

ORDINANCE #67412
Board Bill No. 412

AN ORDINANCE AUTHORIZING THE EXECUTION OF A TRANSPORTATION PROJECT AGREEMENT BETWEEN THE CITY, THE BALLPARK VILLAGE TRANSPORTATION DEVELOPMENT DISTRICT AND BALLPARK VILLAGE HOLDING COMPANY, LLC; PRESCRIBING THE FORM AND DETAILS OF SAID AGREEMENT; MAKING CERTAIN FINDINGS WITH RESPECT THERETO; AUTHORIZING OTHER RELATED ACTIONS IN CONNECTION WITH THE TRANSPORTATION PROJECT; AND CONTAINING A SEVERABILITY CLAUSE.

WHEREAS, the City of St. Louis, Missouri (the “City”), is a body corporate and a political subdivision of the State of Missouri (the “State”), 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 Sections 238.200 to 238.275 of the Revised Statutes of Missouri, as amended (the “TDD Act”), the Ballpark Village Holding Company, LLC, a Delaware limited liability company (the “Developer”) intends to create the Ballpark Village Transportation Development District (the “TDD”) as a political subdivision of the State with the authority to generate revenue to fund a certain “Transportation Project”, for the benefit of the City; and

WHEREAS, the City constitutes the “local transportation authority” (as defined in the TDD Act) for the purposes of approving the Transportation Project pursuant to the TDD Act; and

WHEREAS, no portion of the proposed Transportation Project is intended to be merged into the State highways and transportation system under the jurisdiction of the Missouri Highway Transportation Commission, therefore, approval of the Transportation Project will vest exclusively with the City; and

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

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

WHEREAS, the City intends to enter into that certain Transportation Project Agreement (the “Agreement”), in the form attached hereto as **Exhibit A** and incorporated herein by reference, with the TDD and the Developer, as a mutually satisfactory agreement regarding the development and future maintenance of the Transportation Project; and

WHEREAS, the Board of Aldermen hereby determines that the terms of the Transportation Project Agreement attached as **Exhibit A** hereto and incorporated herein by reference are acceptable and that the execution, delivery and performance by the City, the Developer and the TDD of their respective obligations 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 hereby approves the Transportation Project as submitted to the City with such changes as shall be approved by the Mayor or his designated representative upon submission by the TDD of the plans and specifications of the Transportation Project and as may be consistent with the intent of this Ordinance.

SECTION TWO. The Board of Aldermen further finds and determines that it is necessary and desirable to enter into the Transportation Project Agreement with the TDD and the Developer in order to implement the Transportation Project.

SECTION THREE. The Board of Aldermen finds and determines that the Transportation Project is necessary and desirable in order to increase the supply of available parking in the City.

SECTION FOUR. The Board of Aldermen hereby approves, and the Comptroller of the City is hereby authorized and directed to execute, on behalf of the City, the Transportation Project Agreement by and between the City, the TDD and the Developer

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

SECTION FIVE. The Comptroller of the City or his or her 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 Comptroller or his or her designated representatives.

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

SECTION SEVEN. 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

Transportation Project Agreement (Attached hereto.)

BALLPARK VILLAGE TRANSPORTATION DEVELOPMENT DISTRICT TRANSPORTATION PROJECT AGREEMENT

THIS BALLPARK VILLAGE TRANSPORTATION DEVELOPMENT DISTRICT TRANSPORTATION PROJECT AGREEMENT (this "**Agreement**") is made and entered into as of the ____ day of _____, 2007, by and between the **BALLPARK VILLAGE 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**"), and **BALLPARK VILLAGE HOLDING COMPANY, LLC**, a Delaware limited liability company (the "**Developer**").

Recitals:

1. 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**").
2. The Developer is affiliated with the owner of certain real property located in the City, legally described on **Exhibit A** attached hereto and incorporated herein by reference, together with certain improvements thereon (the "**Property**").
3. Pursuant to Ordinance No. [_____] approved February 9, 2007 (the "**Approving Ordinance**"), the City (a) approved a development plan attached thereto (the "**Development Plan**") for development of a certain area within the City (the "**Development Area**"), (b) adopted the development project described in the Development Plan (the "**Development Project**"), (c) adopted development financing within the Development Area, and (d) established the "City of St. Louis, Missouri, Special Allocation Fund for the Ballpark Village Development Area" (the "**Special Allocation Fund**").
4. Pursuant to Ordinance No. [_____] approved February 9, 2007 (the "**Authorizing Ordinance**"), the City

designated the Developer as "developer" of the Development Area, and approved the execution of a Development Agreement by and between the City and the Developer in substantially the form attached thereto (the "*Development Agreement*").

5. Pursuant to the Development Agreement, the Developer has or will cause the creation of the TDD to finance a portion of the Development Project (the "TDD Project" as further defined in **Section 1** of this Agreement) upon the Property.

6. The TDD intends to pledge all TDD revenues to The Industrial Development Authority of the City of St. Louis, Missouri (the "*Authority*") for payment of the Authority's \$115,800,000 aggregate principal amount of Development Financing Revenue Bonds, Series 2007 (Ballpark Village Project) (the "*Bonds*"), plus Issuance Costs (as defined in the Development Agreement), reserve funds and capitalized interest funds necessary to pay debt service on the Bonds, and any other costs as agreed to by the City in the Development Agreement. The contribution by the TDD towards the acquisition and construction of the TDD Project is intended to reimburse the Developer for the acquisition and construction of the TDD Project.

7. The City, the Developer and the TDD desire to enter into this Agreement in order to: (i) acknowledge the general economic benefit and value to the community created by the TDD Project and to provide for public access within the TDD Project on the terms set forth herein; and (ii) memorialize the agreement of the City, acting in its capacity as the "local transportation authority" (as defined in the TDD Act) regarding development and future maintenance of the TDD Project.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, receipt and sufficiency of which are acknowledged, the Developer, 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.

Property. The real property described in **Exhibit A** hereto, all of which is located within the boundaries of the TDD.

TDD Project. The acquisition and construction of transportation-related improvements on the Property as provided in the TDD Act and the Development Agreement.

TDD Taxes. All assessments, property taxes, sales taxes or other funding methods specifically authorized pursuant to the TDD Act.

Term. The period commencing on the date the Property is conveyed to the TDD 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 reasonably expected useful life of the TDD Project, as determined by an engineer qualified to provide engineering services in the State of Missouri; or (ii) the satisfaction in full of all Bonds.

Section 2. TDD Project Operation and Maintenance.

Except as otherwise provided herein, during the Term hereof, 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 agrees to operate and maintain the TDD Project in accordance with all applicable laws and regulations.

Section 3. Indemnification and Release. To the extent permitted by law, the TDD and the Developer agree 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 development and construction 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, development, and construction of the TDD Project, but not with respect to any financing related thereto. To the extent permitted by law, the City agrees to indemnify, defend, and hold the TDD and Developer and their 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 4. Public Access. The TDD, in cooperation with the City, intends to make available a portion of the TDD Project designated as "public" pursuant to applicable law and the terms set forth in the Development Agreement.

Section 5. Miscellaneous.

5.1. **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.

5.2. **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.

5.3. **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.

5.4. **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 Developer in the event of any default or breach by any party under this Agreement, or for any amount which may become due to any party or on any obligations under the terms of this Agreement. No member, partner, agent, employee or representative of the Developer 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.

5.5. **Entire Agreement; Amendment.** Except with respect to the Development Agreement, this Agreement constitutes the entire agreement between the TDD, the Developer 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. This Agreement shall be amended only in writing and effective when signed by the authorized agents of the TDD, the Developer and the City.

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

5.7. **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.

5.8. **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:

Ballpark Village Transportation Development District
c/o The Cordish Company
601 East Pratt Street, 6th Floor
Baltimore, Maryland 21202
Attention: Blake Cordish

With copies to:

The Cordish Company

601 East Pratt Street, 6th Floor
Baltimore, Maryland 21202
Attention: General Counsel

And

Armstrong Teasdale LLP
One Metropolitan Square, Suite 2600
St. Louis, Missouri 63102
Attn: Michael Whittle

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 a copy to:

St. Louis Development Corporation
1015 Locust Street, Suite 1200
St. Louis, Missouri 63101
Attention: Executive Director

And

City Counselor
City of St. Louis
1200 Market Street, Room 314
St. Louis, Missouri 63103
Attention: Patricia A. Hageman

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.

[Remainder of Page Intentionally Left Blank.]

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

**BALLPARK VILLAGE TRANSPORTATION
DEVELOPMENT DISTRICT**

By: _____
Name: _____
Title: _____

ATTEST:

(Seal)

By: _____
Name: _____
Title: _____

CITY OF ST. LOUIS, MISSOURI

By: Mayor

By: Comptroller

Attest:

Register

Approved as to form:

City Counselor

BALLPARK VILLAGE HOLDING COMPANY, LLC

By:

Name:

Title:

EXHIBIT A
Legal Description of Property

Developer Controlled Site (Parcel Number 64660000350):

Parcel 1:

Lot 3 of "South Downtown Plaza", in City Block 6466 of the City of St. Louis, Missouri, according to plat thereof recorded in Plat Book 12232003 Page 0248 of the Office of the Recorder of Deeds of the City of St. Louis. Including also part of vacated Broadway, Walnut Street and Stadium Plaza, adjacent to Lot 3, according to plat thereof recorded in Plat Book 09272005 Page 696 of the St. Louis City Records. EXCEPTING THEREFROM, that portion of Clark Street Dedicated by instrument recorded in Plat Book 12062006 Page 322 and by Ordinance No. 67243 of the City of St. Louis Records. (Note: To be known as Amended Lot 3 of "South Down-town Plaza").

Parcel 2:

Appurtenant easement rights as set forth in that certain "Stadium West Pedestrian Bridge Agreement" dated as of March 21, 1996, by and between Gateway Stadium, L.L.C., a Missouri limited liability company and Civic Parking, L.L.C., a Missouri limited liability company, as re-corded March 21, 1996 in Book M1194 Page 1117.

Approved: February 20, 2007