

St. Louis City Ordinance 62339

FLOOR SUBSTITUTE

BOARD BILL NO. [91] 57

INTRODUCED BY ALDERMAN Daniel McGuire

An ordinance approving the Development Plan for a tract of land being part of Block 5423 of the City of St. Louis, Missouri, as submitted by SIXTY TWENTY FIVE WESTMINSTER REDEVELOPMENT CORPORATION (hereinafter referred to as the "Developer"); declaring the hereinabove described area as a blighted area which should be redeveloped in the public interest; finding that said Development Plan is in the public interest and conforms to the 1975 Interim Comprehensive Plan for the City; authorizing the Mayor and the Comptroller to enter into an agreement on behalf of the City of St. Louis with the Developer, setting forth the terms and conditions of said agreement, incorporating by reference Chapter 353, Revised Statutes of Missouri, 1986, as amended, and Chapter 11.06 of the Revised Code of the City of St. Louis, 1980; and containing a severability clause and an emergency clause.

WHEREAS, the Board of Aldermen has found and designated: Lot 21 in Block 9 of Washington Heights and in Block 5423 of the City of St. Louis fronting 35 feet on the north line of Westminster Place, by a depth northwardly of 125 feet, more or less, to an alley. Together with all improvements thereon known and numbered as 6025 Westminster Place. Subject to all existing building lines, easements, conditions, restrictions, zoning regulations, now of record, if any. 5423 00 02000. to be a blighted area (hereinafter referred to as the "Development Area") within the meaning of, and as defined in, Section 353.020 of the Revised Statutes of Missouri, 1986; and

WHEREAS, the Developer, an urban redevelopment corporation formed and existing under Chapter 353 of the Revised Statutes of Missouri, 1986, as amended, did duly submit a Development Plan for the development of the Development Area (said Development Plan hereinafter referred to as the "Development Plan"); and

WHEREAS, there have been no improvements in the Development Area since such designation to alter or change the blighted character of the Development Area; and

WHEREAS, the Community Development Agency ("CDA"), acting under the provisions of Chapter 11.06 of the Revised Code of the City of St. Louis, 1980, did make an independent study and investigation of the Development Plan as submitted to it and thereafter did adopt a resolution approving the Development Plan and did present its analysis, reports and recommendations to the Mayor and Board of Aldermen; and

WHEREAS, the recommendation of the Mayor concerning the redevelopment of the Development Area was duly submitted to the Board of Aldermen and duly considered; and

WHEREAS, the Development Plan for the Development Area, which area is more particularly described as follows:

Lot 21 in Block 9 of Washington Heights and in Block 5423 of the City of St. Louis fronting 35 feet on the north line of Westminster Place, by a depth northwardly of 125 feet, more or less, to an alley. Together with all improvements thereon known and numbered as 6025 Westminster Place. Subject to all existing building lines, easements, conditions, restrictions, zoning regulations, now of record, if any. 5423 00 02000.

was found to be in full compliance with Chapter 11.06 of the Revised Code of the City of St. Louis, 1980, and the procedures and requirements therein provided with the exception of certain provisions of Chapter 11.06 of the Revised Code of the City of St. Louis, as amended, compliance with which the Board of Alderman finds under the facts and circumstances of this particular project would serve no worthwhile purpose and should not apply to the approval of this Development Plan, including specifically certain requirements of Sections 11.070, 11.110, and 11.130 of the Revised Code of the City of St. Louis, Missouri; and

WHEREAS, it has been determined by the Board of Aldermen of the City of St. Louis that the Development Plan is in the public interest and serves a public purpose.

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

SECTION ONE. It is hereby determined, found and declared that the Development Plan submitted by SIXTY TWENTY FIVE WESTMINSTER REDEVELOPMENT CORPORATION (the "Development Plan") for the Development Area, as approved by CDA, is in the public interest and as such is approved in accordance with the provisions of this ordinance. The

Development Area is identified and described as follows: Lot 21 in Block 9 of Washington Heights and in Block 5423 of the City of St. Louis fronting 35 feet on the north line of Westminster Place, by a depth northwardly of 125 feet, more or less, to an alley. Together with all improvements thereon known and numbered as 6025 Westminster Place. Subject to all existing building lines, easements, conditions, restrictions, zoning regulations, now of record, if any. 5423 00 02000.

SECTION TWO. It is found, determined and declared that no families will be displaced by the implementation of the Development Plan.

SECTION THREE. The Board of Aldermen has reviewed the previous designation of the Development Area as a blighted area and the Board of Aldermen hereby finds that said area described herein as the Development Area is a blighted area as defined by Chapter 353 of the Revised Statutes of Missouri, 1986, as amended and Chapter 11.06 of the Revised Code of the City of St. Louis, 1980.

SECTION FOUR. It is determined, found and declared that there exists a necessity for the granting of the power of eminent domain to the Developer, that the granting of such power of eminent domain is in the public interest and serves the public purposes expressed in Chapter 11.06 of the Revised Code of the City of St. Louis, 1980, and that there is hereby granted to the Developer a Certificate of Public Convenience and Necessity authorizing and empowering it to acquire by eminent domain or otherwise all or part of the real property located in the Development Plan. The Developer shall have the authority and powers of eminent domain as set forth in Subsection 3, of Section 353.130, Revised Statutes of Missouri, 1986.

SECTION FIVE. The Mayor and the Comptroller of the City of St. Louis shall be and are hereby authorized and directed to enter into and perform on behalf of the City, an agreement by and between said City and the Developer, its successors and assigns. In the event of any conflicts or differences between the provisions of the Development Plan and the Agreement hereinafter recited, the Agreement shall govern and said Development Plan shall be deemed to be amended accordingly.

SECTION SIX. The said Agreement is hereby made a part of this ordinance and said Agreement shall be substantially in words and figures as follows:

AGREEMENT

AN AGREEMENT, entered into this ____ day of _____, 19____ ("Agreement"), between the City of St. Louis (hereinafter referred to as "City") and SIXTY TWENTY FIVE WESTMINSTER REDEVELOPMENT CORPORATION, its successors and assigns (hereinafter referred to as "Developer") for the execution of the Development Plan for the following area:

Lot 21 in Block 9 of Washington Heights and in Block 5423 of the City of St. Louis fronting 35 feet on the north line of Westminster Place, by a depth northwardly of 125 feet, more or less, to an alley. Together with all improvements thereon known and numbered as 6025 Westminster Place. Subject to all existing building lines, easements, conditions, restrictions, zoning regulations, now of record, if any. 5423 00 02000.

heretofore submitted by Developer and approved and enacted by the Board of Aldermen of the City of St. Louis by the ordinance of which this Agreement is a part (said Development Plan, as approved, being hereinafter referred to as the "Development Plan").

WHEREAS, the Board of Aldermen of the City of St. Louis has enacted into law an ordinance, of which this Agreement is a part, approving the Development Plan submitted by Developer, declaring that the area described in said Development Plan is a blighted area (pursuant to Ordinance) and that the clearance, redevelopment, replanning, rehabilitation and reconstruction thereof are necessary for the public convenience and necessity and that the approval of the Development Plan and the activities related thereto are necessary for the preservation of the public peace, health, safety, morals and welfare; and WHEREAS, the ordinance of which this Agreement is a part requires the undertaking and performance upon the part of Developer and of the City of various duties and steps; and that the approval of the Development Plan and the activities related thereto are necessary for the preservation of the public peace, health, safety, morals and welfare; and

WHEREAS, the ordinance of which this Agreement is a part requires the undertaking and performance upon the part of Developer and of the City of various duties and steps; and

WHEREAS, said ordinance directs the Mayor and the Comptroller of the City to enter into an Agreement with Developer providing for the execution of said Development Plan; and

WHEREAS, SIXTY TWENTY FIVE WESTMINSTER REDEVELOPMENT CORPORATION is a corporation formed under Chapter 353 of the Revised

Statutes of Missouri, 1986, as amended, and is now in good standing in the State of Missouri.

NOW, THEREFORE, the City and Developer, for the consideration and mutual covenants hereinafter contained and described under the conditions hereinafter set forth do hereby agree as follows:

1. Items Incorporated in this Agreement. The provisions of Chapter 353 of the Revised Statutes of Missouri, 1986, as amended (the "Urban Redevelopment Corporations Law"), up to and including the date of the ordinance of which this Agreement is a part, the provisions of Chapter 11.06 of the Revised Code of the City of St. Louis, 1980, up to and including the date of the ordinance of which this Agreement is a part; the provisions of the ordinance of which this Agreement is a part; and the Development Plan are hereby incorporated by reference and made in whole a part of this Agreement.

2. Legal Description of the Development Area. The development area (hereinafter referred to as the Development Area") is described as follows: Lot 21 in Block 9 of Washington Heights and in Block 5423 of the City of St. Louis fronting 35 feet on the north line of Westminster Place, by a depth northwardly of 125 feet, more or less, to an alley. Together with all improvements thereon known and numbered as 6025 Westminster Place. Subject to all existing building lines, easements, conditions, restrictions, zoning regulations, now of record, if any. 5423 00 02000.

3. Developer Control over the Development. Developer shall erect or cause to be developed, at its expense, except as otherwise provided in the Development Plan, residential dwelling units in the Development Area as more fully set out and described in the Development Plan hereinafter referred to as the "Development"), in the manner therein provided. Developer shall have complete and exclusive control over the construction of the Development and the management and operation of the Development.

4. Development Phases. The Development shall consist of one (1) phase and shall be implemented as set forth in Section 5 hereof.

5. Development Timing. The Development shall be implemented as follows: acquisition of the property shall commence within eighteen (18) months after due execution of this Agreement by all parties; construction shall commence within twelve (12) months after acquisition of the property and construction shall be substantially completed within twelve (12) months after commencement of construction; provided, however, that upon application by

Developer, the President of the Board of Public Service may extend the foregoing time periods, such extension(s) not to exceed in any case an extension period equal to the period of time set forth herein for the activity to be commenced and/or completed. Developer shall have the right, without amendment of the Development Plan and without approval of the Community Development Agency ("CDA") or the Board of Aldermen, to initiate action on the Development prior to dates stated herein.

6. Developer's Right to Modify the Development Plan. Developer shall have the right to alter, change or modify the number of dwelling units in the Development to the extent approved by the Director of the Community Development Agency.

7. Delays. Notwithstanding anything to the contrary contained herein, in the Development Plan or in the ordinance approving the Development Plan, the times within which development activities are to commence or be completed will automatically be extended appropriately as a result of actions or inactions not within the reasonable control of Developer, including construction delays, delays caused by competent legal authority, strikes, lock outs, labor disputes, riots, fire, or other casualties, tornadoes, acts of God, acts of public enemy, accidents, governmental restrictions, unanticipated or unusual site conditions, priorities regarding acquisition of or use of materials, litigation challenging the rights of Developer, delays caused by the City, State or Federal governments or any failure to obtain requisite permits and/or approvals of City Boards, departments and bureaus within the projected time frame (including, without limitation, the execution of this Agreement by the City). In addition, time extensions shall be granted by the Board of Estimate and Apportionment upon application by Developer before or after the expiration date of any time limit upon a finding by the Board that:

a. Developer has exercised all reasonable care to ensure commencement or completion of the matter in question for which the extension is requested; or

b. The delay in commencing or completing performance was not caused by an unreasonable act or failure to act on the part of Developer.

In the event Developer shall fail to meet any time limits, as extended, for commencement or completion of any activity, or performance of other obligations, the City, and only the City, may take the action set forth in paragraph 8 of this Agreement, and no third parties shall have any rights or claims with respect to such failure unless the City has acted pursuant to paragraph 8 to cancel and terminate this Agreement.

8. Breach and Compliance. In the event of substantial noncompliance with the Development Plan as approved herein, written notice of same may be delivered to Developer by the President of the Board of Public Service, and if Developer, after receipt of such notice, shall not have corrected such substantial noncompliance within forty five (45) days after the time reasonably required to complete such correction (unless the time for such correction is further extended by the President of the Board of Public Service), or upon failure of Developer to commence the development activities or complete the same within the time limits (subject to extension as provided in paragraph 7) set out in paragraph 5 above, then the President of the Board of Public Service may, at his option, petition the Board of Estimate and Apportionment of the City of St. Louis, to cancel, void and terminate this Agreement and all rights of Developer hereunder, in whole or in part, but only with respect to the property involved in the substantial noncompliance and property in any portion of the Development Area in which development activities have not commenced. If the President of the Board of Public Service of the City of St. Louis does so petition the Board of Estimate and Apportionment, notice of said petition shall be given to Developer by said Board of Estimate and Apportionment. No sooner than thirty (30) days after notice of said petition is given to Developer, the Board of Estimate and Apportionment shall hold a hearing on the petition, following which it may, at its option, but only if it finds that there was such substantial noncompliance and failure to timely cure same by Developer within the period provided above, cancel, void and terminate this Agreement and all rights of Developer hereunder, in whole or in part, but only with respect to the property involved in the substantial noncompliance and property in which development activities have not commenced. Said cancellation or termination shall not affect the partial tax abatement granted under this Agreement on any other property in the Development Area which has been or is being developed in accordance with the provisions of this Agreement. Developer shall be entitled to seek judicial review of said decision of the Board of Estimate and Apportionment by filing a petition therefor with the Circuit Court of the City of St. Louis under the provisions of Chapter 536 of the Revised Statutes of Missouri, 1986. Notwithstanding the foregoing provisions of this paragraph 8, and subject only to the "force majeure" provisions of paragraph 7 of this Agreement, this Agreement shall terminate and be of no further force and effect without further action by Developer or the City if Developer (without authorized extension as provided for in paragraphs 5 and 7 of this Agreement) fails to commence and thereafter complete the development activities in accordance with the schedule set forth in paragraph 5 of this Agreement, effective on the 30th day following the date on which such failure occurs; provided, however, that the Director of the Community Development Agency shall have the right, but not the

obligation, to confirm the effective date of such termination by written notice to Developer and to the President of the Board of Public Service. Except as provided in paragraph 22 hereof, the right of termination granted under this paragraph 8 shall be the exclusive remedy for a breach by Developer of any of the terms of this Agreement.

9. Building Maintenance and Demolition. Developer, in accordance with the Development Plan, shall maintain the buildings and public areas in the Development Area to which it holds title in a good state of repair. Developer shall not be obligated to maintain such structures designated for demolition in the Development Plan, but shall be obligated to secure them and meet all health and safety requirements as determined under the rule making authority of the Building Code of the City of St. Louis until completion of demolition.

10. Non Discrimination in facilities. Developer will at all times make all facilities under its control in the Development Area available to the general public without regard to race, religion, color, marital status, status as a veteran, sex, national origin, or physical handicap.

11. Fair Employment Practices. Developer admits that the language, intent and purpose regarding fair employment practices contained in Ordinance 57173 of the City of St. Louis (Chapter 3.44.090 of the Revised Code of the City of St. Louis, 1980) apply to the Development Plan and agrees to comply with the term and spirit of said Ordinance.

12. Equal Opportunity in Construction and Material Suppliers. Developer agrees that all work undertaken within the Development Area shall be performed in compliance with the Guidelines for Maximum utilization of Minority Business Enterprise dated January, 1981, as amended to date.

13. Community Development Agency Review of Final Plans. Prior to commencement of development activities Developer shall submit to the Community Development Agency ("CDA") final plans for such activities for the approval of CDA, which approval shall not be withheld if the plans conform to applicable City Ordinances, this Agreement and the Development Plan. A written report respecting approval shall be given by CDA to Developer within ten (10) days after receipt of such final plans. If no report of disapproval is made by CDA, within ten (10) days after receipt of the final plans, the same shall be deemed to be approved.

14. Developer Compliance with City Procedures. Developer shall obtain all necessary permits as prescribed by law and be subject to all lawful inspections

and perform such necessary acts as are required by Chapter 11.06 of the Revised Code of the City of St. Louis, 1980, or by the ordinance of which this Agreement is a part.

15. City Access to Development Project. Developer, shall, in accordance with Chapter 11.06 of the Revised Code of the City of St. Louis, 1980, cooperate with and permit access to the agents and representatives of the President of the Board of Public Service or other officials of the City who by law have jurisdiction over various types of construction or public facilities. Developer shall be furnished copies of all written reports made by such agents, representatives and officials.

16. City Actions. The City agrees to cooperate with Developer in carrying out the Development Plan and with due diligence will perform each and every act required of it under the Development Plan.

17. Tax Abatement. Upon compliance with the terms and conditions of Section 11.06 of the Revised Code of the City of St. Louis, 1980, real property within the Development Area acquired by Developer shall be taxed in the manner provided in Section 353.110, Revised Statutes of Missouri, 1986; provided, however, that the period of tax abatement shall be limited to the first ten (10) years.

a. Tax abatement as provided in Section 353.110, Revised Statutes of Missouri, 1986, shall be provided for a period of ten (10) years for all improvements.

b. Real property in the Development Area acquired by Developer shall not be subject to assessment or payment of general ad valorem property taxes imposed by the City or State or any political subdivision thereof for a period of ten (10) years from January 1 of the year following the date when Developer acquires such property by purchase, lease or condemnation or otherwise, except to such extent and in such amount as may be imposed upon such real property during such period measured solely by the amount of the assessed valuation of the land, exclusive of improvements, as was determined by the Assessor of the City of St. Louis for taxes due and payable thereon during the calendar year preceding the calendar year during which Developer acquired such real property; and the amounts of such tax assessments shall not be increased by the City Assessor during said ten (10) year period so long as the real property is used in accordance with the Development Plan and this Agreement and any amendments thereto or hereto.

c. In the event that any such real property is tax exempt immediately prior to its acquisition by Developer, the Assessor for the City of St. Louis shall promptly assess such land, exclusive of improvements, at such valuation as shall conform to but not to exceed the assessed valuation made during the preceding calendar year of other land, exclusive of improvements, adjacent thereto. The amount of such assessed valuation so fixed by the City Assessor shall not be increased by the City Assessor during the ten (10) year period next following the date upon which Developer acquired such property so long as such real property is used in accordance with the Development Plan and this Agreement and any amendments thereto or hereto.

d. In the event of the sale or other disposition of any real property of Developer, (i) by reason of the foreclosure, or deed in lieu of foreclosure, under any mortgage, deed of trust or other lien, or insolvency or bankruptcy proceedings; (ii) by order of any court of competent jurisdiction; (iii) by voluntary transfer or conveyance (including sales, long term lease, or other disposition); or (iv) otherwise, then in each case the partial tax relief provided for in this paragraph shall inure to the benefit of any purchaser(s) or other transferee(s) of such real property so long as such purchaser(s) or other transferee(s) shall continue to use, operate and maintain such real property in accordance with the provisions of the Development Plan and this Agreement and any amendments thereto or hereto.

e. If any portion of the real property is not used, operated and maintained in accordance with the Development Plan and any amendments thereto, or in the event that a transferee does not desire the property to continue under the Development Plan and any amendments thereto, such portion of the real property shall be assessed for ad valorem taxes upon the full true value of the real property and may be owned and operated free and from any of the conditions, restrictions, or provisions of Chapter 353 of the Revised Statutes of Missouri, 1986, Chapter 11.06 of the Revised Code of the City of St. Louis, 1980, and the ordinance approving the Development Plan, but will not constitute a withdrawal of other parcels of property from the benefit of Chapter 353 of the Revised Statutes of Missouri, 1986, as amended, Chapter 11.06 of the Revised Code of the City of St. Louis, Missouri, 1980, or said ordinance. A breach of any covenant or obligation of the Development Plan or any obligation imposed by Chapter 353 of the Revised Statutes of Missouri, 1986, as amended, or Chapter 11.06 of the Revised Code of the City of St. Louis, 1980, by any owner will not constitute a breach by any other owner in the Development Area, and each development will be treated separately for this purpose.

18. Payments in Lieu of Taxes. Notwithstanding the tax abatement provisions of Section 353.110, Revised Statutes of Missouri, 1986, Developer agrees with respect to all property in the Development Area, with the exception of institutional property and property otherwise tax exempt, owned by it or its subsidiaries or nominees, and taxed pursuant to Section 353.110, it, its subsidiaries or nominees shall pay to the City with respect to all such property, in addition to the ad valorem taxes computed under Section 353.110, an amount annually equal to the amount by which the actual tax on all such property within the Development Area computed pursuant to Section 353.110 is less than the tax which would have resulted in such taxable year against all such property, had the assessed value of such property and improvements thereon remained the same as the assessed value of such property and improvements thereon as of January 1 of the year in which the Development Plan is approved by the Board of Aldermen of the City of St. Louis. The obligation to make the foregoing payments shall constitute a lien against each such parcel as to which such obligation applies, enforceable by the City in the same manner as general real estate taxes, but neither Developer nor any of its successors or assigns shall have any personal liability with respect thereto. The City agrees with respect to such payments made pursuant to this paragraph that it will distribute such payments in the same manner as it distributes ad valorem property taxes collected on such property to the state, city or other political subdivisions entitled thereto at the time of distribution. In no event shall the taxes assessed and levied against the property of Developer, its successors or assigns, when added to all other payments made under this Section, exceed the taxes which would have been assessed and levied by the City pursuant to the general real property taxing statutes of Missouri.

19. Earnings Limitation on Development.

a. The net earnings of Developer from the Development during the period in which tax relief is enjoyed under paragraph 17 hereof, shall be limited to an amount not to exceed eight percent (8%) per annum (or such greater amounts as may be permitted by Section 353.030 of the Revised Statutes of Missouri, 1986, as amended) of the cost to Developer of the Development (including the cost of the land), or the balance of such cost as reduced by amortization payments, provided that the net earnings to Developer derived from the Development shall in no event exceed a sum equal to eight percent (8%) per annum (or such greater amounts as may be permitted by Section 353.030 of the Revised Statutes of Missouri, 1986, as amended) upon the entire cost thereof. Such net earnings of Developer shall be computed after deducting from gross earnings the following:

- i. All costs and expenses of maintenance and operation.
- ii. Amounts paid for taxes, assessments, insurance premiums and other similar charges, and
- iii. An annual amount sufficient to amortize the cost of the entire Development at the end of the period, which shall not be more than twenty five (25) years from date of completion of the Development. Proceeds from the sale of stock or of any interest in a partnership or joint venture or from the sale of any property upon completion of development activities shall not be deemed income to Developer for purposes of computing earnings under Chapter 353 of the Revised Statutes of Missouri, 1986, as amended.

b. The surplus earnings of Developer in excess of those provided for in subsection a. of this paragraph 20 may be used or held for any one or all of the following purposes:

- i. As reserves for maintenance of such rate of return in future, and may be held by Developer to offset any deficiency in such rate of return which may have occurred in prior years.
- ii. To accelerate amortization payments.
- iii. For the enlargement of, or additions or improvements to, the Development, and
- iv. For a reduction in rentals.

At the termination of the tax relief provided for in paragraph 17, Developer shall make a strict accounting of surplus earnings in excess of those permitted hereby and shall turn over to the City any excess of such surplus earnings not previously used for one or more of the purposes set forth in subparagraph b subsections i, ii, iii and iv, of this paragraph 19. Developer shall establish and maintain reserve accounts, including but not limited to a reserve for the payment of taxes and insurance, according to recognized standard accounting practices. "Cost" as used herein for the purpose of determining the entire cost of the Development shall include, without limitation, among other items or expenses, the cost of land and improvements, financing fees and interest during construction, the estimated or actual expenses of demolition of existing structures, the estimated or actual expense of utilities, landscaping, walls, paving, signage, lighting, sidewalks, the estimated or actual expense of construction, equipment and furnishing of buildings and improvements,

including architectural, engineering, bonding, contracting, legal, accounting, development, construction, management, consulting, pre opening, title insurance and other costs, expenses or fees, the estimated or actual expense of reconstruction, rehabilitation, redevelopment, remodeling or initial repair of existing buildings and improvements, the cost of placement of tenants or occupants and relocation services in connection with the Development, reasonable management and operation expenses until the entire Development is completed, together with such additional expenses as may be incurred as a result of additions to or changes in the Development Plan.

20. **Developer's Right to Transfer Property.** Developer reserves the right to sell, assign, transfer, lease, mortgage and convey any property or any part thereof or interest therein which it may acquire within the Development Area, to any person, corporation, partnership, public authority, joint venture or other entity, including, without limitation, any affiliate of Developer, either before or after completion of the development activities as herein provided. All such transfers prior to completion of the development activities, however, shall be subject to the requirements of the Development Plan, this Agreement and the ordinance of which this Agreement is a part to complete the development activities called for in the Development Plan with respect to such property. All such transfers, before or after completion of the development activities, shall be subject to the land use requirements of the Development Plan. Any portion of the Development may be submitted to condominium ownership, or other interests or estates in the real property may be created. Any transferee or successor in interest to the property or any part thereof within the Development Area, acquired by Developer pursuant to the Development Plan and this Agreement, shall be entitled to the partial tax relief of Section 353.110, Revised Statutes of Missouri, 1986, as provided herein, without further action of the Board of Aldermen of the City of St. Louis, so long as such transferee or successor in interest continues to use, operate and maintain such property for the uses provided in the Development Plan.

21. **Performance Bonding.** Developer has demonstrated its financial capability to undertake and complete the acquisition of the Development Area by obtaining firm financing commitments. The covenants of Developer contained herein are therefore deemed sufficient to assure acquisition of the Development Area and there shall be no requirement for performance bond or other surety respecting acquisition of the Development Area; provided, however, that CDA may require the Developer to post a surety bond securing completion of the Development in such reasonable amount as CDA may determine at the time of final plan approval by CDA in the event that CDA determines at such time that the posting of such a bond is warranted.

22. Liquidated Damages. Liquidated damages in the amount of Five Hundred Dollars (\$500.00) for each month of delay may be assessed in favor of the City upon failure of Developer to complete the Development within the time agreed except as said time may be extended automatically hereunder or by the Board of Estimate and Apportionment for good cause. Periods of less than one (1) month shall be assessed upon a basis proportionate to the number of days in the period. Liquidated damages shall not exceed the reasonable value of any damages suffered by the City and shall be reviewable in the event of dispute between the City and Developer by appeal to the Courts.

23. Certificate of Completion. Developer may, in writing, request that the President of the Board of Public Service issue a Certificate of Completion on any part of the Development, and, upon substantial completion of any phase or any part thereof in accordance with the approved Development Plan, then the President shall issue such certificate and shall promptly notify the Board of Estimate and Apportionment and Developer of same. However, in the event the President of the Board of Public Service determines that any part thereof has not been substantially completed in accordance with the approved Development Plan, then the President forthwith shall transmit notice by registered mail, return receipt requested, to Developer, stating in writing the reasons for the finding that there has not been substantial compliance. Failure to so notify Developer within ten (10) days after receipt of said written request shall be deemed a Certificate of Completion.

24. Modifications in this Agreement. The terms, conditions and provisions of this Agreement and of the Development Plan can be neither substantially modified nor eliminated except by mutual agreement between the City and Developer; provided, however, that this Agreement shall not be construed as an enlargement of the authority conferred upon the City by Chapter 353 of the Revised Statutes of Missouri, 1986, as amended, and provided further that minor modifications may be made to the Development Plan by agreement of Developer, CDA and the President of the Board of Public Service, provided that such an amendment shall not be effective for a period of sixty (60) days after notice of such minor modification shall have been filed with the Clerk of the Board of Aldermen and the Mayor of the City of St. Louis and upon the objection of either the Mayor or the Board of Aldermen within such sixty (60) day period, such minor modification shall not take effect without amendment to the ordinance approving the Development Plan.

25. Term of Use Limitation. The uses in the Development Area shall be limited to the uses described in the Development Plan for a period of not less than twenty five (25) years from the effective date of the ordinance approving the

Development Plan or such longer period with respect to any parcel of property in said Area as the tax advantages under paragraph 17 hereof shall be claimed for such property.

26. Term of Agreement. This Agreement shall remain in full force and effect so long as Developer shall enjoy tax relief under Chapter 353, Revised Statutes of Missouri, 1986, as amended, and Chapter 11.06 of the Revised Code of the City of St. Louis, 1980, as amended, and at the termination of such relief, this Agreement shall terminate and become null and void, provided that all development as herein described has been completed and so certified by the President of the Board of Public Service. The rights and privileges given to Developer by this Agreement and the duties and obligations imposed on Developer shall apply only to the development project described in the Development Plan.

27. Invalidation or Cancellation of Agreement by Developer. In the event that Developer shall be prohibited from performing the covenants and agreements herein contained, or contained in the Development Plan by the order of any governmental agency or other authority of competent jurisdiction, or Court, or in the event that Chapter 353 of the Revised Statutes of Missouri, 1986, as amended, or Chapter 11.06 of the Revised Code of the City of St. Louis, 1980, or the ordinance of which this Agreement is a part, shall be declared invalid in whole or in part or shall be amended in whole or in part, then and in any such event, Developer may cancel or terminate this Agreement by giving written notice of its intention to do so to the City within the sixty (60) day period thereafter.

28. Annual Progress Report. Developer hereby agrees that it will submit an annual progress report on the Development to CDA on the forms provided by CDA.

29. Impact of Developer Default on Tax Relief. No default of Developer in completing any portion of the Development Plan, as approved by the ordinance of which this Agreement is a part, shall in any way affect adversely or jeopardize the partial tax relief with respect to any property in any other portion of the Development Area or any part thereof which has been or will thereafter be completed by Developer, its successors and assigns, including without limitation, any purchaser at a foreclosure sale.

30. Authorization to Secure Special Financial Assistance. The Mayor and Comptroller of the City of St. Louis on behalf of said City are hereby authorized and directed, from time to time, to file application(s), as may be

deemed necessary or appropriate by such officers, including all undertakings and assurances required to be contained therein, to provide such additional information as may be required, and, in general, to take whatever steps are necessary or appropriate in their judgment to apply for and secure funds under the Urban Development Action Grant Program, the Housing Rental Production Program, as authorized under Section 17 of the Housing and Urban Rural Recovery Act of 1983, or any similar federal or state program which may provide financial assistance for the Development.

31. Impact of Cancellation of Agreement. In the event this Agreement is cancelled with respect to all or any part of the real property in the Development Area, all duties, obligations and liabilities of the parties hereto with respect to such property shall cease and terminate as of the cancellation date.

32. Hold Harmless. Developer hereby agrees that, anything to the contrary herein notwithstanding, it will hold harmless and defend the City against any and all claims, loss, damage, injury and liability however caused, resulting from, arising out of, or in any way connected with the matters set forth in this Agreement, whether or not caused by or contributed to, or resulting from any negligence or alleged negligence on the part of any officer, employee or agent of the City.

33. Notice. Whenever notice or other communication is called for herein to be given or is otherwise given pursuant hereto, it shall be in writing and shall be personally delivered or sent by registered or certified mail, return receipt requested, addressed as follows:

if to City:

Mayor of the City of St. Louis
City Hall
Tucker Boulevard and Market Street
St. Louis, Missouri 63103

if to CDA:

Community Development Agency
411 North Tenth Street
St. Louis, Missouri 63101
Attention: Director

if to Developer:

SIXTY TWENTY FIVE WESTMINSTER
REDEVELOPMENT CORPORATION
3807 Washington Avenue
St. Louis, Missouri 63108

and all said notices by mail shall be deemed given on the third business day after deposit in the mail.

34. Severability. The provisions of this Agreement shall be deemed severable. In the event that any provision of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions of this Agreement shall remain valid unless the court finds that the valid provisions are so essentially and inseparably connected with and so dependent upon the invalid provision that it cannot be presumed that the parties hereto would have agreed to the valid provisions of this Agreement; or unless the Court finds the valid provisions, standing alone, are incomplete and incapable of being executed in accordance with the contracting parties' intent. If any part of this Agreement regarding the rights or duties hereunder of Developer are found invalid, Developer shall thereafter at its election have the right to be released from this Agreement.

35. Headings. The headings and captions of this Agreement are for convenience and reference only, and in no way define, limit, or describe the scope or intent of the Agreement of any provision hereof.

IN WITNESS WHEREOF, the parties have set their hands and seals the day and year first above written.

CITY OF ST. LOUIS, MISSOURI

(SEAL)

BY: _____
Mayor

Attest:

City Register

BY: _____
Comptroller

Approved as to Form:

City Counselor

SIXTY TWENTY FIVE WESTMINSTER
REDEVELOPMENT CORPORATION

(SEAL)

BY: _____

Attest:

Secretary

SECTION SEVEN. The sections of this ordinance shall be severable. In the event any section off this ordinance is found by a court of competent jurisdiction to be unconstitutional, the remaining sections of this ordinance are valid, unless the court finds the valid sections of this ordinance are so essentially and inseparably connected with, and so dependent upon, the void section(s) that it cannot be presumed that the Board of Aldermen would have enacted the valid sections without the void one(s); or unless the court finds that the valid sections, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent. If any part of this ordinance regarding the rights or duties herein of Developer are found invalid or unconstitutional. Developer shall thereafter at its election have the right to be released from the Agreement herein contained.

SECTION EIGHT. The passage of this ordinance being deemed necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist within the meaning of Section 20 of Article IV of the Charter, and this ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

Legislative History

| | | | | |
|------------------------|------------------------|------------------|---------------------|-----------------------|
| 1ST READING | REF TO COMM | COMMITTEE | COMM SUB | COMM AMEND |
| 05/03/91 | 05/03/91 | NDC | | |
| 2ND READING | FLOOR AMEND | FLOOR SUB | PERFECTN | PASSAGE |
| 06/07/91 | | | 06/14/91 | 06/21/91 |
| ORDINANCE | VETOED | | VETO OVR | |
| 62339 | | | | |