

**ORDINANCE #68435**  
**Board Bill No 134**

An Ordinance Authorizing The Execution Of A Transportation Project Agreement Between The City, Washington Avenue Apartments, L.P., And The Washington Avenue Transportation Development District; Prescribing The Form And Details Of Said Agreement; Making Certain Findings With Respect Thereto; Approving Modification Of The Transportation Project; Authorizing Other Related Actions In Connection With The Transportation Project; And 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; and

**WHEREAS**, pursuant to sections 238.200 to 238.275 RSMo. (2005) (the “TDD Act”), by that certain Judgment and Order of the Circuit Court of the City of St. Louis, Missouri, in Cause No. 0922-CC01620, Division 1, entered \_\_\_\_\_, 20\_\_ (the “Order”), the Washington Avenue Transportation Development District (the “TDD”) was created; and

**WHEREAS**, the TDD intends to undertake that certain “Transportation Project” as described and defined in the Order, as modified herein, which Transportation Project will provide a benefit to the City by increasing the available supply of parking; and

**WHEREAS**, the City of St. Louis constitutes the “local transportation authority” for the purposes of the Transportation Project, and as a result of the Missouri Highway Transportation Commission’s declining jurisdiction over the Transportation Project, approval of the Transportation Project is vested exclusively with the City; and

**WHEREAS**, the TDD Act provides that prior to construction or funding of a proposed project, such project shall be submitted to the local transportation authority for its prior approval, subject to any required revisions of such project, and the district and local transportation authority in question entering into a mutually satisfactory agreement regarding the development and future maintenance of such proposed project; and

**WHEREAS**, the City hereby desires and intends to approve the Transportation Project, as modified herein, subject to the TDD and the City entering into a mutually satisfactory agreement regarding the development and future maintenance of the Transportation Project; and

**WHEREAS**, the City intends to enter into that certain Transportation Project Agreement (the “Agreement”), in the form attached hereto as **Exhibit A** and incorporated herein by reference, with the TDD and Washington Avenue Apartments, L.P., a Missouri limited partnership (the “Developer”), as a mutually satisfactory agreement regarding the development and future maintenance of the Transportation Project; and

**WHEREAS**, the TDD Act provides that, within six months after development and initial maintenance costs of a project have been paid, the district shall transfer control and ownership of the project in question to the local transportation authority pursuant to contract; and

**WHEREAS**, the TDD intends to transfer and the City intends to accept such control and ownership pursuant to and on the terms set forth in the Transportation Project Agreement; and

**WHEREAS**, the Board of Aldermen hereby determines that the terms of the Transportation Project Agreement attached as **Exhibit A** hereto and incorporated herein by reference are acceptable and that the execution, delivery and performance by the City, the Developer and the TDD of their respective obligations are in the best interests of the City and the health, safety, morals and welfare of its residents.

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

**SECTION ONE.** The Board of Aldermen hereby approves the Transportation Project as submitted to the City.

**SECTION TWO.** The Board of Aldermen further finds and determines that it is necessary and desirable to enter into the Transportation Project Agreement with the Developer in order to implement the Transportation Project.

**SECTION THREE.** The Board of Aldermen finds and determines that the Transportation Project is necessary and desirable in order to increase the supply of available parking in the City.

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

**SECTION FIVE.** The Mayor and Comptroller of the City or his or her 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 or Comptroller or his or her designated representatives.

**SECTION SIX.** The Mayor and Comptroller or his or her 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 or Comptroller or his or her designated representatives.

**SECTION SEVEN.** 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**

#### Transportation Project Agreement

#### **Washington AVENUE TRANSPORTATION DEVELOPMENT DISTRICT** **Transportation Project Agreement**

THIS WASHINGTON AVENUE TRANSPORTATION PROJECT AGREEMENT (this "Agreement") is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 200\_, by and between the WASHINGTON AVENUE TRANSPORTATION DEVELOPMENT DISTRICT, a political subdivision duly organized and existing under the laws of the State of Missouri (the "TDD"), 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 (the "City"), and WASHINGTON AVENUE APARTMENTS, L.P., a Missouri limited partnership (the "Developer").

#### Recitals:

A. The TDD is a political subdivision and transportation development district formed pursuant to the Missouri Transportation Development District Act, Sections 238.200 to 238.275 of the Revised Statutes of Missouri, as amended (the "TDD Act").

B. The Developer is the owner of certain real property and affiliated with the owners of certain real property described on Exhibit A, attached hereto and incorporated herein by reference, together with certain improvements thereon, located in the City (the "Property").

C. The TDD has acquired from the Developer a leasehold interest in a portion of the Property, upon which the Developer may design, develop and construct a TDD Project, or which may be acquired for a TDD Project (as defined in Section 1 of this Agreement).

D. Upon completion of acquisition and construction of the TDD Project, the TDD intends to pledge certain TDD

Revenues to the payment of Obligations (as defined hereinafter) in a principal amount sufficient to finance the TDD Project and related costs of the TDD, including, without limitation, funding capitalized interest on the Obligations, establishing a reserve fund for the Obligations and paying the costs of issuance of the Obligations. The contribution by the TDD towards the acquisition and construction of the TDD Project is intended to reimburse the Developer for the acquisition and construction of the TDD Project.

E. Preliminary plans and specifications (“Preliminary Plans”) of the TDD Project are set forth on Exhibit B, attached hereto and incorporated herein by reference, which Preliminary Plans have been approved by the City.

F. The City and the TDD desire to enter into this Agreement in order to: (i) acknowledge the general economic benefit and value to the community created by the TDD Project and to provide for public access within the TDD Project on the terms set forth herein; (ii) memorialize the agreement of the City, acting in its capacity as local transportation authority (as defined in the TDD Act) regarding development and future maintenance of the TDD Project; and (iii) serve as the contract pursuant to which the TDD shall transfer control and ownership of the Project to the City after the costs thereof have been paid in accordance with Section 238.275.1 of the TDD Act. The City acknowledges that it is entering into this Agreement for the overall benefit of the community and that the commitment to provide public access to the TDD Project does not constitute a specific economic benefit to the City or the TDD.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, receipt and sufficiency of which are acknowledged, the TDD and the City hereby agree as follows:

**Section 1. Definitions.** In addition to the capitalized terms defined elsewhere in this Agreement and in the Recitals, the following capitalized terms used in this Agreement shall have the meanings ascribed to them in this Section.

*Lease.* That certain lease agreement entered into between the Developer, as landlord, and the TDD, as tenant, for the TDD Project, as may be amended from time to time by the parties thereto.

*Obligations.* Obligations issued by the TDD or the City to finance the design, development, construction and/or the acquisition of the TDD Project.

*Property.* The real property described in Exhibit A hereto, all of which is located within the boundaries of the TDD.

*TDD Project.* The Transportation Project described in Exhibit C of the Petition for the Creation of a Transportation Development District, filed in the Circuit Court of the City of St. Louis, Cause No. 0922-CC01620, Division 1, on \_\_\_\_\_, \_\_\_\_\_.

*TDD Revenues.* The TDD Sales Tax and any other sales taxes, special assessments, real property taxes and other fees and charges that may be imposed by the TDD pursuant to the applicable provisions of the TDD Act.

*TDD Sales Tax.* The transportation development district sales tax that the TDD is authorized to impose pursuant to Section 238.235 of the TDD Act.

*Term.* The period commencing on the date of execution of the TDD Ground Sublease and, unless otherwise terminated hereunder prior thereto, continuing until the end of the calendar month that includes that date that is the later of: (i) the end of the TDD Project’s reasonably expected useful life, as determined by an engineer qualified to provide engineering services in the State of Missouri; or (ii) the satisfaction in full of all Obligations.

**Section 2. Access to TDD Project.** The TDD shall, and shall cause its agents and contractors to, comply with any and all applicable laws in connection with its operation of the TDD Project. Prior to the Transfer, defined below, the TDD shall retain all operational control of the TDD Project. After the Transfer, the City shall have all operational control of the TDD Project for the duration of the Lease term, subject to any existing encumbrances.

**Section 3. Transfer of Ownership and Control.** The City and the TDD agree to execute an Assignment of Lease Agreement in form mutually agreeable to the parties immediately upon maturity or termination of the Obligations, by which the TDD transfers to the City its interest in the Lease for the remaining term of the Lease (the “Transfer”). The TDD and the City acknowledge that, upon execution, the transactions contemplated by the Assignment of Lease Agreement shall constitute the transfer of control and ownership of the Project as required pursuant to Section 238.275 of the TDD Act, provided that the TDD shall remain responsible for operation and maintenance of the Project even after such transfer, in accordance with Section 4 hereinafter.

**Section 4. TDD Project Operation and Maintenance.** Except as otherwise provided in the Lease, while the Obligations remain outstanding, the TDD shall perform, or cause to be performed, all obligations connected with or arising out of owning, occupying or using the TDD Project or any part thereof, including without limitation the payment of all expenses required for the operation of the TDD Project, including, without limitation, payment of any real or personal property taxes, assessments, payments in lieu of taxes assessed, any expenses incurred, performance of any cleaning or maintenance services required to maintain the TDD Project in good condition, and provision of any repairs for any damage to the TDD Project (the "TDD Maintenance"). The TDD agrees to operate and maintain the TDD Project in accordance with all applicable laws and regulations. Following the satisfaction in full of all Obligations, and during the remaining Term of this Agreement, the City shall be responsible for the TDD Maintenance.

**Section 5. Indemnification and Release.** To the extent permitted by law, the TDD agrees to indemnify, defend, and hold the City, its employees, agents, and independent contractors and consultants harmless from and against any and all suits, claims, costs of defense, damages, injuries, liabilities, and costs and/or expenses, including court costs and reasonable attorneys' fees and expenses, resulting from, arising out of, or in any way connected with: (i) the acquisition of the TDD Project, including liability under any Environmental Laws; and (ii) the negligence or willful misconduct of the TDD or its respective employees, agents or independent contractors in connection with the management, and acquisition of the TDD Project. To the extent permitted by law, the City agrees to indemnify, defend, and hold the TDD and its employees, agents, and independent contractors harmless from and against any and all suits, claims, damages, injuries, liabilities, and costs and/or expenses, including court costs and reasonable attorneys' fees and expenses, resulting from, arising out of, or in any way connected with the negligence or willful misconduct of the City, its employees, agents, and independent contractors and consultants, or arising from a default by the City of its obligations hereunder. The indemnifications set forth in this Section shall survive termination or expiration of this Agreement.

**Section 6. Miscellaneous.**

**6.1 Representations and Warranties of the TDD.** The TDD hereby represents and warrants to the City and the Developer that: (i) the TDD is authorized to enter into and perform this Agreement and each agreement to be executed and performed by the TDD pursuant to this Agreement; (ii) this Agreement was duly authorized by the governing body of the TDD; and (iii) this Agreement is binding upon, and enforceable against the TDD, in accordance with its terms.

**6.2 Representations and Warranties of the Developer.** The Developer hereby represents and warrants to the City and the TDD that: (i) the Developer is authorized to enter into and perform this Agreement and each agreement to be executed and performed by the Developer pursuant to this Agreement; (ii) this Agreement was duly authorized by the governing entity of the Developer; and (iii) this Agreement is binding upon, and enforceable against the Developer, in accordance with its terms.

**6.3 Representations and Warranties of the City.** The City hereby represents and warrants to the TDD and the Developer that: (i) the City is authorized to enter into and perform this Agreement and each agreement to be executed and performed by the City pursuant to this Agreement; (ii) this Agreement was duly authorized by the governing body of the City; and (iii) this Agreement is binding upon, and enforceable against the City, in accordance with its terms.

**6.4 Applicable Law.** This Agreement shall be taken and deemed to have been fully executed, made by the parties in, and governed by, the laws of the State of Missouri.

**6.5 Representatives Not Personally Liable.** No elected or appointed official, agent, employee or representative of the City or the TDD 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. No member, partner, agent, employee or representative of the Developer shall be personally liable to the City or the TDD 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.

**6.6 Entire Agreement; Amendment.** This Agreement constitutes the entire agreement between the TDD and the City with respect to the matters herein and no other agreements or representations other than those contained in this Agreement have been made by the parties. It supercedes all prior written or oral understandings with respect thereto. This Agreement shall be amended only in writing and effective when signed by the authorized agents of the TDD and the City.

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

**6.8 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, unless the unenforceable or invalid term or provision is such that a court reasonably would find that the parties, or any of them, would not have entered this Agreement without such term or provision, or would not have intended the remainder of this Agreement to be enforced without such term or provision.

**6.9 Notices.** Any notice, demand, or other communication required by this Agreement to be given by any party hereto to the others shall be in writing and shall be sufficiently given or delivered if dispatched by certified mail, postage prepaid, or delivered personally as follows:

In the case of the TDD: Washington Avenue Transportation Development District  
165 N. Meramec Ave., Suite 430  
St. Louis, Missouri 63105  
Attention: Bill Bruce

With a copy to: Husch Blackwell Sanders LLP  
190 Carondelet Plaza, Suite 600  
St. Louis, Missouri 63105  
Attention: David Richardson, Esq.

In the case of the City, to: City of St. Louis  
City Hall  
1200 Market Street  
St. Louis, Missouri 63103  
Attention: Mayor, Room 200  
Attention: Comptroller, Room 212

With a copy to: St. Louis Development Corporation  
1015 Locust Street, Suite 1200  
St. Louis, Missouri 63101  
Attention: Executive Director

and

City Counselor  
City of St. Louis  
1200 Market Street, Room 314  
St. Louis, Missouri 63103  
Attention: Peter Mosanyi

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

**[Signature Pages to Follow.]**

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

WASHINGTON AVENUE TRANSPORTATION  
DEVELOPMENT DISTRICT

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

ATTEST:

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

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

CITY OF ST. LOUIS, MISSOURI

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

Attest: \_\_\_\_\_  
Register

Approved as to form: \_\_\_\_\_  
City Counselor

**EXHIBIT A**

**Legal Description of the Property**

A tract of land being part of City Blocks 517 and 836 of the City of St. Louis, Missouri, whose external boundaries are described as follows:

Beginning at the Southwestern corner of that certain parcel located at 1133 Washington Avenue, currently owned by Washington Avenue Apartments, L.P., and having a City of St. Louis Assessor’s office tax identification number of 05170000107, and extending Northward to along the western border of the aforesaid parcel to its Northwestern corner. Thence proceeding Eastward along the Northern border of the aforesaid parcel to its Northeast corner. Thence proceeding Southward along the aforesaid parcel’s Eastern border to its Southeast corner, said point being on the Northern right-of-way line of Washington Avenue. Thence proceeding Eastward along the Northern right-of-way line of Washington Avenue to the Western right-of-way line of 11th Street. Thence proceeding Southward across Washington Avenue to the Northeast corner of that certain parcel 1100 Washington Avenue, currently owned by 1110 Partners, L.P., and having a City of St. Louis Assessor’s office tax identification number of 08360000501, and continuing Southward along the aforesaid parcel’s Eastern border to the Northern right-of-way line of St. Charles Street. Thence proceeding Westward along the Northern right-of-way line of St. Charles Street to the Southwestern corner of that certain parcel located at 1122 Washington Avenue, currently owned by 1122 Washington, L.P., and having a City of St. Louis Assessor’s office tax identification number of 08360000351. Thence proceeding Northward along the Western border of the aforesaid parcel to its Northwestern corner, said point being on the Southern right-of-way line of Washington Avenue. Thence proceeding Westward along the Southern right-of-way line of Washington Avenue to the East right-of-way line of Tucker Boulevard. Thence proceeding Northward along the East right-of-way line of Tucker Boulevard across Washington Avenue to the point of Beginning.

The district shall include all or a portion of the parcels and right-of-ways more particularly described as follows:

**Parcel 1**

Lots 1 through 4 inclusive and the Eastern 9 inches of Lot 5 of the Partition of Peter Lindell’s Estate, in block No. 836 of the City of St. Louis, Missouri, having an aggregate front of 100 feet 1 inch on the South line of Washington Ave., by a depth Southwardly of 150 feet to the North line of St. Charles Street; bounded East by the West line of Eleventh Street.

**Parcel 2**

Any and all first floor retail and/or commercial units of the parcel more particularly described as follows:

The Western 24 feet 1 inch of Lot 5 and all Lots Nos. 6, 7 and 8 of Lindell’s Subdivision in block No. 836 of the City of St. Louis, beginning at a point in the South line of Washington Avenue, distant 100 feet 1 inch West of the West line of Eleventh Street, thence Westwardly along the South line of Washington Avenue 98 feet 7 inches, more or less, to a point, thence Southwardly and parallel with Eleventh Street 150 feet to the North line of St. Charles Street, thence Eastwardly along the North line of St. Charles Street, 96 feet 7 inches, more or less, to a point distant 9 inches West of the East line of Lot No. 5, thence North and parallel to Eleventh Street, 150 feet to the point of beginning; bounded on the East by property acquired by Howard, et al., by Deed recorded in Book 1587 page 114.

**Parcel 3**

Any and all first floor retail and/or commercial units of the parcel more particularly described as follows:

Lots 9, 10 and 11 of Subdivision of Peter Lindell's Estate and in Block 836 of the City of St. Louis, together fronting 74 feet 6 inches on the South line of Washington Avenue by a depth Southwardly of 150 feet to the North line of St. Charles Street.

Commonly known and numbered 1122 Washington, St. Louis, Missouri.

Subject to deed restrictions, easements, rights-of-way of record, and zoning regulations if any.

**Parcel 4**

Any and all first floor retail and/or commercial units of the parcel more particularly described as follows:

A Lot in Block 517 of the City of St. Louis, Missouri fronting 121 feet 1-1/4 inches, more or less on the North line of Washington Avenue by a depth Northwardly of 137 feet, more or less, to the South line of Lucas Avenue; bounded West by Tucker Boulevard (formerly Twelfth Boulevard) and East by property now or formerly of Lindell Real Estate Company ("the property").

Including only that portion located on the first floor of the building.

**Washington Avenue Right-of-Way**

That portion of Washington Avenue bounded by 11th Street on the east and Tucker Boulevard on the west.

**EXHIBIT B**

**PRELIMINARY PLANS OF TDD PROJECT**

[SEE ATTACHED]

**Approved: July 27, 2009**