

CID Eligible

Silt Fence, SWPPP Maintenance	\$ 60,125
Grading (undercut, spoils, subgrade)	\$ 232,302
Backfill	\$ 81,280
Soil Import, Place/Compact	\$ 92,775
Roadway Seeding, Landscaping, Irrigation	\$ 200,000
Water Infrastructure - 8" C900, hydrants, etc.	\$ 440,170
Sanitary Sewer Infrastructure - 8" SDR35, laterals, manholes, etc.	\$ 531,800
Storm Sewer Infrastructure - 18" RCP, inlets, Cora Marie box culvert, headwalls, etc.	\$ 727,930
Bio-Retention Basin - 5200 sf	\$ 88,400
Site Electric - conduit, transformers to each parcel	\$ 43,200
Utility Borings (3) Under Bryan Road	\$ 255,000
Engenuity Civil Design (Infrastructure Only)	\$ 110,000
Volz Engineering (Infrastructure Only)	\$ 11,341
Estimated Total CID Costs	\$ 2,874,323

*The budget categories are presented as anticipated at this time and are subject to change. The estimated total of \$2,874,323 excludes Cost of Issuance (as defined herein), if any, and the proposed District's administrative fees and expenses including, but not limited to, fees and costs related to the proposed District's formation, planning consultants, advisors, auditors and legal counsel, and reimbursement to the City or the City's third-party professional costs directly related to the City's consideration of the proposed District including, without limitation, legal and planning expenses incurred in relation to the City's establishment of the proposed District, and the City's participation and responsibilities with regard to the ongoing operation functions and administration of the proposed District.

CID Revenue Estimates²

								CID % of Sales 1.00%			
Year	BBQ Restaurant 3k SF (Bryan Rd)	Circle K 5.2k SF (Bryan Rd)	Macadoodles 8.5k SF (Bryan Rd)	Scooter's Coffee 664 SF (Bryan Rd)	Future Retail 4.5k SF (Fiese Rd)	Future Retail 4.5k SF (Fiese Rd)	TOTAL RETAIL	CID % of Retail Sales Tax	TOTAL CID		
1	2023	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
2	2024	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
3	2025	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
4	2026	\$ 4,000,000	\$ 3,000,000	\$ 7,000,000	\$ 1,000,000	\$ -	\$ 15,000,000	\$ 150,000	\$ 150,000	\$ 150,000	
5	2027	\$ 4,080,000	\$ 3,060,000	\$ 7,140,000	\$ 1,020,000	\$ -	\$ 15,300,000	\$ 153,000	\$ 153,000	\$ 153,000	
6	2028	\$ 4,161,600	\$ 3,121,200	\$ 7,282,800	\$ 1,040,400	\$ -	\$ 15,606,000	\$ 156,060	\$ 156,060	\$ 156,060	
7	2029	\$ 4,244,832	\$ 3,183,624	\$ 7,428,456	\$ 1,061,208	\$ -	\$ 15,918,120	\$ 159,181	\$ 159,181	\$ 159,181	
8	2030	\$ 4,329,729	\$ 3,247,296	\$ 7,577,025	\$ 1,082,432	\$ -	\$ 16,236,482	\$ 162,365	\$ 162,365	\$ 162,365	
9	2031	\$ 4,416,323	\$ 3,312,242	\$ 7,728,566	\$ 1,104,081	\$ 1,500,000	\$ 19,561,212	\$ 195,612	\$ 195,612	\$ 195,612	
10	2032	\$ 4,504,650	\$ 3,378,487	\$ 7,883,137	\$ 1,126,162	\$ 1,530,000	\$ 19,952,436	\$ 199,524	\$ 199,524	\$ 199,524	
11	2033	\$ 4,594,743	\$ 3,446,057	\$ 8,040,800	\$ 1,148,686	\$ 1,560,600	\$ 20,351,485	\$ 203,515	\$ 203,515	\$ 203,515	
12	2034	\$ 4,686,638	\$ 3,514,978	\$ 8,201,616	\$ 1,171,659	\$ 1,591,812	\$ 20,758,515	\$ 207,585	\$ 207,585	\$ 207,585	
13	2035	\$ 4,780,370	\$ 3,585,278	\$ 8,365,648	\$ 1,195,093	\$ 1,623,648	\$ 21,173,685	\$ 211,737	\$ 211,737	\$ 211,737	
14	2036	\$ 4,875,978	\$ 3,656,983	\$ 8,532,961	\$ 1,218,994	\$ 1,656,121	\$ 21,597,159	\$ 215,972	\$ 215,972	\$ 215,972	
15	2037	\$ 4,973,497	\$ 3,730,123	\$ 8,703,620	\$ 1,243,374	\$ 1,689,244	\$ 22,029,102	\$ 220,291	\$ 220,291	\$ 220,291	
16	2038	\$ 5,072,967	\$ 3,804,725	\$ 8,877,693	\$ 1,268,242	\$ 1,723,029	\$ 22,469,684	\$ 224,697	\$ 224,697	\$ 224,697	
17	2039	\$ 5,174,427	\$ 3,880,820	\$ 9,055,246	\$ 1,293,607	\$ 1,757,489	\$ 22,919,078	\$ 229,191	\$ 229,191	\$ 229,191	
18	2040	\$ 5,277,915	\$ 3,958,436	\$ 9,236,351	\$ 1,319,479	\$ 1,792,639	\$ 23,377,459	\$ 233,775	\$ 233,775	\$ 233,775	
19	2041	\$ 5,383,473	\$ 4,037,605	\$ 9,421,078	\$ 1,345,868	\$ 1,828,492	\$ 23,845,008	\$ 238,450	\$ 238,450	\$ 238,450	
20	2042	\$ 5,491,143	\$ 4,118,357	\$ 9,609,500	\$ 1,372,786	\$ 1,865,061	\$ 24,321,909	\$ 243,219	\$ 243,219	\$ 243,219	
21	2043	\$ 5,600,966	\$ 4,200,724	\$ 9,801,690	\$ 1,400,241	\$ 1,902,363	\$ 24,808,347	\$ 248,083	\$ 248,083	\$ 248,083	
22	2044	\$ 5,712,985	\$ 4,284,739	\$ 9,997,724	\$ 1,428,246	\$ 1,940,410	\$ 25,304,514	\$ 253,045	\$ 253,045	\$ 253,045	
23	2045	\$ 5,827,245	\$ 4,370,434	\$ 10,197,678	\$ 1,456,811	\$ 1,979,218	\$ 25,810,604	\$ 258,106	\$ 258,106	\$ 258,106	
24	2046	\$ 5,943,790	\$ 4,457,842	\$ 10,401,632	\$ 1,485,947	\$ 2,018,803	\$ 26,326,816	\$ 263,268	\$ 263,268	\$ 263,268	
25	2047	\$ 6,062,665	\$ 4,546,999	\$ 10,609,664	\$ 1,515,666	\$ 2,059,179	\$ 26,853,352	\$ 268,534	\$ 268,534	\$ 268,534	
26	2048	\$ 6,183,919	\$ 4,637,939	\$ 10,821,858	\$ 1,545,980	\$ 2,100,362	\$ 27,390,419	\$ 273,904	\$ 273,904	\$ 273,904	
27	2049	\$ 6,307,597	\$ 4,730,698	\$ 11,038,295	\$ 1,576,899	\$ 2,142,369	\$ 27,938,228	\$ 279,382	\$ 279,382	\$ 279,382	
Total (27 Years)		\$ 121,687,450	\$ 91,265,587	\$ 212,953,037	\$ 30,421,862	\$ 34,260,838	\$ 524,849,613	\$ 10,496,992	\$ 5,248,496		
NPV @ 8% (27 Years)		\$ 39,498,473	\$ 29,623,855	\$ 69,122,328	\$ 9,874,618	\$ 8,947,383	\$ 166,014,041	\$ 1,660,140	\$ 1,660,140		

² Assumes CID obligations issued on a taxable basis at an 8% interest rate. Final rate will be subject to the terms of the Agreement.

DISTRICT PROJECT AGREEMENT
AMONG THE
CITY OF DARDENNE PRAIRIE, MISSOURI,
KALECO LLC,
THE ENCORE COMMUNITY IMPROVEMENT DISTRICT
AND
THE ENCORE TRANSPORTATION DEVELOPMENT DISTRICT
Dated: April 12, 2023

TABLE OF CONTENTS

Recitals 1

ARTICLE I

INCORPORATED ITEMS; DEFINITIONS; EXHIBITS

Section 1.01 Definitions 2
Section 1.02 Exhibits 6

ARTICLE II

PROJECT

Section 2.01 Project 6
Section 2.02 Acquisition 7
Section 2.03 Schedule 7
Section 2.04 City Approvals to Control 7
Section 2.05 Substantial Completion 7
Section 2.06 Insurance 7
Section 2.07 Application of Prevailing Wage, Public Bidding and Other Laws 8
Section 2.08 Community Benefit Payment 8

ARTICLE III

EXCUSABLE DELAY

Section 3.01 Excusable Delay 8

ARTICLE IV

COMMUNITY IMPORVEMENT DISTRICT

Section 4.01 Creation of CID; CID Sales Tax 9
Section 4.02 Construction of the CID Project; Dedication 10
Section 4.03 Approval of CID Project Costs 10
Section 4.04 Application of CID Sales Tax Revenues; Reimbursement of CID
Project Costs; Issuance of CID Obligations 11
Section 4.05 Governance of the CID 11
Section 4.06 Repeal of the CID Sales Tax; Dissolution of the CID 12

ARTICLE V

TRANSPORTATION DEVELOPMENT DISTRICT

Section 5.01 Creation of TDD; TDD Sales Tax 12
Section 5.02 Construction of the TDD Project; Dedication 13
Section 5.03 Approval of TDD Project Costs 13

Section 5.04	Application of TDD Sales Tax Revenues; Reimbursement of TDD Project Costs; Issuance of TDD Obligations	14
Section 5.05	Governance of the TDD	15
Section 5.06	Repeal of the TDD Sales Tax; Dissolution of the TDD.....	15

ARTICLE VI

DEFAULT AND REMEDIES

Section 6.01	Default	15
Section 6.02	Remedies; Results of Termination.....	16

ARTICLE VII

GENERAL PROVISIONS

Section 7.01	Modifications; Successors and Assigns	16
Section 7.02	Right to Transfer Project Site; Assignment of Development Agreement	16
Section 7.03	Indemnification and Hold Harmless.....	16
Section 7.04	Notice	17
Section 7.05	Severability.....	19
Section 7.06	Governing Law; Venue.....	19
Section 7.07	Developer’s Right of Termination	19
Section 7.08	Counterparts	19
Section 7.09	Reimbursement of City Expenses.....	19
Section 7.10	Federal Work Authorization Program.....	20
Section 7.11	Recording	20
Section 7.12	City Consents and Approvals	20
Section 7.13	Representations.....	20

- Exhibit A – Legal Description of the Project Site
- Exhibit B – Concept Site Plan
- Exhibit C – Description of CID Project and TDD Project
- Exhibit D – Form of Certificate of Substantial Completion
- Exhibit E – Form of Certificate of Reimbursable Project Costs

DISTRICT PROJECT AGREEMENT

THIS DISTRICT PROJECT AGREEMENT (this “*Agreement*”) is made and entered into as of April 12, 2023, by and among the **CITY OF DARDENNE PRAIRIE, MISSOURI** (the “*City*”), a fourth-class city and political subdivision of the State of Missouri, **KALECO LLC** (the “*Master Developer*”), a Missouri limited liability company, and upon their respective formation, **THE ENCORE COMMUNITY IMPROVEMENT DISTRICT** (the “*CID*”), a community improvement district and political subdivision of the State of Missouri, and **THE ENCORE TRANSPORTATION DEVELOPMENT DISTRICT** (the “*TDD*”), a transportation development district and political subdivision of the State of Missouri (the *City*, the *Master Developer*, the *CID* and the *TDD* may each be referred to herein as a “*Party*,” and collectively as the “*Parties*”).

RECITALS

A. The *Master Developer* is the owner under contract of certain real property comprising a total of approximately 17.25 acres of land located at the northwest intersection of Feise Road and Bryan Road in the *City* (as legally described on **Exhibit A**, the “*Project Site*”), upon which the *Master Developer* wishes to construct, or cause to be constructed, a mixed-use development consisting of approximately 190 residential rental apartments and approximately 25,000 square feet of commercial/retail space in three phases, together with necessary site improvements and public infrastructure (the “*Project*”).

B. On March 28, 2023, the *Master Developer* caused a Petition for the Creation of a Community Improvement District (the “*CID Petition*”) to be submitted to the *City* in accordance with Sections 67.1401 to 67.1571 of the Revised Statutes of Missouri (the “*CID Act*”), requesting that the *City* adopt an ordinance creating the *CID* for the purpose of funding certain public improvements in connection with the *Project* (a summary of which improvements are described in **Exhibit C** hereto, a “*CID Project*”).

C. The *CID Petition* contemplates that the *CID*, upon its formation and approval by the qualified voters in the *CID*, will impose a one percent sales and use tax on all retail sales made in the boundaries of the *CID* that are subject to taxation pursuant to the provisions of Sections 144.010 to 144.525, inclusive, of the Revised Statutes of Missouri, with certain exceptions listed in the *CID Act* (the “*CID Sales Tax*”).

D. On April 12, 2023, the Board of Aldermen held a duly-noticed public hearing concerning the establishment of the *CID* in accordance with the requirements of the *CID Act* and, thereafter, the Board of Aldermen adopted Ordinance No. _____ approving the *CID Petition* and establishing the *CID* (the “*Approving CID Ordinance*”).

E. Following acquisition of the *Project Site*, the *Master Developer* will submit a petition to the Circuit Court of St. Charles County, Missouri, to form the *TDD* (the “*TDD Petition*”) pursuant to Sections 238.200 to 238.280 of the Revised Statutes of Missouri (the “*TDD Act*”) for the purpose of funding certain transportation-related projects in connection with the *Project* (as further described in **Exhibit C** hereto, the “*TDD Project*”).

F. The *TDD Petition* will provide that, upon its formation and approval by the qualified voters in the *TDD*, the *TDD* will impose a one percent sales tax on all retail sales made in the boundaries of the *TDD* that are subject to taxation pursuant to the provisions of Sections 144.010 to 144.525, inclusive, of the Revised Statutes of Missouri, with certain exceptions listed in the *TDD Act* (the “*TDD Sales Tax*”).

G. The revenues generated from the CID Sales Tax and the TDD Sales Tax will be used to reimburse the Master Developer for CID Project Costs and/or TDD Project Costs (as defined herein) and to pay the operating costs of the CID and the TDD.

H. The City and the Master Developer have also entered into that certain Master Development and Performance Agreement dated as of April 12, 2023, in connection with the Project (the “*Master Development Agreement*”).

I. The Parties desire to enter into this Agreement to (1) provide for the process by which (a) the CID and the TDD will be formed and operated, (b) the CID Project and the TDD Project will be constructed and maintained, and (c) the CID Sales Tax Revenues and the TDD Sales Tax Revenues (each as defined herein) will be used to reimburse the Master Developer for CID Project Costs and/or TDD Project Costs (each as defined herein); and (2) provide assurances to the City regarding the same.

NOW, THEREFORE, for and in consideration of the foregoing Recitals (which are incorporated into this Agreement as an integral part hereof) and the promises, covenants and agreements contained herein, the Parties do hereby agree as follows:

ARTICLE I

INCORPORATED ITEMS; DEFINITIONS; EXHIBITS

Section 1.01 Definitions. In addition to the terms defined elsewhere in this Agreement and the Master Development Agreement, the following capitalized words and terms shall have the following meanings:

“*Annual CID Operating Fund Deposit*” means (a) for the initial Fiscal Year of the CID, the sum of \$15,000, and (b) for each subsequent Fiscal Year, an amount equal to 102% of the then-prior Fiscal Year’s Annual CID Operating Fund Deposit. Funds remaining unspent in the CID Operating Fund at the end of each Fiscal Year shall be carried over to the following Fiscal Year and reduce the amount of the required Annual CID Operating Fund Deposit.

“*Annual TDD Operating Fund Deposit*” means (a) for the initial Fiscal Year of the TDD, the sum of \$15,000, and (b) for each subsequent Fiscal Year, an amount equal to 102% of the then-prior Fiscal Year’s Annual TDD Operating Fund Deposit. Funds remaining unspent in the TDD Operating Fund at the end of each Fiscal Year shall be carried over to the following Fiscal Year and reduce the amount of the required Annual TDD Operating Fund Deposit.

“*Approving CID Ordinance*” means Ordinance No. _____, adopted by the Board of Aldermen on April 12, 2023.

“*Bond Counsel*” means Gilmore & Bell, P.C., or another an attorney or firm of attorneys having nationally recognized standing in the field of tax-exempt municipal bonds approved by the CID Board of Directors and the TDD Board of Directors, with the written consent of the City Administrator.

“*Certificate of Reimbursable CID Project Costs*” means a Certificate of Reimbursable Project Costs in substantially the same form of **Exhibit E** attached hereto, to be delivered by the Master Developer pursuant to **Section 4.03**. The aggregate amount of Reimbursable CID Project Costs pursuant to one or more Certificates of Reimbursable CID Project Costs shall not exceed \$2,874,323, plus accrued interest, the Costs

of Issuance related to any CID Obligations, and any payments to the City made pursuant to the Initial Funding Agreement.

“*Certificate of Reimbursable TDD Project Costs*” means a Certificate of Reimbursable Project Costs in substantially the same form of **Exhibit E** attached hereto, to be delivered by the Master Developer pursuant to **Section 5.03**. The aggregate amount of Reimbursable TDD Project Costs pursuant to one or more Certificates of Reimbursable TDD Project Costs shall not exceed \$2,978,772, plus accrued interest, the Costs of Issuance related to any TDD Obligations, and any payments to the City made pursuant to the Initial Funding Agreement.

“*Certificate of Substantial Completion*” means a Certificate of Substantial Completion in substantially the same form as **Exhibit D** attached hereto, to be delivered by the Master Developer pursuant to **Section 2.05**.

“*CID*” means The Encore Community Improvement District, and its successors and assigns.

“*CID Obligations*” means notes, bonds or other obligations issued by or on behalf of the CID to finance or refinance the CID Project Costs pursuant to the CID Act and this Agreement.

“*CID Operating Fund*” means the fund of that name established by the CID pursuant to **Section 4.04**.

“*CID Petition*” means the petition authorizing the formation of the CID pursuant to the CID Act.

“*CID Project*” means the public improvements constructed as part of the Project, as further described in **Exhibit C** hereto.

“*CID Project Costs*” means the actual costs incurred in connection with the CID Project that are eligible under the CID Act and approved pursuant to **Section 4.03** to be paid by the CID.

“*CID Sales Tax*” means the one percent (1%) community improvement district sales and use tax to be imposed by the CID for a period not to exceed twenty-seven (27) years from the date of creation of the CID on all retail sales made in the boundaries of the CID that are subject to taxation pursuant to the provisions of Sections 144.010 to 144.525, inclusive, of the Revised Statutes of Missouri, with certain exceptions listed in the CID Act.

“*CID Sales Tax Revenues*” means the revenues of the CID Sales Tax imposed by the CID, collected by the Missouri Department of Revenue, received by the CID and deposited in the CID Sales Tax Trust Fund less (a) any costs of collecting the CID Sales Tax retained by the Missouri Department of Revenue, (b) any amount paid under protest until the protest is withdrawn or resolved against the taxpayer, (c) any sum received by the CID that is the subject of a suit or other claim communicated to the CID that challenges the collection of such sum until such suit or claim is resolved in favor of the CID, and (d) any amount set aside in escrow pursuant to State law that the CID reasonably believes was collected and/or paid erroneously.

“*CID Trust Fund*” means “The Encore Community Improvement District Sales Tax Trust Fund” established by the CID pursuant to **Section 4.04**.

“*City*” means the City of Dardenne Prairie, Missouri, and its successors and assigns.

“*City Administrator*” means the person duly appointed as City Administrator pursuant to the Municipal Code.

“*Community Benefit Payment*” shall have the meaning set forth in **Section 2.08**.

“*Concept Site Plan*” means the detailed final plan or final plans approved by the City for the Project Site in conjunction with the Article IV of Chapter 405 of the Municipal Code, as the same may be amended, a copy of which is attached as **Exhibit B** hereto.

“*Construction Inspector*” means the City Engineer of the City or his or her designee.

“*Costs of Issuance*” means all costs reasonably incurred by or on behalf of the CID and/or the TDD in furtherance of the issuance of the CID Obligations and/or the TDD Obligations, respectively, including, but not limited to, the fees and expenses of financial advisors and consultants, the fees and expenses of the CID’s and/or the TDD’s attorneys (including district counsel, the City Attorney, and Bond Counsel), the fees and expenses of the Master Developer’s attorneys, any administrative fees and expenses (including fees and costs of planning consultants and other advisors), underwriters’ discounts and fees, the costs of printing any obligations and any official statements relating thereto, the cost, if any, of credit enhancement, capitalized interest, debt services reserves and the fees of any rating agency rating any obligations.

“*Fiscal Year*” means the fiscal year of the CID and the TDD established by the respective board of directors. The Fiscal Year of the CID and the TDD shall at all times be the same as that of the City, which, as of the date of this Agreement, is January 1 through December 31.

“*Initial Funding Agreement*” means the Initial Funding Agreement dated as of October 5, 2022, between the City and Mia Rose Investments LLC, as may be amended from time to time in accordance with its terms.

“*Master Developer*” means KaLeCo LLC, and its permitted successors and assigns.

“*Municipal Code*” means the Municipal Code of the City of Dardenne Prairie, Missouri, as the same may be amended from time to time.

“*Prime Rate*” means the Prime Rate reported in the “Money Rates” column or any successor column of *The Wall Street Journal*, currently defined therein as the base rate on corporate loans posted by at least 75% of the nation’s 30 largest banks. If *The Wall Street Journal* ceases publication of the Prime Rate, then “Prime Rate” shall mean the “Prime Rate” or “base rate” announced by UMB Bank, N.A., or any successor thereto.

“*Project*” shall have the meaning set forth in the Master Development Agreement.

“*Project Site*” means the area described on **Exhibit A** attached hereto.

“*Reimbursable CID Project Costs*” means all actual and reasonable costs and expenses that are incurred by or at the direction of the Master Developer with respect to construction of the CID Project, as set forth in **Exhibit C**, including the actual and reasonable cost of labor and materials payable to contractors, builders, suppliers, vendors and materialmen in connection with the construction contracts awarded for the CID Project that is constructed or undertaken by the Master Developer, plus all actual and reasonable costs to plan, finance, develop, design and acquire the CID Project, including the following:

(a) all Costs of Issuance incurred in connection with the issuance of the CID Obligations;

(b) all planning, legal, administrative and other costs of the Master Developer associated with the CID Project including, but not limited to, legal and administrative costs incurred or charged in connection with the creation of the CID and the negotiation of this Agreement; and

(c) all other items of expense not elsewhere specified in this definition which may be necessary or incidental to the review, approval, acquisition, construction, improvement and financing of the CID Project and which may lawfully be paid or incurred by the CID under the CID Act, but which shall not exceed, in the aggregate \$2,874,323, plus accrued interest and Costs of Issuance related to any CID Obligations and any payments to the City made pursuant to the Initial Funding Agreement.

The Community Benefit Payment is not a Reimbursable CID Project Cost.

“*Reimbursable TDD Project Costs*” means all actual and reasonable costs and expenses that are incurred by or at the direction of the Master Developer with respect to construction of the TDD Project, as set forth in **Exhibit C**, including the actual and reasonable cost of labor and materials payable to contractors, builders, suppliers, vendors and materialmen in connection with the construction contracts awarded for the TDD Project that is constructed or undertaken by the Master Developer, plus all actual and reasonable costs to plan, finance, develop, design and acquire the TDD Project, including the following:

(a) all Costs of Issuance incurred in connection with the issuance of the TDD Obligations;

(b) all planning, legal, administrative and other costs of the Master Developer associated with the TDD Project including, but not limited to, legal and administrative costs incurred or charged in connection with the creation of the TDD and the negotiation of this Agreement; and

(c) all other items of expense not elsewhere specified in this definition which may be necessary or incidental to the review, approval, acquisition, construction, improvement and financing of the TDD Project and which may lawfully be paid or incurred by the TDD under the TDD Act, but which shall not exceed, in the aggregate \$2,978,772, plus accrued interest and Costs of Issuance related to any TDD Obligations and any payments to the City made pursuant to the Initial Funding Agreement.

The Community Benefit Payment is not a Reimbursable TDD Project Cost.

“*Related Party*” shall have the meaning set forth in the Master Development Agreement.

“*TDD*” means The Encore Transportation Development District, and its successors and assigns.

“*TDD Obligations*” means notes, bonds or other obligations issued by or on behalf of the TDD to finance or refinance the TDD Project Costs pursuant to the TDD Act and this Agreement.

“*TDD Operating Fund*” means the fund of that name established by the TDD pursuant to **Section 5.04**.

“*TDD Petition*” means the petition authorizing the formation of the TDD pursuant to the TDD Act.

“*TDD Project*” means the transportation-related projects constructed as part of the Project, as further described in **Exhibit C** hereto.

“*TDD Project Costs*” means the actual costs incurred in connection with the TDD Project that are eligible under the TDD Act and approved pursuant to **Section 5.03** to be paid by the TDD.

“*TDD Sales Tax*” means the one percent (1%) transportation development district sales tax to be imposed by the TDD for a period not to exceed forty (40) years from the date of creation of the TDD on all retail sales made in the boundaries of the TDD that are subject to taxation pursuant to the provisions of Sections 144.010 to 144.525, inclusive, of the Revised Statutes of Missouri, with certain exceptions listed in the TDD Act.

“*TDD Sales Tax Revenues*” means the revenues of the TDD Sales Tax imposed by the TDD, collected by the Missouri Department of Revenue, received by the TDD and deposited in the TDD Sales Tax Trust Fund *less* (a) any costs of collecting the TDD Sales Tax retained by the Missouri Department of Revenue, (b) any amount paid under protest until the protest is withdrawn or resolved against the taxpayer, (c) any sum received by the TDD that is the subject of a suit or other claim communicated to the TDD that challenges the collection of such sum until such suit or claim is resolved in favor of the TDD, and (d) any amount set aside in escrow pursuant to State law that the TDD reasonably believes was collected and/or paid erroneously.

“*TDD Trust Fund*” means “The Encore Transportation Development District Sales Tax Trust Fund” established by the TDD pursuant to **Section 5.04**.

“*Trust Indenture*” means any trust indenture, financing agreement, loan agreement or other instrument entered into by the CID and or the TDD in connection with the issuance of the CID Obligations and/or the TDD Obligations, in form and substance mutually acceptable to the CID and/or the TDD, as applicable, and the City, as amended from time to time.

“*State*” means the State of Missouri.

Section 1.02 Exhibits. The following exhibits are attached to and incorporated into this Agreement:

- Exhibit A – Legal Description of the Project Site
- Exhibit B – Concept Site Plan
- Exhibit C – Description of CID Project and TDD Project
- Exhibit D – Form of Certificate of Substantial Completion
- Exhibit E – Form of Certificate of Reimbursable Project Costs

ARTICLE II

PROJECT

Section 2.01 Project. Subject to the terms and conditions of the Master Development Agreement and this Agreement, the Master Developer shall construct, or cause the construction of, the Project, including the CID Project and the TDD Project, in accordance with all applicable federal, State and local laws, rules, regulations, ordinances and approvals.

Section 2.02 Acquisition. The Master Developer has acquired or has an option to acquire all real property within the Project Site necessary to complete the Project.

Section 2.03 Schedule. The Master Developer shall commence and substantially complete, or cause the commencement and substantial completion of, the CID Project and the TDD Project, in accordance with the following schedule (subject to extension under the conditions set forth in **Section 3.01** or as approved in writing by the City Administrator):

<u>Activity</u>	<u>Performance Deadline</u>
Obtain title to the Project Site	September 29, 2023
Commencement of CID Project	January 1, 2024
Substantial Completion of CID Project	December 31, 2030
Commencement of TDD Project	January 1, 2024
Substantial Completion of TDD Project	December 31, 2030

Section 2.04 City Approvals to Control. The Master Developer shall obtain or cause to be obtained all necessary zoning, building and other permits and approvals in conjunction with the completion of the Project. Notwithstanding anything to the contrary contained herein, the City's applicable zoning, building and other permits and approvals shall control the development of the Project.

Section 2.05 Substantial Completion. After substantial completion of the CID Project or the TDD Project, as applicable, in accordance with the provisions of this Agreement, the Master Developer shall furnish a Certificate of Substantial Completion to the Construction Inspector certifying the substantial completion of the CID Project or the TDD Project, as applicable. The Construction Inspector shall, within forty-five (45) days following receipt of the Certificate of Substantial Completion (the "*Inspection Period*"), carry out such inspections as he deems necessary to verify to his or her reasonable satisfaction the accuracy of the certifications contained in the Certificate of Substantial Completion.

If the City fails to approve or reject a Certificate of Substantial Completion in writing within such 45-day period, then the Master Developer shall notify the City in writing of the City's failure to take action on that Certificate of Substantial Completion and the City shall have 45 days from receipt of such notice to accept or reject that Certificate of Substantial Completion in writing. If the City has not accepted or rejected the Certificate of Substantial Completion within such 45-day period, the Certificate of Substantial Completion shall be deemed accepted by the City. If the appropriate City official rejects a Certificate of Substantial Completion, such rejection shall specify in reasonable detail in what respects the Master Developer has failed to complete the CID Project or the TDD Project, as applicable, in reasonable accordance with the provisions of this Agreement, or in what respects the Master Developer is otherwise in default, and what measures or acts the Master Developer must take or perform, in the good faith opinion of such City official, to obtain such acceptance.

Section 2.06. Insurance. The Master Developer will cause there to be insurance for the Project, including the CID Project or the TDD Project, in the manner and the amounts set forth in the Master Development Agreement at all times during the term of this Agreement. The Master Developer shall also provide evidence of contractual liability insurance (in form and substance reasonably acceptable to the City Attorney) covering the Master Developer's obligations to indemnify the City as provided in this Agreement,

by an insurance company with a rating by a reputable rating agency indicating excellent or superior financial strength (i.e., an A.M. Best rating of “A:VI” or better). The Master Developer agrees to provide immediate written notice to the City when a cancellation, termination, expiration or modification of the contractual liability policy occurs. All insurance policies shall name the CID and the TDD as additional insureds and loss payees, as applicable. The Master Developer shall, from time to time at the request of the City, the CID and/or the TDD furnish certificates of insurance evidencing said coverage. The Master Developer shall furnish the City with an additional insured endorsement (“AIE”) issued by each applicable insurance carrier to evidence the coverages required in this subsection, which AIE shall utilize the Standard ISO Additional Insured Endorsement, 1985 Broad Form. The certificates and AIE for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf, and are to be received and approved by the City. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Section 2.07. Application of Prevailing Wage, Public Bidding and Other Laws. To the extent that prevailing wage, public bidding or other requirements of State and local laws, codes and regulations (including, but not limited to, the requirement for payment and performance bonds) apply to any portion of the Project, including the CID Project and TDD Project, the Master Developer covenants and agrees to take all such actions as are necessary to comply with such laws, regulations or requirements, and the City shall cooperate with the Master Developer to the extent required to comply with the foregoing requirements. The Master Developer shall indemnify and hold harmless the City from any liability resulting from failure of either the Master Developer or any contractor or subcontractor to pay prevailing wages or to otherwise comply with any public bidding or other requirements of State and local laws, codes and regulations that apply to any portion of the Project, including the CID Project and the TDD Project.

Section 2.08. Community Benefit Payment. The City may have additional capital expenses in the future related to the maintenance of the public infrastructure dedicated to the City in connection with the CID Project and/or the TDD Project. In order to offset such costs, the Master Developer shall make a community benefit payment to the City in the amount of \$71,000 on December 1 each year for 5 years beginning December 1, 2023 (the “*Community Benefit Payment*”). The City may use the Community Benefit Payment for any proper governmental purpose. Notwithstanding any assignment of this Agreement, the Master Developer shall not be released from its obligation pursuant to this Section without the City Administrator’s explicit prior written consent. The Community Benefit Payment is not a Reimbursable CID Project Cost or a Reimbursable TDD Project Cost.

ARTICLE III

EXCUSABLE DELAY

Section 3.01 Excusable Delay. Notwithstanding anything to the contrary contained herein, the schedule for completion of the CID Project and the TDD Project described in **Section 2.03** shall be automatically extended by the number of days of delay caused by actions or events beyond the control of the Master Developer, including, without limitation, damage or destruction by fire or casualty, strike, lockout, civil disorder, war, restrictive government regulations, lack of issuance of any permits and/or legal authorization by the governmental entity necessary for the construction and occupation of the Project (provided that reasonable efforts have been made to obtain said permits/authorizations and all conditions precedent to the issuance of said permits and/or authorizations have been met), shortage or delay in shipment of material or fuel, acts of God, pandemic, unusually adverse weather or wet soil conditions, or other like causes beyond the Master Developer’s reasonable control, including without limitation any litigation, court order or judgment resulting from any litigation affecting the validity of this Agreement

(collectively, an “*Excusable Delay*”). The Parties agree that as of the date of this Agreement, no condition or event exists that would justify an Excusable Delay. Notwithstanding the foregoing, no Excusable Delay will be deemed to exist unless the Master Developer notifies the City in writing of such Excusable Delay within 30 days after the commencement of the event causing such Excusable Delay (or within 30 days after the date that the Master Developer should reasonably have determined that such event will cause such Excusable Delay). An Excusable Delay shall not include any condition or circumstance caused or extended by the Master Developer or Related Party, the CID or the TDD or attributable to the action or inaction of the Master Developer or Related Party, the CID or the TDD, and the Master Developer or applicable Related Party shall have the burden of proof in establishing such Excusable Delay. If unforeseen site conditions on the Project Site, or applicable portion thereof, such as unknown environmental contamination or geotechnical conditions not identified prior to the inception of the CID Project or the TDD Project, as applicable, cause significant delay in preparing the applicable portion of the Project Site for construction of the CID Project or the TDD Project, as applicable, the deadlines provided in **Section 2.03** shall be extended for that period of time which the Master Developer can demonstrate to the reasonable satisfaction of the City Administrator to be necessary to remediate such conditions.

ARTICLE IV

COMMUNITY IMPROVEMENT DISTRICT

Section 4.01 Creation of CID; CID Sales Tax.

(a) Pursuant to the CID Act the CID Petition and the Authorizing CID Ordinance, the CID was formed on April 12, 2023. Following the acquisition of the Project Site by the Master Developer, the Master Developer shall cause the Board of Directors of the CID to submit a ballot proposition to the CID’s qualified voters to authorize the imposition of the CID Sales Tax. So long as the CID is in existence, the CID’s boundaries shall, at all times, cover, at a minimum, all portions of the Project Site used for commercial/retail uses.

(b) The existence of the CID is expressly contingent upon the closing of the transaction contemplated by that certain Commercial Sale Contract – Land dated October 8, 2021 between Cora Bopp Family Limited Partnership, L.P. and the Master Developer (as amended and assigned, the “*Sale Contract*”). In the event the transaction contemplated by the Sale Contract fails to close prior to September 30, 2023, the existence of the CID shall automatically terminate and any outstanding CID Obligations issued by or on behalf of the CID shall be null and void. In addition, if the Board of Directors of the CID fails to authorize and execute this Agreement within 30 days following the acquisition of the Project Site by the Master Developer (subject to any extension granted by the City in its sole and absolute discretion), at the written request of the City, the Master Developer covenants and agrees to execute all necessary documents and assist the City in abolishment of the CID in accordance with the CID Act.

(c) Upon the formation of the CID and approval of the CID Sales Tax by the qualified voters of the CID, the CID shall promptly notify the Missouri Department of Revenue of the imposition of the CID Sales Tax. The CID shall maintain the levy of the CID Sales Tax until the earlier of (i) the reimbursement to the Master Developer for all CID Project Costs identified in all approved Certificates of Reimbursable CID Project Costs pursuant to **Section 4.04** and/or all of the CID Obligations contemplated by this Agreement have been paid in full, or (ii) twenty-seven (27) years from the effective date of the Authorizing CID Ordinance. The CID will not impose a property tax, a special assessment, or fee to finance the CID Project without the prior written consent of the City.

Section 4.02 Construction of the CID Project; Dedication.

(a) The Master Developer shall construct the CID Project on behalf of the CID in accordance with all applicable laws and regulations. The Master Developer shall be responsible for obtaining all permits, approvals and authorizations required by any federal, State or local authority for the construction of the CID Project.

(b) Upon completion of the storm sewer infrastructure portion of the CID Project shown on the Concept Site Plan, as approved and finalized (the "*Storm Sewer Infrastructure Portion of the CID Project*"), the Master Developer shall dedicate the Storm Sewer Infrastructure Portion of the CID Project to the City; provided, however, that the City shall only accept dedication of the Storm Sewer Infrastructure Portion of the CID Project if it meets all requirements for dedication set forth in the Municipal Code.

Section 4.03 Approval of CID Project Costs. The Master Developer shall advance all costs of constructing the CID Project. CID Project Costs incurred by the Master Developer in connection with the CID Project will be eligible for reimbursement upon submission by the Master Developer, and acceptance by the City and the CID, of a Certificate of Reimbursable CID Project Costs, as set forth below:

(a) The Master Developer may submit to the City and the CID no more frequently than once per month, a Certificate of Reimbursable CID Project Costs in substantially the form attached as **Exhibit E** hereto. Said certificate shall be accompanied by itemized invoices, receipts or other information that will demonstrate to the City's and the CID's satisfaction that any cost has been incurred and qualifies for reimbursement pursuant to this Agreement. The categories of costs itemized in **Exhibit C** shall be accepted as CID Project Costs provided that said costs relate to the CID Project, are accepted by the City and the CID pursuant to this section and are otherwise eligible costs for reimbursement by the CID under the CID Act.

(b) The City shall notify the Master Developer in writing within 30 days after each submission of its approval or disapproval of the costs identified in each Certificate of Reimbursable CID Project Costs. If the City determines that any cost identified as a CID Project Cost is not a CID Project Cost under this Agreement or the CID Act, the City shall so notify the Master Developer in writing within 30 days after the submission, identifying the ineligible cost and the basis for determining the cost to be ineligible. The Master Developer shall then have the right to identify and substitute other costs as CID Project Costs, which shall be included with a supplemental application for payment submitted within 30 days after the City's notification of any ineligible costs. The City shall then review and notify the Master Developer in writing within 30 days after submission of its approval or disapproval of the costs identified in the supplemental application for payment.

(c) The Master Developer shall provide such information as the City or the CID may request, and shall make its books and records available to the City and the CID, in order for the City and the CID to confirm that any cost qualifies under this Agreement and has been incurred and paid by the Master Developer.

(d) Notwithstanding anything to the contrary herein, Reimbursable CID Project Costs shall not exceed \$2,874,323, plus accrued interest, the Costs of Issuance related to any CID Obligations and any payments made to the City pursuant to the Initial Funding Agreement, nor shall the Master Developer be entitled to any reimbursement until (a) the City verifies to its reasonable satisfaction that the costs to be reimbursed have been incurred, (b) the acceptance or deemed acceptance of the Certificate of Substantial Completion by the City, and (c) the City has accepted dedication of the Storm Sewer Infrastructure Portion of the CID Project.

Section 4.04 Application of CID Sales Tax Revenues; Reimbursement of CID Project Costs; Issuance of CID Obligations.

(a) The CID shall establish the CID Operating Fund and the CID Trust Fund. All CID Sales Tax Revenues received by the CID in each Fiscal Year shall be deposited as follows:

(1) First, CID Sales Tax Revenues up to the applicable Annual CID Operating Fund Deposit shall be deposited into the CID Operating Fund; and

(2) Second, all remaining CID Sales Tax Revenues shall be deposited into the CID Trust Fund.

(b) The CID shall use money deposited into the CID Operating Fund to pay the costs of administering and operating the CID and any other any other lawful purpose approved by the CID's Board of Directors (including, without limitation, transferring any moneys not needed for the administration and operation of the CID to the CID Trust Fund).

(c) Following the approval or deemed approval of the Certificate of Substantial Completion related to the CID Project, the CID shall use money deposited into the CID Trust Fund to reimburse the Master Developer for the CID Project Costs identified in all approved Certificates of Reimbursable CID Project Costs. The CID shall, subject to annual appropriation, make payments to the Master Developer from the CID Trust Fund on each January 1, April 1, July 1 and October 1 (or if such date is not a business day, the next business day thereafter), without interest, to the extent (1) the CID has money in the CID Trust Fund, and (2) the Master Developer has not yet been reimbursed by the CID for the CID Project Costs identified in all approved Certificates of Reimbursable CID Project Costs.

(d) Notwithstanding anything to the contrary contained herein, the CID may, in lieu of the payments described in subsection (c) above, and following approval or deemed approval of the Certificate of Substantial Completion related to the CID Project and an occupancy of at least 50% of the total square feet of retail space as shown on the Concept Site Plan, as approved and finalized, issue or cause to be issued CID Obligations and use the proceeds thereof to reimburse the Master Developer for the CID Project Costs identified in all approved or deemed approved Certificates of Reimbursable CID Project Costs (provided, however, no CID Obligations may be issued without the prior written permission of the City). If CID Obligations are issued, the CID shall apply money deposited into the CID Trust Fund, subject to annual appropriation, as set forth in the Trust Indenture. Any CID Obligations held by the Master Developer or an Related Party shall bear interest at a variable rate equal to (i) Prime Rate (not to exceed 10%) if the interest on the CID Obligations (in the opinion of Bond Counsel) is not excluded from gross income for federal income tax purposes (the "*Taxable Rate*"), or (ii) Prime Rate less two percent (2.0%) (not to exceed 10%) if the interest on the CID Obligations (in the opinion of Bond Counsel) is excluded from gross income for federal income tax purposes (the "*Tax-Exempt Rate*"). Interest which remains unpaid on any CID Obligations held by the Master Developer or a Related Party on any payment date shall not be compounded. If CID Obligations are issued, the CID agrees to cause the officer of the CID at any time charged with the responsibility of formulating budget proposals to include in the budget proposal submitted to the CID for each fiscal year that the CID Obligations are outstanding, a request for an appropriation of CID Sales Tax Revenues for application to the payment of CID Obligations in accordance with this Agreement and the Trust Indenture.

Section 4.05 Governance of the CID. The Master Developer and any successor in title to all or any portion of the Project Site, in their role as an entity that can designate authorized representatives to serve on the Board of Directors of the CID, shall cause the CID to be governed in accordance with the CID

Act and all other applicable laws. In furtherance thereof, the CID shall engage a qualified administrator or qualified legal counsel to assist in managing the operations of the CID and ensuring compliance with applicable laws. For so long as the CID is in existence, unless otherwise agreed to in writing by the City, two of the members of the CID Board of Directors shall be selected by the City (collectively, the “*City Appointees*”). The City Appointees may, but need not be, City officials or employees. The Master Developer hereby agrees to execute a proxy agreement or adopt a resolution designating the City Appointees as its legally authorized representatives for the limited purpose of qualifying those individuals to act as directors under the CID Act. The Master Developer shall, with respect to any portion of the Project Site owned by the Master Developer within the CID and sold following execution of this Agreement, require that each sale agreement contain a provision obligating such buyer to comply with the provisions of this section.

Section 4.06 Repeal of the CID Sales Tax; Dissolution of the CID. Unless otherwise agreed to in writing among the Parties, upon the earliest of (i) the reimbursement to the Master Developer for all CID Project Costs identified in all approved Certificates of Reimbursable CID Project Costs pursuant to **Section 4.04(c)** and/or all CID Obligations having been paid in full, or (ii) 27 years following the creation of the CID, the Parties shall, at the CID’s and/or the Master Developer’s cost, implement the procedures in the CID Act for repeal of the CID Sales Tax and abolishment of the CID. The Master Developer covenants and agrees to execute all necessary documents and assist the CID and the City in the repeal of the CID Sales Tax and abolishment of the CID in accordance with the CID Act. The covenants contained in this Section shall survive expiration or earlier termination of this Agreement.

ARTICLE V

TRANSPORTATION DEVELOPMENT DISTRICT

Section 5.01 Creation of TDD; TDD Sales Tax.

(a) Following the execution of this Agreement by the City and the Master Developer and the acquisition of the Project Site, the Master Developer shall (i) petition the Circuit Court of St. Charles County, Missouri for the creation of the TDD and (ii) cause the Board of Directors of the TDD to submit a ballot proposition to the TDD’s qualified voters to authorize the imposition of the TDD Sales Tax. So long as the TDD is in existence, the TDD’s boundaries shall, at all times, cover, at a minimum, all portions of the Project Site used for commercial/retail uses. The City agrees to cooperate with and assist the Master Developer and any applicable Phase Developer in all proceedings relating to the creation of the TDD. The petition to create the TDD shall expressly state that the TDD’s continued existence shall be expressly contingent upon the Board of Directors of the TDD authorizing and executing this Agreement within 30 days following formation (subject to any extension granted by the City Administrator in his sole and absolute discretion).

(b) Upon the formation of the TDD and approval of the TDD Sales Tax by the qualified voters of the TDD, the TDD shall promptly notify the Missouri Department of Revenue of the imposition of the TDD Sales Tax. The TDD shall maintain the levy of the TDD Sales Tax until the earlier of (i) the reimbursement to the Master Developer for all TDD Project Costs identified in all approved Certificates of Reimbursable TDD Project Costs pursuant to **Section 5.04** and/or all of the TDD Obligations contemplated by this Agreement have been paid in full, or (ii) forty (40) years from creation of the TDD. The TDD will not impose a property tax, a special assessment, a toll or fee to finance the TDD Project without the prior written consent of the City.

Section 5.02 Construction of the TDD Project; Dedication.

(a) The Master Developer shall construct the TDD Project on behalf of the TDD in accordance with all applicable laws and regulations. The Master Developer shall be responsible for obtaining all permits, approvals and authorizations required by any federal, State or local authority for the construction of the TDD Project.

(b) Upon completion of the portion of the TDD Project shown on the Concept Site Plan, as approved and finalized, to be located in the City right-of-way (the "*Public ROW Portion of the TDD Project*"), the Master Developer shall dedicate the Public ROW Portion of the TDD Project to the City; provided, however, that the City shall only accept dedication of the Public ROW Portion of the TDD Project if it meets all requirements for dedication set forth in the Municipal Code. Following dedication to the City, the City shall only accept for maintenance, in accordance with the requirements of the Municipal Code, the Public ROW Portion of the TDD Project as a part of its public street system, in perpetuity.

Section 5.03 Approval of TDD Project Costs. The Master Developer shall advance all costs of constructing the TDD Project. TDD Project Costs incurred by the Master Developer in connection with the TDD Project will be eligible for reimbursement upon submission by the Master Developer, and acceptance by the City and the TDD, of a Certificate of Reimbursable TDD Project Costs, as set forth below:

(a) The Master Developer may submit to the City and the TDD no more frequently than once per month, a Certificate of Reimbursable TDD Project Costs in substantially the form attached as **Exhibit E** hereto. Said certificate shall be accompanied by itemized invoices, receipts or other information that will demonstrate to the City's and the TDD's satisfaction that any cost has been incurred and qualifies for reimbursement pursuant to this Agreement. The categories of costs itemized in **Exhibit C** shall be accepted as TDD Project Costs provided that said costs relate to the TDD Project, are accepted by the City and the TDD pursuant to this section and are otherwise eligible costs for reimbursement by the TDD under the TDD Act.

(b) The City shall notify the Master Developer in writing within 30 days after each submission of its approval or disapproval of the costs identified in each Certificate of Reimbursable TDD Project Costs. If the City determines that any cost identified as a TDD Project Cost is not a TDD Project Cost under this Agreement or the TDD Act, the City shall so notify the Master Developer in writing within 30 days after the submission, identifying the ineligible cost and the basis for determining the cost to be ineligible. The Master Developer shall then have the right to identify and substitute other costs as TDD Project Costs, which shall be included with a supplemental application for payment submitted within 30 days after the City's notification of any ineligible costs. The City shall then review and notify the Master Developer in writing within 30 days after submission of its approval or disapproval of the costs identified in the supplemental application for payment.

(c) The Master Developer shall provide such information as the City or the TDD may request, and shall make its books and records available to the City and the TDD, in order for the City and the TDD to confirm that any cost qualifies under this Agreement and has been incurred and paid by the Master Developer.

(d) Notwithstanding anything to the contrary herein, Reimbursable TDD Project Costs shall not exceed \$2,978,772, plus accrued interest, the Costs of Issuance related to any TDD Obligations and any payments made to the City pursuant to the Initial Funding Agreement, nor shall the Master Developer be entitled to any reimbursement until (a) the City verifies to its

reasonable satisfaction that the costs to be reimbursed have been incurred, (b) the acceptance or deemed acceptance of the Certificate of Substantial Completion by the City, and (c) the City has accepted dedication of the Public ROW Portion of the TDD Project, and accepted for maintenance, in accordance with the requirements of the Municipal Code, the Public ROW Portion of the TDD Project as a part of its public street system, in perpetuity.

Section 5.04 Application of TDD Sales Tax Revenues; Reimbursement of TDD Project Costs; Issuance of TDD Obligations.

(a) The TDD shall establish the TDD Operating Fund and the TDD Trust Fund. All TDD Sales Tax Revenues received by the TDD in each Fiscal Year shall be deposited as follows:

(1) First, TDD Sales Tax Revenues up to the applicable Annual TDD Operating Fund Deposit shall be deposited into the TDD Operating Fund; and

(2) Second, all remaining TDD Sales Tax Revenues shall be deposited into the TDD Trust Fund.

(b) The TDD shall use money deposited into the TDD Operating Fund to pay the costs of administering and operating the TDD and any other any other lawful purpose approved by the TDD's Board of Directors (including, without limitation, transferring any moneys not needed for the administration and operation of the TDD to the TDD Trust Fund).

(c) Following the approval or deemed approval of the Certificate of Substantial Completion related to the TDD Project, the TDD shall use money deposited into the TDD Trust Fund to reimburse the Master Developer for the TDD Project Costs identified in all approved Certificates of Reimbursable TDD Project Costs. The TDD shall, subject to annual appropriation, make payments to the Master Developer from the TDD Trust Fund on each January 1, April 1, July 1 and October 1 (or if such date is not a business day, the next business day thereafter), without interest, to the extent (1) the TDD has money in the TDD Trust Fund, and (2) the Master Developer has not yet been reimbursed by the TDD for the TDD Project Costs identified in all approved Certificates of Reimbursable TDD Project Costs.

(d) Notwithstanding anything to the contrary contained herein, the TDD may, in lieu of the payments described in subsection (c) above, and following approval or deemed approval of the Certificate of Substantial Completion related to the TDD Project and an occupancy of at least 50% of the total square feet of retail space as shown on the Concept Site Plan, as approved and finalized, issue or cause to be issued TDD Obligations and use the proceeds thereof to reimburse the Master Developer for the TDD Project Costs identified in all approved or deemed approved Certificates of Reimbursable TDD Project Costs (provided, however, no TDD Obligations may be issued without the prior written permission of the City Administrator). If TDD Obligations are issued, the TDD shall apply money deposited into the TDD Trust Fund, subject to annual appropriation, as set forth in the Trust Indenture. Any TDD Obligations held by the Master Developer or an Related Party shall bear interest at a variable rate equal to (i) Prime Rate (not to exceed 10%) if the interest on the TDD Obligations (in the opinion of Bond Counsel) is not excluded from gross income for federal income tax purposes (the "*Taxable Rate*"), or (ii) Prime Rate less two percent (2.0%) (not to exceed 10%) if the interest on the TDD Obligations (in the opinion of Bond Counsel) is excluded from gross income for federal income tax purposes (the "*Tax-Exempt Rate*"). Interest which remains unpaid on any TDD Obligations held by the Master Developer or a Related Party on any payment date shall not be compounded. If TDD Obligations are issued, the TDD agrees to cause the officer of the TDD at any time charged with the responsibility of formulating budget proposals to include in the budget proposal submitted to the TDD for each fiscal year that the TDD Obligations are outstanding, a request for

an appropriation of TDD Sales Tax Revenues for application to the payment of TDD Obligations in accordance with this Agreement and the Trust Indenture.

Section 5.05 Governance of the TDD. The Master Developer and any successor in title to all or any portion of the Project Site, in their role as an entity that can designate authorized representatives to serve on the Board of Directors of the TDD, shall cause the TDD to be governed in accordance with the TDD Act and all other applicable laws. In furtherance thereof, the TDD shall engage a qualified administrator or qualified legal counsel to assist in managing the operations of the TDD and ensuring compliance with applicable laws. For so long as the TDD is in existence, unless otherwise agreed to in writing by the City, two of the members of the TDD Board of Directors shall be designated by the City in its sole discretion (collectively, the “*City Appointees*”). The City Appointees may, but need not be, City officials or employees. The Master Developer hereby agrees to execute a proxy agreement or adopt a resolution designating the City Appointees as its legally authorized representatives for the limited purpose of qualifying those individuals to act as directors under the TDD Act. The Master Developer shall, with respect to any portion of the Project Site owned by the Master Developer within the TDD and sold following execution of this Agreement, require that each sale agreement contain a provision obligating such buyer to comply with the provisions of this section.

Section 5.06 Repeal of the TDD Sales Tax; Dissolution of the TDD. Unless otherwise agreed to in writing among the Parties, upon the earliest of (i) the reimbursement to the Master Developer for all TDD Project Costs identified in all approved Certificates of Reimbursable TDD Project Costs pursuant to **Section 5.04** and/or all TDD Obligations having been paid in full, or (ii) 40 years following the creation of the TDD, the Parties shall, at the TDD’s and/or the Master Developer’s cost, implement the procedures in the TDD Act for repeal of the TDD Sales Tax and abolishment of the TDD. The Master Developer covenants and agrees to execute all necessary documents and assist the TDD and the City in the repeal of the TDD Sales Tax and abolishment of the TDD in accordance with the TDD Act. The covenants contained in this Section shall survive expiration or earlier termination of this Agreement.

ARTICLE VI

DEFAULT AND REMEDIES

Section 6.01 Default. The occurrence and continuance of the following shall constitute an “Event of Default” subject to any excusable delay permitted by **Section 3.01**:

(a) the Master Developer fails to make the Community Benefit Payment required to be paid under the terms of this Agreement within 10 business days after written notice and demand given by the City to the Master Developer;

(b) the City, the CID, the TDD or the Master Developer fails to perform any of its material obligations hereunder with respect to the Project for a period of 30 days (or such longer period as the City Administrator (if the CID, the TDD and/or the Master Developer is the defaulting party) or the Master Developer (if the City is the defaulting party) may agree in writing) following written notice to the defaulting party of such failure, or if such failure is not subject to cure within such 30 days after such notice, the defaulting party fails to initiate action to cure the default within such 30 days after such notice is given and fails to pursue such action diligently; or

(d) any representation of the City, the Master Developer or applicable Phase Developer contained herein with respect to the applicable phase of the Project proves to be

materially false or erroneous and is not corrected or brought into compliance within 30 days (or such longer period as the City (if the CID, the TDD and/or the Master Developer is the defaulting party) or the Master Developer (if the City is the defaulting party) may agree in writing) following written notice to the defaulting party specifying the false or erroneous representation and requiring it to be remedied, or if such matter is not subject to cure within such 30 days after such notice, the defaulting party fails to initiate action to cure the default within such 30 days after such notice is given and fails to pursue such action diligently.

Section 6.02 Remedies; Results of Termination. Upon the occurrence of an Event of Default, the City may institute such proceedings as it deems necessary or desirable to cure and remedy such Event of Default, including but not limited to proceedings to compel specific performance or to terminate this Agreement. If this Agreement is terminated, any CID Obligations and TDD Obligations held by the Master Developer or a Related Party shall, at the direction of the City, be declared null, void and cancelled.

ARTICLE VII

GENERAL PROVISIONS

Section 7.01 Modifications; Successors and Assigns. The terms, conditions and provisions of this Agreement shall not be modified or amended except by mutual agreement in writing among the Parties (provided, that if the Master Developer no longer owns any of the Project Site, the Master Developer need not be a party to any modification or amendment). This Agreement shall be binding upon and inure to the benefit of the Parties and their respective assigns and successors in interest or title to all or any portion of the Project Site; provided, however, the Master Developer may not assign its rights under this Agreement except in accordance with the provisions of **Section 7.02**.

Section 7.02 Right to Transfer Project Site; Assignment of District Project Agreement. The Master Developer may, at any time, sell, lease, assign, transfer, convey and/or otherwise dispose of its interest in the Project Site or any portion thereof and assign its rights and obligations under this Agreement or any portion thereof upon the conditions and in compliance with the terms of **Section 6.3** of the Master Development Agreement and evidence of the assignee's compliance with **Section 2.06** and **Section 7.10** of this Agreement.

Section 7.03 Indemnification and Hold Harmless.

(a) The indemnification and covenants contained in this Section shall survive expiration or earlier termination of this Agreement.

(b) The Master Developer agrees that, anything to the contrary herein notwithstanding, it will defend, indemnify and hold harmless the City, the CID, the TDD, and their respective governing body members, employees, agents and independent contractors against any and all claims, demands, actions, causes of action, loss, damage, injury, liability and/or expense (including attorneys' fees and court costs) resulting from, arising out of, or in any way connected with:

- (1) the Master Developer's failure to comply with any provision of this Agreement;
- (2) the negligence or intentional misconduct of the Master Developer or a Related Party, or their respective officers, employees and agents;

(3) the presence of hazardous wastes, hazardous materials or other environmental contaminants on any property within the Project Site; or

(4) the construction of the Project, the Master Developer's failure to comply with any applicable State, federal or local laws, regulations and ordinances as applicable to the Project Site or the construction of the Project, the creation of the CID and/or the TDD, the imposition of the CID Sales Tax and/or the TDD Sales Tax, the adoption of the Approving CID Ordinance, or the approval, execution or administration of this Agreement.

If the validity or construction of the CID Act, the TDD Act, the Approving CID Ordinance and/or any other ordinance of the City adopted in connection with this Agreement, the CID, the TDD, or the Project are contested in court, the Master Developer shall defend, hold harmless and indemnify the City, the CID and the TDD from and against all claims, demands and/or liabilities of any kind whatsoever including, without limitation, any claim for attorney fees and court costs, and the Master Developer shall pay any monetary judgment and all court costs rendered against the City, the CID and the TDD.

(c) Notwithstanding anything herein to the contrary, the City shall not be liable to the Master Developer, the CID or the TDD for damages or otherwise if all or any part of the CID Act, the TDD Act, the Approving CID Ordinance and/or any other ordinance of the City adopted in connection with this Agreement, the CID, the TDD or the Project is declared invalid or unconstitutional in whole or in part by the final (as to which all rights of appeal have expired or have been exhausted) judgment of any court of competent jurisdiction.

(d) Notwithstanding the foregoing terms of this Section, the Master Developer are not obligated to defend, hold harmless or indemnify (1) the City with respect to any matter or expense resulting from or arising out of the gross negligence or willful misconduct of the City, (3) the CID with respect to any matter or expense resulting from or arising out of the gross negligence or willful misconduct of the CID, or (3) the TDD with respect to any matter or expense resulting from or arising out of the gross negligence or willful misconduct of the TDD.

Section 7.04 Notice. Whenever notice or other communication is called for herein to be given or is otherwise given pursuant hereto, it shall be in writing and shall be personally delivered or sent by registered or certified mail, return receipt requested, addressed as follows:

(a) In the case of the City, to:

City of Dardenne Prairie, Missouri
2032 Hanley Road
Dardenne Prairie, Missouri 63368
Attn: City Administrator

with copies to:

Hamilton Weber LLC
200 N. Third Street
St. Charles, Missouri 63301
Attn: John A. Young, Esq.

and

Gilmore & Bell, P.C.
One Metropolitan Square, Suite 2000
St. Louis, Missouri 63102
Attn: Shannon W. Creighton, Esq.

- (b) In case of the Master Developer, to:

KaLeCo LLC
210 Dogwood Prairie Dr.
Dardenne Prairie, MO 63368
Attn: James A. Cook, Jr.

with a copy to:

Sandberg Phoenix & von Gontard, P.C.
120 South Central Avenue, Suite 1600
Clayton, Missouri 63105
Attn: Andrew C. Ruben, Esq.

- (c) In case of the CID, to:

The Encore Community Improvement District
210 Dogwood Prairie Dr.
Dardenne Prairie, MO 63368
Attn: Chairman

with a copy to:

Sandberg Phoenix & von Gontard, P.C.
120 South Central Avenue, Suite 1600
Clayton, Missouri 63105
Attn: Andrew C. Ruben, Esq.

- (d) In case of the TDD, to:

The Encore Transportation Development District
210 Dogwood Prairie Dr.
Dardenne Prairie, MO 63368
Attn: Chairman

with a copy to:

Sandberg Phoenix & von Gontard, P.C.
120 South Central Avenue, Suite 1600
Clayton, Missouri 63105
Attn: Andrew C. Ruben, Esq.

All said notices by mail shall be deemed given on the day of deposit in the mail. A change of designated officer or address may be made by a Party by providing written notice of such request to the other party.

Section 7.05 Severability. The provisions of this Agreement shall be deemed severable. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions of this Agreement shall remain valid unless the court finds that the valid provisions are so essentially and inseparably connected with and so dependent upon the invalid provision that it cannot be presumed that the parties hereto would have agreed to the valid provisions of this Agreement, or unless the court finds the valid provisions, standing alone, are incomplete and incapable of being executed in accordance with the intent of the Parties.

Section 7.06 Governing Law; Venue; Consent to Jurisdiction; Waiver of Jury Trial . This Agreement shall be governed by and construed in accordance with the laws of the State. THE PARTIES HEREBY IRREVOCABLY (A) SUBMIT TO THE EXCLUSIVE JURISDICTION OF ANY MISSOURI STATE COURT SITTING IN ST. CHARLES COUNTY, MISSOURI, IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, (B) AGREE THAT ALL CLAIMS IN RESPECT TO SUCH SUIT, ACTION OR PROCEEDING MAY BE HELD AND DETERMINED IN ANY OF SUCH COURTS, (C) WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH ANY PARTY MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT, AND (D) WAIVE ANY CLAIM THAT SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVE THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY ACTION IN WHICH THE PARTIES HERETO ARE PARTIES RELATING TO OR ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

Section 7.07 Master Developer's Right of Termination. At any time prior to acceptance or deemed acceptance of the Certificate of Substantial Completion, the Master Developer may, by giving written notice to the City, the CID and the TDD, terminate this Agreement. Upon termination of this Agreement, the Parties shall have no further rights or obligations hereunder except as may expressly survive termination.

Section 7.08 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

Section 7.09 Reimbursement of City Expenses.

(a) Mia Rose Investments LLC has heretofore advanced, pursuant to the Initial Funding Agreement, the aggregate sum of \$20,000.00 to pay and/or reimburse the City for planning, legal, engineering, administrative and other costs associated with the creation of the CID and the TDD, the negotiation of this Agreement and the Project.

(b) As provided for in the Master Development Agreement, the Master Developer hereby agrees to provide to the City any additional sum necessary to pay and/or reimburse the City for any planning, legal, engineering, administrative and other costs associated with the creation of the CID and the TDD, the negotiation of this Agreement, the Costs of Issuance relating to the CID Obligations and the TDD Obligations and the Project.

(c) All sums advanced to the City under the Initial Funding Agreement and subsection (b) above shall constitute CID Project Costs and/or TDD Project Costs, as applicable, and may be reimbursed to the Master Developer as provided for in this Agreement.

Section 7.10 Federal Work Authorization Program. The Master Developer’s reimbursement under this Agreement is a “grant in excess of five thousand dollars” pursuant to Section 285.530.2 of the Revised Statutes of Missouri. Accordingly, the Master Developer must comply with and satisfy the requirements of Section 285.530.2 of the Revised Statutes of Missouri, which requires (1) any business entity receiving such a grant to, by sworn affidavit and provision of documentation, annually affirm its enrollment and participation in a federal work authorization program with respect to the employees of such business entity, and (2) every such business entity to annually sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien. The Master Developer or subsequent owner shall provide such affidavit and documentation to the City, the CID and the TDD upon execution of this Agreement and annually on or before November 15 of each year during the term of this Agreement, beginning November 15, 2023.

Section 7.11 Recording. The Master Developer shall, within 30 days of execution by the CID and the TDD, record this Agreement in the real property records of the St. Charles County Recorder of Deeds and upon such recording shall provide a copy to the City.

Section 7.12 City Consents and Approvals. The Mayor or City Administrator is authorized to execute all documents on behalf of the City as may be required to carry out and comply with the intent of this Agreement. The Mayor or City Administrator, when authorized by the City, shall grant on behalf of the City such consents, estoppels and waivers relating to this Agreement as may be requested during the term hereof.

Section 7.13 Representations.

(a) *By the City.* The City represents, warrants, covenants and agrees as a basis for the undertakings on its part contained herein that:

(1) The City is a fourth-class city organized and existing under the laws of the State, and by proper action has been duly authorized to execute, deliver and perform this Agreement.

(2) To the best of the City’s knowledge, there are no lawsuits either pending and served or threatened that would affect the ability of the City to perform this Agreement.

(b) *By the Master Developer.* The Master Developer represents, warrants, covenants and agrees as the basis for the undertakings on its part herein contained that:

(1) The Master Developer is a limited liability company duly organized and existing under the laws of the State and has power to enter into, and by proper action has been duly authorized to execute, deliver and perform, this Agreement.

(2) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement, conflicts with or results in a breach of any of the terms, conditions or provisions of any restriction, agreement or instrument to which the Master Developer is now a party or by which the Master Developer is bound.

(3) There are no lawsuits either pending or threatened that would affect the ability of the Master Developer to proceed with the completion or operation of the Project.

(4) Pursuant to Section 34.600 of the Revised Statutes of Missouri (the “*Anti-Boycott Act*”), the Master Developer hereby certifies to the City, the CID and TDD that the Master Developer (including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies or related parties of the Master Developer) is not currently engaged in and shall not, for the duration of this Agreement, engage in a boycott of goods or services from the State of Israel, companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel, or persons or entities doing business in the State of Israel within the meaning of the Anti-Boycott Act. The foregoing certification shall not be deemed an admission or agreement that the Anti-Boycott Act is applicable to this Agreement but the foregoing certification is provided if the Anti-Boycott Act is applicable. If the Anti-Boycott Act is initially deemed or treated as applicable to this Agreement but it is subsequently determined not to apply to this Agreement for any reason including by reason of applicable federal law including, without limitation, 50 U.S.C. Section 4607, the repeal or amendment of the Anti-Boycott Act or any ruling of a court of competent jurisdiction as to the unenforceability or invalidity of the Anti-Boycott Act, then the foregoing certification shall cease and not exist.

(c) *By the CID.* The CID represents, warrants, covenants and agrees as a basis for the undertakings on its part contained herein that:

(1) The CID is a community improvement district organized and existing under the laws of the State, and by proper action has been duly authorized to execute, deliver and perform this Agreement.

(2) To the best of the CID’s knowledge, there are no lawsuits either pending or threatened that would affect the ability of the CID to perform this Agreement.

(d) *By the TDD.* The TDD represents, warrants, covenants and agrees as a basis for the undertakings on its part contained herein that:

(1) The TDD is a transportation development district organized and existing under the laws of the State, and by proper action has been duly authorized to execute, deliver and perform this Agreement.

(2) To the best of the TDD’s knowledge, there are no lawsuits either pending or threatened that would affect the ability of the TDD to perform this Agreement.

[Remainder of Page Intentionally Left Blank]

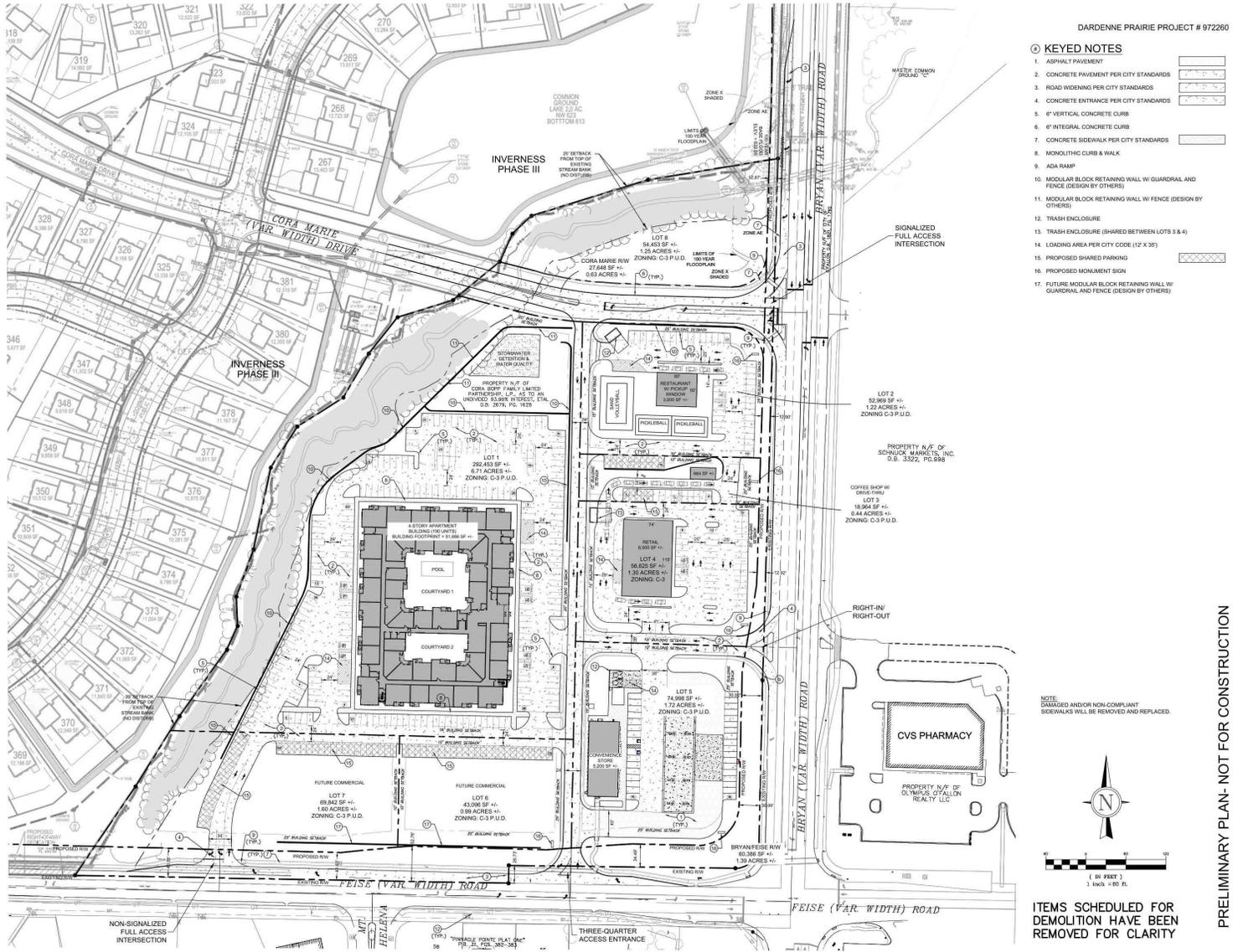
EXHIBIT A

LEGAL DESCRIPTION OF THE PROJECT SITE

A tract of land being part of Section 1, Township 46 North — Range 2 East, St. Charles County, Missouri and being more particularly described as:

Commencing at a point in the North line of property described in deed to Cora Bopp Family Limited Partnership, L.P., etal, recorded in Book 2679 page 1626 of the St. Charles County records, being the Southwest corner of "Bryan Meadows Subdivision", a subdivision according to the plat thereof recorded in Plat Book 9 page 19 of the St. Charles County records; thence Eastwardly along the North line of said Bopp property, being also the South line of said "Bryan Meadows Subdivision", South 89 degrees 03 minutes 52 seconds East 1248.44 feet to a point in the West line of Bryan Road, 100 feet wide, as widened by deed recorded in Book 1884 page 71 of the St. Charles County records; thence Southwardly along the West line of Bryan Road, 100 feet wide, as widened by said Book 1884 page 71, South 01 degree 42 minutes 05 seconds West 904.47 feet to the ACTUAL POINT OF BEGINNING; thence Southwardly along the West line of Bryan Road, 100 feet wide, as widened by said Book 1884 page 71 and by Book 1884 page 69 of the St. Charles County records, the following courses and distances: South 01 degree 42 minutes 05 seconds West 782.54 feet, South 01 degree 14 minutes 27 seconds West 247.69 feet and along a curve to the right whose radius point bears North 88 degrees 45 minutes 33 seconds West 35.00 feet from the last mentioned point, a distance of 54.66 feet to a point in the North line of Feise Road, varying width, as widened by the aforesaid Book 1884 page 69 of the St. Charles County records; thence Westwardly along said North line of Feise Road, as widened, North 89 degrees 17 minutes 03 seconds West 339.65 feet to the Northwest corner of said widening; thence Southwardly along the West line of said widening, South 01 degree 05 minutes 49 seconds West 26.73 feet to a point in the North line of Feise Road, 60 feet wide, said point being 20.00 feet perpendicularly distant North of the centerline; thence Westwardly along said North line of Feise Road, 60 feet wide, being 20.00 feet perpendicularly distant North of and parallel to the centerline, North 88 degrees 57 minutes 51 seconds West 650.09 feet to a point; thence leaving said road line, North 34 degrees 17 minutes 53 seconds East 161.25 feet to a point; thence North 31 degrees 55 minutes 13 seconds East 124.37 feet to a point; thence North 35 degrees 34 minutes 37 seconds East 122.38 feet to a point; thence North 24 degrees 25 minutes 54 seconds East 39.18 feet to a point; thence North 02 degrees 40 minutes 47 seconds West 43.80 feet to a point; thence North 19 degrees 57 minutes 42 seconds East 75.15 feet to a point; thence North 11 degrees 55 minutes 45 seconds East 125.52 feet to a point; thence North 32 degrees 51 minutes 47 seconds East 73.36 feet to a point; thence North 57 degrees 46 minutes 30 seconds East 81.67 feet to a point; thence North 29 degrees 59 minutes 37 seconds East 76.05 feet to a point; thence North 38 degrees 29 minutes 03 seconds East 69.58 feet to a point; thence North 72 degrees 44 minutes 24 seconds East 87.27 feet to a point; thence North 50 degrees 29 minutes 54 seconds East 91.27 feet to a point; thence North 23 degrees 49 minutes 56 seconds East 45.40 feet to a point; thence North 46 degrees 58 minutes 12 seconds East 39.05 feet to a point; thence North 72 degrees 48 minutes 18 seconds East 182.93 feet to a point; thence North 80 degrees 42 minutes 20 seconds East 197.54 feet to the point of beginning and containing 17.250 acres according to a survey by Volz Incorporated during March, 2022.

EXHIBIT B CONCEPT SITE PLAN



- DARDENNE PRAIRIE PROJECT # 972260
- KEYED NOTES**
1. ASPHALT PAVEMENT
 2. CONCRETE PAVEMENT PER CITY STANDARDS
 3. ROAD WIDENING PER CITY STANDARDS
 4. CONCRETE ENTRANCE PER CITY STANDARDS
 5. 6" VERTICAL CONCRETE CURB
 6. 6" INTEGRAL CONCRETE CURB
 7. CONCRETE SIDEWALK PER CITY STANDARDS
 8. MONOLITHIC CURB & WALK
 9. ADA RAMP
 10. MODULAR BLOCK RETAINING WALL W/ GUARDRAIL AND FENCE (DESIGN BY OTHERS)
 11. MODULAR BLOCK RETAINING WALL W/ FENCE (DESIGN BY OTHERS)
 12. TRASH ENCLOSURE
 13. TRASH ENCLOSURE (SHARED BETWEEN LOTS 3 & 4)
 14. LOADING AREA PER CITY CODE (12 X 30')
 15. PROPOSED SHARED PARKING
 16. PROPOSED MONUMENT SIGN
 17. FUTURE MODULAR BLOCK RETAINING WALL W/ GUARDRAIL AND FENCE (DESIGN BY OTHERS)

ENGENUITY
BUILDING VALUE
BY DESIGN

MIA ROSA HOLDINGS

**THE PRAIRIE ENCORE
P.U.D. AREA PLAN**

1575 BRYAN ROAD
DARDENNE PRAIRIE, MISSOURI 63366

PREPARED FOR: CONTACTS: TOM KAHMAN
JIM COOK

Project No: 22-0113

No.	Description	Date

DATE: 03-10-2025
SCALE: 1" = 60'

OVERALL
SITE PLAN
C300

EXHIBIT C

DESCRIPTION OF CID PROJECT AND TDD PROJECT

***CID Project Estimates**

CID Eligible

Silt Fence, SWPPP Maintenance	\$ 60,125
Grading (undercut, spoils, subgrade)	\$ 232,302
Backfill	\$ 81,280
Soil Import, Place/Compact	\$ 92,775
Roadway Seeding, Landscaping, Irrigation	\$ 200,000
Water Infrastructure - 8" C900, hydrants, etc.	\$ 440,170
Sanitary Sewer Infrastructure - 8" SDR35, laterals, manholes, etc.	\$ 531,800
Storm Sewer Infrastructure - 18" RCP, inlets, Cora Marie box culvert, headwalls, etc.	\$ 727,930
Bio-Retention Basin - 5200 sf	\$ 88,400
Site Electric - conduit, transformers to each parcel	\$ 43,200
Utility Borings (3) Under Bryan Road	\$ 255,000
Engenuity Civil Design (Infrastructure Only)	\$ 110,000
Volz Engineering (Infrastructure Only)	\$ 11,341
Estimated Total CID Costs	\$ 2,874,323

*Plus accrued interest and Costs of Issuance related to any CID Obligations and any payments to the City made pursuant to the Initial Funding Agreement.

***TDD Project Estimates**

TDD Eligible

Screenings to build up site and roadways	\$281,485
Bryan Road Access Lane	\$58,825
Cora Marie Pavement	\$133,130
Cora Marie Sidewalks	\$35,050
Feise Road Extension	\$45,600
Feise Road Sidewalks	\$14,125
Mono Curb and Sidewalks	\$99,117
ADA Ramps	\$12,000
Integral and Vertical Curbs	\$115,500
Striping	\$25,000
Bryan Road Traffic Signal	\$600,000
Guardrails of roadways	\$96,690
Signage	\$30,000
Estimated Total TDD Costs	\$2,978,772

*Plus accrued interest and Costs of Issuance related to any TDD Obligations and any payments to the City made pursuant to the Initial Funding Agreement.

EXHIBIT D

FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

CERTIFICATE OF SUBSTANTIAL COMPLETION - [CID][TDD] PROJECT

KALECO LLC (the “Master Developer”), pursuant to that certain District Project Agreement dated as of April 12, 2023 (the “Agreement”), among the City of Dardenne Prairie, Missouri (the “City”), the Master Developer, The Encore Community Improvement District and The Encore Transportation Development District hereby certifies to the City as follows:

1. That as of _____, 20___, the [CID][TDD] Project has been substantially completed in accordance with the Agreement.
2. The [CID][TDD] Project has been completed in a workmanlike manner and in accordance with all applicable zoning, building and other permits issued by the City, including the Approved Site Plan.
3. Lien waivers for the [CID][TDD] Project have been obtained.
4. This Certificate of Substantial Completion is accompanied by the project architect’s certificate of substantial completion on AIA Form G-704 (or the substantial equivalent thereof, a copy of which is attached hereto as Appendix A and by this reference incorporated herein), certifying that the [CID][TDD] Project has been substantially completed in accordance with the Agreement.
5. This Certificate of Substantial Completion is being issued by the Master Developer to the City in accordance with the Agreement to evidence the Master Developer’s satisfaction of all obligations and covenants with respect to the [CID][TDD] Project.
6. The City’s acceptance (below) in writing to this Certificate and the recordation of this Certificate with the St. Charles County Recorder, shall evidence the satisfaction of the Master Developer’s agreements and covenants to complete the [CID][TDD] Project.

This Certificate is given without prejudice to any rights against third parties which exist as of the date hereof or which may subsequently come into being.

All certifications or statements made or set forth in this Certificate of Substantial Completion are made solely for the benefit of the City and shall not be relied upon or used for any purpose by any third party in any proceeding, claim or contest of any kind, nature or character.

All capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand this ____ day of _____, 20__.

KALECO LLC

By: _____
Name: _____
Title: _____

ACCEPTED:

CITY OF DARDENNE PRAIRIE, MISSOURI

By: _____
Name: _____
Title: _____

(Insert Notary Form(s) and Legal Description)

EXHIBIT E

FORM OF CERTIFICATE OF REIMBURSABLE PROJECT COSTS

CERTIFICATE OF REIMBURSABLE [CID][TDD] PROJECT COSTS

TO: City of Dardenne Prairie, Missouri
2032 Hanley Road
Dardenne Prairie, Missouri 63368
Attn: City Administrator

[The Encore Community Improvement District]
[The Encore Transportation Development District]
7 Baxter Lane
Chesterfield, Missouri 63017
Attn: Chairman

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the District Project Agreement dated as of April 12, 2023 (the “*Agreement*”) among the City of Dardenne Prairie, Missouri (the “*City*”), KaLeCo LLC (the “*Master Developer*”), The Encore Community Improvement District and The Encore Transportation Development District. In connection with said Agreement, the undersigned hereby states and certifies that:

1. Each item listed on **Schedule 1** hereto is a [CID][TDD] Project Cost that was incurred in connection with the completion of the [CID][TDD] Project.
2. These [CID][TDD] Project Costs have been paid by the Master Developer and are reimbursable under the [CID][TDD] Act and the Agreement.
3. There has not been filed with or served upon the Master Developer any notice of any lien, right of lien or attachment upon or claim affecting the right of any person, firm or corporation to receive payment of the amounts stated in this request, except to the extent any such lien is being contested in good faith.
4. All necessary permits and approvals required for the [CID][TDD] Project are in full force and effect.
5. If any cost item to be reimbursed under this Certificate is deemed not to be eligible to be reimbursed by the TDD, the Master Developer shall have the right to substitute other eligible [CID][TDD] Project Costs for payment hereunder.
6. The Master Developer is not in default or breach of any term or condition of the Agreement.

Dated this ____ day of _____, 20 ____.

KALECO LLC

By: _____
Name: _____
Title: _____

ACCEPTED:

CITY OF DARDENNE PRAIRIE, MISSOURI

By: _____
Name: _____
Title: _____

**[THE ENCORE COMMUNITY IMPROVEMENT DISTRICT]
[THE ENCORE TRANSPORTATION DEVELOPMENT DISTRICT]**

By: _____
Name: _____
Title: _____

SCHEDULE 1
TO CERTIFICATE OF REIMBURSABLE PROJECT COSTS

BILL NO. 23-17 _____

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF DARDENNE PRAIRIE, MISSOURI,
AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE AN
INTERGOVERNMENTAL COOPERATION AGREEMENT WITH THE CITY OF
O'FALLON, MISSOURI, FOR CERTAIN ROADWAY IMPROVEMENTS**

WHEREAS, Sections 70.220 and 70.230, RSMo., as amended, authorize municipalities to contract and cooperate with another municipality for the planning, development, or construction of any public improvement; and

WHEREAS, the Board of Aldermen of the City of Dardenne Prairie, Missouri (the "City"), desires to enter into an Intergovernmental Cooperation Agreement with the City of O'Fallon to design and construct certain roadway improvements;

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF DARDENNE PRAIRIE, MISSOURI, AS FOLLOWS:

SECTION 1. That the form, terms, and provisions of the Intergovernmental Cooperation Agreement by and between the City of O'Fallon, Missouri, and the City of Dardenne Prairie, Missouri, attached hereto, marked as **Exhibit A**, and incorporated by reference herein, be and they hereby are approved and the City Administrator is hereby authorized, empowered and directed to further negotiate, execute, acknowledge, deliver and administer on behalf of the City such Intergovernmental Cooperation Agreement in substantially the form attached hereto. The City Clerk is hereby authorized and directed to attest to the Intergovernmental Cooperation Agreement and other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of the Intergovernmental Cooperation Agreement and this Ordinance.

SECTION 2. That the City Administrator is hereby further authorized and directed, on behalf of and in the name of the City, to agree to do any and all other acts and things and to execute and deliver any and all other documents, instruments and certificates, all as may be necessary and appropriate to consummate the above mentioned Intergovernmental Cooperation Agreement, and to perform all of the terms, provisions and conditions of the Intergovernmental Cooperation Agreement. Any and all acts which the City Administrator may do or perform in conformance with the powers conferred upon them by this Ordinance are hereby expressly authorized, approved, ratified and confirmed.

SECTION 3. Severability Clause: If any term, condition, or provision of this Ordinance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective and each and every remaining provision hereof shall be valid and shall be enforced to the fullest extent permitted by law, it being the intent of the Board of Aldermen that it would have enacted this Ordinance without the invalid or unenforceable provisions. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said

provision shall thereupon return to full force and effect without further action by the City and shall thereafter be binding.

SECTION 4. Effective Date: This Ordinance shall be in full force and take effect from and after its final passage and approval.

SECTION 5. Savings: Nothing contained herein shall in any manner be deemed or construed to alter, modify, supersede, supplant or otherwise nullify any other Ordinance of the City or the requirements thereof whether or not relating to or in any manner connected with the subject matter hereof, unless expressly set forth herein.

Read two (2) times and passed this _____ day of _____, 2023.

As Presiding officer and as Mayor

Approved this _____ day of _____, 2023.

Mayor

Attest: _____
City Clerk

EXHIBIT A

INTERGOVERNMENTAL COOPERATION AGREEMENT

This Intergovernmental Cooperation Agreement (the "Agreement") is entered into this ____ day of April 2023, by and between the City of O'Fallon, Missouri, ("O'Fallon") and the City of Dardenne Prairie, Missouri, ("Dardenne Prairie"), two municipal corporations and political subdivisions of the State of Missouri (collectively: "the Cities" or "the parties") located in St. Charles County.

WHEREAS, O'Fallon and Dardenne Prairie are adjoining cities which share many common boundary points; and

WHEREAS, O'Fallon and Dardenne Prairie have similar municipal revenue sources, provide similar kinds of services to their residents and visitors, and offer similar commercial and shopping environments and opportunities used by residents of both communities; and

WHEREAS, development of underutilized properties in areas where the two Cities adjoin one another is beneficial to both Cities in that it increases property tax revenues to help support school, fire, and other service districts and county-wide services for residents in both communities; and in that increased economic activity and investment and bringing new vendors to the area marketplace lifts both communities as well as the businesses located in them; and

WHEREAS, a developer has undertaken the construction of 381 homes at the northwest corner of Feise Road and Bryan Road as part of the Inverness residential development ("DP Residential Development"); and

WHEREAS, the Cities have been made aware of an interest on the part of a Commercial Developer to build on the remaining vacant tract of land containing approximately ten (10) acres at the northwest quadrant of the intersection of Feise Road and Bryan Road ("DP Commercial Development"); and

WHEREAS, the combined DP Residential Development and DP Commercial Development ("DP Development Project") are located exclusively within the Dardenne Prairie city limit and are adjacent to Bryan Road, a public roadway owned, maintained and regulated by the City of O'Fallon; and

WHEREAS, the developer of the DP Commercial Development has requested curb cuts and access to Bryan Road from the Commercial Development authorized under

an access agreement attached hereto as **Exhibit A** and such curb cut and access would also serve a certain portion of the DP Residential Development; and

WHEREAS, said DP Development Project, including access points on Bryan Road, will contribute additional traffic that will add to the need for improvements to the transportation network within both municipalities ("Future Roadway Project") as detailed within the Traffic Impact Study (the "TIS") prepared by Crawford, Bunte, Brammeier and dated September 22, 2021 attached as **Exhibit C**; and

WHEREAS, on the eastern side of Bryan Road, directly across from the DP Commercial Development, lies an approximately 16.4 acre tract of land located exclusively within the O'Fallon city limits, and is zoned and planned for commercial retail and office uses pursuant to the ordinances of O'Fallon and the 2021 Comprehensive Plan (the "COOF Commercial Property"); and

WHEREAS, the 2021 Comprehensive Plan further identifies significant future commercial development in the area referred to as the "Bryan Road Corridor" (the COOF Commercial Property and planned development in the Bryan Road Corridor being collectively referred to as the "O'Fallon Planned Development"); and

WHEREAS, the Cities are authorized by Sec. 70.220, RSMo., Supp 2010, to contract and cooperate with each other and their officials for the planning, development, construction, acquisition, or operation of any facility, or for a common service, when, as here, the subject and purposes of any such contract or cooperative action shall be within the scope of the powers of each City; and

WHEREAS, it is the desire and intent of O'Fallon and Dardenne Prairie, to facilitate the DP Development Project and the O'Fallon Planned Development, and, more importantly, facilitate more efficient traffic flow through the heavily-traveled intersection of Bryan and Feise Roads; and

WHEREAS, the parties therefore believe that it is in their mutual best interest to agree between themselves how future roadway funding is to be carried out for improvements to area of the intersection of Bryan Road and Feise Road so as to assure efficient and effective administration of governmental responsibilities; and

WHEREAS, the governing body of each City, by its approval and authorization of this Agreement, hereby finds, determines and declares that the arrangements and terms of cooperative action hereinafter set forth respect and properly retain the

sovereignty of each City within its jurisdiction and territorial limits in accord with Sec. 70.270, RSMo. 2000;

NOW, THEREFORE, for and in consideration of the mutual covenants and promises hereinafter set forth, the adequacy and sufficiency of which consideration is hereby acknowledged by each party, it is hereby agreed by and between O'Fallon and Dardenne Prairie as follows:

1. The Cities respective staffs shall coordinate and facilitate all processes, reviews, permitting, inspections, approvals, fee assessments and collection, and other administration of development activities in the Development Project with one another.
2. If the Dardenne Prairie Board of Alderman approves the development site as depicted on **Exhibit B** with the development located completely in the Dardenne Prairie City limit, then Dardenne Prairie ordinances and Zoning and Building Codes shall be the applicable body of law governing the use, site design, site preparation, escrows and construction for the proposed buildings and parking lots. All curb cuts and other improvements to allow access from the Development to Bryan Road shall be within the exclusive purview of the City of O'Fallon. All construction and installation of curb cuts and any improvements along Bryan Road shall be in accordance with the ordinances, plans, regulations and permit conditions of the City of O'Fallon. O'Fallon staff shall review the site plan, building plan, commercial and way-finding signage plans and similar site and infrastructure plans for the Development and make any necessary comments pertaining to access onto Bryan Road or any other impacts within O'Fallon City limits to the Dardenne Prairie staff prior to the Dardenne Prairie Planning and Zoning meeting that considers this application.
 3. The procedures to be followed and fees to be charged for land use approvals, site plan review and building permit issuance shall be those established by the City whose regulations are to govern the activity at issue pursuant to this Agreement. Fees shall be retained by the City that levies them. Any action arising out of, or concerning, this Agreement shall be brought only in the Circuit Court of St. Charles County, Missouri. All parties to this Agreement consent to the jurisdiction and venue of that court.
4. Missouri law governs the Cities sales and real estate tax collection.
5. The Cities agree that Bryan Road and the Future Roadway Project are vital to the success of the Development Project, the O'Fallon Planned Development and

the safe and efficient traffic flow of the surrounding area. Further, both Cities, within their jurisdiction, agree to maintain traffic controls consistent with the Manual on Uniform Traffic Control Devices (MUTCD) and further agree to support the findings detailed in **Exhibit C** (as subject to review and pending any necessary future changes recommended by a professional traffic operations engineer authorized to practice in the State of Missouri) as it relates to the necessary traffic improvements for the Future Roadway Project.

6. Funding for the Future Roadway Project is anticipated to be through a combination of sources including grants, developer contributions, and funds provided by each City. **Exhibit D** shows a proposed, preliminary funding allocation and breakdown.

6.1 Any additional funding which is secured for the Future Roadway Project, regardless of phase or source, shall be used to offset the total cost of the project. Any remaining costs which are not covered by the additional funding, shall be split between the O'Fallon and the Dardenne Prairie on a 33% / 67% basis, respectively.

6.2 The Future Roadway Project will likely require multiple phases due to the size, scope of cost of the improvements. The Cities agree to jointly seek funding for all phases of the Future Roadway Project.

6.3 The responsibility for project management (design, right-of-way acquisition and construction management and inspection) shall be mutually agreeable by the parties for each component of a phase. The parties shall work together in good faith with respect to designating responsibilities for each component of the work. The parties acknowledge that Dardenne Prairie and, possibly, the O'Fallon may need to hire third party consultants from time to time; the cost of such third party consultants shall be considered a project cost subject to the cost sharing provisions of this Agreement. During the design process, each city shall be given the meaningful opportunity to provide plan review comments and coordinate in the design review of the improvements.

6.4 O'Fallon and Dardenne Prairie agree that, prior to appropriating any funds for any part of the design, engineering, or construction of any portion of Phase I or Phase II, described in Paragraph 8 of this Agreement, an additional traffic study will be conducted for Phase I and Phase II. Notwithstanding the foregoing, the parties agree to share the costs of that study equally unless the study can be funded through future development opportunities. Prior to conducting the study, the two cities agree to

determine the appropriate growth factor to be used for the study based on the existing conditions at that time.

7. The Cities shall work with owners and developers of property within their respective city limits to acquire any required right-of-way dedication(s) and funding contribution(s) for the Future Roadway Project.

8. The expected timeline for the road projects is as follows:

8.1 Phase I – Signalization at Cora Marie and Bryan Road Intersection

8.1.1 No connection between Cora Marie and Bryan Road shall be made until such time that a signal is installed and operational at the proposed intersection. It is anticipated that the Developer of the DP Commercial Development will dedicate necessary right-of-way and pay the costs of this part of the project. In the event that the Commercial Developer fails to do so, then no connection will be made.

8.2 Phase II – Bryan Road and Feise Road Intersection Improvements

8.2.1 Design to begin by December 31, 2029 or earlier.

8.3 Phase III – Roadway Improvements along Bryan Road, south of Feise Road Intersection to Route 364.

8.3.1 Design to begin by December 31, 2032 or earlier.

9 It is understood by both Cities that obtaining additional funding and completing projects with the resulting stipulations from the funding sources can be a lengthy process. Should any additional funding be secured for the Future Roadway Project, regardless of phase or source, the timing requirements for the completion of design, right of way acquisition and construction may require 3-4 years, in total.

9.1 Each City shall be responsible for securing and negotiating funds from developers within the respective corporate limits.

9.2 Each City may utilize Transportation Development Districts, Community Improvement Districts, or other finance tools to the extent allowed by grant agencies (County Road Board, etc.).

9.2 Should a Transportation Development District or Community Improvement District be established for the purpose of contributing to the cost of the Roadwork Project, then any financial contribution shall reduce the overall cost of the Roadwork Project, regardless of which jurisdiction establishes the TDD or CID. The percentages set forth in Section 6.1 of this Agreement shall be based on the reduced amount. In other words, any financial contribution by virtue of a TDD or CID shall work to the advantage of both cities regardless of where the TDD or CID is established.

9.3 This Agreement assumes that the Cities successfully secure certain outside sources of funding for the Future Roadway Project. The Cities shall submit applications for and shall exhaust all possible options of funding. In the event that outside funding is not secured, in whole or in part, for the Future Roadway Project by the deadlines set forth in Paragraph 8 above, the Cities acknowledge that the scope of the required work may be reduced or divided into further phases. The Cities will work in good faith to accomplish work to alleviate traffic problems and facilitate better traffic flow in the area. Regardless of the amount of funding that is secured, the share of the costs shall remain the same.

9.4 During each Phase of the Future Roadway project, the secondary party shall pay to the primary party, as designated by the parties prior to design of the Phase, its share of the costs once each stage of the project (design, ROW, construction) begins. Any cost savings or overages on the project shall be shared between the Cities at the percentages set forth in Section 6.1 of this Agreement.

9.5 Any development agreements negotiated by the Cities with private developers or other entities, such as CIDs, shall address payment to the appropriate City for the roadwork. The developer(s) shall be required to pay their share of the project costs prior to receiving reimbursements from County grant funds.

9.6 If either the final estimates or the bids for any phase of the Future Roadway Project return higher costs than the budget provided for in **Exhibit C**, the Cities agree to meet and confer in order to find cost savings for the project by re-design, reducing and/or eliminating work items where possible. No additional costs will be incurred on any phase of the Future Road Project unless both Cities agree.

IN WITNESS WHEREOF, the parties have entered into this Intergovernmental Cooperation Agreement, in the prescribed form and manner, effective as of the day and year of the signature of the last party to execute the Agreement.

Executed by the City of O'Fallon this day of _____ , 20__

Executed by the City of Dardenne Prairie this day of _____ , 20__

CITY OF DARDENNE PRAIRIE, CITY OF O'FALLON, MISSOURI
MISSOURI

By: _____ By: _____

Title: _____ Title: _____

ATTEST:

ATTEST:

By: _____ By: _____

Title: _____ Title: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____ By: _____

Title: _____ Title: _____

Ordinance No.: _____ Ordinance No.: _____

Exhibit A

Exhibit B

Exhibit C

Exhibit D