

BILL NO. 1483

ORDINANCE NO. 1343

**AN ORDINANCE AUTHORIZING THE ISSUANCE BY THE CITY OF CHESTERFIELD, MISSOURI OF TAX INCREMENT REVENUE NOTES (CHESTERFIELD COMMONS PROJECT), TO PROVIDE FUNDS TO FINANCE CERTAIN REDEVELOPMENT PROJECT COSTS RELATING TO A TAX INCREMENT REDEVELOPMENT PLAN FOR A PORTION OF THE CHESTERFIELD VALLEY REFERRED TO AS THE CHESTERFIELD COMMONS SUB-AREA; AND APPROVING CERTAIN DOCUMENTS AND ACTIONS IN CONNECTION WITH THE ISSUANCE OF SAID NOTES.**

**WHEREAS**, on May 3, 1993, the City Council of the City of Chesterfield, Missouri, pursuant to Ordinance No. 777, created and empowered the Tax Increment Financing Commission of the City of Chesterfield (the "TIF Commission") to transact business and exercise its powers as authorized by the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865, Revised Statutes of Missouri (1994), as amended (the "Act"); and

**WHEREAS**, upon recommendation of the TIF Commission, the City Council adopted Ordinance Nos. 953, 954 and 955 on October 17, 1994, (1) approving a redevelopment plan titled "Chesterfield Valley Tax Increment Financing District Redevelopment Plan" (the "Redevelopment Plan") pursuant to the Act, (2) designating the Chesterfield Valley area within the City as the Redevelopment Area (as that term is defined in the Redevelopment Plan), and (3) establishing a Special Allocation Fund pursuant to the Act for the payment of redevelopment project costs and obligations incurred in the payment thereof; and

**WHEREAS**, pursuant to the Act, the Redevelopment Plan approves the payment from certain Tax Increment Financing revenues of certain redevelopment project costs incurred within the Redevelopment Area, including costs associated with 500-year levee improvements, internal storm water drainage systems, sanitary sewers system improvements, water system extensions, I-64/US 40 improvements, local valley road improvements, and planning, legal and other professional services required to implement the Redevelopment Plan; and

**WHEREAS**, on June 3, 1997, THF Chesterfield Development, L.L.C. (the "Developer") submitted to the City its Application for Tax Increment Financing Assistance for Chesterfield Commons, and on July 16, 1997, the Developer submitted to the City its Redevelopment Project Proposal for the Chesterfield Valley Redevelopment Area (the June 3, 1997 and July 16, 1997 submissions herein collectively referred to as the "Proposal"), proposing redevelopment of a certain area designated by the Proposal (the "Chesterfield Commons Sub-Area"); and

**WHEREAS**, pursuant to Ordinance No. 1343 adopted on November 11, 1997, the City designated the Developer as the developer of the Chesterfield Commons Sub-Area and authorized the City Administrator and City Clerk to execute, on behalf of the City, a Redevelopment Agreement (the "Agreement") with the Developer; and

**WHEREAS**, the City desires to issue, from time to time, its Tax Increment Revenue Notes (Chesterfield Commons Project) (the "Notes"), to provide funds to carry out the redevelopment project in the Chesterfield Commons Sub-Area (the "Project") described in the Proposal, said Notes being payable

solely from certain proceeds deposited into the Chesterfield Commons Account of the Special Allocation Fund (as such terms are defined in the hereinafter referred to Indenture); and

**WHEREAS**, the City has determined that it is in the best interest of the City to sell the Notes from time to time at a private sale, without advertisement, to the Developer or an affiliated entity thereof at a price of not less than 100% of their face value; and

**WHEREAS**, it is necessary at this time to authorize the issuance and delivery of the Notes;

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

**Section 1. Authorization of the Notes.** To accomplish the purposes of the Act and to provide for the payment of a portion of the cost of the Project, the City hereby authorizes the issuance of the Notes in an aggregate principal amount not to exceed \$25,500,000 plus such additional amount as set forth in **Section 201(a)** of the hereinafter referred to Indenture, which Notes shall be issued under and secured by and shall have the terms and provisions set forth in the Agreement and the Indenture. The Notes shall bear such dates, shall mature at such times and in the amounts, shall be in such denominations, shall bear interest at such rates, shall be in such forms, shall be subject to redemption, shall have such other terms and provisions, and shall be issued, executed and delivered in such manner subject to such provisions, covenants and agreements as are set forth in the Indenture. The Notes shall be executed on behalf of the City by the Mayor and attested by the City Clerk, and shall have the corporate seal of the City affixed thereto.

**Section 2. Limited Obligations.** The Notes and the interest thereon shall constitute special, limited obligations of the City payable as to principal and interest solely from (a) Net Proceeds on deposit in the Pilots Account within the Chesterfield Commons Account of the Special Allocation Fund and transferred to the Trustee under the Indenture, (b) subject to annual appropriation and to the extent permitted by law, Net Proceeds on deposit in the Economic Activity Tax Account within the Chesterfield Commons Account of the Special Allocation Fund and transferred to the Trustee under the Indenture, and (c) certain other funds and accounts held by the Trustee under the Indenture, after the payment of (x) rebatable arbitrage, if any, (y) fees and expenses of the Trustee or any Paying Agents, and (z) certain administrative, professional service and other costs and expenses of the City as set forth in **Section 402(b)** of the Indenture and which constitute Redevelopment Project Costs (as defined in Section 99.805(11) of the Act). Net proceeds do not include any amount paid under protest until the protest is withdrawn or resolved against the taxpayer nor any sum received by the City which is the subject of a suit or other claim communicated to the City which suit or claim challenges the collection of such sum.

The moneys on deposit in the Pilots Account shall be those payments in lieu of taxes (as defined in Sections 99.805(7) and 99.845 of the Act) attributable to the increase in the current equalized assessed valuation of each taxable lot, block, tract or parcel of real property in the Chesterfield Commons Sub-Area over and above the initial equalized assessed valuation of the real property within the Chesterfield Commons Sub-Area, as described and determined in accordance with Section 99.855 of the Act. Moneys on deposit in the Economic Activity Tax Account shall be those amounts, subject to annual appropriation, equal to fifty percent (50%) of the total additional revenues from taxes which are imposed by the City or any other taxing district which are generated by economic activities within the Chesterfield Commons Sub-Area over the amount of such taxes generated by economic activities within

the Chesterfield Commons Sub-Area in the calendar year ending December 31, 1996, as described and determined in accordance with Section 99.845.3 of the Act.

The Notes shall not constitute debts or liabilities of the City, the State of Missouri or any political subdivision thereof within the meaning of any constitutional or statutory debt limitation or restriction. Neither the City, the TIF Commission, the commissioners of said TIF Commission, the officers, employees and agents of the City nor any person executing the Notes shall be personally liable for such obligations by reason of the issuance thereof.

**Section 3. Authorization and Approval of Indenture.** The Trust Indenture (the "Indenture") between the City and Magna Bank, N.A., St. Louis, Missouri, as trustee (the "Trustee"), providing for the issuance thereunder of the Notes and setting forth the terms and provisions applicable thereto, is hereby approved in substantially the form set forth as **Exhibit A** hereto. The Mayor and City Clerk are hereby authorized and directed to execute and deliver the Indenture with such changes therein as shall be approved by such officials, such officials' signatures thereon being conclusive evidence of their approval and the City's approval thereof.

**Section 4. Execution of Notes.** The Mayor is hereby authorized and directed to execute, by manual or facsimile signature, the Notes at the times set forth in the Agreement, and to deliver the Notes to the Trustee for authentication for and on behalf of and as the act and deed of the City in the manner provided in the Indenture. The City Clerk is hereby authorized and directed to attest, by manual or facsimile signature, to the Notes and to such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

**Section 5. Further Authority.** The City shall, and the officers, agents and employees of the City are hereby authorized and directed to, take such further action and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance and to carry out, comply with and perform the duties of the City with respect to the Notes, the Indenture and the Agreement.

**Section 6. Effective Date.** This Ordinance shall take effect and be in full force from and after the date of its passage by the City Council and approval by the Mayor.

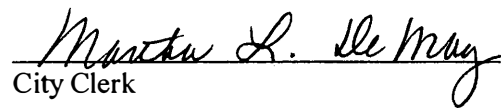
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PASSED AND APPROVED this 17<sup>TH</sup> day of NOVEMBER 1997.

  
Mayor

[SEAL]

ATTEST:

  
City Clerk

**EXHIBIT A**

[Trust Indenture]

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**CITY OF CHESTERFIELD, MISSOURI**

**and**

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

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**TRUST INDENTURE**

**Dated as of \_\_\_\_\_ 1, 19\_\_**  
\_\_\_\_\_

**Relating to**

**Not to Exceed  
\$25,500,000\*  
City of Chesterfield, Missouri  
Tax Increment Revenue Notes  
Series 19\_\_  
(Chesterfield Commons Project)**

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**\* Except as otherwise provided in Section 201(a) hereof.**

## **TRUST INDENTURE**

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## **TRUST INDENTURE**

**THIS TRUST INDENTURE** (the "Indenture"), made and entered into as of \_\_\_\_\_ 1, 19\_\_\_\_, by and between the **CITY OF CHESTERFIELD, MISSOURI**, a third class city and political subdivision of the State of Missouri (the "City"), and **MAGNA BANK, N.A.**, a national banking association duly organized and existing and authorized to accept and execute trusts of the character herein set out under the laws of the United States of America, and having its principal corporate trust office located in St. Louis, Missouri, as trustee (the "Trustee");

### **WITNESSETH:**

**WHEREAS**, the City is authorized and empowered under the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865, inclusive, of the Revised Statutes of Missouri, as amended (the "Act"), to issue notes for the purpose of providing funds to finance the costs of certain redevelopment projects and to pay certain costs related to the issuance of such notes; and

**WHEREAS**, on May 3, 1993, the City Council of the City, pursuant to Ordinance No. 777, created the Tax Increment Financing Commission of the City of Chesterfield, Missouri (the "Commission"); and

**WHEREAS**, a plan for redevelopment titled "Chesterfield Valley Tax Increment Financing District Redevelopment Plan" (the "Redevelopment Plan") designating the Chesterfield Valley area within the City as the Redevelopment Area (the "Redevelopment Area"), has been prepared and reviewed by the Commission and the City, and the City approved said Redevelopment Plan by Ordinance No. 953 adopted on October 17, 1994; and

**WHEREAS**, THF Chesterfield Development, L.L.C., a Missouri limited liability company (the "Developer"), has submitted a redevelopment proposal (the "Redevelopment Proposal") to redevelop the Chesterfield Commons Sub-Area, as further described in **Exhibit A** attached hereto; and

**WHEREAS**, pursuant to Ordinance No. \_\_\_\_\_ adopted on \_\_\_\_\_, 1997, the City designated the Developer as the developer of the Chesterfield Commons Sub-Area and the City and the Developer have entered into a Redevelopment Agreement dated as of \_\_\_\_\_, 1997 (the "Agreement"), whereby the Developer has agreed to carry out portions of the Redevelopment Plan on behalf of the City; and

**WHEREAS**, the City desires to issue under this Indenture up to \$25,500,000 (except as otherwise provided in **Section 201(a)** hereof) aggregate principal amount of Tax Increment Revenue Notes, Series 19\_\_\_\_ (Chesterfield Commons Project) (the "Notes"), to provide funds to pay for certain Reimbursable Project Costs incurred by the Developer with respect to the Chesterfield Commons Project (as such terms are hereinafter defined); and

**WHEREAS**, on \_\_\_\_\_, 1997, the City Council of the City adopted Ordinance No. \_\_\_\_\_ (the "Note Ordinance"), authorizing the issuance of the Notes pursuant to this Indenture for the above purposes; and

**WHEREAS**, pursuant to the Note Ordinance, the City is authorized to execute and deliver this Indenture for the purpose of issuing and securing the Notes as hereinafter provided; and

**WHEREAS**, all things necessary to make the Notes, when authenticated by the Trustee and issued as in this Indenture provided, the valid, legal and binding obligations of the City, and to constitute this Indenture a valid, legal and binding pledge and assignment of the property, rights, interests and revenues herein made for the security of the payment of the principal of and interest on the Notes issued hereunder, have been done and performed, and the execution and delivery of this Indenture and the execution and issuance of the Notes, subject to the terms hereof, have in all respects been duly authorized;

**NOW THEREFORE, THIS 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 Notes by the Owners thereof, and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in order to secure the payment of the principal of and interest on the Notes 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 Notes contained, does hereby transfer, pledge and assign, without recourse, to the Trustee and its successors and assigns in trust forever, and does hereby grant a security interest unto the Trustee and its successors in trust and its assigns, in and to all and singular the property described in paragraphs (a) and (b) below (said property being herein referred to as the "Trust Estate"), to-wit:

(a) All right, title and interest of the City (including, but not limited to, the right to enforce any of the terms thereof) in, to and under all Payments in Lieu of Taxes and, subject to annual appropriation, all Economic Activity Tax Revenues (as such terms are hereinafter defined) derived by the City under and pursuant to and subject to the provisions of the Agreement or otherwise; and

(b) All moneys and securities from time to time held by the Trustee under the terms of this Indenture and any and all other property (real, personal or mixed) 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 transferred, pledged, assigned and/or granted or agreed or intended so to be, to the Trustee and its successors and assigns in trust forever;

**IN TRUST NEVERTHELESS**, upon the terms and conditions herein set forth for the equal and proportionate benefit, security and protection of all present and future Owners of the Notes Outstanding, without preference, priority or distinction as to participation in the lien, benefit and protection hereof of one Note over or from the others, except as herein otherwise expressly provided;

**PROVIDED, NEVERTHELESS**, and these presents are upon the express condition, that if the City or its successors or assigns pays or causes to be paid the principal of such Notes with interest, according to the provisions set forth in the Notes, or provides for the payment or redemption of such Notes by depositing or causing to be deposited with the Trustee the entire amount of funds or securities

required for payment or redemption thereof when and as authorized by the provisions of **Article IX** hereof, and shall also pay or cause to be paid all other sums payable hereunder by the City, then these presents and the estate and rights hereby granted shall cease, terminate and become void; otherwise this Indenture shall be and remain in full force;

**THIS INDENTURE FURTHER WITNESSETH**, and it is hereby expressly declared, covenanted and agreed by and between the parties hereto, that all Notes 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 of the Notes, as follows:

## **ARTICLE I**

### **DEFINITIONS; RULES OF CONSTRUCTION**

**Section 101. Definitions of Words and Terms.** In addition to words and terms elsewhere defined herein, the following words and terms as used in this Indenture shall have the following meanings, unless some other meaning is plainly intended:

**"Accredited Investors"** means an "accredited investor" under Rule 501(a) of Regulation D promulgated under the Securities Act of 1933.

**"Act"** means the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865, inclusive, of the Revised Statutes of Missouri, as amended.

**"Agreement"** means the Redevelopment Agreement dated as of \_\_\_\_\_, 1997, by and between the City and the Developer, as modified, amended or supplemented from time to time.

**"Arbitrage Instructions"** means the Arbitrage Instructions attached as **Exhibit A** to the City's Arbitrage Certificate, as the same may be amended or supplemented in accordance with the provisions thereof.

**"Authorized City Representative"** means the Mayor, City Administrator or Director of Finance and Administration of the City, or such other person at the time designated to act on behalf of the City as evidenced by written certificate furnished to the Developer and the Trustee containing the specimen signature of such person and signed on behalf of the City by its Mayor or City Administrator. Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the Authorized City Representative.

**"Authorized Denominations"** means \$5,000 or any integral multiple thereof.

**"Authorized Developer Representative"** means such person at the time designated to act on behalf of the Developer 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 Developer by its President or Vice President, if the Developer is a corporation, or by its Managing Member, if the Developer is a limited liability company. Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the Authorized Developer Representative.

**"Bond Counsel"** means Gilmore & Bell, P.C., St. Louis, Missouri or an attorney at law or a firm of attorneys acceptable to the City of nationally recognized standing in matters pertaining to the tax-exempt nature of interest on obligations issued by states and their political subdivisions duly admitted to the practice of law before the highest court of any state of the United States of America or the District of Columbia.

**"Business Day"** means any day other than (a) a Saturday, Sunday or any other day on which banking institutions in the city in which the principal corporate trust office of the Trustee is located are required or authorized by law to close or (b) a day on which the New York Stock Exchange is closed.

**"Certification of Reimbursable Project Costs"** means a document, substantially in the form of **Exhibit D** to the Agreement, delivered by the Developer to the City evidencing Reimbursable Project Costs incurred in furtherance of construction of the Public Improvements.

**"Chesterfield Commons Account"** means the account established within the Special Allocation Fund by Ordinance No. \_\_\_\_\_, adopted by the City Council on \_\_\_\_\_, 1997, into which shall be deposited certain Economic Activity Tax Revenues and Payments in Lieu of Taxes generated by the Chesterfield Commons Project within the Chesterfield Commons Sub-Area as provided in **Section 6.2** of the Agreement and this Indenture.

**"Chesterfield Commons Project"** means the project described in the Concept Site Plan (as defined in the Agreement), the Redevelopment Proposal and the Agreement, including but not limited to the construction of the Public Improvements and retail space of approximately 700,000 square feet but not less than 509,000 square feet, including approximately nine major anchor tenants, multiple smaller retail shops, and including outlot space to be used for restaurant/fast food or retail/service uses, all within the Chesterfield Commons Sub-Area.

**"Chesterfield Commons Sub-Area"** shall have the meaning set forth in the recitals to this Indenture.

**"City"** means the City of Chesterfield, St. Louis County, Missouri, a municipal corporation of the State.

**"Code"** means the Internal Revenue Code of 1986, as amended, and the applicable regulations, temporary regulations and proposed regulations thereunder.

**"Debt Service Fund"** means the fund by that name created in **Section 401** hereof.

**"Developer"** means THF Chesterfield Development, L.L.C., a Missouri limited liability company, and any successors or assigns thereto permitted under the Agreement.

**"Economic Activity Tax Revenues"** means 50% of the total additional revenues from taxes which are imposed by the City or any other taxing district (as that term is defined in Section 99.805(12) of the Act) and which are generated by economic activities within the Chesterfield Commons Sub-Area over the amount of such taxes generated by economic activities within the Chesterfield Commons Sub-Area in the calendar year ending December 31, 1996 (subject to annual appropriation by the City as provided in the Act), but excluding therefrom any taxes imposed on sales or charges for sleeping rooms

paid by transient guests of hotels and motels, licenses, fees or special assessments and personal property taxes, other than payments in lieu of taxes.

**"Event of Default"** means any event or occurrence as defined in **Section 701** hereof.

**"Government Securities"** means direct obligations of, or obligations the payment of the principal of and interest on which are unconditionally guaranteed by, the United States of America and backed by the full faith and credit thereof.

**"Immediate Notice"** means notice given no later than the close of business on the date required by the provisions of this Indenture by telephone, telegram, telex, telecopier or other telecommunication device to such phone numbers or addresses as are specified in **Section 1102** hereof or such other phone number or address as the addressee shall have directed in writing, promptly followed by written notice by first-class mail postage prepaid to such addressees.

**"Interest Payment Date"** means any date on which the principal of or interest on any Notes is payable.

**"Investment Securities"** means any of the following securities purchased in accordance with **Section 502** hereof, if and to the extent the same are at the time legal for investment of the funds being invested:

- (a) Government Securities;
- (b) bonds, notes or other obligations of the State, or any political subdivision of the State, that at the time of their purchase are rated in either of the two highest rating categories by a nationally recognized rating service;
- (c) repurchase agreements with any bank, bank holding company, savings and loan association, trust company, or other financial institution organized under the laws of the United States or any state, that are continuously and fully secured by any one or more of the securities described in clause (a) or (b) above and have a market value, exclusive of accrued interest, at all times at least equal to the principal amount of such repurchase agreement and are held in a custodial or trust account for the benefit of the City;
- (d) obligations of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Financing Bank, the Federal Intermediate Credit Corporation, Federal Banks for Cooperatives, Federal Land Banks, Federal Home Loan Banks, Farmers Home Administration and Federal Home Loan Mortgage Corporation;
- (e) certificates of deposit or time deposits, whether negotiable or nonnegotiable, issued by any bank or trust company organized under the laws of the United States or any state, provided that such certificates of deposit or time deposits 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) above, inclusive, which shall have a market value, exclusive of accrued interest, at all times at least equal to the principal amount of such certificates of deposit or time deposits; and

(f) any other securities or investments that are lawful for the investment of moneys held in such funds or accounts under the laws of the State.

**"Net Proceeds"** means all moneys on deposit in (a) the Pilots Account within the Chesterfield Commons Account of the Special Allocation Fund and (b) subject to annual appropriation, the Economic Activity Tax Account within the Chesterfield Commons Account of the Special Allocation Fund, including any moneys deposited into the Special Allocation Fund pursuant to **Section 4.5** of the Agreement. Net Proceeds do not include (i) any amount paid under protest until the protest is withdrawn or resolved against the taxpayer, and (ii) any sum received by the City which is the subject of a suit or other claim communicated to the City which suit or claim challenges the collection of such sum.

**"Note"** or **"Notes"** or **"Series 19\_\_ Notes"** means any note or notes authenticated and delivered under and pursuant to this Indenture.

**"Note Ordinance"** means Ordinance No. \_\_\_\_ of the City adopted on \_\_\_\_\_, 1997, authorizing the execution and delivery of this Indenture and the issuance of the Notes.

**"Opinion of Counsel"** means a written opinion of an attorney or firm of attorneys addressed to the Trustee, for the benefit of the Owners of the Notes, who may (except as otherwise expressly provided in this Indenture) be counsel to the City, the Developer, the Owners of the Notes or the Trustee, and who is acceptable to the Trustee.

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

(a) Notes theretofore cancelled by the Trustee or delivered to the Trustee for cancellation;

(b) Notes which are deemed to have been paid in accordance with **Section 902** hereof;

(c) Notes alleged to have been mutilated, destroyed, lost or stolen which have been paid as provided in **Section 206** hereof; and

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

**"Owner"** means the person in whose name any Note is registered on the Register.

**"Paying Agent"** means the Trustee and any other bank or trust institution organized under the laws of any state of the United States of America or any national banking association designated by this Indenture as paying agent for the Notes at which the principal of and interest on such Notes shall be payable.

**"Payments in Lieu of Taxes"** means those payments in lieu of taxes (as defined in Sections 99.805(7) and 99.845 of the Act) attributable to the increase in the current equalized assessed valuation of each taxable lot, block, tract or parcel of real property in the Chesterfield Commons Sub-Area over and above the initial equalized assessed value (as that term is used and described in Section 99.845.1 of the Act) of each unit of property, as paid to the City's Treasurer by the St. Louis

County Collector of Revenue during the term of the Redevelopment Plan and the Redevelopment Project.

**"Person"** means any natural person, firm, partnership, association, corporation or public body.

**"Pledged Revenues"** means all moneys held in the Revenue Fund and the Debt Service Fund under this Indenture, together with investment earnings thereon.

**"Project Fund"** means the fund by that name created in **Section 401** hereof.

**"Public Improvements"** means that portion of the Work set forth and described in **Exhibit G** to the Agreement.

**"Record Date"** for the interest payable on any Interest Payment Date means the first calendar day, whether or not a Business Day, of the month containing such Interest Payment Date.

**"Redevelopment Plan"** shall have the meaning set forth in the recitals to this Indenture.

**"Redevelopment Project"** means the redevelopment project described in the Redevelopment Plan.

**"Register"** means the registration books of the City kept by the Trustee to evidence the registration, transfer and exchange of Notes.

**"Registrar"** means the Trustee when acting as such under this Indenture.

**"Reimbursable Project Costs"** means only those costs associated with the Public Improvements and which the City has agreed to pay under the Agreement.

**"Revenue Fund"** means the fund by that name created in **Section 401** hereof.

**"Special Allocation Fund"** means the Chesterfield Valley Special Allocation Fund created by Ordinance No. 954, adopted by the City Council on October 17, 1994, and within the Special Allocation Fund a Chesterfield Commons Account established therein by Ordinance No. \_\_\_\_\_, adopted by the City Council on \_\_\_\_\_, 1997, and within the Chesterfield Commons Account a Pilots Account and an Economic Activity Tax Account.

**"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 X** hereof.

**"Taxable TIF Notes"** means the City's Taxable Tax Increment Revenue Notes, Series 19\_\_\_\_ (Chesterfield Commons Project).

**"Tax-Exempt TIF Notes"** means the City's Tax Increment Revenue Notes, Series 19\_\_\_\_ (Chesterfield Commons Project).



**"TIF Bonds"** means Tax Increment Finance Revenue Bonds issued by the City to refund Notes in accordance with **Section 5.2** of the Agreement.

**"TIF Ordinance"** means Ordinance No. 953 of the City adopted on October 17, 1994, authorizing the adoption of tax increment financing within the Redevelopment Area.

**"Trust Estate"** means the Trust Estate described in the granting clauses of this Indenture.

**"Trustee"** means Magna Bank, N.A., St. Louis, Missouri, and its successor or successors and any other association or corporation which at any time may be substituted in its place pursuant to and at the time serving as trustee under this Indenture.

**"Work"** shall have the meaning set forth in the Agreement.

#### **Section 102. Rules of Construction.**

For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

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

(b) Words importing the singular number shall include the plural and vice versa and words importing person shall include firms, associations and corporations, including public bodies, as well as natural persons.

(c) The table of contents hereto and the headings and captions herein are not a part of this document.

(d) Terms used in an accounting context and not otherwise defined shall have the meaning ascribed to them by generally accepted principles of accounting.

## **ARTICLE II**

### **THE NOTES**

#### **Section 201. Authorization, Issuance and Terms of Notes.**

(a) *Authorized Amount of Notes.* No Notes may be issued under the provisions of this Indenture except in accordance with this Article. The total aggregate principal amount of Notes that may be issued hereunder is expressly limited to \$25,500,000, plus such additional amount permitted by the Act and **Section 5.5** of the Agreement (relating to reimbursement for relocation of a water distribution line).

(b) *Title of Notes.* The Taxable TIF Notes authorized to be issued under this Indenture shall be designated "Taxable Tax Increment Revenue Notes, Series 19\_\_\_ (Chesterfield Commons Project)", and the Tax-Exempt TIF Notes authorized to be issued under this Indenture shall be designated "Tax Increment Revenue Notes, Series 19\_\_\_ (Chesterfield Commons Project)". The Notes may have such

further appropriate particular designation added to or incorporated in such title for the Notes of any particular series as the City may determine.

(c) *Form of Notes.* The Notes shall be substantially in the form set forth in **Exhibit B** attached hereto, with such appropriate variations, omissions and insertions as are permitted or required by this Indenture, and 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 usage or requirement of law with respect thereto.

(d) *Denominations.* The Notes shall be issuable as fully registered Notes in the denomination of \$500,000 or any integral multiple of \$5,000 in excess thereof, except with respect to any final Certification of Reimbursable Project Costs, which may be issued in the denomination of \$5,000 or any integral multiple thereof.

(e) *Numbering.* Unless the City shall otherwise direct, each series of Notes shall be numbered from R-1 upward.

(f) *Dating.* The Notes shall be dated as of the date of registration thereof, as evidenced by the Trustee's signature on **Schedule A** to each Note.

(g) *Method and Place of Payment.* The principal of and interest on the Notes shall be payable in any coin or currency of the United States of America which, at the respective dates of payment thereof, is legal tender for the payment of debts due the United States of America. The principal shall be payable at the principal corporate trust office of the Trustee. Payment of interest on any Note shall be made (i) by check or draft of the Trustee mailed to the person in whose name such Note is registered on the Note Register as of the commencement of business of the Trustee on the Record Date for such Interest Payment Date, or (ii) in the case of an interest payment to any Owner of \$500,000 or more in aggregate principal amount of Notes, by electronic transfer to such Owner upon written notice to the Trustee from such Owner containing the electronic transfer instructions including the bank (which shall be in the continental United States), ABA routing number and account number to which such Owner wishes to have such transfer directed. No principal on the Notes is payable unless the Owner thereof has surrendered such Notes at the principal corporate trust office of the Trustee.

## **Section 202. Nature of Obligations.**

(a) The Notes and the interest thereon shall be special, limited obligations of the City payable solely from Note proceeds, the Pledged Revenues and other moneys pledged thereto and held by the Trustee as provided herein, and are secured by a transfer, pledge and assignment of and a grant of a security interest in the Trust Estate to the Trustee and in favor of the Owners of the Notes, as provided in this Indenture.

(b) The Notes and the interest thereon do not constitute a debt of the City, the State or any political subdivision thereof, and do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction.

(c) Except as otherwise provided in **Section 705** hereof, no recourse shall be had for the payment of the principal of or interest on, any of the Notes or for any claim based thereon or upon any obligation, covenant or agreement in this Indenture contained, against any past, present or future member of the City Council or any trustee, officer, official, employee or agent of the City, as such, either directly

or through the City or any successor to the City, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such member of the City, trustee, officer, official, employee or agent as such is hereby expressly waived and released as a condition of and in consideration for the execution of this Indenture and the issuance of any of the Notes.

**(d) NOTWITHSTANDING ANY PROVISION HEREIN OR IN THE NOTES TO THE CONTRARY, THE NOTES ARE SUBJECT TO CANCELLATION AND DISCHARGE BY THE CITY IN WHOLE WITHOUT PAYMENT UNDER THE CONDITIONS DESCRIBED IN SECTION 7.2 OF THE AGREEMENT.**

#### **Section 203. Execution, Authentication and Delivery of Notes.**

(a) The Notes shall be executed on behalf of the City by the manual or facsimile signature of the 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 appears on any Notes ceases to be such officer before the delivery of such Notes, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such person had remained in office until delivery. Any Note may be signed by such persons as at the actual time of the execution of such Note are the proper officers to sign such Note although at the date of such Note such persons may not have been such officers.

(b) The Notes shall have endorsed thereon a Certificate of Authentication substantially in the form set forth in **Exhibit B** hereto, which shall be manually executed by the Trustee. No Note shall be entitled to any security or benefit under this Indenture or shall be valid or obligatory for any purpose unless and until such Certificate of Authentication has been duly executed by the Trustee. Such executed Certificate of Authentication upon any Note shall be conclusive evidence that such Note has been duly authenticated and delivered under this Indenture. The Certificate of Authentication on any Note shall be deemed to have been duly executed if signed by any authorized officer or employee of the Trustee, but it shall not be necessary that the same officer or employee sign the Certificate of Authentication on all of the Notes that may be issued hereunder at any one time.

(c) Upon the submission to the Trustee by the City of each Certification of Reimbursable Project Costs in the manner (and subject to the limitations) set forth in **Articles IV and V** of the Agreement, either (i) the Trustee shall, at the request of the Developer, endorse an Outstanding Taxable TIF Note and/or Tax-Exempt TIF Note on **Schedule A** thereto to evidence an increase in the aggregate principal amount equal to such Reimbursable Project Costs, or (ii) the City shall, at the request of the Developer, issue a new Taxable TIF Note and/or Tax-Exempt TIF Note in a principal amount equal to such Reimbursable Project Costs, or any combination thereof.

#### **Section 204. Registration, Transfer and Exchange of Notes.**

(a) The Trustee is hereby appointed Registrar and as such shall keep a Register for the registration and for the transfer of Notes as provided in this Indenture. Each Note when issued shall be registered in the name of the Owner thereof on the Register.

(b) **The Notes (and beneficial interests therein) are transferable only to Accredited Investors and only upon the execution by the proposed transferee of a letter in substantially the form attached as Exhibit C hereto.** Subject to the limitations of the preceding sentence, any Note may

be transferred only upon the Register upon surrender thereof to the Trustee duly endorsed for transfer or accompanied by an assignment duly executed by the Owner or his attorney or legal representative in such form as shall be satisfactory to the Trustee. Upon any such transfer, the City shall execute and the Trustee shall authenticate and deliver in exchange for such Note a new fully registered Note or Notes, registered in the name of the transferee, of any denomination or denominations authorized by this Indenture.

(c) Any Note, upon surrender thereof at the principal corporate trust office of the Trustee, together with an assignment duly executed by the Owner or his attorney or legal representative in such form as shall be satisfactory to the Trustee, may, at the option of the Owner thereof, be exchanged for Notes of the same series and maturity, of any denomination or denominations authorized by this Indenture, bearing interest at the same rate, and registered in the name of the Owner.

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

(e) The City or the Trustee may make a charge against each Owner requesting a transfer or exchange of Notes for every such transfer or exchange of Notes sufficient to reimburse it for any tax or other governmental charge required to be paid with respect to such transfer or exchange, the cost of printing, if any, each new Note issued upon any transfer or exchange and the reasonable expenses of the City and the Trustee in connection therewith, and such charge shall be paid before any such new Note shall be delivered. The City or the Trustee may levy a charge against an Owner sufficient to reimburse it for any governmental charge required to be paid in the event the Owner fails to provide a correct taxpayer identification number to the Trustee. Such charge may be deducted from an interest payment due to such Owner.

(f) At reasonable times and under reasonable regulations established by the Trustee, the Register may be inspected and copied by the Developer, the City or the Owners (or a designated representative thereof) of 10% or more in principal amount of Notes then Outstanding, such ownership and the authority of any such designated representative to be evidenced to the satisfaction of the Trustee.

(g) The person in whose name any Note is registered on the Register shall be deemed and regarded as the absolute Owner of such Note for all purposes, and payment of or on account of the principal of and interest on any such Note shall be made only to or upon the order of the Owner thereof or his legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Note, including the interest thereon, to the extent of the sum or sums so paid.

#### **Section 205. Description of Notes.**

(a) There shall be issued and secured by this Indenture two series of Notes in an aggregate principal amount of not to exceed \$25,500,000, except as otherwise provided in **Section 201(a)** hereof. The interest on one such series of Notes shall be excludable from gross income of the owners thereof for purposes of federal income taxation (the "Tax-Exempt TIF Notes") and shall be issued with respect to Reimbursable Project Costs identified in an opinion letter to be issued by Bond Counsel as reimbursable from the proceeds of the Tax-Exempt TIF Notes. The interest on the other series of Notes shall be includable in gross income of the owners thereof for purposes of federal income taxation (the "Taxable

TIF Notes") and shall be issued for those Reimbursable Project Costs not reimbursed by the Tax-Exempt TIF Notes.

(b) The Notes shall mature (subject to redemption and payment prior to maturity as provided in **Article III** hereof), on October 17, 2017, and shall bear interest (computed on the basis of a 360-day year of twelve 30-day months) at the lesser of (1) the Interest Rate (as hereinafter defined) or (2) Ten Percent (10%) per annum. "Interest Rate" means (a) with respect to the Taxable TIF Notes, a variable rate, adjusted quarterly, equal to the prime rate as declared by NationsBank, N.A., St. Louis, Missouri (or if NationsBank, N.A. ceases to do business in St. Louis, any other federally-chartered commercial lending institution doing business in St. Louis and selected by the City), and (b) with respect to the Tax-Exempt TIF Notes, a variable rate, adjusted quarterly, equal to the interest rate on the Taxable TIF Notes less one percent (1.0%). The Notes shall bear interest from their registration date or from the most recent Interest Payment Date to which interest has been paid or duly provided for. Interest shall be payable commencing on the fifteenth day of the month of February after which Net Proceeds generated within the Chesterfield Commons Sub-Area have first been deposited in the Special Allocation Fund, and on each February 15 thereafter until the Notes are paid in full. Interest which accrues but remains unpaid on any Interest Payment Date shall *not* be compounded.

(c) The Trustee is hereby designated as the Paying Agent for the payment of the principal of and interest on the Notes.

(d) The Notes shall be executed substantially in the form and manner set forth in **Exhibit B** hereto and delivered to the Trustee for authentication. Prior to or simultaneously with the authentication and delivery of the Notes by the Trustee, there shall be filed with the Trustee the following:

(1) A copy of the Note Ordinance, certified by the City Clerk of the City, approving the issuance of the Notes and authorizing the execution of this Indenture.

(2) An original executed counterpart of this Indenture.

(3) A copy of the Agreement, certified by the City Clerk.

(4) An opinion of Bond Counsel to the effect that the Notes constitute valid and legally binding obligations of the City and that the interest on the Tax-Exempt TIF Notes is excludable from gross income of the owners thereof for federal income tax purposes.

(5) A copy of the Redevelopment Plan, certified by the City Clerk of the City.

(6) Such other certificates, statements, receipts and documents required by any of the foregoing documents or as the Trustee shall reasonably require for the delivery of the Notes.

(e) When the documents mentioned in paragraph (d) of this Section have been filed with the Trustee, and when the Notes have been executed and authenticated as required by this Indenture, the Trustee shall deliver the Notes to or upon the order of the purchasers thereof, but only upon payment to the Trustee of a purchase price equal to 100% of the face amount of the Notes, which payment shall be deemed to have occurred under the circumstances described in **Section 404** hereof.

**Section 206. Mutilated, Lost, Stolen or Destroyed Notes.** If any Note becomes mutilated or is lost, stolen or destroyed, the City shall execute and the Trustee shall authenticate and deliver a new Note

of like date and tenor as the Note mutilated, lost, stolen or destroyed; provided that, in the case of any mutilated Note, such mutilated Note shall first be surrendered to the Trustee. In the case of any lost, stolen or destroyed Note, there shall be first furnished to the Trustee evidence of such loss, theft or destruction satisfactory to the Trustee, together with indemnity to the City and the Trustee satisfactory to the Trustee. If any such Note has matured or been called for redemption, instead of issuing a substitute Note the City may pay or authorize the payment of the same without surrender thereof. Upon the issuance of any substitute Note, the City and the Trustee may require the payment of an amount by the Owner 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 207. Cancellation and Destruction of Notes Upon Payment.** All Notes which have been paid or redeemed or which the Trustee has purchased or which have otherwise been surrendered to the Trustee under this Indenture, either at or before maturity, shall be immediately cancelled and periodically destroyed by the Trustee upon the payment, redemption or purchase of such Notes and the surrender thereof to the Trustee. The Trustee shall execute a certificate in triplicate describing the Notes so cancelled and destroyed, and shall file executed counterparts of such certificate with the City.

### **ARTICLE III**

#### **REDEMPTION OF NOTES**

**Section 301. Redemption of Notes Generally.** The Notes shall be subject to redemption prior to maturity in accordance with the terms and provisions set forth in this Article.

**Section 302. Redemption of Notes.**

(a) *Special Mandatory Redemption.* Subject to the limitation set forth below, the Notes are subject to mandatory redemption and payment prior to October 17, 2017 pursuant to the mandatory redemption requirements of this Section at a redemption price equal to 100% of the principal amount being redeemed, together with accrued interest thereon to the date fixed for redemption. To the extent that moneys are available for such purpose in the Debt Service Fund, the City shall redeem on February 15 in each year the following principal amounts of the Notes:

<u>Year</u>	<u>Principal Amount</u>	<u>Year</u>	<u>Principal Amount</u>
2003	\$450,000	2011	\$1,760,000
2004	565,000	2012	1,980,000
2005	685,000	2013	2,210,000
2006	830,000	2014	2,485,000
2007	975,000	2015	2,855,000
2008	1,150,000	2016	3,175,000
2009	1,330,000	2017	3,505,000
2010	1,545,000		

Notwithstanding any provision herein to the contrary, the principal amount of Notes to be redeemed in accordance with the above redemption schedule shall apply first to any Outstanding Taxable TIF Notes, and thereafter to any Outstanding Tax-Exempt TIF Notes.

In the event that moneys in the Debt Service Fund are insufficient in any year to redeem any Outstanding Taxable TIF Notes and/or Outstanding Tax-Exempt TIF Notes in accordance with the above redemption schedule, (1) the unpaid principal portion of any Taxable TIF Notes shall be added to the principal amount of Taxable TIF Notes to be redeemed pursuant to this Section on the immediately following February 15, and (2) the unpaid principal portion of any Tax-Exempt TIF Notes shall be added to the principal amount of Tax-Exempt TIF Notes to be redeemed pursuant to this Section on the immediately following February 15.

(b) *Optional Redemption.* The Notes are subject to optional redemption by the City in whole at any time or in part on any Interest Payment Date at a redemption price of 100% of the principal amount of the Notes to be redeemed, plus accrued interest thereon to the date fixed for redemption.

### **Section 303. Selection of Notes to be Redeemed.**

(a) Notes shall be redeemed only in Authorized Denominations. When less than all of the Outstanding Notes are to be redeemed and paid prior to maturity, such Notes or portions of Notes to be redeemed shall be selected in Authorized Denominations by the Trustee in such equitable manner as it may determine.

(b) In the case of a partial redemption of Notes when Notes of denominations greater than the minimum Authorized Denomination are then Outstanding, then for all purposes in connection with such redemption each Authorized Denomination unit of face value shall be treated as though it was a separate Note of the denomination of the minimum Authorized Denomination. If one or more, but not all, of the minimum Authorized Denomination units of principal amount represented by any Note are selected for redemption, then upon notice of intention to redeem such minimum Authorized Denomination unit or units, the Owner of such Note or his attorney or legal representative shall forthwith present and surrender such Note to the Trustee (i) for payment of the redemption price (including the interest to the date fixed for redemption) of the minimum Authorized Denomination unit or units of principal amount called for redemption, and (ii) for exchange, without charge to the Owner thereof, for a new Note or Notes of the aggregate principal amount of the unredeemed portion of the principal amount of such Note. If the Owner of any such Note of a denomination greater than minimum Authorized Denomination fails to present such Note to the Trustee for payment and exchange as aforesaid, said Note shall, nevertheless, become due and payable on the redemption date to the extent of the minimum Authorized Denomination unit or units of principal amount called for redemption (and to that extent only) and shall cease to accrue interest on the principal amount so called for redemption.

### **Section 304. Notice of Redemption of Notes.**

(a) Unless waived by any Owner of Notes to be redeemed, official notice of any optional redemption of any Note pursuant to **Section 302(b)** hereof shall be given by the Trustee on behalf of the City by mailing a copy of an official redemption notice by first class mail, postage prepaid, at least 30 days and not more than 60 days prior to the date fixed for redemption to the Owner of the Note or Notes to be redeemed at the address shown on the Register; provided, however, that failure to give such notice by mailing as aforesaid to any Owner or any defect therein as to any particular Note shall not affect the validity of any proceedings for the redemption of any other Notes.

- (b) All official notices of redemption shall be dated and shall state:
- (1) the redemption date,
  - (2) the redemption price,
  - (3) if less than all Outstanding Notes are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the Notes to be redeemed,
  - (4) that on the redemption date the redemption price will become due and payable upon each such Note or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after said date, and
  - (5) the place where such Notes are to be surrendered for payment of the redemption price, which place of payment shall be the principal corporate trust office of the Trustee.
- (c) The Trustee shall mail by first-class mail to the City and the Developer a copy of such redemption notice.

**Section 305. Effect of Call for Redemption.** On or prior to the date fixed for redemption, the City shall deposit moneys or Government Securities with the Trustee as provided in **Section 402** hereof to pay the Notes called for redemption and accrued interest thereon to the redemption date. Upon the happening of the above conditions, and notice having been given as provided in **Section 304** hereof, the Notes or the portions of the principal amount of Notes thus called for redemption shall cease to bear interest on the specified redemption date, provided moneys sufficient for the payment of the redemption price are on deposit at the place of payment at the time, 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.

#### **ARTICLE IV**

#### **FUNDS AND REVENUES**

**Section 401. Creation of Funds.** The following funds of the City are hereby created and established with the Trustee:

- (a) Chesterfield Commons Revenue Fund (the "Revenue Fund").
- (b) Chesterfield Commons Debt Service Fund (the "Debt Service Fund").
- (c) Chesterfield Commons Project Fund (the "Project Fund").

Each fund shall be maintained by the Trustee as a separate and distinct trust fund and the moneys therein shall be held, managed, invested, disbursed and administered as provided in this Indenture. All moneys deposited in the funds shall be used solely for the purposes set forth in this Indenture. The Trustee shall keep and maintain adequate records pertaining to each fund and all disbursements therefrom.



#### **Section 402. Revenue Fund.**

(a) On or before 12:00 noon on each February 15 while the Notes remain Outstanding, the City shall transfer all Net Proceeds to the Trustee for deposit into the Revenue Fund.

(b) Moneys in the Revenue Fund shall be disbursed by the Trustee on each Interest Payment Date for the purposes and in the amounts as follows:

*First*, to the United States of America, an amount sufficient to pay rebate, if any, owed under Section 148 of the Code;

*Second*, to the Trustee or any Paying Agent, an amount sufficient for payment of any fees and expenses which are due and owing to the Trustee or any Paying Agent, upon delivery to the City and the Developer of an invoice for such amounts;

*Third*, to the City, an amount sufficient to reimburse the City for any administrative and professional service costs and expenses incurred by the City under this Indenture after the date of issuance of the first Note and any costs incurred by the City in connection with the issuance of Notes in excess of \$25,500,000 aggregate principal amount pursuant to **Section 201(a)** hereof;

*Fourth*, to the Debt Service Fund, an amount sufficient to pay the interest becoming due and payable on any Notes on such Interest Payment Date;

*Fifth*, to the Debt Service Fund, an amount sufficient to pay the principal of and accrued interest on any Notes which are subject to redemption on such Interest Payment Date pursuant to **Section 302** hereof; and

*Sixth*, after there has accumulated in the Revenue Fund an amount equal to ten percent (10%) of the sum of the outstanding principal amounts of Tax-Exempt TIF Notes and the Taxable TIF Notes (the "10% Reserve"), to the City or its designee, the amount, if any, in excess of the 10% Reserve requested in writing by the City to pay or reimburse the City for the payment of the costs of carrying out the Redevelopment Plan that may be paid through tax increment financing under the Act.

(c) Upon the payment in full of the principal of and interest on the Notes (or provision has been made for the payment thereof as specified in this Indenture) and the fees, charges and expenses of the Trustee and any Paying Agents, and any other amounts required to be paid under this Indenture, all amounts remaining on deposit in the Revenue Fund shall be paid to the City for deposit into the Special Allocation Fund.

#### **Section 403. Debt Service Fund.**

(a) All amounts paid and credited to the Debt Service Fund shall be expended solely for (1) the payment of the principal of and interest on the Notes as the same mature and become due or upon the redemption thereof, or (2) to purchase Notes for cancellation prior to maturity.

(b) The City hereby authorizes and directs the Trustee to withdraw sufficient moneys from the Debt Service Fund to pay the principal of and interest on the Notes as the same become due and

payable and to make said moneys so withdrawn available to the Paying Agent for the purpose of paying said principal of and interest on the Notes.

(c) The Trustee shall use any moneys remaining in the Debt Service Fund to redeem all or part of the Notes Outstanding and interest to accrue thereon prior to such redemption, in accordance with and to the extent permitted by **Article III** hereof, so long as said moneys are in excess of the amount required for payment of Notes theretofore matured or called for redemption.

(d) After payment in full of the principal of and interest on the Notes (or provision has been made for the payment thereof as specified in this Indenture), and the fees, charges and expenses of the Trustee and any Paying Agents and any other amounts required to be paid under this Indenture, all amounts remaining in the Debt Service Fund shall be paid to the City for deposit into the Special Allocation Fund.

**Section 404. Project Fund.** Upon the acceptance by the City of a Certification of Reimbursable Project Costs and the issuance or endorsement of a Note pursuant to **Section 203(c)** hereof, the Developer shall be deemed to have advanced funds necessary to purchase such Note and the City shall be deemed to have deposited such funds in the Project Fund and shall be deemed to have reimbursed the Developer in full for such costs from the amounts deemed to be on deposit in the Project Fund.

**Section 405. Non-Presentation of Notes.** If any Note is not presented for payment when the principal thereof becomes due, either at maturity or at the date fixed for redemption thereof, and provided the Trustee is holding sufficient funds for the payment thereof, all liability of the City to the Owner thereof for the payment of such Note shall forthwith cease, terminate and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such moneys, without liability for interest thereon, for the benefit of the Owner of such Note who shall thereafter be restricted exclusively to such moneys, for any claim or whatever nature on such Owner's part under this Indenture or on, or with respect to, said Note.

Any moneys so deposited with and held by the Trustee not so applied to the payment of Notes within five (5) years after the date on which the same have become due shall be paid by the Trustee to the City, free from the trusts created by this Indenture. Thereafter, Owners shall be entitled to look only to the City for payment, and then only to the extent of the amount so repaid by the Trustee. The City shall not be liable for any interest on the sums paid to it pursuant to this Section and shall not be regarded as a trustee of such money.

## **ARTICLE V**

### **SECURITY FOR DEPOSITS AND INVESTMENT OF MONEYS**

**Section 501. Moneys to be Held in Trust.** All moneys deposited with or paid to the Trustee for the account of any 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, 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.

## **Section 502. Investment of Moneys.**

(a) Moneys in all funds under any provision of this Indenture shall be continuously invested and reinvested by the Trustee in Investment Securities at the written direction of the City given by the Authorized City Representative or, if such written directions are not received, then in any Investment Securities selected by the Trustee. Moneys on deposit in all funds may be invested only in Investment Securities which mature or are subject to redemption prior to the date such funds are expected to be needed. The Trustee may make investments through its investment division or short-term investment department.

(b) All investments shall constitute a part of the fund from which the moneys used to acquire such investments have come. The Trustee shall sell and reduce to cash a sufficient amount of investments in a fund whenever the cash balance therein is insufficient to pay the amounts required to be paid therefrom. The Trustee may transfer investments from any fund to any other fund in lieu of cash when required or permitted by the provisions of this Indenture. In determining the balance in any fund, investments shall be valued at the lower of their original cost or their fair market value on the most recent Interest Payment Date. The Trustee shall not be liable for any loss resulting from such investments.

## **ARTICLE VI**

### **PARTICULAR COVENANTS AND PROVISIONS**

**Section 601. City to Issue Notes and Execute Indenture.** The City covenants that it is duly authorized under the laws of the State to execute and deliver this Indenture, to issue the Notes 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 Notes has been duly and effectively taken; and that the Notes in the hands of the Owners thereof are and will be valid and enforceable limited obligations of the City according to the import thereof.

**Section 602. Covenant to Request Appropriations.** The City covenants and agrees that the officer of the City at any time charged with the responsibility of formulating budget proposals is hereby directed to include in the budget proposal submitted to the City Council of the City for each fiscal year that the Notes are Outstanding a request for an appropriation of the Net Proceeds on deposit in the Economic Activity Tax Account of the Chesterfield Commons Account for transfer to the Trustee for deposit in the Revenue Fund at the times and in the manner provided in **Section 402** hereof.

**Section 603. 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 Notes and in all proceedings pertaining thereto.

**Section 604. 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 further acts, instruments, financing statements and other documents as the Trustee may reasonably require for the better assuring, transferring, pledging and assigning to the Trustee, and granting a security interest unto the Trustee in and to the Trust Estate and the other property and revenues herein described. The Agreement and all other documents or instruments required by the Trustee shall be delivered to and held by the Trustee.

**Section 605. General Limitation on City Obligations.** ANY OTHER TERM OR PROVISION OF THIS INDENTURE OR ANY OTHER DOCUMENT EXECUTED IN CONNECTION WITH THE TRANSACTION WHICH IS THE SUBJECT HEREOF TO THE CONTRARY NOTWITHSTANDING, THE CITY SHALL NOT BE REQUIRED TO TAKE OR OMIT TO TAKE, OR REQUIRE ANY OTHER PERSON OR ENTITY TO TAKE OR OMIT TO TAKE, ANY ACTION WHICH WOULD CAUSE IT OR ANY PERSON OR ENTITY TO BE, OR RESULT IN IT OR ANY PERSON OR ENTITY BEING, IN VIOLATION OF ANY LAW OF THE STATE.

**Section 606. Recording and Filing.** The Trustee shall keep and file or cause to be kept and filed all financing statements related to this Indenture and all supplements hereto and such other documents as may be necessary to be kept and filed in such manner and in such places as may be required by law in order to preserve and protect fully the security of the owners of the Notes and the rights of the Trustee hereunder. In carrying out its duties under this Section, the Trustee shall be entitled to rely on an Opinion of Counsel specifying what actions are required to comply with this Section.

**Section 607. Possession and Inspection of Books and Documents.** The City and the Trustee covenant and agree that all books and documents in their possession relating to the Notes, the Special Allocation Fund and to the distribution of proceeds thereof shall at all reasonable times be open to inspection by such accountants or other agencies or persons as the other party or the Developer may from time to time designate. In addition, to the extent permitted by applicable law, the City agrees to provide the Developer with any and all information in the possession of the City or reasonably obtainable by the City in connection with the Special Allocation Fund, the real estate taxes assessed and paid and the economic activity taxes assessed and paid within the Chesterfield Commons Sub-Area, including, without limitation, any and all reports, provided by the City to the State or to the County of St. Louis (the "County") or by the State or the County to the City in connection therewith, such as, but not limited to, statements and/or reports as to sales activity, utility tax summaries and similar or related information.

**Section 608. Tax Covenants.**

(a) The City shall not use or permit the use of any proceeds of the Tax-Exempt TIF Notes or any other funds of the City, and the Trustee shall not use or permit the use of any proceeds of the Tax-Exempt TIF Notes or any other funds of the City held by the Trustee, directly or indirectly, to acquire any securities or obligations, and shall not use or permit the use of any amounts received by the City or the Trustee in any manner, and shall not take or permit to be taken any other action or actions, which would cause any Tax-Exempt TIF Note to be an "arbitrage bond" within the meaning of Section 148(a) of the Code, or "federally guaranteed" within the meaning of Section 149(b) of the Code. If at any time the City is of the opinion that for purposes of this subsection (a) it is necessary to restrict or limit the yield on or change in any way the investment of any moneys held by the Trustee under this Indenture, the Trustee shall take such action as may be necessary in accordance with such instructions. The City and the Trustee shall be deemed in compliance with this Section to the extent they follow the Arbitrage Instructions or an opinion of Bond Counsel with respect to the investment of funds hereunder.

(b) The City shall not (to the extent within its power or direction) use or permit the use of any proceeds of Tax-Exempt TIF Notes or any other funds of the City, directly or indirectly, in any manner, and shall not take or permit to be taken any other action or actions, which would result in any of the Tax-Exempt TIF Notes being treated as other than an obligation described in Section 103(a) of the Code.

(c) The City will not (to the extent within its power or direction) use any portion of the proceeds of the Tax-Exempt TIF Notes, including any investment income earned on such proceeds, directly or indirectly, in a manner that would cause any Tax-Exempt TIF Note to be a "private activity bond" within the meaning of Section 141(a) of the Code.

(d) The Trustee agrees to comply with any written letter or opinion of Bond Counsel which sets forth the requirements to comply with any statute, regulation or ruling that may apply to the Trustee hereunder and relating to reporting requirements or other requirements necessary to preserve the exclusion from federal gross income of the interest on the Tax-Exempt TIF Notes.

(e) The foregoing covenants of this Section shall remain in full force and effect notwithstanding the defeasance of the Notes pursuant to **Article IX** of this Indenture or any other provision of this Indenture, until the final scheduled payment of all Notes Outstanding.

**Section 609. Collection of Payments in Lieu of Taxes and Economic Activity Tax Revenues.**

The City shall, at the written request of the Owners of a majority in aggregate principal amount of Notes then Outstanding and upon receipt by the City from said Owners of an amount deemed necessary, in the sole judgment of the City, to enable the City to comply with this Section, (a) take all lawful action within its control to cause the County Assessor of St. Louis County, Missouri to assess the real property and improvements within the Chesterfield Commons Sub-Area at the times and in the manner required by the Act, and (b) take such action as may be required to cause the Collector of Revenue of St. Louis County, Missouri and all other persons to pay all Economic Activity Tax Revenues which are due to the City under the Act.

**Section 610. Enforcement of Agreement.**

(a) The City shall enforce the provisions of the Agreement in such manner as the City deems prudent and advisable in its good faith discretion. The City may enforce all appropriate available remedies thereunder, including particularly any actual, agreed or liquidated damages for failure to perform under the Agreement, and shall transfer to the Trustee for deposit to the Revenue Fund all sums received on account of such damages.

(b) The City shall notify the Trustee as to any material failure of performance under the Agreement, and at the time of such notification the City shall also advise the Trustee what action the City proposes to take in enforcing available remedies. If, in the sole judgment of the Trustee, such action is less likely to be effective than some other or additional action, the Trustee shall so advise the City promptly in writing. If, within thirty (30) days following advice by the Trustee that some additional or other action would be more effective, the City has not taken such other or additional action, and the Trustee has not, after consultation with the City, withdrawn such advice, upon receipt of indemnification satisfactory to it, the Trustee is hereby authorized to take such action, whether the action suggested by the Trustee or otherwise, as the Trustee may deem most expedient and in the interest of the Owners of the Notes. In furtherance of the rights granted to the Trustee by this Section, the City hereby assigns to the Trustee all of the rights it may have in the enforcement of the Agreement, further authorizing the Trustee in its own name or in the name of the City to bring such actions, employ such counsel, execute such documents and do such other things as may in the judgment of the Trustee be necessary or appropriate under the circumstance at the expense of the Trust Estate.

(c) If any Notes are owned by persons other than the City, the Developer or any assignee of the City or the Developer (herein referred to as "Third Party Notes"), the City shall not modify, amend or

waive any provision of the Agreement (other than amendments relating to the construction or maintenance of Public Improvements within the Chesterfield Commons Sub-Area) without the prior written consent of the Trustee, whose consent shall not be unreasonably withheld or delayed. The Trustee may withhold its consent to any such proposed modification, amendment or waiver of the Agreement if the proposed modification, amendment or waiver may adversely affect the security for the Third Party Notes or the interests of the Owners thereof or may adversely affect the exclusion of interest on the Third Party Notes that are Tax-Exempt TIF Notes from gross income of the Owners thereof for federal income tax purposes.

## **ARTICLE VII**

### **DEFAULT AND REMEDIES**

**Section 701. Events of Default.** If any one or more 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 performance or observance of any of the covenants, agreements or conditions on the part of the City in this Indenture or in the Notes contained, and the continuance thereof for a period of 30 days after written notice thereof has been given (i) to the City by the Trustee, or (ii) to the Trustee (which notice of default the Trustee shall be required to accept) and the City by the Owners of not less than 25% in aggregate principal amount of Notes then Outstanding; provided, however, if any default is such that it cannot be corrected within such 30-day period, it shall not constitute an Event of Default if corrective action is instituted by the City within such period and diligently pursued until the default is corrected; or

(b) The filing by the City of a voluntary petition in bankruptcy, or failure by the City to promptly lift any execution, garnishment or attachment of such consequence as would impair the ability of the City to carry on its operation, or adjudication of the City as a bankrupt, or assignment by the City for the benefit of creditors, or the entry by the City into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any proceedings instituted under the provisions of federal bankruptcy law, or under any similar acts which may hereafter be enacted.

The Trustee shall give Immediate Notice of any Event of Default to the City and the Developer as promptly as practicable after the occurrence of an Event of Default becomes known to the Trustee.

### **Section 702. Acceleration.**

(a) If an Event of Default has occurred and is continuing, the Trustee may, and shall upon the written request of a majority in aggregate principal amount of the Notes then Outstanding, by notice in writing delivered to the City and the Developer, declare the principal of all Notes then Outstanding and the interest accrued thereon immediately due and payable.

(b) In case of any rescission pursuant to **Section 712** hereof, the Trustee and the Owners shall be restored to their former positions and rights hereunder respectively, but no such rescission shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon.

**Section 703. Surrender of Possession of Trust Estate; Rights and Duties of Trustee in Possession.** If an Event of Default has occurred and is continuing, 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 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, but not limited to, (i) reasonable compensation to the Trustee, its agents and counsel, and (ii) any reasonable charges of the Trustee hereunder, and the Trustee shall apply the remainder of the moneys so received in accordance with **Section 708** hereof. Whenever all that is due upon the Notes has been paid and all defaults made good, 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 the Trust Estate, the Trustee shall render annually to the City and the Developer a summarized statement of receipts and expenditures in connection therewith.

**Section 704. Appointment of Receivers in Event of Default.** If an Event of Default has occurred and is continuing, 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 and of the earnings, income, products and profits thereof, pending such proceedings, with such powers as the court making such appointment shall confer.

**Section 705. Exercise of Remedies by the Trustee.** If an Event of Default has occurred and is continuing, the Trustee may pursue any available remedy at law or equity by suit, action, mandamus or other proceeding to enforce the payment of the principal of and interest on the Notes then Outstanding, and to enforce and compel the performance of the duties and obligations of the City as herein set forth.

If an Event of Default has occurred and is continuing, and if requested so to do by the Owners of not less than 25% in aggregate principal amount of the Notes then Outstanding and indemnified as provided in **Section 801(i)** hereof, the Trustee shall be obligated to exercise such one or more of the rights and powers conferred by this Article as the Trustee, being advised by counsel, deems most expedient in the interests of the Owners.

All rights of action under this Indenture or under any of the Notes may be enforced by the Trustee without the possession of any of the Notes 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 the necessity of joining as plaintiffs or defendants any Owner, and any recovery or judgment shall, subject to **Section 708** hereof, be for the equal benefit of all the Owners of the Outstanding Notes.

**Section 706. 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:

(i) a default has occurred of which the Trustee has notice as provided in **Section 801(h)** hereof, and

(ii) such default has become an Event of Default, and

(iii) the Owners of not less than 25% in aggregate principal amount of the Notes then Outstanding shall have made written request to the Trustee, shall have offered it reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, and shall have provided to the Trustee indemnity as provided in **Section 801(I)** hereof, and

(iv) the Trustee shall thereafter fail or refuse to exercise the powers herein granted or to institute such action, suit or proceeding in its own name;

and such notification, request and 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 its, his or their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of the Owners of all Notes then Outstanding. Nothing in this Indenture, however, shall affect or impair the right of any Owner to payment of the principal of and interest on any Note at and after its maturity or the obligation of the City to pay the principal of and interest on each of the Notes to the respective Owners thereof at the time, place, from the source and in the manner herein and in such Note expressed.

**Section 707. Right of Owners to Direct Proceedings.** Any other provision herein to the contrary notwithstanding, the Owners of a majority in aggregate principal amount of the Notes then Outstanding shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement 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, and provided, further, that the Trustee shall have the right to decline to follow any such direction if the Trustee in good faith determines that the proceeding so directed would involve it in personal liability.

**Section 708. Application of Moneys in Event of Default.** Upon an Event of Default, all moneys held or received by the Trustee pursuant to this Indenture or the Agreement or pursuant to any right given or action taken under this Article shall, after payment of the reasonable costs, advances and expenses of the proceedings resulting in the collection of such moneys, be deposited in the Debt Service Fund. All moneys in the Debt Service Fund and the Revenue Fund shall be applied as follows:

(a) If the principal of all the Notes has not become or has not been declared due and payable, all such moneys shall be applied:

(1) *First* -- To the payment to the persons entitled thereto of all installments of interest then due and payable on the Notes, in the order in which such installments of interest became due and payable, with interest thereon at the rate or rates specified in the respective Notes to the extent permitted by law, 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.



(2) *Second* -- To the payment to the persons entitled thereto of the unpaid principal of any of the Notes that have become due and payable (other than Notes called for redemption for the payment of which moneys or securities are held pursuant to this Indenture), in the order of their due dates, and, if the amount available is not sufficient to pay in full such principal due on any particular date, together with such interest, then to the payment ratably, according to the amounts of principal due on such date, to the persons entitled thereto without any discrimination or privilege.

(b) If the principal of all the Notes has become due or has been declared due and payable, all such moneys shall be applied to the payment of the principal and interest then due and unpaid on all of the Notes, 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 Note over any other Note, ratably, according to the amounts due respectively for principal and interest, to the persons entitled thereto, without any discrimination or privilege.

(c) If the principal of all the Notes has been declared due and payable, and if such declaration thereafter is rescinded and annulled under the provisions of **Section 712** hereof, then, subject to the provisions of subsection (a)(2) above of this Section in the event that the principal of all the Notes shall later become due or be declared due and payable, the moneys shall be applied in accordance with the provisions of subsection (a)(1) of this Section.

Whenever moneys are to be applied pursuant to 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 all of the Notes and interest thereon have been paid under this Section, and all fees, expenses and charges of the Trustee have been paid, any balance remaining in the funds created pursuant to this Indenture shall be paid to the City for deposit in the Special Allocation Fund.

**Section 709. Remedies Cumulative.** No remedy conferred by this Indenture 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.

**Section 710. Delay or Omission Not Waiver.** 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, and every such right, power or remedy may be exercised from time to time and as often as may be deemed expedient.

**Section 711. Effect of Discontinuance of Proceedings.** 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 the City, the Developer, the Trustee and the Owners shall be restored to their former positions and rights hereunder, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

**Section 712. Waivers of Events of Default.** The Trustee shall waive any Event of Default and its consequences and rescind any declaration of maturity of principal upon the written request of the Owners of a majority in aggregate principal amount of the Notes then Outstanding. In case of any such

waiver or rescission, or in case any proceeding taken by the Trustee on account of any such Event of Default have been discontinued or abandoned or determined adversely, then and in every such case the City, the Developer, the Trustee and the Owners shall be restored to their former positions, rights and obligations hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon.

## **ARTICLE VIII**

### **THE TRUSTEE**

**Section 801. Acceptance of Trusts.** The Trustee hereby accepts the trusts imposed upon it by this Indenture, and agrees to perform said trusts as a corporate trustee ordinarily would perform said trusts under a corporate 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, prior to the occurrence of an Event of Default and after the curing of all Events of Default which 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, 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 under reasonably similar circumstances would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or through agents, attorneys, receivers, employees or such other professionals but shall not be answerable for the conduct of the same in accordance with the standard specified above, provided the Trustee has exercised reasonable care in making such selection. The Trustee may act upon the opinion or advice of counsel, who may, without limitation, be counsel to the City or an employee of the Trustee, concerning all matters of trust hereof and the duties hereunder, and, subject to the restrictions of **Section 802** hereof, may in all cases pay such reasonable compensation to all such agents, attorneys, receivers, employees and other such professionals 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 and shall be fully protected in reliance upon such opinion or advice of counsel.

(c) The Trustee shall not be responsible for any recital herein or in the Notes (except with respect to the Certificate of Authentication of the Trustee endorsed on the Notes), or for the recording or rerecording, filing or refiling of this Indenture or any security agreements in connection therewith, or for insuring any of the improvements constructed in the Chesterfield Commons Sub-Area or collecting any insurance moneys, or for the validity of the execution by the City of this Indenture or of any or instruments of further assurance, or for the sufficiency of the security for the Notes. 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 V** hereof.

(d) The Trustee shall not be accountable for the use of any Notes authenticated and delivered hereunder. The Trustee, in its individual or any other capacity, may become the owner or pledgee of Notes with the same rights which it would have if it were not Trustee.

(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 and in accordance with 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 the Owner of any Note, shall be conclusive and binding upon all future Owners of the same Note and upon Notes 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 deems it desirable that a matter be provided or established prior to taking, suffering or omitting any action hereunder, the Trustee shall be entitled to rely upon a certificate signed by an Authorized City Representative or Authorized Developer Representative as sufficient evidence of the facts therein contained. Prior to the occurrence of an Event of 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 of any Event of Default unless the Trustee is specifically notified in writing of such default by the City, the Developer or by the Owners of at least 10% in aggregate principal amount of all Notes then Outstanding.

(i) At any and all reasonable times the Trustee and its duly authorized agents, attorneys, experts, engineers, accountants and representatives shall have the right, but shall not be required, to inspect any and all of the Chesterfield Commons Sub-Area, including all books, papers and records of the City pertaining to the Developer and the Notes, and to take such memoranda from and in regard thereto as may be desired.

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

(k) The Trustee shall have the right, but shall not be required, to demand, in respect of the authentication of any Notes, the withdrawal of any funds, or any action whatsoever within the purview of this Indenture, 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 as are deemed desirable for the purpose of establishing the right of the City to the authentication of any Notes, the withdrawal of any funds or the taking of any other action by the Trustee.

(l) Before taking any action under this Indenture, other than any action under **Article II** hereof concerning the payment of principal and interest on the Notes, declaring an Event of Default or accelerating the maturity of the Notes, the Trustee may, in its discretion, require that satisfactory indemnity be furnished to it by the Owners or other parties for the reimbursement of all reasonable fees, costs liabilities, losses, claims and expenses to which it may be put and to protect it against all liability

including environmental, except liability which is adjudicated to have resulted from its negligence or willful misconduct by reason of any action so taken.

(m) All moneys received by the Trustee or any Paying Agent shall, until used or applied or invested as herein provided, be held in trust in the manner and for the purposes for which they were received but need not be segregated from other funds except to the extent required by this Indenture or by law. 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.

(n) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(i) this Subsection shall not be construed to affect the limitation of the Trustee's duties and obligations provided in this Section or the Trustee's right to rely on the truth of statements and the correctness of opinions as provided in this Section;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by any one of its directors, officers or employees unless it is established that the Trustee was negligent in ascertaining the pertinent facts;

(iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Owners of not less than a majority in principal amount of the Notes then Outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture; and

(iv) subject to subsection (l) above, no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial or environmental liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers if it has reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

**Section 802. 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 (which, during such time as Magna Bank, N.A. is serving as Trustee hereunder, shall be limited to an acceptance fee of \$1,000 and an annual administrative fee of \$1,000) and all agent and counsel fees and other ordinary costs and expenses reasonably and necessarily made or incurred by the Trustee in connection with such ordinary services and, in the event that it becomes necessary that the Trustee perform extraordinary services, it shall be entitled to reasonable extra compensation therefor and to reimbursement for reasonable and necessary extraordinary costs and 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 and as Registrar for the Notes. Upon the occurrence of an Event of Default and during its continuance, the Trustee shall have a lien with right of payment prior to payment on account of principal of or interest on any Note, upon all moneys in its possession under any provisions hereof for the foregoing advances, fees, costs and expenses incurred.

**Section 803. Notice of Default.** If a default occurs of which notice is given to the Trustee as provided in **Section 801(h)** hereof, then the Trustee shall give Immediate Notice thereof to the City and the Developer and within thirty (30) days (five Business Days if the maturity of the Notes has been accelerated pursuant to **Section 702** hereof) by first class mail to the Owners of all Notes then Outstanding as shown by the Register.

**Section 804. 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 of the Notes, the Trustee may intervene on behalf of Owners and shall do so if requested in writing by the Owners of at least 25% in the aggregate principal amount of Notes then Outstanding, provided that the Trustee shall first have been provided indemnity provided under **Section 801(l)** hereof as it may require against the reasonable costs, expenses and liabilities which it may incur in or by reason of such proceeding. The rights and obligations of the Trustee under this Section are subject to the approval of a court of competent jurisdiction.

**Section 805. Successor Trustee Upon Merger, Consolidation or Sale.** Any corporation or association with or into which the Trustee may be merged or converted or with or into which it may be consolidated, or to which the Trustee 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, provided such corporation or association is otherwise eligible under **Section 806** hereof, 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 806. Resignation or Removal of Trustee.** The Trustee and any successor Trustee may at any time resign from the trusts hereby created by giving 30 days' written notice to the City, the Developer and the Owners, and such resignation shall take effect upon the appointment of a successor Trustee pursuant to **Section 807** hereof. If at any time the Trustee ceases to be eligible in accordance with the provisions of this Indenture, it shall resign immediately in the manner provided in this Section. The Trustee may be removed for cause or without cause at any time by an instrument or concurrent instruments in writing delivered to the Trustee and the Developer and signed by the Owners of a majority in aggregate principal amount of Notes then Outstanding. If no Event of Default has occurred and is continuing, the Trustee may be removed for cause (including the failure of the Trustee and the Developer to agree on the reasonableness of the fees and expenses of the Trustee under this Indenture) at any time by an instrument or concurrent instruments in writing delivered to the Trustee and the City and signed by the Developer. The City, the Developer or the Owners of a majority in aggregate principal amount of the Notes then Outstanding may at any time petition any court of competent jurisdiction for the removal for cause of the Trustee. No resignation or removal of the Trustee shall become effective until a successor Trustee has accepted its appointment under **Section 807** hereof.

**Section 807. 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 may be appointed by the Developer (provided no Event of Default has occurred and is continuing) or the Owners of a majority in aggregate principal amount of Notes 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 the Authorized City Representative, may appoint a temporary Trustee to fill such vacancy until a successor Trustee is appointed by the Owners in the manner above provided; and any such temporary

Trustee so appointed by the City shall immediately and without further acts be superseded by the successor Trustee so appointed by such Owners. If a successor Trustee or a temporary Trustee has not been so appointed and accepted such appointment within 30 days of a notice of resignation or removal of the current Trustee, the Trustee may petition a court of competent jurisdiction for the appointment of a successor Trustee to act until such time, if any, as a successor has so accepted its appointment. No resignation or removal of the Trustee and no appointment of a successor Trustee shall become effective until the successor Trustee has accepted its appointment under **Section 807** hereof.

**Section 808. Qualifications of Trustee and Successor Trustees.** The Trustee and every successor Trustee appointed hereunder shall be a trust institution or commercial bank with its principal corporate trust office located in the State, shall be in good standing and qualified to accept such trusts, shall be subject to examination by a federal or state bank regulatory authority, and shall have a reported capital and surplus of not less than \$10,000,000. If such institution publishes reports of conditions at least annually pursuant to law or regulation, then for the purposes of this Section the capital and surplus of such institution shall be deemed to be its capital and surplus as set forth in its most recent report of condition so published.

**Section 809. Vesting of Trusts in Successor Trustee.** Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the City and the Developer an instrument in writing accepting such appointment hereunder, and thereupon such successor shall become fully vested with all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges of its predecessor; 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; and 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 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 810. 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 Agreement, and in particular in case of the enforcement of either upon an Event of Default, or if the Trustee deems that by reason of any present or future law of any jurisdiction it may not 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 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 co-trustee or separate trustee, 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 him or it 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 dies, becomes incapable of acting, resigns or is 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 811. Annual Statement.** The Trustee shall render an annual statement for each calendar year ending December 31 to the City and the Developer and, if so requested and the expense thereof is paid, to any Owner requesting the same, showing in reasonable detail all financial transactions relating to the Trust Estate during the accounting period and the balance in any funds created by this Indenture as of the beginning and close of such accounting period.

**Section 812. Paying Agents; Registrar; Appointment and Acceptance of Duties; Removal.**

(a) The Trustee is hereby designated and agrees to act as Paying Agent and as Registrar for and in respect of the Notes.

(b) The City may appoint one or more additional Paying Agents for the Notes. Each Paying Agent other than the Trustee shall signify its acceptance of the duties and obligations imposed upon it by the Indenture by executing and delivering to the City and the Trustee a written acceptance thereof. The City may remove any Paying Agent other than the Trustee and any successors thereto, and appoint a successor or successors thereto; provided that any such Paying Agent designated by the City shall continue to be a Paying Agent of the City for the purpose of paying the principal of and interest on the Notes until the designation of a successor as such Paying Agent and acceptance by such successor of the appointment. Each Paying Agent is hereby authorized to pay or redeem Notes when such Notes are duly presented to it for payment or redemption, which Notes shall thereafter be delivered to the Trustee for cancellation.

(c) The Paying Agent may at any time resign and be discharged of the duties and obligations created by this Indenture by giving at least 60 days' notice to the City and the Trustee. The Paying Agent may be removed by the City at any time by an instrument signed by the City and filed with the Paying Agent and the Trustee. In the event of the resignation or removal of the Paying Agent, the Paying Agent shall pay over, assign and deliver any moneys held by it in such capacity to its successor or, if there be no successor, to the Trustee.

If the City fails to appoint a Paying Agent hereunder, or the Paying Agent resigns or is removed, or is dissolved, or if the property or affairs of the Paying Agent are taken under the control of any state or federal court or administrative body because of bankruptcy or insolvency, or for any other reason, and the City has not appointed its successor as Paying Agent, the Trustee shall ipso facto be deemed to be the Paying Agent for all purposes of this Indenture until the appointment by the City of the Paying Agent or successor Paying Agent, as the case may be. The Trustee shall give each Owner notice by first-class mail of the appointment of a Paying Agent or successor Paying Agent.

## ARTICLE IX

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

#### **Section 901. Satisfaction and Discharge of the Indenture.**

(a) When the principal of and interest on all the Notes have been paid in accordance with their terms or provision has been made for such payment, as provided in **Section 902** hereof, and provision also is made for paying all other sums payable hereunder, including the fees and expenses of the Trustee and the Paying Agents to the date of payment of the Notes, then the right, title and interest of the Trustee under this Indenture shall thereupon cease, determine and be void, and thereupon the Trustee shall cancel, discharge and release this Indenture and shall 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 any property at the time subject to this Indenture which may then be in the Trustee's possession, except amounts in the Debt Service Fund required to be paid to the City under **Section 403** hereof and except funds or securities in which such moneys are invested and held by the Trustee for the payment of the principal of and interest on the Notes.

(b) The City is hereby authorized to accept a certificate of the Trustee stating that the whole amount of the principal and interest so due and payable upon all of the Notes then Outstanding has been paid or provision for such payment has been made in accordance with **Section 902** hereof as evidence of satisfaction of this Indenture, and upon receipt thereof the City shall cancel and erase the inscription of this Indenture from its records.

#### **Section 902. Notes Deemed to Be Paid.**

(a) Notes shall be deemed to be paid within the meaning of this Article when payment of the principal on such Notes, plus interest thereon to the due date thereof (whether such due date is by reason of maturity or upon redemption as provided in this Indenture, or otherwise), either (1) has been made or caused to be made in accordance with the terms hereof, or (2) provision therefor has been made by depositing with the Trustee, in trust and irrevocably setting aside exclusively for such payment, (i) moneys sufficient to make such payment or (ii) non-callable Government Securities maturing as to principal and interest in such amount and at such times as will ensure the availability of sufficient moneys to make such payment and, with respect to Tax-Exempt TIF Notes deemed to be paid within the meaning of this Article, the Trustee shall have received an opinion of Bond Counsel (which opinion may be based upon a ruling or rulings of the Internal Revenue Service) to the effect that such deposit will not cause the interest on such Tax-Exempt TIF Notes to be included in gross income for purposes of federal income taxation. At such time as a Note is deemed to be paid hereunder as aforesaid, such Note shall no longer be secured by or be entitled to the benefits of this Indenture, except for the purposes of any such payment from such moneys or Government Securities.

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



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

## ARTICLE X

### SUPPLEMENTAL INDENTURES

**Section 1001. 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 are not 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 release property from the Trust Estate which was included by reason of an error or other mistake;
- (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 subject to this Indenture additional revenues, properties or collateral;
- (d) To modify, amend or supplement this Indenture or any indenture supplemental hereto in such manner as to permit the qualification of the Indenture under the Trust Indenture Act of 1939, as then amended, or any similar federal statute hereafter in effect, or to permit the qualification of the Notes for sale under the securities laws of any state of the United States;
- (e) To provide for the refunding of any Notes in accordance with the terms hereof;
- (f) To evidence the appointment of a separate trustee or the succession of a new trustee hereunder; or
- (g) To make any other change which, in the sole judgment of the Trustee, does not materially adversely affect the interests of the Owners. In exercising such judgment the Trustee may rely on an Opinion of Counsel.

**Section 1002. Supplemental Indentures Requiring Consent of Owners.** In addition to Supplemental Indentures permitted by **Section 1001** hereof and subject to the terms and provisions contained in this Section, and not otherwise, with the consent of the Owners of not less than a majority in aggregate principal amount of the Notes then Outstanding, the City and the Trustee may from time to time enter into 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 nothing in this Section contained shall permit or be construed as permitting:

- (a) an extension of the maturity of the principal of or the scheduled date of payment of interest on any Note;
- (b) a reduction in the principal amount, redemption premium or any interest payable on any Note;
- (c) a privilege or priority of any Note or Notes over any other Note or Notes;
- (d) a reduction in the aggregate principal amount of Notes the Owners of which are required for consent to any such Supplemental Indenture; or
- (e) the modification of the rights, duties or immunities of the Trustee, without the written consent of the Trustee.

If at any 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 by first-class mail to each Owner. Such notice shall briefly set forth the nature of the proposed Supplemental Indenture and shall state that copies thereof are on file at the principal corporate trust office of the Trustee for inspection by all Owners. If within 60 days or such longer period as shall 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 Notes Outstanding at the time of the execution of any such Supplemental Indenture have consented to and approved the execution thereof as herein provided, no Owner of any Note 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. Upon the execution of any such Supplemental Indenture as in this Section permitted and provided, this Indenture shall be and be deemed to be modified and amended in accordance therewith.

**Section 1003. Developer's Consent to Supplemental Indentures.** Anything herein to the contrary notwithstanding, a Supplemental Indenture under this Article which affects any rights or obligations of the Developer shall not become effective unless and until the Developer has consented in writing to the execution and delivery of such Supplemental Indenture. In this regard, the Trustee shall cause notice of the proposed execution and delivery of any such Supplemental Indenture together with a copy of the proposed Supplemental Indenture to be mailed to the Developer at least 45 days prior to the proposed date of execution and delivery of any such Supplemental Indenture.

**Section 1004. Opinion of Bond Counsel.** Notwithstanding anything to the contrary in Sections 1001 or 1002 hereof, before the City and the Trustee enter into any Supplemental Indenture pursuant to Section 1001 or 1002 hereof, there shall have been delivered to the Trustee an opinion of Bond Counsel stating that such Supplemental Indenture is authorized or permitted by this Indenture and the Act, complies with their respective terms, will, upon the execution and delivery thereof, be valid and binding upon the City in accordance with its terms and will not adversely affect the exclusion from federal gross income of interest on any Tax-Exempt TIF Notes then Outstanding.

## ARTICLE XI

### MISCELLANEOUS PROVISIONS

**Section 1101. Consents and Other Instruments by Owners.** 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 Notes, 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:

(a) The fact and date of the execution by any person of any such instrument (other than the assignment of a Note) 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.

(b) The fact of ownership of Notes and the amount or amounts, numbers and other identification of such Notes, and the date of holding the same shall be proved by the Register. In all cases where Notes are owned by persons other than the City, the Developer or an assignee of the City or the Developer, in determining whether the Owners of the requisite principal amount of Notes Outstanding have given any request, demand, authorization, direction, notice, consent or waiver under this Indenture, Notes owned by, or held by or for the account of, the City, the Developer or any affiliate or any Person controlling, controlled by or under common control with either of them, shall be disregarded and deemed not to be Outstanding under this Indenture.

**Section 1102. Notices.** Except as otherwise provided herein, it shall be sufficient service of any notice, request, complaint, demand or other paper required by this Indenture to be given to or filed with the City, the Trustee, the Developer or the Owners if the same is duly mailed by first-class mail, postage pre-paid, or sent by telegram, telecopy or telex or other similar communication, or when given by telephone, confirmed in writing by first-class mail, postage pre-paid, or sent by telegram, telecopy or telex or other similar communication, on the same day, addressed:

(a) To the City at:

City of Chesterfield  
922 Roosevelt Parkway  
Chesterfield, Missouri 63017  
Attention: City Administrator  
Telephone: (314) 537-4000  
Facsimile: (314) 537-4799

With copies to:

James E. Mello, Esq.  
Armstrong, Teasdale, Schlafly & Davis  
One Metropolitan Square, Suite 2600  
St. Louis, Missouri 63102-2740  
Telephone: (314) 621-5070  
Facsimile: (314) 621-5065

Douglas R. Beach, Esq.  
Beach, Burcke, Helfers & Mittleman  
222 South Central, Suite 900  
Clayton, Missouri 63105  
Telephone: (314) 863-8484  
Facsimile: (314) 863-5312

(b) To the Trustee at:

Magna Bank, N.A.  
1401 S. Brentwood Boulevard, 9th Floor  
St. Louis, Missouri 63144  
Attention: Corporate Trust Department  
Telephone: (314) 963-2472  
Facsimile: (314) 963-2475

(c) To the Developer at:

THF Chesterfield Development, L.L.C.  
955 Executive Parkway, Suite 210  
St. Louis, Missouri 63141  
Attention: Michael H. Staenberg  
Telephone: (314) 878-4044  
Facsimile: (314) 878-4004

With a copy to:

Alan B. Bornstein, Esq.  
Sonnenschein, Nath & Rosenthal  
One Metropolitan Square, Suite 3000  
St. Louis, Missouri 63102  
Telephone: (314) 259-5803  
Facsimile: (314) 259-5959

(d) To the Owners:

Addressed to each of the Owners of all Notes at the time Outstanding, as shown by the Register.

In the event of any notice to a party other than the City, a copy of said notice shall be provided to the City.

**Section 1103. Limitation of Rights Under the Indenture.** With the exception of rights herein expressly conferred and as otherwise provided in this Section, nothing expressed or mentioned in or to be implied by this Indenture or the Notes is intended or shall be construed to give any person other than the parties hereto, and the Owners of the Notes, any right, remedy or claim under or in respect to this Indenture. This Indenture and all of the covenants, conditions and provisions hereof are, except as otherwise provided in this Section, intended to be and are for the sole and exclusive benefit of the parties hereto and the Owners of the Notes as herein provided.

**Section 1104. Suspension of Mail Service.** If, because of the temporary or permanent suspension of mail service or for any other reason, it is impossible or impractical to mail any notice in the manner herein provided, then such delivery of notice in lieu thereof as shall be made with the approval of the Trustee shall constitute a sufficient notice.

**Section 1105. Business Days.** If any date for the payment of principal of or interest on the Notes or the taking of any other action hereunder is not a Business Day, then such payment shall be due, or such action shall be taken, on the first Business Day thereafter.

**Section 1106. Immunity of Officers, Employees and Members of City.** No recourse shall be had for the payment of the principal of or interest on any of the Notes or for any claim based thereon or upon any obligation, covenant or agreement in this Indenture contained against any past, present or future officer, director, member, employee or agent of the City, the governing body of the City, or of any successor public corporation, as such, either directly or through the City or any successor public corporation, under any rule of law or equity, statute or constitution, or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officers, directors, members, employees or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Indenture and the issuance of such Notes.

**Section 1107. No Sale.** The City covenants and agrees that, except as provided herein or in the Agreement, it will not sell, convey, assign, pledge, encumber or otherwise dispose of any part of the moneys subject to this Indenture.

**Section 1108. Severability.** If any provision of this Indenture is held or deemed to be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstances, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or Sections in this Indenture contained shall not affect the remaining portions of this Indenture, or any part thereof.

**Section 1109. Execution in Counterparts.** This Indenture may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 1110. Governing Law.** This Indenture shall be governed exclusively by and construed in accordance with the applicable laws of the State.

**IN WITNESS WHEREOF**, the City of Chesterfield, Missouri has caused these presents to be signed in its name and behalf and its corporate seal to be hereunto affixed and attested by its duly authorized officers, and to evidence its acceptance of the trusts hereby created, Magna Bank, N.A. has caused these presents to be signed in its name and behalf and its corporate seal to be hereunto affixed and attested by its duly authorized officers, all as of the day and year first above written.

**CITY OF CHESTERFIELD, MISSOURI**

[SEAL]

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

ATTEST:

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

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

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

[SEAL]

ATTEST:

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

**EXHIBIT A**

(Legal Description of Chesterfield Commons Sub-Area)



**EXHIBIT B**

**FORM OF TIF NOTES**

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

**UNITED STATES OF AMERICA  
STATE OF MISSOURI**

Registered  
No. R-\_\_

Registered  
Up to \$25,500,000  
except as otherwise provided herein  
(See **Schedule A** attached)

**CITY OF CHESTERFIELD, MISSOURI**

**[TAXABLE] TAX INCREMENT REVENUE NOTE  
SERIES 19\_\_  
(CHESTERFIELD COMMONS PROJECT)**

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Interest Rate: Variable, as described herein

Maturity Date: October 17, 2017

REGISTERED OWNER:

PRINCIPAL AMOUNT: See **SCHEDULE A** attached hereto.

The **CITY OF CHESTERFIELD, MISSOURI**, an incorporated political subdivision duly organized and validly existing under the Constitution and laws of the State of Missouri (the "City"), for value received, hereby promises to pay to the registered owner shown above, or registered assigns, the Outstanding Principal Amount shown from time to time on **Schedule A** attached hereto on the Maturity Date shown above, and to pay interest thereon from the Date shown from time to time on **Schedule A** attached hereto or from the most recent Interest Payment Date to which interest has been paid or duly provided for, at the lesser of (1) the Interest Rate (as hereinafter defined) or (2) ten percent (10.0%) per annum. "Interest Rate" means a variable rate, adjusted quarterly, equal to the prime rate as declared by NationsBank, N.A., St. Louis, Missouri (or if NationsBank, N.A. ceases to do business in St. Louis, any other federally-chartered commercial lending institution doing business in St. Louis and selected by the City [, less one percent (1.0%)]). Interest shall be payable commencing on the fifteenth day of February after which Net Proceeds generated within the Chesterfield Commons Sub-Area have first been deposited in the Special Allocation Fund, and on each February 15 thereafter (each, an "Interest Payment Date") until the Notes are paid in full. Interest shall be calculated on the basis of a 360-day year of

twelve 30-day months. Interest which accrues but remains unpaid on any Interest Payment Date shall not be compounded.

*Except as otherwise provided herein, the capitalized terms herein shall have the meanings as provided in the Indenture (as hereinafter defined).*

THE OBLIGATIONS OF THE CITY WITH RESPECT TO THIS NOTE TERMINATE ON OCTOBER 17, 2017, WHETHER OR NOT THE PRINCIPAL AMOUNT OR INTEREST HEREON HAS BEEN PAID IN FULL. REFERENCE IS MADE TO THE INDENTURE FOR A COMPLETE DESCRIPTION OF THE CITY'S OBLIGATIONS HEREUNDER.

The principal of this Note shall be paid at maturity or upon earlier redemption to the person in whose name this Note is registered at the maturity or redemption date hereof, upon presentation and surrender of this Note at the principal corporate trust office of Magna Bank, N.A., St. Louis, Missouri (the "Trustee"). The interest payable on this Note on any Interest Payment Date shall be paid to the person in whose name this Note is registered on the Register at the close of business on the first day (whether or not a Business Day) of the calendar month containing such Interest Payment Date. Such interest shall be payable (a) by check or draft mailed by the Trustee to the address of such registered owner shown on the Register or (b) in the case of an interest payment to any registered owner of \$500,000 or more in aggregate principal amount of Notes, by electronic transfer to such registered owner upon written notice given to the Trustee by such registered owner, not less than 15 days prior to the Record Date for such interest, containing the electronic transfer instructions including the bank (which shall be in the continental United States), ABA routing number and account number to which such registered owner wishes to have such transfer directed. The principal or redemption price of and interest on the Notes shall be payable by check or draft in any coin or currency that, on the respective dates of payment thereof, is legal tender for the payment of public and private debts.

This Note is one of an authorized series of fully registered notes of the City designated "City of Chesterfield, Missouri, [Taxable] Tax Increment Revenue Notes, Series 19\_\_ (Chesterfield Commons Project)," which together with another authorized series of fully registered notes of the City designated "City of Chesterfield, Missouri, [Taxable] Tax Increment Revenue Notes, Series 19\_\_ (Chesterfield Commons Project)" aggregate a principal amount of up to \$25,500,000 plus such additional amount permitted by the Act and **Section 5.5** of the Redevelopment Agreement dated as of \_\_\_\_\_, 1997 (the "Agreement") between the City and THF Chesterfield Development, L.L.C. (relating to reimbursement for relocation of a water distribution line) (collectively the "Notes"). The Notes are being issued for the purpose of paying a portion of the redevelopment project costs in connection with the Chesterfield Valley Tax Increment Financing District Redevelopment Plan, under the authority of and in full compliance with the Constitution and laws of the State of Missouri, including particularly the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 through 99.865, inclusive, of the Revised Statutes of Missouri, as amended (the "Act"), and pursuant to a Trust Indenture dated as of \_\_\_\_\_ 1, 19\_\_, between the City and the Trustee (the "Indenture").

The Notes constitute special, limited obligations of the City payable as to principal and interest solely from (a) Net Proceeds on deposit in the Pilots Account within the Chesterfield Commons Account of the Special Allocation Fund, and (b) subject to annual appropriation, Net Proceeds on deposit in the Economic Activity Tax Account within the Chesterfield Commons Account of the Special Allocation Fund and (c) from certain other funds and accounts held under the Indenture, after the payment of (1) rebatable arbitrage, if any, (2) fees and expenses of the Trustee or any Paying Agents, and (3) certain administrative, professional service and other costs and expenses of the City as set forth in

**Section 402(b)** of the Indenture and which constitute Redevelopment Project Costs (as defined in Section 99.805(11) of the Act). Net Proceeds do not include any amount paid under protest until the protest is withdrawn or resolved against the taxpayer nor do Net Proceeds include any sum received by the City which is the subject of a suit or other claim communicated to the City which suit or claim challenges the collection of such sum.

The Notes shall not constitute debts or liabilities of the City, the State of Missouri or any political subdivision thereof within the meaning of any constitutional or statutory debt limitation or restriction. Neither the City, the Tax Increment Financing Commission of the City of Chesterfield, Missouri, the commissioners of said Commission, the officers and employees of the City nor any person executing the Notes shall be personally liable for such obligations by reason of the issuance thereof.

The moneys on deposit in the Pilots Account are those payments in lieu of taxes (as defined in Sections 99.805(7) and 99.845 of the Act) attributable to the increase in the current equalized assessed valuation of each taxable lot, block, tract or parcel of real property in the Chesterfield Commons Sub-Area (as described in **Exhibit A** to the Indenture) over and above the initial equalized assessed valuation of the real property within the Chesterfield Commons Sub-Area, as described and determined in accordance with Section 99.855 of the Act (herein referred to as "PILOTS"). Moneys on deposit in the Economic Activity Tax Account are amounts, subject to annual appropriation, equal to fifty percent (50%) of the total additional revenues from taxes which are imposed by the City or any other taxing districts which are generated by economic activities within the Chesterfield Commons Sub-Area over the amount of such taxes generated by economic activities within the Chesterfield Commons Sub-Area in the calendar year ending December 31, 1996 (herein referred to as "EATS"), as described and determined in accordance with Section 99.845.3 of the Act.

PILOTS and, subject to annual appropriation and to the extent permitted by law, EATS, shall be applied to payments on this Note as follows: first, to pay all other accrued but unpaid interest; and second, to the extent due or subject to redemption, to pay principal of this Note.

**NOTWITHSTANDING ANY PROVISION HEREIN OR IN THE INDENTURE TO THE CONTRARY, THE NOTES ARE SUBJECT TO CANCELLATION AND DISCHARGE BY THE CITY IN WHOLE WITHOUT PAYMENT UNDER THE CONDITIONS DESCRIBED IN SECTION 7.2 OF THE AGREEMENT.**

The Notes are subject to optional redemption by the City in whole at any time or in part on any Interest Payment Date, at a redemption price of 100% of the principal amount of the Notes to be redeemed, plus accrued interest thereon to the date fixed for redemption.

The Notes are subject to mandatory redemption by the City pursuant to the mandatory redemption requirements of the Indenture on each Interest Payment Date, at the redemption price of 100% of the principal amount being redeemed, together with accrued interest thereon to the date fixed for redemption.

If any of the Notes are to be called for optional redemption by the City as aforesaid, notice of redemption, unless waived, is to be given by the Trustee by mailing an official redemption notice by first class mail at least 30 days and not more than 60 days prior to the date fixed for redemption to the registered owner of each Note to be redeemed at the address shown on the Register as of the date of such notice, as more fully described in the Indenture. Notice of redemption having been given as aforesaid, the Notes or portions of Notes so to be redeemed shall, on the redemption date, become due and payable

at the redemption price therein specified, and from and after such date (unless the City defaults in the payment of the redemption price) such Notes or portions of Notes so called for redemption shall cease to bear interest, shall no longer be secured by the Indenture and shall not be deemed to be Outstanding under the provisions of the Indenture. Any defect in any notice or the failure of any parties to receive any notice of redemption shall not cause any Note called for redemption to remain Outstanding.

Notes shall be redeemed only in Authorized Denominations. When less than all of the outstanding Notes are to be redeemed and paid prior to maturity, such Notes shall be selected by the Trustee by lot in Authorized Denominations in such equitable manner as the Trustee may determine.

The Notes are issuable in the form of fully registered Notes without coupons in the denomination of \$500,000 or any integral multiple of \$5,000 in excess thereof, except with respect to the Note issued with respect to the final Certification of Reimbursable Project Costs, which may be issued in the denomination of \$5,000 or any integral multiple thereof.

This Note may be transferred or exchanged, as provided in the Indenture, only upon the Register, upon surrender of this Note together with a written instrument of transfer satisfactory to the Trustee duly executed by the registered owner or the registered owner's duly authorized agent. THE OWNER HEREOF EXPRESSLY AGREES, BY SUCH OWNER'S ACCEPTANCE HEREOF, THAT THE RIGHT TO TRANSFER, ASSIGN OR NEGOTIATE THIS NOTE SHALL BE LIMITED TO TRANSFER, ASSIGNMENT OR NEGOTIATION TO ACCREDITED INVESTORS, AS THAT TERM IS DEFINED IN THE INDENTURE. Accordingly, this Note will be transferable only upon prior delivery to the Trustee of a statement, signed by the transferee, showing that such transferee is an Accredited Investor. After the Trustee receives the foregoing statement, a new Note of the same maturity and in the same principal amount outstanding as the Note which was presented for transfer or exchange shall be issued to the transferee in exchange therefor as provided in the Indenture, and upon payment of the charges therein prescribed. The City and the Trustee may deem and treat the person in whose name this Note 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.

This Note shall not be valid or binding on the City or be entitled to any security or benefit under the Indenture until the Certificate of Authentication hereon has been executed by the Trustee.

**IT IS HEREBY CERTIFIED AND DECLARED** that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of the Notes have existed, happened and been performed in due time, form and manner as required by law.

**IN WITNESS WHEREOF**, the **CITY OF CHESTERFIELD, MISSOURI** has executed this Note by causing it to be signed by the manual or facsimile signature of its Mayor and attested by the manual or facsimile signature of its City Clerk, and its official seal to be affixed or imprinted hereon, and this Note to be dated as of the effective date of registration as shown on **Schedule A**.

**CITY OF CHESTERFIELD, MISSOURI**

(Seal)

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

Attest:

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

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ASSIGNMENT

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

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(Print or Type Name, Address and Social  
Security Number or other Taxpayer Identification Number of Transferee)

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

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

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NOTICE: The signature to this assignment must correspond with the name of the Registered Owner as it appears on the face of the within Note in every particular.

Signature Guaranteed By:

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(Name of Eligible Guarantor Institution)

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

NOTICE: Signature(s) must be guaranteed by an eligible guarantor institution as defined by SEC Rule 17Ad-15 (17 CFR 240.17Ad-15).

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**SCHEDULE A**

**CERTIFICATE OF AUTHENTICATION**

This Note is one of the City of Chesterfield, Missouri [Taxable] Tax Increment Revenue Notes, Series 19\_\_ (Chesterfield Commons Project) described in the within-mentioned Indenture.

<u>Date(1)</u>	<u>Additions to Principal Amount(2)</u>	<u>Principal Amount Paid</u>	<u>Outstanding Principal Amount</u>	<u>Authorized Signatory of Trustee</u>
_____, 19__	\$ _____	\$ _____	\$ _____	_____
_____, 19__	\$ _____	\$ _____	\$ _____	_____
_____, 19__	\$ _____	\$ _____	\$ _____	_____
_____, 19__	\$ _____	\$ _____	\$ _____	_____
_____, 19__	\$ _____	\$ _____	\$ _____	_____
_____, 19__	\$ _____	\$ _____	\$ _____	_____
_____, 19__	\$ _____	\$ _____	\$ _____	_____
_____, 19__	\$ _____	\$ _____	\$ _____	_____
_____, 19__	\$ _____	\$ _____	\$ _____	_____
_____, 19__	\$ _____	\$ _____	\$ _____	_____
_____, 19__	\$ _____	\$ _____	\$ _____	_____
_____, 19__	\$ _____	\$ _____	\$ _____	_____
_____, 19__	\$ _____	\$ _____	\$ _____	_____

- \_\_\_\_\_  
(1) Date of Advance or Interest Payment Date. Advances are limited to one per calendar quarter.  
(2) Limited to advances of \$500,000 or any \$5,000 increment in excess thereof, except with respect to an advance pursuant to the final Certification of Reimbursable Project Costs, which may be for \$5,000 or any integral multiple thereof.

## EXHIBIT C

### PURCHASER'S LETTER OF REPRESENTATIONS

\_\_\_\_\_, 19\_\_

City of Chesterfield  
Chesterfield City Hall  
922 Roosevelt Parkway  
Chesterfield, Missouri 63017

Magna Bank, N.A., as Trustee  
1401 South Brentwood Boulevard  
St. Louis, Missouri 63144

Re: [Taxable] Tax Increment Revenue Notes, Series 19\_\_ (Chesterfield Commons Project)

Ladies and Gentlemen:

This letter is to provide you with certain representations and agreements with respect to the purchase by the undersigned of up to \$\_\_\_\_\_ principal amount of [Taxable] Tax Increment Revenue Notes, Series 19\_\_ (Chesterfield Commons Project) (the "Notes"), issued by the City of Chesterfield, Missouri (the "City"). The Notes are secured in the manner set forth in Ordinance No. \_\_\_\_ of the City, adopted on \_\_\_\_\_, 1997 (the "Note Ordinance") and in the Trust Indenture dated as of \_\_\_\_\_ 1, 19\_\_ (the "Indenture"), between the City and Magna Bank, N.A., as trustee. The undersigned hereby represents to each of you and agrees with each of you, as follows:

1. The undersigned has sufficient knowledge and experience in financial and business matters, including the purchase and ownership of limited revenue obligations and other tax-exempt obligations, to be able to evaluate the risks and merits of the investment represented by the purchase by the undersigned of the Notes. The undersigned is able to bear the economic risk represented by the purchase by the undersigned of the Notes. The undersigned understands that the Notes are repayable solely from funds available in the Chesterfield Commons Account within the Special Allocation Fund described in the Note Ordinance and the Indenture and, with respect to a portion of the funds therein, subject to annual appropriation by the City Council of the City.

2. The undersigned has made its own inquiry and analysis with respect to or affecting the likelihood of the payment of the Notes. The undersigned acknowledges that the City and THF Chesterfield Development, L.L.C. or its approved successors or assigns in interest (the "Developer") have offered to give access, without restriction or limitation, to all information to which a reasonable investor would attach significance in making investment decisions, and the undersigned has had the



opportunity to ask questions of and receive answers from knowledgeable individuals concerning the Notes, this financing transaction, the City and the Developer.

3. The undersigned acknowledges that the City has not made any representation or warranty concerning the accuracy or completeness of any information furnished in connection with the purchase by the undersigned of the Notes. Accordingly, the undersigned has not relied upon the City as to the accuracy or completeness of such information. As a sophisticated investor, the undersigned has made its own decision to purchase the Notes based solely upon its own inquiry and analysis.

4. The undersigned understands that the Notes do not constitute an indebtedness of the City or a loan or credit thereof within the meaning of any constitutional or statutory debt limitation or restriction.

5. The undersigned is familiar with and has counsel who are familiar with the federal and state legislation, rules, regulations and case law pertaining to the transfer and distribution of securities, including, but not limited to, disclosure obligations of the seller incident to any such transfer or distribution. The undersigned hereby covenants and agrees that the undersigned will not sell, offer for sale, pledge, transfer, convey, hypothecate, mortgage or dispose of the Notes or any interest therein in violation of applicable federal or state law or in violation of restrictions on sale, assignment, negotiation or transfer of the Notes as set forth in paragraph 7 below.

6. The undersigned is purchasing the Notes for its own account for investment (and not on behalf of another) and, other than a contemplated pledge of the Notes, has no present intention of reselling the Notes or dividing its interest therein. Notwithstanding the foregoing, the undersigned has the right to sell, offer for sale, pledge, transfer, convey, hypothecate, mortgage or dispose of the Notes at some future date determined by it, provided that such disposition is not in violation of restrictions on sale, assignment, negotiation or transfer of the Notes as set forth in paragraph 7 below.

7. The undersigned acknowledges that the right to sell, assign, negotiate or otherwise transfer the Notes shall be limited to the sale, assignment, negotiation or transfer to an "accredited investor" under Rule 501(a) of Regulation D promulgated under the Securities Act of 1933.

8. The undersigned agrees to indemnify and hold you harmless from any and all claims, judgments, attorneys' fees and expenses of whatsoever nature, whether relating to litigation or otherwise, resulting from any attempted or affected sale, offer for sale, pledge, transfer, conveyance, hypothecation, mortgage or disposition of the Notes in violation of this letter.

9. The undersigned has satisfied itself that the Notes may be legally purchased by the undersigned.

10. The undersigned represents to each of you that the undersigned is an "accredited investor" under Rule 501(a) of Regulation D promulgated under the Securities Act of 1933.

Sincerely,

\_\_\_\_\_  
as Purchaser

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