

RESOLUTION NO. 195

RESOLUTION AUTHORIZING A PRELIMINARY FUNDING AGREEMENT WITH SVERDRUP INVESTMENTS, INC. FOR THE PURPOSE OF ESTABLISHING AN ESCROW ACCOUNT FOR FUNDING COSTS ASSOCIATED WITH CONSIDERATION OF A REDEVELOPMENT PLAN FOR THE TIMBERLAKE AREA AND POTENTIAL USE OF TAX INCREMENT FINANCING

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WHEREAS, Sverdrup Investments, Inc. ("SVI") owners of approximately 13 acres located east of Timberlake Manor Drive between Highway 64 and Conway Road (the "Timberlake Area"), have advised the City of Chesterfield ("City") of an intention to submit a request relating to the redevelopment of the Timberlake Area, including consideration of the use of Tax Increment Financing ("TIF"); and

WHEREAS, the City's staff and consultants have provided the City Council with a written evaluation of the proposed redevelopment in response to a TIF Application submitted by SVI; and

WHEREAS, the City Council has determined that further consideration of SVI's request for designation of the Timberlake Area as a redevelopment area under the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800, et seq., RSMo., as amended, is warranted but such further consideration will require the City to retain the services of consultants and special legal counsel; and

WHEREAS, the City Council believes certain costs to the City associated with further consideration of the TIF Application relating to the redevelopment of the Timberlake Area and the use of TIF should be borne by SVI initiating such review and not by other taxpayers of the City; and

WHEREAS, SVI has indicated a willingness to provide funds to defray the City's expenses associated with consideration of any proposals or requests which may be submitted with respect to the Timberlake Area;

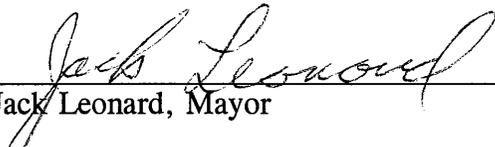
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHESTERFIELD, MISSOURI, AS FOLLOWS:

THAT, the City Administrator is hereby authorized and directed to enter into a Preliminary Funding Agreement with SVI for the purpose of establishing an escrow account for funding certain costs anticipated to be incurred by the City in further considering the TIF Application

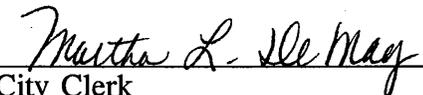
relating to redevelopment of the Timberlake Area. Said Preliminary Funding Agreement is attached hereto as Exhibit "A" and incorporated herein by reference as if fully set forth herein.

FURTHER, THAT the Director of Finance and City Administrator are hereby directed and authorized to deposit any and all funds received pursuant to said Preliminary Funding Agreement authorized hereby into a special escrow account and to disburse such funds for such expenses as may, in the sole judgment of the City Council, be reasonably incurred and reasonably necessary for consideration of any such petition, subject to approval of warrants for payment by the City Council.

PASSED AND APPROVED THIS 7<sup>th</sup> DAY OF DECEMBER, 1995.

  
\_\_\_\_\_  
Jack Leonard, Mayor

Attest:

  
\_\_\_\_\_  
City Clerk

(EXHIBIT "A")

PRELIMINARY FUNDING AGREEMENT

THIS PRELIMINARY FUNDING AGREEMENT ("Agreement") is made and entered into as of the 13<sup>th</sup> day of DECEMBER, 1995 by and between the City of Chesterfield, Missouri, a third class city located in St. Louis County, Missouri (the "City") and Sverdrup Investments, Inc. (the "Developer").

RECITALS

A. Developer is the owner of approximately 13 acres located east of Timberlake Manor Drive between Highway 64 and Conway Road in the City, as shown on Exhibit A attached hereto and incorporated by this reference herein, hereinafter referred to as the "Project Area".

B. Developer desires to redevelop the Project Area and other infrastructure improvements ("Redevelopment Projects") as all set forth in a TIF Application previously submitted to the City.

C. The City desires to further explore the feasibility of (i) performing certain infrastructure improvements in connection with the Redevelopment Projects (the "Improvements"), and (ii) financing such Improvements through the use of tax increment allocation financing ("TIF") pursuant to the Real Property Tax Increment Allocation Redevelopment Act, Section 99.800, et seq., RSMo., as amended ("TIF Act").

D. Subject to the terms of this Agreement, the City desires Developer to assist the City in considering the Redevelopment Projects by advancing to the City funds to allow the City to pay certain preliminary TIF redevelopment start-up costs, which costs will be reimbursed to Developer in accordance with this Agreement and the approved Redevelopment Plan.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Advance Funds. The City hereby acknowledges receipt from the Developer of Sixty Four Thousand Five Hundred Dollars (\$64,500.00) to be used as preliminary funding in connection with the consideration by the City of Redevelopment Projects as set forth in the Recitals (the "Preliminary Funds"). The City shall allocate and use the Preliminary Funds as a source of payment of actual costs incurred by the City after execution of this Agreement for the work generally described in the Work Program, attached hereto and incorporated in this Agreement as Exhibit "B". Such work shall be performed by the contractors described in the Work Program at their respective regular hourly rates and the City shall pay for such work only in accordance with paragraph 2 below.

2. Disbursement. The City shall disburse the Preliminary Funds to pay the fees and expenses of the City's consultants on a regular, but no more frequent than monthly, basis for any period in which such fees and expenses are actually incurred by the City. Such disbursements shall be made only upon receipt of (i) invoices for work reasonably and actually performed generally in accordance with the Work Program by the specified contractors; (ii) receipts for any and all necessary direct out-of-pocket expenditures incurred by the contractors in connection with such planning and/or legal work; and (iii) such other supporting documentation as may be requested by the City (collectively, a "Disbursement Request"). The Finance Director for the City (the "Director") shall examine each such Disbursement Request and all disbursements made by the City shall be authorized in writing by the Director. The Director shall use reasonable care in ascertaining that all amounts charged to the City pursuant to each Disbursement Request are fair and reasonable amounts for the work represented on each Disbursement Request.

3. Copies of Disbursement Requests. Within ten (10) days after the City receives a Disbursement Request, the City shall forward a copy of such Disbursement Request to Developer as set forth herein; provided that, the City reserves the right to omit confidential and privileged statements. In the event Developer has questions regarding any Disbursement Request, Developer shall direct such questions to the Director; provided, however, that the Director shall not be required to obtain Developer's approval of payment of any and all Disbursement Requests.

4. Repayment of Preliminary Funds. The Preliminary Funds shall be repaid to Developer from proceeds of Obligations (as that term is defined in the TIF Act) issued by the City in connection with any and all Redevelopment Plans for the Improvements adopted within five (5) years of the date of this Agreement prior to issuance of Obligations for the payment of any other eligible project costs.

5. Negotiation of Redevelopment Agreement. The City agrees to meet with Developer and attempt to agree upon a mutually acceptable redevelopment agreement pursuant to a Redevelopment Plan for the Project Area, approved by the City in accordance with all applicable provisions of the TIF Act; provided that nothing herein shall prohibit the City from soliciting proposals for the undertaking of the Redevelopment Projects from persons other than the Developer.

6. Right of Termination. The Developer shall have the right to terminate this Agreement at any time in its sole discretion upon giving the City 10 days written notice; whereupon 10 days following Developer's delivery of said notice this Agreement shall be deemed terminated. Upon receipt of said notice the City shall pay to Developer within 60 days of said notice the then existing balance of the Preliminary Funds remaining after the City's payment of any invoices for work performed by any contractor under the Work Program through the date of termination.

7. Excess Preliminary Funds. In the event the City does not expend all of the Preliminary Funds as provided herein on or before **June 1, 1996**, or such other date as agreed to by the parties in writing, the City shall immediately return the remainder of the Preliminary

Funds to Developer, in cash or by cashier's check. In no event shall this Agreement be construed as obligating the Developer to advance additional funds to the City for any purpose whatsoever.

8. No Third Party Beneficiaries. The parties hereby agree that this Agreement shall be a contract solely between the City and the Developer and that no third party shall have any beneficial interest in or derived from this Agreement.

9. Notices. All notices and correspondence hereunder shall be in writing and shall be delivered by hand delivery, facsimile, or first class mail, postage prepaid, to the parties as set forth below:

If to Developer:

Sverdrup Investments, Inc.  
13728 Riverport Drive  
Maryland Heights, MO 63043  
ATTN: Richard E. Feldman

With a copy to:

S. Jerome Pratter  
The Stolar Partnership  
911 Washington Avenue  
St. Louis, MO 63101

If to the City:

City of Chesterfield  
922 Roosevelt Parkway  
Chesterfield, MO 63017-2079  
Attention: City Administrator

With a copy to:

Douglas R. Beach  
City Attorney  
Beach, Burcke, Helfers & Mittleman  
222 South Central, Suite 900  
Clayton, MO 63105

and a copy to:

Armstrong, Teasdale, Schlafly & Davis  
One Metropolitan Square, Suite 2600  
St. Louis, MO 63102-2740  
Attention: James E. Mello

10. Miscellaneous.

a. Governing Law; Counterparts. This Agreement shall be governed by the applicable laws of the State of Missouri, and may be signed in counterparts.

b. Severability. If any provisions of this Agreement shall be unenforceable, the remainder of this Agreement shall be enforced as if such provision were not contained herein.

c. No Waiver. Failure of any party hereto to enforce its rights hereunder at any time shall not be deemed a waiver of any such rights.

d. Successors and Assigns. This Agreement may not be assigned by any party hereto without the prior written consent of all other parties. No assignment, unless specifically provided for in the consent thereto, shall relieve the assigning party of any liability hereunder. This Agreement shall be binding upon the parties hereto and their heirs, successors and permitted assigns.

e. Representations and Warranties. The parties hereto hereby represent and warrant that this Agreement has been duly executed by them or on their behalf, as the case may be, pursuant to due authorization, and is not in violation of any such party's governing documents, charter or ordinances, as the case may be. No consents are necessary for the execution, delivery, and performance of this Agreement by such party, and this Agreement is valid, binding and enforceable against such party in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

Developer:

SVERDRUP INVESTMENTS, INC.

By: Richard E. Zell  
Title: V.P.

City:

CITY OF CHESTERFIELD, ST LOUIS  
COUNTY, MISSOURI

By: Michael D. Berry  
City Administrator