

**ORDINANCE #66925**  
**Board Bill No. 291**

**AN ORDINANCE APPROVING AND AUTHORIZING THE CITY TO EXECUTE AN AMENDED AND RESTATED DEVELOPMENT AGREEMENT WITH DOMINION HOSPITALITY-JEFFERSON, L.L.C.; AUTHORIZING AND APPROVING THE FORM OF AN ACCESS AGREEMENT BETWEEN THE CITY AND THE RESIDENCE INN DOWNTOWN TRANSPORTATION DEVELOPMENT DISTRICT AND THE TAKING OF FURTHER ACTIONS WITH RESPECT THERETO; AUTHORIZING THE TAKING OF OTHER ACTIONS, APPROVAL AND EXECUTION OF OTHER DOCUMENTS NECESSARY OR DESIRABLE TO CARRY OUT AND COMPLY WITH THE INTENT HEREOF; AND CONTAINING A SEVERABILITY CLAUSE.**

**WHEREAS**, Dominion Hospitality-Jefferson, L.L.C., (the "*Company*") desires to design, develop and construct a 188-room Residence Inn Hotel (the "*Hotel*") and an approximately 186-car surface parking lot with lighting and right-of-way improvements all on a site located generally North of Scott Avenue, South of Interstate 64, West of Jefferson Avenue and East of Ewing Avenue, within the City of St. Louis, Missouri (the "*Property*"); and

**WHEREAS**, the Property is located in the Mill Creek Valley Redevelopment Area, which was declared blighted under Chapter 99 RSMo. in Ordinance No. 47245, as amended. The Property is also located in the 525 So. Jefferson Redevelopment Area, which was declared blighted under Chapter 99 RSMo. in Ordinance No. 66400; and

**WHEREAS**, in connection with the design, development and construction of the Hotel, the Company intends to undertake demolition, environmental remediation and related site work as well as maintenance and security for the Property (the "*CID Project*"), which will be financed in part by a community improvement district (the "*CID*") to be created by the Company pursuant to the Community Improvement District Act, Sections 67.1400 to 67.1571 of the Revised Statutes of Missouri, as amended (the "*CID Act*"); and

**WHEREAS**, in connection with the design, development and construction of the Hotel, the Company also intends to undertake design, development and construction of an approximately 186-car surface parking lot along with lighting and right of way improvements and accompanying grading, drainage, pavement, curb, gutter, sidewalk, stormwater facilities, landscaping, signing, lighting, traffic signals or other similar or related infrastructure or improvement; and

**WHEREAS**, a portion of the lighting and right of way improvements and accompanying grading, drainage, pavement, curb, gutter, sidewalk, stormwater facilities, landscaping, signing, lighting, traffic signals or other similar or related infrastructure or improvement (the "*TDD Project*") will be financed in part by a transportation development district created by the Company 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*"); and

**WHEREAS**, the City and the Company desired to formalize and memorialize their commitment with respect to the creation of a transportation development district (the "*TDD*"), execution of an agreement with respect to the CID Project and TDD Project and execution of an Access and Parking Agreement to facilitate the TDD Project; and

**WHEREAS**, on February 28, 2005, the City adopted Ordinance No. 66663 authorizing execution of a Development Agreement (the "*Original Agreement*"); and

**WHEREAS**, on February 28, 2005, the City adopted Ordinance No. 66635, authorizing execution of an Access and Parking Agreement; and

**WHEREAS**, the TDD and CID have deemed it necessary and appropriate to repeal the parking fee imposed by the CID and to modify the TDD Project to eliminate the parking lot as a reimbursable TDD expense; and

**WHEREAS**, the City and the Company desire to (i) amend the Original Agreement to provide for the repeal of such parking fee and modification of the TDD Project and (ii) approve an amended Access and Parking Agreement (the "*Access Agreement*"); and

**WHEREAS**, it is necessary and advisable and in the best interests of the City and the health, safety, morals and welfare of its residents and in accord with the public purposes specified in the TDD Act and the CID Act for the City to enter into an Amended and Restated Development Agreement (the "*Amended and Restated Development Agreement*") with the Developer with respect to the construction and financing of the TDD Project and CID Project and to enter into the Access Agreement with the TDD to provide for public access to the TDD Project.

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

**Section 1.** The Board of Aldermen finds and determines that it is necessary and desirable to enter into the Amended and Restated Development Agreement with the Developer in order to implement the TDD Project and the CID Project.

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

**Section 3.** The Board of Aldermen hereby approves, and the Mayor and Comptroller are hereby authorized and directed to execute, on behalf of the City, the Access Agreement between the City and the TDD, and the City Register is hereby authorized and directed to attest to the Access Agreement and to affix the seal of the City thereto. The Access Agreement shall be in substantially the form set forth as Exhibit E to the Amended and Restated Development Agreement attached hereto as **Exhibit A**, with such changes therein as shall be approved by the officers of the City executing the same and as may be consistent with the intent of this Ordinance and necessary, desirable, convenient or proper in order to carry out the matters herein authorized.

**Section 4.** The Mayor and Comptroller of the City or their designated representatives are hereby authorized and directed to take any and all actions to execute and deliver for and on behalf of the City any and all additional certificates, documents, agreements or other instruments as may be necessary and appropriate in order to carry out the matters herein authorized, with no such further action of the Board of Aldermen necessary to authorize such action by the Mayor and the Comptroller or their designated representatives.

**Section 5.** The Mayor and the Comptroller or their designated representatives, with the advice and concurrence of the City Counselor and after approval by the Board of Estimate and Apportionment, are hereby further authorized and directed to make any changes to the documents, agreements and instruments approved and authorized by this Ordinance as may be consistent with the intent of this Ordinance and necessary and appropriate in order to carry out the matters herein authorized, with no such further action of the Board of Aldermen necessary to authorize such changes by the Mayor and the Comptroller or their designated representatives.

**Section 6.** 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.

**Section 7.** 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 Sections 19 and 20 of Article IV of the Charter of the City of St. Louis and therefore shall become effective immediately upon its passage and approval by the Mayor.

**EXHIBIT A**

**Form of Amended and Restated Development Agreement**  
(Attached hereto.)

**FORM OF ACCESS AGREEMENT**

**THIS ACCESS AGREEMENT** (this "Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2005, by and between the **RESIDENCE INN DOWNTOWN ST. LOUIS TRANSPORTATION DEVELOPMENT DISTRICT**, a political subdivision duly organized and existing under the laws of the State of Missouri (the "TDD") and 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").

**Recitals:**

1. The TDD has acquired from Dominion Hospitality-Jefferson, L.L.C., a Missouri limited liability company, a leasehold interest in certain real estate described on **Exhibit A**, attached hereto and incorporated herein by reference, upon which real estate Dominion Hospitality-Jefferson, L.L.C. will design, develop and construct a TDD Road Project (as defined in **Section 1** of this Agreement).

2. Upon completion of construction of the TDD Road Project, the TDD (as defined in **Section 1** of this Agreement) intends to issue Obligations in a principal amount sufficient to finance the TDD Road Project and related costs of the TDD, including without limitation the costs of issuance of the Obligations and accrued interest thereon. The contribution by the TDD towards the construction of the TDD Road Project is intended to reimburse Dominion Hospitality-Jefferson, L.L.C. for the construction of the TDD Road Project.

3. Preliminary conceptual drawings of the TDD Road Project are set forth on **Exhibit B**, attached hereto and incorporated herein by reference.

4. The City and the TDD desire to enter into this Agreement in order to acknowledge the general economic benefit and value to the community created by the construction of the TDD Road Project and to provide for public access within the TDD Road Project on the terms set forth herein. 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 Road 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.

**Agreement.** This Access Agreement made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2005, by and between the TDD and the City.

**Amended and Restated Development Agreement.** The Amended and Restated Development Agreement dated the \_\_\_\_ day of \_\_\_\_\_, 2005, between the Company and the City.

**Anniversary Date.** The date that commences each one-year period after the Effective Date during the Term hereof.

**City.** 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.

**Cleaning & Maintenance Obligations.** Janitorial and cleaning services (including, without limitation, sweeping, trash can upkeep, trash removal, and cleaning of stairs and sidewalks), replacement of light bulbs, snow removal, landscaping, maintenance of lighting, including emergency lights, periodic re-painting (including, without limitation, re-striping, curb re-painting and re-painting of signs), and, unless specifically included as a Maintenance & Repair Obligation hereunder, any other repair or replacement with a reasonably expected useful life of no more than two (2) years.

**Company.** Dominion Hospitality-Jefferson, L.L.C., a Missouri limited liability company, or its permitted successors and assigns.

**Design Plans.** The Design Plans approved in accordance with the Amended and Restated Development Agreement.

**Effective Date.** The first date on which all of the conditions set forth in **Sections 2.1 and 2.2** of this Agreement shall have been satisfied or waived hereunder.

**Environmental Laws.** Any federal, state or local law, statute, regulation, rule or ordinance or amendments thereto, and all applicable judicial, administrative or regulatory decrees, judgments or orders relating to the protection of human health or the environment, including, without limitation, The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq. (“CERCLA”), as amended, the Resource, Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq. (“RCRA”), the Toxic Substances Control Act, 15 U.S.C. Sections 2601-2671, the Clean Air Act, 42 U.S.C. Sections 7401 et seq., and the Federal Water Pollution Control Act, 33 U.S.C. Sections 1251 to 1387, as the foregoing may be amended from time to time.

**Force Majeure.** Delays as a result of 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 governmental entities necessary for the Company to proceed with construction of the Project 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 TDD, the Obligations, the Amended and Restated Development Agreement or this Agreement.

**Governmental Approvals.** Any and all governmental licenses, permits, consents or other approvals necessary or desirable for the design, construction, development, improvement, financing, operation or maintenance of the TDD Road Project.

**Ground Lease.** The Ground Lease of Land and Lease of Improvements Agreement between the TDD and the Company pertaining to the TDD Road Property and the TDD Road Project.

**Legal Requirements.** Any federal, state, or local law, code, rule, ordinance, regulation, or order of any governmental authority or agency having jurisdiction over the business or operation of the TDD Road Project, including, without limitation, the following: (i) any buildings, zoning, or use laws, ordinances, regulations, or orders; and (ii) Environmental Laws.

**Maintenance & Repair Obligations.** Routine maintenance and repairs to stairs and sidewalks, initial striping and painting of curbs and signs immediately following the construction of the TDD Road Project, sealants, penetrating sealer, drainage maintenance, power washing, maintenance and repairs of the TDD Road Project, maintaining property insurance for the TDD Road Project in accordance with **Section 8** hereof and any other repairs or improvements with a reasonably expected useful life of more than two (2) years.

**Obligations.** Obligations issued by the TDD to finance the design, development and construction of the TDD Road Project.

**Property.** The real property described in Exhibit A to the Amended and Restated Development Agreement, all of which is located within the boundaries of the TDD.

**Qualified Engineer.** A person or firm who is a qualified expert in the field of structural engineering and experienced with other road projects within the St. Louis metropolitan area.

**Reasonably Expected Useful Life.** A period of time expressed in years beginning on the Effective Date of the Agreement and ending on the anniversary of the Effective Date next succeeding the date that the TDD Road Project is reasonably expected to no longer have any useful value, as certified by a Qualified Engineer selected or approved by the TDD. Prior to the issuance of Obligations, such Qualified Engineer shall determine the Reasonably Expected Useful Life and shall provide written notification thereof to both parties hereto.

**Taxes.** All ad valorem taxes and other governmental assessments and charges, general and special, ordinary and extraordinary, of any kind whatsoever (including those levied or assessed by either party hereto), attributable or allocable to the TDD Road Project.

**TDD.** The Residence Inn Downtown St. Louis Transportation Development District, a political subdivision duly organized and existing under the laws of the State of Missouri.

**TDD Act.** The Missouri Transportation Development District Act, Sections 238.200 to 238.275 of the Revised Statutes of Missouri, as amended.

**TDD Road Project.** Construction of all property entryways, interior drives and adjacent sidewalks, curbs, gutters, signage, lighting, traffic signals and landscape screening, which project is depicted on those certain preliminary conceptual drawings set forth as **Exhibit B**, attached hereto and incorporated herein by reference, and the Design Plans approved in accordance with the Amended and Restated Development Agreement.

**TDD Road Property.** The property legally described in **Exhibit A**, attached hereto and incorporated herein by reference.

**TDD Sales Tax.** The transportation development district sales tax to be imposed by the TDD pursuant to Section 238.235 of the TDD Act.

**Term.** The period commencing on the Effective Date 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 Reasonably Expected Useful Life; or (ii) the satisfaction in full of all Obligations.

**Section 2.            Access to TDD Road Project.**

**2.1**        The obligations of the TDD under this Agreement are contingent upon and shall become effective only upon the satisfaction or waiver of all of the following conditions (including the material satisfaction of all required time limitations):

a.            The Company and the TDD mutually agree upon terms of and execute the Ground Lease with respect to the TDD Road Project within twelve (12) months following the date of execution of the Amended and Restated Development Agreement;

b.            The Company and TDD obtain all Governmental Approvals related to design, development, construction and financing of the TDD Road Project;

c.            The TDD determines, in its sole discretion, that the design, development, construction financing and operation of the TDD Road Project (including any and all costs of environmental remediation and utilities relocation) are economically feasible and provides the City with written notice thereof prior to the issuance of Obligations; and

d.            The issuance of Obligations.

Notwithstanding anything to the contrary herein, the time limitations required by the foregoing conditions shall be subject to Force Majeure, and the TDD may waive any one or more of the foregoing conditions by providing written notice thereof to the City. Upon the satisfaction or waiver of all of the foregoing conditions, the TDD shall promptly provide written notice thereof to the City.

**2.2**        The City's obligations under this Agreement are contingent upon and shall become effective only upon the satisfaction or waiver of all of the following conditions (including the material satisfaction of all required time limitations):

a.            The Company and the TDD mutually agree upon terms of and execute the Ground Lease with respect to the TDD Road Project within twelve (12) months following the execution of the Amended and Restated Development Agreement; and

b.            The Company completes the construction of the TDD Road Project and reasonable certification of such completion is delivered to the City on or before December 1, 2005, absent an event of Force Majeure or, in the event of a delay caused by an event of Force Majeure, on or before December 31, 2007, all as provided for in the Amended and Restated Development Agreement; provided, however, that to the extent that Obligations are issued prior to completion of the TDD Road Project, Developer can demonstrate that sufficient funds are on deposit in the project fund to complete construction.

Notwithstanding anything to the contrary herein, the City may waive any one or more of the foregoing conditions by providing written notice thereof to the TDD. Upon the satisfaction or waiver of all of the foregoing conditions, the City shall promptly provide written notice thereof to the TDD.

**2.3** Commencing on the Effective Date, the TDD hereby grants, conveys and sets over to the City, for the use and benefit of the public, a non-exclusive easement for ingress and egress over and upon the TDD Road Project upon the terms and conditions hereinafter set forth.

**2.4** The TDD shall retain all operational control of the TDD Road Project. The TDD shall make the TDD Road Project available to the City for use by the general public subject to such reasonable terms and conditions as the TDD shall require. The TDD shall, and shall cause its agents and contractors to, comply with all Legal Requirements in connection with its operation of the TDD Road Project.

**2.5** The TDD shall, and shall cause its agents and contractors to, comply with all Legal Requirements in connection with the design, development, construction, maintenance and improvement of the TDD Road Project.

**Section 3. Easements Appurtenant.** All easements granted hereunder shall be appurtenant to the property benefited by such easement and shall constitute a covenant running with the land.

**Section 4. Covenant to Appropriate TDD Revenues.** Pursuant to the TDD Act, the TDD shall perform all functions incident to the administration, levy, collection, enforcement and operation of the TDD Sales Tax. Furthermore, the TDD agrees that the officer of the TDD at any time charged with the responsibility of formulating budget proposals shall be directed to include in the budget proposal submitted to the TDD for each fiscal year that the Obligations are outstanding a request for an appropriation of TDD revenues for application to the payment of the Obligations. Any funds appropriated as a result of such a request are pledged by the TDD to payment of the Obligations. If, within thirty (30) days after the end of the TDD=s fiscal year, the TDD=s board of directors fails to adopt a budget, the TDD shall be deemed to have adopted a budget that provides for application of the TDD revenues collected in such fiscal year in accordance with the budget for the prior fiscal year.

**Section 5. TDD Road Project Operation and Maintenance.**

**5.1** Except as otherwise provided herein, during the Term hereof, the TDD shall perform, or cause to be performed, all obligations connected with or arising out of owning, occupying or using the TDD Road Project or any part thereof, including without limitation the payment of all expenses required for the operation of the TDD Road Project, Taxes and assessments, if any, or payments in lieu thereof, utility charges and expenses, and the like, all as and when the same shall become due and payable.

**5.2** During the Term hereof, the TDD shall be solely responsible for and bear, pay and discharge, before the delinquency thereof, all Taxes and assessments, general and special, if any, which may be lawfully taxed, charged, levied, assessed or imposed upon or against or be payable for or in respect of the TDD Road Project, including any taxes and assessments not of the kind enumerated above to the extent that the same are lawfully made, levied or assessed in lieu of or in addition to taxes or assessments now customarily levied against real or personal property, and further including all water and sewer charges, assessments and other general governmental charges and impositions whatsoever, foreseen or unforeseen, which if not paid when due would impair the interest of the City or encumber the TDD Road Project or the TDD Road Property. The sole exception shall be that, for federal income tax and financial reporting purposes, the Company shall retain the economic benefits of ownership.

**5.3** The TDD shall perform or cause to be performed all Cleaning & Maintenance Obligations and all Maintenance & Repair Obligations.

**Section 6. Assignment.** The TDD shall not assign its interest in this Agreement without the prior written consent of the City. The City shall not assign its interest in this Agreement without the prior written consent of the TDD.

**Section 7. Dispute Resolution Process.**

**7.1** The TDD and the City agree that, in the event of a disagreement concerning the matters described herein, they shall negotiate, in good faith, in an attempt to resolve such disagreement for a period of at least sixty (60) days following receipt of notice from either party setting forth the specifics of the disagreement and the relief requested.

**7.2** Should the TDD and the City be unable to resolve such disagreement through good faith negotiation, the TDD and the City agree to attempt in good faith to resolve such disagreement through mediation administered by an organization offering commercial mediation services. Unless otherwise agreed all mediation proceedings shall be conducted in the City of St. Louis, Missouri.

**7.3** The TDD and the City may seek an adjudication of the controversy by the Circuit Court of the City of St. Louis, Missouri, and the prevailing party therein shall be entitled to recover all costs and expenses, including reasonable legal fees and expenses associated therewith.

**Section 8. TDD Requirements.** The TDD acknowledge that, pursuant to the Amended and Restated Development Agreement and such other agreements as may be entered into between the TDD and the Company, the TDD shall require that any and all funds received by the Company from the TDD or through other means as repayment of the Obligations in relation to the TDD Road Project are intended to benefit the community at large by encouraging visitors through the development of the Property. Such funds shall be used by the Company as reimbursement for its additions to permanent working capital through the construction of the TDD Road Project.

**Section 9. Insurance.** At all times during the construction of the TDD Road Project and any improvements thereto, the TDD shall maintain or shall cause the Company to maintain, with insurance companies of recognized responsibility, a minimum of the following: (a) property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the replacement cost of the TDD Road Project; (b) general liability insurance against claims for bodily injury, death, or property damage occurring on, in, or about the TDD Road Project and automobile liability insurance on vehicles operated in conjunction with the TDD Road Project, with a combined single limit for each occurrence of not less than \$1,000,000; and (c) worker's compensation and employer's liability insurance as may be required under applicable law covering any employees retained in connection with the operation of the TDD Road Project. At all times after construction of the TDD Road Project and while the Obligations remain outstanding, the TDD shall maintain or shall cause the Company to maintain, with insurance companies of recognized responsibility, a minimum of the following: (i) property insurance in the amount of the greater of the full insurable value of the TDD Road Project or the outstanding principal amount of the Obligations; and (ii) general liability insurance against claims for bodily injury, death, or property damage occurring on, in, or about the TDD Road Project.

**Section 10. Casualty; Condemnation.**

**10.1** If, during the Term, the TDD Road Project is damaged by fire, flood or other casualty and the cost to repair and/or replace such damage does not exceed \$100,000, the TDD shall, with all reasonable diligence, repair and/or replace the damaged portion of the TDD Road Project to the same condition as existed previously. In the event that the cost to repair and/or replace such damaged portion of the TDD Road Project exceeds \$100,000, the TDD may, in its reasonable discretion, determine whether it is practical to make such repairs and/or replacements. To the extent available, proceeds from the insurance described in **Section 9** of this Agreement shall be applied to the repairs and/or replacements made by the TDD hereunder.

**10.2** Notwithstanding any provision of **Section 10.1** of this Agreement to the contrary, if, while the Obligations remain outstanding, the TDD Road Project is damaged or destroyed, in whole or in part, by fire or other casualty, to such extent that a claim for loss (including any deductible amount pertaining thereto) resulting from such damage, destruction or taking is greater than \$100,000, the TDD shall promptly notify the City in writing as to the nature and extent of such damage or loss and whether it is practicable and desirable to rebuild, repair, restore or replace such damage or loss.

The TDD shall proceed promptly with and complete with reasonable dispatch such rebuilding, repairing, restoring or replacing of the TDD Road Project damaged or destroyed so as to place the TDD Road Project in substantially the same condition as existed prior to the event causing such damage or destruction, with such changes, alterations and modifications as will not impair the utility of the TDD Road Project. The TDD will cause the proceeds of any insurance claim, title insurance or other award from a challenge or threat of legal or equitable action related to the title or use of the TDD Road Project to be applied as provided in this Section. Such proceeds shall be deposited into an insurance fund to be established with and held by the TDD and shall be used and applied for the purpose of paying the cost of such rebuilding, repairing, restoring or replacing such damage or loss. If such proceeds are not sufficient to pay in full the costs of such replacement, repair, rebuilding or restoration, the TDD shall nonetheless complete the work thereof and shall pay the portion of the costs thereof in excess of the amount of such proceeds.

If the TDD determines that the repair, restoration, modification or improvement of the TDD Road Project is not economically feasible or in the best interests of the TDD but the proceeds are sufficient to fully defease the Obligations, then, in lieu of making such repair, restoration, modification or improvement, the TDD shall promptly pay to the trustee the amount of proceeds sufficient to fully defease the Obligations.

**Section 11. Remedies.** All rights and remedies of the City and the TDD herein enumerated shall be cumulative, and none shall exclude any other right or remedy allowed by law. In addition to the other remedies provided in this Agreement, the

City and the TDD shall be entitled to the restraint by injunction of the violation or attempted violation of any of the covenants, agreements or conditions of this Agreement, and the City and the TDD shall be entitled to recover all direct damages arising out of or caused by the other party's violation of any of the covenants, agreements or conditions of this Agreement.

**Section 12. 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 development and construction of the TDD Road Project, including liability under any Environmental Laws; and (ii) the negligence or willful misconduct of the TDD or the Company or their respective employees, agents or independent contractors in connection with the management, development, and construction of the TDD Road Project. 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 development and construction of the TDD Road 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, development, and construction of the TDD Road Project. To the extent permitted by law, the City agrees to indemnify, defend, and hold the TDD and TDD their 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 13. Consents and Cooperation.**

**13.1** Wherever in this Agreement the consent or approval of the TDD or the City is required, such consent or approval shall not be unreasonably withheld, delayed or conditioned, shall be in writing and shall be executed by a duly authorized officer or agent of the party granting such consent or approval. Further, the TDD and the City agree to take such reasonable actions as may be necessary both to carry out the terms, provisions and intent of this Agreement, and to aid and assist each other in carrying out such terms, provisions and intent.

**13.2** The City shall cooperate with the TDD and the Company in all aspects of the development, design, construction, improvement, financing, operation and maintenance of the TDD Road Project, including without limitation, the following: (a) allowing the Company to use, at no fee or other charge, such areas of Jefferson Avenue in St. Louis, Missouri, as reasonably necessary for staging construction of the TDD Road Project, provided, however, that through-traffic shall be maintained on Jefferson Avenue at all times; (b) expediting the performance of any and all inspections and the processing and approval of any and all permits, licenses and other entitlements and authorizations, including, without limitation, any and all Governmental Approvals; (c) expediting the review, processing and approval of any and all plans, drawings and other documents and materials; and (d) using its best efforts to assist in facilitating the issuance of Obligations, including, without limitation, cooperating with the agents, representatives and attorneys of the TDD and Company in connection therewith and entering into an agreement to provide continuing disclosure of information in compliance with all applicable Federal rules and regulations related to the Obligations issuance.

**Section 15. Miscellaneous.**

**15.1 Representations and Warranties of the TDD.** The TDD hereby represents and warrants to the City 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.

**15.2 Representations and Warranties of the TDD.** The TDD hereby represents and warrants to the City 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.

**15.3 Representations and Warranties of the City.** The City hereby represents and warrants to the TDD 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.

**15.4 Warranty; Right to Make Agreement.** The TDD and the City each warrant to the others with respect to itself that neither the execution of this Agreement nor the finalization of the transactions contemplated hereby shall: (i) violate any provision of law or judgment, writ, injunction, order or decree of any court or governmental authority having jurisdiction over it; (ii) result in or constitute a breach or default under any indenture, contract, other commitment or restriction to which it is a party or by which it is bound; or (iii) require any consent, vote or approval which has not been taken, or at the time of the transaction involved shall not have been given or taken.

**15.5 Relationship.** Neither this Agreement nor any agreements, instruments, documents, or transactions contemplated hereby shall in any respect be interpreted, deemed or construed as making either party hereto a partner, joint venturer with, or agent of the other party. The TDD and the City agree that none will make any contrary assertion, claim or counterclaim in any action, suit, arbitration or other legal proceedings involving the TDD and the City.

**15.6 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.

**15.7 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 and, if Obligations are issued and outstanding, approved by the Trustee.

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

**15.9 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.

**15.10 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:**

Downtown Residence Inn Transportation Development District  
c/o Dominion Hospitality-Jefferson, L.L.C.  
1401 S. Brentwood Blvd., Suite 875  
St. Louis, Missouri 63144  
Attention: Chairman

With a copy to:

Armstrong Teasdale LLP  
One Metropolitan Square  
Suite 2600  
St. Louis, Missouri 63102  
Attention: James E. Mello

**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: Patricia A. Hageman

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.

**15.11 Waiver.** The failure of either party to insist upon a strict performance of any of the terms or provisions of this Agreement, or to exercise any option, right or remedy contained in this Agreement, shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right or remedy, but the same shall continue and remain in full force and effect. No waiver by either party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by such party.

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

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

**RESIDENCE INN DOWNTOWN ST. LOUIS  
TRANSPORTATION DEVELOPMENT DISTRICT**

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

ATTEST:

Seal

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

**CITY OF ST. LOUIS, MISSOURI**

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

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

Attest:

\_\_\_\_\_  
Register

Approved as to form:

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

**EXHIBIT A TO ACCESS AGREEMENT  
Legal Description of TDD Road Property**

(To be provided upon completion of construction of TDD Road Project.)

**EXHIBIT B TO ACCESS AGREEMENT  
PRELIMINARY CONCEPTUAL DRAWINGS OF TDD ROAD PROJECT**  
(Attached hereto.)

**AMENDED AND RESTATED DEVELOPMENT AGREEMENT**

**THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT** (this “*Agreement*”), is made and entered into as of the day of \_\_\_\_\_, 2005, 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 **DOMINION HOSPITALITY-JEFFERSON, L.L.C.**, (the “*Company*”), a limited liability company duly organized and existing under the laws of the State of Missouri.

WHEREAS, the Company desires to design, develop and construct a 188-room Residence Inn hotel (the “*Hotel*”) on a site legally described in **Exhibit A**, attached hereto and incorporated herein by reference (the “*Property*”); and

WHEREAS, in connection with the design, development and construction of the Hotel, the Company intends to undertake demolition, environmental remediation and related site work as well as maintenance and security for the Property (the “*CID Project*”), which will be financed in part by a community improvement district to be created by the Company pursuant to the Community Improvement District Act, Sections 67.1400 to 67.1571 of the Revised Statutes of Missouri, as amended (the “*CID Act*”); and

WHEREAS, in connection with the design, development and construction of the Hotel, the Company also intends to undertake design, development and construction of an approximately 186-car surface parking lot along with lighting and right of way improvements and accompanying grading, drainage, pavement, curb, gutter, sidewalk, stormwater facilities, landscaping, signing, lighting, traffic signals or other similar or related infrastructure or improvement. A portion of the lighting and right of way improvements and accompanying grading, drainage, pavement, curb, gutter, sidewalk, stormwater facilities, landscaping, signing, lighting, traffic signals or other similar or related infrastructure or improvement (the “*TDD Project*”) will be financed in part by a transportation development district created by the Company 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*”); and

WHEREAS, the City and the Company desired to formalize and memorialize their commitment with respect to the creation of a community improvement district (the “*CID*”) and a transportation development district (the “*TDD*”) (collectively, the “*Districts*”) and the execution of an Access and Parking Agreement to facilitate the CID Project and the TDD Project; and

WHEREAS, on \_\_\_\_\_, 2005, the City adopted Ordinance No. \_\_\_\_\_ authorizing execution of a Development Agreement (the “*Original Agreement*”); and

WHEREAS, on \_\_\_\_\_, 2005, the City adopted Ordinance No. \_\_\_\_\_, authorizing execution of an Access and Parking Agreement (the “*Access and Parking Agreement*”); and

WHEREAS, the Districts have deemed it necessary and appropriate to repeal the parking fee imposed by the CID and to modify the TDD Project to eliminate the parking lot as a reimbursable TDD expense; and

WHEREAS, the City and the Company desire to (i) amend the Original Agreement to provide for the repeal of such parking fee, modification of the TDD Project and (ii) approve an amended Access and Parking Agreement (the "*Access Agreement*").

NOW, THEREFORE, in consideration of the above premises and the mutual obligations of the parties hereto, each party hereby agrees as follows:

**ARTICLE I.  
CONSTRUCTION OF THE HOTEL PROJECT AND THE TDD PROJECT**

**Section 1.1 Company to Construct the Project.** The Company agrees to advance all costs as necessary to acquire the Property and to design, develop and construct the CID Project and TDD Project (collectively, the "*Project*"), all subject to the Company's right to abandon the Project and to terminate this Agreement as set forth in **Section 5.1** of this Agreement.

**Section 1.2 Project and Construction Schedule.** The Company shall commence or cause the commencement of construction of the Project within twelve (12) months of the date of this Agreement, which Project shall be constructed in a good and workmanlike manner in accordance with the terms of this Agreement and the Concept Site Plan set forth in **Exhibit B**, attached hereto and incorporated herein by reference. The Company shall complete or cause the completion of the Project not later than December 1, 2005, absent an event of force majeure as provided for in **Section 5.7** of this Agreement. In the event of any delay caused by an event of force majeure, the Company shall be granted additional time to complete the Project, but in no event shall such additional time extend beyond December 31, 2007.

**Section 1.3 Design Plans.** The City acknowledges that SLDC has previously reviewed the site plans for the Project (the "*Design Plans*"). Accordingly, the City hereby approves such Design Plans. The Company shall construct the Project in accordance with the Design Plans.

**Section 1.4 Construction Contracts.** The Company may enter into or cause to be entered into one or more construction contracts to complete the Project. Prior to the commencement of construction of any portion of the Project, the Company shall obtain or shall require that any of its contractors obtains workers' compensation, comprehensive general liability and builder's risk insurance coverage in amounts customary in the industry for similar type projects. The Company shall require that such insurance be maintained by any of its contractors for the duration of the construction of such portion of the Project. To the extent that laws pertaining to prevailing wage and hour apply to any portion of the Project, the Company agrees to cooperate to take all actions necessary to apply for the wage and hour determinations and otherwise comply with such laws. 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.

**Section 1.5 Governmental Approvals.** The City agrees to employ reasonable and good faith efforts to cooperate with the Company and to expeditiously process and timely consider and respond to any and all applications for any site plan approvals, plat approvals, zoning changes, conditional use permits, variances, building permits, or other governmental approvals required for implementation of the Project, all in accordance with the applicable City ordinances and the laws of the State of Missouri, and to take all further actions on governmental approvals to effectuate this Agreement.

**Section 1.6 Construction Practices; Design Plan Changes.** All construction practices and procedures with respect to the Project shall be in conformity with all applicable state and local laws, ordinances and regulations. During the progress of the Project, the Company may make such reasonable changes, including without limitation modification of the construction schedule, including dates of commencement and completion (subject to the time limitations set forth in **Section 1.2** of this Agreement), modification of the areas in which the Project is to be performed, relocation, expansion or deletion of items, revisions to the areas and scope of Project, 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 Company, to enhance the economic viability of the Project; provided that the Company shall comply with all laws, regulations and ordinances of the City and that the Company shall not make any material changes to the Project without the advance written consent of SLDC, which consent shall not be unreasonably withheld or delayed. For purposes of this Section, "material changes" shall mean any change that (A) does not substantially conform to the Concept Site Plan; (B) is reasonably expected to increase the total cost of the TDD Project by more than ten percent (10%); or (C) is reasonably expected to increase the total cost of the CID Project by more than ten percent (10%).

**Section 1.7 Certificate of Substantial Completion.** Promptly after substantial completion of either the TDD Project or the CID Project or both, the Company shall furnish to SLDC a Certificate of Substantial Completion. 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 unless, within thirty (30) days following delivery of the Certificate of Substantial Completion, SLDC furnishes the Company with specific written objections to the status of the Project, describing such objections and the measures required to correct such objections in reasonable detail. Upon acceptance of the Certificate of Substantial Completion by the City or upon the lapse of thirty (30) days after delivery thereof to SLDC without any written objections thereto, the Company 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 Company's agreement and covenant to construct and complete the TDD Project or the CID Project or both. The Certificate of Substantial Completion shall be in substantially the form attached as **Exhibit C**, attached hereto and incorporated by referenced herein.

## ARTICLE II. COMMUNITY IMPROVEMENT DISTRICT

**Section 2.1 Company Actions.** The City acknowledges that the Company, at its sole cost and expense, intends to (i) advance all costs necessary to acquire that portion of the Property which will be utilized for the CID Project and (ii) design, develop and construct the CID Project, subject to the creation of the CID to finance the CID Project. The current budget for the CID Project (exclusive of the costs associated with formation and administration of the CID and the costs of issuance of the Obligations, as hereinafter defined) is set forth in **Exhibit D**, attached hereto and incorporated herein by reference and is subject to change in accordance with **Section 1.6** of this Agreement. The Company shall create and operate the CID in accordance with the following:

- A. The CID's boundaries shall consist of the Property.
- B. The CID shall be formed as a political subdivision of the State of Missouri.
- C. Pursuant to the CID Act, the CID shall be authorized to issue CID Obligations which, together with any TDD Obligations issued by the TDD, shall have combined aggregate principal amount not to exceed \$1,500,000 for the Project, plus an additional principal amount for related costs of the CID and TDD, including without limitation the costs associated with formation and administration of the CID and TDD and the costs of issuance of the CID Obligations and TDD Obligations and accrued interest thereon.
- D. The CID shall be authorized to impose a community improvement district sales tax (the "*CID Sales Tax*") in an amount not to exceed one percent (1%) on taxable sales within the CID pursuant to Section 67.1545 of the CID Act, the net proceeds of which CID Sales Tax shall be applied to debt service on the CID Obligations.
- E. The CID's board of directors shall consist of five members who shall be nominated by the Company and appointed by the Mayor of the City with the consent of the Board of Aldermen.
- F. The CID shall maintain accurate records of revenues received, which records shall be open to inspection by the City at all reasonable times.
- G. The CID shall maintain its existence until all CID Obligations have been paid in full, at which time the CID shall dissolve and the CID Sales Tax shall no longer be levied unless a subsequent project has been authorized by the CID and approved by the City in accordance with the CID Act.

**Section 2.2 City's Actions.** The City acknowledges the general economic benefit and the overall value to the community created by the CID Project. To that end, the City shall cooperate with the Company and the CID as follows: The City shall in good faith cooperate with the Company and the CID in all proceedings relating to the creation of the CID and appointment of the members of the CID's Board of Directors.

## ARTICLE III. TRANSPORTATION DEVELOPMENT DISTRICT

**Section 3.1 Company Actions.** The City acknowledges that the Company, at its sole cost and expense, intends to (i) advance all costs necessary to acquire that portion of the Property which will be utilized for the TDD Project (the "*TDD Property*") and (ii) design, develop and construct the TDD Project, subject to the creation of the TDD to (A) finance the TDD Project

and, (B) except as otherwise provided in **Section 3.3** of this Agreement, hold the rights and benefits of ownership of the TDD Project. The current budget for the TDD Project (exclusive of the costs associated with formation and administration of the TDD and the costs of issuance of the Obligations) is set forth in **Exhibit E**, attached hereto and incorporated herein by reference and is subject to change in accordance with **Section 1.6** of this Agreement. The Company shall create and operate the TDD in accordance with the following:

- A. The TDD boundaries shall consist of the Property.
- B. Pursuant to the TDD Act, the TDD shall be authorized to issue TDD Obligations which, together with any CID Obligations issued by the CID, shall have combined aggregate principal amount not to exceed \$1,500,000 for the Project, plus an additional principal amount for related costs of the CID and TDD, including without limitation the costs associated with formation and administration of the CID and TDD and the costs of issuance of the CID Obligations and TDD Obligations and accrued interest thereon.
- C. The TDD shall be authorized to impose a transportation development district sales tax (the “*TDD Sales Tax*”) in an amount not to exceed one percent (1%) on taxable sales within the District pursuant to Section 238.235 of the TDD Act, the net proceeds of which TDD Sales Tax shall be applied to debt service on the TDD Obligations.
- D. The TDD’s board of directors shall consist of five members, three of whom shall be nominated by the Company, one of whom shall be nominated by the Mayor of the City and one of whom shall be nominated by the Comptroller of the City.
- E. The TDD shall maintain accurate records of revenues received, which records shall be open to inspection by the City at all reasonable times.
- F. The TDD shall maintain its existence until all TDD Obligations have been paid in full, at which time the District shall dissolve and the TDD Sales Tax shall no longer be levied unless a subsequent project has been authorized by the District and approved by the City in accordance with the TDD Act.

**Section 3.2 City’s Actions.** The City acknowledges that, in the event that the Company seeks to create the TDD, the City will be the local transportation authority required to approve the TDD Project in accordance with the TDD Act. The City further acknowledges the general economic benefit and the overall value to the community created by construction of the TDD Project. To that end, the City shall cooperate with the Company and the District as follows:

- A. The City shall in good faith cooperate with the Company in all proceedings relating to the creation and certification of the TDD.
- B. The City shall approve the TDD Project identified in the Concept Site Plan as a “project” within the meaning of the TDD Act.
- C. The City may, through the Board of Estimate and Apportionment, appoint one non-voting advisor to the TDD’s board of directors having the authority and rights set forth in Section 238.220.4 of the TDD Act.

**Section 3.3 Access Agreement.** The City and the Company acknowledge and agree that the City shall enter into the Access Agreement with the TDD, which Access Agreement shall constitute a mutually satisfactory agreement between the City and the TDD regarding development and future maintenance of the TDD Project in accordance with Section 238.222 of the TDD Act. The City and the Company further acknowledge and agree that the Access Agreement shall also constitute a contract pertaining to the transfer of ownership and control of the TDD Project from the TDD to the City in accordance with Section 238.275 of the TDD Act. The Access Agreement shall be in substantially the form of **Exhibit E**, attached hereto and incorporated herein by reference and shall contain the following terms:

- A. The term of the Access Agreement shall expire at the end of the calendar month that includes the date that is the later of: (1) the satisfaction in full of all TDD Obligations; or (2) the end of the reasonably expected economic life of the TDD Project, as determined by a qualified engineer or architect licensed in the State of Missouri and selected by Company with the consent of SLDC, which consent shall not be unreasonably withheld.

**ARTICLE IV.  
PROJECT FINANCING**

**Section 4.1 Issuance of Obligations by the Districts.**

A. Pursuant to the TDD Act and the CID Act, the Districts shall be authorized to issue CID Obligations and TDD Obligations in a combined total principal amount of not to exceed \$1,500,000 for the Project, plus an additional principal amount for related costs of the Districts, including without limitation the costs associated with formation and administration of the Districts and the costs of issuance of the CID Obligations and TDD Obligations and accrued interest thereon.

B. The Obligations shall bear such interest rate and shall have such other reasonable terms as determined by the underwriter selected by the TDD and CID.

C. Any CID Obligations issued pursuant to the CID Act shall have a stated maturity of not longer than twenty (20) years from the date of issuance.

D. Any TDD Obligations issued pursuant to the TDD Act shall have a stated maturity of not longer than forty (40) years from the date of issuance.

**Section 4.2 Use of CID Revenues for Redemption of Obligations.** The Company shall cause the CID to deposit the net proceeds of the CID Sales Tax into a separate segregated account (such monies on deposit shall be referred to herein as "*CID Revenues*"). Subject to annual appropriation, CID Revenues shall be pledged to repayment of the CID Obligations. The CID's obligations under this Section shall be the exclusive responsibility of the CID payable solely out of the CID's funds and property as provided in the CID Act and shall not constitute a debt or liability or general obligation of the City, the TDD, the Company, the State of Missouri or any agency or political subdivision thereof. The CID shall not be obligated to pledge any funds other than those specifically pledged to repayment of the CID Obligations as provided for in this Section.

**Section 4.3 Use of TDD Revenues for Redemption of Obligations.** The Company shall cause the TDD to deposit the net proceeds of the TDD Sales Tax into a separate, segregated account (such monies on deposit in a separate, segregated account shall be referred to herein as "*TDD Revenues*"). Subject to the requirements of the TDD Act and subject to annual appropriation, TDD Revenues shall be pledged to repayment of the TDD Obligations. The TDD's obligations under this Section shall be the exclusive responsibility of the TDD payable solely out of the TDD's funds and property as provided in the TDD Act and shall not constitute a debt or liability or general obligation of the City, the CID, the Company, the State of Missouri or any agency or political subdivision thereof. The TDD shall not be obligated to pledge any funds other than those specifically pledged to repayment of the TDD Obligations as provided for in this Section.

**Section 4.4 Covenant to Appropriate TDD Revenues and CID Revenues.**

A. Pursuant to the TDD Act, the Company shall cause the TDD to perform all functions incident to the administration, levy, collection, enforcement and operation of the TDD Sales Tax or to provide for the performance of such function. Furthermore, the Company shall cause the officer of the TDD at any time charged with the responsibility of formulating budget proposals to include in the budget proposal submitted to the TDD for each fiscal year that the TDD Obligations are outstanding a request for an appropriation of TDD Revenues for application to the payment of the TDD Obligations. Any funds appropriated as a result of such a request are pledged by the TDD to payment of the TDD Obligations. If, within thirty (30) days after the end of the TDD's fiscal year, the TDD's Board of Directors fails to adopt a budget, the TDD shall be deemed to have adopted a budget that provides for application of the TDD Revenues collected in such fiscal year in accordance with the budget for the prior fiscal year.

B. Pursuant to the CID Act, the Company shall cause the CID to perform all functions incident to the administration, levy, collection, enforcement and operation of the CID Sales Tax or to provide for the performance of such functions. Furthermore, the Company shall cause the officer of the CID at any time charged with the responsibility of formulating budget proposals to include in the budget proposal submitted to the CID for each fiscal year that the CID Obligations are outstanding a request for an appropriation of CID Revenues for application to the payment of the CID Obligations. Any funds appropriated as a result of such a request are pledged by the CID to payment of the CID Obligations. If, within thirty (30) days after the end of the CID's fiscal year, the CID's board of directors fails to adopt a budget, the CID shall be deemed to have adopted a budget that provides for application of the CID Revenues collected in such fiscal year in accordance with the budget for the prior fiscal year.

**Section 4.5 Cooperation in the Collection of TDD Sales Tax and CID Sales Tax.** The Company agrees to cooperate and take all reasonable actions necessary to cause the TDD Sales Tax and CID Sales Tax to be paid by those retail

businesses operating within the Districts that are subject to the TDD Sales Tax and CID Sales Tax. The Company (or its successor in interest as an owner of affected portions of the real property located within the Districts) shall require in any conveyance of property by deed, or in each tenant's lease or other agreement with the Company pursuant to which a retailer occupies a portion of the real property located within the Districts, certain provisions regarding the reporting and payment of the TDD Sales Tax and CID Sales Tax and their consent thereto. This requirement shall be a covenant running with the land and shall be enforceable for such period as if such purchaser or other transferee or possessor thereof were originally a party to this Agreement.

**Section 4.6 Repeal of TDD Sales Tax and CID Sales Tax.**

A. As long as the TDD Obligations are outstanding, the Company shall not cause the TDD to repeal or reduce the TDD Sales Tax unless such repeal or reduction will not impair the TDD's ability to repay the TDD Obligations that are outstanding. Upon satisfaction in full of the TDD Obligations, the Company shall cause the TDD to immediately implement the procedures in the TDD Act for repeal of the TDD Sales Tax and abolishment of the TDD; provided, however, such procedures shall not be implemented if the TDD, with the prior written consent of the City, has approved another project pursuant to the TDD Act. Upon repeal of the TDD Sales Tax, (a) all or a portion of any TDD Revenues on deposit in the segregated account attributable to the TDD Sales Tax shall be applied to the final payment of the TDD's administrative costs, and (b) thereafter, any such TDD Revenues shall be retained until such time as the TDD is abolished and the TDD's Board of Directors has provided for the transfer of any such TDD Revenues in a manner permitted by the TDD Act.

B. As long as the CID Obligations are outstanding, the Company shall not cause the CID to repeal or reduce the CID Sales Tax unless such repeal or reduction will not impair the CID's ability to repay the CID Obligations that are outstanding. Upon satisfaction in full of the CID Obligations, the Company shall cause the CID to immediately implement the procedures in the CID Act for repeal of the CID Sales Tax and abolishment of the CID; provided, however, such procedures shall not be implemented if the CID, with the prior written consent of the City, has approved another project pursuant to the CID Act. Upon repeal of the CID Sales Tax, (a) all or a portion of any CID Revenues on deposit in the CID Sales Tax account shall be applied to the final payment of the CID's administrative costs, and (b) thereafter, any such CID Revenues shall be retained until such time as the CID is abolished and the CID's Board of Directors has provided for the transfer of any such CID Revenues in a manner permitted by the CID Act.

**ARTICLE V.  
GENERAL PROVISIONS**

**Section 5.1 Company's Right of Termination.** At any time prior to the delivery of the Certificate of Substantial Completion and provided that no Obligations have been issued to finance the Project, the Company may, by giving written notice to the City, abandon the Project and terminate this Agreement and the Company's obligations hereunder if the Company determines, in its sole discretion, that the Project is no longer economically feasible, provided that, upon such termination, the Company shall reimburse the City for any and all out-of-pocket expenses incurred by the City in connection with the City's negotiation and authorization of this Agreement and the performance of its obligations hereunder. Upon such termination, the City shall have no obligation to assist the Company in financing the Project or to otherwise reimburse the Company for any amounts advanced under this Agreement or costs otherwise incurred or paid by Company.

**Section 5.2 City's Right of Termination.** The City may terminate this Agreement if the Company fails to submit its Certificate of Substantial Completion, acceptable to the City, in accordance with **Section 1.7** of this Agreement and the schedule set forth in **Section 1.2** of this Agreement. Upon termination of this Agreement for any reason, the City shall have no obligation to assist the Company in financing the Project or to otherwise reimburse the Company for any amounts advanced under this Agreement or costs otherwise incurred or paid by Company.

**Section 5.3 Selection of Underwriter.** The parties hereby agree to designate Stern Brothers & Co. or such underwriter selected by the Company and reasonably acceptable to the City, the TDD and CID to serve as underwriter of the CID Obligations and TDD Obligations.

**Section 5.4 Successors and Assigns.** 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. 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 Company named herein or any successors in interest under this Agreement or any part hereof may be assigned at any time before, during or after substantial completion of the Project, whereupon



the party disposing of its interest in the Property or assigning its interest under this Agreement shall be thereafter released from further obligation under this Agreement (although any such Property so disposed of or to which such interest pertains shall remain subject to the terms and conditions of this Agreement), provided that the fee title to the TDD Property or any leasehold interest in the Property shall not be sold, transferred or otherwise disposed of and the rights, duties and obligations of the Company 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 Company of the proposed transferee's or assignee's experience (which experience shall consist of hotel experience), and financial capability to undertake and complete such portions of the Project and perform the Company's obligations 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 Company to convey a leasehold interest in all or any portion of the Property to the CID; (b) the right of the Company, the TDD or the CID to convey any interest in the property pursuant to that certain Access Agreement attached hereto as **Exhibit E**; (c) the right of the Company to encumber or collaterally assign its interest in the Property or any portion thereof to secure loans, advances or extensions of credit to finance or from time to time refinance all or any part of the costs of the Project, 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; (d) the right of the Company to assign its rights, duties and obligations under this Agreement to any party related to the Company by one of the relationships described in Section 267(b) of the United States Internal Revenue Code of 1986, as amended; provided that in each such event (i) the Company named herein (DOMINION HOSPITALITY-JEFFERSON, L.L.C.) shall remain liable hereunder for the substantial completion of the Project and shall be released from such liability hereunder only upon substantial completion of the Project and (ii) the Company provides to the City fifteen (15) days' advance written notice of the proposed assignment or transfer.

**Section 5.5 Income Tax Considerations.** The Company acknowledges that, for all purposes, the TDD shall hold all the rights and benefits of ownership of the TDD Project, except that for financial reporting and federal income tax purposes only, the Company shall retain the benefits of ownership. The Company also acknowledges that the contributions of TDD Revenues from the TDD and contributions of CID Revenues from the CID as repayment of the TDD Obligations and CID Obligations are intended to benefit the community at large by encouraging visitors through the redevelopment of the Property. The contributions of TDD Revenues and CID Revenues shall be used by the Company as reimbursements for its additions to permanent working capital through its construction of the Project.

**Section 5.6 Remedies.** Except as otherwise provided in this Agreement and subject to the Company's and the City's respective rights of termination, in the event of any default in or breach of any terms or conditions of this Agreement by either party, or any successor, the defaulting or breaching party (or successor) shall, upon written notice from the other party specifying such default or breach, proceed immediately to cure or remedy such default or breach, and shall, in any event, within thirty (30) days after receipt of notice, cure or remedy such default or breach. In the event that the defaulting or breaching party (or successor) diligently and in good faith commences to cure or remedy such default or breach but is unable to cure or remedy such default or breach within thirty (30) days after receipt of notice, the defaulting or breaching party (or successor) shall, prior to the end of such thirty (30) days, provide notice to the other party that it has in good faith commenced to cure or remedy such default or breach, whereupon the defaulting or breaching party (or successor) shall have an additional thirty (30) days to cure or remedy such default or breach. In case such cure or remedy is not taken or not diligently pursued, or the default or breach shall not be cured or remedied prior to the end of the additional thirty (30) day period, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including without limitation proceedings to compel specific performance by the defaulting or breaching party.

**Section 5.7 Force Majeure.** Neither the City nor the Company nor any successor in interest shall be considered in breach or default of their respective obligations under this Agreement, and times for performance of obligations hereunder shall be extended (but with respect to the times for performance set out in **Section 1.2** of this Agreement, only to the extent provided therein and established thereunder) in the event of any delay caused by force majeure, including without limitation damage or destruction by fire or casualty; strike; lockout; civil disorder; war; restrictive government regulations; lack of issuance of any permits and/or legal authorization by governmental entities necessary for the Company to proceed with construction of the Project 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 TDD or the CID, the TDD Obligations, the CID Obligations, the Access Agreement 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 Company in bad faith, and further provided that the Company notifies the City in writing within thirty (30) days of the commencement of such claimed event of force majeure.

**Section 5.8 Notices.** Any notice, demand or other communication required by this Agreement to be given by either party hereto to the other shall be in writing and shall be sufficiently given or delivered if dispatched by certified United States first class mail, postage prepaid, or delivered personally,

In the case of the Company, to:

Dominion Hospitality-Jefferson, L.L.C.  
1401 S. Brentwood Blvd., Suite 875  
St. Louis, Missouri 63144  
Attention: Michael C. Mullenix

With a copy to:

Armstrong Teasdale LLP  
One Metropolitan Square  
Suite 2600  
St. Louis, Missouri 63102  
Attention: James E. Mello

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: Patricia A. Hageman

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

**Section 5.9 Inspection.** The City, acting through SLDC, may conduct such periodic inspections of the Project as may be generally provided in the building code of the City. In addition, the Company shall allow other authorized representatives of the City or SLDC reasonable access to the Property for inspection thereof, from time to time upon advance notice prior to the completion of the Project. The Company shall not unreasonably deny the City, SLDC 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 Project as the City or SLDC determines is reasonable and necessary to verify the Company's compliance with the Concept Site Plan, the Design Plans and the terms of this Agreement.

**Section 5.10 Choice of Law.** This Agreement shall be taken and deemed to have been fully executed, made by the parties in, and governed by the laws of State of Missouri for all purposes and intents.

**Section 5.11 Entire Agreement; Amendment.** The parties agree that this Agreement constitutes the entire agreement between the parties and that no other agreements or representations other than those contained in this Agreement have been made by the parties. This Agreement shall be amended only in writing and effective when signed by the authorized agents of the parties.

**Section 5.12 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall constitute one and the same instrument.

**Section 5.13 Severability.** In the event any term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect, to the extent the remainder can be given effect without the invalid provision.

**Section 5.14 Representatives Not Personally Liable.** No elected or appointed official, agent, employee or representative of the City or the Company shall be personally liable to the other party in the event of any default or breach by any party under this Agreement, or for any amount which may become due to any party or on any obligations under the terms of this Agreement.

**Section 5.15 Release and Indemnification.** The indemnifications and covenants contained in this Section shall survive termination or expiration of this Agreement.

A. The Company 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 Company, its officers, agents, attorneys, employees and independent contractors, in connection with its or their activities conducted pursuant to this Agreement.

B. 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 Company or its officers, agents, employees, independent contractors or any other persons who may be about the Property or the Project except, to the extent permitted by law, for matters arising out of the negligence or willful misconduct of the City and its governing body members, officers, agents, attorneys, employees and independent contractors.

C. 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.

D. The Company 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 Obligations or the enforcement or validity of any other agreement or obligation made in connection therewith and their approvals (excluding opinions of the City's counsel whenever such claim is based on such party's own negligence); (ii) the negligence or willful misconduct of the Company or its officers, agents, employees or independent contractors in connection with the design, management, development, redevelopment and construction of the Project, or (iii) the compliance by the Company 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 Company. 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 Project or any particular portion thereof.

**Section 5.16 Maintenance of the Property.** The Company 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 Project or any portion thereof. Upon substantial completion of the Project and so long as any Obligations are outstanding, the Company 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 5.7** of this Agreement), maintain or cause to be maintained the buildings and improvements located on the Property 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 Company 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.

**Section 5.17 Damage or Destruction of the Property.** The Company shall maintain or cause to be maintained reasonable casualty and liability insurance with respect to the Property. In the event of substantial destruction or damage to the Property during the term of this Agreement and so long as any Obligations are outstanding, the Company shall, in its sole and absolute discretion, either reconstruct the Project, or tender to the TDD and CID, respectively, that portion of the insurance proceeds from any fire or casualty insurance policy in an amount equal to the outstanding principal amount of the Obligations, plus accrued interest thereon.

**Section 5.18 Non-Discrimination.** The Company 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 Property 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 Company 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 Property and any of the facilities under its control within the Property. Except as provided in this Section, the Company 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 Property.

**ARTICLE VI.  
REPRESENTATIONS OF THE PARTIES**

**Section 6.1 Representations of the City.** The City hereby represents and warrants that the City has full constitutional and lawful right, power and authority, under current applicable law, to execute, deliver and perform the terms and obligations of this Agreement. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the City, enforceable in accordance with its terms.

**Section 6.2 Representations of the Company.** The Company hereby represents and warrants that the Company has full corporate power to execute 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, as evidenced by a certified copy of a good standing certificate and resolution of Company authorizing the purchase of the Property. This Agreement constitutes the legal, valid and binding obligations of the Company, enforceable in accordance with its terms.

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

IN WITNESS WHEREOF, the City and the Company 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: \_\_\_\_\_  
Mayor

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

(SEAL)

Attest:

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

Approved as to Form:

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

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

On this \_\_\_\_ day of \_\_\_\_\_, 2005, before me appeared Francis G. Slay, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the CITY OF ST. LOUIS, MISSOURI, a political subdivision of the State of Missouri, and that the seal affixed to the foregoing instrument is the seal of said City, and said instrument was signed and sealed in behalf of said City by authority of its Board of Aldermen, and said individual acknowledged said instrument to be the free act and deed of said City.

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

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

(SEAL)

My Commission Expires:

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

On this \_\_\_\_ day of \_\_\_\_\_, 2005, before me appeared Darlene Green, to me personally known, who, being by me duly sworn, did say that she is the Comptroller of the CITY OF ST. LOUIS, MISSOURI, a political subdivision of the State of Missouri, and that the seal affixed to the foregoing instrument is the seal of said City, and said instrument was signed and sealed in behalf of said City by authority of its Board of Aldermen, and said individual acknowledged said instrument to be the free act and deed of said City.

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

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

(SEAL)

My Commission Expires:

\_\_\_\_\_

COMPANY”:

**DOMINION HOSPITALITY-JEFFERSON, L.L.C.**

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

STATE OF )  
 ) SS  
COUNTY OF )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2005, before me appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that he is the \_\_\_\_\_ of DOMINION HOSPITALITY-JEFFERSON, L.L.C., a Missouri limited liability company, and that he is authorized to sign the instrument on behalf of said company, and acknowledged to me that he executed the within instrument as said company's free act and deed.

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

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

(SEAL)

My Commission Expires:

\_\_\_\_\_

**EXHIBIT A**  
**Legal Description of Property**

The land referred to herein is situated in the State of Missouri, City of St. Louis and is described as follows:

A tract of land in Tract 57 of the Mill Creek Valley Subdivision, being part of Block 1727B of the City of St. Louis, and being more particularly described as follows: Beginning at the eastern point of curvature of a 15 foot radius rounding curve at the intersection of the west line of Jefferson Avenue with the North line of Scott Avenue said point having coordinates 97425.368 North and 204484.720 East; thence along said 15 foot radius curve a distance of 27.623 feet to the point of tangency of said curve having coordinates 97410.695 North and 204465.877 East; thence along the North line of Scott Avenue North 75 degrees 09 minutes 04 seconds West 413.996 feet to a point having coordinates 97516.790 North and 204065.707 East; thence North 14 degrees 50 minutes 56 seconds East 398.820 feet to a point in the Southern line of the Daniel Boone Expressway right of way, Route 40 TR said point having coordinates 97902.292 North and 204167.912 East; thence along said Southern line South 60 degrees 47 minutes 44 seconds East 344.041 feet to a point having coordinates 97734.425 North and 204468.220 East; thence continuing along said Southern line South 22 degrees 49 minutes 47 seconds East 52.797 feet to a point in the aforementioned Western line of Jefferson Avenue, said point having coordinates 97685.764 North and 204488.705 East; thence along said Western line South 0 degrees 54 minutes 24 seconds West 255.440 feet to a point having coordinates 97430.356 North and 204484.663 East; thence continuing along said Western line South 0 degrees 39 minutes 49 seconds East, 4.989 feet to the point of beginning.

Tax Locator Nos. 1727-22-00808 and 1727-22-00800

Commonly known as 525 South Jefferson Ave., St. Louis, MO 63103

**EXHIBIT B**  
**Site Plan**  
(Attached hereto.)

**EXHIBIT C**  
**Form of Certificate of Substantial Completion**

The undersigned, Dominion Hospitality-Jefferson, L.L.C., a Missouri limited liability company (the "Company"), pursuant to that certain Development Agreement dated as of \_\_\_\_\_, 2005, by and between the City of St. Louis, Missouri (the "City"), and the Company, as may be amended (the "Agreement"), hereby certifies to the City as follows:

1. As of \_\_\_\_\_, 20\_\_, the construction and implementation of the [Parking] [CID] Project (as defined in the Agreement) has been substantially completed in accordance with the Agreement.

2. Construction and implementation of the [Parking] [CID] Project has been performed in a workmanlike manner and in accordance with the Concept Site Plan and the Design Plans developed and approved pursuant to Section 1.3 of the Agreement.

3. This Certificate of Substantial Completion is being submitted by the Company to the City to evidence the Company's satisfaction of all obligations and covenants with respect to the [Parking] [CID] Project.

4. The City's approval of this Certificate of Substantial Completion shall evidence the satisfaction of the Company's agreements and covenants to perform the [Parking] [CID] 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\_\_.

**DOMINION HOSPITALITY-JEFFERSON, L.L.C.,**  
**a Missouri limited liability company**

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

**PROJECT ENGINEER/ARCHITECT**

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

**ACCEPTED:**

**ST. LOUIS DEVELOPMENT CORPORATION**

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

**EXHIBIT D**  
**Budget for TDD Project and CID Project**

| Sitework                         | TDD         | CID         |
|----------------------------------|-------------|-------------|
| Demolition and Environmental     | \$50,400.00 | \$93,600.00 |
| Site Demolition                  | \$30,000.00 |             |
| Balanced Cut and Fill            | \$21,088.00 | \$39,163.00 |
| Bad soil remediation and removal | \$6,924.00  | \$12,861.00 |
| Export Excess Earth              | \$26,000.00 | \$14,000.00 |
| Finish Grading & Backfill        | \$6,500.00  | \$3,500.00  |
| Sanitary Sewers                  |             | \$20,000.00 |
| Storm sewers                     | \$60,000.00 | \$40,000.00 |
| Site Concrete                    | \$60,000.00 | \$35,000.00 |

|  |                          |                       |
|--|--------------------------|-----------------------|
| Hdcp sign and stall                          | \$150.00                 |                       |
| Hdcp sign and stall                          | \$150.00                 |                       |
| Asphalt Paving                               |                          | \$8,000.00            |
| Dumpster screen                              |                          | \$6,000.00            |
| Flagpole and signage                         |                          | \$8,000.00            |
| Ornamental site fencing                      | \$55,000.00              | \$0.00                |
| Retaining Wall                               | \$26,000.00              |                       |
| West Bdry chain link fence                   | \$6,512.00               |                       |
| Landscaping                                  | \$50,000.00              | \$22,000.00           |
| Irrigation                                   | \$32,000.00              | \$7,000.00            |
| Fence at Patio                               |                          | \$2,205.00            |
| Site Lighting                                | \$40,000.00              | \$20,000.00           |
| Soils Testing                                | \$7,000.00               | \$13,000.00           |
| Concrete testing                             | \$1,500.00               |                       |
| Utility relocations                          | \$15,000.00              | \$5,000.00            |
| <b>SITE IMPROVEMENT SUBTOTAL</b>             | <b>\$494,224.00</b>      | <b>\$347,124.00</b>   |
| <b>Professional Fees/Soft Costs</b>          | <b>TDD</b>               | <b>CID</b>            |
| Land Acquisition Cost                        | \$225,000.00             | \$225,000.00          |
| Environ/Phase I /Soils test                  | \$12,000.00              |                       |
| Legal Organizational                         | \$82,760.00              | \$82,760.00           |
| Civil Engineering                            | \$60,000.00              | \$5,000.00            |
| Architect                                    | \$50,000.00              | \$35,000.00           |
| Qualified Common Spaces                      | 3350 square feet @125.00 | \$318,250.00          |
| <b>PROFESSIONAL FEES/SOFT COSTS SUBTOTAL</b> | <b>\$429,760.00</b>      | <b>\$666,010.00</b>   |
| <b>TOTALS</b>                                | <b>\$923,984.00</b>      | <b>\$1,013,134.00</b> |

**EXHIBIT E**  
 Access Agreement  
 (Attached hereto)

**Approved: November 28, 2005**



## FORM OF ACCESS AGREEMENT

**THIS ACCESS AGREEMENT** (this “*Agreement*”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2005, by and between the **RESIDENCE INN DOWNTOWN ST. LOUIS TRANSPORTATION DEVELOPMENT DISTRICT**, a political subdivision duly organized and existing under the laws of the State of Missouri (the “*TDD*”) and 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*”).

### Recitals:

1. The TDD has acquired from Dominion Hospitality-Jefferson, L.L.C., a Missouri limited liability company, a leasehold interest in certain real estate described on **Exhibit A**, attached hereto and incorporated herein by reference, upon which real estate Dominion Hospitality-Jefferson, L.L.C. will design, develop and construct a TDD Road Project (as defined in **Section 1** of this Agreement).

2. Upon completion of construction of the TDD Road Project, the TDD (as defined in **Section 1** of this Agreement) intends to issue Obligations in a principal amount sufficient to finance the TDD Road Project and related costs of the TDD, including without limitation the costs of issuance of the Obligations and accrued interest thereon. The contribution by the TDD towards the construction of the TDD Road Project is intended to reimburse Dominion Hospitality-Jefferson, L.L.C. for the construction of the TDD Road Project.

3. Preliminary conceptual drawings of the TDD Road Project are set forth on **Exhibit B**, attached hereto and incorporated herein by reference.

4. The City and the TDD desire to enter into this Agreement in order to acknowledge the general economic benefit and value to the community created by the construction of the TDD Road Project and to provide for public access within the TDD Road Project on the terms set forth herein. 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 Road 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.

**Agreement.** This Access Agreement made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2005, by and between the TDD and the City.

**Amended and Restated Development Agreement.** The Amended and Restated Development Agreement dated the \_\_\_\_ day of \_\_\_\_\_, 2005, between the Company and the City.

**Anniversary Date.** The date that commences each one-year period after the Effective Date during the Term hereof.

**City.** 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.

**Cleaning & Maintenance Obligations.** Janitorial and cleaning services (including, without limitation, sweeping, trash can upkeep, trash removal, and cleaning of stairs and sidewalks), replacement of light bulbs, snow removal, landscaping, maintenance of lighting, including emergency lights, periodic re-painting (including, without limitation, re-striping, curb re-painting and re-painting of signs), and, unless specifically included as a Maintenance & Repair Obligation hereunder, any other repair or replacement with a reasonably expected useful life of no more than two (2) years.

**Company.** Dominion Hospitality-Jefferson, L.L.C., a Missouri limited liability company, or its permitted successors and assigns.

**Design Plans.** The Design Plans approved in accordance with the Amended and Restated Development Agreement.

**Effective Date.** The first date on which all of the conditions set forth in **Sections 2.1 and 2.2** of this Agreement shall have been satisfied or waived hereunder.

**Environmental Laws.** Any federal, state or local law, statute, regulation, rule or ordinance or amendments thereto, and all applicable judicial, administrative or regulatory decrees, judgments or orders relating to the protection of human health or the environment, including, without limitation, The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.* (“CERCLA”), as amended, the Resource, Conservation and Recovery Act, as amended, 42 U.S.C. 6901 *et seq.* (“RCRA”), the Toxic Substances Control Act, 15 U.S.C. Sections 2601-2671, the Clean Air Act, 42 U.S.C. Sections 7401 *et seq.*, and the Federal Water Pollution Control Act, 33 U.S.C. Sections 1251 to 1387, as the foregoing may be amended from time to time.

**Force Majeure.** Delays as a result of 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 governmental entities necessary for the Company to proceed with construction of the Project 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 TDD, the Obligations, the Amended and Restated Development Agreement or this Agreement.

**Governmental Approvals.** Any and all governmental licenses, permits, consents or other approvals necessary or desirable for the design, construction, development, improvement, financing, operation or maintenance of the TDD Road Project.

**Ground Lease.** The Ground Lease of Land and Lease of Improvements Agreement between the TDD and the Company pertaining to the TDD Road Property and the TDD Road Project.

**Legal Requirements.** Any federal, state, or local law, code, rule, ordinance, regulation, or order of any governmental authority or agency having jurisdiction over the business or operation of the TDD Road Project, including, without limitation, the following: (i) any buildings, zoning, or use laws, ordinances, regulations, or orders; and (ii) Environmental Laws.

**Maintenance & Repair Obligations.** Routine maintenance and repairs to stairs and sidewalks, initial striping and painting of curbs and signs immediately following the construction of the TDD Road

Project, sealants, penetrating sealer, drainage maintenance, power washing, maintenance and repairs of the TDD Road Project, maintaining property insurance for the TDD Road Project in accordance with **Section 8** hereof and any other repairs or improvements with a reasonably expected useful life of more than two (2) years.

**Obligations.** Obligations issued by the TDD to finance the design, development and construction of the TDD Road Project.

**Property.** The real property described in Exhibit A to the Amended and Restated Development Agreement, all of which is located within the boundaries of the TDD.

**Qualified Engineer.** A person or firm who is a qualified expert in the field of structural engineering and experienced with other road projects within the St. Louis metropolitan area.

**Reasonably Expected Useful Life.** A period of time expressed in years beginning on the Effective Date of the Agreement and ending on the anniversary of the Effective Date next succeeding the date that the TDD Road Project is reasonably expected to no longer have any useful value, as certified by a Qualified Engineer selected or approved by the TDD. Prior to the issuance of Obligations, such Qualified Engineer shall determine the Reasonably Expected Useful Life and shall provide written notification thereof to both parties hereto.

**Taxes.** All ad valorem taxes and other governmental assessments and charges, general and special, ordinary and extraordinary, of any kind whatsoever (including those levied or assessed by either party hereto), attributable or allocable to the TDD Road Project.

**TDD.** The Residence Inn Downtown St. Louis Transportation Development District, a political subdivision duly organized and existing under the laws of the State of Missouri.

**TDD Act.** The Missouri Transportation Development District Act, Sections 238.200 to 238.275 of the Revised Statutes of Missouri, as amended.

**TDD Road Project.** Construction of all property entryways, interior drives and adjacent sidewalks, curbs, gutters, signage, lighting, traffic signals and landscape screening, which project is depicted on those certain preliminary conceptual drawings set forth as **Exhibit B**, attached hereto and incorporated herein by reference, and the Design Plans approved in accordance with the Amended and Restated Development Agreement.

**TDD Road Property.** The property legally described in **Exhibit A**, attached hereto and incorporated herein by reference.

**TDD Sales Tax.** The transportation development district sales tax to be imposed by the TDD pursuant to Section 238.235 of the TDD Act.

**Term.** The period commencing on the Effective Date 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 Reasonably Expected Useful Life; or (ii) the satisfaction in full of all Obligations.

## **Section 2.      Access to TDD Road Project.**

**2.1** The obligations of the TDD under this Agreement are contingent upon and shall become effective only upon the satisfaction or waiver of all of the following conditions (including the material satisfaction of all required time limitations):

a. The Company and the TDD mutually agree upon terms of and execute the Ground Lease with respect to the TDD Road Project within twelve (12) months following the date of execution of the Amended and Restated Development Agreement;

b. The Company and TDD obtain all Governmental Approvals related to design, development, construction and financing of the TDD Road Project;

c. The TDD determines, in its sole discretion, that the design, development, construction financing and operation of the TDD Road Project (including any and all costs of environmental remediation and utilities relocation) are economically feasible and provides the City with written notice thereof prior to the issuance of Obligations; and

d. The issuance of Obligations.

Notwithstanding anything to the contrary herein, the time limitations required by the foregoing conditions shall be subject to Force Majeure, and the TDD may waive any one or more of the foregoing conditions by providing written notice thereof to the City. Upon the satisfaction or waiver of all of the foregoing conditions, the TDD shall promptly provide written notice thereof to the City.

**2.2** The City's obligations under this Agreement are contingent upon and shall become effective only upon the satisfaction or waiver of all of the following conditions (including the material satisfaction of all required time limitations):

a. The Company and the TDD mutually agree upon terms of and execute the Ground Lease with respect to the TDD Road Project within twelve (12) months following the execution of the Amended and Restated Development Agreement; and

b. The Company completes the construction of the TDD Road Project and reasonable certification of such completion is delivered to the City on or before December 1, 2005, absent an event of Force Majeure or, in the event of a delay caused by an event of Force Majeure, on or before December 31, 2007, all as provided for in the Amended and Restated Development Agreement; provided, however, that to the extent that Obligations are issued prior to completion of the TDD Road Project, Developer can demonstrate that sufficient funds are on deposit in the project fund to complete construction.

Notwithstanding anything to the contrary herein, the City may waive any one or more of the foregoing conditions by providing written notice thereof to the TDD. Upon the satisfaction or waiver of all of the foregoing conditions, the City shall promptly provide written notice thereof to the TDD.

**2.3** Commencing on the Effective Date, the TDD hereby grants, conveys and sets over to the City, for the use and benefit of the public, a non-exclusive easement for ingress and egress over and upon the TDD Road Project upon the terms and conditions hereinafter set forth.

**2.4** The TDD shall retain all operational control of the TDD Road Project. The TDD shall make the TDD Road Project available to the City for use by the general public subject to such reasonable terms and conditions as the TDD shall require. The TDD shall, and shall cause its agents and contractors to, comply with all Legal Requirements in connection with its operation of the TDD Road Project.

**2.5** The TDD shall, and shall cause its agents and contractors to, comply with all Legal Requirements in connection with the design, development, construction, maintenance and improvement of the TDD Road Project.

**Section 3. Easements Appurtenant.** All easements granted hereunder shall be appurtenant to the property benefited by such easement and shall constitute a covenant running with the land.

**Section 4. Covenant to Appropriate TDD Revenues.** Pursuant to the TDD Act, the TDD shall perform all functions incident to the administration, levy, collection, enforcement and operation of the TDD Sales Tax. Furthermore, the TDD agrees that the officer of the TDD at any time charged with the responsibility of formulating budget proposals shall be directed to include in the budget proposal submitted to the TDD for each fiscal year that the Obligations are outstanding a request for an appropriation of TDD revenues for application to the payment of the Obligations. Any funds appropriated as a result of such a request are pledged by the TDD to payment of the Obligations. If, within thirty (30) days after the end of the TDD's fiscal year, the TDD's board of directors fails to adopt a budget, the TDD shall be deemed to have adopted a budget that provides for application of the TDD revenues collected in such fiscal year in accordance with the budget for the prior fiscal year.

**Section 5. TDD Road Project Operation and Maintenance.**

**5.1** Except as otherwise provided herein, during the Term hereof, the TDD shall perform, or cause to be performed, all obligations connected with or arising out of owning, occupying or using the TDD Road Project or any part thereof, including without limitation the payment of all expenses required for the operation of the TDD Road Project, Taxes and assessments, if any, or payments in lieu thereof, utility charges and expenses, and the like, all as and when the same shall become due and payable.

**5.2** During the Term hereof, the TDD shall be solely responsible for and bear, pay and discharge, before the delinquency thereof, all Taxes and assessments, general and special, if any, which may be lawfully taxed, charged, levied, assessed or imposed upon or against or be payable for or in respect of the TDD Road Project, including any taxes and assessments not of the kind enumerated above to the extent that the same are lawfully made, levied or assessed in lieu of or in addition to taxes or assessments now customarily levied against real or personal property, and further including all water and sewer charges, assessments and other general governmental charges and impositions whatsoever, foreseen or unforeseen, which if not paid when due would impair the interest of the City or encumber the TDD Road Project or the TDD Road Property. The sole exception shall be that, for federal income tax and financial reporting purposes, the Company shall retain the economic benefits of ownership.

**5.3** The TDD shall perform or cause to be performed all Cleaning & Maintenance Obligations and all Maintenance & Repair Obligations.

**Section 6. Assignment.** The TDD shall not assign its interest in this Agreement without the prior written consent of the City. The City shall not assign its interest in this Agreement without the prior written consent of the TDD.

**Section 7. Dispute Resolution Process.**

**7.1** The TDD and the City agree that, in the event of a disagreement concerning the matters described herein, they shall negotiate, in good faith, in an attempt to resolve such disagreement for a period of at least sixty (60) days following receipt of notice from either party setting forth the specifics of the disagreement and the relief requested.

**7.2** Should the TDD and the City be unable to resolve such disagreement through good faith negotiation, the TDD and the City agree to attempt in good faith to resolve such disagreement through mediation administered by an organization offering commercial mediation services. Unless otherwise agreed all mediation proceedings shall be conducted in the City of St. Louis, Missouri.

**7.3** The TDD and the City may seek an adjudication of the controversy by the Circuit Court of the City of St. Louis, Missouri, and the prevailing party therein shall be entitled to recover all costs and expenses, including reasonable legal fees and expenses associated therewith.

**Section 8. TDD Requirements.** The TDD acknowledge that, pursuant to the Amended and Restated Development Agreement and such other agreements as may be entered into between the TDD and the Company, the TDD shall require that any and all funds received by the Company from the TDD or through other means as repayment of the Obligations in relation to the TDD Road Project are intended to benefit the community at large by encouraging visitors through the development of the Property. Such funds shall be used by the Company as reimbursement for its additions to permanent working capital through the construction of the TDD Road Project.

**Section 9. Insurance.** At all times during the construction of the TDD Road Project and any improvements thereto, the TDD shall maintain or shall cause the Company to maintain, with insurance companies of recognized responsibility, a minimum of the following: (a) property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the replacement cost of the TDD Road Project; (b) general liability insurance against claims for bodily injury, death, or property damage occurring on, in, or about the TDD Road Project and automobile liability insurance on vehicles operated in conjunction with the TDD Road Project, with a combined single limit for each occurrence of not less than \$1,000,000; and (c) worker's compensation and employer's liability insurance as may be required under applicable law covering any employees retained in connection with the operation of the TDD Road Project. At all times after construction of the TDD Road Project and while the Obligations remain outstanding, the TDD shall maintain or shall cause the Company to maintain, with insurance companies of recognized responsibility, a minimum of the following: (i) property insurance in the amount of the greater of the full insurable value of the TDD Road Project or the outstanding principal amount of the Obligations; and (ii) general liability insurance against claims for bodily injury, death, or property damage occurring on, in, or about the TDD Road Project.

**Section 10. Casualty; Condemnation.**

**10.1** If, during the Term, the TDD Road Project is damaged by fire, flood or other casualty and the cost to repair and/or replace such damage does not exceed \$100,000, the TDD shall, with all reasonable diligence, repair and/or replace the damaged portion of the TDD Road Project to the same condition as existed previously. In the event that the cost to repair and/or replace such damaged portion of the TDD Road Project exceeds \$100,000, the TDD may, in its reasonable discretion, determine whether it is practical to make such repairs and/or replacements. To the extent available, proceeds from the insurance described in **Section 9** of this Agreement shall be applied to the repairs and/or replacements made by the TDD hereunder.

**10.2** Notwithstanding any provision of **Section 10.1** of this Agreement to the contrary, if, while the Obligations remain outstanding, the TDD Road Project is damaged or destroyed, in whole or in part, by fire or other casualty, to such extent that a claim for loss (including any deductible amount pertaining thereto) resulting from such damage, destruction or taking is greater than \$100,000, the TDD shall promptly notify the City in writing as to the nature and extent of such damage or loss and whether it is practicable and desirable to rebuild, repair, restore or replace such damage or loss.

The TDD shall proceed promptly with and complete with reasonable dispatch such rebuilding, repairing, restoring or replacing of the TDD Road Project damaged or destroyed so as to place the TDD Road Project in substantially the same condition as existed prior to the event causing such damage or destruction, with such changes, alterations and modifications as will not impair the utility of the TDD Road Project. The TDD will cause the proceeds of any insurance claim, title insurance or other award from a challenge or threat of legal or equitable action related to the title or use of the TDD Road Project to be applied as provided in this Section. Such proceeds shall be deposited into an insurance fund to be established with and held by the TDD and shall be used and applied for the purpose of paying the cost of such rebuilding, repairing, restoring or replacing such damage or loss. If such proceeds are not sufficient to pay in full the costs of such replacement, repair, rebuilding or restoration, the TDD shall nonetheless complete the work thereof and shall pay the portion of the costs thereof in excess of the amount of such proceeds.

If the TDD determines that the repair, restoration, modification or improvement of the TDD Road Project is not economically feasible or in the best interests of the TDD but the proceeds are sufficient to fully defease the Obligations, then, in lieu of making such repair, restoration, modification or improvement, the TDD shall promptly pay to the trustee the amount of proceeds sufficient to fully defease the Obligations.

**Section 11. Remedies.** All rights and remedies of the City and the TDD herein enumerated shall be cumulative, and none shall exclude any other right or remedy allowed by law. In addition to the other remedies provided in this Agreement, the City and the TDD shall be entitled to the restraint by injunction of the violation or attempted violation of any of the covenants, agreements or conditions of this Agreement, and the City and the TDD shall be entitled to recover all direct damages arising out of or caused by the other party's violation of any of the covenants, agreements or conditions of this Agreement.

**Section 12. 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 development and construction of the TDD Road Project, including liability under any Environmental Laws; and (ii) the negligence or willful misconduct of the TDD or the Company or their respective employees, agents or independent contractors in connection with the management, development, and construction of the TDD Road Project. 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 development and construction of the TDD Road 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, development, and construction of the TDD Road Project. To the extent permitted by law, the City agrees to indemnify, defend, and hold the TDD and TDD their 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 13. Consents and Cooperation.**

**13.1** Wherever in this Agreement the consent or approval of the TDD or the City is required, such consent or approval shall not be unreasonably withheld, delayed or conditioned, shall be in writing and shall be executed by a duly authorized officer or agent of the party granting such consent or approval. Further, the TDD and the City agree to take such reasonable actions as may be necessary both to carry out the terms, provisions and intent of this Agreement, and to aid and assist each other in carrying out such terms, provisions and intent.

**13.2** The City shall cooperate with the TDD and the Company in all aspects of the development, design, construction, improvement, financing, operation and maintenance of the TDD Road Project, including without limitation, the following: (a) allowing the Company to use, at no fee or other charge, such areas of Jefferson Avenue in St. Louis, Missouri, as reasonably necessary for staging construction of the TDD Road Project, provided, however, that through-traffic shall be maintained on Jefferson Avenue at all times; (b) expediting the performance of any and all inspections and the processing and approval of any and all permits, licenses and other entitlements and authorizations, including, without limitation, any and all Governmental Approvals; (c) expediting the review, processing and approval of any and all plans, drawings and other documents and materials; and (d) using its best efforts to assist in facilitating the issuance of Obligations, including, without limitation, cooperating with the agents, representatives and attorneys of the TDD and Company in connection therewith and entering into an agreement to provide continuing disclosure of information in compliance with all applicable Federal rules and regulations related to the Obligations issuance.

**Section 15. Miscellaneous.**

**15.1 Representations and Warranties of the TDD.** The TDD hereby represents and warrants to the City 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.

**15.2 Representations and Warranties of the TDD.** The TDD hereby represents and warrants to the City 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.

**15.3 Representations and Warranties of the City.** The City hereby represents and warrants to the TDD 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.

**15.4 Warranty; Right to Make Agreement.** The TDD and the City each warrant to the others with respect to itself that neither the execution of this Agreement nor the finalization of the transactions contemplated hereby shall: (i) violate any provision of law or judgment, writ, injunction, order or decree of any court or governmental authority having jurisdiction over it; (ii) result in or constitute a breach or default under any indenture, contract, other commitment or restriction to which it is a party or by which it is bound; or (iii) require any consent, vote or approval which has not been taken, or at the time of the transaction involved shall not have been given or taken.



**15.5 Relationship.** Neither this Agreement nor any agreements, instruments, documents, or transactions contemplated hereby shall in any respect be interpreted, deemed or construed as making either party hereto a partner, joint venturer with, or agent of the other party. The TDD and the City agree that none will make any contrary assertion, claim or counterclaim in any action, suit, arbitration or other legal proceedings involving the TDD and the City.

**15.6 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.

**15.7 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 and, if Obligations are issued and outstanding, approved by the Trustee.

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

**15.9 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.

**15.10 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:**

Downtown Residence Inn Transportation Development District  
c/o Dominion Hospitality-Jefferson, L.L.C.  
1401 S. Brentwood Blvd., Suite 875  
St. Louis, Missouri 63144  
Attention: Chairman

With a copy to:

Armstrong Teasdale LLP  
One Metropolitan Square  
Suite 2600  
St. Louis, Missouri 63102  
Attention: James E. Mello

**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: Patricia A. Hageman

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.

**15.11 Waiver.** The failure of either party to insist upon a strict performance of any of the terms or provisions of this Agreement, or to exercise any option, right or remedy contained in this Agreement, shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right or remedy, but the same shall continue and remain in full force and effect. No waiver by either party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by such party.

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

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

**RESIDENCE INN DOWNTOWN ST. LOUIS  
TRANSPORTATION DEVELOPMENT DISTRICT**

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

ATTEST:

Seal

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

**CITY OF ST. LOUIS, MISSOURI**

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By: Mayor

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By: Comptroller

Attest:

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Register

Approved as to form:

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City Counselor

**EXHIBIT A TO ACCESS AGREEMENT**

**LEGAL DESCRIPTION OF TDD ROAD PROPERTY**

(To be provided upon completion of construction of TDD Road Project.)

**EXHIBIT B TO ACCESS AGREEMENT**

**PRELIMINARY CONCEPTUAL DRAWINGS OF TDD ROAD PROJECT**

(Attached hereto.)