

ORDINANCE #67849
Board Bill No. 394

AN ORDINANCE AMENDING ORDINANCE NO. 67063 ADOPTED BY THE BOARD OF ALDERMEN ON MARCH 10, 2006; AUTHORIZING THE EXECUTION OF AN AMENDMENT TO REDEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY AND LOOP CENTER, 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. 66971, the City designated a portion of the City a Redevelopment Area and approved the Loop Center North Tax Increment Financing (TIF) Redevelopment Plan (the "Redevelopment Plan") and the Redevelopment Project, all as described therein; and

WHEREAS, pursuant to Ordinance No. 66971, the City also 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 Real Property Tax Increment Allocation Redevelopment Act, RSMo §§ 99.800, et seq. (the "TIF Act") and described in said Ordinance; and

WHEREAS, pursuant to Ordinance No. 67063, the City authorized the execution of a Redevelopment Agreement (the "Redevelopment Agreement") between the City and Loop Center, LLC, formerly known as Loop Center North, 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 Developer as provided in and in accordance with Ordinance No. 67063; and

WHEREAS, Section 3.4 of the Redevelopment Agreement provides that the Developer shall commence or cause the commencement of the Construction Work (as that term is defined in the Redevelopment Agreement) not later than June 1, 2007, and shall substantially complete or cause the Construction Work to be substantially complete not later than August 1, 2008 absent any event of force majeure (as that term is defined in the Redevelopment Agreement) and not later than November 1, 2008 in the event of a delay caused by an event of force majeure; and

WHEREAS, Subsection 7.22.2 of the Redevelopment Agreement provides that the Developer shall submit to the MBE/WBE Compliance Officer a copy of the Developer's MBE/WBE Subcontractor's List and the Developer's MBE/WBE Utilization Statement (as those terms are defined in the Redevelopment Agreement) on or before June 1, 2007 with respect to the Construction Work; 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 the dates by which the Construction Work must be commenced and must be complete or substantially complete and the date by which the MBE/WBE Subcontractor's List and the MBE/WBE Utilization Statement must be submitted to the MBE/WBE Compliance Officer; 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

THIS 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 **LOOP CENTER, LLC**, a Missouri limited liability company formerly known as Loop Center North, LLC (the "Developer").

RECITALS

A. The City is a party to that certain Redevelopment Agreement (the "Agreement" and other capitalized terms or defined terms not defined in this Amendment shall have the meanings ascribed to those terms in the Agreement) by and between the City and the Developer, for redevelopment of a portion of the City of St. Louis in accordance with that certain Loop Center North Tax Increment Financing (TIF) Redevelopment Plan and as approved and authorized by the City of St. Louis, Missouri pursuant to Ordinance Numbers 66971 and 67063 (the "Redevelopment Project"); and

B. Section 3.4 of the Agreement provided that (a) the Developer shall commence or cause the commencement of the Construction Work not later than June 1, 2007, (b) the Developer shall substantially complete or cause the Construction Work to be substantially complete, absent any event of force majeure, not later than August 1, 2008, and, (c) in the event of a delay caused by an event of force majeure, the Developer shall substantially complete or cause the Construction Work to be substantially complete by not later than November 1, 2008; and

C. Subsection 7.22.2 of the Redevelopment Agreement provided that the Developer shall submit to the MBE/WBE Compliance Officer a copy of the Developer's MBE/WBE Subcontractor's List and the Developer's MBE/WBE Utilization Statement on or before June 1, 2007 with respect to the Construction Work; and

D. Sections 7.2 and 7.4 provided the right to the City to take certain actions in the event that the Construction Work was not substantially complete by August 1, 2008 or November 1, 2008, as applicable, and the Developer's MBE/WBE Subcontractor's List and the Developer's MBE/WBE Utilization Statement were not submitted to the MBE/WBE Compliance Officer on or before June 1, 2007; and

E. Due to certain circumstances, additional time beyond that provided in the Agreement is required to complete the Construction Work related to the Redevelopment Project, 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.

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. Section 3.4 of the Agreement as originally executed is by this Amendment deleted, 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 not later than forty-five (45) days after execution of this Agreement: (a) demolition and removal of existing buildings and other structures within the Redevelopment Area; and (b) site preparation, including clearing and grading of the Redevelopment Area and environmental remediation of the Redevelopment Area (such components of the Work being hereinafter referred to as the “Site Work”). The Developer shall substantially complete or cause the Site Work to be substantially complete not later than September 15, 2006 absent an event of force majeure subject to satisfaction of any additional requirements of the Missouri Department of Natural Resources in connection with the environmental remediation of the Redevelopment Area. The Developer shall commence or cause the commencement of the construction of a retail/office building and supporting infrastructure and parking improvements not later than June 1, 2008 (such component of the Work being hereinafter referred to as the “Construction Work”). The Developer shall substantially complete or cause the Construction Work to be substantially complete not later than August 1, 2009 absent an event of force majeure. The Work, including without limitation the Site Work and the Construction Work, shall be completed in a good and workmanlike manner in accordance with this Agreement and the Redevelopment Plan. In the event of any delay caused by an event of force majeure, Developer shall be granted additional time to complete the Work, but under no circumstances shall such time to complete the Work extend beyond November 1, 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.”

2. Subsection 7.22.2 of the Agreement as originally executed is by this Amendment deleted, and replaced with the following:

“7.22.2 On or before the date that is forty-five (45) days after the execution of this Agreement, Developer shall submit to the MBE/WBE Compliance Officer a copy of Developer’s MBE/WBE Subcontractor’s List and its MBE/WBE Utilization Statement with respect to the Site Work as that term is defined in **Section 3.4** of this Agreement. On or before June 1, 2008, Developer shall submit to the MBE/WBE Compliance Officer a copy of Developer’s MBE/WBE Subcontractor’s List and its MBE/WBE Utilization Statement with respect to the Construction Work as that term is defined in **Section 3.4** of this Agreement.”

3. 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.

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

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

6. 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 _____, 200__, 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 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

My Commission Expires:

[SEAL]

STATE OF MISSOURI)
)SS

