

**ORDINANCE #65513**  
**Board Bill No. 55**

AN ORDINANCE RECOMMENDED BY THE BOARD OF ESTIMATE AND APPORTIONMENT AFFIRMING THE ADOPTION OF ORDINANCE NO. 64869 OF THE CITY OF ST. LOUIS, MISSOURI, AUTHORIZING THE CITY'S ISSUANCE OF TAX INCREMENT REVENUE OBLIGATIONS FOR THE PURPOSE OF FINANCING A PORTION OF THE CUPPLES STATION REDEVELOPMENT PROJECT; AUTHORIZING THE EXECUTION OF A TRUST INDENTURE RELATING TO SAID OBLIGATIONS; PRESCRIBING THE FORM AND DETAILS OF SAID INDENTURE; AUTHORIZING THE EXECUTION OF A TAX DISTRIBUTION AGREEMENT RELATING TO THE APPROPRIATION AND DISTRIBUTION OF NEW STATE REVENUES RELATED TO THE CUPPLES STATION REDEVELOPMENT PROJECT TO THE REPAYMENT OF SAID OBLIGATIONS; PRESCRIBING THE FORM AND DETAILS OF SAID AGREEMENT; AND AUTHORIZING OTHER RELATED ACTIONS IN CONNECTION WITH THE CUPPLES STATION REDEVELOPMENT PROJECT.

**WHEREAS**, the City of St. Louis, Missouri (the "City"), is a body corporate and political subdivision of the State of Missouri, duly created, organized and existing under and by virtue of its charter, the Constitution and laws of the State of Missouri; and

**WHEREAS**, the City conducted a public hearing on January 9, 1991, pursuant to Resolution 146 of the Board of Aldermen and in accordance with Section 99.825 of 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"), at which public hearing all interested parties and tax districts were permitted to be heard and submit written comments regarding the adoption of the proposed Tax Increment Financing Blighting Analysis and Redevelopment Plan and Project for the Cupples Station TIF Redevelopment Area, dated November 21, 1990 (the "Redevelopment Plan") and the redevelopment projects therein described (the "Project"); and

**WHEREAS**, on March 8, 1991, the Board of Aldermen adopted Ordinances Nos. 62279 and 62280 (the "Approving Ordinances") designating an area legally described in the Redevelopment Plan as a "redevelopment area" as defined in Section 99.805(11) of the Act (the "Redevelopment Area"), adopting tax increment allocation financing under the Act, approving the Redevelopment Plan and the Project pursuant to Act, and approving a Redevelopment Contract (the "Redevelopment Agreement") among the City, the Land Clearance for Redevelopment Authority of the City of St. Louis ("LCRA"), and Cupples Station Redevelopment Corporation, a Missouri redevelopment corporation setting forth the respective rights and obligations of the parties with respect to the redevelopment of the Redevelopment Area; and

**WHEREAS**, pursuant to the Approving Ordinances, the City, LCRA, and Cupples Station Redevelopment Corporation entered into the Redevelopment Agreement as of May 8, 1991; and

**WHEREAS**, pursuant to an Assignment of Redevelopment Rights dated December 29, 1998 (the "Assignment"), Cupples Station Redevelopment Corporation assigned all of its right, title and interest in and to the Redevelopment Agreement to Cupples Development, L.L.C., a Missouri limited liability company (the "Developer"), which Assignment was consented to by LCRA pursuant to a Consent to Assignment of Redevelopment Rights dated December 29, 1998, between LCRA and the Developer; and

**WHEREAS**, on February 14, 2000, the Board of Aldermen of the City adopted Ordinance No. 64869 (the "Note Ordinance") authorizing and directing the issuance and delivery of tax increment revenue obligations of the City for the purpose of financing the Redevelopment Project within the Redevelopment Area and providing for the costs of issuance of such obligations; and

**WHEREAS**, pursuant to the Note Ordinance, the City desires to issue its Tax Increment Revenue Notes, Series 2002 (Cupples Station Redevelopment Project) (the "TIF Notes"), to provide funds to pay for certain Public Project Costs incurred by the Developer with respect to the Cupples Station Redevelopment Project, which TIF Notes are to be secured by a Trust Indenture (the "Trust Indenture") between the City and UMB Bank, N.A., as Trustee (the "Trustee"); and

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

**WHEREAS**, the pursuant to the TIF Act, the City submitted a Supplemental Tax Increment Financing Application dated December 1999 (the "Application") to the Missouri Department of Economic Development (the "DED") requesting that fifty percent (50%) of the "new state revenues" (as that term is defined in the TIF Act) be applied to the Redevelopment Project; and

**WHEREAS**, DED has given its preliminary approval to said Application by letter dated \_\_\_\_\_, 200\_\_; and

**WHEREAS**, the City desires to enter into a Tax Distribution Agreement (the "Agreement") among the City, DED, the Developer and Cupples Station Hotel, L.P. (the "Hotel Developer") setting forth the respective rights and obligations of the City, DED, the Developer and the Hotel Developer with regard to the appropriation and distribution of new state revenues with regard to the Redevelopment Project; and

**WHEREAS**, the Board of Aldermen hereby determines that: (1) acceptance and execution of the Trust Indenture and (2) acceptance and execution of the Tax Distribution Agreement are necessary and advisable and in the best interests of the City and the health, safety, morals and welfare of its residents and in accord with the public purposes specified in the Redevelopment Plan and the TIF Act.

NOW THEREFORE, BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

**Section 1.** The Board of Aldermen hereby ratifies and confirms its adoption of the Note Ordinance.

**Section 2.** The Board of Aldermen hereby finds and determines that it is necessary and advisable and in the best interest of the City and of its inhabitants that the TIF Notes be issued and secured in the form and manner as provided in the Trust Indenture and that it is necessary and desirable to enter into a Trust Indenture with the Trustee in order to issue the TIF Notes.

**Section 3.** The Board of Aldermen hereby approves, and the Mayor and Comptroller are hereby authorized and directed to execute, on behalf of the City, the Trust Indenture between the City and the Trustee, and the City Register is hereby authorized and directed to attest to the Trust Indenture and to affix the seal of the City thereto. The Trust Indenture shall be in substantially the form attached hereto as **Exhibit A**, with such changes therein as shall be approved by the officers of the City executing the same and as may be consistent with the intent of this Ordinance and necessary, desirable, convenient or proper in order to carry out the matters herein authorized.

**Section 4.** The Board of Aldermen further finds and determines that it is necessary and advisable and in the best interest of the City and of its inhabitants that the City enter into the Tax Distribution Agreement in order to provide for the appropriation and distribution of new state revenues to the Redevelopment Project.

**Section 5.** The Board of Aldermen hereby approves, and the Mayor and Comptroller are hereby authorized and directed to execute, on behalf of the City, the Tax Distribution Agreement among the City, DED, the Developer and the Hotel Developer, and the City Register is hereby authorized and directed to attest to the Tax Distribution Agreement and to affix the seal of the City thereto. The Tax Distribution Agreement shall be in substantially the form attached hereto as **Exhibit B**, with such changes therein as shall be approved by the officers of the City executing the same and as may be consistent with the intent of this Ordinance and necessary, desirable, convenient or proper in order to carry out the matters herein authorized.

**Section 6.** The Mayor and Comptroller or their designated representatives are hereby authorized and directed to take any and all actions to execute and deliver for and on behalf of the City any and all additional certificates, documents, agreements or other instruments as may be necessary, desirable, convenient or proper in order to carry out the matters herein authorized. The Mayor and Comptroller or their designated representatives are hereby further authorized and directed to make any changes to the documents and instruments approved and authorized by this Ordinance as may be consistent with the intent of this Ordinance and necessary, desirable, convenient or proper in order to carry out the matters herein authorized.

**Section 7.** It is hereby declared to be the intention of the Board of Aldermen that each and every part, section and subsection of this Ordinance shall be separate and severable from each and every other part, section and subsection hereof and that the Board of Aldermen intends to adopt each said part, section and subsection separately and independently of any other part, section and subsection. In the event that any part, section or subsection of this Ordinance shall be determined to be or to have been unlawful or unconstitutional, the remaining parts, sections and subsections shall be and remain in full force and effect, unless the court making such finding shall determine that the valid portions standing alone are incomplete and are incapable of being executed in accord with

the legislative intent.

**Section 8.** All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

\_\_\_\_\_  
Clerk, Board of Aldermen

\_\_\_\_\_  
President, Board of Aldermen

Approved:      Date: \_\_\_\_\_

\_\_\_\_\_  
Mayor

Truly Engrossed and Enrolled

**EXHIBIT A**

**Form of Trust Indenture  
(Attached hereto.)**

**CITY OF ST. LOUIS, MISSOURI**

**and**

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

**TRUST INDENTURE**

Dated as of \_\_\_\_\_, 2002

Relating to

**City of St. Louis, Missouri  
Tax Increment Revenue Notes  
Series 2002  
(Cupples Station Redevelopment Project )**

**TRUST INDENTURE**

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**TRUST INDENTURE**

**THIS TRUST INDENTURE** (the “Indenture”), made and entered into as of \_\_\_\_\_, 2002, by and between the **CITY OF ST. LOUIS, MISSOURI**, a charter city organized and existing under the laws of the State of Missouri (the “City”), and **UMB BANK, N.A.**, a national banking association duly organized and existing and authorized to accept and execute trusts of the character herein set out under the laws of the United States of America, and having its principal corporate trust office located in Kansas City, 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**, the City conducted a public hearing pursuant to Resolution No. 146 of the Board of Aldermen and in accordance with Section 99.825 of the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865 of the Revised Statutes of Missouri, as amended (the “Act”), at which public hearing all interested parties and taxing districts were permitted to be heard and submit written comments regarding the adoption of the proposed Tax Increment Blighting Analysis and Redevelopment Plan and Project for the Cupples Station TIF Redevelopment Area, dated November 21, 1990 (the “*Redevelopment Plan*”) and the redevelopment projects therein described (the “*Redevelopment Project*”); and

**WHEREAS**, on March 8, 1991, the Board of Aldermen of the City adopted Ordinances No. 62279 and 62280 (the “*Approving Ordinances*”) designating an area legally described in the Redevelopment Plan as a “redevelopment area” as defined by Section 99.805(11) of the Act (the “*Redevelopment Area*”), adopting tax increment allocation financing under the Act, approving the Redevelopment Plan and Project pursuant to the Act, and approving a Redevelopment Contract among the City, the Land Clearance for Redevelopment Authority of the City of St. Louis, Missouri (the “*LCRA*”), and Cupples Station Redevelopment Corporation, a Missouri redevelopment corporation (the “*Redevelopment Agreement*”) setting forth the respective rights and obligations of the parties with respect to the redevelopment of the Redevelopment Area; and

**WHEREAS**, Cupples Station Redevelopment Corporation has submitted a redevelopment proposal (the “Redevelopment Proposal”) to redevelop the Redevelopment Area as further described in **Exhibit A** attached hereto; and

**WHEREAS**, Pursuant to the Approving Ordinances, the City, LCRA, and Cupples Station Redevelopment Corporation entered into the Redevelopment Agreement as of May 8, 1991; and

**WHEREAS**, on August 1, 1995, the Board of Aldermen of the City adopted Ordinance No. 63535 approving a redevelopment plan for an area described therein (the “*353 Area*”), such area being within the Redevelopment Area, and providing for real property ad valorem tax abatement for a redeveloper which is an urban redevelopment corporation formed pursuant to Chapter 353 of the Revised Statutes of Missouri; and

**WHEREAS**, Pursuant to Resolution No. 26, the Board of Aldermen of the City designated Clark Street Redevelopment Corporation, a Missouri redevelopment corporation (“*Clark Street*”), as the redeveloper of the 353 Area, and authorized a redevelopment agreement between Clark Street and LCRA (the “*353 Agreement*”); and

**WHEREAS**, pursuant to an Assignment of Redevelopment Rights dated December 29, 1998 (the “*Assignment*”), Cupples

Station Redevelopment Corporation assigned all of its right, title and interest in and to the Redevelopment Agreement to the Developer, which Assignment was consented to by LCRA pursuant to a Consent to Assignment of Redevelopment Rights dated December 29, 1998, between LCRA and the Developer; and

**WHEREAS**, on February 14, 2000, the Board of Aldermen of the City adopted Ordinance No. 64869 (the “*Note Ordinance*”) authorizing and directing the issuance and delivery of tax increment revenue obligations of the City for the purpose of financing the Redevelopment Project within the Redevelopment Area and providing for the costs of issuance of such obligations; and

**WHEREAS**, pursuant to the Note Ordinance, the City desires to issue under this Indenture its Tax Increment Revenue Notes, Series 2002 (Cupples Station Redevelopment Project) (the “*TIF Notes*”), and, under certain conditions, tax increment revenue bonds (“*TIF Bonds*,” which together with TIF Notes, are collectively referred to herein as “*TIF Obligations*”), to provide funds to pay for certain Public Project Costs incurred by the Developer with respect to the Cupples Station Redevelopment Project (as such terms are hereinafter defined); 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 TIF 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 Redevelopment 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:

**“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.

**“Approving Ordinances”** means Ordinance Nos. 62279 and 62280 adopted by the City on May 8, 1991, designating an area legally described in the Redevelopment Plan as a “redevelopment area” as defined by Section 99.805(11) of the Act, adopting tax increment allocation financing under the Act, approving the Redevelopment Plan and Project pursuant to the Act, and approving a Redevelopment Agreement among the City, the Land Clearance for Redevelopment Authority of the City of St. Louis, Missouri, and Cupples Station Redevelopment Corporation, a Missouri redevelopment corporation setting forth the respective rights and obligations of the parties with respect to the redevelopment of the Redevelopment Area.

**“Auditor”** means a certified public accountant or firm of certified public accountants selected by mutual agreement of the Developer and the Hotel Developer or selected in accordance with the procedure set forth in Section 6.7 of the Development Agreement.

**“Authorized City Representative”** means the Mayor 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. 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 \$100,000 or any integral multiple of \$5,000 in excess thereof, except as otherwise provided in **Section 201**.

**“Authorized Developer Representative”** means an “Authorized Redeveloper Representative” as defined in Section 3.02 of the Redevelopment Agreement.

**“Bond Counsel”** means Armstrong Teasdale LLP, 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 or payment 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.

**“Certificate of Public Project Costs”** means a requisition signed by an Authorized Developer Representative in substantially the form of **Exhibit E** to the Development Agreement evidencing Public Project Costs incurred by the Developer.

“**City**” means the City of St. Louis, Missouri, a charter city organized and existing under the laws of the State.

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

“**Comptroller**” means the Comptroller of the City.

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

“**Development Agreement**” means Development Agreement dated April 1, 2002 by and between Cupples Development, L.L.C. and Cupples Station Hotel, L.P.

“**Developer**” means, collectively, Cupples Development, L.L.C., a Missouri limited liability company, its successors or assigns, and Clark Street Redevelopment Corporation, a Missouri redevelopment corporation.

“**EATs**” or “**Economic Activity Taxes**” 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 Redevelopment Area over the amount of such taxes generated by economic activities within the Redevelopment Area in the calendar year ending December 31, 1991 (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.

“**Hotel Developer**” means Cupples Station Hotel, L.P., a Missouri limited partnership, its successors or assigns.

“**Hotel Developer Apportionment**” means the percentage of Net Revenues generated by the Hotel Property in comparison to the Net Revenues generated by the Redevelopment Area as a whole.

“**Hotel Developer TIF Notes**” means Notes originally issued to the Hotel Developer or its designee.

“**Hotel Property**” means that portion of the real property (including but not limited to fee interests, leasehold interests, tenant-in-common interests and such other like or similar interests) and improvements in the Redevelopment Area, excluding public rights-of-way, owned by the Hotel Developer and necessary for the implementation of the Hotel Developer Project, as described in Exhibit A-1, attached to the Development Agreement.

“**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 Rate**” means (a) with respect to the Taxable TIF Notes, 9% per annum, and (b) with respect to the Tax-Exempt TIF Notes, 7.5% per annum.

“**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) U.S. Government obligations;
- (b) obligations of any agency or instrumentality of the U.S.;
- (c) bonds of the State of Missouri;
- (d) bonds of the City;
- (e) time certificates of deposit secured by collateral as required by statute and the “collateralization” policy of the

City;

(f) repurchase agreements maturing and payable within ninety (90) days and secured by collateral as required by statute and the “collateralization” policy of the City;

(g) deposits with Listed Institutions, provided the Listed Institutions shall give a bond equal to the deposit, with good and sufficient sureties, or the deposit of collateral as required by the statute and the “collateralization” policy of the City.

“**Issuance Costs**” means all costs reasonably incurred by the City in furtherance of the issuance of the Notes including but not limited to the fees and expenses of financial advisors and consultants, the City’s attorneys (including Bond Counsel), the City’s administrative fees and expenses (including planning consultants), underwriters’ discounts and fees, the costs of printing any Notes and any official statements relating thereto, the costs of credit enhancement, if any, capitalized interest, debt service reserves and the fees of any rating agency rating any Notes.

“**LCRA**” means the Land Clearance for Redevelopment Authority of the City of St. Louis, Missouri, a public body corporate and politic, created pursuant to the Land Clearance for Redevelopment Authority Law, Sections 99.300 to 99.660 of the Revised Statutes of Missouri, as amended.

“**Listed Institutions**” means any bank, trust company, credit union or savings and loan association, which has its principal place of business in the State, and which is selected by the Funds Committee of the City.

“**Maturity Date**” means February 1, 2014.

“**Net Revenues**” means the sum of all TIF-Only Area PILOTs, 353 Area Net PILOTs, EATs and New State Revenues on deposit in the Special Allocation Fund. Net Revenues 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.

“**New State Revenues**” means “new state revenues” as defined in Section 99.845.8 of the Act, which are generated in connection with the Redevelopment Area and paid to the Treasurer from the Missouri Supplemental Tax Increment Financing Fund pursuant to Section 99.845.12 of the Act.

“**Note**” or “**Notes**” or “**TIF Notes**” means, collectively or singularly, as the context requires, the Taxable TIF Notes and the Tax-Exempt TIF Notes authenticated and delivered under and pursuant to this Indenture.

“**Note Ordinance**” means Ordinance No. 64869 of the City adopted on February 14, 2000, authorizing the execution and delivery of this Indenture and the issuance of the TIF 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.

**“Payment Date”** means, with respect to any TIF Note, each April 1 and October 1, commencing with the first April 1 or October 1 that immediately succeeds issuance of such TIF Note, and with respect to any TIF Bond, each date set forth in this Indenture for payment of principal of and/or interest on such TIF Bond.

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

**“PILOTS”** 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 Redevelopment 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 during the term of the Redevelopment Plan and the Redevelopment Project.

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

**“Public Project Costs”** means those “redevelopment project costs” as defined in the Act, that may be paid through tax increment financing and which the City has provided for under the Redevelopment Plan, as further described in Section 1.03(viii) of the Redevelopment Agreement.

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

**“Redevelopment Agreement”** means the Redevelopment Contract dated as of May 8, 1991, by and between the City, LCRA, and Developer, as assignee of Cupples Station Redevelopment Corporation, as modified, amended or supplemented from time to time.

**“Redevelopment Area”** means a tract of land identified in the Approving Ordinances as the “Cupples Station Redevelopment Project Area,” being all of City blocks 417, 425, 426, 427, 434, 435 and 437, and a portion of City block 418, together with portions of certain streets and alleys, as more particularly described in the Approving Ordinances and the Redevelopment Plan.

**“Redevelopment Plan”** means the Tax Increment Financing Blighting Analysis and Redevelopment Plan and Project for the Cupples Station TIF Redevelopment Area, dated November 21, 1990, as approved by Ordinance Nos. 62279 and 62280 adopted by the City on May 8, 1991.

**“Redevelopment Project”** means the project described in the Redevelopment Plan, the Redevelopment Proposal, and the Redevelopment Agreement, including but not limited to (1) property acquisition; (2) relocation costs; (3) landscaping, lighting, signage and street furniture; (4) demolition; site preparation and utility repair, relocation and extension; (5) new construction and improvements of streets, alleys, curbing, sidewalks/pedestrianways, streets and intersections and traffic signalization; (6) Issuance Costs associated with the Notes; (7) rehabilitation and reconstruction of the Cupples Station warehouse buildings containing approximately 1,300,000 square feet of space; (8) construction of new structures for commercial, retail, light industrial and residential uses; and (9) professional fees incurred in connection with the Redevelopment Plan and the Redevelopment Agreement.

**“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.

**“Related Party”** means any party related to the Developer or Hotel Developer, as the context requires, by one of the relationships described in Section 267(b) of the United States Internal Revenue Code of 1986, as amended.

**“Revenue Fund”** means the Project Fund for Public Project Costs established pursuant to Section 2.06 of the

Redevelopment Agreement and ratified by **Section 401** hereof, and within the Revenue Fund, an EATs Account, a PILOTs Account, and a State Income Tax Revenues Account.

“**Special Allocation Fund**” means the Cupples Station Special Allocation Fund referenced by the Approving Ordinances and created by Section 401 of the Note Ordinance, and within the Special Allocation Fund, an EATs Account, a PILOTs Account, and a State Income Tax Revenues Account.

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

“**State Income Tax Revenues Account**” means the fund by that name created in Section 203 of the Tax Distribution Agreement.

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

“**Tax Distribution Agreement**” means Tax Distribution Agreement dated \_\_\_\_\_, 2002 by and between the City, the Missouri Department of Economic Development, Cupples Development, L.L.C. and Cupples Station Hotel, L.P.

“**Taxable TIF Notes**” means any one or all of the series of Taxable Tax Increment Revenue Notes (Cupples Station Redevelopment Project), Series 2002, of the City, in an aggregate principal amount not to exceed the amount of Public Project Costs incurred by the Developer plus Issuance Costs less the aggregate principal amount of the Tax-Exempt TIF Notes, authorized and issued pursuant to the Note Ordinance and this Indenture.

“**Tax-Exempt TIF Notes**” means any one or all of the series of Tax-Exempt Tax Increment Revenue Notes (Cupples Station Redevelopment Project), Series 2002, of the City, in an aggregate principal amount as set forth in the approving opinion of Bond Counsel not to exceed the amount of the Public Project Costs incurred by the Developer plus Issuance Costs less the aggregate principal amount of the Taxable TIF Notes, authorized and issued pursuant to the Note Ordinance and this Indenture.

“**TIF Bonds**” means Tax Increment Revenue Bonds authorized and issued by the City in accordance with the Act, the Redevelopment Agreement and the Note Ordinance.

“**TIF Obligations**” means, collectively or singularly, as the context requires, TIF Notes and TIF Bonds, including without limitation any TIF Notes or TIF Bonds.

“**TIF-Only Area**” means that portion of the Redevelopment Area not including the 353 Area.

“**TIF-Only Area PILOTs**” means those PILOTs attributable to the increase in current equalized assessed valuation of each taxable lot, block, tract or parcel of real property within the TIF-Only Area over and above the certified total initial equalized assessed value, as that term is used and described in Sections 99.845.1 and 99.855 of the Act, of each such unit of property in the TIF-Only Area and as paid to the City’s Treasurer by the City’s Collector of Revenue during the term of the Redevelopment Plan and the Redevelopment Project.

“**Treasurer**” means the Treasurer of the City.

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

“**Trustee**” means UMB Bank, N.A., Kansas City, 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.

“**353 Area**” means a portion of the Redevelopment Area identified in the 353 Ordinance as the “Eleventh/Clark/Eighth/Poplar Area,” being all of City Blocks 425, 426, 427 and 434, a portion of City Blocks 417 and 435, together with portions of certain streets and alleys, as more particularly described in the 353 Ordinance.

“**353 Area PILOTs**” means those PILOTs attributable to the increase in the current equalized assessed valuation of each taxable lot, block, tract, or parcel of real property within the 353 Area over and above the certified total initial equalized assessed value (as that term is used and described in Sections 99.845.1 and 99.855 of the Act) of each such unit of property in the 353 Area.

“**353 Area Net PILOTs**” means the 353 Area PILOTs less (i) the amount of such PILOTs deemed paid by and reimbursed to the Developer under Section 504(b) of the Note Ordinance and (ii) the amount of such PILOTs equal to the amount by which the 353 Base exceeds the 353 Area TIF Base, which amount shall be distributed as provided in Section Fourteen of the 353 Ordinance and be deemed to be “payments in lieu of taxes” within the meaning of Section 99.805(14)(j) of the Act, all as paid to the City’s Treasurer by the St. Louis City Collector of Revenue during the term of the Redevelopment Plan and the Redevelopment Project.

“**353 Area TIF Base**” means the certified total initial equalized assessed value (as that term is used and described in Section 99.845.1 and 99.855 of the Act) of each taxable lot, block, tract, or parcel of real property within the 353 Area.

“**353 Base**” means the equalized assessed value of each taxable lot, block, tract, or parcel of real property within the 353 Area during the calendar year preceding the calendar year during which Clark Street acquired title to such property.

“**353 Ordinance**” means Ordinance No. 63535 adopted by the Board of Aldermen of the City on August 1, 1995.

“**Work**” shall have the meaning set forth in the Redevelopment 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.
- (b) *Title of Notes.* The TIF Notes authorized to be issued under this Indenture shall be designated “[Taxable/Tax-Exempt] Tax Increment Revenue Notes (Cupples Station Redevelopment Project), Series, 2002”. 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 \$100,000 or any integral multiple of \$5,000 in excess thereof, except with respect to any final Certificate of Public Project Costs, which may be issued in the denomination of \$1,000 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. Payment shall be made at the payment office of the Trustee on each Payment Date upon presentation of the applicable Notes by a duly authorized representative of the Owner. Upon payment of interest and principal and the notation upon the payment ledger of the applicable Note, the Trustee shall enter the amount paid and outstanding balance on its books which shall be rebuttably presumptive evidence of the principal amount outstanding on such Note.

#### **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 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 Board of Aldermen 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.

#### **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 Register, 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 Certificate of Public Project Costs in the manner (and subject to the limitations) set forth in Article II of the Redevelopment Agreement, either (i) the Trustee shall, upon the written request of the City and 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 Public 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 Public Project Costs, or any combination thereof.

(d) When the documents mentioned in **Section 205(d)** of this Indenture 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 upon the acceptance by the City of a Certificate of Public Project Costs in accordance with the provisions of Section 2.07 of the Redevelopment Agreement and the issuance of an endorsement of a Note as

provided in **Section 203(c)** of this Indenture, at which time the Developer shall be deemed to have advanced funds necessary to purchase such Notes and the City shall be deemed to have reimbursed the Developer in full for such Public Project Costs.

**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 are being issued to the Original Purchaser. The Notes are only transferable or assignable to an accredited investor or qualified institutional investor, as such terms are commonly defined from time to time by applicable state and federal securities laws and regulations, upon the execution by the proposed transferee of a letter stating that such transferee (i) is an accredited investor or qualified institutional investor and (ii) has sufficient knowledge and experience in business and financial matters in general, and investments such as the Notes in particular, to enable the transferee to evaluate the risks involved in an investment in the Notes. Subject to the limitations of the preceding sentence, the Notes 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 the surrender of any such TIF Note to the Trustee, 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 payment office of the Trustee, together with a written instrument or instruments of transfer or authorization for exchange, in a form and with guarantee of signature satisfactory to the Trustee, duly executed by the Original Purchaser thereof or by the Original Purchaser's duly authorized agent, may, at the option of the Owner thereof, be exchanged for Notes of the same series and maturity, in the same aggregate principal amount outstanding as the TIF Note which was presented for transfer or exchange, in the denomination of One Hundred Thousand Dollars or integral multiples of Five Thousand Dollars (\$5,000) in excess thereof, 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.

(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. 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 Public 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 Public 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 the Maturity Date, and shall bear interest (computed on the basis of a 360-day year of twelve 30-day months) at the Interest Rate. The Notes shall bear interest from their registration date or from the most recent Payment Date to which interest has been paid or duly provided for. Principal and interest shall be payable commencing on the first day of April or October after which Net Revenues generated within the Redevelopment Area have first been deposited in the Special Allocation Fund, and on each April 1 and October 1 thereafter until the Notes are paid in full.

(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 Register 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 fully executed copy of the Redevelopment Agreement, certified by the City Register.
- (4) A fully executed copy of the Development Agreement.
- (5) 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.
- (6) A copy of the Redevelopment Plan, certified by the City Register of the City.
- (7) 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.

**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) *Optional Redemption.* The Notes are subject to optional redemption by the City in whole at any time or in part

on any 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.

(b) *Special Mandatory Redemption.* The Notes are also subject to special mandatory redemption and payment without premium thirty (30) days prior to any Payment Date to the extent of, and in an amount equal to, Net Revenues. For purposes of this **Section 302**, "Net Revenues" shall mean all moneys available in the Special Allocation Fund for the mandatory redemption of the Notes, as determined under **Section 402** hereof, on the day that is thirty (30) days prior to any Payment Date or, if such date is not a Business Day, the immediately preceding Business Day. The Notes shall be called by the City for mandatory redemption pursuant to this **Section 302(b)** without the necessity of any action by the City other than as provided in **Section 402** hereof. If only a partial redemption is to occur, then each TIF Note shall be redeemed only through partial repayments of principal in an amount equal to that proportion of Net Revenues that is equal to the proportion the outstanding principal amount of such TIF Note bears to the aggregate principal amount of all Notes then outstanding.

**Section 303. 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) official notices of redemption shall be dated and shall state:

- (1) the redemption date,
- (2) the redemption price,
- (3) in the case of partial redemption, the identification and 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 payment 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 304. Effect of Call for Redemption.** On or prior to the date fixed for redemption, the City shall deposit moneys 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 303** 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) Cupples Station Revenue Fund (the "Revenue Fund").
- (b) Cupples Station Debt Service Fund (the "Debt Service Fund"), which shall contain a Cupples Hotel Account and

a Cupples Development Account therein.

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.** On or before 12:00 noon on the first Business Day of each calendar month while the Notes remain Outstanding, the City shall transfer all Net Revenues on deposit in the Special Allocation Fund to the Trustee for deposit into the Revenue Fund..

**Section 403. Application of Moneys in the Revenue Fund.** Moneys in the Revenue Fund shall be disbursed by the Trustee 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 and, to the appropriate person, the costs of calculating such rebate amount;

*Second*, to the Trustee, the Paying Agent, the Auditor and any other third parties incurring administrative expenses hereunder, an amount equal to, in any calendar year, the lesser of \$10,000 or the aggregate amount of administrative expenses incurred by the Trustee, the Paying Agent, the Auditor or any such third parties; and

*Third*, on each Payment Date, to the Debt Service Fund in accordance with **Section 404** of this Indenture.

The foregoing payment provisions and priorities shall be subject in their entirety to any mandatory redemption provisions (other than those relating to scheduling principal and interest payments) of this Indenture. All moneys remaining in the Special Allocation Fund after the Maturity Date shall be treated as "surplus" as defined in the Act, and shall not be transferred by the City to the Trustee, but shall be distributed in the manner provided by law.

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, the Paying Agent, the Auditor and any other third parties, 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 404. Debt Service Fund.** All amounts paid and credited to the Debt Service Fund shall be deposited by the Trustee into the Cupples Hotel Account and the Cupples Development Account of the Debt Service Fund according to the Hotel Developer Apportionment as determined in accordance with the procedures set forth in Section 6.7 of the Development Agreement.

**Section 405. Application of Moneys in Debt Service Fund.**

(a) *Cupples Hotel Account.* The Trustee shall apply the amounts on deposit in the Cupples Hotel Account on a pro rata basis among Hotel Developer TIF Notes, as follows:

(i) To the payment of interest on the Hotel Developer TIF Notes or any other TIF Obligations issued to the Hotel Developer or its designee;

(ii) To the payment of the principal of the Hotel Developer TIF Notes or any other TIF Obligations issued to the Hotel Developer or its designee;

(iii) To special mandatory redemption of the Hotel Developer TIF Notes or any other TIF Obligations issued to the Hotel Developer or its designee; and

(iv) All amounts remaining in the Cupples Hotel Account of the Debt Service Fund shall be transferred to the Cupples Development Account of the Debt Service Fund or, if there are not outstanding Notes or any other TIF Obligations issued to Developer or its designee and if there are no common expenses identified in accordance with Section 3.10 of the Development Agreement, all amounts remaining in the Cupples Hotel Account of the Debt Service Fund shall be remitted to the City to be distributed in accordance with the TIF Act.

(b) *Cupples Development Account.* The Trustee shall apply the amounts on deposit in the Cupples Development Account on a pro rata basis among the Developer Notes, as follows:

- (i) To the payment of interest on the Developer TIF Notes or any other TIF Obligations issued to the Developer or its designee;
- (ii) To special mandatory redemption of the Developer TIF Note or any other TIF Obligations issued to the Developer or its designee; and
- (iii) All amounts remaining in the Cupples Development Account of the Debt Service Fund shall be transferred to the Cupples Hotel Account of the Debt Service Fund or, if there are no outstanding Notes or any other TIF Obligations issued to the Hotel Developer or its designee and if there are no common expenses identified in accordance with Section 3.10 of the Development Agreement, all amounts remaining in the Cupples Development Account of the Debt Service Fund shall be remitted to the City to be distributed in accordance with the TIF Act.

**Section 406. 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. If, within thirty days of the date when principal of any Note becomes due, either at maturity or at the date fixed for redemption thereof, such Note has not been presented to the Trustee for payment and provided the Trustee is holding sufficient funds for the payment thereof, the Trustee shall give written notice to the Owner of such Note, as evidenced by the Register, that the Trustee is holding for such Owner's benefit sufficient funds for the payment of such Note.

Any moneys so deposited with and held by the Trustee not so applied to the payment of Notes within four (4) 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 Payment Date. The Trustee shall not be liable for any loss resulting from investments made in accordance with **subsection (a)** of this Section.

**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 Board of Aldermen of the City for each fiscal year that the Notes are Outstanding a request for an appropriation of the Net Revenues on deposit in the Economic Activity Tax Account of the Special Allocation Fund 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. A fully executed copy of the Redevelopment 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 Redevelopment Area, including, without limitation, any and all reports, provided by the City to the State or by the State 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 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 Assessor of the City, to assess the real property and improvements within the Redevelopment 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 the City, and all other persons to pay all Economic Activity Tax Revenues which are due to the City under the Act.

**Section 610. Enforcement of Redevelopment Agreement.**

(a) The City shall enforce the provisions of the Redevelopment 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 Redevelopment 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 Redevelopment 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 Redevelopment 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 Redevelopment Agreement (other than amendments relating to the construction or maintenance of Redevelopment Project within the Redevelopment 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 Redevelopment 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(l)** 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(l)** 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 Redevelopment 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 provided in **Section 404** and **Section 405** of this Indenture in accordance with the percentages most recently determined by the Auditor.

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 re-recording, filing or re-filing of this Indenture or any security agreements in connection therewith, or for insuring any of the improvements constructed in the Redevelopment Area

or collecting any insurance moneys, or for the validity of the execution by the City of this Indenture or of any 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 Redevelopment 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 as provided herein or as may be otherwise 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 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 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 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 809** 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 or be wholly owned by an entity having a reported capital and surplus of not less than \$50,000,000. 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, the Redevelopment Agreement, or the Development 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 405 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, except as otherwise provided in this Indenture;
- (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 St. Louis  
Office of the Mayor  
City Hall  
1200 Market Street, Room 200  
St. Louis, Missouri 63103  
Attention: Barbara Geisman, Deputy Mayor for Development

And

City of St. Louis  
Office of the Comptroller  
City Hall  
1200 Market Street, Room 212  
St. Louis, Missouri 63103  
Attention: Ivy Neyland-Pinkston, Deputy Comptroller

With a copy to:

St. Louis Development Corporation  
1015 Locust Street  
Suite 1200  
St. Louis, Missouri 63101  
Attention: Dale Ruthsatz

(b) To the Trustee at:

UMB Bank, N.A.  
928 Grand Avenue, 13th Floor  
Kansas City, Missouri 64106  
Attention: Corporate Trust Department  
Telephone: (816) 860-3010  
Facsimile: (816) 221-0438

(c) To the Developer at:

Cupples Development, L.L.C.  
c/o Bank of America Community Development Banking  
MO1-800-15-03  
800 Market Street, 15th Floor  
St. Louis, Missouri 63101

Attention: Elon Metoyer

With a copy to:

Robert C. Graham, III, Esq.  
Armstrong, Teasdale LLP  
One Metropolitan Square, Suite 2600  
St. Louis, Missouri 63102-2740  
Telephone: (314) 621-5070  
Facsimile: (314) 621-5065

(d) To the Hotel Developer at:

Cupples Station Hotel, L.P.  
c/o McCormack Baron & Associates, Inc.  
1101 Lucas Avenue  
St. Louis, Missouri 63101  
Attention: Hillary Zimmerman

with a copy to:

Rosenblum Goldenhersh Silverstein & Zafft PC  
7733 Forsyth Avenue, Fourth Floor  
St. Louis, Missouri 63105  
Attention: Carl C. Lang

(e) 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 Redevelopment Agreement, it will not sell, convey, assign, pledge, encumber or otherwise dispose of any part of the moneys subject to this Indenture.



act and deed of said City.

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

\_\_\_\_\_  
Notary Public

[SEAL]

My Commission Expires:

\_\_\_\_\_

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 2002, before me appeared Darlene Green, to me personally known, who, being by me duly sworn, did say that she is the Comptroller of the CITY OF ST. LOUIS, MISSOURI, a political subdivision of the State of Missouri, and that the seal affixed to the foregoing instrument is the seal of said City, and said instrument was signed and sealed in behalf of said City by authority of its Board of Aldermen, and said individual acknowledged said instrument to be the free act and deed of said City.

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

\_\_\_\_\_  
Notary Public

[SEAL]

My Commission Expires:

\_\_\_\_\_

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 2002, before me appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that s/he is the \_\_\_\_\_ of UMB Bank, N.A., a national banking association, and that s/he is authorized to sign the instrument on behalf of said banking association, and acknowledged to me that he executed the within instrument as said company's free act and deed.

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

\_\_\_\_\_  
Notary Public

[SEAL]

My Commission Expires:

\_\_\_\_\_

**EXHIBIT A**

**Legal Description of Redevelopment Area**

A tract of land, being all of City Blocks 417, 425, 426, 427, 434, 435, 436 and 437, and a portion of City Block 418, together with portions of certain streets and alleys, and being more particularly described as follows:

Beginning at the point of intersection of the eastern line of Tucker Boulevard and the southern line of Clark Avenue; thence eastwardly along said southern line of Clark Avenue to the point of intersection with the western line of Eighth Street; thence southwardly along said western line of Eighth Street to the point of intersection with the southern line of Spruce Street; thence eastwardly along said southern line of Spruce Street to the point of intersection with the western line of Stadium Plaza/Seventh Street; thence southwardly along said western line of Stadium Plaza/Seventh Street to the point of intersection with the southern line of Poplar Street; thence westwardly along said southern line of Poplar Street to the point of intersection with a line 145 feet east of and parallel with the eastern line of vacated Tenth Street; thence southwardly along said line 145 feet east of and parallel with said eastern line of vacated Tenth Street to the point of intersection with the southern line of Cerre Street; thence westwardly along said southern line of Cerre Street to the point of intersection with the western line of vacated Eleventh Street; thence northwardly along said western line of vacated Eleventh Street to the point of intersection with said southern line of Poplar Street; thence westwardly along said southern line of Poplar Street to the point of intersection with said eastern line of Tucker Boulevard; thence northwardly along said eastern line of Tucker Boulevard to the point of beginning.

**EXHIBIT B**

**FORM OF TIF NOTES**

EXCEPT AS EXPRESSLY PROVIDED FOR HEREIN, THE RIGHT TO TRANSFER, ASSIGN OR NEGOTIATE THIS NOTE SHALL BE LIMITED TO TRANSFER, ASSIGNMENT OR NEGOTIATION TO ANY ACCREDITED INVESTOR OR QUALIFIED INSTITUTIONAL INVESTOR, AS SUCH TERMS ARE COMMONLY DEFINED FROM TIME TO TIME BY APPLICABLE STATE AND FEDERAL SECURITIES LAWS AND REGULATIONS.

**UNITED STATES OF AMERICA  
STATE OF MISSOURI**

Registered  
No. R-\_\_

Registered  
(See **Schedule A** attached)

**CITY OF ST. LOUIS, MISSOURI**

**[TAXABLE/TAX-EXEMPT] TAX INCREMENT REVENUE NOTE  
(CUPPLES STATION REDEVELOPMENT PROJECT)  
SERIES 2002**

Rate of Interest: \_\_\_\_%

Maturity Date: February 1, 2014

The **CITY OF ST. LOUIS, MISSOURI**, an incorporated political subdivision duly organized and validly existing under the Constitution and laws of the State of Missouri (the "City"), on this \_\_\_\_ day of \_\_\_\_\_, 2002, for value received, hereby promises to pay to the registered owner shown above, or registered assigns, the principal sum shown from time to time on **Schedule A** attached hereto on the Maturity Date shown above unless called for redemption prior to the Maturity Date, and to pay interest thereon compounded annually at the Rate of Interest shown above, calculated on the basis of a 365-day year and actual days elapsed from the date hereof to the earlier of: (i) the date of repayment, or (ii) the Maturity Date.

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

All payments of principal and interest by the City shall be from the Net Revenues (as hereinafter defined) on deposit in the Special Allocation Fund created by Ordinance No. 64869 passed and adopted by the Board of Aldermen on February 14, 2000 (the "Note Ordinance"). Reference is made to Ordinances Nos. 62279 and 62280 adopted by the Board of Aldermen on March 8,

1991 (the "Approving Ordinances"). All terms not otherwise defined herein shall have the meanings set forth in the Trust Indenture.

This Note shall be payable solely from the aforesaid Net Revenues and from no other revenue or property of the City, it being understood that this instrument is a special limited obligation of the City and is payable solely from Net Revenues which the City is entitled to receive under Sections 99.800 through 99.865 of Missouri Revised Statutes, as amended (the "Act") and other moneys that are deposited from time to time in the Special Allocation Fund of the City as set forth below. This Note is not a general obligation of the City, the State of Missouri, or any political subdivision thereof, nor of any officer or employee thereof. This Note is issued in connection with a certain redevelopment plan titled "Tax Increment Financing Blighting Analysis and Redevelopment Plan and Project for the Cupples Station TIF Redevelopment Area", dated November 21, 1990 (as from time to time amended, the "Plan"), and the program for redevelopment as described in the Redevelopment Plan (the "Project"), each of which has been approved pursuant to the Approving Ordinances, as further described in the Redevelopment Contract between the City and the Developer (the "Redevelopment Agreement").

Subject to the terms of the immediately following paragraph, the principal and interest hereof shall be payable on April 1 and October 1 in each year while this Note is outstanding, or if such day is not a business day, the first business day thereafter (each, a "Payment Date") to the earlier of repayment or the Maturity Date of this Note, followed by a final payment, to the extent there are funds then available in the Special Allocation Fund, on the Maturity Date in the amount of the then unpaid principal balance hereof and all accrued and unpaid interest hereon.

The City shall pay all amounts due and owing hereunder to the Owner upon presentation of this Note by a duly authorized representative of the Owner at the offices of the Trustee.

"Net Revenues" means the sum of all TIF-Only Area PILOTs, 353 Area Net PILOTs, EATs, and New State Revenues on deposit in the Special Allocation Fund. Net Revenues do not include any such amount paid under protest until the protest is withdrawn or resolved against the taxpayer, nor do Net Revenues 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 sums.

"TIF-Only Area PILOTs" means those PILOTs attributable to the increase in the current equalized assessed valuation of each taxable lot, block, tract, or parcel of real property within the TIF-Only Area over and above the certified total initial equalized assessed value (as that term is used and described in Sections 99.845.1 and 99.855 of the Act) of each such unit of property in the TIF-Only Area and as paid to the City's Treasurer by the St. Louis City Collector of Revenue during the term of the Redevelopment Plan and the Project.

"353 Area Net PILOTs" means the 353 Area PILOTs less (i) the amount of such PILOTs deemed paid by and reimbursed to the Developer under Section 504(b) of the Note Ordinance, and (ii) the amount of such PILOTs equal to the amount by which the 353 Base exceeds the 353 Area TIF Base, which amount shall be distributed as provided in Section Fourteen of the 353 Ordinance and be deemed to be "payments in lieu of taxes" within the meaning of Section 99.805(14)(j) of the Act, all as paid to the City's Treasurer by the St. Louis City Collector of Revenue during the term of the Redevelopment Plan and the Project.

"EATs" means, subject to annual appropriation, fifty percent (50%) of the total additional revenues from taxes, penalties and interest which are imposed by the City or other taxing districts (as that term is defined in Section 88.805(16) of the Act) and which are generated by economic activities within the Redevelopment Area over the amount of such taxes generated by economic activities within the Redevelopment Area in the calendar year prior to the adoption of the Approving Ordinances, while tax increment financing remains in effect, but excluding taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, taxes levied pursuant to Section 70.500 of the Revised Statutes of Missouri, as amended, for the purpose of public transportation.

"New State Revenues" means "new state revenues" as that term is defined in Section 99.845.8 of the Act generated in connection with the Redevelopment Area and paid to the Treasurer from the Missouri Supplemental Tax Increment Financing Fund pursuant to Section 99.845.12 of the Act.

Reference is made to the Note Ordinance for a description of the covenants and agreements made by the City with respect to payment of Net Revenues to pay this Note, the nature and extent of the security for this Note, the rights, duties and obligations of the City with respect hereto and, the rights of the Owner hereof.

This Note may be prepaid at any time in whole or in part without penalty.

The right to transfer, assign, or negotiate this Note shall be limited to transfer, assignment, or negotiation to any accredited investor or qualified institutional investor, as such terms are commonly defined from time to time by applicable state and federal securities laws and regulations, upon the execution by the proposed transferee of a letter stating that such transferee (i) is an accredited investor or qualified institutional investor and (ii) has sufficient knowledge and experience in business and financial matters in general, and investments such as the TIF Notes in particular, to enable the transferee to evaluate the risks involved in an investment in the TIF Notes.

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.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, THE CITY OF ST. LOUIS, MISSOURI, has caused this Note to be executed by the manual or facsimile signature of the Mayor, the Comptroller and the Treasurer of the City and attested by the manual or facsimile signature of the Register of the City and its official seal to be affixed or imprinted hereon, and this Notes to be dated the date shown above.

CITY OF ST. LOUIS, MISSOURI

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

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

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

ATTEST:

Register

CERTIFICATE OF AUTHENTICATION

Date of Registration

This Note is one of the Notes described in the within mentioned Trust Indenture

ASSIGNMENT

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

\_\_\_\_\_  
(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.

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

\_\_\_\_\_

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:



government of the State of Missouri (the “Department”), **CUPPLES STATION HOTEL, L.P.**, a Missouri limited partnership and **CUPPLES DEVELOPMENT, L.L.C.**, a Missouri limited liability company, (collectively, the “Developer”).

#### RECITALS

1. 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 (“TIF Act”), to issue tax increment revenue notes for the purpose of providing funds to finance and refinance the costs of certain “projects” as defined in the TIF Act, and to pay certain costs related to the issuance of such revenue notes.

2. The City has assisted in the financing of the Project through the issuance of tax increment revenue notes and tax increment revenue bonds (collectively, the “TIF Obligations”) to finance certain costs associated with the Project.

3. The Department has approved the Redevelopment Plan to receive the benefits of the State Income Tax Revenues in accordance with this Tax Distribution Agreement and the Department has issued a certificate of approval attached hereto as **Exhibit B**.

4. The City and the Department desire to set forth procedures for the collection and distribution of certain revenues to pay a portion of the principal of and interest on the TIF Obligations (collectively, the “Debt Service”, as more fully described herein).

**NOW, THEREFORE**, in consideration of the premises and the mutual representations, covenants and agreements set forth in this Tax Distribution Agreement, the City, the Developer and the Department covenant and agree, as follows:

#### ARTICLE I

**Section 101. Definitions of Words and Terms.** For all purposes of this Tax Distribution Agreement, except as otherwise provided or unless the context otherwise requires, the following words and terms used in this Tax Distribution Agreement shall have the meanings set forth in this **Section 101**. Capitalized terms used herein which are not otherwise defined shall have the same meanings as set forth in the preamble hereto or in the Redevelopment Plan:

“**Approving Ordinances**” means Ordinance Nos. 62279 and 62280 adopted by the City on May 8, 1991, pertaining to the approval of the Redevelopment Plan and Project, the designation of the Redevelopment Area, the adoption of tax increment financing and the execution of the Redevelopment Agreement.

“**Business Day**” means a day on which both the Department and the City shall be scheduled in the normal course of their respective operations to be open for the conduct of regular business.

“**Commission**” means the Tax Increment Financing Commission of St. Louis, Missouri, a tax increment financing commission established by the City pursuant to the TIF Act.

“**City**” means the City of St. Louis, Missouri.

“**Debt Service**” means, on the date for which the calculation is being made, the principal of and interest due on the TIF Obligations.

“**Department**” means the Missouri Department of Economic Development, a department of the government of the State of Missouri.

“**Developer**” means, collectively, Cupples Development, L.L.C., a Missouri limited liability company, its successors or assigns, and Cupples Station Hotel, L.P., a Missouri limited partnership.

“**DOR**” means the Missouri Department of Revenue, a department of the government of the State of Missouri.

“**Interest Payment Date**” means with respect to the TIF Obligations, April 1 and October 1 of each year, commencing October 1, 2002.

“**Internal Revenue Code**” means the Internal Revenue Code of 1986, as amended, and, when appropriate, any statutory

predecessor or successor thereto, and all applicable regulations (whether proposed, temporary or final) thereunder and any applicable official rulings, announcements, notices, procedures and judicial determinations relating to the foregoing.

“**Missouri Supplemental Tax Increment Financing Fund**” means the fund created pursuant to the TIF Act, administered by the Department.

“**Project**” means the Project as defined in the Redevelopment Plan.

“**Redevelopment Area**” means the areas described in **Exhibit A** hereto.

“**Redevelopment Costs**” means the “redevelopment project costs,” as defined in the TIF Act, that the Commission has agreed to pay from the proceeds of the TIF Obligations.

“**Redevelopment Plan**” means the Tax Increment Financing Blighting Analysis and Redevelopment Plan and Project for the Cupples Station TIF Redevelopment Area, dated November 21, 1990, as approved by the Approving Ordinances.

“**Reporting Business**” means each person which is located or conducts business in the Redevelopment Area that is required to report sales or income to DOR.

“**Special Allocation Fund**” means the Cupples Station Special Allocation Fund referenced by the Approving Ordinances and created by **Section 401** of Ordinance No. 64869 adopted by the City on February 22, 2000, pertaining to the issuance and delivery of tax increment revenue obligations, providing for the costs of issuance thereof, prescribing the form and details of said obligations, creating certain funds and accounts, and providing for the payment of the principal of and interest on said obligations.

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

“**State Income Taxes Reporting Forms**” means Missouri DOR Form MO-941 which must be used by any Reporting Business for the purpose of declaring all State Income Taxes.

“**State Income Tax Revenues**” means fifty percent (50%) of the estimated state income tax withheld on behalf of new employees by the employer pursuant to Section 143.221 of the Revised Statutes of Missouri, at the business located within the Project as identified by the City. The state income tax withholding allowed shall be the City’s estimate of the amount of state income tax withheld by the employer within the Redevelopment Area for new employees who fill new jobs created by the Project.

“**State Income Tax Revenues Account**” means the State Income Tax Revenues Account of the Special Allocation Fund.

“**Tax Distribution Agreement**” means this Tax Distribution Agreement dated as of \_\_\_\_\_, 2002, among the City, the Developer and the Department, relating to the collection and disbursement of States Income Tax Revenues to the City from the Missouri Supplemental Tax Increment Financing Fund.

“**TIF Act**” means Section 99.800 *et seq.*, Revised Statutes of Missouri, as amended.

**Section 102. Rules of Construction.** For all purposes of this Tax Distribution Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following rules of construction apply in construing the provisions of this Tax Distribution Agreement:

- (a) The terms defined in this Article include the plural as well as the singular.
- (b) All references in this instrument to designated “Articles,” “Sections” and other subdivisions are to be the designated Articles, Sections and other subdivisions of this instrument as originally executed.
- (c) The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Tax Distribution Agreement as a whole and not to any particular Article, Section or other subdivision.
- (d) The Article and section headings herein and in the Table of Contents are for convenience only and shall not affect the construction hereof.

**ARTICLE II****COLLECTION AND APPLICATION OF STATE SALES TAX REVENUES**

**Section 201. Annual Request for Appropriation of State Income Tax Revenues.** The Department agrees to annually request the General Assembly of the State to appropriate the State Income Tax Revenues to the Missouri Supplemental Tax Increment Financing Fund, as provided in the TIF Act. The Department shall advise the City in writing not later than the 15 days prior to the commencement of each fiscal year if the General Assembly has not appropriated State Income Tax Revenues for such fiscal year. Each year the Department agrees to review the amount of State Income Tax Revenues estimated to be generated within the Redevelopment Area in connection with its annual request to the General Assembly.

**Section 202. Deposit of State Income Tax Revenues.** The Department shall credit all State Income Tax Revenues appropriated by the General Assembly to the Missouri Supplemental Tax Increment Financing Fund while tax increment financing is in effect for the Redevelopment Area.

**Section 203. Application of Moneys in Missouri Supplemental Tax Increment Financing Fund.** (a) State Income Tax Revenues credited to the Missouri Supplemental Tax Increment Financing Fund shall be available for transfer semiannually to the City in accordance with the TIF Act for deposit in the State Income Tax Revenues Account of the Special Allocation Fund to pay the Debt Service. Interest earnings on amounts on deposit in the Missouri Supplemental Tax Increment Financing Fund shall be retained in the Missouri Supplemental Tax Increment Financing Fund.

(b) Not less than four (4) Business Days prior to each Interest Payment Date, the Department shall transfer from the Missouri Supplemental Tax Increment Financing Fund to the City for deposit in the State Income Tax Revenues Account of the Special Allocation Fund the State Income Tax Revenues. Not later than each Interest Payment Date, the City shall make the transfers from the State Income Tax Revenues Account of the Special Allocation Fund to pay Debt Service.

**Section 204. State Income Tax Reporting Forms.** The City and the Developer agree that they shall require each Reporting Business to file with the Department and DOR the State Income Tax Reporting Forms on a monthly basis. The City and the Developer shall require each Reporting Business to file a separate DOR Form MO-941 for each location identifying all State Income Taxes collected within the Redevelopment Area and shall require that each Reporting Business with multiple business operations within the Redevelopment Area shall separately identify each business operation by address.

**ARTICLE III****CITY AND DEVELOPER COVENANTS**

**Section 301. Completion of Project.** Promptly following completion of the Project, the City and the Developer shall notify the Department of the completion of the Project and shall provide the Department with written evidence of the actual costs of the Project.

**ARTICLE IV****MISCELLANEOUS PROVISIONS**

**Section 401. Notices.** All notices, certificates or other communications required or desired to be given hereunder shall be in writing and shall be deemed duly given when mailed by first class, registered or certified mail, postage prepaid, or by facsimile transmission, addressed as follows:

(i) To the City at:

City of St. Louis  
Office of the Mayor  
City Hall  
1200 Market Street, Room 200  
St. Louis, Missouri 63103  
Attention: Barbara Geisman, Deputy Mayor for Development

And

City of St. Louis  
Office of the Comptroller  
City Hall  
1200 Market Street, Room 212  
St. Louis, Missouri 63103  
Attention: Ivy Neyland-Pinkston, Deputy Comptroller

(ii) To the Developer at:

Cupples Development, L.L.C.  
c/o Bank of America Community Development Banking  
MO1-800-15-03  
800 Market Street, 15th Floor  
St. Louis, Missouri 63101  
Attention: Elon Metoyer  
With a copy to:

Robert C. Graham, III, Esq.  
Armstrong, Teasdale LLP  
One Metropolitan Square, Suite 2600  
St. Louis, Missouri 63102-2740  
Telephone: (314) 621-5070  
Facsimile: (314) 621-5065

And

Cupples Station Hotel, L.P.  
c/o McCormack Baron & Associates, Inc.  
1101 Lucas Avenue  
St. Louis, Missouri 63101  
Attention: Hillary Zimmerman

with a copy to:

Rosenblum Goldenhersh Silverstein & Zafft PC  
7733 Forsyth Avenue, Fourth Floor  
St. Louis, Missouri 63105  
Attention: Carl C. Lang

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

**Section 402. Governing Law.** This Tax Distribution Agreement shall be construed in accordance with and governed by the laws of the State of Missouri.

**Section 403. Severability.** If for any reason any provision of this Tax Distribution Agreement shall be determined to be invalid or unenforceable, the validity and enforceability of the other provisions hereof shall not be affected thereby.

**Section 404. Binding Effect; Benefit of Tax Distribution Agreement.** This Tax Distribution Agreement shall be binding upon and shall inure to the benefit of the City, the Developer and the Department and their respective successors and assigns, subject, however, to the limitations contained herein. With the exception of rights expressly conferred in this Tax Distribution Agreement, nothing in this Tax Distribution Agreement, express or implied, shall give any person, other than the parties hereto and their successors and assigns hereunder and the payee of the outstanding TIF Obligations, any benefit or any legal or equitable right, remedy or claim under this Tax Distribution Agreement.

**Section 405. Amendment to Tax Distribution Agreement.** Prior to the termination of this Tax Distribution Agreement in accordance with **Section 406** of this Tax Distribution Agreement, this Tax Distribution Agreement may not be effectively amended, changed, modified, altered or terminated without the prior concurring written consent of the City, the Department and the Developer; provided, that the consent of the Developer shall not be required in connection with any amendment which does not affect the rights or obligations of the Developer hereunder.

**Section 406. Term of Tax Distribution Agreement.** This Tax Distribution Agreement shall continue until the earlier of: (a) the date upon which the TIF Obligations have been paid in full or defeased; or (2) the termination of tax increment financing for the Redevelopment Area or portion thereof.

**Section 407. Execution in Counterparts.** This Tax Distribution Agreement may be executed simultaneously in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

(The remainder of this page is intentionally left blank.)

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

**CITY OF ST. LOUIS, MISSOURI**

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

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

APPROVED AS TO FORM:

\_\_\_\_\_  
City Counselor

[SEAL]

ATTEST:

\_\_\_\_\_  
City Register

**MISSOURI DEPARTMENT OF  
ECONOMIC DEVELOPMENT**

By: \_\_\_\_\_  
Joseph L. Driskill  
Director

[SEAL]

ATTEST:

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

**CUPPLES DEVELOPMENT, L.L.C., as Developer**

**By: Banc of America Community  
Development Corporation, a North  
Carolina Corporation, its Manager**

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

**CUPPLES STATION HOTEL, L.P., as Developer**

**By: McCormack Baron & Associates,  
Inc., a Missouri Corporation, its General Partner**

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

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

On this \_\_\_\_ day of \_\_\_\_\_, 2002, before me appeared Francis G. Slay, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the CITY OF ST. LOUIS, MISSOURI, a political subdivision of the State of Missouri, and that the seal affixed to the foregoing instrument is the seal of said City, and said instrument was signed and sealed in behalf of said City by authority of its Board of Aldermen, and said individual acknowledged said instrument to be the free act and deed of said City.

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

\_\_\_\_\_  
Notary Public

(SEAL)

My Commission Expires:

\_\_\_\_\_  
STATE OF MISSOURI     )  
  ) SS  
CITY OF ST. LOUIS     )

On this \_\_\_\_ day of \_\_\_\_\_, 2002, before me appeared Darlene Green, to me personally known, who, being by me duly sworn, did say that she is the Comptroller of the CITY OF ST. LOUIS, MISSOURI, a political subdivision of the State of Missouri, and that the seal affixed to the foregoing instrument is the seal of said City, and said instrument was signed and sealed in behalf of said City by authority of its Board of Aldermen, and said individual acknowledged said instrument to be the free act and deed of said City.

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

\_\_\_\_\_  
Notary Public

(SEAL)

My Commission Expires:

\_\_\_\_\_  
STATE OF MISSOURI     )



(SEAL)

My Commission Expires:

\_\_\_\_\_

**EXHIBIT A**

**REDEVELOPMENT AREA**

A tract of land, being all of City Blocks 417, 425, 426, 427, 434, 435, 436 and 437, and a portion of City Block 418, together with portions of certain streets and alleys, and being more particularly described as follows:

Beginning at the point of intersection of the eastern line of Tucker Boulevard and the southern line of Clark Avenue; thence eastwardly along said southern line of Clark Avenue to the point of intersection with the western line of Eighth Street; thence southwardly along said western line of Eighth Street to the point of intersection with the southern line of Spruce Street; thence eastwardly along said southern line of Spruce Street to the point of intersection with the western line of Stadium Plaza/Seventh Street; thence southwardly along said western line of Stadium Plaza/Seventh Street to the point of intersection with the southern line of Poplar Street; thence westwardly along said southern line of Poplar Street to the point of intersection with a line 145 feet east of and parallel with the eastern line of vacated Tenth Street; thence southwardly along said line 145 feet east of and parallel with said eastern line of vacated Tenth Street to the point of intersection with the southern line of Cerre Street; thence westwardly along said southern line of Cerre Street to the point of intersection with the western line of vacated Eleventh Street; thence northwardly along said western line of vacated Eleventh Street to the point of intersection with said southern line of Poplar Street; thence westwardly along said southern line of Poplar Street to the point of intersection with said eastern line of Tucker Boulevard; thence northwardly along said eastern line of Tucker Boulevard to the point of beginning.

**EXHIBIT B**

**DEPARTMENT APPROVAL OF REDEVELOPMENT PLAN**

(Attached hereto.)

**Approved: June 5, 2002**