



Agenda City Council Meeting

City Council Chambers
Historic City Hall, 830 Boonville

Robert Stephens, Mayor

Zone Councilmembers

Phyllis Ferguson, Zone 1
Justin Bumett, Zone 2
Mike Schilling, Zone 3
Craig Fishel, Zone 4

General Councilmembers

Jan Fisk, General A
Craig Hosmer, General B
Kristi S. Fulnecky, General C
Ken McClure, General D

Upcoming Council Meeting Agenda March 7, 2016 - 6:30 p.m.

Speakers must sign up with the City Clerk to speak to an issue on the agenda. Speakers are to limit their remarks to three to five minutes.

Note: Sponsorship does not denote Council member approval or support.

1. **ROLL CALL.**
2. **APPROVAL OF MINUTES. February 22, 2016**

Documents: [02-22-2016.PDF](#)
3. **FINALIZATION AND APPROVAL OF CONSENT AGENDAS. CITIZENS WISHING TO SPEAK TO OR REMOVE ITEMS FROM THE CONSENT AGENDAS MUST DO SO AT THIS TIME.**
4. **CEREMONIAL MATTERS.**
5. **CITY MANAGER REPORT AND RESPONSES TO QUESTIONS RAISED AT THE PREVIOUS CITY COUNCIL MEETING.**
6. **SECOND READING AND FINAL PASSAGE. Citizens Have Spoken. May Be Voted On.**
7. **Council Bill 2016-043. (McClure)**

A special ordinance authorizing the issuance of Conditional Use Permit No. 419 to allow a reduction of the front yard setback along Elm Street within an R-HD, High-Density Multi-Family residential District and UN, University Combining Overlay District, generally located at 1124

and 1130 East Elm Street. (Planning and Zoning Commission and staff recommend approval.)

Documents: [2016-043.PDF](#)

8. Council Bill 2016-044. (Hosmer, Fisk, And Fishel)

A general ordinance amending the Springfield City Code, Chapter 78 – Offenses and Miscellaneous Provisions, Article V – Offenses Against Morals by repealing Section 78-222, and enacting a new Section 78-222, defining indecent exposure or conduct, and including exceptions for breast-feeding, expressing breast milk, and constitutionally-protected activities. (The Plans and Policies Committee recommends approval.)

Documents: [2016-044.PDF](#)

9. RESOLUTIONS.

10. EMERGENCY BILLS.

11. PUBLIC IMPROVEMENTS.

12. GRANTS.

13. AMENDED BILLS.

14. COUNCIL BILLS FOR PUBLIC HEARING. Citizens May Speak. Not Anticipated To Be Voted On. Public Hearing Will Remain Open For Council Bill 2016-050 To Provide An Opportunity For Public Comment During The Complete 20 Day Notice Period.

15. Council Bill 2016-050. (Fulnecky) Public Hearing Will Remain Open To Provide An Opportunity For Public Comment During The Complete 20 Day Notice Period.

A special ordinance approving a plan for an industrial development project for Kraft Heinz Foods Company, a Pennsylvania corporation, consisting of the acquisition and installation of new equipment and machinery at the existing plant; and authorizing the City of Springfield, Missouri to issue its Taxable Industrial Development Revenue Bonds (Kraft Heinz Foods Company Project), Series 2016, in a principal amount not to exceed \$36,000,000 to finance the costs of such project; authorizing and approving certain documents; and authorizing certain other actions in connection with the issuance of the Bonds.

Documents: [2016-050.PDF](#)

16. FIRST READING BILLS. Citizens May Speak. Not Anticipated To Be Voted On..

17. Council Bill 2016-051. (Hosmer)

A general ordinance amending the City Health Care Plan to terminate the City of Springfield Retiree Health Plan (Non-Medicare) on December 31, 2016; repealing the Plan Document and Summary Plan Description of the City of Springfield Retiree Health Plan (Non-Medicare) effective December 31, 2016; terminating the City of Springfield Retiree Health Savings Account Program effective December 31, 2016; amending Chapter 2 of the Springfield City Code, Section 2-92, Merit Rule 25.1, City Health Care Plan, by amending the language of said Merit Rule; amending Section 2-92, Merit Rule 25.1, City Health Care Plan, Exhibit 1, by amending the language of said Exhibit 1; terminating the City of Springfield Medicare supplement plan effective December 31, 2017; amending Section 2-92, Merit Rule 25.2, Police and Fire Departments Health Insurance Plan, Coverage of County Emergency 911 Employees Transferring to the City, by terminating the rights of retirees to City provided or sponsored health insurance coverage; and authorizing the City Manager to administratively amend provisions of the City Health Care Plan conflicting with this ordinance.

Documents: [2016-051.PDF](#)

18. PETITIONS, REMONSTRANCES, AND COMMUNICATIONS.

19. **NEW BUSINESS.**

Refer to the Community Involvement Committee the issue of alcohol at special events.

20. **UNFINISHED BUSINESS.**

21. **MISCELLANEOUS.**

22. **CONSENT AGENDA – FIRST READING BILLS. See Item #3.**

23. **Council Bill 2016-052. (Fisk)**

A general ordinance amending Chapter 2, Section 2-92 of the Springfield City Code, known as the Salary Ordinance, relating to the salary rate and pay grade for one job title within the Springfield Fire Department, as contained in the Fire Protection Schedule (FPS), by adding one new job title, Division Chief (FPS 12).

Documents: [2016-052.PDF](#)

24. **Council Bill 2016-053. (McClure)**

A special ordinance authorizing the City of Springfield, Missouri, to enter into Schedule No. 4 to its existing master equipment lease purchase agreement, the proceeds of which will be used to pay the costs of acquiring equipment for the Parks Department, amending the Fiscal Year 2016 budget of the City in the amount of \$489,500, and to do all things necessary to carry out the lease-purchase transaction, including the execution of certain documents in connection therewith.

Documents: [2016-053.PDF](#)

25. **CONSENT AGENDA – ONE READING BILLS. See Item #3.**

26. **Council Bill 2016-054. (Ferguson)**

A resolution extending the declaration of an economic and housing access calamity until the condition is no longer met, or March 31, 2018, whichever occurs first. (Staff recommends approval.)

Documents: [2016-054.PDF](#)

27. **CONSENT AGENDA – SECOND READING BILLS. Citizens Have Spoken. May Be Voted On.**

28. **Council Bill 2016-045. (Hosmer)**

A special ordinance authorizing the Director of Planning and Development to accept the dedication of the public streets and easements to the City of Springfield, Missouri, as shown on the Preliminary Plat of New Prime Phase Two, generally located at the 2800 block of North Cedarbrook and Packer Avenues, upon the applicant filing and recording a final plat that substantially conforms to the preliminary plat; and authorizing the City Clerk to sign the final plat upon compliance with the terms of this ordinance. (Planning and Zoning Commission and Staff recommend that City Council accept the public streets and easements.)

Documents: [2016-045.PDF](#)

29. **END OF CONSENT AGENDA.**

30. **ADJOURN.**

Persons addressing City Council are asked to step to the microphone and clearly state their name and address before speaking.

All meetings are recorded.

In accordance with ADA guidelines, if you need special accommodations when attending any City meeting,

please notify the City Clerk's Office at 864 -1443 at least 3 days prior to the scheduled meeting.

February 22, 2016
Springfield, Missouri

The City Council met in regular session February 22, 2016 in the Council Chambers at Historic City Hall. The meeting was called to order by Mayor Bob Stephens. A moment of silence was observed.

- Roll Call** Present: Justin Burnett, Craig Fishel, Ken McClure, Jan Fisk, Craig Hosmer, Kristi Fulnecky, Phyllis Ferguson, Mike Schilling, and Bob Stephens. Absent: None.
- Minutes** The minutes of February 8, 2016 were approved as corrected.
- Consent Agenda** The Consent Agenda was finalized and approved as presented.
- Motion to Table Council Bill 2016-034** Anita Cotter, City Clerk, notified Council she received a request from Geoffrey Butler, property owner's representative, to table Council Bill 2016-034. Councilman Schilling moved to table Council Bill 2016-034 indefinitely until the developer can rework it and present it to Council. Councilwoman Ferguson seconded the motion and it was approved by the following vote: Ayes: Burnett, Fishel, McClure, Fisk, Hosmer, Fulnecky, Ferguson, Schilling, and Stephens. Nays: None. Absent: None. Abstain: None.

CEREMONIAL MATTERS

City Managers report and responses to questions raised at the previous City Council meeting:

Greg Burris, City Manager, responded all questions had been answered. Mr. Burris welcomed representatives from the National Resource Network, who are in Springfield to provide technical assistance in our work to improve economic conditions. Mr. Burris noted the National Resource Network is a consortium of experts from around the country working as a part of a federal initiative to assist cities with high rates of poverty. He stated their areas of focus are: workforce development, housing and anchor institutions. He stated community leaders will hear more from them at the Impacting Poverty Commission's "Taking Action" breakfast, scheduled for Wednesday, February 24, 2016.

Mr. Burris noted Springfield Police Chief Paul Williams has provided the monthly crime statistic report for Council's review. Mr. Burris stated the NBC Dateline episode on Sunday, February 21, 2016, featured the fine work of the Springfield Police Department and Greene County Prosecuting Attorney's office.

Mr. Burris noted Council Bill 2016-041, a bill requesting an additional inspector in the Building Development Services department, had been withdrawn. He stated he will submit this request for consideration as part of the Fiscal Year 2016-2017 budget process, and it will compete with all of the other budgetary priorities. Mr. Burris noted this staffing addition was planned many months ago in an attempt to support the Neighborhood Advisory Council's priority request. He stated Chris Straw, Director of Building Development Services, is evaluating staffing ideas to help cover the increased work demands associated with chronic nuisance properties.

Mr. Burris noted Bob Belote, Director of Springfield-Greene County Parks Department, provided Council with the monthly Park Board update. He stated US figure skater Gracie Gold won her second title at the US Figure Skating Championships in St. Paul, Minnesota last month. Mr. Burris noted Gracie, and her twin sister, Carly, both started skating after attending a friend's birthday party at the Mediacom Ice Park. He stated their names appear on several banners inside the ice park, listing winners of state and regional figure skating competitions.

Mr. Burris noted the Mayor's Task Force on Crisis Sheltering meeting with City Council is rescheduled for February 29, 2016. He stated this meeting will take place at noon in the Busch Municipal Building, in the fourth floor conference room. Mr. Burris noted the Task Force will present their recommendations and final report to City Council. He stated the previously scheduled meeting had to be postponed due to a posting mistake regarding posting of public meetings and apologized for any inconvenience the last-minute cancellation may have caused. Mr. Burris noted the City will remain diligent in following the requirements of the Missouri Sunshine Law.

Mr. Burris noted the Citizens' Sales Tax Oversight Committee (CSTOC) is charged with reviewing and monitoring the collection of sales tax revenues. He stated this includes the ¼-cent Capital Improvement Sales Tax, the ⅛-cent Transportation Tax, the Hotel-Motel Sales Tax, and Police/Fire Pension Sales Tax. Mr. Burris noted during the Committee's six years of existence, we have only received positive reports from the Committee. He stated members include Arlene Chriswell, Mary Erickson, Bonnie Jenkins, Summer Masterson, Jennifer Nelson Colwell, Brian Perdue, Jack Thurman and chairman Bob Yeager. Mr. Burris noted Mr. Yeager will present the CSTOC's annual report to City Council.

CSTOC Annual Report

Bob Yeager, Chairman, CSTOC, noted the Committee reviews four sales taxes. He stated the Committee does not choose which projects to review or how to spend the money, rather the City provides reports to the Committee on revenues received and which projects will be funded or are planned to be funded and the Committee reviews whether the money is being spent in accordance with the ballot language. Mr. Yeager noted the Committee's report finds a good-faith effort collecting and accounting for expenditures related to each of these taxes. He stated the Committee reviewed the independent audit report of the Police and Firefighters' Pension Plan by BKD and he is pleased to announce the report reflects a clean audit of the plan. Mr. Yeager noted the upcoming election on April 5, 2016 will have a ⅛-cent Transportation Tax and a ¼-cent Capital Improvement Sales Tax on the ballot. He stated City staff worked very close with Committee members throughout the entire process. Mr. Yeager noted the Committee adopted a resolution in support of the renewal of both the ¼-cent Capital Improvement Sales Tax and the ⅛-cent Transportation Tax. Greg Burris, City Manager, expressed his appreciation to the members of the Committee and the City's Finance Department for their efforts.

The following bills appeared on the agenda under Second Reading Bills:

Tabled

Sponsor: Council Bill 2016-034. A general ordinance amending the Springfield Land Development Code, Section 36-306, Zoning Maps, by rezoning

**Rezoning 608, 614, and
618 West Mount
Vernon Street**

approximately 0.81 acres of property, generally located at 608, 614, and 618 West Mount Vernon Street, from R-SF, Single-Family Residential District, to R-LD, Low-Density Multi-Family Residential District; establishing Conditional Overlay District No. 103; and adopting an updated Official Zoning Map. (Staff, and Planning and Zoning Commission recommend approval.) (By: Mount Vernon 608, LLC; 608, 614 and 618 West Mount Vernon Street; Z-39-2015 & Conditional Overlay District No. 103.)

Aggressive Solicitation

Sponsor: McClure. Council Bill 2016-040. A general ordinance amending the Springfield City Code, Chapter 78 – Offenses and Miscellaneous Provisions, Article I – In General by repealing Section 78-2 – Aggressive solicitation in its entirety.

Councilwoman Fulnecky expressed her opinion Council should keep the existing ordinances in place.

Councilman Burnett stated he will vote in support of the proposed. He expressed his opinion all panhandlers are not aggressive.

Mayor Pro Tem McClure expressed his appreciation to Dan Wichmer, City Attorney, for providing a thorough analysis of all appropriate case law. He expressed his opinion Council would be derelict in its duty to not adhere to and follow the dictates of the Courts. Mr. McClure noted he supports the proposed.

Councilman Hosmer stated he supports the proposed. He expressed his opinion the City has existing ordinances in place that will protect the citizens.

Councilman Schilling asked for data on the extent of complaints or cases that reflect the extent of panhandling in the City. Dan Wichmer, City Attorney, responded police officers have a difficult time getting people to sign a complaint against panhandlers.

Councilwoman Fulnecky expressed her opinion the City should not repeal this ordinance. She asked if the case law in question deals with aggressive and not passive panhandling. Mr. Wichmer gave an overview of court rulings on this issue. He noted the US Supreme Court has provided guidance on panhandling ordinances similar to Springfield's.

Mayor Pro Tem McClure asked for clarification on the City's next step. Mr. Wichmer responded Courts have ruled Cities have the right to deal with public safety and health concern. Mr. McClure asked if Council will review a revised ordinance based on safety and traffic studies. Greg Burris, City Manager, responded the first step is to reach out to national organizations for existing research to see if those results apply to the City.

Councilwoman Fulnecky asked for clarification on aggressive panhandling occurring in a downtown business. Mr. Wichmer responded the City has an existing no solicitation on private property ordinance that protects businesses.

Council Bill 2016-040. General Ordinance 6266 was approved by the following vote: Ayes: Burnett, Fishel, McClure, Fisk, Hosmer, Ferguson, Schilling, and Stephens. Nays: Fulnecky. Absent: None. Abstain: None.

RESOLUTIONS.

EMERGENCY BILLS.

PUBLIC IMPROVEMENTS.

GRANTS.

AMENDED BILLS.

PUBLIC HEARING.

**Conditional Use Permit
No. 419 at 1124 and 1130
East Elm Street**

Sponsor: McClure. Council Bill 2016-043. A special ordinance authorizing the issuance of Conditional Use Permit No. 419 to allow a reduction of the front yard setback along Elm Street within an R-HD, High-Density Multi-Family residential District and UN, University Combining Overlay District, generally located at 1124 and 1130 East Elm Street. (Planning and Zoning Commission and staff recommend approval.)

Mary Lilly Smith, Director of Planning and Development, gave a brief overview of the proposed. She stated the proposed will reduce the front yard setback requirement from 25 feet to 18 feet in order to accommodate a two-story porch.

Councilwoman Ferguson asked for clarification on the 18 foot setback. Ms. Smith responded the porch will be 18 feet from the property line.

An opportunity was given for citizens to express their views.

David Bodeen, property owner's representative, spoke in favor of the proposed.

With no further appearances, the public hearing was closed.

FIRST READING BILLS.

Indecent Exposure

Sponsor: Hosmer, Fisk, and Fishel. Council Bill 2016-044. A general ordinance amending the Springfield City Code, Chapter 78 – Offenses and Miscellaneous Provisions, Article V – Offenses Against Morals by repealing Section 78-222(b)(1) and enacting a new Section 78-222(b)(1). (The Plans and Policies Committee recommends approval.)

Dan Wichmer, City Attorney, gave a brief overview of the proposed. He stated prior to August 2015 the City had an ordinance defining indecent exposure as being in a state of nudity. In response to citizens' concern regarding an event downtown, Council reviewed the issue and passed a new ordinance redefining indecent exposure. Mr. Wichmer noted the new ordinance was challenged in court and the City lost the attempt to dismiss the lawsuit. He stated the proposed puts the original indecent exposure back in place since the City does not currently have an existing indecent exposure ordinance in place.

An opportunity was given for citizens to express their views. With no appearances, the discussion was closed.

PETITIONS, REMONSTRANCES, AND COMMUNICATIONS.**The following appeared on the agenda under New Business:****Records Retention**

As per RSMo. 109.230 (4), City records that are on file in the City Clerk's office and have met the retention schedule will be destroyed in compliance with the guidelines established by the Secretary of State's office.

UNFINISHED BUSINESS.**MISCELLANEOUS.****The following bill appeared on the agenda under Consent Agenda First Reading Bills:****Preliminary Plat of
New Prime Phase Two**

Sponsor: Hosmer. Council Bill 2016-045. A special ordinance authorizing the Director of Planning and Development to accept the dedication of the public streets and easements to the City of Springfield, Missouri, as shown on the Preliminary Plat of New Prime Phase Two, generally located at the 2800 block of North Cedarbrook and Packer Avenues, upon the applicant filing and recording a final plat that substantially conforms to the preliminary plat; and authorizing the City Clerk to sign the final plat upon compliance with the terms of this ordinance. (Planning and Zoning Commission and Staff recommend that City Council accept the public streets and easements.)

The following bill appeared on the agenda under Consent Agenda One Reading Bills:**Sanitary Sewer District
No. 111L of Section No.
2**

Sponsor: Burnett. Council Bill 2016-046. A special ordinance to levy and assess a special tax against the lots, blocks, and parcels of ground hereinafter described to pay for the cost of the construction of sanitary sewers within the City, in Sanitary Sewer District No. 111L of Section No. 2, in the general vicinity of Elm Street and Anoka Place, providing for inclusion of said district in the City Sewer Financial Assistance Program, and authorizing the City Clerk to issue special tax bills and deliver the same to the Director of Finance to be registered in her office in accordance with the ordinance.

Council Bill 2016-046. Special Ordinance 26696 was approved by the following vote: Ayes: Burnett, Fishel, McClure, Fisk, Hosmer, Fulnecky, Ferguson, Schilling, and Stephens. Nays: None. Absent: None. Abstain: None.

**Sanitary Sewer District
No. 17 of Section No.
26**

Sponsor: Fisk. Council Bill 2016-047. A special ordinance amending Special Ordinance No. 26552 to redefine the boundaries of Sanitary Sewer District No. 17 of Section No. 26 of the main sewers of the City of Springfield located in the general vicinity of Kearney Street and Lurvey Road.

Council Bill 2016-047. Special Ordinance 26697 was approved by the following vote: Ayes: Burnett, Fishel, McClure, Fisk, Hosmer, Fulnecky, Ferguson, Schilling, and Stephens. Nays: None. Absent: None. Abstain: None.

**South Creek
Restoration Project**

Sponsor: Schilling. Council Bill 2016-048. A special ordinance authorizing the City Manager, or his designee, to accept state grant funds in the amount of \$10,000 from the Missouri Department of Conservation (MDC), to support native plant establishment and enhancement on the South Creek Restoration Project; to provide matching in-kind services in the approximate amount of \$3,760; to enter into an agreement with MDC for acceptance and use of those funds; to exercise any and all powers to obtain such funding and carry out the identified activities; and to amend the budget of the Department of Environmental Services for Fiscal Year 2015-2016 in the amount of \$10,000 to appropriate the state grant funds.

Council Bill 2016-048. Special Ordinance 26698 was approved by the following vote: Ayes: Burnett, Fishel, McClure, Fisk, Hosmer, Fulnecky, Ferguson, Schilling, and Stephens. Nays: None. Absent: None. Abstain: None.

**National Incident
Management System**

Sponsor: Fulnecky. Council Bill 2016-049. A resolution adopting the National Incident Management System (NIMS) to serve as a policy guideline allowing the City to integrate the process into their everyday working environment.

Council Bill 2016-049. Resolution 10260 was approved by the following vote: Ayes: Burnett, Fishel, McClure, Fisk, Hosmer, Fulnecky, Ferguson, Schilling, and Stephens. Nays: None. Absent: None. Abstain: None.

The following bills appeared on the agenda under Consent Agenda Second Reading Bills:

Adjourn

With no further business to come before Council, the meeting adjourned at approximately 7:03 p.m.

Anita J. Cotter, CMC/MRCC
City Clerk

Prepared by Tom Smith
Assistant City Clerk

One-rdg. _____
P. Hrngs. X
Pgs. 24
Filed: _____

Sponsored by: McClure

First Reading: _____

Second Reading: _____

COUNCIL BILL NO. 2016- 043

SPECIAL ORDINANCE NO. _____

AN ORDINANCE

1 AUTHORIZING the issuance of Conditional Use Permit No. 419 to allow a reduction of
2 the front yard setback along Elm Street within an R-HD, High-Density
3 Multi-Family residential District and UN, University Combining Overlay
4 District, generally located at 1124 and 1130 East Elm Street.
5 (Planning and Zoning Commission and staff recommend approval.)
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8 WHEREAS, by the authority of Section 36-363 of the Land Development Code of
9 the City of Springfield, Missouri, the City Council may grant permits for certain types of
10 uses in certain zoning districts; and
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12 WHEREAS, application has been made, and notice and hearings have been held
13 as provided in Section 36-363 prior to the granting of such use permit, and the Planning
14 and Zoning Commission has found the necessary conditions to exist; and
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16 WHEREAS, the City Council finds the following conditions to exist:
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- 18 1. The application is complete and does not contain or reveal violations of this
19 provision or other applicable regulations which the applicant has failed or
20 refused to supply or correct;
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- 22 2. The site plan meets the standards required by this Article or other applicable
23 regulations with respect to such development or use;
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- 25 3. The proposed site plan does not interfere with easements, roadways, rail
26 lines, utilities, and public or private rights-of-way;
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- 28 4. The proposed site plan does not destroy, damage, detrimentally modify or
29 interfere with the enjoyment and function of significant natural topographic or
30 physical features of the site;
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- 32 5. The proposed site plan is not injurious or detrimental to the use and
33 enjoyment of surrounding property;

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- 6. The circulation elements of the proposed site plan do not create hazards to safety on or off the site, disjointed vehicular or pedestrian circulation paths on or off the site, or undue interferences and inconveniences to vehicular and pedestrian travel;
- 7. The screening of the site provides adequate shielding for nearby uses which may be incompatible with the proposed use;
- 8. The proposed structures or landscaping are not lacking amenity in relation to, or are not incompatible with, nearby structures and uses;
- 9. The proposed site plan does not create drainage or erosion problems on or off the site; and

WHEREAS, the granting of such permit is deemed proper and beneficial to the welfare of the City of Springfield, Missouri.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SPRINGFIELD, MISSOURI, as follows, that:

Section 1 – Permission is hereby granted to use the tract of land generally located at 1124 and 1130 East Elm Street, and more fully described in “Exhibit B,” which is attached hereto and incorporated herein as if copied verbatim, to permit a reduction of the front yard setback along Elm Street within an R-HD, and UN, generally located at 1124 and 1130 East Elm Street on certain conditions in accordance with Section 36-363 of the Land Development Code of the City of Springfield, Missouri.

Section 2 – Such use shall be subject to the conditions set forth in the explanation and “Exhibit D” to this ordinance, both of which are attached hereto and made a part hereof by reference.

Section 3 – Building permits and certificates of occupancy may be issued by the proper authorities pursuant to the permission granted by this ordinance.

Section 4 – This permit shall be in full force and effect only so long as the use of said premises and any improvements thereon conform with the use herein granted and are in accordance with the application and plans herein approved and referred to, unless special exceptions shall have been granted by the Board of Adjustment, and any violation of the requirements of this ordinance may be grounds for the revocation of this permit by the City Council after a hearing before said City Council.

Passed at meeting: _____

Mayor

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Attest: _____, City Clerk

Filed as Ordinance: _____

Approved as to form: *Ashley Wade*, Assistant City Attorney

Approved for Council action: *Lynne Burnett*, City Manager

EXPLANATION TO COUNCIL BILL NO: 2016- 043

FILED: 02-16-16

ORIGINATING DEPARTMENT: Planning and Development

PURPOSE: To allow a reduction of the front yard setback along Elm Street within an R-HD, High-Density Multi-Family Residential District and UN, University Combining Overlay District generally located at 1124 and 1130 East Elm Street.

BACKGROUND INFORMATION:

USE PERMIT NUMBER 419

The *Growth Management and Land Use Plan* element of the *Comprehensive Plan* identifies this area as appropriate for medium- or high-density housing. This category promotes townhouses and various forms of apartment buildings. The subject property is within a University Combining District which permits dormitories, fraternities and sororities.

The applicant is requesting to reduce the front yard setback along Elm Street, a collector roadway, from twenty-five (25) feet to eighteen (18) feet. The reduced setback will allow the proposed fraternity building to be placed closer to Elm Street which will permit more of the land to be used for the proposed development.

In 2010, City Council passed General Ordinance 5861 to allow a reduction in the front yard setback along collector and higher classification roadways with the approval of a Conditional Use Permit. The proposed setback brings activity to the street and an edge along the sidewalk that promotes pedestrian activity and safety. The proposed setback does not create any sight or safety issues for travelers on adjacent roadways.

City Council has approved other similar requests for reduced front yard setbacks near the MSU campus specifically along Kimbrough Avenue and Bear Boulevard. The existing building at 1150 E. Elm St., which is also on the south side of Elm Street, is located approximately 17 feet from the front property line. This would be consistent with the proposed setback reduction on the subject property.

Supports the following Field Guide 2030 goal(s): Chapter 6, Growth Management and Land Use; Major Goal 4, Develop the community in a sustainable manner; Objective 4a, Increase density in activity centers and transit corridors.

FINDINGS FOR STAFF RECOMMENDATION:

1. The *Growth Management and Land Use Plan* element of the *Comprehensive Plan* identifies this area as appropriate for medium- or high-density housing. This

land use category would accommodate townhouses and various forms of apartment buildings.

2. Approval of this application will reduce the front yard setback along Elm Street which will allow the building to be constructed closer to the street to utilize more of the lot area for the development which is already served with public infrastructure and services and is not expected to adversely impact the surrounding properties.

CONDITIONS:

1. The regulations and standards listed on Attachment 3 shall govern and control the use and development of the land in Use Permit Number 419 in a manner consistent with the attached site plan (Attachment 5).
2. The front yard setback along Elm Street may be reduced to eighteen (18) feet and the proposed fraternity building shall be located and constructed in substantial conformance to the attached site plan.

REMARKS:

The Planning and Zoning Commission held a public hearing on February 4, 2016, and recommended approval, by a vote of 8 to 0, of the proposed conditional use permit on the tract of land described on the attached sheet (see the attached Record of Proceedings, "Exhibit C").

The Planning and Development staff recommends the application be approved with the following conditions (see the attached Zoning and Subdivision Report, "Exhibit D").

Submitted by:

Daniel Neal, Senior Planner

Recommended by:

Approved by:



Mary Lilly Smith, Director



Greg Burris, City Manager

EXHIBITS:

Exhibit A, Requirements for Conditional Use Permit 419

Exhibit B, Legal Description

Exhibit C, Record of Proceedings

Exhibit D, Development Review Staff Report

ATTACHMENTS:

Attachment 1, Department Comments

Attachment 2, Requirements for Conditional Use Permit 419

Attachment 3, Standards and Responses for Conditional Use Permits

Attachment 4, Neighborhood Meeting Summary

Attachment 5, Site Plan & Elevation

EXHIBIT A
REQUIREMENTS FOR CONDITIONAL USE PERMIT 419

1. The front yard setback along Elm Street may be reduced to eighteen (18) feet and the proposed fraternity building shall be located and constructed in substantial conformance with Attachment 5.
2. All other standards of the Zoning Ordinance and other applicable ordinances shall be adhered to.

EXHIBIT B
LEGAL DESCRIPTION
USE PERMIT NUMBER 419

THAT CERTAIN PARCEL OR TRACT OF LAND COMPRISING OF LOTS 11, 12 AND A PORTION OF LOT 13 OF HUTLER'S SUBDIVISION, A RECORDED SUBDIVISION IN THE CITY OF SPRINGFIELD, GREENE COUNTY, MISSOURI AND A PORTION OF LOT 6 OF HORINE'S ADDITION, A RECORDED SUBDIVISION IN THE CITY OF SPRINGFIELD, GREENE COUNTY, MISSOURI, BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 11; THENCE, S02°21'11"W, ALONG THE WEST RIGHT-OF-WAY LINE OF FLORENCE AVENUE, A DISTANCE OF 149.42 FEET TO THE SOUTHEAST CORNER OF SAID LOT 13; THENCE, N88°03'45"W, ALONG THE SOUTH LINE OF SAID LOT 13, A DISTANCE OF 119.57 FEET; THENCE, N01°56'15"E, A DISTANCE OF 40.00 FEET; THENCE, S88°01'00"E, A DISTANCE OF 13.00 FEET; THENCE, N02°20'13"E, A DISTANCE OF 110.00 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF ELM STREET; THENCE, ALONG SAID SOUTH RIGHT-OF-WAY LINE FOR THE FOLLOWING TWO (2) DESCRIBED COURSES: THENCE, S88°13'35"E, A DISTANCE OF 57.00 FEET; THENCE, S87°12'52"E, A DISTANCE OF 49.90 FEET TO THE POINT OF COMMENCEMENT. CONTAINING 16,539.7 SQUARE FEET, (0.38 ACRES) MORE OR LESS.

EXHIBIT C
RECORD OF PROCEEDINGS
USE PERMIT NUMBER 419
Planning and Zoning Commission February 4, 2016

Conditional Use Permit 419
1124 East Elm Street
Applicant: Lantz 1124, LLC

Mr. Hosmer states that the applicant is requesting to reduce the front yard setback along Elm Street, a collector roadway, from twenty-five (25) feet to eighteen (18) feet. The reduced setback will allow the proposed fraternity building to be placed closer to Elm Street. City Council has approved other similar requests for reduced front yard setbacks near the MSU campus specifically along Kimbrough Avenue and Bear Boulevard. The existing building at 1150 E. Elm St., which is also on the south side of Elm Street, is located approximately 17 feet from the front property line. This would be consistent with the proposed setback reduction on the subject property. Staff recommends approval of this request with the conditions stated below:

The regulations and standards shall govern and control the use and development of the land in Use Permit Number 419 in a manner consistent with the site plan. The front yard setback along Elm Street may be reduced to eighteen (18) feet and the proposed fraternity building shall be located and constructed in substantial conformance to the site plan.

Mr. Baird opened the public hearing.

Mr. Dave Bodeen, 304B W. Erie, representing the owner and stated that this allows us to bring the building closer to the street and that the front of the building stays at the 25 foot set back. It has a two story colonial style porch with a balcony that has no access to the second story.

Mr. Baird asked when this issue came up in the process and was noted that it came up in the plan review process and the owner decided to keep the balcony and request a Conditional Use Permit.

Ms. Cox asked if there is a fraternity to the west and it was confirmed that there is one.

Mr. Baird closed the public hearing.

COMMISSION ACTION:

Ms. Cox motions that we approve Conditional Use Permit 419 (1124 East Elm Street). Mr. Edwards seconded the motion. The motion **carried** as follows: Ayes: Baird, Edwards, Doennig, Cline, Rose, Ray, Shuler, and Cox. Nays: None. Abstain: None. Absent: None

Bob Hosmer, AICP
Principal Planner

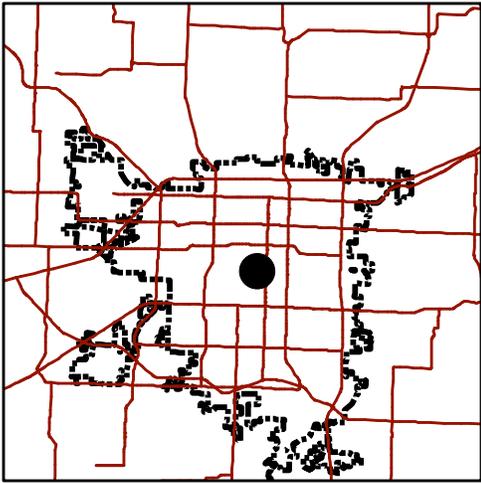
Development Review Staff Report

Planning & Development - 417/864-1031
840 Boonville - Springfield, Missouri 65802

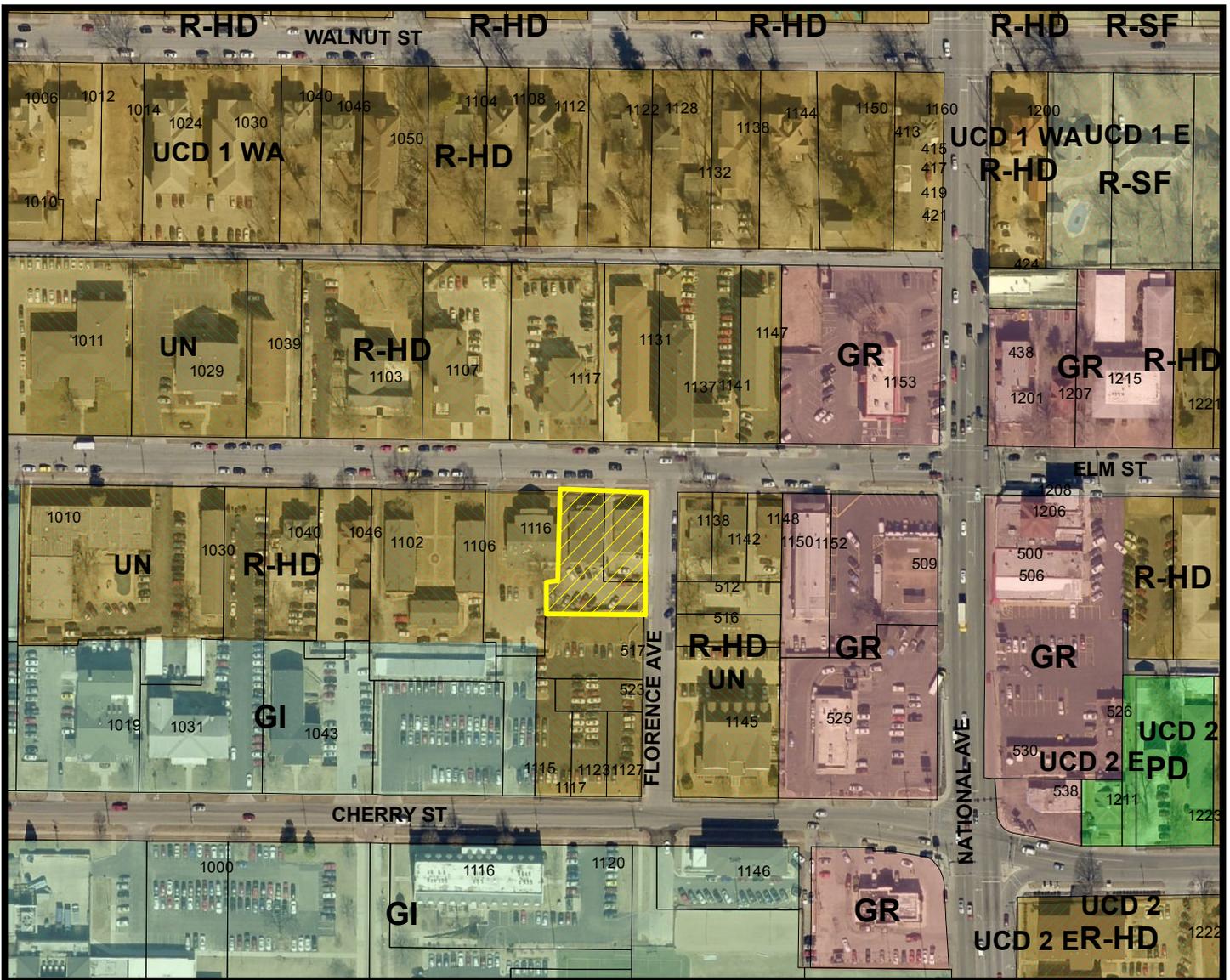
Use Permit 419

Location: 1124 and 1130 E. Elm St.

Current Zoning: R-HD, High-Density Multi-Family Residential with UN Overlay District



LOCATION SKETCH



- Area of Proposal



1 inch = 200 feet

Exhibit D

DEVELOPMENT REVIEW STAFF REPORT
CONDITIONAL USE PERMIT 419

PURPOSE: To allow a reduction of the front yard setback along Elm Street within an R-HD, High-Density Multi-Family Residential District and UN, University Combining Overlay District generally located at 1124 and 1130 East Elm Street

REPORT DATE: January 26, 2016

LOCATION: 1124 & 1130 E. Elm St.

APPLICANT: Lantz 1124, LLC

TRACT SIZE: Approximately 0.38 acres

EXISTING USE: Vacant lot

PROPOSED USE: Fraternity

FINDINGS FOR STAFF RECOMMENDATION:

1. The *Growth Management and Land Use Plan* element of the *Comprehensive Plan* identifies this area as appropriate for medium- or high-density housing. This land use category would accommodate townhouses and various forms of apartment buildings.
2. Approval of this request will provide for the productive use of the subject property which is already served with public infrastructure and services and is not expected to adversely impact the surrounding properties.

RECOMMENDATION:

Staff recommends approval of this request with the following conditions:

1. The regulations and standards listed on Attachment 3 shall govern and control the use and development of the land in Use Permit Number 419 in a manner consistent with the attached site plan (Attachment 5).
2. The front yard setback along Elm Street may be reduced to eighteen (18) feet and the proposed fraternity building shall be located and constructed in substantial conformance to the attached site plan.

Exhibit D

SURROUNDING LAND USES:

AREA	ZONING	LAND USE
North	R-HD w/ UN	Fraternity
East	R-HD w/ UN	Residence
South	R-UN w/ UN	Off-street parking
West	R-HD w/ UN	Fraternity

ZONING ORDINANCE REQUIREMENTS:

1. The conditional use permit procedure is designed to provide the Planning and Zoning Commission and the City Council with an opportunity for discretionary review of requests to establish or construct uses or structures which may be necessary or desirable in a zoning district, but which may also have the potential for a deleterious impact upon the health, safety and welfare of the public. In granting a conditional use, the Planning and Zoning Commission may recommend, and the City Council may impose such conditions, safeguards and restrictions upon the premises benefited by the conditional use as may be necessary to comply with the standards set out in the Zoning Ordinance to avoid, or minimize, or mitigate any potentially adverse or injurious effect of such conditional uses upon other property in the neighborhood. The general standards for conditional use permits are listed in Attachment 3.
2. No conditional use permit shall be valid for a period longer than 18 months from the date City Council grants the conditional use permit, unless within this 18 months:
 - a. A building permit is obtained and the erection or alteration of a structure is started; or
 - b. An occupancy permit is obtained and the conditional use is begun.

COMPREHENSIVE PLAN:

The *Growth Management and Land Use Plan* element of the *Comprehensive Plan* identifies this area as appropriate for medium- or high-density housing. This category promotes townhouses and various forms of apartment buildings which have been located where there is good traffic access between Low-Density Housing and non-residential land uses and at high-amenity locations.

STAFF COMMENTS:

1. The applicant is requesting to reduce the front yard setback along Elm Street, a collector roadway, from twenty-five (25) feet to eighteen (18) feet. The reduced setback will allow the proposed fraternity building to be placed closer to Elm

Exhibit D

Street which will permit more of the land to be used for the proposed development. In 2010, City Council passed General Ordinance 5861 to allow a reduction in the front yard setback along collector and higher classification roadways with the approval of a Conditional Use Permit. The proposed setback brings activity to the street and an edge along the sidewalk that promotes pedestrian activity and safety. The proposed setback does not create any sight or safety issues for travelers on adjacent roadways.

2. City Council has approved other similar requests for reduced front yard setbacks near the MSU campus specifically along Kimbrough Avenue and Bear Boulevard. The existing building at 1150 E. Elm St., which is also on the south side of Elm Street, is located approximately 17 feet from the front property line. This would be consistent with the proposed setback reduction on the subject property.
3. The properties at 1124 and 1130 E. Elm Street were recently combined following the administrative subdivision process. Development of this site will comply with all of the requirements of the Zoning Ordinance for the R-HD, High-Density Multi-Family Residential and UN, University Combining District other than the change to the setback being requested with this application. All requirements for parking, open space, bufferyards and height will be met with the development of this property.
4. Staff has reviewed the applicant's request for a Conditional Use Permit and has determined that it satisfies the standards for Conditional Use Permits outlined in Section 36-363(10) of the Zoning Ordinance. Any development of this property must also follow the R-HD and UN District requirements.
5. The proposed Conditional Use Permit was reviewed by City departments and comments are contained in Attachment 1.

NEIGHBORHOOD MEETING:

The applicant held a neighborhood meeting on January 13, 2016, regarding the request for a conditional use permit. A summary of the meeting is attached (Attachment 4).

PUBLIC COMMENTS:

The property was posted by the applicant on January 19, 2016 at least 10 days prior to the public hearing. The public notice was advertised in the Daily Events at least 15 days prior to the public hearing. Public notice letters were sent out at least 10 days prior to the public hearing to all property owners within 185 feet. Thirteen (13) property owners within one hundred eighty-five (185) feet of the subject property were notified by mail of this request.

CITY COUNCIL PUBLIC HEARING:

February 22, 2016

STAFF CONTACT PERSON:

Daniel Neal
Senior Planner
864-1036

ATTACHMENT 1
DEPARTMENT COMMENTS
CONDITIONAL USE PERMIT 419

BUILDING DEVELOPMENT SERVICES COMMENTS:

No issues with the Conditional Use Permit.

PUBLIC WORKS TRAFFIC DIVISION COMMENTS:

No traffic issues with the reduced setback.

STORMWATER COMMENTS:

No stormwater issues with reduced setback.

CLEAN WATER SERVICES COMMENTS:

No impact on public sewer.

CITY UTILITIES:

No objections with Conditional Use Permit.

FIRE DEPARTMENT:

No comments.

ATTACHMENT 2
REQUIREMENTS FOR CONDITIONAL USE PERMIT 419

1. The front yard setback along Elm Street may be reduced to eighteen (18) feet and the proposed fraternity building shall be located and constructed in substantial conformance with Attachment 5.
2. All other standards of the Zoning Ordinance and other applicable ordinances shall be adhered to.

PINNACLE

DESIGN CONSULTANTS

304-B West Erie St. : Springfield, MO 65807

417.501.8820 phone : 417.865.3033 fax

www.pinnaclecd.com

ATTACHMENT A

36-363 (10) Standards – An application for a conditional use permit shall be granted only if evidence is presented at the public hearing which establishes the following:

With respect to all proposed conditional *uses*, to the extent applicable:

1. The proposed conditional use will be consistent with the adopted policies in the *Springfield Comprehensive Plan*; *The proposed conditional use is consistent with the adopted policies in the Springfield Comprehensive Plan.*
2. The proposed conditional use will not adversely affect the safety of the motoring public and of pedestrians using the facility and the area immediately surrounding the site; *The safety of the motoring public and of pedestrians is not compromised by the conditional use.*
3. The proposed conditional use will adequately provide for safety from fire hazards, and have effective measures of fire control; *The proposed conditional use will adequately provide for safety from fire measures and have effective measures of fire control as required by the current IFC.*
4. The proposed conditional use will not increase the hazard to adjacent property from flood or water damage; *NA*
5. The proposed conditional use will not have noise characteristics that exceed the sound levels that are typical of uses permitted as a matter of right in the district; *The proposed conditional use will not have noise characteristics that exceed sound levels that are typical of uses permitted as a matter of right in the district.*
6. The glare of vehicular and stationary lights will not affect the established character of the neighborhood, and to the extent such lights will be visible from any residential district, measures to shield or direct such lights so as to eliminate or mitigate such glare are proposed; *Lighting from the proposed conditional use will not bleed off of the property.*
7. The location, lighting, and type of signs and the relationship of signs to traffic control is appropriate for the site; *The characteristics of the proposed fraternity signage is appropriate for the site and will be similar to neighboring properties.*
8. Such signs will not have an adverse effect on any adjacent properties; *No adverse effects noted.*
9. The street right-of-way and pavement width in the vicinity is or will be adequate for traffic reasonably expected to be generated by the proposed use; *No notable adverse effects to the existing street right-of-way.*

10. The proposed conditional use will not have any substantial or undue adverse effect upon, or will lack amenity or will be incompatible with, the use or enjoyment of adjacent and surrounding property, the character of the neighborhood, traffic conditions, parking utility facilities, and other matters affecting the public health, safety and general welfare; *The proposed conditional use does not have any notable adverse effect on neighboring properties and will be compatible with the nature of neighboring properties.*
11. The proposed conditional use will be constructed, arranged, and operated so as not to dominate the immediate vicinity or to interfere with the development and use of neighboring property in accordance with the applicable district regulations. In determining whether the proposed conditional use will so dominate the immediate neighborhood, consideration shall be given to:
 - a. The location, nature and height of buildings, structures, walls and fences on the site; and *NA – see proposed site plan*
 - b. The nature and extent of landscaping and screening on the site; *NA – see proposed site plan.*
12. The proposed conditional use, as shown by the application, will not destroy, damage, detrimentally modify or interfere with the enjoyment and function of any significant natural topographic or physical features of the site; *NA*
13. The proposed conditional use will not result in the destruction, loss or damage of any natural, scenic or historic feature of significant importance; *NA*
14. The proposed conditional use otherwise complies with all applicable regulations of the Article, including lot size requirements, bulk regulations, use limitations and performance standards; *The conditional use otherwise complies with the items indicated above.*
15. The proposed conditional use at the specified location will contribute to or promote the welfare or convenience of the public; *NA*
16. Off-street parking and loading areas will be provided in accordance with the standards set out in 36-455, 36-456 and 36-483 of this Article, and such areas will be screened from any adjoining residential uses and located so as to protect such residential uses from any injurious effect; *Offstreet parking requirements are met per the submitted plans.*
17. Adequate access roads or entrance or exit drives will be provided and will be designed so as to prevent traffic hazards and to minimize traffic congestion in public streets and alleys; *NA*
18. The vehicular circulation elements of the proposed application will not create hazards to the safety of vehicular or pedestrian traffic on or off the site, disjointed vehicular or pedestrian circulation paths on or off the site, or undue interference and inconvenience to vehicular and pedestrian travel; *NA*
19. The proposed use, as shown by the application, will not interfere with any easements, roadways, rail lines, utilities and public or private rights-of-way; *Confirmed.*
20. In the case of existing structures proposed to be converted to uses requiring a conditional use permit, the structures meet all fire, health, building, plumbing and electrical requirements of the City of Springfield; and *NA*
21. The proposed conditional use will be served adequately by essential public facilities and services such as highways, streets, parking spaces, police and fire protection, drainage structures, refuse disposal, water and sewers, and schools; or that the persons or agencies responsible for the

establishment of the proposed use will provide adequately for such services. [NA](#)

ATTACHMENT B

The design, arrangement, and operation of the requested conditional use will not affect the development and or use of neighboring property or properties, and is similar to other existing facilities in the neighborhood.

ATTACHMENT C

There are no identifiable adverse effects that are associated with the proposed conditional use.

NEIGHBORHOOD MEETING SUMMARY

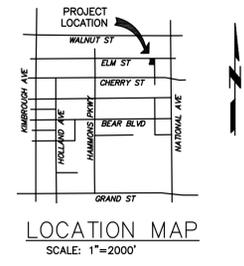
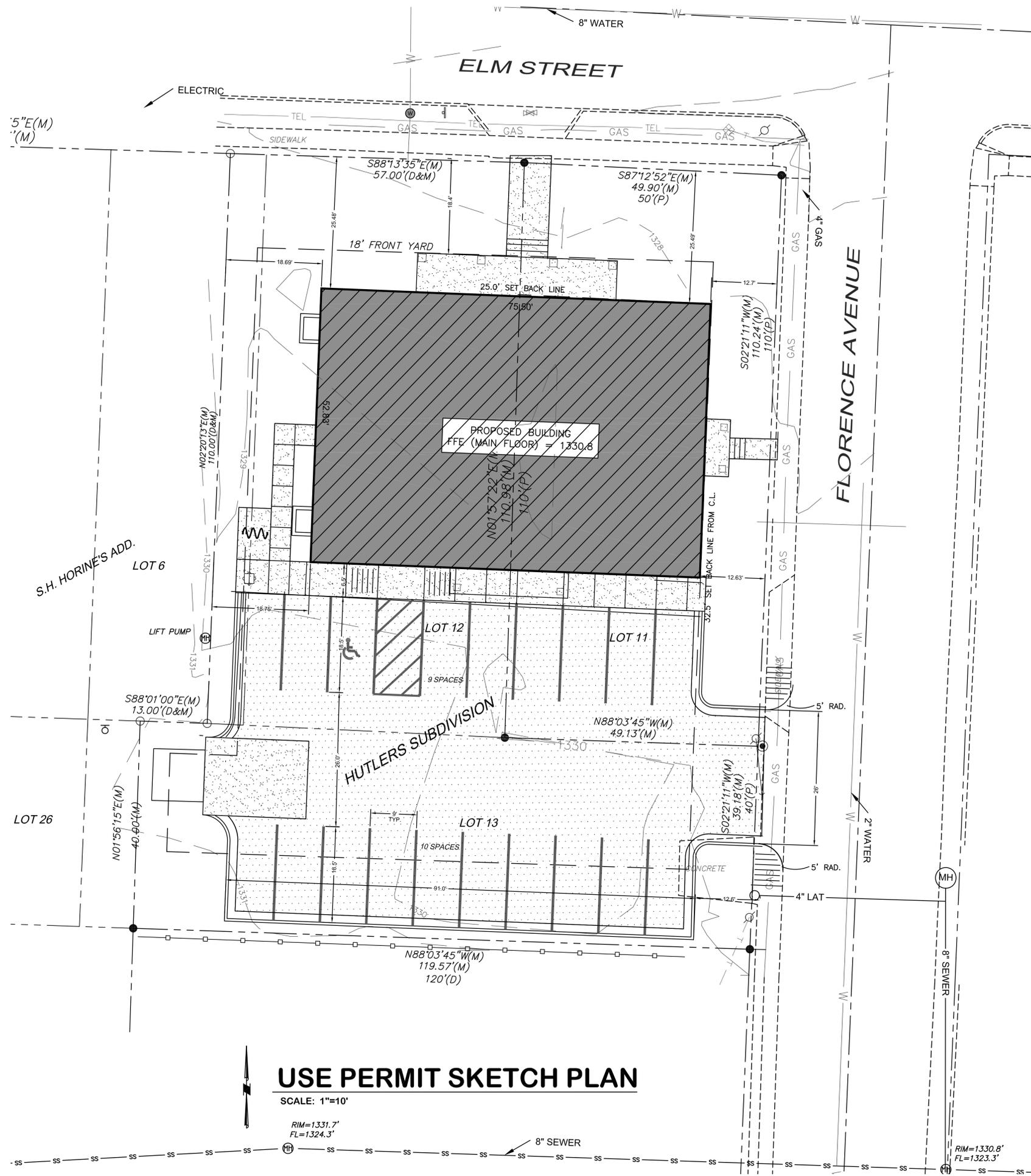
- 1. Conditional Use Permit for: 1124 E Elm
- 2. Meeting Date & Time: 1-13-16 4:00-6:00
- 3. Meeting Location: 1141 E. Elm
- 4. Number of invitations that were sent: ± 50
- 5. How was the mailing list generated: By City
- 6. Number of neighbors in attendance (attach a sign-in sheet): 0

7. List the verbal comments and how you plan to address any issues:
(City Council does not expect all of the issues to be resolved to the neighborhood's satisfaction; however, the developer must explain why the issues cannot be resolved.)

NA

8. List or attach the written comments and how you plan to address any issues:

NA



USE PERMIT INFORMATION:

PREPARED BY:
 PINNACLE DESIGN CONSULTANTS, LLC
 ATTN: DAVID BODEEN, PE
 304-B W. ERIE ST.
 SPRINGFIELD, MO 65807

ZONING: R-HD w/ UNIVERSITY OVERLAY

USE REQUESTED:
 FRONT YARD ENCROACHMENT FOR A PORCH /
 BALCONY COVERED WITH A ROOF.

LOT SIZE: 16,540 S.F. = 0.38 AC.

DESCRIPTION OF PROPERTY
 THAT CERTAIN PARCEL OR TRACT OF LAND COMPRISING OF LOTS 11, 12 AND A PORTION OF LOT 13 OF HUTLER'S SUBDIVISION, A RECORDED SUBDIVISION IN THE CITY OF SPRINGFIELD, GREENE COUNTY, MISSOURI AND A PORTION OF LOT 6 OF HORINE'S ADDITION, A RECORDED SUBDIVISION IN THE CITY OF SPRINGFIELD, GREENE COUNTY, MISSOURI, BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 11; THENCE S02°21'11\"/>

USE PERMIT SKETCH PLAN

SCALE: 1"=10'

RIM=1,331.7'
 FL=1,324.3'

RIM=1,330.8'
 FL=1,323.3'



PINNACLE
 DESIGN CONSULTANTS
 Civil, Structural, Mechanical, Electrical, Plumbing, Fire, and Energy Engineering
 304-B West Erie St., Springfield, MO 65807
 417.882.8122 • 417.882.8122 fax
 www.pinnaclecd.com
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Fraternity House
1124 East Elm St.
Springfield, MO

Larry D. Nelson, Architect
 3424 S. Rogers Ave. Springfield, MO 65804
 Phone: 417.882.8122 Fax 417.882.8152
 email: larrynelsonarchitect@mchsi.com

Date: 10-30-15

Sheet No.
C-1

Attachment 5, page 2



One-rdg. _____
P. Hrngs. _____
Pgs. 3
Filed: 2-16-16

Sponsored by: Hosmer, Fisk, Fishel

First Reading: _____

Second Reading: _____

COUNCIL BILL NO. 2016- 044

GENERAL ORDINANCE NO. _____

AN ORDINANCE

1 AMENDING the Springfield City Code, Chapter 78 – Offenses and Miscellaneous
2 Provisions, Article V – Offenses Against Morals by repealing Section 78-
3 222 and enacting a new Section 78-222, defining indecent exposure or
4 conduct, and including exceptions for breast-feeding, expressing breast
5 milk, and constitutionally-protected activities. (The Plans and Policies
6 Committee recommends approval.)

7 _____

8 WHEREAS, The City Council for the City of Springfield, Missouri, finds and
9 determines as follows:

10

11 (1) Since the founding of our country, appearing nude in a public place which is not a
12 public place provided or set apart for nudity has been considered improper; and

13 (i) As recently as 2000, the United States Supreme Court held that ordinances
14 proscribing nudity in public places satisfied the O'Brien v. United States standard
15 for restrictions on symbolic speech, and

16 (ii) The U.S. Supreme Court upheld the principle that a city's efforts to protect
17 public health and safety were clearly within its police powers, and an ordinance
18 proscribing public nudity furthered a city's interest in combating harmful
19 secondary effects of nudity and the government's interest was unrelated to
20 suppression of free expression, (see City of Erie v. Pap's A.M., 529 U.S. 277
21 (2000)); and

22 (2) Appearing nude in a public place which is not a public place provided or set apart
23 for nudity is engaging in conduct which often serves to impose such person's
24 nudity on others who did not seek it out, who are not able to reasonably avoid
25 observing it, and who may be offended or distressed thereby; and

26 (3) The ordinance proposed herein imposes no restriction on free expression greater
27 than necessary to further the City's goal of preserving public safety and peace.

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NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SPRINGFIELD, MISSOURI, as follows, that:

Section 1 – The Springfield City Code is hereby amended by repealing the existing Section 78-222 and enacting a new Section 78-222, which shall read as follows:

Sec. 78-222. – Indecent exposure.

(a) No person shall engage in or commit any act of indecent exposure or conduct in place open to public view.

(b) “Indecent exposure or conduct” shall include:

(1) The exposure of the male or female genitals, pubic area, or the female breast with less than a fully opaque covering of any part of the areola and nipple, or the showing of the covered male genitals in a discernibly turgid state ~~one’s genitals, buttocks, vulva, pubic hair, pubic area or the female breast below a point immediately above the top of the areola, for the purpose of sexual arousal or gratification or which is likely to cause affront or alarm; provided, however, that any exposure of the female breast necessarily incident to breast-feeding shall not be deemed to be a violation of this chapter.~~

(c) Exception(s).

(1) This section shall not prohibit performances of adult entertainment in compliance with section 10-7.

(2) This section shall not regulate nudity when the conduct of being nude cannot constitutionally be prohibited by this section because it is otherwise protected by the United States Constitution or Missouri Constitution.

(3) This section shall not prohibit a mother from breast-feeding her child or expressing breast milk in any public or private location where the mother and child are otherwise authorized to be.

Note: Language to be added is underscored; language to be removed is ~~stricken~~.

Section 2 – This ordinance shall be in full force and effect from and after passage.

68

69 Passed at meeting: _____

70

71 _____

72

Mayor

73

74 Attest: _____, City Clerk

75

76 Filed as Ordinance: _____

77

78 Approved as to form: Oil R. Wilson, City Attorney

79

80 Approved for Council action: Greg B. Smith, City Manager

EXPLANATION TO COUNCIL BILL NO. 2016 - 044

Filed: 02-16-2016

ORIGINATING DEPARTMENT: Law Department

BACKGROUND INFORMATION: In 2015, the City Council adopted an amended indecent exposure ordinance. That portion of the ordinance involving exposure of the female breast was enjoined by a federal court in December 2015. This ordinance will reinstate the indecent exposure ordinance that was in effect prior to 2015.

The new ordinance also explicitly acknowledges that Missouri state law exempts breast feeding and expressing milk from local indecent exposure or nudity laws.

Finally, the new ordinance acknowledges that there may be situations where nudity or partial nudity are constitutionally protected forms of speech or expressive activity. However, the application of this exception is fact dependent, so no general exception can apply.

Plans and Policies Committee reviewed the proposed ordinance at its meeting on February 15, 2016, and voted 3-1 in favor of recommending the ordinance to Council.

Submitted By:

Approved By:



City Attorney



City Manager

One-rdg. _____
P. Hrngs. _____ X _____
Pgs. _____ 131 _____
Filed: _____ 03-01-16 _____

Sponsored by: _____ Fulnecky _____

First Reading: _____

Second Reading: _____

COUNCIL BILL NO. 2016- 050

SPECIAL ORDINANCE NO. _____

AN ORDINANCE

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APPROVING A plan for an industrial development project for Kraft Heinz Foods Company, a Pennsylvania corporation, consisting of the acquisition and installation of new equipment and machinery at the existing plant; and authorizing the City of Springfield, Missouri to issue its Taxable Industrial Development Revenue Bonds (Kraft Heinz Foods Company Project), Series 2016, in a principal amount not to exceed \$36,000,000 to finance the costs of such project; authorizing and approving certain documents; and authorizing certain other actions in connection with the issuance of the Bonds.

WHEREAS, the City of Springfield, Missouri (the "City") is a constitutional home rule charter city and political subdivision of the State of Missouri, duly created, organized and existing under and by virtue of the Constitution and laws of the State of Missouri and the City's Charter; and

WHEREAS, the City is authorized under the provisions of Article VI, Section 27 of the Missouri Constitution, as amended, and Sections 100.010 to 100.200, inclusive, of the Revised Statutes of Missouri, as amended (collectively, the "Act"), to purchase, construct, extend and improve certain projects (as defined in the Act) for the purposes set forth in the Act and to issue industrial development revenue bonds for the purpose of providing funds to pay the costs of such projects and to lease or otherwise dispose of such projects to private persons or corporations for manufacturing, commercial, warehousing and industrial development purposes upon such terms and conditions as the City shall deem advisable; and

WHEREAS, the City, in accordance with Section 100.050 of the Act, has prepared a plan for industrial development (the "Plan") for Kraft Heinz Foods Company, a Pennsylvania corporation (together with any successors or assigns, the "Company"), with respect to a project consisting of the acquisition and installation of new equipment and machinery at the Company's existing plant (the "Project"); notice of the Project was given to the taxing jurisdictions in accordance with Section 100.059.1 of the Act and the City now desires to approve the Plan; and

36 WHEREAS, the City desires to finance the costs of the Project out of the proceeds of
37 industrial development revenue bonds to be issued under the Act (the "Bonds"); and
38

39 WHEREAS, the City has and does hereby find and determine that it is desirable for
40 the economic development of the City and within the public purposes of the Act that the City
41 proceed with the issuance of the Bonds for the purpose described above; and
42

43 WHEREAS, because the Bonds will be payable solely out of payments, revenues
44 and receipts derived by the City from the lease of the Project to the Company and from no
45 other source, the City has determined that it is appropriate that the Bonds be sold to the
46 Company pursuant to Section 108.170 of Revised Statutes of Missouri, as amended, which
47 provides that notwithstanding any other provisions of any law or any City Charter provision
48 to the contrary, industrial development revenue bonds may be sold at private sale; and
49

50 WHEREAS, the City further finds and determines that it is necessary and desirable in
51 connection with approval of the Plan and the issuance of the Bonds that the City enter into
52 certain documents, and that the City take certain other actions and approve the execution of
53 certain other documents as herein provided;
54

55 NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF
56 SPRINGFIELD, MISSOURI, AS FOLLOWS, that:
57

58 Section 1 – Promotion of Economic Development - The Council hereby finds and
59 determines that the Project will promote the economic welfare and the development of the
60 City, and the issuance of the Bonds by the City to pay the costs of the Project will be in
61 furtherance of the public purposes set forth in the Act.
62

63 Section 2 – Approval of Plan - The Council hereby approves the Plan for Industrial
64 Development Project, attached hereto as "Attachment 1," in accordance with Section
65 100.050 of the Act.
66

67 Section 3 – Authorization and Sale of the Bonds - The City is hereby authorized to
68 issue and sell its Taxable Industrial Development Revenue Bonds (Kraft Heinz Foods
69 Company Project), Series 2016, in an aggregate principal amount not to exceed \$36,000,000,
70 for the purpose of providing funds to pay the costs of the Project. The Bonds shall be issued
71 and secured pursuant to the herein authorized Trust Indenture and shall bear such date,
72 shall mature at such time, shall be in such denominations, shall bear interest at such rate
73 (not to exceed 8.00%), shall be in such form, shall be subject to redemption, shall have
74 such other terms and provisions, shall be issued, executed and delivered in such manner
75 and shall be subject to such provisions, covenants and agreements as are specified in the
76 Trust Indenture upon the execution thereof, and the signatures of the officers of the City
77 executing the Trust Indenture shall constitute conclusive evidence of their approval and the
78 City's approval thereof. The sale of the Bonds to the Company at private sale pursuant to
79 the provisions of Section 108.170 of Revised Statutes of Missouri, as amended, at the
80 interest rate and upon the terms set forth in the Trust Indenture is hereby approved.
81

82 Section 4 – Limited Obligations - The Bonds and the interest thereon shall be limited
83 obligations of the City payable solely out of the payments, revenues and receipts derived by
84 the City from the herein authorized Lease Agreement, and such payments, revenues and

85 receipts shall be pledged and assigned to the Trustee as security for the payment of the
86 Bonds as provided in the Trust Indenture. The Bonds and interest thereon shall not be
87 deemed to constitute a debt or liability of the City within the meaning of any constitutional
88 provision, statutory limitation or City Charter provision and shall not constitute a pledge of
89 the full faith and credit of the City. The issuance of the Bonds shall not, directly, indirectly or
90 contingently, obligate the City to levy any form of taxation therefore or to make any
91 appropriation for their payment.

92
93 Section 5 – Approval and Authorization of Documents - The following documents
94 (the “City Documents”) are hereby approved in substantially the forms presented to the
95 Council at this meeting (copies of which documents shall be filed in the records of the City),
96 and the City is hereby authorized to execute and deliver the City Documents with such
97 changes therein as shall be approved by the officials of the City executing such documents,
98 such officials’ signatures thereon being conclusive evidence of their approval thereof:
99

100 (a) Trust Indenture, attached hereto as "Attachment 2," dated as of the
101 date set forth therein (the “Trust Indenture”), between the City and the bond trustee
102 named therein (the “Trustee”), pursuant to which the Bonds shall be issued and the
103 City shall pledge and assign the payments, revenues and receipts received pursuant
104 to the Lease Agreement to the Trustee for the benefit and security of the owners of
105 the Bonds upon the terms and conditions as set forth in the Trust Indenture
106

107 (b) Lease Agreement, attached hereto as "Attachment 3," dated as of the
108 date set forth therein (the “Lease Agreement”), between the City and the Company,
109 under which the City will provide funds for the purchase and installation of the
110 Project and lease the Project to the Company pursuant to the terms and conditions
111 in the Lease Agreement, in consideration of rental payments by the Company which
112 will be sufficient to pay the principal of, premium, if any, and interest on the Bonds;
113

114 (c) Bond Purchase Agreement, attached hereto as "Attachment 4," dated
115 as of the date set forth therein, between the City and the Company, pursuant to
116 which the Company agrees to purchase the Bonds; and
117

118 (d) Performance Agreement, attached hereto as "Attachment 5," dated as
119 of the date set forth therein, between the City and the Company, pursuant to which
120 the City has granted the Company certain rights with respect to the abatement of ad
121 valorem personal property taxes on the Project in consideration for the Company’s
122 agreement to create and maintain a certain level of employment at the Project site.
123

124 Section 6 – Execution of Documents - The City is hereby authorized to enter into and
125 the Mayor, City Manager, Director of Finance and City Clerk are hereby authorized and
126 directed to execute and deliver, for and on behalf of and as the act and deed of the City, the
127 City Documents and the Bonds and such other documents, certificates and instruments as
128 may be necessary or desirable to carry out and comply with the intent of this Ordinance.
129

130 Section 7 – Severability - The sections, paragraphs, sentences, clauses and phrases
131 of this Ordinance shall be severable. In the event that any such section, paragraph,
132 sentence, clause or phrase of this Ordinance is found by a court of competent jurisdiction to
133 be invalid, the remaining portions of this Ordinance are valid, unless the court finds the valid

134 portions of the Ordinance are so essential to and inseparably connected with and
135 dependent upon the void portion that it cannot be presumed that the City Council has
136 enacted the valid portions without the void ones, or unless the court finds that the valid
137 portions, standing alone, are incomplete and are incapable of being executed in accordance
138 with the legislative intent.
139

140 Section 8 – Further Authority - The officers of the City, including the Mayor, the City
141 Manager, the Director of Finance and the City Clerk, are hereby authorized and directed to
142 execute all documents and take such actions as they may deem necessary or advisable in
143 order to carry out and perform the purposes of this Ordinance and to make ministerial
144 alterations, changes or additions in the foregoing agreements, statements, instruments and
145 other documents herein approved, authorized and confirmed which they may approve, and
146 the execution or taking of such action shall be conclusive evidence of such necessity or
147 advisability.
148

149 Section 9 – Governing Law - This Ordinance shall be governed exclusively by and
150 construed in accordance with the applicable laws of the State of Missouri.
151

152 Section 10 – This Ordinance shall be in effect from and after passage.
153
154

155 Passed at meeting: _____
156

157 _____
158 Mayor

159 Attest: _____, City Clerk
160
161

162 Filed as Ordinance: _____
163
164

165 Approved as to Form: Achalee T. Wiedner, Assistant City Attorney
166
167

168 Approved for Council Action: Greg Burt, City Manager
169

EXPLANATION TO COUNCIL BILL NO: 2016-050

FILED: 03-01-15

ORIGINATING DEPARTMENT: Planning and Development

PURPOSE: An ordinance approving a plan for an industrial development project for Kraft Heinz Foods Company, a Pennsylvania corporation, consisting of the design, purchase, and installation of eight (8) new lines of industrial manufacturing equipment; and authorizing the City of Springfield, Missouri to issue its Taxable Industrial Development Revenue Bonds (Kraft Heinz Foods Company Project), Series 2016, in a principal amount not to exceed \$36,000,000 to finance the costs of such project; authorizing and approving certain documents; and authorizing certain other actions in connection with the issuance of the Bonds.

BACKGROUND INFORMATION: The Kraft Heinz Foods Company (the Company) has been a part of the Springfield community for over 75 years. They began producing processed cheese in 1939 on the second floor of a building on West Mill Street before moving to their current location in 1954. They have expanded their physical plant and production lines several times and now have 780,000 square feet of production and distribution space in Springfield with over 30 production lines.

The Springfield plant produces several hundred million pounds of product annually, including such popular food items as Kraft Macaroni and Cheese, Velveeta and Kraft and Cracker Barrel Shreds and Chunks. The Springfield Kraft Heinz plant employs approximately 900 employees with an average salary of \$40,000 plus benefits. The total annual salaries and wages for the Springfield Kraft Heinz plant exceed \$43 million. Annual turnover is less than four percent and the average term of service is 14 years. Kraft Heinz is active in the community, donating to nonprofit organizations focused on fighting hunger and promoting healthy lifestyles.

The Company has requested that the City of Springfield issue up to \$36 million in industrial revenue bonds pursuant to Sections 100.010 to 100.200, inclusive, of the Revised Statutes of Missouri, as amended (collectively, the "Act") to provide personal property tax abatement related to the design, purchase, and installation of eight (8) new lines of industrial manufacturing equipment (the "Project"). The proposed project includes installation of eight manufacturing lines, new processing equipment, and the upgrade of various technology processes. The investment would result in the creation of approximately 109 new jobs with an associated annual payroll of over \$5,000,000.

Chapter 100 RSMo allows local governments to issue bonds to finance industrial development projects and certain types of commercial development for private corporations, partnerships and individuals. Upon issuance of the bonds, the company transfers ownership of the financed equipment to the local government. The bond proceeds are then used to fund design, purchase, and installation of the project equipment. The company buys the bonds and repays them over a set time period. Once the bonds are completely repaid, the local government conveys title of the site back to the company. Since the equipment property is owned by the local government during the time the bonds are outstanding, the property is exempt from personal property taxes. The bonds are not an obligation of the local government.

In January 2016, City Council passed Resolution 10259, signaling its official intent to issue bonds for the project. The City Council also approved an ordinance to enter into a funding agreement with the Company to cover the City's legal expenses related to the bond issue.

REMARKS: An Industrial Development Plan (the "Plan") has been prepared for the Project pursuant to Sections 100.010 to 100.200, inclusive of the Revised Statutes of Missouri, as amended "Attachment 1." Notice of the consideration of the Plan was given to the taxing jurisdictions in accordance with the Act.

The Project will be owned by the City and leased to the Company. The Project (which consists of design, acquisition, and installation expenses) is expected to cost approximately (but not exceed) \$33,200,000 and the Bonds will be issued in the not to exceed amount of \$36,000,000 to fund the Project.

The Company will purchase the Bonds. Principal and interest on the bonds will be paid solely with revenue derived from rent payments under a lease agreement between the City and the Company. As a result of the City's ownership of the Project, the Project will be exempt from payment of personal property taxes during the entire term of the Lease (which term will end not later than October 31, 2026). The Company will be required to make annual payments in lieu of taxes ("PILOTS") for ten years in an amount equal to 50% of the exempted personal property taxes. These PILOTS will be distributed in accordance with local levies. The Company agrees that it will make a PILOT Payment to the City on or before December 31 of each year.

This ordinance grants a personal property tax exemption that is consistent with adopted City policy as specified in the *Economic Development Incentives Policy Manual*. There are several performance measures included in the project documents, including maintaining at least 950 full-time employees at the Springfield plant and a minimum investment of \$24,000,000.

Attached to this Explanation Sheet are the following documents:

- (a) Plan for Industrial Development Project "Attachment 1"
- (b) Lease Agreement "Attachment 2"
- (c) Trust Indenture "Attachment 3"
- (d) Bond Purchase Agreement "Attachment 4," and
- (e) Performance Agreement "Attachment 5."

Supports the following Field Guide 2030 goal(s): Chapter 3, Economic Development; Major Goal 2, Aggressively use Economic Development Incentives to encourage investment in the community and to encourage job creation and retention; Objective 2b, Continue to explore creative and flexible methods to attract and retain jobs and business investment in the community.

REMARKS: Staff recommends approval.

Submitted by:



Sarah Kerner, Interim Director
Economic Development



Mary Lilly Smith, Director



Greg Burris, City Manager

Chapter 100 Plan for Industrial Development

Kraft Heinz Foods Company

Kraft Heinz Foods Company, a Pennsylvania corporation (“KHFC”), which is a wholly owned subsidiary of The Kraft Heinz Company, is proposing a plan for an industrial development project as described herein to the City of Springfield, Missouri (the “City”), for approval, to be carried out pursuant to Article VI, Section 27(b) of the Missouri Constitution, as amended, and Sections 100.010 to 100.200, inclusive, of the Revised Statutes of Missouri, as amended (the “Act”), as follows:

I. Project Description

KHFC has been a part of the Springfield, Missouri community for nearly 75 years. They began producing processed cheese in 1939 on the second floor of a building on West Mill Street before moving to their current location in 1954. The physical plant and operations capacity have expanded several times. KHFC currently operates a 780,000 square foot production and distribution plant in the City with approximately 33 production lines (the “Manufacturing Facility”). The Manufacturing Facility makes several hundred million pounds of products annually, including such popular foods as Kraft Singles, Kraft Macaroni and Cheese, Velveeta, and Cheez Whiz. The Manufacturing Facility employs approximately 892 full-time employees. Annual turnover at the Manufacturing Facility is less than 5%, excluding retirements, and the average years of service is 14 years. With an average wage for employees exceeding the Greene County average wage and a non-mandatory benefit load factor of approximately 50%, KHFC remains a quality employer in the City and Greene County. KHFC is active in the community, donating to nonprofit organizations focused on fighting hunger and promoting healthy lifestyles, among others. KHFC is proposing to invest \$33,200,000 into the Manufacturing Facility to expand manufacturing capacity. This investment is comprised of the acquisition of certain equipment and machinery, and related soft costs (collectively, the “Project”). KHFC is requesting that the City provide personal property tax abatement of 50% for 10 years on said new equipment and machinery (estimated taxable value of \$24,200,000), which is to be installed at the Manufacturing Facility. This is consistent with the City’s adopted policy. The Project positions the Manufacturing Facility to expand capacity, meet the growing consumer demand for existing and new products, and maintain a strong presence in the Springfield community. The Project will directly lead to the immediate creation of approximately 109 jobs. Additionally, the Project will help retain the existing workforce of 892 in the City and help protect the long-term viability of the Manufacturing Facility.

KHFC agrees to employ at least 950 full-time employees at the Manufacturing Facility by October 31, 2017 and maintain this employment level throughout the term of the Lease (defined below). If total employment falls below this threshold, an additional payment in lieu of tax will be required (see Section VIII below). The amount of this additional payment will be calculated in accordance with the Performance Agreement (the “Performance Agreement”), between the City and KHFC.

II. Proposed Investment

KHFC estimates that the total investment in the proposed Project will be \$33,200,000. The cost-benefit analysis attached as **Exhibit 1**, as prepared by Incentis Group, LLC, is based on the estimated appraised value of the personal property to be installed as part of the Project, in the amount of \$24,200,000.

III. Source of Funds to be Expended for the Project

The source of funds to be expended for the Project will be proceeds of the sale of taxable industrial development revenue bonds to be issued by the City (the “Bonds”). The Bonds shall be issued upon such terms, in such amounts, and at such time as shall be satisfactory to the City and KHFC. Pursuant to Ordinance No. 10259 adopted by the City on January 25, 2016, the City set forth its intent, subject to the satisfaction of certain conditions, to issue the Bonds in an amount not to exceed \$36,000,000. As set forth above, the proposed KHFC investment in taxable personal property is estimated to be \$24,200,000. This value was used to estimate the PILOT Payment schedule (see **Exhibit 1**) for the purpose of this Plan. The actual PILOT Payments will be calculated upon completion of the acquisition and installation of the personal property and will be based on the actual cost of the investment therein. This ensures that the PILOT Payments reflect the actual value of the personal property acquired and installed and avoids the need for amendments to the Plan and Performance Agreement should the actual investment vary from the estimated figures set forth in this Plan. It is agreed that the maximum value of taxable personal property to be financed with the proceeds of the Bonds is \$36,000,000. At the completion of the Project, KHFC will submit a draw request to the named trustee for the Bonds (the “Trustee”), complete with proof of purchase and equipment value. Upon receipt of the draw documents, the Trustee will notate that the Bonds have been funded in the amount equal to the actual cost of the personal property acquired and installed in the Project (as set forth in the draw documents), and the City will take title to said personal property. The year following the year in which the draw occurs will begin the ten-year period of tax abatement on the personal property included in the draw request. The City and KHFC will enter into the Performance Agreement which contractually obligates KHFC to calculate the PILOT Payments as described in this section (and Section VIII below) and obligates KHFC to pay the PILOT Payments for each year the personal property tax abatement is provided. It is expected that all of the personal property will be acquired in 2016 and that the abatement period for said personal property will run from 2017 through 2026.

IV. Terms Upon Which the Facilities to be Provided by the Project are to be Leased or Otherwise Disposed of by the Municipality

The personal property purchased with the Bond proceeds will be owned by the City (upon acquisition by KHFC) and leased back to KHFC under a Lease Agreement (the “Lease”). The Bonds will be repaid solely by KHFC pursuant to the terms of the Lease which will provide that the rental payments will be equal to the principal and interest payments payable on the Bonds. KHFC will have the option to purchase the Project at any time and will have the obligation to purchase the Project at the termination of the Lease. The term of the Lease will end in the final year of the tax abatement provided (December 31, 2026).

V. Taxing Districts Affected by the Project

The proposed Project impacts the following taxing districts:

- City of Springfield
- Springfield-Green County Library District
- Ozarks Technical College
- Greene County General
- Greene County Road and Bridge
- State of Missouri
- Sheltered Workshop
- Senior Services
- Springfield R-12 School District

The Surtax is not assessed on personal property; therefore, it is not impacted by the requested abatement.

VI. Assessed Valuation

The proposed Project includes new personal property that will be purchased upon issuance of the Bonds. As such, the most recent assessed valuation associated with the Project is \$0.00. The estimated total equalized assessed valuation of the personal property included in the Project after the acquisition and installation thereof is \$7,187,400. Because there is no existing assessed evaluation of the Project, all of the taxes shown in the tables attached hereto are new, incremental taxes to be generated by the Project.

VII. Cost/Benefit Analysis on Taxing Districts

The analysis of the costs and benefits of the Project on each taxing district can be found in **Exhibit 1**. The information contained in this document summarizes the preliminary estimate of personal property taxes that the proposed Project may generate in the City. The tax abatement and PILOT Payment estimates used in this Plan are based upon our understanding of the proposed Project parameters, information provided by KHFC, and the reasonable assumptions as outlined in **Exhibit 1**. The actual outcomes may vary from the estimates set forth in **Exhibit 1**. Incentis Group does not guarantee that actual outcomes resulting from the proposed Project being undertaken will equal or be similar to the estimates provided by this Plan.

VIII. Payments in Lieu of Taxes (“PILOT Payments”)

KHFC will be required to make annual PILOT Payments on the Project for each of the 10 years that the tax abatement is in effect (2017 through 2026). The PILOT Payments will equal 50% of the amounts that would otherwise be payable to each taxing jurisdiction if the Project were not owned by the City. The attached tables include an estimate of the annual PILOT Payments. Actual PILOT Payments will be calculated as described in Section III above. PILOT payments will be made by KHFC to the City and then remitted by the City to taxing districts as described in Section 100.050 of the Act.

**Exhibit 1 - Cost-Benefit Analysis on Taxing Districts
Industrial Development Plan for Kraft Heinz Foods Company**

Exhibit Assumptions

MODEL ASSUMPTIONS

The information contained in this document summarizes preliminary estimates of PILOT Payments that the proposed project may generate in Springfield, Missouri. The tax, abatement, and PILOT estimates used in this Analysis are based upon our understanding of the proposed project parameters, information provided by KHFC, and reasonable assumptions as outlined below.

Incentis Group does not guarantee that actual outcomes resulting from the proposed project being undertaken will equal or be similar to the estimates provided by this Analysis.

This Analysis should not be used to replace tax planning regarding the proposed project and future operations nor be relied upon for tax planning purposes.

Requested Industrial Development Bonds: amount not to exceed \$36,000,000

Year	Direct Cost of Equipment	Soft Costs and Contingency	Total Investment included in Analysis
2016	\$24,200,000	\$9,000,000	\$33,200,000
Total	\$24,200,000	\$9,000,000	\$33,200,000

This exhibits assumes an abatement of 50% for 10-years on taxes generated by the proposed investment in personal property

The estimated personal property taxes generated by the proposed project were generated using the following methodology.

Value of Investment in Taxable Equipment*Depreciation* Assessment Ratio = Assessed Value

2015 Tax Rates as confirmed by Tax Collectors Office, 2/23/16

Assessed Value * Tax Rate = Incremental Tax

Investment in Taxable Equipment: \$24,200,000

Our model uses the 7-year recovery period depreciation schedule based on the 2016 Greene County Business/Personal Property Assessment Form Instructions provided by the Greene County Assessor's Office.

The assessment ratio and the tax rates from 2015 were used in our calculations, and held constant (in our calculations) through the 2026 tax year. Note, the actual rate will likely change during the 10 year term and the PILOT Payments will be calculated using the actual tax rates annually.

Tax Millage by Jurisdiction	Tax Rate	
City of Springfield	0.6094	0.6094%
Springfield-Green County Library	0.2443	0.2443%
Ozarks Technical College/Vocational	0.1494	0.1494%
Green County General	0.116	0.1160%
Green County Road & Bridge	0.116	0.1160%
State of Missouri	0.03	0.0300%
County Developmental Disability Programs/Sheltered Workshop	0.0468	0.0468%
Senior Services	0.0494	0.0494%
Springfield R-12	4.0693	4.0693%
Surtax*	N/A	0.0000%
Total Tax Rate	5.4306	5.4306%

*Surtax is not assessed on personal property

Assessment Ratio 33%

Table 1

**Kraft Heinz Foods Company
Proposed Springfield Expansion Project**

*Preliminary Draft
Subject to Review Change
For Discussion Purposes Only*

TABLE 1: Estimated Tax Impact of the Proposed Project (Personal Property)

<i>Taxing District</i>	<i>Tax Levy</i>	<i>% of Total Levy</i>	<i>Incremental Tax Revenue Generated by Proposed Project (Before Abatement)</i>	<i>% of Abatement</i>	<i>Incremental Taxes Abated on Proposed Project</i>	<i>Incremental PILOT Payment from Proposed Project (NET GAIN to Jurisdictions)</i>
City of Springfield	0.6094	11.22%	\$168,874	50%	\$84,437	\$84,437
Springfield-Green County Library	0.2443	4.50%	\$67,699	50%	\$33,850	\$33,850
Ozarks Technical College/Vocational	0.1494	2.75%	\$41,401	50%	\$20,701	\$20,701
Green County General	0.116	2.14%	\$32,145	50%	\$16,073	\$16,073
Green County Road & Bridge	0.116	2.14%	\$32,145	50%	\$16,073	\$16,073
State of Missouri	0.03	0.55%	\$8,313	50%	\$4,157	\$4,157
County Developmental Disability Programs/She	0.0468	0.86%	\$12,969	50%	\$6,484	\$6,484
Senior Services	0.0494	0.91%	\$13,689	50%	\$6,845	\$6,845
Springfield R-12	4.0693	74.93%	\$1,127,666	50%	\$563,833	\$563,833
Surtax	0	0.00%	\$0	0%	\$0	\$0
Total	5.4306	100.00%	\$1,504,903		\$752,451	\$752,451

Table 2

**Kraft Heinz Foods Company
Proposed Springfield Expansion Project**

*Preliminary Draft
Subject to Review Change
For Discussion Purposes Only*

TABLE 2: Estimated Property Tax Increment

	<i>Tax Levy</i>	<i>% of Total Levy</i>	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	Total
Property Value			\$24,200,000	\$24,200,000	\$24,200,000	\$24,200,000	\$24,200,000	\$24,200,000	\$24,200,000	\$24,200,000	\$24,200,000	\$24,200,000	
Depreciation %			90%	70%	55%	43%	31%	18%	10%	10%	10%	10%	
Depreciated Value			\$21,780,000	\$16,940,000	\$13,310,000	\$10,406,000	\$7,502,000	\$4,356,000	\$2,420,000	\$2,420,000	\$2,420,000	\$2,420,000	
Assessment %			33%	33%	33%	33%	33%	33%	33%	33%	33%	33%	
Assessed Property Value			\$7,187,400	\$5,590,200	\$4,392,300	\$3,433,980	\$2,475,660	\$1,437,480	\$798,600	\$798,600	\$798,600	\$798,600	
Tax by Jurisdiction													
City of Springfield	0.6094	11.22%	\$43,800.0	\$34,067	\$26,767	\$20,927	\$15,087	\$8,760	\$4,867	\$4,867	\$4,867	\$4,867	\$168,874
Springfield-Green County Library	0.2443	4.50%	\$17,559	\$13,657	\$10,730	\$8,389	\$6,048	\$3,512	\$1,951	\$1,951	\$1,951	\$1,951	\$67,699
Ozarks Technical College/Vocational	0.1494	2.75%	\$10,738	\$8,352	\$6,562	\$5,130	\$3,699	\$2,148	\$1,193	\$1,193	\$1,193	\$1,193	\$41,401
Green County General	0.116	2.14%	\$8,337	\$6,485	\$5,095	\$3,983	\$2,872	\$1,667	\$926	\$926	\$926	\$926	\$32,145
Green County Road & Bridge	0.116	2.14%	\$8,337	\$6,485	\$5,095	\$3,983	\$2,872	\$1,667	\$926	\$926	\$926	\$926	\$32,145
State of Missouri	0.03	0.55%	\$2,156	\$1,677	\$1,318	\$1,030	\$743	\$431	\$240	\$240	\$240	\$240	\$8,313
County Developmental Disability Programs/	0.0468	0.86%	\$3,364	\$2,616	\$2,056	\$1,607	\$1,159	\$673	\$374	\$374	\$374	\$374	\$12,969
Senior Services	0.0494	0.91%	\$3,551	\$2,762	\$2,170	\$1,696	\$1,223	\$710	\$395	\$395	\$395	\$395	\$13,689
Springfield R-12	4.0693	74.93%	\$292,477	\$227,482	\$178,736	\$139,739	\$100,742	\$58,495	\$32,497	\$32,497	\$32,497	\$32,497	\$1,127,666
Surtax	0	0.00%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Annual Taxes	5.4306	100.00%	\$390,319	\$303,581	\$238,528	\$186,486	\$134,443	\$78,064	\$43,369	\$43,369	\$43,369	\$43,369	\$1,504,903
Value of Abatement			\$195,159	\$151,791	\$119,264	\$93,243	\$67,222	\$39,032	\$21,684	\$21,684	\$21,684	\$21,684	\$752,448
PILOT with Abatement			\$195,159	\$151,791	\$119,264	\$93,243	\$67,222	\$39,032	\$21,684	\$21,684	\$21,684	\$21,684	\$752,455

**CITY OF SPRINGFIELD, MISSOURI,
the City,**

AND

**BOKF, N.A.,
as Trustee**

TRUST INDENTURE

Dated as of April 1, 2016

Relating to:

**\$36,000,000
(Aggregate Maximum Principal Amount)
City of Springfield, Missouri
Taxable Industrial Development Revenue Bonds
(Kraft Heinz Foods Company Project)
Series 2016**

TRUST INDENTURE

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Exhibit A: Description of Project Site

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TRUST INDENTURE

THIS TRUST INDENTURE dated as of April 1, 2016, is between the **CITY OF SPRINGFIELD, MISSOURI**, a constitutional home rule charter city and municipal corporation organized and existing under the laws of the State of Missouri (the “**City**”), and **BOKF, N.A.**, a national banking association duly organized and existing and authorized to accept and execute trusts of the character herein set forth under the laws of the United States of America, with a corporate trust office located in the City of Kansas City, Missouri, as Trustee (the “**Trustee**”);

RECITALS:

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

2. Pursuant to the Act, the City Council of the City gave notice to the affected taxing jurisdictions in accordance with Section 100.059.1 of the Act regarding the financing of the costs of a project for Kraft Heinz Foods Company, a Pennsylvania corporation (the “**Company**”), consisting of the acquisition and installation of new equipment and machinery (collectively, the “**Project**,” as more fully described on **Exhibit B** hereto) at the Company’s existing manufacturing facility located on certain real property in Springfield, Missouri (the “**Project Site**,” as more fully described on **Exhibit A** hereto), out of the proceeds of industrial development revenue bonds to be issued under the Act.

3. Following such notice to affected taxing jurisdictions and a public hearing, the City Council of the City passed Special Ordinance No. _____ (the “**Ordinance**”) on March __, 2016, approving a plan for the Company’s economic development project to be financed through the issuance of \$36,000,000 maximum aggregate principal amount of Taxable Industrial Development Revenue Bonds (Kraft Heinz Foods Company Project), Series 2016 (the “**Series 2016 Bonds**”).

4. Pursuant to the Ordinance, the City is authorized to execute and deliver (a) this Trust Indenture for the purpose of issuing and securing the Bonds, (b) the Lease Agreement with the Company, as lessee, under which the City, as lessor, will acquire and equip the Project and will lease the Project to the Company, in consideration of rentals which will be sufficient to pay the principal of and interest on the Bonds, and (c) the Performance Agreement for the purpose of setting forth the terms and conditions of the Project’s exemption from *ad valorem* personal property taxes and certain payments in lieu of taxes to be made by the Company with respect to the Project.

5. All things necessary to make the Bonds, when authenticated by the Trustee and issued as in this Indenture provided, the valid and legally binding obligations of the City, and to constitute this Indenture a valid and legally binding pledge and assignment of the Trust Estate herein made for the security of the payment of the principal of and interest on the Bonds, have been done and performed, and the execution and delivery of this Indenture and the execution and issuance of the Bonds, subject to the terms hereof, have in all respects been duly authorized.

NOW, THEREFORE, THIS TRUST INDENTURE WITNESSETH:

GRANTING CLAUSES

That the City, in consideration of the premises, the acceptance by the Trustee of the trusts hereby created, the purchase and acceptance of the Bonds by the Owners thereof, and of other good and valuable consideration, the receipt of which is hereby acknowledged, and in order to secure the payment of the principal of and interest on all of the Bonds issued and outstanding under this Indenture from time to time according to their tenor and effect, and to secure the performance and observance by the City of all the covenants, agreements and conditions herein and in the Bonds contained, does hereby pledge and assign to the Trustee and its successors and assigns until this Indenture has been satisfied and discharged, the property described in paragraphs (a), (b) and (c) below (said property being herein referred to as the “Trust Estate”), to-wit:

(a) All right, title and interest in and to the Project together with the tenements, hereditaments, appurtenances, rights, easements, privileges and immunities thereunto belonging or appertaining and, to the extent permissible, all permits, certificates, approvals and authorizations;

(b) All right, title and interest of the City in, to and under the Lease (excluding the City’s right to receive moneys for its own account and the City’s rights to indemnification or to be protected from liabilities by insurance policies required by the Lease, as provided therein or herein), and all rents, revenues and receipts derived by the City from the Project including, without limitation, all rentals and other amounts to be received by the City and paid by the Company under and pursuant to and subject to the provisions of the Lease; and

(c) All moneys and securities from time to time held by or now or hereafter required to be paid to the Trustee under the terms of this Indenture, and any and all other real or personal property of every kind and nature from time to time hereafter, by delivery or by writing of any kind, pledged, assigned or transferred as and for additional security hereunder by the City or by anyone in its behalf, or with its written consent, to the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

TO HAVE AND TO HOLD, all and singular, the Trust Estate with all rights and privileges hereby pledged and assigned or agreed or intended so to be, to the Trustee and its successors and assigns forever;

IN TRUST NEVERTHELESS, upon the terms and subject to the conditions herein set forth, for the equal and proportionate benefit, protection and security of all Owners from time to time of the Bonds outstanding under this Indenture, without preference, priority or distinction as to lien or otherwise of any of the Bonds over any other of the Bonds except as expressly provided in or permitted by this Indenture;

PROVIDED, HOWEVER, that if the City pays, or causes to be paid, the principal of and interest on the Bonds, at the time and in the manner mentioned in the Bonds, according to the true intent and meaning thereof, or provides for the payment thereof (as provided in **Article XIII** hereof), and pays or causes to be paid to the Trustee all other sums of money due or to become due to it in accordance with the terms and provisions hereof, then upon such final payments this Indenture and the rights thereby granted shall cease, determine and be void; otherwise, this Indenture shall be and remain in full force and effect.

THIS INDENTURE FURTHER WITNESSETH, and it is hereby expressly declared, covenanted and agreed by and between the parties hereto, that all Bonds issued and secured hereunder are to be issued, authenticated and delivered and that all the Trust Estate is to be held and applied under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and the City does hereby agree and covenant with the Trustee and with the respective Owners from time to time, as follows:

ARTICLE I

DEFINITIONS

Section 101. Definitions of Words and Terms. In addition to words and terms defined in the Lease and in the Performance Agreement, which definitions shall be deemed to be incorporated herein, and terms defined elsewhere in this Indenture, the following words and terms as used in this Indenture shall have the following meanings, unless some other meaning is plainly intended:

“Act” means, collectively, Article VI, Section 27(b) of the Missouri Constitution, as amended, and Sections 100.010 through 100.200 of the Revised Statutes of Missouri, as amended.

“Additional Bonds” means any additional parity bonds issued pursuant to **Section 209** of this Indenture.

“Additional Rent” means the additional rental described in **Section 5.2** of the Lease.

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

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

“Basic Rent” means the rental described in **Section 5.1** of the Lease.

“Bond” or **“Bonds”** means the Taxable Industrial Development Revenue Bonds (Kraft Heinz Foods Company Project), issued, authenticated and delivered under and pursuant to this Indenture, including an initial series of Taxable Industrial Development Revenue Bonds (Kraft Heinz Foods Company Project), Series 2016, in the maximum aggregate principal amount of \$36,000,000 and, upon the issuance of any Additional Bonds pursuant to **Section 209** of this Indenture, the term “Bonds” shall include such Additional Bonds.

“Bond Fund” means the “City of Springfield, Missouri, Bond Fund -- Kraft Heinz Foods Company” created in **Section 601** of this Indenture.

“Bond Purchase Agreement” means the agreement by that name with respect to the Bonds by and between the City and the Purchaser.

“Business Day” means any day other than a Saturday or Sunday or legal holiday or a day on which banks located in the city in which the principal corporate trust office or the principal payment office of the Trustee are required or authorized by law to remain closed.

“City” means the City of Springfield, Missouri, a constitutional home rule charter city and a municipal corporation organized and existing under the laws of the State of Missouri, and its successors and assigns.

“Closing Date” means the date identified in the Bond Purchase Agreement for the initial issuance and delivery of the Bonds.

“Closing Price” means the amount specified in writing by the Purchaser and agreed to by the City as the amount required to pay for the initial issuance of the Bonds on the Closing Date, which amount shall be equal to any Project Costs spent by the Company from its own funds before the Closing Date, including costs of issuance.

“Company” means Kraft Heinz Foods Company, a Pennsylvania corporation, and its successors or assigns.

“Completion Date” means the dates of execution of the certificates with respect to each component portion of the Project and the date of execution of the certificate with respect to the entire Project required by **Section 4.5** of the Lease and **Section 504** of this Indenture and filed with the Trustee.

“Costs of Issuance Fund” means the “City of Springfield, Missouri, Costs of Issuance Fund -- Kraft Heinz Foods Company” created in **Section 501** of this Indenture.

“Cumulative Outstanding Principal Amount” means the aggregate principal amount of all Series 2016 Bonds outstanding under the provisions of this Indenture, not to exceed \$36,000,000, and any Additional Bonds issued hereunder, as reflected in the records maintained by the Trustee as provided in the Bonds and this Indenture.

“Event of Default” means, with respect to this Indenture, any Event of Default as defined in **Section 901** hereof and, with respect to the Lease, any Event of Default as described in **Section 12.1** of the Lease.

“Government Securities” means direct obligations of, or obligations the payment of principal of and interest on which are unconditionally guaranteed by, the United States of America.

“Indenture” means this Trust Indenture, as from time to time amended and supplemented by Supplemental Indentures in accordance with the provisions of **Article XI** hereof.

“Investment Securities” means any of the following securities:

(a) Government Securities;

(b) obligations of Fannie Mae, the Government National Mortgage Association, the Federal Financing Bank, the Federal Intermediate Credit Corporation, Federal Banks for Cooperatives, Federal Land Banks, Federal Home Loan Banks, Farmers Home Administration and Federal Home Loan Mortgage Corporation;

(c) direct and general obligations of any state of the United States of America, to the payment of the principal of and interest on which the full faith and credit of such state is pledged, provided that at the time of their purchase under this Indenture such obligations are rated in either of the two highest rating categories by a nationally-recognized bond rating agency;

(d) certificates of deposit, whether negotiable or nonnegotiable, issued by any bank or trust company organized under the laws of any state of the United States of America or any national banking association (including the Trustee or any of its affiliates), provided that such certificates of deposit shall be either (1) continuously and fully insured by the Federal Deposit Insurance Corporation, or (2) continuously and fully secured by such securities as are described above in clauses (a) through (c), inclusive, which shall have a market value at all times at least equal to the principal amount of such certificates of deposit and shall be deposited with the Trustee or a custodian bank, trust company or national banking association. The bank, trust company or national banking association holding each such certificate of deposit required to be so secured shall furnish the Trustee written evidence satisfactory to it that the aggregate market value of all such obligations securing each such certificate of deposit will at all times be an amount at least equal to the principal amount of each such certificate of deposit and the Trustee shall be entitled to rely on each such undertaking;

(e) shares of a fund registered under the Investment Company Act of 1940, as amended, whose shares are registered under the Securities Act of 1933, as amended, having assets of at least \$100,000,000, and which shares, at the time of purchase, are rated by Standard & Poor's and Moody's in one of the two highest rating categories (without regard to any refinements or gradation of rating category by numerical modifier or otherwise) assigned by such rating agencies for obligations of that nature; or

(f) any other investment approved in writing by the Authorized City Representative and the Owners of all of the Outstanding Bonds.

“Lease” means the Lease Agreement dated as of April 1, 2016, between the City, as lessor, and the Company, as lessee, as from time to time amended and supplemented by Supplemental Leases in accordance with the provisions thereof and of **Article XII** of this Indenture.

“Lease Term” means the period from the effective date of the Lease until the expiration thereof pursuant to **Section 3.2** of the Lease.

“Leasehold Mortgage” means any leasehold mortgage, leasehold deed of trust, assignment of rents and leases, security agreement or other agreement relating to the Project permitted pursuant to the provisions of **Section 10.4** of the Lease.

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

(a) Bonds theretofore cancelled by the Trustee or delivered to the Trustee for cancellation;

(b) Bonds deemed to be paid in accordance with the provisions of **Section 1302** hereof; and

(c) Bonds in exchange for, or in lieu of other Bonds, which other Bonds have been authenticated and delivered pursuant to this Indenture.

“Owner” or **“Bondowner”** means the registered owner of any Bond as recorded on the bond registration records maintained by the Trustee.

“Paying Agent” means the Trustee and any other bank or trust company designated by this Indenture as paying agent for the Bonds at which the principal of or interest on the Bonds shall be payable.

“Payment Date” means the date on which principal of or interest on any Bond is payable, which shall be December 1 of each year that the Bonds are Outstanding.

“Performance Agreement” means the Performance Agreement dated as of April 1, 2016, between the City and the Company, as amended and supplemented from time to time.

“Person” means an individual, partnership, corporation, business trust, joint stock company, limited liability company, bank, insurance company, unincorporated association, joint venture or other entity of whatever nature.

“Plans and Specifications” means the plans and specifications prepared for and showing the Project, as amended by the Company from time to time before the Completion Date, the same being on file at the office of the Company and which shall be available for reasonable inspection during normal business hours and upon not less than one Business Day’s prior notice by the City, the Trustee and their duly appointed representatives.

“Project” means the project referred to in the recitals of this Indenture, located on the Project Site, such project including the Project Equipment, and all additions, modifications, improvements, replacements and substitutions made to the Project pursuant to the Lease as they may at any time exist.

“Project Costs” means all costs of acquisition and installation of the Project including the following:

- (a) all costs and expenses necessary or incident to the acquisition and installation of the Project Equipment on the Project Site, which the Company conveys to the City;
- (b) fees and expenses of architects, appraisers, surveyors and engineers for estimates, surveys, soil borings and soil tests and other preliminary investigations and items necessary to the commencement of installation, preparation of plans, drawings and specifications and supervision of installation, as well as for the performance of all other duties of professionals and consultants in relation to the acquisition and installation of the Project or the issuance of the Bonds;
- (c) all costs and expenses of every nature incurred in purchasing and installing the Project Equipment, including the actual cost of labor and materials, machinery, furnishings and equipment as payable to contractors, builders and materialmen in connection with the acquisition and installation of the Project, but excluding any real property improvements;
- (d) interest accruing on the Bonds during the acquisition and installation period of the Project;
- (e) reasonable expenses of administration, supervision and inspection properly chargeable to the Project, legal fees and expenses, fees and expenses of accountants and other consultants, publication and printing expenses, and initial fees and expenses of the Trustee to the

extent that said fees and expenses are necessary or incident to the issuance and sale of the Bonds or the acquisition and installation of the Project;

(f) all other items of expense not elsewhere specified in this definition as may be necessary or incident to: (1) the authorization, issuance and sale of the Bonds, including costs of issuance of the Bonds; (2) the acquisition and installation of the Project; and (3) the financing thereof; and

(g) reimbursement to the Company or those acting for it for any of the above enumerated costs and expenses incurred and paid by them before or after the execution of the Lease.

“Project Equipment” means all items of equipment or other personal property acquired or installed on the Project Site pursuant to **Article IV** of the Lease and paid for, or reimbursed, in whole or in part from the proceeds of Bonds, as described in **Exhibit B** attached hereto and by this reference made a part hereof, and all replacements thereof and substitutions therefor which, pursuant to **Section 8.2** of the Lease, constitute part of the Project Equipment.

“Project Fund” means the “City of Springfield, Missouri, Project Fund -- Kraft Heinz Foods Company” created in **Section 501** of this Indenture.

“Project Site” means all of the real estate as described in **Exhibit A** attached hereto and by this reference made a part hereof.

“Purchaser” means the entity identified in the Bond Purchase Agreement as the purchaser of the Bonds, and its successors or assigns.

“State” means the State of Missouri.

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

“Supplemental Lease” means any supplement or amendment to the Lease entered into pursuant to **Article XII** hereof.

“Trust Estate” means the Trust Estate described in the Granting Clauses of this Indenture.

“Trustee” means BOKF, N.A., in the City of Kansas City, Missouri, a national banking association organized and existing under the laws of the United States of America, and its successor or successors and any other corporation which at the time may be substituted in its place pursuant to and at the time serving as Trustee under this Indenture.

Section 102. Rules of Interpretation.

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

(b) Wherever in this Indenture it is provided that either party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so

expressed, be construed as an express covenant to make such payment or to perform, or not to perform, as the case may be, such act or obligation.

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

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

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

ARTICLE II

THE BONDS

Section 201. Title and Amount of Bonds. No Bonds may be issued under this Indenture except in accordance with the provisions of this Article. The Bonds authorized to be issued under this Indenture shall be designated as “City of Springfield, Missouri, Taxable Industrial Development Revenue Bonds (Kraft Heinz Foods Company Project), Series 2016.” The maximum total principal amount of Bonds that may be issued hereunder is hereby expressly limited to \$36,000,000 in one or more series of Bonds (except that such maximum total principal amount may be increased in connection with the issuance of Additional Bonds).

Section 202. Nature of Obligation. The Bonds and the interest thereon shall be special obligations of the City payable solely out of the rents, revenues and receipts derived by the City from the Project and the Lease, and not from any other fund or source of the City. The Bonds are secured by a pledge and assignment of the Trust Estate to the Trustee in favor of the Owners, as provided in this Indenture. The Bonds and the interest thereon shall not constitute general obligations of the City, the State or any political subdivision thereof, and neither the City, the State or related political subdivision thereof shall be liable thereon, and the Bonds shall not constitute an indebtedness within the meaning of any constitutional, charter or statutory debt limitation or restriction, and are not payable in any manner by taxation.

Section 203. Denomination, Number and Dating of the Bonds.

(a) The Bonds shall be issuable in the form of one fully-registered Bond, in substantially the form set forth in **Exhibit C** hereto, in the denomination of \$0.01 or any multiple thereof.

(b) The Bonds shall be dated by the Trustee as of the date of initial delivery thereof as provided herein. If the Bonds are at any time thereafter transferred, any replacement Bonds shall be dated as of the date of authentication thereof.

Section 204. Method and Place of Payment of Bonds.

(a) The principal of and interest on the Bonds shall be payable in any coin or currency of the United States of America which on the respective dates of payment thereof is legal tender for payment of public and private debts.

(b) Payment of the principal of the Bonds shall be made upon the presentation and surrender of such Bonds at the principal payment office of any Paying Agent named in the Bonds. The payment of principal on the Bonds shall be noted on the Bonds on **Schedule I** thereto and the registration books maintained by the Trustee pursuant to **Section 206**. Payment of the interest on the Bonds shall be made by the Trustee on each Payment Date to the Person appearing on the registration books of the Trustee hereinafter provided for as the Owner thereof on the fifteenth day (whether or not a Business Day) of the calendar month next preceding such Payment Date by check or draft mailed to such Owner at such Owner's address as it appears on such registration books.

In accordance with **Section 5.1** of the Lease, provided that the Purchaser, or any other affiliate of the Company, is the sole holder(s) of the Bonds, the Company shall set-off the then-current Basic Rent payment against the City's obligation to the Company as Bondholder(s) under this Indenture in lieu of delivery of the Basic Rent on any Payment Date, without providing notice of such set-off to the Trustee. The Trustee may conclusively rely on the absence of any notice from the Company to the contrary as evidence that such set-off has occurred. At its option, on the final Payment Date, the Company may deliver to the Trustee for cancellation Bonds not previously paid and the Company shall receive a credit against the Basic Rent payable by the Company in an amount equal to the principal amount of the Bonds so tendered for cancellation plus accrued interest thereon. Notwithstanding anything contained in this Indenture, the Lease, the Bond Purchase Agreement or the Performance Agreement to the contrary, if the Purchaser, or any other affiliate of the Company, is the Owner of all of the Bonds Outstanding, payments of principal and interest on the Bonds may be made via a transaction entry on the trust records held by the Trustee and the Paying Agent without requiring the Company to wire or otherwise transfer any moneys to such Owner.

(c) The Bonds and the original **Schedule I** thereto shall be held by the Trustee in trust, unless otherwise directed in writing by the Owner. If the Bonds are held by the Trustee, the Trustee shall, on each Payment Date, send a revised copy of **Schedule I** via facsimile or other electronic means to the Owner, the Company (if not the Owner) and the City. Absent manifest error, the amounts shown on **Schedule I** as noted by the Trustee shall be conclusive evidence of the principal amount paid on the Bonds.

(d) If there is one Owner of the Bonds, the Trustee is authorized to make the final or any interim payments of principal on such Bonds by internal bank transfer or by electronic transfer to an account at a commercial bank or savings institution designated in writing by such Owner and located in the continental United States. The Trustee is also authorized to make interest payments on such Bonds by internal bank transfer or by electronic transfer to an account at a commercial bank or savings institution designated by such Owner and located in the continental United States.

Section 205. Execution and Authentication of Bonds.

(a) The Bonds shall be executed on behalf of the City by the manual or facsimile signature of its Mayor and attested by the manual or facsimile signature of the City Clerk, and shall have the corporate seal of the City affixed thereto or imprinted thereon. If any officer whose signature or facsimile thereof appears on the Bonds ceases to be such officer before the delivery of such Bond, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if such Person had

remained in office until delivery. Any Bond may be signed by such Persons as at the actual time of the execution of such Bond are the proper officers to sign such Bond although at the date of such Bond such Persons may not have been such officers.

(b) The Bonds shall have endorsed thereon a Certificate of Authentication substantially in the form set forth in **Exhibit C** hereof, which shall be manually executed by the Trustee. No Bond shall be entitled to any security or benefit under this Indenture or shall be valid or obligatory for any purposes until such Certificate of Authentication has been duly executed by the Trustee. The executed Certificate of Authentication upon any Bond shall be conclusive evidence that such Bond has been duly authenticated and delivered under this Indenture. The Certificate of Authentication on any Bond shall be deemed to have been duly executed if signed by any authorized signatory of the Trustee.

Section 206. Registration, Transfer and Exchange of Bonds.

(a) The Trustee shall keep books for the registration and for the transfer of Bonds as provided in this Indenture.

(b) The Bonds may be transferred only upon the books kept for the registration and transfer of Bonds upon surrender thereof to the Trustee duly endorsed for transfer or accompanied by an assignment duly executed by the Owner or such Owner's attorney or legal representative in such form as shall be satisfactory to the Trustee. In connection with any such transfer of the Bonds, the City and the Trustee shall receive an executed representation letter signed by the proposed assignee in substantially the form of **Exhibit D** hereto. Upon any such transfer, the City shall execute and the Trustee shall authenticate and deliver in exchange for such Bond a new fully registered Bond or Bonds, registered in the name of the transferee, of any denomination or denominations authorized by this Indenture, in an aggregate principal amount equal to the outstanding principal amount of such Bond, of the same maturity and bearing interest at the same rate.

(c) In all cases in which Bonds are exchanged or transferred hereunder the provisions of any legend restrictions on the Bonds shall be complied with and the City shall execute and the Trustee shall authenticate and deliver at the earliest practicable time Bonds in accordance with the provisions of this Indenture. All Bonds surrendered in any such exchange or transfer shall forthwith be cancelled by the Trustee. The City or the Trustee may make a reasonable charge for every such exchange or transfer of Bonds sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer, and such charge shall be paid before any such new Bond shall be delivered. Neither the City nor the Trustee shall be required to make any such exchange or transfer of Bonds during the 15 days immediately preceding a Payment Date on the Bonds or, in the case of any proposed redemption of Bonds, during the 15 days immediately preceding the selection of Bonds for such redemption or after such Bonds or any portion thereof has been selected for redemption.

(d) If any Owner fails to provide a certified taxpayer identification number to the Trustee, the Trustee may make a charge against such Owner sufficient to pay any governmental charge required to be paid as a result of such failure, which amount may be deducted by the Trustee from amounts otherwise payable to such Owner under such Owner's Bond.

Section 207. Persons Deemed Owners of Bonds. As to any Bond, the Person in whose name the same is registered as shown on the bond registration books required by **Section 206** hereof shall be deemed and regarded as the absolute owner thereof for all purposes. Payment of or on account of the principal of and interest on any such Bond shall be made only to or upon the order of the Owner thereof or a legal representative thereof. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond, including the interest thereon, to the extent of the sum or sums so paid.

Section 208. Authorization of the Series 2016 Bonds.

(a) The Series 2016 Bonds are authorized for the purpose of providing funds to pay a portion of the costs of the Project. The Series 2016 Bonds shall be dated as provided in **Section 203(b)** hereof, shall become due on December 1, 20[[26]] (subject to prior redemption as provided in **Article III**) and shall bear interest as specified in **Section 208(f)** hereof, payable on the dates specified in **Section 208(f)** hereof.

(b) The Trustee is hereby designated as the Paying Agent. The Owners of a majority of Bonds then Outstanding may designate a different Paying Agent upon written notice to the City and the Trustee.

(c) The Bonds shall be executed without material variance from the form and in the manner set forth in **Exhibit C** hereto and delivered to the Trustee for authentication. Prior to or simultaneously with the authentication and delivery of the Series 2016 Bonds by the Trustee, there shall be filed with the Trustee the following:

(1) An original or certified copy of the Ordinance passed by the City Council authorizing the issuance of the Series 2016 Bonds and the execution of this Indenture, the Performance Agreement, the Bond Purchase Agreement and the Lease;

(2) Original executed counterparts of this Indenture, the Lease, the Performance Agreement and the Bond Purchase Agreement;

(3) A representation letter from the Purchaser in substantially the form attached as **Exhibit D** hereto;

(4) A request and authorization to the Trustee on behalf of the City, executed by the Authorized City Representative, to authenticate the Series 2016 Bonds and deliver the same to the Purchaser upon payment, for the account of the City, of the purchase price thereof specified in the Bond Purchase Agreement. The Trustee shall be entitled to conclusively rely upon such request and authorization as to names of the purchaser and the amount of such purchase price;

(5) An opinion of counsel nationally recognized on the subject of municipal bonds to the effect that the Series 2016 Bonds constitute valid and legally binding limited and special revenue obligations of the City; and

(6) Such other certificates, statements, receipts, opinions and documents as the Trustee shall reasonably require for the delivery of the Series 2016 Bonds.

(d) When the documents specified in subsection (c) of this Section have been filed with the Trustee, and when the Series 2016 Bonds have been executed and authenticated as required by this Indenture, either:

(1) The Purchaser shall pay the Closing Price to the Trustee, and the Trustee shall endorse the Series 2016 Bonds in an amount equal to the Closing Price and then pursuant to **Section 204(c)** hereof either hold the Series 2016 Bonds in trust or if so directed in writing deliver the Series 2016 Bonds to or upon the order of the Purchaser; or

(2) The Company shall submit a requisition certificate in accordance with **Section 4.4** of the Lease, in an amount equal to the Closing Price, and the Trustee shall

authenticate and endorse the Series 2016 Bonds in an amount equal to the Closing Price and then pursuant to **Section 204(c)** hereof either hold the Series 2016 Bonds in trust for the Owners or if so directed in writing deliver the Series 2016 Bonds to the Owners (or another purchaser or assignee designated by the Owners).

In either case, the Purchaser shall be deemed to have paid over to the Trustee, and the Trustee shall be deemed to have deposited into the Project Fund, an amount equal or up to the Closing Price.

(e) Following the initial issuance and delivery of the Series 2016 Bonds, the Company may submit additional requisition certificates in accordance with **Section 4.4** of the Lease, and the Trustee shall, based solely on the amount set forth in the requisition, endorse the Bonds in an amount equal to the amount set forth in each requisition certificate. The date of endorsement of each Principal Amount Advanced (as defined in subsection (g) below) as set forth on **Schedule I** to the Series 2016 Bonds shall be the date of the City's approval of each requisition certificate. The Trustee shall keep a record of the total requisitions submitted, and shall notify the City if the requisitions submitted exceed the maximum Cumulative Outstanding Principal Amount of the Bonds permitted hereunder.

(f) The Series 2016 Bonds shall bear interest at the rate of [[6.00]]% per annum on the Cumulative Outstanding Principal Amount of the Series 2016 Bonds. Such interest shall be payable in arrears on each December 1, commencing on December 1, 2017, and continuing thereafter until the Cumulative Outstanding Principal Amount is paid in full; provided that the aggregate maximum principal amount shall not exceed \$36,000,000 (except as such amount may be increased in connection with the issuance of Additional Bonds) and further provided that the Bonds shall be paid in full no later than December 1, 20[[26]]. Interest shall be calculated on the basis of a year of 360 days consisting of twelve months of 30 days each.

(g) The Trustee shall keep and maintain a record of the amount deposited into the Project Fund pursuant to the terms of this Indenture as "Principal Amount Advanced" and shall enter the aggregate principal amount of the Bonds then Outstanding on its records as the "Cumulative Outstanding Principal Amount." On each date upon which a portion of the Cumulative Outstanding Principal Amount is paid to the Owners, pursuant to the redemption provisions of this Indenture, the Trustee shall enter on its records the principal amount paid on the Bonds as "Principal Amount Redeemed," and shall enter the then Outstanding principal amount of the Bonds as "Cumulative Outstanding Principal Amount." The records maintained by the Trustee as to amounts deposited into the Project Fund or principal amounts paid on the Bonds shall be the official records of the Cumulative Outstanding Principal Amount for all purposes and shall be in substantially the form of the Table of Cumulative Outstanding Principal Amount as set out in the form of Bonds in **Exhibit C** hereto. If any moneys are deposited by the Trustee into the Project Fund, then the Trustee shall provide a statement of receipts and disbursements with respect thereto to the City and the Company on a monthly basis. After the Project has been completed and the certificate of payment of all costs is filed as provided in **Section 504** hereof, the Trustee, to the extent it has not already done so pursuant to this Section or **Section 1012** hereof, shall file a final statement of receipts and disbursements with respect thereto with the City and the Company.

Section 209. Authorization of Additional Bonds.

(a) Additional Bonds may be issued under and equally and ratably secured by this Indenture on a parity (except as otherwise provided in this Section) with the Bonds and any other Additional Bonds at any time and from time to time, upon compliance with the conditions set forth in this Section for any of the following purposes: (1) to provide funds to pay the costs of completing the Project, the total of such costs to be evidenced by a certificate signed by an Authorized Company Representative, (2) to provide funds to pay all or any part of the costs of repairing, replacing or restoring the Project in the event of

damage, destruction or condemnation thereto or thereof, (3) to provide funds to pay all or any part of the costs of the acquisition, construction or installation of such additions to the Project (buildings or equipment) as the Company may deem necessary or desirable and as will not impair the nature of the Project as a “project” within the meaning and purposes of the Act, and (4) to provide funds for refunding all or any part of the Bonds of any series then Outstanding, including the payment of any premium thereon and interest to accrue to the designated redemption date and any expenses in connection with such refunding.

(b) Before any Additional Bonds are issued under the provisions of this Section, the City shall pass an ordinance (a) authorizing the issuance of such Additional Bonds, fixing the principal amount thereof and describing the purpose or purposes for which such Additional Bonds are being issued, (b) authorizing the City to enter into a Supplemental Indenture for the purpose of issuing such Additional Bonds and establishing the terms and provisions of such series of Bonds and the form of the bonds of such series, (c) authorizing the City to enter into a Supplemental Lease Agreement with the Company to provide for lease payments at least sufficient to pay the principal of, redemption premium, if any, and interest on the Bonds and Additional Bonds then to be Outstanding (including the Additional Bonds to be issued) as the same become due, and to extend the term of the Lease if the maturity of any of the Additional Bonds would otherwise occur after the expiration of the term of the Lease, (d) authorizing the City to enter into a supplemental performance agreement with the Company to provide for payments in lieu of taxes with respect to the property being financed by the Additional Bonds, and (e) providing for such other matters as are appropriate because of the issuance of the Additional Bonds, which matters, in the judgment of the City, are not prejudicial to the City or the owners of the Bonds previously issued.

(c) Such Additional Bonds shall have the same general title as the Bonds, except for an identifying series letter or date, shall be dated, shall mature on such dates, shall be in such denominations, shall be numbered, shall bear interest at such rates not exceeding the maximum rate then permitted by law payable at such times, and shall be redeemable at such times and prices (subject to the provisions of **Article III** of this Indenture), all as provided by the Supplemental Indenture authorizing the issuance of such Additional Bonds. Except as to any difference in the date, the maturities, denominations, the rates of interest or the provisions for redemption, such Additional Bonds shall be on a parity with and shall be entitled to the same benefit and security of this Indenture as the Bonds and any other Additional Bonds.

(d) Such Additional Bonds shall be executed in the manner set forth in **Section 205** hereof and shall be deposited with the Trustee for authentication, but prior to or simultaneously with the authentication and delivery of such Additional Bonds by the Trustee, and as a condition precedent thereto, there shall be filed with the Trustee the following:

(1) An original or certified copy of the ordinance passed by the City Council authorizing the issuance of such Additional Bonds and the execution of the Supplemental Indenture, Supplemental Lease, a supplement to the Performance Agreement and supplements to any other documents as may be necessary;

(2) Original executed counterparts of the Supplemental Indenture, the Supplemental Lease Agreement and a supplement to the Performance Agreement;

(3) A representation letter from the Purchaser in substantially the form attached as **Exhibit D** hereto;

(4) A request and authorization to the Trustee on behalf of the City, executed by the Authorized City Representative, to authenticate the Additional Bonds and deliver the same to the Purchaser upon payment, for the account of the City, of the purchase price thereof specified in the

bond purchase agreement executed in connection with the purchase of the Additional Bonds. The Trustee shall be entitled to conclusively rely upon such request and authorization as to names of the purchaser and the amount of such purchase price;

(5) An opinion of counsel nationally recognized on the subject of municipal bonds to the effect that the Additional Bonds constitute valid and legally binding limited and special revenue obligations of the City; and

(6) Such other certificates, statements, receipts, opinions and documents as the Trustee shall reasonably require for the delivery of the Additional Bonds.

When the documents specified in this subsection have been filed with the Trustee, and when the Additional Bonds have been executed and authenticated as required by this Indenture, either:

(1) The Purchaser shall pay the purchase price to the Trustee, and the Trustee shall endorse the Additional Bonds in an amount equal to the purchase price and then either hold the Additional Bonds in trust or if so directed in writing deliver the Additional Bonds to or upon the order of the Purchaser; or

(2) The Company shall submit a requisition certificate in accordance with **Section 4.4** of the Lease, in an amount equal to the purchase price of the Additional Bonds, and the Trustee shall authenticate and endorse the Additional Bonds in an amount equal to the purchase price and pursuant to **Section 204(c)** hereof either hold the Additional Bonds in trust for the Purchaser or if so directed in writing deliver the Bonds to the Purchaser (or another purchaser or assignee designated by the Purchaser).

In either case, the Purchaser shall be deemed to have paid over to the Trustee, and the Trustee shall be deemed to have deposited an amount equal or up to the purchase price of any Additional Bonds.

(e) When the documents specified above have been filed with the Trustee, and when such Additional Bonds have been executed and authenticated as required by this Indenture, the Trustee shall deliver such Additional Bonds to or upon the order of the Purchaser thereof, but only upon payment to the Trustee of the purchase price of such Additional Bonds. The proceeds of the sale of such Additional Bonds (except Additional Bonds issued to refund Outstanding Bonds), including accrued interest and premium thereon, if any, shall be immediately paid over to the Trustee and shall be deposited and applied by the Trustee as provided in **Article IV** hereof and in the Supplemental Indenture authorizing the issuance of such Additional Bonds. The proceeds of all Additional Bonds issued to refund Outstanding Bonds (excluding accrued interest and premium, if any, which shall be deposited in a separate account in the Bond Fund) shall be deposited by the Trustee, after payment or making provision for payment of all expenses incident to such financing, to the credit of a special trust fund, appropriately designated, to be held in trust for the sole and exclusive purpose of paying the principal of, premium, if any, and interest on the Bonds to be refunded, as provided in **Section 1101** hereof and in the Supplemental Indenture authorizing the issuance of such refunding Bonds.

Section 210. Mutilated, Lost, Stolen or Destroyed Bonds. If any Bond becomes mutilated, or is lost, stolen or destroyed, the City shall execute and the Trustee shall authenticate and deliver a new Bond of like series, date and tenor as the Bond mutilated, lost, stolen or destroyed; provided that, in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee, and in the case of any lost, stolen or destroyed Bond, there shall be first furnished to the City and the Trustee evidence of such loss, theft or destruction satisfactory to the Trustee, together with indemnity satisfactory to the Trustee to save each of the City and the Trustee harmless. If any such Bond has matured, instead of

delivering a substitute Bond, the Trustee may pay the same without surrender thereof. Upon the issuance of any substitute Bond, the City and the Trustee may require the payment of an amount sufficient to reimburse the City and the Trustee for any tax or other governmental charge that may be imposed in relation thereto and any other reasonable fees and expenses incurred in connection therewith.

Section 211. Cancellation and Destruction of Bonds Upon Payment.

(a) All Bonds which have been paid or redeemed or which the Trustee has purchased or which have otherwise been surrendered to the Trustee under this Indenture, either at or before maturity shall be cancelled by the Trustee immediately upon the payment, redemption or purchase of such Bonds and the surrender thereof to the Trustee.

(b) All Bonds cancelled under any of the provisions of this Indenture shall be destroyed by the Trustee. The Trustee shall execute a certificate describing the Bonds so destroyed, and shall file executed counterparts of such certificate with the City and the Company.

ARTICLE III

REDEMPTION OF BONDS

Section 301. Redemption of Bonds.

(a) The Bonds are subject to redemption and payment at any time before the stated maturity thereof, at the option of the Company, on behalf of the City, and upon written instructions from the Company, (1) in whole, if the Company exercises its option to purchase the Project and deposits an amount sufficient to effect such purchase pursuant to the Lease on the applicable redemption date, or (2) in part, if the Company prepays additional Basic Rent pursuant to the Lease. If only a portion of the Bonds are to be redeemed, (1) Bonds aggregating 10% of the maximum aggregate principal amount of Bonds authorized hereunder shall not be subject to redemption and payment before the stated maturity thereof, and (2) the Trustee shall keep a record of the amount of Bonds to remain Outstanding following such redemption. Any redemption of Bonds pursuant to this paragraph shall be at a redemption price equal to the par value thereof being redeemed, plus accrued interest thereon, without premium or penalty, to the redemption date. Any redemption and payment of the Bonds shall account for any permitted set-off as set forth in **Section 5.1** of the Lease.

(b) The Bonds are subject to mandatory redemption, in whole or in part, to the extent of amounts deposited in the Bond Fund pursuant to **Sections 9.1(a)** or **9.2(c)** of the Lease, in the event of substantial damage to or destruction or condemnation of substantially all of the Project. Bonds to be redeemed pursuant to this paragraph shall be called for redemption by the Trustee on the earliest practicable date for which timely notice of redemption may be given as provided hereunder. Any redemption of Bonds pursuant to this paragraph shall be at a redemption price equal to the par value thereof being redeemed, plus accrued interest thereon, without premium or penalty, to the redemption date. Before giving notice of redemption to the Owners pursuant to this paragraph (b), money in an amount equal to the redemption price shall have been deposited in the Bond Fund.

(c) At its option, the Company, in its capacity as Owner of the Bonds, may deliver to the Trustee for cancellation any Bonds owned by the Company and not previously paid, and the Company, in its capacity as lessee under the Lease, shall receive a credit against the amounts payable by the Company for the redemption of such Bonds in an amount equal to the principal amount of the Bonds so tendered for cancellation, plus accrued interest.

Section 302. Effect of Call for Redemption. Before or on the date fixed for redemption, funds, Government Securities, or a combination thereof, shall be placed with the Trustee which are sufficient to pay the Bonds called for redemption and accrued interest thereon, if any, to the redemption date. Upon the happening of the above conditions and appropriate written notice having been given, the Bonds or the portions of the principal amount of Bonds thus called for redemption shall cease to bear interest on the specified redemption date, and shall no longer be entitled to the protection, benefit or security of this Indenture and shall not be deemed to be Outstanding under the provisions of this Indenture. If the Bonds are fully redeemed before maturity and an amount of money equal to the Trustee's and the Paying Agent's agreed to fees and expenses hereunder accrued and to accrue in connection with such redemption is paid or provided for, the City shall, at the Company's direction, deliver to the Company the items described in **Section 11.2** of the Lease.

Section 303. Notice of Redemption. If the Bonds are to be called for redemption as provided in **Section 301(a)** hereof, the Company shall deliver written notice to the City and the Trustee that it has elected to direct the City to redeem all or a portion of the Bonds at least 40 days (10 days if the Company is the Owner) prior to the scheduled redemption date. The Trustee shall then deliver written notice to the Owners at least 30 days (five days if the Company is the Owner) prior to the scheduled redemption date by facsimile and by first-class mail stating the date upon which the Bonds will be redeemed and paid, unless such notice period is waived by the Owners in writing.

ARTICLE IV

FORM OF BONDS

Section 401. Form Generally. The Bonds and the Trustee's Certificate of Authentication to be endorsed thereon shall be issued in substantially the forms set forth in **Exhibit C**. The Bonds may have endorsed thereon such legends or text as may be necessary or appropriate to conform to any applicable rules and regulations of any governmental authority or any custom, usage or requirements of law with respect thereto.

ARTICLE V

CUSTODY AND APPLICATION OF BOND PROCEEDS

Section 501. Creation of Funds. There are hereby created and ordered to be established in the custody of the Trustee the following separate special trust funds in the name of the City:

- (a) "City of Springfield, Missouri, Project Fund -- Kraft Heinz Foods Company" (herein called the "Project Fund"); and
- (b) "City of Springfield, Missouri, Costs of Issuance Fund -- Kraft Heinz Foods Company" (herein called the "Costs of Issuance Fund").

Upon the issuance of a series of Additional Bonds, if any, the Trustee shall create separate special trust funds similar to those set forth above for said series of Additional Bonds.

Section 502. Deposits into the Project Fund. The proceeds of the sale of the Bonds (whether actually paid or deemed paid under **Section 208(d)** and **(e)** or **Section 209(d)** hereof), including Additional Payments provided for in the Bond Purchase Agreement, when received, excluding such

amounts required to be paid into the Bond Fund pursuant to **Section 602** hereof, shall be deposited by the Trustee into the Project Fund. Any money received by the Trustee from any other source for the purpose of purchasing and installing the Project shall pursuant to any directions from the Person depositing such moneys also be deposited into the Project Fund.

Section 503. Disbursements from the Project Fund.

(a) The moneys in the Project Fund shall be disbursed by the Trustee for the payment of, or reimbursement to the Company (or any other party that has made payment on behalf of the Company) for payment of, Project Costs upon receipt of requisition certificates signed by the Company in accordance with the provisions of **Article IV** of the Lease. The Trustee hereby covenants and agrees to disburse such moneys in accordance with such provisions.

(b) If, pursuant to **Section 208(d)**, the Trustee is deemed to have deposited into the Project Fund the amount specified in the requisition certificates submitted by the Company, the Trustee shall upon endorsement of the Bonds in an equal amount be deemed to have disbursed such funds from the Project Fund to the Company (or such other purchaser designated by the Company) in satisfaction of the requisition certificate.

(c) In paying any requisition under this Section, the Trustee may rely as to the completeness and accuracy of all statements in such requisition certificate if such requisition certificate is signed by the Authorized Company Representative. If the City so requests in writing, a copy of each requisition certificate submitted to the Trustee for payment under this Section shall be promptly provided by the Trustee to the City. The City hereby authorizes and directs the Trustee to make disbursements in the manner and as provided for by the aforesaid provisions of the Lease.

Section 504. Completion of the Project. The completion of the Project and all costs and expenses incident thereto shall be evidenced by the filing with the Trustee of the certificate required by the provisions of **Section 4.5** of the Lease. As soon as practicable any balance remaining in the Project Fund shall without further authorization be transferred to and deposited in the Bond Fund and applied as provided in **Section 4.6** of the Lease.

Section 505. Deposits into and Disbursements from the Costs of Issuance Fund. Money deposited by the Company in the Costs of Issuance Fund shall be used solely to pay costs of issuing the Bonds or refunded to the Company as hereinafter provided. The Trustee shall without further authorization disburse from the Costs of Issuance Fund, to the extent available, money sufficient to pay the amounts shown in a closing memorandum provided to the Trustee on or before the date of delivery of the Bonds, which shall have attached thereto the statements, invoices and related items described in said closing memorandum. The Trustee may rely conclusively on the amounts due as shown in the closing memorandum and will not be required to make any independent inspection or investigation in connection therewith. Any of such money not used to pay costs of issuance by November 1, 2016 shall be refunded to the Company.

Section 506. Disposition Upon Acceleration. If the principal of the Bonds has become due and payable pursuant to **Section 902** hereof, upon the date of payment by the Trustee of any moneys due as hereinafter provided in **Article IX**, any balance remaining in the Project Fund shall without further authorization be deposited in the Bond Fund by the Trustee, with advice to the City and to the Company of such action.

ARTICLE VI

REVENUES AND FUNDS

Section 601. Creation of the Bond Fund. There is hereby created and ordered established in the custody of the Trustee a special trust fund in the name of the City to be designated the “City of Springfield, Missouri, Bond Fund -- Kraft Heinz Foods Company, Series 2016” (herein called the “Bond Fund”).

Section 602. Deposits Into the Bond Fund. The Trustee shall deposit into the Bond Fund, as and when received, (a) all accrued interest on the Bonds, if any, paid by the Purchaser; (b) all Basic Rent payable by the Company to the City specified in **Section 5.1** of the Lease; (c) any Additional Rent payable by the Company specified in **Section 5.2** of the Lease; (d) any amount in the Project Fund to be transferred to the Bond Fund pursuant to **Section 504** hereof upon completion of the Project or pursuant to **Section 505** hereof upon acceleration of the Bonds; (e) the balance of any Net Proceeds (as defined in the Lease) of condemnation awards or insurance received by the Trustee pursuant to **Article IX** of the Lease; (f) the amounts to be deposited in the Bond Fund pursuant to **Sections 9.1(a)** or **(d)** and **9.2(c)** of the Lease; (g) all interest and other income derived from investments of Bond Fund moneys as provided in **Section 702** hereof; and (h) all other moneys received by the Trustee under and pursuant to any of the provisions of the Lease when accompanied by directions from the Person depositing such moneys that such moneys are to be paid into the Bond Fund.

Unless the Company is exercising its right of offset pursuant to **Section 5.1** of the Lease, the Trustee shall notify the Company in writing, at least 15 days prior to each date on which a payment is due under **Section 5.1** of the Lease, of the amount that is payable by the Company pursuant to such Section.

Section 603. Application of Moneys in the Bond Fund.

(a) Except as provided in **Section 605** and **Section 908** hereof or in **Section 4.6(a)** of the Lease, moneys in the Bond Fund shall be expended solely for the payment of the principal of and the interest on the Bonds as the same mature and become due or upon the redemption thereof prior to maturity; provided, however, that any amounts received by the Trustee as Additional Rent under **Section 5.2** of the Lease and deposited to the Bond Fund as provided in **Section 602** above, shall be expended by the Trustee for such items of Additional Rent as they are received or due without further authorization from the City.

(b) The City hereby authorizes and directs the Trustee to withdraw sufficient funds from the Bond Fund to pay the principal of and the interest on the Bonds as the same become due and payable and to make said funds so withdrawn available to the Paying Agent for the purpose of paying said principal and interest.

(c) Whenever the amount in the Bond Fund from any source whatsoever is sufficient to redeem all of the Bonds Outstanding and to pay interest to accrue thereon prior to such redemption, the City covenants and agrees, upon request of the Company, to take and cause to be taken the necessary steps to redeem all such Bonds on the next succeeding redemption date for which the required redemption notice may be given or on such later redemption date as may be specified by the Company. The Trustee may use any moneys in the Bond Fund to redeem a part of the Bonds Outstanding in accordance with and to the extent permitted by **Article III** hereof so long as the Company is not in default with respect to any payments under the Lease and to the extent said moneys are in excess of the amount required for payment of Bonds theretofore matured or called for redemption and past due interest, if any, in all cases when such Bonds have not been presented for payment.

(d) Notwithstanding anything contained herein or in the Lease to the contrary, if the Purchaser, or any other affiliate of the Company, is the Owner of all of the Bonds Outstanding, payments of principal and interest on the Bonds may be made via a transaction entry on the trust records held by the Trustee and the Paying Agent without requiring the Company to wire or otherwise transfer any moneys to such Owner.

Section 604. Payments Due on Days Other Than Business Days. In any case where the date of maturity of principal of or interest, if any, on the Bonds or the date fixed for redemption of any Bonds is not a Business Day, then payment of principal or interest, if any, need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest, if any, shall continue to accrue for the period after such date.

Section 605. Nonpresentment of Bonds. If any Bond is not presented for payment when the principal thereof becomes due, either at maturity or otherwise, or at the date fixed for redemption thereof, if funds sufficient to pay such Bond shall have been made available to the Trustee, all liability of the City to the Owner thereof for the payment of such Bond shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such fund or funds, without liability for interest thereon, for the benefit of the Owner of such Bond who shall thereafter be restricted exclusively to such fund or funds for any claim of whatever nature on his part under this Indenture or on, or with respect to, said Bond. If any Bond is not presented for payment within one year following the date when such Bond becomes due, whether by maturity or otherwise, the Trustee shall without liability for interest thereon repay to the Company the funds theretofore held by it for payment of such Bond, and such Bond shall, subject to the defense of any applicable statute of limitation, thereafter be an unsecured obligation of the Company, and the Owner thereof shall be entitled to look only to the Company for payment, and then only to the extent of the amount so repaid, and the Company shall not be liable for any interest thereon and shall not be regarded as a trustee of such money.

Section 606. Repayment to the Company from the Bond Fund. After payment in full of the principal of and interest on the Bonds (or provision has been made for the payment thereof as provided in this Indenture), and the reasonable fees, charges and expenses of the Trustee, the City and any Paying Agent and any other amounts required to be paid under this Indenture, the Lease and the Performance Agreement, all amounts remaining in the Bond Fund shall be paid to the Company upon the expiration or sooner termination of the Lease.

ARTICLE VII

SECURITY FOR DEPOSITS AND INVESTMENT OF FUNDS

Section 701. Moneys to be Held in Trust. All moneys deposited with or paid to the Trustee for account of the Bond Fund or the Project Fund under any provision of this Indenture, and all moneys deposited with or paid to any Paying Agent under any provision of this Indenture, shall be held by the Trustee or Paying Agent in trust and shall be applied only in accordance with the provisions of this Indenture and the Lease, and, until used or applied as herein provided, shall constitute part of the Trust Estate and be subject to the lien hereof. Neither the Trustee nor any Paying Agent shall be under any liability for interest on any moneys received hereunder except such as may be agreed upon in writing.

Section 702. Investment of Moneys in Project Fund and Bond Fund. Moneys held in the Project Fund and the Bond Fund shall, pursuant to written direction of the Company, signed by the Authorized Company Representative, be separately invested and reinvested by the Trustee in Investment

Securities which mature or are subject to redemption by the Owner prior to the date such funds will be needed. If the Company fails to provide written directions concerning investment of moneys held in the Project Fund and the Bond Fund, the Trustee is authorized to invest in such Investment Securities specified in paragraph (e) of the definition of Investment Securities, provided they mature or are subject to redemption prior to the date such funds will be needed. The Trustee is specifically authorized to implement its automated cash investment system to assure that cash on hand is invested and to charge its normal cash management fees and cash sweep account fees, which may be deducted from income earned on investments; provided that any such fees shall not exceed the interest income on the investment. Any such Investment Securities shall be held by or under the control of the Trustee and shall be deemed at all times a part of the fund in which such moneys are originally held, and the interest accruing thereon and any profit realized from such Investment Securities shall be credited to such fund, and any loss resulting from such Investment Securities shall be charged to such fund. After the Trustee has notice pursuant to **Section 1001(h)** hereof of the existence of an Event of Default, the Trustee shall direct the investment of moneys in the Bond Fund and the Project Fund. The Trustee shall sell and reduce to cash a sufficient amount of such Investment Securities whenever the cash balance in any Fund is insufficient for the purposes of such Fund. In determining the balance in any Fund, investments in such Fund shall be valued at the lower of their original cost or their fair market value as of the most recent Payment Date. The Trustee may make any and all investments permitted by the provisions of this Section through its own bond department or any affiliate or short-term investment department.

Section 703. Record Keeping. The Trustee shall maintain records designed to show compliance with the provisions of this Article and with the provisions of **Article VI** hereof for at least six years after the payment of all of the Outstanding Bonds.

ARTICLE VIII

GENERAL COVENANTS AND PROVISIONS

Section 801. Payment of Principal and Interest. The City covenants and agrees that it will, but solely from the rents, revenues and receipts derived from the Project and the Lease as described herein, deposit or cause to be deposited in the Bond Fund sufficient sums payable under the Lease promptly to meet and pay the principal of and the interest on the Bonds as they become due and payable at the place, on the dates and in the manner provided herein and in the Bonds according to the true intent and meaning thereof. Nothing herein shall be construed as requiring the City to operate the Project as a business other than as lessor or to use any funds or revenues from any source other than funds and revenues derived from the Project.

Section 802. Authority to Execute Indenture and Issue Bonds. The City covenants that it is duly authorized under the Constitution and laws of the State to execute this Indenture, to issue the Bonds and to pledge and assign the Trust Estate in the manner and to the extent herein set forth; that all action on its part for the execution and delivery of this Indenture and the issuance of the Bonds has been duly and effectively taken; that the Bonds in the hands of the Owners thereof are and will be valid and enforceable obligations of the City according to the import thereof.

Section 803. Performance of Covenants. The City covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in the Bonds and in all proceedings of its governing body pertaining thereto. The Trustee may take such action as it deems appropriate to enforce all such covenants, undertakings, stipulations and provisions of the City hereunder.

Section 804. Instruments of Further Assurance. The City covenants that it will do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, such Supplemental Indentures and such further acts, instruments, financing statements and other documents as the Trustee may reasonably require for the better pledging and assigning unto the Trustee the property and revenues herein described to the payment of the principal of and interest, if any, on the Bonds. The City covenants and agrees that, except as herein and in the Lease provided, it will not sell, convey, mortgage, encumber or otherwise dispose of any part of the Project or the rents, revenues and receipts derived therefrom or from the Lease, or of its rights under the Lease.

Section 805. Recordings and Filings. The City may file or cause to be kept and filed all financing statements, and hereby authorizes the Trustee to file or cause to be kept and filed continuation statements with respect to such originally filed financing statements, if any, related to this Indenture and all supplements hereto and such other documents as may be required under the Uniform Commercial Code in order to fully preserve and protect the security of the Owners and the rights of the Trustee hereunder. The City will cooperate in causing this Indenture and all Supplemental Indentures, the Lease and all Supplemental Leases and all other security instruments to be recorded and filed, as may be applicable, in such manner and in such places as may be required by law in order to fully preserve and protect the security of the Owners and the rights of the Trustee hereunder. The Trustee shall cause to be filed continuation statements to the financing statements under the Uniform Commercial Code of the State, with the appropriate filing office of the State, in such manner as may be required by the Uniform Commercial Code of the State. The Company shall be responsible for the reasonable fees and costs, including fees and costs of counsel or other experts, incurred by the Trustee in the preparation and filing of all continuation statements hereunder. Notwithstanding anything to the contrary contained herein, the Trustee shall not be responsible for any initial, amendment, or other filings of any financing statements or the information contained therein (including the exhibits thereto), the perfection of any such security interests, or the accuracy or sufficiency of any description of collateral in such initial filings or for filing any modifications or amendments to the initial filings or any amendments or other changes to Article 9 of the Uniform Commercial Code of the State. The Trustee shall be fully protected in relying on information with respect to such initial filing delivered to it by or on behalf of the City or the Company, as applicable, and descriptions in filing any continuation statements required.

Section 806. Inspection of Project Books. The City covenants and agrees that all books and documents in its possession relating to the Project and the rents, revenues and receipts derived from the Project shall at all times be open to inspection by such accountants or other agencies as the Trustee may from time to time designate.

Section 807. Enforcement of Rights Under the Lease. The City covenants and agrees that it will enforce all of its rights and all of the obligations of the Company (at the expense of the Company) under the Lease to the extent necessary to preserve the Project in good repair and reasonably safe operating condition, and to protect the rights of the Trustee and the Owners hereunder with respect to the pledge and assignment of the rents, revenues and receipts coming due under the Lease; provided that, the City and the Trustee, as its assignee, shall refrain from enforcing any such right or obligation (except for the rights of the City or the Trustee to receive payments owing to either of them for their own account under the Indenture, the Lease, the Performance Agreement or any other agreement related to the Bonds or for their rights of indemnification or to be protected from liabilities by insurance policies required by the Lease) if so directed in writing by the Owners of 100% of the Outstanding Bonds. The City agrees that the Trustee, as assignee of the rentals and other amounts to be received by the City and paid by the Company under the Lease, or in its name or in the name of the City, may enforce all rights of the City to receive such rentals and other amounts and all obligations of the Company to pay such rentals and other amounts under and pursuant to the Lease for and on behalf of the Owners, whether or not the City is in

default hereunder. So long as not otherwise provided in this Indenture, the Company shall be permitted to possess, use and enjoy the Project and appurtenances so as to carry out its obligations under the Lease.

ARTICLE IX

DEFAULT AND REMEDIES

Section 901. Events of Default; Notice; Opportunity to Cure. If any of the following events occur, it is hereby defined as and declared to be and to constitute an “Event of Default”:

- (a) Default in the due and punctual payment of the principal on any Bond, whether at the stated maturity or accelerated maturity thereof, or at any date fixed for redemption thereof;
- (b) Default in the due and punctual payment of the interest on any Bond, whether at the stated maturity or accelerated maturity thereof, or at any date fixed for redemption thereof; or
- (c) Default as specified in **Section 12.1** of the Lease shall have occurred.

No default specified above shall constitute an Event of Default until actual notice of such default by registered or certified mail has been given by the City, the Company, the Trustee or by the Owners of 25% in aggregate principal amount of all Bonds Outstanding to the Company or the City (as the case may be), and the Company or the City (as the case may be) has had 30 days after receipt of such notice to correct said default or cause said default to be corrected and has not corrected said default or caused said default to be corrected within such period; provided, however, if any such default (other than a default in the payment of any money) is such that it cannot be corrected within such period, it shall not constitute an Event of Default if corrective action is instituted by the Company or the City (as the case may be) within such period and diligently pursued until the default is corrected.

Section 902. Acceleration of Maturity in Event of Default; Rescission. If an Event of Default has occurred and is continuing after the notice and cure period described in **Section 901** elapses, the Trustee may, and upon the written request of the Owners of not less than 25% in aggregate principal amount of Bonds then Outstanding, shall, by notice in writing delivered to the City and the Company, declare the principal of all Bonds then Outstanding and the interest accrued thereon immediately due and payable, and such principal and interest shall thereupon become and be immediately due and payable. At any time after such a declaration of acceleration has been made, but before any judgment or decree for payment of money due on any Bonds has been obtained by the Trustee as provided in this Article, the owners of a majority in principal amount of the Bonds Outstanding may, by written notice to the Company and Trustee but with the written consent of the City, rescind and annul such declaration and its consequences if: (a) there is deposited with the Trustee a sum sufficient to pay: (1) all overdue installments of interest on all Bonds; (2) the principal of (and premium, if any, on) any Bonds which have become due otherwise than by such declaration of acceleration and interest thereon at the rate or rates prescribed therefor in such Bonds; and (3) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel; and (b) all Events of Default or defaults, other than the non-payment of the principal of Bonds which have become due solely by such declaration of acceleration, have been cured or have been waived as provided in **Section 910** of this Indenture.

Section 903. Surrender of Possession of Trust Estate; Rights and Duties of Trustee in Possession. If an Event of Default has occurred and is continuing, the City, upon demand of the Trustee, shall forthwith surrender the possession of, and it shall be lawful for the Trustee, by such officer or agent

as it may appoint, to take possession of all or any part of the Trust Estate, together with the books, papers and accounts of the City pertaining thereto, and including the rights and the position of the City under the Lease, and to hold, operate and manage the same, and from time to time make all needful repairs and improvements. The Trustee may lease the Project or any part thereof, in the name and for account of the City, and collect, receive and sequester the rents, revenues and receipts therefrom, and out of the same and any moneys received from any receiver of any part thereof pay, and set up proper reserves for the payment of all proper costs and expenses of so taking, holding and managing the same, including without limitation (a) reasonable compensation to the Trustee, its agents and counsel, (b) any reasonable charges of the Trustee hereunder, (c) any taxes and assessments and other charges prior to the lien of this Indenture, (d) all expenses of such repairs and improvements, and (e) any amounts payable under the Performance Agreement. The Trustee shall apply the remainder of the moneys so received in accordance with the provisions of **Section 908** hereof. Whenever all that is due upon the Bonds has been paid and all defaults cured, the Trustee shall surrender possession of the Trust Estate to the City, its successors or assigns, the same right of entry, however, to exist upon any subsequent Event of Default. While in possession of such property, the Trustee shall render annually to the City and the Company a summarized statement of receipts and expenditures in connection therewith.

Section 904. Appointment of Receivers in Event of Default. If an Event of Default has occurred and is continuing, and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and of the Owners under this Indenture, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the Trust Estate or any part thereof, pending such proceedings, with such powers as the court making such appointment shall confer.

Section 905. Exercise of Remedies by the Trustee.

(a) Upon the occurrence of an Event of Default, the Trustee may pursue any available remedy at law or in equity by suit, action, mandamus or other proceeding to enforce the payment of the principal of and interest on the Bonds then Outstanding and all other amounts due hereunder, and to enforce and compel the performance of the duties and obligations of the City or the Company as herein set forth or as set forth in the Lease, respectively.

(b) If an Event of Default has occurred and is continuing after the notice and cure period described in **Section 901** elapses, and if requested to do so by (1) the City (in the case of an Event of Default pursuant to **Section 12.1(b), (c), (d)** or **(e)** of the Lease), or (2) the Owners of 25% in aggregate principal amount of Bonds then Outstanding and indemnified as provided in subsection (l) of **Section 1001** hereof, the Trustee shall be obligated to exercise such one or more of the rights and powers conferred by this Article as the Trustee, being advised by counsel, shall deem most expedient and in the interests of the City or the Owners, as the case may be.

(c) All rights of action under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without necessity of joining as plaintiffs or defendants any Owners, and any recovery of judgment shall, subject to the provisions of **Section 908** hereof, be for the equal benefit of all the Owners of the Outstanding Bonds.

Section 906. Limitation on Exercise of Remedies by Owners. No Owner shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust hereunder or for the appointment of a receiver or any other remedy hereunder, unless (a) a default has occurred of which the Trustee has been notified as provided in **Section 1001(h)** or of which by said subsection the Trustee is deemed to have notice, (b) such default has

become an Event of Default, (c) the Owners of 25% in aggregate principal amount of Bonds then Outstanding have made written request to the Trustee, have offered it reasonable opportunity either to proceed for such reasonable period not to exceed 60 days following such notice and to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, and have offered to the Trustee indemnity as provided in **Section 1001(I)**, and (d) the Trustee thereafter fails or refuses to exercise the powers herein granted or to institute such action, suit or proceeding in its own name; such notification, request and offer of indemnity are hereby declared in every case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the enforcement of this Indenture, or for the appointment of a receiver or for any other remedy hereunder it being understood and intended that no one or more Owners shall have any right in any manner whatsoever to affect, disturb or prejudice this Indenture by their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of the Owners of all Bonds then Outstanding. Nothing in this Indenture contained shall, however, affect or impair the right of any Owner to payment of the principal of and interest on any Bond at and after the maturity thereof or the obligation of the City to pay the principal of and interest on each of the Bonds issued hereunder to the respective Owners thereof at the time, place, from the source and in the manner herein and in the Bonds expressed.

Section 907. Right of Owners to Direct Proceedings.

(a) The Owners of a majority in aggregate principal amount of Bonds then Outstanding shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver or any other proceedings hereunder; provided that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture, including **Section 1001(I)** hereof.

(b) Notwithstanding any provision in this Indenture to the contrary, including paragraph (a) of this Section, the Owners shall not have the right to control or direct any remedies hereunder upon an Event of Default under **Section 12.1(b), (c), (d) or (e)** of the Lease.

Section 908. Application of Moneys in Event of Default.

(a) All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall, after payment of any obligations outstanding under the Performance Agreement, of the cost and expenses of the proceedings resulting in the collection of such moneys and of the reasonable fees, expenses, liabilities and advances incurred or made by the Trustee (including any reasonable attorneys' fees and expenses) or amounts to be paid pursuant to **Section 903** hereof, be deposited in the Bond Fund and all moneys so deposited in the Bond Fund shall be applied as follows:

(1) Unless the principal of all the Bonds shall have become or shall have been declared due and payable, all such moneys shall be applied:

FIRST -- To the payment to the Persons entitled thereto of all installments of interest, if any, then due and payable on the Bonds, in the order in which such installments of interest became due and payable, and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the Persons entitled thereto, without any discrimination or privilege;

SECOND -- To the payment to the Persons entitled thereof of the unpaid principal of any of the Bonds which shall have become due and payable (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture), in the order of their due dates, and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such interest, then to the payment, ratably, according to the amount of principal due on such date, to the Persons entitled thereto without any discrimination or privilege.

(2) If the principal of all the Bonds shall have become due or shall have been declared due and payable, all such moneys shall be applied to the payment of the principal and interest, if any, then due and unpaid on all of the Bonds, without preference or priority of principal over interest or of interest over principal or of any installment of interest over any other installment of interest or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the Person entitled thereto, without any discrimination or privilege.

(3) If the principal of all the Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled under the provisions of **Section 910**, then, subject to the provisions of subsection (2) of this Section in the event that the principal of all the Bonds shall later become due or be declared due and payable, the moneys shall be applied in accordance with the provisions of subsection (1) of this Section.

(b) Whenever moneys are to be applied pursuant to the provisions of this Section, such moneys shall be applied at such times and from time to time as the Trustee shall determine, having due regard to the amount of such moneys available and which may become available for such application in the future. Whenever the Trustee shall apply such moneys, it shall fix the date (which shall be a Payment Date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such dates shall cease to accrue.

(c) Whenever all of the Bonds and interest thereon, if any, have been paid under the provisions of this Section, and all reasonable fees, expenses and charges of the City and the Trustee and any other amounts required to be paid under this Indenture and the Lease have been paid (including any amounts payable under the Performance Agreement), any balance remaining in the Bond Fund shall be paid to the Company as provided in **Section 603** hereof.

Section 909. Remedies Cumulative. No remedy by the terms of this Indenture conferred upon or reserved to the Trustee or to the Owners is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Owners hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right, power or remedy accruing upon any Event of Default shall impair any such right, power or remedy or shall be construed to be a waiver of any such Event of Default or acquiescence therein; every such right, power or remedy may be exercised from time to time and as often as may be deemed expedient. If the Trustee has proceeded to enforce any right under this Indenture by the appointment of a receiver, by entry, or otherwise, and such proceedings have been discontinued or abandoned for any reason, or have been determined adversely, then and in every such case the City, the Company, the Trustee and the Owners shall be restored to their former positions and rights hereunder, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

Section 910. Waivers of Events of Default. The Trustee shall waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal of and interest, if any, on Bonds, and only upon the written request of the Owners of at least 50% in aggregate principal amount

of all the Bonds then Outstanding, provided, however, that (1) there shall not be waived without the consent of the City an Event of Default hereunder arising from an Event of Default under **Section 12.1(b), (c), (d) or (e)** of the Lease, and (2) there shall not be waived without the consent of the Owners of all the Bonds Outstanding (a) any Event of Default in the payment of the principal of any Outstanding Bonds when due (whether at the date of maturity or redemption specified therein), or (b) any Event of Default in the payment when due of the interest on any such Bonds, unless prior to such waiver or rescission, all arrears of interest, or all arrears of payments of principal when due, as the case may be, and all reasonable expenses of the Trustee and the City (including reasonable attorneys' fees and expenses), in connection with such default, shall have been paid or provided for. In case of any such waiver or rescission, or in case any proceeding taken by the Trustee on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case the City, the Company, the Trustee and the Owners shall be restored to their former positions, rights and obligations hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other Event of Default, or impair any right consequent thereon, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

ARTICLE X

THE TRUSTEE

Section 1001. Acceptance of the Trusts. The Trustee hereby accepts the trusts imposed upon it by this Indenture, but only upon and subject to the following express terms and conditions, and no implied covenants or obligations shall be read into this Indenture against the Trustee:

(a) The Trustee, prior to the occurrence of an Event of Default and after the curing or waiver of all Events of Default that may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. If any Event of Default has occurred and is continuing, subject to **Section 1001(I)** below, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and shall use the same degree of care and skill in their exercise, as a prudent Person would exercise or use under the circumstances in the conduct of its own affairs.

(b) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or through agents, affiliates, attorneys or receivers and shall not be responsible for any misconduct or negligence on the part of any agent, attorney or receiver appointed or chosen by it with due care. The Trustee may conclusively rely upon and act or refrain from acting upon any opinion or advice of counsel, who may be counsel to the City or to the Company, concerning all matters of trust hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such agents, attorneys and receivers as may reasonably be employed in connection with the trusts hereof. The Trustee shall not be responsible for any loss or damage resulting from any action or inaction by it taken or omitted to be taken in good faith in reliance upon such opinion or advice of counsel addressed to the City and the Trustee.

(c) The Trustee shall not be responsible for any recital herein or in the Bonds (except with respect to the Certificate of Authentication of the Trustee endorsed on the Bonds), or except as provided in **Section 805** hereof and the Lease and particularly **Section 10.8** thereof, for the recording or rerecording, filing or refiling of this Indenture or any security agreement in connection therewith (excluding the continuation of Uniform Commercial Code financing statements), or for insuring the Project or collecting any insurance moneys, or for the validity of the execution by the City of this Indenture or of any Supplemental Indentures or instruments of

further assurance, or for the sufficiency of the security of the Bonds. The Trustee shall not be responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with **Article VII** hereof.

(d) The Trustee shall not be accountable for the use of any Bonds authenticated and delivered hereunder. The Trustee, in its individual or any other capacity, may become the Owner or pledgee of Bonds with the same rights that it would have if it were not Trustee. The Trustee shall not be accountable for the use or application by the City or the Company of the proceeds of any of the Bonds or of any money paid to or upon the order of the City or Company under any provision of this Indenture.

(e) The Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, affidavit, letter, telegram or other paper or document provided for under this Indenture believed by it to be genuine and correct and to have been signed, presented or sent by the proper Person or Persons. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any Person who, at the time of making such request or giving such authority or consent is an Owner, shall be conclusive and binding upon all future Owners of the same Bond and upon Bonds issued in exchange therefor or upon transfer or in place thereof.

(f) As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, or whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee shall be entitled to rely upon a certificate signed by the Authorized City Representative or an Authorized Company Representative as sufficient evidence of the facts therein contained, and prior to the occurrence of a default of which the Trustee has been notified as provided in subsection (h) of this Section or of which by said subsection it is deemed to have notice, the Trustee shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same.

(g) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty, and the Trustee shall not be answerable for other than its negligence or willful misconduct.

(h) The Trustee shall not be required to take notice or be deemed to have notice of any default hereunder except failure by the City to cause to be made any of the payments to the Trustee required to be made in **Article VI** hereof, unless the Trustee is specifically notified in writing of such default by the City or by the Owners of at least 25% in aggregate principal amount of all Bonds then Outstanding.

(i) At any and all reasonable times and subject to the Company's reasonable and standard security procedures, the Trustee and its duly authorized agents, attorneys, experts, engineers, accountants and representatives shall have the right, but shall not be required, to inspect any and all of the Project, and all books, papers and records of the City pertaining to the Project and the Bonds, and to take such memoranda from and in regard thereto as may be desired. The Trustee shall treat all proprietary information of the Company as confidential.

(j) The Trustee shall not be required to give any bond or surety in respect to the execution of its trusts and powers hereunder or otherwise in respect of the Project.

(k) The Trustee shall have the right, but shall not be required, to demand, in respect of the authentication of any Bonds, the withdrawal of any cash, the release of any property, or any action whatsoever within the purview of this Indenture, any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required, as a condition of such action by the Trustee deemed desirable for the purpose of establishing the right of the City to the authentication of any Bonds, the withdrawal of any cash, or the taking of any other action by the Trustee.

(l) Notwithstanding anything in the Indenture or the Lease to the contrary, before taking any action under this Indenture other than the payments from moneys on deposit in the Project Fund or the Bond Fund, as provided herein, the Trustee may require that satisfactory indemnity be furnished to it for the reimbursement of all costs and expenses to which it may be put and to protect it against all liability which it may incur in or by reason of such action, except liability which is adjudicated to have resulted from its negligence or willful misconduct by reason of any action so taken.

(m) Notwithstanding any other provision of this Indenture to the contrary, any provision relating to the conduct of, intended to provide authority to act, right to payment of fees and expenses, protection, immunity and indemnification to the Trustee, shall be interpreted to include any action of the Trustee, whether it is deemed to be in its capacity as Trustee, bond registrar or Paying Agent.

(n) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties hereunder.

Section 1002. Fees, Charges and Expenses of the Trustee. The Trustee shall be entitled to payment of and/or reimbursement for reasonable fees for its ordinary services rendered hereunder and all advances, agent and counsel fees and other ordinary expenses reasonably made or incurred by the Trustee in connection with such ordinary services. If it becomes necessary for the Trustee to perform extraordinary services, it shall be entitled to reasonable extra compensation therefor and to reimbursement for reasonable extraordinary expenses in connection therewith; provided that if such extraordinary services or extraordinary expenses are occasioned by the neglect or willful misconduct of the Trustee, it shall not be entitled to compensation or reimbursement therefor. The Trustee shall be entitled to payment and reimbursement for the reasonable fees and charges of the Trustee as Paying Agent for the Bonds. Pursuant to the provisions of **Section 5.2** of the Lease, the Company has agreed to pay to the Trustee all reasonable fees, charges and expenses of the Trustee under this Indenture. The Trustee agrees that the City shall have no liability for any reasonable fees, charges and expenses of the Trustee, and the Trustee agrees to look only to the Company for the payment of all reasonable fees, charges and expenses of the Trustee and any Paying Agent as provided in the Lease. Upon the occurrence of an Event of Default and during its continuance, the Trustee shall have a lien with right of payment prior to payment on account of principal of or interest on any Bond, upon all moneys in its possession under any provisions hereof for the foregoing reasonable advances, fees, costs and expenses incurred.

Section 1003. Notice to Owners if Default Occurs. If a default occurs of which the Trustee is by **Section 1001(h)** hereof required to take notice or if notice of default is given as in said subsection (h) provided, then the Trustee shall give written notice thereof to the last known Owners of all Bonds then Outstanding as shown by the bond registration books required by **Section 206** to be kept at the corporate trust office of the Trustee.

Section 1004. Intervention by the Trustee. In any judicial proceeding to which the City is a party and which, in the opinion of the Trustee and its counsel, has a substantial bearing on the interests of Owners, the Trustee may intervene on behalf of Owners and, subject to the provisions of **Section 1001(l)** hereof, shall do so if requested in writing by the Owners of at least 25% of the aggregate principal amount of Bonds then Outstanding.

Section 1005. Successor Trustee Upon Merger, Consolidation or Sale. With the prior written consent of the Company, any corporation or association into which the Trustee may be merged or converted or with or into which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any merger, conversion, sale, consolidation or transfer to which it is a party, shall be and become successor Trustee hereunder and shall be vested with all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges hereunder as was its predecessor, without the execution or filing of any instrument or any further act on the part of any of the parties hereto.

Section 1006. Resignation of Trustee. The Trustee and any successor Trustee may at any time resign from the trusts hereby created by giving 30 days' written notice to the City, the Company and the Owners, and such resignation shall take effect at the end of such 30 days, or upon the earlier appointment of a successor Trustee by the Owners or by the City, but in any event not before a successor Trustee has been appointed and accepted its duties hereunder.

Section 1007. Removal of Trustee. The Trustee may be removed at any time, with or without cause, by an instrument or concurrent instruments in writing (a) delivered to the Trustee, the City and the Company and signed by the Owners of a majority in aggregate principal amount of Bonds then Outstanding, or (b) so long as no Event of Default under this Indenture or the Lease shall have occurred and be continuing, delivered to the Trustee, the City and the Owners and signed by the Company.

Section 1008. Appointment of Successor Trustee. If the Trustee hereunder resigns or is removed, or otherwise becomes incapable of acting hereunder, or if it is taken under the control of any public officer or officers or of a receiver appointed by a court, a successor Trustee (a) reasonably acceptable to the City may be appointed by the Company (so long as no Event of Default has occurred and is continuing), or (b) reasonably acceptable to the City and the Company may be appointed by the Owners of a majority in aggregate principal amount of Bonds then Outstanding, by an instrument or concurrent instruments in writing; provided, nevertheless, that in case of such vacancy, the City, by an instrument executed and signed by its Mayor and attested by its City Clerk under its seal, may appoint a temporary Trustee to fill such vacancy until a successor Trustee shall be appointed in the manner above provided. Any such temporary Trustee so appointed by the City shall immediately and without further acts be superseded by the successor Trustee so appointed as provided above. Every such Trustee appointed pursuant to the provisions of this Section shall be a trust company or bank in good standing and qualified to accept such trust having, or whose obligations are guaranteed by a financial institution having, a reported capital, surplus and undivided profits of not less than \$50,000,000. If no successor Trustee has been so appointed and accepted appointment in the manner herein provided within 30 days of any resignation or removal, the Trustee or any Owner may petition any court of competent jurisdiction for the appointment of a successor Trustee, until a successor shall have been appointed as above provided.

Section 1009. Vesting of Trusts in Successor Trustee. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the City and the Company an instrument in writing accepting such appointment hereunder, and thereupon such successor shall, without any further act, deed or conveyance, become fully vested with all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges of its predecessor and the duties and obligations of such predecessor hereunder shall thereafter cease and terminate; but such predecessor shall,

nevertheless, on the written request of the City, and upon approval by the City of the records and accounts of the predecessor Trustee, a release of the predecessor Trustee by the City, and payment of the reasonable fees and expenses of the predecessor Trustee, execute and deliver an instrument transferring to such successor Trustee all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges of such predecessor hereunder; every predecessor Trustee shall deliver all securities and moneys held by it as Trustee hereunder to its successor. Should any instrument in writing from the City be required by any predecessor or successor Trustee for more fully and certainly vesting in such successor the trusts, powers, rights, obligations, duties, remedies, immunities and privileges hereby vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the City.

Section 1010. Right of Trustee to Pay Taxes and Other Charges. If any tax, assessment or governmental or other charge upon, or insurance premium with respect to, any part of the Project is not paid as required herein or in the Lease, the Trustee may pay such tax, assessment or governmental charge or insurance premium, without prejudice, however, to any rights of the Trustee or the Owners hereunder arising in consequence of such failure; any amount at any time so paid under this Section, with interest thereon from the date of payment at the rate of 10% per annum, shall become an additional obligation secured by this Indenture, and the same shall be given a preference in payment over any payment of principal of or interest on the Bonds, and shall be paid out of the proceeds of rents, revenues and receipts collected from the Project, if not otherwise caused to be paid; but the Trustee shall be under no obligation to make any such payment unless it shall have been requested to do so by the Owners of at least 25% of the aggregate principal amount of Bonds then Outstanding and shall have been provided adequate funds for the purpose of such payment.

Section 1011. Trust Estate May be Vested in Co-Trustee.

(a) It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including particularly the State of Missouri) denying or restricting the right of banking corporations or associations to transact business as trustee in such jurisdiction. It is recognized that in case of litigation under this Indenture or the Lease, and in particular in case of the enforcement of either on default or in case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Trustee, or take any other action which may be desirable or necessary in connection therewith, it may be necessary or desirable that the Trustee appoint an additional individual or institution as a co-trustee or separate trustee, and the Trustee is hereby authorized to appoint such co-trustee or separate trustee. Such co-trustee or separate trustee must be approved by the Company so long as the Company is not in default under the Lease.

(b) If the Trustee appoints an additional individual or institution as a co-trustee or separate trustee (which appointment shall, so long as no Event of Default has occurred and is continuing hereunder, be subject to the approval of the Company), each and every remedy, power, right, claim, demand, cause of action, immunity, title, interest and lien expressed or intended by this Indenture to be exercised by the Trustee with respect thereto shall be exercisable by such co-trustee or separate trustee but only to the extent necessary to enable such co-trustee or separate trustee to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such co-trustee or separate trustee shall run to and be enforceable by either of them.

(c) Should any deed, conveyance or instrument in writing from the City be required by the co-trustee or separate trustee so appointed by the Trustee for more fully and certainly vesting in and confirming to such co-trustee such properties, rights, powers, trusts, duties and obligations, any and all such deeds, conveyances and instruments in writing shall, on request, be executed, acknowledged and delivered by the City.

(d) If any co-trustee or separate trustee shall die, become incapable of acting, resign or be removed, all the properties, rights, powers, trusts, duties and obligations of such co-trustee or separate trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment of a successor to such co-trustee or separate trustee.

Section 1012. Accounting. The Trustee shall render an annual accounting for the period ending December 31 of each year to the City, the Company and to any Owner requesting the same and, upon the request of the Company or the Owner, a semi-annual accounting to the Company and the Owner, showing in reasonable detail all financial transactions relating to the Trust Estate during the accounting period and the balance in any funds or accounts created by this Indenture as of the beginning and close of such accounting period.

Section 1013. Performance of Duties Under the Lease. The Trustee hereby accepts and agrees to perform all duties and obligations assigned to it under the Lease.

ARTICLE XI

SUPPLEMENTAL INDENTURES

Section 1101. Supplemental Indentures Not Requiring Consent of Owners. The City and the Trustee may from time to time, without the consent of or notice to any of the Owners, enter into such Supplemental Indenture or Supplemental Indentures as shall not be inconsistent with the terms and provisions hereof, for any one or more of the following purposes:

- (a) To cure any ambiguity or formal defect or omission in this Indenture, or to make any other change which, in the judgment of the Trustee, is not to the material prejudice of the Trustee or the Owners;
- (b) To grant to or confer upon the Trustee for the benefit of the Owners any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Owners or the Trustee or either of them;
- (c) To more precisely identify any portion of the Project or to add additional property thereto;
- (d) To conform the Indenture to amendments to the Lease made by the City and the Company;
- (e) To subject to this Indenture additional revenues, properties or collateral; or
- (f) To issue Additional Bonds as provided in Section 209 hereof.

Section 1102. Supplemental Indentures Requiring Consent of Owners.

(a) Exclusive of Supplemental Indentures covered by **Section 1101** hereof and subject to the terms and provisions contained in this Section, and not otherwise, the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding shall have the right, from time to time, anything contained in this Indenture to the contrary notwithstanding, to consent to and approve the execution by the City and the Trustee of such other Supplemental Indenture or Supplemental Indentures as shall be deemed necessary and desirable by the City for the purpose of modifying, amending, adding to

or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any Supplemental Indenture; provided, however, that without the consent of the Owners of 100% of the principal amount of the Bonds then Outstanding, nothing in this Section contained shall permit or be construed as permitting (1) an extension of the maturity or a shortening of the redemption date of the principal of or the interest, if any, on any Bond issued hereunder, or (2) a reduction in the principal amount of any Bond or the rate of interest thereon, if any, or (3) a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (4) a reduction in the aggregate principal amount of Bonds the Owners of which are required for consent to any such Supplemental Indenture.

(b) If at the time the City requests the Trustee to enter into any such Supplemental Indenture for any of the purposes of this Section, the Trustee shall cause notice of the proposed execution of such Supplemental Indenture to be mailed to each Owner as shown on the bond registration books required by **Section 206** hereof. Such notice shall briefly set forth the nature of the proposed Supplemental Indenture and shall state that copies thereof are on file at the designated corporate trust office of the Trustee for inspection by all Owners. If within 60 days or such longer period as may be prescribed by the City following the mailing of such notice, the Owners of not less than a majority in aggregate principal amount of the Bonds Outstanding at the time of the execution of any such Supplemental Indenture shall have consented to and approved the execution thereof as herein provided, no Owner shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the City from executing the same or from taking any action pursuant to the provisions thereof.

Section 1103. Company's Consent to Supplemental Indentures. Anything herein to the contrary notwithstanding, a Supplemental Indenture under this Article that affects any rights of the Company shall not become effective unless and until the Company shall have consented in writing to the execution and delivery of such Supplemental Indenture. The Trustee shall cause notice of the proposed execution and delivery of any Supplemental Indenture (regardless of whether it affects the Company's rights) together with a copy of the proposed Supplemental Indenture to be mailed to the Company at least 15 days prior to the proposed date of execution and delivery of the Supplemental Indenture.

Section 1104. Opinion of Counsel. In executing, or accepting the additional trusts created by, any Supplemental Indenture permitted by this Article or the modification thereby of the trusts created by this Indenture, the Trustee and the City shall receive, and, shall be fully protected in relying upon, an opinion of counsel addressed and delivered to the Trustee and the City stating that the execution of such Supplemental Indenture is permitted by and in compliance with this Indenture and will, upon the execution and delivery thereof, be a valid and binding obligation of the City. The Trustee may, but shall not be obligated to, enter into any such Supplemental Indenture which affects the Trustee's rights, duties or immunities under this Indenture or otherwise.

ARTICLE XII

SUPPLEMENTAL LEASES

Section 1201. Supplemental Leases Not Requiring Consent of Owners. The City and the Trustee shall, without the consent of or notice to the Owners, consent to the execution of any Supplemental Lease or Supplemental Leases by the City and the Company as may be required (a) by the provisions of the Lease and this Indenture, (b) for the purpose of curing any ambiguity or formal defect or omission in the Lease, (c) so as to more precisely identify the Project or add additional property thereto, (d) in connection with the issuance of Additional Bonds under **Section 209** hereof, or (e) in connection

with any other change therein which, in the judgment of the Trustee, does not materially and adversely affect the Trustee or security for the Owners.

Section 1202. Supplemental Leases Requiring Consent of Owners. Except for Supplemental Leases as provided for in **Section 1201** hereof, neither the City nor the Trustee shall consent to the execution of any Supplemental Lease or Supplemental Leases by the City or the Company without the mailing of notice and the obtaining of the written approval or consent of the Owners of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding given and obtained as provided in **Section 1102** hereof. If at any time the City and the Company shall request the consent of the Trustee to any such proposed Supplemental Lease, the Trustee shall cause notice of such proposed Supplemental Lease to be mailed in the same manner as provided in **Section 1102** hereof with respect to Supplemental Indentures. Such notice shall briefly set forth the nature of such proposed Supplemental Lease and shall state that copies of the same are on file in the designated corporate trust office of the Trustee for inspection by all Owners. If within 60 days or such longer period as may be prescribed by the City following the mailing of such notice, the Owners of not less than 50% in aggregate principal amount of the Bonds Outstanding at the time of the execution of any such Supplemental Lease shall have consented to and approved the execution thereof as herein provided, no Owner shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the City from executing the same or from taking any action pursuant to the provisions thereof.

Section 1203. Opinion of Counsel. In executing or consenting to any Supplemental Lease permitted by this Article, the City and the Trustee shall receive, and shall be fully protected in relying upon, an opinion of counsel addressed to the Trustee and the City stating that the executing of such Supplemental Lease is authorized or permitted by this Indenture and the Lease and the applicable law and will upon the execution and delivery thereof be valid and binding obligations of the parties thereof.

ARTICLE XIII

SATISFACTION AND DISCHARGE OF INDENTURE

Section 1301. Satisfaction and Discharge of this Indenture.

(a) When 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, as provided in **Section 1302** hereof, and provision also made for paying all other sums payable hereunder and under the Lease and the Performance Agreement, including the reasonable fees and expenses of the Trustee, the City and Paying Agent to the date of retirement of the Bonds, then the right, title and interest of the Trustee in respect hereof shall thereupon cease, determine and be void. Thereupon, the Trustee shall cancel, discharge and release this Indenture and shall upon the written request of the City or the Company execute, acknowledge and deliver to the City such instruments of satisfaction and discharge or release as shall be required to evidence such release and the satisfaction and discharge of this Indenture, and shall assign and deliver to the City (subject to the City's obligations under **Section 11.2** of the Lease) any property at the time subject to this Indenture which may then be in its possession, except amounts in the Bond Fund required to be paid to the Company under **Section 603** hereof and except funds or securities in which such funds are invested held by the Trustee for the payment of the principal of and interest on the Bonds.

(b) The City is hereby authorized to accept a certificate by the Trustee that the whole amount of the principal and interest, if any, so due and payable upon all of the Bonds then Outstanding has been paid or such payment provided for in accordance with **Section 1302** hereof as evidence of satisfaction of

this Indenture, and upon receipt thereof shall cancel and erase the inscription of this Indenture from its records.

Section 1302. Bonds Deemed to be Paid.

(a) Bonds shall be deemed to be paid within the meaning of this Article when payment of the principal of and interest thereon to the due date thereof (whether such due date be by reason of maturity or upon redemption as provided in this Indenture, or otherwise), either (1) have been made or caused to be made in accordance with the terms thereof, or (2) have been provided for by depositing with the Trustee or other commercial bank or trust company having full trust powers and authorized to accept trusts in the State in trust and irrevocably set aside exclusively for such payment (i) moneys sufficient to make such payment or (ii) Government Securities maturing as to principal and interest in such amount and at such times as will insure the availability of sufficient moneys to make such payment, or (3) have been provided for by surrendering the Bonds to the Trustee for cancellation. At such time as Bonds are deemed to be paid hereunder, as aforesaid, they shall no longer be secured by or entitled to the benefits of this Indenture, except for the purposes of such payment from such moneys or Government Securities.

(b) Notwithstanding the foregoing, in the case of Bonds which by their terms may be redeemed before the stated maturities thereof, no deposit under clause (2) of the immediately preceding paragraph shall be deemed a payment of such Bonds as aforesaid until, as to all such Bonds which are to be redeemed before their respective stated maturities, proper notice of such redemption shall have been given in accordance with **Article III** of this Indenture or irrevocable instructions shall have been given to the Trustee to give such notice.

(c) Notwithstanding any provision of any other section of this Indenture which may be contrary to the provisions of this Section, all moneys or Government Securities set aside and held in trust pursuant to the provisions of this Section for the payment of Bonds shall be applied to and used solely for the payment of the particular Bonds, with respect to which such moneys and Government Securities have been so set aside in trust.

ARTICLE XIV

MISCELLANEOUS PROVISIONS

Section 1401. Consents and Other Instruments by Owners. Any consent, request, direction, approval, objection or other instrument required by this Indenture to be signed and executed by the Owners may be in any number of concurrent writings of similar tenor and may be signed or executed by such Owners in Person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent and of the ownership of Bonds (other than the assignment of ownership of a Bond) if made in the following manner, shall be sufficient for any of the purposes of this Indenture, and shall be conclusive in favor of the Trustee with regard to any action taken, suffered or omitted under any such instrument, namely:

(a) The fact and date of the execution by any Person of any such instrument may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the Person signing such instrument acknowledged before him the execution thereof, or by affidavit of any witness to such execution.

(b) The fact of ownership of Bonds and the amount or amounts, numbers and other identification of such Bonds, and the date of holding the same shall be proved by the registration books of the City maintained by the Trustee pursuant to **Section 206** hereof.

Section 1402. Limitation of Rights Under this Indenture. With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give any Person other than the parties hereto, and the Owners, if any, any right, remedy or claim under or in respect to this Indenture, this Indenture and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto and the Owners, as herein provided.

Section 1403. Notices. It shall be sufficient service of any notice, request, complaint, demand or other paper required by this Indenture to be given or filed with the City, the Trustee, the Company or Owners if the same is duly mailed, postage prepaid, sent by overnight delivery or other delivery service or sent by facsimile:

(a) To the City:

City of Springfield, Missouri
Busch Municipal Building, 4th Floor
840 Boonville Avenue
Springfield, Missouri 65802
Attention: City Manager
Fax: (417) 864-1912

(b) To the Trustee:

BOKF, N.A.
4600 Madison Avenue, Suite 800
Kansas City, Missouri 64112
Attention: Corporate Trust Department
Fax: (816) 932-7315

(c) To the Company:

Kraft Heinz Foods Company
200 E. Randolph Street
Chicago, Illinois 60601
Attention: Derek Crawford, Director, US Government Affairs

With a copy to:

Kraft Heinz Foods Company
200 E. Randolph Street
Chicago, Illinois 60601
Attention: Legal Department

(d) To the Owners if the same is duly mailed by first class, registered or certified mail addressed to each of the Owners of Bonds at the time Outstanding as shown by the bond registration books required by **Section 206** hereof to be kept at the corporate trust office of the Trustee.

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

Section 1404. Severability. If any provision of this Indenture shall be held or deemed to be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever.

Section 1405. Execution in Counterparts. This Indenture 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 1406. Governing Law. This Indenture shall be governed exclusively by and construed in accordance with the applicable laws of the State.

Section 1407. Electronic Storage. The parties agree that the transaction described herein may be conducted and related documents may be received, sent or stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

[Remainder of Page Intentionally Left Blank.]

IN WITNESS WHEREOF, the City has caused this Indenture to be signed in its name and behalf by its City Manager and the seal of the City to be hereunto affixed and attested by the City Clerk, and to evidence its acceptance of the trusts hereby created, the Trustee has caused this Indenture to be signed in its name and behalf by its duly authorized officer, all as of the date first above written.

CITY OF SPRINGFIELD, MISSOURI

By: _____
Name: Greg Burris
Title: City Manager

[SEAL]

ATTEST:

By: _____
Name: Anita Cotter
Title: City Clerk

Approved as to Form:

By: _____
Name: Dan Wichmer
Title: City Attorney

BOKF, N.A.,
as Trustee

By _____
Name: Victor Zarrilli
Title: Senior Vice President

[SEAL]

ATTEST:

By _____
Name:
Title: Vice President

EXHIBIT A

DESCRIPTION OF PROJECT SITE

Legal Description

Tract I:

The East One-half ($E\frac{1}{2}$) of the following: Beginning at the Southeast corner of the Northwest Quarter ($NW\frac{1}{4}$) of the Northwest Quarter ($NW\frac{1}{4}$) of Section Twenty-nine (29), Township Twenty-nine (29) Range Twenty-one (21), thence West along said Quarter Section Line 298 feet; thence North 1138.7 feet to a point on the South and West side of the county road, said road being immediately South and West of the right of way of the railroad; thence in a Southeasterly course 380 feet to the line dividing the Northwest Quarter ($NW\frac{1}{4}$) and the Northeast Quarter ($NE\frac{1}{4}$) of the Northwest Quarter ($NW\frac{1}{4}$) of said Section; thence South 1015 feet to the place of beginning, all in the City of Springfield, Greene County, Missouri, except that part deeded from said East One-half ($E\frac{1}{2}$) to Johnson in Book 1035 at Page 125, and also except any part thereof taken, deeded or used for road or highway purposes.

Tract II:

The East Fifty (50) feet of Lots One (1), Two (2), and Three (3) and the East 5 feet of the West 150 feet of Lots One (1) and Two (2) in Crutcher's Country Club District, a subdivision in Greene County, Missouri, according to the recorded plat thereof.

Tract III:

Beginning at a point 160.1 feet West of the Southeast corner of the Northwest Quarter ($NW\frac{1}{4}$) of the Northwest Quarter ($NW\frac{1}{4}$) of Section Twenty-nine (29), Township Twenty-nine (29), Range Twenty-one (21), and running thence West 139.9 feet; thence North 1301.5 feet to the right of way of the St. Louis and San Francisco Railway; thence Southeasterly along said right of way 190.9 feet; thence South 1146.46 feet to the place of beginning, in Greene County, Missouri, except any part thereof deeded.

EXHIBIT B

PROJECT

All equipment and personal property items designated by the Company now or hereafter procured, assembled, manufactured or installed at the Project Site by the Company paid for, or reimbursed, with Bond proceeds and all additions, replacements, alterations, substitutions thereto now or hereafter effected and specifically designated by the Company. A replacement item may be included by the Company as a part of the Project under the conditions set forth in the Lease.

EXHIBIT C

FORM OF BONDS

THIS BOND OR ANY PORTION HEREOF MAY BE TRANSFERRED, ASSIGNED OR NEGOTIATED ONLY AS PROVIDED IN THE HEREIN DESCRIBED INDENTURE.

No. 1

**Not to Exceed
\$36,000,000**

**UNITED STATES OF AMERICA
STATE OF MISSOURI**

**CITY OF SPRINGFIELD, MISSOURI
TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BOND
(KRAFT HEINZ FOODS COMPANY PROJECT)
SERIES 2016**

Interest Rate

Maturity Date

Dated Date

[[6.00]]%

December 1, 20[[26]]

April __, 2016

OWNER: KRAFT HEINZ FOODS COMPANY

MAXIMUM PRINCIPAL AMOUNT: THIRTY-SIX MILLION DOLLARS AND 00/100

THE CITY OF SPRINGFIELD, MISSOURI, a municipal corporation organized and existing under the laws of the State of Missouri (the “City”), for value received, promises to pay, but solely from the source hereinafter referred to, to the Owner named above, or registered assigns thereof, on the Maturity Date shown above, the principal amount shown above, or such lesser amount as may be outstanding hereunder as reflected on **Schedule I** hereto held by the Trustee as provided in the hereinafter referred to Indenture. The City agrees to pay such principal amount to the Owner in any coin or currency of the United States of America which on the date of payment thereof is legal tender for the payment of public and private debts, and in like manner to pay to the Owner hereof, either by check or draft mailed to the Owner at a stated address as it appears on the bond registration books of the City kept by the Trustee under the within mentioned Indenture or, in certain situations authorized in the Indenture, by internal bank transfer or by wire transfer to an account in a commercial bank or savings institution located in the continental United States. Interest on the Cumulative Outstanding Principal Amount (as hereinafter defined) at the per annum Interest Rate stated above, is payable in arrears on each December 1, commencing on December 1, 2017, and continuing thereafter until the earlier of the date on which said Cumulative Outstanding Principal Amount is paid in full or the Maturity Date. Interest on each advancement of the principal amount of this Bond shall accrue from the date that such advancement is made, computed on the basis of a year of 360 days consisting of 12 months of 30 days each.

As used herein, the term “Cumulative Outstanding Principal Amount” means all Bonds outstanding under the terms of the hereinafter-defined Indenture, as reflected on **Schedule I** hereto maintained by the Trustee.

THIS BOND is one of a duly authorized series of Bonds of the City designated “City of Springfield, Missouri, Taxable Industrial Development Revenue Bonds (Kraft Heinz Foods Company Project), Series 2016,” in the maximum aggregate principal amount of \$36,000,000 (the “Bonds”), to be issued for the purpose of acquiring and installing new equipment and machinery (the “Project”) at the Company’s existing plant located on certain real property in Springfield, Missouri (the “Project Site”). The City will lease the Project to Kraft Heinz Foods Company, a corporation organized and existing under the laws of the State of Pennsylvania and authorized to do business in Missouri (the “Company”), under the terms of a Lease Agreement dated as of April 1, 2016 (said Lease Agreement, as amended and supplemented from time to time in accordance with the provisions thereof, being herein called the “Lease”), between the City and the Company, all pursuant to the authority of and in full compliance with the provisions, restrictions and limitations of the Constitution and statutes of the State of Missouri, including particularly the Act, the charter of the City and pursuant to proceedings duly had by the Council of the City.

THE BONDS are issued under and are equally and ratably secured and entitled to the protection given by a Trust Indenture dated as of April 1, 2016 (said Trust Indenture, as amended and supplemented from time to time in accordance with the provisions thereof, being herein called the “Indenture”), between the City and BOKF, N.A., Kansas City, Missouri, as trustee (the “Trustee”). *Capitalized terms not defined herein shall have the meanings set forth in the Indenture.*

Subject to the terms and conditions set forth therein, the Indenture permits the City to issue Additional Bonds (as defined in the Indenture) secured by the Indenture on a parity with the Bonds. Reference is hereby made to the Indenture for a description of the provisions, among others, with respect to the nature and extent of the security for the Bonds, the rights, duties and obligations of the City, the Trustee and the Owners, and the terms upon which the Bonds are issued and secured.

THE BONDS are subject to redemption and payment at any time before the stated maturity thereof, at the option of the Company, on behalf of the City, and upon written instructions from the Company, (1) in whole, if the Company exercises its option to purchase the Project and deposits an amount sufficient to effect such purchase pursuant to the Lease on the applicable redemption date, or (2) in part, if the Company prepays additional Basic Rent pursuant to the Lease; provided, however, if only a portion of the Bonds are to be redeemed, Bonds aggregating 10% of the maximum principal amount of Bonds authorized under the Indenture shall not be subject to redemption and payment before the stated maturity thereof. Any redemption of Bonds pursuant to this paragraph shall be at a redemption price equal to the par value thereof being redeemed, plus accrued interest thereon, without premium or penalty, to the redemption date.

THE BONDS are subject to mandatory redemption, in whole or in part, to the extent of amounts deposited in the Bond Fund pursuant to **Sections 9.1(a)** or **9.2(c)** of the Lease, in the event of substantial damage to or destruction or condemnation of substantially all of the Project. Bonds to be redeemed pursuant to this paragraph shall be called for redemption by the Trustee on the earliest practicable date for which timely notice of redemption may be given as provided hereunder. Any redemption of Bonds pursuant to this paragraph shall be at a redemption price equal to the par value thereof being redeemed, plus accrued interest thereon, without premium or penalty, to the redemption date. Before giving notice of redemption to the Owners pursuant to this paragraph, money in an amount equal to the redemption price shall have been deposited in the Bond Fund.

If the Bonds are to be called for optional redemption, the Company shall deliver written notice to the City and the Trustee that it has elected to redeem all or a portion of the Bonds at least 40 days (10 days if there is one Owner) prior to the scheduled redemption date. The Trustee shall then deliver written notice to the Owner of this Bond at least 30 days (five days if there is one Owner) before the scheduled redemption date by facsimile and by first-class mail stating the date upon which the Bonds will be redeemed and paid.

THE BONDS, including interest thereon, are special obligations of the City and are payable solely out of the rents, revenues and receipts derived by the City from the Project and the Lease and not from any other fund or source of the City, and is secured by a pledge and assignment of the Project and of such rents, revenues and receipts, including all rentals and other amounts to be received by the City under and pursuant to the Lease, all as provided in the Indenture. The Bonds do not constitute a general obligation of the City or the State of Missouri, and neither the City nor said State shall be liable thereon, and the Bonds shall not constitute an indebtedness within the meaning of any constitutional, charter or statutory debt limitation or restriction, and are not payable in any manner by taxation. Pursuant to the provisions of the Lease, rental payments sufficient for the prompt payment when due of the principal of and interest on the Bonds are to be paid by the Company directly to the Trustee for the account of the City and deposited in a special fund created by the City and designated the "City of Springfield, Missouri, Bond Fund -- Kraft Heinz Foods Company"

THE OWNER of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Indenture, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Indenture. In certain events, on the conditions, in the manner and with the effect set forth in the Indenture, the principal of all the Bonds issued under the Indenture and then Outstanding may become or may be declared due and payable before the stated maturity thereof, together with interest accrued thereon. Modifications or alterations of this Bond or the Indenture may be made only to the extent and in the circumstances permitted by the Indenture.

THIS BOND is transferable, as provided in the Indenture, only upon the books of the City kept for that purpose at the above-mentioned office of the Trustee by the Owner hereof in Person or by such Person's duly authorized attorney, upon surrender of this Bond together with a written instrument of transfer satisfactory to the Trustee duly executed by the Owner or such Person's duly authorized attorney, and thereupon a new fully registered Bond or Bonds, in the same aggregate principal amounts, shall be issued to the transferee in exchange therefor as provided in the Indenture, and upon payment of the charges therein prescribed. The City, the Trustee and any Paying Agent may deem and treat the Person in whose name this Bond is registered as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal or redemption price hereof and interest due hereon and for all other purposes.

THE BONDS are issuable in the form of one fully-registered Bond in the maximum principal amount of \$36,000,000.

THIS BOND shall not be valid or become obligatory for any purposes or be entitled to any security or benefit under the Indenture until the Certificate of Authentication hereon shall have been executed by the Trustee.

IT IS HEREBY CERTIFIED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by the Constitution and laws of the State of Missouri.

IN WITNESS WHEREOF, City of Springfield, Missouri, has caused this Bond to be executed in its name by the manual or facsimile signature of its Mayor, attested by the manual or facsimile signature of its City Clerk and its corporate seal to be affixed hereto or imprinted hereon, and has caused this Bond to be dated the date set forth above.

CERTIFICATE OF AUTHENTICATION

CITY OF SPRINGFIELD, MISSOURI

This Bond is one of the Bonds of the issue described in the within-mentioned Resolution.

By: _____
Mayor

Registration Date: _____

BOKF, N.A.,
as Trustee

ATTEST: _____ (Seal)

By _____
Authorized Signatory

City Clerk

FORM OF ASSIGNMENT

(NOTE RESTRICTIONS ON TRANSFERS)

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

Print or Typewrite Name, Address and Social Security or
other Taxpayer Identification Number of Transferee

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Bond on the books kept by the Trustee for the registration and transfer of Bonds, with full power of substitution in the premises.

Dated: _____.

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular.

Signature Guaranteed By:

(Name of Eligible Guarantor Institution as defined by SEC Rule 17 Ad-15 (17 CFR 240.17 Ad-15))

By _____

Title: _____

EXHIBIT D

FORM OF REPRESENTATION LETTER

City of Springfield, Missouri
Busch Municipal Building, 4th Floor
840 Boonville Avenue
Springfield, Missouri 65802
Attention: City Manager

BOKF, N.A.
4600 Madison Avenue, Suite 800
Kansas City, Missouri 64112
Attention: Corporate Trust Department

Re: \$36,000,000 Maximum Principal Amount of Taxable Industrial Development Revenue Bonds (Kraft Heinz Foods Company Project), Series 2016, of City of Springfield, Missouri

Ladies and Gentlemen:

In connection with the purchase of the above-referenced Bonds (the “Bonds”), the undersigned purchaser of the Bonds (the “Purchaser”) hereby represents, warrants and agrees as follows:

1. The Purchaser fully understands that (a) the Bonds have been issued under and pursuant to a Trust Indenture dated as of April 1, 2016 (the “Indenture”), between the City of Springfield, Missouri (the “City”) and BOKF, N.A., as trustee (the “Trustee”), and (b) the Bonds are payable solely out of certain rents, revenues and receipts to be derived from the leasing or sale of the Project (as defined in the Indenture) to Kraft Heinz Foods Company, a corporation organized and existing under the laws of the State of Pennsylvania and authorized to do business in Missouri (the “Company”), under a Lease Agreement dated as of April 1, 2016 (the “Lease”), between the City and the Company, with certain of such rents, revenues and receipts being pledged and assigned by the City to the Trustee under the Indenture to secure the payment of the principal of and interest on the Bonds.

2. The Purchaser understands that the Bonds have not been registered under the Securities Act of 1933, as amended (the “1933 Act”), or the securities laws of any state and will be sold to the Purchaser in reliance upon certain exemptions from registration and in reliance upon the representations and warranties of the Purchaser set forth herein.

3. The Purchaser understands that the Bonds are transferable only in the manner provided for in the Indenture and discussed below and warrants that it is acquiring the Bonds for its own account with the intent of holding the Bonds as an investment, and the acquisition of the Bonds is not made with a view toward their distribution or for the purpose of offering, selling or otherwise participating in a distribution of the Bonds.

4. The Purchaser agrees not to attempt to offer, sell, hypothecate or otherwise distribute the Bonds to others unless authorized by the terms of the Indenture and upon receipt of any required opinion of counsel acceptable to the City, the Company, the Trustee and the purchaser that all registration and

disclosure requirements of the Securities and Exchange Commission and all other appropriate federal and Missouri securities laws and the securities law of any other applicable state are complied with.

5. The Company has (a) furnished to the Purchaser such information about itself as the Purchaser deems necessary in order for it to make an informed investment decision with respect to the purchase of the Bonds, (b) made available to the Purchaser, during the course of this transaction, ample opportunity to ask questions of, and to receive answers from, appropriate officers of the City and the terms and conditions of the offering of the Bonds, and (c) provided to the undersigned all additional information which it has requested.

6. The Purchaser acknowledges that no offering document has been prepared in connection with the sale of the Bonds. The Purchaser further acknowledges that it has timely received in satisfactory form and manner all proceedings, certificates, opinions, letters and other documents required to be submitted to Purchaser pursuant to the Bond Purchase Agreement prior to or on the date of the delivery of and payment for the Bonds, and that the City and the Company have in all respects complied with and satisfied all of their respective obligations to the Purchaser which are required under the Bond Purchase Agreement to be complied with and satisfied on or before such date.

7. The Purchaser is now, and was when it agreed to purchase the Bonds, familiar with the operations of the Company and fully aware of terms and risks of the Bonds and that the Purchaser is relying on its own knowledge and investigation of facts and circumstances relating to the purchase of the Bonds. The Purchaser believes that the Bonds being acquired are a security of the type that the Purchaser wishes to purchase and hold for investment and that the nature and amount thereof are consistent with its investment program.

8. The Purchaser is fully aware of and satisfied with (i) the current status of the title to the Project and any issues related thereto and (ii) the terms, amounts and providers of the insurance maintained pursuant to **Article VII** of the Lease, and the undersigned is purchasing the Bonds with full knowledge of such matters.

9. The Purchaser understands and agrees that the interest on the Bonds *is* subject to federal and state income taxation.

10. The Purchaser hereby directs the Trustee to hold the Bonds in trust for the undersigned pursuant to **Section 204(c)** of the Indenture.

Dated: _____, 20____

[PURCHASER OF BONDS]

By: _____
Name: _____
Title: _____

**CITY OF SPRINGFIELD, MISSOURI,
As Lessor,**

AND

**KRAFT HEINZ FOODS COMPANY,
As Lessee**

LEASE AGREEMENT

Dated as of April 1, 2016

Relating to:

**\$36,000,000
(Aggregate Maximum Principal Amount)
City of Springfield, Missouri
Taxable Industrial Development Revenue Bonds
(Kraft Heinz Foods Company Project)
Series 2016**

The interest of the City of Springfield, Missouri (the “City”), in this Lease Agreement has been pledged and assigned to BOKF, N.A., Kansas City, Missouri, as Trustee under the Trust Indenture dated as of April 1, 2016, between the City and the Trustee.

LEASE AGREEMENT

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LEASE AGREEMENT

THIS LEASE AGREEMENT, dated as of April 1, 2016 (the “Lease”), is between the **CITY OF SPRINGFIELD, MISSOURI**, a constitutional home rule charter city and municipal corporation organized and existing under the laws of the State of Missouri, as lessor (the “City”), and **KRAFT HEINZ FOODS COMPANY**, a Pennsylvania corporation, as lessee (the “Company”);

RECITALS:

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

2. Pursuant to the Act, the City Council of the City gave notice to the affected taxing jurisdictions in accordance with Section 100.059.1 of the Act regarding the financing of the costs of a project for the Company, consisting of the acquisition and installation of new equipment and machinery (collectively, the “Project,” as more fully described on **Exhibit B** hereto) at the Company’s existing manufacturing facility located on certain real property in Springfield, Missouri (the “Project Site,” as more fully described on **Exhibit A** hereto), out of the proceeds of industrial development revenue bonds to be issued under the Act.

3. Following such notice to affected taxing jurisdictions and a public hearing, the Council of the City passed Special Ordinance No. _____ on March __, 2016 (the “Ordinance”), approving a plan for the Company’s economic development project to be financed through the issuance of \$36,000,000 maximum aggregate principal amount of Taxable Industrial Development Revenue Bonds (Kraft Heinz Foods Company Project), Series 2016 (the “Bonds”).

4. Pursuant to the Ordinance, the City is authorized to execute and deliver (a) the Trust Indenture dated as of even date herewith (the “Indenture”), between the City and BOKF, N.A., as bond trustee (the “Trustee”), for the purpose of issuing and securing the Bonds, (b) this Lease with the Company, as lessee, under which the City, as lessor, will purchase and equip the Project and will lease the Project to the Company, in consideration of rentals which will be sufficient to pay the principal of and interest on the Bonds, and (c) the Performance Agreement for the purpose of setting forth the terms and conditions of the Project’s exemption from *ad valorem* personal property taxes and certain payments in lieu of taxes to be made by the Company with respect to the Project.

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

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

ARTICLE I

DEFINITIONS

Section 1.1. Definitions of Words and Terms. In addition to any words and terms defined elsewhere in this Lease and the words and terms defined in **Section 101** of the Indenture which definitions are hereby incorporated herein by reference, and terms defined, the following words and terms as used in this Lease shall have the following meanings:

“Additional Rent” means the additional rental described in **Sections 5.2** and **6.2** of this Lease.

“Basic Rent” means the rental described in **Section 5.1** of this Lease.

“Equipment Financing” means any financings which the Company may undertake with an Equipment Lender with respect to the Project or any portion thereof.

“Equipment Financing Documents” means all loan agreements, notes, security documents, UCC financing statements, acknowledgements, assignments and other documents securing, evidencing or otherwise pertaining to any Equipment Financing.

“Equipment Lender” means all third parties entering into any Equipment Financing Documents or receiving delivery of or the benefit from any Equipment Financing Documents, including the Equipment Lender’s designee, nominee, assignee, transferee, purchaser in foreclosure or receiver.

“Environmental Law” means and includes the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act, the Superfund Amendments and Reauthorization Act of 1986, any other “Superfund” or “Superlien” law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Materials, as now or at any time hereafter in effect.

“Full Insurable Value” means the reasonable replacement cost of the Project less physical depreciation and exclusive of land, excavations, footings, foundation and parking lots as determined in accordance with **Section 7.2(a)** hereof.

“Lease Term” means the period from the effective date of this Lease until the expiration thereof pursuant to **Section 3.2** of this Lease.

“Net Proceeds” means, when used with respect to any insurance or condemnation award with respect to the Project, the gross proceeds from the insurance or condemnation award with respect to which that term is used remaining after payment of all expenses (including attorneys’ fees, trustee’s fees and any extraordinary expenses of the City and the Trustee) incurred in the collection of such gross proceeds.

“Permitted Encumbrances” means, as of any particular time, as the same may encumber the Project Site (a) liens for ad valorem taxes and special assessments not then delinquent, (b) the Indenture, the Lease and the Performance Agreement, (c) utility, access and other easements and rights-of-way, mineral rights, restrictions, exceptions and encumbrances that will not materially interfere with or impair the operations being conducted on the Project Site or easements granted to the City, (d) such minor defects, irregularities, encumbrances, easements, mechanic’s liens, rights-of-way and clouds on title as normally exist with respect to properties similar in character to the Project Site and as do not in the

aggregate materially impair the property affected thereby for the purpose for which it was acquired or is held by the City, (e) liens or security interests granted pursuant to any Leasehold Mortgage or any Financing Documents, and (f) any other lien, encumbrance, lease, easements, restrictions or covenants consented to in writing by the Company and the Owners of 100% of the principal amount of the Bonds. Nothing in this definition shall authorize or permit any party other than the Company to create or consent to the creation of any Permitted Encumbrance.

“Plans and Specifications” means the plans and specifications prepared for and showing the Project, as amended by the Company from time to time prior to the Completion Date, the same being duly certified by the Company, and on file with the Company in Springfield, Missouri, or with the architect/engineers retained by the Company for the Project, and which shall be available for reasonable inspection by the City, the Trustee and their duly appointed representatives.

Section 1.2. Rules of Interpretation.

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

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

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

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

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

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

Section 1.3. Acceptance of Indenture. The Company acknowledges that it has received an executed copy of the Indenture and that it is familiar with the terms and conditions of the Indenture. The Company further covenants that it will comply with all the conditions and covenants contained in the Indenture relating to the Company and the Project, and that it will not take any action which would cause a default thereunder or jeopardize the rights of the Trustee, the City or the Bondowners.

ARTICLE II

REPRESENTATIONS

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

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

(b) The City proposes to purchase and install the Project or cause the Project to be purchased and installed. The City will lease the Project to the Company and sell the Project or any portion thereof to the Company if the Company exercises its option to purchase the Project or any portion thereof as provided herein, all for the purpose of furthering the public purposes of the Act;

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

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

(e) The City will not permit a lien to be placed on the Project or pledge the revenues derived therefrom for any bonds or other obligations other than the Bonds except with the written consent of the Authorized Company Representative;

(f) The City shall have no authority to operate the Project as a business or in any other manner except as the lessor thereof;

(g) The purchase and installation of the Project and the leasing of the Project by the City to the Company will further the public purposes of the Act; and

(h) No member of the governing body of the City or any other officer of the City has any significant or conflicting interest, financial, employment or otherwise, in the Company or in the transactions contemplated hereby.

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

(a) The Company is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Pennsylvania and is authorized to conduct business in the State of Missouri;

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

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

(d) The estimated costs of purchasing and installing the Project supplied by the Company are in accordance with sound accounting principles;

(e) The Project will comply in all material respects with all presently applicable building and zoning, health, environmental and safety orders and laws and all other applicable laws, rules and regulations; and

(f) The Project is located wholly within the corporate limits of the City of Springfield, Missouri.

ARTICLE III

GRANTING PROVISIONS

Section 3.1. Granting of Leasehold Estate. The City hereby rents, leases and lets the Project to the Company, and the Company hereby rents, leases and hires the Project from the City, subject to Permitted Encumbrances, for the rentals and upon and subject to the terms and conditions herein contained.

Section 3.2. Lease Term. This Lease shall become effective upon its delivery, and subject to sooner termination pursuant to the provisions of this Lease, shall have a term commencing as of the date of this Lease and terminating on December 1, 20[[26]].

Section 3.3. Possession and Use of the Project.

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

(b) Subject to the provisions of this Section, the Company shall have the right to use the Project for any lawful purpose allowed by law and contemplated by the Act, this Lease and the

Performance Agreement. The Company shall comply in all material respects with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, local and other governments or governmental authorities, now or hereafter applicable to the Project or to any adjoining public ways, as to the manner of use or the condition of the Project or of adjoining public ways. In the event of demonstrated noncompliance with such statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements the Company will take all reasonable steps to comply with such statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements. The Company shall also comply with the mandatory requirements, rules and regulations of all insurers under the policies carried under the provisions of **Article VII** hereof. The Company shall pay or cause to be paid all costs, expenses, claims, fines, penalties and damages that may in any manner arise out of, or be imposed as a result of, the failure of the Company to comply with the provisions of this Section. Notwithstanding any provision contained in this Section, however, the Company shall have the right, at its own cost and expense, to contest or review by legal or other appropriate procedures the validity or legality of any such governmental statute, law, ordinance, order, judgment, decree, regulation, direction or requirement, or any such requirement, rule or regulation of an insurer, and during such contest or review the Company may refrain from complying therewith.

Section 3.4. Title to the Project. The City shall be the sole owner of the Project during the Lease Term.

ARTICLE IV

PURCHASING AND INSTALLING THE PROJECT

Section 4.1. Issuance of the Bonds. To provide funds for the payment of Project Costs, the City agrees that it will issue, sell and cause to be delivered the Bonds to the Company, as purchaser thereof, in accordance with the provisions of the Indenture and the Bond Purchase Agreement. The proceeds of the sale of the Bonds, when received, shall be paid over to the Trustee for the account of the City. The Trustee shall promptly deposit such proceeds, when received, as provided in the Indenture, to be used and applied as hereinafter provided in this Lease and in the Indenture. Alternatively, the Trustee may (pursuant to **Section 208(d)** of the Indenture) endorse the Bonds in an amount equal to the requisition certificates submitted pursuant to **Section 4.4** below. In that event, the purchaser of the Bonds shall be deemed to have deposited funds with the Trustee in an amount equal to the amount stated in the requisition certificate.

Section 4.2. Purchase and Installation of the Project. The City and the Company agree that the City will and the Company as the agent of the City shall, but solely from the Project Fund, or an endorsement of the Bond balance pursuant to **Section 4.1** above and **Section 208(d)** or **Section 209(d)** of the Indenture, purchase and install the Project as follows:

(a) Concurrently with the execution of this Lease, the City will acquire that portion of the Project currently complete, if any, and a bill of sale with respect thereto will be delivered to the City;

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

Specifications, with such changes and additions as may be made hereunder, is desirable and appropriate in connection with the Project. The provisions of this paragraph are in addition to and do not supersede the provisions of **Section 8.3**;

(c) Except as provided in the next sentence, title to the Project shall be evidenced by bills of sale or other instruments of transfer, including purchase orders or other instruments pursuant to which the City acquires title to personal property directly from the vendor thereof. Subject to **Section 8.2**, all portions of the Project substituted by the Company shall automatically become part of the Project subject to this Lease, and full title and ownership of such Project shall be automatically vested in the City, without the requirement of a bill of sale or other instrument of conveyance unless otherwise requested by the City. In any event, on or before March 1 of each year, the Company shall furnish to the City (addressed to the City Clerk) and the Trustee a list of items (based on the Company's internal record keeping) comprising the Project as of January 1 of such year (the City and the Company agree that the Trustee has no duty or obligation to review any such lists and is merely holding them as a repository). The improper inclusion or exclusion of any item in the Project pursuant to such list may be rectified by the Company within 30 days' of the discovery by the Company of such improper inclusion or exclusion. The improper inclusion or exclusion of an item on or from such list shall not affect the items comprising the Project for the purpose of this Lease or title thereto as intended by the parties hereto. The Company shall provide such information to the Trustee as may be requested in order to ensure that such list corresponds to the list of items comprising the Project maintained by the Trustee; and

(d) The Company agrees that it will use reasonable efforts to cause the purchase and installation of the Project to be completed as soon as practicable with all reasonable dispatch. In the event such purchase and installation commences prior to the receipt of proceeds from the sale of the Bonds, the Company agrees to advance all funds necessary for such purpose; provided, however, that the Company may be reimbursed from Bond proceeds for any such advance.

Section 4.3. Project Costs. The City hereby agrees to pay for, but solely from the Project Fund, or an endorsement of the Bond balance pursuant to **Section 4.1** above and **Section 208(d)** or **Section 209(d)** of the Indenture, and hereby authorizes and directs the Trustee to pay for, but solely from the Project Fund, all Project Costs upon receipt by the Trustee of a requisition certificate pursuant to **Section 4.4** hereof.

Section 4.4. Payment for Project Costs. All Project Costs as specified in **Section 4.3** hereof shall be paid by the Trustee from the Project Fund as more fully provided in the Indenture, or an endorsement of the Bond balance pursuant to **Section 4.1** above and **Section 208(d)** or **Section 209(d)** of the Indenture. The City hereby authorizes and directs the Trustee to make disbursements from the Project Fund, or endorse the Bond balance pursuant to **Section 4.1** above and **Section 208(d)** or **Section 209(d)** of the Indenture, upon receipt by the Trustee of certificates in substantially the form attached hereto as **Exhibit C**, signed by an Authorized Company Representative. The Trustee may rely conclusively on any such certificate and shall not be required to make any independent investigation in connection therewith. The submission of any requisition certificate by an Authorized Company Representative shall constitute unto the Trustee an irrevocable determination that all conditions precedent to the payments requested have been satisfied.

Section 4.5. Establishment of Completion Date. The Completion Date for the Project shall be evidenced to the City and the Trustee by a certificate signed by the Authorized Company Representative stating (a) that the purchase and installation of the Project has been substantially completed in accordance with the Plans and Specifications, (b) the date of completion thereof, and (c) that

all costs and expenses incurred in the purchase, construction, improvement and installation of the Project have been paid except costs and expenses the payment of which is not yet due or is being retained or contested in good faith by the Company, and (d) amounts to be retained by Trustee with respect to item (c) above. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being. The Company and the City agree to cooperate in causing such certificate to be furnished to the Trustee. A certificate meeting the requirements of this section will be deemed filed on said date, even if not actually filed by said date.

Section 4.6. Surplus or Deficiency in Project Fund.

(a) Upon receipt of the certificate described in **Section 4.5** hereof, the Trustee shall, as provided in **Section 504** of the Indenture, transfer any remaining moneys then in the Project Fund to the Bond Fund to be applied as directed by the Company solely to (1) the payment of principal and premium, if any, of and interest on the Bonds through the payment (including regularly scheduled principal payments, if any) or redemption thereof at the earliest date permissible under the terms of the Indenture, or (2) at the option of the Company, to the purchase of Bonds at such earlier date or dates as the Company may elect. Any amount so deposited in the Bond Fund may be invested as permitted by **Section 702** of the Indenture.

(b) If no Additional Bonds are issued as provided in **Section 209** of the Indenture, and the balance, if any, in the Project Fund shall be insufficient to pay fully all Project Costs and to complete the Project free of liens and encumbrances other than Permitted Encumbrances, the Company shall pay, in cash, the full amount of any such deficiency by making payments thereof directly to the contractors and to the suppliers of materials and services as the same shall become due, and the Company shall save the City and the Trustee whole and harmless from any obligation to pay such deficiency.

Section 4.7. Project Property of City. The Project and all additions thereto or thereof, the Project as fully completed, anything under this Lease which becomes, is deemed to be, or constitutes a part of the Project, and the Project as repaired, rebuilt, rearranged, restored or replaced by the Company under the provisions of this Lease, except as otherwise specifically provided herein, shall immediately when acquired and/or installed become the absolute property of the City, subject only to this Lease, the Indenture and any other Permitted Encumbrances. Nothing herein shall limit the Company's right to own personal property which is not a part of the Project as described in **Section 4.8** hereof.

Section 4.8. Personal Property Purchased by the Company. Any item of personal property the entire purchase price of which is paid for by the Company with the Company's own funds, and no part of the purchase price of which is paid for, or reimbursed, from funds deposited pursuant to the terms of this Lease in the Project Fund, shall be the sole and absolute property of the Company, shall not be subject to the terms of this Lease or the Performance Agreement and shall not constitute a part of the Project for purposes of **Section 6.4** and therefore is subject to taxation, to the extent otherwise provided by law.

Section 4.9. Environmental Matters. The Company acknowledges that it is responsible for maintaining the Project in compliance with all Environmental Laws. In the event that the Company fails to undertake to comply with any final, non-appealable order issued by any local, state or federal authority under applicable Environmental Law, the City or the Trustee, immediately after notice to the Company, may elect (but shall not be required) to undertake such compliance. Any moneys expended by the City or the Trustee in efforts to comply with any applicable Environmental Law (including the reasonable cost of hiring consultants, undertaking sampling and testing, performing any cleanup necessary or useful in the compliance process and reasonable attorneys' fees) shall be due and payable as Additional Rent

hereunder with interest thereon at the average rate of interest per annum on the Bonds, plus two (2) percentage points, from the date such cost is incurred. There shall be unlimited recourse to the Company to the extent of any liability incurred by the City or the Trustee with respect to any breaches of the provisions of this section.

The Company shall and does hereby indemnify the City, the Trustee and the Bondowners and agree to defend and hold them harmless from and against all loss, cost, damage and expense (including, without limitation, reasonable attorneys' fees and costs associated incurred in the investigation, defense and settlement of claims) that they may incur, directly or indirectly, as a result of or in connection with the assertion against them or any of them of any claim relating to the presence on, escape or removal from the Project during the term of this Lease of any hazardous substance or other material regulated by any applicable Environmental Law, or compliance with any applicable Environmental Law, whether such claim is raised before, during or after the term of this Lease, including claims relating to personal injury or damage to property; provided, however, this indemnity shall only relate to claims resulting from the City's ownership of the Project and the Trustee's acceptance of its duties as Trustee hereunder.

ARTICLE V

RENT PROVISIONS

Section 5.1. Basic Rent. The Company covenants and agrees to pay to the Trustee in same day funds for the account of the City during this Lease Term, for deposit in the Bond Fund on or before 10:00 a.m., Trustee's local time, on or before each December 1, commencing December 1, 2017 and continuing until the principal of and interest on the Bonds shall have been fully paid, an amount which, when added to any collected funds then on deposit in the Bond Fund and available on such Payment Date, shall be equal to the total amount payable on each December 1 as interest on the Bonds. On December 1, 20[[26]] (or such earlier date as the Company may elect to redeem the Bonds), the Company shall also pay an amount equal to all principal then due on the Bonds in connection with such maturity or redemption. Except as offset pursuant to the right of the Company set forth below, all payments of Basic Rent provided for in this Section shall be paid directly to the Trustee and shall be deposited in accordance with the provisions of the Indenture into the Bond Fund and shall be used and applied by the Trustee in the manner and for the purposes set forth in this Lease and the Indenture. In furtherance of the foregoing, and notwithstanding any other provision in this Lease, the Indenture, the Bond Purchase Agreement or the Performance Agreement to the contrary, and provided that the Purchaser, or any other affiliate of the Company, is the sole holder of the Bonds, the Company shall set-off the then-current Basic Rent payment against the City's obligation to the Purchaser, or any other affiliate of the Company, as Owner under the Indenture in lieu of delivery of the Basic Rent on any Payment Date, without providing notice of such set-off to the Trustee. The Trustee may conclusively rely on the absence of any notice from the Company to the contrary as evidence that such set-off has occurred. Any Basic Rent paid by the Company which exceeds the total amount payable on such payment dates shall be immediately paid to the Company by wire transfer. At its option, on the final Payment Date, if the Trustee is not holding the Bonds pursuant to the provisions of the Indenture, the Purchaser shall, on or before the final Payment Date, deliver to the Trustee for cancellation Bonds not previously paid and the Company shall receive a credit against the Basic Rent payable by the Company in an amount equal to the principal amount of the Bonds so tendered for cancellation plus accrued interest thereon.

Notwithstanding anything contained in this Lease, the Indenture, the Bond Purchase Agreement or the Performance Agreement to the contrary, if the Purchaser, or any other affiliate of the Company, is the Owner of all of the Bonds Outstanding, payments of Basic Rent may be made via a transaction entry

on the trust records held by the Trustee and the Paying Agent without requiring the Company to wire or otherwise transfer any moneys to such Owner or the Trustee.

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

- (a) all reasonable fees, charges and expenses, including agent and counsel fees, of the Trustee or any Paying Agent incurred under the Indenture, this Lease, or any other document entered into in connection with the Bonds, as and when the same become due;
- (b) all costs incident to the payment of the principal of and interest on the Bonds as the same becomes due and payable, including all costs and expenses in connection with the call, redemption and payment of all Outstanding Bonds;
- (c) all reasonable costs which are reasonably incurred in connection with the enforcement of any rights against the Company or the Project or in connection with a failure of the Company to perform its obligations under this Lease, the Indenture or the Performance Agreement by the City, the Trustee or the Bondowners, including counsel fees and expenses;
- (d) all amounts payable under the Performance Agreement; or
- (e) all other payments of whatever nature which the Company has agreed to pay or assume under the provisions of this Lease.

Section 5.3. Obligations of Company Absolute and Unconditional.

(a) The obligations of the Company under this Lease to make payments of Basic Rent and Additional Rent on or before the date the same become due, and to perform all of its other obligations, covenants and agreements hereunder shall be absolute and unconditional, without notice or demand, and without abatement, deduction, set-off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Project shall have been started or completed, or whether the City's title thereto or to any part thereof is defective or nonexistent, and notwithstanding any damage to, loss, theft or destruction of, the Project or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Project, legal curtailment of the Company's use thereof, the eviction or constructive eviction of the Company, any change in the tax or other laws of the United States of America, the State of Missouri or any political subdivision thereof, any change in the City's legal organization or status, or any default of the City hereunder, and regardless of the invalidity of any action of the City; provided, however, that nothing in this **Section 5.3(a)** or **Section 5.3(b)** is intended or shall be deemed to affect or impair in anyway the rights of the Company to tender Bonds for redemption in satisfaction of Basic Rent as provided in **Section 5.1** and **Section 5.4** hereof, nor the right of the Company to terminate this Lease and repurchase the Project as provided in **Article XI**.

(b) Nothing in this Lease shall be construed to release the City from the performance of any agreement on its part herein contained or as a waiver by the Company of any rights or claims the Company may have against the City under this Lease or otherwise, but any recovery upon such rights and claims shall be had from the City separately, it being the intent of this Lease that the Company shall be unconditionally and absolutely obligated to perform fully all of its obligations, agreements and covenants under this Lease (including the obligation to pay Basic Rent and Additional Rent) for the benefit of the Bondowners. The Company may, however, at its own cost and expense and in its own name or in the

name of the City, prosecute or defend any action or proceeding or take any other action involving third persons which the Company deems reasonably necessary in order to secure or protect its right of possession, occupancy and use hereunder, and in such event the City hereby agrees to cooperate fully with the Company and to take all action necessary to effect the substitution of the Company for the City in any such action or proceeding if the Company shall so request.

Section 5.4. Prepayment of Basic Rent. The Company may at any time and from time to time prepay all or any part of the Basic Rent provided for hereunder (subject to the limitations of **Section 301(a)** of the Indenture relating to the partial redemption of the Bonds). During such times as the amount held by the Trustee in the Bond Fund shall be sufficient to pay, at the time required, the principal of and interest on all the Bonds then remaining unpaid, the Company shall not be obligated to make payments of Basic Rent under the provisions of this Lease. At its option, the Company may deliver to the Trustee for cancellation Bonds owned by the Company and not previously paid, and the Company shall receive a credit against amounts payable by the Company for the redemption of Bonds in an amount equal to the principal amount of the Bonds so tendered for cancellation, plus accrued interest thereon (principal to be credited against principal and interest to be credited against interest).

ARTICLE VI

MAINTENANCE, TAXES AND UTILITIES

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

Section 6.2. Taxes, Assessments and Other Governmental Charges.

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

(b) The Company shall have the right, in its own name or in the City's name, to contest the validity or amount of any tax, assessment or other governmental charge which the Company is required to bear, pay and discharge pursuant to the terms of this Section by appropriate legal proceedings instituted at least 10 days before the tax, assessment or other governmental charge complained of becomes delinquent if and provided (1) the Company, before instituting any such contest, gives the City and the Trustee

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

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

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

Section 6.4. Property Tax Exemption. The City and the Company agree that while the Project is owned by the City and is subject to this Lease, the Project and the leasehold interest of the Company in the Project will be exempt from all *ad valorem* personal property taxes by reason of such ownership, and the City agrees that it will (at the expense of the Company) cooperate with the Company to defend such exemption against all parties in accordance with the Performance Agreement attached hereto as **Appendix I**. Notwithstanding the foregoing, the Company will annually pay to the City the payments in lieu of taxes with respect to the Project set forth in the Performance Agreement.

ARTICLE VII

INSURANCE

Section 7.1. Insurance Generally. The Company agrees to maintain the insurance required by this **Article VII**. The Trustee shall have no obligation to purchase insurance if the Company fails to maintain the insurance required by this **Article VII**.

Section 7.2. Property Insurance.

(a) The Company shall at its sole cost and expense obtain and shall maintain throughout the Lease Term, a policy or policies of insurance (including, if appropriate, builder's risk insurance) to keep the Project constantly insured against loss or damage by fire, lightning and all other risks covered by the extended coverage insurance endorsement then in use in the State of Missouri in an amount equal to the Full Insurable Value thereof (subject to reasonable loss deductible provisions). The insurance required pursuant to this Section shall be maintained with a generally recognized responsible insurance company or companies authorized to do business in the State of Missouri or generally recognized international insurers or reinsurers with an A.M. Best rating of B+ or the equivalent thereof or better as may be selected by the Company. All such policies of insurance pursuant to this Section, and all renewals thereof, shall name the Company as insured and the City and the Trustee shall be named as loss payees, as their respective interests may appear, and shall contain a provision that the issuer of such insurance will provide at least 10 days' advance written notice to, the Company of the cancellation of such insurance. Company agrees it shall immediately forward any notice of cancellation it receives from the issuer of

such insurance to the City and Trustee. The Company shall provide the City and the Trustee, on an annual basis, commencing on December 1, 2016 with a certificate of an Authorized Company Representative certifying compliance with this Section. The Trustee shall be entitled to rely upon said certificate as to the Company's compliance with the insurance requirements. The Trustee makes no representation as to, and shall have no responsibility for the sufficiency or adequacy of, the insurance.

(b) In the event of loss or damage to the Project, the Net Proceeds of property insurance carried pursuant to this Section shall be applied as provided in **Article IX** of this Lease, or as may be directed by, or on behalf of, the Owners of 100% in principal amount of the Bonds Outstanding.

Section 7.3. Commercial General Liability Insurance.

(a) The Company shall at its sole cost and expense maintain or cause to be maintained at all times during the Lease Term general accident and commercial general liability insurance under which the City, the Company and the Trustee shall be named as additional insureds, properly protecting and indemnifying the City and the Trustee, in an amount not less than the limits of liability set by Section 537.610 of the Revised Statutes of Missouri, as amended (subject to reasonable loss deductible amounts not to exceed the amounts normally or generally carried by the Company or its affiliates). The policies of said insurance shall contain a provision that the issuer of such insurance will provide at least 10 days' advance written notice to the Company of the cancellation of such insurance. Company agrees it shall immediately forward any notice of cancellation it receives from the issuer of such insurance to the City and Trustee. The Company shall provide the City and the Trustee, on an annual basis, commencing on December 1, 2016 with a certificate of an Authorized Company Representative certifying compliance with this Section, together with certificates of insurance evidencing such coverage. The Trustee shall be entitled to rely upon said certificate as to the Company's compliance with the insurance requirements. The Trustee makes no representation as to, and shall have no responsibility for the sufficiency or adequacy of, the insurance.

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

Section 7.4. Workers' Compensation. The Company agrees throughout the Lease Term to maintain or cause to be maintained the Workers' Compensation coverage as may be required by the laws of the State of Missouri.

Section 7.5. Blanket Insurance Policies; Self-Insurance. The Company may satisfy any of the insurance requirements set forth in this Article by using blanket policies of insurance, provided each and all of the requirements and specifications of this Article respecting insurance are complied with. Nothing in this Lease shall be construed from prohibiting the Company from self-insuring provided the Company, or in combination with its parent corporation, has a net worth in excess of \$100,000,000, as determined by generally accepted accounting principles. If the Company self-insures as permitted by this Section, the Company shall so notify the City and the Trustee in writing and shall be deemed to have complied with the requirements of this Article.

ARTICLE VIII

ALTERATION OF THE PROJECT

Section 8.1. Additions, Modifications and Improvements to the Project. The Company shall have and is hereby given the right, at its sole cost and expense, to make such additions, modifications and improvements in and to any part of the Project as the Company from time to time may deem necessary or desirable for its business purposes. All additions, modifications and improvements made by the Company pursuant to the authority of this Section shall (a) be made in workmanlike manner and will comply in all material respects with all laws and ordinances applicable thereto, (b) when commenced, be prosecuted to completion with due diligence, and (c) when completed, be deemed a part of the Project; provided, however, that additions of machinery and equipment installed on the Project Site by the Company not purchased or acquired from funds deposited with the Trustee hereunder and not constituting repairs, renewals or replacements of the Project shall remain the property of the Company and may be removed by the Company. Such property shall be subject to *ad valorem* taxes.

Section 8.2. Removal and Replacement of Portions of the Project.

(a) The Company may, if it is not in default in making payments of Basic Rent or Additional Rent hereunder, remove from the Project and sell, exchange, replace or otherwise dispose of, without responsibility or accountability to the City or the Trustee with respect thereto, any items of machinery and equipment, or parts thereof, which constitute a part of the Project and which have become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary or which, in the sound discretion of the Company, are otherwise no longer useful to the Company in its operations. Prior to any such removal, the Company shall deliver to the City and the Trustee a certificate signed by an Authorized Company Representative containing a complete description, including the make, model and serial numbers, if any, of any machinery or equipment constituting a part of the Project that the Company proposes to remove. The Trustee shall amend the list of machinery or equipment comprising the Project maintained by it pursuant to **Section 4.2(b)** hereof upon receipt of such certificate. Upon request, the City will execute and deliver a bill of sale that transfers full and complete title to the Company of such portion of the Project removed. Notwithstanding anything contained herein to the contrary, title to any item of the Project removed from the Project Site shall automatically vest in the Company without further instrument or action, and such vesting of title shall be self-operative effective upon removal. Upon any removal of portions of the Project, the portions of the Project so removed shall no longer be entitled to the benefits of the Performance Agreement.

(b) In all cases, the Company shall pay all of the costs and expenses of any such removal and shall immediately repair at its expense all damage to the Project caused thereby. The Company's rights under this Section to remove machinery and equipment constituting a part of the Project is intended only to permit the Company to maintain an efficient operation by the removal of machinery and equipment which is no longer suitable for any of the reasons set forth in this Section, and such right is not to be construed to permit a removal under any other circumstances and specifically is not to be construed to permit the Company to make a wholesale removal of the Project.

Section 8.3. [Reserved].

Section 8.4. Permits and Authorizations. The Company shall not do or permit others under its control to do any work on the Project related to any repair, rebuilding, restoration, replacement, modification or addition to the Project, or any part thereof, unless all requisite municipal and other governmental permits and authorizations shall have been first procured. All such work shall be done in a good and workmanlike manner and in material compliance with all applicable building, zoning and other

laws, ordinances, governmental regulations. In the event of demonstrated noncompliance with such laws, ordinances, governmental regulations and requirements the Company will take all reasonable steps to comply with laws, ordinances, governmental regulations and requirements.

Section 8.5. Mechanics' Liens.

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

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

ARTICLE IX

DAMAGE, DESTRUCTION AND CONDEMNATION

Section 9.1. Damage or Destruction.

(a) If the Project shall be damaged or destroyed by fire or any other casualty, whether or not covered by insurance, the Company, as promptly as practicable, may elect to do any of the following:

(i) repair, restore, replace or improve the Project as nearly as may be practicable to the condition and character of the Project immediately prior to such damage or destruction.

(ii) if the Company shall determine that repairing, restoring, replacing or improving the Project or any portion thereof is not practicable and desirable, any Net Proceeds of property insurance required by **Article VII** hereof received with respect to such damage or loss shall be

paid into the Bond Fund and shall be used to redeem Bonds on the earliest practicable redemption date or to pay the principal of any Bonds as the same become due.

(b) If the Company shall elect to replace any equipment, for all purposes of this Lease, any reference to the word "Project" shall be deemed to also include any such new equipment and all additions thereto and all replacements and alterations thereof.

(c) The Net Proceeds of property insurance required by **Article VII** hereof received with respect to any damage or loss to the Project shall be paid to the Company. The insurance monies, if any, paid to the Company as provided under this Article, on account of any loss or destruction to the Project, shall be held by it in trust and applied only as provided in subsection (a) above.

(d) If any of the insurance monies paid by the insurance company to the Company as hereinabove provided, shall remain after the completion of such repairs, restoration or replacement, and this Lease shall not have terminated, the excess shall be deposited in the Bond Fund. If the Net Proceeds shall be insufficient to pay the entire cost of such repairs, restoration or replacement, the Company shall pay the deficiency.

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

(f) The City and the Company agree that they will cooperate with each other, to such extent as such other party may reasonably require, in connection with the prosecution or defense of any action or proceeding arising out of, or for the collection of any insurance monies that may be due in the event of, any loss or damage, and that they will execute and deliver to such other parties such instruments as may be required to facilitate the recovery of any insurance monies.

(g) The Company agrees to give prompt notice to the City and the Trustee with respect to all fires and any other casualties occurring in, on, at or about the Project which damage a material portion of the Project.

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

Section 9.2. Condemnation.

(a) If during the Lease Term, title to, or the temporary use of, all or any part of the Project shall be condemned by or sold under threat of condemnation to any authority possessing the power of eminent domain, to such extent that the claim or loss resulting from such condemnation is greater than \$1,000,000, the Company shall, within 90 days after the date of entry of a final order in any eminent domain proceedings granting condemnation or the date of sale under threat of condemnation, notify the City and the Trustee in writing as to the nature and extent of such condemnation or loss of title and whether it is practicable and desirable to acquire substitute equipment.

(b) If the Company shall determine that such substitution is practicable and desirable, the Company shall proceed promptly with and complete with reasonable dispatch the acquisition and installation of such substitute equipment, so as to place the Project in substantially the same condition as existed prior to the exercise of the said power of eminent domain, including the acquisition of other equipment suitable for the Company's operations (which equipment will be deemed a part of the Project and available for use by the Company without the payment of any rent other than herein provided, to the same extent as if such other equipment were specifically described herein and demised hereby); provided, that such equipment will be acquired by the City subject to no liens, security interests or encumbrances prior to the lien and/or security interest afforded by the Indenture other than Permitted Encumbrances. In such case, any Net Proceeds received from any award or awards with respect to the Project or any part thereof made in such condemnation or eminent domain proceedings, or of the sale proceeds, shall be applied in the same manner as provided in **Section 9.1** hereof (with respect to the receipt of property insurance proceeds).

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

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

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

Section 9.3. Bondowner Approval. Notwithstanding anything to the contrary contained in this **Article IX**, the proceeds of any insurance received subsequent to a casualty or of any condemnation proceedings (or threats thereof) may prior to the application thereof by the City or the Trustee be applied as directed by the Owners of 100% of the principal amount of Bonds Outstanding, subject and subordinate to the rights of the City and the Trustee to be paid all their expenses (including attorneys' fees, trustee's fees and any extraordinary expenses of the City and the Trustee) incurred in the collection of such gross proceeds. For purposes of this Section only, any Person to whom Bonds have been pledged in good faith shall be deemed to be the Owner of the Bonds.

ARTICLE X

SPECIAL COVENANTS

Section 10.1. No Warranty of Condition or Suitability by the City; Exculpation and Indemnification. The City makes no warranty, either express or implied, as to the condition of the Project or that it will be suitable for the Company's purposes or needs. The Company releases the City

and the Trustee from, agrees that the City shall not be liable for and agrees to hold the City and the Trustee harmless against, any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Project or the use thereof; unless such loss is the result of the City's or the Trustee's respective gross negligence or willful misconduct. This provision shall survive termination of this Lease.

Section 10.2. Surrender of Possession. Upon accrual of the City's right of re-entry to the extent provided in Section 12.2(b), the Company shall peacefully surrender possession of the Project to the City in good condition and repair; provided, however, the Company shall have the right within 90 days (or such later date as the City may agree to) after the termination of this Lease to remove from the Project Site any buildings, improvements, furniture, trade fixtures, machinery and equipment owned by the Company and not constituting part of the Project. All repairs to and restorations of the Project required to be made because of such removal shall be made by and at the sole cost and expense of the Company, and during said 90-day (or extended) period the Company shall bear the sole responsibility for and bear the sole risk of loss for said buildings, improvements, furniture, trade fixtures, machinery and equipment owned by the Company and not constituting part of the Project. All buildings, improvements, furniture, trade fixtures, machinery and equipment owned by the Company and which are not so removed from the Project before the expiration of said period shall be the separate and absolute property of the City.

Section 10.3. City's Right of Access to the Project. The Company agrees that the City and the Trustee, and their duly authorized agents, shall have the right at reasonable times during business hours, subject to 5 Business Days' advance written notice and the Company's usual safety and security requirements, to enter upon the Project Site (a) to examine and inspect the Project without interference or prejudice to the Company's operations, (b) as may be reasonably necessary to cause to be completed the purchase and installation provided for in Section 4.2 hereof, (c) performing such work in and about the Project Site made necessary by reason of the Company's default under any of the provisions of this Lease, and (d) exhibiting the Project to prospective purchasers, lessees or trustees, following an uncured Event of Default in the case of purchasers or lessees.

Section 10.4. Permitted Encumbrances; Equipment Financing Documents.

(a) If no Event of Default under this Lease shall have happened and be continuing, the Company may at any time or times incur Permitted Encumbrances.

(b) The Company may request the City to (i) pledge, assign or otherwise hypothecate all or a portion of its interest in and to the Project in connection with any Equipment Financing, and/or (ii) acknowledge any Equipment Financing and the rights and remedies of any Equipment Lender thereunder. Subject to the terms and conditions of this Section, the City promptly will execute and deliver or authorize the filing of, at the Company's request and expense, all Equipment Financing Documents. The City and the Trustee will not be liable for any of the indebtedness evidencing the Equipment Financing or for any other obligations of the Company, as borrower under the Equipment Financing Documents in the Company's own name or as the authorized agent for the City even if such agency relationship is not specified. No separate signature or authorization from the City will be required for the execution and delivery of any Equipment Financing Documents. Each Equipment Lender will be entitled to rely upon the Equipment Financing Documents as having been executed by the Company as the agent for the City unless the Equipment Lender has actual notice that the agency granted in this Lease has been terminated because of an uncured Event of Default under this Lease. The City appoints the Company as its irrevocable attorney-in-fact, coupled with an interest, to execute and deliver on behalf of the City each Equipment Financing Document, subject to the limitations of liability set forth above.

(c) In the event of an Equipment Financing by which all or a portion of the Project is pledged as collateral under the Equipment Financing Documents, each of the following provisions will apply in addition to, but not excluding, provisions of the Equipment Financing Documents:

(1) This Lease may not be modified, amended, canceled or surrendered by agreement between the City and the Company, without the prior written consent of each Equipment Lender of which the City and the Trustee have received written notice.

(2) There will be no merger of title between the leasehold estate created by this Lease and the ownership interest of the City in the Project, notwithstanding that this Lease or the leasehold estate and ownership interest will be owned by the same person or persons, without the prior written consent of each Equipment Lender.

(3) If the mailing address of the Equipment Lender is provided to the City and the Trustee in writing, the City will send each Equipment Lender a copy of each notice of default and each notice of termination given to the Company under this Lease, at the same time such notice is sent to the Company. No notice to the Company will be effective unless a copy thereof is served upon each Equipment Lender of which the City and the Trustee has received written notice.

(4) Each Equipment Lender will have the same time period after receipt of notice within which to remedy or cause to be remedied any payment default under this Lease plus thirty (30) days, and the City will accept performance by the Equipment Lender as timely performance by the Company.

(5) The Equipment Lender will not be required to continue possession or continue legal proceedings under this Section if the particular default has been cured.

(6) The City may exercise any of its rights or remedies with respect to any other default by the Company, subject to the rights of the Equipment Lender under this Section as to such other defaults.

(7) In case of default by the Company under this Lease or the Performance Agreement, other than a default in the payment of money, the City will take no action to effect a termination of this Lease or the Performance Agreement by service of a notice or otherwise without first giving notice to the Equipment Lender and allowing the Equipment Lender a reasonable time within which either to (i) obtain possession of the Project and to remedy such default, or (ii) institute and, with reasonable diligence, complete legal proceedings or otherwise acquire the Company's leasehold estate under this Lease. The City's right to terminate this Lease and the Performance Agreement by reason of a default that is not susceptible of being remedied by the Equipment Lender will end with respect to such default when the Equipment Lender obtains possession of the Project or portion thereof financed by an Equipment Financing. The Equipment Lender will pay or cause to be paid to the City and the Trustee all expenses, including reasonable counsel fees, court costs and disbursements incurred by the City or the Trustee in connection with any such default.

(8) If this Lease terminates prior to the expiration of the Lease Term, the City will enter into a new lease for the Project with the Equipment Lender for the remainder of the term, effective as of the date of such termination, at the same rent and upon the same terms, covenants and conditions contained herein, except that such new lease shall not guarantee possession of the Project to the Equipment Lender as against the Company and/or anyone claiming under the Company, and the City, simultaneously with the execution and delivery of such new lease, turns

over to the new lessee all monies, if any, then held by the City under the Lease on behalf of the Company, on condition that:

(A) the Equipment Lender will make written request for such new lease within thirty (30) days after the date of such termination, and

(B) on the commencement date of the term of the new lease, the new tenant cures all defaults of the Company under this Lease (susceptible of being cured by the Equipment Lender) which remain uncured on that date, and pays or causes to be paid all unpaid sums which at such time would have been payable under this Lease but for such termination, and pays or causes to be paid to the City and the Trustee on that date all expenses, including reasonable counsel fees, court costs and disbursements, incurred by the City and the Trustee in connection with any such default and termination as well as in connection with the execution and delivery of such new lease.

If more than one Equipment Lender requests a new lease, a new lease will be made with and delivered to the Equipment Lender whose security interest is prior in lien to those of any other Equipment Lender.

(9) If the Equipment Lender becomes the owner of this Lease and the Equipment Lender assigns this Lease, the Equipment Lender assigning this Lease shall be released from all liability accruing from and after the date of such assignment with the express written consent of the City.

(d) In the event the City or the Trustee engages counsel to review Equipment Financing Documents in connection with any request for the City to execute any Equipment Financing Documents or otherwise pledge the Project as collateral, the Company will reimburse the City and the Trustee for their reasonable counsel fees and expenses incurred in connection with such review.

Section 10.5. Indemnification of City and Trustee. The Company shall indemnify and save and hold harmless the City and the Trustee and their governing body members, officers, agents and employees (collectively, the “Indemnified Parties”) from and against all claims, demands, costs, liabilities, damages or expenses, including reasonable attorneys’ fees, by or on behalf of any person, firm or corporation arising from the issuance of the Bonds and the execution of this Lease, the Indenture or any other documents entered into in connection with the Bonds and from the conduct or management of, or from any work or thing done in or on the Project during the Lease Term, and against and from all claims, demands, costs, liabilities, damages or expenses, including reasonable attorneys’ fees, arising during the Lease Term from (a) any condition of the Project, (b) any breach or default on the part of the Company in the performance of any of its obligations under this Lease or any related document, (c) any contract entered into by the Company in connection with the purchase, construction, extension or improvement of the Project, (d) any act of negligence of the Company or of any of its agents, contractors, servants, employees or licensees, (e) unless the Company has been released from liability pursuant to **Section 13.1(c)**, any act of negligence of any assignee or sublessee of the Company, or of any agents, contractors, servants, employees or licensees of any assignee or sublessee of the Company, (f) obtaining any applicable state and local sales and use tax exemptions for materials or goods that become part of the Project, (g) failure to maintain and provide evidence of the policies of insurance as required by **Article VII**, and (h) any claim relating to the presence on, escape or removal from the Project during the term of the Lease of any hazardous substance or other material regulated by any applicable Environmental Law, or compliance with any applicable Environmental Law, whether such claim arises before, during or after the term of this Lease, including claims relating to personal injury or damage to property; provided, however, the indemnification contained in this **Section 10.5** shall not (i) extend to the City if such claims,

demands, costs, liabilities, damages or expenses, including attorneys' fees, are the result of work being performed at the Project by employees of the City or the result of gross negligence or willful misconduct by the City, or (ii) extend to the Trustee if such claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, are the result of the gross negligence or willful misconduct of the Trustee or (iii) extend to the City if such claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, are the result of the performance or failure to perform by the City or the Trustee of its obligations under this Lease, the Performance Agreement or any related documents. Upon notice from the City or the Trustee, the Company shall defend them or either of them in any such action or proceeding. This **Section 10.5** shall survive any termination of this Lease or the satisfaction and discharge of the Indenture.

In case any action shall be brought against one or more of the Indemnified Parties based upon the foregoing indemnification and in respect of which indemnity may be sought against the Company, the Indemnified Parties shall promptly notify the Company in writing and the Company shall promptly assume the defense thereof, including the employment of counsel, the payment of all reasonable expenses and the right to negotiate and consent to settlement. If the Company shall have wrongfully failed to assume the defense of such action, the reasonable fees and expenses of counsel retained by the Indemnified Party shall be paid by the Company. If any of the Indemnified Parties is advised by counsel retained by the Company to defend such action that there may be legal defenses available to it which are adverse to or in conflict with those available to the Company or any other Indemnified Party, and that the defense of such Indemnified Party should be handled by separate counsel, the Company shall not have the right to assume the defense of such Indemnified Party, but shall be responsible for the reasonable fees and expenses of counsel retained by such Indemnified Party in assuming its own defense, provided, such counsel shall be acceptable to the Company. Any one or more of the Indemnified Parties shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Indemnified Parties unless employment of such counsel has been specifically authorized by the Company in writing, which shall not be unreasonably withheld or delayed. The Company shall not be liable for any settlement of any such action effected without its prior written consent by any of the Indemnified Parties, but if settled with the prior written consent of the Company or if there be a final judgment for the plaintiff in any such action against the Company or any of the Indemnified Parties, with or without the consent of the Company, then provided that the Company was given prompt written notice and the ability to assume the defense thereof as required by this paragraph, the Company agrees to indemnify and hold harmless the Indemnified Parties to the extent provided herein.

Section 10.6. Depreciation, Investment Tax Credit and Other Tax Benefits. The City agrees that any depreciation, investment tax credit or any other tax benefits with respect to the Project or any part thereof shall be made available to the Company, and the City will fully cooperate with the Company in any effort by the Company to avail itself of any such depreciation, investment tax credit or other tax benefits.

Section 10.7. Company to Maintain its Corporate Existence. The Company agrees that until the Bonds are paid or payment is provided for in accordance with the terms of the Indenture, it will maintain its corporate existence, and will not dissolve or otherwise dispose of all or substantially all of its assets; provided, however, that the Company may, without violating the agreement contained in this Section, consolidate with or merge into another domestic corporation (i.e., a corporation incorporated and existing under the laws of one of the states of the United States) or permit one or more other domestic corporations to consolidate with or merge into it, or may sell or otherwise transfer to another domestic corporation all or substantially all of its assets as an entirety and thereafter dissolve, provided, the surviving, resulting or transferee corporation either (A) becomes, in connection with the consolidation, merger or sale of assets becomes the Owner of 100% in principal amount of the Bonds outstanding and expressly assumes in writing all of the obligations of the Company contained in this Lease and the

Performance Agreement, or (B) if not the Owner of 100% in principal amount of the Bonds outstanding, expressly assumes in writing all the obligations of the Company contained in this Lease; and, further provided, that if not the Owner of 100% in principal amount of the Bonds outstanding, the surviving, resulting or transferee corporation, as the case may be, has a consolidated net worth (after giving effect to said consolidation, merger or transfer) at least (i) equal to or greater than that of the Company immediately prior to said consolidation, merger or transfer, or (b) \$100,000,000. The term “net worth”, as used in this Section, shall mean the difference obtained by subtracting total liabilities (not including as a liability any capital or surplus item) from total assets of the Company and all of its subsidiaries. In any such consolidation, merger or transfer the Company shall comply with the provisions of **Section 10.1** hereof to the extent applicable.

Section 10.8. Security Interests. At the written request of the Owner of the Bonds, the City and the Company agree to enter into all instruments (including financing statements and statements of continuation) necessary for perfection of and continuance of the perfection of the security interests of the City and the Trustee in the Project. The Trustee shall, pursuant to Section 805 of the Indenture, continue or cause to be continued the liens of such instruments for so long as the Bonds shall be Outstanding. The City and the Company shall cooperate with the Trustee in this regard by executing such continuation statements and providing such information as the Trustee may require to renew such liens.

ARTICLE XI

OPTION AND OBLIGATION TO PURCHASE THE PROJECT

Section 11.1. Option to Purchase the Project. The Company shall have, and is hereby granted, the option to purchase the Project at any time, upon payment in full of all Bonds then outstanding or provision for their payment having been made pursuant to **Article XIII** of the Indenture. To exercise such option, the Company shall give written notice to the City and to the Trustee, and shall specify therein the date of closing such purchase, which date shall be not less than 15 nor more than 90 days from the date such notice is mailed, and in case of a redemption of the Bonds in accordance with the provisions of the Indenture, the Company shall make arrangements satisfactory to the Trustee for the giving of the required notice of redemption. Notwithstanding the foregoing, if the City or the Trustee provides notice of its intent to exercise its remedies hereunder upon an Event of Default (a “Remedies Notice”), the Company shall be deemed to have exercised its repurchase option under this Section on the 29th day following the issuance of the Remedies Notice without any further action by the Company; provided said notice has not been rescinded by such date (such option to take place on the 29th day following the issuance of the Remedies Notice). The Company may rescind such exercise by providing written notice to the City and the Trustee on or prior to the 29th day and by taking such action as may be required to cure the default that led to the giving of the Remedies Notice. The purchase price payable by the Company in the event of its exercise of the option granted in this Section shall be the sum of the following:

- (a) an amount of money which, when added to the amount then on deposit in the Bond Fund, will be sufficient to redeem all of the then outstanding Bonds on the earliest redemption date next succeeding the closing date, including, without limitation, principal and interest to accrue to said redemption date and redemption expense; plus
- (b) an amount of money equal to the Trustee’s agreed to and reasonable fees, charges and expenses under the Indenture accrued and to accrue until such redemption of the Bonds; plus

(c) an amount of money equal to all payments due and payable pursuant to the Performance Agreement through the end of the calendar year in which the date of purchase occurs; plus

(d) the sum of \$100.00.

At its option, to be exercised at least 5 days prior to the date of closing such purchase, the Company may deliver to the Trustee for cancellation Bonds not previously paid, and the Company shall receive a credit against the purchase price payable by the Company in an amount equal to 100% of the principal amount of the Bonds so delivered for cancellation, plus the accrued interest thereon.

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

(a) If the Indenture shall not at the time have been satisfied in full, a release from the Trustee of the Project from the lien and/or security interest of the Indenture and this Lease and appropriate termination of financing statements as required under the Uniform Commercial Code; and

(b) Documents conveying to the Company legal title to the Project, as it then exists, subject to the following: (1) those liens and encumbrances, if any, to which title to the Project was subject when conveyed to the City; (2) those liens and encumbrances created by the Company or to the creation or suffering of which the Company consented; (3) those liens and encumbrances resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Lease; (4) Permitted Encumbrances other than the Indenture and this Lease; and (5) if the Project or any part thereof is being condemned, the rights and title of any condemning authority.

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

Section 11.4. Obligation to Purchase the Project. As additional consideration for the Company's use of the Project, the Company hereby agrees to purchase, and the City hereby agrees to sell, the Project upon the occurrence of (a) the expiration of the Lease Term following full payment of the Bonds or provision for payment thereof having been made in accordance with the provisions of the Indenture, and (b) the final payment due by the Company under the Performance Agreement. The amount of the purchase price under this Section shall be \$100 plus an amount sufficient to redeem all the then Outstanding Bonds, plus accrued interest and the reasonable fees and expenses of the City and the Trustee.

ARTICLE XII

DEFAULTS AND REMEDIES

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

- (a) Default in the due and punctual payment of Basic Rent; or
- (b) Default in the due and punctual payment of Additional Rent for a period of 30 days following written notice to the Company by the City or the Trustee; or
- (c) Default in the due observance or performance of any other covenant, agreement, obligation or provision of this Lease on the Company’s part to be observed or performed, and such default shall continue for 30 days after the City or the Trustee has given the Company written notice specifying such default (or such longer period as shall be reasonably required to cure such default; provided that (1) the Company has commenced such cure within said 30-day period, and (2) the Company diligently prosecutes such cure to completion); or
- (d) The Company: (1) admits in writing its inability to pay its debts as they become due; or (2) files a petition in bankruptcy or for reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the Bankruptcy Code as now or in the future amended or any other similar present or future federal or state statute or regulation, or files a pleading asking for such relief; or (3) makes an assignment for the benefit of creditors; or (4) consents to the appointment of a trustee, receiver or liquidator for all or a major portion of its property or fails to have the appointment of any trustee, receiver or liquidator made without the Company’s consent or acquiescence, vacated or set aside; or (5) is finally adjudicated as bankrupt or insolvent under any federal or state law; or (6) is subject to any proceeding, or suffers the entry of a final and non-appealable court order, under any federal or state law appointing a trustee, receiver or liquidator for all or a major part of its property or ordering the winding-up or liquidation of its affairs, or approving a petition filed against it under the Bankruptcy Code, as now or in the future amended, which order or proceeding, if not consented to by it, is not dismissed, vacated, denied, set aside or stayed within 90 days after the day of entry or commencement; or (7) suffers a writ or warrant of attachment or any similar process to be issued by any court against all or any substantial portion of its property, and such writ or warrant of attachment or any similar process is not contested, stayed, or is not released within 60 days after the final entry, or levy or after any contest is finally adjudicated or any stay is vacated or set aside; or
- (e) the Company vacates, abandons, ceases operations, fails to occupy or is ejected from the Project Site or any material portion thereof, and the same remains uncured for or abandoned for a period of 90 days; or
- (f) The occurrence and continuance of an “Event of Default” by the Company under the Performance Agreement following any applicable notice and grace period provided therein.

Section 12.2. Remedies on Default. If any Event of Default referred to in **Section 12.1** hereof has occurred and continues beyond the period provided to cure, then the City may at the City’s election (subject, however, to any restrictions against acceleration of the maturity of the Bonds or termination of

this Lease in the Indenture), then or at any time thereafter, and while such default continues, take any one or more of the following actions, subject, however, at all times to the Company's rights under **Article XI**:

(a) cause all amounts payable with respect to the Bonds for the remainder of the term of this Lease to become due and payable after giving ten (10) days prior written notice thereof to the Company, as provided in the Indenture; or

(b) give the Company written notice of the City's intention to terminate this Lease on a date specified therein, which date shall not be earlier than 30 days after such notice is given, and if all defaults have not then been cured, on the date so specified, the Owners shall tender or be deemed to have tendered the outstanding principal amount of the Bonds for cancellation with instruction that such tender is in lieu of payment in accordance with **Section 11.1** hereof, the Company's rights to possession of the Project shall cease and this Lease shall thereupon be terminated, and the City may take possession of the Project or, if the Company has paid all obligations due and owing under the Indenture, this Lease and the Performance Agreement, convey the Project in accordance with **Section 11.2** hereof.

Section 12.3. Survival of Obligations. The Company covenants and agrees with the City and Owners that those of its obligations under this Lease which by their nature require performance after the end of the term of this Lease, or which are expressly stated herein as intended to survive expiration or termination of this Lease, shall survive the cancellation and termination of this Lease, for any cause.

Section 12.4. Performance of the Company's Obligations by the City. If the Company shall fail to keep or perform any of its obligations as provided in this Lease in the making of any payment or performance of any obligation, then the City, or the Trustee in the City's name, may (but shall not be obligated so to do) upon the continuance of such failure on the Company's part for 30 days after written notice of such failure is given the Company by the City or the Trustee, and without waiving or releasing the Company from any obligation hereunder, as an additional but not exclusive remedy, make any such payment or perform any such obligation, and all reasonable sums so paid by the City or the Trustee and all incidental reasonable costs and expenses incurred by the City or the Trustee (including, without limitation, attorneys' fees and expenses) in performing such obligations shall be deemed Additional Rent and shall be paid to the City or the Trustee on demand, and if not so paid by the Company, the City or the Trustee shall have the same rights and remedies provided for in **Section 12.2** hereof in the case of default by the Company in the payment of Basic Rent.

Section 12.5. Rights and Remedies Cumulative. The rights and remedies reserved by the Trustee, the City and the Company hereunder and those provided by law shall be construed as cumulative and continuing rights. No one of them shall be exhausted by the exercise thereof on one or more occasions. The Trustee, the City and the Company shall each be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Lease, notwithstanding availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity.

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

Section 12.7. Trustee's Exercise of the City's Remedies. Whenever any Event of Default shall have occurred and be continuing, the Trustee may, but except as otherwise provided in the Indenture shall not be obliged to, exercise any or all of the rights of the City under this Article, upon notice as required of the City unless the City has already given the required notice. In addition, the Trustee shall have available to it all of the remedies prescribed by the Indenture.

ARTICLE XIII

ASSIGNMENT AND SUBLEASE

Section 13.1. Assignment; Sublease.

(a) The Company may assign, transfer, encumber or dispose of this Lease or any interest therein or part thereof for any lawful purpose under the Act. With respect to any assignment, the Company shall comply with the following conditions:

(1) Such assignment shall be in writing, duly executed and acknowledged by the assignor and in proper form for recording;

(2) Such assignment shall include the entire then unexpired term of this Lease; and

(3) A duplicate original of such assignment shall be delivered to the City and the Trustee within 10 days after the execution thereof, together with an assumption agreement, duly executed and acknowledged by the assignee in proper form for recording, by which the assignee shall assume all of the terms, covenants and conditions of this Lease on the part of the Company to be performed and observed.

(b) The Company shall have the right to sublet all or any part of the Project to a single entity for any lawful purpose under the Act. The Company shall, within 10 days after the delivery thereof, furnish or cause to be furnished to the City and the Trustee a true and correct copy of each such sublease. Any sublease may provide, at the Company's option, that the City's consent shall not be required in respect of any further subletting thereunder if such further subletting is for a similar purpose as the original sublease and is for a purpose permissible under the Act.

(c) Notwithstanding the foregoing, the right of the Company to assign or sublease any interests in this Lease without the prior written consent of the City shall only apply to assignments made (A) to any entity whose long-term debt, or the long-term debt of an entity controlled by, under common control with or controlling such entity has at least a rating in any of the top three long term debt rating categories by any nationally recognized rating agency; (B) so long as the Company shall remain secondarily liable, to any such entity; or (C) to an entity controlled by or under common control with or controlling the Company, so long as such entity has a net worth of at least \$5,000,000 at the time of such assignment or sublease. Any assignee of all the rights of the Company shall agree to be bound by the terms of this Lease and any other documents related to the issuance of the Bonds. Upon such assignment of all the rights of the Company and agreement by the assignee to be bound by the terms of this Lease and any other documents related to the Bonds, the Company shall be released from and have no further obligations under this Lease or any agreement related to the issuance of the Bonds.

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

to such pledge and assignment. The City and the Company recognize that the Trustee is a third party creditor-beneficiary of this Lease.

Section 13.3. Restrictions on Sale or Encumbrance of Project by City. During the Lease Term, the City agrees that, except to secure the Bonds to be issued pursuant to the Indenture, it will not sell, assign, encumber, transfer or convey the Project or any interest therein, but may assign its interest in and pledge any moneys receivable under this Lease to the Trustee pursuant to the Indenture as security for payment of the principal of and interest on the Bonds.

ARTICLE XIV

AMENDMENTS, CHANGES AND MODIFICATIONS

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

ARTICLE XV

MISCELLANEOUS PROVISIONS

Section 15.1. Notices. All notices, certificates or other communications required or desired to be given hereunder shall be in writing and shall be governed by **Section 1403** of the Indenture.

Section 15.2. City Shall Not Unreasonably Withhold Consents and Approvals. Wherever in this Lease it is provided that the City shall, may or must give its approval or consent, or execute supplemental agreements or schedules, the City shall not unreasonably, arbitrarily or unnecessarily withhold or refuse to give such approvals or consents or refuse to execute such supplemental agreements or schedules; provided, however, that nothing in this Lease shall be interpreted to affect the City's rights to approve or deny any additional project or matter unrelated to the Project subject to zoning, building permit or other regulatory approvals by the City.

Section 15.3. Net Lease. The parties hereto agree (a) that this Lease shall be deemed and construed to be a net lease, (b) that the payments of Basic Rent are designed to provide the City and the Trustee funds adequate in amount to pay all principal of and interest accruing on the Bonds as the same become due and payable, (c) that to the extent that the payments of Basic Rent are not sufficient to provide the City and the Trustee with funds sufficient for the purposes aforesaid, the Company shall be obligated to pay, and it does hereby covenant and agree to pay, upon demand therefor, as Additional Rent, such further sums of money, in cash, as may from time to time be required for such purposes, and (d) that if after the principal of and interest on the Bonds and all costs incident to the payment of the Bonds (including the fees and expenses of the City and the Trustee) have been paid in full the Trustee or the City holds unexpended funds received in accordance with the terms hereof such unexpended funds shall, after payment therefrom of all sums then due and owing by the Company under the terms of this Lease, and except as otherwise provided in this Lease and the Indenture, become the absolute property of and be paid over forthwith to the Company.

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

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

Section 15.6. Binding Effect. This Lease shall be binding upon and shall inure to the benefit of the City and the Company and their respective successors and assigns.

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

Section 15.8. Electronic Storage. The parties hereto agree that the transaction described herein may be conducted and related documents may be received, sent or stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 15.9. Execution in Counterparts. This Lease may be executed simultaneously in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

Section 15.10 Complete Agreement. The Company and the City understand that oral or unexecuted agreements or commitments to loan money, extend credit or to forbear from enforcing repayment of a debt including promises to extend or renew such debt are not enforceable. To protect the Company and the City from misunderstanding or disappointment, any agreements the Company and the City reach covering such matters are contained in this Lease, the Bond Purchase Agreement and in the Performance Agreement, which are the complete and exclusive statements of the agreement between the Company and the City, except as the Company and the City may later agree in writing to modify this Lease and the Performance Agreement.

[The remainder of this page intentionally left blank.]

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

CITY OF SPRINGFIELD, MISSOURI

By: _____
Name: Greg Burris
Title: City Manager

[SEAL]

ATTEST:

By: _____
Name: Anita Cotter
Title: City Clerk

KRAFT HEINZ FOODS COMPANY,
a Pennsylvania corporation

By: _____
Name:
Title:

EXHIBIT A

Legal Description

Tract I:

The East One-half (E $\frac{1}{2}$) of the following: Beginning at the Southeast corner of the Northwest Quarter (NW $\frac{1}{4}$) of the Northwest Quarter (NW $\frac{1}{4}$) of Section Twenty-nine (29), Township Twenty-nine (29) Range Twenty-one (21), thence West along said Quarter Section Line 298 feet; thence North 1138.7 feet to a point on the South and West side of the county road, said road being immediately South and West of the right of way of the railroad; thence in a Southeasterly course 380 feet to the line dividing the Northwest Quarter (NW $\frac{1}{4}$) and the Northeast Quarter (NE $\frac{1}{4}$) of the Northwest Quarter (NW $\frac{1}{4}$) of said Section; thence South 1015 feet to the place of beginning, all in the City of Springfield, Greene County, Missouri, except that part deeded from said East One-half (E $\frac{1}{2}$) to Johnson in Book 1035 at Page 125, and also except any part thereof taken, deeded or used for road or highway purposes.

Tract II:

The East Fifty (50) feet of Lots One (1), Two (2), and Three (3) and the East 5 feet of the West 150 feet of Lots One (1) and Two (2) in Crutcher's Country Club District, a subdivision in Greene County, Missouri, according to the recorded plat thereof.

Tract III:

Beginning at a point 160.1 feet West of the Southeast corner of the Northwest Quarter (NW $\frac{1}{4}$) of the Northwest Quarter (NW $\frac{1}{4}$) of Section Twenty-nine (29), Township Twenty-nine (29), Range Twenty-one (21), and running thence West 139.9 feet; thence North 1301.5 feet to the right of way of the St. Louis and San Francisco Railway; thence Southeasterly along said right of way 190.9 feet; thence South 1146.46 feet to the place of beginning, in Greene County, Missouri, except any part thereof deeded.

EXHIBIT B

PROJECT

All machinery, equipment and other personal property located or to be located on the Project Site pursuant to **Article IV** hereof and paid for in whole or in part from the proceeds of Bonds (either directly or by reimbursement of the Company), and all replacements thereof and substitutions therefor made pursuant to this Lease.

EXHIBIT C

[FORM OF REQUISITION CERTIFICATE]

Requisition No. _____

Date: _____

REQUISITION CERTIFICATE

TO: BOKF, N.A., AS TRUSTEE UNDER A TRUST INDENTURE DATED AS OF APRIL 1, 2016, BETWEEN THE CITY OF SPRINGFIELD, MISSOURI, AND THE TRUSTEE, AND LEASE AGREEMENT DATED AS OF APRIL 1, 2016, BETWEEN THE CITY OF SPRINGFIELD, MISSOURI, AND KRAFT HEINZ FOODS COMPANY

The undersigned hereby requests that a total of \$_____ be paid for Project Costs (as defined in said Lease) in such amounts, to such payees and for such purposes as set forth on **Schedule 1** attached hereto.

We hereby state and certify that: (i) the amounts requested are or were necessary and appropriate in connection with the acquisition, installation and equipping of the Project, have been properly incurred and are a proper charge against the Project Fund, and have been paid by or are justly due to the persons whose names and addresses are stated on **Schedule 1**, and have not been the basis of any previous requisition from the Project Fund; (ii) as of this date, except for the amounts referred to above, there are no, to the best of our knowledge, outstanding statements which are due and payable for labor, wages, materials, supplies or services in connection with the acquisition, installation and equipping of the Project which, if unpaid, might become the basis of a vendors', mechanics', laborers' or materialmen's statutory or similar lien upon the Project or any part thereof; and (iii) no part of the several amounts paid or due as stated above has been or is being made the basis for the withdrawal of any moneys from the Project Fund in any previous or pending application for payment made pursuant to said Lease.

KRAFT HEINZ FOODS COMPANY

By: _____

Name: _____

Title: _____

SCHEDULE 1 TO REQUISITION CERTIFICATE

Amount

Payee and Address

Description

APPENDIX I

Form of Performance Agreement

See Document No. 4

\$36,000,000
(AGGREGATE MAXIMUM PRINCIPAL AMOUNT)
CITY OF SPRINGFIELD, MISSOURI
TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BONDS
(KRAFT HEINZ FOODS COMPANY PROJECT)
SERIES 2016

BOND PURCHASE AGREEMENT

DATED AS OF APRIL 1, 2016

City of Springfield, Missouri
Busch Municipal Building, 4th Floor
840 Boonville Avenue
Springfield, Missouri 65802

Ladies and Gentlemen:

On the basis of the representations and covenants and upon the terms and conditions contained in this Bond Purchase Agreement, Kraft Heinz Foods Company, a Pennsylvania corporation (the “Purchaser”), offers to purchase from the City of Springfield, Missouri (the “City”), the above-referenced series of Taxable Industrial Development Revenue Bonds (the “Bonds”), to be issued by the City under and pursuant to Special Ordinance No. _____ passed by the governing body of the City on March __, 2016 (the “Ordinance”) and a Trust Indenture dated as of April 1, 2016 (the “Indenture”), by and between the City and BOKF, N.A., Kansas City, Missouri, as trustee (the “Trustee”). Capitalized terms not otherwise defined herein shall have the meanings set forth in **Section 101** of the Indenture.

SECTION 1. REPRESENTATIONS AND AGREEMENTS

(a) By the City’s acceptance hereof, the City hereby represents to the Purchaser that:

(1) The City is a constitutional home rule charter city and municipal corporation duly organized and validly existing under the laws of the State of Missouri. The City is authorized under Article VI, Section 27(b) of the Missouri Constitution and Sections 100.010 through 100.200 of the Revised Statutes of Missouri, as amended, and its Charter to authorize, issue and deliver the Bonds and to consummate all transactions contemplated by this Bond Purchase Agreement, the Ordinance, the Indenture, the Lease, the Performance Agreement and any and all other agreements relating thereto. The proceeds of the Bonds shall be used for the purpose of financing the Project for the benefit of Kraft Heinz Foods Company, a Pennsylvania corporation (the “Company”), and to pay for the costs incurred in connection with the issuance of the Bonds;

(2) There is no controversy, suit or other proceeding of any kind pending or threatened wherein or whereby any question is raised or may be raised, questioning, disputing or affecting in any way the legal organization of the City or its boundaries, or the right or title of any of its officers to their respective offices, or the legality of any official act leading up to the issuance of the Bonds or the constitutionality or validity of the obligations represented by the

Bonds or the validity of the Bonds, the Ordinance, the Lease, the Indenture or the Performance Agreement; and

(3) Any certificate signed by an authorized representative of the City and delivered to the Purchaser shall be deemed a representation and warranty by the City to such party as to the statements made therein.

(b) The Purchaser represents as follows:

(1) *Organization.* The Purchaser is a corporation duly organized and validly existing under the laws of the State of Pennsylvania and is authorized to do business in and is in good standing under the laws of the State of Missouri;

(2) *No Conflict or Breach.* The execution, delivery and performance of this Bond Purchase Agreement by the Purchaser has been duly authorized by all necessary action of the Purchaser and does not and will not conflict with or result in the breach of any of the terms, conditions or provisions of, or constitute a default under, its organizational documents, any law, court or administrative regulation, decree or order applicable to or binding upon the Purchaser, or, insofar as it has knowledge, any agreement, indenture, mortgage, lease or instrument to which the Purchaser is a party or by which it is bound;

(3) *Documents Legal, Valid and Binding.* When executed and delivered by the Purchaser, this Bond Purchase Agreement will be, and is, a legal, valid and binding obligation, enforceable in accordance with its terms, subject, as to enforcement, to any applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting the enforcement of creditors' rights generally and further subject to the availability of equitable remedies; and

(4) *Purchaser's Certificates.* Any certificate signed by an authorized officer or agent of the Purchaser and delivered to the City shall be deemed a representation and warranty by the Purchaser to such party as to the statements made therein.

SECTION 2. PURCHASE, SALE AND DELIVERY OF THE BONDS

On the basis of the representations and covenants contained herein and in the other agreements referred to herein, and subject to the terms and conditions herein set forth and in the Indenture, the Purchaser agrees to purchase from the City and the City agrees to sell to the Purchaser the Bonds on the terms and conditions set forth herein.

The Bonds shall be sold to the Purchaser by the City on the Closing Date (hereinafter defined) upon payment of an amount equal to the Closing Price (hereinafter defined) for the Bonds, which amount shall be deposited in the Project Fund as provided in the Indenture and shall thereafter on the Closing Date immediately be applied to the payment of Project Costs as provided in the Lease, which deposit and payment shall be recorded via a transaction entry on the trust records held by the Trustee and Paying Agent. From time to time after the Closing Date as additional Project Costs are incurred, the Purchaser may make additional payments with respect to the Bonds ("Additional Payments") to the Trustee, which Additional Payments shall be deposited in the Project Fund and applied to the payment of Project Costs, which deposit(s) and payment(s) shall be recorded via a transaction entry on the trust records held by the Trustee and Paying Agent; provided that the sum of the Closing Price and all such Additional Payments for the Bonds shall not, in the aggregate, exceed \$36,000,000.

As used herein, the term “Closing Date” shall mean April __, 2016, or such other date as shall be mutually agreed upon by the City and the Purchaser; the term “Closing Price” shall mean, with respect to the Bonds, that certain amount specified in writing by the Purchaser and agreed to by the City as the amount required to pay for the initial issuance of the Bonds on the Closing Date, which amount shall be equal to any Project Costs spent by the Company from its own funds before the Closing Date, including costs of issuance.

The Bonds shall be issued under and secured as provided in the Ordinance and in the Indenture and the Lease authorized thereby and the Bonds shall have the maturity, interest rate and shall be subject to redemption as set forth therein. The delivery of the Bonds shall be made in definitive form as a fully registered bond in the maximum aggregate principal denomination of \$36,000,000; provided, that the principal amount of the Bonds Outstanding at any time shall be that amount recorded in the official bond registration records of the Trustee and further provided that interest shall be payable on the Bonds only on the Outstanding principal amount of the Bonds, as more fully provided in the Indenture.

The Company agrees to indemnify and hold harmless the City, the Trustee, and any member, officer, official or employee of the City or of the Trustee and any person controlling the Trustee within the meaning of Section 15 of the Securities Act of 1933, as amended (collectively, the “Indemnified Parties”), against any and all losses, claims, damages, liabilities or expenses whatsoever to the extent caused by any violation by the Company of, or failure by the Company to comply with, any federal or state securities laws in connection with the Bonds.

In case any action shall be brought against one or more of the Indemnified Parties based upon the foregoing indemnification and in respect of which indemnity may be sought against the Company, the Indemnified Parties shall promptly notify the Company in writing and the Company shall promptly assume the defense thereof, including the employment of counsel, the payment of all expenses and the right to negotiate and consent to settlement. Any one or more of the Indemnified Parties shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Indemnified Parties unless employment of such counsel has been specifically authorized by the Company. The Company shall not be liable for any settlement of any such action effected without its consent by any of the Indemnified Parties, but if settled with the consent of the Company or if there be a final judgment for the plaintiff in any such action against the Company or any of the Indemnified Parties, with or without the consent of the Company, then provided that the Company was given prompt written notice and the ability to assume the defense thereof as required by this paragraph, the Company agrees to indemnify and hold harmless the Indemnified Parties to the extent provided herein.

SECTION 3. CONDITIONS TO THE PURCHASER’S OBLIGATIONS

The Purchaser’s obligations hereunder shall be subject to the due performance by the City of the City’s obligations and agreements to be performed hereunder on or prior to the Closing Date and to the accuracy of and compliance with the City’s representations contained herein, as of the date hereof and as of the Closing Date, and are also subject to the following conditions:

(a) There shall be delivered to the Purchaser on or prior to the Closing Date a duly executed copy of the Ordinance, the Trust Indenture, the Performance Agreement, this Bond Purchase Agreement and the Lease and any other instrument contemplated thereby and such documents shall be in full force and effect and shall not have been modified or changed except as may have been agreed to in writing by the Purchaser;

(b) The City shall confirm on the Closing Date by a certificate that at and as of the Closing Date the City has taken all action necessary to issue the Bonds and that there is no

controversy, suit or other proceeding of any kind pending or threatened wherein any question is raised affecting in any way the legal organization of the City or the legality of any official act shown to have been done in the transcript of proceedings leading up to the issuance of the Bonds, or the constitutionality or validity of the indebtedness represented by the Bonds or the validity of the Bonds or any proceedings in relation to the issuance or sale thereof;

(c) The Purchaser shall execute a certificate, dated the Closing Date, to the effect that (i) no litigation, proceeding or investigation is pending against the Purchaser or its affiliates or, to the knowledge of the Purchaser, threatened which would (A) contest, affect, restrain or enjoin the issuance, validity, execution, delivery or performance of the Bonds, or (B) in any way contest the existence or powers of the Purchaser, (ii) no litigation, proceeding or investigation is pending or, to the knowledge of the Purchaser, threatened against the Purchaser that could reasonably be expected to adversely affect its ability to perform its obligations hereunder, (iii) the representations and warranties of the Purchaser herein were and are true and correct in all material respects and not misleading as of the date made and as of the Closing Date, and (iv) such other matters as are reasonably requested by the other parties in connection with the issuance of the Bonds; and

(d) Receipt by the Purchaser and the Company of an approving opinion from Gilmore & Bell, P.C., in form and substance satisfactory to the Purchaser and the Company.

SECTION 4. THE PURCHASER'S RIGHT TO CANCEL

The Purchaser shall have the right to cancel its obligation hereunder to purchase the Bonds by notifying the City in writing of its election to make such cancellation at any time prior to the Closing Date.

SECTION 5. CONDITIONS OF OBLIGATIONS

The obligations of the parties hereto are subject to the receipt of the approving opinion of Gilmore & Bell, P.C., Bond Counsel, with respect to the validity of the authorization and issuance of the Bonds.

SECTION 6. REPRESENTATIONS AND AGREEMENTS TO SURVIVE DELIVERY

All of the representations and agreements by either party shall remain operative and in full force and effect, and shall survive delivery of the Bonds to the Purchaser.

SECTION 7. PAYMENT OF EXPENSES

The Company shall pay all reasonable expenses and costs to effect the authorization, preparation, issuance, delivery and sale of the Bonds. To the best of the City's knowledge and belief, the only expenses payable by the Company in connection with the issuance of the Bonds are the following: (1) the legal fees of Gilmore & Bell, P.C., as Bond Counsel in the amount of \$_____ plus reimbursement for out-of-pocket expenses less any funds previously paid pursuant to the terms of the Funding Agreement between the City and Company related to the issuance of the Bonds, (2) publication costs and filing fees in the amount of \$-0-, (3) the Trustee's initial acceptance fee and first year's administrative fee totaling \$_____, and (4) the economic development fee to the City in the amount of \$_____.

SECTION 8. NOTICE

Any notice or other communication to be given to the City under this Agreement may be given by mailing or delivering the same in writing to the City of Springfield, Missouri, Busch Municipal Building, 4th Floor, 840 Boonville Avenue, Springfield, Missouri 65802, Attention: City Manager; any notice or other communication to be given to the Purchaser or the Company under this Agreement may be given by delivering the same in writing to the following:

To the Purchaser or the Company:

Kraft Heinz Foods Company
200 E. Randolph Street
Chicago, IL 60601
Attention: Derek Crawford, Director, US Government Affairs

With a copy to:

Kraft Heinz Foods Company
200 E. Randolph Street
Chicago, IL 60601
Attention: Legal Department

SECTION 9. APPLICABLE LAW; ASSIGNABILITY

This Bond Purchase Agreement shall be governed by the laws of the State of Missouri and may be assigned by the Purchaser with the written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.

SECTION 10. EXECUTION OF COUNTERPARTS

This Bond Purchase Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same document.

[Remainder of this page intentionally left blank]

Very truly yours,

KRAFT HEINZ FOODS COMPANY,
as Purchaser

Date of Execution:

April __, 2016

By: _____

Name:

Title:

Accepted and agreed to this __ day of April, 2016.

KRAFT HEINZ FOODS COMPANY, as Company

By: _____

Name:

Title:

Accepted and Agreed to this _____ day of _____, 2016.

CITY OF SPRINGFIELD, MISSOURI

By: _____
Name: Greg Burris
Title: City Manager

[SEAL]

ATTEST:

By: _____
Name: Anita Cotter
Title: City Clerk

Attachment 5

Execution Version

PERFORMANCE AGREEMENT

Dated as of April 1, 2016

BETWEEN

CITY OF SPRINGFIELD, MISSOURI

AND

KRAFT HEINZ FOODS COMPANY

Prepared By:

**Gilmore & Bell, P.C.
Kansas City, Missouri**

PERFORMANCE AGREEMENT

THIS PERFORMANCE AGREEMENT, dated as of April 1, 2016 (the “**Agreement**”), is between the **CITY OF SPRINGFIELD, MISSOURI**, a constitutional home rule charter city and municipal corporation organized and existing under the laws of the State of Missouri (the “**City**”), and **KRAFT HEINZ FOODS COMPANY**, a Pennsylvania corporation authorized to conduct business in the State of Missouri (the “**Company**”);

RECITALS:

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

2. Pursuant to the Act, the City Council of the City gave notice to the affected taxing jurisdictions in accordance with Section 100.059.1 of the Act regarding the financing of the costs of a project (the “**Project**”) for the Company consisting of the acquisition and installation of equipment and machinery at the Company’s existing manufacturing facility located on certain real property in the City (the “**Project Site**”), which costs are to be paid out of the proceeds of industrial development revenue bonds to be issued by the City under the Act.

3. Following such notice to the affected taxing jurisdictions, the Council of the City adopted Special Ordinance No. _____ (the “**Ordinance**”) passed by the City Council on March 21, 2016, the City approved a plan for the Project and is authorized to execute and deliver (a) a Trust Indenture of even date herewith (the “**Indenture**”), between the City and BOKF, N.A., Kansas City, Missouri, as bond trustee (the “**Trustee**”), for the purpose of issuing and securing the City’s Taxable Industrial Development Revenue Bonds (Kraft Heinz Foods Company Project), Series 2016, in the maximum aggregate principal amount of \$36,000,000 (the “**Bonds**”), (b) a Lease Agreement of even date herewith (the “**Lease**”) with the Company, as lessee, under which the City, as lessor, will purchase and equip the Project and will lease the Project to the Company, in consideration of rentals which will be sufficient to pay the principal of and interest on the Bonds, and (c) this Agreement for the purpose of setting forth the terms and conditions of the Project’s exemption from *ad valorem* personal property taxes and certain payments in lieu of taxes to be made by the Company with respect to the Project.

4. Pursuant to the foregoing, the City desires to enter into this Agreement with the Company in consideration of the Company’s desire to purchase and install the Project upon the terms and conditions hereinafter set forth.

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

ARTICLE I
DEFINITIONS

Section 1.1. Definitions of Words and Terms. In addition to the words and terms defined in the Recitals and the words and terms defined in Section 101 of the Indenture, which definitions are hereby incorporated herein by reference, the following words and terms as used herein shall have the following meanings:

“Agreement” means this Performance Agreement dated as of April 1, 2016, between the City and the Company, as from time to time amended and supplemented in accordance with the provisions hereof.

“Annual Compliance Report” means the Annual Compliance Report required to be filed by the Company by **Section 3.3** hereof, a copy of which is attached hereto as **Exhibit A**.

“Company” means Kraft Heinz Foods Company, a Pennsylvania corporation authorized to conduct business in Missouri, and its successors and assigns.

“Event of Default” means any Event of Default as described in **Section 6.1** hereof.

“Indenture” means the Trust Indenture dated as of April 1, 2016, between the City and BOKF, N.A., Kansas City, Missouri, as Trustee, relating to the issuance of the Bonds, as amended or supplemented from time to time.

“Job” means a full-time equivalent position with the Company of not less than 37.5 hours per week at the Project Site, which shall include normal full-time employee benefits offered by the Company. Positions filled by workers who are not directly employed by the Company do not qualify as “Jobs” for purposes of this definition.

“PILOT Payments” means the payments in lieu of taxes provided for in **Article III** hereof.

“Project” means the Project Equipment located, or to be located, on the Project Site, the costs of which will be paid in whole or in part, or for which the Company will be reimbursed in whole or in part, from the proceeds of the sale of the Bonds.

“Project Equipment” has the meaning set forth in the Indenture.

“Project Site” means all of the real estate described in **Exhibit A** attached to the Lease and by this reference made a part hereof.

“Test Date” means October 31 of each year, beginning on October 31, 2016 and ending on October 31, 2027.

ARTICLE II

REPRESENTATIONS

Section 2.1. City's Representations. The City hereby represents as follows:

- (a) The Project will significantly benefit the City and the State of Missouri by (i) stimulating economic development in the City and the State through the creation and retention of permanent jobs; and (ii) increasing local and state tax revenues; and
- (b) The Project would not proceed without the assistance provided by the City.

Section 2.2. Company's Representations. The Company hereby represents as follows:

- (a) The Project will significantly benefit the City and the State of Missouri by (i) stimulating economic development in the City and the State through the creation and retention of permanent jobs; and (ii) increasing local and state tax revenues; and
- (b) The Project would not proceed without the assistance provided by the City.

ARTICLE III

PROPERTY TAX EXEMPTION; PAYMENT IN LIEU OF TAXES

Section 3.1. Personal Property Tax Exemption.

(a) So long as the City owns title to the Project, the Project and the leasehold interest of the Company in the Project is expected to be exempt from *ad valorem* taxes on personal property. The first year of the exemption period shall begin on January 1, 2017. Notwithstanding any other provision of this Agreement to the contrary, the last year of such exemption period shall be 2027.

(b) The Company covenants and agrees that, during each year the Project is exempt from *ad valorem* personal property taxes by reason thereof, the Company will make annual payments in lieu of taxes to the City (the "**PILOT Payments**" and each such payment, a "**PILOT Payment**") as described in this **Article III**. The City and the Company hereby agree that the tax abatement provided by this Agreement shall only apply to property financed with proceeds of the Bonds (*i.e.*, personal property constituting a part of the Project) and shall not apply to property not financed with proceeds of the Bonds.

Section 3.2. Payments In Lieu of Taxes.

(a) The Company and the City agree that each item of personal property financed with the proceeds of the Bonds shall be exempt from *ad valorem* taxes for a period not exceeding ten years. Personal property financed with the proceeds of the Bonds includes personal property acquired after January 1, 2016 in connection with the Project. The personal property that comprises the Project would otherwise be exempt from *ad valorem* taxes during the entire term of the Lease (which term will end not later than December 1, 2027), therefore the Company agrees that it shall make a PILOT Payment to the City (to be delivered to the City Clerk) on or before December 31 of each year, commencing December 31, 2017, in an amount equal to the applicable percentage shown below times the amount of the *ad valorem* personal property taxes which would otherwise be due with respect to the Project (calculated as set forth below):

Abatement Year	For Personal Property Acquired in Year	Tax/Calendar Years	Percentage of PILOTS
1-10	2016	2017-2026	50%
	2016	2027 and thereafter	100%
1-10	2017	2018-2027	50%
	2017	2028 and thereafter	100%

The PILOT Payments shall be calculated by the Company as follows:

The amount of Bond proceeds drawn under the Indenture by the Company during each of the calendar years 2016 and 2017 shall equal the actual cost of the Project Equipment incurred by the Company for said years (the “**20__ Annual Project Equipment Value**”), and a depreciation factor shall be applied at the end of each year, as applicable, as follows:

Year	Depreciation Factor	Year	Depreciation Factor
0	100.00%	6	18.00%
1	90.00	7	10.00
2	70.00	8	10.00
3	55.00	9	10.00
4	43.00	10	10.00
5	31.00		

Beginning in 2017, and annually thereafter through the term of this Agreement, the Company shall separately calculate the PILOT Payment for the Project Equipment acquired in each of the calendar years 2016 and 2017 using the following formula:

PILOT Payment = Tax * applicable percentage in above table (based on the year of investment)

$$Tax = (\text{Assessed Value} * \text{Tax Rate}^1) / 100$$

$$\text{Assessed Value} = (20_ \text{Annual Project Equipment Value} * \text{Applicable Depreciation Factor}) * 33 \frac{1}{3}\% \text{ assessment ratio}$$

¹ Shall be calculated using the then current combined personal property tax rate for Greene County, Missouri (5.4306 for 2015)

(b) The Company will, in accordance with the above table and formula, prepare (i) a detailed summary of the Project Equipment expenditures for each year, and (ii) a calculation of the corresponding PILOT Payments, and notify the City by sending such report to the City for its review and approval on or before October 15 of each year, commencing on October 15, 2017, and continuing on each October 15 thereafter while this Agreement remains in effect.

Unless the City notifies the Company of its disapproval on or before October 31, the City shall be deemed to have approved of the Company’s PILOT Payment calculations as set forth in the report. If the City disapproves, the City shall notify the Company in writing setting forth in detail the basis for such disapproval (notice to be provided in accordance with **Section 8.7** of this Agreement).

The approved PILOT Payments shall be payable to the City on or before December 31 of each such calendar year.

(c) The Company shall exercise its option pursuant to **Section 11.4** of the Lease to purchase the Project no later than December 31, 2027. If title to the Project has not been transferred by the City to the Company before December 31, 2027, then not later than December 31, 2028, and not later than December 31 of each year thereafter until title to the Project is transferred to the Company, the Company shall pay to the City a PILOT Payment equal to 100% of the amount that would otherwise be payable to each taxing jurisdiction but for the City's ownership thereof.

Section 3.3. Adjustment of Payments In Lieu of Taxes for Failure to Create and Maintain Jobs.

(a) The Company covenants and agrees that it currently maintains 892 Jobs at the Project Site, and that it expects to create and maintain at least 109 new Jobs at the Project Site on or before October 31, 2017. The City and the Company understand and agree that the property tax abatement set forth in **Section 3.1** above is conditioned upon the Company's maintaining the Jobs as stated in subsection (b) below for so long as the abatement described herein is in effect.

(b) If the Company fails to maintain a total of at least 950 Jobs at the Project Site for a specific calendar year (beginning with calendar year 2017) as certified by the Company in writing to the City Clerk (measured by determining the actual number of Jobs on the last day of each month on each of the immediately preceding 12 months ending on each Test Date and then calculating the 12-month average), the Company shall pay an additional PILOT Payment to the City on or before December 31 of each such calendar year in an amount equal to the formula percentage calculated below times the amount of *ad valorem* taxes which would otherwise be due with respect to the Project:

$$.50 - (.50 \times \frac{\text{Actual Number of Jobs}}{950}) = \text{PILOT \%}$$

(c) The Company shall file with the City annually, commencing on November 10, 2016, and continuing on each November 10 thereafter while this Agreement remains in effect, an Annual Compliance Report in the form attached hereto as **Exhibit A**. The Company also agrees to provide reasonable access to the Company's records for purposes of verifying the number of Jobs, in accordance with **Section 4.1** below.

(d) The calculations set forth in this **Section 3.3** shall be performed as of each Test Date, with any resulting PILOT Payment due as a result of such calculation to be applicable for the year in which such Test Date occurs. Notwithstanding anything contained herein to the contrary, in no event shall the Company's PILOT Payments calculated pursuant to this section and **Section 3.2** hereof exceed 100% of the actual property taxes that would have otherwise been payable on the Project, but for the City's ownership thereof, for the given year.

Section 3.4 Termination for Failure to Make Minimum Investment in Project. In the event the Company fails to make an investment in the Project equal to or greater than twenty-four million two hundred thousand dollars (\$24,200,000) on or before December 31, 2017, then the percentage of PILOT Payments set forth in **Section 3.2** shall be increased to 100% on all property for each year beginning in year 2016 and continuing during each year the Project is exempt from *ad valorem* personal property taxes as provided herein.

Section 3.5. No Abatement on Real Property. The City and the Company hereby agree that the property tax exemptions described in this Agreement shall not apply to real property.

Section 3.6. Distribution of PILOT Payments. Within 30 days of the date of receipt of each PILOT Payment, the City Clerk, or other designated billing/collection agent, shall distribute each PILOT Payment, after reduction for the administrative costs of the City as provided by **Section 3.8** below, among the taxing jurisdictions in proportion to the amount of taxes which would have been paid in each year had the Project not been exempt from personal property taxation pursuant to this Agreement.

Section 3.7. Obligation of City to Effect Tax Abatement. The City agrees to take all actions within its control to obtain and/or maintain in effect the exemption referred to in **Section 3.1** above, including any filing required with any governmental authorities; provided, however, the City shall not be liable for any failure of Greene County, Missouri or any other governmental taxing authority to recognize the exemption provided herein. The City covenants that it will not voluntarily take any action that may cause or induce the levy or assessment of *ad valorem* taxes on the Project. In the event such a levy or assessment should occur, the City shall, at the Company's request and at the Company's expense, fully cooperate with the Company in all reasonable ways to prevent and/or remove any such levy or assessment against the Project.

Section 3.8. Administration Costs. Under Section 100.050 of the Act, the City may require the Company to reimburse the City for its actual costs of issuing the Bonds and administering the plan, including costs associated with administering this Agreement. In addition to the PILOT Payments, the Company agrees to make an annual payment of \$5,000 to the City for administrative costs connected with this Agreement. Said payments will be made at the time PILOT Payments are made.

Section 3.9. Other Property Taxes In Connection with the Project. The City and the Company covenant and agree that the property tax abatement provided by this Agreement and the issuance of the Bonds shall only apply to the City's interest in the Project, and only to that portion financed with proceeds of the Bonds. Any property taxes levied against the Company's interest in the Project by any taxing authority shall be solely the responsibility of the Company. In the event such a levy or assessment should occur, the City shall, at the Company's request, fully cooperate with the Company in all reasonable ways to prevent and/or challenge such levy or assessment.

Section 3.10. No Sales Tax Exemption. The purchase and installation of the Project shall not be exempt from any sales taxes imposed by any governmental authority by virtue of the City's ownership of the Project, and neither the City nor the Company shall request any such exemption. Nothing herein shall limit the Company's right to any exemption of sales taxes not resulting from the City's ownership of title to the Project.

Section 3.11. Credits for Certain Tax Payments. Nothing in this Agreement shall be construed to require the Company to make duplicate tax payments. The Company shall receive a credit hereunder to such extent it has made any payment for *ad valorem* property taxes on the Project to Greene County, Missouri.

Section 3.12. Company's Right To Protest Taxes. Notwithstanding any other provision of this Agreement to the contrary, nothing in this Agreement shall be construed to limit or in any way restrict the availability of any provision of Missouri law which confers upon the Company the right to appeal, protest or otherwise contest any property tax valuation, assessment, classification or similar action.

Section 3.13. Cessation of Operations at the Project Site. If for any reason the Company completely vacates, abandons or ceases operations at the Project Site during the term of this Agreement, and fails to exercise its option to purchase the Project within 90 days after such vacancy, abandonment or cessation of operations, the Company shall make a PILOT Payment to the City (addressed to the City Clerk and to be distributed as provided in **Section 3.3**) equal to 100% of the amounts that would

otherwise be payable to each taxing jurisdiction if the Project was not owned by the City. Such payment shall be made on or before December 31 in the year in which the Company ceases operations (in a *pro rata* amount assuming the Project was placed on the tax rolls effective on the date of cessation through December 31) and on each December 31 thereafter for each year in which the Project is, on January 1 of such year, still titled in the name of the City, and the Company has ceased operations.

Section 3.14. No Abatement on Special Assessments, Licenses or Fees. The City and the Company hereby agree that the property tax exemptions described in this Agreement shall not apply to special assessments and shall not serve to reduce or eliminate any other licenses or fees owing to the City or any other taxing jurisdiction with respect to the Project. The Company hereby agrees to make payments with respect to all special assessments, licenses and fees which would otherwise be due with respect to the Project as if such Project was not owned by the City.

ARTICLE IV

COVENANTS, REPRESENTATIONS AND AGREEMENTS OF THE COMPANY

Section 4.1. Inspection. The Company agrees that the City and its duly authorized agents shall have the right at reasonable times (during business hours), subject to at least five Business Days' advance written notice and to the Company's usual business proprietary, safety and security requirements, to enter upon the Project Site to examine and inspect the Project and the records of the Company which demonstrate compliance with this Agreement.

Section 4.2. Compliance with Laws. To the best of the Company's knowledge, the Project is and will be in material compliance with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, executive orders and codes pertaining to or affecting the Project, including environmental laws, subject to all applicable rights of the Company to contest the same.

Section 4.3. Purchase, Installation and Operation. The Project will be purchased, installed and operated in a manner that is consistent with the description of the Project herein and in the Lease. In the event the Project purchased and installed is materially inconsistent with the description of the Project contained herein and in the presentation to the City Council of the City, the City reserves the right to declare an Event of Default in accordance with **Section 6.1(c)** hereof.

Section 4.4. Indemnification. The Company shall indemnify and save and hold harmless the City from and against all claims, demands, costs, liabilities, damages or expenses, including reasonable attorneys' fees, by or on behalf of any person, firm or corporation arising from the conduct or management of, or from any work or thing done in, on or about, the Project during the term of the Lease, and against and from all claims, demands, costs, liabilities, damages or expenses, including reasonable attorneys' fees, arising during the term of the Lease from any event described in **Section 10.5** of the Lease to the extent and subject to the limitations provided therein provided, however, the indemnification contained in this **Section 4.4** shall not extend to the City if such claims, demands, costs, liabilities, damages or expenses, including reasonable attorneys' fees, are the result of the negligence or willful misconduct by the City, or the performance or failure to perform by the City of its obligations under the Lease.

Section 4.5. Costs of Issuance of the Bonds. The Company agrees to pay on the date of the initial issuance of the Bonds, all costs of issuance incurred in connection therewith, provided that a closing memorandum detailing all costs of issuance is provided to the Company for review at least five Business Days prior to the initial issuance of the Bonds.

ARTICLE V

SALE AND ASSIGNMENT

The benefits granted by the City to the Company pursuant to this Agreement shall belong solely to the Company, and such benefits shall not be transferred (other than to an affiliate of the Company), assigned, pledged or in any other manner hypothecated without the express written consent of the City, except that the Company shall have the right to assign or transfer its interest hereunder, including the benefits hereunder, in connection with any assignment or transfer of its interest in the Project that is permitted pursuant to the Lease; but nothing herein shall preclude the Company from assigning or pledging its interest in the Project so long as the Company continues to occupy the Project and otherwise remains responsible for its undertakings herein.

ARTICLE VI

DEFAULT AND REMEDIES

Section 6.1. Events of Default. If any one or more of the following events shall occur and be continuing, it is hereby defined as and declared to be and to constitute an Event of Default hereunder:

(a) the Company fails to make any PILOT Payments required to be paid hereunder within 10 days after written notice and demand by the City;

(b) the Company shall fail to perform any of its obligations hereunder for a period of 60 days (or such longer period as the City and the Company may agree in writing) following written notice to the Company from the City of such failure which notice shall include a specific description of the Company's failure hereunder); provided, however, that if such failure is not subject to cure within such 60 days, such failure shall not constitute an Event of Default hereunder if the Company initiates action to cure such default and pursues such action diligently; or

(c) any representation of the Company contained herein proves to be materially false or erroneous and is not corrected or brought into compliance within 60 days (or such longer period as the City and the Company may agree in writing) after the City has given written notice to the Company specifying the false or erroneous representation and requiring it to be remedied; provided, however, that if such matter is not subject to cure within such 60 days after such notice, it shall not constitute an Event of Default hereunder if the Company initiates action to cure the default within such 60 days after such notice and pursues such action diligently.

Section 6.2. Remedies on Default. Upon an Event of Default hereunder this Agreement may be terminated by written notice to the Company from the City. Upon such termination the Company shall make a PILOT Payment to the City equal to (i) the *pro rata* amount payable pursuant to **Section 3.3** hereof from January 1 of the year in question through the effective date of termination, plus (ii) the *pro rata* amount of taxes that would be due for the remaining portion of the year assuming the Project was placed on the tax rolls effective on the date of termination through December 31; provided, however, the payment of PILOTS following cessation of operations shall be governed by **Section 3.12**; and provided further, the Company shall receive a credit for all PILOT Payments made pursuant to **Section 3.2** herein and such credit shall reduce the amount of any payments due under this Section.

Upon any termination of this Agreement the Company agrees to pay interest and penalties on all amounts due hereunder that are late to the same extent as if such payments were late tax payments under Missouri law.

Section 6.3. Payments on Defaulted Amounts. Any amounts payable hereunder in lieu of *ad valorem* personal property taxes which are not paid when due shall be subject to penalties imposed by Missouri law on overdue *ad valorem* real estate taxes.

Section 6.4. Enforcement. In addition to the remedies specified in **Section 6.2**, upon the occurrence of an Event of Default, the City or any taxing jurisdictions that would benefit from the PILOT Payments provided for in this Agreement may bring an action for specific performance to enforce such payments.

Section 6.5. Failure of the City to Perform its Obligations. In the event the City shall fail to perform any of its obligations hereunder for (i) a period of 60 days (or such longer period as the Company and the City may agree in writing) following written notice to the City from the Company of such failure which notice shall include a specific description of the City's failure hereunder), or (ii) if such failure is not subject to cure within such 60 days, the City shall have failed to initiate action to cure such default and shall pursue such action diligently; the Company may declare that the City is in default under this Agreement and may pursue any legal remedy available to it to enforce this Agreement.

ARTICLE VII

TERM OF AGREEMENT

This Agreement shall become effective upon execution, and subject to earlier termination pursuant to the provisions of this Agreement (including particularly the following sentence and **Article VI** hereof), shall have an initial term commencing as of the date of this Agreement and terminating on December 31, 2027 (the "**Stated Expiration Date**"). This Agreement shall automatically terminate prior to the Stated Expiration Date in the event the Bonds (or any Bonds issued to refund the Bonds) are no longer outstanding.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

Section 8.1. Severability. If for any reason any provision of this Agreement shall be determined to be invalid or unenforceable, the validity and enforceability of the other provisions hereof shall not be affected thereby.

Section 8.2. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Missouri.

Section 8.3. Execution in Counterparts. This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

Section 8.4. Waiver. The City and the Company acknowledge and agree that the amounts payable hereunder shall constitute payments due the City under the Lease executed in connection with the

Bonds. The Company shall not be entitled to any extension of payment of such amounts as a result of a filing by or against the Company in any bankruptcy court.

Section 8.5. Entire Agreement. This Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, between the City and the Company with respect to the subject matter hereof, except as may be set forth in the Indenture or the Lease.

Section 8.6. Electronic Storage of Documents. The City and the Company agree that the transaction described herein may be conducted and related documents may be received, sent or stored by electronic means.

Section 8.7. Notices. All notices, certificates or other communications required or desired to be given hereunder shall be given in the manner specified in the Indenture.

Section 8.8. Employee Verification. The Company will comply with and satisfy the requirements of Section 285.530.2, RSMo., as amended, which requires (1) any business entity receiving tax abatement to, by sworn affidavit and provision of documentation, annually affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the business entity receiving tax abatement, and (2) every such business entity to annually sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the entity receiving tax abatement. The Company shall provide such affidavits and documentation to the City Clerk on or before November 15 of each year during the term of this Agreement, beginning November 15, 2017, and also upon execution of this Agreement.

Section 8.9. Complete Agreement. The Company and the City understand that oral or unexecuted agreements or commitments to loan money, extend credit or to forbear from enforcing repayment of a debt including promises to extend or renew such debt are not enforceable. To protect the Company and the City from misunderstanding or disappointment, any agreements the Company and the City reach covering such matters are contained in this Performance Agreement and in the Lease, which are the complete and exclusive statements of the agreement between the Company and the City, except as the Company and the City may later agree in writing to modify this Performance Agreement and the Lease.

Section 8.10 Personally Identifiable Information. To the extent that the Company provides the City directly, or through its agents, any personally identifiable information relating to the Company's employees, the City will make all reasonable efforts to ensure that such information is kept strictly confidential.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their respective corporate names, all as of the date first above written.

CITY OF SPRINGFIELD, MISSOURI

By: _____
Name: Greg Burris
Title: City Manager

[SEAL]

ATTEST:

By: _____
Name: Anita Cotter
Title: City Clerk

Approved as to Form:

By: _____
Name: Dan Wichmer
Title: City Attorney

KRAFT HEINZ FOODS COMPANY,
a Pennsylvania corporation

By: _____
Name:
Title:

EXHIBIT A

ANNUAL COMPLIANCE REPORT

Date: November ____, 20__

A. COMPANY INFORMATION.

Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Contact: _____ Telephone: _____

Title: _____ Fax: _____

B. EMPLOYMENT INFORMATION.

Average Annual Number of "Jobs" at the Project
as of October 31, 20__ (the October 31st prior to this Report): _____

Attached is a copy of a report verifying the above calculation containing at a minimum the following information for each Job:

1. Employee Identification Number or other agreed upon designation.
2. Hire Date.
3. Termination Date.

C. CERTIFICATION.

The undersigned hereby represents and certifies that, to the best knowledge and belief of the undersigned, this Annual Compliance Report contains no information or data, contained herein or in the exhibits or attachments, that is false or incorrect in any material respect.

Dated this ____ day of _____, _____.

Signature: _____

Name: _____

Title: _____

One-rdg. _____
P. Hrngs. _____
Pgs. 11 _____
Filed: 03-01-16 _____

Sponsored by: _____ Hosmer _____

First Reading: _____

Second Reading: _____

COUNCIL BILL NO. 2016- 051 _____

GENERAL ORDINANCE NO. _____

AN ORDINANCE

1 AMENDING the City Health Care Plan to terminate the City of Springfield Retiree Health
2 Plan (Non-Medicare) on December 31, 2016; repealing the Plan Document
3 and Summary Plan Description of the City of Springfield Retiree Health Plan
4 (Non-Medicare) effective December 31, 2016; terminating the City of
5 Springfield Retiree Health Savings Account Program effective December 31,
6 2016; amending Chapter 2 of the Springfield City Code, Section 2-92, Merit
7 Rule 25.1, City Health Care Plan, by amending the language of said Merit
8 Rule; amending Section 2-92, Merit Rule 25.1, City Health Care Plan, Exhibit
9 1, by amending the language of said Exhibit 1; terminating the City of
10 Springfield Medicare supplement plan effective December 31, 2017;
11 amending Section 2-92, Merit Rule 25.2, Police and Fire Departments Health
12 Insurance Plan, Coverage of County Emergency 911 Employees Transferring
13 to the City, by terminating the rights of retirees to City provided or sponsored
14 health insurance coverage; and authorizing the City Manager to
15 administratively amend provisions of the City Health Care Plan conflicting
16 with this ordinance.
17

18
19 BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SPRINGFIELD,
20 MISSOURI, as follows, that:

21
22 NOTE: With respect to the amendments described herein, underlined language has
23 been added, and ~~stricken~~ language has been deleted.
24

25 Section 1 – City Council hereby terminates the City of Springfield Retiree Health
26 Plan (Non-Medicare) effective at midnight on December 31, 2016, and repeals the Plan
27 Document and Summary Plan Description of the City of Springfield Retiree Health Plan
28 (Non-Medicare) effective at midnight on December 31, 2016.
29

30 Section 2 – City Council hereby terminates the City of Springfield Retiree Health
31 Savings Account Program effective at midnight on December 31, 2016.
32

33 Section 3 – Chapter 2 of the Springfield City Code, Section 2-92, Merit Rule 25.1,
34 City Health Care Plan, (a) Plan Established, is hereby amended as set out below effective
35 at midnight on December 31, 2016:
36

37 **(a) Plan Established**
38

39 There is hereby established a City Health Care Plan, hereinafter called the "Plan",
40 for eligible employees, ~~and~~ dependents, ~~and~~ retirees as defined in the Plan. The
41 Plan is ~~described~~ ~~composed in of~~ ~~two~~ benefit plan documents, respectively entitled
42 "City of Springfield Group Health Plan", and "~~City of Springfield Non-Medicare~~
43 ~~Retiree Health Plan~~", and referred to collectively as Exhibit 1. Member eligibility is
44 defined and determined in ~~each of the~~ ~~respective~~ benefit plan documents.
45

46 Section 4 – Chapter 2 of the Springfield City Code, Section 2-92, Merit Rule 25.1,
47 City Health Care Plan, (b) Enrollment, subsection (1) is hereby amended as set out below
48 effective at midnight on December 31, 2016:
49

50 **(b) Enrollment**
51

52 (1) The City shall enroll each of its eligible employees in the Plan and shall
53 contribute to the Plan as set forth by ordinance or administrative action, which shall
54 be credited to an account established therefor. The City hereby declares that the
55 contribution is the amount necessary to pay for the benefits and all costs of the Plan
56 including administration thereof for such employees, unless otherwise established.
57

58 Eligible employees may enroll their eligible dependents as defined in the Plan in
59 accordance with the procedures set forth therein by authorizing a payroll deduction
60 from the employee's check.
61

62 ~~Eligible retirees and their eligible dependents as defined in the Plan may enroll in~~
63 ~~accordance with the procedures set forth therein by making monthly payments to the~~
64 ~~City in advance of the month for which coverage is offered; such persons shall~~
65 ~~continue to be enrolled in the Plan in accordance with provisions therein. The~~
66 ~~amounts charged monthly for all eligible dependents and retirees are hereby~~
67 ~~declared to be the amounts necessary to pay for the claims and all costs of the Plan~~
68 ~~including administration thereof for such dependents and retirees, unless otherwise~~
69 ~~established.~~
70

71 The City Council may change the terms and conditions of the Plan but such change
72 shall not affect prior claims that have been made, nor shall any such changes be
73 effective sooner than thirty (30) days after the City Council action unless specifically
74 provided otherwise in the amending ordinance. Subject to the availability of funds for
75 this purpose, the City Manager may also administratively make changes to the Plan,
76 which have been recommended by the Health Insurance Committee, including but
77 not limited to items set out in this subsection (2) below, contributions, deductibles,
78 copayments, scope of coverage or benefits, or as necessary to bring the Plan into
79 compliance with changes with state or federal law, without prior Council approval.
80 Any change which has not been recommended by the Health Insurance Committee
81 and been approved by the City Manager shall require prior City Council approval. A
82 current copy of the Plan and all such changes shall be kept on file with the City
83 Clerk, the Director of Finance, and the Director of Human Resources.
84

85 Section 5 – Chapter 2 of the Springfield City Code, Section 2-92, Merit Rule 25.1,
86 City Health Care Plan, (b) Enrollment, subsection (4) is hereby deleted as set out below
87 effective at midnight on December 31, 2016:
88

89 ~~(4) In addition to any other contribution changes which may be approved by City~~
90 ~~Council or the City Manager, the automatic increases described in subsections (b)(2)~~
91 ~~and (b)(3) above being currently applied to the City of Springfield Group Health Plan,~~
92 ~~shall also, effective with the premiums for coverage January 1, 2010, and thereafter,~~
93 ~~apply to the premium rates for the City of Springfield Non-Medicare Retiree Health~~
94 ~~Plan.~~
95

96 Section 6 – Chapter 2 of the Springfield City Code, Section 2-92, Merit Rule 25.1,
97 City Health Care Plan, Exhibit 1, Eligibility, Funding, Effective Date and Termination
98 Provisions; Eligibility; Definition of Dependent; is hereby amended as set out below effective
99 at midnight on December 31, 2016:

100 **Definition of Dependent**

101 A Dependent is any one of the following persons:

- 102 1. An eligible Employee's spouse.
- 103 2. A child of an eligible Employee under age 26.
- 104 3. A child under age 26 named in a Qualified Medical Child Support Order (QMCSO)
- 105 will be considered an eligible Dependent under the Plan as long as the child
- 106 otherwise meets the definition of a dependent child.
- 107 4. An unmarried child (as defined below) age 26 or older who is Totally and
- 108 Permanently Disabled with a disability that existed prior to the attainment of the
- 109 Plan's age limit and who will be claimed as a dependent on the employee's federal
- 110 income tax return for each plan year for which coverage is provided. The Plan will
- 111 require initial and periodic proof of disability. The employee will have 31 days from
- 112 the date of the request to provide this proof before the child is determined to be
- 113 ineligible.

114 The Plan Administrator reserves the right to have such child examined by a
115 physician of the Plan Administrator's choice, at the Plan's expense, to determine the
116 existence of such incapacity.

117 The term "Spouse" shall mean the person recognized as the covered employee's
118 husband or wife. The Plan Administrator may require documentation proving legal
119 marital relationship.

120 In the cases where Employees are married to one another without Dependents, the
121 Employees will be covered as separate plan members.

122 The term "child" means an employee's natural child, adopted child, child placed with
123 an Eligible Employee in anticipation of adoption. A step-child is included in the
124

134 definition of "child" as long as a natural parent remains married to the employee.

- 135 • If an eligible Employee is the Legal Guardian of a child, the child may be
136 enrolled in this Plan as a covered Dependent only if the Employee has legal
137 guardianship under a court order and is under age 26 (proof of guardianship
138 and age will be required);

139
140 The Plan will not provide coverage to a child under legal guardianship who is age 26
141 or older regardless of whether such child is Totally and Permanently Disabled.

142
143 Guardianship and adoption must be established by valid court order or decree
144 entered after the petition for same has been filed.

145
146 The phrase "child placed with a covered Employee in anticipation of adoption" refers
147 to a child whom the Employee intends to adopt, whether or not the adoption has
148 become final, who has not attained the age of 18 as of the date of such placement
149 for adoption. The term "placed" means the assumption and retention by such
150 Employee of a legal obligation for total or partial support of the child in anticipation of
151 adoption of the child. The child must be available for adoption and the legal process
152 must have commenced.

153
154 Pursuant to Missouri SB264, any eligible Dependent of a deceased, or active-~~or~~
155 ~~retired~~ employee may elect to continue coverage if the survivor is eligible for a
156 retirement benefit, elects the group coverage, and pays any required Plan
157 contributions in a timely manner.

158
159 If both of a Dependent child's parents are Employees, the child will be covered as a
160 Dependent of the mother or father, but not of both.

161
162 If a Dependent Child of an Employee is also an eligible Employee, the Dependent
163 Child will only be eligible as an Employee. Such Dependent Child's effective date as
164 an Employee will immediately follow their Waiting Period. The (Dependent Child)
165 Employee will no longer be eligible as a Dependent of the parent who is an
166 Employee.

167
168 In cases where Employees are married to one another with Dependents, one of the
169 Employees must be covered as a Dependent of the other Employee along with the
170 Dependent Children.

171
~~172 In the case of a family with eligibility for both the City of Springfield Group Health
173 Plan and the City of Springfield Retiree Health Plan (Non-Medicare), all eligible
174 dependents who request coverage must be enrolled in the City of Springfield Group
175 Health Plan unless the dependent is a spouse who is retiring or has retired from the
176 City of Springfield. At the time of retirement, the dependent spouse who is retiring
177 may elect to remain covered under the City of Springfield Employee Health Care
178 Plan or to be covered in the City of Springfield Non-Medicare Retiree Health Plan.~~

179
~~180 Retirees who are the spouse of a current employee covered in the City of Springfield
181 Employee Group Health Plan may elect to change coverage from the City of~~

182 ~~Springfield Employee Group Health Plan to the City of Springfield Retiree Plan (Non-~~
183 ~~Medicare) or from the City of Springfield Retiree Plan (Non-Medicare) to the City of~~
184 ~~Springfield Employee Group Health Plan, effective January 1 of the following~~
185 ~~calendar year, by completing a change of coverage form prior to January 1 of the~~
186 ~~plan year, and filing this form with the Human Resources Department no later than~~
187 ~~the last business day of the plan year. Upon acceptance of a completed form, the~~
188 ~~coverage in the Plan being changed from shall cease at midnight on December 31 of~~
189 ~~the year the form is filed with the Director, and coverage in the Plan selected shall~~
190 ~~begin at 12:00 a.m. on January 1 of the following calendar year. This election~~
191 ~~between plans may only be made once each calendar year the coverage for a plan~~
192 ~~is in place. In no event shall coverage be changed between the plans once a~~
193 ~~calendar year has begun.~~

194
195 If a person covered under this Plan changes status from Employee to Dependent or
196 Dependent to Employee, and the person is covered continuously under this Plan
197 before, during and after the change in status, credit will be given for all amounts
198 applied to maximums (as well as the application of the Pre-existing Condition
199 provision at the same point prior to the change) depending upon the coverages
200 elected and which Covered Persons elect those coverages.

201
202 In the event there is a change in status of any Employee's Dependent covered under
203 the Plan following the initial eligibility determination, the Employee must inform the
204 Plan Administrator of the change in status.

205
206 The Plan Administrator may require documentation proving dependency, which may
207 include, but not be limited to, birth certificates, tax records or initiation of legal
208 proceedings severing parental rights.

209
210 These persons are excluded as Dependents: other individuals living in the Covered
211 Employee's home, but who are not eligible as defined; the legally separated or
212 divorced former Spouse of the Employee.

213
214 Section 7 – Chapter 2 of the Springfield City Code, Section 2-92, Merit Rule 25.1,
215 City Health Care Plan, Exhibit 1, Schedule of Benefits, Deductibles Payable By Plan
216 Participants, is hereby amended as set out below effective at midnight on December 31,
217 2016:

218 **DEDUCTIBLES PAYABLE BY PLAN PARTICIPANTS**

219
220
221 Deductibles are dollar amounts that the Covered Person must pay before the Plan
222 pays.

223
224 A deductible is an amount of money that is paid by the Covered Person once a
225 Calendar Year. It must be paid before any money is paid by the Plan for any
226 Covered Charges. Each January 1st, a new deductible amount is required.
227 Deductibles accrue toward the 100% maximum out-of-pocket payment.

228
229 Any expenses applied against the deductible in the last three (3) months of a
230 calendar year may also be applied against the deductible for the next year.

231
232 When an Employee retires mid-plan year, claims that have been accumulated
233 toward the annual deductible in the employee plan do not carry over to the annual
234 deductible in the Non-Medicare Retiree Health Plan.

235
236 Section 8 – City Council hereby terminates the City of Springfield Medicare
237 supplement plan effective at midnight on December 31, 2017. Effective at midnight on
238 December 31, 2017, the City will not collect and remit premiums for Medicare-eligible retired
239 employees or their Medicare-eligible dependents.

240
241 Section 9 – Chapter 2 of the Springfield City Code, Section 2-92, Merit Rule 25.1,
242 City Health Care Plan, Exhibit 1, Eligibility, Funding, Effective Date and Termination
243 Provisions; Eligibility; Eligibility Requirements for Retirees with Medicare and a Serious
244 Health Condition; is hereby deleted as set out below effective at midnight on December 31,
245 2016:

246
247 **~~Eligibility Requirements for Retirees with Medicare and a Serious Health~~**
248 **~~Condition~~**

249
250 ~~If continuously enrolled in a City of Springfield Health Plan, a retiree who becomes~~
251 ~~Medicare eligible but is ineligible for enrollment in the City sponsored Medicare~~
252 ~~supplement or Advantage Plan (according to Medicare rules and regulations) due to~~
253 ~~a serious health condition may be reinstated in the City of Springfield Group Health~~
254 ~~Plan. The City may require documentation from Medicare to verify the ineligibility to~~
255 ~~enroll in the secondary plan.~~

256
257 Section 10 – Chapter 2 of the Springfield City Code, Section 2-92, Merit Rule 25.1,
258 City Health Care Plan, Exhibit 1, Eligibility, Funding, Effective Date and Termination
259 Provisions; Funding; Cost of the Plan; is hereby amended as set out below effective at
260 midnight on December 31, 2016:

261
262 **Cost of the Plan**

263
264 The cost of the Plan is funded as follows:

265
266 (a) For Employee Coverage, the City pays 100% of the full cost of coverage for
267 eligible Employees as long as they are actively working, on an approved paid leave
268 of absence or on an FMLA approved leave of absence (as required by law and
269 regardless of pay status). Should the Employee not meet the above criteria for City
270 paid premium, the Employee must make the monthly contribution for their coverage.

271
272 (b) For Dependent Coverage, when elected, payment for the cost of dependent
273 coverage is the responsibility of the covered employee. Employees are required to
274 pay the premium for dependent coverage to the City of Springfield to maintain their
275 dependents' coverage during any type of leave absence. Contributions shall be
276 deducted from an Employee's paycheck during the month preceding the coverage
277 period, for example deductions from paychecks in May provide funding for June
278 dependent coverage. If payment cannot be deducted from the employee's pay check
279 due to insufficient earnings or lack of paid leave time to cover the monthly premium,

280 the employee will be responsible for remitting the premium due to the City of
281 Springfield by the first of the month that coverage is provided.

282
283 ~~(c) Medicare Eligible Retirees who have been approved for coverage due to a~~
284 ~~serious health condition that makes them ineligible for a Medicare secondary plan~~
285 ~~will contribute the employee premium less the current Medicare Part B premium rate.~~
286

287 COBRA Plan participants must pay a premium in accordance with the terms
288 described in the COBRA provisions of the Plan.

289
290 The amount of City and Employee contributions is recommended by the Health
291 Insurance Committee and/or the City Manager and as required, approved by City
292 Council. The Health Insurance Committee shall from time to time evaluate the costs
293 of the Plan and recommend the amount to be contributed by the Employee and
294 Dependents.

295
296 In the event that the City of Springfield terminates this Plan, then as of the
297 termination date, the Employees and Dependents, and the City of Springfield shall
298 have no further obligation to make additional contributions to the Plan.

299
300 Section 11 – Chapter 2 of the Springfield City Code, Section 2-92, Merit Rule 25.1,
301 City Health Care Plan, Exhibit 1, Eligibility, Funding, Effective Date and Termination
302 Provisions; Timely and Late Enrollment; Timely Enrollment; is hereby amended as set out
303 below effective at midnight on December 31, 2016:

304
305 **Timely Enrollment**

306
307 The enrollment will be "timely" for Employees and Dependents if the completed
308 enrollment form is received and approved by the Plan Administrator:

309 (a) No later than 31 days after the initial date the Employee meets the
310 eligibility requirements;

311
312 (b) No later than 31 days after the following events:

313 i. The effective date of marriage;

314
315 ii. The date of birth of a child, the adoption of a child, or the placement
316 of a child with the Employee for adoption;

317
318 (c) No later than 31 days following the loss of other health care coverage. In
319 all such prior coverage situations, the request for enrollment in the Plan of a
320 Dependent must be submitted within thirty-one days of the discontinuance of
321 prior health coverage. The Plan shall require that evidence satisfactory to the
322 Plan Administrator regarding prior health coverage be provided as a condition
323 of enrollment.

324
325 (d) In regard to eligible dependent children born or adopted on or after July 1,
326 2001, to or by current employees who at the time of the birth or adoption
327
328

329 already had dependent coverage in force under this Plan and have
330 maintained such coverage in force on a continuous uninterrupted basis
331 following said birth or adoption and through the time of request for enrollment
332 of such dependent child, said dependent children shall be initially enrolled by
333 this plan upon request by the employee.
334

335 (e) No later than 60 days following the loss of coverage through Medicaid or
336 CHIP or within 60 days of eligibility for premium assistance under Medicaid or
337 CHIP. If two Employees (husband and wife) ~~(or Employee and Retiree)~~ are
338 covered under the Plan and the Employee who is covering the Dependent
339 children terminates coverage or retires, the Dependent coverage may be
340 continued by the other covered Employee with no Waiting Period and no pre-
341 existing condition exclusions as long as coverage has been continuous.
342

343 Section 12 – Chapter 2 of the Springfield City Code, Section 2-92, Merit Rule 25.2,
344 Police and Fire Departments Health Insurance Plan; Coverage of County Emergency 911
345 Employees Transferring to the City; is hereby amended by inserting the language set out
346 below effective at midnight on December 31, 2016. The City Clerk shall assign a General
347 Ordinance Number to this ordinance upon passage and replace the blank line in line
348 number 369 with the assigned ordinance number:
349

350 By General Ordinance No. 4562, passed October 16, 1995, employees and
351 retirees of the Fire Department who were members of the International
352 Association of Firefighters Local #152 and formerly covered by health
353 insurance offered through that organization were included within coverage
354 offered under the City Health Care Plan. Effective January 1, 2001, pursuant
355 to City Ordinance and agreements negotiated between the City Manager on
356 behalf of the City and the Springfield Police Officers Association (SPOA),
357 employees and retirees of the Police Department who are members of the
358 SPOA and previously covered by health insurance offered through that
359 organization will also be included within the coverage offered under the City
360 Health Care Plan. Employees formerly employed by Greene County,
361 Missouri in its County 911 Center who become City employees pursuant to
362 the Amendment to the Intergovernmental Agreement between the City of
363 Springfield, Greene County, Missouri, and the City of Republic, Missouri of
364 February 3, 1997, approved by the City in Special Ordinance No. 24131,
365 passed December 17, 2001, will also be included within the coverage offered
366 under the City Health Care Plan upon the commencement of their City
367 employment.
368

369 By General Ordinance No. _____, the City terminated Retiree health care
370 coverage for Non-Medicare Retirees and Medicare eligible retirees on
371 December 31, 2016 and December 31, 2017, respectively.
372

373 In the event of a default in the performance by the Springfield Police Officers
374 Association of the terms and conditions of the agreement between the
375 Association and the City providing for the inclusion of the Association
376 members and retirees into the Plan, referenced in the ordinance enacting this
377 paragraph, and incorporated herein by reference, the City may take action as

378 necessary to collect said unpaid balance, including both principal and
379 accrued interest, including but not limited to the withholding of an amount not
380 to exceed \$25.00 per pay period from the regular pay compensation
381 otherwise due from the City to each present and future Police Department
382 employee added to the coverage of the City Employee Health Care Plan by
383 this amendment to the Plan while such unpaid balance is owing, and applying
384 such withheld amounts from each covered employee's compensation to the
385 unpaid balance until said balance is satisfied.
386

387 Section 13 – City Council hereby authorizes the City Manager or his designee,
388 pursuant to Chapter 2 of the Springfield City Code, Section 2-92, Merit Rule 25.1, City
389 Health Care Plan, Exhibit 1, General Plan Information, General Provisions, Amendments, to
390 administratively amend as necessary any provisions of the Plan conflicting with this
391 ordinance, to conform to and to be consistent therewith.
392

393 Section 14 – This ordinance shall be in full force and effect from and after passage,
394 provided that, for particular provisions herein above specifying different effective dates,
395 those effective dates shall control those provisions.
396

397 Passed at meeting: _____
398

399
400 _____
401 Mayor

402 Attest: _____, City Clerk
403

404
405 Filed as Ordinance: _____
406

407
408 Approved as to form: Rhonda Lewsader, Assistant City Attorney
409

410
411 Approved for Council action: [Signature], City Manager

EXPLANATION TO COUNCIL BILL NO: 2016- 051

FILED: 03-01-16

ORIGINATING DEPARTMENT: Human Resources

PURPOSE: To amend the City Health Care Plan to terminate the City of Springfield Retiree Health Plan (Non-Medicare) on December 31, 2016; to repeal the Plan Document and Summary Plan Description of the City of Springfield Retiree Health Plan (Non-Medicare) effective December 31, 2016; to terminate the City of Springfield Retiree Health Savings Account Program effective December 31, 2016; to amend Chapter 2 of the Springfield City Code, Section 2-92, Merit Rule 25.1, City Health Care Plan, by amending the language of said Merit Rule; to amend Section 2-92, Merit Rule 25.1, City Health Care Plan, Exhibit 1, by amending the language of said Exhibit 1; to terminate the City of Springfield Medicare supplement plan effective December 31, 2017; to amend Section 2-92, Merit Rule 25.2, Police and Fire Departments Health Insurance Plan, Coverage of County Emergency 911 Employees Transferring to the City, by terminating the rights of retirees to City provided or sponsored health insurance coverage; and to authorize the City Manager to administratively amend provisions of the City Health Care Plan conflicting with this ordinance.

BACKGROUND:

City of Springfield's Group Health Care Plan: The City of Springfield has managed one or more self-insured plans since the early 1990's. During the past twenty-plus years, the City has utilized a Health Insurance Committee (HIC) comprised of employees representing numerous departments, unions, and retirees. The HIC guides the City through various legal and financial hurdles including, but not limited to, mandates issued under the Governmental Accounting Standards Board Statement 45 (GASB 45) and the Affordable Care Act (ACA).

Prior to 2005, the City administered one health plan that encompassed both active employees and retirees. In 2005, pursuant to a mandate in GASB 45 that required governments to fully account for and report the cost of providing post-employment benefits, the City obtained an actuarial calculation to determine the total liability of health care expenses and the annual required contribution to fully fund the liability. The results showed that the required contribution to fully fund retiree healthcare was \$282 more per month than what retirees were actually paying.

Following the implementation of GASB 45, the City attempted to identify a third party or a group that would provide affordable health care options for its retirees. While options for the Medicare-eligible retirees were identified, no vendor was identified that was willing to insure the non-Medicare eligible retirees.

Non-Medicare Retiree Health Plan: In 2007, City Council passed General Ordinance 5696. This ordinance approved the creation of a separate high-deductible health plan for non-Medicare eligible retirees. The plan, named the Non-Medicare Retiree Health Plan, provided a subsidy for retirees and a health savings account for retirees and their covered dependents funded by the Employee Group Health Plan. The subsidy was a flat dollar amount that would not increase over time and was similar in value to subsidies provided for retirees in 2005. G.O. 5696 also required that retirees' premiums be sufficient to cover the actual cost to maintain the benefits offered through the plan. Therefore, the ordinance required that premiums be monitored and adjusted on an annual basis.

Since its inception in 2008, the Non-Medicare Retiree Health Plan has experienced a decrease in the number of retirees electing coverage under the plan due to an increase in the number of available health care options in the marketplace. The expansion of the health care marketplace under the ACA has resulted in options not available to retirees in the past. The decrease in retirees electing coverage under the plan has caused premiums for the plan to skyrocket. Even taking into account the \$300 subsidy a retiree receives to help offset their premium, the marketplace now offers options equal to or superior to the City's option for coverage. The marketplace also offers premium subsidies which make coverage attractive and affordable for low-income retirees.

The HIC has been closely monitoring the feasibility and sustainability of the Non-Medicare Retiree Health Plan and conducted its most recent review in September 2015. Representatives of the HIC's health care plan consultant, Segal, noted the plan is at or very near a "death spiral" with accumulated plan losses of over \$1 million since 2008. Plan participants experienced 28 percent to 46 percent premium increases for the 2016 calendar year.

In October 2015, after careful consideration, the HIC voted to recommend closing the Non-Medicare Retiree Health Plan effective midnight on December 31, 2016. The Committee also recommended providing on-site navigators to help current retirees identify health care options to ensure a smooth transition to the plan of their choice by the end of 2016.

Medicare Retiree Plan: G.O. 5696 also authorized the City to sponsor a private vendor to provide a health care plan for its Medicare retiree group. A formal bid process, vetted by the HIC's health care plan consultant, was used to select a vendor. On January 1, 2009, the City implemented sponsorship of a pass-through program for which City staff collected and remitted premiums to the vendor. Today, there are numerous health care plan options for Medicare-eligible retirees, through both Medicare advantage plans and Medicare supplements. The Medicare Retiree Health Plan has not been competitively bid since 2008 and the vendor has changed twice since implementation in 2009. The cost to conduct a formal bid for this service is expected to be \$20,000 to \$25,000.

The HIC does not believe the cost to conduct bidding is a prudent expenditure given that the need to sponsor a program for Medicare eligible retirees is no longer necessary or required. In October 2015, the HIC voted to recommend closure of the Medicare advantage plan effective midnight on December 31, 2017. This recommendation is for a year later than the recommended closure date of the non-Medicare plan to ensure the City has appropriate resources, in the form of navigators, to assist participants to transition to another health care plan of their choice and to ensure no retiree falls through the cracks during the transition.

REMARKS: The Health Insurance Committee recommends this Council bill and respectfully requests City Council's approval.

Submitted by:



Sheila R. Maerz,
Director of Human Resources

Approved by:



Greg Burris,
City Manager

One-rdg. _____
P. Hrngs. _____
Pgs. 4
Filed: 03-01-16

Sponsored by: Fisk

First Reading: _____

Second Reading: _____

COUNCIL BILL NO. 2016- 052

GENERAL ORDINANCE NO. _____

AN ORDINANCE

1 AMENDING Chapter 2, Section 2-92 of the Springfield City Code, known as the Salary
2 Ordinance, relating to the salary rate and pay grade for one job title within
3 the Springfield Fire Department, as contained in the Fire Protection
4 Schedule (FPS), by adding one new job title, Division Chief (FPS 12).
5
6

7 WHEREAS, the Fire Department is continuously working to improve its
8 operations through the efficient use of its resources; and
9

10 WHEREAS, the Fire Department believes that the position of Division Chief
11 should be created as this position is representative of the duties and responsibilities
12 currently existing in the vacant Assistant Fire Chief position over the Training and Safety
13 Division; and
14

15 WHEREAS, the Fire Department believes that the Division Chief position should
16 be funded through the vacant Assistant Fire Chief position over the Training and Safety
17 Division; and
18

19 WHEREAS, the Division Chief duties and responsibilities have been reviewed by
20 the Human Resources Department and it has, through its evaluation, determined that
21 the FPS 12 salary grade is most appropriate and consistent with other city management
22 positions with comparable levels of responsibility; and
23

24 WHEREAS, as a result of this evaluation, the job title of Division Chief (FPS 12)
25 will be established.
26

27 NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF
28 SPRINGFIELD, MISSOURI, as follows, that:
29

30 NOTE: Language to be added is underlined. Language to be removed is ~~stricken~~.
31

32 Section 1 - Chapter 2, Section 2-92 of the Springfield City Code, known as the
33 Salary Ordinance, relating to salary rates and pay grades for various job titles within the

34 City service as contained in the Fire Protection Schedule (FPS), is hereby amended by
35 adding the job title of Division Chief (FPS 12), said changes to be effective upon the
36 passage of this ordinance:

37
38 Proposed Job Title and Salary Grade
39 (Titles to be Added)

40 Classification	41 Grade
42 <u>Division Chief</u>	43 <u>FPS 12</u>

44
45
46 Section 2 - This ordinance shall be in full force and effect from and after passage.

47
48 Passed at meeting: _____

49
50 _____
51 Mayor

52
53 Attest: _____, City Clerk

54
55 Filed as Ordinance: _____

56
57 Approved as to form: *Marianne Anderson Berkey*, Assistant City Attorney

58
59 Approved for Council Action: *Greg Burt*, City Manager

EXPLANATION TO COUNCIL BILL NO: 2016-052

FILED: 03-01-16

ORIGINATING DEPARTMENT: Fire

PURPOSE: To create a new job title within the Fire Department.

BACKGROUND: The Fire Department currently consists of four divisions: Administration, Operations, Prevention, and Training and Safety. Currently, the Administration division is managed by the Fire Chief and the other three are each managed by an Assistant Fire Chief. Recently, a vacancy occurred in the Assistant Fire Chief over the Training and Safety Division, which has provided the opportunity for the Fire Department to re-evaluate the position. The Fire Department is continuously working to improve its operations through the efficient use of its resources.

After review, the Fire Department believes that the title and rank of Division Chief is a more appropriate representation of the current duties of the position rather than Assistant Fire Chief. This is a reduction in the rank of the position by one salary grade assignment. This was determined based upon a number of factors, but primarily because the current position does not have the same overall breadth and level of duties, including less supervision responsibilities. When looking at the scope of responsibility, it does not currently rise to the same level as the other Assistant Fire Chiefs and is more consistent with a division supervisory position.

REMARKS: The Fire Department and Human Resources respectfully request establishing the position of Division Chief at the FPS-12 pay grade. This is one level below (FPS-13) the pay grade of the Assistant Fire Chief, which will result in a cost savings. The creation of this job title will increase the Fire Department's efficiency and help prepare for the future.

BUDGET NOTE: As noted, the fiscal impact of this recommended change will result in a cost savings. The estimated cost savings is \$9,239. The Fire Department hopes to be able to re-utilize these savings by offsetting the cost of its budget requests for the FY17 Budget.

Submitted by:



David Hall, Fire Chief

Recommended by:

A handwritten signature in black ink, appearing to read "Sheila Maerz", written over a horizontal line.

Sheila Maerz, Director of Human Resources

Approved by:

A handwritten signature in black ink, appearing to read "Greg Burris", written over a horizontal line.

Greg Burris, City Manager

One-rdg. _____
P. Hrngs. _____
Pgs. 18
Filed: 03-01-16

Sponsored by: McClure

First Reading: _____

Second Reading: _____

COUNCIL BILL NO. 2016- 053

SPECIAL ORDINANCE NO. _____

AN ORDINANCE

1 AUTHORIZING the City of Springfield, Missouri, to enter into Schedule No. 4 to its
2 existing master equipment lease purchase agreement, the proceeds of
3 which will be used to pay the costs of acquiring equipment for the
4 Parks Department, amending the Fiscal Year 2016 budget of the City
5 in the amount of \$489,500, and to do all things necessary to carry out
6 the lease-purchase transaction, including the execution of certain
7 documents in connection therewith.
8
9

10 WHEREAS, as authorized by Special Ordinance No. 26455, the City, as lessee,
11 previously entered into a Master Equipment Lease Purchase Agreement dated as of
12 October 17, 2014 (the "Master Lease"), with U.S. Bancorp Governing Leasing and Finance,
13 Inc., as Lessor (the "Lessor"), pursuant to which the City will from time to time lease certain
14 equipment on a tax-exempt basis from the Lessor pursuant to schedules of equipment
15 thereto, on a year-to-year basis with an option to purchase the Lessor's interest in such
16 equipment; and
17

18 WHEREAS, the City desires to obtain funds to pay the costs of acquiring equipment
19 for the Parks Department (as further described in the herein defined Schedule No. 4, the
20 "Parks Department Equipment"); and
21

22 WHEREAS, financing the Parks Department Equipment through the execution and
23 delivery of Schedule of Equipment No. 4 to the Master Lease will allow the City to acquire
24 the Parks Department Equipment at a favorable interest rate; and
25

26 WHEREAS, the Finance Department has obtained a competitive rate quotation for
27 the financing; and
28

29 WHEREAS, the Parks Department Equipment will be acquired in accordance with
30 the City's purchasing policy; and
31

32 WHEREAS, in order to facilitate the foregoing and to pay the cost thereof, it is
33 necessary and desirable for the City to take the following actions:
34

- 35 1. Enter into Schedule of Equipment No. 4 to the Master Lease (which incorporates
36 the terms and conditions set forth in the Master Lease), in substantially the form

37 attached hereto as "Attachment 1" ("Schedule No. 4") with the Lessor, pursuant
38 to which the City, as lessee, will lease the Parks Department Equipment
39 described therein from the Lessor, on a year-to-year basis with an option to
40 purchase the Lessor's interest in the Parks Department Equipment.

41
42 2. Enter into an Escrow Agreement in substantially the form attached hereto as
43 "Attachment 2" (the "Escrow Agreement") with the Lessor and the escrow agent
44 to be named therein, pursuant to which the proceeds of Schedule No. 4 will be
45 held in trust by said escrow agent pending the City's use to purchase the Parks
46 Department Equipment financed under Schedule No. 4.

47
48 (Schedule No. 4 and the Escrow Agreement are referred to collectively herein as the "City
49 Documents"); and

50
51 WHEREAS, the annual payments for Schedule No. 4 for the Parks Department
52 Equipment are appropriated in the Fiscal Year 2015-2016 operating budget and a budget
53 adjustment is necessary to appropriate the proceeds of Schedule No. 4; and

54
55 WHEREAS, the amendment to the budget for the City for Fiscal Year 2015-2016 for
56 the acquisition of the Parks Department Equipment has been recommended and approved
57 by the City Manager.

58
59 NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF
60 SPRINGFIELD, MISSOURI, as follows, that:

61
62 Section 1 - The financing of the Parks Department Equipment is hereby approved,
63 with the final terms to be set forth in the City Documents upon the execution thereof, and
64 the signature of the City Manager shall constitute conclusive evidence of the City Manager's
65 approval thereof and the City's approval thereof.

66
67 Section 2 - The City Manager, or his designee, is hereby authorized to sign and
68 execute, for and on behalf of the City, the City Documents in substantially in the form and
69 content as those attached hereto and incorporated herein by reference as "Exhibit A" and
70 "Exhibit B," with such changes therein as shall be consistent with the terms of this ordinance
71 and as are approved by the City Manager, the City Manager's signature thereon being
72 conclusive evidence of approval thereof. The City Clerk is hereby authorized to affix the
73 City's Seal to the City Documents, if necessary, and attest said Seal.

74
75 Section 3 - The obligation of the City to pay Rental Payments (as defined in the
76 Master Lease) under Schedule No. 4 is subject to annual appropriation and will constitute a
77 current expense of the City and will not in any way be construed to be an indebtedness or
78 liability of the City in contravention of any applicable constitutional, charter or statutory
79 limitation or requirement concerning the creation of indebtedness or liability by the City, nor
80 will anything contained in Schedule No. 4 constitute a pledge of the general tax revenues,
81 funds or moneys of the City, and all provisions of Schedule No. 4 will be construed so as to
82 give effect to such intent.

83

84 Section 4 – The City Council hereby amends the budget for the City for Fiscal Year
85 2015-2016 in the accounts and in the amounts as shown on Budget Adjustment 0036, a
86 copy of which is attached hereto and incorporated herein by reference as “Attachment 3.”
87

88 Section 5 – The City Council hereby finds that the budget adjustment made above
89 has been recommended by the City Manager. The City Council hereby directs the City
90 Manager to cause the appropriate accounting entries to be made in the books and records
91 of the City.
92

93 Section 6 – The officers of the City, including the City Manager, Finance Director,
94 City Attorney and the City Clerk, are hereby authorized and directed to execute all
95 documents (including without limitation a Federal Tax Certificate), and take such actions as
96 they may deem necessary or advisable in order to carry out and perform the purposes of
97 this Ordinance and to make any changes or additions to the foregoing agreements,
98 statements, instruments and other documents herein approved, authorized and confirmed
99 which they determine to be in the City’s best interest, and the execution or taking of such
100 action shall be conclusive evidence of such determination.
101

102 Section 7 – The City expects to make capital expenditures after the date of the
103 adoption of this Ordinance in connection with acquisition of the Parks Department
104 Equipment, and the City intends to reimburse itself for such expenditures and also
105 expenditures made with respect to acquisition of the Parks Department Equipment on or
106 after sixty days before the date of this Ordinance with proceeds received under Schedule
107 No. 4.
108

109 Section 8 – This ordinance shall be in full force and effect from and after passage.
110

111 Passed at meeting: _____
112
113

114 _____
115 Mayor
116

117 Attest: _____, City Clerk
118
119

120 Filed as Ordinance: _____
121

122
123 Approved as to form: Rhonda Lewaden, Assistant City Attorney
124

125
126 Approved for Council action: [Signature], City Manager

EXPLANATION TO COUNCIL BILL NO: 2016- 053

FILED: 03-01-16

ORIGINATING DEPARTMENT: Finance

PURPOSE: Authorizing the City of Springfield, Missouri, to enter into Schedule of Equipment No. 4, which will become part of its existing Master Equipment Lease Purchase Agreement, the proceeds of which will be used to pay the costs of acquiring equipment for the Springfield-Greene County Parks Department (Parks Department), to do all things necessary to carry out the lease-purchase transaction, including the execution of certain documents in connection therewith; and amending the budget for the Parks Department for Fiscal Year 2015-2016 in the amount of \$489,500.

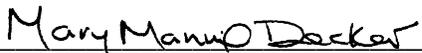
BACKGROUND INFORMATION: As authorized by Special Ordinance Nos. 26455 and 26572, respectively, the City has utilized master lease agreements over the last several years as a low-cost means of acquiring capital equipment. This financing mechanism has allowed the Parks Department to acquire much-needed capital equipment at a very favorable interest rate. The term of the financing is five years. At the end of the five year period, the City will own the equipment.

The proceeds of the transaction will be used to purchase fitness equipment for the Chesterfield and Doling Family Centers, turf maintenance equipment, vehicles, and a trailer. This equipment is essential to the quality programs provided by the Parks Department.

The transaction will be financed by U.S. Bank under the Master Lease Agreement which was bid and executed in 2014. The interest rate on this transaction is 1.886 percent. This is a five year financing with quarterly payments.

Supports the following Field Guide 2030 goal: Chapter 13, Recreation and Leisure, Parks, Open Space and Greenways; Major Goal 2, Future Plan of Action; Parks will be updating its strategic plan to include many new parks, facilities and services, and providing for improvements to our existing parks system

Submitted by:



Mary Mannix Decker, Director of Finance

Approved by:



Greg Burris, City Manager

SCHEDULE OF EQUIPMENT NO. 4

COUNTERPART NO. ____

LESSOR'S INTEREST IN, TO AND UNDER THIS SCHEDULE AND THE AGREEMENT AS IT RELATES TO THIS SCHEDULE MAY BE SOLD OR PLEDGED ONLY BY DELIVERING POSSESSION OF COUNTERPART NO. 1 OF THIS SCHEDULE, WHICH COUNTERPART NO. 1 SHALL CONSTITUTE CHATTEL PAPER FOR PURPOSES OF THE UNIFORM COMMERCIAL CODE.

Re: Schedule of Equipment No. 4 dated April 1, 2016 (the "Schedule"), to Master Equipment Lease Purchase Agreement dated as of October 17, 2014 (collectively, the "Agreement"), between U.S. Bancorp Government Leasing and Finance, Inc., as Lessor, and City of Springfield, Missouri, as Lessee.

1. Defined Terms. All terms used herein have the meanings ascribed to them in the Agreement.

2. Equipment. The Equipment included under this Schedule is comprised of the items described in the Equipment Description attached hereto as **Attachment 1**, together with all replacements, substitutions, repairs, restorations, modifications, attachments, accessions, additions and improvements thereof or thereto.

3. Payment Schedule. The Rental Payments and Purchase Prices under this Schedule are set forth in the Payment Schedule attached as **Attachment 2** hereto.

4. Representations, Warranties and Covenants. Lessee hereby represents, warrants and covenants that its representations, warranties and covenants set forth in the Agreement are true and correct as though made on the date of commencement of Rental Payments on this Schedule.

5. Certification as to Arbitrage. Lessee hereby represents as follows:

(a) The estimated total costs of the Equipment listed in this Schedule, together with any costs of entering into this Schedule that are expected to be financed under this Schedule, will not be less than the total principal portion of the Rental Payments listed in this Schedule.

(b) The Equipment listed in this Schedule has been ordered or is expected to be ordered within six months of the commencement of this Schedule, and the Equipment is expected to be delivered, and the Vendor fully paid, within eighteen months of the commencement of this Schedule.

(c) Lessee has not created or established, and does not expect to create or establish, any sinking fund or other similar fund (i) that is reasonably expected to be used to pay the Rental Payments listed in this Schedule, or (ii) that may be used solely to prevent a default in the payment of the Rental Payments listed in this Schedule.

(d) The Equipment listed in this Schedule has not been and is not expected to be sold or otherwise disposed of by Lessee, either in whole or in major part, prior to the last maturity of the Rental Payments listed in this Schedule.

(e) To the best of Lessee's knowledge, information and belief, the above expectations are reasonable.

(f) Lessee has not been notified of any listing or proposed listing of it by the Internal Revenue Service as an issuer whose arbitrage certificates may not be relied upon.

Lessee will comply with all applicable provisions of the Internal Revenue Code of 1986, as amended, including without limitation Sections 103, 141 and 148 thereof, and the applicable regulations of the Treasury Department to maintain the exclusion of the interest components of Rental Payments from gross income for purposes of federal income taxation.

6. The Agreement. This Schedule is hereby made as part of the Agreement, and Lessor and Lessee hereby ratify and confirm the Agreement. The terms and provisions of the Agreement (other than to the extent that they relate solely to other Schedules or Equipment listed on other Schedules) are hereby incorporated by reference and made a part hereof.

7. Other Provisions.

None.

Dated: April 1, 2016.

U.S. BANCORP GOVERNMENT LEASING AND FINANCE, INC.

By: _____
Title: _____
Address: 13010 SW 68th Parkway, Suite 100
Portland, OR 97223

CITY OF SPRINGFIELD, MISSOURI

By: _____
Title: City Manager
Address: 840 Boonville Ave.
Springfield, MO 65802

APPROVED AS TO FORM:

_____, City Attorney

**ATTACHMENT 1 TO
SCHEDULE OF EQUIPMENT NO. 4**

EQUIPMENT DESCRIPTION

The Equipment consists of the following equipment to be used by Lessee's Parks Department, together with any and all replacement parts, additions, repairs, modifications, attachments and accessories thereto, any and all substitutions, replacements or exchanges therefor, and any and all insurance and/or proceeds thereof:

Description	Estimated Cost
Refrigerated Concessions Truck	\$82,500
CFC Fitness Equipment Replacement	44,500
Ballfield Turf Preparation Units	25,500
DFC Fitness Equipment	44,500
Horse Transport Trailer for Valley Watermill Equestrian Center	27,000
Park Ranger Vehicle	28,500
Park Administration Vehicle	27,000
Three (3) Zero Turn Mowers for Park Operations	40,500
Salt Spreader for Park Operations	15,000
Horton Smith Tri-Plex Mower	30,000
Bill and Payne Stewart Tee Mower	30,000
Rivercut Rough Area Mower and Tri Plex Mower	90,000

This Equipment Description shall be deemed to be supplemented by the descriptions of the Equipment included in the Payment Requests and Acceptance Certificates submitted to U.S. Bank National Association, as escrow agent, pursuant to the Escrow Agreement dated as of April 1, 2016, among Lessor, Lessee and U.S. Bank National Bank, as escrow agent, which descriptions shall be deemed to be incorporated herein.

**ATTACHMENT 2 TO
SCHEDULE OF EQUIPMENT NO. 4**

PAYMENT SCHEDULE

Rental payments will be made in accordance with **Section 4.01** of the Agreement and this Payment Schedule.

Principal Amount: \$489,500

Interest Rate: 1.886%, 30/360 basis; monthly compounding

Rental Payment Date	Interest Portion	Principal Portion	Total Rental Payment	Purchase Price
08/01/2016	\$3,084.59	\$22,662.52	\$25,747.11	\$466,837.48
11/01/2016	2,204.60	23,542.51	25,747.11	443,294.97
02/01/2017	2,093.42	23,653.68	25,747.11	419,641.29
05/01/2017	1,981.72	23,765.39	25,747.11	395,875.90
08/01/2017	1,869.49	23,877.62	25,747.11	371,998.28
11/01/2017	1,756.73	23,990.38	25,747.11	348,007.91
02/01/2018	1,643.44	24,103.67	25,747.11	323,904.24
05/01/2018	1,529.61	24,217.50	25,747.11	299,686.74
08/01/2018	1,415.24	24,331.86	25,747.11	275,354.88
11/01/2018	1,300.34	24,446.77	25,747.11	250,908.11
02/01/2019	1,184.89	24,562.21	25,747.11	226,345.90
05/01/2019	1,068.90	24,678.21	25,747.11	201,667.69
08/01/2019	952.36	24,794.75	25,747.11	176,872.94
11/01/2019	835.27	24,911.84	25,747.11	151,961.10
02/01/2020	717.62	25,029.48	25,747.11	126,931.62
05/01/2020	599.42	25,147.68	25,747.11	101,783.93
08/01/2020	480.67	25,266.44	25,747.11	76,517.49
11/01/2020	361.35	25,385.76	25,747.11	51,131.73
02/01/2021	241.47	25,505.64	25,747.11	25,626.09
05/01/2021	121.02	25,626.09	25,747.11	0.00

ESCROW AGREEMENT

This Escrow Agreement (the “Escrow Agreement”), dated as of April 1, 2016 and entered into among **U.S. BANCORP GOVERNMENT LEASING AND FINANCE, INC.**, a corporation organized and existing under the laws of the State of Minnesota together with its successors and assigns, “Lessor”), **CITY OF SPRINGFIELD, MISSOURI**, a home rule charter city and political subdivision existing under the laws of Missouri (“Lessee”), and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association organized and existing under the laws of the United States of America, as escrow agent (together with its successors and assigns, “Escrow Agent”).

Name of Acquisition Fund: “City of Springfield, Missouri Acquisition Fund-Schedule of Equipment No. 4”
Amount of Deposit into the Acquisition Fund: \$489,500

TERMS AND CONDITIONS

1. This Escrow Agreement relates to and is hereby made a part of the Schedule of Equipment No. 4 dated April 1, 2016 (the “Schedule”) to that Master Equipment Lease Purchase Agreement dated as of October 17, 2014 (the “Agreement,” and together with the Schedule, the “Lease”), between Lessor and Lessee.

2. Except as otherwise defined herein, all terms defined in the Agreement will have the same meaning for the purposes of this Escrow Agreement as in the Agreement.

3. Lessor, Lessee and Escrow Agent agree that Escrow Agent will act as sole Escrow Agent under the Lease and this Escrow Agreement, in accordance with the terms and conditions set forth in this Escrow Agreement. Escrow Agent will not be deemed to be a party to the Lease, and this Escrow Agreement will be deemed to constitute the entire agreement between Lessor and Lessee and Escrow Agent.

4. There is hereby established in the custody of Escrow Agent a special trust fund designated as set forth above (the “Acquisition Fund”) to be held and administered by Escrow Agent in trust for the benefit of Lessor and Lessee in accordance with this Escrow Agreement.

5. Lessor will deposit in the Acquisition Fund the amount specified above. Moneys held by Escrow Agent hereunder will be invested and reinvested by Escrow Agent upon written order of an Authorized Lessee Representative, in accordance with the Federal Tax Certificate executed by Lessee as of the date hereof, in Qualified Investments (as defined below) maturing or subject to redemption at the option of the holder thereof prior to the date on which it is expected that such funds will be needed. If an Authorized Lessee Representative fails to timely direct the investment of any moneys held hereunder, Escrow Agent will invest and reinvest such moneys in Qualified Investments described in **Section 6(vi)** below. Such investments will be held by Escrow Agent in the Acquisition Fund; any interest and gain earned on such investments will be deposited in the Acquisition Fund, and any losses on such investments will be charged to the Acquisition Fund. Escrow Agent may act as purchaser or agent in the making or disposing of any investment.

6. “Qualified Investments” means, to the extent the same are at the time legal for investment of the funds being invested: (i) direct general obligations of the United States of America; (ii) obligations

the timely payment of principal of and interest on which is fully and unconditionally guaranteed by the United States of America; (iii) general obligations of the agencies and instrumentalities of the United States of America acceptable to Lessor; (iv) certificates of deposit, time deposits or demand deposits with any bank or savings institution including Escrow Agent or any affiliate thereof, provided that such certificates of deposit, time deposits or demand deposits, if not insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, are fully secured by obligations described in (i), (ii) or (iii) above; or (v) repurchase agreements with any state or national bank or trust company, including Escrow Agent or any affiliate thereof, that are secured by obligations of the type described in (i), (ii) or (iii) above, provided that such collateral is free and clear of claims of third parties and that Escrow Agent or a third party acting solely as agent for Escrow Agent has possession of such collateral and a perfected first security interest in such collateral; or (vi) money market mutual funds that are invested in securities described in (i), (ii) or (iii) and that are rated "Aaa" by Moody's Investors Service or "AAAm-G" by Standard & Poor's Ratings Services or the comparable rating by Fitch IBCA, Inc.

7. Moneys in the Acquisition Fund will be used to pay for the cost of acquisition of the Equipment listed in the Lease and, if requested by Lessee, to pay certain costs of entering into the Lease. Such payment will be made from the Acquisition Fund upon presentation to Escrow Agent of one or more properly executed Payment Request and Acceptance Certificates, a form of which is attached as **Exhibit A**, executed by Lessee and approved by Lessor, together with an invoice for the cost of the acquisition of said Equipment and a written approval by Lessor of the Vendor to be paid, or in the event that certain costs of entering into the Lease are described in the Payment Request and Acceptance Certificate, an invoice specifying the amount of such costs. In making any disbursement pursuant to this **Section 7**, Escrow Agent may conclusively rely as to the completeness and accuracy of all statements in such Payment Request and Acceptance Certificate, and Escrow Agent will not be required to make any inquiry, inspection or investigation in connection therewith. The approval of each Payment Request and Acceptance Certificate by Lessor will constitute unto Escrow Agent an irrevocable determination by Lessor that all conditions precedent to the payment of the amounts set forth therein have been completed.

8. The Acquisition Fund will terminate upon the occurrence of the earlier of (a) the presentation of a proper Payment Request and Acceptance Certificate and the Final Acceptance Certificate, a form of which is attached as **Exhibit B**, properly executed by Lessee, or (b) the presentation of written notification by Lessor, or, if Lessor has assigned its interest under the Lease, then the assignees or subassignees of all of Lessor's interest under the Lease or an Agent on their behalf, that the Lease has been terminated pursuant to **Section 3.03 (a)** or **(c)** of the Agreement. Upon termination as described in clause (a) of this paragraph, any amount remaining in the Acquisition Fund will be used to prepay the principal portion of Rental Payments unless Lessor directs that payment of such amount be made in such other manner directed by Lessor that, in the opinion of nationally recognized counsel in the area of tax-exempt municipal obligations satisfactory to Lessor, will not adversely affect the exclusion of the interest components of Rental Payments from gross income for federal income tax purposes. If any such amount is used to prepay principal, the Rental Payment Schedule attached to the Lease will be revised accordingly as specified by Lessor. Upon termination as described in clause (b) of this paragraph, any amount remaining in the Acquisition Fund will immediately be paid to Lessor or to any assignees or subassignees of Lessor's interest in this Lease.

9. Escrow Agent may at any time resign by giving at least 30 days' written notice to Lessee and Lessor, but such resignation will not take effect until the appointment of a successor Escrow Agent. The substitution of another bank or trust company to act as Escrow Agent under this Escrow Agreement may occur by written agreement of Lessor and Lessee. In addition, Escrow Agent may be removed at any time, with or without cause, by an instrument in writing executed by Lessor and Lessee. In the event of

any resignation or removal of Escrow Agent, a successor Escrow Agent will be appointed by an instrument in writing executed by Lessor and Lessee. Such successor Escrow Agent will indicate its acceptance of such appointment by an instrument in writing delivered to Lessor, Lessee and the predecessor Escrow Agent. Thereupon such successor Escrow Agent will, without any further act or deed, be fully vested with all the trusts, powers, rights, duties and obligations of Escrow Agent under this Escrow Agreement and the predecessor Escrow Agent will deliver all moneys and securities held by it under this Escrow Agreement to such successor Escrow Agent whereupon the duties and obligations of the predecessor Escrow Agent will cease and terminate. If a successor Escrow Agent has not been so appointed with 90 days of such resignation or removal, Escrow Agent may petition a court of competent jurisdiction to have a successor Escrow Agent appointed.

10. Any corporation or association into which Escrow Agent may be merged or converted or with or into which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any merger, conversion, sale, consolidation or transfer to which it is a party, will be and become successor Escrow Agent hereunder and will be vested with all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges hereunder as was its predecessor, without the execution or filing of any instrument or any further act on the part of any of the parties hereto.

11. Escrow Agent incurs no responsibility to make any disbursements pursuant to this Escrow Agreement except from funds held in the Acquisition Fund. Escrow Agent makes no representations or warranties as to the title to any Equipment listed in the Lease or as to the performance of any obligations of Lessor or Lessee.

12. Escrow Agent may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine, may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument, and may assume that any person purporting to give any writing, notice, advice or instructions in connection with the provisions hereof has been duly authorized to do so. Escrow Agent will not be liable in any manner for the sufficiency or correctness as to form, manner and execution, or validity of this Escrow Agreement other than its own execution thereof or any instrument deposited with it, nor as to the identity, authority or right of any person executing the same; and its duties hereunder will be limited to those specifically provided herein.

13. Unless Escrow Agent is guilty of negligence or willful misconduct with regard to its duties hereunder, Lessee, to the extent permitted by law, and Lessor jointly and severally hereby agree to indemnify Escrow Agent and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or any other expense, fees or charges of any character or nature, which it may incur or with which it may be threatened by reason of its acting as Escrow Agent under this Escrow Agreement; and in connection therewith, to indemnify Escrow Agent against any and all expenses, including reasonable attorneys' fees and the cost of defending any action, suit or proceeding or resisting any claim.

14. The aggregate amount of the costs, fees, and expenses of Escrow Agent in connection with the creation of the escrow described in and created by this Escrow Agreement and in carrying out any of the duties, terms or provisions of this Escrow Agreement is a one-time fee in the amount of \$-0-, to be paid by Lessee concurrently with the execution and delivery of this Escrow Agreement.

Notwithstanding the preceding paragraph, Escrow Agent will be entitled to reimbursement from Lessee of reasonable out-of-pocket, legal or extraordinary expenses incurred in carrying out the duties, terms or provisions of this Escrow Agreement. Claims for such reimbursement may be made to Lessee

and in no event will such reimbursement be made from funds held by Escrow Agent pursuant to this Escrow Agreement. Escrow Agent agrees that it will not assert any lien whatsoever on any of the money or Qualified Investments on deposit in the Escrow Fund for the payment of fees and expenses for services rendered by Escrow Agent under this Escrow Agreement or otherwise.

15. If Lessee, Lessor or Escrow Agent are in disagreement about the interpretation of the Lease or this Escrow Agreement, or about the rights and obligations, or the propriety of any action contemplated by Escrow Agent hereunder, Escrow Agent may, but will not be required to, file an appropriate civil action to resolve the disagreement. Escrow Agent will be indemnified by Lessor and Lessee, to the extent permitted by law, for all costs, including reasonable attorneys' fees and expenses, in connection with such civil action, and will be fully protected in suspending all or part of its activities under this Escrow Agreement until a final judgment in such action is received.

16. Escrow Agent may consult with counsel of its own choice and will have full and complete authorization and protection for any action or non-action taken by Escrow Agent in accordance with the opinion of such counsel. Escrow Agent will otherwise not be liable for any mistakes of facts or errors of judgment, or for any acts or omissions of any kind unless caused by its negligence or willful misconduct.

17. This Escrow Agreement will be governed by and construed in accordance with the laws of the state in which Escrow Agent is located.

18. In the event any provision of this Escrow Agreement will be held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision hereof.

19. This Escrow Agreement may not be amended except by a written instrument executed by Lessor, Lessee and Escrow Agent.

20. This Escrow Agreement may be executed in several counterparts, each of which so executed will be an original.

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

[Remainder of Page Intentionally Left Blank.]

IN WITNESS WHEREOF, Lessor, Lessee and Escrow Agent have caused this Escrow Agreement to be executed by their duly authorized representatives.

**U.S. BANCORP GOVERNMENT LEASING AND
FINANCE, INC.
LESSOR**

By: _____
Title: _____

**CITY OF SPRINGFIELD, MISSOURI
LESSEE**

By: _____
Title: City Manager

APPROVED AS TO FORM:

_____, City Attorney

**U.S. BANK NATIONAL ASSOCIATION
ESCROW AGENT**

By: _____
Title: _____

EXHIBIT A

FORM OF PAYMENT REQUEST AND ACCEPTANCE CERTIFICATE

To: U.S. Bank National Association, as Escrow Agent
13010 SW 68th Parkway, Suite 100
Portland, OR 97223

Re: City of Springfield, Missouri Acquisition Fund established by the Escrow Agreement, dated as of April 1, 2016 (the "Escrow Agreement"), among U.S. Bancorp Government Leasing and Finance, Inc., as lessor ("Lessor"), City of Springfield, Missouri ("Lessee") and U.S. Bank National Association, as Escrow Agent (the "Escrow Agent")

Ladies and Gentlemen:

The Escrow Agent is hereby requested to pay from the Acquisition Fund to the person or corporation designated below as Payee, the sum set forth below in payment of a portion or all of the cost of the acquisition of the equipment, costs incurred in entering into the Lease described below or the interest portions of Rental Payment(s) described below. The amount shown below is due and payable under the invoice of the Payee attached hereto with respect to the cost of the acquisition of the equipment, costs incurred in entering into the Lease described below or payment of the interest portions of Rental Payment(s) and has not formed the basis of any prior request for payment.

The equipment or costs described below are (a) part or all of the "Equipment" that is listed in Equipment Schedule No. 4 dated April 1, 2016 (the "Schedule"), to that certain Master Equipment Lease Purchase Agreement dated as of October 17, 2014 (the "Agreement," and together with the Schedule, the "Lease"), described in the Escrow Agreement or (b) costs incurred in entering into the Lease.

<u>Quantity</u>	<u>Serial Number</u>	<u>Item</u>	<u>Amount</u>
-----------------	----------------------	-------------	---------------

Payee: _____

Lessee hereby certifies and represents to and agrees with Lessor and Escrow Agent as follows:

- (1) The Equipment described above (a) has been delivered, installed and accepted on the date hereof, or (b) the amount requested is a down payment currently due on said Equipment.
- (2) If (1)(a) is applicable, Lessee has conducted such inspection and/or testing of said Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts said Equipment for all purposes.

(3) If (1)(a) is applicable, Lessee is currently maintaining the insurance coverage required by **Section 7.02** of the Agreement.

Lessee hereby certifies and represents to Lessor and Escrow Agent that no event or condition that constitutes, or with notice or lapse of time or both would constitute, an Event of Default (as such term is defined in the Agreement) exists at the date hereof.

Dated: _____, 20__.

CITY OF SPRINGFIELD, MISSOURI
LESSEE

By: _____
Title: _____

APPROVED:

U.S. BANCORP GOVERNMENT LEASING AND FINANCE, INC.
LESSOR

By: _____
Title: _____

EXHIBIT B

FINAL ACCEPTANCE CERTIFICATE

[THIS CERTIFICATE IS TO BE EXECUTED ONLY WHEN ALL EQUIPMENT
HAS BEEN ACCEPTED]

The undersigned hereby certifies that the equipment described above, together with the equipment described in and accepted by Payment Request and Acceptance Certificates previously filed by Lessee with Escrow Agent and Lessor pursuant to the Escrow Agreement, constitutes all of the Equipment subject to the Lease.

Dated: _____

CITY OF SPRINGFIELD, MISSOURI
LESSEE

By: _____
Title: _____

EXHIBIT C

**APPOINTMENT OF AUTHORIZED REPRESENTATIVES;
MONEY MARKET ACCOUNT AUTHORIZATION FORM**

[To be provided by Escrow Agent.]

CITY OF SPRINGFIELD, MO
BUDGET ADJUSTMENT

Attachment 3

BA Number 0036

Revenues:

Fund	Dept	Org	Account	P&G	Location	Amount	Description
20110	16	80010	408070	000000	00000	153,900.00	Lease Proceeds for Parks
20120	16	80010	408070	000000	00000	184,200.00	Lease Proceeds for Parks
57010	16	25010	408070	000000	00000	151,400.00	Lease Proceeds for Parks
Net Revenue Adjustment						489,500.00	

Expenditures:

Fund	Dept	Org	Account	P&G	Location	Amount	Description
20110	16	82540	508170	000000	00000	82,500.00	Concessions refrigeration truck
20110	16	82550	508220	000000	10065	44,500.00	Chesterfield Family Center fitness equipment
20110	16	80570	508170	000000	00000	25,500.00	Turf ballfield dragging equipment
20110	16	80010	509350	000000	00000	1,400.00	Cost of issuance
20120	16	82550	509110	000000	10101	44,500.00	Doling Family Center fitness equipment
20120	16	80570	508170	000000	00000	40,500.00	Three mowers for park operations
20120	16	80040	508320	000000	00000	28,500.00	Park ranger vehicle
20120	16	80010	508120	000000	00000	27,000.00	Parks administration vehicle
20120	16	88030	508170	000000	10428	27,000.00	Equestrian Center horse trailer
20120	16	80520	508170	000000	00000	15,000.00	Salt spreader
20120	16	80010	509350	000000	00000	1,700.00	Cost of issuance
57010	16	25010	508320	000000	10354	90,000.00	Rough area mower
57010	16	25010	508320	000000	10409	30,000.00	Tee mower
57010	16	25010	508320	000000	10169	30,000.00	Triplex mower
57010	16	25010	509350	000000	00000	1,400.00	Cost of issuance
Net Expenditure Adjustment						489,500.00	

Fund Balance Appropriation:

Fund	Title	Amount
	Fund Balance Appropriation	

Explanation: Parks equipment lease for FY2016 operating needs.

Requested By:

Mary Mann O'Dacker 3/2/16
Department Head Date

Approved By:

Mary Mann O'Dacker 3/2/16
Director of Finance Date

Authorization:

Council Bill No. 2016-053
Ordinance No. _____
1st Reading _____
2nd Reading _____
Journal Imp No. _____

City Manager Date

One-rdg. X
P. Hrngs.
Pgs. 4
Filed: 03-01-16

Sponsored by: Ferguson

COUNCIL BILL NO. 2016- 054

RESOLUTION NO.

A RESOLUTION

1 EXTENDING the declaration of an economic and housing access calamity until the
2 condition is no longer met, or March 31, 2018, whichever occurs first.
3 (Staff recommends approval.)
4 _____
5

6 WHEREAS, the City Council first declared an economic and housing access
7 calamity on December 14, 2009, by Resolution No. 9737; and
8

9 WHEREAS, the calamity declaration has been renewed since, by Resolution No.
10 9777 on May 2, 2010; by Resolution No. 9909 on October 17, 2011; by Resolution No.
11 10019 on January 14, 2013; by Resolution No. 10097 on December 16, 2014; and by
12 Resolution No. 10202 on March 23, 2015; and
13

14 WHEREAS, Resolution No. 10178 redefined the threshold of when the
15 declaration of economic and housing access calamity shall be in effect for the City of
16 Springfield, Missouri to until such time as Springfield, Missouri's "individuals below
17 poverty level" falls below the state level or until March 31, 2018, whichever occurs first;
18 and
19

20 WHEREAS, the current statewide level of "individuals below poverty level" is
21 15.6 percent while Springfield, Missouri's level is 26.4 percent, according to the 2010-
22 2014 American Community Survey 5-year profiles; and
23

24 WHERAS, the demand for housing and food services remains strong, local
25 service providers offering food and lodging for the homeless continue to experience
26 high demand for services.
27

28 NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF
29 SPRINGFIELD as follows, that:
30

31 Section 1 – The City Council hereby extends the declaration of an economic and
32 housing calamity for the working poor and unemployed within the City of Springfield,
33 Missouri until such time as the City Council finds that there is no longer a need for the
34 declaration of an economic and housing calamity, or Springfield, Missouri's "individuals
35 below poverty level" fall below the state level, or until March 31, 2018, whichever occurs

36 first.

37

38 Section 2 - Individuals, agencies, or churches that are able to meet building,
39 safety, and health codes for such use may establish facilities during the pendency of
40 this calamity to provide food and lodging to the unemployed and working poor who are
41 without a permanent residence or dwelling and such shall not be considered "shelters" as
42 that term is defined in Section 36-321 of the City Code of Springfield, Missouri. Density of
43 population shall be determined in accordance with Codes of the City unless a different
44 density is set by the City Manager after consultation with the appropriate Department
45 Heads. The Departments of Fire, Health, and Building Development Services, together with
46 the City Manager, shall determine the applicability of the various City Codes and whether or
47 not a facility meets such code provisions, as well as whether or not any Codes may be
48 adjusted administratively on a site-by-site basis to meet the intent of this resolution.

49

50 Section 2 - The duration of the calamity shall be considered ended on March 31,
51 2017, at the latest, unless extended by action of the City Council.

52

53 Section 3 - Individuals, agencies, and churches shall not be required, or considered
54 to be required, to take any action by the passage of this resolution, but any acts in
55 furtherance of assisting the working poor and unemployed homeless in the City shall be
56 voluntary.

57

58 Section 4 - The City Manager is hereby directed to develop appropriate requirements
59 to ensure the health and safety of persons being lodged in any facility opened or operated
60 in response to this declaration of a calamity. Such requirements may include, but not be
61 limited to, the number of persons who may be located in one of these facilities, registration
62 of the facilities on a monthly or more often basis so that compliance with codes and
63 requirements may be ensured, and the type of structures which may be used for such
64 facilities based on the construction of the facilities under the Building Code.

65

66 Section 5 - This declaration and resulting policy shall be in effect from and after
67 passage.

68

69

70 Passed at meeting: _____

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Mayor

Attest: _____, City Clerk

Filed as Resolution _____

Approved as to form: Ashley J. Wicker, Assistant City Attorney

Approved for Council action: Greg Bennett, City Manager

EXPLANATION TO COUNCIL BILL NO. 2016-054

FILED: 03-06-16

ORIGINATING DEPARTMENT: Planning and Development

PURPOSE: To adopt a resolution re-establishing the declaration of an economic and housing access calamity that enables agencies or churches that are able to meet building, safety and health codes for such a use to provide food and lodging to the unemployed and working poor who are without a permanent residence or dwelling; and that such calamity shall be in effect from the date of passage until this resolution is repealed, renewed or until March 31, 2018, whichever occurs first. (Staff recommends approval)

BACKGROUND: Overnight shelters, and other services, are permitted by Division 1, Section 36-303(34) of the Zoning Ordinance of the City of Springfield, Missouri, when Council declares an economic and housing access calamity. Passage of this resolution does not require individuals, agencies, and churches to take any action. Any acts assisting the unemployed and working poor in Springfield shall be voluntary.

City Council first adopted a resolution declaring an economic and housing access calamity on December 14, 2009. The declaration expired on May 1, 2010. Council extended the declaration five additional times until: May 1, 2011; November 1, 2012; January 1, 2014; January 1, 2015; and March 31, 2016.

There has been considerable improvement in the unemployment situation since the original declaration, but the demand for housing and food services remains strong. Local social service providers offering food and lodging for the homeless continue to experience high demand for services. In addition, Mayor Bob Stephens recently created the Mayor's Task Force on Crisis Sheltering to address this growing problem.

Passage of this resolution will continue to allow individuals, churches, agencies and not-for-profits that are able to meet building, safety, and health codes to provide food and lodging until Springfield's "individuals living below poverty level" falls below the state level or March 31, 2017, whichever occurs first. Use of this statistic provides a comparison to the statewide estimate. Currently the statewide poverty level is 15.6 percent while Springfield's poverty level is 26.4 percent (2010-2014 American Community Survey 5-Year Profiles).

The Continuum of Care, the Mayor's Task Force on Crisis Sheltering, and other groups

continue to meet to develop strategies to address the issue over the long term.

REMARKS: Staff recommends approval.

Submitted by:


Brendan K. Griesemer, AICP
Planning and Development Manager

Recommended by:


Mary Lilly Smith, Director

Approved by:


Greg Burris, City Manager

One-rdg. _____
P. Hrngs. _____
Pgs. 17
Filed: 02-16-16

Sponsored by: Hosmer

First Reading: _____

Second Reading: _____

COUNCIL BILL NO. 2016- 045

SPECIAL ORDINANCE NO. _____

AN ORDINANCE

1 AUTHORIZING the Director of Planning and Development to accept the dedication of
2 the public streets and easements to the City of Springfield, Missouri,
3 as shown on the Preliminary Plat of New Prime Phase Two, generally
4 located at the 2800 block of North Cedarbrook and Packer Avenues,
5 upon the applicant filing and recording a final plat that substantially
6 conforms to the preliminary plat; and authorizing the City Clerk to sign
7 the final plat upon compliance with the terms of this ordinance.
8 (Planning and Zoning Commission and Staff recommend that City
9 Council accept the public streets and easements.)
10 _____
11

12 WHEREAS, on February 4, 2016, the Planning and Zoning Commission
13 approved the preliminary plat and subdivision variance of New Prime Phase Two,
14 generally located at the 2800 block of North Cedarbrook and Packer Avenues, as a
15 subdivision of the City of Springfield, Greene County, Missouri.
16

17 NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF
18 SPRINGFIELD, MISSOURI, as follows, that:
19

20 Section 1 – The City Council hereby authorizes the Director of Planning and
21 Development to accept the land and easements dedicated to the City for public use as
22 shown on the preliminary plat of New Prime Phase Two, generally located at the 2800
23 block of North Cedarbrook and Packer Avenues, as approved by the Planning and
24 Zoning Commission, the original of which is on file in the Department of Planning and
25 Development (Approved Preliminary Plat), a reduced version of which is included for
26 general reference as, "Attachement 3," upon the applicant filing and recording a final
27 plat in accordance with the Subdivision Ordinance of the City of Springfield, Missouri,
28 which plat shall substantially conform to the Approved Preliminary Plat, including those
29 conditions established by the Planning and Zoning Commission, which conditions are
30 shown in the explanation to this ordinance, a copy of which is attached hereto and
31 incorporated herein as if copied verbatim, and hereby authorizes acceptance of the
32 public improvements required by this ordinance and the Subdivision Ordinance of the
33 City, upon the Director of Public Works certifying to the Director of Planning and

34 Development and the City Clerk that the public improvements have been made in
35 accordance with City standards and specifications.

36
37 Section 2 – The final plat shall not be recorded until the public improvements
38 relating to the Approved Preliminary Plat, as set out in the explanation and Zoning and
39 Subdivision report which are attached hereto and incorporated herein by reference,
40 shall have been constructed by the person or party subdividing the property according
41 to the specifications of the City of Springfield, Missouri, and to the approval of the
42 Director of Public Works of the City; and provided that said party shall have paid to the
43 City of Springfield engineering fees, permit fees, licenses, and other fees occasioned by
44 the construction of said improvements; or, in lieu of the construction of said
45 improvements, that said parties have filed with the City Manager, according to the terms
46 of the Subdivision Ordinance of the City, the prescribed financial assurances to insure
47 the construction of said improvements, and the payment to the City of all engineering
48 fees, permit fees, licenses, and other fees occasioned or which will be occasioned by
49 the construction of the improvements.

50
51 Section 3 - Upon compliance with all the requirements of this ordinance, the City
52 Clerk is hereby authorized to endorse the Council's approval upon the final plat
53 pursuant to Section 445.030, RSMo.

54
55 Section 4 - Should said parties fail to submit a final plat for the subdivision or
56 portion thereof which substantially conforms to the preliminary plat within two years from
57 the date of this ordinance, then this ordinance shall be of no effect and shall be
58 considered void.

59
60 Passed at meeting: _____

61
62 _____
63 Mayor

64
65 Attest: _____, City Clerk

66
67 Filed as Ordinance: _____

68
69 Approved as to form: Achala J. Wiedner, Assistant City Attorney

70
71 Approved for Council action: Greg Burnett, City Manager

EXPLANATION TO COUNCIL BILL NO: 2016- 045

FILED: 2-16-16

ORIGINATING DEPARTMENT: Planning and Development

PURPOSE: To accept the dedication of the public streets and easements as shown on the preliminary plat of New Prime Phase 2 generally located at the 2800 block of North Cedarbrook and Packer Avenues. (Staff recommends that City Council accept the public streets and easements.)

BACKGROUND INFORMATION:

- A. The preliminary plat of New Prime Phase 2 dated January 26, 2016, the original of which is on file in the Department of Planning and Development, a reduced version of which is included for general reference in Attachment 3.
- B. The Planning and Zoning Commission held a public hearing on February 4, 2016 and approved the preliminary plat and a subdivision variance by a vote of 8 to 0, subject to the following conditions:
 - 1. All improvements shall be constructed in accordance with the “Design Standards for Public Improvements” of the Public Works Department and the maintenance and operation of such improvements shall be the responsibility of the developers unless approved by the Director of Public Works. All required sanitary sewer, street, sidewalk and drainage plans shall be prepared in accordance with City standards and specifications and approved by the Director of Public Works.
 - a. Public improvement plans for the street and cul-de-sac on Cedarbrook and Packer Avenues will need to be approved and improvements constructed or escrowed prior to approval of final plat. The improvements can be escrowed with any form of security as specified by the Subdivision Regulations.
 - b. There is a \$.0227/s.f. trunkline connection fee for this property. This will be based on the square footage of the property connecting to public sewer. If there are sewer improvements, this trunkline fee will be required when the engineering and inspection fees are paid. If there are not sewer plans, these fees will be required when each lot connects.
 - 2. All required street rights-of-way, drainage and utility easements and limitations of access shall be dedicated on the final plat.
 - a. No access is allowed to Interstate Highway 44.

- b. The dedication of right-of-way for Cedarbrook and Packer Avenues are required as shown. Cedarbrook Avenue was previously dedicated by deed.
3. The developer shall meet all city and state erosion control regulations prior to disturbing the soil.
4. It is determined that the public interest requires assurance concerning adequate maintenance of common space areas and improvements. The restrictive covenants, rules and bylaws creating the common ownership must therefore provide that if the owners of the Property Owners Association shall fail to maintain the common areas or improvements in reasonable order and condition in accordance with the approved plans, the City may, after notice and hearing, maintain the same and assess the costs against the units or lots, per the Common Open Space and Common Improvement Regulations section of the Zoning Ordinance.
5. The developer shall be responsible for the relocation costs of any existing utility services and shall be responsible for clearing all utility easements of trees, brush and overhanging tree limbs.
6. All other requirements which are necessary for this subdivision to be in compliance with the Subdivision Regulations.
 - a. Add the following note to the plat: The existing billboards along Interstate 44 are separated by 490 feet to 690 feet. Section 36-454(3)(j) of the Zoning Ordinance requires a minimum of 2,500 feet of separation. These billboards are non-conforming and will be treated as such in accordance with the Zoning Ordinance.

All required improvements shall be the sole responsibility of the sub-divider. As prescribed by Section No. 300 of the Subdivision Regulations, the improvements shall be made or guaranteed by means of bond or escrow agreement. Release of the final plat for recording shall be withheld until the sub-divider has complied with this section.

Section No. 206 of the Subdivision Regulations requires that a final plat be submitted within two years of City Council's acceptance of the public streets and easements.

Attached for Council information is a sketch showing the location of the plat area, an exhibit showing the proposed plat, and a copy of the Planning and Development Department staff report to the Planning and Zoning Commission.

Supports the following Field Guide 2030 goal(s): Supports the following Field Guide 2030 goal(s): Chapter 6, Growth Management and Land Use; Major Goal 4, Develop the community in a sustainable manner.

REMARKS:

Staff recommends approval

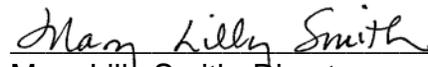
Submitted by:



Daniel Neal, Senior Planner

Recommended by:

Approved by:


Mary Lilly Smith, Director
Greg Burris, City Manager

EXHIBITS:

- Exhibit A, Record of Proceedings
- Exhibit B, Development Review Staff Report
 - Attachment 1, Background Report
 - Attachment 2, Subdivision Variance
 - Attachment 3, Preliminary Plat

EXHIBIT A

RECORD OF PROCEEDINGS Planning and Zoning Commission February 4, 2016

New Prime Phase 2
2800 North Cedarbrook Avenue and Packer Avenue
Applicant: Wolverine Land Holdings, LLC

Mr. Hosmer stated that this is a request to approve a preliminary plat to subdivide approximately 92.77 acres into a two (2) lot manufacturing subdivision. The preliminary plat of New Prime Subdivision expired on July 3, 2014. A new Preliminary Plat has been submitted. Public improvement plans for the street and cul-de-sac on Cedarbrook and Packer Avenues will need to be approved and constructed or escrowed prior to approval of final plat. There is a \$.0227/s.f. public sewer trunkline connection fee for this property. A note to the plat: The existing billboards along Interstate 44 are separated by 490 feet to 690 feet. Section 36-454(3)(j) of the Zoning Ordinance requires a minimum of 2,500 feet of separation. These billboards are non-conforming and will be treated as such in accordance with the Zoning Ordinance. The applicant is also requesting a subdivision variance from extending Diamond Street (a stub street). Staff recommends approval of plat and variance.

Mr. Baird opened the public hearing.

Mr. Derek Lee, 2100 E. Woodhurst, representing the owner. The intent is to combine this land with the 40 acre piece and the existing Prime facility and turn it into a very large piece of land for development. Prime has an agreement with the City of Springfield and the adjoining property owners to build onto Packer Avenue.

Mr. Baird asked about the land on the west end of the proposed project.

Mr. Lee noted that the area is in flux and have not submitted any preplan review.

Ms. Cox asked about stormwater retention for the area and asked if the current detention/drainage easement will stay for the current phase.

Mr. Lee stated that there will be a very large detention basin and the current plan has a multi-use detention basin that will have some park area with trees so Prime employees can use. There is also a proposed detention basin on the far west side for a total three detention basins.

Mr. Baird closed the public hearing.

COMMISSION ACTION:

Mr. Doennig motions that we approve Preliminary Plat New Prime Phase 2 (2800 North Cedarbrook Avenue and Packer Avenue). Mr. Cline seconded the motion. The motion

carried as follows: Ayes: Baird, Edwards, Doennig, Cline, Rose, Ray, Shuler, and Cox. Nays: None. Abstain: None. Absent: None

A handwritten signature in black ink, enclosed in a thin black rectangular border. The signature is cursive and appears to read 'Bob Hosmer'. A horizontal line extends from the right side of the signature box.

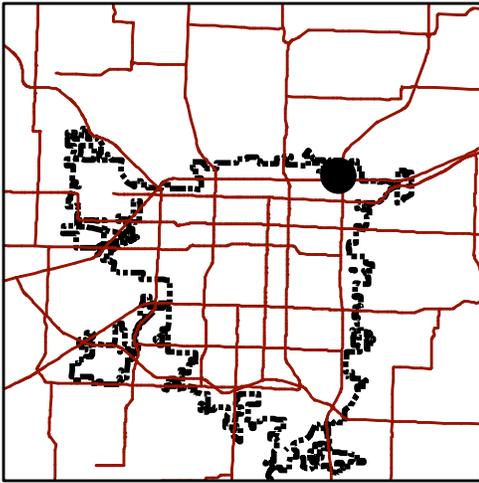
Bob Hosmer, AICP
Principal Planner

Development Review Staff Report

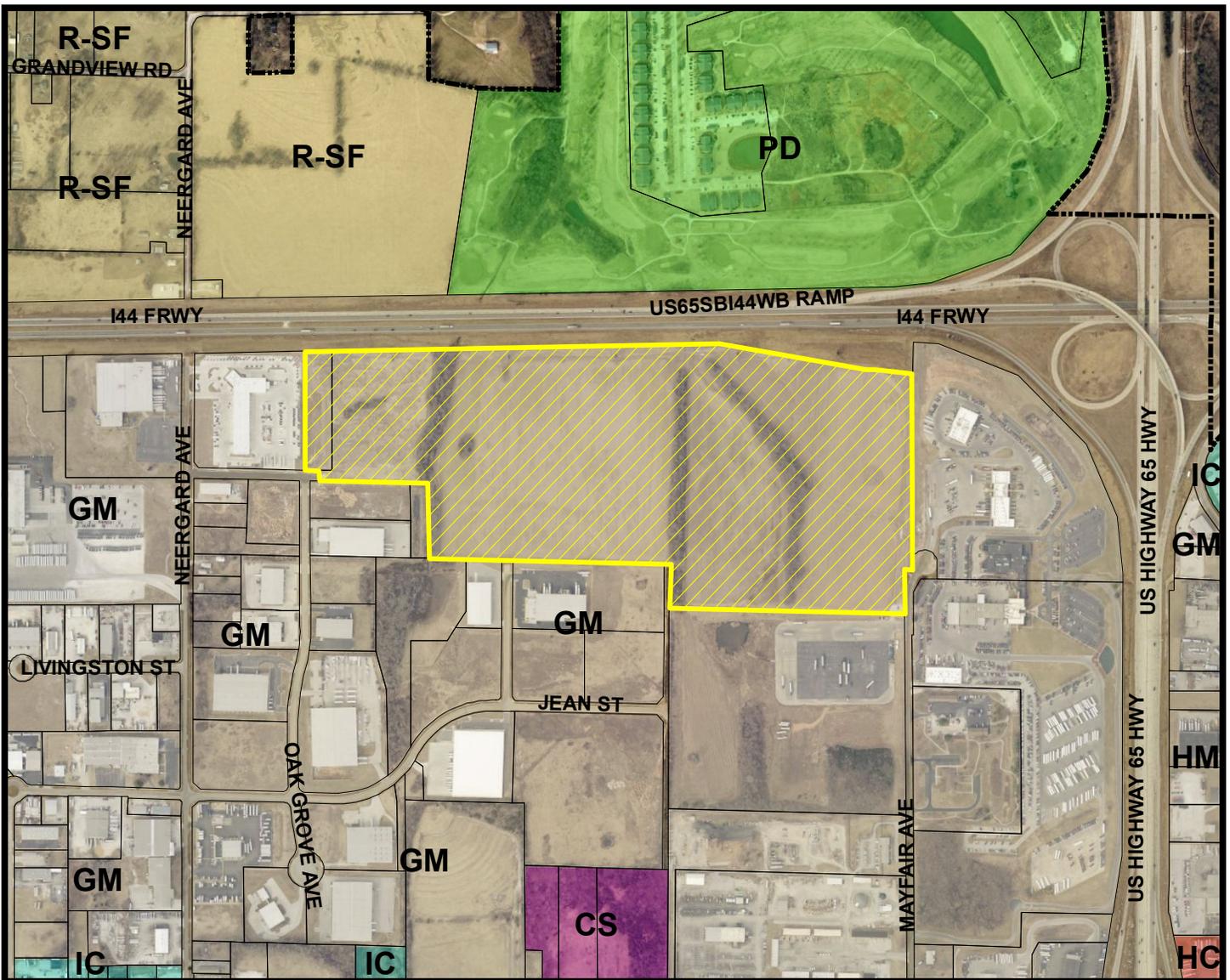
Planning & Development - 417/864-1031
840 Boonville - Springfield, Missouri 65802

Preliminary Plat - New Prime Phase Two

Location: 2800 block N. Cedarbrook Avenue
Current Zoning: GM, General Manufacturing



LOCATION SKETCH



- Area of Proposal



1 inch = 900 feet

DEVELOPMENT REVIEW STAFF REPORT
PRELIMINARY PLAT – NEW PRIME PHASE TWO

PURPOSE: To approve a preliminary plat to subdivide approximately 92.77 acres into a two (2) lot manufacturing subdivision

REPORT DATE: January 26, 2016

LOCATION: 2800 block North Cedarbrook and Packer Avenues

APPLICANT: Wolverine Land Holdings, LLC

TRACT SIZE: Approximately 92.77 acres

EXISTING USE: Vacant/undeveloped land

PROPOSED USE: Uses permitted in the GM, General Manufacturing District

FINDINGS FOR STAFF RECOMMENDATION:

1. The applicant's proposal, with the conditions listed below and approval of the subdivision variance, is consistent with the City's *Subdivision Regulations*.

RECOMMENDATION:

Staff recommends the Planning and Zoning Commission **approve** the Preliminary Plat, with the conditions listed below:

1. All improvements shall be constructed in accordance with the "Design Standards for Public Improvements" of the Public Works Department and the maintenance and operation of such improvements shall be the responsibility of the developers unless approved by the Director of Public Works. All required sanitary sewer, street, sidewalk and drainage plans shall be prepared in accordance with City standards and specifications and approved by the Director of Public Works.
 - a. Public improvement plans for the street and cul-de-sac on Cedarbrook and Packer Avenues will need to be approved and improvements constructed or escrowed prior to approval of final plat. The improvements can be escrowed with any form of security as specified by the Subdivision Regulations.
 - b. There is a \$.0227/s.f. trunkline connection fee for this property. This will be based on the square footage of the property connecting to public sewer. If there are sewer improvements, this trunkline fee will be required when the engineering and inspection fees are paid. If there are not sewer plans, these fees will be required when each lot connects.

2. All required street rights-of-way, drainage and utility easements and limitations of access shall be dedicated on the final plat.
 - a. No access is allowed to Interstate Highway 44.
 - b. The dedication of right-of-way for Cedarbrook and Packer Avenues are required as shown. Cedarbrook Ave. was previously dedicated by deed.
7. The developer shall meet all city and state erosion control regulations prior to disturbing the soil.
8. It is determined that the public interest requires assurance concerning adequate maintenance of common space areas and improvements. The restrictive covenants, rules and bylaws creating the common ownership must therefore provide that if the owners of the Property Owners Association shall fail to maintain the common areas or improvements in reasonable order and condition in accordance with the approved plans, the City may, after notice and hearing, maintain the same and assess the costs against the units or lots, per the Common Open Space and Common Improvement Regulations section of the Zoning Ordinance.
9. The developer shall be responsible for the relocation costs of any existing utility services and shall be responsible for clearing all utility easements of trees, brush and overhanging tree limbs.
10. All other requirements which are necessary for this subdivision to be in compliance with the Subdivision Regulations.
 - a. Add the following note to the plat: The existing billboards along Interstate 44 are separated by 490 feet to 690 feet. Section 36-454(3)(j) of the Zoning Ordinance requires a minimum of 2,500 feet of separation. These billboards are non-conforming and will be treated as such in accordance with the Zoning Ordinance.

If the request is recommended for denial by the Commission and the applicant requests City Council consideration, all the above conditions, plus any amendments made by the Planning and Zoning Commission, shall be included in the Council Bill.

SURROUNDING LAND USES:

AREA	ZONING	LAND USE
North	PD	I-44 and golf course community
East	GM	General Manufacturing uses
South	GM	General Manufacturing uses
West	GM	General Manufacturing uses

HISTORY:

The original Preliminary Plat for New Prime Subdivision was approved by City Council on March 9, 2012. A final plat was administratively approved and recorded on July 3, 2012 which extended the preliminary plat for another two years. The preliminary plat of New Prime Subdivision expired on July 3, 2014. The right-of-way deed for the Cedarbrook Avenue cul-de-sac and a drainage easement were dedicated to the City on November 18, 2015.

COMPREHENSIVE PLAN:

The *Growth Management and Land Use Plan* element of the *Comprehensive Plan* identifies this as an appropriate area for Light Industrial, Office and Office-Warehouse uses. This category includes industry that involves manufacturing, assembly, office and warehousing activities. The most appropriate zoning includes Restricted Industry, Light Industry and General Manufacturing. This area is also located within the I-44 – U.S. 65 Emerging Activity Center. This area has the potential to be a significant regional Activity Center with its existing business and manufacturing activity, including Partnership Industrial Center. This area is currently a major employment center.

STAFF COMMENTS:

1. The applicant is proposing to subdivide approximately 92.77 acres into a two (2) lot commercial subdivision named "NEW PRIME PHASE TWO". The property is currently zoned GM, General Manufacturing and is vacant/undeveloped land.
2. The applicant is also requesting a subdivision variance from extending Diamond Street, a stub street (see ATTACHMENT 2).
3. If Planning and Zoning Commission approves the preliminary plat, then the plat will be forwarded to City Council for acceptance of public streets and easements. An approved preliminary plat is active for two (2) years.
4. A cost share agreement between the applicant and the City for the construction of Packer Road north of Kearney to this subdivision has been approved and will act as a security agreement to insure to the City that the improvements along Packer

Ave. will be completed by the subdivider. Cedarbrook Avenue right-of-way was dedicated by deed on November 18, 2015 and is being re-dedicated as shown on the preliminary plat. Public Improvements for Cedarbrook Avenue must be completed or escrowed prior to the final plat being recorded.

5. The common area that was dedicated on the final plat of New Prime Phase One is being replatted and incorporated into Lot 1 of New Prime Phase Two as a detention/drainage easement.

CITY COUNCIL: February 22, 2016

STAFF CONTACT:

Daniel Neal
Senior Planner
864-1036

ATTACHMENT 1
BACKGROUND REPORT
PRELIMINARY PLAT – NEW PRIME PHASE TWO

AT&T COMMENTS:

Please, note that the development of this property will need additional utility easements for AT&T to place facilities to feed within that development. Also, the site development may require existing facilities to be relocated at the developers' expense. Request utility easements around perimeter of lots to enable the placement of AT&T facilities to this development. Please, note that if the development of this property will need additional AT&T facilities placed, contact Engineer Steven Beier, 180 days prior to construction. Also the site development may require existing facilities to be relocated at the developer's expense.

BUILDING DEVELOPMENT SERVICES COMMENTS:

Add the following note to the plat: The existing billboards along Interstate 44 are separated by 490 feet to 690 feet. Section 36-454(3)(j) of the Zoning Ordinance requires a minimum of 2,500 feet of separation. These billboards are non-conforming and will be treated as such in accordance with the Zoning Ordinance.

CITY UTILITIES COMMENTS:

No objection to the concept. CU has an interest in a tie-in of the water mains to the west and the mains near Mayfair. CU will work with property owner to preserve a corridor for a possible future connection.

FIRE DEPARTMENT COMMENTS:

No issues.

TRAFFIC DIVISION COMMENTS:

1. Public improvement plans for the cul-de-sac on Cedarbrook and the extension of Packer Road will need to be approved and improvements constructed, funds escrowed or other security approved by the Director of Public Works provided prior to approval of final plat.
2. A subdivision variance is required to not extend Diamond Street.

MISSOURI DEPARTMENT OF TRANSPORTATION (MoDOT) COMMENTS:

No comments.

STORMWATER COMMENTS:

All stormwater comments have been addressed.

CLEAN WATER SERVICES COMMENTS:

1. Lot 1 has sewer available along the south property line. If sewer is needed to the north side of the tract, a sewer extension may be necessary.
2. Lot 2 has sewer available along the west and north side of the lot. If sewer is needed on the east side, a sewer extension may be necessary.
3. There is a \$.0227/s.f. trunkline connection fee for this property. This will be based on the square footage of the property connecting to public sewer. If there are sewer improvements, this trunkline fee will be required when the engineering and inspection fees are paid. If there are not sewer plans, these fees will be required when each lot connects.

ATTACHMENT 2
SUBDIVISION VARIANCE APPROVAL CRITERIA
PRELIMINARY PLAT – NEW PRIME PHASE TWO

The applicant is requesting a subdivision variance from Section 36-243(2) of the Subdivision Regulations which requires the arrangement of streets in new subdivisions to make provision for the continuation of the existing streets in adjoining areas. Diamond Street, a commercial local, is stubbed into Lot 1 and was originally platted to be connected to Mayfair Avenue. Since Mayfair Avenue has been vacated as part of an agreement to construct Packer Ave. north of Kearney St., there is no need to connect Diamond Avenue to the east. Both Cedarbrook and Packer Avenues will be terminated with turnarounds near the property lines. Staff supports the request because Diamond Street was only platted as a local street and would only serve lots in the immediate vicinity.

Section 106 of the Subdivision Regulations states in part:

Conditions of Variance Approval. No variance shall be granted unless it is found that:

- (a) There are special and unusual circumstances affecting said property such that the strict application of the provisions of this Article would deprive the owner of the reasonable use of his land and is not the mere granting of a privilege, and

APPLICANT'S RESPONSE:

There are special and unusual circumstances associated with extending Diamond Street through the property. The property is owned by Prime Inc. which is a trucking company. The owner's intent is to provide large lots with internal circulation. Extending Diamond Street through the interior of the property will not allow Prime to construct the internal layout needed to load, park, store and maintain their semi-truck fleet.

- (b) The variance is necessary for the preservation and enjoyment of a substantial property right of the owner, and

APPLICANT'S RESPONSE:

Prime requires areas for truck loading, parking, storage and maintenance. Providing an internal public road system will break up the large areas needed for Prime's internal circulation system. Prime trucks carry valuable merchandise through the internal facility. They have security fencing and 24 hour guard surveillance of the property. Providing public roads throughout the property will limit Prime's ability to secure their facility.

- (c) The granting of the variance would not be detrimental to the public safety, convenience or welfare or be injurious to other property in the vicinity.

APPLICANT'S RESPONSE:

The public will not be affected by the variance. The adjoining property owners have full access to public roads. The site is bounded to the North by I-44 which cannot be accessed by this property. The variance would only affect Prime's interior connectivity. The public has no need for access to the interior of Prime's facilities. This variance will not be detrimental to the public safety, convenience or welfare or be injurious to other property in the vicinity.

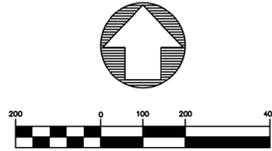
The Planning and Zoning Commission must first decide if all of these conditions are met before this variance can be approved.

PRELIMINARY PLAT
NEW PRIME SUBDIVISION PHASE TWO
WOLVERINE LAND HOLDINGS, LLC
SPRINGFIELD, GREENE COUNTY, MISSOURI

Attachment 3

OWNER/DEVELOPER
 WOLVERINE LAND HOLDINGS, LLC
 2740 N MAYFAIR
 SPRINGFIELD, MO 65803

ALL UTILITIES TO BE PROVIDED BY:
 CITY UTILITIES OF SPRINGFIELD
 301 E. CENTRAL
 SPRINGFIELD, MO 65802
 (417)863-9000



(IN FEET)
 1 inch = 200 ft.

BASIS OF BEARINGS:

BEARINGS ARE GRID NORTH, MISSOURI
 STATE PLANE COORDINATE SYSTEM OF 1983,
 PER TIES TO MO DNR MONUMENT "TRUCK"

BUILDING SETBACKS:

Current Zoning GM - General Manufacturing
 Proposed Zoning GM - General Manufacturing

Athletic Club, Fitness Center, Indoor Sports Facility or Recording, TV or
 Radio Studio

Front 25' (Collector or Higher)
 15' (Local)
 Side, Rear 10'

All other uses

Front, Side, Rear 0'

LOT INFORMATION:

Total Acreage - 92.77 Acres

Total Lots - 2
 Largest Lot - 2 - 80.50 Acres
 Smallest Lot - 1 - 12.27 Acres

FLOOD NOTE:

This property lies in Flood Zone "X" (areas determined to be outside the 0.2% annual chance floodplain) according to Flood Insurance Rate Map Community Panel 29077C 0351 E, effective December 17, 2010.

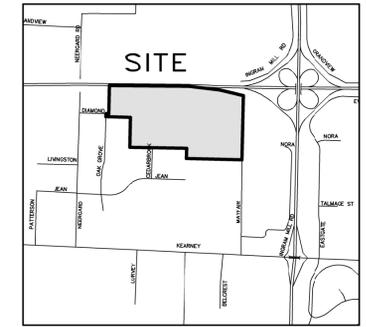
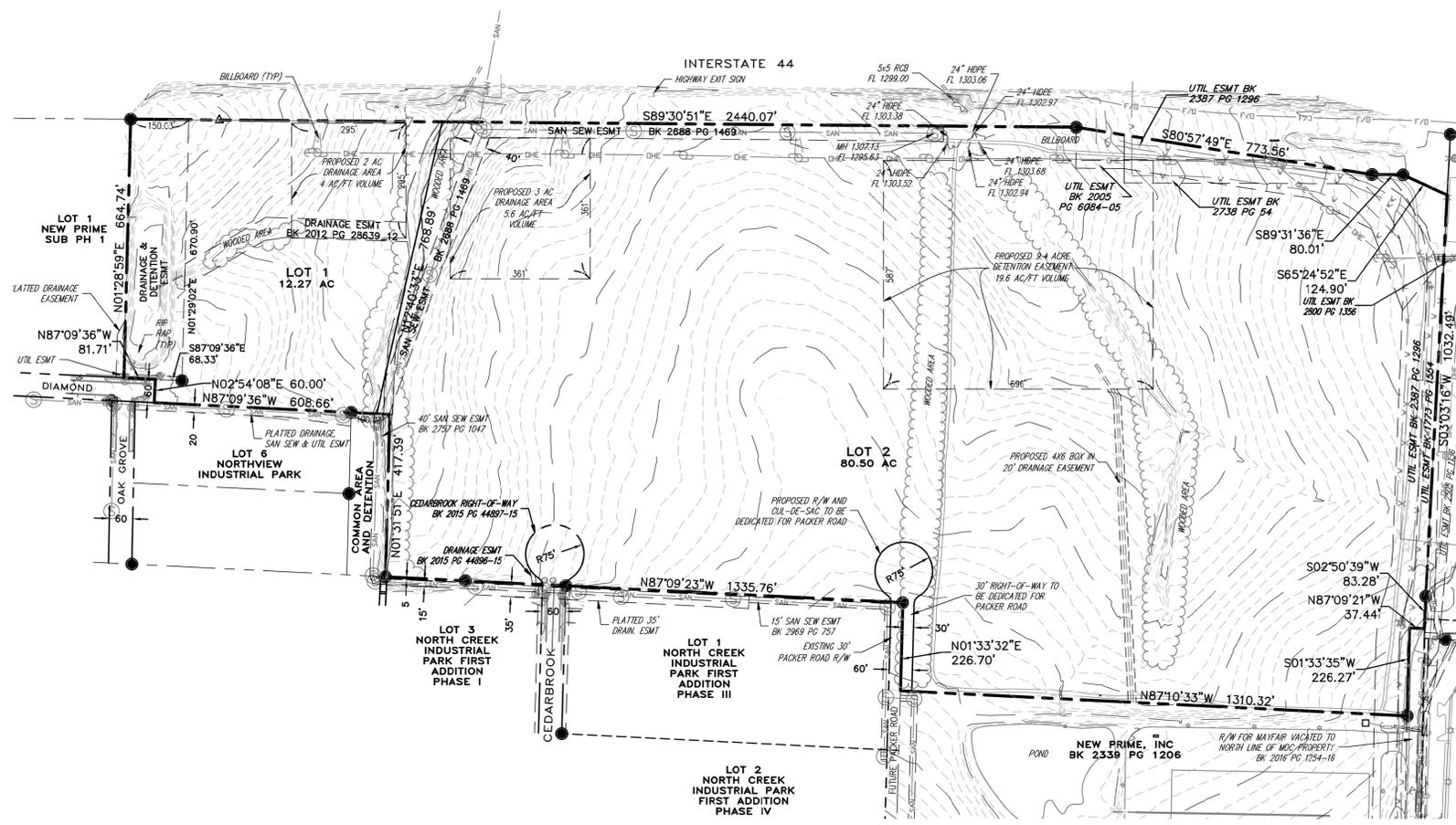
BENCHMARK NOTE:

City of Springfield Benchmark #113
 North Side of Kearney Street 24 feet East of MODOT West Entrance.
 ELEV = 1395.40

STORMWATER NOTE:

All of Lot 1 is a drainage and detention easement.

Stormwater will be provided on each lot at the time of development.



VICINITY MAP
 NOT TO SCALE

PROPERTY DESCRIPTION:

A tract of land being part of Lot 1 of the Northeast Fractional Quarter of the Northwest Fractional Quarter and a part of the Northwest Quarter of the Southeast Quarter of Section 4, Township 29 North, Range 21 West, City of Springfield, Greene County, Missouri, and being more particularly described as follows: Beginning at the Center of said Section 4, also being the Northwest corner of the Northwest Quarter of the Southeast Quarter of said Section and being the Northeast corner of North Creek Industrial Park First Addition Phase One; thence, North 87°09'23" West, along the South line of said Lot 1 of the Northwest Fractional Quarter, said line being the North line of North Creek Industrial Park First Addition Phase One, a distance of 1335.76 feet to an existing iron pin, said point being the Southeast corner of Northview Industrial Park; thence, North 01°31'51" East along the East line of said Northview Industrial Park a distance of 417.39 feet to an existing iron pin at the Northeast corner of said Northview Industrial Park; thence, North 87°09'36" West along the North line of said Northview Industrial Park a distance of 608.66 feet to a point on the Easterly line of New Prime Subdivision Phase One; thence North 02°54'08" East a distance of 60.00 feet to the South line of the Common Area of said Subdivision; thence, North 87°09'36" West, along and with said South line, a distance of 81.71 feet to the Southeast corner of Lot One of said subdivision; thence, North 01°28'59" East, along and with the East line of said Lot One, a distance of 664.74 feet to the Northeast corner of said Lot One, said point lying on the South right-of-way line of Interstate 44; thence, South 89°30'51" East, along and with said South line, a distance of 2440.07 feet to an iron pin, said pin being 150 feet right of Interstate 44 Station 1301+75; thence, South 80°57'49" E, continuing along and with said South line, a distance of 773.56 feet to an iron pin 265 feet right of Station 1309+40; thence, South 89°31'36" East, along and with said South line, a distance of 80.01 feet to an iron pin 265 feet right of Station 1310+20; thence, South 65°24'52" East, along and with said South line, a distance of 124.90 feet to a point lying 316 feet right of Station 1311+34; thence, South 03°03'16" West, leaving said South line, a distance of 1032.49 feet to an existing iron pin on the West right-of-way line of Mayfair Avenue; thence, South 02°50'39" West, along and with said West line, a distance of 83.28 feet; thence, North 87°09'21" West, along and with said West line, a distance of 37.44 feet; thence, South 01°33'35" West, along and with said West line, a distance of 226.27 feet to an existing iron pin; thence, North 87°10'33" West, a distance of 1310.32 feet to the East line of the Northwest Quarter of the Southeast Quarter of said Section 4; said line also being the East line of North Creek Industrial Park First Addition Phase One; thence, North 01°33'32" East, along and with said East line, a distance of 226.70 feet to the POINT OF BEGINNING, containing 92.77 acres, more or less and being subject to easements, restrictions or rights-of-way, if any.

LEGEND

- FOUND IRON PIN (5/8" IP UNLESS NOTED)
- SET 5/8" IRON PIN "LSC 2009028050"
- ▲ R/W MARKER
- BOUNDARY LINE
- - - R/W LINE
- - - EASEMENT LINE
- SETBACK LINE
- (M) MEASURED
- (P) PLAT
- (D) DEED
- (R) RECORD
- ☆ LIGHT POLE
- ⊙ SANITARY SEWER MANHOLE
- ⊕ SANITARY SEWER CLEANOUT
- SANITARY SEWER LINE
- ⊕ UTILITY POLE
- ⊕ ELECTRIC METER
- OVERHEAD ELECTRIC
- UNDERGROUND ELECTRIC
- GUY WIRE
- ⊕ TELEPHONE/COMMUNICATION MANHOLE
- ⊕ TELEPHONE PEDESTAL
- CABLE TV RISER
- CABLE TV LINE
- PHONE/COMMUNICATION LINE
- FIBER OPTIC LINE
- ⊕ WATER VALVE
- ⊕ WATER METER
- WATER LINE
- ⊕ FIRE HYDRANT
- ⊕ GAS VALVE
- ⊕ GAS METER
- GAS LINE
- FENCE LINE (AS NOTED)
- ⊕ ROAD SIGN (STOP, SPEED LIMIT, ETC)

ABBREVIATIONS:

- XFMR TRANSFORMER
- ICV IRRIGATION CONTROL VALVE
- CI STORMWATER CURB INLET

DECLARATION BY SURVEYOR:

I hereby declare to Wolverine Land Holdings, LLC that the information contained herein is based upon an actual survey of the land described herein, according to the current Missouri Minimum Standards for Property Boundary Surveys, 4CSR30-16, URBAN class properties, that the results are correctly represented hereon to the best of my knowledge and belief and that monuments and pins set were placed under my personal supervision.

Physical evidence of improvements is shown from information taken by visual inspection of the premises. Easements shown are those written, provided or evident from surface features and may not be all inclusive. Apparent ownerships as shown are based on information provided by others and do not represent an opinion as to Title.

This plat of survey is an instrument of service and is protected under U.S. Copyright Law. It is not to be used by anyone other than the party or parties named on this plat unless it has been updated and recertified by Lee Engineering & Associates, L.L.C.

BY: Don Ray Berry
 DON RAY BERRY, PROFESSIONAL LAND SURVEYOR
 STATE OF MISSOURI LICENSE NO. 2004017829

DATE: 01/26/2016

SIGN NOTES:

The existing bill boards along Interstate 44 are separated by 490' to 690'. Section 36-454 (3) (j) of the zoning ordinance requires a minimum of 2,500 feet of separation. These bill boards are non-conforming and will be treated as such in accordance with the zoning ordinance.

NOTES:

Accuracy Standard: TYPE Urban Property

Source of Title: Book 2012, Page 28620-12
 New Prime Subdivision Phase One

The utilities shown were compiled from existing mapping from City Services, field locates, and from other mapping/plans such as highway plans. The utilities shown are only to the extent of the available mapping and may not represent all utilities on site. Any particular areas that become of concern during design/planning should be researched further. All buried utilities shown are approximate only.

LEE Engineering & Associates, L.L.C.
 1200 E. Woodhurst, Suite D200
 Springfield, MO 65804
 417-886-9100 (phone)
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Missouri State Certificate of Authority
 Engineering #2009015504
 Land Surveying #2009028050

dlee@leeengineering.biz
 "Engineering with Integrity"

DWG: New Prime Preliminary Plat.dwg
 DATE: 01/18/2016

PROJECT NO.: **204**

PRELIMINARY PLAT NEW PRIME SUBDIVISION PHASE TWO			
Section 4, T29N, R21W Springfield, Greene County, Missouri			
SURVEY BY TSJS	DESIGN LEE	SCALES HOR. 1"=200'	SHEET 1
FIELD BK	DRAWN DRB	VERT. N/A	OF 1 SHEETS
LEVEL BK	CHECKED DRB		FILE NO.