

CONTRACT 2015-0038

AMENDED AND RESTATED REVOLVING LOAN AGREEMENT

THIS AMENDED AND RESTATED REVOLVING LOAN AGREEMENT entered as of the 1st day of April, 2015 by and among the BOARD OF MAYOR AND ALDERMEN OF THE CITY OF FRANKLIN, TENNESSEE, a Tennessee municipality (the "City"), and THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF FRANKLIN, a Tennessee public non-profit corporation (the "IDB").

WITNESSETH:

WHEREAS, the IDB has, pursuant to an Indenture of Trust dated as of December 1, 2005 (the "Indenture") between the IDB and The Bank of New York Trust Company, N.A., as Trustee (the "Trustee"), issued its Adjustable Rate Taxable Tax Increment Bonds, Series 2005 (the "Original Bonds"); and

WHEREAS, the Original Bonds are payable from:

- (i) The incremental real and personal property tax revenues received by the IDB with respect to the property that is subject to that certain "Economic Impact Plan for McEwen Economic Development Area" (the "Plan") heretofore approved by the City and Williamson County, Tennessee (the "TIF Revenues");
- (ii) Certain payments in lieu of taxes paid to the IDB by Nissan North America, Inc. ("Nissan") pursuant to that certain Payment In Lieu of Tax Agreement dated as of December 5, 2005 (the "Nissan PILOT Agreement"), between the IDB and Nissan (the "Nissan PILOT Payments");
- (iii) Payments in lieu of taxes other than the Nissan PILOT Payments received by the City or the IDB with respect to properties located in the "Plan Area," as described in the Plan (the "Other PILOT Payments"); and
- (iv) Certain payments made by Nissan pursuant to that certain Conditional Payments Agreement dated as of December 21, 2005 (the "Conditional Payments Agreement") between the IDB and Nissan (the "Conditional Payments");

WHEREAS, the Original Bonds have also heretofore been secured by an Irrevocable Letter of Credit (the "Letter of Credit") issued by Fifth Third Bank (the "LOC Bank") in favor of the Trustee issued pursuant to a Reimbursement Agreement dated as of December 1, 2005 (as from time to time amended, the "Reimbursement Agreement") between the IDB and the LOC Bank; and

WHEREAS, the Reimbursement Agreement obligates the IDB to reimburse the LOC Bank for any draws made by the Trustee on the Letter of Credit; and

WHEREAS, the IDB and Fifth Third Securities, as Remarketing Agent, have entered into a Remarketing Agreement dated as of December 1, 2005 (the "Remarketing Agreement") relating to the Bonds; and

WHEREAS, to enhance the marketability of the Original Bonds and to induce the LOC Bank to issue the Letter of Credit, the City and the IDB previously entered into a Revolving Loan Agreement dated as of December 21, 2005, as amended by the Amendment to Revolving Loan Agreement dated as of January 21, 2012 (collectively, the "Original Revolving Loan Agreement") pursuant to which the City agreed to loan funds to the IDB to be used to make payments due under the Reimbursement Agreement and the Remarketing Agreement in the event that other revenues pledged for the payment therefor were insufficient; and

WHEREAS, on even date herewith, the IDB will enter into that certain Bond Purchase and Loan Agreement (the "BB&T Loan Agreement") with Branch Banking and Trust Company ("BB&T"), pursuant to which BB&T will purchase the IDB's Tax Increment Revenue Refunding Bonds, Series 2015 in the original aggregate principal amount of **\$12,910,000** (the "Refunding Bonds"), the proceeds of the sale of which will be applied by the IDB to the payment in full of the Original Bonds or the reimbursement of the LOC Bank for a draw made by the Trustee under the Letter of Credit for such payment; and

WHEREAS, the obligations of Nissan under the Conditional Payments Agreement have expired and, therefore, no Conditional Payments will be due or owing from Nissan; and

WHEREAS, the BB&T Loan Agreement will include an assignment of the TIF Revenues, the Nissan PILOT Payments and the Other PILOT Payments (collectively, the "Specified Revenue Sources") to the Purchaser to secure the obligations of the IDB under the BB&T Loan Agreement and the Refunding Bonds; and

WHEREAS, as a condition to B&BT's purchase of the Refunding Bonds, BB&T has required that the City and the IDB enter into this Amended and Restated Loan Agreement as set forth herein.

NOW, THEREFORE, in consideration of the premises, the parties hereby agree that the Original Revolving Loan Agreement is amended and restated as follows:

1. Loans. If at any time the amount on deposit in the Issuer Deposit Account (the "Issuer Account") established under the BB&T Loan Agreement is insufficient to pay principal or interest due under the BB&T Loan Agreement or the Refunding Bonds or other payments due BB&T under the BB&T Loan Agreement, then the City shall, in each such instance within five (5) working days after receipt of written notice from BB&T, deposit funds in the Issuer Deposit Account in an amount sufficient to cure any such deficiency. Each such deposit is herein referred to as a "Loan".

2. Interest on Loans. The Loans shall bear interest at a rate equal to the rate from time to time borne by the Refunding Bonds.

3. Repayment of Loans. Interest and principal on each Loan shall be payable on **July 1** of each year to the extent that funds remain in the Issuer Deposit Account after paying

any current or past due amount due to BB&T under the Refunding Bonds or the BB&T Loan Agreement.

4. Application of Moneys Remaining in Issuer Deposit Account. If at such time as the Bonds and the interest thereon have been paid in full, and any amounts due BB&T under the BB&T Loan Agreement and the Refunding Bonds have been paid, any funds remaining in the Issuer Deposit Account shall be paid to the City and credited against any principal and/or interest then due with respect to the Loans.

5. Interest on Overdue Payments. If any payment of interest or principal on any Loan is not made when due, such unpaid amount shall bear interest at a rate equal to the rate of interest then applicable to such Loan plus 1%.

6. Application of Payments. Any payment with respect to the Loans or any amount credited with respect thereto pursuant to Section 4 hereof shall be applied first to interest (including interest on overdue payments), then to principal.

7. Limitation on Amount and Timing of Loans. The obligation of the City to make Loans shall extend to the earlier of (i) the date on which no amount is outstanding under the BB&T Loan Agreement or the Refunding Bonds and (ii) **date that is three months following maturity date of Refunding Bonds.**

Notwithstanding anything herein to the contrary, the City shall have no obligation to make any Loan to the extent that such Loan shall cause the outstanding principal amount of all Loans to exceed \$5,000,000.

8. Loan Agreement. The occurrence and continuance of an event of default under the BB&T Loan Agreement shall be a default hereunder.

9. No Additional PILOT Agreements. Neither the City nor the IDB shall, without the consent of BB&T, enter into any payment in lieu of tax arrangement with respect to any property in the Plan Area other than the Nissan PILOT Agreement and a PILOT Agreement with American Healthways, Inc.

10. No Amendment to Plan. So long as the IDB owes any amounts under the BB&T Loan Agreement or the Refunding Bonds, no amendment to the Plan shall be made without the consent of BB&T.

11. General Fund of the City. The City shall make Loans hereunder from its general fund and shall not use the proceeds of any borrowing to make Loans hereunder.

12. Notices. A copy of any notice hereunder shall also be given to BB&T at the address provided in the BB&T Loan Agreement.

13. Limited Liability of IDB. Anything in this Agreement to the contrary notwithstanding, the obligation of the IDB to make payments hereunder shall be limited solely to the Specified Revenue Sources, and the IDB shall not be required to effectuate any of its duties,

obligations, powers or covenants hereunder except to the extent of the Specified Revenue Sources.

14. No Liability of Officers. No recourse under or upon any obligation of the IDB hereunder shall be had against any incorporator, member, director or officer, as such, past, present, or future, of the IDB, either directly or through the IDB or otherwise, for the payment for or to the IDB or any receiver thereof, of any sum that may be due and unpaid by the IDB hereunder. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such incorporator, member, director or officer, as such, to respond by reason of any act or omission on his part or otherwise, for the payment for or to the IDB or any receiver thereof, of any such that may remain due and unpaid hereunder or any of them, is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement. No covenant, stipulation, obligation or agreement of the Issuer contained in this Agreement shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member, officer, director, agent or employee of the IDB nor shall any of said persons or entities be liable personally therefor.

15. Separability. If any section, paragraph or provision of this Agreement shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Agreement.

16. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

[signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

BOARD OF MAYOR AND ALDERMEN OF
THE CITY OF FRANKLIN, TENNESSEE

By: _____
Title: Mayor

THE INDUSTRIAL DEVELOPMENT BOARD
OF THE CITY OF FRANKLIN

By: _____
Title: Chairman