

**ORDINANCE #68792  
Board Bill No. 184**

An Ordinance adopting the International Energy Conservation Code, 2009 Edition with changes, as the Energy Conservation Code of the City of Saint Louis; repealing Ordinances 66786; and containing a penalty clause, a savings clause and an emergency clause.

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

**SECTION ONE.**

Ordinance 66786 approved August 2, 2005, pertaining to the Energy Conservation Code of the City of Saint Louis which adopted the 2003 International Energy Conservation Code, 2004 Supplement, is hereby repealed.

**SECTION TWO.**

The International Energy Conservation Code, 2009 Edition, as published by the International Code Council, Inc., one copy of which is on file in the Office of the Register of the City of Saint Louis, being marked and designated as the International Energy Conservation Code is hereby adopted as the Energy Conservation Code of the City of Saint Louis, in the State of Missouri pursuant to this Ordinance and in conformity with Section 71.943 RSMo; and that each and all of the regulations, provisions, penalties, conditions and terms of said Energy Conservation Code are hereby referred to, adopted and made a part hereto, as if fully set out in this ordinance with the additions, insertions, deletions and changes prescribed in Section Four of this ordinance.

**SECTION THREE.**

That the 2009 Edition of the International Energy Conservation Code is amended and changed in the following respects:

*Change Section 101.1 to read as follows:*

**101.1 Title.** These regulations shall be known as the International Energy Conservation Code of the City of Saint Louis, hereafter referred to as “this code.”

*Change Table 402.1 to read as follows:*

**TABLE 402.1  
INSULATION AND FENESTRATION REQUIREMENTS BY COMPONENT<sup>a</sup>**

CLIMATE ZONE	FENESTRATION U-FACTOR <sup>b</sup>	SKYLIGHT <sup>b</sup> U-FACTOR	GLAZED FENESTRATION SHGC <sup>b, e</sup>	CEILING R-VALUE	WOOD FRAME WALL R-VALUE	MASS WALL R-VALUE <sup>f</sup>	FLOOR R-VALUE	BASEMENT <sup>c</sup> WALL R-VALUE	SLAB <sup>d</sup> R-VALUE & DEPTH	CRAWL SPACE <sup>c</sup> WALL
4	0.40	0.60	NR	30	13	5/10	19	13	10, 2 ft	5

For SI: 1 foot = 304.8 mm.

- a. R-values are minimums. U-factors and SHGC are maximums. R-19 batts compressed into a nominal 2 x 6 framing cavity such that the R-value is reduced by R-1 or more shall be marked with the compressed batt R-value in addition to the full thickness R-value.
- b. The fenestration U-factor column excludes skylights. The SHGC column applies to all glazed fenestration.
- c. “15/19” means R-15 continuous insulated sheathing on the interior or exterior of the home or R-19 cavity insulation at the interior of the basement wall. “15/19” shall be permitted to be met with R-13 cavity insulation on the interior of the basement wall plus R-5 continuous insulated sheathing on the interior or exterior of the home. “10/13” means R-10 continuous insulated sheathing on the interior or exterior of the home or R-13 cavity insulation at the interior of the basement wall.
- d. R-5 shall be added to the required slab edge R-values for heated slabs. Insulation depth shall be the depth of the footing or 2 feet, whichever is less in Zones 1 through 3 for heated slabs.
  - i. The second R-value applies when more than half the insulation is on the interior of the mass wall.

Change Section 402.2.7 to read as follows:

**402.2.7 Basement walls.** Walls associated with conditioned basements shall be insulated from the top of the basement wall down to 10 feet below grade or to the basement floor, whichever is less. Walls associated with unconditioned basements with less than twenty percent (20%) exposure above finish grade (based on height of wall x basement perimeter excluding unheated basement garages) may be uninsulated walls.

**SECTION Four....PENALTY CLAUSE**

Any person who shall violate a provision of this code or shall fail to comply with any of the requirements thereof, or who shall erect, construct, alter, extend, repair, remove, demolish, use or occupy any building, structure or premises or equipment regulated by this code in violation of an approved construction document or directive of the code official or the Board of Building Appeals, or of a permit or certificate issued under the provisions of this code, and shall, upon conviction thereof, be punished by a fine of not more than five hundred dollars (\$500), or by imprisonment not exceeding ninety (90) days, or both such fine and imprisonment. Each day that a violation continues shall constitute a separate and distinct offense.

**SECTION FIVE.....SAVINGS CLAUSE**

That nothing in this Ordinance or in the Building Code hereby adopted shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this ordinance.

**SECTION SIX....EMERGENCY CLAUSE**

This being an ordinance necessary for the immediate preservation of the public safety, it is hereby declared to be an emergency measure and shall become effective immediately upon its approval by the Mayor.

**Approved: November 8, 2010**

**ORDINANCE #68793  
Board Bill No. 2  
Committee Substitute As Amended**

An ordinance pertaining to public art; with legislative findings and definitions of terms; establishing a Public Art Trust Fund; providing for funds to be administered by the Regional Arts Commission; providing for the use of funds; defining the powers and duties of the Regional Arts Commission; defining other personnel duties; providing for disbursements from such fund; providing that certain Art-Qualified Projects as herein defined and certain grant requests or applications shall include in their budgets an allocation for Public Art as herein defined; providing for the application of funds; providing for review procedures; and with a severability provision.

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

**SECTION ONE. Legislative Findings and Declarations.** The Board of Aldermen hereby finds and declares as follows:

1. The presence of works of art and decorative elements in public places in the City enhances the quality of life, promotes the general welfare, maintains the quality of the environment and property values, and enhances the attractiveness of the City for residents and visitors.
2. Identifying locations for public works of art and decorative elements and participating in the building of a public art collection of high quality can be stimulating and unifying for the City and contribute to civic pride reflective of the City's diversity.
3. The encouragement of public art and decorative elements and providing for their funding and maintenance promote the general welfare.
4. Because works of art and decorative elements improve communities and neighborhoods, they should be initiated by community groups as well as being components of projects initiated by the City.
5. The expenditure of public funds for the acquisition and maintenance of works of art and decorative elements as herein provided is for a public purpose.

**SECTION TWO. Definitions.** As used in this ordinance the following terms have the following meanings:

"Acquisition" means the acquisition of a work of art by the City by completed commission, donation, or loan for five years or longer.

"Agency" means any public commission, authority or corporation established or authorized under State law to perform one or more functions on behalf of the City and funded in whole or part with City revenues or funds applied for, granted, or allocated by, to, or on behalf of the City. The terms "Agency" and "City" as used in this ordinance do not include the Police Department or Fire Department.

"Artist" means a person who creates an Artwork.

"Art-Qualified Project" means:

i) a construction, renovation or site improvement project of the City or of any Agency intended to preserve or enhance the value of Capital Assets of the City or of any Agency;

"Art-Qualified Project" does not include: "50-50" sidewalk work pursuant to ordinance 67077; any work, including "St. Louis Works" projects, funded by the Street Improvement Fund established by Ordinances 55852, 55964, 55965 and 55966 as amended; any applications of proceeds of the 1/2 cent capital improvements sales tax authorized by Ordinance 62885; emergency repairs immediately necessary to preserve public safety; demolitions by the Building Division or ordered by the Building Commissioner to protect the public safety or by the Land Reutilization Authority; lateral sewer line repairs pursuant to Ch. 23.40 of the City Code, 1994; or any project or work which would otherwise be an Art-Qualified Project which is approved by ordinance, or for which a Project Budget is approved by an Agency, or for which a grant application or request which would otherwise be subject to Section Eight (c) (b) hereof is made, before July 1, 2011.

"Artwork" or "Work of Art" means all forms of tangible works of visual art executed in one or more media or materials including but not limited to paintings, sculpture, stained glass, lightworks, fiberworks, reliefs, monuments, fountains, frescoes, murals, collages, statues, photographs, drawings, mobiles, craftworks, kinetic, electronic or functional furnishings, lighting, and artist-designed landscaping.

"Capital Asset" means land, structures thereon, and permanent objects in public places. For purposes of this ordinance Capital Asset does not include vehicles or heavy equipment.

"City" means The City of St. Louis and any office, department, division, bureau, board, or agency thereof, and any corporation, institute, commission or other entity organized by or acting on behalf of the City or any office, department, division, bureau board or agency thereof.

"Commission" means the Regional Arts Commission.

"Deaccession" means the sale or other disposition of an Artwork by the City.

"Eligible Private Property" means property which is not a Public Place, whose owner has consented to installation thereon of Artworks and/or Infrastructure Decorations, and which is either open to the public without charge during business hours or from which Artworks located thereon are conveniently and fully visible.

"Infrastructure Decoration" means an object which is part of the urban infrastructure, such as, by way of example, bridges, street signs, park benches or manhole covers, the appearance of which is enhanced by incorporation of decorative visual elements.

"Project Budget" means a projection of cost of an Art-Qualified Project which includes all actual construction, demolition and site work costs including surveys; architectural and engineering fees; contingency allowances, acquisition costs for real property or interests therein; and financing costs including costs of issuance.

"Public Art Funds" means all money received from any source by the Public Art Trust Fund established by Section Three.

"Public Place" means areas upon, above, or below municipal buildings, parks, plazas, squares, parkways, rights-of-way, and any space, indoors or outdoors, which is owned or leased or which is being lease-purchased by the City or an Agency and which is generally accessible to the public; and any space not on private property which is visible to the public from a sidewalk or street.

**SECTION THREE. Public Art Trust Fund.** There is hereby established a Public Art Trust Fund of the City, wherein all Public Art Funds shall be held.

The Comptroller shall maintain the Public Art Trust Fund for the receipt of allocations, appropriations, grants and contributions pursuant to this ordinance. Allocations for Public Art Funds from Art-Qualified Projects shall be paid to the Public Art Trust Fund at the time of closing of financing for such Projects or, if there is no such closing, before any expenditure for construction, renovation or demolition is made. Upon receipt of capital grant funds described in Section Eight (b) of this ordinance the portion of such grant funds allocated for Public Art Funds shall be paid immediately by the recipient to the Public Art Trust Fund. Money in the Public Art Trust Fund shall be held in separate Art Qualified Project, City-wide Neighborhood Project, and Administration accounts. Appropriate sub-accounts may be created, and, if required to do so by law or the terms of grants the Comptroller may maintain separate accounts or funds for Public Art Funds which are proceeds of specific bond issues or grants.

Public Art Trust Fund monies are not subject to reversion at the end of fiscal years and shall only be appropriated and expended for public art purposes pursuant to this ordinance. Funds held in the Public Art Trust Fund may be appropriated and expended only for specific projects and programs of or affirmatively recommended by the Commission.

**SECTION FOUR. Fund to be administered by The Commission.** The Regional Arts Commission, as established in Chapter 67 of the Missouri Revised Statutes, shall administer the Public Arts Trust Fund as described in this ordinance.

**SECTION FIVE. Use of Funds.** The Public Arts Trust Fund shall only be used for projects within the City of St. Louis or at Lambert Airport. The annual budget for the Fund shall be submitted by the Commission every year and shall be approved by resolution of the Board of Aldermen.

**SECTION SIX. The Regional Arts Commission - Powers and Duties.**

The Commission shall:

1. Devise programs and plans and determine policies and guidelines for their implementation and cause the implementation thereof, to increase installation of Artworks in Public Places and on Eligible Private Property.
2. Determine and cause to be implemented policies and procedures consistent herewith for the City's art collection including policies and procedures for placement and purchase of Artworks and infrastructure decorations, acceptance of gifts or loans, conservation and maintenance programs, and deaccession of Artworks.
3. Develop and administer a comprehensive management program of the City's art collection which shall include:
  - (i) Establish an accession plan for logging in/accepting works of art into the City-owned collection and an archive system to include factual and legal information about each piece.
  - (ii) A regular procedure to assess the condition of Artworks and need for repairs and maintenance to ensure that Artworks shall be maintained in the best possible condition and, when appropriate, to coordinate with appropriate City departments for responsible maintenance and renovation of the Artworks and art sites. Such maintenance shall be paid for out the Public Arts Trust Fund.
  - (iii) A plan for removing, relocating and altering artwork. The Commission shall submit such a management program to the City by July 1, 2012.
4. Develop policies for relations with Artists concerning the respective rights and duties of the City and Artists with respect to Artworks created by the Artist which become part of the City art collection. Such policies and standard contract provisions shall be developed in consultation with the City Counselor.
5. Develop and maintain a city-wide site inventory for potential permanent and temporary Artwork projects;
6. Make recommendations concerning the acceptance of gifts of Artworks by the City;
7. Recommend public art and aesthetic enhancement projects for consideration in any project or plan being considered by the City;
8. Devise and oversee public art education programs;

9. Prepare and adopt regulations or standard policies from time to time, consistent with this ordinance, for the administration of programs authorized hereby, including but not limited to regulations or standard policies for development, review and approval of art projects and Artists.

**SECTION SEVEN. Other personnel-duties.**

- (a) All City and Agency personnel shall advise the Commission at the earliest possible time concerning:
- (i) Existing or planned sites under the informing person's office, department or agency's jurisdiction which may be appropriate for public Artworks and aesthetic enhancement projects;
  - (ii) Proposed or planned projects involving construction, renovation, or development of any site or facility so as to permit adequate review of the project's potential for incorporation of public Artworks or Infrastructure Decorations;
  - (iii) Any advisory, neighborhood or other groups which may be affected by or interested in the development of public art projects;
  - (iv) Any ordinances, resolutions or regulations which might be relevant to any public art projects; and
  - (v) Planning processes for neighborhood improvement projects, area development projects, private or public planning studies and/or long-range policy recommendations, which could incorporate or address public art projects.
- (b) All City and Agency personnel shall assist the Commission in the development and implementation of public Artworks and Infrastructure Decoration projects and installation and maintenance of duly authorized Artworks and Infrastructure Decorations at departmental sites.

**SECTION EIGHT. Funding.**

- (a) Any Art-Qualified Project administered by any City department or any Agency shall include in its Project Budget an allocation of one percent (1%) of the total amount of such Budget prior to such allocation for Public Art Funds unless prohibited by State or Federal law. No City or Agency personnel shall execute any contract pertaining to an Art-Qualified Project, or authorize the expenditure or payment of any City or Agency Funds, including proceeds of any bonds issued for an Art-Qualified Project, unless the Comptroller has certified that the Art-Qualified Project complies in all applicable respects with this section.
- (b) Any request or application by or on behalf of the City and/or any Agency including any request or application made jointly with one or more other entities for capital grant funds for Art-Qualified Projects to any public or private body, agency, or federation shall contain a request that one percent (1%) of the total grant funds requested be allocated for Public Art Funds, unless specifically excluded by the granting agency or donor or unless the director or other official in charge of operations of the department or agency applying for the grant certifies in writing to the Commission that a request for an allocation for Public Arts Funds would be detrimental to the application's competitiveness.

**SECTION NINE. Application of Funds.** Public Art Funds derived from Art-Qualified Projects pursuant to Section Eight (a) and from capital grant funds received pursuant to a request or application described in Section Eight (b) to the extent permitted under the terms of the grant shall be applied as follows as determined by the Commission:

- (a) Fifty percent (50%) of such funds shall be allocated for expenses of Artworks and Infrastructure Decorations on Eligible Private Property at the specific project site or in immediately adjacent areas. Eligible expenses are Artist and Artwork selection, design development, purchase, production, installation and fabrication, and insurance. No such funds may be applied for standard directional elements or for traditional landscape treatments. If less than the full allocation permitted under this paragraph is made the amount not allocated under this subparagraph shall be allocated to the City-wide Neighborhood Project account of the Public Art Trust Fund, in addition to amounts allocable under subparagraph (b) of this section.
- (b) 25% of such funds shall be allocated to the City-wide Neighborhood Project account within the Public Art Trust Fund established by Section Three hereof, for expenses of Artworks and Infrastructure Decorations as approved by the Commission.
- (c) Up to 25% of such funds shall be allocated to a program support and conservation account of the Public Art Trust Fund. Eligible costs for payment from this account include, but are not limited to: administrative costs for the Commission, documentation (slides, transparencies and/or photographs) of Artworks, professional development, educational programs including lectures, workshops and symposia, and conservation and maintenance of the City public art collection.

**SECTION TEN. Review Procedures.**

(a) Artworks and Infrastructure Decorations funded pursuant to this ordinance shall be reviewed and approved by selection panels established by the Commission prior to their approval for funding by the Commission. Such committees shall include representatives of the Commission, and/or the City department or Agency developing the Project, and members of the public who are residents of the City.

(b) Artworks and Infrastructure Decorations proposed to be funded from the City-wide Neighborhood Project account within the Public Art Trust Fund shall be reviewed and approved by selection panels established by the Commission prior to their approval for funding by the Commission. Such committees shall include representatives of the Commission, of the ward(s) in the City where the Artwork or Infrastructure Decorations are proposed to be located, and of the City department or Agency most directly concerned with the proposed location of the Artwork or Infrastructure Decorations.

(c) All such projects shall be open to artists on a national basis, but must have demonstrated support from the local community or neighborhood in which the artwork or project will occur. Any such Artwork or Infrastructure Decorations may be located in Public Places or on Eligible Private Property.

(d) By July 1, 2012, the Commission shall survey the City on a ward by ward basis and determine the number of Artworks in Public Places and Infrastructure Decorations in each ward.

(e) Artworks and Infrastructure Decorations funded from the City-wide Neighborhood Project account shall be approved by the Commission in a manner, to be determined by the Commission, which emphasizes placement of Artworks in Public Places and Infrastructure Decorations in wards with significantly fewer Artworks in Public Places and Infrastructure Decorations than the ward-by-ward average.

(f) The Commission shall establish a Standing Review Committee to review proposed gifts or long-term loans of Artworks to the City. The Standing Review Committee shall report its recommendation within 60 days after reference to it of any proposal for such a gift or long-term loan. Such report shall be made to the City department with authority to accept or receive such gift or loan. No such gift or loan shall be accepted for the City without the favorable recommendation of the Standing Review Committee.

**SECTION ELEVEN. Severability**

The provisions of this Ordinance are severable. A determination by a court that one or more provisions of this ordinance is or are invalid shall not affect the validity of the remaining provisions.

**Approved: November 18, 2010**

**ORDINANCE #68794  
Board Bill No. 132  
Committee Substitute**

An Ordinance pertaining to the City Housing Conservation Program; repealing Ordinance 67914, Section 17 (A), Ordinance 68724 and Ordinance 68714 and enacting in lieu, thereof, a new section pertaining to the same subject matter.

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

**SECTION ONE.** Ordinance 67914 Section 17 (A), Ordinance 68724 and Ordinance 68714 are hereby repealed and the following is hereby enacted in lieu thereof:

**SECTION TWO.**

**SECTION SEVENTEEN.** Implementation.

The Code Official shall set forth an implementation schedule for the areas of the City not currently within a Housing Conservation District. The implementation schedule and any amendments made to such schedule shall be kept on file with the Code Official in the Building Department. Furthermore, notice of the implementation of the City Housing Conservation Program shall be provided to the impacted areas by publication in the City Journal and the City website four weeks prior to the implementation date for that area. The notice shall set forth the legal boundaries of the area to be included in the Program as well as the implementation

date. All areas of the City shall be included in the City Housing Conservation Program no later than July 1, 2009, except for the areas described below. The areas described below shall only be included in the City Housing Conservation Program through amending this Ordinance.

A. Areas Excluded from City Housing Conservation Program:

Tract I:

An area of Ward 4 comprised of two City Blocks describing by beginning at the intersection of N. Euclid Ave. and Leduc St. and proceeding along the centerlines in a generally clockwise direction east along Leduc St to Marcus Ave., south to Cote Brilliante Ave., west to N. Euclid Ave., to the point of the beginning, being comprised of an area also known as City Blocks 3780, and 4488.

Tract II:

An area comprising most of Ward 5 described by beginning at the intersection of the Mississippi River and the centerline of the eastward prolongation of Mullanphy Street and proceeding in a generally clockwise direction along the centerlines west to N. 7th St., south to Interstate 70, south to Cole St., west to N. Tucker Blvd., south to Dr. Martin Luther King Drive, west to Glasgow Ave., north to Gamble St., east to Leffingwell Ave., north to Madison St., west to Glasgow Ave., north to N. Market St., west to Grand Blvd., south to Dr. Martin Luther King Drive, west to N. Vandeventer Ave., north to Maffitt Ave., east to Prairie Ave., north to St. Louis Ave., east to Glasgow Ave., northeast to Greer Ave., east to Elliott Ave., north to Hebert St., east to Parnell St., north to Natural Bridge Ave., east to Palm St., east to Destrehan St., northeast to Branch St., southeast to the Mississippi River and south along the Mississippi River to the point of beginning.

Tract III:

An area of Ward 6 beginning at the intersection of the centerlines of Compton Ave. and Chouteau Ave. and proceeding along the centerlines in a generally clockwise direction north along Compton Ave., to Olive St., east to Leffingwell Ave., north to Delmar Blvd., west to T.E. Huntley Ave., north to Franklin Ave., east to Leffingwell Ave., north to Dr. Martin Luther King Drive, east to Jefferson Avenue, south to Highway 40/I-64, east to 18th St, south to Randolph St., east to 14th St., south to Park Ave., west to S. 18th St., south to Lafayette Ave., west to Waverly Pl., south to Interstate 44, west to Jefferson Ave., north to Chouteau Ave., then west along Chouteau Ave. to the point of beginning.

Tract IV:

An area of Ward 18 beginning at the intersection of the centerlines of Vandeventer Ave. and Lindell Blvd., and proceeding along the centerlines in a generally clockwise direction west to Newstead Ave., north to McPherson Ave., east to N. Boyle Ave., north to Olive St., northwest to Washington Pl., west to Kingshighway Blvd., north to Delmar Blvd., west to Union Blvd., north to Cates Ave., east to Clarendon Ave., north to Raymond Ave., east to Academy Ave., north to Page Blvd., west to Academy Ave., north to Dr. Martin Luther King Drive, west to Academy Ave., north to Cote Brilliante Ave., east to N. Euclid Ave., south to Cote Brilliante Ave., east to Marcus Ave., south to Evans Ave., east to Newstead Ave., south to Finney Ave., east to Vandeventer Ave., south to the point of beginning. The 4400 and 4300 blocks of Enright Avenue are not included in Tract IV.

Tract V:

An area of Ward 19 beginning at the intersection of the centerlines of Laclede Ave. and Vandeventer Ave., and proceeding along the centerlines in a generally clockwise direction north to Finney Ave., west to N. Newstead Ave., north to Evans Ave., east to N. Vandeventer Ave., north to Dr. Martin Luther King Drive, east to Grand Blvd., north to N. Market St., east to Glasgow Ave., south to Madison St., east to Leffingwell Ave., south to Gamble St., west to Glasgow Ave., south to Dr. Martin Luther King Drive, southeast to Leffingwell Ave., south to Franklin St., west to T.E. Huntley Ave., south to Delmar Blvd., east to Leffingwell Ave., south to Olive St., west to Compton Ave., south to Highway 40/I-64 west to Grand Ave, north on Grand Ave to Laclede Ave, then west on Laclede Ave. to the point of beginning.

Tract VI:

An area comprising Ward 1 described by the area beginning at the intersection of the centerlines as follows: Beginning at the intersection of the centerlines of N. Euclid Ave. and Northland Ave. and proceeding along the centerlines in a generally clockwise direction west to Union Blvd., south to Northland Pl., west to Arlington Ave., north to Lexington

Ave., east and continuing in a straight line to Union Blvd., north to Natural Bridge Ave., east to N. Kingshighway Memorial Blvd., north to Interstate 70, west to Alcott Ave., northeast to Thekla Ave., northwest to Beacon Ave., northeast to Harney Ave., southeast to Alcott Ave., northeast to West Florissant Ave., southeast to Shreve Ave., southwest to Ashland Ave., west to N. Euclid Ave., south to the point of beginning.

**Approved: November 18, 2010**

**ORDINANCE #68795  
Board Bill No. 173**

An ordinance recommended by the Board of Public Service to conditionally vacate above surface, surface and sub-surface rights for vehicle, equestrian and pedestrian travel in easternmost 104.75 feet of the 15 foot wide east/west alley in City Block 2101 as bounded by Hartford, Grand, Juniata and Spring in the City of St. Louis, Missouri, as hereinafter described, in accordance with Charter authority, and in conformity with Section 14 of Article XXI of the Charter and imposing certain conditions on such vacation.

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

**SECTION ONE:** The above surface, surface and sub-surface rights of vehicle, equestrian and pedestrian travel, between the rights-of-way of:

A tract of land being part of a 15' wide alley in Block 4 of Tower Grove Park and Grand Avenue Addition, and in City Block 2101 of the City of St. Louis, Missouri, and said part of alley being more particularly described as follows:

Commencing at the intersection of the westerly line of Grand Blvd., 80 feet wide, with the southerly line of Hartford Street, 60 feet wide; thence along said westerly line of Grand Blvd., south 06 degrees 37 minutes 06 seconds west 125.00 feet to the point of intersection with the northerly line of an alley, 15 feet wide and said point being the True Point of Beginning of the tract of land herein described; thence continuing along the westerly line of Grand Blvd., south 06 degrees 37 minutes 06 seconds west 15.00 feet to the southerly line of said 15 wide alley; thence along the southerly line north 83 degrees 04 minutes 39 seconds west 104.75 feet; thence north 06 degrees 37 minutes 06 seconds west 15.00 feet to a point in the northerly line of said alley 15 feet wide, also being the southwest corner of property conveyed in deed book 1612 page 2047 of the St. Louis City records; thence along said northerly line south 83 degrees 04 minutes 39 seconds east 104.75 feet to the true point of beginning.

are, upon the conditions hereinafter set out, vacated.

**SECTION TWO:** Petitioned by OMB LCC and Treasurer-City of St. Louis. Vacated area will be used to increase security to adjacent properties.

**SECTION THREE:** All rights of the public in the land bearing rights-of-way traversed by the foregoing conditionally vacated alley, are reserved to the City of St. Louis for the public including present and future uses of utilities, governmental service entities and franchise holders, except such rights as are specifically abandoned or released herein.

**SECTION FOUR:** The owners of the land may, at their election and expense remove the surface pavement of said so vacated alley provided however, all utilities within the rights-of-way shall not be disturbed or impaired and such work shall be accomplished upon proper City permits.

**SECTION FIVE:** The City, utilities, governmental service entities and franchise holders shall have the right and access to go upon the land and occupation hereof within the rights-of-way for purposes associated with the maintenance, construction or planning of existing or future facilities, being careful not to disrupt or disturb the owners interests more than is reasonably required.

**SECTION SIX:** The owner(s) shall not place any improvement upon, over or in the area(s) vacated without: 1) lawful permit from the Building Division or Authorized City agency as governed by the Board of Public Service; 2) obtaining written consent of the utilities, governmental service entities and franchise holders, present or future. The written consent with the terms and conditions thereof shall be filed in writing with the Board of Public Service by each of the above agencies as needed and approved by such Board prior to construction.

**SECTION SEVEN:** The owners may secure the removal of all or any part of the facilities of a utility, governmental service entity or franchise holder by agreement in writing with such utilities, governmental entity or franchise holder, filed with the Board of Public Service prior to the undertaking of such removal.

**SECTION EIGHT:** In the event that granite curbing or cobblestones are removed within the vacated area, the Department of Streets of the City of St. Louis must be notified. Owner(s) must have curbing cobblestones returned to the Department of Streets in good condition.

**SECTION NINE:** This ordinance shall be ineffective unless within three hundred sixty (360) days after its approval, or such longer time as is fixed by the Board of Public Service not to exceed three (3) days prior to the affidavit submittal date as specified in the last section of this ordinance, the owner(s) of the area to be vacated must fulfill the following monetary requirements, if applicable, as specified by the City of St. Louis Agencies listed below. All monies received will be deposited by these agencies with the Comptroller of the City of St. Louis.

- 1) CITY WATER DIVISION to cover the full expenses of removal and/or relocation of Water facilities, if any.
- 2) CITY TRAFFIC AND TRANSPORTATION DIVISION to cover the full expense of removal, relocation and/or purchase of all lighting facilities, if any. All street signs must be returned.
- 3) CITY STREET DEPARTMENT to cover the full expenses required for the adjustments of the City's alley(s), sidewalk(s) and street(s) as affected by the vacated area(s) as specified in Sections Two and Eight of the Ordinance.

**SECTION TEN:** An affidavit stating that all of the conditions be submitted to the Director of Streets for review of compliance with conditions 365 days (1 year) from the date of the signing and approval of this ordinance. Once the Director of Streets has verified compliance, the affidavit will be forwarded to the Board of Public Service for acceptance. If this affidavit is not submitted within the prescribed time the ordinance will be null and void.

**Approved: November 18, 2010**

**ORDINANCE #68796  
Board Bill No. 193**

An ordinance authorizing and directing the Street Commissioner to take all necessary actions to honorarily designate the 3300 block of Union Boulevard as "Eddie Mae Jones Boulevard."

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

**SECTION ONE.** Pursuant to the provisions of Ordinance 65233, the 3300 block of Union Boulevard shall hereafter be honorarily designated as "Eddie Mae Jones Boulevard." The Director of Streets shall erect an honorary street-name sign, which sign shall read "Eddie Mae Jones Boulevard."

**Approved: November 18, 2010**

**ORDINANCE #68797  
Board Bill No. 165  
Committee Substitute**

An ordinance pertaining to Gifts To Airport, amending Ordinance 49580 approved October 20, 1959 by repealing or deleting Section Two of Ordinance 49580, which pertains to the selection of an art committee by the mayor, as codified in Section 18.16.020, Committee of the Revised Code, The City of St. Louis, 1994, Anno., and enacting or substituting in its place a new Section Two providing for an art committee of seven persons appointed by the mayor; terms of service; and containing an emergency clause.

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

**SECTION ONE.** Section Two of Ordinance 49580 approved October 20, 1959, as codified in Section 18.16.020, Committee of the Revised Code, the City of St. Louis, 1994, Anno., is hereby amended to read as follows:

"The mayor is authorized and directed to select a committee of seven (7) persons to study and approve the

design, artistic merits and proposed location of any work of art, monument, mural, statuary or other personal property proposed to be donated or to be given to the city to insure that the gift or donation will harmonize with the general design and character of and further development of any airport owned or operated by the city. The members of the committee shall be appointed by the Mayor and approved by the Board of Aldermen.

**SECTION TWO.** Of the seven (7) persons initially appointed by the Mayor, three (3) shall be appointed for terms of four (4) years each, two (2) shall be appointed for terms of three (3) years each, and two (2) shall be appointed for terms of two (2) years each. All persons thereafter shall be appointed to serve a four year term."

**SECTION THREE.** This being an ordinance for the preservation of public peace, health, and safety, it is hereby declared to be an emergency measure within the meaning of Section 20 of Article IV of the Charter of the City of St. Louis and shall become effective immediately upon its approval by the Mayor of the City of St. Louis.

**Approved: November 23, 2010**

**ORDINANCE #68798**  
**Board Bill No. 185**

An Ordinance, recommended and approved by the Airport Commission and the Board of Estimate and Apportionment, ratifying and adopting the actions of the Mayor and the Comptroller of the City of St. Louis (the "City"), the owner and operator of Lambert-St. Louis International Airport® (the "Airport"), in accepting and executing on behalf of the City "Amendment Number 1" dated August 13, 2010 to that certain "Grant Agreement" offered by the United States of America, acting through the Federal Aviation Administration of the United States Department of Transportation, the Grant Agreement being for Project Number 3-29-0085-122-2009, dated August 19, 2009, for a maximum federal obligation of One Million One Hundred Twenty Five Thousand Dollars (\$1,125,000), which is filed in the Office of the City Register (Comptroller Document No. 59775) and was adopted and ratified by the City under Ordinance No. 68474 approved November 6, 2009, for the reimbursement of all direct costs associated with the Environmental Management System (the "Project"); the Amendment Number 1 to the Grant Agreement, which is filed in the Office of the City Register and is made a part hereof (Comptroller Document No. 59775), corrects the percentage reimbursed by the FAA under the Grant Agreement for allowable costs incurred by the City in accomplishing the Project from ninety-five percent (95%) to seventy-five percent (75%); and contains an emergency clause.

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

**SECTION ONE.** The actions of the Mayor and the Comptroller of the City of St. Louis (the "City"), the owner and operator of Lambert-St. Louis International Airport® (the "Airport"), in accepting and executing on behalf of the City "Amendment Number 1" dated August 13, 2010 to that certain "Grant Agreement" offered by the United States of America, acting through the Federal Aviation Administration ("FAA") of the United States Department of Transportation, the Grant Agreement being for Project Number 3-29-0085-122-2009, dated August 19, 2009, for a maximum federal obligation of One Million One Hundred Twenty Five Thousand Dollars (\$1,125,000), which is filed in the Office of the City Register (Comptroller Document No. 59775) and was adopted and ratified by the City under Ordinance No. 68474 approved November 6, 2009, for the reimbursement of all direct costs associated with the Environmental Management System (the "Project"), is hereby ratified, adopted, and approved; the Amendment Number 1 to the Grant Agreement, which is filed in the Office of the City Register and is made a part hereof (Comptroller Document No. 59775), corrects the percentage reimbursed by the FAA under the Grant Agreement for allowable costs incurred by the City in accomplishing the Project from ninety-five percent (95%) to seventy-five percent (75%).

**SECTION TWO.** All terms, conditions, statements, warranties, representations, covenants, agreements, and assurances contained in the initial project application and the incorporated materials referred to in the Grant Agreement, which is filed in the Office of the City Register, not inconsistent with Amendment Number 1, are hereby ratified and approved and made a part hereof.

**SECTION THREE.** This being an ordinance providing for a Public Work and Improvement Program, it is hereby declared to be an emergency measure as defined in Article IV, Section 20 of the City's Charter, and shall become effective immediately upon approval of the Mayor of the City.

**Approved: November 23, 2010**

**ORDINANCE #68799**  
**Board Bill No. 211**  
**Committee Substitute**

AN ORDINANCE APPROVING A NEW CITY GAMING DEVELOPMENT PLAN KNOWN AS THE GAMING DEVELOPMENT PLAN OF THE CITY OF ST. LOUIS, REPORT TO THE MISSOURI GAMING COMMISSION, NOVEMBER, 2010; TERMINATING THAT CERTAIN LEASE AND DEVELOPMENT AGREEMENT BETWEEN THE CITY AND CHAIN OF ROCKS JOINT VENTURE, AS AUTHORIZED BY ORDINANCE NO. 63622; AFFIRMING THE ACTIONS OF THE PORT AUTHORITY OF THE CITY OF ST. LOUIS TO EXECUTE THAT CERTAIN DEVELOPMENT AGREEMENT BETWEEN THE PORT AUTHORITY OF THE CITY OF ST. LOUIS AND CASINO CELEBRATION, LLC, DATED OCTOBER 19, 2010, WITH RESPECT TO A MIXED-USE RECREATION, GAMING, ENTERTAINMENT AND DINING FACILITY AT OR NEAR INTERSTATE 270 AND RIVERVIEW BOULEVARD; AUTHORIZING CERTAIN ACTIONS BY CITY OFFICIALS; CONTAINING A SEVERABILITY CLAUSE.

**WHEREAS**, the City of St. Louis, Missouri (the "City"), is a body corporate and a 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;

**WHEREAS**, the Land Clearance for Redevelopment Authority of the City of St. Louis ("LCRA") is a body politic and is duly constituted according to Section 99.300 to 99.660 of the Revised Statutes of Missouri, as amended; and

**WHEREAS**, the Port Authority of the City of St. Louis ("Port") is a political subdivision of the State of Missouri organized and existing under Chapter 68 of the Revised Statutes of Missouri, as amended; and

**WHEREAS**, pursuant to Section 313.812.1 RSMo., Ordinance No. 66243, that was adopted by the Board of Aldermen and signed by the Mayor of the City on March 30, 2004, approved a gaming development plan titled, "Gaming Development Plan of the City of St. Louis, Report to the Missouri Gaming Commission, February 2004" (the "2004 City Gaming Plan"), which plan, as updated (including an update by the LCRA filed in September of 2010), is on file with the Missouri Gaming Commission; and

**WHEREAS**, the LCRA and the Port, in cooperation with the St. Louis Development Corporation ("SLDC") published a Request for Proposals for development and operation of a gaming facility development in the City on March 29, 2010, which was published in the St. Louis Post-Dispatch and in the St. Louis American, newspapers of general circulation within the City, soliciting proposals for the construction of a gaming facility development in the City, and made such Request for Proposals available for potential developers; and

**WHEREAS**, Casino Celebration, LLC ("Developer"), in response to the solicitation of proposals from developers, submitted its development proposal dated June 30, 2010, as amended, and proposed the development of a mixed-use gaming, recreation, entertainment and dining facility (the "Proposal") on certain real property located at or near Interstate 270 and Riverview Boulevard in the City (the "Area"); and

**WHEREAS**, the Proposal calls for development of an approximately 40,000 square foot gaming floor with 1,400 slot machines and 36 gaming tables and related entertainment, dining, retail and convenience amenities with 1,200 parking spaces in Phase I and, subject to economic feasibility, a hotel with approximately 150 rooms, business center, lounge, museum and an additional 400 slot machines and at least an additional 10 gaming tables in Phase II (the "Development Project"); and

**WHEREAS**, on August 24, 2010, the LCRA and the Port, acting on a recommendation by a selection committee formed by such bodies, determined by Resolutions Nos. 10-LCRA-9075 and 10-PT-25, to approve the selection of the Developer and its Proposal and to authorize negotiations of a development agreement and any other agreements necessary for the development of the Development Project with the Developer; and

**WHEREAS**, the Development Project is of economic significance to the City and will promote the public health, safety, morals and general welfare of the City; and

**WHEREAS**, in order to facilitate the Development Project, the City desires to replace the 2004 City Gaming Plan by adopting an ordinance that approves a new gaming development plan titled "Gaming Development Plan of the City of St. Louis, Report to the Missouri Gaming Commission, November 2010," attached hereto as Exhibit A and incorporated herein by reference as if fully set out (the "2010 City Gaming Plan"); and

**WHEREAS**, the Port is authorized, pursuant to Chapter 68 of the Revised Statutes of Missouri, as amended, to enter into development agreements pertaining to redevelopment of the Area and the Port authorized the execution of the Development

Agreement by Resolutions No. 10-PT-31; and

**WHEREAS**, the Board of Aldermen finds that the terms of Development Agreement, attached as Exhibit B hereto and incorporated herein by reference as if fully set out, is and in the best interests of the City and the health, safety, morals and welfare of its residents, and in accord with public purposes; and

**WHEREAS**, the Board of Aldermen finds that execution by the Port of the Development Agreement and that performance by the Port and the Developer of their respective obligations under the Development Agreement is necessary and desirable and in the best interests of the City and the health, safety, morals and welfare of its residents; and

**WHEREAS**, the Board of Aldermen finds that the City, by and through the City Counselor or her designee, shall terminate that certain Lease and Development Agreement between the City and Chain of Rocks Joint Venture, dated December 29, 1995 and authorized by Ordinance No. 63622, related to a previously proposed gaming project in the Area.

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

**SECTION ONE.** The Board of Aldermen hereby adopts the foregoing recitals as findings.

**SECTION TWO.** The 2004 City Gaming Plan on file with the Missouri Gaming Commission is hereby rescinded and replaced with the 2010 City Gaming Plan, which is hereby adopted and approved. A copy of the 2010 City Gaming Plan is attached hereto as Exhibit A and incorporated herein by reference as if fully set out.

**SECTION THREE.** The Board of Aldermen affirms the actions and finds that the Port is authorized, pursuant to Chapter 68 of the Revised Statutes of Missouri, as amended, in entering into the Development Agreement pertaining to redevelopment of the Area, and that negotiation and execution, by the Port, of the Development Agreement, and that performance by Port and the Developer of their respective obligations under the Development Agreement is necessary and desirable and in the best interests of the City and the health, safety, morals and welfare of its residents. A copy of the Development Agreement is attached hereto as Exhibit B and incorporated herein by reference as if fully set out.

**SECTION FOUR.** The Board of Aldermen finds that the City, by and through the City Counselor or her designee, shall terminate that certain Lease and Developer Agreement between the City and Chain of Rocks Joint Venture, dated December 29, 1995 and authorized by Ordinance No. 63622.

**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  
GAMING DEVELOPMENT PLAN**  
Is on file in the Register's Office.

**DEVELOPMENT AGREEMENT**  
**Between**  
**THE PORT AUTHORITY OF THE CITY OF ST. LOUIS**  
**And**  
**CASINO CELEBRATION, LLC**  
**Dated as of**  
**OCTOBER 19, 2010**

**CASINO CELEBRATION AT THE CHAIN OF ROCKS  
EXECUTION COPY**

**DEVELOPMENT AGREEMENT**

**THIS DEVELOPMENT AGREEMENT** (this "Agreement") is made and entered into as of this 19th day of October,

2010, by and between the **PORT AUTHORITY OF THE CITY OF ST. LOUIS** (the "*Port*"), a political subdivision of the State of Missouri, and **CASINO CELEBRATION, 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. The Port is a political subdivision of the State of Missouri, and is duly constituted according to Chapter 68 of the Revised Statutes of Missouri, as amended.
- B. The City of St. Louis ("*City*") is a municipal corporation of the State of Missouri and a city and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Missouri.
- C. The Missouri Gaming Commission ("*MGC*") has announced that it will accept applications for the development of a riverboat gaming facility and related facilities and potentially prioritize an application for investigation and evaluation by the MGC, as provided in the Missouri Code of State Regulations, Title 11, Division 45, Chapter 4, Section 60 for licensure utilizing the only available Class B gaming license in Missouri as of July 2010.
- D. There is a limit of thirteen (13) licenses in the State of Missouri and the MGC had previously issued two (2) licenses for riverboat gaming facilities and related facilities within the City, one (1) of which was for the President Riverboat Casino which was voluntarily relinquished by Pinnacle Entertainment, Inc. without the consent of the City.
- E. In order to promote the general welfare and encourage capital investment and economic development within the City, the Port and the Land Clearance for Redevelopment Authority of the City of St. Louis ("*LCRA*"), in cooperation with the St. Louis Development Corporation issued a Request for Proposals for Development and Operation of a Gaming Facility Development in the City of St. Louis, Missouri on March 29, 2010, which was published in the St. Louis Post-Dispatch and the St. Louis American, newspapers of general circulation within the City, soliciting proposals for the construction of a gaming facility development in the City (the "*RFP*," which term includes any amendments thereto).
- F. The Developer, in response to the RFP, submitted its development proposal dated June 30, 2010, as amended, and proposed the development of a mixed-use gaming, recreation, entertainment and dining facility on real property shown on **Exhibit A** attached hereto (the "*Development Area*").
- G. The proposed development project contemplates construction of improvements to the Chain of Rocks Bridge, public amenities for users of the bridge and trail system currently located at the Development Area and an approximately 120,000 square foot entertainment and gaming facility within the Development Area, including but not limited to a gaming tables and slot machines, hotel, restaurants, and other entertainment venues (the "*Development Project*") which Development Project has been divided into two separate and distinct phases. The Essential Elements (as hereafter defined) of each phase are listed on **Exhibit B**, attached hereto.
- H. On August 24, 2010, the Board of Commissioners of the Port and the Board of Commissioners of LCRA, each acting on a recommendation by the RFP Selection Committee formed by such bodies, determined by Resolution No. 10-PT-25 and Resolution No. 10-LCRA-9075, respectively (collectively, the "*Selection Resolutions*"), to approve the selection of the Developer and its proposed development and to authorize the negotiation of a development agreement and any other agreements necessary for development of the Development Project with the Developer.
- I. On October 18, 2010, by Resolution No. 10-PT-31, the Board of Commissioners of the Port authorized the execution of this Agreement with the Developer.
- J. The Mayor, Comptroller and President of the Board of Aldermen of the City have endorsed the Developer and the Development Project as evidenced by letters of support submitted to the MGC recommending the Developer and the Development Project and have found that performance by the Port and the Developer of their respective obligations under this Agreement and the good faith efforts of the City contemplated herein are necessary and desirable and in the best interests of the City and the health, safety, morals and welfare of its residents.

#### 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**

**1.1 Definitions**

In addition to other defined words and terms set forth herein, as used in this Agreement, the following words and terms shall have the following meanings:

“*Agreement*” means this Development Agreement, as the same may be from time to time modified, amended or supplemented in writing by the parties hereto in accordance with Section 4.21.

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

“*Certificate of Commencement of Construction*” means a document substantially in the form of **Exhibit C**, attached hereto and incorporated by reference herein, delivered by the Developer to the Port in accordance with this Agreement and evidencing commencement of construction of each specific phase of the Development Project.

“*Certificate of Substantial Completion*” means a document substantially in the form of **Exhibit D**, attached hereto and incorporated herein by reference, issued by the Developer to the Port in accordance with this Agreement and evidencing the Developer’s satisfaction of all obligations and covenants to construct the Essential Elements of a particular phase of the Development Project in accordance with 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.

“*City Parcel I*” means that approximate four (4) acre tract of vacant land immediately south of and adjacent to the Development Area owned by the City as shown on **Exhibit A**, but not including City Parcel II.

“*City Parcel II*” means that approximate four (4) acre tract of vacant land immediately north of the City’s water treatment operation owned by the City as shown on **Exhibit A**, but not including City Parcel I.

“*Construction Plans*” means plans, drawings, specifications and related documents, and construction schedules for the Work or for the construction of a particular phase of the Project, together with all supplements, amendments or corrections, submitted by the Developer to the Port and City and approved by the City in accordance with applicable law.

“*Default Rate*” means a per annum rate of interest equal to two percent (2%) over the “prime rate” charged by Bank of America, N.A., or its successor identified by the Port, but in no event greater than the highest rate permitted under applicable law in effect from time to time.

“*Design Hearing*” means a hearing conducted by authority of the MGC regarding continuous docking, pursuant to Section 313.805(16) and (17) of the Revised Statutes of Missouri, as amended.

“*Developer*” means Casino Celebration, 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.

“*Development Area*” means the real property generally described above and shown on **Exhibit A**, attached hereto and incorporated herein by reference.

“*Development Project*” or “*Project*” means a mixed-use recreation, gaming and entertainment development within the Development Area constructed in accordance with this Agreement and which shall, at a minimum, contain the elements and features set forth in **Exhibit B** (the “Essential Elements”) with respect to each specific phase of the Development Project.

“*Governmental Approvals*” means all gaming approvals, plat approvals, re-zoning or other zoning changes, site plan approvals, conditional use permits, licenses, variances, vacations, building permits, or other subdivision, zoning, or similar approvals from local, state and federal authorities and agencies required for the commencement of Work and implementation of the applicable phase of the Development Project consistent with this Agreement.

“*Investigation Date*” means the date on which the MGC selects Developer’s application for the Project for suitability investigation.

“MGC” means the Missouri Gaming Commission.

“Port” means the Port Authority of the City of St. Louis, a political subdivision of the State of Missouri, duly constituted according to Chapter 68 of the Revised Statutes of Missouri, as amended.

“Property” means the real property and existing improvements in the Development Area required for construction of the Development Project.

“Work” means all work necessary to prepare the Development Area and to construct or cause the construction and completion of each specific phase of the Development Project as specifically described in this Agreement, including, but not limited to: (1) property acquisition; (2) professional services, including, but not limited to, architecture, engineering, surveying, financing, legal and planning and consulting; (3) demolition, site preparation and improvements, (4) construction, reconstruction or rehabilitation of the buildings, including but not limited to interiors, the shell, the façade and the structural elements of the buildings; (5) construction, reconstruction, renovation and/or rehabilitation of related infrastructure and/or improvements, including without limitation surrounding roads, sidewalks and parking facilities; (6) installation of lighting and landscaping; and (7) all other work described in this Agreement.

## ARTICLE II. ACCEPTANCE OF PROJECT

### 2.1 Port Selects Developer

By this Agreement, the Port selects the Developer to perform or cause the performance of the Work in accordance with this Agreement.

The Port will not support another MGC license, within that portion of the City located north of the McKinley Bridge and east of Interstate 70 and Riverview Boulevard, until the earlier of January 1, 2013, termination of this Agreement or conclusion of the current license opportunity, provided that, in the event the Project is licensed, the Port will not support another MGC license in the City located north of Interstate 270 and east of Riverview Boulevard for a period of ten (10) years following issuance of the license to the Developer unless Developer ceases to hold a gaming license for the Project during that period. For purposes of this paragraph, “conclusion of the current license opportunity” includes the withdrawal of Developer’s pending MGC license application, the grant of a license to any other applicant for a gaming project not previously licensed by MGC, or Developer otherwise no longer actively pursuing an MGC gaming license for the Project.

### 2.2 Developer to Advance Costs

Subject to its rights under Section 4.1.1 of this Agreement, the Developer agrees to pay all Project costs as necessary to acquire or improve the Property and to complete the Work. The Developer shall be obligated to pay, which obligation shall survive the expiration or earlier termination of this Agreement, the following expenses:

(i) the Developer shall, on or before October 22, 2010, pay to the Port an amount equal to Fifty Seven Thousand and Forty Two Dollars and no/100 (\$57,042.00), which was invoiced on September 27, 2010, as reimbursement to the City, the Port, the LCRA and all other related entities for all outside legal, consultant and related costs, including reasonable attorneys’ and consultants’ fees, related to the RFP process, the evaluation of the Developer’s proposal or the Port, City or MGC processes regarding the Developer’s proposal or the Project, which amount shall represent payment for all fees incurred and payable through August 31, 2010, except for fees from Armstrong Teasdale LLP, and includes credit for a Ten Thousand and no/100 Dollars (\$10,000.00) filing fee associated with the selection of its proposal pursuant to the RFP;

(ii) the Developer shall, on or before October 22, 2010, pay to the Port an amount equal to Ninety Two Thousand Seven Hundred and Nineteen Dollars and 50/100 (\$92,719.50), to be invoiced on October 19, 2010, as reimbursement to the City, the Port, the LCRA and all other related entities for all outside legal, consultant and related costs, including reasonable attorneys’ and consultants’ fees, related to the RFP process, the evaluation of the Developer’s proposal or the Port, City or MGC processes regarding the Developer’s proposal or the Project, which amount shall represent payment for all fees incurred and payable from September 1, 2010 through October 15, 2010 for Thompson Coburn LLP and from August 20, 2010 through October 15, 2010 for Armstrong Teasdale LLP; and

(iii) thereafter, the Developer shall pay on a monthly basis to the Port such additional amounts as invoiced by the Port to reimburse the City, the LCRA and the Port for their actual reasonable outside legal and consultant costs,

including reasonable attorneys' and financial consultants' fees, that are incurred after October 15, 2010 related to the Port, City and MGC processes regarding the Project for so long as the Developer is pursuing licensing of the Project from MGC until termination of this Agreement.

Each request for payment by the Port shall contain an itemized breakdown of the expenses incurred, subject to redaction by the Port for privileged matters, together with such supporting documentation as may be reasonably requested by the Developer. Any disagreement by the Developer shall not relieve the Developer of its obligation to make timely payments. The Port shall be solely responsible for the payment of all amounts received from the Developer pursuant to this Section 2.2 on account of costs incurred by the Port, LCRA or the City and to remit payment to the City or LCRA, as appropriate. To the extent permitted by law, the Port shall indemnify, defend and hold the Developer harmless from and against any and all claims for payment of costs incurred by the Port, the City or the LCRA in connection with the Project and which are paid to the Port in accordance with this Agreement.

### **ARTICLE III. CONSTRUCTION OF DEVELOPMENT PROJECT**

#### **3.1 Acquisition of Property**

The Developer represents that, as of the date of this Agreement, affiliates of the Developer are the fee owners of or the Developer has written agreements with all necessary parties for the coordinated development of the Project as currently anticipated. Any additional parcels of the Property acquired or controlled by the Developer for completion of the Project shall be held in the name of the Developer and shall be subject to the terms, conditions and covenants contained herein immediately upon acquisition.

#### **3.2 Title Insurance and Survey**

The Developer shall, at its sole cost and expense, no later than sixty (60) days after the submission of a Certificate of Commencement of Construction, provide to the Port copies of an owner's title insurance policy evidencing that the Developer has insured fee title or easements to the Property required for development of the applicable phase of the Project, issued by a title company licensed in the State of Missouri of the Developer's choice. The Developer shall, at its sole cost and expense, and no later than sixty (60) days after the submission of a Certificate of Substantial Completion, provide the Port with a copy of a survey or surveys, prepared by a surveyor of the Developer's choice, who is licensed to conduct surveys in the State of Missouri, which is prepared in accordance with the ALTA/ACSM survey standards generally acceptable within the State of Missouri, which survey or surveys shall locate any and all boundaries, present improvements, utilities, sewers, easements, rights-of-way and encroachments concerning the portion of the Property required for development of the applicable phase of the Project.

#### **3.3 Developer to Construct the Work**

Subject to its rights under Section 4.1.1 of this Agreement, the Developer shall commence or cause the commencement of the construction of the Work, which Work shall be constructed in a good and workmanlike manner in accordance with the terms of this Agreement. 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 in the St. Louis area for similar type projects. The Developer shall require that such insurance be maintained by all 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 take all actions necessary to apply for the wage and hour determinations and otherwise comply with such laws.

#### **3.4 The Project**

Subject to its rights under Section 4.1.1 of this Agreement, the Developer shall construct a gaming development, in accordance with this Agreement, which shall, at a minimum, contain the Essential Elements of the applicable phase of the Project, and shall otherwise comply with the terms and conditions of this Agreement.

#### **3.5 Project Modifications**

The Developer may modify the Development Project and the boundaries of the Development Area to include such other property as Developer deems reasonably necessary for successful completion of the Project, including City Parcel I, subject to necessary City legislation and upon advance written notice to the Port, provided that there is no reduction in Essential Elements, except that the Essential Elements may be modified as agreed to by the Developer and the Port.

### 3.6 Minimum Development Standards

Subject to its rights under Section 4.1.1 of this Agreement, the Developer shall construct the Project as a recreation, entertainment and gaming facility and hotel development in two phases, with each phase being comprised of at least the Essential Elements designated on **Exhibit B** as part of that phase. Total capital investment by the Developer for the Project is estimated to be approximately \$157.5 million, comprised of \$131.5 million for the Phase I (Casino) Development Project, as defined in **Exhibit B** hereto, and \$26 million on the Phase II (Hotel) Development Project, as defined in **Exhibit B** hereto. The Developer has given these original costs as verified estimates which are subject to change due to market conditions, a future competitive bid process, technological advancements, and other factors not contemplated which could provide the Developer with the ability to deliver the Project at a cost different than the originally stated estimates (plus or minus).

### 3.7 Improvements

**3.7.1** Except as may be agreed to by the City and the Developer pursuant to Section 3.7.2 and Section 3.7.3 below, neither the City nor the Port shall be required to contribute any funds with respect to the initial construction of the Project and installation of the Essential Elements. The Developer shall control and own the Project except those areas to be owned by the Metropolitan Parks and Recreation District (a/k/a Great Rivers Greenway) which shall be incorporated into the Project in accordance with the terms of an agreement by and between Developer and said District. The Developer may take advantage of any state or federal funds that might be available for the Project. Neither the City, the LCRA nor the Port shall be obligated to seek state or federal funds on behalf of the Developer, but shall cooperate with the Developer in its efforts to obtain such funding at no cost to the City, the LCRA or the Port.

**3.7.2** The Port shall use commercially reasonable efforts to cooperate with the Developer to obtain the City's approval for formation of a Community Improvement District or Transportation Development District specifically permitting the imposition of a sales tax within the Development Area for projects eligible under each respective enabling act upon terms and conditions reasonably satisfactory to the Developer.

### 3.8 The Phase II Development Project

**3.8.1** The Developer shall exercise commercially reasonable efforts to construct the Essential Elements described on **Exhibit B** as the "Phase II (Hotel) Development Project," including but not limited to the hotel, within the schedule deadlines set forth in Section 3.9 of this Agreement; provided that the Developer's obligation under this Agreement to construct the Phase II (Hotel) Development Project and to make the related capital investment shall be contingent upon the Developer determining that the construction of the Phase II (Hotel) Development Project would be economically feasible and commercially reasonable in the context of the then-current economic conditions.

**3.8.2** If requested by the Developer, the City shall consider incentives to assist in assuring the economic feasibility of the Phase II Development Project.

### 3.9 Schedule and Date

<u>Schedule</u>	<u>Date</u>
Development Agreement executed	October 19, 2010
Submission of Amended City Development Plan to MGC (subject to City legislation)	November 24, 2010
Submission of Design Hearing petition to MGC	Not later than 2 months after the Investigation Date
Submission to the Port of Code compliant plans and specifications and evidence of financing	Not later than 2 months after date of MGC Design Hearing approval with reasonable extensions to be granted by Port
The Phase I (Casino) Development Project Construction initiated	No later than 2 months after the design hearing approval by the MGC, acquisition of all Property interests required for the Phase I (Casino) Development Project and issuance of all other Governmental

	Approvals including final City approvals and permits
The Phase I (Casino) Development Project completed	Not later than 12 months after issuance of Certificate of Construction of Commencement by the Developer
The Phase II (Hotel) Development Project initiated	Not later than March 2017
The Phase II (Hotel) Development Project completed	Not later than 8 months after date of initiation of construction

The Developer shall have the right to extend one or more of the foregoing dates for one or more periods of sixty (60) days Developer is pursuing the Project in good faith, subject to approval by the Port, which approval shall not be unreasonably withheld.

### 3.10 Governmental Approvals

The Developer shall apply for and use commercially reasonable efforts to obtain any and all Governmental Approvals from the applicable governmental authorities for the Project. To the extent allowed by law, the Port shall cooperate with the Developer and take expedited actions to timely consider all Governmental Approvals requests to the City in connection with the Project and shall take all other necessary actions to assist the Developer in achieving the objectives of this Agreement. The Port appoints Rodney Crim or his designee and the Developer appoints Garrick Hamilton to serve on the “*Development Assistance Committee*” which shall meet at regularly scheduled intervals as reasonably determined by its members. The City will be asked to designate a business representative to serve on the Development Assistance Committee and to work with the City’s representatives to assure that the Project obtains timely review of Governmental Approval requests. Each of the parties may, at any time, appoint new or substitute members to the Development Assistance Committee. The Port’s and the City’s representatives and the representative of the Developer will also consider reasonable actions to encourage the ultimate development of the Phase II (Hotel) Development Project as provided for in Section 3.8 and will also consider, document and notify the appropriate parties regarding any force majeure events during the Governmental Approvals and construction process.

### 3.11 Construction Plans; Changes

The Construction Plans for each applicable phase shall be prepared, or reviewed and sealed, 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 as may be necessary or desirable to enhance the quality, functionality or economic viability of the Development Project and as may be in furtherance of the general objectives of this Agreement; 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 Port, which consent shall not be unreasonably withheld or delayed. For purposes of this Section 3.11, “material change” shall mean any change that reduces or substantially alters the Essential Elements.

### 3.12 Certificates of Commencement of Construction

**3.12.1 The Phase I (Casino) Development Project.** Promptly after commencement of construction of the Work related to the Essential Elements described on Exhibit B as the “Phase I (Casino) Development Project,” including but not limited to the casino and certain restaurant and entertainment venues, the Developer shall furnish to the Port, a Certificate of Commencement of Construction, which certificate shall be in substantially the same form as Exhibit C, attached hereto and incorporated herein by reference. The Certificate of Commencement of Construction shall be deemed accepted by the Port upon receipt of the same.

**3.12.2 The Phase II (Hotel) Development Project.** Promptly after commencement of construction of the Work related to the Essential Elements described on Exhibit B as the “Phase II (Hotel) Development Project,” the Developer shall furnish to the Port, a Certificate of Commencement of Construction, which certificate shall be in substantially the same form as Exhibit C, attached hereto and incorporated herein by reference. The Certificate of Commencement of Construction shall be deemed accepted by the Port upon receipt of the same.

### 3.13 Certificates of Substantial Completion

**3.13.1 The Phase I (Casino) Development Project.** Promptly after substantial completion of the Work related to the Phase I (Hotel) Development Project, the Developer shall furnish to the Port a Certificate of Substantial Completion. The Port 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 Port unless, within thirty (30) days following delivery of the Certificate of Substantial Completion, the Port 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 Port, within thirty (30) days following delivery of the Certificate of Substantial Completion, furnishes 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 or respond to such objections and when addressed shall resubmit the Certificate of Substantial Completion to the Port in accordance with this Section. Upon acceptance of the Certificate of Substantial Completion by the Port or upon the lapse of thirty (30) days after delivery thereof to the Port 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 of **Exhibit D**, attached hereto and incorporated by reference herein.

**3.13.2 The Phase II (Hotel) Development.** Promptly after substantial completion of the Work related to the Phase II (Hotel) Development Project, the Developer shall furnish to the Port a Certificate of Substantial Completion. The Port 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 Port unless, within thirty (30) days following delivery of the Certificate of Substantial Completion, the Port 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 Port, within thirty (30) days following delivery of the Certificate of Substantial Completion, furnishes 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 or respond to such objections and when addressed shall re-submit the Certificate of Substantial Completion to the Port in accordance with this Section. Upon acceptance of the Certificate of Substantial Completion by the Port or upon the lapse of thirty (30) days after delivery thereof to the Port 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 of **Exhibit D**, attached hereto and incorporated by reference herein.

### **3.14 City Parcel I**

The Port agrees to use commercially reasonable efforts to cause the City to grant the Developer an option to buy or lease City Parcel I subject to mutually agreeable terms to further enhance the Development Project. The Port shall use commercially reasonable efforts to cooperate with the Developer to obtain the necessary legislation and consent of the City for any such option. Further, the Port agrees to use commercially reasonable efforts to cause the City to grant to the Developer a right of first refusal on the sale, lease or other divestiture of the City Parcel I for any commercial purposes throughout the term of this Agreement; provided, that, the City shall not grant to the Developer a right of first refusal on the sale, lease or other divestiture of the City Parcel I in connection with the transfer or encumbrance of City Parcel I for any and all governmental purposes.

### **3.15 City's Water Treatment Plant**

The Developer acknowledges that the Development Area is located north of City Parcel I and City Parcel II, and that immediately south of City Parcel II are the City's water treatment operations (the "*Water Treatment Plant*"). The Developer acknowledges that certain noises, vibrations, and smells are inherently associated with the operation of the Water Treatment Plant as currently existing and as will continue in the future.

The Developer and the Port agree to use commercially reasonable efforts to pursue a negative easement grant from the City including a waiver of claims by the Developer and covenant that the City Parcel I would not be used in any manner so as to produce noises, vibrations or smells that an ordinary, reasonable person would find to be obnoxious or offensive, considering, however, the proximity of the Water Treatment Plant. The preceding sentence shall not be deemed to include noises, vibrations, and smells attendant to construction activities, and additionally, the preceding sentence shall not be deemed to prevent the City from developing City Parcel I for any lawful use subject to the covenant of the City set forth in Section 2.1 of this Agreement.

Further, the Developer and the Port agree to use commercially reasonable efforts to pursue an agreement from the City including a covenant that the City shall give the Developer timely notice of future EPA regulations or other pertinent laws or regulations that may cause water treatment operations to be placed on City Parcel II. If the Developer reasonably determines that said water treatment operations would produce noises, vibrations or smells that an ordinary, reasonable person would find to be obnoxious or offensive, and which would have a material adverse effect on the Project (as reasonably determined by the Developer),

then the City shall, in cooperation with the Developer but at the Developer's sole expense, favorably consider such alternative sites or treatment methods to mitigate such noises, vibrations or smells provided that the Developer shall bear all incremental costs of said alternative method.

### **3.16 Community Improvements**

The Developer shall pay to the City an amount equal to Two Hundred Thousand Dollars and no/100 (\$200,000.00) annually, payable on or before December 31st of each year commencing in the first calendar year of the Project's licensure by the MGC (prorated as necessary for the first year) as a gaming facility towards community improvements located within the City north of Halls Ferry Circle along Riverview Drive to the City's limit on the north, the Mississippi River on the east and two blocks to the west of Riverview Drive. In addition the community improvements may include the corridors along Hall street between Riverview Drive and Grand and along Broadway north to the City's limit and south to Taylor Ave within two blocks on either side of the Riverview, Hall or Broadway streets. The improvements shall include but not be limited to upgrades to that certain City park known as the North Riverfront Park and other community projects. The funds shall not be paid to the City's General Fund but shall be deposited in a segregated account dedicated to the improvements described in this Section 3.16. The Developer shall have the right to make suggestions and participate in decisions concerning appropriate improvements to be funded. Such amount shall be paid annually until the Project no longer operates as a licensed gaming facility.

## **ARTICLE IV. GENERAL PROVISIONS**

### **4.1 Rights of Termination**

The Developer may elect to terminate this Agreement, upon thirty (30) days prior written notice to the Port and City, in the event that:

- (i) prior to the Developer's issuance of a Certificate of Commencement of Construction as to the Phase I Development Project for any reason and upon the effectiveness of such termination, Developer may abandon the Development Project; or
- (ii) the Missouri gaming laws are changed to prohibit excursion gambling boats and/or gambling games and devices in Missouri before or after the opening of the gaming facility at the Project; or
- (iii) there is an enactment by a governmental authority of taxes or similar imposition so significant that the operation of a gaming facility within the Development Area is no longer profitable as reasonably substantiated by a financial analysis prepared by an independent third-party analyst reasonable acceptable to the Developer and the Port; or
- (iv) there shall be a material uncured default by (i) the Port in the performance of its obligations under this Agreement; or (ii) the City in the performance of its obligations under any agreement with the Developer relating to the Development Project.

In the event this Agreement is terminated by the Developer in accordance with this Section 4.1.1, the parties shall take all reasonable and necessary actions and execute and deliver the necessary documents to terminate this Agreement.

**4.1.2** The Port may elect to terminate this Agreement, upon thirty (30) days prior written notice to the Developer, in the event that:

- (i) the MGC has not selected the Developer, despite the Developer's best efforts, for priority investigation for the Project within one (1) year from the date of this Agreement, unless the parties mutually agree to an extension which extension shall be promptly granted by the Port in the event the MGC has not granted priority investigation for issuance of an available license as of such date or the Developer is then challenging by judicial action the issuance or priority investigation of another applicant for such available license; or
- (ii) there shall be a material uncured default by the Developer in the performance of its obligations under this Agreement.

In the event this Agreement is terminated by the Port or the City in accordance with this Section 4.1.2, the parties shall take all reasonable and necessary actions and execute and deliver the necessary documents to terminate this Agreement.

## 4.2 Successors and Assigns

**4.2.1** Except as otherwise provided in this Section 4.2, the Developer may not sell, assign (whether by operation of law or otherwise), pledge, encumber, hypothecate or transfer or otherwise transfer the all or any part of the Project or all or any part of its rights, duties or obligations under this Agreement without the prior written consent of the Port, which consent shall not be unreasonably withheld.

**4.2.2** Prior to licensure by the MGC of the Developer for the Project:

(i) the Developer may sell, assign (whether by operation of law or otherwise), pledge, encumber, hypothecate or otherwise transfer all or any part of its rights, duties or obligations under this Agreement, with notice to but without the express written consent of the Port, provided the following conditions are satisfied: (a) members of Developer or William J. Koman, Jr. or James G. Koman, in the aggregate, retain a membership or voting interest in any successor Developer equal to or in excess of twenty five percent (25%) of the membership or voting interests in such successor Developer; (b) the gaming facility operator which is a member of such successor Developer is licensed to operate a gaming facility in one or more states and (c) the gaming facility operator which is a member of such successor Developer shall complete the Project Essential Elements as set forth in Exhibit B herein, to the extent required under this Agreement;

or

(ii) members of Developer may transfer ownership, voting rights or other interests in Developer to a gaming facility operator (or affiliate thereof) with notice to but without the express written consent of the Port, provided the following conditions are satisfied: (a) William J. Koman, Jr. or James G. Koman, in the aggregate, retain a membership or voting interest in the Developer equal to or in excess of twenty five percent (25%) of all membership or voting interests in the Developer; (b) the gaming facility operator is licensed to operate a gaming facility in one or more states and (c) the gaming facility operator shall complete the Project Essential Elements as set forth in Exhibit B herein, to the extent required under this Agreement.

**4.2.3** After licensure by the MGC of the Developer for the Project, the Developer may sell, assign (whether by operation of law or otherwise), pledge, encumber, hypothecate or otherwise transfer all or any part of the Project or all or any part of its rights, duties or obligations under this Agreement without the express written consent of the Port, provided the following conditions are satisfied: (i) any such transaction is approved by MGC; (ii) the assignee or transferee delivers to the Port a binding and enforceable agreement that assumes and agrees to perform all of the obligations of Developer as developer under this Agreement from and after the effective date of any such transfer; and (iii) Developer promptly provides the Port with at least ten days' prior written notice of any such transaction. The initial Developer shall be relieved of any obligations under this Agreement arising after the effective date of any such transfer.

**4.2.4** Developer may assign this Agreement to one or more of its lending institutions on a collateral basis without the express written consent of the Port.

**4.2.5** William J. Koman Sr., William J. Koman, Jr., and James G. Koman may transfer their membership interests in the Developer by and among themselves and any of their respective trusts or majority controlled limited liability companies or other entities in which they respectively have the majority of membership interest or voting rights, without the prior written consent of the Port, provided that William J. Koman, Jr., and James G. Koman in the aggregate retain a membership or voting interest in the Developer equal to or in excess of twenty five percent (25%) of all membership or voting interests in the Developer.

**4.2.6** A consent by the Port to any assignment or other transaction under Sections 4.2.1 shall not be deemed a consent to any subsequent assignment or transaction, and any such assignment or transaction made by the Developer or any of its successors or permitted assigns without the prior written consent of the Port shall be void and shall, at the option of the Port, constitute an Event of Default by the Developer or any of its successors or permitted assigns under this Agreement.

**4.2.7** This Agreement shall be binding on and shall inure to the benefit of the parties named herein and their respective legal representatives, successors and assigns.

## 4.3 Events of Default

The occurrence of any of the following shall constitute an Event of Default (an “*Event of Default*”) under this Agreement:

(i) any failure by the Developer to make timely and complete payments of monies referenced in this Agreement within thirty (30) days following receipt by the Developer of written notice of such failure; provided, however, that if the Developer defaults in the performance of any such payment obligation two (2) or more times within any five (5) year period, then, notwithstanding that each of such defaults shall have been cured by the Developer, the Developer shall have ten (10) days in which to cure any further default in the performance of any such payment obligation until such time as there has been less than two (2) defaults in the prior five (5) year period; or

(ii) any failure or neglect or breach of a material provision by the Developer or the Port to observe or perform any term, provision, covenant or agreement contained in this Agreement (other than a provision as to payment) within thirty (30) days after written notice to the defaulting party that such term, provision, covenant or agreement has not been observed or performed; provided, however, that in the event that such failure or neglect by its nature cannot be cured within such thirty (30) day period, then such thirty (30) day period shall be extended until such failure or neglect is cured, but in no event longer than six (6) months from the date of the original written default notice, without the written consent of the non-defaulting party, such consent not to be unreasonably withheld, so long as the defaulting party reasonably commences its efforts to cure within such period and thereafter diligently pursues the same to completion; or

(iii) if any material representation or warranty by the Developer or the Port is made in this Agreement or any written communication between the parties in connection with the Project, shall prove to have been materially incorrect or incomplete when made; or

(iv) any other act or occurrence which constitutes a default or event of default under the terms of this Agreement which is not cured as provided in part (ii) above after notice to Developer; or

(v) if the Developer shall seek relief under the United States Bankruptcy Code or any other law pertaining to insolvency or bankruptcy; or fail to controvert in a timely and appropriate manner (not to exceed ninety (90) days), or acquiesce in writing to, any petition filed against it in an involuntary case under the United States Bankruptcy Code; or shall make any assignment for the benefit of creditors; or shall suffer any receiver to be appointed for any of its property; or shall be unable to meet its debts as they mature; or shall admit such inability in writing; or

(vi) if the Developer shall suspend its business, or dissolve or terminate its existence; or

(vii) except as otherwise permitted under this Agreement, if the Developer shall cease to operate the Project for a period of six (6) consecutive months.

#### **4.4 Remedies**

**4.4.1** Except as otherwise provided in this Agreement and subject to the Developer’s and the Port’s respective rights of cure and/or termination, in the Event of Default or in default or breach of any material terms or conditions of this Agreement by either party, or any successor or permitted assigns, the aggrieved party may institute such proceedings at law or in equity 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. In addition to any and all remedies at law or in equity, the Port and/or the City shall have the right to report the actions of the Developer to the MGC.

**4.4.2 Payments Under Protest.** If at any time a dispute shall arise as to any amount or sum of money to be paid by one party to the other party under the provisions of this Agreement, the party against whom the obligation to pay the money is asserted shall have the right to make payment “under protest” and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said party to institute permitted actions for the recovery of such sum, and if it shall be finally determined that there was no legal obligation on the part of said party to pay such sum or any part thereof, said party shall be entitled to recover such sum or so much thereof as it was not legally required to pay under the provisions of this Agreement, together with interest thereon at the Default Rate.

#### **4.5 Force Majeure**

Neither the Port nor the Developer nor any successor in interest or permitted assign shall be considered in breach or default of their respective obligations under this Agreement, and times for performance of obligations hereunder shall be extended, in the event of any breach, default or delay caused by force majeure, including without limitation damage or destruction by fire or casualty;

litigation, strike; lockout; civil disorder; war; terrorist act; 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 Development Project 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, the Port or the City in bad faith, and further provided that the Developer or the Port must notify the other party in writing within thirty (30) days of the commencement of any such claimed event of force majeure.

#### 4.6 Notices

All notices, demands, consents, approvals and other communications required by this Agreement to be given by either party hereunder shall be in writing and shall be hand delivered, including by air courier or expedited mail service such as Federal Express to the appropriate party at its address set forth below, or at such other address as such party shall have last designated by notice to the other or by facsimile. The telecopy of facsimile numbers set out below also may be changed by notice to all persons set forth below. Notices, demands, consents, approvals, and other communications shall be deemed given when delivered or three (3) days after mailing; provided, however, that if any such notice or other communication shall also be sent by telecopy or facsimile machine, such notice shall be deemed given at the time and on the date of machine transmittal if the sending party receives a written send verification on its machines and forwards a copy thereof with its courier delivered notice or communication. Notices given by a party's counsel shall be considered notices by such party.

- (i) In the case of the Developer, to:  
Casino Celebration, LLC  
6 CityPlace Drive, Suite 430  
St. Louis, MO 63141  
Attention: General Counsel  
Fax: 314.787.1986

With a copy to:

Husch Blackwell Sanders LLP  
190 Carondelet Plaza, Suite 600  
St. Louis, MO 63105  
Attention: Gregory R. Smith  
Fax: 314.480.1505

- (ii) In the case of the Port, to:

Port Authority  
1015 Locust Street, Suite 1200  
St. Louis, Missouri 63101  
Attention: Rodney Crim  
Facsimile: 314.259.3442

With a copy to:

Armstrong Teasdale LLP  
7700 Forsyth Boulevard, Suite 1800  
St. Louis, MO 63105  
Attention: James E. Mello  
Facsimile: 314.621.5065

With a copy to:

Thompson Coburn LLP  
One US Bank Plaza  
St. Louis, MO 63101  
Attention: Gregory D. Omer  
Facsimile: 314.552.7480

#### **4.7 Conflict of Interest**

No member of the Board of Aldermen, the Port, 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 Development Area, shall participate in any decisions relating thereto which affect that member's personal interests or the interests of any business entity 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, Port, or any branch of City's government, as applicable, the nature of such interest and seek a determination by the Board of Aldermen, Port, or any branch of City's government, as applicable, with respect to such interest and, in the meantime, shall not participate in any actions or discussions relating to the activities herein proscribed.

#### **4.8 Damage or Destruction of Development Project**

In the event of total destruction or damage to the Development Project by fire, flood or other casualty, during construction or thereafter during the term of this Agreement, the Developer shall determine and advise the Port in writing within six (6) months of such destruction or damage whether the Developer wishes to restore, reconstruct and repair any such destruction or damage so that the Project will be completed or rebuilt in accordance with this Agreement. Should the Developer determine not commence to restore, reconstruct and repair the Development Project, this Agreement shall terminate one (1) year after the casualty event.

#### **4.9 Inspection**

The Port or 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 Port or the City reasonable access to the Work site from time to time upon reasonable advance notice (which may be oral) prior to the completion of the Work for inspection thereof. The Developer shall not unreasonably deny the Port or the City or their elected or appointed officials, 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 Port determines is reasonable and necessary to verify the Developer's compliance with the terms of this Agreement.

#### **4.10 Representatives Not Personally Liable**

No elected or appointed officials, agent, employees, attorneys or representatives of the City or the Port 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.

Except in those circumstances wherein the Developer asserts as a defense that the acts or conduct of its elected or appointed officials, officers, agents, employees, attorneys or representatives were negligent, unauthorized, ultra vires, unlawful, or otherwise without expressed or implied authority of the Developer, no elected or appointed officials, officers, agents, employees, attorneys or representatives of the Developer shall be personally liable to the Port or the City 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.

#### **4.11 Release and Indemnification**

The indemnifications and covenants contained in this Section shall survive termination or expiration of this Agreement.

**4.11.1** The City, the Port and their elected or appointed officials, officers, agents, attorneys, employees, representatives and independent contractors shall not be liable to the Developer for damages or otherwise in the event that all or any part of any ordinance adopted in connection with either this Agreement or the Development Area, 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 or the Port is prevented from performing any of the covenants and agreements herein or the Developer is prevented from enjoying the rights and privileges hereof.

**4.11.2** The Developer covenants and agrees that the City, the Port and their elected or appointed officials, officers, agents, attorneys, employees, representatives and independent contractors shall be released from and shall not be liable for, and agrees to indemnify and hold harmless the Port, the City and their elected or appointed officials, officers, agents, attorneys, employees, representatives 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 elected or appointed officials, officers, agents, attorneys, employees, representatives and independent contractors, in connection with its or their activities conducted pursuant to this Agreement.

**4.11.3** The City, the Port and their elected or appointed officials, officers, agents, employees, representatives 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, representatives, independent contractors or any other persons who may be about the Property or the Work except for matters arising out of the negligence or willful misconduct of the City, the Port and their elected or appointed officials, officers, agents, employees, representatives and independent contractors.

**4.11.4** All covenants, stipulations, promises, agreements and obligations of the Port contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Port and not of any of its elected or appointed officials, officers, agents, attorneys, employees, representatives or independent contractors in their individual capacities.

**4.11.5** The Developer covenants and agrees that the City and the Port, their elected or appointed officials, officers, agents, attorneys, employees, representatives and independent contractors shall be released from and shall not be liable for, and agrees to indemnify and hold the City, the Port, their elected or appointed officials, officers, agents, attorneys, employees, representatives 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 against such third party of this Agreement or the enforcement or validity of any other agreement or obligation made in connection therewith against such third party and their approvals (excluding opinions of counsel and of the City and Port's financial advisors whenever such claim is based on such party's own willful misconduct or negligent); (ii) negligence or willful misconduct of the Developer or its officers, agents, employees, representatives or independent contractors in connection with the design, management, development 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. The foregoing release and indemnification shall not apply in the case of such liability arising directly out of the negligence, willful misconduct or malicious acts or omissions of the City, the Port or their elected or appointed officials, officers, agents, attorneys, employees, representatives 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 or the Port following termination of this Agreement as to the Development Project or any particular portion thereof.

#### **4.12 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 Development Project or any portion thereof. Upon substantial completion of the Phase I Development Project, the Developer or its successor(s) in interest or permitted assigns, as owner or owners of the affected portion(s) of the Property, shall, during the remainder of the term of this Agreement maintain or cause to be maintained the buildings and improvements within the Development 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, the Developer shall use commercially reasonable efforts to cause each such owner or lessee as a successor in interest to the Developer to 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 to maintain or cause to be maintained reasonable casualty and liability insurance with respect to the same in accordance with this Agreement.

#### **4.13 Non-Discrimination**

The Developer agrees that as an independent covenant running with the land during the term of this Agreement 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 Development 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 may be included in a covenant binding the Property owned by the Developer and all successor and assigns and recorded in the real property record for the City of St. Louis, Missouri.

#### **4.14 Employment**

The employment representations by Developer provided on Exhibit B are considered Essential Elements. In order to encourage employment of City residents, minorities and women, the Developer agrees to work with the St. Louis Agency for Training

and Employment (“SLATE”) and the Federal Empowerment Zone to develop a recruitment and job training program designed to achieve and maintain the Developer’s MBE/WBE objectives. In an effort to provide employment for those living in the community, a preference will be given to qualified residents living in the 63107, 63147, 63136 and 63137 zip codes.

#### **4.15 MBE/WBE**

The Developer agrees to use its reasonable best efforts to comply with the Mayor’s Executive Order #28, as the same may be amended, during the design, construction and operation of the Project and with respect to ongoing services provided by third parties to the Developer. Within ten (10) days after the Investigation Date, Developer shall provide the City with a compliance plan for the Project. Within ten (10) days after submission of the Construction Plans to the City, Developer shall update the construction phase section of its compliance plan. At the time of obtaining the initial gaming license from the MGC for the Project, Developer shall provide the City with an ongoing and comprehensive compliance plan. Said plans, which will include the aforementioned elements of design, construction and operation must be reasonably approved by the City and will be monitored by the City’s MBE/WBE Contract Compliance Officer. A goal of 25% MBE and 5% WBE utilization has been established for the overall compliance plan in connection with this Agreement in accordance with the requirements of Executive Order #28, subject to any amendment to Executive Order #28 as may occur from time to time. If the goals are not met, the Developer shall continue good faith efforts throughout the term of this Agreement to increase MBE/WBE participation and to meet this goal. The Developer shall, at its option, be permitted to include all its predevelopment activities for the Project with respect to meeting said MBE/WBE participation goals for the design and construction phases of the Project.

#### **4.16 Union Matters**

The Developer has represented that it intends to use union construction trades in the construction of the Project. The Developer agrees to enter into a mutually desirable standard form of Neutrality Agreement with unions applicable to the operations of the Project. Notwithstanding the preceding sentence, the Developer reserves the right to generally educate and inform employees about company benefits, policies and the workplace. Further, nothing in this Section shall prevent the Developer from requiring any union to follow and comply with, or from the Developer itself utilizing NLRB’s campaign and election law, regulations and procedures.

#### **4.17 Home Dock City Recommendation to MGC and Gaming Licensing**

**4.17.1** The Port shall use commercially reasonable efforts to cause the City to amend its gaming development plan on file with the MGC pursuant to Section 313.812.1 of the Revised Statutes of Missouri, as amended, and 11 CSR 45-4.040, as amended, to recommend the granting of a gaming license to the Developer for the Project not later than November 24, 2010. The parties hereby agree that design changes required by the MGC shall be accepted by the parties and implemented by the Developer using its commercially reasonable efforts and shall not be considered material modifications to the Project unless said changes or requirements have the effect of reducing in quantity or quality, or both, any of the Essential Elements.

**4.17.2** The Port shall, and use commercially reasonable efforts to cause the City to support (i) a recommendation during all phases of licensing (which the parties hereto agree include only those phases during the period in which Developer is actively pursuing its initial license for the Project and ending upon the earlier of the grant of the initial gaming license for the Project or the grant of a license to any other applicant for a gaming project not previously licensed by MGC) that the MGC grant a license for the Project; and (ii) to approve and implement design changes and regulatory requirements dictated by MGC or other governmental authorities which shall not be considered material modifications to the Project unless such changes or requirements have the effect in quality or quantity of reducing any of the Essential Elements.

#### **4.18 Performance Guaranty**

In order to secure the timely opening of the casino and other components of the Phase I Development Project, the Developer agrees to enter into construction contracts including liquidated damages or penalties for the contractors failing to meet completion dates. In any subsequent agreement with the City, the parties shall seek to provide for reimbursement of the City for any out of pocket costs the City incurs in connection with the Developer’s construction of the Phase I Development Project.

#### **4.19 Confidentiality**

Except as otherwise required by law, the parties agree that each will treat in confidence all documents, materials and other information which each party shall have obtained during the course of the negotiations leading to, and its performance of, this

Agreement (the "Confidential Information"). Such Confidential Information shall not be communicated to any third party, including the media with the prior written consent of the other party or, in the case of any disclosure mandated by law, as much prior written notice as possible to the other party but not less than twenty-four hours advance written notice. The obligation of the parties to treat the Confidential Information in confidence shall not apply to any information which (i) is or becomes available from a source other than a party or such party's counsel or representatives, (ii) is or becomes available to the public other than as a result of disclosure by one of the parties or their agents, or (iii) is a public document or is required to be disclosed under applicable law, by a regulatory agency, administrative process or judicial process, but only to the extent it must be disclosed and subject to the prior written notice requirement above. Notwithstanding the foregoing, the parties hereto may provide, on a need to know basis, Confidential Information to Port or City officials, a party's counsel, accountants, financial advisors, corporate parents, affiliates, officers, directors or employees thereof, provided that any such disclosure shall be subject to the foregoing confidentiality provisions.

#### **4.20 Choice of Law**

This Agreement is subject to the laws of the State of Missouri, the Charter and ordinances of the City and 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.

#### **4.21 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.

#### **4.22 Counterparts**

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

#### **4.23 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.

#### **4.24 Captions**

The captions of this Agreement are for convenience and reference only and in no way define, limit or describe the scope or intent of this Agreement.

#### **4.25 Disclaimer of Relationship**

Neither anything contained in this Agreement nor any act of the Port or the City on the one hand, and the Developer on the other hand, shall be deemed or construed by any person to create any relationship of limited or general partnership or joint venture between the Port/City and the Developer or any third party beneficiary in favor of any person.

#### **4.26 Gender**

Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular numbers shall be held to include the plural, unless the context otherwise requires.

#### **4.27 No Waiver**

No waiver by any party hereto or any violation or breach of any of the terms, provisions and covenants of this Agreement shall be deemed or construed to constitute a waiver of any other violation or breach of any of the other terms, provisions and covenants herein contained.

#### **4.28 Attorneys' Fees**

In the event that any party hereto brings an action or proceeding for a declaration of rights of the parties under this Agreement, for injunctive relief; or for an alleged breach or default of this Agreement, or any other action arising out of this Agreement or the transactions contemplated hereby, the party substantially prevailing in any such action shall be entitled to an award

of reasonable attorneys' fees and any court costs incurred in such action or proceeding against the other party(s), in addition to any other damages or relief awarded, regardless of whether such action proceeds to final judgment.

#### **ARTICLE V. REPRESENTATIONS OF THE PARTIES**

##### **5.1 Representations and Covenants of the Port**

(i) The Port 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 and all of the foregoing have been or will be duly and validly authorized and approved by all necessary Port proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the Port, enforceable in accordance with its terms.

(ii) The Port shall consider in good faith any request for amendments to this Agreement as may be reasonably necessary to complete the Project or address unforeseen events and conditions.

##### **5.2 Representations and Covenants of the Developer**

(i) The Developer hereby represents and warrants that it is a duly organized and validly existing limited liability company in good standing under the laws of the State of Missouri, with perpetual existence, and has the full corporate power and authority to own its properties and to transact the business in which it is engaged or presently proposes to engage. The Developer further represents and warrants that 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.

(ii) The Developer shall consider in good faith any request for amendments to this Agreement as may be reasonably necessary to complete the Project or address unforeseen events and conditions.

#### **ARTICLE VI. OTHER ACTIONS AND AGREEMENTS BY THE PARTIES**

##### **6.1 Standard and Times for Consents and Approvals**

Where any provision of this Agreement requires the consent or approval of another party, each party agrees that it will not unreasonably withhold, condition, or delay such consent or approval, except as otherwise expressly provided in this Agreement (such as by words to the effect of: "sole", "absolute" and/or "complete" discretion), and the reasonableness of each party's determination shall be evaluated in accordance with any particular standards governing such particular consent or approval as expressly set forth in this Agreement, or if no standards are expressly set forth, then in accordance with all relevant facts and circumstances. Where any provision of this Agreement requires one party to do anything to the satisfaction of another party, the first party agrees that it will not unreasonably refuse to state its satisfaction with such action. If no time is given hereunder for a party to respond to a written request by another party for an action or a consent or approval by the other party hereunder, the responding, approving or consenting party shall have fifteen (15) days to take such action, or give such consent or approval, or affirmatively refuse in writing to do the same; and if such party does neither, the requesting party shall have the right to send the other party a notice of default.

##### **6.2 Termination of Earlier Agreement**

The Developer shall cause the Chain of Rocks Joint Venture by and through its joint venturers to take all necessary actions to terminate that certain Lease and Development Agreement between the City of St. Louis, Missouri and the Chain of Rocks Joint Venture dated December 29, 1995, as authorized by City Ordinance No. 63622 on or before November 1, 2010. To the extent that any portions of said Lease and Development Agreement are in conflict with this Agreement, said Lease and Development Agreement, to the extent that it is still in effect, shall control until such time as it is terminated.

##### **6.3 Termination**

Notwithstanding Section 4.5, this Agreement shall automatically terminate January 1, 2013, unless Developer obtains a license from the MGC, with the Developer responsible for any costs as described in Section 2.2. herein to the date of termination.

**6.4 Term of Agreement**

Unless earlier terminated as provided herein, the term of this Agreement shall commence on the date first written above and end when the Developer, or any successor or permitted assign is no longer operating the Project as a gaming casino for a continuous period of two (2) years, if all of the Developer's, or the Developer's successors' or permitted assigns' obligations and duties to the Port and the City hereunder are satisfied at such termination date.

**(The remainder of this page is intentionally left blank.)**

IN WITNESS WHEREOF, the Port, the City and the Developer have caused this Agreement to be executed in their respective names as of the date first above written.

**“PORT”**

**PORT AUTHORITY OF THE  
CITY OF ST. LOUIS**

By: \_\_\_\_\_  
Rodney Crim, Executive Director

**“DEVELOPER”**

**CASINO CELEBRATION, LLC**

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

**List of Exhibits**

- Exhibit A- Description of the Development Area
- Exhibit B- Project Essential Elements
- Exhibit C- Form of Certificate of Commencement of Construction
- Exhibit D- Form of Certificate of Commencement of Substantial Completion

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

On this 18th day of October, 2010, before me appeared Rodney Crim, to me personally known, who, being by me duly sworn, did say that he is the Executive Director of the PORT AUTHORITY OF THE CITY OF ST. LOUIS, MISSOURI, a political subdivision of the State of Missouri, organized under the laws of the State of Missouri, and said instrument was signed in behalf of said Authority by authority of its Board of Commissioners and said individual acknowledged said instrument to be the free act and deed of said Authority and 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  
\_\_\_\_\_ OF \_\_\_\_\_ )

On this 18th day of October, 2010, before me appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that he/she is the \_\_\_\_\_ of CASINO CELEBRATION, LLC, a Missouri limited liability company, and

that he/she is authorized to sign the instrument on behalf of said limited liability company by authority of its Members, and acknowledged to me that he/she executed the within instrument as said limited liability company's free act and deed.

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

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

(SEAL)

My Commission Expires:  
\_\_\_\_\_

**EXHIBIT A**  
**Description of the Development Area**

**EXHIBIT B**  
**Project Essential Elements**

The following are all "Essential Elements" as defined in the Agreement:

**The Phase I (Casino) Development Project Essential Elements**

- Not less than a 40,000 square foot gaming floor including approximately 1,400 slot machines and 36 gaming tables;
- Not less than 80,000 square feet of additional entertainment, dining, retail and convenience amenities potentially including formal dining, buffet, gift shop, café, deli, and bars/entertainment venues;
- Not less than 1,200 parking spaces; and
- Amenities for improvement of the Chain of Rocks Bridge, public parking, public trail relocation and public restrooms as more thoroughly set forth in an agreement between the Metropolitan Parks and Recreation District and the Developer.

**The Phase II (Hotel) Development Project Essential Elements**

- Not less than 150 room hotel;
- Business center, lounge, museum; and
- Not less than 400 additional slot machines and not less than 10 additional gaming tables.

The foregoing represents an estimated \$157,500,000 investment commitment anticipated to create approximately 565 jobs, in two phases: the Phase I Development Project and the Phase II Development Project. The Phase II Development Project is contingent upon Developer determining that the construction is economically feasible. Developer has given these original costs as verified estimates which are subject to change due to market conditions, a future competitive bid process, technological advancements, and other factors not contemplated which could provide Developer with the ability to deliver the Project at a cost different than the originally stated estimates and requiring jobs varying from the original estimate (plus or minus). The cost of the Project and the number of jobs ultimately created shall be a function of sound business practices consistently applied.

As for both phases of the Development Project, the parking lot and façade will be lighted to insure safety; however, the lighting will be positioned in a manner to shine on the immediate Property and minimize effects on the surrounding neighborhood. There will be no exterior music unless specifically permitted by the City. Security commensurate with similar apportioned gaming facilities shall be provided 24 hours a day, seven days a week.

Developer shall obtain all traffic studies and reports reasonably required by the Port, City and the Missouri Department of Transportation ("MODOT") and include such improvements within the Project as reasonably recommended by such studies and

reports for efficient access to and from the Development Area or as may be otherwise required by MODOT.

The Developer shall comply with all mandates of the Clean Water Act in the development of the Development Area. The Developer shall use commercially reasonable efforts to construct the Project in accordance with LEED certification specifications; provided, however the Port acknowledges and agrees that smoking will be permitted at the Project.

**EXHIBIT C**

**Form of Certificate of Commencement of Construction**

DELIVERED BY

CASINO CELEBRATION, LLC

The undersigned, Casino Celebration, LLC (the "Developer"), pursuant to that certain Development Agreement dated as of October 19, 2010, between the Port Authority of the City of St. Louis (the "Port") and the Developer (the "Agreement") hereby certifies to the Port as follows:

1. All property within the Development Area necessary for the construction of Phase \_\_\_ of the Development Project has either been acquired or leased by the Developer in accordance with the Agreement or the Developer holds adequate development rights and easements to complete said Phase \_\_\_ of the Development Project.
2. The Developer has entered into an agreement with a contractor or contractors to construct Phase \_\_\_ of the Development Project.
3. The Developer has obtained all necessary financing to complete Phase \_\_\_ of the Development Project.
4. This Certificate of Commencement of Construction is being issued by the Developer to the Port in accordance with the Agreement to evidence the Developer's satisfaction of all obligations and covenants with respect to commencement of construction of Phase \_\_\_ of the Development Project.

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

**CASINO CELEBRATION, LLC**

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

**EXHIBIT D**

**Form of Certificate of Substantial Completion**

**CASINO CELEBRATION, LLC**

The undersigned, Casino Celebration, LLC, a Missouri limited liability company (the "Developer"), pursuant to that certain Development Agreement dated as of October 19, 2010, between the Port Authority of the City of St. Louis (the "Port") and the Developer (the "Agreement"), hereby certifies to the Port as follows:

1. That as of \_\_\_\_\_, \_\_\_\_\_, the construction of Phase \_\_\_ of the Development Project (as that term is defined in the Agreement) has been substantially completed in accordance with the Agreement.
2. That the Work specific to Phase \_\_\_ of the Development Project has been substantially completed or funded pursuant to the Agreement.
3. The Work specific to Phase \_\_\_ of the Development Project has been performed in a workmanlike manner and substantially in accordance with the Construction Plans (as those terms are defined in the Agreement) for such Phase.
4. 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 incorporated herein by reference, certifying that Phase \_\_\_ of the Development Project has been substantially completed in accordance with the Agreement.

5. Lien waivers for applicable portions of said Work specific to Phase \_\_\_ of the Development Project in excess of Five Thousand Dollars (\$5,000) have been obtained.

6. This Certificate of Substantial Completion is being issued by the Developer to the Port in accordance with the Agreement to evidence the Developer’s satisfaction of all material Project construction obligations and covenants with respect to Phase \_\_\_ of the Development Project.

7. The acceptance (below) or the failure of the Port to object in writing to this Certificate within thirty (30) days of the date of delivery of this Certificate to the Port (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 said Work.

Upon such acceptance by the Port (deemed or actual), 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 \_\_\_\_\_, 20\_\_.

**CASINO CELEBRATION, LLC**

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

**ACCEPTED:**

**PORT AUTHORITY OF THE CITY OF ST. LOUIS**

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

(Insert Notary Form(s) and Legal Description)

**Approved: November 23, 2010**

**ORDINANCE #68800  
Board Bill No. 195**

An Ordinance recommended and approved by the Board of Estimate and Apportionment authorizing and directing the Director of Airports and the Comptroller for the City of St. Louis (the "City") to enter into and execute on behalf of the City an Eleventh Amendment to the Indenture of Lease (AL-60) between the City and Lambert Field Fueling Facilities Corporation (the "Lessee") at Lambert-St. Louis International Airport® dated July 1, 1955 (the "Lease"), authorized by Ordinance 47554 approved June 28, 1955, as amended by: the "First Amendment" (undated), authorized by Ordinance 57108 approved January 30, 1976, the "Second Amendment" dated October 1, 1977, authorized by 57585 approved April 3, 1978, the "Third Amendment" dated December 10, 1984, authorized by Ordinance 59330 approved December 7, 1984, the "Fourth Amendment" dated November 9, 1994, authorized by Ordinance 63292 approved October 14, 1994, the "Fifth Amendment" dated March 13, 1996, authorized by Ordinance 63670 approved March 12, 1996, the "Sixth Amendment" dated January 12, 2006, authorized by Ordinance 66927 approved December 14, 2005, the "Seventh Amendment" dated February 20, 2007, authorized by Ordinance 67358 approved December 19, 2006, the "Eighth Amendment" dated December 27, 2007 authorized by Ordinance 67785 approved November 30, 2007, the "Ninth Amendment" authorized by Ordinance 68111, approved October 6, 2008, the "Tenth Amendment" dated December 4, 2009, authorized by Ordinance 68476 approved November 6, 2009, and this "Eleventh Amendment", which was approved by the City's Airport Commission and the City's Board of Estimate and Apportionment and is attached hereto as ATTACHMENT "A" and made a part hereof and which: i) extends the term of the Lease as previously amended by one (1) year to December 31, 2011, and ii) increases the rent; containing a severability clause; and containing an emergency clause.

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

**SECTION ONE.** The Director of Airports and the Comptroller for the City of St. Louis (the "City") are hereby authorized and directed to enter into and execute on behalf of the City an Eleventh Amendment to the Indenture of Lease (AL-60) between the City and Lambert Field Fueling Facilities Corporation (the "Lessee") at Lambert-St. Louis International Airport® dated July 1, 1955 (the "Lease"), authorized by Ordinance 47554 approved June 28, 1955, as amended by: the "First Amendment" (undated), authorized by Ordinance 57108 approved January 30, 1976, the "Second Amendment" dated October 1, 1977, authorized by 57585 approved April 3, 1978, the "Third Amendment" dated December 10, 1984, authorized by Ordinance 59330 approved December 7, 1984, the "Fourth Amendment" dated November 9, 1994, authorized by Ordinance 63292 approved October 14, 1994, the "Fifth Amendment" dated March 13, 1996, authorized by Ordinance 63670 approved March 12, 1996, the "Sixth Amendment" dated January 12, 2006, authorized by Ordinance 66927 approved December 14, 2005, the "Seventh Amendment" dated February 20, 2007, authorized by Ordinance 67358 approved December 19, 2006, the "Eighth Amendment" dated December 27, 2007 authorized by Ordinance 67785 approved November 30, 2007, the "Ninth Amendment" authorized by Ordinance 68111, approved October 6, 2008, the "Tenth Amendment" dated December 4, 2009, authorized by Ordinance 68476 approved November 6, 2009, and this "Eleventh Amendment" was approved by the City's Airport Commission and the City's Board of Estimate and Apportionment and is to read in words and figures substantially as set out in ATTACHMENT "A", which is attached hereto and made a part hereof.

**SECTION TWO.** The sections, conditions, or provisions of this Ordinance or portions thereof shall be severable. If any section, condition, or provision of this Ordinance or portion thereof contained herein is held invalid by a court of competent jurisdiction, such holding shall not invalidate the remaining sections, conditions, or provisions or portion thereof of this Ordinance 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.

**SECTION THREE.** This being an ordinance for the preservation of public peace, health, or safety, it is hereby declared to be an emergency measure as defined in Article IV, Section 20 of the City Charter and shall become effective immediately upon its approval by the Mayor of the City.

**LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT®**



**ELEVENTH AMENDMENT TO INDENTURE OF LEASE  
LAMBERT FIELD FUELING FACILITIES CORPORATION  
NO. AL-60**

**ELEVENTH AMENDMENT  
TO  
INDENTURE OF LEASE  
(Lambert Field Fueling Facilities Corporation)**

**THIS ELEVENTH AMENDMENT**, entered into this \_\_\_\_ day of \_\_\_\_\_, 2010, between The City of St. Louis, a municipal corporation of the State of Missouri ("**Lessor**") and Lambert Field Fueling Facilities Corporation, incorporated in the State of Delaware ("**Lessee**") is an amendment to the Indenture of Lease dated July 1, 1955 ("**the Original Lease**") which was authorized by Ordinance 47554, approved June 28, 1955, as amended.

**WITNESSETH, THAT:**

**WHEREAS**, the Lessor and Lessee are parties to the Original Lease and ten previous amendments thereto (collectively the "**Lease**").

**WHEREAS**, the Lessor and Lessee desire to amend the Lease to their mutual benefit.

**NOW, THEREFORE**, for and in consideration of the promises, the mutual covenants and agreements herein contained, and other valuable considerations, the Lessor and Lessee agree as follows:

**SECTION 1.** Section 401 of the Lease is hereby deleted in its entirety and substituted with the following.

“401. The term of this Lease shall be for a period commencing on July 1, 1955 and ending on December 31, 2011, unless sooner terminated in accordance with other provisions of this Lease. Notwithstanding the foregoing, at any time beginning on January 1, 2011, the Lessor may terminate this Lease without cause on giving sixty (60) days prior written notice to Lessee.”

**SECTION 2.** Notwithstanding any rents in the Lease to the contrary, including but not limited the provisions of Section 601 (a) and (b) as amended, and Section 801, beginning January 1, 2011, Lessee shall pay to the City Forty-Eight Thousand, Four Hundred and Sixty One Dollars and Seventeen Cents (\$48,461.17) per month, payable on the first day of each month, for the term of this Lease or early termination thereof in accordance with other provisions of this Lease.

**SECTION 3.** All other terms, covenants and conditions of this Lease not inconsistent with this Eleventh Amendment are unchanged and are hereby ratified and approved and shall remain in full force and effect.

*(Remainder of page intentionally left blank)*

**IN WITNESS WHEREOF,** the parties hereto for themselves, their successors and assigns, have executed this Eleventh Amendment the day and year first above written.

Authorized by City Ordinance \_\_\_\_\_, approved \_\_\_\_\_, 2010.

The foregoing Eleventh Amendment was approved by the Airport Commission at its meeting on the \_\_\_\_ day of \_\_\_\_\_, 2010.

**THE CITY OF ST. LOUIS BY:**

\_\_\_\_\_  
Commission Chairman and Director of Airports Date

**APPROVED AS TO FORM ONLY BY:**

**COUNTERSIGNED BY:**

\_\_\_\_\_  
City Counselor Date  
City of St. Louis

\_\_\_\_\_  
Comptroller, Date  
City of St. Louis

**ATTESTED TO BY:**

\_\_\_\_\_  
Register, Date  
City of St. Louis

The Board of Estimate and Apportionment approved the foregoing Eleventh Amendment in substance at its meeting on the \_\_\_\_ day of \_\_\_\_\_ 2010.

\_\_\_\_\_  
Secretary, Date  
Board of Estimate & Apportionment

**LAMBERT FIELD FUELING FACILITIES CORPORATION**

BY: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Approved: November 23, 2010**

**ORDINANCE #68801**  
**Board Bill No. 91**

An ordinance recommended by the Board of Public Service to conditionally vacate above surface, surface and sub-surface rights for vehicle, equestrian and pedestrian travel in 2.02' wide strip on the west side of Euclid beginning at Forest Park and extending northwardly 300.35' to a point and adjacent to City Block 3885 as bounded by Laclede, Euclid, Forest Park and Kingshighway in the City of St. Louis, Missouri, as hereinafter described, in accordance with Charter authority, and in conformity with Section 14 of Article XXI of the Charter and imposing certain conditions on such vacation.

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

**SECTION ONE:** The above surface, surface and sub-surface rights of vehicle, equestrian and pedestrian travel, between the rights-of-way of:

A parcel of ground in City Block 3885, in the City of St. Louis, Missouri, described as follows:

Beginning at the point of intersection of the western line of Euclid Avenue, 60 feet wide, with the northern line of Forest Park Boulevard, 150 feet wide; thence north 06 degrees 49 minutes 00 seconds east 300.35 feet, along the western line of said Euclid Avenue, to a point; thence south 75 degrees 00 minutes 00 seconds east 2.02 feet, to a point; thence south 06 degrees 49 minutes 00 seconds west 300.35 feet, along a line parallel with the western line of said Euclid Avenue, to the northern line of said Forest Park Boulevard, to a point; thence north 75 degrees 05 minutes 00 seconds west 2.02 feet, along the northern line of said Forest Park Boulevard, to the point beginning and containing 601 square feet more or less as prepared by Pitzmans Company.

are, upon the conditions hereinafter set out, vacated.

**SECTION TWO:** Barnes-Jewish Hospital and Quadrangle Management Co. will use vacated area to consolidate property in conjunction with new construction.

**SECTION THREE:** All rights of the public in the land bearing rights-of-way traversed by the foregoing conditionally vacated street, are reserved to the City of St. Louis for the public including present and future uses of utilities, governmental service entities and franchise holders, except such rights as are specifically abandoned or released herein.

**SECTION FOUR:** The owners of the land may, at their election and expense remove the surface pavement of said so vacated street provided however, all utilities within the rights-of-way shall not be disturbed or impaired and such work shall be accomplished upon proper City permits.

**SECTION FIVE:** The City, utilities, governmental service entities and franchise holders shall have the right and access to go upon the land and occupation hereof within the rights-of-way for purposes associated with the maintenance, construction or planning of existing or future facilities, being careful not to disrupt or disturb the owners interests more than is reasonably required.

**SECTION SIX:** The owner(s) shall not place any improvement upon, over or in the area(s) vacated without: 1) lawful permit from the Building Division or Authorized City agency as governed by the Board of Public Service; 2) obtaining written consent of the utilities, governmental service entities and franchise holders, present or future. The written consent with the terms and conditions thereof shall be filed in writing with the Board of Public Service by each of the above agencies as needed and approved by such Board prior to construction.

**SECTION SEVEN:** The owners may secure the removal of all or any part of the facilities of a utility, governmental service entity or franchise holder by agreement in writing with such utilities, governmental entity or franchise holder, filed with the Board of Public Service prior to the undertaking of such removal.

**SECTION EIGHT:** In the event that granite curbing or cobblestones are removed within the vacated area, the Department of Streets of the City of St. Louis must be notified. Owner(s) must have curbing cobblestones returned to the Department of Streets in good condition.

**SECTION NINE:** This ordinance shall be ineffective unless within three hundred sixty (360) days after its approval, or such longer time as is fixed by the Board of Public Service not to exceed three (3) days prior to the affidavit submittal date as

specified in the last section of this ordinance, the owner(s) of the area to be vacated must fulfill the following monetary requirements, if applicable, as specified by the City of St. Louis Agencies listed below. All monies received will be deposited by these agencies with the Comptroller of the City of St. Louis.

- 1) CITY WATER DIVISION to cover the full expenses of removal and/or relocation of Water facilities, if any.
- 2) CITY TRAFFIC AND TRANSPORTATION DIVISION to cover the full expense of removal, relocation and/or purchase of all lighting facilities, if any. All street signs must be returned.
- 3) CITY STREET DEPARTMENT to cover the full expenses required for the adjustments of the City's alley(s), sidewalk(s) and street(s) as affected by the vacated area(s) as specified in Sections Two and Eight of the Ordinance.

**SECTION TEN:** An affidavit stating that all of the conditions be submitted to the Director of Streets for review of compliance with conditions 365 days (1 year) from the date of the signing and approval of this ordinance. Once the Director of Streets has verified compliance, the affidavit will be forwarded to the Board of Public Service for acceptance. If this affidavit is not submitted within the prescribed time the ordinance will be null and void.

**Approved: November 23, 2010**

**ORDINANCE #68802  
Board Bill No. 108**

An Ordinance repealing Ordinance No. 68087 pertaining to the authorization and the execution of a Redevelopment Agreement between the City of St. Louis ("City") and 8000 Michigan TIF, Inc. ("Developer") for the Redevelopment Area known as South Carondelet District #1 ("Redevelopment Area"); and authorizing the execution of a new redevelopment agreement between the same parties for the same Redevelopment Area; making certain findings with respect thereto; authorizing other related actions; and containing a severability clause.

**WHEREAS**, pursuant to Ordinance No. 68086, the City designated the South Carondelet District #1 redevelopment area as a "Redevelopment Area" pursuant to the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865 R.S.Mo. ("TIF Act"), approved a redevelopment plan ("Redevelopment Plan") and a redevelopment project, adopted Tax Increment Financing within the Redevelopment Area and established the South Carondelet District #1 Special Allocation Fund; and

**WHEREAS**, pursuant to Ordinance No. 68087, the City authorized the execution of a TIF redevelopment agreement between the City and Developer ("Original Redevelopment Agreement"), which Original Redevelopment Agreement was not executed by the City; 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 November 30, 2009 absent any event of Force Majeure and not later than November 20, 2010 in the event of a delay caused by an event of Force Majeure; and

**WHEREAS**, due to certain circumstances, additional time beyond that provided in the Original Redevelopment Agreement is required to complete the Work related to the Redevelopment Project, 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 enter into a new redevelopment agreement with the Developer ("Redevelopment Agreement"), in order that Developer may complete the Redevelopment Project, (i) as amended as it concerns the date by which the Work must be complete or substantially complete, and (ii) amend the time at which the Redevelopment Project will be deemed substantially complete; and

**WHEREAS**, the Board of Aldermen hereby determines that the terms of the Redevelopment Agreement attached as Exhibit A hereto and incorporate herein by reference are acceptable and that the execution, delivery and performance by the City and of the attached Redevelopment Agreement is necessary and desirable and in the best interest 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.** Ordinance No. 68087 is hereby repealed.

**SECTION TWO.** 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 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 Redevelopment Agreement and to affix the seal of the City thereto. The 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 matter herein authorized.

**SECTION THREE.** 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 Comptroller or their designated representatives.

**SECTION FOUR.** The Mayor and 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 Comptroller or their designated representatives.

**SECTION FIVE.** 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 findings shall determine that the valid portions standing alone are incomplete and are incapable of being executed in accord with the legislative intent.

**SECTION SIX.** After adoption of this Ordinance by the Board of Aldermen, this Ordinance shall become effective on the 30th day after its approval by the Mayor or by adoption over his veto; *provided however* that if, within ninety (90) days after the effective date of this Ordinance, the Developer has not (i) executed a redevelopment agreement pertaining to the Redevelopment Project and (ii) paid all fees due to the City in accordance with the terms of the redevelopment agreement, the provisions of this Ordinance shall be deemed null and void and of no effect and all the rights conferred by this Ordinance on Developer shall terminate, *provided further however*, that prior to any such termination the Developer may seek an extension of time in which to execute the Redevelopment Agreement, which extension may be granted in the sole discretion of the Board of Estimate and Apportionment of the City.

**EXHIBIT A**

**REDEVELOPMENT AGREEMENT  
Between the  
CITY OF ST. LOUIS, MISSOURI  
And  
8000 MICHIGAN TIF, INC.  
Dated as of**

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

**SOUTH CARONDELET DISTRICT #1 REDEVELOPMENT PROJECT**

<b>ARTICLE 1.</b>	<b>DEFINITIONS</b> .....	2
1.1	Definitions .....	2
<b>ARTICLE 2.</b>	<b>ACCEPTANCE OF PROPOSAL</b> .....	9
2.1	Developer Designation .....	9

2.2	Developer to Advance Costs .....	10
<b>ARTICLE 3.</b>	<b>CONSTRUCTION OF REDEVELOPMENT PROJECT .....</b>	<b>10</b>
3.1	Acquisition of Property .....	10
3.2	Condemnation .....	11
3.3	Relocation .....	11
3.4	Developer to Construct the Work .....	11
3.5	Governmental Approvals .....	11
3.6	Construction Plans; Changes .....	11
3.7	Certificate of Commencement of Construction .....	12
3.8	Certificate of Substantial Completion .....	12
<b>ARTICLE 4.</b>	<b>REIMBURSEMENT OF DEVELOPER COSTS .....</b>	<b>13</b>
4.1	City's Obligation to Reimburse Developer .....	13
4.2	Reimbursements Limited to Reimbursable Redevelopment Project Costs; Developer's Right to Substitute .....	13
4.3	Cost Savings and Excess Profits. ....	14
4.4	Condominium Conversion. ....	15
4.5	City's Obligations Limited to Special Allocation Fund and Bond Proceeds .....	16
<b>ARTICLE 5.</b>	<b>TIF OBLIGATIONS .....</b>	<b>16</b>
5.1	Conditions Precedent to the Issuance of TIF Notes .....	16
5.2	Issuance of TIF Notes .....	17
5.3	Issuance of TIF Bonds. ....	17
5.4	Application of TIF Bond Proceeds .....	19
5.5	Cooperation in the Issuance of TIF Obligations .....	19
5.6	Subordinate Notes .....	19
5.7	City to Select Underwriter and Financial Advisor; Term and Interest Rate .....	20
<b>ARTICLE 6.</b>	<b>SPECIAL ALLOCATION FUND; COLLECTION AND USE OF TIF REVENUES .....</b>	<b>20</b>
6.1	Creation of Special Allocation Fund .....	20
6.2	Certification of Base for PILOTS and EATS. ....	20
6.3	Application of Available Revenues .....	21
6.4	Cooperation in Determining TIF Revenues .....	21
6.5	Obligation to Report TIF Revenues .....	21
6.6	Notice to City of Transfer .....	21
<b>ARTICLE 7.</b>	<b>GENERAL PROVISIONS .....</b>	<b>22</b>
7.1	Developer's Right of Termination .....	22
7.2	City's Right of Termination .....	22
7.3	Successors and Assigns. ....	22
7.4	Remedies .....	23
7.5	Force Majeure .....	24
7.6	Notices .....	24
7.7	Conflict of Interest .....	26
7.8	Damage or Destruction of Redevelopment Project .....	26
7.9	Inspection .....	26
7.10	Choice of Law .....	26
7.11	Entire Agreement; Amendment .....	26
7.12	Counterparts .....	27
7.13	Severability .....	27
7.14	Representatives Not Personally Liable .....	27
7.15	Attorney's Fees. ....	27

7.16 Actions Contesting the Validity and Enforceability of the Redevelopment Plan . . . . . 27

7.17 Release and Indemnification . . . . . 27

7.18 Survival . . . . . 29

7.19 Maintenance of the Property . . . . . 29

7.20 Non-Discrimination . . . . . 29

7.21 Fair Employment . . . . . 29

7.22 MBE/WBE Compliance. . . . . 30

**ARTICLE 8. REPRESENTATIONS OF THE PARTIES . . . . . 30**

8.1 Representations of the City . . . . . 30

8.2 Representations of the Developer . . . . . 30

EXHIBIT A Legal Description of the Redevelopment Area

EXHIBIT B Reimbursable Redevelopment Project Costs

EXHIBIT C Form of Certificate of Commencement of Construction

EXHIBIT D Form of Certificate of Reimbursable Redevelopment Project Costs

EXHIBIT E Form of Certificate of Substantial Completion

EXHIBIT F Equal Opportunity and Nondiscrimination Guidelines

EXHIBIT G Form of MBE/WBE Subcontractor’s List

EXHIBIT H Form of MBE/WBE Utilization Statement

**REDEVELOPMENT AGREEMENT**

**THIS REDEVELOPMENT AGREEMENT** (this “*Agreement*”) is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, 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 **8000 MICHIGAN TIF, INC.**, a corporation duly incorporated and existing under the laws of the State of Missouri (the “*Developer*”). (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, (2000) (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 April 26, 2008 and May 3, 2008 in the St. Louis Daily Record, 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. An affiliate of Developer submitted its development proposal dated April 18, 2008 (the “Redevelopment Proposal”) to the TIF Commission for redevelopment of the Redevelopment Area.

D. On June 4, 2008, following a public hearing held on that date, in accordance with the TIF Act, the TIF Commission adopted a resolution approving the Redevelopment Plan titled “South Carondelet District #1 TIF Redevelopment Plan” dated April 18, 2008 (as may amended, the “Redevelopment Plan”), the Redevelopment Project described in the Redevelopment Plan (the “Redevelopment Project”) and the Redevelopment Area, and recommending that the Board of Aldermen: (1) adopt tax increment financing with respect to the Redevelopment Area by passage of an ordinance complying with the terms of Section 99.845 of the Act; and (2) adopt an ordinance in the form required by the Act (a) approving the Redevelopment Plan, (b) approving and designating the Redevelopment Area as a “redevelopment area” as provided in the Act, (c) approving the Redevelopment Project, and (d) creating the South Carondelet District #1 Special Allocation Fund.

E. On July 28, 2008, after due consideration of the TIF Commission’s recommendations, the Mayor signed Ordinance No. 68086 [Board Bill No. 147] 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, adopting tax increment allocation financing within the Redevelopment Area and establishing the Special Allocation Fund.

F. On July 28, 2008, the Mayor signed Ordinance No. 68087 [Board Bill No. 148] affirming adoption of the Redevelopment Area, Redevelopment Plan and Redevelopment Project, designating the Developer as developer of the Redevelopment Area, and authorizing the City to enter into this Agreement with Developer.

G. On July 28, 2008, the Mayor signed Ordinance No. 68088 [Board Bill No. 149] authorizing the issuance of TIF Notes 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.

H. Pursuant to Ordinance No. 68087, a redevelopment agreement was approved but it was never fully executed ("Original Redevelopment Agreement") and due to certain circumstances, additional time beyond that provided in the Original Redevelopment 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 obligations.

I. On \_\_\_\_\_, \_\_\_\_\_, the Mayor signed Ordinance No. \_\_\_\_\_ [Board Bill No. \_\_\_\_] affirming adoption of the Redevelopment Area, Redevelopment Plan and Redevelopment Project, designating the Developer as developer of the Redevelopment Area, and authorizing the City to enter into this Agreement with Developer.

J. The Board of Aldermen hereby determines that the acceptance of the Redevelopment Proposal and the fulfillment generally of this Agreement are 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.

K. Pursuant to provisions of the TIF Act and Ordinance Nos. 68086, \_\_\_\_\_ and 68088 [Board Bill Nos. 147, \_\_\_\_\_ and 149], the City is authorized to enter into this 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 the 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 1. DEFINITIONS

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

"*Acquisition Costs*" means the consideration paid by Developer or its Related Entity to a third party to acquire fee simple interest in the Property.

"*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 (2000), as amended.

"*Agreement*" means this Redevelopment Agreement, 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 company or enterprise with total assets in excess of \$50,000,000.

"*Approving Ordinance*" means Ordinance No. 68086 [Board Bill No. 147] 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.

"*Authority*" means The Industrial Development Authority of The City of St. Louis, Missouri, a public corporation duly organized under Chapter 349 of the Revised Statutes of Missouri.

"*Authorizing Ordinance*" means Ordinance No. \_\_\_\_\_ [Board Bill No. \_\_\_\_] affirming approval and adoption of the Redevelopment Plan, Redevelopment Project, and designation of the Redevelopment Area, designating Developer as the developer

of the Redevelopment Area, and authorizing the City to enter into a Redevelopment Agreement with Developer.

“*Available Revenues*” means all monies on deposit from time to time (including investment earnings thereon) in (a) the PILOTS Account, and (b) subject to annual appropriation, the EATS Account 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.

“*Bond Proceeds*” means the gross cash proceeds from the sale of TIF Bonds before payment of Issuance Costs, together with any interest earned thereon.

“*Certificate of Commencement of Construction*” means a document substantially in the form of **Exhibit C**, attached hereto and incorporated by reference herein, delivered by Developer to the City in accordance with this Agreement and evidencing commencement of construction of the Redevelopment Project.

“*Certificate of Reimbursable Redevelopment Project Costs*” means a document substantially in the form of **Exhibit D**, 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 E**, 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.

“*City Clerk*” means the Register of the City.

“*Comptroller*” means the Comptroller of the City.

“*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 applicable law.

“*Costs of Conversion*” means the sum of (a) the outstanding balance due on the HUD-insured loan or any other loans secured by the property, if any, at the time of Developer’s notification of condominium conversion; (b) operating losses documented by income/expense statements for the Property; (c) documented construction and other costs incurred with respect to the conversion; (d) the amount of Developer monetary equity (but not equity related to any tax credits) that has been invested in the portion of Redevelopment Project to be converted to condominiums; and (e) the remaining balance due on the original developer fee payment, if any.

“*Developer*” means 8000 Michigan TIF, Inc., a corporation duly incorporated and existing under the laws of the State of Missouri, or its permitted successors or assigns in interest.

“*Disclosure 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 offerings of municipal securities 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.

“*Economic Activity Taxes*” or “*EATs*” shall have the meaning ascribed to such term in Section 99.805(4) 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 and this Agreement.

*“Issuance Costs”* means the amount set forth in **Section 2.2(v)** of this Agreement incurred by the City in furtherance of the issuance of TIF Notes plus all 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, Disclosure Counsel and Bond Counsel), the City’s administrative fees and expenses (including fees and costs of its planning consultants and the SLDC), underwriters’ discounts and fees, the costs of printing any TIF Obligations 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 Obligations.

*“MBE/WBE Compliance Officer”* means the City’s Assistant Airport Director, Department of MBE/WBE Certification and Compliance.

*“MBE/WBE Subcontractor’s List”* means the form of City of St. Louis MBE/WBE Subcontractor’s List published by the Board of Public Service of the City, such form being attached hereto as **Exhibit G** and incorporated herein by this reference.

*“MBE/WBE Utilization Statement”* means the form of City of St. Louis MBE/WBE Utilization Statement prepared by the Board of Public Service of the City published by the Board of Public Service of the City, such form being attached hereto as **Exhibit H** and incorporated herein by this reference.

*“Maturity Date”* means the date that is twenty three (23) years after the effective date of the Approving Ordinance.

*“Note Ordinance”* means Ordinance No. 68088 [Board Bill No. 149] adopted by the Board of Aldermen and signed by the Mayor authorizing the TIF Note(s) and TIF Obligations, any trust indenture relating thereto, and all related proceedings.

*“Notice of Conversion”* means the written notice submitted to the City by Developer that Developer intends to initiate a conversion of all or a portion of the Redevelopment Project from rental or leased area to condominium units, which shall contain the information required by Section 4.4 of this Agreement and shall specify the portion of the Redevelopment Project to be so converted.

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

*“Original Redevelopment Agreement”* means the redevelopment agreement approved pursuant to Ordinance 68087, but never fully executed.

*“Payments in Lieu of Taxes”* or *“PILOTs”* shall have the meaning ascribed to such term in Section 99.805(10) of the TIF Act.

*“Post Completion Funding Source”* means each of the following sources:

1. Tax Credits:

(a) The total value of the proceeds from the sale of any transferable tax credits approved for the Redevelopment Project, based on the amounts approved by the tax credit issuing authority and the purchase prices for such credits set forth in any tax credit purchase agreement; if, pursuant to such purchase agreement, any portion of the proceeds is to be paid subsequent to the date upon which the statement required by Section 4.3 is submitted, the present value of such portion shall be calculated by the City using a time period determined by the City to be reasonable and a 7% present value rate; if no tax credit purchase agreement has been executed, then the total value of such proceeds shall be calculated as 87% of the amount approved by the tax credit issuing authority.

(b) The equity and/or loan proceeds available from investor members or partners in the Redevelopment Project who will be entitled to receive any non-transferable tax credits approved for the Redevelopment Project, per the ownership documentation for the Redevelopment Project property; if, pursuant to such purchase agreement, any portion of the proceeds is to be paid subsequent to the date upon which the statement required by Section 4.3 is submitted, the present value of such portion shall be calculated by the City using a time period determined by the City to be reasonable and a 7% present value rate ; provided, that, if the Project has been approved for a New Markets Tax Credit investment

by a New Markets Tax Credit allocate, but has not yet entered into any agreement pursuant to which such loan or equity proceeds shall be made available, then the value of such proceeds shall be 25% of the face value of the approved New Markets Tax Credit investment.

The Developer shall substantiate the amount of any tax credits approved for the Redevelopment Project and the proceeds or equity related thereto by providing to the City documentation from accountants, tax credit authorities and tax credit purchasers or investors.

(2) Sales Proceeds:

(a) All net sales proceeds actually derived from the sale of any portion of the Redevelopment Project, which net sales proceeds shall be documented by copies of the seller's closing statements for such sales, and

(b) If, at the time of the submittal required pursuant to Section 4.3 of this Agreement, there remain units or portions of the Redevelopment Project which are being marketed and listed as for-sale but are unsold, ninety percent (90%) of the average sale price for all sold units or portions, taking into account the size, location and amenities associated with such sold units as compared to the unsold units or portion, discounted by first, a percentage equal to the average sales commissions paid to unrelated third parties and applied to the discounted listing price; and second, closing costs for sold units (stated as the average amount of closing costs for such sold units).

(3) TIF Financing: the maximum amount of TIF financing available to the Redevelopment Project, as such amount is set forth in Section 4.1 hereof; and

(4) Value of Income-Producing Space: if the Redevelopment Project includes any leased space or space intended for lease (such space being the "Income-Producing Space"), the value of such Income Producing Space, which value shall be calculated by dividing the Stabilized Net Operating Income (as defined below) of such Income Producing Space by a capitalization rate of nine and one-half percent (9.5%). The square footage of Income-Producing Space in the Redevelopment Project shall not exceed the square footage of Income-Producing Space set forth in the TIF Application. In addition to the other materials required to be submitted by subparagraph 4.3 hereof, Developer shall submit a 10-year operating proforma, including income and expense projections, for all Income-Producing Space in the Redevelopment Project, together with copies of all leases, letters of intent, and operating expense documentation, if any, related to such Income-Producing Space.

"*Project Fund*" means the Project Fund created in the Note Ordinance.

"*Project Lender*" means a commercial bank, savings bank, savings and loan association, credit union or other financial institution that has loaned funds to the Developer to be used for construction of the Redevelopment Project and has secured such loan with a mortgage or security interest in the Redevelopment Project.

"*Property*" means the real property (including without limitation all options held by third parties, fee interests, leasehold interests, tenant-in-common interests and such other like or similar interests) and existing improvements in the Redevelopment Area as set forth in the Redevelopment Plan.

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

"Redevelopment Area" means the real property described in **Exhibit A**, attached hereto and incorporated herein by reference.

"*Redevelopment Plan*" means the plan titled "South Carondelet District #1 TIF Redevelopment Plan" dated April 18, 2008, approved by the City pursuant to the Approving Ordinance; as such plan may from time to time be amended in accordance with the TIF Act.

"*Redevelopment Project*" means the Redevelopment Project identified in the Redevelopment Plan consisting of the rehabilitation of the existing building into a mixed use with approximately seventy-eight (78) residential units and ground floor commercial space of approximately 22,000 square feet and construct on the adjacent vacant lot approximately sixteen (16) residential units

"*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 “South Carondelet District #1 TIF Application,” dated April 18, 2008, as submitted by an affiliate of the Developer to the City.

“*Reimbursable Redevelopment Project Costs*” means those Redevelopment Project Costs as described in **Exhibit B**, 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 South Carondelet District #1 Special Allocation Fund, created by the Approving Ordinance in accordance with the TIF Act, and including the accounts and sub-accounts for the Redevelopment Project into which TIF Revenues are from time to time deposited in accordance with the TIF Act and this Agreement.

“*Stabilized Net Operating Income*” shall be calculated as follows:

1. For any portion of the Income Producing Space which has actually been leased, the annualized rental income from such space, less annualized actual and/or reasonable operating expenses as determined by the City (excluding debt service);

PLUS

2. For any portion of the Income Producing Space which is available for lease but has not been leased, the result of the following equation:

(a) The amount of net leaseable square footage multiplied by the average annual rent per square foot of the Income Producing Space which has been actually leased, taking into account the size, location and amenities associated with such space not yet leased as compared to the space leased (provided, that if no such space has been actually leased, the lease rate(s) used shall be the lease rate(s) specified by the Developer in the TIF;

LESS

(b) The amount of net leaseable square footage multiplied by the average annualized actual and/or reasonable operating expenses as determined by the City (excluding debt service) per square foot of the Income Producing Space.

The City shall incorporate a 7% vacancy rate for all Income-Producing Space.

“*TIF Bonds*” means tax increment revenue bonds, if any, authorized and issued by the Authority 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 one or more series of tax increment revenue notes issued by the City pursuant to and subject to this Agreement and the Note Ordinance 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 or the Authority, as the case may be, pursuant to the TIF Act and in accordance with this Agreement.

“*TIF Revenues*” means: (1) payments in lieu of taxes (as that term is defined in Section 99.805(10) of the TIF Act) 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 Sections 99.845.1 and 99.855.1 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) subject to annual appropriation by the Board of Aldermen, 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, 2007 (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, taxes levied pursuant to Section 70.500 of the Revised Statutes of Missouri, as amended, taxes levied for the purpose of public transportation pursuant to Section 94.660 of the Revised Statutes of Missouri, as amended, and licenses, fees or special assessments other than payments in lieu of taxes and penalties and interest thereon, all as provided in Section 99.845 of the TIF Act. Notwithstanding the foregoing, TIF Revenues shall not include the operating levy for school purposes imposed by or any sales tax imposed by the Transitional School District of the City of St. Louis.

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

“*Verified Total Project Costs*” means the sum total of all reasonable or necessary costs incurred, and any such costs incidental to the Redevelopment Project or the Work, including, but not limited to, all Acquisition Costs, Redevelopment Project Costs and Reimbursable Redevelopment Project Costs, as limited by the provisions of Section 4.3 hereof.

“*Work*” means all work necessary to prepare the Redevelopment Area and to construct or cause the construction and completion of the Redevelopment Project described in the Redevelopment Proposal, Redevelopment Plan and this Agreement, including but not limited to: (1) property acquisition; (2) site preparation and environmental remediation; (3) construction of new structures or rehabilitation or reconstruction of improvements within the Redevelopment Area; (4) construction, reconstruction, renovation and/or rehabilitation of related infrastructure and/or public improvements, including without limitation surrounding roads, sidewalks, sewer, water, electrical, parking and other utilities; (5) professional services, including, but not limited to, architecture, engineering, surveying, financing, legal, planning and consulting; (6) and all other work described in the Redevelopment Proposal, Redevelopment Plan and this Agreement, or reasonably necessary to effectuate the intent of this Agreement.

## ARTICLE 2. ACCEPTANCE OF PROPOSAL

**Developer Designation.** The City hereby selects the Developer to perform or cause the performance of the Work in accordance with the Redevelopment Plan and this Agreement and all Governmental Approvals. To the extent of any inconsistency among the foregoing, the parties agree that the Redevelopment Plan shall govern.

**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:

(i) the City acknowledges payment by the Developer of a Five Thousand Dollar and no/100 (\$5,000.00) TIF Application Fee;

(ii) the City acknowledges that, prior to the execution of this Agreement, the Developer paid the sum of Seven Thousand Four Hundred Dollars and 77/100 (\$7,400.77) (which sum represents 0.3% of the maximum amount of TIF Notes allowed to be issued by the City pursuant to **Section 4.1** of this Agreement), which monies have been paid one half to the Comptroller and one half to the SLDC to reimburse the Comptroller and the SLDC for their administrative costs in reviewing the Redevelopment Plan and the Redevelopment Proposal;

(iii) the Developer shall, within ten (10) days after the date of execution of this Agreement, pay the sum of Seven Thousand Four Hundred Dollars and 77/100 (\$7,400.77) (which sum represents 0.3% of the maximum amount of TIF Notes allowed to be issued by the City pursuant to **Section 4.1** of this Agreement), which monies shall be paid one half to the Comptroller and one half to the SLDC to reimburse the Comptroller and the SLDC for their administrative costs in reviewing the Redevelopment Plan and the Redevelopment Proposal;

(iv) the Developer shall pay to the Comptroller an additional amount to reimburse the Comptroller for its actual legal expenses incurred in connection with the review of the Redevelopment Proposal, the review and adoption of the Redevelopment Plan and the negotiation, execution and implementation of the Redevelopment Agreement, which amount shall be paid as follows: (i) all such costs incurred through the date of execution of the Redevelopment Agreement shall be paid within ten (10) days after the execution of the Redevelopment Agreement, and (ii) all such costs incurred after the date of execution of the Redevelopment Agreement and prior to the date upon which the City receives from Developer a Certificate of Reimbursable Redevelopment Project

Costs shall be paid concurrently with the initial issuance of the TIF Notes; and

(v) the Developer shall, concurrently with the issuance of any TIF Notes, pay to the City a flat fee to be reasonably determined by the City in its sole discretion at the time of issuance to pay for the City's Issuance Costs of such TIF Notes; and

(vi) 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 **Articles IV and V** of this Agreement.

### **ARTICLE 3. CONSTRUCTION OF REDEVELOPMENT PROJECT**

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

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

**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.

**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 September 1, 2011 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, but under no circumstance shall such time to complete the Work extend beyond September 1, 2012.

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 take all actions necessary to apply for the wage and hour determinations and otherwise comply with such laws.

**Governmental Approvals.** The City and, at its direction, 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.

**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, subject to the provisions of **Section 3.4**, including but not limited to, dates of commencement and completion (subject to the time limitations set forth in this Agreement), 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 SLDC, which consent shall not be unreasonably withheld or delayed. For purposes of this **Section 3.6**, "material changes" shall mean (i) any change that could reasonably be expected to result in a decrease in the aggregate amount of TIF Revenues generated within the Redevelopment Area to an amount less than 90% of the aggregate amount of TIF Revenues as projected in that certain Cost-Benefit Analysis for the South Carondelet District #1 TIF Redevelopment Plan dated as of April 18, 2008 (as may be amended), and placed on file with SLDC; or (ii) any change that would reduce the final

estimated commercial square footage by more than ten percent (10%) as set forth in this Agreement, the Redevelopment Proposal, Redevelopment Plan and the Construction Plans.

**Certificate of Commencement of Construction.** The Developer shall furnish to the SLDC, with a copy to the Comptroller, a Certificate of Commencement of Construction, which certificate shall be submitted for the Redevelopment Project in accordance with the schedule set forth in **Section 3.4** of this Agreement and in the form of **Exhibit C** attached hereto and incorporated herein by reference. The Certificate of Commencement of Construction shall be deemed accepted by the SLDC upon receipt of the same.

**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 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 Mayor or his designee or 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, within thirty (30) days following delivery of the Certificate of Substantial Completion 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 the SLDC in accordance with this Section and the thirty (30) day period shall begin anew. Upon acceptance of the Certificate of Substantial Completion by the Mayor or his designee and the SLDC for the Redevelopment Project, 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 the Work. The Certificate of Substantial Completion shall be in substantially the form attached as **Exhibit E**, attached hereto and incorporated by referenced herein.

#### **ARTICLE 4. REIMBURSEMENT OF DEVELOPER COSTS**

**City's Obligation to Reimburse Developer.** Subject to the terms of the Note Ordinance and this Agreement, the City agrees to reimburse Developer for the verified Reimbursable Redevelopment Project Costs in a total amount not to exceed Two Million Four Hundred Sixty-Six Thousand Nine Hundred Twenty-Four Dollars (\$2,466,924) plus Issuance Costs to be allocated to the Redevelopment Project.

Subject to the terms of the Note Ordinance and this Agreement, the City agrees to issue TIF Notes to Developer to evidence the City's obligation to reimburse Developer for verified Reimbursable Redevelopment Project Costs in an amount not to exceed **Two Million Four Hundred Sixty-Six Thousand Nine Hundred Twenty-Four Dollars (\$2,466,924), plus Issuance Costs** and interest as provided in Section 5.2 of this Agreement, subject to the limitations of **Article IV** of this Agreement.

**Reimbursements Limited to Reimbursable Redevelopment Project Costs; Developer's Right to Substitute.** Nothing in this Agreement shall obligate the City to issue TIF Notes or 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 provide to the City (a) itemized invoices, receipts or other information evidencing such costs; and (b) a Certificate of Reimbursable Redevelopment Project Costs constituting certification by the Developer that such cost is eligible for reimbursement under the TIF Act. Within thirty (30) days of the City's receipt from the Developer of a Certificate of Reimbursable Redevelopment Project Costs, the City shall review and act upon such Certificate of Reimbursable Redevelopment Project Costs. The parties agree that each of the categories of costs set forth in **Exhibit B**, attached hereto and incorporated herein by this reference, shall constitute Reimbursable Redevelopment Project Costs which are eligible for reimbursement in accordance with the TIF Act and this Agreement. The Developer shall be entitled to reimbursement for Redevelopment Project Costs from any of the categories set forth in **Exhibit B** 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 (i)-(v)**, 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 the thirty (30) day period referenced in this **Section 4.2**, identifying the ineligible cost and the basis for determining the cost to be ineligible, whereupon the Developer shall have the right to identify and substitute other Redevelopment Project Costs as Reimbursable Redevelopment Project Costs with a supplemental application for payment and the thirty (30) day period shall begin anew. If the City fails to approve or disapprove any Certificate of Reimbursable Redevelopment Project Costs within thirty (30) days after receipt thereof, the Certificate of Reimbursable Redevelopment Project Costs shall be deemed approved.

**Cost Savings and Excess Profits.** Within one hundred eighty (180) days after the submission of the Certificate of Substantial Completion by Developer in accordance with **Section 3.8** of this Agreement, Developer also shall furnish to the City for the City's review and approval, (a) a statement of Verified Total Project Costs, with evidence of billings and payments for each expenditure, including itemized invoices, receipts, and pay applications or other evidence of payment as appropriate for the type of cost; and (b) a statement of each and every Post Completion Funding Source for the Redevelopment Project.

If the Redevelopment Project includes a for-sale condominium component, the statements required by this Section 4.3 shall not be submitted until a minimum of 80% of the condominium units included in the Redevelopment Project have been sold, and such statements shall be submitted within sixty (60) days following such sale of 80% of such condominium units.

Developer shall not include developer fees, project management, construction management 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 Related Entity, the amount of such costs shall not exceed the amount set forth in the Redevelopment Plan for such services, or, if the cost for such service is not explicitly set forth in the Redevelopment Plan as an individual line item, an amount determined by the City as acceptable. 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 pay applications submitted to Developer by the construction contractor. The City shall determine whether particular costs are general requirements and includable in the contractor's fee allowance or are construction costs to which the aggregate contractor's fee allowance shall be applied, using the Cost Certification Guide promulgated by the Missouri Housing Development Commission as a guide for such determinations. The City shall complete its review of the statements and other documentation provided by the Developer pursuant to this Section and shall notify Developer if such documentation is acceptable and complete within forty-five (45) days of receipt by the City. Should the City notify Developer that the documentation submitted by the Developer is not acceptable or is not complete, the City shall specify which items of documentation are missing or unacceptable and the manner in which Developer may remedy such deficiencies, and Developer may make supplemental submissions to address such deficiencies, provided, however, that such supplemental submissions shall not include any materials with respect to costs incurred or other events that have taken place subsequent to the date the original submission was made. If requested by the City, Developer shall also submit an affidavit as to the accuracy of the statements as to the costs, the relationship of any payee to the Developer, the accuracy of the statements as to the amounts and types of tax credits received or other funding sources received, and the veracity of any other aspect of the statements of verified total project costs or Post-Completion Funding Sources. The City shall review any supplemental materials provided by the Developer within forty-five (45) days of receipt and shall notify Developer if such documentation is acceptable and complete within forty-five (45) days of receipt by the City. Developer shall respond to any notification by the City pursuant to this section within sixty (60) days of receipt of such notification. Once the City has issued any such notification, the City shall not be required to make the calculations specified in the following paragraph until the City has received all documentation deemed necessary by the City in order to make such calculations, provided, however, that if Developer fails to respond to any notification within such sixty (60) day period, the City shall have the right to finalize the calculations specified in the following paragraph based on the information and documentation then available to the City and the Developer shall accept the results of such finalized calculations for purposes of the discharge of TIF notes as specified in the following paragraph. Either the City or the Developer may waive or extend the time periods for notification and response set forth herein.

To the extent that, in the City's determination, the sum of Post Completion Funding Sources as identified by the City exceeds the sum of: (x) Verified Total Project Costs, plus (y) four percent (4%) of the Acquisition Costs, plus (z) fifteen percent (15%) of all Verified Total Project Costs other than Acquisition Costs, then Developer hereby agrees that 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 Notes which shall be issued by the City in accordance with Section 5.2 of this Agreement shall be reduced by an amount in the aggregate equal to seventy-five percent (75%) of the total amount of such excess, as calculated by the City in accordance herewith. Developer agrees that the City may discharge any TIF Notes already issued at the time of such calculation in an amount in the aggregate equal to seventy-five percent (75%) of the total excess.

**Condominium Conversion.** Upon initiating a condominium conversion of any portion of the Redevelopment Project that has previously been leased or rented (which conversion shall not be initiated any earlier than five (5) years following the Substantial Completion of the Redevelopment Project, Developer shall notify the City in writing of such conversion. Notice of such condominium conversion shall include (a) documentation as to the balance due to third parties unrelated to the Developer in any manner on any secured or unsecured debt or equity financing for such leased or rented portion of the Redevelopment Project; (b) the amount of and firm commitment for any replacement loan required to commence the conversion; (c) annual operating and expense statements for each Developer fiscal year subsequent to the commencement of construction on the leased or rental portion of the

Redevelopment Project; (d) schedule of sales prices for all proposed condominium units; (e) documentation of any monetary Developer Equity previously invested in such leased or rented portion; and (f) revenue projections for the Special Allocation Fund based on the sales prices for the units.

**4.1.1 The City's Rights.** The City shall have thirty (30) days from receipt of a Notice of Conversion to review and approve the Notice of Conversion, or notify Developer of City's objections thereto. The City's right to object to the Notice of Conversion shall be limited to objections based on the insufficiency of the projected Special Allocation Fund revenues to retire any outstanding TIF notes or bonds and the insufficiency of documentation required herein. Developer shall provide any additional documentation requested by City, to City's satisfaction, after which City shall have an additional thirty (30) days to object solely on the basis of the insufficiency of the Special Allocation Fund revenues to retire any outstanding TIF notes or bonds. Should City fail to object to the Notice of Conversion within the 30-day review period provided for in this Agreement, Developer's condominium conversion plan shall be deemed approved by the City.

**4.1.2 Approval.** Upon approval of the Notice of Conversion, Developer shall provide a progress report on the condominium sales to St. Louis Development Corporation on each three-month anniversary of the date of the Notice of Conversion until a minimum of 95% of such units are sold. Each progress report shall include the following: (a) number of units and sales closed, the size of each unit sold, the gross amounts paid for the sales closed, and costs of sale, which shall be documented by Purchaser's and Seller's closing statements; (b) balance due on any other loans secured by the property; (d) monthly income and expense statement for remaining rental units, including any interest payments made or accrued with respect to any loans secured by the property; and (e) conversion costs incurred, documented by contracts for any work and invoices for any work.

**4.1.3 Condominium Conversion Clawback.** When aggregate Net Sales Proceeds exceed the Costs of Conversion plus a new Developer's Fee in the amount of 10% of the Costs of Conversion, Developer shall pay 90% of all future Net Sales Proceeds into the Special Allocation Fund until the amount in the Special Allocation Fund equals the amount of TIF financing originally provided to the Redevelopment Project.

Should Developer fail to provide any of the notifications or reports described herein or fail to make Net Sales Proceeds payments into the Special Allocation Fund as described herein, City may cancel all outstanding TIF Notes and recover all amounts paid to Developer from the Special Allocation Fund.

**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. The City has not pledged its full faith and credit relative to the City's obligation to issue the TIF Obligations or to pay any Reimbursable Redevelopment Project Costs. The TIF Obligations shall be special, limited obligations of the City, and shall not constitute debt to the City within any constitutional or statutory meaning of the word "debt."

## ARTICLE 5. TIF OBLIGATIONS

**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 D**, 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**.

**Issuance of TIF Notes** The City agrees to issue one or more TIF Notes as provided in this Agreement and 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. The TIF Notes shall be in the form attached to the Note Ordinance as **Exhibit B**, provided that if the Note Ordinance is repealed or otherwise amended to amend such form of TIF Note, the TIF Notes shall not be amended for the purposes of this Agreement without the written consent of Developer.

**5.1.1 Terms.** Each TIF Note shall bear interest at a fixed rate per annum determined on the date that is not less than ten (10) and not more than sixty (60) business 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 such TIF Note, in the opinion of Bond Counsel, is not exempt from Federal income taxation (the "Taxable Rate"), or (ii) plus two percent (2%) if the interest on such TIF Note, 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 interest from their registration date or from the most recent Payment Date to which interest has been paid or duly provided for.

**5.1.2 Procedures for Issuance of TIF Notes.** Within a reasonable period of time not to exceed ninety (90) days of Developer's satisfaction of the conditions of **Section 5.1** of this Agreement the City shall issue a TIF Note to an Original Purchaser 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 5.2.2**, 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.

**5.1.3 Special Mandatory Redemption of TIF Notes.** All TIF Notes are subject to special mandatory redemption by the City, in whole at any time or in part on each March 1 and September 1 (each, a "Payment Date") occurring after the acceptance by the City of the Certificate of Substantial Completion 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.

## **5.2 Issuance of TIF Bonds.**

**5.2.1** The City may, in its sole and absolute discretion, issue or cause to be issued TIF Bonds at any time in an amount sufficient to refund all or a portion of the outstanding TIF Notes.

**5.2.2** Upon receipt of a written request by Developer and upon the City's underwriter's recommendation in favor of issuing TIF Bonds and recommendation of the principal amount thereof based on the criteria set forth below, the City shall use its best efforts to cause the Authority to issue TIF Bonds as described in this Section. The aggregate gross cash proceeds from the sale of the TIF Bonds before payment of Issuance Costs, together with any interest accrued thereon ("Bond Proceeds") of such TIF Bonds will be finally determined by the City after receiving the underwriter's recommendation based on the criteria set forth below. The City shall not be obligated to cause the Authority to issue such TIF Bonds unless the underwriter determines that all of the following criteria are satisfied as of the date of issuance of such bonds, unless such criteria are waived by the City's underwriter. 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 Developer may incur in complying with this Section. Notwithstanding anything in this Section to the contrary, Developer shall be liable for all costs incurred by the City or the Authority in the event the Developer has requested the issuance of bonds and the City's underwriter has determined that such bonds cannot be issued at such time.

**5.2.2.1** Criteria for Issuance. The underwriter's recommendation for issuance of TIF Bonds and the principal amount thereof shall be based on the following criteria:

- (i) Acceptance by the City of the Certificate of Substantial Completion;
- (ii) Review of projections of TIF Revenues available for debt service as proposed by an independent qualified consultant. Such projections must show that (A) if all available TIF Revenues were to be applied to the immediate repayment of the TIF Bonds, the TIF Bonds would reasonably be anticipated to be retired within twenty-three (23) years from the effective date of the Approving Ordinance, and (B) based on a maturity date twenty-three (23) years from the effective date of the Approving Ordinance, the TIF Bonds are reasonably likely to achieve debt service coverage ratio reasonably acceptable to the City's underwriter;
- (iii) Developer's documentation of stabilization of the Redevelopment Project for a minimum period of two (2) years after substantial completion as evidenced in a report to the City prepared by a qualified independent consultant to be paid for by the City, which report also sets forth TIF revenue projections for the Redevelopment Project in connection with the issuance of the TIF Bonds;

- (iv) The aggregate net projected debt service on the TIF Bonds (taking into account the principal portion of the TIF Bonds that are issued to establish a reserve fund and to pay Issuance Costs, and including any reserve fund earnings) will be lower than the net average annual debt service on the outstanding TIF Notes, unless the Developer voluntarily elects to defer or forgive principal of and/or interest on the TIF Notes in an amount necessary to make the aggregate net projected debt service on the TIF Bonds lower than the net average annual debt service on the outstanding TIF Notes; and
- (v) The TIF Bonds can be sold at an aggregate net interest cost which is less than the aggregate net interest cost of the TIF Notes to be redeemed.

**Application of TIF Bond Proceeds.** Proceeds of any TIF Bonds shall be applied:

- 5.2.3** To the payment of costs relating to the issuance of the TIF Bonds;
- 5.2.4** To the payment of outstanding principal of and interest on the TIF Notes to be refunded;
- 5.2.5** To the payment of capitalized interest on the TIF Bonds; and
- 5.2.6** To the establishment of a debt service reserve fund for the TIF Bonds in a reasonable amount of the principal amount of TIF Bonds to be issued, as to be determined by the City's underwriter.

**Cooperation in the Issuance of TIF Obligations.** Developer covenants to cooperate and take all reasonable actions necessary to assist the City and its Bond Counsel, the Authority, 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 Obligations, including disclosure of tenants of the Redevelopment Area and the non-financial terms of the leases between Developer and such tenants. Developer will not be required to disclose to the general public or any investor any proprietary or confidential information, including financial information, pertaining to Developer, but upon the execution of a confidentiality agreement acceptable to Developer, 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. 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, provided, that Developer shall satisfy this and any other obligation under this Agreement to make any provision a covenant running with the land by recording this Agreement in the Office of the Recorder of Deeds of the City of St. Louis.

**Subordinate Notes.** TIF Notes may be issued in two series, with one series subordinate to TIF Notes of the other series issued hereunder (the "Subordinate Notes"), such that no payment of principal or interest on any such Subordinate Notes may be made while any TIF Notes are outstanding. All such Subordinate Notes shall be payable as to principal and interest according to the terms set forth in **Sections 5.2 and 6.3** of this Agreement.

If the amount of TIF Bonds issued pursuant to this Agreement is insufficient to refund all of the outstanding TIF Notes, the TIF Notes remaining outstanding shall be redeemed by the issuance of notes subordinate to the TIF Bonds (the "Subordinate Notes"). Each Subordinate Note shall have the same maturity and have the same outstanding principal amount and the same interest rate as the TIF Note it redeems. All such Subordinate Notes shall be payable as to principal and interest according to the terms set forth in **Sections 5.4 and 6.3** of this Agreement.

**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 discretion.

## ARTICLE 6. SPECIAL ALLOCATION FUND; COLLECTION AND USE OF REVENUES

**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," an "EATs Account," and such further accounts or sub-accounts as are required by this Agreement or as the Comptroller 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 Payments

in Lieu of Taxes into the PILOTS Account and all Economic Activity Taxes into the EATs Account.

## **6.1 Certification of Base for PILOTS and EATS.**

**6.1.1** Upon the reasonable written request of the City, Developer shall use its best efforts to provide or cause to be provided to the Comptroller or its authorized representative any documents necessary for the City to calculate the base for PILOTS and EATs including, but not limited to: (i) the address and locator number of all parcels of real property located within the Redevelopment Area; and (ii) information related to payment of utility taxes by any businesses, owners or other occupants of the Redevelopment Area in the calendar year ending December 31, 2009.

**6.1.2** Within ninety (90) days after execution of the Redevelopment Agreement, the City shall provide to the Developer (i) a certificate 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 valuation 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, 2009, but excluding those personal property taxes, taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, taxes levied pursuant to Section 70.500 of the Revised Statutes of Missouri, taxes levied for the purpose of public transportation, or licenses, fees or special assessments identified as excluded in Section 99.845.3 of the TIF Act.

## **6.2 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.

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 SLDC, and payment in full of any other amounts required to be paid under the Note Ordinance, all amounts remaining on deposit in the Revenue Fund shall be declared as surplus and distributed in the manner provided in the Act.

If monies available in Special Allocation Fund are insufficient to reimburse the City or the Developer as provided above on any Payment Date, then the unpaid portion shall be carried forward to the next Payment Date, with interest thereon.

The City agrees that it will comply with the Charter of The City of St. Louis, Article XVI, Section 3 for each fiscal year that TIF Obligations are outstanding and the City will request an appropriation of all Available Revenues on deposit in the Special Allocation Fund for application to the payment of the principal of (including, but not limited to, payment of a premium, if any) and interest on the TIF Obligations.

**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, but not limited to, the City's enforcement and collection of all such payments through all reasonable and ordinary legal means of enforcement.

**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 to pay TIF Revenues and shall 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.

**Notice to City of Transfer.** The Developer agrees to notify the City in writing of any sale, transfer or other disposition of the Property or any interest therein as permitted by **Section 7.3.2** of this Agreement at least fifteen (15) days prior to such 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. Notwithstanding the foregoing, Developer shall not be required to notify the City of the lease or transfer of a residential unit, commercial unit or parking space in the ordinary course of business except as may be required by **Section 4.3**.

**ARTICLE 7.**  
**GENERAL PROVISIONS**

**Developer's Right of Termination.** At any time prior to the delivery of a 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.

**City's Right of Termination.** The City may terminate this Agreement if (i) the Developer fails to submit to the MBE/WBE Compliance Officer a copy of Developer's MBE/WBE Subcontractor's List and its MBE/WBE Utilization Statement within one hundred eighty (180) days of the date of this Agreement; provided, however, that termination under this Section 7.2(i) may be waived in the sole discretion of the MBE/WBE Compliance Officer; or (ii) the Developer fails to submit its Certificate of Substantial Completion, acceptable to the City, in accordance with **Section 3.8** of this Agreement and the schedule set forth in **Section 3.4** of this Agreement. Upon such termination, the City shall have no obligation to issue a TIF Note or to reimburse the Developer for any amounts advanced under this Agreement or costs otherwise incurred or paid by Developer.

**7.1 Successors and Assigns.**

**7.1.1 Binding Effect.** 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.

**7.1.2 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, however, 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 or its rights, duties and obligations under this Agreement 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; and (b) the right of Developer to transfer the Property or to assign the Developer's rights, duties and obligations under this Agreement to any Related Entity; (c) the right of the Developer to sell, lease or transfer a residential unit, commercial unit or parking space in the ordinary course of business; provided that in each such event (i) the Developer named herein shall remain liable hereunder for the substantial completion of the Redevelopment Project, subject, however, to Developer's right of termination pursuant to **Section 7.1** of this Agreement, and shall be released from such liability hereunder only upon substantial completion of the Redevelopment Project and (ii) the Developer provides to the City fifteen (15) days' advance written notice of the proposed assignment or transfer other than of the sale or lease of a residential unit, commercial unit or parking space in the ordinary course of business which shall require no notice except as may be required by **Section 4.3**.

**7.1.3 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 effective date that the Approving Ordinance. 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.

**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.

**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 in the event of any delay caused by force majeure (except as expressly limited in **Section 3.4**), 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 (i) 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 (ii) the Developer notifies the City in writing within thirty (30) days of the commencement of such claimed event of force majeure.

**Notices.** All notices, demands, consents, approvals, certificates and other communications required by this Agreement to be given by either party hereunder shall be in writing and shall be hand delivered or sent by United States first class mail, postage prepaid, addressed to the appropriate party at its address set forth below, or at such other address as such party shall have last designated by notice to the other. Notices, demands, consents, approvals, certificates and other communications shall be deemed given when delivered or three days after mailing; provided, however, that if any such notice or other communication shall also be sent by telecopy or fax machine, such notice shall be deemed given at the time and on the date of machine transmittal if the sending party receives a written send verification on its machines and forwards a copy thereof with its mailed or courier delivered notice or communication.

- (i) In the case of the Developer, to:

8000 Michigan TIF, Inc.  
c/o Steins Broadway Inc  
7525 S. Broadway  
St. Louis, Missouri 63111  
Attention: Benjamin J. Simms  
Facsimile: 314-631-9918

- (ii) 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 for 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: 314-588-0550

With a copy to:

City of St. Louis  
City Counselor  
City Hall  
1200 Market Street, Room 314  
St. Louis, Missouri 63103  
Attention: Peter Mosanyi, Assistant City Counselor  
Facsimile: 314-622-4956

And

Armstrong Teasdale LLP  
One Metropolitan Square, Suite 2600  
St. Louis, Missouri 63102  
Attention: Thomas J. Ray, Esq.  
Facsimile: 314-621-5065

(iii) In the case of the SLDC, to:

SLDC  
1015 Locust Street, Suite 1200  
St. Louis, Missouri 63101  
Attention: Dale Ruthsatz  
Facsimile: 314-231-2341

**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.

**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 and the Developer or a Related Entity owns the Property, 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 or the issuance of a TIF Note to a purchaser other than the Developer or a Related Entity, the Developer shall, at the City's option after consultation with the Developer, tender to the City that portion of the insurance proceeds, if any, to which Developer is entitled, after satisfaction of any terms or obligations of any deed of trust, promissory note or financing agreement entered into by the Developer for the financing of all or any part of the Redevelopment Project, from any fire or casualty insurance policy in an amount equal to the outstanding principal amount of the TIF Bonds or TIF Notes, plus accrued interest thereon to be deposited into the Special Allocation Fund.

**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.

**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.

**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.

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

**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.

**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.

**Attorney's Fees.** In any dispute arising out of or relating to this Agreement, including any action to enforce this Agreement against a defaulting or breaching party pursuant to **Section 7.4**, the prevailing party shall recover from the non-prevailing party the prevailing party's attorney's fees, in addition to any other damages to which it is entitled.

**Actions Contesting the Validity and Enforceability of the Redevelopment Plan** 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, 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 to which the Developer would agree, 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.

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

**7.1.4** 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.

**7.1.5** 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.

**7.1.6** 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.

**7.1.7** 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.

**7.1.8** 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 Notes which may become due to any party under the terms of this Agreement.

**7.1.9** 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.

**Survival.** Notwithstanding the expiration or termination or breach of this Agreement by either party, the agreements contained in **Section 2.2, clauses (iii)-(v), Article VI, Sections 7.10, 7.11, 7.12, 7.13, 7.14, 7.15, 7.16, 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.

**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.

**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.

**Fair Employment.** Without limiting any of the foregoing, the Developer voluntarily agrees to observe the Equal Opportunity and Nondiscrimination Guidelines set forth as **Exhibit F**, 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 F**, attached hereto and incorporated herein by reference.

**MBE/WBE Compliance.** The Developer shall comply with the Mayor's Executive Order #28, as amended as of the date of this Agreement, during the design and construction of the Redevelopment Project and with respect to ongoing services provided by third parties to the Developer in connection with the Redevelopment Project.

**ARTICLE 8.  
REPRESENTATIONS OF THE PARTIES**

**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 Notes, and all of the foregoing have been or will be, upon adoption of ordinances authorizing the issuance of the TIF Notes, 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.

**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 is 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: \_\_\_\_\_

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

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

(SEAL)

Attest:

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

Approved as to Form:

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

**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.

**“DEVELOPER”**

**8000 MICHIGAN TIF, INC.** a Missouri corporation

By: \_\_\_\_\_  
Name: Benjamin J. Simms  
Title: President

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

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, 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



Street; thence southeast along the northern right-of-way of W. Poepping Street and the northern former right-of-way of vacated W. Poepping between Virginia Avenue and Michigan Avenue to the centerline of Michigan Avenue; thence southwest along the centerline of Michigan Avenue to its intersection with the centerline of E. Davis Street, the point of beginning.

**EXHIBIT B**  
**TIF 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 Public Improvements Costs (includes, but is not limited to, street and sidewalk improvements, parking facilities, utility work and resetting of curbs and landscaping and lighting in the right of way areas).
(d)	Construction of new residential units or structures, and rehabilitation or renovation of any existing structures.
(e)	Financing Costs (includes, but is not limited to, loan fees, disbursing 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).
(f)	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).
(g)	Professional Service Costs (includes, but is not limited to, architectural, engineering, legal, marketing, financial, planning, sales commissions or special services).
(h)	TIF Costs & Issuance Costs incurred by the Developer pursuant to <b>Section 2.2(i) – 2.2.(v)</b> of this Agreement.

<sup>1</sup> Subject to the limitations set forth in **Section 4.2** of this Agreement, provided that such costs shall not exceed the aggregate amount of \$2,466,924 plus Issuance Costs as provided in the Agreement.

**EXHIBIT C**  
**Form of Certificate of Commencement of Construction**

To:	City of St. Louis Office of Comptroller 1200 Market St., Room 212 St. Louis, MO 63103 Attention: Ivy Neyland-Pinkston, Deputy Comptroller	City of St. Louis St. Louis Development Corp 1015 Locust St., Ste. 1200 St. Louis, MO 63103 Attention: Dale Ruthsatz
-----	--	--

DELIVERED BY

8000 Michigan TIF, Inc.

The undersigned, 8000 Michigan TIF, Inc. (the "Developer"), pursuant to that certain Redevelopment Agreement dated as of \_\_\_\_\_, 20\_\_, between the City of St. Louis, Missouri (the "City") and Developer (the "Agreement") hereby certifies to the City as follows:

1. All property within the Redevelopment Area necessary for the Redevelopment Project (as legally described on Appendix A attached hereto and by this reference incorporated herein and made a part hereof), has been acquired by Developer or a Related Entity in accordance with the Agreement.
2. Developer has entered into an agreement with a contractor or contractors to construct the Redevelopment Project.
3. Developer has submitted to the MBE/WBE Compliance Officer a copy of Developer's MBE/WBE Subcontractor's List and MBE/WBE Utilization Statement, which are attached hereto as Appendix B.

4. Developer has obtained all necessary financing to complete the Redevelopment Project.

5. This Certificate of Commencement of Construction is being issued by Developer to the City in accordance with the Agreement to evidence Developer’s satisfaction of all obligations and covenants with respect to commencement of construction of the Redevelopment Project.

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

**8000 MICHIGAN TIF, INC.**

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

Name: Benjamin J. Simms

Title: President

**EXHIBIT D  
Form of 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, South Carondelet District #1 Redevelopment Project**

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Redevelopment Agreement dated as of \_\_\_\_\_, 20\_\_ (the “Agreement”), between 8000 Michigan TIF, Inc., a Missouri corporation (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 Redevelopment Plan and 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 \_\_\_\_\_, \_\_\_\_\_.

**8000 MICHIGAN TIF, INC.**

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

Name: Benjamin J. Simms  
Title: President

Approved for payment this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**SLDC**

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

**Schedule 1**

The Developer has incurred the following Reimbursable Redevelopment Project Costs:

Payee:	Amount:	Description of Reimbursable Redevelopment Project Costs:
--------	---------	--

**EXHIBIT E**

**Form of Certificate of Substantial Completion**

**CERTIFICATE OF SUBSTANTIAL COMPLETION**

The undersigned, 8000 Michigan TIF, Inc., a Missouri corporation (the "Developer"), pursuant to that certain Redevelopment Agreement dated as of \_\_\_\_\_, 20\_\_, 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 Exhibit B 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. 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 incorporated herein by reference, certifying that the Redevelopment Project has been substantially completed in accordance with the Agreement.
5. Mechanics lien waivers for applicable portions of the Work in excess of Five Thousand Dollars (\$5,000) have been obtained.
6. This Certificate of Substantial Completion is being issued by the Developer to the SLDC 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 SLDC and the Mayor or his designee to object in writing to this Certificate within thirty (30) days of the date of delivery of this Certificate to the SLDC 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 SLDC and the Mayor or his designee, 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.

(remainder of page intentionally left blank)

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**8000 MICHIGAN TIF, INC.**

By: \_\_\_\_\_  
Name: Benjamin J. Simms  
Title: President

**ACCEPTED:**

**SLDC**

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

**CITY OF ST. LOUIS, MISSOURI**

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

(Insert Notary Form(s) and Legal Description)

**EXHIBIT F  
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 SLDC, 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



breach of the contract, entitling the City to terminate the contract for default. The right to so terminate shall be in addition to, and not in lieu of, any other rights and remedies the City may have for other defaults under the contract. Additionally, the contractor may be subject to the penalties cited in Section Twelve of the Mayor’s Executive Order #28, as amended.

**Assurance:** I, acting as an officer of the undersigned bidder or joint venture bidders, hereby assure the City that on this project my company will (check one):

\_\_\_\_\_ Meet or exceed contract award goals and provide participation as shown above.

\_\_\_\_\_ Fail to meet contract award goals but will demonstrate that good faith efforts were made to meet the goals and my company will provide participation as shown above.

Name of Prime Contractor(s): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Prime Contractor Authorized Signature:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Date: \_\_\_\_\_

**Approved: November 23, 2010**

**ORDINANCE #68803  
Board Bill No. 109**

An Ordinance repealing Ordinance No. 68093 pertaining to the authorization and the execution of a Redevelopment Agreement between the City of St. Louis (“City”) and Carondelet TIF, Inc. (“Developer”) for the Redevelopment Area known as South Carondelet District #3 (“Redevelopment Area”); and authorizing the execution of a new redevelopment agreement between the same parties for the same Redevelopment Area; making certain findings with respect thereto; authorizing other related actions; and containing a severability clause.

**WHEREAS**, pursuant to Ordinance No. 68092, the City designated the South Carondelet District #3 redevelopment area as a “Redevelopment Area” pursuant to the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865 R.S.Mo. (“TIF Act”), approved a redevelopment plan (“Redevelopment Plan”) and a redevelopment project, adopted Tax Increment Financing within the Redevelopment Area and established the South Carondelet District #3 Special Allocation Fund; and

**WHEREAS**, pursuant to Ordinance No. 68093, the City authorized the execution of a TIF redevelopment agreement between the City and Developer (“Original Redevelopment Agreement”), which Original Redevelopment Agreement was not executed by the City; 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, 2009 absent any event of Force Majeure and not later than December 31, 2010 in the event of a delay caused by an event of Force Majeure; and

**WHEREAS**, due to certain circumstances, additional time beyond that provided in the Original Redevelopment Agreement is required to complete the Work related to the Redevelopment Project, 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 enter into a new redevelopment agreement with the Developer (“Redevelopment Agreement”), in order that Developer may complete the Redevelopment Project, (i) as amended as it concerns the date by which the Work must be complete or substantially complete, and (ii) amend the time at which the Redevelopment Project will be deemed substantially complete; and

**WHEREAS**, the Board of Aldermen hereby determines that the terms of the Redevelopment Agreement attached as Exhibit A hereto and incorporate herein by reference are acceptable and that the execution, delivery and performance by the City and of the attached Redevelopment Agreement is necessary and desirable and in the best interest 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.** Ordinance No. 68093 is hereby repealed.

**SECTION TWO.** 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 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 Redevelopment Agreement and to affix the seal of the City thereto. The 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 matter herein authorized.

**SECTION THREE.** 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 Comptroller or their designated representatives.

**SECTION FOUR.** The Mayor and 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 Comptroller or their designated representatives.

**SECTION FIVE.** 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 findings shall determine that the valid portions standing alone are incomplete and are incapable of being executed in accord with the legislative intent.

**SECTION SIX.** After adoption of this Ordinance by the Board of Aldermen, this Ordinance shall become effective on the 30th day after its approval by the Mayor or by adoption over his veto; *provided however* that if, within ninety (90) days after the effective date of this Ordinance, the Developer has not (i) executed a redevelopment agreement pertaining to the Redevelopment Project and (ii) paid all fees due to the City in accordance with the terms of the redevelopment agreement, the provisions of this Ordinance shall be deemed null and void and of no effect and all the rights conferred by this Ordinance on Developer shall terminate, *provided further however*, that prior to any such termination the Developer may seek an extension of time in which to execute the Redevelopment Agreement, which extension may be granted in the sole discretion of the Board of Estimate and Apportionment of the City.

**EXHIBIT A**

**REDEVELOPMENT AGREEMENT  
Between the  
CITY OF ST. LOUIS, MISSOURI  
And  
CARONDELET TIF, INC.  
Dated as of**

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

**SOUTH CARONDELET DISTRICT #3 REDEVELOPMENT PROJECT**

**ARTICLE 1.   DEFINITIONS** ..... 2  
1.1   Definitions ..... 2

**ARTICLE 2. ACCEPTANCE OF PROPOSAL** ..... 9

    2.1 Developer Designation ..... 9

    2.2 Developer to Advance Costs ..... 10

**ARTICLE 3. CONSTRUCTION OF REDEVELOPMENT PROJECT** ..... 10

    3.1 Acquisition of Property ..... 11

    3.2 Condemnation ..... 11

    3.3 Relocation ..... 11

    3.4 Developer to Construct the Work ..... 11

    3.5 Governmental Approvals ..... 11

    3.6 Construction Plans; Changes ..... 11

    3.7 Certificate of Commencement of Construction ..... 12

    3.8 Certificate of Substantial Completion ..... 12

**ARTICLE 4. REIMBURSEMENT OF DEVELOPER COSTS** ..... 13

    4.1 City’s Obligation to Reimburse Developer ..... 13

    4.2 Reimbursements Limited to Reimbursable Redevelopment Project Costs;  
    Developer’s Right to Substitute ..... 13

    4.3 Cost Savings and Excess Profits. .... 14

    4.4 Condominium Conversion. .... 15

    4.5 City’s Obligations Limited to Special Allocation Fund and Bond Proceeds ..... 16

**ARTICLE 5. TIF OBLIGATIONS** ..... 16

    5.1 Conditions Precedent to the Issuance of TIF Notes ..... 16

    5.2 Issuance of TIF Notes ..... 17

    5.3 Issuance of TIF Bonds. .... 18

    5.4 Application of TIF Bond Proceeds ..... 19

    5.5 Cooperation in the Issuance of TIF Obligations ..... 19

    5.6 Subordinate Notes ..... 20

    5.7 City to Select Underwriter and Financial Advisor; Term and Interest Rate ..... 20

**ARTICLE 6. SPECIAL ALLOCATION FUND; COLLECTION AND USE OF TIF REVENUES** ..... 20

    6.1 Creation of Special Allocation Fund ..... 20

    6.2 Certification of Base for PILOTS and EATS. .... 20

    6.3 Application of Available Revenues ..... 21

    6.4 Cooperation in Determining TIF Revenues ..... 21

    6.5 Obligation to Report TIF Revenues ..... 21

    6.6 Notice to City of Transfer ..... 22

**ARTICLE 7. GENERAL PROVISIONS** ..... 22

    7.1 Developer’s Right of Termination ..... 22

    7.2 City’s Right of Termination ..... 22

    7.3 Successors and Assigns. .... 22

    7.4 Remedies ..... 23

    7.5 Force Majeure ..... 24

    7.6 Notices ..... 24

    7.7 Conflict of Interest ..... 26

    7.8 Damage or Destruction of Redevelopment Project ..... 26

    7.9 Inspection ..... 26

    7.10 Choice of Law ..... 27

    7.11 Entire Agreement; Amendment ..... 27

    7.12 Counterparts ..... 27

    7.13 Severability ..... 27

7.14	Representatives Not Personally Liable . . . . .	27
7.15	Attorney's Fees. . . . .	27
7.16	Actions Contesting the Validity and Enforceability of the Redevelopment Plan . . . . .	27
7.17	Release and Indemnification . . . . .	27
7.18	Survival . . . . .	29
7.19	Maintenance of the Property . . . . .	29
7.20	Non-Discrimination . . . . .	29
7.21	Fair Employment . . . . .	29
7.22	MBE/WBE Compliance. . . . .	30
<b>ARTICLE 8.</b>	<b>REPRESENTATIONS OF THE PARTIES . . . . .</b>	<b>30</b>
8.1	Representations of the City . . . . .	30
8.2	Representations of the Developer . . . . .	30
EXHIBIT A	Legal Description of the Redevelopment Area	
EXHIBIT B	Reimbursable Redevelopment Project Costs	
EXHIBIT C	Form of Certificate of Commencement of Construction	
EXHIBIT D	Form of Certificate of Reimbursable Redevelopment Project Costs	
EXHIBIT E	Form of Certificate of Substantial Completion	
EXHIBIT F	Equal Opportunity and Nondiscrimination Guidelines	
EXHIBIT G	Form of MBE/WBE Subcontractor's List	
EXHIBIT H	Form of MBE/WBE Utilization Statement	

### REDEVELOPMENT AGREEMENT

**THIS REDEVELOPMENT AGREEMENT** (this "*Agreement*") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, 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 **CARONDELET TIF, INC.**, a corporation duly incorporated and existing under the laws of the State of Missouri (the "*Developer*"). (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, (2000) (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 April 26, 2008 and May 3, 2008 in the St. Louis Daily Record, 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. An affiliate of Developer submitted its development proposal dated April 18, 2008 (the "Redevelopment Proposal") to the TIF Commission for redevelopment of the Redevelopment Area.

D. On June 4, 2008, following a public hearing held on that date, in accordance with the TIF Act, the TIF Commission adopted a resolution approving the Redevelopment Plan titled "South Carondelet District #3 TIF Redevelopment Plan" dated April 18, 2008 (as may amended, the "Redevelopment Plan"), the Redevelopment Project described in the Redevelopment Plan (the "Redevelopment Project") and the Redevelopment Area, and recommending that the Board of Aldermen: (1) adopt tax increment financing with respect to the Redevelopment Area by passage of an ordinance complying with the terms of Section 99.845 of the Act; and (2) adopt an ordinance in the form required by the Act (a) approving the Redevelopment Plan, (b) approving and designating the Redevelopment Area as a "redevelopment area" as provided in the Act, (c) approving the Redevelopment Project, and (d) creating the South Carondelet District #3 Special Allocation Fund.

E. On July 28, 2008, after due consideration of the TIF Commission's recommendations, the Mayor signed Ordinance No. 68092 [Board Bill No. 153] 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, adopting tax

increment allocation financing within the Redevelopment Area and establishing the Special Allocation Fund.

F. On July 28, 2008, the Mayor signed Ordinance No. 68093 [Board Bill No. 154] affirming adoption of the Redevelopment Area, Redevelopment Plan and Redevelopment Project, designating the Developer as developer of the Redevelopment Area, and authorizing the City to enter into this Agreement with Developer.

G. On July 28, 2008, the Mayor signed Ordinance No. 68094 [Board Bill No. 155] authorizing the issuance of TIF Notes 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.

H. Pursuant to Ordinance No. 68093, a redevelopment agreement was approved but it was never fully executed ("Original Redevelopment Agreement") and due to certain circumstances, additional time beyond that provided in the Original Redevelopment 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 obligations.

I. On \_\_\_\_\_, \_\_\_\_\_, the Mayor signed Ordinance No. \_\_\_\_\_ [Board Bill No. \_\_\_\_] affirming adoption of the Redevelopment Area, Redevelopment Plan and Redevelopment Project, designating the Developer as developer of the Redevelopment Area, and authorizing the City to enter into this Agreement with Developer.

J. The Board of Aldermen hereby determines that the acceptance of the Redevelopment Proposal and the fulfillment generally of this Agreement are 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.

K. Pursuant to provisions of the TIF Act and Ordinance Nos. 68092, \_\_\_\_\_ and 68094 [Board Bill Nos. 153, \_\_\_\_ and 155], the City is authorized to enter into this 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 the 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 1. DEFINITIONS

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

"*Acquisition Costs*" means the consideration paid by Developer or its Related Entity to a third party to acquire fee simple interest in the Property.

"*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 (2000), as amended.

"*Agreement*" means this Redevelopment Agreement, 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 company or enterprise with total assets in excess of \$50,000,000.

"*Approving Ordinance*" means Ordinance No. 68092 [Board Bill No. 153] 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.

"*Authority*" means The Industrial Development Authority of The City of St. Louis, Missouri, a public corporation duly organized under Chapter 349 of the Revised Statutes of Missouri.

“*Authorizing Ordinance*” means Ordinance No. \_\_\_\_\_ [Board Bill No. \_\_\_\_] affirming approval and adoption of the Redevelopment Plan, Redevelopment Project, and designation of the Redevelopment Area, designating Developer as the developer of the Redevelopment Area, and authorizing the City to enter into a Redevelopment Agreement with Developer.

“*Available Revenues*” means all monies on deposit from time to time (including investment earnings thereon) in (a) the PILOTS Account, and (b) subject to annual appropriation, the EATS Account 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.

“*Bond Proceeds*” means the gross cash proceeds from the sale of TIF Bonds before payment of Issuance Costs, together with any interest earned thereon.

“*Certificate of Commencement of Construction*” means a document substantially in the form of **Exhibit C**, attached hereto and incorporated by reference herein, delivered by Developer to the City in accordance with this Agreement and evidencing commencement of construction of the Redevelopment Project.

“*Certificate of Reimbursable Redevelopment Project Costs*” means a document substantially in the form of **Exhibit D**, 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 E**, 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.

“*City Clerk*” means the Register of the City.

“*Comptroller*” means the Comptroller of the City.

“*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 applicable law.

“*Costs of Conversion*” means the sum of (a) the outstanding balance due on the HUD-insured loan or any other loans secured by the property, if any, at the time of Developer’s notification of condominium conversion; (b) operating losses documented by income/expense statements for the Property; (c) documented construction and other costs incurred with respect to the conversion; (d) the amount of Developer monetary equity (but not equity related to any tax credits) that has been invested in the portion of Redevelopment Project to be converted to condominiums; and (e) the remaining balance due on the original developer fee payment, if any.

“*Developer*” means Carondelet TIF, Inc., a corporation duly incorporated and existing under the laws of the State of Missouri, or its permitted successors or assigns in interest.

“*Disclosure 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 offerings of municipal securities 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.

“*Economic Activity Taxes*” or “*EATs*” shall have the meaning ascribed to such term in Section 99.805(4) 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 and this Agreement.

“*Issuance Costs*” means the amount set forth in **Section 2.2(v)** of this Agreement incurred by the City in furtherance of the issuance of TIF Notes plus all 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, Disclosure Counsel and Bond Counsel), the City’s administrative fees and expenses (including fees and costs of its planning consultants and the SLDC), underwriters’ discounts and fees, the costs of printing any TIF Obligations 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 Obligations.

“*MBE/WBE Compliance Officer*” means the City’s Assistant Airport Director, Department of MBE/WBE Certification and Compliance.

“*MBE/WBE Subcontractor’s List*” means the form of City of St. Louis MBE/WBE Subcontractor’s List published by the Board of Public Service of the City, such form being attached hereto as **Exhibit G** and incorporated herein by this reference.

“*MBE/WBE Utilization Statement*” means the form of City of St. Louis MBE/WBE Utilization Statement prepared by the Board of Public Service of the City published by the Board of Public Service of the City, such form being attached hereto as **Exhibit H** and incorporated herein by this reference.

“*Maturity Date*” means the date that is twenty three (23) years after the effective date of the Approving Ordinance.

“*Note Ordinance*” means Ordinance No. 68094 [Board Bill No. 155] adopted by the Board of Aldermen and signed by the Mayor authorizing the TIF Note(s) and TIF Obligations, any trust indenture relating thereto, and all related proceedings.

“*Notice of Conversion*” means the written notice submitted to the City by Developer that Developer intends to initiate a conversion of all or a portion of the Redevelopment Project from rental or leased area to condominium units, which shall contain the information required by Section 4.4 of this Agreement and shall specify the portion of the Redevelopment Project to be so converted.

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

“*Original Redevelopment Agreement*” means the redevelopment agreement approved pursuant to Ordinance 68093, but never fully executed.

“*Payments in Lieu of Taxes*” or “*PILOTS*” shall have the meaning ascribed to such term in Section 99.805(10) of the TIF Act.

“*Post Completion Funding Source*” means each of the following sources:

1. Tax Credits:

(a) The total value of the proceeds from the sale of any transferable tax credits approved for the Redevelopment Project, based on the amounts approved by the tax credit issuing authority and the purchase prices for such credits set forth in any tax credit purchase agreement; if, pursuant to such purchase agreement, any portion of the proceeds is to be paid subsequent to the date upon which the statement required by Section 4.3 is submitted, the present value of such portion shall be calculated by the City using a time period determined by the City to be reasonable and a 7% present value rate; if no tax credit purchase agreement has been executed, then the total value of such proceeds shall be calculated as 87% of the amount approved by the tax credit issuing authority.

(b) The equity and/or loan proceeds available from investor members or partners in the Redevelopment Project who will be entitled to receive any non-transferable tax credits approved for the Redevelopment Project, per the ownership documentation for the Redevelopment Project property; if, pursuant to such purchase agreement, any portion of the proceeds is to be paid subsequent to the date upon which the statement required by Section 4.3 is submitted, the present value of such portion shall be calculated by the City using a time period determined by the City to be reasonable and a 7% present value rate ; provided, that,

if the Project has been approved for a New Markets Tax Credit investment by a New Markets Tax Credit allocate, but has not yet entered into any agreement pursuant to which such loan or equity proceeds shall be made available, then the value of such proceeds shall be 25% of the face value of the approved New Markets Tax Credit investment.

The Developer shall substantiate the amount of any tax credits approved for the Redevelopment Project and the proceeds or equity related thereto by providing to the City documentation from accountants, tax credit authorities and tax credit purchasers or investors.

(2) Sales Proceeds:

(a) All net sales proceeds actually derived from the sale of any portion of the Redevelopment Project, which net sales proceeds shall be documented by copies of the seller's closing statements for such sales, and

(b) If, at the time of the submittal required pursuant to Section 4.3 of this Agreement, there remain units or portions of the Redevelopment Project which are being marketed and listed as for-sale but are unsold, ninety percent (90%) of the average sale price for all sold units or portions, taking into account the size, location and amenities associated with such sold units as compared to the unsold units or portion, discounted by first, a percentage equal to the average sales commissions paid to unrelated third parties and applied to the discounted listing price; and second, closing costs for sold units (stated as the average amount of closing costs for such sold units).

(3) TIF Financing: the maximum amount of TIF financing available to the Redevelopment Project, as such amount is set forth in Section 4.1 hereof; and

(4) Value of Income-Producing Space: if the Redevelopment Project includes any leased space or space intended for lease (such space being the "Income-Producing Space"), the value of such Income Producing Space, which value shall be calculated by dividing the Stabilized Net Operating Income (as defined below) of such Income Producing Space by a capitalization rate of nine and one-half percent (9.5%). The square footage of Income-Producing Space in the Redevelopment Project shall not exceed the square footage of Income-Producing Space set forth in the TIF Application. In addition to the other materials required to be submitted by subparagraph 4.3 hereof, Developer shall submit a 10-year operating proforma, including income and expense projections, for all Income-Producing Space in the Redevelopment Project, together with copies of all leases, letters of intent, and operating expense documentation, if any, related to such Income-Producing Space.

*"Project Fund"* means the Project Fund created in the Note Ordinance.

*"Project Lender"* means a commercial bank, savings bank, savings and loan association, credit union or other financial institution that has loaned funds to the Developer to be used for construction of the Redevelopment Project and has secured such loan with a mortgage or security interest in the Redevelopment Project.

*"Property"* means the real property (including without limitation all options held by third parties, fee interests, leasehold interests, tenant-in-common interests and such other like or similar interests) and existing improvements in the Redevelopment Area as set forth in the Redevelopment Plan.

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

*"Redevelopment Area"* means the real property described in **Exhibit A**, attached hereto and incorporated herein by reference.

*"Redevelopment Plan"* means the plan titled "South Carondelet District #3 TIF Redevelopment Plan" dated April 18, 2008, approved by the City pursuant to the Approving Ordinance; as such plan may from time to time be amended in accordance with the TIF Act.

*"Redevelopment Project"* means the Redevelopment Project identified by the Redevelopment Plan consisting of the redevelopment of the structures for nine (9) residential units and approximately 18,000 square feet of office/retail space as well as constructing approximately 125 new residential units, as set forth in the Redevelopment Plan.

*"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 "South

Carondelet District #3 TIF Application,” dated April 18, 2008, as submitted by an affiliate of the Developer to the City.

“*Reimbursable Redevelopment Project Costs*” means those Redevelopment Project Costs as described in **Exhibit B**, 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 South Carondelet District #3 Special Allocation Fund, created by the Approving Ordinance in accordance with the TIF Act, and including the accounts and sub-accounts for the Redevelopment Project into which TIF Revenues are from time to time deposited in accordance with the TIF Act and this Agreement.

“*Stabilized Net Operating Income*” shall be calculated as follows:

1. For any portion of the Income Producing Space which has actually been leased, the annualized rental income from such space, less annualized actual and/or reasonable operating expenses as determined by the City (excluding debt service);

PLUS

2. For any portion of the Income Producing Space which is available for lease but has not been leased, the result of the following equation:

(a) The amount of net leaseable square footage multiplied by the average annual rent per square foot of the Income Producing Space which has been actually leased, taking into account the size, location and amenities associated with such space not yet leased as compared to the space leased (provided, that if no such space has been actually leased, the lease rate(s) used shall be the lease rate(s) specified by the Developer in the TIF;

LESS

(b) The amount of net leaseable square footage multiplied by the average annualized actual and/or reasonable operating expenses as determined by the City (excluding debt service) per square foot of the Income Producing Space.

The City shall incorporate a 7% vacancy rate for all Income-Producing Space.

“*TIF Bonds*” means tax increment revenue bonds, if any, authorized and issued by the Authority 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 one or more series of tax increment revenue notes issued by the City pursuant to and subject to this Agreement and the Note Ordinance 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 or the Authority, as the case may be, pursuant to the TIF Act and in accordance with this Agreement.

“*TIF Revenues*” means: (1) payments in lieu of taxes (as that term is defined in Section 99.805(10) of the TIF Act) 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 Sections 99.845.1 and 99.855.1 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) subject to annual appropriation by the Board of Aldermen, 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, 2009 (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, taxes levied pursuant to Section 70.500 of the Revised Statutes of Missouri, as amended, taxes levied for the purpose of public transportation pursuant to Section 94.660 of the Revised Statutes of Missouri, as amended, and licenses, fees or special assessments other than payments in lieu of taxes and penalties and interest thereon, all as provided in Section 99.845 of the TIF Act. Notwithstanding the foregoing, TIF Revenues shall not include the operating levy for school purposes imposed by or any sales tax imposed by the Transitional School District of the City of St. Louis.

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

“*Verified Total Project Costs*” means the sum total of all reasonable or necessary costs incurred, and any such costs incidental to the Redevelopment Project or the Work, including, but not limited to, all Acquisition Costs, Redevelopment Project Costs and Reimbursable Redevelopment Project Costs, as limited by the provisions of Section 4.3 hereof.

“*Work*” means all work necessary to prepare the Redevelopment Area and to construct or cause the construction and completion of the Redevelopment Project described in the Redevelopment Proposal, Redevelopment Plan and this Agreement, including but not limited to: (1) property acquisition; (2) site preparation and environmental remediation; (3) construction of new structures or rehabilitation or reconstruction of improvements within the Redevelopment Area; (4) construction, reconstruction, renovation and/or rehabilitation of related infrastructure and/or public improvements, including without limitation surrounding roads, sidewalks, sewer, water, electrical, parking and other utilities; (5) professional services, including, but not limited to, architecture, engineering, surveying, financing, legal, planning and consulting; (6) and all other work described in the Redevelopment Proposal, Redevelopment Plan and this Agreement, or reasonably necessary to effectuate the intent of this Agreement.

## ARTICLE 2. ACCEPTANCE OF PROPOSAL

**Developer Designation.** The City hereby selects the Developer to perform or cause the performance of the Work in accordance with the Redevelopment Plan and this Agreement and all Governmental Approvals. To the extent of any inconsistency among the foregoing, the parties agree that the Redevelopment Plan shall govern.

**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:

(i) the City acknowledges payment by the Developer of a Five Thousand Dollar and no/100 (\$5,000.00) TIF Application Fee;

(ii) the City acknowledges that, prior to the execution of this Agreement, the Developer paid the sum of Six Thousand Five Hundred Eighty-Six Dollars and 93/100 (\$6,586.93) (which sum represents 0.3% of the maximum amount of TIF Notes allowed to be issued by the City pursuant to **Section 4.1** of this Agreement), which monies have been paid one half to the Comptroller and one half to the SLDC to reimburse the Comptroller and the SLDC for their administrative costs in reviewing the Redevelopment Plan and the Redevelopment Proposal;

(iii) the Developer shall, within ten (10) days after the date of execution of this Agreement, pay the sum of Six Thousand Five Hundred Eighty-Six Dollars and 93/100 (\$6,586.93) (which sum represents 0.3% of the maximum amount of TIF Notes allowed to be issued by the City pursuant to **Section 4.1** of this Agreement), which monies shall be paid one half to the Comptroller and one half to the SLDC to reimburse the Comptroller and the SLDC for their administrative costs in reviewing the Redevelopment Plan and the Redevelopment Proposal;

(iv) the Developer shall pay to the Comptroller an additional amount to reimburse the Comptroller for its actual legal expenses incurred in connection with the review of the Redevelopment Proposal, the review and adoption of the Redevelopment Plan and the negotiation, execution and implementation of the Redevelopment Agreement, which amount shall be paid as follows: (i) all such costs incurred through the date of execution of the Redevelopment Agreement shall be paid within ten (10) days after the execution of the Redevelopment Agreement, and (ii) all such costs incurred after the date of execution of the Redevelopment Agreement and prior to the date upon which the City receives from Developer a Certificate of Reimbursable Redevelopment Project Costs shall be paid concurrently with the initial issuance of the TIF Notes; and

(v) the Developer shall, concurrently with the issuance of any TIF Notes, pay to the City a flat fee to be reasonably determined by the City in its sole discretion at the time of issuance to pay for the City's Issuance Costs of such TIF Notes; and

(vi) 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 **Articles IV and V** of this Agreement.

### **ARTICLE 3. CONSTRUCTION OF REDEVELOPMENT PROJECT**

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

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

**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.

**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 December 31, 2012 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, but under no circumstance shall such time to complete the Work extend beyond December 31, 2013.

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 take all actions necessary to apply for the wage and hour determinations and otherwise comply with such laws.

**Governmental Approvals.** The City and, at its direction, 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.

**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, subject to the provisions of **Section 3.4**, including but not limited to, dates of commencement and completion (subject to the time limitations set forth in this Agreement), 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 SLDC, which consent shall not be unreasonably withheld or delayed. For purposes of this **Section 3.6**, "material changes" shall mean (i) any change that could reasonably be expected to result in a decrease in the aggregate amount of TIF Revenues generated within the Redevelopment Area to an amount less than 90% of the aggregate amount of TIF Revenues as projected in that certain Cost-Benefit Analysis for the South Carondelet District #3 TIF Redevelopment Plan dated as of April 18, 2008 (as may be amended), and placed on file with SLDC; or (ii) any change that would reduce the final estimated commercial square footage by more than ten percent (10%) as set forth in this Agreement, the Redevelopment Proposal,

Redevelopment Plan and the Construction Plans.

**Certificate of Commencement of Construction.** The Developer shall furnish to the SLDC, with a copy to the Comptroller, a Certificate of Commencement of Construction, which certificate shall be submitted for the Redevelopment Project in accordance with the schedule set forth in **Section 3.4** of this Agreement and in the form of **Exhibit C** attached hereto and incorporated herein by reference. The Certificate of Commencement of Construction shall be deemed accepted by the SLDC upon receipt of the same.

**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 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 Mayor or his designee or 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, within thirty (30) days following delivery of the Certificate of Substantial Completion 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 the SLDC in accordance with this Section and the thirty (30) day period shall begin anew. Upon acceptance of the Certificate of Substantial Completion by the Mayor or his designee and the SLDC for the Redevelopment Project, 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 the Work. The Certificate of Substantial Completion shall be in substantially the form attached as **Exhibit E**, attached hereto and incorporated by referenced herein.

#### **ARTICLE 4. REIMBURSEMENT OF DEVELOPER COSTS**

**City's Obligation to Reimburse Developer.** Subject to the terms of the Note Ordinance and this Agreement, the City agrees to reimburse Developer for the verified Reimbursable Redevelopment Project Costs in a total amount not to exceed Two Million One Hundred Ninety-Five Thousand Six Hundred Forty-Four Dollars (\$2,195,644) plus Issuance Costs to be allocated to the Redevelopment Project.

Subject to the terms of the Note Ordinance and this Agreement, the City agrees to issue TIF Notes to Developer to evidence the City's obligation to reimburse Developer for verified Reimbursable Redevelopment Project Costs in an amount not to exceed **Two Million One Hundred Ninety-Five Thousand Six Hundred Forty-Four Dollars (\$2,195,644), plus Issuance Costs** and interest as provided in **Section 5.2** of this Agreement, subject to the limitations of **Article IV** of this Agreement.

**Reimbursements Limited to Reimbursable Redevelopment Project Costs; Developer's Right to Substitute.** Nothing in this Agreement shall obligate the City to issue TIF Notes or 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 provide to the City (a) itemized invoices, receipts or other information evidencing such costs; and (b) a Certificate of Reimbursable Redevelopment Project Costs constituting certification by the Developer that such cost is eligible for reimbursement under the TIF Act. Within thirty (30) days of the City's receipt from the Developer of a Certificate of Reimbursable Redevelopment Project Costs, the City shall review and act upon such Certificate of Reimbursable Redevelopment Project Costs. The parties agree that each of the categories of costs set forth in **Exhibit B**, attached hereto and incorporated herein by this reference, shall constitute Reimbursable Redevelopment Project Costs which are eligible for reimbursement in accordance with the TIF Act and this Agreement. The Developer shall be entitled to reimbursement for Redevelopment Project Costs from any of the categories set forth in **Exhibit B** 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 (i)-(v)**, 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 the thirty (30) day period referenced in this **Section 4.2**, identifying the ineligible cost and the basis for determining the cost to be ineligible, whereupon the Developer shall have the right to identify and substitute other Redevelopment Project Costs as Reimbursable Redevelopment Project Costs with a supplemental application for payment and the thirty (30) day period shall begin anew. If the City fails to approve or disapprove any Certificate of Reimbursable Redevelopment Project Costs within thirty (30) days after receipt thereof, the Certificate of Reimbursable Redevelopment Project Costs shall be deemed approved.

**Cost Savings and Excess Profits.** Within one hundred eighty (180) days after the submission of the Certificate of

Substantial Completion by Developer in accordance with **Section 3.8** of this Agreement, Developer also shall furnish to the City for the City's review and approval, (a) a statement of Verified Total Project Costs, with evidence of billings and payments for each expenditure, including itemized invoices, receipts, and pay applications or other evidence of payment as appropriate for the type of cost; and (b) a statement of each and every Post Completion Funding Source for the Redevelopment Project.

If the Redevelopment Project includes a for-sale condominium component, the statements required by this **Section 4.3** shall not be submitted until a minimum of 80% of the condominium units included in the Redevelopment Project have been sold, and such statements shall be submitted within sixty (60) days following such sale of 80% of such condominium units.

Developer shall not include developer fees, project management, construction management 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 Related Entity, the amount of such costs shall not exceed the amount set forth in the Redevelopment Plan for such services, or, if the cost for such service is not explicitly set forth in the Redevelopment Plan as an individual line item, an amount determined by the City as acceptable. 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 pay applications submitted to Developer by the construction contractor. The City shall determine whether particular costs are general requirements and includable in the contractor's fee allowance or are construction costs to which the aggregate contractor's fee allowance shall be applied, using the Cost Certification Guide promulgated by the Missouri Housing Development Commission as a guide for such determinations. The City shall complete its review of the statements and other documentation provided by the Developer pursuant to this Section and shall notify Developer if such documentation is acceptable and complete within forty-five (45) days of receipt by the City. Should the City notify Developer that the documentation submitted by the Developer is not acceptable or is not complete, the City shall specify which items of documentation are missing or unacceptable and the manner in which Developer may remedy such deficiencies, and Developer may make supplemental submissions to address such deficiencies, provided, however, that such supplemental submissions shall not include any materials with respect to costs incurred or other events that have taken place subsequent to the date the original submission was made. If requested by the City, Developer shall also submit an affidavit as to the accuracy of the statements as to the costs, the relationship of any payee to the Developer, the accuracy of the statements as to the amounts and types of tax credits received or other funding sources received, and the veracity of any other aspect of the statements of verified total project costs or Post-Completion Funding Sources. The City shall review any supplemental materials provided by the Developer within forty-five (45) days of receipt and shall notify Developer if such documentation is acceptable and complete within forty-five (45) days of receipt by the City. Developer shall respond to any notification by the City pursuant to this section within sixty (60) days of receipt of such notification. Once the City has issued any such notification, the City shall not be required to make the calculations specified in the following paragraph until the City has received all documentation deemed necessary by the City in order to make such calculations, provided, however, that if Developer fails to respond to any notification within such sixty (60) day period, the City shall have the right to finalize the calculations specified in the following paragraph based on the information and documentation then available to the City and the Developer shall accept the results of such finalized calculations for purposes of the discharge of TIF notes as specified in the following paragraph. Either the City or the Developer may waive or extend the time periods for notification and response set forth herein.

To the extent that, in the City's determination, the sum of Post Completion Funding Sources as identified by the City exceeds the sum of: (x) Verified Total Project Costs, plus (y) four percent (4%) of the Acquisition Costs, plus (z) fifteen percent (15%) of all Verified Total Project Costs other than Acquisition Costs, then Developer hereby agrees that 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 Notes which shall be issued by the City in accordance with Section 5.2 of this Agreement shall be reduced by an amount in the aggregate equal to seventy-five percent (75%) of the total amount of such excess, as calculated by the City in accordance herewith. Developer agrees that the City may discharge any TIF Notes already issued at the time of such calculation in an amount in the aggregate equal to seventy-five percent (75%) of the total excess.

**Condominium Conversion.** Upon initiating a condominium conversion of any portion of the Redevelopment Project that has previously been leased or rented (which conversion shall not be initiated any earlier than five (5) years following the Substantial Completion of the Redevelopment Project, Developer shall notify the City in writing of such conversion. Notice of such condominium conversion shall include (a) documentation as to the balance due to third parties unrelated to the Developer in any manner on any secured or unsecured debt or equity financing for such leased or rented portion of the Redevelopment Project; (b) the amount of and firm commitment for any replacement loan required to commence the conversion; (c) annual operating and expense statements for each Developer fiscal year subsequent to the commencement of construction on the leased or rental portion of the Redevelopment Project; (d) schedule of sales prices for all proposed condominium units; (e) documentation of any monetary

Developer Equity previously invested in such leased or rented portion; and (f) revenue projections for the Special Allocation Fund based on the sales prices for the units.

**4.1.1 The City's Rights.** The City shall have thirty (30) days from receipt of a Notice of Conversion to review and approve the Notice of Conversion, or notify Developer of City's objections thereto. The City's right to object to the Notice of Conversion shall be limited to objections based on the insufficiency of the projected Special Allocation Fund revenues to retire any outstanding TIF notes or bonds and the insufficiency of documentation required herein. Developer shall provide any additional documentation requested by City, to City's satisfaction, after which City shall have an additional thirty (30) days to object solely on the basis of the insufficiency of the Special Allocation Fund revenues to retire any outstanding TIF notes or bonds. Should City fail to object to the Notice of Conversion within the 30-day review period provided for in this Agreement, Developer's condominium conversion plan shall be deemed approved by the City.

**4.1.2 Approval.** Upon approval of the Notice of Conversion, Developer shall provide a progress report on the condominium sales to St. Louis Development Corporation on each three-month anniversary of the date of the Notice of Conversion until a minimum of 95% of such units are sold. Each progress report shall include the following: (a) number of units and sales closed, the size of each unit sold, the gross amounts paid for the sales closed, and costs of sale, which shall be documented by Purchaser's and Seller's closing statements; (b) balance due on any other loans secured by the property; (d) monthly income and expense statement for remaining rental units, including any interest payments made or accrued with respect to any loans secured by the property; and (e) conversion costs incurred, documented by contracts for any work and invoices for any work.

**4.1.3 Condominium Conversion Clawback.** When aggregate Net Sales Proceeds exceed the Costs of Conversion plus a new Developer's Fee in the amount of 10% of the Costs of Conversion, Developer shall pay 90% of all future Net Sales Proceeds into the Special Allocation Fund until the amount in the Special Allocation Fund equals the amount of TIF financing originally provided to the Redevelopment Project.

Should Developer fail to provide any of the notifications or reports described herein or fail to make Net Sales Proceeds payments into the Special Allocation Fund as described herein, City may cancel all outstanding TIF Notes and recover all amounts paid to Developer from the Special Allocation Fund.

**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. The City has not pledged its full faith and credit relative to the City's obligation to issue the TIF Obligations or to pay any Reimbursable Redevelopment Project Costs. The TIF Obligations shall be special, limited obligations of the City, and shall not constitute debt to the City within any constitutional or statutory meaning of the word "debt."

## ARTICLE 5. TIF OBLIGATIONS

**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 D**, 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**.

**Issuance of TIF Notes** The City agrees to issue one or more TIF Notes as provided in this Agreement and 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. The TIF Notes shall be in the form attached to the Note Ordinance as Exhibit B, provided that if the Note Ordinance is repealed or otherwise amended to amend such form of TIF Note, the TIF Notes shall not be amended for the purposes of this Agreement without the written consent of Developer.

**5.1.1 Terms.** Each TIF Note shall bear interest at a fixed rate per annum determined on the date that is not less than ten (10) and not more than sixty (60) business 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 such TIF Note, in the opinion of Bond Counsel, is not exempt from Federal income taxation (the “Taxable Rate”), or (ii) plus two percent (2%) if the interest on such TIF Note, 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 interest from their registration date or from the most recent Payment Date to which interest has been paid or duly provided for.

**5.1.2 Procedures for Issuance of TIF Notes.** Within a reasonable period of time not to exceed ninety (90) days of Developer’s satisfaction of the conditions of **Section 5.1** of this Agreement the City shall issue a TIF Note to an Original Purchaser 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 5.2.2**, 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.

**5.1.3 Special Mandatory Redemption of TIF Notes.** All TIF Notes are subject to special mandatory redemption by the City, in whole at any time or in part on each March 1 and September 1 (each, a “Payment Date”) occurring after the acceptance by the City of the Certificate of Substantial Completion 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.

## **5.2 Issuance of TIF Bonds.**

**5.2.1** The City may, in its sole and absolute discretion, issue or cause to be issued TIF Bonds at any time in an amount sufficient to refund all or a portion of the outstanding TIF Notes.

**5.2.2** Upon receipt of a written request by Developer and upon the City’s underwriter’s recommendation in favor of issuing TIF Bonds and recommendation of the principal amount thereof based on the criteria set forth below, the City shall use its best efforts to cause the Authority to issue TIF Bonds as described in this Section. The aggregate gross cash proceeds from the sale of the TIF Bonds before payment of Issuance Costs, together with any interest accrued thereon (“Bond Proceeds”) of such TIF Bonds will be finally determined by the City after receiving the underwriter’s recommendation based on the criteria set forth below. The City shall not be obligated to cause the Authority to issue such TIF Bonds unless the underwriter determines that all of the following criteria are satisfied as of the date of issuance of such bonds, unless such criteria are waived by the City’s underwriter. 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 Developer may incur in complying with this Section. Notwithstanding anything in this Section to the contrary, Developer shall be liable for all costs incurred by the City or the Authority in the event the Developer has requested the issuance of bonds and the City’s underwriter has determined that such bonds cannot be issued at such time.

**5.2.2.1 Criteria for Issuance.** The underwriter’s recommendation for issuance of TIF Bonds and the principal amount thereof shall be based on the following criteria:

- (i) Acceptance by the City of the Certificate of Substantial Completion;
- (ii) Review of projections of TIF Revenues available for debt service as proposed by an independent qualified consultant. Such projections must show that (A) if all available TIF Revenues were to be applied to the immediate repayment of the TIF Bonds, the TIF Bonds would reasonably be anticipated to be retired within twenty-three (23) years from the effective date of the Approving Ordinance, and (B) based on a maturity date twenty-three (23) years from the effective date of the Approving Ordinance, the TIF Bonds are reasonably likely to achieve debt service coverage ratio reasonably acceptable to the City’s underwriter;
- (iii) Developer’s documentation of stabilization of the Redevelopment Project for a minimum period of two (2) years after substantial completion as evidenced in a report to the City prepared by a qualified independent consultant to be paid for by the City, which report also sets forth TIF revenue projections for the Redevelopment Project in connection with the issuance of the TIF Bonds;
- (iv) The aggregate net projected debt service on the TIF Bonds (taking into account the principal portion of the TIF Bonds that are issued to establish a reserve fund and to pay Issuance Costs, and including any

reserve fund earnings) will be lower than the net average annual debt service on the outstanding TIF Notes, unless the Developer voluntarily elects to defer or forgive principal of and/or interest on the TIF Notes in an amount necessary to make the aggregate net projected debt service on the TIF Bonds lower than the net average annual debt service on the outstanding TIF Notes; and

(v) The TIF Bonds can be sold at an aggregate net interest cost which is less than the aggregate net interest cost of the TIF Notes to be redeemed.

**Application of TIF Bond Proceeds.** Proceeds of any TIF Bonds shall be applied:

**5.2.3** To the payment of costs relating to the issuance of the TIF Bonds;

**5.2.4** To the payment of outstanding principal of and interest on the TIF Notes to be refunded;

**5.2.5** To the payment of capitalized interest on the TIF Bonds; and

**5.2.6** To the establishment of a debt service reserve fund for the TIF Bonds in a reasonable amount of the principal amount of TIF Bonds to be issued, as to be determined by the City's underwriter.

**Cooperation in the Issuance of TIF Obligations.** Developer covenants to cooperate and take all reasonable actions necessary to assist the City and its Bond Counsel, the Authority, 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 Obligations, including disclosure of tenants of the Redevelopment Area and the non-financial terms of the leases between Developer and such tenants. Developer will not be required to disclose to the general public or any investor any proprietary or confidential information, including financial information, pertaining to Developer, but upon the execution of a confidentiality agreement acceptable to Developer, 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. 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, provided, that Developer shall satisfy this and any other obligation under this Agreement to make any provision a covenant running with the land by recording this Agreement in the Office of the Recorder of Deeds of the City of St. Louis.

**Subordinate Notes.** TIF Notes may be issued in two series, with one series subordinate to TIF Notes of the other series issued hereunder (the "Subordinate Notes"), such that no payment of principal or interest on any such Subordinate Notes may be made while any TIF Notes are outstanding. All such Subordinate Notes shall be payable as to principal and interest according to the terms set forth in **Sections 5.2** and **6.3** of this Agreement.

If the amount of TIF Bonds issued pursuant to this Agreement is insufficient to refund all of the outstanding TIF Notes, the TIF Notes remaining outstanding shall be redeemed by the issuance of notes subordinate to the TIF Bonds (the "Subordinate Notes"). Each Subordinate Note shall have the same maturity and have the same outstanding principal amount and the same interest rate as the TIF Note it redeems. All such Subordinate Notes shall be payable as to principal and interest according to the terms set forth in **Sections 5.4** and **6.3** of this Agreement.

**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 discretion.

## ARTICLE 6.

### SPECIAL ALLOCATION FUND; COLLECTION AND USE OF TIF REVENUES

**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," an "EATs Account," and such further accounts or sub-accounts as are required by this Agreement or as the Comptroller 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 Payments in Lieu of Taxes into the PILOTs Account and all Economic Activity Taxes into the EATs Account.

#### 6.1 Certification of Base for PILOTs and EATs.

**6.1.1** Upon the reasonable written request of the City, Developer shall use its best efforts to provide or cause to be provided to the Comptroller or its authorized representative any documents necessary for the City to calculate the base for PILOTs and EATs including, but not limited to: (i) the address and locator number of all parcels of real property located within the Redevelopment Area; and (ii) information related to payment of utility taxes by any businesses, owners or other occupants of the Redevelopment Area in the calendar year ending December 31, 2009

**6.1.2** Within ninety (90) days after execution of the Redevelopment Agreement, the City shall provide to the Developer (i) a certificate 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 valuation 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, 2009, but excluding those personal property taxes, taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, taxes levied pursuant to Section 70.500 of the Revised Statutes of Missouri, taxes levied for the purpose of public transportation, or licenses, fees or special assessments identified as excluded in Section 99.845.3 of the TIF Act.

## **6.2 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.

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 SLDC, and payment in full of any other amounts required to be paid under the Note Ordinance, all amounts remaining on deposit in the Revenue Fund shall be declared as surplus and distributed in the manner provided in the Act.

If monies available in Special Allocation Fund are insufficient to reimburse the City or the Developer as provided above on any Payment Date, then the unpaid portion shall be carried forward to the next Payment Date, with interest thereon.

The City agrees that it will comply with the Charter of The City of St. Louis, Article XVI, Section 3 for each fiscal year that TIF Obligations are outstanding and the City will request an appropriation of all Available Revenues on deposit in the Special Allocation Fund for application to the payment of the principal of (including, but not limited to, payment of a premium, if any) and interest on the TIF Obligations.

**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, but not limited to, the City's enforcement and collection of all such payments through all reasonable and ordinary legal means of enforcement.

**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 to pay TIF Revenues and shall 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.

**Notice to City of Transfer.** The Developer agrees to notify the City in writing of any sale, transfer or other disposition of the Property or any interest therein as permitted by **Section 7.3.2** of this Agreement at least fifteen (15) days prior to such 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. Notwithstanding the foregoing, Developer shall not be required to notify the City of the lease or transfer of a residential unit, commercial unit or parking space in the ordinary course of business except as may be required by **Section 4.3**.

## **ARTICLE 7. GENERAL PROVISIONS**

**Developer's Right of Termination.** At any time prior to the delivery of a 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.

**City's Right of Termination.** The City may terminate this Agreement if (i) the Developer fails to submit to the MBE/WBE Compliance Officer a copy of Developer's MBE/WBE Subcontractor's List and its MBE/WBE Utilization Statement within one hundred eighty (180) days of the date of this Agreement; provided, however, that termination under this Section 7.2(i) may be waived in the sole discretion of the MBE/WBE Compliance Officer; or (ii) the Developer fails to submit its Certificate of Substantial Completion, acceptable to the City, in accordance with **Section 3.8** of this Agreement and the schedule set forth in **Section 3.4** of this Agreement. Upon such termination, the City shall have no obligation to issue a TIF Note or to reimburse the Developer for any amounts advanced under this Agreement or costs otherwise incurred or paid by Developer.

## **7.1 Successors and Assigns.**

**7.1.1 Binding Effect.** 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.

**7.1.2 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, however, 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 or its rights, duties and obligations under this Agreement 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; and (b) the right of Developer to transfer the Property or to assign the Developer's rights, duties and obligations under this Agreement to any Related Entity; (c) the right of the Developer to sell, lease or transfer a residential unit, commercial unit or parking space in the ordinary course of business; provided that in each such event (i) the Developer named herein shall remain liable hereunder for the substantial completion of the Redevelopment Project, subject, however, to Developer's right of termination pursuant to **Section 7.1** of this Agreement, and shall be released from such liability hereunder only upon substantial completion of the Redevelopment Project and (ii) the Developer provides to the City fifteen (15) days' advance written notice of the proposed assignment or transfer other than of the sale or lease of a residential unit, commercial unit or parking space in the ordinary course of business which shall require no notice except as may be required by **Section 4.3**.

**7.1.3 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 effective date that the Approving Ordinance. 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.

**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.

**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 in the event of any delay caused by force majeure (except as expressly limited in **Section 3.4**), 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 (i) 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 (ii) the Developer notifies the City in writing within thirty (30) days of the commencement of such claimed event of force majeure.

**Notices.** All notices, demands, consents, approvals, certificates and other communications required by this Agreement to be given by either party hereunder shall be in writing and shall be hand delivered or sent by United States first class mail, postage prepaid, addressed to the appropriate party at its address set forth below, or at such other address as such party shall have last designated by notice to the other. Notices, demands, consents, approvals, certificates and other communications shall be deemed given when delivered or three days after mailing; provided, however, that if any such notice or other communication shall also be sent by telecopy or fax machine, such notice shall be deemed given at the time and on the date of machine transmittal if the sending party receives a written send verification on its machines and forwards a copy thereof with its mailed or courier delivered notice or communication.

- (i) In the case of the Developer, to:

Carondelet TIF, Inc.  
c/o Steins Broadway Inc  
7525 S. Broadway  
St. Louis, Missouri 63111  
Attention: Benjamin J. Simms  
Facsimile: 314-631-9918

- (ii) 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 for 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: 314-588-0550

With a copy to:

City of St. Louis  
City Counselor  
City Hall  
1200 Market Street, Room 314  
St. Louis, Missouri 63103  
Attention: Peter Mosanyi, Assistant City Counselor  
Facsimile: 314-622-4956

And

Armstrong Teasdale LLP  
One Metropolitan Square, Suite 2600  
St. Louis, Missouri 63102  
Attention: Thomas J. Ray, Esq.  
Facsimile: 314-621-5065

(iii) In the case of the SLDC, to:

SLDC  
1015 Locust Street, Suite 1200  
St. Louis, Missouri 63101  
Attention: Dale Ruthsatz  
Facsimile: 314-231-2341

**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.

**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 and the Developer or a Related Entity owns the Property, 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 or the issuance of a TIF Note to a purchaser other than the Developer or a Related Entity, the Developer shall, at the City's option after consultation with the Developer, tender to the City that portion of the insurance proceeds, if any, to which Developer is entitled, after satisfaction of any terms or obligations of any deed of trust, promissory note or financing agreement entered into by the Developer for the financing of all or any part of the Redevelopment Project, from any fire or casualty insurance policy in an amount equal to the outstanding principal amount of the TIF Bonds or TIF Notes, plus accrued interest thereon to be deposited into the Special Allocation Fund.

**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.

**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.

**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.

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

**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.

**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.

**Attorney's Fees.** In any dispute arising out of or relating to this Agreement, including any action to enforce this Agreement against a defaulting or breaching party pursuant to **Section 7.4**, the prevailing party shall recover from the non-prevailing party the prevailing party's attorney's fees, in addition to any other damages to which it is entitled.

**Actions Contesting the Validity and Enforceability of the Redevelopment Plan** 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, 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 to which the Developer would agree, 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.

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

**7.1.4** 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.

**7.1.5** 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.

**7.1.6** 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.

**7.1.7** 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.

**7.1.8** 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 Notes which may become due to any party under the terms of this Agreement.

**7.1.9** 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.

**Survival.** Notwithstanding the expiration or termination or breach of this Agreement by either party, the agreements contained in **Section 2.2, clauses (iii)-(v), Article VI, Sections 7.10, 7.11, 7.12, 7.13, 7.14, 7.15, 7.16, 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.

**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.

**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.

**Fair Employment.** Without limiting any of the foregoing, the Developer voluntarily agrees to observe the Equal Opportunity and Nondiscrimination Guidelines set forth as **Exhibit F**, 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 F**, attached hereto and incorporated herein by reference.

**MBE/WBE Compliance.** The Developer shall comply with the Mayor's Executive Order #28, as amended as of the date of this Agreement, during the design and construction of the Redevelopment Project and with respect to ongoing services provided by third parties to the Developer in connection with the Redevelopment Project.

**ARTICLE 8.  
REPRESENTATIONS OF THE PARTIES**

**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 Notes, and all of the foregoing have been or will be, upon adoption of ordinances authorizing the issuance of the TIF Notes, 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.

**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 is 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: \_\_\_\_\_

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

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

(SEAL)

Attest:

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

Approved as to Form:

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

**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.

**“DEVELOPER”**

**CARONDELET TIF, INC.** a Missouri corporation

By: \_\_\_\_\_  
Name: Benjamin J. Simms  
Title: President

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

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, 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



**Legal Description**

---

Beginning at the intersection of the centerline of Steins Street and Water Street; thence southwest along the centerline of Water Street to the centerline of the extension of the east-west alley between Water Street and the Missouri Pacific railroad tracks; thence southeast along the centerline of the alley to the extension of the eastern property line of parcel 3093000130 ( 201-05 Schirmer Street); thence southwest along the eastern property line of parcel 3093000130 to the centerline of Schirmer Street; thence southwest along the centerline of Schirmer Street to the intersection with the extension of the eastern property line of parcel 3118000150 (7700 Water Street); thence southwest along the eastern property line of parcel 3118000150 to the southern property line of parcel 3118000150; thence northwest along the southern property line of parcel 3118000150 to the intersection with the centerline of Water Street; thence southwest along the centerline of Water Street to its intersection with the extension of the southern property line of parcel 3117000040 (7717 Water Street ); thence northwest along the southern property line of parcel 3117000040 to its intersection with the centerline of the north-south alley running between Schirmer Street and Courtois Street; thence southwest along the centerline of the alley to the extension of the southern property line of parcel 3117000145 (7712-18 S. Broadway); thence northwest along the southern property line of parcel 3117000145 to the centerline of S. Broadway; thence northeast along the centerline of S. Broadway to its intersection of the centerline of Schirmer Street; thence southeast along the centerline of Schirmer Street to its intersection with the extension of the centerline of the north-south alley running between Schirmer Street and Steins Street; thence northeast along the centerline of the alley to its intersection with the extension of the southern property line of parcel 3094000145 (7610-14 S. Broadway); thence northwest along the southern property line of parcel 3094000145 to its intersection with the centerline of S. Broadway; thence southwest along the centerline of S. Broadway to its intersection with the extension of the southern property line of parcel 3095000050 (7617-19 S. Broadway); thence northwest along the southern property line of parcel 3095000050 to its intersection with the centerline of the north-south alley between Schirmer Street and Steins Street; thence northeast along the centerline of the alley to its intersection with the southern right-of-way of Steins Street; thence northwest along the southern right-of-way of Steins Street to its intersection with the extension of the western property line of parcel 3083000060 (117 W. Steins); thence northeast along the western property line of parcel 3083000060 to its intersection with the southern property line of parcel 3083000100 (7518 Pennsylvania Avenue); thence north west along the southern property line of parcel 3080000100 to its intersection with the centerline of Pennsylvania Avenue; thence southwest along the centerline on Pennsylvania Avenue to its intersection with the centerline of Steins Street; thence northwest along the centerline of Steins Street to its intersection with the extension of the extension of the western property line of parcel 3082000060 (201 W. Steins Street); thence northeast along the western property line of parcel 3082000060 to its intersection with the centerline of the east-west alley running between Pennsylvania Avenue and Minnesota Avenue; thence southeast along the centerline of the alley to its intersection with the centerline of Pennsylvania Avenue; thence northeast along the centerline of Pennsylvania Avenue to its intersection with the extension of the northern property line of parcel 3083000100 (7518 Pennsylvania Avenue); thence southeast along the northern property line of parcel 3083000100 to its intersection with the eastern property line of parcel 3083000100; thence southwest along the eastern property lines of parcel 3083000100 and parcel 3083000060 (117 W. Steins Street) to the intersection with the northern right-of-way of Steins Street; thence southeast

**EXHIBIT B**  
**TIF 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 Public Improvements Costs (includes, but is not limited to, street and sidewalk improvements, parking facilities, utility work and resetting of curbs and landscaping and lighting in the right of way areas).
d)	Construction of new residential units or structures, and rehabilitation or renovation of any existing structures.
e)	Financing Costs (includes, but is not limited to, loan fees, disbursing 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).
f)	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).
g)	Professional Service Costs (includes, but is not limited to, architectural, engineering, legal, marketing, financial, planning, sales commissions or special services).
h)	TIF Costs & Issuance Costs incurred by the Developer pursuant to <b>Section 2.2(i) – 2.2.(v)</b> of this Agreement.

<sup>1</sup> Subject to the limitations set forth in **Section 4.2** of this Agreement, provided that such costs shall not exceed the aggregate amount of \$2,195,644 plus Issuance Costs as provided in the Agreement.

**EXHIBIT C**  
**Form of Certificate of Commencement of Construction**

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

City of St. Louis  
St. Louis Development Corp  
1015 Locust St., Ste. 1200  
St. Louis, MO 63103  
Attention: Dale Ruthsatz

**DELIVERED BY**  
**Carondelet TIF, Inc.**

The undersigned, Carondelet TIF, Inc. (the "Developer"), pursuant to that certain Redevelopment Agreement dated as of \_\_\_\_\_, 20\_\_, between the City of St. Louis, Missouri (the "City") and Developer (the "Agreement") hereby certifies to the City as follows:

1. All property within the Redevelopment Area necessary for the Redevelopment Project (as legally described on Appendix A attached hereto and by this reference incorporated herein and made a part hereof), has been acquired by Developer or a Related Entity in accordance with the Agreement.
2. Developer has entered into an agreement with a contractor or contractors to construct the Redevelopment Project.
3. Developer has submitted to the MBE/WBE Compliance Officer a copy of Developer's MBE/WBE Subcontractor's List and MBE/WBE Utilization Statement, which are attached hereto as Appendix B.
4. Developer has obtained all necessary financing to complete the Redevelopment Project.
5. This Certificate of Commencement of Construction is being issued by Developer to the City in accordance with the Agreement to evidence Developer's satisfaction of all obligations and covenants with respect to commencement of construction of the Redevelopment Project.

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

**CARONDELET TIF, INC.**

By: \_\_\_\_\_  
Name: Benjamin J. Simms  
Title: President

**EXHIBIT D  
Form of 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, South Carondelet District #3 Redevelopment Project**

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Redevelopment Agreement dated as of \_\_\_\_\_, 20\_\_ (the "Agreement"), between Carondelet TIF, Inc., a Missouri corporation (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 Redevelopment Plan and 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 \_\_\_\_\_, \_\_\_\_\_.

**CARONDELET TIF, INC.**

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

Name: Benjamin J. Simms  
Title: President

Approved for payment this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**SLDC**

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

**Schedule 1**

The Developer has incurred the following Reimbursable Redevelopment Project Costs:

Payee:	Amount:	Description of Reimbursable Redevelopment Project Costs:
--------	---------	--

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

The undersigned, Carondelet TIF, Inc., a Missouri corporation (the "Developer"), pursuant to that certain Redevelopment Agreement dated as of \_\_\_\_\_, 20\_\_, 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 Exhibit B 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. 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 incorporated herein by reference, certifying that the Redevelopment Project has been substantially completed in accordance with the Agreement.
5. Mechanics lien waivers for applicable portions of the Work in excess of Five Thousand Dollars (\$5,000) have been obtained.
6. This Certificate of Substantial Completion is being issued by the Developer to the SLDC 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 SLDC and the Mayor or his designee to object in writing to this Certificate within thirty (30) days of the date of delivery of this Certificate to the SLDC 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 SLDC and the Mayor or his designee, 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.

(remainder of page intentionally left blank)

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**CARONDELET TIF, INC.**

By: \_\_\_\_\_  
Name: Benjamin J. Simms  
Title: President

ACCEPTED:

**SLDC**

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

**CITY OF ST. LOUIS, MISSOURI**

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

(Insert Notary Form(s) and Legal Description)

**EXHIBIT F  
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 SLDC, 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.



in the Subcontractor List, which are deemed by the City to be legitimate and responsible. The undersigned understands that if any of the statements and representations are made by the respondent knowing them to be false, or if there is a failure of the successful respondent to implement any of the stated agreements, intentions, objectives, goals and commitments set forth herein without prior approval of the City, then in any such events, the contractor's act or failure to act, as the case may be, shall constitute a material breach of the contract, entitling the City to terminate the contract for default. The right to so terminate shall be in addition to, and not in lieu of, any other rights and remedies the City may have for other defaults under the contract. Additionally, the contractor may be subject to the penalties cited in Section Twelve of the Mayor's Executive Order #28, as amended.

**Assurance:** I, acting as an officer of the undersigned bidder or joint venture bidders, hereby assure the City that on this project my company will (check one):

\_\_\_\_\_ Meet or exceed contract award goals and provide participation as shown above.

\_\_\_\_\_ Fail to meet contract award goals but will demonstrate that good faith efforts were made to meet the goals and my company will provide participation as shown above.

Name of Prime Contractor(s): \_\_\_\_\_

\_\_\_\_\_

Prime Contractor Authorized Signature:

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

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

Date: \_\_\_\_\_

**Approved: November 23, 2010**