

ORDINANCE #67673
Board Bill No. 220

AN ORDINANCE AMENDING ORDINANCE NO. 66668 ADOPTED BY THE BOARD OF ALDERMEN ON FEBRUARY 11, 2005; AUTHORIZING THE EXECUTION OF AN AMENDMENT TO REDEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY AND THE 5700 PROPERTY, LLC; PRESCRIBING THE FORM AND DETAILS OF SAID AMENDMENT; MAKING CERTAIN FINDINGS WITH RESPECT THERETO; AUTHORIZING OTHER RELATED ACTIONS; AND CONTAINING A SEVERABILITY CLAUSE.

WHEREAS, pursuant to Ordinance No. 66659, the City designated a portion of the City a “Redevelopment Area” and approved the 5700 Arsenal TIF Redevelopment Plan (the “Redevelopment Plan”) and the “Redevelopment Project,” all as described therein; and

WHEREAS, pursuant to Ordinance No. 66659, the City adopted tax increment allocation financing within the Redevelopment Area, and established the Special Allocation Fund for the Redevelopment Project, all as provided for and in accordance with the TIF Act and described therein; and

WHEREAS, pursuant to Ordinance No. 66668, the City authorized the execution of a TIF Redevelopment Agreement (the “Redevelopment Agreement”) between the City and The 5700 Property, LLC (the “Developer”), in furtherance of the Redevelopment Plan, with such Redevelopment Agreement to be in the form attached thereto; and

WHEREAS, the Redevelopment Agreement was subsequently executed by the City and Developer as provided in and in accordance with Ordinance No. 66668, which Redevelopment Agreement is dated as of July 19, 2005; and

WHEREAS, Section 3.4 of the Redevelopment Agreement, as authorized by the City, provides that the Developer shall substantially complete or cause the Work to be substantially complete, as those terms are defined therein, not later than March 31, 2007, absent any event of Force Majeure and not later than March 31, 2008 in the event of a delay caused by an event of Force Majeure; and

WHEREAS, it is hereby found and determined that it is necessary and advisable and in the best interest of the City and of its inhabitants to authorize the City to execute an Amendment to the Redevelopment Agreement, in order to amend the Redevelopment Agreement as it concerns (1) the date by which the Work must be complete or substantially complete; (2) the Redevelopment Project; and (3) the interest rate for TIF Notes issued by the City for this Project; and

WHEREAS, the Board of Aldermen hereby determines that the terms of the Amendment to Redevelopment Agreement attached as **Exhibit A** hereto and incorporated herein by reference are acceptable and that the execution, delivery and performance by the City and the Developer of the attached Amendment to Redevelopment Agreement is necessary and desirable and in the best interests of the City and the health, safety, morals and welfare of its residents, and in accord with the public purposes specified in the TIF Act.

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

SECTION ONE. 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 Amendment to Redevelopment 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 Amendment to Redevelopment Agreement and to affix the seal of the City thereto. The Amendment to Redevelopment 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 TWO. 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 THREE. 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 FOUR. 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

Amendment to Redevelopment Agreement

FIRST AMENDMENT TO REDEVELOPMENT AGREEMENT

This First Amendment to Redevelopment Agreement (the “**Amendment**”) is made this ___ 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 **THE 5700 PROPERTY, LLC**, a Missouri limited liability company (the “**Developer**”).

RECITALS

A. The City is a party to that certain Redevelopment Agreement (the “**Agreement**”) dated as of July 19, 2005, by and between the City and Developer, for redevelopment of a portion of the City of St. Louis designated as a Redevelopment Area, as described in Exhibit A, in accordance with that certain 5700 Arsenal TIF Redevelopment Plan and as approved and authorized by the City of St. Louis, Missouri pursuant to Ordinance No. 66668; and

B. All capitalized terms not defined herein shall have the meaning ascribed to such terms in the Agreement; and

C. Section 3.4 of the Agreement provides that the Developer shall substantially complete or cause the Work to be substantially complete, absent any event of Force Majeure, not later than March 31, 2007, and, alternatively provides that in the event of a delay caused by an event of Force Majeure the Developer shall substantially complete or cause the Work to be substantially complete by not later than March 31, 2008, and provides the City the right to take certain actions pursuant to Sections 7.2 and 7.4 of the Agreement in the event that such Work was not substantially complete by the date required; and

D. Due to certain circumstances, additional time beyond that provided in the Agreement is required to complete the Work, and the City acknowledges that it is in the best interests of the City and its residents for the general health, safety, morals and public welfare to provide Developer additional time within which to fulfill its obligation.

E. The City and the Developer desire to further amend the Agreement as set forth in this Amendment.

AGREEMENT

NOW, THEREFORE, in consideration of the above premises and of the mutual promises and covenants set forth herein, the parties hereby agree as follows:

1. Article I, Section 1.1, is hereby amended by deleting the term “Redevelopment Project” and its definition in its entirety, and substituting in lieu thereof the following:

“‘Redevelopment Project’ means the (1) demolition of the existing structures within the Redevelopment Area; (2) construction of at least 46 residential dwellings sold for

initial occupancy exclusively as single-family dwelling, of which at least 42 units shall be designed as detached freestanding single-family dwelling units and of which at least 4 such units shall consist of single-family attached/townhome style dwelling units, such dwelling units and lots shall comply with the City's zoning and land use regulations; and (3) construction of public improvements including utilities, roadwork, sidewalks, landscaping and lighting, as further set forth in the Redevelopment Plan, and as approved by the Approving Ordinance."

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

"'Related Entity' means any party or entity related to the Developer by one of the relationships described in Section 267(b), 707(b)(1)(A) or 707(b)(1)(B) of the Internal Revenue Code of 1986, as amended."

3. 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."

4. Section 3.4 of the Agreement as originally executed is hereby deleted in its entirety, and replaced with the following:

"3.4 Developer to Construct the Work. The Developer shall commence or cause the commencement of the construction of the Work within one hundred twenty (120) days of the date of this Agreement, which Work shall be constructed in a good and workmanlike manner in accordance with the terms of this Agreement and the Redevelopment Plan. The Developer shall substantially complete or cause the Work to be substantially complete not later than March 31, 2008, absent an event of Force Majeure. In the event of any delay caused by an event of Force Majeure as defined in **Section 7.5** of this Agreement, Developer shall be granted additional time to complete the Work but under no circumstance shall such time to complete the Work extend beyond March 31, 2009.

The Developer may enter into or cause to be entered into one or more construction contracts to complete the Work. Prior to the commencement of construction of any portion of the Work, the Developer shall obtain or shall require that any of its contractors obtain workers' compensation, comprehensive public liability, and builder's risk insurance coverage in amounts customary in the industry for similar type projects. The Developer shall require that such insurance be maintained by any of its contractors for the duration of the construction of such portion of the Work. To the extent that laws pertaining to prevailing wage and hour apply to any portion of the Work, the Developer agrees to cooperate and take all actions necessary to apply for the wage and hour determinations and otherwise comply with such laws."

5. 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."

6. Section 5.2.1 of the Agreement as originally executed is hereby deleted in its entirety, and replaced with the following:

"Terms. Each TIF Note shall bear interest at a fixed rate per annum, determined on the date that is not less than ten (10) business days and not more than sixty (60) days prior to the scheduled closing date for the issuance of the TIF Notes (the "Pricing Date")

based on the municipal yield curve for general obligation bonds (the "MMD") compiled by Municipal Market Data-Line7 (or its successors) and published by Thomson Financial, an operating unit of The Thomson Corporation (or its successors), using the MMD yield published as of the Issuance Date for general obligation bonds rated "AAA" that mature in the same year as the TIF Notes, (i) plus four percent (4%) if the interest on the TIF Notes (in the opinion of Bond Counsel) is not exempt from federal income taxation (the "Taxable Rate"), or (ii) plus two percent (2.0%) if the interest on the TIF Notes (in the opinion of Bond Counsel) is exempt from federal income taxation (the "Tax-Exempt Rate"); provided, in no event shall the interest rate on the TIF Notes exceed ten percent (10%) per annum."

7. 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 5.4** 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."

8. 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."

9. 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.”

10. 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.

11. This Amendment shall be construed and enforced in accordance with the laws of the State of Missouri and shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

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

13. No provision of this Amendment may be amended or modified, except by an instrument in writing signed by the parties.

14. Unless otherwise defined herein, any capitalized terms in this Amendment shall have the meanings provided in the Agreement.

15. This Amendment may be executed in multiple counterparts.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of 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

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

[SEAL]

My Commission Expires:

Exhibit A

Legal Description

Those parcels currently identified by the City of St. Louis Assessor's Office as Parcels 5615-00-02350, 5616-00-00300 and 5616-00-00400, together with all interior streets, alleys or rights-of-way.

Approved: August 7, 2007