
OMNIBUS AMENDMENT OF DOCUMENTS

Dated as of December __, 2019

Among

**CITY OF LEE'S SUMMIT, MISSOURI,
the City**

M150 ECHELON LAND DEVELOPMENT, LLC,

and

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

Relating to:

**City of Lee's Summit, Missouri
Taxable Industrial Development Revenue Bonds
(Residences at Echelon Project)
Series 2017**

OMNIBUS AMENDMENT OF DOCUMENTS

THIS OMNIBUS AMENDMENT OF DOCUMENTS dated as of December __, 2019 (the “Amendment”), among the **CITY OF LEE’S SUMMIT, MISSOURI**, a constitutional charter city and municipal corporation duly organized and existing under the laws of the State of Missouri (the “City”), **M150 ECHELON LAND DEVELOPMENT, LLC**, a Missouri limited liability company (the “Company”), and **BOKF, N.A.**, Kansas City, Missouri, 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 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 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 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 passed Ordinance No. 8069 (the “Ordinance”) on January 12, 2017, authorizing the City to issue its Taxable Industrial Development Revenue Bonds (Residences at Echelon Project), Series 2017, in the maximum principal amount of \$27,000,000 (the “Bonds”), for the purpose of acquiring and improving certain real property located generally at the Northwest corner of 291 and 150 Highways in the City (the “Project Site”), including the construction and improvement of a luxury apartment complex on the Project Site (the “Project Improvements,” together with the Project Site, the “Project”).

3. The City leased the Project to the Company pursuant to the Lease Agreement dated as of March 1, 2017 (the “Lease”) between the City and the Company.

4. The Company is the sole bondowner with respect to the Bonds (the “Bondowner”).

5. In connection with the Project, the City entered into a Performance Agreement dated as of March 1, 2017 (the “Performance Agreement”), with the Company, pursuant to which the Company agreed to make certain payments in lieu of taxes for a period starting in 2017 and ending in 2028.

6. The completion of the Project Improvements has been delayed, causing the economic effect of the current schedule of payments in lieu of taxes to have an unanticipated negative consequence on the Company, in that a full payment in lieu of tax computed based on the full project completion is due under the Performance Agreement for 2019, but the Project Improvements are not yet complete.

7. Unanticipated cost increases have caused the estimated cost of completing the Project Improvements to exceed the existing capacity of the Bonds.

8. The Company, the City, the Trustee and the Bondowner desire to extend the maturity of the Bond to December 1, 2029, to extend the term of the Lease to December 1, 2029, and to extend the abatement period under the Performance Agreement through 2029.

9. The Company, the City, the Trustee and the Bondowner desire to authorize additional bond capacity in the amount of \$9,000,000 for a total maximum principal amount of Bonds not to exceed \$36,000,000.

NOW, THEREFORE, for good and valuable consideration the Company, the City, the Trustee and the Bondowner agree as follows:

Section 1.1. Definitions of Words and Terms. For all purposes of this Amendment, except as otherwise provided or unless the context otherwise requires, words and terms used in this Amendment have the same meanings as set forth in **Section 101** of the Trust Indenture dated as of March 1, 2017 relating to the Bonds (the “Indenture”).

Section 1.2. Authority for Amendments. This Amendment is authorized and permitted in accordance with Section 1102 and Section 1202 of the Indenture, and Section 14.1 of the Lease. This Amendment constitutes a Supplemental Indenture, a Supplemental Lease and an amendment to the Lease, as described under such sections. This Amendment is also an amendment to the Performance Agreement.

Section 1.3. Amendment of Lease. Section 3.2 of the Lease is deleted and the following inserted in lieu thereof:

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, 2029.

Additionally, the reference to “December 1, 2028” in Section 5.1 of the Lease is hereby deleted and replaced with “December 1, 2029.”

Section 1.4. Amendment of and Supplement to Indenture. **Exhibit C** of the Indenture is hereby deleted, and **Exhibit A** attached to this Amendment is inserted in lieu thereof, and as soon as possible after the date of this Amendment, a new Bond in substantially the form attached hereto shall be issued for no additional consideration. Such new Bond shall be issued only upon the surrender and cancellation of the original Bond held by the Company as Bondowner. The Company, as sole Bondowner of the Bond, hereby consents to the terms of this Amendment, surrenders the Bond to the Trustee for cancellation and directs the Trustee to execute this Amendment. All references to “December 1, 2028” in Section 208(a) and Section 208(f) of the Indenture are hereby deleted and replaced with “December 1, 2029.” The provisions of Section 1104 and Section 1203 of the Indenture are hereby waived with respect to this Amendment.

Section 1.5. Amendment of Performance Agreement. Section 3.1 of the Performance Agreement is hereby amended by the deletion of “2028” and the insertion of “2029” as the last year of the exemption period. Article VII of the Performance Agreement is hereby amended by the deletion of “December 1, 2028” and the insertion of “December 1, 2029” as the Stated Expiration Date for the Performance Agreement. **Exhibit B – PILOT SCHEDULE**, of the Performance Agreement is hereby deleted and **Exhibit B** attached to this Amendment is inserted in lieu thereof.

Section 1.6. Amendment of Aggregate Maximum Principal Amount. The applicable provisions of the Indenture, the Lease, the Performance Agreement and the Bond Purchase Agreement dated as of March 1, 2017, relating to the Bonds, are hereby amended to authorize a total Cumulative Outstanding Principal Amount of Bonds not to exceed \$36,000,000. The Company, as Bondowner, hereby restates and confirms the representations made by it in the Representation Letter dated as of March 31, 2017 with respect to the Bonds as of the date of this Amendment and with respect to the reissued Bond in the amount of not to exceed \$36,000,000.

Section 1.7. Legal Description. The legal description for the Project Site shown in **Exhibit A** to the Indenture, **Exhibit A** to the Lease, and **Exhibit A** to the Performance Agreement is hereby deleted and replaced with the legal description shown on **Exhibit C** attached hereto.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Company, the City, the Trustee and the Bondowner have caused this Amendment to be duly executed by their duly authorized officers, all as of the day and year first above written.

M150 ECHELON LAND DEVELOPMENT, LLC,
a Missouri limited liability company,
as Company

By its Member:

Frederick J. Delibero Trust Agreement dated November
6, 2013

By: _____
Name: Frederick J. Delibero
Title: Trustee

M150 ECHELON LAND DEVELOPMENT, LLC,
a Missouri limited liability company,
as Bondowner

By its Member:

Frederick J. Delibero Trust Agreement dated November
6, 2013

By: _____
Name: Frederick J. Delibero
Title: Trustee

**THE CITY OF LEE'S SUMMIT,
MISSOURI**

By: _____
Mayor

ATTEST:

City Clerk

BOKF, N.A., as Trustee

By: _____

Name:

Title:

ACKNOWLEDGMENT AND CONSENT

The undersigned, as “Lender” under the above described Indenture and Lease, hereby consents to the execution and delivery of the foregoing Omnibus Amendment of Documents.

[MORTGAGE LENDER**]**

By: _____
Name:
Title:

EXHIBIT A

(FORM OF SERIES 2017 BOND)

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 LEE'S SUMMIT, MISSOURI
TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BOND
(RESIDENCES AT ECHELON PROJECT)
SERIES 2017**

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Dated Date</u>
2.00%	December 1, 2029	March 31, 2017

OWNER: M150 ECHELON LAND DEVELOPMENT, LLC

MAXIMUM PRINCIPAL AMOUNT: NOT TO EXCEED THIRTY-SIX MILLION DOLLARS

THE CITY OF LEE'S SUMMIT, MISSOURI, a constitutional charter city and municipal corporation duly 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, 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 Lee’s Summit, Missouri, Taxable Industrial Development Revenue Bonds (Residences at Echelon Project), Series 2017,” in the maximum aggregate principal amount of \$36,000,000 (the “Bonds”), to be issued for the purpose of acquiring and improving certain real property located generally at the Northwest corner of 291 and 150 Highways in the City (the “Project Site,” as more fully described on **Exhibit A** to the Lease (defined below)), including the construction and improvement of a luxury apartment complex (the “Project Improvements”). The City will lease the Project Site and the Project Improvements (collectively, the “Project”) to M150 Echelon Land Development, LLC, a Missouri limited liability company (the “Company”), under the terms of a Lease Agreement dated as of March 1, 2017 (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, the 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 March 1, 2017 (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.*

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 prior to maturity as provided in the Indenture.

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 are 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 Lee’s Summit, Missouri, Bond Fund – M150 Echelon Land Development, LLC.”

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 reasonably 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.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the City of Lee's Summit, 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 LEE'S SUMMIT, 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

TABLE OF CUMULATIVE OUTSTANDING PRINCIPAL AMOUNT

**CITY OF LEE'S SUMMIT, MISSOURI
TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BOND
(RESIDENCES AT ECHELON PROJECT)
SERIES 2017**

Bond No. 1

Date	Principal Amount Advanced	Principal Amount Redeemed	Cumulative Outstanding Principal Amount	Notation Made By

EXHIBIT B
PILOT SCHEDULE

<u>YEAR</u>	<u>AMOUNT</u>
2017	\$20,421
2018	20,421
2019	20,421
2020	241,299
2021	241,299
2022	241,299
2023	247,331
2024	247,331
2025	247,331
2026	247,331
2027	247,331
2028	253,514
2029	253,514

EXHIBIT C

LEGAL DESCRIPTION OF PROJECT SITE

[**insert platted legal description**]