

ORDINANCE #66092
Board Bill No. 273
Floor Substitute

An ordinance authorizing the City of St. Louis, Missouri (the "City") to assign TIF Revenues attributable to the Edison Brothers Warehouse Redevelopment Area (the "Redevelopment Area") for the purpose of paying the principal and interest on certain bonds to be issued by The Industrial Development Authority of the City of St. Louis, Missouri (the "Authority"); authorizing the City to enter into a certain Financing Agreement with the Authority to provide for such payment; and authorizing and directing the taking of other actions and approval and execution of other documents as necessary or desirable to carry out and comply with the intent hereof.

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

WHEREAS, pursuant to Ordinance No. 64609 dated February 5, 1999 (the "Approving Ordinance"), the City approved a redevelopment plan attached thereto (the "Redevelopment Plan") for redevelopment of the Redevelopment Area, designated Breckenridge Edison Development, L.C., a limited liability company duly organized and existing under the laws of the State of Missouri, as developer of the Redevelopment Area (the "Developer"), approved the execution of a Redevelopment Agreement by and between the City and the Developer dated as of February 26, 1999 (the "Redevelopment Agreement"), and adopted tax increment financing within the Redevelopment Area; and

WHEREAS, pursuant to Ordinance No. 64631 (the "Note Ordinance"), the City authorized issuance of its Taxable Tax Increment Revenue Notes (Edison Brothers Warehouse Redevelopment Area), Series 1999 (the "Taxable Notes"), in an aggregate principal amount not to exceed \$5,300,000, plus issuance costs, less the aggregate principal amount of Tax-Exempt Tax Increment Revenue Notes (Edison Brothers Warehouse Redevelopment Area), Series 1999 (the "Tax-Exempt Notes", and together with the Taxable Notes, the "Notes") for the purpose of implementing the Redevelopment Plan; and

WHEREAS, the Taxable Notes were initially issued on May 8, 2000, and are currently outstanding in a principal amount of \$5,187,851.65, plus accrued interest; and

WHEREAS, the Tax-Exempt Note was issued on October 19, 2001, and is currently outstanding in a principal amount of \$250,000, plus accrued interest; and

WHEREAS, pursuant to the Note Ordinance, the Notes are payable solely from the TIF Revenues deposited in the Special Allocation Fund, as such terms are set forth in the form of the Financing Agreement, attached hereto as Exhibit A; and

WHEREAS, the Redevelopment Agreement requires the City to issue tax increment revenue bonds to refund the TIF Notes, provided that the City can sell such bonds at a net interest cost that is less than the net interest cost of the Notes; and

WHEREAS, the Board of Directors of Authority will consider a resolution (the "Bond Resolution") authorizing the issuance of up to \$7,000,000 aggregate principal amount of Tax-Exempt Tax Increment Revenue Bonds, Series 2003 (Edison Brothers Warehouse Redevelopment Area) (the "Bonds") pursuant to a certain Trust Indenture between the Authority and the trustee named therein (the "Trustee") for the purposes of refunding the Notes, funding a debt service reserve fund for the Bonds, and paying the costs of issuance of the Bonds; and

WHEREAS, pursuant to Ordinance No. 65871, the City has appropriated TIF Revenues consisting of Economic Activity Taxes attributable to the Redevelopment Area for the current fiscal year ending June 30, 2004; and

WHEREAS, the Board of Aldermen of the City hereby finds it is advisable, necessary and in the best interests of the City to refund the Notes with the proceeds of the Bonds, and to direct the TIF Revenues to the payment of the principal of and interest on the Bonds pursuant to the hereinafter approved Financing Agreement; and

WHEREAS, a copy of this Ordinance having been made available for public inspection prior to its adoption by the Board of Aldermen and this bill having been read by title in open meeting three times before final passage by the Board of Aldermen.

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

Section 1. Definitions. All capitalized terms not elsewhere defined herein shall have the meanings set forth in the form of the Financing Agreement, attached hereto as Exhibit A.

Section 2. Findings and Determinations. The Board of Aldermen hereby finds and determines that it is necessary and in the best interests of the City to enter into the Financing Agreement with the Authority for purposes of directing TIF Revenues to payment of the Bonds, including funding of a debt service reserve fund for the Bonds, if deemed necessary and advisable in furtherance of the sale of the Bonds, and paying the costs of issuance of the Bonds.

Section 3. City Obligations. The Bonds and the interest thereon shall not constitute an indebtedness of the City or State of Missouri within the meaning of any constitutional or statutory debt limitation or restriction. The obligation of the City to make payments of Economic Activity Tax Revenues under the Financing Agreement is subject to annual appropriation as provided therein. The obligation of the City to make any of the payments due under the Financing Agreement or the Bonds shall not constitute a debt of the City. The taxing power of the City is not pledged to the payment of the Bonds either as to principal or interest or to the payment of TIF Revenues under the Financing Agreement.

Section 4. Pledging and Assigning of TIF Revenues. The City hereby pledges to transfer all Payments in Lieu of Taxes and, subject to annual appropriation, all Economic Activity Tax Revenues to the Trustee pursuant to the Financing Agreement. The City has already appropriated all Economic Activity Tax Revenues in the Special Allocation Fund to payment of the Bonds for the fiscal year ending June 30, 2004.

Section 5. Authority and Direction to Execute and Deliver City Documents. The City is hereby authorized to enter into, and the Mayor and the Comptroller and such other officers of the City as are appropriate are hereby authorized and directed to execute, seal, attest and deliver, for and on behalf of and as the act and deed of the City, the Financing Agreement and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance, including but not limited to a continuing disclosure agreement, purchase contract and offering materials for the Bonds (collectively the "City Documents"), in such form and with such changes as shall be approved by the City Counselor and by the appropriate officers of the City executing such documents, such officers' signatures thereon being conclusive evidence of their approval thereof.

Section 6. Further Authority. The City and the Mayor, the Comptroller, the Treasurer (as to permitted investments only) and other appropriate officers, agents and employees of the City are hereby authorized to take such further actions and execute such other documents, including but not limited to a continuing disclosure agreement, purchase contract and offering materials for the Bonds, as may be necessary or desirable to carry out and comply with the intent of this Ordinance, and to carry out, comply with and perform the duties of the City with respect to the City Documents.

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

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

Section 9. Governing Law. This Ordinance shall be governed exclusively by and construed in accordance with the applicable laws of the State of Missouri.

Clerk, Board of Aldermen

President, Board of Aldermen

Approved: Date: _____

Mayor

Truly Engrossed and Enrolled

EXHIBIT A

FORM OF FINANCING AGREEMENT

FINANCING AGREEMENT

**between
THE INDUSTRIAL DEVELOPMENT AUTHORITY
OF THE CITY OF ST. LOUIS, MISSOURI
and
CITY OF ST. LOUIS, MISSOURI**

Relating to

**Not to Exceed \$7,000,000
The Industrial Development Authority of the City of St. Louis, Missouri
Tax-Exempt Tax Increment Revenue Bonds
(Edison Brothers Warehouse Redevelopment Area)
Series 2003**

Dated as of _____, 2003

The rights, title and interest of The Industrial Development Authority of the City of St. Louis, Missouri, to this Financing Agreement have been assigned to [TRUSTEE], as Trustee under the Trust Indenture dated as of _____, 2003, between The Industrial Development Authority of the City of St. Louis, Missouri, and the Trustee.

FINANCING AGREEMENT

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FINANCING AGREEMENT

THIS FINANCING AGREEMENT dated as of _____, 2003 (this “*Financing Agreement*”), is between **THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF ST. LOUIS, MISSOURI**, a public corporation duly organized under Chapter 349 of the Revised Statutes of Missouri (the “*Authority*”), and the **CITY OF ST. LOUIS, MISSOURI**, a charter city and political subdivision duly organized and existing under the constitution and laws of the State of Missouri (the “*City*”). Capitalized terms not defined elsewhere herein shall have the meaning set forth in the Indenture as more fully described in Section 1.1 hereof.

RECITALS

WHEREAS, a plan for redevelopment of an area known as the Edison Brothers Warehouse Redevelopment Area was approved by the City's Board of Aldermen on February 5, 1999 (the "*Redevelopment Plan*") by Ordinance No. 64609, which also designated Breckenridge Edison Development, L.C., a limited liability company duly organized and existing under the laws of the State of Missouri (the "*Developer*"), as developer of the Redevelopment Area, authorized execution of a Redevelopment Agreement dated as of February 26, 1999, by and between the City and the Developer (the "*Redevelopment Agreement*"), and adopted tax increment financing therein (the "*Approving Ordinance*"); and

WHEREAS, pursuant to Ordinance No. 64631 (the "*Note Ordinance*"), the City authorized issuance of its Taxable Tax Increment Revenue Notes (Edison Brothers Warehouse Redevelopment Area), Series 1999 (the "*Taxable Notes*"), in an aggregate principal amount not to exceed \$5,300,000, plus issuance costs, less the aggregate principal amount of Tax-Exempt Tax Increment Revenue Notes (Edison Brothers Warehouse Redevelopment Area), Series 1999 (the "*Tax-Exempt Notes*"), together with the Taxable Notes, the "*Notes*") for the purpose of implementing the Redevelopment Plan; and

WHEREAS, the Taxable Notes were initially issued May 8, 2000, and as of _____, 2003 are outstanding in a principal amount of \$5,187,851.65, plus interest in the amount of \$ _____; and

WHEREAS, the Tax-Exempt Note was issued October 19, 2001, and as of _____, 2003 is outstanding in a principal amount of \$250,000, plus interest in the amount of \$ _____; and

WHEREAS, the Redevelopment Agreement requires the City to issue tax increment revenue bonds to refund the TIF Notes, provided that the City can sell such bonds at a net interest cost that is less than the net interest cost of the Notes; and

WHEREAS, the Authority is authorized pursuant to the Chapter 349 of the Revised Statutes of Missouri to issue bonds for the purpose of promoting certain commercial and industrial development "projects"; and

WHEREAS, the City has requested that the Authority issue its revenue bonds for the purpose of refunding the Notes (the refunding of such Notes is referred to herein as the "Refunding"); and

WHEREAS, on _____, 2003, the Board of Directors of the Authority adopted a resolution (the "*Bond Resolution*") authorizing the issuance of up to \$7,000,000 aggregate principal amount of Tax-Exempt Tax Increment Revenue Bonds, Series 2003 (Edison Brothers Warehouse Redevelopment Area) (the "*Bonds*") pursuant to a certain trust indenture dated as of _____, 2003, between the Authority and the [TRUSTEE] (the "*Indenture*") for purposes of refunding the Notes, funding a debt service reserve fund for the Bonds, paying the costs of issuance of the Bonds, and approving this Financing Agreement; and

WHEREAS, on _____, 2003, the Board of Aldermen of the City adopted Ordinance No. _____ (the "*Bond Ordinance*"), approving issuance of the Bonds and this Financing Agreement, and assigning TIF Revenues (as defined herein) to the Trustee for the purpose of paying the principal and interest on the Bonds; and

WHEREAS, the Authority and the City desire to enter into this Financing Agreement to provide for the pledge and assignment of TIF Revenues by the City to the Trustee for the purpose of paying the principal and interest on the Bonds.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein set forth, the Authority and the City do hereby covenant and agree as follows:

ARTICLE I
DEFINITIONS, CONSTRUCTION AND CERTAIN GENERAL PROVISIONS

Section 1.1 Definitions. In addition to words and terms elsewhere defined herein, the following words and terms as used in this Financing Agreement shall have the following meanings, unless some other meaning is plainly intended:

"*Authority*" means The Industrial Development Authority of the City of St. Louis, Missouri.

"*Authorized Authority Representative*" means any person from time to time designated to act on behalf of the Authority as evidenced by written certificate furnished to the Trustee containing the specimen signature of such person and signed on behalf

of the Authority by its Executive Director. Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the Authorized Authority Representative.

“Authorized City Representative” means any person from time to time designated to act on behalf of the City as evidenced by written certificate furnished to the Trustee containing the specimen signature of such person and signed on behalf of the City by its Comptroller. Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the Authorized City Representative.

“Bond Ordinance” means the ordinance adopted by the Board of Aldermen of the City on _____, 2003, approving the issuance of the Bonds, this Financing Agreement, and assigning the TIF Revenues to the Authority for the purpose of paying the principal and interest on the Bonds.

“Bond Resolution” means the resolution adopted by the Board of Directors of the Authority on _____, 2003, authorizing the issuance of the Bonds pursuant to the Indenture for the purposes of refunding the Notes, funding a debt service reserve fund for the Bonds, and paying the costs of issuance of the Bonds.

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

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

“Developer” means Breckenridge Edison Development, L.C., a limited liability company duly organized and existing under the laws of the State of Missouri.

“Economic Activity Tax Revenues” means fifty percent of the total additional revenues from taxes imposed by the City or other taxing districts (as that term is defined in Section 99.805(16) of the TIF Act) and which are generated by economic activities within Redevelopment Area over the amount of such taxes generated by economic activities within Redevelopment Area in the calendar year ending December 31, 1998, as defined and described in Sections 99.805(4) and 99.845 of the TIF Act, but excluding therefrom personal property taxes, taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, licenses, fees or special assessments, taxes levied pursuant to Section 70.500, RSMo., as amended, and taxes levied for the purpose of public transportation pursuant to Section 94.660, RSMo., as amended, all as provided in Section 99.845 of the TIF Act, as amended from time to time, and also excluding as of January 1, 2002, the sales tax authorized by Section 162.1100.5(1), RSMo., as amended.

“Event of Default” means any event or occurrence as defined in Section 8.1 hereof.

“Indenture” means a bond trust indenture by and between the Authority and Trustee which provides their respective rights and obligations and terms of issuance of the Bonds, and any amendment or supplement thereto.

“Note Ordinance” means Ordinance No. 64631 of the City dated February 23, 1999, authorizing issuance of the Notes.

“Notes” shall have the meaning provided in the Recitals hereto.

“Outstanding” means, when used with reference to Bonds, as of a particular date, all Bonds theretofore authenticated and delivered under the Indenture except:

- (a) Bonds theretofore cancelled by the Trustee or delivered to the Trustee for cancellation;
- (b) Bonds which are deemed to have been paid in accordance with the Indenture;
- (c) Bonds alleged to have been mutilated, destroyed, lost or stolen which have been paid as provided in the Indenture; and
- (d) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered pursuant to the Indenture.

“*Owner*” means the Person in whose name any Bond is registered on the Register.

“*Payments in Lieu of Taxes*” means those payments in lieu of taxes (as defined in Section 99.805(10) of the TIF Act) attributable to the increase in the current equalized assessed valuation of all each taxable lot, block, tract or parcel of real property located within the Redevelopment Area over and above the initial equalized assessed value (as that term is used and described in Section 99.845.1 of the TIF Act) of each such unit of property, as paid to the City Treasurer by the City Collector of Revenue during the term of the Redevelopment Plan and the Redevelopment Project.

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

“*Redevelopment Agreement*” means the Redevelopment Agreement dated as of February 26, 1999, by and between the City and the Developer, as modified, amended or supplemented from time to time.

“*Redevelopment Area*” means the area defined as such in the Redevelopment Plan.

“*Redevelopment Plan*” has the meaning set forth in the recitals hereto.

“*Redevelopment Project*” means the project described in the Redevelopment Plan and the Redevelopment Agreement.

“*Register*” means the registration books of the Authority kept by the Trustee, or other designated registrar, to evidence the registration, transfer and exchange of Bonds.

“*Special Allocation Fund*” means the “Edison Brothers Warehouse Special Allocation Fund” created in accordance with Section 99.845 of the TIF Act and by the Note Ordinance.

“*State*” means the State of Missouri.

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

“*TIF Revenues*” means all Economic Activity Tax Revenues, which have been appropriated by the City to the payment of the Bonds, and Payments in Lieu of Taxes on deposit in the Special Allocation Fund. TIF Revenues do not include any such amount paid under protest until the protest is withdrawn or resolved against the taxpayer, nor do TIF Revenues include any sum received by the City which is the subject of a suit or other claim communicated to the City, which suit or claim challenges the collection of such sums or their payment to the Owner of the Bond or its successor in interest, which TIF Revenues are payable as provided in the Indenture.

“*Trust Estate*” means the Trust Estate as described in the Indenture.

“*Trustee*” means [TRUSTEE], _____, Missouri, and its successor or successors and any other association or corporation which at any time may be substituted in its place pursuant to and at the time serving as trustee under the Indenture.

Section 1.2 Rules of Interpretation. Words of one gender shall be deemed and construed to include correlative words of the other genders.

(a) Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing person shall include firms, partnerships, associations and corporations, including public bodies, as well as natural persons.

(b) The words “herein,” “hereby,” “hereunder,” “hereof,” “hereto,” “hereinbefore,” “hereinafter” and other equivalent words refer to this Financing Agreement and not solely to the particular article, section, paragraph or subparagraph hereof in which such word is used.

(c) Reference herein to a particular article or a particular section shall be construed to be a reference to the specified article or section hereof unless the context or use clearly indicates another or different meaning or intent. Reference herein to a schedule or an exhibit shall be construed to be a reference to the specified schedule or exhibit hereto unless the context or use clearly indicates another or different meaning or intent.

(d) Wherever an item or items are listed after the word “including,” such listing is not intended to be a listing that excludes items not listed.

(e) The table of contents, captions and headings in this Financing Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Financing Agreement.

ARTICLE II REPRESENTATIONS

Section 2.1 Representations by the Authority. The Authority represents to the City that:

(a) The Authority is a public corporation duly organized under Chapter 349 of the Revised Statutes of Missouri with lawful power and authority to enter into this Financing Agreement acting by and through its duly authorized officers.

(b) The Bond Resolution has been duly adopted by the Authority and the same has not been modified, amended or repealed.

(c) The execution and delivery of this Financing Agreement by the Authority will not result in a breach of any of the terms of, or constitute a default under, any indenture, mortgage, deed of trust, lease or other agreement or instrument to which the Authority is a party or by which it or any of its property is bound or its bylaws or any of the constitutional or statutory rules or regulations applicable to the Authority or its property.

(d) This Financing Agreement and the Bonds are valid and binding agreements of the Authority, enforceable in accordance with their respective terms, except as enforcement thereof may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other laws or equitable principles of general application affecting remedies or creditors' rights or by general equitable principles which may limit the right to obtain equitable remedies.

(e) There is not now pending or, to the knowledge of the Authority, threatened any suit, action or proceeding against or affecting the Authority by or before any court, arbitrator, administrative agency or other governmental authority which, if decided adversely to the Authority, would materially affect the validity of any of the transactions contemplated by the Bond Resolution or this Financing Agreement, or is reasonably likely to impair the ability of the Authority to perform its obligations under the Bond Resolution or this Financing Agreement, or as contemplated thereby or hereby, nor is there any basis therefor.

Section 2.2 Representations by the City. The City represents and warrants as follows:

(a) The City is a charter city and political subdivision duly organized and existing under the constitution and laws of the State of Missouri. The City has lawful power and authority to enter into this Financing Agreement and all other documents required to be executed and delivered by it in connection with the issuance of the Bonds (collectively, the “City Documents”), acting by and through its officials.

(b) The City has the power and authority to enter into, execute and deliver the City Documents and to perform its obligations thereunder and consummate the transactions contemplated therein, and has by proper action duly authorized the execution and delivery of the City Documents.

(c) This Financing Agreement and the other City Documents are valid and binding agreements of the City, enforceable in accordance with their terms, except as enforcement thereof may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other laws or equitable principles of general application affecting remedies or creditors' rights or by general equitable principles which may limit the right to obtain equitable remedies.

(d) The execution and delivery of this Financing Agreement and the other City Documents, the consummation of the transactions contemplated herein and therein, and the fulfillment of or compliance with the terms and conditions hereof and thereof will not (with the passage of time or the giving of notice, or both) conflict with or result in or constitute a breach of or default under any indenture, mortgage, deed of trust, lease or other agreement or instrument to which the City is a party or by which it or any of its property is bound, or violate any provision of the charter of the City, or of any constitutional or statutory provision, or of any order, rule or regulation of any court or governmental authority applicable to the City or its property.

(e) There is not now pending or, to the knowledge of the City, threatened any suit, action or proceeding against or

affecting the City by or before any court, arbitrator, administrative agency or other governmental authority which, if decided adversely to the City, would materially affect the validity of any of the transactions contemplated by the Bond Ordinance, this Financing Agreement or the other City Documents, or is reasonably likely to impair the ability of the City to perform its obligations under the Bond Ordinance, this Financing Agreement or the other City Documents, or as contemplated thereby or hereby, nor is there any basis therefor.

ARTICLE III BONDS ISSUANCE AND USE OF PROCEEDS

Section 3.1 Authority's Agreement to Issue Bonds. The Authority hereby agrees to issue the Bonds to provide funds to refund the Notes, fund a debt service reserve fund for the Bonds, and pay the costs of issuance of the Bonds, as more fully described in the Indenture.

Section 3.2 Use of Proceeds of the Bonds. The proceeds of the sale of the Bonds shall be deposited with the Trustee and applied as provided in the Indenture and in this Financing Agreement.

ARTICLE IV FINANCING TERMS, TIF REVENUES, AND RIGHTS AND OBLIGATIONS

Section 4.1 Amount and Source of the Financing. The Authority agrees to deposit with the Trustee, upon the terms and conditions specified herein and in the Indenture, the proceeds received by the Authority from the sale of the Bonds, and to cause such proceeds to be applied in accordance with the Indenture for the refunding of the Notes, the funding of a debt service reserve fund for the Bonds, and the payment of costs of issuance of the Bonds.

Section 4.2 City's Obligation to Transfer TIF Revenues to Trustee.

(a) The City shall cause to be transferred to the Trustee (i) on March 1 of each year (or the next Business Day thereafter if March 1 is not a Business Day) all TIF Revenues then on deposit in the Special Allocation Fund, and (ii) on September 1 of each year (or the next Business Day thereafter if September 1 is not a Business Day) all TIF Revenues then on deposit in the Special Allocation Fund. Upon receipt of the TIF Revenues from the City, the Trustee shall deposit all TIF Revenues consisting of Payments in Lieu of Taxes into a segregated account as provided in the Indenture, and all TIF Revenues consisting of Economic Activity Tax Revenues (subject to annual appropriation) into a segregated account as provided in the Indenture.

(b) In order to facilitate the Trustee's deposit of TIF Revenues into the correct accounts, the City shall clearly identify for the Trustee the amount of such funds constituting Payments in Lieu of Taxes and the amount of such funds constituting Economic Activity Tax Revenues.

Section 4.3 Unconditional Obligations of the City. The City covenants and agrees with and for the express benefit of the Authority and the Owners of the Bonds that it will pay all TIF Revenues under Section 4.2 hereof and perform its obligations, covenants and agreements under this Financing Agreement, without notice or demand, and without abatement, deduction, set-off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstances whatsoever; provided, however, that nothing in this Financing Agreement shall be construed as a waiver by the City of any right or claim the City may have against the Authority under this Financing Agreement or otherwise, but any recovery upon such right or claim shall be had from the Authority in a separate proceeding, which separate proceeding shall in no way delay the prompt performance by the City of its obligations under this Financing Agreement for the benefit of the Owners of the Bonds.

ARTICLE V COVENANTS OF THE CITY

Section 5.1 Covenant to Request Appropriations. The City covenants and agrees that the officer of the City at any time charged with the responsibility of formulating budget proposals is hereby directed to include in the budget proposal submitted to the Board of Aldermen of the City for each fiscal year that the Bonds are Outstanding a request for an appropriation of the Economic Activity Tax Revenues on deposit in the Special Allocation Fund for transfer to the Trustee at the times and in the manner provided in Section 4.2 hereof. The City hereby pledges to the Authority timely payment of all TIF Revenues to the Trustee.

Section 5.2 Pledge of Payments in Lieu of Taxes. For so long as the Bonds are Outstanding, the City hereby

pledges all Payments in Lieu of Taxes on deposit in the Special Allocation Fund to payment of the Bonds and covenants and agrees to transfer such Payments in Lieu of Taxes to the Trustee at the times and in the manner provided in Section 4.2 hereof. The City hereby pledges to the Authority timely payment of all TIF Revenues to the Trustee.

Section 5.3 Collection of Payments in Lieu of Taxes and Economic Activity Tax Revenues. The City shall, at the expense of the Trust Estate, (a) take all lawful action within its control to cause the Assessor of the City to assess the real property and improvements within the Redevelopment Area at the times and in the manner required by the Act, and (b) take such lawful action within its control as may be required to cause the Collector of Revenue of the City and all other Persons to pay all TIF Revenues which are payable into the Special Allocation Fund under the Act.

Section 5.4 Enforcement of Agreement.

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

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

(c) The City shall not modify, amend or waive any provision of the Redevelopment Agreement without the prior written consent of the Trustee, whose consent shall not be unreasonably withheld or delayed. The Trustee may withhold its consent to any such proposed modification, amendment or waiver of the Redevelopment Agreement if the proposed modification, amendment or waiver may, in the sole judgment of the Trustee, being advised by counsel, adversely affect the security for the Bonds or the interests of the Owners thereof or may adversely affect the exclusion of interest on the Bonds from gross income of the Owners thereof for federal income tax purposes or as may impose additional duties on the Trustee that were not contemplated upon the original execution of the Indenture.

Section 5.5 Assignment of Financing Agreement by City. The City shall not assign any of its right, title and interest in, to and under this Financing Agreement without the prior written consent of the Authority.

Section 5.6 Tax Covenants of the City. The City covenants and agrees that it will not take any action or permit any action to be taken that would adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Bonds and will take whatever action, or refrain from whatever action, necessary to comply with the requirements of the Internal Revenue Code to maintain the exclusion from gross income for federal income tax purposes of the interest on the Bonds. The City shall provide for all rebate payments required under Section 148(f) of the Internal Revenue Code to the extent such amounts are not available to the Trustee.

**ARTICLE VI
PARTICULAR COVENANTS**

Section 6.1 Indemnification.

(a) To the extent permitted by law, the City releases the Authority and the Trustee from, agrees that the Authority and the Trustee shall not be liable for, and indemnifies the Authority and the Trustee against, all liabilities, losses, damages (including attorneys' fees), causes of action, suits, claims, costs and expenses, demands and judgments of any nature imposed upon or asserted

against the Authority or the Trustee without negligence or willful misconduct on the part of the Authority and the Trustee on account of: (i) any breach or default on the part of the City in the performance of any covenant or agreement of the City under this Financing Agreement, the Bonds or any related document, or arising from any act or failure to act by the City, or any of its agents, contractors, servants, employees or licensees; (ii) the provision of any information furnished by the City in connection with the authorization, issuance and sale of the Bonds or arising from (1) any errors or omissions of the City such that the Bonds, when delivered to the Owners, are not validly issued and binding obligations of the Authority or (2) any fraud or misrepresentations or omissions contained in the proceedings of the Authority or the Trustee furnished by or attributable to the City relating to the issuance of the Bonds or pertaining to the financial condition of the City which, if known to the original purchaser of the Bonds, might reasonably be considered a material factor in its decision to purchase the Bonds; and (iii) any claim or action or proceeding with respect to the matters set forth in subsections (i), and (ii) above brought thereon. Notwithstanding the foregoing, the City shall not indemnify the Authority, the Trustee, or their respective members, directors, officers, employees and agents against liability for damages arising out of their own willful, malicious or negligent acts or omissions, or willful, malicious or negligent acts or omissions of their own members, directors, officers, agents or employees. Satisfaction of the indemnification obligations of the City set forth in this Section shall be had solely from the TIF Revenues and from no other source.

(b) In case any action or proceeding is brought against the Authority or the Trustee in respect of which indemnity may be sought hereunder, the party seeking indemnity shall promptly give notice of that action or proceeding to the City, and the City upon receipt of that notice shall have the obligation and the right to assume the defense of the action or proceeding; provided, that failure of a party to give that notice shall not relieve the City from any of its obligations under this Section unless that failure prejudices the defense of the action or proceeding by the City. At its own expense, an indemnified party may employ separate legal counsel and participate in the defense. The City shall not be liable for any settlement without its consent.

(c) The indemnification set forth above is intended to and shall include the indemnification of all affected officials, directors, officers, attorneys, accountants, financial advisors, staff and employees of the Authority and the Trustee, respectively. That indemnification is intended to and shall be enforceable by the Authority and the Trustee, respectively, to the full extent permitted by law.

Section 6.2 Further Assurances and Corrective Instruments. Subject to the terms of the Indenture, the Authority and the City from time to time will execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, supplemental Financing Agreements and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Redevelopment Area and for carrying out the intention or facilitating the performance of this Financing Agreement.

Section 6.3 Litigation Notice. The City shall give the Authority and the Trustee prompt notice of any action, suit or proceeding by it or against it at law or in equity, or before any governmental instrumentality or agency, or of any of the same which may be threatened, which, if adversely determined, would materially impair the ability of the City to perform its obligations hereunder, or would materially and adversely affect its business, operations, properties, assets or condition. Within one Business Day after the filing by or against the City of a petition in bankruptcy, the City shall notify the Trustee in writing as to the occurrence of such filing.

ARTICLE VII ASSIGNMENT OF AUTHORITY'S RIGHTS UNDER FINANCING AGREEMENT

Section 7.1 Assignment by the Authority. The Authority, by means of the Indenture and as security for the payment of the principal of, purchase price, and redemption premium, if any, and interest on the Bonds, will assign, pledge and grant a security interest in certain of its rights, title and interests in, to and under this Financing Agreement, including TIF Revenues and other revenues, moneys and receipts received by it pursuant to this Financing Agreement, to the Trustee. The Trustee is hereby given the right to enforce, either jointly with the Authority or separately, the performance of the obligations of the City, and the City hereby consents to the same and agrees that the Trustee may enforce such rights as payments required hereunder directly to the Trustee. This Financing Agreement recognizes that the Trustee is a third party creditor-beneficiary hereof.

Section 7.2 Restriction on Transfer of Authority's Rights. The Authority will not sell, assign, transfer or convey its interests in this Financing Agreement except pursuant to the Indenture or this Financing Agreement, or with the express consent of the City.

**ARTICLE VIII
EVENTS OF DEFAULT AND REMEDIES**

Section 8.1 Events of Default Defined. The term “Event of Default” or “Default” shall mean any one or more of the following events:

- (a) Failure by the City to make timely payment of any TIF Revenues when due.
- (b) Failure by the City to make a timely request for appropriations of Economic Activity Tax Revenues, pursuant to Section 5.1.
- (c) Failure by the City to observe and perform any covenant, condition or agreement on the part of the City under this Financing Agreement, other than as referred to in the preceding subsection (a) or (b) of this Section, for a period of 60 days after written notice of such default has been given to the City by the Authority or the Trustee during which time such default is neither cured by the City nor waived in writing by the Authority and the Trustee, provided that, if the failure stated in the notice cannot be corrected within said 60-day period, the Authority and the Trustee may consent in writing to an extension of such time prior to its expiration. The Authority and the Trustee will not unreasonably withhold their consent to such an extension if corrective action is instituted by the City within the 60-day period and diligently pursued to completion and if such consent, in their judgment, does not materially adversely affect the interests of the Owners.
- (d) Any material representation or warranty by the City herein or in any certificate or other instrument delivered under or pursuant to this Financing Agreement or in connection with the financing of the Refunding shall prove to have been false, incorrect, misleading or breached in any material respect on the date when made, unless waived in writing by the Authority and the Trustee.
- (e) The Indenture at any time shall prove not to be a valid, binding and enforceable agreement of the Authority or shall not constitute a valid assignment of the rights of the Authority under this Financing Agreement described in Section 7.1 purportedly assigned under the Indenture and effective to vest in the Trustee all such rights of the Authority in, to and under this Financing Agreement, including the right to enforce this Financing Agreement in accordance with its terms.
- (f) The filing by the City of a voluntary petition in bankruptcy, or failure by the City to promptly lift any execution, garnishment or attachment of such consequence as would impair the ability of the City to carry on its operation, or adjudication of the City as bankrupt, or assignment by the City for the benefit of creditors, or the entry by the City into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any proceedings instituted under the provisions of federal bankruptcy law, or under any similar acts which may hereafter be enacted.

Section 8.2 Remedies on Default. Whenever any Event of Default has occurred and is continuing, the Trustee, as the assignee of the Authority, may pursue any available remedy at law or equity by suit, action, mandamus or other proceeding to enforce the payment of the TIF Revenues pursuant to Section 4.2 hereof, and to enforce and compel the performance of the duties and obligations of the City as herein set forth; provided, however, that such remedy may be satisfied solely from the TIF Revenues and from no other source.

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

Any amount collected pursuant to action taken under this Section shall be paid to the Trustee and applied, first, to the payment of any reasonable costs, expenses and fees incurred by the Authority or the Trustee as a result of taking such action and, second, any balance shall be deposited into the Revenue Fund and applied in accordance with the Indenture.

Notwithstanding the foregoing, the Trustee shall not be obligated to take any step that in its opinion will or might cause it to expend time or money or otherwise incur liability, unless and until satisfactory indemnity has been furnished to the Trustee at no cost or expense to the Trustee.

If any covenant, condition or agreement contained in this Financing Agreement is breached or any Event of Default has occurred and such breach or Event of Default is thereafter waived by the Trustee, such waiver shall be limited to such particular breach or Event of Default.

Section 8.3 No Remedy Exclusive. No remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Financing Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon an Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Trustee to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

Section 8.4 Authority and City to Give Notice of Default. The Authority and the City shall each promptly give to the Trustee written notice of any Event of Default of which the Authority or the City, as the case may be, shall have actual knowledge or written notice, but neither the Authority nor the City shall be liable for failing to give such notice.

Section 8.5 Remedial Rights Assigned to the Trustee. Upon the execution and delivery of the Indenture, the Authority will thereby have assigned to the Trustee all rights and remedies conferred upon or reserved to the Authority by this Financing Agreement. The Trustee shall have the exclusive right to exercise such rights and remedies conferred upon or reserved to the Authority by this Financing Agreement in the same manner and to the same extent, but under the limitations and conditions imposed thereby and hereby. The Trustee and the Owners shall be deemed third party creditor-beneficiaries of all representations, warranties, covenants and agreements contained herein.

ARTICLE IX PREPAYMENT AND ACCELERATION OF PAYMENTS

Section 9.1 Optional Prepayment. At the written direction of the City, the Authority shall cause the Bonds or any portion thereof to be redeemed pursuant to any optional redemption provisions of the Indenture; provided that the City shall provide funds sufficient to refund the Bonds in whole or in part at the times and at the prepayment prices sufficient to effectuate such redemption in accordance with the Indenture.

Section 9.2 Notice of Prepayment. To exercise an option granted by Section 9.1 hereof, the City shall give written notice to the Authority and the Trustee which shall specify therein the date upon which a prepayment of TIF Revenues will be made, which date shall be not less than 45 days from the date the notice is received by the Trustee. In the Indenture, the Authority has directed the Trustee to forthwith take all steps (other than the payment of the money required to redeem the Bonds) necessary under the applicable provisions of the Indenture to effect any redemption of the then Outstanding Bonds, in whole or in part, pursuant to the redemption provisions of the Indenture.

Section 9.3 Precedence of this Article. The rights, options and obligations of the City set forth in this Article may be exercised or shall be fulfilled, as the case may be, whether or not an Event of Default exists hereunder, provided that such Event of Default will not result in nonfulfillment of any condition to the exercise of any such right or option and provided further that no amounts payable pursuant to this Financing Agreement shall be prepaid in part during the continuance of an Event of Default described in Section 8.1(a) hereof.

ARTICLE X MISCELLANEOUS

Section 10.1 Authorized Representatives. Whenever under this Financing Agreement the approval of the Authority is required or the Authority is required or permitted to take some action, such approval shall be given or such action shall be taken by an Authorized Authority Representative, and the City and the Trustee shall be authorized to act on any such approval or action. Whenever under this Financing Agreement the approval of the City is required or the City is required or permitted to take some action, such approval shall be given or such action shall be taken by an Authorized City Representative, and the Authority and the Trustee shall be authorized to act on any such approval or action.

Section 10.2 Term of Financing Agreement. This Financing Agreement shall be effective from and after its execution and delivery and shall continue in full force and effect until the Bonds are deemed to be paid as provided by the Indenture and provision has been made for paying all other sums payable by the City to the Trustee, and the paying agents for the Bonds under this Financing Agreement and the Indenture to the date of the retirement of the Bonds. All agreements, covenants, representations and certifications by the City as to all matters affecting the tax-exempt status of the interest on the Bonds and the indemnifications provided by Section 6.1 shall survive the termination of this Financing Agreement.

Section 10.3 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, postage pre-paid, return receipt requested, or sent by telegram, telecopy or telex or other similar communication, or when given by telephone, confirmed by telephone on the same day, addressed as specified below, provided that notices to the Trustee shall be effective only upon receipt. A duplicate copy of each notice shall be given to all other parties provided for notice in the Indenture. The Authority and the City may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent to it.

To the Authority at: The Industrial Development Authority of
the City of St. Louis, Missouri
1015 Locust Street, Suite 1200
St. Louis, MO 63101
Attention: Assistant Director
Telephone: (314) 259-3474
Facsimile: (314) 231-3400

With a copy to: Leslye Mitchell, Esq.
The Industrial Development Authority of
the City of St. Louis, Missouri
1015 Locust Street, Suite 1200
St. Louis, MO 63101
Telephone: (314) 259-3429
Facsimile: (314) 231-3400

With a copy to: Mark A. Boatman
Armstrong Teasdale LLP
One Metropolitan Square, Suite 2600
St. Louis, MO 63102-2740
Telephone: (314) 621-5070
Facsimile: (314) 621-5065

To the City at: City of St. Louis, Missouri
1200 Market Street, Room 212
St. Louis, MO 63103
Attention: Comptroller
Telephone: (314) 622-4389
Facsimile: (314) 622-4026

With a copy to: Thomas J. Ray, Esq.
The City of St. Louis, Missouri
1200 Market Street, Room 314
St. Louis, MO 63103
Telephone: (314) 622-4403
Facsimile: (314) 622-4956

Section 10.4 Performance Date Not a Business Day. If the last day for performance of any act or the exercising of any right, as provided in this Financing Agreement, is not a Business Day, such payment may be made or act performed or right exercised on the next succeeding Business Day.

Section 10.5 Binding Effect. This Financing Agreement shall inure to the benefit of and shall be binding upon the Authority, the City and their respective successors and assigns, subject to the provisions contained in Section 5.5.

Section 10.6 Amendments, Changes and Modifications. Except as otherwise provided in this Financing Agreement or in the Indenture, subsequent to the issuance of Bonds and prior to all of the Bonds being deemed to be paid in accordance with the Indenture and provision being made for the payment of all sums payable under the Indenture, this Financing Agreement may not be effectively amended, changed, modified, altered or terminated without the concurring written consent of the Trustee.

Section 10.7 Execution in Counterparts. This Financing Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 10.8 No Pecuniary Liability. No provision, representation, covenant or agreement contained in this Financing Agreement or in the Indenture, the Bonds, or any obligation herein or therein imposed upon the Authority, or the breach thereof, shall constitute or give rise to or impose upon the Authority a pecuniary liability (except to the extent of any loan repayments, revenues and receipts derived by the Authority pursuant to this Financing Agreement). No provision hereof shall be construed to impose a charge against the general credit of the Authority or any personal or pecuniary liability upon any director, official or employee of the Authority.

Section 10.9 Extent of Covenants of the Authority and the City; No Personal or Pecuniary Liability. All covenants, obligations and agreements of the Authority and City contained in this Financing Agreement and all covenants, obligations and agreements of the Authority contained in the Indenture shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future member, office, agent or employee of the Authority and City in other than his official capacity, and no official of the Authority executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof by reason of the covenants, obligations or agreement of the Authority and City contained in this Financing Agreement or in the Indenture. No provision, covenant or agreement contained in this Financing Agreement, the Indenture or the Bonds, or any obligation herein or therein imposed upon the Authority or the City, or the breach thereof, shall constitute or give rise to or impose upon the Authority or the City a pecuniary liability or a charge upon the general credit or taxing powers of the State or any political subdivision thereof.

Section 10.10 Severability. If any provision of this Financing Agreement, or any covenant, stipulation, obligation, agreement, act or action, or part thereof made, assumed, entered into a taken thereunder, or any application of such provision, is for any reason held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Financing Agreement or any other covenant, stipulation, obligation, agreement, act or action, or part thereof, made, assumed, entered into, or taken, each of which shall be construed and enforced as if such illegal or invalid portion were not contained herein. Such illegality or invalidity of any application thereof shall not affect any legal and valid application thereof, and each such provision, covenant, stipulation, obligation, agreement, act or action, or part thereof, shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

Section 10.11 Governing Law. This Financing Agreement shall be governed by and construed in accordance with the laws of the State of Missouri.

IN WITNESS WHEREOF, the Authority has caused this Financing Agreement to be executed in its name.

THE INDUSTRIAL DEVELOPMENT
AUTHORITY OF THE CITY OF ST. LOUIS
MISSOURI

(Seal)

By: _____
Rodney Crim, Executive Director

ATTEST:

By: _____
Assistant Secretary

IN WITNESS WHEREOF, the City has caused this Financing Agreement to be executed in its name.

CITY OF ST. LOUIS, MISSOURI

(SEAL)

By: _____
Francis G. Slay
Mayor

APPROVED AS TO FORM

By: _____ By: _____
Thomas J. Ray Darlene Green
Deputy City Counselor Comptroller

ATTEST:

Parrie L. May
Register

Approved: December 2, 2003