

ORDINANCE #68533
Board Bill No. 236

An Ordinance amending Ordinance Numbers 65857 and 66431 and 67059 and 68429 and 68532 (Board Bill #233) pertaining to the Grand Center Redevelopment Area approving a Tax Increment Financing Redevelopment Agreement for the Grand Center Redevelopment Area; approving a fifth Amendment to the Redevelopment Agreement contained in Exhibit A to such Ordinances; prescribing other matters and making findings with respect thereto;; authorizing certain actions by City officials; and containing a severability clause and an emergency clause.

WHEREAS, the City of St. Louis, Missouri (the "City"), is a body corporate and a political subdivision of the State of Missouri, duly created, organized and existing under and by virtue of its charter, the Constitution and laws of the State of Missouri; and

WHEREAS, pursuant to Ordinance No. 65703 approved November 15, 2002, the Board of Aldermen did approve a Redevelopment Plan dated August 2, 2002, as amended (the "Redevelopment Plan") for the Grand Center Redevelopment Area (the "Redevelopment Area") which provides for development of: (a) District Theaters, Museums and Arena Redevelopment Projects; (b) District Parking Redevelopment Projects; (c) District Green Space and Public Improvement Redevelopment Projects; (d) District Education and Housing Redevelopment Projects; (e) District Historic Rehabilitation Redevelopment Projects; and (f) District Retail and Mixed Use Redevelopment Projects (the entire proposal for redevelopment as described in the Redevelopment Plan being hereinafter referred to as a series of "Redevelopment Projects"); and

WHEREAS, the City's Board of Aldermen did duly consider and adopt Ordinance No. 65857 on February 25, 2003 authorizing execution of a redevelopment agreement by and between the City and Grand Center, Inc. ("Developer"), and the City did, pursuant to said ordinance, enter into a Redevelopment Agreement dated April 24, 2003 with the Developer (the "Redevelopment Agreement") in order to implement the Redevelopment Plan and the Redevelopment Projects therein; and

WHEREAS, as implementation of the Redevelopment Plan and the Redevelopment Agreement progressed, it became evident that certain changes were required, and the Developer requested certain amendments to the Redevelopment Agreement and the City's Board of Alderman did duly consider and adopt Ordinance No. 66431 in July, 2004 authorizing execution of an Amendment to the Redevelopment Agreement (the "First Amendment") and did duly consider and adopt Ordinance No. 67059 in March, 2006 authorizing execution of a second Amendment to the Redevelopment Agreement (the "Second Amendment") and did duly consider and adopt Ordinance No. 68429 in July, 2009 authorizing execution of a third Amendment to the Redevelopment Agreement (the "Third Amendment") and did duly consider and adopt Ordinance No. _____ (Board Bill # _____) in November and December, 2009 authorizing execution of a third Amendment to the Redevelopment Agreement (the "Fourth Amendment") by and between the City and the Developer; and

WHEREAS, as implementation of the Redevelopment Plan and the Redevelopment Agreement (as amended by the First Amendment, the Second Amendment and the Third Amendment) has continued to progress, and (i) certain Redevelopment Projects can be completed with lower TIF Allocation amounts and certain other Redevelopment Projects cannot be completed without TIF Allocation amounts, certain additional changes are required, and (ii) certain terms concerning the sale of the property at 634 N. Grand need to be modified in connection with the proposed ultimate redevelopment of said property, and as a result the Developer has requested certain additional amendments to the Redevelopment Agreement; and

WHEREAS, the Board of Aldermen hereby determines that the terms of the Fifth Amendment to the Redevelopment Agreement attached as Exhibit A hereto (the "Fifth Amendment") are acceptable and that the execution, delivery and performance by the City and the Developer of their respective obligations under the Redevelopment Agreement, as amended are 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 Act and the Redevelopment Plan; and

WHEREAS, the Board of Aldermen hereby determines that modifying terms of the sale of the property at 634 N. Grand from City to Developer in accordance with a certain Contract for Sale of Real Estate is in the best interests of the City.

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

SECTION ONE. The Redevelopment Agreement contained in Exhibit A to Ordinance 66857, the First Amendment contained in Exhibit A to Ordinance 66431, the Second Amendment contained in Exhibit A of Ordinance 67059, the Third Amendment contained in Exhibit A of Ordinance 68427, the Fourth Amendment contained in Exhibit A of Ordinance _____

(Board Bill # _____) are hereby ratified and approved. The Fifth Amendment, attached hereto as Exhibit A, is hereby approved and the Redevelopment Agreement, the First Amendment, the Second Amendment, the Third Amendment, and the Fourth Amendment and all exhibits attached thereto and all Redevelopment Projects set forth therein are hereby deemed amended in accordance with the Fifth Amendment.

SECTION TWO. The Mayor and Comptroller of the City and all other officers, agents, representatives and employees of the City are hereby authorized to take any and all actions as may be deemed necessary, desirable, convenient or proper to carry out and comply with the intent of this Ordinance with regard to the implementation of the Redevelopment Plan, the Redevelopment Agreement and the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment and the Contract for Sale of Real Estate and to execute and deliver for and on behalf of the City all certificates, instruments or other documents as may be necessary, desirable, convenient or proper to carry out the matters herein authorized.

SECTION THREE. The Mayor and the Comptroller or their designated representatives are hereby further authorized and directed to make any changes to the documents and instruments approved and authorized by this Ordinance as may be consistent with the intent of this Ordinance and necessary, desirable, convenient or proper in order to carry out the matters herein authorized.

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.

SECTION FIVE. This being an ordinance involving the sale, rehabilitation and financing of property and necessary for the immediate preservation of the public peace, health and safety, it is declared to be an emergency measure as defined by Article IV, Sections 19 and 20 of the Charter of the City of St. Louis and shall take effect and be in force from and after its adoption and approval by the Mayor.

EXHIBIT A

1. Section 1 to the Redevelopment Agreement and First Amendment approved in Exhibit A to Ordinance Number 65857 and Ordinance 66431 and Ordinance 67059 shall be amended by inserting the following definition:

“*Additional Revenues*” means all revenues received by the City from the following taxes enumerated below imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels located at 634 N. Grand within the Redevelopment Area, which taxes do not constitute EATs and which shall be deposited in the Hotel Revenue Fund of the Special Allocation Fund for a ten year period and dedicated to the developer or sub-developer of 634 N. Grand on a “pay as you go basis” to be paid no more frequently than semi-annually and in each case less the costs of collection thereof and excluding (i) any amount paid under protest until such protest is withdrawn or resolved against the taxpayer or (ii) any such amount received by the City which is the subject of a suit or other claim communicated to the City which suit or claim challenges the collection of such sum:

- (a) the general municipal sales tax levied pursuant to Ordinance No. 62884, or any successor thereto;
- (b) the general municipal sales tax levied pursuant to Ordinance No. 55497, as amended by Ordinance Nos. 57179 and 57979, or any successor thereto;
- (c) the transportation sales tax levied pursuant to Ordinance No. 56553, or any successor thereto;
- (d) the capital improvements sales tax levied pursuant to Ordinance No. 62885, or any successor thereto; and

2. Section 2.E to the Redevelopment Agreement and First Amendment approved in Exhibit A to Ordinance Number 65857 and Ordinance 66431 and Ordinance 67059 shall be amended by inserting the following at the end of the section:

“Notwithstanding anything contained herein to the contrary, the City and its agencies shall have the right to grant ten (10) years of tax abatement in connection with any Redevelopment Project related to the property located

at 634 N. Grand and related parking and parking lot improvements.”

3. Section 8 to the Redevelopment Agreement and First Amendment approved in Exhibit A to Ordinance Number 65857 and Ordinance 66431 and Ordinance 67059 shall be deleted and a new Section 8 shall be inserted as follows:

Section 8. Special Allocation Fund: Collection and Use of TIF Revenues and Additional Revenues.

A. Creation of Special Allocation Fund. The City agrees to cause the appropriate officer to maintain the Special Allocation Fund. Subject to the requirements of the TIF Act, the City shall promptly, upon receipt thereof, deposit the TIF Revenues and the Additional Revenues into the Special Allocation Fund.

B. Application of TIF Revenues and Additional Revenues. The City hereby agrees for the term of this Agreement to apply the TIF 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 under successor statutes, to the repayment of TIF Obligations as provided in Section 7 above and as provided in the Note Ordinance. The City hereby agrees for the term of this Agreement to apply the Additional Revenues and any taxes, fees or assessments subsequently enacted and imposed in substitution therefor and allocable to the Special Allocation Fund as provided in the definition of Additional Revenues.

C. Cooperation in Determining TIF Revenues and Additional Revenues. The City and the Developer (and any applicable Sub-Developer) agree to cooperate and take all reasonable actions necessary to cause the TIF Revenues and Additional Revenues to be paid into the Special Allocation Fund, including the City’s enforcement and collection of all such payments through all reasonable and ordinary legal means of enforcement. The Developer shall use its best efforts to supply or cause to be supplied to the City’s Office of the Comptroller a completed Tax Increment Financing (TIF) District Quarterly Information Form for each business located within the Redevelopment Area, the form of which is attached hereto as Exhibit H. In addition, the City and Developer agree as follows:

(i) The City and the Developer (and any applicable Sub-Developer) agree to cooperate and take all reasonable actions necessary to cause the TIF Revenues and Additional Revenues to be paid into the Special Allocation Fund, including the City’s enforcement and collection of all such payments through all reasonable and ordinary legal means of enforcement.

(ii) The Developer (or its successor(s) in interest as an owner or owner(s) of the affected portion(s) of the Redevelopment Area and any applicable Sub-Developer) shall require any "seller" (as that term is defined in Section 144.010(10) of the Missouri Revised Statutes, as amended), located in the Redevelopment Area following completion of the work which has multiple business operations within the City to separately identify and declare all sales taxes originating within the Redevelopment Area and to provide such additional information regarding other sources of sales taxes within the City as may be required to determine the allocation of new sales taxes attributable to the Redevelopment Area during relevant reporting periods for purposes of compliance with this Agreement and the Act.

(iii) To further assist the City in calculating TIF Revenues and Additional Revenues, the Developer (and any applicable Sub-Developer) shall deliver the information related to its Redevelopment Project(s) and shall use all reasonable efforts to complete and submit the form set forth in Exhibit H in order to:

(a) Supply federal and state identification numbers;

(b) Supply or cause to be promptly supplied to the City, copies of statements of earnings, payroll and gross receipts taxes paid (on Business Return Form 234, W-10, P-10 and City Gross Receipt Tax Report or successor forms) and copies of State sales tax returns filed with the Missouri Department of Revenue (on Form 53-1 or successor form) promptly after filing by "sellers" (as that term is defined in Section 144.010(10) of the Missouri Revised Statutes, as amended) located on the Project Parcels;

(c) Supply or cause to be promptly supplied to the City, copies of monthly invoices received

for utility services subject to taxation provided to the Project Parcels, including, but not limited to electric, natural gas, cable and telephone services; and

(d) Request any purchaser or transferee of real property located within the Project Parcels and any lessee or other user of real property located within the Project Parcels, to designate sales subject to sales taxes pursuant to Chapter 144 of the Revised Statutes of Missouri, as amended, to be reported as originating from the Redevelopment Area to the fullest extent permitted by law (including reasonable efforts to negotiate for the inclusion of a clause so providing in the leases or sale contracts relating to the Project Parcels, and to provide the information required pursuant to Section 8.D.(i)-(iii) above.

So long as TIF Obligations are outstanding, the Developer (and any applicable Sub-Developer) shall cause the agreements in this Section to be a covenant running with the land which shall be enforceable as if such purchaser, transferee, lessee or other user of the Project Parcels were originally a party to and bound by this Agreement.

D. Certificate of Total Initial Equalized Assessed Value. Within sixty (60) days following the date of execution of this Agreement, the City shall provide to the Developer a true, correct and complete copy of the St. Louis Assessor's calculation of the total assessed value of all taxable property within the Redevelopment Area for the calendar year ending December 31, 2001, determined pursuant to Section 99.845.1 of the Act.

E. Certificate of Initial Economic Activity Tax Revenues. Within sixty (60) days following the date of execution of this Agreement, the City shall provide to Developer a certification of the total additional revenues from taxes which were imposed by the City or other taxing districts (as the term is defined in Section 99.805(16) of the Act) for economic activities within the Redevelopment Area in the calendar year ending December 31, 2001, other than and excluding any taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, licenses, fees or special assessments and personal property taxes, other than payment in lieu of taxes.

Approved: December 14, 2009