



Hamilton County Board of Commissioners

RESOLUTION

No. 1008-27

A RESOLUTION TO MAKE CERTAIN FINDINGS RELATING TO THE RIVERCITY COMPANY PROJECT, TO DELEGATE CERTAIN AUTHORITY TO THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF CHATTANOOGA, AND TO AUTHORIZE THE COUNTY MAYOR TO ENTER INTO AND EXECUTE AN AGREEMENT FOR PAYMENTS IN LIEU OF AD VALOREM TAXES.

WHEREAS, pursuant to Tennessee Code Annotated, Section 7-53-305(b), the County of Hamilton, Tennessee (the "County") is permitted to delegate to The Industrial Development Board of the City of Chattanooga (the "Board") the authority to negotiate and accept payments in lieu of ad valorem taxes from lessees of the Board upon a finding by the County that such payments are deemed to be in furtherance of the Board's public purposes; and

WHEREAS, the Tennessee Valley Authority owns certain land in the County and has conveyed a permanent easement thereon to The RiverCity Company, and The RiverCity Company is contemplating the construction of a building and other real property improvements to be located on a portion thereof in connection with the operation of a movie theater (collectively the "Project"); and

WHEREAS, because of the substantial economic benefits to the City of Chattanooga, Tennessee and the County resulting from the Project, The RiverCity Company has asked the Board and the County to approve payments in lieu of ad valorem taxes; and

WHEREAS, the County has determined that payments in lieu of ad valorem taxes from the Project would be in furtherance of the Board's public purposes as set forth within Chapter 53 of Title 7 of the Tennessee Code Annotated;

NOW, THEREFORE, BE IT RESOLVED BY THIS COMMISSION:

That we do hereby find that the Project is in the best interest of the County and that the payments in lieu of ad valorem taxes derived therefrom would be in furtherance of the Board's public purposes; and

That, having made such a finding in this instance, we do hereby delegate to the Board the authority to negotiate and accept payments in lieu of ad valorem taxes from The RiverCity Company, it being further noted that this delegation is for this purpose and this project only; and

That the County Mayor is hereby authorized to enter into an Agreement for Payments In Lieu Of Ad Valorem Taxes in the form attached hereto, with such changes thereto as he shall approve; and

BE IT FURTHER RESOLVED THAT THIS RESOLUTION TAKE EFFECT FROM AND AFTER ITS PASSAGE, THE PUBLIC WELFARE REQUIRING IT.

MB: 338
PAGE: 235

Approved: [checked]

Rejected: [unchecked]

Approved: [checked]

Vetoed: [unchecked]

CERTIFICATION OF ACTION

[Signature]
County Clerk

[Signature]
County Executive

October 1, 2008
Date

**AGREEMENT FOR PAYMENTS IN LIEU
OF AD VALOREM TAXES**

THIS AGREEMENT FOR PAYMENTS IN LIEU OF AD VALOREM TAXES (this "Agreement") is made and entered into as of this the ___ day of _____, 2008, by and among **THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF CHATTANOOGA** (the "Board"); **THE RIVERCITY COMPANY**, a Tennessee not-for-profit corporation (the "Company"); the **CITY OF CHATTANOOGA, TENNESSEE** (the "City"); and **HAMILTON COUNTY, TENNESSEE** (the "County") and is joined in, for purposes of evidencing their acceptance of the agency relationship established herein, by **CARL E. LEVI and his successors, acting in the capacity of HAMILTON COUNTY TRUSTEE** ("Trustee"), and by **WILLIAM C. BENNETT and his successors, acting in the capacity of HAMILTON COUNTY ASSESSOR OF PROPERTY** ("Assessor").

WITNESSETH:

WHEREAS, the Company is contemplating the construction of a movie theater and other ancillary real property improvements (the "Project") on certain land located in Chattanooga, Hamilton County Tennessee and described in Exhibit A, attached hereto (the "Land" and together with the movie theater and all other real property improvements to be constructed thereon, the "Property"); and

WHEREAS, the Company anticipates that the Project will require a real property investment of approximately Seven Million and no/100 Dollars (\$7,000,000.00) (the "Capital Investment Projection") and, accordingly, has requested the Board's assistance with the financing of the Project; and

WHEREAS, substantial economic benefits to the City and County economies will be derived from the Project; and

WHEREAS, the Board has agreed to take title (in the form of a perpetual easement granted by the Tennessee Valley Authority) to the Property and to lease the Property to the Company pursuant to a Lease Agreement of even date herewith (the "Lease"); and

WHEREAS, because the Property will be owned by the Board, which is a public corporation organized under the provisions of Tennessee Code Annotated, § 7-53-101, *et seq.*, the Property will be exempt from all ad valorem property taxes ("property taxes") normally paid to the City and to the County, so long as the Property is owned by the Board, pursuant to the provisions of Tennessee Code Annotated § 7-53-305; and

WHEREAS, for the public benefit of the citizens of the City and the County, the Board has requested that the Company make certain payments to the Board in lieu of the payment of property taxes that would otherwise be payable on the Property; and

WHEREAS, the Company has agreed to make such payments to the Board in lieu of the property taxes otherwise payable on the Property (the "In Lieu Payments"), as more particularly set forth hereinafter; and

WHEREAS, the Board has been authorized to receive the In Lieu Payments in lieu of property taxes by resolutions adopted by the City and the County, acting through their duly elected Council and Commission, respectively, which resolutions delegate to the Board the authority to accept the In Lieu Payments upon compliance with certain terms and conditions, including, without limitation, the requirement that the Board collect and expend such payments in furtherance of the public purposes for which the Board was created; and

WHEREAS, the Company and the Board have agreed that all In Lieu Payments made to the Board by the Company shall be paid to the Trustee, who shall disburse such amounts to the general funds of the City and the County in accordance with the requirements specified herein; and

WHEREAS, the Board wishes to designate the Assessor as its agent to appraise the Property and to assess a percentage of its value in the manner specified herein; and

WHEREAS, the Board wishes to designate the Trustee as its agent to receive the In Lieu Payments in accordance with the terms of this Agreement;

NOW, THEREFORE, IN CONSIDERATION OF the mutual covenants and agreements set forth herein, the parties hereto agree as follows:

1. Designation of Assessor; Appraisal and Assessment of Property. The Board hereby designates the Assessor as its agent to appraise and assess the Property. The Assessor shall appraise and assess the Property in accordance with the Constitution and laws of the State of Tennessee as though the Property were subject to property taxes. The Assessor shall give the Trustee, the City Treasurer, the Board, and the Company written notice of any changes in appraisals of the Property in the same manner that notices are given to owners of taxable property. The Assessor shall make available to the Board and the Company all records relating to the appraisal and assessment of the Property.

2. Designation of Trustee; Computation and Billing of Payments In Lieu of Taxes. The Board hereby designates the Trustee as its agent to compute the amounts of the In Lieu Payments, to receive such payments from the Company and to disburse such payments to the City and the County. On or about October 1 of each year during the term of this Agreement, the Trustee shall compute the taxes which would be payable on the Property as if it were subject to property taxes, in accordance with the Constitution and laws of the State of Tennessee and in accordance with the appraisal and assessment of the Assessor. Each year hereunder, the Trustee shall send the Board and the Company a bill for the appropriate amount of In Lieu Payments (the "Tax Bill").

3. Payments in Lieu of Taxes. After receipt of the Tax Bill, the Company shall pay to the Trustee the amount indicated on the Tax Bill in accordance with the amounts set forth below in Paragraph 4. The In Lieu Payments shall be made by the Company in lieu of the property taxes which would otherwise be payable on the Property if it were subject to property taxes.

4. Amount of Payments by the Company. For any period hereunder occurring before January 1, 2010 or after December 31, 2024, and during which the Property is owned by the Board, the Company shall make In Lieu Payments in an amount, as determined by the Assessor and the Trustee, equal to one hundred percent (100%) of the amount of taxes that would have been payable on the Property as if it were subject to property taxes. For each of the years 2010 through 2024, the Company shall make In Lieu Payments in an amount determined by the Assessor and the Trustee equal to the following percentages of the taxes that would have been payable on the Property as if it were subject to property taxes for the respective years shown:

<u>Years</u>	<u>Percentages</u>
2010 - 2024	29.2%

The parties acknowledge that the amount of real property taxes to support County schools currently represents twenty-nine and two-tenths percent (29.2%) of the total amount of the real property taxes that would have been payable on the Property if the Property were subject to real property taxes and further acknowledge that one hundred percent (100%) of such In Lieu Payments for years 2010 through 2024 shall be directed by the Trustee to support the County school system. In all other cases, the Company shall make In Lieu Payments in an amount equal to one hundred percent (100%) of the amount of taxes that would have been payable on the Property if it were subject to property taxes.

5. Penalties and Late Charges. The Company shall make the In Lieu Payments for each year before March 1 of the following year. Except as otherwise provided in Paragraph 19, all In Lieu Payments shall be subject to penalties, late charges, fees and interest charges as follows:

(a) If the Company fails to make any In Lieu Payment before it becomes delinquent, and such failure to pay shall continue and not be fully paid within thirty (30) days after written notice of such nonpayment has been provided, then a late charge shall be

charged and shall also be immediately due and payable. The late charge shall be in the amount of one and one-half percent (1.5%) of the owed amount, for each month that each payment has been unpaid. Such one and one-half percent (1.5%) per month late charge amount shall accumulate each month and be payable so long as there remains any outstanding unpaid amount.

(b) If the Company should fail to pay all amounts and late charges due as provided hereinabove, then the Board, the City or the County may bring suit in the Chancery Court of Hamilton County to seek to recover the In Lieu Payments due, late charges, expenses and costs of collection in addition to reasonable attorneys' fees.

6. PILOT Investment Reporting.

(a) In order to determine the extent to which the Company achieves the Capital Investment Projection upon which the In Lieu Payments have been calculated, within one (1) year following the completion of the Project, the Company shall submit to the City and County, on a form reasonably acceptable to the City and the County, documentation of the Capital Investment Projection.

(b) If the Company fails to achieve the Capital Investment Projection, then the City and the County reserve the right to terminate the benefits of this Agreement for any years remaining hereunder.

(c) If the Company closes the Project or moves the Project from the City during the term hereof, the City and/or the County reserve the right to require the partial repayment of amounts that would have been payable on the Property if it were subject to property taxes.

7. Disbursements by Trustee. All sums received by the Trustee pursuant to Paragraph 3 hereof shall be disbursed to the general funds of the City and the County in accordance with this paragraph and in accordance with the normal requirements of law governing the settlement and paying over of taxes to counties and municipalities. All sums

received shall be divided into two (2) accounts, one for the use and benefit of the City and the other for the use and benefit of the County. The account for the use and benefit of the City shall be funded with the proportionate amount to which the In Lieu Payments are attributable to property taxes which would otherwise be owed to the City, and the account for the use and benefit of the County shall be funded with the proportionate amount to which the In Lieu Payments are attributable to property taxes which would otherwise be owed to the County. All disbursements to the general funds of the City and County shall be made by the Trustee subject to the requirement that all funds disbursed may be used by the City and the County only in furtherance of the public purposes of the Board, as described in Tennessee Code Annotated § 7-53-102.

8. Contest by the Company. The Company shall have the right to contest the appraisal or assessment of the Property by the Assessor and the computation by the Trustee of the amount of the In Lieu Payments. If the Company contests any such appraisal or assessment, then it shall present evidence to the Assessor in favor of its position. Likewise, if the Company contests any such payment computation, it shall present evidence to the Trustee in favor of its position. If the In Lieu Payments being contested shall be or become due and payable, the Company shall make such payments under protest. The Company and the Assessor or the Trustee, as the case may be, shall negotiate in good faith to resolve any disputes as to appraisal, assessment or computation. If the Company and the Assessor or the Trustee are unable to resolve a dispute, then the Company may file suit in the Chancery Court of Hamilton County to ask that the provisions of this Agreement, including those covering appraisal, assessment and computation, be construed or applied to the relevant facts by the Chancery Court in order to resolve such dispute.

9. Lien on Property. Any amounts which remain payable under this Agreement shall become a lien on the Property, and such lien shall be enforceable against the Property in the event that any payment owing hereunder is not timely made in accordance with this Agreement.

10. Term. This Agreement shall become effective on the date that the Board attains title to the Property and shall continue for so long as the Board holds title to any of the Property or the Company has made all payments required hereunder, whichever shall later occur.

11. Leasehold Taxation. If the leasehold interest of the Company should be subject to ad valorem taxation, then any amounts assessed as taxes thereon shall be credited against any In Lieu Payments due hereunder.

12. Notices, etc. All notices and other communications provided for hereunder shall be written, and mailed via registered or certified mail or delivered via overnight express carrier, to the following addresses:

If to the City:	Mr. Randall L. Nelson City Attorney Suite 400, Pioneer Bank Building Chattanooga, Tennessee 37402
If to the County:	Mr. Rheubin M. Taylor County Attorney Room 204 County Courthouse Chattanooga, Tennessee 37402
If to the Company:	The River City Company 850 Market Street 2 nd Floor Miller Plaza Chattanooga, Tennessee 37402
With a Copy to:	Brian L. Eftink, Esq. Miller & Martin PLLC Suite 1000, Volunteer Building 832 Georgia Avenue Chattanooga, Tennessee 37402-2289
If to the Trustee:	Trustee Hamilton County Courthouse Chattanooga, Tennessee 37402
If to the Assessor:	Assessor Hamilton County Courthouse Chattanooga, Tennessee 37402

or, as to each party, at such other address as shall be designated by such party in a written notice to the other parties. All such notices and communications shall be deemed delivered as follows: (i) when mailed via overnight courier service, one business day after mailing, and (ii) when depositing in the United States mail by registered or certified mail, postage prepaid, return receipt requested, three days after deposit.

13. No Waiver; Remedies. No failure on the part of any party hereto, and no delay in exercising any right under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise thereof or the exercise of any other right. The remedies provided in this Agreement are cumulative and are not exclusive of any remedies provided by law.

14. Severability. In the event that any clause or provision of this Agreement shall be held to be invalid by any court or jurisdiction, the invalidity of any such clause or provision shall not affect any of the remaining provisions of this Agreement.

15. No Liability of Board's Officers. No recourse under or upon any obligation, covenant or agreement contained in this Agreement shall be had against any incorporator, member, director or officer, as such, of the Board, whether past, present or future, either directly or through the Board. 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, is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement.

16. Binding Effect. This Agreement shall be binding upon and inure to the benefit of each of the parties and signatories hereto and to their respective successors and assigns.

17. Governing Law. The Agreement shall be governed by, and construed in accordance with, the laws of the State of Tennessee.

18. Amendments. This Agreement may be amended only in writing, signed by each of the parties hereto, except that the Trustee and the Assessor shall not be required to join in amendments unless such amendments affect their respective duties hereunder.

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

[SIGNATURES TO FOLLOW ON NEXT PAGE]

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

ATTEST:

**THE INDUSTRIAL DEVELOPMENT BOARD
OF THE CITY OF CHATTANOOGA**

By: _____
Secretary

By: _____
Chairman

THE RIVERCITY COMPANY

By: _____

Print Name: _____

Title: _____

CITY OF CHATTANOOGA, TENNESSEE

By: _____
Mayor

HAMILTON COUNTY, TENNESSEE

By: _____
County Mayor

CARL E. LEVI

By: _____
Hamilton County Trustee

WILLIAM C. BENNETT

By: _____
Hamilton County Assessor of Property

This Instrument Prepared By:
Miller & Martin PLLC (BLE)
Suite 1000 Volunteer Building
832 Georgia Avenue
Chattanooga, TN 37402

LEASE AGREEMENT

THIS LEASE AGREEMENT, is made and entered as of _____, 2008, by and between **THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF CHATTANOOGA**, a public corporation duly created and existing under the laws of the State of Tennessee (the "Board"), and **THE RIVERCITY COMPANY**, a Tennessee not-for-profit corporation (the "Company").

WITNESSETH:

In consideration of the respective covenants and agreements hereinafter contained, the Board and the Company agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01 Definitions. The following terms when used in this Agreement, unless the context shall clearly indicate another or different meaning or intent, shall be construed as follows:

"Act" means the Tennessee Industrial Development Corporations Act of 1955, Chapter 210 of the Public Acts of 1955, as codified in Tennessee Code Annotated Sections 7-53-101 et seq., as heretofore amended and as hereafter amended from time to time.

"Act of Bankruptcy" means the filing of a petition in bankruptcy (or other commencement of a bankruptcy or similar proceeding) by or against the Company or the Board under any applicable bankruptcy, insolvency or similar law as now or hereafter in effect.

"Agreement" means this Lease Agreement as it now exists and as it may hereafter be amended.

"Board" means The Industrial Development Board of the City of Chattanooga, a public corporation duly created and existing under the Act, and its successors and assigns.

"City" means the City of Chattanooga, Tennessee.

"County" means Hamilton County, Tennessee.

The terms "default" and "event of default" mean any occurrence or event specified in Section 10.01 hereof.

The term "pending" with respect to any proceedings commenced by an Act of Bankruptcy means that such proceedings have not been dismissed, or are subject to further appeal.

"PILOT Agreement" means the Agreement for Payments in Lieu of Ad Valorem Taxes entered into of even date herewith by and among the Board, the Company, the City and the County.

"Project" means the construction and operation of a movie theater and other ancillary uses on the Property.

"Property" means the permanent easement granted by the Tennessee Valley Authority in the land described in Exhibit A attached hereto and incorporated herein, together with the building and all other real property improvements to be constructed thereon.

ARTICLE II

CERTIFICATIONS

Section 2.01 Certifications by Board. The Board makes the following certifications as the basis for the undertakings on its part herein contained:

(a) The Board is a public corporation of the State of Tennessee, duly organized and existing under the provisions of the Act. The Act authorizes the Board to acquire land, buildings, machinery and equipment and related facilities and to own, lease and dispose of the same for the purpose of maintaining and increasing employment opportunities by promoting industry, trade and commerce and by inducing manufacturing, industrial and commercial enterprises to locate in or remain in the State of Tennessee. The Board is authorized to act in furtherance of such purposes in the City.

(b) The Board has found and does hereby declare that the acquisition, construction and equipping of the Project and the leasing of the same to the Company will increase employment in the City, will continue with the revitalization of the economy of downtown Chattanooga, and will be in furtherance of the public purposes for which the Board was created.

(c) The Board has been induced to enter into this undertaking by the promise of the Company to construct a movie theater in the City.

(d) There are no actions, suits, proceedings, inquiries or investigations pending, or to the knowledge of the Board threatened, against or affecting the Board in any court or before any governmental authority or arbitration board or tribunal, which involve the

possibility of materially and adversely affecting the transactions contemplated by this Agreement or which, in any way, would materially and adversely affect the validity or enforceability of this Agreement or any agreement or instrument to which the Board is a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby or thereby.

Section 2.02 Certifications by Company. The Company makes the following certifications as the basis for the undertakings on its part herein contained:

(a) The Company is a not-for-profit corporation, duly formed under the laws of the State of Tennessee, is in good standing under its formation documents, has full power and authority to enter into this Agreement and to perform all obligations contained herein and therein, and has, by proper company and corporate action, been duly authorized to execute and deliver this Agreement and, when executed and delivered by the parties thereto, this Agreement will constitute the valid and binding obligation of the Company enforceable in accordance with its terms.

(b) The agreement of the Board to own the Project and lease it to the Company induced the Company to locate the Project in the City, which will increase employment in the City.

(c) Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated herein by the Company, nor the fulfillment of or compliance with the terms and conditions of this Agreement, does or will conflict with or result in a breach of the terms, conditions or provisions of any restriction or internal governing document of the Company or any agreement or instrument to which the Company is now a party or by which it is bound, or any existing law, rule, regulation, judgment, order or decree to which it is subject, or constitutes a default under any of the foregoing or, except as contemplated hereby, results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Company under the terms of any instrument or agreement.

(d) There are no proceedings pending, or to the knowledge of the Company threatened, against or affecting the Company in any court or before any governmental authority, arbitration board or tribunal which materially and adversely affect the properties, business, prospects, profits or financial condition of the Company, or the ability of the Company to perform its obligations under this Agreement. The Company is not in default with respect to an order of any court, governmental authority, arbitration board or tribunal.

(e) No event has occurred and no condition exists with respect to the Company that would constitute an "event of default" under this Agreement, or which, with the lapse of time or with the giving of notice, or both, would become such an "event of default."

ARTICLE III

LEASING CLAUSES; WARRANTY OF TITLE

Section 3.01 Lease of Property. The Board hereby leases to the Company, and the Company hereby leases from the Board, the Property for the consideration set forth in Section 5.03 hereof and in accordance with the provisions of this Agreement.

Section 3.02 Title. The Board will obtain, upon the acquisition thereof, good and marketable title to the Property, free from all encumbrances except for matters of public record.

Section 3.03 Quiet Enjoyment. The Board covenants and agrees that it will warrant and defend the Company in the quiet enjoyment and peaceable possession of the Project, free from all claims of all persons whatsoever, throughout the Lease Term, so long as the Company shall perform the covenants, conditions and agreements to be performed by it hereunder, or so long as the period for remedying any default in such performance shall not have expired. If the Board shall at any time be called upon to defend the title to said property as aforesaid, it shall not be required to incur any costs or expenses in connection therewith unless indemnified to its satisfaction against all such costs and expenses.

ARTICLE IV

CONSTRUCTION AND INSTALLATION OF PROJECT

Section 4.01 Agreement to Construct and Install Project. The Company agrees that:

- (a) It will cause title in and to the Project to be vested in the Board.
- (b) It will construct and install the Project in the name of and on behalf of the Board.
- (c) It will complete the construction and equipping of the Project as promptly as practicable.

ARTICLE V

EFFECTIVE DATE; DURATION OF LEASE TERM; CONSIDERATION

Section 5.01 Effective Date of this Agreement; Duration of Lease Term. This Agreement shall become effective upon its delivery, and the leasehold estate created hereunder shall then begin, and, subject to the other provisions of this Agreement, shall expire at midnight, December 31, 2024 (which period is hereinafter referred to as the "Lease Term").

Section 5.02 Delivery and Acceptance of Possession. The Board agrees to deliver to the Company sole and exclusive possession of the Project, and the Company agree to accept possession of the Project upon such delivery.

Section 5.03 Consideration for Lease. In consideration of the lease granted hereunder the Company agrees to:

(a) Construct and install the Project as described in Section 4.01 hereof;

(b) Cause the Project to be operated for its own benefit and for the benefit of the citizens of the County and the City; and

(c) Make the payments required of them under the PILOT Agreement.

ARTICLE VI

MAINTENANCE; MODIFICATION; TAXES AND INSURANCE

Section 6.01 Maintenance and Modification of Project by Company. The Company agrees that throughout the term of this Agreement it will, at no expense to the Board, the City or the County, keep the Property, or cause the Property to be kept, in as reasonably safe condition as the operation thereof shall permit.

Section 6.02 Taxes, Other Governmental Charges and Utility Charges. The Board and the Company acknowledge that under present law the Property will be exempt from ad valorem property taxation in the State of Tennessee. The Company will pay, as the same shall become lawfully due and payable, all other taxes and governmental charges of any kind whatsoever upon or with respect to the Property. The Company shall pay, or shall cause its tenant to pay, when due, all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Property.

Section 6.03 Contest of Taxes and Other Charges. The Company may, at its own expense and in its own name, in good faith contest any such taxes, assessments or other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom. The Board will cooperate fully with the Company in any such contest.

Section 6.04 Maintenance of Insurance. Throughout the term of this Agreement, the Company shall keep, or shall cause its tenant to keep, the Property continuously insured against such risks as are customarily insured against with respect to property similar to the Property by businesses of like size and type, paying as the same become due all premiums in respect thereto.

Section 6.05 Indemnification of Board. To the extent caused by the Company, the Company shall and hereby agrees to indemnify and save the Board and its officers, directors,

agents, servants and employees harmless from and against all claims by or on behalf of any person, firm or corporation arising from the conduct or management of, or from any work or thing done on the Property during the term of this Agreement, and against and from all claims arising during the term of this Agreement, from

- (a) any condition of the Property caused by the Company;
- (b) any breach or default on the part of the Company in the performance of its respective obligations under this Agreement; and
- (c) any act of negligence of the Company or of any agents, contractors, servants, employees or licensees of the Company or of any assignee or sublessee of the Company.

To the extent caused by the Company, the Company shall indemnify and save the Board and its officers, directors, agents, servants and employees harmless from and against all reasonable costs and expenses incurred in or in connection with any action or proceeding brought thereon (unless such action or proceeding is a result of the gross negligence or willful misconduct of the Board), and, upon notice from the Board, and to the extent caused by the Company, the Company shall defend the Board and any such officer, director, agent, servant or employee or any of them in any such action or proceeding.

Section 6.06 Board Expenses. In addition to other payments required to be made by the Company hereunder, the Company shall pay any reasonable expenses not specifically mentioned herein which are incurred by the Board in connection with the Project or this Agreement.

Section 6.07 Depreciation and Investment Credit. The Board covenants and agrees that depreciation expenses and investment tax credit, if any, with respect to the Project shall be made available to the Company, and the Board will fully cooperate with the Company in any effort by the Company to avail itself of any such depreciation expenses or investment tax credit, but the Board shall have no responsibility or liability for failure of the Company to receive any such expenses or credits.

ARTICLE VII

DAMAGE, DESTRUCTION AND CONDEMNATION

Section 7.01 Damage and Destruction. If during the term hereof the Property is damaged by fire or other casualty, the Board shall cause the proceeds received by it from insurance to be paid to the Company for application in one or both of the following ways, as shall be determined by the Company:

- (a) Repair, rebuilding or restoration of the property damaged.

(b) Reimbursement to the Company for its loss in value of the Property.

Section 7.02 Condemnation of Property. If title in and to, or the temporary use of, the Property or any part thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, the Board shall cause the proceeds received by it from any award made in such eminent domain proceeding to be paid to the Company for application in one or more of the following ways, as shall be determined by the Company:

(a) Restoration of the Property to substantially the same condition as existed prior to the exercise of said power of eminent domain.

(b) Acquisition, by construction or otherwise, of other property having substantially the same use and utility as the property taken in such proceedings (which property will be deemed a part of the Property available for use by the Company under this Agreement).

(c) Reimbursement to the Company for its loss in value of the Property.

The Board shall cooperate fully with the Company in the handling and conduct of any prospective or pending eminent domain proceeding with respect to the Property 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 Board. In no event will the Board voluntarily settle, or consent to the settlement of, any prospective or pending eminent domain proceeding with respect to the Property or any part thereof without the written consent of the Company.

ARTICLE VIII

SPECIAL COVENANTS

Section 8.01 No Warranty of Condition or Suitability by Board. The Board makes no warranty, either express or implied, as to the condition of the Property or that it will be suitable for the purposes or needs of the Company. The Company releases the Board from, agrees that the Board shall not be liable for, and agrees to hold the Board and its officers, directors, agents, servants and employees 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 Property or the use thereof unless caused by the gross negligence or willful misconduct of the Board. The members of the Board of Directors of the Board shall incur no liability either individually or collectively by reason of the obligations undertaken by the Board hereunder.

ARTICLE IX

ASSIGNMENT, SUBLEASING, PLEDGING AND SELLING

Section 9.01 Assignment or Subleasing. This Agreement may be assigned (including collateral assignments, leasehold mortgages and similar pledges) and the Property may be subleased, as a whole or in part, by the Company without the prior written consent of the Board provided that:

(a) Unless authorized in writing by the Board, no assignment shall relieve the Company from primary liability for any of its obligations hereunder, and, in the event of any such assignment, the Company shall continue to remain primarily liable for performance and observance of the agreements on its part herein provided to be performed and observed by it to the same extent as though no assignment had been made.

(b) The assignee or sublessee shall assume the obligations of the Company hereunder to the extent of the interest assigned or subleased.

Section 9.02 Restrictions on Sale of Property by Board. The Board agrees that, except for transactions effected in accordance with Section 11.03 hereof, it will not sell, assign, encumber, transfer or convey the Property during the Lease Term or create or suffer to be created any debt, lien or charge on the rents, revenues or receipts arising out of or in connection with its ownership of the Property, and it will not take any other action which may reasonably be construed as tending to cause or induce the levy or assessment of ad valorem taxes; provided, that if the laws of the State of Tennessee at the time shall permit, nothing contained in this Section shall prevent the consolidation of the Board with, or merger into, or transfer of the Property as an entirety to, any public corporation whose property and income are not subject to taxation and which has corporate authority to carry on the business of owning, leasing and selling of the Property; provided that such consolidation, merger or transfer shall be authorized by the governing body of the City.

ARTICLE X

EVENTS OF DEFAULT AND REMEDIES

Section 10.01 Events of Default Defined. The following shall be "events of default" under this Agreement, and the terms "event of default" or "default" shall mean, whenever they are used in this Agreement, any one or more of the following events:

(a) The failure by the Board or the Company to observe and perform any covenant, condition or agreement on its part to be observed or performed, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to one party by the other, unless the one giving notice shall agree in writing to an extension of such time prior to its expiration. If a failure under this Section 10.01(a) is such that it can be corrected but not within the applicable period, it shall not constitute an event of default if

appropriate corrective action is instituted within the applicable period and diligently pursued until the default is corrected.

(b) A voluntary Act of Bankruptcy or an Act of Bankruptcy which, if resulting from the filing or commencement of involuntary proceedings against either of the Company or the Board, is not dismissed or discharged within sixty (60) days of the filing or commencement thereof.

The foregoing provisions of subsection (a) of this Section are subject to the following limitations: if by reasons of force majeure, the Board or the Company is unable in whole or in part to carry out the agreements on its part herein referred to, the failure to perform such agreements due to such inability shall not constitute an event of default nor shall it become an event of default upon appropriate notification or the passage of this stated period of time. The term "force majeure" as used herein shall mean, without limitation, the following: acts of God; strikes, lockouts or other industrial disturbances; act of public enemies; orders of any kind of the government of the United States of America or of the State of Tennessee or any of their respective departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires, hurricanes, tornadoes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accident to machinery, transmission pipes or canals; partial or entire failure of utilities; or any other cause or event not reasonably within the control of the Board or the Company. The Board and the Company agree, however, to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its agreements; provided, that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the Board or the Company, as the case may be and the Board and the Company shall not be required to make settlement of strikes, lockouts and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is, in the judgment of the Board or the Company, unfavorable to it.

Section 10.02 Remedies on Default. Whenever any event of default referred to in Section 10.01 hereof shall have occurred and be subsisting, the Board or the Company, as the case may be, may take whatever action at law or in equity may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant under this Agreement.

ARTICLE XI

OPTIONS IN FAVOR OF COMPANY

Section 11.01 Options to Terminate. The Company shall have the following options to cancel or terminate the term of this Agreement:

(a) At any time, the Company may terminate the Lease Term by giving written notice to the Board of such termination. The Company's cancellation and termination options hereunder will not be impaired or otherwise affected by any default or alleged default on the part of the Company under this Agreement.

(b) At any time, the Company may terminate this Agreement as to a part of the Project by giving written notice to the Board of such termination, and such termination shall forthwith become effective as to that part of the Project.

Section 11.02 Option to Purchase Property. Upon termination or expiration of the Lease Term or earlier termination of this Agreement as to a part of the Property, the Company shall have, and is hereby granted, the option to purchase the Property or that part of the Property as to which the Agreement has been terminated, as the case may be, for the purchase price, in each case, of One Dollar (\$1.00). This option may be exercised whether or not the Company is in default hereunder.

Section 11.03 Conveyance on Exercise of Option. Upon exercise of either of the options granted above, the Board will, upon receipt of the purchase price, deliver to the Company documents conveying to the Company title to the Property or to part of the Property, as the case shall be, by appropriate deeds, subject only to

(a) those liens and encumbrances, if any, to which title to said property was subject when conveyed to the Board;

(b) those liens and encumbrances created by or with the consent of the Company; and

(c) 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 Agreement.

ARTICLE XII

MISCELLANEOUS

Section 12.01 Notices. All notices and other communications provided for hereunder shall be written, and mailed via registered or certified mail or delivered via overnight express carrier, to the following addresses:

Board: The Industrial Development Board of
the City of Chattanooga
c/o Randall L. Nelson
Suite 400, Pioneer Building
801 Broad Street
Chattanooga, Tennessee 37402

Company: The River City Company
850 Market Street
2nd Floor Miller Plaza
Chattanooga, Tennessee 37402

With a copy to:

Brian L. Eftink, Esq.
Miller & Martin PLLC
Suite 1000, Volunteer Building
832 Georgia Avenue
Chattanooga, Tennessee 37402-2289

or, as to each party, at such other address as shall be designated by such party in a written notice to the other parties. All such notices and communications shall be deemed delivered as follows: (i) when mailing via overnight courier service, one business day after mailing, and (ii) when depositing in the United States mail by registered or certified mail, postage prepaid, return receipt requested, three days after deposit.

Section 12.02 Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Company, the Board, and their respective successors and assigns.

Section 12.03 Severability. If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 12.04 Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 12.05 Captions. The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope, extent or intent of any provision or Section hereof.

Section 12.06 Applicable Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Tennessee.

[SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, the Board and the Company have caused this Agreement to be duly executed in their respective corporate names, all as of the date first above written.

BOARD:

**THE INDUSTRIAL DEVELOPMENT BOARD
OF THE CITY OF CHATTANOOGA**

ATTEST:

By: _____
Secretary

By: _____
Chairman

COMPANY:

THE RIVERCITY COMPANY

By: _____

Name: _____

Title: _____

STATE OF TENNESSEE
COUNTY OF HAMILTON

Personally appeared before me, _____, Notary Public,
_____ and _____,
with whom I am personally acquainted, and who acknowledged that they executed the within
instrument for the purposes therein contained, and who further acknowledged that they are the
Chairman and Secretary of the Maker, **THE INDUSTRIAL DEVELOPMENT BOARD OF
THE CITY OF CHATTANOOGA**, and are authorized by the Maker to execute this instrument
on behalf of the Maker.

WITNESS my hand, at office, this ____ day of _____, 2008.

Notary Public
My Commission Expires: _____

STATE OF
COUNTY OF

Personally appeared before me, _____, Notary Public,
_____, with whom I am personally acquainted, and who
acknowledged that he executed the within instrument for the purposes therein contained, and
who further acknowledged that he is the _____ of the Maker,
THE RIVERCITY COMPANY, and is authorized by the Maker to execute this instrument on
behalf of the Maker.

WITNESS my hand, at office, this ____ day of _____, 2008.

Notary Public
My Commission Expires: _____

EXHIBIT A
REAL PROPERTY