

1 **WHEREAS**, a public hearing, duly noticed and conducted as required by and in
2 accordance with the CID Act was held ___ a.m. on February ___, 2013, by the Board of
3 Aldermen; and

4 **WHEREAS**, the Magnolia Transportation Development District (the “TDD”) intends to
5 undertake that certain “TDD Project” as described and defined in that certain Transportation
6 Project Agreement (the “Transportation Project Agreement”), the form of which is attached
7 hereto as **Appendix B**; and

8 **WHEREAS**, the City constitutes the “local transportation authority” for the purposes of
9 the TDD Project, and as no portion of the proposed project has been or is intended to be merged
10 into the State highways and transportation system under the jurisdiction of the Missouri Highway
11 Transportation Commission, approval of the TDD Project is vested exclusively with the City;
12 and

13 **WHEREAS**, the TDD Act provides that prior to construction or funding of a proposed
14 project, such project shall be submitted to the local transportation authority for its prior approval,
15 subject to any required revisions of such project, and the district and local transportation
16 authority in question entering into a mutually satisfactory agreement regarding the development
17 and future maintenance of the TDD Project; and

18 **WHEREAS**, the City hereby desires and intends to approve the TDD Project, subject to
19 the TDD and the City entering into a mutually satisfactory agreement regarding the development
20 and future maintenance of the TDD Project; and

21 **WHEREAS**, the City intends to enter into the Transportation Project Agreement as a
22 mutually satisfactory agreement regarding the development and future maintenance of the TDD
23 Project; and

1 **WHEREAS**, the TDD Act provides that, within six months after development and initial
2 maintenance costs of a project have been paid, the district shall transfer control and ownership of
3 the project in question to the local transportation authority pursuant to contract; and

4 **WHEREAS**, the TDD Act intends to transfer and the City intends to accept such control
5 and ownership pursuant to and on the terms set forth in the Transportation Project Agreement;
6 and

7 **WHEREAS**, the Board of Aldermen hereby determines that the terms of the
8 Transportation Project Agreement are acceptable, and that the execution, delivery and
9 performance by the City and the TDD of their respective obligations are in the best interests of
10 the City and the health, safety, morals and welfare of its residents; and

11 **WHEREAS**, this Board of Aldermen hereby finds that the adoption of this ordinance is
12 in the best interest of the City of St. Louis and that the owners of real property located within the
13 CID, as well as the City as a whole, will benefit from the establishment of the CID and the other
14 transactions described herein.

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

16 **SECTION ONE.**

17 (a) A community improvement district, to be known as the “Magnolia
18 Community Improvement District” (hereinafter referred to as the “CID”), is hereby established
19 pursuant to the CID Act on certain real property described below to contract with a private
20 property owner to demolish, remove, renovate, reconstruct, rehabilitate, repair and/or equip the
21 existing building within the CID, impose a sales and use tax and carry out other functions as set
22 forth in the Petition, which is attached hereto as **Appendix A** and incorporated herein by this
23 reference.

1 (b) The CID boundaries are set forth in the Petition and are generally described as
2 follows: generally bounded by Mayfair Plaza/St. Charles Street to the north, 8th Street to the
3 east, the property commonly known as 411-5 N. 8th Street to the south and the property
4 commonly known as 412-6 N. 9th Street to the west.

5 **SECTION TWO.** The CID is authorized by the Petition, in accordance with the CID
6 Act, to impose a tax upon retail sales within the CID to provide funds to accomplish any power,
7 duty or purpose of the CID.

8 **SECTION THREE.** The CID is authorized by the CID Act, at any time, to issue
9 obligations, or to enter into agreements with other entities with the authority to issue obligations,
10 for the purpose of carrying out any of its powers, duties, or purposes. Such obligations shall be
11 payable out of all, part or any combination of the revenues of the CID and may be further
12 secured by all or any part of any property or any interest in any property by mortgage or any
13 other security interest granted. Such obligations shall be authorized by resolution of the CID,
14 and if issued by the CID, shall bear such date or dates, and shall mature at such time or times, but
15 not more than twenty (20) years from the date of issuance, as the resolution shall specify. Such
16 obligations shall be in such denomination, bear interest at such rate or rates, be in such form, be
17 payable in such place or places, be subject to redemption as such resolution may provide and be
18 sold at either public or private sale at such prices as the CID shall determine subject to the
19 provisions of Section 108.170, RSMo. The CID is also authorized to issue such obligations to
20 refund, in whole or part, obligations previously issued by the CID.

21 **SECTION FOUR.**

22 (a) Pursuant to the Petition, the CID shall be in the form of a political subdivision
23 of the State of Missouri, known as the “Magnolia Community Improvement District.”

1 (b) Pursuant to Section 67.1471 of the CID Act, the fiscal year for the CID shall
2 be the same as the fiscal year for the City of St. Louis.

3 (c) No earlier than one hundred and eighty (180) days and no later than ninety
4 (90) days prior to the first day of each fiscal year, the CID shall submit to the Board of Aldermen
5 a proposed annual budget for the CID, setting forth expected expenditures, revenues, and rates of
6 assessments, if any, for such fiscal year. The Board of Aldermen may review and comment on
7 this proposed budget, but if such comments are given, the Board of Aldermen shall provide such
8 written comments no later than sixty (60) days prior to the first day of the relevant fiscal year;
9 such comments shall not constitute requirements, but shall only be recommendations.

10 (d) The CID shall hold an annual meeting and adopt an annual budget no later
11 than thirty (30) days prior to the first day of each fiscal year.

12 **SECTION FIVE.** The CID is authorized to use the funds of the CID for any of the
13 improvements, services or other activities authorized under the CID Act.

14 **SECTION SIX.** Pursuant to the CID Act, the CID shall have all of the powers necessary
15 to carry out and effectuate the purposes of the CID and the CID Act as set forth in the CID Act.

16 **SECTION SEVEN.** The City of St. Louis hereby finds that the uses of the CID proceeds
17 as provided for in the Petition will serve a public purpose by remediating blight and encouraging
18 the redevelopment of real property within the CID.

19 **SECTION EIGHT.** The property within the CID is a “blighted area” pursuant to Section
20 67.1401.2(3) of the CID Act because such property was blighted under Sections 99.300 to
21 99.715, RSMo, pursuant to Ordinance No. 69513.

22 **SECTION NINE.** Within one hundred twenty (120) days after the end of each fiscal
23 year, the CID shall submit a report to the Register of the City and the Missouri Department of

1 Economic Development stating the services provided, revenues collected and expenditures made
2 by the CID during such fiscal year, and copies of written resolutions approved by the board of
3 directors of the CID during the fiscal year. The Register shall retain this report as part of the
4 official records of the City and shall also cause this report to be spread upon the records of the
5 Board of Aldermen, pursuant to Section 67.1471 of the CID Act.

6 **SECTION TEN.** The term for the existence of the CID shall be as set forth in the
7 Petition, as may be amended from time to time, or as such term may be otherwise modified in
8 accordance with the CID Act.

9 **SECTION ELEVEN.** Pursuant to the CID Act, the Board of Aldermen shall not
10 decrease the level of publicly funded services in the CID existing prior to the creation of the CID
11 or transfer the burden of providing the services to the CID unless the services at the same time
12 are decreased throughout the City, nor shall the Board of Aldermen discriminate in the provision
13 of the publicly funded services between areas included in the CID and areas not so included.

14 **SECTION TWELVE.** The Register shall report in writing the creation of the Magnolia
15 Community Improvement District to the Missouri Department of Economic Development.

16 **SECTION THIRTEEN.** The Petition provides that the CID shall be governed by a
17 Board of Directors consisting of five individual directors (collectively the “Directors” and each a
18 “Director”), such Directors to be appointed by the Mayor of the City with the consent of the
19 Board of Aldermen, in accordance with the CID Act and the qualifications set forth in the
20 Petition. By his approval of this ordinance, the Mayor does hereby appoint the following named
21 individuals as Directors of the CID for the terms set forth below, and by adoption of this
22 ordinance, the Board of Aldermen hereby consents to such appointments:

1	<u>Name</u>	<u>Term</u>
2	Frans von Kaenel	2 years
3	Missy McCoy	2 years
4	Matthew Guymon	2 years
5	Stacey Grote	4 years
6	Brennen Soval	4 years

7 **SECTION FOURTEEN.** The Board of Alderman hereby approves the TDD Project as
8 submitted to the City.

9 **SECTION FIFTEEN.** The Board of Alderman further finds and determines that it is
10 necessary and desirable to enter into the Transportation Project Agreement with the TDD in
11 order to implement the TDD Project.

12 **SECTION SIXTEEN.** The Board of Alderman hereby approves, and the Mayor and
13 Comptroller of the City are hereby authorized and directed to execute, on behalf of the City, the
14 Transportation Project Agreement by and between the City and the TDD in similar form to that
15 attached hereto as **Appendix B** and incorporated herein by this reference, and the City Register
16 is hereby authorized and directed to attest to the Transportation Project Agreement and to affix
17 the seal of the City thereto. The Transportation Project Agreement shall be in substantially the
18 form attached, with such changes therein as shall be approved by said Mayor and Comptroller
19 executing the same and as may be consistent with the intent of this Ordinance and necessary and
20 appropriate in order to carry out the matters herein authorized.

21 **SECTION SEVENTEEN.** The Mayor and Comptroller of the City or his or her
22 designated representatives are hereby authorized and directed to take any and all actions to
23 execute and deliver for and on behalf of the City any and all additional certificates, documents,

1 agreements or other instruments as may be necessary and appropriate in order to carry out the
2 matters herein authorized, with no such further action of the Board of Alderman necessary to
3 authorize such action by the Mayor or Comptroller or his or her designated representatives.

4 **SECTION EIGHTEEN.** The Mayor and Comptroller and his or her designated
5 representatives, with the advice and concurrence of the City Counselor, are hereby further
6 authorized and directed to make any changes to the documents, agreements and instruments
7 approved and authorized by this Ordinance as may be consistent with the intent of this Ordinance
8 and necessary and appropriate in order to carry out the matters herein authorized, with no such
9 further action of the Board of Alderman necessary to authorize such changes by the Mayor or
10 Comptroller or his or her designated representatives.

11 **SECTION NINETEEN.** If any section, subsection, sentence, clause, phrase or portion of
12 this ordinance is held to be invalid or unconstitutional, or unlawful for any reason, by any court
13 of competent jurisdiction, such portion shall be deemed and is hereby declared to be a separate,
14 distinct and independent provision of this ordinance, and such holding or holdings shall not
15 affect the validity of the remaining portions of this ordinance.

16 **SECTION TWENTY.** The Board of Aldermen hereby finds and determines that this
17 ordinance constitutes an “emergency measure” pursuant to Article IV, Section 20 of the City
18 Charter, because this Ordinance establishes the CID, which is a taxing district, and as such, this
19 Ordinance shall take effect immediately upon its approval by the Mayor as provided in Article
20 IV, Section 20 of the City Charter.

APPENDIX A

Petition to Establish the Magnolia Community Improvement District

SEE ATTACHED

APPENDIX B

Form of Transportation Project Agreement

SEE ATTACHED

MAGNOLIA TRANSPORTATION DEVELOPMENT DISTRICT
TRANSPORTATION PROJECT AGREEMENT

THIS TRANSPORTATION PROJECT AGREEMENT (this “Agreement”) is made and entered into as of the ___ day of _____, 2014, by and between the MAGNOLIA TRANSPORTATION DEVELOPMENT DISTRICT, a political subdivision duly organized and existing under the laws of the State of Missouri (the “TDD”), and the CITY OF ST. LOUIS, MISSOURI, a city and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Missouri (the “City”).

Recitals:

A. The TDD is a political subdivision and transportation development district formed pursuant to the Missouri Transportation Development District Act, Sections 238.200 to 238.275 of the Revised Statutes of Missouri, as amended (the “TDD Act”).

B. Magnolia STL, LLC, a Colorado limited liability company, or an affiliate (the “Company”), has an interest in certain parking facilities located in the City.

C. The TDD shall acquire from the Company an interest in all or a portion of the parking facilities, which will be acquired for a TDD Project (as hereinafter defined).

D. The City and the TDD desire to enter into this Agreement in order to: (i) memorialize the agreement of the City, acting in its capacity as local transportation authority (as defined in the TDD Act) regarding development and future maintenance of the TDD Project; and (ii) serve as the contract pursuant to which the TDD shall transfer control and ownership of the TDD Project to the City after the costs thereof have been paid in accordance with Section 238.275.1 of the TDD Act. The City acknowledges that it is entering into this Agreement for the overall benefit of the community and that the commitment to provide public access to the TDD Project does not constitute a specific economic benefit to the City or the TDD.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, receipt and sufficiency of which are acknowledged, the TDD and the City hereby agree as follows:

Section 1. Definitions. In addition to the capitalized terms defined elsewhere in this Agreement and in the Recitals, the following capitalized terms used in this Agreement shall have the meanings ascribed to them in this Section.

Obligations. Obligations issued by the TDD or any other political subdivision to finance the TDD Project.

TDD Project. The Transportation Project described in the Petition for the Creation of a Transportation Development District, filed in the Circuit Court of the City of St. Louis.

TDD Transfer Document. That certain lease or license agreement entered into between the Company and the TDD for parking, as may be amended from time to time by the parties thereto.

Term. The period commencing on the date of execution of the TDD Transfer Document and, unless otherwise terminated hereunder prior thereto, continuing until the end of the calendar month that includes that date that is the later of: (i) the end of the TDD Project's reasonably expected useful life, as determined by an engineer qualified to provide engineering services in the State of Missouri; or (ii) the satisfaction in full of all Obligations.

Section 2. Access to TDD Project. The TDD shall, and shall cause its agents and contractors to, comply with any and all applicable laws in connection with its operation of the TDD Project. Prior to the Transfer (as hereinafter defined), the TDD shall retain all operational control of the TDD Project. After the Transfer, the City shall have all operational control of the TDD Project for the remaining Term, subject to any existing encumbrances.

Section 3. Transfer of Ownership and Control. The City and the TDD agree to execute an Assignment in form mutually agreeable to the parties immediately upon maturity or termination of the Obligations, by which the TDD transfers to the City its interest in the TDD Project for the remaining Term (the "Transfer"). The TDD and the City acknowledge that, upon execution, the transactions contemplated by the Assignment shall constitute the transfer of control and ownership of the Project as required pursuant to Section 238.275 of the TDD Act, provided that the TDD shall remain responsible for operation and maintenance of the Project even after such transfer, in accordance with Section 4 hereinafter.

Section 4. TDD Project Operation and Maintenance. Except as otherwise provided in the TDD Transfer Document, while the Obligations remain outstanding, the TDD shall perform, or cause to be performed, all obligations connected with or arising out of owning, occupying or using the TDD Project or any part thereof, including without limitation the payment of all expenses required for the operation of the TDD Project, including, without limitation, payment of any real or personal property taxes, assessments, payments in lieu of taxes assessed, any expenses incurred, performance of any cleaning or maintenance services required to maintain the TDD Project in good condition, and provision of any repairs for any damage to the TDD Project (the "TDD Maintenance"). The TDD agrees to operate and maintain the TDD Project in accordance with all applicable laws and regulations. Following the satisfaction in full of all Obligations, and during the remaining Term, the City shall be responsible for the TDD Maintenance.

Section 5. Indemnification and Release. To the extent permitted by law, the TDD agrees to indemnify, defend, and hold the City, its employees, agents, and independent contractors and consultants harmless from and against any and all suits, claims, costs of defense, damages, injuries, liabilities, and costs and/or expenses, including court costs and reasonable attorneys' fees and expenses, resulting from, arising out of, or in any way connected with: (i) the acquisition of the TDD Project, including liability under any Environmental Laws; and (ii) the negligence or willful misconduct of the TDD or its respective employees, agents or independent contractors in connection with the management, and acquisition of the TDD Project. To the extent permitted by law, the City agrees to indemnify, defend, and hold the TDD and its employees, agents, and independent contractors harmless from and against any and all suits, claims, damages, injuries, liabilities, and costs and/or expenses, including court costs and reasonable attorneys' fees and expenses, resulting from, arising out of, or in any way connected with the negligence or willful misconduct of the City, its employees, agents, and independent

contractors and consultants, or arising from a default by the City of its obligations hereunder. The indemnifications set forth in this Section shall survive termination or expiration of this Agreement.

Section 6. Miscellaneous.

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

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

6.3 Termination. In the event that the Ordinance authorizing the execution of this Agreement shall become ineffective, then this Agreement shall terminate.

6.4 Applicable Law. This Agreement shall be taken and deemed to have been fully executed, made by the parties in, and governed by, the laws of the State of Missouri.

6.5 Representatives Not Personally Liable. No elected or appointed official, agent, employee or representative of the City or the TDD shall be personally liable to the Company in the event of any default or breach by any party under this Agreement, or for any amount which may become due to any party or on any obligations under the terms of this Agreement. No member, partner, agent, employee or representative of the Company shall be personally liable to the City or the TDD in the event of any default or breach by any party under this Agreement, or for any amount which may become due to any party or on any obligations under the terms of this Agreement.

6.6 Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the TDD and the City with respect to the matters herein and no other agreements or representations other than those contained in this Agreement have been made by the parties. It supercedes all prior written or oral understandings with respect thereto. This Agreement shall be amended only in writing and effective when signed by the authorized agents of the TDD and the City.

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

6.7 Severability. In the event any term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect to the extent the remainder can be given effect without the invalid provision, unless the unenforceable or invalid term or provision is such that a court reasonably would find that the parties, or any of them, would not have entered this Agreement without such term or provision,

or would not have intended the remainder of this Agreement to be enforced without such term or provision.

6.8 Notices. Any notice, demand, or other communication required by this Agreement to be given by any party hereto to the others shall be in writing and shall be sufficiently given or delivered if dispatched by certified mail, postage prepaid, or delivered personally as follows:

In the case of the TDD: Magnolia Transportation Development District
818 17th Street
Denver, CO 80202
Attention: Chris Scheer

With a copy to: Husch Blackwell LLP
190 Carondelet Plaza, Suite 600
St. Louis, Missouri 63105
Attention: David Richardson

In the case of the City, to: City of St. Louis
City Hall
1200 Market Street
St. Louis, Missouri 63103
Attention: Mayor, Room 200
Attention: Comptroller, Room 212

With copies to: St. Louis Development Corporation
1520 Market Street, Suite 2000
St. Louis, Missouri 63103
Attention: Executive Director

City Counselor
City of St. Louis
1200 Market Street, Room 314
St. Louis, Missouri 63103

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

[Signature Pages to Follow.]

IN WITNESS WHEREOF, the parties have caused this Magnolia Transportation Development District Transportation Project Agreement to be executed as of the date first written above.

**MAGNOLIA TRANSPORTATION
DEVELOPMENT DISTRICT**

By: _____
_____, Chairman

ATTEST:

By: _____
_____, Secretary

IN WITNESS WHEREOF, the parties have caused this Magnolia Transportation Development District Transportation Project Agreement to be executed as of the date first written above.

CITY OF ST. LOUIS, MISSOURI

By: Mayor

By: Comptroller

Attest:

Register

Approved as to form:

City Counselor