

BILL NO. 16-106

AN ORDINANCE AUTHORIZING THE ISSUANCE OF TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BONDS, IN A PRINCIPAL AMOUNT NOT TO EXCEED \$6,500,000, TO PAY THE COSTS OF AN INDUSTRIAL DEVELOPMENT PROJECT FOR KC SUMMIT TECHNOLOGY LLC, A DELAWARE LIMITED LIABILITY COMPANY; AUTHORIZING AND APPROVING CERTAIN DOCUMENTS; AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF THE BONDS

WHEREAS, the City of Lee's Summit, Missouri (the "City") is a constitutional charter city and municipal corporation of the State of Missouri, duly created, organized and existing under and by virtue of the Constitution and laws of the State of Missouri; and,

WHEREAS, the City is authorized under the provisions of the Article VI, Section 27 of the Missouri Constitution, as amended, and Sections 100.010 to 100.200, inclusive, of the Missouri Revised Statutes, as amended, and the City of Lee's Summit Charter, 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 finance the costs of such projects and to lease or sell such projects to others, and to pledge the payments, revenues and receipts from such projects as security for the payment of the principal of, redemption premium, if any, and interest on such bonds; and,

WHEREAS, the City on June 18, 1998 issued its Taxable Industrial Development Revenue Bonds (Townsend Summit, LLC), Series 1998, in the maximum principal amount of \$100,000,000 (the "Series 1998 Bonds"), for the purpose of providing funds to finance the costs of purchasing and constructing an industrial development project in the City, including land, buildings and fixtures (the "Original Project"), and, in connection therewith, the City leased the Project to Townsend Summit, LLC, a Delaware limited liability company ("Townsend"); and,

WHEREAS, in 2007, Townsend agreed to sell a portion of the Original Project consisting of two buildings of approximately 1,037,985 square feet together (the "2007 Project") to KC Summit Technology LLC, a Delaware limited liability company (the "Company") with the real property on which such buildings are located (which is legally described in Exhibit A to the Original Lease (defined below)); and,

WHEREAS, in connection with the sale of the 2007 Project to the Company, the Company requested that the Series 1998 Bonds be refunded by the issuance by the City of its Taxable Industrial Development Refunding Revenue Bonds (Summit Technology Center Project), Series 2007 (the "Series 2007 Bonds"), in the maximum principal amount of \$51,590,988.52; and,

WHEREAS, pursuant to Ordinance No. 6460 passed on August 2, 2007, the City (i) entered into a Trust Indenture dated as of August 1, 2007 (the "Original Indenture"), with UMB Bank, N.A., Kansas City, Missouri, as bond trustee (the "Trustee"), for the purpose of issuing and securing the Series 2007 Bonds, and (ii) entered into the Lease Agreement dated as of August 1, 2007 (the "Original Lease"), with the Company, under which the City (a) caused the proceeds of the Series 2007 Bonds to be used to refund the Series 1998 Bonds, and (b) leased the 2007 Project to the Company in consideration of payments to be made by the Company to the Trustee which are to be sufficient to pay the principal of and interest on the Series 2007 Bonds as the same become due; and,

BILL NO. 16-106

WHEREAS, on December 17, 2015, the Company sold a portion of the 2007 Project consisting of the north building of the Lee's Summit Technology Center (the "North Building"), together with the real property on which the North Building is located, to Cerner Properties, Inc., a Delaware corporation ("Cerner"); and,

WHEREAS, in connection with the sale of the North Building to Cerner, the Company and the City entered into the First Supplemental Lease Agreement dated as of December 1, 2015 (the "First Supplemental Lease"), for the purpose of (i) modifying the amounts of the payments in lieu of taxes payable by the Company under the Original Lease (to account for the removal of the North Building), (ii) amending the legal description of the 2007 Project (to remove the North Building), and (iii) making other conforming changes thereto; and,

WHEREAS, the Company now requests that the City approve (i) an increase in the size and scope of the 2007 Project, (ii) the issuance of additional Taxable Industrial Development Revenue Bonds under the Original Indenture in the principal amount of not to exceed \$6,500,000 (the "Additional Bonds," and together with the Series 2007 Bonds, collectively, the "Bonds") (increasing the authorized amount of the Bonds to a maximum principal amount of \$58,090,988.52), (iii) the extension of the term of the *ad valorem* real property tax abatement on the 2007 Project, (iv) the modification of the amounts of the payments in lieu of taxes payable by the Company under the Original Lease, as previously supplemented, and (v) the modification of the Original Lease to extend the term thereof through December 31, 2028; and,

WHEREAS, the City, in accordance with Section 100.050 of the Act, has prepared a plan for industrial development (the "2016 Plan") for the Company, with respect to a project consisting of (1) the design and construction of potential improvements to the south building of the Lee's Summit Technology Center and (2) associated site work and infrastructure related thereto, all at a cost of approximately \$6,500,000 (the "2016 Project," and together with the 2007 Project, collectively, the "Project"); and,

WHEREAS, following notice to affected taxing jurisdictions in accordance with Section 100.059.1 of the Act and a public hearing, the City Council passed Ordinance No. 7850 on March 31, 2016, which Ordinance approved the 2016 Plan; and,

WHEREAS, the City further finds and determines that it is necessary and desirable in connection with the authorization of the Additional Bonds that the City enter into certain documents, and that the City take certain other actions and approve the execution of certain other documents as herein provided.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEE'S SUMMIT, MISSOURI, AS FOLLOWS:

SECTION 1. Authorization of the Additional Bonds. The City is hereby authorized to issue the Additional Bonds under the Indenture (defined below), which shall be designated Taxable Industrial Development Refunding and Improvement Revenue Bonds (Summit Technology Center Project), Series 2007, in an aggregate principal amount of not to exceed \$6,500,000, for the purpose of providing funds to pay the costs of the 2016 Project. The Additional Bonds shall bear such date, shall mature at such time, shall be in such denominations, shall bear interest at such rate (not to exceed 8.00%), shall be in such form, shall be subject to redemption, shall be

BILL NO. 16-106

purchased by the Company, shall have such other terms and provisions, shall be issued, executed and delivered in such manner and shall be subject to such provisions, covenants and agreements as are specified in the Indenture upon the execution thereof, and the signatures of the officers of the City executing the Indenture shall constitute conclusive evidence of their approval and the City's approval thereof.

SECTION 2. Limitation on Liability. The Bonds and the interest thereon shall be limited obligations of the City payable solely out of the payments, revenues and receipts derived by the City from the Lease (defined below), and such payments, revenues and receipts shall be pledged and assigned to the Trustee as security for the payment of the Bonds as provided in the Indenture. The Bonds and interest thereon shall not be deemed to constitute a debt or liability of the City within the meaning of any constitutional provision, statutory limitation or City Charter provision and shall not constitute a pledge of the full faith and credit of the City. The issuance of the Bonds shall not, directly, indirectly or contingently, obligate the City to levy any form of taxation therefore or to make any appropriation for their payment.

SECTION 3. Approval and Authorization of Documents. The City is hereby authorized to enter into the following documents (the "City Documents"), in substantially the forms presented to and approved by the City Council, with such changes therein as are approved by the officials of the City executing the documents, such officials' signatures thereon being conclusive evidence of their approval thereof:

- (a) Amended and Restated Trust Indenture dated as of the date set forth therein (the "Indenture"), between the City and the Trustee, pursuant to which (i) the Series 2007 Bonds are issued and the Additional Bonds shall be issued and (ii) the City shall pledge and assign the payments, revenues and receipts received pursuant to the Lease to the Trustee for the benefit and security of the owners of the Bonds upon the terms and conditions as set forth in the Indenture; and
- (b) Second Supplemental Lease Agreement dated as of the date set forth therein (the "Second Supplemental Lease," together with the Original Lease and the First Supplemental Lease, collectively referred to herein as the "Lease"), between the City and the Company.

SECTION 4. Execution of Documents. The Mayor of the City is hereby authorized and directed to execute the Bonds and to deliver the Bonds to the Trustee for authentication for and on behalf of and as the act and deed of the City in the manner provided in the Indenture. The Mayor, the City Manager and the Director of Finance of the City are hereby authorized and directed to execute the City Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance, for and on behalf of and as the act and deed of the City. The City Clerk of the City is hereby authorized and directed to attest to and affix the seal of the City to the Bonds and the City Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

SECTION 5. Further Authority. The City shall, and the officials, agents and employees of the City are hereby authorized to, take such further action, and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance and to carry out, comply with and perform the duties of the City with

BILL NO. 16-106

respect to the Bonds and the City Documents. The Mayor, the City Manager and the Director of Finance of the City are hereby authorized, through the term of the Lease, to execute all documents on behalf of the City (including any estoppel certificates or other documents necessary in connection with the ground lease on the site where the Project is located) as may be required to carry out and comply with the intent of this Ordinance and the City Documents.

SECTION 6. Governing Law. This Ordinance shall be governed exclusively by and construed in accordance with the applicable laws of the State of Missouri.

SECTION 7. Effective Date. This Ordinance shall take effect and be in full force from and after its passage and adoption by the City Council and approval by the Mayor.

PASSED by the City Council of the City of Lee's Summit, Missouri, this _____ day of - _____, 2016.

Mayor *Randall L. Rhoads*

ATTEST:

City Clerk *Denise R. Chisum*

APPROVED by the Mayor of said City this _____ day of _____, 2016.

Mayor *Randall L. Rhoads*

ATTEST:

City Clerk *Denise R. Chisum*

APPROVED AS TO FORM:

City Attorney *Brian W. Head*