

**ORDINANCE #69328**  
**Board Bill No. 213**

An Ordinance authorizing the execution of a Development Agreement between The City of St. Louis and Lord & Taylor LLC and authorizing reimbursement to Lord & Taylor LLC in accordance therewith; prescribing the form and details of said agreement; making certain findings with respect thereto; authorizing other related actions in connection therewith; and containing a severability clause.

**WHEREAS**, The City of St. Louis (the “City”), is a body corporate and a political subdivision of the State of Missouri, duly created, organized and existing under and by virtue of its charter, the Constitution, and laws of the State of Missouri; and

**WHEREAS**, pursuant to Ordinance No. 69021, the City designated a portion of the City a Redevelopment Area and approved that certain “Blighting Study and Plan for the 500 N. Broadway Redevelopment Area” (the “Redevelopment Plan”) for that certain property located at 500 N. Broadway in the City (the “Development Area”) to alleviate the conditions that qualify it as a “blighted area”, as defined in Sections 99.300 to 99.715 of the Revised Statutes of Missouri (2000); and

**WHEREAS**, Lord & Taylor LLC, a Delaware limited liability company (the “Company”), has proposed to lease space within the Development Area (such space, together with common areas of the building located in the Development Area, being the “Project Area”) and add a significant number of new jobs within the Project Area; and

**WHEREAS**, the Company’s agreement to lease space within the Project Area will involve physical improvements to the Project Area, thereby alleviating or helping to alleviate the conditions that qualify it as a “blighted area”; and

**WHEREAS**, the City is agreeable to assisting the Company by reimbursing the Company for costs incurred by the Company or its landlord related to the Company’s lease of the Project Area pursuant to a Development Agreement between the Company and the City (the “Development Agreement”); and

**WHEREAS**, it is hereby found and determined that it is necessary and desirable and in the best interest of the City to enter into the Development Agreement with the Company, and to pay to the Company certain funds in order to provide for the promotion of the general welfare through redevelopment of the Project Area in accordance with the Development Agreement; and

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

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

**SECTION ONE.** The Board of Aldermen finds and determines that, in order to promote the general welfare, as described above, it is necessary and desirable to enter into the Development Agreement with the Company, which agreement, subject to annual appropriation, pledges certain tax revenues for reimbursement to the Company in the form of a financing allowance to help alleviate the conditions that cause the Development Area to be a “blighted area.”

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

**SECTION THREE.** 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 FOUR.** The Mayor and the Comptroller or their designated representatives, with the advice and concurrence of the City Counselor, 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 FIVE.** 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 DEVELOPMENT AGREEMENT**

**DEVELOPMENT AGREEMENT  
between  
THE CITY OF ST. LOUIS, MISSOURI  
and  
LORD & TAYLOR LLC**

**Dated as of**

\_\_\_\_\_, 2012

**500 N. BROADWAY PROJECT**

**DEVELOPMENT AGREEMENT**

**THIS DEVELOPMENT AGREEMENT** (this "Agreement") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2012, 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 **LORD & TAYLOR LLC** (the "Company"), a limited liability company duly organized and existing under the laws of the State of Delaware. (All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in Article I of this Agreement.)

**RECITALS**

- A. The City is authorized and empowered pursuant to the provisions of Sections 99.300 to 99.715 RSMo. (the "Act") to participate in projects for the redevelopment of blighted areas, as described in the Act.
- B. By Ordinance No. 69021, approved October 28, 2011 (the "Approval Ordinance"), the Board of Aldermen of the City (the "Board of Aldermen") approved that certain "Blighting Study and Plan for the 500 N. Broadway Redevelopment Area" (the "Development Plan") which pertains to all or a portion of the property described in Exhibit A hereto (the "Development Area").
- C. The Company has proposed to lease certain property within the Development Area described on Exhibit B hereto (together with certain common areas, as further described herein, the "Project Area") from 500 Broadway, LLC for use as office space.
- D. The Board of Aldermen has determined, pursuant to Ordinance No. \_\_\_\_\_, approved \_\_\_\_\_, 2012 (the "Authorizing Ordinance") that the Company's lease of the Project Area, and the Company's agreement to make payments in furtherance thereof, will enable and require the owner of the Project Area to make improvements to the Project Area (the "Project"), which improvements will contribute to the redevelopment of the Development Area and the remediation of certain blighting conditions described in the Development Plan.
- E. The Project is part of a project approved by the Land Clearance for Redevelopment Authority of the City of St.

Louis on \_\_\_\_\_, 2012.

## 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.** In addition to other defined words and terms set forth herein, as used in this Agreement, the following words and terms shall have the following meanings:

“*Act*” has the meaning given to such term in the Recitals hereto.

“*Affiliates*” means (a) any entity related to the Company 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 or (b) the surviving or acquiring entity in connection with any merger of the Company or sale of all or substantially all of its assets; when used in the singular, this term shall refer to any Affiliate.

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

“*Approval Ordinance*” shall have the meaning given to such term in the Recitals hereto.

“*Authorizing Ordinance*” shall have the meaning given to such term in the Recitals hereto.

“*Base EP Revenues*” means all EP Revenues collected by the City during the calendar year 2011, provided, that, for the purpose of calculating the Financing Allowance to be paid in 2015 (calculated for calendar year 2014), the Base EP Revenues for 2011 shall be increased by two percent (2%) over the EP Revenues for 2011, and for the purpose of calculating the Financing Allowance for each year thereafter, the amount of Base EP Revenues shall be increased by two percent (2%) for each subsequent year through calendar year 2020.

“*Board of Aldermen*” has the meaning given to such term in the Recitals hereto.

“*Certificate of Substantial Completion*” means a document substantially in the form of **Exhibit D**, attached hereto and incorporated herein by reference, issued by the Company to the City in accordance with **Section 6.4** of this Agreement, which, upon approval by SLDC, will evidence substantial completion of the Project, in accordance with the Project Specifications 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.

“*Closing Date*” means a date specified by the Company in writing to the City at least fifteen (15) days in advance of such date (which advance notice may be waived by SLDC), provided that in no event shall such date be later than three hundred sixty (360) days from the date of this Agreement.

“*Collector*” means the Collector of Revenue of The City of St. Louis, Missouri.

“*Company*” shall have the meaning set forth in the Recitals hereto, together with its permitted successors or assigns in interest.

“*Company Jobs*” means full-time equivalent positions with the Company or an Affiliate of not less than 35 hours per week assigned to the Project Area, offering standard employee benefits, which have an average annual wage (actual monetary compensation only, not benefits) of at least \$50,000.

“*Company Lease*” means that certain Lease Agreement between Landlord and the Company (as tenant thereunder) dated August 17, 2007, as amended by that certain First Amendment to Lease dated August 24, 2012.

“*Development Area*” has the meaning given to such term in the Recitals hereto.

“*Development Plan*” has the meaning given to such term in the Recitals hereto.

“*Eligible Project Costs*” means any costs incurred (or caused to be incurred) by (a) the Company, (b) any of the Company’s Affiliates or (c) if pursuant to the Company Lease, the Landlord, which costs are incurred in connection with or which are reasonable and necessary in furtherance of the rehabilitation or redevelopment of the Project Area as provided in the Company Lease. By way of example only, and not by way of limitation, such costs shall include (1) costs of studies, surveys, plans, reports, tests, specifications or other forms of due diligence relating to the Project Area, (2) professional services costs, including, but not limited to, architectural, engineering, legal, marketing, financial, planning or special services, (3) costs of rehabilitation, reconstruction, buildout, repair or remodeling of existing buildings, structures and fixtures, and (4) a portion (equal to the percentage of common area maintenance costs allocated to the Company under the Company Lease) of any of the categories of costs enumerated in (1) through (3) above that are related to improvements to common areas within the Development Area.

“*EP Revenues*” means, for each calendar year, the sum of: (a) all revenue attributable to employees of the Company and the Affiliates from the tax imposed by the City pursuant to Sections 5.22.010 through 5.22.140 of the Revised Code of the City (and any similar or successor tax or taxes) on salaries, wages, commissions, and other compensation, as indicated on the quarterly payroll tax reports (Form W-10), if any, filed by the Company and the Affiliates with the Collector of Revenue of the City, with respect to the calendar year in question; and (b) all revenue attributable to employees of the Company and the Affiliates from the tax imposed by the City pursuant to Sections 5.23.010 to 5.23.140 of the Revised Code of the City (and any similar or successor tax or taxes) on every person who, in connection with his or her business, engages, hires, employs, or contracts with one or more individuals as an employee, to perform work or render services in whole or in part within the City, as indicated on the quarterly payroll report (Form P-10), if any, filed by the Company and the Affiliates with the Collector, with respect to the calendar year in question.

“*Event of Non-Appropriation*” shall have the meaning set forth in **Section 6.5**.

“*Financing Allowance*” means an amount, determined annually during the term of this Agreement, up to the Maximum Financing Amount, which amount is equal to fifty percent (50%) of the difference between: (x) the EP Revenues for the preceding year and (y) the Base EP Revenues for such preceding year. If the calculation of the Financing Allowance results in a negative number, the Financing Allowance shall be zero for such year. The Financing Allowance payable for each year shall be determined on or before March 1 of such year (based upon the preceding year’s EP Revenues and Base EP Revenues) beginning in 2014 (calculated for calendar year 2013), and continuing through 2023 (calculated for calendar year 2022).

“*Financing Allowance Notice*” means a notice submitted in writing by the Company to the City (at the address set forth in **Section 10.4** hereof) after March 1 of each calendar year beginning in 2014 (covering calendar year 2013) and ending 2023 (covering calendar year 2022), which notice shall contain the following:

- (a) A certification by a responsible officer of the Company of the number of Company Jobs located in the Project Area as of December 31 of the prior calendar year or, in lieu of such certification, a copy of the Company’s Missouri Quality Jobs Program Annual Report/Application for Tax Benefits for the prior calendar year;
- (b) A statement that the Financing Allowance for such year is then due and payable;
- (c) A statement of the total amount of the Maximum Financing Amount for such year, including evidence to the City’s reasonable satisfaction that the Eligible Project Costs associated with the Maximum Financing Amount have been incurred and are proper under this Agreement; and
- (d) Wire or other instructions for the payment of the Financing Allowance by the City in federally available funds.

“*Governmental Approvals*” means all necessary permits, licenses and approvals including, but not limited to, plat approvals, re-zoning changes, site plan approvals, conditional use permits, licenses, variances, vacations, building permits, or other subdivision, zoning, or similar approvals from local, state and federal authorities and agencies required for the implementation of the Project and consistent with this Agreement.

“*Landlord*” means the owner of the Project Area, which as of the date of this Agreement is 500 Broadway, LLC, a Missouri limited liability company, or any of its successors or assigns.

“*Maximum Financing Amount*” means the amount of Eligible Project Costs previously incurred as of the date of any Financing Allowance Notice, which Eligible Project Costs have not been previously reimbursed by the City through the payment of the Financing Allowance pursuant to this Agreement.

“*Project*” shall have the meaning set forth in the Recitals hereto.

“*Project Area*” shall have the meaning given to such term in the Recitals hereto, which Project Area consists of a portion of the Development Area.

“*Project Specifications*” means those specifications relating to the renovation and rehabilitation of the Project Area, which specifications are on file with SLDC as of the date of this Agreement and as may be amended from time to time with (if such amendment constitutes a “material amendment” as described below) the approval of SLDC, which approval shall not be unreasonably withheld; provided that if any amendments are not approved or disapproved in writing within fifteen (15) days of their submittal to SLDC, such changes shall be deemed approved. Notwithstanding the foregoing, the approval of Project Specifications by SLDC shall not be deemed to replace or suffice for any approval under or compliance with applicable laws, codes, ordinances or regulations. For the purposes of this definition, the term “material amendment” means an amendment which would decrease the total leasable area leased by the Company by more than ten percent (10%) from that shown in the existing Project Specifications.

“SLDC” means the St. Louis Development Corporation, a Missouri non-profit corporation and the agent of the City hereunder.

“*Work*” means all work necessary to cause the renovation of the Project Area for use as commercial office space by the Company or an affiliate and/or the renovation of common areas within the Project Area, as described in the Project Specifications.

“*500 N. Broadway Financing Allowance Account*” shall have the meaning set forth in **Section 6.5**.

#### **Section 1.2** Rules of Construction.

(a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing persons shall include firms, associations and corporations, including public bodies, as well as natural persons. The term “including” shall not be interpreted to exclude any items not specifically enumerated. All references in this Agreement to designated “Articles”, “Sections” and other subdivisions are to the designated Articles, Sections and other subdivisions of this Agreement as originally executed. The words “herein”, “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision unless the context indicates otherwise.

(b) The headings and captions in this Agreement are not a part of this Agreement.

(c) Accounting terms used in this Agreement and not otherwise defined herein have the meanings given to them by generally accepted accounting principles.

(d) The Exhibits to this Agreement are included in and are a part of this Agreement.

(e) References herein to any particular section of the Act, any other legislation or federal or State regulations shall be deemed to refer also to any successor section thereto or to redesignations thereof for codification purposes, unless otherwise specifically provided herein.

### **ARTICLE II. NATURE OF PROJECT**

**Section 2.1** Public Purpose. The City hereby acknowledges that the Company’s agreement to lease space within the Project Area pursuant to the Company Lease will contribute to or cause the completion of the Project and the remediation of certain conditions that cause the Development Area to be designated as a “blighted area.” As a result, the City acknowledges the public purpose served by the Company Lease.

**Section 2.2** Company to Advance Costs. The Company agrees to lease the Project Area and to require the Landlord to complete or cause the completion of the Work. The Company shall, concurrently with the execution of this Agreement, reimburse the City for all of its reasonable outside consultant costs, including reasonable attorneys’ fees, incurred in connection with this

Agreement, up to and including the date of execution of this Agreement.

### ARTICLE III. REPRESENTATION AND WARRANTIES

**Section 3.1 Company.** The Company represents, warrants and covenants that as of the date of this Agreement:

- (a) The Company is a limited liability company duly organized and validly existing under the laws of the State of Delaware and authorized to transact business in the State of Missouri.
- (b) The Company has the right, power and authority to enter into, execute, deliver and perform this Agreement and the transactions contemplated herein.
- (c) The execution, delivery and performance by the Company of this Agreement have been duly authorized by all necessary action, and, to the best of the Company's knowledge, constitute the legal, valid and binding obligation of the Company, enforceable in accordance with the terms hereof.
- (d) To the best of the Company's knowledge, there are no actions or proceedings by or before any court, governmental commission, board, bureau or any other administrative agency pending, threatened or affecting the Company that would impair its ability to perform under this Agreement.

**Section 3.2 City.** The City represents, warrants and covenants that as of the date of this Agreement:

- (a) The City is a constitutional charter city duly organized and validly existing under its charter and the laws of the State of Missouri.
- (b) The execution, delivery and performance by the City of this Agreement has been duly authorized by all necessary City actions and this Agreement and, to the best of the City's knowledge, constitutes the legal, valid and binding obligation of the City, enforceable in accordance with the terms hereof.
- (c) The City has the right, power and authority to enter into, execute, deliver and perform this Agreement.
- (d) To the best of the City's knowledge, there are no actions or proceedings by or before any court, governmental commission, board, bureau or any other administrative agency pending, threatened or affecting the City that would impair its ability to perform under this Agreement.
- (e) The construction and equipping of the Project (and the Company Lease, which is reasonably expected to assist in such activities) is related to and in furtherance of the public purposes of the City pursuant to the Approval Ordinance and the Development Plan.

### ARTICLE IV. ACQUISITION AND RENOVATION OF PROJECT AREA

**Section 4.1 Leasehold Interest in Project Area.** The Company or an Affiliate has acquired or shall, on or before the Closing Date, acquire a leasehold interest in the Project Area for a term continuing at least through August 31, 2023 (subject to any rights of the Company to extend, terminate or cancel the same). The City's remedies for the Company's failure under this **Section 4.1** shall be limited to the termination of this Agreement pursuant to **Section 7.1**, which termination shall be without further recourse to the Company.

**Section 4.2 Financing Allowance.**

- (a) After March 1 of each calendar year beginning in 2014 (covering calendar year 2013) and ending in 2023 (covering calendar year 2022), the Company shall deliver to the City the Financing Allowance Notice. Upon receipt of each Financing Allowance Notice, the City shall, subject to annual appropriation as described in this Agreement, pay to the Company the Financing Allowance for such year, as described in this Agreement, in accordance with the payment instructions described in the Financing Allowance Notice.
- (b) Notwithstanding anything to the contrary contained herein and beginning with the Financing Allowance Notice

to be received by the City after March 1, 2015, the Financing Allowance payable pursuant to (a) above for a specific calendar year shall be reduced as follows:

(1) If the number of Company Jobs shown in the Financing Allowance Notice is less than 150, but at least 100, the total Financing Allowance that would otherwise be due for such year shall be reduced by 1% for every Company Job below 150. (For example, if the Financing Allowance otherwise due for a specific year was \$100,000, but the Financing Allowance Notice only certified 140 Company Jobs at the Project Site, the Financing Allowance actually due would equal  $\$100,000 - (\$100,000 \times 10\%) = \$90,000$ .)

(2) If the number of Company Jobs shown in the Financing Allowance Notice is less than 100, no Financing Allowance shall be paid.

Such reductions in the Financing Allowance shall only apply to the applicable year of the Financing Allowance Notice. If Financing Allowance Notices for subsequent years show that at least 150 Company Jobs are present in the Project Area, the Company shall, subject to annual appropriation by the City, receive the full Financing Allowance contemplated by (a) above for that year even if it received a reduced Financing Allowance pursuant to this subsection in a prior year.

**Section 4.3** Reserved.

**Section 4.4** Cooperation. The City agrees to timely consider and process and to reasonably cooperate with the Company with respect to any and all Governmental Approvals necessary for the Company to perform its obligations under this Agreement. The Company agrees to (a) conform to all federal, state and local rules, regulations, codes, statutes and ordinances applicable to performance by the Company under this Agreement and (b) provide any information reasonably requested by the City to verify the number of Company Jobs and to calculate the Financing Allowance in a timely manner.

**ARTICLE V. RESERVED**

**ARTICLE VI. DEVELOPMENT OF PROJECT**

Section 6.1 Records. Financial records, supporting documents, statistical records and all other records pertinent to any activity under this Agreement shall be retained by the Company until August 31, 2023. Until such date, SLDC, as agent of the City, shall have reasonable access to any documents, books, papers, and records of the Company which are directly pertinent to this Agreement for the purpose of making an audit or examination of such records and documents. Notwithstanding the foregoing, SLDC shall only have such right of access once annually, and such access shall be subject to the following conditions: (a) SLDC must provide seven (7) days advance request to the Company, and (b) in the course of such audit or examination, SLDC shall be accompanied by a representative of the Company at all times.

**Section 6.2** Conflicts of Interest. The parties agree to abide by all applicable federal, state and local laws, ordinances and regulations relating to conflicts of interest. Additionally, but not in limitation of the foregoing, no member of the Board of Aldermen or any branch of government of the City who has any power of review or approval of any of the undertakings contemplated herein, shall participate in any decisions relating thereto which affect his or her personal interests or the interests of any corporation or partnership in which he or she is directly or indirectly interested. No member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor participate in any decisions relating thereto which affect his or her personal interests or the interests of any corporation or partnership in which he or she is directly or indirectly interested. Any member, official or employee of the City now having or subsequently acquiring any personal interest, direct or indirect, or now having or subsequently acquiring any interest in any corporation, partnership or association which has any interest, in the Project, or in any contract or proposed contract in connection with the redevelopment, rehabilitation or financing of the Project, shall immediately disclose, in writing to the Board of Aldermen, the nature of such interest and seek a determination with respect to such interest by the Board of Aldermen of and in the meantime shall not participate in any actions or discussions relating to the Project.

**Section 6.3** Reserved.

**Section 6.4** Completion of Project. The Company shall cause the Landlord to cause the Work to be substantially complete no later than December 31, 2017. Upon substantial completion, the Company shall submit or cause to be submitted a Certificate of Substantial Completion for such Work substantially in the form of Exhibit D hereto, certifying that such Work has been completed. Upon receipt of a Certificate of Substantial Completion, if SLDC finds that such Work has been completed in accordance with the Project Specifications, then SLDC (on behalf of the City) shall acknowledge its approval of the Certificate of Substantial Completion

by signing and delivering such Certificate to the Company. Said Certificate may, at the Company's discretion, be recorded in the Office of the Recorder of Deeds of the City.

**Section 6.5 Covenant to Appropriate.** The City hereby agrees to create an account, to be titled the "500 N. Broadway Financing Allowance Account," into which the City will deposit an amount equal to the Financing Allowance for each year. The City agrees that it will comply with the Charter of The City of St. Louis, Article XVI, Section 3 for each fiscal year through the fiscal year including March 1, 2023, and the City will request an appropriation from the 500 N. Broadway Financing Allowance Account in each such year in the amount of the Financing Allowance for such year. If the City adopts a budget for a fiscal year that does not include an appropriation equal to the Financing Allowance from the 500 N. Broadway Financing Allowance Account, the same shall constitute an "Event of Non-Appropriation." Should an Event of Non-Appropriation occur, the City shall immediately post a notice of such Event of Non-Appropriation on the EMMA system maintained by the Municipal Securities Rulemaking Board (or if EMMA has been discontinued, a successor repository for similar information regarding municipal securities). If the City fails to give notice in accordance with the provisions of this Section within thirty (30) days following the occurrence of an Event of Non-Appropriation, then the Company shall have all rights set forth in Section 7.3 of this Agreement, including but not limited to the right to specific performance to cause the City to give such notice.

#### ARTICLE VII. TERMINATION, BREACH AND CURE

**Section 7.1 Breach.** In the event of any breach by the Company of any provision, covenant, agreement, restriction, or regulation contained in this Agreement, the Company shall have thirty (30) days after receipt of written notice of such breach from the City to cure same; provided, however, if said breach is non-monetary and cannot be cured within thirty (30) days and the Company has undertaken the curing of said breach within thirty (30) days and continues thereafter to diligently pursue the same, then the Company shall have one hundred and eighty (180) days to cure the same. If any breach of this Agreement remains uncured after the pertinent cure period, the City may terminate this Agreement and terminate any and all rights granted by the City relating to the Project. The Company further agrees that the City shall have the right and power to institute and prosecute proceedings to enjoin the threatened or attempted violation of any covenant, agreement, restriction or regulation contained herein, provided that such right shall be subject to the Company's right to notice and an opportunity to cure as set forth in this Section.

**Section 7.2 City's Remedies.** Notwithstanding any provision herein to the contrary, if (a) the default or breach involves the non-payment by the Company of any moneys due hereunder, the City, in its sole discretion and after satisfaction or expiration of all applicable notice and cure periods, may bring an action for specific performance or terminate this Agreement as provided in **Section 7.1** or (b) the default or breach does not involve a non-payment by the Company of any moneys due hereunder, the City's sole remedy for the Company's default or breach shall be the City's right of termination of this Agreement pursuant to **Section 7.1**. Any termination pursuant to this Section shall be without further recourse against the Company.

**Section 7.3 Company's Remedies.** In the event of a breach or default by the City under this Agreement, except as expressly limited herein, the Company shall have all rights and remedies to which it would otherwise be entitled at law or equity.

**Section 7.4 Company's Right to Terminate.** At any time following the date hereof, the Company may, in its sole and unfettered discretion, terminate this Agreement, in which event neither party shall have any obligation to the other, except the Company's obligation to reimburse the City for outside consultant costs, including reasonable attorneys' fees pursuant to **Section 2.2**. In the event of such termination, the City shall not be entitled to recovery or return of any previously paid Financing Allowances, but the City shall have no requirement to pay any future Financing Allowances.

#### ARTICLE VIII. INDEMNIFICATION

**Section 8.1 Indemnification.** The Company, its successors and assigns, shall forever indemnify, defend and hold harmless the City and SLDC and their respective officials, directors, officers, employees and agents, and successors and assigns (collectively, the "Indemnified Persons"), from and against all harms, including, without limitation, damages, punitive damages, liabilities, losses, demands, claims, cost recovery actions, lawsuits, administrative proceedings, orders, response costs, compliance costs, investigation expenses, consultant fees, attorneys fees, paralegal fees and litigation expenses, arising from or in connection with the exercise of any Indemnified Person's performance of their respective obligations under this Agreement. The Company, and its successors or assigns, shall pay all costs and expenses incurred by the Indemnified Persons to enforce the provisions of this indemnification. Notwithstanding anything to the contrary, the indemnification provided in this Section shall not apply to any claim, demand, cost, liability, damage or expense arising from the gross negligence or willful misconduct of an Indemnified Person. The Company may control or direct the handling of litigation necessary to defend the Indemnified Persons and to ensure that the Indemnified Persons

are held harmless, if (a) the Company uses counsel agreeable to the Indemnified Persons, as applicable, (b) such counsel consults with the Indemnified Persons, as applicable, throughout the course of any such action and (c) the Company pays all reasonable and necessary costs incurred by the Indemnified Persons in connection with such action. The obligations of the Company under this indemnification shall survive the termination of this Agreement and shall remain in force beyond the expiration of any applicable statute of limitations and the full performance of the Company's obligations hereunder.

#### ARTICLE IX. SUCCESSORS AND ASSIGNS

**Section 9.1 Binding Agreement.** 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.

**Section 9.2 Company's Right to Assignment.** Without limiting the generality of the foregoing, all or any part of the Project Area or any interest therein may, without the City's prior consent, be sold, transferred, encumbered, leased, or otherwise disposed of at any time to any Affiliate or Affiliates, and the rights of the Company named herein or any successors in interest under this Agreement or any part hereof may be assigned to any Affiliate or Affiliates at any time before, during or after development of the Project Area, whereupon the party disposing of its interest in the Project Area or assigning its interest under this Agreement shall be thereafter released from further obligation under this Agreement pertaining to the Project Area. Except as provided above or in the Equipment Lease, no other interest in this Agreement, the Project Area or the Project Equipment may be assigned without the consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.

#### ARTICLE X. MISCELLANEOUS

**Section 10.1 Exclusive Benefit.** Any obligation imposed on the Company hereunder is exclusively for the benefit of the City. No person or entity other than the City shall have standing to require satisfaction of any of the obligations contained in this Agreement or be entitled to assume that the City will require strict compliance of any of the terms contained herein.

**Section 10.2 No Personal Liability.** No member, official, or employee of the City or of the Company shall be personally liable to the other party or any successor in interest or assign of the other party, in the event of any default or breach by such party, successor or assign of any of the obligations of this Agreement.

**Section 10.3 SLDC.** The City hereby appoints SLDC as its agent for the purposes of approving amendments to the Project Specifications, carrying out inspections and performing any other administrative functions in accordance with this Agreement, and SLDC, by its execution of this Agreement, acknowledges its obligation to perform such functions and agrees to be bound hereby for the benefit of the parties to this Agreement.

**Section 10.4 Notices.** A notice, demand or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

- (a) In case of the Company, is addressed to or delivered to:

Lord & Taylor LLC  
424 5th Avenue  
New York, NY 10018  
Attn: General Counsel

with a copy to:  
Husch Blackwell LLP  
190 Carondelet Plaza, Suite 600  
St. Louis, Missouri 63105  
Attn: Jonathan W. Giokas

- (b) In case of the City, is addressed to or delivered to:

The City of St. Louis  
Office of the Mayor

City Hall, Room 200  
1200 Market Street  
St. Louis, Missouri 63103

and:

The City of St. Louis  
Office of the Comptroller  
1520 Market Street, Room 3005  
St. Louis, Missouri 63103  
Attn: Ivy Neyland-Pinkston

with a copy to:

Armstrong Teasdale LLP  
7700 Forsyth Boulevard, Suite 1800  
St. Louis, Missouri 63105  
Attn: Thomas J. Ray

and:

St. Louis Development Corporation  
1520 Market Street, Suite 2000  
St. Louis, Missouri 63103  
Attn: Rodney Crim, Executive Director

with a copy to:

St. Louis Development Corporation  
1520 Market Street, Suite 2000  
St. Louis, Missouri 63103  
Attn: Compliance Officer

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

**Section 10.5 Federal Work Authorization Program.** Simultaneously with the execution of this Agreement, the Company shall provide the City with an affidavit and documentation meeting the requirements of Section 285.530, RSMo.

**Section 10.6 Captions.** The captioned headings in this Agreement are solely for the convenience of the parties hereto and are not a part hereof and do not in any way limit or amplify the terms or provisions contained herein nor do they extend any substantive rights hereunder to any party.

**Section 10.7 Multiple Counterparts.** This Agreement may be executed in one or more counterparts, each of which, when taken together, shall constitute one and the same instrument.

**Section 10.8 Severability.** In the event any clause, covenant, paragraph or provision herein shall be declared fully or partially invalid or unenforceable, the remaining clauses, covenants, paragraphs and provisions shall remain enforceable and valid to the fullest extent allowed by law.

**Section 10.9 City's Right to Access.** The Company shall at all reasonable times (with fourteen (14) days prior written notice) allow the representative of SLDC, on behalf of the City, access to the Project Area for any purpose related to this Agreement, which SLDC deems necessary, including, but not limited to, inspection of all work being performed in connection with the rehabilitation and/or construction of improvements thereon. In the event of any inspection, the Company shall have the right at all times to accompany SLDC.

**Section 10.10 Non-Discrimination.** The Company agrees, to the extent permitted by law, to adhere to “Equal Opportunity and Non-Discrimination Guidelines” attached as Exhibit C to this Agreement (the “Guidelines”).

**Section 10.11 Waiver of Jury Trial.** To the extent not prohibited by applicable law, each of the parties hereto knowingly, voluntarily and intentionally waives any right to trial by jury of any claim, demand, action or cause of action based upon or arising under this Agreement or any of the documents attached hereto, or in any way connected with or related or incidental to the discussions, dealings or actions of the parties to this Agreement, whether now existing or hereafter arising, at law or in equity, including, without limitation, contract claims, tort claims, breach of duty claims and all other common law or statutory claims. Each of the Company and the City hereby consents and agrees that any such claim, demand, action or cause of action shall be decided by a trial court without a jury, and that either party to this Agreement may file an original counterpart or a copy hereof with any court as written evidence of the consent of the Company and the City to the waiver of its right to trial by jury. The Company and the City each acknowledges and agrees that it has received full and sufficient consideration for this provision and that this provision is a material inducement for the other entering into this Agreement.

**Section 10.12 Choice of Law.** This Agreement shall be construed and enforced in accordance with the internal laws of the State of Missouri applicable to contracts performed wholly therein without reference to its conflict of laws principles.

**Section 10.13 Entire Agreement.** This Agreement constitutes the entire agreement between the parties and there are no other agreements or representations other than those contained in this Agreement or specifically referenced herein. This Agreement may not be amended, modified or waived orally, but only by a writing signed by the party against whom enforcement of such amendment, modification or waiver is sought.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto, in consideration of the mutual covenants set forth herein and intending to be legally bound, have caused this Development Agreement to be executed and delivered as of the date first written above.

“CITY”

**THE CITY OF ST. LOUIS, MISSOURI**, a city and political subdivision of the State of Missouri

By: \_\_\_\_\_  
Francis G. Slay, Mayor

By: \_\_\_\_\_  
Darlene Green, Comptroller

(SEAL)

\_\_\_\_\_  
Parrie May, City Register

Approved as to form:

\_\_\_\_\_  
Patricia A. Hageman, City Counselor

“COMPANY”

**LORD & TAYLOR LLC**, a Delaware limited liability company

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

IN WITNESS WHEREOF, the undersigned has executed this Development Agreement and acknowledges and accepts its responsibilities and obligations thereunder, which are being undertaken for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

“SLDC”

ST. LOUIS DEVELOPMENT CORP., a Missouri non-profit corporation

By: \_\_\_\_\_  
Rodney Crim, Executive Director

**EXHIBIT A  
Description of Development Area**

The “Redevelopment Area” or “Area” as described in Ordinance No. 69021 of The City of St. Louis, Missouri.

**EXHIBIT B  
Description of Project Area**

The “Project Area” consists of the 10th, 11th, and 12th floors (numbered as Suites 1000, 1100, and 1200, respectively) of the building located within the Development Area and all common areas within the building located within the Development Area.

**EXHIBIT C  
Equal Opportunity and Non-Discrimination Guidelines**

In any contract for Work, the Company, its contractors and subcontractors shall comply with all federal, state and local laws, ordinances, or regulations governing equal opportunity and nondiscrimination laws (the “Nondiscrimination Laws”). Moreover, the Company shall contractually require its contractors and subcontractors to comply with the Nondiscrimination Laws.

The Company and its contractors will not contract or subcontract with any party known to have been found in violation of any such laws, ordinances, regulations or these guidelines.

The Company shall fully comply with Executive Order #28 dated July 24, 1997 (as may be extended) relating to minority and women-owned business participation in City contracts.

The Company agrees for itself and its successors and assigns, that there shall be covenants to ensure that there shall be no discrimination on the part of the Company, its successors or assigns 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 property, or any improvements erected or to be erected in the Area or any part thereof, and those covenants shall run with the land and shall be enforceable by the City and the United States of America, as their interests may appear in the project.

The Company shall fully comply (and ensure compliance by “anchor tenants”) with the provisions of St. Louis City Ordinance #60275, which is codified at Chapter 3.90 of the Revised Ordinances of The City of St. Louis.

The Company shall enter into a Memorandum of Understanding with the St. Louis Agency on Training and Employment (SLATE), which Memorandum of Understanding shall allow for SLATE to refer qualified candidates for non-entry level positions to the Company for further consideration and for the Company to cooperate with SLATE to post job opportunities with SLATE and to participate in certain outreach events, including, but not limited to, job fairs and workshops.

**EXHIBIT D  
Form of Certificate of Substantial Completion**

The undersigned, Lord & Taylor LLC (the “Company”), pursuant to that certain Development Agreement dated as of \_\_\_\_\_ between The City of St. Louis (the “City”) and Company (the “Agreement”) hereby certifies to the City, acting by and through the St. Louis Development Corporation (“SLDC”) as follows:

1. That as of \_\_\_\_\_, \_\_\_\_\_, the construction of the Work (as that term is defined in the Agreement) has been substantially completed in accordance with the Agreement.
2. That the Work with respect to the Project has been substantially completed or caused to have been completed pursuant to the Agreement.

3. The Work has been performed in a workmanlike manner and substantially in accordance with the Project Specifications (as defined in the Agreement).

4. This Certificate of Substantial Completion is being issued by the Company to the SLDC in accordance with the Agreement to evidence the Company's satisfaction of all material construction obligations and covenants with respect to such Work.

5. The acceptance (below) or the failure of the SLDC to object in writing to this Certificate within fifteen (15) business days of the date of delivery of this Certificate to the SLDC (which written objection, if any, must be delivered to the Company prior to the end of such fifteen (15) days) shall evidence the satisfaction of the Company's agreements and covenants to perform said Work.

Upon such acceptance by the SLDC, the Company 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 \_\_\_\_\_, 20\_\_.

**LORD & TAYLOR LLC**

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

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

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

**ACCEPTED:**

**ST. LOUIS DEVELOPMENT CORPORATION**

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

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

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

(Insert Notary Form(s) and Legal Description)

**Approved: November 27, 2012**