

**AN ORDINANCE AUTHORIZING THE CITY OF ARNOLD, MISSOURI TO ISSUE ITS TAXABLE INDUSTRIAL REVENUE BONDS (CEDARHURST OF ARNOLD REAL ESTATE, LLC PROJECT), SERIES 2019, IN A PRINCIPAL AMOUNT NOT TO EXCEED \$10,000,000 FOR THE PURPOSE OF PROVIDING FUNDS TO PAY THE COSTS OF ACQUIRING, CONSTRUCTING AND EQUIPPING A FACILITY FOR AN INDUSTRIAL DEVELOPMENT PROJECT IN THE CITY; APPROVING A PLAN FOR THE PROJECT; AND AUTHORIZING THE MAYOR TO ENTER INTO CERTAIN AGREEMENTS AND TAKE CERTAIN OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF THE BONDS.**

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**WHEREAS**, the City of Arnold, Missouri, a third-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 purchase, construct, extend and equip 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 shall deem advisable; and

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

**WHEREAS**, a Plan for an Industrial Development Project (the “Plan”) has been prepared in the form of **Exhibit A** attached hereto; and

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

**WHEREAS**, the City Council hereby finds and determines that it is desirable for the improvement of the economic welfare and development of the City and within the public purposes of the Act that the City: (1) approve the Plan pursuant to the Act; (2) issue its Taxable Industrial Revenue Bonds (Cedarhurst of Arnold Real Estate, LLC Project), Series 2019, in a principal amount not to exceed \$10,000,000 (the “Bonds”), for the purpose of (a) constructing an approximately 70,000 square foot senior living facility (the “Project Improvements”) on an approximately nine-acre site at the southwest corner of the intersection of Missouri Route 141 and Old Lemay Ferry Road in the City (the “Project Site”) and (b) equipping the Project Site and Project Improvements with certain personal property (the “Project Equipment” and, collectively with the Project Site and the Project Improvements, the “Project”), as more fully described in the Indenture and in the Lease Agreement hereinafter authorized; (3) lease the Project to Cedarhurst of Arnold Real Estate, LLC, a Missouri limited liability company (the “Company”); and (4) enter into a Performance Agreement with the Company, under which the Company will make certain payments to the City in consideration of the City issuing the Bonds; and

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

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

**Section 1. Approval of the Plan.** The City Council hereby approves the Plan for an Industrial Development Project attached as **Exhibit A** hereto.

**Section 2. Authorization for the Project.** The City is hereby authorized to provide for the purchase, construction and equipping of the Project, all in the manner and as more particularly described in the Indenture and the Lease Agreement hereinafter authorized.

**Section 3. Authorization of the Bonds.** The City is hereby authorized to issue and sell the Bonds as described in the recitals hereto for the purpose of providing funds to pay the costs of the Project. The Bonds shall be issued and secured pursuant to the Indenture described below 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 limited obligations of the City, payable solely out of certain payments, revenues and receipts derived by the City from the Lease Agreement described below. Such payments, revenues and receipts shall be pledged and assigned to the bond trustee named therein (the "Trustee") as security for the payment of the Bonds as provided in the Indenture. The Bonds and the interest thereon shall not constitute general obligations of the City, the State of Missouri (the "State") or any political subdivision thereof, and neither the City nor the State shall be liable thereon. The Bonds shall not constitute an indebtedness within the meaning of any constitutional 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 City Council and attached to this Ordinance, with such changes therein as shall be approved by the officials of the City executing the documents, such officials' signatures thereon being conclusive evidence of their approval thereof:

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

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

(c) Bond Purchase Agreement between the City and the Company, in substantially the form attached hereto as **Exhibit D**, for the purchase of the Bonds.

(d) Performance Agreement between the City and the Company, in substantially the form attached hereto as **Exhibit E**, under which the Company will make certain payments in lieu of taxes.

(e) Special Warranty Deed between the Company, as grantor, and the City, as grantee, in substantially the form attached hereto as **Exhibit F**, under which the City will acquire the Project Site.

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

**Section 7. Further Authority.** The City shall, and the officials, agents and employees of the City are hereby authorized to, take such further action, and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance and to carry out, comply with and perform the duties of the City with respect to the Bonds and the City Documents, including documents related to the Company's financing of the Project Improvements and Project Equipment. The Mayor is hereby authorized, through the term of the Lease 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 by the Company) as may be required to carry out and comply with the intent of this Ordinance, the Indenture and the Lease Agreement. The Mayor is further authorized, on behalf of the City, to grant such consents, estoppels and waivers relating to the Bonds, the Indenture, the Lease Agreement or the Performance Agreement as may be requested during the term thereof; provided, such consents, estoppels and/or waivers shall not increase the principal amount of the Bonds, increase the term of the Lease Agreement or the tax exemption as provided for therein, waive an event of default or materially change the nature of the transaction. The 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 section of this Ordinance is found by a court of competent jurisdiction to be invalid or unconstitutional, the remaining sections of this Ordinance shall remain valid unless otherwise directed by the court.

**Section 9. Effective Date.** This Ordinance shall be in full force and effect from and after its passage and approval.

**PASSED** by the City Council and **APPROVED** by the Mayor of the City of Arnold, Missouri  
this 16th day of May, 2019.

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Mayor

(SEAL)

ATTEST:

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City Clerk

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Friday, May 10, 2019



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

[On file in the office of the City Clerk]

**EXHIBIT B**

**TRUST INDENTURE**

[On file in the office of the City Clerk]

**EXHIBIT C**

**LEASE AGREEMENT**

[On file in the office of the City Clerk]

**EXHIBIT D**

**BOND PURCHASE AGREEMENT**

[On file in the office of the City Clerk]

**EXHIBIT E**

**PERFORMANCE AGREEMENT**

[On file in the office of the City Clerk]

**EXHIBIT F**

**SPECIAL WARRANTY DEED**

[On file in the office of the City Clerk]

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**CITY OF ARNOLD, MISSOURI**

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

**FOR**

**CEDARHURST OF ARNOLD REAL ESTATE, LLC**

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**EXHIBIT 7 - PROJECTED VALUE OF PERSONAL PROPERTY TAX ABATEMENT**

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**CITY OF ARNOLD, MISSOURI**

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**PLAN FOR AN INDUSTRIAL DEVELOPMENT PROJECT  
AND  
COST/BENEFIT ANALYSIS  
CEDARHURST OF ARNOLD REAL ESTATE, LLC**

**I. PURPOSE OF THIS PLAN**

The City of Arnold, Missouri (the "City") intends to issue taxable industrial revenue bonds in a principal amount not to exceed \$10,000,000 (the "Bonds"), to finance the costs of a proposed industrial development project (the "Project") for the benefit of Cedarhurst of Arnold Real Estate, LLC (the "Company"). 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 (the "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 bonds to finance the purchase, construction, extension and improvement of warehouses, distribution facilities, research and development facilities, office industries, agricultural processing industries, service facilities that provide interstate commerce, industrial plants, 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.

**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 the site on which the industrial development project will be located and convey title to any equipment to be included in the project to the municipality. (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, the improvements thereon and the project equipment 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, construct and equip 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 payments in lieu of taxes is negotiable. The payments in lieu of taxes 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

**Cedarhurst of Arnold Real Estate, LLC.** The Company is a Missouri limited liability company. The Company’s sole purpose is the ownership of real estate.

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

#### IV. REQUIREMENTS OF THE ACT

**A. Description of the Project.** The Company will acquire and construct an approximately 70,000 square foot senior living facility (the "Project Improvements") on approximately nine acres of land (the "Project Site") located near the intersection of Missouri Route 141 and Old Lemay Ferry Road in the City. The Company is also proposing to acquire and install equipment within the Project Improvements (the "Project Equipment" and together with the Project Site and the Project Improvements, the "Project"). The acquisition, construction and installation of the Project is expected to be complete by the end of 2020.

**B. Estimate of the Costs of the Project.** The acquisition of the Project Site and the construction of the Project Improvements are expected to cost approximately \$9,075,000. The acquisition and installation of the Project Equipment is expected to cost approximately \$415,000.

**C. Sources of Funds to be Expended for the Project.** The source of funds to be expended for the Project will be the proceeds of the Bonds in the maximum principal amount of \$10,000,000 and other available funds of the Company. The Bonds will be payable solely from the revenues derived by the City from the lease or other disposition of the Project (as further described below). The Bonds will not be an indebtedness or general obligation, debt or liability of the City or the State of Missouri.

**D. Statement of the Terms Upon Which the Project is to be Leased or Otherwise Disposed of by the City.** The Company will convey title to the Project to the City. The City will lease the Project to the Company for lease payments equal to the principal and interest on the Bonds, plus certain payments in lieu of taxes. Under the terms of the lease agreement with the City, the Company will have the option to purchase the Project at the termination of the lease. The lease between the City and the Company will terminate on December 31, 2035, unless terminated sooner pursuant to the terms thereof.

**E. Affected School District, Community College District, Emergency Service Providers, County and City.** The Fox C-6 School District is the school district affected by the Project. Jefferson College is the community college district affected by the Project. The Rock Community Fire Protection District of Jefferson County, Missouri (the "Fire District") is the fire protection district affected by the Project. The Rock Township Ambulance District (the "Ambulance District") is the ambulance district affected by the Project. Jefferson County, Missouri is the county affected by the Project. The City of Arnold is the city affected by the Project. The Cost/Benefit Analysis attached hereto identifies all other taxing districts affected by the Project (other than those taxing entities solely affected by the Project with respect to receipt of tax revenues from the commercial surcharge tax).

#### **F. Current Assessed Valuation.**

**Real Property.** The most recent equalized assessed valuation of the real property included in the Project is \$108,100. The Company estimates the total equalized assessed valuation of real property included in the Project after construction of the Project Improvements will be approximately \$1,724,250, based on similar facilities owned by affiliates of the Company.

**Personal Property.** The most recent equalized assessed valuation of the personal property included in the Project is \$0, because the initial assessment of the Project Equipment will not occur until 2021. The estimated total equalized assessed valuation of the Project Equipment after development is \$121,861, which was calculated by multiplying the Company's anticipated investment of \$415,000 in personal property (as adjusted to account for depreciation) by the statutorily-required assessment rate of 33-1/3%.

**G. *Payments in Lieu of Taxes.*** If this Plan is approved by the City Council, the City intends to issue the Bonds, take possession of the Project and extend tax abatement to the Company. The Company will make payments in lieu of taxes equal to the sum of the following:

(1) in years 2019 and 2020, 100% of the the real property taxes that would be levied on the Project Site and the Project Improvements, but for the City's ownership thereof; plus

(2) in years 2021 through 2035, 65% of the property taxes that would be levied on the Project Site, the Project Improvements and the Project Equipment, but for the City's ownership thereof.

The Company will also make any additional payments in lieu of taxes required to satisfy any obligations to an ambulance district, a fire district or emergency or dispatch services board pursuant to the Act. The Company will remit any such additional payments in lieu of taxes directly to the applicable ambulance district, fire district or the emergency or dispatch services board. For example: If the Fire District and the Ambulance District require payments in lieu of taxes equal to the sum of 100% of the property taxes that would be levied on the Project Site, the Project Improvements and the Project Equipment, but for the City's ownership thereof, the Company will be obligated to make additional payments in lieu of taxes equal to the sum of 35% of the property taxes that would be levied on the Project Site, the Project Improvements and the Project Equipment, but for the City's ownership thereof, directly to the Fire District and the Ambulance District.

Except as otherwise set forth in this Plan, all payments in lieu of taxes will be disbursed to the respective taxing entities in the same proportion as the then-current ad valorem tax levy of each taxing entity.

**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 Company.

**I. *Cost/Benefit Analysis and Discussion of Exhibits.*** In compliance with Section 100.050.2(3) of the Revised Statutes of Missouri, this Plan has been prepared to show the costs and benefits to the City and to other taxing jurisdictions affected by the tax abatements and exemptions of the Project. The projections in the Cost/Benefit Analysis are estimates based on numerous assumptions set forth in **Exhibit A** hereto. Therefore, the actual revenues generated from the Project may be significantly different from those shown in the Cost/Benefit Analysis. The following is a summary of the exhibits attached to this Plan 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. This Plan does not attempt to quantify the overall economic impact of the Project.

*Summary of Cost/Benefit Analysis.* **Exhibit 1** provides a summary for each affected taxing district of (1) the total estimated tax revenues that would be generated if the Project did not receive tax abatement, (2) the total estimated value of the payments in lieu of taxes to be made by the Company for the proposed abatement period and (3) the total estimated value of the abatement to the Company. Please note that the actual value of the Project may differ from the estimated value assumed in this Plan and may impact the value of the abatement.

*Real Property Tax Revenues.* **Exhibit 2** provides the projected real property tax revenues that would be generated from the Project Site and Project Improvements without tax abatement. **Exhibit 3** provides the projected value of the payments in lieu of taxes to be made by the Company based on the estimated assessed value of the Project Site and the Project Improvements after completion. The commercial surcharge tax was applied at a rate of \$0.24 per \$100.00 of assessed valuation. **Exhibit 4** provides the projected value of the abatement to the Company.

*Personal Property Tax Revenues.* **Exhibit 5** provides the projected personal property tax revenues that would be generated from the Project Equipment without tax abatement. **Exhibit 6** provides the projected value of the payments in lieu of taxes to be made by the Company based on the estimated assessed value of the Project Equipment after installation. **Exhibit 7** provides the projected value of the abatement to the Company.

Refer to **Attachment A** for the assumptions related to the determination of the assessed values and the tax formulas.

*Sales Tax Exemption.* The City will grant a sales 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, this Plan assumes that the following sales tax levies will remain constant throughout the construction period:

State of Missouri	4.225%
Jefferson County	1.625
City of Arnold	1.250
Rock Community Fire Protection District	0.500
Jefferson County 9-1-1 Dispatch	0.500
Rock Township Ambulance District	<u>0.250</u>
TOTAL	<u>8.350%</u>

The Company estimates there will be approximately \$3,400,000 of qualified construction materials for the Project Improvements, and that all (or a significant portion) of those construction materials will be purchased in the State of Missouri. Thus, if \$3,400,000 of construction materials are purchased in the State of Missouri, the value of that exemption will be \$283,900. The Company does not know at this time what portion of the construction materials will be purchased within the City or Jefferson County. The net fiscal impact of the value of the sales tax exemption on each affected taxing jurisdiction will depend on the amount of construction materials purchased within each taxing jurisdiction.

*Ancillary Project Benefits.* The Company estimates that 50 full-time jobs will be established at the Project Site. The City can also anticipate growth in construction jobs during the construction of the Project Improvements. These jobs will only last during the Project's construction phase and will cease to exist upon completion. All additional workers will be contributing to the local economy. The Project will also provide collateral benefits for local suppliers during the construction period. The City may also see an increase in businesses that support the Project's employees and operations. These ancillary impacts were not measured for purposes of this Plan.

**V. ASSUMPTIONS AND BASIS OF PLAN**

In preparing this Plan, we have made some key assumptions to estimate the fiscal impact of the abatement and exemptions proposed for the Project. See **Attachment A** 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 and its counsel, representatives of the Company 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; we have not independently verified the accuracy, completeness or fairness of such information.

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## ATTACHMENT A

### SUMMARY OF KEY ASSUMPTIONS

1. The Company will invest \$9,490,000 in the Project, consisting of \$1,525,000 for the acquisition of the Project Site, \$7,550,000 for the the construction of the Project Improvements and \$415,000 for the acquisition and installation of the Project Equipment. The Bonds are being issued in the principal amount of \$10,000,000 to provide for contingencies.

2. The acquisition, construction and equipping of the Project will be complete by the end of 2020.

3. The Project will be owned by the City and leased to the Company with an option to purchase. As long as the Project is owned by the City, it will be exempt from ad valorem property taxes.

4. The Project will be excluded from the calculation of ad valorem property taxes from 2019 through 2035.

5. During 2019 and 2020, the Company will make payments in lieu of taxes in the amount of 100% of the the real property taxes that would be levied on the Project Site and the Project Improvements, but for the City's ownership thereof. In the years 2021 through 2035, the Company will make payments in lieu of property taxes equal to 65%<sup>(1)</sup> of the property taxes that would be due, but for the City's ownership of the Project Site, the Project Improvements and the Project Equipment.

6. Commercial real property taxes are calculated using the following formula:

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

7. The Company estimates the total equalized assessed valuation of real property included in the Project after construction of the Project Improvements will be approximately \$1,724,250, based on similar facilities owned by affiliates of the Company.

8. The assessed value of the Project Equipment is calculated using the following formula:

$$(\text{Cost} * \text{Depreciation Factor}) * \text{Assessment Ratio of } 33\text{-}1/3\%$$

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<sup>1</sup> The actual amount of abatement may differ from the estimated amount of abatement assumed in this Plan, depending on whether additional payments are made to the Rock Community Fire Protection District, the Rock Township Ambulance District and/or the Jefferson County 9-1-1 Dispatch under the Performance Agreement and Missouri law.

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The Cost/Benefit Analysis has been prepared on the basis of factual information and assumptions provided to Gilmore & Bell, P.C. by, or on behalf of, the City and the Company. This information is provided in conjunction with our legal representation of the City, as its bond counsel, for this transaction. It is not intended as financial advice or a financial recommendation to the City, the Company, or any other taxing jurisdiction that may be affected by the Project. Gilmore & Bell, P.C. is not a financial advisor or a "municipal advisor" as defined in the Securities Exchange Act of 1934.

9. \$115,000 of the Project Equipment was depreciated using a 5-year recovery period beginning on January 1 immediately following the year of purchase as follows:

<b>Year</b>	<b>5-Year Depreciation</b>
<b>0</b>	100.00%
<b>1</b>	85.00%
<b>2</b>	59.50%
<b>3</b>	41.65%
<b>4</b>	24.99%
<b>5</b>	10.00%
<b>6</b>	10.00%
<b>7</b>	10.00%
<b>8</b>	10.00%
<b>9</b>	10.00%
<b>10</b>	10.00%

10. \$300,000 of the Project Equipment was depreciated using a 7-year recovery period beginning on January 1 immediately following the year of purchase as follows:

<b>Year</b>	<b>7-Year Depreciation</b>
<b>0</b>	100.00%
<b>1</b>	89.29%
<b>2</b>	70.16%
<b>3</b>	55.13%
<b>4</b>	42.88%
<b>5</b>	30.63%
<b>6</b>	18.38%
<b>7</b>	10.00%
<b>8</b>	10.00%
<b>9</b>	10.00%
<b>10</b>	10.00%

11. After development, the assessed value of the Project Site and the Project Improvements is subject to growth at an estimated rate of 2% every year an assessment is made (every odd year).

12. The tax rates used in this Plan reflect the rates in effect for the tax year 2018. The tax rates were held constant through the 2035 tax year.

\* \* \*

The Cost/Benefit Analysis has been prepared on the basis of factual information and assumptions provided to Gilmore & Bell, P.C. by, or on behalf of, the City and the Company. This information is provided in conjunction with our legal representation of the City, as its bond counsel, for this transaction. It is not intended as financial advice or a financial recommendation to the City, the Company, or any other taxing jurisdiction that may be affected by the Project. Gilmore & Bell, P.C. is not a financial advisor or a "municipal advisor" as defined in the Securities Exchange Act of 1934.



**EXHIBIT 1**

**SUMMARY OF COST/BENEFIT ANALYSIS**

<b>Taxing Jurisdiction</b>	<b>Tax Rate</b>	<b>Projected Real and Personal Property Tax Revenues Without Abatement</b>	<b>Projected Real and Personal Property Payments In Lieu of Taxes</b>	<b>Projected Value of Real and Personal Property Tax Abatement</b>
State	0.0300	\$ 11,319	\$ 7,358	\$ 3,962
Health Unit Tax	0.1079	40,713	26,463	14,249
Rock Ambulance	0.1307	49,311	32,052	17,259
Jefferson College	0.3316	125,112	81,323	43,789
Fox School	4.5272	1,708,145	1,110,294	597,851
Rock Comm Fire	1.2458	470,053	305,534	164,518
JC Dev Disabilities	0.0915	34,523	22,440	12,083
Park Tax	0.0273	10,302	6,696	3,606
Mental Health Tax	0.0915	34,523	22,440	12,083
Library C1&C6	0.2800	105,646	68,670	36,976
City of Arnold	0.3911	147,567	95,919	51,649
Road & Bridge Tax	0.2385	89,989	58,493	31,496
Merchant Sur Tax	0.2400	89,307	58,050	31,257
	<b>7.7331</b>	<b>\$ 2,916,509</b>	<b>\$ 1,895,731</b>	<b>\$ 1,020,778</b>

**EXHIBIT 2**

**PROJECTED REAL PROPERTY TAX REVENUES WITHOUT ABATEMENT**

Estimated Assessed Value of Existing Property With Improvements	2021	2022	2023	2024	2025	2026	2027	2028	
<b>\$1,724,250</b>	<b>\$1,724,250</b>	<b>\$1,758,735</b>	<b>\$1,758,735</b>	<b>\$1,758,735</b>	<b>\$1,793,910</b>	<b>\$1,793,910</b>	<b>\$1,829,788</b>	<b>\$1,829,788</b>	
Taxing Jurisdiction	Tax Rate per \$100	2021	2022	2023	2024	2025	2026	2027	2028
State	0.0300	\$ 517	\$ 517	\$ 528	\$ 528	\$ 538	\$ 538	\$ 549	\$ 549
Health Unit Tax	0.1079	1,861	1,861	1,898	1,898	1,936	1,936	1,974	1,974
Rock Ambulance	0.1307	2,253	2,253	2,299	2,299	2,344	2,344	2,391	2,391
Jefferson College	0.3316	5,717	5,717	5,832	5,832	5,948	5,948	6,067	6,067
Fox School	4.5272	78,060	78,060	79,621	79,621	81,214	81,214	82,838	82,838
Rock Comm Fire	1.2458	21,481	21,481	21,910	21,910	22,349	22,349	22,796	22,796
JC Dev Disabilities	0.0915	1,578	1,578	1,609	1,609	1,641	1,641	1,674	1,674
Park Tax	0.0273	471	471	480	480	490	490	500	500
Mental Health Tax	0.0915	1,578	1,578	1,609	1,609	1,641	1,641	1,674	1,674
Library C1&C6	0.2800	4,828	4,828	4,924	4,924	5,023	5,023	5,123	5,123
City of Arnold	0.3911	6,744	6,744	6,879	6,879	7,016	7,016	7,156	7,156
Road & Bridge Tax	0.2385	4,112	4,112	4,195	4,195	4,279	4,279	4,364	4,364
Merchant Sur Tax	0.2400	4,138	4,138	4,221	4,221	4,305	4,305	4,391	4,391
<b>7.7331</b>	<b>\$ 133,338</b>	<b>\$ 133,338</b>	<b>\$ 136,005</b>	<b>\$ 136,005</b>	<b>\$ 138,725</b>	<b>\$ 138,725</b>	<b>\$ 141,499</b>	<b>\$ 141,499</b>	

Estimated Assessed Value of Existing Property With Improvements	2029	2030	2031	2032	2033	2034	2035	Total	
<b>\$1,866,384</b>	<b>\$1,866,384</b>	<b>\$1,903,711</b>	<b>\$1,903,711</b>	<b>\$1,903,711</b>	<b>\$1,941,786</b>	<b>\$1,941,786</b>	<b>\$1,980,621</b>		
Taxing Jurisdiction	Tax Rate per \$100	2029	2030	2031	2032	2033	2034	2035	Total
State	0.0300	\$ 560	\$ 560	\$ 571	\$ 571	\$ 583	\$ 583	\$ 594	\$ 8,285
Health Unit Tax	0.1079	2,014	2,014	2,054	2,054	2,095	2,095	2,137	29,800
Rock Ambulance	0.1307	2,439	2,439	2,488	2,488	2,538	2,538	2,589	36,094
Jefferson College	0.3316	6,189	6,189	6,313	6,313	6,439	6,439	6,568	91,578
Fox School	4.5272	84,495	84,495	86,185	86,185	87,908	87,908	89,666	1,250,308
Rock Comm Fire	1.2458	23,252	23,252	23,717	23,717	24,191	24,191	24,675	344,064
JC Dev Disabilities	0.0915	1,708	1,708	1,742	1,742	1,777	1,777	1,812	25,270
Park Tax	0.0273	510	510	520	520	530	530	541	7,541
Mental Health Tax	0.0915	1,708	1,708	1,742	1,742	1,777	1,777	1,812	25,270
Library C1&C6	0.2800	5,226	5,226	5,330	5,330	5,437	5,437	5,546	77,330
City of Arnold	0.3911	7,300	7,300	7,446	7,446	7,594	7,594	7,746	108,015
Road & Bridge Tax	0.2385	4,451	4,451	4,540	4,540	4,631	4,631	4,724	65,869
Merchant Sur Tax	0.2400	4,479	4,479	4,569	4,569	4,660	4,660	4,753	66,283
<b>7.7331</b>	<b>\$ 144,329</b>	<b>\$ 144,329</b>	<b>\$ 147,216</b>	<b>\$ 147,216</b>	<b>\$ 150,160</b>	<b>\$ 150,160</b>	<b>\$ 153,163</b>	<b>\$ 153,163</b>	<b>\$2,135,705</b>

**EXHIBIT 3**

**PROJECTED REAL PROPERTY PAYMENTS IN LIEU OF TAXES**

Estimated Assessed Value of Existing Property	\$1,724,250	\$1,724,250	\$1,738,735	\$1,758,735	\$1,793,910	\$1,793,910	\$1,829,788	\$1,829,788
With Improvements	65.00%	65.00%	65.00%	65.00%	65.00%	65.00%	65.00%	65.00%
PILOT Payment								

Taxing Jurisdiction	2021	2022	2023	2024	2025	2026	2027	2028
Tax Rate per \$100								
State	0.0300	336	336	343	350	350	357	357
Health Unit Tax	0.1079	1,209	1,209	1,234	1,258	1,258	1,283	1,283
Rock Ambulance	0.1307	1,465	1,465	1,494	1,524	1,524	1,554	1,554
Jefferson College	0.3316	3,716	3,716	3,791	3,866	3,866	3,944	3,944
Fox School	4.5272	50,739	50,739	51,754	52,789	52,789	53,845	53,845
Rock Comm Fire	1.2458	13,963	13,963	14,242	14,527	14,527	14,817	14,817
JC Dev Disabilities	0.0915	1,025	1,025	1,046	1,067	1,067	1,088	1,088
Park Tax	0.0273	306	306	312	318	318	325	325
Mental Health Tax	0.0915	1,025	1,025	1,046	1,067	1,067	1,088	1,088
Library C1&C6	0.2800	3,138	3,138	3,201	3,265	3,265	3,330	3,330
City of Arnold	0.3911	4,383	4,383	4,471	4,560	4,560	4,652	4,652
Road & Bridge Tax	0.2385	2,673	2,673	2,727	2,781	2,781	2,837	2,837
Merchant Sur Tax	0.2400	2,690	2,690	2,744	2,798	2,798	2,854	2,854
<b>Total</b>	<b>7.7331</b>	<b>\$ 86,670</b>	<b>\$ 86,670</b>	<b>\$ 88,403</b>	<b>\$ 90,171</b>	<b>\$ 90,171</b>	<b>\$ 91,974</b>	<b>\$ 91,974</b>

Estimated Assessed Value of Existing Property	\$1,866,384	\$1,866,384	\$1,903,711	\$1,903,711	\$1,941,786	\$1,941,786	\$1,980,621	\$1,980,621
With Improvements	65.00%	65.00%	65.00%	65.00%	65.00%	65.00%	65.00%	65.00%
PILOT Payment								

Taxing Jurisdiction	2029	2030	2031	2032	2033	2034	2035	Total
Tax Rate per \$100								
State	0.0300	364	364	371	379	379	386	5,385
Health Unit Tax	0.1079	1,309	1,309	1,335	1,362	1,362	1,389	19,370
Rock Ambulance	0.1307	1,585	1,585	1,617	1,650	1,650	1,683	23,461
Jefferson College	0.3316	4,023	4,023	4,103	4,185	4,185	4,269	59,525
Fox School	4.5272	54,922	54,922	56,020	57,140	57,140	58,283	812,700
Rock Comm Fire	1.2458	15,113	15,113	15,416	15,724	15,724	16,039	223,641
JC Dev Disabilities	0.0915	1,110	1,110	1,132	1,155	1,155	1,178	16,425
Park Tax	0.0273	331	331	338	345	345	352	4,902
Mental Health Tax	0.0915	1,110	1,110	1,132	1,155	1,155	1,178	16,425
Library C1&C6	0.2800	3,397	3,397	3,465	3,534	3,534	3,605	50,264
City of Arnold	0.3911	4,745	4,745	4,840	4,936	4,936	5,035	70,210
Road & Bridge Tax	0.2385	2,893	2,893	2,951	3,010	3,010	3,070	42,815
Merchant Sur Tax	0.2400	2,912	2,912	2,970	3,029	3,029	3,090	43,084
<b>Total</b>	<b>7.7331</b>	<b>\$ 93,814</b>	<b>\$ 93,814</b>	<b>\$ 95,690</b>	<b>\$ 97,604</b>	<b>\$ 97,604</b>	<b>\$ 99,556</b>	<b>\$1,388,208</b>

**EXHIBIT 4**

**PROJECTED VALUE OF REAL PROPERTY TAX ABATEMENT**

Estimated Assessed Value of Existing Property		2021	2022	2023	2024	2025	2026	2027	2028
With Improvements		\$1,724,250	\$1,724,250	\$1,758,735	\$1,758,735	\$1,793,910	\$1,793,910	\$1,829,788	\$1,829,788
Abatement Percentage		35.00%	35.00%	35.00%	35.00%	35.00%	35.00%	35.00%	35.00%
Taxing Jurisdiction	Tax Rate per \$100	2021	2022	2023	2024	2025	2026	2027	2028
State	0.0300	\$ 181	\$ 181	\$ 185	\$ 185	\$ 188	\$ 188	\$ 192	\$ 192
Health Unit Tax	0.1079	651	651	664	664	677	677	691	691
Rock Ambulance	0.1307	789	789	804	804	821	821	837	837
Jefferson College	0.3316	2,001	2,001	2,041	2,041	2,082	2,082	2,124	2,124
Fox School	4.5272	27,321	27,321	27,867	27,867	28,425	28,425	28,993	28,993
Rock Comm Fire	1.2458	7,518	7,518	7,669	7,669	7,822	7,822	7,978	7,978
JC Dev Disabilities	0.0915	552	552	563	563	574	574	586	586
Park Tax	0.0273	165	165	168	168	171	171	175	175
Mental Health Tax	0.0915	552	552	563	563	574	574	586	586
Library C1&C6	0.2800	1,690	1,690	1,724	1,724	1,758	1,758	1,793	1,793
City of Arnold	0.3911	2,360	2,360	2,407	2,407	2,456	2,456	2,505	2,505
Road & Bridge Tax	0.2385	1,439	1,439	1,468	1,468	1,497	1,497	1,527	1,527
Merchant Sur Tax	0.2400	1,448	1,448	1,477	1,477	1,507	1,507	1,537	1,537
<b>7.7331</b>	<b>\$ 46,668</b>	<b>\$ 46,668</b>	<b>\$ 47,602</b>	<b>\$ 47,602</b>	<b>\$ 47,602</b>	<b>\$ 48,534</b>	<b>\$ 48,534</b>	<b>\$ 49,525</b>	<b>\$ 49,525</b>

Estimated Assessed Value of Existing Property		2029	2030	2031	2032	2033	2034	2035	Total
With Improvements		\$1,866,384	\$1,866,384	\$1,903,711	\$1,903,711	\$1,941,786	\$1,941,786	\$1,980,621	
Abatement Percentage		35.00%	35.00%	35.00%	35.00%	35.00%	35.00%	35.00%	
Taxing Jurisdiction	Tax Rate per \$100	2029	2030	2031	2032	2033	2034	2035	Total
State	0.0300	\$ 196	\$ 196	\$ 200	\$ 200	\$ 204	\$ 204	\$ 208	\$ 2,900
Health Unit Tax	0.1079	705	705	719	719	733	733	748	10,430
Rock Ambulance	0.1307	854	854	871	871	888	888	906	12,633
Jefferson College	0.3316	2,166	2,166	2,209	2,209	2,254	2,254	2,299	32,052
Fox School	4.5272	29,573	29,573	30,165	30,165	30,768	30,768	31,383	437,608
Rock Comm Fire	1.2458	8,138	8,138	8,301	8,301	8,467	8,467	8,636	120,422
JC Dev Disabilities	0.0915	598	598	610	610	622	622	634	8,844
Park Tax	0.0273	178	178	182	182	186	186	189	2,639
Mental Health Tax	0.0915	598	598	610	610	622	622	634	8,844
Library C1&C6	0.2800	1,829	1,829	1,866	1,866	1,903	1,903	1,941	27,065
City of Arnold	0.3911	2,555	2,555	2,606	2,606	2,658	2,658	2,711	37,805
Road & Bridge Tax	0.2385	1,558	1,558	1,589	1,589	1,621	1,621	1,653	23,054
Merchant Sur Tax	0.2400	1,568	1,568	1,599	1,599	1,631	1,631	1,664	23,199
<b>7.7331</b>	<b>\$ 50,515</b>	<b>\$ 50,515</b>	<b>\$ 51,525</b>	<b>\$ 51,525</b>	<b>\$ 51,525</b>	<b>\$ 52,536</b>	<b>\$ 52,536</b>	<b>\$ 53,607</b>	<b>\$ 747,497</b>





**EXHIBIT 7**

**PROJECTED VALUE OF PERSONAL PROPERTY TAX ABATEMENT**

Estimated Assessed Value of Personal Property	\$ 121,861	\$ 92,959	\$ 71,089	\$ 52,454	\$ 34,460	\$ 22,211	\$ 13,832	\$ 13,832
Abatement Percentage	35.00%	35.00%	35.00%	35.00%	35.00%	35.00%	35.00%	35.00%

Taxing Jurisdiction	2021	2022	2023	2024	2025	2026	2027	2028
State	\$ 13	\$ 10	\$ 7	\$ 6	\$ 4	\$ 4	\$ 2	\$ 1
Health Unit Tax	0.0300	0.1079	0.1307	0.1307	0.1307	0.1307	0.1307	0.1307
Rock Ambulance	46	35	27	20	13	8	5	5
Jefferson College	56	43	33	24	16	10	6	6
Fox School	141	108	83	61	40	26	16	16
Rock Comm Fire	1,931	1,473	1,126	831	546	352	219	219
IC Dev Disabilities	591	405	310	229	150	97	60	60
Park Tax	39	30	23	17	11	7	4	4
Mental Health Tax	12	9	7	5	3	2	1	1
Library C1&C6	39	30	23	17	11	7	4	4
City of Arnold	119	91	70	51	34	22	14	14
Road & Bridge Tax	167	127	97	72	47	30	19	19
	102	78	59	44	29	19	12	12
	0.2385	0.2385	0.2385	0.2385	0.2385	0.2385	0.2385	0.2385
	7.4931	3.196	2.438	1.864	1.376	904	583	363

Estimated Assessed Value of Personal Property	\$ 13,832	\$ 13,832	\$ 13,832	\$ 13,832	\$ 13,832	\$ 13,832	\$ 13,832	\$ 13,832
Abatement Percentage	35.00%	35.00%	35.00%	35.00%	35.00%	35.00%	35.00%	35.00%

Taxing Jurisdiction	2029	2030	2031	2032	2033	2034	2035	Total
State	\$ 1	\$ 1	\$ 1	\$ 1	\$ 1	\$ 1	\$ 1	\$ 55
Health Unit Tax	0.0300	0.1079	0.1307	0.1307	0.1307	0.1307	0.1307	0.1307
Rock Ambulance	5	5	5	5	5	5	5	196
Jefferson College	6	6	6	6	6	6	6	238
Fox School	16	16	16	16	16	16	16	603
Rock Comm Fire	219	219	219	219	219	219	219	8,232
IC Dev Disabilities	60	60	60	60	60	60	60	2,265
Park Tax	4	4	4	4	4	4	4	166
Mental Health Tax	1	1	1	1	1	1	1	50
Library C1&C6	4	4	4	4	4	4	4	166
City of Arnold	14	14	14	14	14	14	14	509
Road & Bridge Tax	19	19	19	19	19	19	19	711
	12	12	12	12	12	12	12	434
	0.2385	0.2385	0.2385	0.2385	0.2385	0.2385	0.2385	0.2385
	7.4931	3.196	2.438	1.864	1.376	904	583	363

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**CITY OF ARNOLD, MISSOURI,**

**AND**

**BOKF, N.A.  
as Trustee**

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**TRUST INDENTURE**

**Dated as of June 1, 2019**

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**Relating to:**

**\$10,000,000  
(Aggregate Maximum Principal Amount)  
City of Arnold, Missouri  
Taxable Industrial Revenue Bonds  
(Cedarhurst of Arnold Real Estate, LLC Project)  
Series 2019**

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**TRUST INDENTURE**

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## TRUST INDENTURE

**THIS TRUST INDENTURE** dated as of June 1, 2019 (the “Indenture”), between the **CITY OF ARNOLD, MISSOURI**, a third-class city organized and existing under the laws of the State of Missouri (the “City”), and **BOKF, 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, inclusive, of the Revised Statutes of Missouri, as amended (collectively, the “Act”), to purchase, construct, extend, improve and equip 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, research and development, office industry, warehousing and industrial development purposes upon such terms and conditions as the City shall deem advisable.

2. Pursuant to the Act, the City Council passed an ordinance (the “Ordinance”) on May 16, 2019, authorizing the City to issue its Taxable Industrial Revenue Bonds (Cedarhurst of Arnold Real Estate, LLC Project), Series 2019, in the maximum principal amount of \$10,000,000 (the “Bonds”), for the purpose of (a) acquiring certain real estate located near the intersection of Missouri Route 141 and Old Lemay Ferry Road in the City (the “Project Site,” as more fully described on **Exhibit A** hereto), (b) constructing an approximately 70,000 square foot senior living facility thereon (the “Project Improvements,” as more fully described on **Exhibit B** hereto) and (c) equipping the Project Site and Project Improvements with certain personal property (the “Project Equipment,” as more fully described on **Exhibit C** hereto).

3. The Ordinance authorizes the City to lease the Project Site, the Project Improvements and the Project Equipment (collectively, the “Project”) to Cedarhurst of Arnold Real Estate, LLC, a Missouri limited liability company (the “Company”).

4. Pursuant to the Ordinance, the City is authorized to (a) execute and deliver this Indenture for the purpose of issuing and securing the Bonds, (b) enter into the Lease Agreement of even date herewith (the “Lease”) with the Company, under which the City, as lessor, will, or will cause the Company to, purchase, construct, equip and install the Project and will lease the Project to the Company, as lessee, in consideration of rentals that will be sufficient to pay the principal of and interest on the Bonds and (c) enter into the Performance Agreement of even date herewith (the “Performance Agreement”) for the purpose of setting forth the terms and conditions of the Project’s exemption from ad valorem real property taxes and certain payments in lieu of taxes to be made by the Company with respect to the Project.

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

**NOW, THEREFORE, THIS TRUST INDENTURE WITNESSETH:**

**GRANTING CLAUSES**

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

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

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

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

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

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

**PROVIDED, HOWEVER**, that if the City pays, or causes to be paid, the principal of and interest on the Bonds, at the time and in the manner mentioned in the Bonds, according to the true intent and meaning thereof, or provides for the payment thereof (as provided in **Article XIII** 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 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, 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, as amended, 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 (i) the Company, (ii) the Lender, (iii) a “qualified institutional buyer” under Rule 144A promulgated under the Securities Act of 1933, (iv) any general business corporation or enterprise with total assets in excess of \$100,000,000 or (v) an entity that agrees to assume, or has assumed, the obligations of the Company under this Indenture, the Performance Agreement and the Lease.

**“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 Company and the Trustee containing the specimen signature of such Person and signed on behalf of the City by its Mayor. Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the Authorized City Representative.

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

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

**“Bond”** or **“Bonds”** means the Taxable Industrial Revenue Bonds (Cedarhurst of Arnold Real Estate, LLC Project), Series 2019, in the maximum aggregate principal amount of \$10,000,000, issued, authenticated and delivered under and pursuant to this Indenture.

**“Bond Fund”** means the “City of Arnold, Missouri, Bond Fund -- Cedarhurst of Arnold Real Estate, LLC” created in **Section 501** of this Indenture.

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

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

**“City”** means the City of Arnold, Missouri, a third-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 Bonds.

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

**“Company”** means Cedarhurst of Arnold Real Estate, LLC, a Missouri limited liability company, and its successors or assigns.

**“Completion Date”** means the date of execution of the certificate required by **Section 4.5** of the Lease and **Section 504** hereof or December 31, 2020, whichever is earlier, except as otherwise provided in **Section 4.5** of the Lease.

**“Costs of Issuance Fund”** means the “City of Arnold, Missouri, Costs of Issuance Fund -- Cedarhurst of Arnold Real Estate, LLC” created in **Section 501** of this Indenture.

**“Cumulative Outstanding Principal Amount”** means the aggregate principal amount of all Bonds Outstanding under the provisions of this Indenture, not to exceed \$10,000,000, as reflected in the records maintained by the Trustee as provided in the Bonds and this Indenture.

**“Deed”** means the Special Warranty Deed dated the date of issuance of the Bonds, pursuant to which the Company conveys title to the Project Site to the City.

**“Deed of Trust”** means the first Deed of Trust and Security Agreement dated as of \_\_\_\_\_, 2019 from the Company, as grantor, to the Lender, as grantee, and \_\_\_\_\_, as mortgage trustee, and all renewals, amendments, extensions, refinancings and replacements thereof.

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

**“Financing Document”** means any loan agreement, credit agreement, security agreement, mortgage, participation agreement, lease agreement, sublease, ground lease, hedging agreement or other document executed by or on behalf of, or for the benefit of, a Financing Party, including, without limitation, any loan agreement, credit agreement, deed of trust or any other document executed in connection with the loans made to the Company by Lender.



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

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

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

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

**“Investment Securities”** means any of the following securities:

- (a) Government Securities;
- (b) obligations of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Financing Bank, the Federal Intermediate Credit Corporation, Federal Banks for Cooperatives, Federal Land Banks, Federal Home Loan Banks, Farmers Home Administration and Federal Home Loan Mortgage Corporation;
- (c) direct and general obligations of any state of the United States of America, to the payment of the principal of and interest on which the full faith and credit of such state is pledged, provided that at the time of their purchase under this Indenture such obligations are rated in either of the two highest rating categories by a nationally-recognized bond rating agency;
- (d) certificates of deposit, whether negotiable or nonnegotiable, issued by any bank or trust company organized under the laws of any state of the United States of America or any national banking association (including the Trustee or any of its affiliates), provided that such certificates of deposit shall be either (1) continuously and fully insured by the Federal Deposit Insurance Corporation, or (2) continuously and fully secured by such securities as are described above in clauses (a) through (c), inclusive, which shall have a market value at all times at least equal to the principal amount of such certificates of deposit and shall be deposited with the Trustee or a custodian bank, trust company or national banking association. The bank, trust company or national banking association holding each such certificate of deposit required to be so secured shall furnish the Trustee written evidence satisfactory to it that the aggregate market value of all such obligations securing each such certificate of deposit will at all times be an amount at least equal to the principal amount of each such certificate of deposit and the Trustee may rely on each such undertaking;
- (e) shares of a fund registered under the Investment Company Act of 1940, as amended, whose shares are registered under the Securities Act of 1933, as amended, having

assets of at least \$100,000,000, and which shares, at the time of purchase, are rated by S&P and Moody's in one of the two highest rating categories (without regard to any refinements or gradation of rating category by numerical modifier or otherwise) assigned by such rating agencies for obligations of that nature; or

(f) any other investment approved in writing by the Authorized City Representative and the Owners of all of the Outstanding Bonds.

**"Lease"** means the Lease Agreement dated as of June 1, 2019 between the City, as lessor, and the Company, as lessee, as from time to time amended and supplemented by Supplemental Leases in accordance with the provisions thereof and of **Article XII** of this Indenture.

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

**"Lender"** means Sterling Bank, as grantee, lender and beneficiary under the Deed of Trust, and its successors or assigns.

**"Moody's"** means Moody's Investors Service, Inc., and its successors and assigns, and, if that firm will be dissolved or liquidated or no longer performs the functions of a municipal securities rating service, "Moody's" will be deemed to refer to any other nationally recognized securities rating service designated by the City, with notice to the Trustee.

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

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

(a) Bonds subsequently cancelled by the Trustee or delivered to the Trustee for cancellation;

(b) Bonds deemed to be paid in accordance with the provisions of **Section 1302** hereof; and

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

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

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

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

**“Performance Agreement”** means the Performance Agreement dated as of June 1, 2019 between the City and the Company.

**“Permitted Encumbrances”** means, as of any particular time, as the same may encumber the Project Site, (a) liens for ad valorem taxes and special assessments not then delinquent, (b) the Indenture, the Lease and the Performance Agreement, (c) the Deed of Trust, (d) utility, access and other easements and rights-of-way, mineral rights, restrictions, exceptions and encumbrances that will not materially interfere with or impair the operations being conducted on the Project Site or easements granted to the City, (e) 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 Project Site and 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, (f) liens or security interests granted pursuant to any other Financing Documents, and (g) such exceptions to title set forth in the Commitment for Title Insurance No. 11445astl issued by Old Republic National Title Insurance Company dated March 15, 2019.

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

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

**“Project”** means the project referred to in the recitals of this Indenture, including the Project Site, the Project Improvements and the Project Equipment as they may at any time exist.

**“Project Costs”** means all costs of purchase and construction of the Project, including the following:

(a) all costs and expenses necessary or incident to the acquisition, construction and improvement of the Project Improvements located on the Project Site and the acquisition and installation of the Project Equipment on the Project Site, which the Company conveys to the City;

(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 Project or the issuance of the Bonds;

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

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

(e) interest accruing on the Bonds until the Completion Date;

(f) the cost of title insurance policies and the cost of any other insurance maintained until the Completion Date in accordance with **Article VII** of the Lease;

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

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

**“Project Equipment”** shall have the meaning set forth on **Exhibit C**.

**“Project Fund”** means the “City of Arnold, Missouri, Project Fund -- Cedarhurst of Arnold Real Estate, LLC” created in **Section 501** of this Indenture.

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

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

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

**“S&P”** means S&P Global Ratings, a division of S&P Global, Inc., its successors and their assigns, and if that entity no longer performs the functions of a municipal securities rating agency, “S&P” will be deemed to refer to any other nationally recognized securities rating agency designated by the City, with notice to the Trustee.

**“State”** means the State of Missouri.

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

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

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

**“Trustee”** means BOKF, 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) Unless the context shall otherwise indicate, the words importing the singular number shall include the plural and vice versa, and words importing Persons shall include firms, associations and corporations, including public bodies, as well as natural Persons.

(b) 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.

(c) All references in this instrument to designated “Articles,” “Sections” and other subdivisions are, unless otherwise specified, to the designated Articles, Sections and 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 subdivision.

(d) 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.

(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.

**ARTICLE II**

**THE BONDS**

**Section 201. Title and Amount of Bonds.** No Bonds may be issued under this Indenture except in accordance with the provisions of this Article. The Bonds authorized to be issued under this Indenture shall be designated as “City of Arnold, Missouri, Taxable Industrial Revenue Bonds (Cedarhurst of Arnold Real Estate, LLC Project), Series 2019.” The maximum total principal amount of Bonds that may be issued hereunder is hereby expressly limited to \$10,000,000.

**Section 202. Nature of Obligation.** The Bonds and the interest thereon shall be special obligations of the City payable solely out of the rents, revenues and receipts derived by the City from the Project and the Lease, and not from any other fund or source of the City. The Bonds are secured by a

pledge and assignment of the Trust Estate to the Trustee in favor of the Owners, as provided in this Indenture. The Bonds and the interest thereon shall not constitute general obligations of the City, the State or any political subdivision thereof, and neither the City, the State nor any political subdivision thereof shall be liable thereon, and 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 203. Denomination, Number and Dating of the Bonds.**

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

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

**Section 204. Method and Place of Payment of Bonds.**

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

(b) Payment of the principal of the Bonds shall be made upon the presentation and surrender of such Bonds at the principal payment office of any Paying Agent named in the Bonds. The payment of principal on the Bonds shall be noted on the Bonds on **Schedule I** thereto and the registration books maintained by the Trustee pursuant to **Section 206**. Payment of the interest on the Bonds shall be made by the Trustee on each Payment Date to the Person appearing on the registration books of the Trustee hereinafter provided for as the Owner thereof on the fifteenth day (whether or not a Business Day) of the calendar month next preceding such Payment Date by check or draft mailed to such Owner at such Owner's address as it appears on such registration books.

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

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

(e) If the Company or any Financing Party (including the Lender) is the sole Owner of the Bonds and the lessee under the Lease, then the Owner may set-off its obligation to the City as lessee under the Lease against the City's obligations to the bondholder under this Indenture; provided that, at all times that the Owner is the only bond holder and the lessee under the Lease, such set-off shall be deemed

to occur and payment under this Indenture is deemed to have been made. The Company shall provide the Trustee with a written statement confirming such ownership upon which the Trustee may conclusively rely. In connection with any such permitted set-off, the Trustee may conclusively rely on the absence of any written notice from the Company to the contrary as evidence that such set-off has occurred. On the final Payment Date, the Owner may deliver to the Trustee for cancellation the Bonds and the Owner as lessee under the Lease shall receive a credit against the Basic Rent payable by the lessee under **Section 5.1** of the Lease in an amount equal to the remaining principal on the Bond so tendered for cancellation plus accrued interest thereon.

**Section 205. Execution and Authentication of Bonds.**

(a) The Bonds shall be executed on behalf of the City by the manual or facsimile signature of its Mayor and attested by the manual or facsimile signature of the City Clerk, and shall have the corporate seal of the City affixed thereto or imprinted thereon. If any officer whose signature or facsimile thereof appears on the Bonds ceases to be such officer before the delivery of such Bond, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if such Person had remained in office until delivery. Any Bond may be signed by such Persons as at the actual time of the execution of such Bond are the proper officers to sign such Bond although at the date of such Bond such Persons may not have been such officers.

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

**Section 206. Registration, Transfer and Exchange of Bonds.**

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

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

(c) In all cases in which Bonds are exchanged or transferred hereunder the provisions of any legend restrictions on the Bonds shall be complied with and the City shall execute and the Trustee shall authenticate and deliver at the earliest practicable time Bonds in accordance with the provisions of this Indenture. All Bonds surrendered in any such exchange or transfer shall forthwith be cancelled by the

Trustee. The City or the Trustee may make a reasonable charge for every such exchange or transfer of Bonds sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer, and such charge shall be paid before any such new Bond shall be delivered. Neither the City nor the Trustee shall be required to make any such exchange or transfer of Bonds during the 15 days immediately preceding a Payment Date on the Bonds or, in the case of any proposed redemption in part of Bonds, during the 15 days immediately preceding the selection of Bonds for such redemption or after such Bonds or any portion thereof has been selected for redemption.

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

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

**Section 208. Authorization of the Bonds.**

(a) The Bonds are authorized in the aggregate maximum principal amount of \$10,000,000 for the purpose of providing funds to pay the costs of the Project, which Bonds shall be designated "City of Arnold, Missouri, Taxable Industrial Revenue Bonds (Cedarhurst of Arnold Real Estate, LLC Project), Series 2019." The Bonds shall be dated as provided in **Section 203(b)** hereof, shall become due on December 1, 2035 (subject to prior redemption as provided in **Article III**) and shall bear interest as specified in **Section 208(f)** hereof, payable on the dates specified in **Section 208(f)** hereof.

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

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

(1) An original or certified copy of the ordinance passed by the City Council authorizing the issuance of the Bonds and the execution of this Indenture, the Performance Agreement, the Deed, the Bond Purchase Agreement and the Lease;

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

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



(4) A request and authorization to the Trustee on behalf of the City, executed by the Authorized City Representative, to authenticate the Bonds and deliver the same to or at the 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 names of the purchaser and the amount of such purchase price;

(5) An opinion of counsel nationally recognized on the subject of municipal bonds 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 Bonds.

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

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

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

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

(e) Following the initial issuance and delivery of the Bonds, the Company may submit additional requisition certificates in accordance with **Section 4.4** of the Lease. If the Purchaser does not pay to the Trustee the amount set forth in the requisition 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 Bonds, the Trustee shall endorse the 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 Bonds shall be the date that each such requisition certificate is submitted. The Trustee shall keep a record of the total requisitions submitted to the Trustee for the Project, and shall notify the City if the requisitions submitted exceed the maximum principal amount of the Bonds.

(f) The Bonds shall bear interest at the rate of 5.00% per annum on the Cumulative Outstanding Principal Amount of the Bonds. Such interest shall be payable in arrears on each December 1, commencing on December 1, 2020, and continuing thereafter until the Cumulative Outstanding Principal Amount is paid in full, but not later than December 1, 2035. Interest shall be calculated on the basis of a year of 360 days consisting of twelve months of 30 days each.

(g) The Trustee shall keep and maintain a record of the amount deposited or deemed to be deposited into the Project Fund pursuant to the terms of this Indenture as "Principal Amount Advanced" and shall enter the aggregate principal amount of the Bonds then Outstanding on its records as the "Cumulative Outstanding Principal Amount". If the Trustee is holding the Bonds, such advanced

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

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

**Section 210. Cancellation and Destruction of Bonds Upon Payment.**

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

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

## ARTICLE III

### REDEMPTION OF BONDS

#### **Section 301. Redemption of Bonds.**

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

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

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

**Section 302. Effect of Call for Redemption.** Before or on the date fixed for redemption, funds, Government Securities, or a combination thereof, shall be placed with the Trustee which are sufficient to pay the Bonds called for redemption and accrued interest thereon, if any, to the redemption date. Upon the happening of the above conditions and appropriate written notice having been given, the Bonds or the portions of the principal amount of Bonds thus called for redemption shall cease to bear interest on the specified redemption date, and shall no longer be entitled to the protection, benefit or security of this Indenture and shall not be deemed to be Outstanding under the provisions of this Indenture. If the Bonds are fully redeemed before maturity and an amount of money equal to the Trustee's and the Paying Agent's agreed to fees and expenses hereunder accrued and to accrue in connection with such redemption is paid or provided for, the City shall, at the Company's direction, deliver to the Company the items described in **Section 11.2** of the Lease.

**Section 303. Notice of Redemption.** If the Bonds are to be called for redemption as provided in **Section 301(a)** hereof, the Company shall deliver written notice to the City and the Trustee that it has elected to redeem all or a portion of the Bonds at least 40 days (10 days if there is only one Owner) before

the scheduled redemption date. The Trustee shall then deliver written notice to the Owners at least 30 days (five days if there is one Owner) before the scheduled redemption date by first-class mail (or facsimile, if there is one Owner) stating the date upon which the Bonds will be redeemed and paid, unless such notice period is waived by the Owners in writing.

#### ARTICLE IV

##### FORM OF BONDS

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

#### ARTICLE V

##### CUSTODY AND APPLICATION OF BOND PROCEEDS

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

(a) "City of Arnold, Missouri, Project Fund – Cedarhurst of Arnold Real Estate, LLC" (herein called the "Project Fund").

(b) "City of Arnold, Missouri, Costs of Issuance Fund – Cedarhurst of Arnold Real Estate, LLC" (herein called the "Costs of Issuance Fund").

(c) "City of Arnold, Missouri, Bond Fund – Cedarhurst of Arnold Real Estate, LLC" (herein called the "Bond Fund").

**Section 502. Deposits into the Project Fund.** The proceeds of the sale of the Bonds (whether actually paid or deemed paid under **Section 208(d)** hereof), 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** hereof, shall be deposited by the Trustee into the Project Fund. Any money received by the Trustee from any other source for the purpose of purchasing, constructing and installing the Project shall pursuant to any written directions from the Person depositing such moneys also be deposited into the Project Fund.

**Section 503. Disbursements from the Project Fund.**

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

(b) If, pursuant to **Section 208(d)**, the Trustee is deemed to have deposited into the Project Fund the amount specified in the requisition certificates submitted by the Company, the Trustee shall upon endorsement of the Bonds in an equal amount be deemed to have disbursed such funds from the Project Fund to the Company (or such other purchaser designated by the Company) in satisfaction of the requisition certificate. If the Trustee is holding the Bonds, such deemed disbursement will be deemed to have been made on the date the Trustee endorses the 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 Company 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 Project.** The completion of the purchase, construction and installation of the Project and payment of all costs and expenses incident thereto shall be evidenced by the filing with the Trustee of the certificate required by the provisions of **Section 4.5** of the Lease. As soon as practicable after the Completion Date, any balance remaining in the Project Fund shall without further authorization be transferred by the Trustee to the Bond Fund and applied as provided in **Section 4.6** of the Lease.

**Section 505. Deposits into and Disbursements from the Costs of Issuance Fund.** Any money deposited by the Company in the Costs of Issuance Fund shall be used solely to pay costs of issuing the Bonds or refunded to the Company 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, 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 of such money not used to pay costs of issuance within 180 days of the Closing Date shall be refunded to the Company.

**Section 506. Disposition Upon Acceleration.** If the principal of the Bonds has become due and payable pursuant to **Section 902** hereof, upon the date of payment by the Trustee of any moneys due as hereinafter provided in **Article IX**, any balance remaining in the Project Fund shall without further authorization be deposited in the Bond Fund by the Trustee, with advice to the City and to the Company of such action.

## ARTICLE VI

### REVENUES AND FUNDS

**Section 601. Deposits Into the Bond Fund.**

(a) The Trustee shall deposit into the Bond Fund, as and when received, (i) all accrued interest on the Bonds, if any, paid by the Purchaser; (ii) all Basic Rent payable by the Company to the City specified in **Section 5.1** of the Lease; (iii) any Additional Rent payable by the Company specified in **Section 5.2** of the Lease; (iv) 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; (v) subject to the terms and conditions of the Deed of Trust with respect to the use thereof, the balance of any Net Proceeds (as defined in the Lease) of condemnation awards or insurance received by the Trustee pursuant to **Article IX** of the Lease; (vi) the amounts to be deposited in the Bond Fund pursuant to **Sections 9.1(f)** and **9.2(c)** of the Lease; (vii) all interest and other income derived from investments of Bond Fund moneys as provided in **Section 702** hereof; and (viii) all other moneys received by the Trustee under and pursuant to any of the provisions of the Lease when accompanied by directions from the Person depositing such moneys that such moneys are to be paid into the Bond Fund.

(b) Whether or not deposits are being made to the Trustee, the Trustee shall notify the Company in writing, at least 15 days before each date on which a payment is due under **Section 5.1** of the Lease, of the amount that is payable by the Company pursuant to such Section.

**Section 602. Application of Moneys in the Bond Fund.**

(a) Except as provided in **Section 604** and **Section 908** hereof or in **Section 4.6(a)** of the Lease, moneys in the Bond Fund shall be expended solely for the payment of the principal of and the interest on the 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 for such items of Additional Rent as they are received or due without further authorization from the City.

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

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

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

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

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

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

## ARTICLE VII

### SECURITY FOR DEPOSITS AND INVESTMENT OF FUNDS

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

**Section 702. Investment of Moneys in Project Fund and Bond Fund.** Moneys held in the Project Fund and the Bond Fund shall, pursuant to written direction of the Company, signed by the Authorized Company Representative, be separately invested and reinvested by the Trustee in Investment Securities which mature or are subject to redemption by the Owner before the date such funds will be needed. If the Company fails to provide written directions concerning investment of moneys held in the Project Fund and the Bond Fund, the Trustee is authorized to invest 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. 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** hereof while any of the 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 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 Bonds as they become due and payable at the place, on the dates and in the manner provided herein and in the Bonds according to the true intent and meaning thereof. Nothing herein shall be construed as requiring the City to operate the Project as a business other than as lessor or to use any funds or revenues from any source other than funds and revenues derived from the Project.

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

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

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

**Section 805. Recordings and Filings.** The City shall file or cause to be kept and filed all financing statements, and hereby authorizes and directs 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 UCC financing statement relating to the trust estate filed by the City at the time of the issuance of the Bonds; provided that a copy of the filed initial financing statement is timely delivered to the Trustee. In addition, unless the Trustee has been notified in writing by the City that any such initial filing or description of collateral was or has become defective, the Trustee shall be fully protected in (a) relying on such initial filing and 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 Company shall be responsible for the customary fees charged by the Trustee for the preparation and filing of continuation statements and for the reasonable costs incurred by the Trustee in the preparation and filing of all continuation statements hereunder, including attorneys' fees and expenses. These fees shall be considered "extraordinary services" fees.

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

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

## ARTICLE IX

### DEFAULT AND REMEDIES

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

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

No default specified above shall constitute an Event of Default until the City, the Trustee or the Owners of 25% in aggregate principal amount of all Bonds Outstanding has given actual notice of such default by registered or certified mail or a recognized overnight delivery service to the Company and

Lender, and the Company and Lender have had 30 days after receipt of such notice to correct said default or cause said default to be corrected and has not corrected said default or caused said default to be corrected within such period; provided, however, if any such default (other than a default in the payment of any money) is such that it cannot be corrected within such period, it shall not constitute an Event of Default if corrective action is instituted by the Company, Lender or the City (as the case may be) within such period and diligently pursued until the default is corrected; provided, further that the Trustee is provided with a certification from the defaulting party to the effect that such default cannot be corrected within such period and the Company, Lender or the City, as the case may be, has commenced or will promptly commence corrective action within such period and will diligently pursue such action until the default is corrected.

**Section 902. Acceleration of Maturity in Event of Default.**

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

(b) If, at any time after such declaration, but before the Bonds have matured by their terms, all overdue installments of principal and interest upon the Bonds, together with the reasonable and proper expenses of the Trustee, and all other sums then payable by the City under this Indenture are either paid or provisions satisfactory to the Trustee are made for such payment, then and in every such case the Trustee shall, but only with the approval of a majority of the Owners of the Bonds then Outstanding, rescind such declaration and annul such default in its entirety. In such event, the Trustee shall rescind any declaration of acceleration of installments of rent payments on the Bonds as provided in **Section 12.2** of the Lease.

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

**Section 903. Surrender of Possession of Trust Estate; Rights and Duties of Trustee in Possession.** If an Event of Default has occurred and is continuing after the notice and cure period described in **Section 901** elapses, the City, upon demand of the Trustee, shall forthwith surrender the possession of, and it shall be lawful for the Trustee, by such officer or agent as it may appoint, to take possession of all or any part of the Trust Estate, together with the books, papers and accounts of the City pertaining thereto, and including the rights and the position of the City under the Lease, and to hold, operate and manage the same, and from time to time make all needful repairs and improvements. The Trustee may lease the Project or any part thereof, in the name and for 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 Performance Agreement. The Trustee shall apply the remainder of the moneys so received in accordance with the provisions of **Section 908** hereof. Whenever all that is due upon the Bonds has been paid and all

defaults cured, the Trustee shall surrender possession of the Trust Estate to the City, its successors or assigns, the same right of entry, however, to exist upon any subsequent Event of Default. While in possession of such property, the Trustee shall render annually to the City and the Company a summarized statement of receipts and expenditures in connection therewith.

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

**Section 905. Exercise of Remedies by the Trustee.**

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

(b) If an Event of Default has occurred and is continuing after the notice and cure period described in **Section 901** elapses, and if requested in writing to do so by (1) the City (in the case of an Event of Default pursuant to **Section 12.1(a)** (but only as it relates to Additional Rent), **Section 12.1(b)** (but only as it relates to Unassigned Rights) or **Section 12.1(d)** of the Lease), or (2) the Owners of 25% in aggregate principal amount of Bonds then Outstanding and indemnified as provided in subsection (l) of **Section 1001** 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 Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without necessity of joining as plaintiffs or defendants any Owners, and any recovery of judgment shall, subject to the provisions of **Section 908** hereof, be for the equal benefit of all the Owners of the Outstanding Bonds.

**Section 906. Limitation on Exercise of Remedies by Owners.** No Owner shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust hereunder or for the appointment of a receiver or any other remedy hereunder, unless (a) a default has occurred of which the Trustee has been notified as provided in **Section 1001(h)** or of which by said subsection the Trustee is deemed to have notice, (b) such default has become an Event of Default, (c) the Owners of 25% in aggregate principal amount of Bonds then Outstanding have made written request to the Trustee, have offered it reasonable opportunity either to proceed for such reasonable period not to exceed 60 days following such notice and to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, and have offered to the Trustee indemnity as provided in **Section 1001(i)**, 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 equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of the Owners of all Bonds then Outstanding. Nothing in this Indenture contained shall, however, affect or impair the right of any Owner to payment of the principal of and interest on any Bond at and after the maturity thereof or the obligation of the City to pay the principal of and interest on each of the Bonds issued hereunder to the respective Owners thereof at the time, place, from the source and in the manner herein and in the Bonds expressed.

**Section 907. Right of Owners to Direct Proceedings.**

(a) The Owners of a majority in aggregate principal amount of Bonds then Outstanding may, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver or any other proceedings hereunder; provided that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture, including **Section 1001(l)** 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 **Sections 12.1(a)** (but only as it relates to Additional Rent), **(b)** (but only as it relates to Unassigned Rights), **(c)** or **(d)** of the Lease.

**Section 908. Application of Moneys in Event of Default.**

(a) All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall first be applied 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 Performance Agreement. Any remaining moneys shall be deposited in the Bond Fund and applied as follows:

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

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

SECOND -- To the payment to the Persons entitled thereof of the unpaid principal of any of the Bonds which shall have become due and payable (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture), in the order of their due dates, and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such

interest, then to the payment, ratably, according to the amount of principal due on such date, to the Persons entitled thereto without any discrimination or privilege.

(2) If the principal of all the Bonds has become due or has been declared due and payable, all such moneys shall be applied to the payment of the principal and interest, if any, then due and unpaid on all of the Bonds, without preference or priority of principal over interest or of interest over principal or of any installment of interest over any other installment of interest or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the Person entitled thereto, without any discrimination or privilege.

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

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

(c) Whenever all of the Bonds and interest thereon, if any, have been paid under the provisions of this Section, and all fees, expenses and charges of the City and the Trustee and any other amounts required to be paid under this Indenture and the Lease have been paid (including any amounts payable under the Performance Agreement), any balance remaining in the Bond Fund shall be paid to the Company 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 Company, the Trustee and the Owners shall be restored to their former positions and rights hereunder, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

**Section 910. Waivers of Events of Default.** The Trustee shall waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal of and interest, if any, on the Bonds, but only upon the written request of the Owners of at least 50% in aggregate principal amount of all the Bonds then Outstanding, provided, however, that (1) there shall not be waived without the consent of the City an Event of Default hereunder arising from an Event of Default under **Sections 12.1(a)** (but only as it relates to Additional Rent), **(b)** (but only as it relates to Unassigned Rights), **(c)** or **(d)** of the Lease, and (2) there shall not be waived without the consent of the Owners of all

the Bonds Outstanding (a) any Event of Default in the payment of the principal of any Outstanding Bonds when due (whether at the date of maturity or redemption specified therein), or (b) any Event of Default in the payment when due of the interest on any such Bonds, unless before such waiver or rescission, all arrears of interest, or all arrears of payments of principal when due, as the case may be, and all reasonable expenses of the Trustee and the City (including reasonable attorneys' fees and expenses), in connection with such default, has 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 has been discontinued or abandoned or determined adversely, then and in every such case the City, the Company, the Trustee and the Owners shall be restored to their former positions, rights and obligations hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

## ARTICLE X

### THE TRUSTEE

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

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

(b) The Trustee undertakes to perform such duties as are specifically set forth in this Indenture, and in the absence of bad faith, negligence or willful misconduct on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct. The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or through agents, affiliates, attorneys or receivers and shall not be responsible for any misconduct or negligence on the part of any agent, attorney or receiver appointed or chosen by it with due care. The Trustee may conclusively rely upon and act or refrain from acting upon any opinion or advice of counsel, who may be counsel to the City or to the Company, concerning all matters of trust hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such agents, attorneys and receivers as may reasonably be employed in connection with the trusts hereof. The Trustee shall not be responsible for any loss or damage resulting from any action or nonaction by it taken or omitted to be taken in good faith in reliance upon such opinion or advice of counsel addressed to the City and the Trustee.

(c) The Trustee shall not be responsible for any recital herein or in the Bonds (except with respect to the Certificate of Authentication of the Trustee endorsed on the Bonds), or except

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

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

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

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

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

(h) The Trustee shall not be required to take notice or be deemed to have notice of any default hereunder except failure by the City to cause to be made any of the payments to the Trustee required to be made in **Article VI** 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 Bonds then Outstanding.

(i) At any and all reasonable times and subject to the Company's reasonable and standard security procedures, the Trustee and its duly authorized agents, attorneys, experts,

engineers, accountants and representatives may, but shall not be required to, inspect any and all of the Project, and all books, papers and records of the City pertaining to the Project and the Bonds, and to take such memoranda from and in regard thereto as may be desired. The Trustee shall treat all proprietary information of the Company as confidential.

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

(k) The Trustee may, but shall not be required to, demand, in respect of the authentication of any Bonds, the withdrawal of any cash, the release of any property, or 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 Bonds, the withdrawal of any cash, or the taking of any other action by the Trustee.

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

**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 occasioned by the neglect or willful misconduct of the Trustee, it shall not be entitled to compensation or reimbursement therefor. The Trustee shall be entitled to payment and reimbursement for the reasonable fees and charges of the Trustee as Paying Agent for the Bonds. Pursuant to the provisions of **Section 5.2** of the Lease, the Company has agreed to pay to the Trustee all reasonable fees, charges and expenses of the Trustee under this Indenture. The Trustee agrees that the City shall have no liability for any reasonable fees, charges and expenses of the Trustee, and the Trustee agrees to look only to the Company for the payment of all reasonable fees, charges and expenses of the Trustee and any Paying Agent as provided in the Lease. Upon the occurrence of an Event of Default and during its continuance, the Trustee shall have a lien with right of payment before payment on account of



principal of or interest on any Bond, upon all moneys in its possession under any provisions hereof for the foregoing reasonable advances, fees, costs and expenses incurred. The Trustee's 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 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 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 Bonds then Outstanding.

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

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

**Section 1007. Removal of Trustee.** The Trustee may be removed at any time, with or without cause, by an instrument or concurrent instruments in writing (a) delivered to the Trustee, the City and the Company and signed by the Owners of a majority in aggregate principal amount of Bonds then Outstanding, or (b) so long as no Event of Default under this Indenture or the Lease shall have occurred and be continuing, delivered to the Trustee, the City and the Owners and signed by the Company.

**Section 1008. Appointment of Successor Trustee.** If the Trustee hereunder resigns or is removed, or otherwise becomes incapable of acting hereunder, or if it is taken under the control of any public officer or officers or of a receiver appointed by a court, a successor Trustee (a) reasonably acceptable to the City may be appointed by the Company (so long as no Event of Default has occurred and is continuing), or (b) reasonably acceptable to the City and the Company may be appointed by the Owners of a majority in aggregate principal amount of Bonds then Outstanding, by an instrument or concurrent instruments in writing; provided, nevertheless, that in case of such vacancy, the City, by an

instrument executed and signed by its Mayor 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, or whose obligations are guaranteed by a financial institution having, a reported capital, surplus and undivided profits of not less than \$50,000,000. If no successor Trustee has been so appointed and accepted appointment in the manner herein provided, the Trustee, at the Company's expense, or any Owner may petition any court of competent jurisdiction for the appointment of a successor Trustee, until a successor has been appointed as above provided.

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

**Section 1010. Right of Trustee to Pay Taxes and Other Charges.** If any tax, assessment or governmental or other charge upon, or insurance premium with respect to, any part of the Project is not paid as required herein or in the Lease, the Trustee may pay such tax, assessment 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 Bonds, and shall be paid out of the proceeds of rents, revenues and receipts collected from the Project, if not otherwise caused to be paid; but the Trustee shall be under no obligation to make any such payment unless it has been requested to do so by the Owners of at least 25% of the aggregate principal amount of Bonds then Outstanding and has been provided adequate funds for the purpose of such payment.

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

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

as a co-trustee or separate trustee, and the Trustee is hereby authorized to appoint such co-trustee or separate trustee.

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

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

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

**Section 1012. Accounting.** The Trustee shall render an annual accounting for the period ending December 31 of each year to the City, the Company and to any Owner requesting the same and, upon the request of the City, the Company or any Owner, a monthly accounting to 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 that is not to the material prejudice of the Owners, or, in the judgment of the Trustee, is not to the material prejudice of the Trustee (provided the Trustee may receive and may 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 Project or to add additional property thereto;

(d) To conform the Indenture to amendments to the Lease made by the City and the Company; or

(e) To subject to this Indenture additional revenues, properties or collateral.

**Section 1102. Supplemental Indentures Requiring Consent of Owners.**

(a) Exclusive of Supplemental Indentures covered by **Section 1101** 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 Bonds then Outstanding may, from time to time, anything contained in this Indenture to the contrary notwithstanding, consent to and approve the execution by the City and the Trustee of such other Supplemental Indenture or Supplemental Indentures as shall be deemed necessary and desirable by the City for the purpose of modifying, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any Supplemental Indenture; provided, however, that without the consent of the Owners of 100% of the principal amount of the Bonds then Outstanding, nothing in this Section contained shall permit or be construed as permitting (1) an extension of the maturity or a shortening of the redemption date of the principal of or the interest, if any, on any Bond issued hereunder, or (2) a reduction in the principal amount of any Bond or the rate of interest thereon, if any, or (3) a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (4) a reduction in the aggregate principal amount of Bonds the Owners of which are required for consent to any such Supplemental Indenture.

(b) If at the time the City requests the Trustee to enter into any such Supplemental Indenture for any of the purposes of this Section, the Trustee shall cause notice of the proposed execution of such Supplemental Indenture to be mailed to each Owner as shown on the bond registration books required by **Section 206** 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 Bonds Outstanding at the time of the execution of any such Supplemental Indenture shall have consented to and approved the execution thereof as herein provided, no Owner shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the City from executing the same or from taking any action pursuant to the provisions thereof.

**Section 1103. Company's Consent to Supplemental Indentures.** Anything herein to the contrary notwithstanding, a Supplemental Indenture under this Article shall not become effective unless and until the Company and any Financing Party 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 Company's rights) together with a copy of the proposed Supplemental Indenture to be mailed to the Company and any Financing Party of which the Trustee has received written notice thereof at least 15 days before the proposed date of execution and

delivery of the Supplemental Indenture. The Trustee acknowledges that it has been provided with the name and address of the Lender as is more fully set forth in **Section 1404** hereof.

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

## ARTICLE XII

### SUPPLEMENTAL LEASES

**Section 1201. Supplemental Leases Not Requiring Consent of Owners.** The City and the Trustee shall, without the consent of or notice to the Owners, consent to the execution of any Supplemental Lease or Supplemental Leases by the City and the Company as may be required (a) by the provisions of the Lease and this Indenture, (b) for the purpose of curing any ambiguity or formal defect or omission in the Lease, (c) so as to more precisely identify the Project or add additional property thereto or (d) in connection with any other change therein which, in the judgment of the Trustee, does not materially and adversely affect the Trustee or security for the Owners (provided the Trustee may receive and 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 Company without the mailing of notice and the obtaining of the written approval or consent of the Owners of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding given and obtained as provided in **Section 1102** hereof. If at any time the City and the Company shall request the consent of the Trustee to any such proposed Supplemental Lease, the Trustee shall cause notice of such proposed Supplemental Lease to be mailed in the same manner as provided in **Section 1102** 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 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 thereof.

## **ARTICLE XIII**

### **SATISFACTION AND DISCHARGE OF INDENTURE**

#### **Section 1301. Satisfaction and Discharge of this Indenture.**

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

(b) The City is hereby authorized to accept a certificate by the Trustee that the whole amount of the principal and interest, if any, so due and payable upon all of the Bonds then Outstanding has been paid or such payment provided for in accordance with **Section 1302** 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. Bonds Deemed to be Paid.**

(a) Bonds shall be deemed to be paid within the meaning of this Article when payment of the principal of and interest thereon to the due date thereof (whether such due date be by reason of maturity or upon redemption as provided in this Indenture, or otherwise), either (1) 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 (i) moneys sufficient to make such payment or (ii) Government Securities maturing as to principal and interest in such amount and at such times as will insure the availability of sufficient moneys to make such payment, or (3) have been provided for by surrendering the Bonds to the Trustee for cancellation. At such time as Bonds are deemed to be paid hereunder, as aforesaid, they shall no longer be secured by or entitled to the benefits of this Indenture, except for the purposes of such payment from such moneys or Government Securities.

(b) Notwithstanding the foregoing, in the case of Bonds which by their terms may be redeemed before the stated maturities thereof, no deposit under clause (2) of the immediately preceding paragraph shall be deemed a payment of such Bonds as aforesaid until, as to all such Bonds which are to be redeemed before their respective stated maturities, proper notice of such redemption has been given in accordance with **Article III** of this Indenture or irrevocable instructions have been given to the Trustee to give such notice.

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

## ARTICLE XIV

### MISCELLANEOUS PROVISIONS

#### **Section 1401. Consents and Other Instruments by Owners.**

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

(i) 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.

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

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

**Section 1402. Limitation of Rights Under this Indenture.** With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give any Person other than the parties hereto, and the Owners, if any, any right, remedy or claim under or in respect 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. Notices.** It shall be sufficient service of any notice, request, complaint, demand or other paper required by this Indenture to be given or filed with the City, the Trustee, the Company, 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 Arnold, Missouri  
2101 Jeffco Boulevard  
Arnold, Missouri 63010  
ATTN: City Administrator

with copies to:

Robert K. Sweeney, LLC  
P.O. Box 20  
503 Main Street  
Hillsboro, Missouri 63050  
ATTN: Robert K. Sweeney

and:

Gilmore & Bell, P.C.  
211 N. Broadway, Suite 2000  
St. Louis, Missouri 63102  
ATTN: Mark D. Grimm

(b) To the Trustee:

BOKF, N.A.  
200 N. Broadway, Suite 1710  
St. Louis, Missouri 63102  
ATTN: Corporate Trust Department

(c) To the Company:

Cedarhurst of Arnold Real Estate, LLC  
120 South Central Ave., Suite 1050  
Clayton, Missouri 63105  
ATTN: Jordan D. Dorsey

(d) To the Lender:

Sterling Bank  
50 S. Bemiston Ave.  
Clayton, MO 63105  
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 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 Company. The City, the Company and the Trustee may from time to time designate, by notice given hereunder to the others of such parties, such other address to which subsequent notices, certificates or other communications shall be sent.

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

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

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

**Section 1407. Electronic Storage.** 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 1408. City Consent and Approvals.** Pursuant to the Ordinance, the Mayor is authorized to execute all documents on behalf of the City (including documents pertaining to the transfer of property or the financing of the Project by the Company, and such easements, licenses, rights-of-way, plats and similar documents as may be requested by the Company) as may be required to carry out and comply with the intent of the Ordinance, this Indenture and the Lease. The Mayor is also authorized, unless otherwise expressly provided herein to the contrary, to grant on behalf of the City such consents, estoppels and waivers relating to the Bonds, this Indenture, the Lease or the Performance Agreement, including extensions of the Completion Date, as may be requested during the term thereof; provided, such consents, estoppels and/or waivers shall not increase the principal amount of the Bonds, increase the term of the Lease or adversely affect the tax exemption as provided for therein, waive an Event of Default, or materially change the nature of the transaction unless approved by an ordinance of the City Council.

[Remainder of Page Intentionally Left Blank.]

**IN WITNESS WHEREOF**, the City of Arnold, Missouri, has caused this Indenture to be signed in its name and behalf by its Mayor and the seal of the City to be hereunto affixed and attested by the City Clerk, and to evidence its acceptance of the trusts hereby created, BOKF, 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 ARNOLD, MISSOURI**

By: \_\_\_\_\_  
Mayor

[SEAL]

ATTEST:

By: \_\_\_\_\_  
City Clerk

[Trust Indenture]

**BOKF, N.A., as Trustee**

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

[Trust Indenture]

**EXHIBIT A**  
**PROJECT SITE**

The land situated in Jefferson County, State of Missouri, and described as follows:

**Parcel 1:**

Adjusted Parcel A of Consolidation Plat of Part of Lot 17 in U.S. Survey 2991 Township 43 North, Range 6 East, a subdivision in Jefferson County, Missouri, according to the plat thereof recorded December 4, 2007 as Document No. 2007S-000040 of the Jefferson County Records.

**Parcel 2:**

Lots Eleven (11) and Twelve (12) of GEBHARDT'S 2ND ADDITION, a subdivision in Jefferson County, Missouri, as per plat thereof recorded in Plat Book 26, Page 15 of the Jefferson County Records.

**Parcel 3:**

All that part of a 4.79 acre tract in Lot Sixteen (16) in U.S. Survey 2991, Jefferson County, Missouri, fully described in Warranty Deed dated January 24, 1951 recorded in Book 197, Page 179 in the Recorder's Office of Jefferson County, Missouri, described as follows, to-wit: Beginning at a point on the Northeastern line of said 4.79 acre tract which point of beginning is located North 38-1/2 degrees West 30 feet from the Southeastern line of said 4.79 acre tract; thence North 64-1/2 degrees West, 100 feet; thence South 52-1/2 degrees West, 150 feet; thence South 38-1/2 degrees East to a point 30 feet from the Southeast line of said 4.79 acre tract; thence North 52-1/2 degrees East on a line parallel to and 30 feet distant from the Southeastern line of said 4.79 acre tract to the place of beginning.

**Parcel 4:**

Easement for road purposes over the Drive 26 feet wide as created by the plat of Gebhardt's 2nd Subdivision dated August 24, 1962 and recorded August 27, 1962 in Plat Book 26 page 15 of the Jefferson County Records; subject to the terms, provisions and conditions set forth in said instrument.

**Parcel 5:**

All that part of Lot Seventeen (17) of US Survey No 2991, in Jefferson County, Missouri, described as follows, to-wit: Beginning at a point on the West line of the Lemay Ferry County Road, said point being the most Southern corner of the tract conveyed to John R. Hopmeier and wife to Chas Schierhoff by deed dated July 1, 1952, and recorded in Book 204 page 97 of the Jefferson County Land Records; thence Northwestwardly along the West line of said tract to a point in the Northwest line of the John R. Hopmeier tract, being the Northwest line of said Lot Seventeen (17); thence South 52-1/2 degrees West of the Northwest line of said Lot Seventeen (17), 377.84 feet to the most Western corner of said Lot Seventeen (17); thence South 37-1/2 degrees East 200.56 feet to a point; thence North 52-1/2 degrees East 330 feet to the most Western corner of the one acre tract acquired by John R. Hopmeier by deed recorded in Book 175 page 525 of the Jefferson County Land Records; thence South 37-1/2 degrees East along the Southwest line of said tract, 434.94 feet to the most Southern corner thereof, said point being on the West line of said Lemay Ferry Road; thence Northwardly along the West line of said road to the place of beginning.

**Parcel 6:**

One and Eighty-eight hundredths (1.88) acres being part of a larger tract of 4.00 acres in Lot Seventeen (17), of U.S. Survey No. 2991, Township 43 North, Range 6 East, which larger tract was conveyed by Anton W. Hampel and wife to Alvin Joseph Becker and wife, by deed dated January 13, 1955, recorded in Book 231, at page 549 of the Jefferson County, Missouri Land Records. Said One and Eighty-eight hundredths (1.88) acres being described as follows: Beginning at the most Northern corner of said larger tract and running thence with the Northeastern boundary line thereof, South 37 degrees 30 minutes East 447 feet to an iron pin in the Western line of Lemay Ferry Road; thence with the Western side of said road, South 15 degrees 5 minutes West 170 feet to an iron pin; thence departing from said Lemay Ferry Road and running North 58 degrees 22 minutes West 122.23 feet to an iron pin; thence North 33 degrees 14 minutes West 437.2 feet to an iron pin in the Northwestern boundary line of said larger tract; thence North 52 degrees 30 minutes East 146.39 feet to the place of beginning.

**Parcel 7:**

Seven Tenths (0.7) of an acre being part of a larger tract of 4.00 acres in Lot Seventeen (17), of U.S. Survey No. 2991, Township 43 North, Range 6 East, which larger tract was conveyed by Anton W. Hampel and wife, by Alvin Joseph Becker and wife, by deed dated January 13, 1955, recorded in Book 231 Page 549 of the Jefferson County, Missouri Land Records. Said Seven Tenths (0.7) of an acre being described as follows: Beginning in the Northwestern boundary line of the above mentioned larger tract, at an iron pin located South 52 degrees 30 minutes West 146.39 feet distant from a stone marking the most northern corner of said larger tract, proceed thence from said iron pin, South 52 degrees 30 minutes East 53.65 feet to an iron pin; thence South 33 degrees 14 minutes East 445.14 feet to an iron pin; thence South 58 degrees 22 minutes East 144.66 feet to an iron pin in the Western line of the Lemay Ferry Road; thence with the Western line of said Lemay Ferry Road, North 22 degrees 37 minutes East 39.15 feet; and North 15 degrees 5 minutes East 15.5 feet to an iron pin marking the Southeast corner of a tract of 1.88 acres conveyed by Alvin Joseph Becker and wife, to Robert L. Browning and wife, et al., by deed recorded in Book 342 at page 351 of the aforesaid records; thence with the Southwestern boundaries of said tract of 1.88 acres so conveyed, North 58 degrees 22 minutes West 122.23 feet to an iron pin; thence North 33 degrees 14 minutes West 437.2 feet to the place of beginning.

## **EXHIBIT B**

### **PROJECT IMPROVEMENTS**

The Project Improvements consist of the approximately 70,000 square foot senior living facility to be constructed on the Project Site, to the extent paid for in whole with Bond proceeds.

**EXHIBIT C**

**PROJECT EQUIPMENT**

All items of machinery, equipment and other personal property items transferred to the City, located on the Project Site pursuant to **Article IV** of the Lease, and paid for in whole from the proceeds of the Bonds.

**EXHIBIT D**  
**FORM OF BONDS**

***THIS BOND OR ANY PORTION HEREOF MAY BE TRANSFERRED,  
ASSIGNED OR NEGOTIATED ONLY TO AN APPROVED INVESTOR  
AS DEFINED IN THE HEREIN-DESCRIBED INDENTURE.***

No. 1

Not to Exceed  
**\$10,000,000**

**UNITED STATES OF AMERICA  
STATE OF MISSOURI**

**CITY OF ARNOLD, MISSOURI  
TAXABLE INDUSTRIAL REVENUE BOND  
(CEDARHURST OF ARNOLD REAL ESTATE, LLC PROJECT)  
SERIES 2019**

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Dated Date</u>
5.00%	December 1, 2035	_____, 2019

**OWNER:** \_\_\_\_\_

**MAXIMUM PRINCIPAL AMOUNT:           TEN MILLION DOLLARS**

**THE CITY OF ARNOLD, MISSOURI**, a third-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 continental 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, 2020, and continuing thereafter until the earlier of the date on which said Cumulative Outstanding Principal Amount is paid in full or the Maturity Date. Interest on each advancement of the principal amount of this Bond shall accrue from the date that such advancement is made, computed on the basis of a year of 360 days consisting of 12 months of 30 days each.

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

**THIS BOND** is one of a duly authorized series of Bonds of the City designated “City of Arnold, Missouri, Taxable Industrial Revenue Bonds (Cedarhurst of Arnold Real Estate, LLC Project), Series 2019,” in the maximum aggregate principal amount of \$10,000,000 (the “Bonds”), to be issued for the purpose of constructing an approximately 70,000 square foot senior living facility (collectively, the “Project Improvements”) on certain real property located within the City (the “Project Site”), and equipping the Project Site and the Project Improvements with certain personal property (the “Project Equipment”). The City will lease the Project Site, the Project Improvements and the Project Equipment (collectively, the “Project”) to Cedarhurst of Arnold Real Estate, LLC, a Missouri limited liability company (the “Company”), under the terms of a Lease Agreement dated as of June 1, 2019 (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 Company, all pursuant to the authority of and in full compliance with the provisions, restrictions and limitations of the Constitution, the statutes of the State of Missouri, including particularly the Act, and pursuant to proceedings duly had by the governing body of the City.

**THE BONDS** are issued under and are equally and ratably secured and entitled to the protection given by a Trust Indenture dated as of June 1, 2019 (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 BOKF, N.A., St. Louis, Missouri, as trustee (the “Trustee”). *Capitalized terms not defined herein shall have the meanings set forth in the Indenture.*

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

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

**THE BONDS** are subject to mandatory redemption, in whole or in part, to the extent of amounts deposited in the Bond Fund pursuant to **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 Project. Bonds to be redeemed pursuant to this paragraph shall be called for redemption by the Trustee on the earliest practicable date for which timely notice of redemption may be given as provided hereunder. Any redemption of Bonds pursuant to this paragraph shall be at a redemption price equal to the par value thereof being redeemed, plus accrued interest thereon, without premium or penalty, to the redemption date. Before giving notice of redemption to the Owners pursuant to this paragraph, money in an amount equal to the redemption price has been deposited in the Bond Fund.



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

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

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

**THIS BOND** is transferable, as provided in the Indenture, only upon the books of the City kept for that purpose at the above-mentioned office of the Trustee by the Owner hereof in Person or by such Person's duly authorized attorney, upon surrender of this Bond together with a written instrument of transfer reasonably satisfactory to the Trustee duly executed by the Owner or such Person's duly authorized attorney, and thereupon a new fully registered Bond or Bonds, in 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 Bond is registered as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal or redemption price hereof and interest due hereon and for all other purposes.

**THE BONDS** are issuable in the form of one fully-registered Bond in the maximum principal amount of \$10,000,000.

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

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

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

**CITY OF ARNOLD, MISSOURI**

By: \_\_\_\_\_  
Mayor

[SEAL]

ATTEST:

By: \_\_\_\_\_  
City Clerk

---

---

**CERTIFICATE OF AUTHENTICATION**

This Bond is the Taxable Industrial Revenue Bond (Cedarhurst of Arnold Real Estate, LLC Project), Series 2019, described in the Indenture. The effective date of registration of this Bond is set forth below.

**BOKE, N.A.**, as Trustee

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Authorized Signatory

**SCHEDULE I**

**TABLE OF CUMULATIVE OUTSTANDING PRINCIPAL AMOUNT**  
**CITY OF ARNOLD, MISSOURI**  
**TAXABLE INDUSTRIAL REVENUE BOND**  
**(CEDARHURST OF ARNOLD REAL ESTATE, LLC PROJECT)**  
**SERIES 2019**

**Bond No. 1**

<b>Date</b>	<b>Principal Amount Advanced</b>	<b>Principal Amount Redeemed</b>	<b>Cumulative Outstanding Principal Amount</b>	<b>Notation Made By</b>

---

---

**FORM OF ASSIGNMENT**

***(NOTE RESTRICTIONS ON TRANSFERS)***

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

---

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

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

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

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

Medallion Signature Guarantee:

## EXHIBIT E

### FORM OF REPRESENTATION LETTER

City of Arnold, Missouri  
2101 Jeffco Boulevard  
Arnold, Missouri 63010  
ATTN: City Clerk

BOKF, N.A.  
200 N. Broadway, Suite 1710  
St. Louis, Missouri 63102  
ATTN: Corporate Trust Department

Re: \$10,000,000 Maximum Principal Amount of Taxable Industrial Revenue Bonds  
(Cedarhurst of Arnold Real Estate, LLC Project), Series 2019 of City of Arnold, Missouri

Ladies and Gentlemen:

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

1. The undersigned fully understands that (a) the Bonds have been issued under and pursuant to a Trust Indenture dated as of June 1, 2019 (the "Indenture"), between the City of Arnold, Missouri (the "City") and BOKF, N.A., as trustee (the "Trustee"), and (b) the Bonds are payable solely out of certain rents, revenues and receipts to be derived from the leasing or sale of the Project (as defined in the Indenture) to Cedarhurst of Arnold Real Estate, LLC, a Missouri limited liability company (the "Company"), under a Lease Agreement dated as of June 1, 2019 (the "Lease"), between the City and the Company, with certain of such rents, revenues and receipts being pledged and assigned by the City to the Trustee under the Indenture to secure the payment of the principal of and interest on the Bonds.

2. The undersigned understands that (a) the Bonds and the interest thereon are special obligations of the City payable solely out of the rents, revenues and receipts derived by the City from the Project and the Lease, and not from any other fund or source of the City, (b) the Bonds are secured by a pledge and assignment of the Trust Estate to the Trustee in favor of the Owners, as provided in the Indenture, (c) the Bonds and the interest thereon shall not constitute general obligations of the City, the State or any political subdivision thereof, and none of the City, the State or 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.

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

4. The undersigned is an Approved Investor, as defined in the Indenture.

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

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

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

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

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

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

Dated: \_\_\_\_\_, 20\_\_

**[PURCHASER OF BONDS]**

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

---

**CITY OF ARNOLD, MISSOURI,  
As Lessor,**

**AND**

**CEDARHURST OF ARNOLD REAL ESTATE, LLC,  
As Lessee**

---

**LEASE AGREEMENT**

**Dated as of June 1, 2019**

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**Relating to:**

**\$10,000,000  
(Aggregate Maximum Principal Amount)  
City of Arnold, Missouri  
Taxable Industrial Revenue Bonds  
(Cedarhurst of Arnold Real Estate, LLC Project)  
Series 2019**

---

**Certain rights of the City of Arnold, Missouri (the "City"), in this Lease Agreement have been pledged and assigned to BOKF, N.A., St. Louis, Missouri, as Trustee under the Trust Indenture dated as of June 1, 2019, between the City and the Trustee.**

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## LEASE AGREEMENT

**THIS LEASE AGREEMENT**, dated as of June 1, 2019 (the “Lease”), between the **CITY OF ARNOLD, MISSOURI**, a third-class city organized and existing under the laws of the State of Missouri (the “City”), as lessor, and **CEDARHURST OF ARNOLD REAL ESTATE, LLC**, a limited liability company organized and existing under the laws of the State of Missouri (the “Company”);

### 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, inclusive, of the Revised Statutes of Missouri, as amended (collectively, the “Act”), to purchase, construct, extend, equip 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, research and development, office industry, warehousing and industrial development purposes upon such terms and conditions as the City shall deem advisable.

2. Pursuant to the Act, the City Council passed an ordinance (the “Ordinance”) on May 16, 2019, authorizing the City to issue its Taxable Industrial Revenue Bonds (Cedarhurst of Arnold Real Estate, LLC Project), Series 2019, in the maximum principal amount of \$10,000,000 (the “Bonds”), for the purpose of (a) acquiring an approximately nine-acre site at the southwest corner of the intersection of Missouri Route 141 and Old Lemay Ferry Road in the City (the “Project Site,” as more fully described on **Exhibit A** hereto), (b) constructing an approximately 70,000 square foot senior living facility thereon (the “Project Improvements,” as more fully described on **Exhibit B** hereto) and (c) equipping the Project Site and Project Improvements with certain personal property (the “Project Equipment,” as more fully described on **Exhibit C** hereto).

3. Pursuant to the Ordinance, the City is authorized to enter into a Trust Indenture of even date herewith (the “Indenture”) with BOKF, N.A., St. Louis, Missouri, as Trustee (the “Trustee”), for the purpose of issuing and securing the Bonds, as therein provided, and to enter into this Lease with the Company under which the City will acquire the Project Site and purchase, construct, equip and improve the Project Improvements and the Project Equipment, and will lease the Project Site, the Project Improvements and the Project Equipment as they may at any time exist (collectively, the “Project”), to the Company in consideration of rental payments by the Company that will be sufficient to pay the principal of and interest on the Bonds.

4. The City and the Company acknowledge that the Project is subject to the first Deed of Trust and Security Agreement (the “Deed of Trust”) granted to Sterling Bank, its successors and assigns (the “Lender”), by the Company, pursuant to various loan documents evidencing the loan secured by the Deed of Trust.

5. In consideration of the terms and conditions of this Lease, the Ordinance, issuance of the Bonds and certain other agreements, the City and the Company have concurrently herewith entered into a Performance Agreement of even date herewith (the “Performance Agreement”), pursuant to which the Company has agreed to make certain payments in lieu of taxes.

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

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

## **ARTICLE I**

### **DEFINITIONS**

**Section 1.1. Definitions of Words and Terms.** In addition to any words and terms defined elsewhere in this Lease, capitalized words and terms used in this Lease shall have the meanings given to such words and terms in **Section 101** of the Indenture (which definitions are hereby incorporated by reference).

#### **Section 1.2. Rules of Interpretation.**

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

(b) Unless the context shall otherwise indicate, 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 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.

## **ARTICLE II**

### **REPRESENTATIONS**

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

(a) The City is a third-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 the City Council, the City has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers.

(b) As of the date of delivery hereof, the City agrees to acquire the Project Site, subject to Permitted Encumbrances, and acquire, purchase, construct, equip and install or cause to be acquired, purchased, constructed, equipped and installed thereon the Project Improvements and the Project Equipment. The City agrees to lease the Project to the Company and sell the Project to the Company if the Company exercises its option to purchase the Project or upon termination of this Lease, all for the purpose of furthering the public purposes of the Act.

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

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

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

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

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

(h) The City will not operate the Project as a business or in any other manner except as the lessor thereof, except during the continuance of an Event of Default hereunder.

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

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

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

(c) The execution and delivery of this Lease, the consummation of the transactions contemplated hereby, and the performance of or compliance with the terms and conditions of this Lease by the Company will not, to the best of the Company's knowledge, 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 Company is a party or by which it or any of its property is bound, or the Company's organizational documents, or any order, rule or regulation applicable to the Company or any of its property of any court or governmental body, or 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 Company under the terms of any instrument or agreement to which the Company is a party.

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

(e) The Project will comply in all material respects with all applicable federal, state and local laws, statutes, ordinances, rules, regulations and codes pertaining to or affecting the Project, including all building and zoning, health, environmental and safety orders and laws, subject to all rights of the Company to contest the same.

### ARTICLE III

#### GRANTING PROVISIONS

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

**Section 3.2. Lease Term.** This Lease shall become effective upon its execution and delivery. Subject to earlier termination pursuant to the provisions of this Lease, the lease of the Project shall terminate on December 31, 2035.

**Section 3.3. Possession and Use of the Project.**

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

(b) Subject to the provisions of this Section, the Company shall have the exclusive right to use the Project for any lawful purpose contemplated by the Act and consistent with the terms of the Performance Agreement. The Company shall use its best efforts to comply in all material respects with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, local and other governments or governmental authorities, now or hereafter applicable to the Project, as to the manner of use or the condition of the Project. The Company shall also comply with the

mandatory requirements, rules and regulations of all insurers under the policies carried under the provisions of **Article VII** hereof. The Company shall pay all costs, expenses, claims, fines, penalties and damages that may in any manner arise out of, or be imposed as a result of, the failure of the Company to comply with the provisions of this Section. Notwithstanding any provision contained in this Section, however, the Company may, at its own cost and expense, contest or review by legal or other appropriate procedures the validity or legality of any such governmental statute, law, ordinance, order, judgment, decree, regulation, direction or requirement, or any such requirement, rule or regulation of an insurer, and during such contest or review the Company may refrain from complying therewith.

## **ARTICLE IV**

### **PURCHASE, CONSTRUCTION AND EQUIPPING OF THE PROJECT**

**Section 4.1. Issuance of the Bonds.** To provide funds for the payment of Project Costs, the City agrees that, upon request of the Company, it will issue, sell and cause to be delivered the Bonds to the purchaser thereof in accordance with the provisions of the Indenture and the Bond Purchase Agreement. 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, 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, Construction and Equipping of the Project.** The City and the Company agree that the Company, as the agent of the City, shall purchase, construct and equip the Project as follows:

(a) The City will acquire the Project Site at the execution hereof. Concurrently with the execution of this Lease, (i) a deed and any other necessary instruments of transfer will be delivered to the City and placed of record, and (ii) the commitment for title insurance or ownership and encumbrance report required by **Article VII** hereof will be delivered to the City and the Trustee.

(b) On behalf of the City, the Company will purchase and construct the Project Improvements on the Project Site and otherwise improve the Project Site in accordance with the Plans and Specifications. The Company may revise the Plans and Specifications from time to time as it deems necessary to carry out the Project, but revisions that affect the status of the Project as a "project" under the Act or which would materially alter the accuracy of the description of the Project in the Plan for an Industrial Development Project and Cost/Benefit Analysis distributed under the Act may be made only with the prior written approval of the City. The Company agrees that the aforesaid construction and improvement will, with such changes and additions as may be made hereunder, result in facilities suitable for use by the Company 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 Project. The provisions of this paragraph are in addition to and do not supersede the provisions of **Section 8.3**.



(c) The Company will purchase and install the Project Equipment in the Project Improvements on the Project Site. The Company shall transfer title to the Project Equipment to the City from time to time by bills of sale or other instruments of transfer. On or before March 1 of each year or such other date required by law for reporting personal property declarations, the Company shall furnish to the City and the Trustee a list of items (based on the Company's internal record keeping) comprising the Project Equipment as of January 1 of such year. The improper inclusion or exclusion of any Project Equipment pursuant to such list may be rectified by the Company within 30 days after notice of such improper inclusion or exclusion. The improper inclusion or exclusion of an item on or from such list shall not affect the items comprising the Project Equipment for the purpose of this Lease or title thereto as intended by the parties hereto. The Company shall provide such information to the City and the Trustee as may be requested in order to ensure that such list corresponds to the list of Project Equipment maintained by the Trustee pursuant to **Section 10.8**. The Trustee may conclusively rely upon such information in compiling a list of Project Equipment in accordance with **Section 10.8** hereof. Each bill of sale or other instrument of transfer and each personal property declaration form shall be of sufficient specificity so as to enable the City's officials and the Department of County Assessor of Jefferson County, Missouri (the "County Assessor") to determine which personal property as reported on the annual personal property declaration constitutes Project Equipment (and therefore is owned by the City) and which personal property does not constitute Project Equipment (and therefore is owned by the Company). The City and the Company agree that, pursuant to **Section 4.8**, any interest in any property purchased in whole or in part by the Company with its own funds and not reimbursed from Bond proceeds, shall not constitute part of the Project Improvements or the Project Equipment and shall remain the property of the Company and therefore subject to taxation.

(d) The Company will comply with the provisions of Section 107.170 of the Revised Statutes of Missouri, as amended, to the extent applicable to the construction of the Project.

(e) The Company will cause the purchase, construction, equipping and improvement of the Project to be completed on or before the Completion Date, except as otherwise provided in **Section 4.5** hereof.

**Section 4.3. Project Costs.** The City hereby agrees to pay for, but solely from the Project Fund, and hereby authorizes and directs the Trustee to pay for, but solely from the Project Fund, all Project Costs upon receipt by the Trustee of a certificate pursuant to **Section 4.4** hereof. The Company may not submit any requisition certificates for Project Costs incurred after the Completion Date. The Company must submit all requisitions for Project Costs incurred before the Completion Date within three months after the Completion Date. The maximum amount of Project Costs for which requisitions may be submitted is expressly limited to \$10,000,000.

**Section 4.4. Payment for Project Costs.** The City hereby authorizes and directs the Trustee to make disbursements from the Project Fund and endorse the Bonds, upon receipt by the Trustee of certificates in substantially the form attached hereto as **Exhibit D**, signed by an Authorized Company Representative and approved by an Authorized City Representative:

(a) requesting 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

simultaneously with any request) and directing to whom such amount shall be paid (which may include the Company in the event of a reimbursement);

(b) describing each item of Project Costs for which payment is being requested, including for Project Equipment, a description of the item and a serial or other identifying number, if any, for such item;

(c) stating that each item for which payment is requested is or was desirable and appropriate in connection with the purchase, construction, improvement and equipping of the Project, has been properly incurred and is a proper charge against the Project Fund, that the amount requested either has been paid by the Company, or is justly due, and has not been the basis of any previous requisition from the Project Fund; and

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

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 Company Representative and an Authorized City Representative shall constitute, unto the Trustee, an irrevocable determination that all conditions precedent to the payments requested have been completed.

**Section 4.5. Establishment of Completion Date.** The Completion Date shall be evidenced to the City and the Trustee by a certificate signed by the Authorized Company Representative stating (a) that the purchase, construction and equipping of the Project has 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 equipping of the Project have been incurred. Notwithstanding the foregoing, (1) 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 (2) such certificate shall be deemed given on December 31, 2020 if not actually filed with the City by December 31, 2020, subject to any delay to the extent caused by force majeure, including, without limitation, damage or destruction by fire or casualty, strike, lockout, civil disorder, war, 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, shortage or delay in shipment of material or fuel, acts of God, unusually adverse weather or wet soil conditions, or other like causes beyond the Company's reasonable control, including without limitation any litigation, court order or judgment resulting from any litigation affecting the validity of this Lease, the Indenture, the Ordinance or the Project (collectively, a "Permitted Excuse"). No Permitted Excuse shall be deemed to exist unless the Company provides a written notice to the City, within 30 days after the Company has actual notice of the claimed event, specifying the Permitted Excuse. In no event shall a Permitted Excuse extend the Completion Date beyond December 31, 2021. The Company and the City agree to cooperate in causing such certificate to be furnished to the Trustee.

**Section 4.6. Surplus in Project Fund.** Upon receipt of the certificate described in **Section 4.5** hereof, the Trustee shall, as provided in **Section 504** of the Indenture, transfer any remaining moneys then in the Project Fund to the Bond Fund to be applied as directed by the Company solely to (a) the

payment of principal and premium, if any, of the Bonds through the payment (including regularly scheduled principal payments, if any) or redemption thereof at the earliest date permissible under the terms of the Indenture, or (b) at the option of the Company, to the purchase of Bonds at such earlier date or dates as the Company may elect. Any amount so deposited in the Bond Fund may be invested as permitted by **Section 702** of the Indenture.

**Section 4.7. Project Property of City.** The Project Site, the Project Improvements and the Project Equipment located thereon at the execution hereof and which the Company desires to convey to the City, all work and materials on the Project Improvements as such work progresses, and all additions or enlargements thereto or thereof, the Project as fully completed, anything under this Lease which becomes, is deemed to be, or constitutes a part of the Project, and the Project as repaired, rebuilt, rearranged, restored or replaced by the Company 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 and Permitted Encumbrances and any Financing Document. Nothing herein shall limit the Company's right to own personal property that is not part of the Project Equipment to be acquired by the City pursuant to **Section 4.2** hereof.

**Section 4.8. Non-Project Improvements, Machinery and Equipment Property of the Company.** Any improvements or items of machinery or equipment which do not constitute part of the Project Improvements or the Project Equipment and the entire purchase price of which is paid for by the Company with the Company's own funds and not reimbursed from Bond proceeds, and no part of the purchase price of which is deemed paid from funds deposited pursuant to the terms of this Lease in the Project Fund, shall be the property of the Company and shall not constitute a part of the Project for purposes of **Section 6.4** and therefore are subject to taxation, to the extent otherwise provided by law.

**Section 4.9. Construction Contracts.** The Company may enter into one or more construction contracts to complete the Project. All construction contracts entered into by or on behalf of the Company shall state that the contractor has no recourse against the City or the Trustee in connection with the contractor's construction of the Project.

## ARTICLE V

### RENT PROVISIONS

**Section 5.1. Basic Rent.** The Company covenants and agrees to pay to the Trustee in same day funds for the account of the City during this Lease Term, on or before 11:00 a.m., Trustee's local time, on each Payment Date, as Basic Rent for the Project, an amount which, when added to any collected funds then on deposit in the Bond Fund and available for the payment of principal on the Bonds and the interest thereon on such Payment Date, shall be equal to the amount payable on such Payment Date as principal of the Bonds and the interest thereon as provided in the Indenture. Except as offset pursuant to the right of the Company set forth below, all payments of Basic Rent provided for in this Section shall be paid directly to the Trustee and shall be deposited in accordance with the provisions of the Indenture into the Bond Fund and shall be used and applied by the Trustee in the manner and for the purposes set forth in this Lease and the Indenture. In furtherance of the foregoing, and notwithstanding any other provision in this Lease, the Indenture, the Bond Purchase Agreement or the Performance Agreement to the contrary, and provided that the Company (or any Financing Party holding a mortgage or deed of trust on the Project) is the sole holder of the Bonds, the Company may set-off the then-current Basic Rent payment against the City's obligation to the Company as Bondholder under the Indenture in lieu of delivery of the Basic Rent on any Payment Date, upon providing the Trustee with a written statement confirming such

ownership upon which the Trustee may conclusively rely. The Trustee may conclusively rely on the absence of any notice from the Company to the contrary as evidence that such set-off has occurred. On the final Payment Date, the Company will (a) if the Trustee holds the Bonds, notify the Trustee of the Bonds not previously paid that are to be cancelled or (b) if an entity other than the Trustee holds the Bonds, deliver or cause to be delivered to the Trustee for cancellation Bonds not previously paid. The Company shall receive a credit against the Basic Rent payable by the Company in an amount equal to the principal amount of the Bonds so tendered for cancellation plus accrued interest thereon.

**Section 5.2. Additional Rent.** The Company shall pay 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 reasonably incurred under or arising from the Indenture, this Lease or the Performance Agreement, including but not limited to claims by contractors or subcontractors, as and when the same become due;

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

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

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

**Section 5.3. Obligations of Company Absolute and Unconditional.**

(a) The obligations of the Company under this Lease to make payments of Basic Rent and Additional Rent on or before the date the same 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 (subject to **Section 11.5** 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 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 Project or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Project, legal curtailment of the Company's use thereof, the eviction or constructive eviction of the Company, any change in the tax or other laws of the United States of America, the State of Missouri or any political subdivision thereof, any change in the City's legal organization or status, or any default of the City hereunder, and regardless of the invalidity of any action of the City; provided, however, that nothing in this Section is intended or shall be deemed to affect or impair in any way the rights of the Company to tender Bonds for redemption in satisfaction of Basic Rent as provided in **Section 5.1** and **Section 5.4** hereof, nor the right of the Company to terminate this Lease and repurchase the Project as provided in **Article XI**.

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

#### **Section 5.4. Prepayment of Basic Rent.**

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

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

## **ARTICLE VI**

### **MAINTENANCE, TAXES AND UTILITIES**

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

#### **Section 6.2. Taxes, Assessments and Other Governmental Charges.**

(a) Subject to subsection (b) of this Section, the Company shall promptly pay and discharge, as the same 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 Project, or any part thereof or interest therein (including the leasehold estate of the Company therein) or any buildings, improvements, machinery and equipment at any time installed thereon by the Company, or the income therefrom, including any new taxes and assessments not of the kind enumerated above to the extent that the same are lawfully made, levied or assessed in lieu of or in addition to taxes or assessments now customarily levied against real or personal property, and further including all utility charges, assessments and other general governmental charges

and impositions whatsoever, foreseen or unforeseen, which if not paid when due would impair the security of the Bonds or encumber the City's title to the Project; provided that with respect to any special assessments or other governmental charges that are lawfully levied and assessed which may be paid in installments, the Company shall be obligated to pay only such installments thereof as become due and payable during the Lease Term.

(b) The Company may, in its own name or in the City's name, contest the validity or amount of any tax, assessment or other governmental charge which the Company is required to bear, pay and discharge pursuant to the terms of this Article by appropriate legal proceedings instituted at least 10 days before the tax, assessment or other governmental charge complained of becomes delinquent if and provided (1) the Company, before instituting any such contest, gives the City written notice of its intention to do so, (2) the Company diligently prosecutes any such contest, at all times effectively stays or prevents any official or judicial sale therefor, under execution or otherwise, and (3) the Company 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 Company in connection with any and all administrative or judicial proceedings related to any tax, assessment or other governmental charge. The Company shall save and hold harmless the City from any costs and expenses the City may incur related to any of the above.

(c) Nothing in this Lease shall be construed to require the Company to make duplicate tax payments. The Company shall receive a credit against the PILOT Payments (as defined in the Performance Agreement) to be made by the Company under the Performance Agreement to the extent of any ad valorem taxes imposed with respect to the Project paid pursuant to this Section, except as otherwise provided in the Performance Agreement.

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

**Section 6.4. Property Tax Exemption.** The City and the Company expect that while the Project is owned by the City and is subject to the Lease, the 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 Company) cooperate with the Company to defend such exemption against all parties. The City and the Company further acknowledge and agree that the City's obligations hereunder are contingent upon the Company making the payments and otherwise complying with the terms of the Performance Agreement during the term of this Lease. The terms and conditions of the Performance Agreement are incorporated herein as if fully set forth herein.

## ARTICLE VII

### INSURANCE

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

**Section 7.2. Casualty Insurance.**

(a) The Company shall at its sole cost and expense obtain and shall maintain throughout the Lease Term a policy or policies of insurance (including, if appropriate, builder's risk insurance) to keep the Project constantly insured against loss or damage by fire, lightning and all other risks covered by the extended coverage insurance endorsement then in use in the State of Missouri in an amount equal to the Full Insurable Value thereof (subject to reasonable loss deductible provisions). The insurance required pursuant to this Section shall be maintained with a generally recognized responsible insurance company or companies authorized to do business in the State of Missouri or generally recognized international insurers or reinsurers with an A.M. Best rating of not less than "A-" or the equivalent thereof as may be selected by the Company. The Company shall deliver certificates of insurance for such policies to the City and the Trustee on the date of execution of this Lease 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 Company as insureds, as their respective interests may appear, shall name the Trustee as loss payee and shall contain an agreement by the insurer that, notwithstanding any right of cancellation reserved to such insurer, such policy or contract shall continue in force for at least 10 days after written notice of cancellation to the City, the Company, the Trustee and each other insured or loss payee named therein.

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

**Section 7.3. Public Liability Insurance.**

(a) The Company shall at its sole cost and expense maintain or cause to be maintained at all times during the Lease Term commercial general liability insurance (including but not limited to coverage for operations, contingent liability, operations of subcontractors, completed operations and contractual liability), under which the City, the Company and the Trustee shall be named as additional insureds, properly protecting and indemnifying the City and the Trustee, in an amount not less than the limits of liability set by Section 537.610 of the Revised Statutes of Missouri, as amended (subject to reasonable loss deductible clauses not to exceed the amounts normally or generally carried by the Company). The policies of said insurance shall contain a provision that such insurance may not be canceled by the issuer thereof without at least 10 days' advance written notice to the City, the Company and the Trustee. Certificates of such policies shall be furnished to the Trustee on the date of execution of this Lease and promptly after renewal 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; Self Insurance.** The Company may satisfy any of the insurance requirements set forth in this Article by using blanket policies of insurance, provided each and all of the requirements and specifications of this Article respecting insurance are complied with. The Company may satisfy any of the insurance requirements set forth in this Article using self-insurance or

insurance through a subsidiary or affiliate; so long as (i) the insurance is underwritten by a subsidiary or other affiliate of the Company with a separate net worth of at least \$10,000,000, or (ii) the Company funds such self insurance by appropriate reserves in the amounts recommended by independent actuarial reports obtained not less than every three (3) years for the term of this Lease. The Company shall provide to the City and the Trustee copies of financial statements or similar evidence of net worth of such affiliate on the date hereof and every three (3) years, or, in the case of actuarial reports, on the date of delivery of this Lease and, thereafter, not less than 30 days after receipt of such reports.

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

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

## ARTICLE VIII

### ALTERATION OF THE PROJECT

#### **Section 8.1. Additions, Modifications and Improvements to the Project.**

(a) The Company may make such additions, modifications and improvements in and to any part of the Project Site or Project Improvements as the Company from time to time may deem necessary or desirable for its business purposes. All additions, modifications and improvements made by the Company pursuant to this Section shall (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.

(b) The Company shall, following the Completion Date, notify the City in writing of any improvements to the Project Site or Project Improvements, other than the Project being financed with the proceeds of the Bonds, 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 Company, shall not become part of the Project, and shall be subject to *ad valorem* taxes.

#### **Section 8.2. Removal and Replacement of Project Equipment.**

(a) The Company may, if no uncured Event of Default (as defined in **Section 12.1** hereof) exists and is continuing, remove from the Project and sell, exchange, replace or otherwise dispose of, without responsibility or accountability to the City or the Trustee with respect thereto, any items of machinery and equipment, or parts thereof, which constitute a part of the Project Equipment and which have become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary or which, in the sound discretion of the Company, are otherwise no longer useful to the Company in its operations. Before any such removal of any item of equipment or machinery with a then-market value of greater than \$1,000,000, the Company shall deliver to the City and the Trustee a certificate signed by an Authorized Company Representative containing a complete description of any machinery or equipment that the Company proposes to remove. Upon request by the Company, the City will execute and deliver a bill of



sale that transfers full and complete title to the Company of the Project Equipment removed. Notwithstanding anything contained herein to the contrary, title to any item of the Project Equipment removed from the Project Site shall automatically vest in the Company without further instrument or action, and such vesting of title shall be self-operative effective upon removal. Any Project Equipment removed from the Project Site shall no longer be entitled to the tax exemption afforded by virtue of the City's ownership thereof.

(b) In all cases, the Company shall pay all of the costs and expenses of any such removal and shall immediately repair at its expense all damage to the Project caused thereby. The Company's right under this Section to remove machinery and equipment constituting a part of the Project Equipment is intended only to permit the Company to maintain an efficient operation by the removal of machinery and equipment that is no longer suitable for any of the reasons set forth in this Section, and such right is not to be construed to permit a removal under any other circumstances and specifically is not to be construed to permit the Company to make a wholesale removal of the Project Equipment.

**Section 8.3. Additional Improvements on the Project Site.** The Company may, at its sole cost and expense, construct on portions of the Project Site not theretofore occupied by buildings or improvements such additional buildings and improvements as the Company from time to time may deem necessary or desirable for its business purposes. All additional buildings and improvements constructed on the Project Site by the Company, and not paid for with Bond proceeds, pursuant to the authority of this Section shall not be included as Project Improvements and, during the life of this Lease, shall remain the property of the Company and may be added to, altered or razed and removed by the Company at any time. All additional buildings and improvements shall be made in a good and workmanlike manner and in strict compliance with all material laws, orders and ordinances applicable thereto and when commenced shall be prosecuted to completion with due diligence. The Company covenants and agrees (a) to make any repairs and restorations required to be made to the Project because of the construction of, addition to, alteration or removal of said additional buildings or improvements, and (b) to promptly and with due diligence either raze and remove or repair, replace or restore any of said additional buildings and improvements as may from time to time be damaged by fire or other casualty. The Company shall pay all ad valorem taxes and assessments payable with respect to such additional buildings and improvements which remain the property of the Company. If for any reason the County Assessor determines that such additional buildings and improvements are not subject to ad valorem taxes as a result of the City's ownership of the Project Site, the Company shall make payments in lieu of taxes in an amount equal to the taxes that would otherwise be due under this Section.

**Section 8.4. Permits and Authorizations.** The Company shall not do or permit others under its control to do any work on the Project related to any repair, rebuilding, restoration, replacement, modification or addition to the Project, or any part thereof, unless all requisite municipal and other governmental permits and authorizations shall have been first procured. The City agrees to act promptly on all requests for such municipal permits and authorizations. All such work shall be done in a good and workmanlike manner and in strict compliance with all applicable material building and zoning laws and governmental regulations and requirements, and in accordance with the requirements, rules and regulations of all insurers under the policies required to be carried under the provisions of **Article VII** hereof.

**Section 8.5. Mechanics' Liens.**

(a) The Company will not directly or indirectly create, incur, assume or suffer to exist any lien on or with respect to the Project, except Permitted Encumbrances, and the Company shall promptly

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

(b) Notwithstanding paragraph (a) above, and subject to the terms of the Deed of Trust or other Financing Documents executed by the Company in favor and for the benefit of Lender, the Company may contest any such mechanics' or other similar lien if the Company (1) within 60 days after the Company becomes aware of any such lien notifies the City and the Trustee in writing of its intention so to do, (2) diligently prosecutes such contest, (3) at all times effectively stays or prevents any official or judicial sale of the Project, or any part thereof or interest therein, under execution or otherwise, (4) promptly pays or otherwise satisfies any final judgment adjudging or enforcing such contested lien claim and (5) thereafter promptly procures record release or satisfaction thereof. The Company may permit the lien so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Company is notified by the City that, in the opinion of counsel, by nonpayment of any such items, the interest of the City in the Project will be subject to loss or forfeiture. In that event, the Company shall promptly, at its own expense, take such action as may be reasonably necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim if the same shall arise at any time. The Company shall save and hold harmless the City from any loss, costs or expenses the City may incur related to any such contest. The Company shall reimburse the City for any expense incurred by it in connection with the imposition of any such lien or in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim. The City shall cooperate fully with the Company in any such contest.

## ARTICLE IX

### DAMAGE, DESTRUCTION AND CONDEMNATION

#### Section 9.1. Damage or Destruction.

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

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

Unless the Company makes the determination described in subsection (f) below, the Net Proceeds of casualty insurance required by **Article VII** hereof received with respect to such damage or loss to the Project shall be used to pay the cost of repairing, restoring, replacing or rebuilding the Project or any part thereof. Insurance monies in an amount less than \$1,000,000 may be paid to or retained by the Company to be held in trust and used as provided herein. Insurance monies in any amount of \$1,000,000 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** hereof to pay the cost of repairing, restoring, replacing or rebuilding the Project or any part thereof, or (ii) applied as directed in writing by, or on behalf of, the Owners of 100% in principal amount of the Bonds Outstanding. If the Company makes the determination described in subsection (f) below, the Net Proceeds shall be deposited with the Trustee and used to redeem Bonds as provided in subsection (f).

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

(c) Except as otherwise provided in this Lease, in the event of any such damage by fire or any other casualty, the provisions of this Lease shall be unaffected and the Company shall remain and continue to be liable for the payment of all Basic Rent and Additional Rent and all other charges required hereunder to be paid by the Company, as though no damage by fire or any other casualty has occurred.

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

(e) The Company agrees to give prompt written notice to the City and the Trustee with respect to all fires and any other casualties occurring in, on, at or about the Project Site causing (in the Company's opinion) damage of more than \$1,000,000.

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

is not practicable or desirable, it may tender Bonds to the Trustee for cancellation in a principal amount equal to the Net Proceeds of the casualty insurance, and retain such proceeds for its own account.

(g) The Company shall not, by reason of its inability to use all or any part of the Project during any period in which the Project is damaged or destroyed or is being repaired, 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 Company under this Lease or of any other obligations of the Company under this Lease except as expressly provided in this Section.

#### **Section 9.2. Condemnation.**

(a) If during the Lease Term, title to, or the temporary use of, all or any part of the Project is condemned by or sold under threat of condemnation to any authority possessing the power of eminent domain, to such extent that the claim or loss resulting from such condemnation is greater than \$1,000,000, the Company shall, within 90 days after the date of entry of a final order in any eminent domain proceedings granting condemnation or the date of sale under threat of condemnation, notify the City in writing, the Trustee, the Lender and any other Financing Party under the Financing Document (if any) in writing as to the nature and extent of such condemnation or loss of title and whether it is practicable and desirable to acquire or construct substitute improvements.

(b) If the Company determines that such substitution is practicable and desirable, the Company shall proceed promptly with and complete with reasonable dispatch the acquisition or construction of such substitute improvements, so as to place the Project in substantially the same condition as existed before the exercise of the said power of eminent domain, including the acquisition or construction of other improvements suitable for the Company's operations at the Project (which improvements will be deemed a part of the Project and available for use and occupancy by the Company without the payment of any rent other than herein provided, to the same extent as if such other improvements were specifically described herein and demised hereby); provided, that such improvements will be acquired by the City subject to no liens, security interests or encumbrances before the lien and/or security interest afforded by the Indenture and this Lease other than Permitted Encumbrances. In such case, any Net Proceeds received from any award or awards with respect to the Project or any part thereof made in such condemnation or eminent domain proceedings, or of the sale proceeds, shall be applied in the same manner as provided in **Section 9.1** hereof (with respect to the receipt of casualty insurance proceeds).

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

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

(e) The City shall cooperate fully with the Company in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Project or any part thereof, and shall, to the extent it may lawfully do so, permit the Company to litigate in any such 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 Project or any part thereof without the prior written consent of the Company, the Lender or any other Financing Party.

**Section 9.3. Owner Approval.** Notwithstanding anything to the contrary contained in this **Article IX**, the proceeds of any insurance received subsequent to a casualty or of any condemnation proceedings (or threats thereof) shall 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 Bonds Outstanding, subject and subordinate to (a) the terms and conditions of the Deed of Trust, (b) 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 (c) the rights of the City to any amounts then due and payable under the Performance Agreement. For purposes of this paragraph, the Lender shall be deemed a pledgee of the Bonds.

## ARTICLE X

### SPECIAL COVENANTS

**Section 10.1. No Warranty of Condition or Suitability by the City; Exculpation and Indemnification.** The City makes no warranty, either express or implied, as to the condition of the Project or that it will be suitable for the Company's purposes or needs. The Company releases the City and the Trustee from, agrees that the City and the Trustee shall not be liable for and agrees to hold the City and the Trustee harmless against, any loss or damage to property or any injury to or death of any Person that may be occasioned by any cause whatsoever pertaining to the Project or the Company's use thereof, unless such loss is the result of the City's or the Trustee's gross negligence or willful misconduct. This provision shall survive termination of this Lease.

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

**Section 10.3. Right of Access to the Project.** The City may conduct such periodic inspections of the Project as may be generally provided in the City's municipal code. In addition, the Company

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

#### **Section 10.4. Granting of Easements; 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 in writing 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 an Authorized Company Representative requesting such instrument, and (iii) a certificate executed by an Authorized Company Representative stating that such grant or release is not detrimental to the proper conduct of the business of the Company, will not impair the effective use or interfere with the efficient and economical operation of the Project, will not materially adversely affect the security intended to be given by or under the Indenture and will be a Permitted Encumbrance, and that the Company will defend, indemnify and save and hold harmless the City from and against all claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, arising from the execution and delivery of any instrument, agreement or arrangement pursuant to this Section. If no Event of Default has happened and is continuing beyond any applicable grace period, any payments or other consideration received by the Company for any such grant or with respect to or under any such agreement or other arrangement shall be and remain the property of the Company; but, subject to **Sections 10.4(c)** and **(d)**, upon (i) termination of this Lease for any reason other than the redemption of the Bonds and/or the purchase of the Project by the Company or (ii) the occurrence and continuance of an Event of Default by the Company, all rights then existing of the Company with respect to or under such grant shall inure to the benefit of and be exercisable by the City and the Trustee.

(b) The City acknowledges that the Company has granted the Deed of Trust to Lender prior to its execution of this Lease, and that a duplicate original or certified copy or photostatic copy of the Deed of Trust has been delivered to the City as of the date of this Lease. The right of Lender to foreclose upon the lien of the Deed of Trust or accept a deed in lieu of foreclosure from the Company 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 fifteen (15) days prior thereto, and (ii) before such sale or assignment, all payments then owing to the City under the Performance Agreement are paid and the Bonds are paid or redeemed in full.

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

the leasehold estate, any sublease and rights in connection therewith, and/or grant liens or security interests therein, to any Financing Party. Any further sublease or assignment by any Financing Party shall be subject to the provisions of **Section 13.1(c)** hereof.

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

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

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

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

(iv) the City may exercise any of its rights or remedies with respect to any other Event of Default by the Company, subject to the rights of the Financing Parties under this **Section 10.4(d)** as to such other events of default. Without limiting the generality of the foregoing, Lender may foreclose upon the lien of the Deed of Trust pursuant to a foreclosure sale conducted in accordance with applicable law and the terms of the Deed of Trust, and Lender may accept an assignment of the Project in lieu of foreclosure and may appoint a receiver for the Project, all without obtaining the prior written consent of the City but subject to the provisions of **Section 10.4(b)**;

(v) upon the occurrence and continuance of an Event of Default by the Company under this Lease, other than a default in the payment of money, the City shall take no action to effect a termination of this Lease by service of a notice or otherwise, without first giving notice thereof to each such Financing Party and permitting 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 the 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) the Financing Parties (and their designees, nominees, assignees or transferees) may enter, possess and use the Project at such reasonable times and manner as are necessary or desirable to effectuate the remedies and enforce their respective rights under the Financing Documents;

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

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

(e) In connection with the execution of one or more Financing Documents, upon the request of the Company, the City agrees to execute such documents as shall be reasonably requested by a Financing Party and which are usual and customary in connection with the closing of the financing or refinancing pursuant to the Financing Documents. The Company agrees to reimburse the City for any and all costs and expenses incurred by the City pursuant to this Section, including reasonable attorneys' fees and expenses, in complying with such request.

(f) The Company's obligations under any mortgage or Financing Document relating to the Project entered into after the date of execution of this Lease (the execution of which shall be expressly subject to the prior written consent of Lender in accordance with the Deed of Trust) shall be subordinate to the Company's obligations under this Lease. The City acknowledges that the Lender is a Financing Party and is entitled to the benefits of **Sections 10.4(d)(i)-(viii)** above.

**Section 10.5. Indemnification of City and Trustee.** The Company shall indemnify and save and hold harmless the City and the Trustee and their governing body members, officers, agents and employees from and against all claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, by or on behalf of any Person, firm or corporation arising from the issuance of the Bonds and the execution of the Performance Agreement, this Lease (or any instrument requested by the Company 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 Project during the Lease Term, and against and from all claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, arising during the Lease Term from (a) any condition of the Project, (b) any breach or default on the part of the Company in the performance of any of its obligations under the Performance Agreement, this Lease or any related document, (c) any contract entered into in connection with the acquisition, purchase, construction, equipping, extension, installation or improvement of the Project (including mechanics' liens), (d) any act of negligence of the Company or of any of its agents, contractors, servants, employees or licensees, (e) unless the Company has been released from liability pursuant to **Section 13.1(c)**, any act of negligence of any assignee or sublessee of the Company, or of any agents, contractors, servants, employees or licensees of any assignee or sublessee of the Company, (f) obtaining any applicable state and local sales and use tax exemptions for materials or goods that become part of the Project, and (g) any violation of Section 107.170 of the Revised Statutes of Missouri, as amended; provided, however, the indemnification contained in this **Section 10.5** shall not extend to the City or Trustee to the extent that such claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, are the result of work being performed at the Project by employees of the City, and shall not extend to the City or Trustee, as



applicable, to the extent that such claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, are the result of willful misconduct by the City or the Trustee, respectively. Upon obtaining actual knowledge of the event giving rise to the indemnification contained in this **Section 10.5**, the City or Trustee shall provide prompt written notice of any such claims or demand to the Company; provided that failure to give such notice shall not affect the rights of the City or the Trustee to receive such indemnity. The Company shall defend them or either of them in any such action or proceeding; provided, the City shall, at the Company's expense, cooperate with the Company and provide reasonable assistance in such defense. All costs related to the defense of the City or the Trustee shall be paid by the Company. This **Section 10.5** shall survive any termination of the Performance Agreement and this Lease or the satisfaction and discharge of the Indenture.

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

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

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

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

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

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

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

description of all Project Equipment, said file to be compiled from the certificates furnished to the Trustee pursuant to **Section 4.4** and **Section 8.2** hereof.

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

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

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

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

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

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

(d) The Company warrants and represents that the Company has provided the City and the Trustee with copies of all emergency and hazardous chemical inventory forms (hereinafter “Environmental Notices”) showing Hazardous Substances on the Project Site given within 2 years preceding the date hereof, as of the date hereof, by the Company to any federal, state or local governmental authority or agency as required pursuant to the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C.A. §11001 *et seq.*, or any other applicable Environmental Laws. The Company will provide the City and the Trustee with copies of all Environmental Notices concerning Hazardous Substances on the Project Site subsequently sent to any such governmental authority or agency

as required pursuant to the Emergency Planning and Community Right-to-Know Act of 1986 or any other applicable Environmental Laws. Such copies of subsequent Environmental Notices shall be sent to the City and the Trustee concurrently with their being mailed to any such governmental authority or agency.

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

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

**Section 10.10. Assurance of Performance.** If reasonable grounds for insecurity arise with respect to the Company's performance of the Unassigned Rights, the City may demand in writing adequate assurances that the Company will perform the Unassigned Rights. The Company shall provide adequate assurance to the City of its intended performance within a reasonable time but in any event no more than 30 days after the Company's receipt of the City's demand. If reasonable in the circumstances, such adequate assurances may require the Company to provide security or a guarantee by a third party for the Company's performance of the Unassigned Rights.

## ARTICLE XI

### OPTION AND OBLIGATION TO PURCHASE THE PROJECT

**Section 11.1. Option to Purchase the Project.** The Company shall have, and is hereby granted, the option to purchase all or any portion of the Project at any time, upon payment in full or redemption of the Outstanding Bonds to be redeemed or provision for their payment or redemption having been made pursuant to **Article XIII** of the Indenture. To exercise such option, the Company shall give written notice to the City and to the Trustee, and shall specify therein the date of closing of such purchase, which date shall be not less than 15 nor more than 90 days from the date such notice is mailed, and, in case of a redemption of the Bonds in accordance with the provisions of the Indenture, the Company shall make arrangements satisfactory to the Trustee for the giving of the required notice of redemption. Notwithstanding the foregoing, if the City or the Trustee provides notice of its intent to exercise its remedies hereunder upon an Event of Default (a "Remedies Notice"), the Company shall be deemed to have exercised its repurchase option under this Section on the 29th day following the issuance of the Remedies Notice without any further action by the Company; provided said Remedies Notice has not been rescinded by such date (such option to take place on the 29th day following the issuance of the Remedies Notice). The Company may rescind such exercise by providing written notice to the City and the Trustee on or before the 29th day and by taking such action as may be required to cure the default that led to the giving of the Remedies Notice. The purchase price payable by the Company in the event of its exercise or deemed 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 Bonds on the earliest redemption date next succeeding the closing date, including, without limitation, principal and interest to accrue to said redemption date and redemption expense; plus
- (b) an amount of money equal to the Trustee's and the Paying Agent's agreed to and reasonable fees, charges and expenses under the Indenture accrued and to accrue until such redemption of the Bonds; plus
- (c) an amount of money equal to the City's reasonable charges and expenses incurred in connection with the Company exercising its option to purchase all or a portion of the Project; plus
- (d) an amount of money equal to all payments due and payable pursuant to the 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 Project.** At the closing of the purchase of the Project pursuant to this Article, the City will upon receipt of the purchase price deliver to the Company the following:

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

(b) documents, including without limitation a special warranty deed as to the Project Site and a bill of sale as to Project Equipment, conveying to the Company legal title to the Project, as it then exists, in recordable form, subject to the following: (i) those liens and encumbrances, if any, to which title to the Project was subject when conveyed to the City; (ii) those liens and encumbrances created by the Company or to the creation or suffering of which the Company consented; (iii) those liens and encumbrances resulting from the failure of the Company to perform or observe any of the agreement on its part contained in this Lease; (iv) Permitted Encumbrances other than the Indenture and this Lease (none of which shall have been incurred by the City in breach of the provisions hereof); and (v) if the Project or any part thereof is being condemned, the rights and title of any condemning authority.

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

**Section 11.4. Obligation to Purchase the Project.** The Company hereby agrees to purchase, and the City hereby agrees to sell, the Project upon the occurrence of (a) the expiration of the Lease Term following full payment of the Bonds or provision for payment thereof having been made in accordance with the provisions of the Indenture, and (b) the final payment due under the Performance Agreement. The amount of the purchase price under this Section shall be an amount sufficient to redeem all the then Outstanding Bonds, plus accrued interest and the reasonable fees and expenses of the City and the Trustee.

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

## ARTICLE XII

### DEFAULTS AND REMEDIES

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

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

(b) default in the due observance or performance of any other covenant, agreement, obligation or provision of this Lease on the Company’s part to be observed or performed, and such default continues for 60 days after the City or the Trustee has given the Company written notice specifying such default (or such longer period as is reasonably required to cure such

default, provided that (i) the Company has commenced such cure within said 60-day period, and (ii) the Company diligently prosecutes such cure to completion); or

(c) the Company: (i) admits in writing its inability to pay its debts as they become due; or (ii) files a petition in bankruptcy or for reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the 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 major portion of its property or fails to have the appointment of any trustee, receiver or liquidator made without the Company's consent or acquiescence, vacated or set aside; or (v) is finally adjudicated as bankrupt or insolvent under any federal or state law; or (vi) is subject to any proceeding, or suffers the entry of a final and non-appealable court order, under any federal or state law appointing a trustee, receiver or liquidator for all or a major part of its property or ordering the winding-up or liquidation of its affairs, or approving a petition filed against it under the 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 is not 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 under the Performance Agreement, as defined in **Section 6.1** thereof.

#### **Section 12.2. Remedies on Default.**

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

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

(2) give the Company written notice of intention to terminate this Lease on a date specified therein, which date shall not be earlier than 60 days after such notice is given, and if all defaults have not then been cured, on the date so specified, the Owners shall tender or be deemed to have tendered the Outstanding principal amount of the Bonds for cancellation with instruction that such tender is in lieu of payment in accordance with **Section 11.1** hereof, the Company's rights to possession of the Project shall cease and this Lease shall thereupon be terminated, and the City may re-enter and take possession of the Project; provided, however, if the Company has paid all obligations due and owing under the Indenture (or such obligations have been cancelled by the Owners), this Lease and the Performance Agreement, the City shall convey the Project in accordance with **Section 11.2** hereof.

(b) If the City prevails in any suit or other legal proceeding to enforce the provisions of this Lease, the Company shall (1) reimburse the City for the City's reasonable attorneys' fees and litigation and/or arbitration costs and expenses incurred by the City in connection with such suit or proceeding and (2) pay interest on any amounts owing to the City under this Lease at the highest rate permitted by law from the date such amounts were due until the date of payment.

**Section 12.3. Survival of Obligations.** The Company 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 Company shall continue to pay the Basic Rent and Additional Rent (to the extent the Bonds remain Outstanding) and perform all other obligations provided for in this Lease, all at the time or times provided in this Lease; provided, however, that except for the indemnification contained in **Section 10.5** hereof, upon the payment of all Basic Rent and Additional Rent required under **Article V** hereof, and upon the satisfaction and discharge of the Indenture under **Section 1301** thereof, and upon the Company's exercise of the purchase option contained in **Article XI** hereof, the Company's obligation under this Lease shall thereupon cease and terminate in full, except that obligations with respect to compensation and indemnification of the City and the Trustee shall not so terminate.

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

**Section 12.5. Rights and Remedies Cumulative.** The rights and remedies reserved by the City and the Company hereunder are in addition to those otherwise provided by law and shall be construed as cumulative and continuing rights. No one of them shall be exhausted by the exercise thereof on one or more occasions. The City and the Company shall each be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Lease, notwithstanding 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 Company's option to re-purchase the property as provided in **Article XI** above shall not be terminated upon an Event of Default.

**Section 12.6. Waiver of Breach.** No waiver of any breach of any covenant or agreement herein contained shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by the Company of any covenant, agreement or undertaking by the Company, the City may nevertheless accept from the Company any payment or payments hereunder without in any way waiving City's right to exercise any of its rights and remedies provided for herein with respect to any such default or defaults of the Company which were in existence at the time such payment or payments were accepted by the City.

**Section 12.7. Trustee's Exercise of the City's Remedies.** Whenever any Event of Default has occurred and is continuing, the Trustee may, but shall not be obliged to except as otherwise provided in

the Indenture, exercise any or all of the rights of the City under this Article, upon notice as required of the City . In addition, the Trustee shall have available to it all of the remedies prescribed by the Indenture.

### ARTICLE XIII

#### ASSIGNMENT AND SUBLEASE

##### Section 13.1. Assignment; Sublease.

(a) The Company may sublease, assign, transfer, encumber or dispose of this Lease or any interest herein or part hereof for any lawful purpose under the Act upon providing written notice to the City. Except as otherwise provided in this Section, the Company must obtain the City's prior written consent by Order of the City Council to any such disposition, unless such disposition is to (i) an entity controlled by or under common control with or controlling the Company, (ii) an entity into which the Company is being merged or consolidated, (iii) an assignment to the Lender or any other Financing Party or (iv) an entity that will become, in connection with the disposition, the Owner of the Bonds and which agrees in writing to be bound by the terms and conditions of this Lease, the Indenture and the Performance Agreement.

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

(i) The Company shall notify the City and the Trustee of the assignment in writing;

(ii) 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 Company to be performed and observed.

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

(d) The Company may sublet in whole or in part the Project Site and/or the Project Improvements to a single entity for any lawful purpose under the Act. The Company shall, within 10 days after the delivery thereof, furnish or cause to be furnished to the City and the Trustee a true and correct copy of each such sublease. Any sublease may provide, at the Company's option, that the City's consent shall not be required in respect of any further subletting thereunder if such further subletting is for a similar purpose as the original sublease and is for a purpose permissible under the Act.



**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, interest and premium, if any, on the Bonds and the Company hereby consents to such pledge and assignment.

**Section 13.3. Prohibition Against Fee Mortgage of Project.** The City shall not mortgage its fee interest in the Project, but may assign its interest in and pledge any moneys receivable under this Lease to the Trustee pursuant to the Indenture as security for payment of the principal of and interest on the Bonds. The City acknowledges that the Project Site and this Lease is subject to the Deed of Trust.

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

#### ARTICLE XIV

##### AMENDMENTS, CHANGES AND MODIFICATIONS

**Section 14.1. Amendments, Changes and Modifications.** Except as otherwise provided in this Lease or in the Indenture, subsequent to the issuance of Bonds and before the payment in full of the Bonds (or provision for the payment thereof having been made in accordance with the provisions of the Indenture), this Lease may not be effectively amended, changed, modified, altered or terminated without the prior written consent of the Trustee, given in accordance with the provisions of the Indenture, which consent, however, shall not be unreasonably withheld, and the written consent of all of the Owners, 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 (i) mailed by registered or certified mail, postage prepaid, or (ii) sent by overnight delivery or other delivery service which requires written acknowledgment of receipt by the addressee, addressed as follows:

(a) To the City:

City of Arnold, Missouri  
2101 Jeffco Boulevard  
Arnold, Missouri 63010  
ATTN: City Administrator

with copies to:

Robert K. Sweeney, LLC  
P.O. Box 20  
503 Main Street  
Hillsboro, Missouri 63050  
ATTN: Robert K. Sweeney

and:

Gilmore & Bell, P.C.  
211 N. Broadway, Suite 2000  
St. Louis, Missouri 63102  
ATTN: Mark D. Grimm

(b) To the Trustee:

BOKF, N.A.  
200 N. Broadway, Suite 1710  
St. Louis, Missouri 63102  
ATTN: Corporate Trust Department

(c) To the Company:

Cedarhurst of Arnold Real Estate, LLC  
120 South Central Ave., Suite 1050  
Clayton, Missouri 63105  
ATTN: Jordan D. Dorsey

(d) To the Lender:

Sterling Bank  
50 S. Bemiston Ave.  
Clayton, MO 63105  
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 Company to the other shall also be given to the Lender and the Trustee. The City, the Company and the Trustee may from time to time designate, by notice given hereunder to the others of such parties, such other address to which subsequent notices, certificates or other communications shall be sent.

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

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

**Section 15.4. Limitation on Liability of City.** No provision, covenant or agreement contained in this Lease, the Indenture or the Bonds, or any obligation herein or therein imposed upon the City, or the breach thereof, shall constitute or give rise to or impose upon the City a pecuniary liability or a charge upon the general credit or taxing powers of the City or the State of Missouri.

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

**Section 15.6. Binding Effect.** This Lease shall be binding upon and shall inure to the benefit of the City and the Company 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 Storage.** 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 is authorized to execute all documents on behalf of the City (including documents pertaining to the transfer of property or the financing and refinancing of the Project or any portion thereof) as may be required to carry out and comply with the intent of the Ordinance. The Mayor is also authorized, unless expressly provided herein, to grant on behalf of the City such consents, estoppels and waivers relating to the Bonds, the Indenture, the Performance Agreement or this Lease as may be requested during the term thereof; provided, such consents, estoppels and/or waivers shall not increase the principal amount of the Bonds, increase the term of this Lease or the tax exemption as provided for herein, waive an Event of Default or materially change the nature of the transaction unless otherwise approved by the City Council.

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

**CITY OF ARNOLD, MISSOURI**

By: \_\_\_\_\_  
Mayor

[SEAL]

ATTEST:

By: \_\_\_\_\_  
City Clerk

[Lease Agreement]

**CEDARHURST OF ARNOLD REAL  
ESTATE, LLC**

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

[Lease Agreement]

## EXHIBIT A

### PROJECT SITE

The land situated in Jefferson County, State of Missouri, and described as follows:

**Parcel 1:**

Adjusted Parcel A of Consolidation Plat of Part of Lot 17 in U.S. Survey 2991 Township 43 North, Range 6 East, a subdivision in Jefferson County, Missouri, according to the plat thereof recorded December 4, 2007 as Document No. 29075-000840 of the Jefferson County Records.

**Parcel 2:**

Lots Eleven (11) and Twelve (12) of GEBHARDT'S 2ND ADDITION, a subdivision in Jefferson County, Missouri, as per plat thereof recorded in Plat Book 26, Page 15 of the Jefferson County Records.

**Parcel 3:**

All that part of a 4.79 acre tract in Lot Sixteen (16) in U.S. Survey 2991, Jefferson County, Missouri, fully described in Warranty Deed dated January 24, 1951 recorded in Book 197, Page 179 in the Recorder's Office of Jefferson County, Missouri, described as follows, to-wit: Beginning at a point on the Northeastern line of said 4.79 acre tract which point of beginning is located North 38-1/2 degrees West 30 feet from the Southeastern line of said 4.79 acre tract; thence North 64-1/2 degrees West, 100 feet; thence South 52-1/2 degrees West, 150 feet; thence South 38-1/2 degrees East to a point 30 feet from the Southeast line of said 4.79 acre tract; thence North 52-1/2 degrees East on a line parallel to and 30 feet distant from the Southeastern line of said 4.79 acre tract to the place of beginning.

**Parcel 4:**

Easement for road purposes over the Drive 26 feet wide as created by the plat of Gebhardt's 2nd Subdivision dated August 24, 1962 and recorded August 27, 1962 in Plat Book 26 page 15 of the Jefferson County Records; subject to the terms, provisions and conditions set forth in said instrument.

**Parcel 5:**

All that part of Lot Seventeen (17) of US Survey No 2991, in Jefferson County, Missouri, described as follows, to-wit: Beginning at a point on the West line of the Lemay Ferry County Road, said point being the most Southern corner of the tract conveyed to John R. Hopmeier and wife to Chas Schierhoff by deed dated July 1, 1952, and recorded in Book 204 page 97 of the Jefferson County Land Records; thence Northwestwardly along the West line of said tract to a point in the Northwest line of the John R. Hopmeier tract, being the Northwest line of said Lot Seventeen (17); thence South 52-1/2 degrees West of the Northwest line of said Lot Seventeen (17), 377.84 feet to the most Western corner of said Lot Seventeen (17); thence South 37-1/2 degrees East 208.56 feet to a point; thence North 52-1/2 degrees East 330 feet to the most Western corner of the one acre tract acquired by John R. Hopmeier by deed recorded in Book 175 page 525 of the Jefferson County Land Records; thence South 37-1/2 degrees East along the Southwest line of said tract, 434.94 feet to the most Southern corner thereof, said point being on the West line of said Lemay Ferry Road; thence Northwardly along the West line of said road to the place of beginning.

**Parcel 6:**

One and Eighty-eight hundredths (1.88) acres being part of a larger tract of 4.08 acres in Lot Seventeen (17), of U.S. Survey No. 2991, Township 43 North, Range 6 East, which larger tract was conveyed by Anton W. Hampel and wife to Alvin Joseph Becker and wife, by deed dated January 13, 1955, recorded in Book 231, at page 549 of the Jefferson County, Missouri Land Records. Said One and Eighty-eight hundredths (1.88) acres being described as follows: Beginning at the most Northern corner of said larger tract and running thence with the Northeastern boundary line thereof, South 37 degrees 30 minutes East 447 feet to an iron pin in the Western line of Lemay Ferry Road; thence with the Western side of said road, South 15 degrees 5 minutes West 170 feet to an iron pin; thence departing from said Lemay Ferry Road and running North 58 degrees 22 minutes West 122.23 feet to an iron pin; thence North 33 degrees 14 minutes West 437.2 feet to an iron pin in the Northwestern boundary line of said larger tract; thence North 52 degrees 30 minutes East 146.39 feet to the place of beginning.

**Parcel 7:**

Seven Tenths (0.7) of an acre being part of a larger tract of 4.06 acres in Lot Seventeen (17), of U.S. Survey No. 2991, Township 43 North, Range 6 East, which larger tract was conveyed by Anton W. Hampel and wife, by Alvin Joseph Becker and wife, by deed dated January 13, 1955, recorded in Book 231 Page 549 of the Jefferson County, Missouri Land Records. Said Seven Tenths (0.7) of an acre being described as follows: Beginning in the Northwestern boundary line of the above mentioned larger tract, at an iron pin located South 52 degrees 30 minutes West 146.39 feet distant from a stone marking the most northern corner of said larger tract, proceed thence from said iron pin, South 52 degrees 30 minutes East 53.65 feet to an iron pin; thence South 33 degrees 14 minutes East 445.14 feet to an iron pin; thence South 58 degrees 22 minutes East 144.65 feet to an iron pin in the Western line of the Lemay Ferry Road; thence with the Western line of said Lemay Ferry Road, North 22 degrees 37 minutes East 39.15 feet; and North 15 degrees 5 minutes East 15.5 feet to an iron pin marking the Southeast corner of a tract of 1.88 acres conveyed by Alvin Joseph Becker and wife, to Robert L. Browning and wife, et al., by deed recorded in Book 342 at page 351 of the aforesaid records; thence with the Southwestern boundaries of said tract of 1.88 acres so conveyed, North 58 degrees 22 minutes West 122.23 feet to an iron pin; thence North 33 degrees 14 minutes West 437.2 feet to the place of beginning.

## **EXHIBIT B**

### **PROJECT IMPROVEMENTS**

The Project Improvements consist of the approximately 70,000 square foot senior living facility to be constructed on the Project Site, to the extent paid for in whole with Bond proceeds.

**EXHIBIT C**

**PROJECT EQUIPMENT**

All items of machinery, equipment and other personal property items transferred to the City, located on the Project Site pursuant to **Article IV** of the Lease, and paid for in whole from the proceeds of the Bonds.



**EXHIBIT D**

**FORM OF REQUISITION CERTIFICATE**

Requisition No. \_\_\_\_\_  
Date: \_\_\_\_\_

**REQUISITION CERTIFICATE**

**TO: BOKF, N.A., AS TRUSTEE UNDER A TRUST INDENTURE DATED AS OF JUNE 1, 2019, BETWEEN THE CITY OF ARNOLD, MISSOURI, AND THE TRUSTEE, AND THE LEASE AGREEMENT DATED AS OF JUNE 1, 2019, BETWEEN THE CITY OF ARNOLD, MISSOURI, AND CEDARHURST OF ARNOLD REAL ESTATE, LLC**

The undersigned Authorized Company 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. 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. The Project Costs shall be paid in whole from Bond proceeds in such amounts, to such payees and for such purposes as set forth on **Schedule 1** hereto.

3. Set forth on **Schedule 2** hereto is a description of the Project Equipment acquired, which is being paid for in whole with Bond proceeds pursuant to this Requisition Certificate. Attached hereto as **Exhibit A** is the Bill of Sale transferring said Project Equipment to the City.

4. Each of the items for which payment is requested are or were desirable and appropriate in connection with the purchase and construction of the Project, have been properly incurred and are a proper charge against the Project Fund, and have been paid by the Company 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.

5. As of this date, except for the amounts referred to above, to the best of my knowledge there are no outstanding disputed statements for which payment is requested for labor, wages, materials, supplies or services in connection with the purchase and construction of the Project which, if unpaid,

might become the basis of a vendors', mechanics', laborers' or materialmen's statutory or similar lien upon the Project or any part thereof.

**CEDARHURST OF ARNOLD REAL ESTATE,  
LLC**

By: \_\_\_\_\_  
Authorized Company Representative

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**CITY OF ARNOLD, MISSOURI**

By: \_\_\_\_\_  
Authorized City Representative

**SCHEDULE 1 TO REQUISITION CERTIFICATE**

**PROJECT COSTS**

<u>Payee and Address</u>	<u>Description</u>	<u>Amount</u>
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**SCHEDULE 2 TO REQUISITION CERTIFICATE**

**PROJECT EQUIPMENT**

Item (Description)

Serial or Identification Number

**EXHIBIT A TO REQUISITION CERTIFICATE**

**BILL OF SALE**

**\$10,000,000**  
**(AGGREGATE MAXIMUM PRINCIPAL AMOUNT)**  
**CITY OF ARNOLD, MISSOURI**  
**TAXABLE INDUSTRIAL REVENUE BONDS**  
**(CEDARHURST OF ARNOLD REAL ESTATE, LLC PROJECT)**  
**SERIES 2019**

**Dated as of June 1, 2019**

**BOND PURCHASE AGREEMENT**

Honorable Mayor  
and City Council  
City of Arnold, Missouri

On the basis of the representations and covenants and upon the terms and conditions contained in this Bond Purchase Agreement, Cedarhurst of Arnold Real Estate, LLC, a Missouri limited liability company (the "Purchaser"), offers to purchase from the City of Arnold, Missouri (the "City"), the above-referenced bonds (the "Bonds"), to be issued by the City under and pursuant to an Ordinance adopted by the governing body of the City on May 16, 2019 (the "Ordinance") and a Trust Indenture dated as of June 1, 2019 (the "Indenture") by and between the City and BOKF, N.A., as trustee (the "Trustee"), in substantially the form set forth in **Exhibit D** to the Indenture. *Capitalized terms not otherwise defined herein shall have the meanings set forth in the Indenture.*

**SECTION 1. REPRESENTATIONS AND AGREEMENTS**

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

(1) The City is a third-class city duly organized and validly existing under the laws of the State of Missouri. The City is authorized pursuant to the Constitution, 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 Bonds and to consummate all transactions contemplated by the Ordinance, this Bond Purchase Agreement, the Indenture, the Lease Agreement dated as of June 1, 2019 (the "Lease") by and between the City and the Purchaser, the Performance Agreement dated as of June 1, 2019 (the "Performance Agreement") by and between the City and the Purchaser, and any and all other agreements relating thereto. The proceeds of the Bonds shall be used for the purpose of acquiring, constructing and equipping the Project and paying the costs incurred in connection with the issuance of the Bonds.

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

represented by the Bonds or the validity of the Bonds, the Ordinance, the Lease, the Indenture, the Performance Agreement or this Bond Purchase Agreement.

(b) The Purchaser represents as follows:

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

(2) *No Conflict or Breach.* The execution, delivery and performance of this Bond Purchase Agreement by the Purchaser 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) *Documents Legal, Valid and Binding.* When executed and delivered by the Purchaser, this Bond Purchase Agreement will be, and is, a legal, valid and binding obligation, enforceable in accordance with its terms, subject, as to enforcement, to any applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting the enforcement of creditors' rights generally and further subject to the availability of equitable remedies.

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

## **SECTION 2. PURCHASE, SALE AND DELIVERY OF THE BONDS**

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

The Bonds shall be sold to the Purchaser by the City on the Closing Date (hereinafter defined) upon payment of an amount equal to the Closing Price (hereinafter defined), which amount shall be applied as provided in the Indenture and the Lease. From time to time after the Closing Date, the Purchaser shall make additional payments with respect to the Bonds ("Additional Payments") to the Trustee under the Indenture, which Additional Payments shall be applied to the payment of Project Costs or as provided in the Indenture and the Lease; provided that the sum of the Closing Price and all such Additional Payments shall not, in the aggregate, exceed \$10,000,000 plus the costs of issuance of the Bonds (if such costs of issuance are not paid with Bond proceeds).

As used herein, the term "Closing Date" shall mean June \_\_\_, 2019, or such other date as shall be mutually agreed upon by the City and the Purchaser; the term "Closing Price" shall mean the amount specified in writing by the Purchaser and agreed to by the City as the amount required to pay for the initial issuance of the Bonds on the Closing Date, which amount shall be equal to any Project Costs spent by the Purchaser from its own funds on or before the Closing Date, and, at the Purchaser's option, the costs of issuance of the Bonds if such costs are not paid for from Bond proceeds. The Closing Price shall be transferred to the Trustee on the Closing Date.

The Bonds shall be issued under and secured as provided in the Ordinance, the Indenture and the Lease authorized thereby and the Bonds shall have the maturity, interest rate and shall be subject to redemption as set forth therein. The delivery of the Bonds shall be made in definitive form as a fully-registered bond in the maximum aggregate principal denomination of \$10,000,000; provided, that the principal amount of the Bonds outstanding at any time shall be that amount recorded in the records of the Trustee, absent manifest error, and further provided that interest shall be payable on the Bonds only on the outstanding principal amount of the 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 Lease, the Performance Agreement, this Bond Purchase Agreement and any other instrument contemplated thereby, and such documents shall be in full force and effect and shall not have been modified or changed except as may have been agreed to in writing by the Purchaser.

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

(c) The Purchaser shall execute a certificate, dated the Closing Date, to the effect that (1) no litigation, proceeding or investigation is pending against the Purchaser or its affiliates or, to the knowledge of the Purchaser, threatened against the Purchaser which would (A) contest, affect, restrain or enjoin the issuance, validity, execution, delivery or performance of the Bonds, or (B) in any way contest the existence or powers of the Purchaser, (2) no litigation, proceeding or investigation is pending or, to the knowledge of the Purchaser, threatened against the Purchaser that could reasonably be expected to adversely affect its ability to perform its obligations under the Lease and the 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 City or the Trustee in connection with the issuance of the Bonds.

### **SECTION 4. THE PURCHASER'S RIGHT TO CANCEL**

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



**SECTION 5. CONDITIONS OF OBLIGATIONS**

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

**SECTION 6. REPRESENTATIONS AND AGREEMENTS TO SURVIVE DELIVERY**

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

**SECTION 7. NOTICE**

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

(a) To the City:

City of Arnold, Missouri  
2101 Jeffco Boulevard  
Arnold, Missouri 63010  
ATTN: City Administrator

with copies to:

Robert K. Sweeney, LLC  
P.O. Box 20  
503 Main Street  
Hillsboro, Missouri 63050  
ATTN: Robert K. Sweeney

and:

Gilmore & Bell, P.C.  
211 N. Broadway, Suite 2000  
St. Louis, Missouri 63102  
ATTN: Mark D. Grimm

(b) To the Trustee:

BOKF, N.A.  
200 N. Broadway, Suite 1710  
St. Louis, Missouri 63102  
ATTN: Corporate Trust Department

(c) To the Purchaser:

Cedarhurst of Arnold Real Estate, LLC  
120 South Central Ave., Suite 1050  
Clayton, Missouri 63105  
ATTN: Jordan D. Dorsey

**SECTION 8. APPLICABLE LAW**

This Bond Purchase Agreement shall be governed by the laws of the State of Missouri.

**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.

[Remainder of Page Intentionally Left Blank.]

Very truly yours,

**CEDARHURST OF ARNOLD REAL  
ESTATE, LLC**

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

DATE OF EXECUTION: \_\_\_\_\_, 2019

[Bond Purchase Agreement]

Accepted and Agreed to this June \_\_\_, 2019.

**CITY OF ARNOLD, MISSOURI**

By: \_\_\_\_\_  
Mayor

[SEAL]

ATTEST:

By: \_\_\_\_\_  
City Clerk

[Bond Purchase Agreement]

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**PERFORMANCE AGREEMENT**

**Dated as of June 1, 2019**

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**BETWEEN THE**

**CITY OF ARNOLD, MISSOURI**

**AND**

**CEDARHURST OF ARNOLD REAL ESTATE, LLC**

**Relating to:**

**\$10,000,000**

**(Aggregate Maximum Principal Amount)**

**City of Arnold, Missouri**

**Taxable Industrial Revenue Bonds**

**(Cedarhurst of Arnold Real Estate, LLC Project)**

**Series 2019**

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## PERFORMANCE AGREEMENT

**THIS PERFORMANCE AGREEMENT**, dated as of June 1, 2019, as from time to time amended and supplemented in accordance with the provisions hereof (this "Agreement"), between the **CITY OF ARNOLD, MISSOURI**, a third-class city organized and existing under the laws of the State of Missouri (the "City"), and **CEDARHURST OF ARNOLD REAL ESTATE, LLC, a Missouri limited liability company** (the "Company").

### 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, inclusive, of the Revised Statutes of Missouri, as amended (collectively, 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, warehousing, office industry and industrial development purposes upon such terms and conditions as the City shall deem advisable.

2. Pursuant to the Act, the City Council passed an ordinance (the "Ordinance") on May 16, 2019, authorizing the City to issue its Taxable Industrial Revenue Bonds (Cedarhurst of Arnold Real Estate, LLC Project), Series 2019, in the maximum principal amount of \$10,000,000 (the "Bonds"), for the purpose of (a) acquiring certain real estate located near the intersection of Missouri Route 141 and Old Lemay Ferry Road in the City (the "Project Site," as more fully described on **Exhibit A** hereto), (b) constructing an approximately 70,000 square foot senior living facility (the "Project Improvements," as more fully described on **Exhibit B** hereto) to be located on the Project Site and (c) equipping the Project Site and Project Improvements with certain personal property (the "Project Equipment," as more fully described on **Exhibit C** hereto).

3. The Ordinance authorizes the City to lease the Project Site, the Project Improvements and the Project Equipment (collectively, the "Project") to the Company pursuant to a Lease Agreement dated as of the date hereof between the City and the Company (the "Lease"). Pursuant to the Lease, the City, as lessor, will purchase, construct and equip, or will cause the Company to purchase, construct and equip, the Project and will lease the Project to the Company, as lessee.

4. Pursuant to the foregoing, the City desires to enter into this Agreement with the Company in consideration of the Company's desire to cause the purchase, construction and equipping of the Project as more fully described in the Lease upon the terms and subject to the conditions hereinafter set forth.

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

## ARTICLE I

### DEFINITIONS

**Section 1.1. Definitions of Words and Terms.** In addition to the words and terms defined in the Recitals or in the Indenture, the following words and terms as used herein shall have the following meanings:

**“Agreement”** means this Performance Agreement dated as of June 1, 2019, between the City and the Company, as from time to time amended and supplemented in accordance with the provisions hereof.

**“Collector”** means the Collector of Jefferson County, Missouri.

**“County”** means Jefferson County, Missouri.

**“County Assessor”** means the Department of County Assessor of Jefferson County, Missouri.

**“Environmental Laws”** shall mean any and all laws, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution, the protection of the environment and/or the release of any materials into the environment, including those related to Hazardous Materials, air emissions and discharges to waste or public systems.

**“Event of Default”** means any Event of Default as provided in **Section 6.1** hereof.

**“Hazardous Materials”** shall mean all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

**“PILOT Payments”** means the payments in lieu of taxes provided for in **Article III** hereof.

**“Project”** means, collectively, the Project Site, the Project Improvements and the Project Equipment.

**“Project Costs”** shall have the meaning set forth in **Section 101** of the Indenture.

**“Project Equipment”** means the equipment described in **Exhibit C** hereto.

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

**“Project Site”** means the real estate described in **Exhibit A** hereto.

## ARTICLE II

### ISSUANCE OF BONDS

**Section 2.1. Issuance of the Bonds.** As described herein, the City intends to issue the Bonds (to be purchased by the Company) under the Act for the purpose of paying a portion of the Project Costs. In connection with the issuance of the Bonds, the City will acquire title to the Project from the Company.

## ARTICLE III

### PROPERTY TAX EXEMPTION; PILOT PAYMENTS

**Section 3.1. Property Tax Exemption.** So long as the City owns title to the Project Site and Project Improvements, the City expects that the Project Site and Project Improvements will be exempt from ad valorem taxes on real property. The City expects the Project Equipment to be exempt from ad valorem taxes from and after January 1 of the year following the City's acquisition thereof and continuing so long as the City owns title thereto.

**Section 3.2. Payments in Lieu of Taxes.**

(a) The Company covenants and agrees that, during each year the Project is exempt from ad valorem property taxes by reason of the City's ownership thereof, the Company will make PILOT Payments in such amounts pursuant to **Section 3.2(d)** at such times set forth in this **Article III** to the appropriate authorities.

(b) The County Assessor will, until this Agreement is terminated, determine an assessed valuation with respect to 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, as if title to the Project were in the name of the Company and not the City. Such assessment shall be performed as of January 1 of each odd-numbered year. To facilitate the assessment, the Company agrees to provide such information as the County Assessor and the City may reasonably require to complete the assessment of the Project.

(c) The County Assessor shall notify the City and the Company of the assessed valuation in writing on or about the same date on which the Assessor notifies other County taxpayers of the assessed valuation of their property. The Company shall notify the County Assessor and the City if the Company has not received such notice by July 1. On or about the same date on which the Collector notifies taxpayers of taxes due under Missouri law, the Collector shall notify the Company and the City of the amount of PILOT Payments due under **Section 3.2(d)** hereof. The Company shall notify the Collector and the City if the Company has not received such notice by December 1.

(d) Except as otherwise provided in **Sections 3.2(f), 3.2(g)** and **3.3** hereof, the PILOT Payments shall be calculated as follows:

(1) in the years 2019 and 2020, 100% of the real property taxes that would be levied against the Project Site and the Project Improvements, but for the City's ownership thereof; plus

(2) unless the Company has exercised its option to purchase the Project pursuant to **Section 11.1** of the Lease, in years 2021 through 2035, 65% of the property taxes that would be



levied against the Project Site, the Project Improvements and the Project Equipment, but for the City's ownership thereof.

(e) Each PILOT Payment shall be payable to the Collector. The Company covenants and agrees to make such PILOT Payments on or before December 31 of each year. The Company's failure to receive the notice pursuant to this **Section 3.2** does not relieve the Company of its obligation to make the applicable PILOT Payments by December 31 as provided herein.

(f) Notwithstanding any provision of this Agreement to the contrary, the Company shall make such additional PILOT Payments ("**District Payments**") as may be required to satisfy any obligations to the County for emergency or dispatch services, Rock Community Fire Protection District of Jefferson County, Missouri or Rock Township Ambulance District (collectively, the "**Districts**") pursuant to the Act. The Company will remit any District Payments directly to each District, as applicable. The Company covenants and agrees to make the District Payments on or before December 31 of each year. The Company's failure to receive the notice pursuant to this **Section 3.2** does not relieve the Company of its obligation to make the District Payments by December 31 as provided herein. In no event will the sum of the PILOT Payments and the District Payments made under this Agreement equal more than 100% of the property taxes that would be levied against the Project Site, the Project Improvements and the Project Equipment, but for the City's ownership thereof.

(g) No later than December 31, 2035, the Company shall exercise its option pursuant to **Section 11.1** of the Lease to purchase the Project. If title to the Project has not been transferred by the City to the Company before the earlier of (1) January 1, 2036, or (2) the expiration of the term of this Agreement, then on December 31 of such year and each year thereafter until title to the Project is transferred to the Company, the Company shall pay to the Collector a PILOT Payment equal to 100% of the amount that would otherwise be payable to each taxing jurisdiction but for the City's ownership thereof, including any prior year PILOT Payment then remaining unpaid.

(h) Within 30 days after receipt of each PILOT Payment, the Collector shall, after deducting its customary fee for collection thereof and, if applicable, any other fees, penalties or deductions generally provided by law as if the PILOT Payment were a "property tax collection", divide each PILOT Payment paid by the Company pursuant to **Section 3.2(d)** among the taxing jurisdictions in proportion to the amount of the then current ad valorem tax levy of each taxing jurisdiction.

(i) If the County Assessor fails to perform at least a bi-annual assessment of the value of the Project Site and Project Improvements, the City will perform, at the Company's expense, an assessment of the value of the Project Site and Project Improvements using the same methodology and factors that would be used by the County Assessor.

### **Section 3.3. PILOT Payments if the Company Purchases the Project.**

(a) If the Company exercises its option to purchase the Project pursuant to **Section 11.1** of the Lease before the City notifies the Company of the PILOT Payments due under this Agreement, the Company shall make a PILOT Payment to the Collector equal to 100% of the amount that would have been payable to each taxing jurisdiction for the preceding calendar year but for the City's ownership of the Project.

(b) If the Company exercises its option to purchase 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 Company purchases the Project, the Company shall pay that amount to the Collector (to be applied as provided in **Section 3.2(h)**) prior to or at closing on the purchase of the Project.

**Section 3.4. Other Property Taxes in Connection with the Project; Credits.** The property tax exemption provided by the City's ownership of the Project is expected to apply to all interests in the Project during the period it is owned by the City. If any ad valorem property taxes are levied by or on behalf of any taxing jurisdiction against any interest in the Project during the period the City owns the Project (including, without limitation, any ad valorem taxes levied against the Company's rights in the Lease), the amount of the PILOT Payments the Company is obligated to pay pursuant to this Agreement shall be reduced by the amount of ad valorem tax payments paid by the Company and received by the Collector with respect to the Project. The Company is responsible for any taxes related to any interest in the Project that the Company owns in the Company's own name or granted to the Company other than pursuant to the Lease. Notwithstanding **Section 4.7** hereof, 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 Company's acquisition of construction materials for real property improvements or equipment at the Project Site.

**Section 3.5. No Abatement on Special Assessments, Licenses or Fees.** The City and the Company agree that the property tax exemptions described in this Agreement shall not apply to special assessments 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. The Company agrees to make payments with respect to all special assessments, licenses and fees that would otherwise be due with respect to the Project if the Project was not owned by the City.

**Section 3.6. Company's Right to Protest Taxes.** No provision of this Agreement shall be construed to limit or in any way restrict the availability of any provision of Missouri law which confers upon the Company the right to appeal, protest or otherwise contest any property tax valuation, assessment or classification of the Project on behalf of or in the City's name following written notice to the City from the Company, but solely at the Company's expense. The City agrees to join the Company in any administrative or judicial proceedings related to the property tax valuation, assessment or classification of the Project, but solely at the Company's expense.

**Section 3.7. Personal Property.** The parties hereto acknowledge that the Project Improvements may include the installation of fixtures. Said fixtures are intended to be subject to this Agreement as part of the Project Improvements and are not intended to constitute personal property. The Company may acquire personal property on its own accord; however, such personal property shall not be subject to the terms of this Agreement and shall be subject to ad valorem taxes, unless such personal property constitutes Project Equipment or unless otherwise provided.

## ARTICLE IV

### COVENANTS, REPRESENTATIONS AND AGREEMENTS OF THE COMPANY

**Section 4.1. Inspection.** The City may conduct such periodic inspections of the Project as may be generally provided in the City code and as otherwise provided in **Section 10.3** of the Lease. In addition, the Company agrees that the City and its duly authorized agents may, at reasonable times during normal business hours and, except in the event of emergencies, upon not less than two business days' prior notice, subject to the Company's usual business proprietary, safety, confidentiality and security requirements, enter upon the Project Site (a) to examine and inspect the Project without interference or

prejudice to the Company's operations, (b) to monitor the acquisition and construction of the Project as may be reasonably necessary, (c) to examine all files, records, books and other materials pertaining to the acquisition, installation or maintenance of the Project, and (d) upon either (1) the occurrence and continuance of an Event of Default, or (2) the Company's failure to purchase the Project at the end of the Lease Term, to exhibit the Project to prospective purchasers, lessees or trustees.

**Section 4.2. Representations and Warranties.**

(a) The Company represents that as of the date of this Agreement and during the term of this Agreement, or such shorter period as may be expressly provided for below:

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

(2) The Company has the right, power and authority to enter into, execute, deliver and perform this Agreement.

(3) The execution, delivery and performance by the Company 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 Company, as the same may be amended and supplemented, or to the best of the Company's knowledge, any applicable provision of law, nor does it constitute a breach of or default under or require any consent under any agreement, instrument or document to which the Company is now a party or by which the Company is now or may become bound.

(4) There are no actions or proceedings by or before any court, governmental commission, board, bureau or any other administrative agency pending, or to the best of the Company's knowledge, threatened or affecting the Company that would impair its ability to perform under this Agreement.

(5) The Company 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, construct and equip the Project.

(6) 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 or that otherwise may be applicable by virtue of the City's ownership of the Project Site, including Environmental Laws, subject to all applicable rights of the Company to contest the same.

(7) The Project will be completed in a manner that is consistent with the description of the Project herein and in the Lease.

(b) The City represents that as of the date of this Agreement and during the term of this Agreement, or such shorter period as may be expressly provided for below:

(1) The City is a municipal corporation duly organized and validly existing under the laws of the State of Missouri.

(2) The execution, delivery and performance by the City of this Agreement has been duly authorized by all necessary City actions.

(3) The City has the right, power and authority to enter into, execute, deliver and perform its duties and obligations under this Agreement.

(4) To the best of the City's knowledge, there are no actions or proceedings by or before any court, governmental commission, board, bureau or any other administrative agency pending and served, or to the best of the City's knowledge, threatened or affecting the City that would impair its ability to enter into or perform its obligations under this Agreement.

**Section 4.3. Environmental Warranties.** The Company represents and warrants to the City that, as of the date of this Agreement and during the term of this Agreement, or such shorter period as may be expressly provided for below:

The Company will not use or suffer or permit to be used on the Project Site, or with respect to the Project Equipment, or any part thereof, in any manner inconsistent with the rights of the Trustee or the City hereunder, or in violation of the provisions of any insurance policy or any rules or regulations of insurance underwriters. The Company will comply with, and maintain, use and cause the Project Site and Project Equipment to at all times be in compliance with all laws, including, without limitation, Environmental Laws, applicable to the Project Site and Project Equipment or to the uses or purposes thereof, the non-compliance with which could reasonably be expected to have a material adverse effect on the value or usability of the Project Site or Project Equipment. The Company shall pay immediately when due the cost of removal of any Hazardous Materials which may be located on, in, under or about the Project Site or Project Equipment in violation of any applicable Environmental Law, and keep the Project Site and Project Equipment free of any lien imposed pursuant to any such Environmental Law. In the event the Company fails to do so within a reasonable period of time after notice to the Company, the Trustee or the City may (but shall have no obligation to) cause the Project Site or Project Equipment to be freed from and decontaminated of the Hazardous Materials or take or cause to be taken any other action with respect to any such Hazardous Materials or the Project Site or Project Equipment to protect their interests therein. The Company shall give the City and the Trustee immediate written notice of any condition or occurrence on the Project Site or with the Project Equipment which constitutes a violation of any Environmental Law or would justify a demand for removal or remediation under any Environmental Law. The Company hereby grants to the City and the Trustee, their agents and employees access to the Project Site and Project Equipment and the right to (but in no case shall the City or Trustee be in any way obligated or required to) remove any Hazardous Materials in violation of any applicable Environmental Law from the Project Site or Project Equipment and to perform such investigation and/or remediation thereon, all at the Company's expense and as the City or Trustee shall see fit. The Company agrees to protect, indemnify, defend and hold harmless the Trustee and the City to the fullest extent allowed by law, from and against all claims, demands, causes of action, suits, losses, damages (including, without limitation, punitive damages), violations of any Environmental Law, environmental response and clean-up costs, fines, penalties and expenses (including, without limitation, reasonable counsel fees, cost and expenses incurred in investigating and defending against the assertion of such liabilities), of any nature whatsoever, which may be sustained, suffered or incurred by the Trustee or the City based upon, or in connection with, or relating to, (a) the City's ownership or the Company's operations on the Project Site or use of the Project Equipment, and all activities relating thereto, (b) any misrepresentation or breach of warranty by the Company, (c) any compliance with or investigation, action or proceeding under or violations of any Environmental Law, (d) the presence, remediation, clean-up or removal of any Hazardous Materials on the Project Site or with respect to the Project Equipment or evaluation or investigation of any release or threat of release of any Hazardous Materials on the Project Site or with

respect to the Project Equipment, (e) any loss of or damage to natural resources, including damages to air, surface or ground water, soil and biota on the Project Site, and (f) any private or governmental suits or court or administrative orders or injunctions relating in any way to any Hazardous Materials on, in, under or about the Project Site, or emanating therefrom. The specific indemnity and covenants contained in this paragraph are in addition to and shall not be construed to narrow or in any way restrict the application of the other indemnities and covenants contained in this Agreement, the Lease or in any other document executed in connection with the issuance of the Bonds, notwithstanding any overlap in coverage.

**Section 4.4. Survival of Covenants.** All applicable representations and warranties of the Company and the City contained in **Section 4.2** 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 Company covenants and agrees that the obligations under **Section 4.5** hereof shall survive the cancellation and termination of this Agreement, for any cause, and that the Company 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 Company's obligations under this Agreement (except for **Section 4.5** hereof) shall thereupon cease and terminate in full.

**Section 4.5. Indemnification of City.** The Company shall indemnify, defend and hold harmless the City from and against all claims, demands, costs, liabilities, damages or expenses, including reasonable attorneys' fees, by or on behalf of any person, firm or corporation arising from the City's ownership or conduct of the Project, or from any work or thing done in, or injury occurred on or about, the Project during the term of the Lease, except for those caused by or deriving from an intentional or negligent act of the City, and against and from all claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, arising during the term of the Lease from any event described in **Sections 10.5 and 10.9** of the Lease to the extent and subject to the limitations provided therein.

**Section 4.6. Costs of Issuance of the Bonds; Payment to City.** The Company agrees to pay or provide for the payment of, on the issuance date of the Bonds, all costs of issuance incurred in connection therewith. If this Agreement is terminated before the payment in full of the Bonds or the expiration of the Lease Term or the rights and interests of the Company under this Agreement are assigned pursuant to **Article V** hereof, the Company shall pay any costs of the City in connection therewith, including the City's legal fees and bond counsel fees.

**Section 4.7. Sales Tax Exemptions.** The City will provide a project exemption certificate to the Company, its contractors and subcontractors to purchase and pay for, exempt from sales tax, certain construction materials to be incorporated into or used up in the Project, pursuant to a Missouri Department of Revenue Project Exemption Certificate, Form 5060, to be delivered by the City to the Company. The Company agrees to make, and to cause its contractors and subcontractors 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 can only be used for the Project and which are actually used up or consumed in constructing the Project. Except as provided in the prior sentences, the acquisition and construction of the Project shall not be exempt from any sales taxes imposed by any governmental authority by virtue of the City's ownership of the Project, and neither the City nor the Company will request any such exemption. Nothing herein shall limit the Company's right to any exemption of sales taxes not resulting from the City's ownership of fee simple title to the Project.

**Section 4.8. Public Liability Insurance.**

(a) The Company shall at its sole cost and expense, maintain or cause to be maintained, at all times during the Lease Term, commercial general liability insurance (including, but not limited to, coverage for operations, contingent liability, operations of subcontractors, completed operations and contractual liability) under which the City and the Trustee shall be named as additional insureds, properly protecting and indemnifying the City and the Trustee, in amounts not less than the limits of liability set forth in Section 537.610 of the Revised Statutes of Missouri, as amended (subject to reasonable loss deductible clauses not to exceed \$150,000.00 without the City's prior written consent). The policies of said insurance shall contain an agreement by the insurer that, notwithstanding any right of cancellation reserved to such insurer, such policy or contract shall continue in force for at least 30 days after written notice of cancellation is given to the Company, the City, the Trustee and each other insured or loss payee named therein. Certificates of such policies shall be furnished to the City and the Trustee on the date of execution of the Lease and promptly after renewal of each insurance policy. The Company shall provide the Trustee, on an annual basis, commencing on the effective date of the Lease with a certificate of an Authorized Company Representative certifying compliance with this **Section 4.8**.

(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.

(c) The Company may satisfy the insurance requirements set forth in this section using blanket policies of insurance, provided each and all of the requirements and specifications of this section respecting insurance are complied with.

(d) By execution and performance of this Agreement, the City does not intend to, nor shall it be deemed to have waived or relinquished any immunity or defense on behalf of the City, and the City's council members, officers, directors, servants, employees, agents, successors or assigns.

## ARTICLE V

### SALE AND ASSIGNMENT

The benefits granted by the City to the Company pursuant to this Agreement shall belong solely to the Company, and such benefits shall not be transferred, assigned, pledged or in any other manner hypothecated, except as provided in **Section 13.1** of the Lease.

## ARTICLE VI

### DEFAULT AND REMEDIES

**Section 6.1. 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 hereunder:

(a) the Company fails to make any PILOT Payment required to be paid hereunder within 10 business days after written notice and demand given by the City to the Company;

(b) the Company fails to perform any of their material obligations hereunder for a period of 30 days (or such longer period as the parties may agree in writing) following written notice to the Company from the City of such failure, or if such failure is not subject to cure within

such 30 days after such notice, such party or parties fail to initiate action to cure the default within such 30 days after such notice is given and fail to pursue such action diligently;

(c) any representation of any party contained herein 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 and such party may agree in writing) after the City has given written notice to such party specifying the false or erroneous representation and requiring it to be remedied; provided, that if such matter is not subject to cure within such 30 days after such notice, such 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) the Company permanently ceases operations at the Project Site.

**Section 6.2. Remedies on Default.** As provided in the Lease, any Event of Default referred to in **Section 6.1** hereof shall also constitute an Event of Default under the Lease, affording the City the remedies specified therein.

**Section 6.3. 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. In addition, the Company is expected to pay any late fees due to the County.

**Section 6.4. Enforcement.** In addition to the remedies specified in **Section 6.2**, upon the occurrence of the Event of Default described in **Section 6.1(a)**, the City or any taxing jurisdictions 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 Indenture 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 costs and the cost 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, the Indenture or the Lease, 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.

## ARTICLE VII

### TERM OF AGREEMENT

**Section 7.1. Term of Agreement.** This Agreement shall become effective upon execution by the parties hereto and shall terminate upon the earliest to occur of the following:

(a) the payment in full of the Bonds (or any bonds issued to refund the Bonds) and the payment of all amounts due under this Agreement;

(b) the occurrence and continuance of an Event of Default beyond the cure period and the subsequent termination of this Agreement pursuant to the provisions of the Lease and this Agreement; or

(c) the expiration of the Lease Term set forth in **Section 3.2** of the Lease.

**Section 7.2. Payments in Last Year.** The foregoing provisions of **Section 7.1** shall not relieve the Company of its obligation to make any PILOT Payment owing during the year in which the Bonds are paid, to the extent the Company receives the ad valorem tax exemption contemplated for that year.

## ARTICLE VIII

### MISCELLANEOUS PROVISIONS

**Section 8.1. Mutual Assistance.** The City and the Company agree to take such reasonable actions as may be necessary or appropriate to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent; provided, however, the City shall not be required to incur any costs, expenses, obligations or liabilities in providing such reasonable actions.

**Section 8.2. 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:

(a) To the City:

City of Arnold, Missouri  
2101 Jeffco Boulevard  
Arnold, Missouri 63010  
ATTN: City Administrator

with copies to:

Robert K. Sweeney, LLC  
P.O. Box 20  
503 Main Street  
Hillsboro, Missouri 63050  
ATTN: Robert K. Sweeney

and:

Gilmore & Bell, P.C.  
211 N. Broadway, Suite 2000  
St. Louis, Missouri 63102  
ATTN: Mark D. Grimm

(b) To the Company:

Cedarhurst of Arnold Real Estate, LLC  
120 South Central Ave., Suite 1050  
Clayton, Missouri 63105  
ATTN: Jordan D. Dorsey



**Section 8.3. Severability; Effect of Invalidity.** If for any reason any provision of this Agreement is determined to be invalid or unenforceable, such invalid or unenforceable term will be deemed severed from this Agreement and the validity and enforceability of the other provisions hereof shall not be affected thereby. If this Agreement, or any portion hereof, or any agreements related hereto, are determined to be invalid, the City may not recover or recapture any taxes subject to abatement as provided herein or benefits accruing to the Company prior to such determination if the Company has paid taxes in an amount at least equal to the PILOT Payments due under this Agreement.

**Section 8.4. Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of Missouri.

**Section 8.5. Execution in Counterparts.** This Agreement 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 8.6. Bankruptcy.** The City and the Company acknowledge and agree that the amounts payable hereunder shall constitute payments due the City under the Lease. The Company shall not be entitled to any extension of payment of such amounts as a result of a filing by or against the Company 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.

**Section 8.7. Entire Agreement.** This Agreement, together with the Lease, the Indenture and any other documents entered into of even date herewith in connection with the issuance of the Bonds, constitute the entire agreement of the parties with respect to the subject matter hereof. This Agreement shall not be modified except by written agreement signed on behalf of the parties hereto by their duly authorized representatives.

**Section 8.8. Electronic Storage.** 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 8.9. Employee Verification.** The Company will comply with and satisfy the requirements of Section 285.530.2 of the Revised Statutes of Missouri, as amended, which requires (a) 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 (b) 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 Company shall provide such affidavit and documentation to the City upon the issuance of the Bonds and thereafter on or before October 20 of each year during the term of the Lease.

**Section 8.10. Date of this Agreement.** The dating of this Agreement as of June 1, 2019, is intended as and for the convenient identification of this Agreement only, and is not intended to indicate that this Agreement was executed and delivered on said date, this Agreement being executed and delivered and becoming effective simultaneously with the initial issuance of the Bonds.

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

**CITY OF ARNOLD, MISSOURI**

By: \_\_\_\_\_  
Ron Counts, Mayor

[SEAL]

ATTEST:

By: \_\_\_\_\_  
Tammi Casey, City Clerk

**CEDARHURST OF ARNOLD REAL  
ESTATE, LLC**

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

[Performance Agreement]

**JOINDER**

The Department of the County Assessor of Jefferson County, Missouri hereby joins in the foregoing Performance Agreement to the extent required to perform the obligations assigned to it pursuant to **Article III** thereof.

**DEPARTMENT OF THE COUNTY  
ASSESSOR OF JEFFERSON COUNTY,  
MISSOURI**

By: \_\_\_\_\_  
Robert S. Boyer, County Assessor

## EXHIBIT A

### PROJECT SITE

The land situated in Jefferson County, State of Missouri, and described as follows:]

**Parcel 1:**

Adjusted Parcel A of Consolidation Plat of Part of Lot 17 in U.S. Survey 2991 Township 43 North, Range 6 East, a subdivision in Jefferson County, Missouri, according to the plat thereof recorded December 4, 2007 as Document No. 2007S-000040 of the Jefferson County Records.

**Parcel 2:**

Lots Eleven (11) and Twelve (12) of GEBHARDT'S 2ND ADDITION, a subdivision in Jefferson County, Missouri, as per plat thereof recorded in Plat Book 26, Page 15 of the Jefferson County Records.

**Parcel 3:**

All that part of a 4.79 acre tract in Lot Sixteen (16) in U.S. Survey 2991, Jefferson County, Missouri, fully described in Warranty Deed dated January 24, 1951 recorded in Book 197, Page 179 in the Recorder's Office of Jefferson County, Missouri, described as follows, to-wit: Beginning at a point on the Northeastern line of said 4.79 acre tract which point of beginning is located North 38-1/2 degrees West 30 feet from the Southeastern line of said 4.79 acre tract; thence North 64-1/2 degrees West, 100 feet; thence South 52-1/2 degrees West, 150 feet; thence South 38-1/2 degrees East to a point 30 feet from the Southeast line of said 4.79 acre tract; thence North 52-1/2 degrees East on a line parallel to and 30 feet distant from the Southeastern line of said 4.79 acre tract to the place of beginning.

**Parcel 4:**

Easement for road purposes over the Drive 26 feet wide as created by the plat of Gebhardt's 2nd Subdivision dated August 24, 1962 and recorded August 27, 1962 in Plat Book 26 page 15 of the Jefferson County Records; subject to the terms, provisions and conditions set forth in said instrument.

**Parcel 5:**

All that part of Lot Seventeen (17) of US Survey No 2991, in Jefferson County, Missouri, described as follows, to-wit: Beginning at a point on the West line of the Lemay Ferry County Road, said point being the most Southern corner of the tract conveyed to John R. Hopmeier and wife to Chas Schierhoff by deed dated July 1, 1952, and recorded in Book 204 page 97 of the Jefferson County Land Records; thence Northwestwardly along the West line of said tract to a point in the Northwest line of the John R. Hopmeier tract, being the Northwest line of said Lot Seventeen (17); thence South 52-1/2 degrees West of the Northwest line of said Lot Seventeen (17), 377.84 feet to the most Western corner of said Lot Seventeen (17); thence South 37-1/2 degrees East 206.56 feet to a point; thence North 52-1/2 degrees East 330 feet to the most Western corner of the one acre tract acquired by John R. Hopmeier by deed recorded in Book 175 page 525 of the Jefferson County Land Records; thence South 37-1/2 degrees East along the Southwest line of said tract, 434.94 feet to the most Southern corner thereof, said point being on the West line of said Lemay Ferry Road; thence Northwardly along the West line of said road to the place of beginning.

**Parcel 6:**

One and Eighty-eight hundredths (1.88) acres being part of a larger tract of 4.06 acres in Lot Seventeen (17), of U.S. Survey No. 2991, Township 43 North, Range 6 East, which larger tract was conveyed by Anton W. Hampel and wife to Alvin Joseph Becker and wife, by deed dated January 13, 1955, recorded in Book 231, at page 549 of the Jefferson County, Missouri Land Records. Said One and Eighty-eight hundredths (1.88) acres being described as follows: Beginning at the most Northern corner of said larger tract and running thence with the Northeastern boundary line thereof, South 37 degrees 30 minutes East 447 feet to an iron pin in the Western line of Lemay Ferry Road; thence with the Western side of said road, South 15 degrees 5 minutes West 170 feet to an iron pin; thence departing from said Lemay Ferry Road and running North 58 degrees 22 minutes West 122.23 feet to an iron pin; thence North 33 degrees 14 minutes West 437.2 feet to an iron pin in the Northwestern boundary line of said larger tract; thence North 52 degrees 30 minutes East 146.39 feet to the place of beginning.

**Parcel 7:**

Seven Tenths (0.7) of an acre being part of a larger tract of 4.06 acres in Lot Seventeen (17), of U.S. Survey No. 2991, Township 43 North, Range 6 East, which larger tract was conveyed by Anton W. Hampel and wife, by Alvin Joseph Becker and wife, by deed dated January 13, 1955, recorded in Book 231 Page 549 of the Jefferson County, Missouri Land Records. Said Seven Tenths (0.7) of an acre being described as follows: Beginning in the Northwestern boundary line of the above mentioned larger tract, at an iron pin located South 52 degrees 30 minutes West 146.39 feet distant from a stone marking the most northern corner of said larger tract, proceed thence from said iron pin, South 52 degrees 30 minutes East 53.65 feet to an iron pin; thence South 33 degrees 14 minutes East 445.14 feet to an iron pin; thence South 58 degrees 22 minutes East 144.66 feet to an iron pin in the Western line of the Lemay Ferry Road; thence with the Western line of said Lemay Ferry Road, North 22 degrees 37 minutes East 39.16 feet; and North 15 degrees 5 minutes East 15.5 feet to an iron pin marking the Southeast corner of a tract of 1.88 acres conveyed by Alvin Joseph Becker and wife, to Robert L. Browning and wife, et al., by deed recorded in Book 342 at page 351 of the aforesaid records; thence with the Southwestern boundaries of said tract of 1.88 acres so conveyed, North 58 degrees 22 minutes West 122.23 feet to an iron pin; thence North 33 degrees 14 minutes West 437.2 feet to the place of beginning.

## **EXHIBIT B**

### **PROJECT IMPROVEMENTS**

The Project Improvements consist of the construction of an approximately 70,000 square foot senior living facility located near the intersection of Missouri Route 141 and Old Lemay Ferry Road in the City, to the extent paid for in whole with Bond proceeds.

## **EXHIBIT C**

### **PROJECT EQUIPMENT**

All items of machinery, equipment and other personal property items transferred to the City, located on the Project Site pursuant to **Article IV** of the Lease, and paid for in whole from the proceeds of the Bonds.

Space Above Line Reserved for Recorder's Use

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TITLE OF DOCUMENT: SPECIAL WARRANTY DEED

DATE OF DOCUMENT: June \_\_, 2019

GRANTOR: CEDARHURST OF ARNOLD REAL ESTATE, LLC,  
a Missouri limited liability company

GRANTOR'S MAILING ADDRESS: 120 South Central Ave., Suite 1050  
Clayton, Missouri 63105

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

GRANTEE'S MAILING ADDRESS: 2101 Jeffco Boulevard  
Arnold, Missouri 63010

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

LEGAL DESCRIPTION: See **Exhibit A**, attached to this document at page A-1.



**SPECIAL WARRANTY DEED**

**THIS SPECIAL WARRANTY DEED**, made this June \_\_, 2019, from **CEDARHURST OF ARNOLD REAL ESTATE, LLC**, a Missouri limited liability company, with an address of 120 South Central Ave., Suite 1050, Clayton, Missouri 63105 (the "Grantor"), to the **CITY OF ARNOLD, MISSOURI**, a political subdivision and body corporate organized and existing under the laws of the State of Missouri, with an address of 2101 Jeffco Boulevard, Arnold, Missouri 63010 (the "Grantee").

**WITNESSETH, THAT THE GRANTOR**, in consideration of the sum of Ten Dollars (\$10.00) and other valuable considerations to it paid by the Grantee to Grantor (the receipt and sufficiency of which is hereby acknowledged) does by these presents, **SELL** and **CONVEY** unto the Grantee, its successors and assigns, the lots, tracts or parcels of land situated in the City of Arnold, County of Jefferson, State of Missouri, legally described in **EXHIBIT A** (the "Land"), which is attached hereto at page A-1 of this Special Warranty Deed and incorporated herein by this reference, **SUBJECT, HOWEVER**, to the Permitted Encumbrances described in the Trust Indenture dated as of June 1, 2019 between the Grantee and BOKF, N.A., as trustee.

**TO HAVE AND TO HOLD**, the Land, with all and singular the rights, privileges, appurtenances and immunities thereto belonging or in anyway appertaining unto the Grantee and unto its successors and assigns forever; the Grantor hereby covenanting that the Land is free and clear from any encumbrance done or suffered by it, which have been made by or through Grantor, other than the Permitted Encumbrances; and that it will warrant and defend the title to the Land unto the Grantee and unto the Grantee's successors and assigns forever, against the lawful claims and demands of all persons claiming under Grantor, but not otherwise.

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





## EXHIBIT A

### DESCRIPTION OF THE LAND

**The land situated in Jefferson County, State of Missouri, and described as follows:**

**Parcel 1:**

Adjusted Parcel A of Consolidation Plat of Part of Lot 17 in U.S. Survey 2991 Township 43 North, Range 6 East, a subdivision in Jefferson County, Missouri, according to the plat thereof recorded December 4, 2007 as Document No. 2007S-000040 of the Jefferson County Records.

**Parcel 2:**

Lots Eleven (11) and Twelve (12) of GEBHARDT'S 2ND ADDITION, a subdivision in Jefferson County, Missouri, as per plat thereof recorded in Plat Book 26, Page 15 of the Jefferson County Records.

**Parcel 3:**

All that part of a 4.79 acre tract in Lot Sixteen (16) in U.S. Survey 2991, Jefferson County, Missouri, fully described in Warranty Deed dated January 24, 1951 recorded in Book 197, Page 179 in the Recorder's Office of Jefferson County, Missouri, described as follows, to-wit: Beginning at a point on the Northeastern line of said 4.79 acre tract which point of beginning is located North 38-1/2 degrees West 30 feet from the Southeastern line of said 4.79 acre tract; thence North 64-1/2 degrees West, 100 feet; thence South 52-1/2 degrees West, 150 feet; thence South 38-1/2 degrees East to a point 30 feet from the Southeast line of said 4.79 acre tract; thence North 52-1/2 degrees East on a line parallel to and 30 feet distant from the Southeastern line of said 4.79 acre tract to the place of beginning.

**Parcel 4:**

Easement for road purposes over the Drive 26 feet wide as created by the plat of Gebhardt's 2nd Subdivision dated August 24, 1962 and recorded August 27, 1962 in Plat Book 26 page 15 of the Jefferson County Records; subject to the terms, provisions and conditions set forth in said instrument.

**Parcel 5:**

All that part of Lot Seventeen (17) of US Survey No 2991, in Jefferson County, Missouri, described as follows, to-wit: Beginning at a point on the West line of the Lemay Ferry County Road, said point being the most Southern corner of the tract conveyed to John R. Hopmeier and wife to Chas Schierhoff by deed dated July 1, 1952, and recorded in Book 294 page 97 of the Jefferson County Land Records; thence Northwestwardly along the West line of said tract to a point in the Northwest line of the John R. Hopmeier tract, being the Northwest line of said Lot Seventeen (17); thence South 52-1/2 degrees West of the Northwest line of said Lot Seventeen (17), 377.84 feet to the most Western corner of said Lot Seventeen (17); thence South 37-1/2 degrees East 208.56 feet to a point; thence North 52-1/2 degrees East 336 feet to the most Western corner of the one acre tract acquired by John R. Hopmeier by deed recorded in Book 175 page 525 of the Jefferson County Land Records; thence South 37-1/2 degrees East along the Southwest line of said tract, 434.94 feet to the most Southern corner thereof, said point being on the West line of said Lemay Ferry Road; thence Northwardly along the West line of said road to the place of beginning.

**Parcel 6:**

One and Eighty-eight hundredths (1.88) acres being part of a larger tract of 4.08 acres in Lot Seventeen (17), of U.S. Survey No. 2991, Township 43 North, Range 6 East, which larger tract was conveyed by Anton W. Hampel and wife to Alvin Joseph Becker and wife, by deed dated January 13, 1955, recorded in Book 231, at page 549 of the Jefferson County, Missouri Land Records. Said One and Eighty-eight hundredths (1.88) acres being described as follows: Beginning at the most Northern corner of said larger tract and running thence with the Northeastern boundary line thereof, South 37 degrees 30 minutes East 447 feet to an iron pin in the Western line of Lemay Ferry Road; thence with the Western side of said road, South 15 degrees 5 minutes West 170 feet to an iron pin; thence departing from said Lemay Ferry Road and running North 58 degrees 22 minutes West 122.23 feet to an iron pin; thence North 33 degrees 14 minutes West 437.2 feet to an iron pin in the Northwestern boundary line of said larger tract; thence North 52 degrees 30 minutes East 146.39 feet to the place of beginning.

**Parcel 7:**

Seven Tenths (0.7) of an acre being part of a larger tract of 4.08 acres in Lot Seventeen (17), of U.S. Survey No. 2991, Township 43 North, Range 6 East, which larger tract was conveyed by Anton W. Hampel and wife, by Alvin Joseph Becker and wife, by deed dated January 13, 1955, recorded in Book 231 Page 549 of the Jefferson County, Missouri Land Records. Said Seven Tenths (0.7) of an acre being described as follows: Beginning in the Northwestern boundary line of the above mentioned larger tract, at an iron pin located South 52 degrees 30 minutes West 146.39 feet distant from a stone marking the most northern corner of said larger tract, proceed thence from said iron pin, South 52 degrees 30 minutes East 53.65 feet to an iron pin; thence South 33 degrees 14 minutes East 445.14 feet to an iron pin; thence South 58 degrees 22 minutes East 144.66 feet to an iron pin in the Western line of the Lemay Ferry Road; thence with the Western line of said Lemay Ferry Road, North 22 degrees 37 minutes East 39.15 feet; and North 15 degrees 5 minutes East 16.5 feet to an iron pin marking the Southeast corner of a tract of 1.88 acres conveyed by Alvin Joseph Becker and wife, to Robert L. Browning and wife, et al., by deed recorded in Book 342 at page 351 of the aforesaid records; thence with the Southwestern boundaries of said tract of 1.88 acres so conveyed, North 58 degrees 22 minutes West 122.23 feet to an iron pin; thence North 33 degrees 14 minutes West 437.2 feet to the place of beginning.

BILL NO. 2743

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE PROVIDING FOR THE  
AMENDMENT OF THE FISCAL YEAR 2019 BUDGET.

---

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ARNOLD, MISSOURI, AS FOLLOWS:

- Section 1. The Fiscal Year 2019 Budget adopted on August 16, 2018 has been reviewed and is hereby amended by reference. A copy of said budget adjustment is attached hereto and made a part hereof.
- Section 2. All subsequent interdepartmental or interfund budget line transfers and transfers from unassigned fund balance may be completed upon approval of the City Council.
- Section 3. This ordinance shall be in full force and effect upon its passage and approval and does not require codification.

READ TWO TIMES, PASSED AND APPROVED THIS 16<sup>th</sup> DAY OF MAY 2019.

\_\_\_\_\_  
Presiding Officer of the City Council

\_\_\_\_\_  
Mayor Ron Counts

ATTEST:

\_\_\_\_\_  
City Clerk Tammi Casey

1st reading: \_\_\_\_\_

2nd reading: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney Robert Sweeney

<b>FY 2019 Mid_year Budget Adjustments - SUMMARY</b>			
<b>As of April 23, 2019</b>			
<b>Fund No.</b>	<b>Dept. No.</b>	<b>Dept. Name</b>	<b>Requested Increase (Decrease)</b>
00	115	Information Technology	29,099
00	150	Finance Department	0
00	160	City Clerk	(970)
00	210	Police	93,300
00	230	Dispatch	500
00	310	Public Works	(6,600)
00	315	Fleet	400
00	320	Street	94,702
00	330	Parks	6,000
		<b>TOTAL GENERAL FUND:</b>	<b>216,431</b>
43	340	Recreation Center	40,000
44	440	Golf Course	8,500
48	480	Stormwater	17,400
		<b>TOTAL OF ALL REQUESTS:</b>	<b>282,331</b>

FY2019 Mid-Year Expense Review for Potential Budget Adjustments									
DEPT 115 - INFORMATION TECHNOLOGY									
Fund	Dept #	Dept Name	GL #	GL Name	Budget	Expense + Encumbrance YTD	Balance	Requested Increase (Decrease)	Explanation
00	115	Information Technology	43240	Data Processing	127,995	119,181	8,814	10,000	The new phone system is in place and billing is still being worked out. There have been new phones and package subscriptions added by other departments. The T1 lines were finally disconnected at the end of March, so there might be another round of billing on them.
00	115	Information Technology	44140	Seminars	5,000	5,469	(469)	2,093	Offered deal on training (2 for 1.5 cost - approved by Bryan). Betty needs training. Jeffco offers the training and she receives a \$1904 credit hour break for being a retiree from Jeffco. The books will be considered City property - per Bryan.
00	115	Information Technology	45150	Uniforms	0	180	(180)	260	Bryan approved my uniforms after new budget started - instructed to add to mid-year.
00	115	Information Technology	45250	Expendable Equipment	15,600	17,786	(2,186)	9,746	Replacement machines that need replaced due to not being upgradable, or licenses to upgrade existing machines that are capable of being upgraded. (\$550.00 + \$270.00 * 8) or (\$122.23 + 268.19 * 8). The \$2,186 covered machines and licenses for new employees - wasn't budgeted for by departments.
00	115	Information Technology	46110	Telephone-Regular	190,000	108,587	81,412	4,500	The \$4,500.00 will allow me to install 9 WIFI access points throughout City Hall and the PD. This is needed for EOC internet access. (\$1,636.20 (CH) + \$712.96 (PD) + \$1,865.00 cabling).
00	115	Information Technology	46140	Cellular	2,500	4,366	(1,866)	2,500	\$1856 will cover new employees added to the account, upgrades to phones, and needed accessories (cases, charging stations, cords, etc.)
					341,095			29,099	
							<b>115- TOTAL:</b>		

**FY2019 Mid-Year Expense Review for Potential Budget Adjustments** **DEPT 150 - FINANCE**

Date Submitted: **3/4/2019**  
 Name: **Bill Lehmann**

Fund	Dept #	Dept Name	GL #	GL Name	Budget	Expense + Encumbrance YTD	Balance	Requested Increase (Decrease)	Explanation
00	150	Finance Department	44110	Travel & Lodging	2,250.00	3,734.00	(1,484.00)	2,000.00	GFOA Conference
00	150	Finance Department	44140	Seminars	3,000.00	450.00	2,550.00	(500.00)	GFOA Conference
00	150	Education	44160	Education	2,000.00	0.00	2,000.00	(1,500.00)	GFOA Conference
					<b>7,250.00</b>		<b>150- TOTAL:</b>	<b>0.00</b>	



FY2019 Mid-Year Expense Review for Potential Budget Adjustments		DEPT 160 - CITY CLERK-COLLECTOR							
Date Submitted:	3/4/2019								
Name:	Tammii Casey								
Fund	Dept #	Dept Name	GL #	GL Name	Budget	Expense + Encumbrance YTD	Balance	Requested Increase (Decrease)	Explanation
00	160	City Clerk	45250	Expendable Equipment	400	2,690	(2,290)	(2,290)	Wall Mount Arm and Optiplex should go on Building Dept budget which accounts for \$1205 on my budget. This is for their computer at the Front Window. I'm not sure where the State Bid Computer comes from, which is an additional \$1085 on my budget.
00	160	City Clerk	43110	Lien Fees	0	840	(840)	1,320	Includes enough money for an additional 20 liens or lien releases
					400				
							<b>160-TOTAL:</b>	<b>(970)</b>	

**FY2019 Mid-Year Expense Review for Potential Budget Adjustments**

**DEPT 210 - POLICE; DEPT 230 DISPATCH**

Date Submitted: **3/4/2019**  
 Name: **Robert Shockey**

Fund	Dept #	Dept Name	GL #	GL Name	Budget	Expense + Encumbrance YTD	Balance	Requested Increase (Decrease)	Explanation
00	210	Police	43140	Medical	2,000	0	2,000	(1,000)	No cost as of this time
00	210	Police	44110	Travel & Lodging	7,000	2,632	4,368	1,500	Have K-9 training and several out of town trainings coming up
00	210	Police	44140	Seminars	18,000	3,405	14,595	(5,000)	
00	210	Police	44160	Education	10,000	0	10,000	(3,000)	Only have one officer in school now
00	210	Police	45180	Jail	14,000	678	13,323	(5,000)	
00	210	Police	45220	Postage	3,000	167	2,833	(1,000)	
00	210	Police	45240	Subscriptions	2,200	2,432	(232)	700	
00	210	Police	45310	Gas & Oil	120,000	36,137	83,164	(15,000)	
00	210	Police	46110	Telephone	0	508	507	1,100	
00	210	Police	49150	Automotive	210,000	298,957	(88,957)	120,000	Purchase of 1 new Vehicles (due to Accident) not in budget. Approx \$35,000 and new cages and gun racks for all Ford Explorers. Approx \$77,000
					<b>386,200</b>		<b>210- TOTAL:</b>	<b>93,300</b>	
00	230	Dispatch	44110	Travel	0	135	(135)	300	
00	230	Dispatch	44130	Mileage	0	148	148	200	
					<b>0</b>		<b>230-TOTAL:</b>	<b>500</b>	

FY2019 Mid-Year Expense Review for Potential Budget Adjustments										DEPT 310 - PUBLIC WORKS	
Date Submitted: 3/13/2019											
Name: Tom Palasky											
Fund	Dept #	Dept Name	GL #	GL Name	Budget	Expense + Encumbrance YTD	Balance	Requested Increase (Decrease)	Explanation		
00	310	Public Works	45110	General Operating	42,000.00	5,769.95	36,230.05	(10,000.00)			
00	310	Public Works	45150	Uniforms	0.00	513.10	(513.10)	1,300.00			
00	310	Public Works	45160	Janitorial	8,100.00	4,758.24	3,341.76	2,000.00			
00	310	Public Works	45220	Postage	500.00	0.00	500.00	(100.00)			
00	310	Public Works	45230	Copiers & Supplies	4,500.00	1,205.04	3,294.96	(1,000.00)			
00	310	Public Works	45250	Expendable Equip	10,795.00	5,928.66	4,866.34	2,000.00			
00	310	Public Works	45320	Maintenance	2,200.00	359.07	1,840.93	(800.00)			
					68,095		310- TOTAL:	(6,600)			

**FY2019 Mid-Year Expense Review for Potential Budget Adjustments**

**DEPT 315 - FLEET**

Date Submitted: **3/13/2019**

Name: **Tom Palasky**

Fund	Dept #	Dept Name	GL #	GL Name	Budget	Expense + Encumbrance YTD	Balance	Requested Increase (Decrease)	Explanation
00	315	Fleet	44120	Seminars	300.00	199.00	101.00	100.00	
00	315	Fleet	45150	Uniforms	1,700.00	960.79	739.21	500.00	
00	315	Fleet	46420	Technical Equipment	900.00	190.00	710.00	(200.00)	
					<b>4,200</b>		<b>315- TOTAL:</b>	<b>400.00</b>	





**FY2019 Mid-Year Expense Review for Potential Budget Adjustments**

**DEPT 48-480 STORMWATER**

Date Submitted: 3/13/2019  
 Name: Tom Palasky

Fund	Dept #	Dept Name	GL #	GL Name	Budget	Expense + Encumbrance YTD	Balance	Requested Increase (Decrease)	Explanation
48	480	Stormwater	43120	Engineering	40,000.00	42,481.25	(2,481.25)	40,000.00	
48	480	Stormwater	43290	Miscellaneous	0.00	52.00	(52.00)	100.00	
48	480	Stormwater	44110	Travel & Lodging	1,100.00	720.16	379.84	500.00	
48	480	Stormwater	44130	Mileage	200.00	163.50	36.50	200.00	
48	480	Stormwater	45010	Advertising	300.00	0.00	300.00	(100.00)	
48	480	Stormwater	45090	Equipment Rental	56,000.00	6,300.00	49,700.00	(10,000.00)	
48	480	Stormwater	45110	General Operating	40,000.00	12,181.57	27,818.43	(10,000.00)	
48	480	Stormwater	45150	Uniforms	3,500.00	2,119.57	1,380.43	1,000.00	
48	480	Stormwater	45210	Printing	1,660.00	0.00	1,660.00	(1,000.00)	
48	480	Stormwater	45220	Postage	4,200.00	0.00	4,200.00	(4,000.00)	
48	480	Stormwater	45250	Expendable Equip	800.00	748.74	51.26	700.00	
					<b>147,760.00</b>		<b>48-480 TOTAL:</b>	<b>17,400</b>	

RESOLUTION NO. 19-28

**A RESOLUTION APPROVING A PROPOSAL FROM  
HILLTOP SECURITIES FOR PROVIDING MUNICIPAL ADVISORY  
SERVICES.**

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WHEREAS, the City of Arnold and its related entities maintains a portfolio of municipal debt-related instruments; and

WHEREAS, the City has a fiduciary responsibility to minimize costs and maximize earnings as related to these municipal debt-related instruments;

WHEREAS, THE City desires to retain a municipal advisor for certain work and advice with regard to the City's long term capital projects and related municipal debt;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARNOLD, MISSOURI:

Section 1. The attached proposal from Hilltop Securities is hereby approved. The Mayor and/or the City Administrator are authorized to execute any necessary documents to complete the transaction.

\_\_\_\_\_  
Presiding Officer of the City Council

\_\_\_\_\_  
Mayor Ron Counts

ATTEST:

\_\_\_\_\_  
City Clerk Tammi Casey

Date: \_\_\_\_\_



## MUNICIPAL ADVISORY AGREEMENT

This Municipal Advisory Agreement (the “Agreement”) is made and entered into by and between the **City of Arnold, Missouri** (the “Issuer”) and Hilltop Securities Inc. (“HilltopSecurities”), and is dated, and shall be effective as of, the date executed by the Issuer as set forth on the signature page hereof (the “Effective Date”).

### WITNESSETH:

**WHEREAS**, the Issuer will have under consideration from time to time the authorization and issuance of municipal securities, including but not limited to the issuance and sale of evidences of indebtedness or debt obligations that may currently or in the future be authorized and issued or otherwise created or assumed by the Issuer, in amounts and forms which cannot presently be determined; and

**WHEREAS**, in connection with the authorization, sale, issuance and delivery of such municipal securities, as well as in connection with any matters relating to municipal financial products of the Issuer, the Issuer desires to retain a municipal advisor; and

**WHEREAS**, the Issuer desires to obtain the professional services of HilltopSecurities as a municipal advisor to advise the Issuer regarding the issuance of municipal securities and any municipal financial products, all as more fully described herein, during the period in which this Agreement shall be effective; and

**WHEREAS**, HilltopSecurities is willing to provide its professional services and its facilities as a municipal advisor in connection with the Issuer’s issuances of municipal securities and any municipal financial products, all as more fully described herein, during the period in which this Agreement shall be effective.

**NOW, THEREFORE**, the Issuer and HilltopSecurities, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, do hereby agree as follows:

### SECTION I SCOPE OF SERVICES

A. **Scope of Services and Discharge of Responsibilities.**

1. *Scope of Services.*

(a) HilltopSecurities is engaged by the Issuer as its municipal advisor to provide the services set forth in **Appendix A** hereto (the “Municipal Advisory Services”). The Municipal Advisory Services, together with any services to be provided by HilltopSecurities as the Issuer’s independent registered municipal advisor (“IRMA”) pursuant to subparagraph B.1 of this Section I, are hereinafter collectively referred to as the “Scope of Services” hereunder. The Scope of Services to be provided by HilltopSecurities may be changed only as provided in paragraph D of this Section I.

(b) If the Issuer engages HilltopSecurities or any of its affiliates, in a capacity other than as municipal advisor, to provide additional services that are not municipal advisory activities (“Non-Municipal Advisor Services”), such engagement for Non-Municipal Advisor Services shall be evidenced by a separate agreement between the Issuer and such party. The parties hereto acknowledge that such Non-Municipal Advisor Services shall not be governed by this Agreement and are intended to consist of activities not requiring registration as a municipal advisor under the Securities Exchange Act.

(c) The Issuer shall provide written notice to HilltopSecurities of any other municipal advisor engaged by the Issuer, whether in regard to all or any portion of the Municipal Advisory Services or for any other aspects of the issuance of municipal securities or municipal financial products outside the scope of the Municipal Advisory Services, as described in clause (c) of subparagraph B.1 of this Section I.

2. ***Inquiries and Information in Connection with HilltopSecurities' Duties.*** If and to the extent provided in the Scope of Services, HilltopSecurities is called upon to make recommendations to the Issuer or to review recommendations made by others to the Issuer, and in connection therewith to determine whether such recommendations are suitable for the Issuer, in order to fulfill its duties with respect to such recommendations and any associated suitability determinations, HilltopSecurities is required under applicable regulations to make reasonable inquiries of the Issuer as to the relevant facts. Such facts include, at a minimum, information regarding the Issuer's financial situation and needs, objectives, tax status, risk tolerance, liquidity needs, experience with municipal securities transactions or municipal financial products generally or of the type and complexity being recommended, financial capacity to withstand changes in market conditions during the term of the municipal financial product or the period that municipal securities to be issued in the municipal securities transaction are reasonably expected to be outstanding, and any other material information known by HilltopSecurities about the Issuer and the municipal securities transaction or municipal financial product. In addition, HilltopSecurities is required under applicable regulations to use reasonable diligence to know the essential facts about the Issuer and the authority of each person acting on behalf of the Issuer so as to effectively service HilltopSecurities' municipal advisory relationship with the Issuer, to act in accordance with any special directions from the Issuer, to understand the authority of each person acting on behalf of the Issuer, and to comply with applicable laws, regulations and rules.

Accordingly, the Issuer hereby agrees to provide accurate and complete information reasonably designed to permit HilltopSecurities to fulfill its responsibilities in connection with any such recommendations and suitability determinations and to provide to HilltopSecurities reasonable access to relevant documents and personnel in connection with its required investigation to determine that any recommendations are not based on materially inaccurate or incomplete information. The Issuer acknowledges that HilltopSecurities may not be able to make requested recommendations or suitability determinations if it is not provided access to such information and that the Issuer shall be estopped from claiming a violation of HilltopSecurities' fiduciary duty to the Issuer in connection with a recommendation or suitability determination made by HilltopSecurities based on materially inaccurate or incomplete information provided by the Issuer.

3. ***Actions Independent of or Contrary to Advice.*** The parties hereto acknowledge that the Issuer shall not be required to act in accordance with any advice or recommendation provided by HilltopSecurities to the Issuer. Upon providing such advice or recommendation to the Issuer, together with the basis for such advice or recommendation, HilltopSecurities shall have discharged its duties with regard to such advice or recommendation and shall not be liable for any financial or other damages resulting from the Issuer's election not to act in accordance with such advice or recommendation. Furthermore, the Issuer shall be estopped from claiming a violation of HilltopSecurities' fiduciary duty to the Issuer as a result of its election not to act in accordance with any advice or recommendation by HilltopSecurities, including but not limited to any claim that HilltopSecurities should have taken steps, in addition to providing its advice or recommendation together with the basis therefor, to cause the Issuer to follow its advice or recommendation.

4. ***Preparation of Official Statement in Connection with Issuance of Municipal Securities.*** If and to the extent provided in the Scope of Services, HilltopSecurities is called upon to assist the Issuer in the preparation of its official statement in connection with the issuance of municipal securities, the Issuer

hereby agrees to provide accurate and complete information to HilltopSecurities reasonably designed to permit HilltopSecurities to fulfill its responsibility to have a reasonable basis for any information HilltopSecurities provides about the Issuer, its financial condition, its operational status and its municipal securities in connection with the preparation of the official statement. While HilltopSecurities may participate in the due diligence process in connection with the preparation of the official statement, if such participation is within the Scope of Services, HilltopSecurities shall not be obligated to undertake any inquiry or investigation in connection with such due diligence beyond any inquiries or investigations otherwise required by this Agreement. Furthermore, HilltopSecurities shall not be responsible for certifying the accuracy or completeness of the official statement, other than with respect to information about HilltopSecurities provided for inclusion in the official statement, if applicable. The Issuer agrees that HilltopSecurities may rely on any information provided to it by the Issuer for purposes of this paragraph.

5. ***Representations and Certifications.*** If and to the extent provided in the Scope of Services, HilltopSecurities is called upon to make representations and certifications with regard to certain aspects of matters pertaining to the Issuer, its municipal securities or municipal financial products arising as part of the Municipal Advisory Services to be provided pursuant to this Agreement, the Issuer hereby agrees to provide accurate and complete information to HilltopSecurities as may be reasonably necessary or otherwise helpful to HilltopSecurities in fulfilling its responsibility to have a reasonable basis for any representations, other than representations by HilltopSecurities regarding itself, made in a certificate signed by HilltopSecurities that may be relied upon by the Issuer, any other party involved in any matter arising as part of the Municipal Advisory Services, or investors in the Issuer's municipal securities. The Issuer agrees that HilltopSecurities may rely on any information provided to it by the Issuer for purposes of this paragraph.

**B. Services as Independent Registered Municipal Advisor.**

1. ***Designation as IRMA and Scope of Designation.***

(a) Subject to clause (b) of this subparagraph B.1, if the Issuer elects to designate HilltopSecurities, and HilltopSecurities agrees to represent the Issuer, as the Issuer's IRMA for purposes of Securities Exchange Commission ("SEC") Rule 15Ba1-1(d)(3)(vi) (the "IRMA exemption") with respect to the Municipal Advisory Services, HilltopSecurities will treat such role as IRMA as within the scope of Municipal Advisory Services. Any reference to HilltopSecurities, its personnel and its role as IRMA in the written representation of the Issuer contemplated under SEC Rule 15Ba1-1(d)(3)(vi)(B) shall be subject to prior approval by HilltopSecurities.

If there are any other aspects of the issuance of municipal securities or municipal financial products outside the scope of the Municipal Advisory Services with respect to which the Issuer seeks to have HilltopSecurities serve as its IRMA, such aspects, which are separate and distinct from Municipal Advisory Services for purposes of this Agreement, shall be included in Appendix A hereto and may be changed only as provided in paragraph D of this Section I. HilltopSecurities' duties as IRMA shall be strictly limited to the provision of advice to the Issuer with regard to third-party recommendations on any aspects of the issuance of municipal securities or municipal financial products outside the scope of the Municipal Advisory Services, subject to subparagraph B.3 of this Section I, and the provision of advice by HilltopSecurities to the Issuer with respect to such matters shall not result in a change in scope of the Municipal Advisory Services. By way of example, if HilltopSecurities serves as municipal advisor for an issuance of municipal securities within the scope of Municipal Advisory Services, but is asked to review a recommendation made by a third party with respect to a different issuance of municipal securities not within the scope of Municipal Advisory Services, any advice with respect to such review would not, by itself,

cause such other issuance to come within the scope of Municipal Advisory Services, and HilltopSecurities would not be obligated to undertake any of the services set forth in Appendix A with regard to such issuance unless the scope of Municipal Advisory Services hereunder is amended to include such issuance.

(b) If the Issuer elects not to designate HilltopSecurities to serve as an IRMA for purposes of the IRMA exemption with respect to the Municipal Advisory Services, or if the Issuer elects to designate HilltopSecurities to serve as IRMA for less than the full range of Municipal Advisory Services, such election shall be set forth in Appendix A.

(c) The Issuer shall provide written notice to HilltopSecurities of any other municipal advisor engaged by the Issuer, whether such other municipal advisor has been designated as an IRMA, and such notice shall include the scope of services of such municipal advisor. If the Issuer has engaged, or has caused HilltopSecurities to engage through subcontract, any other party to serve as municipal advisor to the Issuer with regard to all or any portion of the Municipal Advisory Services (“Joint Municipal Advisory Services”), whether engaged jointly with or separately from HilltopSecurities (a “Co-Municipal Advisor”), the Issuer agrees that such Co-Municipal Advisor shall not be entitled to treat HilltopSecurities as an IRMA with respect to the Joint Municipal Advisory Services. Notwithstanding the preceding sentence, the Issuer may seek to have HilltopSecurities provide advice on any recommendation made by a Co-Municipal Advisor with regard to matters within the scope of Joint Municipal Advisory Services on the same terms as set forth in subparagraph B.3 of this Section I, provided that any such advice provided by HilltopSecurities shall not serve to eliminate or reduce such Co-Municipal Advisor’s fiduciary or other duties as municipal advisor to the Issuer.

2. ***HilltopSecurities Not Responsible for Independence from Third Parties.*** Notwithstanding HilltopSecurities’ status as an IRMA, HilltopSecurities shall not be responsible for ensuring that it is independent, within the meaning of the IRMA exemption as interpreted by the SEC, from another party wishing to rely on the exemption from the definition of municipal advisor afforded under the IRMA exemption or for otherwise ensuring that any such party not be treated as a municipal advisor for purposes of Section 15B of the Securities Exchange Act or any SEC or Municipal Securities Rulemaking Board (“MSRB”) rule thereunder. The Issuer expressly acknowledges that it is the responsibility of such other party to make its own determination of independence and that such other party shall not be entitled to cause HilltopSecurities to make any personnel changes to allow such party to qualify for the IRMA exemption.

3. ***Recommendations Provided by Third Parties Relying on IRMA Exemption.*** The Issuer agrees that, to the extent the Issuer seeks to have HilltopSecurities provide advice with regard to any recommendation made by a third party relying on the IRMA exemption, the Issuer shall provide to HilltopSecurities written direction to provide advice with regard to such third party recommendation as well as any information it has received from such third party. In connection therewith, HilltopSecurities shall be authorized to communicate with such third party as necessary or appropriate in order for HilltopSecurities to have the information it needs to provide informed advice to the Issuer with regard to such recommendation. HilltopSecurities shall provide to the Issuer recommendations it receives directly from any third party but shall not be required to provide advice to the Issuer with regard to any such recommendation unless the Issuer has provided to HilltopSecurities the written direction as described above in this subparagraph B.3.

Except as may be otherwise expressly provided in writing by HilltopSecurities, no recommendation by a third-party (including but not limited to a Co-Municipal Advisor) shall be deemed to be a recommendation by HilltopSecurities, and the failure by HilltopSecurities to specifically address any aspect

of a third-party recommendation shall not be viewed as HilltopSecurities having implicitly accepted or approved such aspect of the recommendation or otherwise having adopted the recommendation or any aspect thereof as its own recommendation. Furthermore, the Issuer agrees that, to the extent the Issuer does not seek to have HilltopSecurities provide advice with regard to any recommendation made by a third party relying on the IRMA exemption, HilltopSecurities shall not be required to provide any advice with regard to such recommendation notwithstanding any information it may have received from such third party. HilltopSecurities may rely on the absence of the Issuer's written direction to provide advice with regard to a third party recommendation as indicative that the Issuer does not seek to have HilltopSecurities provide such advice.

**C. Limitations on Scope of Engagement.**

1. ***Express Limitations.*** The Scope of Services with respect to HilltopSecurities' engagement as municipal advisor shall be solely as provided in paragraphs A and B of this Section I and Appendix A of this Agreement, subject to the express limitations set forth in this paragraph C. The failure of the parties hereto to set out any particular service or responsibility, or any particular type or aspect of the issuance of municipal securities or municipal financial products, within the express limitations in this paragraph C shall not, by its omission, cause such service, responsibility or product to be within the scope of this engagement if not contemplated by the mutual agreement of the parties hereto or if not reasonably viewed as encompassed by the description of the Municipal Advisory Services set forth in this Agreement.

2. ***Limitation as to Matters Within Then-Current Scope of Engagement.*** It is expressly understood that HilltopSecurities serves as municipal advisor to the Issuer only with respect to the matters, and with respect to specific aspects of matters, within the then-current Scope of Services. The Issuer acknowledges that HilltopSecurities is not a municipal advisor to the Issuer with respect to matters expressly excluded from such Scope of Services as set forth in this paragraph C or matters otherwise not within the Scope of Services as set forth in paragraphs A and B of this Section I and Appendix A hereto. Without limiting the generality of the preceding sentence, the parties hereto agree that HilltopSecurities' service as municipal advisor for one issuance of municipal securities would not result in HilltopSecurities being a municipal advisor to the Issuer for any other issuances of municipal securities if such other issuances are not within the Scope of Services. It is expressly understood that HilltopSecurities shall be municipal advisor with respect to a particular issuance of municipal securities or a particular municipal financial product beginning on the earlier of (a) the date on which HilltopSecurities is assigned to serve or is otherwise put on notice by the Issuer that it will serve as municipal advisor for such particular matter or (b) the date on which HilltopSecurities first provides advice to the Issuer with respect to such particular matter, and it is further understood that HilltopSecurities shall not be deemed to be a municipal advisor to the Issuer with respect to any such particular matter prior to such date merely due to the fact that the matter falls within the general description of the Scope of Services.

3. ***Transactions and Services Outside Scope of Engagement.*** To the extent that the Issuer engages in any transaction with HilltopSecurities, or any affiliate of HilltopSecurities, as principal relating to municipal securities (including but not limited to as underwriter for the issuance of municipal securities) or municipal financial products that are not within the Scope of Services and with respect to which HilltopSecurities does not in fact provide advice other than as permitted within the exceptions and exclusions of SEC Rule 15Ba1-1, the Issuer agrees that it would not view HilltopSecurities as serving as its municipal advisor with respect to such transaction or any related issuance of municipal securities or municipal financial product. In addition, as noted in clause (b) of subparagraph A.1 of this Section I, the Issuer understands that Non-Municipal Advisor Services are outside the scope of this engagement.

4. ***Issuer Consent to Limitation in Scope.*** The Issuer expressly consents to the limitations in scope of the engagement as described in this paragraph C.

**D. Change in Scope of Services.** The scope of services to be provided by HilltopSecurities, whether within or outside of the scope of the Municipal Advisory Services, may be changed only by written amendment to Appendix A, and the parties hereto agree to amend such appendix promptly to reflect any material changes or additions to the scope of such services, as applicable. Furthermore, the parties hereto agree to amend paragraph C of this Section I to reflect any material changes or additions to the limitations on the overall Scope of Services.

The parties hereto agree that if, on an infrequent or inadvertent basis, HilltopSecurities takes any actions for or on behalf of the Issuer that constitute municipal advisory activities within the meaning of MSRB Rule G-42(f)(iv) but which are not within the Scope of Services under this Agreement, such actions shall not, by themselves, serve to change the Scope of Services under this Agreement without a written amendment as provided in this paragraph. Furthermore, to the extent that any such activities not within the Scope of Services under this Agreement consists of inadvertent advice provided with respect to the issuance of municipal securities or municipal financial products that are not within the Scope of Services under this Agreement, HilltopSecurities may take such action, if any, as it deems appropriate pursuant to Supplementary Material .07 of MSRB Rule G-42 with respect to such inadvertent advice, to maintain the Scope of Services under this Agreement consistent with the intent of the parties hereto.

Amendments to Appendix A may be effected by replacement of the prior version of the appendix with a new version or by the addition of an addendum to such appendix, provided that any such amended appendix shall be dated as of its effective date and shall cause Appendix A, taken together with the provisions of this Section I, to clearly set forth the then-current scope of HilltopSecurities' engagement hereunder and any limitations to such scope.

**E. Non-Municipal Advisory Activities Related to Scope of Services.** The Scope of Services under this Agreement is intended to encompass activities subject to the provisions of Securities Exchange Act Section 15B and the rules of the SEC and MSRB thereunder relating to municipal advisory activities. However, the Issuer and HilltopSecurities acknowledge that in some cases the range of activities necessary or appropriate to provide the intended services hereunder in a fair, effective and efficient manner for the benefit of the Issuer may involve a combination of actions that consist of municipal advisory activities and actions that may not qualify as municipal advisory activities. Unless otherwise prohibited by Securities Exchange Act Section 15B or any rule of the SEC or MSRB thereunder, the fact that HilltopSecurities serves as municipal advisor to the Issuer in connection with a particular matter shall not prohibit HilltopSecurities from undertaking such necessary or appropriate non-municipal advisory activities in connection therewith, and the fact that HilltopSecurities undertakes such non-municipal advisory activities within the Scope of Services under this Agreement would not, by itself, cause such activities to become municipal advisory activities for purposes Securities Exchange Act Section 15B or any rule of the SEC or MSRB thereunder.

## SECTION II TERM AND TERMINATION

**A. Term of this Engagement.** The term of this Agreement begins on the Effective Date and ends, unless terminated pursuant to paragraph B of this Section II, on the last day of the month in which the first anniversary date of the Effective Date shall occur (the "Original Termination Date"). Unless HilltopSecurities or the Issuer shall notify the other party in writing at least thirty (30) days in advance of

the Original Termination Date that this Agreement will not be renewed, this Agreement will be automatically renewed on the Original Termination Date for an additional one (1) year period and thereafter will be automatically renewed on each anniversary date of the Original Termination Date for successive one (1) year periods unless HilltopSecurities or the Issuer shall notify the other party in writing at least thirty (30) days in advance of such successive anniversary date.

**B. Termination of this Engagement.** This Agreement may be terminated with or without cause by the Issuer or HilltopSecurities upon the giving of at least thirty (30) days' prior written notice to the other party of its intention to terminate, specifying in such notice the effective date of such termination. In the event of such termination, it is understood and agreed that only the amounts due HilltopSecurities for services provided and expenses incurred to the date of termination will be due and payable. No penalty will be assessed for termination of this Agreement.

### SECTION III COMPENSATION, EXPENSES, LIABILITY AND OTHER FINANCIAL MATTERS

**A. Compensation.** The fees due to HilltopSecurities for the Municipal Advisory Services and any other services set forth in Appendix A hereto shall be as provided in **Appendix B** hereto. The Issuer has agreed to the compensation arrangements set forth in Appendix B and believes that they are reasonable and not excessive. If at any time the Issuer becomes concerned that, notwithstanding its initial belief that the compensation arrangements set forth in this Agreement are reasonable, the actual amount of compensation to be paid in accordance with such arrangements for any particular matter during the course of this engagement may potentially become excessive, the Issuer shall immediately notify HilltopSecurities in writing of its concern in that regard.

**B. Expenses.** HilltopSecurities shall be entitled to reimbursement of expenses incurred in connection with any services provided hereunder as set forth in Appendix B.

**C. Third-Party Payments.** The Issuer agrees that any request it makes to HilltopSecurities to make payments to any third party on its behalf (other than with any underwriter), whether pursuant to a fee-splitting arrangement or otherwise, shall be in writing and shall set forth the name of the recipient, the amount of payment, and a brief statement of the purpose of such payment. The Issuer agrees that the counter signature by HilltopSecurities of any such written request shall be satisfactory disclosure of such third-party payment or fee-splitting arrangement for purposes of MSRB Rule G-42(e)(i)(D) and shall, in the case of any such arrangements made after the Effective Date, serve as satisfactory written disclosure of any conflict of interest arising from such third-party payment or fee-splitting arrangement for purposes of MSRB Rule G-42(b)(i)(D) and (c)(ii).

**D. No Custody of Issuer Funds.** This engagement does not contemplate that HilltopSecurities receive deposit of or maintain custody of the Issuer's funds unless otherwise provided in Appendix A hereto.

**E. Limitation on Liability.** In the absence of willful misconduct, bad faith, gross negligence or reckless disregard of obligations or duties hereunder on the part of HilltopSecurities or any of its associated persons, Issuer agrees to limit the liability of HilltopSecurities and its associated persons to an amount not to exceed the total fees for services paid to HilltopSecurities in the course of, or connected with, rendering services hereunder.

**SECTION IV  
REQUIRED DISCLOSURES**

- A. Disclosure of Conflicts of Interest and Information Regarding Legal or Disciplinary Events.** The Issuer hereby acknowledges receipt of, and has read and understands the content of, the Municipal Advisor Disclosure Statement, attached hereto as **Appendix C**, current as of the date of this Agreement, setting forth disclosures by HilltopSecurities of material conflicts of interest (the “Conflict Disclosures”), if any, and of any legal or disciplinary events required to be disclosed pursuant to MSRB Rule G-42(b) and (c)(ii). The Conflict Disclosures also describe how HilltopSecurities addresses or intends to manage or mitigate any disclosed conflicts of interest, as well as the specific type of information regarding, and the date of the last material change, if any, to the legal and disciplinary events required to be disclosed on Forms MA and MA-I filed by HilltopSecurities with the SEC.
- B. Waiver of Disclosed Conflicts of Interest.** By executing this Agreement, the Issuer hereby waives any conflicts of interest disclosed by HilltopSecurities in the Conflict Disclosures as of the date of this Agreement.
- C. Consent to Electronic Delivery of Disclosures.** By executing this Agreement, the Issuer consents, for the full term of this Agreement, to the electronic delivery of the Conflict Disclosures at no cost to the Issuer, in lieu of delivery of hard copy. The Conflict Disclosures may be delivered by email to the Issuer at **blehmann@arnoldmo.org**, or at such other email address as the Issuer may hereafter provide in writing to HilltopSecurities.

**SECTION V  
MISCELLANEOUS**

- A. Choice of Law.** This Agreement shall be construed and given effect in accordance with the laws of the State of Missouri.
- B. Binding Effect; Assignment.** This Agreement shall be binding upon and inure to the benefit of the Issuer and HilltopSecurities, their respective successors and assigns; provided however, neither party hereto may assign or transfer any of its rights or obligations hereunder without the prior written consent of the other party.
- C. Entire Agreement.** This instrument, including all appendices hereto, contains the entire agreement between the parties relating to the rights herein granted and obligations herein assumed. Any oral or written representations or modifications concerning this Agreement shall be of no force or effect except for a subsequent modification in writing signed by all parties hereto, subject to the provisions of paragraph D of Section I hereof.

*Signature page follows*



**HILLTOP SECURITIES INC.**

**CITY OF ARNOLD, MISSOURI**

By: Reagan M. Holliday  
Reagan Holliday  
Managing Director, Public Finance

By: Chris Collier  
Chris Collier  
Managing Director, Public Finance

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

Name \_\_\_\_\_

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

Date: \_\_\_\_\_

**APPENDIX A  
MUNICIPAL ADVISORY SERVICES**

This Appendix A sets out the scope of the Municipal Advisory Services to be performed by HilltopSecurities pursuant to the Agreement, subject to the limitations in scope set out in paragraph C of Section I of the Agreement, and with the understanding that:

(a) Individual actions taken within this scope shall be consistent with any request or direction provided by an authorized representative of the Issuer or as HilltopSecurities determines to be necessary or appropriate in furtherance of any matter for which it serves as municipal advisor. However, not all listed activities will be appropriate, necessary or applicable to any particular matter subject to this Agreement.

(b) For purposes of this Agreement, an issuance of municipal securities (an "issuance") shall encompass any and all stages in the life of an issuance, from the pre-issuance planning stage to the repayment stage.

**I. New Issuances of Municipal Securities.** At the direction of or upon the request of the Issuer, HilltopSecurities shall provide advice to the Issuer on any new issuances, including reofferings of outstanding issuances that are treated for purposes of the federal securities laws and/or federal tax laws as new issuances, throughout the term of this Agreement. The activities to be performed by HilltopSecurities may include, depending on the specific circumstances of an issuance or if requested or directed by the Issuer, one or more of the following:

**Planning for New Issuance**

1. ***Survey and Analysis.*** Surveying the financial resources of the Issuer in connection with its capacity to authorize, issue and service the contemplated issuance. This survey would be expected to include an analysis of any existing debt structure as compared with the existing and projected sources of revenues which may be pledged to secure payment of debt service and, where appropriate, would include a study of the trend of the assessed valuation, taxing power and present and future taxing requirements of the Issuer. In the event revenues of existing or projected facilities operated by the Issuer are to be pledged to repayment of the contemplated issuance, the survey would be expected to take into account any outstanding indebtedness payable from such revenues, additional revenues to be available from any proposed rate increases, and additional revenues resulting from improvements to be financed by the contemplated issuance, as projected by consulting engineers engaged by the Issuer.

2. ***Future Financings.*** In connection with the contemplated issuance, considering and analyzing future financing needs as projected by the Issuer's staff and consulting engineers or other experts, if any, engaged by the Issuer.

3. ***Recommendations.*** Making recommendations to the Issuer on the contemplated issuance, including such elements as the date of issue, interest payment dates, schedule of principal maturities, options for prepayment, security provisions, and such other provisions as may be appropriate.

4. **Market Information.** Advising the Issuer of HilltopSecurities' view of current bond market conditions, other related forthcoming bond issues and general information (including applicable economic data) which might normally be expected to influence interest rates or bidding conditions relevant to setting an appropriate date and time for the sale of the issuance.

5. **Elections.** In the event it is necessary to hold an election to authorize the contemplated issuance, assisting in coordinating the assembly of such data as may be required for the preparation of necessary petitions, orders, resolutions, ordinances, notices and certificates in connection with the election, including assistance in the transmission of such data to the Issuer's bond counsel.

#### **Debt Management and Financial Implementation for New Issuance**

6. **Method of Sale.** Evaluating the particular financing being contemplated, giving consideration to the complexity, market acceptance, rating, size and structure in order to make a recommendation as to an appropriate method of sale, and:

a. If the issuance is to be sold by a competitive sale:

(1) Supervising the sale of the municipal securities;

(2) Disseminating information to prospective bidders, organizing such informational meetings as may be necessary, and facilitating prospective bidders' efforts in making timely submission of proper bids;

(3) Assisting the staff of the Issuer in coordinating the receipt of bids, the safekeeping of good faith checks and the tabulation and comparison of submitted bids;

(4) Advising the Issuer regarding the best bid and provide advice regarding acceptance or rejection of the bids; and

(5) Obtaining CUSIP numbers on behalf of the Issuer.

b. If the issuance is to be sold by negotiated sale:

(1) Recommending for the Issuer's final approval and acceptance one or more investment banking firms, as sole underwriter or as managers of an underwriting syndicate, for the purpose of negotiating the purchase of the municipal securities;

(2) Cooperating with and assisting any selected sole or managing underwriter and its counsel, as well as any disclosure counsel retained by the Issuer, in connection with the preparation of any preliminary or final official statement or offering memorandum. HilltopSecurities will cooperate with and assist the underwriters in the preparation of a bond purchase contract, an underwriters' agreement and other related documents;

(3) Assisting the staff of the Issuer in the safekeeping of any good faith checks and providing a cost comparison to the then-current market of expenses, interest rates and prices which are proposed by the underwriters;

(4) Advising the Issuer on the fairness of the price offered by the underwriters;

(5) Advising the Issuer in connection with any terms and conditions it may wish to establish with respect to order priorities and other similar matters relating to the underwriting of the new issuance;

(6) If the new issuance will have a retail order period, advising the Issuer on retail eligibility criteria and other features of the retail order period and reviewing information provided by the underwriters to the Issuer in connection with retail orders received; and

(7) At the request of the Issuer, reviewing required disclosures by underwriters to the Issuer relating to their role as underwriter, conflicts of interests, material terms and risks of the issuance, and any other matters, and providing any appropriate advice to the Issuer in connection with such disclosures.

7. ***Offering Documents for Competitive Offerings.*** Coordinating the preparation of the notice of sale and bidding instructions, preliminary official statement (including cooperating with and assisting any disclosure counsel retained by the Issuer), official bid form and such other documents as may be required and submitting all such documents to the Issuer for examination, approval and certification. After such examination, approval and certification, HilltopSecurities shall provide the Issuer with a supply of all such documents sufficient to its needs and distribute sets of the same to prospective bidders for the municipal securities. HilltopSecurities also shall provide copies of the final official statement to the winning bidder purchasing the municipal securities in the MSRB-designated electronic format and in accordance with the notice of sale and bidding instructions promptly after the Issuer approves the final official statement for distribution.

8. ***Credit Ratings.*** Making recommendations to the Issuer on the advisability of obtaining one or more credit ratings for the issuance and, when directed by the Issuer, coordinating the preparation of such information as may be appropriate for submission to any rating agency. In those cases where the advisability of personal presentation of information to a rating agency may be indicated, HilltopSecurities will arrange for such personal presentations, utilizing such composition of representatives from the Issuer as may be approved or directed by the Issuer.

9. ***Trustee, Paying Agent, Registrar, Professionals and Other Transaction Participants.*** Upon request, providing advice to the Issuer in the selection of a trustee and/or paying agent/registrar, legal, accounting or other professionals, and other transaction participants relating to any issuance, and assisting in the negotiation of agreements pertinent to these services and the fees incident thereto.

10. ***Financial Publications.*** When appropriate, advising financial publications of the forthcoming sale of the municipal securities and providing them with all pertinent information.

11. ***Consultants.*** After consulting with and receiving directions from the Issuer, arranging for such reports and opinions of recognized independent consultants as may be appropriate for the successful marketing of the issuance.

12. ***Auditors.*** In the event formal verification by an independent auditor of any calculations incident to the issuance is required, making arrangements for such services.

13. **Issuer Meetings.** Attending meetings of the governing body of the Issuer, its staff, representatives or committees as requested when HilltopSecurities may be of assistance or service and matters within the scope of this engagement are to be discussed.

14. **Printing.** To the extent authorized by the Issuer, coordinating all work incident to printing or final production, physical or electronic, of the offering documents.

15. **Bond Counsel.** Maintaining liaison with bond counsel in the preparation of all legal documents pertaining to the authorization, sale and issuance of the municipal securities.

16. **Changes in Laws.** Providing to the Issuer copies of proposed or enacted changes in federal and state laws, rules and regulations having, or expected to have, a significant effect on the municipal bond market of which HilltopSecurities becomes aware in the ordinary course of its business, it being understood that HilltopSecurities does not and may not act as an attorney for, or provide legal advice or services to, the Issuer.

17. **Delivery of the Municipal Securities.** As soon as a bid for the purchase of a competitive issuance is accepted by the Issuer or the bond purchase contract for a negotiated issuance is signed by the Issuer, coordinating the efforts of all concerned to the end that the municipal securities may be delivered and paid for as expeditiously as possible and assisting the Issuer in the preparation or verification of final closing figures incident to the delivery of the municipal securities.

18. **Debt Service Schedule; Authorizing Resolution.** After the closing of the sale and delivery of the issuance, delivering to the Issuer a schedule of annual debt service requirements for the issuance and, in coordination with bond counsel, assuring that the paying agent/registrars and/or trustee has been provided with a copy of the authorizing ordinance, order or resolution.

19. **Continuing Disclosure.** Providing advice to the Issuer with regard to its continuing disclosure undertakings for its new issuances and its selection of a dissemination agent under its continuing disclosure undertakings; provided that, upon the mutual agreement of the Issuer and HilltopSecurities, HilltopSecurities may serve as dissemination agent under one or more of the Issuer's continuing disclosure undertakings upon such terms as the parties shall agree, with such service as dissemination agent being expressly excluded from the scope of this Agreement.

**II. Baseline Advice on Outstanding Issuances of Municipal Securities.** HilltopSecurities shall provide baseline on-going advice to the Issuer on any outstanding issuances throughout the term of this Agreement, which may include, depending on the specific circumstances of such issuance or to the extent requested or directed by the Issuer:

1. **Exercising Calls.** Providing advice and assistance to the Issuer with regard to exercising any calls of outstanding municipal securities unrelated to a refunding of such securities.

2. **Refundings and Tender Offers.** Providing advice to the Issuer with regard to opportunities for refundings of outstanding issuances or to make tender offers for outstanding issuances, whether by means of a new issuance, bank loans, or other funds of the Issuer, but not including serving as advisor in connection with the specific transaction through which such refunding or tender offer is effected. Transaction-based advice in connection with a specific new issuance of bonds to effectuate any such refunding or tender offer would be provided within the scope of Municipal Advisory Services for new issuances described in Section I above. Transaction-based advice in

connection with a specific bank loan or other transaction to effectuate any such refunding or tender offer, other than by means of a new issuance of bonds would be provided pursuant to a separate agreement as described in Section IV below.

3. **Continuing Disclosure.** Providing advice to the Issuer with regard to continuing disclosure undertakings for outstanding issuances; processes, policies and procedures to comply with continuing disclosure undertakings; and coordination of continuing disclosure obligations arising from different continuing disclosure undertakings for its various issuances. However, the preparation of continuing disclosure documents, other than in the capacity of dissemination agent under a continuing disclosure undertaking, would be provided within the scope of other services described in Section V. below.

**III. Particularized Services on Outstanding Issuances of Municipal Securities.** HilltopSecurities may provide to the Issuer certain additional advisory or related services in connection with particular outstanding issuances or matters affecting multiple outstanding issuances throughout the term of this Agreement, which may include, depending on the specific circumstances of such issuance and any request or direction of the Issuer:

1. **Other Post-Sale Services.** Reviewing the transaction features and documentation of outstanding issuances with legal counsel for the Issuer, bond counsel, auditors and other experts and consultants retained by the Issuer and assisting in developing appropriate responses to legal processes, audit procedures, inquiries, internal reviews and similar matters, or other services related to one or more outstanding issuances as may be agreed to by the Issuer and HilltopSecurities.

2. **Brokerage of Municipal Escrow Investments.** At the request of the Issuer, brokering the purchase of municipal escrow investments in connection with a refunding of an outstanding issuance, together with any recommendations by HilltopSecurities (but not by First Southwest Asset Management, LLC as an investment adviser) with respect to such brokerage.

3. **Reviewing Funds to Determine Investable Assets.** At the request of the Issuer, reviewing all bank accounts to determine restrictions and use to identify monies that could be invested (in accordance with the City's internal fund balance policies and investment policies).

4. **Debt and Financial Modeling.** Reviewing all of the Issuer's outstanding debt issuances and preparing a comprehensive debt and assigned revenue model to assist the Issuer with its budgeting and financial forecasting. This includes creating a master workbook(s) for all current debt-related issues (TIF-related, TDD-related, COPS, State Revolving Fund Pooled Loan Program, etc.) that contains:

- A tab (or tabs) for each issue detailing the following:
  - Basic identifying information such as: name of the issue, CUSIP, date of issue, original maturity date, interest rate/coupon schedule, etc.
  - Current contact names for each party, including names of parties that were involved in the original issue
  - Current information: remaining balances, projected maturity date, interest rate/coupon schedule, debt service schedule, etc.
  - Potential refunding / refi opportunities and future dates for each
  - Related Trustee bank accounts with current balance in each account

HilltopSecurities will assist the Issuer in annually reviewing this master workbook and making any necessary updates/revisions.

5. **Capital Improvement Programs.** Providing advice and assistance in the development of any capital improvement programs of the Issuer.

6. **Long-Range Planning.** Providing advice and assistance in the development of other long-range financing plans of the Issuer, including assisting in the preparation of formalized financial practices and policies.

**IV. Services as Independent Registered Municipal Advisor (“IRMA”).** At the written request of the Issuer, HilltopSecurities shall, as the Issuer’s IRMA, review and provide advice to the Issuer in connection with any recommendations, proposals, ideas or matters suggested or otherwise communicated by a third party to the Issuer with respect to the same aspects of the issuance of municipal securities or municipal financial products that are within the scope of Municipal Advisory Services. There are no aspects of the issuance of municipal securities or municipal financial products that are outside the scope of Municipal Advisory Services set forth in this Appendix.

**V. Other Services Relating to Municipal Securities.** HilltopSecurities agrees to make available to the Issuer other services relating to municipal securities, when so requested by the Issuer and subject to the agreement by Issuer and HilltopSecurities regarding the specific requirements with respect to such services, which requirements shall be made part of the scope of Municipal Advisory Services and included in this Appendix as an amendment or addendum, which services may include, without limitation:

1. **Refundings and Tender Offers.** Providing advice and assistance in executing a refunding or tender offer of an outstanding issuance other than by means of refunding bonds, such as by means of a bank loan or other funds of the Issuer.

2. **Continuing Disclosure Documents.** Preparing and providing advice with regard to the content of continuing disclosure documents in compliance with the Issuer’s continuing disclosure undertakings for its outstanding issuances, other than in the capacity of dissemination agent under a continuing disclosure undertaking.

\* \* \* \* \*

As provided in paragraph D of Section I of the Agreement, amendments to this Appendix A may be effected by replacement of this Appendix A with a new version hereof or by the addition of an addendum to this Appendix A, and this Appendix A, as it may have been amended, shall be dated and effective as of the most recent of the date set forth in any such amendment or the date set forth in any addendum to this Appendix A.

**APPENDIX B  
FORM AND BASIS OF COMPENSATION**

This Appendix B sets out the form and basis of compensation to HilltopSecurities for the Municipal Advisory Services provided under this Agreement as set forth in Appendix A; provided that the compensation arrangements set forth in this Appendix B shall also apply to any additional services hereafter added to the scope of the Municipal Advisory Services, unless otherwise provided in the amendment to the Agreement relating to such change in scope of Municipal Advisory Services as provided in paragraph D of Section I of the Agreement.

**I. New Issuances of Municipal Securities.** The fees due HilltopSecurities in connection with the Municipal Advisory Services set forth in Section I of Appendix A hereto for each new issuance of municipal securities will not exceed those contained in our fee schedule as listed below:

**\$2.00 per \$1,000 bond with a minimum of \$15,000 per transaction**

The payment of charges as set forth in this Section I for new issuances shall be contingent upon the delivery of the new issuance and shall be due at the time that the municipal securities are delivered.

**II. Baseline Advice on Outstanding Issuances of Municipal Securities.** There shall be no additional fees beyond those set forth in Sections I and III herein for the Municipal Advisory Services set forth in Section II of Appendix A hereto, with the understanding that such services are integral to HilltopSecurities' engagement as municipal advisor to the Issuer and HilltopSecurities shall be compensated for such services through and as part of the fees paid for the other services provided by HilltopSecurities hereunder.

**III. Particularized Services on Outstanding Issuances of Municipal Securities.** In connection with Other Post-Sale Services described in Section III of Appendix A hereto, HilltopSecurities shall charge a monthly fee of \$400 per month. If a bond issue takes place in any calendar year this fee would be waived (or the amount paid would be credited back to the Issuer at the time of the issuance).

In connection with the brokerage of municipal escrow investments described in Section III of Appendix A hereto, HilltopSecurities shall charge a commission that is normal and customary for investments of that type under then-current market conditions and shall disclose such commission to the Issuer so that the Issuer may consider the information in making its investment decision.

**IV. Third-Party Recommendations, Proposals, Ideas or Other Matters as IRMA.** In connection with its review of and advice on third-party recommendations to Issuers as an IRMA as described in Section IV of Appendix A hereto, HilltopSecurities shall charge the monthly fee included above in Section III of this Appendix.

**V. Other Services Relating to Municipal Securities.** In connection with any services described in Section V of Appendix A hereto requested by the Issuer and agreed to by HilltopSecurities, the fees due with respect to any such services shall be as agreed to by the parties hereto, which terms shall be made part of the compensation provided under this Agreement and shall be included in this Appendix as an amendment or addendum hereto.



**VI. Expenses.** The Issuer shall be responsible for the following expenses in connection with the Municipal Advisory Services (including any additional services hereafter added to the scope of the Municipal Advisory Services), if and when applicable, whether they are charged to the Issuer directly as expenses or charged to the Issuer by HilltopSecurities as reimbursable expenses: bond counsel fees and expenses, bond printing costs, bond ratings fees and expenses, computer structuring costs, credit enhancement fees and expenses, accountant fees for verifications and related activities in connection with refundings, official statement preparation and printing, paying agent/registrar/trustee fees and expenses, travel expenses, underwriter and underwriter's counsel fees and expenses, and other miscellaneous expenses incurred by HilltopSecurities in the furtherance of any matter for which it serves as municipal advisor, including copy, delivery, phone and other charges normally incurred in connection with engagements of this type.

The Issuer agrees that any expense that it requests that HilltopSecurities pay to any third party on the Issuer's behalf shall be made in writing and shall be in accordance with paragraph C of Section III of the Agreement.

The payment of reimbursable expenses that HilltopSecurities has assumed on behalf of the Issuer shall NOT be contingent upon the delivery of a new issuance of municipal securities or the completion of any other transactions for which such expenses have been assumed and shall be due at the time that services are rendered and payable upon receipt of an invoice therefor submitted by HilltopSecurities, unless otherwise provided for in any amendment or addendum hereto in connection with the compensation arrangements for any services provided under the Agreement for which such amendment or addendum is required.

**APPENDIX C**  
**MUNICIPAL ADVISOR DISCLOSURE STATEMENT**

This disclosure statement (“Conflict Disclosures”) is provided by **Hilltop Securities Inc.** (“the Firm”) to you (the “Client”) in connection with our current municipal advisory agreement, (“the Agreement”). These Conflict Disclosures provide information regarding conflicts of interest and legal or disciplinary events of the Firm that are required to be disclosed to the Client pursuant to MSRB Rule G-42(b) and (c)(ii).

**PART A – Disclosures of Conflicts of Interest**

MSRB Rule G-42 requires that municipal advisors provide to their clients disclosures relating to any actual or potential material conflicts of interest, including certain categories of potential conflicts of interest identified in Rule G-42, if applicable.

***Material Conflicts of Interest*** – The Firm makes the disclosures set forth below with respect to material conflicts of interest in connection with the Scope of Services under the Agreement with the Firm, together with explanations of how the Firm addresses or intends to manage or mitigate each conflict.

***General Mitigations*** – As general mitigations of the Firm’s conflicts, with respect to all of the conflicts disclosed below, the Firm mitigates such conflicts through its adherence to its fiduciary duty to Client, which includes a duty of loyalty to Client in performing all municipal advisory activities for Client. This duty of loyalty obligates the Firm to deal honestly and with the utmost good faith with Client and to act in Client’s best interests without regard to the Firm’s financial or other interests. In addition, because the Firm is a broker-dealer with significant capital due to the nature of its overall business, the success and profitability of the Firm is not dependent on maximizing short-term revenue generated from individualized recommendations to its clients but instead is dependent on long-term profitability built on a foundation of integrity, quality of service and strict adherence to its fiduciary duty. Furthermore, the Firm’s municipal advisory supervisory structure, leveraging our long-standing and comprehensive broker-dealer supervisory processes and practices, provides strong safeguards against individual representatives of the Firm potentially departing from their regulatory duties due to personal interests. The disclosures below describe, as applicable, any additional mitigations that may be relevant with respect to any specific conflict disclosed below.

**I. Affiliate Conflict.** The Firm, directly and through affiliated companies, provides or may provide services/advice/products to or on behalf of clients that are related to the Firm’s advisory activities within the Scope of Services outlined in the Agreement. First Southwest Asset Management (FSAM), a SEC-registered affiliate of the Firm, provides post issuance services including arbitrage rebate and treasury management. The Firm’s arbitrage team verifies rebate and yield restrictions on the investments of bond proceeds on behalf of clients in order to meet IRS restrictions. The treasury management division performs portfolio management/advisor services on behalf of public sector clients. The Firm, through affiliate First Southwest Advisory, provides a multi-employer trust tailor-made for public entities which allows them to prefund Other Post-Employment Benefit liabilities. The Firm has a structured products desk that provides advice to help clients mitigate risk through investment management, debt management and commodity price risk management products. These products consist of but are not limited to swaps (interest rate, currency, commodity), options, repos, escrow structuring and other securities. Continuing Disclosure services provided by the Firm work with issuers to assist them in meeting disclosure requirements set forth in SEC

rule 15c2-12. Services include but are not limited to ongoing maintenance of issuer compliance, automatic tracking of issuer's annual filings and public notification of material events. The Firm administers two government investment pools for Texas governments; the Short-Term Asset Reserve Fund (TexSTAR) and the Local Government Investment Cooperative (LOGIC). These programs offer Texas government entities investment options for their cash management programs based on the entities specific needs. The Firm and the aforementioned affiliate's business with a client could create an incentive for the Firm to recommend to a client a course of action designed to increase the level of a client's business activities with the affiliates or to recommend against a course of action that would reduce or eliminate a client's business activities with the affiliates. Furthermore, this potential conflict is mitigated by the fact that the Firm and affiliates are subject to their own comprehensive regulatory regime as a member of multiple self-regulatory organizations in which compliance is verified by not only internal tests but annual external examinations.

**II. Other Municipal Advisor or Underwriting Relationships.** The Firm serves a wide variety of other clients that may from time to time have interests that could have a direct or indirect impact on the interests of Client. For example, the Firm serves as municipal advisor to other municipal advisory clients and, in such cases, owes a regulatory duty to such other clients just as it does to Client. These other clients may, from time to time and depending on the specific circumstances, have competing interests, such as accessing the new issue market with the most advantageous timing and with limited competition at the time of the offering. In acting in the interests of its various clients, the Firm could potentially face a conflict of interest arising from these competing client interests. In other cases, as a broker-dealer that engages in underwritings of new issuances of municipal securities by other municipal entities, the interests of the Firm to achieve a successful and profitable underwriting for its municipal entity underwriting clients could potentially constitute a conflict of interest if, as in the example above, the municipal entities that the Firm serves as underwriter or municipal advisor have competing interests in seeking to access the new issue market with the most advantageous timing and with limited competition at the time of the offering. None of these other engagements or relationships would impair the Firm's ability to fulfill its regulatory duties to Client.

**III. Secondary Market Transactions in Client's Securities.** The Firm, in connection with its sales and trading activities, may take a principal position in securities, including securities of Client, and therefore the Firm could have interests in conflict with those of Client with respect to the value of Client's securities while held in inventory and the levels of mark-up or mark-down that may be available in connection with purchases and sales thereof. In particular, the Firm or its affiliates may submit orders for and acquire Client's securities issued in an Issue under the Agreement from members of the underwriting syndicate, either for its own account or for the accounts of its customers. This activity may result in a conflict of interest with Client in that it could create the incentive for the Firm to make recommendations to Client that could result in more advantageous pricing of Client's bond in the marketplace. Any such conflict is mitigated by means of such activities being engaged in on customary terms through units of the Firm that operate independently from the Firm's municipal advisory business, thereby reducing the likelihood that such investment activities would have an impact on the services provided by the Firm to Client under this Agreement.

**IV. Broker-Dealer and Investment Advisory Business.** The Firm is dually registered as a broker-dealer and an investment advisor that engages in a broad range of securities-related activities to service its clients, in addition to serving as a municipal advisor or underwriter. Such securities-related activities, which may include but are not limited to the buying and selling of new issue and outstanding securities and investment advice in connection with such securities, including securities of Client, may be undertaken on behalf of, or as counterparty to, Client, personnel of Client, and current or potential investors in the securities of Client. These other clients may, from time to time and depending on the specific circumstances, have interests in conflict with those of Client, such as when their buying or selling of Client's securities

may have an adverse effect on the market for Client's securities, and the interests of such other clients could create the incentive for the Firm to make recommendations to Client that could result in more advantageous pricing for the other clients. Furthermore, any potential conflict arising from the firm effecting or otherwise assisting such other clients in connection with such transactions is mitigated by means of such activities being engaged in on customary terms through units of the Firm that operate independently from the Firm's municipal advisory business, thereby reducing the likelihood that the interests of such other clients would have an impact on the services provided by the Firm to Client.

**V. Compensation-Based Conflicts.** Fees that are based on the size of the issue are contingent upon the delivery of the Issue. While this form of compensation is customary in the municipal securities market, this may present a conflict because it could create an incentive for the Firm to recommend unnecessary financings or financings that are disadvantageous to Client, or to advise Client to increase the size of the issue. This conflict of interest is mitigated by the general mitigations described above.

Fees based on a fixed amount are usually based upon an analysis by Client and the Firm of, among other things, the expected duration and complexity of the transaction and the Scope of Services to be performed by the Firm. This form of compensation presents a potential conflict of interest because, if the transaction requires more work than originally contemplated, the Firm may suffer a loss. Thus, the Firm may recommend less time-consuming alternatives, or fail to do a thorough analysis of alternatives. This conflict of interest is mitigated by the general mitigations described above.

Hourly fees are calculated with, the aggregate amount equaling the number of hours worked by Firm personnel times an agreed-upon hourly billing rate. This form of compensation presents a potential conflict of interest if Client and the Firm do not agree on a reasonable maximum amount at the outset of the engagement, because the Firm does not have a financial incentive to recommend alternatives that would result in fewer hours worked. This conflict of interest is mitigated by the general mitigations described above.

## **PART B – Disclosures of Information Regarding Legal Events and Disciplinary History**

MSRB Rule G-42 requires that municipal advisors provide to their clients certain disclosures of legal or disciplinary events material to its client's evaluation of the municipal advisor or the integrity of the municipal advisor's management or advisory personnel.

Accordingly, the Firm sets out below required disclosures and related information in connection with such disclosures.

**I. Material Legal or Disciplinary Event.** The Firm discloses the following legal or disciplinary events that may be material to Client's evaluation of the Firm or the integrity of the Firm's management or advisory personnel:

- For related disciplinary actions please refer to the Firm's [BrokerCheck](#) webpage.
- The Firm self-reported violations of SEC Rule 15c2-12: Continuing Disclosure. The Firm settled with the SEC on February 2, 2016. The firm agreed to retain independent consultant and adopt the consultant's finding. Firm paid a fine of \$360,000.

- The Firm settled with the SEC in matters related to violations of MSRB Rules G-23(c), G-17 and SEC rule 15B(c) (1). The Firm disgorged fees of \$120,000 received as financial advisor on the deal, paid prejudgment interest of \$22,400.00 and a penalty of \$50,000.00.
- The Firm entered into a Settlement Agreement with Rhode Island Commerce Corporation. Under the Settlement Agreement, the firm agreed to pay \$16.0 million to settle any and all claims in connection with The Rhode Island Economic Development Corporation Job Creation Guaranty Program Taxable Revenue Bond (38 Studios, LLC Project) Series 2010, including the litigation thereto. The case, filed in 2012, arose out of a failed loan by Rhode Island Economic Development Corporation. The firm's predecessor company, First Southwest Company, LLC, was one of 14 defendants. FirstSouthwest's engagement was limited to advising on the structure, terms, and rating of the underlying bonds. Hilltop settled with no admission of liability or wrongdoing.

II. **How to Access Form MA and Form MA-I Filings.** The Firm's most recent Form MA and each most recent Form MA-I filed with the SEC are available on the SEC's EDGAR system at [Forms MA and MA-I](#). The SEC permits certain items of information required on Form MA or MA-I to be provided by reference to such required information already filed by the Firms in its capacity as a broker-dealer on Form BD or Form U4 or as an investment adviser on Form ADV, as applicable. Information provided by the Firm on Form BD or Form U4 is publicly accessible through reports generated by BrokerCheck at <http://brokercheck.finra.org/>, and the Firm's most recent Form ADV is publicly accessible at the Investment Adviser Public Disclosure website at <http://www.adviserinfo.sec.gov/>. For purposes of accessing such BrokerCheck reports or Form ADV, click previous hyperlinks.

### **PART C – Future Supplemental Disclosures**

As required by MSRB Rule G-42, this Municipal Advisor Disclosure Statement may be supplemented or amended, from time to time as needed, to reflect changed circumstances resulting in new conflicts of interest or changes in the conflicts of interest described above, or to provide updated information with regard to any legal or disciplinary events of the Firm. The Firm will provide Client with any such supplement or amendment as it becomes available throughout the term of the Agreement.

RESOLUTION NO. 19-29

**A RESOLUTION APPROVING AN AGREEMENT FROM US BANK TO PARTICIPATE IN THEIR INSURED CASH SWEEP PROGRAM.**

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WHEREAS, the City of Arnold and its related entities currently utilizes US Bank as the City's main bank for all operating accounts; and

WHEREAS, the City has a fiduciary responsibility to maximize earnings on excess operating funds;

WHEREAS, US Bank offers an Insured Cash Sweep, FDIC insured program, to allow for higher interest earnings on excess operating funds;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARNOLD, MISSOURI:

The attached agreements from US Bank are hereby approved. The Mayor and/or the City Administrator are authorized to execute any necessary documents to complete the transaction.

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Presiding Officer of the City Council

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Mayor Ron Counts

ATTEST:

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City Clerk Tammi Casey

Date: \_\_\_\_\_

## What is ICS®?

### How does it work?

U.S. Bank is a participating institution of the Insured Cash Sweep® Service (ICS) Network, a service offered by Promontory Interfinancial Network. When you choose to invest through ICS, the funds are placed into money market deposit accounts (MMDAs) established at other ICS participating institutions, in amounts less than the standard FDIC insurance maximum, so that both principal and interest are eligible for FDIC protection. As a result, you can access coverage from many banks, while working directly with just one bank.

### What are some of the benefits of ICS?

- **Multi-million-dollar FDIC insurance eligibility.** Using the ICS service, you can access multi-million-dollar FDIC insurance on MMDAs.
- **One bank.** You work directly with U.S. Bank when placing large deposits. With ICS, you can avoid the hassle of opening accounts at different banks in different insurable capacities.
- **One rate.** You earn one interest rate on your funds through ICS. There's no need to negotiate multiple rates or manually tally disbursements for each account.
- **Online access.** You have daily online access to your deposit placement details and the number of withdrawals available.
- **No fees.** U.S. Bank does not charge an annual fee, subscription fee or transaction fee for using the ICS service.

### What is the liquidity feature?

The funds are liquid daily. Deposit placements or withdrawals for ICS accounts must be placed by 9:30 a.m. CT to receive same-day credit/debit. Six withdrawals are allowed within each calendar month; upon the sixth withdrawal, you will receive all of your ICS deposited funds back and will not be able to make another deposit for any amount through ICS until the start of the next calendar month.

### What is the minimum ICS investment?

The minimum investment for MMDAs placed in ICS through the U.S. Bank Money Center is \$250,000. Additional deposits can occur in any increment. Funds placed before 9:30 a.m. CT qualify for same-day settlement. Funds placed after 9:30 a.m. CT will be placed the next business day.



## How do I receive my interest?

Interest is automatically reinvested on the last day of the month. Income earned is subject to both federal and state income tax. Consult your tax advisor, as U.S. Bank does not offer tax advice.

## Financial institution exclusions and placement changes.

Upon opening your ICS account, you may provide a list of financial institutions to exclude for placement of ICS deposits. This list can be updated as needed. Your deposits in ICS member institutions may change daily, as member institution funding needs are subject to change. In no event will ICS place your funds in a way that would exceed the FDIC insurance maximum, provided that you maintain a current list of deposit balances kept at financial institutions through the exclusion list. You have the ability to view your current financial institutions and make daily changes through the online reporting feature.

[usbank.com](http://usbank.com)



For purposes of Section 15B of the Securities Exchange Act of 1934 (the "Act") (SEC Rule 15Ba1-1 et seq.) (the "Rule"), the Money Center Department within the U.S. Bank Corporate Treasury Division (the "Money Center"): (1) is not recommending and will not recommend an action to you; (2) is not providing and will not provide "advice" to you as defined in the Rule, and any information or communication from the Money Center in respect of your accounts with the Money Center or the Safekeeping Department within the U.S. Bank Corporate Treasury Division (the "Account(s)") or in respect of any securities transaction or potential securities transaction to be executed via the Account(s) is not intended to be and should not be construed as "advice" as defined in the Rule; (3) the Money Center is not acting as an advisor to you and does not owe you any fiduciary duty pursuant to Section 15B of the Act or otherwise with respect to any such Account(s), information, communication, transaction or potential transaction; and (4) subject to FINRA Rules 2111 and 2121, the Money Center is acting for its own interest with respect to the Account(s) and with respect to any securities transactions to be executed via the Account(s).

You should discuss any information or material provided to you by the Money Center in connection with trading, investing or other activity in the Account(s) with any and all of your internal or external advisors and experts that you deem appropriate before acting on any such information or material.

**U.S. Bank is not affiliated with Promontory Interfinancial Network and its services.**

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# Deposit Placement Agreement

You, the undersigned, enter into this ICS Deposit Placement Agreement (this "*Agreement*") with U.S. Bank National Association ("*we*" or "*us*"). This Agreement states the terms and conditions on which we will endeavor to place funds of yours into deposit accounts at other depository institutions from a transaction account with us into which you have deposited funds for such placement (the "*Transaction Account*").

Each depository institution at which we place funds (a "*Destination Institution*") will be a depository institution at which deposit accounts are insured by the Federal Deposit Insurance Corporation ("*FDIC*") up to maximum deposit insurance amounts.

## 1. ICS Service and Deposit Accounts

### 1.1. *ICS Service*

(a) We will endeavor to place funds of yours (as a "*Relationship Institution*") at Destination Institutions using ICS®, the Insured Cash Sweep® service, of Promontory Interfinancial Network, LLC ("*Promontory Network*"). The Bank of New York Mellon ("*BNY Mellon*") will act as issuing agent, sub-custodian, settlement agent, and recordkeeper.

(b) Subject to the other terms and conditions of this Agreement, when we place funds of yours in a deposit account held at a Destination Institution for your funds placed through the ICS service (a "*Deposit Account*"), the amount of our outstanding placements of your funds at the Destination Institution through ICS will not exceed the FDIC standard maximum deposit insurance amount ("*SMDIA*"), which is currently \$250,000.

(c) We offer placement of funds through ICS to businesses, nonprofit entities, and, subject to applicable law, public entities. We may also choose to place funds through ICS for individuals with a demonstrated need to maintain large cash balances (e.g., \$500,000 or more) over a 12-month period. You must be capable of using, and you agree to use, the ICS Depositor Control Panel ("*DCP*"), an online tool described in this Agreement, to review proposed placements and for other purposes. You also agree to receive notices concerning ICS deposits that may be posted on the DCP or sent by email.

### 1.2. *Deposit Accounts at Destination Institutions*

(a) Each Deposit Account, including the principal amount and the accrued interest, will be a deposit obligation solely of the Destination Institution at which the Deposit Account is held. It will not be a deposit obligation of ours or of Promontory Network, BNY Mellon, or any other person or entity.

(b) Funds in your Deposit Accounts will be "deposits," as defined by federal law, at the Destination Institutions. Appendix A further describes the Deposit Accounts, which will be non-time deposits that you access as described in this Agreement.

## 2. Your Relationship With Us

### 2.1. *Agency and Custodial Relationship*

(a) We will act as your agent in placing your funds through the ICS service. Under a separate agreement with you that grants us custodial powers (the "*Custodial Agreement*"), we will also act as your custodian with respect to the Deposit Accounts.

(b) Each Deposit Account will be recorded (i) on the records of the Destination Institution in the name of BNY Mellon, as our sub-custodian, (ii) on the records of BNY Mellon in our name, as your custodian, and (iii) on our records in your name. The recording will occur in a manner that permits the Deposit Account to be FDIC-insured to the same extent as if it were recorded on the records of Destination Institution in your name.

(c) For purposes of Article 8 of the Uniform Commercial Code, we will act as your securities intermediary for, and will treat as financial assets, the Deposit Accounts and all your security entitlements and other related interests and assets with respect to the Deposit Accounts, and we will treat you as entitled to exercise the rights that constitute the Deposit Accounts. All interests that we hold with respect to the Deposit Accounts will be held by us only as your securities intermediary and will not be our property. You will be the owner of all funds of yours that we place for you through the ICS service and any interest on those funds.

### 2.2. *Termination of Custodial Relationship*

(a) Either you or we may terminate the custodial relationship between you and us at any time. You may not transfer the Deposit Accounts to another custodian, but you may dismiss us as your custodian with respect to a Deposit Account and request that the Deposit Account be recorded on the records of the Destination Institution in your name. We will endeavor to cause any such request to be promptly forwarded to the Destination Institution. Each Destination Institution has agreed that it will promptly fulfill any such requests, subject to its customer identification policies and other standard account opening terms and conditions.

(b) If a Deposit Account has been recorded on the records of a Destination Institution in your name pursuant to Section 2.2(a), you will be able to enforce your rights in the Deposit Account directly against the Destination Institution, but we will no longer have any custodial responsibility with respect to the Deposit Account and you will not be able to enforce any rights with respect to the Deposit Account against the Destination Institution through us.

## 3. Custodial Account, Depositor Identifier, and Interest Rate

### 3.1. *Custodial Account and Depositor Identifier*

(a) As your custodian, we will open on our records, either directly or with the assistance of BNY Mellon, a custodial account in which we will hold your interests with respect to the Deposit Accounts (an "*ICS Custodial Account*"). We may permit you to have multiple ICS Custodial

Accounts for your business purposes, and we may also permit you to have multiple Transaction Accounts associated with a single ICS Custodial Account.

(b) On the signature page of this Agreement, you will enter a unique alphanumeric identifier for you (a "*Depositor Identifier*"), which will be associated with your ICS Custodial Account. You will enter as your Depositor Identifier your federal taxpayer identification number ("*TIN*"), unless you do not have a TIN, in which case you will enter an alternate identifier that we approve.

(c) If you do not have a TIN and use an alternate identifier, you must use the same alternate identifier for all placements of your funds, by us or by any other institution, through the ICS service or Promontory Network's CDARS® service. If you do not have a TIN and subsequently obtain one, you must promptly report it to us and any such other institutions, and we may use the TIN as your Depositor Identifier.

### 3.2. Interest Rate

(a) The interest rate for your Deposit Accounts at Destination Institutions on any day will be the then-current rate we establish for them, which may be any rate (including zero) and which we may modify at any time (the "*Interest Rate*"). We do not promise that the Interest Rate will be any particular rate or that the Interest Rate that is effective at a given time will be effective at a later time. Through your continued participation in ICS, you accept each applicable Interest Rate.

(b) Payment of the full amount of all accrued interest on a Deposit Account at a Destination Institution will be solely the responsibility of the Destination Institution. Neither we nor any other person or entity will be indebted to you for such payment.

## 4. Placement Procedures

### 4.1. Settlement and Balances

(a) Settlement of payments to and from ICS participating institutions through BNY Mellon ("*ICS Settlement*") will occur on each day that is not a Saturday, a Sunday, or another day on which banks in New York, New York, are authorized or required by law or regulation to close (a "*Business Day*").

(b) On any day, you may confirm through the DCP the aggregate principal balance in your Deposit Accounts (your "*Program Balance*") for each ICS Custodial Account, and your principal balance and accrued interest at each Destination Institution, as of the preceding Business Day or, after completion of ICS Settlement on a Business Day, as of that Business Day.

### 4.2. Triggering Events

(a) Schedule 1 to this Agreement sets forth events that will trigger a transfer of funds from the Transaction Account to the Deposit Accounts at ICS Settlement (a "*Program Deposit*") or a transfer of funds from the Deposit Accounts to the Transaction Account at ICS Settlement (a "*Program Withdrawal*").

(b) Depending on the terms of Schedule 1, an event that triggers a Program Deposit or a Program Withdrawal (a "*Triggering Event*") may

be a specified change in the Transaction Account balance, a request by you that we accept, or another event described in Schedule 1.

(c) If we permit you to have multiple Transaction Accounts associated with a single ICS Custodial Account, Schedule 1 may specify separate sets of Triggering Events for each Transaction Account or one set of Triggering Events for all Transaction Accounts.

(d) Your Transaction Account deposits, alone or when aggregated with other deposits in the same insurable capacity, may exceed the SMDIA. Schedule 2 provides important information concerning the risk of having Transaction Account deposits that exceed the SMDIA.

### 4.3. Program Deposits

(a) The occurrence of a Triggering Event for a Program Deposit does not result in a transfer of funds to your Deposit Accounts until the applicable ICS Settlement occurs.

(b) Subject to the other terms and conditions of this Agreement, and except as provided in Section 4.3(c), a Triggering Event for a Program Deposit under Schedule 1 will result in a transfer of funds to your Deposit Accounts at ICS Settlement the *next* Business Day (a "*Regular Program Deposit*").

(c) Schedule 1 states whether a transfer of funds to your Deposit Accounts at ICS Settlement on the *same* Business Day (a "*Same-Day Program Deposit*") is available and, if so, the cutoff time for you to request a Same-Day Program Deposit (the "*Same-Day Deposit Cutoff Time*"). To the extent Schedule 1 so provides, and subject to the other terms and conditions of this Agreement, a request that we receive and accept before the Same-Day Deposit Cutoff Time will be a Triggering Event that results in a Same-Day Program Deposit.

(d) We may impose a maximum Program Balance amount for your deposits placed through ICS and will inform you of any maximum Program Balance we impose. Even if a Triggering Event for a Program Deposit occurs, we may choose not to transfer the amount to your Deposit Accounts to the extent it would cause the Program Balance to exceed the maximum amount. In addition, we may choose not to transfer to the Deposit Accounts an amount that we have credited to the Transaction Account, but have not yet collected from a third party.

### 4.4. Program Withdrawals

(a) Subject to the other terms and conditions of this Agreement, and except as provided in Section 4.4(b), a Triggering Event for a Program Withdrawal under Schedule 1 will result in a transfer of funds from your Deposit Accounts at ICS Settlement the *next* Business Day (a "*Regular Program Withdrawal*").

(b) Schedule 1 states whether the transfer of funds from your Deposit Accounts at ICS Settlement on the *same* Business Day (a "*Same-Day Program Withdrawal*") is available and, if so, the cutoff time for you to request a Same-Day Program Withdrawal (the "*Same-Day Withdrawal Cutoff Time*"). To the extent Schedule 1 so provides, and subject to the other terms and conditions of this Agreement, a request that we receive and accept before the Same-Day Withdrawal Cutoff

Time will be a Triggering Event that results in a Same-Day Program Withdrawal.

#### 4.5. *Program Withdrawal Advances; Security Interest*

(a) If Schedule 1 provides that we will advance funds to you in anticipation of a Program Withdrawal, or if we otherwise decide in our discretion to advance funds to you in anticipation of a Program Withdrawal, you will owe the amount of these funds to us and we will retain from the funds we receive at ICS Settlement the amount we have advanced to you.

(b) With respect to any amount that you owe to us pursuant to Section 4.5(a):

(i) you grant us, and acknowledge that we have, a security interest in, and a lien on, your Deposit Accounts, related security entitlements, and other related interests and assets that we may hold for you as custodian and securities intermediary pursuant to the Custodial Agreement for the amount you owe to us,

(ii) if a Destination Institution fails before a Program Withdrawal is completed, we may retain the amount of the Program Withdrawal from the proceeds of your FDIC insurance claim to satisfy the amount you owe to us, and

(iii) to the extent the amount you owe to us is not satisfied from the interests and assets we are holding for you pursuant to the Custodial Agreement, or from the proceeds of any FDIC insurance claim, the amount remains owed by you to us and is payable on demand.

(c) If, in a separate agreement, you have granted us a security interest in your Deposit Accounts or in any security entitlements or other interests or assets relating to your Deposit Accounts as collateral for a loan to you or otherwise, we may decline to honor a request for a Program Withdrawal, or decline to honor a debit transaction in the Transaction Account that would trigger a Program Withdrawal or be funded by a Program Withdrawal, to the extent the Program Withdrawal would cause your Program Balance to fall below the loan amount or other amount that you have agreed to maintain in your Deposit Accounts or to which the security interest applies. If, in a separate agreement, you have granted us a security interest in the Transaction Account, we also may decline to honor debit transactions in the Transaction Account in accordance with the separate agreement.

#### 4.6. *Statements*

(a) For each ICS Custodial Account, we will provide you with periodic account statements that include your Program Balance as of the end of the statement period, the total interest you have earned on your Deposit Accounts during the period, the rate of return you have earned on the daily average closing principal balance in your Deposit Accounts for the period (which will be referred to as the "*Statement Period Yield*"), and your principal balance at each Destination Institution in which your funds are deposited as of the end of the period. You should retain these account statements.

(b) The account information available on the DCP as described in Section 4.1(b), and the periodic statements described in Section 4.6(a), will be the only evidence that you will receive of your ownership of the funds. You should retain the account statements for your records.

### 5. Daily Allocation and Depositor Control

#### 5.1. *Daily Allocation; Review and Consent*

(a) In addition to allocating your funds to each Destination Institution in an amount that is under the FDIC insurance limit, the ICS process for allocating Program Deposits, Program Withdrawals, and funds already on deposit reflects various considerations, including the need for certain Destination Institutions to receive deposits in amounts they have placed for their own customers and possible limits on the amounts a Relationship Institution is authorized to place or a Destination Institution has agreed to receive. Applicable deposit amounts may change from day to day. Accordingly, the allocation of funds takes place each Business Day.

(b) As a result of the daily allocation of funds in ICS and the allocation objectives outlined in Section 5.1(a), the set of Destination Institutions to which your funds on deposit are allocated on a Business Day, and the amount allocated to each Destination Institution, may differ from a previous Business Day's allocation. A different allocation may involve the movement of funds from one Destination Institution to another Destination Institution, even though you do not have a Program Deposit or a Program Withdrawal. Such movements of funds will not affect any Interest Rate.

(c) You exercise control over the allocation of your funds through direct contact with us and through the DCP. You are responsible for reviewing the important information we provide you through the DCP, including information regarding proposed allocations that we provide each Business Day. In addition, on request at any time, we will provide you with a list of all Destination Institutions.

(d) Although we will not allocate your funds to Destination Institutions that you exclude or reject as set forth below, you authorize and consent to the allocation of your funds at Destination Institutions that you approve, or do not exclude or reject, as set forth below.

#### 5.2. *Destination Institution Exclusions*

(a) You may enter the name of any depository institution on a list of exclusions from eligibility to receive your funds through ICS (the "*List of Exclusions*"). The initial List of Exclusions appears in Schedule 4 to this Agreement.

(b) An exclusion in Schedule 4 is effective when we have signed the Agreement. You may later add exclusions to your List of Exclusions, or subtract exclusions from your List of Exclusions, by contacting us in a manner we specify. If you add an exclusion in this manner, the new exclusion will be effective within one Business Day after the first Business Day on which we have received the notice from you.

(c) If, on a Business Day, you have outstanding deposits that we have placed for you using Promontory Network's CDARS service, and you have provided the same taxpayer identification number to us for

purposes of CDARS and ICS, our allocation of your funds at Destination Institutions for that Business Day in ICS:

(i) will not include allocation to a Destination Institution that is the subject of a then-effective designation by you as ineligible to receive your funds through CDARS, and

(ii) will not cause the balance in your Deposit Accounts at a Destination Institution, together with the outstanding deposits, if any, that we have placed for you at that Destination Institution through CDARS, to exceed the SMDIA.

### 5.3. Depositor Control Panel

(a) Promontory Network will assist us in providing the DCP to you. Schedule 3 to this Agreement provides access information for the DCP. When you first log in to the DCP using the login credentials described in Schedule 3, you will be required to change your DCP user name and password.

(b) You represent that you have a computer with Internet access, an e-mail address, the ability to download and print information from the DCP for your records, and the knowledge and experience to use an online tool for the DCP functionality. In addition, you acknowledge that you will be required to obtain and maintain all equipment and services necessary for access to the DCP.

### 5.4. Depositor Placement Review

(a) Each Business Day, your aggregate principal balance that will be in Deposit Accounts at Destination Institutions after that day's ICS Settlement will be provisionally allocated to Destination Institutions. The amount allocated will reflect your Program Balance as of the last ICS Settlement, plus any Program Deposit that will occur at the day's ICS Settlement, minus any Program Withdrawal that will occur at the day's ICS Settlement. The allocation may provide that previously-deposited funds will be removed from one or more Destination Institutions and deposited in one or more other Destination Institutions.

(b) After the provisional allocation occurs on a Business Day, but before it becomes final at the day's ICS Settlement, Depositor Placement Review ("DPR") will occur through the DCP. Even if a Destination Institution is not on your List of Exclusions, the final allocation that day will not allocate your funds to a Destination Institution at ICS Settlement if you reject it during DPR through the DCP. The initial DPR time period is set forth in Schedule 3. We may change the DPR period by posting advance notice of the change on the DCP. Your rejection of a Destination Institution will be effective only if you submit it, as specified in the DCP, before DPR ends.

(c) In DPR, you will see a list of Destination Institutions to which your funds are proposed to be allocated at ICS Settlement later that day (the "Proposed Placement List"), reflecting the provisional allocation of all your funds, including funds that will be moved from one Destination Institution to another Destination Institution. The Proposed Placement List will include the principal balance allocated to each Destination Institution. If you review the Proposed Placement List, and you click the approval button or you do not reject any of the Destination Institutions

on the list, you will be approving the proposed allocation and your funds will be allocated in accordance with the list.

(d) If you reject any of the Destination Institutions on the Proposed Placement List, you will be approving allocation to Destination Institutions on the list that you do not reject. After entering rejections, if sufficient time remains in DPR, you will have the opportunity to review a list of other Destination Institutions to which your funds could be allocated (the "Alternate Placement List"). If you click the approval button for the Alternate Placement List, or you do not reject any of the Destination Institutions on it, you will be approving the allocation of your funds to any of the listed Destination Institutions. If you reject any of the Destination Institutions on the Alternate Placement List, you will be approving allocation to listed Destination Institutions that you do not reject. Your funds may be allocated to any combination of Destination Institutions on the Proposed Placement List and the Alternate Placement List that you do not reject.

(e) If the provisional allocation on a Business Day would result in funds of yours currently at one Destination Institution being moved to another Destination Institution and you reject the other Destination Institution in DPR that Business Day, the funds will not necessarily remain at the first Destination Institution. The funds will be allocated to a Destination Institution that you do not reject or returned to the Transaction Account.

(f) A Destination Institution that you reject in DPR will also be added to your List of Exclusions, for purposes of future allocations, within one Business Day after the Business Day on which you submit the rejection.

(g) We do not guarantee that all your funds will be allocated to Destination Institutions on any particular day, even if they were allocated to Destination Institutions on a previous day. Exclusions of Destination Institutions, and rejections of Destination Institutions in DPR, may increase the chance that funds will not be allocated. If funds not yet transferred to your Deposit Accounts are not allocated to a Destination Institution on a Business Day, the funds will remain in the Transaction Account. If funds previously transferred to the Deposit Accounts are not allocated to a Destination Institution on a Business Day, the funds will be returned to the Transaction Account.

## 6. FDIC Insurance Considerations

### 6.1. Deposit Insurance Coverage

(a) You may obtain information about FDIC deposit insurance coverage by visiting the FDIC website at [www.fdic.gov](http://www.fdic.gov) or by contacting the FDIC by letter, email, or telephone. All your deposits at a Destination Institution in the same insurable capacity (whether you are acting directly or through an intermediary) will be aggregated for purposes of the SMDIA. You should add to your List of Exclusions any FDIC-insured depository institution at which you have other deposits in the same insurable capacity. Insurable capacities include, among others, individual accounts and joint accounts.

(b) Separate divisions within a corporate entity are not eligible for separate insurance coverage, and a separate TIN or other Depositor Identifier does not necessarily evidence or establish a separate

insurable capacity. It is your obligation to determine whether funds we are placing for you through ICS are maintained in separate insurable capacities. We will use the Depositor Identifier to identify you, and we will place your funds on the understanding that you are not depositing funds for placement under more than one Depositor Identifier in the same insurable capacity.

(c) The requirements for FDIC deposit insurance coverage of the deposits of the United States government, state, county, and municipal governments and their political subdivisions, the District of Columbia, and the Commonwealth of Puerto Rico are set forth in FDIC regulations. If you are a governmental unit, you are responsible for determining whether the requirements for deposit insurance have been met. We are not responsible for uninsured losses resulting from the placement of deposits that are not eligible for deposit insurance.

(d) The records maintained for us by BNY Mellon regarding ownership of the Deposit Accounts will be used to establish your eligibility for deposit insurance coverage. Accordingly, you must immediately report to us any changes in ownership information. We will inform BNY Mellon of any such changes so that it will have accurate information to provide to the FDIC if a Destination Institution fails and the FDIC pays its insured deposits by cash payment. The FDIC could also require you to provide additional documentation.

## 6.2. *Deposit Insurance Payments*

(a) In case of the liquidation of, or other closing or winding up of the affairs of, an insured depository institution, the FDIC is generally required by law to pay each insured deposit "as soon as possible," either by cash payment or by transferring the deposit to another insured depository institution. It is possible, however, that an insurance payment could be delayed. Neither we nor any other person or entity will be obligated to advance funds to you with respect to an insurance payment or to make any payment to you in satisfaction of a loss you might incur as a result of a delay in an insurance payment.

(b) If a Destination Institution at which your funds are deposited is closed and the FDIC does not transfer deposits that include your funds to another insured depository institution, but will make a deposit insurance cash payment, we will cause a deposit insurance claim for your funds to be filed with the FDIC, and we will credit to you the proceeds of the deposit insurance claim that we receive for your funds, subject to any valid security interest.

(c) If the FDIC makes a deposit insurance cash payment for a Deposit Account at a closed Destination Institution, the FDIC is required by law to pay the principal amount plus unpaid accrued interest to the date of the closing of the Destination Institution, as prescribed by law, subject to the SMDIA. No interest is earned on a Deposit Account after the Destination Institution closes.

(d) If the FDIC transfers the deposits of a closed Destination Institution to another insured depository institution, the acquiring institution may assume a Deposit Account. The acquiring institution may change the rate at which it pays interest on the assumed Deposit Account, subject to your right to withdraw the funds.

## 6.3. *Responsibility to Monitor Deposits; Available Information*

(a) You are responsible for monitoring the total amount of your funds at each Destination Institution in each insurable capacity to determine the extent of FDIC deposit insurance coverage available to you for deposits at that Destination Institution. You should confirm that each placement of your funds at Destination Institutions is consistent with your exclusions and rejections.

(b) Publicly available financial information concerning the Destination Institutions can be obtained by you at the website of the National Information Center of the Federal Reserve System at [www.ffiec.gov/nicpubweb/nicweb/nichome.aspx](http://www.ffiec.gov/nicpubweb/nicweb/nichome.aspx).

## 7. Additional Considerations

### 7.1. *Reciprocal and One-Way*

(a) We may participate in the ICS service through one or both of two different forms of the service. When we place your funds using ICS® Reciprocal, we will receive matching funds placed by other participating institutions for their customers and pay a fee to Promontory Network. When we place your funds using ICS® One-Way<sup>SM</sup>, we will not receive matching funds placed by other participating institutions for their customers or pay a fee to Promontory Network, but we and Promontory Network may receive fees from Destination Institutions in connection with funds placed. The fees may be different for different Destination Institutions.

(b) Interest on the Deposit Accounts will be earned at the Interest Rate, whether we use ICS Reciprocal or ICS One-Way in placing your funds. Available rates may be different depending on which form of ICS we use. In ICS Reciprocal, the fee we pay to Promontory Network may affect available rates. In ICS One-Way, fees paid by Destination Institutions to us or to Promontory Network, or cost-of-funds rates at which Destination Institutions may request funds, may affect available rates. We will not collect a fee from you for the placement of your funds through ICS.

(c) Schedule 4 includes two boxes relating to which form of the ICS service we may use for placement of your funds. If you check the first of these two boxes, we may use ICS Reciprocal, ICS One-Way, or both. We will not be obligated to inform you of the rates that might be available using the form we do not use, and we may select a form that provides greater benefits to us. If you check the second of these two boxes, we may use only ICS Reciprocal.

(d) If you are subject to restrictions on the placement of your funds at depository institutions, you are responsible for determining whether the placement of your funds through ICS, in accordance with Schedule 4, satisfies the restrictions.

### 7.2. *Compare Rates*

(a) We are not acting as your investment advisor, and we are not advising you about alternative investments. You are responsible for comparing the rates of return and other features of the Deposit Accounts to other available deposit accounts and other kinds of investments before choosing placement of your funds through ICS.

(b) The Interest Rate may be higher or lower than a cost-of-funds rate for a Destination Institution, an interest rate for another customer, or interest rates on comparable deposits available directly from us, from the Destination Institutions at which the Deposit Accounts are held, from other Destination Institutions, or from insured depository institutions that are not Destination Institutions.

(c) To the extent permitted by applicable law, Promontory Network may offer us and our employees non-cash incentives of insignificant monetary value, such as plaques, in connection with our placement of funds.

### 7.3. Allocation Considerations and Compensatory Payments

(a) The ICS allocation process is subject to applicable law and may be affected by our objectives, Promontory Network's objectives, or both, including administrative convenience, reduction of costs, and enhancement of profits.

(b) Participating institutions in the ICS service may make compensatory payments resulting in payments to other participating institutions, or receive compensatory payments resulting from payments by other participating institutions, reflecting the difference between an interest rate for a placing institution's customers and a rate at which the receiving institution would otherwise pay interest.

(c) If we were to become insolvent, our receiver or other successor in interest could transfer custody of the Deposit Accounts, and our rights and obligations under this Agreement, to a new custodian that participates in ICS. Alternatively, you could exercise your right to have the Deposit Accounts recorded on the records of the Destination Institutions in your name pursuant to Section 2.2(a).

### 7.4. Mutual Institution Voting and Subscription Rights

(a) Your funds may be placed in a Deposit Account at a Destination Institution that is in the mutual form of organization. Such a Deposit Account will be recorded on the records of the mutual institution in the name of the sub-custodian and not in your name. The sub-custodian will not attend or vote at any meeting of the depositor members of a mutual institution, or exercise any subscription rights in a mutual institution's mutual-to-stock conversion, either on its own behalf or on your behalf. You hereby waive any right you may have to attend or vote at any meeting of the depositor members, or to receive or exercise any subscription rights you may have in the event that the mutual institution converts from mutual to stock form, even if your funds were on deposit in a Deposit Account as of an applicable record date.

(b) If we receive from the sub-custodian notice of a meeting of depositor members of a mutual institution or other materials or information relating to a mutual institution's mutual-to-stock conversion, we may forward such notice, materials, or information to you. If you wish to receive such notice, materials, or information directly from the mutual institution, attend or vote at any meeting of the depositor members of the mutual institution, or receive subscription rights in the event the mutual institution converts from mutual to stock form, you must, before the applicable record date (a date that is usually at least one year in advance of the date the mutual institution's board of directors adopts a plan of conversion), dismiss us as your custodian

and have the Deposit Account recorded on the records of the mutual institution in your name pursuant to Section 2.2(a).

## 8. Other Provisions

### 8.1. Release and Use of Identifying Information

(a) You consent to our providing your name, TIN or other Depositor Identifier, and other information that specifically identifies you ("*Identifying Information*") to Promontory Network, BNY Mellon, and other parties providing services in connection with ICS (each a "*Service Provider*"). A Service Provider may use the Identifying Information in connection with its provision of such services. We or a Service Provider may also provide Identifying Information to a Destination Institution, but will do so only to the extent necessary to comply with a request by you or your agent or to comply with applicable law. In addition, we or a Service Provider may provide Identifying Information to the FDIC in connection with a deposit insurance claim.

(b) Except as provided in Section 8.1(a), we will not provide Identifying Information to any other party unless we determine that (i) we are required by applicable law to do so or (ii) we are permitted by applicable law to do so and have reasonable grounds to do so to protect our own legal or business interests or the legal or business interests of Promontory Network or BNY Mellon. Promontory Network may use and disclose any and all analyses, comparisons, indexes, or other data or information assembled, compiled, or otherwise developed by Promontory Network, including information regarding aggregated activity of ICS depositors, provided that it does not use or disclose any Identifying Information in a manner contrary to this Section 8.1.

### 8.2. Tax Reporting and Withholding

(a) To the extent required by applicable law, we will file with the U.S. Internal Revenue Service (the "*IRS*"), and furnish to you, IRS Form 1099-INT or its equivalent, or IRS Form 1042-S or its equivalent, as applicable, for interest paid on the Deposit Accounts by the Destination Institutions.

(b) If we are notified by the IRS that backup withholding is required for interest on the Deposit Accounts, or if we otherwise determine that we are required by law to collect such backup withholding, we will collect it and pay it to the IRS.

### 8.3. Liability and Dispute Resolution

(a) We will maintain, directly or through a Service Provider, appropriate records of our placements for you. We will not place your funds through ICS at a Destination Institution that is the subject of a then-effective exclusion on your List of Exclusions, at a Destination Institution that is the subject of a then-effective rejection by you, in an ICS placement at a Destination Institution under the Depositor Identifier in an amount that exceeds the SMDIA, or in a manner that violates Section 5.2(c).

(b) If all or part of your deposit at a Destination Institution is uninsured because of our failure to comply with the requirements set forth in Section 8.3(a), and if the Destination Institution fails and you do not otherwise recover the uninsured portion, we will reimburse you for



your documented loss of the uninsured portion that you do not otherwise recover.

(c) SUBJECT TO OUR REIMBURSEMENT OBLIGATION IN SECTION 8.3(b), AND EXCEPT AS MAY BE OTHERWISE REQUIRED BY APPLICABLE LAW, WE WILL NOT BE LIABLE, AND IN NO EVENT WILL PROMONTORY NETWORK OR BNY MELLON BE LIABLE, TO YOU OR TO ANY THIRD PARTY FOR ANY LOSS OR DAMAGES INCURRED OR ALLEGEDLY INCURRED IN CONNECTION WITH THIS AGREEMENT. WITHOUT LIMITING THE FOREGOING, WE, PROMONTORY NETWORK, AND BNY MELLON WILL NOT HAVE ANY LIABILITY TO YOU OR ANY THIRD PARTY FOR: (I) ANY LOSS ARISING OUT OF OR RELATING TO A CAUSE OVER WHICH WE DO NOT HAVE DIRECT CONTROL, INCLUDING THE FAILURE OF ELECTRONIC OR MECHANICAL EQUIPMENT OR COMMUNICATION LINES, TELEPHONE OR OTHER INTERCONNECT PROBLEMS, UNAUTHORIZED ACCESS, THEFT, OPERATOR ERRORS, GOVERNMENT RESTRICTIONS, OR FORCE MAJEURE (E.G., EARTHQUAKE, FLOOD, SEVERE OR EXTRAORDINARY WEATHER CONDITIONS, NATURAL DISASTERS OR OTHER ACT OF GOD, FIRE, ACTS OF WAR, TERRORIST ATTACKS, INSURRECTION, RIOT, STRIKES, LABOR DISPUTES OR SIMILAR PROBLEMS, ACCIDENT, ACTION OF GOVERNMENT, COMMUNICATIONS, SYSTEM OR POWER FAILURES, OR EQUIPMENT OR SOFTWARE MALFUNCTION), (II) DELAY IN ANY FDIC INSURANCE PAYMENT, (III) THE FINANCIAL CONDITION OF ANY DESTINATION INSTITUTION OR THE ACCURACY OF ANY FINANCIAL INFORMATION ABOUT ANY DESTINATION INSTITUTION, OR (IV) ANY SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS).

(d) ANY DISPUTES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT WILL BE GOVERNED BY THE DISPUTE RESOLUTION, ARBITRATION, CHOICE OF LAW, VENUE, WAIVER OF JURY TRIAL, AND COSTS RELATED TO DISPUTES PROVISIONS, IF ANY, CONTAINED IN THE CUSTODIAL AGREEMENT.

#### 8.4. *Miscellaneous*

(a) This Agreement constitutes the entire agreement between you and us relating to the placement of deposits through ICS and any other matter herein, supersedes prior agreements, understandings, negotiations, representations, and proposals, written or oral, relating to any matter herein, and may not be amended by any oral representation made or oral agreement reached after the execution of this Agreement.

(b) This Agreement and, unless otherwise provided in the Custodial Agreement, the Custodial Agreement may be executed in

counterparts, each of which shall be deemed to be an original, but such counterparts shall, together, constitute only one instrument. This Agreement and, unless otherwise provided in the Custodial Agreement, the Custodial Agreement will be valid, binding, and enforceable against you and us when executed by one of the following means that we accept: (i) an original manual signature, (ii) a DocuSign® eSignature or another electronic signature that we accept, or (iii) a faxed, scanned (including in a Portable Document Format or PDF document), or photocopied signature that we accept. Each DocuSign® eSignature, other electronic signature, or faxed, scanned, or photocopied signature that we accept shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original signature, and you and we waive any objection to the contrary.

(c) Either party may terminate this Agreement on written notice to the other, but the obligations of both parties will survive with respect to any funds deposited at the time of termination. In addition, the provisions of this Section 8 will survive termination.

(d) Appendix A and Schedules 1, 2, 3, and 4 (each a "Schedule") are incorporated into and made part of this Agreement. We may amend this Agreement, including Appendix A or any Schedule, prospectively by giving you written notice of the amendment at least fourteen (14) days before the effective date of the amendment, which will be specified in the amendment. We may provide written notice of the amendment by means of a posting on the DCP, an entry on your account statement, an email message, or a printed letter.

(e) Except as provided in Section 7.3(c), this Agreement may not be assigned, in whole or in part, by either party except by operation of law or as required by applicable law, and any purported assignment in violation hereof is void.

(f) The headings in this Agreement are not intended to describe, interpret, define, or limit the scope or intent of this Agreement or any clause hereof. Except as otherwise specified, a reference to a Section is a reference to a section of this Agreement. A reference to Appendix A is a reference to Appendix A to this Agreement, and a reference to a Schedule is a reference to a schedule to this Agreement. The term "applicable law" refers to all applicable statutes, rules, regulations, and judicial orders, whether federal, state, or local. The term "including" does not imply exclusion. The term "month" refers to the calendar month, and the term "year" refers to the calendar year.

The remainder of this page is intentionally left blank.

By signing below, you (as Depositor) and we (as Relationship Institution) agree to be legally bound by this ICS Deposit Placement Agreement, effective when you and we have signed it. If the Transaction Account is a joint account, each owner of the Transaction Account must sign this Agreement, and funds in your Deposit Accounts will be held in the same joint ownership capacity.

RELATIONSHIP INSTITUTION

Institution name: U.S. Bank National Association

Signature: \_\_\_\_\_

Name and title of authorized signatory:  
\_\_\_\_\_

Date signed: \_\_\_\_\_

SOLE OR PRIMARY DEPOSITOR

Depositor name: \_\_\_\_\_

Signature: \_\_\_\_\_

Name and title of authorized signatory (if not individual):  
\_\_\_\_\_

Depositor TIN or approved alternate identifier (and type):  
\_\_\_\_\_

Email address: \_\_\_\_\_@\_\_\_\_\_

Date signed: \_\_\_\_\_

ADDITIONAL DEPOSITOR (FOR JOINT ACCOUNT)

Depositor name: \_\_\_\_\_

Signature: \_\_\_\_\_

Depositor TIN or approved alternate identifier (and type):  
\_\_\_\_\_

Email address: \_\_\_\_\_@\_\_\_\_\_

Date signed: \_\_\_\_\_

ADDITIONAL DEPOSITOR (FOR JOINT ACCOUNT)

Depositor name: \_\_\_\_\_

Signature: \_\_\_\_\_

Depositor TIN or approved alternate identifier (and type):  
\_\_\_\_\_

Email address: \_\_\_\_\_@\_\_\_\_\_

Date signed: \_\_\_\_\_

(Add signature lines as need.)



## APPENDIX A TO ICS DEPOSIT PLACEMENT AGREEMENT

### Deposit Accounts

#### 1. Account Type

(a) Funds that we place for you through ICS at a Destination Institution will be placed in a Deposit Account that is a money market deposit account ("MMDA").

(b) In accordance with federal regulations, each Destination Institution reserves the right to require written notice of an intended withdrawal from an MMDA not less than seven days before the withdrawal is made. The Destination Institutions have indicated that they do not currently intend to exercise this right.

#### 2. Program Withdrawal Limit

(a) Program Withdrawals are limited as follows:

(i) You are permitted up to six Program Withdrawals per month for an ICS Custodial Account. To remain within this limit, you should satisfy yourself that the Triggering Events for Program Deposits and Program Withdrawals under Schedule 1 are appropriate in light of your anticipated day-to-day activity in any Root Account associated with the ICS Custodial Account.

(ii) In addition to applying the Program Withdrawal limit, we will allocate funds so that, in accordance with federal regulations, your funds are not withdrawn from an MMDA at any one Destination Institution more than six times in a month.

(iii) Although we may permit you to have more than one ICS Custodial Account for your business purposes, you may not have more than one ICS Custodial Account for the purpose of avoiding the effects of the Program Withdrawal limit.

(iv) If Triggering Events on the same Business Day result in both a Same-Day Program Withdrawal, on that Business Day, and a Regular Program Withdrawal, on the next Business Day, the Triggering Events will have resulted in your use of two of your six Program Withdrawals for the month.

(v) If the Triggering Event for a Regular Program Withdrawal occurs on the last Business Day of a month, the Regular Program Withdrawal will occur on the first Business Day of the following month for purposes of the Program Withdrawal limit that applies in connection with the ICS savings option.

(b) The consequences of exceeding the limit of six Program Withdrawals are as follows:

(i) So long as you have not exceeded the limit of six Program Withdrawals in any two previous months:

(A) you may use all six permitted Program Withdrawals in a month, and

(B) if an excess (seventh) Program Withdrawal occurs before the last Business Day of the month, we will transfer all the remaining funds in your MMDAs at Destination Institutions to the Root Account.

(ii) If you have exceeded the limit of six Program Withdrawals in any two previous months and a sixth Program Withdrawal occurs in a month, (A) we will transfer all the remaining funds in your MMDAs at Destination Institutions to the Root Account, and (B) the ICS Custodial Account will be ineligible for Program Deposits for the remainder of the month and for the next six full months.

(c) If all the funds in MMDAs for an ICS Custodial Account have been returned to the Root Account pursuant to Section 2(b) of this Appendix A, no Program Deposits will occur before the end of the month. If, in addition, the ICS Custodial Account has become ineligible for Program Deposits, no Program Deposits for the ICS Custodial Account will occur during the period of ineligibility.

SCHEDULE 1 TO ICS DEPOSIT PLACEMENT AGREEMENT

Program Deposits and Program Withdrawals

1. Specified Terms

The Same-Day Deposit Cutoff Time and Same-Day Withdrawal Cutoff Time are as follows:

<input type="text" value="01:00"/>	<input type="checkbox"/> AM	<input checked="" type="checkbox"/> PM	<input type="checkbox"/> Eastern	<input checked="" type="checkbox"/> Central	<input type="checkbox"/> Mountain	<input type="checkbox"/> Pacific
(insert time)	(check AM or PM)		(check time zone)			
Daylight Saving Time applies when nationally in effect unless checked here <input type="checkbox"/>						

2. Program Deposits

(a) The Triggering Event for a Regular Program Deposit is a Regular Program Deposit request by you that we receive and accept. Subject to the other terms and conditions of this Agreement, if such a Triggering Event occurs, we will transfer the requested amount to your Deposit Accounts at ICS Settlement on the next Business Day.

(b) The Triggering Event for a Same-Day Program Deposit is a Same-Day Program Deposit request by you that we receive and accept before the Same-Day Deposit Cutoff Time on a Business Day. Subject to the other terms and conditions of this Agreement, if such a Triggering Event occurs, we will transfer the requested amount to your Deposit Accounts at ICS Settlement later the same Business Day.

(c) If a Triggering Event for a Program Deposit occurs, we may debit the Transaction Account and credit a holding account before the transfer of funds to your Deposit Accounts occurs at ICS Settlement.

3. Program Withdrawals

(a) The Triggering Event for a Regular Program Withdrawal is a Regular Program Withdrawal request by you that we receive and accept. Subject to the other terms and conditions of this Agreement, if such a Triggering Event occurs, we will transfer the requested amount from your Deposit Accounts at ICS Settlement on the next Business Day.

(b) The Triggering Event for a Same-Day Program Withdrawal is a Same-Day Program Withdrawal request by you that we receive and accept before the Same-Day Withdrawal Cutoff Time on a Business Day. Subject to the other terms and conditions of this Agreement, if such a Triggering Event occurs, we will transfer the requested amount from your Deposit Accounts at ICS Settlement later the same Business Day.

(c) Subject to the other terms and conditions of this Agreement, including Section 4.5, and subject to the rules and cutoff times that otherwise apply to Transaction Accounts with us, after we have received and accepted your Program Withdrawal request, we may in our discretion advance funds to you in anticipation of a Program Withdrawal to honor your debit transactions in the Transaction Account so long as the sum of your funds in the Transaction Account and your funds in your Deposit Accounts of the applicable type, after taking into account any pending Program Deposits and any pending Program Withdrawals, is not less than zero. We may do so even if the amount of the debit transaction exceeds the Transaction Account balance. As set forth in Section 4.5, you will owe us any amounts that we credit as advances in anticipation of a Program Deposit and we will retain those amounts from the funds we receive at ICS Settlement.

(d) If a Triggering Event for a Program Withdrawal occurs, we may credit the Transaction Account and debit a holding account before the transfer of funds from your Deposit Accounts occurs at ICS Settlement.

SCHEDULE 2 TO ICS DEPOSIT PLACEMENT AGREEMENT

Transaction Account Deposits That Exceed the SMDIA

Although we will not place your funds through ICS at any one Destination Institution in an amount that exceeds the FDIC standard maximum deposit insurance amount ("*SMDIA*") of \$250,000, deposits in the Transaction Account, separately or together with your other deposits with us in the same insurable capacity, may exceed the SMDIA. For example, when funds in the Transaction Account are awaiting placement through ICS, they will be subject to a single SMDIA until they are placed through ICS and become deposits at Destination Institutions after ICS Settlement. If you cannot accept the risk of having Transaction Account deposits that exceed the SMDIA in these or other circumstances, it will be your responsibility to make arrangements with us to have the deposits collateralized, protected by a properly-executed repurchase sweep arrangement, or otherwise adequately protected, in a manner consistent with applicable law. You should consult your legal advisor to determine whether a particular collateralization arrangement is consistent with applicable law.

SCHEDULE 3 TO ICS DEPOSIT PLACEMENT AGREEMENT

Depositor Control Panel and Depositor Placement Review

1. Depositor Control Panel

The address of the Depositor Control Panel is <https://www.depositorcontrol.com>.

Your initial login credentials for the Depositor Control Panel will be as follows:

User name:	The account number for the Transaction Account
Password:	The last four characters of the Depositor Identifier entered for the sole or primary Depositor on the signature page of this Agreement

You will also be required to enter the email address you have provided to us.

We will separately advise you of any additional steps required of you by additional security controls.

2. Depositor Placement Review

The DPR period each Business Day will be as follows:

3:00 P.M. to 3:15 P.M. Eastern time Daylight Saving Time applies when nationally in effect
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We may change the DPR period by posting notice on the DCP in advance of the change.

SCHEDULE 4 TO ICS DEPOSIT PLACEMENT AGREEMENT

Service Form and Exclusions

1. Reciprocal and One-Way

If you check this box, we may use ICS Reciprocal, ICS One-Way, or both for our placement of your funds through ICS.

If you check this box, we will use only ICS Reciprocal for our placement of your funds through ICS.

2. Exclusions

Each depository institution entered on your List of Exclusions below will be ineligible, as of the date you and we have signed the Agreement, to receive your funds through ICS as a Destination Institution. You may subsequently change your List of Exclusions as provided in the Agreement.

The List of Exclusions should include the city and state of the institution's main office (rather than the city and state of a branch location). The List of Exclusions may also include the institution's FDIC certificate number or transit routing number. Attach additional pages as necessary. If you do not list any exclusions, you should enter "none" under Name of Institution on the first line (but your signature after a blank list will constitute your acknowledgment that you have not listed any exclusions whether or not you enter "none").

3. List of Exclusions

Your List of Exclusions is as follows:

Name of Institution	City and State	FDIC Certificate Number or Routing Number

Signature of sole or primary Depositor: \_\_\_\_\_

# Custodial Agreement

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You, the undersigned, enter into this Custodial Agreement (this "*Agreement*") with U.S. Bank National Association ("we" or "us").

1. Pursuant to this Agreement, you authorize us (as your "*Relationship Institution*") to hold and act as your custodian with respect to all deposit accounts, including all time deposits, money market deposit accounts, and demand deposit accounts, issued or established at other participating institutions pursuant to the CDARS Deposit Placement Agreement or the ICS Deposit Placement Agreement for funds of yours placed through CDARS®, the Certificate of Deposit Account Registry Service®, or ICS®, the Insured Cash Sweep® service (collectively, the "*Deposit Accounts*") and all your security entitlements and other related interests and assets with respect to the Deposit Accounts (collectively, the "*Related Entitlements*"). The custodial account in which we will hold the Deposit Accounts and Related Entitlements (the "*Custodial Account*") comprises all the CDARS and ICS custodial accounts that we maintain for you.

2. As your custodian, we may (i) cause the Deposit Accounts to be titled in our name or in the name of our sub-custodian, (ii) collect for your account all interest and other payments of income or principal pertaining to the Deposit Accounts, (iii) endorse on your behalf any check or other instrument received for your account that requires endorsement, (iv) deposit your funds in, or withdraw your funds from, the Deposit Accounts in accordance with your instructions, (v) deliver or transfer funds from another account with us to the Deposit Accounts or deliver or transfer funds from the Deposit Accounts to another account with us in accordance with your instructions, (vi) for Deposit Accounts that are time deposits, surrender for payment for your account maturing CD and those for which early withdrawal is requested, (vii) execute and deliver or file on your behalf all appropriate receipts and releases and other instruments, including whatever certificates may be required from custodians or may be necessary to obtain exemption from taxes and to name you when required for the purpose of the instrument, and (viii) take such other actions as are customary or necessary to effectuate the purposes of this Agreement.

3. For purposes of Article 8 of the Uniform Commercial Code as included in applicable state law (the "*UCC*"), we will act as your securities intermediary for, and will treat as financial assets, any Deposit Accounts and Related Entitlements that we hold for you pursuant to this Agreement. The Custodial Account will constitute a securities account, as defined in the UCC.

4. We may comply with any writ of attachment, execution, garnishment, tax levy, restraining order, subpoena, warrant, or other legal process that we believe (correctly or otherwise) to be valid. We may notify you of such process by telephone, electronically, or in writing. If we are not fully reimbursed for records research, imaging, photocopying, and handling costs by the party that served the process, we may charge such costs to your account, in addition to any minimum fee we charge for complying with legal processes.

5. We may honor any legal process that is served personally, by mail, or by electronic mail or facsimile transmission at any of our offices or an office of our agent (including locations other than where the funds, records, or property sought is held), even if the law requires personal delivery at the office where your account or records are maintained.

6. We will have no liability to you for any good-faith act or omission by us in connection with this Agreement. You agree to indemnify us and our sub-custodian, and to hold us and our sub-custodian harmless from, all expenses (including counsel fees), liabilities, and claims arising out of any good-faith act or omission by us in connection with this Agreement or compliance with any legal process relating to the Custodial Account that we believe (correctly or otherwise) to be valid. You agree to pay any service charges that we impose on the Custodial Account.

7. You may be an individual in an individual capacity, more than one individual in a joint capacity, or a trust, partnership, corporation, or other legal entity. We may accept instructions on your behalf from any individual who signs this Agreement as or on behalf of a Depositor and from any of the following individuals:

Name	Title or Legal Capacity

By signing below, you (as Depositor) and we (as Relationship Institution) agree to be legally bound by this Custodial Agreement, effective when you and we have signed it.

RELATIONSHIP INSTITUTION

Institution name: U.S. Bank National Association

Signature: \_\_\_\_\_

Name and title of authorized signatory:  
\_\_\_\_\_

Date signed: \_\_\_\_\_

SOLE OR PRIMARY DEPOSITOR

Depositor name: \_\_\_\_\_

Signature: \_\_\_\_\_

Name and title of authorized signatory (if not individual):  
\_\_\_\_\_

Depositor TIN or approved alternate identifier (and type):  
\_\_\_\_\_

Email address: \_\_\_\_\_@\_\_\_\_\_

Date signed: \_\_\_\_\_

ADDITIONAL DEPOSITOR (FOR JOINT ACCOUNT)

Depositor name: \_\_\_\_\_

Signature: \_\_\_\_\_

Depositor TIN or approved alternate identifier (and type):  
\_\_\_\_\_

Email address: \_\_\_\_\_@\_\_\_\_\_

Date signed: \_\_\_\_\_

ADDITIONAL DEPOSITOR (FOR JOINT ACCOUNT)

Depositor name: \_\_\_\_\_

Signature: \_\_\_\_\_

Depositor TIN or approved alternate identifier (and type):  
\_\_\_\_\_

Email address: \_\_\_\_\_@\_\_\_\_\_

Date signed: \_\_\_\_\_

(Add signature lines as needed.)

## Insured Cash Sweep (ICS) Customer Information Form<sup>1</sup>

Primary Customer Name:	
Secondary Customer Name (If applicable):	
Legal Account Title:	
Contact Name (for non-personal accounts):	
If your institution also offers CDARS <sup>®</sup> , are you an existing CDARS customer? <input type="checkbox"/> Yes <input type="checkbox"/> No <small>(Note: CDARS and ICS Customer Profiles are linked. Any changes made to the Customer Profile may impact both services.)</small>	
Customer Class: <input type="checkbox"/> Individual / Joint / Revocable Trust <input type="checkbox"/> Estate / Irrevocable Trust <input type="checkbox"/> Corporation / LLC <input type="checkbox"/> Partnership / Limited Liability Partnership <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Nonprofit Institution <input type="checkbox"/> Clubs and Associations <input type="checkbox"/> Public Entity <input type="checkbox"/> Foreign Government <input type="checkbox"/> Savings Bank / Credit Union <input type="checkbox"/> Other Bank / Financial Institution	
Primary Mailing Address:	
City / State / Zip:	
Duplicate Statement Address (If applicable):	
City / State / Zip:	
Telephone Number:	U.S. Citizen: <input type="checkbox"/> Yes <input type="checkbox"/> No
Email Address (Required):	If No, Country of Citizenship: _____
Primary Owner Tax ID Number:	Type: <input type="checkbox"/> SSN <input type="checkbox"/> TIN <input type="checkbox"/> Non-Resident With SSN / TIN <input type="checkbox"/> Non-Resident Without SSN / TIN <input type="checkbox"/> Individual Tax ID Number
Secondary Owner Tax ID Number (If applicable):	Type: <input type="checkbox"/> SSN <input type="checkbox"/> TIN <input type="checkbox"/> Non-Resident With SSN / TIN <input type="checkbox"/> Non-Resident Without SSN / TIN <input type="checkbox"/> Individual Tax ID Number
Primary Owner Other ID (Required if no Tax ID)*: <small>(If you do not have a U.S. Tax ID, populate a checkbox to the right.)</small>	Other ID Type: <input type="checkbox"/> Drivers License <input type="checkbox"/> Passport <input type="checkbox"/> Other
Secondary Owner Other ID (Required if no Tax ID)*: <small>(If you do not have a U.S. Tax ID, populate a checkbox to the right.)</small>	Other ID Type: <input type="checkbox"/> Drivers License <input type="checkbox"/> Passport <input type="checkbox"/> Other
<small>* If you do not have a U.S. Tax ID you must use this same alternate ID for all CDARS and ICS transactions with all institutions. If you subsequently obtain a U.S. Tax ID, you must promptly inform us and other institutions so that your correct information can be recorded for tax reporting, ICS document tracking, and FDIC insurance purposes.</small>	
Notes:	



**Customer Exclusions:**

There is no need to exclude institutions that currently hold your funds through the CDARS or ICS service. Providing the same Tax ID for each of your CDARS or ICS accounts will enable the location of your current placement(s) to be recognized. These institutions will automatically be excluded from future placements.

Bank:	TRN:	City, State:

**ICS Account Setup:**

Institution Transaction Account No.:	ICS Account Rate: Program Name: ICS Rate Description: Custom Rate (Annual Interest Rate and / or APY):
Will This Be an ICS Account for an IRA? (Personal Accounts Only)  <input type="checkbox"/> Yes <input type="checkbox"/> No	
Notes:	

**To Be Completed By Institution (If applicable)**

<u>Institution ICS Sweep Transaction Account Limits</u> Account Minimum Amount: 250,000 Account Maximum Amount: 100,000,000 Sweep Transaction Minimum Amount: N/A
--

**Additional Information:**

<sup>1</sup>Funds may be submitted for placement only after entering into an ICS Deposit Placement Agreement with us.

**Signatures:**

\_\_\_\_\_   
Customer Signature

\_\_\_\_\_   
Date

\_\_\_\_\_   
Institution Signature

\_\_\_\_\_   
Date

**Insured Cash Sweep (ICS)  
Customer Transaction Request Form**

Primary Customer Name:	Secondary Customer Name (if applicable):
Legal Account Title:	
Contact Name (for non-personal accounts):	Institution Transaction (DDA, MM, Savings) Acct No.:
ICS Transaction Amount: ICS Rate:	ICS Transaction Type: <input type="checkbox"/> Deposit <input type="checkbox"/> Withdrawal <input type="checkbox"/> Liquidation
Notes:	

You may use up to **SIX** Program Withdrawals per calendar month. To remain within this limit, you should satisfy yourself that the Triggering Events for Program Deposits and Program Withdrawals are appropriate in light of your anticipated day-to-day activity in the Transaction Account. A Program Withdrawal occurs on the business day after the business day on which the Triggering Event occurs.

**If you have any updates to exclusions, please contact your Money Center representative or call 866-213-2022.**

**Signatures:**

\_\_\_\_\_ Date

\_\_\_\_\_ Date

RESOLUTION NO. 19-30

**A RESOLUTION APPROVING A QUOTE FROM FLOOR COVERINGS INTERNATIONAL FOR CARPET.**

---

WHEREAS, the City of Arnold solicited three quotes for new carpeting on the 2<sup>nd</sup> floor of City Hall; and

WHEREAS, the quote from Floor Coverings International was the lowest and best;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARNOLD, MISSOURI:

Section 1. The City Council hereby approves the attached quote from Floor Coverings International for carpet in the amount of \$12,210.57.

---

Presiding Officer of the City Council

---

Mayor Ron Counts

ATTEST:

---

City Clerk Tammi Casey

Date: \_\_\_\_\_



# Multiplicity

## broadloom specifications

<b>style name</b>	multiplicity
<b>style number</b>	54593
<b>construction</b>	level loop
<b>fiber</b>	solution q® nylon
<b>dye method</b>	solution dyed
	<b>english</b>
	<b>metric</b>
-----	
<b>pattern repeat</b>	none
<b>tufted weight</b>	20.0
<b>gauge</b>	1/10
<b>stitches per inch</b>	8.5
<b>finished pile thickness</b>	0.124
<b>total thickness</b>	0.267
<b>average density</b>	5806
<b>product size</b>	12 foot
<b>primary backing</b>	synthetic
<b>secondary backing</b>	classicbac®
<b>protective treatments</b>	ssp® shaw soil protection

## testing

<b>radiant panel</b>	class I
<b>nbs smoke</b>	less than 450
<b>electrostatic propensity</b>	less than 3.5 kv

## warranties

ten year commercial limited

## installation method

direct glue

## coordinating products

by Room

Payroll	1,412.98
Admin	1,418.54
ENTIRE AREA	12,210.57
Lobby	7,251.81
Hall	1,203.13
Pin Dir	2,430.47
Conference	1,417.10
ACC	
<hr/>	
	15,134.03
<hr/>	
	2,923.46 D.I.F.

Specifications are subject to nominal manufacturing variances. Material supply and/or manufacturing processes may necessitate specification changes without notice. This carpet is an exclusive design and may not be duplicated in any manner. Use of this design in the creation of another carpet design is also strictly prohibited. Visit [phillyqueencommercial.com/Html/PerformanceTesting](http://phillyqueencommercial.com/Html/PerformanceTesting) for more information.

MOBGDBPCI Glue Down Berber or Pattern Carpet Installation

MOBINB Remove Existing and install new cove base labor

MOBRCP Removal of Carpet

54593 MULTIPLICITY

ACCC0003 Carpet Adhesive SQYD

ACCC0085 Cove Base

Payment details

Total price	Down payment	Balance amount
\$ 12210.57	6105.0	6105.57

Entire area

Add notes

Signature

Apr 02, 2019

Authorized signature

Customer signature

MOBGDBPCI Glue Down Berber or Pattern Carpet Installation

MOBINB Remove Existing and install new cove base labor

MOBRCP Removal of Carpet

54593 MULTIPLICITY

ACCC0085 Cove Base

ACCC0003 Carpet Adhesive SQYD

Payment details

Total price	Down payment	Balance amount
\$ 1412.98	706.0	706.98

Add notes

Payroll

Signature

Apr 02, 2019

Authorized signature

Customer signature

MOBGDBPCI Glue Down Berber or Pattern Carpet Installation

MOBINB Remove Existing and install new cove base labor

MOBRCP Removal of Carpet

54593 MULTIPLICITY

ACCC0085 Cove Base

ACCC0003 Carpet Adhesive SQYD

Payment details

Total price	Down payment	Balance amount
\$ 1418.54	709.0	709.54

City Admin

Add notes

Signature

Apr 02, 2019

Authorized signature

Customer signature

MOBGDCI Glue Down Carpet Installation

MOBINB Remove Existing and install new cove base labor

MOBRCP Removal of Carpet

54593 MULTIPLICITY

ACCC0085 Cove Base

ACCC0003 Carpet Adhesive SQYD

Payment details

Total price	Down payment	Balance amount
\$ 7251.81	3625.0	3626.81

Lobby & Hall

Add notes

Signature

Apr 02, 2019

Authorized signature

Customer signature



MOBGDBPCI Glue Down Berber or Pattern Carpet Installation

MOBINB Remove Existing and Install new cove base labor

MOBRCP Removal of Carpet

54593 MULTIPLICITY

ACCC0085 Cove Base

ACCC0003 Carpet Adhesive SQYD

Payment details

Total price	Down payment	Balance amount
\$ 1203.13	600.0	603.13

Fin Dir.

Add notes

Signature

Apr 02, 2019

Authorized signature

Customer signature

MOBGDBPCI Glue Down Berber or Pattern Carpet Installation

MOBINB Remove Existing and install new cove base labor

MOBRCP Removal of Carpet

54593 MULTIPLICITY

ACCC0003 Carpet Adhesive SQYD

ACCC0085 Cove Base

Payment details

Total price	Down payment	Balance amount
\$ 2430.47	1215.0	1215.47

conference

Add notes

Signature

Apr 02, 2019

Authorized signature

Customer signature

MOBGDBPCI Glue Down Berber or Pattern Carpet Installation

MOBCOCC Courage Carpet Cushion

MOBINB Remove Existing and install new cove base labor

MOBRCP Removal of Carpet

54593 MULTIPLICITY

ACCC0085 Cove Base

ACCC0003 Carpet Adhesive SQYD

Payment details

Total price	Down payment	Balance amount
\$ 1417.1	708.0	709.1

Accountant

Add notes

Signature

Apr 02, 2019

Authorized signature

Customer signature