

**ORDINANCE #68637**  
**Board Bill No. 344**

An Ordinance recommended by the Board of Estimate and Apportionment authorizing the City of St. Louis, Missouri (the "City"), to assign Phase 1 Available Revenues and, upon payment and cancellation of any Phase 2 Obligations, the Phase 2 Available Revenues, as those terms are defined herein, for the purpose of paying the principal and interest on certain bonds to be issued by the City or the Industrial Development Authority of the City; 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; and containing a severability clause.

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

**WHEREAS**, the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 through 99.865, Revised Statutes of Missouri, (the "TIF Act" or "Act"), authorizes the City to undertake redevelopment projects within designated areas of the City; and

**WHEREAS**, staff and consultants of the City and RNY, LLC, an affiliate of Railway Exchange Building TIF, Inc., a Missouri corporation (the "Developer"), prepared a plan for redevelopment titled "The Railway Exchange Building TIF Redevelopment Plan" dated November 6, 2009, as may be amended from time to time (the "Redevelopment Plan"), for an area containing multiple parcels in City Blocks 128 and 129 located generally between 7th Street to the West, Locust Street to the North, 6th Street to the East, and Pine Street to the South (the "Redevelopment Area" or "Area"), which Redevelopment Area is more fully described in the Redevelopment Plan; and

**WHEREAS**, on December 16, 2009, the TIF Commission found that completion of the Redevelopment Project (as hereinafter defined) would provide a substantial and significant public benefit through the elimination of blighting conditions, the strengthening of the employment and economic base of the City, increased property values and tax revenues, stabilization of the Redevelopment Area, facilitation of the economic stability of the City as a whole, and further found that without the assistance of tax increment financing in accordance with the TIF Act, the Redevelopment Project is not financially feasible and would not otherwise be completed; and

**WHEREAS**, On March , 2010, after due consideration of the TIF Commission's recommendations, the Mayor signed Ordinance No. [Board Bill No. 338] designating the Redevelopment Area as a "redevelopment area" as provided in the TIF Act, approving the Redevelopment Plan, approving the Redevelopment Project described in the Redevelopment Plan, adopting tax increment allocation financing within the Redevelopment Area and establishing the Special Allocation Fund; and

**WHEREAS**, On March , 2010, the Mayor signed Ordinance No. \_\_\_\_\_ [Board Bill No. \_\_\_\_\_], affirming adoption of the Redevelopment Area, Redevelopment Plan and Redevelopment Project, designating the Developer as developer of the Redevelopment Project, and authorizing the City to enter into a Redevelopment Agreement with Developer with respect to the Redevelopment Project (the "Redevelopment Agreement").

**WHEREAS**, pursuant to the Redevelopment Plan and Redevelopment Agreement, the City proposes to finance a portion of the costs of the Redevelopment Project by utilizing tax increment allocation financing in accordance with the TIF Act; and

**WHEREAS**, the City is authorized and empowered under the TIF Act to issue obligations and to enter into agreements with other entities for the issuance of obligations for the purpose of providing funds to finance the costs of redevelopment projects; and

**WHEREAS**, the Redevelopment Agreement provides for the issuance by the City or the Industrial Development Authority of the City (the "Authority") of revenue bonds (the "Bonds") pursuant to a trust indenture for the purposes of funding Reimbursable Redevelopment Project Costs (as defined in the Redevelopment Agreement), as well as capitalized interest on the Bonds, reserve funds for the Bonds and the costs of issuance of the Bonds; and

**WHEREAS**, the City desires to execute certain financing documents in order to expedite the issuance and retirement of all obligations issued under the Redevelopment Plan; and

**WHEREAS**, it is hereby found and determined that it is necessary and advisable and in the best interest of the to direct the Phase 1 Available Revenues and, upon payment and cancellation of any Phase 2 Obligations, the Phase 2 Available Revenues, to the payment of the principal of and interest on the Bonds.

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

**SECTION ONE.** In addition to the words and terms defined elsewhere in this ordinance (the "Ordinance"), capitalized words and terms not otherwise defined in this Ordinance, as used in this Ordinance, shall have the meaning set forth in the Redevelopment Agreement. In addition to the words and terms defined elsewhere in this Ordinance and the Redevelopment Agreement, the following capitalized words and terms, as used in this Ordinance, shall have the following meanings:

"Monitor" means an urban planner, urban consultant, certified public accountant, lawyer or firm of urban planners, urban consultants, certified public accountants or lawyers selected, if any, who periodically reviews the method of calculating and the calculations regarding revenues on deposit in the Special Allocation Fund.

**SECTION TWO.** The Board of Aldermen hereby finds and determines that it is necessary and in the best interests of the City to enter into: (a) a Financing Agreement, in a mutually acceptable form, for purposes of directing the Phase 1 Available Revenues and, upon payment and cancellation of any Phase 2 Obligations, the Phase 2 Available Revenues, to payment of the Bonds (the "Financing Agreement"); and (b) an Intergovernmental Cooperation Agreement among the City, the CID and the TDD, in a mutually acceptable form, pertaining to the collection and distribution of CID Revenues and TDD Revenues (the "Cooperation Agreement," and with the Financing Agreement and any other agreements necessary to complete the Redevelopment Project the "City Financing Documents").

**SECTION THREE.** The Bonds and the interest thereon shall be special, limited obligations of the City or the Authority, and shall not constitute an indebtedness of the City, the Authority, or the State of Missouri within the meaning of any constitutional or statutory debt limitation or restriction. The obligation of the City to make payments of certain revenues into the Special Allocation Fund, as may be required under the Redevelopment Agreement or the City Financing Documents, is subject to annual appropriation pursuant to SECTION FOUR hereof. The taxing power of the City is not pledged to the payment of the Bonds either as to principal or interest.

**SECTION FOUR.** The City hereby agrees, so long as the Bonds are outstanding, to apply the Phase 1 Available Revenues and, upon payment and cancellation of any Phase 2 Obligations, the Phase 2 Available Revenues, and any taxes, fees or assessments subsequently enacted and imposed in substitution therefor and allocable to the Special Allocation Fund to the repayment of the Bonds in accordance with the Financing Agreement. The City covenants and agrees that it will comply with the Charter of The City of St. Louis, Article XVI, Section 3 for each fiscal year that the Bonds are outstanding and the City will request an appropriation of all Dedicated Municipal Revenues and EATs for application to the payment of the principal of and interest on the Bonds.

**SECTION FIVE.** The City hereby agrees that it shall provide to the Monitor, if one is selected, (a) on a monthly basis, a report of all Economic Activity Taxes that are sales tax revenues received during the previous month; (b) on a monthly basis, a report on all Available Revenues received during the previous month; and (c) as may be requested, the City agrees to cooperate with the Monitor for verification of calculations and deposits of all Available Revenues (as defined in the Redevelopment Agreement).

**SECTION SIX.** 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 City Financing Documents, each with such changes as shall be approved by the appropriate officers of the City executing such documents, such officers' signatures thereon being conclusive evidence of their approval thereof. The Mayor, the Comptroller, and other appropriate officers, agents and employees of the City, with the advice and concurrence of the City Counselor, are hereby further authorized and directed to execute and deliver such agreements as are necessary and desirable in order to issue the Bonds.

**SECTION SEVEN.** 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 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 Financing Documents.

**SECTION EIGHT.** 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 NINE.** In the event of any inconsistency between the provisions of this Ordinance and the provisions of any prior ordinances, the provisions of this Ordinance shall prevail.

**SECTION TEN.** This Ordinance shall be governed exclusively by and construed in accordance with the applicable laws of the State of Missouri.

**EXHIBIT A  
FORM OF FINANCING AGREEMENT  
(Attached hereto)**

**EXHIBIT B  
FORM OF CONTINUING DISCLOSURE AGREEMENT  
(Attached hereto)**

**EXHIBIT C  
FORM OF TAX COMPLIANCE AGREEMENT  
(Attached hereto)**

**EXHIBIT D  
FORM OF INTERGOVERNMENTAL COOPERATION AGREEMENT  
(Attached hereto)**

**INTERGOVERNMENTAL COOPERATION AGREEMENT**

**THIS INTERGOVERNMENTAL COOPERATION AGREEMENT** (this "*Agreement*") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2010, by and among the **RAILWAY EXCHANGE BUILDING COMMUNITY IMPROVEMENT DISTRICT**, a political subdivision duly organized and existing under the laws of the State of Missouri (the "*CID*"), the **RAILWAY EXCHANGE BUILDING TRANSPORTATION DEVELOPMENT DISTRICT**, a political subdivision duly organized and existing under the laws of the State of Missouri (the "*TDD*"), **RAILWAY EXCHANGE BUILDING TIF, INC.**, a Missouri corporation (the "*Developer*"), and the **CITY OF ST. LOUIS, MISSOURI**, a home rule city and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Missouri (the "*City*").

**Recitals:**

A. The City, the TDD, the CID and the Developer desire to enter into this Agreement in order to acknowledge the general economic benefit and value to the community created by the construction of the Redevelopment Project. The City acknowledges that it is entering into this Agreement for the overall benefit of the community that it does not constitute a specific economic benefit to the City, the TDD, the CID and the Developer.

**NOW, THEREFORE**, in consideration of the foregoing, and for other good and valuable consideration, receipt and sufficiency of which are acknowledged, the CID, the TDD, the Developer and the City hereby agree as follows:

**Section 1. Definitions.** In addition to the capitalized terms defined elsewhere in this Agreement and in the Recitals, the following capitalized terms used in this Agreement shall have the meanings ascribed to them in this Section. Capitalized terms used, but not defined herein, shall have the meaning set forth in the Redevelopment Agreement.

*Agreement.* This Intergovernmental Cooperation Agreement made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and among the CID, the TDD and the City.

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

*TIF Bonds.* The TIF Bonds, as defined in the Redevelopment Agreement.

*CID.* The Railway Exchange Building Community Improvement District, a political subdivision duly organized and existing under the laws of the State of Missouri.

*CID Act.* The Community Improvement District Act, Sections 67.1401 to 67.1571 of the Revised Statutes of Missouri (2000), as amended.

*CID Administrative Costs.* The actual, reasonable and necessary overhead expenses of the CID for administration, supervision and inspection incurred in connection with the CID Project and paid initially by the Developer, and subject to reimbursement in accordance with this Agreement and, upon the first deposit of CID Revenues into the Operating Fund, paid by the CID out of the Operating Fund, including without limitation the following: (a) reimbursement of reasonable and necessary expenses incurred by the City pursuant to Section 67.1461.3 of the CID Act to establish the CID and review the CID's annual budgets and reports (in an amount not to exceed a mutually agreeable percentage of the CID Revenues collected in the applicable year, as provided in the Cooperation Agreement); (b) reimbursement of the petitioners for the actual, reasonable and necessary costs of filing and pursuing the petition to establish the CID and all publication and incidental costs incurred therewith; and (c) reimbursement of the CID's Board of Directors for actual, reasonable and necessary expenditures in the performance of authorized duties on the behalf of the CID.

*CID Revenues.* The revenues collected by the CID from the CID Sales (not including the "top-half" portion thereof which is captured pursuant to TIF Act), imposed in accordance with the CID Act, less any such revenues transferred to the Operating Fund to pay CID Administrative Costs. CID Revenues do not include (i) any amount paid under protest until the protest is withdrawn or resolved against the taxpayer or (ii) any sum received by the CID that is the subject of a suit or other claim communicated to the CID, which suit or claim challenges the collection of such sum.

*CID Sales Tax.* The community improvement sales tax to be imposed by the CID pursuant to Section 67.1521 of the CID Act, as described in the Redevelopment Agreement.

*City.* The City of St. Louis, Missouri, a home rule city and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Missouri.

*Developer.* Railway Exchange Building TIF, Inc., a Missouri corporation, or its permitted successors and assigns.

*Governmental Approvals.* Any and all governmental licenses, permits, consents or other approvals necessary or desirable for the design, construction, development, improvement, financing, operation or maintenance of the Redevelopment Project.

*Operating Fund.* The Operating Fund(s) anticipated to be established by the TDD and/or the CID for the purpose of paying on-going TDD Administrative Costs and CID Administrative Costs (subject to the limitation on each set forth herein), into which revenues of the TDD and CID shall be deposited in an amount identified in each annual budget approved by the TDD and the CID.

*Redevelopment Agreement.* The Redevelopment Agreement dated \_\_\_\_\_, 20\_\_, between the Developer and the City.

*Redevelopment Area.* The real property described in Exhibit A to the Redevelopment Agreement.

*Redevelopment Project.* The "Redevelopment Project" defined in the Redevelopment Agreement.

*TDD.* The Railway Exchange Building Transportation Development District, a political subdivision duly organized and existing under the laws of the State of Missouri.

*TDD Act.* The Missouri Transportation Development District Act, Sections 238.200 to 238.280 of the Revised Statutes of Missouri (2000), as amended.

*TDD Administrative Costs.* The means actual, reasonable and necessary expenses of the TDD for administration, supervision and inspection incurred in connection with the Transportation Project and paid initially by the Developer, subject to

reimbursement in accordance with the Agreement and, upon the first deposit of TDD Revenues into the Operating Fund, paid by the TDD out of the Operating Fund, which expenses include without limitation the following: (a) reimbursement of the board of directors of the TDD for actual, reasonable and necessary expenditures in the performance of duties on behalf of the TDD pursuant to Section 238.222 of the TDD Act; (b) actual, reasonable and necessary expenses incurred in the exercise of the contractual powers of the TDD pursuant to Section 238.250 of the TDD Act; (c) reimbursement of the petitioners and the City for the reasonable and necessary costs of filing and defending the petition to establish the TDD and all publication and incidental costs incurred in obtaining the Court's certification of the petition pursuant to Section 238.217 of the TDD Act; (d) the cost of insurance obtained by the TDD pursuant to Section 238.255 of the TDD Act; (e) the cost of any audit by the state auditor pursuant to Section 238.272 of the TDD Act; (f) actual, reasonable, and necessary expenses incurred by the TDD in the exercise of the powers granted under Section 238.252 of the TDD Act, including compensation of contractors, suits by or against the TDD, and disbursement of funds for the TDD's activities; and (h) actual, reasonable and necessary expenses incurred by the TDD in connection with abolishment of the TDD in accordance with Section 238.275 of the TDD Act.

*TDD Revenues.* The revenues collected by the TDD from the TDD Sales Tax (not including the "top-half" portion thereof which is captured pursuant to the TIF Act), after deducting the cost of collection of one percent (1%) of the total amount collected, less any such revenues transferred to the Operating Fund to pay TDD Administrative Costs. TDD Revenues do not include (a) any amount paid under protest until the protest is withdrawn or resolved against the taxpayer or (ii) any sum received by the TDD that is the subject of a suit or other claim communicated to the TDD, which suit or claim challenges the collection of such sum.

*TDD Sales Tax.* The transportation development district sales tax that the TDD is authorized to impose pursuant to Section 238.235 of the TDD Act, as described in the Redevelopment Agreement.

*TIF Act.* The Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 through 99.865 of the Revised Statutes of Missouri (2000), as amended.

## **Section 2. Covenant to Appropriate TDD Revenues.**

2.1 Pursuant to the TDD Act, the TDD shall perform or cause to be performed all functions incident to the administration, levy, collection, enforcement and operation of the TDD Sales Tax.

2.2 Subject to the terms of the Redevelopment Agreement, the TDD agrees that the officer of the TDD at any time charged with the responsibility of formulating budget proposals shall be directed to include in the budget proposal submitted to the TDD, for each fiscal year that the Bonds are outstanding, a request for an appropriation of the TDD Revenues for payment to the TDD Revenues Account of the Special Allocation Fund (as defined in the Redevelopment Agreement).

2.3 If, within thirty (30) days after the end of the TDD's fiscal year, the TDD's board of directors fails to adopt a budget, the TDD shall be deemed to have adopted a budget that provides for application of the TDD Revenues collected in such fiscal year in accordance with the budget for the prior fiscal year.

## **Section 3. Covenant to Appropriate CID Revenues.**

3.1 Subject to the terms of the Redevelopment Agreement, the CID agrees that the officer of the CID at any time charged with the responsibility of formulating budget proposals shall be directed to include in the budget proposal submitted to the CID, for each fiscal year that the Bonds are outstanding, a request for an appropriation of the CID Revenues for payment to the CID Revenues Account of the Special Allocation Fund (as defined in the Redevelopment Agreement).

3.2 If, within thirty (30) days after the end of the CID's fiscal year, the CID's board of directors fails to adopt a budget, the CID shall be deemed to have adopted a budget that provides for application of the CID Revenues collected in such fiscal year in accordance with the budget for the prior fiscal year.

**Section 4. Distribution of Project Fund Monies.** The parties agree that the Issuer shall make disbursements of a portion of the funds on deposit in the Project Fund (as defined in the Redevelopment Agreement) to the TDD and the CID from time to time in accordance with the terms and conditions of the Redevelopment Agreement.

**Section 5. Assignment.** The TDD and the CID shall not assign their respective interests in this Agreement without the prior written consent of the City, provided this Agreement may be assigned by the TDD or the CID to a lender or bond trustee in connection with the financing of the Redevelopment Project without obtaining the City's consent. The City shall not assign its

interest in this Agreement without the prior written consent of the TDD and the CID.

**Section 6. Dispute Resolution Process.**

6.1 The CID, the TDD and the City agree that, in the event of a disagreement concerning the matters described herein, they shall negotiate, in good faith, in an attempt to resolve such disagreement for a period of at least sixty (60) days following receipt of notice from either party setting forth the specifics of the disagreement and the relief requested.

6.2 Should the CID, the TDD and the City be unable to resolve such disagreement through good faith negotiation, the CID, the TDD and the City agree to attempt in good faith to resolve such disagreement through mediation administered by an organization offering commercial mediation services. Unless otherwise agreed all mediation proceedings shall be conducted in the City of St. Louis, Missouri.

6.3 The CID, the TDD and the City may seek an adjudication of the controversy by the Circuit Court of the City of St. Louis, Missouri, and the prevailing party therein shall be entitled to recover all costs and expenses, including reasonable legal fees and expenses associated therewith.

**Section 7. CID and TDD Requirements.** The CID and the TDD acknowledge that, pursuant to such other agreements as may be entered into between the TDD, the CID and the Developer, the TDD and/or the CID shall require that any and all funds received by the Developer from the TDD and/or the CID or through other means as repayment of the Bonds are for the benefit of the general welfare and are intended to benefit the community at large by eliminating blight and encouraging visitors through the redevelopment of the Redevelopment Area. Such funds shall be used by the Developer as reimbursement for its additions to permanent working capital through the construction of the Redevelopment Project.

**Section 8. Remedies.** All rights and remedies of the City, the TDD and the CID herein enumerated shall be cumulative, and none shall exclude any other right or remedy allowed by law. In addition to the other remedies provided in this Agreement, the City, the TDD and the CID shall be entitled to the restraint by injunction of the violation or attempted violation of any of the covenants, agreements or conditions of this Agreement, and the City, the TDD and the CID shall be entitled to recover all direct damages arising out of or caused by the other party's violation of any of the covenants, agreements or conditions of this Agreement.

**Section 9. Indemnification and Release.** To the extent permitted by law, the TDD and the CID agree to indemnify, defend, and hold the City, its employees, agents, and independent contractors and consultants harmless from and against any and all suits, claims, costs of defense, damages, injuries, liabilities, and costs and/or expenses, including court costs and reasonable attorneys' fees and expenses, resulting from, arising out of, or in any way connected with: (i) the development and construction of the Redevelopment Project; and (ii) the negligence or willful misconduct of the TDD, the CID or the Developer or their respective employees, agents or independent contractors in connection with the management, development, and construction of the Redevelopment Project. To the extent permitted by law, the City agrees to indemnify, defend, and hold the CID and the TDD, their employees, agents, and independent contractors harmless from and against any and all suits, claims, damages, injuries, liabilities, and costs and/or expenses, including court costs and reasonable attorneys' fees and expenses, resulting from, arising out of, or in any way connected with the negligence or willful misconduct of the City, its employees, agents, and independent contractors and consultants, or arising from a default by the City of its obligations hereunder. The indemnifications set forth in this Section shall survive termination or expiration of this Agreement.

**Section 10. Consents and Cooperation.**

10.1 Wherever in this Agreement the consent or approval of the TDD, the CID or the City is required, such consent or approval shall not be unreasonably withheld, delayed or conditioned, shall be in writing and shall be executed by a duly authorized officer or agent of the party granting such consent or approval. Further, the TDD, the CID and the City agree to take such reasonable actions as may be necessary both to carry out the terms, provisions and intent of this Agreement and the Redevelopment Agreement, and to aid and assist each other in carrying out such terms, provisions and intent.

10.2 The City shall cooperate with the TDD, the CID and the Developer in all aspects of the predevelopment, design, construction, improvement, financing, operation and maintenance of the Redevelopment Project, including without limitation, the following: (a) expediting the performance of any and all inspections and the processing and approval of any and all permits, licenses and other entitlements and authorizations, including, without limitation, any and all Governmental Approvals and (b) expediting the review, processing and approval of any and all plans, drawings and other documents and materials.

9.3 The TDD and the CID will not issue any obligations that are not expressly permitted under the terms of the Redevelopment Agreement without prior approval from the City.

**Section 11. Miscellaneous.**

11.1 *Representations and Warranties of the CID.* The CID hereby represents and warrants to the City that: (i) the CID is authorized to enter into and perform this Agreement and each agreement to be executed and performed by the CID, pursuant to this Agreement; (ii) this Agreement was duly authorized by the governing body of the CID; and (iii) this Agreement is binding upon, and enforceable against the CID, in accordance with its terms.

11.2 *Representations and Warranties of the TDD.* The TDD hereby represents and warrants to the City that: (i) the TDD is authorized to enter into and perform this Agreement and each agreement to be executed and performed by the TDD, pursuant to this Agreement; (ii) this Agreement was duly authorized by the governing body of the TDD; and (iii) this Agreement is binding upon, and enforceable against the TDD, in accordance with its terms.

11.3 *Representations and Warranties of the City.* The City hereby represents and warrants to the CID and the TDD that: (i) the City is authorized to enter into and perform this Agreement and each agreement to be executed and performed by the City pursuant to this Agreement; (ii) this Agreement was duly authorized by the governing body of the City; and (iii) this Agreement is binding upon, and enforceable against the City, in accordance with its terms.

11.4 *Warranty; Right to Make Agreement.* The TDD, the CID and the City each warrant to the other with respect to itself that neither the execution of this Agreement nor the finalization of the transactions contemplated hereby shall: (i) violate any provision of law or judgment, writ, injunction, order or decree of any court or governmental authority having jurisdiction over it; (ii) result in or constitute a breach or default under any indenture, contract, other commitment or restriction to which it is a party or by which it is bound; or (iii) require any consent, vote or approval which has not been taken, or at the time of the transaction involved shall not have been given or taken.

11.5 *Relationship.* Neither this Agreement nor any agreements, instruments, documents, or transactions contemplated hereby shall in any respect be interpreted, deemed or construed as making either party hereto a partner, joint venturer with, or agent of the other party. The TDD, the CID and the City agree that neither party will make any contrary assertion, claim or counterclaim in any action, suit, arbitration or other legal proceedings involving the TDD, the CID and the City.

11.6 *Applicable Law.* This Agreement shall be taken and deemed to have been fully executed, made by the parties in, and governed by, the laws of the State of Missouri.

11.7 *Entire Agreement; Amendment.* This Agreement constitutes the entire agreement between the TDD, the CID and the City with respect to the matters herein and no other agreements or representations other than those contained in this Agreement have been made by the parties. It supercedes all prior written or oral understandings with respect thereto. This Agreement shall be amended only in writing and effective when signed by the authorized agents of the TDD, the CID and the City and, if Bonds are issued and outstanding, approved by the Bond Trustee.

11.8 *Counterparts.* This Agreement is executed in multiple counterparts, each of which shall constitute one and the same instrument.

11.9 *Severability.* In the event any term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect to the extent the remainder can be given effect without the invalid provision, unless the unenforceable or invalid term or provision is such that a court reasonably would find that the parties, or either of them, would not have entered this Agreement without such term or provision, or would not have intended the remainder of this Agreement to be enforced without such term or provision.

**Section 12. Notices.** Any notice, demand, or other communication required by this Agreement to be given by either party hereto to the other shall be in writing and shall be sufficiently given or delivered if dispatched by certified mail, postage prepaid, or delivered personally as follows:

**In the case of the CID:**

Railway Exchange Building Community Improvement District

c/o Rick Yackey  
706 Demun  
St. Louis, Missouri 63105

With copies to:

Husch Blackwell Sanders LLP  
190 Carondelet Plaza, Suite 600  
St. Louis, MO 63105  
Attn: David Richardson

**In the case of the TDD:**

Railway Exchange Building Transportation Development District  
c/o Rick Yackey  
706 Demun  
St. Louis, Missouri 63105

With copies to:

Husch Blackwell Sanders LLP  
190 Carondelet Plaza, Suite 600  
St. Louis, MO 63105  
Attn: David Richardson

**In the case of the City, to:**

City of St. Louis  
City Hall  
1200 Market Street  
St. Louis, Missouri 63103

Attention: Mayor, Room 200  
Attention: Comptroller, Room 212

With a copy to:

St. Louis Development Corporation  
1015 Locust Street  
Suite 1200  
St. Louis, Missouri 63101  
Attention: Executive Director

and

City Counselor  
City of St. Louis  
1200 Market Street, Room 314  
St. Louis, Missouri 63103  
Attention: Stephen Kovac

**In the case of the Developer:**

Railway Exchange Building TIF, Inc.  
c/o Rick Yackey  
706 Demun  
St. Louis, Missouri 63105

With copies to:

Husch Blackwell Sanders LLP  
190 Carondelet Plaza, Suite 600  
St. Louis, MO 63105  
Attn: David Richardson

or to such other address with respect to either party as that party may, from time to time, designate in writing and forward to the other as provided in this Section.

**Section 13. Waiver.** The failure of either party to insist upon a strict performance of any of the terms or provisions of this Agreement, or to exercise any option, right or remedy contained in this Agreement, shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right or remedy, but the same shall continue and remain in full force and effect. No waiver by either party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by such party.

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

**IN WITNESS WHEREOF**, the parties have caused this Intergovernmental Cooperation Agreement to be executed as of the date first written above.

**RAILWAY EXCHANGE BUILDING  
TRANSPORTATION DEVELOPMENT  
DISTRICT**

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

**RAILWAY EXCHANGE BUILDING  
COMMUNITY IMPROVEMENT DISTRICT**

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

**RAILWAY EXCHANGE BUILDING TIF, INC.**

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

**CITY OF ST. LOUIS, MISSOURI**

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

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

Attest:

\_\_\_\_\_  
Register

Approved as to form:

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

\_\_\_\_\_  
**TAX COMPLIANCE AGREEMENT**

**Dated as of \_\_\_\_\_, 20\_\_**

\_\_\_\_\_  
**among the**

**CITY OF ST. LOUIS, MISSOURI**

**and**

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

**and**

**THE BOND TRUSTEE**

\_\_\_\_\_  
\$ \_\_\_\_\_

**The Industrial Development Authority of the City of St. Louis, Missouri  
Tax Increment Financing Revenue Bonds  
Series 20\_\_  
(Railway Exchange Building Redevelopment Project)**

\_\_\_\_\_  
**TAX COMPLIANCE AGREEMENT**

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## TAX COMPLIANCE AGREEMENT

This **TAX COMPLIANCE AGREEMENT** (the "Tax Agreement"), entered into as of \_\_\_\_\_, 20\_\_, among the **CITY OF ST. LOUIS, MISSOURI** (the "City"), **THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF ST. LOUIS, MISSOURI** (the "Authority") and the trustee named in the herein-defined Indenture (the "Trustee").

### RECITALS

**1.** This Tax Agreement is being executed and delivered in connection with the issuance by the Authority of its Tax Increment Financing Revenue Bonds, Series 20\_\_ (Railway Exchange Building Redevelopment Project) in an aggregate principal amount of \$\_\_\_\_\_ (the "Bonds"), pursuant to a Resolution adopted by the Board of Directors of the Authority on \_\_\_\_\_, 20\_\_ (the "Bond Resolution"), and that certain Trust Indenture dated as of the date hereof by and between the Authority and the Trustee (the "Indenture"), for the purpose of (i) funding a portion of the Redevelopment Project (each as defined in the Indenture), (ii) funding capitalized interest on the Bonds, (iii) establish reserve funds for the Bonds and (iv) paying the costs of issuance of the Bonds, as more fully described herein and in the Indenture.

**2.** The Internal Revenue Code of 1986, as amended (the "Code"), and the applicable regulations and rulings issued by the U.S. Treasury Department with respect thereto (the "Regulations"), impose certain limitations on the uses and investment of the proceeds of the Bonds and of certain other money relating to the Bonds and set forth the conditions under which interest on the Bonds will be excluded from gross income for federal income tax purposes.

**3.** The City, the Authority and the Trustee are executing this Tax Agreement to set forth certain representations, facts, expectations, terms and conditions relating to the use and investment of the proceeds of the Bonds and of certain other money relating thereto, in order to establish and maintain the exclusion of interest on the Bonds from gross income for federal income tax purposes and to provide guidance for complying with the arbitrage rebate provisions of Code § 148(f).

**NOW, THEREFORE**, in consideration of the foregoing, and for the benefit of the holders of the Bonds, the City, the Authority and the Trustee represent, covenant and agree as follows:

### ARTICLE I. DEFINITIONS

**Section 1.1. Definitions of Words and Terms.** Except as otherwise provided in this Tax Agreement or unless the context otherwise requires, capitalized words and terms used in this Tax Agreement have the same meanings as set forth in the Indenture, and certain other words and phrases have the meanings assigned in Code §§ 103, 141-150 and the Regulations. The following words and terms used in this Tax Agreement have the following meanings:

**"Adjusted Gross Proceeds"** means the Gross Proceeds of the Bonds reduced by amounts (1) in a Bona Fide Debt Service Fund or a reasonably required reserve or replacement fund, (2) that as of the Issue Date are not expected to be Gross Proceeds, but which arise after the end of the applicable spending period, and (3) representing grant repayments or sale or investment proceeds of any purpose investment.

**"Available Construction Proceeds"** means the sale proceeds of the Bonds, increased by (i) Investment earnings on the sale proceeds, (ii) earnings on amounts in a reasonably required reserve or replacement fund allocable to the Bonds but not funded from the Bonds, and (iii) earnings on such earnings, reduced by sale proceeds (A) in any reasonably required reserve fund or (B) used to pay issuance costs of the Bonds.

**"Bona Fide Debt Service Fund"** means a fund, which may include Bond proceeds, that (a) is used primarily to achieve a proper matching of revenues with principal and interest payments within each Bond Year; and (b) is depleted at least once each Bond Year, except for a reasonable carryover amount not to exceed the greater of (1) the earnings on the fund for the immediately preceding Bond Year, or (2) one-twelfth of the principal and interest payments on the Bonds for the immediately preceding Bond Year.

**"Bond"** or **"Bonds"** means any Bond or Bonds described in the recitals, authenticated and delivered under the Indenture.

**"Bond Counsel"** means a firm of nationally recognized bond counsel acceptable to the Issuer.

“**Bond Year**” means each one-year period (or shorter period for the first Bond Year) ending \_\_\_\_\_, or another one-year period selected by the Issuer.

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

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Computation Date**” means each date on which arbitrage rebate for the Bonds is computed. The Issuer may treat any date as a Computation Date, subject to the following limits:

- (a) the first rebate installment payment must be made for a Computation Date not later than 5 years after the Issue Date;
- (b) each subsequent rebate installment payment must be made for a Computation Date not later than five years after the previous Computation Date for which an installment payment was made; and
- (c) the date the last Bond is discharged is the final Computation Date.

The Issuer selects \_\_\_\_\_, 20\_\_ as the first Computation Date but reserves the right to select a different date consistent with the Regulations.

“**Financed Facilities**” means any of the property financed or refinanced with the proceeds of the Bonds, which consists of a portion of the Redevelopment Project (as defined in the Indenture).

“**Financing Agreement**” means the Financing Agreement dated as of \_\_\_\_\_, 20\_\_, between the Issuer and the City, as from time to time amended in accordance with the provisions thereof.

“**Gross Proceeds**” means (a) sale proceeds (any amounts actually or constructively received by the Issuer from the sale of the Bonds, including amounts used to pay underwriting discount or fees, but excluding pre-issuance accrued interest), (b) Investment proceeds (any amounts received from investing sale proceeds, or other Investment proceeds), (c) any amounts held in a sinking fund for the Bonds, (d) any amounts held in a pledged fund or reserve fund for the Bonds, and (e) any other replacement proceeds.

Specifically, Gross Proceeds includes (but is not limited) to amounts (excluding accrued interest) held in the following funds and accounts:

- (1) Project Fund.
- (2) Costs of Issuance Fund.
- (3) Debt Service Fund.
- (4) Debt Service Reserve Fund.
- (5) Rebate Fund (to the extent funded with sale proceeds or Investment proceeds of the Bonds).

“**Guaranteed Investment Contract**” means any Investment with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate, including any agreement to supply Investments on two or more future dates (e.g., a forward supply contract).

“**Indenture**” means the Trust Indenture as originally executed by the Issuer and the Trustee, as amended and supplemented in accordance with the provisions of the Indenture.

“**Investment**” means any security, obligation, annuity contract or other Investment type property that is purchased directly with, or otherwise allocated to, Gross Proceeds, including the Investment element of an interest rate cap agreement. Such term does not include a tax-exempt bond, except for “specified private activity bonds” as such term is defined in Code § 57(a)(5)(C), but does include the Investment element of most interest rate caps.

“**IRS**” means the United States Internal Revenue Service.

“**Issue Date**” means [Issue Date].

“**Issuer**” means The Industrial Development Authority of the City of St. Louis, Missouri, and its successors and assigns.

“**Management Agreement**” means a legal agreement defined in Regulations § 1.141-3(b) as a management, service, or incentive payment contract with an entity that provides services involving all or a portion of any function of the Financed Facilities, such as a contract to manage the entire Financed Facilities or a portion of the Financed Facilities. Contracts for services that are solely incidental to the primary governmental function of the Financed Facilities (for example, contracts for janitorial, office equipment repair, billing, or similar services), however, are not treated as Management Agreements.

“**Measurement Period**” means, with respect to each item of property financed as part of the Financed Facilities, the period beginning on the later of (i) the Issue Date or (ii) the date the property is placed in service and ending on or the earlier of (A) the final maturity date of the Bonds or (B) the expected economic useful life of the property.

“**Minor Portion**” means the lesser of \$100,000 or 5% of the sale proceeds of the Bonds.

“**Net Proceeds**” means the sale proceeds of the Bonds (excluding pre-issuance accrued interest), less any proceeds deposited in a reasonably required reserve or replacement fund, plus all Investment earnings on such sale proceeds.

“**Non-Qualified Use**” means use of Bond proceeds or the Financed Facilities in a trade or business carried on by any Non-Qualified User. The rules set out in Regulations § 1.141-3 determine whether Bond proceeds or the Financed Facilities are “used” in a trade or business. Generally, ownership, a lease, or any other use that grants a Non-Qualified User a special legal right or entitlement with respect to the Financed Facilities, will constitute use under Regulations § 1.141-3.

“**Non-Qualified User**” means any person or entity other than a Qualified User.

“**Opinion of Bond Counsel**” means the written opinion of Bond Counsel or other nationally recognized firm of bond counsel. Unless otherwise specifically noted herein an Opinion of Bond Counsel must conclude that the action or proposed action or the failure to act or proposed failure to act for which the opinion is required will not adversely affect the exclusion of the interest on the Bonds from gross income for federal income tax purposes.

“**Qualified Use Agreement**” means any of the following:

(1) A lease or other short-term use by members of the general public who occupy the Financed Facilities on a short term basis in the ordinary course of the City’s governmental purposes.

(2) Agreements with Qualified Users or Non-Qualified Users to use all or a portion of the Financed Facilities for a period up to 200 days in length pursuant to an arrangement whereby (a) the use of the Financed Facilities under the same or similar arrangements is predominantly by natural persons who are not engaged in a trade or business and (b) the compensation for the use is determined based on generally applicable, fair market value rates that are in effect at the time the agreement is entered into or renewed. Any Qualified User or Non-Qualified User using all or any portion of the Financed Facilities under this type of arrangement may have a right of first refusal to renew the agreement at rates generally in effect at the time of the renewal.

(3) Agreements with Qualified Users or Non-Qualified Users to use all or a portion of the Financed Facilities for a period up to 100 days in length pursuant to arrangements whereby (a) the use of the property by the person would be general public use but for the fact that generally applicable and uniformly applied rates are not reasonably available to natural persons not engaged in a trade or business, (b) the compensation for the use under the arrangement is determined based on applicable, fair market value rates that are in effect at the time the agreement is entered into or renewed, and (c) the Financed Facilities were not constructed for a principal purpose of providing the property for use by that Qualified User or Non-Qualified User. Any Qualified User or Non-Qualified User using all or any portion of the Financed Facilities under this type of arrangement may have a right of first refusal to renew the agreement at rates generally in effect at the time of the renewal.

(4) Agreements with Qualified Users or Non-Qualified Users to use all or a portion of the Financed Facilities for a period up to 50 days in length pursuant to a negotiated arm’s length arrangement at fair market value so long

as the Financed Facilities were not constructed for a principal purpose of providing the property for use by that person.

“**Qualified User**” means a State, territory, possession of the United States, the District of Columbia, or any political subdivision thereof, or any instrumentality of such entity, but it does not include the United States or any agency or instrumentality of the United States.

“**Reasonable Retainage**” means Gross Proceeds retained by the Issuer for reasonable business purposes, such as to ensure or promote compliance with a construction contract; provided that such amount may not exceed (a) for purposes of the 18-month spending test, 5% of net sale proceeds of the Bonds on the date 18 months after the Issue Date, or (b) for purposes of the 2-year spending test, 5% of the Available Construction Proceeds as of the end of the 2-year spending period.

“**Rebate Analyst**” means Bond Counsel or any successor Rebate Analyst selected pursuant to this Tax Agreement.

“**Regulations**” means all Regulations issued by the U.S. Treasury Department to implement the provisions of Code §§ 103 and 141 through 150 and applicable to the Bonds.

“**Tax Agreement**” means this Tax Compliance Agreement as it may from time to time be amended and supplemented in accordance with its terms.

“**Tax Revenues**” means all economic activity tax revenues, payments in lieu of taxes, and all other generally applicable taxes that will be a source for the repayment of the Bonds, as provided in the Indenture.

“**Transcript**” means the Transcript of Proceedings relating to the authorization and issuance of the Bonds.

“**Trustee**” means the trustee named in the Indenture.

“**Underwriter**” means the initial purchaser of the Bonds or such Underwriter reasonable acceptable to the Issuer with the consent of the Developer.

“**Yield**” means, with respect to the Bonds, yield computed under § 1.148-4 of the Regulations and, with respect to an Investment, yield computed under § 1.148-5 of the Regulations.

## ARTICLE II. GENERAL REPRESENTATIONS AND COVENANTS

**Section 2.1. Representations and Covenants of the Issuer.** The Issuer represents and covenants to the City and the Trustee as follows:

(a) *Organization and Authority.* The Issuer (1) is a public corporation duly organized and existing under the laws of the State of Missouri, (2) has lawful power and authority to issue the Bonds for the purposes set forth in the Indenture, to enter into, execute and deliver the Indenture and this Tax Agreement and to carry out its obligations under this Tax Agreement and under such documents, and (3), by all necessary action has duly authorized the person executing this document to execute and deliver this Tax Agreement.

(b) *Tax-Exempt Status of Bonds—General Covenant.* The Issuer (to the extent within its power or direction) will not use any money on deposit in any fund or account maintained in connection with the Bonds, whether or not such money was derived from the proceeds of the sale of the Bonds or from any other source, in a manner that would cause the Bonds to be “arbitrage bonds,” within the meaning of Code § 148, and will not (to the extent within its power or direction) otherwise use or permit the use of any Bond proceeds or any other funds of the Issuer, directly or indirectly, in any manner, or take or permit to be taken any other action or actions, that would cause interest on the Bonds to be included in gross income for federal income tax purposes.

(c) *IRS Form 8038-G.* Attached to this Tax Agreement as **Exhibit B** is a copy of IRS Form 8038-G (Information Return for Tax-Exempt Governmental Obligations) prepared by Bond Counsel based on information provided by the City and the Issuer that is to be filed with the Internal Revenue Service in connection with the issuance of the Bonds as required by Code § 149(e).

(d) *Registered Bonds.* The Bond Indenture requires that all of the Bonds will be issued and held in registered form

within the meaning of Code § 149(a).

(e) *Hedge Bonds.* The Issuer expects that (a) at least 85% of the net sale proceeds (the sale proceeds of the Bonds less any sale proceeds invested in a reserve fund) of the Bonds will be used to carry out the governmental purpose of the Bonds within 3 years after the Issue Date, and (b) not more than 50% of the proceeds of the Bonds will be invested in Investments having a substantially guaranteed yield for 4 years or more.

(f) *Issuer Reliance on Other Parties.* The expectations, representations and covenants of the Issuer concerning uses of Bond proceeds and certain other money described in this Tax Agreement and other matters are based in whole or in part upon covenants, representations and certifications of the other parties set forth in this Tax Agreement or exhibits to this Tax Agreement. Although the Issuer has made no independent investigation of the representations of other parties, including the City, the Issuer is not aware of any facts or circumstances that would cause it to question the accuracy or reasonableness of any representation made in this Tax Agreement or exhibits to this Tax Agreement.

(g) *Bank Qualified Tax-Exempt Obligation.* The Issuer is not designating the Bonds as “qualified tax exempt obligations” under Code § 265(b)(3).

(h) *Single Issue; No Other Issues.* The Bonds constitute a single “issue” under Regulations § 1.150-1(c). No other obligations of the Issuer (1) are being sold within 15 days of the sale of the Bonds, (2) are being sold under the same plan of financing as the Bonds, and (3) are expected to be paid from substantially the same source of funds as the Bonds (disregarding guarantees from unrelated parties, such as bond insurance).

**Section 2.2. Representations and Covenants of the City.** The City represents and covenants to the Authority and the Trustee as follows:

(a) *Organization and Authority.* The City (1) is a constitutional charter city and political subdivision of the State of Missouri, (2) has lawful power and authority to enter into, execute and deliver the Financing Agreement and this Tax Agreement (together, the “City Documents”) and to carry out its obligations thereunder and hereunder, and (3) by all necessary corporate action has been duly authorized to execute the City Documents, acting by and through its duly authorized officers.

(b) *Tax-Exempt Status of Bonds—General Representation and Covenants.* To maintain the exclusion of the interest on the Bonds from gross income for federal income tax purposes, the City (1) will take whatever action, and refrain from whatever action, necessary to comply with the applicable requirements of the Code; (2) will not use or invest, or permit the use or investment of, any Bond proceeds, other money held under the Indenture, or other funds of the City, in a manner that would violate applicable provisions of the Code; and (3) will not use, or permit the use of, any portion of the Financed Facilities in a manner that would cause any Bond to become a “private activity bond” as defined in Code § 141.

(c) *Governmental Obligations—Use of Proceeds.* Proceeds of the Bonds will be used in a Non-Qualified Use. However, the Bonds will not meet the private security or payment test for the reasons set forth in **Section 2.2(d)** below.

(d) *Governmental Obligations—Private Security or Payment – No Impermissible Agreements.*

(1) As of the Issue Date the Issuer and the City expect that none of the principal and interest on the Bonds will be (under the terms of the Bonds or any underlying arrangement) directly or indirectly:

(A) secured by (i) any interest in property used or to be used for a private business use, or (ii) any interest in payments in respect of such property; or

(B) derived from payments (whether or not such payments are made to the Issuer) in respect of property, or borrowed money, used or to be used for a private business use.

(2) For purposes of the foregoing, taxes of general application, including Tax Revenues, are not treated as private payments or as private security. Tax Revenues will be the primary source of repayment of the Bonds. Tax Revenues are generally applicable taxes because they are an enforced contribution exacted pursuant to legislative authority as part of the taxing power, are imposed and collected for the purpose of raising revenue to be used for governmental purposes, have a uniform rate of collection that applies to all persons of the same classification in the appropriate jurisdiction and have a generally applicable manner of collection and determination. No taxpayer has entered into any

“impermissible agreement” relating to the payment of Tax Revenues. An “impermissible agreement” generally includes any agreement described in Regulations § 1.141-4(e)(4)(ii), including the following:

- (A) An agreement to be personally liable for a tax that does not impose personal liability.
- (B) An agreement to provide additional credit support such as a guaranty or to pay unanticipated shortfalls in tax collections.
- (C) An agreement as to the minimum market value of property subject to a property tax.
- (D) An agreement not to challenge or to seek deferral of a tax.
- (E) Any similar agreement that causes a tax to fail to have a generally applicable manner of determination or collection.

(3) The Issuer and the City will not permit any private security or payment with respect to the Bonds without first obtaining an Opinion of Bond Counsel.

(e) *No Private Loan.* Not more than 5% of the net proceeds of the Bonds will be loaned directly or indirectly to any Non-Qualified User. No taxpayer has entered into any “impermissible agreement” relating to payment of incremental property tax revenues. An “impermissible agreement” generally includes any agreement described in Regulations § 1.141-4(e)(4)(ii) such as an agreement to be personally liable for the payment of property taxes or to guaranty the amount of property taxes to be produced by the development project described in the Redevelopment Plan (as defined in the Indenture).

(f) *Management Agreements and Leases.* There will be no Management Agreement or leases regarding any portion of the Financed Facilities owned by the City.

(g) *Limit on Maturity of Bonds.* The proceeds of the Bonds will be used to finance the Redevelopment Project. Therefore, the “average maturity” of the Bonds of \_\_\_\_\_ years, as computed by Bond Counsel, does not exceed \_\_\_\_\_% of the average reasonably expected economic life of the Financed Facilities.

(h) *Registered Bonds.* The Indenture requires that all of the Bonds will be issued and held in registered form within the meaning of Code § 149(a).

(i) *Bonds Not Federally Guaranteed.* The City will not take any action or permit any action to be taken which would cause any Bond to be “federally guaranteed” within the meaning of Code § 149(b).

(j) *Hedge Bonds.* At least 85% of the net sale proceeds of the Bonds will be used to carry out the governmental purpose of the Bonds within three years after the Issue Date, and not more than 50% of the proceeds of the Bonds will be invested in Investments having a substantially guaranteed Yield for four years or more.

(k) *Compliance with Future Tax Requirements.* The City understands that the Code and the Regulations may impose new or different restrictions and requirements on the Issuer in the future. The Issuer will comply with such future restrictions that are necessary to maintain the exclusion of the interest on the Bonds from gross income for federal income tax purposes.

(l) *Interest Rate Swap.* As of the Issue Date the City has not entered into an interest rate swap agreement or any other similar arrangement designed to modify its interest rate risk with respect to the Bonds. The City will not enter into any such arrangement in the future without obtaining an Opinion of Bond Counsel.

(m) *Guaranteed Investment Contract.* As of the Issue Date of the Bonds, the City does not expect to enter into a Guaranteed Investment Contract for any Gross Proceeds of the Bonds. The City will be responsible for complying **Section 4.3(d)** if it decides to enter into a Guaranteed Investment Contract at a later date.

**Section 2.3. Representations and Covenants of the Trustee.** The Trustee represents and covenants to the Issuer and the City as follows:

- (a) The Trustee will comply with the provisions of this Tax Agreement that apply to it as Trustee and any written

letter or opinion of Bond Counsel, specifically referencing the Bonds and received by the Trustee, that sets forth any action necessary to comply with any statute, regulation or ruling that may apply to it as Trustee and relating to reporting requirements or other requirements necessary to maintain the exclusion of the interest on the Bonds from gross income for federal income tax purposes.

(b) The Trustee, acting on behalf of the Issuer, may from time to time cause a firm of attorneys, consultants or independent accountants or an investment banking firm to provide the Trustee with such information as it may request in order to determine all matters relating to (a) the Yield on the Bonds as it relates to any data or conclusions necessary to verify that the Bonds are not "arbitrage bonds" within the meaning of Code § 148, and (b) compliance with arbitrage rebate requirements of Code § 148(f). The Issuer will pay all costs and expenses incurred in connection with supplying the foregoing information.

**Section 2.4. Survival of Representations and Covenants.** All representations, covenants and certifications of the Issuer, the City and the Trustee contained in this Tax Agreement or in any certificate or other instrument delivered by the Issuer, the City or the Trustee under this Tax Agreement, will survive the execution and delivery of such documents and the issuance of the Bonds, as representations of facts existing as of the date of execution and delivery of the instruments containing such representations. The foregoing covenants of this Section will remain in full force and effect notwithstanding the defeasance of the Bonds.

**ARTICLE III.  
ARBITRAGE CERTIFICATIONS AND COVENANTS**

**Section 3.1. General.** The purpose of this Article is to certify, under Regulations § 1.148-2(b), the Issuer's expectations as to the sources, uses and investment of Bond proceeds and other money, in order to support the Issuer's conclusion that the Bonds are not arbitrage bonds. The person executing this Tax Agreement on behalf of the Issuer is an officer of the Issuer responsible for issuing the Bonds.

**Section 3.2. Reasonable Expectations.** The facts, estimates and expectations set forth in this Article are based upon and in reliance upon the Issuer's understanding of the documents and certificates that comprise the Transcript, and the representations, covenants and certifications of the parties contained therein. To the Issuer's knowledge, the facts and estimates set forth in this Tax Agreement are accurate, and the expectations of the Issuer set forth in this Tax Agreement are reasonable. The Issuer has no knowledge that would cause it to believe that the representations, warranties and certifications described in this Tax Agreement are unreasonable or inaccurate or may not be relied upon.

**Section 3.3. Purpose of Financing.** The Bonds are being issued for the purpose of providing funds to (a) finance the costs of the development project described in the Redevelopment Plan (as defined in the Indenture), (b) fund a debt service reserve fund for the Bonds, (c) fund capitalized interest on the Bonds, and (d) pay certain costs of the issuing the Bonds.

**Section 3.4. Funds and Accounts.** The following funds and accounts have been established in the custody of the Trustee under the Indenture:

- (a) Revenue Fund.
- (b) Project Fund.
- (c) Costs of Issuance Fund.
- (d) Debt Service Fund.
- (e) Debt Service Reserve Fund.
- (f) Rebate Fund.

**Section 3.5. Amount and Use of Bond Proceeds and Other Money.**

(a) *Amount of Bond Proceeds.* The total proceeds to be received by the Issuer from the sale of the Bonds will be as follows:

Principal Amount	\$ _____
Net Original Issue Discount	_____

Underwriting Discount \_\_\_\_\_  
 Total Proceeds Received by Issuer \$ \_\_\_\_\_

(b) *Use of Bond Proceeds.* The Bond proceeds are expected to be allocated to expenditures as follows:

(1) The accrued interest and \$ \_\_\_\_\_ of capitalized interest on the Bonds will be deposited in the Debt Service Fund and used to pay interest on the Bonds.

(2) \$ \_\_\_\_\_, equal to the Debt Service Reserve Requirement, will be deposited in the Debt Service Reserve Fund.

(3) \$ \_\_\_\_\_ will be deposited in the Costs of Issuance Fund.

(4) \$ \_\_\_\_\_ will be deposited in the Project Fund.

**Section 3.6. Multipurpose Issue.** The Issuer is applying the arbitrage rules to separate financing purposes of the issue that have the same initial temporary period as if they constitute a single issue for purposes pursuant to Regulations § 1.148-9(h)(3)(i).

**Section 3.7. No Advance Refunding.** No proceeds of the Bonds will be used more than 90 days following the Issue Date to pay principal or interest on any other debt obligation.

**Section 3.8. No Current Refunding.** No proceeds of the Bonds will be used to pay principal or interest on any other debt obligation.

**Section 3.9. Project Completion.** The Issuer has incurred, or will incur within 6 months after the Issue Date, a substantial binding obligation to a third party to spend at least 5% of the Net Proceeds of the Bonds on the Financed Facilities. The completion of the Financed Facilities and the allocation of the Net Proceeds of the Bonds to expenditures will proceed with due diligence. At least 85% of the Net Proceeds of the Bonds will be allocated to expenditures on the Financed Facilities within three years after the Issue Date.

**Section 3.10. Sinking Funds.** The Issuer is required to make periodic payments in amounts sufficient to pay the principal of and interest on the Bonds. Such payments will be deposited into the Debt Service Fund. Except for the Debt Service Fund and the Debt Service Reserve Fund, no sinking fund or other similar fund that is expected to be used to pay principal of or interest on the Bonds has been established or is expected to be established. The Debt Service Fund is used primarily to achieve a proper matching of revenues with principal and interest payments on the Bonds within each Bond Year, and the Issuer expects that the Debt Service Fund will qualify as a Bona Fide Debt Service Fund.

**Section 3.11. Reserve, Replacement and Pledged Funds.**

(a) *Debt Service Reserve Fund.* The Indenture establishes a debt service reserve fund to be funded at the time of issuance of the Bonds in an amount equal to \$ \_\_\_\_\_, the Debt Service Reserve Requirement. The amount to be held in the Debt Service Reserve Fund will not exceed the least of (1) 10% of the stated principal amount of the Bonds, (2) the maximum annual principal and interest requirements on the Bonds (determined as of the Issue Date, or (3) 125% of the average annual principal and interest requirements on the Bonds (determined as of the Issue Date). If the aggregate initial offering price of the Bonds to the public is less than 98% or more than 102% of par, such offering price must be used in clause (1) in lieu of the stated principal amount. Any amounts in the Debt Service Reserve Fund in excess of the Debt Service Reserve Requirement will be transferred to the Project Fund or, if the Financed Facilities are complete, to the Debt Service Fund.

(b) *No Other Replacement or Pledged Funds.* None of the Bond proceeds will be used as a substitute for other funds that were intended or earmarked to pay costs of the Financed Facilities, and that instead have been or will be used to acquire higher yielding investments. Except for the Debt Service Fund and the Debt Service Reserve Fund, there are no other funds pledged or committed in a manner that provides a reasonable assurance that such funds would be available for payment of the principal of or interest on the Bonds if the Issuer or the City encounters financial difficulty.

**Section 3.12. Purpose Investment Yield.** The proceeds of the Bonds will not be used to purchase an Investment for

the purpose of carrying out the governmental purpose of the financing.

**Section 3.13. Offering Prices and Yield on Bonds.**

(a) *Offering Prices.* The Underwriter has certified that (1) all of the Bonds have been the subject of an initial offering to the public at prices no higher than those shown on the inside cover page of the official statement, plus accrued interest (the "Offering Prices"), and (2) the Underwriter expects that at least 10% of the Bonds of each maturity will be sold to the public at initial offering prices no higher than said offering prices. The aggregate initial offering price of the Bonds is \$\_\_\_\_\_, plus accrued interest.

(b) *Bond Yield.* Based on the offering prices, the Yield on the Bonds is \_\_\_\_\_%, as computed by bond counsel as shown on **Exhibit A**. The Issuer has not entered into an interest rate swap agreement with respect to any portion of the proceeds of the Bonds.

**Section 3.14. Miscellaneous Arbitrage Matters.**

(a) *No Abusive Arbitrage Device.* The Bonds are not and will not be part of a transaction or series of transactions that has the effect of (1) enabling the Issuer or the City to exploit the difference between tax-exempt and taxable interest rates to gain a material financial advantage, and (2) overburdening the tax-exempt bond market.

(b) *No Over-Issuance.* The sale proceeds of the Bonds, together with expected investment earnings thereon and other money contributed by the Issuer, do not exceed the cost of the governmental purpose of the Bonds as described above.

**Section 3.15. Conclusion.** On the basis of the facts, estimates and circumstances set forth in this Tax Agreement, the Issuer does not expect that the Bond proceeds will be used in a manner that would cause any Bond to be an "arbitrage bond" within the meaning of Code § 148 and the Regulations.

**ARTICLE IV.  
ARBITRAGE INVESTMENT AND REBATE INSTRUCTIONS**

**Section 4.1. Temporary Periods/Yield Restriction.** Except as described below, Gross Proceeds must not be invested at a Yield greater than the Yield on the Bonds:

(a) *Project Fund and Costs of Issuance Fund.* Bond proceeds deposited in the Project Fund and the Costs of Issuance Fund and investment earnings on such proceeds may be invested without Yield restriction for three years after the Issue Date. If any unspent proceeds remain in the Project Fund or the Costs of Issuance Fund after three years, such amounts may continue to be invested without Yield restriction so long as the Issuer pays to the IRS all Yield reduction payments in accordance with Regulations § 1.148-5(c). These payments are required whether or not the Bonds are exempt from the arbitrage rebate requirements of Code § 148.

(b) *Debt Service Fund.* To the extent that the Debt Service Fund qualifies as a Bona Fide Debt Service Fund, money in such account may be invested without Yield restriction for 13 months after the date of deposit. Earnings on such amounts may be invested without Yield restriction for one year after the date of receipt of such earnings.

(c) *Debt Service Reserve Fund.* Money in the Debt Service Reserve Fund may be invested without Yield restriction up to the least of (1) 10% of the stated principal amount of the Bonds, (2) the maximum annual principal and interest requirements on the Bonds (determined as of the Issue Date), or (3) 125% of the average annual principal and interest requirements on the Bonds (determined as of the Issue Date). If the aggregate initial offering price of the Bonds to the public is less than 98% or more than 102% of par, such offering price must be used in clause (1) in lieu of the stated principal amount.

(d) *Minor Portion.* In addition to the amounts described above, Gross Proceeds not exceeding the Minor Portion may be invested without Yield restriction.

**Section 4.2. Fair Market Value.**

(a) *General.* No Investment may be acquired with Gross Proceeds for an amount (including transaction costs) in excess of the fair market value of such Investment, or sold or otherwise disposed of for an amount (including transaction costs) less

than the fair market value of the Investment. The fair market value of any Investment is the price a willing buyer would pay to a willing seller to acquire the Investment in a bona fide, arm's-length transaction. Fair market value will be determined in accordance with § 1.148-5 of the Regulations.

(b) *Established Securities Market.* Except for Investments purchased for a Yield-restricted defeasance escrow, if an Investment is purchased or sold in an arm's-length transaction on an established securities market (within the meaning of Code § 1273), the purchase or sale price constitutes the fair market value. Where there is no established securities market for an Investment, market value must be established using one of the paragraphs below. The fair market value of Investments purchased for a Yield-restricted defeasance escrow must be determined in a bona fide solicitation for bids that complies with § 1.148-5 of the Regulations.

(c) *Certificates of Deposit.* The purchase price of a certificate of deposit (a "CD") is treated as its fair market value on the purchase date if (1) the CD has a fixed interest rate, a fixed payment schedule, and a substantial penalty for early withdrawal, (2) the Yield on the CD is not less than the Yield on reasonably comparable direct obligations of the United States, and (3) the Yield is not less than the highest Yield published or posted by the CD issuer to be currently available on reasonably comparable CDs offered to the public.

(d) *Guaranteed Investment Contracts.* The purchase price of a Guaranteed Investment Contract is treated as its fair market value on the purchase date if all of the following requirements are met:

(1) Bona Fide Solicitation for Bids. The Issuer or the Trustee makes a bona fide solicitation for the Guaranteed Investment Contract, using the following procedures:

(A) The bid specifications are in writing and are timely forwarded to potential providers.

(B) The bid specifications include all "material" terms of the bid. A term is material if it may directly or indirectly affect the Yield or the cost of the Guaranteed Investment Contract.

(C) The bid specifications include a statement notifying potential providers that submission of a bid is a representation (i) that the potential provider did not consult with any other potential provider about its bid, (ii) that the bid was determined without regard to any other formal or informal agreement that the potential provider has with the Issuer, the Trustee, or any other person (whether or not in connection with the bond issue), and (iii) that the bid is not being submitted solely as a courtesy to the Issuer, the Trustee, or any other person, for purposes of satisfying the requirements of the Regulations.

(D) The terms of the bid specifications are "commercially reasonable." A term is commercially reasonable if there is a legitimate business purpose for the term other than to increase the purchase price or reduce the Yield of the Guaranteed Investment Contract.

(E) The terms of the solicitation take into account the Issuer's reasonably expected deposit and draw-down schedule for the amounts to be invested.

(F) All potential providers have an equal opportunity to bid. For example, no potential provider is given the opportunity to review other bids (i.e., a last look) before providing a bid.

(G) At least three "reasonably competitive providers" are solicited for bids. A reasonably competitive provider is a provider that has an established industry reputation as a competitive provider of the type of Investments being purchased.

(2) Bids Received. The bids received must meet all of the following requirements:

(A) At least three bids are received from providers that were solicited as described above and that do not have a "material financial interest" in the issue. For this purpose, (i) a lead underwriter in a negotiated underwriting transaction is deemed to have a material financial interest in the issue until 15 days after the Issue Date of the issue, (ii) any entity acting as a financial advisor with respect to the purchase of the Guaranteed Investment Contract at the time the bid specifications are forwarded to potential providers has a material financial interest in the issue, and (iii) a provider that is a related party to a provider that has a material financial interest

in the issue is deemed to have a material financial interest in the issue.

(B) At least one of the three bids received is from a reasonably competitive provider, as defined above.

(C) If an agent or broker is used to conduct the bidding process, the agent or broker did not bid to provide the Guaranteed Investment Contract.

(3) Winning Bid. The winning bid is the highest Yielding bona fide bid (determined net of any broker's fees).

(4) Fees Paid. The obligor on the Guaranteed Investment Contract certifies the administrative costs that it pays (or expects to pay, if any) to third parties in connection with supplying the Guaranteed Investment Contract.

(5) Records. The Issuer and the Trustee retains the following records with the bond documents until three years after the last outstanding Bond is redeemed:

(A) A copy of the Guaranteed Investment Contract.

(B) The receipt or other record of the amount actually paid for the Guaranteed Investment Contract, including a record of any administrative costs paid by the Issuer or Trustee, and the certification as to fees paid, described in paragraph (d)(4) above.

(C) For each bid that is submitted, the name of the person and entity submitting the bid, the time and date of the bid, and the bid results.

(D) The bid solicitation form and, if the terms of Guaranteed Investment Contract deviated from the bid solicitation form or a submitted bid is modified, a brief statement explaining the deviation and stating the purpose for the deviation.

(e) *Other Investments.* If an Investment is not described above, the fair market value may be established through a competitive bidding process, as follows:

(1) at least three bids on the Investment must be received from persons with no financial interest in the Bonds (e.g., as underwriters or brokers); and

(2) the Yield on the Investment must be equal to or greater than the Yield offered under the highest bid.

#### **Section 4.3. Certain Gross Proceeds Exempt from the Rebate Requirement.**

(a) *General.* A portion of the Gross Proceeds of the Bonds may be exempt from rebate pursuant to one or more of the following exceptions. The exceptions typically will not apply with respect to all Gross Proceeds of the Bonds and will not otherwise affect the application of the Investment limitations described in Section 4.1. Unless specifically noted, the obligation to compute, and if necessary, to pay rebate as set forth in Section 4.4 applies even if a portion of the gross proceeds of the Bonds is exempt from the rebate requirement. To the extent all or a portion of the Bonds is exempt from Rebate the Rebate Analyst may account for such fact in connection with its preparation of a rebate report described in Section 4.4. The Issuer may defer the final rebate Computation Date and the payment of rebate for the Bonds to the extent permitted by Regulations § 1.148-7(b)(1) and § 1.148-3(e)(2) but only in accordance with specific written instructions provided by the Rebate Analyst.

(b) *Applicable Spending Exceptions.*

(1) The 2-year spending exception is unavailable for the Bonds because the Issuer does not expect that at least 75% of the Available Construction Proceeds will be used for construction or rehabilitation expenditures for property owned by the Issuer.

(2) The following optional rebate spending exceptions can apply to the Bonds:

- (A) 6-month Exception (Code § 148(f)(4)(B) and Regulation § 1.148-7(c))
- (B) 18-month Exception (Regulation § 148-7(d)).

(c) *Special Elections Made with Respect to Spending Exception Elections.* No special elections are being made in connection with the application of the spending exceptions.

(d) *Bona Fide Debt Service Fund.* To the extent that the Debt Service Fund qualifies as a Bona Fide Debt Service Fund, Investment earnings in the account cannot be taken into account in computing arbitrage rebate.

(e) *Documenting Application of Spending Exception.* At any time prior to the first Computation Date, the Issuer may engage the Rebate Analyst to determine whether one or more spending exceptions has been satisfied, and the extent to which the Issuer must continue to comply with Section 4.4 hereof.

(f) *General Requirements for Spending Exception.* The following general requirements apply in determining whether a spending exception is met.

- (1) Using Adjusted Gross Proceeds or Available Construction Proceeds to pay principal of any Bonds is not taken into account as expenditure for purposes of meeting any of the spending tests.
- (2) The six-month spending exception generally is met if all Adjusted Gross Proceeds of the Bonds are spent within six months following the Issue Date. The test may still be satisfied even if up to 5% of the sale proceeds remain at the end of the initial six-month period, so long as this amount is spent within one year of the Issue Date.
- (3) The 18-month spending exception generally is met if all Adjusted Gross Proceeds of the Bonds are spent in accordance with the following schedule:

<b>Time Period After the <u>Issue Date</u></b>	<b>Minimum Percentage of Adjusted Gross <u>Spent</u></b>	<b>Proceeds</b>
6 months	15%	
12 months	60%	
18 months (Final)	100%	

(4) The 2-year spending exception generally is met if all Available Construction Proceeds are spent in accordance with the following schedule:

<b>Time Period After the <u>Issue Date</u></b>	<b>Minimum Percentage of Available Construction <u>Proceeds Spent</u></b>
6 months	10%
12 months	45%
18 months	75%
24 months (Final)	100%

(5) For purposes of applying the 18-month and 2 year spending exceptions only, the failure to satisfy the final spending requirement is disregarded if the Issuer uses due diligence to complete the Financed Facilities and the failure does not exceed the lesser of 3% of the aggregate issue price the Bonds or \$250,000. No such exception applies for any other spending period.

(6) For purposes of applying the 18-month and 2 year spending exceptions only, the Bonds meet the applicable spending test even if, at the end of the final spending period, proceeds not exceeding a Reasonable Retainage

remain unspent, so long as such Reasonable Retainage is spent within 30 months (in the case of the 18-month exception) or 3 years (in the case of the 2 year spending test) after the Issue Date.

**Section 4.4. Computation and Payment of Arbitrage Rebate.**

(a) *Rebate Fund.* The Trustee will keep the Rebate Fund separate from all other funds and will administer the Rebate Fund under this Tax Agreement. Any investment earnings derived from the Rebate Fund will be credited to the Rebate Fund, and any investment loss will be charged to the Rebate Fund.

(b) *Computation of Rebate Amount.* The Trustee will provide the Rebate Analyst investment reports relating to each fund held by the Trustee that contains Gross Proceeds of the Bonds at such times as reports are provided to the Issuer, and not later than ten days following each Computation Date. The Issuer will provide the Rebate Analyst with copies of investment reports for any funds containing Gross Proceeds that are held by a party other than the Trustee annually as of the end of each Bond Year and not later than ten days following each Computation Date. Each investment report provided to the Rebate Analyst will contain a record of each Investment, including (1) purchase date, (2) purchase price, (3) information establishing the fair market value on the date such Investment was allocated to the Bonds, (4) any accrued interest paid, (5) face amount, (6) coupon rate, (7) frequency of interest payments, (8) disposition price, (9) any accrued interest received, and (10) disposition date. Such records may be supplied in electronic form. The Rebate Analyst will compute rebate following each Computation Date and deliver a written report to the Trustee, the Issuer together with an opinion or certificate of the Rebate Analyst stating that arbitrage rebate was determined in accordance with the Regulations. Each report and opinion will be provided not later than 45 days following the Computation Date to which it relates. In performing its duties, the Rebate Analyst may rely, in its discretion, on the correctness of financial analysis reports prepared by other professionals. If the sum of the amount on deposit in the Rebate Fund and the value of prior rebate payments is less than the arbitrage rebate due, the Issuer will, within 55 days after such Computation Date, pay to the Trustee the amount of the deficiency for deposit into the Rebate Fund. If the sum of the amount on deposit in the Rebate Fund and the value of prior rebate payments is greater than the Rebate Amount, the Trustee will transfer such surplus in the Rebate Fund to the Debt Service Fund. After the final Computation Date or at any other time if the Rebate Analyst has advised the Trustee, any money left in the Rebate Fund will be paid to the Issuer and may be used for any purpose not prohibited by law.

(c) *Rebate Payments.* Within 60 days after each Computation Date, the Trustee must pay (but solely from money in the Rebate Fund or provided by the Issuer) to the United States the rebate amount then due, determined in accordance with the Regulations. Each payment must be (1) accompanied by IRS Form 8038 T and such other forms, documents or certificates as may be required by the Regulations, and (2) mailed or delivered to the IRS at the address shown below, or to such other location as the IRS may direct:

Internal Revenue Service Center  
Ogden, UT 84201

**Section 4.5. Successor Rebate Analyst.** If the firm acting as the Rebate Analyst resigns or becomes incapable of acting for any reason, or if the Issuer desires that a different firm act as the Rebate Analyst, then the Issuer by an instrument or concurrent instruments in writing delivered to the firm then serving as the Rebate Analyst and any other party to this Tax Certificate, will engage a successor Rebate Analyst. In each case the successor Rebate Analyst must be a firm of nationally recognized bond counsel or a firm of independent certified public accountants and such firm must expressly agree to undertake the responsibilities assigned to the Rebate Analyst hereunder. In the event the firm acting as the Rebate Analyst resigns or becomes incapable of acting for any reason and the Issuer fails to appoint a qualified successor Rebate Analyst within thirty (30) days following notice of such resignation then the Trustee will appoint a firm to act as the successor Rebate Analyst.

**Section 4.6. Rebate Report Records.** The Trustee and the Issuer will retain copies of each arbitrage rebate report and opinion until three years after the final Computation Date.

**Section 4.7. Filing Requirements.** The Trustee and the Issuer will file or cause to be filed with the Internal Revenue Service such reports or other documents as are required by the Code in accordance with an Opinion of Bond Counsel.

**Section 4.8. Survival after Defeasance.** Notwithstanding anything in the Indenture to the contrary, the obligation to pay arbitrage rebate to the United States will survive the payment or defeasance of the Bonds.

**ARTICLE V.  
MISCELLANEOUS PROVISIONS**

**Section 5.1. Term of Tax Agreement.** This Tax Agreement will be effective concurrently with the issuance and delivery of the Bonds and will continue in force and effect until the principal of, redemption premium, if any, and interest on all Bonds have been fully paid and all such Bonds are cancelled; provided that, the provisions of Article IV of this Tax Agreement regarding payment of arbitrage rebate and all related penalties and interest will remain in effect until all such amounts are paid to the United States.

**Section 5.2. Amendments.** This Tax Agreement may be amended from time to time by the parties to this Tax Agreement without notice to or the consent of any of the Bondowners, but only if such amendment is in writing and is accompanied by an Opinion of Bond Counsel to the effect that, under then existing law, assuming compliance with this Tax Agreement as so amended such amendment will not cause interest on any Bond to be included in gross income for federal income tax purposes. No such amendment will become effective until the Issuer and the Trustee receive this Opinion of Bond Counsel.

**Section 5.3. Opinion of Bond Counsel.** The Issuer and the Trustee may deviate from the provisions of this Tax Agreement if furnished with an Opinion of Bond Counsel addressed to each of them to the effect that the proposed deviation will not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes. The Issuer and the Trustee will comply with any further or different instructions provided in an Opinion of Bond Counsel to the effect that the further or different instructions need to be complied with in order to maintain the validity of the Bonds or the exclusion from gross income of interest on the Bonds.

**Section 5.4. Reliance.** In delivering this Tax Agreement, the Issuer and the Trustee are making only those certifications, representations and agreements as are specifically attributed to them in this Tax Agreement. Neither the Issuer nor the Trustee is aware of any facts or circumstances which would cause it to question the accuracy of the facts, circumstances, estimates or expectations of any other party providing certifications as part of this Tax Agreement and, to the best of its knowledge, those facts, circumstances, estimates and expectations are reasonable. The parties to this Tax Agreement understand that its certifications will be relied upon by Bond Counsel in rendering its opinion as to the validity of the Bonds and the exclusion from federal gross income of the interest on the Bonds.

**Section 5.5. Severability.** If any provision in this Tax Agreement or in the Bonds is determined to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not be affected or impaired.

**Section 5.6. Benefit of Agreement.** This Tax Agreement is binding upon the Issuer and the Issuer and their respective successors and assigns, and inures to the benefit of the parties to this Tax Agreement and the owners of the Bonds. Nothing in this Tax Agreement or in the Indenture or the Bonds, express or implied, gives to any person, other than the parties to this Tax Agreement and their successors and assigns, and the owners of the Bonds, any benefit or any legal or equitable right, remedy or claim under this Tax Agreement.

**Section 5.7. Default; Breach and Enforcement.** Any misrepresentation of a party contained herein or any breach of a covenant or agreement contained in this Tax Agreement may be pursued by the Bondowners or the other party or parties to this Tax Agreement pursuant to the terms of the Indenture or any other document which references this Tax Certificate and gives remedies for a misrepresentation or breach thereof.

**Section 5.8. Record Keeping Responsibilities.** The Trustee and the Issuer recognize (i) that investors purchase the Bonds with the expectation that interest on the Bonds is excluded from gross income for federal income tax purposes, (ii) that the tax-exempt status of interest on the Bonds depends on the accuracy of the representations and the satisfaction of the covenants contained herein by the Issuer, many of which relate to matters that will occur after the date the Bonds are issued, and (iii) that as part of its ongoing tax-exempt bond audit program the Internal Revenue Service requires that records be created and maintained with respect to the following matters:

(a) Documentation evidencing expenditure of Bond proceeds in sufficient detail to determine the date of the expenditure, the asset acquired or the purpose of the expenditure.

(b) Documentation evidencing use of the Financed Facilities by public and private persons (e.g., copies of Management Agreements).

(c) Documentation evidencing all sources of payment or security for the Bonds

(d) Documentation pertaining to any investment of Bond proceeds (including the purchase and sale of securities, SLGs subscriptions, actual investment income received from the investment of proceeds, Guaranteed Investment Contracts, and (if required) rebate calculations).

In addition to the record-keeping duties specifically undertaken by the Trustee, the Issuer has procedures in place or will establish procedures to create and retain these records or to cause these records to be created and retained. Unless otherwise specifically instructed in a written opinion of Bond Counsel or to the extent otherwise provided in this Tax Agreement, the Issuer shall retain and maintain these records until three years following the final maturity of (i) the Bonds or (ii) any obligation issued to refund the Bonds. Any records maintained electronically must comply with Section 4.01 of Revenue Procedure 97-22.

**Section 5.9. Execution in Counterparts.** This Tax Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute the same instrument.

**Section 5.10. Governing Law.** This Tax Agreement will be governed by and construed in accordance with the laws of the State of Missouri.

[Remainder of Page Intentionally Left Blank.]

IN WITNESS WHEREOF, The Industrial Development Authority of the City of St. Louis, Missouri, has caused these presents to be signed in its name and behalf and its corporate seal to be hereunto affixed and attested by its duly authorized officers, all as of the day and year first above written.

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

By: \_\_\_\_\_  
Rodney Crim  
Executive Director

[SEAL]

ATTEST:

By: \_\_\_\_\_  
Patrick M. Bannister  
Assistant Secretary

IN WITNESS WHEREOF, the Trustee has caused these presents to be signed in its name and behalf by one of its duly authorized officers as of the day and year first above written.

\_\_\_\_\_, as Trustee

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

IN WITNESS WHEREOF, the City of St. Louis, Missouri, has caused these presents to be signed in its name and behalf and its corporate seal to be hereunto affixed and attested by its duly authorized officers, all as of the day and year first above written.

**CITY OF ST. LOUIS, MISSOURI**

By: \_\_\_\_\_  
Francis G. Slay

Mayor

By: \_\_\_\_\_  
Darlene Green  
Comptroller

[SEAL]

ATTEST:

By: \_\_\_\_\_  
Parrie May  
City Register

Approved as to form:

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

**EXHIBIT A**

**DEBT SERVICE SCHEDULE AND PROOF OF BOND YIELD**

**EXHIBIT B**

**IRS FORM 8038-G**

**CONTINUING DISCLOSURE AGREEMENT**

This **Continuing Disclosure Agreement** dated as of \_\_\_\_\_, 20\_\_ (the "**Disclosure Agreement**") is executed and delivered by the **CITY OF ST. LOUIS, MISSOURI**, a home rule city and political subdivision duly organized and existing under the laws of the State of Missouri (the "**City**") and the trustee named in the Indenture (defined below), as dissemination agent (the "**Dissemination Agent**") in connection with the issuance by The Industrial Development Authority of the City of St. Louis, Missouri, a public corporation organized and existing under the laws of the State of Missouri (the "**Authority**") of its Tax Increment Financing Revenue Bonds, Series 20\_\_ (Railway Exchange Building Redevelopment Project) (the "**Bonds**"). The Bonds are being issued pursuant to the constitution and laws of the State of Missouri and a Trust Indenture dated as of \_\_\_\_\_, 20\_\_ between the Authority and the trustee named therein (the "**Indenture**"), for the purpose of (a) funding the Redevelopment Project (as defined in the Indenture), (b) funding capitalized interest on the Bonds, (c) establishing reserve funds for the Bonds and (d) paying the costs of issuance of the Bonds, as more fully described herein and in the Indenture. The City and the Dissemination Agent covenant and agree as follows:

**Section 1. Purpose of the Disclosure Agreement.** This Disclosure Agreement is being executed and delivered by the City and the Dissemination Agent for the benefit of the Owners and Beneficial Owners of the Bonds and in order to assist the Participating Underwriter in complying with the requirements of the Rule. The City has determined that the City is the only "obligated person" with responsibility for continuing disclosure within the meaning of the Rule. The City acknowledges that although the Railway Exchange Building Transportation Development District (the "**TDD**") and the Railway Exchange Building Community Improvement District (the "**CID**") are each an "obligated person" within the meaning of the Rule, the City has assumed responsibility for obtaining from the TDD and the CID, and the TDD and CID have covenanted in their respective Closing Certificates to provide to the City, a copy of their respective annual audited financial statements so as to enable the City to provide the information required pursuant to **Section 3(a)**.

**Section 2. Definitions.** In addition to the definitions set forth in the Indenture which apply to any capitalized term used in this Disclosure Agreement unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

"**Annual Report**" shall mean any Annual Report provided by the City pursuant to, and as described in, Section 3 of this

Disclosure Agreement.

“**Beneficial Owner**” shall mean any person who (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Bonds for federal income tax purposes.

“**Bond Counsel**” means attorneys or a firm of attorneys with a nationally recognized standing in the field of municipal bond financing selected by the City.

“**Central Post Office**” means DisclosureUSA, any successor thereto, or any other conduit entity recognized, authorized or approved by the Securities and Exchange Commission for the submission of Annual Reports and any Notice of Material Event to the Repositories. The Central Post Office currently approved by the Securities and Exchange Commission is set forth on **Exhibit A**.

“**Disclosure Representative**” shall mean the City Register, on behalf of the City, or his or her successors or designees, or such other person as the City shall designate in writing to the Trustee from time to time.

“**Dissemination Agent**” shall mean the bank or trust company named as trustee in the Indenture, acting in its capacity as Dissemination Agent hereunder, or any successor Dissemination Agent designated in writing by the City and which has filed with the Trustee a written acceptance of such designation if the Trustee is not the Dissemination Agent.

“**Financing Agreement**” means the Financing Agreement dated as of \_\_\_\_\_, 20\_\_, by and between the Authority and the City, and as amended from time to time in accordance with its terms.

“**Listed Events**” shall mean any of the events listed in **Section 4(a)** of this Disclosure Agreement.

“**National Repository**” shall mean any Nationally Recognized Municipal Securities Information Repository for purposes of the Rule. The National Repositories currently approved by the Securities and Exchange Commission are set forth in **Exhibit A**.

“**Notice of Material Event**” shall mean any notice provided pursuant to **Section 4(f)**.

“**Participating Underwriter**” shall mean the original underwriters of the Bonds required to comply with the Rule in connection with offering of the Bonds.

“**Repository**” shall mean each National Repository and each State Repository.

“**Rule**” shall mean Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“**State**” shall mean the State of Missouri.

“**State Repository**” shall mean any public or private repository or entity designated by the State as a state repository for the purpose of the Rule and recognized as such by the Securities and Exchange Commission. As of the date of this Disclosure Agreement, there is no State Repository.

### **Section 3. Provision of Annual Reports.**

(a) The City shall, or shall cause the Dissemination Agent to, not later than one hundred eighty (180) days after the end of the City’s fiscal year (which currently ends June 30 of each year), commencing with the report for the fiscal year ending June 30, 2009, provide to any person who requests it and to each National Repository and the State Repository, if any, the following financial information and operational data (the Annual Report”):

(i) the City’s audited financial statements for the City’s most recently ended fiscal year and the District’s unaudited financial statements (audited when required by law) for the District’s most recently ended fiscal year, prepared in accordance with standards as promulgated from time to time by the Government Accounting Standards Board. If such audited financial statements are not then available, the Annual Report shall contain unaudited financial statements in a

format similar to the financial statements contained in the final Official Statement and the audited financial statements shall be filed in the same manner as the Annual Report when they become available; and

(ii) Updates as of the end of the fiscal year of certain operating data contained in the final Official Statement under the captions [\_\_\_\_\_]. This operating data shall be limited to the name of tenant, size of premises, term of lease and permitted use.

(b) The Annual Report may be made available or submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in **Section 4(d)** of this Disclosure Agreement; provided that the audited financial statements of the City may be made available or submitted separately from the balance of the Annual Report and later than the date required above for the filing of the Annual Report if they are not available by that date. If the City's fiscal year changes, it shall give notice of such change in the same manner as a Notice of Material Event under **Section 4(f)**.

(c) The Annual Report may include by specific reference other documents, including official statements of debt issues, with respect to which the City is an "obligated person" (as defined by the Rule), which have been filed with each of the Repositories, the Municipal Securities Rulemaking Board or the Securities and Exchange Commission. If the document included by reference is a final official statement, it must be available from the Municipal Securities Rulemaking Board. The City shall clearly identify each such other document so included by reference.

(d) Not later than fifteen (15) Business Days prior to the date specified in **subsection (a)** of this Section for making available or providing the Annual Report to any person who requests it and to each National Repository and the State Repository, if any, the City shall provide its audited financial statements (if then available) and the remainder of the Annual Report to the Dissemination Agent and the Trustee (if the Trustee is not the Dissemination Agent). If by such date the Dissemination Agent has not received a copy of the Annual Report, the Dissemination Agent shall contact the City and request that the City comply with the first sentence of this **subsection (d)**.

(e) If the Dissemination Agent has not received an Annual Report by the date required in **subsection (d)** of this Section, the Dissemination Agent shall so notify (i) each National Repository or to the Municipal Securities Rulemaking Board and the State Repository, if any, (ii) the City, (iii) the Participating Underwriter, and (iv) the Trustee (if the Trustee is not the Dissemination Agent).

(f) The Dissemination Agent shall:

1. determine each year prior to the date for providing the Annual Report the name and address of each National Repository and the State Repository, if any; and
2. provide notice to the City, and the Trustee (if the Trustee is not the Dissemination Agent) certifying that the Annual Report has been filed with each National Repository and the State Repository, if any; and
3. provide a copy of the Annual Report to any person who requests it.

#### **Section 4. Reporting of Significant Events.**

(a) Pursuant to the provisions of this Section, the City shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the Bonds, if material:

1. principal and interest payment delinquencies;
2. non-payment related defaults;
3. unscheduled draws on debt service reserves reflecting financial difficulties;
4. unscheduled draws on credit enhancements reflecting financial difficulties;
5. substitution of credit or liquidity providers, or their failure to perform;
6. adverse tax opinions or events affecting the tax-exempt status of the Bonds;
7. modifications to the rights of owners of the Bonds;
8. optional, contingent or unscheduled Bond calls;
9. defeasances;
10. release, substitution, or sale of property securing repayment of the Bonds; and
11. ratings changes.

(b) The Dissemination Agent shall, within one (1) Business Day of obtaining actual knowledge of the occurrence of any of the Listed Events contact the Disclosure Representative, inform such person of the event, and request that the City promptly notify the Dissemination Agent in writing whether or not to report the event pursuant to **subsection (f)** of this Section. For the purpose of this Disclosure Agreement, “actual knowledge” of the Listed Events shall mean knowledge by an officer of the Dissemination Agent with responsibility for matters related to this Disclosure Agreement.

(c) Whenever the City obtains knowledge of the occurrence of a Listed Event because of a notice from the Dissemination Agent pursuant to **subsection (b)** of this Section or otherwise, the City shall as soon as possible determine if such event would be material under applicable federal securities laws.

(d) If actual knowledge of the occurrence of a Listed Event would be material under applicable federal securities laws, the City shall promptly notify the Dissemination Agent in writing. Such notice shall instruct the Dissemination Agent to report the occurrence pursuant to **subsection (f)** of this Section.

(e) If in response to a request under **subsection (b)** of this Section, the City determines that the Listed Event would not be material under applicable federal securities laws, the City shall so notify the Dissemination Agent in writing and instruct the Dissemination Agent not to report the occurrence pursuant to **subsection (f)** of this Section.

(f) If the Dissemination Agent has been instructed by written notice from the City to report the occurrence of a Listed Event, the Dissemination Agent shall file a notice of such occurrence (each a “*Notice of Material Event*”) with each National Repository or with the Municipal Securities Rulemaking Board and the State Repository, if any, with a copy to the City, the Trustee, and the Participating Underwriter. Notwithstanding the foregoing, a Notice of Material Events with respect to the Listed Events described in **subsection (a)** of this Section need not be given under this subsection any earlier than the notice (if any) of the underlying event is given to the Beneficial Owners of affected Bonds pursuant to the Indenture.

**Section 5. Central Post Office.** The City authorizes and directs the Dissemination Agent to use the Central Post Office for the submission of Annual Reports and Notices of Material Event for so long as there is any Central Post Office recognized, authorized or approved by the Securities and Exchange Commission. Submission of an Annual Report or a Notice of Listed Event by the City or the Dissemination Agent to the Central Post Office shall be deemed to satisfy the Dissemination Agent’s obligations under this Continuing Disclosure Agreement with respect to that Annual Report or Notice of Material Event unless the City has actual notice that the Central Post Office has failed to deliver the Annual Report or Notice of Material Event to the Repositories.

**Section 6. Termination of Reporting Obligation.** The City’s obligations under this Disclosure Agreement shall terminate upon the defeasance, prior redemption or payment in full of all of the Bonds. This Disclosure Agreement shall also terminate upon (i) the Rule being withdrawn, retroactively repealed, or having been found by a court of competent jurisdiction to be invalid in a non-appealable action; or (ii) receipt by the Dissemination Agent, the Trustee (if the Trustee is not the Dissemination Agent) and the City of an opinion of Bond Counsel to the effect that the Rule is no longer applicable to the Bonds. If the City’s obligations under the Financing Agreement are assumed in full by some other entity, such person shall be responsible for compliance with this Disclosure Agreement in the same manner as if it were the City and the City shall have no further responsibility hereunder. If such termination or substitution occurs prior to the final maturity of the Bonds, the City shall give notice of such termination or substitution in the same manner as for a Notice of Material Event under **Section 4(a)**. Notwithstanding the foregoing, the obligations of the City contained in **Section 11** hereof shall survive resignation or removal of the Dissemination Agent and payment of the Bonds.

**Section 7. Dissemination Agent.** The City may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement, and may discharge any such Dissemination Agent, with or without appointing a successor Dissemination Agent. The Dissemination Agent shall not be responsible in any manner for the content of any notice or report prepared by the City pursuant to this Disclosure Agreement. The Dissemination Agent may resign at any time by providing thirty (30) days’ written notice to the City. The Dissemination Agent shall also have no duty or obligation to determine the materiality of a Listed Event and shall not be deemed to be acting in any fiduciary capacity for the City, any Beneficial Owner or any other party. If at any time there is not any other designated Dissemination Agent, the Trustee shall be the Dissemination Agent. The initial Dissemination Agent shall be the Dissemination Agent identified in **Section 2** hereof.

**Section 8. Amendment; Waiver.** Notwithstanding any other provision of this Disclosure Agreement, the City and the Dissemination Agent may amend this Disclosure Agreement (and the approval of an amendment by the Dissemination Agent shall not be unreasonably withheld) and any provision of this Disclosure Agreement may be waived, provided Bond Counsel provides the Dissemination Agent and the City with its opinion that the undertaking of the City, as so amended or after giving effect to such

waiver, is in compliance with the Rule and all current amendments thereto and interpretations thereof that are applicable to this Disclosure Agreement.

In the event of an amendment or waiver of any provision of this Disclosure Agreement (other than an amendment relating to accounting principles), the City shall describe such amendment in the next Annual Report, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or, in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the City. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (i) notice of such change shall be given in the same manner as for a Notice of Listed Material, and (ii) the Annual Report for the year in which the change is made shall present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

**Section 10. Additional Information.** Nothing in this Disclosure Agreement shall be deemed to prevent the City from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Report or Notice of Material Event, in addition to that which is required by this Disclosure Agreement. If the City chooses to include any information in any Annual Report or Notice of Material Event, in addition to that which is specifically required by this Disclosure Agreement, the City shall have no obligation under this Disclosure Agreement to update such information or include it in any future Annual Report or Notice of Material Event.

**Section 11. Default.** In the event of a failure of the City or the Dissemination Agent to comply with any provision of this Disclosure Agreement, the Dissemination Agent or the Trustee may (and, at the request of any Participating Underwriter or the Beneficial Owners of at least twenty-five percent (25%) aggregate principal amount of Outstanding Bonds and indemnified for its costs, shall), or any Owner or Beneficial Owner of the Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the City or the Dissemination Agent, as the case may be, to comply with its obligations under this Disclosure Agreement. A default under this Disclosure Agreement shall not be deemed an event of default under the Financing Agreement or Indenture, and the sole remedy under this Disclosure Agreement in the event of any failure of the City or the Dissemination Agent to comply with this Disclosure Agreement shall be an action to compel performance.

**Section 11. Duties, Immunities and Liabilities of Trustee and Dissemination Agent.** Section 6.1 of the Financing Agreement is hereby made applicable to this Disclosure Agreement and the Dissemination Agent as if such article were (solely for this purpose) contained in this Disclosure Agreement. The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Agreement, and the City agrees, to the extent permitted under applicable law, to indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including reasonable attorneys' fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's negligence or willful misconduct. The Dissemination Agent shall have no responsibility for the City's failure to report a Listed Event to the Dissemination Agent. The obligations of the City under this Section shall survive resignation or removal of the Dissemination Agent and payment of the Bonds. No provision of this Disclosure Agreement shall be interpreted to limit, prohibit or affect any right of the City or the Trustee to provide notice to the Beneficial Owners of the Bonds or any other person pursuant to the terms of the Indenture.

**Section 12. Notices.** Any notices or communications to or among any of the parties to this Disclosure Agreement shall be given in the manner and to the addresses set forth for the City and the Trustee, and to the Dissemination Agent at the address set forth for the Trustee, in the Financing Agreement or Indenture. Any person may, by written notice to the other persons, designate a different address or telephone number(s) to which subsequent notices or communications should be sent.

**Section 13. Beneficiaries.** This Disclosure Agreement shall inure solely to the benefit of the City, the Trustee, the Dissemination Agent, the Participating Underwriter, and Owners and Beneficial Owners from time to time of the Bonds, and shall create no rights in any other person or entity.

**Section 14. Counterparts.** This Disclosure 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 15. Governing Law.** This Disclosure Agreement shall be governed by the laws of the State applicable to contracts performed wholly therein and without reference to its choice of laws principles.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, \_\_\_\_\_, has caused this Continuing Disclosure Agreement to be signed in its name and on its behalf by one of its duly authorized officers as of the day first above written.

\_\_\_\_\_, as Dissemination Agent

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

IN WITNESS WHEREOF, the City of St. Louis, Missouri, has caused these presents to be signed in its name and behalf and its corporate seal to be hereunto affixed and attested by its duly elected officials and/or authorized officers, all as of the day and year first above written.

**CITY OF ST. LOUIS, MISSOURI**

By: \_\_\_\_\_  
Francis G. Slay  
Mayor

[SEAL]

ATTEST:

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

Parrie May  
City Register

**ACKNOWLEDGEMENT OF OWNER**

Railway Exchange Building TIF, Inc. ("Developer"), as developer of the Redevelopment Project, acknowledges receipt of a copy of this Continuing Disclosure Agreement and agrees to update the information required under **Section 3(a)(ii)** herein to the City on an annual basis within sixty (60) days of the written request of the City; provided, however, Developer's obligations hereunder shall terminate upon the sale or other conveyance of Developer or its affiliate's interest in the Redevelopment Project. Developer agrees to cause any purchaser or transferee of its interest in the Redevelopment Project to execute and deliver to the City a written acknowledgement and agreement to update the information required under **Section 3(a)(ii)** herein to the City on an annual basis within sixty (60) days of the written request of the City (which acknowledgement and agreement shall be in form and substance similar to this Acknowledgment). In the event Developer (or any successor in ownership) fails to perform its obligations under this Acknowledgment, the sole remedy of the City shall be an action to compel performance. For purposes of **Section 3(a)(ii)**, Developer's address is Railway Exchange Building TIF, Inc., 706 Demun, St. Louis, Missouri 63105, Attention: Richard Yackey.

RAILWAY EXCHANGE BUILDING TIF, INC., a Missouri corporation

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

**EXHIBIT A**

**NATIONALLY RECOGNIZED MUNICIPAL SECURITIES  
INFORMATION REPOSITORIES**

**Bloomberg Municipal Repository**  
100 Business Park Drive  
Skillman, NJ 08558  
Phone: (609) 279-3225

**DPC Data Inc.**  
One Executive Drive  
Fort Lee, NJ 07024  
Phone: (201) 346-0701

Fax: (609) 279-5962  
<http://www.bloomberg.com/markets/rates/municontacts.html>  
Email: [Munis@Bloomberg.com](mailto:Munis@Bloomberg.com)

Fax: (201) 947-0107  
<http://www.MuniFILINGS.com>  
Email: [nrmsir@dpcdata.com](mailto:nrmsir@dpcdata.com)

**Interactive Data Pricing and Reference Data, Inc.**  
Attn: NRMSIR  
100 William Street, 15th Floor  
New York, NY 10038  
Phone: (212) 771-6999; 800-689-8466  
Fax: (212) 771-7390  
<http://www.interactivedata-prd.com>  
Email: [NRMSIR@interactivedata.com](mailto:NRMSIR@interactivedata.com)

**Standard & Poor’s Securities Evaluations, Inc.**  
55 Water Street  
45th Floor  
New York, NY 10041  
Phone: (212) 438-4595  
Fax: (212) 438-3975  
<http://www.disclosedirectory.standardandpoors.com/>  
Email: [nrmsir\\_repository@sandp.com](mailto:nrmsir_repository@sandp.com)

**ALWAYS VERIFY INFORMATION ABOVE AT:**  
<http://www.sec.gov/info/municipal/nrmsir.htm>

Any notices to or filings with the National Repositories and the State Repository, if any, may be effected by sending the notice or filing to Disclosure USA, in accordance with its published procedures, for further submission by Disclosure USA to the appropriate repositories, as follows:

Electronic submissions only: [www.DisclosureUSA.org](http://www.DisclosureUSA.org)

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**FINANCING AGREEMENT**

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between

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

Relating to

\$ \_\_\_\_\_  
**The Industrial Development Authority of the City of St. Louis, Missouri  
Tax Increment Financing Revenue Bonds  
Series 2010  
(Railway Exchange Building Redevelopment Project)**

**Dated as of \_\_\_\_\_, 2010**

*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 the Trustee named in the Trust Indenture dated as of \_\_\_\_\_, 2010, between The Industrial Development Authority of the City of St. Louis, Missouri, and the Trustee.*

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Exhibit A – Form of Monthly Report

FINANCING AGREEMENT

THIS FINANCING AGREEMENT dated as of \_\_\_\_\_, 2010 (the "Financing Agreement"), 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 municipal corporation duly organized and existing under the laws of the State of Missouri (the "City"). Capitalized terms not defined elsewhere herein shall have the meaning set forth in the Trust Indenture dated as of \_\_\_\_\_, 2010 between the Authority and the trustee named therein (the "Indenture").

RECITALS:

WHEREAS, the City of St. Louis, Missouri (the "City") is authorized and empowered under the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 through 99.865 of the Revised Statutes of Missouri, (2000) (the "TIF Act") to issue obligations for the purpose of providing funds to finance the costs of redevelopment projects and to pay certain costs related to the issuance of such obligations; and

WHEREAS, pursuant to Ordinance No. [\_\_\_\_\_] approved \_\_\_\_\_, 2010 (the "Approving Ordinance"), the City (a) approved a redevelopment plan attached thereto (the "Redevelopment Plan") for redevelopment of a certain area within the City of St. Louis, Missouri (the "Redevelopment Area"), (b) adopted the redevelopment project described in the Redevelopment Plan (the "Redevelopment Project"), (c) adopted tax increment financing within the Redevelopment Area, and (d) established the "City of St. Louis, Missouri, Special Allocation Fund for the Railway Exchange Building Redevelopment Area" (the "Special Allocation Fund"); and

WHEREAS, pursuant to Ordinance No. [\_\_\_\_\_] approved \_\_\_\_\_, 2010 (the "Authorizing Ordinance"), the City designated Railway Exchange Building TIF, Inc., as developer of the Redevelopment Area (the "Developer"), and approved the execution of a Redevelopment Agreement by and between the City and the Developer dated as of \_\_\_\_\_, 2010 (the "Redevelopment Agreement"); and

WHEREAS, pursuant to Ordinance No. [\_\_\_\_\_] approved \_\_\_\_\_, 2010, the City approved the execution of an Intergovernmental Cooperation Agreement the "Cooperation Agreement" with the Railway Exchange Building Transportation

Development District (the “*TDD*”) and the Railway Exchange Building Community Improvement District (the “*CID*”) pursuant to which (a) the TDD and the CID agreed, subject to annual appropriation, to remit to the City the proceeds of the CID Revenues and the TDD Revenues (as described in the Cooperation Agreement) and (b) the City agreed to accept and deposit the proceeds of the CID Revenues into the Phase 1 CID Revenues Account or Phase 2 CID Revenues Account, and the TDD Revenues into the Phase 1 TDD Revenues Account or Phase 2 TDD Revenues Account within the Revenue Fund; and

**WHEREAS**, the Authority is authorized pursuant to Chapter 349 of the Revised Statutes of Missouri to issue bonds for the purpose of promoting certain commercial and public facility “projects;” and

**WHEREAS**, on \_\_\_\_\_, 2010, the Board of Directors of the Authority adopted a resolution (the “*Inducement Resolution*”) declaring the Authority’s intent, upon the satisfaction of certain conditions, to issue its Tax Increment Financing Revenue Bonds (Railway Exchange Building Redevelopment Project) (the “*Bonds*”) for the purpose of (i) funding the Redevelopment Project and/or Independent Project Costs (as defined in the Redevelopment Agreement), (ii) funding capitalized interest on the Bonds, (iii) establishing reserve funds for the Bonds and (iv) paying the costs of issuance of the Bonds; and

**WHEREAS**, on \_\_\_\_\_, 2010, the Board of Aldermen of the City adopted an ordinance (the “*Financing Ordinance*”), approving, among other things, the issuance by the Authority of the Bonds pursuant to the Indenture for the above purposes and assigning the Phase 1 Available Revenues and, upon payment in full and cancellation of any Phase 2 Obligations, Phase 2 Available Revenues (as those terms are defined in the Indenture), for the purpose of paying the principal of and interest on the Phase 1 Bonds; and

**WHEREAS**, on \_\_\_\_\_, 20\_\_\_\_, the Board of Directors of the Authority adopted a resolution (the “*Bond Resolution*”) finding that the conditions set forth in the Inducement Resolution had been satisfied and authorizing the issuance of the Bonds for the purposes set forth in the Inducement Resolution; and

**WHEREAS**, the Authority and the trustee named in the Indenture (the “*Trustee*”) entered into the Indenture for the purpose of issuing and securing the Bonds as provided therein; and

**WHEREAS**, the Authority and the City are entering into this Financing Agreement to provide for the pledge and assignment of the Phase 1 Available Revenues and, upon payment in full and cancellation of any Phase 2 Obligations, Phase 2 Available Revenues, by the City to the Trustee for the purpose of paying the principal of, and premium, if any, and interest on the Bonds; and

**WHEREAS**, as of the date of this Financing Agreement, the City has entered into a certain Tax Compliance Agreement (the “*Tax Compliance Agreement*”) by and among the City, the Authority and the Trustee and a certain Continuing Disclosure Agreement by and between the City and the Trustee, which collectively with this Financing Agreement and the Cooperation Agreement are referred to as the “City Documents;” and

**WHEREAS**, as of the date of this Financing Agreement, the Authority has entered into the Tax Compliance Agreement, the Purchase Contract and the Indenture, which collectively with this Financing Agreement are referred to as the “Authority Documents;”

**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.** All capitalized terms not elsewhere defined herein shall have the meanings set forth in Section 101 of the Indenture.

**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 person shall include firms, partnerships, associations and corporations, including public bodies, as well as natural persons.

(c) 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.

(d) 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.

(e) 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.

(f) 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 the Authority Documents 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 articles of incorporation or its bylaws or any of the constitutional or statutory rules or regulations applicable to the Authority or its property.

(d) The Authority Documents 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 Authority Documents, or is reasonably likely to impair the ability of the Authority to perform its obligations under the Authority Documents, or as contemplated hereby or thereby, 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 home rule city and political subdivision organized and existing under the laws of the State of Missouri. The City has lawful power and authority to enter into each of 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 under and consummate the transactions contemplated by the City Documents, and has by proper action duly authorized the execution and delivery of the City Documents and the performance of the City’s duties and obligations thereunder.

(c) The City Documents are valid and binding agreements of the City, 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.

(d) The execution and delivery of the City Documents, the consummation of the transactions contemplated thereby and the fulfillment of or compliance with the terms and conditions 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 City Documents, or is reasonably likely to impair the ability of the City to perform its obligations under the City Documents, or as contemplated hereby or thereby, nor is there any basis therefor.

**Section 2.3 Special Representations Relating to the Tax Exempt Status of the Bonds.** The Authority and the City each acknowledge that, in connection with the issuance of the Bonds, each has executed and delivered the Tax Compliance Agreement dated as of \_\_\_\_\_, 20\_\_, among the City, the Authority and the Trustee concurrently herewith. The Authority and the City each acknowledge that such Tax Compliance Agreement relates to the use and expenditure of the proceeds of the Bonds and other matters pertaining to the establishment and maintenance of the exemption from gross income for federal income tax purposes of interest on a portion of the Bonds (the "Tax-Exempt Bonds"). The Authority acknowledges and confirms that its certifications and representations contained in the Tax Compliance Agreement are true and correct as if such certifications and representations were set forth herein. The City acknowledges and confirms that its certifications and representations contained in the Tax Compliance Agreement are true and correct as if such certifications and representations were set forth herein.

### ARTICLE III. ISSUANCE OF BONDS

**Section 3.1 Authority's Agreement to Issue Bonds.** The Authority hereby agrees to issue the Bonds to provide funds for the purposes set forth in the Recitals hereof, as further 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 this Financing Agreement.

### ARTICLE IV. TERM OF BONDS, ASSIGNMENT OF RIGHTS

**Section 4.1 City's Obligation to Pay Phase 1 Available Revenues to Trustee.**

(a) On the tenth (10th) calendar day of each month (or the next Business Day thereafter if the tenth (10th) is not a Business Day) while the Bonds are Outstanding, the City shall transfer to the Trustee, all Phase 1 Payments in Lieu of Taxes ("**Phase 1 PILOTs**"), all Phase 1 Economic Activity Tax Revenues ("**Phase 1 EATs**") (subject to appropriation), all Phase 1 Dedicated Municipal Revenues (subject to annual appropriation), all Phase 1 CID Revenues and all Phase 1 TDD Revenues (subject to appropriation by the CID and TDD, respectively). To facilitate the Trustee's deposit of such funds into the correct accounts under the Indenture, the City shall clearly identify for the Trustee, in a form substantially similar to the form in **Exhibit A**, the amount of such funds constituting Phase 1 PILOTs, the amount of such funds constituting Phase 1 EATs, the amount of such funds constituting Phase 1 Dedicated Municipal Revenues, the amount of such funds constituting Phase 1 CID Revenues and the amount of such funds constituting Phase 1 TDD Revenues. The City hereby pledges to the timely payment of all amounts due and owing under the Indenture all Phase 1 PILOTs, all Phase 1 EATs (subject to annual appropriation), all Phase 1 Dedicated Municipal Revenues (subject to annual appropriation), all Phase 1 CID Revenues (subject to annual appropriation by the CID), and all Phase 1 TDD Revenues (subject to appropriation by the TDD).

(b) The City hereby consents to and authorizes the Authority to cause the Trustee to disburse the Phase 1 Available Revenues and, upon payment in full and cancellation of any Phase 2 Obligations, Phase 2 Available Revenues, from the Revenue Fund pursuant to the Indenture.

**Section 4.2 Obligations of City Hereunder Unconditional.** 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 Phase 1 Available Revenues and, upon payment in full and cancellation of any Phase 2 Obligations, Phase 2 Available Revenues, pursuant to **Section 4.1** hereof and perform its obligations, covenants and agreements under this Financing Agreement, without notice or demand, and without abatement, deduction, setoff, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstances whatsoever, whether now existing or hereafter arising, and regardless of any change in the tax or other law of the United States of America, the State or any political subdivision of either thereof, any change in the Authority's legal organization or status, or any default of the Authority hereunder, and regardless of the invalidity of any action of the Authority, and regardless of the invalidity of any portion of this Financing Agreement, and, to the extent permitted by law, the City hereby waives the provisions of any statute or other law now or hereafter in effect contrary to any of its obligations, covenants or agreements under this Financing Agreement or which releases or purports to release the City therefrom. Nothing in this Financing Agreement shall be construed as a waiver by the City of any rights or claims the City may have against the Authority under this Financing Agreement or otherwise, but any recovery upon such rights or claims shall be had from the Authority separately, it being the intent of this Financing Agreement that the City shall be unconditionally and absolutely obligated to perform fully all of its obligations, agreements and covenants under this Financing Agreement for the benefit of the Owners of the Bonds.

**Section 4.3 Assignment of Authority's Rights.** Under the Indenture, the Authority will, as additional security for the Bonds, assign, transfer, pledge and grant a security interest in its rights under 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.

#### ARTICLE V. COVENANTS OF THE CITY

**Section 5.1 Covenant to Request Appropriations.** The City covenants and agrees that the Comptroller 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 Phase 1 EATs and Phase 1 Dedicated Municipal Revenues for transfer to the Trustee for deposit in the Revenue Fund at the times and in the manner provided in **Section 4.1** hereof. All funds appropriated as the result of such a request shall be transferred by the City to the Revenue Fund at the times and in the manner provided in **Section 4.1** hereof.

**Section 5.2 Assignment of Financing Agreement by City.** The City will 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 5.3 Collection of PILOTs, EATs, and Dedicated Municipal 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 of St. Louis, Missouri, to assess the real property and improvements within the Redevelopment Area at the times and in the manner required by the TIF Act, and (b) take such lawful action within its control as may be required to cause the Collector of Revenue of the City of St. Louis, Missouri, and all other Persons to pay all Phase 1 Dedicated Municipal Revenues and to pay all Available Revenues which are payable into the Special Allocation Fund under the TIF Act.

**Section 5.4 Collection of Phase 1 CID Revenues and Phase 1 TDD Revenues.** The City shall take all lawful action within its control to cause the Phase 1 CID Revenues to be remitted by the CID and the Phase 1 TDD Revenues to be remitted by the TDD, and each to be distributed in the manner set forth in the Cooperation Agreement.

**Section 5.5 Enforcement of Agreements.**

(a) The City shall enforce the provisions of the Redevelopment Agreement and the Cooperation 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. All sums received for damages under the Redevelopment Agreement relating to Phase 1 shall be transferred to the Trustee for deposit to the Revenue Fund.

(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 Agreement, and at the time of such notification the City shall also advise the Trustee what action the City proposes to take in enforcing available remedies.

If, in the 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 thirty (30) days following advice by the Trustee that some additional or other action would be more effective, the City has not taken such other or additional action, and the Trustee has not, after consultation with the City, withdrawn such advice, upon receipt of indemnification satisfactory to it, the Trustee is hereby authorized to take such action, whether the action 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 notify the Trustee in writing as to any breach of the Cooperation Agreement that could reasonably be expected to result in a material reduction of Phase 1 CID Revenues or Phase 1 TDD Revenues generated from the Cooperation Agreement, and at the time of such notification the City shall also advise the Trustee what action the City proposes to take in enforcing available remedies. If, in the 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 thirty (30) days following advice by the Trustee that some additional or other action would be more effective, the City has not taken such other or additional action, and the Trustee has not, after consultation with the City, withdrawn such advice, upon receipt of indemnification satisfactory to it, the Trustee is hereby authorized to take such action, whether the action 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 Cooperation 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.

(d) The City shall not modify, amend or waive any provision of the Redevelopment Agreement or the Cooperation 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 or the Cooperation 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 5.6 Information to be Provided.**

(a) The City shall promptly, and in any event within one hundred eighty (180) days after the end of each Fiscal Year of the City, provide to the Trustee and the Underwriter copies of the annual and five-year reports prepared by the City in accordance with the TIF Act.

(b) The City shall within thirty (30) days after the end of each Fiscal Year of the City provide to the Trustee and the Underwriter an accounting of the Phase 1 Dedicated Municipal Revenues, the Phase 1 CID Revenues, the Phase 1 PILOTs, the Phase 1 EATs, and the Phase 1 TDD Revenues received during such Fiscal Year.

### **ARTICLE VI. PARTICULAR COVENANTS**

#### **Section 6.1 Indemnification.**

(a) To the extent permitted by law, the City releases the Authority and the Trustee, the Trustee's officials, officers, shareholders, employees, directors, attorneys and agents 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 and expenses), causes of action (including negligent acts), 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 City Documents 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 clauses (i) and (ii) above brought thereon.

(b) If 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, provided that such expense shall be payable by the City if such employment results from a conflict of interest on the part of counsel selected by the City or such counsel shall fail to actively and competently pursue a 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 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.

**Section 6.4 Continuing Disclosure.** Pursuant to the Financing Ordinance, the Mayor of the City is authorized to enter into the Continuing Disclosure Agreement under which the City covenants and agrees that it will provide continuing disclosure with respect to the Bonds upon the terms and conditions set forth in the Continuing Disclosure Agreement with such changes, deletions and additions therein as shall be approved by the Mayor, which officer is authorized to execute the Continuing Disclosure Agreement for and on behalf of the City, such officer's signature thereon being conclusive evidence of his approval thereof. A default under the Continuing Disclosure Agreement shall not constitute a default under this Financing Agreement or the Indenture.

#### **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 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 Phase 1 Available Revenues and, upon payment in full and cancellation of any Phase 2 Obligations, Phase 2 Available Revenues, and other revenues, moneys and receipts received by it pursuant to this Financing Agreement, to the Trustee.

**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.

#### **ARTICLE VIII. EVENTS OF DEFAULT AND REMEDIES**

**Section 8.1 Events of Default Defined.** The term "Event of Default" or "Default" means any one or more of the following events:

- (a) Failure by the City to timely transfer moneys to the Trustee pursuant to **Section 4.1** hereof.
- (b) Failure by the City to make a timely request for appropriations of Phase 1 EATs, and Phase 1 Dedicated Municipal Revenues when due, 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 subsection (a) of this Section, for a period of sixty (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 and 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 the Indenture or in connection with the financing of the Project 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 a valid assignment of the rights of the Authority pursuant to **Section 7.1** hereof, 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.**

- (a) 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 Phase 1 Available Revenues and, upon payment in full and cancellation of any Phase 2 Obligations, Phase 2 Available Revenues, pursuant to **Section 4.1** 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 Phase 1 Available Revenues and, upon payment in full and cancellation of any Phase 2 Obligations, Phase 2 Available Revenues, and from no other source. If the principal of all Bonds then Outstanding and the interest accrued thereon has been declared immediately due and payable pursuant to the provisions of Section \_\_\_ of the Indenture, all Phase 1 PILOTs (already on deposit in the Special Allocation Fund), all Phase 1 Dedicated Municipal Revenues (subject to annual appropriation), all Phase 1 EATs (subject to annual appropriation) and all Phase 1 CID Revenues and Phase 1 TDD Revenues (held by the City in accordance with the Cooperation Agreement and subject to annual appropriation by the CID and the TDD, respectively) shall become immediately due and payable without any further act or action on the part of the Authority or the Trustee.
- (b) 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, next, any balance shall be deposited into the Revenue Fund and applied in accordance with the Indenture.
- (c) 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.
- (d) 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 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 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 Prepayment at the Option of the City.** Upon the exercise by the City of its option to cause the Bonds or any portion thereof to be redeemed pursuant to Section \_\_\_\_\_ of the Indenture, the City shall provide funds sufficient to refund in whole or in part at the times and at the prepayment prices sufficient to redeem all or a corresponding portion of the Bonds then Outstanding in accordance with said paragraph. At the written direction of the City, such prepayments shall be applied to the redemption of the Bonds in whole or in part in accordance with said paragraph.

**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 Phase 1 Available Revenues will be made, which date shall be not less than forty-five (45) days from the date the notice is received by the Trustee, unless a shorter period is agreed to 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 Section \_\_\_\_ 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 principal of and interest on all the Bonds have been paid in accordance with their terms or provision has been made for such payment, and provision also has been made for paying all other sums payable hereunder and under the Indenture, and the Indenture is deemed to be satisfied and discharged, within the meaning of

Article \_\_\_ of the Indenture. 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.** It shall be sufficient service of any notice, request, complaint, demand or other paper required by this Financing Agreement to be given to or filed with the Authority, the Trustee or the City if the same is duly 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 in writing on the same day, addressed as provided in the Indenture, provided that notices to the Trustee shall be effective only upon receipt, as specified in the Indenture. Notice to the Owners shall be given, if necessary, in the manner provided in the Indenture. A duplicate copy of each notice, certificate or other communication given hereunder to any party mentioned in the Indenture shall be given to all other parties mentioned therein (other than the Owners unless a copy is required to be furnished to them by other provisions of this Financing Agreement). The Authority and the City or the Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent to it.

**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, shall not be 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 5.2**.

**Section 10.6 Amendments, Changes and Modifications.** Except as otherwise provided in this Financing Agreement or in the Indenture, during the term of this Financing Agreement as provided in **Section 10.2** hereof, 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; provided, however, that for purposes of Article 9 of the Uniform Commercial Code of the State, no security interest in this Financing Agreement may be created by the transfer or possession of any counterpart hereof other than the counterpart containing the receipt therefor executed by the Trustee on or immediately following the signature page hereof delivered, pledged and assigned to the Trustee.

**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 effective except 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, officer, 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 or 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.

[The remainder of this page is intentionally left blank.]

**IN WITNESS WHEREOF,** The Industrial Development Authority of the City of St. Louis, Missouri, has caused these presents to be signed in its name and behalf and its corporate seal to be hereunto affixed and attested by its duly authorized officers, all as of the day and year first above written.

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

By: \_\_\_\_\_  
Rodney Crim, Executive Director

[SEAL]

ATTEST:

By: \_\_\_\_\_  
Patrick Bannister, Assistant Secretary

**IN WITNESS WHEREOF,** the City of St. Louis, Missouri, has caused these presents to be signed in its name and behalf and its corporate seal to be hereunto affixed and attested by its duly elected officials and/or authorized officers, all as of the day and year first above written.

**CITY OF ST. LOUIS, MISSOURI**

By: \_\_\_\_\_  
Francis G. Slay  
Mayor

By: \_\_\_\_\_  
Darlene Green  
Comptroller

APPROVED AS TO FORM

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

ATTEST:

\_\_\_\_\_  
Parrie L. May  
Register

**EXHIBIT A  
FORM OF MONTHLY REPORT**

[Date]

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**Re: The Industrial Development Authority of the City of St. Louis, Missouri, Tax Increment Financing Revenue Bonds, Series 2010 (Railway Exchange Building Redevelopment Project)**

Ladies and Gentlemen:

Please be advised that during the month of \_\_\_\_\_, [year], the City of St. Louis, Missouri received the following Phase 1 EATs, Phase 1 PILOTs, Phase 1 Dedicated Municipal Revenues, Phase 1 CID Revenues and Phase 1 TDD Revenues:

<u>Revenue Source</u>	<u>Amount</u>	<u>Account</u>
Phase 1 EATs	\$	Phase 1 EATs Sub-Account of the Special Allocation Fund
Phase 1 PILOTs		Phase 1 PILOTs Sub-Account of the Special Allocation Fund
Phase 1 Dedicated Municipal Revenues		Phase 1 Dedicated Municipal Revenues Account of the Special Allocation Fund
Phase 1 CID Revenues		Phase 1 CID Revenues Account of the Revenue Fund
Phase 1 TDD Revenues		Phase 1 TDD Revenues Account of the Revenue Fund
<b>Total Revenues</b>	<b>\$ _____</b>	

All moneys so received, totaling \$ \_\_\_\_\_, have been transferred to the trustee named in the Trust Indenture dated as of \_\_\_\_\_, 20\_\_ between the named trustee and The Industrial Development Authority of the City of St. Louis, Missouri. All capitalized terms not defined herein shall have the meanings ascribed for them in said Indenture.

**CITY OF ST. LOUIS, MISSOURI**

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

Authorized City Representative

**Approved: March 29, 2010**