

**ORDINANCE #67414**  
**Board Bill No. 323**  
**Committee Substitute**

An ordinance directing the Board of Public Service to adopt Leadership in Energy and Environmental Design (LEED) Green Building rating system for all newly constructed and renovated city-owned facilities.

**WHEREAS**, buildings consume 30% of the total energy and 60% of electricity generated in the United States; and

**WHEREAS**, many federal, state, and municipal governmental bodies have recognized the positive role they can play in helping to establish a market for environmentally-preferable design and construction materials by promulgating green building ordinances and guidelines; and

**WHEREAS**, the United States Green Building Council (USGBC), a non-profit, nationally recognized association with membership representing all segments of the building industry, including architects, manufacturers, government agencies, and environmentalists, has created LEED, a green building rating system that provides specific principles and practices, some mandatory but the majority discretionary, that may be applied during the design, construction, and operation phases, which enable the building to be awarded points from reaching preset standards of environmental efficiency so that it may achieve LEED certification from the USGBC as a "green" building; and

**WHEREAS**, LEED is recognized nation-wide by public and private sectors alike as a credible and viable guide for realizing the goal of a sustainable, energy efficient building that achieves significant cost savings over its lifespan; and

**WHEREAS**, thoughtful planning and design decisions made by the Board of Public Service in the construction and remodeling of city-owned facilities and leaseholds can result in significant cost savings to the City of St. Louis over the life of such facilities and leaseholds; and

**WHEREAS**, LEED ensures that through all stages of a new building's lifecycle: design, construction, and operation, the building will have a less negative impact on the environment and a more positive impact on the health and productivity of its workers as well as the financial strength of this City;

**BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:**

**SECTION ONE.** That the Board of Public Service is hereby directed to employ the LEED Green Building Rating System, Version 2.2 throughout their design, construction, and operation of all newly constructed city-owned facilities greater than five thousand (5000) square feet in size and that each new facility must achieve the LEED silver level of certification.

**SECTION TWO.** The USGBC intends to release a revised version of the LEED Green Building Rating System every three years; and with this in consideration when beginning a new building project, the Board of Public Service shall refer to the most current version of the LEED Green Building Rating System in existence; and after registering with the USGBC at the design stage of the project as is required, the Board of Public Service may adhere to that existing version until completion of the project, regardless of any new LEED version that may be released at a later time.

**SECTION THREE.** The Board of Public Service is further directed to apply LEED principles included in LEED-New Construction, LEED-Commercial Interiors and LEED-Existing Buildings during retrofit and renovation projects of current standing facilities whenever it is practicable.

**SECTION FOUR.** Projects with sites acquired and designed prior to the effective date of this ordinance shall comply with the LEED Silver standard to the extent possible.

**Approved: February 16, 2007**

**ORDINANCE #67415**  
**Board Bill No. 349**

**AN ORDINANCE AMENDING ORDINANCE NO. 66237 ADOPTED BY THE BOARD OF ALDERMEN ON MARCH 30, 2004; AUTHORIZING THE EXECUTION OF AN AMENDMENT TO REDEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY AND ROTHSCHILD WINZERLING LLC; PRESCRIBING THE FORM AND DETAILS OF SAID AMENDMENT; MAKING CERTAIN FINDINGS WITH RESPECT THERETO; AUTHORIZING OTHER RELATED ACTIONS; AND CONTAINING A SEVERABILILTY CLAUSE.**

**WHEREAS**, pursuant to Ordinance No. 66236, the City designated a portion of the City a Redevelopment Area and approved the Caitlin Townhomes TIF Redevelopment Plan (the "Redevelopment Plan") and the Redevelopment Project, all as described therein; and

**WHEREAS**, pursuant to Ordinance No. 66236, the City adopted tax increment allocation financing within the Redevelopment Area, and established the Special Allocation Fund for the Redevelopment Project, all as provided for and in

accordance with the TIF Act and described therein; and

**WHEREAS**, pursuant to Ordinance No. 66237, the City authorized the execution of a TIF Redevelopment Agreement (the "Redevelopment Agreement") between the City and Rothschild Winzerling LLC (the "Developer"), in furtherance of the Redevelopment Plan, with such Redevelopment Agreement to be in the form attached thereto; and

**WHEREAS**, the Redevelopment Agreement was subsequently executed by the City and Developer as provided in and in accordance with Ordinance No. 66237, which Redevelopment Agreement is dated as of October 1, 2004; and

**WHEREAS**, Section 3.4 of the Redevelopment Agreement, as authorized by the City, provides that the Developer shall substantially complete or cause the Work to be substantially complete, as those terms are defined therein, not later than December 31, 2006 absent any event of Force Majeure and not later than December 31, 2007 in the event of a delay caused by an event of Force Majeure; and

**WHEREAS**, it is hereby found and determined that it is necessary and advisable and in the best interest of the City and of its inhabitants to authorize the City to execute an Amendment to the Redevelopment Agreement, in order to amend the Redevelopment Agreement as it concerns the date by which the Work must be complete or substantially complete; and

**WHEREAS**, the Board of Aldermen hereby determines that the terms of the Amendment to Redevelopment Agreement attached as **Exhibit A** hereto and incorporated herein by reference are acceptable and that the execution, delivery and performance by the City and the Developer of the attached Amendment to Redevelopment Agreement is necessary and desirable and in the best interests of the City and the health, safety, morals and welfare of its residents, and in accord with the public purposes specified in the TIF Act.

**BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:**

**SECTION ONE.** The Board of Aldermen hereby approves, and the Mayor and Comptroller of the City are hereby authorized and directed to execute, on behalf of the City, the Amendment to Redevelopment Agreement by and between the City and the Developer attached hereto as **Exhibit A**, and the City Register is hereby authorized and directed to attest to the Amendment to Redevelopment Agreement and to affix the seal of the City thereto. The Amendment to Redevelopment Agreement shall be in substantially the form attached, with such changes therein as shall be approved by said Mayor and Comptroller executing the same and as may be consistent with the intent of this Ordinance and necessary and appropriate in order to carry out the matters herein authorized.

**SECTION TWO.** The Mayor and Comptroller of the City or their designated representatives are hereby authorized and directed to take any and all actions to execute and deliver for and on behalf of the City any and all additional certificates, documents, agreements or other instruments as may be necessary and appropriate in order to carry out the matters herein authorized, with no such further action of the Board of Aldermen necessary to authorize such action by the Mayor and the Comptroller or their designated representatives.

**SECTION THREE.** The Mayor and the Comptroller or their designated representatives, with the advice and concurrence of the City Counselor and after approval by the Board of Estimate and Apportionment, are hereby further authorized and directed to make any changes to the documents, agreements and instruments approved and authorized by this Ordinance as may be consistent with the intent of this Ordinance and necessary and appropriate in order to carry out the matters herein authorized, with no such further action of the Board of Aldermen necessary to authorize such changes by the Mayor and the Comptroller or their designated representatives.

**SECTION FOUR.** It is hereby declared to be the intention of the Board of Aldermen that each and every part, section and subsection of this Ordinance shall be separate and severable from each and every other part, section and subsection hereof and that the Board of Aldermen intends to adopt each said part, section and subsection separately and independently of any other part, section and subsection. In the event that any part, section or subsection of this Ordinance shall be determined to be or to have been unlawful or unconstitutional, the remaining parts, sections and subsections shall be and remain in full force and effect, unless the court making such finding shall determine that the valid portions standing alone are incomplete and are incapable of being executed in accord with the legislative intent.

**EXHIBIT A  
Amendment to Redevelopment Agreement**

**AMENDMENT TO REDEVELOPMENT AGREEMENT**

This Amendment to Redevelopment Agreement ("**Amendment**") is made this \_\_\_ day of \_\_\_\_\_, 2007 by and between the CITY OF ST. LOUIS, MISSOURI ("**City**"), a city and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Missouri, and ROTHSCHILD WINZERLING LLC, a Missouri limited liability company ("**Developer**").

**RECITALS**

A. The City is a party to that certain Redevelopment Agreement ("**Agreement**") dated as of October 1, 2004, by

and between the City and Developer, for redevelopment of a portion of the City of St. Louis in accordance with that certain Caitlin Townhomes TIF Redevelopment Plan and as approved and authorized by the City of St. Louis, Missouri pursuant to Ordinance Nos. 66236 and 66237 (the “Redevelopment Project”); and

B. Section 3.4 of the Agreement did provide that the Developer shall substantially complete or cause the Work to be substantially complete, absent any event of Force Majeure, not later than December 31, 2006, and, alternatively provided that in the event of a delay caused by an event of Force Majeure the Developer shall substantially complete or cause the Work to be substantially complete by not later than December 31, 2007, as such terms are defined in the Agreement, and did provide to the City the right to take certain actions pursuant to Sections 7.2 and 7.4 of the Agreement in the event that such Work was not substantially complete by December 31, 2006; and

C. Due to certain circumstances, additional time beyond that provided in the Agreement is required to complete the Work related to the Redevelopment Project, and the City acknowledges that it is in the best interests of the City and its residents for the general health, safety, morals and public welfare to provide Developer additional time within which to fulfill its obligation.

**AGREEMENT**

NOW, THEREFORE, in consideration of the above premises and of the mutual promises and covenants set forth herein, the parties hereby agree as follows:

1. Section 3.4 of the Agreement as originally executed is by this Amendment deleted, and replaced with the following:

“3.4 **Developer to Construct the Work.** The Developer shall commence or cause the commencement of the construction of the Work within one hundred eighty (180) days of the date of this Agreement, which Work shall be constructed in a good and workmanlike manner in accordance with the terms of this Agreement and the Redevelopment Plan. The Developer shall substantially complete or cause the Work to be substantially complete not later than June 30, 2007, absent an event of Force Majeure. In the event of any delay caused by an event of Force Majeure as defined in **Section 7.5** of this Agreement, Developer shall be granted additional time to complete the Work up to and including December 31, 2007.

The Developer may enter into or cause to be entered into one or more construction contracts to complete the Work. Prior to the commencement of construction of any portion of the Work, the Developer shall obtain or shall require that any of its contractors obtain workers’ compensation, comprehensive public liability, and builder’s risk insurance coverage in amounts customary in the industry for similar type projects. The Developer shall require that such insurance be maintained by any of its contractors for the duration of the construction of such portion of the Work. To the extent that laws pertaining to prevailing wage and hour apply to any portion of the Work, the Developer agrees to cooperate and take all actions necessary to apply for the wage and hour determinations and otherwise comply with such laws.”

2. This Amendment shall be construed and enforced in accordance with the laws of the State of Missouri and shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

3. No provision of this Amendment may be amended or modified, except by an instrument in writing signed by the parties.

4. Unless otherwise defined herein, any capitalized terms in this Amendment shall have the meanings provided in the Agreement.

5. This Amendment may be executed in multiple counterparts.

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

“CITY”

**CITY OF ST. LOUIS, MISSOURI**

By: \_\_\_\_\_  
Francis G. Slay, Mayor

By: \_\_\_\_\_  
Darlene Green, Comptroller

[SEAL]

Attest:

\_\_\_\_\_  
Parrie May, City Register

Approved as to Form:

\_\_\_\_\_  
Patricia Hageman, City Counselor

STATE OF missouri        )  
                                      ) SS.  
CITY OF ST. LOUIS        )

On this \_\_\_\_ day of \_\_\_\_\_, 2007, before me appeared Francis G. Slay, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the CITY OF ST. LOUIS, MISSOURI, a political subdivision of the State of Missouri, and that the seal affixed to the foregoing instrument is the seal of said City, and said instrument was signed and sealed in behalf of said City by authority of its Board of Aldermen, and said individual acknowledged said instrument to be the free act and deed of said City.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the City and State aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public

[SEAL]

My Commission Expires:

\_\_\_\_\_

STATE OF MISSOURI        )  
                                      ) SS.  
CITY OF ST. LOUIS        )

On this \_\_\_\_ day of \_\_\_\_\_, 2007, before me appeared Darlene Green, to me personally known, who, being by me duly sworn, did say that she is the Comptroller of the CITY OF ST. LOUIS, MISSOURI, a political subdivision of the State of Missouri, and that the seal affixed to the foregoing instrument is the seal of said City, and said instrument was signed and sealed in behalf of said City by authority of its Board of Aldermen, and said individual acknowledged said instrument to be the free act and deed of said City.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the City and State aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public

[SEAL]

My Commission Expires:

**Developer**

**Rothschild Winzerling LLC**, a Missouri limited liability company

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF MISSOURI        )  
                                      ) SS.  
CITY OF ST. LOUIS        )

I HEREBY CERTIFY, that on this \_\_\_\_ day of \_\_\_\_\_, 2007, before me, the undersigned Notary Public of said State, personally appeared \_\_\_\_\_, who acknowledged himself to be the \_\_\_\_\_ of Rothschild Winzerling LLC, a Missouri limited liability company, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within

instrument, and acknowledged that he executed the same for the purposes therein contained as such duly authorized \_\_\_\_\_ by signing the name of Rothschild Winzerling LLC by himself as such \_\_\_\_\_.

WITNESS my hand and Notarial Seal.

\_\_\_\_\_  
Name (print): \_\_\_\_\_  
Notary Public in and for said State  
Commission Expires:

Approved: February 16, 2007

**ORDINANCE #67416  
Board Bill No. 353**

An ordinance recommended by the Board of Public Service; authorizing the Board of Public Service to execute and deliver of behalf of the City a design-build contract in substantially the form attached as Exhibit A with Animal House Fund, Inc., a Missouri not for profit corporation, for the design and construction by Animal House Fund, Inc., at its sole cost and expense, and donation to the City, of an animal shelter in a portion of Arsenal-Ellendale Park.

**WHEREAS**, the City’s present animal shelter is obsolete and inadequate;

**WHEREAS**, the City does not currently have funds available for a new animal shelter;

**WHEREAS**, pursuant to its standard procedures, the Office of the President of the Board of Public Service caused the organization of a Selection Committee, which issued a Request for Proposals for funding and professional services for the design and construction of an animal care and adoption center to be located in Ellendale/Arsenal Park;

**WHEREAS**, in response to such Request for Proposals, Animal House Fund, Inc., a Missouri not-for-profit corporation, submitted a proposal in which it offered to design and construct an animal care and adoption center at such location, at no cost to the City, which it will donate to the City upon its completion, which proposal was approved by the Selection Committee;

**WHEREAS**, the provision of animal care and animal adoption services is both a recreational activity and a public service suitable for location by the City in a city park, provided that the design of the facility is compatible with the park;

**WHEREAS**, the proposal of Animal House Fund is for a Leadership in Energy and Environmental Design (“LEED”) certified facility recessed in a hillside at a corner of an underused area of Arsenal/Ellendale Park, at an intersection of two major streets;

**WHEREAS**, a form of a design/build contract for the project is attached hereto as Exhibit A ; and

**WHEREAS**, the Board of Aldermen believes that the design and construction by Animal House Fund, Inc. of an animal care and adoption center is in the best interests of the City and of its citizens;

**Now Therefore,**

**BE IT ORDAINED BY THE CITY OF ST. LOUIS, AS FOLLOWS:**

**SECTION ONE.** Any provision of Ordinance 59171 (Ch. 22.42, Revised Code City of St. Louis 1994, Anno.) to the contrary notwithstanding, the President of the Board of Public Service is hereby authorized to execute and deliver, on behalf of the City of St. Louis, a contract between the City of St. Louis and Animal House Fund, Inc. for Design/Build Services for an Animal Care and Adoption Center at Arsenal/Ellendale Park, in substantially the form attached hereto as Exhibit A, which is incorporated herein by this reference, and to take such other actions consistent herewith and with Exhibit A hereto as are needed to effect the design and construction of the Animal Care and Adoption Center.

112/19/06

**CONTRACT BETWEEN  
CITY OF ST. LOUIS AND ANIMAL HOUSE FUND, INC.  
FOR  
DESIGN/BUILD SERVICES**

DESIGN BUILDER: ANIMAL HOUSE FUND, INC.  
Federal ID. #: 30-0177612  
Contract No.:

Contract Amount: n/a

Comptroller Document Number:

subject to revisions

**Table of Contents**

|   | <b>Page</b> |
|---|-------------|
| DEFINITIONS   | 5           |
| ARTICLE II.   | 8           |
| THE PROJECT   | 8           |
| ARTICLE III.  | 9           |
| INTENT/REFERENCES                                   | 9           |
| ARTICLE IV.   | 10          |
| DIFFERING SITE CONDITIONS/HAZARDOUS SITE CONDITIONS | 10          |
| ARTICLE V.  | 11          |
| DESIGN/BUILDER'S RESPONSIBILITY                     | 11          |
| ARTICLE VI  | 14          |
| TESTS, INSPECTION DEFECTIVE CONSTRUCTION            | 14          |
| ARTICLE VII.  | 15          |
| EXPENSES  | 15          |
| ARTICLE VIII.                                       | 15          |
| CONTRACT TIME/EFFECT OF DELAY/TIME CHANGES          | 15          |
| ARTICLE IX.   | 18          |
| CONTRACT DOCUMENTS                                  | 18          |
| ARTICLE X.  | 1918        |
| NOTICE  | 1918        |
| ARTICLE XI.   | 19          |
| BUDGET  | 19          |
| ARTICLE XII.  | 2221        |
| CHANGES IN THE WORK                                 | 2221        |
| ARTICLE XIII.                                       | 22          |
| WAIVER OF RIGHTS AND INSURANCE MATTERS              | 22          |
| ARTICLE XIV   | 23          |
| PATENT LIABILITY                                    | 23          |
| ARTICLE XV  | 23          |
| GUARANTEE/WARRANTY                                  | 23          |
| ARTICLE XVI   | 24          |
| CLEANING UP   | 24          |
| ARTICLE XVII  | 24          |
| CONVENANT AGAINST UNDUE INFLUENCE                   | 24          |
| ARTICLE XVIII                                       | 24          |
| RECORDS REGARDING PAYMENT                           | 24          |
| ARTICLE XIX.  | 2524        |
| RIGHT OF AUDIT                                      | 25          |
| ARTICLE XX.   | 25          |
| SUSPENSION OF THE WORK                              | 25          |
| ARTICLE XXI.  | 2625        |
| TERMINATION OF CONTRACT                             | 2625        |
| ARTICLE XXII.                                       | 2625        |
| COMPLIANCE WITH LAWS                                | 2625        |
| ARTICLE XXIII                                       | 26          |
| M/WBE PARTICIPATION GOALS                           | 26          |
| ARTICLE XXIV  | 2726        |
| RECORD DOCUMENTS                                    | 2726        |
| ARTICLE XXV   | 27          |
| ACCESS TO SITE                                      | 27          |
| ARTICLE XXVI  | 27          |
| COMPETENCE  | 27          |
| ARTICLE XXVII                                       | 27          |
| STORAGE OF MATERIALS AND EQUIPMENT/USE OF SITE      | 27          |
| ARTICLE XXVIII.                                     | 28          |
| SAFETY/EMERGENCIES                                  | 28          |
| ARTICLE I.  | 7           |
| DEFINITIONS   | 7           |
| ARTICLE II.   | 10          |
| THE PROJECT   | 10          |
| ARTICLE III.  | 12          |

|   |     |
|---|-----|
| INTENT/REFERENCES .....                                   | 121 |
| ARTICLE IV .....  | 12  |
| DIFFERING SITE CONDITIONS/HAZARDOUS SITE CONDITIONS ..... | 12  |
| ARTICLE V .....   | 13  |
| DESIGN/BUILDER'S RESPONSIBILITY .....                     | 13  |
| ARTICLE VI .....  | 16  |
| OTHER CONSTRUCTION .....                                  |     |
| ARTICLE VII .....   | 16  |
| TESTS, INSPECTION DEFECTIVE CONSTRUCTION .....            | 16  |
| ARTICLE VIII .....  | 177 |
| CONTRACT AMOUNT .....                                     | 177 |
| ARTICLE IX .....  | 187 |
| CONTRACT TIME/EFFECT OF DELAY/TIME CHANGES .....          | 187 |
| ARTICLE X .....   | 209 |
| CONTRACT DOCUMENTS .....                                  | 209 |
| ARTICLE XI .....  | 20  |
| NOTICE .....  | 20  |
| ARTICLE XII .....   | 20  |
| PAYMENTS .....  |     |
| ARTICLE XIII .....  | 24  |
| CHANGES IN THE WORK .....                                 | 243 |
| ARTICLE XIV .....   | 244 |
| WAIVER OF RIGHTS .....                                    | 244 |
| ARTICLE XV .....  | 254 |
| PATENT LIABILITY .....                                    | 25  |
| ARTICLE XVI .....   | 25  |
| GUARANTEE/WARRANTY .....                                  | 25  |
| ARTICLE XVII .....  | 26  |
| CLEANING UP .....   | 26  |
| ARTICLE XVIII .....                                       | 26  |
| CONVENANT AGAINST UNDUE INFLUENCE .....                   | 26  |
| ARTICLE XIX .....   | 26  |
| RECORDS REGARDING PAYMENT .....                           | 26  |
| ARTICLE XX .....  | 27  |
| RIGHT OF AUDIT .....                                      | 27  |
| ARTICLE XXI .....   | 27  |
| SUSPENSION OF THE WORK .....                              | 27  |
| ARTICLE XXII .....  | 28  |
| TERMINATION OF CONTRACT .....                             | 28  |
| ARTICLE XXIII .....                                       | 28  |
| COMPLIANCE WITH LAWS .....                                | 28  |
| ARTICLE XXIV .....  | 29  |
| M/WBE PARTICIPATION GOALS .....                           | 29  |
| ARTICLE XXV .....   | 29  |
| RECORD DOCUMENTS .....                                    | 29  |
| ARTICLE XXVI .....  | 29  |
| ACCESS TO SITE .....                                      | 29  |
| ARTICLE XXVII .....                                       | 30  |
| COMPETENCE .....  | 30  |
| ARTICLE XXVIII .....                                      | 30  |
| STORAGE OF MATERIALS AND EQUIPMENT/USE OF SITE .....      | 30  |
| ARTICLE XXIX .....  | 30  |
| SAFETY/EMERGENCIES .....                                  | 30  |
| ARTICLE XXX .....   | 30  |
| CONFLICTS IN DOCUMENTS/DISPUTES .....                     | 30  |
| ARTICLE XXXI .....  |     |
| PERMITS AND LICENSES .....                                | 31  |
| ARTICLE XXXII .....                                       |     |
| CASH ALLOWANCES .....                                     |     |
| ARTICLE XXXIII .....                                      | 31  |
| NO PRESUMPTION AGAINST THE DRAFTER .....                  | 32  |
| ARTICLE XXXIV .....                                       | 32  |
| NO WAIVER BY CITY .....                                   | 32  |
| ARTICLE XXXV .....  | 32  |
| ATTORNEYS FEES .....                                      | 32  |
| ARTICLE XXXVI .....                                       | 32  |
| ENTIRE CONTRACT/INDEPENDENT CONTRACTOR .....              | 32  |
| ARTICLE XXXVII .....                                      | 32  |

SUBCONTRACTS, ASSIGNMENT OR TRANSFER . . . . . 32  
 ARTICLE XXXVIII. . . . . 33  
 TAXES . . . . . 33  
 ARTICLE XXXIX. . . . . 33  
 COMPLAINTS . . . . . 33  
 ARTICLE XL . . . . . 33  
 NOTICE TO PROPERTY OWNERS . . . . . 33  
 ARTICLE XLI. . . . . 33  
 GOVERNING LAWS . . . . . 34  
 ARTICLE XLII. . . . . 34  
 SECTION HEADINGS . . . . . 34  
 ARTICLE XLIII . . . . . 34  
 NOTICE OF CLAIM . . . . . 34  
 ARTICLE XLIV . . . . . 34  
 CUMULATIVE REMEDIES . . . . . 34  
 ARTICLE XLV . . . . . 34  
 SURVIVAL OF OBLIGATIONS . . . . . 34  
 ARTICLE XLVI. . . . . 34  
 SEVERABILITY . . . . . 35  
 ARTICLE XLVII . . . . . 35  
 INSURANCE/INDEMNITY . . . . . 35  
 ARTICLE XLVIII . . . . . 35  
 BONDS . . . . . 36  
 CONFLICTS IN DOCUMENTS/DISPUTES . . . . . 28  
 PERMITS AND LICENSES . . . . . 29  
 NO PRESUMPTION AGAINST THE DRAFTER . . . . . 29  
 NO WAIVER BY CITY . . . . . 29  
 ATTORNEYS FEES . . . . . 29  
 ENTIRE CONTRACT/INDEPENDENT CONTRACTOR . . . . . 30  
 SUBCONTRACTS, ASSIGNMENT OR TRANSFER . . . . . 30  
 TAXES . . . . . 30  
 COMPLAINTS . . . . . 30  
 NOTICE TO PROPERTY OWNERS . . . . . 31  
 GOVERNING LAWS . . . . . 31  
 SECTION HEADINGS . . . . . 31  
 CUMULATIVE REMEDIES . . . . . 31  
 SURVIVAL OF OBLIGATIONS . . . . . 32  
 SEVERABILITY . . . . . 32  
 INSURANCE/INDEMNITY . . . . . 32  
 BONDS . . . . . 33

**CONTRACT NO.**

**CONTRACT BETWEEN CITY OF ST. LOUIS AND ANIMAL HOUSE FUND, INC.**

THIS CONTRACT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by and between the City of St. Louis, Missouri ("City"), and Animal House Fund, Inc., a Missouri not-for-profit corporation ( sometimes referred to as "Design/Builder"), shall govern all labor, material, equipment, and services to be provided by Design/Builder for City on the Project described herein.

WHEREAS, the City has need of the Project described in these Contract Documents; and

WHEREAS, the **DEPARTMENT OF THE PRESIDENT, BOARD OF PUBLIC SERVICE**, an agency or department of the City of St. Louis, under the provisions of Ordinance No. \_\_\_\_\_, duly approved \_\_\_\_\_, and by virtue of the authority vested in such agency or department by the Charter and general ordinances of the City, intends to enter into one or more contracts for the Project; and

WHEREAS, City desires to enter into a Contract with Design/Builder to obtain labor, material, equipment and/or services as set forth herein; and

WHEREAS, Design/Builder represents that Design/Builder is equipped, competent, and able to undertake such an assignment;

NOW THEREFORE, in consideration of the mutual covenants and considerations herein contained, IT IS HEREBY AGREED by the parties hereto as follows:

**ARTICLE I.  
DEFINITIONS**

- A. Contract. The written contract between City and Design/Builder covering the Work; other Contract Documents are attached to the Contract and made a part thereof as provided therein.
- B. City. The word “City” used herein refers to the City of St. Louis.
- C. City’s Authorized Agent/Representative. The person authorized in writing by the City to act on the City’s behalf with respect to the project.
- D. Commencement Date. The date specified in the Notice to Proceed.
- E. Contract Amount: The amount of the contract is \$-0-.
- F. Contract Documents. This Contract, Addenda (which pertain to the Contract Documents), the Request For Proposals, Design/Builder’s Proposal, the Site Plan, Schematic Design drawings, Design Development drawings, Construction drawings, the Notice to Proceed, the Bonds, the General Conditions, the Supplementary Conditions, the General Requirements, the Specifications and the Drawings together with all Work Change Directives, Change Orders, Written Amendments, and Field Orders, issued on or after the Effective Date of the Contract. The Contract Documents also include those documents specifically identified by the City in the Request for Proposals.
- G. Comptroller. The word “Comptroller” used herein refers to the Comptroller of the City of St. Louis.
- H. Construction Manager. A Person or entity, including independent consultants, designated by the President of the Board of Public Service to serve as the liaison between the Design/Builder and the City. The Construction Manager plays a quality assurance role and makes certain that the contract documents are followed. If the Construction Manager is not a City employee, his compensation will be paid by the Design/Builder.
- I. Defective/Imperfect. An adjective which when modifying the term Construction refers to Construction that is unsatisfactory, faulty or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to City’s final acceptance, (unless responsibility for the protection thereof has been assumed by City at Substantial Completion).
- J. Design/Builder. The word “Design/Builder” used herein refers to the “Principal” party of the Contract, who has entered into this Contract, to wit: Animal House Fund, Inc.
- K. Drawings. Those portions of the Contract Documents prepared by or for Design/Builder and approved by City consisting of drawings, diagrams, illustrations, schedules and other data which show the scope, nature, extent, and character of the Work.
- L. Field Order. A written order issued by City which orders or approves Minor Changes in the Work but which does not involve a change in the project cost or the Contract Times.
- M. Fully Executed. The phrase “fully executed” used herein refers to those documents signed by the Design/Builder, the President and Secretary of the Board of Public Service, the Comptroller, the Register, and approved as to form by the City Counselor.
- N. Hazardous Condition. The presence at the site of the Project of asbestos, hazardous waste, PCB’s, petroleum products or radioactive materials in such quantities or circumstances that there is a danger to persons or property.
- O. Holiday. New Year’s Day, Memorial Day, Independence Day, Labor Day, Veteran’s Day, Thanksgiving Day, and Christmas Day are the only holidays granted and recognized by this Contract.
- P. Laws and Regulations. Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.
- Q. M/W/DBE. Minority Owned Business Enterprise, Women Owned Business Enterprise or Disadvantaged Business Enterprise.
- R. Minor Change. A change in the design or construction of the Project consistent with the intent of the Contract documents which does not involve an adjustment in the project costs and/ or the date of Substantial Completion and/ or Date of Final Completion; and does not materially and adversely affect the design of the Project, the quality of any of the materials or equipment specified in the Contract Documents, or the quality of workmanship required by the Contract Documents.
- S. Notice to Proceed. A written notice given by the City to Design/Builder establishing the date on which the Contract times will commence to run. Separate Notices shall be given for Design and for Construction.

- T. President. The word "President" used herein refers to the President of the Board of Public Service, or her/his Authorized Representative.
- U. Specifications. Those portions of the Contract Documents prepared by or for Design/Builder and approved by City consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Construction and certain administrative procedures applicable thereto.
- V. Proposal. The document submitted by Design/Builder in response to the Request for Proposals.
- W. Request for Proposals. The document prepared by or for City specifying and describing City's criteria, objectives and the procedure to be followed in preparing and submitting a Proposal and awarding a contract.
- X. Schedule. The schedule for the work which shall be prepared in accordance with the requirements of the Contract Documents and approved by the City.
- Y. Schedule of Values. A schedule prepared by Design/Builder and acceptable to City indicating that portion of the Contract Price to be paid for each major component of the Work.
- Z. Subconsultant. A duly licensed individual or entity designated by Design/Builder to perform or furnish specific design professional services in connection with the Work.
- AA. Subcontractor. An individual or entity other than a Supplier or Subconsultant having a direct contract with Design/Builder or with any other Subcontractor for the performance of a part of the Work.
- BB. Submittal. A written or graphic document prepared by or for Design/Builder which is required by the Contract Documents to be submitted to City by Design/Builder. Submittals may include Drawings, Specifications, progress schedules, shop drawings, samples, cash flow projections, and Schedules of Values. Submittals other than Drawings and Specifications are not Contract Documents unless specified otherwise in the Contract Documents.
- CC. Substantial Completion. The time at which the Construction (or a specified part) has progressed to the point where it is sufficiently complete, in accordance with the Contract Documents, so that the Construction (or a specified part) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Construction refer to Substantial Completion thereof.
- DD. Supplementary Conditions. The part of the Contract Documents which amends or supplements the Contract or General Conditions.
- EE. Treasurer. The word "Treasurer" used herein refers to the Treasurer of the City of St. Louis.
- FF. Work. The entire completed design, construction or the various separately identifiable parts thereof required to be performed or furnished under the Contract Documents. Work includes and is the result of performing or furnishing design professional services and construction required by the Contract Documents.
- GG. Work Change Directive. A written directive to Design/Builder, issued on or after the Effective Date of the Contract and signed by City ordering or approving an addition, deletion or revision in the Work, or responding to differing site conditions under which the Work is to be performed as provided in Article IV or to emergencies under Article XXIX.

**ARTICLE II.**  
**THE PROJECT**

Design/Builder shall provide all Work for the Project, which is generally described as follows:

Design and construction of an ANIMAL CARE AND ADOPTION CENTER ("ANIMAL HOUSE") at Ellendale/Arsenal Park, in a manner acceptable to the Board of Public Service at no cost to the City of St. Louis.

Design: The building shall be designed in a manner that improves the aesthetics of the impacted areas of park space. Design/Builder shall recess the building in the hillside at the upper northwest corner of an underused area of the park at the corner of McCausland and Arsenal in a manner acceptable to the Board of Public Service. The design and construction of the building shall meet the "LEED certified" criteria for sustainable design and construction.

The facility shall have the following features. All dimensions and numbers specified in this Article II may be increased or decreased by ten percent until conclusion of the Final Design Phase under Article V of this Contract, and may also be changed to comply with requirements of any applicable code or ordinance. Design/Builder may request the President to approve other changes in the features of the Facility until conclusion of the Final Design Phase for budgetary or other reasons, which approval shall not be unreasonably withheld.

Facility:

- 20,000 square foot enclosed heated and cooled structure with the ability to house 300 animals at any given time with an average length of stay being between two to three weeks based on health and behavior, including:
  - o Multi purpose community rooms
  - o Separate adoption and receiving lobbies
  - o Get acquainted rooms
  - o Modern kenneling system
  - o Surgery suite
    - Veterinary Services and Surgery Offices
    - Spay/neuters
    - Euthanasia
  - o Isolation wards
    - Quarantine
    - Euthanasia
- 1,000 square foot loading dock and trash storage area
- 26-car parking lot for combined employee and visitor use
- Parking area for ten (10) service vehicles set back from public view
- Fresh air exchange systems
- Other humane industry standards as appropriate
- Food Storage
- Laundry
- Office/Break Rooms/Volunteer workroom
- Gift shop
- All necessary structural, mechanical, electrical, HVAC, fire suppression, fire alarm and other components as required to provide an attractive and safe environment that meets all applicable building-related codes of the City of St. Louis.
- Finishes shall be designed in a manner that minimizes necessary maintenance.

The Design/Builder and each Sub-(Consultant/Contractor) shall evaluate and satisfy themselves, at no cost or expense to the City, as to the conditions and limitations under which the Work is to be performed, including, without limitation (1) the location, condition, layout and nature of the Project site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, and (4) availability and cost of materials, tools, and equipment. Design/Builder shall also take field measurements and verify field conditions, as applicable to its Work, before commencing Work. Design/Builder shall perform soil borings before commencing Work and shall design and construct the Work in accordance with the best practices of the design and construction trades as required to accommodate soil conditions. City makes no warranties on the condition of the project site. Neither the Contract Amount nor the Schedule shall be adjusted as a result of the Design/Builder's or any Sub-(Consultant/Contractor's) failure to comply with this paragraph.

Design/Builder shall perform all design and construction services, and provide all material, equipment, tools, labor and ancillary and associated services, necessary to complete the Work described in and reasonably inferable from the Contract Documents.

The Design/Builder shall supervise and direct all Work, using the Design/Builder's best skill and ability. The Design/Builder shall be responsible for all design/engineering services, construction means, methods, procedures and resources for the Work and its coordination.

### **ARTICLE III. INTENT/REFERENCES**

#### **A. Intent**

1. The Contract Documents comprise the entire Contract between City and Design/Builder concerning the Work. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the laws of the State of Missouri and City of St. Louis.
2. It is the intent of the Contract Documents to describe a functionally complete Project to be designed and

constructed in accordance with the Contract Documents. Any Work that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be furnished and performed whether or not specifically called for. When words or phrases which have a well-known technical or construction industry or trade meaning are used to describe work, materials or equipment, such words or phrases shall be interpreted in accordance with that meaning unless modified by the Contract Documents.

## **B. References**

Reference to standards, specifications, manuals or codes of any technical society, organization or association, or to the Laws or Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard, specification, manual, code or Laws or Regulations in effect on the last day for receipt of Proposals except as may be otherwise specifically stated in the Contract Documents. In the event of conflict between the Contract and any such referenced standard, the Contract shall govern.

## **ARTICLE IV. DIFFERING SITE CONDITIONS/HAZARDOUS SITE CONDITIONS**

### **A. Differing Site Conditions**

Design/Builder shall within ten (10) days of discovery, and before the conditions are disturbed, give a written notice to City of (i) subsurface or latent physical conditions at the Site which differ materially from those indicated in the Contract Documents, or (ii) unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character called for by the Contract Documents. Design/Builder shall promptly consult with City concerning appropriate measures to address such conditions, and shall, within twenty (20) days (or such additional time as may be specified by the President) after such discovery, provide a proposal for addressing such conditions, in accordance with the best practices of the design and construction trades, and an estimate of the impact on the additional time required, if any, to carry out the proposal. City shall review such conditions and such proposal and shall either approve or reject the proposal in writing within ten (10) days following submission to the City. If City rejects the proposal, City shall work with Design/Builder to devise a proposal acceptable to the City and to Design/Builder.

### **B. Hazardous Site Conditions**

1. Design/Builder and any affected Subcontractor shall immediately (i) stop all Construction in connection with a Hazardous Condition discovered at the Site and in any area affected thereby (except in an emergency), and (ii) notify City (and thereafter confirm such notice in writing). City shall promptly determine the necessity of retaining a qualified expert to evaluate such Hazardous Condition or take corrective action. Design/Builder shall not be required to resume Construction in connection with such Hazardous Condition or in any such affected area until after City, at Design/Builder's sole cost and expense, has obtained any required permits related thereto and delivered to Design/Builder special written notice (i) specifying that such Hazardous Condition and any affected area is or has been rendered safe for the resumption of Construction, or (ii) specifying any special conditions under which such Construction may be resumed safely. If City and Design/Builder cannot agree as to entitlement to or the extent of an adjustment, if any, in Facility design or Contract Times as a result of such construction stoppage or such special conditions under which construction is agreed by Design/Builder to be resumed, the President shall resolve the matter or may terminate the Project.

## **ARTICLE V. DESIGN/BUILDER'S RESPONSIBILITY**

All services, functions, duties and tasks of the Design/Builder under this Article V shall be performed at Design/Builder's sole cost and expense, and at no cost or expense to the City whatsoever, and, in compliance with all applicable codes, laws and Factory Mutual Standards.

As used in this Article V, "City" means the President of the Board of Public Service, or her/his designee, which may include other City agencies or outside entities or agencies.

### **A. Design and Other Professional Services**

Standard of Care: Design/Builder shall provide all professional design services and all related services required to complete all phases of the design and produce all required contract documents for the entire Project. The standard of care for all such services shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality.

1. Preliminary Design Phase: After the Design Notice to Proceed is issued, Design/Builder shall:
  - a. Consult with City to understand City's requirements for the Project and review available data.

- b. Provide City with a detailed schedule, acceptable to City, for the completion of the Preliminary Design Phase and the Final Design Phase, which schedule may be adjusted during the course of such Phases by mutual agreement of City and Design/Builder.
  - c. Advise City as to the necessity of City's providing or obtaining from others additional reports, data or services and assist City in obtaining such reports, data, or services.
  - d. Identify and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by Design/Builder with whom consultation is to be undertaken in connection with the project.
  - e. Obtain such additional geotechnical and related information which Design Builder deems necessary for performance of the Work.
  - f. On the basis of the Conceptual Documents and Design/Builder's Proposal, prepare preliminary design documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.
  - g. Furnish the preliminary design documents to, and review these documents with, City, and make any revisions necessary for City approval, within the time indicated in schedule submitted and approved pursuant to A.1.b. above.
  - h. Provide City with a Phase I Environmental Report concerning the project site.
2. Final Design Phase: After written acceptance by City of the preliminary design phase documents Design/Builder shall:
- a. On the basis of the accepted Preliminary Design Phase documents, prepare final Drawings showing the scope, extent, and character of the Construction to be performed and furnished by Design/Builder, Specifications (which will be prepared, where appropriate, in general conformance with the sixteen division format of the Construction Specifications Institute), General Conditions, and Supplementary Conditions, and all other components of the Contract Documents.
  - b. Provide technical criteria, written descriptions and design data required for obtaining approvals of such governmental authorities as have jurisdiction to review and/or approve the final design of the Project, and assist City in consultations with those appropriate authorities.
  - c. Furnish the above documents, Drawings and Specifications to and review these documents with, City, and make any revisions necessary for City approval, within the time indicated in the schedule submitted and approved pursuant to A.1.b. above.
  - d. If the Phase I Environmental Report so indicates, provide City with a Phase II Environmental Report concerning the project site.
  - e. Provide City with a detailed schedule, acceptable to City, for the completion of the Work, which schedule may be adjusted during the course of the performance of the Work by mutual agreement of City and Design/Builder.
3. Operational Phase: During the Operational Phase, Design/Builder shall:
- a. Prepare a commissioning plan for the start-up, testing, refining and adjusting of any equipment or system.
  - b. Startup and test, and commission any and all equipment and systems;
  - c. Provide training for the City's staff to operate and maintain the Project; and
  - d. Develop systems and procedures and operations/maintenance manuals for control of the operation and maintenance of, and recordkeeping for, the Project.
- B. Supervision and Superintendence of Construction
1. After approval of the final design phase by the City, Design/Builder shall supervise, inspect and direct the construction competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to provide the construction in accordance with the Contract Documents. Design/Builder shall be solely responsible for the design, engineering, means, methods, techniques, sequences and procedures employed for the provision of construction. Design/Builder shall be responsible to see that the completed Construction complies accurately with the Contract Documents and shall keep City advised as to the quality and

progress of the CConstruction.

2. Design/Builder shall provide at the Project site at all times during construction a competent resident superintendent, who shall not be replaced without written notice to the City and the City's approval except if the Superintendent ceases employment with the Design/Builder. The superintendent will be Design/Builder's representative at the Project site and shall have authority to act on behalf of Design/Builder. All communications to the superintendent shall be as binding as if given to Design/Builder.
3. Design/Builder shall complete the Work in accordance with the schedule submitted and approved pursuant to A.1.b. above.

C. Labor, Materials and Equipment

1. Design/Builder shall provide and pay for competent, suitably qualified personnel to survey and lay out the construction and perform construction as required by the Contract Documents. Design/Builder shall at all times maintain good discipline and order at the Project site. Except as otherwise required for the safety or protection of persons or the Work or property at the Project site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all construction at the site shall be performed during regular working hours, and Design/Builder will not permit overtime work or the performance of construction on Saturday, Sunday or any legal holiday without City's written consent, which will not be unreasonably withheld.
2. Unless otherwise specified in the Contract Documents, Design/Builder shall furnish or cause to be furnished, pay for, and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up, commissioning and completion of the Work, including the provision of utilities to the site as required for operation of the completed Work. Design/Builder, in the presence of City's personnel, will direct the commissioning of utilities and operations of systems and equipment.
3. All materials and equipment incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Contract Documents shall expressly run to the benefit of City. Design/Builder shall furnish to the City satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with instructions of the applicable supplier, except as specifically otherwise provided in the Contract Documents.

D. Progress Schedule

1. Design/Builder shall prepare and submit for City approval a Progress Schedule for the Project prior to the Notice to Proceed and shall adhere to the Progress Schedule as it may be adjusted from time to time.
2. Design/Builder shall submit to City for acceptance proposed adjustments in the Progress Schedule that will not change the Contract Times (or Milestones). Such adjustments will conform generally to the Progress Schedule then in effect.
3. Proposed adjustments in the Progress Schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of Article IX.

**ARTICLE VI.  
TESTS, INSPECTION DEFECTIVE CONSTRUCTION**

A. Tests of Materials by City

All materials incorporated in the project are subject to inspection and testing by the City or its designee, without cost to the City, as and when the City may require. This is in addition to tests and inspections required by the Contract Documents to be performed by the Design/Builder.

B. Inspection and Rejection

All materials and workmanship shall be subject to the inspection and rejection of the President, and the Work performed to her/his satisfaction. The President shall have the right to appoint such assistants as she/he may deem necessary to properly inspect the work to be done and materials to be furnished under this Contract, and to see that same strictly corresponds to the Contract Documents. Any defective or non-conforming work or materials that may be discovered before the acceptance of the Work shall be corrected immediately, on the order of the President, notwithstanding that it may have been overlooked by the proper inspector. The inspection of the Work shall not relieve the Design/Builder of any obligation to perform sound and reliable work as required by the Contract Documents.

**C. Tests and Inspections**

1. If the Contract Documents or Laws or Regulations of any public body having jurisdiction require any part of the construction specifically to be inspected, tested or approved, Design/Builder shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, pay all costs in connection therewith, and furnish City the required certificates of inspection or approval. Design/Builder shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for City's acceptance of materials or equipment to be incorporated in the construction or of materials, mix designs, or equipment submitted for approval prior to Design/Builder's purchase thereof for incorporation in the construction.
2. Design/Builder shall give City reasonable notice, at least two business days in advance, of the planned schedule for all required inspections, tests or approvals.
3. If any Construction (or the construction work of others) that is required to be inspected, tested or approved is covered by Design/Builder without written concurrence of City, it must, if requested by City, be uncovered for observation at Design/Builder's expense unless Design/Builder has given City timely notice of Design/Builder's intention to cover the same and City has not acted with reasonable promptness in response to such notice.

**D. Defective Construction**

1. City shall have authority to disapprove or reject Defective construction and will have authority to require special inspection or testing of the construction whether or not the construction is fabricated, installed or completed. If required by City, Design/Builder shall promptly, as directed, either correct all Defective construction, whether or not fabricated, installed or completed, or, if the construction has been rejected by City, remove it from the Project site and replace it with construction consistent with the Contract Documents. Design/Builder shall bear all direct, indirect and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby.
2. Where Defective construction (and damage to other construction resulting therefrom) has been corrected, removed or replaced under this paragraph, the correction period hereunder with respect to such construction will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
3. If, instead of requiring such Defective construction correction or removal and replacement of defective construction, City prefers to accept such Defective construction, City may do so. Design/Builder shall pay all costs attributable to City's evaluation of and determination to accept such defective construction (such costs to include but not be limited to all fees and charges of engineers, architects, attorneys and other professionals).

**ARTICLE VII.  
EXPENSES**

Animal House Fund, Inc. will design, construct and install the facility at its sole cost and expense as provided herein. It is the intent of the parties that the City will incur no cost or expense, of any kind whatsoever, in the connection with or related to the design and construction of the facility. To facilitate Design/Builder's fundraising, Design/Builder may name features of the facility after donors, subject to the prior written approval of the President, which approval shall not be unreasonably withheld.

Unless stated to the contrary in the Contract Documents, the Design/Builder shall provide and pay for all labor, services, material, equipment, tools, machinery, transportation, and utilities necessary for completing the Work.

**ARTICLE VIII.  
CONTRACT TIME/EFFECT OF DELAY/TIME CHANGES****A. Schedule**

The general Schedule for this project is as follows. This general schedule may be revised by mutual written agreement of the City and Design/Builder. Once City has issued the Design Notice to Proceed, the schedule submitted and approved pursuant to Article V, Paragraph A.1.b., shall be the Schedule for the Design Phases. The schedule submitted and approved pursuant to Article V, Paragraph 2.e shall be the schedule of the remainder of the Work.

Fundraising by Design Builder: from the date of this Contract until February 1, 2009

Project Design: April 1, 2007 – August 30, 2007

Construction Notice to Proceed/Construction Begins: earlier of February 1, 2009 or when 75% of costs in hand after completion of design; in no circumstances and anything to the contrary in this Contract notwithstanding, Design/Builder may perform no construction work of any kind whatever until it has received the Construction Notice to Proceed;

Substantial Completion Notice: March 1, 2010

Facility opens: June 1, 2010

B. Animal House Fund, Inc. will advise the President in writing on a monthly basis, in a form approved by the President, beginning April 1, 2007, of the progress of its fundraising for the project.

If at any time the President believes that Animal House Fund Inc. is not pursuing its fundraising campaign in a manner that will result in timely completion of the facility, she/he may terminate this contract on thirty days notice.

If by February 1, 2009, Animal House Fund, Inc. does not have, in hand in cash or, in pledge form satisfactory to the President, commitments of in-kind contributions to the project, of a value of seventy-five percent (75%) of the cost of the project as provided by the budget approved pursuant to Article XI, Paragraph A. 1, the President may terminate this contract on ninety days notice, or may revise the schedule provided herein, in her/his sole discretion.

C. Contract Times

Design/Builder's obligations to begin construction work shall begin upon the Commencement Date as specified in the Construction Notice to Proceed. This notice shall not be issued until both i) the final Contract Documents for the Project have been completed and approved by the City; and ii) Animal House Fund, Inc. has, in hand in cash or, in pledge form satisfactory to the President, commitments of in-kind contributions to the project, of a value of Three Million Dollars (\$3,000,000). Design/Builder shall comply with all time requirements established in the Contract Documents. All dates and time requirements are of the essence of this Contract, and may be amended only in writing signed by the President.

D. Effect of Delay

1. In the event the President reasonably determines that the performance of the Work has not progressed or reached the level of completion required by the Contract Documents or that the Work is being unnecessarily delayed or will not be finished within the prescribed time, the President shall have, among other remedies, the right to order the Design/Builder to take corrective measures necessary to expedite the progress of construction, including, without limitation, (1) working additional shifts or overtime, (2) supplying additional manpower, equipment, and facilities and (3) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). The President may also notify the Design/Builder's bonding company. Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Progress Schedule and other applicable provisions of the Contract Documents, and clearly indicates that all Contract Times will be met. The President's right to require Extraordinary Measures is solely for the purpose of ensuring the Design/Builder's compliance with the construction Schedule agreed to pursuant to Article V, paragraph A. 1. b. The President may exercise the rights furnished the City pursuant to this paragraph as frequently as the President deems necessary to ensure that the Design/Builder's performance of the Work will comply with any schedule date or completion date set forth in the Contract Documents.
2. If the Design/Builder abandons the Work or, in the reasonable determination of the President, fails to take all Extraordinary Measures directed by the President as will insure timely and satisfactory completion of the Work, the President may direct Design/Builder to discontinue all Work under this Contract. Design/Builder shall immediately discontinue all Work upon receipt of such notice. In such case the President may terminate this Contract. In such event, the President may take any, or any combination, of the following measures: i) bid out the Work, or any part thereof, and Design/Builder shall be liable for costs and expenses related to the bidding out and completing of the Work; ii) direct Design/Builder to pay over to the City Comptroller all funds, materials, supplies, and/or commitments for in-kind work then held by Design/Builder for the Project, to be used by the City to complete the Work, with the Design/Builder having no further right to access or use any such funds, materials, supplies or commitments; iii) take control of and use for completing the Work all equipment or materials at the Project site or otherwise identifiable for the Work; or iv) direct Design/Builder, at its cost and expense, to restore the Project site to a park-like condition as approved by the President. Design/Builder hereby grants City a lien on all funds raised for the project, all commitments for in-kind services for the project, and all materials and equipment purchased for the project, and shall at the President's direction execute and/or file any document relating to or assisting in the perfection or enforcement of such lien.
3. If the Work is delayed by Act of God, fire, or other cause over which Design/Builder has no control and could not reasonably anticipate, the Schedule shall be extended as the President and Design/Builder shall reasonably agree; such extension shall be made only if Design/Builder notifies the President in writing of the reason for the delay, and its expected length, within seven (7) days from the commencement of the delay. Design/Builder shall immediately notify the President when the reason for such delay has ceased. In addition, Design/Builder shall continue with all portions of the Work not impacted by such cause of delay.

E. Change of Contract Times

1. The Progress Schedule, Contract Times (or Milestones) may only be changed by written order of the President. Any request for such a change shall be made by notice to the President.

- 2. The Progress Schedule and all Contract Times and Milestones are of the essence of the Contract.
- 3. City shall not be liable to Design/Builder for costs or damages arising out of or resulting from any delays, including but not limited to (i) delays caused by or within the control of Design/Builder, or (ii) delays beyond the control of both parties including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God or acts or neglect by governmental agencies, utility owners, or other Design/Builders performing other work.

F. City Cooperation

City agrees to cooperate with Design/Builder in connection with the Project, to respond in a timely manner immediately to reasonable inquiries from Design/Builder, and to confer with Design/Builder concerning the Project at Design/Builder’s reasonable request.

**ARTICLE IX.  
CONTRACT DOCUMENTS**

Any discrepancies or conflicts in any of the provisions of the Contract Documents are to be resolved in the best interest of the City as determined by the President.

No change, variation or deviation other than a Minor Change, from the final drawings or final specifications shall be made except by written order of the President. Should the Design/Builder find, at any time during the progress of the work, that, in his opinion, existing conditions demand, make desirable or beneficial a modification in requirements for any particular item or items, Design/Builder is required to promptly transmit such information to the President for her/his decision and instructions.

Design/Builder may make Minor Changes in the Work, provided the Design/Builder promptly notifies the City in writing of any such changes within seventy-two (72) hours and records such changes on the Record Documents maintained by the Design/Builder.

Plans, tracing, maps, specifications, completed surveys, design computations, and any other documents prepared under this Contract shall be delivered to and shall become the property of the City upon either termination of the Contract or completion of the Work contained herein. In addition, the City may at any time during the execution of this Contract, request basic survey notes, calculations, and other data prepared under this Contract. All such information produced under this Contract shall be available for use by the City without restriction or limitation of use. If the City incorporates any portion of the Work into a project other than that for which it was intended, the City shall hold the Design/Builder harmless from any claims and liabilities resulting from such use.

The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

- 1. A Work Change Directive;
- 2. A Change Order;
- 3. A Field Order.

**ARTICLE X.  
NOTICE**

Unless otherwise specified herein, the following persons are designated by the respective parties to act on behalf of such party with respect to the Contract Documents, and to receive all written notices:

For City:

For Design/Builder:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Representative)

Design/Builder's Representative shall be available to meet with the City or its Authorized Representative at any time during the performance of the Work, and shall have full authority to act on Design/Builder's behalf on any matter related to this Contract and/or the Work.

Design/Builder acknowledges that only the City’s Authorized Representative, or such other person as the Authorized Representative shall notify Design/Builder in writing, shall have the authority to initiate any modifications to this Contract.

**ARTICLE XI.  
BUDGET**

A. Budget Submission

1. By November 30, 2007, Design-Builder shall submit for City's review and approval a budget for all of the Work. The budget will include quantities and prices of items aggregating approximately \$4,000,000 and will subdivide the Work into component parts in detail and will include a Schedule of Values. The Schedule of Values shall include an indication of which work is intended to be paid for with cash, and which work is intended to be provided as an in-kind contribution. The approved budget will serve as the basis for City's review of Animal House Fund Inc.'s progress in completing the project.
2. The Design/Builder will submit a Monthly Report to the President on the fifth business day of each calendar month. The Monthly Report shall set out all payments made in connection with the Project in the preceding calendar month, and shall indicate how such payments conform to the Project Schedule and the Schedule of Values. The Monthly Report shall also indicate the amount invoiced for each respective item. Additionally, the payment documentation shall indicate the original budget amounts, the amounts paid to date, the amounts previously paid for each item and for any approved Change Order items. The Design/Builder shall include with each Monthly Report lien waivers for all payments and in-kind contributions made to or by each sub-consultant and/or sub-contractor and all other supporting documentation as the President may require. The Design/Builder shall sign each Monthly Report and shall certify that such Monthly Report is true and accurately represents the status of completion of the respective items.
3. The First Monthly Report must be submitted within sixty days (60) after start of the Project. Each subsequent Monthly Report shall be submitted when required under subparagraph 2, above.
4. If the City finds that any Monthly Report reflects that the Project Budget or Progress Schedule have not been adhered, or that there is a concern about the overall project cost, the President may direct the Design/Builder to confer with the President's designee concerning the matter.

B. Waivers of Claims

From time to time, as and when determined by the President, the Design/Builder may be required to submit a signed waiver of all rights of the Design/Builder to assert any claim under Mo. Rev. Stat. 107.170 or under Chapter 429 (to the extent applicable) for labor or material provided.

All lien waivers shall be in a form approved by the President and shall indicate that all debts for Work performed by each subcontractor from the Design/Builder have been satisfied, and that the Subcontractor waives and releases any claim and any right to bring action against the City or any other person or entity pursuant to Missouri Revised Statutes 107.170 and under Chapter 429 and other statutes relating to mechanic's liens (to the extent applicable) on account of labor and materials furnished for the Project.

C. Substantial Completion

When Design/Builder considers the Work ready for its intended use Design/Builder shall notify the President in writing that the Work is substantially complete (except for items specifically listed by Design/Builder as incomplete) and request that City issue a certificate of Substantial Completion. Within a reasonable time thereafter, City and Design/Builder shall make an inspection of the Work to determine the status of completion. If City does not consider the Work substantially complete, City will notify Design/Builder in writing giving the reasons therefor. If City considers the Work substantially complete, City will prepare and deliver to Design/Builder a certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a list of items to be completed or corrected before final acceptance. At the time of delivery of the certificate of Substantial Completion, City will deliver to Design/Builder a written determination as to division of responsibilities pending final acceptance between City and Design/Builder with respect to security, operation, safety, maintenance, heat, utilities, insurance and warranties and guarantees.

D. Final Acceptance

Upon written notice from Design/Builder that the Work or an agreed portion thereof is fully complete, City will make a final inspection with Design/Builder and will notify Design/Builder in writing of all particulars in which this inspection reveals that the Work is incomplete or Defective. Design/Builder shall immediately take such measures as are necessary to complete such Work or remedy such Defective Work. The City will not accept the project until ALL requirements of the Contract are satisfied, including, but not limited to the following:

1. Completion of all punch list work.
2. Provide any specified Warranties/Guarantees.
3. Provide all specified Operations & Maintenance Manuals.

4. Provide any specified training.
5. Provide any specified extra (stock) materials or equipment.
6. Provide certificate of final inspection from other agencies as required (i.e. Electrical Inspection, Mechanical Inspection, Fire Marshal Inspection, MSD, etc.)
7. Submittal of acceptable "Record" set of drawings.
8. Submittal of Certified Weekly Payrolls from Design/Builder and all Subcontractors.
9. Submit specified final documentation.
10. Any claim from Subconsultants, Subcontractors, suppliers, utilities, railroads, adjacent property, and others must be cleared.

If City is satisfied that the Work has been completed and Design/Builder's other obligations under the Contract Documents have been fulfilled, City will, within ten days after receipt of the final Monthly Report, give written notice to Design/Builder that the Work is acceptable. Otherwise, City will return the Monthly Report, indicating in writing the reasons for refusing to accept it, in which case Design/Builder shall make the necessary corrections and resubmit the final Monthly Report. Within thirty days after the presentation to City of the acceptable final Monthly Report and accompanying documentation, in appropriate form and substance and with City's notice of acceptability, the President will recommend to the Board of Public Service that such Board accept the project as City property.

Acceptance of the project by the City shall release the City from any and all further obligations to the Design/Builder.

E. Prompt Payment

The Design/Builder agrees to pay each Sub-Consultant/Contractor under this for satisfactory performance of its contract when and as required by law. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City. This clause applies to both M/W/DBE and non-M/W/DBE Sub-Consultants/Contractors.

F. Title

Title to all material, equipment, and/or any other work provided by the Design/Builder shall pass to the City upon the City's acceptance of same.

**ARTICLE XII.  
CHANGES IN THE WORK**

The City, without invalidating this Contract, may order additions, deletions or revisions in the Work that do not substantially change the intent of the Work to be provided as outlined in the Contract and/or ordinance, or to any other terms of this Contract, except that City may not order such changes without the approval of Design/Builder except when such changes are necessary to properly complete the Work as described in the Contract Documents approved by City prior to commencement of construction. Design/Builder shall, other than a Minor Change, not deviate from the Contract Documents, absent a prior written direction or approval signed by the President, and shall not perform extra work or additional work without a written direction or approval from the President prior to Design/Builder's commencement of such extra work or additional work.

If the City issues written direction to the Design/Builder, signed by an Authorized Representative of the City, to modify the Work or to perform extra or additional work, which work is necessary to properly complete the Work described in the approved Contract Documents, the Design/Builder shall promptly comply with such direction. Within ten (10) calendar days after receiving such direction from the City, the Design/Builder shall prepare and present to the City a written Change Proposal. If the magnitude or complexity of the change is such that more time is required for preparation of the proposal, the Design/Builder shall submit a written request to the City for the additional time. If Design/Builder determines that such extra or additional work or modification to the Work is not required to properly complete the Work described in the approved Contract Documents, Design/Builder shall so notify the President, together with the reasons for Design/Builder's determination, and the parties will confer to resolve the matter.

The City may order other changes as necessary to conform to any applicable law or regulation.

The City agrees not to require any extra work or changes which will increase the cost of the project above \$4,000,000 without the prior written consent of the Design/Builder. If the Design/Builder believes that extra work or changes directed by the City will have such effect, and does not consent to the additional costs, it shall notify the President within ten days and the parties will confer to resolve the matter.

**ARTICLE XIII.  
WAIVER OF RIGHTS AND INSURANCE MATTERS**

City and Design/Builder intend that all policies of insurance purchased in accordance with the Contract Documents will protect City,

Design/Builder, Sub-(Consultants/Contractors), and all other individuals or entities indicated in the Contract Documents to be listed as insureds or additional insureds in such policies and will provide primary and noncontributory coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. City and Design/Builder waive all rights against each other and their respective officers, directors, employees and agents for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Sub-(Consultants/Contractors), Suppliers, Engineers and all other individuals or entities indicated in the Supplementary Conditions to be listed as insureds or additional insureds under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by City as trustee or otherwise payable under any policy so issued. In addition, City waives all rights against Design/Builder, Subcontractors and Suppliers and the officers, directors, employees and agents of any of them for business interruption, loss of use of City's property and any other consequential damages caused by, arising out of or resulting from any of such insured perils or causes of loss or any other peril or cause of loss whether or not insured. Design/Builder agrees to provide or cause to be provided insurance acceptable to the City for all Sub-Contractors, regardless of whether such Sub-Contractors are making in-kind contributions to the Project or whether such Sub-Contractors are to be paid in cash.

**ARTICLE XIV.  
PATENT LIABILITY**

Design/Builder agrees to defend, indemnify and hold harmless the City, its officials, employees and agents from and against any claim, action or suit that may be brought against them for Design/Builder's infringement of any Letters Patent in the performance of this Contract or any breach or violation of trademark or proprietary or trade secret rights of others, as well as against any judgments, decrees, damages, costs and expenses sought, adjudicated, or recovered against any of them, on account of any such actual or alleged infringement.

**ARTICLE XV.  
GUARANTEE/WARRANTY**

Design/Builder shall exercise high professional skill, care and diligence in the performance of its Work, and shall carry out its responsibilities in accordance with customarily accepted good professional practices. Unless otherwise extended by Warranty, if any defects, as determined by the President, in the Work are discovered within one year from notice by President of start of the Warranty Period, Design/Builder shall promptly remedy such defects and provide, at its expense, all labor, material, equipment and services necessary to correct any errors or omissions of Design/Builder or any of its Sub-(Consultants/Contractors). The one-year warranty period shall recommence, upon correction, for the specific item corrected.

This obligation shall be in addition to Design/Builder's obligations to perform its Work properly. No provision in the Contract Documents shall remove the Design/Builder's obligation to complete the Work free of defects in workmanship and material.

Design/Builder agrees that it shall remain solely responsible for the proper performance of all Work required by the Contract Documents, notwithstanding any suggestions, comments, or observations made by any other person or entity, including the City, its employees or agents, with respect to the Work.

In addition to the above, the Design/Builder shall obtain, assign and furnish any manufacturer's warranties that are provided as customary trade practice or those specifically identified in the Contract Documents that differ from the one-year warranty specified above.

Should the Design/Builder fail to remedy any such defective work, the President may cause them to be remedied and charge the cost thereof to the Design/Builder.

**ARTICLE XVI.  
CLEANING UP**

During the term of this Contract, Design/Builder shall keep its Work area and the surrounding area free of debris, trash, and waste materials related to or resulting from its Work. Upon completion of the Work, and prior to final payment, Design/Builder shall remove all debris, rubbish, waste and surplus materials from the site and leave the work area in a clean and orderly condition. If Design/Builder fails to maintain, or leave, its work area in a clean condition, the City may cause such cleanup to be performed by others at Design/Builder's expense.

**ARTICLE XVII.  
CONVENANT AGAINST UNDUE INFLUENCE**

Design/Builder warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Design/Builder, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award of making of this Contract. For breach or violation of this warranty, the City shall have the right to terminate or void this Contract without liability.

Design/Builder hereby represents and warrants that no payments have been or shall be made, directly or indirectly, by or on behalf of Design/Builder to or for the benefit of any employee or agent of City who may reasonably be expected to influence the decision to requisition, issue or take any action with respect to this Contract. Design/Builder shall allow the City and the City's accountants and/or auditors to examine, at City's expense, such of Design/Builder's books and records as may be necessary, in the accountant's reasonable opinion, to verify Design/Builder's compliance with this paragraph.

Design/Builder hereby represents and warrants that it has complied with and is not in violation of §§ 105.450 to 105.464, RSMo., as amended.

**ARTICLE XVIII.**  
**RECORDS REGARDING PAYMENT**

For a period of at least three years after the completion of this Contract, Design/Builder shall maintain, in accordance with generally accepted accounting principles, such records as are necessary to substantiate that all Monthly Reports hereunder were valid and correct. Such records shall demonstrate that the proper percentages of completion and for payments to Sub-(Consultants/Contractors) and suppliers were reflected in the Monthly Reports and supporting documentation. The records to be maintained hereunder include, but are not limited to, all contracts, subcontracts, material bills, correspondence, accounting records, time sheets, canceled checks, orders and invoices pertaining to the City's project.

**ARTICLE XIX.**  
**RIGHT OF AUDIT**

The City and the City's accountants and/or auditors and/or others designated by the City shall be afforded access to all of the Design/Builder's books and records without any limitation whatsoever for the purpose of conducting audits. All books and records shall be open to inspection and/or reproduction within no more than fifteen (15) calendar days of written request to the extent necessary to adequately permit evaluation and verification of Design/Builder's full compliance with Contract Documents. In those instances where Design/Builder's records have been generated from computerized data or records, in addition to hard copy (reports), Design/Builder shall provide such information in an electronic format acceptable to the City.

Design/Builder shall require all Sub-(Consultants/ Contractors) and lower-tiered Sub-(Consultants/ Contractors) (regardless of basis of compensation and specifically including lump sum) to comply with the provisions of this Article by inserting same audit rights into all subcontracts. The intent of such requirement is to provide City with full and complete audit rights to the same extent as City has with Design/Builder.

It is specifically understood that City has the right to examine all of Design/Builder's underlying cost structure for the purpose of conducting audits. Such rights specifically include, but are not limited to, accounting records, job costing systems and methodologies, original detailed estimates, change order pricing, fully-loaded labor rates, percentage markups and burdens, insurance and other allocations performed on a company-wide basis, overhead rate calculations and the derivation of fixed billing rates for specific elements of cost.

**ARTICLE XX.**  
**SUSPENSION OF THE WORK**

If Design/Builder performs Work which does not comply with the Contract Documents, the President's orders, fails to correct nonconforming Work, or breaches any material obligation of Design/Builder under the Contract Documents, the President may, by written order, direct Design/Builder to stop the Work until such noncompliant Work or the breach is corrected. Design/Builder shall receive no extension in the Schedule as a result of such suspension.

**ARTICLE XXI.**  
**TERMINATION OF CONTRACT**

The President may, for good cause shown, terminate this Contract (including termination for City's convenience) upon 10 calendar days' written notice to Design/Builder. Upon receipt of such termination notice, Design/Builder shall cease performance of all Work, and shall safeguard and protect from weather, theft and vandals, any Work, equipment, goods or supplies then in progress.

**ARTICLE XXII.**  
**COMPLIANCE WITH LAWS**

Design/Builder shall comply with all federal, state, and local laws, ordinances and regulations, as may be amended, related to the Work, including, but not limited to, the Prevailing Wages on Public Works Act, Mo. Rev. Stat. § 290.210 through § 290.340 (1996), the Public Works During Excessive Unemployment Act, Mo. Rev. Stat. §§ 290.550 through 290.580 (1993), and the Missouri Prompt Payment Act, Mo. Rev. Stat. §§ 34.057 and 34.058 (1993), as applicable.

For any Work performed under this Contract, Design/Builder shall comply with the prevailing wage as provided under § 290.230, RSMo. Any penalty imposed in connection with the project for violation of such law shall be borne by the Design/Builder.

The Design/Builder shall comply with any and all City Ordinances and the State and Federal Laws controlling or limiting, in any way, the actions of those engaged on the Work or affecting the materials used in such Work. Attention is specifically called to Section

6.04.100, Revised Code of Saint Louis, 1980, which requires that any action brought on the Design/Builder's bond for claims due for labor, material, etc., must be instituted within ninety (90) days after the completion of the Contract. Design/Builder shall comply with the City's Living Wage ordinance, to the extent applicable

Further attention is specifically directed to City Ordinance 51512, Section 3.44.120 of the Revised Code of Saint Louis, 1980, relating to the elimination and prevention of discriminatory practices in matters of employment and training for employment because of race, creed, religion, national origin or ancestry.

**ARTICLE XXIII.  
M/WBE PARTICIPATION GOALS**

Design/Builder acknowledges the City's policy of fully utilizing the skills of minority business enterprises (MBE's) and women's business enterprises (WBE's) in all sectors of the economy to best advance the City's economic and business development objectives. Design/Builder acknowledges that the City has established a goal of at least 25% MBE participation and at least 5% WBE participation in contracts where City funds are expended. Design/Builder shall comply with Executive Order 28, as amended and executed by the Mayor of the City of St. Louis, with respect materials and work or services purchased at market rates, and will solicit donated materials and services from MBEs and WBEs. Design/Builder shall also comply with all federal, state, and local equal employment opportunity laws.

The Airport DBE Office, St. Louis Airport Authority will monitor the project to ensure the M/WBE goals are met.

**ARTICLE XXIV.  
RECORD DOCUMENTS**

Design/Builder shall maintain in a safe place at the Project site one record copy of all Drawings, Specifications, Addenda, Change Orders, Field Orders and Work Change Directives, in good order and annotated to show all changes made during construction. These record documents together with all approved submittals will be available to City for reference. Upon completion of the Work, these record documents and submittals, including a reproducible set of record Drawings, shall be delivered to City.

**ARTICLE XXV.  
ACCESS TO SITE**

Design/Builder shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, around the Project site and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the Project site shall be free from all debris, building materials and equipment creating potentially hazardous conditions.

The President or her/his designee may inspect or review any Work performed by the Design/Builder, and consult with Design/Builder, at any time. No observation, inspection, or review of the Work, or any part thereof, shall constitute acceptance or approval of Work unless specifically stated in writing.

**ARTICLE XXVI.  
COMPETENCE**

Design/Builder confirms that it has the responsibility for it and its Sub-(Consultants/ Contractors) maintaining all necessary licenses, registration, competence and experience to perform all of the Work.

**ARTICLE XXVII.  
STORAGE OF MATERIALS AND EQUIPMENT/USE OF SITE**

A. Storage Of Materials And Equipment

Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Project site by the Design/Builder. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. The insurance and protection of construction materials and equipment stored at the Project site from weather, theft, damage and all other adversity is solely the responsibility of the Design/Builder.

B. Use of Site and Other Areas

Design/Builder shall confine construction equipment, the storage of materials and equipment and the operations of construction workers to those lands and areas permitted by the City and other land and areas permitted by Laws and Regulations, rights-of-way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. Design/Builder shall assume full responsibility for any damage to any such land or area, or to the City or occupant thereof or of any adjacent land or areas, resulting from the performance of the Work. Should any claim be made by the City or any such occupant because of the performance of the Work, Design/Builder shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law. Design/Builder shall, to the fullest extent permitted by laws and regulations, indemnify and hold harmless City, City representatives, City's Consultants and anyone directly or indirectly employed by any of them from and against all claims, costs, losses and damages (including, but not limited to, fees of

engineers, architects, attorneys and other professionals and court and arbitration or other dispute resolution costs) arising out of or resulting from any claim or action, legal or equitable, brought by City or any such occupant against City, or any other party indemnified hereunder to the extent caused by or based upon Design/Builder's performance of the Work.

**ARTICLE XXVIII.  
SAFETY/EMERGENCIES**

A. Safety

Design/Builder shall be solely responsible for the safety of its workers and others on the Project site relating to its Work, notwithstanding the presence of City, its employees or agents. Design/Builder shall post all necessary warning and danger signs related to its Work and shall comply with all requirements of the Occupational Safety and Health Act as amended. Design/Builder shall also safeguard and protect from damage related to its Work, all materials and equipment to be incorporated into the Work, as well as the Work itself, and all property of the City and adjacent land. Design/Builder shall immediately rectify, at its expense, any damage Design/Builder, its employees, agents or Sub-(Consultants/Contractors) cause to the Work, or to the property of City or any third party. The City shall not be liable for the physical condition or safety of the Project site or any improvements thereon.

Design/Builder shall designate a qualified and experienced safety representative at the Project site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

The President may immediately suspend the Work if unsafe conditions or acts are observed, and the Design/Builder shall not receive an extension of the Schedule resulting from any safety suspension.

B. Emergencies

In emergencies affecting the safety or protection of persons or the construction or property at the Project Site or adjacent thereto, Design/Builder, without special instruction or authorization from City, is obligated to act to prevent threatened damage, injury or loss.

C. Blasting

Design Builder shall obtain prior written permission from the City before performing any blasting, for any purpose whatsoever, in connection with the Project.

**ARTICLE XXIX.  
CONFLICTS IN DOCUMENTS/DISPUTES**

A. Conflicts in Documents

Design/Builder shall promptly upon discovery advise the President of any conflict, omission, error, or ambiguity in the Contract Documents, or between any Contract Document and actual field conditions, and the President shall resolve such conflict, omission, error or ambiguity in its sole discretion. If Design/Builder performs any such unresolved Work, Design/Builder shall bear the costs of correcting such Work.

B. Disputes

The President will determine the amount, classifications, acceptability, and fitness of the several kinds of work to be done, and will decide all questions which may arise relative to the proper performance of this Contract, and her/his decisions shall be final and conclusive.

If any dispute arises between Design/Builder and the City, the President shall resolve the dispute. In the event of any dispute between the City and Design/Builder, Design/Builder shall continue with its performance of the Work unless directed by the City to cease its performance.

The President shall resolve all disputes and his/her decision shall be final.

**ARTICLE XXX.  
PERMITS AND LICENSES**

Design/Builder shall procure and pay for any and all building permits or other permits or licenses necessary for the Work.

**ARTICLE XXXI.  
NO PRESUMPTION AGAINST THE DRAFTER**

No assumption or inference against either party shall be made because of the preparation of this Contract.

**ARTICLE XXXII.  
NO WAIVER BY CITY**

The failure of City in any one or more instances to insist upon strict performance of any of the terms of this Contract or to exercise any option herein conferred shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion.

**ARTICLE XXXIII.  
ATTORNEYS FEES**

In the event of litigation between Design/Builder and the City concerning the Project or this Contract, no party shall be entitled to recover its attorney's fees, costs, and expenses from the other party arising from such litigation.

**ARTICLE XXXIV.  
ENTIRE CONTRACT/INDEPENDENT CONTRACTOR**

A. Entire Contract

This Document and Contract Documents, as defined herein, constitute the entire Contract between the parties with respect to its subject matter and any prior Contracts, understandings, or other matters, whether oral or written, are of no further force or effect.

B. Independent Contractor

Design/Builder acknowledges it is an independent Contractor, and neither Design/Builder nor any of its Sub-(Consultants/Contractors) or employees shall be deemed an employee or agent of the City for any purpose.

**ARTICLE XXXV.  
SUBCONTRACTS, ASSIGNMENT OR TRANSFER**

Design/Builder shall not assign or transfer any right, obligation or interest under this Contract except with the prior written consent of the City. The use of Sub-(Consultants/Contractors) shall in no way relieve the Design/Builder of its primary responsibility for the Work; Design/Builder shall remain solely responsible to the City for all acts, errors, and omissions of its employees, Sub-(Consultants/Contractors) and suppliers.

Design/Builder shall present to the President a List of Sub-(Consultants/Contractors) for his approval before the Contract is fully executed. Design/Builder shall not enter into any subcontract with a party as to whom the City has a reasonable objection, or has not approved, or is not on the List of Sub-(Consultants/Contractors), and no Sub-(Consultant/Contractor) or other entity can perform any work unless said Subcontractor or other entity is approved in writing by the President.

The Contract Documents shall not be construed as creating a contractual relationship of any type between the City and any Sub-(Consultant/Contractor) or supplier of Design/Builder.

**ARTICLE XXXVI.  
TAXES**

Design/Builder shall pay all sales, consumer, use, gross receipts and other similar taxes required to be paid by Design/Builder in accordance with the laws and regulations which are applicable during the performance of the Work.

**ARTICLE XXXVII.  
COMPLAINTS**

On the complaint of any citizen and taxpayer of the City of St. Louis that any work is being done contrary to this Contract, or the Work or material used is Imperfect, the City's Board of Public Service shall examine the complaint, and may appoint two or more members of the Board to examine and report on the Work. After considering the report of its members, the Board shall make such order as shall be just and reasonable and in the public interest, and such decision shall be binding on all parties. The cost of such examination shall be borne by the Design/Builder if such complaint is well founded, and by the complainant if found to be groundless.

**ARTICLE XXXVIII.  
NOTICE TO PROPERTY OWNERS**

The Design/Builder shall give due notice in writing at a reasonable length of time in advance of the Work to the property owners and occupants, and also to all persons who as agents, or otherwise, may be in charge of any building, or other property, streets, gas, or water pipes, conduits, tracks, or other utilities that may or might be affected by his operations and the Design/Builder shall allow all such persons or companies, ample time to take all such measurements as may be deemed necessary for the proper protection, or adjustment, of their property and shall not cause any hindrance to, or interferences with, any such persons, companies, or the employees thereof, engaged in carrying out such protection, or adjustment work.

**ARTICLE XXXIX.**  
**GOVERNING LAWS**

This Contract shall be deemed to have been made in, and construed in accordance with the laws of the State of Missouri, and is subject to the Charter, Ordinances and Executive Orders of the City of St. Louis. The Design/Builder shall comply with all local, state and federal laws and regulations relating to the performance of this Contract.

This Contract shall be governed by and constructed in accordance with the laws of the State of Missouri.

**ARTICLE XL.**  
**SECTION HEADINGS**

All section headings contained in this Contract are for the convenience of reference only and are not intended to define, enlarge or limit the scope of any provision of this Contract.

**ARTICLE XLI.**  
**CUMULATIVE REMEDIES**

The duties and obligations herein imposed and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, any general or specific warranties, guarantees and indemnities imposed upon Design/Builder and all of the rights and remedies available to City thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by laws or regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.

**ARTICLE XLII.**  
**SURVIVAL OF OBLIGATIONS**

All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Work and termination or completion of the Contract.

**ARTICLE XLIII.**  
**SEVERABILITY**

Should any specific provision of this Contract be held unenforceable, the remaining provisions shall remain in full force and effect.

**ARTICLE XLIV.**  
**INSURANCE/INDEMNITY**

A. Insurance

1. Design/Builder or such other entity as may be acceptable to and approved by City in its discretion and each Sub-(Consultant/Contractor) shall maintain adequate primary and non-contributory insurance underwritten by a solvent insurance company, which is acceptable to City, is duly authorized to transact business in the State of Missouri as granted by the Director, State of Missouri Department of Insurance, and meets the requirements set forth in the Contract Documents. A certificate of authority, issued by the Director, Missouri Department of Insurance, may be requested by the City.
2. Insurance coverage shall meet minimum requirements as stated in the Contract Documents and shall be effective immediately upon the execution of this Contract to continue so long as Work is performed hereunder or for such longer period as specifically hereinafter provided.
3. A standard Certificate of Insurance (Exhibit C), which has been devised for use in the Board of Public Service contracts, is attached for completion. This form, and its legal use, has been approved by the City Counselor of the City of St. Louis.

B. Indemnity

1. Design/Builder shall defend, indemnify, and hold harmless the City, its officials, and employees from any and all loss, damages, costs, expenses, claims and causes of action (collectively, "Loss") which may be imposed upon or asserted against City, its officials, or employees where such Loss is caused or incurred, or alleged to be caused or incurred, in whole or in part as a result of the negligence or other actionable fault of Design/Builder, its employees, Sub-(Consultants/Contractors) or affiliates. This indemnity shall apply notwithstanding the joint, concurrent, contributory or comparative fault or negligence of the City or any third party. Nothing in this Article shall be deemed to impose liability on Design/Builder to indemnify City when the City's negligence or other actionable fault is the sole cause of Loss.

- 2. Design/Builder further agrees to defend, indemnify and hold harmless the City, its officials, agents and employees against all claims, liens, demands or suits which may be asserted by any Sub-(Consultant/Contractor), supplier, agent, or employee of Design/Builder relating to the Project.
- 3. In the event full indemnity pursuant to this Article is unenforceable under any law, Design/Builder and City shall bear any Loss in proportion to their respective fault.
- 4. Should any entity file a lien against the property, Design/Builder shall promptly act to remove the lien from the property. Should Design/Builder fail to remove the lien from the property within a time period deemed reasonable by the President, the City may makes any payment City deems necessary to remove the lien and Design/Builder agrees to repay to the City the amount of such payment within ten (10) days following the City's payment.

**ARTICLE XLV.  
BONDS**

Design/Builder or such other entity as may be acceptable to and approved by City in its discretion shall obtain, within ten (10) calendar days after the Construction Notice to Proceed and before commencing work, a Performance and Payment Bond in an amount acceptable to and approved by City in its sole discretion. Bonds shall be executed by a surety company satisfactory to the City of St. Louis and shall meet the requirements set forth in Contract Documents.

The bond shall guarantee and secure the payment of all Sub-(Consultants/Contractors) and suppliers for labor, equipment and/or materials supplied to or for the benefit of Design/Builder or the Work, as well as Design/Builder's proper performance of the Work. The performance bond shall remain in full force and effect for at least the specified Warranty Period.

A form of bond (Exhibit A) is attached.

**DESIGN/BUILDER:**

ATTEST: \_\_\_\_\_

SECRETARY \_\_\_\_\_

COMPANY: \_\_\_\_\_  
(SEAL)

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_

**BONDING CO.:** \_\_\_\_\_  
(SEAL)

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_

**CITY OF ST. LOUIS, MISSOURI:  
COUNTERSIGNED:**

\_\_\_\_\_  
COMPTRROLLER Date

The foregoing Contract and Bond were approved by the Board of Public Service on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
PRESIDENT, BOARD OF PUBLIC SERVICE

\_\_\_\_\_  
SECRETARY, BOARD OF PUBLIC SERVICE

The foregoing Contract and Bond are in due form according to law.

\_\_\_\_\_  
City COUNSELOR Date

The foregoing Bond and Securities therein are hereby approved.

\_\_\_\_\_  
COMPTRROLLER Date

\_\_\_\_\_  
REGISTER Date

COMPTRROLLER DOCUMENT NUMBER: \_\_\_\_\_

CONTRACT NO.

CONTRACT NO.

**EXHIBIT A  
Form of Bond For Payment and Performance**

FOR THE FAITHFUL PERFORMANCE of all and singular the terms and stipulations of this contract, in every particular, the said \_\_\_\_\_ as Principal, and

as Security, parties of the first part, hereby bind themselves and their respective heirs, executors, administrators, successors, and assigns, unto the said City of St. Louis, in the penal sum of \_\_\_\_\_ Lawful money of the United States, conditioned that in the event the said \_\_\_\_\_ shall faithfully and properly perform all the provisions and terms of the foregoing contract, including those under which the principal agrees to pay the prevailing hourly rate of wages for each craft or type of workman required to execute this contract in the locality as determined by the Department of Labor and Industrial Relations of Missouri or by final judicial determination pursuant to the provisions of Sections 290.210 to 290.340, inclusive, of the Revised Statutes of Missouri, 1969, and shall as soon as the work contemplated by said contract is completed, pay to the proper parties all amounts due for material, lubricants, oil, gasoline, grain, hay, feed, coal and coke, repairs on machinery, groceries and food stuffs, equipment and tools, consumed or used in connection with the construction of such work, and all insurance premiums, both compensation, and all other kinds of insurance, on said work, and for all labor performed in such work whether by sub-(Consultant/Contractor) or otherwise, then this obligation to be void, otherwise to remain in full force and effect, and the same may be sued on at the instance of any material man, laboring man, mechanic, or other interested party, in the name of the City of St. Louis, to the use of such parties, for any breach of the conditions hereof.

And \_\_\_\_\_ as Surety, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

EXHIBIT B - CERTIFICATE OF INSURANCE

NAME OF INSURED: \_\_\_\_\_

CONTRACT NO.:

KIND OF COVERAGE:

Workmen's Compensation: Policy Number: \_\_\_\_\_  
Insurance Co.: \_\_\_\_\_  
Dates of Coverage: From \_\_\_\_\_ to \_\_\_\_\_

Commercial General Liability Policy Number: \_\_\_\_\_  
Insurance Co.: \_\_\_\_\_  
Dates of Coverage: From \_\_\_\_\_ to \_\_\_\_\_  
Each Occurrence: \$ \_\_\_\_\_  
Aggregate: \$ \_\_\_\_\_

Automobile Public Liability and Property Damage: Policy Number: \_\_\_\_\_  
Insurance Co.: \_\_\_\_\_  
Dates of Coverage: From \_\_\_\_\_ to \_\_\_\_\_  
Combined Single Limit (each accident):  
\$ \_\_\_\_\_

Builders Risk: Policy Number: \_\_\_\_\_  
Insurance Co.: \_\_\_\_\_  
Dates of Coverage: From \_\_\_\_\_ to \_\_\_\_\_  
Coverage Amount: \_\_\_\_\_

Professional Liability: Policy Number: \_\_\_\_\_  
Insurance Co.: \_\_\_\_\_  
Dates of Coverage: From \_\_\_\_\_ to \_\_\_\_\_  
Coverage Amount: \_\_\_\_\_

If any policy described above is cancelled during its term by the company or the coverage afforded by it is reduced, the insurer will mail notice, by registered mail, thirty (30) days before the effective date of such cancellation or change to: Department of the President, Board of Public Service, Room 305 City Hall, St. Louis, Missouri 63103.

Such policy also covers the City of St. Louis, Missouri as an additional insured with respect to all operations covered under this contract; however, reserving to the City all rights to recover damages to property owned by the City as a result of negligence of the Design/Builder, his Sub-(Consultants/Contractors), employees, or agents. Such insurance shall be primary and non-contributory.

The Compensation policy covers all employees of the named insured engaged in the operation, care and maintenance of the premises designated.

Such insurance as is afforded by the Liability policy with respect to liability assumed by the insured under a contract applies also to that part of contract between the named insured and City of St. Louis dated \_\_\_\_\_, reading:

"The Design/Builder shall take out and maintain during the life of this contract adequate Commercial General Liability Insurance in the amounts specified to protect the City of St. Louis, the Design/Builder, and any Subcontractor or Subconsultant performing work covered by this contract from all claims for damages for personal injury including accidental death, as well as from claims for property damages, which may arise from operations under this contract, whether such operations be by himself or by any Subcontractor, Subconsultant or by anyone directly or indirectly employed by either of them; and, he shall furnish the President with certificates of insurance showing such coverages." Such policy shall be primary and non-contributory.

Name of Insurance Company: \_\_\_\_\_

By Insurance Agent: \_\_\_\_\_  
(must be an original signature)

**Approved: February 16, 2007**

**ORDINANCE #67417**  
**Board Bill No. 366**

**AN ORDINANCE AUTHORIZING THE EXECUTION OF AN AMENDED AND RESTATED REDEVELOPMENT AGREEMENT WITH MCGOWAN BROTHERS DEVELOPMENT CORPORATION, LLC; PRESCRIBING THE FORM AND DETAILS OF SAID AGREEMENT; AND AUTHORIZING OTHER RELATED ACTIONS IN CONNECTION WITH THE REDEVELOPMENT OF CERTAIN PROPERTY WITHIN A REDEVELOPMENT AREA.**

**WHEREAS**, pursuant to the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 through 99.865 of the Revised Statutes of Missouri, as amended (the "*Act*" or "*TIF Act*"), the City adopted Ordinance No. 65854 on February 7, 2003 (the "*Approving Ordinance*"), which Approving Ordinance (i) designated as a "redevelopment area" a certain portion of the City (the "*Redevelopment Area*"), (ii) approved a redevelopment plan entitled "Grace Lofts TIF Redevelopment Plan" (the "*Redevelopment Plan*"), (iii) approved the redevelopment project described in the Redevelopment Plan (the "*Redevelopment Project*"), (iv) adopted tax increment allocation financing within the Redevelopment Area, and (v) established the "City of St. Louis, Missouri, Special Allocation Fund for the Grace Lofts TIF Project" all as set forth in the Approving Ordinance and in accordance with the requirements of the Act; and

**WHEREAS**, pursuant to provisions of the Act, the City adopted Ordinance No. 65855 on February 7, 2003, which authorized the execution of a redevelopment agreement with McGowan Brothers Development Corporation, LLC (the "*Developer*") setting forth the terms and obligations of the parties with respect to the implementation of the Redevelopment Project approved in the Approving Ordinance; and

**WHEREAS**, pursuant to the provisions of the Act, the City adopted Ordinance No. 65856 on February 7, 2003, which authorized and directed the issuance and delivery of not to exceed \$1,550,000 principal amount of Tax Increment Revenue Notes (Grace Lofts TIF Redevelopment Project), Series 200X (the "*TIF Notes*"), to finance the development of the Redevelopment Project; and

**WHEREAS**, pursuant to provisions of the Act, the City entered into a redevelopment agreement with the Developer dated as of August 12, 2003 (the "*Original Agreement*"); and

**WHEREAS**, the Developer and the City desire to approve and execute an amendment to the Original Agreement (the "*Amended Agreement*") to provide for the issuance of TIF Notes to an Approved Investor, other than the Developer, as that term is defined in the Original Agreement.

**NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF ST. LOUIS, MISSOURI, AS FOLLOWS:**

**Section 1.** The Board of Aldermen finds and determines that it is necessary and desirable to enter into the Amended Agreement with the Developer in order to implement the Redevelopment Project and to enable the Developer to carry out its proposal for development of the Redevelopment Project.

**Section 2.** The Board of Aldermen hereby approves, and the Mayor and Comptroller of the City are hereby authorized and directed to execute, on behalf of the City, the Amended Agreement by and between the City and the Developer attached hereto as **Exhibit A**, and the City Register is hereby authorized and directed to attest to the Amended Agreement and to affix the seal of the City thereto. The Amended Agreement shall be in substantially the form attached, with such changes therein as shall be approved by said Mayor and Comptroller executing the same and as may be consistent with the intent of this Ordinance and necessary and appropriate in order to carry out the matters herein authorized.

**Section 3.** The Mayor and Comptroller of the City or their designated representatives are hereby authorized and

directed to take any and all actions to execute and deliver for and on behalf of the City any and all additional certificates, documents, agreements or other instruments as may be necessary and appropriate in order to carry out the matters herein authorized, with no such further action of the Board of Aldermen necessary to authorize such action by the Mayor and the Comptroller or their designated representatives.

**Section 4.** The Mayor and the Comptroller or their designated representatives, with the advice and concurrence of the City Counselor and after approval by the Board of Estimate and Apportionment, are hereby further authorized and directed to make any changes to the documents, agreements and instruments approved and authorized by this Ordinance as may be consistent with the intent of this Ordinance and necessary and appropriate in order to carry out the matters herein authorized, with no such further action of the Board of Aldermen necessary to authorize such changes by the Mayor and the Comptroller or their designated representatives.

**Section 5.** It is hereby declared to be the intention of the Board of Aldermen that each and every part, section and subsection of this Ordinance shall be separate and severable from each and every other part, section and subsection hereof and that the Board of Aldermen intends to adopt each said part, section and subsection separately and independently of any other part, section and subsection. In the event that any part, section or subsection of this Ordinance shall be determined to be or to have been unlawful or unconstitutional, the remaining parts, sections and subsections shall be and remain in full force and effect, unless the court making such finding shall determine that the valid portions standing alone are incomplete and are incapable of being executed in accord with the legislative intent.

**EXHIBIT A  
Form of Amended and Restated Redevelopment Agreement  
(Attached hereto.)**

**AMENDED AND RESTATED REDEVELOPMENT AGREEMENT**

Between the

**CITY OF ST. LOUIS, MISSOURI**

And

**McGOWAN BROTHERS DEVELOPMENT CORPORATION, LLC**

for

**GRACE LOFTS TIF REDEVELOPMENT PROJECT**

Dated as of

\_\_\_\_\_ 2007

**TABLE OF CONTENTS**

**ARTICLE I  
DEFINITIONS**

Section 1.1 Definitions ..... 2

**ARTICLE II  
ACCEPTANCE OF PROPOSAL**

Section 2.1 Developer Designation ..... 6  
Section 2.2 Developer to Advance Costs ..... 6

**Article III  
CONSTRUCTION OF REDEVELOPMENT PROJECT**

Section 3.1 Acquisition of Property ..... 7  
Section 3.2 Condemnation ..... 7  
Section 3.3 Relocation ..... 7  
Section 3.4 Developer to Construct the Work ..... 7  
Section 3.5 Governmental Approvals ..... 7  
Section 3.6 Construction Plans; Changes ..... 7  
Section 3.7 Certificate of Substantial Completion ..... 8

**ARTICLE IV  
REIMBURSEMENT OF DEVELOPER COSTS**

|             |  |   |
|-------------|--|---|
| Section 4.1 | City's Obligation to Reimburse Developer .....   | 8 |
| Section 4.2 | Reimbursements Limited to Reimbursable Redevelopment Project Costs;<br>Developer's Right to Substitute ..... | 8 |
| Section 4.3 | City's Obligations Limited to Special Allocation Fund and Bond Proceeds .....                                | 9 |

**ARTICLE V  
TIF OBLIGATIONS**

|             |  |    |
|-------------|--|----|
| Section 5.1 | Conditions Precedent to the Issuance of TIF Notes .....                        | 9  |
| Section 5.2 | Issuance of TIF Notes .....  | 9  |
| Section 5.3 | TIF Bonds .....  | 10 |
| Section 5.4 | Cooperation in the Issuance of TIF Obligations .....                           | 10 |
| Section 5.5 | City to Select Underwriter and Financial Advisor; Term and Interest Rate ..... | 11 |

**ARTICLE VI  
SPECIAL ALLOCATION FUND;  
COLLECTION AND USE OF TIF REVENUES**

|             |   |    |
|-------------|---|----|
| Section 6.1 | Creation of Special Allocation Fund .....       | 11 |
| Section 6.2 | Certification of Base for PILOTS and EATS ..... | 11 |
| Section 6.3 | Application of Available Revenues .....         | 11 |
| Section 6.4 | Cooperation in Determining TIF Revenues .....   | 11 |
| Section 6.5 | Obligation to Report TIF Revenues .....         | 11 |
| Section 6.6 | Notice to City of Transfer .....                | 12 |

**ARTICLE VII  
GENERAL PROVISIONS**

|              |  |    |
|--------------|--|----|
| Section 7.1  | Developer's Right of Termination .....   | 12 |
| Section 7.2  | City's Right of Termination .....  | 12 |
| Section 7.3  | Successors and Assigns .....   | 13 |
| Section 7.4  | Remedies .....   | 13 |
| Section 7.5  | Force Majeure .....  | 13 |
| Section 7.6  | Notices .....  | 14 |
| Section 7.7  | Conflict of Interest .....   | 15 |
| Section 7.8  | Damage or Destruction of Redevelopment Project .....                               | 15 |
| Section 7.9  | Inspection .....   | 15 |
| Section 7.10 | Choice of Law .....  | 16 |
| Section 7.11 | Entire Agreement; Amendment .....  | 16 |
| Section 7.12 | Counterparts .....   | 16 |
| Section 7.13 | Severability .....   | 16 |
| Section 7.14 | Representatives Not Personally Liable .....  | 16 |
| Section 7.15 | Actions Contesting the Validity and Enforceability of the Redevelopment Plan ..... | 16 |
| Section 7.16 | Release and Indemnification .....  | 17 |
| Section 7.17 | Survival .....   | 18 |
| Section 7.18 | Maintenance of the Property .....  | 18 |
| Section 7.19 | Non-Discrimination .....   | 18 |
| Section 7.20 | Fair Employment .....  | 19 |

**ARTICLE VIII  
REPRESENTATIONS OF THE PARTIES**

|             |  |    |
|-------------|--|----|
| Section 8.1 | Representations of the City .....      | 19 |
| Section 8.2 | Representations of the Developer ..... | 19 |

**EXHIBITS**

|           |   |
|-----------|---|
| EXHIBIT A | Form of Certificate of Reimbursable Redevelopment Project Costs |
| EXHIBIT B | Form of Certificate of Substantial Completion                   |
| EXHIBIT C | Legal Description of the Redevelopment Area                     |
| EXHIBIT D | Reimbursable Redevelopment Project Costs                        |
| EXHIBIT E | Equal Opportunity and Nondiscrimination Guidelines              |

## REDEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED REDEVELOPMENT AGREEMENT (this "Agreement") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 200X, by and between the CITY OF ST. LOUIS, MISSOURI (the "City"), a city and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Missouri, and McGOWAN BROTHERS DEVELOPMENT CORPORATION, LLC, (the "Developer"), a limited liability company duly organized and existing under the laws of the State of Missouri. (All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in Article I of this Agreement.)

### RECITALS

A. Pursuant to Ordinance No. 62477, adopted and approved on December 20, 1991, the Board of Aldermen duly formed the Tax Increment Financing Commission of the City of St. Louis, Missouri (the "TIF Commission"), in accordance with the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 through 99.865 of the Revised Statutes of Missouri, as amended (the "TIF Act"), and empowered the TIF Commission to transact business and exercise its powers as authorized by the TIF Act.

B. The City published a notice on December 7, 2002 and December 14, 2002, in the St. Louis Post-Dispatch, a newspaper of general circulation within the City, soliciting proposals for the redevelopment of the Redevelopment Area (as hereinafter defined), and made such requests for proposals available for potential developers of the Redevelopment Area.

C. On November 5, 2002, the Developer submitted to the City a redevelopment proposal (the "Redevelopment Proposal") for the Redevelopment Area.

D. On January 8, 2003, following a public hearing held on January 8, 2003, in accordance with the TIF Act, the TIF Commission adopted a resolution approving the redevelopment plan known as the Grace Lofts TIF Redevelopment Plan (the "Redevelopment Plan") and recommending that the Board of Aldermen: (1) approve the Redevelopment Plan; and (2) approve and designate the Redevelopment Area as a "redevelopment area" as provided in the TIF Act.

E. On February 7, 2003, after due consideration of the TIF Commission's recommendations, the City adopted: (1) Ordinance No. 65854 designating the Redevelopment Area as a "redevelopment area" as provided in the TIF Act, approving the Redevelopment Plan, approving the redevelopment project described in the Redevelopment Plan (the "Redevelopment Project"), adopting tax increment allocation financing within the Redevelopment Area and establishing the Special Allocation Fund; (2) Ordinance No. 65855 authorizing the City to enter into a redevelopment agreement with Developer; and (3) Ordinance No. 65856 authorizing the issuance of TIF Notes and TIF Obligations as evidence of the City's obligation to pay certain Redevelopment Project Costs incurred in furtherance of the Redevelopment Plan and the Redevelopment Project and pledging TIF Revenues to the payment of the TIF Notes.

F. The City and Developer desired to alter the terms of issuance of the TIF Notes to provide for the initial issuance of TIF Notes to individuals and entities other than Developer and to extend time for substantial completion of the Redevelopment Project in accordance with the date Developer submitted its Certificate of Substantial Completion.

G. The Board of Aldermen hereby determines that the acceptance and the fulfillment generally of this Amended and Restated Redevelopment Agreement is in the best interests of the City, and the health, safety and welfare of its residents, and in accord with the public purposes specified in the Redevelopment Plan.

H. Pursuant to provisions of the TIF Act and Ordinance Nos. 65605, 65606, 65607, \_\_\_\_\_ and \_\_\_\_\_, the City is authorized to enter into this Amended and Restated Agreement, to issue TIF Notes as evidence of the City's obligation to pay certain Redevelopment Project Costs incurred in furtherance of the Redevelopment Plan and any such Redevelopment Project, and to pledge TIF Revenues to the payment of the TIF Notes.

### AGREEMENT

Now, therefore, in consideration of the premises and promises contained herein and other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### ARTICLE I. DEFINITIONS

**Section 1.1 Definitions.** As used in this Agreement, the following words and terms shall have the following meanings:

"Acquisition Costs" means all costs of acquiring a fee simple interest in the Property, including, but not limited to the cost of land and improvements; brokerage commissions; costs of title commitments, reports or policies; surveys; engineering fees, environmental remediation, soil, hazardous waste and other site and property-related reports and expenses; appraisals; professional fees of any kind or nature, including attorneys' fees, filing fees, recording fees, experts' fees; and all litigation costs, including commissioners' awards, judgments, payments in settlement of litigation, and all associated court costs, fees and expenses.

“Agreement” means this Amended and Restated Redevelopment Agreement by and between the City and the Developer, as the same may be from time to time modified, amended or supplemented in writing by the parties hereto.

“Approved Investors” means (a) the Developer or a Related Entity, (b) an “accredited investor” under Rule 501(a) of Regulation D promulgated under the Securities Act of 1933, (c) a “qualified institutional buyer” under Rule 144A promulgated under the Securities Act of 1933 or (d) any general business corporation or enterprise with total assets in excess of \$50,000,000.

“Approving Ordinance” means Ordinance No. 65854, designating the Redevelopment Area, approving the Redevelopment Plan, approving the Redevelopment Project, adopting tax increment allocation financing within the Redevelopment Area and establishing the Special Allocation Fund.

“Authorizing Ordinance” means Ordinance No. 65856 and Ordinance No. \_\_\_\_\_ authorizing the City to enter into the Original Agreement and the Amended and Restated Agreement with Developer.

“Available Revenues” means (a) all moneys on deposit in the the PILOTs Account of the Special Allocation Fund; (b) all moneys on deposit in the EATs Account of the Special Allocation Fund that have been appropriated to the repayment of the TIF Notes, excluding (i) any amount paid under protest until the protest is withdrawn or resolved against the taxpayer or (ii) any sum received by the City which is the subject of a suit or other claim communicated to the City which suit or claim challenges the collection of such sum.

“Board of Aldermen” means the Board of Aldermen of the City.

“Bond Counsel” means Armstrong Teasdale LLP, St. Louis, Missouri, or an attorney at law or a firm of attorneys acceptable to the City of nationally recognized standing in matters pertaining to the tax-exempt nature of interest on obligations issued by states and their political subdivisions duly admitted to the practice of law before the highest court of any state of the United States of America or the District of Columbia.

“Certificate of Reimbursable Redevelopment Project Costs” means a document substantially in the form of **Exhibit A**, attached hereto and incorporated herein by reference, provided by the Developer to the City in accordance with this Agreement and evidencing Reimbursable Redevelopment Project Costs incurred by the Developer.

“Certificate of Substantial Completion” means a document substantially in the form of **Exhibit B**, attached hereto and incorporated herein by reference, issued by the Developer to the City in accordance with this Agreement and evidencing the Developer’s satisfaction of all obligations and covenants to construct the Redevelopment Project in accordance with the Redevelopment Plan and this Agreement.

“City” means the City of St. Louis, Missouri, a city and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Missouri.

“Construction Plans” means plans, drawings, specifications and related documents, and construction schedules for the construction of the Work, together with all supplements, amendments or corrections, submitted by the Developer and approved by the City in accordance with and as required by this Agreement.

“Developer” means McGowan Brothers Development Corporation, LLC, a limited liability company duly organized and existing under the laws of the State of Missouri, or its permitted successors or assigns in interest.

“Economic Activity Taxes” or “EATs” shall have the meaning ascribed to such term in Section 99.805 of the TIF Act.

“Governmental Approvals” means all plat approvals, re-zoning or other zoning changes, site plan approvals, conditional use permits, variances, building permits, or other subdivision, zoning, or similar approvals required for the implementation of the Redevelopment Project related to the Redevelopment Area and consistent with the Redevelopment Plan, the Redevelopment Proposal and this Agreement.

“Issuance Costs” means all actual costs reasonably incurred by the City in furtherance of the issuance of TIF Obligations, including without limitation, the fees and expenses of financial advisors and consultants, the City’s attorneys (including issuer’s counsel and Bond Counsel), the City’s administrative fees and expenses (including fees and costs of planning consultants), underwriters’ discounts and fees, the costs of printing any TIF Notes and any official statements relating thereto, the costs of credit enhancement, if any, capitalized interest, debt service reserves and the fees of any rating agency rating any TIF Notes.

“Note Ordinance” means Ordinance No. \_\_\_\_\_, adopted by the Board of Aldermen authorizing the TIF Note and TIF Obligations, any trust indenture relating thereto, and all related ordinances, resolutions and proceedings.

“Original Agreement” means the Redevelopment Agreement dated as of August 12, 2003 by and between the City and Developer

“Payments in Lieu of Taxes” or “PILOTs” shall have the meaning ascribed to such term in Section 99.805 of the TIF Act.

“Project Fund” means the Project Fund created in the Note Ordinance.

“Redevelopment Area” means the area described in **Exhibit C**, attached hereto and incorporated herein by reference, comprising one parcel of real property.

“Redevelopment Plan” means the plan titled Grace Lofts TIF Redevelopment Plan as approved by the City on November 22, 2002, pursuant to Ordinance No. 65854, as such plan may from time to time be amended in accordance with the TIF Act.

“Redevelopment Project” means the redevelopment project described in the Redevelopment Plan as approved by Ordinance No. 65855 on February 7, 2003, consisting of the rehabilitation and renovation of the building located at 1320-24 Washington Avenue (historically known as the Lesan-Gould building) into two floors of retail and office space and approximately 40,500 square feet of residential space, along with underground parking.

“Redevelopment Project Costs” shall have the meaning ascribed to such term in Section 99.805(14) of the TIF Act.

“Redevelopment Proposal” means the document on file with the City and incorporated herein by reference, titled “Grace Lofts TIF Application” submitted by the Developer to the City on November 5, 2002, as subject to the provisions of the Redevelopment Plan and this Agreement.

“Reimbursable Redevelopment Project Costs” means those Redevelopment Project Costs as described in **Exhibit D**, attached hereto and incorporated herein by reference, for which the Developer is eligible for reimbursement in accordance with this Agreement.

“Related Entity” means any party or entity related to the Developer by one of the relationships described in Section 267(b), Section 707(b)(1)(A) or Section 707(b)(1)(B) of the Internal Revenue Code of 1986, as amended.

“Relocation Plan” means the relocation plan of the City for the Redevelopment Area as contained in the Redevelopment Plan, which relocation plan was adopted on December 20, 1991, pursuant to Ordinance No. 62481.

“SLDC” means the St. Louis Development Corporation, a non-profit corporation organized and existing under the laws of the State of Missouri.

“Special Allocation Fund” means the City of St. Louis, Missouri, Special Allocation Fund for the Grace Lofts TIF Redevelopment Project, created by Ordinance No. 65854 approved by the Mayor on February 25, 2003, in accordance with the TIF Act, and including the accounts into which Available Revenues are from time to time deposited in accordance with the TIF Act and this Agreement.

“TIF Act” means the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 through 99.865 of the Revised Statutes of Missouri, as amended.

“TIF Bonds” means tax increment revenue bonds, if any, authorized and issued by the City in accordance with the TIF Act and this Agreement.

“TIF Commission” means the Tax Increment Financing Commission of the City of St. Louis, Missouri.

“TIF Notes” means the [Taxable][Tax-Exempt] Tax Increment Revenue Note (Grace Lofts Redevelopment Project), Series 200x-A and Series 200x-B, issued pursuant to the Note Ordinance in a total aggregate principal amount not to exceed \$1,550,000 plus Issuance Costs, to evidence the City’s limited obligation to repay Reimbursable Redevelopment Project Costs incurred by the Developer on behalf of the City in accordance with the TIF Act and this Agreement.

“TIF Obligations” means TIF Bonds, TIF Notes or other obligations, singly or in series, issued by the City pursuant to the TIF Act and in accordance with this Agreement.

“TIF Revenues” means: (1) Payments in Lieu of Taxes attributable to the increase in the current equalized assessed valuation of each taxable lot, block, tract, or parcel of real property located within the Redevelopment Area over and above the initial equalized assessed value (as that term is used and described in Section 99.845.1 of the TIF Act) of each such unit of property, as paid to the City Treasurer by the City Collector of Revenue during the term of the Redevelopment Plan and the Redevelopment Project, and (2) fifty percent (50%) of the total additional revenues from taxes which are imposed by the City or other taxing districts (as that term is defined in Section 99.805(16) of the TIF Act) and which are generated by economic activities within the Redevelopment Area over the amount of such taxes generated by economic activities within the Redevelopment Area in the calendar year ending December 31, 2002 (subject to annual appropriation by the City as provided in the TIF Act), as defined and described in Sections 99.805(4) and 99.845 of the TIF Act, but excluding therefrom personal property taxes, taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, licenses, fees or special assessments, taxes levied pursuant to Section 70.500 of the Revised Statutes of Missouri, as amended, and taxes levied for the purpose of public transportation pursuant to Section 94.660 of the Revised Statutes of Missouri, as amended, all as provided in Section 99.845 of the TIF Act, as amended from time to time.

“Trustee” means the trustee or fiscal agent for any issue of TIF Obligations.

“Work” means all work necessary to prepare the Redevelopment Area and to construct or cause the construction of the Redevelopment Project as specifically described in the Redevelopment Proposal, the Redevelopment Plan, and this Agreement

including: (1) property acquisition, (2) professional fees, including architecture, engineering, surveying, legal and planning and consulting; (3) site preparation and improvements, including without limitation site re-grading and excavation for structural rehabilitation; installation of utilities, carpentry, brickwork, electrical work and site landscaping; and (4) all other work described in the Redevelopment Proposal and the Redevelopment Plan, or reasonably necessary to effectuate the intent of this Agreement.

## ARTICLE II. ACCEPTANCE OF PROPOSAL

**Section 2.1 Developer Designation.** The City hereby selects the Developer, who has acquired the Property, and to perform or cause the performance of the Work in accordance with the Redevelopment Plan, this Agreement and all Governmental Approvals.

**Section 2.2 Developer to Advance Costs.** The Developer agrees to advance all Redevelopment Project Costs as necessary to acquire the Property and to complete the Work, all subject to the Developer's right to abandon the Redevelopment Project and to terminate this Agreement as set forth in **Section 7.1** of this Agreement. Additionally, and not by way of limitation:

2.2.1 the City acknowledges that, prior to the execution of the Original Agreement, the Developer paid an initial fee of Five Thousand Dollars (\$5,000.00) TIF Application Fee;

2.2.2 the City acknowledges that, prior to the execution of the Original Agreement, the Developer paid a fee of Four Thousand Seven Hundred and Ten Dollars (\$4,710.00), which monies have been paid one half to the Comptroller of the City and one half to the SLDC to reimburse the City's Comptroller and the SLDC for their administrative costs incurred in connection with the review of the Redevelopment Application and Redevelopment Plan;

2.2.3 the City acknowledges that, within ten (10) days of execution of the Original Agreement, Developer paid to the Comptroller of the City an additional amount Four Thousand Seven Hundred and Ten Dollars (\$4,710.00), which amount was paid one half to the Comptroller and one half to the SLDC for their administrative costs incurred in connection with the negotiation of the Original Agreement.

2.2.4 the City acknowledges that, within ten (10) days of execution of the Original Agreement, Developer paid to the Comptroller of the City an additional amount of Thirteen Thousand Nine Hundred and Fifty-Nine Dollars and Fifteen Cents (\$13,959.15), which amount was paid to reimburse the Comptroller for its actual legal expenses incurred in connection with the adoption of the Approving Ordinances and the negotiation of the Original Agreement;

2.2.5 the Developer shall, within ten (10) days of the execution of this Amended and Restated Agreement pay to the Comptroller of the City an additional amount to reimburse the Comptroller for its actual legal expenses incurred in connection with the adoption of the Amended and Restated Agreement and Ordinance and the Note Ordinance;

2.2.6 the Developer shall, concurrently with the initial issuance of the TIF Notes, pay to the City an additional amount as determined by the Comptroller, for the City's Issuance Costs of such TIF Notes; and

2.2.7 any amounts advanced to the City shall represent Reimbursable Redevelopment Project Costs to be reimbursed exclusively from the proceeds of TIF Obligations as provided in and subject to **Article IV** and **Article V** of this Agreement.

## ARTICLE III. CONSTRUCTION OF REDEVELOPMENT PROJECT

**Section 3.1 Acquisition of Property.** Developer represents that, as of the date of this Agreement, Developer is the fee owner of the Property. Any additional properties acquired by the Developer for completion of the Work shall be held in the name of the Developer and shall be subject to the terms, conditions and covenants contained herein and in the Redevelopment Plan immediately upon acquisition.

**Section 3.2 Condemnation.** As of the date of this Agreement, it is not anticipated that the use of eminent domain will be necessary to acquire any portion of the Property in the Redevelopment Area.

**Section 3.3 Relocation.** The Developer shall identify any Displaced Person (as defined in Ordinance No. 62481 of the City) that is entitled to relocation payments or relocation assistance under the Relocation Plan. The City shall, at the Developer's sole cost and expense, subject to reimbursement as a Reimbursable Redevelopment Project Cost in accordance with **Article IV** of this Agreement, coordinate such relocation payments and relocation assistance in accordance with the Relocation Plan.

**Section 3.4 Developer to Construct the Work.** The Developer shall commence or cause the commencement of the construction of the Work within one hundred twenty (120) days of the date of this Agreement, which Work shall be constructed in a good and workmanlike manner in accordance with the terms of this Agreement. The Developer has completed or caused the completion of all of the Work.

3.4.1 The Developer may enter into or cause to be entered into one or more construction contracts to complete the Work. Prior to the commencement of construction of any portion of the Work, the Developer shall obtain or shall require that any of its contractors obtain workers' compensation, comprehensive public liability and builder's risk insurance

coverage in amounts customary in the industry for similar type projects. The Developer shall require that such insurance be maintained by any of its contractors for the duration of the construction of such portion of the Work. To the extent that laws pertaining to prevailing wage and hour apply to any portion of the Work, the City and the Developer agree to cooperate and take all actions necessary to apply for the wage and hour determinations and otherwise comply with such laws.

**Section 3.5 Governmental Approvals.** The City and the SLDC agree to employ reasonable and good faith efforts to cooperate with the Developer and to process and timely consider and respond to all applications for the Governmental Approvals as received, all in accordance with the applicable City ordinances and laws of the State of Missouri.

**Section 3.6 Construction Plans; Changes.** The Construction Plans shall be prepared by a professional engineer or architect licensed to practice in the State of Missouri and the Construction Plans and all construction practices and procedures with respect to the Work shall be in conformity with all applicable state and local laws, ordinances and regulations. During the progress of the Work, the Developer may make such reasonable changes, including without limitation modification of the construction schedule, including dates of commencement and completion, modification of the areas in which the Work is to be performed, relocation, expansion or deletion of items, revisions to the areas and scope of Work, and any and all such other changes as site conditions or orderly development may dictate or as may be necessary or desirable, in the sole determination of the Developer, to enhance the economic viability of the Redevelopment Project and as may be in furtherance of the general objectives of the Redevelopment Plan; provided that (a) the Developer shall comply with all laws, regulations and ordinances of the City and (b) prior to any material changes, the Developer shall obtain the advance written consent of the City and the SLDC, which consent shall not be unreasonably withheld or delayed. For purposes of this Section, "material changes" shall mean any change that could reasonably be expected to result in a decrease in the aggregate amount of TIF Revenues generated within the Redevelopment Area of at least ten percent (10%).

**Section 3.7 Certificate of Substantial Completion.** Promptly after substantial completion of the Work, the Developer shall furnish to the City and the SLDC a Certificate of Substantial Completion. The City and the SLDC shall, within thirty (30) days following delivery of the Certificate of Substantial Completion, carry out such inspections as it deems necessary to verify to its reasonable satisfaction the accuracy of the certifications contained in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be deemed accepted by the City and the SLDC unless, within thirty (30) days following delivery of the Certificate of Substantial Completion, the City or the SLDC furnishes the Developer with specific written objections to the status of the Work, describing such objections and the measures required to correct such objections in reasonable detail. Upon acceptance of the Certificate of Substantial Completion by the City and the SLDC or upon the lapse of thirty (30) days after delivery thereof to the City and the SLDC without any written objections thereto, the Developer may record the Certificate of Substantial Completion with the City's Recorder of Deeds, and the same shall constitute evidence of the satisfaction of the Developer's agreements and covenants to perform all Work. The Certificate of Substantial Completion shall be in substantially the form attached as **Exhibit B**, attached hereto and incorporated by referenced herein.

#### **ARTICLE IV. REIMBURSEMENT OF DEVELOPER COSTS**

**Section 4.1 City's Obligation to Reimburse Developer.** The City agrees to reimburse Developer for the verified Reimbursable Redevelopment Project Costs in the amounts and as set forth on **Exhibit D**, attached hereto and incorporated herein by reference, as may be adjusted pursuant to Article IV of this Agreement. Subject to the terms of the Note Ordinance and this Agreement, the City agrees to issue TIF Notes to evidence the City's obligation to reimburse Developer for verified Reimbursable Redevelopment Project Costs in an amount not to exceed One Million Five Hundred Fifty Thousand Dollars and 00/100 (\$1,550,000.00) plus Issuance Costs and interest as provided in **Section 5.2** of this Agreement, subject to the limitations of **Article IV** of this Agreement.

**Section 4.2 Reimbursements Limited to Reimbursable Redevelopment Project Costs; Developer's Right to Substitute.** Nothing in this Agreement shall obligate the City to issue TIF Notes to reimburse the Developer for any cost that is not incurred pursuant to Section 99.820.1 of the TIF Act or that does not qualify as a "redevelopment project cost" under Section 99.805(14) of the TIF Act. The Developer shall, at the City's request, provide itemized invoices, receipts or other information, if any, reasonably requested by the City to confirm that any such cost is so incurred and does so qualify. Each such request shall be accompanied by a certification by the Developer that such cost is eligible for reimbursement under the TIF Act. The parties agree that each of the categories of costs set forth in **Exhibit D**, attached hereto and incorporated herein by reference, shall constitute Reimbursable Redevelopment Project Costs which are eligible for reimbursement in accordance with the TIF Act and this Agreement. The Developer shall not be limited to the total amount of reimbursement shown for each such category on **Exhibit D**, but shall be entitled to reimbursement for Redevelopment Project Costs from any of the categories set forth therein, without regard to the maximum amounts shown for each category, up to the maximum aggregate amount established in Section 4.1 of this Agreement; provided that the Developer shall be obligated to advance to the City the full amounts identified in **Section 2.2**, clauses **2.2.1** through **2.2.4**, of this Agreement. If the City determines that any cost identified as a Reimbursable Redevelopment Project Cost is not a "redevelopment project cost" under Section 99.805(14) of the TIF Act, the City shall so notify the Developer in writing within thirty (30) days identifying the ineligible cost and the basis for determining the cost to be ineligible, whereupon the Developer shall have the right to contest such determination and/or identify and substitute other Redevelopment Project Costs as Reimbursable Redevelopment Project Costs with a supplemental application for payment.

**Section 4.3 City's Obligations Limited to Special Allocation Fund and Bond Proceeds.** Notwithstanding any other term or provision of this Agreement, TIF Notes issued by the City to the Developer for Reimbursable Redevelopment Project

Costs are payable only from the Special Allocation Fund and from Bond Proceeds, if any, and from no other source.

#### ARTICLE V. TIF OBLIGATIONS

**Section 5.1 Conditions Precedent to the Issuance of TIF Notes.** No TIF Notes shall be issued until such time as the City has (i) accepted a Certificate of Substantial Completion in accordance with the procedures set forth in **Section 3.8** of this Agreement; (ii) approved a Certificate of Reimbursable Redevelopment Project Costs in substantially the form of **Exhibit A**, attached hereto and incorporated herein by reference, in accordance with the procedures set forth in **Section 4.2** of this Agreement; (iii) obtained an opinion of Bond Counsel regarding the taxable nature of the TIF Notes; (iv) received the full payment of all advances required to be paid under **Section 2.2** of this Agreement; and (v) received such other documentation as the City shall reasonably require of Developer in order for the City to obtain an opinion of Bond Counsel as required by this **Section 5.1**

**Section 5.2 Issuance of TIF Notes.** Upon satisfaction of the conditions of **Section 2.2**, clause **2.2.4**, and **Section 5.1** of this Agreement, the City agrees to issue one or more TIF Notes as provided in the Note Ordinance to reimburse the Developer for Reimbursable Redevelopment Project Costs up to the maximum amount established in **Section 4.1** of this Agreement, subject to the limitations of **Article IV** of this Agreement.

**5.2.1 Terms.** Each TIF Note shall bear interest at a fixed rate per annum, determined on the date that is not less than ten (10) business days and not more than sixty (60) days prior to the scheduled closing date for the issuance of the TIF Notes (the "Pricing Date") based on the municipal yield curve for general obligation bonds (the "MMD") compiled by Municipal Market Data-Line® (or its successors) and published by Thomson Financial, an operating unit of The Thomson Corporation (or its successors), using the MMD yield published as of the Issuance Date for general obligation bonds rated "AAA" that mature in the same year as the TIF Notes, (i) plus four percent (4%) if the interest on the TIF Notes (in the opinion of Bond Counsel) is not exempt from federal income taxation (the "Taxable Rate"), or (ii) plus two percent (2.0%) if the interest on the TIF Notes (in the opinion of Bond Counsel) is exempt from federal income taxation (the "Tax-Exempt Rate"); provided, in no event shall the interest rate on the TIF Notes exceed ten percent (10%) per annum.

**5.2.2 Procedures for Issuance of TIF Notes.** Within sixty (60) days of the Developer's satisfaction of the conditions of **Section 5.1** of this Agreement the City shall issue a TIF Note evidencing reimbursement of Reimbursable Redevelopment Project Costs. Notwithstanding anything contained in this Agreement to the contrary, upon the acceptance by the City of a Certificate of Reimbursable Redevelopment Project Costs and the issuance by the City of a TIF Note as provided in this **Section 5.2.3**, the Developer shall be deemed to have advanced funds necessary to purchase such TIF Notes and the City shall be deemed to have deposited such funds in the Project Fund and shall be deemed to have reimbursed the Developer in full for such costs from the amounts deemed to be on deposit in the Project Fund from time to time.

**5.2.3 Special Mandatory Redemption of TIF Notes.** The TIF Notes are subject to special mandatory redemption by the City, on each March 1 and September 1 occurring after the acceptance by the City of the Certificate of Substantial Completion and issuance of the TIF Notes at a redemption price equal to 100% of the principal amount being redeemed, together with the accrued interest thereon to the date fixed for redemption, which amount of principal being redeemed shall be an amount equal to Available Revenues on deposit in the applicable account of the Special Allocation Fund and which will not be required for the payment of interest on such March 1 and September 1.

**Section 5.3 TIF Bonds.** The City may, in its sole and absolute discretion, issue TIF Bonds in an amount sufficient to refund all or a portion of the outstanding TIF Notes. The Developer shall not have any liability for any costs associated with the issuance of TIF Bonds but shall bear its own costs and expenses, including any attorneys' fees and expenses, that the Developer may incur in complying with **Section 5.4** of this Agreement. Proceeds of any TIF Bonds shall be applied in the following order: (a) to the payment of Issuance Costs relating to the issuance of the TIF Bonds; (b) to the payment of outstanding principal of and interest on the TIF Notes to be refunded; (c) to the payment of capitalized interest on the TIF Bonds; and (d) to the establishment of a debt service reserve fund for the TIF Bonds.

**Section 5.4 Cooperation in the Issuance of TIF Obligations.** The Developer covenants to cooperate and take all reasonable actions necessary to assist the City and its Bond Counsel, underwriters and financial advisors in the preparation of offering statements, private placement memorandum or other disclosure documents and all other documents necessary to market and sell the TIF Bonds, including disclosure of tenants of the Property and the non-financial terms of the leases between the Developer and such tenants, to the extent permitted by such leases. The Developer will not be required to disclose to the general public or any investor any proprietary or confidential information, including financial information, pertaining to the Developer, but upon the execution of a confidentiality agreement acceptable to the Developer, the Developer will provide such information to the City's financial advisors, underwriters and their counsel to enable such parties to satisfy their due diligence obligations. The Developer shall make such compliance obligation a covenant running with the land, enforceable as if any subsequent transferee thereof were originally a party to and bound by this Agreement.

**Section 5.5 City to Select Underwriter and Financial Advisor; Term and Interest Rate.** The City shall have the right to select the designated underwriter (and such financial advisors and consultants as the underwriter and the City deem necessary for the issuance of the TIF Bonds) and underwriter's counsel. The final maturity of the TIF Bonds shall not exceed the maximum term permissible under the TIF Act. The TIF Bonds shall bear interest at such rates, shall be subject to redemption and shall have such terms as the City shall determine in its sole and absolute discretion.

**ARTICLE VI.  
SPECIAL ALLOCATION FUND;  
COLLECTION AND USE OF TIF REVENUES**

**Section 6.1 Creation of Special Allocation Fund.** The City agrees to cause its Comptroller or other financial officer to maintain the Special Allocation Fund, including a "PILOTs Account" and an "EATs Account," and such further accounts or sub-accounts as are required by this Agreement or as the Comptroller of the City may deem appropriate in connection with the administration of the Special Allocation Fund pursuant to this Agreement. Subject to the requirements of the TIF Act and, with respect to Economic Activity Taxes, subject to annual appropriation by the Board of Aldermen, the City will promptly upon receipt thereof deposit all PILOTs in the PILOTs Account and all EATs in the EATs Account, as applicable.

**Section 6.2 Certification of Base for PILOTs and EATS.** Within ninety (90) days after adoption of the Approving Ordinances, the City shall provide to the Developer: (i) a true, correct and complete copy of the City Assessor's calculation of the total initial equalized assessed valuation of the taxable real property within the Redevelopment Area based upon the most recently ascertained equalized assessed value of each taxable lot, block, tract or parcel of real property within the Redevelopment Area; and (ii) a certification of the amount of revenue from taxes, penalties and interest which are imposed by the City and other taxing districts and which are generated by economic activities within the Redevelopment Area for the calendar year ending December 31, 2001, but excluding those taxes, licenses, fees or special assessments identified in Section 99.845.3 of the TIF Act.

**Section 6.3 Application of Available Revenues.** The City hereby agrees for the term of this Agreement to apply the Available Revenues and any taxes, fees or assessments subsequently enacted and imposed in substitution therefor and allocable to the Special Allocation Fund under the TIF Act or this Agreement to the repayment of TIF Notes issued under Article V of this Agreement as provided in the Note Ordinance and this Agreement.

**Section 6.4 Cooperation in Determining TIF Revenues.** The City and the Developer agree to cooperate and take all reasonable actions necessary to cause the TIF Revenues to be paid into the Special Allocation Fund, including the City's enforcement and collection of all such payments through all reasonable and ordinary legal means of enforcement.

**Section 6.5 Obligation to Report TIF Revenues.** The Developer shall cause any purchaser or transferee of real property located within the Property, and any lessee or other user of real property located within the Property required to pay TIF Revenues, to use all reasonable efforts to timely fulfill such obligations as are required by **Section 6.4** of this Agreement. So long as any of the TIF Obligations are outstanding, the Developer shall cause such obligations to be covenants running with the land, which covenants shall be enforceable as if such purchaser, transferee, lessee or other user of such real property were originally a party to and bound by this Agreement.

**Section 6.6 Notice to City of Transfer.** The Developer agrees to notify the City in writing of any proposed sale, transfer or other disposition of the Property or any interest therein as permitted by **Section 7.3.2** of this Agreement within ninety (90) days after the date of said sale, transfer or other disposition. Said notice shall specify the name and address of the person so acquiring any or all of the Property or any interest therein and shall identify the Property to be sold, transferred or otherwise disposed, whether by voluntary transfer or otherwise.

**ARTICLE VII.  
GENERAL PROVISIONS**

**Section 7.1 Developer's Right of Termination.** At any time prior to the delivery of the Certificate of Substantial Completion, the Developer may, by giving written notice to the City, abandon the Redevelopment Project and terminate this Agreement and the Developer's obligations hereunder if the Developer determines, in its sole discretion, that the Redevelopment Project is no longer economically feasible. Upon such termination, the City shall have no obligation to reimburse the Developer for any amounts advanced under this Agreement or costs otherwise incurred or paid by Developer.

**Section 7.2 City's Right of Termination.** The City may terminate this Agreement if the Developer fails to submit its Certificate of Substantial Completion, acceptable to the City, in accordance with **Section 3.7** of this Agreement and the schedule set forth in Section 3.4 of this Agreement. Upon termination of this Agreement for any reason, the City shall have no further obligation to reimburse the Developer for any amounts advanced under this Agreement or costs otherwise incurred or paid by Developer.

**Section 7.3 Successors and Assigns.**

**7.3.1 Binding Affect.** This Agreement shall be binding on and shall inure to the benefit of the parties named herein and their respective heirs, administrators, executors, personal representatives, successors and assigns.

**7.3.2 Assignment or Sale.** Without limiting the generality of the foregoing, all or any part of the Property or any interest therein may be sold, transferred, encumbered, leased, or otherwise disposed of at any time, and the rights of the Developer named herein or any successors in interest under this Agreement or any part hereof may be assigned at any time before, during or after redevelopment of the Redevelopment Project, whereupon the party disposing of its interest in the Property or assigning its interest under this Agreement shall be thereafter released from further obligation under this Agreement (although any such Property so disposed of or to which such interest pertains shall remain subject to the terms

and conditions of this Agreement), provided that until substantial completion of the Redevelopment Project, the fee title to the Property shall not be sold, transferred or otherwise disposed of and the rights, duties and obligations of the Developer under this Agreement shall not be assigned in whole or in part without the prior written approval of the City, which approval shall not be unreasonably withheld or delayed upon a reasonable demonstration by the Developer of the proposed transferee's or assignee's experience and financial capability to undertake and complete such portions of the Work and perform the Developer's obligations under this Agreement, all in accordance with this Agreement. Notwithstanding anything herein to the contrary, the City hereby approves, and no prior consent shall be required in connection with: (a) the right of the Developer to encumber or collaterally assign its interest in the Property or any portion thereof to secure loans, advances or extensions of credit to finance or from time to time refinance all or any part of the Redevelopment Project Costs, or the right of the holder of any such encumbrance or transferee of any such collateral assignment (or trustee or agent on its behalf) to transfer such interest by foreclosure or transfer in lieu of foreclosure under such encumbrance or collateral assignment; (b) the right of Developer to assign the Developer's rights, duties and obligations under this Agreement to any party related to the Developer by one of the relationships described in Section 267(b) of the United States Internal Revenue Code of 1986, as amended; provided that in each such event (i) the Developer named herein (McGowan Brothers Development Corporation, LLC) shall remain liable hereunder for substantial completion of the Work and shall be released from such liability hereunder only upon the City's acceptance of the Certificate of Substantial Completion and (ii) the Developer provides to the City fifteen (15) days' advance written notice of the proposed assignment or transfer.

**7.3.3 Assignment or Sale to Exempt Organization.** Prior to any sale, transfer or other disposition of all or any portion of the Property or any interest therein to an organization exempt from payment of ad valorem property taxes, such organization shall be required to agree not to apply for an exemption from payment of such property taxes for a period ending on the earlier of the date that all TIF Obligations are paid in full or twenty-three (23) years from the date that the Note Ordinance was adopted by the City. The Developer shall make this requirement a covenant running with the land, enforceable for such period as if such purchaser or other transferee or possessor thereof were originally a party to and bound by this Agreement.

**Section 7.4 Remedies.** Except as otherwise provided in this Agreement and subject to the Developer's and the City's respective rights of termination, in the event of any default in or breach of any term or conditions of this Agreement by either party, or any successor, the defaulting or breaching party (or successor) shall, upon written notice from the other party specifying such default or breach, proceed immediately to cure or remedy such default or breach, and shall, in any event, within thirty (30) days after receipt of notice, cure or remedy such default or breach. In the event that the defaulting or breaching party (or successor) diligently and in good faith commences to cure or remedy such default or breach but is unable to cure or remedy such default or breach within thirty (30) days after receipt of notice, the defaulting or breaching party (or successor) shall, prior to the end of such thirty (30) days, provide notice to the other party that it has in good faith commenced to cure or remedy such default or breach, whereupon the defaulting or breaching party (or successor) shall have an additional thirty (30) days to cure or remedy such default or breach. In case such cure or remedy is not taken or not diligently pursued, or the default or breach shall not be cured or remedied prior to the end of the additional thirty (30) day period, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including without limitation proceedings to compel specific performance by the defaulting or breaching party.

**Section 7.5 Force Majeure.** Neither the City nor the Developer nor any successor in interest shall be considered in breach or default of their respective obligations under this Agreement, and times for performance of obligations hereunder shall be extended (but with respect to the times for performance set out in Section 3.4 of this Agreement, only to the extent provided therein and established thereunder) in the event of any delay caused by force majeure, including without limitation damage or destruction by fire or casualty; strike; lockout; civil disorder; war; restrictive government regulations; lack of issuance of any permits and/or legal authorization by the governmental entity necessary for the Developer to proceed with construction of the Work or any portion thereof; shortage or delay in shipment of material or fuel; acts of God; unusually adverse weather or wet soil conditions; or other like causes beyond the parties' reasonable control, including without limitation any litigation, court order or judgment resulting from any litigation affecting the validity of the Redevelopment Plan, the Redevelopment Project or the TIF Obligations or this Agreement; provided that such event of force majeure shall not be deemed to exist as to any matter initiated or sustained by the Developer in bad faith, and further provided that the Developer notifies the City in writing within thirty (30) days of the commencement of such claimed event of force majeure.

**Section 7.6 Notices.** Any notice, demand or other communication required by this Agreement to be given by either party hereto to the other shall be in writing and shall be sufficiently given or delivered if dispatched by certified United States first class mail, postage prepaid, or delivered personally,

In the case of the Developer, to:

McGowan Brothers Development Corporation, LLC  
1223 Lucas Avenue  
St. Louis, MO 63103  
Attention: Kevin McGowan  
Facsimile: 314.621.8440

With copies to:

Husch & Eppenberger, LLC

190 Carondelet Plaza  
Suite 600  
Clayton, Missouri 63105  
Attention: David Richardson  
Facsimile: 314.480.1505

In the case of the City, to:

City of St. Louis  
Office of the Mayor  
City Hall  
1200 Market Street, Room 200  
St. Louis, Missouri 63103  
Attention: Barbara Geisman, Executive Director of Development  
Facsimile: 314.622.3440

And

City of St. Louis  
Office of the Comptroller  
City Hall  
1200 Market Street, Room 212  
St. Louis, Missouri 63103  
Attention: Ivy Neyland-Pinkston, Deputy Comptroller  
Facsimile: 314.589.0550

With a copy to:

St. Louis Development Corporation  
1015 Locust Street  
Suite 1200  
St. Louis, Missouri 63101  
Attention: Dale Ruthsatz  
Facsimile: 314.231.2341

And

Armstrong Teasdale LLP  
One Metropolitan Square, Suite 2600  
St. Louis, Missouri 63102  
Attention: Thomas J. Ray  
Facsimile: 314.621.5065

or to such other address(es) with respect to either party as that party may, from time to time, designate in writing and forward to the other as provided in this paragraph.

**Section 7.7 Conflict of Interest.** No member of the Board of Aldermen, the TIF Commission, or any branch of the City's government who has any power of review or approval of any of the Developer's undertakings, or of the City's contracting for goods or services for the Redevelopment Area, shall participate in any decisions relating thereto which affect that member's personal interests or the interests of any corporation or partnership in which that member is directly or indirectly interested. Any person having such interest shall immediately, upon knowledge of such possible conflict, disclose, in writing, to the Board of Aldermen the nature of such interest and seek a determination by the Board of Aldermen with respect to such interest and, in the meantime, shall not participate in any actions or discussions relating to the activities herein proscribed.

**Section 7.8 Damage or Destruction of Redevelopment Project.** In the event of total destruction or damage to the Redevelopment Project by fire or other casualty, during construction or thereafter during the term of this Agreement so long as any TIF Notes are outstanding, the Developer shall determine and advise the City in writing within one year of such destruction or damage whether to restore, reconstruct and repair any such destruction or damage so that the Redevelopment Project will be completed or rebuilt in accordance with the Redevelopment Plan and this Agreement. Should the Developer determine not to restore, reconstruct and repair, all unaccrued liability of the City for any payments of principal or interest on the TIF Notes shall immediately terminate and the Developer shall promptly surrender the TIF Notes to the City for cancellation. In the event of such total destruction or damage during the term of this Agreement and after any TIF Bonds are issued, the Developer shall, at the City's option after consultation with the Developer, tender to the City that portion of the insurance proceeds from any fire or casualty insurance policy in an amount equal to the outstanding principal amount of the TIF Bonds, plus accrued interest thereon.

**Section 7.9 Inspection.** The City may conduct such periodic inspections of the Work as may be generally provided in the building code of the City. In addition, the Developer shall allow other authorized representatives of the City reasonable access to the Work site from time to time upon advance notice prior to the completion of the Work for inspection thereof. The Developer

shall not unreasonably deny the City and its officers, employees, agents and independent contractors the right to inspect, upon request, all architectural, engineering, demolition, construction and other contracts and documents pertaining to the construction of the Work as the City determines is reasonable and necessary to verify the Developer's compliance with the terms of this Agreement.

**Section 7.10 Choice of Law.** This Agreement shall be taken and deemed to have been fully executed, made by the parties in, and governed by the laws of State of Missouri for all purposes and intents.

**Section 7.11 Entire Agreement; Amendment.** The parties agree that this Agreement constitutes the entire agreement between the parties and that no other agreements or representations other than those contained in this Agreement have been made by the parties. This Agreement shall be amended only in writing and effective when signed by the authorized agents of the parties.

**Section 7.12 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall constitute one and the same instrument.

**Section 7.13 Severability.** In the event any term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect, to the extent the remainder can be given effect without the invalid provision.

**Section 7.14 Representatives Not Personally Liable.** No elected or appointed official, agent, employee or representative of the City shall be personally liable to the Developer in the event of any default or breach by any party under this Agreement, or for any amount which may become due to any party or on any obligations under the terms of this Agreement.

**Section 7.15 Actions Contesting the Validity and Enforceability of the Redevelopment Plan.** During such time as the Developer is the owner of the TIF Notes, in the event a third party brings an action against the City or the City's officials, agents, attorneys, employees or representatives contesting the validity or legality of the Redevelopment Area, the Redevelopment Plan, the TIF Obligations, or the ordinance approving this Agreement, the Developer may, at its option, join the City in defense of such claim or action. The parties expressly agree that, so long as no conflicts of interest exist between them with regard to the handling of such litigation, the same attorney or attorneys may simultaneously represent the City and the Developer in any such proceeding. The Developer shall be responsible for all reasonable and necessary costs and expenses incurred by the City and by the Developer in connection with the defense of such claim or action, provided that if the City does not approve a settlement or compromise which the Developer would agree to, the Developer shall not be responsible for any costs or expenses incurred thereafter in the defense of such claim or action. All cost of any such defense, whether incurred by the City or the Developer, shall be deemed to be Reimbursable Redevelopment Project Costs and reimbursable from any amounts in the Special Allocation Fund, subject to **Article IV** of this Agreement.

**Section 7.16 Release and Indemnification.** The indemnification provisions and covenants contained in this Section shall survive termination or expiration of this Agreement.

7.16.1 The City and its governing body members, officers, agents, attorneys, employees and independent contractors shall not be liable to the Developer for damages or otherwise in the event that all or any part of the TIF Act, or any ordinance adopted in connection with either the TIF Act, this Agreement or the Redevelopment Plan, is declared invalid or unconstitutional in whole or in part by the final (as to which all rights of appeal have expired or have been exhausted) judgment of any court of competent jurisdiction, and by reason thereof either the City is prevented from performing any of the covenants and agreements herein or the Developer is prevented from enjoying the rights and privileges hereof.

7.16.2 The Developer releases from and covenants and agrees that the City and its governing body members, officers, agents, attorneys, employees and independent contractors shall not be liable for, and agrees to indemnify and hold harmless the City, its governing body members, officers, agents, attorneys, employees and independent contractors against any and all claims, demands, liabilities and costs, including reasonable attorneys' fees, costs and expenses, arising from damage or injury, actual or claimed (excluding consequential and punitive damages), to persons or property occurring or allegedly occurring as a result of any negligent or malicious acts or omissions of the Developer, its governing body members, officers, agents, attorneys, employees and independent contractors, in connection with its or their activities conducted pursuant to this Agreement.

7.16.3 The City and its governing body members, officers, agents, attorneys, employees and independent contractors shall not be liable for any damage or injury to the persons or property of the Developer or its officers, agents, employees, independent contractors or any other persons who may be about the Property or the Work except for matters arising out of the gross negligence or willful misconduct of the City and its governing body members, officers, agents, attorneys, employees and independent contractors.

7.16.4 All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and not of any of its governing body members, officers, agents, attorneys, employees or independent contractors in their individual capacities.

7.16.5 No governing body members, officers, agents, attorneys, employees or independent contractors of the City shall be personally liable to the Developer (i) in the event of a default or breach by any party under this Agreement or (ii) for any amount or any TIF Obligations which may become due to any party under the terms of this Agreement.

7.16.6 The Developer releases from and covenants and agrees that the City, its governing body members, officers, agents, attorneys, employees and independent contractors shall not be liable for, and agrees to indemnify and hold the City, its governing body members, officers, agents, attorneys, employees and independent contractors, harmless from and against any and all third party suits, interest, claims and cost of reasonable attorneys fees incurred by any of them, resulting from, arising out of, or in any way connected with: (i) the enforcement of this Agreement, the validity of the TIF Obligations or the enforcement or validity of any other agreement or obligation made in connection therewith and their approvals (excluding opinions of counsel and of the City's financial advisors whenever such claim is based on such party's own negligence); (ii) the negligence or willful misconduct of the Developer or its officers, agents, employees or independent contractors in connection with the design, management, development, redevelopment and construction of the Work, or (iii) the compliance by the Developer with all applicable state, federal and local environmental laws, regulations and ordinances as applicable to the Property, to the extent such condition existed prior to the acquisition thereof by the Developer. The foregoing release and indemnification shall not apply in the case of such liability arising directly out of the negligence or malicious acts or omissions of the City or its governing body members, officers, agents, attorneys, employees and independent contractors in connection with its or their activities conducted pursuant to this Agreement or which arises out of matters undertaken by the City following termination of this Agreement as to the Redevelopment Project or any particular portion thereof.

**Section 7.17 Survival.** Notwithstanding the expiration or termination or breach of this Agreement by either party, the agreements contained in **Section 2.2**, clauses **2.2.3** and **2.2.4**, **Article VI**, **Section 7.10**, **Section 7.11**, **Section 7.12**, **Section 7.13**, **Section 7.14**, **Section 7.15**, **Section 7.16**, **Section 7.17** and **Article VIII** of this Agreement shall, except as otherwise expressly set forth herein, survive such early expiration or early termination of this Agreement by either party.

**Section 7.18 Maintenance of the Property.** The Developer shall remain in compliance with all provisions of the City's ordinances relating to maintenance and appearance of the Property during the construction of the Redevelopment Project or any portion thereof. Upon substantial completion of the Redevelopment Project and so long as any TIF Obligations are outstanding, the Developer or its successor(s) in interest, as owner or owners of the affected portion(s) of the Property, shall, during the remainder of the term of this Agreement (but subject to any delay caused by an event of force majeure as provided in **Section 7.5** of this Agreement), maintain or cause to be maintained the buildings and improvements within the Redevelopment Area which it owns in a good state of repair and attractiveness and in conformity with applicable state and local laws, ordinances and regulations. If there are separately-owned or ground leased parcels of real estate on the Property during the term of this Agreement, each owner or lessee as a successor in interest to the Developer shall maintain or cause to be maintained the buildings and improvements on its parcel in a good state of repair and attractiveness and in conformity with applicable state and local laws, ordinances and regulations, and shall maintain or cause to be maintained reasonable casualty and liability insurance with respect to the same in accordance with **Section 7.8** of this Agreement.

**Section 7.19 Non-Discrimination.** The Developer agrees that, during the term of this Agreement and as an independent covenant running with the land, there shall be no discrimination upon the basis of race, creed, color, national origin, sex, age, marital status or physical handicap in the sale, lease, rental, occupancy or use of any of the facilities under its control within the Redevelopment Area or any portion thereof and said covenant may be enforced by the City or the United States of America or any of their respective agencies. The Developer further agrees that a provision containing the covenants of this paragraph shall be included in all agreements pertaining to the lease or conveyance or transfer (by any means) of all or a portion of the Redevelopment Project and any of the facilities under its control in the Redevelopment Area. Except as provided in this Section, the Developer shall have no obligation to enforce the covenants made by any transferee or lessee, tenant, occupant or user of any of the facilities within the Redevelopment Area.

**Section 7.20 Fair Employment.** Without limiting any of the foregoing, the Developer voluntarily agrees to observe the Equal Opportunity and Nondiscrimination Guidelines set forth as **Exhibit E** attached hereto and incorporated herein by reference. By execution of this Agreement, the Developer certifies and agrees that it is under no contractual or other disability that would materially impair its ability to observe the Guidelines set forth as **Exhibit E**, attached hereto and incorporated herein by reference.

## ARTICLE VIII REPRESENTATIONS OF THE PARTIES

**Section 8.1 Representations of the City.** The City hereby represents and warrants that it has full constitutional and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, including without limitation the right, power and authority to issue and sell the TIF Obligations, and all of the foregoing have been or will be, upon adoption of ordinances authorizing the issuance of the TIF Obligations, duly and validly authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the City, enforceable in accordance with its terms.

**Section 8.2 Representations of the Developer.** The Developer hereby represents and warrants it has full power to execute and deliver and perform the terms and obligations of this Agreement and all of the foregoing has been duly and validly authorized by all necessary corporate proceedings. This Agreement constitutes the legal, valid and binding obligation of the Developer, enforceable in accordance with its terms.

(The remainder of this page intentionally left blank.)

IN WITNESS WHEREOF, the City and the Developer have caused this Agreement to be executed in their respective names and the City has caused its seal to be affixed thereto, and attested as to the date first above written.

“CITY”:

CITY OF ST. LOUIS, MISSOURI

By: \_\_\_\_\_  
Francis G. Slay, Mayor

By: \_\_\_\_\_  
Darlene Green, Comptroller

(SEAL)

Attest:

\_\_\_\_\_  
Parrie May, City Register

Approved as to Form:

\_\_\_\_\_  
Patricia Hageman, City Counselor

“DEVELOPER”

McGOWAN BROTHERS  
DEVELOPMENT CORPORATION , LLC

By: \_\_\_\_\_  
Name: Kevin McGowan  
Title: \_\_\_\_\_

STATE OF MISSOURI     )  
                                  ) SS  
CITY OF ST. LOUIS     )

On this \_\_\_\_ day of \_\_\_\_\_, 2007, before me appeared Francis G. Slay, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the CITY OF ST. LOUIS, MISSOURI, a political subdivision of the State of Missouri, and that the seal affixed to the foregoing instrument is the seal of said City, and said instrument was signed and sealed in behalf of said City by authority of its Board of Aldermen, and said individual acknowledged said instrument to be the free act and deed of said City.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public

(SEAL)

My Commission Expires:

\_\_\_\_\_  
STATE OF MISSOURI     )  
                                  ) SS  
CITY OF ST. LOUIS     )

On this \_\_\_\_ day of \_\_\_\_\_, 2007, before me appeared Darlene Green, to me personally known, who, being by me duly sworn, did say that she is the Comptroller of the CITY OF ST. LOUIS, MISSOURI, a political subdivision of the State of Missouri, and that the seal affixed to the foregoing instrument is the seal of said City, and said instrument was signed and sealed in behalf of said City by authority of its Board of Aldermen, and said individual acknowledged said instrument to be the free act and deed of said City.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public

(SEAL)

My Commission Expires:

\_\_\_\_\_  
STATE OF )  
 ) SS  
COUNTY OF )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2007, before me appeared Kevin McGowan, to me personally known, who, being by me duly sworn, did say that he is the \_\_\_\_\_ of McGowan Brothers Development Corporation, LLC, a Missouri limited liability company, and that he is authorized to sign the instrument on behalf of said company, and acknowledged to me that he executed the within instrument as said company’s free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand in the County and State aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public

(SEAL)

My Commission Expires:

\_\_\_\_\_

**EXHIBIT A**  
**Form of Certificate of**  
**Reimbursable Redevelopment Project Costs**

Certificate of Reimbursable Redevelopment Project Costs

TO:  
City of St. Louis  
Office of Comptroller  
1200 Market Street, Room 212  
St. Louis, Missouri 63103  
Attention: Ivy Neyland-Pinkston, Deputy Comptroller

**Re: City of St. Louis, Missouri, Grace Lofts TIF Redevelopment Project Area**

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Amended and Restated Redevelopment Agreement dated as of \_\_\_\_\_, 2007 (the “Agreement”), between the City and McGowan Brothers Development Corporation, LLC, a Missouri limited liability company (the “Developer”). In connection with said Agreement, the undersigned hereby states and certifies that:

1. Each item listed on Schedule 1 hereto is a Reimbursable Redevelopment Project Cost and was incurred in connection with the construction of the Redevelopment Project.
2. These Reimbursable Redevelopment Project Costs have been have been paid by the Developer and are reimbursable under the Note Ordinance and the Agreement.
3. Each item listed on **Schedule 1** has not previously been paid or reimbursed from money derived from the Special Allocation Fund or any money derived from any project fund established pursuant to the Note Ordinance, and no part thereof has been included in any other certificate previously filed with the City.
4. There has not been filed with or served upon the Developer any notice of any lien, right of lien or attachment upon or claim affecting the right of any person, firm or corporation to receive payment of the amounts stated in this request, except to the extent any such lien is being contested in good faith.
5. All necessary permits and approvals required for the portion of the Work for which this certificate relates have been issued and are in full force and effect.
6. All Work for which payment or reimbursement is requested has been performed in a good and workmanlike manner and in accordance with the Agreement.
7. If any cost item to be reimbursed under this Certificate is deemed not to constitute a “redevelopment project cost”

within the meaning of the TIF Act and the Agreement, the Developer shall have the right to substitute other eligible Reimbursable Redevelopment Project Costs for payment hereunder.

8. The costs to be reimbursed under this Certificate constitute advances qualified for Tax-Exempt TIF Notes:

Yes: \_\_\_\_\_ No: \_\_\_\_\_

9. The Developer is not in default or breach of any material term or condition of the Agreement beyond the applicable cure period, if any.

Dated this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**McGOWAN BROTHERS  
DEVELOPMENT CORPORATION, LLC**

By: \_\_\_\_\_  
Name: Kevin McGowan  
Title: \_\_\_\_\_

Approved for Payment this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**CITY OF ST. LOUIS, MISSOURI**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT B  
Form of Certificate of Substantial Completion  
CERTIFICATE OF SUBSTANTIAL COMPLETION**

The undersigned, McGOWAN BROTHERS DEVELOPMENT CORPORATION, LLC, a Missouri limited liability company (the "Developer"), pursuant to that certain Amended and Restated Redevelopment Agreement dated as of \_\_\_\_\_, 2007, between the City of St. Louis, Missouri (the "City"), and the Developer (the "Agreement"), hereby certifies to the City as follows:

1. That as of \_\_\_\_\_, \_\_\_\_\_, the construction of the Redevelopment Project (as that term is defined in the Agreement) has been substantially completed in accordance with the Agreement.
2. That the Work has been substantially completed or funded pursuant to the Agreement.
3. The Work has been performed in a workmanlike manner and substantially in accordance with the Construction Plans (as those terms are defined in the Agreement).
4. Lien waivers for applicable portions of the Work in excess of Five Thousand Dollars (\$5,000) have been obtained.
5. This Certificate of Substantial Completion is accompanied by the project architect's or owner representative's certificate of substantial completion on AIA Form G-704 (or the substantial equivalent thereof), a copy of which is attached hereto as Appendix A and by this reference incorporated herein), certifying that the Redevelopment Project has been substantially completed in accordance with the Agreement.
6. This Certificate of Substantial Completion is being issued by the Developer to the St. Louis Development Corporation and the City in accordance with the Agreement to evidence the Developer's satisfaction of all material obligations and covenants with respect to the Redevelopment Project.
7. The acceptance (below) or the failure of the St. Louis Development Corporation and the City to object in writing to this Certificate within thirty (30) days of the date of delivery of this Certificate to the St. Louis Development Corporation and the City (which written objection, if any, must be delivered to the Developer prior to the end of such thirty (30) days) shall evidence the satisfaction of the Developer's agreements and covenants to perform the Work.

Upon such acceptance by the St. Louis Development Corporation and the City, the Developer may record this Certificate in the office of the City's Recorder of Deeds. This Certificate is given without prejudice to any rights against third parties which exist as of the date hereof or which may subsequently come into being. Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**McGOWAN BROTHERS DEVELOPMENT CORPORATION, LLC**

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

**ACCEPTED:**

**ST. LOUIS DEVELOPMENT CORPORATION**

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

(Insert Notary Form(s) and Legal Description)

**EXHIBIT C  
 Legal Description of the Redevelopment Area**

**A LOT IN BLOCK 834 OF THE CITY OF ST. LOUIS, FRONTING 50 FEET ON THE SOUTH LINE OF WASHINGTON AVENUE, BY A DEPTH SOUTHWARDLY, BETWEEN PARALLEL LINES OF 150 FEET, MORE OR LESS, TO THE NORTH LINE OF ST. CHARLES STREET, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE SOUTH LINE OF WASHINGTON AVENUE DISTANT 80 FEET EAST OF THE EAST LINE OF 14TH STREET AND EXTENDING SOUTH AND PARALLEL WITH THE EAST LINE OF 14TH STREET 150 FEET, MORE OR LESS, TO A POINT IN THE NORTH LINE OF ST. CHARLES STREET, THENCE EAST ALONG SAID NORTH LINE 50 FEET; THENCE NORTH 150 FEET, MORE OR LESS, TO THE SOUTH LINE OF WASHINGTON AVENUE; THENCE WEST ALONG SAID SOUTH LINE 50 FEET TO THE BEGINNING.**

**EXHIBIT D  
 Reimbursable Redevelopment Project Costs\***

| CATEGORY |   |
|----------|---|
| (a)      | Acquisition Costs (as defined in Section 1.1 of this Agreement).  |
| (b)      | Demolition Costs (includes, but is not limited to, demolition of existing buildings and structures or parts thereof).   |
| (c)      | Site Preparation and Improvements Costs (includes, but is not limited to, street and sidewalk improvements, utility work and resetting of curbs and landscaping and lighting in the common areas).  |
| (d)      | Financing Costs (includes, but is not limited to, loan fees, disbursing fees, construction monitoring and inspection fees, lender's legal fees, loan appraisals, flood certificates, tax credit investor fees and any and all other costs incurred by the Developer in connection with obtaining financing for and a tax credit investor in the Redevelopment Project). |
| (e)      | Environmental Testing, Remediation and/or Abatement Costs (includes, but is not limited to, the testing for and removal and disposal of toxic or hazardous substances or materials).  |
| (f)      | Professional Service Costs (includes, but is not limited to, architectural, engineering, legal, marketing, financial, planning, or special services).   |
| (g)      | TIF Costs & Issuance Costs incurred by the Developer pursuant to Section 2.2(i) – 2.2.(v) of this Agreement.  |
| (h)      | Rehabilitation, Renovation or Reconstruction or existing structures.  |

\*Subject to the limitations of Article IV of this Agreement.

**EXHIBIT E  
 Equal Opportunity and Nondiscrimination Guidelines**

In any contract for Work in connection with the Redevelopment Project related to any of the Property in the Redevelopment Area, the Developer (which term shall include the Developer, any transferees, lessees, designees, successors and assigns thereof, including without limitation any entity related to the Developer by one of the relationships described in Section 267(b) of the United States Internal Revenue Code of 1986, as amended), its contractors and subcontractors shall comply with all federal, state and local laws, ordinances or regulations governing equal opportunity and nondiscrimination (the "Laws"). Moreover, the Developer shall contractually require its contractors and subcontractors to comply with the Laws.

The Developer and its contractors or subcontractors shall not contract with any party known to have been found in violation

of the Laws.

The Developer agrees for itself and its contractors and subcontractors that there shall be covenants to ensure that there shall be no discrimination on the part of the Developer or its contractors and subcontractors upon the basis of race, color, creed, national origin, sex, marital status, age, sexual orientation or physical handicap in the sale, lease, rental, use or occupancy of any of the Property or any improvements constructed or to be constructed on the Property or any part thereof. Such covenants shall run with the land and shall be enforceable by the St. Louis Development Corporation, the City and the United States of America, as their interest may appear in the Redevelopment Project.

The Developer shall make good faith efforts to observe Executive Order #28 dated July 24, 1997, relating to minority and women-owned business participation in City contracts.

The parties agree that the provisions of City Ordinance #60275, codified at Chapter 3.90 of the Revised Ordinances of the City of St. Louis, Missouri (the "First Source Jobs Policy"), do not specifically apply to the Developer as a potential recipient of TIF Notes, TIF Bonds and/or TIF Revenues. Nonetheless, the Developer voluntarily agrees to make good faith efforts to observe the provisions of the First Source Jobs Policy related to the negotiation of an employment agreement with the St. Louis Agency on Training and Employment.

**Approved: February 16, 2007**

**ORDINANCE #67418  
Board Bill No. 367**

**AN ORDINANCE RECOMMENDED BY THE BOARD OF ESTIMATE AND APPORTIONMENT REPEALING ORDINANCE NUMBER 65856 OF THE CITY OF ST. LOUIS, AND, IN LIEU THEREOF, AUTHORIZING AND DIRECTING THE ISSUANCE AND DELIVERY OF NOT TO EXCEED \$1,550,000 PLUS ISSUANCE COSTS PRINCIPAL AMOUNT OF TAX INCREMENT REVENUE NOTES (GRACE LOFTS TIF REDEVELOPMENT PROJECT), OF THE CITY OF ST. LOUIS, MISSOURI; PRESCRIBING THE FORM AND DETAILS OF THE TIF NOTES AND THE COVENANTS AND AGREEMENTS MADE BY THE CITY TO FACILITATE AND PROTECT THE PAYMENT THEREOF; AND PRESCRIBING OTHER MATTERS RELATING THERETO.**

WHEREAS, the City of St. Louis, Missouri (the "City"), is a body corporate and political subdivision of the State of Missouri, duly created, organized and existing under and by virtue of its charter, the Constitution and laws of the State of Missouri; and

WHEREAS, the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865, of the Revised Statutes of Missouri, as amended (the "Act"), authorizes the City to undertake redevelopment projects within designated areas of the City; and

WHEREAS, staff and consultants have prepared a plan for redevelopment titled "Grace Lofts TIF Redevelopment Plan" dated November 22, 2002 (the "Redevelopment Plan"), with amendments, if any, for an area which includes the building which is listed on the National Register of Historic Places and located at 1320-24 Washington Avenue (the "Redevelopment Area"), which Redevelopment Area is more fully described in the Redevelopment Plan; and

WHEREAS, on February 25, 2003, the Mayor signed Ordinance No. 65854, which (a) approved the Redevelopment Plan and designated the Redevelopment Area as a "redevelopment area" as provided for in the Act, (b) adopted the redevelopment project described in the Redevelopment Plan (the "Redevelopment Project"), (c) adopted tax increment allocation financing within the Redevelopment Area and (d) created the City of St. Louis, Missouri, Special Allocation Fund for the Grace Lofts TIF Redevelopment Project (the "Special Allocation Fund"); and

WHEREAS, on February 25, 2003, the Mayor signed Ordinance No. 65855, which authorized the City to enter into a Redevelopment Agreement with McGowan Brothers Development Corporation, LLC (the "Developer"); and

WHEREAS, on February 25, 2003, the Mayor signed Ordinance No. 65856 (the "Original Note Ordinance"), which approved the issuance of its Tax Increment Revenue Notes (Grace Lofts TIF Redevelopment Project) (the "TIF Notes"), to provide funds to finance a portion of the costs of the Redevelopment Project by utilizing tax increment allocation financing in accordance with the Act, said funds being payable solely from certain proceeds deposited into the Special Allocation Fund; and

WHEREAS, the City now desires to alter the terms of issuance of the TIF Notes to provide for the initial issuance of TIF Notes to individuals and entities other than Developer; and

WHEREAS, the City has determined that it is in the best interest of the City to sell the TIF Notes at a private sale, without advertisement, to an Original Purchaser at an interest rate based on the municipal yield curve for general obligation bonds (the "MMD") compiled by Municipal Market Data-Line® (or its successors); and

WHEREAS, the City has found and determined that it is necessary and advisable and in the best interest of the City and of its inhabitants that the TIF Notes be issued and secured in the form and manner provided in this Note Ordinance to carry out the Redevelopment Project; and

WHEREAS, the City desires to repeal the Original Note Ordinance and, in lieu thereof, enact this Note Ordinance, as necessary to facilitate the purchase of the TIF Notes.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF ST. LOUIS, AS FOLLOWS:**

**ARTICLE I.  
DEFINITIONS**

**Section 101 Definitions of Words and Terms.** In addition to the words and terms defined elsewhere in this ordinance (the "Ordinance"), the following capitalized words and terms, as used in this Ordinance, shall have the following meanings:

"Act" or "TIF Act" means the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 through 99.865 of the Revised Statutes of Missouri.

"Agreement" means the Amended and Restated Redevelopment Agreement by and between the City and the Developer, as the same may be from time to time modified, amended or supplemented in writing by the parties hereto.

"Approved Investors" means (a) the Developer or a Related Entity, (b) an "accredited investor" under Rule 501(a) of Regulation D promulgated under the Securities Act of 1933, (c) a "qualified institutional buyer" under Rule 144A promulgated under the Securities Act of 1933 or (d) any general business corporation or enterprise with total assets in excess of \$50,000,000.

"Approving Ordinance" means Ordinance No. 65854, designating the Redevelopment Area, approving the Redevelopment Plan, approving the Redevelopment Project, adopting tax increment allocation financing within the Redevelopment Area and establishing the Special Allocation Fund.

"Arbitrage Certificate" means the certificate of that name the City delivered at the time of issuing of any Tax Exempt TIF Notes.

"Authorizing Ordinances" means Ordinance No. 65855 and Ordinance No. \_\_\_\_\_ [Board Bill No. \_\_\_\_] authorizing the City to enter into the Original Agreement and the Agreement with Developer.

"Authorized Denominations" means \$100,000 or any integral multiple of \$1,000 in excess thereof, except with respect to the TIF Note issued upon acceptance by the City of the final Certificate of Reimbursable Redevelopment Project Costs, which TIF Note may be issued in any integral multiple of \$1,000, subject to the limitation provided in Section 201 of this Ordinance.

"Available Revenues" means (a) all monies on deposit in the PILOTs Account of the Special Allocation Fund; (b) all monies on deposit in the EATs Account of the Special Allocation Fund that have been appropriated to the repayment of the TIF Notes, excluding (i) any amount paid under protest until the protest is withdrawn or resolved against the taxpayer or (ii) any sum received by the City which is the subject of a suit or other claim communicated to the City which suit or claim challenges the collection of such sum.

"Bond Counsel" means Armstrong Teasdale LLP, St. Louis, Missouri, or an attorney at law or a firm of attorneys acceptable to the City of nationally recognized standing in matters pertaining to the tax-exempt nature of interest on obligations issued by states and their political subdivisions duly admitted to the practice of law before the highest court of any state of the United States of America or the District of Columbia.

"Certificate of Reimbursable Redevelopment Project Costs" means a document substantially in the form of Exhibit A to the Agreement provided by the Developer to the City evidencing Reimbursable Redevelopment Project Costs incurred by the Developer.

"Certificate of Substantial Completion" means a document substantially in the form of Exhibit B to the Agreement issued by the Developer to the City in accordance with the Agreement and evidencing the Developer's satisfaction of all obligations and covenants to construct the Redevelopment Project in accordance with the Redevelopment Plan and the Agreement.

"City" means the City of St. Louis, Missouri, a body corporate and political subdivision duly authorized and existing under its charter and the Constitution and laws of the State of Missouri.

"Debt Service Fund" means the fund by that name created in **Section 401** of this Ordinance.

"Debt Service Reserve Fund:" means the fund by the name created in Section 401 of the Ordinance.

"Debt Service Reserve Fund Requirement" means the sum of \$ \_\_\_\_\_.

"Developer" means McGowan Brothers Development Corporation, LLC, a Missouri limited liability company, or its

permitted successors or assigns in interest.

“Economic Activity Taxes” or “EATs” shall have the meaning ascribed to such term in Section 99.805(4) of the TIF Act.

“EATs Account” means the Economic Activity Tax Account in the Revenue Fund of the Special Allocation Fund.

“Finance Officer” means the Comptroller of the City or her authorized agent.

“Government Obligations” means direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America.

“Issuance Costs” means all costs reasonably incurred by the City in furtherance of the issuance of TIF Notes, including without limitation the fees and expenses of financial advisors and consultants, the City’s attorneys (including issuer’s counsel and Bond Counsel), the City’s administrative fees and expenses (including fees and costs of planning consultants), underwriters’ discounts and fees, the costs of printing any TIF Notes and any official statements relating thereto, the costs of credit enhancement, if any, capitalized interest, debt service reserves and the fees of any rating agency rating any TIF Notes.

“Maturity Date” means March 27, 2026, which is the date that is twenty-three (23) years after the effective date of Ordinance No. 65854.

“Ordinance” or “Note Ordinance” means this Ordinance as from time to time amended in accordance with the terms hereof.

“Original Purchaser” means the Developer, a Related Entity or a Qualified Institutional Buyer; *provided, however*, that any such Related Entity or Qualified Institutional Buyer shall also qualify as an Approved Investor and shall be designated in writing by the Developer as the Original Purchaser.

“Outstanding,” when used with reference to Notes, as of a particular date, all Notes theretofore authenticated and delivered, except:

- (a) Notes theretofore cancelled by the Finance Officer or delivered to the Finance Officer for canceling;
- (b) Notes which are deemed paid under Section 705 hereof;
- (c) Notes alleged to have been mutilated, destroyed, lost or stolen which have been paid as provided in Section 208 hereof;
- (d) Notes in exchange for or in lieu of which other Notes have been authenticated and delivered pursuant to this Ordinance; and
- (e) Notes held by or for the account of the City or any person controlling, controlled by or under common control with the City for purposes of any consent or other action to be taken by the holders of a specified percentage of Notes outstanding under this Ordinance.

“Owner” means, when used with respect to any TIF Note, the present, registered holder of any of the TIF Notes.

“Paying Agent Agreement” means an agreement by that name the Finance Officer enters into with UMB Bank, N.A., St. Louis, Missouri, pursuant to which the bank has agreed to serve as registrar and paying agent for the Notes. The City has agreed to provide to the paying agent immediately available funds at least one business day prior to each Payment Date, but solely from moneys then available for such purpose in the Grace Lofts Special Allocation Fund, sufficient funds to pay all interest and principal payments due and payable on the Notes. The paying agent shall have no responsibility to make any such payments to the extent the City has not provided such funds to the paying agent at least one business day prior to the relevant Payment Date.

“Payment Date” means, with respect to any TIF Note, each March 1 and September 1, commencing with the first March 1 or September 1 that immediately succeeds the City’s acceptance of the Certificate of Substantial Completion as provided in the Agreement.

“Payments in Lieu of Taxes” or “PILOTS” shall have the meaning ascribed to such term in Section 99.805 of the TIF Act.

“PILOTS Account” means the Payments in Lieu of Taxes Account of the Special Allocation Fund.

“Project Fund” means the fund by that name created in **Section 401** of this Ordinance.

“Qualified Institutional Buyer” means a qualified institutional buyer under Rule 144A promulgated under the Securities Act of 1933.

“Redevelopment Area” means the Redevelopment Area identified as such in the Agreement and more particularly described in Exhibit A, attached hereto and incorporated herein by reference.

“Redevelopment Plan” means the plan titled “Grace Lofts TIF Redevelopment Plan,” as approved by the Mayor of the City on February 25, 2003, pursuant to Ordinance No. 65854, as such plan may from time to time be amended in accordance with the TIF Act.

“Redevelopment Project” means that redevelopment project contemplated by the Redevelopment Plan, the Original Agreement and the Agreement.

“Register” means the books for registration, transfer and exchange of the TIF Notes kept at the office of the Finance Officer.

“Reimbursable Redevelopment Project Costs” means those Redevelopment Project Costs for which the Developer is eligible for reimbursement in accordance with the TIF Act and in accordance with the Agreement.

“Related Entity” means any party or entity related to the Developer by one of the relationships described in Section 267(b), Section 707(b)(1)(A) or Section 707(b)(1)(B) of the Internal Revenue Code of 1986, as amended.

“Revenue Fund” means the fund by that name created in **Section 401** of this Ordinance.

“Series A Account” means the account by that name created in **Section 401** of this Ordinance.

“Series A Note(s)” means the [Taxable][Tax-Exempt] Tax Increment Revenue Note (Grace Lofts Redevelopment Project), Series 200\_\_-A, issued pursuant to this Ordinance in an aggregate amount not to exceed \$1,550,000 plus Issuance Costs, in substantially the form set forth in **Exhibit B**, attached hereto and incorporated herein by reference.

“Series B Account” means the account by that name created in **Section 401** of this Ordinance.

“Series B Note” means the [Taxable][Tax-Exempt] Tax Increment Revenue Note (Grace Lofts Redevelopment Project), Series 200\_\_-B, issued pursuant to the Note Ordinance in an aggregate amount not to exceed \$1,550,000 plus Issuance Costs, less the aggregate outstanding principal amount of the Series A Notes, in substantially the form set forth in **Exhibit C**, attached hereto and incorporated herein by reference.

“Special Allocation Fund” means the City of St. Louis, Missouri, Special Allocation Fund for the Grace Lofts TIF Redevelopment Project, created by Ordinance No. 65854 [Board Bill No. 425] approved by the Mayor of the City on February 25, 2003, and including the accounts into which Available Revenues are from time to time deposited in accordance with the TIF Act, the Agreement and this Ordinance, as ratified and further described in Section 301 hereof.

“Tax-Exempt TIF Note” means any TIF Note, the interest on which (in the opinion of Bond Counsel), is exempt from federal income taxation.

“TIF Notes” means the aggregate amount not to exceed \$1,550,000 plus Issuance Costs Tax Increment Revenue Notes (Grace Lofts Redevelopment Project), Series A & B, issued by the City pursuant to and subject to this Ordinance.

“TIF Revenues” means: (1) Payments in Lieu of Taxes attributable to the increase in the current equalized assessed valuation of each taxable lot, block, tract, or parcel of real property located within the Redevelopment Area over and above the initial equalized assessed value (as that term is used and described in Section 99.845.1 of the TIF Act) of each such unit of property, as paid to the City Treasurer by the City Collector of Revenue during the term of the Redevelopment Plan and the Redevelopment Project, and (2) fifty percent (50%) of the total additional revenues from taxes which are imposed by the City or other taxing districts (as that term is defined in Section 99.805(16) of the TIF Act) and which are generated by economic activities within the Redevelopment Area over the amount of such taxes generated by economic activities within the Redevelopment Area in the calendar year ending December 31, 2002 (subject to annual appropriation by the City as provided in the TIF Act), as defined and described in Sections 99.805(4) and 99.845 of the TIF Act, but excluding therefrom personal property taxes, taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, licenses, fees or special assessments, taxes levied pursuant to Section 70.500 of the Revised Statutes of Missouri, as amended, and taxes levied for the purpose of public transportation pursuant to Section 94.660 of the Revised Statutes of Missouri, as amended, all as provided in Section 99.845 of the TIF Act, as amended from time to time.

“Valuation Date” means March 1 and September 1 of each year.

**Section 102 Rules of Construction.** For all purposes of this Ordinance, except as otherwise expressly provided or unless the context otherwise requires:

(a) Words of masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

(b) Words importing the singular number shall include the plural and vice versa and words importing person shall include firms, associations and corporations, including public bodies. The headings and captions herein are not a part of this document.

(c) Terms used in an accounting context and not otherwise defined shall have the meaning ascribed to them by

generally accepted principles of accounting.

(d) Whenever an item or items are listed after the word “including,” such listing is not intended to be an exhaustive listing that excludes items not listed.

## ARTICLE II. AUTHORIZATION OF TIF NOTES

**Section 201 Authorization of TIF Notes.** There are hereby authorized and directed to be issued by the City to an Original Purchaser two or more series of the TIF Notes in an aggregate amount not to exceed \$1,550,000 plus Issuance Costs. The TIF Notes shall be in substantially the form of Exhibit B and Exhibit C, as applicable, attached hereto and incorporated herein by reference.

### **Section 202 Description of TIF Notes.**

(a) Title of TIF Notes. There shall be issued one series of one or more Series A Notes in an aggregate amount not to exceed \$1,550,000 plus Issuance Costs authorized hereunder and one series of one or more Series B Notes in an aggregate amount not to exceed \$1,550,000 plus Issuance Costs, less the aggregate, outstanding principal amount of the Series A Notes. The Series A Notes shall be designated “[Taxable]/[Tax-Exempt] Tax Increment Revenue Notes (Grace Lofts Redevelopment Project), Series \_\_\_\_\_-A”. The Series B Notes shall be designated “[Taxable]/[Tax-Exempt] Tax Increment Revenue Notes (Grace Lofts Redevelopment Project), Series \_\_\_\_\_-B”. The TIF Notes may have such further appropriate particular designation added to or incorporated in such title for the TIF Notes of any particular series as the City may determine.

(b) Form of TIF Notes. The TIF Notes shall be substantially in the form set forth in **Exhibit B** and **Exhibit C**, respectively, attached hereto and incorporated herein by reference, with such appropriate variations, omissions and insertions as are permitted or required by this Ordinance, and may have endorsed thereon such legends or text as may be necessary or appropriate to conform to any applicable rules and regulations of any governmental authority or any usage or requirement of law with respect thereto.

(c) Terms of TIF Notes. The TIF Notes shall mature (subject to redemption and payment prior to maturity as provided in **Article III** hereof), on the date that is twenty-three (23) years after the effective date of Ordinance No. 65854 or March 27, 2026. Each TIF Note shall bear interest at a fixed rate per annum, determined on the date that is not less than ten (10) business days and not more than sixty (60) days prior to the scheduled closing date for issuance of the TIF Notes (the “Pricing Date”) based on the municipal yield curve for general obligation bonds (the “MMD”) compiled by Municipal Market Data-Line® (or its successors) and published by Thomson Financial, an operating unit of The Thomson Corporation (or its successors), using the MMD yield published as of the Issuance Date for general obligation bonds rated “AAA” that mature in the same year as the TIF Notes, (i) plus four percent (4%), if the interest on the TIF Notes (in the opinion of Bond Counsel) is not exempt from federal income taxation (the “Taxable Rate”), or (ii) plus two percent (2.0%), if the interest on the TIF Notes (in the opinion of Bond Counsel) is exempt from federal income taxation (the “Tax-Exempt Rate”); provided, in no event shall the interest rate on the TIF Notes exceed ten percent (10%) per annum. All TIF Notes shall have a stated maturity of the Maturity Date. Interest shall be computed on the basis of a 360-day year of twelve 30-day months. The TIF Notes shall bear simple interest from their registration date or from the most recent Payment Date to which interest has been paid or duly provided for.

(d) Denominations. The TIF Notes shall be issuable as fully registered TIF Notes in Authorized Denominations.

(e) Numbering. Unless the City directs otherwise, each series of TIF Notes shall be numbered from R-1 upward.

(f) Dating. The TIF Notes shall be dated as provided in **Section 207**, as evidenced by the Finance Officer’s signature on **Schedule A** to each TIF Note.

(g) Evidence of Principal Payments. The payment of principal of the TIF Notes on each Payment Date shall be noted on the TIF Notes on **Schedule A** thereto. The original **Schedule A** to the TIF Note shall be held by the Finance Officer in trust, unless otherwise directed in writing by the Owners thereof. If the TIF Notes are held by the Finance Officer, the Finance Officer shall, on each Payment Date, send a revised copy of **Schedule A** via facsimile to the Owner. Absent manifest error, the amounts shown on **Schedule A** held by the Finance Officer shall be conclusive evidence of the principal amount paid on the TIF Notes.

(h) Sale of TIF Notes. When TIF Notes have been executed and authenticated as required by this Ordinance, the Finance Officer shall hold the TIF Notes in trust or, if directed in writing by the Owners thereof, deliver the TIF Notes to or upon the order of the Owners thereof, as provided in paragraph (g) above, but only upon payment to the City of a purchase price equal to one hundred percent (100%) of the face amount of the TIF Notes, which payment shall be deemed to have occurred under the circumstances described in **Section 405** of this Ordinance.

**Section 203 Finance Officer to Serve as Paying Agent and Registrar.** The Finance Officer or her authorized representative is hereby designated as the paying agent pursuant to the Paying Agent Agreement for the payment of principal of and interest on the TIF Notes and the bond registrar with respect to the registration, transfer and exchange of the TIF Notes and for allocating and holding funds as provided herein.

**Section 204 Security for TIF Notes.** All TIF Notes shall be equally and ratably secured by Available Revenues.

The TIF Notes shall be special, limited obligations of the City payable solely from and secured as to the payment of principal and interest by a pledge of the Available Revenues. The taxing power of the City is not pledged to the payment of the TIF Notes either as to principal or interest. The TIF Notes shall not be or constitute a general obligation of the City, nor shall they constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter provision, limitation or restriction. THE OBLIGATIONS OF THE CITY WITH RESPECT TO THE TIF NOTES SHALL TERMINATE ON THE FIRST TO OCCUR OF THE FULL PAYMENT AND DISCHARGE OF THE TIF NOTES OR THE MATURITY DATE (WHETHER OR NOT THE PRINCIPAL AMOUNT OR INTEREST HAS BEEN PAID IN FULL).

**Section 205 Method and Place of Payment of TIF Notes.** The principal of and interest on the TIF Notes shall be payable in any coin or currency which, on the respective dates of payment thereof, is legal tender for the payment of debts due the United States of America. Payment shall be made by the Finance Officer on each Payment Date as provided in this Note Ordinance. Principal and interest shall be payable by check or draft at the office of the Finance Officer or pursuant to the Paying Agent Agreement or by wire transfer to the person in whose name such TIF Note is registered on the Register on each Payment Date.

**Section 206 Registration, Transfer and Assignment.** So long as the TIF Notes remain outstanding, the City shall cause to be kept at the office of the Finance Officer books for the registration, transfer and exchange of the TIF Notes or pursuant to the Paying Agent Agreement, as herein provided. The TIF Notes when issued shall be registered in the name of the Original Purchaser thereof on the Register.

The TIF Notes and beneficial interest therein may only be purchased by an Original Purchaser and transferred or assigned to Approved Investors upon the execution by each proposed purchaser, transferee or assignee of a letter in substantially the form of **Exhibit E**, attached hereto and incorporated herein by reference, stating that such Original Purchaser, transferee or assignee (i) is an Approved Investor and (ii) has sufficient knowledge and experience in business and financial matters in general, and investments such as the TIF Notes in particular, to enable the purchaser, transferee or assignee to evaluate the risks involved in an investment in the TIF Notes. The TIF Notes may be transferred and exchanged upon the records of the City or pursuant to the Paying Agent Agreement.

Upon surrender of a TIF Note to the Finance Officer, the Finance Officer shall transfer or exchange the TIF Notes for a new TIF Note or TIF Notes, which shall be (i) in Authorized Denominations, except with respect to the TIF Notes issued upon acceptance by the City of the final Certificate of Reimbursable Redevelopment Project Costs, which TIF Notes may be issued in any denomination, subject to the limitation on the aggregate principal amount, and (ii) of the same Maturity Date and in the same aggregate principal amount outstanding as the TIF Note which was presented for transfer or exchange. The TIF Notes presented for transfer or exchange shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in a form and with guarantee of signature satisfactory to the Finance Officer, duly executed by the Owner thereof or by the Owner's duly authorized agent. Upon any transfer, exchange or assignment as provided in this Section, the transferor shall reimburse the City for all of the reasonable out-of-pocket costs incurred by the City in connection with the administration of such transfer, exchange or assignment.

**Section 207 Execution, Authentication and Delivery of the TIF Notes.** Each of the TIF Notes, including any TIF Notes issued in exchange or as substitution for the TIF Notes initially delivered, shall be signed by the manual or facsimile signature of the Mayor and the Finance Officer of the City, attested by the manual or facsimile signature of the Register of the City, and shall have the official seal of the City affixed thereto or imprinted thereon. If any officer whose signature appears on any TIF Note ceases to be such officer before the delivery of such TIF Note, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such person had remained in office until delivery. Any TIF Note may be signed by such persons who at the actual time of the execution of such TIF Note are the proper officers to sign such TIF Note although at the date of such TIF Note such persons may not have been such officers.

The Mayor, Finance Officer and Register of the City are hereby authorized and directed to prepare and execute the TIF Notes as hereinbefore specified, and when duly executed, to deliver the TIF Notes to the Finance Officer for authentication.

The TIF Notes shall have endorsed thereon a certificate of authentication substantially in the form set forth in **Schedule A of Exhibit B** and **Exhibit C** hereto, which shall be manually executed by an authorized signatory of the Finance Officer, but it shall not be necessary that the same signatory sign the certificate of authentication on all of the TIF Notes that may be issued hereunder at any one time. No TIF Note shall be entitled to any security or benefit under this Ordinance or be valid or obligatory for any purpose until the certificate of authentication has been duly executed by the Finance Officer. Such executed certificate of authentication upon any TIF Note shall be conclusive evidence that such TIF Note has been duly authenticated and delivered under this Ordinance.

The TIF Notes shall be initially executed and authenticated by the City upon acceptance of the following: (i) a Certificate of Substantial Completion; (ii) a Certificate of Reimbursable Redevelopment Project Costs; (iii) an opinion of Bond Counsel regarding the taxable nature of the TIF Notes; (iv) the full payment of all advances required to be paid under Section 2.2 of the Agreement; and (v) such other documentation as the City shall reasonably require of Developer, and any Original Purchaser, in order for the City to obtain an opinion of Bond Counsel as required by this Section 5.1 of the Agreement.

Upon the Developer's satisfaction of the foregoing conditions and upon approval of each Certificate of Reimbursable Redevelopment Project Costs, the Finance Officer shall either: (i) at the request of the City upon instructions of the Developer, endorse an outstanding TIF Note on **Schedule A** thereto to evidence an increase in an aggregate amount equal to such Reimbursable Redevelopment Project Costs, or (ii) at the request of the City upon instructions of the Developer, issue a new TIF Note in a principal amount equal to such Reimbursable Redevelopment Project Costs, or any combination thereof. Each date of endorsement of each

such TIF Note shall be the date of acceptance by the City of each Certificate of Reimbursable Redevelopment Project Costs except that the initial endorsement of each TIF Note shall be dated the date of issuance of such TIF Note. Thereupon, pursuant to **Section 202(h)**, the TIF Notes shall either be held or delivered to or upon the order of the Owner or any Original Purchaser.

Upon acceptance by the City of such a Certificate of Reimbursable Redevelopment Project Costs in accordance with the Agreement and upon execution and authentication of the TIF Notes as required by this Ordinance, the Developer shall be deemed to have advanced funds to the City in an amount equal to the purchase price of the TIF Notes, which shall be 100% of the face amount of the TIF Notes, and, upon the issuance of an endorsement of the TIF Notes as provided in the preceding paragraph, the City shall be deemed to have reimbursed the Developer in full for such Reimbursable Redevelopment Project Costs.

**Section 208 Mutilated, Lost and Stolen TIF Notes.** If any mutilated TIF Note is surrendered to the Finance Officer or the Finance Officer receives evidence to his/her satisfaction of the destruction, loss or theft of any TIF Note and there is delivered to the Finance Officer such security or indemnity as may be required by it to save the City and the Finance Officer harmless, then, in the absence of notice to the Finance Officer that such TIF Note has been acquired by a bona fide purchaser, the City shall execute and the Finance Officer shall register and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen TIF Note, a new TIF Note with the same Maturity Date and of like tenor and principal amount. Upon the issuance of any new TIF Note under this Section, the City and the Finance Officer may require the payment by the Owner of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses connected therewith. If any such mutilated, destroyed, lost or stolen TIF Note has become or is about to become due and payable, the Finance Officer may, in its discretion, pay such TIF Note instead of issuing a new TIF Note.

**Section 209 Cancellation, Discharge and Abatement of TIF Notes.** All TIF Notes that have been paid or redeemed or that otherwise have been surrendered to the Finance Officer, either at or before the Maturity Date, shall be canceled and destroyed by the Finance Officer in accordance with existing security regulations upon the payment or redemption of such TIF Note and the surrender thereof to the Finance Officer. The Finance Officer shall execute a certificate in duplicate describing the TIF Notes so cancelled and destroyed, and shall file an executed counterpart of such certificate with the City.

**NOTWITHSTANDING ANY PROVISION HEREIN TO THE CONTRARY, THE TIF NOTES ARE SUBJECT TO CANCELLATION AND DISCHARGE BY THE CITY IN WHOLE OR IN PART WITHOUT PENALTY UNDER THE CONDITIONS SET FORTH IN ARTICLE VII OF THE AGREEMENT.**

### ARTICLE III. REDEMPTION AND PAYMENT OF PRINCIPAL AND INTEREST

**Section 301 Optional Redemption.** The TIF Notes are subject to optional redemption by the City in whole at any time or in part on any Payment Date at a redemption price of 100% of the principal amount of the TIF Note to be redeemed, plus accrued interest thereon to the date fixed for redemption. If only a partial redemption is to occur, then each TIF Note shall be redeemed in the order of maturity as set forth in **Section 403** of this Note Ordinance, and within any maturity the TIF Notes shall be redeemed in Authorized Denominations by the City in accordance with the order specified in **Section 403** of this Note Ordinance. In the event of an optional redemption of the Notes, unless waived by any Registered Owner of Notes to be redeemed, official notice of any redemption shall be given by the Finance Officer on behalf of the City by mailing a copy of an official redemption notice by first class mail, postage prepaid, at least thirty (30) days (five days if all of the Notes are owned by the Developer) and not more than sixty (60) days prior to the date fixed for redemption, to each Registered Owner of the Notes to be redeemed at the address shown on the Note Register.

All official notices of optional redemption shall be dated and shall contain the information specified in Section 304, hereof. The failure of any Owner to receive notice given as heretofore provided or an immaterial defect therein shall not invalidate any redemption.

**Section 302 Special Mandatory Redemption.** All TIF Notes are subject to special mandatory redemption by the City on each Payment Date, at a redemption price equal to 100% of the principal amount being redeemed, together with accrued interest thereon to the date fixed for redemption, which amount of principal being redeemed shall be an amount equal to Available Revenues then on deposit in the applicable accounts or sub-accounts of the Special Allocation Fund and which will not be required for the payment of interest on such Payment Date. The TIF Notes shall be called by the City for special mandatory redemption pursuant to this Section without the necessity of any action by the City other than as provided in **Section 403** of this Ordinance, or as provided in the paragraph immediately below.

In the event of a special mandatory redemption of any Notes with an Owner other than Developer or a Related Entity, unless waived by such Owner of Notes to be redeemed, official notice of any redemption shall be given by the Finance Officer on behalf of the City by mailing a copy of an official redemption notice by first class mail, postage prepaid, at least thirty (30) days and not more than sixty (60) days prior to the date fixed for redemption, to each Registered Owner other than Developer or a Related Entity of the Notes to be redeemed at the address shown on the Note Register.

**Section 303 Selection of Notes to be Redeemed.** TIF Notes shall be redeemed only in Authorized Denominations. When less than all of the outstanding TIF Notes are to be redeemed and paid prior to maturity, such TIF Notes or portions of TIF Notes to be redeemed shall be selected in Authorized Denominations by the Fiscal Agent in accordance with the order specified in **Section 403** of this Note Ordinance. In the case of a partial redemption of TIF Notes when TIF Notes of denominations greater than the minimum Authorized Denomination are then outstanding, then for all purposes in connection with such redemption each

Authorized Denomination unit of face value shall be treated as though it was a separate TIF Note of the denomination of the minimum Authorized Denomination.

**Section 304 Notice and Effect of Call for Redemption.** In the event of any optional redemption of the Notes or, in the event of any special mandatory redemption of the Notes with respect to an Owner other than the Developer or a Related Entity, unless waived by any such Owner of Notes to be redeemed, official notice of any redemption shall be given by the Finance Officer on behalf of the City by mailing a copy of an official redemption notice by first class mail to each Owner of the Notes to be redeemed at the address shown on the Note Register. All official notices of redemption shall be dated and shall contain the following information:

- (a) the redemption date;
- (b) the redemption price;
- (c) if less than all Outstanding Notes are to be redeemed, the identification (and, in the case of partial redemption of any Notes, the respective principal amounts) of the Notes to be redeemed; and
- (d) a statement that on the redemption date the redemption price will become due and payable upon each Note or portion thereof called for redemption and that interest thereon shall cease to accrue from and after the redemption date.

The failure of any Owner to receive notice given as heretofore provided or an immaterial defect therein shall not invalidate any redemption. All Notes that have been redeemed shall be cancelled and destroyed or deemed cancelled and destroyed by the Finance Officer as provided herein and shall not be reissued.

#### ARTICLE IV. FUNDS AND REVENUES

**Section 401 Creation of Funds and Accounts.** There are hereby created or ratified and ordered to be established in the treasury of the City the Special Allocation Fund into which all Available Revenues shall be deposited, and within it the following separate funds and accounts:

- (a) A Revenue Fund, and within it;
  - (i) A PILOTs Account,
  - (ii) An EATs Account.
- (b) A Debt Service Fund and, within it;
  - (i) The Series A Account;
  - (ii) The Series B Account; and
- (c) The Debt Service Reserve Fund;
- (d) The Project Fund.

**Section 402 Administration of Funds and Accounts.** The Special Allocation Fund and the funds and accounts established therein shall be maintained in the treasury of the City and administered by the City solely for the purposes and in the manner as provided in the Act, this Ordinance, the Approving Ordinance, and the Authorizing Ordinance so long as any TIF Notes remain outstanding hereunder.

**Section 403 Revenue Fund.**

- (a) On or before the date that is five (5) days prior to each Payment Date while the TIF Notes remain outstanding, the City shall transfer:
  - (i) Those Available Revenues attributable to PILOTs shall be transferred and deposited into the PILOTs Account of the Revenue Fund; and
  - (ii) Those Available Revenues attributable to EATs shall be transferred and deposited into the EATs Account of the Revenue Fund.
- (b) Available Revenues in the Revenue Fund shall be disbursed by the Finance Officer on each Payment Date first from the EATs Account, and second from the PILOTs Account for the purposes and in the amounts as follows:

*First*, to the United States of America, an amount sufficient to pay any arbitrage rebate owed under Section 148 of the Code, as directed in writing by the City in accordance with the Arbitrage Certificate;

*Second*, to the Comptroller of the City and the St. Louis Development Corporation (which monies shall be paid one half to the Comptroller and one half to the St. Louis Development Corporation), an amount equal to the lesser of i) Three Thousand Dollars and no/100 (\$3,000.00), or ii) 0.2% of the Notes outstanding, on each Payment Date, plus any accumulated deficiency from previous years, plus an amount sufficient to pay all or any portion of the fees and expenses incurred by the City pursuant to Section 7.15 of the Agreement that have not otherwise been reimbursed to the City through the issuance of TIF Notes, and any fees to the paying agent pursuant to the Paying Agent Agreement;

*Third*, to the Series A Account of the Debt Service Fund, an amount sufficient to pay all or any portion of the past due interest owing as a result of prior deficiencies of moneys to pay interest due on the Series A Notes on each Payment Date;

*Fourth*, to the Series A Account of the Debt Service Fund, an amount sufficient to pay all or any portion of the accrued interest becoming due and payable on any Series A Note on each Payment Date;

*Fifth*, to the Series A Account of the Debt Service Fund, an amount sufficient to pay the interest on the Series A Notes on the next succeeding Payment Date;

*Sixth*, for transfer to the Debt Service Reserve Fund such amount as may be required to restore any deficiency in the Debt Service Reserve Fund if the amount on deposit in the Debt Service Reserve Fund is less than the Debt Service Reserve Requirement;

*Seventh*, to the Series A Account of the Debt Service Fund, an amount sufficient to pay the principal of any Series A Note that is subject to redemption pursuant to this Note Ordinance on each Payment Date;

*Eighth*, if no Series A Notes are Outstanding, to the Series B Account of the Debt Service Fund, an amount sufficient to pay all or any portion of the past due interest owing as a result of prior deficiencies of moneys to pay interest due on the Series B Note on each Payment Date;

*Ninth*, if no Series A Notes are Outstanding, to the Series B Account of the Debt Service Fund, an amount sufficient to pay all or any portion of the accrued interest becoming due and payable on any Series B Note on each Payment Date;

*Tenth*, if no Series A Notes are Outstanding, to the Series B Account of the Debt Service Fund, an amount sufficient to pay the interest on the Series B Notes on the next succeeding Payment Date;

*Eleventh*, if no Series A Notes are Outstanding, to the Series B Account of the Debt Service Fund, an amount sufficient to pay the principal of any Series B Note that is subject to redemption pursuant to this Note Ordinance on each Payment Date; and

*Twelfth*, all other remaining money in the PILOTs Account and EATs Account of the Special Allocation Fund shall annually be declared as surplus and distributed in the manner provided in the TIF Act.

(c) If monies available in the Special Allocation Fund are insufficient to reimburse the City as provided above on any Payment Date, then the unpaid portion shall be carried forward to the next Payment Date, with interest thereon at the same rate as the Series A Notes.

(d) Upon the payment in full of the principal of and interest on all TIF Notes (or provision has been made for the payment thereof as specified in the Note Ordinance), payment in full of the fees and expenses of the Comptroller and the St. Louis Development Corporation, and payment in full of any other amounts required to be paid under this Ordinance, all amounts remaining on deposit in the Revenue Fund shall be declared as surplus and distributed in the manner provided in the Act.

#### **Section 404 Debt Service Fund.**

(a) All amounts paid and credited to the Debt Service Fund shall be expended solely for (i) the payment of the principal of and interest on the TIF Notes as the same mature and become due or upon the redemption thereof, said TIF Notes all being subject to special mandatory redemption thereof, or (ii) to purchase Notes for cancellation prior to maturity.

(b) The City hereby authorizes and directs the Finance Officer to withdraw sufficient moneys from the Debt Service Fund to pay the principal of and interest on the TIF Notes as the same become due and payable, and to make said moneys so withdrawn available for the purpose of paying said principal of and interest on the TIF Notes.

(c) After payment in full of the principal of and interest on the TIF Notes (or provision has been made for the payment thereof as specified in this Ordinance), payment of the fees and expenses of the Finance Officer, and payment of any other amounts required to be paid under this Ordinance, all amounts remaining in the Debt Service Fund shall be declared as surplus and distributed in the manner provided in the Act.

**Section 405 Project Fund.** Upon Acceptance by the City of a Certificate of Reimbursable Redevelopment Project Costs and the issuance or endorsement of a TIF Note pursuant to **Section 207** of this Ordinance, the Developer shall be deemed to

have advanced funds necessary to purchase such TIF Notes and the City shall be deemed to have deposited such funds in the Project Fund and shall be deemed to have reimbursed the Developer or paid for in full for such costs from the amounts deemed to be on deposit in the Project Fund.

**Section 406 Debt Service Reserve Fund.** Except as herein otherwise provided, funds on deposit in the Debt Service Reserve Fund shall be used and applied by the Finance Officer solely to prevent a default in the event moneys on deposit in the Debt Service Reserve Fund shall be insufficient to pay the principal of and interest on the Notes as the same become due. The Finance Officer may disburse and expend moneys from the Debt Service Reserve Fund whether or not the amount therein equals the Debt Service Reserve Fund Requirement. Moneys on deposit in the Debt Service Reserve Fund may be used to pay Notes called for redemption or to purchase Notes in the open market, prior to the Maturity Date, provided all Notes at the time Outstanding are called for redemption or purchased and sufficient funds are available therefor. Moneys on deposit in the Debt Service Reserve Fund shall be used to pay and retire the Notes last becoming due, unless such Notes and all interest thereon are otherwise paid.

So long as the sum on deposit in the Debt Service Reserve Fund shall aggregate an amount equal to the Debt Service Reserve Fund Requirement, investment earnings on funds on deposit in the Debt Service Reserve Fund shall be deposited into the Series A Account of the Debt Service Fund; provided, however, that if no Series A Notes are then Outstanding, such investment earnings shall be deposited into the Series B Account of the Debt Service Fund. If the sum on deposit in the Debt Service Reserve Fund shall be less than the Debt Service Reserve Fund Requirement, investment earnings on funds in the Debt Service Reserve Fund shall remain therein and be applied to reducing such deficiency.

So long as the sum on deposit in the Debt Service Reserve Fund shall aggregate an amount equal to the Debt Service Reserve Fund Requirement on each Valuation Date, no further deposits to said Debt Service Reserve Fund shall be required. Investments and moneys in the Debt Service Reserve Fund shall be evaluated at the market value thereof, exclusive of accrued interest, by the Finance Officer on and the amount on deposit therein determined accordingly.

After payment in full of the principal of, premium, if any, and interest on the Notes (or provision has been made for the payment thereof as specified in the Ordinance), the fees, charges and expenses of the Finance Officer and any Paying Agent and any other amounts required to be paid under the Ordinance or any other instrument entered into with respect to the Notes, all amounts remaining in the Debt Service Reserve Fund shall be paid to the City.

**Section 407 Nonpresentment of Notes.** If any TIF Note is not presented for payment when the principal thereof becomes due at stated maturity or prior redemption date, and provided that funds sufficient to pay such TIF Note have been made available to the Finance Officer, all liability of the City to the Owner thereof for the payment of such TIF Note shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Finance Officer to hold such funds, without liability for interest thereon, for the benefit of the Owner of such TIF Note, who shall thereafter be restricted exclusively to such funds for any claim of whatever nature on his part under this Ordinance or on, or with respect to, said TIF Note. If any TIF Note is not presented for payment within five (5) years following the date when such TIF Note becomes due at maturity, the Finance Officer shall repay to the City the funds theretofore held by it for payment of such TIF Note, and such TIF Note shall, subject to the defense of any applicable statute of limitation, thereafter be an unsecured obligation of the City, and the Registered Owner thereof shall be entitled to look only to the City for payment, and then only to the extent of the amount so repaid to it by the Finance Officer, and the City shall not be liable for any interest thereon and shall not be regarded as a Finance Officer of such money.

## ARTICLE V. REMEDIES

**Section 501 Remedies.** The provisions of this Ordinance, including the covenants and agreements herein contained, shall constitute a contract between the City and the Owners of the Notes. The Owners shall have the right:

(a) by mandamus or other suit, action or proceedings at law or in equity to enforce the rights of the Owner against the City and its officers, agents and employees, and to require and compel duties and obligations required by the provisions of this Ordinance or by the constitution and laws of the State of Missouri;

(b) by suit, action or other proceedings in equity or at law to require the City, its officers, agents and employees to account as if they were the trustees of an express trust; and

(c) by suit, action or other proceedings in equity or at law of enjoin any acts or things which may be unlawful or in violation of the rights of the Owners.

**Section 502 Limitation on Rights of Owners.** The Owners secured hereby shall not have any right in any manner whatever by its action to affect, disturb or prejudice the security granted and provided for herein, or to enforce any right hereunder, except in the manner herein provided.

**Section 503 Remedies Cumulative.** No remedy conferred herein upon the Owners is intended to be exclusive of any other remedy, but each such remedy shall be cumulative and in addition to every other remedy and may be exercised without exhausting and without regard to any other remedy conferred herein. No waiver of any default or breach of duty or contract by the Owners shall extend to or affect any subsequent default or breach of duty or contract or shall impair any rights or remedies thereon. No delay or omission of the Owners to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein. Every substantive right and every remedy conferred

upon the Owners by this Ordinance may be enforced and exercised from time to time and as often as may be deemed expedient. If any suit, action or proceedings taken by the Owners on account of any default or to enforce any right or exercise any remedy has been discontinued or abandoned for any reason, or has been determined adversely to the Owner, then, and in every such case, the City and the Owners shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies, powers and duties of the Owners shall continue as if no such suit, action or other proceedings had been brought or taken.

#### **ARTICLE VI. DEPOSIT AND INVESTMENT OF MONEYS**

**Section 601 Deposits of Moneys.** All moneys deposited with or paid to the Finance Officer for the account of the various funds established under this Ordinance shall be held by the Finance Officer in trust and shall be applied only in accordance with this Ordinance. The Finance Officer shall not be under any liability for interest on any moneys received hereunder except as otherwise provided herein.

**Section 602 Investment of Moneys.** Moneys held in any fund or account referred to in this Ordinance shall be invested by the City in Government Obligations or in time or demand deposits or in certificates of deposit issued by any bank having combined capital, surplus and undivided profits of at least Fifty Million Dollars (\$50,000,000) but only to the extent such time or demand deposits or certificates of deposit are fully insured by the Federal Deposit Insurance Corporation; provided, however, that no such investment shall be made for a period extending longer than the date when the moneys invested may be needed for the purpose for which such fund was created. All earnings on any investments held in any fund or account shall accrue to and become a part of such fund or account, except the Debt Service Reserve Fund, as provided in Section 406 herein.

#### **ARTICLE VII. MISCELLANEOUS PROVISIONS**

**Section 701 Covenant to Request Appropriations.** The City agrees that the officer of the City at any time charged with the responsibility of formulating budget proposals will be directed to include in the budget proposal submitted to the Board of Aldermen for each fiscal year that the TIF Notes are outstanding a request for an appropriation of all moneys on deposit in the Special Allocation Fund for transfer to the Finance Officer for deposit at the times and in the manner provided in **Section 403** of this Ordinance.

**Section 702 Tax Matters.** Neither the City nor the Developer shall use or permit the use of any proceeds of any Tax Exempt TIF Note to acquire any securities or obligations, and shall not take or permit to be taken any other action or actions, which would cause any Tax Exempt TIF Note to be an "arbitrage bond" within the meaning of Section 148(a) of the Code, or "federally guaranteed" within the meaning of Section 149(b) of the Code. The City (to the extent within its power or discretion) and the Developer shall not use or permit the use of any proceeds of any Tax Exempt TIF Note, and shall not take or permit to be taken any other action or actions, which would result in any Tax Exempt TIF Note being treated as other than an obligation described in Section 103(a) of the Code. The City (to the extent within its power or discretion) and the Developer shall not use any portion of the proceeds of any Tax Exempt TIF Note, including any investment income earned on such proceeds, in any manner that would cause such Tax Exempt TIF Note to be a "private activity bond" within the meaning of Section 141(a) of the Code. The officers of the City, including the Mayor, the Finance Officer and the Register, shall be, and they hereby are, authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Section.

**Section 703 Payments Due on Saturdays, Sundays and Holidays.** In any case where the Payment Date is a Saturday, a Sunday or a legal holiday or other day that is not a business day, then payment of principal or interest need not be made on such date but may be made on the next succeeding business day with the same force and effect as if made on the Payment Date, and no interest shall accrue for the period after such date.

**Section 704 Notices, Consents and Other Instruments.** Any notice, consent, request, direction, approval, objection or other instrument required by this Ordinance to be signed and executed by the Owner of the TIF Notes may be in any number of concurrent writings of similar tenor and may be signed or executed by such Owner in person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent and of the ownership of the TIF Note, if made in the following manner, shall be sufficient for any of the purposes of the Ordinance, and shall be conclusive in favor of the City with regard to any action taken, suffered or omitted under any such instrument, namely:

- (a) The fact and date of the execution by any person of any such instrument may be proved by a certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such instrument acknowledged before such officer the execution thereof, or by affidavit of any witness to such execution.
- (b) The fact of ownership of the TIF Note, the amount or amounts and other identification of the TIF Note, and the date of holding the same shall be proved by the registration books of the City.

**Section 705 Notes Deemed to Be Paid.**

(a) Notes shall be deemed to be paid within the meaning of this Ordinance when payment of the principal on such Notes, plus interest thereon to the due date thereof (whether such due date is by reason of maturity or upon redemption as provided in this Ordinance, or otherwise), either (1) has been made or caused to be made in accordance with the terms hereof, or (2) provision

therefor has been made by depositing with the Finance Officer, in trust and irrevocably setting aside exclusively for such payment, (i) moneys sufficient to make such payment or (ii) non callable Government Obligations maturing as to principal and interest in such amount and at such times as will ensure the availability of sufficient moneys to make such payment and, with respect to Tax-Exempt TIF Notes deemed to be paid within the meaning of this Section, the Finance Officer shall have received an opinion of Bond Counsel (which opinion may be based upon a ruling or rulings of the Internal Revenue Service) to the effect that such deposit will not cause the interest on such Tax-Exempt TIF Notes to be included in gross income for purposes of federal income taxation. At such time as a Note is deemed to be paid hereunder as aforesaid, such Note shall no longer be secured by or be entitled to the benefits of this Ordinance, except for the purposes of any such payment from such moneys or Government Obligations.

(b) Notwithstanding the foregoing, in the case of Notes which by their terms may be redeemed prior to the Maturity Date, no deposit under clause (2) of subsection (a) above shall be deemed a payment of such Notes as aforesaid until, as to all such Notes which are to be redeemed prior to their respective stated maturities, proper notice of such redemption has been given in accordance with Article III hereof.

(c) Notwithstanding any provision of any other Section of this Ordinance which may be contrary to the provisions of this Section, all moneys or Government Obligations set aside and held in trust pursuant to the provisions of this Section for the payment of Notes and interest thereon shall be applied to and be used solely for the payment of the particular Notes and interest thereon with respect to which such moneys and Government Obligations have been so set aside in trust.

**Section 706 Execution of Documents; Further Authority.** The City is hereby authorized to enter into and the Mayor and the Finance Officer of the City are hereby authorized and directed to execute and deliver, for and on behalf of and as the act and deed of the City, the TIF Notes and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance. The officers of the City, including without limitation the Mayor, the Finance Officer and the Register, are hereby authorized and directed to execute, and the City Register is hereby authorized and directed where appropriate to attest, all certificates, documents or other instruments, and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Ordinance and to make ministerial alterations, changes or additions in the foregoing agreements, statements, instrument and other documents herein approved, authorized and confirmed which they determine to be in the City's best interest, and the execution or taking of such action shall be conclusive evidence of such determination.

**Section 707 Severability.** If any section or other part of this Ordinance, whether large or small, is for any reason held invalid, the invalidity thereof shall not affect the validity of the other provisions of this Ordinance.

**Section 708 Governing Law.** This Ordinance shall be governed exclusively by and constructed in accordance with the applicable internal laws of the State of Missouri.

**Section 709 Private Sale.** The Board of Aldermen of the City hereby declares that it is in the City's best interest to sell the TIF Notes at private sale because a public sale of the TIF Notes would cause additional expense to the City and because the condition of the current financial markets makes such a public sale not feasible or the best course of action for the City.

**Section 710 Repeal of Conflicting Ordinances.** Ordinance 66587 or other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

#### EXHIBIT A Legal Description of Redevelopment Area

Legal Description of Grace Lofts Redevelopment Area

**A LOT IN BLOCK 834 OF THE CITY OF ST. LOUIS, FRONTING 50 FEET ON THE SOUTH LINE OF WASHINGTON AVENUE, BY A DEPTH SOUTHWARDLY, BETWEEN PARALLEL LINES OF 150 FEET, MORE OR LESS, TO THE NORTH LINE OF ST. CHARLES STREET, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE SOUTH LINE OF WASHINGTON AVENUE DISTANT 80 FEET EAST OF THE EAST LINE OF 14TH STREET AND EXTENDING SOUTH AND PARALLEL WITH THE EAST LINE OF 14TH STREET 150 FEET, MORE OR LESS, TO A POINT IN THE NORTH LINE OF ST. CHARLES STREET, THENCE EAST ALONG SAID NORTH LINE 50 FEET; THENCE NORTH 150 FEET, MORE OR LESS, TO THE SOUTH LINE OF WASHINGTON AVENUE; THENCE WEST ALONG SAID SOUTH LINE 50 FEET TO THE BEGINNING.**

#### EXHIBIT B Form of Series A Note

***THIS TIF NOTE OR ANY PORTION HEREOF MAY BE TRANSFERRED, ASSIGNED OR NEGOTIATED ONLY TO "APPROVED INVESTORS," AS DEFINED HEREIN, AND IN ACCORDANCE WITH THE PROVISIONS HEREOF.***

UNITED STATES OF AMERICA  
STATE OF MISSOURI

Registered  
No. R-\_\_\_

In an Aggregate Not to Exceed

\$ \_\_\_\_\_ Plus Issuance Costs  
(See Schedule A attached)

CITY OF ST. LOUIS, MISSOURI

[TAXABLE][TAX-EXEMPT] TAX INCREMENT REVENUE NOTE  
(GRACE LOFTS TIF REDEVELOPMENT PROJECT)  
SERIES 200x-A

|                                |                                  |                            |                       |
|--------------------------------|----------------------------------|----------------------------|-----------------------|
| Rate of Interest:<br>[ ]% [ ]% | Maturity Date:<br>March 27, 2026 | Dated Date:<br>_____, 2005 | CUSIP Number:<br>None |
|--------------------------------|----------------------------------|----------------------------|-----------------------|

REGISTERED OWNER:

PRINCIPAL AMOUNT: See SCHEDULE A attached hereto.

The **CITY OF ST. LOUIS, MISSOURI**, a body corporate and a political subdivision duly organized and validly existing under its charter and the Constitution and laws of the State of Missouri (the “City”), for value received, hereby promises to pay to the Registered Owner shown above, or registered assigns, the principal amount shown from time to time on **Schedule A** attached hereto on the Maturity Date shown above unless called for redemption prior to the Maturity Date, and to pay interest thereon from the effective date of registration shown from time to time on **Schedule A** attached hereto or from the most recent Payment Date to which interest has been paid or duly provided for, at the Rate of Interest shown above computed on the basis of a 360-day year of twelve 30-day months. Interest and principal shall be payable each March 1 and September 1 (each, a “*Payment Date*”), commencing on the first March 1 or September 1 following the acceptance of the Certificate of Substantial Completion in accordance with the Redevelopment Agreement between the City and McGowan Brothers Development Corporation, LLC (the “*Developer*”), dated as of August 12, 2003, as amended (the “*Redevelopment Agreement*”) and issuance of the TIF Notes, until the TIF Notes are paid in full. The TIF Notes shall bear simple interest from their registration date or from the most recent Payment Date to which interest has been paid or duly provided for.

Except as otherwise provided herein, the capitalized terms herein shall have the meanings as provided in Ordinance No. \_\_\_\_\_ adopted by the Board of Aldermen on \_\_\_\_\_, 2007 (the “*Note Ordinance*”) or the Redevelopment Agreement.

**THE OBLIGATIONS OF THE CITY WITH RESPECT TO THIS TIF NOTE TERMINATE ON MARCH 27, 2026, WHETHER OR NOT THE PRINCIPAL AMOUNT OR INTEREST HEREON HAS BEEN PAID IN FULL. REFERENCE IS MADE TO THE NOTE ORDINANCE FOR A COMPLETE DESCRIPTION OF THE CITY’S OBLIGATIONS HEREUNDER.**

Subject to the preceding paragraph, the principal of and interest on this TIF Note shall be paid by the Comptroller of the City or her authorized agent (the “*Finance Officer*”) at maturity or upon earlier redemption as provided in Article III of the Note Ordinance to the person in whose name this TIF Note is registered at the maturity or redemption date hereof. The principal of and interest on the TIF Notes shall be payable in any coin or currency of the United States of America which, at the respective dates of payment thereof, is legal tender for the payment of debts due the United States of America. The principal and interest shall be payable by check or draft at the office of the Finance Officer or by wire transfer to the person in whose name such TIF Note is registered on the Register on each Payment Date.

This TIF Note is one of an authorized series of fully registered Notes of the City designated “City of St. Louis, Missouri, [Taxable][Tax-Exempt] Tax Increment Revenue Notes (Grace Lofts TIF Redevelopment Project), Series 200x-A,” issued in an aggregate principal amount of not to exceed \$ \_\_\_\_\_ plus Issuance Costs (the “*Notes*”). The TIF Notes are being issued for the purpose of paying a portion of the Redevelopment Project Costs in connection with the Redevelopment Plan, under the authority of and in full compliance with the Constitution and laws of the State of Missouri, including particularly the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865, of the Revised Statutes of Missouri, as amended (the “*Act*”), and pursuant to the Note Ordinance.

The TIF Notes and the interest thereon shall be special, limited obligations of the City payable solely from and secured as to the payment of principal and interest, by the Available Revenues and other moneys pledged thereto and held by the Finance Officer as provided herein. “*Available Revenues*” means (a) all monies on deposit in the PILOTs Account of the Special Allocation Fund; and (b) all monies on deposit in the EATs Account of the Special Allocation Fund that have been appropriated to the repayment of the TIF Notes, excluding (i) any amount paid under protest until the protest is withdrawn or resolved against the taxpayer or (ii) any sum received by the City which is the subject of a suit or other claim communicated to the City which suit or claim challenges the collection of such sum.

The monies on deposit in the PILOTs Account of the Special Allocation Fund are those payments in lieu of taxes (as defined in Sections 99.805(10) and 99.845 of the Act) attributable to the increase in the current equalized assessed valuation of each taxable lot, block, tract or parcel of real property in the Redevelopment Area (as described in **Exhibit A** to the Note Ordinance) over and above the initial equalized assessed valuation (as provided for by Section 99.855 of the Act) of each taxable lot, block, tract or parcel of real property in the Redevelopment Area, as paid to the City’s Treasurer by the City’s Collector of Revenue during the term of the Redevelopment Plan and the Redevelopment Project.

The monies on deposit in the EATs Account of the Special Allocation Fund are those amounts equal to fifty percent (50%) of the total additional revenues from taxes which are imposed by the City or any other taxing district (as that term is defined in Section 99.805(16) of the Act) and which are generated by economic activities within the Redevelopment Area over the amount of such taxes generated by economic activities within the Redevelopment Area in the calendar year ending December 31, 2002 (subject to annual appropriation by the City as provided in the Act), during the term of the Redevelopment Plan and Redevelopment Project, but excluding therefrom personal property taxes, taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, licenses, fees or special assessments, other than payments in lieu of taxes, taxes levied pursuant to Section 70.500 of the Revised Statutes of Missouri, as amended, and taxes levied for the purpose of public transportation pursuant to Section 94.660 of the Revised Statutes of Missouri, as amended, all in accordance with Section 99.845.3 of the Act, as may be amended from time to time.

All TIF Notes shall be equally and ratably secured by Available Revenues. The TIF Notes shall be special, limited obligations of the City payable solely from and secured as to the payment of principal and interest by a pledge of the Available Revenues. The taxing power of the City is not pledged to the payment of the TIF Notes either as to principal or interest. The TIF Notes shall not be or constitute a general obligation of the City, nor shall they constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter provision, limitation or restriction. THE OBLIGATIONS OF THE CITY WITH RESPECT TO THE TIF NOTES SHALL TERMINATE ON THE FIRST TO OCCUR OF THE FULL PAYMENT AND DISCHARGE OF THE TIF NOTES OR THE MATURITY DATE (WHETHER OR NOT THE PRINCIPAL AMOUNT OR INTEREST HAS BEEN PAID IN FULL).

Available Revenues in the Revenue Fund shall be disbursed by the Finance Officer on each Payment Date first from the EATs Account, and second from the PILOTs Account for the purpose and in the amounts as follows:

*First*, to the United States of America, an amount sufficient to pay any arbitrage rebate owed under Section 148 of the Code, as directed in writing by the City in accordance with the Arbitrage Certificate;

*Second*, to the Comptroller of the City and the St. Louis Development Corporation (which monies shall be paid one half to the Comptroller and one half to the St. Louis Development Corporation), an amount equal to the lesser of i) Three Thousand Dollars and no/100 (\$3,000.00), or ii) 0.2% of the Notes outstanding, on each Payment Date, plus any accumulated deficiency from previous years, plus an amount sufficient to pay all or any portion of the fees and expenses incurred by the City pursuant to Section 7.15 of the Agreement that have not otherwise been reimbursed to the City through the issuance of TIF Notes, and any fees to the paying agent pursuant to the Paying Agent Agreement;

*Third*, to the Series A Account of the Debt Service Fund, an amount sufficient to pay all or any portion of the past due interest owing as a result of prior deficiencies of moneys to pay interest due on the Series A Notes on each Payment Date;

*Fourth*, to the Series A Account of the Debt Service Fund, an amount sufficient to pay all or any portion of the accrued interest becoming due and payable on any Series A Note on each Payment Date;

*Fifth*, to the Series A Account of the Debt Service Fund, an amount sufficient to pay the interest on the Series A Notes on the next succeeding Payment Date;

*Sixth*, for transfer to the Debt Service Reserve Fund such amount as may be required to restore any deficiency in the Debt Service Reserve Fund if the amount on deposit in the Debt Service Reserve Fund is less than the Debt Service Reserve Requirement;

*Seventh*, to the Series A Account of the Debt Service Fund, an amount sufficient to pay the principal of any Series A Note that is subject to redemption pursuant to this Note Ordinance on each Payment Date;

*Eighth*, if no Series A Notes are Outstanding, to the Series B Account of the Debt Service Fund, an amount sufficient to pay all or any portion of the past due interest owing as a result of prior deficiencies of moneys to pay interest due on the Series B Note on each Payment Date;

*Ninth*, if no Series A Notes are Outstanding, to the Series B Account of the Debt Service Fund, an amount sufficient to pay all or any portion of the accrued interest becoming due and payable on any Series B Note on each Payment Date;

*Tenth*, if no Series A Notes are Outstanding, to the Series B Account of the Debt Service Fund, an amount sufficient to pay the interest on the Series B Notes on the next succeeding Payment Date;

*Eleventh*, if no Series A Notes are Outstanding, to the Series B Account of the Debt Service Fund, an amount sufficient to pay the principal of any Series B Note that is subject to redemption pursuant to this Note Ordinance on each Payment Date; and

*Twelfth*, all other remaining money in the PILOTs Account and EATs Account of the Special Allocation Fund shall annually be declared as surplus and distributed in the manner provided in the TIF Act.

Upon the payment in full of the principal of and interest on the TIF Notes (or provision has been made for the payment thereof as specified in this Note Ordinance), payment in full of the fees and expenses of the Comptroller and the St. Louis Development Corporation, and payment in full of any other amounts required to be paid under this Note Ordinance, all amounts remaining on deposit in the Revenue Fund and the Debt Service Fund shall be declared as surplus and distributed in the manner provided in the Act.

The City covenants that the officer of the City at any time charged with the responsibility of formulating budget proposals will be directed to include in the budget proposal submitted to the Board of Aldermen of the City for each fiscal year that the TIF Notes are outstanding a request for an appropriation of all moneys on deposit in the Special Allocation Fund for transfer to the Finance Officer for deposit at the times and in the manner provided in Section 403 of the Note Ordinance.

**NOTWITHSTANDING ANY PROVISION IN THE NOTE ORDINANCE OR IN THE TIF NOTES TO THE CONTRARY, THE TIF NOTES MAY BE SUBJECT TO CANCELLATION AND DISCHARGE BY THE CITY IN WHOLE WITHOUT PENALTY UNDER THE CONDITIONS SET FORTH IN SECTIONS 7.1 AND 7.2 OF THE REDEVELOPMENT AGREEMENT.**

The TIF Notes are subject to optional redemption by the City in whole at any time or in part on any Payment Date at a redemption price of one hundred percent (100%) of the principal amount of the TIF Note to be redeemed, plus accrued interest thereon to the date fixed for redemption.

The TIF Notes are subject to special mandatory redemption by the City on each Payment Date, at a redemption price equal to one hundred percent (100%) of the principal amount being redeemed, together with accrued interest thereon to the date fixed for redemption, in an amount equal to Available Revenues on deposit in the applicable account of the Special Allocation Fund and which will not be required for the payment of interest on such Payment Date.

The TIF Notes or portions of Notes to be redeemed shall become due and payable on the redemption date, at the redemption price therein specified, and from and after the redemption date (unless the City defaults in the payment of the redemption price) such TIF Notes or portion of TIF Notes shall cease to bear interest. The redemption price of such TIF Notes shall be paid by the Finance Officer. Installments of interest due on or prior to the redemption date shall be payable as herein provided for payment of interest. Upon surrender for any partial redemption of any TIF Note, there shall be prepared for the Registered Owner a new TIF Note or Notes of the same maturity in the amount of the unpaid principal as provided herein. All TIF Notes that have been redeemed shall be cancelled and destroyed by the Finance Officer as provided herein and shall not be reissued.

TIF Notes shall be redeemed only in the principal amount of One Thousand Dollars (\$1,000) or any integral multiple thereof. When less than all of the outstanding TIF Notes are to be redeemed and paid prior to maturity, such TIF Notes shall be selected by the Finance Officer in One Thousand Dollar (\$1,000) units of face value in such equitable manner as the Finance Officer may determine.

The TIF Notes are issuable in the form of fully registered Notes without coupons in minimum denominations of One Thousand Dollars (\$1,000) or any multiple thereof, except with respect to the Notes issued upon acceptance by the City of the final Certificate of Reimbursable Redevelopment Project Costs, which Notes may be issued in any denomination, subject to the limitation on the aggregate principal amount.

This TIF Note may be transferred or exchanged as provided in the Note Ordinance only upon the Register, upon surrender of this TIF Note together with a written instrument of transfer satisfactory to the Finance Officer duly executed by the Registered Owner or the Registered Owner's duly authorized agent.

**THE OWNER HEREOF EXPRESSLY AGREES, BY SUCH OWNER'S ACCEPTANCE HEREOF, THAT THE RIGHT TO PURCHASE, TRANSFER, ASSIGN OR NEGOTIATE THIS TIF NOTE SHALL BE LIMITED TO PURCHASE, TRANSFER, ASSIGNMENT OR NEGOTIATION TO APPROVED INVESTORS AND UPON THE EXECUTION BY THE PROPOSED PURCHASER OR TRANSFEREE OF AN INVESTMENT LETTER IN SUBSTANTIALLY THE FORM OF EXHIBIT D TO THE NOTE ORDINANCE, SIGNED BY THE PROPOSED PURCHASER OR TRANSFEREE, SHOWING THAT THE PROPOSED PURCHASER OR TRANSFEREE IS AN APPROVED INVESTOR. "Approved Investor" means (a) the Developer or any party or entity related to the Developer by one of the relationships described in Section 267(b) of the Internal Revenue Code of 1986, as amended, (b) an "accredited investor" under Rule 501(a) of Regulation D promulgated under the Securities Act of 1933, (c) a "qualified institutional buyer" under Rule 144A promulgated under the Securities Act of 1933 or (d) any general business corporation or enterprise with total assets in excess of Fifty Million Dollars (\$50,000,000).**

Subject to the limitations of the preceding paragraph, upon surrender thereof at the office of the Finance Officer, the Finance Officer shall transfer or exchange any TIF Note for a new TIF Note of the same maturity and in the same principal amount as the Outstanding principal amount of the TIF Note that was presented for transfer or exchange. Any TIF Note presented for transfer or exchange shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in a form and with guarantee of signature satisfactory to the Finance Officer, duly executed by the Registered Owner thereof or by the Registered Owner's duly authorized agent.

This TIF Note shall not be valid or binding on the City or be entitled to any security or benefit under the Indenture until the Certificate of Authentication hereon has been executed by the Finance Officer.

**IT IS HEREBY CERTIFIED AND DECLARED** that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of the TIF Notes have existed, happened and been performed in due time, form and manner as required by law.

**IN WITNESS WHEREOF**, the **CITY OF ST. LOUIS, MISSOURI** has executed this TIF Note by causing it to be signed by the manual or facsimile signature of its Mayor and Comptroller and attested by the manual or facsimile signature of its City Register, and its official seal to be affixed or imprinted hereon, and this TIF Note to be dated as of the effective date of registration as shown on **Schedule A** attached hereto.

**CITY OF ST. LOUIS, MISSOURI**

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

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

Attest:

(Seal)

\_\_\_\_\_  
City Register

Approved as to Form:

\_\_\_\_\_  
City Counselor

**ASSIGNMENT**

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto

\_\_\_\_\_  
(Print or Type Name, Address and Social Security Number or other Taxpayer Identification Number of Transferee)

the within TIF Note and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ agent to transfer the within Note on the books kept by the Finance Officer for the registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_.

NOTICE: The signature to this assignment must correspond with the name of the Registered Owner as it appears on the face of the within Note in every particular.

Signature Guaranteed By:

\_\_\_\_\_  
(Name of Eligible Guarantor Institution)

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

NOTICE: Signature(s) must be guaranteed by an eligible guarantor institution as defined by SEC Rule 17Ad-15 (17 CFR 240.17Ad-15).



REGISTERED OWNER:

PRINCIPAL AMOUNT: See SCHEDULE A attached hereto.

The **CITY OF ST. LOUIS, MISSOURI**, a body corporate and a political subdivision duly organized and validly existing under its charter and the Constitution and laws of the State of Missouri (the "City"), for value received, hereby promises to pay to the Registered Owner shown above, or registered assigns, the principal amount shown from time to time on **Schedule A** attached hereto on the Maturity Date shown above unless called for redemption prior to the Maturity Date, and to pay interest thereon from the effective date of registration shown from time to time on **Schedule A** attached hereto or from the most recent Payment Date to which interest has been paid or duly provided for, at the Rate of Interest shown above computed on the basis of a 360-day year of twelve 30-day months. Interest and principal shall be payable each March 1 and September 1 (each, a "Payment Date"), commencing on the first March 1 or September 1 following the acceptance of the Certificate of Substantial Completion in accordance with the Redevelopment Agreement between the City and McGowan Brothers Development Corporation, LLC (the "Developer"), dated as of August 12, 2003, as amended (the "Redevelopment Agreement") and issuance of the TIF Notes, until the TIF Notes are paid in full. The TIF Notes shall bear simple interest from their registration date or from the most recent Payment Date to which interest has been paid or duly provided for.

Except as otherwise provided herein, the capitalized terms herein shall have the meanings as provided in Ordinance No. \_\_\_\_\_ adopted by the Board of Aldermen on \_\_\_\_\_, (the "Note Ordinance") or the Redevelopment Agreement.

**THE OBLIGATIONS OF THE CITY WITH RESPECT TO THIS TIF NOTE TERMINATE ON MARCH 27, 2026, WHETHER OR NOT THE PRINCIPAL AMOUNT OR INTEREST HEREON HAS BEEN PAID IN FULL. REFERENCE IS MADE TO THE NOTE ORDINANCE FOR A COMPLETE DESCRIPTION OF THE CITY'S OBLIGATIONS HEREUNDER.**

Subject to the preceding paragraph, the principal of and interest on this TIF Note shall be paid at maturity or upon earlier redemption as provided in Article III of the Note Ordinance to the person in whose name this TIF Note is registered at the maturity or redemption date hereof, by the Comptroller of the City or her authorized agent (the "Finance Officer"). The principal of and interest on the TIF Notes shall be payable in any coin or currency of the United States of America which, at the respective dates of payment thereof, is legal tender for the payment of debts due the United States of America. The principal and interest shall be payable by check or draft at the office of the Finance Officer or by wire transfer to the person in whose name such TIF Note is registered on the Register on each Payment Date.

This TIF Note is one of an authorized series of fully registered Notes of the City designated "City of St. Louis, Missouri, [Taxable][Tax-Exempt] Tax Increment Revenue Notes (Grace Lofts TIF Redevelopment Project), Series 200x-B," issued in an aggregate amount of not to exceed \$ \_\_\_\_\_ plus Issuance Costs (the "Notes"). The TIF Notes are being issued for the purpose of paying a portion of the Redevelopment Project Costs in connection with the Redevelopment Plan, under the authority of and in full compliance with the Constitution and laws of the State of Missouri, including particularly the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865, of the Revised Statutes of Missouri, as amended (the "Act"), and pursuant to the Note Ordinance.

The TIF Notes and the interest thereon shall be special, limited obligations of the City payable solely from and secured as to the payment of principal and interest, by the Available Revenues and other moneys pledged thereto and held by the Finance Officer as provided herein. "Available Revenues" means (a) all monies on deposit in the PILOTs Account of the Special Allocation Fund; and (b) all monies on deposit in the EATs Account of the Special Allocation Fund that have been appropriated to the repayment of the TIF Notes, excluding (i) any amount paid under protest until the protest is withdrawn or resolved against the taxpayer or (ii) any sum received by the City which is the subject of a suit or other claim communicated to the City which suit or claim challenges the collection of such sum.

The monies on deposit in the PILOTs Account of the Special Allocation Fund are those payments in lieu of taxes (as defined in Sections 99.805(10) and 99.845 of the Act) attributable to the increase in the current equalized assessed valuation of each taxable lot, block, tract or parcel of real property in the Redevelopment Area (as described in **Exhibit A** to the Note Ordinance) over and above the initial equalized assessed valuation (as provided for by Section 99.855 of the Act) of each taxable lot, block, tract or parcel of real property in the Redevelopment Area, as paid to the City's Treasurer by the City's Collector of Revenue during the term of the Redevelopment Plan and the Redevelopment Project.

The monies on deposit in the EATs Account of the Special Allocation Fund are those amounts equal to fifty percent (50%) of the total additional revenues from taxes which are imposed by the City or any other taxing district (as that term is defined in Section 99.805(16) of the Act) and which are generated by economic activities within the Redevelopment Area over the amount of such taxes generated by economic activities within the Redevelopment Area in the calendar year ending December 31, 2002 (subject to annual appropriation by the City as provided in the Act), during the term of the Redevelopment Plan and Redevelopment Project, but excluding therefrom personal property taxes, taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, licenses, fees or special assessments, other than payments in lieu of taxes, taxes levied pursuant to Section 70.500 of the Revised Statutes of Missouri, as amended, and taxes levied for the purpose of public transportation pursuant to Section 94.660 of the Revised Statutes of Missouri, as amended, all in accordance with Section 99.845.3 of the Act, as may be amended from time to time.

All TIF Notes shall be equally and ratably secured by Available Revenues. The TIF Notes shall be special, limited

obligations of the City payable solely from and secured as to the payment of principal and interest by a pledge of the Available Revenues. The taxing power of the City is not pledged to the payment of the TIF Notes either as to principal or interest. The TIF Notes shall not be or constitute a general obligation of the City, nor shall they constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter provision, limitation or restriction. THE OBLIGATIONS OF THE CITY WITH RESPECT TO THE TIF NOTES SHALL TERMINATE ON THE FIRST TO OCCUR OF THE FULL PAYMENT AND DISCHARGE OF THE TIF NOTES OR THE MATURITY DATE (WHETHER OR NOT THE PRINCIPAL AMOUNT OR INTEREST HAS BEEN PAID IN FULL).

Available Revenues in the Revenue Fund shall be disbursed by the Finance Officer on each Payment Date first from the EATs Account and second from the PILOTs Account for the purposes and in the amounts as follows:

*First*, to the United States of America, an amount sufficient to pay any arbitrage rebate owed under Section 148 of the Code, as directed in writing by the City in accordance with the Arbitrage Certificate;

*Second*, to the Comptroller of the City and the St. Louis Development Corporation (which monies shall be paid one half to the Comptroller and one half to the St. Louis Development Corporation), an amount equal to the lesser of i) Three Thousand Dollars and no/100 (\$3,000.00), or ii) 0.2% of the Notes outstanding, on each Payment Date, plus any accumulated deficiency from previous years, plus an amount sufficient to pay all or any portion of the fees and expenses incurred by the City pursuant to Section 7.15 of the Agreement that have not otherwise been reimbursed to the City through the issuance of TIF Notes, and any fees to the paying agent pursuant to the Paying Agent Agreement;

*Third*, to the Series A Account of the Debt Service Fund, an amount sufficient to pay all or any portion of the past due interest owing as a result of prior deficiencies of moneys to pay interest due on the Series A Notes on each Payment Date;

*Fourth*, to the Series A Account of the Debt Service Fund, an amount sufficient to pay all or any portion of the accrued interest becoming due and payable on any Series A Note on each Payment Date;

*Fifth*, to the Series A Account of the Debt Service Fund, an amount sufficient to pay the interest on the Series A Notes on the next succeeding Payment Date;

*Sixth*, for transfer to the Debt Service Reserve Fund such amount as may be required to restore any deficiency in the Debt Service Reserve Fund if the amount on deposit in the Debt Service Reserve Fund is less than the Debt Service Reserve Requirement;

*Seventh*, to the Series A Account of the Debt Service Fund, an amount sufficient to pay the principal of any Series A Note that is subject to redemption pursuant to this Note Ordinance on each Payment Date;

*Eighth*, if no Series A Notes are Outstanding, to the Series B Account of the Debt Service Fund, an amount sufficient to pay all or any portion of the past due interest owing as a result of prior deficiencies of moneys to pay interest due on the Series B Note on each Payment Date;

*Ninth*, if no Series A Notes are Outstanding, to the Series B Account of the Debt Service Fund, an amount sufficient to pay all or any portion of the accrued interest becoming due and payable on any Series B Note on each Payment Date;

*Tenth*, if no Series A Notes are Outstanding, to the Series B Account of the Debt Service Fund, an amount sufficient to pay the interest on the Series B Notes on the next succeeding Payment Date;

*Eleventh*, if no Series A Notes are Outstanding, to the Series B Account of the Debt Service Fund, an amount sufficient to pay the principal of any Series B Note that is subject to redemption pursuant to this Note Ordinance on each Payment Date; and

*Twelfth*, all other remaining money in the PILOTs Account and EATs Account of the Special Allocation Fund shall annually be declared as surplus and distributed in the manner provided in the TIF Act.

Upon the payment in full of the principal of and interest on the TIF Notes (or provision has been made for the payment thereof as specified in this Note Ordinance), payment in full of the fees and expenses of the Comptroller and the St. Louis Development Corporation, and payment in full of any other amounts required to be paid under this Note Ordinance, all amounts remaining on deposit in the Revenue Fund and the Debt Service Fund shall be declared as surplus and distributed in the manner provided in the Act.

The City covenants that the officer of the City at any time charged with the responsibility of formulating budget proposals will be directed to include in the budget proposal submitted to the Board of Aldermen of the City for each fiscal year that the TIF Notes are outstanding a request for an appropriation of all moneys on deposit in the Special Allocation Fund for transfer to the Finance Officer for deposit at the times and in the manner provided in Section 403 of the Note Ordinance.

**NOTWITHSTANDING ANY PROVISION IN THE NOTE ORDINANCE OR IN THE TIF NOTES TO THE CONTRARY, THE TIF NOTES MAY BE SUBJECT TO CANCELLATION AND DISCHARGE BY THE CITY IN WHOLE WITHOUT PENALTY UNDER THE CONDITIONS SET FORTH IN SECTIONS 7.1 AND 7.2 OF THE REDEVELOPMENT AGREEMENT.**

The TIF Notes are subject to optional redemption by the City in whole at any time or in part on any Payment Date at a redemption price of one hundred percent (100%) of the principal amount of the TIF Note to be redeemed, plus accrued interest thereon to the date fixed for redemption.

The TIF Notes are subject to special mandatory redemption by the City on each Payment Date, at a redemption price equal to one hundred percent (100%) of the principal amount being redeemed, together with accrued interest thereon to the date fixed for redemption, in an amount equal to Available Revenues on deposit in the applicable account of the Special Allocation Fund and which will not be required for the payment of interest on such Payment Date.

The TIF Notes or portions of Notes to be redeemed shall become due and payable on the redemption date, at the redemption price therein specified, and from and after the redemption date (unless the City defaults in the payment of the redemption price) such TIF Notes or portion of TIF Notes shall cease to bear interest. The redemption price of such TIF Notes shall be paid by the Finance Officer. Installments of interest due on or prior to the redemption date shall be payable as herein provided for payment of interest. Upon surrender for any partial redemption of any TIF Note, there shall be prepared for the Registered Owner a new TIF Note or Notes of the same maturity in the amount of the unpaid principal as provided herein. All TIF Notes that have been redeemed shall be cancelled and destroyed by the Finance Officer as provided herein and shall not be reissued.

TIF Notes shall be redeemed only in the principal amount of One Thousand Dollars (\$1,000) or any integral multiple thereof. When less than all of the outstanding TIF Notes are to be redeemed and paid prior to maturity, such TIF Notes shall be selected by the Finance Officer in One Thousand Dollar (\$1,000) units of face value in such equitable manner as the Finance Officer may determine.

The TIF Notes are issuable in the form of fully registered Notes without coupons in minimum denominations of One Thousand Dollars (\$1,000) or any multiple thereof, except with respect to the Notes issued upon acceptance by the City of the final Certificate of Reimbursable Redevelopment Project Costs, which Notes may be issued in any denomination, subject to the limitation on the aggregate principal amount.

This TIF Note may be transferred or exchanged as provided in the Note Ordinance only upon the Register, upon surrender of this TIF Note together with a written instrument of transfer satisfactory to the Finance Officer duly executed by the Registered Owner or the Registered Owner's duly authorized agent.

**THE OWNER HEREOF EXPRESSLY AGREES, BY SUCH OWNER'S ACCEPTANCE HEREOF, THAT THE RIGHT TO PURCHASE, TRANSFER, ASSIGN OR NEGOTIATE THIS TIF NOTE SHALL BE LIMITED TO PURCHASE, TRANSFER, ASSIGNMENT OR NEGOTIATION TO APPROVED INVESTORS AND UPON THE EXECUTION BY THE PROPOSED PURCHASER OR TRANSFEREE OF AN INVESTMENT LETTER IN SUBSTANTIALLY THE FORM OF EXHIBIT D TO THE NOTE ORDINANCE, SIGNED BY THE PROPOSED PURCHASER OR TRANSFEREE, SHOWING THAT THE PROPOSED PURCHASER OR TRANSFEREE IS AN APPROVED INVESTOR. "Approved Investor" means (a) the Developer or any party or entity related to the Developer by one of the relationships described in Section 267(b) of the Internal Revenue Code of 1986, as amended, (b) an "accredited investor" under Rule 501(a) of Regulation D promulgated under the Securities Act of 1933, (c) a "qualified institutional buyer" under Rule 144A promulgated under the Securities Act of 1933 or (d) any general business corporation or enterprise with total assets in excess of Fifty Million Dollars (\$50,000,000).**

Subject to the limitations of the preceding paragraph, upon surrender thereof at the office of the Finance Officer, the Finance Officer shall transfer or exchange any TIF Note for a new TIF Note of the same maturity and in the same principal amount as the Outstanding principal amount of the TIF Note that was presented for transfer or exchange. Any TIF Note presented for transfer or exchange shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in a form and with guarantee of signature satisfactory to the Finance Officer, duly executed by the Registered Owner thereof or by the Registered Owner's duly authorized agent.

This TIF Note shall not be valid or binding on the City or be entitled to any security or benefit under the Indenture until the Certificate of Authentication hereon has been executed by the Finance Officer.

**IT IS HEREBY CERTIFIED AND DECLARED** that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of the TIF Notes have existed, happened and been performed in due time, form and manner as required by law.

**IN WITNESS WHEREOF**, the **CITY OF ST. LOUIS, MISSOURI** has executed this TIF Note by causing it to be signed by the manual or facsimile signature of its Mayor and Comptroller and attested by the manual or facsimile signature of its City Register, and its official seal to be affixed or imprinted hereon, and this TIF Note to be dated as of the effective date of registration as shown on **Schedule A** attached hereto.

**CITY OF ST. LOUIS, MISSOURI**

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

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

Attest:

(Seal)

\_\_\_\_\_  
City Register

Approved as to Form:

\_\_\_\_\_  
City Counselor

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto

\_\_\_\_\_  
(Print or Type Name, Address and Social Security Number or other Taxpayer Identification Number of Transferee)

the within TIF Note and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ agent to transfer the within Note on the books kept by the Finance Officer for the registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_.

NOTICE: The signature to this assignment must correspond with the name of the Registered Owner as it appears on the face of the within Note in every particular.

Signature Guaranteed By:

\_\_\_\_\_  
(Name of Eligible Guarantor Institution)

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

NOTICE: Signature(s) must be guaranteed by an eligible guarantor institution as defined by SEC Rule 17Ad-15 (17 CFR 240.17Ad-15).

SCHEDULE A

CERTIFICATE OF AUTHENTICATION

This TIF Note is one of the Series 200x-B TIF Notes described in the within-mentioned Note Ordinance.

| <u>Date<sup>(1)</sup></u> | <u>Additions to Principal Amount<sup>(2)</sup></u> | <u>Principal Amount Paid</u> | <u>Outstanding Principal Amount</u> | <u>Authorized Signatory of Finance Officer</u> |
|---------------------------|--|------------------------------|-------------------------------------|--|
| _____ → _____             | \$ _____   | \$ _____                     | \$ _____                            |  |
| _____ → _____             |  |                              |                                     |  |
| _____ → _____             |  |                              |                                     |  |
| _____ → _____             |  |                              |                                     |  |
| _____ → _____             |  |                              |                                     |  |
| _____ → _____             |  |                              |                                     |  |

\_\_\_\_\_ → \_\_\_\_\_  
 \_\_\_\_\_ → \_\_\_\_\_  
 \_\_\_\_\_ → \_\_\_\_\_  
 \_\_\_\_\_ → \_\_\_\_\_  
 \_\_\_\_\_ → \_\_\_\_\_  
 \_\_\_\_\_ → \_\_\_\_\_  
 \_\_\_\_\_ → \_\_\_\_\_

- (1) Date of approval of each Certificate of Reimbursable Redevelopment Project Costs, as provided in Section 5.2 of the Redevelopment Agreement (which constitutes Date of Authentication with respect to such portion of the Note) or Payment Date.
- (2) Limited to denominations of \$1,000 or any integral thereof, except with respect to an advance pursuant to the final Certificate of Reimbursable Redevelopment Project Costs, which may be in any denomination in excess of \$1,000, subject to the limitation on the aggregate principal amount provided for in the Note Ordinance.

**EXHIBIT D**

**Form of Letter of Representations**

\_\_\_\_\_, 20\_\_

City of St. Louis  
 City Hall  
 Tucker and Market Streets  
 St. Louis, Missouri 63103  
 Attention: Mayor, Room 200  
 Attention: Comptroller, Room 311

Re: Not to Exceed \$ \_\_\_\_\_ City of St. Louis, Missouri, Tax Increment Revenue Notes, (Grace Lofts Redevelopment Project), Series 200\_\_-A

Not to Exceed \$ \_\_\_\_\_ City of St. Louis, Missouri, Tax Increment Revenue Notes, (Grace Lofts Redevelopment Project), Series 200\_\_-B

Ladies and Gentlemen:

This letter is to provide you with certain representations and agreements with respect to the purchase by the undersigned of the aggregate principal amount not to exceed \_\_\_\_\_ plus Issuance Costs [Taxable][Tax-Exempt] Tax Increment Revenue Notes, (Grace Lofts Redevelopment Project), Series 200\_\_-A/B (the "TIF Notes"), issued by the City of St. Louis, Missouri (the "City"). The TIF Notes are secured in the manner set forth in Ordinance No. \_\_\_\_\_ [Board Bill No. \_\_\_\_\_] of the City adopted on \_\_\_\_\_, 200\_\_ (the "Note Ordinance"). The undersigned hereby represents to each of you and agrees with each of you, as follows:

- 1. The undersigned is an Approved Investor (as defined in the Note Ordinance).
- 2. The undersigned acknowledges that the City has not made any representation or warranty concerning the accuracy or completeness of any information furnished in connection with the purchase by the undersigned of the TIF Notes. Accordingly, the undersigned has not relied upon the City as to the accuracy or completeness of such information. As a sophisticated investor, the undersigned has made its own decision to purchase the TIF Notes based solely upon its own inquiry and analysis.
- 3. The undersigned understands that the TIF Notes do not constitute an indebtedness of the City or a loan or credit thereof within the meaning of any constitutional or statutory debt limitation or restriction.
- 4. The undersigned is familiar with and has counsel who are familiar with the federal and state legislation, rules, regulations and case law pertaining to the transfer and distribution of securities, including, but not limited to, disclosure obligations of the seller incident to any such transfer or distribution. The undersigned hereby covenants and agrees that the undersigned will not sell, offer for sale, pledge, transfer, convey, hypothecate, mortgage or dispose of the TIF Notes or any interest therein in violation of applicable federal or state law or in violation of restrictions on sale, assignment, negotiation or transfer of the TIF Notes as set forth in paragraph 6 below.

5. The undersigned is purchasing the TIF Notes for its own account for investment (and not on behalf of another) and, other than a contemplated pledge of the TIF Notes, has no present intention of reselling the TIF Notes or dividing its interest therein. Notwithstanding the foregoing, the undersigned has the right to sell, offer for sale, pledge, transfer, convey, hypothecate, mortgage or dispose of the TIF Notes at some future date determined by it, provided that such disposition is not in violation of restrictions on sale, assignment, negotiation or transfer of the TIF Notes as set forth in paragraph 6 below.
6. The undersigned acknowledges that the right to sell, assign, negotiate or otherwise transfer the TIF Notes shall be limited to Approved Investors (as defined in the Note Ordinance).
7. The undersigned agrees to indemnify and hold you harmless from any and all claims, judgments, attorneys' fees and expenses of whatsoever nature, whether relating to litigation or otherwise, resulting from any attempted or affected sale, offer for sale, pledge, transfer, conveyance, hypothecation, mortgage or disposition of the TIF Notes in violation of this letter.
8. The undersigned has satisfied itself that the TIF Notes may be legally purchased by the undersigned.

Sincerely,

as Purchaser

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

Approved: February 16, 2007

**ORDINANCE #67419**  
**Board Bill No. 368**

**AN ORDINANCE AUTHORIZING THE EXECUTION OF AN AMENDED AND RESTATED REDEVELOPMENT AGREEMENT WITH MOON BROTHERS, LLC; PRESCRIBING THE FORM AND DETAILS OF SAID AGREEMENT; AND AUTHORIZING OTHER RELATED ACTIONS IN CONNECTION WITH THE REDEVELOPMENT OF CERTAIN PROPERTY WITHIN A REDEVELOPMENT AREA.**

**WHEREAS**, pursuant to the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 through 99.865 of the Revised Statutes of Missouri, as amended (the "*Act*" or "*TIF Act*"), the City adopted Ordinance No. 66813 on July 22, 2005 (the "*Approving Ordinance*"), which Approving Ordinance (i) designated as a "redevelopment area" a certain portion of the City (the "*Redevelopment Area*"), (ii) approved a redevelopment plan entitled "Moon Bros. Carriage Lofts TIF Redevelopment Plan" (the "*Redevelopment Plan*"), (iii) approved the redevelopment project described in the Redevelopment Plan (the "*Redevelopment Project*"), (iv) adopted tax increment allocation financing within the Redevelopment Area, and (v) established the "City of St. Louis, Missouri, Special Allocation Fund for the Moon Brothers Carriage Lofts TIF Project" all as set forth in the Approving Ordinance and in accordance with the requirements of the Act; and

**WHEREAS**, pursuant to provisions of the Act, the City adopted Ordinance No. 66825 on July 22, 2005, which authorized the execution of a redevelopment agreement with Moon Brothers, LLC (the "*Developer*") setting forth the terms and obligations of the parties with respect to the implementation of the Redevelopment Project approved in the Approving Ordinance; and

**WHEREAS**, pursuant to the provisions of the Act, the City adopted Ordinance No. 66826 on July 22, 2005, which authorized and directed the issuance and delivery of not to exceed \$1,300,000 principal amount of Tax Increment Revenue Notes (Grace Lofts TIF Redevelopment Project), Series 200X (the "*TIF Notes*"), to finance the development of the Redevelopment Project; and

**WHEREAS**, pursuant to provisions of the Act, the City entered into a redevelopment agreement with the Developer dated as of August 15, 2006 (the "*Original Agreement*"); and

**WHEREAS**, the Developer and the City desire to approve and execute an amendment to the Original Agreement (the "*Amended Agreement*") to provide for the issuance of TIF Notes to an Approved Investor, other than the Developer, as that term is defined in the Original Agreement.

**NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF ST. LOUIS, MISSOURI, AS FOLLOWS:**

**Section 1.** The Board of Aldermen finds and determines that it is necessary and desirable to enter into the Amended Agreement with the Developer in order to implement the Redevelopment Project and to enable the Developer to carry out its proposal for development of the Redevelopment Project.

**Section 2.** The Board of Aldermen hereby approves, and the Mayor and Comptroller of the City are hereby authorized and directed to execute, on behalf of the City, the Amended Agreement by and between the City and the Developer

attached hereto as **Exhibit A**, and the City Register is hereby authorized and directed to attest to the Amended Agreement and to affix the seal of the City thereto. The Amended Agreement shall be in substantially the form attached, with such changes therein as shall be approved by said Mayor and Comptroller executing the same and as may be consistent with the intent of this Ordinance and necessary and appropriate in order to carry out the matters herein authorized.

**Section 3.** The Mayor and Comptroller of the City or their designated representatives are hereby authorized and directed to take any and all actions to execute and deliver for and on behalf of the City any and all additional certificates, documents, agreements or other instruments as may be necessary and appropriate in order to carry out the matters herein authorized, with no such further action of the Board of Aldermen necessary to authorize such action by the Mayor and the Comptroller or their designated representatives.

**Section 4.** The Mayor and the Comptroller or their designated representatives, with the advice and concurrence of the City Counselor and after approval by the Board of Estimate and Apportionment, are hereby further authorized and directed to make any changes to the documents, agreements and instruments approved and authorized by this Ordinance as may be consistent with the intent of this Ordinance and necessary and appropriate in order to carry out the matters herein authorized, with no such further action of the Board of Aldermen necessary to authorize such changes by the Mayor and the Comptroller or their designated representatives.

**Section 5.** It is hereby declared to be the intention of the Board of Aldermen that each and every part, section and subsection of this Ordinance shall be separate and severable from each and every other part, section and subsection hereof and that the Board of Aldermen intends to adopt each said part, section and subsection separately and independently of any other part, section and subsection. In the event that any part, section or subsection of this Ordinance shall be determined to be or to have been unlawful or unconstitutional, the remaining parts, sections and subsections shall be and remain in full force and effect, unless the court making such finding shall determine that the valid portions standing alone are incomplete and are incapable of being executed in accord with the legislative intent.

**EXHIBIT A  
Form of Amended and Restated Redevelopment Agreement  
(Attached hereto.)**

**AMENDED AND RESTATED REDEVELOPMENT AGREEMENT**

Between the

**CITY OF ST. LOUIS, MISSOURI**

And

**MOON BROTHERS, LLC**

for

**MOON BROS. CARRIAGE LOFTS TIF REDEVELOPMENT PROJECT**

Dated as of

\_\_\_\_\_ 2007

**TABLE OF CONTENTS**

**ARTICLE I  
DEFINITIONS**

Section 1.1 Definitions ..... 2

**ARTICLE II  
ACCEPTANCE OF PROPOSAL**

Section 2.1 Developer Designation ..... 6  
Section 2.2 Developer to Advance Costs ..... 6

**ARTICLE III  
CONSTRUCTION OF REDEVELOPMENT PROJECT**

Section 3.1 Acquisition of Property ..... 6  
Section 3.2 Condemnation ..... 7  
Section 3.3 Relocation ..... 7  
Section 3.4 Developer to Construct the Work ..... 7

|             |   |   |
|-------------|---|---|
| Section 3.5 | Governmental Approvals . . . . .                | 7 |
| Section 3.6 | Construction Plans; Changes . . . . .           | 7 |
| Section 3.7 | Certificate of Substantial Completion . . . . . | 8 |

**ARTICLE IV  
REIMBURSEMENT OF DEVELOPER COSTS**

|             |  |   |
|-------------|--|---|
| Section 4.1 | City's Obligation to Reimburse Developer . . . . .   | 8 |
| Section 4.2 | Reimbursements Limited to Reimbursable Redevelopment Project Costs;<br>Developer's Right to Substitute . . . . . | 8 |
| Section 4.3 | Cost Savings and Excess Profits . . . . .  | 9 |
| Section 4.4 | City's Obligations Limited to Special Allocation Fund and Bond Proceeds . . . . .                                | 9 |

**ARTICLE V  
TIF OBLIGATIONS**

|             |  |    |
|-------------|--|----|
| Section 5.1 | Conditions Precedent to the Issuance of TIF Notes . . . . .                        | 9  |
| Section 5.2 | Issuance of TIF Notes . . . . .  | 9  |
| Section 5.3 | TIF Bonds . . . . .  | 10 |
| Section 5.4 | Cooperation in the Issuance of TIF Obligations . . . . .                           | 10 |
| Section 5.5 | City to Select Underwriter and Financial Advisor; Term and Interest Rate . . . . . | 11 |

**ARTICLE VI  
SPECIAL ALLOCATION FUND;  
COLLECTION AND USE OF TIF REVENUES**

|             |   |    |
|-------------|---|----|
| Section 6.1 | Creation of Special Allocation Fund . . . . .       | 11 |
| Section 6.2 | Certification of Base for PILOTS and EATS . . . . . | 11 |
| Section 6.3 | Application of Available Revenues . . . . .         | 11 |
| Section 6.4 | Cooperation in Determining TIF Revenues . . . . .   | 11 |
| Section 6.5 | Obligation to Report TIF Revenues . . . . .         | 11 |
| Section 6.6 | Notice to City of Transfer . . . . .                | 12 |

**ARTICLE VII  
GENERAL PROVISIONS**

|              |  |    |
|--------------|--|----|
| Section 7.1  | Developer's Right of Termination . . . . .   | 12 |
| Section 7.2  | City's Right of Termination . . . . .  | 12 |
| Section 7.3  | Successors and Assigns. . . . .  | 12 |
| Section 7.4  | Remedies . . . . .   | 13 |
| Section 7.5  | Force Majeure . . . . .  | 13 |
| Section 7.6  | Notices . . . . .  | 14 |
| Section 7.7  | Conflict of Interest . . . . .   | 15 |
| Section 7.8  | Damage or Destruction of Redevelopment Project . . . . .                               | 15 |
| Section 7.9  | Inspection . . . . .   | 15 |
| Section 7.10 | Choice of Law . . . . .  | 15 |
| Section 7.11 | Entire Agreement; Amendment . . . . .  | 16 |
| Section 7.12 | Counterparts . . . . .   | 16 |
| Section 7.13 | Severability . . . . .   | 16 |
| Section 7.14 | Representatives Not Personally Liable . . . . .  | 16 |
| Section 7.15 | Actions Contesting the Validity and Enforceability of the Redevelopment Plan . . . . . | 16 |
| Section 7.16 | Release and Indemnification . . . . .  | 16 |
| Section 7.17 | Survival . . . . .   | 17 |
| Section 7.18 | Maintenance of the Property . . . . .  | 17 |
| Section 7.19 | Non-Discrimination . . . . .   | 18 |
| Section 7.20 | Fair Employment . . . . .  | 18 |

**ARTICLE VIII  
REPRESENTATIONS OF THE PARTIES**

|             |  |    |
|-------------|--|----|
| Section 8.1 | Representations of the City . . . . .      | 18 |
| Section 8.2 | Representations of the Developer . . . . . | 18 |

**EXHIBITS**

|           |   |
|-----------|---|
| EXHIBIT A | Form of Certificate of Reimbursable Redevelopment Project Costs |
| EXHIBIT B | Form of Certificate of Substantial Completion                   |
| EXHIBIT C | Legal Description of the Redevelopment Area                     |

EXHIBIT D Reimbursable Redevelopment Project Costs  
 EXHIBIT E Equal Opportunity and Nondiscrimination Guidelines

### REDEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED REDEVELOPMENT AGREEMENT (this "Agreement") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2007, by and between the CITY OF ST. LOUIS, MISSOURI (the "City"), a city and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Missouri, and MOON BROTHERS, LLC, (the "Developer"), a limited liability company duly organized and existing under the laws of the State of Missouri. (All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in Article I of this Agreement.)

### RECITALS

A. Pursuant to Ordinance No. 62477, adopted and approved on December 20, 1991, the Board of Aldermen duly formed the Tax Increment Financing Commission of the City of St. Louis, Missouri (the "TIF Commission"), in accordance with the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 through 99.865 of the Revised Statutes of Missouri, as amended (the "TIF Act"), and empowered the TIF Commission to transact business and exercise its powers as authorized by the TIF Act.

B. The City published a notice on February 1, 2005 and February 8, 2005, in the St. Louis Post-Dispatch, a newspaper of general circulation within the City, soliciting proposals for the redevelopment of the Redevelopment Area (as hereinafter defined), and made such requests for proposals available for potential developers of the Redevelopment Area.

C. On January 19, 2005, the Developer submitted to the City a redevelopment proposal (the "Redevelopment Proposal") for the Redevelopment Area.

D. On April 13, 2005, following a public hearing held on April 13, 2005, in accordance with the TIF Act, the TIF Commission adopted a resolution approving the redevelopment plan known as the Moon Brothers Carriage Lofts TIF Redevelopment Plan (the "Redevelopment Plan") and recommending that the Board of Aldermen: (1) approve the Redevelopment Plan; and (2) approve and designate the Redevelopment Area as a "redevelopment area" as provided in the TIF Act.

E. On July 22, 2005, after due consideration of the TIF Commission's recommendations, the City adopted: (1) Ordinance No. 66813 designating the Redevelopment Area as a "redevelopment area" as provided in the TIF Act, approving the Redevelopment Plan, approving the redevelopment project described in the Redevelopment Plan (the "Redevelopment Project"), adopting tax increment allocation financing within the Redevelopment Area and establishing the Special Allocation Fund; (2) Ordinance No. 66825 authorizing the City to enter into a redevelopment agreement with Developer; and (3) Ordinance No. 66826 authorizing the issuance of TIF Notes and TIF Obligations as evidence of the City's obligation to pay certain Redevelopment Project Costs incurred in furtherance of the Redevelopment Plan and the Redevelopment Project and pledging TIF Revenues to the payment of the TIF Notes.

F. The City and Developer desired to alter the terms of issuance of the TIF Notes to provide for the initial issuance of TIF Notes to individuals and entities other than Developer.

G. The Board of Aldermen hereby determines that the acceptance and the fulfillment generally of this Amended and Restated Redevelopment Agreement is in the best interests of the City, and the health, safety and welfare of its residents, and in accord with the public purposes specified in the Redevelopment Plan.

H. Pursuant to provisions of the TIF Act and Ordinance Nos. 66813, 66825, 66826, \_\_\_\_\_ and \_\_\_\_\_, the City is authorized to enter into this Amended and Restated Agreement, to issue TIF Notes as evidence of the City's obligation to pay certain Redevelopment Project Costs incurred in furtherance of the Redevelopment Plan and any such Redevelopment Project, and to pledge TIF Revenues to the payment of the TIF Notes.

### AGREEMENT

Now, therefore, in consideration of the premises and promises contained herein and other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### ARTICLE I. DEFINITIONS

**Section 1.1 Definitions.** As used in this Agreement, the following words and terms shall have the following meanings:

"Acquisition Costs" means all costs of acquiring a fee simple interest in the Property, including, but not limited to the cost of land and improvements; brokerage commissions; costs of title commitments, reports or policies; surveys; engineering fees, environmental remediation, soil, hazardous waste and other site and property-related reports and expenses; appraisals; professional fees of any kind or nature, including attorneys' fees, filing fees, recording fees, experts' fees; and all litigation costs, including

commissioners' awards, judgments, payments in settlement of litigation, and all associated court costs, fees and expenses.

"Agreement" means this Amended and Restated Redevelopment Agreement by and between the City and the Developer, as the same may be from time to time modified, amended or supplemented in writing by the parties hereto.

"Approved Investors" means (a) the Developer or a Related Entity, (b) an "accredited investor" under Rule 501(a) of Regulation D promulgated under the Securities Act of 1933, (c) a "qualified institutional buyer" under Rule 144A promulgated under the Securities Act of 1933 or (d) any general business corporation or enterprise with total assets in excess of \$50,000,000.

"Approving Ordinance" means Ordinance No. 66813, designating the Redevelopment Area, approving the Redevelopment Plan, approving the Redevelopment Project, adopting tax increment allocation financing within the Redevelopment Area and establishing the Special Allocation Fund.

"Authorizing Ordinance" means Ordinance No. 66825 and Ordinance No. \_\_\_\_ authorizing the City to enter into the Original Agreement and the Amended and Restated Agreement with Developer.

"Available Revenues" means (a) all moneys on deposit in the the PILOTs Account of the Special Allocation Fund; (b) all moneys on deposit in the EATs Account of the Special Allocation Fund that have been appropriated to the repayment of the TIF Notes, excluding (i) any amount paid under protest until the protest is withdrawn or resolved against the taxpayer or (ii) any sum received by the City which is the subject of a suit or other claim communicated to the City which suit or claim challenges the collection of such sum.

"Board of Aldermen" means the Board of Aldermen of the City.

"Bond Counsel" means Armstrong Teasdale LLP, St. Louis, Missouri, or an attorney at law or a firm of attorneys acceptable to the City of nationally recognized standing in matters pertaining to the tax-exempt nature of interest on obligations issued by states and their political subdivisions duly admitted to the practice of law before the highest court of any state of the United States of America or the District of Columbia.

"Certificate of Reimbursable Redevelopment Project Costs" means a document substantially in the form of **Exhibit A**, attached hereto and incorporated herein by reference, provided by the Developer to the City in accordance with this Agreement and evidencing Reimbursable Redevelopment Project Costs incurred by the Developer.

"Certificate of Substantial Completion" means a document substantially in the form of **Exhibit B**, attached hereto and incorporated herein by reference, issued by the Developer to the City in accordance with this Agreement and evidencing the Developer's satisfaction of all obligations and covenants to construct the Redevelopment Project in accordance with the Redevelopment Plan and this Agreement.

"City" means the City of St. Louis, Missouri, a city and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Missouri.

"Construction Plans" means plans, drawings, specifications and related documents, and construction schedules for the construction of the Work, together with all supplements, amendments or corrections, submitted by the Developer and approved by the City in accordance with and as required by this Agreement.

"Developer" means Moon Brothers, LLC, a limited liability company duly organized and existing under the laws of the State of Missouri, or its permitted successors or assigns in interest.

"Economic Activity Taxes" or "EATs" shall have the meaning ascribed to such term in Section 99.805 of the TIF Act.

"Excess Project Related Profits" means the sum of: (a) the net cash sales proceeds received by the Developer from the sale of the Redevelopment Project to a third party, (b) the proceeds of any Neighborhood Preservation Act or other federal or state tax credits made available for the Redevelopment Project, if any, and (c) the principal amount of any TIF Notes issued pursuant to Article V, less: (x) the amount of Verified Total Project Costs, and (y) the combination of (i) fifteen percent (15%) of the amount of all Verified Total Project Costs, other than Acquisition Costs, and (ii) four percent (4%) of the amount of all Acquisition Costs.

"Governmental Approvals" means all plat approvals, re-zoning or other zoning changes, site plan approvals, conditional use permits, variances, building permits, or other subdivision, zoning, or similar approvals required for the implementation of the Redevelopment Project related to the Redevelopment Area and consistent with the Redevelopment Plan, the Redevelopment Proposal and this Agreement.

"Issuance Costs" means all actual costs reasonably incurred by the City in furtherance of the issuance of TIF Obligations, including without limitation, the fees and expenses of financial advisors and consultants, the City's attorneys (including issuer's counsel and Bond Counsel), the City's administrative fees and expenses (including fees and costs of planning consultants), underwriters' discounts and fees, the costs of printing any TIF Notes and any official statements relating thereto, the costs of credit enhancement, if any, capitalized interest, debt service reserves and the fees of any rating agency rating any TIF Notes.

"Note Ordinance" means Ordinance No. \_\_\_\_, adopted by the Board of Aldermen authorizing the TIF Note and TIF

Obligations, any trust indenture relating thereto, and all related ordinances, resolutions and proceedings.

“Original Agreement” means the Redevelopment Agreement dated as of August 15, 2006 by and between the City and Developer

“Payments in Lieu of Taxes” or “PILOTS” shall have the meaning ascribed to such term in Section 99.805 of the TIF Act.

“Project Fund” means the Project Fund created in the Note Ordinance.

“Redevelopment Area” means the area described in **Exhibit C**, attached hereto and incorporated herein by reference, comprising one parcel of real property.

“Redevelopment Plan” means the plan titled Moon Bros. Carriage Lofts TIF Redevelopment Plan as approved by the City on November 22, 2002, pursuant to Ordinance No. 65854, as such plan may from time to time be amended in accordance with the TIF Act.

“Redevelopment Project” means the redevelopment project described in the Redevelopment Plan as approved by Ordinance No. 66813 on July 22, 2005, consisting of the redevelopment of the property commonly known as 1700-1718 Delmar, in downtown St. Louis, into 43 residential condominium units, construction of a minimum of 1800 square feet of commercial space and a parking structure containing between 40-59 parking spaces.

“Redevelopment Project Costs” shall have the meaning ascribed to such term in Section 99.805(14) of the TIF Act.

“Redevelopment Proposal” means the document on file with the City and incorporated herein by reference, titled “Moon Bros. Carriage Lofts TIF Application” submitted by the Developer to the City on January 29, 2005, as subject to the provisions of the Redevelopment Plan and this Agreement.

“Reimbursable Redevelopment Project Costs” means those Redevelopment Project Costs as described in **Exhibit D**, attached hereto and incorporated herein by reference, for which the Developer is eligible for reimbursement in accordance with this Agreement.

“Related Entity” means any party or entity related to the Developer by one of the relationships described in Section 267(b), Section 707(b)(1)(A) or Section 707(b)(1)(B) of the Internal Revenue Code of 1986, as amended.

“Relocation Plan” means the relocation plan of the City for the Redevelopment Area as contained in the Redevelopment Plan, which relocation plan was adopted on December 20, 1991, pursuant to Ordinance No. 62481.

“SLDC” means the St. Louis Development Corporation, a non-profit corporation organized and existing under the laws of the State of Missouri.

“Special Allocation Fund” means the City of St. Louis, Missouri, Special Allocation Fund for the Moon Bros. Carriage Lofts TIF Redevelopment Project, created by Ordinance No. 66813 approved by the Mayor on August 3, 2005, in accordance with the TIF Act, and including the accounts into which Available Revenues are from time to time deposited in accordance with the TIF Act and this Agreement.

“TIF Act” means the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 through 99.865 of the Revised Statutes of Missouri, as amended.

“TIF Bonds” means tax increment revenue bonds, if any, authorized and issued by the City in accordance with the TIF Act and this Agreement.

“TIF Commission” means the Tax Increment Financing Commission of the City of St. Louis, Missouri.

“TIF Notes” means the [Taxable][Tax-Exempt] Tax Increment Revenue Note (Moon Bros. Carriage Lofts Redevelopment Project), Series 200x-A and Series 200x-B, issued pursuant to the Note Ordinance in a total aggregate principal amount not to exceed \$1,300,000 plus Issuance Costs, to evidence the City’s limited obligation to repay Reimbursable Redevelopment Project Costs incurred by the Developer on behalf of the City in accordance with the TIF Act and this Agreement.

“TIF Obligations” means TIF Bonds, TIF Notes or other obligations, singly or in series, issued by the City pursuant to the TIF Act and in accordance with this Agreement.

“TIF Revenues” means: (1) Payments in Lieu of Taxes attributable to the increase in the current equalized assessed valuation of each taxable lot, block, tract, or parcel of real property located within the Redevelopment Area over and above the initial equalized assessed value (as that term is used and described in Section 99.845.1 of the TIF Act) of each such unit of property, as paid to the City Treasurer by the City Collector of Revenue during the term of the Redevelopment Plan and the Redevelopment Project, and (2) fifty percent (50%) of the total additional revenues from taxes which are imposed by the City or other taxing districts (as that term is defined in Section 99.805(16) of the TIF Act) and which are generated by economic activities within the Redevelopment Area over the amount of such taxes generated by economic activities within the Redevelopment Area in the calendar year ending December

31, 2002 (subject to annual appropriation by the City as provided in the TIF Act), as defined and described in Sections 99.805(4) and 99.845 of the TIF Act, but excluding therefrom personal property taxes, taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, licenses, fees or special assessments, taxes levied pursuant to Section 70.500 of the Revised Statutes of Missouri, as amended, and taxes levied for the purpose of public transportation pursuant to Section 94.660 of the Revised Statutes of Missouri, as amended, all as provided in Section 99.845 of the TIF Act, as amended from time to time.

“Trustee” means the trustee or fiscal agent for any issue of TIF Obligations.

“Work” means all work necessary to prepare the Redevelopment Area and to construct or cause the construction of the Redevelopment Project as specifically described in the Redevelopment Proposal, the Redevelopment Plan, and this Agreement including: (1) property acquisition, (2) professional fees, including architecture, engineering, surveying, legal and planning and consulting; (3) site preparation and improvements, including without limitation site re-grading and excavation for structural rehabilitation; installation of utilities, carpentry, brickwork, electrical work and site landscaping; and (4) all other work described in the Redevelopment Proposal and the Redevelopment Plan, or reasonably necessary to effectuate the intent of this Agreement.

## ARTICLE II. ACCEPTANCE OF PROPOSAL

**Section 2.1 Developer Designation.** The City hereby selects the Developer, who has acquired the Property, and to perform or cause the performance of the Work in accordance with the Redevelopment Plan, this Agreement and all Governmental Approvals.

**Section 2.2 Developer to Advance Costs.** The Developer agrees to advance all Redevelopment Project Costs as necessary to acquire the Property and to complete the Work, all subject to the Developer’s right to abandon the Redevelopment Project and to terminate this Agreement as set forth in **Section 7.1** of this Agreement. Additionally, and not by way of limitation: the City acknowledges that, prior to the execution of the Original Agreement, the Developer paid an initial fee of Five Thousand Dollars (\$5,000.00) TIF Application Fee;

2.2.1 the City acknowledges that, prior to the execution of the Original Agreement, the Developer paid a fee of Three Thousand Nine Hundred and No Dollars (\$3,900.00), which monies have been paid one half to the Comptroller of the City and one half to the SLDC to reimburse the City’s Comptroller and the SLDC for their administrative costs incurred in connection with the review of the Redevelopment Application and Redevelopment Plan;

2.2.2 the City acknowledges that, within ten (10) days of execution of the Original Agreement, Developer paid to the Comptroller of the City an additional amount Three Thousand Nine Hundred and No Dollars (\$3,900.00), which amount was paid one half to the Comptroller and one half to the SLDC for their administrative costs incurred in connection with the negotiation of the Original Agreement.

2.2.3 the City acknowledges that, within ten (10) days of execution of the Original Agreement, Developer paid to the Comptroller of the City an additional amount of Seven Thousand One Hundred and Six Dollars and Fifty Cents (\$7,906.50), which amount was paid to reimburse the Comptroller for its actual legal expenses incurred in connection with the adoption of the Approving Ordinances and the negotiation of the Original Agreement;

2.2.4 the Developer shall, within ten (10) days of the execution of this Amended and Restated Agreement pay to the Comptroller of the City an additional amount to reimburse the Comptroller for its actual legal expenses incurred in connection with the approval and adoption of the Amended and Restated Agreement and Ordinance and the Note Ordinance;

2.2.5 the Developer shall, concurrently with the initial issuance of the TIF Notes, pay to the City an additional amount as determined by the Comptroller, for the City’s Issuance Costs of such TIF Notes; and

2.2.6 any amounts advanced to the City shall represent Reimbursable Redevelopment Project Costs to be reimbursed exclusively from the proceeds of TIF Obligations as provided in and subject to Article IV and Article V of this Agreement.

## ARTICLE III. CONSTRUCTION OF REDEVELOPMENT PROJECT

**Section 3.1 Acquisition of Property.** Developer represents that, as of the date of this Agreement, Developer is the fee owner of the Property. Any additional properties acquired by the Developer for completion of the Work shall be held in the name of the Developer and shall be subject to the terms, conditions and covenants contained herein and in the Redevelopment Plan immediately upon acquisition.

**Section 3.2 Condemnation.** As of the date of this Agreement, it is not anticipated that the use of eminent domain will be necessary to acquire any portion of the Property in the Redevelopment Area.

**Section 3.3 Relocation.** The Developer shall identify any Displaced Person (as defined in Ordinance No. 62481 of the City) that is entitled to relocation payments or relocation assistance under the Relocation Plan. The City shall, at the Developer’s sole cost and expense, subject to reimbursement as a Reimbursable Redevelopment Project Cost in accordance with

**Article IV** of this Agreement, coordinate such relocation payments and relocation assistance in accordance with the Relocation Plan.

**Section 3.4 Developer to Construct the Work.** The Developer shall commence or cause the commencement of the construction of the Work within one hundred twenty (120) days of the date of this Agreement, which Work shall be constructed in a good and workmanlike manner in accordance with the terms of this Agreement. The Developer has completed or caused the completion of all of the Work.

3.4.1 The Developer may enter into or cause to be entered into one or more construction contracts to complete the Work. Prior to the commencement of construction of any portion of the Work, the Developer shall obtain or shall require that any of its contractors obtain workers' compensation, comprehensive public liability and builder's risk insurance coverage in amounts customary in the industry for similar type projects. The Developer shall require that such insurance be maintained by any of its contractors for the duration of the construction of such portion of the Work. To the extent that laws pertaining to prevailing wage and hour apply to any portion of the Work, the City and the Developer agree to cooperate and take all actions necessary to apply for the wage and hour determinations and otherwise comply with such laws.

**Section 3.5 Governmental Approvals.** The City and the SLDC agree to employ reasonable and good faith efforts to cooperate with the Developer and to process and timely consider and respond to all applications for the Governmental Approvals as received, all in accordance with the applicable City ordinances and laws of the State of Missouri.

**Section 3.6 Construction Plans; Changes.** The Construction Plans shall be prepared by a professional engineer or architect licensed to practice in the State of Missouri and the Construction Plans and all construction practices and procedures with respect to the Work shall be in conformity with all applicable state and local laws, ordinances and regulations. During the progress of the Work, the Developer may make such reasonable changes, including without limitation modification of the construction schedule, including dates of commencement and completion, modification of the areas in which the Work is to be performed, relocation, expansion or deletion of items, revisions to the areas and scope of Work, and any and all such other changes as site conditions or orderly development may dictate or as may be necessary or desirable, in the sole determination of the Developer, to enhance the economic viability of the Redevelopment Project and as may be in furtherance of the general objectives of the Redevelopment Plan; provided that (a) the Developer shall comply with all laws, regulations and ordinances of the City and (b) prior to any material changes, the Developer shall obtain the advance written consent of the City and the SLDC, which consent shall not be unreasonably withheld or delayed. For purposes of this Section, "material changes" shall mean any change that could reasonably be expected to result in a decrease in the aggregate amount of TIF Revenues generated within the Redevelopment Area of at least ten percent (10%).

**Section 3.7 Certificate of Substantial Completion.** Promptly after substantial completion of the Work, the Developer shall furnish to the City and the SLDC a Certificate of Substantial Completion. The Mayor or his designee and SLDC shall, within thirty (30) days following delivery of the Certificate of Substantial Completion, carry out such inspections as it deems necessary to verify to its reasonable satisfaction the accuracy of the certifications contained in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be deemed accepted by the City and the SLDC unless, within thirty (30) days following delivery of the Certificate of Substantial Completion, the City or the SLDC furnishes the Developer with specific written objections to the status of the Work, describing such objections and the measures required to correct such objections in reasonable detail. In the case where the Mayor or his designee or SLDC provides the Developer with specific written objections to the status of the Work, the Developer shall have such amount of time as is reasonably necessary to address such objections and when addressed shall re-submit the Certificate of Substantial Completion to the Mayor or his designee or SLDC in accordance with this Section. Upon acceptance of the Certificate of Substantial Completion by the Mayor or his designee and the SLDC or upon the lapse of thirty (30) days after delivery thereof to the Mayor or his designee and the SLDC without any written objections thereto, the Developer may record the Certificate of Substantial Completion with the City's Recorder of Deeds, and the same shall constitute evidence of the satisfaction of the Developer's agreements and covenants to perform all Work. The Certificate of Substantial Completion shall be in substantially the form attached as **Exhibit B**, attached hereto and incorporated by referenced herein.

## ARTICLE VI. REIMBURSEMENT OF DEVELOPER COSTS

**Section 4.1 City's Obligation to Reimburse Developer.** The City agrees to reimburse Developer for the verified Reimbursable Redevelopment Project Costs in the amounts and as set forth on **Exhibit D**, attached hereto and incorporated herein by reference, as may be adjusted pursuant to Article IV of this Agreement. Subject to the terms of the Note Ordinance and this Agreement, the City agrees to issue TIF Notes to evidence the City's obligation to reimburse Developer for verified Reimbursable Redevelopment Project Costs in an amount not to exceed One Million Three Hundred and 00/100 (\$1,300,000.00) plus Issuance Costs and interest as provided in **Section 5.2** of this Agreement, subject to the limitations of **Article IV** of this Agreement.

**Section 4.2 Reimbursements Limited to Reimbursable Redevelopment Project Costs; Developer's Right to Substitute.** Nothing in this Agreement shall obligate the City to issue TIF Notes to reimburse the Developer for any cost that is not incurred pursuant to Section 99.820.1 of the TIF Act or that does not qualify as a "redevelopment project cost" under Section 99.805(14) of the TIF Act. The Developer shall, at the City's request, provide itemized invoices, receipts or other information, if any, reasonably requested by the City to confirm that any such cost is so incurred and does so qualify. Each such request shall be accompanied by a certification by the Developer that such cost is eligible for reimbursement under the TIF Act. The parties agree that each of the categories of costs set forth in **Exhibit D**, attached hereto and incorporated herein by reference, shall constitute Reimbursable Redevelopment Project Costs which are eligible for reimbursement in accordance with the TIF Act and this Agreement.

The Developer shall not be limited to the total amount of reimbursement shown for each such category on **Exhibit D**, but shall be entitled to reimbursement for Redevelopment Project Costs from any of the categories set forth therein, without regard to the maximum amounts shown for each category, up to the maximum aggregate amount established in Section 4.1 of this Agreement; provided that the Developer shall be obligated to advance to the City the full amounts identified in **Section 2.2**, clauses **2.2.1** through **2.2.4**, of this Agreement. If the City determines that any cost identified as a Reimbursable Redevelopment Project Cost is not a “redevelopment project cost” under Section 99.805(14) of the TIF Act, the City shall so notify the Developer in writing within thirty (30) days identifying the ineligible cost and the basis for determining the cost to be ineligible, whereupon the Developer shall have the right to contest such determination and/or identify and substitute other Redevelopment Project Costs as Reimbursable Redevelopment Project Costs with a supplemental application for payment.

**Section 4.3 Cost Savings and Excess Profits.** In addition to the documents required to be provided to the City under **Section 4.2** of this Agreement, upon final completion of the Redevelopment Project, Developer shall provide to the City itemized invoices, receipts, pay applications or other information evidencing the Verified Total Project Costs. Within ninety (90) days after the close of the initial sale of each residential unit located in the Redevelopment Area by the Developer, Developer also shall furnish to the City a statement detailing the Excess Project-Related Profits. The maximum amount of Reimbursable Redevelopment Project Costs for which the Developer shall be reimbursed by the City as provided for in **Section 4.1** of this Agreement and the maximum amount of any TIF which shall be issued by the City in accordance with **Section 5.2** of this Agreement shall be reduced by an amount equal to seventy-five percent (75%) of the total Excess Project Related Profits.

Developer shall not include developer fees or consultant fees for any service typically performed by the Developer in the Verified Total Project Costs. With respect to any other costs for any services provided by the Developer or any entity related to the Developer, the amount of such costs shall not exceed the amount set forth in the Redevelopment Plan for such services. Moreover, if any of the owners, officers, principals or members of the construction contractor for the redevelopment Project are the same as any owner, officer, principal or member of Developer or general partner in the owner of the development, amounts allowed for aggregate contractor fees shall not exceed eighteen percent (18%) of construction costs as provided for in the Missouri Housing Development Commission’s 2005 Qualified Allocation Plan for the Low Income Housing Tax Credit Program and Developer shall include documentation, including detailed invoices and receipts for payment, for each and every item of costs traceable to third parties with no relationship to Developer, in addition to summary applications submitted to Developer by the construction contractor..

**Section 4.4 City’s Obligations Limited to Special Allocation Fund and Bond Proceeds.** Notwithstanding any other term or provision of this Agreement, TIF Notes issued by the City to the Developer for Reimbursable Redevelopment Project Costs are payable only from the Special Allocation Fund and from Bond Proceeds, if any, and from no other source.

## ARTICLE V. TIF OBLIGATIONS

**Section 5.1 Conditions Precedent to the Issuance of TIF Notes.** No TIF Notes shall be issued until such time as the City has (i) accepted a Certificate of Substantial Completion in accordance with the procedures set forth in **Section 3.8** of this Agreement; (ii) approved a Certificate of Reimbursable Redevelopment Project Costs in substantially the form of **Exhibit A**, attached hereto and incorporated herein by reference, in accordance with the procedures set forth in **Section 4.2** of this Agreement; (iii) obtained an opinion of Bond Counsel regarding the taxable nature of the TIF Notes; (iv) received the full payment of all advances required to be paid under **Section 2.2** of this Agreement; and (v) received such other documentation as the City shall reasonably require of Developer in order for the City to obtain an opinion of Bond Counsel as required by this **Section 5.1**

**Section 5.2 Issuance of TIF Notes.** Upon satisfaction of the conditions of Section 2.2, clause 2.2.4, and Section 5.1 of this Agreement, the City agrees to issue one or more TIF Notes as provided in the Note Ordinance to reimburse the Developer for Reimbursable Redevelopment Project Costs up to the maximum amount established in Section 4.1 of this Agreement, subject to the limitations of Article IV of this Agreement.

**5.2.1 Terms.** Each TIF Note shall bear interest at a fixed rate per annum, determined on the date that is not less than ten (10) business days and not more than sixty (60) days prior to the scheduled closing date for the issuance of the TIF Notes (the “Pricing Date”) based on the municipal yield curve for general obligation bonds (the “MMD”) compiled by Municipal Market Data-Line® (or its successors) and published by Thomson Financial, an operating unit of The Thomson Corporation (or its successors), using the MMD yield published as of the Issuance Date for general obligation bonds rated “AAA” that mature in the same year as the TIF Notes, (i) plus four percent (4%) if the interest on the TIF Notes (in the opinion of Bond Counsel) is not exempt from federal income taxation (the “Taxable Rate”), or (ii) plus two percent (2.0%) if the interest on the TIF Notes (in the opinion of Bond Counsel) is exempt from federal income taxation (the “Tax-Exempt Rate”); provided, in no event shall the interest rate on the TIF Notes exceed ten percent (10%) per annum.

**5.2.2 Procedures for Issuance of TIF Notes.** Within sixty (60) days of the Developer’s satisfaction of the conditions of Section 5.1 of this Agreement the City shall issue a TIF Note evidencing reimbursement of Reimbursable Redevelopment Project Costs. Notwithstanding anything contained in this Agreement to the contrary, upon the acceptance by the City of a Certificate of Reimbursable Redevelopment Project Costs and the issuance by the City of a TIF Note as provided in this **Section 5.2.3**, the Developer shall be deemed to have advanced funds necessary to purchase such TIF Notes and the City shall be deemed to have deposited such funds in the Project Fund and shall be deemed to have reimbursed the Developer in full for such costs from the amounts deemed to be on deposit in the Project Fund from time to time.

5.2.3 **Special Mandatory Redemption of TIF Notes.** The TIF Notes are subject to special mandatory redemption by the City, on each March 1 and September 1 occurring after the acceptance by the City of the Certificate of Substantial Completion and issuance of the TIF Notes at a redemption price equal to 100% of the principal amount being redeemed, together with the accrued interest thereon to the date fixed for redemption, which amount of principal being redeemed shall be an amount equal to Available Revenues on deposit in the applicable account of the Special Allocation Fund and which will not be required for the payment of interest on such March 1 and September 1.

**Section 5.3 TIF Bonds.** The City may, in its sole and absolute discretion, issue TIF Bonds in an amount sufficient to refund all or a portion of the outstanding TIF Notes. The Developer shall not have any liability for any costs associated with the issuance of TIF Bonds but shall bear its own costs and expenses, including any attorneys' fees and expenses, that the Developer may incur in complying with **Section 5.4** of this Agreement. Proceeds of any TIF Bonds shall be applied in the following order: (a) to the payment of Issuance Costs relating to the issuance of the TIF Bonds; (b) to the payment of outstanding principal of and interest on the TIF Notes to be refunded; (c) to the payment of capitalized interest on the TIF Bonds; and (d) to the establishment of a debt service reserve fund for the TIF Bonds.

**Section 5.4 Cooperation in the Issuance of TIF Obligations.** The Developer covenants to cooperate and take all reasonable actions necessary to assist the City and its Bond Counsel, underwriters and financial advisors in the preparation of offering statements, private placement memorandum or other disclosure documents and all other documents necessary to market and sell the TIF Bonds, including disclosure of tenants of the Property and the non-financial terms of the leases between the Developer and such tenants, to the extent permitted by such leases. The Developer will not be required to disclose to the general public or any investor any proprietary or confidential information, including financial information, pertaining to the Developer, but upon the execution of a confidentiality agreement acceptable to the Developer, the Developer will provide such information to the City's financial advisors, underwriters and their counsel to enable such parties to satisfy their due diligence obligations. The Developer shall make such compliance obligation a covenant running with the land, enforceable as if any subsequent transferee thereof were originally a party to and bound by this Agreement.

**Section 5.5 City to Select Underwriter and Financial Advisor; Term and Interest Rate.** The City shall have the right to select the designated underwriter (and such financial advisors and consultants as the underwriter and the City deem necessary for the issuance of the TIF Bonds) and underwriter's counsel. The final maturity of the TIF Bonds shall not exceed the maximum term permissible under the TIF Act. The TIF Bonds shall bear interest at such rates, shall be subject to redemption and shall have such terms as the City shall determine in its sole and absolute discretion.

## ARTICLE VI SPECIAL ALLOCATION FUND; COLLECTION AND USE OF TIF REVENUES

**Section 6.1 Creation of Special Allocation Fund.** The City agrees to cause its Comptroller or other financial officer to maintain the Special Allocation Fund, including a "PILOTs Account" and an "EATs Account," and such further accounts or sub-accounts as are required by this Agreement or as the Comptroller of the City may deem appropriate in connection with the administration of the Special Allocation Fund pursuant to this Agreement. Subject to the requirements of the TIF Act and, with respect to Economic Activity Taxes, subject to annual appropriation by the Board of Aldermen, the City will promptly upon receipt thereof deposit all PILOTs in the PILOTs Account and all EATs in the EATs Account, as applicable.

**Section 6.2 Certification of Base for PILOTs and EATs.** Within ninety (90) days after adoption of the Approving Ordinances, the City shall provide to the Developer: (i) a true, correct and complete copy of the City Assessor's calculation of the total initial equalized assessed valuation of the taxable real property within the Redevelopment Area based upon the most recently ascertained equalized assessed value of each taxable lot, block, tract or parcel of real property within the Redevelopment Area; and (ii) a certification of the amount of revenue from taxes, penalties and interest which are imposed by the City and other taxing districts and which are generated by economic activities within the Redevelopment Area for the calendar year ending December 31, 2001, but excluding those taxes, licenses, fees or special assessments identified in Section 99.845.3 of the TIF Act.

**Section 6.3 Application of Available Revenues.** The City hereby agrees for the term of this Agreement to apply the Available Revenues and any taxes, fees or assessments subsequently enacted and imposed in substitution therefor and allocable to the Special Allocation Fund under the TIF Act or this Agreement to the repayment of TIF Notes issued under Article V of this Agreement as provided in the Note Ordinance and this Agreement.

**Section 6.4 Cooperation in Determining TIF Revenues.** The City and the Developer agree to cooperate and take all reasonable actions necessary to cause the TIF Revenues to be paid into the Special Allocation Fund, including the City's enforcement and collection of all such payments through all reasonable and ordinary legal means of enforcement.

**Section 6.5 Obligation to Report TIF Revenues.** The Developer shall cause any purchaser or transferee of real property located within the Property, and any lessee or other user of real property located within the Property required to pay TIF Revenues, to use all reasonable efforts to timely fulfill such obligations as are required by **Section 6.4** of this Agreement. So long as any of the TIF Obligations are outstanding, the Developer shall cause such obligations to be covenants running with the land, which covenants shall be enforceable as if such purchaser, transferee, lessee or other user of such real property were originally a party to and bound by this Agreement.

**Section 6.6 Notice to City of Transfer.** The Developer agrees to notify the City in writing of any proposed sale, transfer or other disposition of the Property or any interest therein as permitted by **Section 7.3.2** of this Agreement within ninety (90) days after the date of said sale, transfer or other disposition. Said notice shall specify the name and address of the person so acquiring any or all of the Property or any interest therein and shall identify the Property to be sold, transferred or otherwise disposed, whether by voluntary transfer or otherwise.

## ARTICLE VII. GENERAL PROVISIONS

**Section 7.1 Developer's Right of Termination.** At any time prior to the delivery of the Certificate of Substantial Completion, the Developer may, by giving written notice to the City, abandon the Redevelopment Project and terminate this Agreement and the Developer's obligations hereunder if the Developer determines, in its sole discretion, that the Redevelopment Project is no longer economically feasible. Upon such termination, the City shall have no obligation to reimburse the Developer for any amounts advanced under this Agreement or costs otherwise incurred or paid by Developer.

**Section 7.2 City's Right of Termination.** The City may terminate this Agreement if the Developer fails to submit its Certificate of Substantial Completion, acceptable to the City, in accordance with **Section 3.7** of this Agreement and the schedule set forth in Section 3.4 of this Agreement. Upon termination of this Agreement for any reason, the City shall have no further obligation to reimburse the Developer for any amounts advanced under this Agreement or costs otherwise incurred or paid by Developer.

### **Section 7.3 Successors and Assigns.**

**7.3.1. Binding Affect.** This Agreement shall be binding on and shall inure to the benefit of the parties named herein and their respective heirs, administrators, executors, personal representatives, successors and assigns.

**7.3.2. Assignment or Sale.** Without limiting the generality of the foregoing, all or any part of the Property or any interest therein may be sold, transferred, encumbered, leased, or otherwise disposed of at any time, and the rights of the Developer named herein or any successors in interest under this Agreement or any part hereof may be assigned at any time before, during or after redevelopment of the Redevelopment Project, whereupon the party disposing of its interest in the Property or assigning its interest under this Agreement shall be thereafter released from further obligation under this Agreement (although any such Property so disposed of or to which such interest pertains shall remain subject to the terms and conditions of this Agreement), provided that until substantial completion of the Redevelopment Project, the fee title to the Property shall not be sold, transferred or otherwise disposed of and the rights, duties and obligations of the Developer under this Agreement shall not be assigned in whole or in part without the prior written approval of the City, which approval shall not be unreasonably withheld or delayed upon a reasonable demonstration by the Developer of the proposed transferee's or assignee's experience and financial capability to undertake and complete such portions of the Work and perform the Developer's obligations under this Agreement, all in accordance with this Agreement. Notwithstanding anything herein to the contrary, the City hereby approves, and no prior consent shall be required in connection with: (a) the right of the Developer to encumber or collaterally assign its interest in the Property or any portion thereof to secure loans, advances or extensions of credit to finance or from time to time refinance all or any part of the Redevelopment Project Costs, or the right of the holder of any such encumbrance or transferee of any such collateral assignment (or trustee or agent on its behalf) to transfer such interest by foreclosure or transfer in lieu of foreclosure under such encumbrance or collateral assignment; (b) the right of Developer to assign the Developer's rights, duties and obligations under this Agreement to any party related to the Developer by one of the relationships described in Section 267(b) of the United States Internal Revenue Code of 1986, as amended; provided that in each such event (i) the Developer named herein (Moon Brothers, LLC) shall remain liable hereunder for substantial completion of the Work and shall be released from such liability hereunder only upon the City's acceptance of the Certificate of Substantial Completion and (ii) the Developer provides to the City fifteen (15) days' advance written notice of the proposed assignment or transfer.

**7.3.3. Assignment or Sale to Exempt Organization.** Prior to any sale, transfer or other disposition of all or any portion of the Property or any interest therein to an organization exempt from payment of ad valorem property taxes, such organization shall be required to agree not to apply for an exemption from payment of such property taxes for a period ending on the earlier of the date that all TIF Obligations are paid in full or twenty-three (23) years from the date that the Note Ordinance was adopted by the City. The Developer shall make this requirement a covenant running with the land, enforceable for such period as if such purchaser or other transferee or possessor thereof were originally a party to and bound by this Agreement.

**Section 7.4 Remedies.** Except as otherwise provided in this Agreement and subject to the Developer's and the City's respective rights of termination, in the event of any default in or breach of any term or conditions of this Agreement by either party, or any successor, the defaulting or breaching party (or successor) shall, upon written notice from the other party specifying such default or breach, proceed immediately to cure or remedy such default or breach, and shall, in any event, within thirty (30) days after receipt of notice, cure or remedy such default or breach. In the event that the defaulting or breaching party (or successor) diligently and in good faith commences to cure or remedy such default or breach but is unable to cure or remedy such default or breach within thirty (30) days after receipt of notice, the defaulting or breaching party (or successor) shall, prior to the end of such thirty (30) days, provide notice to the other party that it has in good faith commenced to cure or remedy such default or breach, whereupon the defaulting or breaching party (or successor) shall have an additional thirty (30) days to cure or remedy such default or breach. In case such cure or remedy is not taken or not diligently pursued, or the default or breach shall not be cured or remedied

prior to the end of the additional thirty (30) day period, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including without limitation proceedings to compel specific performance by the defaulting or breaching party.

**Section 7.5 Force Majeure.** Neither the City nor the Developer nor any successor in interest shall be considered in breach or default of their respective obligations under this Agreement, and times for performance of obligations hereunder shall be extended (but with respect to the times for performance set out in Section 3.4 of this Agreement, only to the extent provided therein and established thereunder) in the event of any delay caused by force majeure, including without limitation damage or destruction by fire or casualty; strike; lockout; civil disorder; war; restrictive government regulations; lack of issuance of any permits and/or legal authorization by the governmental entity necessary for the Developer to proceed with construction of the Work or any portion thereof; shortage or delay in shipment of material or fuel; acts of God; unusually adverse weather or wet soil conditions; or other like causes beyond the parties' reasonable control, including without limitation any litigation, court order or judgment resulting from any litigation affecting the validity of the Redevelopment Plan, the Redevelopment Project or the TIF Obligations or this Agreement; provided that such event of force majeure shall not be deemed to exist as to any matter initiated or sustained by the Developer in bad faith, and further provided that the Developer notifies the City in writing within thirty (30) days of the commencement of such claimed event of force majeure.

**Section 7.6 Notices.** Any notice, demand or other communication required by this Agreement to be given by either party hereto to the other shall be in writing and shall be sufficiently given or delivered if dispatched by certified United States first class mail, postage prepaid, or delivered personally,

In the case of the Developer, to:

Moon Brothers, LLC  
317 N. 11th Street, Suite 500  
St. Louis, MO 63101  
Attention: Craig Heller  
Facsimile: 314.241.6702

With copies to:

Husch & Eppenberger, LLC  
190 Carondelet Plaza  
Suite 600  
Clayton, Missouri 63105  
Attention: David Richardson  
Facsimile: 314.480.1505

In the case of the City, to:

City of St. Louis  
Office of the Mayor  
City Hall  
1200 Market Street, Room 200  
St. Louis, Missouri 63103  
Attention: Barbara Geisman, Executive Director of Development  
Facsimile: 314.622.3440

And

City of St. Louis  
Office of the Comptroller  
City Hall  
1200 Market Street, Room 212  
St. Louis, Missouri 63103  
Attention: Ivy Neyland-Pinkston, Deputy Comptroller  
Facsimile: 314.589.0550

With a copy to:

St. Louis Development Corporation  
1015 Locust Street  
Suite 1200  
St. Louis, Missouri 63101  
Attention: Dale Ruthsatz  
Facsimile: 314.231.2341

And

Armstrong Teasdale LLP  
One Metropolitan Square, Suite 2600  
St. Louis, Missouri 63102  
Attention: Thomas J. Ray  
Facsimile: 314.621.5065

or to such other address(es) with respect to either party as that party may, from time to time, designate in writing and forward to the other as provided in this paragraph.

**Section 7.7 Conflict of Interest.** No member of the Board of Aldermen, the TIF Commission, or any branch of the City's government who has any power of review or approval of any of the Developer's undertakings, or of the City's contracting for goods or services for the Redevelopment Area, shall participate in any decisions relating thereto which affect that member's personal interests or the interests of any corporation or partnership in which that member is directly or indirectly interested. Any person having such interest shall immediately, upon knowledge of such possible conflict, disclose, in writing, to the Board of Aldermen the nature of such interest and seek a determination by the Board of Aldermen with respect to such interest and, in the meantime, shall not participate in any actions or discussions relating to the activities herein proscribed.

**Section 7.8 Damage or Destruction of Redevelopment Project.** In the event of total destruction or damage to the Redevelopment Project by fire or other casualty, during construction or thereafter during the term of this Agreement so long as any TIF Notes are outstanding, the Developer shall determine and advise the City in writing within one year of such destruction or damage whether to restore, reconstruct and repair any such destruction or damage so that the Redevelopment Project will be completed or rebuilt in accordance with the Redevelopment Plan and this Agreement. Should the Developer determine not to restore, reconstruct and repair, all unaccrued liability of the City for any payments of principal or interest on the TIF Notes shall immediately terminate and the Developer shall promptly surrender the TIF Notes to the City for cancellation. In the event of such total destruction or damage during the term of this Agreement and after any TIF Bonds are issued, the Developer shall, at the City's option after consultation with the Developer, tender to the City that portion of the insurance proceeds from any fire or casualty insurance policy in an amount equal to the outstanding principal amount of the TIF Bonds, plus accrued interest thereon.

**Section 7.9 Inspection.** The City may conduct such periodic inspections of the Work as may be generally provided in the building code of the City. In addition, the Developer shall allow other authorized representatives of the City reasonable access to the Work site from time to time upon advance notice prior to the completion of the Work for inspection thereof. The Developer shall not unreasonably deny the City and its officers, employees, agents and independent contractors the right to inspect, upon request, all architectural, engineering, demolition, construction and other contracts and documents pertaining to the construction of the Work as the City determines is reasonable and necessary to verify the Developer's compliance with the terms of this Agreement.

**Section 7.10 Choice of Law.** This Agreement shall be taken and deemed to have been fully executed, made by the parties in, and governed by the laws of State of Missouri for all purposes and intents.

**Section 7.11 Entire Agreement; Amendment.** The parties agree that this Agreement constitutes the entire agreement between the parties and that no other agreements or representations other than those contained in this Agreement have been made by the parties. This Agreement shall be amended only in writing and effective when signed by the authorized agents of the parties.

**Section 7.12 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall constitute one and the same instrument.

**Section 7.13 Severability.** In the event any term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect, to the extent the remainder can be given effect without the invalid provision.

**Section 7.14 Representatives Not Personally Liable.** No elected or appointed official, agent, employee or representative of the City shall be personally liable to the Developer in the event of any default or breach by any party under this Agreement, or for any amount which may become due to any party or on any obligations under the terms of this Agreement.

**Section 7.15 Actions Contesting the Validity and Enforceability of the Redevelopment Plan.** During such time as the Developer is the owner of the TIF Notes, in the event a third party brings an action against the City or the City's officials, agents, attorneys, employees or representatives contesting the validity or legality of the Redevelopment Area, the Redevelopment Plan, the TIF Obligations, or the ordinance approving this Agreement, the Developer may, at its option, join the City in defense of such claim or action. The parties expressly agree that, so long as no conflicts of interest exist between them with regard to the handling of such litigation, the same attorney or attorneys may simultaneously represent the City and the Developer in any such proceeding. The Developer shall be responsible for all reasonable and necessary costs and expenses incurred by the City and by the Developer in connection with the defense of such claim or action, provided that if the City does not approve a settlement or compromise which the Developer would agree to, the Developer shall not be responsible for any costs or expenses incurred thereafter in the defense of such claim or action. All cost of any such defense, whether incurred by the City or the Developer, shall be deemed to be Reimbursable Redevelopment Project Costs and reimbursable from any amounts in the Special Allocation Fund, subject to **Article IV** of this Agreement.

**Section 7.16 Release and Indemnification.** The indemnification provisions and covenants contained in this Section

shall survive termination or expiration of this Agreement.

7.16.1. The City and its governing body members, officers, agents, attorneys, employees and independent contractors shall not be liable to the Developer for damages or otherwise in the event that all or any part of the TIF Act, or any ordinance adopted in connection with either the TIF Act, this Agreement or the Redevelopment Plan, is declared invalid or unconstitutional in whole or in part by the final (as to which all rights of appeal have expired or have been exhausted) judgment of any court of competent jurisdiction, and by reason thereof either the City is prevented from performing any of the covenants and agreements herein or the Developer is prevented from enjoying the rights and privileges hereof.

7.16.2. The Developer releases from and covenants and agrees that the City and its governing body members, officers, agents, attorneys, employees and independent contractors shall not be liable for, and agrees to indemnify and hold harmless the City, its governing body members, officers, agents, attorneys, employees and independent contractors against any and all claims, demands, liabilities and costs, including reasonable attorneys' fees, costs and expenses, arising from damage or injury, actual or claimed (excluding consequential and punitive damages), to persons or property occurring or allegedly occurring as a result of any negligent or malicious acts or omissions of the Developer, its governing body members, officers, agents, attorneys, employees and independent contractors, in connection with its or their activities conducted pursuant to this Agreement.

7.16.3. The City and its governing body members, officers, agents, attorneys, employees and independent contractors shall not be liable for any damage or injury to the persons or property of the Developer or its officers, agents, employees, independent contractors or any other persons who may be about the Property or the Work except for matters arising out of the gross negligence or willful misconduct of the City and its governing body members, officers, agents, attorneys, employees and independent contractors.

7.16.4. All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and not of any of its governing body members, officers, agents, attorneys, employees or independent contractors in their individual capacities.

7.16.5. No governing body members, officers, agents, attorneys, employees or independent contractors of the City shall be personally liable to the Developer (i) in the event of a default or breach by any party under this Agreement or (ii) for any amount or any TIF Obligations which may become due to any party under the terms of this Agreement.

7.16.6. The Developer releases from and covenants and agrees that the City, its governing body members, officers, agents, attorneys, employees and independent contractors shall not be liable for, and agrees to indemnify and hold the City, its governing body members, officers, agents, attorneys, employees and independent contractors, harmless from and against any and all third party suits, interest, claims and cost of reasonable attorneys fees incurred by any of them, resulting from, arising out of, or in any way connected with: (i) the enforcement of this Agreement, the validity of the TIF Obligations or the enforcement or validity of any other agreement or obligation made in connection therewith and their approvals (excluding opinions of counsel and of the City's financial advisors whenever such claim is based on such party's own negligence); (ii) the negligence or willful misconduct of the Developer or its officers, agents, employees or independent contractors in connection with the design, management, development, redevelopment and construction of the Work, or (iii) the compliance by the Developer with all applicable state, federal and local environmental laws, regulations and ordinances as applicable to the Property, to the extent such condition existed prior to the acquisition thereof by the Developer. The foregoing release and indemnification shall not apply in the case of such liability arising directly out of the negligence or malicious acts or omissions of the City or its governing body members, officers, agents, attorneys, employees and independent contractors in connection with its or their activities conducted pursuant to this Agreement or which arises out of matters undertaken by the City following termination of this Agreement as to the Redevelopment Project or any particular portion thereof.

**Section 7.17 Survival.** Notwithstanding the expiration or termination or breach of this Agreement by either party, the agreements contained in **Section 2.2**, clauses **2.2.3** and **2.2.4**, **Article VI**, **Section 7.10**, **Section 7.11**, **Section 7.12**, **Section 7.13**, **Section 7.14**, **Section 7.15**, **Section 7.16**, **Section 7.17** and **Article VIII** of this Agreement shall, except as otherwise expressly set forth herein, survive such early expiration or early termination of this Agreement by either party.

**Section 7.18 Maintenance of the Property.** The Developer shall remain in compliance with all provisions of the City's ordinances relating to maintenance and appearance of the Property during the construction of the Redevelopment Project or any portion thereof. Upon substantial completion of the Redevelopment Project and so long as any TIF Obligations are outstanding, the Developer or its successor(s) in interest, as owner or owners of the affected portion(s) of the Property, shall, during the remainder of the term of this Agreement (but subject to any delay caused by an event of force majeure as provided in **Section 7.5** of this Agreement), maintain or cause to be maintained the buildings and improvements within the Redevelopment Area which it owns in a good state of repair and attractiveness and in conformity with applicable state and local laws, ordinances and regulations. If there are separately-owned or ground leased parcels of real estate on the Property during the term of this Agreement, each owner or lessee as a successor in interest to the Developer shall maintain or cause to be maintained the buildings and improvements on its parcel in a good state of repair and attractiveness and in conformity with applicable state and local laws, ordinances and regulations, and shall maintain or cause to be maintained reasonable casualty and liability insurance with respect to the same in accordance with **Section 7.8** of this Agreement.

**Section 7.19 Non-Discrimination.** The Developer agrees that, during the term of this Agreement and as an

independent covenant running with the land, there shall be no discrimination upon the basis of race, creed, color, national origin, sex, age, marital status or physical handicap in the sale, lease, rental, occupancy or use of any of the facilities under its control within the Redevelopment Area or any portion thereof and said covenant may be enforced by the City or the United States of America or any of their respective agencies. The Developer further agrees that a provision containing the covenants of this paragraph shall be included in all agreements pertaining to the lease or conveyance or transfer (by any means) of all or a portion of the Redevelopment Project and any of the facilities under its control in the Redevelopment Area. Except as provided in this Section, the Developer shall have no obligation to enforce the covenants made by any transferee or lessee, tenant, occupant or user of any of the facilities within the Redevelopment Area.

**Section 7.20 Fair Employment.** Without limiting any of the foregoing, the Developer voluntarily agrees to observe the Equal Opportunity and Nondiscrimination Guidelines set forth as **Exhibit E** attached hereto and incorporated herein by reference. By execution of this Agreement, the Developer certifies and agrees that it is under no contractual or other disability that would materially impair its ability to observe the Guidelines set forth as Exhibit E, attached hereto and incorporated herein by reference.

**ARTICLE VIII  
REPRESENTATIONS OF THE PARTIES**

**Section 8.1 Representations of the City.** The City hereby represents and warrants that it has full constitutional and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, including without limitation the right, power and authority to issue and sell the TIF Obligations, and all of the foregoing have been or will be, upon adoption of ordinances authorizing the issuance of the TIF Obligations, duly and validly authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the City, enforceable in accordance with its terms.

**Section 8.2 Representations of the Developer.** The Developer hereby represents and warrants it has full power to execute and deliver and perform the terms and obligations of this Agreement and all of the foregoing has been duly and validly authorized by all necessary corporate proceedings. This Agreement constitutes the legal, valid and binding obligation of the Developer, enforceable in accordance with its terms.

(The remainder of this page intentionally left blank.)

**IN WITNESS WHEREOF**, the City and the Developer have caused this Agreement to be executed in their respective names and the City has caused its seal to be affixed thereto, and attested as to the date first above written.

“CITY”:

**CITY OF ST. LOUIS, MISSOURI**

By: \_\_\_\_\_  
Francis G. Slay, Mayor

By: \_\_\_\_\_  
Darlene Green, Comptroller

(SEAL)

Attest:

\_\_\_\_\_  
Parrie May, City Register

Approved as to Form:

\_\_\_\_\_  
Patricia Hageman, City Counselor

“DEVELOPER”

**MOON BROTHERS, LLC**

By: \_\_\_\_\_  
Name: Craig Heller  
Title: \_\_\_\_\_

STATE OF MISSOURI     )  
  ) SS  
CITY OF ST. LOUIS     )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2007, before me appeared Francis G. Slay, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the CITY OF ST. LOUIS, MISSOURI, a political subdivision of the State of Missouri, and that the seal affixed to the foregoing instrument is the seal of said City, and said instrument was signed and sealed in behalf of said City by authority of its Board of Aldermen, and said individual acknowledged said instrument to be the free act and

deed of said City.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public

(SEAL)

My Commission Expires:

\_\_\_\_\_

STATE OF MISSOURI     )  
                                  ) SS  
CITY OF ST. LOUIS     )

On this \_\_\_\_ day of \_\_\_\_\_, 2007, before me appeared Darlene Green, to me personally known, who, being by me duly sworn, did say that she is the Comptroller of the CITY OF ST. LOUIS, MISSOURI, a political subdivision of the State of Missouri, and that the seal affixed to the foregoing instrument is the seal of said City, and said instrument was signed and sealed in behalf of said City by authority of its Board of Aldermen, and said individual acknowledged said instrument to be the free act and deed of said City.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public

(SEAL)

My Commission Expires:

\_\_\_\_\_

STATE OF             )  
                          ) SS  
COUNTY OF         )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2007, before me appeared Craig Heller, to me personally known, who, being by me duly sworn, did say that he is the \_\_\_\_\_ of Moon Brothers, LLC, a Missouri limited liability company, and that he is authorized to sign the instrument on behalf of said company, and acknowledged to me that he executed the within instrument as said company's free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand in the County and State aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public

(SEAL)

My Commission Expires:

\_\_\_\_\_

**EXHIBIT A**  
**Form of Certificate of**  
**Reimbursable Redevelopment Project Costs**

Certificate of Reimbursable Redevelopment Project Costs

TO:  
City of St. Louis  
Office of Comptroller  
1200 Market Street, Room 212  
St. Louis, Missouri 63103

Attention: Ivy Neyland-Pinkston, Deputy Comptroller

**Re: City of St. Louis, Missouri, Moon Brothers Carriage Lofts TIF Redevelopment Project Area**

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Amended and Restated Redevelopment Agreement dated as of \_\_\_\_\_, 2007 (the "Agreement"), between the City and Moon Brothers, LLC, a Missouri limited liability company (the "Developer"). In connection with said Agreement, the undersigned hereby states and certifies that:

- 1. Each item listed on **Schedule 1** hereto is a Reimbursable Redevelopment Project Cost and was incurred in connection with the construction of the Redevelopment Project.
- 2. These Reimbursable Redevelopment Project Costs have been have been paid by the Developer and are reimbursable under the Note Ordinance and the Agreement.
- 3. Each item listed on Schedule 1 has not previously been paid or reimbursed from money derived from the Special Allocation Fund or any money derived from any project fund established pursuant to the Note Ordinance, and no part thereof has been included in any other certificate previously filed with the City.
- 4. There has not been filed with or served upon the Developer any notice of any lien, right of lien or attachment upon or claim affecting the right of any person, firm or corporation to receive payment of the amounts stated in this request, except to the extent any such lien is being contested in good faith.
- 5. All necessary permits and approvals required for the portion of the Work for which this certificate relates have been issued and are in full force and effect.
- 6. All Work for which payment or reimbursement is requested has been performed in a good and workmanlike manner and in accordance with the Agreement.
- 7. If any cost item to be reimbursed under this Certificate is deemed not to constitute a "redevelopment project cost" within the meaning of the TIF Act and the Agreement, the Developer shall have the right to substitute other eligible Reimbursable Redevelopment Project Costs for payment hereunder.
- 8. The costs to be reimbursed under this Certificate constitute advances qualified for Tax-Exempt TIF Notes:  
Yes: \_\_\_\_\_ No: \_\_\_\_\_
- 9. The Developer is not in default or breach of any material term or condition of the Agreement beyond the applicable cure period, if any.

Dated this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**MOON BROTHERS LLC**

By: \_\_\_\_\_  
Name: Craig Heller  
Title: \_\_\_\_\_

Approved for Payment this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

CITY OF ST. LOUIS, MISSOURI

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT B  
Form of Certificate of Substantial Completion  
CERTIFICATE OF SUBSTANTIAL COMPLETION**

The undersigned, MOON BROTHERS, LLC, a Missouri limited liability company (the "Developer"), pursuant to that certain Amended and Restated Redevelopment Agreement dated as of \_\_\_\_\_, 2007, between the City of St. Louis, Missouri (the "City"), and the Developer (the "Agreement"), hereby certifies to the City as follows:

- 1. That as of \_\_\_\_\_, \_\_\_\_\_, the construction of the Redevelopment Project (as that term is defined in the Agreement) has been substantially completed in accordance with the Agreement.

- 2. That the Work has been substantially completed or funded pursuant to the Agreement.
- 3. The Work has been performed in a workmanlike manner and substantially in accordance with the Construction Plans (as those terms are defined in the Agreement).
- 4. Lien waivers for applicable portions of the Work in excess of Five Thousand Dollars (\$5,000) have been obtained.
- 5. This Certificate of Substantial Completion is accompanied by the project architect's or owner representative's certificate of substantial completion on AIA Form G-704 (or the substantial equivalent thereof), a copy of which is attached hereto as Appendix A and by this reference incorporated herein), certifying that the Redevelopment Project has been substantially completed in accordance with the Agreement.
- 6. This Certificate of Substantial Completion is being issued by the Developer to the St. Louis Development Corporation and the City in accordance with the Agreement to evidence the Developer's satisfaction of all material obligations and covenants with respect to the Redevelopment Project.
- 7. The acceptance (below) or the failure of the St. Louis Development Corporation and the City to object in writing to this Certificate within thirty (30) days of the date of delivery of this Certificate to the St. Louis Development Corporation and the City (which written objection, if any, must be delivered to the Developer prior to the end of such thirty (30) days) shall evidence the satisfaction of the Developer's agreements and covenants to perform the Work.

Upon such acceptance by the St. Louis Development Corporation and the City, the Developer may record this Certificate in the office of the City's Recorder of Deeds. This Certificate is given without prejudice to any rights against third parties which exist as of the date hereof or which may subsequently come into being. Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**MOON BROTHERS, LLC**

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

**ACCEPTED:**

**ST. LOUIS DEVELOPMENT CORPORATION**

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

(Insert Notary Form(s) and Legal Description)

**EXHIBIT C  
 Legal Description of the Redevelopment Area**

A lot in block 524 of the City of St. Louis, fronting 188 feet in the South line of Delmar Boulevard by a depth Southwardly of 144 feet 7 1/2 inches, to an alley 20 feet wide; bounded East by Seventeenth Street.

**EXHIBIT D  
 Reimbursable Redevelopment Project Costs\***

| CATEGORY |   |
|----------|---|
| (a)      | Acquisition Costs (as defined in Section 1.1 of this Agreement).  |
| (b)      | Demolition Costs (includes, but is not limited to, demolition of existing buildings and structures or parts thereof).   |
| (c)      | Site Preparation and Improvements Costs (includes, but is not limited to, street and sidewalk improvements, utility work and resetting of curbs and landscaping and lighting in the common areas).  |
| (d)      | Financing Costs (includes, but is not limited to, loan fees, disbursing fees, construction monitoring and inspection fees, lender's legal fees, loan appraisals, flood certificates, tax credit investor fees and any and all other costs incurred by the Developer in connection with obtaining financing for and a tax credit investor in the Redevelopment Project). |

|     |  |
|-----|--|
| (e) | Environmental Testing, Remediation and/or Abatement Costs (includes, but is not limited to, the testing for and removal and disposal of toxic or hazardous substances or materials). |
| (f) | Professional Service Costs (includes, but is not limited to, architectural, engineering, legal, marketing, financial, planning, or special services).                                |
| (g) | TIF Costs & Issuance Costs incurred by the Developer pursuant to Section 2.2(i) – 2.2.(v) of this Agreement.   |
| (h) | Rehabilitation, Renovation or Reconstruction of existing structures.   |

\*Subject to the limitations of Article IV of this Agreement.

**EXHIBIT E**  
**Equal Opportunity and Nondiscrimination Guidelines**

In any contract for Work in connection with the Redevelopment Project related to any of the Property in the Redevelopment Area, the Developer (which term shall include the Developer, any transferees, lessees, designees, successors and assigns thereof, including without limitation any entity related to the Developer by one of the relationships described in Section 267(b) of the United States Internal Revenue Code of 1986, as amended), its contractors and subcontractors shall comply with all federal, state and local laws, ordinances or regulations governing equal opportunity and nondiscrimination (the “Laws”). Moreover, the Developer shall contractually require its contractors and subcontractors to comply with the Laws.

The Developer and its contractors or subcontractors shall not contract with any party known to have been found in violation of the Laws.

The Developer agrees for itself and its contractors and subcontractors that there shall be covenants to ensure that there shall be no discrimination on the part of the Developer or its contractors and subcontractors upon the basis of race, color, creed, national origin, sex, marital status, age, sexual orientation or physical handicap in the sale, lease, rental, use or occupancy of any of the Property or any improvements constructed or to be constructed on the Property or any part thereof. Such covenants shall run with the land and shall be enforceable by the St. Louis Development Corporation, the City and the United States of America, as their interest may appear in the Redevelopment Project.

The Developer shall make good faith efforts to observe Executive Order #28 dated July 24, 1997, relating to minority and women-owned business participation in City contracts.

The parties agree that the provisions of City Ordinance #60275, codified at Chapter 3.90 of the Revised Ordinances of the City of St. Louis, Missouri (the “First Source Jobs Policy”), do not specifically apply to the Developer as a potential recipient of TIF Notes, TIF Bonds and/or TIF Revenues. Nonetheless, the Developer voluntarily agrees to make good faith efforts to observe the provisions of the First Source Jobs Policy related to the negotiation of an employment agreement with the St. Louis Agency on Training and Employment.

**Approved: February 16, 2007**