

ORDINANCE #65938
Board Bill No. 66
Committee Substitute

AN ORDINANCE RECOMMENDED BY THE BOARD OF ESTIMATE AND APPORTIONMENT AFFIRMING ADOPTION OF A REDEVELOPMENT PLAN, REDEVELOPMENT AREA, REDEVELOPMENT PROJECT; AUTHORIZING THE EXECUTION OF A REDEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY AND DDR SOUTHTOWN, LLC; PRESCRIBING THE FORM AND DETAILS OF SAID AGREEMENT; MAKING CERTAIN FINDINGS WITH RESPECT THERETO; AUTHORIZING OTHER RELATED ACTIONS IN CONNECTION WITH THE REDEVELOPMENT OF CERTAIN PROPERTY WITHIN THE REDEVELOPMENT AREA; 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, on December 20, 1991, pursuant to Ordinance No. 62477, the Board of Aldermen of the City created the Tax Increment Financing Commission of the City of St. Louis, Missouri (the “TIF Commission”); and

WHEREAS, on April 9, 2003, after all proper notice was given, the TIF Commission held a public hearing in conformance with the TIF Act, and received comments from all interested persons and taxing districts affected by the Redevelopment Plan and the redevelopment project described therein; and

WHEREAS, pursuant to the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 through 99.865 of the Revised Statutes of Missouri (2000), as amended (the “Act” or “TIF Act”), and after due consideration of the TIF Commission’s recommendations, the Board of Aldermen of the City of St. Louis, Missouri adopted Ordinance No. _____ [Board Bill No. _____] on _____, 2003, which Ordinance (i) approved a redevelopment plan entitled the Southtown Redevelopment Plan pursuant to the TIF Act (the “Redevelopment Plan”), (ii) designated the Southtown Redevelopment Area (as described in the Redevelopment Plan) as a “redevelopment area” as that term is defined in the TIF Act (the “Redevelopment Area”), (iii) approved the Redevelopment Project described in the Redevelopment Plan, (iv) adopted tax increment allocation financing within the Redevelopment Area, (v) established the City of St. Louis, Missouri “Southtown Special Allocation Fund,” and (vi) made certain findings with respect thereto, all as set forth in such Ordinance and in accordance with the requirements of the Act; and

WHEREAS, pursuant to the provisions of the TIF Act, the City is authorized to enter into a redevelopment agreement with DDR Southtown, LLC or an affiliate thereof as “Developer” setting forth the respective rights and obligations of the City and Developer with regard to the redevelopment of the Redevelopment Area (the “Redevelopment Agreement”), and the terms of such Redevelopment Agreement are to be consistent with a Settlement Agreement and Mutual Release entered into as of February 12, 2003 (the “Settlement Agreement”), between the City and Developers Diversified Realty, Inc; and

WHEREAS, the Board of Aldermen hereby determines that the terms of the Redevelopment Agreement attached as **Exhibit A** hereto (the “Redevelopment Agreement”) are acceptable and that the execution, delivery and performance by the City and the Developer of their respective obligations under the Redevelopment Agreement are in the best interests of the City and the health, safety, morals and welfare of its residents, and in accord with the public purposes specified in the TIF Act and the Redevelopment Plan.

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

Section One. The Board of Aldermen hereby ratifies and confirms its approval of the Redevelopment Plan, Redevelopment Area, and Redevelopment Project. The Board of Aldermen further finds and determines that it is necessary and desirable to enter into the Redevelopment Agreement with the Developer in order to implement the Redevelopment Project and to enable the Developer to carry out the proposal for development of the Redevelopment Project.

Section Two. The Board of Aldermen finds and determines that the assistance of tax increment financing is necessary and desirable in order to implement the Redevelopment Project and to enable DDR Southtown, LLC or an affiliate thereof as “Developer” to carry out the proposal for development of the Redevelopment Project.

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

Section Four. The Mayor of the City or any designated representative of his is 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.

Section Five. The Mayor is 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 Settlement Agreement and the intent of this Ordinance and as may be necessary, desirable, convenient or proper in order to carry out the matters herein authorized.

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

EXHIBIT A

REDEVELOPMENT AGREEMENT
Between the
CITY OF ST. LOUIS, MISSOURI
And
SOUTHTOWN REALTY LLC
for
REDEVELOPMENT PLAN
SOUTHTOWN REDEVELOPMENT AREA

Dated as of
_____, 2003

TABLE OF CONTENTS

RECITALS 1
AGREEMENT 2
ARTICLE I. DEFINITIONS 2
 1.1 Definitions 2
ARTICLE II. ACCEPTANCE OF PROPOSAL 8
 2.1 Developer Designation 8
 2.2 Developer to Advance Costs 8
ARTICLE III. CONSTRUCTION OF SOUTHTOWN REDEVELOPMENT PROJECT 8
 3.1 Acquisition of Property 8

3.2	Condemnation	9
3.3	Relocation	9
3.4	Developer to Construct the Work	9
3.5	Governmental Approvals	9
3.6	Construction Plans; Changes	9
3.7	Certificate of Substantial Completion	10
3.8	Transportation Development District	10
3.9	Tenant Selection	12
ARTICLE IV. REIMBURSEMENT OF DEVELOPER COSTS		12
4.1	City's Obligation to Reimburse Developer	12
4.2	Reimbursements Limited to Reimbursable Redevelopment Project Costs; Developer's Right to Substitute	12
4.3	City's Obligations Limited to Special Allocation Fund	13
ARTICLE V. TIF OBLIGATIONS		13
5.1	Conditions Precedent to the Issuance of TIF Obligations	13
5.2	Issuance of TIF Notes	13
5.3	Issuance of TIF Bonds	14
5.4	Subordinate Notes	14
5.5	Cooperation in the Issuance of TIF Obligations	15
5.6	Developer to Select Underwriter; Sale, Term and Interest Rate	15
ARTICLE VI. SPECIAL ALLOCATION FUND; COLLECTION AND USE OF TIF REVENUES		15
6.1	Creation of Special Allocation Fund	15
6.2	Certification of Base for PILOTS and EATS	15
6.3	Application of Available Revenues	16
6.4	Cooperation in Determining TIF Revenues	19
6.5	Obligation to Report TIF Revenues	20
6.6	Notice to City of Transfer	20
ARTICLE VII. GENERAL PROVISIONS		21
7.1	Developer's Right of Termination	21
7.2	City's Right of Termination	21
7.3	Successors and Assigns	21
7.4	Remedies	22
7.5	Force Majeure	23
7.6	Notices	24
7.7	Conflict of Interest	24
7.8	Damage or Destruction of Southtown Redevelopment Project	24
7.9	Inspection	24
7.10	Choice of Law	25
7.11	Entire Agreement; Amendment	25
7.12	Counterparts	25
7.13	Severability	25
7.14	Representatives Not Personally Liable	25
7.15	Actions Contesting the Validity and Enforceability of the Redevelopment Plan	25
7.16	Release and indemnification	26
7.17	Survival	27
7.18	Maintenance of the Property; Leases	27
7.19	Non-Discrimination	28
7.20	Fair Employment	28
ARTICLE VIII. REPRESENTATIONS OF THE PARTIES		28

8.1 Representations of the City 28
 8.2 Representations of the Developer 28

EXHIBITS

- EXHIBIT A Form of Certificate of Reimbursable Redevelopment Project Costs
- EXHIBIT B Form of Certificate of Substantial Completion
- EXHIBIT C Legal Description of The Redevelopment Area
- EXHIBIT D Reimbursable Redevelopment Project Costs
- EXHIBIT E Equal Opportunity and Nondiscrimination Guidelines
- EXHIBIT F Form of TIF Notes
- EXHIBIT G Project TIF Revenues
- EXHIBIT H Form of Notice of Commencement of Construction

REDEVELOPMENT AGREEMENT

THIS REDEVELOPMENT AGREEMENT (this “Agreement”) is made and entered into as of this ____ 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 **SOUTHTOWN REALTY LLC**, (the “Developer”), a Delaware limited liability company. (All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in Article I of this Agreement.)

RECITALS

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

B. On January 31, 2003, the Developer submitted to the City a redevelopment plan (the “Redevelopment Plan”) for the Redevelopment Area described in *Exhibit C* attached hereto and incorporated herein by reference (the “Redevelopment Area”).

C. On April 9, 2003 following a public hearing held on that date, in accordance with the TIF Act, the TIF Commission adopted a resolution approving the redevelopment plan known as the Redevelopment Plan – Southtown Redevelopment Area (the “Redevelopment Plan”) and recommending that the Board of Aldermen: (1) approve the Redevelopment Plan; and (2) approve and designate the Redevelopment Area as a “redevelopment area” as provided in the TIF Act.

D. On _____, 2003, after due consideration of the TIF Commission’s recommendations, the City adopted: (1) Ordinance No. _____ [Board Bill No. _____] designating the Redevelopment Area as a “redevelopment area” as provided in the TIF Act, approving the Redevelopment Plan, and approving the redevelopment project described in the Redevelopment Plan, adopting tax increment allocation financing within the Redevelopment Area, and establishing the Special Allocation Fund; and (2) Ordinance No. _____ [Board Bill No. _____] authorizing the City to enter into a redevelopment agreement with Developer.

E. On _____, 2003, the City adopted Ordinance No. _____ [Board Bill No. _____] authorizing the issuance of TIF Notes as evidence of the City’s obligation to pay certain Redevelopment Project Costs incurred in furtherance of the Redevelopment Plan and the Redevelopment Project and pledging TIF Revenues to the payment of the TIF Notes.

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

F. Pursuant to provisions of the TIF Act and Ordinance Nos. ____ and _____ [Board Bill Nos. ____ and ____], respectively, the City is authorized to enter into this Agreement, to issue TIF Notes as evidence of the City’s obligation to pay certain Redevelopment Project Costs incurred in furtherance of the Redevelopment Plan and any such Redevelopment Project, and to pledge TIF Revenues to the payment of the TIF Notes.

G. Pursuant to a Settlement Agreement and Mutual Release entered into as of February 12, 2003, by and between the City and Developers Diversified Realty, Inc., an Ohio Corporation, the City has agreed to support the use of TIF Notes in connection with the Southtown Redevelopment Project.

AGREEMENT

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

ARTICLE I. DEFINITIONS

1.1. Definitions.

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

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

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

“*Approving Ordinance*” means Ordinance No. _____ [Board Bill No. _____], designating the Redevelopment Area, approving the Redevelopment Plan, approving the Redevelopment Project, adopting tax increment allocation financing within the Redevelopment Area and establishing the Special Allocation Fund.

“*Authorizing Ordinance*” means Ordinance No. _____ [Board Bill No. _____] authorizing the City to enter into a Redevelopment Agreement with Developer.

“*Available Revenues*” means all monies on deposit from time to time (including investment earnings thereon) in (a) the PILOTS Account, (b) the TDD Revenues Account; (c) subject to annual appropriation, the Municipal Revenues Account, and (d) subject to annual appropriation, the EATs Account that have been appropriated to the repayment of the TIF Notes, excluding (i) any amount paid under protest until the protest is withdrawn or resolved against the taxpayer or (ii) any sum received by the City which is the subject of a suit or other claim communicated to the City which suit or claim challenges the collection of such sum.

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

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

“*Bond Indenture*” means the Trust Indenture securing the TIF Bonds as approved by the City by ordinance.

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

“*Business Day*” means any day other than a Saturday, Sunday or any other day on which banking institutions in the city in which the principal corporate trust office or payment office of the Trustee is located are required or authorized by law to close.

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

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

“*Certified Base*” has the meaning ascribed to such term in **Section 6.2** hereof.

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

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

“*Cost Certification*” means that certain cost certification prepared by the Developer’s accountants evidencing Reimbursable Redevelopment Project Costs.

“*Debt Service Fund*” means the fund by that name created in the Bond Indenture.

“*Debt Service Reserve Fund*” means the fund by that name created in the Bond Indenture.

“*Debt Service Reserve Requirement*” means the debt service reserve requirement required under the Bond Indenture.

“*Developer*” means SOUTHTOWN REALTY LLC, a Delaware limited liability company, or its permitted successors or assigns in interest.

“*Economic Activity Taxes*” or “*EATS*” shall have the meaning ascribed to such term in Section 99.805 of the TIF Act. For purposes of such definition, the City hereby acknowledges that this tax increment financing has not directly benefitted the relocation of any retail establishments within the City of St. Louis within one year from the approval of the Redevelopment Plan or the Southtown Redevelopment Project.

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

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

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

“*Intergovernmental Cooperation Agreement*” means the Agreement between the City and the Southtown Transportation Development District as approved by the City by ordinance.

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

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

“*Monitor*” means a third party who may be described in the Bond Indenture and charged with the duty of monitoring the collection and deposit of revenues into the Special Allocation Fund, if the Underwriter reasonably requires such third party to exercise such function as a condition to purchasing the Bonds.

“*Municipal Revenues*” means, while tax increment financing remains in effect and, subject to annual appropriation, the total additional revenue from taxes, penalties and interest that do not otherwise constitute TIF Revenues hereunder, and which are imposed by the City and are generated by economic activities within the area of the Redevelopment Project over the amount of such

taxes generated by economic activities within the area of the Redevelopment Project in the calendar year ended December 31, 2002, while tax increment financing remains in effect, but excluding personal property taxes, taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, taxes levied pursuant to Section 70.500 of the Revised Statutes of Missouri, as amended, or taxes levied for the purpose of public transportation pursuant to Section 94.660 of the Revised Statutes of Missouri, as amended, licenses, fees or special assessments other than payments in lieu of taxes and penalties and interest thereon.

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

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

“*Paying Agent*” means the Trustee under the Bond Indenture.

“*Payment Date*” means, with respect to payment of TIF Bonds, any date on which the principal of or interest on any TIF Bonds is payable.

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

“*PILOTs Account*” means the PILOTs Account in the Special Allocation Fund.

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

“*Projected TIF Revenues*” means the TIF Revenues anticipated to be generated within the Redevelopment Area, as set forth in **Exhibit G** hereto and incorporated herein by reference, which TIF Revenues were calculated based on the assumptions set forth in the Cost/Benefit Analysis dated January 10, 2003.

“*Property*” means the real property (including without limitation all options held by third parties, fee interests, leasehold interests, tenant-in-common interests and such other like or similar interests) and existing improvements in the Redevelopment Area necessary for the implementation of the Redevelopment Project.

“*Redevelopment Area*” means the real property described in **Exhibit C**, attached hereto and incorporated herein by reference, comprising approximately 15 acres of land.

“*Redevelopment Plan*” means the plan titled Redevelopment Plan – Southtown Redevelopment Area as approved by the City on _____, 2003, pursuant to Ordinance No. _____ [Bill Board No. ____], as such plan may from time to time be amended in accordance with the TIF Act.

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

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

“*Relocation Plan*” means the relocation plan of the City for the Redevelopment Area as contained in the Redevelopment Plan, in conformity with Ordinance No. 62481 of the City.

“*Revenue Fund*” means the fund by that name created in **Section 6.3** of this Agreement or the fund by that name under the Bond Indenture, as the context requires.

“*Southtown Redevelopment Project*” or “*Redevelopment Project*” means (1) items C, D, and E of **Exhibit D**, attached hereto and incorporated herein by reference, including (a) acquisition of property for right-of-ways and for the construction of roads, storm water improvements, sanitary sewers, water mains, and electrical utilities; (b) site preparation and earthwork for right-of-ways and the construction of roads, storm water improvements, sanitary sewers, water mains, and electrical utilities; (c) construction or re-construction of utilities improvements, including water distribution and service facilities, sanitary sewers, roads, storm water improvements, and electrical service facilities and street lights; (2) site work including demolition, re-grading and excavation and

environmental; and (3) construction of approximately 97,000 square feet of retail store space, as well as related internal roads, sidewalks and parking facilities, and screening and site landscaping on the Property, as described in the Redevelopment Plan and Redevelopment Proposal and as modified from time to time.

“*Special Allocation Fund*” means the City of St. Louis, Missouri, Southtown Special Allocation Fund created by the Approving Ordinance, and including the accounts and sub-accounts for the Southtown Redevelopment Project into which TIF Revenues and TDD Revenues are from time to time deposited in accordance with the TIF Act and this Agreement, including a PILOTS Account, an EATS Account, a Municipal Revenues Account and a TDD Account.

“*Special TIF Counsel*” means the law firm of Armstrong Teasdale LLP, St. Louis, Missouri, or an attorney at law or a firm of the attorneys acceptable to the City.

“*Substantial Completion*” means the stage in the progress of the Work when the Redevelopment Project is sufficiently complete in accordance with the Redevelopment Plan, the Construction Plans and this Agreement so that the retail space within the Redevelopment Project can be leased, occupied and utilized for its intended use; provided that as a condition precedent to Substantial Completion, the Developer has received all certificates of occupancy and any other permits, approvals, licenses and other documents necessary for the beneficial occupancy of the Redevelopment Project.

“*Tax Compliance Agreement*” means the Tax Compliance Agreement by and between the City and Trustee as approved by the City by ordinance.

“*TDD*” means the Southtown Transportation Development District created and maintained pursuant to **Section 3.8** of this Agreement.

“*TDD Account*” means the account of that name as defined in the Note Ordinance.

“*TDD Act*” means the Missouri Transportation Development District Act, Sections 238.200 through 238.275 of the Revised Statutes of Missouri, as amended.

“*TDD Revenue Limit*” shall have the meaning set forth in the Bond Indenture.

“*TDD Revenues*” means revenues of the TDD created in accordance with the TDD Act and Section 3.9 of this Agreement.

“*TDD Sales Tax*” means the transportation development district sales tax levied by the TDD in accordance with the TDD Act and **Section 3.8** of this Agreement.

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

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

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

“*TIF Notes*” means tax increment revenue notes issued by the City pursuant to and subject to this Agreement and the Note Ordinance in substantially the form set forth in **Exhibit F**, to evidence the City’s limited obligation to repay Reimbursable Redevelopment Project Costs incurred by the Developer on behalf of the City in accordance with the TIF Act and this Agreement, which TIF notes shall be fully assignable by the Developer, and includes any Subordinate Notes issued pursuant to Section 5.4 hereof.

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

“*TIF Revenues*” means: (1) payments in lieu of taxes (as that term is defined in Section 99.805(10) of the TIF Act) attributable to the increase in the current equalized assessed valuation of each taxable lot, block, tract, or parcel of real property located within the Redevelopment Area over and above the initial equalized assessed value (as that term is used and described in Section 99.845.1 of the TIF Act) of each such unit of property, as paid to the City Treasurer by the City Collector of Revenue during the term of the Redevelopment Plan and the Southtown Redevelopment Project, and (2) fifty percent (50%) of the total additional

revenues from taxes which are imposed by the City or other taxing districts (as that term is defined in Section 99.805(16) of the TIF Act) and which are generated by economic activities within the Redevelopment Area over the amount of such taxes generated by economic activities within the Redevelopment Area in the calendar year ending December 31, 2002 (subject to annual appropriation by the City as provided in the TIF Act), as defined and described in Sections 99.805(4) and 99.845 of the TIF Act, but excluding therefrom personal property taxes, taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, licenses, fees or special assessments, taxes levied pursuant to Section 70.500 of the Revised Statutes of Missouri, as amended, and taxes levied for the purpose of public transportation pursuant to Section 94.660 of the Revised Statutes of Missouri, as amended, all as provided in Section 99.845 of the TIF Act, as amended from time to time. Notwithstanding the foregoing, TIF Revenues shall not include the operating levy for school purposes imposed by or any sales tax imposed by the Transitional School District of the City of St. Louis.

“*Transportation Project*” means that portion of the Work that includes but is not limited to the following: (i) street improvements and traffic signalization; (ii) engineering and design work for the Redevelopment Project improvements; (iii) site work, drainage, pavement, lighting, striping; (iv) construction of a public surface parking lot, provided that there are no private use restrictions accruing to the benefit of any tenants or the Developer (to the extent that such restrictions exist, such restrictions shall apply to less than 10% of the parking improvements, whether measured by area or costs); and (v) construction of accompanying curb, gutter, sidewalk, storm water facilities or other similar or related infrastructure or improvement. The approximate location of the Transportation Project is as follows: the intersection of Kingshighway and Chippewa Streets all within the boundaries of the City of St. Louis, Missouri.

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

“*Underwriter*” means Stifel, Nicolaus & Company, Incorporated, the initial purchaser of the Bonds, and its successors or assigns, or such other entity as may be designated by Developer and reasonably acceptable to the Comptroller of the City of St. Louis

“*Work*” means all work necessary to prepare the Redevelopment Area and to construct or cause the construction of the Redevelopment Project as specifically described in the Redevelopment Plan and this Agreement including, but not limited to: (1) property acquisition; (2) professional fees, including architecture, engineering, soil, surveying, legal and planning and consulting; (3) demolition and site preparation including without limitation site re-grading and excavation and environmental remediation; (4) construction or re-construction of utilities improvements, including water distribution and service facilities, sanitary sewers, roads, stormwater improvements, and electrical service facilities and street lights; (5) construction of a mixed use retail development of approximately 97,000 square feet, as well as related internal roads, sidewalks and parking facilities, and screening and site landscaping; (6) all other work described in the Redevelopment Plan or reasonably necessary to effectuate the intent of this Agreement.

ARTICLE II. ACCEPTANCE OF PROPOSAL

2.1. Developer Designation.

The City hereby designates the Developer to perform or cause the performance of the Work in accordance with the Redevelopment Plan, this Agreement, and all Governmental Approvals.

2.2. Developer to Advance Costs.

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

(a) the City acknowledges payment by the Developer of a Five Thousand Dollar (\$5,000.00) TIF Application Fee;

(b) the Developer shall pay the actual and reasonable out-of-pocket expenses of the City in connection with this Agreement and the TIF Notes in a total amount not to exceed Ten Thousand Dollars (\$10,000.00), which amount does not include bond counsel fees and fees and expenses incurred in connection with the issuance of the TIF Notes and the TIF Bonds;

(c) within ten (10) days of the execution of this Agreement, the Developer shall pay an additional fee of Twenty-Five Thousand Dollars (\$25,000.00) to the Comptroller of the City; and

(d) the Developer shall, concurrently with the initial issuance of the TIF Notes, pay to the City the sum of Fifteen Thousand Dollars (\$15,000.00) for the City's Issuance Costs of such TIF Notes.

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

ARTICLE III. CONSTRUCTION OF SOUTHTOWN REDEVELOPMENT PROJECT

3.1. Acquisition of Property.

Developer represents that, as of the date of this Agreement, Developer is the fee owner of the Property, excluding City streets or any portion thereof. Any additional properties acquired by the Developer for completion of the Work shall be held in the name of the Developer and shall be subject to the terms, conditions, and covenants contained herein and in the Redevelopment Plan immediately upon acquisition.

3.2. Condemnation.

As of the date of this Agreement, it is not anticipated that the use of eminent domain will be necessary to acquire any portion of the real property in the Redevelopment Area.

3.3. Relocation.

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

3.4. Developer to Construct the Work.

(a) The Developer shall commence or cause the commencement of the construction of the Work within a reasonable time following the date this Agreement is executed and delivered. The Developer shall complete or cause the completion of all of the Work not later than the date that is three (3) years following the date of this Agreement absent an event of force majeure within the meaning of **Section 7.5** of this Agreement. In the event of any delay caused by an event of force majeure, Developer shall be granted additional time to complete the Work up to and including the date that is five (5) years following the date of this Agreement.

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

3.5. Governmental Approvals.

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

3.6. Construction Plans; Changes.

The Construction Plans shall be prepared by a professional engineer or architect licensed to practice in the State of Missouri and the Construction Plans and all construction practices and procedures with respect to the Work shall be in conformity with all applicable state and local laws, ordinances, and regulations. During the progress of the Work, the Developer may make such reasonable changes, including without limitation modification of the construction schedule, including dates of commencement and

completion; modification of the areas in which the Work is to be performed; relocation, expansion or deletion of items; revisions to the areas and scope of Work; and any and all such other changes as site conditions or orderly development may dictate or as may be necessary or desirable, in the sole determination of the Developer, to enhance the economic viability of the Southtown Redevelopment Project and as may be in furtherance of the general objectives of the Redevelopment Plan; provided that (a) the Developer shall comply with all laws, regulations, and ordinances of the City and (b) prior to any material changes, the Developer shall obtain the advance written consent of the City and the St. Louis Development Corporation, which consent shall not be unreasonably withheld or delayed. For purposes of this **Section**, “material changes” shall mean any change in the project uses of the Southtown Redevelopment Project that could reasonably be expected to result in a decrease of at least ten percent (10%) in the aggregate amount of Projected TIF Revenues, during the time period while any TIF Obligation is expected to be outstanding; provided, however, that once the City has provided the Certified Base, then such Projected TIF Revenues shall be re-calculated using the Certified Base.

3.7. Certificate of Substantial Completion.

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

3.8. Transportation Development District

The Developer shall petition the Circuit Court of the City of St. Louis, Missouri, for the creation of the TDD pursuant to the TDD Act, to be known as the Southtown Transportation Development District. The TDD shall be created solely for the purpose of providing tax revenues in addition to TIF Revenues for funding Redevelopment Project Costs paid or incurred in connection with the Transportation Project. The TDD shall be formed and operate in accordance with an intergovernmental cooperation agreement which shall include without limitation the following:

- (a) The TDD’s boundaries shall consist of the Redevelopment Area in its entirety.
- (b) The TDD will impose a 1% transportation development district sales tax on all retail sales made within the District, as provided in the TDD Act contained in Chapter 238, RSMo, as amended. As an alternative financing method, the TDD shall impose a special assessment in an amount equal to the TDD Sales Tax, which special assessment shall be abated unless and until the TDD fails or is otherwise unable to levy or collect the TDD Sales Tax or apply the TDD Sales Tax to the payment of TIF Obligations. The TDD shall impose no other tax, assessment, toll or charge whatsoever without the written consent of the City.
- (c) All TDD Revenues shall be deposited into the TDD Account of the Special Allocation Fund to provide for the payment of principal of and interest on TIF Obligations issued in connection with the Transportation Project.
- (d) 100% of TDD Sales Tax proceeds shall be used to pay debt service on the Notes or Bonds in accordance with this Agreement and the Note Ordinance, excepting therefrom the portion of the TDD Sales Tax proceeds deducted by the TDD for the TDD’s reasonable and actual costs of administering, collecting, enforcing and operating the TDD Sales Tax or special assessment as provided in the TDD Act, not to exceed 1% of TDD Sales Tax revenues.
- (e) The TDD shall maintain its existence until all TDD Obligations and TIF Obligations have been paid in full, at which time the TDD shall dissolve and the TDD Sales Tax shall no longer be levied.
- (f) The TDD shall keep accurate records of TDD Revenues received and costs incurred, and such records

shall be open to inspection by the City at all reasonable times.

(g) The TDD shall not exercise any powers or undertake any action authorized under the TDD Act other than those powers and actions expressly set forth in this Section or otherwise agreed upon by the City and the Developer in writing.

(h) The City and Developer shall use their best efforts and cooperate with each other in good faith in all proceedings relating to the creation and certification of the TDD, including the execution of all consents, approvals, authorizations or other documents required to create and certify the TDD or cause the City to be designated as the local transportation authority within the meaning of the TDD Act.

(i) The TDD shall permit the City to appoint at least one advisor to its board of directors having the authority and rights set forth in Section 238.220.4 of the TDD Act.

(j) The Developer shall not object to the City's designation as a "local transportation authority" within the meaning of Section 238.202 of the TDD Act.

(k) The Developer, as the owner of record of all real property located within the TDD, shall in good faith cooperate and assist in obtaining approval for and levying of the TDD Sales Tax contemplated by the Agreement by voting to approve the TDD Sales Tax at an election held in accordance with Section 238.235 of the TDD Act or by signing a special assessment petition in accordance with Section 238.230 of the TDD Act.

(l) The Developer shall use its best efforts to ensure that every retailer shall (a) add the TDD Sales Tax to the retailer's sales price and when so added such TDD Sales Tax shall constitute a part of the price, shall be a debt of the purchaser to the retailer until paid, and shall be recoverable at law in the same manner as the purchase price, all as provided for in Section 238.235 of the TDD Act; or (b) pay the TDD special assessment to be levied against any and all real property owned by it within the TDD pursuant to the TDD Act on or before the dates on which each installment of such special assessment is due.

(m) The Developer shall waive the right to file suit to set aside the TDD Sales Tax or otherwise question the validity of the proceedings relating thereto.

3.9. Tenant Selection.

So long as any TIF Obligation is outstanding, the Developer shall give consideration in tenant selection to any tenant who will produce a higher volume of sales taxes for the City, all other economic terms and conditions being equal.

(a) Not more than 10,000 square feet of the Project is to be occupied by tenants who engage primarily in uses other than sales or services that are subject to Missouri sales taxes. The Developer shall report to the City by January 31 of each year the amount of square footage of space per month or portion thereof occupied by tenants as "non-sales tax space" during the previous calendar year.

(b) For each month that more than 10,000 square feet of the Project is occupied by a tenant as "non-sales tax space," the Developer shall pay to the City by January 31 of the following year a penalty in a total amount not to exceed Eighteen Thousand Dollars (\$18,000.00) per calendar year. Subject to such maximum limitation, such penalty shall equal \$0.339 per square foot per month for each square foot of "non-sales tax space" in excess of 10,000 square feet for each such month. Such penalty shall be deposited into the Special Allocation Fund to be applied to the repayment of the TIF Obligations.

ARTICLE IV. REIMBURSEMENT OF DEVELOPER COSTS

4.1. City's Obligation to Reimburse Developer.

The City agrees to reimburse Developer for the verified Reimbursable Redevelopment Project Costs, which Redevelopment Project Costs are anticipated to be in the amounts and as set forth on *Exhibit D*, attached hereto and incorporated herein by reference, as may be adjusted pursuant to **Article IV** of this Agreement. Subject to the terms of the Note Ordinance and this Agreement, the City agrees to issue TIF Obligations to evidence the City's obligation to reimburse Developer for verified Reimbursable Redevelopment Project Costs in an amount not to exceed Seven Million Five Hundred Thousand 00/100 dollars (\$7,500,000.00) plus

the amount of verified Reimbursable Redevelopment Project Costs advanced to the City pursuant to **Section 2.2** of this Agreement and interest as provided in **Section 5.2** of this Agreement, subject to the limitations of **Article IV** of this Agreement.

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

Nothing in this Agreement shall obligate the City to issue TIF Obligations to reimburse the Developer for any cost that is not incurred pursuant to Section 99.820.1 of the TIF Act or that does not qualify as a “redevelopment project cost” under Section 99.805(14) of the TIF Act. The Developer shall provide to the City (a) itemized invoices, receipts or other information evidencing such costs; and (b) a Certificate of Reimbursable Redevelopment Project Costs constituting certification by the Developer that such cost is eligible for reimbursement under the TIF Act. Within thirty (30) days of the City’s receipt from the Developer of a Certificate of Reimbursable Redevelopment Project Costs, the City shall review and act upon such Certificate of Reimbursable Redevelopment Project Costs. The parties agree that each of the categories of costs set forth in **Exhibit D**, attached hereto and incorporated herein by reference, shall constitute Reimbursable Redevelopment Project Costs which are eligible for reimbursement in accordance with the TIF Act and this Agreement. The Developer shall not be limited to the total amount of reimbursement shown for each such category on **Exhibit D**, but shall be entitled to reimbursement for Redevelopment Project Costs from any of the categories set forth therein, without regard to the maximum amounts shown for each category, up to the maximum aggregate amount established in **Section 4.1** of this Agreement; provided that the Developer shall be obligated to advance to the City the full amounts identified in **Section 2.2(i)-(v)**, of this Agreement, and provided further, that at any given time, the aggregate amount of reimbursement for “Professional Fees” under category F of **Exhibit D** shall not exceed the lesser of (i) \$1,700,000, or (ii) the aggregate amount of hard costs reimbursed to date. If the City determines that any cost identified as a Reimbursable Redevelopment Project Cost is not a “redevelopment project cost” under Section 99.805(14) of the TIF Act, the City shall so notify the Developer in writing within thirty (30) days identifying the ineligible cost and the basis for determining the cost to be ineligible, whereupon the Developer shall have the right to contest such determination and/or identify and substitute other Redevelopment Project Costs as Reimbursable Redevelopment Project Costs with a supplemental application for payment. If the City fails to approve or disapprove any Certificate within thirty (30) days after receipt thereof, the Certificate of Reimbursable Redevelopment Project Costs shall be deemed approved.

4.3. City’s Obligations Limited to Special Allocation Fund.

Notwithstanding any other term or provision of this Agreement, TIF Notes issued by the City to the Developer for Reimbursable Redevelopment Project Costs are payable only from the Special Allocation Fund and from Bond Proceeds, if any, and from no other source.

**ARTICLE V.
TIF OBLIGATIONS**

5.1. Conditions Precedent to the Issuance of TIF Obligations.

No TIF Obligations shall be issued until such time as the City has received (i) a Notice of Commencement of Construction in substantially the form of **Exhibit H**, attached hereto and incorporated herein by reference, (ii) a Certificate of Reimbursable Redevelopment Project Costs in substantially the form of **Exhibit A**, attached hereto and incorporated herein by reference evidencing Developer’s payment of Reimbursable Redevelopment Project Costs of at least \$250,000 of hard costs related to categories B through E on **Exhibit D**, and (iii) the full payment of all advances required to be paid under **Section 2.2** of this Agreement.

5.2. Issuance of TIF Notes.

Upon satisfaction of the conditions of **Section 2.2** and **Section 5.1** of this Agreement, the City agrees to issue one or more TIF Notes as provided in the Note Ordinance to reimburse the Developer for Reimbursable Redevelopment Project Costs up to the maximum amount established in **Section 4.1** of this Agreement, subject to the limitations of **Article IV** of this Agreement. The TIF Notes shall be in substantially the form set forth in **Exhibit F**, attached hereto and incorporated herein by reference.

(a) Terms. Each TIF Note shall bear simple interest at a fixed rate per annum equal to (i) seven and one-fourth percent (7.25%) if the interest on such TIF Note, in the opinion of Bond Counsel, is not exempt from Federal income taxation, or (ii) five and three-fourths percent (5.75%) if the interest on such TIF Note, in the opinion of Bond Counsel, is exempt from Federal income taxation. All TIF Notes shall have a stated maturity of the Maturity Date.

(b) Procedures for Issuance of TIF Notes. Except as otherwise provided in this Agreement, the City

shall, within ten (10) days after acceptance by the City of the Certificate of Reimbursable Redevelopment Project Costs, issue an endorsement to the TIF Note evidencing an advance of Reimbursable Redevelopment Project Costs. In lieu of an endorsement to the TIF Note, the City shall, upon written request by the Developer, issue additional TIF Notes in denominations of at least One Hundred Thousand Dollars (\$100,000) and in increments of \$5,000 in excess thereof, to evidence the City's obligation to pay such advances of Redevelopment Project Reimbursement Costs.

If the City accepts the Certificate of Reimbursable Redevelopment Project Costs within thirty (30) days after submission by the Developer, the resulting endorsement to the TIF Note shall be deemed to have been made on the date that the City accepts the Certificate of Reimbursable Redevelopment Project Costs. If the City accepts the Certificate of Reimbursable Redevelopment Project Costs more than thirty (30) days after submission by Developer (or rejects it more than thirty (30) days after submission by Developer and provides the Developer the right to identify and substitute eligible Reimbursable Redevelopment Project Costs in accordance with **Section 4.2** of this Agreement), the resulting endorsement to the TIF Note shall be deemed to have been made on the thirty-first (31st) day after submission of the Certificate of Reimbursable Redevelopment Project Costs by the Developer.

Notwithstanding anything contained in this Agreement to the contrary, upon the acceptance by the City of a Certificate of Reimbursable Redevelopment Project Costs and the issuance by the City of an endorsed TIF Note as provided in this **Section 5.2**, the Developer shall be deemed to have advanced funds necessary to purchase such TIF Note and the City shall be deemed to have deposited such funds in the Project Fund and shall be deemed to have reimbursed the Developer in full for such costs from the amounts deemed to be on deposit in the Project Fund from time to time.

(c) Special Mandatory Redemption of TIF Notes. The TIF Notes are subject to special mandatory redemption by the City, in whole at any time or in part on each April 1 and October 1 occurring after the acceptance by the City of the Certificate of Substantial Completion at a redemption price equal to 100% of the principal amount being redeemed, together with the accrued interest thereon to the date fixed for redemption.

5.3. Issuance of TIF Bonds.

(a) The City may at its discretion issue, or cause to be issued, TIF Bonds in an amount sufficient to refund all or a portion of the outstanding TIF Notes.

(b) Upon receipt of a written request by the Developer at any time beginning eight months after the City's acceptance of the Certificate of Substantial Completion, The Industrial Development Authority of the City of St. Louis or such other conduit entity designated by the Developer, and reasonably acceptable to the City, shall immediately proceed to issue TIF Bonds as described in this Section 5.3. The TIF Bonds shall be issued in such aggregate principal amount as the projected financial performance of the Redevelopment Project will support. Such financial performance projections will be based on reasonable assumptions, taking into account the then-current lease-up and occupancy rate of the Redevelopment Project and the nature of the lessees.

5.4. Subordinate Notes.

If the amount of TIF Bonds issued pursuant to the Note Ordinance and this Agreement is insufficient to refund all of the outstanding TIF Notes, the TIF Notes remaining outstanding shall be redeemed by the issuance of notes subordinate to the TIF Bonds (the "Subordinate Notes"). Each Subordinate Note shall have the same maturity and have the same outstanding principal amount as the TIF Note it redeems. Any Subordinate Notes that are tax-exempt shall bear interest at a rate equal to tax-exempt TIF Bonds of like maturity plus 2.0%, and any Subordinate Notes that are taxable shall bear interest at a rate equal to taxable TIF Bonds of like maturity plus 2.0%. All such Subordinate Notes shall be payable as to principal and interest according to the terms set forth in Sections 6.3 and 6.4 of this Agreement.

5.5. Cooperation in the Issuance of TIF Obligations.

Developer covenants to cooperate and take all reasonable actions necessary to assist the City and its Bond Counsel, underwriters and financial advisors in the preparation of offering statements, private placement memorandum or other disclosure documents and all other documents necessary to market and sell the TIF Obligations, including disclosure of tenants of the Redevelopment Area and the non-financial terms of the leases between Developer and such tenants. Developer will not be required to disclose to the general public or any investor any proprietary or confidential information, including financial information, pertaining to Developer, but upon the execution of a confidentiality agreement acceptable to Developer, Developer will provide such

information to the City's financial advisors, underwriters and their counsel to enable such parties to satisfy their due diligence obligations. Developer shall make such compliance obligation a covenant running with the land, enforceable as if any subsequent transferee thereof were originally a party to and bound by this Agreement.

5.6. Developer to Select Underwriter; Sale, Term and Interest Rate.

The Developer may designate Stifel, Nicolaus & Company as the underwriter or may designate a different underwriter reasonably acceptable to the Comptroller of the City of St. Louis. The Developer has the right to effect a private placement of any TIF Obligations, in its sole discretion. The final maturity of the TIF Bonds shall not exceed the maximum term permissible under the TIF Act.

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

6.1. Creation of Special Allocation Fund.

The City agrees to cause its Comptroller or other financial officer to maintain the Special Allocation Fund, including a "PILOTS Account," an "EATS Account," a "TDD Revenues Account" and a "Municipal Revenues Account," and such further accounts or sub-accounts as are required by this Agreement or as the Comptroller of the City may deem appropriate in connection with the administration of the Special Allocation Fund pursuant to this Agreement. Subject to the requirements of the TIF Act, the City will promptly upon receipt thereof deposit all TIF Revenues into the PILOTS Account or EATS Account, as applicable.

6.2. Certification of Base for PILOTS and EATS.

Within ninety (90) days after adoption of the Approving Ordinance, the City shall provide to the Developer the following (referred to as the "Certified Base"): (i) a true, correct, and complete copy of the City Assessor's calculation of the total initial equalized assessed valuation of the taxable real property within the Redevelopment Area based upon the most recently ascertained equalized assessed value of each taxable lot, block, tract, or parcel of real property within the Redevelopment Area; and (ii) a certification of the amount of revenue from taxes, penalties, and interest which are imposed by the City and other taxing districts and which are generated by economic activities within the Redevelopment Area for the calendar year ending December 31, 2002, but excluding those taxes, licenses, fees, or special assessments identified in Section 99.845.3 of the TIF Act.

6.3. Application of Available Revenues.

The City hereby agrees for the term of this Agreement to apply the Available Revenues and any taxes, fees, or assessments subsequently enacted and imposed in substitution therefor and allocable to the Special Allocation Fund under the TIF Act or this Agreement to the repayment of TIF Obligations issued under Article V of this Agreement as provided in the Note Ordinance and this Agreement. As long as any TIF Notes are outstanding, Available Revenues shall be applied to payment each April 1 and October 1 (each, a "Payment Date") beginning on the first April 1 or October 1 immediately succeeding issuance of such TIF Notes, from the Special Allocation Fund as follows:

(a) On or before the date that is five (5) days prior to each Payment Date while the TIF Notes remain outstanding, the City shall transfer all Available Revenues to the Finance Officer for deposit into the Revenue Fund.

(b) Moneys in the Revenue Fund shall be disbursed by the Finance Officer on each Payment Date, first from the EATS Account, then from the PILOTS Account, then from the TDD Revenues Account and then from the Municipal Revenues Account for the purposes and in the amounts as follows:

First, to the Comptroller of the City an amount sufficient to pay all or any portion of the fees and expenses incurred by the Comptroller of the City but not to exceed in any calendar year the lesser of Fifteen Thousand Dollars (\$15,000.00) or 0.2% of the Notes outstanding on January 1 of such calendar year (in the event there are insufficient funds in such accounts to cover all or a portion of such fees and expenses, such deficiency shall not be paid and shall not accumulate);

Second, to the Comptroller of the City an amount sufficient to reimburse the City for costs incurred pursuant to **Section 7.15** of this Redevelopment Agreement that have not otherwise been reimbursed to the City through the issuance of TIF Notes purchased by the Developer;

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

Fourth, to the Debt Service Fund, an amount sufficient to pay all or any portion of the scheduled interest becoming due and payable on any TIF Notes on such Payment Date;

Fifth, to the Debt Service Fund, an amount sufficient to pay the principal of any TIF Notes that are subject to redemption pursuant to the TIF Note Ordinance;

Sixth, to the St. Louis Development Corporation an amount sufficient to pay all or any portion of the fees and expenses incurred by the St. Louis Development Corporation but not to exceed in any calendar year the lesser of Fifteen Thousand Dollars (\$15,000.00) or 0.2% of the Notes outstanding on January 1 of such calendar year (in the event there are insufficient funds in such accounts to cover all or a portion of such fees and expenses, such deficiency shall not be paid and shall not accumulate); and

Seventh, to the City all other remaining money to be declared as surplus and distributed in the manner provided in the Act.

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

If monies available in the Special Allocation Fund are insufficient to reimburse the City as provided above on any Payment Date, then the unpaid portion shall be carried forward to the next payment date, with interest thereon at the same rate as the tax-exempt TIF Obligations.

The City agrees that the officer of the City at any time charged with the responsibility of formulating budget proposals will be directed to include in the budget proposal submitted to the Board of Aldermen, for each fiscal year that TIF Obligations are outstanding, a request for an appropriation of all Available Revenues on deposit in the EATs Account and the Municipal Revenues Account of the Special Allocation Fund for application to the payment of the principal of (including, but not limited to, payment of a premium, if any) and interest on the TIF Obligations.

6.4 Application of Available Revenues to TIF Bonds.

(a) On the 10th calendar day of each month (or the next Business Day thereafter if the 10th is not a Business Day) while the Bonds are Outstanding, the City shall cause to be transferred (i) all Available Revenues as of the last day of the preceding month consisting of Payments in Lieu of Taxes to the Trustee and shall direct the Trustee in writing to deposit such sums into the PILOTs Revenue Account of the Revenue Fund, (ii) all Available Revenues as of the last day of the preceding month consisting of Economic Activity Tax Revenues to the Trustee and shall direct the Trustee in writing to deposit such sums into the EATs Revenue Account of the Revenue Fund, (iii) all Municipal Revenues as of the last day of the preceding month and shall direct the Trustee in writing to deposit such sums into the Municipal Revenues Account of the Revenue Fund, and (iv) all Available Revenues as of the last day of the preceding month consisting of TDD Revenues to the Trustee and shall direct the Trustee in writing to deposit such sums into the TDD Revenue Account of the Revenue Fund. If the Trustee has not received Available Revenues on or before the 15th calendar day of each month, the Trustee shall notify the Underwriter and the City of such non-receipt.

(b) Moneys in the Revenue Fund of the Debt Service Reserve Fund shall be applied under this subsection (b) (other than by operation of *First* below) such that the aggregate TDD Revenues so applied do not exceed the TDD Revenue Limit on or before the 40th day (or if such day is not a Business Day, the immediately preceding Business Day) prior to each Payment Date. On the 40th day (or if such day is not a Business Day, the immediately preceding Business Day), except as otherwise provided, prior to each Payment Date, the Trustee shall apply moneys in the Revenue Fund (first drawing on EATs, second on TDD Revenues and third on PILOTs) for the purposes and in the amounts as follows:

(i) transfer TDD Revenues in excess of the TDD Revenue Limit to the Excess TDD Revenue Fund; provided that, in accordance with the Bond Indenture, on any Payment Date on which the TDD Revenue Limit has not been met, funds from the Excess TDD Revenue Fund shall be transferred to the TDD Revenue Account of the Revenue Fund until the TDD Revenue Limit is met;

- (ii) to the Rebate Fund, when necessary, an amount sufficient to pay rebate, if any, to the United States of America, owed under Section 148 of the Code, as directed in writing by the City in accordance with the Tax Compliance Agreement;
- (iii) transfer to the Debt Service Account of the Debt Service Fund, when necessary, an amount sufficient to pay the interest on the Bonds on the next succeeding Payment Date;
- (iv) transfer to the Debt Service Reserve Fund such amount as may be required to restore any deficiency in the Debt Service Reserve Fund if the amount on deposit in the Debt Service Reserve Fund is less than the Debt Service Reserve Requirement; provided however that any moneys from the TDD Revenue Account of the Revenue Fund shall be deposited in the TDD Debt Service Reserve Account, any moneys from the EATs Revenue Account shall be deposited in the EATs Debt Service Reserve Account, and any moneys from the PILOTs Revenue Account shall be deposited in the PILOTs Debt Service Reserve Account;
- (v) transfer to the Debt Service Fund, an amount sufficient to pay all or any portion of past due interest owing as a result of prior deficiencies of moneys to pay interest due any TIF Notes on each Payment Date;
- (vi) transfer to the Debt Service Fund, an amount sufficient to pay all or any portion of the scheduled interest becoming due and payable on any TIF Notes on such Payment Date;
- (vii) pay to the Trustee or any Paying Agent, an amount sufficient for payment of any fees, charges and expenses which are due and owing to the Trustee or any Paying Agent, upon delivery to the City (with a copy to the Trustee if the Paying Agent is other than the Trustee) of an invoice for such amounts; pay to the Monitor, if any, an amount sufficient for payment of any reasonable and necessary fees and expenses which are due and owing to the Monitor upon delivery to the City (with a copy to the Trustee) of an invoice for such amounts (provided such payments to the Trustee may not exceed \$5,000 in any calendar year and payments to the Monitor, if any, may not exceed in any calendar year an amount, which when added to the Trustee's fee, equals \$10,000); and pay to the City an amount sufficient for payment of any fees and expenses incurred by the City in the administration of the Redevelopment Plan, but not to exceed in any calendar year, the lesser of Fifteen Thousand Dollars (\$15,000.00) or 0.2% of the Notes outstanding on January 1 of such calendar year, **(in the event there are insufficient funds in such accounts to cover all or a portion of such fees and expenses, such deficiency shall not be paid and shall not accumulate)**, unless the City has incurred costs pursuant to Section 7.15 of this Redevelopment Agreement that have not otherwise been reimbursed to the City through the issuance of TIF Notes purchased by the Developer, upon delivery to the Trustee of the City's certification of such amounts;
- (viii) transfer to (a) the TDD Redemption Account of the Debt Service Fund all moneys then remaining in the TDD Revenue Account of the Revenue Fund, (b) the EATs Redemption Account of the Debt Service Fund all moneys then remaining in the EATs Revenue Account of the Revenue Fund, and (c) the PILOTs Redemption Account of the Debt Service Reserve Fund all moneys then remaining in the PILOTs Revenue Account, which moneys, together with Municipal Revenues, if any, shall be applied as follows:

First, to the payment of principal of all TIF Bonds in an amount not to exceed the amount set forth for such Payment Date on the schedule attached hereto as Exhibit __ and incorporated herein by reference; and

Second, to the payment of any TIF Notes in an amount not to exceed the amount set forth for such Payment Date on the schedule set forth in Exhibit __; and

Third, all remaining Available Revenues to the payment of principal of the TIF Bonds.

If the moneys in the Revenue Fund are insufficient to make payment to the City for its fees and expenses as provided above on any Payment Date, then the unpaid portion shall be carried forward to the next Payment Date, without accruing interest thereon.

Upon final maturity of the Bonds, all moneys in the Revenue Fund shall be used, *first*, to the extent necessary to pay unpaid principal of and accrued interest on the Bonds, and *second*, to the extent necessary to pay unpaid principal of and accrued interest on any Subordinate Notes. Upon the payment in full of the principal of and interest on the Bonds and any Subordinate Notes (or provision has been made for the payment thereof as specified in the Indenture) and the fees, charges and expenses of the Trustee and any Paying Agents, and any other amounts required to be paid under this Indenture, all amounts remaining on deposit in (i) the PILOTs Revenue Account of the Revenue Fund and the EATs Revenue Account of the Revenue Fund shall be paid to the City for deposit into the Special Allocation Fund, (ii) the Municipal Revenue Account of the Revenue Fund shall be paid to the City for deposit into the Special Allocation Fund; and (iii) the TDD Revenue Account of the Revenue Fund shall be paid to the City: *first*, for deposit into the Special Allocation Fund to pay all or any portion of the principal and interest on any outstanding TIF Notes and *second*, for application by the City in accordance with the Intergovernmental Cooperation Agreement.

6.5. Cooperation in Determining TIF Revenues.

The City and the Developer agree to cooperate and take all reasonable actions necessary to cause the TIF Revenues to be paid into the Special Allocation Fund, including the City's enforcement and collection of all such payments through all reasonable and ordinary legal means of enforcement. The Developer (or its successor(s) in interest as an owner or owner(s) of the affected portion(s) of the Property) shall require each "seller" (as that term is defined in Section 144.010(11) of the Missouri Revised Statutes, as amended) located on the Property to provide to the Comptroller of the City the following information:

- (i) Each "seller's" federal and state tax identification numbers.
- (ii) Within thirty (30) days of filing, copies of all sales tax returns filed with the Missouri Department of Revenue (on Form 53-S.F. Missouri Department of Revenue or such successor form) with respect to the sales taxes originating from businesses located within the Redevelopment Area. In the event that a "seller" has multiple business operations within the City, such "seller" shall file separate sales tax returns for the sales taxes originating from the business located within the Redevelopment Area.
- (iii) Within thirty (30) days of filing, copies of all earnings tax returns filed with the City (on Business Return Form 234 or such successor form) with respect to earnings taxes originating from the business located within the Redevelopment Area. In the event that a business has multiple operations within the City, such business shall file separate earnings tax returns for the earnings taxes originating from the business located within the Redevelopment Area.
- (iv) Within thirty (30) days of filing, copies of all earnings tax withholding reports filed with the City (on Form W-10 or such successor form) with respect to earnings tax withholdings originating from the business located within the Redevelopment Area. In the event that a business has multiple operations within the City, such business shall file separate earnings tax withholding reports for the earnings tax withholdings originating from the business located within The Redevelopment Area.
- (v) Within thirty (30) days of receipt, copies of monthly invoices received for utility services provided to the property on which the business within the Redevelopment Area is located, including without limitation electric, water, natural gas, and telephone services.

The Developer (or its successor(s) in interest as an owner or owner(s) of any portion(s) of the Property) shall also request any purchaser or transferee of real property and any lessee or other user of real property located within the Redevelopment Area to designate sales subject to sales taxes pursuant to Chapter 144 of the Revised Statutes of Missouri, as amended, to be reported as originating from the Redevelopment Area to the fullest extent permitted by law (including reasonable efforts to negotiate for the inclusion of a clause so providing in the leases of the Property). The Developer shall satisfy this requirement by including the obligations set forth in this **Section** within any deed conveying a portion of the Property to, or any lease entered into with, any "seller."

6.6. Obligation to Report TIF Revenues.

The Developer shall cause any purchaser or transferee of real property located within the Property, and any lessee or other

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

6.7. Notice to City of Transfer.

The Developer agrees to notify the City in writing of any proposed sale, transfer, or other disposition of the Property or any interest therein as permitted by **Section 7.3.(b)** of this Agreement within thirty (30) days after the date of said sale, transfer or other disposition. Said notice shall specify the name and address of the person so acquiring any or all of the Property or any interest therein and shall identify the Property to be sold, transferred, or otherwise disposed, whether by voluntary transfer or otherwise.

**ARTICLE VII.
GENERAL PROVISIONS**

7.1. Developer's Right of Termination.

At any time prior to the delivery of the Certificate of Substantial Completion, the Developer may, by giving written notice to the City, abandon the Southtown Redevelopment Project and terminate this Agreement and the Developer's obligations hereunder if the Developer determines, in its sole discretion, that the Southtown Redevelopment Project is no longer economically feasible. Upon such termination, the City shall have no obligation to reimburse the Developer for any amounts advanced under this Agreement or costs otherwise incurred or paid by Developer and any TIF Notes issued in connection with the Southtown Redevelopment Project pursuant to this Agreement shall be deemed null, void and canceled.

7.2. City's Right of Termination.

The City may terminate this Agreement if the Developer fails to submit its Certificate of Substantial Completion, acceptable to the City, in accordance with **Section 3.7** of this Agreement and the schedule set forth in **Section 3.4** of this Agreement. Upon termination of this Agreement in accordance with this **Section 7.2**, the City shall have no further obligation to reimburse the Developer for any amounts advanced under this Agreement or costs otherwise incurred or paid by Developer and any TIF Notes issued in connection with the Southtown Redevelopment Project pursuant to this Agreement shall be deemed null, void and canceled.

7.3. Successors and Assigns.

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

(b) **Assignment or Sale.** Without limiting the generality of the foregoing, all or any part of the Property or any interest therein may be sold, transferred, encumbered, leased, or otherwise disposed of at any time, and the rights of the Developer named herein or any successors in interest under this Agreement or any part hereof may be assigned at any time before, during or after redevelopment of the Southtown Redevelopment Project, whereupon the party disposing of its interest in the Property or assigning its interest under this Agreement shall be thereafter released from further obligation under this Agreement (although any such Property so disposed of or to which such interest pertains shall remain subject to the terms and conditions of this Agreement), provided that until substantial completion of the Southtown Redevelopment Project, the fee title to the Property shall not be sold, transferred or otherwise disposed of and the rights, duties and obligations of the Developer under this Agreement shall not be assigned in whole or in part without the prior written approval of the City, which approval shall not be unreasonably withheld or delayed upon a reasonable demonstration by the Developer of the proposed transferee's or assignee's experience and financial capability to undertake and complete such portions of the Work and perform the Developer's obligations under this Agreement, all in accordance with this Agreement. Notwithstanding anything herein to the contrary, the City hereby approves, and no prior consent shall be required in connection with: (a) the right of the Developer to encumber or collaterally assign its interest in the Property or any portion thereof to secure loans, advances or extensions of credit to finance or from time to time refinance all or any part of the Southtown Redevelopment Project Costs, or the right of the holder of any such encumbrance or transferee of any such collateral assignment (or trustee or agent on its behalf) to transfer such interest by foreclosure or transfer in lieu of foreclosure under such encumbrance or collateral assignment; (b) the right of the Developer to master lease the Property and/or to admit investor limited partners into Developer in each instance to provide debt and/or equity proceeds to finance Redevelopment Project Costs; (c) the right of Developer to assign the Developer's rights, duties, and obligations under this Agreement to any party related to the Developer by one of the

relationships described in Section 267(b) of the United States Internal Revenue Code of 1986, as amended; provided that in each such event (i) the Developer named herein shall remain liable hereunder for substantial completion of the Work and shall be released from such liability hereunder only upon the City's acceptance of the Certificate of Substantial Completion and (ii) the Developer provides to the City fifteen (15) days' advance written notice of the proposed assignment or transfer.

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

(d) **Pledge of TIF Notes.** Notwithstanding anything herein to the contrary, the City hereby approves, and no prior consent shall be required in connection with (i) the right of the Developer to pledge its interest any TIF Note or any portion thereof to secure any mortgage loan or mortgage note in connection with or any loans, advances or extensions of credit to finance or from time to time refinance all or any part of the Southtown Redevelopment Project Costs, or (ii) the right of the holder of such pledge, or transferee of any such pledge (or trustee or agent on its behalf), to transfer such interest due to foreclosure or transfer in lieu of foreclosure of the Property.

7.4. Remedies.

Except as otherwise provided in this Agreement and subject to the Developer's and the City's respective rights of termination set forth in **Sections 7.1** and **7.2**, 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. In case such cure or remedy is not taken or not diligently pursued, 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.

7.5. Force Majeure.

Neither the City nor the Developer nor any successor in interest shall be considered in breach or default of their respective obligations under this Agreement, and times for performance of obligations hereunder shall be extended (but with respect to the times for performance set out in **Section 3.4** of this Agreement, only to the extent provided therein and established thereunder) in the event of any delay caused by force majeure, including without limitation damage or destruction by fire or casualty; strike; lockout; civil disorder; war; restrictive government regulations; lack of issuance of any permits and/or legal authorization by the governmental entity necessary for the Developer to proceed with construction of the Work or any portion thereof; shortage or delay in shipment of material or fuel; acts of God; unusually adverse weather or wet soil conditions; or other like causes beyond the parties' reasonable control, including without limitation any litigation, court order or judgment resulting from any litigation affecting the validity of the Redevelopment Plan, the Southtown Redevelopment Project, or the TIF Obligations or this Agreement; provided that the Developer notifies the City in writing within thirty (30) days of the commencement of such claimed event of force majeure.

7.6. Notices.

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

In the case of the Developer, to:

With copies to:

The Stolar Partnership
911 Washington Avenue, 7th Floor
St. Louis, Missouri 63101
Attention: Lori L. Bockman

In the case of the City, to:

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

and

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

With a copy to:

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

and

Armstrong Teasdale LLP
One Metropolitan Square, Suite 2600
St. Louis, Missouri 63102
Attention: Mark A. Boatman

7.7. Conflict of Interest.

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

7.8. Damage or Destruction of Southtown Redevelopment Project.

In the event of total destruction or damage to the Southtown Redevelopment Project by fire or other casualty during construction or thereafter during the term of this Agreement, so long as any TIF Notes are outstanding, the Developer shall determine and advise the City in writing within one year of such destruction or damage whether Developer will restore, reconstruct, and repair any such destruction or damage so that the Southtown Redevelopment Project will be completed or rebuilt in accordance with the Redevelopment Plan and this Agreement. Should the Developer determine not to restore, reconstruct, and repair such destruction or damage, all unaccrued liability of the City for any payments of principal of or interest on the TIF Notes shall immediately terminate and the Developer shall promptly surrender the TIF Notes to the City for cancellation, whereupon this Agreement shall terminate.

7.9. Inspection.

The City may conduct such periodic inspections of the Work as may be generally provided in the building code of the City. In addition, the Developer shall allow other authorized representatives of the City reasonable access to the Work site from time to time upon reasonable advance notice prior to the completion of the Work for reasonable inspection thereof. The Developer shall not unreasonably deny the City and its officers, employees, agents, and independent contractors the right to inspect, upon request, all architectural, engineering, demolition, construction and other contracts and documents pertaining to the construction of the Work as the City determines is reasonable and necessary to verify the Developer's compliance with the terms of this Agreement.

7.10. Choice of Law.

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

7.11. Entire Agreement; Amendment.

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

7.12. Counterparts.

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

7.13. Severability.

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

7.14. Representatives Not Personally Liable.

No elected or appointed official, agent, employee, or representative of the City shall be personally liable to the Developer in the event of any default or breach by any party under this Agreement, or for any amount which may become due to any party or on any obligations under the terms of this Agreement.

7.15. Actions Contesting the Validity and Enforceability of the Redevelopment Plan.

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

be deemed to be Reimbursable Redevelopment Project Costs and reimbursable from any amounts in the Special Allocation Fund, subject to **Article IV** of this Agreement.

7.16. Release and Indemnification.

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

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

(b) 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 grossly negligent or malicious acts or omissions of the Developer, its governing body members, officers, agents, attorneys, employees and independent contractors, in connection with its or their activities conducted pursuant to this Agreement.

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

(d) 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.

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

(f) 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 validity of the TIF Obligations or the enforcement or validity of any other agreement or obligation made in connection therewith and their approvals (excluding opinions of counsel and of the City's financial advisors whenever such claim is based on such party's own negligence); (ii) the gross negligence or willful misconduct of the Developer or its officers, agents, employees or independent contractors in connection with the design, management, development, redevelopment and construction of the Work; or (iii) the compliance by the Developer with all applicable state, federal and local environmental laws, regulations and ordinances as applicable to the Property, to the extent such condition existed subsequent to the acquisition thereof by the Developer. The foregoing release and indemnification shall not apply in the case of such liability arising directly out of the negligence or malicious acts or omissions of the City or its governing body members, officers, agents, attorneys, employees and independent contractors in connection with its or their activities conducted pursuant to this Agreement or which arises out of matters undertaken by the City following termination of this Agreement as to the Southtown Redevelopment Project or any particular portion thereof.

7.17. Survival.

Notwithstanding the expiration or termination or breach of this Agreement by either party, the agreements contained in **Section 2.2, Article VI, Sections 7.10, 7.11, 7.12, 7.13, 7.14, 7.15, 7.16, 7.17,** and **Article VIII** of this Agreement shall, except as

otherwise expressly set forth herein, survive such early expiration or early termination of this Agreement by either party.

7.18. Maintenance of the Property; Leases.

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

(b) The Developer shall use commercially reasonable efforts to lease any portion of the Property consisting of commercial space to a tenant or tenants whose business or businesses generate sales that are subject to sales taxes under Chapter 144 of the Revised Statutes of Missouri, as amended.

7.19. Non-Discrimination.

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

7.20. Fair Employment.

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

**ARTICLE VIII.
REPRESENTATIONS OF THE PARTIES**

8.1. Representations of the City.

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

8.2. Representations of the Developer.

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

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

“CITY”:

CITY OF ST. LOUIS, MISSOURI

By: _____
Francis G. Slay, Mayor

By: _____
Darlene Green, Comptroller

[SEAL]

Attest:

Parrie May, City Register

Approved as to Form:

Patricia Hageman, City Counselor

“DEVELOPER”:

SOUTHTOWN REALTY LLC

By: _____
Name: _____
Title: _____

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 City and State aforesaid, the day and year first above written.

Notary Public

[SEAL]

My Commission Expires:

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

On this ____ day of _____, 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

Thousand Dollars (\$250,000) consisting of hard costs related to categories B through E of **Exhibit D** to the Agreement.

3. These Reimbursable Redevelopment Project Costs have been have been paid by the Developer and are reimbursable under the Note Ordinance and the Agreement.

4. Each item listed on the Cost Certification attached hereto as Schedule 1 has not previously been paid or reimbursed from money derived from the Special Allocation Fund or any money derived from any project fund established pursuant to the Note Ordinance, and no part thereof has been included in any other certificate previously filed with the City.

5. There has not been filed with or served upon the Developer any notice of any lien, right of lien or attachment upon or claim affecting the right of any person, firm or corporation to receive payment of the amounts stated in this request, except to the extent any such lien is being contested in good faith.

6. All necessary permits and approvals required for the portion of the Work for which this certificate relates have been issued and are in full force and effect.

7. All Work for which payment or reimbursement is requested has been performed in a good and workmanlike manner and in accordance with the Agreement.

8. If any cost item to be reimbursed under this Certificate is deemed not to constitute a "redevelopment project cost" within the meaning of the TIF Act and the Agreement, the Developer shall have the right to substitute other eligible Reimbursable Redevelopment Project Costs for payment hereunder.

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

Yes: _____ No: X

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

Dated this ____ day of _____, ____.

SOUTHTOWN REALTY LLC

By: _____
Name: _____
Title: _____

Approved for Payment this ____ day _____, ____.

ST. LOUIS DEVELOPMENT CORPORATION

By: _____
Name: _____
Title: _____

Approved for Payment this ____ day of _____, ____.

CITY OF ST. LOUIS, MISSOURI

By: _____
Name: _____
Title: _____

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

The undersigned, SOUTHTOWN REALTY LLC, a Delaware limited liability company (the "Developer"), pursuant to that certain Redevelopment Agreement dated as of _____, 2003, between the City of St. Louis, Missouri (the "City"), and the Developer (the "Agreement"), hereby certifies to the City as follows:

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

Upon such acceptance by the St. Louis Development Corporation and the City (or failure of the St. Louis Development Corporation and the City to object in writing to this Certificate within such thirty (30) day period), the Developer may record this Certificate in the office of the City's Recorder of Deeds. This Certificate is given without prejudice to any rights against third parties which exist as of the date hereof or which may subsequently come into being. Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.

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

SOUTHTOWN REALTY LLC

By: _____
Name: _____
Title: _____

ACCEPTED:

ST. LOUIS DEVELOPMENT CORPORATION

By: _____
Name: _____
Title: _____

CITY OF ST. LOUIS, MISSOURI

By: _____
 Name: _____
 Title: _____

EXHIBIT C

SOUTHTOWN REDEVELOPMENT AREA

Beginning at a point located at the intersection of the southern boundary of Chippewa Street and Ridgewood (Paper) Avenue in St. Louis, Missouri, the point of beginning, and continuing west along the southern boundary of Chippewa Street to the intersection of the western boundary of Kingshighway Boulevard; thence northeast along the western boundary of Kingshighway to the intersection of the northern boundary of Beck Avenue and the western boundary of Kingshighway Boulevard; thence east along the northern boundary of Beck Ave. to the intersection of the western boundary of Ridgewood Avenue and Beck Avenue; thence north along the western boundary of Ridgewood to the intersection of the northern side of Tholozan Avenue and Ridgewood Avenue; thence east approximately 50 feet along the northern boundary of Tholozan Avenue to a point; thence south approximately 220 feet; thence east approximately 60 feet along the northern boundary of the alley between Tholozan Avenue and Beck Avenue; thence south approximately 200 feet to the northern boundary of the Beck Avenue Cul-de-sac, (east of Ridgewood (Paper) Avenue); thence counter clockwise along the curve of the Beck Avenue Cul-de-sac to a point located at the southern boundary of said Cul-de-sac; thence continuing south approximately 210 feet to the point of intersection with the southern boundary of the alley between Chippewa Street and Beck Avenue; thence west approximately 100 feet along the southern boundary of the alley between Chippewa Street and Beck Avenue to the point of intersection with the eastern boundary of Ridgewood Avenue (paper); and then south approximately 200 feet to the intersection with the southern boundary of Chippewa Street, the point of beginning.

EXHIBIT D

Estimated Reimbursable Redevelopment Project Costs

CATEGORY	ESTIMATED COSTS
(a) Acquisition Costs (as defined in Section 1.1 of this Agreement).	\$3,975,000.00
(b) Demolition and Environmental.	\$50,000.00
(c) Site Preparation and Paving (includes excavation and re-grading for new structures and paving for parking lot).	\$120,000.00
(d) Infrastructure and Utilities Improvements (includes water distribution, storm water sewers/detention facilities, sanitary sewers, electrical and installation of other utilities).	\$275,000.00
(e) Lighting, Signage and Landscaping.	\$300,000.00
(f) Professional Fees (includes, but is not limited to, architectural, engineering, legal, marketing, financial, planning, or special services).	\$1,700,000.00 ¹
Total Reimbursable Redevelopment Project Costs	\$7,500,000.00

¹ Subject to the limitations set forth in Section 4.2 of this Agreement.

EXHIBIT E

Equal Opportunity and Nondiscrimination Guidelines

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

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

of the Laws.

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

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

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

**EXHIBIT F
Form of Note**

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

**UNITED STATES OF AMERICA
STATE OF MISSOURI**

**Registered
No. R-__**

**Registered
(See Schedule A attached hereto)**

CITY OF ST. LOUIS, MISSOURI

**[TAXABLE][TAX-EXEMPT] TAX INCREMENT REVENUE NOTE
(Southtown Redevelopment Project)
SERIES 2003**

Rate of Interest: Maturity Date: Dated Date: CUSIP Number:
[__%][__%] , 2025 , 200__ None

REGISTERED OWNER: _____

PRINCIPAL AMOUNT: See **SCHEDULE A** attached hereto.

The **CITY OF ST. LOUIS, MISSOURI**, a body corporate and a political subdivision duly organized and validly existing under its charter and the Constitution and laws of the State of Missouri (the "City"), for value received, hereby promises to pay to the Registered Owner shown above, or registered assigns, the Principal Amount shown from time to time on **Schedule A** attached hereto on the Maturity Date shown above unless called for redemption prior to the Maturity Date, and to pay interest thereon from the effective date of registration shown from time to time on **Schedule A** attached hereto or from the most recent Payment Date to

which interest has been paid or duly provided for, at the Rate of Interest shown above computed on the basis of a 360-day year of twelve 30-day months. Interest and principal shall be payable each April 1 and October 1 (each, a "*Payment Date*"), commencing on the first April 1 or October 1 following the acceptance of the Certificate of Commencement of Construction in accordance with the Redevelopment Agreement between the City and SOUTHTOWN REALTY LLC (the "*Developer*"), dated as of _____, 2003 (the "*Redevelopment Agreement*"), until the TIF Notes are paid in full. The TIF Notes shall bear interest from their registration date or from the most recent Payment Date to which interest has been paid or duly provided for. Interest that accrues but remains unpaid on any Payment Date shall be compounded semi-annually.

Except as otherwise provided herein, the capitalized terms herein shall have the meanings as provided in Ordinance No. [Board Bill ___] adopted by the Board of Aldermen on _____, 2003 (the "*Note Ordinance*") or the Redevelopment Agreement.

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

If the amount of Bonds issued pursuant to the Note Ordinance and the Redevelopment Agreement is insufficient to refund all of the outstanding Notes, the Notes remaining outstanding shall be redeemed by the issuance of Notes subordinate to the Bonds and having the same maturity as the Notes being redeemed. Any Subordinate Notes that are tax-exempt shall bear interest at a rate equal to tax-exempt TIF Bonds of like maturity plus 2.0%, and any Subordinate Notes that are taxable shall bear interest at a rate equal to taxable TIF Bonds of like maturity plus 2.0%. All such subordinate Notes shall be payable as to principal and interest according to the terms set forth in **Sections 6.3 and 6.4** of the Redevelopment Agreement.

Subject to the preceding two paragraphs, the principal of and interest on this TIF Note shall be paid at maturity or upon earlier redemption as provided in **Article III** of the Note Ordinance to the person in whose name this TIF Note is registered at the maturity or redemption date hereof, upon presentation and surrender of this TIF Note at the payment office of the Comptroller of the City or her authorized agent (the "*Finance Officer*"). The principal of and interest on the TIF Notes shall be payable in any coin or currency of the United States of America which, at the respective dates of payment thereof, is legal tender for the payment of debts due the United States of America. The principal of or interest on this TIF Note shall be payable by check or draft at the office of the Finance Officer to the person in whose name this TIF Note is registered on the Register on each Payment Date. Except as otherwise provided in **Section 208** of the Note Ordinance with respect to mutilated, destroyed, lost or stolen TIF Notes, no principal on the TIF Notes is payable unless the Owner thereof has surrendered such TIF Notes at the office of the Finance Officer.

This TIF Note is one of an authorized series of fully registered Notes of the City designated "City of St. Louis, Missouri, [Taxable][Tax-Exempt] Tax Increment Revenue Notes (Southtown Redevelopment Project) Series 2003," issued in an aggregate principal amount of not to exceed \$_____ (the "*Notes*"). The TIF Notes are being issued for the purpose of paying a portion of the Redevelopment Project Costs in connection with the Redevelopment Plan, under the authority of and in full compliance with the Constitution and laws of the State of Missouri, including particularly the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865, of the Revised Statutes of Missouri, as amended (the "*Act*"), and pursuant to the Note Ordinance.

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

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

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

The monies on deposit in the TDD Revenues Account of the Special Allocation Fund are those revenues of the TDD created in accordance with the TDD Act and **Section 3.9** of the Redevelopment Agreement

The monies on deposit in the Municipal Revenues Account of the Special Allocation Fund means, while tax increment financing remains in effect and, subject to annual appropriation, the total additional revenue from taxes, penalties and interest that do not otherwise constitute TIF Revenues hereunder, and which are imposed by the City and are generated by economic activities within the area of the Redevelopment Project over the amount of such taxes generated by economic activities within the area of the Redevelopment Project in the calendar year ended December 31, 2002, while tax increment financing remains in effect, but excluding personal property taxes, taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, taxes levied pursuant to Section 70.500 of the Revised Statutes of Missouri, as amended, or taxes levied for the purpose of public transportation pursuant to Section 94.660 of the Revised Statutes of Missouri, as amended, licenses, fees or special assessments other than payments in lieu of taxes and penalties and interest thereon.

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

Moneys in the Revenue Fund shall be disbursed by the Finance Officer on each Payment Date, first from the EATS Account, then from the PILOTS Account, then from the TDD Revenues Account and then from the Municipal Revenues Account for the purposes and in the amounts as follows:

First, to the Comptroller of the City an amount sufficient to pay all or any portion of the fees and expenses incurred by the Comptroller of the City but not to exceed in any calendar year the lesser of Fifteen Thousand Dollars (\$15,000.00) or 0.2% of the Notes outstanding on January 1 of such calendar year (in the event there are insufficient funds in such accounts to cover all or a portion of such fees and expenses, such deficiency shall not be paid and shall not accumulate);

Second, to the Comptroller of the City an amount sufficient to reimburse the City for costs incurred pursuant to **Section 7.15** of the Redevelopment Agreement that have not otherwise been reimbursed to the City through the issuance of TIF Notes purchased by the Developer;

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

Fourth, to the Debt Service Fund, an amount sufficient to pay all or any portion of the scheduled interest becoming due and payable on any TIF Notes on such Payment Date;

Fifth, to the Debt Service Fund, an amount sufficient to pay the principal of any TIF Notes that are subject to redemption pursuant to **Section 302** of this Ordinance;

Sixth, to the St. Louis Development Corporation an amount sufficient to pay all or any portion of the fees and expenses incurred by the St. Louis Development Corporation but not to exceed in any calendar year the lesser of Fifteen Thousand Dollars (\$15,000.00) or 0.2% of the Notes outstanding on January 1 of such calendar year (in the event there are insufficient funds in such accounts to cover all or a portion of such fees and expenses, such deficiency shall not be paid and shall not accumulate); and

Seventh, to the City all other remaining money to be declared as surplus and distributed in the manner provided in the Act, subject to the provisions set forth herein.

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

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

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

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

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

TIF Notes shall be redeemed only in the principal amount of Five Thousand Dollars (\$5,000) or any integral multiple thereof. When less than all of the outstanding TIF Notes are to be redeemed and paid prior to maturity, such TIF Notes shall be selected by the Finance Officer in Five Thousand Dollar (\$5,000) units of face value in such equitable manner as the Finance Officer may determine.

The TIF Notes are issuable in the form of fully registered Notes without coupons in minimum denominations of One Hundred Thousand Dollars (\$100,000) or any integral multiple \$5,000 in excess thereof, except with respect to the Notes issued upon acceptance by the City of the final Certificate of Reimbursable Redevelopment Project Costs, which Notes may be issued in any denomination, subject to the limitation on the aggregate Principal Amount.

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

THE OWNER HEREOF EXPRESSLY AGREES, BY SUCH OWNER'S ACCEPTANCE HEREOF, THAT THE RIGHT TO PURCHASE, TRANSFER, ASSIGN OR NEGOTIATE THIS TIF NOTE SHALL BE LIMITED TO PURCHASE, TRANSFER, ASSIGNMENT OR NEGOTIATION TO APPROVED INVESTORS AND UPON THE EXECUTION BY THE PROPOSED PURCHASER OR TRANSFEREE OF AN INVESTMENT LETTER IN SUBSTANTIALLY THE FORM OF EXHIBIT C TO THE NOTE ORDINANCE, SIGNED BY THE PROPOSED PURCHASER OR TRANSFEREE, SHOWING THAT THE PROPOSED PURCHASER OR TRANSFEREE IS AN APPROVED INVESTOR. "Approved Investor" means (a) the Developer or any party or entity related to the Developer by one of the relationships described in Section 267(b) of the Internal Revenue Code of 1986, as amended, (b) an "accredited investor" under Rule 501(a) of Regulation D promulgated under the Securities Act of 1933, (c) a "qualified institutional buyer" under Rule 144A promulgated under the Securities Act of 1933, (d) any general business corporation or enterprise with total assets in excess of \$50,000,000, (e) the United States Department of Housing and Urban Development ("HUD") or any instrumentality thereof, or the Federal Housing Administration ("FHA"), a divisional unit of HUD, or (f) the mortgagee under any mortgage loan (whether FHA-insured or otherwise), so long as such mortgagee or its assignee meets the requirements of (a), (b), (c) or (d) above, relating to the Revenue Bonds. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, no governmental departments, units, or agencies specifically named in this paragraph as an Approved Investor, nor any instrumentality of such governmental department, unit or agency, shall be required to execute an investment letter.

Notwithstanding anything herein to the contrary, the City hereby approves, and no prior consent shall be required in connection with (i) the right of the Developer to pledge its interest any TIF Note or any portion thereof to secure any mortgage loan in connection with the Revenue Bonds, or any other loans, advances or extensions of credit to finance or from time to time refinance all or any part of the Southtown Redevelopment Project Costs, or (ii) the right of the holder of any such pledge, or transferee of any such pledge (or trustee or agent on its behalf) to transfer such interest due to foreclosure or transfer in lieu of foreclosure of the Property.

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

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

IT IS HEREBY CERTIFIED AND DECLARED that all acts, conditions and things required to exist, happen and be

performed precedent to and in the issuance of the TIF Notes have existed, happened and been performed in due time, form and manner as required by law.

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

CITY OF ST. LOUIS, MISSOURI

By: _____
Mayor

By: _____
Comptroller

By: _____
Treasurer

Attest:

(Seal)

City Register

Approved as to Form:

City Counselor

ASSIGNMENT

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

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

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

Dated: _____.

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

Signature Guaranteed By:

EXHIBIT H
Form of Notice of Commencement of Construction

The undersigned, Developer's Diversified Realty Corporation (the "Developer"), pursuant to that certain Redevelopment Agreement dated as of _____, 2003, between the City of St. Louis, Missouri (the "City") and Developer (the "Agreement") hereby certifies to the City as follows:

1. All property within the Redevelopment Project Area necessary for the Redevelopment Project (as legally described on Appendix A attached hereto and by this reference incorporated herein and made a part hereof), has been acquired by Developer in accordance with the Agreement.
2. Developer has entered into an agreement with a contractor or contractors to construct the Redevelopment Project.
3. Developer has obtained all necessary financing to complete the Redevelopment Project.

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

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand this _____ day of _____, 200__.

SOUTHTOWN REALTY LLC

By: _____
Name: _____
Title: _____

Approved: July 3, 2003