

## *St. Louis City Ordinance 64462*

FLOOR SUBSTITUTE

BOARD BILL NO. [98] 99

INTRODUCED BY ALDERMAN LYDA KREWSON

An Ordinance authorizing and directing the Mayor and the Comptroller, on behalf of the City of St. Louis, to enter into and execute an Agreement with the Missouri Development Finance Board and Forest Park Forever, Inc. pertaining to tax credits of up to a total of Six Million Dollars (\$6,000,000) for contributions for the purpose of funding improvements to Forest Park; and further authorizing one or more disbursing agreements supplementing the terms of Disbursement Agreements authorized by Ordinance 64122 with provisions which are consistent with the Agreement authorized by this ordinance; and containing an emergency clause.

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

SECTION ONE. The Mayor and the Comptroller are hereby authorized and directed, on behalf of the City of St. Louis, to enter into and execute an Agreement with the Missouri Development Finance Board and Forest Park Forever, Inc. pertaining to tax credits of up to a total of Six Million Dollars (\$6,000,000) for contributions for the purpose of funding improvements to Forest Park. Such Agreement shall substantially read in words and figures as the attached Agreement, with such modifications and revisions thereto as are consistent with this Ordinance and are approved by the officers executing the same and by the City Counselor, such officer's signatures thereon being conclusive evidence of their approval. Such Agreement is hereby made part of this Ordinance and is on file in the Register's Office.

SECTION TWO. The Comptroller and the President of the Board of Public Service are authorized to enter into and execute, on behalf of the city, one or more disbursing agreement among the City, Forest Park Forever, Inc., the City's Program Manager and the Disbursing Agent (as those terms are defined in the agreement between the City and Forest Park Forever, Inc. authorized by Ordinance 64122), which may supplement the terms of Disbursing Agreements authorized by Ordinance 64122 by providing that proceeds of Contributions as defined in the attached Agreement shall be held in a separate account by the Disbursing Agent, and that disbursements from such account shall require the approval of the Missouri Development Finance Board.

SECTION THREE. Emergency Clause. This being an Ordinance for the immediate preservation of public peace, health and safety, it is hereby declared to be an immediate measure within the meaning of Sections 19 and 20 of Article IV of the Charter of the City of St. Louis and therefore this Ordinance shall become effective immediately upon its passage and approval by the Mayor.

July 15, 1998-6  
Doc. No. TCA6

**TAX CREDIT AGREEMENT**  
(Forest Park Forever Project)

THIS TAX CREDIT AGREEMENT, dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_ (the "Agreement"), by and among the MISSOURI DEVELOPMENT FINANCE BOARD, a body corporate and politic of the State of Missouri (the "Board"), the CITY OF ST. LOUIS, MISSOURI, a charter city organized and existing under its charter and the constitution and the laws of the State of Missouri (the "Public Entity"), and the FOREST PARK FOREVER, INC., a Missouri not-for-profit corporation ("Nonprofit Entity");

WITNESSETH:

WHEREAS, Section 100.286.6 of the Revised Statutes of Missouri (the "Tax Credit Statute") provides that any taxpayer shall be entitled to a tax credit against any tax otherwise due under the provisions of Chapter 143, R.S.Mo, excluding withholding tax imposed by Sections 143.191 to 143.261, R.S.Mo, Chapter 147, R.S.Mo, or Chapter 148, R.S.Mo, in the amount of fifty percent of any amount contributed in money or property by the taxpayer to the development and reserve fund, the infrastructure development fund or the export finance fund during the taxpayer's tax year, provided, however, the total tax credits awarded in any calendar year beginning after January 1, 1994, shall not be the greater of ten million dollars or five percent of the average growth in general revenue receipts in the preceding three fiscal years;

WHEREAS, the Public Entity and the Nonprofit Entity have requested that the Board accept contributions from donors and make the proceeds of such contributions available to the Public Entity for the purpose of paying a portion of the cost of financing the project described on Exhibit A hereto (the "Project"), all as more fully described in the application for assistance submitted to the Board (the "Project Application");

WHEREAS, the Public Entity and the Nonprofit Entity entered into an Agreement dated September 9, 1997, pertaining to the expenditure of funds raised by the Nonprofit Entity for the benefit of the Public Entity's Forest Park (the "City-Forest Park Forever Agreement") authorized by Ordinance 64122 approved July 23, 1997;

WHEREAS, at meetings of the Board held on April 21, 1998 and May 19, 1998, the Public Entity and the Nonprofit Entity made written and oral presentations to the Board concerning the Project and the Project Application;

WHEREAS, the Project will significantly benefit St. Louis, Missouri and the State of Missouri by: (i) further enhancing educational, recreational and cultural opportunities for residents of St. Louis, Missouri and the State of Missouri, and (ii) increasing local and state tax revenues;

WHEREAS, pursuant to a motion of the Board adopted at its meeting held May 19, 1998, the Board approved the Project Application and directed the Executive Director to work with the Public Entity and the Nonprofit Entity in the preparation of this Agreement for the purpose of setting forth the terms and conditions upon which contributions will be accepted by the Board and how the proceeds of such moneys will be applied;

WHEREAS, the Board, the Public Entity and the Nonprofit Entity desire to enter into this Agreement for the purpose of setting forth the terms and conditions pursuant to which the Board will accept contributions and deposit such contributions into the infrastructure development fund for the purposes set forth herein, all subject to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, the Board, the Public Entity and the Nonprofit Entity hereby covenant and agree as follows:

## ARTICLE I DEFINITIONS

In addition to the terms defined in the Recitals to this Agreement and elsewhere herein, as used in this Agreement the following terms shall have the following meanings:

"Application" means the request for assistance submitted to the Board by the Public Entity and the Nonprofit Entity, a copy of which is on file at the offices of the Board and the City Register.

"Contributions Account" means the segregated account to be established by the Disbursing Agent for the Contributions.

"Contribution" means any contribution received by the Board pursuant to and in accordance with this Agreement.

"Disbursement Request" means the Disbursement Request referred to in Section 4.3 hereof and the form of which is attached hereto as Exhibit B.

"Donor" means any person making a contribution to the Board.

"Disbursing Agent" means Commonwealth Land Title Insurance Company, as Disbursing Agent under the Disbursing Agreement.

"Disbursing Agreements" means the Project Disbursing Agreements entered into from time to time, among the Public Entity, the Private Entity and the Disbursing Agent pursuant to the City-Forest Park Forever Agreement and this Agreement.

"Local Jurisdiction" means the City of St. Louis, Missouri.

"Material" means a standard for materiality pursuant to which any change or amendment would, when added to all such other changes or amendments, result in a prudent person considering such change or amendment material or would impact any individual line item of the Project Budget by 5% or more. Any change shall be deemed Material if the Board notifies the Public Entity and the Nonprofit Entity, prior to the effective date of such change, that the Board considers such change to be Material. Notwithstanding the foregoing, no change to any line item shall be deemed Material if the cost of such change (when added to all similar changes which were not Material) is less than 5% of such line item. Notwithstanding the foregoing, reallocations of costs between or among line items which do not change the total Project Budget by more than 5% shall not be deemed Material; increases of line items which do not require a reduction of another line item shall not be deemed Material; and reallocations of costs from the Project Budget to other projects within the Forest Park Master Plan Estimates shall not be deemed Material.

"Maximum Contributions" shall have the meaning set forth in Section 3.1 hereof.

"Maximum Tax Credits" shall have the meaning set forth in Section 3.1 hereof.

"Project" means the infrastructure projects described in Exhibit A, and any additions, modifications, replacements, repairs, reconstruction, restoration or substitutions thereto, approved by the Board.

"Project Budget" means the Project Budget described on Exhibit C hereto, and any amendments and additions thereto made in accordance with Section 5.8(a) of this Agreement. The Project Budget is for a period of time which will extend beyond the period in which Contributions will be accepted and Tax Credits issued under this Agreement.

"Project Costs" means all reasonable and necessary costs and expenses, as more fully described on Exhibit D, for the property described in Exhibit A.

"Tax Credits" means tax credits issued by the Board in accordance with the Tax Credit Statute and this Agreement in consideration of Contributions.

"Tax Credit Statute" shall have the meaning set forth in the Recitals.

"Total Forest Park Master Plan Estimates" means the Forest Park Master Plan Estimates described on Exhibit C hereto

## ARTICLE II FINDINGS AND DETERMINATIONS; REPRESENTATIONS AND WARRANTIES

Section 2.1. Board's Determination of Project Benefit. The Board hereby finds and determines as follows:

(a) The Project will significantly benefit St. Louis, Missouri and the State of Missouri by: (i) further enhancing educational, recreational and cultural opportunities for residents of St. Louis, Missouri and the State of Missouri, and (ii) increasing local and state tax revenues;

(b) The benefits to be derived by the State of Missouri are expected to exceed the benefits provided by the Board by this Agreement;

(c) The Board's participation is a material precondition to the Nonprofit Entity's participation in the Project, and Nonprofit Entity could not complete its participation in the Project without the assistance provided by the Board.

Section 2.2. Public Entity's Determination of Project Benefit and Representations and Warranties. The Public Entity hereby finds and determines as follows:

(a) The Project will significantly benefit St. Louis, Missouri and the State of Missouri by: (i) further enhancing educational, recreational and cultural opportunities for residents of St. Louis, Missouri and the State of Missouri, and (ii) increasing local and state tax revenues;

(b) The benefits to be derived by the State of Missouri are expected to exceed the benefits provided by the Board by this Agreement;

(c) The Public Entity (1) is a charter city organized and existing under its charter, the constitution and the laws of the State, and (2) its execution and delivery of this agreement has been duly authorized by ordinance duly passed by the Public Entity.

(d) The execution and delivery of this Agreement by the Public Entity will not result in a breach of any of the terms of, or constitute a default under, any indenture, mortgage, deed of trust, lease or other agreement or instrument to which the Public Entity is a party or by which it or any of its property is bound or its bylaws or any of the constitutional or statutory rules or regulations applicable to the Public Entity or its property.

Section 2.3. Nonprofit Entity's Determination of Project Benefit and Representations and Warranties. The Nonprofit Entity hereby represents and warrants as follows:

(a) The Project will significantly benefit St. Louis, Missouri and the State of Missouri by: (i) further enhancing educational, recreational and cultural opportunities for residents of St. Louis, Missouri and the State of Missouri, and (ii) increasing local and state tax revenues;

(b) The benefits to be derived by the State of Missouri are expected to exceed the benefits provided by the Board by this Agreement;

(c) Private contributions in the required amount could not be raised by the Nonprofit Entity without the assistance provided by the Board.

(d) The Nonprofit Entity (1) is a not-for-profit corporation organized and existing under the laws of the State of Missouri, (2) has lawful power and authority to execute and deliver this Agreement and to carry out its obligations thereunder and hereunder, and (3) by all necessary corporate action has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers.

(e) The execution and delivery of this Agreement by the Nonprofit Entity will not result in a breach of any of the terms of, or constitute a default under, any indenture, mortgage, deed of trust, lease or other agreement or instrument to which the Nonprofit Entity is a party or by which it or any of its property is bound or its bylaws or any of the constitutional or statutory rules or regulations applicable to the Nonprofit Entity or its property.

Section 2.4. No Private Benefit. The Public Entity and the Nonprofit Entity represent and warrant that no portion of the Project or the proceeds of the Contributions shall benefit any private person, except for such benefits as may be conferred to private persons through the ordinary course of business of the parties in the development, construction and operation of the Project, and in furtherance of the Nonprofit Entity's charitable purposes and the public purposes of the Board and the Public Entity.

### ARTICLE III CONTRIBUTIONS AND TAX CREDITS

Section 3.1. Agreement to Accept Contributions and Issue Tax Credits. Subject to the requirements set forth herein, the Board hereby agrees to accept Contributions from Donors in a maximum aggregate amount of \$12,000,000 ("Maximum Contributions"), resulting in the potential issuance of Tax Credits in the maximum amount of \$6,000,000 (the "Maximum Tax Credits") and to deposit such Contributions into the Board's infrastructure development fund, and to issue such Donors' Tax Credits in an amount not to exceed the lesser of (i) 50% of the amount of such Contribution, or (ii) the then current maximum amount authorized under the Tax Credit Statute. Notwithstanding that the Maximum Tax Credits available hereunder equals \$6,000,000, the Public Entity and the Nonprofit Entity agree that the issuance of the Maximum Tax Credits in each of the following calendar years shall be limited as follows:

Calendar Year	Annual Maximum Amount
1998	\$2,000,000
1999	\$2,000,000
2000	\$2,000,000

The amount of each Contribution shall be determined as provided in the Tax Credit Statute and as provided herein.

Any portion of such Annual Maximum Amount for which the Nonprofit Entity has not received written commitments for contributions for the current calendar

year prior to December 1 in a form acceptable to the Board shall be forfeited effective midnight on each such December 1 of the calendar year set forth above. This paragraph shall not restrict the owner of any Tax Credit from utilizing the benefits of the carryforward provisions contained in the Tax Credit Statute.

Section 3.2. Submission of Form 100. The Board shall process each Contribution which is accompanied by a properly completed Form 100 and any other documents required by Missouri law. Any Contribution which is received for which the Board does not have a properly completed Form 100 and any other documents required by Missouri law shall be held by the Board until such documents are provided or, at the option of the Board, returned to the Donor with a written notation stating why such Contribution is being returned. A copy of each returned donation shall also be sent to the Nonprofit Entity. The Board reserves the right to require any additional information which the Board determines to be necessary to comply with the Board's statutes, as they may be amended from time to time, including but not limited to, the "Certificate of Reportable Contributions" from any Donor (which is not an individual).

Section 3.3. Minimum Donation. The Board shall not accept any donation in an amount less than \$10,000. Any donation which is received for less than such minimum amount shall be returned to the Donor with a written notation stating that donations must be made in the minimum amount of \$10,000. A copy of each returned donation shall also be sent to the Nonprofit Entity. Section 3.4. Processing Donations. The Board shall promptly process all completed donations. The Board expects that once a properly completed Form 100 and all other required documents are received by the Board, together with the Contribution, the Board will issue or cause to be issued the Tax Credits within 45 calendar days, but not more frequently than once a month.

Section 3.5. Determination of Amount of Contribution. The amount (or value) of each Contribution shall be determined by the Board as follows:

Cash. The amount (or value) of cash Contributions shall be the face amount of such Contribution.

Marketable Securities. The amount (or value) of marketable securities shall be the proceeds received by the Board from the liquidation of such marketable securities in accordance with the Donor's instructions approved and accepted by the Board, less the Board's costs of selling such securities.

Unmarketable Securities and Other Property. No contributions of unmarketable securities or other property shall be permitted under this Agreement.

All such determinations by the Board shall, absent manifest error, be conclusive and binding upon the Donors, the Public Entity, and the Nonprofit Entity. The Board reserves the right to reject any Contribution.

Section 3.6. Nonprofit Entity Notice of Estimated Usable Tax Credits. On or before each October 1, commencing October 1, 1998, the Nonprofit Entity shall notify the Board in writing of that portion of the Maximum Tax Credits the Nonprofit Entity intends to utilize (the "Estimated Usable Tax Credits") prior to the following December 1. In the event such amount is less than the Maximum Tax Credits for such year, the Board shall be entitled to use the difference between the Maximum Tax Credits and the Estimated Usable Tax Credits for any other project of the Board. The Nonprofit Entity understands and agrees that the maximum amount of tax credits the Board may issue in each calendar year is limited by the Tax Credit Statute. The Nonprofit Entity agrees to fully cooperate with the Board's efforts to use any tax credits provided hereunder which are not expected to be used by the Nonprofit Entity.

Section 3.7. Donations in Excess of Maximum Contributions. The Board, the Public Entity and the Nonprofit Entity agree that in the event the Board receives in any year Contributions in excess of the Maximum Contributions set forth in Section 3.1 hereof, the Board shall return such donation to the Donor thereof with a statement that Tax Credits are no longer available for such donations.

#### ARTICLE IV

##### APPLICATION OF CONTRIBUTIONS

Section 4.1. Board's Application of Contributions. All Contributions received by the Board shall be deposited in the same manner as other amounts received by the Board, and the amount of such Contributions shall be maintained by the Board on its books and records (the "Board Project Account"). All moneys on deposit in the Board Project Account shall be invested by the Board in accordance with its investment guidelines. All interest earnings on such amounts shall be deposited into the Board Project Account and be available for disbursement as provided herein. Section 4.2. Disbursements from the Board Project Account.

(a) The Board shall disburse amounts from the Board Project Account to the Disbursing Agent upon receipt of fully executed disbursement requests in the form attached hereto as Exhibit B (each a "Disbursement Request"). The Board

shall be entitled to rely upon each Disbursement Request in disbursing amounts from the Board Project Account and it shall have no duty to conduct any investigation into the authenticity of the signatures on such Disbursement Request or the accuracy of the information set forth therein.

(b) All Disbursement Requests shall be submitted to the Board for approval as provided in Section 4.3 hereof. All payments from the Board Project Account shall be made payable to the Disbursing Agent, with instructions to deposit such amounts into the Contributions Account. Such amounts shall then be available for further disbursement by the Disbursing Agent as provided in the Disbursing Agreement and upon approval of the Board.

(c) The Board shall not process any Disbursement Request until the Board has received satisfactory evidence that the Public Entity has made the required expenditures for the year and in the amount shown in Section 5.10. For example, any Contributions received in fiscal year 1999 shall not be expended until the Public Entity makes the expenditure required for fiscal year 1999. Contributions received in 1999 which are not expended in fiscal year 1999 may be expended in 2000 without the requirement that the required expenditures for fiscal year 2000 have been made. However, the requirement of this subparagraph shall apply again to Contributions received in 2000 and 2001.

(d) In no event shall the Nonprofit Entity submit more than one Disbursement Request to the Board each month, unless approved by the Board's Executive Director.

Section 4.3. Processing of Disbursement Requests. Within ten (10) business days after the submission of a fully completed Disbursement Request to the Board, the Executive Director shall process such request for payment or immediately notify the Nonprofit Entity of any information needed to process such Disbursement Request.

Section 4.4. Deduction of Board Fees and Expenses. As Contributions are received the Board shall deduct an administrative fee in an amount equal to 2% of the amount of Contributions up to and including \$1,000,000 and an amount equal to 1% of the amount of the total Contributions in excess of \$1,000,000, and its actual out-of-pocket expenses (including the fees and expenses of the Board's counsel) incurred by the Board in the execution and administration of this Agreement and shall furnish the Public Entity and the Nonprofit Entity a detailed description of such deductions at least quarterly. Concurrently with the execution of this Agreement (or if no moneys are on deposit in the Board Project Account at the time this Agreement is executed, then as soon thereafter

as amounts are designated therein) the Board shall deduct from the Board Project Account the legal fees and expenses of Gilmore & Bell, P.C. in an agreed upon amount of \$12,500. Such payment shall cover all legal fees and expenses of the Board relating to the Board's approval of the Application and the execution of this Agreement.

Section 4.5. Return of Contributions. In the event the Nonprofit Entity and the Public Entity shall notify the Board that the Project has been abandoned for any reason or upon an event of default under Section 6.1 hereof, then all Contributions held by the Board pursuant to Section 4.1 hereof or held by the Public Entity or the Nonprofit Entity pursuant to Section 4.2 hereof shall be applied as follows: (i) first, to reimburse the State for the cost of Tax Credits issued hereunder and actually used by the Donor with respect to such Contributions, (ii) second, if requested by a Donor in writing, returned to the Donor after deducting any amount due to the State under (i) above, and (iii) third, used to pay for infrastructure projects the Board and the Public Entity mutually determine are beneficial to the Local Jurisdiction and the State of Missouri. The Board agrees that it will provide a written notice to each Donor who would be entitled to any Contribution return. In determining the cost to the State of such Tax Credits the Board shall assess interest on such Tax Credits in an amount equal to The Bond Buyer's 20 Bond Index published in The Bond Buyer on the day such calculation is made. Notwithstanding any other provision of this Agreement, Contributions which are expended in accordance with this Agreement shall not be subject to return nor shall such credits be subject to recapture.

## ARTICLE V

### THE PROJECT; RECORDS AND REPORTS

Section 5.1. Access to the Project and Inspection; Operation of the Project. The Board and the duly authorized agents of the Board shall have the right, at all reasonable times upon the furnishing of reasonable advance notice under the circumstances, to enter upon the Project and to examine and inspect the Project. The Board and the duly authorized agents of the Board shall also be permitted, at all reasonable times upon reasonable advance notice under the circumstances, to examine the books and records of the Public Entity and the Nonprofit Entity with respect to the Project and the Contributions and the obligations of the Public Entity and the Nonprofit Entity hereunder. In no event shall any such request be made of the Public Entity more than quarterly.

Section 5.2. Reports and Financial Statements by the Nonprofit Entity. Beginning on the date of the execution of this Agreement and ending one year following the later of the final disbursement of any Contributions held by the

Board or the Disbursing Agent and the payment of all costs in connection with the Project payable from such amounts, the Nonprofit Entity shall cause to be furnished to the Board:

(a) All audit and compliance reports prepared for submission to any federal or state agency or authority as soon as practicable after they are available.

(b) Any other reports and any and all financial statements prepared by employees or agents of the Nonprofit Entity (including the Nonprofit Entity's accountants) relating to the financial condition of the Nonprofit Entity and the status of the Project for distribution to the Public Entity or members of the Nonprofit Entity's governing board as soon as practicable after they are available.

(c) As soon as practicable after they are available but in no event more than 60 days after the end of each quarterly fiscal period of each fiscal year, the unaudited financial statements of the Nonprofit Entity for such period.

(d) As soon as practicable after they are available but in no event more than 150 days after the last day of each fiscal year, the audit report and audited financial statements of the Nonprofit Entity for such fiscal year certified by the Nonprofit Entity's independent certified public accountants prepared in accordance with generally accepted accounting principles.

(e) As soon as practicable after they are filed copies of the IRS Form 990 and Form 990 T filed with the Internal Revenue Service for the most recent tax year.

(f) Copies of all (i) loan documents executed by the Nonprofit Entity, (ii) lease or sublease agreements (having a term of at least one year or more) relating to the Project and executed by the Nonprofit Entity and (iii) management or consulting agreements relating to the Project and executed by the Nonprofit Entity.

(g) Such additional information as the Board may reasonably request concerning the Nonprofit Entity, including such statistical and other operating information requested on a periodic basis.

Section 5.3. Reports by the Board to the Nonprofit Entity and the Public Entity. Upon the written request of the Nonprofit Entity or the Public Entity, the Board shall furnish such information concerning the Board's receipt and disbursement

of Contributions as the Nonprofit Entity or the Public Entity may reasonably request, but not more frequently than monthly.

Section 5.4. Reports by the Public Entity to the Board. The Public Entity shall furnish the Board with any copies of any reports relating to the Project prepared by it for distribution to the Nonprofit Entity or the governing body of the Public Entity.

Section 5.5. Indemnification and Release.

(a) The Nonprofit Entity releases the Board and the Public Entity from, and agrees that the Board shall not be liable for, and indemnifies the Board and the Public Entity against, any liabilities, losses, damages (including attorneys' fees), causes of action, suits, claims, costs and expenses, demands and judgments of any nature imposed upon or asserted against the Board or the Public Entity (except to the extent that any of the foregoing arises as a result of the gross negligence or willful misconduct of the Board or the Public Entity, as applicable, or any of their officials, commissioners, directors, officers, attorneys, accountants, employees or agents) on account of: (i) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the acquiring, constructing, demolishing, renovating, improving and operation of the Project; (ii) any breach or default on the part of the Nonprofit Entity or any of its agents, contractors, servants, employees or licensees in the performance of any covenant or agreement of the Nonprofit Entity under this Agreement or any related document; (iii) violation of any law, ordinance or regulation affecting the ownership, occupancy or use of the Project; (iv) any loss suffered by any Donor as a result of the inability of the Donor to use any Tax Credit issued by the Board, other than as a result of the failure of the Board to issue such Tax Credit upon receipt by the Board of the necessary information, (v) any loss resulting from any environmental violation at the Project, and (vi) any claim or action or proceeding with respect to the matters set forth in subsections (i), (ii), (iii), (iv) and (v) above brought thereon.

(b) In case any action or proceeding is brought against the Board or the Public Entity in respect of which indemnity may be sought hereunder, the Board and/or the Public Entity shall promptly give notice of that action or proceeding to the Nonprofit Entity, and the Nonprofit Entity upon receipt of that notice shall have the obligation and the right to assume the defense of the action or proceeding; provided, that failure of a party to give that notice shall not relieve the Nonprofit Entity from any of its obligations under this Section unless that failure prejudices the defense of the action or proceeding by the Nonprofit

Entity. Any one or more of the indemnified parties shall have the right to employ separate counsel with respect to any such claim or in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such indemnified party or indemnified parties unless the employment of such counsel has been specifically authorized, in writing, by the Nonprofit Entity or the indemnified parties reasonably conclude that there is a conflict of interest that would prevent counsel for the Nonprofit Entity from adequately representing both the Nonprofit Entity and the indemnified parties. The Nonprofit Entity shall not be liable for any settlement without its consent.

(c) The indemnification set forth above is intended to and shall include the indemnification of all affected officials, directors, officers, attorneys, accountants, financial advisors and employees of the Board and the Public Entity. That indemnification is intended to and shall be enforceable by the Board and the Public Entity to the full extent permitted by law.

(d) To the extent permitted by law, the Public Entity releases the Board from, and agrees that the Board shall not be liable for, any liabilities, losses, damages (including attorneys' fees), causes of action, suits, claims, costs and expenses, demands and judgments of any nature imposed upon or asserted against the Public Entity (except to the extent that any of the foregoing arises as a result of the gross negligence or willful misconduct of the Board or the Public Entity, as applicable, or any of their officials, commissioners, directors, officers, attorneys, accountants, employees or agents) on account of: (i) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the acquiring, constructing, demolishing, renovating, improving and operation of the Project; (ii) any breach or default on the part of the Nonprofit Entity in the performance of any covenant or agreement of the Nonprofit Entity under this Agreement or any related document, or arising from any act or failure to act by the Nonprofit Entity, or any of its agents, contractors, servants, employees or licensees; (iii) violation by persons other than the Board, its members or agents of any law, ordinance or regulation affecting the ownership, occupancy or use of the Project; (iv) any loss suffered by any Donor as a result of the inability of the Donor to use any Tax Credit issued by the Board, other than as a result of the failure of the Board to issue such Tax Credit upon receipt by the Board of the necessary information, (v) any loss resulting from any environmental violation at the Project, and (vi) any claim or action or proceeding with respect to the matters set forth in subsections (i), (ii), (iii), (iv) and (v) above brought thereon.

Section 5.6. Further Assurances and Corrective Instruments. The Board, the Public Entity and the Nonprofit Entity from time to time will execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project and for carrying out the intention or facilitating the performance of this Agreement.

Section 5.7. Litigation Notice. The Nonprofit Entity shall give the Board and/or the Public Entity prompt notice of any action, suit or proceeding by it or against it at law or in equity, or before any governmental instrumentality or agency, which, if adversely determined, would materially and adversely affect the Project or the performance of its obligations hereunder. The Public Entity shall give the Board and/or the Nonprofit Entity prompt notice of any action, suit or proceeding by it or against it at law or in equity, or before any governmental instrumentality or agency, which, if adversely determined, would materially and adversely affect the Project or the performance of its obligations hereunder. The Board shall give the Public Entity and/or the Nonprofit Entity prompt notice of any action, suit or proceeding by it or against it at law or in equity, or before any governmental instrumentality or agency, which, if adversely determined, would materially and adversely affect the Tax Credits, the Project or the performance of its obligations hereunder.

Section 5.8. Affirmative Covenants of the Nonprofit Entity and Public Entity. The Nonprofit Entity and the Public Entity covenant and agree that so long as this Agreement is in effect, the Nonprofit Entity and the Public Entity will strictly comply with each of the following requirements:

(a) All Contributions shall be expended strictly in accordance with the Project Budget. The Project Budget may be amended by the Public Entity from time to time; provided, however, that changes to the Project Budget which are Material will be made only with the written consent of the Board, such consent not to be unreasonably withheld.

(b) Changes to the Project which are Material may only be made with the written approval of the Board.

Section 5.9. Affirmative Covenants of the Nonprofit Entity.

(a) The Nonprofit Entity shall maintain in effect a designation from the Internal Revenue Service as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code").

(b) The Nonprofit Entity is not presently and shall not engage in any "unrelated trade or business," as defined in Section 513 of the Code that would adversely affect its status as an organization described in Section 501(c)(3) of the Code.

Section 5.10. Negative Covenant of the Public Entity. The Public Entity covenants and agrees that so long as this Agreement is in effect, the Public Entity will, to the extent within its control, refrain from taking any action that would cause the Nonprofit Entity to violate any of the affirmative covenants contained in this Agreement. The Public Entity shall promptly notify the Board in writing if it receives actual notice of any default by the Nonprofit Entity or it under this Agreement.

Section 5.11. Affirmative Covenants of the Public Entity. The Public Entity covenants and agrees that so long as this Agreement is in effect, the Public Entity will, subject to annual appropriation, expend the following amounts in each of the years shown for the Forest Park Master Plan Estimates or Forest Park operations:

Fiscal Year	Expenditure Required
1999	\$3,000,000
2000	\$3,000,000
2001	\$3,000,000
2002	\$3,000,000
2003	

## ARTICLE VI

### MISCELLANEOUS PROVISIONS

Section 6.1. Default. In the event the Nonprofit Entity shall fail to perform any material covenant, condition or other provision of this Agreement and such failure shall continue for 30 days after written notice thereof by the Board, the Board shall be entitled to retain all Contributions in the Board Project Account; provided, however, if such failure is correctable but is such that it cannot be corrected within such 30-day period, such failure shall not constitute a failure within the meaning of this Section 6.1 if the Nonprofit Entity is diligently pursuing such corrective action and such failure is corrected within 120 days. Amounts retained by the Board pursuant to this Section shall be applied in accordance with Section 4.5 hereof.

Section 6.2. Notices. Any notice, request, complaint, demand or other communication required or desired to be given or filed under this Agreement

shall be in writing and shall be deemed duly given or filed if the same shall be delivered by courier or overnight delivery service or duly mailed by first class mail, postage prepaid, addressed as follows:

(a) To the Board:

Missouri Development Finance Board  
Harry S. Truman Bldg.  
301 W. High Street, Room 680  
Jefferson City, Missouri 65101  
Attention: Executive Director  
Telephone No. (573) 751-8479  
Fax No. (573) 526-4418

(b) To the Public Entity:

City of St. Louis, Missouri  
1200 Market Street  
St. Louis, Missouri 63103  
Attention: Chief of Staff  
Telephone No. (314) 622-3201  
Fax No. (314) 622-4601

Comptroller  
Room 212, City Hall  
1200 Market Street  
St. Louis, Missouri 63103  
Phone: (314) 622-3287  
Fax: (314) 622-4026

Director's Office  
Department of Parks, Recreation and Forestry  
5600 Clayton Road - Forest Park  
St. Louis, Missouri 63110  
Phone: (314) 535-5050  
Fax: (314) 535-3901

(c) To the Nonprofit Entity:

Forest Park Forever  
5595 Grand Drive in Forest Park  
St. Louis, Missouri 63112

Attention: Executive Director  
Telephone No. (314) 367-7275  
Fax No. (314) 367-7622

The Board, the Public Entity and the Nonprofit Entity may from time to time designate, by notice given hereunder to the others of such parties, such other address to which subsequent notices, certificates or other communications shall be sent.

Section 6.3. Severability. If any provision of this Agreement shall be held or deemed to be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatsoever.

Section 6.4. Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 6.5. Governing Law. This Agreement shall be governed exclusively by and be construed in accordance with the applicable laws of the State of Missouri.

Section 6.6. Term of the Agreement. This Agreement shall terminate upon the latter of the expenditure of all funds on deposit in the Contributions Account derived from the Board Project Account or June 30, 2001; provided, however, the representations, warranties and indemnification provisions of this Agreement shall survive the termination of this Agreement.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be signed in its respective name and behalf and its official seal to be hereunto affixed and attested by its duly authorized officers, all as of the date first above written.

MISSOURI DEVELOPMENT FINANCE BOARD

By: \_\_\_\_\_  
Robert V. Miserez, Executive Director

CITY OF ST. LOUIS, MISSOURI

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

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

ATTEST:

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

Approved as to Form:

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

FOREST PARK FOREVER, INC.

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

EXHIBIT A

DESCRIPTION OF THE PROJECT

Intersections, street lights, roadways, walks, curbs, drainage, walking paths, running paths, bridges and culverts (and infrastructure improvements related thereto) in connection with the renovation and reconstruction of Forest Park located in St. Louis, Missouri

EXHIBIT B

FORM OF DISBURSEMENT REQUEST

Disbursement Request No. \_\_\_\_

To: Missouri Development Finance Board

Harry S. Truman Bldg.  
301 W. High Street, Room 680  
Jefferson City, Missouri 65101  
Attn: Finance Director  
Fax No. (314) 526-4418

Re: Forest Park Forever - Disbursement Request from the Board Project Account

You are hereby requested pursuant to Section 4.2 of the Tax Credit Agreement dated as of the \_\_\_ day of \_\_\_\_\_, 199\_\_ (the "Agreement"), to issue a check to Commonwealth Land Title Insurance Company (◆Commonwealth◆) as disbursing agent pursuant to that certain Project Disbursing Agreement dated as of \_\_\_\_\_ (the ◆Disbursing Agreement◆) to permit Commonwealth to issue checks to provide for the payment or reimbursement of Project Costs (as defined in the Agreement), subject to and in accordance with the requirements of the Disbursing Agreement:

The undersigned hereby states and certifies that:

1. These Project Costs to be paid or reimbursed will be incurred and will be due and payable in connection with the Project.
2. None of these Project Costs to be paid or reimbursed has previously been paid or reimbursed.
3. All necessary permits and approvals required for the Project for which this withdrawal is to be made will be issued and will be in full force and effect prior to disbursement by the Disbursing Agent.
4. The Public Entity has furnished to the Board the information necessary to determine its compliance with Section 5.11 of the Tax Credit Agreement.
5. Pursuant to this Agreement, no disbursement from the Contributions Account will be made without the approval of the Missouri Development Finance Board.

Dated this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

FOREST PARK FOREVER, INC.

By: \_\_\_\_\_  
Authorized Representative

Approved for Payment on \_\_\_\_\_, 19\_\_:

MISSOURI DEVELOPMENT FINANCE BOARD

By: \_\_\_\_\_  
Executive Director

cc: Comptroller, City of St. Louis

EXHIBIT C

PROJECT BUDGET

Sources:

Contributions	\$12,000,000
Other Non-Tax Credit Funds	12,478,500
TOTAL	\$24,478,500

Uses:

Roadways, walks and curbs <sup>1</sup>	\$15,566,200
Walking, Running paths	4,686,000
Bridges and culverts	4,226,300
TOTAL	\$24,478,500

<sup>1</sup> Includes intersections, street lights, roadways, walks, curbs, drainage, walking paths, running paths, bridges and culverts (and infrastructure improvements related thereto) in connection with the renovation and reconstruction of Forest Park located in St. Louis, Missouri

TOTAL FOREST PARK MASTER PLAN ESTIMATES

Sources:

State Funds	\$ 2,000,000
Private Contributions	43,000,000

Public Funds	41,000,000
TOTAL	\$86,000,000

Uses:

Utilities	\$14,049,200
Infrastructure	24,478,500
Architectural and Engineering	4,800,000
Site Preparation	1,897,500
Lake/Lagoon System	9,634,500
Golf Course	4,480,000
Street Lighting	4,258,000
Park Facilities	14,901,500
Active Recreation	3,751,990
Paving and Reforestation	2,908,000
Miscellaneous	841,810
TOTAL	\$86,000,000

EXHIBIT D

REQUIREMENTS FOR ALL DISBURSEMENTS FROM THE BOARD PROJECT ACCOUNT

Only the costs of constructing and equipping the Project, including material, labor, architectural and engineering costs, are eligible for reimbursement with the proceeds of Contributions relating to Tax Credits. Reimbursable costs must be properly documented by acceptable accounting practices.

<b>Legislative History</b>				
<b>1ST READING</b>	<b>REF TO COMM</b>	<b>COMMITTEE</b>	<b>COMM SUB</b>	<b>COMM AMEND</b>
<b>06/26/98</b>	<b>06/26/98</b>	<b>PARK</b>	<b>07/16/98</b>	

<b>2ND READING</b>	<b>FLOOR AMEND</b>	<b>FLOOR SUB</b>	<b>PERFECTN</b>	<b>PASSAGE</b>
<b>07/10/98</b>			<b>07/17/98</b>	<b>07/24/98</b>
<b>ORDINANCE</b>	<b>VETOED</b>		<b>VETO OVR</b>	
<b>64462</b>				