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IN THE CIRCUIT COURT OF JACKSON COUNTY
STATE OF MISSOURI

In re:	)
	)
AVILA UNIVERSITY, a benevolent corporation,	)
	)
Petitioner.	)
	)
Serve:	)
Attorney General	)
State of Missouri	)

VERIFIED PETITION TO REMOVE
RESTRICTIONS ON CERTAIN ENDOWED FUNDS

COMES NOW Avila University ("Avila"), by and through its undersigned counsel, and hereby files its Petition to Remove Restrictions on Certain Endowed Funds pursuant to Mo. Rev. Stat. § 402.138 and states as follows:

A. INTRODUCTION

1. Avila is a university established in 1940 and is an accredited institution of higher education providing undergraduate and graduate degrees.

2. Avila maintains its principal place of business in Jackson County, Missouri.

3. Avila's mission is to provide "undergraduate and graduate education in the liberal arts and professional studies, preparing lifelong learners to make meaningful contributions to the global community."

4. Over its more than 70 years, Avila has been blessed to receive testamentary and direct gifts to support its mission. Certain of the gifts are "restricted" either by the terms of the gift instrument or an agreement with Avila that prescribes the purposes and uses of the funds and also limits access to the funds annually to the earnings the funds generate. These gifts comprise Avila's restricted endowment.

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5. Avila now seeks relief pursuant to Mo. Rev. Stat. § 402.138 to remove restrictions on the use of certain of the endowed funds to allow the principal to be employed for either the stated purpose or a related purpose for which the gifts were established.

B. JURISDICTION

6. Avila is located in this County, transacts business in this County, which is also the location of the endowed funds at issue, and accordingly, this Court has proper jurisdiction and venue pursuant to Mo. Rev. Stat. §§ 506.500 and 508.010.

7. A prior Petition was filed bearing Case No. 23P8-PR01034 in the Probate Court of this Circuit on August 4, 2023. By Order issued August 28, 2023, the Probate Court dismissed the Petition for failure "to set forth any basis that would give the Probate Division any jurisdiction."

C. LEGAL STANDARD

8. Mo. Rev. Stat. § 402.138 governs the ability of an institution to modify or remove gift conditions on endowed funds. Pursuant to Subsection 3 of Section 402.138:

> If a particular charitable purpose or restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument. The institution shall notify the attorney general of the application, and the attorney general will be given an opportunity to be heard.

9. Accordingly, the Court has the authority to modify the restrictions on endowed funds provided that (a) the Attorney General is provided an opportunity to be heard; (b) the restriction on the gift has become "unlawful, impracticable, impossible to achieve, or wasteful;" and (c) the funds are to be used in a manner consistent with the charitable purpose for which the funds were restricted.

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D. CONDITIONS PRECEDENT

10. On April 30, 2023, at a duly noticed meeting of the Board of Trustees of Avila, the Board of Trustees enacted a resolution approving the removal of restrictions from certain funded endowments at issue in this Petition to permit use for awarding scholarships and institutional aid for students. A listing of the endowed funds at issue in this Petition is attached as Exhibit 1.

11. Subsequently, by electronic vote issued on or about July 28, 2023, as permitted by Mo. Rev Stat 355.266, the Board of Trustees further voted and enacted a resolution to clarify that, should the requested relief be granted by the Court, four million, eight hundred thousand dollars ($4,800,000) of the funds are to be transferred to the unrestricted endowment for the 2023-2024 fiscal year, effective July 1, 2024, one million six hundred twenty thousand five hundred fifty five dollars ($1,620,555) are to be transferred in the 2024-2025 fiscal year and not earlier. Any funds so transferred are to be used solely for scholarships and institutional aid for students.

12. By letter dated May 22, 2023, Avila notified the Attorney General of Avila's intent to remove restrictions on certain endowed funds which were referenced in the letter, and attached all relevant, material information in Avila's possession regarding the establishment and operation of the referenced funds. A copy of the letter without the exhibits comprising the documents regarding the establishment of each endowed fund is attached as Exhibit 2.

E. THE ENDOWED FUNDS AT ISSUE

13. Avila has identified 97 endowed funds established to provide scholarships for which Avila wishes to relax the restrictions on a portion of the endowed funds to permit use of

the principal as well as the earnings on the endowed funds to fund student scholarships and institutional aid for students for the 2023-2024 and 2024-2025 academic years.

14. The identified funds and the amount of each fund to be unrestricted to permit use for the 2023-2024 and 2024-2025 academic years are identified on Exhibit 1 of this Petition which is incorporated by reference.

15. Rather than encroach and eliminate restrictions on the full corpus of particular, restricted funds, the Avila Board of Trustees determined it would be better to remove restrictions on only a portion of each of the endowed funds leaving a balance of restricted funds to be utilized for the future pursuant to the stated purpose of the endowed funds. Avila is requesting that the restrictions on portions of 97 endowed funds be removed totaling $6,420,555. The 97 funds would continue to have restricted principal totaling $2,318,447 if the requested relief is granted.

16. Each of the restricted funds at issue was established to fund scholarships. Avila will use the funds that are no longer restricted to fund scholarships and institutional aid for students for the 2023-2024 and 2024-2025 academic years.

17. To this end, the Board of Trustees has authorized four million, eight hundred thousand dollars ($4,800,000) of the funds are to be transferred to the unrestricted endowment for the 2023-2024 fiscal year, and, effective July 1, 2024, one million six hundred twenty thousand five hundred fifty five dollars ($1,620,555) to be transferred in the 2024-2025 fiscal year and not earlier. All of these funds are to be spent only on scholarships and institutional aid for students.

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F. GROUNDS FOR ACTION

18. Avila's current circumstances satisfy the requirement that continued enforcement of the restriction that limits use of the endowed scholarship funds to income but not the principal is impractical and may make it impossible for Avila to achieve the purpose of the scholarship.

19. Although Avila has taken extreme measures to eliminate costs and enhance revenues this past year and in past years, and recently effected certain management changes, the current crisis in higher education and its impact on Avila require Avila to utilize the fund principal to meet its scholarship goals for students in need.

20. Funding scholarships with resources beyond current earnings from the endowed funds is fully consistent with the purpose for which the endowed funds were created; namely, to provide scholarships.

21. Unless use of the principal of the endowed funds for scholarships is unrestricted, a significant possibility exists that no scholarship – earnings or principal – will be awarded because the University will be challenged to meet its financial obligations.

22. Avila's pressing need to fund scholarships for the 2023-2024 and 2024-2025 academic years is a short term liquidity challenge to permit certain programmatic changes to be implemented that should alleviate the short term financial difficulty. Avila is beginning to benefit from significant enrollment growth. This fall's incoming enrollment of freshmen and transfer students will grew to 501 compared to last year's incoming class of 275. Significant international enrollment should begin in January 2024. Avila has also expanded its programming with five new graduate programs in Education as well as new programs in nursing.

23. Avila's current expected enrollment this academic year is 1693 students. The vast majority of the students at Avila receive financial assistance, and the ability to provide

scholarships is critical for students to be able to afford Avila and for Avila to have sufficient revenue to afford its operation. If relief is granted as requested, all of the funds will be used to fund scholarships consistent with the original purposes for which the endowed funds were established.

24. As of April 30, 2023, Avila's endowment totaled $18.1 million. Of that amount. $10.6 million is restricted.

25. Avila is requesting that the University be authorized to transfer from its restricted endowment to its unrestricted endowment for use as institutional aid and scholarships for students (A) four million, eight hundred thousand dollars ($4,800,000) for the 2023-2024 fiscal year, and (B) effective July 1, 2024, one million six hundred twenty thousand five hundred fifty-five dollars ($1,620,555) in the 2024-2025 fiscal year and not earlier.

G. CONCLUSION

For the foregoing reasons, Avila requests that the restrictions subject to the referenced endowed funds be removed to permit the Board of Trustees to transfer four million, eight hundred thousand dollars ($4,800,000) of the funds to the unrestricted endowment for the 2023-2024 fiscal year, and, effective July 1, 2024, one million six hundred twenty thousand five hundred fifty five dollars ($1,620,555) be transferred in the 2024-2025 fiscal year and not earlier, and all of the transferred funds to be used solely to award institutional aid and scholarships for students.

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Respectfully submitted,

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Attorneys for Petitioner Avila University

STATE OF MISSOURI)
) SS
COUNTY OF JACKSON)

I, Jim Burkee, hereby state and aver pursuant to Mo. Rev. Stat. § 509.030:

1. I am the President of Avila University, and on behalf of Avila University I am authorized to verify this Petition.

2. I have read the foregoing Petition and it is true and correct to the best of Avila University's knowledge, information and belief, as such knowledge, information and belief is maintained in the ordinary course of its business, relying upon such persons ordinarily possessing knowledge of and records ordinarily reflecting the subject matter of the aforementioned Petition.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Jim Burkee

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STATE OF MISSOURI)
) SS.
COUNTY OF JACKSON)

On this 31 day of August, 2023, before me personally appeared Jim Burkee, to me known to be the person described in and who signed the above document, and acknowledged that he signed the same as his 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.

Kristin Gaughan
Notary Public

My commission expires: April 25, 2025

KRISTIN GAUGHAN
NOTARY PUBLIC - NOTARY SEAL
STATE OF MISSOURI
MY COMMISSION EXPIRES APRIL 25, 2025
JACKSON COUNTY
COMMISSION #17941885

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