

AMENDMENT TO REVOLVING LOAN AGREEMENT

THIS AMENDMENT TO REVOLVING LOAN AGREEMENT entered into as of the \_\_\_\_ day of January, 2012 by and between 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 "Bonds"); and

WHEREAS, the Bonds are payable from certain revenues specified in the Indenture (the "Specified Revenue Sources"); 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, the Bonds are 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, to enhance the marketability of the 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 (the "Revolving Loan Agreement") pursuant to which the City agreed to loan funds to the IDB which can 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 are insufficient;

WHEREAS, the IDB desires to renew and extend the Letter of Credit, and as a condition for such renewal and extension, the LOC Bank has required that the Revolving Loan Agreement be amended.

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

1. The phrase December 31, 2010 in Section 7 of the Agreement is hereby amended to read December 31, 2015.

2. The number \$2,700,000 in Section 7 of the Agreement is hereby amended to read \$5,000,000.

3. Except as hereby amended, the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment to Revolving Loan 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  
CITY OF FRANKLIN

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

Title: Chairman

**CITY OF FRANKLIN, TENNESSEE**  
**NOTES TO FINANCIAL STATEMENTS**  
JUNE 30, 2011

**NOTE 3 - DETAILED NOTES ON ALL FUNDS (Cont.)**

**F. Long-term Debt (Cont.)**

*Contingent Liability*

The City of Franklin entered a standby loan agreement with the City of Franklin Industrial Development Board in December 2005, subsequent to an Industrial Development Board bond issue for \$15 million. The bond issue provided funds to purchase land for the site of the Nissan North America Headquarters project, a 500,000 square foot building on a 50 – acre campus in the McEwen Economic Development District of Franklin. The Development District is a tax-increment financing district, created under Tennessee Law, which is designed to provide funds which will retire the bond issue from property taxes on future development.

At the inception of the project, the Industrial Development Board had approximately two years of debt service escrowed. As of January 2008, this escrow was fully spent and the City of Franklin began, as agreed, to make available short-term loans while the proceeds from the Development District were insufficient to cover the debt service. These loans apply only to project years three through seven (2009 through 2013), and cannot exceed \$5 million at any time during that period. At present, expected development in the area is proceeding as projected in the debt repayment plan. Through June 30, 2011, the City has lent \$2,833,900 to the Industrial Development Board under standby loan agreement. This amount will be repaid through future property taxes on the development.

*Industrial Development Bonds*

The City, through the Industrial Development Board, has in the past authorized issuance of various Industrial Revenue Bonds to provide financial assistance to private sector entities for the acquisition of industrial and commercial facilities deemed to be in the public interest. The bonds are secured by the property financed and payable solely from payments received on the underlying mortgage loans. Neither the City, State, nor any political subdivision thereof is obligated in any manner for repayment of bonds. Accordingly, the bonds are not reported as liabilities in the accompanying financial statements.

*Swap Agreements*

The City has two interest rate swap agreements which are considered to be derivative financial instruments under GASB Statement 53, "Accounting and Financial Reporting for Derivative Instruments." Accordingly, the derivatives are reported on the statement of net assets at fair value, and are tested for effectiveness to qualify for hedge accounting.

Both pay-fixed interest rate swap transactions are associated with variable debt. Combining a pay-fixed receive-variable rate swap with variable debt results in "synthetic" fixed rate debt: The economics are similar to fixed rate debt, but another instrument is involved unlike regular fixed rate debt. Each time the City created synthetic fixed rate debt, a comparison and determination was made that the fixed rate on regular debt would have been higher than the fixed rate on the swap.

For both swaps, there are two main strategies the City pursued with respect to each transaction. Each swap can achieve one or more of these strategies. Then as a result of execution of the derivative, its value will change with respect to how prevailing rates on each reporting period compare to when the derivative was put in place. The accumulated changes in fair value, or total fair value of the derivatives are a function of how prevailing interest rates and other market factors affect each transaction at each reporting period. Pursuant to GASB 53, each swap transaction is then evaluated to determine what type of accounting treatment to apply.



## MEMORANDUM

---

January 12, 2012

TO: Members of the Board of Mayor and Aldermen

FROM: Eric Stuckey, City Administrator  
Russ Truell, ACA/CFO

RE: Renewal of Revolving Loan Agreement with Franklin IDB regarding Nissan project

### **Purpose**

The purpose of this memorandum is to provide information to the Board of Mayor and Aldermen (BOMA) to consider updating the City's loan agreement with the Franklin Industrial Development Board (IDB) related to the Nissan headquarters project and the McEwen Economic Development District.

### **Background**

The City has in place a revolving loan agreement with the Industrial Development Board. The agreement was approved in 2005 to induce the IDB to undertake the financing of the land for the Nissan headquarters relocation. The loan agreement was necessary to allow the IDB to obtain a bank letter of credit for the bonds used to support the bonds issued to purchase the land.

The letter of credit is up for renewal and the lending bank has requested an updated agreement clarifying the amount of the potential loan and the term of the loan. The loan, including accrued interest, will be paid with proceeds from the Tax Increment Financing (TIF) proceeds from the Nissan property and other properties in the immediate area (TIF district).

### **Recommendation**

It is the recommendation of City staff that the Board adopt the updated loan agreement, updating section 7 of the revolving loan agreement.

## REVOLVING LOAN AGREEMENT

THIS REVOLVING LOAN AGREEMENT entered as of the 21<sup>st</sup> day of December, 2005 by and between 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 is authorized pursuant to and in accordance with Chapter 53 of Title 7 of Tennessee Code Annotated, as amended (the "Act"), to issue and sell its bonds in order to finance the acquisition of a site for a "project" (as defined in the Act); and

WHEREAS, pursuant to T.C.A. Section 7-53-312, the IDB and the City have approved an economic impact plan (the "Plan") (a copy of which is attached hereto as Exhibit A) relating to certain property (the "Plan Area") in Franklin, Tennessee that includes the site (the "Site") for a corporate headquarters building to be occupied by Nissan North America, Inc. ("Nissan"); and

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 "the Trustee"), authorized the issuance of its Adjustable Rate Taxable Tax Increment Bonds, Series 2005 (the "Bonds") in the principal amount of \$14,945,000 in order to finance the acquisition of the Site; and

WHEREAS, the Bonds are payable from (1) the incremental real and personal property tax revenues (the "TIF Revenues") received by the IDB with respect to the property that is subject to the Plan, (2) certain payments in lieu of taxes (the "Nissan PILOT Payments") to be paid to the IDB by Nissan pursuant to a Payment In Lieu of Tax Agreement dated December 21, 2005, between the IDB and Nissan, (3) payments in lieu of taxes other than the Nissan PILOT Payments (the "Other PILOT Payments") received by the City or the IDB with respect to property located within the Plan Area, and (4) certain payments (the "Conditional Payments") to be made by Nissan pursuant to a Conditional Payments Agreement dated \_\_\_\_\_ between the IDB and Nissan, in the event that it fails to complete or occupy the corporate headquarters building; and

WHEREAS, the TIF Revenues, the Nissan PILOT Payments, the Other PILOT Payments and the Conditional Payments are herein referred to as the "Specified Revenue Sources"; and

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

WHEREAS, the Bonds bear interest at a variable rate but the IDB has entered into an interest rate swap agreement (the "Swap"), with Fifth Third Bank (the "Counterparty") whereby for a period of five years the IDB pays a fixed rate of interest and the Counterparty pays a

variable rate of interest; and

WHEREAS, the principal of and up to 45 days. interest (at the maximum interest rate of 12%) on, and certain purchase price payments relating to, the Bonds will also be secured by the Irrevocable Letter of Credit (the "Letter of Credit"), dated as of the date of initial delivery of the Bonds, issued by Fifth Third Bank (the .LOC Bank.) in favor of the Trustee, issued pursuant to a Reimbursement Agreement (the "Reimbursement Agreement") dated as of December 1, 2005, 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, to enhance the marketability of the Bonds and to induce the LOC Bank to issue the Letter of Credit, the City is, pursuant to T.C.A. Section 6-54-118, entering into this Loan Agreement to provide funds which the IDB can use to make payments due under the Reimbursement Agreement and payments due under the Swap in the event that the other revenues pledged for the payment therefor are insufficient;

NOW, THEREFORE, the parties agree as follows:

1. Loans. If at any time the amount on deposit in the [Issuer Deposit Account] (the "Issuer Account") established under the Reimbursement Agreement is insufficient to reimburse the LOC Bank for any drawings made by the Trustee under the Letter of Credit, other payments due the LOC Bank under the Reimbursement Agreement, payments due the Remarketing Agent under the Remarketing Agreement and to make any payments then due under the Swap, then the City shall, in each such instance within five (5) working days after receipt of written notice from the LOC Bank, 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 Bonds.
3. Repayment of Loans. Interest and principal on each Loan shall be payable on April 1 of each year to the extent that funds remain in the Issuer Deposit Account after paying any current amount due on such day to the LOC Bank, and payments then due under the Swap.
4. Application of Moneys Remaining in Issuer Account. If at such time as the Bonds and the interest thereon have been paid in full, and any amounts due the LOC Bank under the Reimbursement Agreement and any fees due the Remarketing Agent under the Remarketing Agreement 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 initially extend until December 31, ~~2010~~2015; provided, however, that unless the TIF Revenues, the Nissan PILOT Payments and the Other PILOT Payments collected for tax year 2010 or any year thereafter exceeds 1.5 times the debt service on the Bonds (taking into account any swap relating to the Bonds and any fees due the LOC Bank under the Reimbursement Agreement) for such year, the obligation of the City to make Loans shall automatically be extended for an additional year at a time.

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 \$~~2,700,000~~5,000,000.

8. Reimbursement Agreement. The occurrence and continuance of an event of default under the Reimbursement Agreement shall be a default hereunder.

9. No Additional PILOT Agreements. Neither the City nor the IDB shall, without the consent of the LOC Bank, 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 Reimbursement Agreement, the Remarketing Agreement or the Swap, no amendment to the Plan shall be made without the consent of the LOC bank.

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 the LOC Bank at the address provided in the Reimbursement 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 one original and all of which shall constitute but one and the same instrument.

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