

ORDINANCE #67468
Board Bill No. 398

AN ORDINANCE AUTHORIZING THE EXECUTION OF FIRST AMENDMENT TO REDEVELOPMENT AGREEMENT WITH BALKE BROWN ASSOCIATES, INC.; PRESCRIBING THE FORM AND DETAILS OF SAID AGREEMENT; AND AUTHORIZING OTHER RELATED ACTIONS IN CONNECTION WITH THE REDEVELOPMENT OF CERTAIN PROPERTY WITHIN A REDEVELOPMENT AREA.

WHEREAS, pursuant to the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 through 99.865 of the Revised Statutes of Missouri, as amended (the "*Act*" or "*TIF Act*"), the City adopted Ordinance No. 66684 [Board Bill No. 458] on April 29, 2005 (the "*Approving Ordinance*"), which Approving Ordinance (i) designated as a "redevelopment area" a certain portion of the City (the "*Redevelopment Area*"), (ii) approved a redevelopment plan entitled "PET Building Lofts TIF Redevelopment Plan" (the "*Redevelopment Plan*"), (iii) approved the redevelopment project described in the Redevelopment Plan (the "*Redevelopment Project*"), (iv) adopted tax increment allocation financing within the Redevelopment Area, and (v) established the "City of St. Louis, Missouri, PET Building Special Allocation Fund" all as set forth in the Approving Ordinance and in accordance with the requirements of the Act; and

WHEREAS, pursuant to provisions of the Act, the City adopted Ordinance No. 66848 [Board Bill No. 194] on August 9, 2005, which authorized the execution of a redevelopment agreement with Balke Brown Associates, Inc. (the "*Developer*") setting forth the terms and obligations of the parties with respect to the implementation of the Redevelopment Project approved in the Approving Ordinance; and

WHEREAS, pursuant to the provisions of the Act, the City adopted Ordinance No. _____ [Board Bill _____] on _____, 2007, which authorized and directed the issuance and delivery of not to exceed \$3,000,000 principal amount of Tax Increment Revenue Notes (PET Building Redevelopment Project), Series 200X (the "*TIF Notes*"), to finance the development of the Redevelopment Project; and

WHEREAS, pursuant to provisions of the Act, the City entered into a redevelopment agreement with the Developer dated as of September 3, 2005 (the "*Original Agreement*"); and

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

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

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

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

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

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

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

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

EXHIBIT A
Form of First Amendment to Redevelopment Agreement
(Attached hereto.)

FIRST AMENDMENT TO REDEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO REDEVELOPMENT AGREEMENT (this "**Amendment**") is made and entered into as of the ____ day of _____, 2007, 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 BALKE BROWN ASSOCIATES, INC. (the "**Developer**"), a corporation duly organized and existing under the laws of the State of Missouri.

WITNESSETH:

WHEREAS, the City and the Developer are parties to that certain Redevelopment Agreement dated as of September 20, 2005 (the "**Agreement**"), which sets forth the respective rights and obligations of the City and the Developer with regards to the redevelopment project relating to the building commonly known as the "**PET Building;**" and

WHEREAS, the City and the Developer desire to amend the Agreement in certain particulars as hereinafter set forth in this Amendment.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth hereinafter, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the City and the Developer do hereby covenant and agree as follows:

1. Terms and phrases defined in the Agreement shall have the same meanings when used herein unless noted otherwise to the contrary.

2. Article I, Section 1.1 is hereby amended by deleting the term "TIF Notes" and its definition in its entirety, and substituting in lieu thereof the following:

"TIF Notes" means tax increment revenue notes issued by the City pursuant to and subject to this Agreement and the Note Ordinance in substantially the form as provided in the Note Ordinance, to evidence the City's limited obligation to repay Reimbursable Redevelopment Project Costs incurred by the Developer on behalf of the City in accordance with the TIF Act and this Agreement.

3. The last sentence in Article V, Section 5.2 is hereby deleted in its entirety and the following sentence is inserted in lieu thereof: "The TIF Notes shall be in a form substantially similar to that provided in the Note Ordinance."

4. Article V, Section 5.2.1 is hereby amended by adding the following sentence: "Notwithstanding the foregoing, any TIF Note issued to any party other than the Developer or a Related Entity may bear interest at an annual rate that is lower than those specified above, based on the recommendation of the City's placement agent in light of market conditions."

5. Article V, Section 5.2.3 is hereby amended by deleting such text in its entirety and the following text is

substituted in lieu thereof:

“Special Mandatory Redemption of TIF Notes. All TIF Notes are subject to special mandatory redemption by the City, in whole at any time or in part on each April 1 (the “Payment Date”) occurring after the acceptance by the City of a Certificate of Substantial Completion, at a redemption price equal to 100% of the principal amount being redeemed, together with the accrued interest thereon to the date fixed for redemption.

6. Article V, Section 5.6 is hereby amended by deleting such text in its entirety and the following text is substituted in lieu thereof:

“Subordinate TIF Notes. (a) TIF Notes may be issued in two series, with one series subordinate to TIF Notes of the other series issued hereunder (the “Subordinate TIF Notes”), such that no payment of principal of or interest on any such Subordinate TIF Notes may be made while any TIF Notes are Outstanding. All such Subordinate TIF Notes shall be payable as to principal and interest according to the terms set forth in **Sections 5.2 and 6.3** of this Agreement.

(b) If the amount of TIF Bonds issued pursuant to the Note Ordinance and this Agreement is insufficient to refund all of the outstanding TIF Notes, the TIF Notes remaining outstanding shall be redeemed by the issuance of notes subordinate to the TIF Bonds (the “Subordinate Obligations”). Each Subordinate Obligation shall have the same maturity and have the same outstanding principal amount and the same interest rate as the TIF Note it redeems. All such Subordinate Obligations shall be payable as to principal and interest according to the terms set forth in **Sections 5.4 and 6.3** of this Agreement.”

7. Article V, Section 5.7 is hereby amended by deleting such text in its entirety and the following text is substituted in lieu thereof:

“City to Select Underwriter and Financial Advisor; Term and Interest Rate. The Comptroller, on behalf of the City, shall have the right to select the designated placement agent or underwriter (and such financial advisors and consultants as the placement agent and/or underwriter and the Comptroller deem necessary for the issuance of TIF Notes or TIF Bonds), and disclosure or underwriter’s counsel. The final maturity of the TIF Notes and/or TIF Bonds shall not exceed the maximum term permissible under the TIF Act. TIF Bonds shall bear interest at such rates, shall be subject to redemption and shall have such terms as determined in the sole discretion of the Comptroller, on behalf of the City.

8. Article VI, Section 6.3 is hereby deleted in its entirety and the following text is substituted in lieu thereof:

Application of Available Revenues. The City hereby agrees for the term of this Agreement to apply the Available Revenues and any taxes, fees or assessments subsequently enacted and imposed in substitution therefor and allocable to the Special Allocation Fund under the TIF Act or this Agreement to the repayment of TIF Notes issued under **Article V** of this Agreement as provided in the Note Ordinance.

Upon the payment in full of the principal of and interest on all TIF Notes (or provision has been made for the payment thereof as specified in the Note Ordinance), payment in full of the fees and expenses of the Comptroller and the St. Louis Development Corporation, and payment in full of any other amounts required to be paid under the Note Ordinance, all amounts remaining on deposit in the Revenue Fund shall be declared as surplus and distributed in the manner provided in the Act.

If monies available in Special Allocation Fund are insufficient to reimburse the City or the Developer as provided in the Note Ordinance on any Payment Date, then the unpaid portion shall be carried forward to the next Payment Date, with interest thereon.

The City agrees that the officer of the City at any time charged with the responsibility of formulating budget proposals will be directed to include in the budget proposal submitted to the Board of Aldermen, for each fiscal year that TIF Obligations are outstanding, a request for an appropriation of all Available Revenues on deposit in the Special Allocation Fund for application to the payment of the principal of (including, but not limited to, payment of a premium, if any) and interest on the TIF Obligations.

9. Exhibit F is hereby deleted in its entirety, and all references to Exhibit F contained in the Redevelopment Agreement are of no further force and effect, it being the intent of this provision that the TIF Notes shall be in a form substantially similar to the form provided in the Note Ordinance.

10. Except as hereby amended, all other terms and conditions of the Agreement shall remain the same and in full force and effect.

[Signatures appear on the following page.]

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

“CITY”:

CITY OF ST. LOUIS, MISSOURI

By: _____
Francis G. Slay, Mayor

By: _____
Darlene Green, Comptroller

[SEAL]

Attest:

Parrie May, City Register

Approved as to Form:

Patricia Hageman, City Counselor

“DEVELOPER”:

BALKE BROWN ASSOCIATES, INC.

By: _____
Name: _____
Title: _____

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

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

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

Notary Public

