

ORDINANCE #67417
Board Bill No. 366

AN ORDINANCE AUTHORIZING THE EXECUTION OF AN AMENDED AND RESTATED REDEVELOPMENT AGREEMENT WITH MCGOWAN BROTHERS DEVELOPMENT CORPORATION, LLC; PRESCRIBING THE FORM AND DETAILS OF SAID AGREEMENT; AND AUTHORIZING OTHER RELATED ACTIONS IN CONNECTION WITH THE REDEVELOPMENT OF CERTAIN PROPERTY WITHIN A REDEVELOPMENT AREA.

WHEREAS, pursuant to the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 through 99.865 of the Revised Statutes of Missouri, as amended (the “*Act*” or “*TIF Act*”), the City adopted Ordinance No. 65854 on February 7, 2003 (the “*Approving Ordinance*”), which Approving Ordinance (i) designated as a “redevelopment area” a certain portion of the City (the “*Redevelopment Area*”), (ii) approved a redevelopment plan entitled “Grace Lofts TIF Redevelopment Plan” (the “*Redevelopment Plan*”), (iii) approved the redevelopment project described in the Redevelopment Plan (the “*Redevelopment Project*”), (iv) adopted tax increment allocation financing within the Redevelopment Area, and (v) established the “City of St. Louis, Missouri, Special Allocation Fund for the Grace Lofts TIF Project” all as set forth in the Approving Ordinance and in accordance with the requirements of the Act; and

WHEREAS, pursuant to provisions of the Act, the City adopted Ordinance No. 65855 on February 7, 2003, which authorized the execution of a redevelopment agreement with McGowan Brothers Development Corporation, LLC (the “*Developer*”) setting forth the terms and obligations of the parties with respect to the implementation of the Redevelopment Project approved in the Approving Ordinance; and

WHEREAS, pursuant to the provisions of the Act, the City adopted Ordinance No. 65856 on February 7, 2003, which authorized and directed the issuance and delivery of not to exceed \$1,550,000 principal amount of Tax Increment Revenue Notes (Grace Lofts TIF Redevelopment Project), Series 200X (the “*TIF Notes*”), to finance the development of the Redevelopment Project; and

WHEREAS, pursuant to provisions of the Act, the City entered into a redevelopment agreement with the Developer dated as of August 12, 2003 (the “*Original Agreement*”); and

WHEREAS, the Developer and the City desire to approve and execute an amendment to the Original Agreement (the “*Amended Agreement*”) to provide for the issuance of TIF Notes to an Approved Investor, other than the Developer, as that term is defined in the Original Agreement.

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

Section 1. The Board of Aldermen finds and determines that it is necessary and desirable to enter into the Amended Agreement with the Developer in order to implement the Redevelopment Project and to enable the Developer to carry out its proposal for development of the Redevelopment Project.

Section 2. 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 Amended Agreement by and between the City and the Developer attached hereto as **Exhibit A**, and the City Register is hereby authorized and directed to attest to the Amended Agreement and to affix the seal of the City thereto. The Amended Agreement shall be in substantially the form attached, with such changes therein as shall be approved by said Mayor and Comptroller executing the same and as may be consistent with the intent of this Ordinance and necessary and appropriate in order to carry out the matters herein authorized.

Section 3. The Mayor and Comptroller of the City or their designated representatives are hereby authorized and directed to take any and all actions to execute and deliver for and on behalf of the City any and all additional certificates, documents, agreements or other instruments as may be necessary and appropriate in order to carry out the matters herein authorized, with no such further action of the Board of Aldermen necessary to authorize such action by the Mayor and the Comptroller or their designated representatives.

Section 4. The Mayor and the Comptroller or their designated representatives, with the advice and concurrence

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

Section 5. It is hereby declared to be the intention of the Board of Aldermen that each and every part, section and subsection of this Ordinance shall be separate and severable from each and every other part, section and subsection hereof and that the Board of Aldermen intends to adopt each said part, section and subsection separately and independently of any other part, section and subsection. In the event that any part, section or subsection of this Ordinance shall be determined to be or to have been unlawful or unconstitutional, the remaining parts, sections and subsections shall be and remain in full force and effect, unless the court making such finding shall determine that the valid portions standing alone are incomplete and are incapable of being executed in accord with the legislative intent.

**EXHIBIT A
Form of Amended and Restated Redevelopment Agreement
(Attached hereto.)**

AMENDED AND RESTATED REDEVELOPMENT AGREEMENT

Between the

CITY OF ST. LOUIS, MISSOURI

And

McGOWAN BROTHERS DEVELOPMENT CORPORATION, LLC

for

GRACE LOFTS TIF REDEVELOPMENT PROJECT

Dated as of

_____ **2007**

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REDEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED REDEVELOPMENT AGREEMENT (this “Agreement”) is made and entered into as of this ___ day of _____, 200X, 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 MCGOWAN BROTHERS DEVELOPMENT CORPORATION, LLC, (the “Developer”), a limited liability company duly organized and existing under the laws of the State of Missouri. (All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in Article I of this Agreement.)

RECITALS

A. 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. The City published a notice on December 7, 2002 and December 14, 2002, in the St. Louis Post-Dispatch, a newspaper of general circulation within the City, soliciting proposals for the redevelopment of the Redevelopment Area (as hereinafter defined), and made such requests for proposals available for potential developers of the Redevelopment Area.

C. On November 5, 2002, the Developer submitted to the City a redevelopment proposal (the “Redevelopment Proposal”) for the Redevelopment Area.

D. On January 8, 2003, following a public hearing held on January 8, 2003, in accordance with the TIF Act, the TIF Commission adopted a resolution approving the redevelopment plan known as the Grace Lofts TIF Redevelopment Plan (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.

E. On February 7, 2003, after due consideration of the TIF Commission’s recommendations, the City adopted: (1) Ordinance No. 65854 designating the Redevelopment Area as a “redevelopment area” as provided in the TIF Act, approving the Redevelopment Plan, approving the redevelopment project described in the Redevelopment Plan (the “Redevelopment Project”), adopting tax increment allocation financing within the Redevelopment Area and establishing the Special Allocation Fund; (2) Ordinance No. 65855 authorizing the City to enter into a redevelopment agreement with Developer; and (3) Ordinance No. 65856 authorizing the issuance of TIF Notes and TIF Obligations 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.

F. The City and Developer desired to alter the terms of issuance of the TIF Notes to provide for the initial issuance of TIF Notes to individuals and entities other than Developer and to extend time for substantial completion of the Redevelopment Project in accordance with the date Developer submitted its Certificate of Substantial Completion.

G. The Board of Aldermen hereby determines that the acceptance and the fulfillment generally of this Amended

and Restated Redevelopment 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.

H. Pursuant to provisions of the TIF Act and Ordinance Nos. 65605, 65606, 65607, _____ and _____, the City is authorized to enter into this Amended and Restated 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.

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

Section 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 Amended and Restated Redevelopment Agreement by and between the City and the Developer, as the same may be from time to time modified, amended or supplemented in writing by the parties hereto.

“Approved Investors” means (a) the Developer or a Related Entity, (b) an “accredited investor” under Rule 501(a) of Regulation D promulgated under the Securities Act of 1933, (c) a “qualified institutional buyer” under Rule 144A promulgated under the Securities Act of 1933 or (d) any general business corporation or enterprise with total assets in excess of \$50,000,000.

“Approving Ordinance” means Ordinance No. 65854, 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. 65856 and Ordinance No. _____ authorizing the City to enter into the Original Agreement and the Amended and Restated Agreement with Developer.

“Available Revenues” means (a) all moneys on deposit in the the PILOTs Account of the Special Allocation Fund; (b) all moneys on deposit in the EATs Account of the Special Allocation Fund that have been appropriated to the repayment of the TIF Notes, excluding (i) any amount paid under protest until the protest is withdrawn or resolved against the taxpayer or (ii) any sum received by the City which is the subject of a suit or other claim communicated to the City which suit or claim challenges the collection of such sum.

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

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

“Certificate of Reimbursable Redevelopment Project Costs” means a 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 satisfaction of all obligations and covenants to construct the Redevelopment Project in accordance with the Redevelopment Plan and this Agreement.

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

"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.

"Developer" means McGowan Brothers Development Corporation, LLC, a limited liability company duly organized and existing under the laws of the State of Missouri, or its permitted successors or assigns in interest.

"Economic Activity Taxes" or "EATs" shall have the meaning ascribed to such term in Section 99.805 of the TIF Act.

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

"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 issuer's counsel and Bond Counsel), the City's administrative fees and expenses (including fees and costs of planning consultants), underwriters' discounts and fees, the costs of printing any TIF Notes 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 Notes.

"Note Ordinance" means Ordinance 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.

"Original Agreement" means the Redevelopment Agreement dated as of August 12, 2003 by and between the City and Developer

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

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

"Redevelopment Area" means the area described in **Exhibit C**, attached hereto and incorporated herein by reference, comprising one parcel of real property.

"Redevelopment Plan" means the plan titled Grace Lofts TIF Redevelopment Plan as approved by the City on November 22, 2002, pursuant to Ordinance No. 65854, as such plan may from time to time be amended in accordance with the TIF Act.

"Redevelopment Project" means the redevelopment project described in the Redevelopment Plan as approved by Ordinance No. 65855 on February 7, 2003, consisting of the rehabilitation and renovation of the building located at 1320-24 Washington Avenue (historically known as the Lesan-Gould building) into two floors of retail and office space and approximately 40,500 square feet of residential space, along with underground parking.

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

"Redevelopment Proposal" means the document on file with the City and incorporated herein by reference, titled "Grace Lofts TIF Application" submitted by the Developer to the City on November 5, 2002, as subject to the provisions of the Redevelopment Plan and this Agreement.

"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.

“Related Entity” means any party or entity related to the Developer by one of the relationships described in Section 267(b), Section 707(b)(1)(A) or Section 707(b)(1)(B) of the Internal Revenue Code of 1986, as amended.

“Relocation Plan” means the relocation plan of the City for the Redevelopment Area as contained in the Redevelopment Plan, which relocation plan was adopted on December 20, 1991, pursuant to Ordinance No. 62481.

“SLDC” means the St. Louis Development Corporation, a non-profit corporation organized and existing under the laws of the State of Missouri.

“Special Allocation Fund” means the City of St. Louis, Missouri, Special Allocation Fund for the Grace Lofts TIF Redevelopment Project, created by Ordinance No. 65854 approved by the Mayor on February 25, 2003, in accordance with the TIF Act, and including the accounts into which Available Revenues are from time to time deposited in accordance with the TIF Act and 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, if any, 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 the [Taxable][Tax-Exempt] Tax Increment Revenue Note (Grace Lofts Redevelopment Project), Series 200x-A and Series 200x-B, issued pursuant to the Note Ordinance in a total aggregate principal amount not to exceed \$1,550,000 plus Issuance Costs, to evidence the City’s limited obligation to repay Reimbursable Redevelopment Project Costs incurred by the Developer on behalf of the City in accordance with the TIF Act and this Agreement.

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

“TIF Revenues” means: (1) Payments in Lieu of Taxes 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 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.

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

“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 Proposal, the Redevelopment Plan, and this Agreement including: (1) property acquisition, (2) professional fees, including architecture, engineering, surveying, legal and planning and consulting; (3) site preparation and improvements, including without limitation site re-grading and excavation for structural rehabilitation; installation of utilities, carpentry, brickwork, electrical work and site landscaping; and (4) all other work described in the Redevelopment Proposal and the Redevelopment Plan, or reasonably necessary to effectuate the intent of this Agreement.

ARTICLE II. ACCEPTANCE OF PROPOSAL

Section 2.1 Developer Designation. The City hereby selects the Developer, who has acquired the Property, and to perform or cause the performance of the Work in accordance with the Redevelopment Plan, this Agreement and all Governmental

Approvals.

Section 2.2 Developer to Advance Costs. The Developer agrees to advance all Redevelopment Project Costs as necessary to acquire the Property and to complete the Work, all subject to the Developer's right to abandon the Redevelopment Project and to terminate this Agreement as set forth in **Section 7.1** of this Agreement. Additionally, and not by way of limitation:

2.2.1 the City acknowledges that, prior to the execution of the Original Agreement, the Developer paid an initial fee of Five Thousand Dollars (\$5,000.00) TIF Application Fee;

2.2.2 the City acknowledges that, prior to the execution of the Original Agreement, the Developer paid a fee of Four Thousand Seven Hundred and Ten Dollars (\$4,710.00), which monies have been paid one half to the Comptroller of the City and one half to the SLDC to reimburse the City's Comptroller and the SLDC for their administrative costs incurred in connection with the review of the Redevelopment Application and Redevelopment Plan;

2.2.3 the City acknowledges that, within ten (10) days of execution of the Original Agreement, Developer paid to the Comptroller of the City an additional amount Four Thousand Seven Hundred and Ten Dollars (\$4,710.00), which amount was paid one half to the Comptroller and one half to the SLDC for their administrative costs incurred in connection with the negotiation of the Original Agreement.

2.2.4 the City acknowledges that, within ten (10) days of execution of the Original Agreement, Developer paid to the Comptroller of the City an additional amount of Thirteen Thousand Nine Hundred and Fifty-Nine Dollars and Fifteen Cents (\$13,959.15), which amount was paid to reimburse the Comptroller for its actual legal expenses incurred in connection with the adoption of the Approving Ordinances and the negotiation of the Original Agreement;

2.2.5 the Developer shall, within ten (10) days of the execution of this Amended and Restated Agreement pay to the Comptroller of the City an additional amount to reimburse the Comptroller for its actual legal expenses incurred in connection with the adoption of the Amended and Restated Agreement and Ordinance and the Note Ordinance;

2.2.6 the Developer shall, concurrently with the initial issuance of the TIF Notes, pay to the City an additional amount as determined by the Comptroller, for the City's Issuance Costs of such TIF Notes; and

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

ARTICLE III. CONSTRUCTION OF REDEVELOPMENT PROJECT

Section 3.1 Acquisition of Property. Developer represents that, as of the date of this Agreement, Developer is the fee owner of the Property. 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.

Section 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 Property in the Redevelopment Area.

Section 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.

Section 3.4 Developer to Construct the Work. The Developer shall commence or cause the commencement of the construction of the Work within one hundred twenty (120) days of the date of this Agreement, which Work shall be constructed in a good and workmanlike manner in accordance with the terms of this Agreement. The Developer has completed or caused the completion of all of the Work.

3.4.1 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.

Section 3.5 Governmental Approvals. The City and the SLDC agree to employ reasonable and good faith efforts to cooperate with the Developer and to process and timely consider and respond to all applications for the Governmental Approvals as received, all in accordance with the applicable City ordinances and laws of the State of Missouri.

Section 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 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 SLDC, which consent shall not be unreasonably withheld or delayed. For purposes of this Section, "material changes" shall mean any change that could reasonably be expected to result in a decrease in the aggregate amount of TIF Revenues generated within the Redevelopment Area of at least ten percent (10%).

Section 3.7 Certificate of Substantial Completion. Promptly after substantial completion of the Work, the Developer shall furnish to the City and the SLDC a Certificate of Substantial Completion. The City and the SLDC shall, within thirty (30) days following delivery of the Certificate of Substantial Completion, carry out such inspections as it deems necessary to verify to its reasonable satisfaction the accuracy of the certifications contained in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be deemed accepted by the City and the SLDC unless, within thirty (30) days following delivery of the Certificate of Substantial Completion, the City or the SLDC furnishes the Developer with specific written objections to the status of the Work, describing such objections and the measures required to correct such objections in reasonable detail. Upon acceptance of the Certificate of Substantial Completion by the City and the SLDC or upon the lapse of thirty (30) days after delivery thereof to the City and the SLDC without any written objections thereto, the Developer may record the Certificate of Substantial Completion with the City's Recorder of Deeds, and the same shall constitute evidence of the satisfaction of the Developer's agreements and covenants to perform all Work. The Certificate of Substantial Completion shall be in substantially the form attached as **Exhibit B**, attached hereto and incorporated by referenced herein.

ARTICLE IV. REIMBURSEMENT OF DEVELOPER COSTS

Section 4.1 City's Obligation to Reimburse Developer. The City agrees to reimburse Developer for the verified Reimbursable Redevelopment Project Costs 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 Notes to evidence the City's obligation to reimburse Developer for verified Reimbursable Redevelopment Project Costs in an amount not to exceed One Million Five Hundred Fifty Thousand Dollars and 00/100 (\$1,550,000.00) plus Issuance Costs and interest as provided in **Section 5.2** of this Agreement, subject to the limitations of **Article IV** of this Agreement.

Section 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 Notes 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, at the City's request, provide itemized invoices, receipts or other information, if any, reasonably requested by the City to confirm that any such cost is so incurred and does so qualify. Each such request shall be accompanied by a certification by the Developer that such cost is eligible for reimbursement under the TIF Act. 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**, clauses **2.2.1** through **2.2.4**, of this Agreement. If the City determines that any cost identified as a Reimbursable Redevelopment Project Cost is not a “redevelopment project cost” under Section 99.805(14) of the TIF Act, the City shall so notify the Developer in writing within 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.

Section 4.3 City’s Obligations Limited to Special Allocation Fund and Bond Proceeds. Notwithstanding any other term or provision of this Agreement, TIF Notes issued by the City to the Developer for Reimbursable Redevelopment Project Costs are payable only from the Special Allocation Fund and from Bond Proceeds, if any, and from no other source.

ARTICLE V. TIF OBLIGATIONS

Section 5.1 Conditions Precedent to the Issuance of TIF Notes. No TIF Notes shall be issued until such time as the City has (i) accepted a Certificate of Substantial Completion in accordance with the procedures set forth in **Section 3.8** of this Agreement; (ii) approved a Certificate of Reimbursable Redevelopment Project Costs in substantially the form of **Exhibit A**, attached hereto and incorporated herein by reference, in accordance with the procedures set forth in **Section 4.2** of this Agreement; (iii) obtained an opinion of Bond Counsel regarding the taxable nature of the TIF Notes; (iv) received the full payment of all advances required to be paid under **Section 2.2** of this Agreement; and (v) received such other documentation as the City shall reasonably require of Developer in order for the City to obtain an opinion of Bond Counsel as required by this **Section 5.1**

Section 5.2 Issuance of TIF Notes. Upon satisfaction of the conditions of **Section 2.2**, clause **2.2.4**, 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.

5.2.1 Terms. Each TIF Note shall bear interest at a fixed rate per annum, determined on the date that is not less than ten (10) business days and not more than sixty (60) days prior to the scheduled closing date for the issuance of the TIF Notes (the “Pricing Date”) based on the municipal yield curve for general obligation bonds (the “MMD”) compiled by Municipal Market Data-Line® (or its successors) and published by Thomson Financial, an operating unit of The Thomson Corporation (or its successors), using the MMD yield published as of the Issuance Date for general obligation bonds rated “AAA” that mature in the same year as the TIF Notes, (i) plus four percent (4%) if the interest on the TIF Notes (in the opinion of Bond Counsel) is not exempt from federal income taxation the (“Taxable Rate”), or (ii) plus two percent (2.0%) if the interest on the TIF Notes (in the opinion of Bond Counsel) is exempt from federal income taxation (the “Tax-Exempt Rate”); provided, in no event shall the interest rate on the TIF Notes exceed ten percent (10%) per annum.

5.2.2 Procedures for Issuance of TIF Notes. Within sixty (60) days of the Developer’s satisfaction of the conditions of **Section 5.1** of this Agreement the City shall issue a TIF Note evidencing reimbursement of Reimbursable Redevelopment Project Costs. Notwithstanding anything contained in this Agreement to the contrary, upon the acceptance by the City of a Certificate of Reimbursable Redevelopment Project Costs and the issuance by the City of a TIF Note as provided in this **Section 5.2.3**, the Developer shall be deemed to have advanced funds necessary to purchase such TIF Notes and the City shall be deemed to have deposited such funds in the Project Fund and shall be deemed to have reimbursed the Developer in full for such costs from the amounts deemed to be on deposit in the Project Fund from time to time.

5.2.3 Special Mandatory Redemption of TIF Notes. The TIF Notes are subject to special mandatory redemption by the City, on each March 1 and September 1 occurring after the acceptance by the City of the Certificate of Substantial Completion and issuance of the TIF Notes 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, which amount of principal being redeemed shall be 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 March 1 and September 1.

Section 5.3 TIF Bonds. The City may, in its sole and absolute discretion, issue TIF Bonds in an amount sufficient to refund all or a portion of the outstanding TIF Notes. The Developer shall not have any liability for any costs associated with the issuance of TIF Bonds but shall bear its own costs and expenses, including any attorneys' fees and expenses, that the Developer may incur in complying with **Section 5.4** of this Agreement. Proceeds of any TIF Bonds shall be applied in the following order: (a) to the payment of Issuance Costs relating to the issuance of the TIF Bonds; (b) to the payment of outstanding principal of and interest on the TIF Notes to be refunded; (c) to the payment of capitalized interest on the TIF Bonds; and (d) to the establishment of a debt service reserve fund for the TIF Bonds.

Section 5.4 Cooperation in the Issuance of TIF Obligations. The 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 Bonds, including disclosure of tenants of the Property and the non-financial terms of the leases between the Developer and such tenants, to the extent permitted by such leases. The Developer will not be required to disclose to the general public or any investor any proprietary or confidential information, including financial information, pertaining to the Developer, but upon the execution of a confidentiality agreement acceptable to the Developer, the 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. The 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.

Section 5.5 City to Select Underwriter and Financial Advisor; Term and Interest Rate. The City shall have the right to select the designated underwriter (and such financial advisors and consultants as the underwriter and the City deem necessary for the issuance of the TIF Bonds) and underwriter's counsel. The final maturity of the TIF Bonds shall not exceed the maximum term permissible under the TIF Act. The TIF Bonds shall bear interest at such rates, shall be subject to redemption and shall have such terms as the City shall determine in its sole and absolute discretion.

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

Section 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" and an "EATs 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 and, with respect to Economic Activity Taxes, subject to annual appropriation by the Board of Aldermen, the City will promptly upon receipt thereof deposit all PILOTs in the PILOTs Account and all EATs in the EATs Account, as applicable.

Section 6.2 Certification of Base for PILOTS and EATS. Within ninety (90) days after adoption of the Approving Ordinances, the City shall provide to the Developer: (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, 2001, but excluding those taxes, licenses, fees or special assessments identified in Section 99.845.3 of the TIF Act.

Section 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 Notes issued under Article V of this Agreement as provided in the Note Ordinance and this Agreement.

Section 6.4 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.

Section 6.5 **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 6.4** of this Agreement. So long as any of the TIF Obligations are outstanding, the Developer shall cause such obligations to be covenants running with the land, which covenants shall be enforceable as if such purchaser, transferee, lessee or other user of such real property were originally a party to and bound by this Agreement.

Section 6.6 **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 7.3.2** of this Agreement within ninety (90) 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

Section 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 Redevelopment Project and terminate this Agreement and the Developer's obligations hereunder if the Developer determines, in its sole discretion, that the Redevelopment Project is no longer economically feasible. Upon such termination, the City shall have no obligation to reimburse the Developer for any amounts advanced under this Agreement or costs otherwise incurred or paid by Developer.

Section 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 for any reason, 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.

Section 7.3 **Successors and Assigns.**

7.3.1 **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.

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

7.3.3 Assignment or Sale to Exempt Organization. Prior to any sale, transfer or other disposition of all or any portion of the Property or any interest therein to an organization exempt from payment of ad valorem property taxes, such organization shall be required to agree not to apply for an exemption from payment of such property taxes for a period ending on the earlier of the date that all TIF Obligations are paid in full or twenty-three (23) years from the 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.

Section 7.4 Remedies. Except as otherwise provided in this Agreement and subject to the Developer's and the City's respective rights of termination, in the event of any default in or breach of any term or conditions of this Agreement by either party, or any successor, the defaulting or breaching party (or successor) shall, upon written notice from the other party specifying such default or breach, proceed immediately to cure or remedy such default or breach, and shall, in any event, within thirty (30) days after receipt of notice, cure or remedy such default or breach. In the event that the defaulting or breaching party (or successor) diligently and in good faith commences to cure or remedy such default or breach but is unable to cure or remedy such default or breach within thirty (30) days after receipt of notice, the defaulting or breaching party (or successor) shall, prior to the end of such thirty (30) days, provide notice to the other party that it has in good faith commenced to cure or remedy such default or breach, whereupon the defaulting or breaching party (or successor) shall have an additional thirty (30) days to cure or remedy such default or breach. In case such cure or remedy is not taken or not diligently pursued, or the default or breach shall not be cured or remedied prior to the end of the additional thirty (30) day period, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including without limitation proceedings to compel specific performance by the defaulting or breaching party.

Section 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 Redevelopment Project or the TIF Obligations or this Agreement; provided that such event of force majeure shall not be deemed to exist as to any matter initiated or sustained by the Developer in bad faith, and further provided that the Developer notifies the City in writing within thirty (30) days of the commencement of such claimed event of force majeure.

Section 7.6 Notices. Any notice, demand or other communication required by this Agreement to be given by either party hereto to the other shall be in writing and shall be sufficiently given or delivered if dispatched by certified United States first class mail, postage prepaid, or delivered personally,

In the case of the Developer, to:

McGowan Brothers Development Corporation, LLC
1223 Lucas Avenue
St. Louis, MO 63103
Attention: Kevin McGowan
Facsimile: 314.621.8440

With copies to:

Husch & Eppenberger, LLC
190 Carondelet Plaza
Suite 600
Clayton, Missouri 63105
Attention: David Richardson
Facsimile: 314.480.1505

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
Facsimile: 314.622.3440

And

City of St. Louis
Office of the Comptroller
City Hall
1200 Market Street, Room 212
St. Louis, Missouri 63103
Attention: Ivy Neyland-Pinkston, Deputy Comptroller
Facsimile: 314.589.0550

With a copy to:

St. Louis Development Corporation
1015 Locust Street
Suite 1200
St. Louis, Missouri 63101
Attention: Dale Ruthsatz
Facsimile: 314.231.2341

And

Armstrong Teasdale LLP
One Metropolitan Square, Suite 2600
St. Louis, Missouri 63102
Attention: Thomas J. Ray
Facsimile: 314.621.5065

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

Section 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.

Section 7.8 Damage or Destruction of Redevelopment Project. In the event of total destruction or damage to the Redevelopment Project by fire or other casualty, during construction or thereafter during the term of this Agreement so long as any TIF Notes are outstanding, the Developer shall determine and advise the City in writing within one year of such destruction or damage whether to restore, reconstruct and repair any such destruction or damage so that the Redevelopment Project will be completed or rebuilt in accordance with the Redevelopment Plan and this Agreement. Should the Developer determine not to restore, reconstruct and repair, all unaccrued liability of the City for any payments of principal of or interest on the TIF Notes shall immediately terminate and the Developer shall promptly surrender the TIF Notes to the City for cancellation. In the event of such total destruction or damage during the term of this Agreement and after any TIF Bonds are issued, the Developer shall, at the City's option after consultation with the Developer, tender to the City that portion of the insurance proceeds from any fire or casualty insurance policy in an amount equal to the outstanding principal amount of the TIF Bonds, plus accrued interest thereon.

Section 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 advance notice prior to the completion of the Work for inspection thereof. The Developer shall not unreasonably deny the City and its officers, employees, agents and independent contractors the right to inspect, upon request, all architectural, engineering, demolition, construction and other contracts and documents pertaining to the construction of the Work as the City determines is reasonable and necessary to verify the Developer's compliance with the terms of this Agreement.

Section 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.

Section 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.

Section 7.12 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute one and the same instrument.

Section 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.

Section 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.

Section 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.

Section 7.16 Release and Indemnification. The indemnification provisions and covenants contained in this Section shall survive termination or expiration of this Agreement.

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

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

pursuant to this Agreement.

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

7.16.4 All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and not of any of its governing body members, officers, agents, attorneys, employees or independent contractors in their individual capacities.

7.16.5 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.

7.16.6 The Developer releases from and covenants and agrees that the City, its governing body members, officers, agents, attorneys, employees and independent contractors shall not be liable for, and agrees to indemnify and hold the City, its governing body members, officers, agents, attorneys, employees and independent contractors, harmless from and against any and all third party suits, interest, claims and cost of reasonable attorneys fees incurred by any of them, resulting from, arising out of, or in any way connected with: (i) the enforcement of this Agreement, the validity of the TIF Obligations or the enforcement or validity of any other agreement or obligation made in connection therewith and their approvals (excluding opinions of counsel and of the City's financial advisors whenever such claim is based on such party's own negligence); (ii) the negligence or willful misconduct of the Developer or its officers, agents, employees or independent contractors in connection with the design, management, development, redevelopment and construction of the Work, or (iii) the compliance by the Developer with all applicable state, federal and local environmental laws, regulations and ordinances as applicable to the Property, to the extent such condition existed prior to the acquisition thereof by the Developer. The foregoing release and indemnification shall not apply in the case of such liability arising directly out of the negligence or malicious acts or omissions of the City or its governing body members, officers, agents, attorneys, employees and independent contractors in connection with its or their activities conducted pursuant to this Agreement or which arises out of matters undertaken by the City following termination of this Agreement as to the Redevelopment Project or any particular portion thereof.

Section 7.17 Survival. Notwithstanding the expiration or termination or breach of this Agreement by either party, the agreements contained in **Section 2.2**, clauses **2.2.3** and **2.2.4**, **Article VI**, **Section 7.10**, **Section 7.11**, **Section 7.12**, **Section 7.13**, **Section 7.14**, **Section 7.15**, **Section 7.16**, **Section 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.

Section 7.18 Maintenance of the Property. The Developer shall remain in compliance with all provisions of the City's ordinances relating to maintenance and appearance of the Property during the construction of the Redevelopment Project or any portion thereof. Upon substantial completion of the Redevelopment Project and so long as any TIF Obligations are outstanding, the Developer or its successor(s) in interest, as owner or owners of the affected portion(s) of the Property, shall, during the remainder of the term of this Agreement (but subject to any delay caused by an event of force majeure as provided in **Section 7.5** of this Agreement), maintain or cause to be maintained the buildings and improvements within the Redevelopment Area which it owns in a good state of repair and attractiveness and in conformity with applicable state and local laws, ordinances and regulations. If there are separately-owned or ground leased parcels of real estate on the Property during the term of this Agreement, each owner or lessee as a successor in interest to the Developer shall maintain or cause to be maintained the buildings and improvements on its parcel in a good state of repair and attractiveness and in conformity with applicable state and local laws, ordinances and regulations, 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.

Section 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.

Section 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**

Section 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.

Section 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.

(The remainder of this page intentionally left blank.)

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

“CITY”:

CITY OF ST. LOUIS, MISSOURI

By: _____
Francis G. Slay, Mayor

By: _____
Darlene Green, Comptroller

(SEAL)

Attest:

Parrie May, City Register

Approved as to Form:

Patricia Hageman, City Counselor

“DEVELOPER”

**McGOWAN BROTHERS
DEVELOPMENT CORPORATION, LLC**

By: _____
Name: Kevin McGowan
Title: _____

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

On this ____ day of _____, 2007, before me appeared Francis G. Slay, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the CITY OF ST. LOUIS, MISSOURI, a political subdivision of the State of Missouri, and that the seal affixed to the foregoing instrument is the seal of said City, and said instrument was signed and sealed in behalf of said City by authority of its Board of Aldermen, and said individual acknowledged said instrument to be the free act and deed of said City.

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

Notary Public

(SEAL)

My Commission Expires:

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

On this ____ day of _____, 2007, before me appeared Darlene Green, to me personally known, who, being by me duly sworn, did say that she is the Comptroller of the CITY OF ST. LOUIS, MISSOURI, a political subdivision of the State of Missouri, and that the seal affixed to the foregoing instrument is the seal of said City, and said instrument was signed and sealed in behalf of said City by authority of its Board of Aldermen, and said individual acknowledged said instrument to be the free act and deed of said City.

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

Notary Public

(SEAL)

My Commission Expires:

STATE OF)
) SS
COUNTY OF)

On this ____ day of _____, 2007, before me appeared Kevin McGowan, to me personally known, who, being by me duly sworn, did say that he is the _____ of McGowan Brothers Development Corporation, LLC, a Missouri limited liability company, and that he is authorized to sign the instrument on behalf of said company, and acknowledged to me that he executed the within instrument as said company's free act and deed.

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

Notary Public

(SEAL)

My Commission Expires:

EXHIBIT A
Form of Certificate of
Reimbursable Redevelopment Project Costs

Certificate of Reimbursable Redevelopment Project Costs

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

Re: City of St. Louis, Missouri, Grace Lofts TIF Redevelopment Project Area

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Amended and Restated Redevelopment Agreement dated as of _____, 2007 (the "Agreement"), between the City and McGowan Brothers Development Corporation, LLC, a Missouri limited liability company (the "Developer"). In connection with said Agreement, the undersigned hereby states and certifies that:

1. Each item listed on Schedule 1 hereto is a Reimbursable Redevelopment Project Cost and was incurred in connection with the construction of the Redevelopment Project.
2. These Reimbursable Redevelopment Project Costs have been have been paid by the Developer and are reimbursable under the Note Ordinance and the Agreement.
3. Each item listed on **Schedule 1** has not previously been paid or reimbursed from money derived from the Special Allocation Fund or any money derived from any project fund established pursuant to the Note Ordinance, and no part thereof has been included in any other certificate previously filed with the City.
4. There has not been filed with or served upon the Developer any notice of any lien, right of lien or attachment upon or claim affecting the right of any person, firm or corporation to receive payment of the amounts stated in this request, except to the extent any such lien is being contested in good faith.
5. All necessary permits and approvals required for the portion of the Work for which this certificate relates have been issued and are in full force and effect.
6. All Work for which payment or reimbursement is requested has been performed in a good and workmanlike manner and in accordance with the Agreement.
7. If any cost item to be reimbursed under this Certificate is deemed not to constitute a "redevelopment project cost" within the meaning of the TIF Act and the Agreement, the Developer shall have the right to substitute other eligible Reimbursable Redevelopment Project Costs for payment hereunder.
8. The costs to be reimbursed under this Certificate constitute advances qualified for Tax-Exempt TIF Notes:

Yes: _____ No: _____

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

Dated this ____ day of _____, _____.

**McGOWAN BROTHERS
DEVELOPMENT CORPORATION, LLC**

By: _____
Name: Kevin McGowan
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, McGOWAN BROTHERS DEVELOPMENT CORPORATION, LLC, a Missouri limited liability company (the "Developer"), pursuant to that certain Amended and Restated Redevelopment Agreement dated as of _____, 2007, between the City of St. Louis, Missouri (the "City"), and the Developer (the "Agreement"), hereby certifies to the City as follows:

1. That as of _____, _____, the construction of the Redevelopment Project (as that term is defined in the Agreement) has been substantially completed in accordance with the Agreement.
2. That the Work has been substantially completed or funded pursuant to 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 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 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, 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 _____, _____.

McGOWAN BROTHERS DEVELOPMENT CORPORATION, LLC

By: _____
 Name: _____
 Title: _____

ACCEPTED:

ST. LOUIS DEVELOPMENT CORPORATION

By: _____
 Name: _____
 Title: _____

(Insert Notary Form(s) and Legal Description)

EXHIBIT C

Legal Description of the Redevelopment Area

A LOT IN BLOCK 834 OF THE CITY OF ST. LOUIS, FRONTING 50 FEET ON THE SOUTH LINE OF WASHINGTON AVENUE, BY A DEPTH SOUTHWARDLY, BETWEEN PARALLEL LINES OF 150 FEET, MORE OR LESS, TO THE NORTH LINE OF ST. CHARLES STREET, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE SOUTH LINE OF WASHINGTON AVENUE DISTANT 80 FEET EAST OF THE EAST LINE OF 14TH STREET AND EXTENDING SOUTH AND PARALLEL WITH THE EAST LINE OF 14TH STREET 150 FEET, MORE OR LESS, TO A POINT IN THE NORTH LINE OF ST. CHARLES STREET, THENCE EAST ALONG SAID NORTH LINE 50 FEET; THENCE NORTH 150 FEET, MORE OR LESS, TO THE SOUTH LINE OF WASHINGTON AVENUE; THENCE WEST ALONG SAID SOUTH LINE 50 FEET TO THE BEGINNING.

EXHIBIT D

Reimbursable Redevelopment Project Costs*

CATEGORY	
(a)	Acquisition Costs (as defined in Section 1.1 of this Agreement).
(b)	Demolition Costs (includes, but is not limited to, demolition of existing buildings and structures or parts thereof).
(c)	Site Preparation and Improvements Costs (includes, but is not limited to, street and sidewalk improvements, utility work and resetting of curbs and landscaping and lighting in the common areas).
(d)	Financing Costs (includes, but is not limited to, loan fees, disbursing fees, construction monitoring and inspection fees, lender’s legal fees, loan appraisals, flood certificates, tax credit investor fees and any and all other costs incurred by the Developer in connection with obtaining financing for and a tax credit investor in the Redevelopment Project).
(e)	Environmental Testing, Remediation and/or Abatement Costs (includes, but is not limited to, the testing for and removal and disposal of toxic or hazardous substances or materials).
(f)	Professional Service Costs (includes, but is not limited to, architectural, engineering, legal, marketing, financial, planning, or special services).
(g)	TIF Costs & Issuance Costs incurred by the Developer pursuant to Section 2.2(i) – 2.2.(v) of this Agreement.
(h)	Rehabilitation, Renovation or Reconstruction of existing structures.

*Subject to the limitations of Article IV of this Agreement.

EXHIBIT E
Equal Opportunity and Nondiscrimination Guidelines

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

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

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

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

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

Approved: February 16, 2007