

ORDINANCE #68876
Board Bill No. 278

An Ordinance authorizing the execution of a project agreement between the City of St. Louis and Northside Regeneration, LLC; prescribing the form and details of said agreement; authorizing other related actions in connection therewith; 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 (2000), as amended (the "TIF Act"), the Board of Aldermen of the City of St. Louis, Missouri (the "City") adopted Ordinance No. 68484 on October 30, 2009 (the "Plan Ordinance"), which Plan Ordinance: (i) adopted and approved a redevelopment plan entitled the "NorthSide Regeneration Tax Increment Financing (TIF) Redevelopment Plan" dated September 8, 2009 (the "Redevelopment Plan"), (ii) designated the NorthSide Regeneration Redevelopment Area (as described in the Redevelopment Plan) as a "redevelopment area" as that term is defined in the TIF Act (the "Redevelopment Area"), (iii) adopted and approved the Redevelopment Project Area A and Redevelopment Project Area B as described in the Redevelopment Plan, (iv) adopted tax increment allocation financing within the Redevelopment Project Area A (as legally described in the Redevelopment Plan) and Redevelopment Project Area B (as legally described in the Redevelopment Plan), (v) established the City of St. Louis, Missouri "NorthSide Regeneration Special Allocation Fund," and (vi) made certain findings with respect thereto, all as set forth in the Plan Ordinance and in accordance with the requirements of the TIF Act; and

WHEREAS, on October 30, 2009, the Board of Aldermen adopted Ordinance No. 68485 (the "Redevelopment Agreement Ordinance"), (i) affirming designation of the Redevelopment Area and approval of the Redevelopment Plan and Redevelopment Projects in RPA A and Redevelopment Projects in RPA B, (ii) designating Northside Regeneration, LLC (the "Developer"), as developer of the Redevelopment Area, and (iii) authorizing the City to enter into the Redevelopment Agreement (the "Redevelopment Agreement"); and

WHEREAS, on December 14, 2009, the parties executed and delivered the Redevelopment Agreement; and

WHEREAS, on or about October 8, 2009, certain individuals commenced an action in the Circuit Court of the City of St. Louis against the City, the Tax Increment Financing Commission of the City of St. Louis and the Developer seeking a writ of mandamus and declaratory and injunctive relief to prevent implementation of the Plan Ordinance and the Redevelopment Agreement Ordinance in the case of Smith v TIF Commissioners (City of St. Louis), et al., Case No. 0922-CC09379 (the "Lawsuit"); and

WHEREAS, on July 2, 2010, the Court entered its Memorandum, Order and Judgment in the Lawsuit stating, among other things, "that this judgment shall not be construed to forbid defendant City of St. Louis to amend or supplement said ordinances in accordance with law." Memorandum, Order and Judgment at page 51; and

WHEREAS, on July 23, 2010, the Developer filed the Motion for New Trial or to Amend Judgment and the City joined in said Motion; and

WHEREAS, on October 22, 2010, the Court entered the Memorandum and Order, denying the Motion for New Trial or to Amend Judgment stating, among other things:

Certainly defendant Northside could now seek to procure an executed project agreement from the City and so cure the defect in the ordinances at issue, but the fact that the project comes at the end of the sequence, rather than simultaneously with the adoption of the ordinances designating the redevelopment area and approving the redevelopment plan, does not seem to the Court to be inconsistent with the statute.

Memorandum and Order at page 3; and

WHEREAS, in order to supplement the Plan Ordinance and the Redevelopment Agreement Ordinance, the parties wish to enter into a project agreement (the "Project Agreement") providing for (i) the construction and development of (a) a recycling center for building materials and building aggregates, denominated the "SMART Center", and (b) certain infrastructure work for Redevelopment Project Area B, which construction and development shall commence on the later of dates certain or written authorization from the City to proceed, (ii) the submittal by the Developer of certain certificates of commencement of construction and certificates of substantial completion, (iii) the City's assistance to the Developer in undertaking the construction and development, and (iv) indemnification by Developer; and

WHEREAS, the Board of Aldermen hereby determines that the terms of the Project 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 their respective obligations under the Project Agreement are in the best interests of the City and the health, safety, morals and welfare of its residents.

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 Project Agreement by and between the City and the Developer attached hereto as **Exhibit A**, as and for a supplement to the Plan Ordinance and the Redevelopment Agreement Ordinance, and the City Register is hereby authorized and directed to attest to the Project Agreement and to affix the seal of the City thereto. The Project 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, 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.

SECTION FIVE. After adoption of this Ordinance by the Board of Aldermen, this Ordinance shall become effective on the 30th day after its approval by the Mayor or adoption over his veto.

**EXHIBIT A
PROJECT AGREEMENT**

PROJECT AGREEMENT

THIS PROJECT AGREEMENT (the "Agreement") is made and entered into as of the _____ day of _____, 20____, by and between the CITY OF ST. LOUIS, MISSOURI, a city and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Missouri, and NORTHSIDE REGENERATION, LLC, a limited liability company duly organized and existing under the laws of the State of Missouri.

(All capitalized terms used but not otherwise defined herein shall have the same meanings ascribed to them in **Section 1** of this Agreement.)

RECITALS:

A. On October 30, 2009, the Board of Aldermen adopted Ordinance No. 68484 designating the Redevelopment Area as a "redevelopment area" as provided in the TIF Act and approving the Redevelopment Plan, among other actions.

B. Prior to the adoption of the Plan Ordinance, Northside provided the Board of Aldermen and its advisors, including City staff, with a TIF Phase Summary that provided detailed information regarding project costs for the public infrastructure projects designated for tax increment financing.

C. On October 30, 2009, the Board of Aldermen adopted Ordinance No. 68485 which, among other matters, authorized the City to enter into the Redevelopment Agreement.

D. On December 14, 2009, the parties executed and delivered the Redevelopment Agreement.

E. On or about October 8, 2009, certain individuals commenced an action in the Circuit Court of the City of St. Louis against the City, the TIF Commission and the Developer seeking a writ of mandamus and declaratory and injunctive relief to prevent implementation of the Plan Ordinance and the Redevelopment Agreement Ordinance in the case of Smith v TIF Commissioners (City of St. Louis), et al., Case No. 0922-CC09379.

F. On July 2, 2010, the Court entered its Memorandum, Order and Judgment in the Lawsuit which provided, among other things, that the Redevelopment Plan and/or the Plan Ordinance lacked reference to a specific project and that "this judgment shall not be construed to forbid defendant City of St. Louis to amend or supplement said ordinances in accordance with law."

G. Neither the City nor the Developer agrees with the Court's holding in the Lawsuit that the Redevelopment Plan and/or Plan Ordinance was in any way deficient and that the execution of this Agreement is not meant as, and should not be construed as any admission or agreement by the parties the either the Redevelopment Plan and/or Plan Ordinance was in any way deficient.

H. On July 23, 2010, the Developer filed the Motion for New Trial or to Amend Judgment and the City joined in said Motion.

I. On October 22, 2010, the Court entered the Memorandum and Order, denying the Motion for New Trial or to Amend Judgment stating, among other things:

The project must be part of a contract or ordinance; the redevelopment *plan* is not a *project*. . . . Under the Court's construction of the TIF statute, Northside's infrastructure "project" simply will not meet the statutory criterion unless and until it is part of a contract or ordinance specifying precisely what will be built, when, and at what cost.

* * *

Certainly defendant Northside could now seek to procure an executed project agreement from the City and so cure the defect in the ordinances at issue, but the fact that the project comes at the end of the sequence, rather than simultaneously with the adoption of the ordinances designating the redevelopment area and approving the redevelopment plan, does not seem to the Court to be inconsistent with the statute.

Memorandum and Order at pages 3 and 4.

J. On February ____, 2011, the Board of Aldermen adopted Ordinance _____, authorizing the City to enter into this Agreement.

K. In order to supplement the Plan Ordinance and the Redevelopment Agreement Ordinance, the parties wish to enter into this Agreement for the construction and development of (1) a recycling center for building materials and building aggregates, denominated the "SMART Center", and (2) certain infrastructure work for Redevelopment Project Area B. A description of the SMART Center, including the legal description of the property on which the SMART Center is to be developed and constructed is attached as Exhibit A to this Agreement. The infrastructure work to be completed is described on Exhibit B to this Agreement and the legal description of the areas affected is contained in the Redevelopment Plan.

AGREEMENT:

Now, therefore, in consideration of the premises and promises contained herein and other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions. As used in this Agreement, the following words and terms shall have the following meanings:

“Agreement” means this Project Agreement.

“Certificate of Commencement of Construction” means a document substantially in the form of Exhibit C, attached hereto and incorporated by reference herein, delivered by Developer to the City in accordance with the Redevelopment Agreement and this Agreement and evidencing commencement of each of the Projects, in accordance with the schedule set forth in **Section 2** of this Agreement.

“Certificate of Substantial Completion” means a document substantially in the form of Exhibit D, attached hereto and incorporated herein by reference, issued by the Developer to the City in accordance with the Redevelopment Agreement and this Agreement evidencing the Developer’s satisfaction of all obligations and covenants to complete each of the Projects in accordance with the Redevelopment Agreement, the Redevelopment Plan and this Agreement.

“City” means the City of St. Louis, Missouri, a city and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Missouri.

“Comptroller” means the Comptroller of the City.

“Construction Plans” means plans, drawings, specifications and related documents, and construction schedules for each of the Projects, together with all supplements, amendments or corrections, submitted by the Developer and approved by the City in accordance with the Redevelopment Agreement and this Agreement and pursuant to the standard process of the City for the issuance of building permits.

“Court” means the Circuit Court for the City of St. Louis, Missouri (Twenty-Second Circuit).

“Developer” means Northside Regeneration, LLC, a limited liability company duly organized and existing under the laws of the State of Missouri.

“Governmental Approvals” means all plat approvals, re-zoning or other zoning changes, site plan approvals, conditional use permits, variances, building permits, or other subdivision, zoning, or similar approvals required for the implementation of the Projects and consistent with the Redevelopment Agreement, the Redevelopment Plan and this Agreement.

“Infrastructure” means the demolition and abatement work described on Exhibit B, attached hereto and incorporated herein by this reference. Exhibit B sets forth the costs and locations of the infrastructure improvements to be made for Redevelopment Project Area B.

“Lawsuit” means the case captioned, Smith v TIF Commissioners (City of St. Louis), et al., Case No. 0922-CC09379, pending in the Court.

“Plan Ordinance” means Ordinance No. 68484, designating the Redevelopment Area, approving the Redevelopment Plan, approving the redevelopment projects in Redevelopment Project Area A and the redevelopment projects in Redevelopment Project Area B, adopting tax increment financing within Redevelopment Project Area A and Redevelopment Project Area B and establishing that certain special allocation fund.

“Projects” means the SMART Center and the Infrastructure.

“Redevelopment Agreement” means the Redevelopment Agreement, dated as of December 14, 2009, between the City and the Developer.

“Redevelopment Agreement Ordinance” means Ordinance No. 68485, affirming adoption of the Redevelopment Plan, Redevelopment Area, and redevelopment projects; authorizing the execution of the Redevelopment Agreement between the City and the Developer; prescribing the form and details of the Redevelopment Agreement; and designating Northside Regeneration, LLC as developer of the Redevelopment Area.

“Redevelopment Area” means the real property described in **Appendix A**, attached to the Redevelopment Plan.

“Redevelopment Plan” means the plan titled “Northside Regeneration Tax Increment Financing (TIF) Redevelopment Plan” dated September 8, 2009 and amended September 16, 2009, approved by the City pursuant to the Approving Ordinance, as such plan may from time to time be further amended in accordance with the TIF Act.

“Redevelopment Project Area A” means the real property described as Redevelopment Project Area A in **Appendix A**, attached to the Redevelopment Plan.

“Redevelopment Project Area B” means the real property described as Redevelopment Project Area B in **Appendix A**, attached to the Redevelopment Plan.

“SLDC” means the St. Louis Development Corporation, a non-profit corporation organized and existing under the laws of the State of Missouri.

“SMART Center” means the recycling center for building materials and building aggregates to be developed and constructed on the property described on Exhibit A, attached hereto and incorporated herein by this reference.

“TIF Act” means the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 through 99.865 of the Revised Statutes of Missouri, as amended.

“TIF Commission” means the Tax Increment Financing Commission of the City of St. Louis.

2. Developer to Complete Projects. The Developer shall commence or cause the commencement of the Projects and shall complete the Projects, all as identified below:

- a. The construction of the SMART Center shall commence on the later of February 15, 2011 or the date on which the Developer receives written authorization from the City to commence construction and shall be completed twelve (12) months after commencement of construction. Such written authorization from the City to commence shall be evidenced by letters from SLDC and the Alderperson in whose ward the SMART Center is located.
- b. The work relating to the Infrastructure shall commence on the later of February 15, 2011 or the date on which the Developer receives written authorization from the City to commence the work relating to the Infrastructure and shall be completed twelve (12) months after commencement of the work relating to the Infrastructure. Such written authorization from the City to commence shall be evidenced by letters from SLDC and the Alderperson in whose ward the Infrastructure is located.

3. Construction Plans. The Construction Plans relating to each of the Projects or any discrete portion or portions thereof shall be prepared by a professional engineer or architect licensed to practice in the State of Missouri and the Construction Plans and all construction practices and procedures with respect to the Projects shall be in conformity with all applicable state and local laws, ordinances and regulations, and the provisions of the Redevelopment Agreement and this Agreement.

4. Certificate of Commencement of Construction. The Developer shall furnish to the SLDC, with a copy to the Comptroller, one or more Certificates of Commencement of Construction, which certificates shall be submitted for all or a portion of each of the Projects in accordance with the schedule set forth in **Section 2** of this Agreement and in the form of Exhibit C attached hereto and incorporated herein by reference in accordance with this Agreement.

5. Certificate of Substantial Completion. Promptly after substantial completion of a discrete portion of one of the Projects, the Developer shall furnish to the City and the SLDC a Certificate of Substantial Completion substantially in the form attached as Exhibit D, attached hereto and incorporated by referenced herein.

6. Governmental Approvals. The City and, at its direction, the SLDC agree to employ reasonable and good faith efforts to cooperate with the Developer and to process and timely consider and respond to all applications for the Governmental Approvals as received relating to the Projects, all in accordance with the applicable City ordinances and laws of the State of Missouri.

7. Assistance to Developer in Undertaking Redevelopment. The City will use its best efforts, but subject to legislative authority, with no obligation on the part of the City to complete any portion of the Projects, and provided that the proposed Projects comply with the standards of the Board of Public Service and the Department of Streets, Traffic and Refuse of the City, to

take the steps set forth in this Section to assist the Developer. The Developer acknowledges and confirms that this Agreement does not bind the City to procure or to commit funds or to be responsible for the safety and welfare of any person related to the development and construction of the Projects. The City shall endeavor to use its police powers to facilitate the orderly development and construction of the Projects by closing streets as necessary, placing barricades to separate traffic from the site or sites of the construction of the Projects, placing warning signs to indicate the site or sites of the construction of the Projects and expediting additions to streets and vacation of streets and alleys where necessary subject, however, to applicable law and the rights of owners of property in the Redevelopment Area other than the Developer.

8. Force Majeure. Neither the City nor the Developer nor any successor in interest shall be considered in breach or default of their respective obligations under this Agreement, and times for performance of obligations hereunder shall be extended by twelve (12) months and, if such condition continues, shall be extended for up to twenty-four (24) months in the event of any delay caused by force majeure, including without limitation damage or destruction by fire or casualty; strike; lockout; civil disorder; war; restrictive government regulations; lack of issuance of any permits and/or legal authorization by the governmental entity necessary for the Developer to proceed with construction of one or both of the Projects or any portion thereof and which such governmental entity would be required to issue in the ordinary course of business; shortage or delay in shipment of material or fuel; acts of God; unusually adverse weather or wet soil conditions; or other like causes beyond the parties' reasonable control, including without limitation any litigation, court order or judgment resulting from any litigation affecting the validity of the Projects or this Agreement; provided that (a) such event of force majeure shall not be deemed to exist as to any matter initiated or sustained by the Developer in bad faith, and (b) the Developer notifies the City in writing within thirty (30) days of the Developer's actual knowledge of the existence of such claimed event of force majeure.

9. Notice. All notices, demands, consents, approvals, certificates and other communications required by this Agreement to be given by either party hereunder shall be in writing and shall be hand delivered or sent by United States first class mail, postage prepaid, addressed to the appropriate party at its address set forth below, or to such other individual or to such other address as such party shall have last designated by notice to the other. Notices, demands, consents, approvals, certificates and other communications shall be deemed given when delivered or three (3) days after mailing; provided, however, that if any such notice or other communication shall also be sent by telecopy or fax machine, such notice shall be deemed given at the time and on the date of machine transmittal if the sending party receives a written send verification on its machines and forwards a copy thereof with its mailed or courier delivered notice or communication.

In the case of the Developer, to:

Northside Regeneration, LLC
1001 Boardwalk Springs Place
O'Fallon, Missouri 63366
Attention: William D. Laskowsky
Facsimile: (636) 561-3901

With a copy to:

Stone, Leyton & Gershman
A Professional Corporation
7733 Forsyth Boulevard, Suite 500
St. Louis, Missouri 63105
Attention: Steven M. Stone
Facsimile: (314) 721-8660

In the case of the City, to:

City of St. Louis
Office of the Mayor
City Hall
1200 Market Street, Room 200
St. Louis, Missouri 63103
Attention: Mayor
Facsimile: 314-622-3440

And

City of St. Louis
Office of the Comptroller
City Hall
1520 Market Street, Room 3005
St. Louis, Missouri 63103
Attention: Ivy Neyland-Pinkston, Deputy Comptroller
Facsimile: 314-588-0550

With a copy to:

St. Louis Development Corporation
1015 Locust Street
Suite 1200
St. Louis, Missouri 63101
Attention: Dale Ruthsatz
Facsimile: 314-231-2341

And

Armstrong Teasdale LLP
One Metropolitan Square, Suite 2600
St. Louis, Missouri 63102
Attention: Thomas Ray
Facsimile: 314-621-5065

And

Husch Blackwell LLP
190 Carondelet Plaza, Suite 600
St. Louis, Missouri 63105
Attention: David G. Richardson
Facsimile: 314-480-1505

And

City Counselor
City Hall
1200 Market Street, Room 314
St. Louis, Missouri 63102
Attention: Patty Hageman, City Counselor

In the case of the SLDC, to:

St. Louis Development Corporation
1015 Locust Street, Suite 1200
St. Louis, Missouri 63101
Attention: Dale Ruthsatz
Facsimile: 314-231-2341

10. Inspection. The City may conduct such periodic inspections of the Projects as may be generally provided in the building code of the City. In addition, the Developer shall allow other authorized representatives of the City reasonable access to the site or sites of the Projects from time to time upon advance notice prior to the completion of the Projects for inspection thereof for the purpose of determining whether or not one of the Projects is proceeding in accordance with the terms of the Redevelopment Agreement and this Agreement. The Developer shall not unreasonably deny the City and its officers, employees, agents and

independent contractors the right to inspect, upon request, all architectural, engineering, demolition, construction and other contracts and documents pertaining to the construction of the Projects as the City determines is reasonable and necessary to verify the Developer's compliance with the terms of the Redevelopment Agreement and this Agreement.

11. Choice of Law. This Agreement shall be taken and deemed to have been fully executed, made by the parties in, and governed by the laws of State of Missouri for all purposes and intents.

12. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute one and the same instrument.

13. Severability. In the event any term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect, to the extent the remainder can be given effect without the invalid provision.

14. Captions. The headings or captions of the articles, sections or paragraphs appearing in this Agreement are for convenience of reference only, are not a part of this Agreement and are not to be considered in interpreting this Agreement.

15. Attorney's Fees. In any dispute arising out of or relating to this Agreement, including any action to enforce this Agreement against a defaulting or breaching party, the prevailing party shall recover from the non-prevailing party the prevailing party's attorney's fees, in addition to any other damages to which it may be entitled.

16. Representatives Not Personally Liable. No elected or appointed official, agent, employee or representative of the City shall be personally liable to the Developer in the event of any default or breach by any party under this Agreement, or for any amount which may become due to any party or on any obligations under the terms of this Agreement.

17. Incorporation of Redevelopment Agreement. This Agreement shall be governed by the Redevelopment Agreement, including, but not limited to Sections 7.20, 7.21, 7.22, 7.23, and 7.26 thereof, the terms and provisions of the Redevelopment Agreement being incorporated herein by this reference. This Agreement shall be further governed by any Individual RPA Redevelopment Agreement (as such term is defined in the Redevelopment Agreement).

18. Events of Default. There shall be an Event of Default if one of the following occurs: (a) the Developer fails to comply with the schedule set forth in **Section 2** of this Agreement; (b) the City determines that the Developer has failed to comply with any material provision of this Agreement; (c) the Developer has commenced a bankruptcy case; or (d) the City determines that the Developer has abandoned the Projects; provided, however, that no Event of Default shall exist if (x) the Developer remedies or cures a monetary default or breach within fifteen (15) days after receipt of written notice from the City specifying the default or breach, or (y) the Developer remedies or cures a non-monetary default or breach within thirty (30) days after receipt of written notice from the City specifying the default or breach or the Developer diligently and in good faith commences to cure or remedy such default or breach but is unable to cure or remedy such default or breach within thirty (30) days after receipt of notice, and the Developer, prior to the end of such thirty (30) days, provides notice to the City that it has in good faith commenced to cure or remedy such default or breach, whereupon the Developer shall have an additional thirty (30) days to cure or remedy such default or breach.

19. City's Right of Termination. The City may terminate this Agreement upon the occurrence of an Event of Default, which has continued after any applicable cure period.

20. Other Remedies. Except as otherwise provided in this Agreement relating to the occurrence of Events of Default and otherwise and subject to the City's right of termination, upon the occurrence of an Event of Default, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default, including without limitation proceedings to compel specific performance by the defaulting party, termination of this Agreement, or exercising any and all remedies available at law or in equity.

21. Release and Indemnification. The obligations under this Section shall survive the termination of this Agreement and shall remain in force beyond the expiration of any applicable statute of limitations and the full performance of the obligations hereunder.

a. The City and its governing body members, officers, agents, attorneys, employees and independent contractors shall not be liable to the Developer for damages or otherwise in the event that all or any part of the ordinance adopted in connection with this Agreement is declared invalid or unconstitutional or this Agreement is declared void in whole or in part by the final (as to which all rights of appeal have expired or have been exhausted) judgment of any court

of competent jurisdiction, and by reason thereof either the City is prevented from performing any of the covenants and agreements herein or the Developer is prevented from enjoying the rights and privileges hereof.

b. The Developer releases from and covenants and agrees that the City and its governing body members, officers, agents, attorneys, employees and independent contractors shall not be liable for, and agrees to indemnify, defend and hold harmless the City, its governing body members, officers, agents, attorneys, employees and independent contractors against any and all claims, demands, liabilities and costs, including reasonable attorneys' fees, costs and expenses, arising from damage or injury, actual or claimed (excluding consequential and punitive damages), to persons or property occurring or allegedly occurring as a result of any negligent or malicious acts or omissions of the Developer, its governing body members, officers, agents, attorneys, employees and independent contractors, in connection with its or their activities conducted pursuant to this Agreement.

c. The City and its governing body members, officers, agents, attorneys, employees and independent contractors shall not be liable for any damage or injury to the persons or property of the Developer or its officers, agents, employees, independent contractors or any other persons who may be about the Projects except for matters arising out of the gross negligence or willful misconduct of the City and its governing body members, officers, agents, attorneys, employees and independent contractors.

d. All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and not of any of its governing body members, officers, agents, attorneys, employees or independent contractors in their individual capacities. No governing body members, officers, agents, attorneys, employees or independent contractors of the City shall be personally liable to the Developer in the event of a default or breach by any party under this Agreement.

e. In the event a third party brings an action against the City, its governing body members, officers, agents, attorneys, employees and independent contractors, contesting the validity or legality of this Agreement, resulting from, arising out of, or in any way connected with the enforcement of this Agreement, or the actions of the City and its governing body members, officers, agents, attorneys, employees and independent contractors pertaining to this Agreement, the Developer shall protect, indemnify, defend (by counsel reasonably acceptable to the City) and hold harmless the City, its governing body members, officers, agents, attorneys, employees and independent contractors, from and against all harms, including, without limitation, damages, punitive damages, liabilities, losses, demands, claims, judgments, settlements, losses, liabilities, fines, cost recovery actions, lawsuits, administrative proceedings, orders, response costs, compliance costs, investigation expenses, consultant fees, attorneys' fees, paralegal fees, court costs and litigation expenses, arising from or in connection with the defense of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the City and the Developer have caused this Agreement 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

Approved as to Form:

City Counselor

(SEAL)

Attest:

Parrie May, City Register

“DEVELOPER”

NORTHSIDE REGENERATION, LLC,
a Missouri limited liability company

By: McEagle Regeneration, LLC
 (“MR”), a Missouri limited liability company

By: _____
Name: Paul J. McKee, Jr.
Title: Chief Manager of MR

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY ON WHICH SMART CENTER IS TO BE
LOCATED AND DESCRIPTION OF SMART CENTER

A TRACT OF LAND BEING PART OF CITY BLOCKS 602 AND 611 OF THE CITY OF ST. LOUIS, MISSOURI AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTERLINE OF NORTH 10TH (60 FOOT WIDE) STREET WITH THE NORTH RIGHT OF WAY LINE OF AN EAST WEST ALLEY (15 FOOT WIDE), SAID ALLEY BEING NORTH OF CASS STREET, LOCATED IN CITY BLOCK 602;

THENCE ALONG SAID NORTH RIGHT OF WAY LINE, NORTH 75 DEGREES 12 MINUTES 28 SECONDS WEST, A DISTANCE OF 207.58 FEET TO THE EAST RIGHT OF WAY LINE OF THE PROPOSED PARKWAY;

THENCE ALONG SAID EAST RIGHT OF WAY LINE, NORTH 18 DEGREES 35 MINUTES 44 SECONDS EAST, A DISTANCE OF 309.93 FEET TO THE SOUTH RIGHT OF WAY LINE OF MULLANPHY (60 FOOT WIDE) STREET;

THENCE CONTINUING ALONG SAID EAST RIGHT OF WAY LINE ACROSS SAID MULLANPHY STREET, NORTH 13 DEGREES 15 MINUTES 17 SECONDS EAST, A DISTANCE OF 60.00 FEET TO THE NORTH RIGHT OF WAY LINE OF SAID MULLANPHY STREET;

THENCE CONTINUING ALONG SAID EAST RIGHT OF WAY LINE, ALONG A NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 508.25 FEET, WITH A CENTRAL ANGLE OF 32 DEGREES 46 MINUTES 52 SECONDS (WHICH CHORD BEARS NORTH 46 DEGREES 31 MINUTES 13 SECONDS EAST, A CHORD DISTANCE OF 286.84 FEET) THROUGH AN ARC DISTANCE OF 290.79 FEET; AND SOUTH 76 DEGREES 44 MINUTES 52 SECONDS EAST, A DISTANCE OF 37.88 FEET TO THE CENTERLINE OF THE AFORMENTIONED 10TH STREET;

THENCE ALONG SAID CENTERLINE, SOUTH 14 DEGREES 48 MINUTES 00 SECONDS WEST, A DISTANCE OF 614.22 FEET TO THE POINT OF BEGINNING.

THE ABOVE TRACT OF LAND CONTAINING 2.385 ACRES IS BASED UPON AVAILABLE RECORDS AND SURVEYS COMPILED BY COLE AND ASSOCIATES, INC. AND IS SUBJECT TO ALL EASEMENTS, RESTRICTIONS, RESERVATIONS AND CONDITIONS OF RECORD, IF ANY.

EXHIBIT B

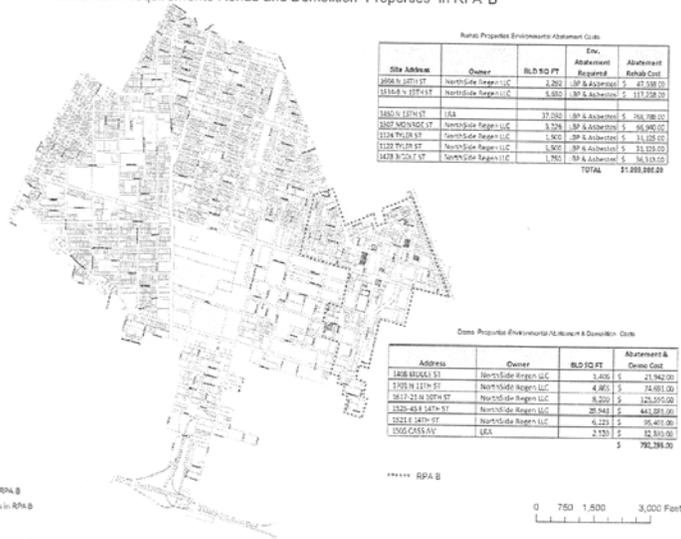
DESCRIPTION OF INFRASTRUCTURE IMPROVEMENTS

68876

EXHIBIT B

DESCRIPTION OF INFRASTRUCTURE IMPROVEMENTS

Abatement Requirements Rehab and Demolition Properties in RPA B



68876

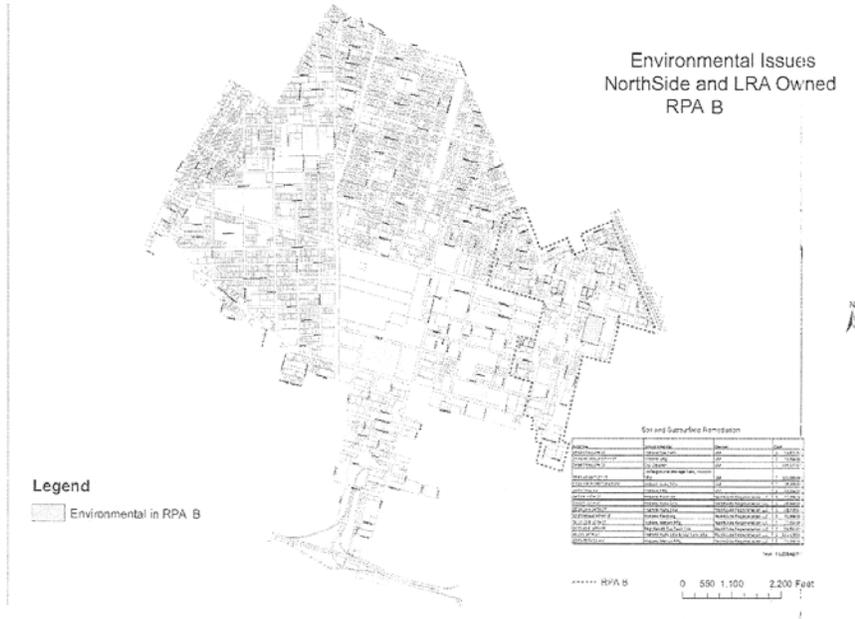


EXHIBIT C

FORM OF CERTIFICATE OF COMMENCEMENT OF CONSTRUCTION

DELIVERED BY

Northside Regeneration, LLC

The undersigned, Northside Regeneration, LLC (the "Developer"), pursuant to that certain Project Agreement dated as of _____, 20____, between the City of St. Louis, Missouri (the "City") and Developer (the "Agreement") hereby certifies to the City as follows:

1. All property necessary to complete the portion of the Projects identified herein has been acquired by Developer.
2. Developer has entered into an agreement with a contractor or contractors to construct [insert description of specific portion of Projects].
3. Developer has submitted to the MBE/WBE Compliance Officer a copy of Developer's MBE/WBE Subcontractor's List and M/WBE Utilization Statement, which are attached hereto as Appendix A.
4. Developer has obtained all necessary financing to complete the portion of the Projects identified herein.
5. This Certificate of Commencement of Construction is being issued by Developer to the City in accordance with the Agreement to evidence Developer's satisfaction of all obligations and covenants with respect to commencement of construction of the portion of the Projects identified herein.

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand this day of _____, 20_____.

NORTHSIDE REGENERATION, LLC,
a Missouri limited liability company

By: McEagle Regeneration, LLC,
a Missouri limited liability company

By: _____
Name: _____
Title: _____

EXHIBIT D

FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

The undersigned, Northside Regeneration, LLC, a Missouri limited liability company (the "Developer"), pursuant to that certain Project Agreement dated as of _____, 20____, between the City of St. Louis, Missouri (the "City"), and the Developer (the "Agreement"), hereby certifies to the City as follows:

1. That as of _____, _____, the construction of the [insert description of specific portion of the Projects] has been substantially completed in accordance with the Agreement.
2. That the development and construction of such portions of the Projects (as that term is defined in the Agreement) has been substantially completed or funded.
3. The development and construction of the Projects has been performed in a workmanlike manner and substantially in accordance with the Construction Plans (as those terms are defined in the Agreement).

4. This Certificate of Substantial Completion is accompanied by the project architect’s or owner representative’s certificate of substantial completion on AIA Form G-704 (or the substantial equivalent thereof), a copy of which is attached hereto as Appendix A and incorporated herein by reference, certifying that the portion of the Projects has been substantially completed in accordance with the Agreement.

5. Lien waivers for applicable portions of the work related to the Projects in excess of Five Thousand Dollars (\$5,000) have been obtained.

6. This Certificate of Substantial Completion is being issued by the Developer to the SLDC and the City in accordance with the Agreement to evidence the Developer’s satisfaction of all material obligations and covenants with respect to the Projects.

7. The acceptance (below) or the failure of the SLDC and the Mayor or his designee to object in writing to this Certificate within thirty (30) days of the date of delivery of this Certificate to the SLDC and the City (which written objection, if any, must be delivered to the Developer prior to the end of such thirty (30) days) shall evidence the satisfaction of the Developer’s agreements and covenants to perform the development and construction of the specific portions of the Projects.

Upon such acceptance by the SLDC and the Mayor or his designee, the Developer may record this Certificate in the office of the City’s Recorder of Deeds. This Certificate is given without prejudice to any rights against third parties which exist as of the date hereof or which may subsequently come into being. Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand this ____ day of _____, 20 ____.

NORTHSIDE REGENERATION, LLC,
a Missouri limited liability company

By: McEagle Regeneration, LLC,
a Missouri limited liability company

By: _____

Name: _____

Title: _____

ACCEPTED:

SLDC

By: _____

Name: _____

Title: _____

CITY OF ST. LOUIS, MISSOURI

By: _____
Mayor

Approved: February 22, 2011