ORDINANCE #67879
Board Bill No. 459

AN ORDINANCE AMENDING ORDINANCE NOS. 66494 AND 66752 ADOPTED BY THE BOARD OF ALDERMEN ON NOVEMBER 19, 2004 AND JUNE 23, 2005, RESPECTIVELY; AUTHORIZING THE EXECUTION OF A SECOND AMENDMENT TO REDEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY AND ADLER LOFTS, 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. 66493, the City designated a portion of the City a Redevelopment Area and approved the Adler Lofts TIF Redevelopment Plan (the "Redevelopment Plan") and the Redevelopment Project, all as described therein; and

WHEREAS, pursuant to Ordinance No. 66493, 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. 66494, the City authorized the execution of a TIF Redevelopment Agreement between the City and Adler Lofts, LLC (the "Developer"), in furtherance of the Redevelopment Plan, with such TIF Redevelopment Agreement to be in the form attached thereto; and

WHEREAS, the TIF Redevelopment Agreement was subsequently executed by the City and the Developer, as provided in and in accordance with Ordinance No. 66494, which TIF Redevelopment Agreement is dated as of February 16, 2005, as amended by that certain Amendment to Redevelopment Agreement dated as of February 5, 2007, as provided for and in accordance with Ordinance No. 66752 (collectively, the "Redevelopment Agreement"); 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 December 31, 2006 absent any event of Force Majeure and not later than December 31, 2007 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 a Second Amendment to the Redevelopment Agreement, in order to amend the Redevelopment Agreement as it concerns the date by which the Work must be complete or substantially complete; and

WHEREAS, the Board of Aldermen hereby determines that the terms of the Second 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 of the attached Second 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 Second 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 Second Amendment to Redevelopment Agreement and to affix the seal of the City thereto. The Second 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
Second Amendment to Redevelopment Agreement

SECOND AMENDMENT TO REDEVELOPMENT AGREEMENT

This Second Amendment to Redevelopment Agreement ("**Second Amendment**") is made this __ day of January, 2008 by and between the CITY OF ST. LOUIS, MISSOURI ("**City**"), a city and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Missouri, and ADLER LOFTS, LLC, a Missouri limited liability company ("**Adler**").

RECITALS

A. The City and Adler are parties to that certain Redevelopment Agreement dated as of February 16, 2005, as amended by that certain Amendment to Redevelopment Agreement dated as of February 5, 2007 (collectively, the "**Agreement**"), for the redevelopment of a portion of the City of St. Louis in accordance with that certain Adler Lofts TIF Redevelopment Plan and as approved and authorized by the City of St. Louis, Missouri pursuant to Ordinance Nos. 66493 and 66494; and

B. Section 3.4 of the Agreement did provide that the Developer shall substantially complete or cause the Work to be substantially complete, absent any event of Force Majeure, not later than December 31, 2006, and, alternatively provided 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 December 31, 2007, as such terms are defined in the Agreement, and did provide to 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 December 31, 2006; and

C. Due to certain circumstances, additional time beyond that provided in the Agreement is required to complete the 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 Second 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 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 December 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 up to and including December 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 take all actions necessary to apply for the wage and hour determinations and otherwise comply with such laws."

2. This Second 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.

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

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

5. This Second Amendment may be executed in multiple counterparts.

[Signature Pages to Follow.]

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

"CITY"

_____

_____

(SEAL)

Attest:

_____
Parrie May, City Register

Approved as to Form:

_____
Patricia Hageman, City Counselor

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

CITY OF ST. LOUIS, MISSOURI

By:

Francis G. Slay, Mayor

By:

Darlene Green, Comptroller

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 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 County and State aforesaid, the day and year first above written.

_____

Notary Public

My Commission Expires:

_____

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

On this _____ day of _____, 200_, 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 County and State aforesaid, the day and year first above written.

_____

Notary Public

My Commission Expires:

_____

"ADLER"

_____

_____

ADLER LOFTS, LLC, a Missouri limited liability company

By:

Name:

Its: _____

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

I HEREBY CERTIFY, that on this _____ day of _____, 200_, before me, the undersigned Notary Public of said State, personally appeared _____, who acknowledged himself to be the _____ of Adler Lofts, LLC, a Missouri limited liability company, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained as such duly authorized Manager by signing the name of ADLER LOFTS, LLC by himself as such Manager.

WITNESS my hand and Notarial Seal.

_____

Name

(print):_____

Notary Public in and for said State
Commission Expires:

EXHIBIT A
Legal Description of the Redevelopment Area

Parcel One

A Lot in Block 2006 of the City of St. Louis, fronting 100 feet on the North line of Washington Avenue by a depth Northwardly between parallel lines of 137 feet more or less to the South line of Lucas Avenue; bounded West by a line parallel to and 75 feet East of the East line of 21st Street or by property now or formerly of Craddock-Terry Co.

Parcel Two

A lot in Block 20067 of the City of St. Louis fronting 75 feet on the North line of Washington Avenue by a depth Northwardly of 137 feet 9 inches, more or less, to the South line of Lucas Avenue; bounded West by Twenty-First Street.

Parcel Three

A lot in Block 2007 of the City of St. Louis, fronting 69 feet on the North line of Washington Avenue by a depth Northwardly of 137 feet, more or less, to the South line of Lucas Avenue, with a width thereon of 69 feet; bounded East by Twenty-First Street, and West by a line 69 feet West of and parallel to the West line of Twenty-First Street, or property now or formerly of Mary Jane Blanke.

Parcel Four

A tract of land being part of 21st Street, 60.00 feet wide, between City Blocks 2007 and 2006 of the City of St. Louis, Missouri; said being more particularly described as follows:

Beginning at the intersection of the north line of Washington (80.00 foot wide) Avenue and the west line of 21St St. (60.00 foot wide) Street; thence north 02 degrees 23 minutes 58 seconds west along the west line of said 21st Street for a distance of 136.97 feet to a point located on the south line of Lucas (50.00) Avenue; thence north 87 degrees 32 minutes 19 seconds east for a distance of 60.00 feet to a point located on the east line of said 21st Street; thence south 02 degrees 23 minutes 58 seconds east along the east line of said 21st Street for a distance of 136.89 feet to a point located on the north line of said Washington Avenue; thence south 87 degrees 27 minutes 30 seconds west for a distance of 60.00 feet to the point of beginning and containing 8213 square feet.

Approved: February 19, 2008