

**ORDINANCE #65852**  
**Board Bill No. 420**  
**Floor Substitute**

**AN ORDINANCE RECOMMENDED BY THE BOARD OF ESTIMATE AND APPORTIONMENT OF THE CITY OF ST. LOUIS AND APPROVING AND AUTHORIZING THE CITY TO EXECUTE A DEVELOPMENT AGREEMENT WITH DRURY DEVELOPMENT CORPORATION; AUTHORIZING AND APPROVING THE CREATION OF A TRANSPORTATION DEVELOPMENT DISTRICT TO FINANCE AND LEASE A PORTION OF THE PROJECT TO BE UNDERTAKEN BY DRURY DEVELOPMENT CORPORATION; AUTHORIZING AND APPROVING THE FORM OF AN ACCESS AND PARKING AGREEMENT BETWEEN THE CITY AND SUCH 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**, the City of St. Louis, Missouri (the "City"), is a body corporate and a political subdivision of the State of Missouri, duly created, organized and existing under and by virtue of its charter, the Constitution and laws of the State of Missouri; and

**WHEREAS**, pursuant to the Land Clearance for Redevelopment Authority Law, Sections 99.300 to 99.660 of the Revised Statutes of Missouri, as amended (the "Act"), the City's Board of Aldermen, by Ordinance No. 64794 dated December 7, 1999 (the "Approving Ordinance"), approved a Blighting Study and Redevelopment Plan dated July 27, 1999 (the "Plan"), for the 408 Olive Street & 400 Washington Avenue Area (the "Area"), which Area is more fully described in the Plan; and

**WHEREAS**, the Land Clearance for Redevelopment Authority of the City of St. Louis, a public body corporate and politic established pursuant to the Act (the "LCRA"), duly advertised for redevelopment proposals for the Area; and

**WHEREAS**, Drury Development Corporation (the "Developer") caused Merchant's Laclede Redevelopment Corporation (the "Redeveloper") to submit a proposal dated October 15, 2002 (the "Proposal") for the rehabilitation of the building located within the Area at 408 Olive Street (the "Hotel Property") as an approximately 206-room Hilton Hotel with ground floor retail and 10th floor meeting rooms and ballrooms (the "Hotel Project"); and

**WHEREAS**, on October 22, 2002, by Resolution No. 02-LCRA-7256, the LCRA designated and selected the Redeveloper as redeveloper of the Hotel Property and authorized the execution of a Redevelopment Agreement therewith; and

**WHEREAS**, the Redeveloper's ability to undertake the Hotel Project is contingent upon the ability of the Developer and the City to provide financing for a parking facility adequate to support the Hotel Project; and

**WHEREAS**, the Developer proposes to design, develop and construct an approximately 415-car parking structure and right-of-way improvements at a cost of approximately \$6,350,000 (the "Garage Project") on a leased site at the northwest corner of Fourth and Olive Streets, which Garage Project will be financed in part by a transportation development district (the "District") to be created by the Developer 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 in part by payments made by the City to the District pursuant to an Access and Parking Agreement related to a portion of the Garage Project (the "Access and Parking 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 Act and the Plan for the City to enter into a Development Agreement (the "Development Agreement") with the Developer with respect to the construction and financing of the Garage Project and, upon creation of the District, to enter into the Access and Parking Agreement with the District to provide for public parking within a portion of the Garage Project.

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

**Section 1.** The Board of Aldermen hereby ratifies and confirms its adoption of the Plan. The Board of Aldermen further finds and determines that it is necessary and desirable to enter into the Development Agreement with the Developer in order to implement the Garage Project and to enable the Redeveloper to carry out its proposal for development of the Hotel 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 Development Agreement between the City and the Developer, and the City Register is hereby authorized and directed to attest to the Development Agreement and to affix the seal of the City thereto. The 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 and Parking Agreement between the City and the District once the District has been created, and the City Register is hereby authorized and directed to attest to the Access and Parking Agreement and to affix the seal of the City thereto. The Access and Parking Agreement shall be in substantially the form set forth as Exhibit E to the 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 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, desirable, convenient or proper in order to carry out the matters herein authorized. The Mayor and Comptroller or their designated representatives are hereby further authorized and directed to make any changes to the documents and instruments approved and authorized by this Ordinance 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 5.** It is hereby declared to be the intention of the Board of Aldermen that each and every part, section and subsection of this Ordinance shall be separate and severable from each and every other part, section and subsection hereof and that the Board of Aldermen intends to adopt each said part, section and subsection separately and independently of any other part, section and subsection. In the event that any part, section or subsection of this Ordinance shall be determined to be or to have been unlawful or unconstitutional, the remaining parts, sections and subsections shall be and remain in full force and effect, unless the court making such finding shall determine that the valid portions standing alone are incomplete and are incapable of being executed in accord with the legislative intent.

\_\_\_\_\_  
Clerk, Board of Aldermen

\_\_\_\_\_  
President, Board of Aldermen

Approved:      Date: \_\_\_\_\_

\_\_\_\_\_  
Mayor

Truly Engrossed and Enrolled

**EXHIBIT A**

**Form of Development Agreement**  
(Attached hereto.)

**DEVELOPMENT AGREEMENT**

**THIS DEVELOPMENT AGREEMENT** (this "*Agreement*"), is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2003, 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 **DRURY DEVELOPMENT CORPORATION**, (the "*Company*"), a corporation duly organized and existing under the laws of the State of Missouri.

**WHEREAS**, the Company desires to design, develop and construct a 206-room Hilton Hotel (the "*Hotel Project*"), by rehabilitating the site of the existing Merchant's Laclede Building at the southwest corner of Fourth and Olive Streets in the City, which site is legally described in **Exhibit A**, attached hereto and incorporated herein by reference (the "*Hotel Property*"); and

**WHEREAS**, the Company's tentative decision to undertake the Hotel Project is contingent upon the ability of the Company and the City to provide financing for a parking facility adequate to support the Hotel Project; and

**WHEREAS**, the Company proposes to design, develop and construct an approximately 415-car parking structure and right-

of-way improvements at a cost of approximately \$6,350,000 (the "*Garage Project*") at the northwest corner of Fourth and Olive Streets on a leased site legally described in **Exhibit B**, attached hereto and incorporated herein by reference (the "*Garage Property*"), which Garage Project will be financed in part by a transportation development district to be 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 in part by payments to be made by the City to the District pursuant to an Access and Parking Agreement related to a portion of the Garage Project (the "*Access and Parking Agreement*") ; and

**WHEREAS**, the City and the Company desire to formalize and memorialize the City's commitment to the Company with respect to the creation of the District and the execution of the Access and Parking Agreement to facilitate the Hotel Project and the Garage Project.

**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 GARAGE PROJECT**

**Section 1.1 Company to Construct the Project.** The Company agrees to advance all costs as necessary to acquire the Hotel Property and Garage Property (collectively, the "*Property*") and to design, develop and construct the Hotel Project and Garage 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 4.1** of this Agreement. As part of the Garage Project, the Developer shall make a good faith, commercially reasonable efforts to develop, market and lease the street level of the Garage Project for occupancy by businesses that engage in sales at retail.

**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 C**, attached hereto and incorporated herein by reference. The Company shall complete or cause the completion of the Project not later than December 31, 2005, absent an event of force majeure as provided for in **Section 4.5** 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 up to and including December 31, 2007.

**Section 1.3 Design Plans.** Prior to the commencement of construction of the Garage Project, the Company shall submit to the St. Louis Development Corporation (the "*SLDC*"), for its approval, site plans (including landscaping), floor plans, elevations and outline specifications of exterior materials to be used with respect to the Garage Project (the "*Design Plans*"). The Company shall construct the Garage Project in accordance with the Design Plans submitted to and approved by the SLDC. The Design Plans shall be deemed approved unless the SLDC shall, within thirty (30) days following submission of such Design Plans, notify the Company in writing of its rejection, stating in detail the reasons that any portion of such Design Plans are not in substantial conformity with the provisions of this Agreement (including without limitation the requirements of **Section 1.1** of this Agreement to provide for street level retail) and applicable state and local laws and regulations. With respect to such portion or portions, if any, of the Design Plans that are rejected by the SLDC, the Company shall submit revised portions of the Design Plans, which shall be deemed approved unless rejected in the same manner as the original submission.

**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 obtain workers' compensation, comprehensive public liability and builder's risk insurance coverage in amounts customary in the industry for similar type project. 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 City and the Company agree to cooperate to take all actions necessary to apply for the wage and hour determinations and otherwise comply with such laws.

**Section 1.5 Governmental Approvals.** The City agrees to employ reasonable and good faith efforts to cooperate with the Developer 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, 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 Design Plans without the advance written consent of the SLDC. For purposes of this Section, “*material changes*” shall mean any change that (A) reduces the number of parking spaces for the Garage Project by more than five percent (5%); or (B) is reasonably expected to increase the total cost of the Garage Project by more than ten percent (10%); or (C) eliminates the possibility of developing the street level of the Garage Project for occupancy by businesses that engage in sales at retail; or (D) is a substantial change to the aesthetic treatments of the Garage Project, as reasonably determined by the SLDC.

**Section 1.7 Certificate of Substantial Completion.** Promptly after substantial completion of either the Garage Project or the Hotel Project or both, the Company shall furnish to the City a Certificate of Substantial Completion. The City 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, the City 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 the City 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 Garage Project or the Hotel Project or both. The Certificate of Substantial Completion shall be in substantially the form attached as Exhibit D, attached hereto and incorporated by referenced herein.

## ARTICLE II. TRANSPORTATION DEVELOPMENT DISTRICT

**Section 2.1 Company Actions.** The City acknowledges that the Company, at its sole cost and expense, intends to advance all costs necessary to acquire a long-term leasehold interest in the Garage Property and design, develop and construct the Garage Project, subject to the creation of a transportation development district (the “*District*”) to (A) finance the Garage Project through the issuance of transportation development revenue notes and/or bonds (the “*TDD Obligations*”) and, (B) except as otherwise provided in **Section 4.4** of this Agreement, hold the rights and benefits of ownership of the Garage Project. The current budget for the Garage Project (exclusive of the costs associated with formation and administration of the District and the costs of issuance of the TDD Obligations) is set forth in **Exhibit I**, attached hereto and incorporated herein by reference and is subject to change in accordance with **Section 1.5** of this Agreement. In the event that the Company seeks to form the District pursuant to the TDD Act, the Company shall create and operate the District in accordance with the following:

- A. The District’s boundaries shall include without limitation the Hotel Property and the Garage Property.
- B. The District shall be authorized to issue the TDD Obligations in a principal amount of not to exceed \$6,350,000 plus related costs of the District, including without limitation the costs associated with formation and administration of the District and the costs of issuance of the TDD Obligations and accrued interest thereon.
- C. Upon issuance of the TDD Obligations, the District shall acquire the Garage Project from the Company and enter into the Access and Parking Agreement with the City as provided for in **Section 2.3** of this Agreement.
- D. The District 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. The District shall also be authorized to impose parking fees (the “*TDD Parking Fees*”) for use of the Garage Project in accordance with Section 238.237 of the TDD Act, the net proceeds of which TDD Parking Fees shall also be applied to debt service on the TDD Obligations. So long as the District is exempt from the payment of the City’s license tax levied pursuant to Ordinance No. 48871, as amended by Ordinance No. 56778, or any successor thereto (currently five percent (5%) of gross receipts), the TDD Parking Fees shall not include any amount for such license tax.
- E. The District’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.
- F. The District shall maintain accurate records of revenues received, which records shall be open to

inspection by the City at all reasonable times.

G. The District 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 and TDD Parking Fees 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 2.2 City's Actions.** The City acknowledges that, in the event that the Company seeks to create the District, the City will be the local transportation authority required to approve the Garage Project in accordance with the TDD Act. The City further acknowledges the general economic benefit created by the construction of the Hotel Project and the Garage Project and the overall value to the community created by the 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 District and shall not object to the Company's petition for the creation of the District.

B. The City shall approve the Garage 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 District's board of directors having the authority and rights set forth in Section 238.220.4 of the TDD Act.

D. The City acknowledges and agrees that, upon the District's acquisition of the Garage Project from the Company, the District, as a separate political subdivision of the State of Missouri, shall be exempt from payment of the City's license tax levied pursuant to Ordinance No. 48871, as amended by Ordinance No. 56778, or any successor thereto (currently five percent (5%) of gross receipts).

**Section 2.3 Access and Parking Agreement.** The City and the Company acknowledge and agree that the City shall enter into the Access and Parking Agreement with the District, which Access and Parking Agreement shall constitute a mutually satisfactory agreement between the City and the District regarding development and future maintenance of the Garage Project in accordance with Section 238.222 of the TDD Act. The City and the Company further acknowledge and agree that the Access and Parking Agreement shall also constitute a contract pertaining to the transfer of ownership and control of the Garage Project from the District to the City in accordance with Section 238.275 of the TDD Act. The Access and Parking 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 and Parking 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 Parking Garage, as determined by a qualified engineer or architect licensed in the State of Missouri.

B. As long as any TDD Obligations are outstanding, the District may impose TDD Parking Fees on the Garage Project.

C. As long as any TDD Obligations are outstanding, the District shall make a minimum of 200 parking spaces (as measured during normal business hours) available to the general public (the "*Public Portion of the Garage Project*") and may retain the remainder of the parking spaces within the Garage Project for the exclusive use of the Hotel Project (the "*Hotel Portion of the Garage Project*"). Upon satisfaction in full of all TDD Obligations, the entire Garage Project shall be made available to the general public for the remainder of the term of the Access and Parking Agreement. The City acknowledges that it has agreed to enter into the Access and Parking Agreement for the overall benefit of the community and that the commitment to make available the Public Portion of the Garage Project does not constitute a specific economic benefit from the Company to the City.

D. On or before the last day of each month, the City shall make monthly access payments to the District in an amount equal to seventy five percent (75%) of the revenues reported as having been received during the immediately preceding month from the following sales taxes imposed by the City within the boundaries of the District: (1) the City's general municipal sales tax levied pursuant to Ordinance No. 62884, or any successor thereto (currently 0.375%), (2) the City's general municipal sales tax levied pursuant to Ordinance No. 55497, as amended by Ordinance Nos. 57179 and 57979, or any successor thereto (currently 1.000%), (3) the City's transportation sales tax levied pursuant to Ordinance No. 56553, or any successor thereto (currently 0.500%), and (4) the City's capital improvements sales tax levied pursuant to Ordinance No. 62285, or any successor thereto (currently 0.500%).

E. On or before the tenth (10th) day of each month, the District shall certify to the City the amount of the monthly access payment due on or before the last day of the month, which certification (the "*Certificate of Access Payment Due*")

shall be calculated based upon the amount of taxable sales identified upon each TDD Sales Tax Return received by the District during the immediately preceding month. The District's Certificate of Access Payment Due shall be in substantially the form of **Exhibit F**, attached hereto and incorporated herein by reference.

F. The District shall apply all access payments received from the City to debt service on the TDD Obligations.

### ARTICLE III. TDD OBLIGATIONS

**Section 3.1 Conditions Precedent to Issuance of TDD Obligations.** No TDD Obligations shall be issued until such time as the City has received the following:

A. A Certificate of Substantial Completion for the Garage Project, which has been approved by the Company's architect or engineer for the Garage Project; and

B. A Certificate of Reimbursable Transportation Project Costs in substantially the form of **Exhibit G**, attached hereto and incorporated herein by reference, which has been approved by the Company's architect or engineer for the Garage Project and by the District.

**Section 3.2 Issuance of TDD Obligations by the District.** Upon satisfaction of the conditions set forth in **Section 3.1** of this Agreement, the Company shall cause the District to issue the TDD Obligations up to the maximum amount set forth in **Section 2.1(B)** of this Agreement. The TDD Obligations shall bear interest at a rate per annum not to exceed the 30-year treasury rate (as published in the *Wall Street Journal* on the date of issuance of the TDD Obligations) plus two and one-half percent (2½%), compounded monthly, provided that in no event shall the interest rate on the TDD Obligations exceed ten percent (10%) per annum. The TDD Obligations shall have a stated maturity of not longer than forty (40) years from the date of issuance; however, the parties acknowledge and agree that it is the intention of the Company to cause the District to issue TDD Obligations that have a stated maturity of thirty (30) years from the date of issuance.

**Section 3.3 Use of District's Available Revenues for Redemption of TDD Obligations.** The Company shall cause the District to deposit the net proceeds of the TDD Sales Tax, the net proceeds of the TDD Parking Fees and all revenues from the City's access payments under the Access and Parking Agreement (collectively, such monies on deposit in such segregated funds shall be referred to herein as "*Available Revenues*"), into separate segregated accounts. Subject to annual appropriation, Available Revenues shall be pledged to repayment of the TDD Obligations. The Company intends to apply the contributions of Available Revenues from the District as repayment of the TDD Obligations to reimburse the Company for its increases to permanent working capital through the Company's construction of the Garage Project. The District's obligations under this Section shall be the exclusive responsibility of the District payable solely out of District funds and property as provided in the TDD Act and shall not constitute a debt or liability or general obligation of the City, the Company, the State of Missouri or any agency or political subdivision thereof. The District 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 3.4 Covenant to Appropriate Available Revenues.** Pursuant to the TDD Act, the Company shall cause the District to perform all functions incident to the administration, levy, collection, enforcement and operation of the TDD Sales Tax and TDD Parking Fees or to provide for the performance of such functions. Furthermore, the Company shall cause the officer of the District at any time charged with the responsibility of formulating budget proposals to include in the budget proposal submitted to the District for each fiscal year that the TDD Obligations are outstanding a request for an appropriation of Available Revenues for application to the payment of the TDD Obligations. Any funds appropriated as a result of such a request are pledged by the District to payment of the TDD Obligations. If, within thirty (30) days after the end of the District's fiscal year, the District's board of directors fails to adopt a budget, the District shall be deemed to have adopted a budget that provides for application of the Available Revenues collected in such fiscal year in accordance with the budget for the prior fiscal year.

**Section 3.5 Cooperation in the Collection of TDD Sales Tax.** The Company agrees to cooperate and take all reasonable actions necessary to cause the TDD Sales Tax to be paid by those retail businesses operating within the District that are subject to the TDD Sales Tax. The Developer (or its successor in interest as an owner of affected portions of the real property located within the District) shall require in any conveyance of property by deed, or in each tenant's lease or other agreement with the Developer pursuant to which a retailer occupies a portion of the real property located within the District, certain provisions regarding the reporting and payment of the TDD 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 3.6 Repeal of TDD Sales Tax and TDD Parking Fees.** As long as the TDD Obligations are outstanding, the Company shall not cause the District to repeal or reduce the TDD Sales Tax unless such repeal or reduction will not impair the District's ability to repay the TDD Obligations that are outstanding and unless there is also a pro-rata reduction of the City's monthly access payments provided for in the Access and Parking Agreement and **Section 2.3(D)** of this Agreement. Upon satisfaction in full of the TDD Obligations, the Company shall cause the District to immediately implement the procedures in the TDD Act for repeal of the TDD Sales Tax and the TDD Parking Fees and abolishment of the District; provided, however, such procedures shall not be implemented if the District, with the prior written consent of the City, has approved another project pursuant to the TDD Act. Upon repeal of the TDD Sales Tax and the TDD Parking Fees, (a) all or a portion of any Available Revenues on deposit in the segregated accounts attributable to the TDD Sales Tax and the TDD Parking Fees shall be applied to the final payment of the District's administrative costs, and, thereafter, any such Available Revenues shall be retained until such time as the District is abolished and the District's board of directors has provided for the transfer of any such Available Revenues in a manner permitted by the TDD Act. Upon satisfaction in full of the TDD Obligations, the City's obligation to make monthly access payments provided for in the Access and Parking Agreement and **Section 2.3(D)** of this Agreement shall also cease.

#### ARTICLE IV. GENERAL PROVISIONS

**Section 4.1 Company's Right of Termination.** At any time prior to the delivery of the Certificate of Substantial Completion, 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. Upon such termination, the City shall have no obligation to enter into the Access and Parking Agreement or to otherwise assist the Company in financing the Garage Project or to otherwise reimburse the Company for any amounts advanced under this Agreement or costs otherwise incurred or paid by Company.

**Section 4.2 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 1.6** 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 enter into the Access and Parking Agreement or to otherwise assist the Company in financing the Garage Project or to otherwise reimburse the Company for any amounts advanced under this Agreement or costs otherwise incurred or paid by Company.

**Section 4.3 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 until substantial completion of the Project, the fee title to the Property or any leasehold interest in the Property greater than thirty (30) years 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 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 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; (b) 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 (DRURY DEVELOPMENT CORPORATION) 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 4.4 Income Tax Considerations.** The Company acknowledges that, for all purposes, the District shall hold all the rights and benefits of ownership of the Garage 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 Available Revenues from the District as repayment of the TDD Obligations are intended to benefit the community at large by encouraging visitors through the redevelopment of the Property. The contributions of Available Revenues shall be used by the Company as reimbursements for its additions to permanent working capital through its construction of the Garage Project.

**Section 4.5 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 term or conditions of this Agreement by either party, or any successor, the defaulting or breaching party (or successor) shall, upon written notice from the other party specifying such default or breach, proceed immediately to cure or remedy such default or breach, and shall, in any event, within thirty (30) days after receipt of notice, cure or remedy such default or breach. In the event that the defaulting or breaching party (or successor) diligently and in good faith commences to cure or remedy such default or breach but is unable to cure or remedy such default or breach within thirty (30) days after receipt of notice, the defaulting or breaching party (or successor) shall, prior to the end of such thirty (30) days, provide notice to the other party that it has in good faith commenced to cure or remedy such default or breach, whereupon the defaulting or breaching party (or successor) shall have an additional thirty (30) days to cure or remedy such default or breach. In case such cure or remedy is not taken or not diligently pursued, or the default or breach shall not be cured or remedied prior to the end of the additional thirty (30) day period, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including without limitation proceedings to compel specific performance by the defaulting or breaching party.

**Section 4.6 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 the governmental entity 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 District, the TDD Obligations, this Agreement or the Access and Parking 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 4.7 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:

Drury Development Corporation  
8315 Drury Industrial Parkway  
St. Louis, Missouri 63114  
Attention: Jacqueline Pollvogt

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 4.8 Inspection.** The City 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 reasonable access to the Property from time to time upon advance notice prior to the completion of the Project for inspection thereof. The Company shall not unreasonably deny the City and its officers, employees, agents and independent contractors the right to inspect, upon request, all architectural, engineering, demolition, construction and other contracts and documents pertaining to the construction of the Project as the City 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 4.9 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 4.10 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 4.11 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall constitute one and the same instrument.

**Section 4.12 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 4.13 Representatives Not Personally Liable.** No elected or appointed official, agent, employee or representative of the City shall be personally liable to the Company 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 4.14 Release and Indemnification.** The indemnifications and covenants contained in this Section shall survive termination or expiration of this Agreement.

A. The Developer releases from and covenants and agrees that the City and its governing body members, officers, agents, attorneys, employees and independent contractors shall not be liable for, and agrees to indemnify and hold harmless the City, its governing body members, officers, agents, attorneys, employees and independent contractors against any and all claims, demands, liabilities and costs, including reasonable attorneys' fees, costs and expenses, arising from damage or injury, actual or claimed (excluding consequential and punitive damages), to persons or property occurring or allegedly occurring as a result of any negligent or malicious acts or omissions of the 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 for matters arising out of the gross negligence or willful misconduct of the City and its governing body members, officers, agents, attorneys, employees and independent contractors.

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 Developer releases from and covenants and agrees that the City, its governing body members, officers, agents, attorneys, employees and independent contractors shall not be liable for, and agrees to indemnify and hold the City, its governing body members, officers, agents, attorneys, employees and independent contractors, harmless from and against any and all third party suits, interest, claims and cost of reasonable attorneys fees incurred by any of them, resulting from, arising out of, or in any way connected with: (i) the enforcement of this Agreement, the validity of the TDD 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 4.15 Survival.** Notwithstanding the expiration or termination or breach of this Agreement by either party, the agreements contained in **Sections 3.3, 3.4, 3.5, 3.6, 4.7, 4.9, 4.10, 4.11, 4.12, 4.13, 4.14, 4.15, 4.16, 4.17 and 4.18 and Article V** of this Agreement shall, except as otherwise expressly set forth herein, survive such early expiration or early termination of this Agreement by either party.

**Section 4.16 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 TDD 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 4.5** 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, and shall maintain or cause to be maintained reasonable casualty and liability insurance with respect to the same in accordance with **Section 1.3** of this Agreement.

**Section 4.17 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.

**Section 4.18 Fair Employment.** Without limiting any of the foregoing, the Company voluntarily agrees to observe the Equal Opportunity and Nondiscrimination Guidelines set forth as **Exhibit H**, attached hereto and incorporated herein by reference. By execution of this Agreement, the Company certifies and agrees that it is under no contractual or other disability that would materially impair its ability to observe the Guidelines set forth as **Exhibit H**, attached hereto and incorporated herein by reference.

## ARTICLE V. REPRESENTATIONS OF THE PARTIES

**Section 5.1 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. All expenditures of City funds contemplated in this Agreement are hereby appropriated from currently available funds of the City. The City expressly acknowledges that this Agreement is not conditioned on (A) receipt of any federal or State grant or loan or (B) an appropriation not within the current City's fiscal year. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the City, enforceable in accordance with its terms.

**Section 5.2 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 \_\_\_\_\_, 2003, 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 \_\_\_\_\_, 2003, 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



**EXHIBIT B**

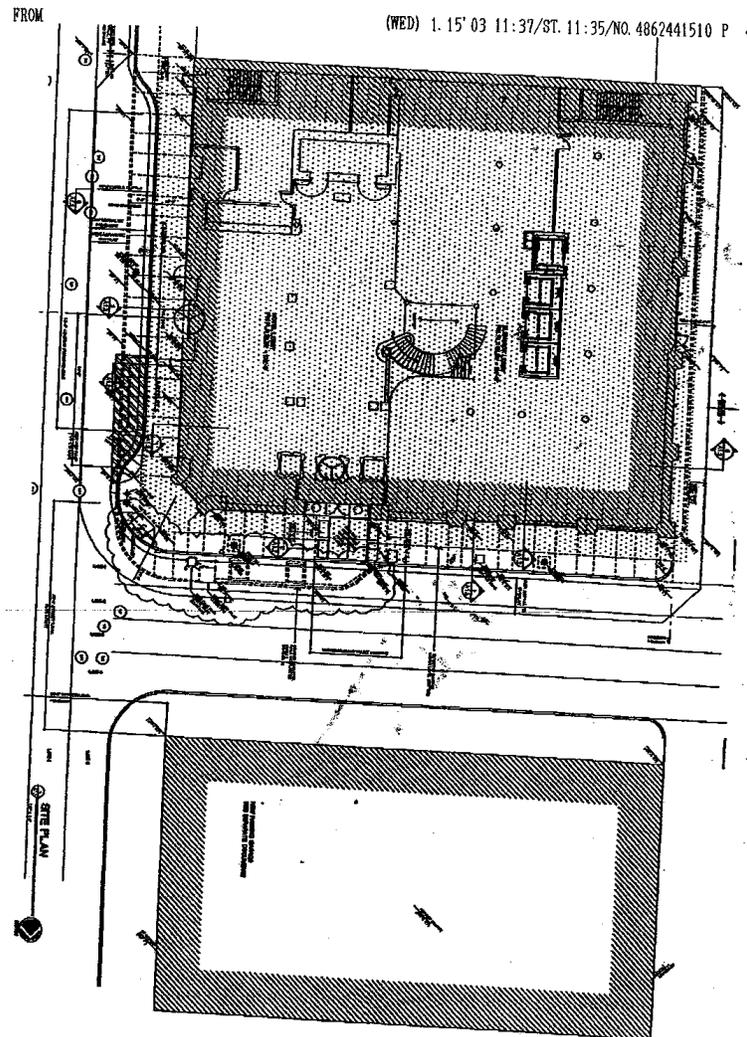
**Legal Description of Garage Property**

PARCEL 1: A Lot of ground in Block Ninety-Nine (99) of the City of St. Louis, fronting fifty-seven (57) feet one (1) inch, more or less, on the West line of Fourth Street by a depth Westwardly of one hundred twenty-two (122) feet six and three-eighths (6-3/8) inches, more or less, to an alley twelve (12) feet wide, more or less, conditionally dedicated by instruments recorded in Book 782 Page 13 and in Book 771 Page 378. Bounded South by Olive Street and North by property now or formerly of Robert MCK Jones, et al., Trustees.

PARCEL 2: A Lot in Block 99 of the City of St. Louis, fronting 57 feet, more or less, on the West line of Fourth Street, by a depth Westwardly of 120 feet, more or less, to an alley; bounded on the South by a line 57 feet 1 inch North of the North line of Olive Street, and on the North by property conveyed to Daniel Catlin by Wm. Lucas, et al., by Deed recorded in Book 959 Page 245.

**EXHIBIT C**

**Concept Site Plan**  
(Attached hereto.)



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**EXHIBIT D**

**Form of Certificate of Substantial Completion**

The undersigned, Drury Development Corporation, a Missouri corporation (the "Company"), pursuant to that certain Development Agreement dated as of \_\_\_\_\_, 2003, 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 [Garage] [Hotel] Project (as defined in the Agreement) has been substantially completed in accordance with the Agreement.
- 2. Construction and implementation of the [Garage] [Hotel] Project has been performed in a workmanlike manner and in accordance with the Concept Site Plan and the construction plans developed pursuant to Section 1.5 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 [Garage] [Hotel] 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 [Garage] [Hotel] 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\_\_.

**DRURY DEVELOPMENT CORPORATION,  
a Missouri corporation**

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

**PROJECT ENGINEER/ARCHITECT**

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

**ACCEPTED:**

**ST. LOUIS DEVELOPMENT CORPORATION**

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

**CITY OF ST. LOUIS, MISSOURI**

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

**EXHIBIT E**

**Form of Access and Parking Agreement  
(Attached hereto.)**

**ACCESS AND PARKING AGREEMENT**

**THIS ACCESS AND PARKING AGREEMENT** (this "Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2003, by and between the \_\_\_\_\_ **TRANSPORTATION DEVELOPMENT DISTRICT**, a political

subdivision duly organized and existing under the laws of the State of Missouri (the "District"), 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 District has acquired from Drury Development Corporation, a Missouri corporation, a leasehold interest in certain real estate described on **Exhibit A**, attached hereto and incorporated herein by reference, upon which real estate Drury Development Corporation will design, develop and construct a Parking Garage (as defined in **Section 1** of this Agreement).

2. Upon completion of construction of the Parking Garage, the District intends to issue the Bonds (as defined in **Section 1** of this Agreement) in a principal amount sufficient to finance the Parking Garage and related costs of the District, including without limitation the costs of issuance of the Bonds and accrued interest thereon. The contribution by the District towards the construction of the Parking Garage is intended to reimburse Drury Development Corporation for the construction of the Parking Garage.

3. Preliminary conceptual drawings of the Parking Garage are set forth on **Exhibit C**, attached hereto and incorporated herein by reference.

4. The City and the District 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 Hotel Project and the Garage Project and to provide for public access to a certain portion of the parking spaces within the Parking Garage 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 make parking spaces available to the public does not constitute a specific economic benefit to the City or the District.

**NOW, THEREFORE**, in consideration of the foregoing, and for other good and valuable consideration, receipt and sufficiency of which are acknowledged, the District 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.

**Access Payment.** The amount payable by the City under **Section 4.1** of this Agreement.

**Agreement.** This Parking Garage Agreement made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2003, by and between the District and the City.

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

**Bonds.** The transportation development revenue notes and/or bonds issued by the District pursuant to the Bond Financing.

**Bond Financing.** The issuance of Bonds by the District to finance the construction of the Parking Garage.

**Bond Repayment Period.** The period commencing upon the Effective Date and ending not more than forty (40) years thereafter.

**Bond Trustee.** The trustee for the Bonds designated pursuant to the Bond Financing.

**Certificate of Access Payment Due.** The District's certification to the City as to the amount of the Access Payment due on or before the last day of each month, as provided for in **Section 4.1** of this Agreement, which certification shall be in substantially the form of **Exhibit D**, attached hereto and incorporated herein by reference.

**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 elevator, stairs and sidewalks), replacement of light bulbs, snow removal, landscaping, maintenance of exit and emergency lights, periodic re-painting (including, without limitation, re-striping, curb re-painting and re-painting of signs), repair and replacement of access control systems and equipment, 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.** Drury Development Corporation, a Missouri corporation, or its permitted successors and assigns.

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

**Development Agreement.** The Development Agreement dated \_\_\_\_\_, 2003, between the Company and the City.

**District.** The \_\_\_\_\_ Transportation Development District, a political subdivision duly organized and existing under the laws of the State of Missouri.

**District's Notice.** The written notice provided by the District to the City of an upcoming Notice Deadline, which written notice must be provided no more than one hundred eighty (180) days nor less than ninety (90) days prior to the Notice Deadline.

**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.

**Event of Non-Appropriation.** Any of the events described in **Section 14.1** of this Agreement.

**Force Majeure.** Delays as a result of acts of God, war, civil disturbance, governmental action (including the revocation or refusal to grant licenses or permits, where such revocation or refusal is not due to the fault of the party whose performance is to be excused for reasons of Force Majeure), strikes, lockouts, boycotts, embargoes, fire, casualty or any other causes beyond the reasonable control of either party.

**Garage Construction Contract.** The construction contract to be entered into between Company and the construction contractor selected by Company, as contemplated by the Development Agreement.

**Garage Contractor.** The construction contractor named in the Garage Construction Contract.

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

**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 Parking Garage.

**Ground Lease.** The Ground Lease between the District and the Company pertaining to the Garage Property.

**Hotel Parking Spaces.** The portion of the Parking Spaces within the Parking Garage retained by the District for the exclusive use of the Hotel Project, as required by the Ground Lease.

**Hotel Project.** An approximately 206-room Hilton Hotel to be designed, developed and constructed by the Company in accordance with the Development Agreement.

**Hotel Property.** The property legally described in **Exhibit B**, attached hereto and incorporated herein, upon which the Company will design, develop and construct the Hotel 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 Parking Garage, 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 elevator, stairs and sidewalks, initial striping and painting of curbs and signs immediately following the construction of the Parking Garage, sealants, penetrating sealer, drainage maintenance, power washing, maintenance, repairs and replacements to all building systems other than access control systems (including, without limitation, electrical, HVAC, elevator, and piping), maintaining property insurance for the Parking Garage in

accordance with Section 8 hereof, structural repairs or improvements, de-lamination of the concrete decks, repair or replacement of structural beams, failure of façade systems, and, unless specifically included as a Cleaning & Maintenance Obligation hereunder, any other repairs or improvements with a reasonably expected life of more than two (2) years.

**Parking Garage.** A parking facility, located on the Garage Property, consisting of approximately 415 automobile parking spaces, which parking facility is described by those certain preliminary conceptual drawings set forth as **Exhibit C**, attached hereto and incorporated herein by reference, and the Design Plans approved in accordance with the Development Agreement.

**Parking Spaces.** All automobile parking spaces located within the Parking Garage, consisting of the Hotel Parking Spaces and the Public Parking Spaces.

**Property.** The Garage Property and the Hotel Property, all of which is located within the boundaries of the \_\_\_\_\_Transportation Development District.

**Public Parking Spaces.** The portion of the Parking Spaces within the Parking Garage available to the general public, as provided for by this Agreement, which portion shall be a minimum of 200 of the Parking Spaces as measured during normal business hours.

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

**Reasonably Expected Economic 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 Parking Garage is reasonably expected to no longer have any economic value, as certified by a Qualified Engineer selected by the District. Prior to the Bond Financing, such Qualified Engineer shall determine the Reasonably Expected Economic 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 Parking Garage.

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

**TDD Sales Tax.** The transportation development district sales tax to be imposed by the District 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 Economic Life; or (ii) the end of the Bond Repayment Period.

## **Section 2.        Access to Parking Garage.**

**2.1**        The District'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 District mutually agree upon terms of and execute a ground lease with respect to the Garage Property within twelve (12) months following the date of execution of the Development Agreement;

b.        The Company and Garage Contractor mutually agree upon terms of and execute the Garage Construction Contract within twelve (12) months following the date of execution of the Development Agreement;

c.        The Company and the District obtain all Governmental Approvals related to design, development, construction and financing of the Parking Garage;

d.        The District determines, in its sole discretion, that the design, development, construction financing and operation of the Parking Garage (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 Bond Financing; and

e.        The Bond Financing.

Notwithstanding anything to the contrary herein, the time limitations required by the foregoing conditions shall be subject to Force Majeure, and the District 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 District 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 District mutually agree upon terms of and execute a ground lease with respect to the Garage Property within twelve (12) months following the execution of the Development Agreement; and

b. The Garage Contractor completes the construction of the Parking Garage and reasonable certification of such completion is delivered to the City on or before December 31, 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 Development Agreement.

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

**2.3** Commencing on the Effective Date, the District hereby grants, conveys and sets over to the City, for the use and benefit of the public, a non-exclusive easement for parking over and upon the Public Parking Spaces within the Parking Garage upon the terms and conditions hereinafter set forth. Not later than thirty (30) days prior to each Anniversary Date, the District shall notify the City in writing of the number of Public Parking Spaces within the Parking Garage for the upcoming one-year period, which number shall not be less than 200 as measured during normal business hours. At the end of the Bond Repayment Period, all Parking Spaces shall be deemed Public Parking Spaces for the remaining Term of the Agreement.

**2.4** The District shall retain all operational control of the Parking Garage and shall have the continuing right to operate the Parking Garage, including the right to establish the parking fees to be charged therein in accordance with the TDD Act. The District shall make the Public Parking Spaces available to the City for use by the general public. At the end of the Bond Repayment Period, the District shall make the Hotel Parking Spaces available to the City upon the same terms and conditions as the District makes the Public Parking Spaces available to the City for use by the general public. The District shall, and shall cause its agents and contractors to, comply with all Legal Requirements in connection with its operation of the Parking Garage, including without limitation complying with all sales tax and other reporting obligations required pursuant to the Development Agreement or any applicable federal, state or local laws.

**2.5** The District 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 Parking Garage.

**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. Access Payments.**

**4.1** Within thirty (30) days following the Effective Date, and, thereafter, on or before the last day of each month during the Bond Repayment Period, the City shall, subject to annual appropriation, make Access Payments to the District in an amount equal to seventy five percent (75%) of the revenues reported as having been received during the immediately preceding month from the following sales taxes imposed by the City within the Property: (1) the general municipal sales tax levied pursuant to Ordinance No. 62884, or any successor thereto (currently 0.375%), (2) the general municipal sales tax levied pursuant to Ordinance No. 55497, as amended by Ordinance Nos. 57179 and 57979, or any successor thereto (currently 1.000%), (3) the transportation sales tax levied pursuant to Ordinance No. 56553, or any successor thereto (currently 0.500%), and (4) the capital improvements sales tax levied pursuant to Ordinance No. 62285, or any successor thereto (currently 0.500%).

On or before the tenth (10th) day of each month, the District shall provide the City the Certificate of Access Payment Due, which shall be calculated based upon the amount of taxable sales identified upon each TDD Sales Tax Return received by the District during the immediately preceding month. The District's Certificate of Access Payment Due shall be in substantially the form of **Exhibit D**, attached hereto and incorporated herein by reference.

In the event that the District reduces the TDD Sales Tax is reduced below the rate of one percent (1%), the City's Access Payments shall be reduced on a pro-rata basis. For example, if the TDD Sales Tax is reduced to one half percent (½%), the City's

Access Payments shall be in an amount equal to thirty seventy and one half percent (37½%) of the revenues identified in this Section.

**4.2** Each Access Payment shall be due on or before the last day of the calendar month during which the City receives a Certificate of Access Payment Due; provided, however, that, if the District fails to provide such Certificate of Access Payment Due on or before the tenth (10th) day of a particular month, the due date for such Access Payment shall be extended by the number of days late that such Certificate of Access Payment Due was submitted.

**4.3** In the event that, at any time during the Term hereof, the City is unable to use any of the Public Parking Spaces as a result of the acts or omissions of the District or Company or their respective employees, agents or contractors or as a result of fire, flood or other casualty, the parties agree that there will be a pro rata reduction of Access Payments during the applicable period of such lost use based on the number of Public Parking Spaces that cannot be used.

**Section 5. Parking Garage Operation and Maintenance.**

**5.1** Except as otherwise provided herein, during the Term hereof, the District shall perform, or cause to be performed, all obligations connected with or arising out of owning, occupying, managing or using the Parking Garage or any part thereof, including without limitation the payment of all expenses required for the operation of the Parking Garage, 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 District 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 Parking Garage, 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 Parking Garage or the Garage Property. The sole exception shall be that, for the federal income tax and financial reporting purposes, the Company shall retain the economic benefits of ownership.

**5.3** The District shall perform all Cleaning & Maintenance Obligations for the Parking Garage in accordance with the same standards used for other first-class parking garages in the St. Louis metropolitan area. The District shall perform all Maintenance & Repair Obligations in accordance with the same standards used for other first-class parking garages in the St. Louis metropolitan area.

**Section 6. Assignment.** The District shall not assign its interest in this Agreement without the prior written consent of the City; provided, however, this Agreement may be assigned by the District to the Bond Trustee without the necessity of obtaining the City's consent. The City shall not assign its interest in this Agreement without the prior written consent of the District and the Bond Trustee.

**Section 7. Dispute Resolution Process.**

**7.1** The District 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 District and the City be unable to resolve such disagreement through good faith negotiation, the District 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 District 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. District Requirements.** The District acknowledges that, pursuant to the Development Agreement and such other agreements as may be entered into between the District and the Company, the District shall require that any and all funds received by the Company from the District or through other means as repayment of the Bonds in relation to the Parking Garage and the Hotel Project (as defined in the Development Agreement) are intended to benefit the community at large by encouraging visitors through the redevelopment 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 Parking Garage.

**Section 9. Insurance.** At all times during the construction of the Parking Garage and any improvements thereto, the District 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 Parking Garage; (b) general liability insurance against claims for bodily injury, death, or property damage occurring on, in, or about the Garage Property and automobile liability insurance on vehicles operated in conjunction with the Parking Garage, with a combined single limit for each occurrence of not less than \$1,000,000.00; (c) garage keeper's comprehensive and collision insurance against liability for damage to automobiles of others in the care, custody, or control of the District or the operator of the Parking Garage, with limits as customarily carried by operators of such facilities in the St. Louis metropolitan area; and (d) 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 Parking Garage. At all times during the Bond Repayment Period, the District 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 Parking Garage or the outstanding principal amount of the Bonds; and (ii) general liability insurance against claims for bodily injury, death, or property damage occurring on, in, or about the Garage Property.

**Section 10. Casualty; Condemnation.**

**10.1** If, during the Term, the Parking Garage is damaged by fire, flood or other casualty and the cost to repair and/or replace such damage does not exceed \$100,000, the District shall, with all reasonable diligence, repair and/or replace the damaged portion of the Parking Garage to the same condition as existed previously. In the event that the cost to repair and/or replace such damaged portion of the Parking Garage exceeds \$100,000, the District may, in its reasonable discretion, determine whether it is practical to make such repairs and/or replacements. To the extent that such repairs and/or replacements are determined by the District to be impractical, Access Payments hereunder shall abate for the remainder of the Term in a reasonable and just proportion to the untenability of the Parking Garage. 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 District hereunder.

**10.2** Notwithstanding any provision of **Section 10.1** of this Agreement to the contrary, if, during the Bond Repayment Period, the Parking Garage 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 District shall promptly notify the City and the Bond Trustee 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 District shall proceed promptly with and complete with reasonable dispatch such rebuilding, repairing, restoring or replacing of the Garage Property damaged or destroyed so as to place the Parking Garage 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 Parking Garage. The District 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 Parking Garage to be applied as provided in this Section. If such proceeds received with respect to any such damage or loss to the Parking Garage exceed \$100,000, such proceeds shall be paid to the Bond Trustee and shall be deposited into an insurance fund to be established with and held by the Bond Trustee and shall be used and applied for the purpose of paying the cost of such rebuilding, repairing, restoring or replacing such damage or loss. The Bond Trustee shall be authorized to disburse money from the insurance fund as so directed by the District upon receipt of a requisition certificate or certificates therefor signed by the District. If such proceeds are not sufficient to pay in full the costs of such replacement, repair, rebuilding or restoration, the District 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 District determines that the repair, restoration, modification or improvement of the Parking Garage is not economically feasible or in the best interests of the District but the proceeds are sufficient to fully defease the Bonds, then, in lieu of making such repair, restoration, modification or improvement, the District shall promptly pay to the Bond Trustee the amount of proceeds sufficient to fully defease the Bonds.

**Section 11. Remedies.** All rights and remedies of the District 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 District 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 District shall be entitled to recover all direct damages arising out of or caused by the City's violation of any of the covenants, agreements or conditions of this Agreement.

If the City defaults in making any of the Access Payments or in paying any other amount due hereunder and such default continues for ten (10) days after the City receives written notice thereof from the District, or if the City defaults in the prompt and full performance of any other provision of this Agreement, and if such other default continues for thirty (30) days after the City receives written notice thereof from the District; provided, however, that if such failure cannot be cured within such thirty (30) day

period, then such period shall be reasonably extended to permit such cure so long as the City commences such cure immediately following such notice and continues to use its best efforts to complete such cure to completion within a reasonable period, or if the interest of the City be levied upon under execution or be attached by process of law and such levy or attachment is not removed or bonded over within sixty (60) days after such levy or attachment (it being agreed that the City shall not be entitled to the benefit of such period if such levy or attachment could in the District's reasonable judgment place the Parking Garage at risk), then, and in any such event, the District may, at its election, either terminate this Agreement and the City's right of access to the Parking Garage. Nothing herein shall relieve the City of any obligation, including the obligation to make Access Payments or to pay any other amount due hereunder. Notwithstanding anything to the contrary herein, for purposes of this Agreement, an Event of Non-Appropriation (as defined in **Section 14.1** of this Agreement) shall not constitute a default in the payment of any amount due hereunder.

If the District elects to terminate this Agreement pursuant to this Section, the District shall forthwith upon such termination be entitled to recover an amount equal to the damages sustained by the District as a result of the City's default hereunder.

**Section 12. Indemnification and Release.** To the extent permitted by law, the District 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 Parking Garage, including liability under any Environmental Laws; and (ii) the negligence or willful misconduct of the District or the Company or their respective employees, agents or independent contractors in connection with the management, development, and construction of the Parking Garage. To the extent permitted by law, the City agrees to indemnify, defend, and hold the District its employees, agents, and independent contractors harmless from and against any and all suits, claims, damages, injuries, liabilities, and costs and/or expenses, including court costs and reasonable attorneys' fees and expenses, resulting from, arising out of, or in any way connected with the negligence or willful misconduct of the City, its employees, agents, and independent contractors and consultants, or arising from a default by the City of its obligations hereunder. The indemnifications set forth in this Section shall survive termination or expiration of this Agreement.

**Section 13. Consents and Cooperation.**

**13.1** Wherever in this Agreement the consent or approval of the District 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 District 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 District and the Company in all aspects of the predevelopment, design, construction, improvement, financing, operation and maintenance of the Parking Garage, including without limitation, the following: (a) allowing the Company and Garage Contractor to use, at no fee or other charge, such areas of Olive and Fourth Streets in St. Louis, Missouri, as reasonably necessary for staging construction of the Parking Garage, provided, however, that through-traffic shall be maintained on Olive and Fourth Streets at all times; (b) acknowledging the District's exemption from payment of the City license tax levied pursuant to Ordinance No. 48871, as amended by Ordinance No. 56778, or any successor thereto (currently five percent (5%) of gross receipts); (c) 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; (d) expediting the review, processing and approval of any and all plans, drawings and other documents and materials; and (e) using its best efforts to assist in facilitating the Bond Financing, including, without limitation, cooperating with the agents, representatives and attorneys of the District 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 Bond Financing.

**Section 14. Non-Appropriation**

**14.1** In the event that the City through the Board of Aldermen shall not appropriate, specifically with respect to this Agreement, on or before the end of each fiscal year that this Agreement is in effect, moneys sufficient to pay all Access Payments reasonably estimated to become due for the next one-year period following an Anniversary Date, an Event of Non-Appropriation shall be deemed to have occurred. In the event that during the Term, any Access Payment shall become due which was not included in the City's current budget, or which exceeds the amounts which were included therefor in the City's current budget, then, in the event that moneys are not specifically appropriated to pay such Access Payment within sixty (60) days subsequent to the date upon which such Access Payment is due, an Event of Non-Appropriation shall be deemed to have occurred.

**14.2** Notwithstanding **Section 14.1** of this Agreement, an Event of Non-Appropriation shall not be deemed to have occurred hereunder if, in each consecutive month subsequent to that in which an event described in **Section 14.1** of this Agreement occurs, Access Payments are timely paid hereunder for the remainder of the Term.

**14.3** If an Event of Non-Appropriation occurs, the City shall not be obligated to make the Access Payments or any other payments provided for herein; provided, however, that the City shall continue to be liable for Access Payments allocable to any period during which the City shall continue to have a right of access to the Garage Property.

**14.4** The City covenants and warrants that the officer or official of the City at any time charged with the responsibility of formulating budget proposals is hereby directed to include in the budget proposal submitted to the Board of Aldermen of the City of St. Louis, for each fiscal year that this Agreement is in effect, a request for an appropriation of Access Payments and all other amounts due hereunder for such fiscal year. Any funds appropriated as the result of such a request shall be transferred by the City to the District at the times and in the manner provided in **Sections 4.1 and 4.2** of this Agreement.

**Section 15. Miscellaneous.**

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

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

**15.3 Warranty; Right to Make Agreement.** The District and the City each warrant to the other 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.

**15.4 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 District and the City agree that neither party will make any contrary assertion, claim or counterclaim in any action, suit, arbitration or other legal proceedings involving the District and the City.

**15.5 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.

**15.6 Entire Agreement; Amendment.** This Agreement constitutes the entire agreement between the District 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 District and the City and, if Bonds are issued and outstanding, approved by the Bond Trustee.

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

**15.8 Severability.** In the event any term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect to the extent the remainder can be given effect without the invalid provision, unless the unenforceable or invalid term or provision is such that a court reasonably would find that the parties, or either 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.

**15.9 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 mail, postage prepaid, or delivered personally as follows:

**In the case of the District:**

\_\_\_\_\_  
Transportation  
Development District

c/o Drury Development Corporation  
8315 Drury Industrial Parkway  
St. Louis, Missouri 63114  
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  
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.

**15.10 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.

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

\_\_\_\_\_  
**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 AND PARKING AGREEMENT  
Legal Description of Garage Property**

(See Exhibit B to Development Agreement.)  
Description of Garage Property on file in the Register’s Office.

**EXHIBIT B TO ACCESS AND PARKING AGREEMENT  
LEGAL DESCRIPTION OF HOTEL PROPERTY**

(See Exhibit A to Development Agreement.)  
Description of Hotel Property on file in the Register’s Office.

**EXHIBIT C TO ACCESS AND PARKING AGREEMENT  
PRELIMINARY CONCEPTUAL DRAWINGS OF PARKING GARAGE**

(See Exhibit C to Development Agreement.)  
Preliminary Conceptual Drawings of Parking Garage on file in the Register’s Office.

**EXHIBIT D TO ACCESS AND PARKING AGREEMENT  
CERTIFICATE OF ACCESS PAYMENT DUE**

(See Exhibit F to Development Agreement.)  
Certificate of Access Payment Due on file in the Register’s Office.

**EXHIBIT F**

**Form of Certificate of Access Payment Due**

I, the undersigned, being the [Treasurer] [Executive Director] of the \_\_\_\_\_ Transportation Development District, a Missouri political subdivision (the “District”), created in accordance with the Missouri Transportation Development District Act, Sections 238.200 to 238.275 of the Revised Statutes of Missouri, as amended (the “TDD Act”), hereby certifies to the City of St. Louis, Missouri (the “City”), as follows:

1. During the month ended \_\_\_\_\_, 20\_\_\_\_, the District received \_\_\_\_\_ TDD Sales Tax Returns that identified a total of \_\_\_\_\_ in taxable sales occurring within the District.

2. Based upon such taxable sales as were reported during the immediately preceding month, the amount of tax generated from the City’s general municipal sales tax levied pursuant to Ordinance No. 62884, or any successor thereto (currently

0.375%), the City’s general municipal sales tax levied pursuant to Ordinance No. 55497, as amended by Ordinance Nos. 57179 and 57979, or any successor thereto (currently 1.000%), the City’s transportation sales tax levied pursuant to Ordinance No. 56553, or any successor thereto (currently 0.500%), and the City’s capital improvements sales tax levied pursuant to Ordinance No. 62285, or any successor thereto (currently 0.500%), was

3. After applying a timely payment discount of two percent (2%), the amount of tax due to the City during the immediately preceding month was \_\_\_\_\_.

4. Pursuant to the Access and Parking Agreement dated \_\_\_\_\_, 2003, between the City and the District, the City has agreed to make monthly access payments to the District in an amount equal to seventy five percent (75%) of the revenues reported as having been paid during the immediately preceding month from those City sales taxes identified in Paragraph 2 above.

5. Based upon the amount of tax due to the City during the immediately preceding month, as identified in Paragraph 3 above, the amount of the City’s access payment due for this month is \_\_\_\_\_, which access payment is due on or before the last day of the month.

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

**TRANSPORTATION  
DEVELOPMENT DISTRICT**

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

**EXHIBIT G**

**Form of Certificate of Reimbursable Transportation Project Costs**

<p>To: City of St. Louis, Missouri City Hall 1200 Market Street St. Louis, Missouri 63103 Attention: Mayor Attention: Comptroller</p>	<p>St. Louis Development Corporation 1015 Locust Street Suite 1200 St. Louis, Missouri 63101 Attention: Executive Director</p>
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Re: Development Agreement between the City of St. Louis, Missouri (the “City”), and Drury Development Corporation (the “Company”), dated as of \_\_\_\_\_, 2003, as may be amended (the “Agreement”)

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement. In connection with said Agreement, the undersigned hereby states and certifies that:

1. Each item listed on Schedule 1 hereto is a Reimbursable Transportation Project Cost and was incurred in connection with the construction and implementation of the Garage Project.
2. These Reimbursable Transportation Project Costs have been incurred by the Company and are payable or reimbursable by the District as provided for in the Agreement.
3. Each item listed on Schedule 1 has not previously been paid or reimbursed by the District and no part thereof has been included in any other certificate previously filed with the District.
4. There has not been filed with or served upon the Company or the District any notice of any lien, right of lien or attachment upon or claim affecting the right of any person, firm or corporation to receive payment of the amounts stated in this request, except to the extent any such lien is being contested in good faith.
5. All necessary permits and approvals required for the portion of the Garage Project for which this certificate relates have been issued and are in full force and effect.
6. All work for which payment or reimbursement is requested has been performed in a good and workmanlike manner and in accordance with the Agreement.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**DRURY DEVELOPMENT CORPORATION,  
a Missouri corporation**

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

**PROJECT ENGINEER/ARCHITECT**

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

**APPROVED FOR PAYMENT THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_:**

**TRANSPORTATION DEVELOPMENT DISTRICT**

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

**EXHIBIT H**

**Equal Opportunity and Nondiscrimination Guidelines**

In any contract in connection with the Project related to any of the Property, the Company (which term shall include the Company, any transferees, lessees, designees, successors and assigns thereof, including without limitation any entity 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), its contractors and subcontractors shall comply with all federal, state and local laws, ordinances or regulations governing equal opportunity and nondiscrimination (the "Laws"). Moreover, the Company shall contractually require its contractors and subcontractors to comply with the Laws.

The Company and its contractors or subcontractors shall not contract with any party known to have been found in violation of the Laws.

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

The Company shall observe Executive Order #28 dated July 24, 1997, and any successor Executive Order thereto, relating to minority and women-owned business participation in City contracts.

The parties agree that the provisions of City Ordinance #60275, codified at Chapter 3.90 of the Revised Ordinances of the City of St. Louis, Missouri (the "First Source Jobs Policy"), does not specifically apply to the Company as a potential recipient of City funds pursuant to the Parking Garage Ground Lease. Nonetheless, the Company voluntarily agrees to make good faith efforts to observe the provisions of the First Source Jobs Policy related to the negotiation of an employment agreement with the St. Louis Agency on Training and Employment.

**EXHIBIT I****Budget for Garage Project**

**Merchant's Laclede Parking Garage  
 Projected Development Cost  
 Proposed 415-Space Parking Garage**

**DEVELOPMENT COSTS**

Lease Cost During Construction		\$ 135,000	
Site Preparation		\$ 80,000	
Legal & Miscellaneous		\$ 20,000	
<b>Acquisition &amp; Site Costs</b>			<b>\$ 235,000</b>
Parking Construction	spaces	415	
	Cost/Space	\$ 12,500	
<b>Parking Construction</b>			<b>\$ 5,187,500</b>
Project Management		\$ 350,000	
Survey, Soils, Title & Testing		\$ 50,000	
Legal Fees		\$ 50,000	
Interest Carry		\$ 75,000	
Right-of-Way Improvements-Olive & 4th St.		\$ 400,000	
<b>Soft Project Costs</b>			<b>\$ 925,000</b>
<b>Total Project Cost</b>			<b>\$ 6,347,500</b>

Approved: February 25, 2003