



**WORK SESSION MEETING OF THE CITY COUNCIL  
City of Maplewood, Missouri**

**City Council Chambers, City Hall  
7601 Manchester Road, Maplewood, MO 63143**

**Tuesday, January 14, 2025**

**6:00 PM**

**AGENDA**

1. Call to Order
2. Roll Call
3. Tech Electronics Chapter 100 Bond Proposal
4. Proposed amendments to Chapter 6 – Advertising, Article II. Signs:
  - a. Division 1. Generally, Sec. 6-29. Definitions and Sec. 6-31. Permits.
  - b. Division 3. Permitted Temporary Signs, Sec. 6-72. Regulations.
5. Adjournment

---

**Accessibility Notice**

The City of Maplewood is committed to making public meetings accessible to all residents. To request accommodations or assistance, please contact the Deputy City Clerk at [cityclerk@maplewoodmo.gov](mailto:cityclerk@maplewoodmo.gov) or 314-646-3602, or Relay Missouri at 800-736-2966 (TTY). Please make your request at least 48 hours prior to the meeting to ensure appropriate arrangements can be made.

**Virtual Access**

Watch this meeting live at [www.youtube.com/@cityofmaplewood8819](https://www.youtube.com/@cityofmaplewood8819)

*Posted on January 10, 2025, at Maplewood City Hall and [maplewoodmo.gov](http://maplewoodmo.gov)*

# Memorandum



**To:** Mayor and City Council  
**From:** Amber Withycombe, City Manager  
**Date:** January 9, 2025  
**Re:** **Tech Electronics Chapter 100 Project – 2024 Proposal and Background**

---

## **Overview of Chapter 100 Bonds**

Chapter 100 of RSMo authorizes cities to issue industrial development revenue bonds to finance projects for private companies. Under this program, the city technically takes ownership of the project assets and leases them back to the company. Since the city owns the assets, they become exempt from property taxes, but the city and company agree on a contractual payment in lieu of tax (usually a percentage of the property taxes that would otherwise be due but for the city's ownership interest). The company benefits from tax abatement while retaining operational control through the lease agreement. The bonds are repaid solely by lease payments made by the company, with no financial obligation to the city.

This financing structure has become an important economic development tool for municipalities seeking to attract and retain employers. The program allows cities to offer targeted tax incentives while maintaining protections through performance agreements that ensure community benefits.

## **Background**

In 2017, the City Council approved a Chapter 100 industrial development project for Tech Electronics Properties, LLC to construct their corporate headquarters at 2 Sunnen Drive (now 3233 South Big Bend Boulevard). The original agreement authorized \$8.2 million in bonds to finance a 60,000 square foot facility that would house at least 150 employees. The approved incentives included sales tax exemption on construction materials and real property tax abatement of 70% for the first ten years, followed by 50% for five years.

In 2020, responding to increased project costs, the Council amended the agreement to increase the maximum bond amount to \$12 million while maintaining the original tax incentive structure and completion deadline of December 31, 2024.

## **Expiration of Prior Agreements**

The original 2017 Chapter 100 agreement and its 2020 amendment have now expired without the project being completed. According to the company's recent letter to the City, they were unable to meet the December 31, 2024 completion deadline due to the long-term impact of the pandemic on their customers' operations and the industry at large. As a result, the company has initiated termination of the existing agreements with the City regarding the tax incentives and is now pursuing a new Chapter 100 arrangement.

This termination requires Tech Electronics to submit notice of tender of the bonds for cancellation and exercise their option to re-acquire the property that was previously conveyed to the City. No city council action is needed with respect to the termination. The company is now

effectively starting fresh with a new proposal rather than seeking another amendment to the expired agreements.

### **2024 Proposal**

Tech Electronics now seeks a new Chapter 100 agreement. The revised proposal reduces the facility size to 55,000 square feet but increases the employment commitment to 175 jobs, comprising 100 office employees and 75 field employees, with projected growth of 25-50 additional positions during the incentive term.

The estimated project cost remains between \$10-12 million. The company requests the same tax incentive structure as previously approved: sales tax exemption on construction materials and real property tax abatement of 70% for ten years followed by 50% for five years. Notably, they are not seeking personal property tax abatement.

The new construction timeline proposes groundbreaking by December 31, 2025, with completion by June 30, 2027. The project would consolidate Tech Electronics' regional distribution center, technical labs, help desk facilities, and corporate offices from multiple locations into a single Maplewood facility.

### **Community Benefits**

Tech Electronics has committed to expanding their community engagement through a formal partnership with the MRH School District. This includes student outreach programs, summer internships, and an apprenticeship program. The company currently employs approximately 400 people total, with 250 in the St. Louis metropolitan area.

### **Considerations for Discussion**

Given the expiration of the previous agreements without performance, combined with the evolving project scope, staff recommends Council discussion focus on several key aspects of the new proposal:

- Whether the requested incentive levels remain appropriate given both the project's evolution and the lack of progress under prior agreements.
- The feasibility of the revised project timeline and what additional safeguards or milestones should be included to ensure completion.
- Mechanisms for verifying and ensuring compliance with employment commitments, potentially including more robust reporting requirements than in previous agreements.
- Whether the proposed community benefits adequately serve the interests of the city and school district, and if additional commitments should be secured given the history of the project.

Council may wish to consider including more robust performance requirements, specific project milestones, and potential clawback provisions in any new agreement to ensure the development moves forward as proposed while protecting the city's interests.

Mark Spykerman, the City's bond counsel from Gilmore & Bell, will be present at the work session to provide additional detail on any of these aspects during the discussion. Please let me know if you need any additional information in advance.

Enclosures

2024 Tech Electronics Project Proposal

2017 Lease Agreement

2020 Lease Agreement Amendment

Gilmore & Bell Summary of Economic Development Tools

Dear Amber,

*As a follow up to the recent meeting that you and I had with Councilmember Nick Homa and the subsequent emails we have exchanged in the past couple of weeks, I want to reiterate the strong interest that Tech Electronics has in its proposed corporate expansion project at 2 Sunnen Drive in the City of Maplewood. As you know, the City Council previously approved tax incentives for the project. Please let this letter serve as our renewed proposal for tax incentives for the project. It is our hope that the City has continued interest in partnering with Tech Electronics to make this project a reality.*

*Tech Electronics is a family-owned business that was founded in St. Louis almost 62 years ago. We offer a variety of advanced technologies and services to help our customers work smarter, feel safer, and collaborate more effectively. Our on-premises and cloud technologies include security, fire protection, monitoring, healthcare, audio/visual, telephone, IT services and sound. Over the years, Tech Electronics has grown to over 400 employees (approximately 250 of whom live in the St. Louis metropolitan area). We currently cover a five-state region that includes Colorado, Kansas, Illinois, Indiana and Missouri.*

*As a growing, regional service organization, Tech Electronics intends to consolidate a substantial portion of its operations – including its regional distribution center, technical labs, help desk facilities and corporate offices – to a single, new facility. We found the current site in Maplewood attractive because it is close to our current facilities in the City of St. Louis, it has good highway accessibility for our service fleet and visiting customers, and it is a vibrant area that would be attractive to our growing tech savvy workforce.*

*When Tech Electronics first approached the City about this proposed project in 2017, the City Council approved sales tax exemption on construction materials, as well as real property tax abatement of 70% for the first 10 years after completion of the project and 50% for next five years thereafter. In exchange, we committed to making a capital investment of over \$8 million and to bringing a minimum of 150 jobs. In 2020, the City Council agreed to extend the time for completion of the project to December 31, 2024 in exchange for Tech Electronics agreement to forego the final one to two years of real property tax abatement and to partner with the Maplewood-Richmond Heights School District to provide an internship and apprenticeship program.*

*Unfortunately, at the time that the City Council approved the extension, we were not fully aware of the long-term impact that the Covid-19 pandemic would have – not only on our customers’ operations, but on our industry at large. As a result, Tech Electronics is unable to meet the current deadline of December 31, 2024 for completion of the project. As such, the company has determined that the best course of action is to terminate the existing agreements with the City regarding the tax incentives, and to pursue new tax incentives. Accordingly, Tech Electronics will be submitting a notice of tender of the bonds for cancellation and a notice of exercise of its option to re-acquire the property that was previously conveyed to the City.*

*As outlined below, Tech Electronics’ current proposal for tax incentives is substantially similar to what was initially proposed in 2017 with any material changes noted.*

- In connection with the City’s approval of tax incentives, the company will undertake the project*
- The project will consist of an approximately 55,000 square foot facility to serve as the company’s regional distribution center, training center, call center and corporate offices (the original proposal was for a 60,000 square foot facility)*
- The project costs are estimated at \$10 million to \$12 million (the original proposal estimated project costs of \$8.2 million, which was subsequently adjusted to approximately \$12 million in 2020)*
- The company will have a minimum of 175 jobs located at the facility (approximately 100 office employees and 75 field employees), which is expected to grow by 25-50 jobs over the term of the tax incentives (the original proposal estimated that the project would result in a minimum of 150 jobs at the facility)*
- The company will enter into a community benefit agreement with Maplewood-Richmond Heights School District that will involve student outreach, a summer internship program and an apprenticeship program*
- The company will commence construction of the project on or before December 31, 2025 and complete construction on or before June 30, 2027*
- The company requests that the City provide a project exemption certificate that will allow for a sales and use tax exemption on all construction materials for the project (this is the same as what was originally approved by the City Council in 2017)*

- *The company requests that the City provide real property tax abatement of 70% for the first 10 years after completion of the project and real property tax abatement of 50% for the next five years thereafter (this is the same level of abatement that was originally approved by the City Council in 2017)*
- *The company is not seeking any tax abatement on personal property/equipment installed within the facility*

*We remain very excited about the possibility of expanding our operations to Maplewood and pursuing tax abatement under a new Chapter 100 and look forward to the opportunity to discuss how we can partner with the City to make this project a reality.*

*I look forward to speaking with you soon.*

*Sincerely,*



*Kurt S Canova  
Executive Chairman*

---

**CITY OF MAPLEWOOD, MISSOURI,**

**As Lessor,**

**AND**

**TECH ELECTRONICS PROPERTIES, LLC,**

**As Lessee**

---

**LEASE AGREEMENT**

**Dated as of December 1, 2017**

---

**Relating to:**

**\$8,200,000**  
**(Aggregate Maximum Principal Amount)**  
**City of Maplewood, Missouri**  
**Taxable Industrial Revenue Bonds**  
**(Tech Electronics Properties, LLC Project)**  
**Series 2017**

---

**Certain rights of the City of Maplewood, Missouri (the "City"), in this Lease Agreement have been pledged and assigned to UMB Bank, N.A., St. Louis, Missouri, as Trustee under the Trust Indenture dated as of December 1, 2017, between the City and the Trustee.**

**TABLE OF CONTENTS**

Page

**ARTICLE I**

**DEFINITIONS**

Section 1.1. Definitions of Words and Terms.....2  
Section 1.2. Rules of Interpretation.....2

**ARTICLE II**

**REPRESENTATIONS**

Section 2.1. Representations by the City.....2  
Section 2.2. Representations by the Company.....3

**ARTICLE III**

**GRANTING PROVISIONS**

Section 3.1. Granting of Leasehold Estate .....4  
Section 3.2. Lease Term .....4  
Section 3.3. Possession and Use of the Project .....4

**ARTICLE IV**

**PURCHASE, CONSTRUCTION AND IMPROVEMENT OF THE PROJECT**

Section 4.1. Issuance of the Bonds.....5  
Section 4.2. Purchase, Construction and Improvement of the Project.....5  
Section 4.3. Project Costs.....6  
Section 4.4. Payment for Project Costs.....6  
Section 4.5. Establishment of Completion Date .....6  
Section 4.6. Surplus in Project Fund.....6  
Section 4.7. Project Property of the City.....7  
Section 4.8. Non-Project Improvements, Machinery and Equipment Property of the the Company .....7  
Section 4.9. Construction Contracts.....7

**ARTICLE V**

**RENT PROVISIONS**

Section 5.1. Basic Rent .....7  
Section 5.2. Additional Rent .....8  
Section 5.3. Obligations of the Company Absolute and Unconditional.....8  
Section 5.4. Prepayment of Basic Rent .....9

**ARTICLE VI**

**MAINTENANCE, TAXES AND UTILITIES**

Section 6.1. Maintenance and Repairs .....9  
Section 6.2. Taxes, Assessments and Other Governmental Charges.....9  
Section 6.3. Utilities .....10  
Section 6.4. Property Tax Exemption.....10

**ARTICLE VII**

**INSURANCE**

Section 7.1. Title Commitment or Report .....10  
Section 7.2. Casualty Insurance .....10  
Section 7.3. Liability Insurance .....11  
Section 7.4. Blanket Insurance Policies; Self Insurance .....11  
Section 7.5. Worker’s Compensation .....11  
Section 7.6. Sovereign Immunity .....11

**ARTICLE VIII**

**ALTERATION OF THE PROJECT**

Section 8.1. Additions, Modifications and Improvements to the Project.....12  
Section 8.2. Additional Improvements on the Project Site .....12  
Section 8.3. Permits and Authorizations .....12  
Section 8.4. Mechanics’ Liens.....13

**ARTICLE IX**

**DAMAGE, DESTRUCTION AND CONDEMNATION**

Section 9.1. Damage or Destruction.....14  
Section 9.2. Condemnation .....15  
Section 9.3. Bondowner Approval .....16

**ARTICLE X**

**SPECIAL COVENANTS**

Section 10.1. No Warranty of Condition or Suitability by the City; Exculpation and Indemnification..16  
Section 10.2. Surrender of Possession .....16  
Section 10.3. Right of Access to the Project .....17  
Section 10.4. Granting of Easements; Leasehold Mortgages and Financing Arrangements.....17  
Section 10.5. Indemnification of the City and Trustee.....19  
Section 10.6. Depreciation, Investment Tax Credit and Other Tax Benefits.....20  
Section 10.7. The Company to Maintain its Existence .....20  
Section 10.8. Security Interests.....20  
Section 10.9. Environmental Matters, Warranties, Covenants and Indemnities Regarding  
Environmental Matters.....21

Section 10.10.	Additional Provisions Relating to Lender .....	23
----------------	--	----

**ARTICLE XI**

**OPTION AND OBLIGATION TO PURCHASE THE PROJECT**

Section 11.1.	Option to Purchase the Project .....	24
Section 11.2.	Conveyance of the Project.....	25
Section 11.3.	Relative Position of Option and Indenture.....	26
Section 11.4.	Obligation to Purchase the Project .....	26
Section 11.5.	Right of Set-Off.....	26

**ARTICLE XII**

**DEFAULTS AND REMEDIES**

Section 12.1.	Events of Default.....	26
Section 12.2.	Remedies on Default.....	27
Section 12.3.	Survival of Obligations .....	28
Section 12.4.	Performance of the Company’s Obligations by the City .....	28
Section 12.5.	Rights and Remedies; Cumulative .....	28
Section 12.6.	Waiver of Breach.....	28
Section 12.7.	Trustee’s Exercise of the City’s Remedies.....	28

**ARTICLE XIII**

**ASSIGNMENT AND SUBLEASE**

Section 13.1.	Assignment; Sublease .....	29
Section 13.2.	Assignment of Revenues by the City .....	29
Section 13.3.	Prohibition Against Fee Mortgage of Project.....	29
Section 13.4.	Restrictions on Sale or Encumbrance of Project by the City .....	29

**ARTICLE XIV**

**AMENDMENTS, CHANGES AND MODIFICATIONS**

Section 14.1.	Amendments, Changes and Modifications.....	30
---------------	--	----

**ARTICLE XV**

**MISCELLANEOUS PROVISIONS**

Section 15.1.	Notices.....	30
Section 15.2.	The City Shall Not Unreasonably Withhold Consents and Approvals.....	31
Section 15.3.	Net Lease.....	31
Section 15.4.	Limitation on Liability of the City .....	32
Section 15.5.	Governing Law .....	32
Section 15.6.	Binding Effect .....	32
Section 15.7.	Severability .....	32
Section 15.8.	Execution in Counterparts.....	32

Section 15.9. Electronic Storage .....32  
Section 15.10. City Consent.....32  
  
Signatures and Seal .....33  
  
Exhibit A –Project Site  
Exhibit B –Project Improvements  
Exhibit C - Form of Requisition Certificate

## LEASE AGREEMENT

**THIS LEASE AGREEMENT**, dated as of December 1, 2017 (the “Lease”), between the **CITY OF MAPLEWOOD, MISSOURI**, a constitutional charter city organized and existing under the laws of the State of Missouri (the “City”), as lessor, and **TECH ELECTRONICS PROPERTIES, LLC**, a Missouri limited liability company (the “Company”), as lessee;

### RECITALS:

1. The City is authorized and empowered pursuant to the provisions of Article VI, Section 27(b) of the Missouri Constitution, Sections 100.010 through 100.200, inclusive, of the Revised Statutes of Missouri, as amended (collectively, the “Act”), and the City Charter, to purchase, construct, extend, improve and equip certain projects (as defined in the Act) and to issue industrial development revenue bonds for the purpose of providing funds to pay the costs of such projects and to lease or otherwise dispose of such projects to private persons or corporations for manufacturing, commercial, research and development, office industry, warehousing and industrial development purposes upon such terms and conditions as the City shall deem advisable.

2. Pursuant to the Act, the City Council passed an ordinance (the “Ordinance”) on September 26, 2017, authorizing the City to issue its Taxable Industrial Revenue Bonds (Tech Electronics Properties, LLC Project), Series 2017, in the maximum principal amount of \$8,200,000 (the “Bonds”), for the purpose of (a) acquiring certain real estate located at 2 Sunnen Drive in the City (the “Project Site,” as more fully described on **Exhibit A**, attached hereto and incorporated herein by reference) and (b) constructing a corporate headquarters facility (the “Project Improvements,” as more fully described on **Exhibit B**, attached hereto and incorporated herein by reference) for Tech Electronics, Inc. (“Tech Electronics”) to be located on the Project Site.

3. Pursuant to the Ordinance, the City is authorized to enter into a Trust Indenture of even date herewith (the “Indenture”) with UMB Bank, N.A., St. Louis, Missouri, as Trustee (the “Trustee”) for the purpose of issuing and securing the Bonds, and to enter into this Lease, under which the City will, or will cause the Company to, purchase, construct and install the Project Improvements and will lease the Project Site and the Project Improvements (collectively, the “Project”) to the Company in consideration of rentals that will be sufficient to pay the principal of and interest on the Bonds.

4. The City and Company acknowledge and agree that the title to the Project is subject and subordinate to the first Deed of Trust (“Deed of Trust”) granted to Enterprise Bank & Trust, its successors and assigns (the “Lender”), by the Company, pursuant to various loan documents (the “Loan Documents”) evidencing the loan secured by the Deed of Trust (the “Loan”) prior to the Company’s conveyance of fee title to the Project Site to the City in connection with the Project.

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

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

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

## **ARTICLE I**

### **DEFINITIONS**

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

**Section 1.2. Rules of Interpretation.**

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

(b) Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing Persons shall include firms, associations and corporations, including governmental entities, as well as natural Persons.

(c) Wherever in this Lease it is provided that either party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform, or not to perform, as the case may be, such act or obligation.

(d) All references in this instrument to designated "Articles," "Sections" and other subdivisions are, unless otherwise specified, to the designated Articles, Sections and subdivisions of this instrument as originally executed. The words "herein," "hereof," "hereunder" and other words of similar import refer to this Lease as a whole and not to any particular Article, Section or other subdivision.

(e) The Table of Contents and the Article and Section headings of this Lease shall not be treated as a part of this Lease or as affecting the true meaning of the provisions hereof.

(f) Whenever an item or items are listed after the word "including," such listing is not intended to be a listing that excludes items not listed.

## **ARTICLE II**

### **REPRESENTATIONS**

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

(a) The City is a constitutional charter city duly organized and validly existing under the laws of the State of Missouri. Under the provisions of the Act, the City has lawful power and authority to enter into the transactions contemplated by this Lease and to carry out its obligations hereunder. By proper action of its City Council, the City has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers.

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

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

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

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

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

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

(h) The City will not operate the Project as a business or in any other manner except as the lessor thereof; provided, subsequent to an Event of Default hereunder and the Company's failure to cure such Event of Default, the City may, but is not obligated to, operate the Project in such manner as the City deems best.

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

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

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

(c) The execution and delivery of this Lease, the consummation of the transactions contemplated hereby, and the performance of or compliance with the terms and conditions of this Lease by the Company will not, to the Company's knowledge, conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any mortgage, deed of trust, lease or any other restrictions or any agreement or instrument to which the Company is a party or by which it or any of its property is bound, or the Company's organizational documents, or any order, rule or regulation applicable to the Company or any of its property of any court or governmental body, or constitute a default under any of the foregoing, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Company under the terms of any instrument or agreement to which the Company is a party.

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

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

### ARTICLE III

#### GRANTING PROVISIONS

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

**Section 3.2. Lease Term.** This Lease shall become effective upon its execution and delivery. Subject to earlier termination pursuant to the provisions of this Lease, the lease of the Project shall terminate on December 31 of the 15<sup>th</sup> calendar year following the Completion Date.

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

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

(b) Subject to the provisions of this Section, the Company shall have the exclusive right to use the Project for any lawful purpose contemplated by the Act and consistent with the terms of the Performance Agreement. The Company shall use its reasonable best efforts to comply in all material respects with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all

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

(c) In connection with the Company's possession and use of the Project, the Company shall have all rights and shall assume all obligations of the Lot 3 Owner (as defined in the Amended Declaration of Covenants for Sunnen Business Park recorded on November 9, 2017, with the St. Louis County, Missouri Recorder of Deeds in Book 22774, Page 2446 (the "Amended Declaration")) under the Amended Declaration. The Company shall indemnify the City from and against all claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, arising under the Amended Declaration, by or on behalf of any Person, firm or corporation in accordance with **Section 10.5** hereof. Further, the Company shall have all rights, if any, of the City in and to all strips and gores of lands, streets, alleys, passages, and all easements appurtenant to the real property comprising the Project, subject to the terms of any instrument granting such appurtenant rights.

## ARTICLE IV

### PURCHASE, CONSTRUCTION AND IMPROVEMENT OF THE PROJECT

**Section 4.1. Issuance of the Bonds.** To provide funds for the payment of Project Costs, the City agrees that, upon request of the Company, it will issue, sell and cause to be delivered the Bonds to the purchaser thereof in accordance with the provisions of the Indenture and the Bond Purchase Agreement. The proceeds of the sale of the Bonds, when received, shall be paid over to the Trustee for the account of the City. The Trustee shall promptly deposit such proceeds, when received, as provided in the Indenture to be used and applied as hereinafter provided in this Lease and in the Indenture.

**Section 4.2. Purchase, Construction and Improvement of the Project.** The City and the Company agree that the Company, as the agent of the City shall, but solely from the Project Fund, purchase, construct and improve the Project as follows:

(a) The City will acquire the Project Site and the Project Improvements located thereon at the execution hereof. Concurrently with the execution of this Lease, (1) a deed and any other necessary instruments of transfer will be delivered to the City and placed of record, and (2) the commitment for title insurance or ownership and encumbrance report required by **Article VII** hereof will be delivered by the Company to the City and the Trustee.

(b) On behalf of the City, the Company will purchase and construct the Project Improvements on the Project Site and otherwise improve the Project Site in accordance with the Plans and Specifications. The Company may revise the Plans and Specifications from time to time as it deems necessary to carry out the Project, but revisions that would alter the intended purpose of the Project may be made only with the prior written approval of the City. The Company agrees

that the aforesaid construction and improvement will, with such changes and additions as may be made hereunder, result in facilities suitable for use by the Company for its purposes, and that all real and personal property described in the Plans and Specifications, with such changes and additions as may be made hereunder, is desirable and appropriate in connection with the Project. The provisions of this paragraph are in addition to and do not supersede the provisions of **Section 8.3**.

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

(d) The Company will cause the purchase, construction and improvement of the Project to be completed on or before the Completion Date.

**Section 4.3. Project Costs.** The City hereby agrees to pay for, but solely from the Project Fund, and hereby authorizes and directs the Trustee to pay for, but solely from the Project Fund, all Project Costs upon receipt by the Trustee of a requisition certificate pursuant to **Section 4.4** hereof. The Company may not submit any requisition certificate for Project Costs incurred after the Completion Date. The Company must submit all requisition certificates for Project Costs incurred before the Completion Date within three (3) months after the Completion Date. The maximum amount of Project Costs for which requisition certificates may be submitted is \$8,200,000.

**Section 4.4. Payment for Project Costs.**

(a) The City hereby authorizes and directs the Trustee to make disbursements from the Project Fund and endorse the Bonds, upon receipt by the Trustee of certificates in substantially the form of **Exhibit C**, attached hereto and incorporated herein by reference, signed by an Authorized Company Representative and approved by an Authorized City Representative. The Company agrees that the information in each certificate will be accurate in all respects when given, and that the Company will notify the City if the Company becomes aware of any material inaccuracies in a certificate after the date on which it is given.

(b) The Trustee may rely conclusively on any such certificate and shall not be required to make any independent inspection or investigation in connection therewith. The approval of any requisition certificate by the Authorized Company Representative and an Authorized City Representative shall constitute, unto the Trustee, an irrevocable determination that all conditions precedent to the payments requested have been completed.

**Section 4.5. Establishment of Completion Date.** The Completion Date shall be evidenced to the City and the Trustee by a certificate signed by the Authorized Company Representative stating (a) that the purchase, construction and improving of the Project has been completed in accordance with the Plans and Specifications, (b) the date of completion thereof, and (c) that all costs and expenses of the purchase, construction, and improving of the Project have been incurred. Notwithstanding the foregoing, (i) such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being and (ii) such certificate shall be deemed given on December 31, 2020 if not actually filed with the City by December 31, 2020.

**Section 4.6. Surplus in Project Fund.** Upon the Completion Date, the Trustee shall, as provided in **Section 504** of the Indenture, transfer any remaining moneys then in the Project Fund to the Bond Fund to be applied as directed by the Company solely to (a) the payment of principal and premium, if any, of the Bonds through the payment (including regularly scheduled principal payments, if any) or redemption thereof at the earliest date permissible under the terms of the Indenture, or (b) at the option of

the Company, to the purchase of Bonds at such earlier date or dates as the Company may elect. Any amount so deposited in the Bond Fund may be invested as permitted by **Section 702** of the Indenture.

**Section 4.7. Project Property of the City.** The Project Site and the Project Improvements located thereon at the execution hereof and which the Company desires to convey to the City, all work and materials on the Project Improvements as such work progresses, and all additions or enlargements thereto or thereof, the Project as fully completed, anything under this Lease which becomes, is deemed to be, or constitutes a part of the Project, and the Project as repaired, rebuilt, rearranged, restored or replaced by the Company under the provisions of this Lease, except as otherwise specifically provided herein, shall immediately when erected or installed become the absolute property of the City, subject only to this Lease, the Indenture, Permitted Encumbrances, the Deed of Trust and the Leasehold Mortgage, if any.

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

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

## ARTICLE V

### RENT PROVISIONS

**Section 5.1. Basic Rent.** The Company covenants and agrees to pay to the Trustee in same day funds for the account of the City during this Lease Term, on or before 11:00 a.m., Trustee's local time, on each Payment Date, as Basic Rent for the Project, an amount which, when added to any collected funds then on deposit in the Bond Fund and available for the payment of principal on the Bonds and the interest thereon on such Payment Date, shall be equal to the amount payable on such Payment Date as principal of the Bonds and the interest thereon as provided in the Indenture. Except as offset pursuant to the right of the Company set forth below, all payments of Basic Rent provided for in this Section shall be paid directly to the Trustee and shall be deposited in accordance with the provisions of the Indenture into the Bond Fund and shall be used and applied by the Trustee in the manner and for the purposes set forth in this Lease and the Indenture. In furtherance of the foregoing, and notwithstanding any other provision in this Lease, the Indenture, the Bond Purchase Agreement or the Performance Agreement to the contrary, and provided that the Company is the sole holder of the Bonds, the Company may set-off the then-current Basic Rent payment against the City's obligation to the Company as Bondholder under the Indenture in lieu of delivery of the Basic Rent on any Payment Date, without providing notice of such set-off to the Trustee. The Trustee may conclusively rely on the absence of any notice from the Company to the contrary as evidence that such set-off has occurred. On the final Payment Date, the Company will (a) if the Trustee holds the Bonds, notify the Trustee that the Bonds not previously paid are to be cancelled or (b) if an entity other than the Trustee holds the Bonds, deliver or cause to be delivered to the Trustee for cancellation, the Bonds not previously paid and the Company shall receive a credit against the Basic Rent payable by the Company in an amount equal to the principal amount of the Bonds so tendered for cancellation plus accrued interest thereon.

**Section 5.2. Additional Rent.** The Company shall pay as Additional Rent, within 30 days after receiving an itemized invoice therefor, the following amounts:

(a) all fees, charges and expenses, including agent and counsel fees and expenses, of the City, the Trustee and the Paying Agent incurred under or arising from the Indenture, this Lease or the Performance Agreement, including but not limited to claims by contractors or subcontractors, as and when the same become due;

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

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

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

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

(a) The obligations of the Company under this Lease to make payments of Basic Rent and Additional Rent on or before the date the same become due, and to perform all of its other obligations, covenants and agreements hereunder shall be absolute and unconditional, without notice or demand, and without abatement, deduction, set-off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Project has been started or completed, or whether the City's title thereto or to any part thereof is defective or nonexistent, and notwithstanding any damage to, loss, theft or destruction of, the Project or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Project, legal curtailment of the Company's use thereof, the eviction or constructive eviction of the Company, any change in the tax or other laws of the United States of America, the State of Missouri or any political subdivision thereof, any change in the City's legal organization or status, or any default of the City hereunder, and regardless of the invalidity of any action of the City; provided, however, that nothing in this Section is intended or shall be deemed to affect or impair in any way the rights of the Company to tender Bonds for redemption in satisfaction of Basic Rent as provided in **Section 5.1** and **Section 5.4** hereof, nor the right of the Company to terminate this Lease and repurchase the Project as provided in **Article XI**.

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

use hereunder, and in such event the City hereby agrees to cooperate fully with the Company and to take all action necessary to effect the substitution of the Company for the City in any such action or proceeding if the Company shall so request.

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

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

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

**ARTICLE VI**

**MAINTENANCE, TAXES AND UTILITIES**

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

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

(a) Subject to subsection (b) of this Section, the Company shall promptly pay and discharge, as the same become due, all taxes and assessments, general and special, and other governmental charges of any kind whatsoever that may be lawfully taxed, charged, levied, assessed or imposed upon or against or be payable for or in respect of the Project, or any part thereof or interest therein (including the leasehold estate of the Company therein) or any buildings, improvements, machinery and equipment at any time installed thereon by the Company, or the income therefrom, including any new taxes and assessments not of the kind enumerated above to the extent that the same are lawfully made, levied or assessed in lieu of or in addition to taxes or assessments now customarily levied against real or personal property, and further including all utility charges, assessments and other general governmental charges and impositions whatsoever, foreseen or unforeseen, which if not paid when due would impair the security of the Bonds or encumber the City's title to the Project; provided that with respect to any special assessments or other governmental charges that are lawfully levied and assessed which may be paid in installments, the Company shall be obligated to pay only such installments thereof as become due and payable during the Lease Term.

(b) The Company may, in its own name or in the City's name, contest the validity or amount of any tax, assessment or other governmental charge which the Company is required to bear, pay and discharge pursuant to the terms of this Article by appropriate legal proceedings instituted at least 10 days before the tax, assessment or other governmental charge complained of becomes delinquent if and provided

(1) the Company, before instituting any such contest, gives the City written notice of its intention to do so, (2) the Company diligently prosecutes any such contest, at all times effectively stays or prevents any official or judicial sale therefor, under execution or otherwise, and (3) the Company promptly pays any final judgment enforcing the tax, assessment or other governmental charge so contested and thereafter promptly procures record release or satisfaction thereof. The City agrees to cooperate fully with the Company in connection with any and all administrative or judicial proceedings related to any tax, assessment or other governmental charge. The Company shall save and hold harmless the City from any costs and expenses the City may incur related to any of the above.

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

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

**Section 6.4. Property Tax Exemption.** The City and the Company expect that while the Project is owned by the City and is subject to the Lease, the Project will be exempt from all ad valorem property taxes by reason of such ownership, and the City agrees that it will (at the expense of the Company) cooperate with the Company to defend such exemption against all parties. The City and the Company further acknowledge and agree that the City's obligations hereunder are contingent upon the Company making the payment of PILOT Payments (as defined in the Performance Agreement) and otherwise complying with the terms of the Performance Agreement during the term of this Lease. The terms and conditions of the Performance Agreement are incorporated herein as if fully set forth herein.

## ARTICLE VII

### INSURANCE

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

**Section 7.2. Casualty Insurance.**

(a) Before commencement of construction of the Project Improvements, the Company shall, at its sole cost and expense, obtain and shall maintain throughout the Lease Term, a policy or policies of insurance (including, if appropriate, builder's risk insurance) to keep the Project constantly insured against loss or damage by fire, lightning and all other risks covered by the extended coverage insurance endorsement then in use in the State of Missouri in an amount equal to the Full Insurable Value thereof (subject to reasonable loss deductible provisions). The insurance required pursuant to this Section shall be maintained with a generally recognized responsible insurance company or companies authorized to do business in the State of Missouri or generally recognized international insurers or reinsurers with an A.M.

Best rating of not less than "A-" or the equivalent thereof as may be selected by the Company. The Company shall deliver certificates of insurance for such policies to the City and the Trustee before commencement of construction of the Project Improvements and promptly after renewal of each insurance policy. All such policies of insurance pursuant to this Section, and all renewals thereof, shall name the City, the Trustee, and the Company as insureds, as their respective interests may appear, shall name the Trustee as loss payee and shall contain an agreement by the insurer that, notwithstanding any right of cancellation reserved to such insurer, such policy or contract shall continue in force for at least 10 days after written notice of cancellation to the Company, the Trustee, the City and each other insured or loss payee named therein.

(b) In the event of loss or damage to the Project, the Net Proceeds of casualty insurance carried pursuant to this Section shall be (1) paid over to the Trustee and shall be applied as provided in **Article IX** of this Lease, or (2) applied as directed in writing by, or on behalf of, the Owners of 100% in principal amount of the Bonds Outstanding, subject to the rights of any Financing Party under any Financing Documents.

**Section 7.3. Liability Insurance.**

(a) The Company shall at its sole cost and expense maintain or cause to be maintained at all times during the Lease Term commercial general liability insurance (including but not limited to coverage for operations, contingent liability, operations of subcontractors, completed operations and contractual liability), under which the City, the Company and the Trustee shall be named as additional insureds, properly protecting and indemnifying the City and the Trustee, in an amount not less than the limits of liability set by Section 537.610 of the Revised Statutes of Missouri, as amended (subject to reasonable loss deductible clauses not to exceed \$150,000 without the City's prior written consent). The policies of said insurance shall contain an agreement by the insurer that, notwithstanding any right of cancellation reserved to such insurer, such policy or contract shall continue in force for at least 10 days after written notice of cancellation to the Company, the Trustee, the City and each other insured or loss payee named therein. Certificates of such policies shall be furnished to the City and the Trustee on the date of execution of this Lease and promptly after renewal of each insurance policy.

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

**Section 7.4. Blanket Insurance Policies.** The Company may satisfy any of the insurance requirements set forth in this Article by using blanket policies of insurance, provided each and all of the requirements and specifications of this Article respecting insurance are complied with.

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

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

## ARTICLE VIII

### ALTERATION OF THE PROJECT

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

(a) The Company may make such additions, modifications and improvements in and to any part of the Project Site or Project Improvements as the Company from time to time may deem necessary or desirable for its business purposes. All additions, modifications and improvements made by the Company pursuant to this Section shall (i) be made in a good and workmanlike manner and in strict compliance with all laws, orders and ordinances applicable thereto and (ii) when commenced, be prosecuted to completion with due diligence. In no event shall the Company install any underground storage tanks, landfills, surface impoundments for waste materials or any above ground tanks without adequate containment to contain the entire contents of the largest tank, plus accumulated precipitation.

(b) The Company shall, following the Completion Date, notify the City in writing of any improvements to the Project Site or Project Improvements, other than the Project being financed with the proceeds of the Bonds, that in the aggregate are reasonably expected to exceed \$500,000 during any calendar year. In such case, before undertaking such improvements, the City and the Company shall amend the Performance Agreement to specifically identify such improvements and to either (i) provide for the payment by the Company of additional PILOT Payments (as defined in the Performance Agreement) or (ii) state that no additional PILOT Payments shall be required with respect to such improvements. If such improvements constitute personal property, any such improvements shall remain the property of the Company, shall not become part of the Project, and shall be subject to *ad valorem* taxes.

**Section 8.2. Additional Improvements on the Project Site.** Subject to **Section 8.1(b)** hereof, the Company may, at its sole cost and expense, construct on portions of the Project Site not theretofore occupied by buildings or improvements such additional buildings and improvements as the Company from time to time may deem necessary or desirable for its business purposes. All additional buildings and improvements constructed on the Project Site by the Company, and not paid for with Bond proceeds, pursuant to the authority of this Section shall not be included as Project Improvements and, during the life of this Lease, shall remain the property of the Company and may be added to, altered or razed and removed by the Company at any time. All additional buildings and improvements shall be made in a good and workmanlike manner and in strict compliance with all material laws, orders and ordinances applicable thereto and when commenced shall be prosecuted to completion with due diligence. The Company covenants and agrees (a) to make any repairs and restorations required to be made to the Project because of the construction of, addition to, alteration or removal of said additional buildings or improvements, and (b) to promptly and with due diligence either raze and remove or repair, replace or restore any of said additional buildings and improvements as may from time to time be damaged by fire or other casualty. The Company shall pay all ad valorem taxes and assessments payable with respect to such additional buildings and improvements which remain the property of the Company. If for any reason the City Assessor determines that such additional buildings and improvements are not subject to ad valorem taxes, the Company shall make payments in lieu of taxes in an amount equal to the taxes that would otherwise be due under this Section.

**Section 8.3. Permits and Authorizations.** The Company shall not do or permit others under its control to do any work on the Project related to any repair, rebuilding, restoration, replacement, modification or addition to the Project, or any part thereof, unless all requisite municipal and other governmental permits and authorizations shall have been first procured. The City agrees to act promptly

on all requests for such municipal permits and authorizations. In its capacity as owner of the Project, the City shall cooperate with the Company to obtain, amend, or maintain any existing or future municipal or other governmental permit or authorization for the Project that requires the City's signature, certification, or consent as the owner of any part of the Project, including executing any required applications, certifications, or reports; provided, however, that nothing herein contained shall be construed as the City's current approval of, or acquiescence to, any permit or authorization in its capacity as a municipal corporation, it being acknowledged that such matters can only be approved by the City in the proper exercise of its municipal functions through appropriate governmental procedures and in the exercise of the City's unlimited legislative discretion. All such work shall be done in a good and workmanlike manner and in strict compliance with all applicable material building and zoning laws and governmental regulations and requirements, and in accordance with the requirements, rules and regulations of all insurers under the policies required to be carried under the provisions of **Article VII** hereof.

**Section 8.4. Mechanics' Liens.**

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

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

## ARTICLE IX

### DAMAGE, DESTRUCTION AND CONDEMNATION

#### Section 9.1. Damage or Destruction.

(a) If the Project is damaged or destroyed by fire or any other casualty, whether or not covered by insurance, the Company, as promptly as practicable, shall either (1) make the determination described in subsection (f) below, or (2) repair, restore, replace or rebuild the same so that upon completion of such repairs, restoration, replacement or rebuilding the Project is of a value not less than the value thereof immediately before the occurrence of such damage or destruction or, at the Company's option, construct upon the Project Site new buildings and improvements thereafter together with all new machinery, equipment and fixtures which are either to be attached to or are to be used in connection with the operation or maintenance thereof, provided that (i) the value thereof shall not be less than the value of such destroyed or damaged Project Improvements immediately before the occurrence of such damage or destruction and (ii) the nature of such new buildings, improvements and fixtures will not impair the character of the Project as an enterprise permitted by the Act.

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

Unless the Company makes the determination described in subsection (f) below, the Net Proceeds of casualty insurance required by Article VII hereof received with respect to such damage or loss to the Project shall be used to pay the cost of repairing, restoring, replacing or rebuilding the Project or any part thereof. Insurance monies in an amount less than \$500,000 may be paid to or retained by the Company to be held in trust and used as provided herein. Insurance monies in any amount of \$500,000 or more shall be (1) paid to the Trustee and deposited in the Project Fund and shall be disbursed as provided in Section 4.4 hereof to pay the cost of repairing, restoring, replacing or rebuilding the Project or any part thereof, or (2) applied as directed in writing by, or on behalf of, the Owners of 100% in principal amount of the Bonds Outstanding. If the Company makes the determination described in subsection (f) below, the Net Proceeds shall be deposited with the Trustee and used to redeem Bonds as provided in subsection (f).

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

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

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

loss or damage, and that they will execute and deliver to such other parties such instruments as may be required to facilitate the recovery of any insurance monies.

(e) The Company agrees to give prompt written notice to the City and the Trustee with respect to all fires and any other casualties occurring in, on, at or about the Project Site causing (in the Company's opinion) damage of more than \$500,000.

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

(g) The Company shall not, by reason of its inability to use all or any part of the Project during any period in which the Project is damaged or destroyed or is being repaired, rebuilt, restored or replaced, nor by reason of the payment of the costs of such rebuilding, repairing, restoring or replacing, be entitled to any reimbursement from the City, the Trustee or the Owners or to any abatement or diminution of the rentals payable by the Company under this Lease or of any other obligations of the Company under this Lease except as expressly provided in this Section.

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

(a) If during the Lease Term, title to, or the temporary use of, all or any part of the Project is condemned by or sold under threat of condemnation to any authority possessing the power of eminent domain, to such extent that the claim or loss resulting from such condemnation is greater than \$500,000, the Company shall, within 90 days after the date of entry of a final order in any eminent domain proceedings granting condemnation or the date of sale under threat of condemnation, notify the City in writing, the Trustee, the mortgagee under the Leasehold Mortgage (if any) and the Financing Party under the Financing Document (if any) in writing as to the nature and extent of such condemnation or loss of title and whether it is practicable and desirable to acquire or construct substitute improvements.

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

domain proceedings, or of the sale proceeds, shall be applied in the same manner as provided in **Section 9.1** hereof (with respect to the receipt of casualty insurance proceeds).

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

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

(e) The City shall cooperate fully with the Company in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Project or any part thereof, and shall, to the extent it may lawfully do so, permit the Company to litigate in any such proceeding in the name and on behalf of the City. In no event will the City voluntarily settle or consent to the settlement of any prospective or pending condemnation proceedings with respect to the Project or any part thereof without the prior written consent of the Company.

**Section 9.3. Bondowner Approval.** Notwithstanding anything to the contrary contained in this **Article IX**, the proceeds of any insurance received subsequent to a casualty or of any condemnation proceedings (or threats thereof) may before the application thereof by the City or the Trustee be applied as directed in writing by the Owners of 100% of the principal amount of Bonds Outstanding, subject and subordinate to (a) the rights of the City and the Trustee to be paid all their expenses (including attorneys' fees, trustee's fees and any extraordinary expenses of the City and the Trustee) incurred in the collection of such gross proceeds and (b) the rights of the City to any amounts then due and payable under the Performance Agreement.

## ARTICLE X

### SPECIAL COVENANTS

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

**Section 10.2. Surrender of Possession.** Upon accrual of the City's right of re-entry to the extent provided in **Section 12.2(b)**, the Company shall peacefully surrender possession of the Project to the City in good condition and repair; provided, however, the Company may, within 90 days (or such later date as

the City may agree to) after the termination of this Lease, remove from the Project Site any buildings, improvements, furniture, trade fixtures, machinery and equipment owned by the Company and not constituting part of the Project. All repairs to and restorations of the Project required to be made because of such removal shall be made by and at the sole cost and expense of the Company, and during said 90-day (or extended) period the Company shall bear the sole responsibility for and bear the sole risk of loss for said buildings, improvements, furniture, trade fixtures, machinery and equipment owned by the Company and not constituting part of the Project. All buildings, improvements, furniture, trade fixtures, machinery and equipment owned by the Company and which are not so removed from the Project before the expiration of said period shall be the separate and absolute property of the City. Notwithstanding the foregoing, if the Company has paid all obligations due and owing under the Indenture (or such obligations have been cancelled by the Owners), this Lease and the Performance Agreement, the City shall convey the Project in accordance with **Section 11.2** hereof.

**Section 10.3. Right of Access to the Project.** The City may conduct such periodic inspections of the Project as may be generally provided in the City's municipal code. In addition, the Company agrees that the City and the Trustee and their duly authorized agents may, at reasonable times during normal business hours and, except in the event of emergencies, upon not less than two Business Day's prior notice, subject to the Company's usual business proprietary, safety, confidentiality and security requirements, enter upon the Project Site (a) to examine and inspect the Project without interference or prejudice to the Company's operations, (b) to monitor the acquisition, construction and installation provided for in **Section 4.2** hereof as may be reasonably necessary, (c) to examine all files, records, books and other materials in the Company's possession pertaining to the acquisition, installation or maintenance of the Project, and (d) upon either (1) the occurrence and continuance of an Event of Default or (2) the Company's failure to purchase the Project at the end of the Lease Term, to exhibit the Project to prospective purchasers, lessees or trustees.

**Section 10.4. Granting of Easements; Leasehold Mortgages and Financing Arrangements.**

(a) Subject to **Sections 10.4(c)** and **(d)**, if no Event of Default under this Lease has happened and is continuing, the City agrees that it will execute and deliver and will cause and direct the Trustee in writing to execute and deliver any instrument necessary or appropriate to confirm and grant, release or terminate any sublease, easement, license, right-of-way or other right or privilege or any such agreement or other arrangement, upon receipt by the City and the Trustee of: (1) a copy of the instrument of grant, release or termination or of the agreement or other arrangement, (2) a written application signed by an Authorized Company Representative requesting such instrument, (3) a certificate executed by an Authorized Company Representative stating that such grant or release is not detrimental to the proper conduct of the business of the Company, will not impair the effective use or interfere with the efficient and economical operation of the Project, will not materially adversely affect the security intended to be given by or under the Indenture and will be a Permitted Encumbrance, and (4) the Company's commitment to defend, indemnify and save and hold harmless the City from and against all claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, arising from the execution and delivery of any instrument, agreement or arrangement pursuant to this Section. If no Event of Default has happened and is continuing beyond any applicable grace period, any payments or other consideration received by the Company for any such grant or with respect to or under any such agreement or other arrangement shall be and remain the property of the Company; but, subject to **Sections 10.4(c)** and **(d)**, upon (i) termination of this Lease for any reason other than the redemption of the Bonds and/or the purchase of the Project by the Company or (ii) the occurrence and continuance of an Event of Default by the Company, all rights then existing of the Company with respect to or under such grant shall inure to the benefit of and be exercisable by the City and the Trustee.

(b) Subject to the Deed of Trust and any covenants set forth therein, the Company may mortgage or grant a deed of trust against the leasehold estate created by this Lease, with prior notice to but without the consent of the City, provided and upon condition that a duplicate original or certified copy or photostatic copy of each such mortgage, and the note or other obligation secured thereby, is delivered to the City within thirty (30) days after the execution thereof. The sale of the Company's leasehold estate at a foreclosure sale or trustee's sale under the Leasehold Mortgage or any assignment in lieu thereof shall not require the consent of the City, if (i) written notice of the proposed sale or assignment is provided to the City at least fifteen (15) days prior thereto, and (ii) before such sale or assignment, all payments then owing to the City under the Performance Agreement are paid.

(c) The City acknowledges and agrees that the Company may finance and refinance its rights and interests in the Project, this Lease and the leasehold estate created hereby and, in connection therewith, the Company may execute Financing Documents with one or more Financing Parties. Notwithstanding anything contained to the contrary in this Lease, the Company may, at any time and from time to time, with prior notice to but without the consent of the City (1) execute one or more Financing Documents upon the terms contained in this **Section 10.4** and (2) sublease or assign this Lease, the leasehold estate, any sublease and rights in connection therewith, and/or grant liens or security interests therein, to any Financing Party. Any further sublease or assignment by any Financing Party shall be subject to the provisions of **Section 13.1(c)**.

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

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

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

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

(4) the City may exercise any of its rights or remedies with respect to any other Event of Default by the Company, subject to the rights of the Financing Parties under this **Section 10.4(d)** as to such other events of default. Without limiting the generality of the foregoing, the holder of the Deed of Trust or any Leasehold Mortgage may cause the sale of the fee simple interest or any leasehold interest of the Company, as applicable, to be sold at foreclosure sale conducted in accordance with applicable law and the terms of the Deed of Trust or any Leasehold Mortgage, to accept assignment of this Lease in lieu of foreclosure and to appoint a receiver for the Project, all

without obtaining the prior written consent of the City but subject to the provisions of **Section 10.4(b)**;

(5) upon the occurrence and continuance of an Event of Default by the Company under this Lease, other than a default in the payment of money, the City shall take no action to effect a termination of this Lease by service of a notice or otherwise, without first giving notice thereof to each such Financing Party and permitting such Financing Party (or its designee, nominee, assignee or transferee) a reasonable time within which to remedy such default in the case of an Event of Default which is susceptible of being cured (provided that the period to remedy such Event of Default shall continue beyond any period set forth in the Lease to effect said cure so long as the Financing Party (or its designee, nominee, assignee or transferee) is diligently prosecuting such cure); provided that the Financing Party (or its designee, nominee, assignee or transferee) shall pay or cause to be paid to the City and the Trustee all expenses, including reasonable counsel fees, court costs and disbursements incurred by the City or the Trustee in connection with any such default;

(6) the Financing Parties (and their designees, nominees, assignees or transferees) may enter, possess and use the Project at such reasonable times and manner as are necessary or desirable to effectuate the remedies and enforce their respective rights under the Financing Documents; and

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

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

(f) The Company's obligations under any mortgage or Financing Document relating to the Project entered into after the date of execution of this Lease shall be subordinate to the Company's obligations under this Lease. The City acknowledges that the Deed of Trust was placed of record prior to the execution of this Lease and the Company's obligations under this Lease are subordinate to the Deed of Trust. The City further acknowledges that the Lender is a Financing Party and is entitled to the benefits of **Section 10.4(d)(1) through (7)** above.

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

#### **Section 10.5. Indemnification of the City and Trustee.**

(a) The Company shall defend, indemnify and save and hold harmless the City and the Trustee and their governing body members, officers, agents and employees from and against all claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, by or on behalf of any Person, firm or corporation arising from the issuance of the Bonds and the execution of the Performance Agreement, this Lease (or any instrument requested by the Company pursuant to **Section 10.4** hereof) or the Indenture and from the conduct or management of, or from any work or thing done in or on the Project during the Lease Term, and against and from all claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, arising during the Lease Term from (a) any condition of the Project, (b) any breach or default on the

part of the Company in the performance of any of its obligations under the Performance Agreement, this Lease or any related document, (c) any contract entered into in connection with the acquisition, purchase, construction, extension, installation or improvement of the Project, (d) any act of negligence of the Company or of any of its agents, contractors, servants, employees or licensees, (e) unless the Company has been released from liability pursuant to **Section 13.1(c)**, any act of negligence of any assignee or sublessee of the Company, or of any agents, contractors, servants, employees or licensees of any assignee or sublessee of the Company, (f) obtaining any applicable state and local sales and use tax exemptions for materials or goods that become part of the Project, and (g) any violation of Section 107.170 of the Revised Statutes of Missouri, as amended; provided, however, the indemnification contained in this **Section 10.5** shall not extend to the City to the extent that such claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, are (1) the result of work being performed at the Project by employees of the City, or (2) the result of negligence or willful misconduct by the City, and shall not extend to the Trustee to the extent that such claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, are the result of the willful misconduct of the Trustee. Upon written notice from the City or the Trustee of any such claims or demand, the Company shall defend them or either of them in any such action or proceeding; provided, that the City shall cooperate with the Company and provide reasonable assistance in such defense. All costs related to the defense of the City or the Trustee shall be paid by the Company. This **Section 10.5** shall survive any termination of the Performance Agreement and this Lease or the satisfaction and discharge of the Indenture.

(b) Pursuant to the terms of the Performance Agreement, Tech Electronics has also agreed to indemnify the City and the Trustee for all matters provided for under subsection (a) of this Section.

**Section 10.6. Depreciation, Investment Tax Credit and Other Tax Benefits.** The City agrees that any depreciation, investment tax credit or any other tax benefits with respect to the Project or any part thereof shall be made available to the Company, and the City will fully cooperate with the Company in any effort by the Company to avail itself of any such depreciation, investment tax credit or other tax benefits; provided, however, that the City shall not be required to incur any out-of-pocket expense in connection therewith.

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

**Section 10.8. Security Interests.** The City and the Company hereby authorize the Trustee to file all appropriate financing and continuation statements as may be required under the Uniform Commercial Code in order to fully preserve and protect the security of the Owners and the rights of the Trustee under the Indenture and the Leasehold Mortgage. At the written request of the Owners of 100% of the Bonds then Outstanding, the City and the Company agree to enter into any other instruments necessary for perfection of and continuance of the perfection of the security interests of the City and the Trustee in

the Project. Upon the written instructions of the Owners of 100% of the Bonds then Outstanding, the Trustee shall file all instruments the Owners deem necessary to be filed and shall continue or cause to be continued such instruments for so long as the Bonds are Outstanding. Notwithstanding the foregoing, the Trustee shall not be obligated to file any original instrument unless such instrument has been prepared by an attorney acceptable to the Trustee (and any reasonable attorneys' fees incurred in connection therewith shall be paid by the Company), and the Trustee shall not be responsible for the accuracy or sufficiency of any such original instrument. The City and the Company shall cooperate with the Trustee in this regard by providing such information as the Trustee may require to file or to renew such statements.

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

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

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

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

(b) The Company warrants and represents to the City and the Trustee that to the knowledge of the Company there are no conditions on the Project Site which materially violate any applicable Environmental Laws and no claims or demands have been asserted or made in writing by any third parties arising out of, relating to or in connection with any Hazardous Substances on, or allegedly on, the Project Site for any injuries suffered or incurred, or allegedly suffered or incurred, by reason of the foregoing. The Company represents that it is aware of the environmental conditions identified at the Project Site in the Phase I Environmental Site Assessment of the Project Site prepared by Environmental Operations, Inc. for Enterprise Bank & Trust, dated February 13, 2017 and the Phase II Site Assessment Report for the Project Site prepared by Environmental Operations, Inc. for Enterprise Bank & Trust, dated May 2, 2017 (the “Reports”). The Company shall handle all Hazardous Substances at the Project Site in conformance with law and shall take appropriate precautions to ensure that no person is exposed to Hazardous Substances at the Project Site without appropriate personal protective equipment. The Company shall cause Environmental Operations, Inc. to agree that the City may rely upon the Reports. The Company shall at all times comply with the criteria established for a “bona fide prospective purchaser” under 42 U.S.C. § 9601(40) and shall take all steps necessary to ensure that the City maintains status as a bona fide prospective purchaser under 42 U.S.C. § 9601(40).

(c) The Company will provide the City and the Trustee with copies of any notifications of releases of Hazardous Substances or of any environmental hazards or potential hazards which are given by or on behalf of the Company to any federal, state or local or other agencies or authorities or which are received by the Company from any federal, state or local or other agencies or authorities with respect to the

Project Site. Such copies shall be sent to the City and the Trustee concurrently with their being mailed or delivered to the governmental agencies or authorities or within ten days after they are made or received by the Company. The Company will provide to the City for review only, any environmental assessment ("Assessments(s)") and reports regarding the correction or remediation of material environmental issues required by Environmental Laws to be addressed in the Assessment ("Report(s)") concerning the Project Site and the Project Improvements; upon the completion of the City's review of the Assessments and the Reports, the City shall immediately return to the Company all originals and copies of the Assessments and Reports.

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

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

(f) The Company agrees to defend, indemnify, protect and hold harmless the City and the Trustee and their directors, officers, shareholders, officials or employees from and against any and all claims, demands, costs, liabilities, damages or expenses, including reasonable attorneys' fees, arising from (i) any release (as defined in 42 U.S.C. § 9601 (22)), actual or alleged, of any Hazardous Substances, upon the Project or respecting any products or materials previously, now or thereafter located upon the Project, regardless of whether such release or alleged release has occurred before the date hereof or hereafter occurs and regardless of whether such release or alleged release occurs as a result of any act, omission, negligence or misconduct of the Company or any third party or otherwise (except to the extent such release occurs as a result of any negligent omission or misconduct of the City), (ii) (A) any violation now existing or hereafter arising (actual or alleged) of, or any other liability under or in connection with, any applicable Environmental Laws relating to or affecting the Project, or (B) any violation now existing or hereafter arising, or any other liability, under or in connection with, any applicable Environmental Laws relating to any products or materials previously, now or hereafter located upon the Project, regardless of whether such violation or alleged violation or other liability is asserted or has occurred or arisen before the date hereof or hereafter is asserted or occurs or arises and regardless of whether such violation or alleged violation or other liability occurs or arises, as the result of any act, omission, negligence or misconduct of the Company or any third party or otherwise (except to the extent such release occurs as a result of any act, negligent

omission or misconduct of the City), (iii) any assertion by any third party of any claims or demands for any loss or injury arising out of, relating to or in connection with any Hazardous Substances in, on, under or emanating from or allegedly in, on, or emanating from the Project Site, or (iv) any material breach, falsity or failure of any of the representations, warranties, covenants and agreements contained in this Section; provided, however, that the Company's obligations under this **Section 10.9(f)** shall not apply to the extent such claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, are the result of (i) work being performed at the Project by employees of the City, (ii) negligence or willful misconduct by the City or the willful misconduct by the Trustee, or (iii) breach of this Lease, the Performance Agreement, or the Bond Purchase Agreement by the City. The City shall cooperate with the Company in the defense of any matters included within the foregoing indemnity without any obligation to expend money. This subsection (f) shall survive any termination of this Lease.

(g) Pursuant to the terms of the Performance Agreement, Tech Electronics has also agreed to indemnify the City and the Trustee as for all matters provided under subsection (f) of this Section.

(h) A Phase I environmental site assessment prepared for the Company by Environmental Operations, Inc., dated October 13, 2017 ("Phase I"), which the Company has provided to the City, concludes that a Phase II investigation conducted on the Project Site identified soil containing lead at concentrations exceeding Missouri Department of Natural Resources (MDNR) Default Target Levels (DTLs), and that this soil may not be considered "clean fill" if removed from the Project Site. In addition, the Phase II investigation identified groundwater containing polynuclear aromatic hydrocarbons (PAHs) at concentrations exceeding DTLs. The Phase I concludes that groundwater generated during future construction activities in portions of the Property may need to be discharged to sanitary sewer system under a special permit. The Company shall conduct all earthmoving and groundwater management activities pursuant to a Contaminated Media Management Plan prepared by a qualified environmental professional addressing the recommendations of the Phase I.

**Section 10.10. Additional Provisions Relating to Lender.** Notwithstanding anything to the contrary set forth in this Lease:

(a) The City and the Company hereby acknowledge and agree that the Project is subject to the Lender's interest under the Deed of Trust and that no further notice of the Deed of Trust is required in order for the Lender to have all Lender rights and protections provided herein and in the Indenture.

(b) The City hereby consents to (1) the pledge of the Bonds to the Lender, and (2) the granting of the Deed of Trust as a Permitted Encumbrance. Each of the City and the Company acknowledges and agrees that the Project is subject to the Deed of Trust and that no further notice of the Deed of Trust is required in order for Lender to have all of the rights and provided under this Lease or the Indenture.

(c) So long as the Lender is the pledgee of the Bonds, the following provisions relating to the Lender shall be applicable:

(1) The Lender shall be deemed to be the sole holder of the Bonds for purposes of any request, demand, authorization, direction, notice, consent or waiver under the Indenture, this Lease and all other documents relating to the Bonds.

(2) The Company shall not be permitted to terminate the Lease or surrender the Bonds for cancellation (except with respect to regularly scheduled payments of principal and interest) without the prior written consent of the Lender.

(3) Any opinion of counsel, including Bond Counsel, to be delivered to the City shall also be address to and delivered to the Lender.

(4) All notices to be given to or by the Company shall also be given to the Lender.

(5) The Lender shall have the right to cause the sale of the Company's leasehold interest to be sold at foreclosure or receiver's sale conducted in accordance with applicable law, to accept assignment of this Lease in lieu of foreclosure and to appoint a receiver for the Project, all without obtaining the prior consent of the City. The sale of the Company's leasehold estate at a foreclosure or receiver's sale or any assignment in lieu or deed in lieu thereof to the Lender shall not require the consent of the City.

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

(7) Upon the occurrence of any Event of Default under the Indenture, this Lease or any other document relating to the Bonds, the Lender shall be provided 30 days following the its receipt of written notice of such Event of Default from the City to cure such default.

(8) The rights of the City and the Trustee in and to any Net Proceeds are and will at all times be subject to the rights of the Lender with respect to such Net Proceeds.

(9) The Lender shall be a third-party beneficiary with power to enforce the same of any provisions granting rights to the Lender contained in this Lease, in the Indenture or in any other document relating to the Bonds, including, without limitation, **Sections 3.1, 10.4, 13.1 and 14.1** hereof, and the notice and cure provisions of **Sections 12.1 and 15.1** hereof.

(10) The provisions herein are supplemental to any other rights and remedies afforded the Lender in connection with the transactions evidenced by the Lease and the Indenture and the Lender shall have the benefit of all such rights and remedies.

## ARTICLE XI

### OPTION AND OBLIGATION TO PURCHASE THE PROJECT

**Section 11.1. Option to Purchase the Project.** The Company shall have, and is hereby granted, the option to purchase all or any portion of the Project at any time, upon payment in full or redemption of all Bonds then Outstanding or provision for their payment or redemption having been made pursuant to **Article XIII** of the Indenture. To exercise such option, the Company shall (a) give written notice to the City and to the Trustee, and shall specify therein the date of closing of such purchase, which date shall be not less than 30 nor more than 90 days from the date such notice is mailed, (b) provide evidence of payment of all real property taxes with respect to the Project Site and the Project Improvements, and (c) in case of a

redemption of the Bonds in accordance with the provisions of the Indenture, the Company shall make arrangements satisfactory to the Trustee for the giving of the required notice of redemption. Notwithstanding the foregoing, if the City or the Trustee provides notice of its intent to exercise its remedies hereunder upon an Event of Default (a "Remedies Notice"), the Company shall be deemed to have exercised its repurchase option under this Section on the 29th day following the issuance of the Remedies Notice without any further action by the Company; provided said Remedies Notice has not been rescinded by such date (such option to take place on the 29th day following the issuance of the Remedies Notice). The Company may rescind such exercise by providing written notice to the City and the Trustee on or before the 29th day and by taking such action as may be required to cure the default that led to the giving of the Remedies Notice; provided that if the Deed of Trust or any Leasehold Mortgage is then in effect, the Company may not rescind without the prior written consent of the holder thereof. The purchase price payable by the Company in the event of its exercise of the option granted in this Section shall be the sum of the following:

- (a) an amount of money which, when added to the amount then on deposit in the Bond Fund, will be sufficient to redeem all of the then-Outstanding Bonds on the earliest redemption date next succeeding the closing date, including, without limitation, principal and interest to accrue to said redemption date and redemption expense; plus
- (b) an amount of money equal to the Trustee's and the Paying Agent's agreed to and reasonable fees, charges and expenses under the Indenture accrued and to accrue until such redemption of the Bonds; plus
- (c) an amount of money equal to the City's reasonable charges and expenses incurred in connection with the Company exercising its option to purchase all or a portion of the Project; plus
- (d) an amount of money equal to all payments due and payable pursuant to the Performance Agreement through the end of the calendar year in which the date of purchase occurs; plus
- (e) the sum of \$10.00.

At its option, to be exercised at least five days before the date of closing such purchase, the Company may deliver to the Trustee for cancellation Bonds not previously paid, and the Company shall receive a credit against the purchase price payable by the Company in an amount equal to 100% of the principal amount of the Bonds so delivered for cancellation, plus the accrued interest thereon.

**Section 11.2. Conveyance of the Project.** At the closing of the purchase of the Project pursuant to this Article, the City will upon receipt of the purchase price deliver to the Company the following:

- (a) a release from the Trustee of the Project from the lien and/or security interest of the Indenture and this Lease and appropriate termination of financing statements as required under the Uniform Commercial Code; and
- (b) documents, including without limitation a special warranty deed as to the Project Site, conveying to the Company legal title to the Project, as it then exists, in recordable form, subject to the following: (i) those liens and encumbrances, if any, to which title to the Project was subject when conveyed to the City; (ii) those liens and encumbrances created by the Company or

to the creation or suffering of which the Company consented; (iii) those liens and encumbrances resulting from the failure of the Company to perform or observe any of the agreement on its part contained in this Lease; (iv) Permitted Encumbrances other than the Indenture and this Lease; and (v) if the Project or any part thereof is being condemned, the rights and title of any condemning authority.

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

**Section 11.4. Obligation to Purchase the Project.** The Company hereby agrees to purchase, and the City hereby agrees to sell, the Project upon the occurrence of (a) the expiration of the Lease Term following full payment of the Bonds or provision for payment thereof having been made in accordance with the provisions of the Indenture, (b) the sum of the items set forth in **Section 11.1(a)-(e)** and (c) payment of all real property taxes with respect to the Project Site and the Project Improvements. The amount of the purchase price under this Section shall be an amount sufficient to redeem all of the then-Outstanding Bonds, plus all payments due and payable pursuant to the Performance Agreement through the end of the calendar year in which the date of purchase occurs, plus accrued interest and the reasonable fees and expenses of the City and the Trustee.

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

## ARTICLE XII

### DEFAULTS AND REMEDIES

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

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

(b) default in the due observance or performance of any other covenant, agreement, obligation or provision of this Lease on the Company’s part to be observed or performed, and such default continues for 60 days after the City or the Trustee has given the Company written notice specifying such default (or such longer period as is reasonably required to cure such default, provided that (i) the Company has commenced such cure within said 60-day period, and (ii) the Company diligently prosecutes such cure to completion); or

(c) the Company (i) admits in writing its inability to pay its debts as they become due; or (ii) files a petition in bankruptcy or for reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the Bankruptcy Code as now or in the future amended or any other similar present or future federal or state statute or regulation, or files a pleading asking for such relief; or (iii) makes an assignment for the benefit of creditors; or (iv) consents to the appointment of a trustee, receiver or liquidator for all or a major portion of its property or fails to have the appointment of any trustee, receiver or liquidator made without the Company's consent or acquiescence, vacated or set aside; or (v) is finally adjudicated as bankrupt or insolvent under any federal or state law; or (vi) is subject to any proceeding, or suffers the entry of a final and non-appealable court order, under any federal or state law appointing a trustee, receiver or liquidator for all or a major part of its property or ordering the winding-up or liquidation of its affairs, or approving a petition filed against it under the Bankruptcy Code, as now or in the future amended, which order or proceeding, if not consented to by it, is not dismissed, vacated, denied, set aside or stayed within 90 days after the day of entry or commencement; or (vii) suffers a writ or warrant of attachment or any similar process to be issued by any court against all or any substantial portion of its property, and such writ or warrant of attachment or any similar process is not contested, stayed, or is not released within 60 days after the final entry, or levy or after any contest is finally adjudicated or any stay is vacated or set aside;

(d) an Event of Default under the Performance Agreement, as defined in **Section 6.1** thereof; or

(e) following substantial completion and initial occupancy of the Project Improvements by Tech Electronics, and prior to expiration of this Lease, Tech Electronics vacates, abandons, ceases operations or otherwise fails to occupy the Project Improvements as its corporate headquarters for 90 consecutive days, unless the Project has been subject to a casualty or condemnation and the Project is being reconstructed. For purposes hereof, the term "headquarters" means the location at which the Tech Electronics maintains its centralized administrative, management, finance and support functions to support its operations, and at which a majority of the Tech Electronics' executive officers related to the aforementioned functions are located.

**Section 12.2. Remedies on Default.** If any Event of Default referred to in **Section 12.1** hereof has occurred and continues beyond the period provided to cure, then the City may at the City's election (subject, however, to any restrictions against acceleration of the maturity of the Bonds or termination of this Lease in the Indenture), then or at any time thereafter, and while such default continues, take any one or more of the following actions, in addition to the remedies provided in **Section 12.5** hereof:

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

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

Owners), this Lease and the Performance Agreement, the City shall convey the Project in accordance with **Section 11.2** hereof.

**Section 12.3. Survival of Obligations.** The Company covenants and agrees with the City and Owners that its obligations under this Lease shall survive the cancellation and termination of this Lease, for any cause, and that the Company shall continue to pay the Basic Rent and Additional Rent (to the extent the Bonds remain Outstanding) and perform all other obligations provided for in this Lease, all at the time or times provided in this Lease; provided, however, that except for the indemnification contained in **Section 10.5** and **Section 10.9** hereof, upon the payment of all Basic Rent and Additional Rent required under **Article V** hereof, and upon the satisfaction and discharge of the Indenture under **Section 1301** thereof, and upon the Company's exercise of the purchase option contained in **Article XI** hereof, the Company's obligation under this Lease shall thereupon cease and terminate in full, except that obligations with respect to compensation and indemnification of the City and the Trustee shall not so terminate.

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

**Section 12.5. Rights and Remedies Cumulative.** The rights and remedies reserved by the City and the Company hereunder are in addition to those otherwise provided by law and shall be construed as cumulative and continuing rights. No one of them shall be exhausted by the exercise thereof on one or more occasions. The City and the Company shall each be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Lease, notwithstanding the availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity. Notwithstanding anything in this **Section 12.5** or elsewhere in this Lease to the contrary, however, the Company's option to re-purchase the property as provided in **Article XI** above shall not be terminated upon an Event of Default unless and until this Lease is terminated to the extent permitted pursuant to **Section 12.2(b)** above. The parties agree that no provision of this Lease shall be construed to allow the City to require the Company to acquire, construct or install the Project or to retain or create jobs.

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

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

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

## ARTICLE XIII

### ASSIGNMENT AND SUBLEASE

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

(a) The Company may sublease, assign, transfer, encumber or dispose of this Lease or any interest herein or part hereof for any lawful purpose under the Act upon providing written notice to the City. Except as otherwise provided in this Section or in **Section 10.10** above, the Company must obtain the City's prior written consent to any such disposition, unless such disposition is to an entity controlled by or under common control with or controlling the Company.

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

- (1) the Company shall notify the City and the Trustee of the assignment in writing;
- (2) such assignment shall be in writing, duly executed and acknowledged by the assignor and in proper form for recording;
- (3) such assignment shall include the entire then unexpired term of this Lease; and
- (4) a duplicate original of such assignment shall be delivered to the City and the Trustee within 10 days after the execution thereof, together with an assumption agreement, duly executed and acknowledged by the assignee and in proper form for recording, by which the assignee shall assume all of the terms, covenants and conditions of this Lease on the part of the Company to be performed and observed.

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

**Section 13.2. Assignment of Revenues by the City.** The City shall assign and pledge any rents, revenues and receipts receivable under this Lease, to the Trustee pursuant to the Indenture as security for payment of the principal of, interest and premium, if any, on the Bonds and the Company hereby consents to such pledge and assignment.

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

**Section 13.4. Restrictions on Sale or Encumbrance of Project by the City.** During the Lease Term, the City agrees that, except to secure the Bonds to be issued pursuant to the Indenture and except to

enforce its rights under **Section 12.2(b)** hereof and as permitted by **Section 10.4** hereof, it will not sell, assign, encumber, mortgage, transfer or convey the Project or any interest therein.

#### ARTICLE XIV

##### AMENDMENTS, CHANGES AND MODIFICATIONS

**Section 14.1. Amendments, Changes and Modifications.** Except as otherwise provided in this Lease or in the Indenture, subsequent to the issuance of Bonds and before the payment in full of the Bonds (or provision for the payment thereof having been made in accordance with the provisions of the Indenture), this Lease may not be effectively amended, changed, modified, altered or terminated without the prior written consent of the Trustee, given in accordance with the provisions of the Indenture, which consent, however, shall not be unreasonably withheld, and the written consent of all of the Owners and the Lender.

#### ARTICLE XV

##### MISCELLANEOUS PROVISIONS

**Section 15.1. Notices.** All notices, certificates or other communications required or desired to be given hereunder shall be in writing and shall be deemed duly given when (i) mailed by registered or certified mail, postage prepaid, or (ii) sent by overnight delivery or other delivery service which requires written acknowledgment of receipt by the addressee, addressed as follows:

(a) To the City:

City of Maplewood, Missouri  
7601 Manchester Road  
Maplewood, Missouri 63143  
ATTN: City Manager

with a copy to:

Husch Blackwell LLP  
190 Carondelet Plaza, Suite 600  
St. Louis, Missouri 63105  
ATTN: Craig S. Biesterfeld, Esq.

(b) To the Trustee:

UMB Bank, N.A.  
2 S. Broadway, Suite 600  
St. Louis, Missouri 63102  
ATTN: Corporate Trust Department

(c) To the Company:

Tech Electronics Properties, LLC  
c/o Tech Electronics, Inc.  
6437 Manchester Road  
St. Louis, Missouri 63139  
ATTN: Kurt S. Canova

with copies to:

Armstrong Teasdale LLP  
7700 Forsyth Boulevard, Suite 1800  
St. Louis, Missouri 63105  
ATTN: Robert Klahr, Esq.

and

Enterprise Bank & Trust  
3890 S Lindbergh Blvd.  
St. Louis, MO 63127  
Attention: Brian G. Geen

and

Thompson Coburn LLP  
One US Bank Plaza  
Suite 2700  
St. Louis, Missouri 63101  
Attn: Matthew R. Buesching, Esq.

All notices given by certified or registered mail as aforesaid shall be deemed fully given as of the date they are so mailed, provided, however, that notice to the Trustee shall be effective only upon receipt. A duplicate copy of each notice, certificate or other communication given hereunder by either the City or the Company to the other shall also be given to the Trustee and the Lender. The City, the Company and the Trustee may from time to time designate, by notice given hereunder to the others of such parties, such other address to which subsequent notices, certificates or other communications shall be sent.

**Section 15.2. The City Shall Not Unreasonably Withhold Consents and Approvals.**

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

**Section 15.3. Net Lease.** The parties hereto agree (a) that this Lease shall be deemed and construed to be a net lease, (b) that the payments of Basic Rent are designed to provide the City and the Trustee funds adequate in amount to pay all principal of and interest accruing on the Bonds as the same become due and payable, (c) that to the extent that the payments of Basic Rent are not sufficient to provide the City and the Trustee with funds sufficient for the purposes aforesaid, the Company shall be obligated to pay, and it does hereby covenant and agree to pay, upon demand therefor, as Additional Rent, such further sums of money, in cash, as may from time to time be required for such purposes, and (d) that if after the

principal of and interest on the Bonds and all costs incident to the payment of the Bonds (including the fees and expenses of the City and the Trustee) have been paid in full the Trustee or the City holds unexpended funds received in accordance with the terms hereof such unexpended funds shall, after payment therefrom of all sums then due and owing by the Company under the terms of this Lease, and except as otherwise provided in this Lease and the Indenture, become the absolute property of and be paid over forthwith to the Company.

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

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

**Section 15.6. Binding Effect.** This Lease shall be binding upon and shall inure to the benefit of the City and the Company and their respective successors and assigns. The Lender shall be a third-party beneficiary of any provisions contained herein granting rights to the Lender.

**Section 15.7. Severability.** If for any reason any provision of this Lease shall be determined to be invalid or unenforceable, the validity and enforceability of the other provisions hereof shall not be affected thereby.

**Section 15.8. Execution in Counterparts.** This Lease may be executed in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

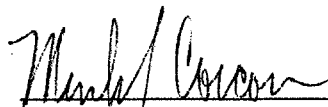
**Section 15.9. Electronic Storage.** The parties agree that the transaction described herein may be conducted and related documents may be sent, received or stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

**Section 15.10. City Consent.** Pursuant to the Ordinance, the City Manager is authorized to execute all documents on behalf of the City (including documents pertaining to the transfer of property, easements, licenses, rights-of-way, plats and similar documents or the financing and refinancing of the Project or any portion thereof as may be requested by the Company) required to carry out and comply with the intent of the Ordinance. The City Manager is also authorized, unless expressly provided herein, to grant on behalf of the City such consents, estoppels and waivers relating to the Bonds, the Indenture, the Performance Agreement or this Lease as may be requested during the term thereof; provided, such consents, estoppels and/or waivers shall not increase the principal amount of the Bonds, increase the term of this Lease or the tax exemption as provided for herein, waive an Event of Default or materially change the nature of the transaction unless otherwise approved by the City Council.

[Remainder of Page Intentionally Left Blank.]


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

**CITY OF MAPLEWOOD, MISSOURI**

By:   
City Manager

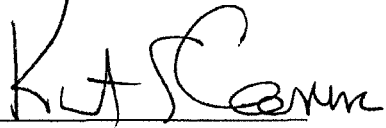
[SEAL]

ATTEST:

By:   
Deputy City Clerk

[Lease Agreement]

**TECH ELECTRONICS PROPERTIES, LLC**

By:   
Name: Kurt S. Canova  
Title: Authorized Representative

[Lease Agreement]

**EXHIBIT A**

**PROJECT SITE**

Adjusted Lot 3 as shown on that certain Boundary Adjustment Plat of Lot 3 and Lot 5 of Sunquad Subdivision Second Amended Plat, according to the plat thereof recorded in Plat Book 365, Page 574, Records of St. Louis County, Missouri.

## **EXHIBIT B**

### **PROJECT IMPROVEMENTS**

The Project Improvements consist of constructing an approximately 60,000 square foot corporate headquarters facility on the Project Site, to the extent paid for in whole with Bond proceeds.

**EXHIBIT C**

**FORM OF REQUISITION CERTIFICATE**

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

**REQUISITION CERTIFICATE**

**TO: UMB BANK, N.A., AS TRUSTEE UNDER A TRUST INDENTURE DATED AS OF DECEMBER 1, 2017, BETWEEN THE CITY OF MAPLEWOOD, MISSOURI, AND THE TRUSTEE, AND THE LEASE AGREEMENT DATED AS OF DECEMBER 1, 2017, BETWEEN THE CITY OF MAPLEWOOD, MISSOURI, AND TECH ELECTRONICS PROPERTIES, LLC**

The undersigned Authorized Company Representative hereby states and certifies that:

1. A total of \$ \_\_\_\_\_ is requested to pay for Project Costs (as defined in said Trust Indenture).

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

3. Each of the items for which payment is requested are or were desirable and appropriate in connection with the purchase and construction of the Project (as defined in the Trust Indenture), have been properly incurred and are a proper charge against the Project Fund, and have been paid by the Company or are justly due to the Persons whose names and addresses are stated on Schedule 1, and have not been the basis of any previous requisition from the Project Fund.

4. As of this date, except for the amounts referred to above, to the best of my knowledge there are no outstanding disputed statements for which payment is requested for labor, wages, materials, supplies or services in connection with the purchase and construction of the Project which, if unpaid, might become the basis of a vendors', mechanics', laborers' or materialmen's statutory or similar lien upon the Project or any part thereof.

**TECH ELECTRONICS PROPERTIES, LLC**

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

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

**CITY OF MAPLEWOOD, MISSOURI**

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

**SCHEDULE 1 TO REQUISITION CERTIFICATE**

**PROJECT COSTS**

<u>Payee and Address</u>	<u>Description</u>	<u>Amount</u>
--------------------------	--------------------	---------------





\* 2 0 1 7 1 2 0 1 0 0 4 5 5 \*

GERALD E. SMITH, RECORDER OF DEEDS  
ST. LOUIS COUNTY MISSOURI  
41 SOUTH CENTRAL, CLAYTON, MO 63105

TYPE OF INSTRUMENT: AGRMT  
GRANTOR: TECH ELECTRONICS PRPOERTIES LLC ETAL  
TO:  
GRANTEE:  
PROPERTY DESCRIPTION: SUNQUAD SUBDN SECOND AMEND L: ADJ 3 PB: 365 PG: 574

Lien Number

Notation

Locator

NOTE: I, the undersigned Recorder of Deeds, do hereby certify that the information shown on this Certification Sheet as to TYPE OF INSTRUMENT, the NAMES of the GRANTOR and GRANTEE as well as the DESCRIPTION of the REAL PROPERTY affected is furnished merely as a convenience only, and in the case of any discrepancy of such information between this Certification Sheet and the attached Document, the ATTACHED DOCUMENT governs. Only the DOCUMENT NUMBER, the DATE and TIME of filing for record, and the BOOK and PAGE of the recorded Document is taken from this CERTIFICATION SHEET.

RECORDER OF DEEDS DOCUMENT CERTIFICATION

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

Document Number  
00455

I, the undersigned Recorder of Deeds for said County and State, do hereby certify that the following and annexed instrument of writing, which consists of 7 pages, (this page inclusive), was filed for record in my office on the 1 day of December 2017 at 12:12PM and is truly recorded in the book and at the page number printed above.

In witness whereof I have hereunto set my hand and official seal the day, month and year aforesaid.

RE  
Deputy Recorder



*Gerald E. Smith*  
Recorder of Deeds  
St. Louis County, Missouri

Mail to:

First American Title NCS St. Louis  
8182 Maryland Ave., Ste 400  
Saint Louis, MO 63105

Destination code: 4002

RECORDING FEE 39.00  
(Paid at the time of Recording)

**E-RECORDED** simplifile®

ID: 2017120100459  
County: St. Louis  
Date: 12-1-2017 Time: 12:12 pm

-----  
(The above space is reserved for Recorder's Certification.)

TITLE OF DOCUMENT: MEMORANDUM OF LEASE AGREEMENT  
DATE OF DOCUMENT: <sup>As of</sup> December 1, 2017  
GRANTOR: CITY OF MAPLEWOOD, MISSOURI,  
a constitutional charter city organized and existing  
under the laws of the State of Missouri  
GRANTOR'S MAILING ADDRESS: 7601 Manchester Road  
Maplewood, Missouri 63143  
GRANTEE: TECH ELECTRONICS PROPERTIES, LLC  
a Missouri limited liability company  
GRANTEE'S MAILING ADDRESS: c/o Tech Electronics, Inc.  
6437 Manchester Road  
St. Louis, Missouri 63139  
Attn: Kurt S. Canova  
RETURN DOCUMENTS TO: Mark D. Grimm, Esq.  
Gilmore & Bell, P.C.  
211 North Broadway, Suite 2000  
St. Louis, Missouri 63102  
LEGAL DESCRIPTION: See Exhibit A.

## MEMORANDUM OF LEASE AGREEMENT

**THIS MEMORANDUM OF LEASE AGREEMENT**, gives notice of, ratifies and confirms the Lease Agreement dated as of December 1, 2017 (the "Lease"), between the **CITY OF MAPLEWOOD, MISSOURI**, a constitutional charter city organized and existing under the laws of the State of Missouri (the "City"), as lessor, and **TECH ELECTRONICS PROPERTIES, LLC**, a Missouri limited liability company (the "Company"), as lessee.

### RECITALS:

1. The City is authorized and empowered pursuant to the provisions of Article VI, Section 27(b) of the Missouri Constitution, Sections 100.010 through 100.200, inclusive, of the Revised Statutes of Missouri, as amended (collectively, the "Act"), and the City Charter, to purchase, construct, extend, equip and improve certain projects (as defined in the Act) and to issue industrial development revenue bonds for the purpose of providing funds to pay the costs of such projects and to lease or otherwise dispose of such projects to private persons or corporations for manufacturing, commercial, research and development, office industry, warehousing and industrial development purposes upon such terms and conditions as the City shall deem advisable.

2. Pursuant to the Act, the City Council passed an ordinance (the "Ordinance") on September 26, 2017, authorizing the City to issue its Taxable Industrial Revenue Bonds (Tech Electronics Properties, LLC Project), Series 2017, in the maximum principal amount of \$8,200,000 (the "Bonds"), for the purpose of (a) acquiring certain real estate located at 2 Sunnen Drive in the City (the "Project Site," as more fully described on **Exhibit A**, attached hereto and incorporated herein by reference) and (b) constructing a corporate headquarters facility (the "Project Improvements") for Tech Electronics, Inc. ("Tech Electronics") to be located on the Project Site.

3. Pursuant to the Ordinance, the City is authorized to enter into a Trust Indenture of even date herewith (the "Indenture") with UMB Bank, N.A., St. Louis, Missouri, as Trustee (the "Trustee") for the purpose of issuing and securing the Bonds, and to enter into the Lease, under which the City will, or will cause the Company to, purchase, construct and install the Project Improvements and will lease the Project Site and the Project Improvements (collectively, the "Project") to the Company in consideration of rentals that will be sufficient to pay the principal of and interest on the Bonds.

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

**NOW, THEREFORE**, in consideration of the premises and the mutual representations, covenants and agreements contained in the Lease, the City and the Company do represent, covenant and agree as follows:

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

2. **Lease Term.** The Lease shall become effective upon its execution and delivery. Subject to earlier termination pursuant to the provisions of the Lease, the lease of the Project shall terminate on December 31 of the 15<sup>th</sup> calendar year following the Completion Date.

3. **Basic Rent.** The Company covenants and agrees to pay to the Trustee in same day funds for the account of the City during the Lease Term, on or before 11:00 a.m., Trustee's local time, on each Payment Date, as Basic Rent for the Project, an amount which, when added to any collected funds then on deposit in the Bond Fund and available for the payment of principal on the Bonds and the interest thereon on such Payment Date, shall be equal to the amount payable on such Payment Date as principal of the Bonds and the interest thereon as provided in the Indenture.

4. **Definition of Terms.** Capitalized terms not defined herein shall have the meanings ascribed thereto in the Indenture and the Lease.

*[Remainder of Page Intentionally Left Blank.]*

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

TECH ELECTRONICS PROPERTIES, LLC

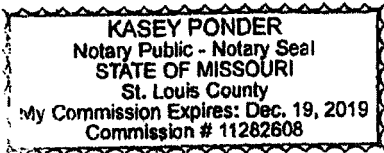
By: Kurt S. Canova  
Name: Kurt S. Canova  
Title: Authorized Representative

ACKNOWLEDGMENT

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

On this 20 day of NOV, 2017, before me, the undersigned, a Notary Public in and for said State, personally appeared Kurt S. Canova, to me personally known, who, being by me duly sworn, did say that he is the Authorized Representative of **TECH ELECTRONICS PROPERTIES, LLC**, a Missouri limited liability company, and that said instrument was signed on behalf of said company by authority of its governing body, and said officer acknowledged said instrument to be the free act and deed of said company.

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

Name: Kasey Ponder  
Notary Public in and for said State  
My Commission Expires:  
  
*PLEASE AFFIX SEAL FIRMLY AND CLEARLY IN THIS BOX*



**EXHIBIT A**

**PROJECT SITE**

**The land situated in the County of St. Louis, State of Missouri, and described as follows:**

**Adjusted Lot 3 as shown on that certain boundary Adjustment Plat of Lot 3 and Lot 5 of Sunquad Subdivision Second Amended Plat, according to the plat thereof recorded in Plat Book 365, Page 574, Records of St. Louis County, Missouri.**





\* 2 0 2 0 1 2 3 1 0 0 8 6 9 \*

GERALD E. SMITH, RECORDER OF DEEDS  
ST. LOUIS COUNTY MISSOURI  
41 SOUTH CENTRAL, CLAYTON, MO 63105

TYPE OF INSTRUMENT: **AMDT**  
GRANTOR: **CITY OF MAPLEWOOD, MISSOURI ETAL**  
TO:  
GRANTEE:

PROPERTY DESCRIPTION:

Lien Number

Notation

Locator

NOTE: I, the undersigned Recorder of Deeds, do hereby certify that the information shown on this Certification Sheet as to TYPE OF INSTRUMENT, the NAMES of the GRANTOR and GRANTEE as well as the DESCRIPTION of the REAL PROPERTY affected is furnished merely as a convenience only, and in the case of any discrepancy of such information between this Certification Sheet and the attached Document, the ATTACHED DOCUMENT governs. Only the DOCUMENT NUMBER, the DATE and TIME of filing for record, and the BOOK and PAGE of the recorded Document is taken from this CERTIFICATION SHEET.

RECORDER OF DEEDS DOCUMENT CERTIFICATION

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

Document Number  
**00869**

I, the undersigned Recorder of Deeds for said County and State, do hereby certify that the following and annexed instrument of writing, which consists of 10 pages, (this page inclusive), was filed for record in my office on the 31 day of December 2020 at 03:40PM and is truly recorded in the book and at the page number printed above.

In witness whereof I have hereunto set my hand and official seal the day, month and year aforesaid.

ER  
Deputy Recorder



*Gerald E. Smith*  
Recorder of Deeds  
St. Louis County, Missouri

Mail to:

Gilmore and Bell (E)  
2405 Grand Boulevard  
Kansas City, MO 64108

Destination code: **4000**

RECORDING FEE 48.00  
(Paid at the time of Recording)

-----  
(The above space is reserved for Recorder's Certification.)

TITLE OF DOCUMENT: FIRST AMENDMENT TO LEASE AGREEMENT

DATE OF DOCUMENT: As of December 1, 2020

GRANTOR: TECH ELECTRONICS PROPERTIES, LLC  
a Missouri limited liability company

GRANTORS' MAILING ADDRESS: Tech Electronics Properties, LLC  
c/o Tech Electronics, Inc.  
6437 Manchester Road  
St. Louis, Missouri 63139  
Attn: Kurt S. Canova

GRANTEE: CITY OF MAPLEWOOD, MISSOURI,  
a constitutional charter city organized and existing under  
the laws of the State of Missouri

GRANTEE'S MAILING ADDRESS: 7601 Manchester Road  
Maplewood, Missouri 63143

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

LEGAL DESCRIPTION: See **Exhibit A**

**FIRST AMENDMENT TO LEASE AGREEMENT**

**THIS FIRST AMENDMENT TO LEASE AGREEMENT**, dated as of December 1, 2020 (this “First Amendment to Lease”), is between the **CITY OF MAPLEWOOD, MISSOURI**, a constitutional charter city organized and existing under the laws of the State of Missouri (the “City”), as lessor, and **TECH ELECTRONICS PROPERTIES, LLC**, a Missouri limited liability company (the “Company”), as lessee;

**RECITALS:**

**A.** The City is authorized and empowered pursuant to the provisions of Article VI, Section 27(b) of the Missouri Constitution, Sections 100.010 through 100.200, inclusive, of the Revised Statutes of Missouri, as amended (collectively, the “Act”), and the City Charter, to purchase, construct, extend, improve and equip certain projects (as defined in the Act) and to issue industrial development revenue bonds for the purpose of providing funds to pay the costs of such projects and to lease or otherwise dispose of such projects to private persons or corporations for manufacturing, commercial, research and development, office industry, warehousing and industrial development purposes upon such terms and conditions as the City shall deem advisable.

**B.** Pursuant to the Act, the City Council passed Ordinance No. 5869 (the “2017 Ordinance”) on September 26, 2017, authorizing the City to issue its Taxable Industrial Revenue Bonds (Tech Electronics Properties, LLC Project), Series 2017, in the maximum principal amount of \$8,200,000 (the “Original Bonds”), for the purpose of (1) acquiring certain real estate located at 3233 South Big Bend Boulevard (formerly 2 Sunmen Drive) in the City (the “Project Site,” as more fully described on **Exhibit A**, attached hereto and incorporated herein by reference) and (2) constructing a corporate headquarters facility (the “Project Improvements,” as more fully described on **Exhibit B**, attached hereto and incorporated herein by reference) for Tech Electronics, Inc. (“Tech Electronics”) to be located on the Project Site.

**C.** Pursuant to the 2017 Ordinance, the City entered into (1) the Trust Indenture dated as of December 1, 2017 (the “Original Indenture” and, as amended by the below-defined First Amendment to Indenture, the “Indenture”) with UMB Bank, N.A., St. Louis, Missouri, as Trustee (the “Trustee”), for the purpose of issuing and securing the Original Bonds, and (2) the Lease Agreement dated as of December 1, 2017 with the Company (the “Original Lease” and, as amended by this First Amendment to Lease, the “Lease”), under which the City will, or will cause the Company to, purchase, construct and install the Project Improvements and will lease the Project Site and the Project Improvements (collectively, the “Project”) to the Company in consideration of rentals that will be sufficient to pay the principal of and interest on the Original Bonds.

**D.** Pursuant to the Act, the City Council passed an ordinance on \_\_\_\_\_, 2020, approving (1) the First Amendment to Trust Indenture dated of even date herewith (the “First Amendment to Indenture”) and (2) this First Amendment to Lease, for the purposes of amending the maximum principal amount of the Bonds and other terms set forth in the Original Bonds, the Original Indenture and the Original Lease.

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

**1. Definitions.** Capitalized terms not otherwise defined herein shall have the meanings set forth in the Original Lease. The definition of “Bonds” in Recital 2 of the Original Lease is hereby deleted and replaced with the following:

“**Bond**” or “**Bonds**” means the Taxable Industrial Revenue Bonds (Tech Electronics Properties, LLC Project), Series 2017, in the maximum aggregate principal amount of \$12,000,000, issued authenticated and delivered under and pursuant to the Indenture.

**2. Lease Term.** Section 3.2 of the Original Lease is hereby deleted in its entirety and replaced with the following:

**Section 3.2. Lease Term.** This Lease shall become effective upon its execution and delivery. Subject to earlier termination pursuant to the provisions of this Lease, the lease of the Project shall terminate on December 31, 2037.

**3. Maximum Amount of Project Costs.** The reference to “\$8,200,000” in Section 4.3 of the Original Lease is hereby deleted and replaced with “\$12,000,000”.

**4. Completion Date.** The last sentence of Section 4.5 of the Original Lease is hereby deleted in its entirety and replaced with the following:

Notwithstanding the foregoing, (i) such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being and (ii) such certificate shall be deemed given on December 31, 2023 if not actually filed with the City by December 31, 2023; provided, however, that the Company shall have the option to extend the Completion Date by one (1) year until December 31, 2024 by written notice to the City on or before December 1, 2023, in which case such certificate shall be deemed executed and filed on December 31, 2024 if not actually executed and filed by December 31, 2024.

**5. Trustee Consent and Waiver.** The Company, as Owner of 100% of the Outstanding Bonds, hereby directs the Trustee to consent to this First Amendment to Lease, waive any and all rights to prior notice or opinions under the Original Lease or the Indenture, and execute the corresponding First Amendment to Indenture.

**6. Tender of Bond.** The Company, simultaneously with execution of this First Amendment to Lease, will tender the R-1 Bond for cancellation and shall receive the R-2 Bond in exchange therefor, as described in the First Amendment to Indenture.

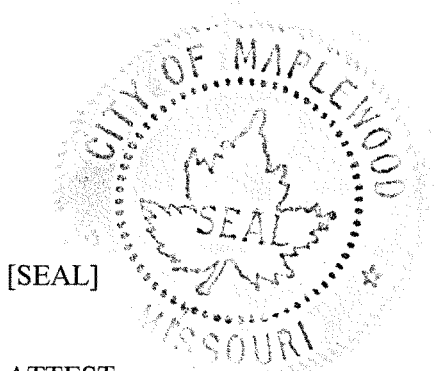
**7. Counterparts.** This First Amendment to Lease may be executed in multiple counterparts.

**8. Applicability of Original Lease.** Except as expressly modified hereby, all other terms and conditions of the Original Lease shall remain unaltered and in full force and effect.

**9. Anti-Discrimination Against Israel Act.** Pursuant to Section 34.600 of the Revised Statutes of Missouri, the Company certifies it is not currently engaged in and shall not, for the duration of this Lease, engage in a boycott of goods or services from (a) the State of Israel, (b) companies doing business in or with the State of Israel or authorized by, licensed by, or organized under the laws of the State of Israel, or (c) persons or entities doing business in the State of Israel.

[Remainder of Page Intentionally Left Blank]

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



CITY OF MAPLEWOOD, MISSOURI

By: [Signature]  
Acting City Manager

[SEAL]

ATTEST:

By: [Signature: Kara Scheidt]  
Deputy City Clerk

ACKNOWLEDGMENT

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

On this 16th day of December, 2020, before me, the undersigned, a Notary Public, appeared **ANTHONY TRAXLER**, to me personally known, who, being by me duly sworn, did say that he is the Acting City Manager of the **CITY OF MAPLEWOOD, MISSOURI**, and that the seal affixed to the foregoing instrument is the corporate seal of said City, and that said instrument was signed and sealed by authority of its City Council, and said officers acknowledged said instrument to be executed for the purposes therein stated and as 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.

[Signature: Mark D. Grimm]  
Name: Mark D Grimm  
Notary Public in and for said State

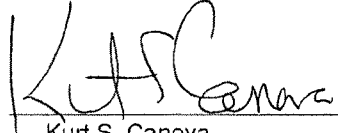
My Commission Expires:  

MARK D. GRIMM Notary Public - Notary Seal State of Missouri Commissioned for St. Louis County My Commission Expires: August 08, 2023 Commission Number: 15527361
---

  
PLEASE AFFIX SEAL FIRMLY AND CLEARLY IN THIS BOX

[First Amendment to Lease]

TECH ELECTRONICS PROPERTIES, LLC

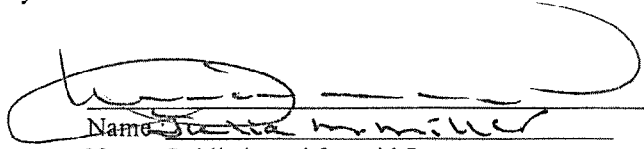
By:   
Name: Kurt S. Canova  
Title: Authorized Representative

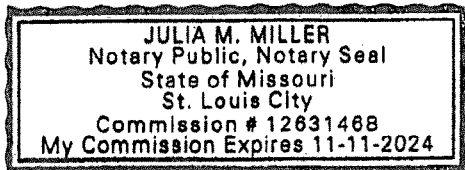
ACKNOWLEDGMENT

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

On this 16th day of December, 2020, before me, the undersigned, a Notary Public in and for said State, personally appeared Kurt S. Canova, to me personally known, who, being by me duly sworn, did say that he is the Authorized Representative of **TECH ELECTRONICS PROPERTIES, LLC**, a Missouri limited liability company, and that said instrument was signed on behalf of said company by authority of its governing body, and said officer acknowledged said instrument to be the free act and deed of said company.

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

  
Name: Julia M. Miller

Notary Public in and for said State  
My Commission Expires:  
  
*PLEASE AFFIX SEAL FIRMLY AND CLEARLY IN THIS BOX*

[First Amendment to Lease]

This First Amendment to Lease is hereby acknowledged and consented to by the Lender named in the Indenture as of the date first written above. Lender hereby waives any prior notice requirement in connection with the execution of this First Amendment to Lease.

ENTERPRISE BANK & TRUST, as Lender

By: [Signature]  
Name: Brian G. Green  
Title: Assistant Vice President

ACKNOWLEDGMENT

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

On this 17th day of December, 2020, before me, the undersigned, a Notary Public in and for said State, personally appeared Brian Green, to me personally known, who, being by me duly sworn, did say that he is the Asst. Vice President of **ENTERPRISE BANK & TRUST**, a Officer, and that said instrument was signed on behalf of said company by authority of its governing body, and said officer acknowledged said instrument to be the free act and deed of said corporation.

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

[Signature]  
Name: Matt Busch  
Notary Public in and for said State  
My Commission Expires: 7/19/22


MATT BUSS  
Notary Public - Notary Seal  
St Louis County - State of Missouri  
Commission Number 14474418  
My Commission Expires Jul 19, 2022

PLEASE AFFIX SEAL FIRMLY AND CLEARLY IN THIS BOX

[First Amendment to Lease]

This First Amendment to Lease is hereby acknowledged and consented to by the Trustee named in the Indenture as of the date first written above.

UMB BANK, N.A., as Trustee

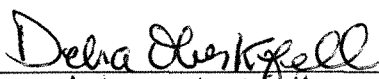
By:   
Name: Nancy Prives  
Title: Vice President

**ACKNOWLEDGMENT**

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

On this 15th day of December, 2020, before me, the undersigned, a Notary Public in and for said State, personally appeared Nancy Prives, to me personally known, who, being by me duly sworn, did say that she is the Vice President of **UMB BANK, N.A.**, and that said instrument was signed on behalf of said company by authority of its governing body, and said officer acknowledged said instrument to be the free act and deed of said corporation.

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

  
Name : Debra Oberkfell  
Notary Public in and for said State  
My Commission Expires: JAN 5, 2023

**DEBRA OBERKFELL**  
Notary Public - Notary Seal  
STATE OF MISSOURI  
ST. LOUIS CITY County  
My Commission Expires: Jan. 5, 2023  
Commission # 15426348

PLEASE AFFIX SEAL FIRMLY AND CLEARLY IN THIS BOX

[First Amendment to Lease]

**EXHIBIT A**

**PROJECT SITE**

The land situated in the County of St. Louis, State of Missouri, and described as follows:

Adjusted Lot 3 as shown on that certain boundary Adjustment Plat of Lot 3 and Lot 5 of Sunquad Subdivision Second Amended Plat, according to the plat thereof recorded in Plat Book 365, Page 574, Records of St. Louis County, Missouri.

**EXHIBIT B**

**PROJECT IMPROVEMENTS**

The Project Improvements consist of constructing an approximately 60,000 square foot corporate headquarters facility on the Project Site, to the extent paid for in whole with Bond proceeds.



\* 2 0 2 0 1 2 3 1 0 0 8 6 9 \*

GERALD E. SMITH, RECORDER OF DEEDS  
ST. LOUIS COUNTY MISSOURI  
41 SOUTH CENTRAL, CLAYTON, MO 63105

TYPE OF INSTRUMENT: **AMDT**  
GRANTOR: **CITY OF MAPLEWOOD, MISSOURI ETAL**  
TO:  
GRANTEE:

PROPERTY DESCRIPTION:

Lien Number

Notation

Locator

NOTE: I, the undersigned Recorder of Deeds, do hereby certify that the information shown on this Certification Sheet as to TYPE OF INSTRUMENT, the NAMES of the GRANTOR and GRANTEE as well as the DESCRIPTION of the REAL PROPERTY affected is furnished merely as a convenience only, and in the case of any discrepancy of such information between this Certification Sheet and the attached Document, the ATTACHED DOCUMENT governs. Only the DOCUMENT NUMBER, the DATE and TIME of filing for record, and the BOOK and PAGE of the recorded Document is taken from this CERTIFICATION SHEET.

RECORDER OF DEEDS DOCUMENT CERTIFICATION

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

Document Number  
**00869**

I, the undersigned Recorder of Deeds for said County and State, do hereby certify that the following and annexed instrument of writing, which consists of 10 pages, (this page inclusive), was filed for record in my office on the 31 day of December 2020 at 03:40PM and is truly recorded in the book and at the page number printed above.

In witness whereof I have hereunto set my hand and official seal the day, month and year aforesaid.

ER  
Deputy Recorder



*Gerald E. Smith*  
Recorder of Deeds  
St. Louis County, Missouri

Mail to:

Gilmore and Bell (E)  
2405 Grand Boulevard  
Kansas City, MO 64108

Destination code: **4000**

RECORDING FEE 48.00  
(Paid at the time of Recording)

-----  
(The above space is reserved for Recorder's Certification.)

TITLE OF DOCUMENT: FIRST AMENDMENT TO LEASE AGREEMENT

DATE OF DOCUMENT: As of December 1, 2020

GRANTOR: TECH ELECTRONICS PROPERTIES, LLC  
a Missouri limited liability company

GRANTORS' MAILING ADDRESS: Tech Electronics Properties, LLC  
c/o Tech Electronics, Inc.  
6437 Manchester Road  
St. Louis, Missouri 63139  
Attn: Kurt S. Canova

GRANTEE: CITY OF MAPLEWOOD, MISSOURI,  
a constitutional charter city organized and existing under  
the laws of the State of Missouri

GRANTEE'S MAILING ADDRESS: 7601 Manchester Road  
Maplewood, Missouri 63143

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

LEGAL DESCRIPTION: See **Exhibit A**

**FIRST AMENDMENT TO LEASE AGREEMENT**

**THIS FIRST AMENDMENT TO LEASE AGREEMENT**, dated as of December 1, 2020 (this “First Amendment to Lease”), is between the **CITY OF MAPLEWOOD, MISSOURI**, a constitutional charter city organized and existing under the laws of the State of Missouri (the “City”), as lessor, and **TECH ELECTRONICS PROPERTIES, LLC**, a Missouri limited liability company (the “Company”), as lessee;

**RECITALS:**

**A.** The City is authorized and empowered pursuant to the provisions of Article VI, Section 27(b) of the Missouri Constitution, Sections 100.010 through 100.200, inclusive, of the Revised Statutes of Missouri, as amended (collectively, the “Act”), and the City Charter, to purchase, construct, extend, improve and equip certain projects (as defined in the Act) and to issue industrial development revenue bonds for the purpose of providing funds to pay the costs of such projects and to lease or otherwise dispose of such projects to private persons or corporations for manufacturing, commercial, research and development, office industry, warehousing and industrial development purposes upon such terms and conditions as the City shall deem advisable.

**B.** Pursuant to the Act, the City Council passed Ordinance No. 5869 (the “2017 Ordinance”) on September 26, 2017, authorizing the City to issue its Taxable Industrial Revenue Bonds (Tech Electronics Properties, LLC Project), Series 2017, in the maximum principal amount of \$8,200,000 (the “Original Bonds”), for the purpose of (1) acquiring certain real estate located at 3233 South Big Bend Boulevard (formerly 2 Sunnen Drive) in the City (the “Project Site,” as more fully described on **Exhibit A**, attached hereto and incorporated herein by reference) and (2) constructing a corporate headquarters facility (the “Project Improvements,” as more fully described on **Exhibit B**, attached hereto and incorporated herein by reference) for Tech Electronics, Inc. (“Tech Electronics”) to be located on the Project Site.

**C.** Pursuant to the 2017 Ordinance, the City entered into (1) the Trust Indenture dated as of December 1, 2017 (the “Original Indenture” and, as amended by the below-defined First Amendment to Indenture, the “Indenture”) with UMB Bank, N.A., St. Louis, Missouri, as Trustee (the “Trustee”), for the purpose of issuing and securing the Original Bonds, and (2) the Lease Agreement dated as of December 1, 2017 with the Company (the “Original Lease” and, as amended by this First Amendment to Lease, the “Lease”), under which the City will, or will cause the Company to, purchase, construct and install the Project Improvements and will lease the Project Site and the Project Improvements (collectively, the “Project”) to the Company in consideration of rentals that will be sufficient to pay the principal of and interest on the Original Bonds.

**D.** Pursuant to the Act, the City Council passed an ordinance on \_\_\_\_\_, 2020, approving (1) the First Amendment to Trust Indenture dated of even date herewith (the “First Amendment to Indenture”) and (2) this First Amendment to Lease, for the purposes of amending the maximum principal amount of the Bonds and other terms set forth in the Original Bonds, the Original Indenture and the Original Lease.

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

1. **Definitions.** Capitalized terms not otherwise defined herein shall have the meanings set forth in the Original Lease. The definition of “Bonds” in Recital 2 of the Original Lease is hereby deleted and replaced with the following:

“Bond” or “Bonds” means the Taxable Industrial Revenue Bonds (Tech Electronics Properties, LLC Project), Series 2017, in the maximum aggregate principal amount of \$12,000,000, issued authenticated and delivered under and pursuant to the Indenture.

2. **Lease Term.** Section 3.2 of the Original Lease is hereby deleted in its entirety and replaced with the following:

**Section 3.2. Lease Term.** This Lease shall become effective upon its execution and delivery. Subject to earlier termination pursuant to the provisions of this Lease, the lease of the Project shall terminate on December 31, 2037.

3. **Maximum Amount of Project Costs.** The reference to “\$8,200,000” in Section 4.3 of the Original Lease is hereby deleted and replaced with “\$12,000,000”.

4. **Completion Date.** The last sentence of Section 4.5 of the Original Lease is hereby deleted in its entirety and replaced with the following:

Notwithstanding the foregoing, (i) such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being and (ii) such certificate shall be deemed given on December 31, 2023 if not actually filed with the City by December 31, 2023; provided, however, that the Company shall have the option to extend the Completion Date by one (1) year until December 31, 2024 by written notice to the City on or before December 1, 2023, in which case such certificate shall be deemed executed and filed on December 31, 2024 if not actually executed and filed by December 31, 2024.

5. **Trustee Consent and Waiver.** The Company, as Owner of 100% of the Outstanding Bonds, hereby directs the Trustee to consent to this First Amendment to Lease, waive any and all rights to prior notice or opinions under the Original Lease or the Indenture, and execute the corresponding First Amendment to Indenture.

6. **Tender of Bond.** The Company, simultaneously with execution of this First Amendment to Lease, will tender the R-1 Bond for cancellation and shall receive the R-2 Bond in exchange therefor, as described in the First Amendment to Indenture.

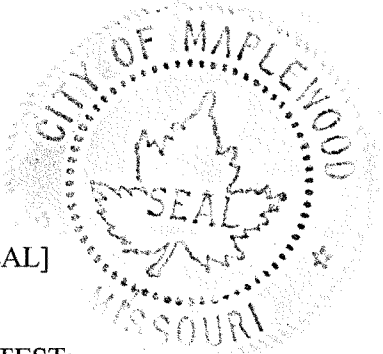
7. **Counterparts.** This First Amendment to Lease may be executed in multiple counterparts.

8. **Applicability of Original Lease.** Except as expressly modified hereby, all other terms and conditions of the Original Lease shall remain unaltered and in full force and effect.

9. **Anti-Discrimination Against Israel Act.** Pursuant to Section 34.600 of the Revised Statutes of Missouri, the Company certifies it is not currently engaged in and shall not, for the duration of this Lease, engage in a boycott of goods or services from (a) the State of Israel, (b) companies doing business in or with the State of Israel or authorized by, licensed by, or organized under the laws of the State of Israel, or (c) persons or entities doing business in the State of Israel.

[Remainder of Page Intentionally Left Blank]

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



[SEAL]

CITY OF MAPLEWOOD, MISSOURI

By: [Signature]  
Acting City Manager

ATTEST:

By: [Signature: Kara Scheidt]  
Deputy City Clerk

ACKNOWLEDGMENT

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

On this 16th day of December, 2020, before me, the undersigned, a Notary Public, appeared **ANTHONY TRAXLER**, to me personally known, who, being by me duly sworn, did say that he is the Acting City Manager of the **CITY OF MAPLEWOOD, MISSOURI**, and that the seal affixed to the foregoing instrument is the corporate seal of said City, and that said instrument was signed and sealed by authority of its City Council, and said officers acknowledged said instrument to be executed for the purposes therein stated and as 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.

[Signature: Mark D. Grimm]  
Name: Mark D Grimm  
Notary Public in and for said State

My Commission Expires:

MARK D. GRIMM Notary Public - Notary Seal State of Missouri Commissioned for St. Louis County My Commission Expires: August 08, 2023 Commission Number: 15527361
---

PLEASE AFFIX SEAL FIRMLY AND CLEARLY IN THIS BOX

[First Amendment to Lease]

TECH ELECTRONICS PROPERTIES, LLC

By: Kurt S. Canova  
Name: Kurt S. Canova  
Title: Authorized Representative

ACKNOWLEDGMENT

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

On this 16th day of December, 2020, before me, the undersigned, a Notary Public in and for said State, personally appeared Kurt S. Canova, to me personally known, who, being by me duly sworn, did say that he is the Authorized Representative of **TECH ELECTRONICS PROPERTIES, LLC**, a Missouri limited liability company, and that said instrument was signed on behalf of said company by authority of its governing body, and said officer acknowledged said instrument to be the free act and deed of said company.

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

Julia M. Miller  
Name Julia M. Miller  
Notary Public in and for said State

My Commission Expires:  

JULIA M. MILLER Notary Public, Notary Seal State of Missouri St. Louis City Commission # 12631468 My Commission Expires 11-11-2024
---

  
*PLEASE AFFIX SEAL FIRMLY AND CLEARLY IN THIS BOX*

[First Amendment to Lease]

This First Amendment to Lease is hereby acknowledged and consented to by the Lender named in the Indenture as of the date first written above. Lender hereby waives any prior notice requirement in connection with the execution of this First Amendment to Lease.

ENTERPRISE BANK & TRUST, as Lender

By: [Signature]  
Name: Brian G. Green  
Title: Assistant Vice President

ACKNOWLEDGMENT

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

On this 17th day of December, 2020, before me, the undersigned, a Notary Public in and for said State, personally appeared Brian Green, to me personally known, who, being by me duly sworn, did say that he is the Asst. Vice President of **ENTERPRISE BANK & TRUST**, a Officer, and that said instrument was signed on behalf of said company by authority of its governing body, and said officer acknowledged said instrument to be the free act and deed of said corporation.

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

[Signature]  
Name: Matt Busch  
Notary Public in and for said State

My Commission Expires: 7/19/22


MATT BUSS  
Notary Public - Notary Seal  
St Louis County - State of Missouri  
Commission Number 14474418  
My Commission Expires Jul 19, 2022

PLEASE AFFIX SEAL FIRMLY AND CLEARLY IN THIS BOX

[First Amendment to Lease]

This First Amendment to Lease is hereby acknowledged and consented to by the Trustee named in the Indenture as of the date first written above.

UMB BANK, N.A., as Trustee

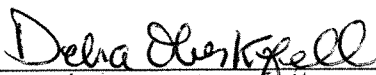
By:   
Name: Nancy Prives  
Title: Vice President

**ACKNOWLEDGMENT**

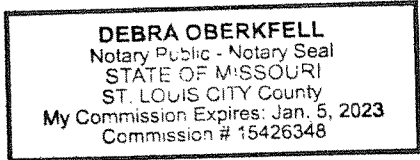
STATE OF MISSOURI        )  
  ) SS.  
COUNTY OF ST. LOUIS    )

On this 15th day of December, 2020, before me, the undersigned, a Notary Public in and for said State, personally appeared Nancy Prives, to me personally known, who, being by me duly sworn, did say that she is the Vice President of UMB BANK, N.A., and that said instrument was signed on behalf of said company by authority of its governing body, and said officer acknowledged said instrument to be the free act and deed of said corporation.

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

  
Name : Debra Oberkfell  
Notary Public in and for said State

My Commission Expires: JAN 5, 2023



PLEASE AFFIX SEAL FIRMLY AND CLEARLY IN THIS BOX

**EXHIBIT A**

**PROJECT SITE**

The land situated in the County of St. Louis, State of Missouri, and described as follows:

Adjusted Lot 3 as shown on that certain boundary Adjustment Plat of Lot 3 and Lot 5 of Sunquad Subdivision Second Amended Plat, according to the plat thereof recorded in Plat Book 365, Page 574, Records of St. Louis County, Missouri.

**EXHIBIT B**

**PROJECT IMPROVEMENTS**

The Project Improvements consist of constructing an approximately 60,000 square foot corporate headquarters facility on the Project Site, to the extent paid for in whole with Bond proceeds.



## SUMMARY OF ECONOMIC DEVELOPMENT TOOLS:

THIS OUTLINE CONTAINS A SUMMARY OF –

TAX INCREMENT FINANCING  
SALES TAX REBATE/DEVELOPMENT AGREEMENTS  
TRANSPORTATION DEVELOPMENT DISTRICTS  
COMMUNITY IMPROVEMENT DISTRICTS  
SPECIAL BUSINESS DISTRICTS  
NEIGHBORHOOD IMPROVEMENT DISTRICTS  
PROPERTY TAX ABATEMENT UNDER CHAPTER 353 RSMO  
PROPERTY TAX ABATEMENT UNDER CHAPTER 100 RSMO  
LAND CLEARANCE FOR REDEVELOPMENT AUTHORITY LAW  
LOCAL OPTION ECONOMIC DEVELOPMENT SALES TAX

*(Updated through January 1, 2024)*

---

The following materials were prepared by the public finance law firm of Gilmore & Bell, P.C.

Gilmore & Bell is one of the leading public finance law firms in the United States. The firm specializes in public finance transactions, serving as bond counsel or underwriters' counsel in a wide variety of tax-exempt and taxable financings and providing tax and arbitrage rebate services in connection with tax-exempt financings. The firm also provides advice to cities, counties and states regarding economic development incentives, administers special taxing districts and handles securities law matters. Gilmore & Bell has more than 50 attorneys and seven offices, located in St. Louis and Kansas City, Missouri, Wichita, Kansas, Omaha, Nebraska, Edwardsville and Champaign, Illinois, and Salt Lake City, Utah.

For more information, please visit the Gilmore & Bell website at [www.gilmorebell.com](http://www.gilmorebell.com), or contact one of the following attorneys:

***In Kansas City (816-221-1000):***

Sid Douglas  
Haden Crumpton  
Sarah Granath

David Martin  
Megan Miller  
Toni Stegeman

***In St. Louis (314-436-1000):***

Stephanie Bogue  
Erick Creach  
Shannon Creighton  
Sean Flynn

Mark Grimm  
Claire Halpern  
Mark Spykerman  
Jason Terry

## **SUMMARY OF THE OVERTURNING OF HB 1606**

On December 19, 2023, the Missouri Supreme Court declared that House Bill 1606 (passed during the 2022 Legislative Session) was unconstitutional. **As a result, the following provisions (all of which were included within House Bill 1606) are no longer applicable:**

### **Tax Increment Financing**

- Information regarding a continued public hearing held prior to the adoption of an ordinance proposing the redevelopment area or approving a redevelopment plan or project must be provided to the Missouri Department of Revenue.
- Any municipality establishing a redevelopment area must provide the following information to the State Auditor and the Missouri Department of Revenue: (1) a description of the boundaries of the redevelopment area, (2) any amendments made to the boundaries of a redevelopment area, (3) the estimated redevelopment project costs, (4) the estimated date of completion of the redevelopment projects, and (5) the date on which the redevelopment area is to be dissolved.
- For any redevelopment area established after August 28, 2022, the governing body shall not deposit any payments in lieu of taxes or other taxes into the special allocation fund until the municipality submits the redevelopment area boundary description to the State Auditor and the Missouri Department of Revenue.
- Any notices required under Section 99.825 shall be submitted to the Missouri Department of Revenue.
- Notice of the five-year public hearing regarding the redevelopment projects must be provided to the Missouri Department of Revenue.

### **Community Improvement Districts**

- Any municipality establishing a CID must provide the following information to the State Auditor and the Missouri Department of Revenue: (1) a description of the boundaries, (2) the rate of property tax or sales tax to be levied within the CID, (3) any amendments made to the boundaries, and (4) the date on which the CID is to expire.
- For any CID established after August 28, 2022, the governing body shall not order any assessment made on any real property within the CID and shall not levy any property or sales tax until the municipality submits the boundary description and the rate of property or sales tax to be levied to the State Auditor and the Missouri Department of Revenue.
- Notice of any amendments made to the petition prior to the adoption of an ordinance establishing the CID must be sent to the Missouri Department of Revenue.
- Notice of a public hearing for the establishment of the CID and any information included in a motion to continue a public hearing for the establishment of the CID must be provided to the Missouri Department of Revenue.
- The CID Board of Directors is required to submit the proposed budget and the annual report to the Missouri Department of Revenue and the State Auditor.

### **Transportation Development Districts**

- Notice of a petition filed by the registered voters or a governing body must be sent to the Missouri Department of Revenue.
- The following information must be submitted to the State Auditor and the Missouri Department of Revenue: (1) a description of the boundaries, (2) the average assessment made against real property within the district, and the rate of property tax or sales tax levied, (3) any amendments made to the boundaries or the tax rates levied, and (4) the date on which the district is to be terminated.
- For any TDD established after August 28, 2022, the governing body must not collect any property or sales taxes until the governing body submits the boundary description, the average assessment made against real property, and the rate of property tax or sales tax levied.

### **Neighborhood Improvement Districts**

- Any municipality establishing a NID must provide the following information to the State Auditor and the Missouri Department of Revenue: (1) a description of boundaries, (2) the average assessment made against the real property within the district, (3) any amendments made to the boundaries, and (4) the date on which the NID is dissolved.
- For any NID established after August 28, 2022, the governing body shall not order any assessment made on any real property within the NID until the governing body submits the description of boundaries and the average assessment to be made.
- Notice of the public hearing on the plans and specifications for the improvements and proposed assessments shall be sent to the Missouri Department of Revenue.

### **Annual Financial Reports to the State Auditor**

- Any political subdivision required to provide an annual financial report to the state auditor pursuant to § 105.145, RSMo. will not be subject to the \$500 per day fine for failure to submit the annual financial report, if the political subdivision had gross revenues of less than \$5,000 or did not levy or collect taxes in the fiscal year for which the annual financial report is due.

\* \* \* \* \*

## **TAX INCREMENT FINANCING IN MISSOURI**

### **I. GENERAL**

Municipalities can only spend public funds for public purposes. If the costs to be funded are public improvements – such as roads, traffic signals or utilities – then the municipality has a variety of options as to how to finance those public improvements. If the costs to be funded are not public improvements – such as land acquisition costs or site development costs for property owned by persons or entities other than municipalities – then public funds can be used to finance those costs only if the governing body of the municipality finds that the site is a “blighted area” or a “conservation area,” as defined under Missouri law. Tax increment financing (“TIF”) is a method to encourage redevelopment of these areas.

The Missouri TIF law authorizes cities and counties to adopt a redevelopment plan that provides for the redevelopment of a designated area, and to use TIF to fund a portion of the project costs.

The theory of tax increment financing is that, by encouraging redevelopment projects, the value of real property in a redevelopment area should increase. When a TIF plan is adopted, the assessed value of real property in the redevelopment area is frozen for tax purposes at the current base level prior to construction of improvements. The owner of the property continues to pay property taxes at this base level. As the property is improved, the assessed value of real property in the redevelopment area increases above the base level. By applying the tax rate of all taxing districts having taxing power within the redevelopment area to the increase in assessed valuation of the improved property over the base level, a “tax increment” is produced. The tax increments, referred to as “payments in lieu of taxes,” are paid by the owner of the property in the same manner and at the same time as regular property taxes. The payments in lieu of taxes are transferred by the collecting agency to the treasurer of the municipality and deposited in a special allocation fund. In addition, local taxing districts transfer 50% of all incremental sales and utility tax revenues to the treasurer of the municipality for deposit into the special allocation fund. All or a portion of the moneys in the fund can then be used to pay redevelopment project costs or to retire bonds or other obligations issued to pay such costs.

The net effect of tax increment financing is to permit a developer to use a portion of property taxes that otherwise would be paid on the completed project to repay all or a portion of the development costs, thereby reducing the net annual debt service on the completed project (and thus increasing the rate of return on the project). In this manner, future tax increases are not abated, but rather are used to fund costs of the project.

### **II. PROCEDURES FOR ADOPTING TIF**

#### ***The TIF Act***

The TIF Act permits municipalities to undertake different redevelopment projects within a redevelopment area pursuant to the same redevelopment plan. If a redevelopment plan has multiple redevelopment projects, the municipality may designate different “redevelopment projects” and adopt tax increment financing at different times for each redevelopment project. This structure enables municipalities and developers to phase in projects and to derive additional benefits from the payments in lieu of taxes created by the redevelopment projects.

Before a municipality may implement tax increment financing, (1) the municipality must create a TIF commission as provided in the TIF Act, (2) a redevelopment plan, including a description of the redevelopment area and the redevelopment projects therein, must be prepared, (3) the TIF commission must hold a public hearing and make a recommendation to the municipality pertaining to the redevelopment plan,

the redevelopment projects and the designation of the redevelopment area, and (4) the municipality must adopt an ordinance approving the redevelopment plan, the redevelopment projects and the designation of the redevelopment area as discussed below. If a TIF commission makes a recommendation in opposition to a proposed redevelopment plan, redevelopment project, or designation of a redevelopment area, or amendments thereto, the governing body of the municipality may only approve such plan, project, designation or amendment upon a two-thirds majority vote. Once the ordinance is adopted, tax increment financing may be implemented for one or more redevelopment projects within a redevelopment area. Because of various notice and hearing requirements, it usually takes 120 days or longer to establish a TIF commission and adopt a TIF plan.

Role of the TIF Commission

Before adopting tax increment financing, a municipality must create a TIF commission by ordinance of its governing body. The composition of the TIF Commission depends on (1) whether a city or a county is undertaking the redevelopment project and (2) the location of the city or county undertaking the redevelopment project, as described in the following chart:

Number of members appointed by:	Entity Creating TIF Commission				
	City (outside St. Louis, St. Charles and Jefferson Counties)	City (inside St. Louis, St. Charles, Jefferson, Clay and Cass Counties)	County (other than St. Louis County)	St. Louis County	St. Louis City
City(ies)	6	3 <sup>1</sup>	0	3 <sup>2</sup>	6
School districts	2	2	2	2	2
County	2	6	6	6	0
Other taxing districts	1	1	1	1	1
Total members	11	12	9	12	9

<sup>1</sup> These members are appointed by the cities that have TIF districts in the county.

The TIF commission conducts the public hearings required under the TIF Act, and makes recommendations to the governing body of the municipality concerning the adoption of redevelopment plans or redevelopment projects and the designation of redevelopment areas. For TIF commissions created by cities within Cass, Clay, Jefferson, St. Charles or St. Louis Counties, a recommendation of approval only occurs if a majority of the commissioners vote to approve a redevelopment plan, redevelopment project, designation of a redevelopment area, or an amendment; a tie vote is considered a recommendation in opposition. The redevelopment plans, redevelopment projects and the designation of the redevelopment area must receive final approval of the governing body of the municipality.

Records of the TIF commission must be retained by the governing body of the municipality that created the TIF Commission, and must be made available to the public under the Sunshine Law.

Designation of Redevelopment Area

The “redevelopment area” must contain property that may be classified as a “blighted area” or a “conservation area” (described below), or any combination thereof. The entire redevelopment area need not meet the criteria of one of these categories, but must include only “those parcels of real property and

improvements thereon directly and substantially benefited by the proposed redevelopment project improvements.” Thus, a larger redevelopment area that includes property that is increasing in value can enhance the feasibility of a TIF project, provided the larger area, on the whole, is a blighted area or a conservation area and is “substantially benefited” by the redevelopment project.

Although the TIF Act provides for redevelopment projects in an “economic development area,” certain questions remain regarding the constitutionality of TIF financing in such an area that may require a court case to resolve. It is unclear whether there are any instances under which a redevelopment project may be undertaken in an economic development area. Therefore, this memorandum does not discuss TIF financing within economic development areas.

The TIF Act defines a blighted area and a conservation area as follows:

“*Blighted area*” is defined as

an area which, by reason of the predominance of insanitary or unsafe conditions, deterioration of site improvements, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, retards the provision of housing accommodations or constitutes an economic or social liability or a menace to the public health, safety, or welfare in its present condition and use.

“*Conservation area*” is defined as

any improved area within the boundaries of a redevelopment area located within the territorial limits of a municipality in which fifty percent or more of the structures in the area have an age of thirty-five years or more. Such an area is not yet a blighted area but is detrimental to the public health, safety, morals, or welfare and may become a blighted area because of any one or more of the following factors: dilapidation; obsolescence; deterioration; illegal use of individual structures; presence of structures below minimum code standards; abandonment; excessive vacancies; overcrowding of structures and community facilities; lack of ventilation, light or sanitary facilities; inadequate utilities; excessive land coverage; deleterious land use or layout; depreciation of physical maintenance; and lack of community planning.

Effective August 28, 2021, all redevelopment plans and projects in a retail area (defined below) approved after January 1, 2022 must meet the dilapidation factor to be found to be a conservation area.

Under Missouri’s condemnation laws, (1) farmland that is declared blighted cannot be acquired by eminent domain and (2) blight must be evaluated on a parcel-by-parcel basis if any property in the redevelopment area will be acquired through (or under the threat of) condemnation.

Effective August 28, 2021, the TIF Act prohibits new tax increment financing projects in any “greenfield area.” A “greenfield area” is defined as “any vacant, unimproved, or agricultural property that is located wholly outside the incorporated limits of a city, town, or village, or that is substantially surrounded by contiguous properties with agricultural zoning classifications or uses unless said property was annexed into the incorporated limits of a city, town, or village ten years prior to the adoption of the ordinance approving the redevelopment plan for such greenfield area.”

Other legislation in 2007 prohibits new tax increment financing projects in “Hunting Heritage Protection Areas.” Such areas consist of all land within the 100 year flood plain of the Missouri and

Mississippi rivers, as designated by FEMA, but excluding (1) areas with a population of at least 50,000 persons and designated as an “urbanized area” by the United States Secretary of Commerce, (2) any land ever used, operated or owned by an entity regulated by the Federal Energy Regulatory Commission, (3) any land used for the operation of a physical port of commerce, (4) any land within Kansas City or St. Louis City, and (5) any land located within one half mile of any interstate highway. There are also several exceptions to the general prohibition against new tax increment financing projects including (1) the ability to expand existing tax increment financing projects located within a Hunting Heritage Protection Area, subject to certain limitations, (2) redevelopment projects for the purposes of flood and drainage protection, and (3) redevelopment projects for the purposes of constructing or operating renewable fuel facilities.

Beginning January 1, 2022, the TIF Act prohibits new projects from being authorized in a flood plain as designated by FEMA unless such projects are located in the following places:

1. Jackson, Platte, Clay or Cole counties;
2. The cities of Springfield, St. Joseph, Hannibal or Jefferson City;
3. In a port district, provided such financing is utilized for port infrastructure projects; or
4. In a levee or drainage district created prior to August 28, 2021.

Further, projects in flood plains shall not be authorized in St. Charles County unless the redevelopment area “actually abuts a river or major waterway and is substantially surrounded by contiguous properties with residential, industrial or commercial zoning classifications.

#### Preparation of Redevelopment Plan

Before proceeding with a redevelopment project, the municipality must approve a redevelopment plan that designates the redevelopment area, describes the redevelopment project and sets forth a comprehensive program for redevelopment. The TIF Act requires the following information to be included in the redevelopment plan:

1. Estimated redevelopment project costs;
2. The anticipated sources of funds to pay the costs;
3. Evidence of commitments to finance the project costs;
4. The anticipated type and term of the sources of funds to pay costs;
5. The anticipated type and term of the obligations to be issued;
6. The most recent equalized assessed valuation of the property within the redevelopment area that is to be subjected to payments in lieu of taxes and economic activity taxes;
7. An estimate of the equalized assessed valuation after redevelopment; and
8. The general use of the land in the redevelopment area.

Additional information not required by statute may be included in the plan, such as the total acreage in the redevelopment area and the total payments in lieu of taxes and economic activity taxes estimated to be generated over the period the plan is in effect.

### Public Hearing Regarding Redevelopment Plan

Before adopting tax increment financing, the TIF commission must hold a public hearing on the redevelopment plan and redevelopment project and the proposed redevelopment area. Notice of the hearing must be published and must be mailed to affected taxing districts and property owners. The TIF commission is required to vote on any proposed redevelopment plan, redevelopment project, or designation of a redevelopment area within 30 days after the public hearing and to make recommendations to the governing body of a municipality. A subsequent amendment to a redevelopment plan or project that changes the boundaries or nature of the initial plan or project may require the TIF commission to hold another public hearing and make additional recommendations to the governing body before the amendment can be implemented.

### Adoption of Ordinances by Municipality

The redevelopment plan will become effective upon adoption of an ordinance by the municipality that approves the redevelopment plan and the redevelopment project and designates the redevelopment area. As discussed above, if the TIF Commission makes a recommendation in opposition to the redevelopment plan, the redevelopment project or the designation of the redevelopment area, the governing body of the municipality may only approve such plan, project or designation upon a two-thirds majority vote. The TIF Act does not specify in detail what information must be included in the ordinance approving the redevelopment plan. The TIF Act does state, however, that no redevelopment plan may be adopted without findings that:

- a. The redevelopment area on the whole is a blighted area, a conservation area or an economic development area, including, effective August 28, 2021, a study prepared by a land use planner, urban planner, licensed architect, licensed commercial real estate appraiser or licensed attorney, which includes a detailed description of the factors that qualify the redevelopment area.
- b. The redevelopment area has not been subject to growth and development through investment by private enterprise and would not reasonably be anticipated to be developed without the adoption of tax increment financing (this is sometimes referred to as the “but-for” test, as discussed above, and must be supported by an affidavit of the developer submitted with the redevelopment plan).
- c. The redevelopment plan conforms to the comprehensive plan for the development of the municipality as a whole.
- d. The estimated dates, which shall not be more than 23 years from the adoption of the ordinance approving a redevelopment project within a redevelopment area, of completion of any redevelopment project and retirement of obligations incurred to finance redevelopment project costs have been stated.
- e. A plan has been developed for relocation assistance for businesses and residences. The relocation plan must comply with the provisions of Sections 523.200 to 523.215 of the Revised Statutes of Missouri, as amended.
- f. A cost-benefit analysis has been prepared showing the economic impact of the plan on each taxing district that is at least partially within the boundaries of the redevelopment area.

g. The redevelopment plan does not include the initial development or redevelopment of any gambling establishment.

Further, effective August 28, 2021, the TIF Act prohibits the adoption of TIF in a retail area<sup>1</sup> in a redevelopment area designated as an economic development area under the TIF Act unless the financing for the project is exclusively utilized to fund a retail infrastructure project<sup>2</sup>. This does not apply to projects in a retail area within a redevelopment area designated as a blighted area or a conservation area.

### III. CAPTURE/USE OF TIF REVENUES

#### Determination of TIF Revenues

After the ordinance is passed, the county assessor must determine the total equalized assessed value of all taxable real property within the redevelopment project area. Thereafter, the total equalized assessed valuation of taxable real property in the redevelopment project area in excess of the initial equalized assessed valuation is computed by the county assessor for each year that tax increment financing is in effect. The payments in lieu of taxes are made by property owners in the redevelopment area on the increase in current equalized assessed valuation of each taxable parcel of real property over and above the initial equalized assessed valuation of each such parcel, and such payments are deposited into the special allocation fund. Effective August 28, 2018, ambulance, fire protection districts and counties imposing a property tax, and effective August 28, 2021, imposing an economic activity tax for the purpose of operating a 911 center providing emergency or dispatch services can annually set a reimbursement rate between 50% and 100% of the amount of their entities' tax increment prior to the time the assessment is paid into the Special Allocation Fund. If a redevelopment plan, area or project is amended, these entities have the right to recalculate their reimbursement. If the voters in a taxing district approve a new tax levy or an increase to a taxing district's existing levy after August 28, 2014, then the additional revenues generated within an existing redevelopment project area from the voter-approved tax levy or increase will not be subject to capture without the taxing district's consent.

In addition, 50% of the increase in total revenues of incremental sales and utility taxes (referred to as "economic activity taxes") are captured and deposited into the special allocation fund. Under the TIF Act, economic activity taxes do not include taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, licenses, fees, special assessments, personal property taxes, and, effective August 28, 2016, sheltered workshop taxes. The TIF Act and certain sales tax statutes further exclude some local sales taxes from capture and deposit into the special allocation fund, including, without limitation, certain sales taxes imposed to fund a children's services fund, emergency communication systems, public transportation, parks and trails, and stadium improvements in Jackson County.

Other statutes may place limits on the ability to capture a local sales tax. For example, any economic development sales tax imposed pursuant to Section 67.1305 of the Revised Statutes of Missouri is not captured by tax increment financing unless recommended by the economic activity tax board and

<sup>1</sup> A proposed redevelopment building area for which more than 50% of the usable building square footage in the area is projected to be used by retail businesses, which shall be businesses that primarily sell or offer to sell goods to a buyer primarily for the buyer's personal, family or household use and not primarily for business, commercial or agricultural use.

<sup>2</sup> Includes highways, roads, streets, bridges, sewers, traffic control systems and devices, water distribution and supply systems, curbing, sidewalks, storm water and drainage systems or any other similar public improvements, but shall not include private structures.

approved by the governing body imposing the tax. Additionally, if the voters in a taxing district approve a new sales tax after August 28, 2014 (including increases to existing sales taxes, but not including renewals of expiring sales taxes), then the revenues generated within an existing redevelopment project area from the new sales tax will not be subject to capture without the consent of the taxing district.

Further, effective August 28, 2016, for any plans, projects, designations, or amendments approved by a governing body of a city in St. Louis, St. Charles or Jefferson Counties over a recommendation in opposition by the TIF commission, the payments in lieu of taxes and economic activity taxes captured by the TIF will be limited to paying only redevelopment costs for the demolition of buildings and for the clearing and grading of land.

Effective August 28, 2021, for redevelopment projects approved after December 31, 2021, St. Louis City may provide for the deposit of up to 10% of TIF Revenues generated by that redevelopment project into a Strategic Infrastructure for Economic Growth Fund.

#### Issuance of Bonds or Other Obligations

Either the municipality or the TIF commission may issue bonds or other obligations under the TIF Act which are payable from moneys in the special allocation fund or other funds specifically pledged. The TIF Act provides that voter approval of TIF bonds is not required. The bonds or other obligations must mature within 23 years, may bear any interest rate and may be sold at public or private sale as determined by the municipality or TIF commission. The bonds or other obligations are not a general obligation of the municipality and, accordingly, do not count toward the municipality's constitutional debt limitation.

#### Reporting/Hearing Requirements

The TIF Act has always included certain annual reporting requirements; those requirements were amended in 2016 to clarify the obligations and the penalties for non-compliance. Effective August 28, 2016, the governing body of each municipality must submit to the Department of Revenue an annual report concerning the status of each redevelopment plan and project no later than November 15th of each year. If a municipality fails to provide an annual report, the Department of Revenue must send a notice of the failure to the municipality, specifying required corrections. If the municipality fails to comply with the notice within sixty days, it is prohibited from adopting any new TIF plans for five years from the date of the failure notice provided by the Department of Revenue.

The municipality must also publish in a newspaper of general circulation in the county a statement showing the payments in lieu of taxes received and expended in that year, the status of the redevelopment plan and projects, the amount of outstanding bonded indebtedness and any additional information the municipality deems necessary.

Every five years, the governing body of the municipality must hold a public hearing to determine if the redevelopment project is making satisfactory progress under the proposed time schedule contained in the redevelopment plan. Notice of the public hearing must be given in a newspaper of general circulation in the redevelopment area once each week for four weeks immediately prior to the hearing.

\* \* \* \* \*

# **SALES TAX REBATE/DEVELOPMENT AGREEMENTS**

## **I. INTRODUCTION**

Another alternative to TIF financing is for a municipality to enter into an agreement (commonly referred to as a “sales tax rebate agreement” or “development agreement”) with a property owner, whereby the owner of a retail establishment agrees to fund the costs of certain public improvements. The municipality agrees to reimburse the owner for the cost of those improvements, with interest at an agreed-upon taxable interest rate, from the incremental sales taxes generated by the project. The owner generally agrees to be paid solely from those incremental sales taxes, and not from any other funds of the municipality.

## **II. STATUTORY AUTHORITY**

Section 70.220 of the Revised Statutes of Missouri (the “Cooperation Law”) authorizes any municipality or other political subdivision to contract with any other political subdivision, private person or firm for the “planning, development, construction, acquisition or operation of any public improvement or facility.” The political subdivision may authorize the contract by ordinance or resolution.

## **III. TYPICAL STRUCTURE OF TRANSACTION**

Many retail developments require the installation of public improvements (such as roads, traffic signals and utilities) to accommodate the development. Under the typical agreement, the developer agrees to advance the costs of the public improvements. The political subdivision agrees to reimburse the developer for such costs, with interest, over a specified period of time. The agreement usually provides that only a portion of the incremental (*i.e.*, new) sales tax revenues generated from the development will be used to reimburse the cost of the public improvements. This results in immediate new revenue to the municipality, while also providing a source of repayment for the public improvements.

The Missouri Constitution generally requires voter approval if a political subdivision pledges tax revenue to the repayment of indebtedness that lasts for more than one year. Therefore, sales tax rebate agreements specifically provide that the political subdivision’s obligation is from year-to-year only, and is subject to annual appropriation by the governing body.

Because the developer usually assumes responsibility for initial construction of the public improvements, it’s important that the agreement provide for payment of prevailing wages, payment and performance bonds, and indemnification of the governing body.

Undertaking a sales tax rebate agreement is a fairly simple process, since the governing body is obligating only its funds – not the funds of any other political subdivision. No public hearing or consultation with other political subdivisions is required.

\* \* \* \* \*

# TRANSPORTATION DEVELOPMENT DISTRICTS

## I. INTRODUCTION

### Purpose

A transportation development district (“TDD”) may be created pursuant to Sections 238.200 to 238.275 of the Revised Statutes of Missouri, as amended (the “TDD Act”) to fund, promote, plan, design, construct, improve, maintain and operate one or more projects or to assist in such activity. A TDD is a separate political subdivision of the state. “*Project*” includes any bridge, street, road, highway, access road, interchange, intersection, signing, signalization, parking lot, bus stop, station, garage, terminal, hangar, shelter, rest area, dock, wharf, lake or river port, airport, railroad, light rail, or public mass transportation system and any similar or related improvement or infrastructure.

### Projects, Submission of Plans

Before construction or funding of any project (except for public mass transportation systems), the TDD must submit the proposed project to the Missouri Highways and Transportation Commission (the “Commission”) for its prior approval. If the Commission finds that the project will improve or is a necessary or desirable extension of the state highways and transportation system, the Commission may preliminarily approve the project subject to the TDD providing plans and specifications for the project and making any revisions in the plans and specifications required by the Commission and the TDD and Commission entering into a mutually satisfactory agreement regarding development and future maintenance of the project. After such preliminary approval, the TDD may impose and collect such taxes and assessments as may be included in the Commission’s preliminary approval. After the Commission approves the final construction plans and specifications, the TDD must obtain prior commission approval of any modification of such plans or specifications.

If the proposed project is not intended to be merged into the state highways and transportation system, the TDD shall also submit the proposed project and proposed plans and specifications to the local transportation authority that will become the owner of the project for its prior approval. “*Local transportation authority*” is a county, city, town, village, county highway commission, special road district, interstate compact agency, or any local public authority or political subdivision having jurisdiction over any bridge, street, highway, dock, wharf, ferry, lake or river port, airport, railroad, light rail or other transit improvement or service.

In those instances where a local transportation authority is required to approve a project and the Commission determines that it has no direct interest in that project, the Commission may decline to consider the project. Approval of the project then vests exclusively with the local transportation authority subject to the TDD making any revisions in the plans and specifications required by the local transportation authority and the TDD and the local transportation authority entering into a mutually satisfactory agreement regarding development and future maintenance of the project. After the local transportation authority approves the final construction plans and specifications, the TDD must obtain prior approval of the local transportation authority before modifying such plans or specifications.

## II. FUNDING METHODS

### Sales Tax

Any TDD may impose a sales tax in increments of one-eighth of one percent up to a maximum of one percent on all retail sales made in the TDD that are subject to taxation under Missouri law, with certain exceptions (including the sale of motor vehicles, trailers, boats and outboard motors). The sales tax must be approved by approval of a majority of the “qualified voters” within the TDD. The “qualified voters” are (1) the registered voters within the TDD, and (2) the property owners within the TDD (who shall receive one vote per acre). Any registered voter who also owns property must elect whether to vote as a registered voter or a property owner. Notwithstanding the foregoing, the owners of all of the property in the TDD may implement the sales tax by unanimous petition in lieu of holding an election. The sales tax rate must be uniform throughout the TDD.

The Department of Revenue collects TDD sales taxes.

### Special Assessments

The TDD may also, with majority voter approval, make one or more special assessments for project improvements that specially benefit the properties within the TDD. A TDD may establish different classes or subclasses of real property within the TDD for the purpose of levying different rates of assessments.

### Property Tax

The TDD may also, with approval by at least four-sevenths of the voters, impose a property tax in an amount not to exceed the annual rate of ten cents on the hundred dollars assessed valuation. The property tax must be uniform throughout the TDD.

### Tolls

If approved by a majority of the qualified voters voting on the question in the TDD, the TDD may charge and collect tolls or fees for the use of a project.

### Bonds

The TDD may issue bonds, notes and other obligations for not more than 40 years, and may secure any of such obligations by mortgage, pledge, assignment or deed of trust of any or all of the property and income of the TDD. The TDD cannot mortgage, pledge or give a deed of trust on any real property or interests that it obtained by eminent domain.

### III. FORMATION

#### Creation of TDD

A TDD may be created by (1) petition of at least fifty registered voters within the proposed TDD, or (2) if there are no registered voters within the TDD, the owners of all of the real property located within the proposed TDD. In addition, two or more local transportation authorities may adopt resolutions calling for the joint establishment of a TDD and then file a petition requesting the creation of a TDD. With certain limited exceptions, the property in the TDD must be contiguous.

The petition is filed in the circuit court of the county in which a majority of the TDD is located. Among other information, the petition must set forth:

1. The name and address of each respondent, which must include the Commission and each affected local transportation authority within the proposed TDD.
2. A specific description of the proposed TDD boundaries including a map illustrating the boundaries.
3. A general description of each project proposed to be undertaken by the TDD, including a description of the approximate location of each project.
4. The estimated project costs and anticipated revenues to be collected from the project;
5. The number of members of the board of directors of the proposed TDD, which shall be not less than five or more than fifteen.
6. A proposal for funding the TDD.
7. Details of the budgeted expenditures, including estimated expenditures for physical improvements, land acquisition, professional services and interest charges.

#### Hearing

The court hears the case without a jury. If the court determines the petition is not legally defective and the proposed TDD and method of funding are neither illegal nor unconstitutional, the court shall enter its judgment to that effect.

If the petition was filed by registered voters or by a governing body, the court shall then certify the questions regarding TDD creation, project development and proposed funding for voter approval. If the petition was filed by the owners of record of all of the real property located within the proposed TDD, the court shall declare the TDD organized and certify the funding methods stated in the petition for qualified voter approval. If a petition is filed pursuant to the resolutions of two or more local transportation authorities calling for the joint establishment of a TDD, the court shall then certify the single question regarding TDD creation, project development and proposed funding for voter approval.

If the petition for the establishment of the TDD is filed by the owners of all real property in the proposed TDD, at least one public hearing must be held regarding the establishment of the TDD.

### Election

If the court certifies the petition for voter approval, a majority vote is required to approve the formation of the TDD.

If (1) the petition was filed pursuant to the resolutions of two or more local transportation authorities calling for the joint establishment of a TDD and was certified for voter approval, (2) the TDD desires to impose a sales tax as the only proposed funding mechanism and (3) the proposition to create the TDD and authorize the sales tax has received majority voter approval, the circuit court shall declare the TDD organized and the sales tax to be in effect.

If the TDD desires to impose a funding mechanism other than a sales tax, the proposed funding mechanism requires separate voter approval at a subsequent election.

“*Qualified voters*” for TDD elections generally include (1) the registered voters within the TDD and (2) if no registered voters are present in the TDD and the TDD petition was submitted by the property owners or by resolution of two or more local transportation authorities, the property owners within the TDD (who shall receive one vote per acre). If a registered owner moves into a TDD that has already been created and which no registered voters previously resided in, the registered voter must elect whether to vote as a registered voter or a property owner.

### Board of Directors

Since the TDD is a separate political subdivision, it has its own board of directors that serves as the governing body of the TDD.

Unless the TDD is formed at the request of two or more local transportation authorities, directors are elected by the qualified voters within the TDD (i.e., registered voters or property owners, as the case may be).

If two or more local transportation authorities requested formation of the TDD, the board of directors consists of (1) the presiding officer and one person designated by the governing body of each local transportation authority (if the TDD is comprised of two or three local transportation authorities), or (2) the presiding officer of each local transportation authority (if the TDD is comprised of four or more local transportation authorities).

### Report of Formation

Each TDD must report to the state auditor the date it was organized and contact information for its current board of directors within thirty days after the first TDD board of directors meeting.

## **IV. MISCELLANEOUS**

### Condemnation

The TDD may condemn land for a project in the name of the state of Missouri, upon prior approval by the Commission, or the local transportation authority as appropriate, as to the necessity for the taking of the description of the parcel and the interest taken in that parcel.

Project Revisions

At any time during the existence of a TDD, the board may submit to the voters of the TDD a proposition to increase or decrease the number of projects that it is authorized to complete.

If the board proposes to discontinue a project, it must first obtain approval from the Commission if the proposed project is intended to be merged into the state highways and transportation system or approval from the local transportation authority if the proposed project is intended to be merged into a local transportation system under the local authority's jurisdiction.

The board may modify the project previously approved by the TDD voters, if the modification is approved by the Commission and, where appropriate, a local transportation authority.

Audit Required

The state auditor is required to audit each TDD at least once every three years, and may audit more frequently if the state auditor deems appropriate or if a petition for audit is submitted by the requisite percentage (most likely 25%, but potentially as low as 5% in TDDs with large populations of registered voters) of voters within the TDD under Section 29.230 of the Revised Statutes of Missouri. Most TDDs that have issued bonds are required by the bond underwriter to obtain an annual independent audit.

The actual costs of a petition audit performed by the state auditor shall be paid by the TDD. However, costs of an audit or a petition audit in excess of 3% of the gross revenues of the TDD shall be absorbed by the state auditor's office.

Annual Report to State Auditor

TDDs with cash receipts of more than \$10,000 per year are required to submit an annual report of its financial transactions to the state auditor, which is due (1) within four months of the end of the TDD's fiscal year if the report will contain unaudited financial statements or (2) within six months of the end of the TDD's fiscal year if the report will consist of financial statements audited by a certified public accountant. TDDs with cash receipts of less than \$10,000 per year are required to file annual reports, but with simplified reporting requirements. Any TDD that fails to timely file an annual report, and continues such failure after notification by the Department of Revenue, is subject to a fine of \$500 per day until the report is filed; however, a TDD with less than \$5,000 in gross revenues during the fiscal year for which the annual report is delinquent is not subject to the fine.

Projects, Transfer to Commission or Authority

Within six months after development and initial maintenance costs of its completed project have been paid, the TDD shall pursuant to contract transfer ownership and control of the project to the commission or a local transportation authority which shall be responsible for all future maintenance costs pursuant to contract. Such transfer may occur sooner with the consent of the recipient.

\* \* \* \* \*

# COMMUNITY IMPROVEMENT DISTRICTS

## I. INTRODUCTION

### What is a Community Improvement District?

A community improvement district (“CID”) is either a political subdivision with the power to impose a sales tax, a special assessment or a real property tax, or a nonprofit corporation with the power to impose special assessments. The CID is created by a city or county following submission of a petition by the property owners within the proposed CID.

A CID is a separate legal entity distinct and apart from the municipality or county that creates the CID. In many respects, a CID is similar to a TDD, except that the CID can finance a much broader array of improvements and can also undertake various public services.

Effective August 28, 2021, the term of a newly created CID shall not exceed 27 years from the adoption of the ordinance establishing the CID, unless extended by the municipality that created it.

### Authority

Sections 67.1401 to 67.1571 of the Revised Statutes of Missouri (the “Community Improvement District Act”) authorize the creation of CIDs.

### Kinds of Infrastructure Improvements

A variety of public improvements can be financed with a CID. Projects may include, but are not limited to:

1. Pedestrian or shopping malls and plazas.
2. Parks, lawns, trees and any other landscape.
3. Convention centers, arenas, aquariums, aviaries and meeting facilities.
4. Sidewalks, streets, alleys, bridges, ramps tunnels, overpasses and underpasses, traffic signs and signals, utilities, drainage, water, storm and sewer systems and other site improvements.
5. Parking lots, garages or other facilities.
6. Music, news and child-care facilities.
7. Any other useful, necessary or desired improvement.

In addition, within a “blighted area,” the CID may pay costs of demolishing, renovating and rehabilitating structures.

### Public Services

A CID may provide a variety of public services, including but not limited to:

1. With the municipality's consent, prohibiting or restricting vehicular and pedestrian traffic and vendors on streets.
2. Operating or contracting for the provision of music, news, child-care or parking facilities, and buses, mini-buses or other modes of transportation.
3. Leasing space for sidewalk café tables and chairs.
4. Providing or contracting for the provision of security personnel, equipment or facilities for the protection of property and persons.
5. Providing or contracting for cleaning, maintenance and other services to public and private property.
6. Promoting tourism, recreational or cultural activities or special events.
7. Promoting business activity, development and retention.
8. Providing refuse collection and disposal services.
9. Contracting for or conducting economic, planning, marketing or other studies.

## **II. FORMATION PROCESS**

### Petition Requesting Formation

A CID is formed by petition of the property owners. The petition must be signed by:

1. Property owners collectively owning at least 50 percent of the assessed value of the real property within the proposed CID; and
2. More than 50 percent per capita of all owners of real property within the proposed CID.

The petition must include a wide variety of information, including:

1. A five-year plan describing the purposes of the proposed CID, the services it will provide, the improvements it will make, an estimate of costs of those services and improvements, the anticipated sources of funds to pay the costs, and the anticipated term of the sources of funds to pay the costs.
2. Organizational and governance information, including:
  - a. Whether the CID will be a political subdivision or a nonprofit corporation.
  - b. If a political subdivision, the manner in which the board of directors will be elected and the number of directors on the initial board.

3. The maximum rates of real property taxes and special assessments that may be imposed.
4. The limitations, if any, on the borrowing capacity and revenue generation of the CID.

Alternately, in Kansas City only, the city, rather than the property owners, may submit a petition for the establishment of the CID, provided that the CID's only funding source will be a real property tax.

#### Remaining Steps to Form the CID

After the petition is submitted, the governing body of the municipality will proceed with the following actions:

1. Hold a public hearing regarding the formation of the CID. Notice of the hearing must be published once a week for two consecutive weeks before the public hearing, and must be mailed at least 15 days prior to the public hearing. The notice must include, among other items, the following information: (a) date, time, and place of hearing; (b) boundaries of the CID, (c) statement that a copy of the petition is available for review at the clerk's office and (d) statement that all interested persons will be given an opportunity to be heard at the hearing.
2. Establish the CID by order or ordinance.

### **III. GOVERNANCE**

#### Political Subdivision

The petition specifies whether directors will be elected by the "qualified voters" or appointed by the municipality. A "qualified voter" must either own real property within the CID or be a registered voter within the CID. During an election of the board, no person may cast more than one ballot. Appointments are made by the chief elected officer with the consent of the governing body.

The board shall consist of at least 5 but not more than 30 directors. Each director must (a) own real property or a business within the CID (or be the legally authorized representative of the owner) or (b) be a registered voter residing within the CID. If there are less than 5 owners of real property located within the CID, the board may be comprised of up to 5 legally authorized representatives of any of the owners of real property located within the CID.

Effective August 28, 2021, for CIDs in which there are no registered voters within the boundaries of the CID, at least one director must reside within the municipality, is registered to vote, has no financial interest in any real property or business operating within the CID, and is not a relative within the second consanguinity to an owner of real property or a business operating within the CID.

Further, effective August 28, 2021, if the board is to be elected, the petition must state that one member of the board shall be appointed by the governing body of the municipality for a four year term.

#### Nonprofit Corporation

The directors are elected in the same manner as directors of other nonprofit corporations, under chapter 355 of the Revised Statutes of Missouri.

#### **IV. FUNDING OF IMPROVEMENTS**

##### Special Assessments

Any CID, whether a political subdivision or nonprofit corporation, may impose special assessments, if approved by petition signed by:

1. Owners collectively owning real property representing more than 50 percent of the assessed value of real property within the CID; and
2. More than 50 percent per capita of the owners of all real property within the CID.

##### Real Property Taxes

A CID that is a political subdivision can impose a real property tax if approved by a majority of the “qualified voters.” A “qualified voter” is:

1. Registered voter residing within the CID; or
2. If there are no registered voters residing within the CID, the owners of real property within the CID.

Unlike transportation development districts, there is no limit on the amount of real property taxes that may be imposed by a CID.

##### Sales Tax

A CID that is a political subdivision can impose a sales tax if approved by a majority of the “qualified voters,” as defined above. The tax may be imposed in increments of one-eighth of one percent, up to a maximum of one percent.

##### Other Sources

1. Fees, rents and charges for CID property or services.
2. Grants, gifts and donations.

##### Bonds

The CID may issue bonds, notes, and other obligations for not more than 20 years, and may secure any of such obligations by mortgage, pledge, assignment, or deed of trust of any or all of the property of the CID.

**V. MISCELLANEOUS**

Construction Contracts

Effective August 28, 2021, all construction contracts entered into by the CID that has adopted a sales tax that are in excess of \$5,000 shall be competitively bid and awarded to the lowest and best bidder.

Annual Budget

The CID must annually (between 180 and 90 days prior to its fiscal year end) submit a proposed budget to the governing body of the municipality that created the CID, in response to which the municipality may provide non-binding recommendations. The CID must then hold an annual meeting and adopt the budget prior to the first day of a fiscal year.

Annual Report to the Municipal Clerk and Missouri Department of Economic Development

Within 120 days after the end of each fiscal year, an annual report stating the services provided by the CID, the revenues and expenditures, copies of the resolutions passed by the board of directors, and effective August 28, 2021, state the dates the CID adopted its annual budget, submitted its proposed annual budget to the municipality and submitted its annual report to the municipal clerk must be submitted to the municipal clerk and the Missouri Department of Economic Development.

Audit

A CID may be audited by the state auditor in the same manner as an agency of the State of Missouri.

\* \* \* \* \*

# **SPECIAL BUSINESS DISTRICTS**

## **I. INTRODUCTION**

### **What is a Special Business District?**

A special business district (“SBD”) is a political subdivision with the power to impose a real property tax, a business license tax and special assessments, depending upon the size of the City in which the SBD is created. The funding sources can be spent on certain public improvements and services listed in the statute. The SBD is created by a city following submission of a petition by property owners that pay real property taxes within the proposed district.

An SBD is a separate legal entity distinct and apart from the city that creates the district. In cities with 350,000 or more people, the SBD board consists of seven members appointed by the City and serves as the governing body of the SBD, but in all other cities the governing body of the city also serves as the governing body of the SBD and the SBD board is only a recommending body. Therefore, in all cities except those with 350,000 or more people, the city governing body needs to operate the SBD as a separate political subdivision of the city and not as another board or commission of the city.

### **Authority**

Sections 71.790 to 71.808 of the Revised Statutes of Missouri govern special business districts.

### **Kinds of Infrastructure Improvements**

Specific types of public improvements can be financed with an SBD:

1. Widen or narrow existing streets and alleys.
2. Construct or install pedestrian or shopping malls, plazas, sidewalks or moving sidewalks, parks, meeting and display facilities, convention centers, arenas, bus stop shelters, lighting, benches or other seating furniture, sculptures, telephone booths, traffic signs, fire hydrants, kiosks, trash receptacles, marquees, awnings, canopies, walls and barriers, paintings, murals, alleys, shelters, display cases, fountains, rest rooms, information booths, aquariums, aviaries, tunnels and ramps, pedestrian and vehicular overpasses and underpasses, and each and every other useful or necessary or desired improvement.
3. Landscape and plant trees, bushes and shrubbery, flowers and each and every and other kind of decorative planting.
4. Install and operate or lease public music and news facilities.
5. Construct and operate child-care facilities.
6. Construct lakes, dams, and waterways of whatever size.
7. Construct, reconstruct, extend, maintain, or repair parking lots or parking garages, both above and below ground, or other facilities for the parking of vehicles, including the power to install such facilities in public areas, whether such areas are owned in fee or by easement.

### Public Services

An SBD may provide a variety of public services, including:

1. Purchase and operate buses, minibuses, mobile benches, and other modes of transportation.
2. Lease space within the district for sidewalk cafe tables and chairs.
3. Provide special police or cleaning facilities and personnel for the protection and enjoyment of the property owners and the general public using the facilities of such business district.
4. Maintain all city-owned streets, alleys, malls, bridges, ramps, tunnels, lawns, trees and decorative plantings of each and every nature, and every structure or object of any nature whatsoever constructed or operated by the city.
5. Grant permits for newsstands, sidewalk cafes, and each and every other useful or necessary or desired private usage of public or private property.
6. Prohibit or restrict vehicular traffic on such streets within the business district as the governing body may deem necessary and to provide the means for access by emergency vehicles to or in such areas.
7. Promote business activity in the district by, but not limited to, advertising, decoration of any public place in the area, promotion of public events which are to take place on or in public places, furnishing of music in any public place, and the general promotion of trade activities in the district.
8. With the city's consent, prohibiting or restricting vehicular and pedestrian traffic and vendors on streets.

### Additional Powers for Large Cities

In any city with a population of 350,000 or more, an SBD has the following additional powers:

1. Cooperate with other public agencies and with any industry or business located within the district in the implementation of any project within the district.
2. Enter into any agreement with any other public agency, any person, firm, or corporation to effect any of the provisions contained in the SBD statutes.
3. Contract and be contracted with, and to sue and be sued.
4. Accept gifts, grants, loans, or contributions from the city in which the district is located, the United States of America, the state of Missouri, political subdivisions, foundations, other public or private agencies, individuals, partnerships, or corporations.

5. Employ such managerial, engineering, legal, technical, clerical, accounting, and other assistance as it may deem advisable. The district may also contract with independent contractors for any such assistance.

## II. FORMATION PROCESS

### Petition Requesting Formation and Resolution of Intent

The process to form an SBD starts with a petition. The petition must be signed by one or more owners of real property on which is paid the ad valorem real property taxes within the proposed district. The statute does not specify the required contents of the petition, but it's reasonable to assume the petition should include, at a minimum, the boundaries of the proposed district, the proposed funding methods, and the proposed uses of the funds. Once a petition is filed, the governing body may adopt a "resolution of intent" to form the SBD, which must contain the following:

1. Description of the boundaries of the proposed area.
2. The time and place of a hearing to be held by the governing body considering establishment of the district.
3. The proposed uses to which the additional revenue shall be put and the initial tax rate to be levied.

### Survey and Investigation

Prior to adopting an ordinance which approves an SBD, the city must conduct a survey and investigation for the purposes of determining:

1. The nature of and suitable location for business district improvements.
2. The approximate cost of acquiring and improving the land therefor.
3. The area to be included in the business district or districts.
4. The need for and cost of special services, and cooperative promotion activities.
5. The percentage of the cost of acquisition, special services, and improvements in the business district which are to be assessed against the property within the business district and that part of the cost, if any, to be paid by public funds.

The cost of the survey and investigation must be included as a part of the cost of establishing the business district. A written report of this survey and investigation must be filed in the office of the city clerk and must be available for public inspection.

### Public Hearing

The governing body of the city must hold a public hearing prior to approval of the SBD by ordinance. The hearing must be preceded by two publication notices between 10 and 15 days before the hearing and mailed notice to all property owners and licensed businesses within the proposed district.

### Ordinance to Approve District

If the city adopts an ordinance to approve the SBD, the ordinance must contain:

1. The number, date and time of the resolution of intention pursuant to which it was adopted;
2. The time and place the hearing was held concerning the formation of the area;
3. The description of the boundaries of the district;
4. A statement that the property in the area established by the ordinance shall be subject to the provisions of additional tax as provided in the petition;
5. The initial rate of levy to be imposed upon the property lying within the boundaries of the district;
6. A statement that an SBD has been established;
7. The uses to which the additional revenue shall be put;
8. In any city with a population of less than three hundred fifty thousand, the creation of an advisory board or commission and enumeration of its duties and responsibilities; and
9. In any city with a population of three hundred fifty thousand or more, provisions for a 7-member board of commissioners to administer the SBD.

### **III. GOVERNANCE**

The district is a separate political subdivision of the state. In cities with less than 350,000 population, the governing body of the city serves as the governing body of the SBD. Care should be taken to hold separate meetings of the SBD board rather than incorporating SBD legislative actions into legislative actions of the governing body of the city. In cities with less than 350,000 population, the SBD board serves as an advisory capacity to the SBD governing body.

In cities with a population of 350,000 or more, the SBD board appointed by the city serves as the governing body of the SBD. The members must be appointed by the mayor with the advice and consent of the governing body of the city. Five members must be owners of real property within the district or their representatives and two members must be renters of real property within the district or their representatives.

## IV. FUNDING OF IMPROVEMENTS

### Real Property Taxes

An SBD may impose a real property tax that does not exceed 85¢ per \$100 of assessed valuation. In St. Louis only, the real estate tax imposed by an SBD may be imposed and collected even though the property is subject to tax abatement pursuant to a redevelopment plan adopted under Chapter 353 of the Revised Statutes of Missouri.

### Business License Tax

An SBD may impose a tax on businesses and individuals doing business within the SBD. The rate of the SBD business license tax cannot exceed 50% of the other business license taxes imposed within the district.

### Special Assessments

Any SBD in a city with a population of 350,000 or more and located in more than one county may also impose special assessments at the following maximum rates:

1. Not more than 5¢ per square foot on each square foot of land.
2. Not more than ½¢ per square foot on each square foot of improvements on land.
3. Not more than \$12 per abutting foot of the lots, tracts and parcels of land within the district abutting on public streets, roads and highways.

### Elections

The taxes and assessments described above are subject to voter approval. Residents of the SBD and owners of property within the SBD are “qualified voters” for property tax and special assessment elections. Holders of business licenses within the SBD are “qualified voters” for business license tax elections. When an election is held, the qualified voters must apply to the City Clerk for a ballot. The City Clerk will then mail a ballot to each qualified voter that applies for a ballot. Ballots must then be returned to the City Clerk’s office with an affidavit attesting that the voter is a qualified voter. The City Clerk will then arrange for election judges from the county election authority to count the ballots and certify the election.

### Bonds

An SBD is authorized by statute to issue general obligation bonds or notes for a maximum of 20 years and in a maximum amount of 10% of the total assessed value of all land within the district. The SBD is also authorized to issue revenue bonds and refunding revenue bonds to pay the cost of acquiring, constructing, improving, or extending any revenue-producing facilities, and such bonds are payable solely from the operation of such revenue-producing facility. However, there are some concerns regarding the constitutionality of the statutorily prescribed election procedures for SBDs, particularly elections for the approval of general obligation bonds. Accordingly, if bonds are being considered as a funding mechanism, a Community Improvement District is a better economic development tool because it can achieve many of

the same goals as an SBD, but does not have constitutional concerns that might impact the marketability of any bonds.

\* \* \* \* \*

# NEIGHBORHOOD IMPROVEMENT DISTRICTS

## I. INTRODUCTION

### What is a Neighborhood Improvement District?

A neighborhood improvement district (“NID”) is an area benefited by a public improvement and assessed to pay for that improvement. It is created by an election held or petition circulated within the proposed district. A NID may be created by a city or a county, but it is not a separate legal entity from such city or county.

### Authority

Article III, Section 38(c) of the Missouri Constitution and Sections 67.453 to 67.475 of the Revised Statutes of Missouri (the “Neighborhood Improvement District Act”) authorize the creation of NIDs by cities or counties.

### Kinds of Projects

Only **public** facilities, improvements or reimprovements can be financed with a NID. The improvement must confer a benefit on property within the district, but the improvement is not required to be located in the district. Projects may include, but are not limited to:

1. Acquisition of property.
2. Improvement of streets, gutters, curbs, sidewalks, crosswalks, driveway entrances and structures, drainage works incidental thereto and service connections from sewer, water, gas and other utility mains, conduits or pipes.
3. Improvement of storm and sanitary sewer systems.
4. Improvement of street lights and street lighting systems.
5. Improvement of waterworks systems.
6. Improvement of parks, playgrounds and recreational systems.
7. Landscaping for streets or other public facilities.
8. Improvement of flood control works.
9. Improvement of pedestrian and vehicle bridges, overpasses and tunnels.
10. Improvement of retaining walls and area walls on public ways.
11. Improvement of property for off-street parking.
12. Acquisition and improvement of other public facilities or improvements.

13. Improvements for public safety.

## II. FORMATION PROCESS

A NID may be created either by election or by petition of property owners.

### By Election

A neighborhood improvement district must be approved by the percentage of electors within the proposed district voting thereon required for general obligation bonds (four-sevenths at an election held on general municipal election day or any primary or general election, and two thirds at all other elections). The resolution or ordinance calling the election and notice of election must include the following information:

1. Project name.
2. General nature of proposed improvement.
3. Estimated cost. *The estimated cost should include all costs, including financing costs. It does not include interest on the general obligation bonds.*
4. Boundaries of proposed district. *The boundaries of the area to be assessed may be described by metes and bounds, streets or other sufficiently specific description.*
5. Proposed method of assessment, including any provision for the annual assessment of maintenance costs for the improvement in each year in each year during the term of the bonds issued for the improvement and after the bonds issued for the original improvement are paid in full. *The cost of the improvements must be apportioned against the **property** in the district in accordance with the benefits accruing to the property by reason of the improvement and may be assessed equally per front foot, per square foot or any other reasonable assessment plan.*
6. Statement that final cost will not exceed the estimated cost by more than twenty-five percent (notice of election only).

### By Petition

The petition signed by the owners of record of at least two-thirds by area of all real property located within the proposed district is submitted to the governing body of the city or county. The State Auditor requires a certification of the acreage or square footage in the district and the acreage or square footage owned by the signers of the petition. The petition must include the following information:

1. Project name.
2. General nature of proposed improvement.
3. Estimated cost.
4. Boundaries of proposed district.

5. Proposed method of assessment, including a provision for the annual assessment of maintenance costs for the improvement in each year during the term of the bonds issued for the improvement and after the bonds issued for the original improvement are paid in full.
6. Number of years over which the assessments for the improvement can be paid.
7. Notice that names of signers may not be withdrawn later than seven days after petition filed.

The petition must be signed by all owners of record of a parcel of property for that parcel to be counted. Each owner of record of real property located in the proposed district is allowed one signature. Any person, corporation, or limited liability partnership owning more than one parcel of land located in such proposed district shall be allowed only one signature on the petition. In the case of property owned by a corporation or partnership, evidence of the authority of the person signing on behalf of such entity should be presented with the petition. An affidavit of the person or persons circulating the petition should also be submitted with the petition.

#### Remaining Steps to Form the District

After the election is held or petition is submitted, the governing body will proceed with the following actions:

1. Order preparation of plans and specifications.
2. Prepare a preliminary assessment roll.
3. Hold a public hearing regarding the proposed project. Notice of the hearing must be published not more than 20 days and not less than 10 days before the hearing, and must include the following information: (a) project name; (b) date, time and place of hearing. (c) general nature of improvements; (d) revised estimated cost (or, if available, final cost); (e) boundaries of district; and (f) statement that written and oral objections will be considered at the hearing.
4. Order improvements to be made.
5. Issue temporary notes, if needed.
6. Construct the project.
7. Computate final costs and assessments.
8. Assess final costs.
9. Mail notice of assessments and provide property owners the opportunity to pay up front.

#### Recording Requirement

Any municipality that creates a NID must file certain information with the county recorder of deeds prior to levying special assessments or enforcing liens arising from special assessments. This information includes:

1. The names of the property owners within NID at the time of recording.
2. The name of the governing body of the city or county establishing the NID and the title of any official or agency responsible for collecting or enforcing any special assessments.
3. The legal description of the NID boundaries.
4. The identifying number of the resolution or ordinance creating the NID.

### **III. FINANCING OF IMPROVEMENTS**

Bonds issued in connection with NID projects are a form of general obligation bonds. The bonds are payable as to both principal and interest from the assessments and, if not so paid, from current income and revenue and revenues and surplus funds of the city or county that formed the district. The city or county is not authorized to impose any new or increased ad valorem property tax to pay principal of or interest on the bonds without voter approval from the entire city or county. If the city or county uses funds on hand to pay debt service, the issuer can reimburse itself from assessments at a later date.

The bonds are general obligation bonds, and count against the issuer's legal debt limit at the time that the governing body has found the formation of the district advisable. Until bonds are actually issued, 125% of the project cost is counted against the debt limit. NID bonds can only be issued in an amount of up to 10% of the assessed valuation of the issuer. The maturity of the bonds is limited to 20 years.

\* \* \* \* \*

## **PROPERTY TAX ABATEMENT UNDER CHAPTER 353, RSMO.**

### **I. INTRODUCTION**

Under Chapter 353 of the Revised Statutes of Missouri, real property tax abatement is available within “blighted areas.” An Urban Redevelopment Corporation is created under the general corporations laws of Missouri and, once created, it has the power to operate one or more redevelopment projects pursuant to a city-approved or county-approved (if St. Louis County or Jackson County) redevelopment plan.

Under this program, an eligible city or county may approve a redevelopment plan that provides for tax abatement for up to 25 years, thus encouraging the redevelopment of the blighted area. To be eligible for the abatement, the Urban Redevelopment Corporation must take title to the property to be redeveloped. During the first 10 years of tax abatement, (1) 100% of the incremental increase in real property taxes on the land are abated, (2) 100% of the real property taxes on all improvements are abated, and (3) the property owner continues to pay real property taxes on the land in the amount of such taxes on such land (without considerable improvements) in the year before the Urban Redevelopment Corporation takes title.

During the next 15 years, between 50% and 100% of the real property taxes on all land and all improvements are abated. Payments in lieu of taxes (“PILOTS”) may be imposed on the Urban Redevelopment Corporation by contract with the city or county, as applicable, to achieve an effective tax abatement that is less than the abatement established by statute. PILOTS are paid on an annual basis to replace all or part of the real estate taxes that are abated. PILOTS will be allocated to each taxing district according to their proportionate share of ad valorem property taxes. The Urban Redevelopment Corporation may take title to lots, tracts or parcels of property within the redevelopment area in phases, in order to maximize the tax abatement during a phased redevelopment project.

Effective August 28, 2018, ambulance, fire protection districts and counties imposing a property tax for the purpose of operating a 911 center providing emergency or dispatch services can annually set a reimbursement rate between 50% and 100% of the amount of their entities’ ad valorem real property tax revenues they would have received in the absence of tax abatement prior to the time the assessment is determined. If a plan is amended, these entities have the right to recalculate their reimbursement.

### **II. PROCEDURES FOR APPROVING TAX ABATEMENT**

The following is a summary of the basic steps for the approval of a development plan:

#### ***Preparation of Tax Impact Statement***

The statute requires the governing body to hold a public hearing regarding any proposed development plan. Before the public hearing, the governing body must furnish to the political subdivisions whose boundaries include any portion of the property to be affected by tax abatement (1) notice of the scheduled public hearing and (2) a written statement of the impact on ad valorem taxes such tax abatement will have on the political subdivisions.

The tax impact statement must include, at a minimum, an estimate of the amount of ad valorem tax revenues of each political subdivision that will be affected by the proposed tax abatement.

Preparation of Development Plan

The proposed developer usually will assume responsibility for preparation of the development plan. This document identifies the proposed redevelopment area, the redevelopment projects to be undertaken, the program to be carried out to remove the blighting influences within the area, and the estimated project costs. The plan will include or incorporate by reference the characteristics that qualify the area as “blighted” under Missouri law.

Chapter 353 defines a blighted area as “that portion of the city within which the legislative authority of such city determines that by reason of age, obsolescence, inadequate or outmoded design or physical deterioration have become economic and social liabilities, and that such conditions are conducive to ill health, transmission of disease, crime or inability to pay reasonable taxes.”

Public Hearing

Before approving a development plan, the governing body of the city or county must hold a public hearing. The governing body must adopt an ordinance establishing the procedures for giving notice of the public hearing. Notice of the hearing must be given to each affected taxing district affected by the development plan.

Preparation of Redevelopment Agreement

The Redevelopment Agreement describes the Urban Redevelopment Corporation’s obligations to carry out the development plan. Among the provisions that typically are included in the Redevelopment Agreement are (1) procedures for acquiring property, including prerequisites to the use of condemnation; (2) the period for which tax abatement will be provided; (3) the time period within which the redevelopment corporation can carry out the project; and (4) procedures for the corporation to transfer title to property in the area.

Under Missouri’s condemnation laws, (1) an Urban Redevelopment Corporation cannot acquire property through condemnation, unless the corporation entered into a redevelopment agreement before December 31, 2006, (2) farmland that is declared blighted cannot be acquired by eminent domain and (3) blight must be evaluated on a parcel-by-parcel basis, if any property in the redevelopment area will be acquired through (or under the threat of) condemnation.

Adoption of Ordinance by Governing Body

Following the public hearing, the governing body can approve a development plan and Redevelopment Agreement by adoption of an ordinance. Among other matters, the ordinance must make findings that the area described in the development plan is “blighted” under Missouri law, that a relocation plan has been developed for displaced persons, and that the Redevelopment Agreement establishes the time within which property in the area must be acquired.

\* \* \* \* \*

# **PROPERTY TAX ABATEMENT UNDER CHAPTER 100, RSMO.**

## **I. INTRODUCTION**

### General

Cities, counties, towns and villages in Missouri are authorized, pursuant to Article VI, Section 27(b) of the Missouri Constitution and Sections 100.010 to 100.200 of the Revised Statutes of Missouri (the “Act”) to issue revenue bonds to finance projects for private corporations, partnerships and individuals. There are two primary reasons to issue revenue bonds under the Act. First, if the bonds are tax-exempt, it may be possible to issue the bonds at lower interest rates than those obtained through conventional financing. Second, even if the bonds are not tax-exempt, ad valorem taxes on bond-financed property may be abated so long as the bonds are outstanding. Such tax abatement may result in a significant financial benefit to a company. *This memo focuses primarily on the issuance of taxable industrial development bonds issued for the purposes of the abatement of ad valorem taxes.*

### Types of Projects

The Act permits any city, county, town or village (referred to herein as a “Municipality”) to issue bonds to finance the costs of warehouses, distribution facilities, research and development facilities, office industries, agricultural processing industries, services facilities which provide interstate commerce and industrial plants. Article VI, Section 27(b) of the Missouri Constitution also authorizes such bonds to be issued for other types of commercial facilities. In connection with such projects, the bond proceeds may be used to finance land, buildings, fixtures and machinery.

### Revenue Bonds

Revenue bonds issued pursuant to the Act do not require voter approval and are payable solely from revenues received from the project. The Municipality applies the proceeds from the sale of the bonds to purchase, construct, improve or equip an eligible project. In exchange, the company promises to make payments that are sufficient to pay the principal and interest on the bonds as they become due. Thus, the Municipality merely acts as a conduit for the financing.

## **II. TAXATION OF BOND-FINANCED PROPERTY**

### Property Tax Exemption

Under Article X, Section 6 of the Missouri Constitution and Section 137.100 of the Missouri Revised Statutes, all property of any political subdivision is exempt from taxation. In a typical revenue bond transaction, the Municipality holds fee title to the project and leases the project to the company benefitting from the tax abatement. Although the Missouri Supreme Court has held that the leasehold interest is taxable, it is taxable only to the extent that the economic value of the lease is less than the actual market value of the lease. See *Iron County v. State Tax Commission*, 437 S.W.2d 665 (Mo. 1968)(*en banc*) and *St. Louis County v. State Tax Commission*, 406 S.W.2d 644 (Mo. 1966)(*en banc*). If the rental payments under the lease agreement equal the actual debt service payments on the bonds, the leasehold interest should have no “bonus value” and the bond-financed property should be exempt from ad valorem taxation and personal property taxation so long as the bonds are outstanding. Bonds may be issued to finance real property, personal property, or both.

The Municipality and the company may determine that partial tax abatement – but not full tax abatement – is desirable. If partial tax abatement is offered, the Municipality and the company will enter into an agreement for the company to make payments in lieu of taxes equal to the difference between the abatement amount and the taxes otherwise due. The amount of payments in lieu of taxes is negotiable to any amount. The payments in lieu of taxes are payable by December 31 of each year, and are distributed to the Municipality and to each political subdivision in the same manner and in the same proportion as property taxes would otherwise be distributed under Missouri law.

Effective August 28, 2018, ambulance, fire protection districts and counties imposing a property tax for the purpose of operating a 911 center providing emergency or dispatch services can annually set a reimbursement rate between 50% and 100% of the amount of their entities' ad valorem real property tax revenues they would have received in the absence of tax abatement prior to the time the assessment is determined. If a plan is amended, these entities have the right to recalculate their reimbursement.

### Sales Tax Exemption

Under Section 144.054.3 of the Missouri Revised Statutes, a company may apply to the Missouri Department of Economic Development (“Department of Economic Development”) to receive a sales tax exemption on all personal property purchased through a revenue bond transaction. According to the Department of Economic Development, to receive this exemption, the personal property must qualify as a “project” under the Act, which includes: (1) warehouses, (2) distribution facilities, (3) research and development facilities, (4) office industries, (5) agricultural processing industries, (6) service facilities that provide interstate commerce, and (7) industrial plants, including the associated real estate, building, fixtures, and machinery. Additionally, the personal property that is classified as machinery and used directly in a manufacturing process is entitled to a sales tax exemption without prior approval from the Department of Economic Development.

The municipality may also furnish the company with a sales tax exemption certificate, so that materials used in constructing any real property improvements can be exempt from sales taxes.

## **III. STRUCTURE OF THE TRANSACTION**

### Issuance and Sale of Bonds

The Municipality issues its bonds pursuant to a trust indenture entered into between the Municipality and a bank or trust company acting as trustee. Revenue bonds, like issues of conventional corporate securities, are sold by two basic methods – public offerings or private placements. If the company has access to the regional or national securities markets, it may retain an investment banker as underwriter and sell the bonds publicly. The size and financial condition of the company are the primary factors that determine the company's ability to utilize a public offering. As an alternative to a public offering, the company may wish to place the bonds with a sophisticated purchaser. A private placement is very similar to a long-term bank loan. If bonds are being issued at a taxable interest rate for the sole purpose of receiving tax abatement, it is common for the company or the company's commercial lender to purchase the bonds. The bond proceeds are deposited with the trustee bank in a separate trust account to be used to purchase and construct the project.

### Conveyance of Property to Municipality and Lease-Back to Company

Concurrently with the closing of the bonds, the company will convey to the Municipality title to the site on which the industrial development project will be located. The Municipality must be the legal owner of the property while the bonds are outstanding in order for the property to be eligible for tax abatement. At the same time, the Municipality will lease the project site, together with all improvements thereon (including the project), back to the Company pursuant to a lease agreement. The lease agreement will require the company acting on behalf of the Municipality, to use the proceeds of the bonds to purchase and construct the project. The company will be unconditionally obligated to make payments to the trustee in amounts that will be sufficient to pay principal and interest on the bonds as they become due.

Under the lease agreement, the company typically: (a) unconditionally agrees to make payments sufficient to pay the principal of and interest on the bonds as they become due; (b) agrees, at its own expense, to maintain the project, pay all taxes and assessments with respect to the project and maintain adequate insurance; (c) has the right, at its own expense, to make certain additions, modifications or improvements to the project; (d) may assign its interests under the agreement or sublease the project while remaining responsible for payments under the agreement; (e) covenants to maintain its corporate existence during the term of the bond issue; and (f) agrees to indemnify the Municipality for any liability the Municipality might incur as a result of its participation in the transaction.

### Payments in Lieu of Taxes

If the Municipality and the company determine that partial tax abatement is desirable, the Municipality and the company will enter into an agreement providing for the company to make “payments in lieu of taxes” to the Municipality and other taxing entities. The amount of payments in lieu of taxes is negotiable.

## **IV. PROCEDURE FOR ISSUING BONDS**

The following is a summary of the basic steps required for the issuance of taxable bonds under the Act for the purpose of providing tax abatement:

### Approval of the Project

Upon a determination by the Municipality to proceed with the financing, the Municipality normally adopts a resolution (referred to as a “resolution of intent” or “inducement resolution”) stating the Municipality’s willingness and intent to issue bonds for the project. Thereafter, the Municipality must provide notice to each taxing district of the Municipality’s intent to approve a “plan for industrial development” for the project. The plan must identify the primary terms of the proposed transaction, and must include a cost-benefit analysis that shows the impact of the proposed tax abatement on each taxing district.

### Preparation of Legal Documents

Gilmore & Bell prepares the basic legal documents necessary for the bond issue, as described in “Structure of the Transaction” above. These documents will be reviewed by and supplemented with information and comments received from the parties to the financing, including the Municipality, the company, the trustee bank, any bank or any investment banker that may be involved and their respective counsel.

Approval of Documents and Issuance of Bonds

After an investment banker or other purchaser (which may be the company) has agreed to purchase the bonds, the final details of the bond issue are determined and the basic documents will be finalized. The Municipality and the company will each adopt resolutions approving the legal documents and authorizing the issuance of the bonds at the specified interest rates and terms.

Preparation of Closing Documents

In addition to the basic legal documents discussed above, numerous other “closing documents” are necessary for the closing of a bond issue. Such documents include certificates relating to the existence of authority to execute and deliver documents and the absence of material litigation, corporate resolutions, opinions of counsel and evidence of payment for and receipt of the bonds. Gilmore & Bell will assist in the preparation and collection of the necessary closing documents.

Closing

The last step in the transaction is the closing itself, at which the Municipality delivers the bonds to the purchaser in exchange for payment of the purchase price of the bonds. The bond proceeds are paid over to the trustee bank, to be disbursed in accordance with the provisions of the trust indenture to pay the costs of the project. At the closing, Gilmore & Bell will deliver to the bond purchasers its opinion to the effect that the bonds have been validly issued under applicable state law and, if applicable, that the interest on the bonds is exempt from state and federal income taxation.

**V. ADVANTAGES OF REVENUE BOND FINANCING**

From the Municipality’s standpoint, industrial development revenue bond financing is a useful tool to induce responsible new industries to locate in the area, as well as encouraging companies already in the area to remain, by assisting them in improving their present facilities or in building new ones. The end result is often a combination of increased job opportunities, existing job retention and large-scale capital investment.

From the company’s standpoint, the principal advantage of industrial development revenue bond financing depends on the purpose for which the bonds are being issued. The company can receive significant financial incentives in the form of property and/or sales tax abatement on the bond-financed property. Additionally, if the bonds are tax-exempt, the cost of funds provided by revenue bonds generally is significantly below that of other alternatives because the interest paid to holders of such bonds is exempt from federal and state income taxation.

\* \* \* \* \*

## **LAND CLEARANCE FOR REDEVELOPMENT AUTHORITY**

### **I. PURPOSE**

A Land Clearance for Redevelopment Authority (an “Authority”) may be created to assist counties and municipalities to redevelop blighted or insanitary areas for residential, recreational, commercial, industrial or for public uses. The LCRA Law (§§ 99.300 to 99.715, RSMo.) is premised upon the concept that the menace of blight is beyond remedy and control solely by regulatory process in the exercise of the police power and cannot be dealt with effectively by the ordinary operations of private enterprise without the aids provided in the LCRA Law. The LCRA Act is intended to be a broad grant of authority by which a municipality, to the greatest extent it determines to be feasible in carrying out the provisions of the LCRA Act, is afforded maximum opportunity, consistent with the sound needs of the municipality as a whole, to the rehabilitation or redevelopment or renewal of areas by private enterprise.

### **II. CREATION**

Before an Authority may operate in a city or county, the governing body of the city or county must (1) find that one or more “blighted” or “insanitary” areas (each defined in the statute) exist in such community and that the redevelopment of such area or areas is necessary in the interest of the public health, safety, morals or welfare of the residents of such community and (2) approve the conduct of business by the Authority by ordinance or resolution. Although any municipality or county can authorize the operation of an LCRA, any municipality that contains less than 75,000 inhabitants is required to obtain majority voter approval to allow the Authority to operate. Regional authorities may also be created where two or more cities or counties cooperate to do so.

### **III. GOVERNANCE**

An Authority is governed by a board of five commissioners appointed by the mayor for a municipal authority or county commission for a county authority. Commissioners must be taxpayers who have resided in the city or county forming the Authority for at least 5 years. In a regional Authority, each city or county appoints one commissioner. If there are an even number of communities represented in a regional Authority, those commissioners appoint one additional commissioner.

### **IV. POWERS**

The LCRA Law provides for the financing of any land clearance or urban renewal project. The powers of an LCRA are exercised by its 5-member Board of Commissioners who must each be a taxpayer that has lived in the community for at least five years. The city must appoint Commission members to create staggered four-year terms.

An LCRA possesses a powers that related to blight clearance and redevelopment, including:

1. Prepare or cause to be prepared and recommend redevelopment plans and urban renewal plans to the governing body of the community within its area of operation and undertake and carry out land clearance projects and urban renewal projects within its area of operation.

2. Arrange or contract for the furnishing or repair, by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities or other facilities for or in connection with a land clearance project or urban renewal project.
3. Purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, eminent domain or otherwise, any real or personal property or any interest therein.
4. To make plans to carry out a program of voluntary repair and rehabilitation of buildings and improvements, plans for the enforcement of state and local laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements.
5. To make plans to carry out a program of compulsory repair, rehabilitation, demolition, or removal of buildings and improvements.
6. Issue bonds for any of its corporate purposes including the payment of principal and interest upon any advances for surveys and plans for land clearance projects.
7. Make or have made all surveys, studies and plans, but not including the preparation of a general plan for the community, necessary to the carrying out of the purposes of this law.

An LCRA may delegate to a municipality or other public body any of the powers or functions of the authority with respect to the planning or undertaking of a land clearance project or urban renewal project in the area in which the municipality or public body is authorized to act, and the municipality or public body is authorized to carry out or perform such powers or functions for the LCRA.

A “land clearance project” includes any work or undertaking to acquire blighted or insanitary areas or portions thereof; clearing any such areas by demolition or removal of structures and improvements thereon and to install, construct or reconstruct streets, utilities, and site improvements essential to the preparation of sites for uses in accordance with a redevelopment plan; retain, sell or lease the land; and develop, construct, repair or improve residences, houses, buildings, structures and other facilities.

An “urban renewal project” includes any surveys, plans, undertakings and activities for the elimination and for the prevention of the spread or development of insanitary, blighted, deteriorated or deteriorating areas and may involve any work or undertaking for such purpose constituting a land clearance project or any rehabilitation or conservation work, or any combination of such undertaking or work in accordance with an urban renewal project.

“Rehabilitation or conservation work” is also defined in the statute and may include such things as carrying out plans for rehabilitation of buildings and other improvements, acquiring real property and demolition and clearing of such property to accomplish certain enumerated purposes; developing buildings and other structures; installing improvements necessary for carrying out the urban renewal project; and the disposition of the urban renewal project and related land.

## V. FUNDING MECHANISMS

### Generally

An Authority may issue bonds and may secure any of such obligations by mortgage, pledge, assignment or deed of trust of any or all of the property and income of the Authority, respectively. Bond issues of the Authority in excess of \$10,000,000 must be sold at public sale. The Authority may pledge all or any part of its gross or net rents, fees or revenues from land clearance projects to secure the repayment of bonds.

Any property held by the Authority in fee simple is subject to property tax abatement. A developer could enter into a financing arrangement similar to Chapter 100 where the developer receives the benefit of the abatement during the period any bonds remain outstanding. An Authority may acquire real property and lease the property to a redeveloper, who would then use the property and not pay *ad valorem* property taxes.

### Property Tax Abatement in Constitutional Charter Cities

Sections 99.700 through 99.715, RSMo, provides a 10-year tax abatement process that is available in constitutional charter cities. The abatement covers 100% of the increased value of the property after abatement, as compared to the certified value before the abatement commenced. The property owner continues to annually pay taxes during this ten-year period based on the value of the property before redevelopment started.

A property owner submits plans to the LCRA which show that the applicant is engaged in new construction or rehabilitation pursuant to an approved redevelopment plan or urban renewal plan. § 99.700. The LCRA reviews the plans for construction/rehabilitation and issues a "certificate of qualification for tax abatement" to the applicant. § 99.700. The applicant notifies the county assessor of the qualification for tax abatement. § 99.705. The LCRA must issue a copy of the plans to the assessor. § 99.705. Then, the County assessor shall "issue a statement as to the current assessed valuation of the then existing real property covered by the plans."

The phrase "current assessed valuation" means the valuation of the property before new construction or rehabilitation begins, regardless of whether the new construction or rehabilitation is partially or totally complete at the time that the assessor receives the notice of qualification for abatement from the property owner. *20th & Main Redev. Partnership v. Kelley*, 774 S.W.2d 139 (Mo. 1989). This is the proper interpretation of the phrase "current assessed valuation" because the statute is to be construed liberally to effectuate the purpose of tax abatement. *Id.* The property is not to be assessed based on partially complete or completed rehabilitation at the time the assessor receives notice. *Id.*

The *Kelley* opinion notes that it would be a good practice to file a certificate for tax abatement prior to the start of new construction or rehabilitation, but failure to do so should not ruin the intended effect of the statute. The county must look back to the last valuation before new construction or rehabilitation started. In the *Kelley* case, the developer applied for tax abatement after an assessment date on which the rehabilitation was 90% complete, but still received abatement based on the pre-rehabilitation assessed value of the property.

The county assessor's statement of the value serves as the maximum assessed valuation of all real property included in the plans for a period of ten years from the date on which the statement is issued by the county. § 99.710.

Calculation of the 10-Year Abatement Period (Charter Cities)

Based on the *Kelley* case, the county should look to the January 1 assessment before the rehabilitation or new construction commenced. The facts of the *Kelley* case illustrate how this should work:

Jan. 1, 1985 – Assessed value of the subject property was \$46,080 (taxes due were \$2,186).

Aug. 1985 – Respondent purchased property, rehabilitation started.

Jan. 1, 1986 – Assessed value of the property was \$251,940 (taxes due were \$12,551), rehabilitation was 90% complete.

July 1986 – Owner received certificate of abatement from LCRA, owner delivered certificate to county assessor.

The county argued that taxes should be paid in 1986 based on the higher assessed value as of Jan. 1, 1986, because the county received the certificate in July 1986. The owner argued that the assessed value should be the lower Jan. 1, 1985 value because that was the value before the rehabilitation started.

The court agreed with the property owner, and the \$46,080 assessed value from 1985 was used for the purpose of calculating abatement. “The current assessed valuation of the then existing real property’ [in Section 99.705] does not refer to the valuation of the property when the certificate is presented to the assessor, as appellants would have us believe. An interpretation along these lines would render the remaining wording of the statute void of meaning, and would counter the intent of the legislature. \* \* \* We hold that 99.705 provides that the valuation of the property *before* rehabilitation begins is the applicable number which is to be used for determining tax relief.” *Kelley*, 774 S.W.2d at 141 (emphasis in original).

The *Kelley* case is not specific on how the 10-year period is calculated, but a rule can be drawn from the case. Section 99.715 provides that abatement is effective “each year for a period of ten years from the date on which the statement [of abatement] was issued.” The court held in *Kelley* that the taxes due for the year 1986 were \$2,186 (based on the 1985 value), so presumably the first year of the 10-year period was 1986, starting on January 1, 1986. The general rule from this case would be that the first year of the 10-year period is the calendar year during which the certificate of qualification is issued, not a partial year, and the abatement continues for nine more calendar years after the year that the certificate is issued.

Property tax exemption for periods longer than 10 years may also be available through the issuance of industrial revenue bonds to finance certain property, similar to the tax exemption allowed under Chapter 100, RSMo. LCRAs in St. Louis City and Kansas City have issued industrial revenues bonds to finance the acquisition of certain real and personal property. This property is then titled in the name of the LCRA (and is therefore tax-exempt) and leased to a private company. The lease payments made by the private company are then used to pay debt service on the bonds.

## VI. OTHER CONSIDERATIONS

No real property can be acquired by the Authority until a plan is adopted by the governing body. An Authority may use the power of eminent domain to acquire any interest in any real property that is necessary to the redevelopment plan. All property including funds of an Authority shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process can be against the Authority's property. An authority is immune from any judgment which would be a charge or lien upon its property.

An Authority is a separate political entity required to comply with all Missouri laws applicable to political subdivisions (e.g., public meetings, Sunshine Law requirements, annual budgets, etc.). At least once a year the Authority must file a report of its activities with the city or county clerk where the Authority is located. Also, every five years the governing body of the city or county is to have a hearing to determine whether the Authority is making satisfactory progress under the time schedules in plans that have been approved.

A city which approves a land clearance project is granted certain additional powers by the LCRA Act which aid in the purposes of the plan, including causing parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities, or any other works which it is otherwise empowered to undertake, to be furnished in compliance with a redevelopment plan. A city is also expressly authorized to plan or replan, zone or rezone any part of the city or make exceptions from building regulations and ordinances to carry out the plan.

Many provisions of the LCRA Act are similar to the Planned Industrial Expansion Authority ("PIEA") Act. However, the PIEA Act is available only to cities with a population of at least 400,000 or to cities that have adopted a charter under Article VI, Section 19 of the Missouri Constitution. Additionally, the PIEA Act is focused on industrial development.

\* \* \* \* \*

# LOCAL OPTION ECONOMIC DEVELOPMENT SALES TAX

## I. INTRODUCTION

A Local Option Economic Development Sales Tax may be levied, subject to voter approval, at a rate of up to one-half of one percent (0.5%) by any city, town, village or county (collectively, a “municipality”) pursuant to Section 67.1305, RSMo. If approved by the voters, the sales tax will become effective on the first day of the second calendar quarter following the election. If not approved by the voters, a proposal for a Local Option Economic Development Sales Tax may not be resubmitted to the voters for twelve (12) months.

Certain municipalities, including Springfield, Joplin, St. Joseph, Buchanan County, Jasper County, all cities within Jasper County, Butler County and all cities within Butler County, may levy a Local Option Economic Development Sales tax, subject to voter approval, at a rate of up to one-half of one percent (0.5%) pursuant to Section 67.1303, RSMo., in lieu of the sales tax levied pursuant to Section 67.1305, RSMo. The provisions in Section 67.1303, RSMo., differ slightly from the provisions of Section 67.1305, RSMo., presented in this memorandum. If your municipality is able to levy a Local Option Economic Development Sales Tax pursuant to either Section 67.1303, RSMo., or Section 67.1305, RSMo., please consult with a Gilmore & Bell attorney to determine which sales tax will best serve your municipality’s needs.

## II. PROCEDURES FOR IMPLEMENTATION

After the Local Option Economic Development Sales Tax is approved by the voters, the municipality levying the tax must create an Economic Development Tax Board. The membership of this Board is dependent upon whether the sales tax was levied by a city, town, village or county, as shown in the following table:

	Levied by City/Town/Village <sup>1</sup>		Levied by County
School Districts	1	2	1
City/Town/Village	3	5	0
County	1	2	4
All Cities/Towns/Villages within County	0	0	2
<b>TOTAL MEMBERS:</b>	<b>5</b>	<b>9</b>	<b>7</b>

<sup>1</sup> An Economic Development Tax Board established by a City/Town/Village must consist of at least 5 members, but may be increased to 9 members. The number of members must be designated in the ordinance imposing the sales tax.

The purposes of this Board are to (1) develop and consider economic development plans, economic development projects and designations of economic development areas, (2) hold public hearings, and (3) make recommendations to the governing body of the municipality concerning economic development plans, economic development projects and designations of economic development areas. However, the governing body of the municipality levying the Local Option Economic Development Sales Tax will make all final funding determinations.

Before making any recommendations to the governing body of the municipality, the Economic Development Tax Board must hold a public hearing concerning the proposed economic development plan, economic development project or designation of an economic development area. Section 67.1305, RSMo.,

does not provide any direction concerning the content of economic development plans or projects, the factors for considering the designation of an economic development area, or even procedures for giving notice of the public hearing. Accordingly, we suggest that the governing body of the municipality levying the sales tax pass a resolution, ordinance or order addressing these items concurrently with the establishment of the Economic Development Tax Board.

### III. USE OF SALES TAX REVENUES

The use of Local Option Economic Development Sales Tax revenue is subject to several restrictions:

1. Sales tax revenue may not be used for any retail development project, except for the redevelopment of downtown areas or historic districts.
2. At least twenty percent (20%) of the revenue must be used for projects directly related to long-term economic development preparation, including but not limited to the following:
  - a. Acquisition of land;
  - b. Installation of infrastructure for industrial or business parks;
  - c. Improvement of water and wastewater treatment capacity;
  - d. Extension of streets; and
  - e. Providing matching dollars for state or federal grants.
3. Remaining revenue may be used for, but is not limited to, the following:
  - a. Marketing;
  - b. Providing grants and low-interest loans to companies for job training, equipment acquisition, site development and infrastructure;
  - c. Training programs to prepare workers for advanced technologies and high skill jobs;
  - d. Legal and accounting expenses directly associated with the economic development planning and preparation process; and
  - e. Developing value-added and export opportunities for Missouri agricultural products.
4. Not more than twenty-five percent (25%) of revenue may be used annually for administrative purposes, including staff and facility costs.
5. Sales tax revenue may be used outside of the boundaries of the municipality imposing the tax if:
  - a. The municipality imposing the tax or the state receives significant economic benefit from the economic development plan, economic development project or the designation of the economic development area; and

- b. An agreement is entered between all municipalities participating in the economic development plan, economic development project or the designation of the economic development area detailing the authority and responsibilities of each municipality.
- 6. When imposed in a tax increment financing (TIF) district, Local Option Economic Development Sales Tax revenue is not captured by TIF.
- 7. When imposed in any special taxing district, including but not limited to TIF, Neighborhood Improvement Districts or Community Improvement Districts, Local Option Economic Development Sales Tax revenue may not be used for the purposes of the special taxing district unless recommended by the Economic Development Tax Board and approved by the governing body of the municipality levying the tax.

#### **IV. REPORTING REQUIREMENTS**

The Economic Development Tax Board and the governing body of the municipality levying the Local Option Economic Development Sales Tax must make a public report at least annually on the use of the sales tax revenue and the progress of any economic development plan, economic development project or the designation of the economic development area.

Additionally, no later than March 1 of each year, the Economic Development Tax Board must submit to the Joint Committee on Economic Development (a joint committee of the Missouri General Assembly) a report that includes the following information for each economic development project funded:

- 1. A statement of the project's primary economic goals.
- 2. A statement of the total Local Option Economic Development Sales Taxes received during the immediately preceding calendar year.
- 3. A statement of the total expenditures during the preceding calendar year in each of the following categories:
  - a. Infrastructure improvements;
  - b. Land and/or buildings;
  - c. Machinery and equipment;
  - d. Job training investments;
  - e. Direct business incentives;
  - f. Marketing;
  - g. Administration and legal expenses; and
  - h. Other expenditures.

## V. REPEAL OF SALES TAX

The governing body of the municipality levying the Local Option Economic Development Sales Tax may choose to submit the question of repeal of the sales tax to the voters on any election date. Additionally, whenever the governing body of the municipality receives a petition signed by ten percent (10%) of registered voters of the municipality voting in the last gubernatorial election calling for an election to repeal the sales tax, the governing body must submit the question of the repeal to the voters at the next available election date.

If a majority of the voters approve the repeal, the repeal of the sales tax will become effective on December 31 of the calendar year in which the voters approved the repeal.

\* \* \* \* \*



To: City Manager Amber Withycombe

From: Ward 3 Council Member Nick Homa

Cc: Director of Public Works Anthony Traxler

Date: December 26, 2024

Re: January Work Session addition –Yard Sign Revisit

I would like to discuss the yard sign limitations in Maplewood. To my knowledge, our city only allows yard signs to be displayed thirty days prior to an election (as I believe is governed by Chapter 6, Division 3, Sec. 6-72 - [Permitted Temporary Signs](#)). Other municipalities, for example Richmond Heights, have different stringencies and allow yard signs to be displayed for 60 days (or some other length) prior to an election.

It has been brought to my attention that for elections drawing competing candidates across our two municipalities, such as the upcoming MRH school board election in April, Richmond Heights residents have the ability to display candidate yard signs for twice as long as Maplewood residents. I would request that language be proposed for discussion during our work session that would lengthen the timeline to 60 days prior to an election (from the current thirty days) to bring things into balance between Maplewood and Richmond Heights.

Pending additional review or work needed by city staff, please cause this item to be added to the January 14, 2025 work session.

# Memorandum



**To:** Mayor and City Council  
**From:** Amber Withycombe, City Manager  
**Date:** January 9, 2025  
**Re:** **Election sign ordinance amendment**

---

Currently, the City’s Code of Ordinances addresses election signs under two separate provisions: the general temporary sign definition and Sec. 6-31(c)(3) governing residential yard signs. This structure has created confusion about display periods and requirements, particularly during school board elections.

The attached mark-up proposes amending the code to:

1. Create a specific election sign subsection under Sec. 6-72 (Permitted Temporary Signs)
2. Extend the permitted display period from 30 to 60 days before an election
3. Establish clear removal requirements (within 5 days post-election)
4. Set consistent size limitations (6 square feet in residential districts, 16 square feet in commercial districts)
5. Add election signs meeting these requirements to our permit exemption list

These changes would align our regulations with Richmond Heights’ approach (their Section 415.030) and create consistency across our shared MRH community.

## Chapter 6 ADVERTISING

### ARTICLE II. SIGNS

#### DIVISION 1. GENERALLY

##### Sec. 6-29. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Billboard* means a sign advertising or directing attention to an activity not conducted, or to a service not provided, or to an article or product not manufactured, assembled, processed, prepared or sold upon the premises upon which the sign is located.

*Ground sign* means a display sign supported by uprights or braces in or upon the ground surface.

*Post sign* means a sign that is mounted on a stationary pole or posts and not attached to any part of a building. (Also called a pole sign.)

*Projecting sign* means a display sign which is attached directly to the building wall and which extends more than 15 inches from the face of the wall.

*Roof sign* means a display sign that is erected, constructed and maintained above the roof of the building.

*Sign* means any identification, description, illustration or device, illuminated or nonilluminated, which is visible from any public place or is located on private property and exposed to the public and which directs attention to a product, service, place, activity, person, institution, business or solicitation, including any emblem, painting, placard or temporary sign designed to advertise, identify or convey information, with the exception of window displays and national flags. For the purpose of removal, signs shall also include all sign structures.

*Sign area* means the total area of the space to be used for advertising purposes, including the spaces between open-type letters and figures, including the background structure or other decoration or addition which is an integral part of the sign. Sign supports shall be excluded in determining the area of a sign. A double-faced sign shall have the same total area as a single-faced sign.

*Temporary sign* means a display sign, banner or other advertising device constructed of cloth, canvas, fabric, plastic, or other light temporary material with or without a structural frame, intended for display ~~for a period not to exceed 30 days, including decorative displays for holidays or public demonstrations.~~ Unless otherwise specified in this article, temporary signs shall not be displayed for more than 30 days.

*Wall sign* means a display sign which is painted on or attached directly to the building wall and which extends not more than 15 inches from the face of the wall.

(Code 1982, § 3-21; Ord. No. 4141, § I, 5-10-1983; Ord. No. 4713, § 1, 1-9-1996; Ord. No. 5047, § IV, 3-26-2002)

### **Sec. 6-30. Violations.**

Any person who installs, erects or maintains any sign or device in violation of this article shall be deemed guilty of a misdemeanor, and subject to a fine of not less than \$100.00 or more than \$500.00, and each day or part thereof such violation shall continue shall constitute a separate offense.

(Code 1982, § 3-29; Ord. No. 4141, § IX, 5-10-1983)

### **Sec. 6-31. Permits.**

- (a) *Required for sign construction or alteration.* No sign of any of the types described herein shall be erected, nor the location of any existing sign changed, until a permit therefor shall have been issued by the director of public works. No permit shall be granted until after an application has been filed with the director of public works showing the plans and specifications, including dimensions, material and details of construction of the proposed sign.
- (b) *Existing signs.* An existing sign shall not be enlarged, altered, or relocated except in conformity to the provisions for new signs, nor until a proper permit has been secured.
- (c) *Exempt signs.* The following signs are exempt from permit fees:
  - (1) "For sale" or "for lease" (including garage or basement sales) signs not to exceed six square feet.
  - (2) Temporary signs announcing civic events approved by the director of public works.
  - (3) Temporary yard signs in residential districts (other than "for sale" or "for lease" signs as described in subsection (c)(1) of this section); these signs shall not exceed six square feet and cannot be erected more than 30 days prior to the event for which they are erected and must be removed within two days after the event for which they are erected.
  - (4) Window signs which are placed on the inside of a ground floor display window, both temporary and permanent-type, advertising only specific products available or services provided therein; provided that there be no more than four signs for the total display window area, and the signs not exceed 20 percent of the total display window area.
  - (5) Front door signs, with wording confined to the name of the business, building or institution, address, telephone number, general business or service conducted therein, and hours of operation, not to exceed 33 percent of the area of the door.
  - (6) Temporary election signs complying with the requirements of Sec. 6-72(8).
- (d) *Permit fees.* Before the issuance of a sign permit, the following fees shall be paid to the office of the city clerk.
  - (1) For permanent signs, \$50.00 plus \$5.00 per square foot.
  - (2) The permit fee for double-faced signs shall be based on the total area of both faces.
  - (3) Temporary signs other than exempted, \$20.00.

(Code 1982, § 3-22; Ord. No. 4141, § II, 5-10-1983; Ord. No. 4183, § 1, 6-12-1984; Ord. No. 5047, §§ V—X, 3-26-2002; Ord. No. 6018, § I, 7-11-2023)

### **Secs. 6-32—6-48. Reserved.**

### DIVISION 3. PERMITTED TEMPORARY SIGNS

#### Sec. 6-72. Regulations.

The following temporary signs may be erected in conformance with this article:

- (1) *Announcement of development sign.* A temporary ground sign may be erected on vacant property for a period not to exceed 60 days prior to the issuance of a building permit announcing the specific development of the lot, provided the sign is erected behind the building line and does not exceed 32 square feet in area. On projects in which the working drawings require more than 60 days to complete, the director of public works may extend the allowable time period an additional 60 days, provided that drawings are being completed expeditiously.
- (2) *Construction signs.* A construction sign may be erected after issuance of a building permit announcing the type of building or development under construction. Such sign may include the names of those associated with the project and leasing information. Such sign shall not exceed 32 square feet in area. Such sign shall be removed upon completion of the work and prior to occupancy of the building. The location of the sign shall be subject to the review and approval of the public works director.
- (3) *"For sale" signs on nonresidential buildings.* One "for sale" or "for lease" sign may be erected on each nonresidential building or premises, provided such sign conforms to the following requirements:
  - a. It shall not exceed 12 square feet in area.
  - b. The legend shall refer only to the sale or the lease of the building or premises and contain the name, address and telephone number of the agent handling the sale. The sign may contain the zoning district designation and the type of space available if desired.
- (4) *Residential "for sale" signs.* One "for sale" or "for lease" sign shall be permitted on each residential property, provided said sign conforms to the following requirements:
  - a. It shall not exceed six square feet in area.
  - b. It shall be erected in the front yard at least five feet back from the property line and not attached to any building.
  - c. The legend shall refer only to the sale or lease of the premises with the name, address and telephone number of the agent. The zoning district may be placed on the sign.
  - d. "For sale" signs remaining longer than ten days after the property is sold or no longer for sale shall be considered illegal signs.
- (5) *Garage and basement sale signs.* One such sign shall be permitted on a residential property, provided said sign conforms to the following requirements:
  - a. It shall not exceed six square feet in area.
  - b. It shall not be posted for longer than 48 hours.
  - c. No one residence shall be permitted more than two such signs per year.

(6) *Miscellaneous signs.* The public works director may authorize one temporary sign for each building, such as political headquarters signs, signs announcing civic events or similar type signs, provided they are mounted flat on the wall of the building and do not exceed 25 square feet in area.

(7) *Banners.* One banner may be erected on any nonresidential building, provided such sign does not exceed 40 square feet in area, and is erected for no more than 30 days. No more than four banners may be erected in a calendar year.

(8) Election signs. Ground signs may be erected on private property during election season, subject to the following requirements:

a. Signs shall be erected no more than sixty (60) days prior to an election and must be removed within five (5) days after the election.

b. Signs shall not exceed six (6) square feet in residential districts and sixteen (16) square feet in commercial districts.

c. Signs shall not be erected in the public right-of-way.

d. No permit shall be required for election signs meeting these requirements.

(Code 1982, § 3-24; Ord. No. 4141, § IV, 5-10-1983; Ord. No. 4183, § 1, 6-12-1984; Ord. No. 5047, § XVII, 3-26-2002; Ord. No. 5154, § IV, 1-27-2004; Ord. No. 5709, § II, 8-13-2013)

**Section 415.030. Rules and Definitions. [Ord. No. 5217 §§1 — 2, 4-15-2013]**

A. *Rules Of Construction.* For the purpose of this Chapter, certain rules of construction shall apply to the text, as follows:

1. Words used in the present tense include the future tense; and the singular includes the plural, unless the context clearly indicates the contrary.
2. The terms "*shall*" and "*must*" are always mandatory and not discretionary; the words "*may*" or "*should*" are permissive.
3. Words or terms not interpreted or defined by this Section shall be used with a meaning of common or standard utilization.
4. The word "*person*" includes a firm, organization, association, partnership, trust, company or corporation, as well as an individual.
5. The words "*use*" or "*occupy*" shall include the words "*intended*", "*designed*", "*arranged to be used*" or "*occupied*".

B. *Definitions.* The following definitions shall apply in interpretation and enforcement of this Chapter unless otherwise specifically stated:

**BANNER** — A sign made of fabric, plastic, paper or other light pliable material, not enclosed in a rigid frame and characteristically suspended along or across a public street.

**BUILDING FACE OR WALL** — All window and wall area on the first (1st) floor of a building in one (1) plane or elevation; or, for multi-story single tenant buildings, all window and wall area in one (1) plane or elevation.

**CANOPY** — Any structure attached to a building at the inner end and supported on the other end, or a freestanding structure, with one (1) or more supports, meant to provide shelter from weather elements onto which signs may be affixed or incorporated.

**CHANGEABLE COPY SIGN (MANUAL)** — A sign on which copy is changed manually in the field, i.e., reader boards with changeable letters or changeable pictorial panels.

**CITY** — The City of Richmond Heights, Missouri.

**CODE ENFORCEMENT OFFICER** — The Building Commissioner or other officially designated representative of the City of Richmond Heights responsible for the enforcement of the Sign Ordinance and other ordinances.

**COPY** — The wording or graphics on a sign surface.

**COVERED MALL BUILDING** — A building enclosing a number of occupancies which are typically served by a roofed-over common pedestrian area serving more than one (1) tenant.

**DISTRICT** — As defined under Chapter 405 of this Title.

**ELECTION SEASON** — The period from sixty (60) days prior to any election voted in by the residents of Richmond Heights until two (2) weeks after that election.

**ELECTRONIC MESSAGE SIGN** — Any sign, or portion of a sign, that displays an electronic image, which may or may not include text, where the rate of change is

electronically programmed and can be modified by electronic processes. Electronic message signs include computer programmable, microprocessor, or controlled electronic displays and the images can be produced from LED technology, fiber optics, light bulbs, or other illumination devices within the display area. Electronic message signs do not include projected images or messages projected onto buildings or other objects. Electronic signs are permitted only by attachment to or placement as a ground sign.

**ERECT** — To build, construct, reconstruct, attach, hang, rehang, alter, place, affix, enlarge, move or relocate, and includes the painting and repainting of existing sign structures.

**FACADE** — The front or main part of a building facing a street; for purposes of this Chapter, the facade is defined as measured from the ground elevation to the head beam.

**FLASHING SIGN** — Any sign which contains an intermittent or flashing light source, or which includes the illusion of intermittent or flashing light by means of animation, or an externally mounted intermittent light source.

**FRONTAGE** — The length of the lot along the street side. The front of a lot bordering more than one (1) street is considered separately for each street.

**GASOLINE AND OIL SERVICE STATIONS** — Any business which dispenses, or is designed to dispense, gasoline and/or oil for use in motor vehicles or boats.

**GROUND LEVEL** — The level equivalent to that of the immediate surrounding grade.

**HEIGHT OF SIGN** — The vertical distance measured from the surrounding grade to the highest point of the sign.

**ILLEGAL SIGNS** — A sign which contravenes this Chapter or a non-conforming sign for which a permit required under a previous ordinance was not obtained.

**LOGO** — A letter, character or symbol used to represent a person, corporation or business enterprise.

**LOT** — A parcel, tract, plot or area of land accessible by means of a street or other permanently reserved principal means of access. It may be a single parcel separately described in a deed or plat which is recorded in the office of the County Recorder of Deeds, or it may include parts of or a combination of such parcels when adjacent to one another and used as one as determined by the Code Enforcement Officer.

**MARQUEE** — Any structure attached to a building at the inner end and supported on the other end or a freestanding structure, with one (1) or more supports, onto which signs may be affixed or incorporated.

**OBSCENE** — Material which deals with sex in a manner appealing to a prurient interest.

**OWNER** — A person reflected as such on official records and including duly authorized agent, purchaser, lessee, devisee, and any person having a vested or contingent interest in the property or business in question.

**PERMIT** — A building permit obtained from the Code Enforcement Officer/Building Commissioner.

**PERSON** — Any natural person, firm, partnership, association, corporation, company or organization of any kind.

**PREMISES** — An area of land with its appurtenances and buildings which, because of its unity of use, may be regarded as the smallest conveyable unit of real estate.

**READER BOARD** — Any sign that has changeable or removable lettering.

**REGIONAL MALL** — A planned development containing a minimum of one million (1,000,000) square feet of floor space.

**RIGHT-OF-WAY (R.O.W)** — The proposed right-of-way as indicated on the City of Richmond Heights Comprehensive Plan and/or as set forth in the City of Richmond Heights Subdivision Ordinance, as well as all such other areas dedicated to the public for use as streets, roadways, walkways or alleys at the time of adoption of this Chapter and any such areas acquired subsequent thereto.

**ROOFLINE** — The highest point of the coping on a flat roof, false mansard, or parapet wall; the decline of a true mansard roof; the ridge line between the upper and lower slopes of a gambrel roof; or the mean height level between the eaves and the ridge for a gable or hip roof.

**SETBACK** — The minimum horizontal distance between either the face of curb, the edge of pavement, or the right-of-way line and the sign structure as specified in a particular Section of this Chapter.

**SHOPPING CENTER** — A building containing four (4) or more shops, stores, and other places of business and providing off-street parking facilities for all of the businesses and their customers.

**SIGN** — Any identification, description, illustration or device, illuminated or non-illuminated, which is visible from any public right-of-way or is located on private property and exposed to the public right-of-way and which directs attention to a product, service, place, activity, person, institution, business or solicitation, including any permanently installed or situated merchandise or any emblem, painting, banner, pennant or placard designed to advertise, identify or convey information. For the purpose of removal, signs shall also include all sign structures. For the purposes of this Chapter, this definition shall include those signs painted directly upon a building or other structure.

**SIGN AREA** — The area of the sign face. The "*sign area*" of a multi-faced sign is the sum of the sign areas of each face, excluding structural trim and supports, provided there is no advertising copy on such trim or supports. If a sign is attached to a building or suspended in any manner whereby there is no apparent trim or confining border, the sign area shall be computed by drawing an imaginary straight line around a generally rectangular margin and measuring the area so encompassed upon a building or other structure.

**SIGN, ATTACHED** — A sign erected or placed upon the wall of any building with the plane of the face parallel to the plane of the wall below the roofline.

**SIGN, BILLBOARD** — An off-premises sign, any part of the contents of which is visible from any point on the traveled ways of the interstate or primary road system.

**SIGN, CONSTRUCTION** — A temporary sign erected on the premises on which construction is taking place, during the period of such construction.

**SIGN, FACE OF** — The area of a sign on which the copy may be placed. The area of a sign

visible from one (1) direction as projected on a plane.

**SIGN, DIRECTIONAL INFORMATION** — A sign which is designed and erected for the purpose of traffic or pedestrian direction and placed on the property to which or on which the public is directed including entrance and exit signs.

**SIGN, FLUTTERING** — A sign which moves with the wind or by some artificial means.

**SIGN, GROUND** — Any detached on-premises sign which has its bottom portion erected upon or supported by the ground, a ground planter box, or other supports.

**SIGN, HANGING** — Any sign hanging entirely beneath the canopy, portico or marquee.

**SIGN, ILLUMINATED** — Any sign which is illuminated by light sources mounted on or in the sign or at some other location.

**SIGN, INCIDENTAL** — A sign which is too small to be legible from a position off the premises.

**SIGN, NON-CONFORMING** — A sign legally erected under the previously existing ordinances of the City, but which does not conform to the provisions of this Chapter.

**SIGN, OFF-PREMISES** — A sign located on property not owned or leased by the owner of the sign.

**SIGN, ON-PREMISES** — A sign located on property owned or leased by the owner of the sign.

**SIGN, POLE** — Any detached on-premises sign which is supported by one (1) or more stationary columns taller than ten (10) feet above the mean grade line of the ground at its base, provided that this shall not include a permitted ground sign.

**SIGN, PROJECTING** — A sign, other than a flat attached sign, which is attached to and projects from a building wall or other structure.

**SIGN, ROOF** — Any sign erected on a roof but excluding marquee and canopy signs and wall signs. The generally vertical plane of a mansard-type roof shall be interpreted the same as a wall of a building.

**SIGN STRUCTURE** — The sign and all parts associated with its construction.

**SIGN SUPPORTS** — All structures by which a sign is held up including, for example, poles, braces, guys and anchors.

**SIGN, TEMPORARY** — Any sign intended for a limited or intermittent period of display.

**SIGN, VEHICLE** — Any sign attached to or painted on vehicles not used for transportation purposes in the normal day-to-day operations of the business that are parked and visible from the public right-of-way.

**SIGN, WINDOW, TEMPORARY** — A temporary sign affixed to the inside of an exterior window or glass door.

**STREET** — A public thoroughfare which affords the principal means of access to abutting property.

**USE** — The purpose for which a building, lot, sign or other structure is arranged, intended,

designed, occupied or maintained.

ZONING ORDINANCE — The Zoning Ordinance of the City of Richmond Heights and the current Zoning District Map related thereto.

**Section 415.120. Signs Allowed in All Zoning Districts — (Unless Noted Otherwise) No Building Permit Required. [Ord. No. 5217 §§1 — 2, 4-15-2013]**

- A. While the following signs require no permit, they must conform to all Sections of this Chapter regulating health, safety or general welfare of the community and may not be erected in the public right-of-way unless noted otherwise:
1. The erection, construction and maintenance of official traffic signs, signals and devices and signs of the Federal, State, County or City Government;
  2. Signs for the control or direction of traffic and other authorized public purposes, including on private property, related to the promotion of the health, safety and welfare of the general public as permitted or required by the City or other governmental authority;
  3. One (1) ground sign of six (6) square feet or less in all residential districts, sixteen (16) square feet or less in commercially zoned "C-1" and "C-2" Districts, and of the dimensions permitted for any other signs in Planned Development-Commercial and Planned Development-Mixed Use Districts, provided in each instance that any such sign is located on private property with the owner's permission. Additional ground signs are permitted under this Subsection during the election season, not to exceed the total number of questions or candidates on the ballot for the ensuing election. Any additional sign permitted during the election season, which is not removed after the end of the election season, shall be considered a prohibited sign;
  4. In accordance with Section 67.317, RSMo., properties that are for rent, for sale or for lease may have an additional sign not exceeding six (6) square feet per sign face. One (1) such sign shall be allowed per street frontage. All such additional signs shall be removed upon receipt of a temporary or permanent occupancy permit;
  5. Construction signs of six (6) square feet or less in residentially zoned property and twelve (12) square feet or less in commercial or industrially zoned. Such signs may be allowed for a maximum of thirty (30) days. Such sign shall not be erected in a public right-of-way and shall be removed ten (10) days after receipt of an occupancy permit for a building or development or ten (10) days after the completion of the work if no occupancy permit is required;
  6. Signs not exceeding two (2) square feet in sign area individually and not exceeding six (6) square feet in aggregate, including, but not limited to, the following:
    - a. Residential address number.
    - b. Commercial address numerals, which are required to be prominently displayed on each building. Larger address numerals may be permitted elsewhere in this Chapter and would be subject to the provisions and regulations of the particular Section.
    - c. No trespassing signs.
  7. Signs affixed to the interior of a window. The total gross sign area of all window signs shall not exceed twenty percent (20%) of the total window surface area; (Note no such

sign shall be allowed on any residentially zoned property.)

8. Incidental signs;
9. Signs not visible from a public right-of-way;
10. Non-profit, charitable, religious or educational institutions or organizations may erect temporary signs, a maximum size of thirty-two (32) square feet, for a total of no more than thirty (30) days each calendar year;
11. Signs, no larger than two (2) square feet with a maximum height of two (2) feet above grade, may be erected in the tree lawn area of the public right-of-way, with the City's Code Enforcement Officer's permission. Such signs must be erected and removed in accordance with the direction of the City's Code Enforcement Officer. Any sign that is placed without the City's Code Enforcement Officer's permission, or remains on display after it is required to be removed, may be removed and disposed of by the City.