

**BILL NO. 15-22**

**ORDINANCE NO. 4.313**

**AN ORDINANCE AUTHORIZING THE CITY OF GLADSTONE, MISSOURI, TO ISSUE ITS TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BONDS (NORTHLAND INNOVATION CENTER PROJECT), SERIES 2015, IN A PRINCIPAL AMOUNT NOT TO EXCEED \$17,700,000 TO FINANCE THE COSTS OF A PROJECT FOR GLADSTONE CAP LLC, A DELAWARE LIMITED LIABILITY COMPANY, CONSISTING OF THE CONSTRUCTION AND IMPROVEMENT OF A COMMERCIAL FACILITY; RATIFYING THE PREVIOUS APPROVAL OF A PLAN FOR INDUSTRIAL DEVELOPMENT FOR THE PROJECT; AUTHORIZING AND APPROVING CERTAIN DOCUMENTS; AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF THE BONDS.**

**WHEREAS**, the City of Gladstone, Missouri (the “City”) is a third class city and political subdivision of the State of Missouri, duly created, organized and existing under and by virtue of the Constitution and laws of the State of Missouri; and

**WHEREAS**, the City is authorized under the provisions of Article VI, Section 27 of the Missouri Constitution, as amended, and Sections 100.010 to 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) for the purposes set forth 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 shall deem advisable; and

**WHEREAS**, the City, in accordance with Section 100.050 of the Act, has previously prepared and approved a plan for industrial development (the “Plan”) for Gladstone CAP LLC, a Delaware limited liability company (together with any successors or assigns, the “Company”), with respect to a project consisting of the construction and improvement of a commercial facility (the “Project”); and

**WHEREAS**, notice of the Project was given to the taxing jurisdictions in accordance with Section 100.059.1 of the Act and the City has previously approved the Plan; and

**WHEREAS**, the City desires to finance the costs of the Project out of the proceeds of industrial development revenue bonds to be issued under the Act (the “Bonds”); and

**WHEREAS**, the City has and does hereby find and determine that it is desirable for the economic development of the City and within the public purposes of the Act that the City proceed with the issuance of the Bonds for the purpose described above; and



**WHEREAS**, because the Bonds will be payable solely out of payments, revenues and receipts derived by the City from the lease of the Project to the Company and from no other source, the City has determined that it is appropriate that the Bonds be sold to the Company pursuant to Section 108.170 of Revised Statutes of Missouri, as amended, which provides that notwithstanding any other provisions of any law or any charter provision to the contrary, industrial development revenue bonds may be sold at private sale.

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

**Section 1. Public Purpose.** The Council hereby finds and determines that the Project will promote the economic welfare and the development of the City, and the issuance of the Bonds by the City to pay the costs of the Project will be in furtherance of the public purposes set forth in the Act.

**Section 2. Ratification of Approval of Plan.** The Council hereby ratifies its previous approval of the Plan.

**Section 3. Authorization and Sale of the Bonds.** The City is hereby authorized to issue and sell its Taxable Industrial Development Revenue Bonds (Northland Innovation Center Project), Series 2015, in an aggregate principal amount not to exceed \$17,700,000, for the purpose of providing funds to pay the costs of the Project. The Bonds shall be issued and secured pursuant to the herein authorized Trust Indenture and shall bear such date, shall mature at such time, shall be in such denominations, shall bear interest at such rate (not to exceed 5.00%), shall be in such form, shall be subject to redemption, shall have such other terms and provisions, shall be issued, executed and delivered in such manner and shall be subject to such provisions, covenants and agreements as are specified in the Trust Indenture upon the execution thereof, and the signatures of the officers of the City executing the Trust Indenture shall constitute conclusive evidence of their approval and the City's approval thereof. The sale of the Bonds to the Company at private sale pursuant to the provisions of Section 108.170 of Revised Statutes of Missouri, as amended, at the interest rate and upon the terms set forth in the Trust Indenture is hereby approved.

**Section 4. Limited Obligations.** The Bonds and the interest thereon shall be limited obligations of the City payable solely out of the payments, revenues and receipts derived by the City from the herein authorized Lease Agreement, and such payments, revenues and receipts shall be pledged and assigned to the Trustee as security for the payment of the Bonds as provided in the Trust Indenture. The Bonds and interest thereon shall not be deemed to constitute a debt or liability of the City within the meaning of any constitutional provision, statutory limitation or City code provision and shall not constitute a pledge of the full faith and credit of the City. The issuance of the Bonds shall not, directly, indirectly or contingently, obligate the City to levy any form of taxation therefore or to make any appropriation for their payment.

**Section 5. Approval and Authorization of Documents.** The following documents (the "City Documents") are hereby approved in substantially the forms presented to the Council at this meeting (copies of which documents shall be filed in the records of the City), and the City is hereby authorized to execute and deliver the City Documents with such changes therein as



shall be approved by the officials of the City executing such documents, such officials' signatures thereon being conclusive evidence of their approval thereof:

(a) Trust Indenture dated as of the date set forth therein (the "Trust Indenture"), between the City and First Bank of Missouri, Gladstone, Missouri (the "Trustee"), pursuant to which the Bonds shall be issued and the City shall pledge and assign 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 Trust Indenture;

(b) Lease Agreement dated as of the date set forth therein (the "Lease Agreement"), between the City and the Company, under which the City will provide funds for the construction and improvement of the Project and lease the Project to the Company pursuant to the terms and conditions in the Lease Agreement, in consideration of rental payments by the Company which will be sufficient to pay the principal of, premium, if any, and interest on the Bonds;

(c) Bond Purchase Agreement dated as of the date set forth therein, between the City and the Company, pursuant to which the Company agrees to purchase the Bonds;

(d) Performance Agreement dated as of the date set forth therein, between the City and the Company, pursuant to which the City will grant the Company certain rights with respect to the abatement of *ad valorem* real property taxes on the Project in consideration for the Company's agreement to operate the Project as a commercial facility;

(e) Parking Lease dated the date set forth therein, between the City and the Company;

(f) Access Easement dated the date set forth therein, between the City and the Company; and

(g) Consent and Agreement dated the date set forth therein, between the City, BMO Harris Bank N.A. and the Company.

**Section 6. Execution of Documents.** The City is hereby authorized to enter into and the Mayor, City Manager, Director of Finance, City Attorney and City Clerk are hereby authorized and directed to execute and deliver, for and on behalf of and as the act and deed of the City, the City Documents and the Bonds 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. Severability.** The sections, paragraphs, sentences, clauses and phrases of this Ordinance shall be severable. In the event that any such section, paragraph, sentence, clause or phrase of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining portions of this Ordinance are valid, unless the court finds the valid portions of the Ordinance are so essential to and inseparably connected with and dependent upon the void portion that it cannot be presumed that the City Council has enacted the valid portions without



the void ones, or unless the court finds that the valid portions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

**Section 8. Governing Law.** This Ordinance shall be governed exclusively by and construed in accordance with the applicable laws of the State of Missouri.

**Section 9. Effective Date.** This Ordinance shall take effect and be in full force from and after its passage by the City Council.

**INTRODUCED, PASSED, SIGNED AND MADE EFFECTIVE BY THE COUNCIL OF THE CITY OF GLADSTONE, MISSOURI, THIS 8<sup>th</sup> DAY OF JUNE, 2015.**



\_\_\_\_\_  
Mayor Bill Garnos

(SEAL)

ATTEST:



\_\_\_\_\_  
Ruth E. Bocchino, City Clerk

First Reading: June 8, 2015

Second Reading: June 8, 2015





**All-America City**

**Gladstone**



**2008**

DATE: JUNE 4, 2015

TO: KIRK DAVIS, CITY MANAGER

FROM: SCOTT WINGERSON, ASSISTANT CITY MANAGER *Scott*

RE: INDUSTRIAL DEVELOPMENT REVENUE BONDS DOCUMENTS  
NORTHLAND INNOVATION CENTER

Please find enclosed documents related to the issuance of Industrial Development Revenue Bonds in connection with the Northland Innovation Center project. The draft ordinance provides authority for the City to enter into a variety of agreements including:

- Trust Indenture
- Lease Agreement
- Bond Purchase Agreement
- Performance Agreement
- Parking Lease
- Access Easement
- Consent and Agreement

Special thanks to the BMO Harris Team, CBC Team, and the City Team for working together and making the Northland Innovation Center a reality. If you should have any questions please do not hesitate to contact me.







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**CITY OF GLADSTONE, MISSOURI,  
the City**

**AND**

**FIRST BANK OF MISSOURI,  
as Trustee**

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**TRUST INDENTURE**

**Dated as of June 1, 2015**

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**Relating to:**

**\$17,700,000  
(AGGREGATE MAXIMUM PRINCIPAL AMOUNT)  
CITY OF GLADSTONE, MISSOURI  
TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BONDS  
(NORTHLAND INNOVATION CENTER PROJECT)  
SERIES 2015**

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## TRUST INDENTURE

**THIS TRUST INDENTURE** dated as of June 1, 2015 (the "Indenture"), is between the **CITY OF GLADSTONE, MISSOURI**, a third class city and political subdivision duly organized and existing under the laws of the State of Missouri (the "City"), and **FIRST BANK OF MISSOURI**, Gladstone, Missouri, a state banking corporation duly organized and existing and authorized to accept and execute trusts of the character herein set forth under the laws of the State of Missouri, with a corporate trust office located in Gladstone, 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 and improve certain projects (as defined in Section 100.010 of the Revised Statutes of Missouri, as amended) 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 businesses for manufacturing, commercial, research and development, warehousing and industrial development purposes upon such terms and conditions as the City shall deem advisable.
2. The City Council adopted Resolution R-14-73 on October 1, 2014, authorizing the City to enter into the Development Agreement dated October 14, 2014 (as amended, the "Development Agreement"), with Gladstone CAP LLC, a Delaware limited liability company (the "Company"), and expressing the intent of the City to finance an economic development project for the Company.
3. Following notice to affected taxing jurisdictions in accordance with Section 100.059.1 of the Act and a public hearing, the City Council adopted Ordinance No. 4.307 on May 11, 2015, approving a plan for the Company's economic development project.
4. Pursuant to the Act, the City Council passed Ordinance No. \_\_ (the "Ordinance") on June 8, 2015, authorizing the City to issue its Taxable Industrial Development Revenue Bonds (Northland Innovation Center Project), Series 2015, in the maximum principal amount of \$17,700,000 (the "Bonds"), for the purpose of improving certain real property located generally at the southeast corner of N. Oak Trafficway and N.E. 68<sup>th</sup> Street in Gladstone, Missouri (the "Project Site," as more fully described on **Exhibit A** hereto), including the construction and improvement of a commercial facility on the Project Site (the "Project Improvements," as more fully described on **Exhibit B** hereto).
5. The Ordinance authorizes the City to lease the Project Site and the Project Improvements (collectively, the "Project") to the Company.
6. Pursuant to the Ordinance, the City is authorized to execute and deliver (a) this Indenture for the purpose of issuing and securing the Bonds, (b) 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, construct and improve 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) the Performance Agreement (defined herein) 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.



7. 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 (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 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 until this Indenture has been satisfied and discharged, 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, subject to the Company's rights under the Lease, together with the tenements, hereditaments, appurtenances, rights, easements, privileges and immunities thereunto belonging or appertaining and, to the extent permissible, all permits, certificates, approvals and authorizations;

(b) All right, title and interest of the City in, to and under the Lease (excluding Unassigned Rights), 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.

**“Authorized City Representative”** means the Mayor, the City Manager, the City Clerk 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 Development Revenue Bonds (Northland Innovation Center Project), issued, authenticated and delivered under and pursuant to this Indenture, including an initial series of Taxable Industrial Development Revenue Bonds (Northland Innovation Center Project), Series 2015, in the maximum aggregate principal amount of \$17,700,000.



**“Bond Fund”** means the “City of Gladstone, Missouri, Bond Fund -- Gladstone CAP 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 Gladstone, Missouri, a third class city duly organized and existing under the laws of the State of Missouri, and its successors and assigns.

**“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, including costs of issuance.

**“Commercial Lending Bank”** means BMO Harris Bank N.A., with an office located in Kansas City, Missouri.

**“Company”** means Gladstone CAP LLC, a Delaware limited liability company, and its successors or assigns.

**“Completion Date”** means the date of execution of the certificate required by **Section 4.5** of the Lease and **Section 504** hereof, which shall be deemed executed and filed if not actually executed and filed on or before the date occurring fourteen (14) months following the commencement of construction on the Project (or such later date as may be allowed for Completion of Construction of the Project under **Section 4.02** of the Development Agreement), except as otherwise provided in **Section 4.5** of the Lease.

**“Conventional Loan”** means the loan from Commercial Lending Bank to the Company in the amount of \$[15,650,000], made on or about June \_\_, 2015.

**“Costs of Issuance Fund”** means the “City of Gladstone, Missouri, Costs of Issuance Fund -- Gladstone CAP LLC” created in **Section 501** hereof.

**“Cumulative Outstanding Principal Amount”** means the aggregate principal amount of all Bonds Outstanding under the provisions of this Indenture, not to exceed \$17,700,000, as reflected in the records maintained by the Trustee as provided in the Bonds and this Indenture.

**“Development Agreement”** means the Development Agreement dated October 14, 2014, as amended by the First Amendment to Development Agreement dated April 21, 2015, each between the City and the Company, and as further amended from time to time in accordance with its terms.

**“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 and an Event of Development Agreement Default.



**“Event of Development Agreement Default”** means, (a) except as described in clause (b), a “Developer Event of Default” as described in **Section 12.01** of the Development Agreement, and (b) if a Financing Party is acting as Company under the Lease, the Performance Agreement or the Development Agreement by virtue of foreclosure, default or similar circumstances related to financing obtained for the Project, a “Developer Event of Default” as described in subparagraphs (a), (b), (d) and (e) of **Section 12.01** of the Development Agreement.

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

**“Financing Party”** means Commercial Lending Bank (in connection with the Conventional Loan) 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 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 Fannie Mae, the Government National Mortgage Association, the Federal Financing Bank, the Federal Intermediate Credit Corporation, Federal Banks for Cooperatives, Federal Land Banks, Federal Home Loan Banks, Farmers Home Administration and Federal Home Loan Mortgage Corporation;
- (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 shall be entitled to 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, 2015, 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.

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

**"Moody's"** means Moody's Investors Service, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and assigns, and, if such corporation is dissolved or liquidated or no longer performs the functions of a securities rating agency, "Moody's" will be deemed to refer to any other nationally recognized securities rating agency designated by the Authorized Company Representative.

**"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 previously 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”** or **“Bondowner”** means the registered owner of any Bond as recorded on the bond registration records maintained by the Trustee and, for any actions requiring the consent of an Owner hereunder, the Commercial Lending Bank.

**“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 include December 1 of each year that the Bonds are Outstanding, commencing on December 1, 2016.

**“Performance Agreement”** means the Performance Agreement dated as of June 1, 2015, between the City and the Company, as amended and supplemented from time to time.

**“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 Development Agreement, this Indenture, the Lease and the Performance Agreement, (c) utility, access and other easements and rights-of-way, mineral rights, restrictions, exceptions and encumbrances that will not materially interfere with or impair the operations being conducted on the Project Site or easements granted to the City, (d) such minor defects, irregularities, encumbrances, easements, mechanic’s liens, rights-of-way and clouds on title as normally exist with respect to properties similar in character to the Project Site and as do not in the aggregate materially impair the property affected thereby for the purpose for which it was acquired or is held by the City, (e) liens or security interests granted pursuant to any Leasehold Mortgage or any Financing Documents, and (f) such exceptions to title set forth in Proforma Title Policy No. \_\_\_\_\_ issued by First American Title Insurance Company (Commitment No. NCS-700537-KCTY).

**“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 Site and the Project Improvements as they may at any time exist.

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

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



(b) fees and expenses of architects, appraisers, surveyors and engineers for estimates, surveys, soil borings and soil tests and other preliminary investigations and items necessary 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 construction and improvement of the Project or the issuance of the Bonds;

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

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

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

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

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

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

**"Project Fund"** means the "City of Gladstone, Missouri, Project Fund -- Gladstone CAP LLC" created in **Section 501** hereof.

**"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 or in part 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 Standard & Poor's Ratings Services, a division of McGraw Hill Financial, Inc., a corporation organized and existing under the laws of the State of New York, its successors and assigns, and if such corporation is dissolved or liquidated or no longer performs the functions of a securities rating



agency, "S&P" will be deemed to refer to any other nationally recognized securities rating agency designated by the Authorized Company Representative.

**"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 First Bank of Missouri, Gladstone, Missouri, a state banking corporation duly organized and existing and authorized to accept and execute trusts of the character herein set forth under the laws of the State of Missouri, 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 Gladstone, Missouri, Taxable Industrial Development Revenue Bonds (Northland Innovation Center Project), Series 2015." The maximum total principal amount of Bonds that may be issued hereunder is hereby expressly limited to \$17,700,000.

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

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

(a) The Bonds shall be issuable in the form of one fully-registered Bond, in substantially the form set forth in **Exhibit C** 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** hereof. 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 is the sole Owner of the Bonds, then the Company may set-off its obligation to the City as lessee under the Lease against the City's obligations to the Company as the bondholder under this Indenture. 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 may deliver to the Trustee for cancellation the Bonds and the Company shall receive a credit against the Basic Rent payable by the Company under **Section 5.1** of the Lease in an amount equal to the remaining principal 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 C** 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 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 D** hereto. 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 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 \$17,700,000 for the purpose of providing funds to pay the costs of the Project, which Bonds shall be designated "City of Gladstone, Missouri, Taxable Industrial Development Revenue Bonds (Northland Innovation Center Project), Series 2015." The Bonds shall be dated as provided in **Section 203(b)** hereof, shall become due on December 31, 2039 (subject to prior redemption as provided in **Article III** hereof) 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 C** 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 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 D** 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;

(6) An opinion of counsel nationally recognized on the subject of municipal bonds stating that the Bonds are exempt from registration under the Securities Act of 1933, as amended, and the Indenture is exempt from qualification under the Trust Indenture Act of 1939, as amended; and

(7) 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, and 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 of the City's approval of each requisition certificate. The Trustee shall keep a record of the total requisitions submitted for the Project, and shall notify the City if the requisitions submitted exceed the maximum principal amount of the Bonds permitted hereunder.



(f) The Bonds shall bear interest at the rate of 2.00% 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, 2016, and continuing thereafter until the Cumulative Outstanding Principal Amount is paid in full, but not later than December 31, 2039. 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." 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 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 C** hereto. 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 504** hereof, 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 which have been paid or redeemed or which 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 or redemption 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. 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(a)** or **(f)** of the Lease, in the event of substantial damage to or destruction or condemnation of substantially all of the Project. Bonds to be redeemed pursuant to this paragraph shall be called for redemption by the Trustee on the earliest practicable date for which timely notice of redemption may be given as provided hereunder. Any redemption of Bonds pursuant to this paragraph shall be at a redemption price equal to the par value thereof being redeemed, plus accrued interest thereon, without premium or penalty, to the redemption date. Before giving notice of redemption to the Owners pursuant to this paragraph (b), money in an amount equal to the redemption price shall have been deposited in the Bond Fund.

(c) In connection with a redemption under paragraphs (a) or (b) of this Section, at its option, the Company may deliver 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 one Owner) before the



scheduled redemption date. The Trustee shall then deliver written notice to the Owners at least 30 days (five days if there is one Owner) before the scheduled redemption date by facsimile and by first-class mail 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 C** hereto. 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 separate special trust funds in the name of the City:

- (a) "City of Gladstone, Missouri, Project Fund – Gladstone CAP LLC" (herein called the "Project Fund");
- (b) "City of Gladstone, Missouri, Costs of Issuance Fund – Gladstone CAP LLC" (herein called the "Costs of Issuance Fund"); and
- (c) "City of Gladstone, Missouri, Bond Fund – Gladstone CAP 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) and (e)** hereof), including Additional Payments provided for 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 improving the Project shall pursuant to any 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) and (e)** hereof, the Trustee is deemed to have deposited into the Project Fund the amount specified in the requisition certificates submitted by the Company in accordance with the provisions of **Article IV** of the Lease, 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.

(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 acquisition, construction and improvement 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.** 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 by September 1, 2015 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 provided in **Article IX** hereof, 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, (a) all accrued interest on the Bonds, if any, paid by the Purchaser; (b) all Basic Rent payable by the Company to the City specified in **Section 5.1** of the Lease; (c) [reserved]; (d) 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; (e) 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; (f) the amounts to be deposited in the Bond Fund pursuant to **Sections 9.1(f)** and **9.2(c)** of the Lease; (g) all interest and other income derived from investments of Bond Fund moneys as provided in **Section 702** hereof; and (h) 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) 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 shall have been made available to the Trustee, all liability of the City to the Owner thereof for the payment of such Bond shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such 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 shall be entitled to look only to the Company for payment, and then only to the extent of the amount so repaid, and the Company shall not be liable for any interest thereon and shall not be regarded as a trustee of such money.

**Section 605. Repayment to the Company from the Bond Fund.** After payment in full of the principal and interest on the Bonds (or provision has been made for the payment thereof as provided in this Indenture), and the reasonable fees, charges, and expenses of the Trustee and the City and any other amounts required to be paid under this Indenture, the Performance Agreement, the Lease and the Development Agreement, all amounts remaining in the Bond Fund, if any, shall be paid to the Company upon the expiration or sooner termination of the Lease.

## **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 for at least six years after the payment of all of the Outstanding Bonds.

## ARTICLE VIII

### GENERAL COVENANTS AND PROVISIONS

**Section 801. Payment of Principal and Interest.** The City covenants and agrees that it will, but solely from the rents, revenues and receipts derived from the Project and the Lease as described herein, deposit or cause to be deposited in the Bond Fund sufficient sums payable under the Lease promptly to meet and pay the principal of and 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. The City covenants and agrees that, except as herein and in the Lease provided, it will not sell, convey, mortgage, encumber or otherwise dispose of any part of the Project or the rents, revenues and receipts derived therefrom or from the Lease, or of its rights under the Lease.



**Section 805. Recordings and Filings.** The City shall file or cause to be kept and filed all financing statements, and hereby authorizes the Trustee to file or cause to be kept and filed continuation statements with respect to such originally filed financing statements related to this Indenture and all supplements hereto and such other documents as may be required under the Uniform Commercial Code in order to fully preserve and protect the security of the Owners and the rights of the Trustee hereunder. The City will cooperate in causing this Indenture and all Supplemental Indentures, the Lease and all Supplemental Leases 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.

**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;
- (d) An Event of Development Agreement Default has occurred; or
- (e) 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 to the Company, and the Company has had 30 days after receipt of such notice to correct said default or cause said default to be corrected and has not corrected said default or caused said default to be corrected within such period; provided, however, if any such default (other than a default in the payment of any money) is such that it cannot be corrected within such period, it shall



not constitute an Event of Default if corrective action is instituted by the Company or the City (as the case may be) within such period and diligently pursued until the default is corrected.

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

(a) If an Event of Default has occurred and is continuing after the notice and cure period described in **Section 901** hereof 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.

(d) Pursuant to **Section 12.2(b)** of the Lease, the City may give the Company written notice of intention to terminate the 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** of the Lease.

**Section 903. Surrender of Possession of Trust Estate; Rights and Duties of Trustee in Possession.** If an Event of Default has occurred and is continuing after the notice and cure period described in **Section 901** hereof elapses, the City, upon demand of the Trustee, shall forthwith surrender the possession of, and it shall be lawful for the Trustee, by such officer or agent as it may appoint, to take possession of all or any part of the Trust Estate, together with the books, papers and accounts of the City pertaining thereto, and including the rights and the position of the City under the Lease, and to hold, operate and manage the same, and from time to time make all needful repairs and improvements. Subject to the provisions of the Lease, 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 the lien of 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** hereof elapses, and if requested to do so by (1) the City (in the case of an Event of Default pursuant to **Section 12.1(b)** (but only as it relates to Unassigned Rights) or (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)** hereof or of which by said subsection the Trustee is deemed to have notice, (b) such default has become an Event of Default, (c) the Owners of 25% in aggregate principal amount of Bonds then Outstanding have made written request to the Trustee, have offered it reasonable opportunity either to proceed for such reasonable period not to exceed 60 days following such notice and to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, and have offered to the Trustee indemnity as provided in **Section 1001(l)** hereof, and (d) the Trustee thereafter fails or refuses to exercise the powers herein granted or to institute such action, suit or proceeding in its own name; such notification, request and offer of indemnity are hereby declared in every case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the enforcement of this Indenture, or for the appointment of a receiver or for any other remedy hereunder, it being understood and intended that no one or more Owners shall have



any right in any manner whatsoever to affect, disturb or prejudice this Indenture by their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or 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 **Section 12.1(b)** (but only with respect to Unassigned Rights) 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, after payment of any obligations outstanding under the Lease and the Performance Agreement, of the cost 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, be deposited in the Bond Fund and all moneys so deposited in the Bond Fund shall be applied as follows:

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

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

SECOND -- To the payment to the Persons entitled thereto of the unpaid principal of any of the Bonds which 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 shall have become due or shall have been declared due and payable, all such moneys shall be applied to the payment of the principal and interest, if any, then due and unpaid on all of the 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 shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled under the provisions of **Section 910** hereof, then, subject to the provisions of subsection (2) of this Section in the event that the principal of all the Bonds shall later become due or be declared due and payable, the moneys shall be applied in accordance with the provisions of subsection (1) of this Section.

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

(c) Whenever all of the 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, and 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 **Section 12.1(b)** (but only with respect to Unassigned Rights) or (d) of the Lease or any Event of Development Agreement Default, 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, shall have been paid or provided for. In case of any such waiver or rescission, or in case any proceeding taken by the Trustee on account of any such default shall have been discontinued or abandoned or determined adversely, then and in every such case the City, the 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)** hereof, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and shall use the same degree of care and skill in their exercise, as a prudent Person would exercise or use under the circumstances in the conduct of its own affairs.

(b) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or through agents, affiliates, attorneys or receivers and shall not be responsible for any misconduct or negligence on the part of any agent, attorney or receiver appointed or chosen by it with due care. The Trustee may conclusively rely upon and act or refrain from acting upon any opinion or advice of counsel, who may be counsel to the City or to the 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.

**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.

**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** hereof 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 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 Company and the Owners and signed by the City.

**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 or any Owner may petition any court of competent jurisdiction for the appointment of a successor Trustee, until a successor shall have 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 shall have been requested to do so by the Owners of at least 25% of the aggregate principal amount of Bonds then Outstanding and shall have been provided adequate funds for the purpose of such payment.

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

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

(b) If the Trustee appoints an additional individual or institution as a co-trustee or separate trustee (which appointment shall be subject to the approval of the 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, within 90 days following the end of such 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 which, in the judgment of the Trustee, is not to the material prejudice of the Trustee or the Owners;

(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 shall have consented in writing to the execution and delivery of such Supplemental Indenture. The Trustee shall cause notice of the proposed execution and delivery of any Supplemental Indenture (regardless of whether it affects the Company's rights) together with a copy of the proposed Supplemental Indenture to be mailed to the Company and any Financing Party at least 15 days before the proposed date of execution and delivery of the Supplemental Indenture.

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



## ARTICLE XII

### SUPPLEMENTAL LEASES

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

**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 shall have been given in accordance with **Article III** hereof or irrevocable instructions shall have been given to the Trustee to give such notice.

(c) Notwithstanding any provision of any other section of this Indenture which may be contrary to the provisions of this Section, all moneys or Government Securities set aside and held in trust pursuant to the provisions of this Section for the payment of 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 and the Owners, as herein provided.

**Section 1403. Notices.** It shall be sufficient service of any notice, request, complaint, demand or other paper required by this Indenture to be given or filed with the City, the Trustee, the Company or 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 Gladstone, Missouri  
7010 North Holmes  
Gladstone, Missouri 64118  
Attention: City Manager

(b) To the Trustee:

First Bank of Missouri  
701 Minnesota Avenue, Suite 206  
Kansas City, Kansas 66101  
Attention: Corporate Trust Department

(c) To the Company:

Gladstone CAP LLC  
c/o CBC Real Estate Group  
4706 Broadway, Suite 240  
Kansas City, Missouri 64112  
Attention: Daniel Carr

With a copy to:

Polsinelli PC  
900 W. 48<sup>th</sup> Place, Suite 900  
Kansas City, Missouri 64112  
Attention: Timothy C. Klink

(d) To the Owners if the same is duly mailed by first class, registered or certified mail addressed to each of the Owners of Bonds at the time Outstanding as shown by the bond registration books required by **Section 206** 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 shall be 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 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.** Pursuant to the Ordinance, the City Manager and the Mayor are authorized, unless expressly provided herein, to grant on behalf of the City such consents and waivers relating to the Bonds, this Indenture, the Lease Agreement or the Performance Agreement as may be requested during the term thereof; provided, such consents 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, or materially change the nature of the transaction.

[Remainder of this page intentionally left blank]



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

**CITY OF GLADSTONE, MISSOURI**

By: \_\_\_\_\_  
Name: Kirk Davis  
Title: City Manager

[SEAL]

ATTEST:

By: \_\_\_\_\_  
Name: Ruth Bocchino  
Title: City Clerk

[Trust Indenture]



**FIRST BANK OF MISSOURI**, as Trustee

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

Name: Pete Gardner

Title: Vice President

[Trust Indenture]



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

The following described real estate located in Clay County, Missouri:

Lot 1, NORTHLAND INNOVATION CAMPUS, a subdivision in the City of Gladstone, Clay County, Missouri, according to the recorded plat thereof.



## **EXHIBIT B**

### **PROJECT IMPROVEMENTS**

The Project Improvements consist of the following, to the extent paid for in whole with Bond proceeds:

The Project includes the design, engineering and construction of a minimum of 90,000 square feet of net leasable area, including surface parking, to be occupied by a variety of public and private tenants. The building(s) will be designed to reflect the character of emerging Downtown Gladstone and with the input of the public partners/tenants. The Project is not a school but will contain a significant educational component. The quality of the building shall be generally considered as Class "A." The building(s) should be LEED "certified."



**EXHIBIT C**

**FORM OF BONDS**

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

**No. 1**

**Not to Exceed  
\$17,700,000**

**UNITED STATES OF AMERICA  
STATE OF MISSOURI**

**CITY OF GLADSTONE, MISSOURI  
TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BOND  
(NORTHLAND INNOVATION CENTER PROJECT)  
SERIES 2015**

**Interest Rate**

**2.00%**

**Maturity Date**

**December 31, 2039**

**Dated Date**

**June \_\_, 2015**

**OWNER:**

**GLADSTONE CAP LLC**

**MAXIMUM PRINCIPAL AMOUNT:**

**NOT TO EXCEED SEVENTEEN MILLION  
SEVEN HUNDRED THOUSAND  
DOLLARS**

**THE CITY OF GLADSTONE, MISSOURI**, a third class city and political subdivision duly 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, 2016, 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 Gladstone, Missouri, Taxable Industrial Development Revenue Bonds (Northland Innovation Center Project), Series 2015," in the maximum aggregate principal amount of \$17,700,000 (the "Bonds"), to be issued for the purpose of improving certain real property located generally at the southeast corner of N. Oak Trafficway and N.E. 68<sup>th</sup> Street in Gladstone, Missouri (the "Project Site," as more fully described on **Exhibit A** to the Lease (defined below)), including the construction and improvement of a commercial facility (the "Project Improvements"). The City will lease the Project Site and the Project Improvements (collectively, the "Project") to Gladstone CAP LLC, a Delaware limited liability company (the "Company"), under the terms of a Lease Agreement dated as of June 1, 2015 (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 and the statutes of the State of Missouri, including particularly the Act, and pursuant to proceedings duly had by the Council 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, 2015 (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 First Bank of Missouri, Gladstone, 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 prior to maturity as provided in the Indenture.

**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, charter or statutory debt limitation or restriction, and are not payable in any manner by taxation. Pursuant to the provisions of the Lease, rental payments sufficient for the prompt payment when due of the principal of and interest on the Bonds are to be paid by the Company directly to the Trustee for the account of the City and deposited in a special fund created by the City and designated the "City of Gladstone, Missouri, Bond Fund -- Gladstone CAP 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 \$17,700,000.

**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 shall have 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 Gladstone, 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, and has caused this Bond to be dated the date set forth above.

**CERTIFICATE OF AUTHENTICATION**

**CITY OF GLADSTONE, MISSOURI**

This Bond is one of the Bonds  
of the issue described in the  
within-mentioned Resolution.

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

Registration Date: \_\_\_\_\_

**FIRST BANK OF MISSOURI,**  
as Trustee

ATTEST: \_\_\_\_\_ (Seal)

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

\_\_\_\_\_  
City Clerk



**SCHEDULE I**

**TABLE OF CUMULATIVE OUTSTANDING PRINCIPAL AMOUNT**

**CITY OF GLADSTONE, MISSOURI  
TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BOND  
(NORTHLAND INNOVATION CENTER PROJECT)  
SERIES 2015**

**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>
6/ __/2015				



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**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.

Signature Guaranteed By:

---

(Name of Eligible Guarantor Institution as  
defined by SEC Rule 17 Ad-15 (17 CFR 240.17  
Ad-15))

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

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## **EXHIBIT D**

### **FORM OF REPRESENTATION LETTER**

City of Gladstone, Missouri  
7010 North Holmes  
Gladstone, Missouri 64118  
Attention: City Manager

First Bank of Missouri, as Trustee  
701 Minnesota Avenue, Suite 206  
Kansas City, Kansas 66101  
Attention: Corporate Trust Department

Re: \$17,700,000 Maximum Principal Amount of Taxable Industrial Development Revenue Bonds (Northland Innovation Center Project), Series 2015 of the City of Gladstone, Missouri

Ladies and Gentlemen:

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

1. The Purchaser fully understands that (a) the Bonds have been issued under and pursuant to a Trust Indenture dated as of June 1, 2015 (the "Indenture"), between the City of Gladstone, Missouri (the "City") and First Bank of Missouri, Gladstone, Missouri, 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 Gladstone CAP LLC, a Delaware limited liability company (the "Company"), under a Lease Agreement dated as of June 1, 2015 (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 Purchaser 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.

3. The Purchaser 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.



4. The Company has (a) furnished to the Purchaser such information about itself as the Purchaser 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 Purchaser, 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 Purchaser all additional information which it has requested.

5. The Purchaser 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. The Purchaser 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.

6. The Purchaser 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 Purchaser is purchasing the Bonds with full knowledge of such matters.

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

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

9. The Purchaser is the lessee under the Lease *or* (i) a "qualified institutional buyer" under Rule 144A promulgated under the Securities Act of 1933, or (ii) any general business corporation or enterprise with total assets in excess of \$100,000,000.

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

**[PURCHASER OF BONDS]**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_







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**CITY OF GLADSTONE, MISSOURI,  
As Lessor,**

**AND**

**GLADSTONE CAP LLC,  
As Lessee**

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**LEASE AGREEMENT**

**Dated as of June 1, 2015**

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**Relating to:**

**\$17,700,000  
(AGGREGATE MAXIMUM PRINCIPAL AMOUNT)  
CITY OF GLADSTONE, MISSOURI  
TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BONDS  
(NORTHLAND INNOVATION CENTER PROJECT)  
SERIES 2015**

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**Certain rights of the City of Gladstone, Missouri (the "City"), in this Lease Agreement have been pledged and assigned to First Bank of Missouri, Gladstone, Missouri, as Trustee under the Trust Indenture dated as of June 1, 2015, between the City and the Trustee.**



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## LEASE AGREEMENT

**THIS LEASE AGREEMENT**, dated as of June 1, 2015 (the "Lease"), is between the **CITY OF GLADSTONE, MISSOURI**, a third class city and political subdivision duly organized and existing under the laws of the State of Missouri, as lessor (the "City"), and **GLADSTONE CAP LLC**, a limited liability company organized and existing under the laws of the State of Delaware, as lessee (the "Company");

### RECITALS:

1. The City is authorized under Article VI, Section 27(b) of the Missouri Constitution and Sections 100.010 through 100.200 of the Revised Statutes of Missouri, as amended (the "Act"), to purchase, construct, extend and improve certain "projects" (as defined in Section 100.010 of 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 shall deem advisable.
2. The City Council adopted Resolution R-14-73 on October 1, 2014, authorizing the City to enter into the Development Agreement dated October 14, 2014 (as amended, the "Development Agreement"), with the Company, and expressing the intent of the City to finance an economic development project for the Company.
3. Following notice to affected taxing jurisdictions in accordance with Section 100.059.1 of the Act and a public hearing, the City Council adopted Ordinance No. 4.307 on May 11, 2015, approving a plan for the Company's economic development project.
4. Pursuant to the Act, the City Council passed Ordinance No. \_\_\_\_\_ (the "Ordinance") on June 8, 2015, authorizing the City to issue its Taxable Industrial Development Revenue Bonds (Northland Innovation Center Project), Series 2015, in the maximum principal amount of \$17,700,000 (the "Bonds"), for the purpose of improving certain real property located generally at the southeast corner of N. Oak Trafficway and NE 69<sup>th</sup> Street in Gladstone, Missouri (the "Project Site," as more fully described on **Exhibit A** hereto), including the construction and improvement of a commercial facility on the Project Site (the "Project Improvements," as more fully described on **Exhibit B** hereto).
5. Pursuant to the Ordinance, the City is authorized to enter into a Trust Indenture of even date herewith (the "Indenture") with First Bank of Missouri, Gladstone, 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 construct and improve the Project Improvements, and lease the Project Site and the Project Improvements 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.
6. 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.



7. 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.

**Section 1.3. Acceptance of Indenture.** The Company acknowledges that it has received an executed copy of the Indenture and that it is familiar with the terms and conditions of the Indenture. The Company further covenants that it will comply with all the conditions and covenants contained in the Indenture relating to the Company and the Project, and that it will not take any action which would cause a default thereunder or jeopardize the rights of the Trustee, the City or the Bondholders.



## 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 and political subdivision duly organized and validly existing under the laws of the State of Missouri. Under the provisions of the Act, the City has lawful power and authority to enter into the transactions contemplated by this Lease and to carry out its obligations hereunder. By proper action of its governing body, the City has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers.

(b) As of the date of delivery hereof, the City has acquired the Project Site and agrees to construct and improve or cause to be constructed and improve thereon the Project Improvements. 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 as provided for herein, all for the purpose of furthering the public purposes of the Act.

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

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

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

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

(h) The City will not operate the Project as a business or in any other manner except as the lessor thereof or potentially as lessee of a portion thereof, except subsequent to 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 Delaware, and is qualified to conduct business in 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 construction and improvement of the Project are in accordance with sound engineering and accounting principles.

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

(f) The Project is located wholly within the corporate limits of the City of Gladstone, Missouri.

### **ARTICLE III**

#### **GRANTING PROVISIONS**

**Section 3.1. Granting of Leasehold Estate.** The City shall own fee simple title to the Project during the Lease Term. 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 commence as of the date of this Lease and terminate on December 31, 2039.



### **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, 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 and the Development 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**

### **CONSTRUCTION AND IMPROVEMENT 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 may (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** below. In that event, 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. Construction and Improvement of the Project.** The City and the Company agree that the Company, as the agent of the City, shall, but solely from the Project Fund, construct and improve the Project as follows:



(a) The City has acquired the Project Site prior to the execution hereof. Concurrently with the execution of this Lease, 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 construct and improve the Project Improvements on the Project Site and otherwise improve the Project Site in accordance with the Plans and Specifications. The Company may revise the Plans and Specifications from time to time as it deems necessary to carry out the Project, but revisions that would alter the intended purpose of the Project may be made only with the prior written approval of the City. The Company agrees that the aforesaid construction and improvement will, with such changes and additions as may be made hereunder, result in facilities suitable for 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 8.2**;

(c) 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; and

(d) The Company will cause the construction 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.

**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 C**, 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;

(c) stating that each item for which payment is requested is or was desirable and appropriate in connection with the construction and improvement 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 construction and improvement 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, extension and improvement 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 construction and improvement of the Project have been incurred. Notwithstanding the foregoing, 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. The Company and the City agree to cooperate in causing such certificate to be provided to the Trustee.

**Section 4.6. Surplus or Deficiency in Project Fund.**

(a) 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 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. Any amount so deposited in the Bond Fund may be invested as permitted by **Section 702** of the Indenture.

(b) If the Project Fund shall be insufficient to pay fully all Project Costs and to complete the Project free of liens and encumbrances other than Permitted Encumbrances, the Company shall pay, in cash, the full amount of any such deficiency by making payments thereof directly to the contractors and to the suppliers of materials and services as the same shall become due, and the Company shall save the City and the Trustee whole and harmless from any obligation to pay such deficiency.

**Section 4.7. Project Property of City.** The Project Site and the Project Improvements, which the Company desires to convey to the City, including 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, Permitted Encumbrances and the Leasehold Mortgage, if any.

**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 and the entire purchase price of which is paid for by the Company with the Company's own funds, and no part of the purchase price of which is paid for from funds deposited pursuant to the terms of this Lease in the Project Fund, shall be the property of the Company and shall not



constitute a part of the Project for purposes of **Section 6.4** hereof and therefore are subject to taxation, to the extent otherwise provided by law.

## **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 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 is the sole Owner 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, without providing notice of such set-off to the Trustee. 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 reasonable fees, charges and expenses, including agent and counsel fees and expenses, of the City, the Trustee and the Paying Agent incurred under or arising from the Indenture, this Lease or the Performance Agreement, including but not limited to claims by contractors or subcontractors, as and when the same become due;

(b) all reasonable 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 reasonable fees, charges and expenses incurred in connection with the enforcement of any rights against the Company or the Project, or in connection with a failure of the Company to perform its obligations 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, Development Agreement, 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, 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 5.3(a)** or **Section 5.3(b)** is intended or shall be deemed to affect or impair in anyway 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** hereof.

(b) Nothing in this Lease shall be construed to release the City from the performance of any agreement on its part herein contained or as a waiver by the 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 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.** The Company may at any time and from time to time, upon receipt of the written consent of the Commercial Lending Bank, prepay a portion of the Basic Rent provided for hereunder (subject to the limitations of **Section 301(a)** of the Indenture relating to the 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.

Subject to **Section 301(a)** of the Indenture relating to the redemption of Bonds, the Company, at its option, 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 necessary 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 and the provisions of the Development Agreement.

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

(a) Subject to subsection (b) of this Section and any other provisions of this Lease to the contrary, 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 and the Trustee 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 and the Trustee from any costs and expenses the City and the Trustee 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 any payments in lieu of taxes due under the Performance Agreement to the extent of any ad valorem taxes imposed and paid by the Company with respect to the Project paid pursuant to this Section.



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

**Section 6.4. Property Tax Exemption.** The City and the Company agree that while the Project is owned by the City and is subject to the Lease, the Project will be exempt from all ad valorem real 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 (attached hereto as **Appendix I**) are incorporated herein as if fully set forth herein.

## **ARTICLE VII**

### **INSURANCE**

**Section 7.1. Title Commitment or Report.** 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. Copies of such report shall be provided to the City and the Trustee. The Trustee has no duty to review or analyze the sufficiency of such commitment or report and shall hold such documents solely as a repository.

**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 upon renewal of each insurance policy. All such policies of insurance pursuant to this Section, and all renewals thereof, shall name the Company as the insured and the City as an additional insured, as their respective interests may appear, shall name the Trustee as loss payee and 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.

(b) In the event of loss or damage to the Project, the Net Proceeds of casualty insurance carried pursuant to this Section shall be (i) paid over to the Trustee and shall be applied as provided in **Article IX** of this Lease, or (ii) if otherwise directed by, or on behalf of, the Owners of 100% in principal amount of the Bonds Outstanding, as so directed. 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 as provided in **Section 9.1(a)** hereof.



### **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 not less than 30 days before the expiration date of each insurance policy.

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

**Section 7.4. Blanket Insurance Policies; 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 \$150,000,000, 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.

## **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 compliance with all laws, orders and ordinances applicable thereto and (ii) when commenced, be prosecuted to completion with due diligence; provided, however, that additions of machinery and equipment installed on the Project Site by the Company, not purchased or acquired from funds deposited with the Trustee hereunder and not constituting repairs, renewals, or replacements of the Project, shall remain the property



of the Company and may be removed by the Company, such property being subject to *ad valorem* personal property taxes.

(b) The Company shall, following the Completion Date, notify the City in writing of any improvements to the portion of the Project Site that in the aggregate are reasonably expected to exceed \$1,000,000 during any calendar year.

**Section 8.2. 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 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, 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 8.3. 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 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 8.4. Mechanics' Liens.**

(a) The Company will not directly or indirectly create, incur, assume or suffer to exist any lien on or with respect to the Project, except Permitted Encumbrances, and the Company shall promptly notify the City of the imposition of 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, 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 which 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 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) if determined by the Owners of 100% in principal amount of the Bonds Outstanding, applied as directed by, or on behalf of, such 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 the Commercial Lending Bank, any leasehold mortgagee or any other Financing Party. 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 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 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 any Leasehold Mortgage or other Financing Document to use any Net Proceeds for the 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 Commercial Lending Bank, the mortgagee under any Leasehold Mortgage and any other Financing Party under the Financing Documents. 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, upon receipt of the written consent of the Commercial Lending Bank, 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, the Trustee, the Commercial Lending Bank, the mortgagee under the Leasehold Mortgage (if any) and any other Financing Party under the Financing Documents 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, provided that if the Company is the sole owner of the Bonds and it has determined that acquiring and constructing substitute improvements is not practicable or desirable, it may, upon receipt of the written consent of the Commercial Lending Bank, tender Bonds to the Trustee for cancellation in a principal amount equal to the Net Proceeds of the condemnation awards, and retain such proceeds for its own account, all subject to the rights of the Commercial Lending Bank, any mortgagee under a Leasehold Mortgage and any other Financing Party under the Financing Documents.

(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 and the Commercial Lending Bank.

**Section 9.3. Bondowner Approval.** Notwithstanding anything to the contrary contained in this **Article IX**, the proceeds of any insurance received subsequent to a casualty or of any condemnation proceedings (or threats thereof) 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 rights of the City and the Trustee to be paid all their expenses (including attorneys' fees, trustee's fees and any extraordinary expenses of the City and the Trustee) incurred in the collection of such gross proceeds and (b) the rights of the City to any amounts then due and payable under the Performance Agreement. For purposes of this paragraph, the Commercial Lending Bank 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)** hereof, 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.

**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 Days' 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; Leasehold Mortgages and Financing Arrangements.**

(a) Subject to **Sections 10.4(c) and (d)**, if no Event of Default under this Lease has occurred and is continuing, the Company may at any time or times (i) grant subleases (in accordance with **Section 13.1(d)** hereof), easements, licenses, rights-of-way (including the dedication of public highways) and other rights or privileges in the nature of easements that are for the direct use of the Project, or part thereof, by the grantee, (ii) release or terminate existing subleases, easements, licenses, rights-of-way and other rights or privileges, all with or without consideration and upon such terms and conditions as the Company shall determine, or (iii) incur Permitted Encumbrances. The Company may take such actions and may execute any applicable documents in the Company's own name. No separate signature of or authorization from the City shall be required for the execution and delivery of any such document, although the City agrees to execute and deliver such confirming documents as are described below, under the procedures described below, if the Company chooses to make such a request. All third parties entering into agreements with the Company or receiving delivery of or the benefit of such agreements or documents shall be entitled to rely upon the same as having been executed and delivered by the City, unless such third party has actual or constructive notice, expressly in writing, that the agency herein granted by the City to the Company has been terminated by the City because of an uncured Event of Default hereunder. The City agrees that it will execute and deliver and will cause and direct the Trustee to execute and deliver any instrument necessary or appropriate to confirm and grant, release or terminate any such 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. 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 Company may mortgage or grant a deed of trust against the leasehold estate created by this Lease, with prior notice to but without the consent of the City, provided and upon condition that a duplicate original or certified copy or photostatic copy of each such mortgage or deed of trust, and the note or other obligation secured thereby, is delivered to the City within thirty (30) days after the execution thereof. The sale of the Company's leasehold estate at a foreclosure sale or trustee's sale under the Leasehold Mortgage or any assignment in lieu thereof shall not require the consent of the City, if (i) written notice of the proposed sale or assignment is provided to the City at least 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.



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

(i) 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, provided that the sole responsibility of the City with respect to such notices is to deliver notices to the Financing Parties at those addresses supplied to the City pursuant hereto;

(ii) 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;

(iii) 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, the holder of the Leasehold Mortgage may cause the sale of the leasehold interest of the Company to be sold at foreclosure sale conducted in accordance with applicable law and the terms of the Leasehold Mortgage, to accept assignment of this Lease in lieu of foreclosure and to 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)**;

(iv) 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;



(v) 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;

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

(vii) no merger of the fee and the leasehold interests in the Project Site or the Project shall occur without the prior written consent of each of the Financing Parties.

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

**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 reasonable 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 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 construction and improvement of the Project, (d) any act of negligence of the Company or of any of its agents, contractors, servants, employees or licensees, (e) unless the Company has been released from liability pursuant to **Section 13.1(c)** hereof, 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 (i) the result of work being performed at the Project by employees or agents of the City, or (ii) the result of gross negligence or willful misconduct by the City, its employees or agents, or the Trustee. Upon written notice from the City or the Trustee of any such claims or demand, the Company shall defend them or either of them in any such action or proceeding; provided, that the City shall cooperate with the Company and provide reasonable assistance in such defense. All costs related to the defense of the City or the Trustee shall be paid by the Company. This **Section 10.5** shall survive any



termination of the Performance Agreement and this Lease or the satisfaction and discharge of the Indenture.

**Section 10.6. Depreciation, Investment Tax Credit and Other Tax Benefits.** The City agrees that any depreciation, investment tax credit or any other tax benefits with respect to the Project or any part thereof shall be made available to the Company, and the City will fully cooperate with the Company in any effort by the Company to avail itself of any such depreciation, investment tax credit or other tax benefits.

**Section 10.7. Company to Maintain its Existence.** The Company agrees that until the Bonds are paid or payment is provided for in accordance with the terms of the Indenture, it will maintain its existence, and will not dissolve or otherwise dispose of all or substantially all of its assets; provided, however, that subject to the Development Agreement 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, if the surviving, resulting or transferee Person expressly assumes in writing all the obligations of the Company contained in this Lease, and the surviving, resulting or transferee Person either (a) has a long-term-debt rating or is controlled by or under common control with an entity with a long-term debt rating in any of the top three long-term-debt rating categories by any nationally recognized rating service, (b) is controlled by, under common control with or controls the Company, or (c) is otherwise approved by the City Council.

**Section 10.8. Security Interests.** The City and the Company hereby authorize the Trustee to file all appropriate financing and continuation statements as may be required under the Uniform Commercial Code in order to fully preserve and protect the security of the Owners and the rights of the Trustee under the Indenture. Upon the written instructions of the Owners or pledgees of 100% of the Bonds then Outstanding, the Trustee shall file all 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.

**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) [Reserved].

(c) The Company will provide the City and the Trustee with copies of any notifications of releases of Hazardous Substances or of any environmental hazards or potential hazards in material violation of Environmental Laws which are given by or on behalf of the Company to any federal, state 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 will provide the City and the Trustee with copies of all emergency and hazardous chemical inventory forms (hereinafter "Environmental Notices") concerning Hazardous Substances on the Project Site sent to any such 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. Such copies of 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 material conformance with all applicable Environmental Laws. Without limiting the generality of the foregoing, the Company will not use, generate, treat, store, dispose of or otherwise introduce any Hazardous Substance into or on the Project or any part thereof 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 material 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 thereafter located upon the Project, to the extent that such release occurred following the Closing Date, 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 omission or misconduct of the City), (ii) (A) any violation arising after the Closing Date (actual or alleged) of, or any other liability under or in connection with, any applicable Environmental Laws relating to or affecting the Project which occurs following the Closing Date, or (B) any violation arising after the Closing Date, or any other liability, under or in connection with, any applicable Environmental Laws relating to any products or materials located upon the Project following the Closing Date, 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, omission or misconduct of the City), (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 following the Closing Date, 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 (A) work being performed at the Project by employees or agents of the City or activity that occurred prior to the Closing Date, (B) gross negligence or willful misconduct by the City, its employees or agents or the Trustee, or (C) 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 **Section 10.9(f)** shall survive any termination of this Lease.

**Section 10.10. Bankruptcy of the Company.** The City covenants and agrees that if this Lease is rejected by a trustee or debtor in possession in any bankruptcy or insolvency proceeding or the Lease is terminated as a result of any incurable default, and within thirty (30) days after such rejection or termination the Commercial Lending Bank or its assignee has arranged to the reasonable satisfaction of the City for the satisfaction of any and all defaults by the Company as of the date of such rejection or termination, then the City agrees that it will, to the extent permitted by law, execute and deliver to the Commercial Lending Bank, or its assignee, a new lease agreement for the leased premises which (i) shall be for a term equal to the remaining term of the terminated Lease before giving effect to such rejection or termination, and (ii) shall contain the same covenants, agreements, terms, provisions, extension options, purchase options and limitations as set forth in this Lease prior to the date of rejection or termination.

## ARTICLE XI

### OPTION AND OBLIGATION TO PURCHASE THE PROJECT

**Section 11.1. Option to Purchase the Project.** Provided that (i) the Company has completed the construction, acquisition and installation of the public improvements set forth in **Exhibit C** to this Lease (the "Public Improvements"), to the City's reasonable satisfaction upon prompt inspection by the City, or (ii) if the Company shall not have completed the Public Improvements, the Company has delivered the sum of \$505,750 (less the costs of the Public Improvements actually expended by the Company) to the City as additional consideration for the Project Site (the "Additional Purchase Price") (\$500,000 of which is consideration for the Project Site and \$5,750 is consideration for a parking-related lease between the City and the Company), which amount shall be in addition to any payment made by the Company to the City as consideration for the Project Site at the time of the delivery of this Lease, the Company shall have, and is hereby granted, the option to purchase all or any portion of the Project, 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.

If the Company elects to purchase the Project Site pursuant to the foregoing paragraph, and pays the Additional Purchase Price therefor, then, upon completion of the Public Improvements, or any portion thereof, by the Company on or before December 31, 2016, to the City's reasonable satisfaction upon prompt inspection by the City, the City shall reimburse the Additional Purchase Price, or the portion thereof corresponding to the portion of the Public Improvements completed by Company, to the Company. The provisions of this paragraph shall survive any termination of this Lease.



Notwithstanding any other conflicting provision in this **Article XI**, the Commercial Lending Bank, if it has foreclosed on the Company's rights under this Lease, shall have, and is hereby granted, the option to purchase all or any portion of the Project, 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, or the Commercial Lending Bank, as applicable, shall give written notice to the City and to the Trustee, and shall specify therein the requested date of closing of such purchase, which date shall be not less than 10 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, or the Commercial Lending Bank, as applicable, shall make arrangements satisfactory to the Trustee for the giving of the required notice of redemption.

Notwithstanding any provisions of this Lease, the Trust Indenture, the Development Agreement, the Performance Agreement, or any other documents related thereto to the contrary, in the event that the City or the Trustee elects to exercise any rights or remedies under any of the aforementioned documents, including without limitation any rights to terminate this Lease or to otherwise dispossess Company of the Project, the Company, provided it has (i) completed the construction, acquisition and installation of the Public Improvements or (ii) delivered the Additional Purchase Price to the City, shall be deemed to have exercised its option under this **Section 11.1** to be effective the day immediately preceding the date that such termination or dispossession is to take place; provided such notice has not been rescinded by the City or Trustee, as the case may be, by such date. The Company may rescind such exercise by providing written notice to the City and the Trustee and by taking such action as may be required to cure the default that led to such notice being given.

The purchase price payable by the Company, or the Commercial Lending Bank, as applicable, in the event of its exercise of the option granted in this Section shall be the sum of the following:

- (a) an amount of money which, when added to the amount then on deposit in the Bond Fund, will be sufficient to redeem all or a portion of the then-Outstanding 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, or the Commercial Lending Bank, as applicable, 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 \$1,000.00.

At its option, to be exercised at least 5 days before the date of closing such purchase, the Company, or the Commercial Lending Bank, as applicable, may deliver to the Trustee for cancellation Bonds not previously paid, and the Company, or the Commercial Lending Bank, as applicable, shall



receive a credit against the purchase price payable by the Company, or the Commercial Lending Bank, as applicable, in an amount equal to 100% of the principal amount of the Bonds so delivered for cancellation, plus the accrued interest thereon.

**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, or the Commercial Lending Bank, as applicable, 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, conveying to the Company, or the Commercial Lending Bank, as applicable, 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 as of the date of this Lease; (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; 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, or the Commercial Lending Bank, as applicable, 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, the Development Agreement or the Performance Agreement; provided that such option will not result in nonfulfillment of any condition to the exercise of such option (including the payment of all amounts specified in **Section 11.1** hereof).

**Section 11.4. Obligation to Purchase the Project.** Provided that the Company has (i) completed the construction, acquisition and installation of the Public Improvements or (ii) delivered the Additional Purchase Price to the City, and all other conditions set forth herein have been satisfied, the Company hereby agrees to purchase, and the City hereby agrees to sell, the Project upon the occurrence of the following: (a) the expiration or earlier termination of the Lease term, (b) the full payment of the Bonds or provision for payment thereof having been made in accordance with the provisions of the Indenture, and (c) the final payment due under the Performance Agreement (as the same may be earlier terminated as a result of the termination of this Lease). 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. Notwithstanding the foregoing, the Company may, upon receipt of the written consent of the Commercial Lending Bank, 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.



## 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) The occurrence and continuance of an Event of Default by the Company under the Performance Agreement, as defined in **Section 6.1** thereof (which includes, without limitation, an Event of Development Agreement Default).

**Section 12.2. Remedies on Default.** 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:



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

(b) give the Company written notice of its 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. Notwithstanding the foregoing, the City agrees that the Company shall not be in default under this Lease unless written notice specifying such default is given to the Commercial Lending Bank, each mortgagee under a Leasehold Mortgage, if any, and each other Financing Party under the Financing Documents (if any) identified to the City by the Company (collectively, the "Additional Notice Parties"). The City agrees that each of the Additional Notice Parties shall have the right to cure or commence to cure such default on behalf of the Company within 30 days after the receipt of such notice. Any termination of this Lease under this **Section 12.2(b)** shall be subject to the Company's, and the Commercial Lending Bank's, option to purchase pursuant to **Section 11.1** above.

**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 the Lease to the contrary, however, the Company's option to purchase the Project provided in Article XI hereof shall not be terminated upon an Event of Default unless and until this Lease is terminated to the extent permitted pursuant to Section 12.2(b) hereof.

**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 except as otherwise provided in the Indenture shall not be obliged to, exercise any or all of the rights of the City under this Article, upon notice as required of the City unless the City has already given the required notice. In addition, the Trustee shall have available to it all of the remedies prescribed by the Indenture.

## **ARTICLE XIII**

### **ASSIGNMENT AND SUBLEASE**

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

(a) The Company may assign, transfer, encumber or dispose of this Lease or any interest herein or part hereof for any lawful purpose under the Act. Except as otherwise provided in this Section, the Company must obtain the City's prior written consent by the City Council to any such disposition, unless such disposition is to an entity controlled by or under common control with or controlling the Company. Additionally, the Company may assign any interests in this Lease without the City's prior written consent if the assignment is to the Commercial Lending Bank, or its assignee, so long as its assignee's long-term debt, or the long-term debt of an entity controlled by, under common control with or controlling such Person has at least a rating in any of the top three long term debt rating categories by any nationally recognized rating agency.

(b) With respect to any assignment not permitted in subsection (a) above, the Company shall comply with the following conditions:

- (i) The Company shall notify the City 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) Except for any sublease between the Company and (i) North Kansas City School District or (ii) Northwest Missouri State University, the Company may sublet less than 20% of 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 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. Any sublease for more than 20% of the Project Site and/or the Project Improvements shall require the City's prior written consent, not to be unreasonably withheld, conditioned or delayed.

**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. The City and the Company recognize that the Trustee is a third party creditor beneficiary of this Lease.

**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.

**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, except that the City may sublease any portion of the Project subleased to it by the Company or an entity related to the Company.

## 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 Bondowners and the written consent of the Commercial Lending Bank, any mortgagee under any Leasehold Mortgage (if any) and any other Financing Party under the Financing Documents.



## 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 governed by Section 1403 of the Indenture.

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

**Section 15.3. Net Lease.** The parties hereto agree (a) that this Lease shall be deemed and construed to be a net lease, (b) that the payments of Basic Rent are designed to provide the City and the Trustee funds adequate in amount to pay all principal of and interest accruing on the Bonds as the same 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.

**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 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 Complete Agreement.** THE COMPANY AND THE CITY UNDERSTAND THAT ORAL OR UNEXECUTED AGREEMENTS OR COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT INCLUDING PROMISES TO EXTEND OR RENEW SUCH DEBT ARE NOT ENFORCEABLE. TO PROTECT THE COMPANY AND THE CITY FROM MISUNDERSTANDING OR DISAPPOINTMENT, ANY AGREEMENTS THE COMPANY AND THE CITY REACH COVERING SUCH MATTERS ARE CONTAINED IN THIS LEASE AND IN THE PERFORMANCE AGREEMENT AND THE DEVELOPMENT AGREEMENT WHICH ARE THE COMPLETE AND EXCLUSIVE STATEMENTS OF THE AGREEMENT BETWEEN THE COMPANY AND THE CITY, EXCEPT AS THE COMPANY AND THE CITY MAY LATER AGREE IN WRITING TO MODIFY THIS LEASE AND THE PERFORMANCE AGREEMENT AND THE DEVELOPMENT AGREEMENT.

*[Remainder of this page intentionally left blank]*



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

**CITY OF GLADSTONE, MISSOURI**

[SEAL]

By: \_\_\_\_\_  
Name: Kirk Davis  
Title: City Manager

ATTEST:

By: \_\_\_\_\_  
Name: Ruth Bocchino  
Title: City Clerk

[Lease Agreement]



**GLADSTONE CAP LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Daniel Carr  
Title: Manager



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

The following described real estate located in Clay County, Missouri:

Lot 1, NORTHLAND INNOVATION CAMPUS, a subdivision in the City of Gladstone, Clay County, Missouri, according to the recorded plat thereof.



## **EXHIBIT B**

### **PROJECT IMPROVEMENTS**

The Project Improvements consist of the following, to the extent paid for in whole with Bond proceeds:

The Project includes the design, engineering and construction of a minimum of 90,000 square feet of net leasable area, including surface parking, to be occupied by a variety of public and private tenants. The building(s) will be designed to reflect the character of emerging Downtown Gladstone and with the input of the public partners/tenants. The Project is not a school but will contain a significant educational component. The quality of the building shall be generally considered as Class "A." The building(s) should be LEED "certified."



**EXHIBIT C**  
**PUBLIC IMPROVEMENTS**

Public Improvements Completion Schedule

	<u>Cost</u>
1. Fire hydrant assembly and piping	\$ 64,347
2. Storm piping/inlets	138,441
3. Earthwork	17,158
4. Curb and Gutter	75,504
5. Concrete drives	64,864
6. Light pole bases	<u>21,931</u>
	<b>\$382,245</b>

Public Improvements Hard Cost= **\$382,245**

+ **\$31,133** Permits, Contingency & Fees (Pro-Rata Allocation)

= **\$413,378**

+ **\$100,000** Public Art

= **\$513,378** in total public improvement dollars expended



**EXHIBIT D**

**FORM OF REQUISITION CERTIFICATE**

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

**REQUISITION CERTIFICATE**

**TO: FIRST BANK OF MISSOURI, AS TRUSTEE UNDER A TRUST INDENTURE DATED AS OF JUNE 1, 2015, BETWEEN CITY OF GLADSTONE, MISSOURI, AND THE TRUSTEE, AND THE LEASE AGREEMENT DATED AS OF JUNE 1, 2015, BETWEEN CITY OF GLADSTONE, MISSOURI, AND GLADSTONE CAP LLC**

The undersigned Authorized Company Representative hereby states and certifies that:

1. A total of \$\_\_\_\_\_ is requested to pay for Project Costs (as defined in the Indenture) of the Project Improvements. The total amount of this requisition and all prior requisitions are as follows:

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

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

3. Each of the items for which payment is requested are or were desirable and appropriate in connection with the construction and improvement of the Project (as defined in the Trust Indenture), 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.

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



**GLADSTONE CAP LLC**

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

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

**CITY OF GLADSTONE, 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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**APPENDIX I**  
**PERFORMANCE AGREEMENT**

(See Document No. 4)







**\$17,700,000**  
**(AGGREGATE MAXIMUM PRINCIPAL AMOUNT)**  
**CITY OF GLADSTONE, MISSOURI**  
**TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BONDS**  
**(NORTHLAND INNOVATION CENTER PROJECT)**  
**SERIES 2015**

**DATED AS OF JUNE 1, 2015**

**BOND PURCHASE AGREEMENT**

City of Gladstone, Missouri  
Gladstone, Missouri

Ladies and Gentlemen:

On the basis of the representations, and covenants and upon the terms and conditions contained in this Bond Purchase Agreement, Gladstone CAP LLC, a Delaware limited liability company (the "Purchaser"), offers to purchase from the City of Gladstone, Missouri (the "City"), the above-referenced series of Taxable Industrial Development Revenue Bonds (the "Bonds"), to be issued by the City under and pursuant to Ordinance No. \_\_\_\_\_ passed by the governing body of the City on June 8, 2015 (the "Ordinance") and a Trust Indenture dated as of June 1, 2015 (the "Indenture"), by and between the City and First Bank of Missouri, Gladstone, Missouri, as trustee (the "Trustee"). Capitalized terms not otherwise defined herein shall have the meanings set forth in Section 101 of 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 and political subdivision duly organized and validly existing under the laws of the State of Missouri. The City is authorized under Article VI, Section 27(b) of the Missouri Constitution and Sections 100.010 through 100.200 of the Revised Statutes of Missouri, as amended, to authorize, issue and deliver the Bonds and to consummate all transactions contemplated by this Bond Purchase Agreement, the Ordinance, the Indenture, the Lease, the Performance Agreement and any and all other agreements relating thereto. The proceeds of the Bonds shall be used to finance the Project for Gladstone CAP LLC, a Delaware limited liability company (the "Company"), and to pay for 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 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 indebtedness represented by the Bonds or the validity of the Bonds, the Ordinance, the Lease, the Indenture or the Performance Agreement; and



(3) Any certificate signed by an authorized representative of the City and delivered to the Purchaser shall be deemed a representation and warranty by the City to such party as to the statements made therein.

(b) The Purchaser represents as follows:

(1) The Purchaser is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and is qualified to conduct business in the State of Missouri;

(2) 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) 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; and

(4) 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 party 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 herein set forth 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) for the Bonds, which amount shall be deposited in the Project Fund as provided in the Indenture and shall thereafter on the Closing Date immediately be applied to the payment of Project Costs as provided in the Lease. From time to time after the Closing Date as additional Project Costs are incurred, the Purchaser may make additional payments with respect to the Bonds ("Additional Payments") to the Trustee, which Additional Payments shall be deposited in the Project Fund and 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 for the Bonds shall not, in the aggregate, exceed \$17,700,000.

As used herein, the term "Closing Date" shall mean June \_\_, 2015, or such other date as shall be mutually agreed upon by the City and the Purchaser; the term "Closing Price" shall mean, with respect to the Bonds, that certain 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 (1) any Project Costs spent by the Purchaser from its own funds on or before the Closing Date, (2) the aggregate principal amount of the Bonds, if all of the proceeds of the Bonds are being transferred



to the Trustee on the Closing Date, or (3) any other amount agreed upon by the City and the Purchaser, so long as such amount does not exceed \$17,700,000.

The Bonds shall be issued under and secured as provided in the Ordinance and in 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 \$17,700,000; provided, that the principal amount of the Bonds outstanding at any time shall be that amount recorded in the official bond registration records of the Trustee 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.

The Company agrees to indemnify and hold harmless the City, the Trustee, and any member, officer, official or employee of the City or of the Trustee within the meaning of Section 15 of the Securities Act of 1933, as amended (collectively, the "Indemnified Parties"), against any and all losses, claims, damages, liabilities or expenses whatsoever to the extent the same are caused by any violation by the Company of, or failure by the Company to comply with, any federal or state securities laws in connection with the Bonds; provided, however, that the indemnification contained in this paragraph shall not extend to such Indemnified Party if such loss, claim, damage, liability, or expense is (i) the result of the Indemnified Party's negligence or willful misconduct, or (ii) the Indemnified Party is not following the written instructions of the Owner of the Bonds.

In case any action shall be brought against one or more of the Indemnified Parties based upon the foregoing indemnification and in respect of which indemnity may be sought against the Company, the Indemnified Parties shall promptly notify the Company in writing and the Company shall promptly assume the defense thereof, including the employment of counsel, the payment of all expenses and the right to negotiate and consent to settlement. Any one or more of the Indemnified Parties shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Indemnified Parties unless employment of such counsel has been specifically authorized by the Company. The Company shall not be liable for any settlement of any such action effected without its consent by any of the Indemnified Parties, but if settled with the consent of the Company or if there be a final judgment for the plaintiff in any such action against the Company or any of the Indemnified Parties, with or without the consent of the Company, then provided that the Company was given prompt written notice and the ability to assume the defense thereof as required by this paragraph, the Company agrees to indemnify and hold harmless the Indemnified Parties to the extent provided herein.

### **SECTION 3. CONDITIONS TO THE PURCHASER'S OBLIGATIONS**

The Purchaser's obligations hereunder shall be subject to the due performance by the City of the City's obligations and agreements to be performed hereunder on or prior to the Closing Date and to the accuracy of and compliance with the City's 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 executed copy of the Ordinance, the Indenture, the Performance Agreement, this Bond Purchase Agreement, the Lease, 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 threatened 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 indebtedness represented by the Bonds or the validity of the Bonds or any proceedings in relation to the issuance or sale thereof;

(c) The Company shall execute a certificate, dated the Closing Date, to the effect that (i) no litigation, proceeding or investigation is pending against the Company or its affiliates or, to the knowledge of the Company, threatened which would (A) contest, affect, restrain or enjoin the issuance, validity, execution, delivery or performance of the Bonds, or (B) in any way contest the existence or powers of the Company, (ii) no litigation, proceeding or investigation is pending or, to the knowledge of the Company, threatened against the Company that could reasonably be expected to adversely affect its ability to perform its obligations hereunder, (iii) the representations and warranties of the Company 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 (iv) such other matters as are reasonably requested by the other parties in connection with the issuance of the Bonds; and

(d) Receipt by the Purchaser and the Company of an approving opinion from Gilmore & Bell, P.C., in form and substance satisfactory to the Purchaser and the Company.

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

The Purchaser shall have the right to cancel its obligation hereunder to purchase the Bonds by notifying the City in writing of its election to make such cancellation at any time prior to 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 and the satisfaction of the provisions of the Development Agreement.

#### **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. PAYMENT OF EXPENSES**

The Company shall pay all reasonable expenses and costs to effect the authorization, preparation, issuance, delivery and sale of the Bonds. To the best of the City's knowledge and belief, the only expenses payable by the Company in connection with the issuance of the Bonds are the following: (1) the legal fees of Gilmore & Bell, P.C., in the amount of \$\_\_\_\_\_ plus reimbursement for out-of-pocket expenses, (2) publication costs and filing fees in the amount of \$-0-, and (3) the Trustee's initial acceptance fee and first year's administrative fee totaling \$3,250.

#### **SECTION 8. NOTICE**

Any notice or other communication to be given to the City under this Agreement may be given by mailing or delivering the same in writing to the City of Gladstone, Missouri, 7010 North Holmes, Gladstone, Missouri 64118, Attention: City Manager; any notice or other communication to be given to



the Purchaser or the Company under this Agreement may be given by delivering the same in writing to the following:

To Gladstone CAP LLC:

Gladstone CAP LLC  
c/o CBC Real Estate Group  
4706 Broadway, Suite 240  
Kansas City, Missouri 64112  
Attention: Daniel Carr

With a copy to:

Polsinelli PC  
900 W. 48<sup>th</sup> Place, Suite 900  
Kansas City, Missouri 64112  
Attention: Timothy C. Klink

#### **SECTION 9. APPLICABLE LAW; ASSIGNABILITY**

This Bond Purchase Agreement shall be governed by the laws of the State of Missouri and may be assigned by the Purchaser with the written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed.

#### **SECTION 10. 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 this page intentionally left blank]



Very truly yours,

**GLADSTONE CAP LLC,**  
as Purchaser

Date of Execution:

\_\_\_\_\_, 2015

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

Name: Daniel Carr

Title: Manager



Accepted and Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**CITY OF GLADSTONE, MISSOURI**

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

Name: Kirk Davis

Title: City Manager

[SEAL]

ATTEST:

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

Name: Ruth Bocchino

Title: City Clerk



Accepted and Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**GLADSTONE CAP LLC**, as Company

By: \_\_\_\_\_  
Name: Daniel Carr  
Title: Manager



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**PERFORMANCE AGREEMENT**

**Dated as of June 1, 2015**

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**BETWEEN**

**CITY OF GLADSTONE, MISSOURI**

**AND**

**GLADSTONE CAP LLC**

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**Prepared By:**

**Gilmore & Bell, P.C.  
Kansas City, Missouri**



## PERFORMANCE AGREEMENT

**THIS PERFORMANCE AGREEMENT**, dated as of June 1, 2015 (the "**Agreement**"), between the **CITY OF GLADSTONE, MISSOURI**, a third-class city and political subdivision duly organized and existing under the laws of the State of Missouri (the "**City**"), and **GLADSTONE CAP LLC**, a Delaware 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 Section 100.010 of the Revised Statutes of Missouri, as amended) 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, warehousing and industrial development purposes upon such terms and conditions as the City shall deem advisable.

2. Pursuant to the Act, the City Council of the City gave notice to the affected taxing jurisdictions in accordance with Section 100.059.1 of the Act and held a public hearing to finance the costs of a project (the "**Project**") for the Company consisting of the improvement of certain real property located generally at the southeast corner of N. Oak Trafficway and N.E. 69<sup>th</sup> Street in Gladstone, Missouri (the "**Project Site**"), including the construction and improvement of a commercial facility on the Project Site, out of the proceeds of the industrial development revenue bonds to be issued under the Act to provide funds to pay the costs of the Project, and to lease or sell the Project to the Company for the purpose of financing the costs of the Project.

3. Pursuant to Ordinance No. 4.307 passed by the City Council on May 11, 2015, the City has approved a plan for the Company's economic development project.

4. Pursuant to Ordinance No. \_\_\_\_\_ passed by the City Council on June 8, 2015, the City has been authorized to execute and deliver (a) a Trust Indenture of even date herewith (the "**Indenture**"), between the City and First Bank of Missouri, Gladstone, Missouri, as trustee (the "**Trustee**"), for the purpose of issuing and securing the City's Taxable Industrial Development Revenue Bonds (Northland Innovation Center Project), Series 2015 in the maximum principal amount of \$17,700,000 (the "**Bonds**"), (b) a Lease Agreement of even date herewith (the "**Lease**") with the Company, as lessee, under which the City, as lessor, will construct and improve the Project and will lease the Project to the Company, in consideration of rentals which will be sufficient to pay the principal of and interest on the Bonds, and (c) this 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. Pursuant to the foregoing, the City desires to enter into this Agreement with the Company in consideration of the Company's desire to construct, extend and improve the Project 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 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 terms otherwise defined herein, the following words and terms as used herein shall have the following meanings:

**“Agreement”** means this Performance Agreement dated as of June 1, 2015, between the City and the Company, as from time to time amended and supplemented in accordance with the provisions hereof.

**“Commercial Facility”** means a facility comprised of rentable space operated for profit by the Company in accordance with this Agreement and the Development Agreement.

**“Company”** means Gladstone CAP LLC, a Delaware limited liability company, and its successors and assigns.

**“Development Agreement”** means the Development Agreement dated October 14, 2014, between the City and the Company related to the Project, as previously amended and as may be further amended in accordance with its terms.

**“Event of Development Agreement Default”** has the meaning set forth in the Indenture.

**“Force Majeure”** means an event that is beyond the control of the Company and is of the kind and/or nature of a riot, war, act of enemies (including terrorism within the continental United States), national emergency, fire, flood, act of God, severe weather conditions, material shortage or strike that renders it substantially impossible for the Company to operate the Project.

**“Indenture”** means the Trust Indenture dated as of June 1, 2015, between the City and First Bank of Missouri, Gladstone, Missouri, as Trustee, relating to the issuance of the Bonds, as amended or supplemented from time to time.

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

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

**“Project Improvements”** shall have the same meaning as provided in **Exhibit B** to the Indenture.

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

## ARTICLE II

### REPRESENTATIONS

**Section 2.1. City’s Representations.** The City hereby represents that the Project will significantly benefit the City of Gladstone and the State of Missouri by (i) stimulating economic development in the City and the State through the creation and retention of permanent jobs; and (ii) increasing local and state tax revenues.



**Section 2.2. Company's Representations.** The Company hereby represents that the Project will significantly benefit the City of Gladstone and the State of Missouri by (i) stimulating economic development in the City and the State through the creation and retention of permanent jobs; and (ii) increasing local and state tax revenues.

### ARTICLE III

#### PROPERTY TAX EXEMPTION; PAYMENT IN LIEU OF TAXES

**Section 3.1. Property Tax Exemption.** So long as the City owns title to the Project, the City agrees that the Project will be exempt from ad valorem taxes on real property. The first year of the exemption period for purposes of this Agreement shall begin on January 1, 2016 (with the exception of the payment of the PILOT for 2015 as discussed below). Notwithstanding any other provision of this Agreement to the contrary, the last year of such exemption period shall be 2039. The Company covenants and agrees that, during each year the Project is exempt from ad valorem taxes by reason hereof, the Company will make annual payments in lieu of taxes to the City (each such payment, a "PILOT") as described in this **Article III**. The City and the Company hereby agree that the tax abatement provided by this Agreement shall only apply to property financed with the proceeds of the Bonds (i.e., property constituting a part of the Project) and shall not apply to property not financed with proceeds of the Bonds.

**Section 3.2. Payments In Lieu of Taxes.** The Company covenants and agrees to make PILOT Payments to the City on or before each December 31, commencing December 31, 2015, in the amounts, and in the years, set forth in **Exhibit B** attached hereto. Because the Project Site is owned by the City in 2015, the real property is not subjected to ad valorem taxation for 2015, and, therefore, the Company, to the extent the taxes for 2015 have not already been paid, is required to make a PILOT payment equal to 100% of the taxes that would otherwise be due for 2015, as set forth on **Exhibit B**.

**Section 3.3. Failure to Operate the Project as a Commercial Facility.** If the Company fails to operate the Project as a Commercial Facility in a manner generally consistent with the Development Agreement, or as otherwise reasonably permitted by the City, then in addition to any other remedies that may be available to the City under the Lease, the Development Agreement or hereunder, the PILOTS set forth in **Section 3.2** shall be increased to 100% of the ad valorem real property taxes that would otherwise have been due on the Project during each year following such failure, including the pro rata portion of the year in which the failure occurs, and during which the Project is exempt from ad valorem real property taxes as provided herein; provided, that if following any such failure, the Company recommences operating the Project as a Commercial Facility in a manner generally consistent with the Development Agreement, or as otherwise reasonably permitted by the City, the PILOTS shall once again be paid in conformance with **Exhibit B** hereto, beginning in the year in which the Company reestablishes such compliance.

**Section 3.4. Distribution of PILOTS.** Within 30 days of the date of receipt of each PILOT, the City or designated billing/collection agent shall distribute each PILOT among the taxing jurisdictions in accordance with **Exhibit B**. However, during any period under **Section 3.3** during which the Company is paying 100% of the ad valorem real property taxes that would otherwise have been due on the Project, the City or its designated billing/collection agent shall distribute each PILOT among the taxing jurisdictions in proportion to the amount of taxes which would have been paid in each year had the Project not been exempt from taxation pursuant to this Agreement.



**Section 3.5. Obligation of City to Effect Tax Abatement.** The City agrees to take all actions within its control to obtain and/or maintain in effect the exemption referred to in **Section 3.1** above, including any filing required with any governmental authorities; provided, however, the City shall not be liable for any failure of Clay County, Missouri or any other governmental taxing authority to recognize the exemption provided herein. The City covenants that it will not voluntarily take any action that may cause or induce the levy or assessment of ad valorem taxes on the Project. In the event such a levy or assessment should occur, the City shall, at the Company's request and at the Company's expense, fully cooperate with the Company in all reasonable ways to prevent and/or remove any such levy or assessment against the Project.

**Section 3.6. Administration Costs.** Under Section 100.050 of the Act, the City may require the Company to reimburse the City for its actual costs of issuing the Bonds and administering the plan including costs associated with this Agreement, in an amount of no greater than \$1,000 per year. The City will provide a statement for such costs to the Company not later than November 15<sup>th</sup> of each year and the Company will reimburse the City for its costs on or before December 31 of each year continuing until December 31 of the year in which this Agreement expires or is terminated.

**Section 3.7. Other Property Taxes In Connection with the Project.** The real 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 ad valorem tax payments related to such levy or levies which are paid by the Company and received by the City and other taxing jurisdictions shall be credited against and reduce on a *pro rata* basis the amount of the PILOT Payments the Company is obligated to pay pursuant to this Agreement. The Company shall be responsible for any taxes related to any interest in the Project which the Company owns in its own name or granted to the Company other than pursuant to the Lease.

**Section 3.8. Sales Tax Exemption.** The City shall issue the Company a sales tax exemption certificate for the purpose of providing sales tax exemption on materials used in the construction of the Project Improvements. It is the City and the Company's expectation that the purchase of any and all such materials shall be exempt from taxation pursuant to Article III, Section 39(10) of the Missouri Constitution and Section 144.062, RSMo. The Company shall account for all purchases for which the sales tax exemption is used and shall provide such accounting to the City upon request by the City, but not more often than annually. The Company shall reimburse the City and/or the other recipients of sales tax if it is determined that such exemption was improperly used or that the City did not have the legal authority to issue such certificate for such purposes.

**Section 3.9. Credits for Certain Tax Payments.** Nothing in this Agreement shall be construed to require the Company to make duplicate tax payments. The Company shall receive a credit hereunder to such extent it has made any payment for ad valorem real property taxes on the Project to Clay County, Missouri.

**Section 3.10. Company's Right To Protest Taxes.** Notwithstanding any other provision of this Agreement to the contrary, nothing in 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, classification or similar action.

**Section 3.11. No Abatement on Special Assessments, Licenses or Fees.** The City and the Company hereby 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 hereby agrees to make payments with respect to all special assessments, licenses and fees which would otherwise be due with respect to the Project if such Project was not owned by the City.

## **ARTICLE IV**

### **COVENANTS, REPRESENTATIONS AND AGREEMENTS**

**Section 4.1. Inspection.** The Company agrees that the City and its duly authorized agents shall have the right at reasonable times (during business hours), subject to at least 48 hours advance notice and to the Company's usual business proprietary, safety and security requirements, to enter upon the Project Site to examine and inspect the Project and the records of the Company which demonstrate compliance with this Agreement.

**Section 4.2. Compliance with Laws.** The Project will comply in all material respects with all applicable building and zoning, health, environmental and safety ordinances and laws and all other applicable laws, rules and regulations.

**Section 4.3. Construction and Improvement of the Project.** The Project will be constructed and improved consistent with the description of the Project herein. In the event the Project constructed and improved is materially inconsistent with the description of the Project contained herein and in the presentation to the City Council of the City, the City reserves the right to declare an Event of Default in accordance with **Section 6.1** hereof.

**Section 4.4. Representations and Warranties.**

(a) The Company represents, warrants and covenants 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 Delaware, and is qualified to conduct business in 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 corporate action, and does not violate the articles of organization or 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) To the best of the Company's knowledge, there are no actions or proceedings by or before any court, governmental commission, board, bureau or any other administrative agency pending, threatened or affecting the Company that would impair its ability to perform under this Agreement; and

(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 construct, complete and operate the Project.

(b) The City represents, warrants and covenants 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 third class city and political subdivision 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 have been duly authorized by all necessary City actions;

(3) The City has the right, power and authority to enter into, execute, deliver and perform this Agreement; and

(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, threatened or affecting the City that would impair its ability to perform under this Agreement.

**Section 4.5. Survival of Covenants.** All warranties, representations, covenants and agreements of the Company and the City contained herein shall survive termination of this Agreement for any reason.

**Section 4.6. Indemnification.** The Company shall indemnify and defend the City to insure that the City and the Trustee are held harmless 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 conduct or management of, or from any work or thing done in, on or about, the Project during the term of the Lease, 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 **Section 10.5** of the Lease to the extent and subject to the limitations provided therein. The Company hereby grants such warranties regarding environmental matters as set forth in **Section 10.9** of the Lease. This section shall not apply to the negligence or willful misconduct of the City or its officers, employees or agents.

**Section 4.7. Costs of Issuance of the Bonds.** The Company agrees to pay on the date of the initial issuance of the Bonds, all costs of issuance incurred in connection therewith.

## 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 (other than to an affiliate of the Company), assigned, pledged or in any other manner hypothecated without the express written consent of the City; but nothing herein shall preclude the Company from assigning or pledging its interest in the Project so long as the Company continues to occupy the Project and otherwise remains responsible for its undertakings herein.



## ARTICLE VI

### DEFAULT AND REMEDIES

**Section 6.1. Events of Default.** If any one or more of the following events shall occur and be 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 Payments required to be paid hereunder within 10 days after written notice and demand by the City;

(b) the Company shall fail to perform any of its obligations hereunder for (i) a period of 60 days (or such longer period as the City and the Company may agree in writing) following written notice to the Company from the City of such failure which notice shall include a specific description of the Company's failure hereunder), or (ii) if such failure is not subject to cure within such 60 days, Company shall have failed to initiate action to cure such default and shall pursue such action diligently;

(c) any representation of the Company 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 the Company may agree in writing) after the City has given written notice to the Company 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 (or such longer period as the City and Company agree in writing) after such notice, the Company fails to initiate action to cure the default within such 30 days after such notice and fails to pursue such action diligently;

(d) the Company fails to operate the Project as a Commercial Facility; or

(e) an Event of Development Agreement Default exists.

**Section 6.2. Remedies on Default.** Upon an Event of Default hereunder this Agreement may be terminated by written notice to the Company from the City. Within thirty days of such termination and upon written notice of the dollar amounts due, the Company shall make a PILOT to the City equal to (i) the pro rata amount payable pursuant to **Section 3.3** hereof from January 1 of the year in question through the effective date of termination, plus (ii) the pro rata amount of taxes that would be due for the remaining portion of the year assuming the Project was placed on the tax rolls effective on the date of termination through December 31; provided, however, the payment of PILOTS following cessation of operations shall be governed by **Section 3.4**.

Upon any termination of this Agreement the Company agrees to pay interest and penalties on all amounts due hereunder to the same extent as if such payments were taxes under Missouri law.

**Section 6.3. Payments on Defaulted Amounts.** Any amounts due hereunder which are not paid when due shall bear interest at the interest rate imposed by Missouri law on overdue ad valorem real estate taxes from the date such payment was first due.

**Section 6.4. Enforcement.** In addition to the remedies specified in **Section 6.2**, upon the occurrence of an Event of Default, the City or any taxing jurisdictions that would benefit from the PILOT Payments due and owing under this Agreement may bring an action for specific performance to enforce such payments. In the event of litigation pertaining to the enforcement of this Agreement, the losing party shall pay all costs of litigation, including reasonable attorneys' fees.



**Section 6.5. Failure of the City to Perform its Obligations.** In the event the City shall fail to perform any of its obligations hereunder for (i) a period of 60 days (or such longer period as the Company and the City may agree in writing) following written notice to the City from the Company of such failure which notice shall include a specific description of the City's failure hereunder), or (ii) if such failure is not subject to cure within such 60 days, the City shall have failed to initiate action to cure such default and shall pursue such action diligently; the Company may declare that the City is in default under this Agreement and may pursue any legal remedy available to it to enforce this Agreement.

## **ARTICLE VII**

### **TERM OF AGREEMENT**

This Agreement shall become effective upon execution, and subject to earlier termination pursuant to the provisions of this Agreement (including particularly **Article VI** hereof), shall have an initial term commencing as of the date of this Agreement and terminating on December 31, 2039 (the "**Stated Expiration Date**"). This Agreement shall automatically terminate prior to the Stated Expiration Date in the event the Bonds (or any Bonds issued to refund the Bonds) are no longer outstanding.

## **ARTICLE VIII**

### **MISCELLANEOUS PROVISIONS**

**Section 8.1. Severability.** If for any reason any provision of this Agreement shall be determined to be invalid or unenforceable, the validity and enforceability of the other provisions hereof shall not be affected thereby.

**Section 8.2. Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of Missouri.

**Section 8.3. Execution in Counterparts.** This Agreement may be executed simultaneously 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 8.4. Waiver.** The City and the Company acknowledge and agree that the amounts payable hereunder shall constitute payments due the City under the Lease executed in connection with the Bonds. 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.

**Section 8.5. Entire Agreement.** This Agreement constitutes the entire agreement relating to the subject matter contained herein and supersedes all prior agreements and understandings, both written and oral, between the City and the Company with respect to the subject matter hereof.

**Section 8.6. Electronic Storage of Documents.** The City and the Company agree that the transaction described herein may be conducted and related documents may be stored by electronic means.

**Section 8.7. Notices.** All notices, certificates or other communications required or desired to be given hereunder shall be given in the manner specified in the Indenture.

**Section 8.8. Employee Verification.** The Company will comply with and satisfy the requirements of Section 285.530.2, RSMo., as amended, which requires (1) any business entity receiving



tax abatement to, by sworn affidavit and provision of documentation, annually affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the business entity receiving tax abatement, and (2) every such business entity to annually sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the entity receiving tax abatement. The Company shall provide such affidavits and documentation to the City on or before November 15 of each year during the term of this Agreement, beginning November 15, 2016, and also upon execution of this Agreement.

**Section 8.9. Complete Agreement.** The Company and the City understand that oral or unexecuted agreements or commitments to loan money, extend credit or to forbear from enforcing repayment of a debt including promises to extend or renew such debt are not enforceable. To protect the Company and the City from misunderstanding or disappointment, any agreements the Company and the City reach covering such matters are contained in this Performance Agreement, the Lease and the Development Agreement, which are the complete and exclusive statements of the agreement between the Company and the City, except as the Company and the City may later agree in writing to modify this Performance Agreement, the Lease and the Development Agreement.

[The remainder of this page intentionally left blank]



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

**CITY OF GLADSTONE, MISSOURI**

By: \_\_\_\_\_  
Name: Kirk Davis  
Title: City Manager

[SEAL]

ATTEST:

By: \_\_\_\_\_  
Name: Ruth Bocchino  
Title: City Clerk



**GLADSTONE CAP LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Daniel Carr  
Title: Manager



## **EXHIBIT A**

### **Legal Description**

The following described real estate located in Clay County, Missouri:

Lot 1, NORTHLAND INNOVATION CAMPUS, a subdivision in the City of Gladstone, Clay County, Missouri, according to the recorded plat thereof.



**EXHIBIT B**  
**PILOT SCHEDULE**



## PARKING LEASE

**THIS PARKING LEASE** is made and entered into as of June \_\_\_\_, 2015, by and between the **CITY OF GLADSTONE, MISSOURI**, a third class city organized and existing under the laws of the State of Missouri ("Landlord"), and **GLADSTONE CAP, LLC**, a Delaware limited liability company ("Tenant").

### WITNESSETH:

For and in consideration of the rent hereinafter provided, and for and in consideration of the mutual agreements herein set forth and for other good and valuable consideration, Landlord hereby leases and Tenant hereby takes the premises herein described, upon and subject to the terms and conditions herein set forth, for the term herein stated, as follows:

### ARTICLE 1 DEFINITIONS

Section 1.1 Definitions. The underscored terms set forth below shall have the respective meanings indicated for purposes of this Lease:

Base Rent. The term "Base Rent" means the base rental as set forth in **Article 4**.

Commencement Date. The term "Commencement Date" means the date on which the Term commences, such date being June \_\_\_\_, 2015.

Development Agreement. The Development Agreement between the Landlord and Tenant, dated October 14, 2014, with respect to the development of the Northland Innovation Center, as attached hereto as Exhibit D, and as amended by the First Amendment to the Development Agreement attached hereto as Exhibit E.

Excluded Personal Property. The term "Excluded Personal Property" means any and all furniture, fixtures, equipment and other personal property, including without limitation, replacements and substitutions therefor, and all leases thereof and all rents, revenues, income, profits, royalties, deposits and proceeds therefrom, now or hereafter owned, leased or used by or through Tenant and/or any Excluded Property Party and their respective successors, assigns, and /or transferees.

Excluded Property. The term "Excluded Property" means the Improvements, Pre-Existing Improvements and all Excluded Personal Property.

Excluded Property Party. The term "Excluded Property Party" means Tenant, any person or entity occupying or using any part of the Improvements or Premises by or through Tenant (or its lessees, successors or assigns) and/or any person or entity holding an ownership or security interest in any Excluded Property.

Improvements. The term "Improvements" means the Pre-Existing Improvements and the Surface Parking.

Land. The term "Land" means the parcel of land described in Exhibit A attached hereto and by this reference made a part hereof and the easements, rights, hereditaments and other appurtenances now or hereafter appurtenant to, benefiting or serving such parcel including the land lying in the bed of any street, alley or highway in front of, within or adjoining the land described in such Exhibit but not including any Improvements or Pre-Existing Improvements.



Landlord. In addition to the meaning ascribed to the term "Landlord" in **Section 19.5** hereof, the term "Landlord" means the Landlord named herein and any person, firm, corporation or other legal entity who or which shall succeed to Landlord's legal and equitable fee simple title to the Land (any such successor to be conclusively deemed to have assumed the obligations of "Landlord" herein by virtue of such succession).

Landlord Mortgage. The term "Landlord Mortgage" means any mortgage granted or made by Landlord to grant to a Landlord Mortgagee a security interest in Landlord's interest in the Premises and/or in this Lease and shall include whatever security instruments are used in the State of Missouri to secure such interests including without limitation, financing statements, security agreements, mortgages, deeds of trust, and any other documentation required to so secure such interest.

Landlord Mortgagee. The term "Landlord Mortgagee" means the holder or secured party under a Landlord Mortgage.

Leasehold Mortgage. The term "Leasehold Mortgage" means any leasehold mortgage granted or made by Tenant to grant to a Leasehold Mortgagee a security interest in Tenant's leasehold interest in this Lease and shall include whatever security instruments are used in the State of Missouri to secure the mortgagee's interest in the leasehold interest of Tenant under this Lease without limitation, financing statements, security agreements, mortgages, deeds of trust, and any other documentation required to so secure such interest.

Leasehold Mortgagee. The terms "Leasehold Mortgagee" means the holder or secured party under a Leasehold Mortgage.

Lease Year. The term "Lease Year" means each successive twelve (12) month period during the term commencing on the Commencement Date.

Permitted Encumbrances. The term "Permitted Encumbrances" means only the encumbrances described in Exhibit B hereto.

Phase I Property. The term "Phase I Property" means that certain real property adjacent to the Premises as described on Exhibit C.

Pre-Existing Improvements. The term "Pre-Existing Improvements" means any improvements located on the Land on the Commencement Date (e.g., utility lines).

Premises. The term "Premises" means the Land and any Pre-Existing Improvements.

Surface Parking. The term "Surface Parking" means an asphalt surface parking area sufficient to service Tenant's development located on Phase I Property, along with normal and customary improvements related thereto, such as but not limited to lighting, parking islands, and landscaping.

Tenant. In addition to the meanings ascribed to the term "Tenant" in **Section 19.5** hereof, the term "Tenant" means the Tenant named herein, and any person, firm, corporation or other legal entity to whom or to which Tenant's interest in this Lease shall be assigned.

## ARTICLE 2 THE DEMISE FOR THE TERM

Section 2.1 Demise. Landlord hereby leases to Tenant, and its successors and assigns, the Premises situated in the County of Clay, State of Missouri, and described more fully in Exhibit A, from



the Commencement Date and continuing thereafter for the remaining term of this Lease (the "Term").

Section 2.2 Term. Tenant will be deemed to accept the Premises as of the Commencement Date. Unless otherwise renewed or sooner terminated as provided herein, the Term shall continue until the earlier to occur of (i) December 31, 2039, (ii) Landlord and Tenant enter into a separate lease agreement with respect to the Premises in connection with financing under Section 100.010 through 100.200, Revised Statutes of Missouri, or (iii) upon termination of Tenant's development rights with respect to the Phase 2 Property (as defined in the Development Agreement) as more fully described in **Section 2.4** hereof (the "Expiration Date").

Section 2.3 Lease Not Terminable Except as Provided Herein. Except as otherwise expressly provided for herein, this Lease shall not terminate, nor shall Tenant be entitled to any abatement, diminution, deduction, deferment, or reduction of rent, or set-off against the Rent, nor shall the respective obligations of Landlord and Tenant be otherwise affected by reason of any damage to or destruction of the Premises by whatever cause; any taking by eminent domain or eviction by paramount title (except to the extent this Lease is effected by operation of law); any lawful or unlawful prohibition of Tenant's use of the Premises; any interference with such use by any private person, corporation, or other entity; any default or breach of any warranty by Landlord under this Lease; any, default of Tenant under this Lease, any inconvenience, interruption, cessation, or loss of business, or otherwise, caused directly or indirectly by any present or future laws, rules, requirements, orders, directions, ordinances, or regulation of the United States of America or of the state, county or city government, or any other municipal government or lawful authority whatsoever or by priorities, rationing, or curtailment of labor or materials or by war or any matter or thing resulting therefrom; or for any other cause whether similar to or dissimilar from the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties that the obligations of Tenant hereunder shall be separate and independent covenants and agreements and that the Rent and all other payments to be made by Tenant hereunder shall continue to be payable in all events unless the obligations to pay the same shall be terminated pursuant to the express provisions of this Lease.

Section 2.4 Termination. The Development Agreement provides for the automatic termination of the Development Agreement with respect to the right to develop the Land in the event the Closing (as defined in the Development Agreement) of the Land has not been consummated on or before the later of (i) the date of Completion of Construction of the Phase 1 Project Improvements (as defined in the Development Agreement) or (ii) December 31, 2015. If such automatic termination of the Development Agreement occurs with respect to the right to develop the Land, then this Parking Lease shall thereafter terminate, but not until: (i) written notice has been sent from Landlord to Tenant stating that Landlord (or a third-party) has provided alternative structured parking usable by Tenant upon the Land, along with permanent access thereto from NE 69<sup>th</sup> Street, and (ii) Landlord (or a third-party) and Tenant have entered into a separate, permanent, non-exclusive parking easement pursuant to which Tenant is permitted to park within such alternative structured parking, and Tenant is further granted permanent access thereto. Landlord and Tenant agree to use commercial best efforts to negotiate and execute the easement referred to in the prior sentence. Upon termination of this Lease in accordance with this **Section 2.4**, Tenant shall, within 60 days of such termination, (i) vacate the Land, and (ii) remove any leasehold mortgage or encumbrance of any kind that may have been suffered against the Land during the term of this Lease.

### ARTICLE 3

#### TITLE: QUIET ENJOYMENT

Section 3.1 Warranty of Title. Landlord warrants that it holds good fee simple title to the Premises, free and clear of any and all easements, rights of way, restrictions, conditions, covenants, or encumbrances other than the Permitted Encumbrances and any liens or encumbrances created by Tenant



subsequent to the Commencement Date.

Section 3.2 Covenant of Quiet Enjoyment. Landlord covenants that so long as Tenant is performing its covenants and agreements herein and observing the provisions of this Lease after giving effect to all applicable cure periods, Tenant shall peaceably and quietly have possession and enjoy the Premises in accordance with the terms of this Lease, without hindrance or molestation by Landlord or any persons claiming by, through or under Landlord.

#### ARTICLE 4 RENT

Section 4.1 Base Rent. Tenant covenants to pay to Landlord, without set-off or deduction, as a net base rental ("Base Rent") for the Premises from and after the Commencement Date, the sum of One and 00/100 Dollars (\$1.00) per annum, payable annually in advance, on each anniversary of the Commencement Date, or the first business day thereafter if such anniversary date falls on a non-business day, during each year of the Term.

Section 4.2 Proration. There shall be no proration of Base Rent.

Section 4.3 Place of Payment. All rentals payable hereunder shall be paid to Landlord at the address set forth at **Section 18.1**, unless Tenant is otherwise instructed in writing by Landlord.

Section 4.4 Gross Lease. The Lease shall be a gross lease. Tenant shall also pay all amounts required to maintain the Premises, and to insure the Premises in accordance with **Article 7**. The Parties anticipate that the Land and the Premises will be exempt from all ad valorem property taxes during the entire Term. If any ad valorem property taxes are assessed against the Land, the Premises, or any interest therein during the Term, all such taxes shall be paid by Landlord prior to delinquency.

#### ARTICLE 5 CONSTRUCTION OF IMPROVEMENTS

Section 5.1 Improvements. Tenant, at its sole risk, cost and expense, may construct and develop on the Land as part of the Premises the Improvements, subject to Landlord's reasonable approval, not to be unreasonably withheld, conditioned or delayed. Specifically, Tenant may construct on the Premises the Surface Parking. In addition, Tenant shall have the right at any time during the Term to repair, replace and maintain the Improvements, subject, however, to the provisions of **Section 8.2**.

Section 5.2 Control of Construction. The construction and development of the Improvements, and any and all subsequent work on or about the Premises shall be done in compliance with applicable building and zoning laws and all other laws, ordinances, orders, rules, regulations and requirements of all Federal, State and municipal governments and the appropriate departments, commissions, boards and officers thereof.

Section 5.3 Discharge of Mechanic's Liens. Tenant shall not suffer or permit any mechanic's liens to be filed against Landlord's title to the Premises or against Tenant's interest in the Premises and/or Improvements by reason of work, labor, services or materials supplied to Tenant or as a result of an agreement with, or the assent of, Tenant, including, without limitation, any mechanic's liens arising out of or in connection with the construction of any Improvements. If any such mechanic's liens shall at any time be filed against the Premises or any part thereof, Tenant shall promptly cause the same to be discharged of record or bonded over as may be necessary to prevent a foreclosure on the Premises or any part thereof to satisfy the same in accordance with **Section 8.3** hereof.



Section 5.4 Title to Improvements. Title to all Improvements, including any and all Improvements constructed on the Premises prior to or after the Commencement Date shall be deemed vested in and owned by Tenant for all purposes. Subject to **Section 8.2**, any Improvements remaining on the Premises at the end of the Term, shall then become the property of Landlord, and Landlord shall thereupon be entitled to possession thereof. Nothing in this Lease shall require or shall be construed to create any obligation of Tenant to cause any Improvements to be located on the Premises at the end of the Term.

## ARTICLE 6 USE AND OPERATION OF THE PREMISES

Section 6.1 Permitted Use. Tenant may use the Premises for any use permitted under applicable law.

Section 6.2 Compliance With Laws and Governmental Requirements. Tenant shall, at its sole cost and expense, obtain all governmental permits, approvals, licenses, and authorizations needed by Tenant to construct any Improvements on the Premises, and shall maintain same during the Term as required by applicable law. Landlord covenants and agrees to cooperate with Tenant, at Tenant's expense, in the obtaining of such permits, approvals, licenses, and authorizations. Tenant covenants and agrees that it will, at its sole cost and expense, take such actions as may be lawfully required by any public body having jurisdiction over the Premises in order to comply with such sanitary, zoning, and other similar requirements designed to protect the public, in effect during the Term, applicable to the Premises or the manner of Tenant's use and occupancy of the Premises or otherwise applicable to the Premises. Tenant shall, at Tenant's expense, make any alterations or repairs to the Premises that may be necessary to comply with any of the foregoing, subject to the applicable provisions of **Article 8**.

## ARTICLE 7 INSURANCE

Section 7.1 Casualty Insurance. Tenant will procure and maintain in effect at all times and at Tenant's expense insurance insuring Tenant against loss or damage to the Improvements by fire, vandalism, malicious mischief, and other risks from time to time. Such insurance shall provide coverage in an amount sufficient to prevent Tenant from being a co-insurer of any loss under the policy or policies, but in no event less than 100% of the full replacement cost of the Improvements.

Section 7.2 Liability Insurance. During the Term of this Lease, the Tenant shall cause the Premises and the Improvements to be continuously insured against such risks and in such amounts, with such deductible provisions as are customary in connection with the construction and operation of facilities of the type and size comparable to the Improvements. The Tenant shall carry and maintain, or cause to be carried and maintained, and pay or cause to be paid in a timely manner the premiums for at least the following insurance with respect to the Premises and the Improvements (unless the requirement therefor shall be waived by the City in writing):

(i) Commercial general liability ("CGL") insurance providing coverage for those liabilities which is equal or broader than that currently covered by a CGL policy (a standard ISO CGL form) including at least the following hazards: (1) premises and operations; (2) products and completed operations; (3) independent contractors; and (4) blanket contractual liability for all legal contracts; such insurance to be on an "occurrence" form with a combined limit of not less than the maximum amount of liability as published annually by the Department of Insurance in the Missouri Register, in accordance with Section 537.610 RSMo which is made applicable to political subdivisions pursuant to Section 537.600, RSMo; and



(ii) Workers' compensation insurance or self-insurance, subject to statutory limits and employer's liability insurance with a limit of at least \$1,000,000 per accident and per disease per employee, and \$1,000,000 for disease aggregate in respect of any work or operations on or about the Premises, or in connection with the Improvements or its operation if applicable in accordance with the applicable worker's compensation laws.

**Section 7.3 Additional Policy Requirements.** All insurance policies required hereunder shall be written and signed by reputable and financially sound insurance companies admitted to do insurance business in Missouri having a rating of not less than category A+ as listed in Bests' Rating Guide or the equivalent rating if such rating ceases to be published or available. All such policies shall contain an agreement by the insurer that such policies shall not be canceled without at least thirty (30) days' prior written notice to Landlord and Tenant. Anything in this Lease to the contrary notwithstanding, Landlord and Tenant each hereby waives any and all rights of recovery, claim, action or cause of action, against the other, its agents (including partners, both general and limited), officers, directors, members, shareholders or employees, for any loss or damage that may occur to the Premises, or any improvements thereto, or any property of such party therein, by reason of fire, the elements, or any other cause which could be insured against under the terms of standard fire and extended coverage insurance policies, regardless of cause or origin, including negligence of the other party hereto, its agents, officers or employees, and covenants that no insurer shall hold any right of subrogation against such other party.

**Section 7.4 Certificates of Insurance and Payment of Premiums.** Tenant shall deliver certificates of insurance evidencing the required coverages and limits of liability. Said certificates shall be so delivered immediately after the writing and effective date of said policies but in no event less frequently than annually, along with receipts evidencing payment of the premiums therefor. Tenant will pay the premiums for all insurance policies which Tenant is obligated to carry under the terms of this Lease.

**Section 7.5 Liability for Deductible Amounts.** Tenant, as principal named insured for all property insurance required hereunder, retains full responsibility for payment of all deductibles under each of said policies. Nothing herein contained shall be construed as rendering Landlord personally liable for the payment of any such insurance premiums but if, at any time during the Term or any extensions hereof, Tenant shall fail, refuse, or neglect to effect, maintain, or renew any of the policies of insurance required by this Lease, or fail, refuse or neglect to keep and maintain same in full force and effect, or to pay premiums therefor promptly when due, or to deliver to Landlord and/or mortgagee any of such policies or certificates, then Landlord at its sole option but without obligation to do so, may effect, maintain or renew such insurance, and the amount of money paid as the premium thereon, plus interest at the rate set forth in **Section 13.3** below, shall be collectible as though it were rent then matured hereunder and due and payable forthwith.

**Section 7.6 Tenant's Indemnity.** Unless due to the intentional act or negligence of Landlord or Landlord's officers, agents, contractors, employees or invitees and except as provided in the last sentence of **Section 4.4** of this Lease, Tenant will defend, indemnify, and hold harmless Landlord, its officers, employees and agents (the "Indemnified Parties") from and against any and all liabilities, claims, losses, damages, actions, judgments, costs, and expenses (including without limitation reasonable attorney's fees and expenses) of every kind imposed upon or asserted against the Indemnified Parties arising by reason of or in connection with (a) Tenant's possession, use, occupancy, or control of the Premises; (b) any accident, injury to or death of persons, or loss of or damage to property occurring on or about the Premises; of (c) the possession, operation, use, misuse, maintenance, or repair of the Premises. If it becomes necessary for Landlord to defend any action seeking to impose any such liability, Landlord may elect to notify Tenant and tender defense of such action to Tenant. Tenant shall accept such tender of defense (with counsel reasonably acceptable to Landlord) and Tenant will pay all costs, expenses, and reasonable attorney's fees incurred in effecting such defense, in addition to any other sums which Landlord may be called upon to



pay by reason of the entry of a judgment against Landlord in the litigation in which such claim is asserted. Landlord shall not be responsible for the loss of or damage to property or injury to or death of persons occurring in or about the Premises by reason of any future condition, defect, matter, or thing in the Premises, or for the acts, omissions, or negligence of other persons or tenants in and about the Premises, and Tenant agrees to defend (with counsel reasonably acceptable to the Landlord), indemnify, and hold the Indemnified Parties harmless from and against all claims and liability for same, unless such loss, damage, or death is due to the intentional act or negligence of any of the Indemnified Parties.

## ARTICLE 8 CONDITION OF IMPROVEMENTS

Section 8.1 No Landlord Obligation. Landlord shall not under any circumstances be required to furnish any services or facilities or to make any repairs, replacements or alterations of any nature or description in or to the Premises or to make any expenditure whatsoever in connection with this Lease or to maintain the Premises in any way. Tenant assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance, and management of the Premises.

Section 8.2 Alteration of Improvements. Tenant will not commit any waste of the Premises; provided, however, Tenant may, in its sole discretion, demolish and/or remove any and all Improvements from the Premises it being agreed and understood that Tenant shall have no obligation to restore such Improvements or to cause any Improvements to be located on the Premises at the end of the Term. Tenant shall deliver the Improvements to Landlord at the end of the Term or the end of Tenant's right to remain in possession of the Premises (as a result of rights available to Tenant as contemplated under **Section 19.17** hereof), whichever occurs later, free from mechanic's liens arising by or through Tenant and in reasonably good and working condition. Tenant shall have the right to repair, replace and maintain the Improvements to the Premises. The work necessary to repair, replace and maintain the Improvements to the Premises shall be done at Tenant's expense by employees of or contractors hired by Tenant. Tenant shall promptly pay to Tenant's contractors when due the cost of all such work and upon completion deliver to Landlord evidence of payment, contractors' affidavits and full and final waivers of all liens for labor, services or materials. All work done by Tenant or its contractors pursuant to this **Section 8.2** shall comply with all applicable insurance requirements and all applicable laws and ordinances and rules and regulations of governmental departments or agencies.

Section 8.3 Liens. Tenant will pay or cause to be paid all charges for all work done by Tenant, including without limitation all labor and materials for all construction, development, repair, replacement and maintenance of the Improvements to or upon the Premises during the Term, including such work or portion thereof as is required by any governmental entity having jurisdiction or is otherwise required by applicable law, and will not suffer or permit any mechanic's, materialman's, or similar liens for labor or materials furnished to the Premises during the Term or any extensions hereof to be filed against the Premises and/or the Improvements; and if any such lien shall be filed, Tenant will either pay the same or procure the discharge thereof by giving security or in such other manner as may be required or permitted by law within ninety (90) days after such filing or within such shorter time period as may be required by law. Tenant shall have the right, however, at its sole cost and expense, in its name or in the name of Landlord or in the name of both, to contest any such lien, provided the existence of such lien pending such contest shall not jeopardize Landlord's interest in the Premises. Tenant shall indemnify Landlord against, and save Landlord harmless from, any and all loss, damage, claims, liabilities, judgments, interest, costs, expenses, and reasonable attorney's fees arising out of the filing of any such lien. Tenant's indemnification obligation pursuant to the preceding sentence shall survive the expiration or termination of this Lease. Nothing contained herein shall constitute any consent or request by Landlord, express or implied, to or for the performance of any labor or services or the furnishing of any materials or other property in respect of the Premises nor as giving Tenant any right, power, or authority to contract for or permit the performance



of any labor or services or the furnishing of any materials or other property in such fashion as would permit the making of any claim against Landlord or the Premises in respect thereto. Tenant shall have no right to encumber or cause to be encumbered the title or interest of Landlord in the Premises in any manner whatsoever.

Section 8.4     Environmental Matters.

A.     The term "Environmental Laws" shall mean and include the Resource Conservation and Recovery act, as amended by the Hazardous and Solid Waste Amendments of 1984, the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Materials Transportation Act, the Toxic Substances Control Act, the Federal Insecticide, Fungicide and Rodenticide Act and all applicable state and local environmental laws, ordinances, rules, requirements, and regulations, as any of the foregoing may have been or may be from time to time amended, supplemented or supplanted and any and all other federal, state or local laws, ordinances, rules, requirements and regulations, now or hereafter existing, relating to the preservation of the environment or the regulation or control of toxic or hazardous substances or materials; and

B.     The term "Regulated Substance" shall mean and include any, each and all substances or materials now or hereafter regulated pursuant to any Environmental Laws, including, but not limited to, any such substance or material now or hereafter under any Environmental Law defined as or deemed to be a "regulated substance," pesticide, "hazardous substance" or "hazardous waste" or included in any similar or like classification or categorization thereunder.

C.     Tenant shall not cause or permit any Regulated Substance to be placed, held, located, released, transported or disposed of on, under, at or from the Premises in violation of any Environmental Laws or permit any Regulated Substance to otherwise adversely affect the Premises and/or the Improvements in violation of any Environmental Laws. Tenant shall, at its own cost and expense, contain at or remove from the Premises and/or the Improvements, or perform any other necessary remedial action regarding any Regulated Substance in any way affecting the Premises and/or the Improvements if such containment, removal or other remedial action is required of the owner and/or operator of the Premises and/or the Improvements under any Environmental Laws and, to the extent Tenant takes any remedial action with respect to any Regulated Substance whether or not so required, Tenant shall perform any containment, removal or remediation of any kind involving any Regulated Substance in any way affecting the Premises and/or the Improvements in compliance with the requirements of all Environmental Laws. Tenant shall provide Landlord with written notice (and a copy as may be applicable) of any of the following within thirty (30) days thereof: (i) Tenant's obtaining knowledge or notice of any kind of the presence, or any actual or threatened release, of any Regulated Substance in any way affecting the Premises and/or the Improvements; (ii) Tenant's receipt or submission, or Tenant's obtaining knowledge or notice of any kind, of any report, citation, notice or other communication from or to any federal, state or local governmental or quasi-governmental authority regarding any Regulated Substance in any way affecting the Premises and/or the Improvements; or (iii) Tenant's obtaining knowledge or notice of any kind of the incurrence of any cost or expense by any federal, state or local governmental or quasi-governmental authority or any private party in connection with the assessment, monitoring, containment, removal or remediation of any kind of any Regulated Substance in any way affecting the Premises and/or the Improvements, or of the filing or recording of any lien on the Premises and/or the Improvements or any portion thereof in connection with any such action or Regulated Substance in any way affecting the Premises and/or the Improvements.

Tenant shall defend all actions against Landlord and pay, protect, indemnify and save harmless Landlord, its directors, officers, employees and agents from and against any and all liabilities, losses, damages, costs, expenses (including, without limitation, reasonable attorneys' and consultant's fees, response and cleanup costs, court costs, and litigation expenses), causes of action, suits, claims, demands



or judgments of any nature relating to any action brought against Landlord arising out of or in any way relating to any violation or claimed violation of Environmental Laws by Tenant and/or the Premises and/or the Improvements other than in connection with a Pre-Term Condition (as hereinafter defined). If at the expiration or other termination of this Lease any response or cleanup of a condition involving Regulated Substances is required of Tenant and/or the Premises and/or the Improvements by any federal, state or local governmental authority and such condition first arose during the Term as a result of Tenant's acts or omissions, then Tenant shall remain solely responsible for such requirement. The foregoing indemnity shall survive the expiration or earlier termination of this Lease. Notwithstanding anything to the contrary in this Lease, Landlord, and not Tenant, is responsible for any remediation of the Premises required as a result of any environmental condition of the Premises which existed prior to Commencement Date (a "Pre-Term Condition").

## ARTICLE 9 DAMAGE OR DESTRUCTION

Section 9.1 No Abatement of Rent. Notwithstanding any contrary law, Rent shall not be suspended or abated as a result of any damage or destruction to, and/or during any restoration or rebuilding of, the Premises and/or the Improvements.

## ARTICLE 10 SUBLETTING AND ASSIGNMENT

Section 10.1 Transactions Requiring Landlord's Consent. Except as permitted in **Section 14.1** in connection with or arising out of a grant by Tenant of a Leasehold Mortgage, Tenant shall not, without the prior written consent of Landlord, which consent shall not be unreasonably withheld or conditioned and shall be given or denied (and if denied with reasons therefor) within thirty (30) days after a request for such consent from Tenant, (a) assign this Lease or any interest hereunder, or (b) permit any assignment of this Lease by operation of law. Tenant may sublet the Premises or any part thereof and may permit the use or occupancy of all or any part of the Premises by any parties other than Tenant, its agents, employees and invitees with the written consent of Landlord.

Section 10.2 Effectiveness of Assignment/Sublease; No Avoidance of Liability. Except as permitted in **Section 14.1** in connection with or arising out of a grant by Tenant of a Leasehold Mortgage, Tenant shall give Landlord written notice of any proposed assignment or subletting under **Section 10.1**, which notice shall contain the proposed principal terms thereof. Except as permitted in **Section 14.1** in connection with or arising out of a grant by Tenant of a Leasehold Mortgage, no assignment of this Lease shall be effective unless the assignee shall execute an appropriate instrument assuming all of the obligations of Tenant hereunder and unless Tenant acknowledges therein its continued liability under this Lease. Landlord's consent to any proposed assignment (when such consent is required pursuant to **Section 10.1**), shall not constitute a waiver of Landlord's right reasonably to approve or disapprove of any subsequent assignment.

Section 10.3 Assignment by Landlord. Landlord shall cause any transferee of Landlord's interest in the Premises to assume Landlord's obligations under this lease.

## ARTICLE 11 CONDEMNATION

Section 11.1 Temporary Taking by Eminent Domain. If, during the Term, the temporary use of the whole or any portion of the Premises shall be taken as a result of the exercise of the power of eminent domain, Tenant shall be entitled to the entire compensation and award for any and all damage, loss or injury suffered as a result of such temporary taking, and this Lease shall continue in full force and effect



without any abatement of the rental or other payments required to be made by Tenant hereunder.

Section 11.2 Total Taking of Whole or Affecting Whole by Eminent Domain. If, during the Term, all of the Premises shall be permanently taken as a result of the exercise of the power of eminent domain, or a portion of the Premises shall be taken as a result of the exercise of eminent domain with resulting damages to any Improvements and the award made in such proceedings shall be based on a determination that the portion of the Premises not taken is worthless and cannot practicably be rehabilitated, then Tenant may terminate this Lease effective on the date of vesting of title with the condemning authority or its designees. Tenant shall be entitled to the entire compensation and award for any and all of such taking.

Section 11.3 Substantial Taking Not Affecting Whole. If, during the Term, a portion of the Premises shall be taken as a result of the exercise of eminent domain with resulting damage to any Improvements and the amount of the award made is based on a determination that the portion of the Premises not so taken is of value and can practicably be rehabilitated, then unless Tenant, within sixty (60) days after the vesting of title to the land in the condemnor and issuance of the award, shall elect at its option to cancel this Lease and surrender the Premises to Landlord, this Lease shall upon vesting of title in such proceedings terminate only as to that portion of the Premises so taken, Base Rent shall abate from and after vesting of title in such proceedings in the proportion that the area taken bears to the area of the entire Premises, and the total award shall be deposited into a construction disbursing escrow for application against Tenant's cost of repair and restoration of the Improvements which Tenant shall effect in such manner as it deems appropriate. In the event Tenant elects not to effect such restoration or is unable to do so, Tenant shall retain the entirety of the award.

Section 11.4 Voluntary Transfers in Lieu of Condemnation. Landlord shall not voluntarily transfer all or any part of the Premises or Landlord's interest therein in lieu of the actual exercise of the power of eminent domain without the prior written consent of Tenant which Tenant may withhold in its reasonable discretion it being understood that, among other reasons which may be the basis for the withholding of consent in Tenant's reasonable discretion, Tenant may withhold consent if such proposed transfer would in effect materially and adversely affect Tenant's rights under this Lease or the operation by Tenant of its business at the Premises.

## ARTICLE 12

### UTILITIES; EASEMENTS; LANDLORD'S ACCESS

Section 12.1 Payment of Public Utility Charges. Tenant shall pay or cause to be paid all charges for gas, water, sewer, electricity, light, heat or power, telephone or other communication service used, rendered or supplied upon in connection with the Improvements.

Section 12.2 Easements. Landlord agrees, upon request of Tenant at any time and from time to time, and at the sole cost of Tenant, to join in the grant of new easements and rights of way or alteration of existing easements and rights of way upon, under or over the Premises for public utilities, public purposes, access to public facilities, roads and ways, parking, and reciprocal easements, provided such grant or grants are reasonably necessary for the operation of the Premises for the uses herein permitted. Landlord will not grant any easements, licenses or other rights which would permit any third party to obtain rights to the Premises (other than mortgages or deeds of trust granted by Landlord pursuant to **Article 14**) or modify any of the Permitted Encumbrances.

Section 12.3 Landlord's Access to Premises. Other than in the event of an emergency involving an imminent threat to persons or property, in which event Landlord may gain such access to the Premises and Improvements as is necessary to protect such persons and/or property, Landlord may not have any entry or access to the Premises or Improvements (i) without at least twenty four (24) hours' prior notice to Tenant, (ii) except at reasonable times, (iii) other than in accordance with Tenant's reasonable security



arrangements, or (iv) in any manner which interrupts, interferes with or diminishes the operations of Tenant in the demised premises or would cause Tenant to incur costs or expenses that Tenant would not have incurred but for such entry.

### ARTICLE 13 DEFAULT PROVISIONS

Section 13.1 Tenant's Default. Tenant shall be in default under this Lease if (i) default shall be made in the payment of the Rent or any installment thereof or in the payment of any other sum required to be paid by Tenant under this Lease and such default shall continue for thirty (30) days after written notice to Tenant, (ii) if default shall be made in the observance or performance of any of the other covenants or conditions in this Lease which Tenant is required to observe and perform and such default shall continue for thirty (30) days after written notice to Tenant, unless such default cannot reasonably be cured within such thirty (30) day period, in which event Tenant shall have such additional reasonable period of time as is necessary to cure such default provided it is diligently pursuing such a cure during such additional period of time, (iii) if a hazardous condition exists on or about the Premises and/or the Improvements which Tenant is required to eliminate and such condition is not eliminated within a reasonable period of time after written notice from Landlord, (iv) if the interest of Tenant in this Lease shall be levied on under execution or other legal process and the same is not dismissed, stayed or vacated within ninety (90) days thereafter other than in connection with the exercise by a Leasehold Mortgagee of its rights under a Leasehold Mortgage, then Landlord may treat the occurrence of any one or more of the foregoing events as a breach of this Lease, and thereupon at its option may, with or without further notice or demand of any kind to Tenant or any other person, be entitled to exercise any rights and remedies provided at law or in equity; provided, however, in no event shall any breach of this Lease by Tenant, or the occurrence of any of the foregoing events in this **Section 13.1**, provide a basis for the termination of this Lease or Tenant's right of possession hereunder by Landlord, and Landlord shall not attempt to terminate, or to cause the termination of, this Lease, or in any way seek to terminate this Lease or Tenant's right of possession hereunder as a result of any such breach, it being agreed and understood that Landlord's sole remedies in the event of any such breach shall be limited to the recovery of damages and obtaining equitable relief, including specific performance of Tenant covenants hereunder. Any and all damages whether paid or otherwise unpaid but incurred by Landlord as a result of Tenant breaching any part of this Lease shall be deemed to be Rent due pursuant to this Lease. Nothing in this **Section 13.1** shall be deemed to limit the termination of this Lease as set forth in **Section 2.4** above.

Section 13.2 Landlord's Cure of Tenant's Default. If Tenant shall default in the performance or observance of any agreement or condition of this Lease other than an obligation to pay money to Landlord and shall not cure such default within the applicable cure period under **Section 13.1**, Landlord, at its option, without waiving any claim for breach of this Lease, may at any time thereafter cure such default for the account of Tenant, and any amount paid or any contractual liability incurred by Landlord in so doing shall be deemed paid or incurred for the account of Tenant, and Tenant shall reimburse Landlord therefor or save Landlord harmless therefrom; provided, however, that Landlord may cure any such default as aforesaid prior to the expiration of said waiting period but after notice to Tenant, if the curing of such default prior to the expiration of said waiting period is reasonably necessary to protect the Premises or Landlord's interest therein, or to prevent injury or damage to persons or property. If Tenant shall fail to reimburse Landlord upon demand for any amount paid for the account of Tenant hereunder, said amount shall be added to and become due as a part of the next payment of rent due hereunder. Tenant hereby agrees to pay Landlord interest on such amount at the rate described below in **Section 13.3**. Notwithstanding anything to the contrary contained herein, in the case of emergency, notices required pursuant to this **Section 13.2** may be given verbally or in any other reasonably due and sufficient manner having regard to the emergency and the attending circumstances. If any such notice shall not be given in the manner described in **Article 18** of this Lease, then, as soon thereafter as practicable, such notice shall



be followed up by notice given in the manner prescribed in said **Article 18**. No entry by Landlord in accordance with the provisions of this **Section 13.2** shall be deemed to be an eviction of Tenant.

Section 13.3 Interest on Unpaid Sums. Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be difficult to ascertain. Accordingly, if any installment of Rent due from Tenant shall not be received by Landlord or Landlord's designee within fifteen (15) days after the date on which such sum is due, Tenant shall pay to Landlord interest on said rent at a rate (the "Over Due Rate") equal to two percent (2%) per annum above the prime rate of interest publicly announced from time to time by UMB Bank, N.A., or its successor (provided that if said Bank shall cease to announce its prime rate, then the prime rate shall mean the like rate of interest as publicly announced by another bank determined by Landlord) (but in no event at a rate which is more than the highest rate which is at the time lawful in the State of Missouri) from the date such Rent was due. Acceptance of interest by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

Section 13.4 Default by Landlord. If any act or omission by Landlord would give Tenant the right to sue for damages from Landlord or to claim any rights with respect to this Lease, Tenant will not sue for such damages or exercise any such rights until it shall have given written notice of the act or omission to Landlord. In no event shall any breach of this Lease by Landlord provide a basis for termination of this Lease by Tenant and Tenant shall not attempt to terminate this Lease or to cause the termination of this Lease or in any way seek to terminate this Lease as a result of any such breach, it being understood and agreed that Tenant's sole remedies in the event of any such breach shall be limited to the recovery of damages and obtaining equitable relief, including specific performance of Landlord's covenants hereunder.

## ARTICLE 14 FINANCING

Section 14.1 Tenant's Financing. Tenant shall have the right, at any time and from time to time, in addition to any other rights herein granted and without any requirement to obtain Landlord's consent to encumber any Excluded Property or to mortgage or grant a security interest in Tenant's leasehold interest in this Lease, any space leases and any other subleases, under one or more Leasehold Mortgages, and/or to assign this Lease and any subleases as collateral security for such Leasehold Mortgages. Tenant acknowledges that so long as any Leasehold Mortgage shall remain unsatisfied of record or until written notice of satisfaction is given by the holder to Landlord, the following provisions shall apply in respect of such Leasehold Mortgagee notwithstanding any other provisions of this Lease to the contrary:

(i) There shall be no cancellation, termination, surrender, acceptance of surrender, amendment or modification of this Lease by joint action of Landlord and Tenant, nor shall Landlord recognize any such action by Tenant alone, without in each case the prior consent in writing of any Leasehold Mortgage (which shall not be unreasonably withheld, delayed or conditioned). Nor shall any merger result from the acquisition by, or devolution upon, any person or entity of both the fee estate in the Premises and the leasehold estate created by this Lease. Any attempted cancellation, termination, surrender, amendment, modification or merger of this Lease without the prior written consent of all Leasehold Mortgagees (which shall not be unreasonably withheld, delayed or conditioned) shall be of no force or effect;

(ii) Each Leasehold Mortgagee shall be given notice of any action, suit or other proceeding or dispute between the parties and shall have the right to intervene therein and be made a party thereto if Tenant fails to do so. In any event, each Leasehold Mortgagee shall receive notice, and a copy, of any award, decision or judgment rendered in such arbitration, action, suit or other proceeding.



(iii) If there is a condemnation or taking by eminent domain in respect of the Premises, any award of payment which is to be paid to Tenant shall, if required under any Leasehold Mortgage, be paid instead to the Leasehold Mortgagees in accordance with the priority of their liens and in accordance with the terms of the applicable Leasehold Mortgage. If a condemnation or taking by eminent domain results in a termination of this Lease, Tenant's portion of the award or payment shall be paid to the Leasehold Mortgagees in accordance with the priority of their liens and the provisions of their respective Leasehold Mortgages.

(iv) No payment made to Landlord by any Leasehold Mortgagee shall constitute agreement that such payment was, in fact, due under the terms of this Lease; and the Leasehold Mortgagee having made any payment or portion thereof to Landlord pursuant to Landlord's wrongful, improper or mistaken notice or demand shall be entitled to the return of any such payment or portion thereof provided it shall have made demand therefor not later than one (1) year after the date of its payment.

(v) In connection with the rights of a Leasehold Mortgagee to cure Tenant's defaults under this Lease and to protect its security, Landlord and Tenant hereby expressly grant to each Leasehold Mortgagee, and agree that each Leasehold Mortgagee shall have, the absolute and immediate right to enter in and upon the Premises or any part thereof to such extent and as often as the Leasehold Mortgagee, in its sole discretion, deems necessary or desirable in order to prevent or to cure any such default by Tenant, without any obligation to do so.

(vi) In the event any right granted to a Leasehold Mortgagee under this **Section 14.1** shall by its nature only be exercisable by one Leasehold Mortgagee and more than one Leasehold Mortgagee desires to exercise such right, then in that event only the Leasehold Mortgagee holding the most senior Leasehold Mortgage among the Leasehold Mortgagees desiring to exercise such right, shall be entitled to do so.

(vii) In the event a Leasehold Mortgagee or its designee (by foreclosure, conveyance in lieu of foreclosure or otherwise), or the purchaser at a foreclosure sale or the assignee or designee of such purchaser, acquires Tenant's interest in this Lease, the Leasehold Mortgagee or its designee shall not be bound by any modification or amendment to this Lease not otherwise previously approved by the Leasehold Mortgagee.

(viii) In the event a Leasehold Mortgagee or its designee (by foreclosure, conveyance in lieu of foreclosure or otherwise), or the purchaser at a foreclosure sale or the assignee or designee of such purchaser, acquires Tenant's interest herein, such party shall thereupon become Tenant under this Lease and hereby agrees to perform each and all of Tenant's obligations and covenants hereunder (including the payment of past due Rent); provided, however, that any defaults by Tenant under this Lease which do not involve the payment of money and which cannot be satisfied or cured by such party shall be deemed waived.

(ix) Nothing in this **Section 14.1** shall be deemed or construed to create or impose any obligation, covenant or liability, whatsoever, upon a Leasehold Mortgagee: (a) for the payment of Base Rent and Additional Rent or any additional monetary sums due under this Lease; (b) for the performance of any of Tenant's covenants and agreements hereunder; or (c) to cure any default by the Tenant under this Lease, and neither Tenant nor Landlord shall have any claims against a Leasehold Mortgagee for its failure to make any payment or take any action which it is entitled to take under this **Section 14.1** until such time as such Leasehold Mortgagee assumes possession of the Premises or acquires the Tenant's interest in the Lease, and then only for as long as it remains in possession or the owner of the leasehold estate created thereby, and Landlord expressly waives any and all such claims.

(x) The liability of any Leasehold Mortgagee, its successors and assigns, shall be limited in



all respects to its interest in this Lease and the leasehold estate created hereby and such Leasehold Mortgagee shall have no personal liability hereunder and no judgment or decree shall be enforceable beyond the interest of such Leasehold Mortgagee in the leasehold estate created under this Lease or shall be sought or entered in any action or proceeding brought in connection with this Lease.

(xi) Notwithstanding anything to the contrary contained in this Lease, if a Leasehold Mortgagee or its designee shall acquire title to Tenant's interest in this Lease, by foreclosure of its Leasehold Mortgage thereon or by assignment in lieu of foreclosure, such Leasehold Mortgagee or designee may freely assign this Lease and shall thereupon be released from all liability for the performance or observance of the covenants and conditions in this Lease contained on tenant's part to be performed and observed from and after the date of such assignment; provided, however, that the assignee shall have assumed the obligations of Tenant under the Lease that accrue from and after the date of such assumption.

(xii) Subject to the terms of its Leasehold Mortgage and to the extent permitted therein, should a Leasehold Mortgagee be entitled to the appointment of a receiver for all or any part of the Premises (a "Receiver"), without regard to whether such Leasehold Mortgagee has commenced an action to foreclose the lien of its Leasehold Mortgage and without regard to the nature of the action in which the appointment of a receiver is sought, Landlord agrees that it will not oppose any such appointment, whether or not entitled by the terms of this Lease to do so. Notwithstanding anything to the contrary contained in this Lease, the appointment of the Receiver for the Premises by any court at the request of a Leasehold Mortgagee or by agreement between Tenant and such Leasehold Mortgagee, or the entering into possession of the Premises by such Receiver, shall not be deemed to make such Leasehold Mortgagee a "mortgagee-in-possession" or otherwise liable in any manner with respect to the Premises and shall not, in and of itself, constitute default under this Lease.

(xiii) Tenant and Landlord agree that the provisions of this **Section 14.1** are for the benefit of and shall be enforceable by each Leasehold Mortgagee, its respective successors and assigns who comply with the provisions of this **Section 14.1**.

(xiii) Each Leasehold Mortgage shall expressly provide that, the rights granted by Tenant to the Leasehold Mortgagee respecting all rights and interests of Tenant under this Lease, other than as to the Excluded Property, are at all times subject and subordinate to the rights and interests of Landlord. Further, each Leasehold Mortgage shall provide that the Leasehold Mortgagee will execute such reasonable agreements and instruments as may be required by Landlord and/ or its lenders to further evidence such subordination.

## ARTICLE 15 HOLDING OVER AND SURRENDER

Section 15.1 Surrender. At the termination of this Lease by lapse of time or otherwise, and subject to the provisions of **Section 8.3**, Tenant shall yield up immediate possession of the Premises in accordance with **Article 8**, and shall pay all costs incurred by landlord in regaining possession of the Premises including court costs and attorney fees..

## ARTICLE 16 PROPERTY OF TENANT

Section 16.1 Personal Property, Trade Fixtures and Equipment. Tenant may, at its sole cost and expense, install any trade fixtures, equipment, and other personal property of a temporary or permanent nature used in connection with its business on or at the Premises, and Tenant shall have the right at any



time during the Term to remove any and all such trade fixtures, equipment, and other personal property that it may have stored or installed upon or at the Premises. Landlord hereby waives any contractual, statutory or common law "landlord's lien" as to all Excluded Property.

Section 16.2 Abandonment of Property. Any of Tenant's trade fixtures, equipment, and other personal property not removed by Tenant upon the expiration or earlier termination of this Lease (the "Abandoned Property") shall be considered abandoned by Tenant and may be appropriated, sold, destroyed, or otherwise disposed of by Landlord without liability or obligation on Landlord's part to pay or account for, same. At the request of Landlord, Tenant will, at such time, execute, acknowledge, and deliver to Landlord a bill of sale or other appropriate conveyance document evidencing the transfer to Landlord of all right, title and interest of Tenant in and to the Abandoned Property.

## ARTICLE 17 ESTOPPEL CERTIFICATES

Section 17.1 Estoppel Certificates. Landlord and Tenant each agree to furnish, at any time and from time to time, so long as this Lease shall remain in effect, upon not less than thirty (30) days prior written request by the other party, a statement in writing certifying (i) that this Lease is unmodified and in full force and effect (or if there have been modifications that the same is in full force and effect as modified, stating the modifications), (ii) that the dates to which the Rent and other charges have been paid in advance, if any, (iii) that to the best knowledge of Tenant, there are no defaults under the Lease by Landlord or Tenant, as the case may be, except such defaults as may be specified in such statement, and (iv) that, in the case of Landlord to its best knowledge, it is not in default under any mortgage or deed of trust encumbering the Premises and that in the case of Tenant, to its best knowledge it is not in default under any leasehold mortgage encumbering Tenant's leasehold interest under this Lease, it being intended that any such statement delivered pursuant to this Article may be relied upon by any prospective purchasers of Landlord's or Tenant's respective interests or any prospective mortgagee, holder of any mortgage, or assignee of any mortgage upon Tenant's interest in the Premises.

## ARTICLE 18 NOTICES

Section 18.1 Manner of Making Notices. In every case where under any of the provisions of this Lease or in the opinion of either Landlord or Tenant, or otherwise, it shall or may become necessary or desirable to make or give any declaration, approval or notice of any kind, it shall be sufficient if a copy of any such declaration, approval or notice is hand delivered or sent by registered or certified mail, return receipt requested, postage prepaid, properly addressed to Landlord or Tenant (as the case may be) at the following address (or such other address as may hereafter be given in writing as the address for notice hereunder by one party to the other):

If to Landlord:           City of Gladstone, Missouri  
                                  7010 North Holmes  
                                  Gladstone, Missouri 64118  
                                  Attention: City Manager

With a copy to:           City of Gladstone, Missouri  
                                  7010 North Holmes  
                                  Gladstone, Missouri 64118  
                                  Attention: City Attorney

With a copy to:           Gilmore & Bell, P.C.  
                                  2405 Grand Boulevard, Suite 1100



Kansas City, Missouri 64108  
Attention: Rick McConnell

If to Tenant: Gladstone CAP, LLC  
c/o CBC Real Estate Group  
4706 Broadway, Suite 240  
Kansas City, Missouri 64112  
Attention: Daniel Carr

With a copy to: Polsinelli PC  
900 W. 48th Place, Suite 900  
Kansas City, MO 64112  
Attention: Daniel Murphy

Copies of all notices shall be given to Landlord's mortgagee and Tenant's mortgagee at the address provided by Landlord and Tenant or by Landlord's mortgagee or Tenant's mortgagee, as the case may be.

Section 18.2 When Notice Deemed Given. Whenever a notice which is required by this Lease to be given by either party hereto to the other party, the notice shall be considered as having been given on the day on which the notice was hand delivered or placed in the United States mails as provided by this Article.

## ARTICLE 19 MISCELLANEOUS

Section 19.1 Covenants to Run with the Land. All the covenants, agreements, conditions and undertakings in this Lease shall extend and inure to and be binding upon the successors and permitted assigns of each of the parties hereto, the same as if they were in every case named and expressed, and the same shall be construed as covenants running with the land. Wherever in this Lease reference is made to any of the parties hereto, it shall be held to include and apply to, wherever applicable, also the successors and permitted assigns of each such party, the same as if in each and every case so expressed.

Section 19.2 Survival of Indemnity and Payment Obligations. Each obligation to indemnify, defend and hold harmless provided for in this Lease and to pay any amounts accruing under this Lease prior to the date of expiration or termination of this Lease shall survive the expiration or termination of this Lease.

Section 19.3 No Merger of Estates. There shall be no merger of this Lease or the leasehold estate created by this Lease with any other estate or interest in the Premises by reason of the fact of the same person, firm, corporation (including the Tenant), or other entity acquiring or owning or holding, directly or indirectly, this Lease or the leasehold interest created by this Lease or any interest in this Lease, and any such other estate or interest in the Premises or any part thereof, and no such merger shall occur unless and until all corporations, firms, and other entities having an interest (including a security interest) in this Lease or the leasehold interest created by this Lease and any such other estate or interest in the Premises or any part thereof, shall join in a written instrument effecting such merger and shall duly record the same.

Section 19.4 Relationship of Parties. Neither anything in this Lease nor any acts of the parties shall be construed or deemed by the parties, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between the parties.



Section 19.5 Successors and Assigns. The words "Landlord" and "Tenant" and the pronouns referring thereto, as used in this Lease, shall mean, where the context requires or permits, the persons named herein as Landlord and as Tenant, respectively, and their respective heirs, legal representatives, successors, and assigns, irrespective of whether singular or plural, or masculine, feminine, or neuter. The agreements and conditions in this Lease contained on the part of Landlord to be performed and observed shall be binding upon Landlord and its heirs, legal representatives, successors, and assigns, and shall inure to the benefit of Tenant and its heirs, legal representatives, successors, and assigns; and the agreements and conditions on the part of Tenant to be performed and observed hereunder shall be binding upon Tenant and its heirs, legal representatives, successors, and assigns, and shall inure to the benefit of Landlord and its heirs, legal representatives, successors, and assigns.

Section 19.6 Entire Agreement. This Lease (including all Exhibits) contains the entire and only agreement between the parties regarding the subject matter hereof, and no oral statements or representations or prior written matter or negotiations not contained in this Lease shall have any force or effect. This Lease shall not be modified, amended, canceled, surrendered, or terminated in any way except by a writing, subscribed by authorized representatives of the party against whom it is to be enforced, which writing shall contain the written consent of Landlord's mortgagee and Tenant's mortgagee.

Section 19.7 Force Majeure Occurrences. In the event that Landlord or Tenant are delayed or prevented from performing any of their respective obligations during the Term because of strikes, lockouts, labor troubles, inability to procure materials, failure of power, governmental restrictions, casualty or reasons of a like nature not the fault of the party delayed in the performance of such obligation, then the period of such delays shall be deemed added to the time herein provided for the performance of any such obligation and the defaulting party shall not be liable for losses or damages caused by such delays; provided, however, that this **Section 19.7** shall not apply to the payment of any rent required to be paid by Tenant hereunder.

Section 19.8 Memorandum of Lease. Landlord and Tenant shall, concurrently with the execution of this Lease, execute a memorandum of this Lease in form acceptable to Tenant for recording in the chain of title of the Land, setting forth the parties hereto, the date hereof, the term hereof, any option to extend hereunder, and any options or rights of purchase or first refusal, and said memorandum shall be promptly recorded by Tenant.

Section 19.9 Invalidity of Provisions. If any provision of this Lease or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

Section 19.10 Remedies Cumulative. No remedy herein or otherwise conferred upon or reserved to Landlord or Tenant shall be considered exclusive of any other remedy, but the same shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute; and every power and remedy given by this Lease to Landlord or Tenant may be exercised from time to time and as often as occasion may arise or as may be deemed expedient by Landlord or Tenant, as the case may be. No delay or omission of Landlord or Tenant to exercise any right or power arising from any default shall impair any such right or power, nor shall it be construed to be a waiver of any such default or an acquiescence therein.

Section 19.11 Waiver of Remedies Not to be Inferred. No waiver of any breach of any of the covenants or conditions of this Lease shall be construed to be a waiver of any other breach or to be a waiver of, acquiescence in, or consent to any further or succeeding breach of the same or similar covenant or condition.



Section 19.12 Modification. None of the covenants, terms or conditions of this Lease to be kept and performed by Landlord or Tenant shall in any manner be waived, modified, changed or abandoned except by a written instrument, duly signed and acknowledged by Landlord and Tenant.

Section 19.13 Singular and Plural. Any word contained in the text of this Lease, including but not by way of limitation "Tenant" and "Landlord", shall be read as the singular or the plural and as the masculine, feminine or neuter gender as may be applicable in the particular context.

Section 19.14 Captions. The captions of this Lease are for convenience and reference only and in no way define, limit or describe the scope or intent of this Lease.

Section 19.15 Law. This Lease shall be construed and enforced in accordance with the laws of the State of Missouri.

Section 19.16 Attorneys' Fees. In the event of a dispute between the parties resulting in litigation, the prevailing party shall have the right to recover its reasonable attorneys' fees and expenses from the non-prevailing party.

Section 19.17 Landlord Bankruptcy. Notwithstanding anything herein, should the Lease be rejected by Landlord (and its assigns) pursuant to an order of the U.S. Bankruptcy Court, Tenant will continue to have all of its rights of election provided for in 11 USC 365 (h) (i) (A) (2) as well as any other rights available to it under applicable federal or state bankruptcy or non-bankruptcy law.

Section 19.18 Contingencies. There are no contingencies to this Lease.

Section 19.19 Counterparts. This Lease may be executed in one or more counterparts, with signatures to one being deemed signatures to each such counterpart, each of which shall be deemed one and the same instrument. The parties agree that signature pages sent by facsimile or via email in portable document format, or similar format, shall be deemed originals.

## ARTICLE 20 EXHIBITS AND ADDENDA TO LEASE

Section 20.1 Exhibits and Addenda to Lease. Attached to this Lease, and incorporated into and made a part of this Lease by this reference, are the following:

- (a) EXHIBIT A - Legal Description of the Land
- (b) EXHIBIT B - Permitted Encumbrance
- (c) EXHIBIT C - Legal Description of Phase I Property
- (d) EXHIBIT D – Development Agreement
- (e) EXHIBIT E – First Amendment to Development Agreement

[The remainder of this page intentionally left blank.]



IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Lease, effective as of the day and year first above written.

**CITY OF GLADSTONE, MISSOURI**

By: \_\_\_\_\_  
Name: Kirk L. Davis  
Title: City Manager

ATTEST

\_\_\_\_\_  
Ruth Bocchino, City Clerk

**GLADSTONE CAP, LLC**

By: \_\_\_\_\_  
Name: Dan Carr  
Title: Member



## **EXHIBIT A**

### **Legal Description of Land**

Lot 2 and Tract 1, NORTHLAND INNOVATION CAMPUS, a subdivision in the City of Gladstone, Clay County, Missouri, according to the recorded plat thereof.



## **EXHIBIT B**

### **Permitted Encumbrances**

1. All assessments and taxes for the year 2015 and all subsequent years for the County of Clay and City of Gladstone, Missouri.

[LIST OTHERS]



## **EXHIBIT C**

### **Legal Description of Phase I Property**

Lot 1, NORTHLAND INNOVATION CAMPUS, a subdivision in the City of Gladstone, Clay County, Missouri, according to the recorded plat thereof.



## **EXHIBIT D**

### **Development Agreement**



## **EXHIBIT E**

### **First Amendment to Development Agreement**



### ACCESS EASEMENT

THIS ACCESS EASEMENT (this "**Easement**") is made this \_\_\_\_ day of June, 2015, by the City of Gladstone, Missouri, a third-class city and political subdivision duly organized and existing under the laws of the State of Missouri ("**Grantor**") in favor of Gladstone CAP, LLC, a limited liability company organized and existing under the laws of the State of Delaware ("**Grantee**").

### RECITALS

A. Grantor is the owner of that certain real property located in the City of Gladstone, Clay County, Missouri, hereinafter referred to as the "**Servient Estate**", as legally described on Exhibit A, attached hereto and incorporated herein;

B. Grantor is the owner, and Grantee is the lessee, of that certain real property located in the City of Gladstone, Clay County, Missouri, hereinafter referred to as the "**Dominant Estate**", as legally described on Exhibit B, attached hereto and incorporated herein;

C. Grantee, pursuant to that certain Lease Agreement, dated June \_\_\_\_, 2015, by and between Grantor and Grantee, has the option to purchase the Dominant Estate from Grantor; and

D. Grantor desires to grant to Grantee, both personally and appurtenant to the land, an easement over and through the Servient Estate for the purposes of accessing the Dominant Estate, subject to the terms and provisions of this Easement.

NOW, THEREFORE, in consideration of the payment of Ten and 00/100 Dollars, the covenants and obligations contained in this Easement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by and between Grantor and Grantee as follows:

1. Grantor hereby grants, conveys, and reserves for the benefit of both the Grantee and the Dominant Estate, a non-exclusive easement over any and all paved areas, now or hereafter existing, located upon the Servient Estate, for ingress and egress to and from the Dominant Estate, which rights shall include both vehicular and pedestrian access, but shall not,



separate from any other agreements between Grantor and Grantee, include any rights to park upon the Servient Estate.

2. Grantor shall have the right to impose reasonable rules and regulations governing the use of driveways, sidewalks, and other access ways on the Servient Estate, and the right to relocate the same without the consent of Grantee; provided that such rules, regulations, and/or relocation shall not unreasonably impede Grantee's, or its successors' or assigns', access across the Servient Estate to the Dominant Estate. The easements granted herein shall be nonexclusive and shall be exercised in common with others entitled to similar use thereon. Nothing herein shall be construed to prohibit Grantor from constructing any improvements on the Servient Estate; provided that reasonable paved access across the Servient Estate to the Dominant Estate shall continue to be available to Grantee, and its successors and assigns, at all times.

3. Except as may be required by Grantee pursuant to any other agreement by and between Grantor and Grantee, Grantor shall maintain the access granted herein in reasonable condition.

4. Grantee hereby agrees to indemnify, protect, defend, and hold Grantor, its members, officers, employees, and agents, harmless from and against any and all claims, demands, damages, liabilities, and costs, including reasonable attorneys' fees, arising from damage or injury, actual or claimed, of whatsoever kind or character (including consequential and punitive damages) to Grantor (or Grantor's employees, guests, invitees, or agents) in the course of Grantee's (or Grantee's employees', guests', invitees', or agents') use of the easement set forth herein for ingress and egress to and from the Dominant Estate, except to the extent that such claims, demands, damages, liabilities, or costs result from the negligence or willful misconduct of Grantor, or Grantor's employees, guests, invitees, or agents.

5. The provisions of this Agreement may be modified or terminated in whole or in part only upon written agreement signed by Grantor and Grantee, or their successors and assigns.

6. This Agreement shall be subject to the laws of the State of Missouri.

7. The rights and obligations of Grantor and Grantee set forth herein shall run with land in connection with the Dominant Estate and Servient Estate. Either party hereto shall have the right to record this Easement with the Clay County, Missouri Recorder of Deeds.

[Remainder of Page Intentionally Blank]



50488895.1



GRANTEE:

**Gladstone CAP, LLC**, a Delaware limited liability company

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

Name: Daniel Carr

Title: Member

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of June, 2015, before me appeared Daniel Carr, to me personally known, who being by me duly sworn did say that he is a Member of Gladstone CAP, LLC, a Delaware limited liability company, and that said instrument was signed on behalf of said limited liability company, and said Member acknowledged said instrument to be the free act and deed of said limited liability company.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

\_\_\_\_\_  
[SEAL]



## **EXHIBIT "A"**

### **Legal Description of Servient Estate:**

Lot 2 and Tract 1, NORTHLAND INNOVATION CAMPUS, a subdivision in Gladstone, Clay County, Missouri



## **EXHIBIT "B"**

### **Legal Description of Dominant Estate:**

Lot 1, NORTHLAND INNOVATION CAMPUS, a subdivision in Gladstone, Clay County,  
Missouri



## CONSENT AND AGREEMENT

This CONSENT AND AGREEMENT (this "Agreement"), dated as of June \_\_, 2015, is made and entered into by and among **THE CITY OF GLADSTONE, MISSOURI**, a municipal corporation (the "City"), **BMO HARRIS BANK N.A.** (the "Bank"), and **GLADSTONE CAP LLC**, a Delaware limited liability company (the "Borrower"). The following recitals form an integral part of this Agreement:

A. Reference is made to that certain (i) Development Agreement dated as of October 14, 2014 (the "Original Agreement") as amended by the First Amendment to the Development Agreement dated April 21, 2015 (the "First Amendment") both between the City and the Borrower, and as modified by the Extension of Development Agreement Deadlines (the "Extension") executed by the City (with the Original Agreement, the First Amendment and the Extension, as the same may be further amended, restated, renewed or modified from time to time, being the "Development Agreement"), (ii) Parking Lease dated as of the date hereof between the City and the Borrower (the "Parking Lease") and (iii) the Access Easement dated as of the date hereof between the City and the Borrower (the "Access Easement").

B. The Borrower is now or hereafter may become otherwise obligated or indebted to the Bank, and the Bank may make future advances to the Borrower, and the Borrower may incur future obligations to the Bank, whether pursuant to that certain Construction Loan Agreement, by and between the Borrower and the Bank (as the same may be amended from time to time, the "Loan Agreement"), dated as of the date hereof, or pursuant to the Collateral Documents or the Loan Documents (each as defined in the Loan Agreement).

NOW THEREFORE, in consideration of the foregoing recitals, the agreements herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement hereby agree as follows:

1. Consent. City hereby consents to (a) the assignment by Borrower to Bank of all of Borrower's right, title and interest under the Development Agreement pursuant to that certain Assignment of Development Agreement (as the same may be amended from time to time, the "Assignment"), dated the same date as the Loan Agreement and in a form provided to the City for review, executed and delivered by Borrower for the benefit of Bank and (b) the security interest in the Parking Lease and the Access Easement granted to Bank by Borrower pursuant to that certain Deed of Trust, Security Agreement, Assignment of Lease and Rents, and Fixture Filing dated as of the date hereof (the "Deed of Trust") in a form provided to the City for review, which Deed of Trust is one of the Collateral Documents. City agrees for the benefit of Bank that the City will observe and perform all of its covenants and obligations under the Development Agreement, the Parking Lease and the Access Easement (collectively, the "Assigned Documents").

2. Attornment. City covenants and agrees to make full and complete attornment (without the necessity of any other or further attornment or instrument) to, and to accept performance of the Borrower's obligations under the Assigned Documents, from (a) Bank (or an affiliate of Bank organized to hold title to the property described in Exhibit A attached hereto (the "Property") (Bank's "Affiliate")), or (b) any receiver which Bank requests be appointed for the Property. Such attornment shall be for the balance of the term of the Assigned Documents, including any extensions thereof, and shall be upon the same terms, covenants and conditions as provided in the Assigned Documents so as to establish direct privity of estate and contract between City and Bank (or its Affiliate), with the same force and effect as though the Assigned Documents were made directly between City and the person to whom City shall



attorn as aforesaid, provided, however, that (i) neither Bank nor its Affiliate shall be bound by any amendment or modification of any of the Assigned Documents after the date of this Agreement without the written consent of Bank or its Affiliate in contravention of the provisions hereof, and (ii) City's attornment shall not be deemed a waiver of any default by the Borrower (but shall be subject to Bank's cure rights as provided herein). If Bank (or its Affiliate) exercises its rights under the Assignment or the Deed of Trust and thereafter sells its interest in the Property and assigns its rights under any of the Assigned Documents to another entity with the written consent of the City (in accordance with any Assigned Document), then Bank (and its Affiliate) shall be discharged from all liability under the Assigned Documents arising from any action or non-action after Bank or its Affiliate assigns or otherwise transfers its interest in the Assigned Documents as part of any such sale of the Bank's interest in the Property.

3. Amendment of Assigned Documents. The City agrees that, so long as the Loan shall remain outstanding and unpaid, the City shall not, without the prior written consent of the Bank, (a) amend or modify any of the Assigned Documents, (b) cancel or terminate any of the Assigned Documents in contravention of the provisions of this Agreement, or (c) assign the Assigned Documents other than pursuant to the terms of the applicable Assigned Document and this Agreement.

4. Bank's Right to Cure Borrower Default. If any breach or default on the part of the Borrower occurs under any of the Assigned Documents, then the City shall give the Bank written notice thereof at the same time the City gives written notice thereof to the Borrower setting forth the nature of the default, the specific action or actions necessary to cure such default and the period during which the Borrower must cure the default pursuant to the applicable Assigned Document. If the Borrower fails to cure the same within any applicable cure or grace period (any such uncured breach or default being referred to herein as a "Borrower Default"), then (a) the City shall give the Bank written notice thereof, (b) the City shall have the right to take any action permitted under the applicable Assigned Document, subject, however, to the Bank's rights to cure the same as provided herein below. The Bank shall have the right, but not the obligation, to cure or cause the cure of such Borrower Default prior to the exercise by the City of any rights or remedies available under the applicable Assigned Document or applicable law, on the following terms and subject to the following conditions:

4.1 If the Borrower Default involves the failure to make any payment due by the Borrower under an Assigned Document, then, if the Bank desires to exercise such cure right, the Bank shall make such payment to the City within fifteen (15) days after the expiration of the Borrower's cure or grace period applicable to such failure, subject to possible delays resulting from any injunction, or by reason of any applicable law, or by reason of any action by any court having jurisdiction over any bankruptcy, reorganization or insolvency proceeding involving the Borrower. If the Bank fails to exercise such cure right as aforesaid, then the Bank shall have no liability therefor and the City shall have the unrestricted right to exercise any rights or remedies available to the City under the Assigned Documents as a result of such Borrower Default.

4.2 If the Borrower Default involves the failure to observe or perform a covenant or obligation under an Assigned Document, then, if the Bank desires to exercise such cure right, the Bank shall give the City written notice of the Bank's intention to cure such Borrower Default within fifteen (15) days after the expiration of the Borrower's cure or grace period applicable to such failure, subject to possible delays resulting from any injunction, or by reason of any applicable law, or by reason of any action by any court having jurisdiction over any bankruptcy, reorganization or insolvency proceeding involving the Borrower. If the Bank fails to exercise such cure right as aforesaid, then the Bank shall have no liability therefor and the City shall have the unrestricted right to exercise any rights or remedies available to the City under the applicable Assigned Document as a result of such Borrower Default.



4.3 If the Bank exercises its cure right as provided in Section 4.2 above, then the Bank shall cause such Borrower Default to be cured within thirty (30) days after the Bank gives written notice to the City of the Bank's exercise of such cure right; provided, however, that if the Borrower Default is of such a nature that it is not reasonably capable of cure within said thirty (30) day period, then the Bank shall have a reasonable time after the expiration of said thirty (30) day period within which to cure such default provided that the Bank is proceeding with reasonable diligence to cause such default to be cured; and provided, further, that if it is reasonably necessary for the Bank to obtain possession of the Property (either through receivership, foreclosure or deed in lieu thereof, all at the option of the Bank) in order to cure such default, then the pursuit of such remedies by the Bank with reasonable diligence shall be deemed to satisfy the foregoing requirement that the Bank proceed with reasonable diligence with respect to the cure of such default.

5. Exercise of Bank Remedies for Borrower Default. If the Bank (or its successors or Affiliate) exercises the Bank's rights under the Assignment, the Deed of Trust or the other Loan Documents (as defined in the Loan Agreement) and thereby acquires all of the Borrower's rights under any Assigned Document, then the Bank (or its successors or Affiliate) shall be liable for the obligations of the Borrower under such Assigned Document only for the period of time that the Bank (or its successors or Affiliate) remains the holder of such rights. The Bank (or its successors or Affiliate) shall not be liable for any default or other action of the Borrower prior to the exercise of such rights by the Bank (or its successors or Affiliate), nor shall the Bank (or its successors or Affiliate) have any obligations under any Assigned Document for any obligations which accrue or arise after its rights thereunder have been assigned or otherwise disposed of thereafter.

6. Bankruptcy. If an Assigned Document is terminated as a result of any rejection of such Assigned Document in any bankruptcy, reorganization or insolvency proceeding, then the City shall, upon written request by the Bank, given within thirty (30) days after such termination, execute and deliver to the Bank a new Assigned Document, which shall have the same provisions as provided in the current Assigned Document which has been so terminated and with equal priority. The City shall not agree to a voluntary termination or surrender of any Assigned Document without the Bank's prior written consent. The City agrees that the obligations of the City herein are specifically enforceable.

7. Casualty and Condemnation Proceeds. Notwithstanding anything to the contrary in any Assigned Document, , and so long as the Loan remains outstanding, the parties agree that all proceeds from any casualty to or any condemnation (or sale under threat of condemnation) of the Property shall be (a) first, applied in accordance with any leases encumbering the Property, if the Bank has agreed to make such proceeds available for repair or restoration of the Property, (b) secondly, paid to the Bank for the application by the Bank pursuant to terms of the Loan Documents (as defined in the Loan Agreement), and (c) finally, paid to the Borrower.

8. Representations, Warranties and Covenants. The City represents, warrants and covenants to and for the benefit of the Bank and the Borrower that:

8.1 A true, correct and complete copy of each of the Assigned Documents has been delivered to the Bank, and, other than as described herein, no Assigned Document has been canceled, modified, assigned, extended or amended. There are no side letters or oral or other agreements which affect any terms of any of the Assigned Documents or the relationship between the City and the Borrower.



8.2 To the best of its knowledge and belief, as of the date of this Agreement, the Borrower has not engaged in any conduct that would permit the City to terminate any Assigned Document as provided therein.

8.3 Each of the Assigned Documents is in full force and effect on the date hereof and represents the valid, binding and enforceable obligation of the City. The City is not in default under any Assigned Document and has not breached any of the terms of any Assigned Document. To the best knowledge of the City, the Borrower is not in default under any Assigned Document and has not breached any of the terms of any Assigned Document. As of the date hereof, the City has no claims against the Borrower, and no offsets or defenses against the performance of its obligations under any Assigned Document. No termination of the Borrower's rights under any Assigned Document shall be valid without prior written notice to the Bank of such termination and an opportunity to cure in accordance with the provisions of such Assigned Document.

8.4 Any amounts required to be paid prior to the date hereof by the Borrower to the City pursuant to any Assigned Document have been paid in full.

8.5 The City has not subordinated or caused to be subordinated its interest in any Assigned Document to any deed of trust or other lien. The City has not sold, transferred or assigned any Assigned Document or otherwise incurred or granted a lien or encumbrance on its interest in any Assigned Document.

8.6 If the Property is developed and completed in accordance with the plans and specifications therefor, will be in compliance with the Assigned Documents and the City's ordinances, including, without limitation, zoning ordinances.

8.7 To the best knowledge of the City, there is no litigation or proceeding pending or threatened against or affecting the City which would materially adversely affect any Assigned Document, the projects described therein, or the ability of the City to perform any of its obligations under any Assigned Document.

8.8 The City has received no notice of prior sale, transfer or assignment, hypothecation or pledge of the Borrower's interest in any Assigned Document, except as otherwise set forth herein.

8.9 None of the following events have occurred: (a) the filing of a petition in bankruptcy, insolvency or reorganization, or for the appointment of a receiver or trustee, affecting the City, or (b) the making of an assignment by the City for the benefit of its creditors.

9. Lender Requirements. Upon the written request of the Bank (or its successors or assigns), the City agrees to enter into an agreement on the same terms and conditions as this Agreement with any other mortgage lender who will be granted a deed of trust or mortgage against Borrower's leasehold interest in the Property created by the Lease Agreement dated as of June 1, 2015 between the City and the Company, if the same is reasonably required to facilitate a sale or refinancing of such leasehold interest.

10. Miscellaneous.

10.1 Waiver. No waiver of any breach or default hereunder shall constitute or be construed as a waiver by the Bank of any subsequent breach or default or of any breach or default of any



other provisions of this Agreement. Any waiver by the Bank must be in writing and will not be construed as a continuing waiver. No waiver will be implied from any delay or failure to take action on account of any default of the Borrower.

10.2 Notices. The City agrees to mail or deliver to the Bank a copy of any and all notices which the City may from time to time serve upon the Borrower. Copies of such notices shall be given to the Bank promptly upon the giving of the same to the Borrower.

The Bank agrees to mail or deliver to the City a copy of any and all notices of default with respect to the Loan Documents, the Collateral Documents or the Loan Agreement which the Bank may from time to time serve upon the Borrower.

In the event that the City receives a notice of default of Borrower under the Loan Documents, the Collateral Documents or the Loan Agreement, the City may elect, but shall be under no obligation to, cure such default. If the City makes such an election, the City and Bank agree to use commercially reasonable means to facilitate such cure.

Any notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given if and when received if personally delivered, or on the second business day after being deposited in United States registered or certified mail, postage prepaid, and addressed to a party at its address set forth below or to such other address the party to receive such notice may have designated to all other parties by notice in accordance herewith:

If to the Bank:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

with copies to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

and to:

Thompson Coburn LLP  
One U.S. Bank Plaza, 33<sup>rd</sup> Floor  
St. Louis, Missouri 63101  
Attn: Gayle Smith, Esq.

If to the Borrower:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or to such other address the party to receive such notice may have theretofore furnished to all other parties by notice in accordance herewith. Except as otherwise specifically required herein, no notice of the exercise of any right or option granted to the Bank herein is required to be given.

10.3 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement.

10.4 Governing Law. This Agreement and the terms, provisions and conditions herewith shall be governed by and construed and enforced in accordance with the internal laws of the State of Missouri (without giving effect to the conflicts of law provisions thereof).

10.5 General. This Agreement may not be modified or amended except by written Agreement of the parties hereto. The headings contained in this Agreement have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms and provisions hereof. If any term, covenant or condition of this Agreement, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby and each term, covenant and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law. This Agreement represents the entire Agreement between the parties and all prior negotiations and communications between the parties concerning the subject loan are superseded hereby.

10.6 Termination. This Agreement shall terminate upon the date that the Lender releases all collateral assignments of and security interest in the Assigned Documents, including but not limited to the release of Assignment and the Deed of Trust.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]



SIGNATURE PAGE FOR  
CONSENT AND AGREEMENT

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the year and date first set forth above.

“CITY”

**THE CITY OF GLADSTONE, MISSOURI**

Attest:

By: \_\_\_\_\_  
City Manager

\_\_\_\_\_  
City Clerk



SIGNATURE PAGE FOR  
CONSENT AND AGREEMENT

“BANK”

**BMO HARRIS BANK N.A.**

(SEAL)

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



SIGNATURE PAGE FOR  
CONSENT AND AGREEMENT

“BORROWER”

**GLADSTONE CAP LLC**

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

Exhibits:

A      Legal Description of the Property



