ORDINANCE #67710
Board Bill No. 283

An ordinance amending Ordinance No. 66557; authorizing the execution of a second amendment to Redevelopment Agreement by and between the City of St. Louis and AD Brown Acquisition, 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 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. 66556 (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 titled "1136 Washington 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 "1136 Washington 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. 66557 and Ordinance No. 66846, which authorized the execution of a redevelopment agreement and an amendment (collectively, the *"Redevelopment Agreement"*) by and between the City and AD Brown Acquisition, LLC (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 No. 265] on _____, 2007 (the "Note Ordinance"), which authorized and directed the issuance and delivery of not to exceed $3,650,000 principal amount of Tax Increment Revenue Notes (1136 Washington Redevelopment Project), Series 200_-A/B (the *"TIF Notes"*), to finance the development of the Redevelopment Project; and

WHEREAS, the Redevelopment Agreement was subsequently executed by the City and the Developer June 28, 2005, as amended November 16, 2006; and

WHEREAS, the Developer and the City desire to approve and execute a second amendment to the Redevelopment Agreement (the *"Amendment"*) to provide for the issuance of TIF Notes to an Original Purchaser, as that term is defined in the Note Ordinance, in addition to the Developer.

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 the Amendment in order to amend the Redevelopment Agreement as it concerns the issuance of TIF Notes by the City for this Redevelopment Project, including the interest rate for TIF Notes issued; and

WHEREAS, the Board of Aldermen hereby determines that the terms of the Amendment 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 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 1. The Board of Aldermen finds and determines that it is necessary and desirable to enter into the Amendment 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 Amendment 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 and to affix the seal of the City thereto. The Amendment 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 Second Amendment to Redevelopment Agreement
(Attached hereto.)

SECOND AMENDMENT TO REDEVELOPMENT AGREEMENT

THIS SECOND 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 AD Brown Acquisition, LLC (the ***"Developer"***), a Missouri limited liability company.

WITNESSETH:

WHEREAS, the City and the Developer are parties to that certain Redevelopment Agreement dated as of June 28, 2005, as amended by that certain Amendment to Redevelopment Agreement dated November 16, 2006 (collectively, 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 ***"Meridian;"*** 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 and the Note Ordinance shall have the same meanings when used herein unless noted otherwise to the contrary. To the extent any terms and phrases defined in the Agreement conflict with the terms and phrases defined in Ordinance No. _____, (the "Note Ordinance"), the Note Ordinance shall prevail. Terms and phrases defined in the Note Ordinance but not included in the Agreement are hereby added to the Agreement.

2. 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."

3. Article V, Section 5.2.1 is hereby deleted in its entirety and the following is inserted in lieu thereof:

"Terms. The TIF Notes shall mature (subject to redemption and payment prior to maturity as provided in Article III hereof), on the date that is twenty-three (23) years after the effective date of the Approving Ordinance, or January 21, 2028. 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 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-Line® (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. All TIF Notes shall have a stated maturity of the Maturity Date. Interest shall be computed on the basis of a 360-day year of twelve 30-day months. The TIF Notes shall bear simple interest from their registration date or from the most recent Payment Date to which interest has been paid or duly provided for."

4. Article V, Section 5.2.2 is hereby deleted in its entirety and the following is inserted in lieu thereof:

"Procedures for Issuance of TIF Notes. Within a reasonable period of time not to exceed ninety (90) days of Developer's satisfaction of the conditions of Section 5.1 of this Agreement the City shall issue a TIF Note to an Original Purchaser evidencing reimbursement of Reimbursable Redevelopment Project Costs. Notwithstanding anything contained in this Agreement to the contrary, upon the acceptance by the City of a Certificate of Reimbursable Redevelopment Project Costs and the issuance by the City of a TIF Note as provided in this Section 5.2.2, the Developer shall be deemed to have advanced funds necessary to purchase such TIF Notes and the City shall be deemed to have deposited such funds in the Project Fund and shall be deemed to have reimbursed the Developer in full for such costs from the amounts deemed to be on deposit in the Project Fund from time to time."

5. Article V, Section 5.6 is hereby 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 Finance Officer, 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 Finance Officer 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 Finance Officer, on behalf of the City, and in accordance with the Note Ordinance."

6. Article V, Section 5.7 is hereby added as follows:

"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 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 Revenue 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 Finance Officer 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 the Revenue 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 Revenue 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."

8. Exhibit F is hereby deleted in is entirety, and all references to Exhibit F contained in the 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.

9. 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"

AD Brown Acquisition, LLC, a Missouri limited liability company

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

[SEAL]

Print Name: _____

My Commission Expires:

_____

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

On this ___ day of _____, 2007, before me appeared Darlene Green, to me personally known, who, being by me duly sworn, did say that she is the Comptroller 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

[SEAL]

Print Name: _____

My Commission Expires:

_____

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

On this ___ day of _____, 2007, before me appeared _____, to me personally known, who, being by me duly sworn, did say that he is _____ of AD Brown Acquisition, LLC, a Missouri limited liability company, and that he is authorized to sign the instrument on behalf of said company, and acknowledged to me that he executed the within instrument as said company's free act and deed.

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

_____

Notary Public

[SEAL]

Print Name: _____

My Commission Expires:

_____

Approved: October 29, 2007